

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAMDOUH IBRAHIM AHMED HABIB)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 02-CV-1130 (CKK)
)	
GEORGE BUSH,)	
)	
Respondent)	
_____)	

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. 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 Mamdouh Ibrahim Ahmed Habib 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 that would personally identify certain U.S. Government personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

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

Dated: 1 Oct 04

Ta McPalmer
Teresa A. McPalmer
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser:
30 September 2004

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From: Director, Combatant Status Review Tribunal

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

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

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

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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29 Sep 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #6 of 13 September 2004
(2) Record of Tribunal Proceedings

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


- a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate. However, his Personal Representative read his unsworn statement at the Tribunal, as requested by the detainee.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibits R-8, R-10, and R-13 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. The inclusion of exhibits R-3 and R-4, motions from the detainee's Federal habeas corpus case, are quite inexplicable. In any event, the Tribunal did not find them useful and they had no effect on the Tribunal's decision.
- d. The detainee made no requests for witnesses or other evidence.
- e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

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

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

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



James R. Crisfield Jr.
CDR, JAGC, USN

UNCLASSIFIED



Department of Defense
Director, Combatant Status Review Tribunals

13 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #6

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 Colonel, U.S. Marine Corps;
Member

J. M. McGARRAH
Rear Admiral
Civil Engineer Corps
United States Naval Reserve



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

27 September 2004

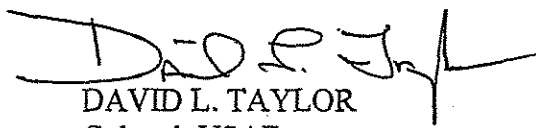
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN [REDACTED]

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

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


DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

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

(U) TRIBUNAL PANEL: #6

(U) ISN#: [REDACTED]

Ref: (a) (U) Convening Order for Tribunal #6 of 13 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)


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

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

2. (U) On 22 September 2004, the Tribunal determined, by a preponderance of the evidence, that Detainee # [REDACTED] is properly designated as an enemy combatant as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, Al Qaida forces, or associated forces that are engaged in hostilities 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, U.S. Army
Tribunal President

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #6
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 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 commenced this hearing on 20 September 2004. The Recorder presented Exhibits R-1 through R-5 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: admits traveling to Afghanistan prior to the attacks of 11 September 11 2001, where he stayed at a known Al Qaida safehouse in Kandahar, Afghanistan, which was run by a highly placed Al Qaida operative; admits residing in another safe house in Kabul, Afghanistan, where the number of guests and the amount of activity significantly increased just prior to the attacks of 11 September 2001; admits having knowledge of the 11 September 2001 attacks prior to their occurrence; admits he conducted surveillance of buildings, hospitals and schools with another detainee; admits he assisted with the transfer of chemical weapons at a compound near Kabul; states he trained several of the 11 September 2001 hijackers in martial arts and had planned to hijack a plane himself; and, was captured along with two German Muslims in Pakistan by Pakistani authorities. The Recorder called no witnesses.

The detainee chose not to attend the Tribunal as reflected in the Detainee Election Form (Exhibit D-a); however, he did ask the Personal Representative to tell the Tribunal that: nothing in the Unclassified Summary of Evidence is true; he was kidnapped from Pakistan, taken to Egypt, then brought to Guantanamo Bay; all of the information he has given prior to his meeting with his Personal Representative on 17 September 2004 was given under duress and torture; he has been tortured since being captured and has reported that fact to the International Committee of the Red Cross; and he would tell interrogators what they wanted to hear because he was in fear.

During the classified session of the Tribunal, the Recorder presented Exhibits R-6 through R-19. The Personal Representative presented no classified evidence. Both the Recorder and the Personal Representative commented on the classified exhibits.

While the Tribunal was reading the classified exhibits, the Tribunal received instructions from the Office for the Administrative Review of the Detention of Enemy Combatants in Washington, D.C., to recess the Tribunal until further notice. The Tribunal was subsequently instructed to reconvene on 22 September 2004, which it did. When the Tribunal reconvened its classified session, the Recorder introduced into evidence the second page of Exhibit R-10, which had inadvertently not been included with the original exhibit. The Tribunal then completed reading all of the classified exhibits and closed for deliberations. The Tribunal considered both the unclassified and classified exhibits and the detainee's comments made through the Personal Representative in reaching its decision.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-19 and D-a.
- b. Testimony of the following persons: None.
- c. Unsworn Statement of the detainee (through the Personal Representative):

See Enclosure (3) to the CSRT Decision Report.

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

The Detainee requested no witnesses.

The Detainee requested no additional evidence be produced.

5. Discussion of Unclassified Evidence

The recorder offered Exhibits R-1 through R-5 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 (the FBI redaction certification), and Exhibits R-3 and R-4 (documents relating to the detainee's pending Habeas petition), provided no usable evidence. Exhibit R-5, an excerpt from the Terrorist Organization Reference Guide, provided useful information on the Hizballah and Lashkar-e-Tayyiba terrorist/terrorist support groups. Because there was no other unclassified evidence for the Tribunal to consider other than the Personal Representative's denials on behalf of the detainee of the

assertions on the Unclassified Summary of Evidence, the Tribunal had to look to the classified exhibits to support the assertions on the Unclassified Summary of Evidence and the Tribunal's conclusions. 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

a. When the CSRT Decision Report was being prepared, the Tribunal realized that the Reporter who recorded the proceeding on 20 September 2004 was not the same Reporter who recorded the proceeding on 22 September, and as a result, had not been sworn. Accordingly, on 23 September 2004, the Tribunal reconvened for the sole purpose of swearing the Reporter with respect to the classified proceedings of the previous day. The Tribunal members, the Personal Representative, and the Recorder were present. No further corrective action was required.

b. Because the Personal Representative's comments on behalf of the detainee allege that he has been tortured (see Enclosure (3) to the CSRT Decision Report and Exhibit R-10), the Tribunal notified the CSRT Assistant Legal Advisor. As per instructions, the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO was also notified of the matter on 22 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. The Personal Representative informed the Tribunal that the detainee understood the Tribunal process, but chose not to participate, as indicated in Exhibit D-a.

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

UNCLASSIFIED//FOUO

8. Dissenting Tribunal Member's report


None. The Tribunal reached a unanimous decision.

