

UNCLASSIFIED//~~FOUO~~

Summary of Administrative Review Board Proceedings for ISN 902

*The Administrative Review Board was called to order.*

*The Designated Military Officer (DMO) was sworn.*

*The Board Reporter was sworn.*

*The Translator was sworn.*

*The Detainee entered the proceedings.*

*The Presiding Officer announced the convening authority and purpose of the Administrative Review Board proceedings.*

*The Administrative Review Board members were sworn.*

*The Assisting Military Officer (AMO) was sworn.*

*The Presiding Officer asked the Detainee if he wishes to make a statement under oath. (Muslim oath offered).*

*The Detainee accepted taking the Muslim oath.*

*The Presiding Officer read the hearing instructions to the Detainee and confirmed that he understood.*

*The Assisting Military Officer presented the Enemy Combatant Notification form, Exhibit EC-A, to the Administrative Review Board.*

*The Assisting Military Officer presented the Enemy Combatant Election Form, Exhibit EC-B, to the Administrative Review Board.*

Presiding Officer: Assisting Military Officer please read your comments from the Enemy Combatant Election Form.

Assisting Military Officer: The Detainee's ARB interview occurred on 19 October 2005 and lasted 40 minutes. After a review of the ARB's purpose and procedures, the Pashto translated Unclassified Summary of Evidence was read to the Detainee. When the Detainee was asked if he wanted to attend the ARB, present a written or oral statement, to have the AMO speak on his behalf, he said he would attend the ARB and respond to each statement of information in the Unclassified Summary after it is presented. The Detainee elected to submit 31 letters and one photograph to the board. A follow up interview, to allow the Detainee to bring the items, was conducted on 20 October 2005 and lasted 71 minutes. The Detainee was cooperative and polite throughout both interviews. The

ISN 902  
Enclosure (6)  
Page 1 of 15

21158

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Detainee was given a copy of both the Pashto translated and English versions of the Unclassified Summary of Evidence.

*The Designated Military Officer presented the Unclassified Summary of Evidence, Exhibit DMO-1, the FBI Redaction Memorandum, DMO-2, and the Terrorist Organization Reference Guide, DMO-3, to the Administrative Review Board.*

*The Board recessed at 1420 and reconvened at 1422 for retrieval of DMO-3.*

*The Designated Military Officer stated that a copy of these exhibits had been previously distributed to the Assisting Military Officer for presentation to the Detainee.*

*The Presiding Officer noted from the Enemy Combatant Election Form that the Detainee wanted to respond to each item of the information from the Unclassified Summary as it was presented.*

*The Designated Military Officer gave a brief description of the contents of the Unclassified Summary of Evidence, Exhibit DMO-1 to the Administrative Review Board to assist the Detainee with answering the statements.*

Designated Military Officer: (3) The following primary factors favor continued detention: (3.a) Commitment (3.a.1) The Detainee was captured on 09 December 2002 under suspicion of firing Rocket Propelled Grenades (RPGs) at the American firebase in Asadabad, Afghanistan, on 02 December 2002.

Detainee: That day I was captured but I did not have any rockets. I didn't have any rockets and I didn't fire any rockets.

Designated Military Officer: (3.a.2) The Detainee admitted firing three RPGs at the firebase. He didn't know the date but it is believe that this was an attack that occurred in September 2002.

Detainee: I have not admitted that [statement].

Designated Military Officer: (3.a.3) The Detainee said he was offered money by Mullah Sher to fire the RPGs at the American base. After he had completed the attack, Mullah Sher took the RPG launcher back from him and instead of the promised payment, bought him a pair of tennis shoes. The Detainee stated that Mullah Sher has others working for him to conduct attacks against Americans.

Detainee: I brought the tennis shoes with my own money. I am not aware of [who the] Mullah Sher [is] and I did not say those words.

ISN 902  
Enclosure (6)  
Page 2 of 15

21159

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Designated Military Officer: (3.a.4) Maulawi Sher Wali is a former Taliban Border Brigade Commander for Konar Province. In early April 2005, he was reported to have worked to smuggle explosives from Pakistan into Afghanistan.

Detainee: What does this have to do with me?

Presiding Officer: You may have some connection or you may know this commander. Someone is trying to tie [you both together].

Detainee: I have not heard his name and I do not know him and these questions should not be [referred] to me and they have no connection to me.

Presiding Officer: Someone is trying to tie you together with this commander that's why this [statement] is there. Your answer is fine.

Detainee: They can accuse me for anything but I am not accepting it.

Designated Military Officer: (3.a.5) After the rocket attack, the Detainee went with Rohullah to the village of Patak, Pakistan, and met with Kazi Haji. Once there, Kazi Haji gave a letter to the Detainee who took it to the Mullah at the mosque in Asadabad. This Mullah has incited people while speaking in the mosque against the central government and the United States. The letter instructed the Mullah to pay the Detainee, who received 1,400 rupees.

Detainee: Rohullah is in Camp 5 (GTMO Detention Camp) and you can ask him if I have been with him [to] attack or not. It is not a difficult question. He is alive and he is here. Before [meeting] him in the camp I did not know him, I met him here.

Presiding Officer: How about Kazi Haji?

Detainee: I don't know [him].

Designated Military Officer: (3.a.6) Rohullah is a known al Qaida cell leader who operated out of Konar Province, Afghanistan, and the Pakistan border region.

Detainee: What does that have to do with me?

Designated Military Officer: (3.a.7) Before Ramadan, the Detainee went to Bajoor, Pakistan and met with Kazi Haji and was paid 20,000 rupees. After firing the rockets, he was paid 3,500 rupees by Jan Shah. Jan Shah then drove the Detainee to Kas Konar where the Detainee crossed the river near the Spin Jumat (Spin Mosque). The Detainee was then seen near a stream in a taxi talking on a radio. This was .5km south of the firebase around the time of the rocket attack.

