



Convening Authority

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

DEC 13 2013

MEMORANDUM FOR CLERK OF COURT, UNITED STATES COURT OF MILITARY
COMMISSION REVIEW

SUBJECT: Petition for New Trial in Case of *United States v. al Qosi*.

In accordance with Rule for Military Commission (R.M.C.) 1210, I have considered and taken action on a petition for new trial filed by Captain Mary McCormick in the case of *United States v. al Qosi*. As I have declined to grant the petition, I refer it for action to the United States Court of Military Commission Review in accordance with R.M.C. 1210(e). I have enclosed the following:

1. Petition for new trial;
2. Convening Authority memorandum taking action on the petition; and
3. Attachments to the Convening Authority memorandum, which are:
 - a. Memorandum from Captain Mary McCormick to Acting General Counsel, Department of Defense, dated 8 July 2013.
 - b. E-mail from Captain Mary McCormick to Ms. [REDACTED] dated July 19, 2013.
 - c. Memorandum from Mr. Bruce MacDonald to Captain Mary McCormick, dated February 27, 2013.
 - d. Request for Translator Support, dated June 4, 2012.
 - e. Memorandum from Mr. Bruce MacDonald to Captain Mary McCormick, dated June 13, 2012.
 - f. Request for Translator Support, dated November 8, 2012.
 - g. Memorandum from Mr. Bruce MacDonald to Captain Mary McCormick, dated November 29, 2012.
 - h. Memorandum from Convening Authority, Office of Military Commissions, to the Chief, Military Commission Office of Court Administration, dated October 22, 2013.

A handwritten signature in black ink, reading "L. Oostburg Sanz", is located below the list of attachments.

Paul L. Oostburg Sanz
Convening Authority
for Military Commissions

cc:

CAPT Mary McCormick, OCDC
CAPT Edward White, OCP

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DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

February 1, 2013

MEMORANDUM FOR MR. BRUCE MACDONALD, CONVENING AUTHORITY,
MILITARY COMMISSIONS

SUBJECT: Petition for New Trial ICO *United States v. Ibrahim Ahmed Mahmoud al Qosi*

Attached hereto, in a sealed envelope, is a Petition for New Trial prepared on behalf of my client, Ibrahim Ahmed Mahmoud al Qosi, pursuant to Regulation for Trial by Military Commission § 26-4a(2) (2011). The Petition contains allegations that a fraud was perpetrated on the military commission which sentenced Mr. al Qosi.

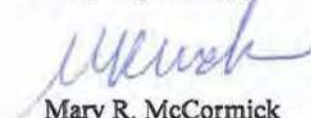
As you know, I have only been Mr. Qosi's attorney for a few months. I have not had an opportunity to confer with Mr. Qosi about the Petition for New Trial. Because in signing MC Form 2330 Mr. Qosi expressly reserved the right to file a Petition for New trial, I have an obligation to take action to preserve that right. Thus, I am filing the Petition with you today solely for the purpose of meeting the two-year filing deadline. Because the allegations made in the Petition arguably include the actions of all those involved in negotiating and approving the pretrial agreement in Mr. Qosi's case, I believe you and your legal advisor, and others in your office who were involved, have a conflict of interest which prevents you from considering the merits of the Petition. Considering all of the above, I make the following requests

1. In order to allow me the opportunity to adequately advise and confer with Mr. Qosi regarding the Petition for New Trial, I request you extend the deadline for filing the Petition to August 3, 2013. Today, the U.S. Court of Military Commission Review ("CMCR") denied a request I made to it to extend the filing deadline by six months. In its Order, which is attached, the CMCR suggests that you have the authority to extend the deadline because it is a regulatory, not a statutory, requirement. If you grant this request, I further request that you return the Petition to me for possible resubmission after Mr. Qosi and I have conferred.

2. In the alternative, I request that you forward this Petition for New Trial to the Secretary of Defense with a request that he appoint another convening authority and legal advisor to consider the Petition. I am cognizant of the possibility the Secretary will not appoint another convening authority but, instead, may decide to act on the Petition under his own authority to convene military commissions pursuant to 10 U.S.C. § 948h. In any event, I request that the Secretary or the substitute convening authority grant an extension of time for filing the Petition for New Trial until August 3, 2013. Should such request be granted, I further request that the Petition be returned to me for possible resubmission after Mr. Qosi and I have conferred.

3. In the event that you, the Secretary of Defense or any appointed substitute convening authority decides to deny the request to extend the filing deadline, then I request that action on the Petition be held in abeyance until I have an opportunity to effectively consult with Mr. Qosi regarding his right to file the Petition.

Very respectfully,

A handwritten signature in blue ink, appearing to read 'M. McCormick', is written over the typed name.

Mary R. McCormick
CAPT, JAGC, USN
Counsel for Ibrahim al Qosi

IBRAHIM AHMED MAHMOUD)	
AL QOSI,)	
)	Petition for New Trial
Petitioner)	
)	Military Commission Convened
v.)	at Guantanamo Bay,
)	adjourned August 11, 2010
UNITED STATES,)	
)	Convening Authority Action Issued
Respondent)	February 3, 2011
)	

This Petition for New Trial is filed on behalf of Ibrahim Ahmed Mahmoud al Qosi pursuant to Regulation for Trial by Military Commission § 26-4a(2) (2011). Because they were parties to the actions which led to the fraud perpetrated on this commission, the undersigned counsel requests that the convening authority, Mr. MacDonald, be recused from consideration of this Petition and the Legal Advisor and all others who participated in the preparation or negotiation of the pretrial agreement in Mr. Qosi's case be disqualified from reviewing this Petition, and that an impartial convening authority and Legal Advisor be appointed to review the Petition.

The regulations require the Petition be signed by Mr. Qosi or someone with specific authority to file it on his behalf. Reg. Tr. Mil. Comm. § 26-4b. The undersigned counsel was appointed to represent Mr. Qosi on September 12, 2012. Since then, her attempts to effectively communicate with Mr. Qosi have been unsuccessful. *See, e.g.,* Petition for Extraordinary Relief filed on behalf of Mr. Qosi (Jan. 4, 2013). The regulations provide that any petition for a new trial must be filed within two years of the date the convening authority approves the sentence. Reg. Tr. Mil. Comm. § 26-4a. Counsel is filing this Petition in order to meet the required filing deadline so as to preserve Mr. Qosi's right to seek a new trial. *Roe v. Flores-Ortega*, 528

U.S.470, 480 (2000) (counsel should act to preserve post-trial rights where she has "reason to think . . . that a rational defendant would want to appeal.").

