

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG, <i>et al.</i>)	
)	
<i>Petitioners,</i>)	
)	
v.)	CASE NO. 1:04-CV-01137 (RMC)
)	
GEORGE W. BUSH, <i>et al.</i>)	
)	
<i>Respondents.</i>)	
)	

**NOTICE OF FILING OF PUBLIC VERSION OF DOCKET NOS. 32 AND 34,
FACTUAL RETURN OF FEROZ ABBASI**

Petitioner Feroz Abbasi and Respondents file the attached public version of the factual return filed in this case on October 22, 2004 (Docket No. 32 and 34) that was subsequently ordered sealed by the Court. The Factual Return contains redactions made by Petitioners consistent with the Court's Order Addressing the Sealing of Material to protect the personal safety of individuals. The redactions made by respondents in the factual return are the same or consistent with those made by respondents in docket nos. 32 and 34, and such redactions were made for the reasons explained in the Declaration of James R. Crisfield, Jr., contained in the factual return.

Dated: November 1, 2004

Respectfully submitted,

/s/ Shayana Kadidal

Shayana Kadidal (D.C. Bar No. 454248)

Barbara Olshansky

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MOAZZAM BEGG, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1137 (RMC)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ FACTUAL RETURN TO PETITION FOR WRIT OF HABEAS CORPUS
BY PETITIONER FERUZ ALI ABBASI**

Respondents hereby submit, as explained herein, the record of proceedings before the Combatant Status Review Tribunal pertaining to petitioner Feroz Ali Abbasi as a factual return to petitioner’s petition for writ of habeas corpus. See Exhibit A. For the reasons explained in the record, petitioner Feroz Ali Abbasi has been determined to be an enemy combatant. Accordingly, petitioner Feroz Ali Abbasi is lawfully subject to detention pursuant to the President’s power as Commander in Chief or otherwise, and is being detained.

The portion of the record suitable for public release is attached hereto, and the remaining portions of the record, including information that is classified or not suitable for public release, will be filed under seal and made available to petitioner’s counsel upon the entry of a protective order governing such information by the Court, and the issuance of security clearances to petitioner’s counsel.

Respondents reserve the right to rely, in addition to the complete record, on legal grounds for petitioner Feroz Ali Abbasi’s continued detention, presented in briefing opposing the petition for writ of habeas corpus in accordance with a schedule determined by the Court.

Dated: October 22, 2004

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEROZ ALI ABBASI, <i>et al.</i> ,)	
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Petitioners,)	
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v.)	Civil Action No. 04-CV-1137 (RMC)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

DECLARATION OF TERESA A. McPALMER


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

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.
2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Feroz Ali Abassi 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 the names and addresses of detainee family members and 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: 21 Oct 04



Teresa A. McPalmer
CDR, JAGC, USN



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

OARDEC/Ser: 0249
20 October 2004

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From: Director, Combatant Status Review Tribunal

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

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

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

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

J. M. McGARRAH
RADM, CEC, USN

Distribution:

NSC (Mr. John Bellinger)
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19 Oct 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 #11 of 29 September 2004

(2) Record of Tribunal Proceedings

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

a. The detainee was properly notified of the Tribunal process and made a sworn statement at the Tribunal. Following his failure to comply with repeated warnings from the Tribunal President to confine his comments to the issue of his status as an enemy combatant, the detainee was removed from the Tribunal.

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

c. The Tribunal substantially complied with all provisions of references (a) and (b). Note that some information in exhibits R-4 thru R-7, R-10, and R-14, was redacted. The FBI properly certified in exhibits R-2 and R-3 that the redacted information would not support a determination that the detainee is not an enemy combatant. Note also the following duplicate pairs of pages in exhibit D-E: 47 and 48; 29 and 31; and 30 and 32. Finally, please note that the Tribunal's reference to a consultation with the Combatant Status Review Tribunal Legal Advisor is slightly misleading. The Tribunal consulted with the Assistant Legal Advisor on this matter. I have not consulted with the Tribunal regarding this particular case.

d. The detainee requested that several witnesses be produced to testify at the Tribunal. They included his attorney, his mother, and multiple U.S. Government employees. The Tribunal President denied the request for his attorney because her expected testimony -- that the detainee was unlawfully detained in Guantanamo Bay -- was not relevant to the determination to be made by the Tribunal. The President denied the request for the detainee's mother because he determined that her expected testimony -- information about the detainee's state of mind before leaving the United Kingdom -- was also not relevant to the Tribunal. Finally, the President determined that the expected testimony of

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

the U.S. government employees -- addressing issues related to his health and alleged maltreatment at Guantanamo Bay -- was not relevant to the Tribunal. He also determined that the witnesses were not reasonably available because the request for them was not timely.

In my opinion the Tribunal President's witness decisions were not an abuse of discretion.


The detainee also requested that documentary evidence be produced. He first requested his autobiography be produced. It was produced and was considered by the Tribunal. The detainee also requested his medical records to substantiate his deteriorating medical condition and abuse that he claimed he had suffered. The Tribunal President declined to order the production of these records because he determined that they would not be relevant to the Tribunal's decision. Finally, the detainee requested a letter he had written to his mother. The detainee claimed that the letter would support his allegations of maltreatment. The President denied this request, again on the basis of lack of relevance. In my opinion, the Tribunal President correctly determined that the denied documents were not relevant to the issue of the detainee's classification as an enemy combatant. His decisions were not an abuse of discretion.

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



Department of Defense
Director, Combatant Status Review Tribunals

29 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #11

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

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

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

MEMBERS:

[REDACTED], Colonel, U.S. Air Force; President

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

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

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



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

13 October 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: #11

(U) ISN#: [REDACTED]

Ref: (a) (U) Convening Order for Tribunal #11 of 29 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U/FOUO)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) 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 7 Oct 04 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, 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: _____ #11
ISN #: _____

1. Introduction

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida. 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 the evidence presented to the Tribunal by the Recorder indicated that the detainee traveled from Great Britain to Afghanistan to receive military training and to fulfill his jihad obligation. It further indicated that when he arrived in Afghanistan he was taken to a guesthouse where he was recruited, given a nickname, and sent to the al Farouq training camp. At the camp, the detainee participated in both basic and advanced courses. The unclassified summary of the evidence also indicated that, after training, the detainee met with high level al Qaida leaders, volunteered for a martyrdom mission, was assigned guard duty over a suspected spy, and then volunteered to serve with a small unit of al Qaida fighters who were to defend the Kandahar airport against the Americans. The detainee chose to participate in the Tribunal process. He requested several witnesses, requested a number of unclassified documents be produced, and made a sworn verbal statement. The Tribunal President found the requested witnesses not relevant to the issue of whether the detainee is properly classified as an enemy combatant, and denied the requests. The Tribunal President ordered some of the unclassified documents requested by the detainee to be produced and the Recorder complied. The President also denied the several of the detainee's document requests, finding that the requested documents were not relevant for purposes of the CSRT process. The detainee, in his verbal statement, read verbatim from several of the documents he had previously submitted as evidence. The portions he chose to read were not relevant to the issue of whether the detainee is properly classified as an enemy combatant. The President asked the detainee several times to confine his remarks to issues relevant to his status as an enemy combatant. The detainee refused to comply with the President's request, and was finally removed from the hearing room. The Tribunal continued in the detainee's absence, and the Tribunal members later considered all the evidence submitted by the detainee, including the documents the detainee was reading verbatim during his

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Enclosure (1)
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sworn statement. The Tribunal President's evidentiary and witness rulings are explained below.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a through D-G and R-1 through R-18.
- b. Sworn statement of the detainee.

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

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

<u>Witness</u>	<u>President's Decision</u>	<u>Testified?</u>
Gitanjali Gutierrez	not relevant	no*
[REDACTED]	not relevant	no**
Multiple U.S. employees	not relevant/not reasonably available	no***

* Mr Guteirrezz is the detainee's lawyer. The detainee proffered that this witness would testify regarding how the detainee is wrongly being held as an enemy combatant, because he should be held as a POW under international law. The Tribunal President ruled that this information would not be relevant to the CSRT process and therefore denied the request.

** [REDACTED] is the detainee's mother. The detainee proffered that this witness could submit the detainee's last will and testament that could attest to his frame of mind before leaving the United Kingdom and would cover the reasons why he left home. The Tribunal President ruled the detainee's state of mind prior to leaving Great Britain was not relevant to his classification as an enemy combatant but reserved the option to approve the witness request if, after consideration of all evidence presented, it appeared that the proffered witness would be relevant and helpful. After review of all the evidence presented the President's ruling did not change. The President felt that the detainee's actions once he arrived in Afghanistan were the relevant information needed by the Tribunal to determine whether he had been properly classified as an enemy combatant, not his state of mind when leaving the United Kingdom. Further, the Tribunal President felt that the detainee's 148 page autobiography, along with his three additional documents, which the Tribunal considered, contained sufficient background information regarding the detainee's state of mind, and the last will and testament would be cumulative. He therefore denied the requested witness as not relevant.

*** In Exhibits D-c and D-f, the Detainee requested many witnesses and documents that related to his health, various indignities he feels he has suffered while detained at Guantanamo Bay, Cuba, and related matters. The Tribunal President denied these requests because they did not relate to whether the detainee has been properly classified as an enemy combatant. The President also felt that these witnesses were not reasonably available because the detainee did not request the witnesses until he was before the Tribunal, despite several earlier opportunities to do so. Inasmuch as the requests alleged maltreatment of the detainee, the Tribunal President forwarded the documents to the CSRT Director for appropriate action.

The Detainee requested the following additional evidence be produced:

<u>Evidence</u>	<u>President's Decision</u>	<u>Produced?</u>
Detainee's autobiography	reasonably available	yes
Detainee's medical records	not relevant	no*
Letter to detainee's mother	not relevant	no*
Other documents authored by the detainee	reasonably available	yes**

* The detainee did not proffer that either of these exhibits (which he requested only in an exhibit submitted during the hearing), were in any way relevant to the issue of whether he is properly classified as an enemy combatant. The detainee proffered that his medical records would show that his health has deteriorated since being transferred to Building Four-Echo. He proffered that the letter to his mother would support certain allegations of maltreatment while detained. The Tribunal President therefore ruled that the documents were not relevant and denied the requests. Inasmuch as the requests alleged maltreatment of the detainee, the Tribunal President forwarded the documents to the CSRT Director for appropriate action.

** Submitted as Defense exhibits

5. Discussion of Unclassified Evidence

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

a. The recorder offered Exhibits R-1, R-2, R-3, and R-18 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. Exhibits R-2 and R-3 provided no usable

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Enclosure (1)
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evidence. Exhibit R-18 is the detainee's Habeas Corpus petition, which the Tribunal carefully considered. Predominately, the Tribunal had to look to classified exhibits and the exhibits submitted by the detainee 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 and the exhibits submitted by the detainee. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3), and the detainee's exhibits are attached, marked D-b, through D-G. In his statement, the detainee read portions of his exhibits verbatim to the panel. His remarks were focused on the legality of his detention and similar matters. The Tribunal President asked the detainee several times to confine his remarks to matters relevant to the question of whether his classification as an enemy combatant was proper. After multiple warnings, the detainee refused to address matters relevant to this issue, and was removed from the hearing room. Since the detainee had been reading his comments directly from his submitted exhibits, and refused to interject any additional information, the Tribunal carefully considered the detainee's exhibits after the detainee was removed from the hearing for his disruptive behavior.

c. The Tribunal felt that several of the defense exhibits, submitted at the detainee's request, generally supported the allegation that detainee is a member of al Qaida, and specifically supported individual allegations in the Unclassified Summary of the evidence. For example, in Exhibit D-f, page 9-11, the detainee explains why his military training was necessary and was his obligation. This helped the Tribunal understand why the detainee voluntarily traveled from Great Britain to Afghanistan, using his own funds, to receive military training and fulfill his jihad obligation. On page 11 of Exhibit D-f, the detainee writes about the guesthouse in Afghanistan that is the subject of paragraph 3(a)(2) of Exhibit R-1. He explains that the process in the guesthouse was more similar to enrollment in a university course, and that the person "enrolling" was under no obligation to do so and it was "their free choice and initiative." This paragraph helped the Tribunal understand the enrollment process and convinced the Tribunal that the detainee made a free and conscious choice to train at the al Farouq terrorist training camp. On page 13 of Exhibit D-f, the detainee explains his state of mind when leaving Great Britain for Afghanistan. He says that he left Britain to either "join Taliban or fight for the sake of Allah in Kashmir." Along with convincing the Tribunal of the detainee's true intentions, the Tribunal President felt that this statement regarding his state of mind when leaving Britain supported his earlier conclusion that the detainee's mother was not a relevant witness. (Detainee proffered that his mother would submit the detainee's last will and testament as evidence of his frame of mind before leaving Britain). Also on page 13, the detainee clarifies the statement that he is alleged to have made in paragraph 3(a)(5) of Exhibit R-1, stating that the true construction of the statement should be "to take action against THE Americans and THE Jews." On the same page the detainee states that he read "Declaration of War" by Usama bin Laden and knew before he left that bin Laden "had issues with the American military." On the next page he confirms that bin Laden funded the camp, and that he was present when bin

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Enclosure (1)
Page 4 of 6

Laden gave a speech at the camp (Exhibit R-1, paragraph 3(a)(6)). Exhibit D-e provides a plethora of support for several of the allegations in Exhibit R-1, most notably in the chapter regarding his terrorist training at the camp and associations with other known al Qaida figures. Finally, on page 27 of Exhibit D-d, the Tribunal noted that the detainee states that he is "in no way perturbed" by being classified as an enemy combatant and is "humbled that Allah would honor me so." He concludes this statement by referring to the United States as "terrorist America," and asserts "none of the oppressors before has escaped punishment for their sins." He further asserts that the U.S. army is occupying "our very Sacred Centre – the Arabian Peninsula." The Tribunal considered these statements not because of their inflammatory rhetoric, but because of their similarity to statements made in the past by senior al Qaida figures. His mimicry of their oft-heard claims further convinced the panel that this detainee is deeply involved with the al Qaida organization.

After carefully considering the detainee's exhibits, the Tribunal was fully convinced that the detainee is properly classified as an enemy combatant. However, the Tribunal also relied on certain classified evidence in reaching its decision and found that the classified evidence also supported the allegations in Exhibit R-1. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor


The Tribunal consulted the CSRT Legal Advisor during the course of this hearing in regard to the document that is now marked Exhibit D-b. The Tribunal President asked the legal advisor if this one-page document, in which the detainee purports to "officially claim the status of prisoner of war," changed the detainee's legal status in any way. The Legal Advisor informed the President did not change the detainee's legal status and advised the President to allow the document to be submitted as a defense exhibit. The document was admitted as Exhibit D-b and given appropriate consideration by the Tribunal.

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. He asked several questions and actively participated in the hearing.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida.

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Enclosure (1)
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8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

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

, Col, USAF
Tribunal President

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Enclosure (1)
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Summarized Sworn Detainee Statement

When asked by the Tribunal President if the detainee understood the CSRT process, the Detainee answered, "Yes."

Tribunal President: Do you have any questions concerning the Tribunal process?

Detainee: May I have my legal representative present please?

Tribunal President: No you may not. This is not a legal proceeding it is a Military Tribunal. Do you have any other questions?

Detainee: No.

[After the Recorder read the unclassified summary the Detainee stated the following:]

Detainee: He read something different. The factual basis that I was here is different in some of the particulars...(inaudible). Most likely his will be submitted but this one will be rendered redundant. So I would rather have this one actually submitted as well...(inaudible).

Tribunal President: Do you have a copy of the original there?

Detainee: Yes it was just handed to me by the Personal Representative and he read something different.

Tribunal President: Then we will submit that one as exhibit D-G.

Tribunal President: Do you wish to make a statement to this Tribunal?

Detainee: I did make a defense call, for a witness to be called. This supposed suspected spy who supposedly identified me as his alleged beater.

Tribunal President: When did you make that request?

Detainee: It is in one of the documents, it is defense calls essential witnesses and documentation. I have made a number of defense calls for certain witnesses and certain documents to be presented to the court as evidence.

Tribunal President: I will consider all of those and make a determination on them at a later time.

Detainee: I would like it to be known that the actual suspected spy is present or was present in Guantanamo Bay Cuba as a detainee. I would like him to be called as a

ISN # [REDACTED]
Enclosure (3)
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witness in order to verify what he is saying and to find out why he has alleged me as his beater, when I did not beat him.

Tribunal President: If we determine a witness to be relevant, the witness will have the option of attending or not attending. We will look at that and make a determination then contact the potential witness, if we determine it is relevant.

Tribunal President: You also requested formally through your Personal Representative two witnesses and a document. You requested that your lawyer be allowed as a witness.

Detainee: As a legal advisor to the defense not as a legal advocate in anyway.

Tribunal President: You stated your lawyer would testify about you being illegally held here against International law. This is a Military Tribunal not a legal proceeding, so the request for the lawyer was denied.

Detainee: On the basis that the Tribunal can actually hold me here in incarceration or release me, I would consider this a criminal proceeding.

Tribunal President: The second request you had was for your mother, who you stated would talk to the frame of mind you had prior to leaving the United Kingdom and the reasons why you left home.

Detainee: I actually stated that there was a document which I wrote, my last will and testament, and it was...(inaudible)..that my mother would actually come as a witness to submit the document as evidence.

Tribunal President: I have determined that your frame of mind prior to leaving the United Kingdom is not relevant at this time. Rather what you did while you were in Afghanistan is what is relevant to this Tribunal.

Detainee: The reference is made that I actually left the United Kingdom in order to take action against Americans and Jews. That document actually clarifies that as well as my biography the reasons why I actually left the United Kingdom.

Tribunal President: Your biography was the third item in your request. We have that and will consider it in our deliberations.

Detainee: I would like to make a point, my last will and testament is specific to certain sections in my biography. The biography, because it covers many years is very general and the last will and testament is specific and covers certain parts of the biography and...(inaudible).

Tribunal President: Thank you, we will take that into consideration as well.

Detainee: The habeas proceeding going on, on my behalf and I believe the actual determination from this...(inaudible)..on the basis to go toward those habeas proceedings. I wonder whether the documents are going to go toward the habeas proceedings?

Tribunal President: To my knowledge none of the evidence submitted today will go to the habeas. The decision it self might. You have a lawyer representing you in the habeas and if he chooses to submit that as part of the habeas that is up to him.

Detainee: I believe that Judge Greene in the United States she requested the basis as to why we are being held here for the habeas petitioners. And the record is actually...(inaudible)..for a common sense review Tribunal. I believe specific basis are presented to her and those documentations will actually go into. Maybe you haven't been informed on this matter.

Tribunal President: I have not. We will check into it and if that is the issue and again we will decide if it is relevant then we will request it and have it submitted as part of the package.

Tribunal President: Please understand this is the first time we have seen the evidence as a panel, so it is difficult sometimes for me to answer the relevancy until after we have seen the evidence. If after we have gone through the Tribunal and we feel that we need this evidence and it is relevant then we will recess and call for the evidence and reconvene at a later time.

Tribunal President: Do you wish to make a statement to this Tribunal?

Detainee: May I be presented with my defense response to the accusations for my designation as an enemy combatant.

[The Detainee was sworn.]

Detainee: This is to be submitted as a document into evidence, so I wrote it as a document rather to be spoke on, but I am going to speak from it anyway, so bear with me.

[Reading]: ...(inaudible)..A.K.A Malcolm X. I am not anti-American and I did not come here to condemn America. I want to make that very clear. I came here to tell the truth and if the truth condemns America, then she stands condemned. ...(inaudible)..the sun rising is splendor. A. Notice. It is my duty as a Muslim to warn all who are involved in this matter that they are personally responsible for their actions at all times before Allah. Allah says in this uncreated world that is the Koran. Is then the man who believes no better then the man who is rebellious and wicked? Not equal are they. For those who believe and do righteous deeds are gardeners as hospitable homes for their good deeds. As to those who are rebellious and wicked their abode will be the fire. Every time they wish to get away there from they will be forced there into and it will be said to them.

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Take ye the penalty of the fire, the which ye will want to reject as false. And indeed we will make them taste of the penalty of this life prior to the supreme penalty in order that they may repent and return. And who does more wrong then one to whom are recited the signs of his lord and who turns away there from. Vary from those who transgress we will exact due retribution. Chapter 32, Al Sajdah, versus 18-22. It is also my duty and pleasure as a Muslim to happily proclaim that Allah will forgive any wrongs we do and/or have done upon sincere repentance. And those who have done something to be ashamed of or wronged their own souls, earnestly bring Allah to mind and ask for forgiveness of their sins and who can forgive sins except Allah. And are never obstinate in persisting knowingly in the wrongs they have done. Fro such the reward is forgiveness from their lord and gardeners with rivers flowing underneath an eternal dwelling how excellent a recompense for those who work and strive. Chapter 3, Al Imran, versus 135-138.

Tribunal President: Excuse me. While I appreciate your concern for our souls I would really like you to get to the relevant information concerning this Tribunal. Directed specifically to the facts relevant to this Tribunal.

Detainee: Okay, I just wanted to let you know. I wanted to make that point as a Muslim it was my duty.

Tribunal President: I appreciate your religious duties. I would appreciate more now that you get to the facts of the Tribunal.

Detainee[reading]: B. Deputy Secretary of Defense Order of July 7, 2004. The Secretary of Defense has established a Combatant Status Review Tribunal process to determine in a fact-based proceeding, whether the individuals detained by the Department of Defense at the U.S. Naval Base Guantanamo Bay, Cuba are properly classified as enemy combatants and are to permit each detainee the opportunity to contest such designation. The arguments in this written presentation are confined and directed to the above. C. Islamic Law. It was we who renewed the laws to Moses, therein was guidance and light. By its standards have been judged the Jews, by the Prophets who bowed as in Islam to Allah's will, by the Rabbis and doctors of law, for to them was entrusted the projection of Allah's book, and they were witnesses thereto. Therefore fear not men, but fear me and sell not my signs for a miserable price. If any do fail to judge by the light of what Allah hath revealed they are no better than unbelievers.

Tribunal President: Once again...

Detainee: This concerns my designation as an enemy combatant. If you will allow me to go through the process you will understand my...

Tribunal President: I will allow you to go through the process if you ever get to the part about what we are here to talk about today, which is your classification as an enemy combatant.

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Detainee: This does concern my classification as an enemy combatant because I am speaking to you on the point of view of Islamic law.

Tribunal President: This is not Islamic law; it has no authority here and has no bearing on these proceedings. This is a Military Tribunal. You have been designated as an enemy combatant against the United States by the U.S. Government. That is what is important here. We do not comply with or consider Islamic law.

[The Personal Representative attempted to hand the Detainee a copy of the unclassified summary.]

Personal Representative: Would you like to look at this, this is the specifics, you wrote some notes about this.

Detainee: I understand, I understand. I know what I am doing.

