IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW
***before* W. Pollard, N. Richardson, M. Holifield**

IN RE OMAR AHMED KHADR	**PETITION FOR AN INJUNCTION TO PREVENT THE PRESIDENT AND THE SECRETARY OF DEFENSE FROM VIOLATING THE STATUTORY INDEPENDENCE OF THE CHIEF DEFENSE COUNSEL** USCMCR Case No. 13-005 Tried at Guántanamo Bay, Cuba, on 9-12 August 2010, 25-31 October 2010 Before a Military Commission convened by Hon. Susan J. Crawford Presiding Military Judge COL Peter E. Brownback, USA (ret.) COL Patrick J. Parrish, USA Date: Feb. 24, 2025

TO THE HONORABLE, THE JUDGES OF
THE COURT OF MILITARY COMMISSION REVIEW

RELIEF SOUGHT

COMES NOW Petitioner, Omar Ahmed Khadr, by and through his undersigned counsel, pursuant to Rule 22 of this Court's Rules of Practice, and respectfully requests the Court to enjoin the Secretary of Defense—at the behest of the President and in furtherance of a naked political agenda that is at best indifferent to Petitioner's rights—to violate the statutory independence of the Chief Defense Counsel, who is appropriately charged with the responsibility to supervise the personnel under his command in order to ensure the zealous and conflict-free representation of the accused in military commission proceedings.

"As the highest judicial tribunal in the [military commission] system," this Court is responsible for the "administration of military justice" in cases arising under its "actual or potential appellate jurisdiction defined in [10 U.S.C. § 950f(c)]." *Dew v. United States*, 48 M.J. 639, 645 (Army Ct. Crim. App. 1998). Toward that end, the Court is authorized by the All Writs Act to issue injunctive relief "to compel the [Secretary's] performance, when refused, of a ministerial duty" that is a condition precedent to the actual exercise of its appellate jurisdiction and to preserve the integrity of the judicial process. *United States v. Khadr*, 568 F.Supp.3d 1266, 1276 (C.M.C.R. 2021) (quoting *Wilbur v. United States*, 281 U.S. 206, 218 (1930)); *see also Brown v. Gilmore*, 533 U.S. 1301, 1302 (2001) (All Writs Act authorizes an appellate court to issue injunctive relief "if the legal rights at issue are indisputably clear.") (cleaned up); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 608 (1966) ("[A] court of appeals, having jurisdiction to review administrative orders, [may] exercise its express authority under the All Writs Act to issue such temporary injunctions as may be necessary to protect its own jurisdiction."); *Belbacha v. Bush*, 520 F.3d 452, 459 (D.C. Cir. 2008).

ISSUE PRESENTED

IS AN INJUNCTION THE APPROPRIATE REMEDY WHERE, AS HERE, THE PRESIDENT AND THE SECRETARY OF DEFENSE HAVE ABROGATED THE INDEPENDENCE OF THE DEFENSE FUNCTION BY DISREGARDING THE CHIEF DEFENSE COUNSEL'S STATUTORY AUTHORITY TO SUPERVISE THE MILITARY COMMISSIONS DEFENSE ORGANIZATION?

STATEMENT OF JURISDICTION

This Court has jurisdiction over petitions for injunctive relief pursuant to the All Writs Act, 28 U.S.C. § 1651(a); Rule 22 of the U.S. Court of Military Commission Review Rules of Practice (2016); and *In re Al-Nashiri*, 791 F.3d 71, 75-78 (D.C. Cir. 2015).

SUMMARY OF ESSENTIAL FACTS

On January 20, 2025, President Donald Trump was inaugurated as president. Over the past month, the President has issued a torrent of broadly worded Executive Orders to radically restructure the federal government as part of Elon Musk's Department of Government Efficiency ("DOGE") initiative. At its inception, Mr. Musk described DOGE's goal as "to cut the federal government down to size" through "large-scale firings" and personnel policies whose sole purpose is to render federal employment so intolerable that it will provoke "a wave of voluntary terminations that we welcome." Elon Musk & Vivek Ramaswamy, *DOGE Plan to Reform Government*, WALL STREET JOURNAL (Nov. 20, 2025), *available at* https://www.wsj.com/opinion/musk-and-ramaswamy-the-doge-plan-to-reform-government-supreme-court-guidance-end-executive-power-grab-fa51c020. The DOGE initiative is projected to complete its work by July 4, 2026. *Ibid*.

