

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAMDOUH IBRAHIM AHMED HABIB)
)
 Petitioner,)
)
 v.) Civil Action No. 02-CV-1130 (CKK)
)
 GEORGE BUSH,)
)
 Respondent)
 _____)

DECLARATION OF TERESA A. McPALMER

Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba. In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Mamdouh Ibrahim Ahmed Habib that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information that would personally identify certain U.S. Government personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 1 Oct 04

Ta McPalmer

Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser:
30 September 2004

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # [REDACTED]**

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN # [REDACTED] meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final, and the detainee will be scheduled for an Administrative Review Board.

J. M. McGARRAH
RADM, CEC, USN

Distribution:

NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
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OARDEC (Fwd)
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29 Sep 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #6 of 13 September 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate. However, his Personal Representative read his unsworn statement at the Tribunal, as requested by the detainee.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibits R-8, R-10, and R-13 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant. The inclusion of exhibits R-3 and R-4, motions from the detainee's Federal habeas corpus case, are quite inexplicable. In any event, the Tribunal did not find them useful and they had no effect on the Tribunal's decision.
- d. The detainee made no requests for witnesses or other evidence.
- e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

3. I recommend that the decision of the Tribunal be approved and the case be considered final.



James R. Crisfield Jr.
CDR, JAGC, USN

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Department of Defense
Director, Combatant Status Review Tribunals

13 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #6

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED] Colonel, U.S. Army; President

[REDACTED] Commander, JAGC, U.S. Navy; Member (JAG)

[REDACTED] Lieutenant Colonel, U.S. Marine Corps;
Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

27 September 2004

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN [REDACTED]

1. Pursuant to Enclosure (1), paragraph (I)(5) of the *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba* dated 29 July 2004, I am forwarding the Combatant Status Review Tribunal Decision Report for the above mentioned ISN for review and action.

2. If there are any questions regarding this package, point of contact on this matter is the undersigned at DSN 660-3088.


DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (4).

(U) TRIBUNAL PANEL: #6

(U) ISN#: [REDACTED]

Ref: (a) (U) Convening Order for Tribunal #6 of 13 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) Statement of Detainee through Personal Representative (U/FOUO)
(4) (U) Copies of Documentary Evidence Presented (S/NF)
(5) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).

2. (U) On 22 September 2004, the Tribunal determined, by a preponderance of the evidence, that Detainee # [REDACTED] is properly designated as an enemy combatant as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners, as more fully discussed in the enclosures.

4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).

[REDACTED]

Colonel, U.S. Army
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #6
ISN #: _____

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The Tribunal commenced this hearing on 20 September 2004. The Recorder presented Exhibits R-1 through R-5 during the unclassified portion of the Tribunal. The primary exhibit, the Unclassified Summary of Evidence (Exhibit R-1), indicates, among other things, that the detainee: admits traveling to Afghanistan prior to the attacks of 11 September 11 2001, where he stayed at a known Al Qaida safehouse in Kandahar, Afghanistan, which was run by a highly placed Al Qaida operative; admits residing in another safe house in Kabul, Afghanistan, where the number of guests and the amount of activity significantly increased just prior to the attacks of 11 September 2001; admits having knowledge of the 11 September 2001 attacks prior to their occurrence; admits he conducted surveillance of buildings, hospitals and schools with another detainee; admits he assisted with the transfer of chemical weapons at a compound near Kabul; states he trained several of the 11 September 2001 hijackers in martial arts and had planned to hijack a plane himself; and, was captured along with two German Muslims in Pakistan by Pakistani authorities. The Recorder called no witnesses.

The detainee chose not to attend the Tribunal as reflected in the Detainee Election Form (Exhibit D-a); however, he did ask the Personal Representative to tell the Tribunal that: nothing in the Unclassified Summary of Evidence is true; he was kidnapped from Pakistan, taken to Egypt, then brought to Guantanamo Bay; all of the information he has given prior to his meeting with his Personal Representative on 17 September 2004 was given under duress and torture; he has been tortured since being captured and has reported that fact to the International Committee of the Red Cross; and he would tell interrogators what they wanted to hear because he was in fear.

During the classified session of the Tribunal, the Recorder presented Exhibits R-6 through R-19. The Personal Representative presented no classified evidence. Both the Recorder and the Personal Representative commented on the classified exhibits.

While the Tribunal was reading the classified exhibits, the Tribunal received instructions from the Office for the Administrative Review of the Detention of Enemy Combatants in Washington, D.C., to recess the Tribunal until further notice. The Tribunal was subsequently instructed to reconvene on 22 September 2004, which it did. When the Tribunal reconvened its classified session, the Recorder introduced into evidence the second page of Exhibit R-10, which had inadvertently not been included with the original exhibit. The Tribunal then completed reading all of the classified exhibits and closed for deliberations. The Tribunal considered both the unclassified and classified exhibits and the detainee's comments made through the Personal Representative in reaching its decision.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-19 and D-a.
- b. Testimony of the following persons: None.
- c. Unsworn Statement of the detainee (through the Personal Representative):

See Enclosure (3) to the CSRT Decision Report.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The recorder offered Exhibits R-1 through R-5 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 (the FBI redaction certification), and Exhibits R-3 and R-4 (documents relating to the detainee's pending Habeas petition), provided no usable evidence. Exhibit R-5, an excerpt from the Terrorist Organization Reference Guide, provided useful information on the Hizballah and Lashkar-e-Tayyiba terrorist/terrorist support groups. Because there was no other unclassified evidence for the Tribunal to consider other than the Personal Representative's denials on behalf of the detainee of the

assertions on the Unclassified Summary of Evidence, the Tribunal had to look to the classified exhibits to support the assertions on the Unclassified Summary of Evidence and the Tribunal's conclusions. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

a. When the CSRT Decision Report was being prepared, the Tribunal realized that the Reporter who recorded the proceeding on 20 September 2004 was not the same Reporter who recorded the proceeding on 22 September, and as a result, had not been sworn. Accordingly, on 23 September 2004, the Tribunal reconvened for the sole purpose of swearing the Reporter with respect to the classified proceedings of the previous day. The Tribunal members, the Personal Representative, and the Recorder were present. No further corrective action was required.

b. Because the Personal Representative's comments on behalf of the detainee allege that he has been tortured (see Enclosure (3) to the CSRT Decision Report and Exhibit R-10), the Tribunal notified the CSRT Assistant Legal Advisor. As per instructions, the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO was also notified of the matter on 22 September 2004.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The detainee chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.

b. The Personal Representative informed the Tribunal that the detainee understood the Tribunal process, but chose not to participate, as indicated in Exhibit D-a.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the Tribunal President.

Colonel, U.S. Army
Tribunal President

UNCLASSIFIED//FOUO

Although the detainee elected not to participate in the Tribunal process, as indicated on the Detainee Election Form (Exhibit D-a), he asked his Personal Representative to verbally provide information to the Tribunal. The following summarizes the Personal Representative's presentation of the detainee's information.

Personal Representative: None of the information in the unclassified summary was truthful. He was kidnapped from Pakistan, he has been tortured, and all the information he has given up prior to talking to me on 17 September 2004 was under duress.

Tribunal President: Is that statement written?

Personal Representative: No, [REDACTED] that's the oral statement he gave me.

At the request of a Tribunal member taking notes, the Personal Representative repeated the above information from the detainee.

Tribunal President: When you say coming here, you mean coming to GTMO?

Personal Representative: Yes.

Tribunal Member: Did the detainee mention if he was tortured here or under duress at GTMO?

Personal Representative: He says he has been tortured since his capture. He's reported it to the International Red Cross. When the International Red Cross meets with him and asks him what the person's name was who supposedly tortured him, he answers, "How can I tell you a name if the name tags are taped over?" Its been reported to the International Red Cross. He also determined that the fact that he's in Camp 5 where the lights are on and the fans run constantly is a form of torture.

Tribunal President: Where was the torture committed?

Personal Representative: He just said up until this time.

Tribunal Member: He said he was kidnapped from Pakistan, taken to Egypt, and then brought here?

Personal Representative: Correct, and given to U.S. custody.

Tribunal President: Personal Representative, do you have any other evidence to present to this Tribunal on behalf on the detainee?

Personal Representative: No, [REDACTED] I have no other evidence to present.

ISN # [REDACTED]
Enclosure (3)
Page 1 of 2

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Tribunal President: All unclassified evidence having been provided to this Tribunal, this concludes this Tribunal session.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.



Colonel, U.S. Army
Tribunal President

ISN # [REDACTED]
Enclosure (3)
Page 2 of 2

DETAINEE ELECTION FORM

Date: 17 Sep 2004

Start Time: 1015

End Time: 1110

ISN#: [REDACTED]

Personal Representative: [REDACTED] LT COL
(Name/Rank)

Translator Required? NO Language? ENGLISH/ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

Detainee Election:

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

Personal Representative Comments:

Detainee will not attend the Tribunal. There will not be any witness. The entire session was
conducted in English.

Personal Representative: [REDACTED]

FOUO

Recorder Exhibit List
For
ISN [REDACTED]

#	Title	Bullet	Classification
R1	Unclassified Summary		UNCLASSIFIED
R2	FBI Redaction of National Security Information	3.a.3.	UNCLASSIFIED
R3	US District Court Case of Mamdouh Habib		UNCLASSIFIED
R4	US District Court Case of Mamdouh Habib		UNCLASSIFIED
R5	U.S. Department of Homeland Security, "Terrorist Organization Reference Guide" (Jan. 04 ed.) excerpt	3.a.4. 3.a.5.	UNCLASSIFIED
R6	Intelligence Information Report (IIR) 6 034 0565 02	3.a.1. 3.a.2.	SECRET/NOFORN
R7	Intelligence Information Report (IIR) 6 034 0547 03	3.a.1.	SECRET/NOFORN
R8	CITF Form 40 dtd 7 May 03 (redacted copy)	3.a.1.	FOUO//LES
R9	Knowledgeability Brief (KB) dtd 11 May 02	3.a.2.	SECRET
R10	FBI 302 dtd 24 May 03 (redacted copy)	3.a.3.	FOUO//LES
R11	Intelligence Information Report (IIR) 6 034 0454 02	3.a.5.	SECRET/NOFORN
R12	Intelligence Information Report (IIR) 6 034 0488 03	3.a.6.	SECRET/NOFORN
R13	CITF Form 40 dtd 11 Mar 03 (redacted copy)	3.a.4. 3.b.1.	FOUO//LES
R14	Intelligence Assessment (DTG 271545Z MAY 02)	3.b.2.	SECRET
R15	Intelligence Information Report (IIR) 6 034 0497 03	3.b.3.	SECRET/NOFORN
R16	Intelligence Information Report (IIR) 6 034 0482 03	3.b.4.	SECRET/NOFORN
R17	Quarterly Review of Community Counterterrorism Tiers	3.a.4. 3.a.5.	SECRET//NOFORN
R18	CITF Memorandum dtd 26 April 04	Summary	SECRET//NOFORN
R19	Baseball Card: Detainee		SECRET//NOFORN

Unclassified

Combatant Status Review Board

9 September 2004

TO: Personal Representative

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – HABIB, Mamdouh Ibrahim Ahmed

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he associated with al Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. Detainee is associated with al Qaida.
 1. Detainee admits to traveling to Afghanistan prior to the attacks of September 11, 2001, where he stayed at a known al Qaida safehouse in Kandahar, Afghanistan, which was run by a highly placed al Qaida operative and was protected by an armed man.
 2. Detainee admits to residing at another safehouse in Kabul, Afghanistan where the number of guests and amount of activity significantly increased just prior to the attacks of September 11, 2001.
 3. Detainee admits having knowledge of the attacks of September 11, 2001 prior to their occurrence.
 4. Shortly before September 11, 2001, Detainee admits to staying at a safehouse in Lahore, Pakistan.

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Unclassified

3307

Exhibit R1

Unclassified

5. In the late 1990s, Detainee communicated with members of the Lebanon – based Hizballah terrorist group, to inquire about joining the Jihad in Afghanistan.
 6. Detainee admits that he has ties to individuals involved in the 1993 bombing of the World Trade Center in New York City.
- b. Detainee engaged in hostilities against the US or its coalition partners.
1. Detainee admits that he conducted surveillance of buildings, hospitals and schools with another detainee.
 2. Detainee admits that he assisted with the transfer of chemical weapons at a compound near Kabul, Afghanistan.
 3. Detainee states that he trained several of the September 11 hijackers in martial arts and had planned to hijack a plane himself.
 4. Detainee was captured along with two German Muslims in Pakistan by Pakistani authorities.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 6, 2004

BJ 9/2/04

REQUEST FOR REDACTION OF NATIONAL SECURITY INFORMATION

ISN [REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked¹. The FBI makes this request on the basis that said information relates to the national security of the United States². Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

¹Redactions are marked by means of pink/blue highlighter on the OARDEC provided FBI document.

²See Executive Order 12958

Exhibit R2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAFIQ RASUL, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-0299 (CKK)

FAWZI KHALID ABDULLAH FAHAD
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 02-CV-0828 (CKK)

MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-1130 (CKK)

MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1135 (ESH)

O.K. [REDACTED] *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1136 (JDB)

MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1137 (RMC)

MOURAD BECHELLALI, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1142 (RJL)

JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1144 (RWR)

FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,

et al.,

Respondents.

Civil Action No. 04-CV-1164 (RBW)

LAKHDAR BOUMEDIENE, *et al.*
Petitioners,
v.
GEORGE WALKER BUSH,
President of the United States,
et al.,
Respondents.

Civil Action No. 04-CV-1166 (RJL)

SUHAIL ABDUL ANAM, *et al.*
Petitioners,
v.
GEORGE W. BUSH,
President of the United States,
et al.,
Respondents.

Civil Action No. 04-CV-1194 (HHK)

**RESPONDENTS' MOTION TO CONSOLIDATE
AND MEMORANDUM IN SUPPORT THEREOF**

Currently pending before various judges of this Court are a number of petitions for writs of habeas corpus, as styled above, brought on behalf of foreign nationals detained or taken into custody by United States authorities as enemy combatants in connection with hostilities involving al Qaeda, the Taliban, and their supporters, and held at the United States Naval Base at Guantanamo Bay, Cuba. For the reasons explained below, these cases – as well as any after-filed actions of the same nature – should be consolidated under FED. R. CIV. P. 42. The cases present

common questions of law and fact, and consolidation will promote judicial economy and convenience for the parties. Absent such consolidations, all parties will be prejudiced, both by the potential for inconsistent rulings on similar issues pertaining to Guantanamo Bay detainees, as well as by the practical and logistical difficulties presented by multiple cases, many, if not all, of which may involve the presentation of highly classified materials, proceeding before different judges on possibly divergent schedules.

By local rule, this motion is submitted to Judge Kollar-Kotelly, as the judge presiding over the "earlier numbered" of the Guantanamo Bay detainee cases, *Rasul v. United States*, No. 02-CV-0299. See LCvR 40.5(d) ("Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned."). Notification of this motion, along with a copy of the motion, is being submitted to each of the judges in the related cases. See Notice of Filing of Motion to Consolidate in *Rasul v. Bush*, No. 02-CV-0299 (CKK) (filed July 23, 2004, in each of the related cases).

Counsel for respondents have conferred or attempted to confer by telephone with counsel for petitioners in the related cases regarding this motion. Counsel for petitioners in *Kurnaz v. Bush*, No. 04-CV-1135 (ESH), opposes the motion. Counsel for petitioners in *Al Odah v. United States*, No. 02-CV-0828 (CKK); *Habib v. Bush*, No. 02-CV-1130 (CKK); [REDACTED] ^{O.K.} *v. Bush*, No. 04-CV-1136 (JDB); *Benchellali v. Bush*, No. 04-CV-1142 (RJL); and *Boumediene v. Bush*, No. 04-CV-1166 (RJL), believe the motion is premature, pending access to their clients, and either oppose the motion or are not in a position to consent to the motion. As of the filing of this motion, counsel for petitioners in the other cases have not informed counsel for respondents of their final position regarding the motion.

