

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG, *et al.*)
)
)
 Petitioner,)
)
 v.) Civil Action No. 04-CV-1137 (RMC)
)
)
 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:

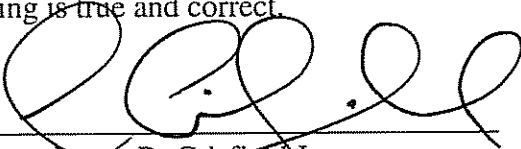
1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each 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 Moazzam Begg that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information considered law enforcement sensitive as well as that which would personally identify other detainees, their family members, and 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: 20 Dec 04



James R. Crisfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 0516

18 DEC 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.

J. M. McGARRAH
RADM, CEC, USN

Distribution:
NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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2871

16 Dec 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 #20 of 8 November 2004
(2) Capt [REDACTED] E-Mail of 13 October 2004
(3) 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 affirmatively declined to participate in the Tribunal. The detainee's Personal Representative presented a written statement prepared by the detainee and other evidence on behalf of the detainee.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b).
- d. The detainee requested the production of nine witnesses. These requests are itemized, although somewhat inaccurately, in paragraph 4 of enclosure (1) to the Tribunal Decision Report. Each witness is described below.

1. Shahid Abassi – The detainee proffered that this witness would testify that the detainee was fleeing the war in Afghanistan and was not armed. The detainee could not provide locating information for this witness other than to state that the “Rashid Trust charity organization” might know his whereabouts. The Tribunal President determined that the witness was not reasonably available due to the limited locating information supplied by the detainee. In my opinion, this decision was not an abuse of discretion given the paucity of information provided by the detainee.

2. Tahir Ashraf – The detainee proffered that this witness would testify that the detainee spent the preponderance of his time in Afghanistan building a school and teaching at another school. The detainee stated that the witness lived in the United Kingdom and could be located through the detainee's father. The Tribunal President

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

determined that the witness was relevant and requested the U.S. State Department to initiate contact with the witness. Contact was established but the witness did not reply to inquiries regarding whether they were willing to testify at the tribunal. Under the circumstances, the Tribunal President determined that the witness was not reasonably available. In my opinion, this decision was not an abuse of discretion by the President.

3. [REDACTED] – The witness was the detainee’s wife. The detainee proffered that this witness would testify that the detainee did not support terrorist organizations or military activities. The detainee stated that the witness lived in the United Kingdom and could be located through the detainee’s father. The Tribunal President determined that the witness was relevant and requested the U.S. State Department to initiate contact with the witness. Contact was established but the witness did not reply to inquiries regarding whether she was willing to testify at the tribunal. Under the circumstances, the Tribunal President determined that the witness was not reasonably available. In my opinion, this decision was not an abuse of discretion by the President.

4. Abdul Walid – The detainee proffered that this witness would testify that the detainee did not support terrorist organizations or military activities. The detainee stated that the witness lived in the United Kingdom and could be located through the detainee’s father. The Tribunal President determined that the witness was relevant and requested the U.S. State Department to initiate contact with the witness. Contact was established but the witness did not reply to inquiries regarding whether he was willing to testify at the tribunal. Under the circumstances, the Tribunal President determined that the witness was not reasonably available. In my opinion, this decision was not an abuse of discretion by the President.

5. A Sudanese in charge of the [REDACTED] training camp – It appears that the detainee proffered that this witness would testify that the [REDACTED] camp had no ties to al Qaida or the Taliban and also that the detainee did not attend the camp (in which case the affiliation of the camp seems to be irrelevant). In any event, the witness was identified by the Tribunal as detainee ISN [REDACTED]. When approached by the Personal Representative, the witness refused to testify at the tribunal but provided an oral statement that was reduced to writing by a translator. This statement was included in the evidence as exhibit D-g.¹ Although the Tribunal President did not render a formal decision on the relevance and reasonable availability of this witness,² it is apparent that he was neither.

6. Patrick Hamilton – The detainee proffered that this witness was an ICRC employee who would testify that the detainee had previously been issued a POW identity card at a U.S. detention facility in Kandahar, Afghanistan. The Tribunal President initially determined that the witness was relevant, but after consultation with the

¹ The Tribunal Decision Report erroneously indicates that the statement is exhibit D-f.

² The Tribunal President merely stated that the witness’s *written statement* was reasonably available.

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

Assistant Legal Advisor, she changed her determination.³ She based her decision on her conclusion that the Combatant Status Review Tribunals do not have the discretion to determine that a detainee should be classified as a prisoner of war -- only whether the detainee satisfies the definition of "enemy combatant" as provided in references (a) and (b). In my opinion, this decision was correct. It bears noting that in a written statement prepared by the detainee especially for the CSRT, the detainee specifically says that he does *not* claim POW status (*see* exhibit D-e).

7. [REDACTED] -- The detainee stated that this witness was a member of the U.S. armed forces and could testify that the detainee had been classified as a prisoner of war when detained in Kandahar. For the reasons indicated in paragraph 1(d)(6) above, the witness was deemed not relevant.

8. [REDACTED] -- The detainee proffered that the witness accompanied the detainee in Afghanistan and could testify that the Government allegations were false. For the reasons discussed in paragraph 3 of enclosure (2) of the Tribunal Decision Report, the Tribunal President determined that the witness was not reasonably available. Under the circumstances, the Tribunal President had no option other than to hold that the witness was not reasonably available.

9. Abu Ukashah -- The detainee proffered that the witness could testify that he was with the detainee in Afghanistan and the Government allegations were false. The detainee stated that the Karkhana police station in Peshawar, Pakistan, would have locating information for this witness. The Tribunal President initially determined that the witness was relevant and reasonably available (*see* enclosure 5 of the Tribunal Decision Report).⁴ Paragraph 4 of enclosure (1) of the Tribunal Decision Report, which documents the Tribunal's ruling on witness requests, does not mention the request for Abu Ukashah at all. I have confirmed with CSRT personnel in Guantanamo Bay, however, that Abu Ukashah was included among the names provided to the U.S. State Department with the request for assistance in locating witnesses (*see* enclosure (2)). The State Department was unsuccessful in making contact with this witness. Although the Tribunal Decision Report does not address a final decision on this witness, it appears that he was not reasonably available.

e. The detainee requested documentary evidence.

1. The detainee requested documents from a lawyer representing him in his Federal habeas action. In response to this request the detainee's lawyer provided some documents and these were included in the evidence presented to the Tribunal.

³ The Tribunal Decision Report indicates that the Tribunal consulted with the "legal advisor" but this is actually a reference to the Assistant legal Advisor. In any event, my advice to the Tribunal would have been the same as the Assistant Legal Advisor's.

⁴ The Tribunal President's decision in respect of reasonable availability appears to have been rather premature since no effort had yet been made to actually locate this witness.

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

2. The detainee also requested a definition of "al Qaida" and a list of "associated forces." While the definition of al Qaida was provided to the detainee, no list of associated forces was provided. The Tribunal Decision Report erroneously indicates that such a list was provided (*see* paragraph 4 of enclosure (1) of the Tribunal Decision Report). In reality, the detainee was provided with a list of coalition forces (*see* page 5 of enclosure (5) of the Tribunal Decision Report). The Tribunal should have understood what the detainee was requesting since they refer to his request as one seeking, "a list of associated forces, as that phrase is used in Exhibit R-1, the Unclassified Summary of Evidence." In my opinion, it was an error for the Tribunal not to provide the requested list or, if such a list was properly classified, to deny the request on that basis. The error was harmless to the detainee, however, since the evidence presented to the Tribunal demonstrated that the detainee provided support to al Qaida. In my opinion, no corrective action is necessary under the circumstances.

3. The detainee also requested a polygraph examination. The Tribunal President determined that she did not have the authority to grant such a request and that, even if she did, the results of a polygraph would not be helpful to the Tribunal. Whether the Tribunal possesses this authority is debatable. There is nothing in paragraph G of enclosure (1) of reference (b) ("Combatant Status Review Tribunal Authority") which permits a Tribunal to order the *creation* of evidence for use at a Tribunal. Even if the Tribunal has such authority, the detainee could not have been prejudiced by the Tribunal's refusal to order a polygraph examination for him. Given the evidence that the detainee provided support to al Qaida, and his own statements admitting to training in Afghanistan and being present at the front lines, it is inconceivable that *any* polygraph results could have altered the Tribunal's decision. In my opinion, this decision was not an abuse of the President's discretion.

The detainee did not request any other evidence.

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

g. The detainee's Personal Representative was given the opportunity to review the record of proceedings and he submitted comments to the Tribunal. In his comments, the Personal Representative argues that since the detainee was provided (according to the detainee) with a POW identification card while detained at the Bagram base in Afghanistan, then he cannot be an enemy combatant. Even if we assume that the facts as stated by the detainee are true, the Personal Representative's argument ignores several facts. First, a detaining power is not bound forever by the initial field determination that a detainee is entitled to POW protection. Second, and more significant for our purposes, a detaining power's determination that the Geneva Convention Relative to the Treatment of Prisoners of War does not apply to a certain armed conflict or a certain category of belligerents is not trumped by the field forces providing a POW identity card to a

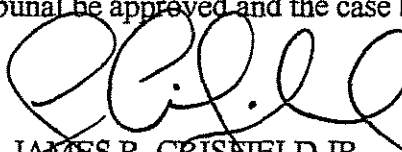
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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

detainee.⁵ In any case, whether or not the detainee was provided with a POW
identification card in Afghanistan is irrelevant to the narrow mandate of the CSRT.

Additionally, the Personal Representative takes the Tribunal to task for failing to
order a polygraph for the detainee. For the reasons described above in paragraph 1(e)(3),
I do not believe the Tribunal President abused her discretion by denying the detainee's
request.

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

⁵ I do not know this for a fact, but it seems unlikely that military police units carry two sets of identification badges
for detainees – one for POWs and one for enemy combatants.



Department of Defense
Director, Combatant Status Review Tribunals

8 Nov 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #20

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. Army; President

[REDACTED], Commander, JAGC, U.S. Navy; Member
(JAG)

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

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

2877

Enclosure (1)

13 Oct 04

Sir,

Below please find a witness request and contact information provided by detainee Moazzam Begg. Please inform me if you are able to locate the witnesses so that they may testify on the detainee's behalf at his Combatant Status Review Tribunal (CSRT).

Name:

Abu Suhail and spouse

Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Phone:

[REDACTED]

Additional Information:

- The witnesses are the detainee's friend and his friend's spouse
- Address and phone number are for detainee's father - please contact father to determine location of witnesses
- Detainee's father may also be able to contact Tahir Ashraf - Mr. Ashraf will be able to locate witnesses

Name:

Abdul Walid

Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Phone:

[REDACTED]

Additional Information:

- The witness is a Palestinian living in the UK.
- Address and phone number are for detainee's father - please contact father to determine location of witness
- Detainee's father may also be able to contact Tahir Ashraf - Mr. Ashraf will be able to locate witness

~~Classification: UNCLASSIFIED~~

Caveats: FOUO

Name:

Abu Ukashah

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Additional Information:

- The witness can be located through the Karkhana Police.

Please let me know if you have any questions or concerns.

Thank you, Sir.

Very Respectfully,

Capt [REDACTED]

Classification: UNCLASSIFIED

Caveats: FOUO



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

22 November 2004

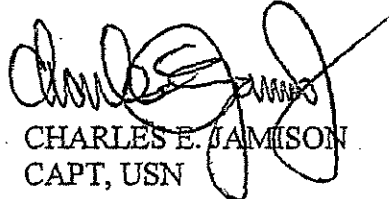
MEMORANDUM FOR DIRECTOR, CSRT

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.


CHARLES E. JAMISON
CAPT, USN

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #20
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 was part of or supporting Taliban or Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. 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 Tribunal held this hearing on 13 November 2004. The Recorder presented Exhibits R-1 through R-4 during the unclassified portion of the Tribunal. The primary exhibit, the Unclassified Summary of Evidence (Exhibit R-1), indicates, among other things, that: The Detainee is a member of Al Qaida and other affiliated terrorist organizations; the Detainee recruited individuals to attend Al Qaida run terrorist training camps in Afghanistan; the Detainee provided money and material support to Al Qaida terrorist training camps; and that the Detainee has received extensive training at Al Qaida run terrorist training camps since 1993. The Detainee has been trained on the AK-47, rocket propelled grenades (RPGs), handguns, ambush theory, detection of land mines and the manufacture of improvised grenades; the Detainee provided support to Al Qaida terrorists by providing shelter for their families while the Al Qaida members committed terrorist acts; the Detainee engaged in hostile acts against the United States or its coalition Partners; the Detainee was armed and prepared to fight on the frontlines against US and allied forces alongside Taliban and Al Qaida fighters; the Detainee retreated to the Tora Bora Afghanistan along with other Taliban and Al Qaida fighters; the Detainee engaged in these hostile actions while neither he nor his fellow fighters wore distinctive military emblems on their clothes, nor followed a typical chain of command; the Detainee provided support to Usama Bin Laden's Al Qaida terrorist network with full knowledge that Bin Laden had issued a declaration of war against the United States and that the Al Qaida network had committed numerous terrorist attacks against the United States and its citizens. The Recorder called no witnesses.

The Detainee initially indicated that he would attend and participate in the Tribunal. However, on the morning of the Tribunal, the Detainee refused to attend, citing

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ISN # _____
Enclosure (1)
Page 1 of 5

instructions from his attorney. His decision is reflected on the Detainee Election Form (Exhibit D-a). The Personal Representative presented Exhibits D-b through D-g, and provided a summary of those exhibits that is provided at Enclosure (3) to the CSRT Decision Report. The Personal Representative called no witnesses on behalf of the Detainee.

During the classified session of the Tribunal, the Recorder presented Exhibits R-5 through R-27 without comment. The Personal Representative presented Exhibit D-h and provided a brief explanation. After considering all of the classified and unclassified evidence, the Tribunal determined that the Detainee is properly classified as an enemy combatant.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-27, and D-a through D-h.
- b. Testimony of the following persons: None. But, the Detainee did provide a witness statement, which was submitted by the Personal Representative as Exhibit D-g.
- c. Sworn statement of the Detainee: None. But, the Detainee did provide a statement, which was submitted by the Personal Representative as Exhibit D-e.

