

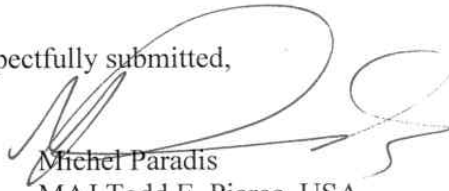


(D.C. Cir. 2004) *rev'd on other grounds sub nom. Iraq v. Beatty*, 129 S.Ct. 2183 (2009).

Intervention now for the limited purpose of this motion is appropriate because CAPT O'Toole's continued service on this Court came to light when this Court issued its *en banc* order on 3 September 2010. The need for the remedy, therefore, only arose within the past two weeks.

Neither intervention for this limited purpose nor the remedy sought would prejudice either of the existing parties in this case. On 14 September 2010, the Appellant in this case, Salim Ahmed Hamdan, filed a motion to disqualify CAPT O'Toole on other, but related, grounds. The instant motion seeks alternative relief that is not inconsistent with the relief requested by Appellant, and which is necessary to protect Mr. al Bahlul's particular interests. In addition, intervention for this limited purpose would not prejudice the the government. The relief requested is necessary to prevent unlawful command influence from tainting a related case. Neither in this case nor in the case of *United States v. al Bahlul*, does the government have a legitimate interest in compromised appellate proceedings. *See* 10 U.S.C. § 949b(b)(1)(A).

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent via e-mail to COL Francis Gilligan (Ret.), counsel for the government, and Harry Schneider, Joseph McMillian and Adam Thurschwell, counsel for the Appellant, on the 15<sup>th</sup> day of September 2010.

Dated: 15 September 2010

Respectfully submitted,



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