Mr. Qosi expressly reserved his right to file this Petition when he signed MC Form 2330 at trial. *See* Record of Trial in the case of *United States v. al Qosi*, Appellate Exhibit ("App. Ex.") 109. Counsel has no reason to believe Mr. Qosi has changed his mind. Having been unable thus far to discuss the matter with Mr. Qosi, however, counsel is unable to determine whether he does in fact want to pursue this Petition. Until or unless she hears otherwise, counsel is obligated to pursue Mr. Qosi's rights to challenge his conviction and must attempt to do so in a way that does not conflict with his actual desires. The convening authority should accept the filing of this Petition without Mr. Qosi's signature because counsel's attempts to effectively communicate with Mr. Qosi to advise him of his right to file it have been thwarted by the convening authority's refusal to fund travel to facilitate a meeting with Mr. Qosi and, most recently, his refusal to approve funding for interpreter services to enable counsel to establish telephonic communications with Mr. Qosi (*see* counsel's request for translation services submitted Jan. 10, 2013, attached hereto as Petitioner's Exhibit 1). Until counsel has consulted with Mr. Qosi on this matter, however, the Petition should remain sealed.

Statement of the Case

On July 7, 2010, the military commission judge accepted Mr. Qosi's guilty pleas to one charge alleging a single specification of conspiracy to commit terrorism and to provide material support to terrorism, and one charge alleging one specification of providing material support to a terrorist organization. All of the conduct on which the allegations were based occurred prior to December 2001. On August 11, 2010, the panel of officers comprising the military commission

members sentenced Mr. Qosi to be confined for a period of 14 years. The convening authority approved the adjudged sentence on February 3, 2011. Pursuant to a pretrial agreement, the convening authority suspended confinement in excess of two years from the date findings were announced (July 7, 2010), for a period not to exceed five years or until such time as “the accused has complied with the terms of the pretrial agreement,” whichever occurs sooner. Mr. Qosi was released from confinement on July 10, 2012.

Statement of Facts

Ibrahim Ahmed Mahmoud al Qosi was a cook at an al Qaeda compound in Afghanistan. He also provided “logistical support for Usama bin Laden and other al Qaeda members” by supplying the kitchen and occasionally driving. Pros. Ex. 1 at 3. These activities, which occurred between 1996 and 2001, are the basis for the military commission charges. Mr. Qosi was never involved in any planning of terrorist acts and had no foreknowledge of any of al Qaeda’s operations. *Id.* at 5. He knew, only after the fact, of the involvement of al Qaeda in the attacks on the U.S. embassies in Kenya and Tanzania, the attack on the *U.S.S. Cole*, and the September 11th attacks on the World Trade Center and the Pentagon. *Id.*

Mr. Qosi admitted at trial that he intended to provide support, namely his personal services, to al Qaeda. *Id.* at 5-6. Mr. Qosi’s wife and children were with him in Afghanistan until November 2001, and his “activities in Afghanistan were [his] sole means of support for them.” *Id.* at 6.

In December 2001, Mr. Qosi was arrested by Pakistani officials at the Afghanistan-Pakistan border and subsequently turned over to the custody of the United States. *Id.* at 4-5. He arrived in Guantanamo Bay, Cuba, in early 2002 and spent the next ten and a half years in

custody there. R. at 798. In mid-2010, Mr. Qosi was brought before a military commission to face one charge of conspiracy, with a single specification alleging he conspired to commit terrorism and to provide material support to terrorism, and a second charge setting out a single specification alleging he provided material support for terrorism.

Mr. Qosi entered into a pretrial agreement in which the convening authority, Mr. MacDonald, agreed to suspend all confinement adjudged in excess of two years from the date pleas were accepted.¹ In exchange, Mr. Qosi agreed, *inter alia*: (1) to enter into a stipulation of fact; (2) to waive his appellate rights; (3) that the members would be instructed that they must adjudge a sentence to confinement only within a range of 12 to 15 years; and, (4) that Mr. Qosi would execute MC Form 2330 -- "Waiver/Withdrawal of Appellate Rights in Military Commissions Trials Subject to Review by the Court of Military Commission Review" (which expressly preserves his right to file this Petition). App. Ex. 109 at 1.

On 15 June 2010, the government filed a motion, in which the defense joined, requesting the judge, Lieutenant Colonel ("LtCol") Nancy J. Paul, U.S. Air Force, provide the instruction set out in the pretrial agreement. App. Ex. 84. On the record, the government requested the motion be filed under seal until after the members announced their sentence. R. at 434. LtCol Paul granted the government's request that the motion be sealed, but expressed that she had "some concerns about the requested instructions." R. at 434-35. LtCol Paul heard argument on the merits of the motion during a telephonic conference held pursuant to R.M.C. 802, consequently the argument is not reproduced in the record. R. at 433-34. LtCol Paul granted the government's motion and also granted the government's request to keep her written ruling on the motion under seal "until further notice." R. at 434-35; App. Ex. 84-A.

¹ The pretrial agreement in this case was sealed at trial and remains sealed.

Mr. Qosi entered guilty pleas on July 7, 2010.

On August 11, 2010, after hearing evidence on sentence, the members were instructed that “[t]he minimum sentence that may be adjudged in this case is confinement for no less than 12 years. The maximum sentence that may be adjudged in this case is confinement for no more than 15 years.” R. at 798. They were given a sentencing worksheet that required them to choose a sentence to confinement in the range of 12 to 15 years. App. Ex. 110. The members returned a sentence to confinement for 14 years. R. at 850.

Additional facts necessary to the resolution of this Petition are included below.

Reasons for Granting a New Trial

The basis for this Petition for new trial is that the convening authority, the lawyers involved and the judge, perpetrated a fraud on the military commission by keeping secret from the members the true extent of their authority to sentence Mr. Qosi, and by affirmatively mis-instructing them in that regard. By forcing on the members a mandatory minimum sentence in contravention of the will of Congress, the members were deceived into believing they lacked the power to adjudge a sentence less than provided for in the pretrial agreement.

1. What constitutes “fraud” for purposes of a petition for new trial? Section 26-4a(2) of the Regulations for Trial Military Commissions provides that a new trial may be granted in the event a fraud was perpetrated on the military commission. The concept of “fraud” in the term “fraud on the commission” is the same as that applied to determine “fraud on the court.” Thus, “fraud” in this context is not common law fraud. It is considerably different.