UNCLASSIFIED//~~FOUO~~

Detainee: I don't know [any] of these people. They are free [and] I don't know them. They should be here and not me. They should be captured not me. Why didn't someone capture them and not me, if they gave me the money? I don't know them.

Designated Military Officer: (3.a.8) Mullah Sher and Rohullah gave explosives to the Detainee who then delivered them to Malawi Aslam. It is believed Malawi Aslam was responsible for the IED attack south of the firebase in September 2002. The Detainee was paid by Alef Khan to pass the explosives over to Aslam.

Detainee: They should capture Aslam, why did they capture me? [They] mention Rohullah, and I don't know Rohullah.

Designated Military Officer: (3.a.9) Alef Khan has been identified as an armed insurgent operating out of Qalae Siah District in Nangarhar Province, Afghanistan.

Detainee: What does this have to do with me?

Designated Military Officer: (3.b) Connections/Associations (3.b.1) Prior to firing the rockets at the firebase, the Detainee was with Sher and Rohullah on the east side of the Konar River. Then the Detainee was in a car with Sultan Sayed near Jan Dad's house.

Detainee: I don't know of them and I am not aware.

Designated Military Officer: (3.b.2) Sultan Sayed is one of four appointed HIG sub-commanders in Konar Province, to include the region around Asadabad.

Detainee: Maybe, but I don't know him.

Designated Military Officer: (3.b.3) The Detainee said that while he was at Friday prayer at the mosque in the town of Shiekh Yousef, Pakistan, a Lashker Tauba commander gave the prayer and began to speak about the jihad in Kashmir. After the speech, he asked for volunteers and financial aid to fight in Kashmir. The Detainee went to him and offered to round up some people from his home Province to fight in the jihad.

Detainee: When I was in Shiekh Yousef City I was working as a daily hire worker. I am not going to make too [many] remarks because they told us to say just yes or no. If I start saying a lot of things you will be disturbed and I will be disturbed and we will just waste time.

Designated Military Officer: (3.b.4) The Secretary of State has designated the Lashkar-e-Tayyiba (LT) as a Foreign Terrorist Organization. The LT is the armed wing of the Pakistan-based religious organization, Markaz-ud-Dawa-wal-irshad (MOD), a Sunni anti-United States 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.

ISN 902  
Enclosure (6)  
Page 4 of 15

21161

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

against India. The LT has conducted a number of operations against Indian troops and civilian targets in Kashmir since 1993.

Detainee: These questions are not for me. Why did they put them on me? I am sorry but I am not responsible for Lashkar-e-Tayyiba group.

Presiding Officer: They are trying to show a connection possibly with you belonging to the group.

Detainee: I am not familiar with Pakistan. I was just keeping animals that is all I [was] doing. How do I know them?

Designated Military Officer: (3.b.5) United States Forces obtained information stating that the Detainee had been working in Pakistan and had been known to be associated with the families of Saber Lal and Haji Rohullah.

Detainee: Rohullah is in the same room with me. He is in Camp 5 and you can ask him if I have any connection with them or not.

Presiding Officer: When you say Rohullah is in the same room with you what do you mean?

Detainee: He is in 35 and I am in 38.

Designated Military Officer: (3.b.6) Saber Lal and Haji Rohullah are Taliban commanders.

Detainee: I am not aware. The only one thing I can say is Saber Lal fought against the Taliban for six years, how is he now their commander?

Presiding Officer: Saber Lal fought against the Taliban for six years?

Detainee: Yes, for six years.

Presiding Officer: And Haji Rohullah, no idea [who he is]?

Detainee: Rohullah is with me in the same place (detention camp area) and he told me the story.

Presiding Officer: The whole story, tell us and enlighten us because someone is assuming he is a Taliban commander.

Detainee: When [people] get captured they give names and they make a lot of accusations and lie on [other] people. That's what they did to me and did to him. What does this have to do with me if Saber Lal is a commander of Taliban?

ISN 902  
Enclosure (6)  
Page 5 of 15

21162

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Presiding Officer: The connection they are trying to make is [your] association with him.

Detainee: We don't have any connection we [are] from different tribes.

Designated Military Officer: (3.b.7) The Detainee was once a soldier for Hizb-I Islami Gulbuddin (HIG) commander Sher Wali.

Detainee: I don't know Gulbuddin. I am not [a soldier] and I don't understand. I have not worked for the government. I haven't worked for him or know him.

Designated Military Officer: (3.b.8) The Secretary of State has identified the HIG as a Foreign Terrorist Organization. Gulbuddin Hikmatyar founded HIG as a faction of the Hizb-I Islami party in 1977 and it was one of the major Mujahedin groups in the war against the Soviets. HIG has long-established ties with Usama bin Ladin. HIG has staged small attacks in its attempt to force United States troops to withdraw from Afghanistan, overthrow the Afghanistan government, and establish a fundamentalist state.

Detainee: Well maybe that's for [people with] Gulbuddin but I am not with the Gulbuddin.

Designated Military Officer: (4) The following primary factors favor release or transfer (4.a) Prior to his detention, the Detainee had never heard of Usama bin Laden or al Qaida.

Detainee: Yes, it's true.

Designated Military Officer: (4.b) The Detainee stated he never worked for the Taliban.

Detainee: I haven't worked for [the] government anywhere.

Designated Military Officer: (4.c) A known Taliban member who received terrorist training in Afghanistan stated the Detainee was not al Qaida or Taliban and that he was only an animal caretaker and a nomad from the Konar Province.