BACKGROUND

On September 11, 2001, the al Qaeda terrorist network launched a vicious, coordinated attack on the United States, killing approximately 3,000 persons. In response, the President, as Commander-in-Chief and with Congressional authorization for the use of force, took steps to protect the Nation and prevent additional threats. Among these steps, the President dispatched the armed forces of the United States to Afghanistan to seek out and subdue the al Qaeda terrorist network and the Taliban regime that had supported and protected that network. In the course of that campaign – which remains ongoing – the United States and its allies have captured or taken control of a large number of individuals, many of whom are foreign nationals. As authorized by, *inter alia*, a Military Order of November 13, 2001 issued by the President,¹ the United States military has transferred a number of these alien enemy combatants for detention at the United States Naval Base at Guantanamo Bay, Cuba, an area within the sovereign territory of Cuba leased for an indefinite term by the United States, and over which the United States exercises exclusive control.² Approximately 600 such aliens are currently detained at Guantanamo Bay.

Pending before this Court are a number of cases brought on behalf of aliens detainees in the control of the Department of Defense and held at Guantanamo Bay. The cases commonly challenge the legality and conditions of the detention and confinement of the aliens on whose behalf the cases are brought. Of the cases of which respondents are now aware, before Judge Kollar-Kotelly are *Rasul v. Bush*, No. 02-CV-0299; *Al Odah v. United States*, No. 02-CV-0828;

¹ See 66 Fed. Reg. 57,831 (Nov. 16, 2001).

² See *Rasul v. Bush*, ___ U.S. ___, 124 S. Ct. 2686, 2690-93 (2004).

and *Habib v. Bush*, No. 02-CV-1130.³ Before Judge Huvelle is *Kurnaz v. Bush*, No. 04-CV-1135. Before Judge Bates is ^{O.K.} [REDACTED] *v. Bush*, No. 04-CV-1136.⁴ Before Judge Collyer is *Begg v. Bush*, No. 04-CV-1137. Pending before Judge Leon are *Benchellali v. Bush*, No. 04-CV-1142, and *Boumediene v. Bush*, No. 04-CV-1166. Before Judge Roberts is *El-Banna v. Bush*, No. 04-CV-1144. Before Judge Walton is *Gherebi v. Bush*, No. 04-CV-1164.⁵ And before Judge Kennedy is *Anam v. Bush*, No. 04-CV-1194.

Each of these cases is a petition for habeas corpus, or, in one case, a complaint essentially constituting a habeas petition,⁶ filed by “next friends” on behalf of alien detainees at Guantanamo Bay. The cases include as respondents the President, the Secretary of Defense, the commander of Joint-Task-Force-GTMO responsible for Guantanamo Bay, and the commander of the particular

³ The Court initially dismissed these cases on jurisdictional grounds, *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002), and subsequent appeals led to the Supreme Court’s *Rasul* decision.

⁴ A Guantanamo Bay detainee case dismissed by Judge Bates prior to the Supreme Court’s decision in *Rasul* is, *Sassi v. Bush*, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the *Benchellali* case before Judge Leon or the [REDACTED] case before Judge Bates.

⁵ ^{O.K.} *Gherebi* was recently transferred to this District from the Ninth Circuit. Unlike the petitions in the other pending cases, the *Gherebi* petition is not yet posted on the Court’s ECF system; accordingly, a copy of the operative habeas petition in the case is attached as Exhibit A. The petition was initially filed by petitioners in the Ninth Circuit Court of Appeals, which transferred the petition for disposition by the district court for the Central District of California. See *Gherebi v Bush*, 262 F. Supp. 2d 1064 (C.D. Cal. 2003). After the case was appealed, decided, then vacated by the Supreme Court, the Ninth Circuit transferred the case to the District of Columbia. See *Gherebi v. Bush*, ___ F.3d ___, 2004 WL 1534166 (July 8, 2004).

⁶ See *Rasul v. Bush*, 215 F. Supp. 2d 55, 62-64 (D.D.C. 2002) (noting that claims asserted in *Al Odah* case are “within the exclusive province of the writ of habeas corpus”).

camp housing the detainees in Guantanamo Bay, and/or other government officials.⁷ Allegations in the petitions typically include that petitioners were apprehended in connection with hostilities involving al Qaeda, the Taliban, and their supporters or otherwise and were taken involuntarily to Guantanamo Bay;⁸ that petitioners are not enemy combatants and have not been informed of charges against them;⁹ that petitioners have been housed in inadequate housing, without meaningful access to families or counsel, and without opportunity to fully exercise their religious beliefs;¹⁰ and that petitioners have been forced to provide involuntary statements to interrogators.¹¹ Petitioners challenge their confinement, as well as the Military Order of

⁷ The *Gherebi* petition names the President, the Secretary of Defense, and "1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials." The *Al Odah* complaint also includes the United States as respondent-defendant.

⁸ See *Rasul* First Amended Petition ¶¶ 23-24, 27, 32; *Al Odah* Amend. Compl. ¶ 16; *Habib* Pet. ¶¶ 16-19, 21-22; *Kurnaz* Pet. ¶¶ 6, 16-17, 19, 23-24; [REDACTED] Pet. ¶¶ 16, 21-22; *Begg* Pet. ¶¶ 22-26; *Bechellali* Pet. ¶¶ 28, 30, 32; *El-Banna* First Amend. Pet. ¶¶ 19-26, 27-28; *Gherebi* Amend. Pet. ¶ 2; *Boumediene* Pet. ¶¶ 16-18, 20; *Anam* Pet. ¶¶ 26, 31, 36, 40-41, 44, 46, 52, 58, 61.

⁹ See *Rasul* First Amended Petition ¶¶ 22, 29-30, 47; *Al Odah* Amend. Compl. ¶¶ 15, 18; *Habib* Pet. ¶¶ 15, 23-24, 44; *Kurnaz* Pet. ¶¶ 13-15, 34; [REDACTED] Pet. ¶¶ 13, 30; *Begg* Pet. ¶¶ 17-18, 47, 52; *Bechellali* Pet. ¶¶ 25-26, 48; *El-Banna* First Amend. Pet. ¶¶ 15-16, 43; *Boumediene* Pet. ¶¶ 13-14, 25; *Anam* Pet. ¶¶ 23, 28, 33, 37, 59, 71, 73, 78.

¹⁰ See *Rasul* First Amended Petition ¶¶ 33, 49; *Al Odah* Amend. Compl. ¶¶ 28-29; *Habib* Pet. ¶¶ 27, 44-45; *Kurnaz* Pet. ¶¶ 8, 34-35; [REDACTED] Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; *Bechellali* Pet. ¶¶ 48-49; *El-Banna* First Amend. Pet. ¶¶ 43-44; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶¶ 73-74.

¹¹ See *Rasul* First Amended Petition ¶ 32; *Habib* Pet. ¶¶ 26, 44; *Kurnaz* Pet. ¶¶ 34-35; [REDACTED] Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; *Bechellali* Pet. ¶ 49; *El-Banna* First Amend. Pet. ¶ 44; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶ 73-74.

November 13, 2001, as contrary to the Constitution¹² and international treaties, including the Third and Fourth Geneva Conventions,¹³ the International Covenant on Civil and Political Rights and the American Declaration on the Rights and Duties of Man,¹⁴ as well as customary international law.¹⁵ Some of the petitions additionally assert claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Administrative Procedure Act (APA), 5 U.S.C. § 702-706.¹⁶ Petitioners commonly seek relief in the form of release,¹⁷ orders permitting access to counsel and barring interrogations, and declarations that petitioners' detention and the November 13, 2001 military order violate the Constitution, treaties, and laws of the United States, as well as

¹² Constitutional provisions relied upon typically include the Due Process Clause of the Fifth Amendment, the War Powers Clause, and Article I, section 9, regarding suspension of the Privilege of the Writ of Habeas Corpus. *See Rasul* First Amended Petition ¶¶ 52-54, 62-64; *Al Odah* Amend. Compl. ¶ 37; *Habib* Pet. ¶¶ 48-51, 59-61; *Kurnaz* Pet. ¶¶ 39-41, 63-65; [REDACTED] Pet. O.K. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71; *Bechellali* Pet. ¶¶ 53-56, 77-79; *El-Banna* First Amend. Pet. ¶¶ 48-50, 72-74; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶¶ 33-35, 43-45; *Anam* Pet. ¶¶ 80-82, 90-92, 97.

O.K.

¹³ *See Habib* Pet. ¶¶ 56-57; *Kurnaz* Pet. ¶ 61; [REDACTED] Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; *Bechellali* Pet. ¶ 75; *El-Banna* First Amend. Pet. ¶ 70; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 41; *Anam* Pet. ¶ 88.

O.K.

¹⁴ *See Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Bechellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶¶ 37, 39; *Anam* Pet. ¶¶ 84-86.

O.K. ¹⁵ *See Rasul* First Amended Petition ¶¶ 56-60; *Habib* Pet. ¶¶ 52-55; *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Bechellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶ 37; *Anam* Pet. ¶¶ 84-86.

O.K.

¹⁶ *See Al Odah* Amend. Compl. ¶¶ 38-39; *Kurnaz* Pet. ¶¶ 48, 53, 57, 67; [REDACTED] Pet. ¶¶ 44, 49, 53, 63; *Begg* Pet. ¶ 68; *Bechellali* Pet. ¶¶ 62, 67, 71, 81; *El-Banna* First Amend. Pet. ¶¶ 57, 62, 66, 76; *Anam* Pet. ¶ 94.

¹⁷ In *Al Odah*, plaintiffs previously disclaimed seeking release, but the Court determined that plaintiffs "plainly challenge the lawfulness of their custody." *Rasul*, 215 F. Supp. 2d at 62.

international law.¹⁸ Indeed, except with regard to averments concerning the circumstances of petitioners' capture, attempts by family or friends to contact a detainee, and the occasional additional legal theory, the petitions in these cases are essentially the same. Furthermore, many of the cases involve the same litigation counsel or coordinating counsel.¹⁹

ARGUMENT

Federal Rule of Civil Procedure 42(a) provides that "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."²⁰

The Rule encourages consolidation where cases present questions of law or fact in common; thus, consolidation is appropriate "[i]f two cases appear to be of like nature and relative to the same question" and consolidation would promote judicial economy. See *Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491, 499 (C.D. Ill. 1983); *Judicial Watch, Inc. v.*

¹⁸ See *Rasul* First Amended Petition § VI; *Al Odah* Amend. Compl. (Prayer for Relief); *Habib* Pet. § V; *Kurnaz* Pet. § V; [REDACTED] Pet. § V; *Begg* Pet. § V; *Bechellali* Pet. § V; *El-Banna* First Amend. Pet. § V; *Gherebi* Amend. Pet. ¶¶ 5-6; *Boumediene* Pet. § VI; *Anam* Pet. (Prayer for Relief).
O.K.

¹⁹ For example, in a significant number of the cases petitioners are represented by counsel from the Center for Constitutional Rights. And the *Kurnaz*, [REDACTED] and *Begg* cases were filed by the same law firm.
O.K.

²⁰ Of course, petitions for a writ of habeas corpus are civil in nature, see *Hilton v. Braunskill*, 481 U.S. 770, 775-76 (1987), and, though different in respects from general civil litigation, habeas petitions are subject to the Federal Rules of Civil Procedure to the extent not inconsistent with statute. See FED. R. CIV. P. 81(a)(2); see also *Hilton*, 481 U.S. at 776 ("[w]here . . . the need is evident for principles to guide the conduct of habeas proceedings, it is entirely appropriate to use . . . [general civil] rules by analogy or otherwise.") (internal quotation marks and citation omitted). Thus, FED. R. CIV. P. 42 applies with respect to these cases.

United States Dep't of Energy, 207 F.R.D. 8, 8 (D.D.C. 2002) (Friedman, J.). A court has discretion to consolidate cases when it will “help it manage its caseload with economy of time and effort for itself, for counsel, and for litigants.” *Mylan Pharmaceuticals Inc. v. Henney*, 94 F. Supp. 2d 36, 43 (D.D.C. 2000) (Urbina, J.) (internal quotation marks and citation omitted), *vacated on other grounds sub nom., Pharmachemie B.V. v. Barr Labs., Inc.*, 276 F.3d 627 (D.C. Cir. 2002). Consolidation relieves the Court and parties of the burden of duplicative filings and orders. *See New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 147-48 (D.D.C. 2002) (Kollar-Kotelly, J.). It does not, however, “merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.” *Id.* (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933)); *see also Midwest Community Council*, 98 F.R.D. at 499 (consolidation can economize time and effort “without circumscribing the opportunity for full litigation of all relevant claims”).

The pending habeas petitions by Guantanamo Bay detainees involve not just “a common question of law or fact” as required by FED. R. CIV. P. 42; they involve a number of common questions of law and fact. Of course, the cases present common fact scenarios in that each and every petitioner is an alien who was apprehended in some manner overseas in connection with hostilities involving al Qaeda, the Taliban, and their supporters; is considered an enemy combatant; and is held outside of the United States and the territorial jurisdiction of United States courts at Guantanamo Bay, an area over which the government exercises exclusive jurisdiction but not ultimate sovereignty. Further, each and every petitioner challenges the nature of his confinement, allegedly without access to counsel or family and without a statement of charges against him.

Moreover, the cases present a number of common legal questions or issues, including whether petitioners' detention violates the Constitution, laws, or treaties cited in the petitions; whether the November 13, 2001 Military Order pursuant to which petitioners are detained violates the Constitution, laws, or treaties cited in the petitions; whether the treaties and international law principles cited by petitioners are enforceable in a habeas proceeding; potential challenges to and the significance of the Combatant Status Review Tribunal process to be afforded Guantanamo Bay detainees for review of their status as enemy combatants;²¹ and the nature and scope of judicial review of the military's determination of a detainee's status. In addition, the cases will share common questions on procedural matters such as the nature and extent of detainees' access to counsel; the scope and method of any inquiry, if appropriate, into confinement conditions; or the need, if any, for the physical presence of petitioners in court for their case.

Because these cases share such issues in common, consolidation will promote interests of efficiency and economy for both the Court and the parties. Judicial resources will be conserved with one judge considering and resolving, presumably once, the various common issues; multiple judges of the Court should not duplicate their efforts by dealing with common issues of this nature in multiple cases, thus devoting resources of multiple chambers to the same issues. Indeed, this Court initially consolidated, on motion of plaintiffs, the *Rasul* and *Al Odah* cases for the limited purpose of considering the Court's jurisdiction, an issue subsequently addressed by

²¹ The Department of Defense recently created a such a process for alien detainees at Guantanamo Bay. See Department of Defense website at:

<http://www.defenselink.mil/releases/2004/nr20040707-0992.html>

the Supreme Court. *See* Order of July 30, 2002 (in *Rasul* and *Al Odah*). As noted above, a number of common issues still must be resolved in these and the other cases, and consolidation is accordingly warranted.²²

Consolidation will also promote efficiency and economy to the extent the cases require the Court to have access to classified information. The fewer the number of Court chambers needing such access, the more quickly and efficiently appropriate security arrangements can be made for access to and storage of such information by or for the Court.

Furthermore, consolidation would serve to avoid the very real risk of inconsistent adjudications in these cases. *See International Paving Systems v. Van-Tulco, Inc.*, 806 F. Supp. 17, 22 (E.D.N.Y. 1992) (a primary purpose of consolidation is to avoid inconsistent results in separate actions). This factor takes on special significance given the serious Constitutional issues involving the President's war powers raised in these cases, as well as the possibility that these cases may ultimately require the presentation of highly classified materials. Even with respect to other common procedural or merits-related issues, inconsistent adjudications on such issues could result in the administration of conflicting rulings with respect to the Guantanamo Bay detainees, such that the detainees would be subject to inconsistent treatment that might be occasioned by such rulings. Consolidation would avoid such difficulties. In addition, consolidation similarly would avoid the potential for multiple interlocutory appeals that might

²² Also, to the extent that only certain cases involve certain claims, *e.g.*, claims under the Alien Tort Statute, 28 U.S.C. § 1350, issues pertaining to those claims, such as whether such claims can be properly asserted in the cases, can be jointly resolved in the cases to which they pertain, as needed. The existence of such claims in some cases should not be a barrier to consolidation given the economies and conservation of judicial resources that consolidation would promote with respect to the common questions in those and the other cases.

arise from multiple rulings on the same issues from different judges, to the extent such appeals might be appropriate.

