

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION;  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

DEPARTMENT OF DEFENSE; CENTRAL  
INTELLIGENCE AGENCY; DEPARTMENT OF  
STATE; DEPARTMENT OF JUSTICE,

Defendants.

09 Civ. 8071 (BSJ) (FM)

ECF Case

**SUPPLEMENTAL DECLARATION OF MELISSA GOODMAN**

I, Melissa Goodman, under penalty of perjury declare as follows:

1. I represent the American Civil Liberties Union and the American Civil Liberties Union Foundation (collectively, “the ACLU”) in the above-referenced action. I submit this declaration in support of plaintiffs’ motion for partial summary judgment.

2. Attached hereto as Exhibit A is a true and correct copy of an official Department of Defense policy document entitled “Detainee Review Procedures at Bagram Theater Internment Facility, Afghanistan.”<sup>1</sup> The document describes in detail the procedures and standards applied by Detainee Reviews Boards (“DRB”) at Bagram. Under this policy, detainees now appear “within 60 days after the detainee's transfer to [Bagram] and at least every six months thereafter” before a DRB, a panel of three U.S. military officers who determine whether detainees should remain imprisoned, be transferred to Afghan custody, or be released. Exh. A at

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<sup>1</sup> This policy was filed as an addendum to the government’s brief on appeal in *Maqaleh v. Gates*, No. 09-5265 (D.C. Cir. brief and addendum filed Sept. 14, 2009).

4.<sup>2</sup> At these administrative military proceedings, the panel considers written and testimonial evidence from the military and the detainee. *Id.* at 4-6. The detainee is not permitted to have a lawyer but is assigned a personal representative – a military officer who is supposed to assist the detainee. *Id.* at 5, 7. Detainees are permitted to attend the hearings and are permitted to present written information, testify, call witnesses who are “reasonably available,” and question government witnesses. *Id.* at 5-6. The policy provides that “[p]roceedings shall be open except for deliberations and voting by the members and testimony or other matters that would compromise national or operational security if held in the open.” *Id.* at 5. The cover memo to the policy states that “The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational security), including to representatives of the ICRC *and possibly non-governmental organizations.*” *Id.* at 2. (emphasis added).

3. Attached hereto as Exhibit B is a true and correct copy of an article by Jonathan Horowitz, a consultant and researcher at the Open Society Institute, published on April 20, 2010 on the *Huffington Post*, an online newspaper. Jonathan Horowitz, *New Detention Rules Show Promise and Problems*, *Huffington Post*, April 20, 2010.<sup>3</sup> The article indicates that DOD has invited human rights observers to attend the open portion of some DRB proceedings. Mr. Horowitz is among those human rights observers who recently attended the DRBs proceedings of five detainees. According to Mr. Horowitz’s account: “One man was alleged to have distributed landmines and provided financial support to the Taliban. Another was detained after

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<sup>2</sup> Page numbers here refer to the “addendum” page numbers located in the extreme bottom right corner.

<sup>3</sup> Available at [http://www.huffingtonpost.com/jonathan-horowitz/new-detention-rules-show\\_b\\_544509.html](http://www.huffingtonpost.com/jonathan-horowitz/new-detention-rules-show_b_544509.html).

allegedly discarding a hand grenade before approaching a military checkpoint. The third was detained for having in his house materials used for making improvised explosive devices. A fourth had alleged links to insurgent commanders. The fifth detainee was captured along the Pakistan border with a group of insurgents. Each DRB lasted one to three hours.” Exh. B. at 1. According to the account, at these DRBs, the “military, the detainee, and witnesses” presented evidence, *id.*, and “[f]our of the five DRBs [he] observed included witnesses,” *id.* at 3. With respect to Afghan detainees, “local community elders frequently assured the panel that [detainees] would not pose a threat and would be able to find gainful employment.” *Id.*

4. The DOD has publicly released transcripts and related documents prepared in relation to administrative status review hearings at Guantánamo Bay. At Guantánamo, DOD operated Combatant Status Review Tribunals (“CSRT”) and Administrative Review Boards (“ARB”) that served the same function as the DRBs at Bagram. The unclassified transcripts and related documents from these tribunals comprise thousands of pages, and are all available online at [http://www.dod.gov/pubs/foi/detainees/csrt\\_arb/index.html](http://www.dod.gov/pubs/foi/detainees/csrt_arb/index.html).<sup>4</sup> The transcripts often include discussion of the detainees’ citizenship; date, location and circumstance of capture; and/or length of detention. For example, the first CSRT hearing transcript included among the DOD’s compilation of documents, a true and correct copy of which is attached hereto as Exhibit C, includes discussion of each of these categories of information about a Guantánamo detainee:

“[T]he Personal Representative read each bullet of the Unclassified Summary [of the government’s evidence] and the Detainee had the following responses.

[ . . . ]

**Personal Representative:** “The Detainee was captured in December 2001 at his house in Kabul”

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<sup>4</sup> Plaintiffs cited the same compendium of records in the Declaration of Jonathan Hafetz, at ¶ 11. Once again, because these documents are so lengthy, plaintiffs supply only the Internet link here.

**Detainee:** “Yes, that’s right it was 2001, but I don’t remember the month. It was the middle of Ramadan 2001.”

[ . . . ]

**Tribunal Member:** “We don’t know much information about you. The only information we have about you is from the Unclassified Summary and what you have told us today. We have a few questions so we can figure out your story. Are you a citizen of Kazakhstan?”

