

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

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Defense Motion for Appropriate Relief

Bill of Particulars

2 December 2009

1. **Timeliness:** This Motion is timely filed in accordance with the Order of the Military Judge on 18 November 2009.¹

2. **Relief Sought:** Mr. Mohammed Kamin, by and through detailed defense counsel, respectfully requests the Commission Order the government to provide to the defense, no later than 10 days after the issuance of the Order, a bill of particulars concerning the Charge and six supporting Specifications that specifies as follows:

- a. The parties to the “armed conflict” as referenced in all six Specifications.
- b. The “act of terrorism” referenced in Specifications 1, 3, and 5.
- c. The name of the “military bases” and describe the “activities” in Specifications 1 and 2, subparagraph b.
- d. The name and location of the “bridge” and “route to Zaina Kahil Village” alleged in Specifications 1 and 2, subparagraph c.
- e. The name of the “United States or Coalition base” referenced in Specifications 1 and 2, subparagraph d.
- f. The name of the “city” referenced in Specifications 1 and 2, subparagraph e.
- g. The types and quantity of “weapons and equipment” referenced in Specification 3.
- h. The types and quantity of “weapons” referenced in Specification 4.
- i. The mode of “transportation” referenced in Specifications 5 and 6.

¹ The defense files this Motion in accordance with the Military Judge’s Order. However, in so doing, it does not acquiesce to or acknowledge that the Commission is a “regularly constituted court,” and further asserts that the Military Commissions Act of 2009 (“MCA”) is unconstitutional on its face. *See, e.g., In re Mohammed Kamin* (09-1294) (D.C. Circuit).

- j. The location, dates of attendance, and other associates/leaders of the “al Qaeda terrorist training camp” referenced in subparagraph a, Specifications 1 and 2,
- k. The type of “surveillance” referenced in subparagraph b, Specifications 1 and 2.
- l. The mechanism for “launching” missiles in subparagraph e, of Specifications 1 and 2, and the number of missiles allegedly launched.
- m. The locations in “Afghanistan and Pakistan,” as referenced in all six Specifications.
- n. How the accused allegedly “join[ed]” and “bec[ame] a member of” a terrorist organization, as referenced in Specifications 1 and 2.
- o. The location and statement of ownership of “his residence,” as referenced in Specifications 3 and 4.
- p. Details concerning where in “his residence” he used for “storing weapons and equipment,” as referenced in Specifications 3 and 4.
- q. The “various locations and people in Afghanistan,” as referenced in Specifications 5 and 6.

3. Burden and Standard of Proof: As the moving party, the defense bears the burden to prove that a bill of particulars is required to ensure Mr. Kamin can adequately prepare for trial. *See* R.M.C. 905(c)(2); R.M.C. 906(b)(5). For any questions of fact, the burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c).

4. Facts:

a. Mr. Mohammed Kamin is a native of Afghanistan. He was captured in the Khowst Region, Afghanistan on or about [REDACTED] May 2003. Shortly thereafter, he was transferred to Bagram Air Base, Afghanistan, where he was detained in the custody of the United States. In September 2004, Mr. Kamin was transferred to the U.S. Naval Station, Guantanamo Bay, Cuba (GTMO) where he continues to be confined under the authority of the Commander, Joint Task Force Guantanamo (JTF-GTMO). As of the date of this filing, Mr. Kamin has been confined as a prisoner of the United States for Two Thousand Three Hundred and Ninety-Four (2,394) consecutive days – approximately 6 ½ years.

b. The Charge was preferred against Mr. Kamin on 11 March 2008 for six Specifications of Providing Material Support for Terrorism (“material support”). *See* 10 U.S.C. § 950v(b)(25). The Charge and Specifications were referred for trial by military commission on 4 April 2008.

5. Discussion:

a. In any criminal trial, fundamental due process requires the accused to be on notice of what he must defend against. "It is vain to give the accused a day in court, with no opportunity to prepare for it, or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case." *Powell v. State of Alabama*, 287 U.S. 45, 59 (1932). As drafted, the Specifications are not sufficient to provide Mr. Kamin notice of what he is to defend against as they are void of crucial detail. "The purpose of a bill of particulars [is] to inform the accused of the nature of the charge with sufficient precision to enable the accused to prepare for trial, to avoid or minimize the danger of surprise at the time of trial . . ." R.M.C. 906(b)(5), *Discussion*. A bill of particulars should be provided if a charge is "too vague and indefinite for such purposes." *United States v. Rivera*, 62 MJ 564, 566 (C.G.C.C.A. 2005) (citing *United States v. Francisco*, 575 F.2d 815, 818 (10th Cir. 1978))(internal citations omitted).

b. The relief sought is reasonable and narrowly tailored to allow the defense to adequately prepare for trial. In balancing the need for more specificity, the defense invites the Commission to consider that Mr. Kamin was in the custody of the United States over five years before he was even charged. Thus, the government has been able to acquaint itself with the facts of the case long before Mr. Kamin was detailed counsel to represent him. Additionally, it must be noted that the alleged events occurred in "Afghanistan and Pakistan" – a location that is difficult for the defense to investigate. Thus, the need for more detail concerning the charges is greater in the present case than in a typical criminal trial.

6. Request for Oral Argument: As it is entitled, the defense respectfully requests oral argument. *See* R.M.C. 905(h). Specifically, the defense respectfully requests it be provided the opportunity to present evidence and argument on this matter at the hearing scheduled for the week of 15-16 December 2009.

7. Witness Request: None.

8. Conference with Opposing Counsel: Pursuant to Military Commissions Rules of Court, Rule 3.3, the defense conferred with the prosecution on 1 December 2009. The prosecution opposes the requested relief.

9. Additional Information: "The Military Judge has the sole authority to determine whether or not any given matter shall be released." *See* RC 3.9.c; *see also* R.M.C. 801; Reg. ¶¶ 19-5, 19-6. The Commission should seek to strike a balance of protecting Mr. Kamin's right to a fair trial, the improper or unwarranted publicity pertaining to the case, and the public understanding of the Military Commissions. *See* Reg. ¶ 19-1. The release of pleadings and rulings is essential for the public, writ large, to be able to assess and evaluate the legitimacy of United States judicial proceedings being held on a military base overseas and in a fortified courtroom. At a minimum, providing the public the opportunity to read and evaluate the pleadings and rulings would contribute to Mr. Kamin being able to have a "public trial." *See* U.S. Constitution, Sixth Amendment. The defense hereby respectfully requests that the Military Judge authorize

the Assistant Secretary of Defense for Public Affairs (or designee) to release this pleading and any and all responses, replies, and/or rulings under the same designation to the public at the earliest possible date.

10. **Attachments:** None.

Respectf

ully submitted,

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