Consolidation also would not prejudice the parties.²³ With respect to respondents, consolidation would help alleviate the logistical burdens respondents face in responding to multiple habeas petitions before different judges on potentially divergent schedules. Efficiencies gained by consolidation would promote the speediest and most efficient resolution of these cases overall, and, thus, would be in the interest of all concerned, including petitioners. Further, should the cases reach a stage that might call for consideration of the circumstances of individual detainees or their separate claims, the Court can consider an appropriate response, including potential de-consolidation, at that time. *See New York v. Microsoft*, 209 F. Supp. 2d at 147-48; FED. R. CIV. P. 42(b).

Finally, the cases that are the subject of this motion are those of which respondents' counsel are now aware. Respondents request that the Court exercise its power to consolidate, *sua sponte*, any subsequently filed petitions with the pending cases. *See Mylan*, 94 F. Supp. 2d at 43 (noting the court's power to consolidate *sua sponte*); *Midwest Community Council*, 98 F.R.D. at 499-500 (same). For the reasons explained above, consolidation of future-filed similar petitions by Guantanamo Bay detainees is warranted.

CONCLUSION

For the reasons set forth above, the Court should grant respondents' motion and consolidate these cases and similar cases filed in the future.

²³ While prejudice to a party is a factor to be taken into account in considering consolidation, *see Judicial Watch*, 207 F. Supp. 2d at 8, a court can order consolidation over the objection of one, or even all, parties. *See Midwest Community Council*, 98 F.R.D. at 499-500.

Dated: July 23, 2004

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAFIQ RASUL, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-0299 (CKK)

FAWZI KHALID ABDULLAH FAHAD
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 02-CV-0828 (CKK)

MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-1130 (CKK)

MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1135 (ESH)

O.K.

 *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1136 (JDB)

MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1137 (RMC)

MOURAD BENCHELLALI, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1142 (RJL)

JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1144 (RWR)

FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
et al.,

Respondents.

Civil Action No. 04-CV-1164 (RBW)

LAKHDAR BOUMEDIENE, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1166 (RJL)

SUHAIL ABDUL ANAM, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1194 (HHK)

ISA ALI ABDULLA ALMURBATI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1227 (RBW)

MAHMOAD ABDAH, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1254 (HHK)

**RESPONDENTS' MOTION FOR JOINT CASE MANAGEMENT CONFERENCE,
ENTRY OF COORDINATION ORDER, AND REQUEST FOR EXPEDITION**

Respondents hereby request a Joint Case Management Conference involving each of the judges presiding over complaints or petitions for habeas corpus brought on behalf of foreign nationals detained or taken into custody by United States authorities as enemy combatants in connection with hostilities involving al Qaeda, the Taliban, and their supporters, and held at the United States Naval Base at Guantanamo Bay, Cuba. The requested Joint Case Management Conference would allow the Court to develop and enter a coordination order to allow for the orderly and efficient resolution of the many common questions of law presented by these petitions. While the petitions have not been consolidated, the Court's inherent authority to manage its docket permits coordinated consideration of legal issues where judicial economy would be served, and where – as here – consistent resolution of those legal issues is desirable. Respondents are presenting this Motion simultaneously to each of the judges to whom a

Guantanamo habeas petition has been assigned. Given the important concerns that underlie this Motion, Respondents respectfully request that the Court expedite its consideration.

Although proceedings on all of these petitions are at their inception, and despite the fact that each petition alleges some facts unique to individual detainees, it is already clear that the cases present a number of important common questions of law. The common questions include threshold issues whose resolution will determine the fundamental character of the proceedings that follow, including: (1) whether, under the U.S. Constitution, the detainees have a right to consult with Petitioners and their counsel for purposes of prosecuting these habeas petitions, and for other purposes; (2) whether the Constitution, and other applicable legal principles, permit ~~Respondents to place conditions on such attorney-detainee consultations, including whether~~ Respondents may require certain attorney-detainee consultations to be monitored for national security purposes;¹ (3) whether the detainees, who were not captured in the United States or its territories and are not detained there, are protected by the Due Process Clause of the Fifth Amendment, and by other provisions of the Constitution; (4) whether the detainees may ~~challenge their detention under various treaties and conventions to which the United States is~~ signatory, and under principles of "customary international law"; (5) whether these habeas proceedings must be deferred pending completion of the Combatant Status Review Tribunal ("CSRT") process that the Department of Defense has recently formalized to reach fresh determinations on the status of the detainees, most particularly whether their circumstances of

¹ This issue is presently under consideration by Judge Kollar-Kotelly. See *Response to Complaint in Accordance with Court's Order of July 25, 2004* filed in *Al Odah v. United States*, No. 02-CV-828 (July 30, 2004).

capture and other factors qualify them as “enemy combatants”;² and (6) whether and to what extent the status determinations reached in the CSRT process merit deference in this Court’s consideration of the habeas petitions. In addition, there are common procedural questions to be addressed in these cases, including appropriate procedures for handling classified submissions in the cases, the propriety of and limitations on discovery, and procedures for any hearings in those matters.

Respondents previously moved for consolidation of all such petitions before a single judge of this Court pursuant to FED. R. CIV. P. 42. By order dated July 26, 2004, Judge Kollar-Kotelly (the judge presiding over the lowest-numbered of the Guantanamo Bay cases) declined to exercise her discretion to consolidate, concluding that “the different circumstances of each Petitioner’s capture and the individualized reasons offered for that Petitioner’s confinement will require individualized adjudication.” (Mem. Op. at 3-4.) Respondents do not challenge that determination in this Motion, but instead respectfully suggest an alternative procedure. Even if one assumes that the varying circumstances of the Petitioners’ capture may ultimately require individualized attention by the Court, it will promote judicial economy and convenience for the parties to order coordinated briefing, argument, and consideration on the important questions of law and procedure that will shape these habeas proceedings. Absent such coordinated treatment, all parties will be prejudiced, both by the potential for inconsistent rulings on similar issues pertaining to Guantanamo Bay detainees, as well as by the practical and logistical difficulties

² In at least three cases, Petitioners have filed motions seeking to temporarily enjoin the implementation of the CSRT process and challenging the conduct of hearings without access to counsel. See *Gherebi v. Bush*, No. 04-CV-1164; *Boumediene v. Bush*, No. 04-CV-1166; *El-Banna v. Bush*, No. 04-CV-1144.

presented by briefing and arguing the same legal issues before at least eight separate district judges.

Accordingly, Respondents urge that the judges presiding over the above-captioned petitions schedule a Joint Case Management Conference, with all judges present, in order to identify the common questions of law presented by the pending petitions, and to develop a schedule for coordinated pretrial proceedings, including briefing and argument on those questions. A proposed order is attached.

Pursuant to LCvR 7(m), counsel for Respondents have conferred or attempted to confer by telephone and e-mail with counsel for Petitioners in the related cases regarding this motion.

~~Counsel for Petitioners in *Habib, El-Banna, Gherebi, Anam, Almurbati, Boumediene* and *Begg*~~
have indicated that they oppose or do not consent to the motion. Counsel for Petitioners in *Benchellali* have indicated that they reserve judgment but expect to oppose the motion.

Respondents would note that with respect to the previous motion for consolidation, counsel for Petitioners who expressed a position either opposed or did not consent to the motion.

BACKGROUND

On September 11, 2001, the al Qaeda terrorist network launched a vicious, coordinated attack on the United States, killing approximately 3,000 persons. In response, the President, as Commander-in-Chief and with Congressional authorization for the use of force, took steps to protect the Nation and prevent additional threats. Among these steps, the President dispatched the armed forces of the United States to Afghanistan to seek out and subdue the al Qaeda terrorist network and the Taliban regime that had supported and protected that network. In the course of that campaign – which remains ongoing – the United States and its allies have captured or taken

control of a large number of individuals, many of whom are foreign nationals. As authorized by, *inter alia*, a Military Order of November 13, 2001 issued by the President,³ the United States military has transferred a number of these alien enemy combatants for detention at the United States Naval Base at Guantanamo Bay, Cuba, an area within the sovereign territory of Cuba leased for an indefinite term by the United States, and over which the United States exercises exclusive control.⁴ Approximately 600 such aliens are currently detained at Guantanamo Bay.

Pending before this Court are a number of cases brought on behalf of alien detainees in the control of the Department of Defense and held at Guantanamo Bay. The cases commonly challenge the legality and conditions of the detention and confinement of the aliens on whose behalf the cases are brought. ~~Of the cases of which Respondents are now aware, before Judge Kollar-Kotelly are *Rasul v. Bush*, No. 02-CV-0299; *Al Odah v. United States*, No. 02-CV-0828; and *Habib v. Bush*, No. 02-CV-1130.⁵ Before Judge Huvelle is *Kurnaz v. Bush*, No. 04-CV-1135. Before Judge Bates is ~~██████████~~ ^{O.K.} *v. Bush*, No. 04-CV-1136.⁶ Before Judge Collyer is *Begg v. Bush*, No. 04-CV-1137. Pending before Judge Leon are *Benchellali v. Bush*, No. 04-CV-1142 and *Boumediene v. Bush*, No. 04-CV-1166. Before Judge Roberts is *El-Banna v. Bush*, No. 04-~~

³ See 66 Fed. Reg. 57,831 (Nov. 16, 2001).

⁴ See *Rasul v. Bush*, 124 S. Ct. 2686, 2690-93 (2004).

⁵ The Court initially dismissed these cases on jurisdictional grounds, *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002), and subsequent appeals led to the Supreme Court's *Rasul* decision.

⁶ A Guantanamo Bay detainee case dismissed by Judge Bates prior to the Supreme Court's decision in *Rasul* is *Sassi v. Bush*, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the *Benchellali* case before Judge Leon or the ~~██████████~~ case before Judge Bates.

O.K.

CV-1144. Before Judge Walton are *Gherebi v. Bush*, No. 04-CV-1164 and *Almurbati v. Bush*, 04-CV-1227.⁷ And before Judge Kennedy are *Anam v. Bush*, No. 04-CV-1194 and *Abdah v. Bush*, No. 04-CV-1254. Based on the number of foreign nationals detained at Guantanamo Bay, it is highly likely that numerous additional petitions will be filed.

Each of these cases is a petition for habeas corpus, or, in one case, a complaint essentially constituting a habeas petition,⁸ filed by “next friends” on behalf of alien detainees at Guantanamo Bay. The cases include as respondents the President, the Secretary of Defense, the commander of Joint Task Force-GTMO responsible for Guantanamo Bay, and the commander of the particular camp housing the detainees in Guantanamo Bay, and/or other government officials.⁹ Allegations ~~in the petitions typically include that Petitioners were apprehended in connection with hostilities~~ involving al Qaeda, the Taliban, and their supporters or otherwise and were taken involuntarily to Guantanamo Bay;¹⁰ that Petitioners are not enemy combatants and have not been informed of

⁷ *Gherebi* was recently transferred to this District from the Ninth Circuit. The petition was initially filed by petitioners in the Ninth Circuit Court of Appeals, which transferred the petition for disposition by the district court for the Central District of California. *See Gherebi v. Bush*, 262 F. Supp. 2d 1064 (C.D. Cal. 2003). After the case was appealed, decided, then vacated by the Supreme Court, the Ninth Circuit transferred the case to the District of Columbia. *See Gherebi v. Bush*, 374 F.3d 727, 2004 WL 1534166 (July 8, 2004).

⁸ *See Rasul*, 215 F. Supp. 2d at 62-64 (D.D.C. 2002) (noting that claims asserted in *Al Odah* case are “within the exclusive province of the writ of habeas corpus”).

⁹ The *Gherebi* petition names the President, the Secretary of Defense, and “1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials.” The *Al Odah* complaint also includes the United States as respondent-defendant.

¹⁰ *See Rasul* First Amended Petition ¶¶ 23-24, 27, 32; *Al Odah* Amend. Compl. ¶ 16; *Habib* Pet. ¶¶ 16-19, 21-22; *Kurnaz* Pet. ¶¶ 6, 16-17, 19, 23-24; [REDACTED] Pet. ¶¶ 16, 21-22; *Begg* Pet. ¶¶ 22-26; *Benchellali* Pet. ¶¶ 28, 30, 32; *El-Banna* First Amend. Pet. ¶¶ 19-26, 27-28; *Gherebi* Amend. Pet. ¶ 2; *Boumediene* Pet. ¶¶ 16-18, 20; *Anam* Pet. ¶¶ 26, 31, 36, 40-41, 44, 46, 52, 58, 61; *Almurbati* Pet. ¶¶ 8, 10, 12; 19-22; *Abdah* Pet. ¶¶ 19-20, 22-51.

charges against them;¹¹ that Petitioners have been housed in inadequate housing, without meaningful access to families or counsel, and without opportunity to fully exercise their religious beliefs;¹² and that Petitioners have been forced to provide involuntary statements to interrogators.¹³ Petitioners challenge their confinement, as well as the Military Order of November 13, 2001, as contrary to the Constitution¹⁴ and international treaties, including the Third and Fourth Geneva Conventions,¹⁵ the International Covenant on Civil and Political Rights and the American Declaration on the Rights and Duties of Man,¹⁶ as well as customary

¹¹ See *Rasul* First Amended Petition ¶¶ 22, 29-30, 47; *Al Odah* Amend. Compl. ¶¶ 15, 18; *Habib* Pet. ¶¶ 15, 23-24, 44; *Kurnaz* Pet. ¶¶ 13-15, 34; [REDACTED] Pet. ¶¶ 13, 30; *Begg* Pet. ¶¶ 17-18, 47, 52; *Benchellali* Pet. ¶¶ 25-26, 48; *El-Banna* First Amend. Pet. ¶¶ 15-16, 43; *Boumediene* Pet. ¶¶ 13-14, 25; *Anam* Pet. ¶¶ 23, 28, 33, 37, 59, 71, 73, 78; *Almurbati* Pet. ¶¶ 18, 36, 41; *Abdah* Pet. ¶¶ 15-16, 63.

¹² See *Rasul* First Amended Petition ¶¶ 33, 49; *Al Odah* Amend. Compl. ¶¶ 28-29; *Habib* Pet. ¶¶ 27, 44-45; *Kurnaz* Pet. ¶¶ 8, 34-35; [REDACTED] Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; *Benchellali* Pet. ¶¶ 48-49; *El-Banna* First Amend. Pet. ¶¶ 43-44; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶¶ 73-74; *Almurbati* Pet. ¶ 41; *Abdah* Pet. ¶¶ 63-64.

¹³ See *Rasul* First Amended Petition ¶ 32; *Habib* Pet. ¶¶ 26, 44; *Kurnaz* Pet. ¶¶ 34-35; [REDACTED] Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; *Benchellali* Pet. ¶ 49; *El-Banna* First Amend. Pet. ¶ 44; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶ 73-74; *Almurbati* Pet. ¶ 41; *Abdah* Pet. ¶¶ 63-64.

¹⁴ Constitutional provisions relied upon typically include the Due Process Clause of the Fifth Amendment, the War Powers Clause, and Article I, section 9, regarding suspension of the Privilege of the Writ of Habeas Corpus. See *Rasul* First Amended Petition ¶¶ 52-54, 62-64; *Al Odah* Amend. Compl. ¶ 37; *Habib* Pet. ¶¶ 48-51, 59-61; *Kurnaz* Pet. ¶¶ 39-41, 63-65; [REDACTED] Pet. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71; *Benchellali* Pet. ¶¶ 53-56, 77-79; *El-Banna* First Amend. Pet. ¶¶ 48-50, 72-74; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶¶ 33-35, 43-45; *Anam* Pet. ¶¶ 80-82, 90-92, 97; *Almurbati* Pet. ¶¶ 43, 45, 53, 55; *Abdah* Pet. ¶¶ 73, 75, 83, 85.

¹⁵ See *Habib* Pet. ¶¶ 56-57; *Kurnaz* Pet. ¶ 61; [REDACTED] Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; *Benchellali* Pet. ¶ 75; *El-Banna* First Amend. Pet. ¶ 70; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 41; *Anam* Pet. ¶ 88; *Almurbati* Pet. ¶ 51; *Abdah* Pet. ¶¶ 77, 79, 81.