Detainee: Show me that member of Taliban [that stated] he knows me [because] I don't know him.

Presiding Officer: This person that was a known Taliban member is saying that you were not al Qaida or Taliban, he is saying this in your favor.

Detainee: I don't know him. I was a nomad taking care of animals that's all I [do]. I am an animal caretaker [from a] generation of [animal caretakers] like my father and grandfather.

ISN 902  
Enclosure (6)  
Page 6 of 15

21163

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Presiding Officer: Do you understand this person that we know is a Taliban member is saying you are not Taliban or al Qaida?

Detainee: Okay.

Presiding Officer: From what's in front of me I don't know who this guy is either but I could probably find out.

Detainee: I want to know what he looks like.

Presiding Officer: The important thing here is he is saying you are not al Qaida and you are not Taliban and that you are an animal caretaker and a nomad.

Detainee: Yes, sir.

Presiding Officer: While we go to great lengths to tell you the stuff that may not be good we [also] want to make sure we go to great lengths to tell you [things] that may work in your favor.

Designated Military Officer: (4.d) The Detainee claims no knowledge or involvement with Hizb-E-Islami Gulbuddin (HIG).

Detainee: Yes.

Designated Military Officer: (4.e) The Detainee stated he does not know a Rohullah, Alef Kahn, Saber Lal, or Malawi Alsam. The Detainee stated that he knew a Mullah Sher when the Detainee helped him build a mosque in approximately 2001.

Detainee: Mullah Sher at that time was not against Americans, why is he against them now? He is a poor guy. He has a house beside the Americans living there day and night.

Presiding Officer: Here it says you do not know Saber Lal, but you do know him now though?

Detainee: Yes, I met him here in Cuba.

Designated Military Officer: (4.f) The Detainee denies any type of weapons training.

Detainee: That's true.

Designated Military Officer: (4.g) The Detainee denies any involvement with any attacks against Americans.

Detainee: No, I haven't done it and I will not do it.

21164

UNCLASSIFIED//~~FOUO~~

ISN 902  
Enclosure (6)  
Page 7 of 15

UNCLASSIFIED//~~FOUO~~

Designated Military Officer: (4.h) The Detainee has never heard of the September 11 attacks until he was detained.

Detainee: Yes, I was not aware of it. We live in a very remote area and we just take care of animals, we don't know about [anything].

Designated Military Officer: (4.i) The Detainee stated he likes the United States' presence in Afghanistan because it brings peace and stability to the country.

Detainee: Yes, that's correct.

Designated Military Officer: (4.j) The Detainee believes jihad against the United States is wrong, and he does not intend to support it in the future.

Detainee: That's correct.

Designated Military Officer: (4.k) The Detainee believes his cousin had two men provide misinformation to the Americans about the Detainee's alleged involvement with the attack in order to retaliate for the Detainee's physical attack on him.

Detainee: They captured me [because of] his words.

Designated Military Officer: (4.l) The Detainee claims two interpreters, Waheed and Haji, who were with the Americans at the time of his capture told him to confess to firing the rockets, promising that he would then be released.

Detainee: There is a mistake here in the last one. They didn't say I had to admit to firing rockets, they said anything [that we ask you] say yes [to it]. You are cousin of Ismeal and I am cousin of Ismeal and I would let you go.

Presiding Officer: Were these two guys your cousins?

Detainee: No, they were translators they were not my cousins, but Ismeal is my cousin. They were working for [the] Americans and Ismeal was working for Americans [also]. They said whatever [we ask] you say yes, [because] we know Ismeal your cousin and we will let you go. They have already talked together and said they would accuse me for an arrest.

Presiding Officer: These two were implying that because they knew your cousin Ismeal that they would let you go as long as you agree to answer 'yes' to certain questions.

Detainee: Yes, that's it exactly.

Designated Military Officer: This concludes the Unclassified Summary of Evidence.

ISN 902  
Enclosure (6)  
Page 8 of 15

21165

UNCLASSIFIED//~~FOUO~~



UNCLASSIFIED//~~FOUO~~

*The Designated Military Officer confirmed that he had no further unclassified information and requested a closed session to present classified information relevant to the disposition of the Detainee.*

Detainee: Present whatever you have.

*The Presiding Officer acknowledged the request.*

*The Presiding Officer opened the Administrative Review Board to the Detainee to present information with the assistance of the Assisting Military Officer.*

Assisting Military Officer: Yes sir, the Detainee would like to make an oral statement and submit letters on his behalf. I am handing to the Administrative Review board the following unclassified exhibits marked as EC-C1 through EC-C31 and EC-D1.

Note: EC-D1 was remarked as EC-C32.

Presiding Officer: Assisting Military Officer please read the Detainee's additional comments on the Enemy Combatant Election Form.

Assisting Military Officer: In response to the allegations, the Detainee said that they are untrue. He says he is a poor, young man only 25, and asks how he could have done all these things. He also said that in a previous interview he made a statement that "my cousin works for the Americans" which was translated to "My cousin works for the Taliban". He said that he would answer the allegations at the ARB.

Detainee: Can I start?

Presiding Officer: You may begin your statement.

*The Detainee made the following statement:*

Detainee: My statement is this; I am a very poor man. Because of the translator misunderstanding I am here. You can look at my father's picture and my family, I am very poor and we are very unfortunate people. At the time they captured me I couldn't speak English, I couldn't understand it and that is why they gave wrong information and captured me. Now [since] I can speak English, if the translator makes a mistake I can tell. I was not against the Americans. I wasn't against them before, now and I will not be against them in the future. I liked them (Americans) before but now without justice they have put me in jail for three years. I appreciate and thank you for your time and kindness to come and sit down with me. My only request is to just make the decision to let me go or kill me. Because they look at me like Enemy Combatant and I don't look at them like Enemy Combatant. You can ask the soldiers [about] the other Detainees not [working] well with me because they ask me "Why am I so nice to the Americans?" I don't know my crime, what is my crime? I am not going to talk too much I understand you guys.