Mr. Musk himself has specific personal interests that are adverse to the Department of Defense, which presently deems him a national security risk. The Department denied him a security clearance and his leadership of the aerospace company SpaceX, which maintains over ten billion dollars in defense contracts, has triggered at least three internal security reviews, including by the former DOD Inspector General. *See* Kirsten Grind, et al., *Elon Musk and SpaceX Face Federal Reviews after Violations of Security Reporting Rules*, N.Y. TIMES (Dec. 17, 2024), *available at* https://www.nytimes.com/2024/12/17/technology/elon-musk-spacex-national-security-reporting.html. The bases for concern are his refusal to disclose "details of his meetings with foreign leaders" and the extent of his hallucinogenic drug use. *Ibid*.

Unlike traditional agencies, DOGE has been structured to operate with minimal oversight and has consistently invoked executive privilege to shield its internal operations from transparency requirements. Internal communications within agencies such as the Treasury Department and the

Office of Personnel Management, demonstrate increasing alarm. One senior official, speaking under condition of anonymity, described DOGE as creating "a wild, wild West environment" where traditional administrative controls were ignored or dismantled.

Since it began operations, Mr. Musk has publicly described DOGE's modus operandi in terms typically used by hackers conducting an attack on a computer network. Like a distributed denial of service attack, DOGE has mandated an ad hoc patchwork of ever-changing, and often conflicting policy directives, in open disregard of existing statutory requirements, regulatory procedures, and court orders with the goal, not of enabling the government to carry out legal mandates more efficiently, but of creating such substantial uncertainty and confusion that it is incapable of carrying out any work at all. DOGE, Musk has bragged, is taking a "chainsaw" to the government. *See* Natasha Anderson, *Elon Musk wields chainsaw on stage as Trump's right-hand man boasts of slashing government spending*, THE DAILY MAIL (Feb. 21, 2025), *available at* https://www.dailymail.co.uk/news/article-14421021/Elon-Musk-wields-chainsaw-boasts-slashing-government-spending.html.

The consequences for MCDO's defense teams have been predictable. Counsel have had extended in-person meetings, phone calls, or email communications with the Chief Defense Counsel, Brigadier General Jackie Thompson, or his front office staff, near daily on these matters. Defense counsel have also been forced to address DOGE and related Executive Order issues on essentially a full-time basis over the last four weeks. This includes:

1. Review of GTMO migrant policy for potential impacts, logistical or legal, on case strategy.
2. Review of military spouse employment rights and similar rights-based review of assigned employees, civilian and military.
3. Review and preparation for a potential release of probationary employees.
4. Programmatic review of impacts of DEI and gender executive orders for applicability to team operations.

5. Individual and group-based administrative review of administrative personnel records (ongoing now).

6. Re-administration of telework training and filing of new situational telework agreements.

7. Assessment and review of impacts on current and future remote workers.

8. Review and assessment of Deferred Resignation Program policy and impacts.

9. Review and assessment of impacts on current civilian hiring, including with respect to future employees with offers of employment.

10. Chief Defense Counsel executive order/DRP presentation.

11. Review of daily policy changes (an ongoing assessment via email, with commentary and questions provided to the front office).

12. Development and provision of internal telework guidance.

13. Snow day impact due to conflicting OPM guidance on applicability of telework guidelines.

On February 3, 2025, in response to the Presidential mandate for a return to in-person work, the leadership of MCDO convened an urgent meeting to assess the immediate impacts of the new work policy. Participants in the meeting noted that the Executive Orders were not merely administrative guidelines but radical, top-down decrees that threatened to upend established work practices.

On February 6, 2025, the CDC presided over a previously scheduled All Hands meeting for the entire MCDO. It had been initially called to announce the results of the DEOCS survey—a tool designed to gauge organizational climate. However, due to the ban on questions regarding diversity, equity, and inclusion, the survey results could no longer be discussed. Instead, the CDC spoke with a tone that conveyed both urgency and forewarning, and explicitly cautioned MCDO personnel that marking one's timecard as teleworking was tantamount to "making yourself a target." The CDC warned that such an action would attract adverse administrative or personnel actions, thereby transforming what should be a neutral work arrangement into a potential liability.