**Detainee:** “Yes.”

[ . . . ]

**Tribunal Member:** “We’re trying to figure out why you’re here. The United States wouldn’t detain someone for more than 2 years for simply growing vegetables. Can you help us understand?”

[ . . . ]

**Tribunal Member:** “Who captured you in Kabul?”

*The detainee did not respond to the question.*

**Tribunal Member:** “Was it the Americans?”

**Detainee:** “The Afghan people captured me. When I was in prison, I heard Massoud’s people captured me.”

**Tribunal Member:** “When you were captured, were members of your family in the house also?”

**Detainee:** “There were 3 people in the house. Abdul was in that house too?”

**Tribunal Member:** “Jacob too?”

**Detainee:** Yes.

**Tribunal Member:** “Was there any resistance to arrest?”

**Detainee:** “I don’t know; they just captured me at my house.”

[ . . . ]

**Tribunal President:** “You said earlier other people were arrested with you at your house.”

**Detainee:** “I told you there were 3 people arrested in the house.”

**Tribunal President:** “You were with 3 people when you were arrested?”

**Detainee:** “Yes”

[ . . . ]

**Tribunal Member:** “At your house, did you have neighbors?”

*The detainee did not respond to the question*

**Tribunal Member:** “Was there anyone close by?”


**Detainee:** “It’s a community and there are other houses around.”

Dep’t of Defense, Testimony of Detainees Before the Combatant Status Review Tribunal, at 1-9 (testimony of ISN #521, Abdulrahim Kerimbakiev). The same detainee’s unclassified summary of evidence, presented at his first Administrative Review Board hearing on May 3, 2005, a true and correct copy of which is attached hereto as Exhibit D, includes additional details about his circumstances of capture, stating that “[a]nti-Taliban forces in Kabul, Afghanistan captured the detainee and seven other al Qaida members; there were also 3 anti-aircraft missiles confiscated at the time.” Dep’t of Defense, Summaries of Detention-Release Factors for ARB Round One held at Guantanamo, at 1088-89.

4. Attached hereto as Exhibit E is a true and correct copy of a memorandum, dated September 18, 2009, from the Director of National Intelligence (“DNI”) Dennis Blair, to the Director of the Central Intelligence Agency, regarding the “Protection of sources and methods in *Amnesty Int’l v. CIA*.” The memorandum was filed as Exhibit N to the Declaration of Wendy M. Hilton in support of the government’s motion for summary judgment in *Amnesty Int’l USA v. CIA*, No. 07-5435, dkt. 152, attachment 41 (S.D.N.Y. declaration and exhibit filed Sept. 22, 2009). *Amnesty Int’l v. CIA* is a FOIA lawsuit brought against the CIA and other government

agencies, in which the CIA has invoked Exemption 3 and 50 U.S.C. § 403-1(i), the “intelligence sources and methods” withholding provision of the National Security Act, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458. The DNI is not named as a defendant in that action. The CIA’s declarations in support of summary judgment in that case were supplemented by this signed memorandum from the DNI to the Director of the CIA stating that the DNI had been informed of the nature of the records withheld, had reviewed a sample of them, and had determined that the records “implicate[d] sensitive intelligence sources and methods that must be protected in the interest of the national security of the United States,” citing 50 U.S.C. § 403-1(i). The memorandum also explicitly authorized the Director of the CIA “to take all necessary and appropriate measures to ensure that these sources and methods are protected during the course of this litigation.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on this 6th day of May 2010.

  
Melissa Goodman

# Exhibit A

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UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE

OFFICE OF THE UNDER SECRETARY OF DEFENSE

2000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-2000



POLICY

JUL 14 2009

The Honorable Carl Levin  
U.S. Senate  
228 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Levin:

(U) Please find enclosed a copy of the policy guidance that the Deputy Secretary of Defense approved on July 2, 2009, modifying the procedures for reviewing the status of aliens detained by the Department of Defense at the Bagram Theater Internment Facility (BTIF) in Afghanistan, and related policy guidance regarding the criteria for assessing the threat such aliens represent, and regarding the authority to transfer and release such aliens from the BTIF. The enhanced detainee review procedures significantly improve the Department of Defense's ability to assess whether the facts support the detention of each detainee as an unprivileged enemy belligerent, the level of threat the detainee represents, and the detainee's potential for rehabilitation and reconciliation. The modified procedures also enhance the detainee's ability to challenge his or her detention.

(U) The modified procedures adopt the definitional framework of detention authority that the Administration first published in a Guantanamo habeas filing on March 13, 2009. Under this framework, the Department of Defense has the authority to detain "[p]ersons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks." The Department of Defense also has the authority to detain "[p]ersons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces."

(U) In addition to assessing whether the facts support the detention of each detainee as an unprivileged enemy belligerent under this framework, the modified procedures require detainee review boards to consider each detainee's threat level and potential for rehabilitation and reconciliation. Moreover, these threat assessments will no longer be linked to the criteria for transferring the detainee to Guantanamo.

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Derived from: Multiple Sources  
Declassify on: June 30, 2019





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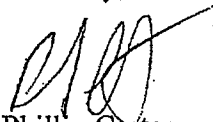
**UNCLASSIFIED WHEN SEPARATED FROM CLASSIFIED ENCLOSURE**

(U) The modified procedures generally follow the procedures prescribed in Army Regulation (AR) 190-8, such as that the proceedings generally shall be open (with certain exceptions including for matters that would compromise national or operational security), including to representatives of the ICRC and possibly non-governmental organizations. Detainees will be allowed to attend all open sessions and call reasonably available witnesses.

