

Exhibit A



AMHERST COLLEGE

Department of Religion

PROFESSOR JAMAL J. ELIAS

December 13, 2004

Baher Azmy, Esquire
Seton Hall School of Law
833 McCarter Highway
Newark, NJ 07102

Dear Professor Azmy:

At your request, I am writing to provide an expert opinion on the philosophy and activities of the Tablighi Jama'at movement, in connection with an administrative military proceeding your client faces as part of his detention in Guantanamo Bay, Cuba. I hold the position of Professor of Religion at Amherst College, with a specialization in Islamic thought. One of my books on Islam has been translated into five languages and I have written quite extensively on religion in contemporary Pakistan. My most recent research trip to the country was in December 2003 and was focused in large part on the Tablighi Jama'at, their emphasis on travel and their attitudes toward international and domestic Pakistani politics.

In this letter, I will attempt to describe the general philosophy and history of the Tablighis (the common term for the members of the Tablighi Jama'at movement), which should be highly relevant to understanding the circumstances of your client's travel to and within Pakistan. I will also attempt to explain why it is extremely implausible that the Tablighis support terrorism or are in any way affiliated with any terrorist or "jihadi" movements such as the Taliban or Al Qaeda, or even with extremist movements operating in Pakistan.

The formal beginnings of the organization date from the mid-1930s when the Tablighi Jama'at first emerged as a movement aimed at reforming Muslims through greater adherence to ritual, particularly to prayer. Since that time, their fundamental beliefs have consisted of Six Principles (*Chhe Usul*): (i) the Islamic credal formula (There is no god but Allah, and Muhammad is the messenger of Allah) is an individual covenant with God which has to be understood in its true meaning and with all its implications; (ii) prayer is the most important ritual obligation of a Muslim and should be performed in a congregation whenever possible; (iii) religious knowledge (*ilm*) and remembrance of God (*zikr*) are obligatory for every Muslim, and both derive from the study of the Qur'an; (iv) respect for all Muslims is imperative (kind treatment of all non-Muslims is actively encouraged but it is not an explicit principle); (v) sincerity of purpose (*ikhlas-e niyyat*) is obligatory, in the sense that all acts must have appropriate intentions since, in the absence of such intention, even good acts will not be rewarded by God; and (vi) members must donate time (*tafrigh-e waqt*) to the movement to engage in missionary activity.

The last principle refers to the obligation of members of the Tablighi Jama'at to take time from their regular lives to travel and actively engage in spreading the message of the movement in the Muslim community. The sixth principle is also referred to as

tabligh, emphasizing its centrality as a doctrine. Depending on the interpretation, a follower of the movement is required to spend between one day and four months a year traveling to call people to the movement (other teachings state that this obligation can be met by traveling as a missionary for four months cumulatively during the course of one's lifetime). Local, regional and international travel as *tabligh* has come to fulfill the Muslim obligation to 'strive in the path of God' (*jihad fi sabil Allah*) in Tablighi understanding.

I must emphasize this last point, that the Tablighis formally and actively believe that traveling to engage in missionary activity fully discharges any religious obligation to engage in Jihad. This is fully in keeping with others of the Six Principles which take a spiritual interpretation of rituals such as prayer and emphasize an almost mystical (Sufi) understanding of the nature of religious knowledge and remembrance of God. Followers of the Tablighi Jama'at are forbidden from actively participating in politics or extremist movements, a stand that has frequently put them in conflict with religious political parties in Pakistan.

Personal reform through prayer is one of the most identifiable features of the Tablighi Jama'at movement. At the same time, travel (including international travel) has become an essential characteristic of the movement through which followers not only call others to the 'true faith' (i.e. engage in *da'wa*), but also a means for self-improvement. As such, there is absolutely nothing out of the ordinary for a young man in Germany to associate with the Tablighi Jama'at movement in a personal spiritual attempt to discover (or rediscover) his faith. If he were to do so, it would be completely expected that he would end up traveling with a group of Tablighi men as a necessary requirement of their faith. Given that Pakistan forms the practical international center of this movement, it would be logical that his early travels would take him there where he would not only meet with other members of the movement but would be expected to travel from city to city as part of the sixth formal principle of their movement. I would also posit that it would be especially important to members of the movement to take new European converts around with them when they were traveling in Pakistan because it would help with missionary activity: "prize" converts – people from exotic or more economically developed backgrounds – are used by many religious movements the world over to show off the attractiveness or dynamism of their message, its "truth" as it were. It is a major part of the public rhetoric of the Tablighi Jama'at that their movement contains people from all over the world and that their annual gatherings at Raiwind in Pakistan and Tongi in Bangladesh have a wide international attendance. There is some circumstantial evidence to suggest that extremist groups have been trying to infiltrate the Tablighi Jama'at's annual gathering at Raiwind either to make trouble or else to win converts from the million-strong crowd that congregates there. However, it is important to note that these extremist groups are not condoned by the structure, leadership or teachings of the Tablighi Jama'at, that they would be using a very large crowd as cover as opposed to infiltrating the rank and file of the movement, and that they would be there to win converts AWAY from the Tablighis, not to share with them in any ideological or political sense. Furthermore, I gather that your client is not accused of attending the annual gathering at Raiwind; it is therefore highly unlikely that he would have had contact with any extremist or "jihadi" groups through his travels with the Tablighis.