ISN 902  
Enclosure (6)  
Page 9 of 15

21166

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Presiding Officer: Does that conclude your statement?

Detainee: Yes, that was my statement and I am not going to say anymore.

Presiding Officer: Thank You!

*The Assisting Military Officer had no questions for the Detainee.*

*The Designated Military Officer had no questions for the Detainee.*

*Administrative Review Board Member's questions:*

Board Member: Just some quick verification questions. Your cousin Ismeal is he the one who basically said, along with the interpreters that you had something to do with the attacks and firing the rockets.

OL-23: I don't understand sir.

Board Member: The two interpreters Waheed and Haji, and his cousin Ismeal [are] they the ones who suggested you confess to the firing the rocket on the Americans?

Detainee: My cousin Ismeal was not even there. The two interpreters did not tell me to admit to the rockets they told me anything we say you say [yes to].

Board Member: And they said they knew your cousin?

Detainee: Yes sir.

Board Member: Did you make them or your cousin mad at you?

Detainee: I did not have a good relationship with my cousin and he was on their side.

Board Member: What happened to your toe?

Detainee: I was playing soccer and when I kicked the ball my toe hit the ground.

Board Member: You have told a lot of people you don't know and a lot of things you didn't do. I am going to try to find out what you know and what you did.

Board Member: Tell us how you were captured or arrested.

Detainee: I was sleeping in my home when I got captured. Four days prior to my capture I fought my cousin, which is my fathers brother's son. I broke his head when I had a fight with him. The whole village heard and he told me "If I don't get you [into] GTMO Bay, then they will not call me son of a human being".

Board Member: Who arrested you?

21167

UNCLASSIFIED//~~FOUO~~

ISN 902  
Enclosure (6)  
Page 10 of 15

UNCLASSIFIED//~~FOUO~~

Detainee: Eighteen Americans and five Afghans.

Board Member: What time of day was it?

Detainee: This was around 10, 11, 12 at night.

Board Member: Why did you attack your cousin?

Detainee: Americans helped us a lot and they gave us a water pipe. When the pipe came my cousin gave water to every house except our house. When I [returned] from Pakistan my mother told me he did not give us water. It was around evening [during] fasting month I came around [and found him] he was smoking a cigarette and I said hello. I asked him about the water, he said why are you asking me, why don't you go and ask the Americans. Then we started arguing, we ended up fighting and I had a stick and I hit him in the head. It started bleeding and then the people came to separate us and he said "If I do not send you to GTMO Bay, I am not human." The Americans came and said why did you beat up your cousin?

Board Member: The Americans said that?

Detainee: Yes, they investigated.

Board Member: Do you know anyone in Taliban or al Qaida?

Detainee: No, I don't know anyone.

Board Member: Do you know anybody in the HIG?

Detainee: I haven't worked with them.

Board Member: You don't know anybody in the HIG?

Detainee: No.

Board Member: Tell us about your family.

Detainee: What kind of information do you want?

Board Member: Wife, children, parents.

Detainee: I have a wife; I have a son; I have two younger brothers and parents, my father and my mother. I have four sisters, two are married and two are at home.

Board Member: Those that are still with your parents all live together?

Detainee: Yes.

21168

UNCLASSIFIED//~~FOUO~~

ISN 902  
Enclosure (6)  
Page 11 of 15

UNCLASSIFIED//~~FOUO~~

Presiding Officer: I noticed your grandfather mentioned in one of the letters.

Detainee: My grandfather died when my father was four years old.

Presiding Officer: I thought it said special greeting from grandfather.

Detainee: This was from my grandmother side.

Board Member: If you knew anybody then factors that don't seem to relate to you would relate to him or her. If you knew anybody these factors would relate to because we usually try to relate these factors to someone you know or to an organization or to what he did.

Detainee: If I knew some people I would not give them the privilege to be there (be free). If I am in Cuba they would be in Cuba also.

Board Member: Thank You!

Detainee: Thank You.

Board Member: In the letters you got from your family, did someone talk about your cousin Ismeal? Just want to make sure you will not have any trouble if you go back.

Detainee: I will not fight it was enough for me.

Presiding Officer: Do you write your family often? It seems like you write them often [since] back in November 2003.

Detainee: I don't know the time and the [amount], but anytime the Red Cross come I give him twenty letters.

Presiding Officer: The picture that we have here they mentioned in January 2003 about over two years ago, is that the picture?

Detainee: In the letters they always tell me to learn English.

Presiding Officer: Who is in the ninth grade?

Detainee: My cousin from my mother's side. He is studying in Kabul.

Presiding Officer: I believe you are an honorable man so I'd like for you to be honest with me and give me honest answers to some of these questions.

Detainee: I am not hiding anything I have told everybody the truth. I have been accused wrongfully and I am not a criminal and I have not [committed] any crime.

Presiding Officer: Were you ever near or around the American firebase at Asadabad?

ISN 902  
Enclosure (6)  
Page 12 of 15

21169

UNCLASSIFIED//~~FOUO~~

UNCLASSIFIED//~~FOUO~~

Detainee: My home is in the back of the American base.

Presiding Officer: So you live near it?

Detainee: I can hear them talking. It's not a big base it is kind of like an airport.

Presiding Officer: Rohullah who is in Camp 5, you never, even in passing, met the guy in a different village or tribe?

Detainee: I didn't know him before. He was in Bagram, Afghanistan with me (prior to Cuba) and then later on he came to Cuba.