In perhaps the most illuminating discussion of the doctrine, the Tenth Circuit in *Bullock v. United States* distilled the holdings of the U.S. Supreme Court related to “fraud on the court,”

and described it as a deception “in the procurement of a judgment.” *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) (citing *Universal Oil Products Co. v Root Refining Co.*, 328 U.S. 575 (1946)). More specifically, the *Bullock* court concluded that “[f]raud on the court (other than fraud as to jurisdiction) is fraud which is *directed to the judicial machinery* itself and is not fraud between the parties or fraudulent documents, false statements or perjury.” *Id.* (emphasis added).

Relying on the same Supreme Court precedent, the Second Circuit clarified that the doctrine “is limited to fraud which seriously affects the integrity of the normal process of adjudication [F]raud on the court involves ‘far more than an injury to a single litigant’ because it threatens the very integrity of the judiciary and the proper administration of justice.” *Gleason v. Jandrucko*, 860 F.2d 556, 558-59 (2nd Cir. 1988) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)). The deception perpetrated on the commission members in Mr. Qosi’s case is of the type and severity to meet the definition of “fraud on the court.”

2. The military commission sentencing system. The members are a critical component of the “judicial machinery” in military commission cases. Congress reserved to the commission members the role of determining an appropriate sentence. 10 U.S.C. § 949m(b). Within the federal system, this authority is unique to military commissions. In courts-martial, the accused can elect to be sentenced by the military judge. In federal courts, Congress gave the sentencing power to judges and, to a certain extent, the U.S. Sentencing Commission. Only in military commissions has Congress lodged sentencing authority solely with the jury.

The members were deliberately misled regarding their authority to determine an appropriate sentence. They were instructed by the military judge that the law required them to

adjudge confinement, and required them to adjudge a term of confinement within a specific range of 12 to 15 years. Congress did not set mandatory minimum punishments for the offenses to which Mr. Qosi pled guilty, nor for any offenses triable by military commission. Although delegating to the President and the Secretary of Defense the power to set *maximum* punishments, Congress did not delegate its authority to set minimum punishments. 10 U.S.C. § 949t. *See, e.g., Hutto v. Davis*, 454 U.S. 370, 374 (1982) (establishing mandatory minimum terms of confinement is part of the “the basic linedrawing process that is ‘properly within the province of legislatures, and not courts.’”) (quoting *Rummel v. Estelle*, 445 U.S. 263, 275-76 (1980)). Consistent with the statute, the regulations and rules governing military commissions do not set mandatory minimum punishments for any offenses.

Accordingly, in the military commissions system created by Congress the members are free to impose no punishment. In the event the members determine confinement is appropriate, they possess absolute discretion to impose any term up to, and including, the maximum set in the rules. Thus, no law required the members to sentence Mr. Qosi to a term of confinement, and certainly not confinement limited to a range of 12-15 years.

3. The members who sentenced Mr. Qosi were defrauded. The fraudulent instructions given to the members were the result of a deliberate intent to mislead them regarding the extent of their authority to sentence Mr. Qosi. The false limitations placed on the members’ authority to adjudge a sentence in this case subverted the integrity of the military commission, and the corruption was multiplied because it was the conscious act of the judge, the lawyers and the convening authority. *Gleason*, 860 F.2d at 560 (“the requisite interference with the judicial machinery” can be established where “the type of fraud ‘subvert[s] the integrity of the court itself, or is . . . perpetrated by officers of the court.’”)

Simply put, the proper administration of justice in this case was undermined as the result of a “deliberately planned and carefully executed scheme to defraud” the sentencing authority in order to obtain a minimum sentence. *Hazel-Atlas Glass*, 322 U.S. at 245-46 (setting aside a judgment because a party successfully schemed to defraud the Patent Office and the appellate court). How did this happen? The prosecutors and the convening authority clearly wanted a mandatory minimum sentence of 12 years and, apparently, sought to make it more difficult for the members to reach a sentence at the lower end of the predetermined range (more on this later). The prosecutors and convening authority realized that any agreement for the convening authority to approve the predetermined mandatory minimum could be undermined by the members. App. Ex. 84 at paras. 4c and h. In the event that the members adjudged confinement for a term that fell below the minimum length agreed to, the convening authority would be powerless to approve a greater sentence than that adjudged by the members. 10 U.S.C. § 950b(c)(3)(C).² Thus, to ensure that the members sentenced Mr. Qosi to at least the minimum length of confinement sought by the government, a highly unusual provision was inserted into the pretrial agreement. That provision added a requirement that the defense join the government in requesting the military judge to instruct the members that “an appropriate sentence in this case is no less than twelve (12) years confinement and no more than fifteen (15) years confinement.” App. Ex. 89 at para. 5(b).

On 15 June 2010, the government filed a motion, in which the defense joined, requesting the military judge provide the instruction set out in the pretrial agreement. App. Ex. 84. On the

² In trying to convince the military judge that the proposed instruction inured to Mr. Qosi’s benefit, the government argued that if the members adjudged a sentence lower than the minimum contained in the pretrial agreement, “the Convening Authority would have a strong inclination not to authorize a punishment below the range, and could instead direct that the case be taken to trial on the merits or even, potentially, withdrawn and re-referred.” App. Ex. 84 at n.6. The statute clearly prohibits any such action. 10 U.S.C. §§ 950b(c)(2) and (3)(C).

record, the government requested the motion be filed under seal until after the members announced their sentence in order to prevent press reports of it. R. at 434. LtCol Paul granted the government's request that the motion be sealed, but expressed that she had "some concerns about the requested instructions." R. at 434-35. To further ensure the secrecy of the issue, LtCol Paul heard argument on the merits of the motion during a telephonic conference held under R.M.C. 802. R. at 433-34.

Because it was conducted outside the presence of a court reporter, there is no record of what was said to allay the military judge's concerns over the instruction. We know only that she granted the motion, adopting in large part the government's reasoning. App. Ex. 84-A. Further insulating the issue from scrutiny, the military judge granted the government's motion to keep her written ruling on the motion under seal "until further notice," R. at 435. It could not have escaped the notice of all those involved (the lawyers, the convening authority and the judge) that the pretrial agreement's appellate waiver provision might very well permanently shield their actions from review. Indeed, as that was likely one of the government's goals in negotiating the appellate waiver provision, the waiver is part and parcel of the scheme to deceive the members.