¹⁶ See *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Benchellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶¶ 37, 39; *Anam* Pet. ¶¶ 84-86;

international law.¹⁷ Some of the petitions additionally assert claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Administrative Procedure Act (APA), 5 U.S.C. § 702-706.¹⁸

Petitioners commonly seek relief in the form of release,¹⁹ orders permitting access to counsel and barring interrogations, and declarations that Petitioners' detention and the November 13, 2001 military order violate the Constitution, treaties, and laws of the United States, as well as international law.²⁰ Indeed, aside from specific allegations regarding the circumstances of each Petitioners' capture, the petitions are substantially alike. Furthermore, many of the cases involve the same litigation counsel or coordinating counsel.²¹

In *Al-Odah*, briefing is underway concerning whether Respondents may require certain attorney-detainee consultations to be monitored for national security purposes. In *Gherebi*, the Court has established a briefing schedule for a motion to dismiss by Respondents. And in *El-*

Almurbati Pet. ¶¶ 47, 49; *Abdah* Pet. ¶ 77, 79.

D.K. ¹⁷ See *Rasul* First Amended Petition ¶¶ 56-60; *Habib* Pet. ¶¶ 52-55; *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Benchellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶ 37; *Anam* Pet. ¶¶ 84-86; *Almurbati* Pet. ¶ 51; *Abdah* Pet. ¶¶ 77, 79, 81.

¹⁸ See *Al Odah* Amend. Compl. ¶¶ 38-39; *Kurnaz* Pet. ¶¶ 48, 53, 57, 67; [REDACTED] Pet. ¶¶ 44, 49, 53, 63; *Begg* Pet. ¶ 68; *Benchellali* Pet. ¶¶ 62, 67, 71, 81; *El-Banna* First Amend. Pet. ¶¶ 57, 62, 66, 76; *Anam* Pet. ¶ 94; *Almurbati* Pet. ¶¶ 57-59, 61-64, 66; *Abdah* Pet. ¶ 87.

¹⁹ In *Al Odah*, plaintiffs previously disclaimed seeking release, but the Court determined that plaintiffs "plainly challenge the lawfulness of their custody." *Rasul*, 215 F. Supp. 2d at 62.

²⁰ See *Rasul* First Amended Petition § VI; *Al Odah* Amend. Compl. (Prayer for Relief); *Habib* Pet. § V; *Kurnaz* Pet. § V; [REDACTED] Pet. § V; *Begg* Pet. § V; *Benchellali* Pet. § V; *El-Banna* First Amend. Pet. § V; *Gherebi* Amend. Pet. ¶¶ 5-6; *Boumediene* Pet. § VI; *Anam* Pet. (Prayer for Relief); *Almurbati* Pet. (Prayer for Relief); *Abdah* Pet. (Prayer for Relief).

²¹ For example, in a significant number of the cases Petitioners are represented by counsel from the Center for Constitutional Rights.

Banna, a hearing on a TRO sought by Petitioners is scheduled for August 6, 2004, with a return to the petition currently due on August 12, 2004.

ARGUMENT

District courts have both express and inherent authority to coordinate proceedings on cases pending before them in the interest of justice and in the service of judicial economy. It has long been recognized that there is a “power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Airline Pilots Ass’n v. Miller*, 523 U.S. 866, 880, n.6 (1998) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254-255 (1936)). One specific codification of this authority is FED. R. CIV. P. 42(a), a provision that recognizes not only the notion of formal consolidation, but also the power of the Court to “order a joint hearing . . . o[n] any or all the matters in issue,” and to “make such orders concerning proceedings [in the several actions] as may tend to avoid unnecessary costs or delay.” FED. R. CIV. P. 42(a).²²

Moreover, the district courts’ inherent authority to manage their dockets goes beyond the measures expressed in Rule 42. As the Federal Judicial Center’s Manual for Complex Litigation (Fourth) explains, even when cases sharing common issues are pending in *different* judicial districts, “judges can coordinate proceedings in their respective courts to avoid or minimize duplicative activity and conflicts.” MOORE’S FED. PRACTICE, MANUAL FOR COMPLEX LITIGATION (FOURTH) 227 (2004). Coordination measures that district courts can employ

²² Petitions for a writ of habeas corpus are civil in nature, see *Hilton v. Braunskill*, 481 U.S. 770, 775-76 (1987), though different in respects from general civil litigation. See *id.* at 776 (“[w]here . . . the need is evident for principles to guide the conduct of habeas proceedings, it is entirely appropriate to use . . . [general civil] rules by analogy or otherwise.”) (internal quotation marks and citation omitted).

include “joint hearings or conferences” on common legal issues, followed by “joint or parallel orders by the several courts in which the cases are pending.” *Id.*²³ In addition, the Judicial Panel on Multidistrict Litigation, in exercising its discretion to deny pretrial consolidation of multiple actions pending in different districts under 28 U.S.C. § 1407, has recognized that the goals of judicial economy and minimization of “inconsistent pretrial rulings” can at times be achieved simply through “consultation and coordination between the . . . concerned district courts[.]” *In re Royal Am. Indus., Inc. Sec. Litig.*, 407 F. Supp. 242, 244 (J.P.M.L. 1976).

The reach of district courts’ authority to manage their own dockets is illustrated by the procedures adopted by the District Court for the Central District of California in resolving constitutional challenges to the Sentencing Reform Act of 1984, and the sentencing guidelines promulgated thereunder by the U.S. Sentencing Commission. There, the district court convened an en banc panel of the court to consider the common question of the Sentencing Guidelines’ constitutionality – a question that had surfaced in 22 separate criminal cases. The court ordered the common issue “transferred . . . from each of the [separate] cases . . . to the Court as a whole,” and accepted joint briefing, conducted a joint hearing, and issued an en banc opinion on the constitutional challenge, from which a number of district judges dissented. *See United States v. Ortega Lopez*, 684 F. Supp. 1506, 1508 (C.D. Cal. 1988), *abrogated by United States v. Brady*, 895 F.2d 538 (9th Cir. 1990).

²³ Indeed, district courts have used such cooperative approaches even in matters where related cases are pending simultaneously in state and federal court, “jointly presid[ing] over hearings on pretrial motions, based on a joint motions schedule,” relying on “coordinated briefs so that one set of briefs can be used in both state and federal courts . . .” MOORE’S FED. PRACTICE, MANUAL FOR COMPLEX LITIGATION (FOURTH) at 236.

This court's local rules include provisions premised on similarly broad principles of inherent authority as to case management issues. Under LCvR 40.5(e), this court's Calendar Committee has the authority to refer "two or more cases assigned to different judges" to "one judge" for a "specific purpose . . . in order to avoid duplication of judicial effort," so long as the assignment is "with the consent of the judge to whom the cases will be referred" and the "scope of authority of said judge" is identified. More broadly, LCvR 40.7(h) recognizes the authority of the Chief Judge to "take such other administrative actions, after consultation with appropriate committees of the Court, as in his/her judgment are necessary to assure the just, speedy and inexpensive determination of cases, and are not inconsistent with these Rules."

~~The habeas petitions before the Court here present a number of common legal questions~~
that would plainly benefit from coordinated consideration and resolution, whether in a "joint hearing" under FED. R. CIV. P. 42(a) or under a coordinated schedule determined jointly by all of the district judges presiding over the cases. These issues include: (1) whether the detention, as described in the pleadings, violates the Constitution and laws cited in the petitions, and, underlying this question, whether detainees have rights under the Constitution notwithstanding the alleged facts that they are not United States citizens, that they were captured outside the United States, and are currently detained outside the United States and its territories; (2) whether, based on the factual allegations in the petitions, the detainees may challenge their detention under various treaties and conventions to which the United States is signatory, and under principles of "customary international law," and, underlying this question, whether the cited treaties and conventions are self-executing and claims thereunder cognizable in a habeas proceeding; (3) whether these habeas proceedings must, or should in the exercise of the Court's discretion, be

deferred pending completion of the CSRT hearings on the status of the detainees, which will produce formal determinations (and factual records) by the Department of Defense on the circumstances of the detainees' capture and whether those circumstances qualify them as "enemy combatants," *see Hamdi*, 124 S. Ct. at 2648-50 (plurality opinion) (describing contours of acceptable military process for determining the status of United States citizens detained as "enemy combatants");²⁴ and (4) whether and to what extent the status determinations reached in the CSRT process merit deference in this Court's consideration of the habeas petitions. *See id.* at 2649 (plurality opinion) (stating that, in military review process, government's evidence concerning circumstances of capture should be entitled to "presumption" of validity). Moreover, ~~Petitioners in at least three cases have filed motions seeking to temporarily enjoin the~~ implementation of the CSRT hearings. *See supra* note 2.

In addition, there are common procedural questions that must be addressed at the outset of these proceedings. These include whether, under the U.S. Constitution, the detainees have a right to consult with Petitioners and their counsel for purposes of prosecuting these habeas petitions, and for other purposes, and whether Respondents may place conditions on such attorney-detainee consultations, including whether Respondents may require certain attorney-detainee consultations to be monitored for national security purposes. Other common procedural questions involve appropriate procedures for the handling of any classified factual or other submissions that may be required in these cases, the propriety of and limitations on discovery, and hearing procedures.

²⁴ The Department of Defense recently created a such a process for alien detainees at Guantanamo Bay. *See* Department of Defense website at: <http://www.defenselink.mil/releases/2004/nr20040707-0992.html>

Because these cases share such issues in common, some form of coordinated scheduling and consideration of these issues, including, where appropriate, a joint hearing, will promote interests of efficiency and economy for both the Court and the parties. Joint briefing will conserve the parties' resources by relieving them of the burden of preparing separate sets of briefs on the same issues. A joint hearing or argument will provide all of the judges presiding over these actions with a comprehensive oral presentation on the important, common legal and procedural questions presented by the petitions. And a joint hearing or another form of coordinated treatment will minimize delay in the resolution of these questions.

Perhaps most important, coordinated treatment would additionally minimize the risk of ~~conflicting determinations on the fundamental legal questions that unite the petitions.~~ Even if the Court were simply to accept coordinated briefing and argument on the common legal questions presented in these cases, with each district judge reserving the discretion to reach his or her own conclusion and enter separate orders, the mere fact of coordinated scheduling and joint hearing, with consequent deliberations among the various judges of the Court, the opportunities for ~~conflicting rulings would be reduced.~~ The seriousness of the issues raised in these petitions, and the sensitive national security context in which they arise, make avoidance of conflicting rulings – if at all possible – imperative.

There can be no serious argument that the coordination sought by Respondents would prejudice the parties. With respect to Respondents, coordinated presentation and resolution of the common legal issues in the petitions would help alleviate the logistical burdens Respondents face in responding to multiple habeas petitions on potentially divergent schedules. Although there are currently just over a dozen cases filed, and despite the fact that only a handful of those have

required any briefing or hearings at this point, the logistical difficulties that lie ahead already are apparent. For instance, Respondents are presently simultaneously preparing briefs regarding a TRO challenging the CSRT process, the conditions of access for counsel, and the merits in a motion to dismiss in different cases. Respondents have already argued two motions for a TRO in a single day. Furthermore, there are approximately 600 foreign nationals detained at Guantanamo Bay, so additional petitions are certain to be filed. At some point in the not-too-distant future, the logistical difficulties presented today will become insurmountable – not only to Petitioners’ and Respondents’ Counsel, but to this Court and its personnel, Department of Justice personnel involved in processing security clearances for Petitioners’ counsel, and Department of Defense personnel who (in addition to being called upon to process requests related to these cases) have pressing responsibilities related to their core duties in connection with the ongoing hostilities in Afghanistan and elsewhere. A coordinated schedule would be undeniably preferable to multiple filings and hearings on overlapping issues in an increasing number of cases with various schedules. Moreover, once the common legal issues are resolved, and the shape that these habeas proceedings must therefore take determined, Petitioners can proceed efficiently to tee up any remaining issues pertaining to individual detainees before the individual judges presiding over their actions.

CONCLUSION

For the reasons set forth above, the Court should grant this Motion and order a Joint Case Management Conference for purposes of cataloging the common questions presented by these petitions, and entering a joint scheduling order allowing for the orderly and coordinated resolution of these questions.

Dated: August 4, 2004

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U.S. Department of Homeland Security
U.S. Customs and Border Protection
Office of Border Patrol

Terrorist Organization Reference Guide

January 2004

Exhibit

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of 9

U. S. BUREAU OF CUSTOMS AND BORDER PROTECTION

Purpose: The purpose of the Terrorist Organization Reference Guide is to provide the Field with a who's who in terrorism. The main players and organizations are identified so the CBP Officer and BP Agent can associate what terror groups are from what countries, in order to better screen and identify potential terrorists.

Limitations (Gaps in Data): This Guide is based upon the information available to this office at the time that the report was prepared.

NOTE: This report is based upon information obtained from various open sources. No classified information was used in the preparation of this report.

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Designated Foreign Terrorist Organizations

12. Hizballah (Party of God)

a.k.a. Islamic Jihad, Revolutionary Justice Organization, Organization of the Oppressed on Earth, and Islamic Jihad for the Liberation of Palestine

Description

Formed in 1982 in response to the Israeli invasion of Lebanon, this Lebanon - based radical Shi'a group takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini. The Majlis al-Shura, or Consultative Council, is the group's highest governing body and is led by Secretary General Hassan Nasrallah. Hizballah is dedicated to liberating Jerusalem, ultimately eliminating Israel, and has formally advocated ultimate establishment of Islamic rule in Lebanon. Nonetheless, Hizballah has actively participated in Lebanon's political system since 1992. Hizballah is closely allied with, and often directed by, Iran but may have conducted operations that were not approved by Tehran. While Hizballah does not share the Syrian regime's secular orientation, the group has been a strong tactical ally in helping Syria advance its political objectives in the region.

Activities

Known or suspected to have been involved in numerous anti-US and anti-Israeli terrorist attacks, including the suicide truck bombings of the US Embassy and US Marine barracks in Beirut in October 1983 and the US Embassy annex in Beirut in September 1984. Three members of Hizballah, Imad Mughniyah, Hasan Izz-al-Din, and Ali Atwa, are on the FBI's list of 22 Most Wanted Terrorists for the hijacking in 1985 of TWA Flight 847 during which a US Navy diver was murdered. Elements of the group were responsible for the kidnapping and detention of US and other Westerners in Lebanon in the 1980s. Hizballah also attacked the Israeli Embassy in Argentina in 1992 and the Israeli cultural center in Buenos Aires in 1994. In fall 2000, it captured three Israeli soldiers in the Shab'a Farms and kidnapped an Israeli noncombatant whom it may have lured to Lebanon under false pretenses.

Strength

Several thousand supporters and a few hundred terrorist operatives.

Location/Area of Operation

Operates in the southern suburbs of Beirut, the Bekaa Valley, and southern Lebanon. Has established cells in Europe, Africa, South America, North America, and Asia. Alleged to have raised over \$50 million in the Tri-Border Area of South America since 1995.

External Aid

Receives financial, training, weapons, explosives, political, diplomatic, and organizational aid from Iran and diplomatic, political, and logistic support from Syria.

13. Islamic Movement of Uzbekistan (IMU)

Description

Coalition of Islamic militants from Uzbekistan and other Central Asian states opposed to Uzbekistani President Islam Karimov's secular regime. Although the IMU's primary goal remains to overthrow Karimov and establish an Islamic state in Uzbekistan, IMU political and ideological leader Tohir Yoldashev is working to rebuild the organization and appears to have widened the IMU's targets to include all those he perceives as fighting Islam. The IMU generally has been unable to operate in Uzbekistan and thus has been more active in Kyrgystan and Tajikistan.

Activities

The IMU primarily targeted Uzbekistani interests before October 2001 and is believed to have been responsible for five car bombs in Tashkent in February 1999. Militants also took foreigners hostage in 1999 and 2000, including four US citizens who were mountain climbing in August 2000, and four Japanese geologists and eight Kyrgyz soldiers in August 1999. Even though the IMU's rhetoric and ultimate goals may have been focused on Uzbekistan, it was generally more active in Kyrgystan and Tajikistan. In Operation Enduring Freedom, the counterterrorism coalition has captured, killed, and dispersed many of the IMU's militants who were fighting with the Taliban in Afghanistan and severely degraded the movement's ability to attack Uzbekistani or Coalition interests in the near term. IMU military leader Juma Namangani was killed during an air strike in Afghanistan in November 2001; Yoldashev remains at large.