Detainee [reading]: In July 2003, respondent Bush announced that he had designated Mr. Abbasi an enemy combatant subject to the Executive Military Order of November 13, 2001. D. The Joint Resolution. In the wake of the September 11, 2001 attacks, the United States at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the nations, organizations, or persons that planned, authorized, committed, or aided the terrorist attacks on September 11th, 2001 or that harbored such organizations or persons. Defense Response: Unlike the greatest terrorist acts known to history, committed by the United States of America. The atom bombings of the civilian population of Nagasaki and Hiroshima. There has not been shown any adequate, sufficient, and substantial evidence to establish the guilt of Al-Qaida as the very perpetrators of the terrorist attacks of September 11th, 2001. But there has been much unfounded and biased...(inaudible). Therefore based upon the wholesome legal principal of, innocent until proven guilty without a shadow of a doubt, Al-Qaida can be said to be innocent of the terrorist attacks of September 11th, 2001. Unless adequate evidence is presented before a fair and just court of law, which then establishes Al-Qaida as the perpetrators of the terrorist attacks of September 11th without a shadow of a doubt. Al-Qaida being innocent of perpetrating the terrorist attacks of September 11th, Taliban cannot be guilty of harboring terrorist. If Taliban is not guilty of harboring terrorist and Al-Qaida is innocent of the September 11th terrorist attacks then the fundamental basis of Congress' Joint Resolution authorizing the use of necessary and appropriate force against nations, organizations, or persons that planned, authorized, committed, or aided in the September 11th, 2001 attack, Al-Qaida terrorist attacks; not only does not have a leg to stand on, it does not even have buttocks to sit on, nor a back or sides to lie on. In fact the unfounded use of military force commencing I believe on October 9th, 2001...

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Tribunal President: Excuse me. This is your last warning and this is the last time I am going to tell you this. This is not a matter of Al-Qaida this is not a matter of government against government. This is a matter of what you did in Afghanistan.

Detainee: I believe this is a matter of my classification as an enemy combatant.

Tribunal President: It is not. I am here to tell you it is not. These matters are beyond the control and beyond the range of this Tribunal. I am telling you for the final time to confine your discussion to the matters before this Tribunal. I will help you specifically address the matters on the Combatant Status summary of evidence on the combatant status review Tribunals, which specifically address your actions in Afghanistan.

Detainee: Would you, Personal Representative, did you not tell me that I'm here and that Tribunal is going to deal with one thing, my designation as enemy combatant. You never told me specially I had to address those matters. If I want to address my designation as an enemy combatant, by International Law and the Geneva Conventions...

Tribunal President: Once again, International Law does apply, Geneva Conventions do not apply. You have been designated as an enemy combatant. This Tribunal will fairly listen to your explanation of your actions. We will consider what you have written but for the purposes of this Tribunal, for this session, I will once again direct you to address the matters specific to your actions in Afghanistan.

Detainee: Well sir, you told me that I'm here to address my designation as an enemy combatant. ...(inaudible)..I don't see why I should be confined to those matters. I have right here my status. And my status shouldn't be incompetent. I should have P.O.W. status. So, you are telling me I am an enemy combatant. I am telling you by special Geneva Conventions, I am a non-combatant.

Tribunal President: I am telling you...

Detainee: ...(inaudible)..by U.S. law you should hold me as a combatant. But you are saying that I cannot do that. Those accusations frankly if the Recorder would have read my autobiography those accusations would not have been made. In the original...(inaudible)..unclassified...(inaudible)..basis or response there are mistakes that differ from autobiography, you would not have made them.

Tribunal President: Once again, International Law does not matter here. Geneva Convention does not matter here. What matters here and what I am concerned about and what I really want to get to, is your status as enemy combatant based upon the evidence that has been provided and your actions while you were in Afghanistan. If you deviate from that one more time you will be removed from this Tribunal and we will continue to hear evidence without you being present.

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Personal Representative: (to the Detainee, while attempting to hand him the unclassified summary) Do you want to read from this and whatever you said that was specific to this, from our meeting today? Do you realize what he is talking about? These.

Tribunal President: Would you like to have a moment to confer with your Personal Representative, to gather your thoughts?

Detainee: I am just thinking of what ever works. This specific document will do it much better. Okay, Defense call to essential witnesses and documentation.

Tribunal President: Just for clarification and once again. You are not being limited except for the fact that we will consider everything that you have written.

Detainee: I know but I have the right to speak...

Tribunal President: No you don't.

Detainee: And the Personal Representative told me I can say what ever I like.

Tribunal President: He was mistaken if he told you that.

Detainee: Okay.

Tribunal President: But we will consider all of what you have written.

Detainee: This concerns my being said to be a member of Al-Qaida and an Al-Qaida fighter. [reading]: It is unclear whether Mr. Abbasi is or is not a prisoner of war, but this is clearly a question appropriate for inquiry by a competent Tribunal. The answer would depend upon the precise facts of the case and in particular upon the exact relationship between the Taliban, which in our view was as a matter of International Law the government of Afghanistan, even though it was not recognized by the United States as such, and any organization in which he was an active participant in Afghanistan. We understand that it is said Mr. Abbasi was a member of Al-Qaida, but we are not aware of any proof that this is the case, or of any proof of the nature of the relationship between Al-Qaida. This point is important because the definition of a combatant in International Law may be wide enough...

Tribunal President: Once again...International Law...

[The Detainee continued to read from his document, speaking over the Tribunal President, as the Tribunal President attempted to stop him.]

Tribunal President: Mr. Abbasi your conduct is unacceptable and this is your absolute final warning. I don't care about International Law. I don't want to hear the words International Law again. We are not concerned with International Law. I am going to

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give you one last opportunity, for which I am being much more generous and perhaps I shouldn't, but I will give you one last opportunity to address the specifics on the summary of evidence. If you wish to do so you may, if you do not wish to do so we will have you removed.

Personal Representative: (to the Detainee, while attempting to hand him the unclassified summary) Why don't you use this in defense answers to the allegations.

Detainee: Let me see this. I believe the Recorder is suppose to present evidence on the circumstances of my capture.

[The Detainee kept trying to interrupt the Tribunal President as he stated the following:]

Tribunal President: The unclassified evidence the Recorder had to submit has been submitted, and provided for your review. Any other evidence he has, has been classified.

Detainee: So, the government evidence has been classified.

Tribunal President: Any other evidence he...

Detainee: I want to make it aware to this Tribunal that I have a copy of the Combatant Status Review Tribunal process and I am aware of how this Tribunal is to be conducted.

Tribunal President: So are we.

Detainee: That's good, and the Recorder is suppose to present the government evidence based on government information and part of that evidence is the circumstances of my being captured. [The Detainee turned to the recorder and asked:] Is that classified or not Recorder?

Tribunal President: The Recorder is not required to answer your questions. All the unclassified evidence he has, has been submitted.

Detainee: I would like to bring it to the Tribunals attention, The Combatant Status Review Tribunal process. [reading]: E. Combatant Status Review Tribunal Authority. 3. Request the production of such reasonable available information in the possession of the U.S. Government bearing on the issue of whether the detainee meets the criteria to be designated as an enemy combatant including information generated in connection with the initial determination to hold the detainee as an enemy combatant and in any subsequent reviews of that determination as well as any records, determinations, or reports generated in connection with such proceedings...(inaudible)..called herein after the Government Information.

Tribunal President: The Tribunal Recorder has requested a closed session to present further evidence.

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Detainee: I understand that.

Tribunal President: That further evidence will be submitted. Do you wish to address the specifics on your unclassified summary or not? Yes or No.

Detainee: I think no.

Tribunal President: We are going to ask for you to be removed from the Tribunal hearing. Thank you for your time...

Detainee: I would like to make it known to the Tribunal that all your actions will come before Allah and he will be just when allowing consideration for this. And Allah may forgive you and Allah may punish you.


[The Tribunal was recessed to remove the Detainee from the room.]

AUTHENTICATION

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


_____, Col, USAF

Tribunal President

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DETAINEE ELECTION FORM

Date: 26-Sep-04

Start Time: 0845

End Time: 1000

ISN#: [REDACTED]

Personal Representative: [REDACTED]
(Name/Rank)

Translator Required? NO Language? ENGLISH

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

Detainee Election:

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

Personal Representative Comments:

Detainee has requested 3 witnesses.

#1 His Lawyer, Gitanjali S. Gutierrez located at Gibbons, Dell Deo, Dolan, Griffinger & Vecchione, Attorneys at Law, One Riverfront Plaza, Newark, NJ, 07102-5549. Phone: 973-596-4500. His lawyer will testify regarding wrongly being held as an enemy combatant, should be held as a POW by International Law and the Geneva Convention.

#2. His Mother, [REDACTED], located at [REDACTED]. His mother has his Last Will and Testimony as well as supplemental Notes that can attest to his frame of mind before leaving the United Kingdom. It covers the reasons why he left home.

#3. He gave a [REDACTED] a 130-page document/biography that explains his history in Britain through his capture by Afghanistan that explains his actions, intents, and basis for his actions. His Interrogator here in GITM also have seen it. Detainee would like that document presented to the Tribunal.

Personal Representative: [REDACTED]

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Exhibit 0-4

Combatant Status Review Board

TO: Tribunal Members

FROM: OIC, CSRT (23 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – Feroz Ali Abassi

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 a member of al Qaida. He engaged in hostilities against the United States or its coalition partners.

a. Detainee is a member of al Qaida.

1. Detainee traveled from Great Brittan to Afghanistan, using his own funds, to receive military training and to fulfill his jihad obligation.
2. Detainee was escorted from Quetta, Pakistan to a guesthouse in Afghanistan, where recruiting took place. At the guesthouse, detainee relinquished his passport and money for security purposes, completed an application form, and chose a nickname. Detainee was then taken to Camp Farouq for training.
3. At Camp Farouq, detainee received military training, including but not limited to, city tactics, mountain tactics, weapons, maneuver, topography, surveillance, and ambushing. During weapons training, detainee trained on the following weapons: AKM, AK-47, RPG, and PK machine gun.
4. After basic training, detainee volunteered for advanced courses in Mountain Tactics and City Tactics. Detainee attended these courses because this training was a perquisite for being sent to the front of the front lines.

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Exhibit R-1

5. After completing his basic training, detainee met with high-level al Qaida leaders. During this meeting, detainee stated that he left his home, in the United Kingdom, to take action against Americans and Jews. Additionally at this meeting, the detainee volunteered for a martyrdom mission.
6. Detainee was present when Usama Bin Laden gave a speech at al Farouq. Additionally, detainee was present when Usama Bin Laden visited the mountain warfare camp.
7. Detainee was identified as the guard posted to watch a suspected spy. This took place at the home of a Taliban official.

b. Detainee engaged in hostilities against the United States.

1. After 11 September 2001, detainee was forced to leave the guesthouse where he was staying. Detainee volunteered to be sent to defend the Kandahar airport, because it was the most dangerous mission. While there, detainee served in a small unit of al Qaida fighters, intent on defending the airport against the Americans.

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.



To : Department of Defense Date 09/08/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT

From : FBI GTMO
Counterterrorism Division

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 03/22/2002	FD-302 dated 05/03/2003	FD-302 dated 06/10/2003
FD-302 dated 08/03/2002	FD-302 dated 05/06/2003	FD-302 dated 06/11/2003
FD-302 dated 12/09/2002	FD-302 dated 05/17/2003	FD-302 dated 06/19/2003
FD-302 dated 04/14/2003	FD-302 dated 05/24/2003	FD-302 dated 06/20/2003
FD-302 dated 04/22/2003	FD-302 dated 05/31/2003	FD-302 dated 06/21/2003
FD-302 dated 04/23/2003	FD-302 dated 06/07/2003	
FD-302 dated 04/30/2003	FD-302 dated 06/09/2003	

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

²See Executive Order 12958

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Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 09/08/2004

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

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To : Department of Defense Date 09/22/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIG, CSRT

From : FBI GTMO
Counterterrorism Division
Asst. Gen. Counsel. [REDACTED]

Subject REQUEST FOR REDACTION OF
NATIONAL SECURITY INFORMATION
[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 06/09/2003
FD-302 dated 06/10/2003
FD-302 dated 06/11/2003
FD-302 dated 06/20/2003
FD-302 dated 06/21/2003

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

²See Executive Order 12958

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Exhibit R-3

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 09/22/2004

If you need additional assistance, please contact
Assistant General Counsel ([REDACTED]),
[REDACTED] or Intelligence Analyst [REDACTED]
[REDACTED] ([REDACTED]), [REDACTED],
Intelligence Analyst [REDACTED], ([REDACTED])
[REDACTED]

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JOHN J. GIBBONS
SENIOR PARTNER

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LAWRENCE S. LUSTBERG
DIRECTOR

PHILIP G. GALLAGHER
JENNIFER CHING
JONATHAN L. HAFETZ*
GITANJALI S. GUTIERREZ

* NOT ADMITTED IN N.J.

July 9, 2004

VIA CERTIFIED MAIL. RETURN RECEIPT REQUIRED

George Walker Bush
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

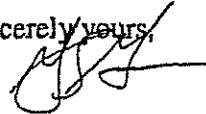
Re: Kurnaz v. Bush, et al., Doc. No. 1:04CV01135 (D.C. Dist.Ct.)
Begg v. Bush, et al., Doc. No. 1:04CV01137 (D.C. Dist.Ct.)
O. K. ~~██████~~ v. Bush, et al., Doc. No 1:04CV01136 (D.C. Dist. Ct.)

Dear President Bush:

Enclosed please find two copies of each of the habeas petitions in the above-captioned matters which have been filed in the United States District Court for the District of Columbia.

Please do not hesitate to contact me if you have any further questions.

Sincerely yours,



Gitanjali S. Gutierrez

Enclosures

cc: Donald Rumsfeld, United States Secretary of Defense
Maj. Gen. Geoffrey Miller
Army Col. Nelson J. Cannon
John D. Ashcroft, Esq., Attorney General of the United States
Roscoe C. Howard, Esq., United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[REDACTED],
Detainee, Camp Delta,
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba;

[REDACTED],
as Next Friend of [REDACTED]
[REDACTED]
[REDACTED];

FEROZ ALI ABBASI,
Detainee, Camp Delta,
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba; and

[REDACTED],
[REDACTED]
[REDACTED];

Petitioners,

v.

GEORGE W. BUSH,
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500;

DONALD RUMSFELD,
Secretary, United States
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000;

ARMY BRIG. GEN. JAY HOOD,
Commander, Joint Task Force - GTMO
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba; and

ARMY COL. NELSON J. CANNON,

PETITION FOR WRIT
OF HABEAS CORPUS

No. 1:04CV01137

Commander, Camp Delta,)
Guantánamo Bay Naval Station)
Guantánamo Bay, Cuba)

Respondents.)
All sued in their official capacities.)

CERTIFICATION OF SERVICE

I hereby certify under penalty of perjury that, on July 9, 2004, I caused two copies of petitioners [REDACTED] as Next Friend of [REDACTED], Feroz Ali Abbasi; and [REDACTED], as Next Friend of Feroz Ali Abbasi's, Petition for Writ of Habeas Corpus, to be served on the following respondents and counsel by certified mail, return receipt requested addressed as listed below:

George Walker Bush
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500


John D. Ashcroft, Esq.
Attorney General of the United States
5111 Main Justice Building
10th Street & Constitution Ave., NW
Washington, DC 20530

Donald Rumsfeld
Secretary, United States
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Roscoe C. Howard, Esq.
United States Attorney
555 4th Avenue
Washington, D.C. 20530

Maj. Gen. Geoffery Miller
Commander, Joint Task Force -
GTMO
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba

Army Col. Nelson J. Cannon,
Commander, Camp Delta,
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba


Gitanjali S. Gutierrez
Attorney for Petitioners

Dated: July 9, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[REDACTED])
Detainee, Camp Delta,)
Guantánamo Bay Naval Station)
Guantánamo Bay, Cuba;)

[REDACTED])
as Next Friend of [REDACTED])
[REDACTED])
[REDACTED])

FEROZ ALI ABBASI,)
Detainee, Camp Delta,)
Guantánamo Bay Naval Station)
Guantánamo Bay, Cuba; and)

[REDACTED])
[REDACTED])
[REDACTED])
[REDACTED])

Petitioners,)

v.)

GEORGE W. BUSH,)
President of the United States)
The White House)
1600 Pennsylvania Ave., N.W.)
Washington, D.C. 20500;)

DONALD RUMSFELD,)
Secretary, United States)
Department of Defense)
1000 Defense Pentagon)
Washington, D.C. 20301-1000;)

ARMY BRIG. GEN. JAY HOOD,)
Commander, Joint Task Force - GTMO)
Guantánamo Bay Naval Station)
Guantánamo Bay, Cuba; and)

ARMY COL. NELSON J. CANNON,)

CASE NUMBER 1:04CV01137

JUDGE: John D. Bates

DECK TYPE: Habeas Corpus/2255

DATE STAMP: 07/02/2004

**PETITION FOR WRIT
OF HABEAS CORPUS**

No.

Commander, Camp Delta,)
 Guantánamo Bay Naval Station)
 Guantánamo Bay, Cuba)
)
 Respondents.)
 All sued in their official capacities.)

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner [REDACTED] and Feroz Ali Abbasi seek a Writ of Habeas Corpus. They act on their own behalf and through their Next Friends, [REDACTED], the wife of [REDACTED] and [REDACTED], the mother of Feroz Ali Abbasi.
2. Petitioner [REDACTED] (“detained Petitioner”) is a citizen of the United Kingdom. Petitioner [REDACTED] is a citizen of the United Kingdom. Petitioner [REDACTED] is being held virtually *incommunicado* in Respondents’ unlawful custody.
3. Petitioner Feroz Ali Abbasi (“detained Petitioner”) is also a citizen of the United Kingdom. [REDACTED] resides in [REDACTED]. Petitioner Feroz Ali Abbasi is being held virtually *incommunicado* in Respondents’ unlawful custody.
4. Pursuant to either the President’s authority as Commander in Chief and under the laws and usages of war or the November 13, 2001 Military Order, *see* ¶ 38-40 *infra*. Respondents George W. Bush, President of the United States, Donald H. Rumsfeld, U.S. Secretary of Defense, Army Brigadier General Jay Hood, Commander of Joint Task Force-GTMO, and Army Colonel Nelson J. Cannon, Commander, Camp Delta, Guantánamo Bay Naval Station, Cuba are either ultimately responsible for or have been charged with the responsibility of maintaining the custody and control of the detained Petitioner at Guantánamo.

JURISDICTION

5. Petitioners bring this action under 28 U.S.C. §§2241 and 2242, and invoke this Court’s jurisdiction under 28 U.S.C. §§1331, 1651, 2201, and 2202; 5 U.S.C. §702; the Fifth, Sixth, and Eighth Amendments to the United States Constitution; the International Covenant on Civil and Political Rights; the American Declaration on the Rights and Duties of Man; and

customary international law. Because they seek declaratory relief, Petitioners also rely on Federal Rule of Civil Procedure 57.

6. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by [REDACTED] and [REDACTED] as Next Friends under 28 U.S.C. §2242. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. §2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. §2202, as this case involves an actual controversy within the Court's jurisdiction.

II PARTIES

7. Petitioner [REDACTED] is a citizen of [REDACTED] who is presently incarcerated and held in Respondents' unlawful custody in Camp Delta, Guantánamo. *See Exhibit A (Affidavit of [REDACTED])*.
8. Petitioner [REDACTED] is [REDACTED]'s wife. She is a [REDACTED] citizen. Because her husband cannot secure access either to legal counsel or to the courts of the United States, [REDACTED] acts as his Next Friend. *See Exhibit A*.
9. On her own and through counsel, Gareth Peirce, [REDACTED] has repeatedly tried to contact her husband, to learn more about his condition and status, and to gain access to him. The British Authorities have either rebuffed or ignored the requests of Mrs. [REDACTED] and her counsel. *See id.*
10. Petitioner Feroz Ali Abbasi is a citizen of the United Kingdom who is presently incarcerated and held in Respondents' unlawful custody in Camp Delta, Guantánamo. *See Exhibit C (Affidavit of Louise Christian)*.
11. Petitioner [REDACTED] is [REDACTED] mother. She resides in [REDACTED]. Because her son cannot secure access either to legal counsel or to the court of the United States, [REDACTED] acts as his Next Friend. *See Exhibit C*.
12. On her own and through counsel, Louise Christian, [REDACTED] has repeatedly tried to contact her son, to learn more about his condition and status, and to gain access to him. The United States authorities have either rebuffed or ignored the requests of Mrs. [REDACTED] and her counsel. *See id.*

13. Respondent George W. Bush is the President of the United States and Commander in Chief of the United States Military. . It is pursuant to the November 13, 2001 Military Order promulgated by him or alternatively, under his authority as Commander in Chief and under the laws and usages of war, that Mr. [REDACTED] is being detained. Accordingly, Respondent Bush is ultimately responsible for Petitioner's unlawful detention.
14. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to either the November 13, 2001 Military Order or the President's authority as Commander in Chief and under the laws and usages of war, Respondent Rumsfeld has been charged with maintaining the custody and control of the detained Petitioner.
15. Respondent Hood is the Commander of Joint Task Force-GTMO, the task force running the detention operation at Guantánamo. He has supervisory responsibility for the detained Petitioner.
16. Respondent Cannon is the Commander of Camp Delta, the U.S. facility where the detained Petitioner is presently held. He is the immediate custodian responsible for Petitioner's detention.

III STATEMENT OF FACTS

17. The detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind.
18. The detained Petitioners are not, nor has they ever been, "enemy combatants" who are "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there." *See Hamdi v. Rumsfeld*, 542 U.S. ___, slip op. at 8-9 (June 28, 2004).
19. Petitioners seek to enforce their right to a judicial determination of whether there is a factual basis for Respondent's determination that they are "enemy combatants."
20. In August of 2001, Petitioner [REDACTED], his wife [REDACTED] and their children moved to live in Kabul, Afghanistan with their life savings in order to establish a school. Once they arrived, they purchase a home and Mr. [REDACTED] began setting up the school. *See Exhibit A.* After

the events of September 11, 2001, [REDACTED] and his family remained in Kabul because they lacked the means to leave immediately and hoped that the threats of military repercussions would not materialize. After the bombing of Kabul, [REDACTED] and his family sought financial assistance from family and friends to flee to Pakistan. *See id.*

21. By November 2001, [REDACTED] and his family had re-established themselves in Islamabad, Pakistan and leased a new home. *See Exhibit B.*
22. During the night of January 31, 2002, Pakistani officials seized [REDACTED] from his home in Islamabad, Pakistan. *See Exhibit B.* He was able to make one call to his father stating that he was seized by Pakistan officials and that United States officials were also present. *See id.* Both [REDACTED]'s family and his [REDACTED] counsel have repeatedly attempted since that time to intervene on his behalf and to acquire information about his detention. *See id.*
23. Shortly after his seizure, Pakistani lawyers filed a habeas petition on behalf of [REDACTED] in Pakistani court. On March 1, 2002, the court ordered the Pakistan Interior Minister to produce [REDACTED] before the court on March 7, 2002, but the Interior Minister refused to do so. On March 8, 2002, [REDACTED]'s lawyer, Mr. Abdur Rahman Saddiqui, submitted that the Pakistani Security Services ("ISI") and the United States Central Intelligence Agency ("CIA") had seized [REDACTED] and that the ISI had interrogated him. Upon threat of sanctions, the court again ordered the Interior Minister to produce [REDACTED] on March 14, 2002. Again, the Interior Minister did not do so. *See Exhibit B.*
24. On March 4, 2002, [REDACTED]'s father learned from an International Red Cross worker that Pakistani authorities had transferred custody of [REDACTED] to United States authorities. According to the Red Cross worker, United States forces had taken Mr. [REDACTED] to Kandahar approximately 10 to 14 days earlier. *See Exhibit B.*
25. For some time, the United States held [REDACTED] in detention at a United States military airbase in Baghram, Afghanistan. *See Exhibit.* [REDACTED]'s family received a few messages from him through the International Red Cross. *See Exhibit A.* In one letter to his wife dated November 20, 2002, [REDACTED] stated that he wished his family to consult the lawyer, Gareth Peirce, on his behalf. In a letter to his father written December 15, 2002, he also stated

that "I have not seen the sun, sky, moon etc. for nearly a year" and that "I am in this state of depression and I am beginning to lose the fight against depression and hopelessness." See Exhibit B.

