

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ZAHAR OMAR HAMIS BIN HAMDOUN,)

Petitioner,)

v.)

Civil Action No. 05-CV-0280 (CKK)

GEORGE W. BUSH, *et al.*,)

Respondents.)

DECLARATION OF TERESA A. McPALMER

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

1. I am the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants at U.S. Naval Base Guantanamo Bay, Cuba (OARDEC). In that capacity I am an advisor to the Director, Combatant Status Review Tribunals.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Zahar Omar Hamis Bin Hamdoun that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or were redacted by an OARDEC staff member. This staff member also redacted information that would personally identify certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 1 August 2005

Teresa A. McPalmer
Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 091

10 JAN 2005

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From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR
DETAINEE ISN # 576**

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 #576 meets the criteria for designation as an Enemy Combatant, in accordance with references (a) and (b).
2. This case is now considered final and the detainee will be scheduled for an Administrative Review Board.

J. M. McGARRAH
RADM, CEC, USN

Distribution:

NSC (Mr. John Bellinger)
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11 Jan 05

MEMORANDUM

From: Assistant Legal Advisor
To: Director, Combatant Status Review Tribunal
Via: Legal Advisor *JRC*

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN #576

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 #18 of 1 Nov 2004
(2) Record of Tribunal Proceedings

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

a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate. The detainee affirmatively declined to attend, and affirmatively declined to participate in the Tribunal. In addition, the detainee did not provide the Personal Representative with any statements to present on his behalf. Exhibit D-b is an Affidavit from the Personal Representative to the Tribunal, which sets forth the detainee's election of these rights. Therefore, the Tribunal was held *in absentia* outside Guantanamo Bay, Cuba with a new Personal Representative that thoroughly reviewed and familiarized himself with the detainee's file. This Personal Representative has the same access to information, evidence and witnesses as the Personal Representative in Guantanamo Bay, Cuba.

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

c. The Tribunal substantially complied with all provisions of references (a) and (b). Note that some information in exhibits R-6, R-7, R-8, R-9 and R-10 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant.

d. The detainee did not request that any witnesses be produced. However, the detainee did request that the Personal Representative produce evidence on his behalf. The detainee, specifically, requested that the personal representative in Guantanamo Bay, Cuba obtain a certificate from a religious institute to demonstrate the detainee's intent to teach the Koran in Afghanistan. Although the Personal Representative was not able to obtain the specific certificate requested by the detainee, the Tribunal found that the

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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # 576

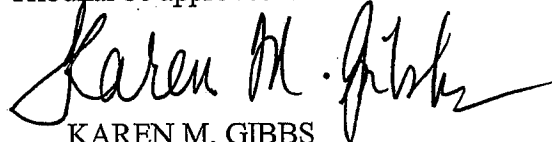
Personal Representative made a "bona fide" attempt to obtain that evidence, and did obtain substitute evidence that was a certificate that noted the detainee's attendance in a religious institute. Notwithstanding, the Tribunal held that neither the specific evidence requested, nor that produced were relevant to the determination because neither covered the period of time that the subject combatant activities occurred. In short, the evidence requested would not support a determination that the detainee is not an enemy combatant. Therefore, the Personal Representative's inability to obtain the specific documentary evidence requested did not affect the decision made by the Tribunal.

e. The Tribunal's decision that detainee #576 is properly classified as an enemy combatant was unanimous.

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

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

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



KAREN M. GIBBS
CDR, JAGC, USNR



Department of Defense
Director, Combatant Status Review Tribunals

1 Nov 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #18

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

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

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

MEMBERS:

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

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

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

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

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) and (3).

(U) TRIBUNAL PANEL: #18

(U) ISN#: 576

Ref: (a) (U) Convening Order for Tribunal #18 of 1 Nov 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

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

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).

2. (U) On 10 Nov 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #576 is properly designated as an enemy combatant as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, al Qaida and participated in military operations against the United States or its coalition partners, as more fully discussed in the enclosures.

4. (U) Enclosure (1) provides an unclassified account of the basis for the Tribunal's decision. A detailed account of the evidence considered by the Tribunal and its findings of fact are contained in enclosures (1) and (2).