In conclusion, I would like to state that, in light of the formal emphasis the Tablighi Jama'at places on encouraging personal spiritual reform through prayer and studying the Qur'an, it would be very natural for a young Muslim in Europe to get involved with them in order to become more religious. Given the importance placed on group travel for purposes of missionary activity and self-improvement in the teachings of the movement, it would follow that he would then join with other Tablighi men and journey to Pakistan, the functional center of their movement. While there, he would be expected to go from town to town with these and other members of the movement in order to fulfill his religious obligations and increase his sense of fellowship. There is absolutely nothing in these activities to suggest that he either started out with any desire to join a political or extremist group or that he would have had contact with them in Pakistan. On the contrary, affiliation with the Tablighi Jama'at would normally mean that one had made the conscious decision to distance oneself from politics and armed conflict.

Sincerely,

A handwritten signature in cursive script that reads "Jamal J. Elias".

Jamal J. Elias
Professor of Religion
Amherst College
Amherst, MA 01002-5000

Baher Azmy, Esq.
Associate Professor
Seton Hall School of Law
833 McCarter Highway
Newark, NJ 07102

Dear Professor Azmy:

At your request, I am writing to provide an expert opinion on the philosophy and activities of the Tablighi Jamaat/Jamaat al Tablighi, in connection with an administrative military proceeding your client faces as part of his detention in Guantanamo Bay, Cuba. I am currently a Professor of History and Director of the Center for South Asian Studies at the University of Michigan and have been specifically studying the Tablighi Jamaat movement for about 15 years. I have written extensively on the group and a list of my publications is attached as part of my C.V. In this letter, I will attempt to describe the general philosophy and history of the Tablighis, which should be highly relevant to understanding the circumstances of your client's travel to and within Pakistan. I will also attempt to explain why it is implausible to believe that the Tablighis support terrorism or are in any way affiliated with other terrorist or "jihadi" movements such as the Taliban or Al Qaeda.

I might begin by noting that this movement originated in India in the 1920s but its participants now are found throughout the world. A collection of articles, *Travellers in Faith: Studies of the Tablighi Jamaat as a Transnational Islamic Movement for Faith Renewal* ed. Muhammad Khalid Masud (2000) would give you a good sense of the extent and characteristics of participants in what they themselves sometimes simply call "a faith movement." (I am among the contributors to that volume.)

Five brief points:

* There is no "organization" as such, in the sense of paid staff or formal hierarchy. There is no membership. Any Muslim, man or woman, who seeks to be a better Muslim can participate as a way of honing one's own faith through encouraging others to participate. Thus to speak of the Jamaat as a "front for" or "allied with" another organization does not make sense.

* The modus operandi of the movement is for males to join in small groups, 10-12, who travel together, perhaps in their own city, throughout a country, or internationally, ideally staying in a mosque, paying their own way, and gathering groups of Muslims (e.g. after prayers) to encourage them to correct performance of the prayer, fast, tithing, etc. In France, for example, critics refer to Tablighis as "praying machines." Women are

expected to operate within homes or joining public meetings in mosques or halls in a women's section (I, for example, have been to gatherings of women in homes in Pakistan and a huge hall in Toronto, where a women's section was curtained off from the men and loudspeakers conveyed the preaching.) For traveling men, the presence of the group is key because it is the experience of common correct practice and exhortation, taking them out of everyday activities, that teaches them the faith. Moving from city to city in a group should be understood as standard practice, not as something suspicious.

* Ideally a group includes both more experienced participants and novices. Since many European or Turkish muslims don't know Islam well, participation might be attractive to someone very serious about learning the religion.

* Tablighis are active in Europe and North America. The volume above, for example, includes articles on France, Germany, and Belgium, and Canada.

* Participants are scrupulously a-political. Their mission is transformation of individual lives, starting with their own. More practically, they need to be seen as wholly neutral because they need the benign support of government officials so that they can conduct their travels and their meetings. Tablighis periodically gather in large meetings, annually, for example, in Dewsbury, Raiwind, Bhopal, and Dhaka, when they need permits, water trucks, special buses, etc.

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Exhibit B

~~SECRET~~

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: Additional Release Memos
Classification: ~~SECRET~~
Caveats: NONE

Sir:

I completed and printed out release memos to be signed for the following detainees:

[REDACTED]

PK [REDACTED]: CITF has no definite link/evidence of detainee having an association with al Qaida or making any specific threat toward the U.S. (See notes on CITF memo.)

[REDACTED]

[REDACTED] 061: The Germans confirmed that this detainee has no connection to an al Qaida cell in Germany. ID of detainee was confirmed [REDACTED]

[REDACTED]

VR

[REDACTED]

Classification: ~~SECRET~~
Caveats: NONE

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[REDACTED]
[REDACTED] THIS SOURCE MAY ACTUALLY HAVE NO AL-QAIDA OR TALIBAN
ASSOCIATION [REDACTED]

6. (U) POC THIS MEMORANDUM IS THE UNDERSIGNED AT DSN [REDACTED]

[REDACTED]
CW3, USA
CHIEF, INTERROGATION TEAM 2

700066

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CITF-CDR

SUBJECT: (S) Assessment UP Implementation Guidance for Release or Transfer of Detainees under U.S. Department of Defense (DoD) Control to Foreign Government Control/Detainee Murat Kurnaz, [REDACTED] 061 [REDACTED]

checkpoint, [REDACTED] detained Kurnaz and turned him over to U.S. forces on [REDACTED]

Kurnaz's version of events raises several questions that remain unanswered. [REDACTED] brother told investigators that Kurnaz left Germany to fight against the U.S. Kurnaz left for Pakistan after 11 September 2001, and he has made contradictory statements regarding his knowledge of the attacks. Further contact with German authorities is needed to complete interviews of potential witnesses in Germany. Kurnaz's statement regarding his time in Pakistan needs to be clarified regarding his association with JT. There is no indication that Kurnaz was in direct contact with a Taliban recruiter; however, he regularly associated with individuals connected to JT throughout his travels in Pakistan.

