

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BASHIR NASHIR AL-MARWALAH,)
et al.)
Petitioners,)
v.) Civil Action No. 04-CV-1194 (HHK)
GEORGE W. BUSH,)
President of the United States, *et al.*,)
Respondents.)
_____)

DECLARATION OF JAMES R. CRISFIELD JR.

Pursuant to 28 U.S.C. § 1746, I, Commander James R. Crisfield Jr., 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 Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

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 Bashir Nashir Al-Marwalah 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: 30 Sep 04



James R. Crisfield Jr.
CDR, JAGC, USN



**Department of Defense
Director, Combatant Status Review Tribunals**

OARDEC/Ser: 140
24 September 2004

FOR OFFICIAL USE ONLY

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)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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24 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 2004

Encl: (1) Appointing Order for Tribunal #5 of 17 August 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, was present for the unclassified portion of the Tribunal, and made a sworn statement.

b. The Tribunal was properly convened and constituted by enclosure (1).

c. The Tribunal complied with the provisions of references (a) and (b).

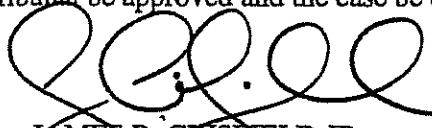
d. The detainee made no requests for witnesses or additional evidence.

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.

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


JAMES R. CRISFIELD JR.
CDR, JAGC, USN



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

22 September 2004

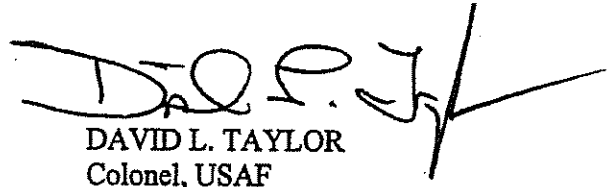
MEMORANDUM FOR DIRECTOR, CSRT

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: #5

(U) ISN#:

Ref: (a) (U) Convening Order for Tribunal #5 of 27 Aug 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) Summary of Detainee/Witness Testimony (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 20 Sep 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 and was part of or supporting 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).

[REDACTED]
[REDACTED] Col, USAF
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #5

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. Specifically, the Tribunal finds he is a member of, or affiliated with al Qaida, and was part of or supporting 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. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that the detainee voluntarily traveled from Yemen to Afghanistan to receive training in the Al Farouq training camp and while he was there learned to use a variety of weapons, including the Kalishnakov rifle, RPK machine gun, and the Seminov rifle. The unclassified summary also indicated that the detainee later trained at the Malek Military Center where he received instruction on a number of other weapons. He went home to Yemen, then voluntarily returned to Afghanistan in August 2001 to obtain additional weapons training. Finally, the unclassified summary indicated that the detainee traveled to the front line near Bagram, Afghanistan, retreated with others, and fled to Pakistan where he was captured in a raid on an apartment on September 11, 2002. The detainee called no witnesses and requested no documents be produced. He made a sworn verbal statement. The detainee, in his statement, said that all the information contained in Exhibit R-1 (unclassified summary of the evidence) was essentially correct, with the exception of Paragraph 3(b)(1). The detainee's statement will be explained in more detail in paragraph 5.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-9.
- b. Sworn statement of the detainee

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

The Detainee requested no witnesses; no rulings were required.

The Detainee requested no additional evidence be produced; no rulings were required.

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 provided no usable evidence. Accordingly, the Tribunal had to look to 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 sworn testimony. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3). During his statement, the detainee responded to Exhibit R-1, the unclassified summary of the evidence, point by point. With only minor clarifications, the detainee agreed that all but one of the evidentiary statements in this document are correct. The minor clarifications were not of an exculpatory nature and can be reviewed in enclosure (3). The detainee did, however, claim that paragraph 3(b)(1) is incorrect. He said that he never traveled to the front lines. He maintains that he was on the "back line" of the battle rather than the "front line." The detainee further stated that he was trained as a sniper, and considers himself to be an "Arab fighter." He claimed that his goal was to travel to Chechnya to fight there. Finally, he said that after he retreated in Afghanistan, he went to Pakistan where he waited for eight months, moving from house to house hoping to eventually go back to Yemen. He was then arrested and sent to Guantanamo Bay, Cuba. The Tribunal found the detainee's testimony helpful in clarifying his intentions and motivations, but thought the detainee was rather evasive on the subject of who he was affiliated with and why. His admissions that he was an Arab fighter and has received a great deal of training on various weapons from several known al Qaida and Taliban training camps were helpful in making our determination that the detainee is properly classified as an enemy combatant. On the other hand, the detainee's claim that he is not a member of al Qaida and, in fact, doesn't even know what al Qaida is were hard to believe in light of the other admissions he made. The Tribunal also found his claim that he intended to travel to Chechnya dubious in that he never made any effort to actually go there either before or after he received his training. Even after he retreated from Afghanistan he made no effort to travel to Chechnya – he simply "waited" in Pakistan for eight months with no job or other obvious means of support. In sum, the Tribunal finds it much more likely that the

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detainee was trained by al Qaida to be a fighter and was simply waiting in Pakistan for his orders.