Presiding Officer: They talked about some substantial amounts for possibly paying you to be involved in these explosions.

Detainee: Rohullah is in the same camp ask him. If you want Saber Lal while I am sitting here you can call the soldiers and tell them to bring him here.

Board Member: Most Detainees wear white hats, is there some significance of your black hat?

Detainee: I understood that.

Board Member: Does that mean you are higher up in the organization?

Detainee: I am dark that's why.

Board Member: Oh, so you are not higher up in the organization, you're not a Mullah?

Detainee: No, I look nice with it. I am darker and it matches with the hat.

Presiding Officer: If you are released or transferred back to your home country of Afghanistan what do you plan on doing?

Detainee: Before I was thinking about working for the Americans but they trouble me too much. I am going back to my own way of living and I will keep my goats.

Presiding Officer: And stay away from your cousin.

Detainee: I can't go anywhere [without seeing him] his house is [near]. Even my cousin has been upset lately and he wants me to come back.

*The Presiding Officer read the post-Administrative Review Board instructions to the Detainee and adjourned the open session of the Administrative Review Board.*

Detainee: What time will the answer come?

21170

UNCLASSIFIED//~~FOUO~~

ISN 902  
Enclosure (6)  
Page 13 of 15

UNCLASSIFIED//~~FOUO~~

Presiding Officer: There is no set time as to when.

Detainee: Last year during Ramadan I was being tried and then this year in Ramadan [I am] being tried [again].

Presiding Officer: Last year was to determine whether you were an Enemy Combatant, this is a review of that status. We are going to make a recommendation and once that recommendation is accepted by the Designated Civilian Official [you may be notified], we are just not sure how quickly that response will get back to you and in what manner.

Detainee: In the previous (board) they wrongfully accused me as an enemy. This time I hope it does not happen like this. I told you before and I am telling you now, I was not your enemy, I am not your enemy and I will not be your enemy. I am a very poor man and I will keep my animals. Look at my picture, look at my father's clothes, and look at my brother's shoes.

Presiding Officer: I did and you have a handsome family.

Detainee: Thank you.

Presiding Officer: I cannot give you a specific time as to when the answer will get back to you. You have been patient this long please be patient a little longer.

Detainee: If I have to spend 100 years in jail I will still be patient.

Board Member: We hope it will be soon.

Detainee: I am thankful for the six people who are here for me (referring to the ARB personnel) but I would like for you to think about the justification, they brought me here [wrongfully].

Presiding Officer: We will take all of this into consideration, your families' letters, the comments you have made here today and the information we have in front of us and that's about all I can tell you.

Detainee: Thank you.

*The Presiding Officer opened the classified portion of the session.*

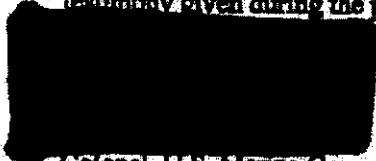
*The Presiding Officer adjourned the classified portion of the session and the Administrative Review Board was closed for deliberation and voting.*

ISN 902  
Enclosure (6)  
Page 14 of 15

UNCLASSIFIED//~~FOUO~~

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. Marine Corps  
Presiding Officer

21172

UNCLASSIFIED//~~FOUO~~

ISN 902  
Enclosure (6)  
Page 15 of 15

# UNCLASSIFIED

## CORRESPONDENCE SUBMITTED ON BEHALF OF ENEMY COMBATANT

ISN 902

Exhibit #	Date	Classification	Guantanamo#/ICRC Letter #
EC-C1	9/12/2003	UNCLASSIFIED	GUAN-2004-I 00165/ICRC #4413
EC-C2	12/10/2003	UNCLASSIFIED	GUAN-2004-I 00585/ICRC #4715
EC-C3	11/23/2003	UNCLASSIFIED	GUAN-2004-I 00913/ICRC #5050
EC-C4	1/12/2003	UNCLASSIFIED	GUAN-2004-I 00830/ICRC #4964
EC-C5	1/9/2004	UNCLASSIFIED	GUAN-2004-I 01276/ICRC #5451
EC-C6	3/8/2004	UNCLASSIFIED	GUAN-2004-I 01994/ICRC #5873
EC-C7	5/30/2004	UNCLASSIFIED	GUAN-2004-I 02200/ICRC #6014
EC-C8	6/2/2004	UNCLASSIFIED	GUAN-2004-T 01220/ICRC #0499
EC-C9	6/22/2004	UNCLASSIFIED	ICRC #A132-10178
EC-C10	6/20/2004	UNCLASSIFIED	GUAN-2004-I 02401/ICRC #6148
EC-C11	9/21/2004	UNCLASSIFIED	GUAN-2004-A 01000/ICRC #7106
EC-C12	9/25/2004	UNCLASSIFIED	GUAN-2004-A 01001/ICRC #7107
EC-C13	10/5/2004	UNCLASSIFIED	GUAN-2005-A 00256/ICRC #7489
EC-C14	1/12/2005	UNCLASSIFIED	GUAN-2005-A 00360/ICRC #7598
EC-C15	1/7/2005	UNCLASSIFIED	GUAN-2005-A 00572/ICRC #7805
EC-C16	2/22/2005	UNCLASSIFIED	GUAN-2005-A 00598/ICRC #7831
EC-C17	3/24/2005	UNCLASSIFIED	GUAN-2005-A 01004/ICRC #8191
EC-C18	4/24/2005	UNCLASSIFIED	GUAN-2005-A 01478/ICRC #8650
EC-C19	4/24/2005	UNCLASSIFIED	GUAN-2005-A 01479/ICRC #8651
EC-C20	5/22/2005	UNCLASSIFIED	GUAN-2005-A 01473/ICRC #8645
EC-C21	1/21/2005	UNCLASSIFIED	GUAN-2005-A 01477/ICRC #8649
EC-C22	4/23/2005	UNCLASSIFIED	GUAN-2005-A 01480/ICRC #8652
EC-C23	4/28/2005	UNCLASSIFIED	GUAN-2005-A 01474/ICRC #8646
EC-C24	4/29/2005	UNCLASSIFIED	GUAN-2005-A 01475/ICRC #8647
EC-C25	4/28/2005	UNCLASSIFIED	GUAN-2005-A 01476/ICRC #8648
EC-C26	5/9/2005	UNCLASSIFIED	GUAN-2005-A 01779/ICRC #8947
EC-C27	6/21/2005	UNCLASSIFIED	GUAN-2005-A 01963/ICRC #9131
EC-C28	6/21/2005	UNCLASSIFIED	GUAN-2005-A 01964/ICRC #9132

