

UNITED STATES OF AMERICA

v.

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

Stipulation of Fact

MGS
13 GX
14 October 2010

1. This stipulation of fact is entered into by the Prosecution and Defense knowingly and voluntarily in the case of *United States v. Omar Ahmed Khadr* (hereinafter "the accused"). It is hereby stipulated and agreed, by and between the Prosecution and Defense, with the express consent of the accused, that the following facts are true.

Jurisdiction

2. Omar Khadr is an alien unprivileged enemy belligerent, as defined by the Military Commissions Act of 2009 (MCA). Omar Khadr is, and has been at all times relevant to these proceedings, a person subject to trial by military commission under Section 948c of the MCA. Omar Khadr has never been a citizen of the United States and is therefore an alien. Omar Khadr is an enemy belligerent because he has purposefully and materially supported hostilities against the United States and its coalition partners. Omar Khadr is an unprivileged belligerent because he does not fall within one of the eight categories enumerated under Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War:

(1) Khadr is not a member of the armed forces of a Party to the conflict, including militia or volunteer corps forming part of such armed forces;

(2) Khadr is not a member of some other militia or volunteer corps, including organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, which must fulfill the following conditions:

- (a) being commanded by a person responsible for his subordinates;
- (b) having a fixed distinctive sign recognizable at a distance;
- (c) carrying arms openly;
- (d) conducting operations in accordance with the laws and customs of war;

(3) Khadr is not a member of regular armed forces who profess allegiance to a government or authority not recognized by the United States;

(4) Khadr did not accompany the armed forces without actually being a member thereof, such as civilian members of military aircraft crews, supply contractors, and other ~~persons~~ who have received

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authorization from the armed forces which they accompany, from whom they receive some sort of identification card;

(5) Khadr is not a member of a merchant marine or civil aircraft crew of a Party to the conflict;

(6) Khadr is not an inhabitant of a non-occupied territory who spontaneously took up arms to resist invading forces and who carried arms openly and respected the laws and customs of war;

(7) Khadr is not a person who belonged to the armed forces of the occupied country and has been interned, after being originally liberated, due to his allegiance to those armed forces; and

(8) Khadr is not a person belonging to one of the above categories who has been interned by a neutral or non-belligerent Power on its territory.

Al Qaeda Background

3. Al Qaeda, meaning "the base," was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and their officials by the use of force and violence. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaeda. One purpose or goal of al Qaeda, as stated by Usama bin Laden and other al Qaeda members, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of forcing the United States to withdraw its forces from the Arabian Peninsula and to oppose United States' support of Israel.

4. Al Qaeda operations and activities have historically been planned and executed with the involvement of a *shura* (consultation) council composed of several committees, including the political committee, military committee, security committee, finance committee, media committee, and religious/legal committee.

5. Since 1989, members and associates of al Qaeda, known and unknown, have carried out numerous terrorist attacks, including but not limited to the attacks against the American Embassies in Kenya and Tanzania in August 1998, the attack against the USS COLE (DDG 67) in October 2000, and the attacks on the United States on September 11, 2001.

6. Between 1989 and 2001, al Qaeda established training camps, guest houses/safe houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

7. In August 1996, Usama bin Laden publicly issued a "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian Peninsula.

8. In February 1998, Usama bin Laden, Dr. Ayman al Zawahiri (al Qaeda second-in-command), and others, issued a fatwa (purported religious ruling) requiring all Muslims able to

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do so, to kill Americans – whether civilian or military – anywhere they can be found and to “plunder their money.”

9. On or about 29 May 1998, Usama bin Laden issued a statement entitled “*The Nuclear Bomb of Islam*,” in which he stated that “it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God.”

10. On or about 21 August 1998, the United States designated al Qaeda a “specially designated terrorist” (SDT), pursuant to the International Emergency Economic Powers Act, and on or about 8 October 1999, the United States designated al Qaeda a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act.

11. In or about 2001, al Qaeda's media committee created *As Sahab* (The Clouds) Media Foundation. As Sahab has orchestrated and distributed multi-media propaganda, solicited and promoted jihad against the United States, and documented al Qaeda's training efforts and its reasons for its declared war against the United States.

