EXHIBIT A

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(U) **Combatant Status Review Tribunal Decision Report Cover Sheet**

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (4).

(U) TRIBUNAL PANEL: #12

(U) ISN#: 768

Ref: (a) (U) Convening Order for Tribunal #12 of 29 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U/~~FOUO~~)
(2) (U) Classified Summary of Basis for Tribunal Decision (~~SAR~~)
(3) (U) Summary of Detainee/Witness Testimony (U/~~FOUO~~) – (N/A)
(4) (U) Copies of Documentary Evidence Presented (~~SAR~~)
(5) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened on 24 November 2004 by references (a) and (b) to make a determination as to whether the Detainee meets the criteria to be designated as an enemy combatant, as defined in reference (c).

2. (U) On 24 November 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #768 is properly designated as an enemy combatant, as defined in reference (c).

3. (U) In particular, the Tribunal finds that this Detainee was part of, or supporting, al Qaida forces that are engaged in hostilities against the United States or its coalition partners, as more fully discussed in the enclosures.

4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).

[redacted]
Tribunal President

EXHIBIT B

Frye, Ellen L

From: Wolfe, Kristina (CIV) [Kristina.Wolfe@usdoj.gov]

Sent: 27 January 2009 17:10

To: Hina Shamsi; Henry, Terry (CIV)

Cc: Shane Kadidal; Curnin, Paul C; Abravanel, Karen; Frye, Ellen L; Paul Turner; Gerald Bierbaum; Jonathan Hafetz; Frakt, David, MAJ, DoD OGC; ArtSpitzer@aol.com

Subject: RE: Motions to Dismiss in Guantanamo detainee habeas case nos. 05cv2385, 05cv2371, 08cv1207

Dear Counsel:

Thank you for your inquiry. The Government is currently in the process of assessing how it should proceed in these cases. Time is needed to make that assessment and determination. Accordingly, while we are not in a position to withdraw the motions at this time, we have no objection to a two-week continuance of your time to respond to the motions while the Government's assessment continues. This would be without prejudice to any further request for scheduling relief by either of the parties.

Regards,
Kristina

From: Hina Shamsi [mailto:hshamsi@aclu.org]
Sent: Monday, January 26, 2009 3:38 PM
To: Henry, Terry (CIV); Wolfe, Kristina (CIV)
Cc: Shane Kadidal; pcurnin@stblaw.com; kabravanel@stblaw.com; Frye, Ellen L; Paul Turner; Gerald Bierbaum; Jonathan Hafetz; Frakt, David, MAJ, DoD OGC; ArtSpitzer@aol.com
Subject: Motions to Dismiss in Guantanamo detainee habeas case nos. 05cv2385, 05cv2371, 08cv1207

Dear Mr. Henry and Ms. Wolfe:

I write on behalf of my client, Mohammed Jawad (a/k/a Saki Bacha, 05cv2385), and habeas counsel, cc:'d here, for the following three Guantanamo detainees: Mohammed Kameen (05cv2385); Ahmed Muhammed Haza al-Darbi (05cv2371); and, Abd al Ramin Hussein Mohammed al-Nashiri (08cv1207).

In each of our clients' cases, on January 16, 2009, the Department of Justice filed motions to dismiss, or alternatively, hold in abeyance pending the outcome of military commission proceedings. Briefs in opposition to DOJ's motions to dismiss are due this Friday, January 30.

In light of President Obama's January 22, 2009 Executive Order concerning the Review and Disposition of Individuals Detained at Guantanamo, which instructed Secretary of Defense Gates to halt all military commission proceedings, my fellow habeas counsel and I write to ask if you would consider withdrawing the motions to dismiss (without prejudice) in our respective cases.