Strength

Probably fewer than 1,000 militants.

Location/Area of Operation

Militants are scattered throughout South Asia, Tajikistan, and Iran. Area of operations includes Afghanistan, Iran, Kyrgyzstan, Pakistan, Tajikistan, and Uzbekistan.

External Aid

Support from other Islamic extremist groups and patrons in the Middle East and Central and South Asia.

19. Lashkar-e-Tayyiba (LT) (Army of the Righteous)

Description

The LT is the armed wing of the Pakistan -based religious organization, Markaz-ud-Dawa-wal-irshad (MOI) - a Sunni anti-US missionary organization formed in 1989. The LT is led by Abdul Wahid Kashmiri and is one of the three largest and best-trained groups fighting in Kashmir against India; it is not connected to a political party. The United States in October 2001 announced the addition of the LT to the US Treasury Department's Office of Foreign Asset Control's (OFAC) list - which includes organizations that are believed to support terrorist groups and have assets in US jurisdiction that can be frozen or controlled. The group was banned, and the Pakistani Government froze its assets in January 2002.

Activities

The LT has conducted a number of operations against Indian troops and civilian targets in Kashmir since 1993. The LT claimed responsibility for numerous attacks in 2001, including an attack in January on Srinagar airport that killed five Indians along with six militants; an attack on a police station in Srinagar that killed at least eight officers and wounded several others; and an attack in April against Indian border-security forces that left at least four dead. The Indian Government publicly implicated the LT - along with JEM - for the 13 December attack on the Indian Parliament building. The LT is also suspected of involvement in the 14 May 2002 attack on an Indian Army base in Kaluchak that left 36 dead. Senior al-Qaeda lieutenant Abu Zubaydah was captured at an LT safehouse in Faisalabad in March 2002, suggesting some members are facilitating the movement of al-Qaeda members in Pakistan.

Strength

Has several hundred members in Azad Kashmir, Pakistan, and in India's southern Kashmir and Doda regions. Almost all LT cadres are foreigners - mostly Pakistanis from madrassas across the country and Afghan veterans of the Afghan wars. Uses assault rifles, light and heavy machineguns, mortars, explosives, and rocket-propelled grenades.

Location/Area of Operation

Based in Muridke (near Lahore) and Muzaffarabad. The LT trains its militants in mobile training camps across Pakistan-administered Kashmir and had trained in Afghanistan until fall of 2001.

External Aid

Collects donations from the Pakistani community in the Persian Gulf and United Kingdom, Islamic NGOs, and Pakistani and Kashmiri businessmen. The LT also

maintains a Web site (under the name of its parent organization Jamaat ud-Oaawa), through which it solicits funds and provides information on the group's activities. The amount of LT funding is unknown. The LT maintains ties to religious/military groups around the world, ranging from the Philippines to the Middle East and Chechnya through the MOI fraternal network. In anticipation of asset seizures by the Pakistani Government, the LT withdrew funds from bank accounts and invested in legal businesses, such as commodity trading, real estate, and production of consumer goods.

20. Lashkar I Jhangvi (LJ) (Army of Jhangvi)

Description

Lashkar I Jhangvi (LJ) is the militant offshoot of the Sunni sectarian group Sipah-I-Sahaba Pakistan (SSP). The group focuses primarily on anti-Shia attacks and was banned by Pakistani President Musharraf in August 2001 as part of an effort to rein in sectarian violence. Many of its members then sought refuge with the Taliban in Afghanistan, with whom they had existing ties.

Activities

LJ specializes in armed attacks and bombings. The group attempted to assassinate former Prime Minister Nawaz Sharif and his brother Shabaz Sharif, Chief Minister of Punjab Province, in January 1999. Pakistani authorities have publicly linked LJ members to the kidnap and murder of US journalist Daniel Pearl in early 2002. Police officials initially suspected LJ members were involved in the two suicide car bombings in Karachi in 2002-against a French shuttle bus in May and the US Consulate in June - but their subsequent investigations have not led to any LJ members being charged in the attacks. Similarly, press reports have linked LJ to attacks on Christian targets in Pakistan, including a grenade assault on the Protestant International Church in Islamabad in March 2002 that killed two US citizens, but no formal charges have been filed against the group.

Strength

Probably fewer than 100.

Location/Area of Operation

LJ is active primarily in Punjab and Karachi. Some members travel between Pakistan and Afghanistan.

External Aid

Unknown.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 23 September 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

I have no comments.

My comments are attached.

[REDACTED] Lt Col, USAF
Name

23 Sept 04
Date

[REDACTED]
Signature

ISN # [REDACTED]
Enclosure (5)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RASHID AWAD RASHID AL UWAYDAH,)

Petitioner,)

v.)

GEORGE W. BUSH, *et al.*,)

Respondents.)

Civil Action No. 05-1668 (GK)

DECLARATION OF TERESA A. McPALMER

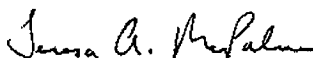
Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information, and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Rashid Awad Rashid al Uwaydah that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 23 March 2006



Teresa A. McPalmer
CDR, JAGC, U. S. Navy



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 0333

80 NOV 2004

From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 664**

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN #664 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final and the detainee will be scheduled for an Administrative Review Board.

A handwritten signature in black ink, appearing to read "J. M. McGARRAH".

J. M. McGARRAH
RADM, CEC, USN

Distribution:

NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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3355

29 Nov 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 664Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #7 of 13 September 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and voluntarily elected to not participate in the Tribunal. The detainee requested his Personal Representative to share information they had previously discussed about the Unclassified Summary.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with all provisions of references (a) and (b). Note that some information in exhibit R-3 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant. Internee Serial Numbers in exhibits R-9 and R-10 have been redacted by a member of the Combatant Status Review Tribunal administrative support element in Guantanamo Bay. Such redactions are completely unnecessary and illogical. I have advised personnel in Guantanamo Bay to cease the practice.
- d. The detainee did not request that any witnesses or evidence be produced.
- e. The Tribunal's decision that detainee # 664 is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

UNCLASSIFIED

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 664

3. I recommend that the decision of the Tribunal be approved and the case be considered final.

A handwritten signature in black ink, appearing to read 'J.R. Cristfield Jr.', written in a cursive style.

JAMES R. CRISTFIELD JR.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

13 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #7

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED] Colonel, U.S. Army; President

[REDACTED], Commander, JAGC, U.S. Navy; Member (JAG)

[REDACTED] Lieutenant Commander, U.S. Navy; Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

03 November 2004

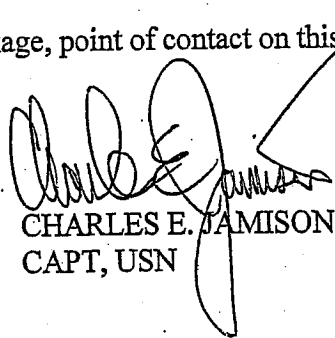
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 664

1. Pursuant to Enclosure (1), paragraph (I)(5) of the *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba* dated 29 July 2004, I am forwarding the Combatant Status Review Tribunal Decision Report for the above mentioned ISN for review and action.

2. If there are any questions regarding this package, point of contact on this matter is the undersigned at DSN [REDACTED].



CHARLES E. JAMISON
CAPT, USN

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (3).

(U) TRIBUNAL PANEL: #7

(U) ISN#: 664

Ref: (a) (U) Convening Order for Tribunal #7 of 13 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis for Tribunal Decision (U/~~FOUO~~)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) Copies of Documentary Evidence Presented (S/NF)
(4) (U) Personal Representative's Record Review (U/~~FOUO~~)

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).

2. (U) On 24 October 2004, the Tribunal determined by a preponderance of the evidence that Detainee #664 is properly designated as an enemy combatant as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, Taliban or Al Qaida forces, as more fully discussed in the enclosures.

4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).


Colonel, U.S. Army
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #7 _____
ISN #: _____ 664 _____

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Taliban or Al Qaida forces. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The Tribunal held this hearing on 24 October 2004. The Recorder presented Exhibits R-1 and R-2 during the unclassified portion of the Tribunal. The primary exhibit, the Unclassified Summary of Evidence (Exhibit R-1), indicates that: the detainee is associated with Al Qaida; the detainee voluntarily traveled from Saudi Arabia to Pakistan in June or July 2001; one of the detainee's known aliases was on a list of captured Al Qaida members that was discovered on a computer hard drive associated with a senior Al Qaida member; the detainee's name is on a list of "trust" accounts of Al Qaida mujahidin found during raids against Al Qaida safe houses in Pakistan; and the detainee's name is on a list of names, aliases and nationalities recovered during raids of suspected Al Qaida safe houses in Pakistan. The Recorder called no witnesses.

The detainee did not attend the Tribunal and refused to provide the Personal Representative with an affirmative or negative response when asked if he desired to participate, as indicated on the Detainee Election Form (Exhibit D-a). The Personal Representative did offer to tell the detainee's story to the Tribunal, if the detainee wished. The detainee indicated to the Personal Representative that "this was good." Accordingly, the Tribunal treated the detainee's failure to affirmatively respond to the Personal Representative's invitation to participate in the Tribunal process as a declination and proceeded without the detainee. However, consistent with the detainee's desires, the Personal Representative submitted into evidence the detainee's responses to the assertions on the Unclassified Summary of Evidence (Exhibit D-b). The Personal Representative presented no other evidence and called no witnesses on behalf of the detainee.

During the classified session of the Tribunal, the Recorder presented Exhibits R-3 through R-14 and commented on the evidence. The Personal Representative presented no classified evidence and made no comments on the classified exhibits. After considering all of the classified and unclassified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-14 and D-a and D-b.
- b. Testimony of the following persons: None.
- c. Unsworn statement of the detainee:

See Exhibit D-b.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The detainee requested no witnesses.

The detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The Recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, the FBI redaction certification, provided no usable evidence. Accordingly, the Tribunal had to look to other evidence to support the assertions on the Unclassified Summary of Evidence and the Tribunal's conclusions.

As noted in paragraph 2, above, the Personal Representative submitted a written response to the assertions contained on the Unclassified Summary of Evidence (see Exhibit D-b). In sum, the detainee admitted he traveled from Saudi Arabia to Pakistan in June or July of 2001, but stated he did so because the Saudi government was chasing him. He clarified that he went to Pakistan via the United Arab Emirates. Regarding his name and aliases appearing on certain computer lists, he stated that there are many names like his and someone who hates him may have planted his name on the lists. He also requested that the Tribunal check the dates on the information because it could relate to before he was in Pakistan. The detainee added that while he was in Pakistan, the war was going on in Afghanistan and there was bombing and there were many Americans at his hotel. The detainee claims that if he was guilty or afraid, he would have run away, but he didn't.

Also, he claims that other people he met stole his money and passport. When considered in the light of the classified evidence, the Tribunal found the detainee's statement unpersuasive. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

None.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The detainee chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.


b. As indicated in Exhibit D-a, the detainee made a conscious decision not to provide a definitive response to the Personal Representative's invitation to participate in the Tribunal process. Because the Personal Representative fully explained the Tribunal process to the detainee, and because the detainee indicated that having the Personal Representative present the detainee's story to the Tribunal was "good," the Tribunal finds the detainee made a knowing, intelligent and voluntary decision not to personally participate in the Tribunal process.

c. The detainee is properly classified as an enemy combatant because he was part of or supporting Taliban or Al Qaida forces.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army
Tribunal President


DETAINEE ELECTION FORM

Date: 20 OCT 04

Start Time: 1430

End Time: 1540

ISN#: 664

Personal Representative: , LTC, US ARMY
(Name/Rank)

Translator Required? Y Language? ARABIC

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

Detainee Election:

- Wants to Participate in Tribunal
- Affirmatively Declines to Participate in Tribunal
- Uncooperative or Unresponsive

Personal Representative Comments:

Detainee refused to attend by not answering the question of whether he would attend or not. I went around this issue several different ways with him but could not get an answer. I told him that no definitive answer was going to be interpreted as a no, but that I would tell his story if he wished. He indicated this was good. So, PR will tell his story to the Tribunal.

Personal Representative: 

UNCLASSIFIED

Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (05 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL UWAYDAH,
Rashid Awad Rashid

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is associated with al Qaida.
 - a. The detainee is associated with al Qaida:
 1. The detainee voluntarily traveled from Saudi Arabia to Pakistan in June or July 2001.
 2. One of the detainee's known aliases was on a list of captured al Qaida members that was discovered on a computer hard drive associated with a senior al Qaida member.
 3. The detainee's name is on a list of 'trust' accounts of al Qaida Mujahidin found during raids against al Qaida safe houses in Pakistan.
 4. The detainee's name is on a list of names, aliases and nationalities recovered during raids of suspected al Qaida safe houses in Pakistan.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

UNCLASSIFIED

Page 3365 of 1
Exhibit RI

UNCLASSIFIED

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 09/28/2004

If you need additional assistance, please contact Asst.
Gen. Counsel [REDACTED],
[REDACTED] or, Intelligence Analyst [REDACTED]
[REDACTED] or
Intelligence Analyst [REDACTED]
[REDACTED]

UNCLASSIFIED

03363
Page 2 of 2

Detainee 664 response to allegations in the Unclassified Summary

1. It is correct that I traveled to Pakistan, but I traveled from the United Arab Emirates. I had left Saudi Arabia because the Saudi government was chasing me. Several friends were also being chased and had been caught, so I went to Pakistan.

2.

3. Regarding the names on the computers. There are many names like mine; there is a Rashid Ahmed in this camp. How can you know that this name is mine? There are a lot of Arab people from Medina (my home town) in Pakistan. It's possible someone of them used my name out of hatred or some other reason. People can use any name they want.

4. Same as 3. but adds. What are the dates on this information, perhaps it was before I was in Pakistan.

In Pakistan while the war was going on in Afghanistan and there was bombing, there were many Americans in my hotel. If I were guilty of something and afraid, I would have run away. I didn't run away. There were other people I met there and they stole my money and my passport. Later the Pakistani Intelligence arrested me. I was so shocked that I could not take care of myself.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 27 October 2004, I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #664.

I have no comments.

My comments are attached.

Name

 LTC

Date

27 OCT 04

Signature



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABDUL RAHMAN,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

Civil Action No. 05-0994 (JDB)

DECLARATION OF TERESA A. McPALMER

Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information, and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Abdul Rahman that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 7 April 2006



Teresa A. McPalmer
CDR, JAGC, U. S. Navy



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 936.

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17 FEB 2005

From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 675**

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN #675 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final and the detainee will be scheduled for an Administrative Review Board.

J. M. McGARRAH
RADM, CEC, USN

Distribution:
NSC (Mr. John B. Wiegmann)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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3371

14 Feb 05

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN #675Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #27 of 9 December 2004
(2) Col. [REDACTED] E-mail of 25 January 2005
(3) Record of Tribunal Proceedings

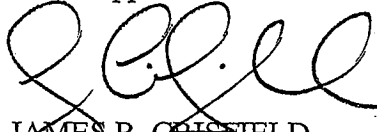
1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and elected to participate.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b). Note that the Tribunal Decision Report does not include a classified decision report. I confirmed with the Tribunal President that the Tribunal found all the classified evidence persuasive of the detainee's status as an enemy combatant. See enclosure (2).
- d. The detainee requested one witness and his passport as evidence. The Tribunal President found both to be relevant. The Tribunal forwarded a request to the Government of Afghanistan through the U.S. State Department to locate and communicate with the witness, but according to the State Department no response was received from the Government of Afghanistan. Based on the lack of a response, the Tribunal President determined that the witness was not reasonably available. The Tribunal also attempted to obtain the detainee's passport by forwarding a request to the Government of Uzbekistan via the State Department. Again, according to the State Department, no response was received. The Tribunal President determined that the passport was not reasonably available. In my opinion, the Tribunal President had no choice but to find the requested witness and document not reasonably available.
- e. The Tribunal's decision that detainee #675 is properly classified as an enemy combatant was unanimous.