12. Since at least August 1998 through 27 July 2002, al Qaeda and its affiliates have been engaged in hostilities against the United States and its coalition partners. Following al Qaeda's attacks on September 11, 2001, and in furtherance of its goals, members and associates of al Qaeda have violently opposed and attacked the United States and coalition forces, United States Government and civilian employees, and citizens of various countries in locations throughout the world, including, but not limited to Afghanistan.

Khadr Family Background & Exposure to al Qaeda

13. Omar Khadr was born on 19 September 1986 in Toronto, Canada. He is a citizen of Canada and has no legal basis to claim citizenship in the United States. Khadr's parents are Maha Elsannah Khadr and Ahmad Sa'id Khadr (Ahmad Khadr). Ahmad Khadr was a trusted senior member of al Qaeda who had direct and continuous interactions with other al Qaeda senior members to include, but not limited to: (1) Usama bin Laden, (2) Dr. Ayman al-Zawahiri, (3) Muhammad Atef, al Qaeda's military chief in 2001, and (4) Saif al Adel, a senior al Qaeda military commander in 2001. Ahmad Khadr was not only a senior al Qaeda member but was also a close associate and friend to these senior members of al Qaeda.

14. In or around 1990, Ahmad Khadr moved his family, including Omar Khadr, from Canada to Peshawar, Pakistan. Prior to moving from Canada to Peshawar, Omar Khadr attended Isna Islamic school for one year in Canada. Once Omar Khadr moved to Pakistan, he attended second and third grade at al-Ansar school. In late 1994, Ahmad Khadr was arrested by Pakistani authorities for providing money to support the bombing of the Egyptian Embassy in Pakistan. While Ahmad Khadr was incarcerated in Pakistan, Omar Khadr returned with his siblings to Canada to stay with their grandparents. After several months Ahmad Khadr was released and charges against him were dropped. Omar Khadr attended school in Canada for one year while his father was imprisoned in Pakistan. The Khadr family returned to Pakistan in 1995. Upon his return, Omar Khadr completed fifth through eighth grade at al-Ansar school. During his schooling, Khadr studied mathematics, science, grammar, the Koran, Arabic, and other subjects.

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15. In 1996, in support of al Qaeda, Ahmad Khadr moved his family from Pakistan to Jalalabad, Afghanistan. From 1996 to 2001, the Khadr family traveled throughout Afghanistan and Pakistan, including yearly trips to Usama bin Laden's compound in Jalalabad for the Eid celebration at the end of Ramadan. While traveling with his father, Omar Khadr saw and personally met senior al Qaeda leaders, including Usama bin Laden, Dr. Zawahiri, Muhammad Atef, and Saif al Adel. Omar Khadr also visited various al Qaeda training camps, guest houses, and safe houses.

16. Omar Khadr had extensive firsthand knowledge of the fact that his father, Ahmad Khadr, had a close relationship with Usama bin Laden. Specifically, Omar Khadr knew his father helped raise funds and provided the funds in support of al Qaeda operations. For example, these funds were given to maintain al Qaeda training camps. Furthermore, in 1999, Usama bin Laden, told Omar Khadr's family that they should not travel with Ahmad Khadr in order to avoid being captured by Western authorities. Consequently, Ahmad Khadr did not travel to Canada with Omar Khadr and the family in 1999.

17. After al Qaeda's terrorist attacks against the United States on September 11, 2001, the Khadr family, now back in Afghanistan, moved repeatedly throughout the country.

18. While in Afghanistan, Ahmed Khadr and members of his family, including Omar Khadr, visited many al Qaeda training camps, to include the al Farook camp (where al Qaeda trained in small-arms, map-reading, orientation, explosives, and other training), the Derunta camp (where al Qaeda trained members in explosives and poisons), and the Khaldan camp (where al Qaeda trained members in light weapons, explosives, poisons, sabotage, target selection, urban warfare, and assassination tactics). Omar Khadr knew that these camps were operated by and associated with al Qaeda. Khadr provided U.S. officials with significant details regarding the operation of the training camps, including the fact that his father was responsible for providing financing for these camps, other al Qaeda sponsored camps, and other sponsored activities.