JTF 170 interviews: [REDACTED]

CITF interviews/recommendations: [REDACTED]

KB: [REDACTED]

Polygraph Consideration: None offered.

JTF 170/GTMO release recommendations: [REDACTED]

3. ~~(S//NF)~~ Military Commission Jurisdiction Assessment: Based on the information available at this time, it appears [REDACTED] that Kurnaz will be determined to be an individual subject to the President's Military Order of 13 November 2001.
 - a. Kurnaz is not a United States citizen. He appears to be a citizen of Turkey.
 - b. CITF is not aware of evidence that Kurnaz was or is a member of al-Qaida.
 - c. CITF is aware of indicators that Kurnaz may have aided or abetted, or conspired to commit acts of terrorism against the U.S., its citizens or interests.
 - d. CITF is not aware of any evidence that Kurnaz has knowingly harbored any individual who was a member of al-Qaida or who has engaged in, aided or abetted, or conspired to commit acts of terrorism against the U.S., its citizens or interests.

4. ~~(S//NF)~~ Law Enforcement Value Assessment:
 - a. Continued Investigation: CITF believes that further investigation of Kurnaz may produce new information relevant to this recommendation. CITF is awaiting

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The content of this document was prepared by an employee of the federal government for internal Executive Branch use, is predecisional and contains deliberative process material, and therefore is exempt from disclosure pursuant to Exemption 5 of the Freedom of Information Act (FOIA), 5 U.S.C. section 552(b)(5).

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bases for his detention, came to much the same conclusion that we had respectfully urged upon you in our February 1, 2005 submission: that the evidence against Mr. Kurnaz does not provide a strong basis to conclude he is an enemy combatant. Therefore, we think her judicial opinion is relevant to your consideration of whether Mr. Kurnaz should continue to be regarded as "dangerous to the United States, its interests or its allies."

Focusing on Mr. Kurnaz's case, Judge Green first concludes that the unclassified evidence supporting his detention provides an extremely attenuated – and constitutionally insufficient – basis for a conclusion that Mr. Kurnaz supports or is associated with terrorism. See Memorandum Opinion at 62 ("the unclassified evidence upon which the CSRT relied upon in determining Murat Kuraz's "enemy combatant" status consisted of findings that he was "associated" with an Islamic missionary group named Jama'at-Al-Tabliq, that he was an "associate of and planned to travel to Pakistan with an individual who later engaged in a suicide bombing, and that he accepted free food, lodging and schooling in Pakistan from an organization known to support terrorist acts.") (citing Kurnaz Factual Return, Enclosure (1) at 1). Specifically, she states:

Nowhere does any unclassified evidence reveal that the detainee even had knowledge of his associate's planned suicide bombing.² let alone establish that the detainee assisted in the bombing in any way....In addition, although the detainee admits to briefly studying with JT, there is no unclassified evidence to establish that his studies involved anything other than the Koran.³

Memorandum Opinion at 62-63.

Regarding the classified basis for his detention, which she reviews in detail, Judge Green finds it similarly thin. Consistent with our February 1 submission to the ARB, Judge Green points out the numerous exculpatory statements of U.S. officials which demonstrate their belief that he has no connections to the Taliban, or Al Qaeda. See Memorandum Opinion at 50-51 ("the 'detainee may actually have no Al-Qaida or Taliban association'") (citing Exhibit R-16 at 1-2); ("CITF has no definite link/evidence of detainee having an association with al-Qaida or making any specific threat toward the U.S." and that the "[t]he Germans confirmed that this detainee has no connection to an al-Qaida cell in Germany") (citing Exhibit R-17) (emphasis added); ("There is no indication that Kurnaz was in direct contact with a Taliban recruiter," ... 'CITF is not aware of evidence that Kurnaz was or is a member of al-Qaida' and that 'CITF is not aware of any evidence that Kurnaz has knowingly harbored any individual who was a member of al-Qaida or who has engaged in, aided or abetted, or conspired to commit acts of terrorism against the U.S., its citizens or interests') (citing Exhibit R-18) (emphasis added).

² Judge Green was not aware of information we have provided to the ARB (see Exhibits 7 and 8), that Mr. Bilgin is alive, has never been under any suspicion by German authorities regarding a suicide bombing, and has been cleared by German authorities of suspicions related to terrorism.

³ As we described in detail in pages 11-16 of our letter to the ARB and accompanying expert letters, Jama'at al Tabliq is an enormous group that is both avowedly peaceful and anti-political and could not, for reasons related to structure, ideology and practice, support or be affiliated with terrorist groups in any significant way.

