

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED:

DAVID MATTHEW HICKS

2. ALIASES OF ACCUSED:

a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood"

3. ISN NUMBER OF ACCUSED (LAST FOUR):

0002

II. CHARGES AND SPECIFICATIONS

4. CHARGE: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.

SPECIFICATION:

See Attached Charges and Specifications.

III. SWEARING OF CHARGES

5a. NAME OF ACCUSER (LAST, FIRST, MI)

Tubbs, II, Marvin, W.

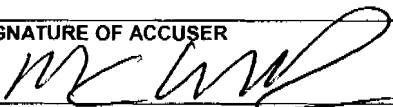
5b. GRADE

O-4

5c. ORGANIZATION OF ACCUSER

Office of the Chief Prosecutor, OMC

5d. SIGNATURE OF ACCUSER



5e. DATE (YYYYMMDD)

20070202

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser the 2nd day of February, 2007, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Kevin M. Chenail
Typed Name of Officer

Office of the Chief Prosecutor, OMC
Organization of Officer

O-5
Grade

Commissioned Officer, U.S. Marine Corps
Official Capacity to Administer Oath
(See R.M.C. 307(b) must be commissioned officer)



Signature

MC FORM 458 JAN 2007

Blocks I through IV of this MC Form 458, including the continuation sheets for Block II, are duplicate originals, replacing misplaced originals. *506 3-1-06*

IV. NOTICE TO THE ACCUSED

6. On February 2, 2007 the accused was notified of the charges against him/her (See R.M.C. 308).

Kevin M. Chenail, LtCol, U.S. Marine Corps
*Typed Name and Grade of Person Who Caused
Accused to Be Notified of Charges*

Office of the Chief Prosecutor, OMC
*Organization of the Person Who Caused
Accused to Be Notified of Charges*

[Signature]
Signature

V. RECEIPT OF CHARGES BY CONVENING AUTHORITY

7. The sworn charges were received at 1000 hours, on 6 Feb. '07, at the Office of the
Convening Authority for Military Commissions, Arlington, VA
Location

For the Convening Authority: Jennifer D. Young
Typed Name of Officer

CW3, USA
Grade

[Signature]
Signature

VI. REFERRAL

8a. DESIGNATION OF CONVENING AUTHORITY

8b. PLACE

8c. DATE (YYYYMMDD)

Convening Authority

Arlington, VA

20070301

Appointed 6 Feb. 2007

Referred for trial to the (non)capital military commission convened by military commission convening order 07-01 dated
1 March 2007

subject to the following instructions¹: See Continuation Sheet

By [Signature]
Command, Order, or Direction

Hon. Susan J. Crawford
Typed Name and Grade of Officer

Convening Authority
Official Capacity of Officer Signing

[Signature]
Signature

10 U.S.C. Sec. 948h

VII. SERVICE OF CHARGES

9. On _____, _____ I (caused to be) served a copy these charges on the above named accused.

Typed Name of Trial Counsel

Grade of Trial Counsel

Signature of Trial Counsel

FOOTNOTES

¹See R.M.C. 601 concerning instructions. If none, so state.

CONTINUATION SHEET – MC FORM 458 JAN 2007, Block VI Referral

In the case of UNITED STATES OF AMERICA v. DAVID MATTHEW HICKS
a/k/a “David Michael Hicks”
a/k/a, “Abu Muslim Australia”
a/k/a “Abu Muslim Austraili”
a/k/a “Abu Muslim Philippine”
a/k/a “Muhammad Dawood”

The following charge and specifications are referred to trial by military commission:

Specifications 1 and 2 of Charge I, as amended, and Charge I.

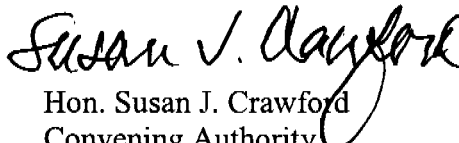
Other matters incorporated by reference in Block 4 of MC Form 458 pertaining to the accused, including those sections entitled “INTRODUCTION”, “JURISDICTION”, and “BACKGROUND” are in the nature of a bill of particulars and are not referred to trial.

The following charge and specification are dismissed and are not referred to trial:

The Specification of Charge II and Charge II.

This case is referred non-capital.

Date 3-1-07


Hon. Susan J. Crawford
Convening Authority
for Military Commissions

UNITED STATES OF AMERICA

v.