19. In early 2000, Omar Khadr traveled to the front lines with an al Qaeda cleric named Sheikh Issa. Sheikh Issa was a scholar for al Qaeda who answered questions about the Koran. Khadr indicated that Sheikh Issa also taught a class in Kabul. In the class, students learned the rules for Jihad, including: (1) What to do if one captures a spy - hang him; (2) What to do if one captures a Muslim soldier - kill him; (3) One is allowed to take the weapon from an enemy soldier whom one killed; and (4) Americans were non-believers and it was justified to kill them. Khadr understood Sheikh Issa's teachings and their intended purposes to help al Qaeda members in their jihad against the Americans.

20. In 2002, Omar Khadr stated in an interview with U.S. officials, that a Jihad is occurring in Afghanistan and if non-believers enter a Muslim country then every Muslim in the world should fight the non-believers. Khadr further stated if the Americans leave the Gulf States and if Israel leaves Palestine, then the fighting will stop. Khadr stated that every country should worry about one's own country and not interfere in other countries' problems.

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Khadr's al Qaeda Training

21. In approximately June 2002, at 15 years-old, Omar Khadr was sent by his father to serve as translator for known members of LIFG and al Qaeda. The Libyan Islamic Fighting Group is a designated terrorist organization and was associated with Al Qaeda at the time of Omar Khadr's offenses. Omar Khadr attended one-on-one private terrorist training from a man who was a member of al Qaeda. Khadr called this training "main-basic" training. The training consisted of training in the use of rocket propelled grenades, various assault rifles, pistols, grenades, and explosives. Khadr was aware that such training was wrongful. Khadr indicated that his father made statements that the training was to be used in attacks against the Jews because the Jews are always fighting; which suggested to Khadr that someone Jewish should be killed. Ahmad Khadr said that because the Jews were attacking Palestinians, they should be attacked.

22. By this time, Omar Khadr was fluent in four languages, English, Arabic, Pashtu, and Dari. Khadr also spoke conversational French.

23. Prior to attending training, Khadr had intimate knowledge of the al Qaeda organization and its goals. Omar Khadr, voluntarily and of his own free will, chose to conspire and agree with various members of al Qaeda to train and ultimately conduct operations to kill United States and coalition forces. Omar Khadr's efforts in attending training were all in support of al Qaeda and furthered the aims of the organization. After Omar Khadr successfully completed his training, Khadr considered himself to be an active member of al Qaeda and he shared the same goals as the organization which are to target and kill all Americans, whether civilian or military, anywhere they can be found and to "plunder their money."

Khadr's Membership in an Explosives Cell

24. After completion of the "main-basic" training, in July 2002, Omar Khadr joined a terrorist cell that was made up of terrorists that had associations with both LIFG and al Qaeda. That cell constructed and planted Improvised Explosive Devices ("IEDs"), to be used in an effort to kill United States and coalition forces. Omar Khadr, along with other cell members, transformed a dozen TC-6 Italian landmines into IEDs, each one taking approximately two hours to build. The cell included Sheikh Abu Leith al-Libi, a senior LIFG and al Qaeda military commander. Omar Khadr knew at the time he joined the cell that Abu Leith al-Libi and the other men in the cell were associated with al Qaeda.

25. Khadr was responsible for providing translation services between the cell and other al Qaeda members, to include facilitating the transfer of the explosives to the cell. Furthermore, as evidenced in a bomb-making video filmed by the cell (Prosecution Exhibit 8) Omar Khadr was actively involved in converting the landmines to IEDs.

26. Omar Khadr and the other cell members videotaped themselves constructing and planting the IEDs. Omar Khadr said the location where he and the other al Qaeda operatives are shown planting IEDs in the video was chosen because it had been traveled by a U.S. military convoy, it was away from villages, and it was a tight, direct road that ran adjacent to the ledge of a mountain which would ensure maximum blowback from the explosions which would cause as

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much death and destruction as possible. Also, the cell believed it was an acceptable location because the vehicles would have to funnel through a small road with no way to exit, like a choke point. Omar Khadr and the other cell member planted ten of the twelve TC-6 landmines on the road. The ten landmines were spaced about eight meters apart. The distance was stepped between the holes. The mines were to be activated all at the same time by a hand held radio transmitter. Omar Khadr stated a receiver was attached to each mine and programmed to the same frequency as the hand held transmitter. The receiver of each mine was tested and determined to be working. Omar Khadr stated he learned that the transmitter was effective at a distance of up to about 500 meters. In 2002, U.S. and coalition forces were driving armored and unarmored humvees, and various unarmored pick-up trucks.