Respectfully submitted,

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

Colonel, U.S. Army
Tribunal President

UNCLASSIFIED//FOUO

ISN # 
Enclosure (1)
Page 4 of 4

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Although the detainee elected not to participate in the Tribunal process, as indicated on the Detainee Election Form (Exhibit D-a), he asked his Personal Representative to verbally provide information to the Tribunal. The following summarizes the Personal Representative's presentation of the detainee's information.

Personal Representative: None of the information in the unclassified summary was truthful. He was kidnapped from Pakistan, he has been tortured, and all the information he has given up prior to talking to me on 17 September 2004 was under duress.

Tribunal President: Is that statement written?

Personal Representative: No, [REDACTED] that's the oral statement he gave me.

At the request of a Tribunal member taking notes, the Personal Representative repeated the above information from the detainee.

Tribunal President: When you say coming here, you mean coming to GTMO?

Personal Representative: Yes.

Tribunal Member: Did the detainee mention if he was tortured here or under duress at GTMO?

Personal Representative: He says he has been tortured since his capture. He's reported it to the International Red Cross. When the International Red Cross meets with him and asks him what the person's name was who supposedly tortured him, he answers, "How can I tell you a name if the name tags are taped over?" It's been reported to the International Red Cross. He also determined that the fact that he's in Camp 5 where the lights are on and the fans run constantly is a form of torture.

Tribunal President: Where was the torture committed?

Personal Representative: He just said up until this time.

Tribunal Member: He said he was kidnapped from Pakistan, taken to Egypt, and then brought here?

Personal Representative: Correct, and given to U.S. custody.

Tribunal President: Personal Representative, do you have any other evidence to present to this Tribunal on behalf of the detainee?

Personal Representative: No, [REDACTED] I have no other evidence to present.

ISN # [REDACTED]
Enclosure (3)
Page 1 of 2

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Tribunal President: All unclassified evidence having been provided to this Tribunal, this concludes this 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, U.S. Army
Tribunal President

ISN # 
Enclosure (3)
Page 2 of 2

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3304

DETAINEE ELECTION FORM

Date: 17 Sep 2004

Start Time: 1015

End Time: 1110

ISN#: [REDACTED]

Personal Representative: [REDACTED] LT COL
(Name/Rank)

Translator Required? NO Language? ENGLISH/ARABIC

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

Detainee Election:

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

Personal Representative Comments:

Detainee will not attend the Tribunal. There will not be any witness. The entire session was
conducted in English.

Personal Representative: [REDACTED]

Exhibit D-a3305

FOUO

Recorder Exhibit List
For
ISN [REDACTED]

#	Title	Bullet	Classification
R1	Unclassified Summary		UNCLASSIFIED
R2	FBI Redaction of National Security Information	3.a.3.	UNCLASSIFIED
R3	US District Court Case of Mamdouh Habib		UNCLASSIFIED
R4	US District Court Case of Mamdouh Habib		UNCLASSIFIED
R5	U.S. Department of Homeland Security, "Terrorist Organization Reference Guide" (Jan. 04 ed.) excerpt	3.a.4. 3.a.5.	UNCLASSIFIED
R6	Intelligence Information Report (IIR) 6 034 0565 02	3.a.1. 3.a.2.	SECRET/NOFORN
R7	Intelligence Information Report (IIR) 6 034 0547 03	3.a.1.	SECRET/NOFORN
R8	CITF Form 40 dtd 7 May 03 (redacted copy)	3.a.1.	FOUO//LES
R9	Knowledgeability Brief (KB) dtd 11 May 02	3.a.2.	SECRET
R10	FBI 302 dtd 24 May 03 (redacted copy)	3.a.3.	FOUO//LES
R11	Intelligence Information Report (IIR) 6 034 0454 02	3.a.5.	SECRET/NOFORN
R12	Intelligence Information Report (IIR) 6 034 0488 03	3.a.6.	SECRET/NOFORN
R13	CITF Form 40 dtd 11 Mar 03 (redacted copy)	3.a.4. 3.b.1.	FOUO//LES
R14	Intelligence Assessment (DTG 271545Z MAY 02)	3.b.2.	SECRET
R15	Intelligence Information Report (IIR) 6 034 0497 03	3.b.3.	SECRET/NOFORN
R16	Intelligence Information Report (IIR) 6 034 0482 03	3.b.4.	SECRET/NOFORN
R17	Quarterly Review of Community Counterterrorism Tiers	3.a.4. 3.a.5.	SECRET//NOFORN
R18	CITF Memorandum dtd 26 April 04	Summary	SECRET//NOFORN
R19	Baseball Card: Detainee		SECRET//NOFORN

Unclassified

Combatant Status Review Board

9 September 2004

TO: Personal Representative

FROM: OIC, CSRT

Subject: Summary of Evidence for Combatant Status Review Tribunal – HABIB, Mamdouh Ibrahim Ahmed

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 associated with al Qaida and engaged in hostilities against the United States or its coalition partners.
 - a. Detainee is associated with al Qaida.
 1. Detainee admits to traveling to Afghanistan prior to the attacks of September 11, 2001, where he stayed at a known al Qaida safehouse in Kandahar, Afghanistan, which was run by a highly placed al Qaida operative and was protected by an armed man.
 2. Detainee admits to residing at another safehouse in Kabul, Afghanistan where the number of guests and amount of activity significantly increased just prior to the attacks of September 11, 2001.
 3. Detainee admits having knowledge of the attacks of September 11, 2001 prior to their occurrence.
 4. Shortly before September 11, 2001, Detainee admits to staying at a safehouse in Lahore, Pakistan.

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Unclassified

3307

Exhibit R1

Unclassified

5. In the late 1990s, Detainee communicated with members of the Lebanon – based Hizballah terrorist group, to inquire about joining the Jihad in Afghanistan.
 6. Detainee admits that he has ties to individuals involved in the 1993 bombing of the World Trade Center in New York City.
- b. Detainee engaged in hostilities against the US or its coalition partners.
1. Detainee admits that he conducted surveillance of buildings, hospitals and schools with another detainee.
 2. Detainee admits that he assisted with the transfer of chemical weapons at a compound near Kabul, Afghanistan.
 3. Detainee states that he trained several of the September 11 hijackers in martial arts and had planned to hijack a plane himself.
 4. Detainee was captured along with two German Muslims in Pakistan by Pakistani authorities.
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



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 6, 2004

BH 9/2/04

REQUEST FOR REDACTION OF NATIONAL SECURITY INFORMATION

ISN [REDACTED]

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

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

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

¹Redactions are marked by means of pink/blue highlighter on the OARDEC provided FBI document.