The CDC indicated that he intended to assert the independence of the MCDO function up his chain of command and expected potential negative personal blowback.

While caricatured by DOGE as lazy bureaucrats not wanting to come into the office, remote and telework arrangements have served vital needs for MCDO for over a decade, given its unique mission. Most obviously, trial-level litigation and client communications are all accomplished in Naval Station Guantanamo Bay (NSGB), not in the NCR. On any given week, a significant percentage of MCDO personnel are either in transit to/from or carrying out mission-critical objectives in NSGB on a 24/7 operational tempo in collaboration CONUS personnel. The client in this case resides in Canada. Remote and telework agreements have been essential to ensuring timely communication and coordination, particularly given that videoconferences not permitted in most MCDO workspaces due to security constraints.

Relatedly, MCDO's unique mission involves mustering highly specialized expertise from around the country. Of the largest significance, the MCA accords capital accused the right to representation by learned counsel. Identifying capitally qualified counsel, who are both eligible to receive TS/SCI security clearances and capable of satisfying the other qualifications necessary for such counsel, has required drawing upon on counsel from across the nation. As contractors, learned counsel are authorized to maintain their existing legal practices outside the NCR, and have frequently done so. Given the leading role learned counsel play in the direction of the representation of MCDO capital clients, it has often been both mission essential and more efficient to permit co-counsel and other supporting personnel to telework or engage in remote work agreements to collaborate more closely with learned counsel.

On February 4, 2025, therefore, the CDC sent a memorandum to the Acting General Counsel for the Department of Defense, making an initial attempt to assert the traditional independence of MCDO from policies that could negatively affect the defense function:

> The Military Commissions Act of 2009 (MCA) created a unique statutory and organizational structure for the Military Commissions Defense Organization (MCDO) requiring the MCDO Chief Defense Counsel (CDC) to exercise independent discretion in the management and supervision of MCDO personnel. The purpose for this framework is to avoid unlawful government interference with the MCDO's statutory mission (10 U.S.C. 948k(c)-(d); 949b(2)(C) and the Regulation for Trial by Military Commission paragraphs 1-4, 1-5, 9-1 and 9-3).
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> Thus, my understanding is the MCA and associated authorities exempt MCDO personnel from a blanket return to work mandate by the Convening Authority. I intend to comply with the intent of the implementation guidance to the extent that it does not adversely impact client representation, but will exercise independent professional judgement in determining mission required duty locations for MCDO personnel on a case-by-case basis. Thus, given the above, I intend to continue my statutory mandate of independent defense management and supervision of the MCDO personnel unless or until I am notified that I am not to do so.

Attach. A.[1] On February 7, 2025, the CDC reiterated his position and sought guidance on the Department's position in a follow-up memorandum. Attach. B.

On February 9, 2025, the CDC received a response from Brent Harvey, an attorney in the DoD General Counsel's Office. Mr. Harvey indicated to the CDC that the Secretary of Defense's implementation guidance did not exempt MCDO and that individual exemptions to the remote/telework policy could only be made by the Secretary of Defense. Attach. C. The CDC understood these communications as rejecting his assertion of the MCDO's administrative independence and as a personal threat that continuing to resist DOGE initiatives directed at MCDO would compromise the terms of his imminent retirement from the Army in April 2025. Under the implicit threat of adverse personnel action, the CDC has acquiesced in the relinquishment of his statutory duty to supervise MCDO personnel in the exercise of his independent judgment. The CDC's concerns are not unfounded given that the Secretary of Defense recently fired the Judge Advocate General for each service in part because of their insistence on the military's compliance

[1] Pursuant to the Court's briefing order, a motion to attach a supplemental appendix in support of the instant petition is filed concurrently herewith. *See* Motion to Attach Supplemental Appendix in Support of Petition for An Injunction, Case No. 13-005 (C.M.C.R. Feb. 24, 2025).

with the law of armed conflict. *See* Gregg Jaffee, *In Pursuit of a 'Warrior Ethos,' Hegseth Targets Military's Top Lawyers: The defense secretary has repeatedly derided the military lawyers for war crime prosecutions and battlefield rules of engagement*, N.Y. TIMES (Feb. 22, 2025), *available at* https://www.nytimes.com/2025/02/22/us/politics/hegseth-firings-military-lawyers-jag.html.

