

UNCLASSIFIED//FOR PUBLIC RELEASE
MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED
ABDU AL-NASHIRI

AE 348

**DEFENSE MOTION TO ABATE
PROCEEDINGS PENDING THE
RESTORATION OF COMMANDER
BRIAN MIZER TO THE DEFENSE TEAM**

October 8, 2015

- 1. Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905 and is timely pursuant to Military Commissions Trial Judiciary Rule of Court (R.C.) 3.7.b.(1).
- 2. Relief Requested:** The defense respectfully requests that the proceedings be held in abatement pending the restoration of Commander Brian Mizer to the defense team.
- 3. Overview:** Mr. Al-Nashiri's senior detailed military counsel, Commander Brian Mizer, is scheduled to demobilize from active duty on October 16, 2015. Due to his importance to Mr. Al-Nashiri and the defense team, the Chief Defense Counsel of the Military Commissions Defense Organization denied his application to withdraw from representation of Mr. Al-Nashiri, and requested that his demobilization orders be canceled. However, the Department of the Navy denied the Chief Defense Counsel's request. Because the Department of the Navy's actions constitute an improper severance of the attorney-client relationship without good cause, this Commission should abate the proceedings pending the restoration of Commander Mizer to the defense team.
- 4. Burden of Proof and Persuasion:** The defense bears the burden of persuasion by a preponderance of the evidence. R.M.C. 905(c)(2)(A).

5. Statement of Facts:

Commander Mizer was a drilling member of the Selected Reserve in 2013, when he was involuntarily mobilized and detailed to Mr. Al-Nashiri's case in July of 2013. Attachment B. In the 2-plus years that have elapsed since, he has met with Mr. Al-Nashiri a number of times, forming an attorney-client relationship with him, and has argued Mr. Al-Nashiri's case before this Commission on a number of occasions. He is currently the senior military counsel on Mr. Al-Nashiri's defense team.

Commander Mizer received demobilization orders in the summer of 2015. (*Id.*) Although this is not the first time he has received such orders, he elected at this time not to consent to further extension of his active duty orders. (*Id.*) He is scheduled to demobilize on October 16, 2015. (*Id.*)

Upon making this decision, he informed the client as well as learned counsel in this matter, Mr. Kammen, of his intent to withdraw. Mr. Al-Nashiri did not consent to Commander Mizer's withdrawal. Attachment C. Mr. Kammen also informed the Chief Defense Counsel of the Military Commissions Defense Organization, Brigadier General John Baker, that in his opinion the withdrawal or removal of Commander Mizer from the team would not be in Mr. Al-Nashiri's best interests and that he could not positively endorse Commander Mizer's request.

Finally, Commander Mizer submitted an Application for Withdrawal as Detailed Counsel to BGen Baker. BGen Baker, citing Mr. Al-Nashiri's and Mr. Kammen's objections as well as the case of *United States v. Hutchins*, 69 M.J. 282 (C.A.A.F. 2011), denied that application. On September 11, 2015, BGen Baker requested that the Department of the Navy extend Commander Mizer's active duty service and cancel his demobilization orders. Attachment D. That request was denied on October 5, 2015. Attachment E.

6. Argument:

In *United States v. Hohman*, 70 M.J. 98 (C.A.A.F. 2011) (per curiam), the Court of Appeals for the Armed Forces discussed a similar situation to the instant case, in which detailed counsel, Captain Muth, was scheduled to depart from active duty, under the analogous Rule for Courts Martial 505. There, the Marine Corps denied counsel's request to extend his orders so that he could continue to represent his client. *Id.* at 99. Finding that this constituted an erroneous severance of the attorney-client relationship, the military judge ordered abatement of the court martial until Captain Muth could be restored to his status as detailed defense counsel. *Id.*

Relying on *United States v. Hutchins*, however, the Court of Appeals for the Armed Forces found that the particular circumstances before it did not justify an exception to the normal termination of representation that occurs when detailed counsel separates from active duty. *Id.* at 99-100. Whether such an exception is warranted is "highly contextual[.]" *Hutchins*, 69 M.J. at 290-91. Specifically, where "[n]one of the issues under the initial responsibility of [detailed counsel] involved matters of fact or law in which he had unique knowledge or expertise beyond that which could be gained through routine preparation by the attorneys who remained on the defense team[.]" no prejudice would result from counsel's withdrawal, and so an exception should not be made. *Id.* at 292.