The military judge's instructions to the members completed the plan. First, she gave the standard instruction informing the members that they were required to follow her instructions on the law and were prohibited from consulting outside sources. R. at 536. The judge later instructed the members, pursuant to her ruling, that "[t]he minimum sentence that may be adjudged in this case is confinement for no less than 12 years. The maximum sentence that may be adjudged in this case is confinement for no more than 15 years." R. at 798. She then, wrongfully, provided the members with a worksheet on which confinement within the proposed sentencing range was the only option. App. Ex. 110. *Cf. United States v. Henderson*, 11 M.J.

395, 397 n.2 (C.M.A. 1981) ("the worksheet should make clear that, in the absence of some statutory minimum sentence, the court members are free to impose a sentence which may range from the maximum punishment down to no punishment.").

Not only did the military judge's instructions make confinement mandatory, and a sentence to confinement within the specified range mandatory, but the members were intentionally kept in the dark regarding the Congressional command that a sentence "shall be determined" upon the concurrence of two-thirds of the members voting. 10 U.S.C. § 949m(b)(1). Instead, the members were instructed that a concurrence of three-fourths of the members voting was required for any sentence. R. at 843.

Because the military judge's proposed instructions included the three-fourths vote requirement (R. at 796), she must have at some point concluded that the agreed-upon sentencing range threw the case into the exception to the two-thirds rule contained in 10 U.S.C. § 949m(b)(3) for sentences in excess of 10 years. Whether this instruction was given at the urging of the prosecutors who were trying to protect their deal and hoped to obtain a sentence at the top of the range, we may never know because all discussion of the instructions regarding the sentencing range occurred off the record and the military judge's ruling on the government's motion does not address the issue of the number of votes required. Regardless, it is entirely reasonable to conclude that one of the government's goals in imposing this particular sentencing range was to make it more difficult for the members to reach a sentence at the low end of the range.³ In this case, with ten members, the military judge's instruction added an additional vote to the tally of those otherwise needed to reach a sentence.

³ The prosecutor argued to the members that they should impose the maximum sentence of 15 years. R. at 810.

The convening authority, the lawyers involved and the judge all ignored the requirements of the sentencing system Congress enacted in the Military Commissions Act (2009). As discussed above, Congress determined that in military commissions sentences would be adjudged only by members. It provided some leeway for the President or Secretary of Defense to establish maximum sentences, but provided no such authority to establish mandatory minimum sentences. Aside from this limited authority granted in the statute, no one has the power to alter the sentencing system Congress enacted. *Harmeline v. Michigan*, 501 U.S. 957, 998 (1991) (Kennedy, J., concurring, “[d]eterminations about the nature and purposes of punishment for criminal acts implicate difficult and enduring questions respecting the sanctity of the individual, the nature of law, and the relationship between law and the social order. . . . And the responsibility for making these fundamental choices and implementing them lies with the legislature.”); *Weems v. United States*, 217 U.S. 349, 379 (1910) (“[P]rominence is given to the power of the legislature to define crimes and their punishment. . . . The function of the legislature is primary, its exercises fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of their wisdom or propriety.”). See also *Garrett v. Lowe*, 39 M.J. 293, 296-97 (C.M.A. 1994) (in instructing the members, the military judge may not stray from the sentencing structure set out in the statute).

Among the players involved in the scheme to mislead the members, the military judge’s role in perpetrating the fraud stands out.⁴ The judge side-stepped her duty to impartially enforce

⁴ This is not to absolve the prosecutors from their clear responsibility to ensure the integrity of the justice system. See, e.g., *Strickler v. Greene*, 527 U.S. 263, 301-02 (1999) (“American prosecutors” play a “special role . . . in the search for truth in criminal trials. Within the federal system, we have said that the United States Attorney is ‘the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.’”) (quoting *Berger v.*

the law and, instead, became a tool of a government attempting to force a minimum sentence where Congress provided none. The judge either willfully turned a blind eye to the requirements of the statute or was deliberately indifferent to the legality of the path she was taking. Either way, she ably facilitated the fraud.

The military judge's written ruling reveals she gave little, if any, thought to the governing statute and relied, instead, upon a provision from the 2007 Manual for Military Commissions that she admitted was deleted from the version of the Manual applicable to her conduct of this case (the 2010 edition). App. Ex. 84-A at para. 9. The 2007 version of R.M.C. 1005(e) contained a subparagraph (5) that was eliminated in subsequent editions. *Compare* R.M.C. 1005(e)(5) (2007) to R.M.C. 1005(e) (2010). Subparagraph (5) provided that, where a pretrial agreement included an agreed-upon minimum sentence, the judge "shall instruct the members" that the mandatory minimum sentence for the offense is that set out in the agreement. In concluding that the elimination of subparagraph (5) did not serve to proscribe such an instruction, the military judge ignored, as did the government in its motion, the import of the contemporaneous change to the rule regarding mandatory sentences.

In the 2007 edition of the Manual, R.M.C. 1006(d)(5), entitled "Mandatory sentence; pretrial agreement," provided that "When a pretrial agreement is in effect, the members shall vote on a sentence in accordance with Rule 1005(e)(5), subject to (6), below" (regarding the effect of a failure to agree on a sentence). In the 2010 Manual, the language "pretrial agreement" was eliminated from the title of R.M.C. 1006(d)(5) and the rule was revised to provide only that

United States, 295 U.S. 78, 88 (1935)); *United States v. Moore*, 651 F.3d 30, 51 (D.C. Cir. 2011) (in evaluating allegations of prosecutorial misconduct, the court quoted *Berger v. United States* for the proposition that a prosecutor "is in a peculiar and very definite sense the servant of the law, . . ."); *United States v. Fletcher*, 62 M.J. 175 (C.A.A.F. 2005) (applying the standards announced in *Berger v. United States* to prosecutors in the military justice system).

“When a mandatory punishment is prescribed the members shall vote on a sentence in accordance with this rule.” As is required by 10 U.S.C. § 949a(a), this change, as well as the change to 1005(e), conformed those rules to the Rules for Courts-Martial and to the requirement found in *Garrett v. Lowe*⁵ that a vote must be taken even on a mandatory minimum sentence provided in the statute. Compare R.M.C. 1005(e) (2010) to R.C.M. 1005(e) (2008) and R.M.C. 1006(d)(5) (2010) to R.C.M. 1006(d)(5) (2008). Rather than focusing on the sentencing scheme set out in the Military Commissions Act, and the conformity requirement expressed in § 949a(a), the military judge’s ruling gave primacy to the demands of the pretrial agreement.

The integrity of the system is undermined when the law is ignored. The role of the judge is to guard against subversion of the law so that justice is properly administered. That is why “where the judge has not performed his judicial function,” there is fraud on the court. *Bullock*, 763 F.2d at 1121 (a judge’s failure to perform establishes fraud on the court because it is one manner in which “the impartial functions of the court [are] directly corrupted”). The military judge here failed miserably in her obligation to uphold the law and, as a result, the commission was defrauded.

