

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF JAMES R. CRISFIELD JR.

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

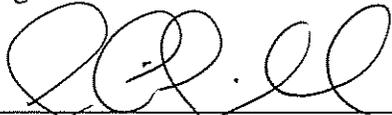
1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Khaled Qasim 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 any 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: 6 Oct 04



James R. Crisfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

3 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)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
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2 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 2004Encl: (1) Appointing Order for Tribunal #5 of 17 August 2004
(2) Record of Tribunal Proceedings

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

a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate in the Tribunal proceedings. At the Tribunal, the detainee's Personal Representative made an unsworn statement on the detainee's behalf and at his request.

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

c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibits R-3, R-4, R-5, and R-6 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant.

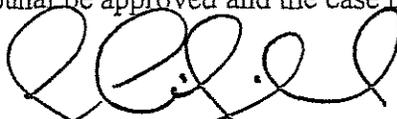
d. The detainee made no requests for witnesses or other evidence.

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

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

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

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

17 Aug 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #5

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 Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

30 September 2004

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# [REDACTED]

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

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


DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

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

(U) TRIBUNAL PANEL: #5

(U) ISN#: [REDACTED]

Ref: (a) (U) Convening Order for Tribunal #5 of 17 August 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

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

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).
2. (U) On 27 September 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee # [REDACTED] is properly designated as an enemy combatant as defined in reference (c).
3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, al-Qaida and associated with the Taliban, as more fully discussed in the enclosures.
4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).

[REDACTED]
[REDACTED] Colonel, USAF
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #5 _____

ISN #: _____ 

1. Introduction

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

2. Synopsis of Proceedings

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that:

- a. The Detainee is a Yemeni citizen who traveled to Afghanistan in late 1999.
- b. The Detainee twice trained at the Al Farouq training Camp.
- c. At Al Farouq, the Detainee received training on the Kalishnakov rifle, M-16, PK machine gun, Rocket Propelled Grenades, hand grenades, explosives and advanced tactical training.
- d. Before 11 Sep 01, the Detainee traveled to the frontlines of Afghanistan to fight against the Northern Alliance.
- e. The Detainee approached a Taliban representative and requested to join the Taliban.
- f. The Detainee's brother was apprehended by Yemeni authorities in connection with the bombing of the USS COLE (DDG 67).
- g. The Detainee was present in Tora Bora, with other al-Qaida fighters during Ramadan, 2001.
- h. While in Tora Bora, the Detainee and his associates were addressed by Usama bin Laden
- i. The Detainee was captured by a local Pashtun tribe in the Tora Bora region.

The detainee chose not to participate in the Tribunal process but he asked his Personal Representative to present information on his behalf.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

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ISN 
Enclosure (1)
Page 1 of 3

- a. Exhibits: D-a and R-1 through R-9.
- b. Unsworn statement of the detainee as relayed by his Personal Representative.

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

The Detainee requested no witnesses.

The Detainee requested no additional evidence to be produced.

5. Discussion of Unclassified Evidence

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

- a. The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence.

- b. Essentially the only unclassified evidence the Tribunal had to consider was the detainee's unsworn testimony as relayed by his Personal Representative and the Personal Representative's statements concerning his interviews with the detainee. A summarized transcript of the detainee's unsworn testimony is attached as CSRT Decision Report Enclosure 3. In his unsworn statement, the Detainee told the Personal Representative that he was tortured and mistreated after capture by Afghanistan forces and was shown a picture of Al Farouq and was told to tell the Americans the story he told earlier during interrogations or he would be returned to them in Afghanistan and be tortured. He stated that he was tortured when he got here to Guantanamo Bay, Cuba by American interrogators so he continued to tell the same story. However, he believed that his Personal Representative was a neutral person so he decided to tell him the truth. In reference to the information in the unclassified summary of evidence listed in paragraph 2 above, he stated that "a" was true. He said that "b" and "c" were not true and that he did not receive any training. He said "d" was not true because he stayed in a guesthouse and never went to the frontlines. He said "e" was not true because he didn't speak the same language as the Taliban so how could he speak to them. In reference to item "f" he said that he had no business with his brother and asked how could this be used as evidence against him. In regards to item "g" above, the Detainee relayed that he was in Tora Bora but he didn't know the people around him were al-Qaida. He also said that item "h" was true but only to the extent that Usama bin Laden was walking by and said

“hi” to him. He said that item “i” was not true and that Afghanistan Police had captured him and he was taken to Kabul where he was mistreated.

The Personal Representative said that he talked to the Detainee in regards to the allegations of torture by Afghanistan and US Forces. The Detainee changed his story during this part of their discussion to say that he had never been tortured by anyone. He had been “mistreated” by the Afghanistan forces but did not clarify. He had never been tortured by American Forces either in Afghanistan or here at Guantanamo Bay Cuba. He had heard people “crying in the night” and he had assumed that they had been tortured.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report. Because of the details provided in the classified evidence and the contradictions in the Detainee’s relayed statement in regards to torture, the Tribunal found the Detainee’s relayed statement to be unpersuasive and relied primarily on the classified evidence in making our decision.