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

The Detainee requested the following witnesses:

a. Shahid Abassi. This request was denied on the ground that the witness was not reasonably available. The Detainee did not provide enough detail regarding the witness' whereabouts to enable U.S. and Pakistani authorities to locate the witness. See page 1 of Enclosure (5) to the CSRT Decision Report.

b. His wife, [REDACTED] and his wife, [REDACTED] and Abdul Wahid. The witness request for these United Kingdom residents was approved by the Tribunal President. The Department of State and United Kingdom authorities did successfully contact the witnesses. However, the witnesses failed to reply to the U.S. Embassy in the U.K. on whether they would make themselves available for the hearing. The witnesses did not appear at the hearing or provide written statements. See pages 1 and 2 of Enclosure (5) to the CSRT Decision Report.

c. A Sudanese in charge of the [REDACTED] training camp. The Tribunal was able to identify this individual as Detainee # [REDACTED]. Detainee # [REDACTED] was interviewed by the Personal Representative. Detainee # [REDACTED] declined to participate in the hearing as a witness, but he

did agree to submit a statement, which was accepted as Exhibit D-f. See page 2 of Enclosure (5) to the CSRT Decision Report.

d. Patrick Hamilton and [REDACTED]. The Detainee requested these individuals for the purpose of verifying that at one point he, the Detainee, was classified as a prisoner of war. The request was originally approved. However, upon consultation with the legal adviser and further reflection, the Tribunal President concluded that the witnesses were not relevant, and so the request was disapproved. The information that the witnesses were to provide was determined to be irrelevant because the fact, if established, that the Detainee was at one time classified as a prisoner of war is not germane to the question before the Tribunal, namely whether the Detainee was part of or supporting Taliban or Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. See pages 2 and 3 of Enclosure (5) to the CSRT Decision Report.

e. [REDACTED] The Tribunal President made a determination that security considerations preclude this witness' presence at the hearing. Therefore, the witness request was denied on the ground that the witness was not reasonably available.

Prior to the hearing, the Detainee requested that a statement from his attorney be submitted as evidence. During the hearing, the Detainee, through his Personal Representative, submitted documents from two of his attorneys. These documents are the affidavits described in paragraph 5.a., below. See also page 2 of Enclosure (5) to the CSRT Decision Report.

The Detainee did request from the Tribunal prior to the hearing a definition of Al Qaida and a list of associated forces, as that phrase is used in Exhibit R-1, the Unclassified Summary of Evidence. Responsive answers to both inquiries were provided to the Detainee through his Personal Representative prior to the scheduled hearing date. See pages 1, 4 and 5 of Enclosure (5) to the CSRT Decision Report.

The Detainee requested from the Tribunal prior to the hearing that he be administered a polygraph as a means of bolstering his claim of innocence. The Tribunal President concluded that she did not have the authority to grant such a request, as there are no polygraphers attached to the Tribunals. Moreover, given the nature of polygraphy, especially in a cross-cultural setting such as this, the Tribunal doubted the helpfulness of such an examination, even if it were to show no deception to relevant questions. The Tribunal preferred instead to rely upon the testimony of the Detainee, were he to offer any, and the documents submitted by the Recorder and the Personal Representative. Therefore, the request was denied. See page 2 of Enclosure (5) to the CSRT Decision Report.

5. Discussion of Unclassified Evidence

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

a. The Recorder offered Exhibits R-1 through R-4 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 are affidavits submitted by the Detainee's two attorneys to the U.S. District Court for the District of Columbia discussing aspects of the attorneys' representation of the Detainee. Exhibit R-4 is the Government's motion to consolidate various habeas corpus petitions from individuals being detained by the U.S.. Exhibits R-2 through R-4 did not provide information helpful to the Tribunal on the question of whether this Detainee meets the definition of an enemy combatant. Accordingly, the Tribunal had to look to other evidence to support the assertions in the Unclassified Summary of Evidence and the Tribunal's conclusions.

b. As noted in paragraph 2, above, the Detainee, through his Personal Representative, submitted Exhibits D-b through D-g in the unclassified session. Exhibit D-b is a letter to the Detainee from his lawyer. Exhibit D-c is the Detainee's habeas corpus petition. Exhibit D-d is a letter from Deputy Assistant General Thomas R. Lee to the Senior Judge of the Washington D.C. federal district court providing his estimate of the time frame in which the CSRT process could be completed. Exhibit D-f is a copy of the Third Geneva Convention. While valuable to the Tribunal generally, Exhibits D-c, D-d and D-f were not directly relevant to the issue before the Tribunal.

c. As noted, Exhibit D-e is the Detainee's statement. Much of that exhibit is also dedicated to the discussion of issues outside the scope of the Tribunal's inquiry. However, the Detainee did emphatically and at length deny the allegations contained in paragraph 3 of Exhibit R-1, the Unclassified Summary of Evidence. The Tribunal accepted the Detainee's statements as an acknowledgement that he had some involvement with a number of terrorists and terrorist training camps, including providing financial support, but otherwise found the Detainee's testimony unpersuasive when considered in conjunction with the classified evidence. The Tribunal did note the Detainee's assertion that he signed a statement under duress, but also noted that the Detainee acknowledges that he was afforded an opportunity to edit that statement.

d. Exhibit D-f is a statement by another Detainee, [REDACTED]. As discussed above, the Detainee had requested [REDACTED] as a witness. The Personal Representative advised the Tribunal that Detainee [REDACTED] declined to participate as a witness, but did agree to submit a statement. The Personal Representative further advised the Tribunal that the statement is written by the translator, documenting Detainee's [REDACTED] verbal statements. The picture on the Exhibit is that of Detainee Beggs.

6. Consultations with the CSRT Legal Advisor

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ISN # [REDACTED]
Enclosure (1)
Page 4 of 5

The Tribunal consulted the CSRT Assistant Legal Advisor regarding the Detainee's allegations made in his statement that he witnessed individuals in custody being abused, and that he was abused, or at least threatened with abuse, as well (see Exhibit D-e). As per instructions, the OARDEC Forward Chief of Staff and the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO were notified of the matters on 15 November 2004. This information had previously been passed to the OARDEC liaison on 23 September 2004.

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 chose not to participate in the Tribunal proceeding. No evidence was produced that caused the Tribunal to question whether the Detainee was mentally and physically capable of participating in the proceeding, had he wanted to do so. Accordingly, no medical or mental health evaluation was requested or deemed necessary.


b. As indicated in Exhibit D-a, the Detainee made a conscious decision not to attend his pre-Tribunal interview session with the Personal Representative. Accordingly, the Tribunal finds the Detainee made a knowing, intelligent and voluntary decision not to participate in the Tribunal process.

c. The Detainee is properly classified as an enemy combatant because he was part of or supporting Taliban or Al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


Colonel, U.S. Army
Tribunal President

Summarized Unsworn Personal Representative Statement with absent Detainee

Personal Representative states Detainee declined to participate in Tribunal proceedings.

Personal Representative states the Detainee was advised of his right to be present during all open sessions of the hearing; advised of his right to make a statement; under oath or unsworn; advised of his right to representation by a Personal Representative; advised of his right to provide evidence and present witnesses on his behalf; and advised of his right to examine and review all unclassified evidence/documents. Personal Rep stated the Detainee indicated he did understand the Tribunal process.

The Personal Representative submits the Detainee Election form D-A.

The Recorder presented Exhibits R-2 and R-4 into evidence and gave a brief description of the contents of the Unclassified Summary of Evidence (Exhibit R-1).

The Recorder confirmed that he had no further unclassified evidence or witnesses and requested a closed Tribunal session to present classified evidence.

President was convinced Detainee was aware of his rights and had an understanding of the Tribunal process. President announced Tribunal hearing would proceed without the presence of the Detainee.

Personal Representative made the following statement for the detainee.

Personal Representative: Exhibit D-J, the witness that was requested was a commander of a Taliban training camp. ISN [REDACTED] states that the detainee was never at that location and there for since the witness was at that location the fact he didn't know [REDACTED] was proof that he was never there.

Tribunal President: This is a statement from the witness that was requested witness number [REDACTED]

Personal Representative: Yes, the witness could not write, he could read but not write so the translator wrote what he said, he looked at it and the translator and I witnessed it.

Personal Representative: The detainee did allege torture in Afghanistan by two FBI agents and then that those men threatened him but did not torture him her. I forwarded that complaint through our legal channel as required.

Tribunal President: Was that complaint given to you during the initial interview?

Personal Representative: Yes, Ma'am.

Personal Representative: The Detainee wanted to bring your attention to the fact that "associated forces" are not defined in the definition of enemy combatant and he did not know how he could reasonably confront or rebut that if it was not defined. I would also like to draw your attention to fact that he claimed he had a POW Card that was issued to him by the United States. He had the card in his possession at Baghram Air Base for several months. The International Committee of the Red Cross witnessed it. As you are aware, Geneva Convention Category III has three categories for someone who is captured on the battlefield; civilian, combatant, or POW. Those categories are mutually exclusive. In D-f, I included the Geneva Convention. On page one, he was entitled to the status of POW. On page two, the categories with POW, the length of the status is in effect which is to when the conflict is terminated. There is the identity card requirement, which is on page five. Also on page five, it is not to be removed once the card is given. So, he would ask that you reconsider that. That can be construed as proof he is not an enemy combatant, because if he is a POW, that would exclude him from being an enemy combatant.

Tribunal President: We will make note of his request. This tribunal has determined that the designation of POW is not relevant to the combatant status determination.


The Personal Representative states for the record that the Detainee received two letters in the mail from his lawyer to not participate in the tribunal process. The Detainee made a statement to the guard that if there is a tribunal he is not attending.

The Personal Representative had nothing further on the behalf of the detainee for this unclassified session of the tribunal.

The Tribunal President concludes the open tribunal session.

AUTHENTICATION

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


Colonel, United States Army
Tribunal President

DETAINEE ELECTION FORM

Date: 23Sep04

Start Time: 12:00

End Time: 14:35

ISN#: [REDACTED]

Personal Representative: LTCOL [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:

Polite and well spoken. Will take Muslim oath. UK witness and PK witness plus documents from lawyer.

It was notified on 13 NOV04 that
Mr [REDACTED] ISN [REDACTED] does not want to attend
his Tribunal.

[REDACTED]

13 NOV04

Personal Representative: [REDACTED]

NOV. 13 2004

(ON NOVEMBER 13th 2004 ^{P15} ~~ISNF~~ ISNF [REDACTED]) WHEN

ASKED THAT HE NEEDED TO GET UP TO GO TO BUILDING 7 HE REPLIED WITH " IF IT IS TRIBUNAL I AM NOT GOING IF HE IS A REPRESENTATIVE I WILL GO AND SPEAK TO HIM,"

P15 ISNF [REDACTED] ALSO COMMENTED THAT ON NOVEMBER 12 2004 HE RECEIVED TWO LETTERS FROM HIS LAWYERS STATING THAT HE NO LONGER PARTICIPATE IN THE TRIBUNALS. AT THAT POINT I CONTACTED D.O.C. AND TOLD THEM ABOUT THE SITUATION AND ^{THEY SAID THEY} ~~SAID THEY~~ WOULD CALL RIGHT BACK ON IF [REDACTED] NEEDED TO GO TO TRIBUNALS. SHORTLY LATER D.O.C CALLED AND SAID IF HE CHOOSE NOT TO GO HE ([REDACTED]) WOULD NOT HAVE TO. AT THAT POINT I TOLD [REDACTED] HE WAS NOT SURE IF IT WAS A REPRESENTATIVE OR THE ACTUAL TRI^BUNAL BUT THAT HE HAD A CHOICE TO GO, AT THAT MOMENT HE DECLINED AND REFUSED TO BE ESCORTED TO BUILDING 7. I THEN TOLD THE ESCORT TEAM TO LEAVE. ~~Because that was the only way~~ [REDACTED]

SPC [REDACTED]

491ST MP CO.
[REDACTED]

Appendix I to
Exhibit D-a

2889

Combatant Status Review Board

TO: Tribunal Member

15 September 2004

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – Detainee Begg, Moazzam

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 other affiliated terrorist organizations. The detainee has engaged in hostilities against the United States or its coalition partners.

a. The detainee is a member of al Qaida and other affiliated terrorist organizations.

1. The detainee recruited individuals to attend al Qaida run terrorist training camps in Afghanistan.

2. The detainee provided money and material support to al Qaida terrorist training camps.

3. The detainee has received extensive training at al Qaida run terrorist training camps since 1993. He has been trained on the AK-47, Rocket Propelled Grenades (RPGs), handgun, ambush theory, detection of land mines and the manufacture of improvised grenades.

4. The detainee provided support to al Qaida terrorists by providing shelter for their families while the al Qaida members committed terrorist acts.

b. The detainee engaged in hostile acts against the United States or its coalition Partners.

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1. The detainee was armed and prepared to fight on the frontlines against US and allied forces alongside Taliban and al Qaida fighters.
 2. The detainee retreated to the Tora Bora Afghanistan along with other Taliban and al Qaida fighters.
 3. The detainee engaged in these hostile actions while neither he nor his fellow fighters wore distinctive military emblems on their clothes, nor followed a typical chain of command.
 4. The detainee provided support to Usama Bin Laden's al Qaida terrorist network with full knowledge that Bin Laden had issued a declaration of war against the United States and that the al Qaida network had committed numerous terrorist attacks against the United States and its citizens.
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.

Unclassified

2891 252

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG,



As Next Friend Of
MOAZZAM BEGG

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 SOLICITOR GARETH PEIRCE

I, GARETH PEIRCE, of 14 Inverness Street, London, United Kingdom, NW1 7HJ, being
duly sworn, depose and state as follows:

Exhibit **R1**
2892

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, Moazzam Begg, 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 Moazzam Begg, [REDACTED] and thereafter by his wife, [REDACTED] to act on their behalf and on behalf of Moazzam Begg himself. Annexed hereto marked "GP1" is a copy of my designation as a solicitor for [REDACTED] and her husband Moazzam Begg in these proceedings.
3. My understanding of the events that preceded Mr Begg'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, Moazzam Begg, his wife and their children moved to live in Kabul, in Afghanistan. This had been a long term plan of the family; Moazzam Begg 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 Mr Begg was involved in the process of setting up the school. Mr Begg 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 Moazzam Begg 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. Moazzam Begg 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, Moazzam Begg and his family had reached Islamabad and his father in Birmingham 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, Moazzam Begg 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 Moazzam Begg 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 Moazzam Begg's existence, despite the production in those proceedings by [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 Begg's Pakistani passport) they could make no formal intervention to Pakistan in view of the fact that Mr Begg had dual British and Pakistani nationality.