Conclusion

The convening authority, the lawyers and the judge in this case carried out a deliberate plan to tie the members’ hands in the otherwise free exercise of their discretion to sentence Mr. Qosi. They kept secret from the members the law. They eviscerated the nearly unlimited discretion Congress intended the members to wield. They deprived the members of the authority to reach an appropriate sentence based on a two-thirds vote. By misleading the members

⁵ 39 M.J. 293, 296 (C.M.A. 1994).

regarding the full extent of their authority to act, these actors undermined the fair administration of justice in this case. The fraud perpetrated on this commission should not be tolerated.

WHEREFORE, this Petition should be granted.

Respectfully submitted,



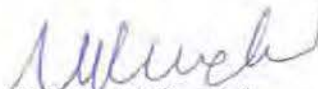
Mary R. McCormick
CAPT, JAGC, USN
Office of the Chief Defense Counsel
1620 Defense Pentagon
Washington, D.C. 20301-1620

mary.mccormick [REDACTED]

Counsel for Ibrahim al Qosi

Certificate of Filing

I certify that the foregoing Petition for New Trial was hand delivered to the Convening Authority, Mr. Bruce MacDonald, at the Convening Authority's Office in Arlington, VA, on the 1st day of February, 2013.



Mary R. McCormick
CAPT, JAGC, USN
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1620 Defense Pentagon
Washington, D.C. 20301-1620

mary.mccormick [REDACTED]

From: McCormick, Mary R. CAPT OSD OMC Defense
To: Roberson, Darrell E. CIV OSD OMC Convening Authority
Cc: [REDACTED]@saic.com"
Subject: TRF requesting [REDACTED]
Date: Thursday, January 10, 2013 4:41:42 PM
Attachments: TRF [REDACTED] for phone call.docx

Mr. Roberson,

Attached is a TRF [REDACTED] to assist me with a potential telephone call with my client. Kindly assign it a record number.
Thank you.

R,

Mary R. McCormick
CAPT, JAGC, USN
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1620 Defense Pentagon
Washington, DC 20301-1620
mary.mccormick [REDACTED]
[REDACTED]

Petitioner's Exhibit 1, p. 1 of 3

REQUEST FOR EXPERTS (CONSULTANTS) AND TRANSLATORS		For DOD(OGC, OMC) use only Date received: Record No.:
Purpose: This form is used to request an expert consultant or translator for the Office of the General Counsel of the Department of Defense, Office of Military Commissions. The information below is required to evaluate the type of services requested and also for appropriateness and compliance with DoD policies and for coordination with the units involved. Please complete all applicable sections.		Start Date: 11 Jan 2013 End Date: 7 Feb 2013
SECTION 1 – EXPERT CONSULTANT	SECTION 2 – TRANSLATOR	
1. Type of Expert (e.g. electronics, explosives)	1. Language of Translator (i.e. Arabic, Spanish) <input type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Egyptian <input type="checkbox"/> Swahili	
2. Expert Address/Agency	2. Assignment details X CONUS assignment: # Hours - 8 <input type="checkbox"/> Consecutive <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Research Hours <input type="checkbox"/> Secret <input type="checkbox"/> Court reporter: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> OCONUS assignment: # Days (including travel days) – <input type="checkbox"/> Country: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Simultaneous: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Consecutive: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Court Reporters: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Translation Per word Subject title: From: English into <input type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Pashto <input type="checkbox"/> Swahili <input type="checkbox"/> Indonesian From: into English # of Pages:	
3. Expert Phone/POC	3. Translator Address/Agency /Phone/POC [REDACTED]	
4. Classification of Information	4. Classification of Information X Unclassified (A/C Comm.) <input type="checkbox"/> Secret <input type="checkbox"/> TS/SCI	
5. Location Expert needed	5. Location Translator needed National Capital area	
6. Are you requesting a particular expert? (list) What subject would you like the expert to address?	6. Are you requesting a particular translator? (Please list) [REDACTED]	
7. Requested Expert Itinerary	7. Requested Translator Itinerary Sometime within next 30 days, roughly 11 Jan to 7 Feb 2013	
Requester Information Rank/Name: CAPT Mary McCormick, JAGC, USN Phone number: [REDACTED] Title: Detailed Appellate Counsel Fax number: [REDACTED] Organization: OCDC E-mail address: mary.mccormick [REDACTED]		
Comments: Request an Arabic interpreter to assist detailed counsel with potential telephone communications and follow up written communications with client, Ibrahim al Qosi. Exact date and time are unknown at this time, but potential for telephone calls and need for follow up written communications to occur within next 30 days. Counsel anticipates the interpreter will be needed for 8 hours total. Counsel has been appointed Mr. Qosi's appellate defense counsel and needs to begin discussing post-trial and appellate options with client, including possibilities and mechanisms for seeking statutory and regulatory relief from the findings and sentence in his case. [REDACTED] is requested due to his past experience with Mr. Qosi. Mr. Qosi does not know any of the OCDC translators and has never met appellate counsel.		
Validation/Signature: The below signatures certify that the above mentioned services requested have been completed and received by the USG. Number of hours/days @ completion: Total # of words transcribed:		

Petitioner's Exhibit 1, p. 2 of 3

Translator/Expert:	Agency/PM:	Requester:	OGC/OMC: (once signed, forward copy to PM)
Date:	Date:	Date:	Date:

Petitioner's Exhibit 1, p. 3 of 3



OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

DEC 13 2013

Convening Authority

MEMORANDUM FOR CAPTAIN MARY R. MCCORMICK, OFFICE OF CHIEF
DEFENSE COUNSEL

SUBJECT: Petition for New Trial in case of *United States v. al Qosi*.

I considered carefully your petition for new trial in the case of Mr. Ibrahim Ahmed Mahmoud al Qosi, which is dated February 1, 2013; your request that I consider the petition pursuant to Regulation for Trial by Military Commission ¶ 26-4.a.2, which is dated July 8, 2013 (enclosed); and your e-mail request that I consider the matters that you submitted under seal, dated July 19, 2013 (enclosed). On February 27, 2013, the former Convening Authority, Mr. Bruce MacDonald, denied your request for an extension of the filing deadline until August 3, 2013 (enclosed). For the reasons set forth below, I find that your petition is not properly filed. Further, I deny your petition for new trial for failure to demonstrate fraud on the military commission. Your request for an Arabic translator to assist with telephonic and written communications with Mr. al Qosi is denied.

