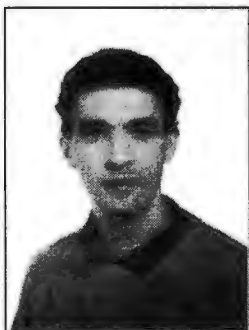


## DJAMEL AMEZIANE\*

### ALGERIAN GUANTÁNAMO REFUGEE IN NEED OF REFUGEE PROTECTION



*DJAMEL AMEZIANE is an ethnic Berber [REDACTED] who fled his home country 16 years ago in order to escape persecution and make a better life for himself. He traveled to Austria, where he worked as a top-paid chef in an Italian restaurant, and later to Canada, where he applied for political asylum and lived for five years, though his application was ultimately denied. Displaced, fearful of being returned to Algeria, and faced with few options, he traveled to Afghanistan. But as a foreigner in a land soon torn apart by conflict, he became an easy target for corrupt local forces, who sold him to the U.S. military for a bounty. The Americans transported him first to the Airbase at Kandahar, Afghanistan, and then to Guantánamo Bay, Cuba, where, after more than six years, he remains imprisoned without charge and, to date, without judicial review of his detention. If Djamel is ever to leave Guantánamo in safety, he needs the protection of a third country to offer him resettlement.*

#### Personal History

Djamel Ameziane was born in 1967 in Algiers to a close-knit family of four brothers and four sisters. He obtained a college diploma in Algeria and worked as a supervisor responsible for supplying drinking water and waste disposal. In 1992, Djamel left the country to escape escalating instability and oppression under the one-party government then in power. He transited through Italy to Vienna, Austria, where he [REDACTED] Djamel began working as a dishwasher in Vienna, but his talent allowed him to rise quickly to become the highest-paid chef at *Al Caminetto Trattoria*, a well-known Italian restaurant. In 1995, following the election of a conservative anti-immigrant government, new immigration policies kept Djamel from extending or renewing his visa, and his work permit was denied without explanation. He was forced to leave the country.

Djamel traveled directly to Canada because of its large French-speaking population and his belief that Canada's immigration policy was more favorable to immigrants like him. Immediately upon his arrival, he told immigration officials that he wanted to apply for asylum because he was afraid of being deported to [REDACTED]. As he awaited a decision, Djamel obtained a temporary work permit and worked diligently for an office supply company and for various restaurants [REDACTED]. His application was denied in 2000 and he was forced to uproot his life and leave the country he had made his home for the past five years.

Fearful of being forcibly returned to Algeria, Djamel went to Afghanistan, the only country where he felt he could live freely without discrimination as a Muslim man, and where he would not fear deportation to Algeria. Once in Afghanistan, he did not participate in any military training or fighting and, as soon as the war started, he fled to escape the fighting. He was captured by local police while trying to cross the border into Pakistan, and was turned over to U.S. forces for a bounty. Later, in Guantánamo, soldiers told Djamel that the Pakistanis sold people to them in Afghanistan for \$2,000, and in Pakistan for \$5,000.

Djamel has never been alleged by the U.S. government to have engaged in any acts of terrorism or hostilities. He has never picked up a weapon or participated in any military training or fighting, nor is he accused of these acts. In short, he has never had any involvement with extremism, terrorism or any act of violence whatsoever. Tragically, Djamel was nonetheless [REDACTED] on or around February 11, 2002, where he was held in the now-infamous metal cages of Camp X-Ray.

\* Djamel Ameziane is represented by attorneys Wells Dixon and Pardiss Kebriaei at the Center for Constitutional Rights. For more information about Guantánamo's refugees, contact [emaclean@ccrjustice.org](mailto:emaclean@ccrjustice.org).  
027969 Defense Reciprocal Discovery

Photo credit: Center for Constitutional Rights

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DEFENSE EXHIBIT CC for identification  
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## **Imprisonment at Guantánamo**

At Guantánamo, Djamel has been detained over the past year in solitary confinement in a small windowless cell in Camp 6, which the ICRC has described as more restrictive than supermax facilities in the U.S.<sup>1</sup> Separate from the inhumane conditions of his detention, he has been subjected repeatedly to brutal acts of physical violence by military guards. He has been subjected to a form of waterboarding, where guards held his head down and placed a running water hose between his nose and mouth, running it for several minutes over his face and suffocating him, repeating the operation several times. Of that experience he writes, "I had the impression that my head was sinking in water. Simply thinking of it gives me the chills." He has spent as many as 25 and 30 hours at a time in the interrogation room, sometimes with techno music blasting, "enough to burst your eardrums." He was once sprayed all over with cayenne pepper and then hosed down with water to accentuate the effect of the pepper spray and make his skin burn. The guards then bound him in cuffs and chains and took him to an interrogation room, where he was left for several hours, writhing in pain, his clothes soaked while air conditioning blasted in the room, and his body burning from the pepper spray.

For the injuries and ailments resulting from his imprisonment, he has never been afforded adequate medical care. For example, because he spends nearly all his time staring at the inside of his small cell in Camp 6, his vision has been steadily deteriorating. It took a year of repeated requests for him to receive an eye examination, and he still does not have a proper pair of eyeglasses. He also suffers from rheumatism in his legs because of the extremely cold temperatures inside Camp 6, for which he cannot even get a pair of socks.

During his more than six years at Guantánamo, Djamel has been deprived of critical moments with his family. His father passed away during this period, before Djamel could see or communicate with him one last time. His brothers and sisters have had wedding ceremonies he has been unable to attend and had children who have never known their uncle.

## **Fear of Return to Algeria**

Djamel has a credible fear of persecution if he were to be returned to Algeria. In Djamel's hometown in Kabylie, an unstable region in the north of Algeria known for frequent, violent clashes between the Algerian army and Islamic resistance groups, practicing Muslims are automatically suspected of being supporters of such groups and are frequently harassed and targeted for arrests and detention by the government solely because of their religious practices. The stain of having spent time in Guantánamo would alone be enough to put him at risk of being imprisoned if he is returned. Algeria has a documented history of torture and ill-treatment of its prisoners, and Algerian government officials have stated to lawyers for Guantánamo prisoners that all Algerian citizens in Guantánamo would be considered serious security threats and would be subject to further detention and investigation if returned. The first two Algerians transferred out of Guantánamo in July 2008 were disappeared for two weeks and likely subjected to interrogation by the DRS, Algeria's "military security" police. Amnesty International has reported that the most serious violations of human rights abuses have been committed by the DRS in cases of individuals detained on suspicion of terrorist activity.

## **Need for Refugee Protection**

Djamel remains trapped at Guantánamo until a third country comes forward to offer him resettlement protection. He is in the process of applying for resettlement in Canada, the country he lived in for five years and would not have left had he not previously been denied asylum.

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<sup>1</sup> This is according to the most recent version of his attorney's unclassified notes.  
027970 Defense Reciprocal Discovery

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ALDL AL NASR,

Petitioner,

v.

GEORGE WALKER BUSH, *et al.*,

Respondents.

Civil Action No. 05-345 (JDB)

**DECLARATION OF TERESA A. McPALMER**

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

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

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

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

Dated: 22 July 2005

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



Department of Defense  
Director, Combatant Status Review Tribunals

OARDEC/Ser: 901

9 FEB 2005

~~FOR OFFICIAL USE ONLY~~

From: Director, Combatant Status Review Tribunal

Subj: REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR  
DETAINEE ISN # 308

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 #308 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

UNCLASSIFIED

25 Jan 05

MEMORANDUM

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

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL  
FOR DETAINEE ISN #308

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

Encl: (1) Appointing Order for Tribunal #12 of 29 Sep 2004  
(2) Record of Tribunal Proceedings

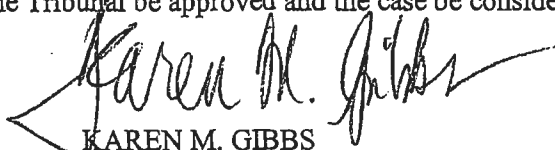
1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and elected to participate in the CSRT, by attending the CSRT and presenting a sworn statement with the assistance of his personal representative. *See* Exhibits D-a. The statement consisted of the detainee's responses to the allegations contained in Exhibit R-2. *See* Enclosure (3).
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal substantially complied with all provisions of references (a) and (b).
- d. Note that some information in Exhibit R-4 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.
- e. Exhibits R-3, R-4 and R-9 contain handwritten notes in the margins. These notes appear to be aids in directing the Tribunal to the source of information contained in the Unclassified Summary provided to the detainee. These notes do not alter the evidence, nor do they affect the legal sufficiency of the evidence.
- f. The detainee did not request that any witnesses or documentary evidence be produced.
- g. The Tribunal's decision that detainee #308 is properly classified as an enemy combatant was unanimous.

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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL  
FOR DETAINEE ISN # 308

- h. The detainee's Personal Representative was given the opportunity to review the record of proceedings, and declined to submit post-tribunal comments to the Tribunal.
2. The proceedings and decision of the Tribunal as reflected in Encl. (2) are legally sufficient, and no corrective action is required.
3. I recommend that the decision of the Tribunal be approved and the case be considered final.

  
KAREN M. GIBBS  
CDR, JAGC, USNR



Department of Defense  
Director, Combatant Status Review Tribunals

29 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #12

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. Marine Corps Reserve; President

[REDACTED] Lieutenant Colonel, JAGC, U.S. Army;  
Member (JAG)

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

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





HEADQUARTERS, OARDEC FORWARD  
GUANTANAMO BAY, CUBA  
APO AE 09360

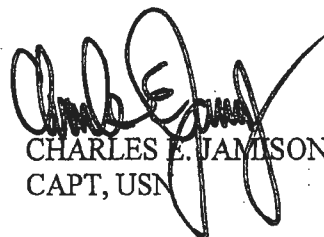
21 January 2005

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander ICO ISN 308

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 [REDACTED].

  
CHARLES E. JAMISON  
CAPT, USN

**(U) Combatant Status Review Tribunal Decision Report Cover Sheet**

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

(U) TRIBUNAL PANEL: #12

(U) ISN#: 308

Ref: (a) (U) Convening Order for Tribunal #12 of 29 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/~~FOUO~~)  
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)  
(3) (U) Summary of Detainee/Witness Testimony (U/~~FOUO~~)  
(4) (U) Copies of Documentary Evidence Presented (S/NF)  
(5) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened on 20 October 2004 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 20 October 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #308 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 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. Marine Corps  
Tribunal President

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**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION**

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

TRIBUNAL PANEL:       #12        
ISN #:       308      

**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 because he is a member of, or affiliated with, al Qaida forces that are engaged in hostilities against the United States and 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 unclassified evidence presented to the Tribunal by the Recorder alleged that the Detainee was associated with the Taliban and traveled to Afghanistan to fight the jihad. The unclassified summary also indicated that the Detainee admitted traveling to Afghanistan to join the Taliban and stayed at a Taliban farm in Kabul. The Detainee chose to participate in the Tribunal process. He called no witnesses, requested no documents be produced and made a sworn verbal statement with the assistance of his assigned Personal Representative. The Detainee, in his verbal statement, admitted that he did travel to Kabul, but did not go to fight the jihad or to join the Taliban. The Detainee stated that he was going to Pakistan because he had a problem with his eye and he was going to get it treated. He also wanted to see the religion of the Taliban for 10 days in Afghanistan and then after that, he was going to go back to Pakistan and have the operation. When he got to Kabul, the Taliban put him in jail because he had stated that he was a Saudi Arabian police officer and they believed that he must have been a spy.

**3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-17.
- b. Testimony of the following persons: Sworn statement of the Detainee.

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

The Detainee requested no witnesses and requested no additional evidence be produced; therefore, no rulings on these matters were required.

#### 5. Discussion of Unclassified Evidence

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

- a. The Recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence.
- b. Essentially the only unclassified evidence the Tribunal had to consider was the Detainee's sworn testimony. A summarized transcript of the Detainee's sworn testimony is attached as Enclosure (3) to the CSRT Decision Report. In sum, the Detainee testified that he did travel to Kabul, but did not go to fight the jihad or to join the Taliban. The Detainee stated that he was going to Pakistan because he had a problem with his eye and he was going to get it treated. He also wanted to see the religion of the Taliban for 10 days in Afghanistan and then after that, he was going to go back to Pakistan and have the operation. When he got to Kabul, the Taliban put him in jail because he had stated that he was a Saudi Arabian police officer and they claimed that he was a spy. The Detainee told the Taliban that he wanted to go home, but they were still treating him as a spy. He was taken to a bean farm under the control of the Taliban and then eventually led across the border and was turned over with others to the Pakistani authorities.
- c. The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

#### 6. Consultations with the CSRT Legal Advisor

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

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#### 7. Conclusions of the Tribunal


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

- a. The Detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was requested or deemed necessary.
- b. The Detainee understood the Tribunal proceedings. He asked no questions regarding his rights and actively participated in the hearing.
- c. The Detainee is properly classified as an enemy combatant because he is a member of, or affiliated with, al Qaida forces that are engaged in hostilities against the United States or its coalition partners.

#### 8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

  
Colonel, U.S. Marine Corps  
Tribunal President

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**Summarized Sworn Detainee Statement**

*The Detainee requested that the Personal Representative make a statement on his behalf, and the Detainee would add information if he needed to.*

*The Personal Representative, along with the Detainee, addressed each point of the Unclassified Summary.*

- **3(a)1 The Detainee, a Saudi Arabian citizen, traveled to Kabul, Afghanistan, in July 2001 to fight the jihad.**

Personal Representative: The Detainee admits he did travel to Kabul, but did not go to fight the jihad. When he got to Kabul, the Taliban put him in jail because he was a Saudi police officer...

Detainee: They asked me if I was a fighter, I said no, I just came to see your religion.

Personal Representative: ...and they claimed that the Detainee was a spy.

- **3(a)2 The Detainee admitted traveling to Afghanistan to join the Taliban.**

Personal Representative: This is much like point 1. Yes, the Detainee traveled to Afghanistan...

Detainee: I was going to Pakistan because I had a problem with my eye and I wanted to get it treated. I wanted to see the religion of the Taliban for 10 days and then after that, I was going to go back and have the operation. That's when they captured me and put me in jail, as stated in the previous answer.

Personal Representative: Yes, although he admitted to traveling to Afghanistan, the Detainee never admitted he went there to join the Taliban. He did not go to join the Taliban.

- **3(a)3 The Detainee stayed in a Taliban bean farm in Kabul.**

Personal Representative: The Detainee admits he was on a farm. The Taliban had taken him out of jail, and he was given no choice.

The Detainee told the Taliban that he wanted to go home, but they were still treating him as a spy. He was brought to this farm by the Taliban.

Detainee: They were telling me they were going to take me to my family. There were a whole bunch of people together. They said, start moving,

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and we'll take you to your country and we started walking at night. We stayed at the farm for 15 days and then we were to go to Pakistan and then back to my hometown. I was crying.

Personal Representative: The Detainee made the point, that he did not want, did not like the idea, and has no idea what happened, but did not go and did not want to fight America. The Detainee was traveling through Tora Bora with a number of other people.

Detainee: I was told I would go through Tora Bora to my hometown.

Personal Representative: Because the Detainee believed he was being treated as a spy, the Taliban shared very little information about where they were going, except to tell him they were bringing him back to his family. Instead, he was turned over with the others to the Pakistani authorities to a Pakistani jail.

**Tribunal Members Questions to Detainee**

Q: You mentioned you had a problem with your eye. What was the problem?

A: I was in a car accident in Saudi Arabia. I had 27 fractures in my head and something was wrong with my pupil. I heard that the medicine in Pakistan, especially for the eyes, was the best in the world.

Q: Was your vision impaired?

A: I have a loss of eyesight.

Q: Can you see us now?

A: Yes, I can.

Q: Did you have someone help you get all the way to Pakistan if you could not see well?

A: No, I didn't have anybody.

Q: It must have been quite a challenge to travel to a strange country, where you had never been before, when your vision was not 100%.

A: There were some people that spoke Arabic.

Q: They told you where to go and how to get there?

A: Yes, they did.

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- Q: Did you have the treatment in Pakistan?
- A: I never went to the hospital. I went to the Taliban and when I came back I was going to the hospital.
- Q: Because you went to Afghanistan first, you didn't have the opportunity to get the treatment, right?
- A: Yes. Could you repeat that question?
- Q: Because you went to Afghanistan first...
- A: I did not go to Afghanistan, I went to Pakistan. From Pakistan, I went to Afghanistan.
- Q: When you went to Pakistan the first time, were you able to get the treatment then?
- A: I never went to the hospital?
- Q: Why was that?
- A: I wanted to see the Taliban religion first and then come back again and take care of my eye.
- Q: Even though your eye was bothering you that much, you chose not to get it fixed first?
- A: Just out of curiosity, I wanted to find out about the Taliban first and then come back and take care of my eye.
- Q: How long did they keep you in jail for being a spy?
- A: I don't know exactly, but approximately 2-2 ½ months.
- Q: Then they released you and took you to the farm?
- A: They did not release me, but they took me there.
- Q: So, you went to the farm...were you allowed to move about freely?
- A: No, I was not.
- Q: What did they ask you to do for them while you were there?



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- A: They said to stay here, do nothing and don't move around. If you wanted to go out and use the bathroom, you would find a tree and go behind a tree.
- Q: They didn't ask you to help with any of the farming duties?
- A: No, they did not.
- Q: Were there other people there who were working?
- A: There wasn't anybody working there. I saw everybody just sitting there.
- Q: How could there be a farm when no one is working?
- A: I do not know; all I saw was a lot of trees.
- Q: Were there soldiers there guarding the people?
- A: There were some people there who had Kalashnikovs. They were moving back and forth. They did not speak with us.
- Q: They were supposed to prevent you from leaving?
- A: Yes, because you can't move without them seeing you.
- Q: Was there any military training that happened at the farm?
- A: No.
- Q: How long were you at the farm?
- A: Approximately 15 days.
- Q: What happened after that?
- A: After the 15 days, they took me to Tora Bora and into Pakistan. Sometimes they had us walk and sometimes they carried us with vans or trucks.
- Q: Can you describe the circumstances of how you were captured?
- A: Which one, the Pakistani or the Afghani?
- Q: I didn't know there was more than one. You were apprehended in Pakistan, after going through Tora Bora?
- A: Yes.

Q: Please describe your capture.

A: There were groups of people. You don't know who they are, whether they are Arabs or different nationalities. We arrived in Pakistan and they gave us some bread to feed us, they killed a cow for us, after we ate, they let us sleep. In the middle of the night they woke us up and said we had to move now.

We were taken to a mosque and divided us up into groups of 10. They said they'd take each group of 10 and deliver them to their families. They took a whole bunch of people and when our turn came, we were put in a car with Pakistani soldiers who were carrying all kinds of weapons. From there, they took us directly to the prison.

Q: You were in prison for a time and then given to the Americans?

A: I stayed in prison approximately 6 days.

Q: Did you have your passport and money with you when you were taken by the Pakistanis?

A: No.

Q: What happened to your passport?

A: When they told us to move in the middle of the night, I forgot them. I left without them. They told me to keep moving and they'd bring all of my belongings. I told them I didn't have my passport and money, and they told me to keep moving and they'd bring my money and passport to me.

Q: Did you have any weapons with you when you were making your journey?

A: No.

Q: When you were in jail in Pakistan, did any embassy representatives visit you?

A: Yes. They came to visit me when I was in the hospital.

Q: When did you go to the hospital?