But counsel in *Hohman* had only been representing his client for a little over eight months, *see Hohman*, 70 M.J. at 99, and there was no indication in the record that counsel's responsibilities were so specialized that he could not have been replaced with other detailed counsel prior to trial, *see id.* at 100. Therefore, although it was error to sever Captain Muth's status as detailed defense counsel, in the context of *Hohman* there was no prejudice to the accused. *See also Hutchins*, 69 M.J. at 292 (no reversible error occurred where an assistant

detailed defense counsel was replaced by new counsel of six years' active military justice experience as well as experience as the senior trial attorney on felony cases as a public defender).

The opposite is true here. Commander Mizer is the senior detailed military counsel on Mr. Al-Nashiri's team, having been on the case since July of 2013. As BGen Baker recognized in refusing to excuse him (*see* Attachment D), Commander Mizer has devoted a substantial amount of time, effort, and preparation to the case, even though it has not yet been to trial—a time commitment due in large part to the fact that this is a capital case. He also is the only military counsel remaining on the case with significant experience litigating before the Commission and the only military counsel remaining who has significant national security experience as well as capital experience. He is not replaceable, either in terms of his general experience level or the amount of time he has committed to this type of litigation, and so his loss would greatly prejudice the defense.

Nor could his institutional knowledge be replaced if he were to withdraw. Should he be granted permission to do so, only one attorney—learned counsel, Mr. Kammen—would be left with more than one year's worth of experience representing Mr. Al-Nashiri—even though the case itself is seven years old. The complexity of the discovery and the litigation in this case make such institutional knowledge invaluable and irreplaceable.

Finally, perhaps the most important consideration is the effect of counsel's withdrawal on the attorney-client relationship. Mr. Al-Nashiri has formed a strong relationship with Commander Mizer, such that for the first time, he objected to the withdrawal of one of his military attorneys. Attachment C. In any criminal case, such an objection would indicate that withdrawal would be detrimental to the client's interests. In a capital case, however, the attorney-client relationship is vital to the preparation and presentation of the case, and therefore vital to

the client's own life. Mr. Al-Nashiri's refusal to consent to the loss of one of his capital defense attorneys weighs strongly in favor of retaining Commander Mizer on the defense team.

The fact that it is error to sever Commander Mizer's status as detailed defense counsel may also be seen in the Chief Defense Counsel's objection to that severance. After detailed counsel forms an attorney-client relationship with his client, there are two circumstances in which an authority competent to detail such counsel may, in his or her discretion, grant withdrawal: if either (a) counsel requests it, or (b) other good cause to excuse counsel is shown on the record. R.M.C. 505(d)(2)(B). But here, the Chief Defense Counsel has not excused Commander Mizer from this case.¹ Instead, BGen Baker noted that Commander Mizer's absence would have a "devastating impact to the team as a whole and to Mr. Al-Nashiri personally. Attachment D ¶ 5.

In denying BGen Baker's request to cancel the demobilization orders, the Department of the Navy indicated that Commander Mizer is fungible because "Mr. Al-Nashiri has had, and continues to have, uninterrupted representation from multiple counsel[,]" Attachment E ¶ 5. But continuity of *some* counsel is not the issue. The attorney-client relationship is not transferable between individuals, and neither is the amount of knowledge and experienced gained from representing a capital defendant for well over two years.

This Commission should not presume that the proposed termination of Commander Mizer's active duty status also terminates his representation of Mr. Al-Nashiri. Because the loss of Commander Mizer would drastically reduce the defense's experience level, institutional knowledge, and confidence base with Mr. Al-Nashiri, this case is an exception to that general rule. It is error to sever Commander Mizer as detailed defense counsel in this case. This matter

¹ The Chief Defense Counsel of the Military Commissions Defense Organization is the only person authorized to detail defense counsel to a military commission. R.T.M.C. 9-1.

should therefore be held in abatement pending Commander Mizer's restoration to the defense team.

7. Oral Argument: The defense does not request oral argument on this motion.

8. Witnesses: None.

9. Conference with Opposing Counsel: The defense has conferred with the government. The government opposes the request to abate the proceedings and takes no position with regard to Commander Mizer's detail at this time, pending review of the final and filed motion.

