

which contains the MCA reform legislation at Title XVIII, §§ 1801-1807. The House action has now been reported to the Senate, and the Conference Report is pending Senate action.

Section 950f(b) to NDAA FY 2010 changes the procedures for the assignment and appointment of judges. Civilians may only serve as judges after Presidential appointment and Senate confirmation. § 950f(b)(3). Further, section 950f(d) expands the standard of review. “The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.” § 950f(d).

The pending legislative amendments to the MCA may result in changes that will (1) change the composition of the court, (2) change the Manual for Military Commissions, (3) necessitate re-litigation of issues in this case or (4) produce legal consequences affecting the options available to both the accused and the Government. It would be inefficient and potentially unjust to deny the requested stay when the MCA is currently being reformed by the Congress and before the Secretary of Defense has prescribed regulations consistent with the legislation.

Thus, the Government asks for a stay of the proceedings and the filing of the Government brief to the CMCR for 90 days based on the 60 day notice period for making changes to the Manual. 10 U.S.C. § 948a(d).

The Government has consulted with the defense and they take no position at the present time.

Respectfully submitted,

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