UNCLASSIFIED

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN #675

- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit post-tribunal comments to the Tribunal. See enclosure (5) of Record of Tribunal Proceedings.
2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.
3. I recommend that the decision of the Tribunal be approved and the case be considered final.



JAMES R. CRISTFIELD
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

9 Dec 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #27

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED], Colonel, U.S. Army; President

[REDACTED] Lieutenant Colonel, U.S. Air Force; Member

[REDACTED] Lieutenant Colonel, U.S. Air Force;
Member (JAG)

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Navy

3374

Encl (1)

Crisfield, James R (N3N5LD)

From: [REDACTED]
Sent: Tuesday, January 25, 2005 7:42 AM
To: 'Crisfield, James R (N3N5LD)'
Subject: RE: ISN 675

Classification: U N C L A S S I F I E D
Caveats: ~~FOUO~~

CDR Crisfield,

Based on your definition, the Tribunal found all of the classified evidence in ISN 675's case to be persuasive and supportive of the determination of this Detainee's status as an enemy combatant.

[REDACTED]

Classification: U N C L A S S I F I E D
Caveats: ~~FOUO~~



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

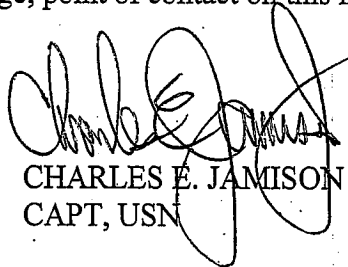
14 January 2005

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander ICO ISN 675

1. Pursuant to Enclosure (1), paragraph (I)(5) of the *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba* dated 29 July 2004, I am forwarding the Combatant Status Review Tribunal Decision Report for the above mentioned ISN for review and action.

2. If there are any questions regarding this package, point of contact on this matter is the undersigned at DSN [REDACTED]



CHARLES E. JAMISON
CAPT, USN

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (4).

(U) TRIBUNAL PANEL: #27

(U) ISN#: 675

Ref: (a) Convening Order for Tribunal #27 of 9 December 2004 (U)
(b) CSRT Implementation Directive of 29 July 2004 (U)
(c) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) Unclassified Summary of Basis for Tribunal Decision (U/~~FOUO~~)
(2) Classified Summary of Basis for Tribunal Decision (N/A)
(3) Summary of Detainee/Witness Testimony (U/~~FOUO~~)
(4) Copies of Documentary Evidence Presented (S/NF)
(5) Personal Representative's Record Review (U)

(U) This Tribunal was convened on 22 December 2004 by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).

(U) The Tribunal has determined that Detainee #675 is properly designated as an enemy combatant as defined in reference (c).

(U) In particular, the Tribunal finds that this detainee supported the Taliban and is a member of the Islamic Movement of Uzbekistan (IMU), an associated force that has engaged in hostilities against the United States or its coalition partners, as more fully discussed in the enclosures.

(U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosure (1).


Colonel, U.S. Army
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: _____ #27 _____
ISN #: _____ 675 _____

1. Introduction

As the Combatant Status Review Tribunal Decision Report indicates, the Tribunal has determined that this detainee supported the Taliban and is a member of the Islamic Movement of Uzbekistan (IMU), an associated force that has engaged in hostilities against the United States or its coalition partners, as more fully discussed in the enclosures. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal. Due to the preponderance of the unclassified evidence and the Detainee's own written and oral testimony, which was supported by the classified evidence, there will be no classified summary Enclosure (2).

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee is associated with the Taliban. The Detainee arrived in Afghanistan in May/June 2000 from Uzbekistan via Tajikistan. The Detainee completed military training in Tajikistan. The Detainee received weapons training on the AK-47 rifle, rocket-propelled grenade launcher, and PK machine gun. The Detainee fought with the Islamic Movement of Uzbekistan. The Islamic Movement of Uzbekistan is a terrorist organization fighting with the Taliban in Afghanistan. The Detainee met with a particular individual in Kabul, to whom he gave his passport. This individual is the leader of the Islamic Movement of Uzbekistan. The Detainee participated in military operations against the coalition. The Detainee was captured in Afghanistan with a weapon and ammunition. The Detainee fought in Afghanistan.

The Detainee participated actively in the Tribunal proceeding and made a sworn statement, as well as submitting a written statement, each responding to the allegations on the Unclassified Summary of Evidence. In short, the Detainee admitted sufficient facts to confirm his status as an enemy combatant.

The Detainee chose to participate in the Tribunal process. He called one witness and requested one document be produced. The Tribunal President approved one witness and found that the approved witness was not reasonably available, and that alternative means of producing the witness's testimony were also not reasonably available. The Tribunal President ordered the unclassified document requested by the detainee to be produced although the State Department was unable to produce this document. The Tribunal President's evidentiary and witness rulings are explained below.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and D-b, R-1 through R-16.
- b. Testimony of the following persons: none.
- c. Sworn statement of the detainee

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested the following witnesses be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Commander Abjulmumin	not reasonably available	no*

* The Detainee offered that this witness would testify that the Detainee willingly surrendered himself. As such the assigned Tribunal president at that time determined that this testimony could be relevant and was therefore approved. A request to obtain this witness testimony was sent to the U.S. Department of State on 26 November 2004 with follow-ups on 10 December 04 and 17 December 04. To date, the Department of State has indicated they have had no response back from the Foreign Embassy. As such, the Tribunal President determined that based on the attempt to locate and the lack of response, this witness was not reasonably available.

The Detainee requested that the following evidence be produced:

<u>Evidence</u>	<u>President's Decision</u>	<u>Produced?</u>
passport	not reasonably available	no*

* The Detainee requested that his passport be obtained from the Uzbekistan government. The assigned Tribunal president at that time approved this request. A request to obtain this document was sent to the U.S. Department of State on 26 November 2004 with follow-ups on 10 December 04 and 17 December 04. To date, the Department of State has indicated they have had no response back from the Foreign Embassy. As such, the Tribunal President determined that based on the attempt to locate and the lack of response, this document was not reasonably available.

5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 is the Department of Homeland Security Terrorist Organization Reference Guide; it highlights that the Islamic Movement of Uzbekistan (IMU) is a designated foreign terrorist organization, but provided no usable evidence. Accordingly, the Tribunal also reviewed the classified exhibits for support of the Unclassified Summary of Evidence.

b. Essentially the only unclassified evidence the Tribunal had to consider was the Detainee's written statement (Exhibit D-b) and his sworn testimony. A summarized transcript of the Detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). A copy of the Detainee's written statement is attached as Exhibit D-b. In sum, the Detainee admitted that he supported the Taliban and was a member of the Islamic Movement of Uzbekistan (IMU). The Detainee admitted fleeing Uzbekistan to Tajikistan in August of 1999 when a friend who was using the Detainee's car and identification murdered a police officer and left the Detainee's identification at the scene. While in Tajikistan, the Detainee met an Islamic Movement of Uzbekistan (IMU) representative who confiscated his military identification card and took him to an auto shop compound, which held many "newcomers." During his stay, the Detainee admitted being trained on and firing an AK-47. The Detainee admitted traveling with the IMU to a mountain region near Kyrgyzstan to join the "battlefront," but claims he never made it due to an illness. The Detainee claims he was treated in an IMU hospital for 7 months. After his recovery, the Detainee stated he and others were transported by Russian soldiers into Afghanistan. Initially arriving in Mazar-e-Sharif, the Detainee claims after one week, he and 5-6 others were transferred to an auto shop compound in Kabul. While in Kabul, the Detainee admitted to driving an ambulance for the IMU. The Detainee claimed that he made several unsuccessful attempts to regain his military ID and money to return to Uzbekistan because he was homesick. Desperate, the Detainee claims he ran away and was captured by the IMU between Kabul and Mazar-e-Sharif. In order to secure his release, the Detainee agreed to go to the front line in the Dashti Archi district of Kunduz City and help with miscellaneous chores for a month or so. When the U.S. bombardment began, the Detainee was handed an AK-47 weapon. When the IMU retreated, the Detainee claims he voluntarily surrendered to the US Alliance Commander Abdul Munin in Dashti Archi's Mulla Quli village.

c. In his closing comments, the Detainee stated he did not want to be returned to his native Uzbekistan, because of the false "criminal" (aka murder) charges against him and that he feared for his life.

The Tribunal found the Detainee's admission that he joined the IMU and supported their (and the Taliban's) efforts in Afghanistan at the frontlines sufficient to confirm his status as an enemy combatant because he supported the Taliban and was a member of the Islamic Movement of Uzbekistan (IMU), an associated force that has engaged in hostilities against the United States and its coalition partners (see Exhibit R-2). The fact

that the Detainee was subsequently incarcerated by the IMU does not detract from his status as an enemy combatant because he voluntarily agreed to go to the frontlines in Afghanistan to get out of jail. Due his criminal record in Uzbekistan, he joined the IMU to avoid returning to his own country and appeared less concerned with their ideological beliefs. The tribunal also considered the classified evidence. The documents did not include any information that would change the findings of any member of the tribunal. Given the Detainee's admissions during his testimony, and the classified exhibits, the Tribunal found the evidence overwhelming that the detainee is properly classified as an enemy combatant.

6. Consultations with the CSRT Legal Advisor

No issues arose during the course of this hearing that required consultation with the CSRT legal advisor.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The Detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed appropriate.
- b. The Detainee understood the Tribunal proceedings and actively participated throughout the Tribunal.
- c. The Detainee is properly classified as an enemy combatant. He supported the Taliban and is a member of the Islamic Movement of Uzbekistan (IMU), an associated force that has engaged in hostilities against the United States or its coalition partners
- d. Due to the preponderance of the unclassified evidence and the Detainee's own written and oral testimony, which was supported by the classified evidence, there will be no classified summary Enclosure (2).

8. Dissenting Tribunal Member's Report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army
Tribunal President

Summarized Detainee Statement

The Tribunal President read the Hearing Instructions to the Detainee. The Detainee confirmed that he understood the process and had no questions.

The Personal Representative presented the Detainee Election Form (Exhibit D-A) to the Tribunal.

The Recorder presented Exhibit R-1 (the Unclassified Summary of Evidence) and Exhibit R-2 to the Tribunal.

The Recorder gave a brief description of the contents of the Unclassified Summary of Evidence (Exhibit R-1).

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

Referring to Exhibit D-A, the Detainee Election Form, the Tribunal President made the following statement:

Tribunal President: I see by the Detainee Election Form that you have elected to participate here today as evidenced by your being here. I also see that you requested to have a witness. You also requested for us to see if we could get your passport.

Detainee: I just want to let you know that I actually went to that person, not to ask for my passport, but my passport should be back in Uzbekistan.

Tribunal President: As such, based on your request we did go to our Department of State to ask for the witness and the document to be produced. They requested these things on the 26th of November with follow-ups on the 10th of December and 17th of December. To date, the Department of State has received no response back from the foreign embassy. As such, I have determined that based on the attempt to locate and the lack of response, this witness and this document at this time are not reasonably available. Should they become available at a later time, the Tribunal will consider whether to re-open your case or not. Kamalludin Kasimbekov, you may now present any evidence you have to the Tribunal and you have the assistance of your Personal Representative in doing so. Do you wish to present information to the Tribunal and would you like to make your statement under oath?

Detainee: Yes.

Tribunal President: Recorder, would you please administer the oath?

The Recorder administered the Muslim oath to the Detainee.

Tribunal President: You may now begin.

Personal Representative: First we would like to enter as an Exhibit D-B, a hand written statement by Kasimbekov.

Tribunal President: Let's take a moment to read this.

The Tribunal paused to read the Detainee's written statement.

Tribunal President: Is there anything else in addition to this written statement that you would like to tell us?

Detainee: I just want to let you know about the item number in my summary of evidence, it is item number three which says that I received training on the AK-47 and the other two weapons. I just want to let you know that I only trained on the AK-47. I just saw the other two weapons at that time and I never received training on them.

3.a.3. The Detainee received weapons training on the AK-47 rifle, rocket-propelled grenade launcher, and PK machine gun.

Tribunal President: Is there anything else you would like to add?

Detainee: Item number six says that I went to the leader of the IMU and gave him my passport. I didn't give him my passport. I went to him to ask for my military I.D. back so I could go home.

3.a.6. The Detainee met with a particular individual in Kabul, to whom he gave his passport.

Detainee: Can I take a look at the evidence? I may have a question? Can I have a couple of minutes to read this?

Personal Representative: He has the Uzbek translation.

Tribunal President: Okay, yes certainly.

The Tribunal paused to allow the Detainee to re-read the translated version of Exhibit R-1.

Detainee: Okay, again about number six, I didn't give him my passport. I just went to him to ask for my military I.D. My passport is actually in Tajikistan. My passport was in Uzbekistan at that time but when I was in Tajikistan, they took my military I.D.

Personal Representative: Who are they?

Detainee: The members of IMU.

Translator: How can I explain "coalition" to him?

Personal Representative: It's a group of, in this case countries or organizations, who support each other toward one common goal.

The translator relayed the definition of culture to the Detainee who appeared to understand.

Detainee: I am concerned that my combatant status review board is a fake and it was presented to me previously. There was a definition of what an Enemy Combatant is and it was saying that anybody who is against or participated against America or it's allies. By that definition, I've never done anything against America and this definition is not relevant to me. The main reason that I joined the IMU was because back in Uzbekistan my brother was jailed with false accusations. When their representative from Uzbekistan came here to the camp I talked to them and they were also giving us all kinds of false accusations. When that delegation came back they read some sort of summary of evidence to me about my case, they read things that I had never heard of and that I never participated in. There were all kinds of charges that I never heard of. Even from his words, they'd be writing some notes and I noticed that they were adding lots things to it that I never talked about.

Tribunal President: Does that conclude your statement?

Detainee: Yes. If there is need for me to write a statement in more detail I can. I didn't have enough time at that moment when they gave me the piece of paper so I just wrote initial portion.

Tribunal President: I think I speak for my fellow Tribunal Members, that I think your statement is very detailed and provides us a lot of information. At this time though we may have some questions for you. Would you be willing to answer some questions for us?

Detainee: Yes.

Tribunal President: Thank you. Personal Representative, do you have any questions for the Detainee?

Personal Representative: Yes ma'am I do.

Personal Representative's questions:

- Q. There were a few things that you mentioned to me in our interview that I think is relevant to the Tribunal and therefore I'd like to ask you a few questions. Why were the members of the IMU holding your military I.D.?
- A. At that time between Tajikistan and Uzbekistan there was no border. I'm not sure about right now, there may be one now but at that time they didn't have a border so everybody could easily go through from one country to another country if they had

a passport, military I.D., or some kind of document. For that reason, if you had any kind of document, they would take that document so you won't be able to travel freely. This was to keep you there with them.

Q. You had requested a witness, Commander Aduluman (ph). What did you want to ask Commander Aduluman (ph) and why?

A. I just wanted him to confirm that I actually surrendered myself voluntarily and nobody pushed to that and that I gave him my weapon.

Q. Why did you decide to surrender to General Fahim's (ph) men?

A. The main reason was because I wanted to go back home and I thought the opportunity to surrender myself would be easier for me get home and sooner.

Q. You were captured in Mazar-e-Sharif while you were helping the IMU. Why did you agree to help the IMU?

A. I agreed to help them out because that was the way I could be released from the jail, that's why I agreed to help them. The jail was in a basement and they didn't have any kind of descent living conditions and it was very hard there. I wanted to get out of the jail and I thought would be a perfect opportunity for me to go back home after that.

Personal Representative: That's all the questions I have.

Detainee: Can I add something?

Tribunal President: Sure.

Detainee: Just for your record I want to let you know that on my previous interrogations, I never had a descent interpreters. Once they brought me two interpreters, which our languages are not even close enough to understand what I was talking about. I'm just guessing that all those items on my summary of evidence that you wrote here, could be the misunderstanding or mistranslation.

Personal Representative: I don't have anything else ma'am.

Tribunal President: Recorder, do you have any questions for the Detainee?

Recorder: No ma'am I don't.

Tribunal President: Do any Tribunal members have any questions for the Detainee?