(U) Key supplemental procedures not found in AR 190-8 that enhance the detainee's ability to challenge his or her detention include appointment of a personal representative who "shall act in the best interests of the detainee"; whose "good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments)"; and who has access to all reasonably available information (including classified information) relevant to the proceedings. The end result is a process that approximates the process used to screen American citizens captured in Iraq.

(U) The Department of Defense submits this report on its modification of the procedures for reviewing the status of aliens detained by the Department of Defense at the BTIF in conformity with Section 1405(c) of the Detainee Treatment Act of 2005, Public Law Number 109-163, Title XIV. The modification will not go into effect until at least 60 days from the date of this report. In the meantime, it would be my pleasure to discuss the modified detainee review procedures with Members of the Committee or Committee Staff, at your convenience.

Sincerely,



Phillip Carter  
Deputy Assistant Secretary of Defense  
for Detainee Policy

Enclosures: As stated.

Cc: The Honorable John McCain

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**Detainee Review Procedures at Bagram Theater Internment Facility (BTIF), Afghanistan (U)**

*Authority to Detain and Intern (U)*

(U) U.S. Forces operating under Operation Enduring Freedom (OEF) authority are authorized to detain persons temporarily, consistent with the laws and customs of war (e.g., in self-defense or for force protection). Additionally, OEF forces are authorized to detain, and to intern at the Bagram Theater Internment Facility (BTIF), persons who meet the following criteria:

- (U) Persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks;
- (U) Persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.

(U) Internment must be linked to a determination that the person detained meets the criteria detailed above and that internment is necessary to mitigate the threat the detainee poses, taking into account an assessment of the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society. If, at any point during the detainee review process, a person detained by OEF forces is determined not to meet the criteria detailed above or no longer to require internment to mitigate their threat, the person shall be released from DOD custody as soon as practicable. The fact that a detainee may have intelligence value, by itself, is not a basis for internment.

*Capturing Unit Review (U)*

(U) Commander, USCENTCOM, shall ensure that OEF detainee review procedures include a review by the capturing unit commander, with the advice of a judge advocate, to assess whether persons detained by the unit meet the criteria for detention. This review shall occur prior to requesting a detainee's transfer to the BTIF for internment, and normally within 72 hours of the detainee's capture.

*Transfer Request (U)*

(U) Commander, USCENTCOM, shall ensure that OEF detainee review procedures include a request, by the capturing unit commander, to transfer to the BTIF those detainees the capturing unit commander assesses may meet the criteria for internment. The capturing unit commander shall forward the transfer request to the BTIF commander for review.

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*Review of Transfer Request (U)*

(U) Commander, USCENTCOM, shall further ensure that OEF detainee review procedures include a review by the BTIF commander, with the advice of a judge advocate, to assess whether detainees whose transfer to the BTIF the capturing unit commander has requested meet the criteria for internment. This review shall occur prior to approving a request to transfer a detainee to the BTIF for internment, and normally within 14 days of the detainee's capture.

*Initial Detainee Notification (U)*

(U) Commander, USCENTCOM, shall ensure that detainees receive timely notice of the basis for their internment, including an unclassified summary of the specific facts that support the basis for their internment. Commander, USCENTCOM shall further ensure that detainees also receive a timely and adequate explanation of the detainee review procedures, including, at a minimum: the fact that the detainee will have an opportunity to present information and evidence to a board of officers convened to determine whether the detainee meets the criteria for internment; the projected dates of the detainee's initial and periodic review boards; and the fact that a personal representative will be appointed to assist the detainee before the review boards. Detainees shall receive such notice and explanation, in writing and orally in a language the detainee understands, within 14 days after the detainee's transfer to the BTIF whenever feasible.

*Detainee Review Boards (U)*

(U) Commander, USCENTCOM shall ensure that a board of officers reviews all reasonably available information to determine whether each person transferred to the BTIF meets the criteria for internment and, if so, whether the person's continued internment is necessary. These reviews shall occur within 60 days after the detainee's transfer to the BTIF and at least every six months thereafter.

(U) Commander, USCENTCOM shall designate a flag or general officer to serve as the convening authority for review boards.

(U) Review boards shall be composed of three field-grade officers authorized access to all reasonably available information (including classified information) relevant to the determinations of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary. In order to ensure the neutrality of the review board, the convening authority shall ensure that none of its members was directly involved in the detainee's capture or transfer to the BTIF. The senior officer shall serve as the president of the review board. Another, non-voting officer shall serve as the recorder for the board proceedings.

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(U) The convening authority shall ensure that a judge advocate is available to advise the review board on legal and procedural matters.

(U) Review boards shall follow the procedures prescribed by AR 190-8, paragraph 1-6.e., as supplemented below:

- (U) The convening authority shall ensure that a personal representative, as described below, is appointed to assist each detainee before the review board.
- (U) Prior to each review board, appropriate U.S. military personnel shall conduct a reasonable investigation into any exculpatory information the detainee offers.
- (U) Review board proceedings shall follow a written procedural script in order to provide the detainee a meaningful opportunity to understand and participate in the proceedings (e.g., similar to the script used in Multi-National Force Review Committee proceedings in Iraq).
- (U) Members of the review board and the recorder shall be sworn. The recorder shall be sworn first by the president of the review board. The recorder will then administer the oath to all voting members of the review board, including the president.
- (U) A written record shall be made of the proceedings.
- (U) Proceedings shall be open except for deliberations and voting by the members and testimony or other matters that would compromise national or operational security if held in the open.
- (U) The detainee shall be advised of the purpose of the hearing, his or her opportunity to present information, and the consequences of the board's decision, at the beginning of the review board proceedings.
- (U) The detainee shall be allowed to attend all open sessions, subject to operational concerns, and will be provided with an interpreter if necessary.
- (U) The detainee shall be allowed to call witnesses if reasonably available and considered by the Board to have relevant testimony to offer, and to question those witnesses called by the review board, subject to any operational or national security concerns. Relevant witnesses serving with U.S. Forces shall not be considered reasonably available if, as determined by their commanders, their presence at the review board would affect combat or support operations. In these cases, written statements, preferably sworn, may be substituted and considered by the review board.