A: I went to Pakistan in a bus.

**Tribunal President Questions to the Detainee**

Q: This was after you had been captured?

A: The bus flipped over and they took me to the hospital.

**Tribunal Members Questions to the Detainee**

Q: Was this before you went to jail?

A: In prison.

Q: So, after you left the jail?

A: While I was in prison. They were moving us from one prison to another prison. I was on the bus sleeping. I heard people firing at the bus and I got hit with a bullet in my arm and broke my arm. The bus turned over, and they just kept moving us. From that point, they took me to Pakistan and took me to the hospital there.

Q: You were shot in the arm? What other injuries did you have?

A: That was it.

Q: In the Pakistan hospital, they fixed your arm?

A: Yes, they fixed it and put it in a cast.

Q: Did they fix your eye at the same time?

A: No, they did not.

Q: How long were you in the hospital?

A: I do not recall, but my guess would be approximately 7 days.

Q: That is where the embassy representative came to visit you?

A: Yes.

Q: Can you tell us how the conversation went between the two of you?

A: I don't recall, but what I remember is he asked my name, which part of Saudi Arabia I was from, where I was captured. That's all I recall.

Q: When you finished your stay in the hospital, they took you back to jail?

- A: They took me to a prison in Pakistan. From the Pakistani prison, I was turned over to the States.
- Q: What did they accuse you of doing at that time?
- A: They did not accuse me of anything.
- Q: When you first came into the custody of the Americans, did they tell you why you were there?
- A: They didn't say anything to me and there were no accusations.
- Q: How long was it before somebody explained why you were there?
- A: I don't recall. I was taken by plane to a prison that belongs to the States and from there they brought me to Cuba. I explained my situation and my story to them. The interrogator in Afghanistan told me not to worry and not to fear anything because I was going back to my family and my home.
- I was put on a plane and I thought I was going back to my family. Instead, they brought me here. They started interrogating me again, and I kept telling them the same story.
- Q: The interrogations were, that you went to help the Taliban?
- A: Not to help the Taliban. They asked me if I knew the Taliban, and I said I didn't know the Taliban. I explained the situation the way I explained it here.
- Q: Have you ever had any weapons training at any time in your life?
- A: Only when I was working for the police department in Saudi Arabia.
- Q: How long did you have that job?
- A: I don't recall, approximately 5-6 years, I'm not sure. I forgot.
- Q: What responsibilities did you have as a Saudi police officer?
- A: In the Red Cross.
- Q: You were guarding people who worked there?
- A: I was sitting in the office. All the people that came there with bodily injuries, I asked them how they sustained those injuries. I asked about the location where

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the injury took place, I'd contact the authority in that particular region and the interrogator would come over and interrogate the person.

If this guy had done something wrong, they [interrogators] would take him to that location and interrogate him further, and deal with him at that location.

I explained this to the interrogators here, in Cuba.

Q: Did you do the same duties for 5 or 6 years, or did you do other things also?

A: I was a driver.

Q: For important people, or for what?

A: I used to work one day, and have two days off, so instead of wasting my time I used to work for a taxi on my time off. This is how I was earning money.

Q: As a police officer, you had a responsibility to maintain proficiency on weapons?

A: All they did was give us information on pistols and how to use them. Every six or seven months they would let us fire off 20 rounds or so. That's all we would do.

Q: As a police officer, you were required to carry a pistol with you at all times?

A: No, I was not carrying a pistol. If you wanted to have a gun, you were required to clean it and submit a report. I didn't want to deal with that, so that's why I didn't have a pistol.

Q: Are there any other weapons they trained you how to use?

A: Yes.

Q: What weapons were those?

A: The Kalashnikov, [and] a Saudi made rifle; I don't know the name of it.

Q: So, it was pistol, Kalashnikov, and the Saudi rifle?

A: Yes.

Q: When the Taliban arrested you for being a spy, did you tell them you were familiar with these weapons?

A: No, I didn't.

- Q: Did they know you had experience as a police officer?
- A: They had no idea.
- Q: When you were a police officer, did you carry special identification that showed you had that job?
- A: No.
- Q: You didn't have police ID?
- A: They didn't give me one.
- Q: When the Taliban asked what you did, what did you tell them?
- A: I told them I was in the police force.
- Q: So they did know you were a policeman?
- A: They asked me if I was a fighter with the mujahadin. I said I'm not a fighter. They asked what I did in Saudi Arabia and I told them I was with the police force. That's when they told me I was a spy.
- Q: Did they ask you to do anything for them, perhaps train some of their people on police skills?
- A: No.
- Q: Have you ever had treatment on your eye, after all this time?
- A: No.
- Q: Not even while you've been here?
- A: I gave up. I'm going to wait until I go back to Saudi Arabia and I'll treat myself there.
- Q: What city in Saudi Arabia were you a policeman?
- A: Sakaka al-Jouf.
- Q: Is that a small town or big town?
- A: Small town.

Q: Does it cost much money to get to Afghanistan?

A: It doesn't cost much, roughly 1000 Saudi Riyals, or less.

Q: Did anyone help you pay to go to Afghanistan?

A: Nobody helped.

Q: Do you have any other family members in the police force?

A: No.

Q: Do you have to know anyone to get a job with the police? Do you have to be friends with anyone, or can anyone become a police officer?

A: Anybody can register to become a member of the police department.

**Tribunal President Questions to Detainee**

Q: Did you have to take vacation from the police force to travel to Pakistan?

A: No, I was let go from the police department a long time ago.

Q: How long ago, before you traveled to Pakistan?

A: Four months prior.

Q: What did you do after you were released from the police force?

A: I was a driver and a horse trainer.

Q: You were going to pay for your operation with the money you earned from working in Saudi Arabia?

A: Yes.

Q: How long did you anticipate the travel and the operation would take before you would be able to return to Saudi Arabia?

A: I was thinking it wouldn't take any longer than 40 days, including the time for the operation.

My wife had just had a baby and I took her to her family. In Saudi Arabia, when a woman is ready to have a baby, she is sent to her family for 40 days. Afterwards, she is taken back home. Since she was ready to have a baby and it

was going to take 40 days, I would leave my wife and family and go to Pakistan, have the operation and come back.

When I came back, I would pick her up from her family. I told this to the interrogator and it's in my file.

Q: You thought you'd have enough time to travel to Pakistan, get the operation, but before getting the operation, you'd go to Afghanistan?

A: I went to Pakistan, but I wanted to see the religion of the Taliban. I wanted to go to the Taliban for 10 days, go back to Pakistan and have the operation and then I was captured and imprisoned.

Q: Did you think of traveling to Afghanistan after you had the operation?

A: No.

Q: I'm wondering why you did not have the operation in Pakistan first and then travel to Afghanistan to observe the Taliban religion.

A: I said before I have the operation, I'll go find out about the religion and then I'll come back.

Q: Thank you for your testimony.

A: I swear by God to tell the truth.

**Personal Representative's Questions to Detainee**

Q: During our meeting, you stated that the Taliban in Kabul arrested you?

A: I don't know which one is Kabul and which one is not.

Q: In Afghanistan, the Taliban arrested you?

A: Yes.

Q: That's when they found out you were with the Saudi police, and said you were a spy. Did they make any accusations against you?

A: No, they did not.

Q: When you were first arrested, did the Taliban take your money and your passport?

A: Yes, and they returned it back to me.



Q: They turned it back to you at the bean farm, or later?

A: While we were moving towards Tora Bora.

Q: This is one of the reasons you believed they were taking you back to your family?

A: Yes.

Q: Did you get the eye injury the same time you had all the head fractures?

A: Yes, at the same time.

Q: Did that happen after you left the Saudi police?

A: Before I left the police. Sixteen years prior.

Q: Sixteen years prior?

A: Yes.

Q: So, your eye...you were allowed to still do day-to-day things with your bad eye?

A: Yes.

Q: You decided, since your wife was going to have a baby, that would be a good time to get your eye fixed?

A: Yes.

Q: When did you decide to see the Taliban religion?

A: When I was ready to go have my eye taken care of, I said before I do that, let me go to Afghanistan and see the Taliban's religion and then come back.

Q: Did you not go from Saudi Arabia to Afghanistan, then Pakistan? Why didn't you do that?

A: No.

Q: Went to Pakistan first...

A: From Saudi Arabia, to Bahrain to Pakistan to Afghanistan. I told the interrogator that too.

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Q: That's fine. I'm just trying to determine if, while you were in Pakistan, you decided to see the Taliban?

A: Yes.

Q: When you were in Pakistan, did you have a doctor's appointment to get your eye fixed in the hospital?

A: No.

**Tribunal Members Questions to the Detainee**

Q: Why did you leave the police force?

A: I don't recall. The salary was very little. Working on my own, I made a lot more money.

Q: Previously, you said you were let go from the police department.

A: I said I left.

**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

DETAINEE ELECTION FORMDate: 14 October 2004Start Time: 1300 hrsEnd Time: 1400 hrsISN#: 0308Personal Representative: [REDACTED], MAJOR, USAF  
(Name/Rank)Translator Required? YESLanguage? ARABICCSRT Procedure Read to Detainee or Written Copy Read by Detainee? YESDetainee Election:

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

Personal Representative Comments:

Detainee desires to participate in the Tribunal; however, he would like his Personal  
Representative to answer Tribunal questions regarding the evidence. No witnesses or  
documentary evidence is required. Please cancel the follow-up interview—it is not required.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Personal Representative: [REDACTED]

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (23 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL NUSAYRI, Adil Uqla Hassan.

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 detainee is associated with the Taliban.
  - a. The detainee is associated with the Taliban:
    1. The detainee, a Saudi Arabian citizen, traveled to Kabul, Afghanistan, in July 2001 to fight the jihad.
    2. The detainee admitted traveling to Afghanistan to join the Taliban.
    3. The detainee stayed in a Taliban bean farm in Kabul.
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.

# Memorandum



To : Department of Defense Date 09/21/2004  
Office of Administrative Review  
for Detained Enemy Combatants,  
Col. David Taylor, OIC, CSRT

From : FBI GTMO  
Counterterrorism Division,  
Office of General Counsel,  
Asst. Gen. Counsel [REDACTED]

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

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

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

The following documents relative to ISN 308 have been redacted by the FBI and provided to the OARDEC, GTMO:

FD-302 dated 10/24/2002

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

pg 10A2


Memorandum from [REDACTED] to Col. David Taylor  
Re: REQUEST FOR REDACTION, 09/21/2004

If you need additional assistance, please contact  
Assistant General Counsel [REDACTED]  
[REDACTED] Intelligence Analyst (IA)  
[REDACTED], or IA [REDACTED]  
[REDACTED]

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## Personal Representative Review of the Record of Proceedings

I acknowledge that on 19 January 2005 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #308.

 I have no comments.

     My comments are attached.

 Lt Col, USAF

Name PERSONAL REP TEAM LEAD

19 Jan 05  
Date



Signature

FOR MAT 

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**~~DJAMEL SAID ALI AMEZIANE~~**

Petitioner

v.

GEORGE WALKER BUSH, *et al.*,

Respondents.

Civil Action No. 05-0392 (ESH)

**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 (OARDEC) 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 Djamel Said Ali Ameziene that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I redacted information that would personally identify other detainees and certain U.S. Government personnel in order to protect the personal privacy and security of those individuals.

3. I confirmed with a contact at the Federal Bureau of Investigation that the reference to

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ISN 888 on page 3 of Recorder's Exhibit 2 is a typographical error. The ISN should have been properly identified as 310.

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

Dated: 11 July 2005

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



**Department of Defense**  
**Director, Combatant Status Review Tribunals**

OARDEC/Ser: 0328

**06 DEC RECD**

From: Director, Combatant Status Review Tribunal

Subj: **REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR  
DETAINEE ISN # 310**

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 #310 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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## 26 Nov 04



Department of Defense  
Director, Combatant Status Review Tribunals

13 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #7

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:

██████████, Colonel, U.S. Army; President

██████████, Commander, JAGC, U.S. Navy; Member (JAG)

██████████, Lieutenant Commander, U.S. Navy; Member

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



HEADQUARTERS, OARDEC FORWARD  
GUANTANAMO BAY, CUBA  
APO AE 09360

27 October 2004

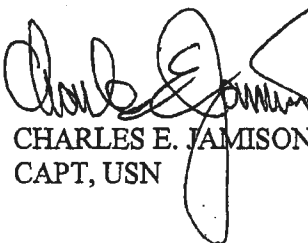
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 310

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 [REDACTED]

  
CHARLES E. JAMISON  
CAPT, USN

[REDACTED]

**(U) Combatant Status Review Tribunal Decision Report Cover Sheet**

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

(U) TRIBUNAL PANEL: #7

(U) ISN#: 310

Ref: (a) (U) Convening Order for Tribunal #7 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/~~FOUO~~)  
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)  
(3) (U) Copies of Documentary Evidence Presented (S/NF)  
(4) (U) Personal Representative's Record Review (U/~~FOUO~~)

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

2. (U) On 21 October 2004, the Tribunal determined, by a preponderance of the evidence, that Detainee #310 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, an organization that is a part of the armed forces, 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 enclosure (2).

[REDACTED]

Colonel, U.S. Army  
Tribunal President

DERV FM: Multiple Sources  
DECLASS: XI

[REDACTED]

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION**

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

TRIBUNAL PANEL: \_\_\_\_\_ #7  
ISN #: \_\_\_\_\_ 310

**1. Introduction**

As the Combatant Status Review Tribunal (CSRT) Decision Report indicates, the Tribunal has determined that this detainee is properly classified as an enemy combatant and was part of or supporting Taliban or Al Qaida forces. 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 conducted the proceeding on 21 October 2004. The Recorder presented Exhibits R-1 and R-2 during the unclassified portion of the Tribunal. The Unclassified Summary of Evidence, Exhibit R-1, indicates, among other things, that the detainee: traveled to Afghanistan from Canada on a fraudulent passport; received 1,200 to 1,500 Canadian dollars from a Tunisian man who encouraged the detainee to travel to Afghanistan; was instructed to go to a guesthouse in Kabul upon his arrival in Afghanistan, a direction which he ultimately followed; noted that a number of the other residents of the guesthouse were Taliban fighters; then stayed in a guesthouse in Jalalabad, Afghanistan, with a number of Arab men; traveled with Taliban fighters through the Tora Bora mountains during the U.S. bombing campaign; traveled illegally into Pakistan without any documentation and was captured by the Pakistani military at a mosque; and escaped from a bus that was forcibly overtaken by other prisoners with the detainee, but was captured again a short time later by Pakistani authorities. The Recorder called no witnesses.

The detainee did not attend the Tribunal hearing and affirmatively declined to participate. He also did not provide the Personal Representative with any statements or evidence to present on his behalf. The detainee's decision is reflected on the Detainee Election Form (Exhibit D-A). The Personal Representative presented no evidence and called no witnesses.

During the classified portion of the Tribunal hearing, the Recorder presented Exhibits R-3 through R-17. The Personal Representative presented no classified evidence. The Recorder and the Personal Representative did not have any comments on the classified evidence.

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ISN #310  
Enclosure (1)  
Page 1 of 3

After the Tribunal read all of the classified exhibits, the Tribunal requested additional information. In response to the Tribunal's request, the Recorder offered into evidence classified Exhibits R-18 and R-19, after giving the Personal Representative an opportunity to review the documents. Neither the Recorder nor the Personal Representative had any comments on the additional documents. After considering the unclassified and the classified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

### **3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-19 and D-A.
- b. Testimony of the following persons: None.
- c. Statement of the detainee: None.

### **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 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, the FBI redaction certification, provides no usable evidence. Because there was no other unclassified evidence for the Tribunal to consider, 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**

No issues arose during the course of this hearing that required consultation with the CSRT Legal Advisor.



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#### 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 Taliban or Al Qaida forces.

#### 8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,



Colonel, U.S. Army  
Tribunal President

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ISN #310  
Enclosure (1)  
Page 3 of 3

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**DETAINEE ELECTION FORM**Date: 15-Oct-04Start Time: 1000End Time: 1020ISN#: 310Personal Representative:  
(Name/Rank)Translator Required? YESLanguage? ARABICCSRT 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 has elected NOT to participate in Tribunals. He has NO witness request

Personal Representative:

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (30 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal - AMEZIANE, Djamel Said Ali

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida.

The detainee is associated with al Qaida:

1. In late 2000, the detainee, who claims Algerian citizenship, traveled to Afghanistan from Canada on a fraudulent passport.
2. Prior to his departure from Canada, the detainee received 1,200 to 1,500 Canadian dollars from a Tunisian man who had encouraged the detainee to travel to Afghanistan.
3. The detainee was instructed to go to a guesthouse in Kabul upon his arrival in Afghanistan, which direction the detainee ultimately followed.
4. The detainee noted that a number of the other residents of the guesthouse were Taliban fighters.
5. The guesthouse in Kabul was run by an al Qaida communications specialist.
6. The detainee then stayed in a guesthouse in Jalalabad, Afghanistan with a number of Arab men.
7. The detainee traveled with Taliban fighters through the Tora Bora mountains during the U.S. bombing campaign.
8. The detainee traveled illegally to Pakistan without any documentation and was captured by the Pakistani military at a mosque.

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Defense Reciprocal Discovery

page 1 of 2  
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EXHIBIT R1

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9. ~~The detainee escaped from a bus that was forcibly overtaken by other prisoners with the detainee, but he was captured again a short time later 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.

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Defense Reciprocal Discovery

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Memorandum



To : Department of Defense Date 09/28/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
Col. David Taylor, OIC, CSRT

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

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

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

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

The following documents relative to ISN 310 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 04/01/2002

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

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Memorandum from [REDACTED] to Col. David Taylor  
Re: REQUEST FOR REDACTION, 09/28/2004

If you need additional assistance, please contact Asst.  
Gen. Counsel [REDACTED] ([REDACTED]),  
[REDACTED] or, Intelligence Analyst [REDACTED]  
[REDACTED] ([REDACTED]) [REDACTED] or  
Intelligence Analyst [REDACTED] ([REDACTED])  
[REDACTED]

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Defense Reciprocal Discovery

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# Memorandum



To : Department of Defense Date 10/27/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
Capt. Charles Jamison, OIC, CSRT

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

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

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

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

The following documents relative to ISN 888 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 05/03/02 (ISN [REDACTED] interview)  
FD-302 dated 05/04/02 (ISN [REDACTED] interview)

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

Memorandum from [REDACTED] to Capt. Charles Jamison  
Re: REQUEST FOR REDACTION, 10/27/2004

If you need additional assistance, please contact  
Asst. Gen. Counsel [REDACTED] ([REDACTED]),  
[REDACTED] or Intelligence Analyst (IA)  
[REDACTED] ([REDACTED]), [REDACTED]  
[REDACTED] IA [REDACTED] ([REDACTED]), [REDACTED]  
[REDACTED].



UNCLASSIFIED//FOUO

**Personal Representative Review of the Record of Proceedings**

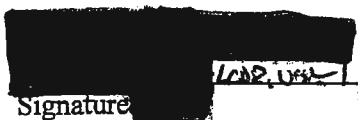
I acknowledge that on 20 October 2004, I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #310.

☒ I have no comments.

☐ My comments are attached.