27. Khadr and the other operatives in the cell targeted U.S. forces with the specific intent of killing Americans, and as many as possible. Over the course of multiple interviews with U.S. personnel, Omar Khadr described in great detail the making and planting of the IEDs and the destruction that he and the other cell members hoped would be caused by the explosions. When asked why he and the other cell members were constructing IEDs, Khadr stated "to kill U.S. forces." Omar Khadr stated to a U.S. official that the proudest moment of his life was constructing and planting IEDs.

28. During one interview, Omar Khadr indicated that following September 11, 2001, he was told about a \$1500 reward placed on each American killed. Omar Khadr indicated that when he heard about the reward, he wanted to kill a lot of American[s] to get lots of money.

29. Omar Khadr voluntarily chose to conspire and agree with various members of al Qaeda, and the al Qaeda cell members at Ayub Kheil, to construct and plant IEDs in support of al Qaeda and to further the aims of the organization. Omar Khadr voluntarily chose to construct and plant the IEDs. He was not forced to participate in these acts.

30. During an interview with U.S. personnel, Omar Khadr stated he considered the September 11, 2001 attacks on the United States and the attacks on the USS COLE to be acts of terrorism. He agreed his efforts in land mine missions were also of a terrorist nature and said that he considered himself a terrorist trained by al Qaeda.

31. Omar Khadr provided information to US personnel regarding the ten IEDs that were planted by his cell. The IEDs were successfully and safely removed. No US personnel, coalition forces, or civilians were injured or killed by any of the IEDs planted by Omar Khadr or this cell.

Spying in Support of al Qaeda

32. While working with the explosives cell, one of Omar Khadr's duties was to collect information on U.S. forces in order to determine where to plant IEDs to maximize the opportunity for death and destruction. On at least one occasion, Omar Khadr clandestinely spied upon U.S. troop movements near the airport in Khowst, Afghanistan. Omar Khadr did not wear a uniform and attempted to blend in with the civilian population in order to gain as much actionable intelligence as possible.

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33. During this spying mission, Khadr recorded the number and types of vehicles used by U.S. forces. Khadr also calculated the estimated distance between the vehicles, the approximate speed of the convoy, and the time and direction of the U.S. convoys' movements.

34. Khadr collected this information with the specific intent to learn the best locations to target U.S. forces with IEDs and to help al Qaeda in its attacks against U.S. forces. Khadr conveyed this information to other al Qaeda operatives, who considered the information in determining where to target U.S. forces.

Firefight with U.S. Forces & Murder of SFC Christopher Speer

35. On 27 July 2002, Khadr was at a compound in Ayub Kheil with the al Qaeda explosives cell. U.S. forces received information that suspected members of al Qaeda were operating out of the compound and were conducting attacks against U.S. and coalition forces. Prior to the Americans arriving, Khadr and the other cell members received word that the Americans were coming to their location. While the owner of the compound, Aman Ullah, fled, Khadr stayed behind in order to fight the Americans. U.S. forces then moved to the compound and asked the occupants, including Khadr, to come outside of the compound to talk to the U.S. forces. At that time, Khadr knew that the forces outside the compound were American. The request to the al Qaeda members was relayed in both English and Pashto (the primary language in Afghanistan). Khadr is and was at that time fluent in both English and Pashto.

36. When Khadr and the other al Qaeda cell members refused to come outside of the compound or to speak to the U.S. forces, two members of the accompanying Afghan Military Forces entered the main compound, raised their heads above a wall and again asked for the occupants of the compound to come out and speak to the U.S. led forces. At that moment, individuals in the house opened fire, instantly killing both Afghan soldiers. U.S. soldiers pulled the Afghan soldiers out of the compound and a four-hour firefight between U.S. soldiers and the al Qaeda cell commenced.

37. In addition to Omar Khadr and the other al Qaeda cell members, there were both women and children in the compound. Prior to, and throughout the course of the firefight and during breaks in the firing, U.S. forces gave the occupants inside the compound multiple chances to surrender. At one point, the women and children in the compound exited the compound and U.S. forces escorted them to safety.