DAVID MATTHEW HICKS
a/k/a "David Michael Hicks"
a/k/a/ "Abu Muslim Australia"
a/k/a "Abu Muslim Austraili"
a/k/a "Abu Muslim Philippine"
a/k/a "Muhammad Dawood"

CHARGES:

Providing Material Support for Terrorism;
and,
Attempted Murder in Violation of the Law of War

INTRODUCTION

1. The accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood," hereinafter "Hicks"), is a person subject to trial by military commission for violations of the law of war and other offenses triable by military commission, as an alien unlawful enemy combatant. At all times material to the charges:

JURISDICTION

2. Jurisdiction for this military commission is based on Title 10 U.S.C. Sec. 948d, the Military Commissions Act of 2006, hereinafter "MCA;" its implementation by the Manual for Military Commissions (MMC), Chapter II, Rules for Military Commissions (RMC) 202 and 203; and, the final determination of September 30, 2004 by the Combatant Status Review Tribunal (CSRT) that Hicks is an unlawful enemy combatant as a member of, or affiliated with, al Qaeda.
3. The charged conduct of the accused is triable by military commission.

BACKGROUND

4. Hicks was born on August 7, 1975 in Adelaide, Australia.
5. In or about May 1999, Hicks traveled to Tirana, Albania and joined the Kosovo Liberation Army (KLA), a paramilitary organization fighting on behalf of Albanian Muslims. Hicks completed basic military training at a KLA camp and engaged in hostile action before returning to Australia.
6. While in Australia, Hicks converted to Islam. In or about November 1999, he traveled to Pakistan where, in early 2000, he joined a terrorist organization known as Lashkar-e Tayyiba (LET), meaning "Army of the Righteous" or "Army of the Pure."

- a. The LET is the armed wing of Markaz-ud-Daawa-wal-Irshad (MDI), (a/k/a Markaz Jamat al Dawa), a group formed by Hafiz Mohammed Saeed and others.
 - b. The LET's known goals include violent attacks against property and nationals (both military and civilian) of India and other countries in order to occupy Indian-controlled Kashmir and violent opposition of Hindus, Jews, Americans, and other Westerners.
 - c. Starting around 1990, LET established training camps and guest houses, schools, and other operations primarily in Pakistan and Afghanistan for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of India and other countries.
 - d. Since 1990, members and associates of LET have conducted numerous attacks on military and civilian personnel and property in Indian-controlled Kashmir and India, itself.
 - e. In 1998, Saeed called for holy war against the United States after LET members were killed by United States missile attacks against terrorist training facilities in Afghanistan.
 - f. On or about April 23, 2000, in a bulletin posted on the internet, LET claimed that it had recently killed Indian soldiers and destroyed an Indian government building, both located in Indian-controlled Kashmir.
 - g. On or about December 26, 2001, the United States designated LET a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act.
7. After joining LET, Hicks trained for two months at LET's Mosqua Aqsa camp in Pakistan. His training included weapons familiarization and firing, map reading and land navigation, and troop movement.
 8. Following training at Mosqua Aqsa, Hicks, along with LET associates, traveled to a border region between Pakistani-controlled Kashmir and Indian-controlled Kashmir, where he engaged in hostile action against Indian forces.
 9. In or about January 2001, Hicks, with assistance from LET, traveled to Afghanistan and attended al Qaeda training camps.

GENERAL ALLEGATIONS

10. Al Qaeda ("The Base") was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.
11. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaeda.
12. A purpose or goal of al Qaeda, as stated by Usama bin Laden and other al Qaeda leaders, is to support violent attacks against property and nationals (both military and civilian) of the



United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and to oppose U.S. support of Israel.

13. Al Qaeda operations and activities have historically been planned and executed with the involvement of a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.
14. Between 1989 and 2001, al Qaeda established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.
15. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.
16. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."
17. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."
18. In or about 2001, al Qaeda's media committee which created As Sahab ("The Clouds") Media Foundation which has orchestrated and distributed multi-media propaganda detailing al Qaeda's training efforts and its reasons for its declared war against the United States.
19. Since 1989 members and associates of al Qaeda, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the USS COLE in October 2000; and the attacks on the United States on September 11, 2001.
20. Following al Qaeda's attacks on September 11, 2001, and in furtherance of its goals, members and associates of al Qaeda have violently opposed and attacked the United States or its Coalition forces, United States Government and civilian employees, and citizens of various countries in locations throughout the world, including, but not limited to Afghanistan.
21. On or about October 8, 1999, the United States designated al Qaeda ("al Qa'ida") a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, and on or about August 21, 1998, the United States designated al Qaeda a "specially designated terrorist" (SDT), pursuant to the International Emergency Economic Powers Act.