  
Name

22 OCT 04  
Date

  
Signature

ISN #310  
Enclosure (4)

UNCLASSIFIED//FOUO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SAIID FARHI,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

Civil Action No. 05-1347 (GK)

**DECLARATION OF TERESA A. McPALMER**

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

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

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

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

Dated: 31 October 2005



Teresa A. McPalmer  
CDR, JAGC, USN

Department of Defense  
Director, Combatant Status Review Tribunals

10 JAN 2005  
OARDEC/Ser: 383

~~FOR OFFICIAL USE ONLY~~

From: Director, Combatant Status Review Tribunals

Subj: REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR  
DETAINEE ISN #311

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 #311 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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Department of Defense  
Director, Combatant Status Review Tribunals

12 Oct 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #15

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

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

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

MEMBERS:

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

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

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

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

UNCLASSIFIED

7 Jan 05

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunals

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL  
FOR DETAINEE ISN # 311

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004

(b) Secretary of the Navy Implementation Directive of 29 July 2004

Encl: (1) Appointing Order for Tribunal #15 of 12 October 2004

(2) Record of Tribunal Proceedings

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

- a. The detainee was properly notified of the Tribunal process and affirmatively declined to participate in the hearing.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibits R-3, R-4, R-8, and R-19 was redacted. The FBI properly certified in exhibits R-2 and R-21 that the redacted information would not support a determination that the detainee is not an enemy combatant. Additionally, the names of two law enforcement agents and a linguist was redacted from exhibit R-17. It is clear that such redacted information would not support a finding that the detainee is not an enemy combatant.
- d. Exhibits R-3 through R-6, R-13, R-16, and R-17 contain handwritten notes in the margins. These notes apparently direct the Tribunal to the source of the information contained in the allegations or to exculpatory information. These notes do not alter the evidence. The notes are provided as an aid and do not affect the legal sufficiency of the document.
- e. The detainee did not request any witnesses or evidence be presented on his behalf.
- f. The Tribunal's decision that detainee #311 is properly classified as an enemy combatant was unanimous.
- g. The detainee's Personal Representative was given the opportunity to review the record of proceedings and affirmatively declined to submit comments to the Tribunal.


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Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL  
FOR DETAINEE ISN # 311

2. The proceedings and decision of the Tribunal as recorded in enclosure (2) are legally sufficient and no corrective action is required.
3. I recommend that the decision of the Tribunal be approved and the case be considered final.

  
T.A. McPALMER.  
CDR, JAGC, USN



HEADQUARTERS, OARDEC FORWARD  
GUANTANAMO BAY, CUBA  
APO AE 09360

4 November 2004

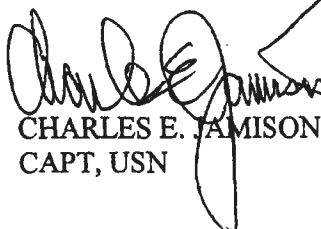
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# 311

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 [REDACTED].

  
CHARLES E. JAMISON  
CAPT, USN

**(U) Combatant Status Review Tribunal Decision Report Cover Sheet**

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

(U) TRIBUNAL PANEL:   #15  

(U) ISN#:   311  

Ref: (a) (U) Convening Order for Tribunal #15 of 12 October 2004 (U)  
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)  
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

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

1. (U) This Tribunal was convened by references (a) and (b) to make a determination as to whether the detainee meets the criteria to be designated as an enemy combatant as defined in reference (c).
2. (U) On 27 Oct 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee #311 is properly classified 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, 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).



Tribunal President

Col, USAF



**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL  
DECISION****(Enclosure (1) to Combatant Status Review Tribunal Decision Report)**TRIBUNAL PANEL:       #15        
ISN #:       311      **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. In reaching its conclusions, the Tribunal considered both classified and unclassified information. The following is an account of the unclassified evidence considered by the Tribunal and other pertinent information. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

**2. Synopsis of Proceedings**

The unclassified summary of the evidence presented to the Tribunal by the Recorder indicated that the detainee left Algeria in 1989 and lived in France for six to seven years. It further indicated that he left France, traveled to Italy, then traveled to England in January 2001. While in England, the detainee attended the Finsbury Park and Baker Street mosques, which the Unclassified Summary characterized as "known extremist mosques." The Unclassified Summary then indicated that the detainee left England in June, 2001 to look for a wife in Afghanistan, stayed in an Algerian house in Afghanistan, and then traveled to Kabul, where he stayed for one and one half months. Finally, the Unclassified Summary states that the detainee was captured by Pakistani authorities while attempting to cross the border into Pakistan and was later injured in a bus accident while still in the custody of the Pakistanis. The detainee chose not to participate in the Tribunal process. He called no witnesses and requested no documents be produced. The Tribunal initially met on 21 Oct 04, and reconvened to accept additional evidence and deliberate on 27 Oct 04.

**3. Evidence Considered by the Tribunal**

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a and R-1 through R-21.

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

The Detainee requested no witnesses; no rulings were necessary.

The Detainee requested no additional evidence be produced; no rulings were necessary.

UNCLASSIFIED//~~FOUO~~ISN #311  
Enclosure (1)  
Page 1 of 3

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## 5. Discussion of Unclassified Evidence

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

a. The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2 provided no usable evidence. When the Tribunal reopened for more information, the Recorder offered, along with certain classified exhibits, Exhibit R-21, which was another FBI request for Redaction of National Security Information. This exhibit provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence.

The Tribunal also relied on certain classified evidence in reaching its decision. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

## 6. Consultations with the CSRT Legal Advisor

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

## 7. Conclusions of the Tribunal

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

a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.

b. The detainee understood the Tribunal proceedings. The detainee chose not to participate in the Tribunal process, as indicated in Exhibit D-a, but his Personal Representative informed the Tribunal that the detainee had been fully informed of his rights and of the allegations in the Unclassified Summary of the Evidence. The Personal Representative told the Tribunal that the detainee had actively participated in their meetings, but chose not to participate in the proceedings after thinking about it overnight.

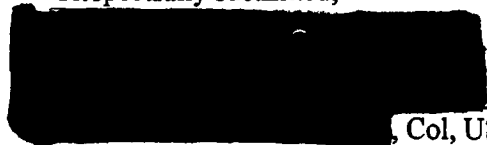
c. The detainee is properly classified as an enemy combatant and is a member of, or associated with al Qaida.

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.

Col, USAF

Tribunal President

UNCLASSIFIED//~~FOUO~~

ISN #311  
Enclosure (1)  
Page 3 of 3

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DETAINEE ELECTION FORMDate: 16 Oct 2004Start Time: 0845End Time: 0855ISN#: 311Personal Representative: [REDACTED] MAJ  
(Name/Rank)Translator Required? YES Language? ARABICCSRT 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:**

The detainee decided over night that participating in the tribunal was not a good decision for him. The detainee was courteous and cooperative during the initial and follow-up interviews. He does not want to participate because he does not believe that the CSRT process is real. He believes that it is a joke and that his case has been pre-decided.

When asked if he wanted his PR to present any statements on his behalf at the tribunal, he declined.

Personal Representative: [REDACTED]UNCLASSIFIED//~~FOUO~~

Exhibit D-2072

UNCLASSIFIED

Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (29 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – FARHI, Saiid.

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 has known al Qaida associations.

The detainee is a member of, or associated with, al Qaida:

1. The detainee left Algeria in 1989 and went to France, where he lived for six to seven years.
  2. Detainee left France in 1996 or 1997 and traveled to Italy, he then traveled to England in January 2001.
  3. While in England, the detainee attended the Finsbury Park Mosque and Baker Street Mosque, both known extremist mosques.
  4. Detainee left England in June 2001 to travel to Afghanistan, via Pakistan, to look for a wife.
  5. Detainee stayed in an Algerian house while in Jalalabad, Afghanistan.
  6. Detainee traveled to Kabul where he stayed for one and one half months.
  7. Pakistani authorities captured detainee when he attempted to cross the border between Afghanistan and Pakistan.
  8. Detainee received injuries during a bus accident while in the custody of the 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

Exhibit: R-1 2073

Date 09/20/2004

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION

FD 302 dated 06/12/2002

<sup>2</sup>See Executive Order 12958

2074

Memorandum from [REDACTED] to Col. David Taylor  
Re: REQUEST FOR REDACTION, 09/20/2004

If you need additional assistance, please contact  
Assistant General Counsel [REDACTED]  
[REDACTED] or Intelligence Analyst [REDACTED]  
Intelligence Analyst [REDACTED]  
[REDACTED]

# Memorandum



To : Department of Defense Date 10/27/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
Capt. Charles Jamison, OIC, CSRT

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

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

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

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

The following documents relative to ISN 311 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 03/30/02  
FD-302 dated 06/12/02

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958



Memorandum from [REDACTED] to Col. David Taylor  
Re: REQUEST FOR REDACTION, 10/27/2004

If you need additional assistance, please contact  
Asst. Gen. Counsel [REDACTED] or Intelligence Analyst (IA)  
[REDACTED]

*Pg -2- of 2*

UNCLASSIFIED//~~FOUO~~

## Personal Representative Review of the Record of Proceedings

I acknowledge that on 30 October 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #311.

☒ I have no comments.

☐ My comments are attached.

  
Name

30 Oct 2004  
Date

  
Signature

ISN #311  
Enclosure (4)

UNCLASSIFIED//~~FOUO~~  
Defense Reciprocal Discovery

028034

2078

00000066

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MUHAMMAD KHANTUMANI,

Petitioner

v.

GEORGE WALKER BUSH, *et al.*,

Respondents.

Civil Action No. 05-526 (RMU)

**DECLARATION OF TERESA A. McPALMER**

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

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

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 Muhammad Khantumani that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto or have been redacted by an OARDEC staff member. This staff member also redacted information that would personally identify U.S. Government personnel and foreign nationals in order to protect the personal security of those individuals.

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

Dated: 15 July 2005

Teresa A. McPalmer

Teresa A. McPalmer  
CDR, JAGC, USN



Department of Defense  
Director, Combatant Status Review Tribunals

OARDEC/Ser: 992

3 - MAR 2005

~~FOR OFFICIAL USE ONLY~~

From: Director, Combatant Status Review Tribunal

Subj: REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL FOR  
DETAINEE ISN #312

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 #312 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 B. Wiegmann)  
DoS (Ambassador Prosper)  
DASD-DA  
JCS (J5)  
SOUTHCOM (CoS)  
COMJTFGTMO  
OARDEC (Fwd)  
CITF Ft Belvoir

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Department of Defense  
Director, Combatant Status Review Tribunals

8 Nov 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #20

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

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

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

MEMBERS:

[REDACTED] Colonel, U.S. Army; President

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

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

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



HEADQUARTERS, OARDEC FORWARD  
GUANTANAMO BAY, CUBA  
APO AE 09360

17 December 2004

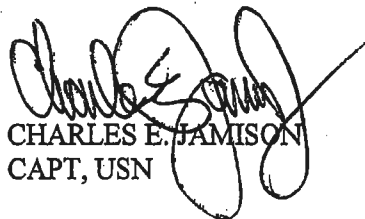
MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN 312

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 [REDACTED]

  
CHARLES E. JAMISON  
CAPT, USN

~~SECRET//NOFORN//XI~~

**(U) Combatant Status Review Tribunal Decision Report Cover Sheet**

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

(U) TRIBUNAL PANEL:   #20  

(U) ISN#:   312  

Ref: (a) (U) Convening Order for Tribunal #20 of 8 November 2004 (U)  
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)  
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)


Encl: (1) (U) Unclassified Summary of Basis for Tribunal Decision (U/~~FOUO~~)  
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)  
(3) (U) Summary of Detainee and Witness Testimony (U/~~FOUO~~)  
(4) (U) Copies of Documentary Evidence Presented (S/NF)  
(5) (U) Memorandum for the Record of 4 December 2004 (U/~~FOUO~~)  
(6) (U) Personal Representative's Record Review (U/~~FOUO~~)

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

2. (U) On 9 December 2004, the Tribunal determined by a preponderance of the evidence that Detainee #312 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 and 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

DERV FM: Multiple Sources  
DECLASS: XI

~~SECRET//NOFORN//XI~~



**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION**

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

TRIBUNAL PANEL:       #20      ISN #:       312      **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 and 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 conducted this hearing on 9 December 2004. The Recorder presented Exhibit R-1 and R-2 during the unclassified portion of the Tribunal. The principal exhibit, the Unclassified Summary of Evidence (Exhibit R-1), indicates, among other things, that: the detainee is associated with the Taliban or al Qaida; the detainee traveled from Syria to Afghanistan in 2001; the detainee's father is a veteran Mujahidin fighter; the detainee trained at [REDACTED] training camp in 2001; the [REDACTED] training camp was a basic training facility for Jihadists against the coalition; while at [REDACTED], the detainee trained on the Kalishnikov rifle, pistols, light weapons, grenades, and the Bika weapons system; the detainee admitted to traveling through the Tora Bora Mountains in Afghanistan; the detainee was in Kabul, Afghanistan when it was defeated; and, after the fall of Kabul, the detainee fled to Jalalabad and subsequently to Pakistan, where he was arrested. The Recorder called no witnesses.

The detainee participated actively in the Tribunal proceedings. He submitted a written statement, Exhibit D-b, and then answered Tribunal members' questions. The detainee's sworn testimony and the answers to the questions posed to him are summarized in Enclosure (3) to the CSRT Decision Report. The detainee called one witness.

During the classified session of the Tribunal, the Recorder presented Exhibits R-3 through R-24, commenting that Exhibits R-3 through R-8 supported the Unclassified Summary of Evidence and Exhibits R-9 through R-25 provided amplifying information. The Personal Representative presented Exhibits D-c and D-d, providing brief comments.

After considering all of the classified and unclassified evidence, the Tribunal determined that the detainee is properly classified as an enemy combatant.

UNCLASSIFIED//~~FOUO~~ISN #312  
Enclosure (1)  
Page 1 of 3

### 3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: R-1 through R-24, and D-a through D-d.
- b. Testimony of the following person:

ISN [REDACTED] (See Enclosure (3) to the CSRT Decision Report).

- c. Sworn statement of the detainee:

See Enclosure (3) to the CSRT Decision Report.

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

The detainee's one witness request, for his father, [REDACTED] was approved. See Enclosure (5) to the CSRT Decision Report.

The detainee requested no additional evidence be produced.

### 5. Discussion of Unclassified Evidence

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

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

b. As noted in paragraph 2, above, the detainee submitted a written statement and provided sworn testimony, responding to each of the allegations on the Unclassified Summary of Evidence. Afterwards, he answered questions posed by the Tribunal members. In sum, the detainee denied being a member of the Taliban or al Qaida. He asserted that his father drew him to Afghanistan from Syria. He further stated that he had no knowledge of his father's activities while he was in Afghanistan and desired to return to Syria to complete his studies. A summarized transcript of the detainee's sworn testimony is attached as CSRT Decision Report Enclosure (3).

#### 6. Consultations with the CSRT Legal Advisor

The Tribunal consulted the CSRT Assistant Legal Advisor regarding allegations made by the detainee in his written statement and in his testimony that Pakistani officials in the presence of U.S. officials tortured him, and in a U.S. facility. He also claims that U.S. soldiers abused him. As per instructions, the OARDEC Forward Chief of Staff and the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO were notified of the matters on 11 December 2004. These allegations, on behalf of both detainee and his father, have previously been reported on 22 November 2004, following the father's Tribunal.

#### 7. Conclusions of the Tribunal

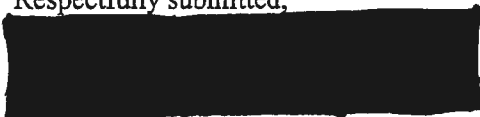
Upon careful review of all the evidence presented in this matter, the Tribunal makes the following determinations:

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings and actively participated throughout the hearing.
- c. The detainee is properly classified as an enemy combatant because he was part of or supporting al Qaida forces and associated forces that are engaged in hostilities against the United States or its coalition partners.

#### 8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

  
Colonel, U.S. Army  
Tribunal President

**Summarized Sworn Detainee Statement**

*The Tribunal President read the Hearing Instructions to the Detainee, and confirmed that the Detainee understood and had no questions.*

*Making reference to the Detainee Election form, the Tribunal President confirmed the Detainee's participation, and that he had requested one Witness that was readily available. Also indicated on the Detainee Election form was a written statement from the Detainee, Exhibit D-B.*

*The Unclassified Summary of Evidence (Exhibit R-1) was read in full to the Tribunal by the Recorder. Also provided to the Tribunal by the Recorder was Unclassified Exhibit R-2.*

*The Tribunal President then permitted the Detainee to present evidence, and advised him he had the assistance of his Personal Representative in doing so.*

*The Detainee took the Muslim oath.*

Tribunal President: Personal Representative, would you read each allegation, and allow the Detainee to respond to each of the allegations?

Personal Representative: Madam President, the Detainee has prepared in writing a statement he'd like to read to the Tribunal that addresses all of the allegations.

Tribunal President: (to the Detainee) Would you prefer responding to the allegations, submitting your statement, or reading your statement?

Detainee: If there's no objection, I will read the statement.

Tribunal President: OK.

Personal Representative: I have a translated copy of Exhibit D-B, which is the statement he is going to read into the record.

**Detainee Statement (Exhibit D-B)**

Before I begin defending myself, I would present my gratitude to all the members at this tribunal and to the personal representative and the translator and to everyone who helped in allowing me to defend myself; but unfortunately, I would like to let you know that we have heard, and several times, about this court, that it is merely a game presented against the detainees. As for the two words "Enemy Combatant", this is the verdict that has been presented to every detainee, for as I have understood, that the detainee, no matter what he did, this verdict will not be lifted for him even if he did the impossible. But, I said a game, not to mock anyone present now, but that is what I heard and I grew more sure that

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it is a game when I heard that all the detainees are enemy combatants and I haven't heard of one who has left as innocent except for one person.

At the start of defending myself I will say that there are numerous and many issues that you must look at, and among these issues is my story and I will say it in a moderate manner, neither long nor short and if you want details about every word then I will elaborate.

The story is; I am the detainee owner of the number 312. I left Syria in the year 2001, at the end of the sixth month, with members of my family. Their number comes to nine, and I am their tenth. Our departure, all of us, was with papers that were in order – visa, passport, necessary stamps – so we left Syria to Iran. When my father called to the hotel and said come to the Iranian-Afghan border, we went to him. After that, we went to Kabul and we stayed in it the whole time, three months, and yet close to two months and more after our stay in Kabul, my uncle's wife came and her kids and their arrival was only one week before the events, I mean the event of the eleventh of September. Our stay in Kabul was in a house that my father had rented. During our stay in Kabul, I did not leave the house except to go to the supermarket close by. I was always discussing with my father and asking to go back to Syria again to continue my studies, but he said to wait until he had collected his money and after that we will go to Saudi Arabia. After that, the events happened and America announced that there would be a war against Afghanistan, so we left immediately after America's announcement of the war. We left to Jalalabad so we could go to Pakistan to save ourselves from the war. We stayed in Jalalabad for a period of one month and after that we left with the family to a village so we could leave to Pakistan. At our arrival, and before our family got out, the residents of the village told my father that two of you should stay here and two should go with the family so my father chose me to remain with him and the family left to Pakistan. The reason that made the village's residents separate us is that highway robbers and thieves are abundant, so if they see you they might kill you and kill the children and take the women. After that, the village people took my father and me to another village and we stayed in it for a few days. After that village, we went to another village and we stayed in it for a few days as well. After that, the village people told my father that there was no means of getting to Pakistan except by walking in the mountains, so we walked in the mountains for three days, keeping in mind that we didn't know the name of those mountains or the name of the villages. Upon our arrival in the Pakistani village, we stayed in it for a few days and after that they took us to the prison; that was in the first day of EID, in the afternoon. Keep in mind that we had not done any crime or any illegal act.