Sincerely,

Hina Shamsi
National Security Project
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212.519.7886
Fax: 212.549.2583

cc: Shane Kadidal (counsel for Mr. Kameen)
Paul Curnin (counsel for Mr. al-Darbi)
Karen Abravanel (counsel for Mr. al-Darbi)
Ellen Frye (counsel for Mr. al-Darbi)

Paul Turner (counsel for Mr. al-Nashiri)
Gerald Bierbaum (counsel for Mr. al-Nashiri)
Jonathan Hafetz (co-counsel for Mr. Jawad)
Maj. David Frakt (co-counsel for Mr. Jawad)
Arthur Spitzer (co-counsel for Mr. Jawad)

EXHIBIT C

UNITED STATES COURT
OF
MILITARY COMMISSION REVIEW

Before
F. Williams, D. Francis, and D. O'Toole

UNITED STATES Appellant v. MOHAMMED JAWAD Appellee	)	APPELLANT'S REQUEST FOR DELAY CMCR CASE NO. 08-004 DATE: 4 February 2009

Before the Court is a motion by the United States, as Appellant, requesting a 120-day delay in issuing our decision on the Appellant's preceding interlocutory appeal. That appeal challenges the military judge's excluding from evidence certain statements purportedly made by the Appellee. Both parties filed their pleadings, and oral argument was held on January 13, 2009. The United States now requests a 120-day delay in rendering our decision in order to participate in the review of the status of Guantanamo Bay detainees, and military commission process, mandated by the President of the United States in Executive Order 13492, issued on January 22, 2009.

The rule governing the timeliness of this Court's decisions is Court of Military Commission Review (CMCR) Rule 22(c). That rule provides interlocutory appeals "will ordinarily be decided within 30 calendar days after oral argument or filing of briefs, whichever is later, unless the Chief Judge grants an extension of time." We, therefore, understand the Appellant's request for a 120-day delay to be a motion to extend the time ordinarily available under CMCR Rule 22(c). The Appellee objects on the grounds that there is no authority for the grant of such a delay, that it is not in the interests of justice, and that it is to his substantial prejudice. The Appellee principally argues this prejudice results from his continued confinement, and a contravention of his speedy trial right.

At the outset, we reject the Appellee's contention that there is no authority by which this Court may grant the requested delay. CMCR Rule 22(c) recognizes the authority of the Chief Judge, one of the judges on this panel, to extend the time within which the Court may decide matters.

We turn now to consideration of whether the requested delay is in the interests of justice. In doing so, we note that the reason for the delay is to allow the Department of Defense to participate in an Interagency review, not only of the military commission process, but also the status of those apprehended and presently detained at Guantanamo Bay -- including the Appellee -- their conditions, and the factual and legal bases for their apprehension and detention, all in the context of the national security and foreign policy interests of the United States. It is the latter, broad context which lends the most weight to the Appellant's request for delay. Indeed, the U.S. Supreme Court has often recognized that the President has the principal constitutional responsibility for national security and foreign policy. *See e.g., Dep't of the Navy v. Egan*, 484 U.S. 518, 529 (1988) (quoting *Haig v. Agee*, 453 U.S. 280, 293-94 (1981)) (citing "the generally accepted view that foreign policy was the province and responsibility of the Executive"); *Harlow v. Fitzgerald*, 457 U.S. 800, 812 n. 19 (1982) (national security and foreign policy are "'central' Presidential domains"); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936) (stating the "very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations"). We, thus, accord great deference to the President in his determination that the Interagency review is required – now – in the interests of national security and foreign policy. Against the weight of the President's stated need for a 120-day delay we still must balance the objections and prejudice asserted by the Appellee.

Before proceeding, we pause to consider the important public interests in the process of appellate review. The public relies on appellate courts to impartially and expeditiously determine appeals. In particular, the assurance that motions to suppress evidence are correctly decided through an orderly process of appellate review protects both the rights of the accused and the "rights of public justice." *Beavers v. Haubert*, 198 U.S. 77, 87 (1905). In this regard, we conclude that the manner by which the request was tendered to the Court – as a motion within the pending litigation – and not as a military order, dispels the perception of both improper influence and of interference with the public's interest in orderly appellate review.