Colonel, USAF
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: #18
ISN #: 576

1. Introduction

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

2. Synopsis of Proceedings

The unclassified summary of evidence presented to the Tribunal by the Recorder indicated that the detainee is a member of, or affiliated with al Qaida and participated in military operations against the United States or its coalition partners. The detainee did not participate in the Tribunal process but did request that additional evidence be produced.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-22.
- b. Exhibits: D-a through D-d.

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

The detainee did not request any witnesses; no rulings were required.

The detainee requested that the Personal Representative (PR) at Guantanamo submit evidence on his behalf that proves he has a certificate from a religious institute that will show his intent to go to Afghanistan to teach the Koran. The Guantanamo PR made a bona fide attempt to obtain this certificate, but was not able to obtain it. However, the Guantanamo PR did obtain Exhibit D-d from the Joint Detainee Information Management System, which notes the detainee's attendance at a religious institute. The Tribunal ruled that Exhibit D-d and the requested certificate, even if available, were not

relevant because they did not cover the period of time during which the Detainee's combatant activities allegedly occurred.

5. Discussion of Unclassified Evidence

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

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

b. Since the detainee did not participate in the Tribunal process, the Tribunal relied heavily on classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

The Legal Advisor was asked whether the tribunal should reclassify the unclassified portion of the proceedings due to the Recorder mentioning classified information during the reading of the unclassified summary. The Legal Advisor opined that the entire session should be reclassified. Therefore, the Tribunal ordered the recorder to reclassify the entire session "SECRET/NOFORN", and to so mark the tape.

7. Conclusions of the Tribunal

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

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings. The Personal Representative (PR) advised the detainee of his rights and read the unclassified summary of the evidence to him. The detainee affirmatively declined to participate in the Tribunal.
- c. The detainee is properly classified as an enemy combatant and is a member of, or affiliated with, al Qaida.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, USAF

Tribunal President

DETAINEE ELECTION FORMDate: 01-Nov-04Start Time: 0830End Time: 1000ISN#: 576Personal Representative: 
(Name/Rank)Translator Required? YESLanguage? ARABICCSRT Procedure Read to Detainee or Written Copy Read by Detainee? YESDetainee Election:

- ☐ Wants to Participate in Tribunal
- ☒ Affirmatively Declines to Participate in Tribunal
- ☐ Uncooperative or Unresponsive

Personal Representative Comments:Detainee has elected NOT to participate in Tribunals. He has NO witness request:The detainee has requested that the PR submit evidence on his behalf that proves he has a certificate from a religious institute that will show intent that he went to AFG to teach the KoranPersonal Representative: 

LCDR. USN Exhibit: D-A

An initial interview was held with detainee **HAMDOUN, Zahar Omar Hamis Bin (ISN-576)** on 02-Nov-04.

[REDACTED] The detainee spoke the language of the linguist and understood the linguist.

[REDACTED] The detainee was reminded that the U.S. government established a Combat Status Review Tribunal to review his designation as an enemy combatant.

[REDACTED] The detainee was advised that I am not an attorney nor his advocate, but will assist him in the CSRT process if he chooses to participate.

[REDACTED] The detainee was advised that a tribunal of military officers will review his enemy combatant designation even if he chooses not to participate.

[REDACTED] The detainee was advised that he will have an opportunity to speak on his own behalf and call witnesses and ask questions of the witnesses and tribunal members.

[REDACTED] The detainee was advised that he may choose not to appear at the Tribunal hearing or participate in the CSRT process, but that I could present information on his behalf.

[REDACTED] The detainee confirmed that he understood the process as explained to him and did not have any questions.

[REDACTED] The detainee affirmatively chose not to participate in the CSRT process, but does want me to present information on his behalf.

I affirm that the information above is complete and accurate to the best of my knowledge.

[REDACTED]
LCDR, NC, USN

02 NOV 04
Date

Exhibit 2D-b

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (14 October 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – HAMDOUN, Zahar Omar Hamis Bin

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 the detainee is associated with al Qaida.

