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f-- Request for Extension of Discovery
Deadline -- US v. Hashim [REDACTED]

UNCLASSIFIED

All,

Pursuant to Military Commissions Trial Judiciary Rules of Court Rule 3.4., the prosecution hereby files this special request for relief asking the Court to extend its discovery deadline in this case until 16 January 2009.

1. Timeliness. This special request for relief is filed in accordance with the verbal instructions of the military judge provided in a Rule for Military Commissions (RMC) 802 session conducted on 19 November 2008.

2. Requested Relief. The Government requests the Military Judge to extend the Government's deadline for completing discovery in this case to 16 January 2009.

3. Facts. At the initial trial session of this case on 19 November 2008, the military judge set a deadline of 24 December 2008 for the Government to complete its discovery to the defense. In an RMC 802 session immediately prior to the initial trial session, the military judge discussed scheduling matters with trial and defense counsel and directed trial counsel to inform him if the government needed additional time to complete its discovery.

4. The prosecution has worked diligently to complete its discovery in this case in accordance with the Court's order. In fact, the prosecution will complete discovery of several hundred documents to the defense by 24 December 2008, including numerous records of interviews of the accused and records of interviews of individuals identified by the accused. However, there are three categories of documents the government is unable to produce to the defense by 24 December 2008: 1) certain documents from the FBI; 2) the accused's medical records; and 3) scanned material from JTF-GTMO's evidence locker.

5. Concerning FBI documents, the prosecution provided the FBI with 59 FBI documents to clear for discovery during the first week of November 2008. Since that time, the trial team and the OMC-P leadership have engaged frequently with the FBI in an attempt to obtain a review of the documents. The FBI replied that its review was delayed due to being overwhelmed with detainee habeas litigation and by the fact that it had a changeover in personnel. Today, the trial team finally received FBI's response to its

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review request. Unfortunately, this response only contained 16 documents and didn't account for the other 43 documents OMC-P requested the FBI to review. The prosecution is attempting to resolve this discrepancy with the FBI. However, with the onset of the holidays, the prosecution is doubtful that it will be able to obtain a rapid review of the other 43 FBI documents it has identified for discovery.

6. The accused's medical records are in the custody of JTF-GITMO at Guantanamo Bay, Cuba. The prosecution reviewed the records on 8 December 2008 and determined that they should be disclosed to the defense. Accordingly, the prosecution made arrangements for the documents to be reproduced and mailed to the prosecution's offices in Arlington, Virginia. The records have not yet arrived, but the prosecution has been assured by JTF-GITMO that they have been mailed. Once the records do arrive, they will need to be reviewed by other federal agencies prior to their disclosure to the defense. The prosecution estimates it should be able to complete these steps by 16 January 2009.

7. With regard to JTF-GITMO evidence locker items, they have been scanned and stored on an approximately 400 Gigabyte hard drive. The prosecution received this hard drive on 15 December 2008. This hard drive contains scanned material from all GITMO detainees and is not completely searchable by detainee ISN number. The prosecution has partially searched the hard drive and identified some potentially discoverable material. However, the prosecution needs to complete its search of the hard drive and have the products of this search cleared by other federal agencies. The prosecution estimates it should be able to complete these steps by 16 January 2009.

8. Argument. Despite the prosecution's diligent efforts to comply with the Court's discovery deadline, it is unable to meet it. Accordingly, the prosecution requests the Court to extend the prosecution's discovery deadline in this case to 16 January 2009.

9. Certificate of Confidentiality. Trial Counsel has attempted to contact the defense counsel, Lt Col [REDACTED], on several occasions over the last several days via telephone [REDACTED] to discuss discovery matters. Lt Col [REDACTED] has indicated via e-mail that he is available to discuss these matters [REDACTED] 2 December 2008. In order to give the Court adequate notice of this request prior to the lapse of the discovery deadline, trial counsel has filed this request without a prior conference with the defense.

Thank you for your consideration of this request.

V/r

Maj Dolan

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Trial Counsel
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