26. Thereafter, at some point in 2003, ██████████'s family was informed that United States officials had transferred him to Guantánamo Bay on February 6, 2003. See Exhibit B. ██████████ has been held in U.S. custody at Guantánamo since that time.
27. In July 2003, Respondent Bush announced that he had designated Mr. ██████████ an "enemy combatant" subject to the Executive Military Order of November 13, 2001. Mr. ██████████ has yet to be charged, provided access to counsel, or granted any other legal process. Mr. ██████████ counsel has been informed that Mr. ██████████ has been held in solitary confinement since his designation in July 2003. See Exhibit B.
28. Both ██████████'s family and attorneys are concerned about his deteriorating physical and mental health. See Exhibits A - B.
29. At the time of his detention, Mr. ██████████ was not a member of either the Taliban government's armed forces or the Al Qaeda armed forces. He did not cause or attempt to cause any harm to American personnel or property prior to his capture. Mr. ██████████ was not in Afghanistan at the time of his detention, but was taken into custody in Pakistan, turned over to the custody of the U.S. Military there, then transferred to Afghanistan, and ultimately transported to Guantánamo.
30. The British Foreign Office has confirmed that Feroz Abbasi is being held in Guantánamo, subject to interrogation, and denied Consular access. See Exhibit C. The United States has not disclosed the circumstances of his seizure but Petitioner ██████████ believes that he was taken by United States Military Forces in Kandahar, Afghanistan sometime on or before January 11, 2002.
31. In July 2003, Respondent Bush announced that he had designated Mr. Abbasi an "enemy combatant" subject to the Executive Military Order of November 13, 2001. Mr. Abbasi has yet to be charged, provided access to counsel, or granted any other legal process.
32. At the time of his detention, Mr. Abbasi was not a member of either the Taliban government's armed forces or the Al Qaeda armed forces. He did not cause or attempt to cause any harm to

American personnel or property prior to his capture.

The Joint Resolution

33. In the wake of the September 11, 2001 attacks, the United States, at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001).

34. The detained Petitioners are not, and have never been, a member of Al Qaeda or any other terrorist group. Prior to their detention, they did not commit any violent act against any American person or espouse any violent act against any American person or property. Nor were they involved in the ensuing armed conflict. They had no involvement, direct or indirect, in either the terrorist attacks on the United States on September 11, 2001, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. They are not properly subject to the detention order issued by the President. As they did not participate in the armed conflict at any point in time, they also are not properly subject to the Executive's authority as Commander in Chief or under the laws and usages of war.

35. The detained Petitioners have had no military or terrorist training. They at no time voluntarily joined any terrorist force.

36. The detained Petitioner [REDACTED] was not initially taken into custody by American forces. It is unclear how Petition Abbasi was seized. Both, however, were taken into custody against their will and handed over to the Americans. They did not engage in combat against American forces.

37. The detained Petitioners promptly identified themselves by their correct name and nationality to the United States. They requested that the United States provide them with access to their families and to legal counsel. The detained Petitioners were kept blindfolded against their will for lengthy periods while being taken involuntarily to Guantánamo.

The Detention Order

38. On November 13, 2001, Respondent Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes Respondent Rumsfeld to detain anyone Respondent Bush has "reason to believe":

- i. is or was a member of the organization known as al Qaida;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

See Military Order of November 13, 2001. President Bush must make this determination in writing. The Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

39. The Military Order vests the President with complete discretion to identify the individuals that fall within its scope. It establishes no standards governing the use of his discretion. Once a person has been detained, the Order contains no provision for the person to be notified of the charges he may face. Instead, the Order authorizes detainees to be held without charges. It contains no provision for detainees to be notified of their rights under domestic and international law, and provides neither the right to counsel nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and no provision for appeal to an Article III or any other court. In fact, the Order expressly bars any form of judicial review. The Order authorizes indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.

40. The Military Order authorizes the use of military commissions to try noncitizens accused of terrorism and other war crimes. It establishes no guarantee that charges will be promptly

brought, that these charges will be made know to the accused and his counsel, or that a speedy trial providing adequate legal process will be afforded to determine guilt on such charges or their legal validity under domestic or international law. It permits prolonged pre-commission detention in solitary confinement, risking such long-term psychological injury as that suffered by Mr. [REDACTED] and Mr. Abbasi.

41. The detained Petitioners are not properly subject to the Military Order.
42. However, the Military Order was promulgated in the United States and in this judicial district, the decision to detain and designate Petitioners were made by Respondents in the United States and in this judicial district, the decision to detain Petitioners at Guantánamo was made in the United States and in this judicial district, and the decision to continue detaining the Petitioners was, and is, being made by Respondents in the United States and in this judicial district.
43. In the related case of *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002), Respondents contended that the petitioners in that case were being detained not pursuant to the President's Military Order but rather under the President's authority as Commander in Chief and under the laws and usages of war. However, Petitioners in this matter were not arrested or detained by the United States in the course of the armed conflict.
44. Moreover, Petitioner [REDACTED] was detained by Pakistani not United States authorities and was arrested by them not in Afghanistan, but while in his home in Pakistan, nowhere near a battlefield. Accordingly, Petitioner is not properly detained under the President's authority as Commander in Chief or under the laws and usages of war.

Guantánamo Bay Naval Station

45. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray, at the United States Naval Base, in Guantánamo Bay, Cuba. In April 2002, all prisoners were transferred to a more permanent prison facility in Guantánamo, Camp Delta. Offenses committed by both civilians and foreign nationals living on Guantánamo are brought before federal courts on the mainland, where respondents enjoy the full panoply of Constitutional rights. Detainees incarcerated at Guantánamo are entitled to test the legality of their detention in the federal courts. *Rasul v. Bush*, 542 U.S. ___, (June 28,

2004).

46. In or about February 6, 2003, the United States military transferred the detained Petitioner ██████ to Guantánamo, where he has been held ever since, in the custody of Respondents Bush, Rumsfeld, Hood, and Cannon. In or about January 2002, the United States military transferred the detained Petitioner Abbasi to Guantánamo, where he has been held ever since, in the custody of Respondents Bush, Rumsfeld, Hood, and Cannon.

The Conditions of Detention at Guantánamo

47. Since gaining control of the detained Petitioners, the United States military has held them virtually *incommunicado*. On information and beliefs, they have been, or will be, interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, and have not been provided counsel or the means to contact counsel. They have not been informed of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, or customary international law. Indeed, Respondents have taken the position that Petitioners should not be told of these rights. As a result, the detained Petitioners are completely unable either to protect or to vindicate their rights under domestic and international law.

48. On information and belief, the detained Petitioners have been forced to provide involuntary statements to Respondents' agents at Guantánamo. The detained Petitioners have been held under conditions that violate their international and constitutional rights to dignity and freedom from cruel, unusual and degrading treatment or punishment. They have been housed throughout their detention in accommodations that fail to satisfy either domestic or internationally accepted standards for any person subject to detention. For example, upon information and belief, they were initially forced to use a bucket for a toilet, and were not provided with basic hygienic facilities. They have been refused meaningful access to their families. They have not been provided with the opportunity fully to exercise their religious beliefs and they have been

humiliated in the exercise of their religion. They have been exposed to the indignity and humiliation of the cameras of the national and international press, brought to Guantánamo with the express consent and control of Respondents.

49. In published statements, Respondents Bush, Rumsfeld, and officers Lehnert and Carrico who preceded Hood and Cannon in their respective positions, have indicated that the United States may hold the detained Petitioners under these conditions indefinitely. *See, e.g.*, Roland Watson, *THE TIMES (LONDON)*, Jan. 18, 2002 (“Donald Rumsfeld, the U.S. Defence Secretary, suggested last night that al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them.”).¹
50. Indeed, according to the Department of Defense, detainees who are adjudged innocent of all charges by a military commission may nevertheless be kept in detention at Guantánamo indefinitely. *See* Department of Defense Press Background Briefing of July 3, 2003, available at <http://www.defenselink.mil/transcripts/2003/tr20030703-0323.html> (last visited on July 1, 2004).

IV CAUSES OF ACTION

FIRST CLAIM FOR RELIEF (UNLAWFUL DETENTION)

51. Petitioners incorporate paragraphs 1 - 50 by reference.
52. The detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind. Petitioners are not, nor have they ever been, “enemy combatants” who were “part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there.” *See Hamdi v. Rumsfeld*, 542 U.S. ___, slip op. at 8-9 (June 28, 2004). The Petitioners

¹ *See also* TIME MAG., *Welcome to Camp X-Ray*, Feb. 3, 2002:

More curious still is the matter of the prisoners' ultimate fate. Rumsfeld has laid out four options: a military trial, a trial in U.S. criminal courts, return to their home countries for prosecution, or continued detention ‘while additional intelligence is gathered.’ The last seems a distinct possibility; the Pentagon plans to build 2,000 cells at Camp X-Ray.

have committed no violation of domestic, foreign, or international law. There is no basis whatsoever in law for Petitioners' detention.

SECOND CLAIM FOR RELIEF
(DUE PROCESS - FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION)

53. Petitioners incorporate paragraphs 1 - 52 by reference.
54. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without Due Process of Law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of the Fifth Amendment, since they act at the President's direction. On its face, the Executive Order violates the Fifth Amendment.

THIRD CLAIM FOR RELIEF
(DUE PROCESS - FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION)

55. Petitioners incorporate paragraphs 1 - 54 by reference.
56. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. The Executive Order, as applied to Petitioners, violates the Fifth Amendment.

FOURTH CLAIM FOR RELIEF
(DUE PROCESS - INTERNATIONAL LAW)

57. Petitioners incorporate paragraphs 1 - 56 by reference.
58. By the actions described above, Respondents, acting under color of law, have violated and continue to violate customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of Petitioners, without legal process, in violation of binding obligations of

the United States under international law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of international law, since they act at the President's direction. On its face, the Executive Order violates international law.

FIFTH CLAIM FOR RELIEF
(DUE PROCESS – INTERNATIONAL LAW)

59. Petitioners incorporate paragraphs 1 - 58 by reference.
60. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man. The Executive Order, as applied to the detained Petitioners, violates these and other binding obligations of the United States under International Law.

SIXTH CLAIM FOR RELIEF
(DUE PROCESS – FAILURE TO COMPLY
WITH U.S. MILITARY REGULATIONS AND
INTERNATIONAL HUMANITARIAN LAW)

61. Petitioners incorporate paragraphs 1 - 60 by reference.
62. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the rights accorded to persons seized by the United States Military in times of armed conflict, as established by, *inter alia*, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law.

SEVENTH CLAIM FOR RELIEF
(WAR POWERS CLAUSE)

63. Petitioners incorporate paragraphs 1 - 62 by reference.
64. By the actions described above, Respondents, acting under color of law, have exceeded the constitutional authority of the Executive and have violated and continue to violate the War Powers Clause by ordering the prolonged and indefinite detention of the detained Petitioners

without Congressional authorization.

EIGHTH CLAIM FOR RELIEF
(SUSPENSION OF THE WRIT)

65. Petitioners incorporate paragraphs 1 - 64 by reference.
66. To the extent the Executive Order of November 13, 2001, disallows any challenge to the legality of the Petitioners' detention by way of habeas corpus, the Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution. The actions of the Respondents in claiming the legal right to detain petitioners without judicial authorization or review constitute a suspension of the writ of habeas corpus in violation of Article I of the United States Constitution.

NINTH CLAIM FOR RELIEF
(ARBITRARY AND UNLAWFUL DETENTION – VIOLATION OF THE APA)

67. Petitioners incorporate paragraphs 1 - 66 by reference.
68. By detaining Petitioners for the duration and in the manner described herein, Respondents have arbitrarily, unlawfully, and unconstitutionally detained the Petitioners, in violation of the Administrative Procedures Act, 5 U.S.C. §706(2).

TENTH CLAIM FOR RELIEF
(UNLAWFUL TRIAL BY MILITARY COMMISSION - VIOLATION OF THE FIFTH
AMENDMENT OF THE UNITED STATES CONSTITUTION)

69. Petitioners incorporate paragraphs 1 - 68 by reference.
70. Pursuant to the Executive Order of November 13, 2001, Petitioners have been designated by Respondent Bush as "enemy combatants" subject to a possible trial by military commission.
71. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush has ordered that individuals designated as "enemy combatants" may be tried by military commission, without Due Process of Law. Respondents Rumsfeld is likewise acting in violation of the Fifth Amendment, since he acts at the President's direction. On its face and as

applied to Petitioners, trial by military commission pursuant to the Executive Order violates the Fifth Amendment.

TENTH CLAIM FOR RELIEF
(UNLAWFUL TRIAL BY MILITARY COMMISSION - VIOLATION OF INTERNATIONAL LAW)

72. Petitioners incorporate paragraphs 1- 71 by reference.
73. The trial by military commission for which Respondents have, by designating Petitioners, indicated that he may be eligible, violates the rights accorded to persons seized by the United States Military in times of armed conflict, as established by, *inter alia*, the United States Constitution, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law.
74. As Lord Goldsmith, the British Attorney General, said a week ago,

There will always be measures which are not open to governments. Certain rights - for example the right to life, *the prohibition on torture*, on slavery - are simply non-negotiable.

There are others such as the presumption of innocence or *the right to a fair trial by an independent and impartial tribunal established by law*, where we cannot compromise on long-standing principles of justice and liberty, even if we may recognise that there may sometimes be a need to guarantee these principles in new or different ways.

See Lord Goldsmith, Terrorism and Justice: The British Perspective from the Attorney General, Speech at the Cour de Cassation (June 25, 2004), available at http://news.bbc.co.uk/2/hi/uk_news/politics/3839153.stm. The manner in which Petitioner has been treated in Guantánamo Bay, and the "tribunal" that has been organized to try him - described by another respected British jurist, Lord Steyn, as a court that is a "mockery of justice" and that "derives from the jumps of the kangaroo" - cannot pass muster under the most basic and fundamental description of due process.

V
PRAYER FOR RELIEF

WHEREFORE, petitioners pray for relief as follows:

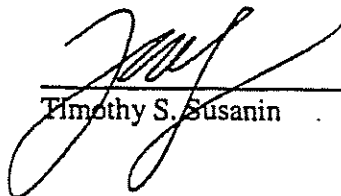
1. Grant Petitioner [REDACTED] Next Friend status, as Next Friend of [REDACTED];
2. Grant Petitioner [REDACTED] Next Friend status, as Next Friend of Feroz Ali Abbasi
3. Order the detained Petitioners released from Respondents' unlawful custody;
4. Order Respondents immediately to allow counsel to meet and confer with the detained Petitioner, in private and unmonitored attorney-client conversations;
5. Order Respondents to cease all interrogations of the detained Petitioners, direct or indirect, while this litigation is pending;
6. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth Amendment to the United States Constitution;
7. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Administrative Procedures Act, 5 U.S.C. § 702;
8. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;
9. Order and declare that the Executive Order of November 13, 2001, violates the War Powers Clause;
10. Order and declare that the provision of the Executive Order that bars the detained Petitioners from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution;
11. Order and declare that the prolonged, indefinite, and restrictive detention of Petitioners is arbitrary and unlawful, a deprivation of liberty without due process in violation of the Fifth Amendment to the United States Constitution, and in violation of the law of nations and treaties of the United States;
12. Order and declare that the detained Petitioners are being held in violation of the Fifth Amendment to the United States Constitution;
13. Order and declare that the detained Petitioners are being held in violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;

14. Order and declare that the detained Petitioners are being held in violation of the regulations of the United States Military, the Geneva Conventions, and international humanitarian law;
15. Order and declare that the provisions of the Executive Order that authorize trial by military commission violate the Fifth Amendment of the United States Constitution.
16. Order and declare that the provisions of the Executive Order that authorize trial by military commission violate the various provisions of the regulations of the United States Military, the Uniform Code of Military Justice, the Geneva Conventions, and international law;
17. To the extent Respondents contest any material factual allegations in this Petition, require respondents to show the facts upon which Petitioners' detentions are based, grant Petitioners an opportunity for meaningful discovery into the case against them, and schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations; and
18. Grant such other legal or equitable relief as may be appropriate to protect Petitioners' rights under the United States Constitution, federal statutory law, and international law.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

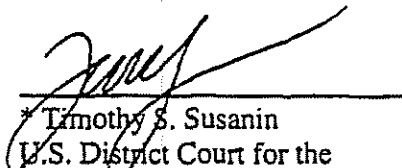
Executed on this 2nd day of July 2004.



Timothy S. Susanin

Respectfully submitted,

Counsel for Petitioners:



* Timothy S. Susanin
U.S. District Court for the
District of Columbia Bar No. 455429

Lawrence S. Lustberg
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Counsel for Petitioners

* Mr. Susanin appears as local counsel for all attorneys.

Dated: Newark, New Jersey
July 2, 2004

EXHIBIT A

1. I am a solicitor in England and I am a partner in the firm of Birnberg Peirce at the above address. I have been retained by the Second Petitioner, [REDACTED], to act on her behalf and also on behalf of her husband, [REDACTED], the First Petitioner, who is presently detained by the United States military at Camp Delta, Guantánamo Bay Naval Station, Cuba (Guantánamo).

2. On 2nd February 2002, I was retained by the father of [REDACTED], [REDACTED], and thereafter by his wife, [REDACTED], to act on their behalf and on behalf of [REDACTED] himself. Annexed hereto marked "GPI" is a copy of my designation as a solicitor for [REDACTED] and her husband [REDACTED] in these proceedings.

3. My understanding of the events that preceded Mr [REDACTED]'s detention in Guantanamo Bay is as follows and is derived from interviews with his wife and also information from the British Foreign Office.

4. In August of 2001, [REDACTED] his wife and their children moved to live in Kabul, in Afghanistan. This had been a long term plan of the family; [REDACTED] believed that he and his family could live safely in that country, and that he could be involved in work of social value, namely by setting up a school. He and his family had travelled to Kabul with their life savings. Once they arrived they acquired a house in Kabul and [REDACTED] was involved in the process of setting up the school. Mr [REDACTED] spoke to family and friends from time to time after their arrival and was believed by them to have become safely settled there.

5. The events of September 11, 2001 and their repercussions, however, had an immediate and disturbing effect upon [REDACTED] and his family as they did upon the entire civilian population of Afghanistan in the light of statements about military repercussions planned by the United States. [REDACTED] and his family remained in Kabul during the bombing of that city; it had been

almost impossible for them to leave and, like many others, their initial reaction had been to wait and hope that conditions did not worsen. However, they were eventually compelled to flee.

6. It is my understanding that, by the end of November 2001, [REDACTED] and his family had reached Islamabad and his father in [REDACTED] and a family friend were involved in arranging for the sending of monies in order for the family to re-establish itself in Islamabad. The family entered into a lease on accommodation there and were intending to stay and attempt to re-settle themselves.

7. On the 31st January 2002, [REDACTED] telephoned his father directly, stating that he had been seized by Pakistani officials, with Americans also present, and that he was making the call from a mobile phone which had not yet been taken from him whilst he was in transit from his house. He had been arrested from the premises he had rented, with his wife and children present.

8. From the date of the receipt of that call continuous attempts were made by and on behalf of his family to obtain answers to what happened to [REDACTED] and to obtain intervention on his behalf. Lawyers were instructed in Pakistan to initiate habeas corpus proceedings there to obtain his release from detention. All of the papers in those proceedings can be produced should they be considered of assistance to the Court. The affidavits of all relevant departments in Pakistan with authority to make arrests, denied all knowledge of [REDACTED]'s existence, despite the production in those proceedings by Mrs [REDACTED] of the lease taken out by her husband for the property in which the family were living at the time of his arrest.

9. In parallel, on behalf of the family, I asked for intervention by the Foreign Office. The response of the Foreign Office was that, upon inquiry (indicating that they had been shown a copy

of Mr [REDACTED]'s Pakistani passport) they could make no formal intervention to Pakistan in view of the fact that Mr [REDACTED] had dual British and Pakistani nationality.

10. The Court in Pakistan on 1st March 2002 ordered the Interior Minister to bring Mr [REDACTED] to Court on 7th March; the Interior Ministry failed to comply with that order. On 8th March 2002, Mr [REDACTED]'s lawyer, Mr Abdur Rahman Saddiqui, submitted that Mr [REDACTED] had been taken from his home by the CIA and the Pakistani Security Services ('ISI'), and interrogated by the ISI. The Court ordered Mr [REDACTED]'s production on 14th March 2002, on pain of sanctions being imposed upon the Interior Ministry. Still Mr [REDACTED] was not produced.

11. However, in the interim, on 4th March 2002, a Mr [REDACTED] from the Red Cross telephoned Mr [REDACTED]'s father in [REDACTED] to say that [REDACTED] had been handed to the US authorities by Pakistani authorities, and had been taken to Kandahar, some 10 to 14 days previously by US forces. It is our understanding that Mr [REDACTED] was thereafter held at a US military airbase in Baghram in Afghanistan. In the light of the sworn responses to the habeas corpus application in Pakistan it is clear that [REDACTED] was removed to Afghanistan unlawfully.

12. Thereafter his family received few communications from him of which two are exhibited here, one to his wife [REDACTED] dated the 20th of November 2002, and one to his father, dated the 15th of December 2002. In a letter to his wife he makes specific reference to his wish that the family consult a lawyer, naming myself as the lawyer who had represented [REDACTED] in the year 2000. In his letter to his father, he states "*I have not seen the sun, sky, moon etc for nearly a year.*" He states, "*I am in this state of desperation and I am beginning to lose the fight against depression and hopelessness.*"

13. I on behalf of [REDACTED] and [REDACTED], the father of the first petitioner pressed the Foreign Office by letter and in interview in England to ensure the most basic provision of information concerning Mr [REDACTED]. The Foreign Office indicated it was impossible to obtain any information whatsoever from the US authorities. As one example, in a letter dated the 24th of October 2002 the Foreign Office confirmed that *"we have made regular requests for information on and access for welfare purposes, preferably Consular access, to Mr [REDACTED] and any other British nationals who may be in a similar position. The US position is that they will not allow us Consular access, or access for any welfare purposes, to any British national detained in Afghanistan or provide us with any information about Mr [REDACTED]'s detention."* I exhibit a copy of that letter at "GP2".