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

11. However, in the interim, on 4th March 2002, a Mr Hamilton from the Red Cross telephoned Mr Begg's father in Birmingham, to say that Moazzam Begg 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 Begg 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 Moazzam Begg 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 Moazzam Begg 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 Begg. 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 Begg 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 Begg's detention."* I exhibit a copy of that letter at "GP2".

14. Mr Begg'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 Moazzam Begg'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 Moazzam Begg and others.

15. I have continued to press the Foreign Office in England to achieve the release of Mr Begg 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 Moazzam Begg, 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, Moazzam Begg 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 Moazzam Begg 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 Moazzam Begg'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 Moazzam Begg 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
NW1 7AH
020 7485 8811

6

Garth Peirce

Before me:

Clath

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG,)
 [REDACTED])
 As Next Friend Of)
 MOAZZAM BEGG)
)
 Petitioners,)
)
 v.)
)
 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.)

No. _____

AFFIDAVIT OF [REDACTED]

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

1. I am a the wife of Moazzam Begg and I am a British citizen. I have been married to Moazzam Begg since 1995.

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Exhibit R3
2899
page 1 of 4

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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 United Kingdom, 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 nine years to my husband. We have four children, one child having been born following my return to England from Pakistan in 2002.
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 Moazzam away. I was extremely concerned about him for a range

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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 England 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

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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. Moazzam 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 Moazzam'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 TYNDALLOODS SOLICITORS
BIRMINGHAM on this 5th day of March, 2004

Before me:

Naldie Gove (SOLICITOR)

TYNDALLOODS
WINDSOR HOUSE
TEMPLE ROW
BIRMINGHAM B2 8TB

4

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2902

Page 4 of 4

_____)
 _____) *et al.*)
 _____))
 Petitioners,))
 _____))
 v.))
 _____))
 GEORGE W. BUSH,))
 President of the United States,))
 _____))
 _____))
 _____))
 Respondents.))

Civil Action No. 04-CV-1135 (ESH)

_____)
 _____) *et al.*)
 _____))
 Petitioners,))
 _____))
 v.))
 _____))
 GEORGE W. BUSH,))
 President of the United States,))
 _____))
 _____))
 _____))
 Respondents.))

Civil Action No. 04-CV-1136 (JDB)

_____)
 _____) *et al.*)
 _____))
 Petitioners,))
 _____))
 v.))
 _____))
 GEORGE W. BUSH,))
 President of the United States,))
 _____))
 _____))
 _____))
 Respondents.))

Civil Action No. 04-CV-1137 (RMC)

_____)
 _____ *et al.*)
)
 Petitioners,)
)
 v.)
)
 GEORGE WALKER BUSH,)
 President of the United States,)
et al.,)
)
 Respondents.)

Civil Action No. 04-CV-1166 (RJL)

_____)
 _____ *et al.*)
)
 Petitioners,)
)
 v.)
)
 GEORGE W. BUSH,)
 President of the United States,)
et al.,)
)
 Respondents.)

Civil Action No. 04-CV-1194 (HHK)

**RESPONDENTS' MOTION TO CONSOLIDATE
 AND MEMORANDUM IN SUPPORT THEREOF**

Currently pending before various judges of this Court are a number of petitions for writs of habeas corpus, as styled above, brought on behalf of foreign nationals detained or taken into custody by United States authorities as enemy combatants in connection with hostilities involving al Qaeda, the Taliban, and their supporters, and held at the United States Naval Base at Guantanamo Bay, Cuba. For the reasons explained below, these cases – as well as any after-filed actions of the same nature – should be consolidated under FED. R. CIV. P. 42. The cases present

common questions of law and fact, and consolidation will promote judicial economy and convenience for the parties. Absent such consolidations, all parties will be prejudiced, both by the potential for inconsistent rulings on similar issues pertaining to Guantanamo Bay detainees, as well as by the practical and logistical difficulties presented by multiple cases, many, if not all, of which may involve the presentation of highly classified materials, proceeding before different judges on possibly divergent schedules.

By local rule, this motion is submitted to Judge Kollar-Kotelly, as the judge presiding over the "earlier numbered" of the Guantanamo Bay detainee cases, *Rasul v. United States*, No. 02-CV-0299. See LCvR 40.5(d) ("Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned."). Notification of this motion, along with a copy of the motion, is being submitted to each of the judges in the related cases. See Notice of Filing of Motion to Consolidate in *Rasul v. Bush*, No. 02-CV-0299 (CKK) (filed July 23, 2004, in each of the related cases).

Counsel for respondents have conferred or attempted to confer by telephone with counsel for petitioners in the related cases regarding this motion. Counsel for petitioners in [REDACTED] v. *Bush*, No. 04-CV-1135 (ESH), opposes the motion. Counsel for petitioners in [REDACTED] v. *United States*, No. 02-CV-0828 (CKK); [REDACTED] v. *Bush*, No. 02-CV-1130 (CKK); [REDACTED] v. *Bush*, No. 04-CV-1136 (JDB); [REDACTED] v. *Bush*, No. 04-CV-1142 (RJL); and [REDACTED] v. *Bush*, No. 04-CV-1166 (RJL), believe the motion is premature, pending access to their clients, and either oppose the motion or are not in a position to consent to the motion. As of the filing of this motion, counsel for petitioners in the other cases have not informed counsel for respondents of their final position regarding the motion.

BACKGROUND

On September 11, 2001, the al Qaeda terrorist network launched a vicious, coordinated attack on the United States, killing approximately 3,000 persons. In response, the President, as Commander-in-Chief and with Congressional authorization for the use of force, took steps to protect the Nation and prevent additional threats. Among these steps, the President dispatched the armed forces of the United States to Afghanistan to seek out and subdue the al Qaeda terrorist network and the Taliban regime that had supported and protected that network. In the course of that campaign -- which remains ongoing -- the United States and its allies have captured or taken control of a large number of individuals, many of whom are foreign nationals. As authorized by, *inter alia*, a Military Order of November 13, 2001 issued by the President,¹ the United States military has transferred a number of these alien enemy combatants for detention at the United States Naval Base at Guantanamo Bay, Cuba, an area within the sovereign territory of Cuba leased for an indefinite term by the United States, and over which the United States exercises exclusive control.² Approximately 600 such aliens are currently detained at Guantanamo Bay.

Pending before this Court are a number of cases brought on behalf of aliens detainees in the control of the Department of Defense and held at Guantanamo Bay. The cases commonly challenge the legality and conditions of the detention and confinement of the aliens on whose behalf the cases are brought. Of the cases of which respondents are now aware, before Judge Kollar-Kotelly are *Rasul v. Bush*, No. 02-CV-0299; [REDACTED] *v. United States*, No. 02-CV-0828;

¹ See 66 Fed. Reg. 57,831 (Nov. 16, 2001).

² See *Rasul v. Bush*, ___ U.S. ___, 124 S. Ct. 2686, 2690-93 (2004).

and [REDACTED] v. Bush, No. 02-CV-1130.³ Before Judge Huvelle is [REDACTED] v. Bush, No. 04-CV-1135. Before Judge Bates is [REDACTED] v. Bush, No. 04-CV-1136.⁴ Before Judge Collyer is [REDACTED] v. Bush, No. 04-CV-1137. Pending before Judge Leon are [REDACTED] v. Bush, No. 04-CV-1142, and [REDACTED] v. Bush, No. 04-CV-1166. Before Judge Roberts is [REDACTED] v. Bush, No. 04-CV-1144. Before Judge Walton is [REDACTED] v. Bush, No. 04-CV-1164.⁵ And before Judge Kennedy is [REDACTED] v. Bush, No. 04-CV-1194.

Each of these cases is a petition for habeas corpus, or, in one case, a complaint essentially constituting a habeas petition,⁶ filed by "next friends" on behalf of alien detainees at Guantanamo Bay. The cases include as respondents the President, the Secretary of Defense, the commander of Joint Task Force-GTMO responsible for Guantanamo Bay, and the commander of the particular

³ The Court initially dismissed these cases on jurisdictional grounds, *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002), and subsequent appeals led to the Supreme Court's *Rasul* decision.

⁴ A Guantanamo Bay detainee case dismissed by Judge Bates prior to the Supreme Court's decision in *Rasul* is, [REDACTED] v. Bush, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the [REDACTED] case before Judge Leon or the [REDACTED] case before Judge Bates.

⁵ [REDACTED] was recently transferred to this District from the Ninth Circuit. Unlike the petitions in the other pending cases, the [REDACTED] petition is not yet posted on the Court's ECF system; accordingly, a copy of the operative habeas petition in the case is attached as Exhibit A. The petition was initially filed by petitioners in the Ninth Circuit Court of Appeals, which transferred the petition for disposition by the district court for the Central District of California. See [REDACTED] v. Bush, 262 F. Supp. 2d 1064 (C.D. Cal. 2003). After the case was appealed, decided, then vacated by the Supreme Court, the Ninth Circuit transferred the case to the District of Columbia. See [REDACTED] v. Bush, ___ F.3d ___, 2004 WL 1534166 (July 8, 2004).

⁶ See *Rasul v. Bush*, 215 F. Supp. 2d 55, 62-64 (D.D.C. 2002) (noting that claims asserted in [REDACTED] case are "within the exclusive province of the writ of habeas corpus").

camp housing the detainees in Guantanamo Bay, and/or other government officials.⁷ Allegations in the petitions typically include that petitioners were apprehended in connection with hostilities involving al Qaeda, the Taliban, and their supporters or otherwise and were taken involuntarily to Guantanamo Bay;⁸ that petitioners are not enemy combatants and have not been informed of charges against them;⁹ that petitioners have been housed in inadequate housing, without meaningful access to families or counsel, and without opportunity to fully exercise their religious beliefs;¹⁰ and that petitioners have been forced to provide involuntary statements to interrogators.¹¹ Petitioners challenge their confinement, as well as the Military Order of

⁷ The [REDACTED] petition names the President, the Secretary of Defense, and "1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials." The [REDACTED] complaint also includes the United States as respondent-defendant.

⁸ See *Rasul* First Amended Petition ¶¶ 23-24, 27, 32; [REDACTED] Amend. Compl. ¶ 16; [REDACTED] Pet. ¶¶ 16-19, 21-22; [REDACTED] Pet. ¶¶ 6, 16-17, 19, 23-24; [REDACTED] Pet. ¶¶ 16, 21-22; *Begg* Pet. ¶¶ 22-26; [REDACTED] Pet. ¶¶ 28, 30, 32; [REDACTED] First Amend. Pet. ¶¶ 19-26, 27-28; [REDACTED] Amend. Pet. ¶ 2; [REDACTED] Pet. ¶¶ 16-18, 20; [REDACTED] Pet. ¶¶ 26, 31, 36, 40-41, 44, 46, 52, 58, 61.

⁹ See *Rasul* First Amended Petition ¶¶ 22, 29-30, 47; [REDACTED] Amend. Compl. ¶¶ 15, 18; [REDACTED] Pet. ¶¶ 15, 23-24, 44; [REDACTED] Pet. ¶¶ 13-15, 34; [REDACTED] Pet. ¶¶ 13, 30; *Begg* Pet. ¶¶ 17-18, 47, 52; [REDACTED] Pet. ¶¶ 25-26, 48; [REDACTED] First Amend. Pet. ¶¶ 15-16, 43; [REDACTED] Pet. ¶¶ 13-14, 25; [REDACTED] Pet. ¶¶ 23, 28, 33, 37, 59, 71, 73, 78.

¹⁰ See *Rasul* First Amended Petition ¶¶ 33, 49; [REDACTED] Amend. Compl. ¶¶ 28-29; [REDACTED] Pet. ¶¶ 27, 44-45; [REDACTED] Pet. ¶¶ 8, 34-35; [REDACTED] Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; [REDACTED] Pet. ¶¶ 48-49; [REDACTED] First Amend. Pet. ¶¶ 43-44; [REDACTED] Amend. Pet. ¶ 3; [REDACTED] Pet. ¶ 25; [REDACTED] Pet. ¶¶ 73-74.

¹¹ See *Rasul* First Amended Petition ¶ 32; [REDACTED] Pet. ¶¶ 26, 44; [REDACTED] Pet. ¶¶ 34-35; [REDACTED] Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; [REDACTED] Pet. ¶ 49; [REDACTED] First Amend. Pet. ¶ 44; [REDACTED] Pet. ¶ 25; [REDACTED] Pet. ¶ 73-74.

November 13, 2001, as contrary to the Constitution¹² and international treaties, including the Third and Fourth Geneva Conventions,¹³ the International Covenant on Civil and Political Rights and the American Declaration on the Rights and Duties of Man,¹⁴ as well as customary international law.¹⁵ Some of the petitions additionally assert claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Administrative Procedure Act (APA), 5 U.S.C. § 702-706.¹⁶ Petitioners commonly seek relief in the form of release,¹⁷ orders permitting access to counsel and barring interrogations, and declarations that petitioners' detention and the November 13, 2001 military order violate the Constitution, treaties, and laws of the United States, as well as

¹² Constitutional provisions relied upon typically include the Due Process Clause of the Fifth Amendment, the War Powers Clause, and Article I, section 9, regarding suspension of the Privilege of the Writ of Habeas Corpus. See *Rasul* First Amended Petition ¶¶ 52-54, 62-64, [REDACTED] Amend. Compl. ¶ 37, [REDACTED] Pet. ¶¶ 48-51, 59-61, [REDACTED] Pet. ¶¶ 39-41, 63-65; [REDACTED] Pet. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71, [REDACTED] Pet. ¶¶ 53-56, 77-79, [REDACTED] First Amend. Pet. ¶¶ 48-50, 72-74, [REDACTED] Amend. Pet. ¶ 3, [REDACTED] Pet. ¶¶ 33-35, 43-45; [REDACTED] Pet. ¶¶ 80-82, 90-92, 97.

¹³ See [REDACTED] Pet. ¶¶ 56-57, [REDACTED] Pet. ¶ 61, [REDACTED] Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; [REDACTED] Pet. ¶ 75, [REDACTED] First Amend. Pet. ¶ 70, [REDACTED] Amend. Pet. ¶ 3, [REDACTED] Pet. ¶ 41; [REDACTED] Pet. ¶ 88.

¹⁴ See [REDACTED] Pet. ¶¶ 43-45, [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60, [REDACTED] Pet. ¶¶ 57, 59, [REDACTED] First Amend. Pet. ¶¶ 52-54, [REDACTED] Pet. ¶¶ 37, 39, [REDACTED] Pet. ¶¶ 84-86.