Rule for Military Commission (R.M.C.) 1210(c) states that a petition for new trial shall be signed under oath or affirmation by one of the following:

- (1) the accused;
- (2) a person possessing the power of attorney of the accused for that purpose; or
- (3) a person with the authorization of an appropriate court to sign the petition as the representative of the accused.

Id. You do not fall under any of the categories above, and you do not enjoy an attorney-client relationship with the accused, as you have not demonstrated that you have ever met, spoken with, or made written contact with him. As such, I find that the petition is not properly filed, as there is no indication that it was done with the accused's knowledge or consent.

You indicated in your petition that you have not communicated with the accused because the Convening Authority has "thwarted" your attempts to do so. On June 4, 2012, a defense paralegal for "Team al Qosi" submitted a request for translation of documents from Arabic to English. On June 13, 2012, the Convening Authority denied this request, for failure to demonstrate why the translation services available within the Office of the Chief Defense Counsel (OCD) could not be utilized (enclosed). On November 8, 2012, you submitted a request for Mr. [REDACTED] a contract interpreter, to travel with Team al Qosi to Khartoum, Sudan to discuss Mr. al Qosi's post-trial rights and options (enclosed). On November 29, 2012, the Convening Authority denied your request on the bases that (1) Mr. al Qosi waived his post-trial and appellate rights and the Convening Authority had already taken action, therefore this was not an active case; and (2) even if it was an active case, you did not demonstrate why an alternate means of communication could not be utilized (enclosed). On January 10, 2013, you submitted a request for Mr. [REDACTED] to assist defense counsel with potential telephonic communications and follow-up written communications "in order to begin



discussing post-trial and appellate options" with Mr. al Qosi. On February 1, 2013, you appended the request to your petition for new trial (Petitioner's Exhibit 1). I deny your request for contract translator services, as you have not demonstrated why the Arabic translators who are assigned to OCDC cannot be utilized, and there is no entitlement to the interpreter of your choice.

While having determined that your petition is not properly filed, I have also considered the merits of your petition. On October 22, 2013, with the concurrence of the defense and the prosecution, I directed the Office of Court Administration to unseal and forward Appellate Exhibits 84 and 84A for my consideration, pursuant to my authority under R.M.C. 1210(g) (enclosed). I received the Appellate Exhibits and considered them on the merits, along with the rest of the record of trial.

I find that there is no evidence to support the allegation of fraud on the military commission. *See* R.M.C. 1210(f). I find no willful attempt on the part of any of the parties, the military judge, the Convening Authority who approved the pretrial agreement, or his legal advisors to mislead the military commission or to circumvent the law, rules and procedures applicable to trial by military commission.

A thorough review of the record of trial indicates that Mr. al Qosi freely and voluntarily agreed to plead guilty in exchange for the benefit of a pretrial agreement. The record also demonstrates that Mr. al Qosi freely and voluntarily agreed to include in the pretrial agreement a provision that allowed for the military commission members to be instructed on a sentencing range. The inclusion of such a provision was lawful and was consistent with the Military Commissions Act, the Manual for Military Commissions, and existing law, policy, and regulations.

In accordance with R.M.C. 1210(e), I will forward the petition for new trial, along with this memorandum and its attachments, to the United States Court of Military Commission Review.



Paul L. Oostburg Sanz
Convening Authority
for Military Commissions

Attachments:
As stated

cc:
CAPT White, OCP



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

July 8, 2013

MEMORANDUM FOR MR. ROBERT S. TAYLOR, ACTING GENERAL COUNSEL,
DEPARTMENT OF DEFENSE

SUBJECT: Petition for New Trial ICO *United States v. Ibrahim Ahmed Mahmoud al Qosi*

As you may know, the Chief Defense Counsel for Military Commissions detailed me to represent Ibrahim Ahmed Mahmoud al Qosi as his appellate counsel. In that capacity, on February 1, 2013, I filed a Petition for New Trial with the convening authority. On February 2, 2013, I was informed by Mr. Bruce MacDonald that he had forwarded to you the sealed Petition for New Trial for consideration of my request that a neutral convening authority and legal advisor be appointed to consider the Petition.

I am writing to request that you return the Petition for New Trial to Mr. Oostburg Sanz for his consideration pursuant to Regulation for Trial by Military Commission § 26-4a(2) (2011). As you know, Mr. MacDonald is no longer the convening authority and the conflicted legal advisor, Mr. Chapman, recently retired. To my knowledge, Mr. Oostburg Sanz has no prior involvement with Mr. Qosi's case.

Very respectfully,

A handwritten signature in black ink, appearing to read "McCormick", is written over the typed name.

Mary R. McCormick
CAPT, JAGC, USN
Counsel for Ibrahim al Qosi

[REDACTED] CIV OSD OMC CA (US)

From: McCormick, Mary R CAPT OSD OMC Defense
Sent: Friday, July 19, 2013 12:26 PM
To: [REDACTED] CIV OSD OMC Convening Authority
Cc: Sundel, Philip L Mr OSD OMC Defense
Subject: Re: Al Qosi petition for new trial

Ms. [REDACTED]

Yes. Please do unseal the packet so that the CA can consider the merits of the petition.

R,

CAPT McCormick
Counsel for Ibrahim al Qosi

----- Original Message -----

From: [REDACTED] CIV OSD OMC Convening Authority
Sent: Thursday, July 18, 2013 04:08 PM
To: McCormick, Mary R CAPT OSD OMC Defense
Subject: Al Qosi petition for new trial

CAPT McCormick:

I am in receipt of your letter addressed to the Acting General Counsel, dated July 8, 2013.

Mr. Oostburg Sanz, the Convening Authority, will consider your petition for new trial, filed on behalf of Mr. al Qosi. As you are aware, Mr. Oostburg was not in the position of Convening Authority when Mr. al Qosi was tried or when action was taken in his case. I also was not employed by the Office of Military Commissions at the time of Mr. al Qosi's trial and have not worked on any aspect of the case. The Acting General Counsel appointed me as the Legal Advisor to the Convening Authority concerning the petition for new trial filed by you on behalf of Mr. al Qosi. Concerning this matter, I report directly to the Convening Authority and will not consult with other legal advisors who were present at the time of Mr. al Qosi's trial.

I am in possession of the filings you submitted, including the memorandum dated 1 February 2013 to the previous Convening Authority, Mr. Bruce MacDonald, and the documents you submitted under seal.