6. Consultations with the CSRT Legal Advisor

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

7. Conclusions of the Tribunal

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

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The Tribunal questioned the Personal Representative about the Detainee’s responses during their interview. It was clear that the Detainee understood the process but he chose not to participate in the Tribunal process, as indicated in Exhibit D-a.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with al-Qaida, and was part of or supporting the Taliban.

8. Dissenting Tribunal Member’s report

None. The Tribunal reached a unanimous decision.


Colonel, USAF
Tribunal President

Summarized Detainee Statement

[The detainee was not present during the Tribunal]

Tribunal President: Personal Representative did the detainee desire for you to present information to this Tribunal on his behalf?

Personal Representative: Yes sir.

Tribunal President: Please do so.

Personal Representative: The detainee told me he has been tortured and mistreated. Was mistreated in Afghanistan. In Afghanistan they told untrue stories and told them that if they didn't tell the story that they wanted them to that they would have to come back to them. They told them that they were going to turn them over to the Americans and if they didn't tell the story that they told them to tell the Americans that they would come back and they would torture them. They were also told to tell them that; If you are Al-Qaida or Taliban that the Americans would let you go home a lot sooner. They showed them pictures of a camp and told them to tell this is where they were trained. When he arrived here, he talked in the beginning but he stopped for a year because he was being tortured. In the last two months he decided to talk again to the interrogators. I read the unclassified summary to him. He said yes he is from Yemen and he was waiting for this moment to tell his story to me. In the summary of the evidence:

3.a.1. is true. (Detainee is a Yemen citizen who traveled to Afghanistan in late 1999.)

3.a.2. is not true. (Detainee twice trained at the Al-Farouq training camp.) He did not train at that camp or no other camp.

3.a.3. is not true. (At Al-Farouq, Detainee received training on the Kalashnikov rifle; M-16; PK machine gun; RPGs; hand grenades; explosives and advanced tactical training.) He never trained on any weapon.

3.a.4. is not true. (Before September 11, 2001, Detainee traveled to the front lines of Afghanistan to fight against the Northern Alliance.) At all times he was in a guesthouse; he never went to the front lines.

3.a.5. is not true. (Detainee approached a Taliban representative and requested to join the Taliban.) He does not speak the language how could he talk to a Taliban official.

3.a.6. (Detainee's brother was apprehended by Yemeni authorities in connection with the bombing of the USS COLE (DDG 67). He has no business with his brother so what does this have to do with him?

3.b. is not true. (The detainee participated in military operations against the coalition.)

3.b.1. (Detainee was present in Tora Bora with Al-Qaida fighters during Ramadan, 2001. (Ramadan began on November 15, 2001.)) Yes he was in Tora Bora but he didn't know the people were Al-Qaida.

3.b.2. (While in Tora Bora, Detainee and his associates were addressed by Usama Bin Laden.) Yes, but he was passing by and just said "hi" and went on his way.

3.b.3. (Detainee was captured by a local Pashtun tribe in the Tora Bora region.) No. He was captured by Afghan police while a guy took them to Jalalabad. They were suppose to be taking them to the Americans instead they took them to Kabul to a person who treated them bad. They were mistreated. They came out of the mountains because one of the people they were with was injured and they were coming down for medical help. They heard the Americans would provide medical help.

Personal Representative: I asked him why he stayed in Afghanistan for so long and what did he do for work? He said he did not do any work everything was provided, food and water. He decided to go to Afghanistan because the Indians were mistreating and killing people. He went with three guys. He only knew one. They traveled to Pakistan but when they got there they were told it was a political thing and they shouldn't go there. They changed their minds and went to Afghanistan. They went to Afghanistan because they didn't want to make the people who paid for them to go off and fight to be mad and return home. They decided to go to Afghanistan; since they hadn't been gone that long and the people who paid for them would not be happy. They stayed at the Arab house, in the guesthouse. There was no war and everything was normal. No fighting, they were told the fighting was a long way from them. He was getting ready to go home but the USS COLE was attacked. At that time anyone who was coming back from Afghanistan was arrested. He got that information from a phone call home. Since he knew his brother was arrested he knew it was not safe for him to go home. He was waiting until his brother was released, then he would go home. He finally got bored and they were going to attempt to go home but then they heard about the attacks in New York and they knew it was not safe to go home. Then the bombing started and they were told to move from the Afghan house because that would be a target. They stayed in another house until things started to fall apart then they went from there to Kabul, from there to Jalalabad, and as they were passing the people told them that Jalalabad was not a safe place to go. They went to Tora Bora and stayed in the caves for weeks. The bombing started up there and a person was injured so they went back down the mountain and that's how they were captured. That's what he asked me to report to you.

Tribunal President: Personal Representative do you have any other evidence to present to this Tribunal on behalf of the Detainee.

Personal Representative: No, sir.