²See Executive Order 12958

Exhibit R2

UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAFIQ RASUL, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-0299 (CKK)

FAWZI KHALID ABDULLAH FAHAD
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 02-CV-0828 (CKK)

MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-1130 (CKK)

MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

O.K. [REDACTED] *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

MOURAD BECHELLALI, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1142 (RJL)

JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1144 (RWR)

FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,

et al.,

Respondents.

Civil Action No. 04-CV-1164 (RBW)

LAKHDAR BOUMEDIENE, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

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

SUHAIL ABDUL ANAM, *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 *Kurnaz v. Bush*, No. 04-CV-1135 (ESH), opposes the motion. Counsel for petitioners in *Al Odah v. United States*, No. 02-CV-0828 (CKK); *Habib v. Bush*, No. 02-CV-1130 (CKK); *O.K. v. Bush*, No. 04-CV-1136 (JDB); *Benchellali v. Bush*, No. 04-CV-1142 (RJL); and *Boumediene 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; *Al Odah 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 *Habib v. Bush*, No. 02-CV-1130.³ Before Judge Huvelle is *Kurnaz v. Bush*, No. 04-CV-1135. Before Judge Bates is ^{O.K.} [REDACTED] *v. Bush*, No. 04-CV-1136.⁴ Before Judge Collyer is *Begg v. Bush*, No. 04-CV-1137. Pending before Judge Leon are *Benchellali v. Bush*, No. 04-CV-1142, and *Boumediene v. Bush*, No. 04-CV-1166. Before Judge Roberts is *El-Banna v. Bush*, No. 04-CV-1144. Before Judge Walton is *Gherebi v. Bush*, No. 04-CV-1164.⁵ And before Judge Kennedy is *Anam 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, *Sassi v. Bush*, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the *Benchellali* case before Judge Leon or the [REDACTED] case before Judge Bates.

⁵ ^{O.K.} *Gherebi* was recently transferred to this District from the Ninth Circuit. Unlike the petitions in the other pending cases, the *Gherebi* 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 *Gherebi 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 *Gherebi 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 *Al Odah* 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 *Gherebi* petition names the President, the Secretary of Defense, and "1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials." The *Al Odah* complaint also includes the United States as respondent-defendant.

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

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

¹⁰ See *Rasul* First Amended Petition ¶¶ 33, 49; *Al Odah* Amend. Compl. ¶¶ 28-29; *Habib* Pet. ¶¶ 27, 44-45; *Kurnaz* Pet. ¶¶ 8, 34-35; [REDACTED] Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; *Bechellali* Pet. ¶¶ 48-49; *El-Banna* First Amend. Pet. ¶¶ 43-44; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶¶ 73-74.

¹¹ See *Rasul* First Amended Petition ¶ 32; *Habib* Pet. ¶¶ 26, 44; *Kurnaz* Pet. ¶¶ 34-35; [REDACTED] Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; *Bechellali* Pet. ¶ 49; *El-Banna* First Amend. Pet. ¶ 44; *Boumediene* Pet. ¶ 25; *Anam* 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; *Al Odah* Amend. Compl. ¶ 37; *Habib* Pet. ¶¶ 48-51, 59-61; *Kurnaz* Pet. ¶¶ 39-41, 63-65; [REDACTED] Pet. O.K. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71; *Bechellali* Pet. ¶¶ 53-56, 77-79; *El-Banna* First Amend. Pet. ¶¶ 48-50, 72-74; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶¶ 33-35, 43-45; *Anam* Pet. ¶¶ 80-82, 90-92, 97.

O.K.

¹³ See *Habib* Pet. ¶¶ 56-57; *Kurnaz* Pet. ¶ 61; [REDACTED] Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; *Bechellali* Pet. ¶ 75; *El-Banna* First Amend. Pet. ¶ 70; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 41; *Anam* Pet. ¶ 88.

O.K.

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

O.K. ¹⁵ See *Rasul* First Amended Petition ¶¶ 56-60; *Habib* Pet. ¶¶ 52-55; *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Bechellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶ 37; *Anam* Pet. ¶¶ 84-86.

O.K.

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

¹⁷ In *Al Odah*, 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; *Al Odah* Amend. Compl. (Prayer for Relief); *Habib* Pet. § V; *Kurnaz* Pet. § V; [REDACTED] Pet. § V; *Begg* Pet. § V; *Bechellali* Pet. § V; *El-Banna* First Amend. Pet. § V; *Gherebi* Amend. Pet. ¶¶ 5-6; *Boumediene* Pet. § VI; *Anam* Pet. (Prayer for Relief).
O.K.

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

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 *Al Odah*). 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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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAFIQ RASUL, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-0299 (CKK)

FAWZI KHALID ABDULLAH FAHAD
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 02-CV-0828 (CKK)

MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-1130 (CKK)

MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

O.K.

 *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

MOURAD BENCHELLALI, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1142 (RJL)

JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1144 (RWR)

FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,

et al.,

Respondents.

Civil Action No. 04-CV-1164 (RBW)

LAKHDAR BOUMEDIENE, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

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

SUHAIL ABDUL ANAM, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

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

ISA ALI ABDULLA ALMURBATI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1227 (RBW)

MAHMOAD ABDAH, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1254 (HHK)

**RESPONDENTS' MOTION FOR JOINT CASE MANAGEMENT CONFERENCE,
ENTRY OF COORDINATION ORDER, AND REQUEST FOR EXPEDITION**

Respondents hereby request a Joint Case Management Conference involving each of the judges presiding over complaints or petitions for habeas corpus 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. The requested Joint Case Management Conference would allow the Court to develop and enter a coordination order to allow for the orderly and efficient resolution of the many common questions of law presented by these petitions. While the petitions have not been consolidated, the Court's inherent authority to manage its docket permits coordinated consideration of legal issues where judicial economy would be served, and where – as here – consistent resolution of those legal issues is desirable. Respondents are presenting this Motion simultaneously to each of the judges to whom a

Guantanamo habeas petition has been assigned. Given the important concerns that underlie this Motion, Respondents respectfully request that the Court expedite its consideration.

