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UNITED STATES OF AMERICA

v.

TAREK MAHMOUD EL SAWAH

**LEGAL ADVISOR'S
PRETRIAL ADVICE**

On December 12, 2008, prosecutors swore charges against Tarek Mahmoud el Sawah under the Military Commissions Act of 2006 and Rule for Military Commissions (R.M.C.) 307. Pursuant to the Regulation for Trial by Military Commissions, the Chief Prosecutor forwarded the charges against Mr. el Sawah on the same day.

Mr. el Sawah is charged with conspiracy to commit offenses prosecutable by military commission, specifically, attacking civilians, attacking civilian objects, murder in violation of the law of war, destruction of property in violation of the law of war, hazarding a vessel, and terrorism. He is also charged with providing material support to an international terrorist organization engaged in hostilities with the United States. The maximum punishment that may be imposed for these offenses is confinement for life.

After charges were sworn, proceedings in this case were halted pending completion of the Presidentially-directed review of the cases of all detainees at Guantanamo Bay, Cuba, and a decision on the forum for trial, if appropriate, in each case. No action was taken regarding referral of the above charges during the pendency of the review. After charges were sworn, Congress enacted the Military Commissions Act of 2009, amending significant provisions of the law relating to jurisdiction, available offenses, and evidentiary standards for trials by military commission. As a result, prosecutors ask that you dismiss the charges without prejudice.

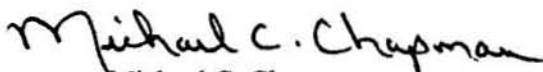
R.M.C. 401 authorizes only the Secretary of Defense or a convening authority designated by him to dispose of charges. As a convening authority designated by the Secretary of Defense for the purpose of convening military commissions, you have the authority to dismiss the charges or refer them to a trial by military commission. *See also* 10 U.S.C. § 948h. R.M.C. 406 requires that I advise you on certain matters before you may refer any charge or specification to trial by a military commission.

Because of the changes to the statute, it is important that the prosecutors re-evaluate the case and re-draft the charges, if appropriate, to conform to the requirements of the Military

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Commissions Act of 2009. Therefore, I recommend that you dismiss the Charges and Specifications dated December 12, 2008, without prejudice.

A handwritten signature in black ink that reads "Michael C. Chapman". The signature is written in a cursive style with a large, stylized "M" and "C".

Michael C. Chapman
Legal Advisor to the Convening Authority
for Military Commissions

Atchs:

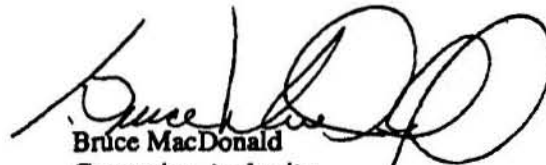
1. Charge Sheet, December 12, 2008
2. Chief Prosecutor's memo, undated

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DIRECTION OF THE CONVENING AUTHORITY

The charges and specifications against Tarek Mahmoud el Sawah dated December 12, 2008, are dismissed without prejudice.



Bruce MacDonald
Convening Authority
for Military Commissions



CHIEF PROSECUTOR

DEPARTMENT OF DEFENSE
CHIEF PROSECUTOR OF MILITARY COMMISSIONS
 1610 DEFENSE PENTAGON
 WASHINGTON, DC 20301-1610

MEMORANDUM THRU Legal Advisor to the Convening Authority

FOR THE CONVENING AUTHORITY FOR MILITARY COMMISSIONS

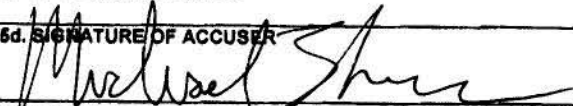
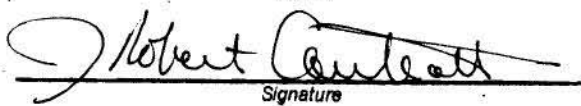
SUBJECT: Request for Dismissal of Charges ICO United States v Tarek Mahmoud El Sawah

1. I respectfully request you dismiss, without prejudice, the charges currently pending against Tarek Mahmoud El Sawah pursuant to your authority under Rule for Military Commissions (RMC) 401(a).
2. The charges against Mr. El Sawah were sworn on 12 December 2008 and he was notified of the charges on 4 January 2009. On 20 January 2009, the Secretary of Defense directed the Convening Authority to cease referring cases to military commissions, and the charges were never referred for trial. As the charges against Mr. El Sawah were sworn under the now superseded Military Commissions Act of 2006, I respectfully request dismissal without prejudice. This will allow my office to prosecute Mr. El Sawah under the current Act at our discretion.
3. Additionally, we are in receipt of Defense Counsel's request for speedy trial or in the alternative for dismissal with prejudice. In our view, the constitutional right to a speedy trial does not apply to Military Commissions cases. Further, RMC 707, "Timeliness", is not triggered until after referral of charges, which has not occurred. Consequently, I recommend you deny the defense request and instead dismiss the charges without prejudice as I am requesting. That action will eliminate the existence of sworn charges as the defense requests without preventing future prosecution if and when appropriate. There is no reason to prevent future prosecution by dismissing with prejudice.
4. If there are any questions, please contact my action officer on this matter, CDR Dirk Padgett, JAGC, USN. You may reach CDR Padgett by telephone 2 [REDACTED] or by email 2 [REDACTED]