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The president of the review board shall determine whether witnesses not serving with U.S. Forces are reasonably available. At the discretion of the president of the review board, such relevant witnesses may testify by means of video teleconference, teleconference, or sworn written statement, if it would not be feasible for the witness to testify in person.

- (U) The detainee shall be allowed to testify or otherwise address the review board.
- (U) The detainee may not be compelled to testify before the review board.
- (U) The detainee shall be allowed to present reasonably available documentary information relevant to the determination of whether the detainee meets the criteria for internment and/or whether the detainee's continued internment is necessary.
- (U) Following the hearing of testimony and the review of documents and other information, the review board shall determine whether the detainee meets the criteria for internment, as defined above. The review board shall make this determination in closed session by majority vote. Preponderance of the evidence shall be the standard used in reaching the determination.
- (U) If the review board determines that the detainee does not meet the criteria for internment, the detainee shall be released from DoD custody as soon as practicable. If the review board determines that the detainee does meet the criteria for internment, the review board shall recommend an appropriate disposition to the convening authority. The review board shall make this recommendation in closed session by majority vote. Possible recommendations are as follows:
  - (U) Continued internment at the BTIF. Such a recommendation must include a determination not only that the detainee meets the criteria for internment, but also that continued internment is necessary to mitigate the threat the detainee poses.
  - (U) Transfer to Afghan authorities for criminal prosecution.
  - (U) Transfer to Afghan authorities for participation in a reconciliation program.
  - (U) Release without conditions.
  - (U) In the case of a non-Afghan and non-U.S. third-country national, possible recommendations may also include transfer to a third country for criminal prosecution, participation in a reconciliation program, or release.

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- (U) The review board's recommendations regarding disposition shall include an explanation of the board's assessment of the level of threat the detainee poses and the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society.
  - (U) In assessing threat, the review board shall further assess whether the detainee is an Enduring Security Threat, as defined in separate policy guidance regarding detainee threat assessment criteria and transfer and release authority at the BTIF. "Enduring Security Threat" is not a legal category, but rather an identification of the highest threat detainees for purposes of transfer and release determinations, as discussed below.
  - (U) In assessing potential for rehabilitation, reconciliation, and eventual reintegration into society, the review board shall consider, among other things, the detainee's behavior and participation in rehabilitation and reconciliation programs while detained by OEF forces. Information relevant to the assessment of potential for rehabilitation, reconciliation, and eventual reintegration into society may not be available for purposes of the detainee's initial review, but should be considered as it becomes available.
- (U) A written report of the review board determinations and recommendations shall be completed in each case.

(U) The recorder shall prepare the record of the review board within seven working days of the announcement of the board's decision. The record will then be forwarded to the first Staff Judge Advocate in the BTIF's chain of command.

(U) The record of every review board proceeding resulting in a determination that a detainee meets the criteria for internment shall be reviewed for legal sufficiency when the record is received by the office of the Staff Judge Advocate for the convening authority.

(U) Whenever possible, detainees shall receive notice of the results of their review boards, in writing and orally in a language the detainee understands, within 7 days after completion of the legal sufficiency review.

*Personal Representative (U)*

(U) The personal representative shall be a commissioned officer familiar with the detainee review procedures and authorized access to all reasonably available information (including classified information) relevant to the determination of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary.

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(U) The personal representative shall be appointed not later than 30 days prior to the detainee's review board. The detainee may waive the appointment of a personal representative, unless the detainee is under 18 years of age, suffers from a known mental illness, or is determined by the convening authority to be otherwise incapable of understanding and participating meaningfully in the review process.

(U) The personal representative shall act in the best interests of the detainee. To that end, the personal representative shall assist the detainee in gathering and presenting the information reasonably available in the light most favorable to the detainee. The personal representative's good faith efforts on behalf of the detainee shall not adversely affect his or her status as a military officer (e.g., evaluations, promotions, future assignments).

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6

# Exhibit B



May 5, 2010



This is the print preview: [Back to normal view »](#)

**Jonathan Horowitz**

Human rights investigator

Posted: April 20, 2010 12:01 PM

## New Detention Rules Show Promise and Problems

After years of blundered war-time detention policy, the U.S. military recently revamped its way of deciding who should be detained and released in Afghanistan.

The new system features Detainee Review Boards (DRBs) where detainees appear before a three-member U.S. military panel that determines whether a detainee should be released, detained until his next review in six months, or transferred to Afghan authorities for prosecution or reconciliation.

In March, I had the opportunity to observe five DRBs. One man was alleged to have distributed landmines and provided financial support to the Taliban. Another was detained after allegedly discarding a hand grenade before approaching a military checkpoint. The third was detained for having in his house materials used for making improvised explosive devices. A fourth had alleged links to insurgent commanders. The fifth detainee was captured along the Pakistan border with a group of insurgents. Each DRB lasted one to three hours.