Although proceedings on all of these petitions are at their inception, and despite the fact that each petition alleges some facts unique to individual detainees, it is already clear that the cases present a number of important common questions of law. The common questions include threshold issues whose resolution will determine the fundamental character of the proceedings that follow, including: (1) whether, under the U.S. Constitution, the detainees have a right to consult with Petitioners and their counsel for purposes of prosecuting these habeas petitions, and for other purposes; (2) whether the Constitution, and other applicable legal principles, permit ~~Respondents to place conditions on such attorney-detainee consultations, including whether~~ Respondents may require certain attorney-detainee consultations to be monitored for national security purposes;¹ (3) whether the detainees, who were not captured in the United States or its territories and are not detained there, are protected by the Due Process Clause of the Fifth Amendment, and by other provisions of the Constitution; (4) whether the detainees may challenge their detention under various treaties and conventions to which the United States is signatory, and under principles of "customary international law"; (5) whether these habeas proceedings must be deferred pending completion of the Combatant Status Review Tribunal ("CSRT") process that the Department of Defense has recently formalized to reach fresh determinations on the status of the detainees, most particularly whether their circumstances of

¹ This issue is presently under consideration by Judge Kollar-Kotelly. See *Response to Complaint in Accordance with Court's Order of July 25, 2004* filed in *Al Odah v. United States*, No. 02-CV-828 (July 30, 2004).

capture and other factors qualify them as “enemy combatants”;² and (6) whether and to what extent the status determinations reached in the CSRT process merit deference in this Court’s consideration of the habeas petitions. In addition, there are common procedural questions to be addressed in these cases, including appropriate procedures for handling classified submissions in the cases, the propriety of and limitations on discovery, and procedures for any hearings in those matters.

Respondents previously moved for consolidation of all such petitions before a single judge of this Court pursuant to FED. R. CIV. P. 42. By order dated July 26, 2004, Judge Kollar-Kotelly (the judge presiding over the lowest-numbered of the Guantanamo Bay cases) declined to ~~exercise her discretion to consolidate, concluding that “the different circumstances of each~~ Petitioner’s capture and the individualized reasons offered for that Petitioner’s confinement will require individualized adjudication.” (Mem. Op. at 3-4.) Respondents do not challenge that determination in this Motion, but instead respectfully suggest an alternative procedure. Even if one assumes that the varying circumstances of the Petitioners’ capture may ultimately require individualized attention by the Court, it will promote judicial economy and convenience for the parties to order coordinated briefing, argument, and consideration on the important questions of law and procedure that will shape these habeas proceedings. Absent such coordinated treatment, 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

² In at least three cases, Petitioners have filed motions seeking to temporarily enjoin the implementation of the CSRT process and challenging the conduct of hearings without access to counsel. *See Gharebi v. Bush*, No. 04-CV-1164; *Boumediene v. Bush*, No. 04-CV-1166; *El-Banna v. Bush*, No. 04-CV-1144.

presented by briefing and arguing the same legal issues before at least eight separate district judges.

Accordingly, Respondents urge that the judges presiding over the above-captioned petitions schedule a Joint Case Management Conference, with all judges present, in order to identify the common questions of law presented by the pending petitions, and to develop a schedule for coordinated pretrial proceedings, including briefing and argument on those questions. A proposed order is attached.

Pursuant to LCvR 7(m), counsel for Respondents have conferred or attempted to confer by telephone and e-mail with counsel for Petitioners in the related cases regarding this motion.

~~Counsel for Petitioners in *Habib, El-Banna, Gharebi, Anam, Almurbati, Boumediene* and *Begg*~~

have indicated that they oppose or do not consent to the motion. Counsel for Petitioners in *Benchellali* have indicated that they reserve judgment but expect to oppose the motion.

Respondents would note that with respect to the previous motion for consolidation, counsel for Petitioners who expressed a position either opposed or did not consent to 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,³ 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.⁴ Approximately 600 such aliens are currently detained at Guantanamo Bay.

Pending before this Court are a number of cases brought on behalf of alien 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; *Al Odah v. United States*, No. 02-CV-0828; and *Habib v. Bush*, No. 02-CV-1130.⁵ Before Judge Huvelle is *Kurnaz v. Bush*, No. 04-CV-1135. Before Judge Bates is ~~██████████~~ ^{O.K.} *v. Bush*, No. 04-CV-1136.⁶ Before Judge Collyer is *Begg v. Bush*, No. 04-CV-1137. Pending before Judge Leon are *Benchellali v. Bush*, No. 04-CV-1142 and *Boumediene v. Bush*, No. 04-CV-1166. Before Judge Roberts is *El-Banna v. Bush*, No. 04-

³ See 66 Fed. Reg. 57,831 (Nov. 16, 2001).

⁴ See *Rasul v. Bush*, 124 S. Ct. 2686, 2690-93 (2004).

⁵ 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.

⁶ A Guantanamo Bay detainee case dismissed by Judge Bates prior to the Supreme Court's decision in *Rasul* is *Sassi v. Bush*, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the *Benchellali* case before Judge Leon or the ~~██████████~~ case before Judge Bates.

O.K.

CV-1144. Before Judge Walton are *Gherebi v. Bush*, No. 04-CV-1164 and *Almurbati v. Bush*, 04-CV-1227.⁷ And before Judge Kennedy are *Anam v. Bush*, No. 04-CV-1194 and *Abdah v. Bush*, No. 04-CV-1254. Based on the number of foreign nationals detained at Guantanamo Bay, it is highly likely that numerous additional petitions will be filed.

Each of these cases is a petition for habeas corpus, or, in one case, a complaint essentially constituting a habeas petition,⁸ 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 camp housing the detainees in Guantanamo Bay, and/or other government officials.⁹ 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;¹⁰ that Petitioners are not enemy combatants and have not been informed of

⁷ *Gherebi* was recently transferred to this District from the Ninth Circuit. 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 Gherebi 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 Gherebi v. Bush*, 374 F.3d 727, 2004 WL 1534166 (July 8, 2004).

⁸ *See Rasul*, 215 F. Supp. 2d at 62-64 (D.D.C. 2002) (noting that claims asserted in *Al Odah* case are "within the exclusive province of the writ of habeas corpus").