14. Mr [REDACTED]'s family was informed that he had been transferred to Guantanamo Bay on February 6th, 2003. On the 10th of February 2003 on behalf of [REDACTED]'s father and his wife I instructed the Centre for Constitutional Rights in the United States to initiate all such legal action on his behalf as they considered possible. (I had already in 2002 instructed the Centre for Constitutional Rights in similar terms to initiate habeas corpus proceedings on behalf of [REDACTED] and [REDACTED] whose petition is now shortly due to be heard by the Supreme Court in the United States.) The Centre for Constitutional Rights petitioned the Inter-American Commission on Human Rights for the Organisation of American States on March 4th, 2003 on behalf of [REDACTED] and others.

15. I have continued to press the Foreign Office in England to achieve the release of Mr [REDACTED] and compliance with international law. I enclose one example of letters written to the Foreign Secretary Mr Straw, and to the Attorney General. I am aware that the Attorney General has

continued to press for due process to be applied to [REDACTED] who is now, I understand, designated as a person who may be placed before a military tribunal as an "enemy combatant" although no charges have yet been proffered against him. I have been informed by the Foreign Office that he has been held in solitary confinement since the time of his designation.

16. After two years in custody, [REDACTED] has been detained wholly incommunicado from any legal advice. He has clearly and specifically asked that his family obtain the assistance of his lawyer, namely myself but, as has been throughout the case with [REDACTED] and [REDACTED], no possibility of access by any who might provide him with advice has been achieved. At repeated approaches by myself and his family to, and meetings with, the Foreign Office, no further or better information concerning [REDACTED] has been achieved. No letters have been received by his family since July 2003. In the past 24 hours I have been told that reliable information suggests that there are serious questions as to [REDACTED]'s mental health. Such a condition is wholly unsurprising given that the Foreign Office has stated that he has been held in solitary confinement for some six months. As a lawyer with lengthy experience of the effects of isolation upon the ability of any detainee to stand trial, and to make appropriate decisions concerning his defence, I am certain that [REDACTED] must now be in urgent need of wholly independent advice, both legal and medical.

17. I know the facts deposed to herein to be true of my own knowledge, except where otherwise appears.

Sworn by the Deponent at _____ on this 9 day of March, 2004

OSBORNES SOLICITORS
68 PARKWAY
LONDON
NW4 7AH
020 7485 8811

6

Garth Peiré

Before me:

Clath

IN THE
SUPREME COURT OF THE UNITED STATES

[REDACTED]

[REDACTED]

as Next Friend of

[REDACTED]

Petitioners

v.

No. _____

GEORGE WALKER BUSH,
President of the United States

DONALD RUMSFELD,
Secretary, United States
Department of Defense

MAJ. GEN. GEOFFERY MILLER,
Commander, Joint Task
Force - 160
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba

ARMY COL. NELSON J. CANNON,
Commander, Camp Delta
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba

Defendants.

EXHIBITS TO PETITION FOR WRIT OF HABEAS CORPUS

EXHIBITS TO AFFIDAVIT OF SOLICITOR GARETH PEIRCE

- A. GP1: Copy of designation as solicitor for [REDACTED] and her husband [REDACTED] in these proceedings.
- B. GP2: Copy of letter sent by the FOREIGN OFFICE to Birnberg Peirce & Partners. (October 24, 2003)

OSBORNES SOLICITORS
68 PARKWAY
LONDON
NW1 7AH
020 7485 8811

5246

31 Oct 72

EXHIBIT GP1

GREAT BRITAIN
AUTHORISATION

COMES NOW, _____, being duly sworn, and deposes and states as follows:

1. I am related to _____. He is my husband. I love him and want only what is in his best interests.
2. It is my understanding that he is not allowed access to a lawyer or to the courts of the United States.
3. I wish to act as his "next friend" and I hereby retain request and authorise Gareth Peirce, solicitor, and Daniel Guedalla, solicitor, at Birnberg Peirce and Partners solicitors, 14 Inverness Street, London NW1 7HJ, United Kingdom, and in the United States I retain and authorise Clive A. Stafford Smith, and his associates, to act on behalf of Moazzam Begg and take whatever legal steps that they consider to be in his best interests.

Sworn to this 4th day of March 2004

Witnessed: *Nalder Garcia (SOLICITOR)*

TYNDALLWOODS
WINDSOR HOUSE
TEMPLE ROW
BIRMINGHAM B2 5TS

EXHIBIT GP2

EXHIBIT GP3

24-OCT-2002 11:20 FROM CONSULAR DIV



Foreign & Commonwealth Office

Consular Division
Room G/111
Old Admiralty Building
London
SW1A 2PA

Tel: 020 70080143
Fax: 020 70080112
E-mail: John.Colley@fco.gov.uk

24 October 2002

Birnberg, Peirce and Partners
14 Inverness Street
London
NW1 7HJ

By Fax to: 020 7911 0170

Dear Sirs

Thank you for your letter to the Foreign and Commonwealth Office of 8 October about Mr [REDACTED], who is believed to be detained in Afghanistan by the United States. I am the officer dealing with [REDACTED]'s case and have been asked to reply. Please use the above address and fax number for correspondence.

I would like to assure you that we are conscious of the importance of safeguarding Mr [REDACTED]'s welfare.

You have asked for a meeting to discuss this matter with FCO officials. It will be possible to have a meeting at 14.00 on Wednesday 30 October; [REDACTED], Head of Consular Division and myself, will attend the meeting. Please could you advise us in advance of who is attending from Birnberg Peirce & Partners and from Mr [REDACTED]'s family. We will have to limit the total number of visitors to four. If this time is inconvenient, please contact me by telephone to arrange a different time.

In answer to the four specific points raised in your letter:-

a) & b) There has not been a consular visit.

c) On hearing reports of Mr [REDACTED]'s possible detention in Afghanistan by the US authorities, the FCO sought information from the US Government about his identity and location. Since then we have made regular requests for information on and access for welfare purposes, preferably consular access, to Mr [REDACTED] and any other [REDACTED] who may be in a similar position. The US position is that they will not allow us consular access, or access for any welfare purposes, to any [REDACTED] detained in Afghanistan or provide us with any information about Mr [REDACTED]'s detention. We do however continue to press for access and information. We understand that the International Red Cross (ICRC) has had access to Mr [REDACTED] at Bagram.



d) We have not been provided with information on his status by the US authorities.

Yours faithfully

[Redacted signature]

[Redacted name]

Consular Division

cc:

EXHIBIT B

01716810407

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[REDACTED],
[REDACTED]
As Next Friend Of
[REDACTED]

Petitioners,

v.

No. _____

GEORGE WALKER BUSH,
President of the United States

DONALD RUMSFELD,
Secretary, United States
Department of Defense

MAJ. GEN. GEOFFERY MILLER,
Commander, Joint Task
Force - GTMO
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba

ARMY COL. NELSON J. CANNON,
Commander, Camp Delta
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba

Defendants.

AFFIDAVIT OF [REDACTED]

I, [REDACTED], of [REDACTED], [REDACTED] being duly sworn, depose and state as follows:

1. I am a the wife of [REDACTED] and I am a [REDACTED] citizen. I have been married to [REDACTED] since [REDACTED].

2. All of the relevant background is already set out in the witness statement of Gareth Peirce, made on my behalf, and contact with the [REDACTED] with the Government of Pakistan, with the courts in Pakistan and officials in Pakistan has been conducted on my behalf by my father in law and our solicitor, Gareth Peirce. She has provided an affidavit in these proceedings, and I do not repeat what is contained in her affidavit.
3. I have been married for [REDACTED] years to my husband. We have [REDACTED] children, one child having been born following my return to [REDACTED] from Pakistan in [REDACTED].
4. In August of last year my husband and I moved with our children to Kabul in Afghanistan. The reasons for our move were related to the wish of our family to live in a society that we regarded as safe and in which we wished to bring up our children. My husband's plan was to be involved in the running of a school. We, in consequence, came to move to Kabul in August of 2001 and bought a house in Kabul. My husband was engaged in setting up a school when the events of September 11, 2001 occurred, and had an effect upon all civilians living in Afghanistan. We believed that the sensible thing was to wait and see what happened, hoping that the rumours of war would not materialise. However, after the bombing of Kabul occurred, in which we were living, we were forced to flee, although we were not in a position to do so immediately.
5. We eventually succeeded in getting out of Afghanistan and, with the help of monies sent by our families and friends in England, rented a house in Islamabad where we re-settled and were living with our children in what we believed, then, to be safety. The premises were rented in our name, and there was nothing clandestine about our presence.
6. During the night of 31st January 2002, when I was asleep, people who were not known to me arrived at our house and took [REDACTED] away. I was extremely concerned about him for a range

of reasons, but including the fact that he is someone who has suffered from ill health for a number of years, in particular concerned with great difficulty in breathing. When he exerts himself in any way, even going up the stairs, he has to have recourse to an inhaler. I am aware that he cannot function at all without this and I asked those persons taking him to ensure that he had it with him at all times.

7. I have not seen my husband since that time. As is set out in the statement of Gareth Peirce, proceedings were initiated in Pakistan and all knowledge of my husband's detention was denied in the course of those proceedings by all relevant Pakistani authorities with power to arrest. It was my father in law who received a call during the time in which those proceedings were ongoing, to say that my husband was in American hands in detention in Afghanistan.

8. I was eventually able to return to [REDACTED] myself with my children, and enquiries on my behalf have been made by my father in law and our solicitor of the Foreign Office at frequent intervals. No information has been provided that reassures us, nor allows us even to know what is his legal situation, and what is his physical condition. I have received a number of letters from my husband through the Red Cross in which the average delay has been several months in arrears of the date appearing on each letter. I do not feel that my husband is able to say anything that reflects what is happening to him. His letters are very obviously censored. He has indicated that time is passing very slowly, and that a week seems like a year. He says always that he prays for us and wishes us to pray for him. I have however had no letter since July of last year.

9. I have seen it reported that my husband was captured on a battlefield and have now learned that he has been designated an "enemy combatant" and yet I know that he was seized from our

01716810407

house in Islamabad. I know him to be a good and principled person who was trying, with his family, to live a responsible and socially useful life.

10. I have asked that all further possible steps be taken on his behalf bring this in view of the now extreme alarm I feel at my husband's never ending detention at the hands of the American authorities who have at all times indicated publicly that they do not intend to be bound by what I understood to be international minimum norms.

11. [REDACTED] has mentioned in correspondence to me the name of our family's solicitor, Gareth Peirce, and it is my certain belief that he would want me to take appropriate legal action on his behalf. Consequently, I wish to act as his "next friend". In this capacity I have retained and here record my continuing request and authorisation to Gareth Peirce solicitor or her associates and Michael Ratner attorney for the Centre of Constitutional Rights (CCR) in New York, and any lawyers associated with the CCR to act on my own and my husband [REDACTED]'s behalf and take whatsoever legal steps they consider to be in our best interests.

12. I know the facts deposed to herein to be true of my own knowledge, except where otherwise appears.

Sworn by the Deponent at TYNDALLOODES SOLICITORS
BIRMINGHAM on this 5th day of March, 2004

[REDACTED]

Before me:

Neddie Gove (Solicitor)

TYNDALLOODES
WINDSOR HOUSE
JEMPL. ROW
BIRMINGHAM B3 8TA

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEROZ ALI ABBASI)
 [REDACTED])
 as Next Friend of Feroz Ali Abbasi)
)
 Petitioners)
)
 v.)
)
GEORGE WALKER BUSH,)
 President of the United States)
)
DONALD RUMSFELD,)
 Secretary, United States)
 Department of Defense)
)
BRIGADIER GEN. MIKE LEHNERT,)
 Commander, Joint Task)
 Force - 160)
 Guantanamo Bay Naval Station)
 Guantanamo Bay, Cuba)
)
COLONEL TERRY CARRILO,)
 Commander, Camp X-Ray)
 Guantanamo Bay Naval Station)
 Guantanamo Bay, Cuba)
)
 Defendants.)

No. _____

AFFIDAVIT OF LOUISE CHRISTIAN

I LOUISE CHRISTIAN of Christian Fisher of 42 Museum Street, Bloomsbury, London WC1A 1LY in the United Kingdom being duly sworn, **DEPOSES AND STATES** as follows:

1. I am a solicitor and I have been engaged by the Second Petitioner [REDACTED] [REDACTED] to act on her behalf and on behalf of her son Feroz Ali Abbasi, the First Petitioner.

2. On the 8th February 2002 I wrote to William Farish, the US Ambassador to the UK and to the UK Foreign Secretary, Jack Straw in similar terms. The letters are attached hereto and marked "LC1".
3. On the 18th day of February 2002 members of my firm, my client and Stephen Solley QC, Leading Counsel instructed on behalf of Mr Abbasi had a meeting with Baroness Amos of the UK Government.
4. We have instructed Leading Counsel Stephen Solley QC and two leading academics Professors Vaughan Lowe and Guy Goodwin-Gill to advise on the legal status of Mr Abbasi and his right to access to lawyers. I attach marked "LC2" a copy of their Opinion. The Opinion was handed to Baroness Amos but she said she would not be responding to it.
5. On 21st February I telephoned the US Ambassador's office and asked for an immediate reply to our letter of 8th February. I was told I would be telephoned later in the day. I subsequently sent a faxed letter dated 21st February a copy of which is attached marked "LC3". The letter notifies our requirement that an independent Court or Tribunal determine Mr Abbasi's status and that his lawyers be given access to him.
6. I have not received a reply to my letters to the US Ambassador.
7. I have not received any other communication either from any authority of the United States apart from those referred to above.
8. [REDACTED] has received messages from her son Feroz one of which is attached to her affidavit.

- 9. I have spoken to a Red Cross Representative in the UK who has confirmed to me that the Red Cross will pass letters from the family to Feroz but these messages are to be limited to matters of family news only.
- 10. I know the facts deposed to herein to be true of my own knowledge, except where otherwise appears.

SWORN by the Deponent at)
 this 2)
 day of July 2004)
 before me: Eve Carline)
 EVE CARLINE

[Handwritten signature]

BurtonWoods
 Solicitors
 Museum House
 25 Museum Street
 London WC1A 1JT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEROZ ALI ABBASI

[REDACTED]

As Next Friend of Feroz Ali Abbasi

Petitioners

v.

GEORGE WALKER BUSH,
President of the United States

DONALD RUMSFELD
Secretary, United States
Department of Defense

BRIGADIER GEN. MIKE LEHNERT,
Commander, Joint Task
Force - 160
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba

COLONEL TERRY CARRILO,
Commander, Camp X-Ray
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba

Defendants.

No. _____

EXHIBIT "LC1"

This is the exhibit referred to in the Affidavit of Louise Christian referred to as exhibit "LC1".

Signed:

Eve Christian EVE CHRISTIAN

Dated:

2/7/04

8 February 2002

LC.RG.J0121-001

William Farish Esq
US Ambassador
US Embassy
24 Grosvenor Square
London W1A 1AE

BY FAX: 0207 493 3425

Dear Mr Farish,

RE: FERUZ ABBASI - DETAINED IN GUANTANAMO

We have been instructed by Ms [REDACTED], to represent her son, Feroz Abbasi. Mr Abbasi who is a British National has been reported as being detained by the US Government in Guantanamo, Cuba. This has been confirmed by the Foreign Office who states that Mr Abbasi has been interrogated by MI5 officers from Britain who confirmed his identity. The Foreign Office have however stated that they have been denied Consular access to Mr Abbasi.

We are writing on behalf of Mr Abbasi to express a number of extremely urgent pressing concerns about the legal authority under which he is being held, the status which the US Government accords to him, the conditions of his detention and in particular any sensory deprivation to which he is being subjected, the lack of access by any independent person or medical expert, the question of whether we as lawyers will be allowed access to visit him in Cuba, the proposed future conduct of the US Government in relation to him and whether he will be afforded a fair trial and if so in what jurisdiction.

We write to let you know that we have instructed Stephen Solley QC the Chairman of the Bar Human Rights Committee and that we have received backing from the Law Society Human Rights Committee and the Bar Human Rights Committee in requesting immediate access to visit Mr Abbasi in Guantanamo to check on his welfare. We would like access for a member of this firm, Mr

Stephen Solley QC and an independent medical expert instructed by us. We would be grateful to hear from you urgently whether you are able to grant us access to Mr Abbasi at Guantanamo.

Obviously Ms [REDACTED] Mr Abbasi's mother would also like access to her son so we also make a separate request for a visit by her.

We would like to have an urgent meeting with you in person to discuss our requests, the basis on which Mr Abbasi is being held, what efforts have been made to confirm his identity, and the conditions of his detention. We would be grateful if you could telephone Louise Christian or Elaine Kassabian on the above number as soon as possible to arrange such a meeting.

We have instructed Stephen Solley QC to advise on whether the US Government has lawful authority to detain Mr Abbasi at Guantanamo, on whether his status is that of a prisoner of war or a person detained on suspicion of a crime, on the conditions of his detention and the treatment being afforded to him and on his right to be brought before a Court or other Tribunal which will satisfy the international law requirements for a fair trial. We intend to let you have a copy of Mr Solley's opinion as soon as possible.

We would be grateful to hear from you extremely urgently in response to our request for a meeting and for access to Mr Abbasi as his lawyers to confer with him in private.

Mr Abbasi who is a British Citizen was born on the 29th October 1979 so he is only just twenty two years old. He disappeared on the 12th December 2000 to the enormous distress of his mother who is extremely close to him. His mother is extremely concerned that she has not received any personal message from him or had any information at all on his medical condition or well being. She has passed a personal message to the Red Cross to give to him but has had no response or information from them. Similarly she is very disturbed that although it is said that MI5 officers have interrogated Mr Abbasi in Guantanamo no Consular access has been allowed. It appears to us that the lack of any independent access whatsoever to Mr Abbasi constitutes a grave breach of international law and that the US Government is laying itself open to very serious accusations should any harm befall Mr Abbasi while he is detained in Guantanamo.

We would be grateful to speak with you urgently concerning this matter and for your response to our request for access to Mr Abbasi in Guantanamo.

We are sending a copy of this letter to the Foreign Secretary and officials in the Foreign Office, to Mr Abbasi's MP, Mr Geraint Davies and to the Bar and the Law Society Human Rights Committees.

We await an urgent response.

Yours faithfully,

CHRISTIAN FISHER

8 February 2002

LC.RG.J0121-001

The Right Honourable Jack Straw MP
Foreign Secretary
Foreign & Commonwealth Office
King Charles Street
London SW1A 2AH

BY FAX: 0207 839 2417

Dear Foreign Secretary,

RE: FERUZ ABBASI - DETAINED IN GUANTANAMO

We have been instructed to act for Mr Feroz Abbasi who has been detained in Guantanamo. We enclose a copy of a letter sent to the US Ambassador and also a copy of a letter to the British Red Cross. We are writing to ask for an urgent meeting with you in person for ourselves and our client, Ms [REDACTED], the mother of Feroz Abbasi. We are concerned to hear from the Foreign Office that Consular access to Mr Abbasi has been denied. We have asked for proof that there has been a request for Consular access and of the reply. Ms [REDACTED] is extremely concerned that she has not received any personal message from her son even though they are very close.

As you will see from our letter to the US Ambassador we are asking for access to Mr Abbasi in Guantanamo for ourselves as lawyers and an Independent doctor. We anticipate that a member of this firm will be accompanied by Stephen Solley QC, the Chair of the Bar Human Rights Committee. The request for access has the backing of the Law Society and the Bar Council Human Rights Committees.

We seek an urgent meeting with you as we understand you have called for the British detainees in Guantanamo to be returned to the UK. Ms [REDACTED] would urgently like to hear from you as to what communications have been between the British Government and the US Government in furtherance of your request.

We await hearing from you urgently.

Yours faithfully,

CHRISTIAN FISHER

ENCS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEROZ ALI ABBASI

[REDACTED]

As Next Friend of Feroz Ali Abbasi

Petitioners

v.

GEORGE WALKER BUSH,

President of the United States

DONALD RUMSFELD

Secretary, United States
Department of Defense

BRIGADIER GEN. MIKE LEHNERT,

Commander, Joint Task
Force - 160
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba

COLONEL TERRY CARRILO,

Commander, Camp X-Ray
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba

Defendants.

No. _____

EXHIBIT "LC2"

This is the exhibit referred to in the Affidavit of Louise Christian referred to as exhibit "LC2".

Signed: Eve Carllis EVE CARLLIS

Dated: 2/7/04

In the Matter of the detention of Mr Feroz Abbasi at US Guantanamo Base, Cuba.

Opinion on Status, Detention, Right of Legal Access, Consular Access, and Remedies.

1. We understand that Mr Abbasi is held under the United States Presidential Order dated 13 November 2001. This advice is based upon the text of the Presidential Order currently (14 February 2002) displayed on the US Government website, at <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html>.
2. The Order does not automatically apply to anyone: it applies only to those individuals who have been determined by the President, in writing, to be a non-US citizen whom there is reason to believe was at the 'relevant times' (and the Order does not define the 'relevant times') a member of al Qaida or engaged in international terrorism aimed at United States interests, or harboured any such person, and whom it is in the interests of the United States to make subject to the Presidential Order (Section 2). We do not know whether such a written determination has been made in respect of Mr Abbasi.

Mr Abbasi's status

3. As far as Mr Abbasi's status is concerned, as a matter of international law there are only three possibilities: (i) he may be a combatant, now held as a prisoner of war; (ii) he may be a civilian detainee, now interned; or (iii) he may be an unlawful combatant, now detained, either pending trial or simply detained and not pending trial.
4. If Mr Abbasi is a prisoner of war, his detention is governed by the terms of Geneva Convention III. He could not be required to give any information to the US authorities other than his name, rank, serial number and date of birth. He could not be prosecuted for his involvement in the hostilities: he could be prosecuted only for war crimes and crimes against humanity. He would be entitled to be released and repatriated without delay after the cessation of hostilities. [GCIII, art. 118].

5. The United States denies that Mr Abassi is a prisoner of war. As a matter of law that question is regulated by GCIII Article 5 and Article 45 of the 1977 Additional Protocol I to the Geneva Conventions ('API').
6. The United States has not ratified API. However, in the Operational Law Handbook (JA 422) issued by the Judge Advocate General's School, United States Army, Charlottesville, Virginia, in 1997, it is stated, 'that the US views [among others, Article 45 API] as customary international law' (page 18-2), which would bind the United States along with all other States. The Handbook summarises Article 45 in the following terms: "prisoner of war presumption for those who participate in the hostilities".
7. This statement is qualified in the 2002 edition of Operational Law Handbook, in which it is now said that the US views Article 45 API as 'customary international law or acceptable practice though not legally binding' (Ch. 2, p. 11). It is practically inconceivable that the customary international law has changed in this way since 1997. In any event it would be arguable before an international tribunal that the United States is estopped from denying that API represents customary international law, particularly given the fact that 159 States have now ratified Additional Protocol I (such an argument would, however, be less likely to succeed before a United States court or tribunal).
8. API stipulates that if Mr Abbasi 'claims the status of prisoner of war, or if he appears to be entitled to such status, or if the party on which he depends claims such status on his behalf by notification' to the United States, he is presumed to be a prisoner of war, and retains that status until such time as his status has been determined by a competent tribunal. It is not known whether prisoner of war status has been claimed by or on behalf of Mr Abbasi. In our view, however, such status could be claimed on his behalf, certainly by the British Government, and possibly by his legal representatives. (Some doubt as to the right of his legal representatives to make the claim flows from the fact that API does not expressly give such a right, although earlier US practice has confirmed the role of counsel in proceedings to determine status; see further below). We understand

that the United States has not submitted the question of Mr Abbasi's status to a competent tribunal.