The DRB panel's decision is based on a "preponderance of information" that is provided by the U.S. military, the detainee, and witnesses. The panel's decision is also based on the likelihood of whether a detainee could be reintegrated back into his community without threatening international or Afghan forces. The five detainees are awaiting the panel's decision.

The DRBs have been moving forward at an impressive pace despite limited number of staff. The military is holding DRBs five days a week. The vast majority of detainees have gone through their first review since the new procedures were implemented in September 2009.

The DRBs are held at the new Detention Facility in Parwan (DFIP), which currently holds around 800 detainees. DFIP is located on the outskirts of the Bagram Air Base and is under the full control of the U.S. government. It's a \$60 million state of the art facility that has replaced the infamous Bagram Theater Internment Facility, which is now taped off and appears empty.

DRBs are an improvement over the past system, Unlawful Enemy Combatant Review Boards (UECRBs), which had been used since 2005 by the U.S. military at Bagram. But the improvements are relative and the bar was set very low to begin with.

In April 2009, Judge Bates of the U.S. District Court for D.C., described the UECRBs as "plainly less sophisticated and more error-prone" than the Guantanamo Bay detainee review boards - and those review boards were deemed unconstitutional by the Supreme Court:

Unlike the [Guantanamo Bay process], where a petitioner has access to a "personal representative," Bagram detainees represent themselves. Obvious obstacles, including language and cultural differences, obstruct effective self-representation by petitioners such as these. Detainees cannot even speak for themselves; they are only permitted to submit a written statement. But in submitting that statement, detainees do not know what evidence the United States relies upon to justify an "enemy combatant" designation -- so they lack a meaningful opportunity to rebut that evidence. Respondents' far-reaching and everchanging definition of enemy combatant, coupled with the uncertain evidentiary standards, further undercut the reliability of the UECRB review.

Since that decision, the review procedures in Afghanistan have been overhauled to the DRB system. It remains to be seen, however, whether the U.S. has the right combination of procedures to build a fair process that can make an accurate determination relating to a person's detention and freedom.

The rights of the detainee are outlined at the beginning of the hearing when the military panel states, directly and simply: "This is not a criminal trial." The implication is that the detainee won't be convicted of a crime and that the military won't apply many of the essential legal rights found in criminal proceedings in most countries around the world. The detainee isn't entitled to a lawyer and isn't allowed to see all the evidence against him. Evidentiary standards are informal and the detainee's fate is not decided by an independent judge but by a member of the U.S. military--the same institution that detained him.

While the rules are a far cry from the regular system of courtroom checks and balances, the military has tried to address shortcomings by providing detainees with certain rights that were never part of the UECRB in Bagram.

Each detainee is assigned a personal representative--not a lawyer--who can review the classified evidence on their behalf. (The detainee can't review classified evidence.) Detainees are informed of the allegations against them and can, also for the first time, call witnesses to testify on their behalf. DRB policy also explicitly prohibits information obtained under torture from being submitted as evidence.

To increase the presence of witnesses at the DRBs, the U.S. military distributes information in local communities about the DRB procedures. The U.S. also allows detainees to ask their relatives to gather witnesses and documents to support their case. Both of these measures are positive since some former detainees I spoke with complained that they were not notified of their right to call witnesses.

Four of the five DRBs I observed included witnesses, some of whom disputed the government's allegations and others who acted as character witnesses. When the panel asked the witnesses what would happen if the detainee were released, local community elders frequently assured the panel that they would not pose a threat and would be able to find gainful employment.

*A communal cell at the Detention Facility in Parwan. (Jonathan Horowitz)*

In the DRB's that I observed, the personal representatives, who according to the DRB policy are obligated to act in the "best interest" of the detainee, felt free to advocate on behalf of a detainee, challenge the factual record, and ensure that the detainee understood the procedures. This is a welcomed change.

However, there are reasons for concern. Serious problems continue to damage the credibility of the new system.

For example, that detainees are not allowed to review classified information seriously jeopardizes the accuracy and legitimacy of the hearings. This classification procedure, though important for protecting identities of informants, makes it nearly impossible for the detainee to effectively challenge the veracity of the allegations.

To solve this problem, the U.S. military and intelligence agencies need to end their culture of over-classification and give greater priority to improving their evidence gathering capacity, as opposed to their intelligence gathering capacity. Without a shift from reliance on secret sources to greater transparency, U.S. detention operations and its detainee review system are doomed. This is not unprecedented; International Security Assistance Forces (ISAF) soldiers, who send their detainees to Afghan authorities, have been given orders to improve evidence collection for Afghan criminal prosecutions.

The U.S. also needs to review its intelligence sources and eliminate those who repeatedly provide false and inaccurate information. One of the biggest complaints Afghans have of the U.S. detention policy is that informants aren't held accountable. In the highly publicized botched night raid by U.S. Special Operations Forces that killed civilians in February, the Christian Science Monitor reported the family as saying, "We want that spy who gave the false information to the Americans...I don't want the spy for myself, I want him to face justice or be handed over to the commander of the [Afghan army] corps."

The DRBs also need more staff, especially personal representatives. If not supplemented, personnel will quickly burn-out and this will severely damage the quality of the DRBs. Currently, there are only eight representatives responsible for reviewing evidence, gathering witnesses, and conducting meetings for 800 detainees.