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Memorandum

To :

Date

Department of Defense 05/31/2006
Office for the Administrative Review
of the Detention of Enemy Combatants
Frank Sweigart, Director

From : Federal Bureau of Investigation
Counterterrorism Division

[REDACTED]

Subject Administrative Review of Enemy Combatant
[REDACTED] 061 [REDACTED]

Administrative

In accordance with the Administrative Review Board assessment dated 08/24/2005, from the Federal Bureau of Investigation (FBI), Counterterrorism Division, to the Department of Defense (DOD), Office for the Administrative Review of the Detention of Enemy Combatants, MURAT KARNAZ, Internment Serial Number (ISN) [REDACTED] 061 [REDACTED], was assessed to pose a [REDACTED] threat to the national security of the United States and its allies.

←
ARB
decision

The below summary is based solely on information derived from FBI investigations in response to a DoD request (Cycle 2, Round 23) dated 05/01/2006.

Investigative Summary

MURAT KARNAZ, ISN [REDACTED] 061 [REDACTED], is a Turkish national currently detained at the U.S. Naval Base, Guantanamo Bay, Cuba.

KARNAZ was born in Turkey but was raised in Germany. KARNAZ has denied membership in the Jama'at al-Tabligh (JT) but admitted to attending a JT mosque in Germany, associating with JT members, and traveling to Pakistan to study at a JT controlled mosque.

KARNAZ was never in the military and never received military training. While in Pakistan, KARNAZ stayed in guest houses in Karachi and Islamabad. KARNAZ was detained by Pakistani authorities and turned over to U.S. forces.

Intelligence Value

KARNAZ has [REDACTED] intelligence value regarding recruiting, personnel, and operations of the Jama'at al-Tabligh in Germany and Pakistan.

DMO Exhibit 8

PAGE 1 OF 2

Memorandum from FBI to DoD

Re: Administrative Review of Enemy Combatant, 05/31/2006

FBI Interest

A review of FBI records conducted to date leads to the conclusion the FBI has no investigative interest in this detainee, MURAT KARNAZ, ISN [REDACTED] 061 [REDACTED]

Threat Assessment

There is no information that KARNAZ received any military training or is associated with the Taliban or al-Qa'ida. Although he has denied being a member of the Jama'at al-Tabligh, his associates, travel and religious studies contradict this denial. For these reasons, KARNAZ is believed to pose a [REDACTED] [REDACTED] to the national security of the United States and its allies if released.

Exhibit C

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document, however, was never provided to the detainee, and had he received it, he would have had the opportunity to challenge its credibility and significance. Not only is the document rife with hearsay and lacking in detailed support for its conclusions, but it is also in direct conflict with classified exculpatory documents also not disclosed to the detainee.

Exhibit R19 is a June 25, 2004 memorandum signed by Brigadier General David B. Lacquement and addressed to the Secretary of Defense. Among other comments, the memorandum charges that [REDACTED]

[REDACTED] Kurnaz Factual Return, Exhibit R19 at 2. The only support for this assertion are vague references to [REDACTED]

[REDACTED] Id. While these allegations may very well be true, due process requires that the detainee have some ability to inquire as to the sources of the [REDACTED] and to have the opportunity to address whether he ever traveled to [REDACTED] and whether he even knows, let alone had contact with, [REDACTED]

[REDACTED]. The importance of such an opportunity is highlighted by the fact that Exhibit R19 is contradicted by other classified information ignored or discounted by the CSRT without even a hint of an explanation.

For example, an earlier memorandum dated February 24, 2002 revealed that no evidence existed, at least at that time, to indicate that the detainee [REDACTED]

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presumably the requirements to be deemed an "enemy combatant" -- and that the detainee "may actually have no Al-Qaida or Taliban association." Kurnaz Factual Return, Exhibit R16 at 1-2. In addition, a September 30, 2003 memorandum from Major [REDACTED] to Lieutenant Colonel [REDACTED] revealed that "CITF [Criminal Investigative Task Force] has no definite link/evidence of detainee having an association with al Qaida or making any specific threat toward the U.S.," and that "The Germans confirmed that this detainee has no connection to an al Qaida cell in Germany." Kurnaz Factual Return, Exhibit R17. Yet another document the detainee was not permitted to examine and use to contest his "enemy combatant" designation is a May 19, 2003 memorandum from Commanding General Britain P. Mallow to the General Counsel of the Department of Defense. Among other exculpatory statements, the memorandum discloses that "There is no indication that Kurnaz was in direct contact with a Taliban recruiter," that "CITF is not aware of evidence that Kurnaz was or is a member of al-Qaida," and that "CITF is not aware of any evidence that Kurnaz has knowingly harbored any individual who was a member of al-Qaida or who has engaged in, aided or abetted, or conspired to commit acts of terrorism against the U.S., its citizens or interests." Kurnaz Factual Return, Exhibit R18.

These three classified documents call into serious question the nature and thoroughness of the prior "multiple levels of review" of "enemy combatant" status referenced in Deputy Secretary of Defense Paul Wolfowitz's July 7, 2004 Order establishing the CSRT system. At a minimum, the documents raise the question of what specific information could have been discovered between the May 19, 2003 memorandum stating that there was no evidence either that the detainee was a member of al Qaeda or was in direct contact with any Taliban recruiter, and the

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June 25, 2004 memorandum concluding that the detainee [REDACTED]

[REDACTED] Certainly, the CSRT record lacks sufficient explanation or identification of the [REDACTED] sources for the new evidence, and had the detainee received information regarding the existence and contents of the exculpatory documents, he could have challenged the tribunal to investigate these matters more carefully than it did.