UNCLASSIFIED

21173

Enclosure (4)  
EC-C  
Page 1 of 2



## UNCLASSIFIED

EC-C29	6/8/2005	UNCLASSIFIED	GUAN-2005-A 01965/ICRC #9133
EC-C30	7/4/2005	UNCLASSIFIED	GUAN-2005-A 01966/ICRC #9134
EC-C31	6/3/05	UNCLASSIFIED	GUAN-2005-I 01039
EC-C32	Not Dated	UNCLASSIFIED	N/A

UNCLASSIFIED

21174

Enclosure (4)  
EC-C  
Page 2 of 2

UNCLASSIFIED

6-3-2005



9020

The McGraw-Hill Companies  
Camp Dicks, Quantico Bay  
Washington, DC 22055

U.S. Department of Justice

Washington, D.C. 20530  
Official Business  
Penalty for Private Use \$300

CLASSIFIED 10/05

21175

UNCLASSIFIED

EC-C31  
Page 1 of 11

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

In re PRO SE GUANTANAMO BAY DETAINEES CASES:

KHAIL-GUL v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0877 (IR)
RAHMATTULLAH v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0878 (CKK)
TAJ MOHAMMAD v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0879 (RWW)
HAJH NASRAT v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0880 (BSE)
MOHAMMED OULD ELANI v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0881 (RWR)
PAZIL RAHMAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0882 (GK)
KARIN BOSTAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0883 (RWW)
MUHBULLAH v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0884 (RMC)
ALIF MOHAMMAD v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0885 (CK)
ABDEL WAHAB v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0886 (BGE)
CHAMAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0887 (RWR)
NAZUL GUL v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0888 (CKK)
YASIN MUHAMMAD BARAKAT v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0889 (BSE)
SHARBAT KHAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0890 (RMC)
NASRULLAH v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0891 (RWW)
ALI HUSSEIN MOHAMMAD MUSTY SHARAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0892 (CKK)
MOHAMMAD MUSTAFA SOHAIL v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0893 (RMC)

APPROVED BY  
S. F. ROCHAS



U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

UNCLASSIFIED

KASIMBEKOV KOMOLIDEN TOKIRJANOVICH v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0994 (RCL)
MOHAMEDOU OULD ELAHI ELAHI v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0995 (GK)
AKHTEYAR MOHAMMED v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0996 (JR)
KHUDADAD v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0997 (PLF)
ARIAN MOHAMMAD GHAFIL AL KARIN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0998 (RMU)
ASIM BEN THABIT AL KHALAQ v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-0999 (RSW)
ABIS SARAJEDIN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1000 (PLF)
ABDULLAH MOHAMMED KAHN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1001 (BSH)
AKHTAR MOHAMMAD v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1002 (BGS)
HABIBULLAH MANGUT v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1006 (JDB)
ADRI HASSAN HAMAD v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1009 (RCL)
MOHABAT KHAN v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1010 (JIL)
ABDUL ZUHOOR v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1011 (JR)
SYED MUHAMMAD ALI SHAH v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1012 (BSH)
ABDUL SALAAM v. GEORGE W. BUSH, et al.	Civil Action No. 05-CV-1013 (JDB)

2117-2005-109  
UNCLASSIFIED

APPROVED BY  
05/10/05



**RESPONDENTS' MOTION TO STAY PROCEEDINGS PENDING RELATED APPEALS AND FOR COORDINATION**

For the reasons explained below, respondents move for a coordinated stay of proceedings in the above-captioned *pro se* Guantanamo Bay detainee cases,<sup>1</sup> pending resolution of all appeals in two other Guantanamo Bay detainee cases, *Khalid et al. v. Bush*, No. 04-CV-1142 (JL), 355 F. Supp.2d 311 (D.D.C. 2005), *appeals docketed*, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and *In re Guantanamo Detainee Cases*, No. 03-CV-8299, *et al.*, 355 F. Supp.2d 443 (D.D.C. 2005), *appeal on petition for interlocutory appeal*, No. 05-5064 (D.C. Cir.). The pending appeals will address the same issues in the above-captioned cases and, thus, determine how the cases should proceed, if at all. As every Judge who has considered this issue has concluded, a stay of proceedings is therefore appropriate.<sup>2</sup>

**BACKGROUND**

The above-captioned cases are among more than 50 individual *pro se* cases filed by detainees at the United States Naval Base, Guantanamo Bay, Cuba ("Guantanamo Bay"). A total of approximately 92 cases have been filed by or on behalf of approximately 200 detainees at Guantanamo Bay and are pending in this Court. The above-captioned *pro se* cases were filed through mailings by detainees to the Court. So far several judges of the Court have issued orders

<sup>1</sup> Five of the above-captioned cases, *Abuomairat v. Bush*, No. 05-CV-8878 (CKK); *Gul v. Bush*, No. 05-CV-8888 (CKK); *Shanley v. Bush*, No. 05-CV-8892 (CKK); *Almaguer v. Bush*, No. 05-CV-1008 (JMS); and *Schauer v. Bush*, No. 05-CV-1013 (JMS), have already been stayed. See *infra* note 3. This motion is being submitted in those cases only for purposes of seeking coordination and not for purposes of seeking a stay.

