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UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
	)	MOTION FOR EXTENSION OF TIME TO
	)	RESPOND
v.	)	
	)	CASE No. 08-003
	)	
OMAR AHMED KHADR	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
	)	Colonel Patrick Parrish
	)	

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**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY  
COMMISSION REVIEW**

**Relief Sought**

COMES NOW Appellee pursuant to Rule 21(a) of this Court’s Rules of Practice and Procedure and respectfully requests that this Court grant an extension until 25 September 2008 for the Appellee to file its brief in response to the Government’s appeal in this case. In light of the relief requested, Appellee respectfully requests this Court to rule on the instant motion no later than 29 August 2008.

**Standard for Granting Relief**

Rule 21(a) of this Court’s Rules of Practice and Procedure provides that this Court “may extend any time limits prescribed . . . in such a manner as may appear to be required for a full, fair, and expeditious consideration of the case.”

**Facts**

Appellee, Omar A. Khadr (Mr. Khadr), is the subject of ongoing proceedings before a military commission at Guantanamo Bay. Mr. Khadr is represented by the same two counsel in those proceedings as will represent him in connection with the instant appeal. Under the terms of the current trial schedule, a session of the military commission is scheduled for the week of 8

September 2008 and trial is scheduled for 8 October 2008. (*See* Order on Future Hearings (Attachment A).)

The parties will be litigating a number of motions at the 10 September session of the commission, including three motions to compel the production of expert witnesses, a motion to dismiss involving violation of a discovery order, a motion to compel discovery, and a motion for reconsideration of the commission's ruling on a previous motion concerning the appointment of expert psychological and psychiatric consultants to the defense team. Other motions are expected. In addition to preparing to litigate and argue the expert, discovery, and other motions, counsel are in the process of gathering affidavits in support of the motion for reconsideration. (*See* Affidavit of LCDR Kuebler (Attachment B).)

Since filing its notice of appeal, the Government has not requested to stay or abate the proceedings of the military commission pending disposition of the appeal. As things stand, those proceedings will continue and Mr. Khadr has a right to competent representation in connection therewith. The appeal relates to a motion for a reconsideration filed months after the previous ruling of the previous military judge relating to the "enterprise" language of Charge III. (*See* Gov't Appx., Ex. F.) As the Government motion was based on no intervening change in the law, the defense elected not to respond to the Government's motion before the commission. As a result, Appellee's counsel have no response brief from the military commission that can be readily converted into an answer to the Government's brief in this proceeding. Counsel will accordingly be required to research and prepare a brief from scratch.

### **Argument**

Rule 21(a) provides this Court with the authority to grant an extension of the Appellee's time in which to file an answer to the Government's appeal. The Court should exercise that

authority in this case and grant the Appellee an extension to 25 September 2008 to file its response.

The Governments' surprise appeal comes in the midst of ongoing proceedings in Mr. Khadr's military commission – proceedings that will continue notwithstanding the pendency (or outcome) of this appeal. *See* R.M.C. 908(b)(8). It goes without saying that Mr. Khadr has a right to competent representation in connection with those proceedings, including, significantly, a currently-scheduled 10 September 2008 session of the commission at which numerous complex motions will be litigated. Counsel have the remainder of this week and the week of 1 September to complete their preparation for the 10 September session of commission. Adequate preparation for the 10 September session (and other appropriate trial preparation in light of the current trial schedule) will consume the entirety of that time. Unlike the Government, who currently has at least five attorneys detailed to this case, Mr. Khadr is dependent upon his two detailed counsel for appropriate representation in *both* his trial and appellate proceedings. Furthermore, Ms. Snyder, one of Mr. Khadr's two military commission attorneys, has been on reserve duty with the Navy since 18 August 2008 and will continue to be on reserve duty until 31 August 2008. (*See* Affidavit of LCDR Kuebler (Attachment B).) This impacts the amount of time counsel have to prepare for the 10 September hearing.

As noted above, because the defense elected not to file a response brief in the commission, it has no brief at hand that can be readily converted into a response brief. Moreover, the timing and substance of the Government's appeal raise issues relating to jurisdiction that will need to be researched and potentially briefed. The substance of the Government's appeal raises complex constitutional and other legal issues that will need to be researched and responded to virtually from scratch. Thus, counsel cannot prepare for the 10

September session of the commission *and* competently represent Mr. Khadr on appeal if the due date for the Appellee's answer remains fixed at 5 September 2008.

Moreover, counsel will not be able to address these matters while at Guantanamo Bay in connection with the 10 September session of the commission. In addition to being preoccupied with proceedings in the commission, counsel will not have access to appropriate facilities for communications and research. As a result, there is simply no way that Appellee's counsel will be able to make meaningful progress in responding to the Government's appeal until after they return from Guantanamo the week of 8 September.

Finally, prudential considerations militate in favor of granting the requested extension in these proceedings, rather than compelling counsel to seek delay in the commission. The vast majority of the issues to be litigated at the next session of the commission relate to expert and discovery matters that, once decided, can be effectuated (i.e., experts can begin their work and discovery can be produced) while this appeal is litigated and resolved. Since trial will go forward regardless of this Court's ruling on the Government's appeal, the interests of judicial economy favor prompt resolution of those matters by the trial court even if it means disposition of the Government's appeal will be delayed by a matter of twenty or so days.