9. In our view, the United States is obliged to submit the question of Mr Abbasi's status to a competent tribunal, which is also consistent with the practice of the United States in other theatres of operations.
10. During the Vietnam War, the US Military Assistance Command in Vietnam issued comprehensive criteria for classification and disposition of detainees. Annex A of Directive Number 381-46 of December 27, 1967 defined 'detainees' as 'persons who have been detained but whose final status has not yet been determined. Such persons are entitled to humane treatment in accordance with the provisions of the Geneva Conventions.' It further provided for the systematic classification of detainees into 'prisoner of war' and 'non-prisoner of war' categories.
11. Among the non-prisoner of war class, the directive included civilian defendants liable to trial by the Government of Vietnam for offences under local law, as well as certain categories of 'irregulars', such as guerrillas 'detained while not engaged in actual combat' and a detainee 'suspected of being a spy, saboteur or terrorist'.
12. Directive Number 20-5 of March 15, 1968 made extensive provision for the determination of eligibility for prisoner of war status applicable, among others, to 'non-prisoners of war and doubtful cases who are captured by or are in the custody of United States forces.' The Directive relied expressly on Article 5 GCIII. It provided that 'All United States military and DOD civilian personnel who take or have custody of a detainee will... (2) Afford to each detainee in their custody treatment consistent with that of a prisoner of war, unless or until it has been determined by competent authority in accordance with this directive that the detainee is not a prisoner of war.'
13. The Directive provided further in relation to the rights of the detainee that, 'No person may be deprived of his status as a prisoner of war without having had an opportunity to present his case with the assistance of a qualified advocate or counsel', and that, 'The

Detainee shall have the right to be present with his counsel at all open sessions of the tribunal.'

14. The Directive made extensive provision for the 'Rights of Counsel for the Detainee', including 'a period of at least one week before the hearing in order to prepare his case', free access to visit the detainee and interview him in private', a 'reasonable opportunity to confer privately with essential witnesses, including prisoners of war', and rights of cross-examination and presentation of witnesses and testimony.
15. It is unclear whether Mr Abbasi is or is not a prisoner of war, but this is clearly a question appropriate for inquiry by a competent tribunal. The answer would depend upon the precise facts of his case, and in particular upon the exact relationship between the Taliban (which in our view was as a matter of international law the Government of Afghanistan, even though it was not recognised by the United States as such) and any organisation in which he was an active participant in Afghanistan. We understand that it is said that Mr Abbasi was a member of Al Q'aida, but we are not aware of any proof that this is the case, or of any proof of the nature of the relationship between Al Q'aida. This point is important because the definition of a 'combatant' in international law may be wide enough to embrace Al Q'aida fighters if, as a matter of fact, they were integrated into the Taliban command structure.
16. If Mr Abbasi were a civilian detainee, his internment would be governed by the terms of Geneva Convention IV. He would be entitled to visits, communications, and other privileges, and to be released as soon as the reasons, which necessitated his internment no longer, exist [GCIV, art. 132].
17. Even if the exceptional provisions of Article 5 GCIV apply and a person is detained in the territory of a Party to the conflict/occupied territory 'as a person under definite suspicion of activity hostile to the security of the Occupying Power', such he or she shall be treated with humanity and, 'in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.'

18. Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty: Art. 133, GCIV. However, the provisions of Articles 71-76 GCIV inclusive shall apply by analogy to proceedings against internees who are in the national territory of the Detaining Power: Art. 126 GCIV.
19. Among others, Article 72 provides for rights of defence, including assistance by a qualified advocate or counsel of their choice, 'who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.'
20. We understand that the United States does not regard Mr Abbasi as an internee within the terms of GC IV.
21. The third possibility is that Mr Abbasi is an unlawful combatant, entitled to treatment neither as a combatant prisoner of war nor as a civilian internee. This appears to be the status that the United States regards him as having.
22. Unlawful combatants are not without rights. They are entitled to the minimum standard of treatment set out in API article 75. Article 75 is among those recognized by the United States in 1997 as representing customary international law. Article 75 reads as follows:-

Art 75. Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such

persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder;

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

(iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form or indecent assault;

(c) the taking of hostages;

(d) collective punishments; and

(e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence; (our emphasis)

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be accused or convicted of a criminal offence

on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt;

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

[5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.]

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and

trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

- (a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
- (b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1

23. Article 75 represents the minimum standard of treatment to which Mr Abbasi is entitled. That is so regardless of whether he is a prisoner of war, civilian internee, or unlawful combatant.

Mr Abbasi's detention

24. In so far as Mr Abbasi's detention is concerned, the entitlement of the United States to detain him without proceeding to try him for any offence is limited. It was noted above that prisoners of war and civilian internees must be released as soon as possible after the end of hostilities or the cessation of the circumstances that warranted their detention.

25. The United States may claim that they are entitled by the right of self-defence to detain Mr Abbasi, in order to avert a real and imminent threat to the United States. The generally-accepted statement of the criteria of self-defence appears in the correspondence concerning the Caroline incident, where it was said that there must be shown "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation", and further that the State invoking self-defence must do "nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it." [British & Foreign State Papers, vol. 29, p.1137]. Article 51 of the UN Charter recognizes that the right of

self-defence may be exercised by any single State, and also by States acting in exercise of the right of collective self-defence. That might be said to warrant Mr Abbasi's detention in order to avert a threat to any of the United States' NATO allies.

26. It is a question of fact whether the circumstances warrant the exercise of a right of self-defence by the United States. Mr Abbasi might have presented a danger to the United States immediately after September 11, 2001. He might have presented such a danger when he was in Afghanistan, and would clearly have done so if he were engaged in hostilities against United States or other NATO forces operating lawfully in Afghanistan (and for present purposes we assume that the United States action in Afghanistan was, as a matter of international law, lawful). But he plainly cannot be held indefinitely without trial on this basis.

27. If Mr Abbasi is facing prosecution by the United States, his detention for a reasonable period pending trial will be lawful. If he is a prisoner of war he could be prosecuted only for war crimes and crimes against humanity. If he is an unlawful combatant he could be prosecuted for his involvement in hostilities: for example, he could be prosecuted for the attempted murder of any United States soldiers against whom he fought.

Mr Abbasi's right of access to a lawyer

28. If Mr Abbasi is or may be facing prosecution, API Article 75(4)(a), set out above, expressly entitles him to 'all necessary rights and means of defence'. That must include a right of access to a lawyer. That right is reinforced by similar provisions in other international agreements. Two instruments, to both of which the United States is a party, are particularly significant. The American Declaration on the Rights and Duties of Man sets out various entitlements to equality before the law (Article II), resort to the courts (Article XVIII) to submit petitions to competent authorities (Article XXIV), and to be presumed innocent until proven guilty (Article XXVI).

29. The International Covenant on Civil and Political Rights sets out the right of every person to life (Article 6), the right to liberty and freedom from arbitrary detention (Article 9), to treatment with

respect for their humanity and inherent dignity (Article 10) and to equality before the law and to adequate facilities for the preparation of his defence (Article 14).

30. In our opinion, those instruments all establish a right of access to a lawyer, for any person facing possible prosecution. Moreover, in the particular circumstances of this case the right of access arises in two ways. First, Section 2 (a) (1) of the United States Presidential Order indicates that the President has already determined in writing that he has reason to believe that Mr Abbasi has committed one or more of the offences set out thereafter at (i), (ii) and (iii). These are similar offences to those faced by [REDACTED] in the criminal proceedings he faces in the US District Court of Virginia, having been detained, it will be remembered, in Afghanistan. Mr Abbasi plainly faces the real prospect of prosecution. There would otherwise be no reasonable basis to detain him. Whether in due course he is actually prosecuted is a different question and one that does not affect the issue of legal access. Mr Abbasi is entitled to seek legal advice so as to present his position in such a light that he is not prosecuted. English jurisprudence is clear upon the point, as is European Strasbourg jurisprudence. Secondly, access might arise in the context of proceedings before the 'competent tribunal' that would determine Mr Abbasi's right to the status of a prisoner of war. The international instruments do not explicitly establish such a right for persons who are detained without facing prosecution, but in our view such a right is implicit in all of the instruments cited.
31. These rights may be the subject of derogations where, broadly speaking, it is necessary to do so in order to preserve public safety in time of public emergency: see American Declaration on the Rights and Duties of Man, Article XXVIII, International Covenant on Civil and Political Rights, Article 4. Any such derogation must be limited to what is necessary to preserve public safety. Again, there is no evidence to suggest that the denial of access to a lawyer is strictly necessary in order to protect public safety.
32. No derogation from its obligations under the International Covenant on Civil and Political Rights has been declared by the United States, or communicated to any of the other 144 States Parties through the intermediary of the UN Secretary-General, as required by Article 4(3).

33. Article 14 ICCPR66, it will be recalled, requires adequate facilities for the preparation of a defence, and declares that 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.'
34. In the present case, it is difficult to see how it can be argued that the denial of access to a lawyer is strictly necessary in order to defend the United States. The question is whether the prisoner is any more of a threat to the United States if he has access to a lawyer than he is if he does not. It is very difficult to see that this could be so. Only if there were a reasonable fear that Mr Abbasi's contact with a lawyer might enable items or communications prejudicial to public safety in or out of the prison could this be maintained. Moreover, that fear would have to be one arising in the specific case of Mr Abbasi and his lawyers. Mr Abbasi's right may not be suspended because there is a reasonable fear that lawyers visiting other prisoners might constitute such a danger. In any event, no argument to this effect has been made out by the United States.
35. It might be argued by the United States that access to a lawyer would impede the process of interrogation. Even if, as a matter of fact, this were true, it would be relevant only in so far as the interrogation was the only means available to enable the United States to defend its vital interests, in accordance with the circumstances in which derogations from human rights instruments are permitted. There is no evidence to suggest that this is the case; and given the length of time for which the prisoner has already been available for questioning, it is difficult to believe that any such case could be made out. Moreover, this argument would be relevant only in so far as the interrogation did not involve the application of internationally unlawful force or pressure to the prisoner: international law does not permit States to suspend their basic humanitarian duties, and self-defence would not operate so as to permit the use of torture or other internationally unlawful pressure to the prisoner. Even if a State had a right not to have lawful interrogations impeded, that right could not extend to unlawful interrogations.

36. There is a further and important reason why the United States may not suspend the right of access to a lawyer in this case. The Presidential Order of 13 November 2001 specifically excludes from its scope US nationals. Non-US prisoners are as a matter of law thus discriminated against in relation to their access to lawyers and to right to petition courts in the United States or other countries and international tribunals. This is objectionable on three grounds.
37. First, Guantanamo Bay is Cuban territory, currently leased by the United States; see Article 3 of the Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval stations; February 23, 1903. The apparent claim in the 13 November 2001 Presidential Order that the United States may forbid foreign nationals outside United States territory to petition non-United States courts is entirely without foundation as a matter of international law. The United States has no competence to give any such order: it lies beyond the reach of United States' jurisdiction.
38. Second, by discriminating between the Cuban prisoners on the basis of their nationality, the United States is violating its international legal duties to maintain the equality of all persons before the law, without discrimination. That duty is set out in the American Declaration on the Rights and Duties of Man (Article II), the International Covenant on Civil and Political Rights (Article 2), and API (Article 75(1)). The United States is not entitled to deny to British nationals right that it gives to its own nationals.
39. Third, notwithstanding its characterisation under US law, Guantanamo is clearly a place for which the United States is responsible and in respect of which the international obligations of the United States apply.

Consular access

40. We note also that the United Kingdom is entitled to insist upon consular access to Mr Abbasi. That right is set out in Article 36 of the Vienna Convention on Consular Relations, which provides:-

"Communication and contact with nationals of the sending state.

1. With a view to facilitating the exercise of consular functions

relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action."

Remedies

41. There are three main approaches through which Mr Abassi's rights might be enforced. First, there may be an appeal to the United States' courts. We understand that such an application has already been lodged. We are not experts in United States law; but it seems reasonable to suppose that, given the terms of the Presidential Order, it is not probable that a United States' court will rule that the detention of the prisoners at Guantanamo Bay is entirely unlawful, although it may be more likely to uphold claims to humane treatment and to access to lawyers for those detained.

42. Second, the British Government should make diplomatic representations to the United States Government, requiring that Mr

Abbasi and other British nationals held at Guantanamo Bay be treated in accordance with the United States' obligations under international law, and in particular at the very least have immediate access to legal assistance.

43. Third, a petition might be lodged on Mr Abbasi's behalf with the Inter-American Commission on Human Rights. Article 1 of the Statute of that Commission gives it jurisdiction over matters arising under the American Declaration of the Rights and Duties of Man. Article 25 of that Statute empowers the Commission to adopt precautionary measures to prevent irreparable harm to persons. This is a case in which it would be appropriate for the Commission to order precautionary measures, as a matter of urgency.

Stephen Solley QC, Charter Chambers

Prof. Vaughan Lowe, Essex Court Chambers

Prof. Guy Goodwin-Gill, Blackstone Chambers

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEROZ ALI ABBASI)
 _____)
 As Next Friend of Feroz Ali Abbasi)
)
 Petitioners)
)
 v.)
)
GEORGE WALKER BUSH,)
 President of the United States)
)
DONALD RUMSFELD)
 Secretary, United States)
 Department of Defense)
)
BRIGADIER GEN. MIKE LEHNERT,)
 Commander, Joint Task)
 Force - 160)
 Guantanamo Bay Naval Station)
 Guantanamo Bay, Cuba)
)
COLONEL TERRY CARRILO,)
 Commander, Camp X-Ray)
 Guantanamo Bay Naval Station)
 Guantanamo Bay, Cuba)
)
 Defendants.)

No. _____

EXHIBIT "LC3"

This is the exhibit referred to in the Affidavit of Louise Christian referred to as exhibit "LC3".

Signed: Eve Carlile EVE CARLILE

Dated: 2/7/04

21 February 2002

LC.RG.J0121-001

William Farish Esq
US Ambassador
US Embassy
24 Grosvenor Square
London W1A 1AE

BY FAX: 0207 493 3425

FOR THE ATTENTION OF [REDACTED]

URGENT FOR IMMEDIATE ATTENTION

Dear Ambassador,

RE: FERUZ ABBASI - DETAINED IN GUANTANAMO
INTERNMENT SERIAL NUMBER: [REDACTED]

We act for the above and write further to our letter of 8th February a further copy of which we enclose. We are extremely surprised not to have received a response and confirm our telephone conversation when we advised Ms [REDACTED] that we require a response urgently. We understand that decisions are being taken in Washington and we would like to speak to the person making the decisions so would be grateful for a name and telephone number.

We enclose a copy of a Counsel's opinion which is written by Senior Leading Counsel, Stephen Solley QC, Chair of the Bar Human Rights Committee together with two leading academics in the field of international human rights law. We respectfully draw your attention to its content.

We are extremely disturbed that the status of our client has still not been clarified by the US and that he is still being detained without any clarification of whether he will be charged with any offence or the procedure to which he is subject.

We wish to notify you formally that we consider our client to be a prisoner of war and subject to the terms of the Geneva Convention.

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We understand that this is disputed by the US Government and write to give formal notice that we require a determination by an independent Tribunal or Court as soon as possible as to his status.

We also require access to him as his lawyers as requested previously.

We consider this matter to be extremely urgent and look forward to your urgent response today.

Yours faithfully,

CHRISTIAN FISHER

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DEFENCE CALL TO ESSENTIAL WITNESSES AND DOCUMENTATION

as may be sufficient to support the detainee's classification as an enemy combatant, including the circumstances of how the detainee was taken into the custody of U.S. or allied forces (the evidence so presented shall constitute the "Government Evidence"). In the event the Government Information contains evidence to suggest that the detainee should not be designated as an enemy combatant, the Recorder shall also separately provide such evidence to the Tribunal.

DEFENCE CALL 2: Request that allied-force members who initially captured, helped, and subsequently bound, detainee to be called as witnesses. To clarify circumstances of how detainee was taken into custody of U.S. or allied forces.

DEFENCE CALL 3: Request that F.B.I. agents [REDACTED] and "Chris" who initially interrogated detainee at U.S. Base at Kandahar Airport and subsequently generated erroneous report be called as witnesses.

DEFENCE CALL 4: Request that F.B.I. agent [REDACTED] who periodically interrogated detainee between February 2002 - Autumn 2002 (approx.) and had subsequently received "erroneous report" to be called as a witness.

DEFENCE CALL 5: Request that Central Intelligence Task Force (C.I.T.F) Sergeant [REDACTED] and F.B.I. agent [REDACTED], who interrogated detainee around April 2003 - August 2003 (approx.) and April 2003 - June 2003 (approx.) respectively, be called (as witness) as parties to the clarification of the circumstances of how detainee was taken into the custody of U.S. or allied forces.

DEFENCE CALL 6: Request entire Interrogation Case File from past to present be presented to the Tribunal as documentary evidence; ^{including} any such amendments, extractions, deletions, and any other subsequent changes to the initial content of the Interrogation Case File be presented as ~~documentary~~ ^{documentary} evidence to the 5286

tribunal.

DEFENCE ALLEGES EXTRACTION OF GOVERNMENT INFORMATION UNDER DURESS:

DEFENCE CALL 7: Request C.I.T.F. Sergeant [redacted] and F.B.I. agent [redacted], who interrogated detainee around April 2003 - August 20-03 (approx.) and April 2003 - June 2003 (approx.) respectively, be called as witnesses to mental and emotional state of detainee during the extraction of Government Information between April 2003 - August 2003.

DEFENCE CALL 8: Request that Building-Four Camp-Echo staff M.P.s ("Key Patch" ^{are} ; some and possibly all from Detroit, Michigan; allocated to Buildings Three and Four Camp-Echo from March 19th 2003 - August 10th 2003 (approx.)) be called as witnesses party to the application of mental stress and pressure upon the detainee during the extraction of Government Information between April 2003 - August 2003.

The call is inclusive of but not limited to the N.C.O who was posted as Head over both Building-Three and -Four (rank E6 or above, most likely E7; was taken out of recent retirement to be deployed at Guantanamo Bay, Cuba, at the time) whom the detainee alleges knowingly and willfully misdirected the detainee to pray north (towards America) and, detainee alleges, withdrew comfort items from detainee, and ^{head of} was party to persons who attempted to also withdraw Qur'an from the detainee, without official authorisation.

The call is inclusive of but not limited to Specialist [redacted] whom the detainee alleges had sex with P.F.C. [redacted] (whom the Defence requests to be called as a witness; Detainee is uncertain of name but presents this approximation) while Specialist [redacted] and P.F.C. [redacted] alike assumed detainee was sound

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DEFENCE CALL TO ESSENTIAL WITNESSES AND DOCUMENTATION

astesp. ~~██████████~~ ~~██████████~~

The call is inclusive of but not limited to Sergeant ██████████ who, the detainee alleges, groped the breasts of, or otherwise sexually fondled, a female M.P. to the effect of, the detainee alleges, a sharp intake of breath by the female M.P. which, the detainee alleges, distracted him from his prayer while he was praying north to America.

The call is inclusive of but not limited to P.F.C. ██████████ whom the detainee alleges tried to feed the detainee a "hot plate" of pork, attempted to read the detainee's personal mail, and, the detainee alleges, can bear witness to "sounds of sex" emanating from Building-Four while, detainee alleges, Specialist ██████████ and P.F.C. ██████████ were "going at it."

The call is inclusive of but not limited to P.F.C. ██████████ whom the detainee alleges, ate the detainee's peanut butter right in front of him at a time, detainee alleges, when that peanut butter was a significant part of detainee's limited protein intake.

The call is inclusive of but not limited to P.F.C. ██████████ who the detainee alleges along with Specialist ██████████, P.F.C. ██████████, P.F.C. ██████████, and the rest of Day Shift at Building-Four, conspired to keep detainee ignorant of detainee's allotted Tuesday Recreation, detainee alleges, necessary for his intake of sunlight as, detainee alleges, detainee was kept in dim artificial light in a windowless room for days on end.

DEFENCE CALL 9: In light of allegations by detainee Defence requests Photo Profiles of all Building-Four Camp Echo staff M.P.s (~~█~~ "Key Patch"; some and possibly all are from Detroit, Michigan) who had direct contact with detainee ~~██████████~~ from March 14th 2003 through August 2003, to aid ~~██████████~~ ^{DEFENCE} in identifying ~~██████████~~ 5288 ~~██████████~~ alleged

witnesses party to the application of mental stress and pressure and allow Defence to question these alleged witnesses party to the application of mental stress and pressure upon the detainee.

DEFENCE CALL 10: Request Doctor who administered to detainee between March 19th 2003 - June 2003 (approx.) and detainee ^{and was partially successful,} alleges attempted ^{and emotional} quite of immunisation injections, to unhinge detainee's mental stability and calm; to be called as a witness.

DEFENCE CALL 11: In light of Defence Call 10 above Defence requests detainee's ^{entire} Medical Record from past to present be presented to the Tribunal as documentary evidence including any such amendments, extractions, deletions, and other subsequent changes to the initial content of the Medical Record to be presented as documentary evidence to the Tribunal as, detainee alleges, detainee was in good health (all praise is due to Allah) prior to transfer to Building - Four Echo and, detainee alleges, detainee's health has deteriorated ever since.

DEFENCE CALLS TRIBUNAL'S NOTICE TO: the apparent "coincidence" between the alleged extraction of Government Information under duress (April 2003 - August 2003) and the announcement by President Bush on July 2003 that he had designated the detainee an "enemy combatant" subject to the Executive Military Order of November 13, 2001.

PRE-EMPTIVE ASSUMPTION: Assuming that no such initial determination by the President, in writing, subject to the Executive Military Order of November 13th 2001, had been made designating the detainee an "enemy combatant" before, during, or shortly after capture: Defence requests to know what the detainee's status was prior to the President announcing in July 2003 that he had designated the detainee an "enemy combatant"??

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DEFENCE CALL TO ESSENTIAL WITNESSES AND DOCUMENTATION

DEFENCE CALL 12: Detainee claims to have presented a letter to C.I.T.F. Sergeant [REDACTED] (interrogator April 2003 - August 2003 approx.) upon the back of which, detainee claims, he drew pictures of dead dogs with speech bubbles in support of detainee's above allegations in the hope that the letter would, detainee claims, by the Grace of Allah bypass notice and reach detainee's mother who, detainee hoped, would sound the alarm and relieve detainee of his suffering. The Defence requests that the letter be presented to the Tribunal as documentary evidence.

DEFENCE CALL 13: Detainee claims to have written a long letter of ten pages to Detainee's mother numbered 13 (i) - (X) respectively and dated Thursday 6th May 2004 (17th Rabi'ul Akbir 1425 A.H) which detainee presented to the Mail Clerk and, detainee claims, supports above allegations. The Defence requests that the letters be presented to the Tribunal as documentary evidence. Defence is aware a copy of each detainee letter, if not the letter itself, is kept here at Guantanamo.

DEFENCE CALL 14:

(VI) Combatant Status Review Tribunal Process: Recorder Qualifications, Roles and Responsibilities: C. Responsibilities of Recorder; (2) The Recorder shall draft a proposed unclassified summary of the relevant evidence derived from the Government Information.