Interpreted in a light most favorable to the petitioners, the CSRT's decision to deem Exhibit R19 the most credible evidence without a sufficient explanation for its rejection of conflicting exculpatory evidence in at least three separate documents supports the petitioners' allegation that the "CSRTs do not involve an impartial decisionmaker." Al Odah Petitioners' Reply to the Government's "Response to Petitions for Writ of Habeas Corpus and Motion to Dismiss," filed in Al Odah v. United States, 02-CV-0828 (CKK), on October 20, 2004, at 23-24. But however the record in Kumaz is interpreted, it definitively establishes that the detainee was not provided with a fair opportunity to contest the material allegations against him.

The Court fully appreciates the strong governmental interest in not disclosing classified evidence to individuals believed to be terrorists intent on causing great harm to the United States. Indeed, this Court's protective order prohibits the disclosure of any classified information to any of the petitioners in these habeas cases. Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, 344 F. Supp.2d 174 (D.D.C. 2004) at ¶ 30. To compensate for the resulting hardship to the petitioners and to ensure due process in the litigation of these cases, however, the protective order requires the disclosure of all relevant classified information to the petitioners' counsel who have the

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notwithstanding the fact that the Personal Representative may review classified information considered by the tribunal, that person is neither a lawyer nor an advocate and thus cannot be considered an effective surrogate to compensate for a detainee's inability to personally review and contest classified evidence against him. *Id.* at Enclosure (3), ¶ D. Additionally, there is no confidential relationship between the detainee and the Personal Representative, and the Personal Representative is obligated to disclose to the tribunal any relevant inculpatory information he obtains from the detainee. *Id.* Consequently, there is inherent risk and little corresponding benefit should the detainee decide to use the services of the Personal Representative.

The lack of any significant advantage to working with the Personal Representative is illustrated by the record of Kurnaz. Despite the existence of three exculpatory classified documents, the Personal Representative made no request for further inquiry regarding the undisclosed sources for information contained in the only classified document relied upon by the CSRT and did not make even a single comment highlighting the existence of contradictory classified evidence. Kurnaz Factual Return, Enclosure (5). Clearly, the presence of counsel for the detainee, even one who could not disclose classified evidence to his client, would have ensured a fairer process in the matter by highlighting weaknesses in evidence considered by the tribunal and helping to ensure that erroneous decisions were not made regarding the detainee's "enemy combatant" status. The CSRT rules, however, prohibited that opportunity.

In sum, the CSRT's extensive reliance on classified information in its resolution of "enemy combatant" status, the detainees' inability to review that information, and the prohibition of assistance by counsel jointly deprive the detainees of sufficient notice of the factual bases for

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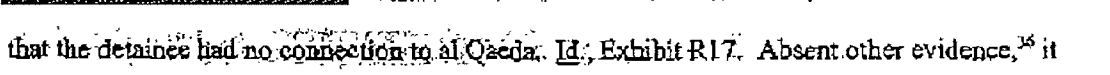
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Enclosure (3) at 1. In addition, although the detainee admits to briefly studying with JT, there is no unclassified evidence to establish that his studies involved anything other than the Koran.³⁵

The dearth of evidence establishing actual activities undertaken by the detainee in furtherance of terrorism is illustrated by classified Exhibit R23 attached to the factual return. In that document, dated March 15, 2002, an interrogator




Id., Exhibit R23 at 2. The interrogator then wrote that



Id. German authorities, however, subsequently informed the U.S.

that the detainee had no connection to al Qaeda. Id., Exhibit R17. Absent other evidence,³⁶ it

³⁵ In fact, classified evidence reviewed by the CSRT indicates that the petitioner was actually denied admission to the JT school in Lahore, Pakistan. Id., Exhibit R18 at 1.

³⁶ It is true that Exhibit R19 to the Kurnaz Factual Return does assert that the detainee  and the respondents urge this Court to uphold the detention of any petitioner, including Mr. Kurnaz, as long as "some evidence" exists to support a conclusion that he actively participated in terrorist activities. Motion to Dismiss at 47-51. *Hamdi*, however, holds that the "some evidence" standard cannot be applied where the detainee was not given an opportunity to challenge the evidence in an administrative proceeding, 124 S. Ct. at 2651, and Mr. Kurnaz was never provided access to Exhibit R19. Additionally, in resolving a motion to dismiss, the Court must accept as true the petitioner's allegations and must interpret the evidence in the record in the light most favorable to the nonmoving party. Because Exhibit R19 fails to provide any significant details to support its conclusory allegations, does not reveal the sources for its information, and is contradicted by other evidence in the record, the Court cannot at this stage of the litigation give the document the weight the CSRT afforded it.

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Exhibit D

COMMITTEE ON FOREIGN AFFAIRS
Subcommittee on International Organizations, Human Rights, and Oversight

Statement of Baher Azmy, U.S. Counsel to Former Detainee Murat Kurnaz
Rayburn House Office Building, Room 2172
May 20, 2008

My name is Baher Azmy. I am a Professor at Seton Hall Law School. I served as counsel to Murat Kurnaz during the last year and a half of his detention in Guantanamo Bay. I am grateful to Chairman Delahunt and Subcommittee Members for holding this hearing and for inviting me to submit testimony regarding Murat Kurnaz's case.