¹⁵ See *Rasul* First Amended Petition ¶¶ 56-60, [REDACTED] Pet. ¶¶ 52-55; [REDACTED] Pet. ¶¶ 43-45, [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60, [REDACTED] Pet. ¶¶ 57, 59, [REDACTED] First Amend. Pet. ¶¶ 52-54, [REDACTED] Pet. ¶ 37, [REDACTED] Pet. ¶¶ 84-86.

¹⁶ See [REDACTED] Amend. Compl. ¶¶ 38-39; [REDACTED] Pet. ¶¶ 48, 53, 57, 67, [REDACTED] Pet. ¶¶ 44, 49, 53, 63; *Begg* Pet. ¶ 68, [REDACTED] Pet. ¶¶ 62, 67, 71, 81, [REDACTED] First Amend. Pet. ¶¶ 57, 62, 66, 76, [REDACTED] Pet. ¶ 94.

¹⁷ In [REDACTED] plaintiffs previously disclaimed seeking release, but the Court determined that plaintiffs "plainly challenge the lawfulness of their custody." *Rasul*, 215 F. Supp. 2d at 62.

international law.¹⁸ Indeed, except with regard to averments concerning the circumstances of petitioners' capture, attempts by family or friends to contact a detainee, and the occasional additional legal theory, the petitions in these cases are essentially the same. Furthermore, many of the cases involve the same litigation counsel or coordinating counsel.¹⁹

ARGUMENT

Federal Rule of Civil Procedure 42(a) provides that "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."²⁰

The Rule encourages consolidation where cases present questions of law or fact in common; thus, consolidation is appropriate "[i]f two cases appear to be of like nature and relative to the same question" and consolidation would promote judicial economy. See *Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491, 499 (C.D. Ill. 1983); *Judicial Watch, Inc. v.*

¹⁸ See *Rasul* First Amended Petition § VI; [REDACTED] Amend. Compl. (Prayer for Relief); [REDACTED] Pet. § V; [REDACTED] Pet. § V; [REDACTED] Pet. § V; *Begg* Pet. § V; [REDACTED] Pet. § V; [REDACTED] First Amend. Pet. § V; [REDACTED] Amend. Pet. ¶¶ 5-6; [REDACTED] Pet. § VI; [REDACTED] Pet. (Prayer for Relief).

¹⁹ For example, in a significant number of the cases petitioners are represented by counsel from the Center for Constitutional Rights. And the [REDACTED] and *Begg* cases were filed by the same law firm.

²⁰ Of course, petitions for a writ of habeas corpus are civil in nature, see *Hilton v. Braunskill*, 481 U.S. 770, 775-76 (1987), and, though different in respects from general civil litigation, habeas petitions are subject to the Federal Rules of Civil Procedure to the extent not inconsistent with statute. See FED. R. CIV. P. 81(a)(2); see also *Hilton*, 481 U.S. at 776 ("[w]here . . . the need is evident for principles to guide the conduct of habeas proceedings, it is entirely appropriate to use . . . [general civil] rules by analogy or otherwise.") (internal quotation marks and citation omitted). Thus, FED. R. CIV. P. 42 applies with respect to these cases.

United States Dep't of Energy, 207 F.R.D. 8, 8 (D.D.C. 2002) (Friedman, J.). A court has discretion to consolidate cases when it will "help it manage its caseload with economy of time and effort for itself, for counsel, and for litigants." *Mylan Pharmaceuticals Inc. v. Henney*, 94 F. Supp. 2d 36, 43 (D.D.C. 2000) (Urbina, J.) (internal quotation marks and citation omitted), *vacated on other grounds sub nom., Pharmachemie B.V. v. Barr Labs., Inc.*, 276 F.3d 627 (D.C. Cir. 2002). Consolidation relieves the Court and parties of the burden of duplicative filings and orders. *See New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 147-48 (D.D.C. 2002) (Kollar-Kotelly, J.). It does not, however, "merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another." *Id.* (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933)); *see also Midwest Community Council*, 98 F.R.D. at 499 (consolidation can economize time and effort "without circumscribing the opportunity for full litigation of all relevant claims").

The pending habeas petitions by Guantanamo Bay detainees involve not just "a common question of law or fact" as required by FED. R. CIV. P. 42; they involve a number of common questions of law and fact. Of course, the cases present common fact scenarios in that each and every petitioner is an alien who was apprehended in some manner overseas in connection with hostilities involving al Qaeda, the Taliban, and their supporters; is considered an enemy combatant; and is held outside of the United States and the territorial jurisdiction of United States courts at Guantanamo Bay, an area over which the government exercises exclusive jurisdiction but not ultimate sovereignty. Further, each and every petitioner challenges the nature of his confinement, allegedly without access to counsel or family and without a statement of charges against him.

Moreover, the cases present a number of common legal questions or issues, including whether petitioners' detention violates the Constitution, laws, or treaties cited in the petitions; whether the November 13, 2001 Military Order pursuant to which petitioners are detained violates the Constitution, laws, or treaties cited in the petitions; whether the treaties and international law principles cited by petitioners are enforceable in a habeas proceeding; potential challenges to and the significance of the Combatant Status Review Tribunal process to be afforded Guantanamo Bay detainees for review of their status as enemy combatants;²¹ and the nature and scope of judicial review of the military's determination of a detainee's status. In addition, the cases will share common questions on procedural matters such as the nature and extent of detainees' access to counsel; the scope and method of any inquiry, if appropriate, into confinement conditions; or the need, if any, for the physical presence of petitioners in court for their case.

Because these cases share such issues in common, consolidation will promote interests of efficiency and economy for both the Court and the parties. Judicial resources will be conserved with one judge considering and resolving, presumably once, the various common issues; multiple judges of the Court should not duplicate their efforts by dealing with common issues of this nature in multiple cases, thus devoting resources of multiple chambers to the same issues. Indeed, this Court initially consolidated, on motion of plaintiffs, the *Rasul* and *Al Odah* cases for the limited purpose of considering the Court's jurisdiction, an issue subsequently addressed by

²¹ The Department of Defense recently created a such a process for alien detainees at Guantanamo Bay. See Department of Defense website at:

<http://www.defenselink.mil/releases/2004/nr20040707-0992.html>

the Supreme Court. *See* Order of July 30, 2002 (in *Rasul* and [REDACTED]). As noted above, a number of common issues still must be resolved in these and the other cases, and consolidation is accordingly warranted.²²

Consolidation will also promote efficiency and economy to the extent the cases require the Court to have access to classified information. The fewer the number of Court chambers needing such access, the more quickly and efficiently appropriate security arrangements can be made for access to and storage of such information by or for the Court.

Furthermore, consolidation would serve to avoid the very real risk of inconsistent adjudications in these cases. *See International Paving Systems v. Van-Tulco, Inc.*, 806 F. Supp. 17, 22 (E.D.N.Y. 1992) (a primary purpose of consolidation is to avoid inconsistent results in separate actions). This factor takes on special significance given the serious Constitutional issues involving the President's war powers raised in these cases, as well as the possibility that these cases may ultimately require the presentation of highly classified materials. Even with respect to other common procedural or merits-related issues, inconsistent adjudications on such issues could result in the administration of conflicting rulings with respect to the Guantanamo Bay detainees, such that the detainees would be subject to inconsistent treatment that might be occasioned by such rulings. Consolidation would avoid such difficulties. In addition, consolidation similarly would avoid the potential for multiple interlocutory appeals that might

²² Also, to the extent that only certain cases involve certain claims, e.g., claims under the Alien Tort Statute, 28 U.S.C. § 1350, issues pertaining to those claims, such as whether such claims can be properly asserted in the cases, can be jointly resolved in the cases to which they pertain, as needed. The existence of such claims in some cases should not be a barrier to consolidation given the economies and conservation of judicial resources that consolidation would promote with respect to the common questions in those and the other cases.

arise from multiple rulings on the same issues from different judges, to the extent such appeals might be appropriate.

Consolidation also would not prejudice the parties.²³ With respect to respondents, consolidation would help alleviate the logistical burdens respondents face in responding to multiple habeas petitions before different judges on potentially divergent schedules. Efficiencies gained by consolidation would promote the speediest and most efficient resolution of these cases overall, and, thus, would be in the interest of all concerned, including petitioners. Further, should the cases reach a stage that might call for consideration of the circumstances of individual detainees or their separate claims, the Court can consider an appropriate response, including potential de-consolidation, at that time. *See New York v. Microsoft*, 209 F. Supp. 2d at 147-48; FED. R. CIV. P. 42(b).

Finally, the cases that are the subject of this motion are those of which respondents' counsel are now aware. Respondents request that the Court exercise its power to consolidate, *sua sponte*, any subsequently filed petitions with the pending cases. *See Mylan*, 94 F. Supp. 2d at 43 (noting the court's power to consolidate *sua sponte*); *Midwest Community Council*, 98 F.R.D. at 499-500 (same). For the reasons explained above, consolidation of future-filed similar petitions by Guantanamo Bay detainees is warranted.

CONCLUSION

For the reasons set forth above, the Court should grant respondents' motion and consolidate these cases and similar cases filed in the future.

²³ While prejudice to a party is a factor to be taken into account in considering consolidation, *see Judicial Watch*, 207 F. Supp. 2d at 8, a court can order consolidation over the objection of one, or even all, parties. *See Midwest Community Council*, 98 F.R.D. at 499-500.

Dated: July 23, 2004

Respectfully submitted,

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Moazzam Begg
Guantanamo Bay
Cuba

14 August 2004

Dear Moazzam

I am writing to introduce you to Gita Gutierrez (of the law firm Gibbons, Del Deo, Dolan, Griffinger, & Vecchione) who has obtained clearance to visit you. The conditions under which she is allowed to visit you are far from ideal. Any documents that she takes to the visit, including this letter, are subject to scrutiny by the authorities at Guantanamo Bay. This process is of course objectionable, and Gita is complying with it because, using the best judgement we can, it is of urgent importance that you see an outside and independent person who has your interests at heart, when you have been allowed no such contact for the past two and a half years.

I write this letter to reassure you that Gita is part of a legal team in the United States, who is acting with the blessing and on the instructions of your family and of me on behalf of your family. I set out something of the history of instruction of lawyers and actions on your behalf of which you may be completely unaware.

Immediately after you were unlawfully seized in Pakistan, your family initiated legal action on your behalf in Pakistan. The judges in Pakistan, on an application for *habeas corpus* (meaning that you should be immediately released from unlawful custody and produced to the court) ordered that you be so produced. Each relevant Ministry in Pakistan submitted an affidavit that it was not responsible for holding you, and was unaware of your whereabouts. Thereafter your father was informed that you were in Bagram Airbase in Afghanistan. For the next year, acting on your family's instructions, and jointly with them, I pressed the Foreign Office to assist in your release from unlawful detention. The Foreign Office stated to your father and to me in writing and in person that they had had no consular or welfare access to you and could provide us with no information whatsoever. They stated that the US would provide them with no information. We asked for the active assistance of the British Government in challenging the legality of your detention in Afghanistan.

Partners
Gareth Peirce
Fiona George
Nigel Leakin

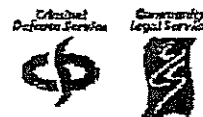
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Roxsein Zahir

Immigration Coreworkers
Irfan Canganin
Liz Farrell
Penny Gentles



Specialist Help Point

The firm is regulated by the Law Society in the conduct of investment business

Exhibit D29/08

We then learned that you had been moved to Guantanamo Bay, and since that time we have instructed lawyers in America to bring all possible proceedings on your behalf that could challenge the legality of your detention, including a petition to the Inter-American Committee for Human Rights which made strong recommendations in respect of the detention without trial of detainees in Guantanamo.

I instructed the Centre for Constitutional Rights in New York on your behalf to commence a challenge in the US courts. (They had already initiated *habeas corpus* proceedings in the courts in America in early 2002 on behalf of two other British residents, Shafiq Rasul and ██████████ from Tipton in the West Midlands, who had been detained in Guantanamo Bay since early 2002.) Their case finally reached the Supreme Court in April of this year, and judgement was given on 28th June 2004, finding that the United States Government had been wrong to argue as it had in the lower courts, that Guantanamo Bay was not subject to the supervisory jurisdiction of the US courts. (I instructed the lawyers at the Centre for Constitutional Rights to join your own case in that action, but it was considered by them that as that case was considerably advanced at that stage, and due to be heard by the Supreme Court, it was preferable for findings to be made in relation to the applicants already before the Supreme Court so that further delay not be brought about, and because any findings in relation to any detainee would have a parallel effect upon others.)

It is thus that you have now come to meet Gita. She is an attorney in New York, and following the Supreme Court case, her firm agreed to act with the Centre for Constitutional Rights to achieve a resolution of your position. It is important for you to know that the Prime Minister, Tony Blair, has already stated publicly in this country that you will be returned here. The Attorney General, Lord Goldsmith, has also stated publicly that the proposed military tribunals do not constitute a fair procedure that the United Kingdom can acknowledge as adequate. Gita will undoubtedly discuss with you further our own view in relation to the tribunals and the process under which you are held. That view is strongly held; that it is a process that does not comply in any way with any minimum international norms of basic human rights and due process.

We hope that by now, the beginning of the end of your ordeal has been achieved. It has been a great privilege for the past two and a half years, although one that has been extremely distressing and frustrating, to have worked with your family who have been tireless in campaigning for your release. Thanks to their efforts, there is hardly a person in this country who does not know the name of Moazzam Begg, and the injustice that Guantanamo Bay represents.

I apologise for the brevity of this letter, and its inadequacy in discussion of the further legal actions that are contemplated. I would like to make you aware however, that it having been stated by President Bush that the British detainees could be transferred any time that the British government agreed to take them, and the British government having stated that it would take them, that in the absence of this happening promptly, we propose to seek a judicial review in the courts in this country, of the continuing failure of such a transfer if it has not taken place shortly. Mr Blair has stated it is perfectly appropriate to make sure there are 'structures' in place in this country in order to satisfy the United States that there would be no risk if you were transferred. It is extremely difficult to know what these 'structures' might be but this is a matter that will

have to be pressed here in the courts if there is continuing failure to achieve your transfer and/or to achieve your release from unlawful custody. Our view, strongly held, is that in no circumstances is the unjust and unlawful 'process' ongoing in Guantanamo an appropriate one to engage in. That view, as I have indicated, is accepted by the senior legal advisor to the British Government, the Attorney General.