If you wish me to do so, I will unseal the documents that you submitted under seal for consideration by the Convening Authority. Please indicate if you wish me to open the documents or return them to you.

Sincerely,

[REDACTED]

[REDACTED]

Assistant Legal Advisor
Office of Military Commissions
4800 Mark Center Drive, Suite 11F09-02
Alexandria, VA 22350-2100
[REDACTED]



Convening Authority

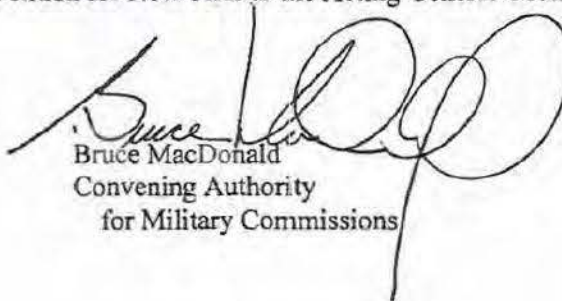
OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

February 27, 2013

MEMORANDUM FOR CAPT MARY McCORMICK, OCDC

SUBJECT: Request for Extension/Petition for New Trial; *U.S. v. al Qosi*

I considered carefully your memorandum dated February 1, 2013, asking that I grant a six-month extension of the time to file a Petition for New Trial in the above case or, alternatively, that I forward the sealed Petition for New Trial to the Secretary of Defense to appoint another convening authority and legal advisor to review the sealed Petition for New Trial or grant the requested extension. I deny your request for an extension of the time to file a Petition for New Trial. I forwarded the sealed Petition for New Trial to the Acting General Counsel, DoD, for his review.



Bruce MacDonald
Convening Authority
for Military Commissions

cc:
Chief Prosecutor

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<h1>REQUEST FOR TRANSLATORS AND EXPERTS (CONSULTANTS)</h1>		<i>For DOD(OGC, OMC) use only</i> Date received: 4 June 2012 Record No.:	
<i>Purpose: This form is used to request an expert consultant or translator for the Office of the General Counsel of the Department of Defense, Office of Military Commissions. The information below is required to evaluate the type of services requested and also for appropriateness and compliance with DoD policies and for coordination with the units involved. Please complete all applicable sections.</i>		Start Date: 1 June 2012 End Date: 30 June 2012	
SECTION 1 – EXPERT CONSULTANT		SECTION 2 – TRANSLATOR	
1. Type of Expert (e.g. electronics, explosives)	1. Language of Translator (i.e. Arabic, Spanish) <input checked="" type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Pashto <input type="checkbox"/> Swahili <input type="checkbox"/> Indonesian		
2. Expert Address/Agency	2. Assignment details <input checked="" type="checkbox"/> CONUS assignment: #Days <u>30</u> or # Hours _____ <input type="checkbox"/> Consecutive: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Research Hours <input type="checkbox"/> Court reporter: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> OCONUS assignment: # Days (including travel days) _____ <input type="checkbox"/> Country: _____ <input type="checkbox"/> Simultaneous: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret: <input type="checkbox"/> Consecutive: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret: <input type="checkbox"/> Court Reporters: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Translation/Transcription: Subject file: Attorney Client materials Type of document: (ie, legal docs, letters, interviews, news articles, or other technical information) <u>legal docs, news articles</u> Form of Work to be translated or transcribed: <input type="checkbox"/> Video <input type="checkbox"/> Audio <input type="checkbox"/> Handwritten <input type="checkbox"/> Internet Research <input type="checkbox"/> Other _____ <input type="checkbox"/> English into <input type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Pashto <input type="checkbox"/> Swahili <input type="checkbox"/> Indonesian From _____ into English # of Pages _____		
3. Expert Phone/POC	3. Translator Address/Agency /Phone/POC <div style="background-color: black; width: 100%; height: 1em;"></div>		
4. Classification of Information	4. Classification of Information <input checked="" type="checkbox"/> Unclassified <input type="checkbox"/> Secret <input type="checkbox"/> TS/SCI		
5. Location Expert needed	5. Location Translator needed		
6. Are you requesting a particular expert? (list) What subject would you like the expert to address?	6. Are you requesting a particular translator? (Please list) <div style="background-color: black; width: 100%; height: 1em;"></div>		
7. Requested Expert Itinerary	7. Requested Translator Itinerary		
Requester Information LN1 <div style="background-color: black; width: 100px; height: 1em;"></div> Office: <div style="background-color: black; width: 100px; height: 1em;"></div> Defense Paralegal Fax: <div style="background-color: black; width: 150px; height: 1em;"></div> Office of Military Commission – Defense E-mail address: <div style="background-color: black; width: 150px; height: 1em;"></div> Team Al-Qosi			
Comments (Include any additional clarifying requirements not listed above): Request Arabic translator to translate documents during the month of June in Rosslyn, VA.			
Validation/Signature: The below signatures certify that the above mentioned services requested have been completed and received by the USG.			
Number of hours/days @ completion: Total # of words transcribed:			
Translator/Expert:	Agency/PM:	Requester: LN1 <div style="background-color: black; width: 50px; height: 1em;"></div>	OGC/OMC: (once signed, forward copy to PM)
Date:	Date:	Date:	Date:



Convening Authority

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

June 13, 2012

MEMORANDUM FOR MAJOR TODD E. PIERCE, JA, USA, OCDC

SUBJECT: Defense Request for Translator - *Al Qosi*

I considered carefully your request dated June 4, 2012, for the appointment of a translator to the *Al Qosi* defense team to translate "legal docs" and "news articles." For the reasons set forth below, I deny your request.

Neither the Military Commissions Act nor the Rules for Military Commissions require the Government to provide translations of documents for the accused. Rather, the Convening Authority may detail interpreters to translate documents for the accused "as necessary." See 10 U.S.C. § 9481(b); see also Chapter 7-3 (c), Regulation for Trial by Military Commission (2011 Edition). This is consistent with federal law, which does not grant a defendant the right to have statutes, regulations, discovery documents, and/or other materials translated into their language of choice. As such, it is incumbent on the defense team to determine the key documents the accused should examine, and to have the interpreters assigned to the Office of the Chief Defense Counsel ("OCDC") translate those documents.

In this case, you have not demonstrated the necessity for any additional translation services beyond those already available to you in the OCDC. Accordingly, your request is denied. If you desire, you may resubmit your request, for my reconsideration, with an explanation as to why such translation services are necessary.