Tribunal Members' questions:

- Q. You say you have a military I.D. card, were you in the Uzbekistan military?
- A. Yes.
- Q. How old are you?
- A. I'm now 27. I was born in 1977 on November the 9th.
- Q. Education level?
- A. I graduated from 8th grade in the middle school. Then I went to Lesay (ph) it's a kind of college level school. I did three years at Lesay (ph). I turned in my documents to the college but I had to leave the country at that time.
- Q. How long were you in the Uzbek Army or the Uzbek military?
- A. They would assign you to some kind of job and you would work there and 20% of your salary would go to the military as a donation.
- Q. Did you have a particular job in the military? Were you a cook, a soldier, or a mechanic?
- A. I didn't actually work where they assigned me. I was trading jobs. It was like bribing them. You give them money so they don't bother you.
- Q. You said you were jail. Where were you in jail?
- A. In Afghanistan, IMU members actually put me in jail.
- Q. Are you having any problems with the translator today?
- A. No no no.
- Q. Have you been back to Uzbekistan since 1999?
- A. No.
- Q. Do you believe that you are wanted for the policemen's murder? (Referring to information stated in Exhibit D-B)
- A. When the representative from Uzbekistan came here, they gave me a summary of evidence and read me some charges. I was totally shocked hearing those kinds of things because it never happened.

Q. But the Uzbek representative did accuse you of that?

A. Yes.

Tribunal President's questions:

Q. I know in your statement you said that after the U.S. started bombing in Afghanistan is when you decided to leave? When approximately did you surrender?

A. It was about four or five days before Ramadan. I'm not sure about the date but I'm sure it was right before Ramadan. It was approximately four or five days before.

Q. Were you by yourself or did you surrender with a group?

A. When I came to that place I saw lots of people over there, other people who had come to surrender.

Q. Other IMU members?

A. Some Pakistani people, I saw one Arab, and one other person who is actually here at this moment. He speaks Russian.

Q. When you surrendered to them, what did they tell you?

A. They let me go but I was staying with them. They told me not to go far, but to stay around them.

Q. Did they promise you that they would try to help you get home?

A. They just promise me but they even told me that I could just leave right then if I wanted to but I didn't want to go through Tajikistan because I didn't know that particular (area) and didn't know what to do there.

Q. So I guess the follow on question is how did you end up here in Cuba?

A. I believe American intelligence somehow found out that there were lots of people on that side and they came to get us. I believe the date was May 1st.

Tribunal President: I'd like to thank you for participating in this Tribunal today. Kamalludin Kasibekov, do you have any other thing you would like to tell this Tribunal at this time?

Detainee: No, that is pretty much it.

The Tribunal President confirmed with the Personal Representative that he had no further evidence and that the Detainee no previously approved witnesses to present to the Tribunal.

The Tribunal President explained the remainder of the Tribunal process to the Detainee and adjourned the open session.

As the open session was being adjourned the Detainee asked the following question:

Detainee: I have one question.

Tribunal President: Certainly.

Detainee: If the Tribunal determines me as a Non-Enemy Combatant, you said that you are going to send me back to my homeland but in Uzbekistan as you know I may be jailed again because of all the false accusations against me. That is not the place for me to go back to.

Tribunal President: I'll tell you that we don't make that determination. The only thing that we consider is whether you are an Enemy Combatant or not and then the Department of State works to decide where you are actually released to.

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.



Colonel, USA
Tribunal President

DETAINEE ELECTION FORM

Date: 06 November 2004

Start Time: 1410

End Time: 1540

ISN#: 675

Personal Representative:  Major, USAF
(Name/Rank)

Translator Required? YES Language? UZBEK

CSRT Procedure Read to Detainee or Written Copy Read by Detainee? YES

Detainee Election:

- Wants to Participate in Tribunal**
- Affirmatively Declines to Participate in Tribunal**
- Uncooperative or Unresponsive**

Personal Representative Comments:

Detainee #675 was briefed on the CSRT process and he acknowledged that he understood it. The detainee was very cooperative and eager to listen.

Detainee #675 stated that he has a concern that some earlier translators have not accurately translated his statements and he believes there is some confusion with his case file. He has asked to speak at his Tribunal to clarify some of the things about his case. For example, during an interrogation he stated that he had worked in a car repair shop and he heard the translator say that he had worked in a weapons repair shop.

Detainee #675 would like to call a witness from Afghanistan to testify that he willingly surrendered himself. He also would like the US to contact the Uzbekistan government to see if they have his passport. He believes the passport is in their possession, not in Afghanistan as the unclassified summary stated.

Personal Representative: 
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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (27 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – KASIMBEKOV, Kamalludin.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with the Taliban and participated in military operations against the United States and its coalition partners.
 - a. The detainee is associated with the Taliban:
 1. The detainee arrived in Afghanistan in May/June 2000 from Uzbekistan via Tajikistan.
 2. The detainee completed military training in Tajikistan.
 3. The detainee received weapons training on the AK-47 rifle, rocket-propelled grenade launcher, and PK machine gun.
 4. The detainee fought with the Islamic Movement of Uzbekistan.
 5. The Islamic Movement of Uzbekistan is a terrorist organization fighting with the Taliban in Afghanistan.
 6. The detainee met with a particular individual in Kabul, to whom he gave his passport.
 7. This individual is the leader of the Islamic Movement of Uzbekistan.
 - b. The detainee participated in military operations against the coalition.
 1. The detainee was captured in Afghanistan with a weapon and ammunition.
 2. The detainee fought in Afghanistan.

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4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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**U.S. Department of Homeland Security
U.S. Customs and Border Protection
Office of Border Patrol**

NOTE: This report is based upon information obtained from various open sources. No classified information was used in the preparation of this report.

Office of Border Patrol
1624 SSG Sims Road,
AF,
TX 79908
Address: Attn. BPSCC P.O. Box 6017
, Texas 79906
Lieutenant D. Thew
(5) 724-3218

**Terrorist Organization
Reference Guide**

January 2004

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Designated Foreign Terrorist Organizations¹

The following descriptive list constitutes the 36 terrorist groups that currently (as of 30 January 2003) are designated by the Secretary of State as Foreign Terrorist Organizations (FTOs), pursuant to section 219 of the Immigration and Nationality Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. The designations carry legal consequences:

- It is unlawful to provide funds or other material support to a designated FTO.
- Representatives and certain members of a designated FTO can be denied visas or excluded from the United States.
- US financial institutions must block funds of designated FTOs and their agents and must report the blockage to the US Department of the Treasury.

1. Abu Nidal organization (ANO)

a.k.a. Fatah - the Revolutionary Council, Arab Revolutionary Brigades, Black September, and Revolutionary Organization of Socialist Muslims

Description

Has carried out terrorist attacks in 20 countries, killing or injuring almost 900 persons. Targets include the United States, the United Kingdom, France, Israel, moderate Palestinians, the PLO, and various Arab countries. Major attacks included the Rome and Vienna airports in December 1985, the Neve Shalom synagogue in Istanbul and the Pan Am Flight 73 hijacking in Karachi in September 1986, and the City of Poros day-excursion ship attack in Greece in July 1988. Suspected of assassinating PLO deputy chief Abu Iyad and PLO security chief Abu Hul in Tunis in January 1991. ANO assassinated a Jordanian diplomat in Lebanon in January 1994 and has been linked to the killing of the PLO representative there. Has not staged a major attack against Western targets since the late 1980s.

Strength

Few hundred plus limited overseas support structure.

Location/Area of Operation

Elements relocated to Iraq in December 1998, where the group maintains a presence. Has an operational presence in Lebanon including in several Palestinian refugee camps. Authorities shut down the ANO's operations in Libya and Egypt in 1999. Has demonstrated ability to operate over wide area, including the Middle East, Asia, and Europe. Financial problems and internal disorganization have reduced the group's activities and capabilities.

External Aid

Receives financial, training, weapons, explosives, political, diplomatic, and organizational aid from Iran and diplomatic, political, and logistic support from Syria.

13. Islamic Movement of Uzbekistan (IMU)**Description**

Coalition of Islamic militants from Uzbekistan and other Central Asian states opposed to Uzbekistani President Islam Karimov's secular regime. Although the IMU's primary goal remains to overthrow Karimov and establish an Islamic state in Uzbekistan, IMU political and ideological leader Tohir Yoldashev is working to rebuild the organization and appears to have widened the IMU's targets to include all those he perceives as fighting Islam. The IMU generally has been unable to operate in Uzbekistan and thus has been more active in Kyrgystan and Tajikistan.

Activities

The IMU primarily targeted Uzbekistani interests before October 2001 and is believed to have been responsible for five car bombs in Tashkent in February 1999. Militants also took foreigners hostage in 1999 and 2000, including four US citizens who were mountain climbing in August 2000, and four Japanese geologists and eight Kyrgyz soldiers in August 1999. Even though the IMU's rhetoric and ultimate goals may have been focused on Uzbekistan, it was generally more active in Kyrgystan and Tajikistan. In Operation Enduring Freedom, the counterterrorism coalition has captured, killed, and dispersed many of the IMU's militants who were fighting with the Taliban in Afghanistan and severely degraded the movement's ability to attack Uzbekistani or Coalition interests in the near term. IMU military leader Juma Namangani was killed during an air strike in Afghanistan in November 2001; Yoldashev remains at large.

Strength

Probably fewer than 1,000 militants.

Location/Area of Operation

Militants are scattered throughout South Asia, Tajikistan, and Iran. Area of operations includes Afghanistan, Iran, Kyrgyzstan, Pakistan, Tajikistan, and Uzbekistan.

External Aid

Support from other Islamic extremist groups and patrons in the Middle East and Central and South Asia.

Жангчи статусни қайта кўриб чиқиш кенгаши

Шахсий Вакилга

Хукумат Вакилидан (27 Октябрь 2004)

Мавзу – Жангчи статусни қайта кўриб чиқиш Суд учун исбот-далилларнинг қисқача мазмуни – КАСИМБЕКОВ, Комолидин.

1. 2004 йил 16-Июль билан саналанган Ҳарбий денгиз флоти департамент бўлими баённомасининг талабларига биноан – **Кубадаги Гвантанамо Курфази Ҳарбий Базасида Ушлаб Қолинган Душман Жангчиларга нисбатан жангчи статусни қайта кўриб чиқиш Судни Амалларини Ижро Қилиш** – Трибунал, ушлаб олинганларни душман жангчиси деб белгиланганини (аниқланганини) қайта кўриб чиқиш учун тайинланган.
2. Америка Қўшма Штатлари ва унинг иттифоқдошдарига қарши жанг қилган Толибон ёки Ал Қойда, ва уларга қўшилган кучларнинг аъзоси бўлган ёки уларга ёрдам берганлар, душман жангчиси деб ҳисобланади. Бунинг ичига жанг қилганлар ва уларга тўғридан тўғри ёрдам берган ҳамма инсонлар киради.
3. АҚШ ҳукумати ушлаб олинган инсонни душман жангчиси деб олдиндан аниқлаган. Бу аниқлаш АҚШнинг қўлидаги маълумотдан келиб чиқади ва бу маълумот ушлаб олинган инсоннинг Толибон билан қўшилганини ва Америка Қўшма Штатлари ва унинг коалиция иттифоқдошдарига қарши ҳарбий амалиётларда иштирок этганини кўрсатади.
 - а. Ушлаб олинган инсон Толибон билан қўшилган:
 1. Ушлаб олинган инсон Май ёки Июнь ойида 2000 йилда Ўзбекистондан, Тожикистон орқали Афғонистонга етиб келди.
 2. Ушлаб олинган инсон Тожикистонда ҳарбий машқ тугатди.
 3. Ушлаб олинган инсон АК-47 милтиғи, граната учирадиган ракета отувчи, ва ПК пулемёти бўйича машқ олди.
 4. Ушлаб олинган инсон Ўзбекистоннинг Исломиий Ҳаракати билан (тарафида) жанг қилди.
 5. Ўзбекистоннинг Исломиий Ҳаракати Афғонистонда Толибон билан (тарафида) жанг қиладиган террористик ташқилоти.
 6. Ушлаб олинган инсон Қабулда алоҳида бир шахс (инсон) билан учрашди. Ушлаб олинган инсон унга паспортини берди.

7. Бу инсон Ўзбекистоннинг Исломий Ҳаракатининг бошлиғи.
 - б. Ушлаб олинган инсон коалицияга қарши ҳарбий амалиётларда иштирок этди.
 1. Ушлаб олинган инсон Афғонистонда қурол ва ўқ-дори билан қўлга олинган.
 2. Ушлаб олинган инсон Афғонистонда жанг қилди.
4. Ушлаб олинган одам ўзини душман жангчиси деб аниқланганини мунозара қилиш учун имконияти бўлади. Трибунал, иштирок этиши мумкин бўлган гувоҳларни келтиришга ҳаракат қилади. Хамда, ушлаб олинган инсон душман жангчиси эмаслигини исбот қиладиган далилларни келтиришга имконият беради. Исбот ёки гувоҳларни мумкин бўлган даражада иштирок этишини Суд Раҳбари қарор қилади.

Kamoliddin Tohirjonovich Kacimbekov's statement.


In the beginning of August 1999, in Tashkent, my friend Abdurouf, wanted to borrow my car for a short period of time. I gave it to him and waited for him near the hospital of Tashkent medical institute. He came vary late around 10-11 at night. He called me from the car, without getting off. I set in the car and He drove the car for about a half in hour through the beltway in to vineyard. I was wondering that He didn't say a word while driving. Later He told me that my passport, driver's license and registration (could be a title) are gone and where He left them. When He was giving a ride to His friends, who are in inquiry (wanted), police stopped Him and asked for documents. When police realized that documents are do not belong to Abdurouf, He wanted to repossess the car. At that moment His friends got scared and they killed the police. My documents were with that policeman and Abdurof left His friends and came back to me. I had my military ID with me. Than Abdurouf apologized to me and requested that I'll go with Him to Kazakstan. Involuntarily I had to leave. In Kazakstan I stayed approximately 1 week. Than during one day, Abdurouf got the address of some place from His friends and we left with Him towards that address. We came back to Tashkent, went to the South Station and left to Yangier by bus. From there we went to Leninobod, city in Tajikistan and then to Dushanbe city by taxi. Than by minivan we travel to Tajik opposition and met with the IMU representative. After one day we travel to Hoyit by a hitch hiking truck. I came to Hoyit. There, another person took my military ID and asked me several questions about myself. Then He took only me to the place in Hoyit, which previously belong to some auto shop and was surrounded by wall. People of all kind off ages were there and they were also newcomers. I stayed at that place 1 week. During that week I received training on the AK-47 rifle and shoot 10 bullets for practice only. I also saw grenade launcher and PK gun machine there, but we didn't have training on them. After about 1 week or 10 days, truck came and at nighttime we drove for a 1 or 2 hours and came to Tajikistan

mountainous area near the border of Kyrgyzstan. After one day with ammunitions we walked up to the mountains 1 day and down 1 day. And came to the Batkent region of Kyrgyzstan. If you walk another half a day from that place, you would've end up at the battlefield (for reason to cross to Uzbekistan) of IMU. I didn't go there. I left behind. I was having problems with my health. 1 month later I took care of (improved) my health and went back to Tajikistan again. I came to the Lojir village of Tajikistan. At that place IMU had a hospital. There I was getting treatment for about 7 month or so. Then, truck came and took us all. On the way other cars, trucks, busses joined us (in month of May) and we all went (came) to the border of Afghanistan through (via) the city Kulob of Tajikistan. Then Tajik government and Russian army by helicopter and ship transported us to Afghanistan. Then on our trucks again we came to city Kunduz, Afghanistan. We stayed 1 day there and than left to city Masar-E-Sharif. After staying in Masar-E-Sharif for about 1 week, me and 5-6 other people were transported to city Kabul by airplane. In Kabul they placed me to work at auto shop on Vazir Akbarhon street or region. That auto shop belongs to IMU and after working there for some period of time I've been appoint to drive the IMU's ambulance. In the year of 2001, because I've missed my home and my parents, I went to the leader of IMU and ask permission to go home and also for my military ID and money. After the third time, still not getting result, I borrowed approximately \$80 from my friends and runaway, because anyone who decides to live that place for good will be jailed. While riding a minivan taxi from Kabul through Masar-E-Sharif in order to get to Uzbekistan, I've been captured and jailed for 6 month by people from IMU between Kabul and Masar-E-Sharif. I've been released on September 16th 2001 with agreement that I will help in a battle. I came to the front line in Dashti Archi district of Kunduz city and was helping with all kind of household work for about a month or so. In 2001 US bombarded those places and because of lots of dead bodies they gave me AK-47 weapon. IMU retreat front line. I didn't follow them. I went to the US Alliance commander Abdul Mumin in Dashti Archi's Mulla Quli village and turn in my weapon. There were no bullets shot from my weapon.