Murat's case, along with the analysis of my colleague, Mark Denbeaux,¹ and the testimony of Stephen Abraham, and legion accounts of former detainees and habeas lawyers, lays to shameful waste two of the central claims animating the Bush administration's defense of Guantanamo: that the camp holds only hardened terrorists or the "worst of the worst," and that the detainees, at least since the 2004 *Rasul v. Bush* decision, have received adequate legal process to differentiate the guilty from the innocent. Indeed, not only is Murat Kurnaz innocent of any terrorist-related acts or associations, it is now clear that the U.S. government knew this as early as 2002, despite continuing to formally label him an "enemy combatant." His case thus, like so many others, demonstrates the vital need for habeas corpus to ensure a fair process and to release those, like Murat, who spent years of their lives for nothing more than being in the wrong place at the wrong time.

Because Murat has already testified to the Committee about the factual circumstances leading to his arrest and detention, and his treatment, I will limit my remarks to the legal absurdities of his particular case.

A. Arrest in Pakistan and Transfer to Guantanamo

As Murat described in his testimony, he decided to go on a pilgrimage to Pakistan to learn more about Islam before his new, and more religiously-educated wife, would join him and his family in Germany. He had set on this plan following soon after his marriage in the Summer of 2001 and decided to go through with it, even after the events of September 11th. As he has told me many times, and described to you and the Combatant Status Review Tribunal committee, he was horrified by the September 11th attacks. He condemns terrorism in the strongest terms and believes all who engage in such senseless violence should be severely punished. He also strongly believes that such acts, and the killing of woman, children and one's self, are absolutely prohibited by the Koran and that Osama Bin Laden has perverted Islam.

Many people ask him, and me, why he went to Pakistan in October 2001, at a time of increasing tension in the region? Skeptics also ask, why isn't his travel there proof of a desire to

¹ See, e.g. Mark Denbeaux et al., *Report on Guantanamo Detainees: Profile of 517 Detainees Through Analysis of Dep't Defense Data*, Feb.8, 2006, http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf; Mark Denbeaux et al., *No Hearing Hearings*, http://law.shu.edu/news/final_no_hearing_hearings_report.pdf.

join Al Qaeda or the Taliban? As for the first question, the answer for Murat was simple at the time (but concededly unwise in retrospect): no war had started yet and he believed that Pakistan had nothing to do with whatever force the U.S. planned to use. He was 19 years old, not politically sophisticated or informed enough to imagine the war would have spill-over effects into Pakistan. As for the second question, it is abundantly clear now from even the U.S. government, that Murat never intended to or actually traveled to Afghanistan, associated with individuals engaged in any terrorism or received any military or weapons training of any kind.

All that Murat did was travel for weeks with a Muslim missionary group which calls itself Jama'at al Tablighi.² It is an avowedly peaceful group regularly likened to America's Jehovah's Witnesses, which has been so successful in spreading a spiritual version of Islam in Pakistan, India and Bangladesh, precisely because it stays away from politics. The government denominated Murat and numerous other Guantanamo detainees as "enemy combatants" merely because they formed some kind of "association with" this multi-million member group. This is a seriously uninformed and even disingenuous assessment.

As the most renowned American expert on Jama'at al Tablighi, University of Michigan Professor Barbara Metcalf, explained in a letter we obtained from her and submitted to the military in connection with Kurnaz's 2005 Administrative Review Board proceeding, it is "implausible to believe that the Tablighis support terrorism or are in any way affiliated with other terrorist or 'jihadi' movements such as the Taliban or Al Qaeda." Jamal K. Elias, Professor of Religion at Amherst College also stated in a letter we submitted for the military's consideration, "it is highly unlikely that [Kurnaz] would have had contact with any extremist or 'jihadi' groups through his travels with the Tablighis." (These letters are attached as Exhibit A).

In early November 2001, Murat was on a local bus filled with civilian Pakistanis, making his way to the airport for a return trip home. That bus was stopped at a routine checkpoint. Murat, likely because of his European appearance, was pulled off for questioning. The police had no evidence or suspicion of any crime; they detained him it seems merely because he was a foreigner in Pakistan at a time the Pakistani government felt enormous pressure to assist the Americans. They soon turned him over to American military, for what Murat was told by an American interrogator was an amount of \$3000.³

I have little to add to Murat's detailed account of his treatment in Afghanistan and Guantanamo – it is richly detailed in his book, *Five Years of My Life*. I would only say that virtually every thing he has described was either a part of official U.S. interrogation policy or

² See, e.g. Richard Bernstein, *One Muslim's Odyssey to Guantanamo*, N.Y. Times, June 5, 2005, <http://www.nytimes.com/2005/06/05/international/europe/05prisoner.html>.

