UNITED STATES OF AMERICA	)	
v.	)	**MOTION FOR DOCKETING**
ALI HAMZA AHMAD SULAYMAN AL BAHLUL	)	27 July 2004

Part I - Request for Trial Date

1. The Prosecution will be prepared for trial and ready to begin its case on the merits on 8 November 2004.

2. The Prosecution estimates that it will take approximately eight (8) days to present its case on the merits, and one (1) day on sentencing if sentencing proceedings are required.

3. The Prosecution intends to furnish all information to the Defense, to include the names of witnesses that Commission Law requires, not later than 3 September 2004.

4. The Prosecution does intend to request that Protected Information be presented, and if the request is granted, that the presentation of such information will take approximately one (1) day (such day already included in the calculation in paragraph 2 above.)

5. In determining a trial date, and on behalf of all counsel for the Prosecution in the above styled case, the Prosecution requests that the Presiding Officer consider the following events that would significantly interfere with counsels' being in trial:

Counsel	Dates	Significant Event
NAME REDACTED	13 August 2004	MPRE examination
NAME REDACTED	***DATE REDACTED*** 2005	Retirement from active duty

6. Other information that may be of use to the Presiding Officer in the docketing of this case: Based on informal discussions with the Defense, the Prosecution anticipates numerous pretrial motions.

_____
NAME REDACTED
Commander, JAGC, U.S. Navy
Prosecutor

Part II - Defense Response to Docketing Request

1. The Defense (select one option below):

____. Is prepared to begin its case on the merits after the conclusion of the Prosecution's case as indicated in Part I above.

____. Requests that the trial begin on a date earlier than that requested by the Prosecution for the following reasons (be specific):

__X__. Requests a delay in the beginning of the trial until 1 July 05 (assuming that counsel are able to proceed with case preparation in the near future) for the following reasons (be specific):

Due to government inaction in providing an interpreter counsel have been unable to communicate with Mr. al Bahlul since mid-April, and have been able to speak with him for only two days since being detailed 3 Feb 04. Consequently, counsel have been unable to take even the beginning steps towards preparing the case for litigation such as discussing the discovery obtained to date with Mr. al Bahlul, pursuing discovery requests denied by the Government, interviewing Government-controlled witnesses, etc.

Additionally, counsel anticipate the need to research, brief and litigate many extremely complex legal issues dealing with the military commission process. Since the issues often build on each other, it will be necessary to litigate one or a series of issues, absorb the decision on said issues along with any developments in the case that result, and then litigate the next issue or set of issues. Consequently, counsel anticipates the need for an extended pretrial motions phase.

2. The Defense estimates that if it presents a case on the merits, it shall take approximately _____ days to present it. If sentencing proceedings are required, the defense will need _____ days to present it.

Unfortunately, at this early stage in the process counsel are unable to even guess at the response to these questions.

3. The Defense (does) (does not) intend to request that Protected Information be presented, [and if the request is granted, that the presentation of such information shall take approximately ___ days (such days already included in the calculation in paragraph 2 above.)]

Unfortunately, at this early stage in the process counsel are unable to even guess at the response to this question.

4. The defense will not present any affirmative defenses as that term is used in Commission Law (See POM # 1 for a definition of that term.)

Unfortunately, at this early stage in the process counsel are unable to even guess at the response to this question.

5. The defense will present, or may present, the following affirmative defense(s) as that term is used in Commission Law.

Unfortunately, at this early stage in the process counsel are unable to even guess at the response to this question.

6. (Optional): In determining a trial date, and on behalf of all counsel for the Defense in the above styled case, the Defense requests that the Presiding Officer consider the following events that would significantly interfere with counsels' being in trial. (Include all counsel detailed to the case):

Counsel	Dates	The Significant Event.
Bridges	30 Aug – 3 Sep	Leave (use/lose expires 30 Sep 04)
	13-28 Sep	Leave (use/lose expires 30 Sep 04)
	23-30 Oct	Leave
Sundel	7-10 Sep	Leave (use/lose expires 30 Sep 04)

7. (Optional.) Other information that may be of use to the Presiding Officer in the docketing of this case:

/s/ Philip Sundel

PHILIP SUNDEL
LCDR, JAGC, USN
Detailed Defense Counsel

Part III - Prosecution Reply to Docketing Request

1. The Prosecution (select one option below):

a. If the Defense requested a trial date earlier than that requested by the Prosecution.