During our stay in Kabul, my father's job was in a restaurant. I did not see the restaurant, but I saw him, how he prepared the food in the house and then went in the morning to the market to sell it.

As for the members of my family, they were all with my family (sixteen individuals). Among them was my grandmother, aged 67, and an infant also, his age was eight months.

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As for the presence of these two people in this family, these two people did not have teeth, so that should clue you in and make clear to you my father's good intentions and the purpose for which he left. And his arrival with two people such as these should also make clear to you that he has no relationship with fighting or war or any groups or al Qaida or Taliban.

I will begin the defense of myself. I state that the truth and the facts of the story that I present to you now, so if you want the truth and the facts, then this is it. If you want otherwise, you can take what you want. The personal representative has presented the accusations and the core accusation says that I am from the Taliban or al Qaida.

**First:** If you wish for me to swear that this item is incorrect, I am prepared and I have a witness to testify that I have no relationship with anyone from al Qaida or the Taliban or any other group.

**Second:** As for the two words Taliban and al Qaida and other words like Jihad and Mujahiden, I had not heard of all these words before, but I had heard them for the first time in the prison here when I was asked before by the interrogators. "Are you Taliban?" I would say no. "Are you Qaida?" I would say no. I say to you simply and easily that I am not from the Taliban or from al Qaida or even from any other group. In fact, I am against any person who commits hostile acts and violent acts. For my father and I, we wish for every person in the world to live with freedom and safety and peace and peace of mind whether that person was small or big, man or woman. And we said in the interrogation that when the events happened, I mean the 11th of September, we cried and we were greatly saddened and we said in the interrogation also that my grandmother, this old woman, cried and said "what is the innocent people's fault, to be killed?" And me, my whole life, I never left Syria and never left my city and this was the first time I had left my country and my age when I left was close to eighteen years. And you could know, from our stay here in this place, if we were combatants to you or non-combatants, for each one of you can go back to my behavior file and look for yourself. But despite that, I will mention to you many pieces of evidence that will show you that we have no relationship with any of the groups at all, neither my father nor me.

**From these stories and pieces of evidence:**

Several times my father and I saw a piece of metal that could have, as the soldier said about it, been used as a weapon and could have caused harm. When we saw these pieces, we took them immediately and turned them in to the soldiers. This happened approximately over 15 times and this is all recorded with the date and time. In the very recent past, on the 20th of November, I saw two pieces of metal in [REDACTED] and I gave them to the soldier. Also, on the 29<sup>th</sup> of November, I saw in the walkway of [REDACTED] a piece of metal 5 cm long and I gave it to the soldier immediately. On the 2<sup>nd</sup> of December, in [REDACTED] my father saw a piece of metal and gave it to the soldier. On the 4<sup>th</sup> of December, I saw a piece of metal and I gave it to the soldier and also on the 4<sup>th</sup> of December, at night, in [REDACTED] a soldier gave me a mask to hang my Koran. This mask comes with a piece of metal, and the soldier forgot to take the piece of metal

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from it before giving it to me. So, he gave it to me with the piece of metal in it. I took the metal and I gave it to the soldier and he thanked me and he wrote that on the computer.

And I have mentioned these stories first because I remember the date and the other stories are bigger and more dangerous than the first story. I have done very good deeds that show you my good intentions and my honesty and my father's honesty. It does not make sense at all if I was an enemy combatant, that I would give back those things and the pieces of metal that could inflict harm. And another story: one time I was in the walkway in [REDACTED] and I saw a piece of metal 20 cm long, so I took it immediately and gave it to the soldiers. After this good deed one of the soldiers came and instead of thanking me, he proceeded to threaten to kill me. He said I will cut your head and your neck, without me doing anything to him. Look at how the reward was from this soldier, instead of thanking me for this deed he threatened to kill me. And the supervisors afterwards kicked him out of the Block and wrote a report about that and all the supervisors saw this that day.

And the other story in [REDACTED] I also saw a piece of metal inside the room and that metal was the remains of welding, and I told the soldier about it.

And the other story happened in [REDACTED] in room [REDACTED] I saw breakage in the fence and I notified the authorities about it. The room is still there and you can see it and the soldiers can all testify that my father and I have done this thing and they will also testify that we have no problems with any of the soldiers. We have maintained good behavior and fine manners in spite of all the pressures around us and in spite of the threats and the torture that we have been through. I will mention the stories where we have been through torture and threats, and I will mention where that was, and I will mention the reason also.

During our stay in the Pakistani prison, we were subjected to beatings and harsh torture. The torture led to my nose being broken; you can see it in front of you now. During the time we were being tortured, there were Americans present.

During our stay in the American prison in Kandahar, we were subjected to torture. The reason was that they wanted us to say that we were from al Qaida or the Taliban by force. My father's forehead was fractured and the Red Cross saw this and wrote a report. My left hand was fractured and I suffered many diseases as well and there were also other methods of psychological pressure and fatigue like sleep deprivation for long hours and not going to relieve yourself and that is among the necessities for humans. That prison was under the management of Americans.

During our stay in [REDACTED] we were subjected to bad treatment and the reason was so that we could say, by force, that we were from al Qaida or the Taliban. In one of these stories, one of the interrogators brought two wires connected to electricity and said that if you do not say that you and your father are from al Qaida or Taliban, I will place

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these in your neck. Another time, he drew knives and said "if you don't say you are from al Qaida or Taliban, we will bring the knives and cut your hands and put salt in them."

Also, in that same place, one of the interrogators beat me in my face and at that time I was drinking water, so he hit the cup and hit me as well. The reason was that he wanted me to say by force that my father and I were from al Qaida or Taliban. Also, in [REDACTED] the soldiers came and threatened us and told us "we killed your family."

During our stay in [REDACTED] we were exposed to death threats and threats of handing us over to other countries so they could torture us there, and after that they would bring us back here.

And I told you that one time after I gave the soldier the metal, which was 20 cm long, the soldier threatened to kill me.

Also, the soldiers in this place told us twice that they killed our family and they said we know that they are 14 individuals. After that, the interrogators tried pressuring and torturing us, to compel us by force to say that we were from al Qaida or the Taliban. When they failed at what they wanted, they came to us with temptation and enticement and they proposed to us that we lie about the detainees in this place in exchange for a car, a house, and American citizenship. They said to us "lie about the detainees and we will give you these things"; we refused because we do not know anyone. I am sure that this method of temptation was followed with many of the detainees. I am sure that many of the detainees lied about other detainees without prior knowledge and all this false cooperation happened for the sake of personal advantage and for the sake of the implication of the detainees and for the sake of getting out of this place. So I ask of you to look into my case thoroughly. And finally, of this accusation I repeat again that we are not from al Qaida or the Taliban or any other group at all and we don't have any relationship with wars or fighting. My father will testify that I am not of any group at all, and my family will testify that I am not of any group at all. They will testify that my father also does not have any relationship with any group at all. One of the interrogators made a request of me and said to me "if you said that your father is from al Qaida or the Taliban we will take you out of this place and we will send you home." I told him that my father is not from any group at all and this is the truth, for my father is a food seller only and nothing else.

*The first accusation*, and it states that I traveled from Syria to Afghanistan in the year 2001. The answer is yes, I traveled from Syria to Afghanistan with papers that were in order and official and it is available to you. That was in the sixth month of the year 2001, in the end of the sixth month.

Syria, which is my original country, did not forbid any person from going to any place in the world except for one country, and that is Israel. It was written on the passport "travel to everywhere in the world is permitted except for Israel" and you can go back to the Syrian passport office and look into this piece of information.

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Therefore, I don't see any problem in this accusation because I proceeded with papers that were in order and through legal means. And I did not commit anything illegal. Knowing that I entered before the events of the eleventh and before the war and in Afghanistan, I stayed at the house during my whole time and I did not leave it and my father can testify to that.

The second accusation says that my father is a veteran mujahideen fighter. My father has defended himself against this accusation at his trial, but I will repeat again that my father does not have any relationship with al Qaida or the Taliban or any group at all. Neither does he know wars and he doesn't have any relationship with wars and he didn't leave Syria, except twice and both times were in the year 1999, once to Saudi Arabia and the other time to Afghanistan. So how can this accusation say that he is a veteran fighter, when in his entire life he's never left his country except for those two times? My father worked in a restaurant in Kabul and I haven't seen this restaurant, but I saw how he used to place the food in the house then go in the morning to the market to sell it. I swear, if you wish, that my father is not a fighter and not al Qaida or Taliban and does not belong to any other group at all.

NOTE: The detainee skipped accusations 3, 4 and 5 on the Unclassified Summary of evidence for reasons noted below.

The third accusation [Number 6 on the Unclassified Summary] says that the detainee admitted that he traveled through the mountains of Tora Bora in Afghanistan.

*At this time, the Detainee departed momentarily from his written statement and stated the following.*

Detainee: Would you permit me to ask a question?

Tribunal President: Yes.

Detainee: Regarding [REDACTED] would you like me to respond to that or not?

Tribunal President: Do you want to complete your statement here first, then respond to that allegation?

Detainee: OK.

*The Detainee resumed reading aloud his written statement Exhibit D-B.*

I said in the interrogation, when I was asked how I got out of Jalalabad, I said that I got out of Jalalabad with my family to a village and after that we got separated from our family. My father and I were left, and the residents of the village took us to another village. We stayed in it for some days and after that we went to another village and we

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stayed for some days as well. After that, the residents of the village said that there was no way to get to Pakistan except for walking in the mountains. So we walked in the mountains for three days, not knowing what the name of those mountains were, nor the names of the villages that we stayed in. That is all what I said in the interrogation and I did not say anything more.

*The fourth accusation* [Number 7 on the Unclassified Summary] says that the detainee was in Kabul when it was defeated.

***The Tribunal President briefly interrupted to make a correction as to the sequence of the allegations.***

Tribunal President: The third accusation [according to the Unclassified Summary] reads the Detainee trained at [REDACTED] training camp; just so we clarify this is not actually the third accusation you just read. If you don't mind, could you please explain or respond to the third accusation.

Detainee: Could I ask the Personal Representative a question?

Tribunal President: Yes.

***The Detainee spoke briefly with his Personal Representative***

Detainee: (addressing the Tribunal President) The other accusation talking about this place is the first I have heard of this place; I have never heard of this place before. I don't know where it is: is it in Turkey or Syria? I don't know where it is.

Tribunal President: What place?

Detainee: The [REDACTED] camp.

Tribunal President: So, if I understand you, you did not know where [REDACTED] was?

Detainee: No, not entirely.

Tribunal President: Then let me ask another question. Is the rest of your statement going to correspond to the Unclassified Summary?

Detainee: Yes, but according to the portions about [REDACTED] I have told you and my Personal Representative that I have not heard of this place before.

Tribunal President: It might be helpful for us, when we put this into a transcript, that we identify which allegation you're answering and that you read it, so we know what the answer is; do you understand?

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**Detainee:** The third accusation [in Detainee written statement Exhibit D-B], is the sixth accusation written on the Unclassified Summary.

**Tribunal President:** That's the reason I wanted to clarify it, so when it's admitted into the record and someone else is reading it, they won't be confused when they look at your statement and it reads third or fourth allegation on the Unclassified Summary; do you understand?

**Detainee:** Yes. Very well. I wrote nothing about at all numbers three, four and five, because I know nothing about this place, and I don't know anything about these weapons.

**Tribunal President:** So does the fourth allegation in your statement correspond to the fourth allegation on the Unclassified Summary?

**Detainee:** No. Numbers three, four and five, I wrote nothing about at all because I wanted to answer them orally.

**Tribunal President:** I understand; I just wanted to make it a matter of record that they actually do not correspond to the Unclassified Summary.

**Detainee:** I erased three, four and five, and made number three about the mountains of Tora Bora. I'm talking about the fourth accusation, but you have the fourth as the seventh accusation. My fourth [from his statement] says that I was in Kabul when it was defeated.

***The Detainee resumed reading his statement at this time.***

The answer: I said in the interrogation that when I heard that America was going to start war against Afghanistan we left Kabul to Jalalabad. We didn't see the war; we didn't see the defeat of Kabul or even the defeat of Jalalabad. This accusation is incorrect and the date proves that to you and my father, if you ask him, will tell you when we left.

The fifth accusation [Number 8 on the Unclassified Summary]: says after the fall of Kabul the Detainee fled to Jalalabad and then to Pakistan where he was arrested.

***The Detainee stopped reading his written statement at this time, and addressed the Tribunal President.***

**Detainee:** Will you permit me to go and pray?

**Tribunal President:** We need to go ahead and try to complete this.

**Detainee:** The time is very specific, if you would allow it.

**Tribunal President:** Yes, we will take a brief recess to allow you to pray,

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Detainee: Thank you.

*The Tribunal President recessed the hearing briefly to permit the Detainee to pray, and reconvened shortly thereafter. The Tribunal President then allowed the Detainee to continue reading his written statement aloud to the Tribunal; note that the Detainee repeated the last accusation before continuing.*

The fifth accusation [Number 8 on the Unclassified Summary], says after the fall of Kabul the detainee fled to Jalalabad and then to Pakistan where he was arrested.

*The Detainee added the following (not from written statement.)*

Detainee: Of course the fifth [from my statement] is the last accusation [# 8] on the Unclassified Summary.

*The Detainee continued reading his statement.*

The answer, as I have mentioned to you, is that we left Kabul before the start of the war. So how can the accusation say that we left after the fall of Kabul? I do not know.

Regarding our departure from Jalalabad to Pakistan, this is true, for we left Jalalabad to save ourselves from death and that is the biggest proof that shows every rational person and every individual that we are not combatants and we are not fighters and we are not terrorists and we do not have any relationship with Al Qaida or the Taliban or any other group. This accusation shows you that we escaped from death to save ourselves, for the terrorist or the combatant, as you say, likes to die. But we are the opposite: we do not like death and the proof is that we left Jalalabad to Pakistan. If we liked death, we would not have left Afghanistan. For the person who has a mind knows that we have nothing to do with any of these wars or fighters and the accusation says he was arrested in Pakistan. It should say he was sold in Pakistan, for we ourselves were not arrested by anyone, but we ourselves entered the Pakistani village and the residents of the village handed us over to the Pakistani Authorities. We did not commit any crime or any illegal act.

Finally, this is our true story in front of your eyes and firstly and lastly I say to you that I have heard before that everyone in this place has been determined to be an enemy combatant before the trial starts and this verdict I am positive that no matter what I present in terms of evidence or witnesses or oath, I am sure that this verdict will not be lifted and thank you to everyone who is present in this hearing. The end.

*This concluded the oral presentation/reading of the written statement by the Detainee.*

Detainee: Thank you for giving me the opportunity to pray.

Tribunal President: You're welcome. I have to clarify to you that this is not a court, and you are not on trial. It is the responsibility of this Tribunal to determine if you should remain an enemy combatant.

Detainee: Very well.

Tribunal President: Does that conclude your statement; is there anything else you wish to add?

Detainee: No.

**Tribunal Member Questions to Detainee**

Q: Where was your passport when you were arrested?

A: When they caught us in Pakistan, I had my father's, and mine. He didn't know I had it. Here [in Cuba] I told him I had it with me. The Pakistani police took them and said they'd give them to the Americans.

Q: You said your father told you you'd leave Afghanistan after he collected the money; what money was that?

A: The money he was working for; he would gather all his things and possessions and go.

Q: How long had your father been in Afghanistan before you arrived?

A: I don't remember the exact date, approximately a year and three or four months.

Q: Did your father pay for your travel and the rest of the family also?

A: No, the money we used was our money from Syria. That's what I know, and I don't know if my father knows something different.

Q: When you and your father separated from the family, how many men were still left with the family?

A: I don't know. I didn't see them leave; I was a young man at the time and you could ask my father.

Q: Did you have any weapons with you when you were arrested?

A: Neither when I was arrested, or before my arrest.

Q: Did your father have any weapons on him when he was arrested?

A: No.

Q: What about the family, when they were in Afghanistan, did they have any weapons?

A: In Kabul, we did not have weapons, but in Jalalabad when the problems started, my father had a small gun to defend himself, to defend the family in case anything happened. He didn't use it and no one else ever used it.

Q: How old are you?

A: Approximately 21, now maybe 22; I was born in 1982.

Q: You speak very well; what is your education?

A: What do you mean, Arabic or English?

Q: What level of education?

A: High school; secondary education is the same as high school; I just wanted to clarify that for you.

Q: I would like to clarify something else; you've made allegations you've been abused. As you know, your father previously spoke before a Tribunal. At that time, the same issues were raised; we've already notified the appropriate authorities about what you told us.

A: You remember last time [when Detainee was a Witness for his father], when you looked at my nose, I think you remember.

Q: Could you tell me how you got from Syria to Afghanistan?

A: Of course, we left Syria by train, and it went from there to Iran. On the way between the two there is a lake, so we went by boat from the border of Turkey to Iran. After that, we went on an Iranian train to Tehran.

Q: And from there?

A: After that, by bus to Meshad, and then to a hotel. We left on Saturday, and my father called to see when we left. We got there after about four days. After getting to the hotel, we called my aunt in Syria, and told them we were there and gave her the address. My father called my aunt, and she told him where we were, so he called the hotel. He told us to come to the border. After the border, we went to Herat.

Q: What was the first city you went to in Afghanistan?

A: Herat.

Q: And how did you get from Herat to Kabul?

A: On a plane; after the plane we got to Kabul.

Q: What was the reason you simply didn't take a plane from Syria to Kabul?

A: I don't know; maybe it was cheaper. When I first left, I did not know I was going to Afghanistan. My father first said, come to Iran.

Q: You said you left Kabul before any fighting started; is that right?

A: Yes.

Q: Why didn't you head back for the Iran border as opposed to the other direction?

A: I don't know; my father said we'd go to the Pakistani border and go out from there.

Q: You didn't ask him why?

A: No.

Q: What did you do in Syria?

A: I was a student.

Q: In high school?

A: Yes.

Q: You said you hadn't heard of the Taliban until you arrived here; is that right?

A: In the American prison in Kandahar.

Q: In school, they never told you the government of Afghanistan was the Taliban?

A: We do not study governments.

Q: And you'd never heard of Osama Bin Laden from the Russian-Afghan war?

A: I'd like to tell you that in our house we don't even have a television.

Q: I don't understand why it is you broke up the family when you left Afghanistan.

A: The residents of the village told us that since we have women and children; eight children and four women; they said if the highway robbers saw you, that you are four men, and they might kill all of you and then take the women and children.

Q: Why was that more likely with four men than with two? I would think it would be just the opposite.

A: They might think we're combatants; they might think anything, do you know what I mean? If they saw only two men, they would think they're just going out and escorting them out. That's my opinion, I do not know.

Q: How many guides went with the rest of your family?

A: I don't know. If you ask my father, he might know, but I do not know.

Q: Were the guides male?

A: I don't know.

Q: You didn't see them leave?

A: I saw that they left, but I didn't see how many went with them. We had no news about them after that.

Q: From Jalalabad, where did you go?

A: If you just take the whole story from my father, it would be better. I'll tell you we went by car to a village; after the village, they said separate them so they could go to Pakistan.

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Q: You don't know the name of the village?

A: No, I don't know. If I knew, I would've told you; I don't have a problem [with that].