10. List of Attachments:

- a. Certificate of Service, dated 8 Oct 15 (1 page)
- b. Application for Withdrawal of Detailed Counsel, dated 14 Aug 15 (3 pages)
- c. Accused's Denial of Withdrawal (1 page)
- d. Denial of Commander Brian Mizer's Withdrawal Request, dated 11 Sep 15 (3 pages)
- e. Department of the Navy Disapproval Memo, dated 5 Oct 15 (2 pages)

/s/ Richard Kammen
RICHARD KAMMEN
DOD Appointed Learned Counsel

/s/ Jennifer Pollio
JENNIFER POLLIO
LCDR, JACG, USN
Assistant Detailed Defense Counsel

ATTACHMENT

A

Filed with TJ
8 October 2015

Appellate Exhibit 348 (Al-Nashiri)
Page 7 of 21

CERTIFICATE OF SERVICE

I certify that on 8 October 2015, I electronically filed the forgoing document with the Trial Judiciary and served it on all counsel of record via e-mail.

/s/ Richard Kammen
Richard Kammen, #5064-49
KAMMEN & MOUDY
135 North Pennsylvania St.
Suite 1175
Indianapolis, IN 46204
(317) 236-0400
Richard@kammenlaw.com

ATTACHMENT

B

14 Aug 15

From: CDR Brian L. Mizer, JAGC, U.S. Navy Reserve
To: Chief Defense Counsel, Office of Military Commissions

Subj: APPLICATION FOR WITHDRAWAL OF DETAILED COUNSEL

Ref: (a) R.M.C. 505(e)

Encl: (1) Involuntary Mobilization Orders dated 2 Jul 13
(2) Involuntary Mobilization Orders dated 3 Oct 14
(3) Demobilization Orders dated 20 Jul 15
(4) Mr. Al-Nashiri's Consent to Release of Majors Danel, Hurley, and Jackson as Detailed Counsel dated 27 Apr 15
(5) Prosecution Motion to Continue Stay of Proceedings dated 24 Jul 15
(6) Mr. Al-Nashiri's Objection to Withdrawal of CDR Mizer as Detailed Counsel dated 11 Aug 15

1. Pursuant to reference (a), I hereby apply for withdrawal as detailed counsel for Mr. Abdul Rahim Al-Nashiri.

2. In addition to enclosures (1) through (6), the following information is provided:

a. I served at this command between July 2007, and July 2009, when I separated from active duty after nine years of service.

b. As a drilling member of the Selected Reserve, I consented to involuntary mobilization for a period of one year in July 2013. On 21 August 2013, the Military Commission set trial for 2 September 2014.

c. On 26 February 2014, the Military Commission continued the trial until 4 December 2014.

d. After a brief departure from active duty in July 2014, I again consented to involuntary mobilization for a second year in October 2014.

e. On 16 April 2015, the Military Commission cancelled all future sessions of the Military Commission pending resolution of two government interlocutory appeals.

f. On 27 April 2015, Mr. Al-Nashiri consented to the withdrawal of three of his detailed defense counsel: Majors Allison Danelis, Thomas Hurley, and Daphne Jackson.

g. On 26 June 2015, the United States Court of Military Commissions Review granted the prosecution's unopposed motion to stay further proceedings in the prosecution's two interlocutory appeals as the government "seeks re-nomination and re-confirmation of the military judges as U.S.C.M.C.R. judges." Enclosure 5 at 3. The court-ordered stay remains in effect as of this application.

h. Additionally, due to a series of delays related to the government's *ex parte* litigation pursuant to M.C.R.E. 505, the prosecution has significant discovery obligations that remain unfulfilled as of the date of this application, and it is entirely possible that completion of discovery remains years in the future.

i. It is my assessment that any trial in this case will not occur until 2017, at the earliest. That assumes the prosecution immediately complies with its discovery obligations, presidential and congressional action in September 2015, that addresses the constitutional infirmity of the United States Court of Military Commissions Review, and the cessation of the filing of frivolous interlocutory appeals by the prosecution. None of these events appear likely to occur as of the date of this application.

j. Given the indefinite delay of Mr. Al-Nashiri's case, I respectfully do not consent to further extension of my active-duty orders, and I intend to return to my civilian employment with the Department of the Air Force's Appellate Defense Division.

k. During my mobilization, I have continued attorney-client relationships with six airmen, including Senior Airman Andrew Witt. The mandatory review of his capital case is pending before the Court of Appeals for the Armed Forces, and I expect to argue that case in January 2016.

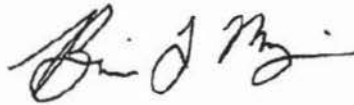
l. I have received orders to detach from this office on 16 October 2015.

m. In my reserve capacity, I am presently assigned to a unit, the Navy-Marine Corps Appellate Defense Division, and I intend to return to that unit upon demobilization. I have notified my chain of command of my pending return.

n. On 11 August 2015, learned counsel, Mr. Richard Kammen, met with Mr. Al-Nashiri at Naval Station Guantanamo Bay to discuss my request to withdraw from his case. I did not attend that meeting. Mr. Al-Nashiri does not consent to my withdrawal as detailed counsel.