⁹ The *Gherebi* petition names the President, the Secretary of Defense, and "1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials." The *Al Odah* complaint also includes the United States as respondent-defendant.

¹⁰ *See Rasul* First Amended Petition ¶¶ 23-24, 27, 32; *Al Odah* Amend. Compl. ¶ 16; *Habib* Pet. ¶¶ 16-19, 21-22; *Kurnaz* Pet. ¶¶ 6, 16-17, 19, 23-24; *[REDACTED]* Pet. ¶¶ 16, 21-22; *Begg* Pet. ¶¶ 22-26; *Benchellali* Pet. ¶¶ 28, 30, 32; *El-Banna* First Amend. Pet. ¶¶ 19-26, 27-28; *Gherebi* Amend. Pet. ¶ 2; *Boumediene* Pet. ¶¶ 16-18, 20; *Anam* Pet. ¶¶ 26, 31, 36, 40-41, 44, 46, 52, 58, 61; *Almurbati* Pet. ¶¶ 8, 10, 12; 19-22; *Abdah* Pet. ¶¶ 19-20, 22-51.

charges against them;¹¹ that Petitioners have been housed in inadequate housing, without meaningful access to families or counsel, and without opportunity to fully exercise their religious beliefs;¹² and that Petitioners have been forced to provide involuntary statements to interrogators.¹³ Petitioners challenge their confinement, as well as the Military Order of November 13, 2001, as contrary to the Constitution¹⁴ and international treaties, including the Third and Fourth Geneva Conventions,¹⁵ the International Covenant on Civil and Political Rights and the American Declaration on the Rights and Duties of Man,¹⁶ as well as customary

¹¹ See *Rasul* First Amended Petition ¶¶ 22, 29-30, 47; *Al Odah* Amend. Compl. ¶¶ 15, 18; *Habib* Pet. ¶¶ 15, 23-24, 44; *Kurnaz* Pet. ¶¶ 13-15, 34; [REDACTED] Pet. ¶¶ 13, 30; *Begg* Pet. ¶¶ 17-18, 47, 52; *Benchellali* Pet. ¶¶ 25-26, 48; *El-Banna* First Amend. Pet. ¶¶ 15-16, 43; *Boumediene* Pet. ¶¶ 13-14, 25; *Anam* Pet. ¶¶ 23, 28, 33, 37, 59, 71, 73, 78; *Almurbati* Pet. ¶¶ 18, 36, 41; *Abdah* Pet. ¶¶ 15-16, 63.

¹² See *Rasul* First Amended Petition ¶¶ 33, 49; *Al Odah* Amend. Compl. ¶¶ 28-29; *Habib* Pet. ¶¶ 27, 44-45; *Kurnaz* Pet. ¶¶ 8, 34-35; [REDACTED] Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; *Benchellali* Pet. ¶¶ 48-49; *El-Banna* First Amend. Pet. ¶¶ 43-44; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶¶ 73-74; *Almurbati* Pet. ¶ 41; *Abdah* Pet. ¶¶ 63-64.

¹³ See *Rasul* First Amended Petition ¶ 32; *Habib* Pet. ¶¶ 26, 44; *Kurnaz* Pet. ¶¶ 34-35; [REDACTED] Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; *Benchellali* Pet. ¶ 49; *El-Banna* First Amend. Pet. ¶ 44; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶ 73-74; *Almurbati* Pet. ¶ 41; *Abdah* Pet. ¶¶ 63-64.

¹⁴ 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; *Al Odah* Amend. Compl. ¶ 37; *Habib* Pet. ¶¶ 48-51, 59-61; *Kurnaz* Pet. ¶¶ 39-41, 63-65; [REDACTED] Pet. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71; *Benchellali* Pet. ¶¶ 53-56, 77-79; *El-Banna* First Amend. Pet. ¶¶ 48-50, 72-74; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶¶ 33-35, 43-45; *Anam* Pet. ¶¶ 80-82, 90-92, 97; *Almurbati* Pet. ¶¶ 43, 45, 53, 55; *Abdah* Pet. ¶¶ 73, 75, 83, 85.

¹⁵ See *Habib* Pet. ¶¶ 56-57; *Kurnaz* Pet. ¶ 61; [REDACTED] Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; *Benchellali* Pet. ¶ 75; *El-Banna* First Amend. Pet. ¶ 70; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 41; *Anam* Pet. ¶ 88; *Almurbati* Pet. ¶ 51; *Abdah* Pet. ¶¶ 77, 79, 81.

¹⁶ See *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Benchellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶¶ 37, 39; *Anam* Pet. ¶¶ 84-86;

international law.¹⁷ 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. § 702-706.¹⁸

Petitioners commonly seek relief in the form of release,¹⁹ 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 international law.²⁰ Indeed, aside from specific allegations regarding the circumstances of each Petitioners' capture, the petitions are substantially alike. Furthermore, many of the cases involve the same litigation counsel or coordinating counsel.²¹

In *Al-Odah*, briefing is underway concerning whether Respondents may require certain attorney-detainee consultations to be monitored for national security purposes. In *Gherebi*, the Court has established a briefing schedule for a motion to dismiss by Respondents. And in *El-*

Almurbati Pet. ¶¶ 47, 49; *Abdah* Pet. ¶ 77, 79.

O.K. ¹⁷ See *Rasul* First Amended Petition ¶¶ 56-60; *Habib* Pet. ¶¶ 52-55; *Kurnaz* Pet. ¶¶ 43-45; [REDACTED] Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Benchellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶ 37; *Anam* Pet. ¶¶ 84-86; *Almurbati* Pet. ¶ 51; *Abdah* Pet. ¶¶ 77, 79, 81.

O.K. ¹⁸ See *Al Odah* Amend. Compl. ¶¶ 38-39; *Kurnaz* Pet. ¶¶ 48, 53, 57, 67; [REDACTED] Pet. ¶¶ 44, 49, 53, 63; *Begg* Pet. ¶ 68; *Benchellali* Pet. ¶¶ 62, 67, 71, 81; *El-Banna* First Amend. Pet. ¶¶ 57, 62, 66, 76; *Anam* Pet. ¶ 94; *Almurbati* Pet. ¶¶ 57-59, 61-64, 66; *Abdah* Pet. ¶ 87.

¹⁹ In *Al Odah*, 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.