<sup>2</sup> Due to the extraordinary circumstances presented by these *pro se* cases, see *infra*, respondents' counsel did not confer with each of the *pro se* petitioners regarding this motion, but it is presumed that petitioners oppose the motion.

GUAN 5005 UNCLASSIFIED

pertaining to certain *pro se* cases before them. Judges Kollar-Kotelly and Bates have already stayed cases before them pending the Court of Appeals resolution of the *Khalid* and *In re Guantanamo Detainees Case* appeals.<sup>3</sup> Judge Roberts has set a schedule for respondents to file and serve "a statement showing why the Writ of Habeas Corpus should not issue."<sup>4</sup> And Judge Robinson has ordered respondents to "make a return certifying the true cause of petitioner's detention" in the cases before him.<sup>5</sup>

Almost three dozen non-*pro se* Guantanamo Bay detainee cases have been stayed pending the *Khalid* and *In re Guantanamo Detainees Case* appeals; no Judge of the Court who so far has addressed the issue has refused to stay such a case.<sup>6</sup>

---

<sup>3</sup> See Order (May 18, 2005), *Salameh v. Bush*, No. 05-CV-0878 (CKK) (staying cases requiring factual return after decision from Court of Appeals in *Khalid* and *In re Guantanamo Bay Detainees Case*); Order (May 18, 2005), *Gul v. Bush*, No. 05-CV-0883 (CKK) (same); Order (May 18, 2005), *Shabazz v. Bush*, No. 05-CV-0892 (CKK) (same); Order (May 25, 2005), *Adams v. Bush*, No. 05-CV-1008 (JDB) (staying case); Order (May 25, 2005), *Salameh v. Bush*, No. 05-CV-1013 (JDB) (same).

<sup>4</sup> See Order (May 11, 2005), *Khalid v. Bush*, No. 05-CV-0881 (RWK); Order (May 11, 2005), *Chamam v. Bush*, No. 05-CV-0887 (RWK).

<sup>5</sup> See Order (May 11, 2005), *Khalid-Gul v. Bush*, No. 05-CV-0877 (JR); Order (May 27, 2005), *Mohammed v. Bush*, No. 05-CV-0896 (JR); Order (May 27, 2005), *Zubair v. Bush*, No. 05-CV-1011 (JR).

<sup>6</sup> See, e.g., *El-Morshedi v. Bush*, No. 05-CV-0270 (JR) (dkt. no. 29); *Al-Winnan v. Bush*, No. 05-CV-0828 (FLR) (dkt. no. 13); *Amourah v. Bush*, No. 05-CV-0892 (JRB) (dkt. no. 12); *Siti v. Bush*, No. 05-CV-0429 (JTL) (dkt. no. 5); *Kabir v. Bush*, No. 05-CV-0481 (JTL) (dkt. no. 10); *Qasbi v. Bush*, No. 05-CV-0454 (JMS) (dkt. no. 4); *Al-Rashid v. Bush*, No. 05-CV-0584 (RWK) (dkt. no. 10); *Salameh v. Bush*, No. 05-CV-0714 (RWK) (dkt. no. 12).

**ARGUMENT**

A coordinated stay of these *pro se* cases is appropriate. The *Khalid and Jare Guantanamo Detainee Cases* involve decisions of Judges Leon and Green, respectively, regarding the claims, if any, available to Guantanamo Bay detainees. The appeals of these cases thus will address the same issues in these *pro se* cases, including whether Guantanamo Bay detainees have judicially enforceable rights under the Constitution, statutes, or various international treaties. Those appeals, therefore, will determine how the Guantanamo Bay detainee cases, including these *pro se* cases, should proceed, if at all. It makes no sense for these cases to proceed in advance of resolution of the appeals; further proceedings would require the expenditure of judicial and other resources that may be avoided as a result of the appeals, and, in any event, such proceedings very likely would have to be revisited or reargued when the Court of Appeals provides guidance regarding handling of the claims in these Guantanamo Bay detainee cases. Indeed, Judges Koffey and Bates have recognized these issues and stayed the *pro se* cases before their pending a decision from the Court of Appeals.<sup>3</sup>

<sup>3</sup> The Court has the authority to stay proceedings in habeas cases, even prior to the filing of a response. Pursuant to the Rules Governing Section 2254 Cases in the United States District Courts (the "2254 Rules"), which are applicable to petitions for writ of habeas corpus other than those arising under 28 U.S.C. § 2254, such as the petitions in these cases, see 2254 Rule 1(b), a court may extend the deadline for responses to habeas petitions beyond the time limits set forth in 28 U.S.C. § 2243 — the 2254 Rules do not indicate a fixed deadline for responding to habeas petitions, and they supersede the time limits set forth in 28 U.S.C. § 2243. Rule 4 provides that "the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. . . ." See *Mohr v. Neuhorn*, 15 F.3d 652, 653-54 (7th Cir. 1994) ("[T]he Rules Governing Section 2254 Cases in the United States District Courts, which have the force of a superseding statute, 28 U.S.C. § 2072(b) . . . [i]ssued up the deadline for responses. Rule 4 leaves it up to the district court to fix the deadline."); *Castillo v. Pratt*, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001) (staying § 2241 petitioner's request for expedited consideration because "[t]he discussion afforded by Rule 4 of the 2254 Rules 'perverts' over the strict time limits of 28 U.S.C. § 2243"). See also *Lewis v. North American*