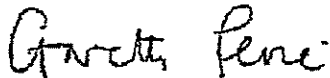
Lastly, I wish to emphasise that the whole process under which you were unlawfully kidnapped in Pakistan, as the Pakistan courts effectively acknowledged, i.e. subject to no lawful process of arrest, detention, deportation or extradition, contaminates in law the whole process that has followed thereafter, even had that process been, as it so clearly has not, a process that accorded with international minimum obligations. We have absolutely no doubt, having interviewed in detail some of those who have returned to the United Kingdom from Guantanamo Bay, and who were in US detention in Afghanistan, that you had been subjected to an unimaginable ordeal. Nothing in that process could possibly stand the scrutiny of a proper and independent court. In the absence of that, nothing lesser should be substituted nor agreed with.

I shall continue to act on your behalf and on behalf of your family, in every way that is possible until you are safely back here and with your family once again. Those actions are taken in cooperation with colleagues in the United States and it is thus I introduce Gita to you and to confirm that it is with the knowledge and blessing of your family here. I enclose a copy of a letter from Sally and a letter from your father confirming that instruction which has in fact been ongoing for the past year and a half. Those letters are included with this in order that you be reassured that Gita is introduced to you through ourselves. Lastly, I enclose a copy of a letter sent by the Foreign Office to your father on the 11th August.

We hope that your days in Guantanamo Bay are numbered, and are fast drawing to an end. We have considered it important that Gita, the first lawyer of the team to obtain clearance, comes to see you at the earliest opportunity. (A further application to see you by another lawyer, who is accredited as a lawyer in the US but is British by birth, Clive Stafford Smith, is also at the present time, under consideration. He too works with the Centre for Constitutional Rights and with us. Like Gita, he has met your father.) Whilst there may be restrictions upon what Gita is able to say as a result of the wholly wrong, in our view, conditions under which she is obliged to see you, we hope nevertheless that you will find the meeting of benefit. I look forward to seeing you at the earliest possible opportunity.

With best wishes.

Yours sincerely,



Gareth Peirce
Bimberg Peirce & Partners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG,)
Detainee, Camp Delta,)
Guantánamo Bay Naval Station)
Guantánamo Bay, Cuba;)
[REDACTED])
as Next Friend of MOAZZAM)

United Kingdom;)

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

[REDACTED])
United Kingdom;)

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 Moazzam Begg and [REDACTED] seek a Writ of Habeas Corpus. They act on their own behalf and through their Next Friends, Ms. [REDACTED] the wife of Moazzam Begg, and [REDACTED], the mother of [REDACTED].
2. Petitioner Moazzam Begg (“detained Petitioner”) is a citizen of the United Kingdom. Petitioner [REDACTED] is a citizen of the United Kingdom. Petitioner Moazzam Begg is being held virtually *incommunicado* in Respondents’ unlawful custody.
3. Petitioner [REDACTED] (“detained Petitioner”) is also a citizen of the United Kingdom. [REDACTED] resides in the United Kingdom. Petitioner [REDACTED] 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 Moazzam Begg is a citizen of the United Kingdom who is presently incarcerated and held in Respondents' unlawful custody in Camp Delta, Guantánamo. *See Exhibit A (Affidavit of [REDACTED]).*
8. Petitioner [REDACTED] is Moazzam's wife. She is a British 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 [REDACTED] and her counsel. *See id.*
10. Petitioner [REDACTED] 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 Feroz's mother. She resides in the United Kingdom. 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 [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. Begg 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 Moazzam Begg, 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. Begg began setting up the school. See Exhibit A. After

the events of September 11, 2001, Moazzam Begg 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, Mr. Begg and his family sought financial assistance from family and friends to flee to Pakistan. *See id.*

21. By November 2001, Moazzam Begg 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 Moazzam Begg 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 Moazzam Begg's family and his British 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 Moazzam Begg in Pakistani court. On March 1, 2002, the court ordered the Pakistan Interior Minister to produce Moazzam Begg before the court on March 7, 2002, but the Interior Minister refused to do so. On March 8, 2002, Moazzam Begg's lawyer, Mr. Abdur Rahman Saddiqui, submitted that the Pakistani Security Services ("ISI") and the United States Central Intelligence Agency ("CIA") had seized Moazzam Begg and that the ISI had interrogated him. Upon threat of sanctions, the court again ordered the Interior Minister to produce Moazzam Begg on March 14, 2002. Again, the Interior Minister did not do so. *See Exhibit B.*
24. On March 4, 2002, Moazzam Begg's father learned from an International Red Cross worker that Pakistani authorities had transferred custody of Moazzam Begg to United States authorities. According to the Red Cross worker, United States forces had taken Mr. Begg to Kandahar approximately 10 to 14 days earlier. *See Exhibit B.*
25. For some time, the United States held Moazzam Begg in detention at a United States military airbase in Bagram, Afghanistan. *See Exhibit.* Mr. Begg'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, Moazzam Begg 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, Mr. Begg's family was informed that United States officials had transferred him to Guantánamo Bay on February 6, 2003. See Exhibit B. Mr. Begg has been held in U.S. custody at Guantánamo since that time.

27. In July 2003, Respondent Bush announced that he had designated Mr. Begg an "enemy combatant" subject to the Executive Military Order of November 13, 2001. Mr. Begg has yet to be charged, provided access to counsel, or granted any other legal process. Mr. Begg's U.K. counsel has been informed that Mr. Begg has been held in solitary confinement since his designation in July 2003. See Exhibit B.

28. Both Moazzam Begg'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. Begg 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. Begg 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 [REDACTED] 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 [REDACTED] 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. [REDACTED] an "enemy combatant" subject to the Executive Military Order of November 13, 2001. Mr. [REDACTED] has yet to be charged, provided access to counsel, or granted any other legal process.

32. At the time of his detention, Mr. [REDACTED] 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 Begg was not initially taken into custody by American forces. It is unclear how Petitioner ██████ 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. Begg and Mr. [REDACTED]

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 Begg 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 Begg 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 [REDACTED] 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:

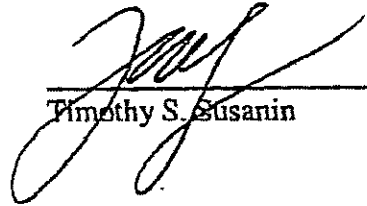
1. Grant Petitioner [REDACTED] Next Friend status, as Next Friend of Moazzam Begg;
2. Grant Petitioner [REDACTED] Next Friend status, as Next Friend of [REDACTED];
3. Order the detained Petitioners released from Respondents' unlawful custody;
4. Order Respondents immediately to allow counsel to meet 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.

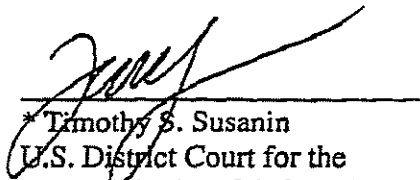
Executed on this 2nd day of July 2004.



Timothy S. Susarin

Respectfully submitted,

Counsel for Petitioners:



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

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Counsel for Petitioners

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

Dated: Newark, New Jersey
July 2, 2004



GUAN20041 02646

U. S. Department of Justice

Civil Division

Deputy Assistant Attorney General

Washington, D.C. 20530

August 31, 2004

Delivery by Hand

The Honorable Joyce Hens Green
Senior United States District Judge
United States Courthouse
333 Constitution Ave., NW, Room 2315
Washington, DC 20001

Re: Guantanamo Bay Detainee Cases

Dear Judge Green:

Pursuant to your request at last Friday's conference in these cases, this letter memorializes the schedule proposed by the government for the submission of factual returns containing the factual bases for the detention of petitioner-detainees. As we discussed on Friday, the submission of such factual returns will follow the assembly and finalization of an administrative record for each detainee in the on-going Combatant Status Review Tribunal ("CSRT") process being conducted by the military.^{1/} Where the CSRT process results in a conclusion that the detainee is properly held as an enemy combatant, that process will supply the complete factual record justifying that conclusion.

[Each of the petitioner-detainees has begun the CSRT process in some fashion, with some more advanced in the process than others.] In estimating a period for overall completion of the CSRT process for the petitioner-detainees in these cases, however, several caveats are in order. The process is in its early stages, and its timely completion depends not only on unforeseen contingencies and operations at Guantanamo Bay, but also could be affected by idiosyncratic aspects of the CSRT proceedings of individual detainees. With these appropriate caveats, as well as those mentioned at the conferences in these cases, the government anticipates completing CSRT

APPROVED BY
US FORCES



^{1/} Pursuant to your request, I am enclosing a copy of the July 29, 2004 Department of Defense directive implementing and describing the CSRT process.

SEP 14 2004

JTF/ JDOG S-2
GUANTANAMO BAY, CUBA

Exhibit D-d 2940

The Honorable Joyce Hens Green
August 31, 2004
Page 2

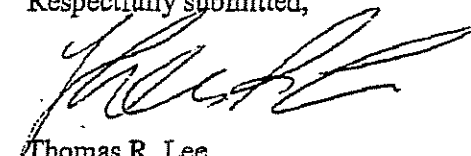
GUAN20041 026-46

proceedings for the majority of the current habeas petitioner-detainees² by end of September and for all of the current habeas petitioner-detainees by mid-October. Accordingly, the government intends to begin submitting administrative records finalized in the CSRT process, which will indicate the factual bases for the detention of petitioner-detainees to whom the records pertain, in the next two weeks. Such records will be submitted on a rolling basis, as CSRT proceedings for petitioner-detainees are completed. We anticipate filing the last of the factual returns by the week of October 18, 2004.³

This process will advance the parties' and the Court's interest in securing the most efficient and timely resolution of these cases. It accommodates the interests of counsel for petitioner-detainees in receiving in the coming weeks a complete statement of the factual basis for a detainee's status as an enemy combatant. And it does so without multiplying proceedings in these cases by requiring a partial explanation of the basis for detention that would doubtless have to be supplemented, and without diverting resources from the CSRT process in order to provide a partial factual return, a diversion that would necessarily slow down the ultimate completion of the CSRT process.

This schedule, of course, assumes coordinated treatment of these cases. To the extent one or more of the pending cases takes a different track requiring a reordering of particular detainees within the CSRT queue or the interruption of CSRT proceedings in order to facilitate a partial explanation of the factual basis for detention, the process inevitably will be disrupted and the proposed schedule may be impacted adversely.

Respectfully submitted,



Thomas R. Lee
Deputy Assistant Attorney General

On Behalf of Respondents

² As discussed at the August 27 conference, the government has been unable to confirm that it is detaining two of the petitioners in these cases. Counsel for these petitioners have been notified and asked to investigate the matter further or supply additional information regarding the petitioners.

³ To the extent that records submitted encompass both unclassified and classified documents, the government will file unclassified portions in the case to which the record pertains. Classified portions will be prepared for filing but will not actually be filed pending the entry of an appropriate protective order governing the use and maintenance of classified materials and, further, will not be shared with opposing counsel in a case until that counsel obtains an appropriate security clearance.

The Honorable Joyce Hens Green
August 31, 2004
Page 3

Enclosure

cc: Counsel for petitioners in:

(by electronic mail)

Rasul v. Bush, No. 02-CV-0299;
[REDACTED] *v. United States*, No. 02-CV-0828;
[REDACTED] *v. Bush*, No. 02-CV-1130;
[REDACTED] *v. Bush*, No. 04-CV-1135;
[REDACTED] *v. Bush*, No. 04-CV-1136;
Begg v. Bush, No. 04-CV-1137;
[REDACTED] *v. Bush*, No. 04-CV-1142;
[REDACTED] *v. Bush*, No. 04-CV-1144;
[REDACTED] *v. Bush*, No. 04-CV-1164;
[REDACTED] *v. Bush*, No. 04-CV-1166;
[REDACTED] *Bush*, No. 04-CV-1194;
[REDACTED] *v. Bush*, 04-CV-1227;
[REDACTED] *v. Bush*, No. 04-CV-1254

SEP 1 1 2004

RESPONSE TO TRIBUNAL PROCESS

My decision to participate in The Combatant Status Review Tribunals is based on necessity; and stems from the desire to challenge my detention - both past and present - at the hands of the U.S. Military. This is by no means an acquiescence of the process, which I believe is intrinsically inequitable due to the following:-

1. I have been informed by U.S. officials that the tribunal is supposed to be a battlefield determination, conducted normally within weeks of initial custody. It is three years late! And this is no battlefield!
2. I was not captured on a battlefield nor in a combat zone, nor in any such contiguous proximity. Rather, I was abducted from my residence - where I lived with my wife and young children - in Pakistan (Islamabad), at gunpoint, by U.S. and Pakistani "agents"; held captive at an unknown location for three weeks; and handed over to the U.S. military at an airport, on 21st February 2002. Thereafter I was taken to Kandahar; and later to Bagram. (See

* letter of Gareth Peirce; Affidavits of Gareth Peirce and [redacted]

30) In a letter dated 14th August 2004, my U.K. solicitor, Gareth Peirce states "...in the circumstances is the unjust and unlawful process ongoing in Guantanamo an appropriate one to engage in. That view... is accepted by the senior legal advisor to the British Government, the Attorney General." Also, "The Attorney General, Lord Goldsmith, has also stated publicly that the proposed Military Tribunals do not constitute a fair procedure that the U.K. can acknowledge as adequate." (See Habeas Petition p.15)

- (ii) Another leading British jurist describes the proposed military tribunals as "... a mockery of justice..." that "... derives from the jumps of the kangaroo..." (See *ibid*)
- (iii) According to Webster's dictionary (and law schools around the world) a tribunal is a law court; ... seat of judgement. Whether, or not, there is some confusion in terminology between "commissions" and "tribunals", it is clear that neither is bound by the principles of a congruent legal system.
- (iv) The tribunals are being held under the authority of the U.S. military; and by extension, in the name of the "coalition" (See CSRT notice to detainees). The U.K. is by far the most prominent in that very coalition, yet it has requested either "receive a fair trial" or that I be "returned to the U.K." Neither of the above processes conform to that request.
4. It is claimed that the tribunal does not seek to "punish", but, an unfavourable decision will result in continued detention, reinforcing the government's position in denying legal rights. In fact, though the CSRT notice states that the tribunal is a "separate" matter to habeas petitions, the government has sought the court's deferral of judgement in all such cases (see letter US DoJ-31.8.04), and aims to directly impact the decision with findings from a "factual basis" for detention. Ergo, it will attempt to maintain the position that detainees are "enemy aliens" unentitled to legal succor. The two processes are thus inextricably fused.