3. As you are aware, "separation from active duty normally terminates representation[.]" *United States v. Hutchins*, 69 M.J. 282, 290 (C.A.A.F. 2011). I respectfully submit my separation from active duty constitutes good cause for the severance of my attorney-client relationship with Mr. Al-Nashiri for purposes of R.M.C. 505(d)(2).

4. If I may be of future service to your command in my limited role as a Navy reservist, please let me know.

A handwritten signature in black ink, appearing to read "B. L. Mizer". The signature is fluid and cursive, with the first name "B." and last name "Mizer" clearly distinguishable.

B. L. MIZER

ATTACHMENT

C

TO: AL-NASHIRI - ISN 10015
FROM: LCDR POLLIO
10015



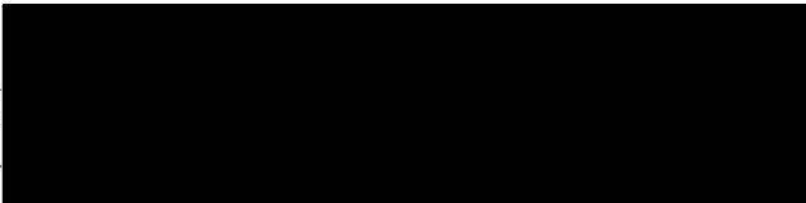
I, Abdul Rahim Al-Nashiri, hereby authorize the release of Commander Brian L. Mizer as my detailed defense counsel. I understand that I may object to their release, but I do not do so. This release was made voluntarily by me and of my own free will. I hereby request that the Chief Defense Counsel authorize the release of Commander Brian L. Mizer.

Name: _____

Signature: _____

Date: _____

*I Refuse This request.
I Do want CDR Mizer to
be my Lawyer.*



ATTACHMENT

D



DEPARTMENT OF DEFENSE
CHIEF DEFENSE COUNSEL FOR MILITARY COMMISSIONS
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

11 September 2015

MEMORANDUM FOR SECRETARY OF DEFENSE

THROUGH COMMANDER, U.S. FLEET FORCES COMMAND, N1
CHIEF OF NAVAL OPERATIONS, N31
ASSISTANT SECRETARY OF THE NAVY, MANPOWER AND RESERVE
AFFAIRS

SUBJECT: REQUEST TO EXTEND COMMANDER BRIAN MIZER, JAGC, USN

1. Commander Brian Mizer, detailed defense counsel for Mr. al-Nashiri, is supposed to demobilize during the month of October. I am writing to request that those demobilization orders be cancelled and that he continue to be involuntarily recalled to active duty until the later of one year or until the completion of his representation of Mr. al-Nashiri. As noted in Enclosure 1, the Deputy General Counsel for Personnel & Health Policy strongly supports this request.

2. Commander Mizer has been detailed as defense counsel for Mr. al-Nashiri since 23 July 2013 and an attorney-client relationship has formed between the two. Under Rule for Military Commission (R.M.C.) 505(d)(2)(B), once "an attorney-client relationship has been formed between the accused and detailed defense counsel ..., an authority competent to detail such counsel¹ may excuse or change such counsel only: (i) Upon request of the accused or application for withdrawal by such counsel; or (ii) For other good cause shown on the record."

3. In anticipation of CDR Mizer's demobilization, Mr. Kammen, Mr al-Nashiri's lead (and learned) counsel, provided Mr. al-Nashiri notice of CDR Mizer's planned departure to determine whether Mr. al-Nashiri would consent to CDR Mizer's excusal as his defense counsel. Enclosure (2) contains Mr. al-Nashiri written objection to CDR Mizer's excusal.

