

UNITED STATES OF AMERICA

Offer for Pre-trial Agreement

v.

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

13/10 MGS
OK
12 October 2010

1. I, OMAR AHMED KHADR, ISN 0766, am presently the accused under military commission charges, dated 24 April 2007. I read the charges and specifications alleged against me, and they have been explained to me by my defense counsel, Lieutenant Colonel Jon Jackson, and Major Matthew Schwartz, and Mr. Nate Whitling, a Canadian foreign consultant (hereinafter collectively referred to as "defense counsel"). I understand the charges and specifications, and I am aware I have a legal and moral right to plead not guilty and to leave the prosecution with the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence.

2. Understanding the above and under the conditions set forth below, and in consideration of this agreement by the Convening Authority to approve a sentence in accord with the limitations set forth in this agreement, I offer and agree to:

a. Plead Guilty to all charges and specifications.

b. Admit I knowingly and intentionally committed each of the acts set forth in each charge and specification referred on 24 April 2007. I understand, as explained to me by my defense counsel, that my admission of committing these acts constitutes a sufficient basis, under United States law, for me to be found guilty beyond a reasonable doubt to the aforementioned charges and specifications.

c. Enter into the Stipulation of Fact that is Attachment A, dated 12 October, 2010, a nine (9) page document (hereinafter Attachment A). I understand that I have an absolute right to refuse to enter into Attachment A but I knowingly and voluntarily agree to enter into Attachment A with the United States Government. I understand a stipulation of fact ordinarily cannot be contradicted. If Attachment A should be contradicted during or after my guilty plea, I understand the United States Government may withdraw from this pretrial agreement. I further understand and agree that Attachment A will be used to determine my guilt and to determine an appropriate sentence. I have discussed this decision with my defense counsel and believe it is in my best interest to enter into Attachment A with the United States Government for the herein stated purposes.

d. Knowingly and voluntarily waive and relinquish any request for any forensic or scientific testing of any physical evidence in the United States Government's possession, including, but not limited to, DNA testing. I fully understand that as a result of this waiver I will

APPELLATE EXHIBIT 341

PAGE _____ OF _____

not have another opportunity to have any physical evidence in this case submitted for any testing or to employ the results of any testing to support any claim of innocence regarding the offenses to which I am pleading guilty. In addition, I understand the United States Government may dispose of such physical evidence upon sentencing by a Military Commission in this case.

e. Waive any claim to confinement credit for any period of time I have been detained prior to the sentence being announced. Notwithstanding my waiver to any claim to confinement credit prior to the sentence being announced, this waiver in no way shall be construed as to limit the Convening Authority's ability to reduce the sentence imposed pursuant to paragraph 6 *infra*.

f. Sign and execute the document found at Attachment B, a two (2) page document that is Military Commission Form 2330, Waiver/Withdrawal of Appellate Rights, within the specified timeframe found within Attachment B and R.M.C. 1110. In doing so I understand I will, at the time of execution of Attachment B, waive my rights to appeal this conviction, sentence, and/or detention to the extent permitted by law, or to collaterally attack my conviction, sentence, and/or detention in any judicial forum (found in the United States or otherwise) or proceeding, on any grounds, except that I may bring a post-conviction claim if any sentence is imposed in excess of the statutory maximum sentence or in violation of the sentencing limitation provisions contained in this agreement. I have been informed by my counsel orally and in writing of my post-trial and appellate rights.

g. Not initiate or support any litigation or challenge, in any forum in any Nation, against the United States or any official in their personal or official capacity with regard to my capture, detention, prosecution to include discovery practice, post conviction confinement and/or detainee combatant status. I further agree to move to dismiss with prejudice any presently pending direct or collateral attack challenging my capture, detention, prosecution and/or detainee combatant status; to implement this aspect of this agreement, following announcement of the sentence in this case, I direct my counsel to submit a motion to dismiss the petition for habeas corpus in my case currently pending in the United States District Court for the District of Columbia as well as all claims currently pending in the United States Court of Appeals for the District of Columbia Circuit.

h. Not to engage in or materially support, directly or indirectly, hostilities against the United States or its coalition partners as defined in 10 U.S.C. § 948(a), or any other organization that I know engages in hostilities against the United States or its coalition partners.

i. While in the continued custody of the United States, submit to interviews whenever and wherever requested by United States law enforcement officials, intelligence authorities, and prosecutors. I understand the requesting parties will notify my legal counsel of the interviews. However, I waive any right I may have to my attorneys being present for the interviews. I understand I must be completely truthful during these interviews. I also agree, while in U.S. custody, to appear, cooperate, and testify truly, before any grand jury, any court, military court or hearing, military commission or any other proceeding requested by the United States Government.

j. I agree and understand that if I am not truthful in any testimony I may provide, I may be prosecuted for perjury, false statement or other similar offense before any court or Military Commission having jurisdiction over me.