O.K. ²⁰ See *Rasul* First Amended Petition § VI; *Al Odah* Amend. Compl. (Prayer for Relief); *Habib* Pet. § V; *Kurnaz* Pet. § V; [REDACTED] Pet. § V; *Begg* Pet. § V; *Benchellali* Pet. § V; *El-Banna* First Amend. Pet. § V; *Gherebi* Amend. Pet. ¶¶ 5-6; *Boumediene* Pet. § VI; *Anam* Pet. (Prayer for Relief); *Almurbati* Pet. (Prayer for Relief); *Abdah* Pet. (Prayer for Relief).

²¹ For example, in a significant number of the cases Petitioners are represented by counsel from the Center for Constitutional Rights.

Banna, a hearing on a TRO sought by Petitioners is scheduled for August 6, 2004, with a return to the petition currently due on August 12, 2004.

ARGUMENT

District courts have both express and inherent authority to coordinate proceedings on cases pending before them in the interest of justice and in the service of judicial economy. It has long been recognized that there is a “power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Airline Pilots Ass’n v. Miller*, 523 U.S. 866, 880, n.6 (1998) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254-255 (1936)). One specific codification of this authority is FED. R. CIV. P. 42(a), a provision that recognizes not only the notion of formal consolidation, but also the power of the Court to “order a joint hearing . . . o[n] any or all the matters in issue,” and to “make such orders concerning proceedings [in the several actions] as may tend to avoid unnecessary costs or delay.” FED. R. CIV. P. 42(a).²²

Moreover, the district courts’ inherent authority to manage their dockets goes beyond the measures expressed in Rule 42. As the Federal Judicial Center’s Manual for Complex Litigation (Fourth) explains, even when cases sharing common issues are pending in *different* judicial districts, “judges can coordinate proceedings in their respective courts to avoid or minimize duplicative activity and conflicts.” MOORE’S FED. PRACTICE, MANUAL FOR COMPLEX LITIGATION (FOURTH) 227 (2004). Coordination measures that district courts can employ

²² Petitions for a writ of habeas corpus are civil in nature, *see Hilton v. Braunskill*, 481 U.S. 770, 775-76 (1987), though different in respects from general civil litigation. *See id.* 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).

include "joint hearings or conferences" on common legal issues, followed by "joint or parallel orders by the several courts in which the cases are pending." *Id.*²³ In addition, the Judicial Panel on Multidistrict Litigation, in exercising its discretion to deny pretrial consolidation of multiple actions pending in different districts under 28 U.S.C. § 1407, has recognized that the goals of judicial economy and minimization of "inconsistent pretrial rulings" can at times be achieved simply through "consultation and coordination between the . . . concerned district courts[.]" *In re Royal Am. Indus., Inc. Sec. Litig.*, 407 F. Supp. 242, 244 (J.P.M.L. 1976).

The reach of district courts' authority to manage their own dockets is illustrated by the procedures adopted by the District Court for the Central District of California in resolving constitutional challenges to the Sentencing Reform Act of 1984, and the sentencing guidelines promulgated thereunder by the U.S. Sentencing Commission. There, the district court convened an en banc panel of the court to consider the common question of the Sentencing Guidelines' constitutionality – a question that had surfaced in 22 separate criminal cases. The court ordered the common issue "transferred . . . from each of the [separate] cases . . . to the Court as a whole," and accepted joint briefing, conducted a joint hearing, and issued an en banc opinion on the constitutional challenge, from which a number of district judges dissented. *See United States v. Ortega Lopez*, 684 F. Supp. 1506, 1508 (C.D. Cal. 1988), *abrogated by United States v. Brady*, 895 F.2d 538 (9th Cir. 1990).

²³ Indeed, district courts have used such cooperative approaches even in matters where related cases are pending simultaneously in state and federal court, "jointly presid[ing] over hearings on pretrial motions, based on a joint motions schedule," relying on "coordinated briefs so that one set of briefs can be used in both state and federal courts . . ." MOORE'S FED. PRACTICE, MANUAL FOR COMPLEX LITIGATION (FOURTH) at 236.

This court's local rules include provisions premised on similarly broad principles of inherent authority as to case management issues. Under LCvR 40.5(e), this court's Calendar Committee has the authority to refer "two or more cases assigned to different judges" to "one judge" for a "specific purpose . . . in order to avoid duplication of judicial effort," so long as the assignment is "with the consent of the judge to whom the cases will be referred" and the "scope of authority of said judge" is identified. More broadly, LCvR 40.7(h) recognizes the authority of the Chief Judge to "take such other administrative actions, after consultation with appropriate committees of the Court, as in his/her judgment are necessary to assure the just, speedy and inexpensive determination of cases, and are not inconsistent with these Rules."

~~The habeas petitions before the Court here present a number of common legal questions~~
that would plainly benefit from coordinated consideration and resolution, whether in a "joint hearing" under FED. R. CIV. P. 42(a) or under a coordinated schedule determined jointly by all of the district judges presiding over the cases. These issues include: (1) whether the detention, as described in the pleadings, violates the Constitution and laws cited in the petitions, and, underlying this question, whether detainees have rights under the Constitution notwithstanding the alleged facts that they are not United States citizens, that they were captured outside the United States, and are currently detained outside the United States and its territories; (2) whether, based on the factual allegations in the petitions, the detainees may challenge their detention under various treaties and conventions to which the United States is signatory, and under principles of "customary international law," and, underlying this question, whether the cited treaties and conventions are self-executing and claims thereunder cognizable in a habeas proceeding; (3) whether these habeas proceedings must, or should in the exercise of the Court's discretion, be

deferred pending completion of the CSRT hearings on the status of the detainees, which will produce formal determinations (and factual records) by the Department of Defense on the circumstances of the detainees' capture and whether those circumstances qualify them as "enemy combatants," *see Hamdi*, 124 S. Ct. at 2648-50 (plurality opinion) (describing contours of acceptable military process for determining the status of United States citizens detained as "enemy combatants");²⁴ and (4) whether and to what extent the status determinations reached in the CSRT process merit deference in this Court's consideration of the habeas petitions. *See id.* at 2649 (plurality opinion) (stating that, in military review process, government's evidence concerning circumstances of capture should be entitled to "presumption" of validity). Moreover, ~~Petitioners in at least three cases have filed motions seeking to temporarily enjoin the~~ implementation of the CSRT hearings. *See supra* note 2.