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

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 necessary.

b. The detainee understood the Tribunal proceedings. When asked, he indicated that he understood the process and asked no questions regarding his rights. He actively participated in the hearing.

c. The detainee is properly classified as an enemy combatant in that he is a member of, or affiliated with, al Qaida and was part of or supporting the Taliban.

8. Dissenting Tribunal Member's report


None. The Tribunal reached a unanimous decision.

Respectfully submitted,



 Col, USAF
Tribunal President

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Enclosure (1)
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Summarized Sworn Detainee Statement

When asked by the Tribunal President the detainee stated he understood the CSRT process and he did not have any questions.

When asked by the Tribunal President if the detainee had anything to add regarding the unclassified summary, the detainee stated, "I never moved to the front lines."

[At this point the Tribunal President clarified his previous question and asked the detainee if he wanted to make a statement under oath.] The detainee indicated that he did wish to make his statement under oath and was sworn by the Recorder. He then testified essentially as follows:

"The statement I moved to the front line and participated in the fight against the Northern Alliance is not correct."

[The Tribunal President then asked the detainee if that concluded his statement. The detainee stated that it did. The Personal Representative (PR) then informed the President that the detainee preferred to be prompted by the PR to respond to specific items in the unclassified summary. The President indicated that the PR should proceed in that manner.]

Summarized Answers in Response to Questions by the Personal Representative

[The Personal Representative read directly from the Unclassified Summary and the detainee provided the following responses:]

Q. The detainee voluntarily traveled from Yemen to Afghanistan in September 2000.

A. Yes.

Q. While waiting for transportation to Afghanistan, the detainee stayed at a safe house.

A. The place I stayed at was referred to as an office.

Q. The detainee attended the Al-Farouq training camp in September 2000.

A. Yes.

Q. At the Al-Farouq training camp, the detainee was trained on the Kalashnikov, RPK Machine gun, and the Semenov Rifle.

A. Yes.

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Enclosure (3)
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Q. The detainee then trained at the Malek Military Center, where he received training on the Makarov Pistol, Dragonov Sniper Rifle, PK Machine-gun, RPGs, hand grenades, and map reading.

A. Regarding the map reading, they only taught me to read North, South, East and West.

Q. Following the training, the Detainee returned to Yemen, then again voluntarily traveled back to Afghanistan in August of 2001.

A. Yes. I do not know the name of each month. I refer to them as the first month, second month, etcetera. Since I am not sure of the names, it is possible it was a different month, but I know it was the eighth month.

Q. The detainee returned to the Al-Farouq training camp, where he received specialized training in positional shooting with AK-47s.

A. Yes. I attended, but I don't know if it is considered specialized training. They just taught me how to walk and sit with a weapon.

Q. The detainee participated in military operations against the coalition.

A. Not correct.

Q. The detainee participated in the retreat from Omar Seif Center, Afghanistan.

A. Yes.

Q. The detainee then fled to Karachi, Pakistan where he was captured during a raid on an apartment on September 11, 2002.

A. Yes.

Q. Why did you travel to Afghanistan?

A. To train.

Q. To fight against whom?

A. The Chechnyans.

Summarized Answers in Response to Questions by the Tribunal Members

Q. You went from Yemen to Afghanistan?

A. Yes.

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Enclosure (3)
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Q. Can you tell me how you traveled there?

A. I went by airplane from Yemen to Pakistan to Afghanistan.

Q. Where in Pakistan did you stay?

A. I went to the Dastar Taliban (office) in Ramsta.

Q. In Afghanistan-do you remember which city?

A. Yes. ~~Kutah~~

Q. You knew there were Taliban in the office and you were going to train with the Taliban?

A. There are rooms with Afghans who just wait there until they go somewhere else.

Q. Did anyone help you get to Pakistan and then to Afghanistan?

A. Afghans.

Q. Did they give you money, a plane ticket, how did they do it?

A. No.

Q. You used your own money to go to Afghanistan?

A. Yes.

Q. What do you do in Yemen?

A. I study.

Q. You are a student?

A. Yes.


Q. Do you study the Koran?

A. I used to study nursing.

Q. Once you got into Afghanistan, what city did you go to?

A. Kandahar.

Q. And then you went to training at Al-Farouq?

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Enclosure (3)
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A. Yes.