On February 22, 2025, ProPublica released a report that DOGE had been funded with tens of millions of dollars—diverted from the budgets of other federal agencies through the nearly century-old Economy Act—to support its operations. These funds, earmarked for "IT modernization" and other established initiatives, were being diverted to DOGE's staff. ProPublica also received audio recordings of DOGE staff referring to the sweeping policy changes they were imposing government wide as "ad hoc adjustments" and warned that any employee failing to comply would be "treated like a target." Avi Asher-Schapiro, et al., *DOGE's Millions: As Musk and Trump Gut Government, Their Ax-Cutting Agency Gets Cash Infusion*, PROPUBLICA (Feb. 20, 2025), *available at* https://www.propublica.org/article/doge-trump-musk-funding-foia-congress-transparency.

This coercion has been squarely directed at the MCDO. Defense counsel have received direct, coercive communications from senior officers, including a high-ranking officer who explicitly warned defense personnel that continuing to mark timecards as "TS"—indicative of "situational telework," which remains authorized, even under the revised telework policy—would make them the "target" of punitive administrative measures. The language used in these oral communications was not merely advisory but coercive.

On February 20, 2025, the CDC called a meeting of the senior counsel from the individual trial teams, as well as the MCDO leadership. The CDC notified counsel that he was both receiving and responding directly to demands for information from the Office of the Convening Authority, implementing DOGE initiatives, and described the present situation as one in which "someone

who doesn't understand what we're doing makes the decisions." He notified counsel that the "biggest battle was going to be whether they were going to keep commissions at all." He also informed counsel that, when it came to providing justifications for not summarily terminating probationary employees, MCDO was given only "four hours to work the issue," which prevented him from consulting with the defense teams directly. He acknowledged that he did so, even though understood that the "intent was to cut jobs … and we are fighting against an interest that is against us and that is also against our clients at the same time."

The CDC reiterated that he had been proceeding on a policy of acquiescence to DOGE's demands even though he believed they were illegal. His reason for doing so was that DOGE would take action, even illegal action, that would have permanent consequences and offer little in the way of legal recourse. "Some person, somewhere, unknown, not transparent to us, will make a decision about keeping an investigator, an attorney, and whoever that may be," the CDC explained. "You can argue it at the court level, but the person will be gone by that time."

The CDC also notified counsel that MCDO was receiving "five or six" demands for information or notifications of policy changes per day and that DOGE "cut off the ability to forward those messages to our employees … and so now there's going to be even more of an information black hole that we have to overcome because of the actions they undertook." He then indicated that the new restrictions on forwarding DOGE's latest policy changes via email would likely require twice daily meetings moving forward.

Finally, on February 22, 2025, after the President urged him to be "more aggressive" in his efforts to cull the federal workforce, Mr. Musk tweeted: "Consistent with President @realDonaldTrump's instructions, all federal employees will shortly receive an email requesting

to understand what they got done last week. Failure to respond will be taken as a resignation."[2] When the email began arriving in employees' inboxes, undersigned counsel, acting in his capacity as the Head of MCDO's Appellate Section, instructed the lawyers under his supervision not to respond pending further instruction, because "this is a blatantly illegal request that would require you to violate your ethical obligation to maintain the attorney-client privilege, shield attorney work product, and preserve client confidences. Under the prevailing ethics rules, you are not permitted to disclose such information in the absence of an order by an appellate court." Attach. D.[3]

REASONS FOR GRANTING THE WRIT

President Donald Trump's recent Executive Orders and Elon Musk's Department of Government Efficiency ("DOGE") has unleashed a whirlwind of chaos across the federal government, the Department of Defense, and the MCDO. That was and remains intentional. This chaos has rendered the environment in which defense counsel must operate so unpredictable that the accused's constitutional and statutory rights to effective representation have been irreparably compromised. And while it continues, it strips defense counsel of the time, predictability, and institutional stability required to mount a competent defense in this case. *United States v. Cronic*, 466 U.S. 648 (1984); 10 U.S.C. § 948k(c).