Also of grave concern is the lack of adequate translation services during DRB proceedings. In the cases I observed, the interpreter at times did not provide a full translation of comments by detainees, witnesses, panel members, personal representatives, or the recorder. Inadequate interpreters should not be allowed to influence a process that determines a person's liberty. Since the DRBs are audio recorded, it would be beneficial for an independent expert to review the tapes and assess the quality of the DRB interpreters. More broadly, U.S. military should conduct a complete review of its Dari and Pashtu interpreters.

Another key problem is that U.S. military personnel aren't well versed in Afghan history, culture, and politics, which is critical in accurate detainee reviews. Mobile ringtones that demonstrate sympathy for the Taliban (yes, they exist); hosting a wedding that Taliban members attend; and an affiliation with an insurgent commander aren't necessarily incriminating in an Afghan context, however are seen as very worrisome behavior by the U.S. military. In the realities of this conflict, Afghans download Taliban ring tones to help them gain safe passage at insurgent checkpoints; insurgents are omnipresent in local community affairs; and insurgent commanders today have been U.S. allies in the past.


To help resolve this problem, U.S. military personnel, especially those involved in detentions, should receive better training on Afghanistan's history, culture, and politics. Afghan legal expertise would also be valuable since the DRB panel, whose members aren't experts in Afghan law, can hand over detainees to Afghan authorities for criminal prosecutions.

Despite all the changes to its detention policies, and the improvements that are still needed, the U.S. remains adamant about handing its DFIP operations to the Afghan government, at which point the Afghan government is likely to start holding criminal trials for the detainees. The transfer date is ambitiously set for January 2011. In reality, it will take place when the U.S. is confident that Afghanistan's justice system is stronger and safe from threats of corruption.

To quicken the pace, the U.S. is setting up a Rule of Law Center at DFIP where it will facilitate the training of Afghan judges, national security prosecutors, investigators, and defense lawyers under Afghan domestic law. If done well, this rule of law program holds considerable potential for strengthening Afghanistan's extremely weak legal system. Afghan officials desperately need to increase their skills in building legal cases and respecting the rights of detainees, such as by respecting the ban on coerced evidence and ensuring detainees enjoy their right to an attorney and fair trial.

As the U.S. moves forward in its various efforts to change the way it conducts detention operations in Afghanistan, it remains unwilling to allow defense lawyers into the DRBs, put non-military personnel on the review panel, or permit detainees to see classified evidence. All weaken the ability of the military to accurately determine who it should detainee and who it should set free.

But these flaws shouldn't cloud the fact that some of the other problem areas can be fixed if tackled appropriately, such as through better evidence collection, not classifying information unnecessarily, improving interpreters, increasing the number of personal representatives, and proper rule of law training for national security detention cases.

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# Exhibit C

**Summarized Unsworn Detainee Statement**

I do not accept the accusations.

*When the Detainee made no further comments, the Personal Representative read each bullet of the Unclassified Summary and the Detainee had the following responses.*

- **3(a)(1) The Detainee traveled to Kabul, Afghanistan from Kazakhstan in September, 2000.**

I forgot. It's been 2 ½ years. I don't remember which month.

- **3(a)(2) Detainee's travel route took him through Karachi, Islamabad and Peshawar, Pakistan and through Kandahar, Afghanistan.**

That's right.

- **3(a)(3) The Detainee has family ties to known terrorists in Pakistan.**

What kind of ties?

*The Personal Representative rephrased the question. Is anyone related to you a terrorist in Pakistan?*

I have no relatives in Pakistan. How can...?

- **3(a)(4) One of Detainee's "family ties" is a member of a terrorist group responsible for attacks in Uzbekistan.**

None of my family members have ties with the terrorist group in Uzbekistan.

- **3(a)(5) The Detainee resided in Taliban provided housing and worked as a cook in a Taliban camp.**

I told you last time. I wasn't a cook, I just grew the vegetables. I don't even know how to cook. My mother was cooking for me all of the time.

- **3(a)(6) The Detainee was captured in December 2001 at his house in Kabul.**

Yes, that's right it was 2001, but I don't remember the month. It was the middle of Ramadan in 2001.

**Questions by the Personal Representative**

Q: Can you tell us who you traveled to Afghanistan with?

A: There were 10 people, my grandmother, sisters and brothers.

**Questions by the Tribunal Members**

Q: Good morning.

A: Thank God.

Q: We don't know much information about you. The only information we have about you is from the Unclassified Summary and what you have told us today. We have a few questions so we can figure out your story. Are you a citizen of Kazakhstan?

A: Yes.

Q: Can you tell us why you went from Kazakhstan to Afghanistan with your family?

A: In Kazakhstan there are no jobs. It's hard to make money.

Q: You and your entire family went to Afghanistan to look for work?

A: We heard that any immigrants to Afghanistan from other countries are provided with food.

Q: Was that true? When you went to Afghanistan, did they provide you with food and a place to live?

A: Yes, they provided.

Q: How did you know how to get from Kazakhstan all the way to Afghanistan?

A: *The Detainee did not respond to the question.*

Q: It was a very long journey. How did you know how to do it?

A: There was no money. A guy named Jacob who knows the route. I went with Jacob.