Q: Where were you headed in Pakistan?

A: We went on the presumption the Pakistani residents would take us to an embassy or house or help us find a way to get out instead of to prison.

Q: Did you have a way to meet up with the rest of the family?

A: No; I don't know. I think my family went home, and I don't know how they went or when they got there. They left going back to Syria, so I don't know.

Q: You never heard of a plan between your father and the family?

A: I didn't hear anything. I'm sure if you ask my father, he'll tell you the story.

Q: You said that you didn't leave the house the entire time you were there in Kabul, except to go to the market; why?

A: Where would I go? I don't know the language, I don't know the people, I don't know the way or anything.

Q: You didn't want to sightsee or visit a mosque or anything?

A: No, I was asking my father to go back to Syria.

Q: Were there other Arabs there for you to talk to?

A: I don't know; I didn't even talk to Afghans.

Q: But you did go to the market?

A: Yes, it was close by the house, just to buy stuff for the house.

Q: But you didn't go to your father's restaurant?

A: No.

Q: Why didn't you help him with his business?

A: I was asking him to return to Syria. This was his work, I don't know, I was a student.

Q: In Kabul, you still didn't see Taliban because you'd never heard of them?

A: I didn't know anyone.

Q: You never had any run-ins with the authorities?

A: Neither in Syria or Afghanistan; I never had any run-ins with anyone.

Q: I get the impression you and your father didn't discuss your plans very much; is that correct?

A: What do you mean plans exactly?

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Q: You don't seem to know of any of the plans or movement of the family; I'm wondering why that is.

A: I am a young person, it's none of my business. For me it was just come, come or go, go; do you understand?

Q: Yes, I do. My understanding is that you're the eldest son, is that correct?

A: I have a sister that's older than me.

**Tribunal President Questions to Detainee**

Q: Why did you and your family go to Afghanistan? Help me to understand why you left your home country for another country.

A: We went to visit my father; that was all I knew.

Q: Do you know why your father went to Afghanistan?

A: He said he was leaving to work; he said he was working in Saudi Arabia.

Q: He said he was working in Saudi Arabia?

A: He said he would go to work in Saudi Arabia.

Q: Yet he ended up in Afghanistan?

A: I don't know; you can ask my father.

Q: I get the impression you didn't have an option of whether to stay in Syria or go to Afghanistan.

A: I got out to see my father.

Q: Were you going for a short visit or to live in Afghanistan?

A: I didn't know I was going in the first place; my father said come to Iran.

Q: So you didn't know why you were going to Iran, either.

A: I knew I was going to see my father in Iran, but I didn't know where he was.

Q: And you didn't know how long you were going to be gone?

A: No.

Q: You didn't have the opportunity to complete your education?

A: After Afghanistan? Of course not, I went to prison, so how could I continue my education?

Q: I didn't know if you had received any type of training in Afghanistan while you were there.

A: I told you I didn't leave from the house.

Q: Do you know if your father was encouraged by anyone in his country to go to Afghanistan or Saudi Arabia?

A: No. I wish you could see how I looked when I first got captured; if you saw me you'd think I looked about fifteen years old.

Q: I need to verify your reasons for leaving Kabul.

A: After the problem occurred in America, we heard America was going to start a war against Afghanistan. We left in order to save ourselves, and our family.

Q: How did you get that information?

A: My father maybe heard it on the radio; I don't know.

Q: Was your father the only one working in your family in Afghanistan?

A: Yes. The rest of us all sat in the house, and wouldn't leave except to buy something, and come back.

Q: I guess that was really uncomfortable; you didn't know the language, everybody is there waiting for your father to bring the food; did the family help in the restaurant at all?

A: He would prepare his things, and the rest of us just prepared food for us. We washed the clothes, the floor; we were busy all the time.

Q: You were in Kabul one month?

A: Three months.

Q: Then you traveled to Jalalabad, right?

A: Yes.

Q: How long were you in Jalalabad?

A: About a month.

Q: How did you travel from Kabul to Jalalabad?

A: By car.

Q: Was that your car?

A: No, we have no car.

Q: You rented it.

A: No like a transportation service.

Q: Like a taxi?

A: It fit the entire family; we were all in one car.

***At this time, the Tribunal President recessed briefly to bring in the Witness. The Detainee was informed he would have the opportunity to ask questions. The Witness was brought in, and given the Muslim oath by the Recorder.***

**Tribunal Member Questions to Witness**

Q: Is the Detainee your oldest son?

A: I have a daughter that is older than him.

Q: When [the Detainee] came to visit you, where did he think he was going to?

A: For him to come to me, I told them to come to me. Truthfully, they knew I was in Saudi Arabia. I said come to Iran, and after I met them, I would call my sister's home to know where they were. I knew they were in Iran, and I called them at the hotel. I told them to come to the border of Afghanistan; from there at the border I received them; that's it.

Q: From Pakistan, how did they travel to Afghanistan?

A: They did not enter Pakistan.

Q: I'm sorry, Iran to Afghanistan?

A: By land, of course, the whole way.

Q: Does your son know how to use weapons?

A: No.

Q: Who financed your family's travel?

A: They had money.

Q: Why is it they simply didn't fly to meet you in Kabul?

A: They didn't know I was in Kabul or Afghanistan.

Q: Why didn't you tell them?

A: This is something personal; his mother knows I went to work in Saudi Arabia.

Q: Did you leave Kabul before the fighting started?

A: Yes.

Q: Why?

A: To save ourselves, why else?

Q: The fighting hadn't started yet; why did you feel the need to save yourself?

A: When I heard America was going to start a war, I left.

Q: Why didn't you go back through Iran?

A: Jalalabad was closer to Pakistan.

Q: Why did you go to Pakistan?

A: To return to Saudi Arabia.

Q: To return to Saudi Arabia as opposed to Syria?

A: It was my intention to go to Saudi Arabia, that's what I thought.

Q: So when you entered Pakistan, what was your plan from there?

A: When we entered my plan was to go to Saudi Arabia.

Q: Right, but how?

A: By way of travel.

Q: From my map, you were going the wrong direction; what was your plan to get from Pakistan to Saudi Arabia?

A: There are many ways available; from Pakistan to Iran, from Iran to Syria, and then Syria to Saudi Arabia.

Q: I understand your family was broken up just after you left Jalalabad, but before you entered Pakistan; is that correct?

A: Yes, that's correct.

Q: Where did you intend to meet them?

A: Really I told them to go to Syria; there they would make do, and me and my son would travel to Saudi Arabia. That's what I thought; it was all thoughts.

Q: My thinking is that you'd establish a meeting point inside Pakistan; obviously, you didn't do that, could you explain why?

A: No, we didn't agree on any meeting point.

**Tribunal President Questions to Witness**

Q: What did your son do the three months in Afghanistan?

A: Sitting at home.

Q: Did he not help you with your business?

A: No; he was just at home; he didn't help.

Q: What was your reason for leaving Syria and going to Saudi Arabia, and then to Afghanistan?

A: To live free, and to work and make money.

Q: Were you not free in Syria?

A: In Syria, you are free, but don't have the money to open your own place to sell chicken and other types of food, you'd need a million or two million in Syrian currency to do that, close to 40,000 Syrian dollars. In Afghanistan, a small amount would enable you to open any business you want to open.

Q: What was your business?

A: It was small, and then my family came; when they came, I wanted to open a larger venture, so I rented a place. I had just rented it and hadn't started to prepare it yet. When I rented it, all the problems started and all the hopes we had for this place were lost.

Q: When you say we, who is we?

A: My family.

Q: But your son seems not to know what you're doing and why you went to Afghanistan?

A: We didn't know, but when they came, they knew.

Q: So the dreams and hopes with your family weren't there until your family got to Afghanistan?

A: The hopes and dreams someone would want to have in this world; what happened the currency and money was lost, and now we are here.

Q: Why did you move to Saudi Arabia?

A: I went to do the Hajj or Pilgrimage. The money I had was not enough to bring my family over; I didn't have the money for them to have a place to stay and transportation. That prevented me from living and staying in Saudi Arabia, because I wanted to live there but I wanted to live with my family.

Q: So why did you go to Afghanistan after leaving Saudi Arabia?

A: Because I heard you didn't need a visa or anything from the TV and media.

Q: So you were able to get into Afghanistan without a passport or visa?

A: I had the passport and it was in order, but you don't need a visa there like other places in the world.

Q: Like a work visa?

A: Residence visa, work visa, you don't need any of that stuff.

Q: Were you encouraged by anyone in Saudi Arabia or Syria to go to Afghanistan?

A: I don't know; I don't know anyone really.

Q: Did you know anyone in Afghanistan?

A: The person I stayed with, I didn't know. I stayed with him and the Taliban intelligence took me in. This person the Taliban intelligence introduced me to was [REDACTED]

*The Detainee interrupted the translator to clarify a statement from the Witness.*

Detainee: My father [Witness] stayed in the hotel, and from the hotel, the Taliban intelligence took him to meet the person he stayed with.

*The Tribunal President then resumed questioning the Witness*

Q: Why did you stay with someone you didn't know anything about?

A: Because he helped me and was nice to me, and he would come with things from the market so we could work together. We worked together; me with my efforts and him bringing things from the market, and we'd prepare them together.

Q: So this was your partner?

A: No, but after I got to know him, he became my partner.

Q: Was he an Arab or Afghani?

A: An Arab.

Q: Was he from Syria?

A: He said he was from Syria and his accent was from Syria, I don't know.

Q: Did Mohammed [the Detainee] receive any type of training when he was in Afghanistan?

A: No, it was quite the opposite. He was always saying, "Father, I want to return to continue my studies." I would tell him to wait a little; God willing I will work, and then we will go to Saudi Arabia and you can continue your studies. That is what I used to say.

Q: So it was not your intention to stay in Afghanistan with your business?

A: If things were the way they were in the beginning, I would've collected the money and gone. You have to have a lot of money in the outside world, not just a little bit.

*The Tribunal President then asked if the Detainee wished to ask questions of the Witness [his father].*

Detainee: I would like to comment on the first question the official asked here. He said how did you get from Iran to the Afghan border. That was by car, but after that it was by plane. After we got to Afghanistan, we got on the plane. I would like to agree with what he said; from Iran to the border of Afghanistan was by car.

Tribunal Member (addressing the Witness): Do you agree with that, sir?

Witness: Yes, of course, and we discussed this in the last Tribunal; all travel was by land except in Afghanistan where they took a plane. And don't say it was a Taliban plane, it was a civilian plane; just so you have no doubts, and the company was called Ariana Afghanistan.

Tribunal Member: The Taliban came and met you at the hotel? How did they know you were at the hotel?

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Witness: Every government has its own intelligence, and they work with the hotels, and know who stays at the hotels. They knew about me from the owner of the hotel.

*The Tribunal President confirmed there were no more questions for the Witness, and recessed briefly to allow the Witness to be removed from the Tribunal.*

*Upon reconvening, the Tribunal President asked observers and members of the press to remain quiet, reminding them that any talking could easily be picked up by the recording devices being utilized in the Tribunal.*

*The Tribunal President confirmed there were no additional questions or evidence to present, and began reading the remainder of the hearing instructions to the Detainee. Before the Hearing was adjourned, the Detainee interrupted to state the following:*

Detainee: Miss, we do not want to return to our country; is that understood?

Tribunal President: You do not want to return to Syria?

Detainee: No.

Tribunal President: Do you have a preference of a country; we don't make that decision, but we will make it a part of the record.

Detainee: Any country my father and I can live, and we don't really have problems in Syria, but we heard about political asylum. We don't want to go to Syria because we heard if we return there, they would kill us. The reason is because for the first three years, you've been saying "terrorists, terrorists." If we return, whether we did something or not, there's no such thing as human rights; we will be killed immediately. You know this very well.

Tribunal President: We'll make that a part of the record.

Detainee: My father and I; is that OK?

Tribunal President: I understand.

Detainee: OK, thanks a lot.

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*The Tribunal President then adjourned the open session.*

AUTHENTICATION

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

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

Colonel, U.S. Army  
Tribunal President

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**DETAINEE ELECTION FORM**Date: 2 DEC 04Start Time: 1000End Time: 1145ISN#: 312Personal Representative: [REDACTED] LTC, US ARMYTranslator Required? YES Language? ARABICCSRT 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 participate and provide a written statement, which he might read into the record.  
He has requested one witness, his father who is also detained.

Personal Representative: [REDACTED]

Detainee Statement

Before I begin defending myself I would present my gratitude to all the members at this tribunal and to the personal representative and the translator and to everyone who helped in allowing me to defend myself but unfortunately I would like to let you know that we have heard, and several times, about this court, that it is merely a game presented against the detainees and as for the two words "Enemy Combatant", this is the verdict that has been presented to every detainee, for as I have understood, that the detainee, no matter what he did, this verdict will not be lifted for him even if he did the impossible, but I said a game not to mock anyone present now, but that is what I heard and I grew more sure that it is a game when I heard that all the detainees are enemy combatants and I haven't heard of one who has left as innocent except for one person.

At the start of defending myself I will say that there are numerous and many issues that you must look at and among these issues is my story and I will say it in a moderate manner, neither long nor short and if you want details about every word then I will elaborate.

The story is: I am the detainee owner of the number 312, I left Syria in the year 2001 at the end of the sixth month with members of my family their number comes to nine and I am their tenth and our departure, all of us, was with papers that were in order-visa-passport-necessary stamps- so we left Syria to Iran and when my father called to the hotel and said come to the Iranian-Afghan border we went to him and we went after that to Kabul and we stayed in it the whole time, three months, and yet close to two months and more after our stay in Kabul, my uncle's wife came and her kids and their arrival was only one week before the events, I mean the event of the eleventh of September and our stay in Kabul was in a house that my father had rented and during our stay in Kabul I did not leave the house except to go to the supermarket close by and I was always discussing with my father and asking to go back to Syria again to continue my studies but he said wait until I collect my money and after that we will go to Saudi Arabia. And after that the events happened and America announced that there would be a war against Afghanistan so we left immediately after America's announcement of the war, we left to Jalalabad so we could go to Pakistan to save ourselves from the war and we stayed in Jalalabad for a period of one month and after that we left with the family to a village so we could leave to Pakistan and at our arrival and before our family got out the residents of the village told my father that two of you should stay here and two should go with the family so my father chose me to remain with him and the family left to Pakistan [and the reason that made the village's residents separate us is that they said that highway robbers and thieves are abundant so if they see you they might kill you and kill the children and take the women] and after that the village people took me and my father to another village and we stayed in it for a few days and after that village to another village and we stayed in it for a few days as well and after that the village people told my father that there was no means of getting to Pakistan except by walking in the mountains so we walked in the mountains for three days, keeping in mind that we didn't know the name of those mountains or the name of the villages and upon our arrival to the Pakistani village we stayed in it for a few

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EXHIBIT D-b

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days and after that they took us to the prison and that was in the first day of EID in the afternoon. Keeping in mind that we had not done any crime or any illegal act.

**Note # 1:** During our stay in Kabul my fathers job was in a restaurant, I did not see the restaurant but I saw him, how he prepared the food in the house then go in the morning to the market to sell it.

**Note # 2:** As for the members of my family they were all with my family [sixteen individuals] among them my grandmother and her age was 67 and an infant also, his age was eight months. As for the presence of these two people in this family, these two people did not have teeth, so that should clue you in and make clear to you my father's good intentions and his purpose for which he left. And his arrival with two people such as these should also make clear to you that he has no relationship with fighting or war or any groups or Qaeda or Taliban.

I will begin the defense of myself. I state that the truth and the facts is the story that I presented to you now, so if you want the truth and the facts, then this is it and if you want otherwise you can take what you want.

The personal representative has presented the accusations and the core accusation says that I am from the Taliban or Al-Qaeda.

**First:** If you wish for me to swear that this item is incorrect I am prepared and I have a witness to testify that I have no relationship with anyone from Al-Qaeda or the Taliban or any other group.

**Second:** As for the two words Taliban and Al-Qaeda and other words like Jihad-Mujahideen-I had not heard of all these words before but I had heard them for the first time in the prison here when I was asked before by the interrogators are you Taliban I would say no-are you Qaeda I would say no.... I say to you in a simply and easily that I am not from the Taliban or from Al-Qaeda or even from any other group, in fact I am against any person who commits hostile acts and violent acts. For my father and I, we wish for every person in the world to live with freedom and safety and peace and peace of mind whether that person was small or big, man or woman. And we said in the interrogation that when the events happened-I mean the eleventh of September-we cried and we were greatly saddened and we said in the interrogation also that my grandmother, this old woman, cried and said what is those innocent people's fault, to be killed? And me, my whole life I never left Syria and never left my city and this was the first time I had left my country and my age when I left was close to eighteen years. And you could know, from our stay here in this place, if we were combatants to you or non-combatants, for each one of you can go back to my behavior file and look for yourself. But despite that, I will mention to you many pieces of evidence that will show you that we have no relationship with any of the groups at all, neither my father nor me.

**From these stories and pieces of evidence:**

Several times my father and I saw a piece of metal that could have, as the soldier said about it, been used as a weapon and could have caused harm. When we saw these pieces

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we took them immediately and turned them in to the soldiers and this happened approximately over 15 times and this is all recorded with the date and time. In the very recent past on the 20<sup>th</sup> of November, I saw two pieces of metal in [REDACTED] and I gave them to the soldier and also on the 29<sup>th</sup> of November I saw in the walkway of [REDACTED] a piece of metal 5 cm long and I gave it to the soldier immediately and also on the 2<sup>nd</sup> of December in [REDACTED] by father saw a piece of metal and gave it to the soldier.

And also on the 4<sup>th</sup> of December I saw a piece of metal and I gave it to the soldier and also on the 4<sup>th</sup> of December at night in [REDACTED] a soldier gave me a mask to hang my Quran on and usually this mask comes with a metal and the soldier forgot to take the piece of metal from it before giving it to me so he gave it to me with the piece of metal in it, so I took the metal and I gave it to the soldier and he thanked me and he wrote that on the computer.

And I have mentioned these stories first because I remember the date and the other stories are bigger and more dangerous than the first story. I have done very good deeds that show you my good intentions and my honesty and my father's honesty with you in all our words and it does not make sense at all if I was an enemy combatant that I would give back those things and the pieces of metal that could inflict harm. And the story is one time I was in the walkway in [REDACTED] and I saw a piece of metal 20 cm long so I took it immediately and gave it to the soldiers and after this good deed one of the soldiers came instead of thanking me he proceeded to threaten to kill me and he said I will cut your head and your neck without me doing anything to him. Look at how the reward was from this soldier, instead of thanking me for this deed he threatened to kill me. And the supervisors afterwards kicked him out of the Block and wrote a report about that and all the supervisors saw this that day.

And the other story in [REDACTED] I also saw a piece of metal inside the room and that metal was the remains of welding, and I told the soldier about it.

And the other story happened in [REDACTED] in room [REDACTED]. I saw breakage in the fence and I notified the authorities about it. And the room is still there and you can see it and the soldiers can all testify that my father and I have done this thing and they will also testify that we have no problems with any of the soldiers and we have maintained good behavior and fine manners in spite of all the pressures around us and in spite of the threats and the torture that we have been through. And I will mention the stories where we have been through torture and threats and I will mention where that was and I will mention the reason as well.

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**The first story:** During our stay in the Pakistani prison we were subjected to beatings and harsh torture until the torture led to my nose being broken and you can see it in front of you now, and during the time we were being tortured, there were Americans present.