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[2] https://x.com/elonmusk/status/1893386883444437415.

[3] Under the prevailing ethical standard, an attorney has a *prima facie* obligation to refuse voluntary disclosure of any privileged or confidential information related to his representation of a client. It has been uniformly held that before a lawyer may deem himself "required by law" to divulge such information, he must first "assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." ABA Model Rule 1.6, cmt. 11; *see also* D.C. Rule 1.6, cmt. 28 ("a lawyer ordered by a court to disclose client confidences or secrets should not comply with the order until the lawyer has personally made every reasonable effort to appeal the order or has notified the client of the order and given the client the opportunity to challenge it."); D.C. Ethics Op. 288 (1999) (a lawyer is "required to raise any reasonably tenable objection to another's attempt to obtain confidential client information" by a subpoena); D.C. Ethics Op. 214 (1990) (lawyer may not reveal confidential client information to the IRS pursuant to mandatory reporting statute until "substantial good faith arguments . . . regarding the coverage of [the statute] ... are resolved definitively by the courts."); Texas Ethics Op. 559 (2005) (appointed defense counsel may not reveal client confidences in a petition for attorney's fees, where "the requirement to provide confidential information ... is not an unconditional court order which might be the subject of challenge in an appellate court.").

Moreover, DOGE's campaign of administrative anarchy goes beyond mere inconvenience or confusion—it is unlawful influence. *In re Abdul-Aziz Ali*, 558 F.Supp.3d 1167, 1177 (C.M.C.R. 2021) (construing 10 U.S.C. § 949b(a)); *see also* R.T.M.C. ¶ 1-4 (noting the statutory prohibition of both actual and apparent unlawful influence in military commission proceedings). Superior officers, acting under DOGE's erratic directives, have coerced the CDC with the fear of losing his retirement benefits, issued directives that impermissibly intrude upon the professional judgment of defense counsel, and created a climate of coercion under which every employee fears imminent, summary termination. This unlawful influence disrupts Petitioner's attorney-client relationships and forces an impossible dilemma on counsel to withdraw or compromise their advocacy due to threats against their careers.

For these two independently sufficient grounds—(1) the denial of the effective assistance of counsel, and (2) the coercive, unlawful influence undermining of defense counsel's independence—Petitioner respectfully requests that this Court grant a writ of prohibition to prohibit the Secretary from implementing DOGE's campaign of governmental vandalism and to restore sufficient predictability so that defense counsel can re-commence with the representation of the accused in this case.

A. This Court Should Prohibit the Secretary of Defense, Acting at the Behest of the President and His Political Minions, From Undermining the Right to Counsel.

The right to effective assistance of counsel is a cornerstone of our legal system, enshrined in the Sixth Amendment and mirrored by 10 U.S.C. § 948k(c). The Supreme Court's unanimous decision in *United States v. Cronic*, 466 U.S. 648 (1984), underscores that the provision of counsel is not merely a formality—it is essential to ensure that the prosecution's case is zealously tested, and that the accused receives ineffective assistance of counsel if the adversarial process itself is compromised, including for pretextual grounds of "efficiency." *Id.*; *see also United States v.*

Jefferson, 13 M.J. 1 (C.M.A. 1982). This right is not limited to the trial itself but extends to every critical stage of the proceedings, including arraignments, interrogations, plea negotiations, pretrial proceedings, and direct appeals. *Montejo v. Louisiana*, 556 U.S. 778 (2009).

DOGE's effort to dismantle the government by creating so much chaos that it provokes "a wave of voluntary terminations," has compromised and continues to compromise Petitioner's defense team. Counsel assigned to this case have found themselves forced to navigate a minefield of ad hoc changes to their work schedules, to seemingly random personnel directives, to rapidly changing administrative policies, and to the constant threat of summary termination, leaving little time for case preparation. The disruption has not been limited to logistical challenges; it has extended to the very substance of legal representation. Defense counsel are now forced to operate in an environment where uncertainty and unpredictability are the norm, and no reasonable planning can be done to permit the focused, diligent preparation of an effective defense.