The Defence calls Recorder as witness in order to clarify, define, qualify, and quantify, words and phrases the Recorder used in the unclassified summary of the relevant evidence derived from the Government Information.

The words and phrases used by the Recorder, in the unclassified summary of the relevant evidence from the Government Information, the Defence requires the Recorder to clarify, define, qualify, and quantify, are inclusive of but not limited to:

(a) "DETAINEE";

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(VII) During the Vietnam War, the US Military Assistance Command in Vietnam issued comprehensive criteria for classification and disposition of detainees. Annex A of Directive Number 381-46 of December 27, 1967 defined 'detainees' as 'persons who have been detained but whose final status has not yet been determined. Such persons are entitled to humane treatment in accordance with the provisions of the Geneva Conventions.' It further provided for the systematic classification of detainees into 'prisoner of war' and 'non-prisoner of war' categories.

The Defence requires the Recorder to;

- (i) Explain to the Tribunal and Defence the Recorder's use of the word "detainee" in the context of insertion (VII) quoted above?

(VIII) Combatant Status Review Tribunal Process: G. Tribunal Procedures; (1) By July 17, 2004, the convening authority was required to notify each detainee of the opportunity to contest his status as an enemy combatant in the Combatant Status Review Tribunal Process, the opportunity to consult with and be assisted by a Personal Representative, and of the jurisdiction of the courts of the United States to entertain a habeas corpus petition filed on the detainee's behalf. The English language version of this Notice to Detainees is at enclosure (4). All detainees were so notified July 12-14, 2004.

- (ii) Clarify the status of the detainee prior to the detainee being notified in the Combatant Status Review Tribunal Notice to Detainees, "You are being held as an enemy combatant by the United States Armed Forces," on July 13th 2004?

(IX) In July 2003, Respondent Bush announced that he had designated Mr. Abbas as an "enemy combatant" subject to the Executive Military Order of November 13, 2001.

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- (iii) In reference to insertion (IX) above the Defence requires the Recorder to clarify to the Tribunal and Defence the status of the detainee prior to President Bush's announcement that he had designated the detainee an "enemy combatant".

The Defence calls the Tribunal to note, as in Defence Call 1 above and in reference to insertion IX, that it request this announcement by the President of his determination of the detainee an "enemy combatant" and former and latter determinations of this sort by the President to be submitted as documentary evidence to the Tribunal. (See insertions (II), (III), and (IX) as well as 'DEFENCE CALLS TRIBUNAL'S NOTICE TO?' and 'PRE-EMPTIVE ASSUMPTION' on page 3, second side, of this document).

- (iv) The Defence requires the Recorder to clarify to the Tribunal and Defence what the status was of the detainee upon capture and transfer to US custody?
- (v) The Detainee requires the Recorder to clarify to the Tribunal and Defence what had happened to his designation as a terrorist; and the bold statements of terrorism ~~participating~~ ^{attributed} to detainees held at Camp X-ray?

(b) "AL QAIDA", "MEMBER OF AL QAIDA", "AL-QAIDA FIGHTERS";

- (X) It is unclear whether Mr. Abbasi is or is not a prisoner of war, but this is clearly a question appropriate for inquiry by a competent tribunal. The answer would depend upon the precise facts of the case, and in particular upon the exact relationship between the Taliban (which in our view was as a matter of international law the Government of Afghanistan, even though it was not recognised by the United States as such) and any organisation in which he was an active participant in Afghanistan. We understand that it is said that Mr. Abbasi was a member of Al Qaida, but we are not aware of any proof that this is the case, or of any proof of the

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nature of the relationship between Al Q'aida. This point is important because the definition of a 'combatant' in international law may be wide enough to embrace Al Q'aida fighters if, as a matter of fact, they were integrated into the Taliban command structure.

DEFENCE CALLS TRIBUNALS NOTICE TO: the fact that it is commonly known that Usama bin Laden the leader of Al Qaida pledged his allegiance to Maulana Muhammad 'Umar, the leader of the Taliban and, the Commander-of-the-Believers-in-the-Islamic-Emirate-of-Afghanistan. Hence Usama bin Laden and Al Qaida (as well as Jamaat-ul-Jihad which integrated into Al Qaida in the summer of 2001) were certainly integrated into the Taliban command structure and therefore subordinate and in the command of Maulana Muhammad 'Umar the Commander-of-the-Believers-in-the-Islamic-Emirate-of-Afghanistan.

It is also a commonly known fact that Maulana Muhammad 'Umar the Commander-of-the-Believers-in-the-Islamic-Emirate-of-Afghanistan was in direct command of all mujahideen (fighters in the Cause of Allah), in the Islamic-Emirate-of-Afghanistan, obligated by their religion, Islam, by the Qur'an (the Uncreated Word of Allah), and hence by their Lord, Allah, to defend the Law-of-Allah established by the Taliban over the Islamic-Emirate-of-Afghanistan; the peoples of the Islamic-Emirate-of-Afghanistan; and the land, property, resources, institutes, boundaries, faith, economy, national security and so forth of what then constituted the Islamic-Emirate-of-Afghanistan. This should be evident from Maulana Muhammad 'Umar's title as the Commander-of-the-Believers-in-the-Islamic-Emirate-of-Afghanistan ('Amir ul Mumineen').

The Defence requires the Recorder to:

- (i) Give the Tribunal and Defence a comprehensive definition of "Al Qaida"?

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- (ii) Explain to the Tribunal and Defence how a person becomes a "member of Al Qaida"; through what agency, means, and methods?
- (iii) Explain to the Tribunal and Defence how a person becomes an "Al-Qaida fighter"; through what agency, means, and methods?
- (iv) In the context of, and in reference to, insertion (X) and the 'Defence Calls Tribunals Notice to:' immediately above: the Defence requires the ~~Recorder~~ Recorder to explain in depth, to the Tribunal and Defence ~~how~~, through what means is the detainee designated an "enemy combatant" even though, ~~the~~ the Recorder alleges, the detainee is an "Al Qaida fighter" integrated into the Taliban command structure and therefore by international law would be considered a "combatant" (entitled to prisoner of war status) if the allegations were indeed found to be true?

(c) "MARTYRDOM MISSION";

- (i) The Defence requires the Recorder to: give the Tribunal and Defence a comprehensive definition of "martyrdom mission"?
- (ii) And explain in depth the objective, timing, and target, of the alleged "voluntarized" "martyrdom mission" in question?

(d) "ACTION AGAINST AMERICANS AND JEWS";

The Defence requires the Recorder to:

- (i) Explain to the Tribunal and Defence the meaning of "action" in the present context?
- (ii) Explain to the Tribunal and Defence the meaning of "Americans" in the present context?
- (iii) Explain to the Tribunal and Defence the meaning of "Jews" in the present context?

(e) "JIHAD OBLIGATION";

The Defence requires the Recorder to:

- (i) Give the Tribunal and Defence a comprehensive definition of the word "jihad"?
- (ii) Explain that comprehensive definition in the context of "jihad obligation" ⁵²⁹⁴?

(iii) Further explain that comprehensive definition in the context of "personal jihad"?

(f) "RECRUITMENT";

The Defence requires the Recorder:

- (i) To explain to the Tribunal and Defence in what context the Recorder used the word "recruitment"?
- (ii) And to further clarify "recruitment" into what?

(g) "APPLICATION FORM";

The Defence requires the Recorder to:

- (i) Explain to the Tribunal and Defence in what context the Recorder used the phrase "application form"?
- (ii) And to further clarify the purpose of the "application form"?

(h) "THE AMERICANS";

The Defence requires the Recorder to:

- (i) Explain to the Tribunal and the Defence the meaning of the word "Americans" used in the context of, "While there, detainees served in a small unit of Al-Qaida fighters, intent on defending the airport against the Americans."?
- (ii) And explain the ~~difference~~ reason for a difference, if any, in this explanation of the word and that of (d)(ii) and how the Recorder came to that reason^{ing}?

(i) "OPERATE";

The Defence requires the Recorder to:

- (i) Explain to the Tribunal and Defence in what way did Usama bin Laden "operate" Camp Farouq?

(j) "KALASHNIKOV", "PK PISTOL", "RPG", "PK MACHINE GUN";

The Defence requires the Recorder to describe and furnish the Tribunal and

- (i) Defence with statistical data for;

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- (i) "Kalashnikov" and explain the meaning of the word?
- (ii) "PK Pistol" and explain what "PK" stands for?
- (iii) "RPG" and what "RPG" stands for?
- (iv) "AK machine gun" and explain what "AK" stands for in this context?

(K) "SMALL UNIT";

The Defence requires the Recorder to:

- (i) Define for the benefit of the Tribunal and Defence what a "small unit" is?
- (ii) What a "small unit" consists of?
- (iii) And how many persons in a "small unit"?

DEFENCE CALL 15:

The Defence calls the alleged "Identifier" who allegedly identified the detainee as a guard posted at a Taliban official's home to watch a suspected spy.

DEFENCE CALL 26:

The Defence calls the "suspected spy" who was, allegedly, beaten by the detainee, allegedly, because, allegedly, as the detainee explained, it was, allegedly, detainee's personal jihad.

Defence is aware that the "suspected spy" is or was a detainee here at Guantanamo Bay, Cuba, as ^{present} detainee claims; detainee has faced similar allegations from an interrogator (C.I.T.F. [REDACTED]).

DEFENCE CALL 17:

The Defence calls for the very unclassified-"factual" basis, of detainee's designation as an enemy combatant, shown to the detainee and retained by the Personal Representative, on Sunday 26th September 2004CE / 12th Sha'ban 1425AH at 9:00am - 10:00am; just in case the Recorder gets some funky ideas about changing it behind detainee's back in order to save face.

DEFENCE CALL 18: Defence calls handwritten document by detainee upon the subject of "Martyrdom and Islam" presented to interrogator C.I.T.F. [REDACTED] to be presented as documentary evidence.

DEFENCE CALL 19: Defence calls handwritten document by detainee presented to [REDACTED] (C.I.T.F. interrogator) in answer to allegations of "suspected spy" beating. To be presented as documentary evidence.

in 26th Sept 2004 CE
(6:78)

In the name of Allah, Most Gracious, Most Merciful.

(د ١٤٢٥ هـ ش ١١)

66 "I'm not anti-American, and I didn't come here to condemn America - I want to make that very clear! I came here to tell the truth - and if the truth condemns America, then she stands condemned!"
« EL-Hajj Malik EL-Shabazz a.k.a. Malcolm X. »

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Legal Defence Operation: الشَّامِسُ بَارِزَةً ("The Sun Rising in Splendour.")*

(A) NOTICE:

It is my duty as a Muslim to warn all who are involved in this matter that they are personally responsible for their actions, at all times, before Allah. Allah says in His Uncreated-Word that is the Qur'an:

"Is then the man who believes no better than the man who is rebellious and wicked? Not equal are they.

"For those who believe and do righteous deeds, are Gardens as hospitable Homes, for their (good) deeds.

"As to those who are rebellious and wicked, their abode will be the Fire: every time they wish to get away therefrom, they will be forced therein, and it will be said to them: 'Taste ye the Penalty of the Fire, the which ye were wont to reject as false.'

"And indeed We will make them taste of the Penalty of this (life) prior to the supreme Penalty, in order that they may (repent and) return.

"And who does more wrong than one to whom are recited the Signs of his Lord and who turns away therefrom? Verily from those who transgress We shall exact (due) Retribution."

« Chapter 32: Al Sajdah; verses 18-22 »

It is also my duty (and pleasure) as a Muslim to happily proclaim that Allah will forgive any wrongs we do and/or have done upon sincere repentance:

"And those who having done something to be ashamed of, or wronged their own souls, earnestly bring Allah to mind, and ask for forgiveness for their sins - and who can forgive sins except Allah? - and are never obstinate in persisting knowingly in (the wrong) they have done."

"For such the reward is forgiveness from their Lord, and Gardens with rivers flowing underneath - an eternal dwelling: how excellent a

recompense for those who work (and strive)!" << Chapter 3: Āl 'Innān, verses 135-136 >>

Therefore the conditions of sincere repentance are (a) to ~~ask~~ Allah feel sorry for the sin we have committed solely for Allah's sake i.e., that we have disobeyed Him Our Guardian-Lord. (b) to ask Allah to forgive us by raising our hands and pleading for forgiveness and (c) to have the conviction in our hearts that we have abandoned that sin and will not repeat it.

Even if we repeat that same sin seventy times in one day as long as we sincerely repent seventy times ~~each~~ ~~day~~ (i.e., after each time we commit the sin) Allah will forgive us. It is not Allah that gives ~~of~~ ^{for} forgiving sin it is Allah that gives from asking forgiveness.

(B) DEPUTY SECRETARY OF DEFENSE ORDER OF JULY 7, 2004:

"The Secretary of Defense has established a Combatant Status Review Tribunal (CSRT) process to determine, in a fact-based proceeding, whether the individuals detained by the Department of Defense at the U.S. Naval Base Guantanamo Bay, Cuba, are properly classified as enemy combatants and to permit each detainee the opportunity to contest such designation."

The arguments in this Written Presentation are confined and directed to the above.

(C) ISLAMIC LAW:

"It was We who revealed the Law (to Moses): therein was guidance and light. By its standards have been judged the Jews, by the Prophets who bore witness (as in Islam) to Allah's Will, by the Rabbis and Doctors of Law: for to them was entrusted the protection of Allah's Book, and they were witnesses thereto: therefore fear not man, but fear Me, and sell not My Signs for a miserable price. If any do fail to judge by (the light of) what Allah hath revealed, they are (no better than) Unbelievers."

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" We ordained therein for them: "life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (no better than) wrong-doers.

" And in their footsteps We sent Jesus the son of Mary, confirming the Law that had come before him: We sent him the Gospel: therein was guidance and light, and confirmation of the Law that had come before him: a guidance and an admonition to those who fear Allah.

" Let the People of the Gospel judge by what Allah hath revealed therein. If any do fail to judge by (the light of) what Allah hath revealed, they are (no better than) those who rebel.

" To thee We sent the Scripture in truth, confirming the scripture that came before it, and guarding it in safety: so judge between them by what Allah hath revealed, and follow not their vain desires, diverging from the Truth that hath come to thee. To each among you We have prescribed a Law and an Open Way. If Allah had so willed, He would have made you a single people, but (His Plan is) to test you in what He hath given you; so strive as in a race in all virtues. The goal of you all is to Allah; it is He that will show you the truth of the matter in which ye dispute;

" And this (He commands): judge them between them by what Allah hath revealed, and follow not their vain desires, but beware of them lest they beguile thee from any of that (teaching) which Allah hath sent down to thee. And if they turn away, be assured that for some of their crimes it is Allah's purpose to punish them. And truly most men are rebellious.

5300

“Do they then seek after a judgement of Ignorance? But who, for a people whose faith is assured, can give better judgement than Allah? « Chapter 5: Al Ma'idah; verses 44-50 »

“Those who persecute (or draw into temptation) the Believers, man and women, and do not turn in repentance, will have the Penalty of Hell: they will have the Penalty of the Burning Fire.” « Chapter 85: Al Buruj; verse 10 ».

Allah alone has the right to judge man. Man can only oppress another man by judging him. Therefore on that basis I contest my designation as an “enemy combatant.” (See reference quotation below:)

“In July 2003, Respondent Bush announced that he had designated M. Abbasi an ‘enemy combatant’ subject to the Executive Military Order of November 13, 2001.”

(D) THE JOINT RESOLUTION :

“In the wake of the September 11, 2001 attacks, the United States, at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the “nations, organizations, or persons” that “planned, authorized, committed, or aided the terrorist attacks on September 11th, 2001, or [that] harbored such organizations or persons.” (Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001).)”

DEFENCE RESPONSE :

Unlike the Greatest Terrorist Acts known to history. Committed by the Terrorist United States of America. The atom bombings of the CIVILIAN population of Nagasaki and Hiroshima. There has not been shown any adequate, sufficient, and substantial evidence to establish the guilt of Al Qaidah as

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the very perpetrators of the terrorist attacks of September 11th 2001. But there has been much unfounded and biased conjecture.

Therefore based upon the wholesome legal principle of, "innocent until proven guilty WITHOUT A SHADOW OF A DOUBT", Al Qaidah can be said to be INNOCENT of the terrorist attacks of September 11th 2001 unless adequate evidence is presented before a fair and just Court of Law which then establishes Al Qaidah as the perpetrators of the terrorist attacks of September 11th WITHOUT A SHADOW OF A DOUBT.

Al Qaidah being innocent of perpetrating the terrorist attacks of September 11th, Taliban cannot be guilty of harbouring terrorists!

If Taliban is not guilty of harbouring terrorists and Al Qaidah is innocent of the September 11th terrorist attacks then the fundamental basis of Congress' Joint Resolution authorising the use of necessary and appropriate force against nations, organizations, or persons that planned, authorized, committed, or aided in the September 11, 2001, Al Qaeda terrorist attacks; not only does not have a leg to stand on; it does not even have buttocks to sit on; nor a back or sides to lie on!

In fact the unfounded use of military force, commencing I believe on October 9th 2001, is merely a repeat of the yet again unfounded cruise bombings of The Islamic-Emirate-of-Afghanistan, an ACT OF WAR I might add, after the Oklahoma bombing to which yet again Usama bin Laden was accused yet again without adequate evidence and yet again was unjustly attacked.

So, recent history has proven that the Terrorist United States of America has had an unjustifiable and unreasonable habe for the Islamic-⁵³⁰²Emirate-of-

Afghanistan. Why so? The very words of your Commander-in-Chief reveal all:

“
Crusade
 ”

This point is made even more heinous by the subsequent point that Osama bin Laden possessed a fax line with the Terrorist American government. That through that fax line he was WARNED to the similar purport of, “The Americans are going to bomb in one month's time”! Knowledge only a handful could have possessed, all I would surmise within the upper echelons of the American government itself. Events were true to the news.

Not only that ~~but~~ ~~and~~ the U.S. Military “telegraphed” its intentions to bomb via civilian radio transmissions by telling Northern Alliance to, “Ground your planes.”! Further fuel to add to the plausible suspicion that the U.S.A.'s government was in cahoots with Osama bin Laden!

Therefore George W. Bush's “War on Terrorism” is nothing of the sort. It is but a puppet show pretence to truth and justice. The real war is clear to all with a sense of truth, justice, and fair play; it is a war on the Muslims, a war on Islam; a pathetic attempt at warring against Allah — a Crusade!

As to the perpetrators of the terrorist attacks of September 11th 2001 I would suggest those who truly want to know the answer to that dilemma (certainly the Americans do not) to look to those who gained the most from that crime. It certainly can not be the Muslims who have suffered greatly and can rightly be considered as the On-going Victims of September 11, 2001.

I end this response with a quote from Arthur Conan Doyle's “Sherlock Holmes”:

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"The difficulty is to detach the framework of fact — of absolute undeniable fact — from the embellishments of theorists and reporters. Then, having established ourselves upon this sound basis, it is our duty to see what inferences may be drawn, and which are the special points upon which the whole mystery turns."

(E) THE DETENTION ORDER

"On November 13, 2001, Respondent Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes Respondent Rumsfeld to detain anyone Respondent Bush has 'reason to believe':

- i. is or was a member of the organization known as Al Qaeda;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

See Military Order of November 13, 2001. President Bush must make this determination in writing. The Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

(F) COMBATANT STATUS REVIEW TRIBUNAL NOTICE TO DETAINEES

"You are being held as an enemy combatant by the United States Armed Forces. An enemy combatant is an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. The definition includes any person who has committed a belligerent act or has directly supported such hostilities."

DEFENCE RESPONSE:

- (i) Innocent until proven guilty;

Adequate evidence would have to be shown before a fair and just Court of Law

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and the full panoply of legal assistance ^{afforded to me} ~~at my access~~ before such a statement as, "You are being held as an enemy combatant..." can be fully justified.

It seems the concept of "evidence" is a foreign one to the U.S. Government and its Military.

- (ii) No definition whatsoever is given to clarify the terms, "...part of or supporting..." "Taliban", "Al Qaeda".

Accurate definitions seem also to be a too highly advanced concept for the 21st Century American government and its Military. Such ambiguity allows the American government to side step justice truth and fair-play giving them an unfair and underhanded advantage over the defence or so they think.

Little do they know the truth is on our side!

- (iii) Further quoting from the Combatant Status Review Tribunal Notice to Detainees, "it states, "This is not a criminal trial and the Tribunal will not punish you,..."

Quote from the Combatant Status Review Tribunal Process: I. Post-Hearing Procedures; (9) If the Tribunal determines that the detainee shall no longer be classified as an enemy combatant, and the Director, CSRT, approves the Tribunal's decision, the Director, CSRT, shall forward the written report of the Tribunal's decision directly to the Secretary of the Navy. The Secretary of the Navy shall so advise the DoD Office of Detainee Affairs, the Secretary of State, and any other relevant U.S. Government agencies, in order to permit the Secretary of State to coordinate the transfer of the detainee with representatives of the detainee's country of nationality for release or other disposition consistent with applicable laws. In these cases the Director, CSRT, will ensure coordination with the Joint Staff with respect to detainee transportation issues."

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Therefore by the undisputable fact that the Tribunal can relieve the suffering of a detainee or prolong; it goes contrary to the whimsical claim, "This is not a criminal trial and the Tribunal will not punish you,..." But we are not complaining, quite to the contrary, bring it on! Our Lord says in the Qur'an:

"And slacken not in following up the enemy! if ye are suffering hardships, they are suffering similar hardships; but ye have hope from Allah, while they have none. And Allah is full of knowledge and wisdom." « Chapter 4: Al Nisā'; 104 »

(G) IN THE MATTER OF THE DETENTION OF MR FEROFZ ABBASI AT US GUANTANAMO BASE, CUBA:

1. We understand that Mr. Abbasi is held under the United States Presidential Order dated 13 November 2001. This advice is based upon the text of the Presidential Order currently (14 February 2002) displayed on the US Government website, (at <http://www.whitehouse.gov/news/releases/2001/11/2001111327.html>.)
2. The Order does not automatically apply to anyone: it applies only to those individuals who have been determined by the President, in writing, to be a non-US citizen whom there is reason to believe was at the 'relevant times' (and the Order does not define the 'relevant times') a member of al Qaeda or engaged in international terrorism aimed at United States interests, or harbored any such person, and whom it is in the interests of the United States to make subject to the Presidential Order (Section 2). We do not know whether such a written determination has been made in respect of Mr. Abbasi.

Mr. Abbasi's status

3. As far as Mr. Abbasi's status is concerned, as a matter of international law there are only three possibilities: (i) he may be a combatant, now held as a prisoner of war; (ii) he may be a civilian detainee, now interned, ⁵³⁰⁶ or (iii)

he may be an unlawful combatant, now detained, either pending trial or simply detained and not pending trial.