In addition, there are common procedural questions that must be addressed at the outset of these proceedings. These include whether, under the U.S. Constitution, the detainees have a right to consult with Petitioners and their counsel for purposes of prosecuting these habeas petitions, and for other purposes, and whether Respondents may place conditions on such attorney-detainee consultations, including whether Respondents may require certain attorney-detainee consultations to be monitored for national security purposes. Other common procedural questions involve appropriate procedures for the handling of any classified factual or other submissions that may be required in these cases, the propriety of and limitations on discovery, and hearing procedures.

²⁴ 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>

Because these cases share such issues in common, some form of coordinated scheduling and consideration of these issues, including, where appropriate, a joint hearing, will promote interests of efficiency and economy for both the Court and the parties. Joint briefing will conserve the parties' resources by relieving them of the burden of preparing separate sets of briefs on the same issues. A joint hearing or argument will provide all of the judges presiding over these actions with a comprehensive oral presentation on the important, common legal and procedural questions presented by the petitions. And a joint hearing or another form of coordinated treatment will minimize delay in the resolution of these questions.

Perhaps most important, coordinated treatment would additionally minimize the risk of ~~conflicting determinations on the fundamental legal questions that unite the petitions. Even if the~~ Court were simply to accept coordinated briefing and argument on the common legal questions presented in these cases, with each district judge reserving the discretion to reach his or her own conclusion and enter separate orders, the mere fact of coordinated scheduling and joint hearing, with consequent deliberations among the various judges of the Court, the opportunities for ~~conflicting rulings would be reduced. The seriousness of the issues raised in these petitions, and~~ the sensitive national security context in which they arise, make avoidance of conflicting rulings — if at all possible — imperative.

There can be no serious argument that the coordination sought by Respondents would prejudice the parties. With respect to Respondents, coordinated presentation and resolution of the common legal issues in the petitions would help alleviate the logistical burdens Respondents face in responding to multiple habeas petitions on potentially divergent schedules. Although there are currently just over a dozen cases filed, and despite the fact that only a handful of those have

required any briefing or hearings at this point, the logistical difficulties that lie ahead already are apparent. For instance, Respondents are presently simultaneously preparing briefs regarding a TRO challenging the CSRT process, the conditions of access for counsel, and the merits in a motion to dismiss in different cases. Respondents have already argued two motions for a TRO in a single day. Furthermore, there are approximately 600 foreign nationals detained at Guantanamo Bay, so additional petitions are certain to be filed. At some point in the not-too-distant future, the logistical difficulties presented today will become insurmountable – not only to Petitioners’ and Respondents’ Counsel, but to this Court and its personnel, Department of Justice personnel involved in processing security clearances for Petitioners’ counsel, and Department of Defense personnel who (in addition to being called upon to process requests related to these cases) have pressing responsibilities related to their core duties in connection with the ongoing hostilities in Afghanistan and elsewhere. A coordinated schedule would be undeniably preferable to multiple filings and hearings on overlapping issues in an increasing number of cases with various schedules. Moreover, once the common legal issues are resolved, and the shape that these habeas proceedings must therefore take determined, Petitioners can proceed efficiently to tee up any remaining issues pertaining to individual detainees before the individual judges presiding over their actions.

CONCLUSION

For the reasons set forth above, the Court should grant this Motion and order a Joint Case Management Conference for purposes of cataloging the common questions presented by these petitions, and entering a joint scheduling order allowing for the orderly and coordinated resolution of these questions.

Dated: August 4, 2004

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U.S. Department of Homeland Security
U.S. Customs and Border Protection
Office of Border Patrol

Terrorist Organization Reference Guide

January 2004

Exhibit

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U. S. BUREAU OF CUSTOMS AND BORDER PROTECTION

Purpose: The purpose of the Terrorist Organization Reference Guide is to provide the Field with a who's who in terrorism. The main players and organizations are identified so the CBP Officer and BP Agent can associate what terror groups are from what countries, in order to better screen and identify potential terrorists.

Limitations (Gaps in Data): This Guide is based upon the information available to this office at the time that the report was prepared.

NOTE: This report is based upon information obtained from various open sources. No classified information was used in the preparation of this report.

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Designated Foreign Terrorist Organizations

12. Hizballah (Party of God)

a.k.a. Islamic Jihad, Revolutionary Justice Organization, Organization of the Oppressed on Earth, and Islamic Jihad for the Liberation of Palestine

Description

Formed in 1982 in response to the Israeli invasion of Lebanon, this Lebanon - based radical Shi'a group takes its ideological inspiration from the Iranian revolution and the teachings of the late Ayatollah Khomeini. The Majlis al-Shura, or Consultative Council, is the group's highest governing body and is led by Secretary General Hassan Nasrallah. Hizballah is dedicated to liberating Jerusalem, ultimately eliminating Israel, and has formally advocated ultimate establishment of Islamic rule in Lebanon. Nonetheless, Hizballah has actively participated in Lebanon's political system since 1992. Hizballah is closely allied with, and often directed by, Iran but may have conducted operations that were not approved by Tehran. While Hizballah does not share the Syrian regime's secular orientation, the group has been a strong tactical ally in helping Syria advance its political objectives in the region.

Activities

Known or suspected to have been involved in numerous anti-US and anti-Israeli terrorist attacks, including the suicide truck bombings of the US Embassy and US Marine barracks in Beirut in October 1983 and the US Embassy annex in Beirut in September 1984. Three members of Hizballah, Imad Mughniyah, Hasan Izz-al-Din, and Ali Atwa, are on the FBI's list of 22 Most Wanted Terrorists for the hijacking in 1985 of TWA Flight 847 during which a US Navy diver was murdered. Elements of the group were responsible for the kidnapping and detention of US and other Westerners in Lebanon in the 1980s. Hizballah also attacked the Israeli Embassy in Argentina in 1992 and the Israeli cultural center in Buenos Aires in 1994. In fall 2000, it captured three Israeli soldiers in the Shab'a Farms and kidnapped an Israeli noncombatant whom it may have lured to Lebanon under false pretenses.

Strength

Several thousand supporters and a few hundred terrorist operatives.