Q. Did you train with the Taliban in Al-Farouq?

A. I trained with all of them, the Arabs, foreigners, but not the Afghans.

Q. Are you a member of al Qaida?

A. I don't know. I know I am an Arab fighter.

Q. An Arab fighter-and you went to Al-Farouq to fight knowing you were going to go to Chechnya?

A. I went to train and go to Chechnya.

Q. Do you remember when you were in Al-Farouq ever seeing Usama Bin Laden?

A. No.

Q. Do you know what al Qaida is?

A. No, I don't know. I've seen things on television.

Q. Are you trained as a sniper?

A. Yes.

Q. Did you ever fire your weapon in combat other than training?

A. Only for training. I trained with a person.

Q. What weapon did you use when you were a sniper?

A. Dragonov, four years ago.

Q. Do you remember who ran the training camp where you trained?

A. Yes.

Q. Who?

A. In Al-Farouq, there were several trainers. Malek Hakeem use to train me.

Q. After your training in Al-Farouq, why did you go back to Yemen?

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Enclosure (3)
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- A. I wanted to see my family. My father was sick and I wanted to finish my studies.
- Q. Did you finish your studies?
- A. When I go back, I will finish.
- Q. Then you decided to go back to Afghanistan after you saw your father, is that correct?
- A. Yes, but I don't know exactly what you mean.
- Q. Why did you go back?
- A. So I could fight the Chechnyans.
- Q. You said you didn't travel to the front line near Bagram?
- A. Yes.
- Q. But you were retreating from the Omar Seif Center?
- A. Yes.
- Q. Where were you retreating from when you were involved in that retreat?
- A. I retreated from Omar Seif to Kabul. I was not on the front lines. I retreated from the back lines.
- Q. What happened when you were captured?
- A. I was brought to Cuba.
- Q. You fled to Pakistan, true or not true?
- A. What do you mean?
- Q. You previously stated that after you retreated you went to Pakistan.
- A. Yes.
- Q. How long were you there before you were captured?
- A. Eight to ten months.
- Q. What were you doing in Pakistan?
- A. I was sitting in a house.

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Enclosure (3)
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Q. Were you waiting for something to happen?

A. I was planning to go back to Yemen.

Q. How were you captured?

A. The Pakistanis came in and arrested me.

Q. Who were you with when you were arrested?

A. There were two people with me. One was (inaudible) and the other was Amir.

Q. Were those people also brought to Guantanamo?

A. They were arrested, but I haven't seen them.

The Tribunal President asked the Detainee if he had any other evidence to present to this Tribunal.

[The detainee stated:] I can swear to you, I am not quite sure what to say. I was not fighting, nor did I want to fight Americans. The Americans were very far from where I was fighting and I am from Yemen. The Americans did not do anything to give me a reason to fight them.

Q. Personal Representative do you have any other evidence to present to this Tribunal?

A. No.

[After the Personal Representative said no, and the President concluded the tribunal session, the detainee interrupted and stated:] "Osmah Embe and Humam Yahmen Ami were also trainers in the Al-Farouq training camp."

AUTHENTICATION

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

[REDACTED]

[REDACTED] Col, USAF
Tribunal President

ISN # [REDACTED]
Enclosure (3)
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Recorder Exhibit List
For
ISN [REDACTED]

| # | Title | Classification |
|----|--|----------------|
| R1 | Unclassified Summary | UNCLASSIFIED |
| R2 | FBI Request for redaction dtd 9 SEP 04 | UNCLASSIFIED |
| R3 | FBI FD-302 29OCT02 | FOUO//LES |
| R4 | 000837 Knowledgeability Brief | SECRET |
| R5 | JTF GTMO Baseball Card | SECRET//NOFORN |
| R6 | CITF Memo dtd 26 May 04 | SECRET//NOFORN |
| R7 | TD-314/45194-02 | SECRET//NOFORN |
| R8 | TD-314/37103-02 | SECRET//NOFORN |
| R9 | Capture event | SECRET |

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (8 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal –
AL-MARWALAH, Bashir Nasir

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 an al Qaida fighter.
 - a. The detainee is an al Qaida fighter:
 1. The detainee voluntarily traveled from Yemen to Afghanistan in September 2000.
 2. While waiting for transportation to Afghanistan, the detainee stayed at a safehouse.
 3. The detainee attended the Al Farouq training camp in September 2000.
 4. At the Al Farouq training camp, the detainee was trained on the Kalishnikov, RPK Machine-gun, and the Seminov Rifle.
 5. The detainee then trained at the Malek Military Center, where he received training on the Makarov Pistol, Dragonov Sniper Rifle, PK Machine-gun, RPGs, hand grenades, and map reading.
 6. Following his training, the Detainee returned to Yemen, then again voluntarily traveled back to Afghanistan in August of 2001.
 7. The detainee returned to the Al Farouq training camp, where he received specialized training in positional shooting with AK-47s.

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EXHIBIT B-1
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b. The detainee participated in military operations against the coalition.

1. The detainee traveled to the front line near Bagram, Afghanistan.
2. The detainee participated in the retreat from Omar Seif Center, Afghanistan.
3. The detainee then fled to Karachi, Pakistan where he was captured during a raid on an apartment on September 11, 2002.

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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Memorandum



To : Department of Defense Date 09/09/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT

From : FBI GTMO
Counterterrorism Division
[REDACTED]

Subject: 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.

The following documents relative to ISN [REDACTED] have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 10/29/2002

¹Redactions are blackened out on the OARDEC provided FBI document.

²See Executive Order 12958

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

If you need additional assistance, please contact On
Scene Commander [REDACTED],
[REDACTED] or Intelligence Analyst
[REDACTED].

Personal Representative Review of the Record of Proceedings

I acknowledge that on 21 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

21 Sep 2004
Date

[REDACTED]

ISN # [REDACTED]
Enclosure (5)