3. On 14 August 2015, CDR Mizer submitted Enclosure 3, an application for withdrawal as detailed defense counsel, to me for consideration. Before taking action on this request, I sought Mr. Kammen's input on this request. Enclosure 4 provides Mr. Kammen's objection to CDR Mizer's application for withdrawal and contains Mr. Kammen's assessment that such a withdrawal would adversely affect the interest of Mr. al-Nashiri. Under Rule 1.16b of our governing Rules for Professional Responsibility, a counsel's request to withdraw from

¹ As the Chief Defense Counsel for Military Commissions (CDC), I am the only authorized person to detail or excuse detailed defense counsel for a commission. R.M.C. 503(c) empowered the Secretary of Defense to prescribe regulations for the persons who are authorized to detail defense counsel to a military commission. The Secretary has used Rule for Trial by Military Commission 9-1 to prescribe these regulations and has designated only the CDC as the detailing authority for defense counsel. Under R.M.C. 505(d), this make the CDC as the only person authorized to excuse a defense counsel from a military commission. (While not germane here, a military judge has an analogous authority to disqualify counsel under R.M.C. 901 when that counsel has acted in a disqualifying capacity. Such a disqualification would provide the CDC good cause to then excuse that counsel under R.M.C. 505 (d)(2)(B)(ii).)

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representation may be approved "if withdrawal can be accomplished without adverse effect on the interests of the client." JAGINST 5803.1E, Rule 1.16b.

4. After considering the Enclosures 2 – 4, and the applicable case law, I denied CDR Mizer's request to be excused as detailed defense counsel in the *United States v. al-Nashiri* Commission because I had determined that his withdrawal will have material adverse effect on the interests of Mr. al-Nashiri and that other good cause does not exist to excuse CDR Mizer as detailed defense counsel for Mr. al-Nashiri. Enclosure 5 contains my written response to CDR Mizer.

5. While a military justice case, I found the Court Appeals for the Armed Forces' (CAAF) guidance on severance under the analogous Rule for Courts-Martial 505 instructive when reaching my decision not to excuse CDR Mizer. In *United States v. Hutchins*, 69 M.J. 282 (C.A.A.F. 2011), CAAF explained that the individual circumstances of a particular case, to include the interests associated with cancelling or postponing a separation date and the role of a particular member of the defense team, may warrant a finding that the end of counsel's active duty requirement is insufficient by itself to establish good cause. *Id.*, at 291. Such is the case here. CDR Mizer's departure at this stage will have a devastating impact on the defense team as a whole and Mr. al-Nashiri personally. Even though trial has not yet begun, his involvement in Mr. al-Nashiri's defense is well beyond the initial stages. Capital charges have been referred and a great deal of time and effort has gone into case preparation and the development of the case strategy. Further, excusing him as detailed defense counsel would leave a significant void in the level of skill and experience needed to carry on Mr. al-Nashiri's defense. CDR Mizer has a unique understanding, developed over a period of years, of the particular litigation history and the facts behind the charges Mr. al-Nashiri faces. Additionally, the skill and talent CDR Mizer has demonstrated over the years as a defense counsel has instilled a great deal of trust and confidence in CDR Mizer by Mr. al-Nashiri. This trust is exemplified in Mr. al-Nashiri's objection to CDR Mizer leaving his defense team. CDR Mizer is the first military counsel that Mr. al-Nashiri has objected to departing from his defense team (Mr. al-Nashiri has consented to least 6 military counsel departing his defense team since his current set of charges were sworn in 2011). Mr. al-Nashiri's objection is particularly persuasive because client rapport is of particular significance in capital litigation generally and in Commissions cases specifically.²

6. Prior to making my decision to deny CDR Mizer's request to be excused as Mr. al-Nashiri's defense counsel, I also considered a recent ruling in *United States v. Abd al Hadi al-Iraqi*, where the Commission was faced with the similar issue of determining under what circumstances it is appropriate to sever the attorney-client relationship. In reaching his decision, the military judge used Rule 1.16 as a guide to explore whether the excusal of the original detailed defense counsel prior to the referral of charges would have a material adverse effect on the interests of the client. As part of its analysis, the Commission emphasized that the charges had not yet been preferred at the time of the excusal; that discovery had not yet been provided; and that the detailed defense counsel was replaced with a qualified and experienced defense counsel. For these reasons, the Commission concluded, in that non-capital case, that the withdrawal had no material adverse effect on the interests of the client. By contrast, CDR Mizer has been the lead military counsel post-referral of capital charges against Mr. al-Nashiri, has been actively involved with the analysis of hundreds of thousands of pages of discovery, interviewed innumerable witnesses,

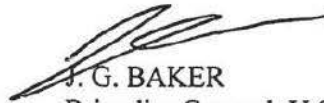
² Indeed, it was the lack of trust in their counsel that caused the initial capitally charged accused's to go pro se during the first iteration of the Commissions.