(cont'd... p2)

Page 2

(RESPONSE TO TRIBUNAL PROCESS)

5. The burden of proof is placed firmly on the detainee and thus I am denied access to ~~the~~ specific details pertaining to the "factual basis" of my detention. As it is my response to such ambiguous discovery must be based on intuition and perception of "classified" or "government information".
6. The above "information" and exigent allegations are themselves taken directly from a Statement - I believe, on 13th February 2003 - that I was made to sign, in effect, by coercion, and under duress. It is self-evident that the "unclassified" basis for detention is merely a summary of that statement. (See p. 8-10)
7. Upon initial transfer to the U.S. military, and subsequent detention in Kandahar, on 25th February 2002, I was issued with a card for EPOWs (Enemy Prisoners of War), which noted my personal details, and the ID number which I am allocated to this day: [REDACTED]. Whilst I do not claim EPOW status, - nor that of "illegal" or "enemy" combatant - This is another emphatic display of the unrelenting and inscrutable process that I have experienced. (Around six weeks later, these cards, that had been issued to hundreds of detainees, - many prior to my arrival - were later confiscated by the military. (Mr. Patrick Hamilton of CRC visited at that time, and I have requested his testimony, for confirmation).
8. The CSRT notice received on 13th July 2002 clearly states that detainees will be given a statement on the factual basis for detention. I have been given no such opportunity. Merely been permitted to copy notes from the original. Whilst I have had opportunities to review and address these bases. It is further evident demonstration of the absurdity contained in an already unfair process.

SRT
EXCESS

9. Despite having requested witness statements from several people - including from my father and wife - I have been informed that "no contact could be made" had yet, my father lives in the U.K. and is in constant and regular contact with the British Foreign Office, who sent a delegate last week, bringing mail from my wife and family. He was also advised via US authorities, that I had requested statements!
10. Page 2, Enclosure (3) (1) states that I would be informed several days before the actual commencement of the tribunal. I have received no such prior knowledge regarding a date and was informed abruptly at 0900 hrs, today (29th October 2004), that the tribunal would be proceeding at 1100 hrs! and whether I wished to attend!
11. According to Article (5) of the Geneva Convention, and Army Regulations 190-198 and Administrative Procedures the tribunal is severely deficient in:
- (i) Requirements of standard of proof (ii) preponderance of evidence (iii) detainee status determined as "enemy combatant" prior to tribunal (iv) offers no appeal to decision (v) does not offer POW status (vi) denies right to chosen counsel attendance (vii) is closed to public scrutiny (viii) is subject to change at the government's whims (ix) lacks neutral decision makers (x) does not offer reasonable access to witnesses.
12. I have reason to believe that the government may include any information in this document in 'commissions' proposed and yet am unable even to obtain copies for my own record.

TRAINING CAMPS IN AFGHANISTAN - A Background.

There has been a deliberate and erroneous effort by various sections of investigative agencies to distort the reality of "training camps" in the Muslim world - particularly but not exclusively, in Afghanistan - as collectively either under the umbrella of al-Qaeda, or closely "associated" by politico-religious objectives. This assumption is not only a gross misrepresentation of facts - whether by design, or by ignorance - but also, by definition, would absurdly seek the inclusion of tens of thousands of unrelated persons into the ranks of al-Qaeda - a relatively minuscule organisation.

The said camps were established mainly on the Pak-Afghan border during the 1980s, with the sole purpose to train resistance fighters (local, and foreign volunteers) - against occupation forces of the former Soviet Union. As it is commonly known, these camps, and their organisers, received the full blessing of the USA - and allied nations - in the form of covert training by Special Operations units; and the supply of Stinger (SAM) missiles, et al.

By 1991 the Soviets had withdrawn their forces from Afghan soil, but left in power was the pro-Soviet government of Mr. Najibullah. The camps continued, firstly in support of various Afghan factions to overthrow the government - which occurred in 1992, and after, were employed by the same factions in the internecine civil war that ensued.

Inspired by the momentous defeat of the Soviet armed forces, the camps attracted countless individuals from all over the Muslim world, that were themselves from countries or regions facing similar protracted occupation by foreign invasion or else under brutal repression by international "patriot" governments against sections of their own people. Many of the former have

also been designated "occupied territory" status under numerous U.N. Resolutions that call for withdrawal of the aggressor.

Whether occupied, or struggling against a despot for independence, several of these camps were set up by and for peoples in close geographical proximity to Afghanistan, hence you have:

Kashmiris (and their numerous groups) against Indian occupation;
Chechens (or Icherians) against Russian occupation; Iraqi Kurds against Saddam's Iraqi forces; Turkestani Uighurs against Chinese repression. Fighters also came from the Balkans - Bosnia & Herzegovina, and Kosovo to fight Serbian occupation.

The USA itself has been the foremost in criticizing and waging war against two of these regimes. To suggest then, that these camps have the motivation, aim and objective - as well as resources - to prepare against the USA in a terrorist-type war is the height of unintelligence - by the "intelligence" community that inadvertently diminishes and belittles the misery and desperation that has prompted a plethora of attendance to the camps in the first place. Implicating these camps; and all that attend, support and operate - or even play a peripheral role in that support - is akin to holding all the ^{U.S.} militia's (members, instructors, financiers, attendees - and leaflet distributors) to account for involvement with the Oklahoma bomber, Timothy McVeigh, because of the Michigan Militia that he trained with!

I don't know when al-Qaida formed as an organization, but I had never heard of UBH or it ~~until~~ ^{until} after the U.S. Embassy bombings in Africa, ⁽¹⁹⁹⁸⁾ for which they were accused. From what I know, UBH was in Sudan until 1997, or so, then left for Afghanistan, where he set up base to the Taliban capital, Kandahar. His group required allegiance, physical presence and commitment and had the most lengthy training camps in Afghanistan. Separate from all others.

RESPONSE TO "FACTUAL BASIS"

(a)
TRAINING

(3) The camp that I visited in late 1993 was run by the Jamat-e-Islami (Pakistan) - the third largest political party in that country. The camp was near the Pak-Afghan border in the north. It was responsible for training Kashmiri refugees in small arms and mountain tactics. The J.I. (Pak) also supported an Afghan faction of what later became the anti-Taliban Northern Alliance. Subsequently, the camp was closed down by the Taliban in late 1994.

My visit there lasted just over a week and did not include training; since minimum courses were for seven weeks - or more. My purpose was to observe and meet with other Pakistanis ~~from~~ (being a British Pakistani myself) that had fought the Soviets - and to learn about the Kashmiri dilemma. My absence from the U.K. did not exceed four weeks - which I could prove, if necessary, through family, employers' friends, etc.

But for argument's sake, if in 1993, I did receive training at this camp - I am at a loss to compute how that demonstrates membership of al-Qaida, or hostility towards the USA? Also, importantly, it is common knowledge that al-Qaida tactics employed against U.S.A. definitely involved hi-jacking, bombings and suicide missions. The training here - and in most camps that I have heard of pertained to small arms and guerilla methods, that did not aspire ~~to~~ to al-Qaida's goals. In fact, I had not even heard the name Osama Bin Laden, or Al Qaida until the late 90s! Any present or subsequent knowledge I have regarding them is in retrospect.

Further, it is alleged that I have "received ... training ... since 1993..." that means - I even sporadically - that I,

for around ten years, have been continuously training, (and yet, have not put that training to use in all that time), suggesting that I am either the world's most incompetent trainee - or amongst the most highly trained! But the only other time I visited a training camp was in early 1998 for a period of two or three days. This camp was close to the Afghan city of Jalalabad - being one amongst several in that location.

At the time I was residing in Pakistan - Peshawar - for a few months, and the journey was only two hours, or so, away. I went there to visit Jalalabad, swim in its lakes and view the camp; it was very small and poorly funded. It was training Kurdish locals from Northern Iraq in the use of crudely improvised incendiary grenades. (One of these trainees recounted how he had lost several family members during a chemical gas attack by Iraqi forces in the village of Halabja, in the 1980s). This camp in no way was part of al-Qaeda; its organisers were quite outspoken against al-Qaeda, and Taliban - for their own reasons - and it was consequently shut down in mid-1999, and didn't reopen.

Another camp, known as [REDACTED] was also in operation at the time - though I did not visit, nor know of its location. I learnt something of it through some people I met in Pakistan in 1998. It was not part of al-Qaeda at all - and was independent of any group or organisation. I believe both camps were unaffiliated to al-Qaeda. Their *raison d'être* was to help prepare against occupation forces and repressive regimes - as mentioned. During late '98 - mid '99 I forwarded a few hundred British pounds for both camps. I have never had reason to believe that any of these small amounts

2/14 (2)

(Cont'd ... P.2)

Page 3/11

a) were utilized in hostilities against the U.S.A.

RECRUITMENT

The process of recruitment is quite distinct in that it purports to expand membership via a certain procedure: requiring acceptance of rules, leadership, goals and so forth. I believe this is true for al-Qaida, Taliban, the U.S. military or the Alabama State Militia. However, the two camps that have mentioned - in [redacted], or [redacted] - did not have induction for recruits; membership of an organisation or group structure on offer. Most trainees would either return home - wiser for the experience; or, proceed, one way or another, to places like Chechnya, Kashmir or Kurdistan. Those who could afford to, would contribute some pecuniary donation in reciprocation.

In 1998, I was asked by an individual to provide him with a written reference for one of the camps. Later, he cancelled the request and did not collect it. Though I had intended to recommend others wishing to train at [redacted], no one actually was. (One British friend did go to a completely different camp - in Kashmir, Pakistan - through a mutual friend in that country. This was with a Pak/Kashmir group entirely unrelated to al-Qaida. In fact their own camps had been closed down by Taliban in 1994 - see p.2)

ENDING

I had also contemplated sending more funds to the camps between 98-99, but (a) finances dictated otherwise (b) the meagre amounts I had sent were not being forwarded (c) both the camps had closed down by mid-99. I have requested the witness statement of [redacted] (Libyan) whom I believe ran the [redacted] camp, and was taken into U.S. custody around December 2001. I wish his confirmation of (a) whether I attended

██████████ (b) Was ██████████ part of al-Qaida - or any other group?
(c) Did he receive funds from me for the camp? (d) Did I recruit, or recommend anyone to attend the camp?

(ASSOCIATED) FORCES. There is a tendency to stereotype al-Qaida's transience towards the U.S.A. being synonymous to previous combative engagements on the Muslim world. Whilst in U.S. custody in Bagram, I was held in cells entitled "Pentagon", "Somalia", "U.S.S. Cole", "World Trade Centre" and "Lebanon"! One cannot escape the argument that because al-Qaida have declared a holy war against the U.S.A, in turn the U.S. has regarded many Islamic peoples, nations and organisations with antipathy.

Thus incredible labelling has been used to include the anti-Taliban government of Iran, the former leadership of Iraq and its subsequent insurgents - and the Communist regime of North Korea, embracing a "ubiquitous" al-Qaida!

It is alleged that I am either a member of "Taliban", "al-Qaida" or "associated forces". Both the former are easily disproved. And though the latter remains enigmatic, I will state that membership of any group, party, force etc, particularly in the Islamic diaspora, requires an oath of allegiance to the leader of a named group, directly, whether written, verbal or even tacit. For example, it is common knowledge in Pakistan, that all such groups have structured systems which include actual card carrying membership.

I have never met or seen Osama bin Laden, nor offered my allegiance to any group - whether related to al-Qaida - or not: neither directly nor implicitly. I would like to be told exactly how and to whom I am putatively allied to by membership.

(2)
SUPPORT

No own families were evacuated from Afghanistan along with Kurdish and Chechen refugees into Pakistan when I eventually met up with them in early/mid November 2001. Two families stayed at my house, in Islamabad with us for a couple of days. They were only women and children. Her mentor later took them away to other locations. They were not part of al-Qaeda - their nationalities give some indication to that. Even for the sake of argument even if they were women and children of al-Qaeda members I cannot see by what stretch of the imagination accommodating women and children for a short period can be regarded as hostile to the USA - or demonstrate a membership of al-Qaeda.

It is stated that I "provided shelter... while al-Qaeda committed terrorist acts..." I am unaware of any terrorist acts committed against the U.S.A. during that particular time period, and certainly not by relatives of the said families. Perhaps my accusers could enlighten me.

Page 5/11
(6)

VISIT TO AFGHANISTAN

In late July, 2001 my family and I left the U.K. and arrived in the city of Kabul, Afghanistan. By early August we had acquired our own residence. We had planned to stay for at least a year - a concept that I had discussed at length with family and friends in the U.K., where we had been initiating a project to fund and expand an elementary school programme for refugee children, as well as locals.

The plan was to expand both boys and girls schools to incorporate secondary education - and a link to the Kabul University. We collected books, funds and stationery; together with computers, classroom furniture and playground apparatus.

I was very excited with the project after having received photographs of the school students; playgrounds; classrooms; school buses; outings, etc. I also received copies of curricula, syllabi and reports from teachers and the headmaster. (I have requested copies as evidence - from U.K.).

Though the girls' school was not authorised by the strict Taliban regime, I still enrolled my own daughter at the school; and my son at the boys - though he was still too young.

With the intent to begin teaching myself - after gaining local language proficiency - I gave the children brief assembly addresses; took them on outings to: the Kabul Zoo Trade Fair, the game of "Royal Buzkashi" (similar to Polo) and viewed several premises for expansion.

I had also helped initiate a project to build wells in the drought stricken regions of North West Afghanistan, and by the time of my arrival over 20 had been built - many sponsored from the U.K. I had worked for an aid organisation operating in Bosnia & Herzegovina in mid-90s; my aim in Afghanistan was to continue in social value and assistance to these less fortunate

than myself. (I have requested witness statements to confirm - from U.K.)

FRONTLINE (1)

Before leaving the U.K. I had conducted some research pertaining to the stability of the region: though a state of war existed between the parties, and intermittent fighting occurred in regions bordering Tajikistan, the cities and all surrounding areas had been quiet for over two years. An ambience of relative peace had begun - something absent for over twenty years: thousands were returning home; law and order (if somewhat austere) was prevalent in ninety percent of the country; reconstruction of buildings and roads was in earnest; foreign investment and the presence of international aid organisations of repute was prevalent. Peace negotiations between the factions were seemingly fertile, hence the frontline had been dormant for nearly two years.

My own naivety and geographical ignorance caused my surprise to learn the relatively close proximity of the frontline to Kabul City - around an hour's journey! But to gain reassurance of the inactivity first hand I decided to visit a section controlled by Pakistani fighters. The month was still August. I stayed for a few hours, mostly at the rear - some twenty minutes away from the actual front, where I was permitted to stay and observe for an hour, or so. Besides the occasional sporadic shelling - which I heard was rare - the place was calm and silent. Here I was told that peace talks would produce an ~~imminent~~ eminent end to the war and that Taliban were considering proposals for Northern Alliance surrender, and inclusion in regional government.