k. In further exchange for consideration of the benefit I am receiving, I also agree, after I am transferred to Canadian custody, to never enter into the United States of America or any of her territories or military installations. If I enter into said area(s), the remaining portion of any approved sentence, if any, shall be carried out in United States custody, explicitly revoking the provisions of paragraph 6 of this agreement. I understand and agree that I will also waive any legal actions that may or may not be brought at that time, in any forum, whether in the United States or otherwise, as a result of my violation of this agreement by entering the United States of America or any of her territories or military installations. This includes United States airspace.

l. I hereby assign to the Government of Canada any profits or proceeds which I may be entitled to receive in connection with any publication or dissemination of information relating to the illegal conduct alleged on the charge sheet. This assignment shall include any profits and proceeds for my benefit, regardless of whether such profits and proceeds are payable to me or to others, directly or indirectly, for my benefit or for the benefit of my associates or a current or future member of my family. I hereby represent that I have not previously assigned, and I agree that I will not circumvent this assignment to the Government of Canada by assigning, the rights to my story to an associate or to a current or future member of my family, or to another person or entity that would provide some financial benefit to me, to my associates, or to a current or future member of my family. Moreover, I will not circumvent this assignment by assisting or facilitating his or her profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination. I agree that this assignment is enforceable through any applicable provision of law that would further the purpose of this paragraph's prohibition of personal enrichment for myself, my family, or my heirs and assigns, through any publication nor dissemination of qualifying information, and I acknowledge that my representations herein are material terms of this agreement.

3. Subject to the Rules for Military Commissions (R.M.C.), the Military Commissions Rules of Evidence (M.C.R.E.) and the limitations described below, I understand the prosecution and defense may call witnesses and present evidence, subject to any rulings by the Military Judge, regarding matters in aggravation and extenuation and mitigation for sentencing consideration. I further agree to the following:

a. I will not seek to offer any testimony, in any form, from any detainee presently held at Naval Station Guantanamo Bay;

b. I will not seek to obtain any depositions to be offered at the presentencing hearing, nor will I offer any depositions at the presentencing hearing;

c. I will not seek to offer the testimony, either in court or via VTC of any witness, other than: (1) Dr. Katherine Porterfield; (2) Dr. Steven Xenakis. (3) Captain McCarthy; and (4) Dr. Arlette Zinck, all of whom the Government has agreed to produce at U.S. Naval Station, Guantanamo Bay, Cuba for sentencing. I understand that sentencing proceedings will not be delayed to if these witnesses are unavailable.

d. I will not seek to offer the expert testimony, in any form, of any expert other than Dr. Katherine Porterfield and Dr. Stephen Xenakis. I recognize that it is the responsibility of my defense counsel to ensure that fees for these experts have been properly requested and approved and that sentencing proceedings will not be delayed if the Defense fails to submit proper requests sufficiently in advance of the sentencing hearing to allow the Convening Authority to review and approve appropriate hours to accommodate these witnesses' testimony.

4. I understand that this offer, when accepted by the Convening Authority, constitutes a binding agreement. I assert that I am, in fact, guilty of the offenses to which I am offering to plead guilty, and that I have been apprised of the evidence against me and agree that the evidence could and would prove me guilty beyond a reasonable doubt of the offenses to which I am pleading guilty. I understand that this agreement permits the Military Commission to find me guilty for all offenses to which I plead guilty without the need for the government to present evidence that would prove my guilt beyond a reasonable doubt. I offer to plead guilty because it will be in my best interest that the Convening Authority grants me the relief set forth in this agreement. I understand that I waive my right to a trial of the facts and to be confronted by the witnesses against me, and my right to avoid self-incrimination insofar as a plea of guilty will incriminate me.

5. In making this offer, I further state that:

a. I am satisfied with Lieutenant Colonel Jon Jackson and Major Matthew Schwartz my detailed defense counsel who advised me with respect to this offer and consider them competent to represent me in this Military Commission.

b. No person or persons made any attempt to force or coerce me into making this offer or to plead guilty. I enter into this agreement voluntarily of my own free will.

c. My counsel fully advised me of the nature of the charges against me, the possibility of my defending against them, any defense that might apply (including other defense motions that have not yet been filed), and the effect of the guilty plea that I am offering to make, and I fully understand their advice and the meaning, effect, and consequences of this plea.

d. I understand that I may withdraw my plea of guilty at any time before the sentence is announced but not after the sentence is announced and that, if I do so, this agreement is canceled and of no effect. This agreement will also be canceled and of no effect, if any of the following occurs:

(1) The Military Commission refuses to accept my plea of guilty to any charge and specification, as set forth above, or modification of the plea by anyone during the trial to “not guilty,” or to lesser charges;

(2) Either party withdraws from the agreement before the trial; or

(3) I fail to enter into Attachment A and Attachment B as described in paragraph 2(g) and (j) *supra*.

e. I understand the Convening Authority’s obligation to approve a sentence no greater than that provided in this agreement may be canceled if, between the announcement of sentence and the Convening Authority’s approval of any sentence, I commit any offense chargeable under the Military Commissions Act of 2009 or fail to otherwise fulfill the terms of this agreement.

