

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

Frank D. WUTERICH ) GOVERNMENT'S MOTION  
Staff Sergeant (E-6) ) TO EXPEDITE RULING  
U.S. Marine Corps, )  
Appellant ) Crim.App. Misc. Dkt. No. 200800183  
 )  
v. ) USCA Dkt. No. 11-8003/MC  
 )  
United States, )  
Appellee )

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES:

COMES NOW the United States, pursuant to Rule 30 of this Court's Rules of Practice and Procedure, and respectfully moves this Court to expedite its ruling on: (1) Appellant's January 18, 2011, Motion for access to sealed documents; and, (2) Appellant's November 5, 2010, Writ Appeal Petition. The United States has not and will not file an opposition to Appellant's January 18, 2011 Motion.

The United States' interest is preserving the start date of trial, which has now been moved a third time and now is set to commence on April 11, 2011. Because of (a) the great cost to the United States in scheduling and rescheduling a trial such as this, involving a large number of witnesses from across the globe, and (b) the need to maximize the amount of time this Court can use to resolve the underlying issues after full briefing by both parties, immediate action is necessary by this Court to grant or deny Appellant access to the sealed documents.

The United States indicated its intent to file no opposition to Appellant's motion to access the sealed documents, in response to a question from this Court's Clerk; the United States prosecutors, both on appeal and at trial, have no knowledge of the contents of these documents, as they presumably reflect attorney-client privileged materials. Appellant filed his motion to access the sealed documents on January 18, 2011. And, Appellant's Brief is currently due February 10, 2011.

Good cause exists for expedited resolution for the following reasons: (1) trial is currently set to begin on April 11, 2011; (2) approximately 49 witnesses will participate in trial, 17 of whom are military witnesses and the remainder have required service of subpoenas to secure attendance, and cash advances have been granted to several to secure their attendance; (3) all of the civilian witnesses have arranged for time away from work, child care, and other logistical arrangements to appear and testify in the case; (4) many witnesses are traveling to the situs of trial, Camp Pendleton, from various parts of the United States; (5) approximately 30 witnesses are flying to Camp Pendleton to appear at this general court-martial; (6) one witness, the S-3 alpha for the 7th Marine Regiment, is traveling from Afghanistan to testify at trial, and he will be departing Afghanistan to return to CONUS; finally,

(7) a U.S. Army officer is scheduled to return to CONUS from Germany.

In order to save cost, operational impact, and needless travel and strain on units and military and civilian witnesses who will in short order travel to Camp Pendleton for trial that is scheduled to begin on April 11th, the above constitutes good cause for this Court to resolve Appellant's Motion so that briefing may conclude, and for this Court to fully consider and resolve the underlying Writ Appeal Petition such that trial can commence and the logistics and scheduling of arranging for the attendance of numerous military and civilian witnesses may be resolved.

#### **Conclusion**

The Government respectfully moves this Court to expedite its decision on (1) Appellant's motion to access the sealed documents, and (2) Appellant's Writ Appeal Petition.

/S/

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**Certificate of Filing and Service**

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on this 28th day of January, 2011.

/s/

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