GUAN-2005-20189 UNCLASSIFIED

A confirmed stay should also include a stay on any requirement, including any requirement previously imposed by Court order, *see supra* notes 4 & 5, that respondents submit any kind of factual return or other return to the *pro se* petitions. Aside from the fact that the Court of Appeals, in *Khalid and J. re Guantanamo Detainee Cases*, will be considering the proper scope of these habeas proceedings, including whether these cases can be dismissed without reference to specific factual returns for petitioners, little utility would be served by requiring respondents to submit factual returns at this time. In those detainee cases in which factual returns have been required and filed, such returns have typically consisted of records of proceedings before the Combatant Status Review Tribunal ("CSRT"), which the military uses to review and confirm detainees' ongoing status as enemy combatants subject to detention. Such returns include both classified and unclassified material, and often a full explanation of the reasons justifying the detention of a particular detainee necessarily involves classified or otherwise protected information that, pursuant to military rules and/or the Protective Orders entered in various detainee habeas cases, may not be shared with a detainee (whose detention was initiated because he was believed to pose a threat or danger to the security of the Nation and its troops or citizens).<sup>2</sup>

---

*Co.*, 299 U.S. 248, 254-55 (1936) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants."); *id.* at 256 (noting propriety of stay in cases "of extraordinary public moment").

<sup>2</sup> A detainee's counsel may have access to classified and protected materials in a factual return pertaining to the detainee, but only after counsel obtains a security clearance and otherwise complies with the protective order made applicable in other *Guantanamo Bay* detainee cases, which prohibits the sharing of classified information with a detainee. *See* November 8, 2004 Amended Protective Order and Procedures for Counsel Access To Detainees at the United States Naval Base in Guantanamo Bay, Cuba, ¶ 30, *J. re Guantanamo Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. 2004).

- 4 -

21181

UNCLASSIFIED

EC-C31  
Page 7 of 11



With respect to information supporting detention that can be shared with a detainee, each detainee has already had the opportunity to participate in the CSRT process, and during that process, an unclassified summary of the evidence supporting the detainee's classification as an enemy combatant was made available to the detainee in advance of the CSRT hearing. See Memorandum dated July 29, 2004 regarding Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Encl. (1) ¶¶ F(3), H(3) (available online at: [www.defenselink.mil/news/Jul2004/20040730comb.pdf](http://www.defenselink.mil/news/Jul2004/20040730comb.pdf)). A detainee also would have been permitted to attend and testify in the open portions of the CSRT proceedings. See *id.* ¶ F(3). There would be little utility in requiring respondents to rehash in a return information the detainee already had the opportunity to learn, especially when proceedings in these cases otherwise should be stayed pending the appeal.

A coordinated stay, including a stay on any kind of return to the petition, would also be warranted to the extent it would be appropriate to attempt to find volunteer counsel for any of the pro se petitioners who desire such counsel. These pro se cases were presumably filed as a result of notifications provided by the Department of Defense ("DoD") informing detainees that they could seek review of their detention by petitioning the Court. Petitioners, however, are likely unfamiliar with United States law and the American legal system, typically do not speak or write English, and have access to the Court only through mail and not the Court's electronic filing system. Given these factors, as well as the fact that petitioners are not permitted access to classified information supporting their detention, recruitment of volunteer counsel for petitioners

GUAN-2005-~~UN~~CLASSIFIED

who desire counsel may be appropriate.<sup>9</sup> A coordinated stay of the cases would permit any such efforts to go forward and promote efficiency in the cases.

**CONCLUSION**

For the foregoing reasons, the Court should stay further proceedings in these *pro se* cases, including any requirement for a return to the petitioners, pending resolution of the appeals in *Khaila* and *In re Guantanamo Detainee Cases*.

Dated: June 3, 2005

Respectfully submitted,

PETER D. KEMLER  
Assistant Attorney General

KENNETH L. WAINSTEIN  
United States Attorney

DAVID B. SALMONS  
Assistant to the Solicitor General

DOUGLAS M. LETTER  
Terrorism Litigation Counsel

---

<sup>9</sup> For its part, DoD is in discussions with an attorney organization regarding recruiting volunteer counsel for *pro se* petitioners who may desire representation.

GUAN-2005-101039

UNCLASSIFIED

In Terry M. Henry  
JOSEPH H. HUNT  
VINCENT M. GARVEY  
TERRY M. HENRY  
JAMES J. SCHWARTZ  
FRERYA M. NORONHA  
ROBERT J. KATKBERG  
NICHOLAS J. PATTERSON  
ANDREW L. WARDEN  
EDWARD H. WHITE  
Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
P.O. Box 883  
Washington, DC 20044  
Tel: (202) 514-2800  
Attorneys for Respondents

GUAN 2005-I 01039

UNCLASSIFIED

**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2005, I caused a copy of the foregoing Respondents' Motion to Stay Proceedings Pending Related Appeals and for Coordination to be served via U.S. Mail, First Class postage prepaid, on the petitioners in these cases at the following address:

Camp Delta; Guantanamo Bay  
Washington, D.C. 20335

At Terry M. Henry  
TERRY M. HENRY  
United States Department of Justice  
Civil Division, Federal Programs Branch  
One of the Attorneys for Respondents

APPROVED BY  
JULIUS ROBERTS



IF JUDGES  
GUANTANAMO BAY, CUBA

21185

UNCLASSIFIED

EC-C31  
Page 11 of 11

UNCLASSIFIED



Description: Photograph, left to right, of detainee's cousin holding detainee's son, two brothers, and father.

21186

UNCLASSIFIED

EC-C32  
Page 1 of 1