- Q: Do you remember how long it took you to get from Kazakhstan to Kabul?
- A: Approximately 2-3 days.
- Q: How did you get there [Kabul]. By plane, car?
- A: We went by plane from Kazakhstan to Karachi, Pakistan and then by bus from Karachi to Kabul.
- Q: So, you were in a house in Kabul and the only thing you did was grow vegetables. Did you do anything else?
- A: I looked on the house. Nothing else.
- Q: All of your family members lived in the same house?
- A: The rest of them were in the house. Jacob was working in the kitchen as a cook. The rest just stayed in the house.
- Q: You and your family didn't have to pay for any food or housing costs?
- A: We don't pay anything. All of the food and stuff is free. Jacob gets paid money from them [Afghanistan government].
- Q: Did they [Afghanistan government] ask anything from you in return?
- A: No.
- Q: The government in Afghanistan didn't require any service from you?
- A: No.
- Q: You lived in Kabul for a year or so? Maybe a little longer?
- A: Approximately a year.
- Q: You found the situation in Afghanistan better than your home country of Kazakhstan?
- A: It was not a hard life. They bring everything, like food, to us. I helped with the back yard.



- Q: When did you first realize that Afghanistan was in the middle of a civil war?
- A: Please repeat the question.
- Q: At some point did you realize that the country was at civil war?
- A: When you traveled on the road, you can see the broken houses and tanks and realize there is a war going on.
- Q: Was the place where you and your family lived ever in any danger of the civil war?
- A: No. The houses are safe.
- Q: Did anybody from the Taliban ever approach you and ask you to assist them?
- A: No.
- Q: Did they approach any members of your family?
- A: No. Most of my family is just kids and a woman.
- Q: It seems most unusual that the government would be so generous to you and your family, but not ask anything of you in return. Can you explain this for us?
- A: *The Detainee did not respond to the question.*
- Q: What can you tell us about the other accusations you said were false? When it says you have "family ties" to known terrorists in Pakistan and Uzbekistan, what is the government talking about when it says these things?
- A: You mean how the Taliban government...how they feel about the terrorist groups in Pakistan and Uzbekistan, right?
- Q: No. What does the United States government mean when it says you have "family ties" to terrorists?
- A: They are just blaming me. It's false.
- Q: Do you think this is about someone else in your family?
- A: We came to Afghanistan because we are all Muslim. They provide all the food and housing because of the Muslim religion.

Q: We're trying to figure out why you're here. The United States wouldn't detain someone for more than 2 years for simply growing vegetables. Can you help us understand?

A: *The Detainee did not respond to the question.*

Q: Do you want to tell us why you think you're here?

A: I'm here because I went to Afghanistan with my family for a better life. They captured me at that house. That's the reason I'm here.

Q: Who captured you in Kabul?

A: *The Detainee did not respond to the question.*

Q: Was it Americans?

A: The Afghan people captured me. When I was in prison, I heard Massoud's people captured me.

Q: When you were captured, were members of your family in the house also?

A: There were 3 people in the house. Abdul was in that house too?

Q: Jacob too?

A: Yes.

Q: Was there any resistance to the arrest?

A: I don't know; they just captured me at my house.

Q: You had nothing to defend yourself with?

A: There is nothing.

Q: Do you have any idea where the rest of your family is?

A: God knows.

Q: Did you ever have the opportunity to have any type of training while in Afghanistan?

A: For what reason?

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Q: To do something other than growing vegetables, maybe help the government.

A: I can't do anything except grow vegetables.

Q: Did anyone ask you if you wanted to do something else?

A: No.

Q: What kind of vegetables did you grow?

A: Green peppers, tomatoes, green beans and some potatoes.

**Questions by the Tribunal President**

Q: Was your garden large or confined to a small yard?

A: It was only for my family.

Q: The house you stayed in, did it house just your immediate family members or were other people living in this house?

A: No, just my family members.

Q: Yet, when you were captured, other people were with you, other than your family. Right?

A: *The Detainee did not respond to the question.*

Q: You said earlier other people were arrested with you at your house.

A: I told you there were 3 people arrested in the house.

Q: You were with 3 people when you were arrested?

A: Yes.

Q: What work did these people do to earn a living?

A: They just ate whatever God provided.

Q: They too were living off the good graces of the Taliban government in Afghanistan?

A: *The Detainee did not respond to the question.*

ISN# 521  
Enclosure (3)  
Page 6 of 9

UNCLASSIFIED//~~FOUO~~

000006

- Q: Do you know if the others received military training while in Afghanistan?
- A: Jacob was a cook for the back-up forces. Abdullah came from Pakistan, studying Islamic studies and came from Pakistan to Kabul.
- Q: Do you know if they received military training from the Taliban?
- A: I don't know.
- Q: Did you receive military training from the Taliban or Al Qaeda while you were in Afghanistan?
- A: No.
- Q: In your vegetable garden, did you also grow poppies?
- A: I do not know what a poppy is.
- Q: Flowers.
- A: Like a kind of drug?
- Q: Yes, opium.
- A: No, what I am going to do growing this?
- Q: It's pretty popular in Afghanistan, and it's a pretty good cash crop from what I understand. So, your garden was for your family's use only? You didn't provide those vegetables to anyone else?
- A: The ground is not good. Vegetables don't grow well.