**The second story:** During our stay in the American prison in Kandahar we were subjected to torture and the reason was that they wanted us to say that we were from Al-Qaeda or the Taliban by force, my father's forehead was fractured and the Red Cross saw this and wrote a report and my left hand was fractured and I suffered many diseases as well and there were also other methods of psychological pressure and fatigue like sleep

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deprivation for long hours and not going to relieve yourself and that is among the necessities for humans, and that prison was under the management of Americans.

The third story: During our stay in [REDACTED] we were subjected to bad treatment and the reason was so that we could say by force that we were from Al-Qaeda or the Taliban. In one of these stories one of the interrogators brought two wires connected to electricity and said that if you do not say that you and your father are from Al-Qaeda or Taliban I will place these in your neck and another time he drew knives and said if you don't say you are from Al-Qaeda or Taliban we will bring the knives and cut your hands and put salt in them.

And also in that same place one of the interrogators beat me in my face and at that time I was drinking water, so he hit the cup and hit me as well and the reason was that he wanted me to say by force that my father and I were from Al-Qaeda or Taliban.

And also in [REDACTED] the soldiers came and threatened us and told us we killed your family.

The fourth story: During our stay in [REDACTED] we were exposed to death threats and threats of handing us over to other countries so they could torture us there and after that they would bring us back here.

And I told you that one time after I gave the soldier the metal, which was 20 cm, long the soldier threatened to kill me.

And also the soldiers in this place told us twice, they said we killed your family and they said we know that they are 14 individuals and after the interrogators tried pressuring and torturing us to compel us by force to say that we were from Al-Qaeda or the Taliban, and when they failed at what they wanted, they came to us with temptation and enticement and they proposed to us that we lie about the detainees in this place in exchange for a car-a house-and the American citizenship and they said to us "lie about the detainees and we will give you these things", so we refused because we do not know anyone and I am sure that this method of temptation was followed with many of the detainees and I am sure that many of the detainees lied about the other detainees without prior knowledge and all this false cooperation happened for the sake of personal advantage and for the sake of the implication of the detainees and for the sake of getting out of this place. So I ask of you to look into my case thoroughly and finally, of this accusation I repeat again that we are not from Al-Qaeda or the Taliban or any other group at all and we don't have any relationship with wars or fighting and my father will testify that I am not of any group at all and my family will testify that I am not of any group at all and they will testify that my father also does not have any relationship with any group at all One of the interrogators made a request of me and said to me, if you said that your father is from Al-Qaeda or the Taliban we will take you out of this place and we will send you home so I told him that my father is not from any group at all and this is the truth for my father is a food seller only and nothing else.

*The first accusation,* and it states that I traveled from Syria to Afghanistan in the year-2001-the answer is yes I traveled from Syria to Afghanistan with papers that were in order and official and it is available with you and that was in the sixth month of the year -2001- in the end of the sixth year

Syria, which is my original country did not forbid any person from going to any place in the world except for one country and that is Israel, it was written on the passport "travel to everywhere in the world is permitted except for Israel" and you can go back to the Syrian passport office and look into this piece of information.

Therefore I don't see any problem in this accusation because I proceeded with papers that were in order and through legal means. And I did not commit anything illegal. Knowing that I entered before the events of the eleventh and before the war and in Afghanistan I stayed at the house during my whole time and I did not leave it and my father can testify to that.

*The second accusation* and it says that my father is a veteran Mujahideen fighter. My father has defended himself against this accusation at his trial, but I will repeat again that my father does not have any relationship with Al-Qaeda or the Taliban or any group at all neither does he know wars and he doesn't have any relationship with wars and he didn't leave Syria except twice and both times were in the year 1999-once to Saudi Arabia and the other time to Afghanistan, so how can this accusation say that he is a veteran fighter when in his entire life he's never left his country except for those two times. My father worked in a restaurant in Kabul and I haven't seen this restaurant but I saw how he used to place the food in the house then go in the morning to the market to sell it and I swear if you wish that my father is not a fighter and not Al-Qaeda or Taliban and does not belong to any other group at all.

*The third accusation* says that the detainee admitted that he traveled through the mountains of Tora Bora in Afghanistan.

The answer: I said in the interrogation when I was asked how I got out of Jalalabad, I said exactly that I got out of Jalalabad with my family to a village and after that we got separated from our family and me and my father were left and the residents of the village took us to another village and we stayed in it for some days and after that we went to another village and we stayed for some days as well and after that the resident of the village said that there was no way to get to Pakistan except for walking in the mountains so we walked in the mountains for three days not knowing what the name of those mountains were nor the names of the villages that we stayed in. That is all what I said in the interrogation and I did not say anything more.

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*The fourth accusation* says that the detainee was in Kabul when it was defeated.

The answer: I said in the interrogation that when I heard that America was going to start war against Afghanistan we left Kabul to Jalalabad and we didn't see the war in the first place and we didn't see the defeat of Kabul or even the defeat of Jalalabad, so this accusation is incorrect and the date proves that to you and my father if you asked him will tell you when we left.

*The fifth accusation:* says after the fall of Kabul the detainee fled to Jalalabad and then to Pakistan where he was arrested.

The answer as I have mentioned to you is that we left Kabul before the start of the war so how the accusation can say that we left after the fall of Kabul I do not know.

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Regarding our departure from Jalalabad to Pakistan, this is true, for we left Jalalabad to save ourselves from death and that is the biggest proof that shows every rational person and every individual that we are not combatants and we are not fighters and we are not terrorists and we do not have any relationship with Al-Qaeda or the Taliban or any other group, for this accusation shows you that we escaped from death to save ourselves, for the terrorist or the combatant as you say likes to die, but we are the opposite completely we do not like death and the proof is that we left Jalalabad to Pakistan and if we liked death we would not have left Afghanistan, neither us nor our family, for the person who has a mind knows that we have nothing to do with any of these wars or fighters and the accusation says he was arrested in Pakistan, but is should say he was sold in Pakistan for we ourselves were not arrested by anyone, but we ourselves entered the Pakistani village and the residents of the village handed us over to the Pakistani Authorities when we did not commit any crime or any illegal act.

Finally, this is our true story in front of your eyes and firstly and lastly I say to you that I have heard before that everyone in this place has been determined to be an enemy combatant before the trial starts and this verdict I am positive that no matter what I present in terms of evidence or witnesses or oath, I am sure that this verdict will not be lifted and thank you to everyone who is present in this hearing. The end.

12/2/2001

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UNCLASSIFIED

**Combatant Status Review Board**

TO: Personal Representative

FROM: OIC, CSRT (29 November 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal – KHANTUMANI, Muhammad Abd Al Nasir

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with the Taliban or al Qaida.

The detainee is associated with the Taliban or al Qaida.

1. The detainee traveled from Syria to Afghanistan in 2001.
  2. The detainee's father is a veteran Mujahidin fighter.
  3. The detainee trained at [REDACTED] training camp in 2001.
  4. The [REDACTED] training camp was a basic training facility for Jihadists against the coalition.
  5. While at [REDACTED] the detainee trained on the Kalishnikov rifle, pistols, light weapons, grenades, and the Bika weapons system.
  6. The detainee admitted to traveling through the Tora Bora Mountains in Afghanistan.
  7. The detainee was in Kabul, Afghanistan when it was defeated.
  8. After the fall of Kabul, the detainee fled to Jalalabad and subsequently to Pakistan, where he was arrested.
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

1 of 1  
R1



# Memorandum



To : Department of Defense Date 11/08/2004  
Office of Administrative Review  
for Detained Enemy Combatants  
Capt. Charles Jamison, OIC, CSRT

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

Subject REQUEST FOR REDACTION OF  
NATIONAL SECURITY INFORMATION  
[REDACTED]

Pursuant to the Secretary of the Navy Order of 29 July 2004, Implementation of Combatant Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, Section D, paragraph 2, the FBI requests redaction of the information herein marked<sup>1</sup>. The FBI makes this request on the basis that said information relates to the national security of the United States<sup>2</sup>. Inappropriate dissemination of said information could damage the national security of the United States and compromise ongoing FBI investigations.

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

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

The following documents relative to ISN 312 have been redacted by the FBI and provided to the OARDEC:

FD-302 dated 05/03/02

<sup>1</sup>Redactions are blackened out on the OARDEC provided FBI document.

<sup>2</sup>See Executive Order 12958

Memorandum from [REDACTED] to Capt. Charles Jamison  
Re: REQUEST FOR REDACTION, 11/08/2004

If you need additional assistance, please contact Asst.  
Gen. Counsel [REDACTED]  
[REDACTED] or Intelligence Analyst (IA)

IA

2.72

UNCLASSIFIED//~~FOUO~~

MEMO FOR RECORD

4 December 2004

TO PR: #52

FROM: TRIBUNAL # 20

SUBJECT: ISN # 312 Request For Witnesses/Documents

The Tribunal received and reviewed the witness request from Detainee # 312 to locate Detainee [REDACTED] Detainee [REDACTED] will testify why Detainee #312 went to Afghanistan and what he did while he was there.

Detainee # 312's request for his witness is deemed relevant, reasonable and approved.

[REDACTED]  
COL, USA  
Tribunal President

Enclosure (5)

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028075

Defense Reciprocal Discovery

2119

00000107

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### Personal Representative Review of the Record of Proceedings

I acknowledge that on 15 December 2004, I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN #312.

     I have no comments.

✓ My comments are attached.

Name

Signature

15 Dec 04  
Date

ISN #312  
Enclosure (6)

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UNCLASSIFIED//~~FOUO~~

PR Comments on the results of the Tribunal for #312

I do not believe the Tribunal gave proper weight to exhibit D-c. The purpose of D-c was not necessarily to prove that the detainee was not properly classified as an enemy combatant, rather it was to shed light on the veracity of the testimony of detainee [REDACTED]. While the spreadsheet is not a comprehensive document, it does show that detainee has provided information on over 60 detainees, currently at [REDACTED]. These detainees come from varying countries and backgrounds and were in widely separate areas of Afghanistan. In order for [REDACTED] to know over 10% of the detainees by sight and name, he would have to have known almost a similar portion of non-detained Taliban and al Qaida personnel in Afghanistan. This thought strains the imagination. Specifically regarding #312, detainee [REDACTED] indicated that he saw him at [REDACTED] training camp during his [REDACTED] one week of training in April 2001. All documentary evidence indicates that detainee was not in Afghanistan until July 2001 and therefore, [REDACTED] could not have seen him. I investigated [REDACTED] file and prepared the spreadsheet (D-c). After identifying over 60 detainees, I realized that a comprehensive investigation regarding each identified detainee was not possible. However, there were a limited amount that the detainee identified at [REDACTED]. I then reviewed the travels of each of the detainees that [REDACTED] identified at [REDACTED]. Based on the documents in our possession, not one of the detainees that [REDACTED] identified at [REDACTED] was in the country at the time that [REDACTED] would have been able to identify them as being trained at this camp. Barring each of these detainees having elaborate cover stories that have not been compromised over the length of their detainment, the testimony of [REDACTED] should not be relied upon.

[REDACTED]  
[REDACTED] LTC, US ARMY

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UNCLASSIFIED

**Combatant Status Review Board**

TO: Personal Representative

FROM: OIC, CSRT (30 September 2004)

Subject: Summary of Evidence for Combatant Status Review Tribunal - AMEZIANE, Djamel  
Saïd Ali

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that the detainee is associated with al Qaida.

The detainee is associated with al Qaida:

1. In late 2000, the detainee, who claims Algerian citizenship, traveled to Afghanistan from Canada on a fraudulent passport.
2. Prior to his departure from Canada, the detainee received 1,200 to 1,500 Canadian dollars from a Tunisian man who had encouraged the detainee to travel to Afghanistan.
3. The detainee was instructed to go to a guesthouse in Kabul upon his arrival in Afghanistan, which direction the detainee ultimately followed.
4. The detainee noted that a number of the other residents of the guesthouse were Taliban fighters.
5. The guesthouse in Kabul was run by an al Qaida communications specialist.
6. The detainee then stayed in a guesthouse in Jalalabad, Afghanistan with a number of Arab men.
7. The detainee traveled with Taliban fighters through the Tora Bora mountains during the U.S. bombing campaign.
8. The detainee traveled illegally to Pakistan without any documentation and was captured by the Pakistani military at a mosque.

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page 1 of 2  
000345  
Exhibit R1

UNCLASSIFIED

9. The detainee escaped from a bus that was forcibly overtaken by other prisoners with the detainee, but he was captured again a short time later 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.

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*page 2 of 2*  
**000346**

UNCLASSIFIED

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

12 May 2005

From: Presiding Officer  
To: AMEZIANE, DJAMEL SAID ALI  
Via: Assisting Military Officer  
SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI

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. In late 1995, the detainee traveled to Canada from Austria with a fake Dutch passport.

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~ passport.

~~\_\_\_\_\_~~ traveled illegally to Pakistan without documentation and was captured by the Pakistani military at a mosque.

~~\_\_\_\_\_~~ used aliases to hide his Algerian identity from Pakistani and U.S. military authorities.

b. Connections/Associations

1. The detainee attended the Al-Salaam mosque in Montreal, Canada.

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DMO Exhibit 1

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SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI

2. Prior to his departure from Canada, the detainee received 1,200 to 1,500 Canadian dollars from a Tunisian man who had encouraged the detainee to travel to Afghanistan.

3. The detainee stated that he went to a guesthouse in Kabul upon his arrival in Afghanistan, which the detainee did not name.

4. The detainee noted that a number of the other residents of the guesthouse were Taliban fighters.

5. The guesthouse in Kabul was run by an al Qaida communications specialist.

6. The detainee stayed in a guesthouse in Jalalabad, Afghanistan with a number of Arab men.

7. The detainee traveled with Taliban fighters through the Tora Bora mountains during the U.S. bombing campaign.

c. Intent

After residing in Canada illegally for five years, the detainee traveled from Canada to England and then to Iran and Afghanistan on a false French passport.

d. Other Relevant Data

The detainee escaped from a bus that was forcibly overtaken by other prisoners with the detainee, but was captured again a short time later by Pakistani authorities.

4. The following primary factors favor release or transfer:

a. While in Afghanistan, the detainee did not receive any military or terrorist training and did not see any fighting.

b. The detainee denied ever having participated in any fighting or terrorist activity and denied he had any intention of participation in such activity if he is released. The detainee denied knowledge of future planned terrorist attacks in the United States and denied knowledge of the locations of terrorist training camps or the identity of individuals affiliated with al Qaida or other terrorist organizations.

c. The detainee stated he left Canada because they would not grant him asylum. He was not even thinking of jihad when he moved to Afghanistan.

d. The detainee decided to flee Afghanistan because the non-Taliban and the opposition were killing Arabs.

e. In the Tora Bora mountains the detainee did not see any type of military training being

**UNCLASSIFIED**

**SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI**

conducted and he was never issued a weapon.

f. The detainee stated, "I am not a member of al Qaida."

g. The detainee denies ever viewing any extremist material or visiting any radical Islamic websites.

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.

00000115

**UNCLASSIFIED//FOUO****Summary of Administrative Review Board Proceedings for ISN 310**

*The Administrative Review Board was called to order.*

*The Designated Military Officer (DMO) was sworn.*

*The Board Reporter was sworn.*

*The Presiding Officer announced the convening authority and purpose of the Administrative Review Board proceedings.*

*The Administrative Review Board members were sworn.*

*The Assisting Military Officer (AMO) was sworn.*

*The AMO presented the Enemy Combatant Notification form, Exhibit EC-A, to the Administrative Review Board.*

*The AMO presented the Enemy Combatant Election Form, Exhibit EC-B, to the Administrative Review Board.*

*It was noted by the Presiding Officer that from Exhibit EC-B, the Detainee had chosen not to be present for the Administrative Review Board proceedings.*

*The Presiding Officer confirmed that the AMO had met with the Detainee and informed him of his rights regarding the proceedings, that the Detainee appeared to understand the process, that the Unclassified Summary of Evidence was read to the Detainee, that a translator was used during the interview, and that the AMO confirmed that the translator spoke the same language as the Detainee.*

*The DMO presented the Unclassified Summary of Evidence, Exhibit DMO-1, and DMO-2, the FBI Redaction Memorandum to the Administrative Review Board.*

*The DMO stated that a copy of these exhibits had been previously distributed to the AMO and Detainee.*

*The DMO gave a brief description of the contents of the Unclassified Summary of Evidence, Exhibit DMO-1, to the Administrative Review Board.*

*The Presiding Officer asked the DMO for any further unclassified information.*

*The DMO confirmed that he had no further unclassified information and requested a closed session to present classified information relevant to the disposition of the Detainee.*

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Enclosure (5)  
Page 1 of 2

**UNCLASSIFIED//FOUO**

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*The Presiding Officer acknowledged the request.*

*When asked if the AMO had any information to present on behalf of the Detainee to the Administrative Review Board, the AMO stated that he previously submitted a summary of the interview. The AMO then verbally summarized the Detainee's comments during the interview.*

*The Presiding Officer read the remainder of the unclassified portion of the Administrative Review Board proceedings, and then adjourned the proceedings.*

*The Presiding Officer opened the classified portion of the session.*

*The Presiding Officer adjourned the classified portion of the session and the Administrative Review Board was closed for deliberation and voting.*

#### 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  
Presiding Officer

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Enclosure (5)  
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# UNCLASSIFIED

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

25 March 2006

TO: AMEZIANE, DJAMEL SAID ALI

SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI

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; (2) transfer you to your home state, with conditions agreed upon by the United States and your home state; or (3) continue your detention under United States control.

3. The following primary factors favor continued detention:

a. Commitment

1. The detainee paid 20,000 Austrian Shillings for a Dutch passport and driver's license, both of which were already altered with the detainee's picture on them.

2. In late 1995, the detainee traveled to Canada from Austria with a fake passport.

3. In late 2000, the detainee paid 800 Canadian Dollars for a stolen French passport.

4. In October-November 2000, the detainee flew from Montreal to London, England and then to Tehran, Iran. From Tehran, the detainee traveled by taxi to the Iran/Afghanistan border and to Kabul. The detainee presented his fraudulent passport to the Iranian border guards and purported to be a French Muslim traveling to Afghanistan for personal reasons.

5. The detainee assigned himself his first alias, Abdul Rahim, while living in a guest house in Afghanistan. The detainee gave the second alias to Pakistani military authorities upon his arrest to prevent them from discovering he was Algerian. The detainee continued to use this second alias and false place of birth when interviewed by United States authorities in Afghanistan and at Camp X-Ray until approximately 23 March 2002.

b. Connections/Associations

1. The detainee attended the Al Ummah Mosque in Montreal, Canada.

DMO Exhibit 1  
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## UNCLASSIFIED

SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI

2. In late 2000, while attending the Al Umah Mosque, the detainee met a Tunisian who gave the detainee approximately 1,200 to 1,500 Canadian Dollars and told him to go to a guest house in Kati Parwan, Afghanistan.

3. Upon arriving in Kabul, the detainee went to the guest house in Kati Parwan, a neighborhood of Kabul. The detainee stated that the majority of boarders in the house were Taliban fighters there awaiting training or resting after returning from the front lines, but others were just tenants.

4. In February 2001, the detainee took a taxi to Jalalabad asking for the Arab guest house in the intelligence neighborhood of Jalalabad, named for the Taliban Intelligence headquarters located there

### c. Intent

The detainee decided while in Canada that he wanted to go to Afghanistan because he believed the Taliban had created the only country which was truly Islamic, and the detainee wanted to live somewhere with only Sharia Law.