4. If Mr. Abbas is a prisoner of war, his detention is governed by the terms of Geneva Convention III. He could not be required to give any information to the US authorities other than his name, rank, serial number and date of birth. He could not be prosecuted for his involvement in the hostilities; he could be prosecuted for war crimes and crimes against humanity. He would be entitled to be released and repatriated without delay after the cessation of hostilities. [GC.III, art. 128].
5. The United States denies that Mr. Abbas is a prisoner of war. As a matter of law that question is regulated by GC.III Article 5 and Article 45 of the 1977 Additional Protocol I to the Geneva Conventions ("API").
6. The United States has not ratified API. However, in the Operational Law Handbook (JA 422) issued by the Judge Advocate General's School, United States Army, Charlottesville, Virginia, in 1997, it is stated, "that the US views [among others, Article 45 API] as customary international law" (page 18-2), which would bind the United States along with all other States. The Handbook summarizes Article 45 in the following terms: "prisoner of war presumption for those who participate in the hostilities."
7. This statement is qualified in the 2002 edition of Operational Law Handbook, in which it is now said that the US views article 45 API as "customary international law or acceptable practice though not legally binding" (Ch. 2, p. 19). It is practically inconceivable that the customary international law has changed in this way since 1997, in any event it would arguable before an international tribunal that the United States is estopped from denying that API represent customary international law, ~~and~~

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particularly given the fact that 159 States have now ratified Additional Protocol I (such an argument would, however, be less likely to succeed before a United States court or tribunal).

8. API stipulates that if Mr. Abbasi 'claims the status of prisoner of war, or if he appears to be entitled to such status, or if the party on which he depends claims such status on his behalf by notification' to the United States, he is presumed to be a prisoner of war, and retains that status until such time as his status has been determined by a competent tribunal. It is not known whether prisoner of war status has been claimed by or on behalf of Mr. Abbasi. In our view, however, such status could be claimed ~~on his behalf~~ by or on behalf of Mr. Abbasi. In our view, however, such status could be claimed on his behalf, certainly by the British Government, and possibly by his legal representatives. (Some doubt as to the right of his legal representative to make the claim flows from the fact that API does not expressly give such a right, although earlier US practice has confirmed the role of counsel in proceedings to determine status; see further below). We understand that the United States has not submitted the question of Mr. Abbasi's status to a competent tribunal.)

9. In our view, the United States is obliged to submit the question of Mr. Abbasi's status to a competent tribunal, which is also consistent with the practice of the United States in other theatres of operations.

10. During the Vietnam War, the US Military Assistance Command in Vietnam issued comprehensive criteria for classification and disposition of detainees. Annex A of Directive Number 381-46 of December 27, 1967 defined 'detainees' as 'persons who have been detained but whose final status has not yet been determined. Such persons are entitled to humane treatment in accordance with the provisions of the Geneva Conventions.'

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It further provided for the systematic classification of detainees into 'prisoner of war' and 'non-prisoner of war' categories.

11. Among the non-prisoner of war class, the directive included civilian dependants liable to trial by the Government of Vietnam for offences under local laws, as well as certain categories of 'irregulars', such as guerrillas 'detained while not engaged in actual combat' and a detainee 'suspected of being a spy, saboteur or terrorist'.
12. Directive Number 20-5 of March 15, 1968 made extensive provision for the determination of eligibility for prisoner of war status applicable, among others, to 'non-prisoners of war and doubtful cases who are captured by or are in the custody of United States forces.' The Directive relied expressly on Article 5 G.C.III. It provided that 'All United States military and DOD civilian personnel who take or have custody of a detainee will...
 - (2) Afford to each detainee in their custody treatment consistent with that of a prisoner of war, unless or until it has been determined by competent authority in accordance with this directive that the detainee is not a prisoner of war.'
13. The Directive provided further in relation to the rights of the detainee that, 'No person may be deprived of his status as a prisoner of war without having an opportunity to present his case with the assistance of a qualified advocate or counsel', and that, 'The Detainee shall have the right to be present with his counsel at all open sessions of the tribunal.'
14. The Directive made extensive provision for the 'Rights of Counsel for the Detainee', including 'a period of at least one week before the hearing in order to prepare his case', free access to visit the detainee and interview him in private', a 'reasonable opportunity to confer privately with essential witnesses,

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including prisoners of war', and rights of cross-examination and presentation of witnesses and testimony.

15. It is unclear whether Mr. Abbasi is or is not a prisoner of war, but this is clearly a question appropriate for inquiry by a competent tribunal. The answer would depend upon the precise facts of ~~this~~ case, and in particular upon the exact relationship between the Taliban (which in our view as a matter of international law the Government of Afghanistan, even though it was not recognised by the United States as such) and any organisation in which he was an active participant in Afghanistan. We understand that it is said that Mr. Abbasi was a member of Al Q'aida, but we are not aware of any proof that this is the case, or of any proof of the nature of the relationship between Al Q'aida. This point is important because the definition of a 'combatant' in international law may be wide enough to embrace Al Q'aida fighters if, as a matter of fact, they were integrated into the Taliban command structure. [NOTE: Mullah Muhammad Umar, the leader of Taliban, was also the Commander-of-the-Believer-in-the-Islamic-Emirate-of-Afghanistan i.e., "Amir ul Mumineen". Usama bin Laden prior to September 11th 2001 had pledged his allegiance to Amir ul Mumineen Mullah Muhammad Umar and therefore was subordinate and subjected to the Amir ul Mumineen. Al Q'aida being a secret and exclusive organisation even in the Islamic-Emirate-of-Afghanistan can arguably be said to have been 'integrated into the Taliban command structure.' The term 'Al Q'aida fighters' needs to be accurately, unambiguously, and publically defined because, personally, I cannot see how there can be an 'Al Q'aida fighter' when the ^{ordinary} members of Al Q'aida ^{if such existed,} were ~~visited~~ ^{visited} in secrecy even in the Islamic-Emirate-of-Afghanistan.]

16. If Mr. Abbasi were a civilian detainee, his internment would be governed by the terms of Geneva Convention ⁽⁴⁰⁾ IV. He would be entitled to visits, communications, and other privileges, and to be released as soon as the reasons, which

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necessitated his internment no longer, exist [GC IV, art. 132].

17. Even if the exceptional provisions of Article 5 GC IV⁽⁴⁾ apply and a person is detained in the territory of a Party to the conflict/occupied territory 'as a person under definite suspicion of activity hostile to the security of the Occupying Power', such he or she shall be treated with humanity and, 'in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.'
18. Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty: (Art. 133, GC IV.) However, the provisions of Articles 71-76 GC IV inclusive shall apply by analogy to proceedings against internees who are in the national territory of the Detaining Power: Art. 126 GC IV.
19. Among others, Article 72 provides for rights of defence, including assistance by a qualified advocate or counsel of their choice, 'who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.'
20. We understand that the United States does not regard Mr. Abbasi as an internee within the terms of GC IV.
21. The third possibility is that Mr. Abbasi is an unlawful combatant, entitled to treatment neither as a combatant prisoner of war nor as a civilian internee. This appears to be the status that the United States regards him as having.

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

22. Unlawful combatants are not without rights. They are entitled to the minimum standard of treatment set out in API article 75. Article 75 is among those recognized by the United States in 1997 as representing customary international law. Article 75 reads as follows:-

Art 75. Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinions, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons. [Fundamental guarantees which have been violated time and time again. Especially concerning our religious practices!]
2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
 - (a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - (i) murder;
 - (ii) torture of all kinds, whether physical or mental;
 - (iii) corporal punishment; and
 - (iv) mutilation; [My very testicles have been mutilated under what I can only guess to be a desperate attempt by the Establishment to make my beard grow via the guise of "immunisation injections" in order to make me more eligible for ^{damaging} "heredence" they desperately desire to pin upon myself. See letter written to Mother titled, "Admission of

Sharloock Holmes; Adventure ~~XXIV~~ - "The Beardless Face Mystery" written on Wednesday 2nd April 2004 / 14/04/1425 A.H (Islamic date)].

(b) outrages upon personal dignity, in particular humiliating and degrading treatment [I certainly have not forgotten being molested by three different American fingers, at different times, two within the space of twenty four hours, violating my anus, the last of which seemed to take great pleasure from it so much so he satiated himself by repeatedly pushing and pulling his finger within my rectum], enforced prostitution and any form of indecent assault;

(c) the taking of hostages;

(d) collective punishments; and

(e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence; (our emphasis)

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

(c) no one shall be accused or convicted of a criminal offence on account or any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when ^{the criminal offence} ~~the~~ offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law; [a provision, it seems, America has conveniently forgotten.]

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

[5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, wherever possible, be held in the same place and accommodated as family units.]

6. Persons who are arrested, detained or interned for reasons ⁵³¹⁴ related to

the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecutions and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

23. Article 75 represents the minimum standard of treatment to which Mr. Abbasi is entitled [except when captured as a prisoner of a crusade]. That is so regardless of whether he is a prisoner of war, civilian internee, or unlawful combatant.

Mr. Abbasi's detention

24. In so far as Mr. Abbasi's detention is concerned, the entitlement of the United States to detain him without proceeding to try him for any offence is limited. It was noted above that prisoners of war and civilian

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

Internees must be released as soon as possible after the end of hostilities or the cessation of the circumstances that warranted their detention.

25. The United States may claim that they are entitled by the right of self-defence to detain Mr. Abbas, in order to avert a real and imminent threat to the United States. The generally-accepted statement of the criteria of self-defence appears in the correspondence concerning the Caroline incident, where it was said that there must be shown "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation", and further that the State invoking self-defence must do "nothing unreasonable or excessive"; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it." [British & Foreign State Papers, vol. 29, p. 1137]. Article 51 of the UN Charter recognizes that the right of self-defence may be exercised by any single State, and also by States acting in exercise of the right of collective self-defence. That might be said to warrant Mr. Abbas's detention in order to avert a threat to any of the United States' NATO allies.

26. It is a question of fact whether the circumstances warrant the exercise of a right of self-defence by the United States. Mr. Abbas might have presented a danger to the United States immediately after September 11, 2001. He might have presented such a danger when he was in Afghanistan, and would clearly have done so if he were engaged in hostilities against United States or other NATO forces operating lawfully in Afghanistan (and for present purposes we assume that the United States action in Afghanistan was, as a matter of international law, lawful). [I personally would dissent. The U.S. action in the Islamic Emirate of Afghanistan was not lawful. The U.S. did not have any legitimate cause whatsoever except that of a, quoting Bush, "Crusade", to attack the Islamic Emirate, tear down Allah's Law, and replace it with oppressive democracy!] But he plainly cannot

be held indefinitely without trial on this basis.

27. If Mr. Abbasi is facing prosecution by the United States, his detention for a reasonable period pending trial will be lawful. If he is a prisoner of war he could be prosecuted only for war crimes and crimes against humanity. If he is an unlawful combatant he could be prosecuted for his involvement in hostilities; for example, he could be prosecuted for the attempted murder of any United States soldiers against whom he fought. [Such an example is highly amusing to me. It places the words "United States soldiers" in the same sentence with the word "fought". There were no United States soldiers on the ground fighting. They were either high, high, high, up in the air, mere white specks against a blue backdrop, or ^{were present on terra firma} if, and I would doubt it, a handful, I emphasize the words they would have been miles and miles away from any danger. The ground troops came way after the fighting had ceased—at least a week after Kandahar fell. I repeat there were no United States soldiers on the ground. Such a statement would be a merely empty pretence of bravado.]

Mr. Abbasi's right of access to a lawyer

28. If Mr. Abbasi is or may be facing prosecution, API Article 75(4)(a), set out above, expressly entitles him to 'all necessary rights and means of defence' that must include a right of access to a lawyer. That right is reinforced by similar provisions in other international agreements. Two instruments, to both of which the United States is a party, are particularly significant. The American Declaration of the Rights and Duties of Man sets out various entitlements to equality before the law (Article ⁽⁶⁾ II), resort to the courts (Article ⁽¹⁷⁾ XVIII) to submit petitions to competent authorities (Article ⁽²⁰⁾ XXIV), and to be pre-⁽²¹⁾sumed innocent until proven guilty (Article ⁽²¹⁾ XXVI). [!]

29. The International Covenant on Civil and Political Rights sets out the right

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

of every person to life (Article 6), the right to liberty and freedom from arbitrary detention [ha!] (Article 9), to treatment with respect for their humanity and inherent dignity (Article 10) and to equality before the law and to adequate facilities for the preparation of his defence (Article 14).

30. In our opinion, those instruments all establish a right of access to a lawyer, for any person facing possible prosecution. Moreover, in the particular circumstances of this case the right of access arises in two ways. First, Section 2(a) (9) of the United States Presidential Order indicates that the President has already determined in writing that he has reason to believe that Mr. Abbasi has committed one or more of the offences set out thereafter at (i), (ii), and (iii). There are similar offences to those faced by John Philip Walker Lindh in the criminal proceedings he faces in the US District Court of Virginia, having been detained, it will be remembered, in Afghanistan. Mr. Abbasi plainly faces the real prospect of prosecution [if only the Americans could somehow bypass that troublesome thing called "evidence"]. There would otherwise be no reasonable basis to detain him. Whether in due course he is actually prosecuted is a different question and one that does not affect the issue of legal access. Mr. Abbasi is entitled to seek legal advice so as to present his position in such a light that he is not prosecuted. English jurisprudence is clear upon the point, as is European Strasbourg jurisprudence. Secondly, access might arise in the context of proceedings before the "competent tribunal" that would determine Mr. Abbasi's right to the status of a prisoner of war. The international instruments do not explicitly establish such a right for persons who are detained without facing prosecution, but in our view such a right is implicit in all of the instruments cited.

31. These rights may be the subject of derogations where, broadly speaking, it is necessary to do so in order to preserve public safety in time of public emergency; see American Declaration on the Rights and Duties of Man, 5318

Article ⁽²²⁾ XXVIII, International Covenant on Civil and Political Rights, Article 4. Any such derogation must be limited to what is necessary to preserve public safety. Again, there is no evidence to suggest that the denial of access to a lawyer is strictly necessary in order to protect public safety.

32. No derogation from its obligations under the International Covenant on Civil and Political Rights has been declared by the United States, or communicated to any of the other 144 States Parties through the intermediary of the UN Secretary-General, as required by Article 4(3).
33. Article 14 ICCPR 66, it will be recalled, requires adequate facilities for the preparation of a defence, and declares that "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [ha!]."
34. In the present case, it is difficult to see how it can be argued that the denial of access to a lawyer is strictly necessary in order to defend the United States. The question is whether the prisoner is any more of a threat to the United States if he has access to a lawyer than he is if he does not. It is very difficult to see that this could be so. Only if there were a reasonable fear that Mr. Abbasi's contact with a lawyer might enable items or communications prejudicial to public safety in or out of the prison could this be maintained. Moreover, that fear would have to be one arising in the specific case of Mr. Abbasi and his lawyers. Mr. Abbasi's right may not be suspended because there is a reasonable fear that lawyers visiting other prisoners might constitute such a danger. In any event, no argument to this effect has been made out by the United States.

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

35. It might be argued by the United States that access to a lawyer would impede the process of interrogation. Even if, as a matter of fact, this were true, it would be relevant only in so far as the interrogation was the only means available to enable the United States to defend its vital interests, in accordance with the circumstance in which derogations from human rights instruments are permitted. There is no evidence to suggest that this is the case; and given the length of time for which the prisoner has already been available for questioning, it is difficult to believe that any such case could be made out. Moreover, this argument would be relevant only in so far as the interrogation did not involve the application of internationally unlawful force or pressure to the prisoner: international law does not permit States to suspend their basic humanitarian duties, and self-defence would not operate so as to permit the use of torture or other internationally unlawful pressure to the prisoner. Even if a State had a right not to have lawful interrogations impeded, that right could not extend to unlawful interrogations.
36. There is a further and important reason why the United States may not suspend the right of access to a lawyer in this case. The Presidential Order of 13 November 2001 specifically excludes from its scope US nationals. Non-US prisoners are as a matter of law thus discriminated against in relation to their access to lawyers and to right to petition courts in the United States or other countries and international tribunals. This is objectionable on three grounds.
37. First, Guantanamo Bay is Cuban territory, currently leased by the United States: see Article 3 of the Agreement Between the United States and Cuba for the Lease of Lands for Coaling and Naval Stations, February 23, 1903. The apparent claim in the 13 November 2001 Presidential Order that the United States may forbid foreign nationals outside United States territory to petition non-United States courts is entirely without found-

ation as a matter of international law. The United States has no competence to give any such order: it lies beyond the reach of United States' jurisdiction.

38. Second, by discriminating between the Cuban prisoners on the basis of their nationality, the United States is violating its international legal duties to maintain the equality of all persons before the law, without discrimination. The duty is set out in the American Declaration on the Rights and Duties of Man (Article III), the International Covenant on Civil and Political Rights (Article 2), and API (Article 75(1)). The United States is not entitled to deny to British nationals rights that it gives to its own nationals.

39. Third, notwithstanding its characterisation under US law, Guantanamo is clearly a place for which the United States is responsible and in respect of which the international obligations of the United States apply...

Stephen Solley QC, Charter Chambers

Prof. Vaughan Lowe, Essex Court Chambers

Prof. Gray Goodwin-Gill, Blackstone Chambers

The above is a Counsel's opinion which was written by Senior Leading Counsel, Stephen Solley QC, Chair of the Bar Human Rights Committee together with two leading academics in the field of international human rights law to whom I send my appreciative thanks.

As Lord Goldsmith, the British Attorney General said,

"There will always be measures which are not open to governments.

Certain rights - for example the right to life, the prohibition on torture, on slavery - are simply non-negotiable.

There are others such as the presumption of innocence or the right

to a fair trial by an independent and impartial tribunal established

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§ by laws, where we cannot compromise on long-standing principles of justice and liberty, even if we may recognize that there may sometimes be a need to guarantee these principles in new or different ways.

(See Lord Goldsmith, Terrorism and Justice: The British Perspective from the Attorney General, Speech at the Cour de Cassation (June 25, 2004), available at http://news.bbc.co.uk/2/hi/uk_news/politics/3839153.stm.)

BOND

the manner in which Petitioner has been treated in Guantanamo Bay, and the "tribunal" that has been organized to try him - described by another respected British jurist, Lord Steyn, as a court that is a "mockery of justice" and that "derives from the jumps of the kangaroo" - cannot pass muster under the most basic and fundamental description of due process.

Therefore under the basis that the Combatant Status Review Tribunal is a "mockery of justice" and "derives from the jumps of the kangaroo" also that "[it] cannot pass muster under the most basic and fundamental description of due process" as well as that it violates what has been presented in

"(G) IN THE MATTER OF THE DETENTION OF MR FERDIE ABGASI AT US GUANTANAMO BASE, CUBA" (page 5 of this Written Representation): I contest that

I am properly classified as an "enemy combatant."

(H) UNCLASSIFIED "FACTUAL" BASIS FOR CLASSIFICATION AS AN "ENEMY COMBATANT" AND DEFENCE RESPONSE :

Really U.S. you must try harder. You can't oppress and persecute with kid gloves. Get stuck in! Get down and dirty! I was expecting some meaty, supposed "facts" to sink my teeth into and tear apart - Allah Willing. Yet, what is presented to me is an "unclassified "coffee break" basis" for my being classified as an "enemy combatant." A fourteen year old could have generated better lies to classify me as "enemy combatant."

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3. Supposedly there is, "information possessed by the U.S.", that I am a "member of Al-Qaidah."

I am presuming that this, "information possessed by the U.S." is the "Government Information", defined in, "Combatant Status Review Tribunal Process; E. Combatant Status Review Tribunal Authority"; (3) Request the production of such reasonably available information in the possession of the U.S. Government bearing on the issue of whether the detainee meets the criteria to be designated as an enemy combatant, including information generated in connection with the initial determination to hold the detainee as an enemy combatant and in any subsequent reviews of that determination, as well as any records, determinations, or reports generated in connection with such proceedings (Cumulatively called hereinafter the "Government Information").

?
THIS IS THE FIRST I AM HEARING OF THE EXISTANCE OF ANY SUCH "INITIAL DETERMINATION..."

(a) For any relevant information not provided in response to a Tribunal's request, the agency holding the information shall provide either an acceptable substitute for the information requested or a certification to the Tribunal that none of the withheld information would support a determination that the detainee is not an enemy combatant. Acceptable substitutes may include an unclassified or, if not possible, a lesser classified, summary of the information; or a statement as to the relevant facts the information would tend to prove."

And it is also alleged that I engaged in hostilities against U.S. or coalition partners.

(a) "Detainee is a member of Al Qaida"

As I have stated before what constitutes "Al Qaida" and "a member of Al Qaida" has really to be defined and made clear to all and sundry.

I have various interpretations as, "anybody who trained in the training camps", "anybody who met Osama bin Laden", "anybody non-Afghan

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DEFENCE RESPONSE TO UNCLASSIFIED "FACTUAL" BASIS OF DETENTION

who fought against the U.S." So how am I going to contest such an allegation without knowing the basis for it? The U.S. really has to grow-up and give-up childish name calling. A real man is unmoved by ~~mere~~ words. Present me with evidence for your allegations. Otherwise you can call me what you like; you are as responsible for your deeds before Allah as I am.

(I) CONCLUSION:

Do not be fooled into thinking that I am in anyway perturbed by you classifying me as a (non-sensical) "enemy combatant". In fact quite to the contrary, I am humbled that Allah would honour me so. Do you really think I would like to be considered a friend to a nation that massacred whole Nubian American tribes? That killed, raped, enslaved, and oppressed the blacks of Africa?

I must have been around fourteen years old when I opened my textbook to a black-and-white picture of an American. All I remember of the American was that he was white. Big grin on his face. Checkered short-sleeved shirt (I believe) and him kneeling down on one knee. His elbow rested on one of the very atom bombs that obliterated millions, INNOCENT CIVILIAN MILLIONS. Yet he could have been kneeling beside his five year old son. You would have not known the difference. Terrorist America; you had named them had you not? Big Boy and Big Tom? Believe you me it absolutely burns my heart to see innocents die. Pure hate wells up in my veins to think that the U.S. could get away with such a thing. My eyes light up aflame and I yearn for justice, sweet justice, against the tyrant that hurts INNOCENT CIVILIANS.

Yet Americans have no shame whatsoever for it. They are quite proud. How many times can Terrorist America blow up the world now? I last counted seven?

Do you think I want to be a friend to the same nation that sanctioned

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Iraq, so heavily that great numbers of babies died as a result? And yet I have spoken to an American soldier who said, "They deserved it, they should have overthrown Saddam." This, from the very "defenders of freedom."

Do you think I want to be on good relations with an army that is occupying our very Sacred Centre - the Arabian Peninsula? Do you think I want to be a friend to an army, that, as another soldier of the American army put it, "I'll admit it, us soldiers do like to go to other peoples' countries and ^{to} fuck their women."

THIS IS AN APOLOGY FOR THE SOLDIER'S USE OF PROFANITY.

Do you think I want to be a friend to a nation that supports Israeli terrorism against Palestinians? Sticks and stones against tanks and military helicopters?

What do you think happened to the smiley American in the atom bomb photo? Why don't you go and find out? Maybe you should look in the cemetery. He met with death just like all have done and will do (except Allah the Everliving). Not one of the oppressors before us escaped punishment for their sins. Terrorist America: do you think you will? Every generation is born, lives, grows old, dies, and is brought to book for its deeds. Will you escape?

"How many were the populations We utterly destroyed because of their iniquities, setting up in their places other peoples?"

"Yet, when they felt Our Punishment (coming), behold, they (tried to) flee from it."

"Flee not, but return to the good things of this life which were given you, and to your homes, in order that ye may be called to account."