38. Khadr had the opportunity to leave with the women and children. At that time, he could have left the compound and was not forced by anyone to stay and fight. This was a decision Khadr made knowingly and voluntarily. U.S. forces continued to instruct the cell members in the compound to stop shooting and come outside. Omar Khadr understood the request from U.S. forces as a request to surrender. Omar Khadr and the other occupants in the compound decided to fight the U.S. forces rather than surrender or otherwise exit the compound peacefully. Omar Khadr and the others made a pact that they would rather die fighting than be captured by U.S. forces. Omar Khadr was given an AK-47 Kalashnikov, a pistol and took up a fighting position within the compound.

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39. Close air support was called in by the US forces. A-10s and Apache attack helicopters dropped bombs (including two 500 pound bombs) and fired thousands of rounds of ammunition into the compound. During the bombing, Khadr was injured in the eyes and leg by shrapnel from a U.S. grenade.

40. Khadr understood, at the time of the firefight, that he would not have faced any repercussions from the other members of the al Qaeda cell if he would have chosen not to fight and surrendered with the women and children to U.S. forces. Khadr could have left the compound if he wanted. He chose to stay behind and fight the Americans.

41. After the U.S. forces believed the firefight was over, they began clearing the compound. A U.S. Special Forces unit entered the compound. It was the belief of the U.S. forces that all individuals inside the compound had been killed during the battle. After entering the compound the unit began taking direct fire from an AK-47. One soldier saw the individual firing the AK-47, engaged and killed him.

42. Upon hearing the U.S. Special Forces soldiers, Khadr, positioned behind a crumbling wall, armed and threw a Russian F-1 grenade in the vicinity of the talking soldiers. Khadr threw the grenade with the specific intent of killing or injuring as many Americans as he could. The grenade thrown by Khadr exploded near Sergeant First Class ("SFC") Christopher Speer, launching shrapnel into his head and causing mortal brain damage. SFC Speer was killed by the grenade that Khadr threw. He died approximately 12 days later on 8 August 2002.

43. At the time that Khadr threw the grenade that killed SFC Speer and injured another U.S. soldier, Khadr was not under the impression that U.S. soldiers were preparing to charge his position, attack or engage him. Rather, Khadr thought that the soldiers entering the compound were looking for wounded or dead and that the firefight was over.

44. Reacting to the thrown grenade, another U.S. Special Forces soldier engaged Khadr and shot him two times in the torso. Khadr was also injured by shrapnel from the fire fight. Khadr stated in interviews with U.S. personnel that he believed he would likely die in the firefight and wanted to kill as many Americans as possible before being killed. During an interview in October 2002, Khadr stated he felt happy when he heard that he had killed an American. Khadr indicated that when he would get "pissed off" with the guards at Bagram, he would recall his killing of the U.S. soldier and it would make him feel good.

45. When captured, Khadr was in possession of one loaded pistol with a round in the chamber and there were grenades near his position behind the wall.

46. After the grenade attack, U.S. medics at the scene provided medical care to both U.S. soldiers and Khadr. Khadr was ultimately air evacuated to Bagram Air Base where he was treated in a military field hospital. At Bagram, Khadr underwent surgery for his wounds. Also, the only ophthalmologist in theatre was flown to Afghanistan in order to perform vision-saving eye surgery. The surgery was successful and Khadr's eyesight was saved. Khadr was in the Bagram hospital for two weeks prior to being transferred into the detention facility. Khadr received excellent medical care throughout his time in U.S. custody.

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47. Khadr voluntarily chose to conspire and agree with various members of al Qaeda to train and ultimately conduct operations to kill United States and coalition forces. Khadr's efforts in attending training, constructing and planting IEDs, and ultimately participating in a firefight against U.S. forces were all in support of al Qaeda and furthered the aims of the terrorist group.

48. Khadr is an alien unprivileged enemy belligerent as defined by the 2009 Military Commissions Act and at no time relevant to the charged offenses did he have any legal basis to commit any war-like acts, to include all of the acts described above in this stipulation. During the charged timeframe, Khadr knowingly and intentionally engaged in hostilities against the United States.

49. In addition to murdering SFC Christopher Speer, other U.S. soldiers, including SFC Layne Morris (who lost his sight in one eye from grenade shrapnel), were injured as a result of Khadr and his conspirators' actions in the firefight.

50. Khadr does not have any legal defense to any of the offenses to which he is pleading guilty.

13. Oct. 2010
Date

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