### d. Other Relevant Data

1. [REDACTED]

2. The following day, the detainee was loaded onto a bus with many others. Suddenly, the bus erupted in shouting and gunfire. The detainee allegedly dove to the floor and crawled to the middle aisle. Allegedly, many people fell on top of the detainee, breaking his left arm. The detainee then crawled out of a window of the bus and hid under a nearby small bridge. The detainee was again arrested and taken to a nearby prison in Kohat, Pakistan.

3. After five to seven days in the prison in Kohat, the detainee was transferred to a hospital for his broken arm, where he remained for approximately two weeks. The Pakistani military eventually released the detainee and the other prisoners to the United States who then transferred them to Guantanamo.

4. The following primary factors favor release or transfer:

a. While in Afghanistan, the detainee stated that he did not receive any military or terrorist training and did not see any fighting.

b. The detainee was living in Jalalabad when he learned of the 11 September 2001 terrorist attacks in the United States. The detainee stated that he was shocked when he learned of these attacks. The detainee denied having any advance knowledge of these attacks and denied having heard any rumors of any such attacks prior to 11 September 2001.

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## **UNCLASSIFIED**

**SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AMEZIANE, DJAMEL SAID ALI**

c. The detainee denied ever having participated in any fighting or terrorist activity and denied that he had any intention of participating in such activity if he is released. The detainee denied any knowledge of any future planned terrorist attacks in the United States and denied knowledge of the locations of any terrorist training camps or the identity of any individuals affiliated with al Qaida or other terrorist organizations.

d. The detainee stated that he was not even thinking of jihad when he moved to Afghanistan. The detainee decided to flee Afghanistan because the non-Taliban and opposition were killing Arabs.

e. The detainee stated that he was not a member of al Qaida.

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.

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## UNCLASSIFIED

Department of Defense  
Office for the Administrative Review of the Detention of Enemy  
Combatants at U.S. Naval Base Guantanamo Bay, Cuba

15 May 2007

TO: ISMAIL SAID ALI BIN NASR

SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF ISMAIL SAID ALI BIN NASR

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; (2) transfer you to your home state, with conditions agreed upon by the United States and your home state; or (3) continue your detention under United States control.
3. The following primary factors favor continued detention:
  - a. Commitment
    1. The detainee decided while in Canada he wanted to go to Afghanistan because he believed the Taliban had created the only country which was truly Islamic, and the detainee wanted to live somewhere with only Sharia Law.
    2. The detainee was a member of an Afghan tribe with approximately 5,000 to 6,000 members.
    3. In October to November 2000 the detainee flew from Montreal, Canada, to London, England, and then to Tehran, Iran. From Tehran, the detainee traveled by taxi to the Iran-Afghanistan border and to Kabul, Afghanistan. The detainee presented his fraudulent passport to the Iranian border guards and purported to be a French Muslim traveling to Afghanistan for personal reasons.
    4. The detainee stated he traveled to the guest house in Kabul, Afghanistan, and stayed there for approximately three months. The majority of boarders in the house were Taliban fighters awaiting training or resting after returning from the front lines.
    5. The detainee stated he stayed for two weeks at an Arab guest house located in the same neighborhood as the Taliban intelligence headquarters.

DMO Exhibit 1  
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## UNCLASSIFIED

SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF ISMAIL SAID ALI BIN NASR

6. The detainee stated he traveled to the Tora Bora mountains of Afghanistan after the fall of Kabul, Afghanistan, and dug shelters in the ground. The United States bombing was mostly on the other side of the mountains where Taliban fighters were fleeing the front lines.

### b. Training

1. A source stated he met the detainee at the al Farouq Training Camp in Afghanistan.

2. The al Farouq Training Camp was funded by al Qaida and all students received weapons training, attended a commando course, and received instruction in topography and explosives.

### c. Other Relevant Data

1. The detainee stated he purchased a stolen passport and an altered driver's license. In 1995, he was detained in Canada by authorities for using the fake passport. Additionally, the detainee stated he purchased a stolen passport in 2000 and received money from a person he met at a mosque for travel to Kabul, Afghanistan.

2. [REDACTED]

4. The following primary factors favor release or transfer:

a. The detainee denied having any knowledge of the attacks in the United States prior to their execution on 11 September 2001 and also denied knowledge of any rumors or plans of future attacks on the United States or United States interests.

b. The detainee stated he was not thinking of jihad when he moved to Afghanistan.

c. The detainee denied ever having participated in any fighting or terrorist activity and denied he had any intention of participating in such activity if he is released. The detainee denied any knowledge of any future planned terrorist attacks in the United States and denied knowledge of the locations of any terrorist training camps or the identity of any individuals affiliated with al Qaida or other terrorist organizations.

d. The detainee stated he is not a member of al Qaida.

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

DMO Exhibit 1  
Page 2 of 3

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**UNCLASSIFIED**

**SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF ISMAIL SAJJID ALI BIN NASR**  
continued detention, nor may the AMO form a confidential relationship with you or represent  
you in any other matter.

DMO Exhibit 1  
Page 3 of 3

**UNCLASSIFIED**

**IN THE**  
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

---

DJAMEL AMEZIANE,

Prisoner, U.S. Naval Station, Guantánamo Bay, Cuba

*Petitioner,*

v.

UNITED STATES,

*Defendant.*

---

**PETITION AND REQUEST FOR PRECAUTIONARY MEASURES**

Dated: August 6, 2008

*Respectfully submitted on behalf of  
Djamel Ameziane:*

Pardiss Kebriaei  
Shayana Kadidal  
CENTER FOR CONSTITUTIONAL  
RIGHTS  
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## I. PRELIMINARY STATEMENT

1. Djamel Ameziane is a prisoner at the U.S. Naval Base at Guantánamo Bay, Cuba, where he has been held virtually *incommunicado*, without charge or judicial review of his detention, for six and a half years. While arbitrarily and indefinitely detained by the United States at Guantánamo, Mr. Ameziane has been physically and psychologically tortured, denied medical care for health conditions resulting from his confinement, prevented from practicing his religion without interference and insult, and deprived of developing his private and family life. The stigma of Guantánamo will continue to impact his life long after he is released from the prison. These harms, as well as the denial of any effective legal recourse to seek accountability and reparations for the violations he has suffered, constitute violations of fundamental rights under the American Declaration of the Rights and Duties of Man ("American Declaration"). The U.S. government, as a signatory to the Declaration, is obliged to respect these rights vis-à-vis Mr. Ameziane by virtue of holding him as its prisoner.

2. A citizen of Algeria, Mr. Ameziane left his home country in the 1990s to escape escalating violence and insecurity and in search of a better life. He went first to Austria, where he worked as a high-paid chef, and then to Canada, where he sought political asylum and lived for five years but was ultimately denied refuge. Fearful of being deported to Algeria and faced with few options, Mr. Ameziane went to Afghanistan. He fled that country as soon as the fighting began in October 2001, but was captured by the local police and turned over to U.S. forces, presumably for a bounty.

3. From the point of his capture, Mr. Ameziane was shipped to a detention facility at the U.S.-occupied Air Base in Kandahar, Afghanistan, where his torture began. Military prison guards beat, punched and kicked Mr. Ameziane and other prisoners without provocation,

menaced them with working dogs, subjected them to brutal searches and desecrated their Qur'ans.

4. In February 2002, Mr. Ameziane was transferred from Kandahar to Guantánamo Bay, just weeks after the prison opened. As one of the first prisoners to arrive, Mr. Ameziane was held in Camp X-Ray – the infamous camp of the early regime at Guantánamo – in a small wire-mesh cage, exposed to the sun and the elements.<sup>1</sup> In March 2007, he was transferred to Camp VI – the newest maximum security facility at Guantánamo – where, according to unclassified information to date,<sup>2</sup> he sits in isolation all day, every day, in a small concrete and steel cell with no windows to the outside or natural light or air, and where he is slowly going blind.<sup>3</sup>

5. During his imprisonment at Guantánamo, Mr. Ameziane has been interrogated hundreds of times. In connection with these interrogations, he has been beaten, subjected to simulated drowning, denied sleep for extended periods of time, held in solitary confinement, and subjected to blaring music designed to torture. His abuse and conditions of confinement have resulted in injuries and long-term health conditions for which he has never received proper treatment, despite repeated requests. Medical treatment has furthermore been withheld to coerce his cooperation in interrogations.

6. Mr. Ameziane's imprisonment at Guantánamo has also deprived him of precious years during the prime of his life, during which he would have wished to marry, start a family

<sup>1</sup> See, e.g., Shafiq Rasul, Asif Iqbal, & Rihel Ahmed, *Composite Statement: Detention in Afghanistan and Guantánamo Bay* (July 26, 2004), available at <http://globalresearch.ca/articles/RAS408A.html>.

<sup>2</sup> The information provided in this Petition concerning Mr. Ameziane's confinement in Camp VI is based upon attorney-client meeting notes of visits to Mr. Ameziane at Guantánamo, as well as his letters to his attorneys, that were unclassified at the time of filing.

<sup>3</sup> See Human Rights Watch, *Locked Up Alone: Detention Conditions and Mental Health at Guantánamo* (June 2008), available at <http://www.hrw.org/reports/2008/us0608/us0608webwcover.pdf>.

and pursue a career. It also denied him the chance to say goodbye to his father, who passed away while Mr. Ameziane has been imprisoned.

7. For more than six years, the United States has denied Mr. Ameziane the right not only to challenge his detention, but also to seek accountability and effective relief for the other harms he has suffered. At no time has the United States charged him with any crime, nor accused him of participating in any hostile action at any time, of possessing or using any weapons, of participating in any military training activity or of being a member of any alleged terrorist organization.

8. As this petition is filed, Mr. Ameziane continues to be indefinitely and inhumanely detained, and he faces an uncertain future. While the U.S. Supreme Court's ruling in *Boumediene v. Bush* in June 2008 restores Guantánamo detainees' right to habeas corpus,<sup>4</sup> a remedy that Mr. Ameziane will pursue, the fact remains that he is still sitting in his cell at Guantánamo Bay without charge and that he has been deprived of any semblance of meaningful review of his detention for over six years.

9. Were Mr. Ameziane to be released from Guantánamo, he would need a third country in which to resettle safely. He is currently applying for resettlement in Canada, where he legally resided for five years prior to his detention. Mr. Ameziane confronts an ongoing risk of persecution in Algeria, the country he fled 16 years ago as a young man in hope of finding peace and security, only to end up at Guantánamo because of circumstances beyond his making or control.

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<sup>4</sup> *Boumediene v. Bush*, 128 U.S. 2229 (June 12, 2008).

## I. BACKGROUND AND CONTEXT

### A. The United States' Response to September 11

10. Days after the attacks on the World Trade Center and the Pentagon on September 11, 2001, the U.S. Congress passed a joint resolution that broadly authorized the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks ... in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."<sup>5</sup> This resolution, the Authorization for the Use of Military Force ("AUMF"), provided the legal basis for the United States' military campaign against the Taliban regime in Afghanistan and the al Qaeda elements that supported it.<sup>6</sup>

11. Two months later, on November 13, 2001, the President signed an executive order that defined a sweeping category of non-U.S. citizens whom the Department of Defense was authorized to detain in its "war against terrorism."<sup>7</sup> The order provided that the President alone would determine which individuals fit within the purview of that definition and could be detained.<sup>8</sup> It also explicitly denied all such detainees being held in U.S. custody anywhere the right to challenge any aspect of their detention in any U.S. or foreign court or international tribunal, and authorized trial by military commissions for individuals who would be charged.<sup>9</sup>

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<sup>5</sup> Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), *available at* <http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>.

<sup>6</sup> *See Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

<sup>7</sup> Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, Exec. Order No. 66 F.R. 57,833 (Nov. 13, 2001) [hereinafter "Exec. Order No. of Nov. 13, 2001"], *available at* [http://www.law.uchicago.edu/tribunals/docs/exec\\_order.pdf](http://www.law.uchicago.edu/tribunals/docs/exec_order.pdf).

<sup>8</sup> *See* Exec. Order No. of Nov. 13, 2001 § 2(a).

<sup>9</sup> *See* Exec. Order No. of Nov. 13, 2001 § 7(b)(2). In 2006, the U.S. Supreme Court ruled these military commissions unconstitutional in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).

12. Pursuant to the AUMF and this order, hundreds of individuals were captured in the weeks and months following September 11, not only in Afghanistan, but in areas of the world where there was no armed conflict involving the United States.<sup>10</sup> They were detained and interrogated in U.S. custody in various locations, including in U.S. military bases in Afghanistan and Guantánamo Bay, in foreign prisons and in secret sites operated by the CIA.<sup>11</sup>

13. Confidential government memos written in the days, weeks and months after September 11 reveal that the United States did not intend to be bound by its constitutional or international legal obligations in responding to the attacks. A memo from the Director of the CIA from September 16, 2001 declared, "All the rules have changed,"<sup>12</sup> while a subsequent memo from the Office of the Legal Counsel at the Department of Justice counseled the President that there were essentially no limits to his authority "as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response."<sup>13</sup> In January 2002, as the first prisoners began to arrive at Guantánamo, additional memos from the Office of the Legal Counsel<sup>14</sup> and from the President's White House Counsel advised the

<sup>10</sup> See U.N. Econ. & Soc. Council, Comm'n on Human Rights, *Situation of detainees at Guantánamo Bay*, U.N. Doc. E/CN.4/2006/120 (Feb. 15, 2006) [hereinafter "UN Special Mandate Holders' Report"], available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/112/76/PDF/G0611276.pdf?OpenElement>. For example, six men of Algerian origin were detained in Bosnia and Herzegovina in October 2001 and transferred to Guantánamo. See *id.* at para. 25.

<sup>11</sup> See, e.g., Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, available at [http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644_pf.html).

<sup>12</sup> Amnesty International, *USA Justice Delayed and Justice Denied? Trials under the Military Commissions Act*, at 2 (March 22, 2007), citing Memorandum: We're at war (Sept. 16, 2001), available at <http://asiapacific.amnesty.org/library/Index/ENGAMR510442007?open&of=ENG-USA>.

<sup>13</sup> U.S. Dep't of Justice, Office of the Legal Counsel, Memorandum Opinion of Deputy Assistant Attorney General John Yoo to Timothy Flanigan, "The President's constitutional authority to conduct military operations against terrorists and nations supporting them" (Sept. 25, 2001).

<sup>14</sup> U.S. Dep't of Justice, Office of the Legal Counsel, Memorandum Opinion of Deputy Assistant Attorney General John Yoo to William J. Haynes II, "Application of Treaties and Laws to al Qaeda and Taliban Detainees" (Jan. 9, 2002), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf>; U.S. Dep't of Justice, Office of the Legal Counsel, Memorandum Opinion of Assistant Attorney General Jay Bybee to Alberto Gonzalez et al.,

President that captured members of al Qaeda and the Taliban were not protected by the Third Geneva Convention, reasoning that this “new kind of war ... renders obsolete Geneva’s strict limitations on questioning of enemy prisoners” and that not applying “Geneva” would “substantially reduce” the risk that U.S. officials would later be prosecuted for war crimes under the War Crimes Act.<sup>15</sup> The President issued an order one month later declaring that Taliban and al Qaeda detainees were not entitled to prisoner of war status under the Geneva Conventions.<sup>16</sup>

14. The manner in which the United States has conducted its “war on terror” has given rise to abuses that have been widely decried by the international community. While the United Nations Security Council adopted a strong anti-terrorism resolution only two weeks after September 11 condemning the attacks and calling upon States to take legislative, procedural and economic measures to prevent, prohibit and criminalize terrorist acts,<sup>17</sup> subsequent resolutions also called upon “[s]tates [to] ensure that any measure[s] taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law.”<sup>18</sup> The United States has failed to respect these obligations. In the report of

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“Application of Treaties and Laws to al Qaeda and Taliban Detainees” (Jan. 22, 2002), *available at* <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.22.pdf>.

<sup>15</sup> Alberto Gonzales, White House Counsel, Memorandum for the President, “Decision re: application of the Geneva Convention on prisoners of war to the conflict with al Qaeda and the Taliban” (Jan. 25, 2002) (draft), *available at* <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>.

<sup>16</sup> Memorandum of the President, “Humane Treatment of Al Qaeda and Taliban Detainees” (Feb. 7, 2002), *available at* [http://lawofwar.org/bush.memo.7\\_Feb\\_2002\\_1\\_0001.jpg](http://lawofwar.org/bush.memo.7_Feb_2002_1_0001.jpg).

<sup>17</sup> U.N. S.C. Res. 1373, U.N. Doc. S/RES/508 (Sept. 28, 2001), *available at* <http://www.state.gov/s/ct/index.cfm?docid=5108>.

<sup>18</sup> See UN Special Mandate Holders’ Report, *supra* note 10, at para. 7, n. 3. (Declaration annexed to S.C. Res. 1456, U.N. Doc. S/RES/1456 (Jan. 20, 2003). Relevant General Assembly resolutions on this issue are G.A. Res. 57/219, G.A. Res. 58/187, and G.A. Res. 59/191. The most recent resolution adopted by the U.N. S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005), in which the Security Council reiterated the importance of upholding the rule of law and international human rights law while countering terrorism.) See also *id.* at para. 7, nn. 4-6 (Statement delivered by the Secretary General at the Special Meeting of the Counter-Terrorism Committee with Regional Organizations, New York, March 6, 2003, *available at* <http://www.un.org/apps/sg/sgstats.asp?nid=275>; Speech delivered by the United Nations High Commissioner for Human Rights at the Biennial Conference of the International Commission of Jurists (Berlin, Aug. 27 2004), *available at*

his mission to the United States, the UN Special Rapporteur on Human Rights and Counter-Terrorism criticized the “serious situations of incompatibility between international human rights obligations and the counter-terrorism law and practice of the United States” and the fact that “a number of important mechanisms [in U.S. law] for the protection of rights have been removed or obfuscated under law and practice since the events of 11 September.”<sup>19</sup> For years, this Commission and other international bodies,<sup>20</sup> as well as U.S. officials themselves,<sup>21</sup> have called for the United States to close the prison at Guantánamo without further delay.

**B. International Network of Detention Facilities, Including in Kandahar and at Bagram Air Force Base, Afghanistan; in Iraq; and in Guantánamo Bay, Cuba**

15. As part of its response to September 11, the United States seized and detained hundreds, if not thousands, of individuals in sites and facilities away from public scrutiny, including U.S. military bases around the world, foreign prisons and secret CIA sites.<sup>22</sup> As an indication that the United States is scaling up, not down, its global detention operations, recent news reports state that the Pentagon has planned to build a new, larger detention facility on the U.S. Air Base at Bagram, Afghanistan to replace the existing dilapidated one.<sup>23</sup> Currently, in known sites alone, the United States holds some 270 persons in Guantánamo, some 700 persons

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<http://www.unhchr.ch/huricane/hurricane.nsf/NewsRoom?OpenFrameSet>; Commission on Human Rights resolutions 2003/68, 2004/87 and 2005/80).

<sup>19</sup> Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, paras. 53, 3 (Nov. 22, 2007) [hereinafter “2007 Scheinin Report”], available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/149/55/PDF/G0714955.pdf?OpenElement>.

<sup>20</sup> See, e.g., Inter-Am. C.H.R., Res. No. 2/06 (July 28, 2006); UN Special Mandate Holders’ Report, *supra* note 10, at para. 96.