The present environment is the intended result of a self-styled "chainsaw" attack on the rule of law itself. When the CDC attempted to assert the independence of the MCDO, he was met with personal threats and a disregard of legality. Indeed, the CDC acknowledged to defense counsel that he viewed the directions he was being given as illegal but that "some person, somewhere, unknown, not transparent to us," was making the decisions and that the only option defense counsel had was to try and curry favor with this opaque authority. Otherwise, for example, even if the termination of personnel was flagrantly illegal, "You can argue it at the court level, but the person will be gone by that time."

When defense counsel must operate under such circumstances, the prejudice to the accused is both immediate and irreparable. Petitioner's defense team cannot continue to spend the majority of its time responding to the latest act of administrative arson dreamed up by some opaque figure inside of DOGE, while spending the remainder under the constant anticipation of what will be

next. Post hoc curative measures cannot restore the lost time, the irretrievable stability, or the trust between the accused and his counsel. The Supreme Court has consistently held that when the defense's opportunity for effective counsel is compromised at any critical stage, no amount of subsequent corrective action can cure that violation. DOGE's reckless disregard for legality and consequences is turning this case into its own "ball of worms" for which no remedy short of summary vacatur will be sufficient.

The cumulative effect is a present situation in which the defense counsel has no ability to prepare and present a robust defense. The chaos and unpredictability of the administrative environment, combined with the coercive, unlawful interference by senior officers, have deprived the accused of the benefit of counsel at all critical stages of the proceedings. As a result, this proceeding has become fundamentally unfair, as the very mechanisms designed to safeguard the accused's constitutional and statutory rights have been undermined by a relentless campaign of administrative vandalism.

A fair trial requires not only the opportunity for effective counsel but also the preservation of an environment in which that counsel can operate independently and without undue influence. The present conditions—marked by unpredictable policy changes, ad hoc administrative measures, and overt coercive behavior—render it impossible for defense counsel to fulfill their duty. The "wild, wild West" is not a place for justice. It is a place where established rules of justice are ignored in favor of capricious executive action.

B. This Court Should Grant an Injunction to Prevent Unlawful Command Influence Interfering with the Chief Defense Counsel's Independent Judgment.

Unlawful influence is the mortal enemy of military justice. Under 10 U.S.C. § 949b(a)(2)(C), *no* person may attempt to coerce or, by *any* unauthorized means, influence the independent professional judgment of defense counsel. The prohibition against unlawful influence

is not merely a technicality; it is necessary for any trial to comport with both justice and the appearance of justice in the military commission context. That extends not simply to individual acts of intimidation and coercion, but also to ensuring that MCDO has sufficient structural independence from the Secretary of Defense, who is the superior convening authority military commissions.

The Department of Defense has long respected MCDO's unique legal status. The office of the Chief Defense Counsel is an appointive office established in the MCA itself. 10 U.S.C. § 948k(d)(2). By regulation, the CDC is charged with the duty to "supervise all defense activities and the efforts of detailed defense counsel and other office personnel and resources pursuant to the M.C.A. and the M.M.C., ensure proper supervision and management of all personnel and resources assigned to the [MCDO], and facilitate the proper representation of all accused referred to trial before a military commission appointed pursuant to the M.C.A." R.T.M.C. ¶ 9-1(a)(2). The CDC's supervisory responsibility includes establishing the "structure" of the office and "tak[ing] appropriate measures to ensure that each detailed defense counsel is capable of zealous representation and unencumbered by any conflict of interest." R.T.M.C. ¶ 9-1(a)(7), (9).

This structural independence within the Department of Defense plays a critical role in maintaining the integrity of the law of armed conflict, which "is of fundamental importance to the Armed Forces of the United States." Dep't of Defense, *Law of War Manual*, Forward (2024). MCDO accomplishes this mission by providing zealous and ethical criminal defense services to accused charged with violations of the law governing the conduct of hostilities that are triable by military commissions established by order of the President. 10 U.S.C. § 948b.

