Bradley Manning defense files motion to dismiss charges over pre-trial abuse

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The defense attorney of accused Army whistleblower Bradley Manning filed a 110-page motion on July 27 requesting that all charges against the soldier be dismissed. The motion was made on the basis of Article 13 of the Uniform Code of Military Justice, which bans "punishment or penalty other than arrest or confinement upon the charges pending against [a detainee]."

Manning's lead attorney, David Coombs, wrote that "[t]he defense does not believe that there has ever been such an egregious case of unlawful pretrial punishment in Army history. This court needs to send a message that an unlawful order to keep a pretrial detainee in the equivalent of solitary confinement for almost nine months cannot—and will not—be tolerated."

Article 13 states that unnecessary pre-trial punishment is grounds for dismissal of charges.

Coombs also filed a motion of continuance based on the government's withholding of 84 emails that reveal high-ranking Armed Forces complicity in ordering the mistreatment of Manning. The emails reveal that at least one three-star general specifically ordered Manning's unbearable conditions, which some argue violate the "cruel and unusual punishment" clause of the Constitution's Eighth Amendment.

As Coombs points out in his continuance filing, government officials withheld the emails until 9:15 p.m. on the night of July 26—less than three hours before the deadline to file an Article 13 motion—despite the court's previously elaborated requirement that all documentation that is "obviously material to the preparation of the defense" be made available.

The military judge overseeing the hearings will almost certainly not dismiss the charges. Regardless of legal precedent, the Obama administration is determined to ruin Manning's life for helping make public over 700,000 files that serve as evidence to the crimes of US imperialism.

The force with which the government is attacking Manning expresses its nervousness, as well as its resolve to prevent future leaks that may jeopardize attempts to maintain and expand its geo-political domination. Prosecutors are seemingly using any archaic, anti-democratic charge on the books in an attempt to destroy the young man.

The 34 counts being brought against Manning read as a laundry list of state despotism, from "treason", "aiding the enemy" and "embezzlement and theft", to "sedition", and "espionage". Government prosecutors are backing up these absurd claims with some of the most anti-democratic legal precedents of the past century, including the Espionage Act of 1917, the Subversive Activities Control Act of 1950, the Computer Fraud and Abuse Act, and the PATRIOT Act.

All the while, Manning remains in military custody. Though it has been over two years since he was arrested in May, 2010, the court has denied previous motions filed by the defense claiming that Manning's Sixth Amendment right to a speedy trial has been violated.

The Article 13 motion filed in July highlights the terrible conditions Manning has faced while in military custody.

The motion quotes UN Special Rapporteur on Torture Juan Mendez, who strongly criticized the US government's treatment of Manning in an interview with the *Guardian* in March. "I conclude that the 11 months under conditions of solitary confinement," Mendez said, "…constitutes at minimum cruel, inhuman, and degrading treatment in violation of Article 16 of the [UN] Convention Against Torture."

Mendez was referring to the nearly one year that Manning spent in Quantico, Virginia, from July 2010 to April 2011. During this period, Manning was kept in a six- by eight-foot cell for 23 to 24 hours a day.

Forced by guards to stay awake between 5:00 a.m. and 10:00 p.m. each day, Manning was also denied the right to

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exercise in his cell, use the cell walls as a backrest, or lie down at any point during the daytime.

For six months, Manning was given only 20 minutes of "sunshine call" per day, during which time he was told to walk in lace-less shoes, with shackles on his ankles and wrists and a guard's hand on his back.

Manning was also forced to sleep naked and to stand naked in front of multiple guards at parade rest position. Guards sometimes took away Manning's glasses and forced him to reply in the affirmative when they "checked on him" at five-minute intervals.

Manning's overseers justified this cruel treatment as necessary to prevent Manning from inflicting harm upon himself or others. This argument carries no weight, as several military psychologists and hundreds of law professors have explained.

The Article 13 motion highlights the baseless nature of this claim by quoting interactions between psychiatrists and military officials.

When military psychiatrists recommended better treatment for Manning, an official reportedly replied, "We'll do whatever we want to do. You [the psychiatrists] make your recommendation and I have to make a decision based on everything else."

The psychiatrist responded, "Then don't say it's based on mental health. You can say it's MAX [maximum] custody, but just don't say that we're somehow involved in this," to which the senior officer said, "That's what we're going to do."

Multiple military psychiatrists had been recommending that Manning be downgraded from POI [prevention of injury] status for months, according to the motion. Psychiatrists tried to explain to overseers that "[Manning] did not present a risk to himself and that the POI status was actually causing PFC Manning psychological harm."

Furthermore, there is little legal framework to support Manning's POI status, according to a letter written by 300 law professors in 2011.

"The administration has provided no evidence that Manning's treatment reflects a concern for his own safety or that of other inmates," the letter states. "Unless and until it does so, there is only one reasonable inference: this pattern of degrading treatment aims either to deter future whistleblowers, or to force Manning to implicate WikiLeaks founder Julian Assange in a conspiracy, or both."

The trial has been wrought with possible grounds for dismissal of charges. In April of 2011, president Obama made comments that provided grounds for dismissal based on Article 37 of the Uniform Code of Military Justice, which protects against Unlawful Command Influence.

The president, revealing his disdain for the legal process, explained to a crowd that he did not need to wait for the verdict to pronounce guilt: "We're a nation of laws," the president said. "We don't individually make our own decisions about how the laws operate… [Manning] broke the law."

The comments are not only hypocritical coming from a president that has established his "right" to indefinitely detain and assassinate anyone, including American citizens, without a warrant. They may also serve as a basis for an argument for dismissal of charges against Manning.

According to Article 37 of UCMJ, "Unlawful Command Influence occurs when senior personnel, wittingly or unwittingly, have acted to influence court members, witnesses, or others participating in military justice cases. Such unlawful influence not only jeopardizes the validity of the judicial process, it undermines the morale of military members, their respect for the chain of command, and public confidence in the military."

The court, however, has failed to dismiss charges based on Unlawful Command Influence.

Manning's prosecution is being carried out in flagrant violation of basic constitutional rights and to legal precedent that does not serve the Obama administration. The information revealed in the Article 13 and continuance motions of July 26 serve as further proof that the minds of the decision makers have already been made up and that the trial is little more than an anti-democratic witch-hunt.

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