³ It is well-known that flyers offering bounties of "wealth beyond your dreams," were dropped all over Afghanistan to encourage locals to turn over suspected Taliban or al Qaeda members to perverse and grossly inaccurate effect. Relatedly, Pervez Musharraf explained in his book, *In the Line of Fire*, that he felt that he would endure a military "onslaught" from the U.S. if he did not appear to be fully cooperating with the war on terror, and that he specifically turned over 329 persons to the U.S. in exchange for millions of dollars of bounty money.

was well-known to have been inflicted upon other detainees.⁴ In addition, he previously reported to me in meetings in January 2005 in Guantanamo, about all of these forms of abuse.⁵

B. The “Legal Process” Provided to Murat

Murat, like most of the detainees in Guantanamo, was denominated an “enemy combatant” by the Department of Defense. That designation is quite remarkable, since documents from both U.S. and German intelligence agencies make clear that he was innocent of any terrorist connections. Indeed, in light of all the exculpatory evidence in his file, it appears that the DoD simply made up accusations against him as part of his Combatant Status Review Tribunal Process. His case thus demonstrates, like many others, the shocking inadequacy of the CSRT process and the obvious need for a rational system for adjudicating enemy combatant status that only habeas corpus could provide.

1. CSRT Allegations Against Him

At his CSRT hearing, Murat was presented with two conclusions made by the DoD that rendered him an “enemy combatant.” Consistent with the Kafkaesque CSRT process in place in Guantanamo, he was asked to prove himself innocent of those charges without benefit of counsel or witnesses.

First, the CSRT asserted that Murat’s friend, Selcuk Bilgin, “engaged in a suicide bombing” and suggested he might have perpetrated a suicide bombing in Istanbul in November 2003 – two years *after* Kurnaz was already in U.S. custody. As an initial matter, it is worth contemplating the fantastical legal proposition established here by the CSRT: that one could be indefinitely detained as an “enemy combatant” for the acts committed by someone else, even if one did not participate in or even know of those alleged acts.⁶

Equally problematic, this charge was factually absurd. As a five-minute call with relevant German officials would have revealed, Bilgin was alive and well in Bremen and under no suspicion of any such acts. In light of the absence of any other evidence against Murat, and the conclusions of U.S. and German officials that Murat had no terrorist connections, it appears

⁴ See, e.g. Tim Golden, *In U.S. Report, Brutal Details of Two Afghan Inmates’ Deaths*, N.Y. Times, May 20, 2005, at <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html> (documenting practice of suspending prisoners by their hands in Afghanistan prison camps at precisely the same time Murat was suffering similar treatment).

⁵ See Carol Leonnig, *Ex-Afghanistan Detainee Alleges Torture*, Washington Post, Mar. 29, 2008.

⁶ United States District Judge Joyce Hens Green, who issued a ruling on consolidated habeas petitions in *In re Guantanamo Bay Detainee Cases*, which is currently on appeal to the U.S. Supreme Court in the case captioned *Boumediene v. Bush*, focused on the attenuated allegations against Kurnaz and concluded any detention based on such allegations would be unlawful. Specifically, she explained that, even if it is true that Selcuk Bilgin was a “suicide bomber,” there is no evidence that Murat “had knowledge of his associate’s planned suicide bombing, let alone establish that [Kurnaz] assisted the bombing in any way. In fact, [Kurnaz] expressly denied knowledge of a bombing plan when he was informed of it by the American authorities.” She continued to explain that there was no evidence that Murat “planned to be a suicide bomber himself, took up arms against the United States or otherwise intended to attack American interests.”

the suicide bomber charge was simply made up out of whole cloth to justify his detention. But, Murat did not have access to counsel during the CSRT and was thousands of miles from home – as incredible as the allegation sounded to him, he could do nothing to meet his imposed obligation to rebut it.

This allegation also demonstrates why the new process afforded to detainees under the Detainee Treatment Act and Military Commissions Act (“DTA Review”) is a profoundly inadequate substitute for habeas corpus. DTA Review process requires the court hearing a detainee petition to *accept* all of the factual findings of a CSRT panel *as true* and prohibits counsel from introducing any new evidence. Thus, under this procedure, Selcuk Bilgin would still be presumed to be an enemy combatant, even though the Bilgin charge is objectively false. Under DTA Review, Murat’s counsel could not submit an affidavit from Bilgin or German authorities disproving the CSRT conclusion.

The second basis for his enemy combatant designation by the DoD and CSRT, was that he “associated with” and “received food and lodging” from the peaceful missionary group, Jama’at al Tablighi. The U.S. government apparently believes that some members of this twenty-million member group have, at some point, engaged in hostile acts against the United States. But, there was no evidence or even accusation that Murat participated in or even knew of any such hostile acts.⁷ Thus, according to the U.S. government’s theory, it has the power to seize any one of the Tablighi’s twenty-million members and hold them in Guantanamo as enemy combatants.

The government has admitted as much. The administration’s definition of an “enemy combatant” is expansive beyond all bounds, purportedly justifying the detention of anyone who “supports” individuals or organizations “hostile to the United States.” As the government has fully conceded in litigation over the legality of the CSRTs, this standard includes no knowledge requirement, no intent requirement and no materiality requirement. Thus, the government readily conceded in the *In re Guantanamo Bay Detainee Cases* before United States District Judge Joyce Hens Green, that its overly broad definition of enemy combatant that would encompass even “[a] little old lady in Switzerland who writes checks to what she thinks is a charity that helps orphans in Afghanistan but [what] really is a front to finance al-Qaeda activities.” Murat Kurnaz, like many other Guantanamo detainees still imprisoned, is legally, if not physically, equivalent to this “little old lady” from Switzerland.