Bruce MacDonald
Convening Authority
for Military Commissions

cc:
Chief Defense Counsel

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REQUEST FOR EXPERTS (CONSULTANTS) AND TRANSLATORS		For DOD(OGC, OMC) use only Date received: 8 Nov 2012 Record No.:	
Purpose: This form is used to request an expert consultant or translator for the Office of the General Counsel of the Department of Defense, Office of Military Commissions. The information below is required to evaluate the type of services requested and also for appropriateness and compliance with DoD policies and for coordination with the units involved. Please complete all applicable sections.		Start Date: 09 Dec 2012	
		End Date: 14 Dec 2012	
SECTION 1 – EXPERT CONSULTANT		SECTION 2 – TRANSLATOR	
1. Type of Expert (e.g. electronics, explosives)	1. Language of Translator (i.e. Arabic, Spanish) <input checked="" type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Egyptian <input type="checkbox"/> Swahili		
2. Expert Address/Agency	2. Assignment details <input type="checkbox"/> CONUS assignment: # Hours <input type="checkbox"/> Consecutive: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Research Hours <input type="checkbox"/> Court reporter: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input checked="" type="checkbox"/> OCONUS assignment: # Days (including travel days) – 6 Days <input checked="" type="checkbox"/> Country: Khartoum, Sudan <input type="checkbox"/> Simultaneous: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret: <input type="checkbox"/> Consecutive: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret: <input type="checkbox"/> Court Reporters: <input type="checkbox"/> TS/SCI <input type="checkbox"/> Secret <input type="checkbox"/> Translation Per word Subject title: _____ From English into <input type="checkbox"/> Arabic <input type="checkbox"/> Dari/Farsi <input type="checkbox"/> Pashto <input type="checkbox"/> Swahili <input type="checkbox"/> Indonesian From _____ into English # of Pages _____		
3. Expert Phone/POC	3. Translator Address/Agency /Phone/POC [REDACTED]		
4. Classification of Information	4. Classification of Information <input checked="" type="checkbox"/> Unclassified (A/C Comm.) <input type="checkbox"/> Secret <input type="checkbox"/> TS/SCI		
5. Location Expert needed	5. Location Translator needed		
6. Are you requesting a particular expert? (list) What subject would you like the expert to address?	6. Are you requesting a particular translator? (Please list) [REDACTED]		
7. Requested Expert Itinerary	7. Requested Translator Itinerary 09 Dec – DC to Khartoum 10-14 Dec – Khartoum, Sudan 14 Dec – Return to U.S.		
Requester Information Rank/Name: CAPT Mary McCormick; LNC [REDACTED] Phone number: [REDACTED] [REDACTED] Fax number: [REDACTED] Title: Detailed Appellate Counsel; paralegal E-mail address: mary.mccormick [REDACTED] Organization: OCDC [REDACTED]			
Comments: Request an Arabic translator to travel with Team al Qosi to Khartoum, Sudan for a country visit from 09-14 Dec 2012. We would like to request [REDACTED] to travel on the same flights as the team.			
Validation/Signature: The below signatures certify that the above mentioned services requested have been completed and received by the USG.			
Number of hours/days @ completion: Total # of words transcribed:			
Translator/Expert:	Agency/PM:	Requester:	OGC/OMC: (once signed, forward copy to PM)
Date:	Date:	Date:	Date:



Convening Authority

DEPARTMENT OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22304-2100

November 29, 2012

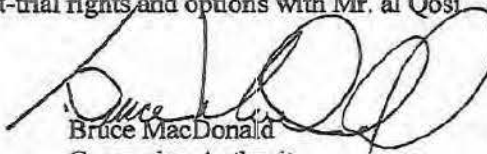
MEMORANDUM FOR CAPT MARY MCCORMICK, JAGC, USN, OCDC

SUBJECT: Defense Request for Counsel and Translator Travel -- Mr. al Qosi

I considered carefully your request for defense counsel and a translator to travel to Khartoum, Sudan, to consult with Mr. al Qosi about his post-trial rights and options. For the reasons set forth below, I deny your request.

I cannot approve travel unless the purpose of the travel is "essential official business in the GOV'T interest," and the "objective cannot be satisfactorily accomplished less expensively" by an alternate means. See JTR, Volume 2, Part A, para. C4405. You have not demonstrated that this is essential official business. This is not an active case. Mr. al Qosi pled guilty on August 10, 2010, and was sentenced pursuant to the terms of a pre-trial agreement. In that pre-trial agreement, Mr. al Qosi waived his right to appeal the findings and sentence, and also executed MC Form 2330 waiving those rights. In response to questions from the Military Judge, Mr. al Qosi said that his defense counsel had advised him of his appellate rights and that he understood them. On February 3, 2011, I took action on this case. Even if this were an active case, you have not demonstrated that an alternate means of accomplishing the mission, such as written correspondence or teleconference, will not satisfactorily accomplish the mission.

Accordingly, you have not demonstrated why it is necessary for you and a translator to travel to the Sudan in order to discuss post-trial rights and options with Mr. al Qosi.


Bruce MacDonald
Convening Authority
for Military Commissions

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Convening Authority

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

OCT 22 2013

MEMORANDUM FOR CHIEF, MILITARY COMMISSIONS OFFICE OF COURT
ADMINISTRATION

SUBJECT: Unsealing of Appellate Exhibits in case of *United States v. al Qosi*.

Please unseal and forward to my office Appellate Exhibit (AE) 84 (Government Motion- Request for Sentencing Instructions) and AE 84A (Military Judge's Ruling), in the military commission of Mr. Ibrahim Ahmed Mahmoud al Qosi. I wish to consider these AEs as the reviewing authority of a petition for new trial filed by appellate defense counsel on behalf of Mr. al Qosi.

At trial, the military judge directed that both appellate exhibits be filed under seal. Her oral sealing directive indicated they would remain under seal until sentence was announced, in order to prevent the members from becoming aware of their contents before announcing the sentence. See transcript at 434. The military judge then gave a conflicting directive concerning when the seal would be lifted. See transcript at 435. The record of trial has been authenticated and therefore the military judge no longer has jurisdiction over this case, or the ability to order documents unsealed. Therefore, pursuant to my power of review under R.M.C. 1210(g), I direct the unsealing of these documents for the limited purpose of reviewing the merits of the petition for new trial. Both appellate defense counsel and counsel for the government concur with my considering these exhibits.

A handwritten signature in black ink, appearing to read "L. Oostburg Sanz".

Paul L. Oostburg Sanz
Convening Authority
for Military Commissions

cc:
CAPT Mary McCormick, OCDC
CAPT Edward White, OCP