Given the adversarial system, oversight of an accused's defense counsel is reserved to those who are ethically bound to pursue the accused's best interests. This alters the necessary supervision and accountability structure for such personnel because "a public defender is not amenable to

administrative direction in the same sense as other [public] employees. … Held to the same standards of competence and integrity as a private lawyer, a public defender works under the canons of professional responsibility on behalf of a client." *Polk County v. Dodson*, 454 U.S. 312, 321 (1981). "[A]n indispensable element of the effective performance of his responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation." *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979).

This unique relationship imposes upon the government a standing "constitutional obligation … to respect the professional independence of the public defenders whom it engages. … There can be no fair trial unless the accused receives the services of an effective and independent advocate." *Dodson*, 454 U.S. at 321-22; *see also* ABA Standards for Criminal Justice: Prosecution and Defense Function, Standard 4-3.5, commentary, at 168 ("Payment of fees and costs by a person other than the accused can never be allowed to … confer on the fee payer any control of the litigation inconsistent with the best interests of the accused."); R.M.C. 109(b)(1) ("all attorneys practicing before military commissions" are required to comply with applicable "State and service-specific Rules of Professional Conduct."). Accordingly, "[o]nce counsel is appointed, the day-to-day conduct of the defense rests with the attorney." *Wainwright v. Sykes*, 433 U.S. 72, 93 (1977).

Unlike any other lawyers employed by the Executive Branch, MCDO's lawyers therefore do not represent the United States, but their detailed clients' constitutional and statutory rights. In light of the constitutional concerns respecting the independence of defense counsel, Congress has bestowed broad ranging protections on MCDO's lawyers, and by extension their support staff, by prohibiting the use of "any unauthorized means" to "influence" "the exercise of professional judgment" by "defense counsel." 10 U.S.C. §§ 949b(a)(2)(C), (b)(1)(B).

Within this legal framework, the CDC is therefore required by law to exercise his own independent professional judgment about the supervision of defense counsel to ensure that each accused receives zealous and effective representation. That includes the authority to direct the circumstances under which those under his supervision must carry out their duties. That basic structure, which has been understood and respected through four previous presidential administrations, has fallen under DOGE's chainsaw in less than a month. Superior officers, acting under the ad hoc direction of DOGE, have issued statements and directives that directly undermine the independence of defense counsel and have created a climate of intimidation, in which personnel are forced to choose between their professional obligations and their livelihoods.

In *United States v. Gilmet*, 83 M.J. 398 (2023), coercive statements by a senior officer created an intolerable conflict of interest between the accused and his designated military counsel, after a commanding officer implied to defense counsel that they were not truly independent and therefore protected from career repercussions. The resulting severance of the established attorney-client relationship was found to have prejudiced the accused's rights irreparably, leading to the dismissal of charges with prejudice. Here, the coercion has been far greater in scale and more explicit, to include the CDC acquiescing to ad hoc directives from "some person, somewhere, unknown, not transparent to us," because to do otherwise would put his immediate financial future, and the livelihoods of the personnel he manages, the next "target."

That is actual and apparent unlawful influence that has already compromised Petitioner's defense in this case. Those harms will only compound and multiply if defense counsel continue to perform their jobs under the teeth of a chainsaw being wielded by "some person, somewhere, unknown, not transparent to us."

CONCLUSION

At the behest of the President and the active encouragement of the Secretary of Defense, DOGE has, by design, transformed what should be a minimally predictable judicial system, in which defense counsel can zealously advocate for their clients, into a shambles where defense counsel spend every day weighing whether they should allow themselves to be professionally compromised or withdrawing entirely, thereby depriving Petitioner of the robust defense that is his right. This unlawful interference with defense counsel's core functions, through coercion, disruption, and intimidation, undermines longstanding attorney-client relationships and renders these proceedings fundamentally unfair.

Accordingly, in order to preserve the integrity of the military commission system, this Court should grant Petitioner's request for an injunction directing the President and the Secretary of Defense to cease and desist from ignoring the statutory independence of the CDC to supervise the defense counsel under his command in order to ensure the zealous and conflict-free representation of the accused.

Dated: Feb. 24, 2025

Respectfully submitted,

/s/_____

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via e-mail to the Court and to opposing counsel, Mr. Michael J. O'Sullivan and Mr. Bryce G. Poole, at the Office of the Chief Prosecutor, Military Commissions, on this 24th day of February 2025.

/s/_____
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