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[The Tribunal was reconvened]

Tribunal President: The Tribunal is reconvened in the unclassified session. The reason for the reconvening is that the Personal Representative remembered he had some additional information to provide us from the statements provide by the Detainee.

Personal Representative: Although the Detainee mentioned that people were tortured, he himself was never personally tortured.

Tribunal Member: He told you that he himself wasn't tortured or is that your assessment?

Personal Representative: He said he was not tortured. All he said is that he heard people crying at night, but he was not tortured.

Tribunal President: While here in Guantanamo Bay Cuba?

Personal Representative: He said he was not tortured here in Guantanamo Bay.

Tribunal President: Did he say he was not tortured in Afghanistan or did he say he was not tortured here in Guantanamo Bay?

Personal Representative: He said he was not tortured here in Guantanamo Bay.

Tribunal President: Did he say he was tortured in Afghanistan?

Personal Representative: He said he was treated bad and mistreated.

Tribunal President: But he did not say he was tortured?

Personal Representative: He did not say he was tortured.

[The Tribunal was reconvened]

Tribunal President: The unclassified session is now reconvened. We are having some additional discussion concerning whether or not there were some conflicts in the testimony provided to the Personal Representative from the Detainee and we asked for clarification. We are going to talk about that again. In the detainee's statement he stated that when he got here to Guantanamo Bay, he was tortured as well. It also stated that he quit speaking to the interrogators for one year because he was tortured by the interrogators. I want to clarify based upon his statements to you, was he ever tortured here at Guantanamo Bay?

ISN [REDACTED]
Enclosure (3)
Page 3 of 4

UNCLASSIFIED / FOUO

1677

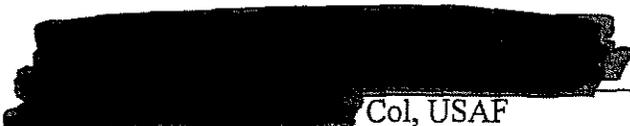
Personal Representative: Based on his statements to me. When he made his first initial statement he said that he was tortured here. But when I went back to clarify when he was tortured, he said he was never personally tortured.

Tribunal Member: So, he made conflicting statements?

Personal Representative: He made conflicting statements. He said he heard people crying at night, but he was not tortured.

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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Recorder Exhibit List
For
ISN [REDACTED]

#	Title	Classification
R1	Unclassified Summary	UNCLASSIFIED
R2	FBI Request for Redaction of National Security Information 14 SEP 04	UNCLASSIFIED
R3	FBI 302 dtd 13 May 02	FOUO//LES
R4	FBI 302 dtd 21 May 02	FOUO//LES
R5	FBI 302 dtd 25 Aug 02 (1)	FOUO//LES
R6	FBI 302 dtd 25 Aug 02 (2)	FOUO//LES
R7	IIR 6 034 0159 03	SECRET
R8	CITF Memo dtd 29 Mar 04	SECRET//NOFORN
R9	JFTGTMO Baseball Card	SECRET//NOFORN

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1679

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (14 September 04)

Subject: Summary of Evidence for Combatant Status Review Tribunal - QASIM, Khaled

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 and associated with the Taliban and engaged in hostilities against the United States or its coalition partners.
 - a. The detainee is a member of al Qaida and is associated with the Taliban:
 1. Detainee is a Yemeni citizen who traveled to Afghanistan in late 1999.
 2. Detainee twice trained at the Al Farouq training camp.
 3. At Al Farouq, Detainee received training on the Kalishnikov rifle; M-16; PK machine gun; RPGs; hand grenades; explosives and advanced tactical training.
 4. Before September 11, 2001, Detainee traveled to the front lines of Afghanistan to fight against the Northern Alliance.
 5. Detainee approached a Taliban representative and requested to join the Taliban.
 6. Detainee's brother was apprehended by Yemeni authorities in connection with the bombing of the USS COLE (DDG 67).
 - b. The detainee participated in military operations against the coalition.
 1. Detainee was present in Tora Bora, with other al Qaida fighters during Ramadan, 2001. (Ramadan began on November 15, 2001).
 2. While in Tora Bora, Detainee and his associates were addressed by Usama Bin Laden.

UNCLASSIFIED

18 1 of 2

1680
Exhibit R-1

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3. Detainee was captured by a local Pashtun tribe in the Tora Bora region.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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Pg 2 of 2 1681

Memorandum



To : Department of Defense Date 09/14/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT

From : FBI GTMO
Counterterrorism Division
[REDACTED] 9/14/04

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, GTMO:

FD-302 dated 05/13/2002
FD-302 dated 05/21/2002
Two(2) FD-302s dated 08/25/2002

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

²See Executive Order 12958

Exhibit R-2

pg 1 of 2

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 09/14/2004

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

Personal Representative Review of the Record of Proceedings

I acknowledge that on 28 September 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

I have no comments.

My comments are attached.

[REDACTED]

Name

28. Sep 2004
Date

[REDACTED]

Signature

ISN # [REDACTED]
Enclosure (5)