CHARGE I: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.
SECTION 950v(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM

SKC
3-1-07

22. SPECIFICATION 1: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Austraili," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from in or about December 2000 through in or about December 2001, intentionally provide material support or resources to an international terrorist organization engaged in hostilities against the United States, namely al Qaeda, which the accused knew to be such an organization that engaged, or engages, in terrorism, and, that the conduct of the accused took place in the context of and was associated with an armed conflict, namely al Qaeda or its associated forces against the United States or its Coalition partners.
23. That Paragraphs (10) through (21) of the General Allegations are realleged and incorporated by reference for Specification 1 of Charge I.
24. That the material support or resources provided by the accused, included, but were not limited to, the following:
- a. That in or about January 2001, Hicks traveled to Afghanistan, with the assistance of Lashkar-e Tayyiba (LET), to include LET's recommendation, funding, and transportation, in order to attend al Qaeda terrorist training camps.
 - b. That upon entering Afghanistan, Hicks traveled to Kandahar where he stayed at an al Qaeda guest house and met Richard Reid ("Abdul Jabal"), Feroz Abbasi ("Abu Abbas al-Britani"), and other associates or members of al Qaeda. While attending al Qaeda's training, Hicks would use the *kunya*, or alias, "Abu Muslim Austraili," among others.
 - c. That Hicks then traveled to and trained at al Qaeda's al Farouq camp located outside Kandahar, Afghanistan. In al Qaeda's eight-week basic training course, Hicks trained in weapons familiarization and firing, land mines, tactics, topography, field movements, basic explosives, and other areas.
 - d. That in or about April 2001, Hicks returned to al Farouq and trained in al Qaeda's guerilla warfare and mountain tactics training course. This seven-week course included: marksmanship; small team tactics; ambush; camouflage; rendezvous techniques; and techniques to pass intelligence to al Qaeda operatives.
 - e. That while Hicks was training at al Farouq, Usama bin Laden visited the camp on several occasions. During one visit, Hicks expressed to bin Laden his concern over the lack of english al Qaeda training material.
 - f. That after Hicks completed his first two al Qaeda training courses, Muhammad Atef (a/k/a Abu Hafs al Masri), then the military commander of al Qaeda, summoned and

individually interviewed certain attendees. Hicks was interviewed about: his background; knowledge of Usama bin Laden; al Qaeda; his ability to travel around the world, to include Israel; and his willingness to go on a martyr mission. After this interview, Muhammed Atef recommended Hicks for attendance at al Qaeda's urban tactics training course at Tarnak Farm.

- g. That in or about June 2001, Hicks traveled to Tarnak Farm and participated in this course. A mock city was located inside the camp, where trainees were taught how to fight in an urban environment. This city tactics training included: marksmanship; use of assault and sniper rifles; rappelling; kidnapping techniques; and assassination methods.
- h. That in or about August 2001, Hicks participated in an advanced al Qaeda course on information collection and surveillance at an apartment in Kabul, Afghanistan. This course included practical application where Hicks and other student operatives conducted surveillance of various targets in Kabul, including the American and British Embassies. This surveillance training included weeks of: covert photography; use of dead drops; use of disguises; drawing diagrams depicting embassy windows and doors; documenting persons coming and going to the embassy; and, submitting reports to the al Qaeda instructor who cited the al Qaeda bombing of the USS Cole as a positive example of the uses for their training. During this training, Hicks personally collected intelligence on the American Embassy.
- i. That during the surveillance course, Richard Reid ("Abdul Jabal") visited on two separate occasions. After the course, Hicks returned to Kandahar airport, where Abdul Jabal taught a class on the meaning of *jihad*. Hicks also received instruction from other al Qaeda members or associates on their interpretation of Islam, the meaning and obligations of *jihad*, and related topics, at other al Qaeda training camps in Afghanistan.
- j. That on or about September 9, 2001, Hicks traveled to Pakistan to visit a friend. While at this friend's house, Hicks watched television footage of the September 11, 2001 attacks on the United States, and expressed his approval of the attacks.
- k. That on or about September 12, 2001, Hicks returned to Afghanistan and, again, joined with al Qaeda. Hicks had heard reports that the attacks were conducted by al Qaeda and that America was blaming Usama bin Laden.
- l. That upon arriving in Kandahar, Afghanistan, Hicks reported to Saif al Adel, then al Qaeda's deputy military commander and head of the security committee for al Qaeda's shura council, who was organizing al Qaeda forces at locations where it was expected there would be fighting against the United States, Northern Alliance, or other Coalition forces. Hicks was given a choice of three different locations (city, mountain, or airport), and he chose to join a group of al Qaeda fighters near the Kandahar Airport.
- m. That Hicks traveled to the Kandahar Airport and was issued an Avtomat Kalashnikova 1947 (AK-47) automatic rifle. On his own, however, Hicks armed himself with six (6)

ammunition magazines, 300 rounds of ammunition, and three (3) grenades to use in fighting the United States, Northern Alliance, and other Coalition forces.