Turning to the Appellee's asserted right to a speedy trial, we note that it derives explicitly from Rule for Military Commissions (RMC) 707.[1] At a minimum, the Appellee has a right to have the presiding military judge announce the assembly of the military commission within 120 days of service of charges. RMC 707(a)(2). Ordinarily, the delay attending an interlocutory appeal is excluded from calculating this 120 days, unless the appeal was frivolous and interposed for the purpose of delay. RMC 707(b)(4)(B) and (c). Since neither the interlocutory appeal, nor the requested delay, was frivolous or interposed for delay, a direct application of the rules would seem to place the requested delay beyond any speedy trial challenge.

[1] We need not, and specifically do not, hold that the Appellee has a constitutional due process right to a speedy trial. However, even if we were to adopt the functional test set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the result in this matter would be the same, based on our balancing the "[l]ength of delay, the reason for the delay, the [Appellee's] assertion of his right, and prejudice to the [Appellee]."

However, neither the RMC nor the CMCR Rules anticipate the circumstances presented here, where the requested delay is not sought as necessary to the proper discharge of this Court's responsibility in ruling on the pending appeal. Under these unique facts, we decline to rely only on the routine exclusion of time incidental to appeals as determinative. We look, instead, to continue our evaluation of whether the requested delay is in the interests of justice.

The Appellee asserts a range of prejudice will inure to him in the event we grant the requested delay. While asserting his right to speedy trial, the Appellee does not assert specific prejudice related to his ability to defend at trial. In a period of four months, there would be some increased chance that exculpatory evidence might be lost. But, that is speculation. It is not speculation to concede that the Appellee is detained at Guantanamo Bay and has been so detained for more than six years. Though the charged offense is serious enough to warrant some level of restraint pending trial, six years appears at first glance to be such an excessive period as to demonstrate prejudice. However, actual prejudice related to delay of trial in this case is less compelling than it might first appear. Appellee's detention status is not entirely related to the charges now pending against him; rather, it is the result of his classification as an enemy combatant, and the administrative determination that his continued detention is in the interest of national security. We also note that since the Appellee has the right to petition for a writ of habeas corpus, his status and the conditions of his confinement are subject to challenge in the federal district courts quite apart from whether this Court issues, or stays, its decision in the pending interlocutory appeal.[2]

Against the Appellee's assertions of prejudice, we balance the public interest in conducting the review directed by the President. We conclude that the balance tips in favor of granting the requested delay as in the interests of justice. This is because the review involves not only consideration of the rights of the Appellee, but also the rights of all of the other detainees, the public interest in the fair and expeditious disposition of the detainees, and the national security of the United States, including the impact of the military commission process on international relations. These are all matters of great public concern that involve both law and policy, and which, as noted, properly fall within the President's authority and responsibility. And, they are not unconnected to this case or the rights of this Appellee. To counter-balance these considerations, the strongest assertion of prejudice by Appellee is the undifferentiated part of his detention related to his pretrial status. Since his detention status is to be reconsidered under the review directed by the President, and is under the active review of the federal district court, we conclude this consideration is, for the present, outweighed by the purpose justifying the requested delay.

Finally, while it is not at all clear that a prompt resolution of the preceding interlocutory motion would in any way prejudice an on-going Interagency review,

[2] The Appellee admits that he has filed a petition for a writ of habeas corpus and that a Minute Order was entered requiring the Government to file a factual return with the U.S. District Court for the District of Columbia by February 27, 2009, setting forth the basis for the Appellee's continued detention. Appellee Response at 5.

we acknowledge that we are not in the proper position to determine what, if any, unintended consequences could impact national security or international relations as the result of our denying the requested delay and issuing our opinion. The ordinary 30-day decision requirement of CMCR Rule 22(c), within which to adjudicate the appellant's interlocutory appeal in this case, is extended to May 20, 2009.

With the concurrence of the panel, Appellant's motion is GRANTED.

Frank J. Williams
Chief Judge