f. I understand that in the event this plea agreement is not approved by the Convening Authority or is not accepted by the Military Commission, or if I withdraw from this agreement prior to the Military Commission announcing my sentence, this offer cannot be used against me in any proceeding in this case to establish my guilt to these offenses.

g. This document includes all of the terms of this pretrial agreement and, to the extent consistent with the authority granted to the Convening Authority by section 948(h) of the Military Commissions Act of 2009, this prosecution and agreement disposes of all acts of commission or omission which have been referred to this military commission. I have taken into account that other U.S. federal government agencies have indicated their willingness to positively endorse my prisoner transfer application after I have completed one additional year in U.S. custody after my sentence is approved; however, I recognize the decision to approve my transfer is ultimately made by the Canadian Government, and this agreement cannot bind Canadian Officials to accept my prisoner transfer application. No other inducements have been made by the Convening Authority, or any other person, which affect my offer to plead guilty.

h. It is a condition precedent to this agreement that duly authorized officials of the United States and Canada exchange diplomatic notes reflecting United States and Canadian Government support for my transfer to Canada to serve the remainder of my approved sentence after completing no less than one additional year in United States custody after the date of approval of my sentence, and that the United States provide copies of these diplomatic notes to my detailed defense counsel. I understand that my transfer to Canada is contingent upon the consent of the Government of Canada, and that this plea agreement cannot bind the Government of Canada to consent to my prisoner transfer application. I further understand that the Government of Canada cannot accept my application until it is submitted and that any acceptance of a prisoner transfer agreement is a separate agreement from the pre-trial agreement I am entering into with the Convening Authority. I understand that if the Government of Canada ultimately does not accept my application for transfer, it will have no impact on this agreement. No other inducements have been made by the Convening Authority, or any other person, which affect my offer to plead guilty.

6. As consideration for my offer to plead guilty set forth above:

a. The Convening Authority will not approve a sentence of confinement of greater than eight (8) years.

b. The Convening Authority agrees to take all appropriate actions, to the extent of his authority, including the execution of all necessary documents, to support transfer of the accused from the custody of the United States to the custody of Canada after the accused has served one year of confinement in the custody of the United States after the announcement of sentence, provided the accused otherwise complies with the terms of this agreement. The remainder of the approved sentence will be served in Canada, consistent with Canadian Law.

c. The parties acknowledge that the authority of the Convening Authority is limited by the Military Commissions Act of 2009, the Rules for Military Commissions, and the Regulation for Trial by Military Commission, which limit the authority of the Convening Authority to action related to the prosecution of cases by military commission, such as the approval of the terms of pretrial agreements, the approval of the findings and the sentence of military commissions, and taking action on clemency requests, if any. The parties acknowledge the Convening Authority does not have the authority to:

- (1) Control the location of confinement, the conditions of confinement, or whether such confinement is served in military or federal institutions;
- (2) Release the accused from military or federal confinement after taking formal action on the findings and sentence of the military commission;
- (3) Bind the government of the United States to release the accused from law of war detention;
- (4) Bind the government of Canada to allow the accused to enter the country, or to direct, control or otherwise influence the accused's confinement, transfer, parole, or release while in the custody of the government of Canada.

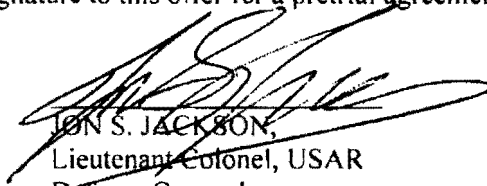
7. The accused and defense counsel understand and agree that this agreement consists of seven (7) numbered paragraphs and seven (7) pages. This document represents the accused's entire agreement with the United States Government. The parties further understand and agree that there are no other agreements, letters, verbal promises or notations that will affect this agreement. The accused and defense counsel further agree that no other inducements have been made by the United States Government which affect the accused's offer to plead guilty.

13 OCT 2010
Date

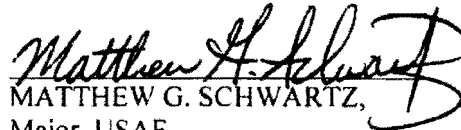
Omar A. Khadr
Omar Ahmed Khadr

I certify I gave the accused the advice referred to above. I explained to him the elements of the offenses and I witnessed his voluntary signature to this offer for a pretrial agreement.

13 OCT 2010
Date

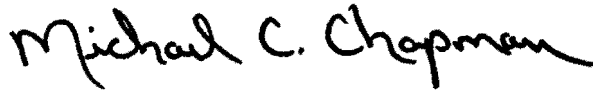

JON S. JACKSON,
Lieutenant Colonel, USAR
Defense Counsel

13 Oct 2010
Date


MATTHEW G. SCHWARTZ,
Major, USAF
Defense Counsel

I recommend (acceptance) (rejection) of this offer.

OCT 13 2010
Date


Michael C. Chapman
Legal Advisor to the Convening Authority

The foregoing instrument, dated OCT 13 2010 is (approved and accepted) (disapproved).

OCT 13 2010
Date


Convening Authority