In early November I visited a town just north of Kabul and south of the front - name 'Chakdara' - where I was when, after leaving Kabul, to gain news, I learnt

page 6/11

(b)

about the collapse of the Taliban government in Kabul.

EVACUATION

After the US attacks in October my family and I evacuated to a town south of Kabul; closer to the Pakistani border - where I planned to escape to if the news of war persisted. We had spent much money, effort and sacrifice in establishing a home and the social projects and did not wish to abandon it all unless absolutely necessary. By early November, though rumours of war vacillated, the market places were still full, weddings taking place, several Western aid organisations were still there i.e. in Kabul - where I returned, from time to time, to check on our house and remove personal belongings to our new location. During our time in Kabul, and during the time in the southern town, a British family also stayed with us, for several weeks. I have requested their testimony through my family - as I believe they returned to the U.K. at the same time I evacuated to Pakistan - November 2001 - where I saw them last.

"FRONT-102"

As mentioned earlier, I returned to check on our house in Kabul a few times. The last time this happened I went to buy provisions and other household goods; then to enquire about the situation from some Pakistani aid workers, just outside the city. I had told my wife to expect me late that evening or early next day. But it was not to be: that same night it was rumoured that Kabul had fallen - without fighting - but it was now very dangerous - particularly for foreigners, as they would be bottled or

kidnapped, or killed. Thus no one dared to risk evacuation through Kabul, and I began an arduous journey over mountain roads, to what I thought would lead to my family. Instead we ended up completely lost.

During most of the night, eventually reaching a high road with a pandemonium of vehicles heading south.

I was distraught and devastated at not being able to reach my family, but knew that the other British family, and the Kurdish would not abandon them.

My own vehicle had been left in Kabul, and I had virtually only the clothes I wore with me. I kept asking people to take me back through Kabul - the only route I knew of to my family, but no one would agree. Eventually I got news that my family had been evacuated to the Pak border and that they would soon be safe in Pakistan. I arrived at Jalalabad the next morning; but there too things became unbelievable. It was said that highway robbers were abound now that there was no central authority, and foreigners were the target. The border crossings, though unsafe, were still open for women and children.

However we continued south, and eventually came to a point where the roads ended and mountains began.

We managed to hire a local guide to take us over the mountains into Pakistan. We were all Pakistani citizens - I a dual national. Interrogators have claimed my route was through Toru Bora. I do not know what the place was called, nor did I stay to find out. I did meet other people evacuating this route - some may have been fighters - or just armed locals, as is common there.

6/10/88 (2)

page 7
(19)

PROCESSED
ARMED

But there was no fighting or bombing whilst I was there. I did not see the caves and weapons stashes that have been mentioned, nor were any of us armed during this journey. (Though, back in August I had purchased a rifle and hand gun, - which had been left at home, and in the vehicle, respectively - and for which I had obtain licences. These were for my own protection and I did not discharge them on Tach frontlines, Lora Bora, or at any hostile engagement - since I was not present at such engagement to begin with).

(This I believe is the extent of the information taken by law enforcement and twisted to fit me into "enemy combatant" status).

Support
(19) (H)

I was reunited with my family in Islamabad, Pakistan, where we had requested financial help from family and friends in the U.K. I thanked the people that had helped my family, and in return offered them assistance by staying at my new residence in Pak.

For the third time, in as many months we began from scratch, making our home - that we had leased - and spent thousands of pounds, in purchasing needs for the empty house. So we were settled once more; my children in good local schools, my aunts and uncles in the same country, fairly closeby; income from our house rented out in the U.K., and the money collected for us by friends and family. I had to buy new wardrobes of clothes for us all - my family also had evacuated in a hasty and desperate manner. Almost all our belongings were left between our Kabul residence - or the evacuation house. Still, we had to thank God that we were all safely

united. I have never wept so much in my entire life as during those days in November. I hated myself for being insane enough to bring my family to Afghanistan. It still hurts just to recall the memory. Even these three years in custody bear no equal to how destroyed my heart felt at that fateful time: Why did I not evacuate much earlier on to Pakistan? Why did I leave to visit Kabul that day? Why didn't I take the risk to return through Kabul? Why did I come to Afghanistan???

But in His mercy God gave us three more months together. I furnished the house with every new possible appliance to ease my family's burden. I bought home lewish foods every day. The children were so happy; and apart from the abandoned projects in Pakistan, Afghanistan, we were glad to be there. The phone lines were normal; Satellite T.V. was prevalent, internet available. I am fluent in Urdu, and Islamabad is the cleanest city in Pak. I was going to work on translating ancient Arabic texts; and establishing a new route to continue the school in Afghanistan - but keeping my base in Islamabad - after the war had simmered down.

For Eid, the great Muslim festival, we were going to tour the lush valleys of the North East, and visit my Aunt in Karachi - where I had lived some months in my ~~years~~ ^{teens}. Happy days were ahead. My wife was expecting a child in June. Perhaps we'd return to the U.K. for the birth, and then come back. Then came the night of 31st January 2002. ~~At~~ Midnight. The door-bell rings. I answer, and guns are put to my head. I'm pushed in, see a tazer crackle and I am hooded. Shackles and flexcuffs finish the job. They carry me into a vehicle - and I never return home again.

SEIZURE

Page 8
(13)

I couldn't even say a word to my wife. How could this be happening again? What did I... what did they do to deserve this? Some agents evidently stayed at the house. This is not Britain or the USA - even though the USA don't particularly care what the Pakistanis do, as long as they reach their target. I'm it. If they harm my family in anyway.... I'm held for three weeks. I have an anxiety attack. They didn't even give the opportunity to put my shoes on! So I'm ~~bare~~ ^{bare} foot. A sympathetic guard gives me a destroyed pair of sandals. I thank him. I hear sounds of banging at night. Must be night shift works. Now I hear yells and words of pain. Must be torture. A man is taken from my room (The officer in charge liked me, so he put me in a waiting room - for three weeks!) But it was a palace compared to the dungeon cells that housed several other misables. I saw some of them when passing the bathroom. The cells were black, even with lights on! Damp, with dripping water and moldy walls, no view except the cage entrance - and a ~~beating~~ ^{beating} with rubber pipes to look forward to everyday. Some had been there three months - some six. Back on my palace an Afghan shares the room. Accused of embezzling money from Hajj pilgrims. The agent enters, shakes my hand asks about my welfare; then approaches the Afghan and punches him on the face repeatedly. Then pulls him down from the shoulders, and knees him in the groin at least fifteen times! He is told to stand up - and cannot sleep for three days. Agents says "I'll teach how to talk languages you've never heard of." And so he confesses - to whatever. I'm left alone again. He goes home for Eid. My "Eid" will be in Kandahar. My family have no idea of my whereabouts. No one's even

demanding a ransom!

I believed that my family had been divested of all the money on the estate, and I was left penniless and destitute, by the agents who took several items from our house. (I have sought an inventory list of all items and money seized from our house, on numerous occasions - but as usual, there is no response, nor accountability).

Thereafter followed an ordeal - in Kanchhar and Bayram U.S. detention facilities - that was to last until 7th February 1973 - some year in all. During this period I was forced to shave a bucket as a lecture, with several others - forcibly stripped naked and photographed in front of several people; forced to take communal showers in freezing cold water denied natural light and fresh food, for the duration.

INTERROGATION

Interrogation began in earnest from the outset; I had already witnessed the results of 'unsatisfactory' interrogations: sleep deprivation, racial and religious taunts; being chained to a door for hours - with a supporting plastic sanitary as a head; literal arm twisting and forced bowing and several physical beatings. Two of these beatings resulted in the deaths of two detainees in June and December of 1969. I was a witness to both, in some fashion. (In June this year interrogators from (C) approached me about these, producing pictures of both the victim and the victims to identify).

It was during the said time in ~~Iran~~ ^{Iran} around May, that I was subjected to a series of particularly harsh interviews by FBI agents - with other present. They made it clear from the beginning that

page 9/11
(6)

they would not accept my protestations.

All detainees were soon aware that one's treatment was based on accordance to his report with interrogators. Subsequently, it became clear that the guards were instructed to commence my "punishment" directly after one such interview: I was dragged into an isolation room, my hands shackled from behind, to my ankles, and a suffocating hood placed over my head. (I am an asthma sufferer - but my protests fell on deaf ears). I was struck around the head several times, then left in that manner, on the floor, for several hours, only to be interrogated again. This time they threatened to have me sent to Cairo (Egypt) to face torture, by Egyptian thugs in the ~~police~~ intelligence service. It was to include electric currents, severe beatings and sexual abuse - and "other" methods. This they said would vindicate U.S. personnel from actual involvement - merely observation. They told me that [redacted] (Libyan) had been sent there and "confessed" after two days. (But to what - I don't know). I spoke, later, with other detainees that had been sent to Egypt and questioned by U.S. intelligence, whilst I was in Bagram.

It was ~~to~~ now that I truly realised how their perceptions were formed: Muslim + training camp + Afghanistan = al-Qaida! That simple. And they needed results, to show superiors how far they were progressing. Sadly, their reasoning was most base, compounded by an ignorance in comprehending the nuances of the various groups and ideologies separate from al-Qaida, as well as the strikingly obvious differences of cultures, schools of religious thought and language. I was astounded when they told me to "stop using big words", or repeatedly spell names, terms or places that are commonly known, even to English.

Speakers!

Saying that I was "already convicted" - (an inadvertent truth) - they intimidated me with threats of arbitrary incarceration, denial of legal rights, consular or family access. They showed photographs of my children in front of me, claiming I would never see them again. Then, producing a mobile satellite phone I was told that my family were only a phone call away (from whom I'd had no news since my abduction four months earlier) - all I needed to do was tell them what they wanted to hear - whether about myself, or others. (And yet, the only crimes I've ever witnessed were perpetrated by U.S. personnel - as mentioned).

They said my only hope was through them: "plea bargain"; "state witness" and "witness protection" were all terms put forth. But even I knew that for that to occur there must be some relative crime. As I had no knowledge of such I would reasonably have to invent something! Of course they were well aware of that, and no court in the US would convict for crimes that do not exist. Finally, it was evident that they would require my assent to their own perceptions - which they, clearly, have presented in the statement that I signed - some seven months later, in Guantanamo.

By early June (2002) the interrogators had left Bagram, and I did not see them again until my arrival in camp Echo, Guantanamo Bay - with memories fresh of the threats of summary trials, life imprisonment and execution, coupled with ^a year long ordeal sustained in Afghanistan - ^{when} I was processed in "Delta

Page 10/11

(16)
STATEMENT

On 8th February 2003, ~~seven months later~~: On the night of 13th February they arrived at my cell, in camp Echo (where I have been held in isolation since that time) - along with two other CTF agents - producing documents, i.e. a statement for me to read and sign. My response was surprise, after all these months: I had been told that the system in Guantanamo was much better, and a resolution to my situation would be more apparent there. Thus I requested a lawyer, and a copy of the statement. Both were denied. They reiterated the previous threats, this time with less enticement, adding that I could only have a lawyer after I signed. (Unbeknownst to me, my U.K. lawyer had instructed the Centre for Constitutional Rights in New York, to initiate all legal proceedings on my behalf, on 10th February - just three days earlier! - (see Affidavit of Gareth Pierce, p. 5)). (I do not know why I was held in Afghanistan for such a long time; longer than any detainee that I know of. I witnessed four sets of detainees, over a year, sent off to Cuba. I can only assume that it was because Guantanamo would change the status quo with things like Consular access, habeas petitions and the like).

The statement was very poorly composed, and quite clearly written in haste - containing several omissions and blatant factual errors. Nonetheless, faced with the prospects so eloquently outlined by these characters I relented and agreed to sign. I was permitted to make a little adjustment, but expressed clearly that I was wholly dissatisfied with its contents as it coupled fact with fiction, decontextualisation, exaggeration and misrepresentation of the truth. I also expressed that

wished to delay signing until I had had ample time
to review a copy. This they rejected stressing that the
signature was required there and then. And thus I signed
This is the basis of the factual ~~detention~~ cause for
detention that I believe is the bulk of the "government
evidence" that is now deemed classified!

The unclassified "factual basis" that I have been
used, almost literally, the same wording, in a summarized
manner.

It maybe suggested that I received such treatment due
to an uncooperative attitude, or hostile nature - but nothing
could be further from the truth. I have maintained a
composed and compliant demeanour with all U.S. personnel,
throughout the past three years. Rather, my cooperation with
the said "investigators" produced the opposite effect: the more I
offered an insight and educated background of history, events,
politics and cultural differences - within various Islamic groups,
countries and movements - the more they were convinced of
my involvement. It did not occur to them that much of what
I told them was common knowledge in that region of the world,
or else could be easily learned from books, internet or newspapers,
if one has the inclination, and a penchant for credulity.

My attendance of the training camp - where 10's of 1000's
had trained, some extensively over the past 20 years - for a few days,
was regarded as ground breaking information! And the same in
relation to what message support I gave during a period of
12 months, or so.

page 111

CONCLUSION

A matter which truly elicits my astonishment pertains to the supposedly extraordinary lengths taken by the U.S. authorities — from coordinating my initial abduction, kidnap and subsequent interrogations — totalling over 250 interviews; holding me in the Bagram detention facility, for a year; placing me in isolation from all other detainees for two years, in Guantanamo; refusing to order a fair trial by peers — or repatriation to the U.K. (as officially requested); to the censoring of mail to ludicrous proportions (like children's letters); and the denial of all news, relative even to my own predicament (until recently) — all because of the capricious notion that I may have been prepared to fight in a frontline scenario! A situation in which it has not even been alleged that hostile encounters occurred — or even that U.S. troops were physically present — let alone combative engagements, or casualties!

And yet it is well known that the frontlines were manned by thousands of fighters — many from Pakistan — that fled to Pakistan after the U.S. invasion; but were neither pursued, sought after nor abducted from their homes.

To extrapolate such a prodigious status from my negligible — or rather, imaginary — role as an "enemy combatant" epitomises the extent of the levels of savagery which continue to plague the U.S. administration — subjecting hundreds of people to extraneous decisions in the process.

Clearly, I believe, I am victim to the deception

and assumption; through some of my past activities and associations however Iiterate, never at any time have been involved in bellicose acts against the USA - nor any country since the war: nor have I supported such acts or had direct knowledge of the same. - And I have never been a member of H. Q. or any other group (overt or subversive): though I have had sympathies and involvement with causes previously mentioned. Many opportunities have arisen to engage in hostilities against the USA, but it is precisely because I am a British citizen, understanding the special relations between the two countries, (and for my own family interests) that I would not have contemplated aggression against the USA.