2. Evidence of Murat’s Innocence

As part of the habeas corpus proceedings that followed the Supreme Court’s decision in *Rasul v. Bush* – and before these proceedings were hopelessly delayed, stayed and obviated by government actions and the suspension of habeas corpus twice enacted by the U.S. Congress –

⁷ Regarding this allegation, Judge Green explained that, “although [Mr. Kurnaz] admits to briefly studying with JT, there is no unclassified evidence to establish that his studies involved anything other than the Koran.” Thus, she concluded that, the U.S. government was attempting to hold Murat “possibly for life, solely because of his contacts with individuals or organizations tied to terrorism and not because of any terrorist activities that the detainee aided, abetted, or undertook himself.... This would violate due process.”

the government also filed with the court, additional classified evidence against the detainees. The evidence was not available to the public, but habeas counsel and Judge Green were able to view it in secure environment.

I reviewed that evidence soon after it was made available and learned that most of this classified evidence in the Kurnaz file actually exonerated him. Judge Green also identified the numerous exculpatory statements in his file and demonstrated that the CSRT panel obviously refused to consider such evidence in coming to the (pre-ordained) conclusion that Murat was an enemy combatant. She concluded that the failure to consider multiple exculpatory statements calls into question the impartiality of the Tribunal making enemy combatant determinations.

The Defense Department insisted that these exculpatory documents and portions of Judge Green's opinion even referencing their existence be classified. However, pursuant to a 2007 Freedom of Information Act litigation in New York, those documents and Judge Green's opinion referencing them have been declassified. The now unclassified statements include:

- A September 30, 2002 Memorandum from military officials states that "CITF [Command Information Task Force] has no definite link/evidence of detainee having an association with al-Qaida or making any specific threat against the U.S." It also states that "The Germans confirmed that this detainee has no connection to an al-Qaida cell in Germany."
- A May 2003, Memorandum from General Brittain P. Mallow to the General Counsel of the Department of Defense reported that "CITF is not aware of evidence that Kurnaz is or was a member of Al Qaida." It also reported that "CITF is not aware of any evidence that Kurnaz has knowingly harbored any individual who was a member of Al Qaeda or who has engaged in, aided or abetted or conspired to commit acts of terrorism against the United States, its citizens or interests."
- A September 2002 declassified memorandum from a German intelligence officer to the German Chancellor's office states, "USA considers Kurnaz's innocence to be proven."⁸

(The relevant portions of the documents – Bate-stamped by the government pursuant to a FOIA document production – are attached as Exhibit B. The relevant, declassified portions of Judge Green's opinion referencing and analyzing those opinions are attached as Exhibit C.)

C. Murat's Eventual Release

In August 2006, Murat was finally released to his family in Germany, after nearly five years in U.S. custody. He never did anything wrong, nor did he ever have the opportunity to demonstrate this essential reality to an impartial tribunal. But, Guantanamo is an arbitrary and often irrational system. It is wholly unconcerned with guilt or innocence, punishment or

⁸ See also Carol Leonnig, *Evidence of Innocence Rejected at Guantanamo*, Wash. Post, Dec. 5, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/12/04/AR2007120402307_pf.html.

remediation and release determinations are typically without rhyme or reason.⁹ Had their been a legal process in place, the false charges against him could have been disproven and his innocence recognized by a neutral tribunal.

What finally happened is that the new Merkel government reversed Germany's earlier position and decided to attempt to negotiate for his release. The prior German administration had argued that Murat was solely the responsibility of the Turkish government for negotiation and repatriation purposes. Meanwhile, the Turkish government did not take an interest in pursuing his release because Murat had no strong connections to the country. So, without any legal process in place, Murat was in a diplomatic limbo, at the mercy of political actors in two different countries. Of course, the U.S. could also have just released him to Turkey and we do not yet know why it chose not to.

Finally, my German co-counsel and I were able to bring to public light in Germany the evidence of Murat's innocence and the abuse he suffered, which finally motivated enough outrage in Germany to pressure the Merkel administration to begin negotiating for his release. But, even in negotiating for his release, and despite the evidence of his innocence, the U.S. government insisted that the German government engage in forms of detention and monitoring that would be illegal under German law. Because of the German refusal to accept these conditions, an otherwise simple transfer negotiation took eight months to complete. It is one bitter irony that here the German government stood up to the Americans about the importance of adhering to law.

Indeed, upon his release from Guantanamo, the U.S. military tried to force Murat, to sign a statement admitting he was a member of Al Qaeda – which he refused to do. And, in a final shameless indignity, Murat was flown from Guantanamo to his freedom in Germany drugged, hooded and shackled – exactly as he had arrived to that horrible camp, nearly five years earlier.

Thank you very much.

⁹ Even Murat's Administrative Review Board (ARB) hearing was non-sensical. The military instituted annual ARB hearings to determine if detainees "continue" to pose a danger to the U.S. or its allies. In January 2006, the ARB determined that Murat was still a threat and therefore not eligible for release. Evidence of his dangerousness included allegations (unveiled as part of the FOIA) that he "prayed loudly during the playing of the national anthem;" that "possibly to estimate the height of the fences... [Kurnaz] asked how high the basketball rim was;" and that he asked a guard to "report that he ate his whole meal when he only ate his apple." Only six months later, another ARB was convened which authorized his release. It is hard to imagine what could have made him materially less "dangerous" in the intervening few months.