The detainee is associated with al Qaida:

1. The detainee arrived in Afghanistan in the fall of 1999 from Yemen via Pakistan.
 2. The detainee trained at the [REDACTED] camp.
 3. The detainee completed training on the AK-47 rifle, M-16 rifle, rocket-propelled grenade launcher, PK pistol, and hand grenades.
 4. The detainee attended a lecture by Usama Bin Laden.
 5. The detainee stayed at multiple safehouses.
 6. The detainee was arrested in a safehouse.
 7. During detainee's arrest, two flotation devices, with explosive residue on them, were discover.
4. The detainee has the opportunity to contest his designation as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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R-1

Memorandum



To : Department of Defense Date 10/13/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT

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

Subject: REQUEST FOR REDACTION OF
NATIONAL SECURITY INFORMATION
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked¹. The FBI makes this request on the basis that said information relates to the national security of the United States². Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

CERTIFICATION THAT REDACTED INFORMATION DOES NOT SUPPORT A DETERMINATION THAT THE DETAINEE IS NOT AN ENEMY COMBATANT

The FBI certifies the aforementioned redaction contains no information that would support a determination that the detainee is not an enemy combatant.

The following documents relative to ISN 576 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 05/09/2002
FD-302 dated 07/08/2002

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

²See Executive Order 12958

Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 10/13/2004

If you need additional assistance, please contact
Asst. Gen. Counsel [REDACTED],

[REDACTED] or Intelligence Analyst

[REDACTED]
Intelligence Analyst [REDACTED]

MEMORANDUM

02 November 2004

From: [REDACTED] LCDR, NC, USN, PR-79
To: Tribunal Members ICO ISN-576

Subj: INITIAL INTERVIEW NOTES ICO ISN-576

1. The following statement was dictated on 02NOV04 from ISN-576 to PR-79 regarding the Summary of Evidence points 3-A-1 through 3-A-7.

3-A-1: Proximally 1999, in the fall, from Yemen to PK to AFG. Went to AFG for missionary work well before the 2001 World Trade Center crashes to teach to Koran. I had a passport and papers with me when I was captured and I had my certificate from the Hader Moot Institute for Religious Studies in Hadarmoot City, Mukala, Yemen.

3-A-2&3: I did not attend the camp, I said that I did because the pressure from PK interrogators. I never trained on any of these weapons, or with hand-grenades. I never attended a lecture by Usama BinLaden. The PK military and PK civilians in the prison pressured me to say these words. They threatened me if I did not say these words they were going to torture me. The PK said if you say you are going for mission work "Aldawa" and that your purpose was just for Dawa, the Americans will have "doubts" about you and will pressure and torture you. They will say you have a relationship with 9-11. But if you say you went to train in the [REDACTED] camp and trained on these weapons, the Americans will believe you. Also the PK military said if I told them I attended Osama BinLadens lecture the Americans would not torture me and would send me back to my country because the Americans were only interested in 9-11 issues and anyone associated with 9-11. The PK military told me that the Americans had no problems with the people who trained there because a lot of PK people fought with the Taliban and there is no problem with that. Therefore we had to say all of this.

3-A-5&6: When Kabul surrendered, there was too much commotion so we found a car belonging to an Arab that was leaving Kabul and we went with him. We went to PK from there. The Arabs we were with said we cannot go directly to Karachi PK, so they stopped at many houses on the way to PK. These houses belonged to AFG and PK people. These people helped the needy because we left all our belongings in Kabul. We stayed in these houses about 1-2 days and up to 2 weeks at a time until I arrived in Karachi. I stayed in Karachi to arrange my travel to Yemen. We went through regular PK checkpoints on our way from AFG to PK. They checked my passport they looked at the car we traveled in and there were no problems. I spent more than 10-15 days in PK arranging my travel without problems. I could not go directly to the PK embassy because I did not know where it was, and the people in charge who brought us PK advised us not to go anywhere or say anything, they were scaring us. I was arrested in a Karachi house with about 16 other people and turned over to the Americans.

3-A-7: I have no idea at all about this. In the house there was two floating vests, I did see these, they were with a pile of old clothes next to the toilet. I never thought anything about them.


2. Please contact me if can be of any further assistance

[REDACTED]

Exhibit 23127 D-C

Personal Representative Review of the Record of Proceedings


I acknowledge that on 22 November 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #576.

 I have no comments.

☐ My comments are attached.


Name

22 Nov 04
Date


Signature

ISN #576
Enclosure (4)