I am a happily married man, with a wife and four young children at home - (one that was born some months after my abduction, that I've seen only in pictures). It has been nearly three years since I saw them last. We are not permitted any freedom of meaningful communication; the average letter arrives every six months, with a British delegate. The mail system remains abnormal. Our lives have been shattered; my children are growing up without their father during the most formative years of their life. No calls, news, regular mail are all denied - even children's letters are censored when formally does. And I would ask simply this: What did I ever do to the USA - or attempt to do?

I am not an enemy combatant, and never was.

It is time for the ordeal to end. Let me go home.

M. J. G.

VERZARA 1000 # [REDACTED]

Third Geneva Convention

From Wikipedia, the free encyclopedia.

The **Third Geneva Convention** regarded the treatment of prisoners of war. It was adopted in 1929 as an extension to the rights guaranteed by the Hague Convention of 1907. It was revised in 1949, with the modified form adopted on August 12, 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from April 21 to August 12, 1949, and entered into force on October 21, 1950.

Those entitled to prisoner of war status include:

- 4A(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, provided that they fulfil the following conditions:
 - (a) that of being commanded by a person responsible for his subordinates;
 - (b) that of having a fixed distinctive sign recognizable at a distance (although this is not required under the First Additional Protocol);
 - (c) that of carrying arms openly;
 - (d) that of conducting their operations in accordance with the laws and customs of war.
- 4A(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
- 4A(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

The exact definition of "lawful combatant" has been subject to a number of discussions in view of a number of public military conflicts in the 2000s, including the U.S. invasions of Afghanistan and Iraq. Because many of the people fighting do not have uniforms it is claimed that they do not display a "fixed distinctive sign recognisable at a distance" are not entitled to the protections of the Geneva Convention as they are not "lawful combatants" (see unlawful combatant). Problems with such distinctions include the status of snipers and special forces, who wear clothing such as Ghillie suits which are specifically intended to prevent identification of them at a distance and who seek to avoid being visible until the time of their attack, but who still want to be considered to be prisoners of war.

Contents

- 1 Exemptions
- 2 Excerpts
- 3 See also
- 4 External links

Exemptions

There exists exemptions to the Third Convention for "High Contracting Parties" to this convention. In the case of a conflict between a signatory and a non-signatory the signatory shall remain bound until such time as the non-signatory no longer acts under the strictures of the convention.

(Art 2) "...Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

Exhibit D-F 2968

agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.
- (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.
- (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
- (4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
- (5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
- (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention: (1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Art. 5. The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Art. 6. In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art. 7. Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art. 8. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Art. 9. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Art. 10. The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

Art. 11. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a

view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

Part II. General Protection of Prisoners of War

Art. 12. Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Art. 13. Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Art. 14. Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Art. 15. The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Art. 16. Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Part III. Captivity

Section 1. Beginning of Captivity

Art. 17. Every prisoner of war, when questioned on the subject, is bound to give only his surname,

first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

Art. 18. All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

Art. 19. Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

Art. 20. The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

Section II. Internment of Prisoners of War

Chapter I. General Observations

Art. 21. The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Art. 22. Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Art. 23. No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

Art. 24. Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment

as in other camps.

Chapter II. Quarters, Food and Clothing of Prisoners of War

Art. 25. Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Art. 26. The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Art. 27. Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Art. 28. Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III. Hygiene and Medical Attention

Art. 29. The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Art. 30. Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Art. 31. Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war.

Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Art. 32. Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV. Medical Personnel and Chaplains Retained to Assist Prisoners of War

Art. 33. Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V. Religious, Intellectual and Physical Activities

Art. 34. Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Art. 35. Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Art. 36. Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Art. 37. When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Art. 38. While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

Chapter VI. Discipline

Art. 39. Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Art. 40: The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Art. 41. In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Art. 42. The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

Chapter VII. Rank of Prisoners of War

Art. 43. Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Art. 44. Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Art. 45. Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII. Transfer of Prisoners of War after their Arrival in Camp

Art. 46. The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Art. 47. Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

Art. 48. In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

Section III. Labour of Prisoners of War

Art. 49. The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Art. 50. Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

(a) agriculture; (b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose; (c) transport and handling of stores which are not military in character or purpose; (d) commercial business, and arts and crafts; (e) domestic service; (f) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Art. 51. Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Art. 52. Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Art. 53. The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

Art. 54. The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Art. 55. The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Art. 56. The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his

camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Art. 57. The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

Section IV. Financial Resources of Prisoners of War

Art. 58. Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Art. 59. Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Art. 60. The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I : Prisoners ranking below sergeants: eight Swiss francs.

Category II : Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV : Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V : General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above; (b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own

armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Art. 61. The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Art. 62. Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Art. 63. Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Art. 64 The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Art. 65. Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Art. 66. On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Art. 67. Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Art. 68. Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

Section V. Relations of Prisoners of War With the Exterior

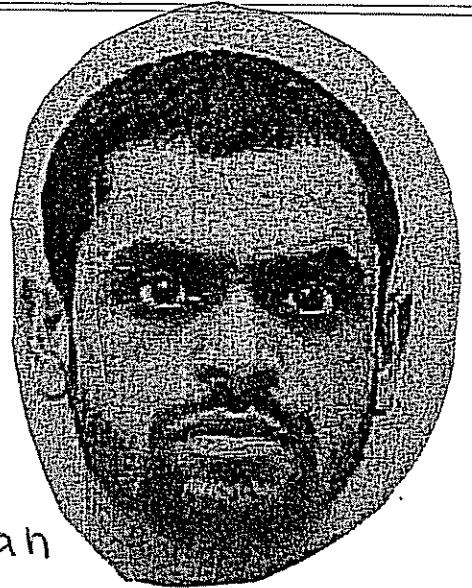
Art. 69. Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Art. 70. Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Art. 71. Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to

تشرين الثاني (٢٠٠٤)

لم أرى هذا الرجل من قبل



شهادة

I Have not seen this man before.

[Redacted]

I Certify that the above is the correct translation.

[Redacted]

[Redacted], OL-13

I certify that the detainee, ISN [Redacted] stated the above and could not write his signature. Detainee was shown photo of [Redacted] ISN [Redacted]

[Redacted]

[Redacted] LT Col, USAFR

Personal Representative,
10 NOV 2004

MEMO FOR RECORD
TO: PR #44
FROM: TRIBUNAL # 6

24 September 2004

SUBJECT: ISN # [REDACTED] Request For Witnesses/Documents

The Tribunal reviewed the request from Detainee # [REDACTED] to provide a definition of Al Qaida, list of associated organizations, contact a fellow refugee identified as Shahid Abassian through the Rashid Trust Charity organization and a colleague identified as Tahir Ashraf. Detainee # [REDACTED] said the request for witness Shahid Abassian would verify that he was fleeing the war and he was not armed and aiding any organization. Detainee # [REDACTED] said the request for Tahir Ashraf would verify that he spent the preponderance of his time in Kabul building one school and teaching at another.

The Tribunal has identified an unclassified definition of Al Qaida and a list of associated organizations to provide to the detainee. You are requested to schedule a follow-up interview with the detainee to provide the unclassified definition of Al Qaida, the list of associated organizations, and request he identify the address or telephone number(s) of Shahid Abassian and the Rashid Trust Charity organization. The request to contact Shahid Abassian may be relevant, but without his address or the address of the Rashid Trust Charity organization the request is deemed not reasonably available. The request to contact Tahir Ashraf is relevant, reasonable and approved. All relevant and reasonable requests are forwarded to the State Department to make contact with the Pakistani and United Kingdom Governments and inform them of Detainee's # [REDACTED] request.

[REDACTED]
COL, USA,
Tribunal President

2984)
Enclosure (5)
1 of 5

MEMO FOR RECORD
TO: PR #44
FROM: TRIBUNAL # 7

11 October 2004

SUBJECT: ISN # [REDACTED] Request For Witnesses/Documents

The Tribunal reviewed the additional requests from Detainee # [REDACTED] as identified on his follow-up Detainee Election Form. The follow-up election form requested a polygraph, a statement from his lawyer, the following witnesses or statements from the following witnesses: his wife, [REDACTED] and his wife, [REDACTED] possibly a detainee, Abdul Walid, Abu Ukashah, GTMO Sudanese Detainee, Patrick Hamilton of the International Committee of the Red Cross (ICRC) and [REDACTED] US Army.

The request for a polygraph is not the responsibility of the Tribunal. The Tribunal is not authorized to conduct polygraphs. The JTF office considers the request for a polygraph. However, the Tribunal will consider the results of the polygraph if it is submitted to the Tribunal.

Contact was made with the detainee's lawyer by telephone by our Asst. Legal Advisor on 8 October 2004. The detainee's lawyer will determine the availability of the documents the detainee requested and will submit the documents to the tribunal. This request is deemed relevant, reasonably available and approved.

Detainee # [REDACTED] indicates the following witnesses may be reached through his father, Mr. [REDACTED] Phone [REDACTED] his wife, [REDACTED] and wife, and Abdul Walid. These witnesses will testify that they were with the detainee in Afghanistan and can rebut allegations of the government. This request is deemed relevant, reasonably available and approved.

Abu Ukashah can be found in Pakistan. He lives in Phase II, Hayatabad, Peshewar, PK. The detainee says the Karkhana Police station knows his address. This witness can testify he was with the detainee in Afghanistan and that the government's allegations are false. This request is deemed relevant, reasonably available and approved.

The Sudanese detainee can testify that the detainee did not attend an Al Qaida or Taliban training camp. The witness may possibly be Detainee # [REDACTED]. A written statement from this detainee is deemed reasonably available and approved.

Patrick Hamilton of the ICRC, located in the United Kingdom can testify that Detainee # [REDACTED] has been previously classified as a POW in the US detention facility next to the Kandahar airport. This request is deemed relevant, reasonably available and approved.

[REDACTED] United States Army, can testify that Detainee # [REDACTED] has been previously classified as a POW in the US run detention facility next to the Kandahar airport. This request is deemed relevant, reasonably available and approved.

[REDACTED]
COL, USA,
Tribunal President

2985

2 of 5

MEMO FOR RECORD
TO: PR #44
FROM: TRIBUNAL # 7

14 October 2004

SUBJECT: ISN # [REDACTED] Request For Witnesses/Documents

The Tribunal received further legal advise on Detainee # [REDACTED] requests for Patrick Hamilton of the International Committee of the Red Cross (ICRC) and [REDACTED] US Army. Patrick Hamilton of the ICRC and [REDACTED] United States Army, can testify that Detainee # [REDACTED] has been previously classified as a POW in the US detention facility next to the Kandahar airport.

Due to the limited scope of this Tribunal, the testimony of Patrick Hamilton of the ICRC and [REDACTED] United States Army, is deemed not relevant in determining whether or not Detainee # [REDACTED] is properly classified as an Enemy Combatant. This request for testimony from Patrick Hamilton and [REDACTED] is denied.

However, if the Tribunal determines Detainee # [REDACTED] to be properly classified as an Enemy Combatant, this information could be determined to be relevant during the Administrative Review Board and should be reconsidered at that time.

[REDACTED]
COL, USA,
Tribunal President

AL QAEDA

Al Qaeda is a radical Sunni Muslim umbrella organization established to recruit young Muslims into the Afghani Mujahideen and is aimed to establish Islamist states throughout the world, overthrow 'un-Islamic regimes' expel Us soldiers and Western influence from the Gulf, and capture Jerusalem as a Muslim city.

NORTHERN ALLIANCE AND THE US COALITION

1. The anti-Taliban Northern Alliance was made up of forces that allied against the Taliban after the Taliban took control of Afghanistan in 1996.
2. These are the forces allied with the US and coalition during Operation Enduring Freedom, which began on 07 Oct 2001, four weeks after the airline bombing of the world trade centers (9-11).
3. Northern Alliance Forces include the following between 1996 and present:
 - Tajik leader, former Afghan president *Burhanuddin Rabbani*, created *Jamiat-I Islami* (Islamic Society)
 - *Ismail Khan*, Tajik forces in the west
 - Commander *Ahmad Shah Masoud*, Rabbani's Mujahadeen commander, (Built *Shura-yi-Nazar-I Shamali* – Supervisory Council of the North-SCN)
 - SCN- coordinated *Jamiat commanders*, they developed into Masood's Islamic Army, *Urdu-yi Islami*.
 - *General Abdul Rashid Dostum*, Sunni Muslim Uzbeks, in Mazar-I Sharif, the *Junbish-1 Milli-yi Islami* (National Islamic Movement)
 - *Hazara Shiites*- Central Afghanistan, tribal factions, Iranian supported

Personal Representative Review of the Record of Proceedings

I acknowledge that on 17 November 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

17 NOV 04
Date

[REDACTED]
Signature

ISN # [REDACTED]
Enclosure (6)

Comments on Tribunal Results for ISN [REDACTED]

The detainee requested witnesses who would testify that he was designated a Prisoner of War (POW) during his detention at Bagram Afghanistan by the United States military. Mr Patrick Hamilton of the International Committee of the Red Cross and Army Sergeant [REDACTED] were requested by the detainee to testify that the he wore a United States military supplied POW card around his neck for over 2 months at the Bagram detention facility.

The categories of enemy combatant and POW are mutually exclusive. Thus were the assertion of the detainee true, this would have been compelling evidence supplied by the United States. The fact that the Tribunal was instructed to assume that the detainee is an enemy combatant does not provide a means of denying the detainee the right to rebut the presumption.

The Tribunal incorrectly ruled the above witnesses not relevant because they were not disputing that the detainee aided the Taliban or al Qaida. POW status would not have precluded these facts from being true.

The request of the detainee for a polygraph examination was not allowed based on the incorrect conclusion that the Tribunal did not have the authority to order such a test because no polygraph examiners are assigned to the Tribunal process. There is nothing in the convening order that states this. Further, the comments on the validity of polygraph tests in the Tribunal decision are inappropriate given that none of the members are polygraph experts. If the Tribunal members did consult a polygraph expert before reaching this conclusion, that information should have been included in the government evidence. The fact that the convening order allows wide latitude in admitting evidence such as hearsay testimony indicates that excluding this evidence runs contrary to the intent of the convening order.

The above-mentioned failure to view relevant testimony denied this detainee adequate due process as outlined in the order of the convening authority.

17 NOV 04
Date

[REDACTED]
Lieutenant Colonel, USAFR
Personal Representative