**Questions by the Tribunal Members**

- Q: You were not able to sell any vegetables to make any money for yourself?
- A: *The Detainee did not respond to the question.*
- Q: It seems unusual to us that you would be in Afghanistan for over a year, but have no money yourself and have no source of income. Can you explain this for us, please?
- A: *The Detainee did not respond to the question.*

- Q: If you were released from Guantanamo Bay, where would you like to go?
- A: Mecca, it's a holy place. I know they are [Saudi Arabia is] a Muslim country.
- Q: I don't have any more questions, but I'll give you one more chance to say anything you might want to say to help us understand why many of these things don't seem to make sense.
- A: *The Detainee did not respond to the question.*
- Q: Is there anything else you can tell us to help us understand why you're here?
- A: *The Detainee did not respond to the question.*
- Q: At your house, did you have neighbors?
- A: *The Detainee did not respond to the question.*
- Q: Was there anyone close by?
- A: It's a community and there are other houses around.
- Q: They all grew vegetables?
- A: I don't know.
- Q: Did Jacob get vegetables from you?
- A: *The Detainee did not respond to the question.*
- Q: He was a cook; he needed vegetables.
- A: *The Detainee did not respond.*
- Q: No answer?
- A: Sir, I told you the ground is really bad and it doesn't really grow anything. It doesn't really grow vegetables.

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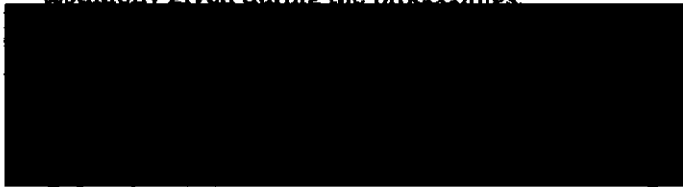
**Questions by the Tribunal President**

Q: Do you have any other information that you would like to present to this Tribunal today?

A: *The Detainee did not respond to the question.*

**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. Marine Corps  
Tribunal President

ISN# 521  
Enclosure (3)  
Page 9 of 9

UNCLASSIFIED//~~FOUO~~

000009

# Exhibit D

**UNCLASSIFIED**

**Department of Defense  
Office for the Administrative Review of the Detention of Enemy  
Combatants at US Naval Base Guantanamo Bay, Cuba**

03 May 2005

**From:** Presiding Officer  
**To:** KERIMBAKIEV, ABDULRAHIM  
**Via:** Assisting Military Officer  
**SUBJECT:** UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF KERIMBAKIEV, ABDULRAHIM

1. An Administrative Review Board will be convened to review your case to determine if your continued detention is necessary.
2. The Administrative Review Board will conduct a comprehensive review of all reasonably available and relevant information regarding your case. At the conclusion of this review the Board will make a recommendation to: (1) release you to your home state or to a third state; (2) transfer you to your home state, or a third state, with conditions agreed upon by the United States and your home state, or the third state; or (3) continue your detention under United States control.
3. The following primary factors favor continued detention:
  - a. Commitment
    1. The detainee traveled to Kabul, Afghanistan from Kazakhstan in September 2000.
    2. Detainee's travel route took him through Karachi, Islamabad and Peshawar, Pakistan and through Kandahar, Afghanistan.
    3. The detainee was recruited by the Taliban in Kazakhstan.
    4. The detainee was captured in December 2001 at his house in Kabul, Afghanistan.
  - b. Connections/Associations
    1. The detainee has family ties to known terrorists in Pakistan.
    2. One of detainee's "family ties" is a member of a terrorist group responsible for attacks in Uzbekistan.
    3. The detainee is a member of the Eastern Turkestan Islamic Party/Movement (ETIP/ETIM).

001088

UNCLASSIFIED

DMO Exhibit 1

Page 1 of 2



**UNCLASSIFIED**

**SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE REVIEW BOARD IN THE CASE OF KERIMBAKIEV, ABDULRAHIM**

4. The detainee and his family were financially supported by the Taliban and resided in Taliban provided housing. In October 2001, the detainee departed Kabul, Afghanistan to work as a cook at a Taliban Military Camp.

5. The detainee and the individuals he traveled with, chose a cover story for their recruitment in Kazakhstan.

**c. Other Relevant Data**

Anti-Taliban Forces in Kabul, Afghanistan captured the detainee and seven other al Qaida members; there were also 3 anti-aircraft missiles confiscated at the time.

4. The following primary factors favor release or transfer:

The detainee denied having any terrorist affiliation or information about terrorist activities directed or planned against the United States. He further denied knowing about anyone possibly having such information.

5. You will be afforded a meaningful opportunity to be heard and to present information to the Board; this includes an opportunity to be physically present at the proceeding. The Assisting Military Officer (AMO) will assist you in reviewing all relevant and reasonably available unclassified information regarding your case. The AMO is not an advocate for or against continued detention, nor may the AMO form a confidential relationship with you or represent you in any other matter.

**UNCLASSIFIED**

001089

# Exhibit E

DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC 20511


E/S 00995

MEMORANDUM FOR: Director, Central Intelligence Agency  
SUBJECT: Protection of sources and methods in Amnesty Int'l v. CIA

I have been advised that in connection with the above-mentioned Freedom of Information Act (FOIA) litigation certain information must be protected from public disclosure.

I have been informed of the nature of the records at issue in this case and have reviewed a sample of them. I am aware that the Central Intelligence Agency will explain to the Court the need to withhold certain information. The records I reviewed, as well as information that would necessarily be revealed by a response to categories 3-6, 9-10, and 15-17 of the December 28, 2007 FOIA request, directly implicate sensitive intelligence sources and methods that must be protected from unauthorized disclosure in the interest of the national security of the United States. See 50 U.S.C. § 403-1(i).

You are authorized to take all necessary and appropriate measures to ensure that these sources and methods are protected during the course of this litigation.

  
\_\_\_\_\_  
Dennis Blair

9/18/09  
\_\_\_\_\_  
Date