P.S. Because of time, months and days might not be very accurate.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 30 December 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #675.

 have no comments.

My comments are attached.

 Maj, USAF
Name

30 Dec 2004
Date


Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWAZ NAMAN HAMOUD)
ABDULLAH MAHDI,)
)
Petitioner)
)
v.) Civil Action No. 05-665 (RWR)
)
GEORGE W. BUSH, *et al.*,)
)
Respondents.)
_____)

DECLARATION OF TERESA A. McPALMER

Pursuant to 28 U.S.C. § 1746, I, Commander Teresa A. McPalmer, Judge Advocate General's Corps, United States Navy, hereby state that to the best of my knowledge, information, and belief, the following is true, accurate and correct:

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Fawaz Naman Hamoud Abdullah Mahdi that are suitable for public release. Two documents that pertain to the petitioner's medical condition are not attached hereto. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by a member of the OARDEC legal staff. This staff member also redacted information that would personally identify other detainees and certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 13 July 2005

Teresa A. McPalmer

Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser35
12 August 2004

~~FOR OFFICIAL USE ONLY~~

From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 678**

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004

1. I concur in the decision of the Combatant Status Review Tribunal that Detainee ISN #678 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final, and the detainee will be scheduled for an Administrative Review Board.

A handwritten signature in cursive script, reading "J. M. McGarrah", is positioned above the typed name.

J. M. MCGARRAH
RADM, CEC, USNR

Distribution:
NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

~~FOR OFFICIAL USE ONLY~~

11 Aug 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 678Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Order of 29 July 2004Encl: (1) Appointing Order for Tribunal #3 of 30 July 2004
(2) Record of Proceedings for Detainee # 678

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

a. The detainee was properly notified of the Tribunal process and elected to participate in the Tribunal.

b. The Tribunal was properly convened and constituted by enclosure (1). I note that this Tribunal was appointed on 30 July 2004 as Combatant Status Review Tribunal # 3. Due to an administrative shuffle of the Tribunal appointing letters, Tribunal # 2 was appointed *after* Tribunal # 3. As a result, the Tribunal Decision Report in enclosure (2) refers to this Tribunal as Tribunal # 2 when it is actually Tribunal # 3.

c. The Tribunal complied with all provisions of references (a) and (b). The evidence raised the issue of the detainee's mental capacity to participate in the hearing. The Tribunal recognized this issue and determined that the detainee was mentally capable of participating in the proceeding.

d. The detainee requested one witness who he identified to his Personal Representative as [REDACTED] or [REDACTED]. That witness was later identified as [REDACTED]. [REDACTED] testified in person before the Tribunal. [REDACTED] refused to take a formal oath, but, in response to questioning from the Recorder, he promised to tell the truth. The detainee made no other requests for witnesses or other evidence, although during his statement to the Tribunal he referred to several people in Saudi Arabia and Yemen who could testify regarding his motive for fighting jihad in Afghanistan. The Tribunal President, after consulting with the Legal Advisor and Personal Representative, properly determined that this reference did not constitute a witness request. Note that even if the President had determined that the detainee's reference *did* constitute a witness request, the witnesses would have been irrelevant to the Tribunal's decision since, according to the detainee, the witnesses only

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW
TRIBUNAL FOR DETAINEE ISN # 678

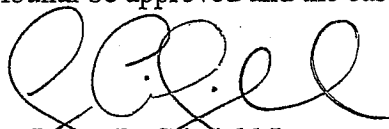
had knowledge of the detainee's motive for fighting in Afghanistan and apparently would not contradict the fact that he went to Afghanistan and fought for al-Qaeda and the Taliban.

e. The Tribunal's decision that detainee # 678 is properly classified as an enemy combatant was unanimous.

f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

3. I recommend that the decision of the Tribunal be approved and the case be considered final.



James R. Cristfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

30 July 2004
Ser/0035ajs

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #3

Ref: (a) Convening Authority Appointment Letter of 9 July 2004

By the authority given to me in reference (a), a Combatant Status Review Tribunal established by "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba" dated 29 July 2004 is hereby convened. It shall hear such cases as shall be brought before it without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

MEMBERS:

[REDACTED] Colonel, U.S. Marine Corps Reserve; President

[REDACTED] Lieutenant Colonel, JAGC, U.S. Army; Member (JAG)

[REDACTED] Lieutenant Colonel, U.S. Air Force; Member

A handwritten signature in cursive script, reading "J. M. McGARRAH", is positioned above the typed name.

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
U.S. Naval Reserve

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) (3) and (4).

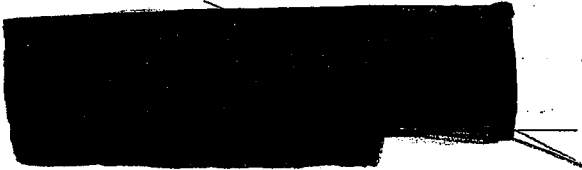
(U) TRIBUNAL PANEL: #2

(U) ISN#: 678

Ref: (a) Convening Order for Tribunal #2 of 30 July 2004 (U)
(b) CSRT Implementation Directive of 29 July 2004 (U)
(c) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) Unclassified Summary of Basis For Tribunal Decision (U)
(2) Classified Summary of Basis for Tribunal Decision (S//NF)
(3) Summary of Detainee/Witness Testimony (S//NF)
(4) Copies of Documentary Evidence Presented (S//NF)
(5) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).
2. (U) The Tribunal has determined, by a preponderance of the evidence, that Detainee #678 is designated as an enemy combatant as defined in reference (c).
3. (U) In particular, the Tribunal finds that this detainee affiliated himself with both Al-Qaeda and the Taliban, as more fully discussed in the enclosures.
4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).



Colonel, U.S. Marine Corps
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

(Enclosure (1) to Combatant Status Review Tribunal Decision Report)

TRIBUNAL PANEL: #2
ISN #: 678

1. Introduction

As the Combatant Status Review Tribunal Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and has affiliated himself with both Al-Qaeda and the Taliban. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Any classified evidence considered by the Tribunal is discussed in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

2. Synopsis of Proceedings

The unclassified evidence presented to the Tribunal by the Recorder indicated that the detainee was captured in Afghanistan in 2001 and affiliated himself with both Al-Qaeda and the Taliban. The detainee chose to participate in the Tribunal process. He called one witness, and orally responded to questions from his Personal Representative. The Tribunal President found the requested witness reasonably available, and allowed the witness's testimony. The detainee, in his oral responses to questions, admitted traveling to the [REDACTED] training camp, and training to fight in Jihad. He also admitted to "turning himself in," along with his weapon, to Northern Alliance forces while he was fighting with Taliban forces in Afghanistan. He denied executing an oath to Osama Bin Laden. The Tribunal President's evidentiary and witness rulings are explained below.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a, R-1, and R-2 through R-18*
- b. Testimony of the following persons: [REDACTED] (ISN [REDACTED])
- c. Oral Responses of detainee in response to questions from his Personal Representative

*Exhibits R-2 through R-15, and R-18 are classified SECRET/NOFORN.

4. Rulings by the Tribunal on Detainee Requests for Evidence or Witnesses

The Detainee requested that the following witness be produced for the hearing:

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
[REDACTED]	Reasonably Available	Yes

The Detainee requested no additional evidence be produced. He declined to make an oral statement on his own behalf, but he prepared a written statement in his native language, which was translated into English, and he asked his Personal Representative to read it on his behalf. He appropriately answered questions posed to him by his Personal Representative, as well as by Tribunal Members.

5. Discussion of Unclassified Evidence

The Tribunal found the following unclassified evidence persuasive in making its determinations: Exhibit R-1, which indicated that the detainee affiliated himself with Al-Qaeda by signing an oath of loyalty to Osama Bin Laden and training at the [REDACTED] training camp in Afghanistan, a camp known to be frequented by Al-Qaeda members and sympathizers. The detainee also admitted traveling to Afghanistan to fight in the Jihad, fought with the [REDACTED] group of Taliban fighters and engaged in hostilities against the Northern Alliance, an ally of the United States. Northern Alliance forces captured the detainee in 2001 near Mulla Qoli, Afghanistan.

The Tribunal found the following unclassified evidence unpersuasive in making its determinations: Exhibits R-16 and R-17, psychiatric examinations of the detainee in 2002. While these were persuasive in advancing the notion that the detainee suffers from a form of mental illness, they were not persuasive as to whether the detainee had acted as an Enemy Combatant, as defined in reference (c). For example, while R-17 indicates that the information offered by detainee should be considered "highly unreliable," it also says "there may be nuggets of vitally useful information buried [beneath] the mountain of psychiatric nonsense."

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

The Tribunal consulted the Legal Advisor during the course of this hearing on the following matters: During the Personal Representative's questioning of the detainee, the detainee exclaimed that he had witnesses in Saudi Arabia and Yemen who could support his contention that he only went to fight in the Jihad in Afghanistan at the urging of his friends and a Mullah in Mecca to cleanse his soul and free himself from his "magic illness" (detainee's reference to his alleged mental illness), or words to that effect. The

President inquired further of the Personal Representative as to whether the detainee had actually requested those witnesses (or any witnesses) be present. The Personal Representative replied that the detainee had not mentioned specific individuals such that a specific request for their presence could be made. After consultation with the Legal Advisor, the President determined that the detainee had not made a specific request for identifiable witnesses; therefore, a specific ruling as to their relevance or reasonable availability was not necessary.

7. Conclusions of the Tribunal

Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

a. The detainee was mentally and physically capable of participating in the proceeding. No additional medical or mental health evaluations (other than the ones that had already been conducted as evidenced in exhibits R-16 and R-17) were requested or otherwise deemed appropriate.

b. The detainee understood the Tribunal proceedings. He asked no questions regarding his rights and, although he asked his Personal Representative to read a statement and speak for him at the beginning of the proceeding, he also answered questions posed to him and otherwise actively participated in the hearing.

c. The detainee is properly classified as an enemy combatant because he affiliated himself with both Al-Qaeda and the Taliban.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

A large black rectangular redaction box covering the signature of the Tribunal President.

Colonel, U.S. Marine Corps
Tribunal President

UNCLASSIFIED

Summarized Detainee Statement

I did not see anything. I am not an enemy combatant. I have a witness. It does not matter to me if my Personal Representative speaks on my behalf.

Detainee's witness is escorted into the proceedings.

Summarized Detainee Witness Statement

How are you Fawaz. I am so truthful. Anything I say will be the truth. There is no need for me to be under oath. I know the difference between the truth and a lie. Yes what I say will be the truth.

Answers in response to questions by the Personal Representative:

Yes I remember seeing Fawaz. I was sitting there. I saw Fawaz receiving his treatment there. I was sitting there in the hospital. I saw Fawaz receiving his treatment there. Fawaz was sitting there with me in the hospital. Fawaz was there getting treatment. That is all I know. Fawaz was getting treatment for magic things and have to be treated by reading of the Koran.

Summarized Detainee Statement

I was being treated for my mental problem. We had just met there in the Harem.

Summarized Detainee Witness Statement

Answers in response to questions by the Recorder:

Yes I did travel to Afghanistan. No I did not travel with the detainee. I did see the detainee in Afghanistan. I am willing to answer any questions. I just saw this guy there getting his treatment. That is the only thing I knew about him. I did not talk to him about any subject.

Answers in response to questions by the Tribunal Members:

If you have questions, please ask. I did not spend time with the detainee. I saw him. At that time they closed the roads to Palestine. I did not have any contact with the detainee. I just saw him there. I did not discuss him condition. I am holding myself responsible for everything I tell you. No I don't have anything else. I just would like to know how is health condition is doing. God be with you Fawaz. There is nothing. We don't have anything. I don't know why they are holding us here. We are so sure about this. We don't have anything. God be with you Fawaz.

Witness is removed from the proceedings.

UNCLASSIFIED

Summarized Detainee Statement

I want my Personal Representative to speak for me.

Statement By Personal Representative

In response to the unclassified summary of evidence, I Fawaz want you to know he did not know the meaning of Al Qaeda. I did not know anything about them until I turned myself in. I did not know swear to Jihad or Usama Bin Laden. I did not sign an oath of loyalty to Usama Bin Laden. I accused myself in front of the interrogators of many things to hasten my assumed execution rather than going to prison. I trained with [REDACTED] [REDACTED] I had to train there before I was allowed to go north. I left very early because the training was cruel. I was a fighter against Ahmed Masood. I did not know they were US Allies. I did not want to fight at all. But my friends and the Mullah told me to fight. I tried to pray to the Koran, to cleanse my soul. I had to fight Jihad as a last resort to cleanse my soul.

Summarized Detainee Statement

I fight only because of Mullah. I prayed and reading of Koran for the sake of God. I did all these things for the sake of God. I was there because I was told only the Jihad places had magic things inside.

Statement By Personal Representative

I went to fight Jihad as a last resort to fight the spell that was making me mentally ill. I was assigned to the [REDACTED] group of fighters. I had a weapon, but I never fired it. I turned myself in [REDACTED] at Mulli Qoli three days before Ramadan.

Summarized Detainee Statement

Answers in response to questions by the Tribunal Members:

I have witnesses in Saudi Arabia and Yemen. I was told I have magic disease. I went to the hospital. They have the x-rays and reports. I experience some psychological problems while I was in the hospital. All my reports are still there in the same hospital. I was in the fight. I turned myself in to save my life. When we received the order to pull back, I withdraw and I had the weapon. I left the training camp because of the stress. The orders that was given to us was to do this and to do that. I decided to run away from the camp. Yes I turned in my weapon when I turned myself in. I have witnesses in Saudi Arabia and Yemen. They knew very well that my purpose for travel was not for Jihad but to treat myself.

UNCLASSIFIED

AUTHENTICATION

I certify the material contained in this transcript is a true and accurate summary of the testimony given during the proceedings.



Colonel, USMC
President, CSRT

UNCLASSIFIED

Detainee Election Form

Date/Time: 22 JUL 04 / 0730

ISN#: 678

Personal Representative: Lt Col [REDACTED]
[Name/Rank]

Translator Required? Yes Language? Modern Arabic

CSRT Procedures Read to Detainee or Written Copy Read by Detainee? _____

Detainee Election:

Wants to Participate in Tribunal

Affirmatively Declines to Participate in Tribunal

Uncooperative or Unresponsive

Personal Representative Comments:

Detainee requested another detainee,
[REDACTED] ([REDACTED])
be present at his hearing. Based on information
detainee provided, the witness requested is
ISN [REDACTED]
Detainee desires to make an oral statement
to Tribunal.

[REDACTED]
Personal Representative

Combatant Status Review Board

TO: Personal Representative

FROM: Recorder

Subject: Summary of Evidence for Combatant Status Review Tribunal – Mahdi, Fawaz Naman Hamoud Abdullah.

1. Under the provisions of the Department of the Navy Memorandum, dated 16 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is a member of Al-Qaida and associated with the Taliban. He engaged in hostilities against the United States or its coalition partners
 - a. Detainee is a member of Al-Qaida.
 1. The detainee signed an oath of loyalty to Usama Bin Laden
 2. He trained at the [REDACTED] training camp
 - b. Detainee engaged in hostilities against the United States or its coalition partners
 1. Detainee admitted that he went to Afghanistan to fight in the Jihad.
 2. He was assigned to the [REDACTED] Group of fighters. This group was responsible for a 50M by 100M sector on the front.
 3. He was captured in 2001 three days before Ramadan by Northern Alliance forces near the village of Mulla Qoli.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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EXHIBIT R1

Personal Representative Review of the Record of Proceedings

I acknowledge that on 3 August 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN# 678.

I have no comments.

My comments are attached.

Name



Date

3 AUG 04

Signature