MARK S. MARTINS
 Brigadier General, U.S. Army
 Chief Prosecutor

- 3 Encls
 1. Charge Sheet
 2. Notification of Charges
 3. 20 Jan 09 SECDEF Memo

ATTORNEY WORK PRODUCT / PREDECISIONAL /
 DELIBERATIVE PROCESS PRIVILEGED

CHARGE SHEET		
I. PERSONAL DATA		
1. NAME OF ACCUSED: TAREK MAHMOUD EL SAWAH		
2. ALIASES OF ACCUSED: a/k/a Tariq Mahmoud Ahmed al Sawah, a/k/a Tariq Mahmud Ahmad al Sawwah, a/k/a Abu al Laith al Masri, a/k/a Abu al Layth al Masri, a/k/a Abu al Laith al Muhajir		
3. ISN NUMBER OF ACCUSED (LAST FOUR): 0535		
II. CHARGES AND SPECIFICATIONS		
4. CHARGE: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.		
SPECIFICATION: See Attached Charges and Specifications.		
III. SWEARING OF CHARGES		
5a. NAME OF ACCUSER (LAST, FIRST, MI) SAVAGE, MICHAEL E.	5b. GRADE O5	5c. ORGANIZATION OF ACCUSER OMC-Prosecution
5d. SIGNATURE OF ACCUSER 	5e. DATE (YYYYMMDD) 20081212	
AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser the <u>12th</u> day of <u>December</u> , <u>2008</u> , and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.		
J. ROBERT CANTRALL Typed Name of Officer		OMC-Prosecution Organization of Officer
LTCOL/O-5 United States Air Force Grade		Judge Advocate - Article 136(a)(1) Official Capacity to Administer Oath (See R.M.C. 307(b) must be commissioned officer)
 Signature		

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IV. NOTICE TO THE ACCUSED		
6. On	<u>12 December</u> , 2008	the accused was notified of the charges against him/her (See R.M.C. 308).
<u>R. J. KILMARTIN COL, USMC</u> <small>Typed Name and Grade of Person Who Caused Accused to Be Notified of Charges</small>		<u>OMC-Prosecution</u> <small>Organization of the Person Who Caused Accused to Be Notified of Charges</small>
<u>R. J. Kilmartin</u> <small>Signature</small>		
V. RECEIPT OF CHARGES BY CONVENING AUTHORITY		
7. The sworn charges were received at <u>1640</u> hours, on <u>12 Dec 2008</u> , at <u>Arlington, VA</u> <div style="text-align: center; margin-top: 10px;"><small>Location</small></div>		
For the Convening Authority: <u>BOBBY J. CHAVIS</u> <div style="text-align: center; margin-top: 10px;"><small>Typed Name of Officer</small></div>		
<u>SSG, USA</u> <div style="text-align: center; margin-top: 10px;"><small>Grade</small></div>		
<u>Bobby J. Chavis</u> <div style="text-align: center; margin-top: 10px;"><small>Signature</small></div>		
VI. REFERRAL <i>Dismissed per 311/2012 DPM</i>		
8a. DESIGNATION OF CONVENING AUTHORITY	PLACE	8c. DATE (YYYYMMDD)
Referred for trial to the (non)capital military commission convened by military commission convening order _____ _____ subject to the following instructions ¹ : _____ _____		
By _____ of _____ <small>Command, Order, or Direction</small>		
_____ <small>Typed Name and Grade of Officer</small>		_____ <small>Official Capacity of Officer Signing</small>
_____ <small>Signature</small>		
VII. SERVICE OF CHARGES		
9. On _____, _____ I (caused to be) served a copy these charges on the above named accused.		
_____ <small>Typed Name of Trial Counsel</small>		_____ <small>Grade of Trial Counsel</small>
_____ <small>Signature of Trial Counsel</small>		
FOOTNOTES		
¹ See R.M.C. 601 concerning instructions. If none, so state.		

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Continuation MC Form 458 ICO TAREK MAHMOUD EL SAWAH

CHARGE 1: Violation of 18 U.S. Code § 950 (b)(28) CONSPIRACY

Specification: From in or about October 2000 to in or about November 2001, in Afghanistan, Tarek Al Sawah, (hereinafter "Sawah") a person subject to trial by military commission as an unlawful alien enemy combatant, did intentionally and knowingly conspire and agree with various members and associates, both known and unknown, of the al Qaeda organization, including Usama Bin Laden, Abdel Rahman al Muhajir, Abu Tarek al Tunisi, Abu Muhammad al Masri, and Muhammed Ibn al Libi and that al Qaeda engaged in hostilities against the United States, including the 1998 attack against the American embassies in Kenya and Tanzania, the 2000 attack against the USS Cole, the 11 September 2001 attack against the United States and other separate attacks, to commit one or more substantive offenses subject to trial by military commission, to wit: attacking civilians; attacking civilian objects; murder in violation of the law of war; destruction of property in violation of the law of war; hazarding a vessel and terrorism, and that Sawah knew the unlawful purpose of the agreement and joined willfully, with the intent to further the unlawful purpose, and in order to accomplish some objective and purpose of the agreement, Sawah knowingly committed at least one of the following overt acts:

- a. Attended al Qaeda Basic terrorist weapons training camp known as al Farouq.
- b. Attended specialized explosives training from al Qaeda explosive expert Muhsin Musa Matwalli Atwah (a/k/a Abd. Abdel Rahman al Muhajir), including the following al Qaeda explosives techniques: how to build improvised explosive devices (IEDs) and remote detonation systems; how to use common chemicals to increase the explosive power of IEDs, and how to destroy bridges, buildings, and rail systems with explosives.
- c. Attended advanced explosives training from al Qaeda explosive expert Abu Tarek al Tunisi, in which the accused learned how to make explosive timers for IEDs, including the use of Casio wrist watches as remote detonators.
- d. Served in al Qaeda fighting positions near cities of Bagram and Kabul.
- e. Between approximately June 2001 and September 2001, Sawah accepted assignment to Tarnak Farms where he served as an explosives trainer for members of al Qaeda. He taught individuals how to use military equipment and manufacture explosives including but not limited to hand grenades, anti-personnel mines, and improvised explosive devices, all to be used as terror weapons to attack military personnel, civilians and civilian infrastructure.
- f. Between approximately July and October 2001, Sawah traveled to a variety of locations in Afghanistan and conducted explosives training courses teaching the

fundamentals of how to use explosives to members of al Qaeda, the Taliban, and others.

g. Between August 2001 and October 2001, while serving al Qaeda as an explosives trainer in Afghanistan, Sawah authored an approximately four-hundred (400) page handwritten manuscript that contained bomb making techniques and then gave said explosives manual to al Qaeda co-conspirators with the intent of making his knowledge of explosive devices readily available for other al Qaeda members.

h. Between August 2001 and October 2001, at Tarnak Farms, at the direction of a member of al Qaeda's Shura Council, Sawah developed and successfully tested a remote controlled limpet mine for use against U.S. warships.

i. In November 2001, fought with al Qaeda forces against United States and Coalition forces in the "Tora Bora" region of Afghanistan until wounded and captured by coalition forces.

CHARGE II: Violation of 10 U. S. Code § 950 v(b)(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM

Specification: From in or about October 2000 to in or about December 2001, at various locations in Afghanistan, in the context of, or associated with an armed conflict, Tarek al Sawah, a person subject to the jurisdiction of the military commissions as an unlawful alien enemy combatant, did intentionally provide material support and resources, that included but are not limited to: providing personnel including himself, expertise and training to al Qaeda, an international terrorist organization then engaged in hostilities against the United States, including violent attacks on the U.S. Embassies at or near Nairobi, Kenya and Dar es Salaam, Tanzania, on or about August 7, 1998; on the USS Cole at or near Aden, Yemen, on or about October 12, 2000, and at various locations in the United States on or about September 11, 2001, knowing that al Qaeda engaged in or engages in Terrorism, by:

- a. Attended al Qaeda Basic terrorist weapons training camp known as al Farouq.
- b. Attended specialized explosives training from al Qaeda explosive expert Muhsin Musa Matwalli Atwah (a/k/a Abd Abdel Rahman al Muhajir), including the following al Qaeda explosives techniques: how to build improvised explosive devices (IEDs) and remote detonation systems, how to use common chemicals to increase the explosive power of IEDs, and how to destroy bridges, buildings, and rail systems with explosives.
- c. Attended advanced explosives training from al Qaeda explosive expert Abu Tarek al Tunisi, in which the accused learned how to make explosive timers for IEDs, including the use of Casio wrist watches as remote detonators.

d. Served in the al Qaeda fighting positions near the cities of Bagram and Kabul.

e. Between approximately June 2001 and September 2001, Sawah was assigned to Tarnak Farms where he served as an explosives trainer for members of al Qaeda. He taught individuals how to use military equipment and manufacture explosives including but not limited to: hand grenades, anti-personnel mines, and improvised explosive devices, as terror weapons to attack military personnel, civilians and civilian infrastructure.

f. Between approximately July and October 2001, Sawah traveled to a variety of locations in Afghanistan and conducted explosives training courses teaching the principles of explosives to members of al Qaeda, the Taliban or others.

g. While serving al Qaeda as an explosives trainer in Afghanistan, Sawah authored an approximately four-hundred (400) page handwritten manuscript that contained bomb making techniques and then gave said explosives manual to al Qaeda co-conspirators with the intent of making his explosives knowledge readily available for other al Qaeda members.

h. Between August 2001 and October 2001, at Tarnak, at the direction of a member of al Qaeda's Shura Council, Sawah developed and successfully tested a remote controlled limpet mine for use against U.S. warships.

i. Fought with al Qaeda forces against United States and coalition forces in the "Tora Bora" region of Afghanistan until wounded and captured by coalition forces.