"They said: 'Ah! woe to us! We were indeed wrongdoers!'"

"And that cry of theirs ceased not, till We made them as a field that is mown, as ashes silent and quenched."

« Chapter 2: Al Ambiyā'; verses 11-15 »

PS JO OF JO

I'm not anti-American, and I didn't come here to condemn America - I want to make that very clear! I came here to tell the truth - and if the truth condemns America, then she stands condemned! [Signature]
(EL-Hajj Malik EL-Shabazz a.k.a. Malcolm X)

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In the name of Allah, Most Gracious, Most Merciful.

LEGAL DEFENCE OPERATION!

الشَّيْخُ بَازِلُ
("The Sun Rising in Splendor")

THE DEFENCE'S ANSWERS TO ALLEGATIONS

(I) PROLOGUE :

It is only yesterday Tuesday 5th October 2004CE / (A1870 كعش 11) at around 1:10pm that I met for the second time my Personal Representative for the Combatant Status Review Tribunal here at Camp Echo Guantanamo Bay Naval Station Guantanamo Bay Cuba.

He showed me the photocopy of my "autobiography" which I wrote around May - June 2003 because I felt that the interrogators had consistently corrupted, twisted and blatantly lied about what I had told them of my "story" and to remedy that I desired to have something in my interrogation case file to speak on my behalf contrast and even expose the lies propagated by glory-hound interrogators.

I had requested my Personal Representative for the C.S.R.T (Combatant Status Review Tribunal(s)) to search and find it with Central Intelligence Task Force (C.I.T.F.) in order to submit it as documentary evidence in the C.S.R.T.

On presenting it to be (the photocopy of it) he acknowledged it has been officially authorized to be submitted as documentary evidence in the C.S.R.T. on my request and my behalf.

Therefore with that consideration in mind I am writing my response to the allegations on the Unclassified "factual" basis of my designation as an enemy Combatant presented to me by my Personal Representative on Sunday 26th September

2004 CE 1182 (K. 11). In this way I can keep my answers to the allegations specific and upon one track without having to deviate greatly to explain background, environment, surrounding, and other, information which is the office of and suitable purpose of the autobiography now submitted as documentary evidence.

Therefore this document refers back to the autobiography and may elucidate some parts of the autobiography which may have been left unclear or because of the fact that someone's story is multifaceted like a diamond and therefore reflects different aspects of the same scene from different perspectives the general nature of the autobiography may have not covered such specifics as these allegations entail.

(II) INTRODUCTION :

It is very clear from any reading of my autobiography and these allegations that the Record either was negligent that he/she somehow "missed" my autobiography, willfully obstinate and simply ignored it, or was unaware it actually existed.

It shall be noted in the "Defence Call to Essential Witnesses and Documentation" the document I have submitted as evidence on my behalf to the C.S.R.T. I call a number of previous interrogators as witnesses. The first of which interrogated me around Christmas 2001; [REDACTED] and "Chris". It seems on the simple premise that when they first interrogated me they thought and told the Marines that escorted me to their tent that, "It will only take five minutes." Yet because I had the audacity to speak up and tell them the whole truth of my doings to the best of my ability at the time (as I was being starved and maltreated) and therefore that "five minutes" became atleast three hours, running over into their lunch time they (but I would more likely suspect shifty [REDACTED]) blatantly corrupted my story and wrote an erroneous report of it. I know because later at Camp

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THE DEFENCE'S ANSWERS TO ALLEGATIONS

X-ray interrogator (F.B.I) [REDACTED] read the very first line of the report he confirmed as being from [REDACTED] and "Chris" and I noted and expressed that that very first line was inaccurate and factually incorrect. Obviously "somebody's" stomach had ruled "somebody's" head!

I will say now before I go on that from the very first moment I was transferred into American hands I have been frank, truthful, and honest, about my own actions and doings. Yet I have come to learn that the interrogators had no desire to know the truth whatsoever. They were not working in order to obtain justice for the families of those who were killed, injured, or suffered any type of loss due to the terrorist attacks of September 11th 2001 CE. They were working for themselves: glory-seeking and what they wanted to hear and what their selfish little ears heard was what was best for their image fame and paycheck. They "cherry-picked" (i.e., they tried to hustle the quick buck) rather than do the hard work of systematic interrogation and corroboration of that information to see where there were discrepancies in the information and interrogate further to iron them out.

As mentioned above my interrogators at Camp X-ray were F.B.I agents [REDACTED] and "Bob." They had received the erroneous report from [REDACTED] and "Chris" and assumed it to be true and my truth to be lies. They noted down a highly corrupted form ~~most~~ parts of what I told them which they believed made them look good in front of their bosses and they could use as leverage over me. Leverage? It seems all they were after was some media fame they have consistently tried to get me to be a "cooperative witness" for them. I know because they had expressed as much to me.

It shall be noted that the M.I. (Ministry of Defence) either 5 or 6 came and interrogated me within the period of my stay at Camp X-ray. I was completely open with them and told them my full story within the limited time of the interrogation. To the effect that I was threatened by a soldier called [REDACTED] who wanted to,

One day go round and round with me. Tough talk to a man in a cage. The Ministry of Intelligence left with my ~~finger~~ prints and my story in general form. Why was I so open? Because ~~from the beginning~~ I didn't believe I did anything wrong nor do I now and wanted someone to try to prove that I did. With impatience I told them the truth to the best of my ability and gave an obstinate look that read, "And what!?!". I believed and believe I by the Grace of Allah was in the right and they in the wrong and was ready to prove it. Allah Willing. And this is also why I have submitted my autobiography as evidence because rather than hide I've by the Grace of Allah opted to face up to the justice system. If I truly believe I did nothing wrong why should I hide and lie as though I were some criminal?

After being disrespected by the interrogators I devised a plan to get them off my case. (As I was being interrogated every day in the month of February 2002) I told them the price of my cooperation was (i) a green card (ii) \$30,000 (supposedly the price paid out for me to the Afghans) and (iii) immunity from prosecution; they promptly did as I wanted to all praise is due to Allah they dropped me like a hot potatoe; March 2002 came and went without any interrogations and March 28th (Sunday?) we were transferred to Camp Delta.

In Camp Delta I had already decided my next plan of ~~action~~. Everytime they interrogated me I began by, "I have nothing to say about my case except with a legal representative present." Ofcourse I was denied legal representation and the interrogation went on but I did not talk about my case.

An example of how the interrogators corrupted the truth into what they wanted to hear is that of, I believe, the Habeas-petition Mr. ~~██████████~~ I had mentioned to ~~██████████~~ that one of my trainers nicknamed Abu Hudhayaf among other traits was "a few inches" shorter than I and had furnished him with a narrative that illustrated the point. I often did this because I wasn't under the stupid presumption that they were simply "going to take my word for it." I gave them plenty of

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minor details so that they may be able to corroborate them and so see that to some extent (from their perspective) I was telling them the truth. But how they managed to mitigate violence upon their own and others' faculty of reason by sizing Mr. [REDACTED] (I believe) as my trainer I do not know! I believe Mr. [REDACTED] is not, "a few inches", but possibly feet shorter than I (I'm approximately 6'2")! How Mr. [REDACTED] (I believe) managed to shorten himself and develop [REDACTED] ill health for a number of years, in particular concerned with great difficulty in breathing after training us at 6'0" (approx.) and a peak of physical fitness or so is beyond me! I really thought people were joking when I heard them say, "American Intelligence is a contradiction in terms." The interrogators cherry-picked again. They didn't just bend the information to fit their glory-crawling they snapped it into shape thereby causing an innocent man to suffer for allegations that are not true and he abused the trust the American public has put in them to catch those who perpetrated September 11th 2001 and to prevent any such terrorism happening again Allah willing.

Not only that but I remember [REDACTED] telling me in Camp X-ray how they have "got" my trainer "Abu Hudhaifah" yet they did not show me a picture of this supposed "Abu Hudhaifah" until around August 2003 when C.I.T.F. Sergeant [REDACTED] revealed it and all I saw was an unfamiliar face looking up at me. All the time they hugged it to their breasts as though somehow that would cause it to lead into truth.

I have since then felt guilty for telling them the truth and for my mis-recognition of persons from photos shown to me. It was the first time I have ever had to recognize people in such a way unknown to myself at the time my memory functions poorly in that aspect. Yet when I realized my mistake I made efforts to correct the error but true to form the interrogators considered what they wanted to hear (to feed their glory-obsessive ways) as the truth and a man was lying if he told them otherwise. I only tried to help them and tell them the truth in this manner because as I had said to them, "I did not want blood on my hands," meaning I did not want to inadvertently help Al Qaidah (at the time I had also assumed they had perpetrated

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September 11th) by not cooperating with the interrogators whom I had wrongly assumed knew what they were doing. Anyway they promptly construed my metaphorical statement as an admission of guilt - possibly murder (their egos suggested) - yet they were devoid of evidence of the sort but that really didn't matter this is Cuba.

Like children they raided the candy store and gorged themselves on chocolaty Muslims seemingly with impunity. They did not realize the obvious (as usual) that their Commander-in-Chief's and President's power waned and therefore would wane and they would be brought to account for every bite lick and slurp. The shopkeepers key is in the door and about to turn (Allah willing) and they are left strewn on the shop floor brown mouthed and chocolaty handed and incapacitated by a savage bout of indigestion - Allah willing.

Believe you me I came to the serious conclusion that either these interrogators were the dogs of the real F.B.I or America had really stupid criminals. And upon that conclusion I remained. Requesting legal representation and not talking about my case became complete silence in the face of further abuse by interrogators until via the means of so called "immunisation injections" which partially sent me crazy and mutilated my testicles to this day I literally broke down and began talking to the interrogators again this time Central Intelligence T-15 Five Sergeant [REDACTED] and F.B.I. agent [REDACTED] (the only good F.B.I agent I've met and he was sent here by mistake although I wouldn't be wrong to add [REDACTED] as a marginal good F.B.I. agent too). This was May 2003 CE and it was then I concluded although it may be detrimental to me in the future I should write my autobiography by my own hand in order to avoid a repeat of the corruption by previous interrogators (although I suspect [REDACTED] is actually [REDACTED] from Kandahar but cannot be sure).

Hence that is how my autobiography came about in an environment of injections and blatant disrespect and abuse from MPs and the fact that I have ^{had to} literally

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word for word speak out my truth. If this is there level of incompetence with a native english speaker what of a full-blown Arab?

(III) IMPORTANT NOTICE:

My autobiography was not written as a legal document permissible in a court of law. I've speculated much in it, also assumed many things and conjecture freely on others. I did this as a vain attempt to stimulate the interrogators into the right mode of thinking. Whereas in a court of law I would have to rightly so confine myself to actual facts.

(IV) THE UNCLASSIFIED "FACTUAL" BASIS OF MY DETENTION & ANSWERS:

3. "... information possessed by the U.S. that he is a member of Al-Qaida. Engaged in hostilities against U.S. or coalition partners.

(a) Detainee is a member of Al-Qaida"

I have never once claimed that I am a member of Al-Qaida or ever was or wanted to be.

Like I've said before the U.S. needs to make a clear and public announcement of their definition of Al-Qaidah for all and sundry so that I can know whether I fit into that definition or not. Without that clear United States' definition of what they term a member of Al-Qaidah I'll go by what I believe is the correct definition of "a member of Al-Qaidah" and that is anyone who pledged their allegiance to Usama bin Laden. I have never or ever wanted to pledge my allegiance (bayyah) to Usama bin Laden therefore I was not and am not a member of Al-Qaidah.

If the U.S. wants to define Al-Qaidah as Muslims who are wearing orange and have a beard then I will have to look at myself and say, "Well, I am wearing orange, Muslim (all praise is due to Allah), and have a beard therefore

by that definition alone and without extrapolation or extension: America deems me a member of Al-Qaidah."

"1. Travelled from Great Britain to Afghanistan, using own funds, received military training to fulfill jihad obligation."

The arabic word "jihad" in itself means "to strive" in the Islamic context it is divided into four (i) Jihad ul Nafs; to strive against the evil impulses of the self (ii) Jihad ul Shaytaan; to strive and fight the insidious whispers of evil & sedition by Satan and his hosts (iii) Jihad ul Qalam; to strive with the pen and (iv) Jihad ul Saif; to strive with the sword.

Upon reading "Jihad; the shortest path to jannah (Paradise)" by Masood Azhar I was made aware that military struggle (jihad ul Saif) was an individual obligation upon me (fard ul 'ayn);

"O ye who believe! what is the matter with you, that, when ye are asked to go forth in the Cause of Allah, ye cling heavily to the earth? Do ye prefer the life of this world to the Hereafter? But little is the comfort of this life, as compared with the Hereafter.

"Unless ye go forth, He will punish you with a grievous penalty, and put others in your place; but Him you would not harm in the least. For Allah hath power over all things." << Chapter 9: Al Tawbah; verses 38-39 >>

It was these very verses, all praise is due to Allah, that pushed me to go. Allah compelled marching forth with "grievous penalty" if a person didn't. That made marching forth obligatory and fearing that I would burn in Hell-fire for my negligence (Allah forbid) & all praise is due to Allah; He gave me the strength and opportunity to go, and endeavour to fulfil my obligation of jihad.

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As far as training is concerned the Islamic jurisprudant (Fiqh) principle that, "if something is necessary to fulfil an obligation that thing becomes an obligation itself" applies. In order to fight militarily a person needs to be trained militarily. Training is also supported by;

"

If they had intended to come out, they would certainly have made some preparation therefor; but Allah was averse to their being sent forth; so He made them lag behind, and they were told, "Sit ye among those who sit (inactive)." ⁵ " « Chapter 9: Al Tawbah, verse 46 »

Jihad ul Saif (military struggle) is fought for a number of reasons of which I was taught six and can only really accurately remember four!

(i) To make Allah's Word the highest;

"

To those against whom war is made, permission is given (to fight), because they are wronged — and verily, Allah is Most Powerful for their aid —

"

(They are) those who have been expelled from their homes in defiance of right — (for no cause) except that they say, "Our Lord is Allah". Had not Allah checked one set of people by means of another there would surely have been pulled down monasteries, churches, Synagogues, and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid His (cause) — for verily Allah is Full of Strength, Exalted in Might (Able to enforce His Will). « Chapter 22: Al Hajj ; verses 57-60 »

(ii) To establish Allah's Law upon the land; (See "Defence Response to ~~Unsubstantiated~~ "Factual" Basis of Designation as an Enemy Combatant" submitted as documentary evidence in C.S.R.T and ;

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 "But no, by your Lord! They do not really believe unless they make you (O Prophet) a judge of all on which they disagree among themselves, and then find in their hearts no bar to an acceptance of your decision and give themselves up to it in utter self-surrender." << Chapter 4: an-Nisā'; verse 65 >>

(iii) To protect innocent and persecuted men, women, and children;

"Let those fight in the cause of Allah who sell the life of this world for the Hereafter. To him who fights in the cause of Allah - whether he is slain or gets victory - soon shall We give him a reward of great (value).

"And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? - men, women, and children, whose cry is: 'Our Lord! Rescue us from this town, whose people are oppressors; and raise for us from Thee one who will protect; and raise for us from Thee one who will help!' " << Chapter 4: Al Nisā'; verse 75 >>

(iv) In the hope of being martyred for the Cause of Allah;

"And say not of those who are slain in the way of Allah: 'They are dead.' Nay, they are living, though ye perceive (it) not.

And see the document I've called as evidence in the C.S.R.T. which I had presented to interrogator C.I.T.F. [REDACTED] on the subject of "Martyrdom and Islam."

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(v) To purge the ranks of the Muslims of hypocrites (i.e., those who are really non-Muslims, they do not believe in Allah and the Last Day, yet pretend in outward appearance and show to be from the Muslim rank in order to gain some worldly advantage ^{and} or out of fear.

(vi) To test the Believers (?)

"2. Escorted to Quetta then to guesthouse in Afghanistan where recruitment took place. Relinquished passport and money for security purposes, filled in an application form, and took a nickname. Then went on to Camp Farouq for training"

In order for the Recorder to use the word "recruitment" he/she would have to explain recruitment into what?

The appropriate word to be used in the context of the guesthouse in Afghanistan is "enrolment". People stayed at the guesthouse in order to wait for a military training course which they signed their name down for i.e., enrolled for it much like students at a University enrol for degree courses. The person was under no obligation to and it was their free choice and initiative. Some persons used the guesthouse as, "a place to eat and sleep", while they checked out the Islamic - Emirate of - Afghanistan.

Also the use of the word "application form" would have to be followed by application into what?

The appropriate phrase here would be, "background check" as no-one could be allowed to use the facilities willy-nilly. Among other things the person need an "advocate" of sorts, someone who could vouch for their credibility as being a good honest Muslim and not a spy or peeloader.

"3. Camp Farouq - military training - maneuver, topography, surveillance, ambushing. Weapons Kalashnikovs, PK pistol, RPG, PK machine gun."

Highly inaccurate but I'll let the autobiography sort it out. Can someone show me a "PK pistol" please because I don't think such a thing exists!

"4. Volunteered advanced course Mountain Tactics & City Tactics. Prerequisites for front lines."

"5. Met with high-level Al-Qaida leaders. During this meeting, detainee stated that he left his home, in the United Kingdom, to take action against Americans and Jews. Additionally at this meeting, the detainee volunteered for a martyrdom mission."

A little background first; (a) I had no idea whatsoever of the meeting except when I was actually sitting in the room (b) I knew not the existence of the building in which the meeting took place before I was in the premises (c) I knew not of the office or purpose of the building prior to being brought there. (d) I knew not the identity of the persons in front of me in the meeting prior to them introducing themselves. (e) Nor to this day do I know the purpose of that meeting.

I was simply brought to the meeting room unaware. When they introduced themselves as, "Second in command of Al-Qaidah", and, "Third in command of Al-Qaidah", I connected the word "command" with the military term "Commander" such as "Commander-in-Chief". Nor did I have any reason to believe a jihad organization like Al-Qaidah targetted civilians because I was under the impression that all mujahideen (fighters in the Cause of Allah) knew Islam forbids the killing of innocents and it went without saying.

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Obvious to anyone who has read my autobiography, "During this meeting, detainee stated that he left his home, in the United Kingdom, ..." is a mere fabrication. I actually left Britain to either join Taliban or fight for the sake of Allah in Kashmir. "United Kingdom" or any reference to "Britain" or "England" whatsoever was never made it would have been redundant as my nickname was 'Abbas al Britaniya' (Abbas from Britain).

"... to take action against Americans and Jews." Shows clearly the corruption of interrogators of what they heard into what they wanted to hear. The true construction should be, "... to take action against THE Americans and THE Jews." Where the definite article indicated by "the" in both cases means that the person addressing me assumed I was aware of what "Americans" and what "Jews" he was talking about. An illustrative example: if I say "apples" and "juice" I'm speaking generally but if I say "the apples" and "the juice" the person I'm addressing is assumed to know which specific "apples" and "juice" I'm talking about.

So how is Commander II Abu Hafsa someone I had never met before nor knew existed until that very meeting able to address me in a definite sense by using the definite article for "Americans" and "Jews". (i) On the unspoken assumption that a jihad organisation is a military organisation that only targets armed and dangerous aggressor therefore rendering "the Americans and the Jews" as "militarily aggressive Americans and militarily aggressive Jews". (ii) In Britain I had read two small books on the occupation of the Holy Land (the Arabian Peninsula) by American military troops. One which I believe was called "Occupation of the Holy Land" and was a translation of a sermon by ~~Sheikh~~ ~~Abdullah~~ ~~Abdullah~~ a Sheikh who was subsequently imprisoned by the Saudi Arabian government and "Declaration of War" on the same subject by Osama bin Laden (translated into English). So prior to the meeting I knew Osama bin Laden had issues with the American military occupation of the Holy Land. Also at that time Osama bin Laden had made clear his support of the Palestinian "intifada" (uprising) through the medium of

his so-called "Training Video" which we had the opportunity to watch at the guesthouse unknown to me prior to the meeting. Therefore based on that information I understood "military aggressive Americans and Jews" to mean "American troops in Saudi Arabia and Israeli troops in Palestine".

"Additionally at this meeting, the detainee volunteered for a martyrdom mission." A mere fabrication - read my autobiography please.

"6. Knew U.B.L. "operated" Farouq. Speech at Farouq present. Present when U.B.L. visited "Mountain Warfare Camp."

I don't believe I have ever stated categorically that I knew Osama bin Laden "operated" Camp Farouq. And if I have done it was based on conjecture or word of mouth. On word of mouth alone I've heard he funded the camp(s) but I've never actually heard that he "operated" them - there is a difference.

The speech at Farouq, yes I was present at the very speech when with his own mouth and tongue he told Basic Training that he had received a fax from the Americans! My translator was abruptly cut short but I got enough to know that the fax was either a threat or an attempt at a bargain or both. I didn't really much care to hear the speech and left with my translator to snack on some cold honey in my tent.

"7. Detainee was identified as the guard posted to watch a suspected spy. This took place at the home of a Taliban official. The suspected spy recognized the detainee because the detainee beat him, because, as detainee explained, it was his personal jihad."

— INCOMPLETED —

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Combatant Status Review Board

TO: Personal Representative

FROM: Recorder

Subject: Summary of Evidence for Combatant Status Review Tribunal – Feroz Ali Abassi

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 a member of Al-Qaida. He engaged in hostilities against the United States or its coalition partners.
 - a. Detainee is a member of Al Qaida.
 1. Detainee traveled from Great Brittan to Afghanistan, using his own funds, to receive military training and to fulfill his jihad obligation.
 2. Detainee was escorted from Quetta, Pakistan to a guesthouse in Afghanistan, where recruiting took place. At the guesthouse, detainee relinquished his passport and money for security purposes, completed an application form, and chose a nickname. Detainee was then taken to Camp Farouq for training.
 3. At Camp Farouq, detainee received military training, including but not limited to, maneuver, topography, surveillance, and ambushing. During weapons training, detainee trained on the following weapons: Klashnikov, PK Pistol, RPG, and PK machine gun.
 4. After basic training, detainee volunteered for advanced courses in Mountain Tactics and City Tactics. Detainee attended these courses because this training was a perquisite for being sent to the front of the front lines.

5. After completing his basic training, detainee met with high-level Al-Qaida leaders. During this meeting, detainee stated that he left his home, in the United Kingdom, to take action against Americans and Jews. Additionally at this meeting, the detainee volunteered for a martyrdom mission.
6. Detainee knew that Usama Bin Laden operated Al Farouq. Detainee was present when Usama Bin Laden gave a speech at Al Farouq. Additionally, detainee was present when Usama Bin Laden visited the mountain warfare camp.
7. Detainee was identified as the guard posted to watch a suspected spy. This took place at the home of a Taliban official. The suspected spy recognized the detainee because the detainee beat him, because, as detainee explained, it was his personal jihad.

b. Detainee engaged in hostilities against the United States.

1. After September 11, 2001, detainee was forced to leave the guesthouse where he was staying. Detainee volunteered to be sent to defend the Kandahar airport, because it was the most dangerous mission. While there, detainee served in a small unit of Al-Qaida fighters, intent on defending the airport against the Americans.

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.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 9 October 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]

Name

09 OCT 04

Date

[REDACTED]

Signature

ISN # [REDACTED]
Enclosure (5)