Based upon the foregoing, it is clear that the requested extension is required for a full, fair, and expeditious consideration of Mr. Khadr's case and this Court should grant the instant motion.

/s/  
William Kuebler  
LCDR, JAGC, USN

Rebecca S. Snyder

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was e-mailed to this Court, Major Jeffrey D. Groharing, USMC; Captain Keith A. Petty, JA, USA; Jordan A. Goldstein, and John Murphy, on 27 August 2008.

*/s/*  
William C. Kuebler  
LCDR, JAGC, USN

UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
	)	MOTION TO ATTACH
	)	
v.	)	CASE No. 08-003
	)	
OMAR AHMED KHADR	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
	)	Colonel Patrick Parrish
	)	

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**TO THE HONORABLE, THE JUDGES OF THE COURT OF MILITARY  
COMMISSION REVIEW**

**Relief Sought**

COMES NOW Appellee and respectfully requests that this Court attach the following documents to Appellee’s Motion for Extension of Time to Respond filed concurrently:

- A) Order on Future Hearings dated 19 June 2008
- B) Affidavit of LCDR William C. Kuebler, JAGC, USN

These documents are necessary to support the factual basis for Appellee’s motion.

Therefore, the Court should grant this motion to attach.

/s/  
William Kuebler  
LCDR, JAGC, USN

Rebecca S. Snyder

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was e-mailed to this Court, Major Jeffrey D. Groharing, USMC; Captain Keith A. Petty, JA, USA; Jordan A. Goldstein, and John Murphy, on 27 August 2008.

/s/  
William C. Kuebler  
LCDR, JAGC, USN

UNITED STATES }  
OF }  
AMERICA }

FUTURE HEARINGS

v. }

OMAR AHMED KHADR }  
a/k/a "Akhbar Farhad" }  
a/k/a "Akhbar Farnad" }  
a/k/a "Ahmed Muhammed Khahi" }

COURT ORDER

19 June 2008

1. The commission ruled at the hearing today that counsel will submit motions based on the schedule set out below.

Law motions

- a. Defense written motions are due 11 July 2008
- b. Government responses are due 25 July 2008
- c. The hearing for law motions is set for 13 August 2008

Evidentiary and Expert motions

- a. Defense written motions are due 21 August 2008
- b. Government responses are due 3 September 2008
- c. The hearing for evidentiary and expert motions is set for 10 September 2008

2. The trial is scheduled to start on 8 October 2008.

So ordered.

  
Patrick J. Parrish  
COL, JA  
Military Judge

UNITED STATES OF AMERICA	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
	)	
	)	CASE No. 08-003
v.	)	
	)	
OMAR AHMED KHADR	)	Convened by MCCO # 07-02
	)	Presiding Military Judge
	)	Colonel Patrick Parrish
	)	

**Affidavit of LCDR William C. Kuebler, JAGC, USN**

I, LCDR William C. Kuebler, JAGC, USN, do hereby depose and state as follows:

1. I am the Detailed Defense Counsel for the Appellee, Mr. Omar A. Khadr (Mr. Khadr) in military commission proceedings under the Military Commissions Act. Ms. Rebecca S. Snyder is the Assistant Detailed Defense Counsel for Mr. Khadr. Ms. Snyder has been on reserve duty with the Navy since 18 August 2008 and will continue to be on reserve duty until 31 August 2008.
2. In accordance with the military commission's Order on Future Hearings, a session of the military commission is scheduled for 10 September 2008. In connection with that session of the commission, the defense has filed and expects to litigate a number of motions. These include three motions to compel the production of expert witnesses, a motion to dismiss involving violation of a discovery order, one motion to compel discovery (based on reconsideration of a previous ruling), and a motion for a partial continuance of the defense's deadline to file certain evidentiary motions. The defense requested, but was unable to obtain, a copy of the current "filings inventory" reflecting recent motions (and other matters) submitted by the defense.
3. In addition, the defense is preparing, but has not filed, a motion for reconsideration of the commission's ruling on a previous motion concerning the appointment of expert psychological

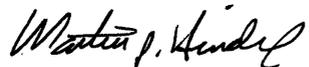
and psychiatric consultants to the defense team. In addition to preparing to litigate and argue the expert, discovery, and other motions, counsel are in the process of gathering affidavits in support of the motion for reconsideration. Lastly, the defense anticipates filing one or two additional motions concerning discovery and/or violation of orders of the commission before the commission's next session.

4. I do not believe that the defense can competently prepare for the 10 September session of the commission and competently represent Mr. Khadr in proceedings before the Court of Military Commission Review if the Appellee is required to submit an answer and/or dispositive motions in connection with the above-captioned matter in accordance with the current deadline of 5 September 2008.



William C. Kuebler  
LCDR, JAGC, USN

Subscribed to and sworn before me this 27<sup>th</sup> day of August 2008



Martin J. Hindel  
LTC, USAFR  
Authority: 10 U.S.C. § 936