Subj: REQUEST TO EXTEND COMMANDER BRIAN MIZER, JAGC, USN

actively developed a defense strategy and has been directly involved with significant litigation over the past four years. In short, unlike the defense counsel at issue in the al-Iraqi Commission, CDR Mizer is an essential part of the foundation upon which Mr. al-Nashiri's defense rests and to lose him now would have a material adverse effect on the interests of Mr. al-Nashiri.

7. There certainly is well established precedence for extending a reservist's active duty service in the context of military commissions. Not only has CDR Mizer's own active duty service been extended to allow him to continue with his obligations to Mr. al-Nashiri, several other reservists on other defense teams have also extended their active duty status in order to avoid severing their attorney-client relationships.

8. Demobilizing CDR Mizer will serve as a defacto excusal as detailed defense counsel in contravention of R.M.C 505 because CDR Mizer cannot effectively represent Mr. al-Nashiri in this capital commission as drilling reservist with a full-time job outside the Military Commissions Defense Organization. Therefore, I request that CDR Mizer's demobilization orders be cancelled.



J. G. BAKER
Brigadier General, U.S. Marine Corps
Chief Defense Counsel for
Military Commissions

Attachments:
as stated

cc:
DoDGC (P&HP)
OMC-CA
Navy JAG
Mr. Kammen
CDR Mizer
Mr. al-Nashiri

ATTACHMENT

E



DEPARTMENT OF THE NAVY
 OFFICE OF THE ASSISTANT SECRETARY
 (MANPOWER AND RESERVE AFFAIRS)
 1000 NAVY PENTAGON
 WASHINGTON, D.C. 20350-1000

OCT 05 2015

From: Deputy Assistant Secretary of the Navy (Reserve Affairs/Total Force Integration)
 To: Chief Defense Counsel for Military Commissions

SUBJECT: REQUEST TO EXTEND COMMANDER BRIAN MIZER, JAGC, USN

Ref: (a) Your ltr of 11 Sep 15
 (b) 10 U.S.C. § 12302
 (c) DoDI 1235.12

1. Reference (a), requests that CDR Mizer's demobilization orders be cancelled. The decision regarding whether it's appropriate to cancel CDR Mizer's demobilization orders and seek approval from the Secretary of Defense to involuntarily extend him on active duty rests with the Department of the Navy (DON).
2. After careful consideration, and for the reasons discussed below, your request is disapproved.
3. Reference (a) requests that CDR Mizer be involuntarily extended until the later of one year or until completion of his representation of Mr. al-Nashiri and that his demobilization orders be cancelled. However, reference (b) prohibits involuntary extensions beyond 24 months.
4. Reference (c) states it is DoD policy to maintain a dwell time ratio of 1:5. CDR Mizer was involuntarily mobilized twice within the past two years. He was mobilized from July 2013 to July 2014, and again from October 2014 to present. CDR Mizer had just three months of dwell time between his two mobilizations. This ratio of 1:0.25 is far below the standard contained in reference (c).
5. CDR Mizer is one of multiple counsel assigned to represent Mr. al-Nashiri. Mr. al-Nashiri has had, and continues to have, uninterrupted representation from multiple counsel, including learned counsel with extensive experience in capital cases.
6. Importantly, there is no indication Mr. al-Nashiri's trial will conclude within the 24-month statutory period. According to CDR Mizer's assessment, due to extensive pre-trial litigation and discovery, any trial in this case will likely not occur until 2017, at the earliest. Based on this assessment, approval of CDR Mizer's involuntary extension until the statutory limit of October 2016 will not obviate the requirement to allow him to demobilize prior to Mr. al-Nashiri's trial.
7. CDR Mizer does not consent to further extension of his active-duty orders. Instead, he desires to return to his civilian employment with the Air Force's Appellate Defense Division. As noted in his request to withdraw as Mr. al-Nashiri's detailed defense counsel, during his mobilization, CDR Mizer has continued his attorney-client relationship with six Airmen. One of these Airmen has a mandatory review of his capital case pending before the Court of Appeals for the Armed Forces. CDR Mizer expects to argue this significant case in January 2016.

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8. Disapproval of the request to cancel CDR Mizer's demobilization orders will allow him to be replaced by another experienced defense counsel well in advance of Mr. al-Nashiri's trial.

9. The DON is committed to supporting the Office of Military Commission's mission. In this regard, a qualified detailed defense counsel will be provided to replace CDR Mizer in a timely manner.

10. Point of contact is CDR [REDACTED] who can be reached at COMM: [REDACTED]
[REDACTED]
[REDACTED]

Copy to:
CNO N31
USFF N1
N095