- n. That on or about October 7, 2001, when the Coalition Forces, Operation Enduring Freedom, bombing campaign began, Hicks had been at the Kandahar airport for about two weeks and entrenched in the area where the initial military strikes occurred. At this site, other al Qaeda forces were in battle positions based a couple of hundred meters in all directions, and were under the direction of another al Qaeda leader.
- o. That on or about October 10, 2001, after two nights of bombing, Hicks was reassigned and joined an armed group outside the airport where he guarded a tank. For about the next week Hicks guarded the tank, and every day received food, drink, and updates on what was happening from the al Qaeda leader in charge.
- p. That Hicks heard fighting was heavy at Mazar-e Sharif, that Kabul would be next, and that western countries, including the United States, had joined with the Northern Alliance.
- q. That Hicks implemented the tactics he had learned with al Qaeda and trained some of the others positioned with him at Kandahar. After apparent resistance to his training, and no enemy in sight at the time in Kandahar, Hicks decided to look for another opportunity to fight in Kabul.
- r. That on or about October 17, 2001, Hicks told the al Qaeda leader in charge of his plans, and then traveled to Kabul. Hicks also took his weapon and all his ammunition.
- s. That Hicks arrived in Kabul and met a friend from LET, who requested Hicks go to the front lines in Konduz with him, and Hicks agreed.
- t. That on or about November 9, 2001, Hicks and his LET friend arrived at Konduz, the day before Mazar-e Sharif was captured by the Northern Alliance and U.S. Special Forces. Sometime after Hicks arrived at Konduz, he went to the frontline outside the city for two hours where he joined a group of al Qaeda, Taliban, or other associated fighters, including John Walker Lindh, engaged in combat against Coalition forces. Hicks spent two hours on the frontline before it collapsed and was forced to flee. During the retreat, Hicks saw bullets flying and Northern Alliance tanks coming over the trenches.
- u. That Hicks spent two to three days making his way back to Konduz while being chased and fired upon by the Northern Alliance.
- v. That Hicks made it safely back to the city of Konduz, where he approached some of the Arab fighters and asked about their plans. The Arab fighters said they were going back into Konduz in order to fight to the death. Hicks, instead, decided to use his Australian passport and flee to Pakistan.

- w. That Hicks then moved secretly within Konduz to a *madafah*, an Arab safe house. Hicks wrote the Arabs a letter that said not to come look for him because he was okay, and left the safe house. At this time Hicks still had his weapon, and moved again, secretly, to another house where he stayed for about three weeks. Later, a man who spoke some english helped Hicks sell his weapon so he could flee to Pakistan.
- x. That in or about December 2001, one week after the control of Konduz changed from the Taliban to the Northern Alliance, Hicks took a taxi and fled towards Pakistan. However, Hicks was captured by the Northern Alliance in Baghlan, Afghanistan.
25. SPECIFICATION 2: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Australi," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from in or about December 2000 through in or about December 2001, provide material support or resources to be used in preparation for, or in carrying out, an act of terrorism, that the accused knew or intended that the material support or resources were to be used for those purposes, that the conduct of the accused took place in the context of and was associated with an armed conflict, namely al Qaeda or its associated forces against the United States or its Coalition partners.
26. That paragraphs (10) through (21) of the General Allegations are realleged and incorporated by reference for Specification 2 of Charge I.
27. That paragraph 24 and its subparagraphs (a) through (x) of Specification 1 are realleged and incorporated by reference for Specification 2 of Charge I.

~~CHARGE II: VIOLATION OF SECTION AND TITLE OF CRIME IN PART IV OF M.M.C.
SECTION 950t ATTEMPTED MURDER IN VIOLATION OF THE LAW OF WAR~~

28. SPECIFICATION: In that the accused, David Matthew Hicks (a/k/a "David Michael Hicks," a/k/a "Abu Muslim Australia," a/k/a "Abu Muslim Australi," a/k/a "Abu Muslim Philippine," a/k/a "Muhammad Dawood;" hereinafter "Hicks"), a person subject to trial by military commission as an alien unlawful enemy combatant, did, in or around Afghanistan, from on or about September 11, 2001, through in or about December 2001, attempt to commit murder in violation of the law of war, by directing small arms fire, explosives, or other means and methods, with the intent to kill divers persons of the United States, Northern Alliance, or other Coalition forces, while the accused was without combatant immunity as an unlawful enemy combatant who was part of, or supporting, al Qaeda, Taliban, or associated forces engaged in hostilities against the United States or its Coalition partners, and that the conduct of the accused took place in the context of and was associated with an armed conflict.

SJC
3-1-07

W