____ The Prosecution is prepared to proceed on the trial date requested by the Defense.

____ The Prosecution is not prepared to proceed on the trial dated requested by the Defense for the following reasons (be specific):

b. If the defense requested a trial date later than that requested by the Prosecution.

___ The Prosecution has no objection to the delay requested by the Defense.

XX The Prosecution opposes to the delay requested by the defense because (be specific):

While the Prosecution is receptive to the Defense concerns relating to an interpreter, certain information should be considered in docketing this case.
The chronological history concerning the Defense obtaining an interpreter is as follows:

1. On 3 March 2004, the Defense requested ***NAME REDACTED*** to serve as their interpreter. The Defense acknowledged shortly after submitting this request that there would be difficulties in obtaining the required security clearance for ***NAME REDACTED*** and asked for Appointing Authority intervention.

2. On 18 March 2004, the Appointing Authority detailed ***NAME REDACTED*** as a member of the Defense team to provide interpreter services. The defense agreed to this detailing and indicated to the Appointing Authority that she would be an acceptable interim interpreter. ***NAME REDACTED*** accompanied the Defense to GTMO and provided interpreter services for them. After utilizing the services of ***NAME REDACTED*** in April 2004, the Defense informed the Appointing Authority that in the Defense team's view, she lacked the skills and qualifications to provide future interpreter services.

3. On 11 May 2004, the Defense requested ***NAME REDACTED*** as an interim interpreter until the Defense request for ***NAME REDACTED*** as a permanent interpreter was approved. The Defense by name request for the employment of ***NAME REDACTED*** was later withdrawn by the Defense on 12 May 2004. Another interpreter proposed by the Appointing Authority was rejected out of hand by the Defense because this person had previously provided interpreter services for the government at GTMO. The Prosecution fails to understand

how this prior service creates a bias or inability to perform the duties as an interpreter for the Defense. It is ironic that after the Defense rejected two apparently otherwise qualified interpreters, they are now asking by name for an interpreter who also happens to be a lawyer previously active in protecting the rights of Arabs.

4. On 17 June 2004, the Defense made a by name request for ***NAME REDACTED*** to serve as their interpreter. After undergoing competency testing and being placed in a position to be hired, the Defense advised the Appointing Authority that ***NAME REDACTED***'s willingness to serve as an interim interpreter was conditioned upon him being hired as a law clerk for the Military Commissions Defense shop. This recently imposed condition has created complications in his hiring to provide interpreter services.

It is the Prosecution's current understanding that measures to hire ***NAME REDACTED*** are being finalized and that he should be available to the Defense shortly. Absent an assertion by the Defense that this is not going to come to fruition, a trial date of July 2005 based on the lack of an interpreter is unwarranted.

The Defense team has been in place for over a year although they did not have a specific client until February of 2004. While I concur with the Defense assertion that there will be many complex legal issues to litigate, the defense is not starting at ground zero. Many of these legal issues are easily recognizable regardless of the particular client and the Defense has had over a year to research and prepare for these issues. These motions that are not fact specific to this trial should be filed now.

c. If the Prosecution and Defense both agreed to the same trial date, omit this paragraph.

2. (Optional.) Other information that may be of use to the Presiding Officer in the docketing of this case:

The Prosecution is unsure of LCDR Sundel's career intentions. However, it is our understanding that LCDR Sundel must make a decision in September of 2004 as to whether he wishes to continue on active duty in the United States Navy. Should he determine that it is in his best interest to separate from active duty, the Prosecution understands that he will leave active duty in January of 2005. It would create a substantial hardship for the Prosecution and for the judicial process if the lead Defense Counsel in this case leaves active duty midstream and this should be taken into account when docketing this case.

Another area for consideration in docketing this case is the accused's previously expressed desire to represent himself and not use the services of Detailed Military Defense Counsel. On 20 April 2004, the Defense counsel detailed to this case requested to withdraw from their representation of Mr. al Bahlul. Additionally, the Defense

submitted a memorandum on 11 May 2004 to the Appointing Authority and others requesting a modification to Military Commission Orders and Instructions to permit an accused to represent himself. Additionally, Mr. al Bahlul recently expressed when he was served with the charges in his case that he did not desire to be represented by his current attorneys. While the Prosecution is unaware of the current status of this issue, it may impact the docketing and progression of this trial.

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NAME REDACTED
Commander, JAGC, U.S. Navy
Prosecutor

Part IV - Decision of the Presiding Officer