Location/Area of Operation

Operates in the southern suburbs of Beirut, the Bekaa Valley, and southern Lebanon. Has established cells in Europe, Africa, South America, North America, and Asia. Alleged to have raised over \$50 million in the Tri-Border Area of South America since 1995.

External Aid

Receives financial, training, weapons, explosives, political, diplomatic, and organizational aid from Iran and diplomatic, political, and logistic support from Syria.

13. Islamic Movement of Uzbekistan (IMU)

Description

Coalition of Islamic militants from Uzbekistan and other Central Asian states opposed to Uzbekistani President Islam Karimov's secular regime. Although the IMU's primary goal remains to overthrow Karimov and establish an Islamic state in Uzbekistan, IMU political and ideological leader Tohir Yoldashev is working to rebuild the organization and appears to have widened the IMU's targets to include all those he perceives as fighting Islam. The IMU generally has been unable to operate in Uzbekistan and thus has been more active in Kyrgystan and Tajikistan.

Activities

The IMU primarily targeted Uzbekistani interests before October 2001 and is believed to have been responsible for five car bombs in Tashkent in February 1999. Militants also took foreigners hostage in 1999 and 2000, including four US citizens who were mountain climbing in August 2000, and four Japanese geologists and eight Kyrgyz soldiers in August 1999. Even though the IMU's rhetoric and ultimate goals may have been focused on Uzbekistan, it was generally more active in Kyrgystan and Tajikistan. In Operation Enduring Freedom, the counterterrorism coalition has captured, killed, and dispersed many of the IMU's militants who were fighting with the Taliban in Afghanistan and severely degraded the movement's ability to attack Uzbekistani or Coalition interests in the near term. IMU military leader Juma Namangani was killed during an air strike in Afghanistan in November 2001; Yoldashev remains at large.

Strength

Probably fewer than 1,000 militants.

Location/Area of Operation

Militants are scattered throughout South Asia, Tajikistan, and Iran. Area of operations includes Afghanistan, Iran, Kyrgyzstan, Pakistan, Tajikistan, and Uzbekistan.

External Aid

Support from other Islamic extremist groups and patrons in the Middle East and Central and South Asia.

19. Lashkar-e-Tayyiba (LT) (Army of the Righteous)

Description

The LT is the armed wing of the Pakistan -based religious organization, Markaz-ud-Dawa-wal-irshad (MOI) - a Sunni anti-US missionary organization formed in 1989. The LT is led by Abdul Wahid Kashmiri and is one of the three largest and best-trained groups fighting in Kashmir against India; it is not connected to a political party. The United States in October 2001 announced the addition of the LT to the US Treasury Department's Office of Foreign Asset Control's (OFAC) list - which includes organizations that are believed to support terrorist groups and have assets in US jurisdiction that can be frozen or controlled. The group was banned, and the Pakistani Government froze its assets in January 2002.

Activities

The LT has conducted a number of operations against Indian troops and civilian targets in Kashmir since 1993. The LT claimed responsibility for numerous attacks in 2001, including an attack in January on Srinagar airport that killed five Indians along with six militants; an attack on a police station in Srinagar that killed at least eight officers and wounded several others; and an attack in April against Indian border-security forces that left at least four dead. The Indian Government publicly implicated the LT - along with JEM - for the 13 December attack on the Indian Parliament building. The LT is also suspected of involvement in the 14 May 2002 attack on an Indian Army base in Kaluchak that left 36 dead. Senior al-Qaeda lieutenant Abu Zubaydah was captured at an LT safehouse in Faisalabad in March 2002, suggesting some members are facilitating the movement of al-Qaeda members in Pakistan.

Strength

Has several hundred members in Azad Kashmir, Pakistan, and in India's southern Kashmir and Doda regions. Almost all LT cadres are foreigners - mostly Pakistanis from madrassas across the country and Afghan veterans of the Afghan wars. Uses assault rifles, light and heavy machineguns, mortars, explosives, and rocket-propelled grenades.

Location/Area of Operation

Based in Muridke (near Lahore) and Muzaffarabad. The LT trains its militants in mobile training camps across Pakistan-administered Kashmir and had trained in Afghanistan until fall of 2001.

External Aid

Collects donations from the Pakistani community in the Persian Gulf and United Kingdom, Islamic NGOs, and Pakistani and Kashmiri businessmen. The LT also

maintains a Web site (under the name of its parent organization Jamaat ud-Oaawa), through which it solicits funds and provides information on the group's activities. The amount of LT funding is unknown. The LT maintains ties to religious/military groups around the world, ranging from the Philippines to the Middle East and Chechnya through the MOI fraternal network. In anticipation of asset seizures by the Pakistani Government, the LT withdrew funds from bank accounts and invested in legal businesses, such as commodity trading, real estate, and production of consumer goods.

20. Lashkar I Jhangvi (LJ) (Army of Jhangvi)

Description

Lashkar I Jhangvi (LJ) is the militant offshoot of the Sunni sectarian group Sipah-I-Sahaba Pakistan (SSP). The group focuses primarily on anti-Shia attacks and was banned by Pakistani President Musharraf in August 2001 as part of an effort to rein in sectarian violence. Many of its members then sought refuge with the Taliban in Afghanistan, with whom they had existing ties.

Activities

LJ specializes in armed attacks and bombings. The group attempted to assassinate former Prime Minister Nawaz Sharif and his brother Shabaz Sharif, Chief Minister of Punjab Province, in January 1999. Pakistani authorities have publicly linked LJ members to the kidnap and murder of US journalist Daniel Pearl in early 2002. Police officials initially suspected LJ members were involved in the two suicide car bombings in Karachi in 2002-against a French shuttle bus in May and the US Consulate in June - but their subsequent investigations have not led to any LJ members being charged in the attacks. Similarly, press reports have linked LJ to attacks on Christian targets in Pakistan, including a grenade assault on the Protestant International Church in Islamabad in March 2002 that killed two US citizens, but no formal charges have been filed against the group.

Strength

Probably fewer than 100.

Location/Area of Operation

LJ is active primarily in Punjab and Karachi. Some members travel between Pakistan and Afghanistan.

External Aid

Unknown.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 23 September 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

☒ I have no comments.

☐ My comments are attached.

Name

[REDACTED] Lt Col, USAF

23 Sept 04
Date

Signature

[REDACTED]

ISN # [REDACTED]
Enclosure (5)