<sup>21</sup> See, e.g., Tom Shanker & David E. Sanger, *New to Pentagon, Gates Argued for Closing Guantánamo*, Int. Herald Tribune, March 22, 2007, available at <http://www.ihb.com/articles/2007/03/23/america/web-0323gitmo.php>; *Chief of U.S. Military Says Close Guantánamo to Salvage U.S. Image*, Ass. Press, Jan. 13, 2008.

<sup>22</sup> See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005.

<sup>23</sup> See Eric Schmitt, *U.S. Planning Big New Prison in Afghanistan*, N.Y. Times, May 17, 2008.

in Afghanistan, including over 600 in Bagram, and over 20,000 persons in Iraq.<sup>24</sup> As was the path for Mr. Ameziane, many of those held in Afghanistan were subsequently transferred to Guantánamo.

#### 1. Kandahar Detention Facility

16. During the first week of December 2001, in the later stages of the U.S. invasion of Afghanistan, U.S. Marines took control of the international airport in Kandahar and established a temporary U.S. base, including a prison reportedly capable of holding 100 detainees.<sup>25</sup> The U.S. military occupied and controlled the base over the following months, including the five-week period of Mr. Ameziane's detention there.<sup>26</sup> The prison at Kandahar subsequently became what the U.S. military calls an "intermediate" site, a holding facility where detainees await transportation to other permanent facilities.<sup>27</sup> News reports from February 2002, around the period of Mr. Ameziane's detention at Kandahar, described the facility as one of two main jails in Afghanistan for more than 200 terrorism suspects, many of whom were awaiting transfer to Guantánamo.<sup>28</sup> Detention conditions at Kandahar have been described by international monitors as below human rights standards.<sup>29</sup>

<sup>24</sup> See Solomon Moore, *Thousands of New Prisoners Overwhelm Iraqi System*, N.Y. Times, Feb. 14, 2008, available at <http://www.nytimes.com/2008/02/14/world/middleeast/14justice.html> (reporting that over 24,000 prisoners are held in U.S. military prisons in Iraq).

<sup>25</sup> See Press Release, U.S. Dep't of Defense, *U.S. to Question Detainees* (Dec. 18, 2001), available at <http://www.defenselink.mil/news/newsarticle.aspx?id=44340>.

<sup>26</sup> See Steven Lee Myers, *A Nation Challenged: In the South; Anticipating Many Captives, U.S. Marines Build a Prison Camp at Kandahar Airport*, N.Y. Times, Dec. 16, 2001, available at <http://query.nytimes.com/gst/fullpage.html?res=9403E5D61F3FF935A25751C1A9679C8B63&sec=&spon=&pagewanted=1>.

<sup>27</sup> See Email Communication from CENTCOM Combined Forces Command Spokesperson Michele Dewerth to Human Rights First, June 9, 2004, cited in Human Rights First, *Ending Secret Detentions*, June 2004.

<sup>28</sup> Christopher Marquis, *A Nation Challenged: The Fighting; U.S. Troops Reinforcing Safety of Base in Kandahar*, N.Y. Times, Feb. 16, 2002.

<sup>29</sup> Comm'n on Human Rights, M. Cherif Bassiouni, Report of the Independent Expert on the Situation of Human Rights in Afghanistan, "Advisory Services and Technical Cooperation in the Field of Human Rights," para. 45, 61<sup>st</sup> Sess., U.N. Doc. E/CN.4/2005/122 (Mar. 11, 2005).



## 2. Guantánamo Bay Detention Facility

17. The territory of the Guantánamo Bay Naval Base has been under U.S. control since the end of the Spanish-American War.<sup>30</sup> The United States occupies the territory pursuant to a 1903 Lease Agreement executed with Cuba in the aftermath of the war, which expressly provides for the United States' "complete jurisdiction and control" over the area – control it may exercise permanently if it so chooses.<sup>31</sup> In *Rasul v. Bush*, the U.S. Supreme Court rejected the government's argument that the right to habeas corpus does not extend to the prisoners at Guantánamo Bay because they are outside of U.S. territory.<sup>32</sup> As one Justice wrote, "Guantánamo Bay is in every practical respect a United States territory" over which the United States has long exercised "unchallenged and indefinite control."<sup>33</sup>

18. The first prisoners were transferred to Guantánamo on January 11, 2002.<sup>34</sup> At its peak, the prison held more than 750 men from over 40 countries, ranging in age from 10 to 80, most of whom U.S. officials have admitted should never have been held there in the first place.<sup>35</sup> As of August 2008, there were approximately 260 prisoners from about 30 countries being held

<sup>30</sup> See, e.g., *Rasul v. Bush*, 542 U.S. 466, 475 (2004) (describing the United States' "plenary and exclusive jurisdiction" over Guantánamo Bay).

<sup>31</sup> Lease of Lands for Coaling and Naval Stations, U.S.-Cuba, art. III, Feb. 16-23, 1905, T.S. No. 418.

<sup>32</sup> Leaked government memos from 2002 reveal that the administration selected Guantánamo as a prison site precisely because it believed that detainees being held there would be beyond the reach of U.S. law and the protections of habeas in particular. See U.S. Dep't of Justice, Office of Legal Counsel, Memorandum of Deputy Assistant Attorney General John C. Yoo for William J. Haynes, *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba* (Dec. 28, 2001), available at <http://www.gwu.edu/%7Ensarchiv/NSAEBB/NSAEBB127/01.12.28.pdf>.

<sup>33</sup> *Rasul*, 542 U.S. at 487 (Kennedy, J., concurring).

<sup>34</sup> See, e.g., Guantánamo Bay Timeline, Wash. Post, available at <http://projects.washingtonpost.com/Guantanamo/timeline/>; Amnesty International, *United States of America: No substitute for habeas corpus* at 11 (Nov. 2007).

<sup>35</sup> See Center for Constitutional Rights (CCR), *Guantánamo Bay Six Years Later*, available at <http://www.ccrjustice.org/files/GuantanamoSixYearsLater.pdf>; Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* 209 (2006) (citing a former CIA officer who reported that "only like 10 percent of the people [there] are really dangerous, that should be there and the rest are people that don't have anything to do with it ... don't even understand what they're doing there"). See also Mark Denbeaux & Joshua Denbeaux, *The Guantánamo Detainees: The Government's Story* 2-3 (Feb. 8, 2006).

at Guantánamo.<sup>36</sup> These include approximately 50 men, like Mr. Ameziane, who cannot return to their home country for fear of torture or persecution and need a safe third country for resettlement.<sup>37</sup>

19. The conditions of detention at Guantánamo have been described by international monitors as inhumane.<sup>38</sup> The first prisoners at Guantánamo, including Mr. Ameziane – who arrived blindfolded and goggled, wearing earmuffs and face masks, handcuffed and shackled – were held for the first few months of their imprisonment in open air wire-mesh cages in the infamous Camp X-Ray.<sup>39</sup> For more than two years, the prisoners were virtually cut off from the outside world, until *Rasul* opened Guantánamo to lawyers in 2004, but communication with lawyers, family members and other prisoners continues to be severely restricted.<sup>40</sup> Today, about 70% of all prisoners are held in solitary confinement or isolation in one of three camps – Camps 5 and 6, and Camp Echo.<sup>41</sup> International NGOs have described Camp VI, where Mr. Ameziane is detained, as more severe in some respects than the most restrictive “super-maximum” facilities

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<sup>36</sup> International Committee of the Red Cross (ICRC), Operational Update, *US detention related to the events of 11 September 2001 and its aftermath – the role of the ICRC* (July 30, 2008), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/usa-detention-update-300708?opendocument>. See also Press Release, U.S. Dep’t of Defense, Detainee Transfer Announced (July 2, 2008), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12100> (stating that approximately 265 prisoners remain at Guantánamo).

<sup>37</sup> See, e.g., Jennifer Daskal, *A Fate Worse than Guantánamo*, Wash. Post, Sept. 2, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/31/AR2007083101463.html>.

<sup>38</sup> See Human Rights Watch Report, *supra* note 3, at 3.

<sup>39</sup> See *id.* at 7.

<sup>40</sup> See *id.* at 14-15.

<sup>41</sup> See CCR, *Solitary Confinement at Guantánamo Bay*, available at <http://www.ccrjustice.org/files/Solitary%20Confinement%20summary.pdf>. See also Human Rights Watch Report, *supra* note 3, at 1.

in the United States,<sup>42</sup> which have been criticized by international bodies as incompatible with human rights, and the ICRC has described the conditions at Camp Echo as “extremely harsh.”<sup>43</sup>

20. Prisoners are routinely abused and mistreated by military guards and it is well-established by now, after government reports and memos, news and NGO reports, and detainees’ accounts themselves, that they have been subjected to methods constituting torture during interrogations.<sup>44</sup> According to a report released by the Office of the Inspector General at the Department of Justice in May 2008, some of the most frequently reported techniques included sleep deprivation or disruption, prolonged shackling, stress positions, isolation, and the use of bright lights and loud music.<sup>45</sup>

21. In response to years of indefinite and abusive detention, prisoners have engaged in acts of resistance and self-harm, including hunger strikes and suicide attempts; in 2003 alone, prisoners reportedly committed over 350 acts of self-harm.<sup>46</sup> To date, there have been five reported deaths at the base.<sup>47</sup> The most recent death was in December 2007; according to news reports, the prisoner suffered from a treatable form of colon cancer and died from lack of treatment.<sup>48</sup>

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<sup>42</sup> See Amnesty International, *United States of America: Cruel and Inhuman: Conditions of isolation for detainees at Guantánamo Bay*, at 2 (April 2007).

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., Dep’t of Justice, Office of the Inspector General, *A Review of the FBI’s Involvement in and Observations of Detainee Interrogations in Guantánamo Bay, Afghanistan, and Iraq*, 171-201 (May 2008) [hereinafter “DOJ OIG Report”]; Neil A. Lewis, *Red Cross Finds Detainee Abuse in Guantánamo*, N.Y. Times, Nov. 30, 2004.

<sup>45</sup> See DOJ OIG Report, *supra* note 44, at 171.

<sup>46</sup> See UN Special Mandate Holders’ Report, *supra* note 10.

<sup>47</sup> See Petitioners’ Observations of February 16, 2007, Inter-Am. C.H.R. Precautionary Measures No. 259, *Detainees in Guantánamo Bay, Cuba*. Three prisoners were reported dead on June 10, 2006; a fourth on May 30, 2007; and a fifth on December 30, 2007. The government has yet to release the results of its purported investigation into the nature and circumstances of any of the deaths.

<sup>48</sup> See *Alleged Taliban Member Detained in Guantánamo Bay Dies of Cancer*, Assoc. Press, Dec. 31, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/30/AR2007123002423.html>.

**C. The Legal Framework Governing Guantánamo Detainees: U.S. Legislation and Litigation**

22. Since 2002, multiple legal challenges have been mounted against the President's purported authority to hold individuals in indefinite, unreviewable detention. Although U.S. courts have attempted to restrict that authority, the Executive and the Congress have responded time and again with ever-problematic legislation and procedures, namely, the Combatant Status Review Tribunal ("CSRT") procedures in 2004, the Detainee Treatment Act ("DTA") in 2005, and the Military Commissions Act ("MCA") in 2006. Notwithstanding the Supreme Court's ruling in *Boumediene* striking the MCA's denial of habeas as unconstitutional with respect to Guantánamo detainees, the United States has succeeded in delaying effective habeas relief for the detainees for over six years. Furthermore, the MCA's other provisions, as well as the DTA and the CSRT procedures, remain intact.

**1. Habeas Corpus and Access to Courts**

23. In February 2002, the first *habeas corpus* petition on behalf of Guantánamo prisoners was filed in the U.S. District Court for the District of Columbia ("D.C. District Court"). The district court dismissed the petition for lack of jurisdiction, holding that as non-citizens detained outside sovereign U.S. territory, the petitioners had no right to habeas, and the Court of Appeals affirmed. The U.S. Supreme Court granted certiorari and, on June 24, 2004, held in *Rasul v. Bush* that U.S. federal courts have jurisdiction to hear *habeas* petitions of Guantánamo detainees.<sup>49</sup> Two years into their detention, Guantánamo prisoners had access to the courts for the first time.

24. In the aftermath of *Rasul*, more than 200 *habeas* petitions were filed in the D.C. District Court on behalf of over 300 Guantánamo detainees. In January 2005, two district court

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<sup>49</sup> *Rasul*, 542 U.S. at 483-84.

judges issued conflicting decisions regarding the extent of federal court access mandated by the Supreme Court's decision in *Rasul*. In *Khalid v. Bush*, one judge held that nonresident noncitizens detained outside the sovereign territory of the United States in the course of the "war" against al Qaeda and the Taliban held no constitutional rights, that no federal law was relevant and applicable, and that international law was not binding in this instance.<sup>50</sup> In contrast, in *In re Guantánamo Detainee Cases*, another judge held that the detainees were entitled to constitutional due process rights that were not satisfied by the CSRTs created by the Bush Administration in response to *Rasul* (discussed *infra*), and that some of the detainees held rights under the Third Geneva Convention.<sup>51</sup>

25. As the litigation continued, Congress passed two laws pertinent to the question of the detainees' right to *habeas*. In December 2005, Congress passed the DTA, which stripped federal courts of jurisdiction over any new *habeas* petitions filed on behalf of Guantánamo detainees and created as a purported substitute for *habeas* a limited remedy in the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court of Appeals").<sup>52</sup> Under the DTA, the scope of the Court's review is limited solely to examining whether the CSRTs were conducted in compliance with procedures established by the Secretary of Defense for the CSRTs<sup>53</sup> – in other words, whether the military followed its own rules.<sup>54</sup> Although the DTA was

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<sup>50</sup> *Khalid v. Bush*, 355 F. Supp. 2d 311 (D.D.C. 2005).

<sup>51</sup> *In re Guantánamo Bay Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. 2004). These two cases were consolidated as *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007).

<sup>52</sup> Detainee Treatment Act of 2005 ("DTA") § 1005(e), 42 U.S.C.A. § 2000dd (2005). The DTA stripped federal courts of jurisdiction to consider *habeas* petitions and "any other action" concerning any aspect of detentions at Guantánamo. In *Hamdan*, 548 U.S. 557 (2006), the U.S. Supreme Court recognized that the DTA did not apply to *habeas* petitions pending at the time of its passage.

<sup>53</sup> DTA, cit., § 1005(e)(2); Military Commissions Act of 2006 ("MCA") § 3(a)(1), 10 U.S.C.A. (2006), amending 10 U.S.C.A. § 950(g) (2006).

<sup>54</sup> See *Hamdan*, 548 U.S. 557 at 572.

enacted over three years ago, only one of the more than 150 DTA cases that have been filed since 2005 was recently decided on the merits.<sup>55</sup>

26. In October 2006, Congress passed the MCA, which goes even further than the DTA by precluding federal courts from considering *habeas* petitions and “any other action” not only by Guantánamo detainees *or* by any other detainee captured after September 11, 2001 and held as an “enemy combatant” in U.S. custody anywhere.<sup>56</sup> The limited DTA review by the D.C. Circuit Court of Appeals is the only court access such detainees are permitted by the MCA.<sup>57</sup>

27. In February 2007, a divided panel of judges of the D.C. Circuit Court of Appeals relied on the MCA in dismissing for lack of jurisdiction the leading *habeas* petitions on appeal from the D.C. District Court, consolidated as *Boumediene v. Bush* and *Al Odah v. United States* (“*Boumediene*”),<sup>58</sup> and the detainees petitioned for writ of certiorari to the Supreme Court. In June 2007, in a highly unusual move, the Supreme Court reversed its initial denial of cert and agreed to hear the combined cases. Pending the Supreme Court’s decision, judges of the D.C. District Court stayed or dismissed the hundreds of *habeas* petitions pending in the Court.<sup>59</sup>

28. On June 12, 2008, the U.S. Supreme Court ruled in *Boumediene* that the MCA’s *habeas*-stripping provision was unconstitutional with respect to Guantánamo detainees and that

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<sup>55</sup> *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977 (C.A.D.C. June 20, 2008).

<sup>56</sup> MCA § 7(a)(2).

<sup>57</sup> MCA § 950g.

<sup>58</sup> All three judges agreed that Congress intended to strip the right of the courts to hear claims from Guantánamo detainees when it passed the MCA. However, the decision was split 2-1 on whether common law *habeas* review extended to Guantánamo. The majority ruled that it did not, and that the MCA was valid and did not constitute an unconstitutional suspension of the writ of *habeas corpus*. One judge, in dissent, found the MCA to be an unconstitutional withdrawal of jurisdiction from the federal courts. *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007).

<sup>59</sup> On September 20, 2007, for example, the D.C. District Court dismissed the *habeas corpus* petitions of 16 Guantánamo detainees with a one paragraph explanation stating that “federal courts have no jurisdiction over *habeas* petitions of enemy combatants detained at Guantánamo Bay.” *Qayed v. Bush*, Mem. Order of Sept. 20, 2007, Civil Action No. 05-0454 (RMU).

the review process under the DTA was not an adequate substitute for full *habeas* review.<sup>60</sup> The Court's decision paves the way for the detainees' *habeas* petitions to be heard in the D.C. District Court, although no Guantánamo detainee has yet had a hearing on the merits of his *habeas* petition, and no such hearing has been scheduled to date.

29. Finally, on June 20, 2008, the D.C. Circuit Court of Appeals issued its first decision in a DTA case. In *Parhat v. Gates*, the Court held that a CSRT's designation of the petitioner as an "enemy combatant" was invalid and ordered the government to "release Parhat, to transfer him, or to expeditiously convene a new Combatant Status Review Tribunal."<sup>61</sup>

## 2. CSRTs and Status Determinations

30. On July 7, 2004, just days after the *Rasul* decision, the government hastily created an administrative review process under CSRTs – military tribunals composed of three mid-level officers tasked with reviewing whether the detainees at Guantánamo were being properly held as "enemy combatants."<sup>62</sup> In addition to the CSRTs, Administrative Review Boards (ARBs) were established to review annually whether each detainee should continue to be held.<sup>63</sup> According to the government, every detainee at Guantánamo Bay has had a CSRT.<sup>64</sup>

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<sup>60</sup> *Boumediene v. Bush/Al Odah v. United States*, 128 S. Ct. 2229 (June 12, 2008).

<sup>61</sup> *Parhat*, WL 2008 2576977, at 2-3. The Court stated that "Parhat's principal argument on this appeal is that the record before his Combatant Status Review Tribunal is insufficient to support the conclusion that he is an enemy combatant, even under the Defense Department's own definition of that term. We agree."

<sup>62</sup> See Dep't of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (1), §§ A & B [hereinafter "CSRT Procedures"], available at <http://www.defenselink.mil/news/Aug2006/d20060809CSRTProcedures.pdf>.

<sup>63</sup> See Dep't of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (3), § 1(a) [hereinafter "ARB Procedures"], available at <http://www.defenselink.mil/news/Aug2006/d20060809ARBProceduresMemo.pdf>.

<sup>64</sup> See UN Special Mandate Holders' Report, *supra* note 10, at para. 28. Response of the United States of America Oct. 21, 2005, to Inquiry of the UNHCR Special Rapporteurs dated Aug. 8, 2005, Pertaining to Detainees at Guantánamo Bay, at 47.

31. As the government has acknowledged, the CSRTs and ARBs are administrative, not judicial proceedings.<sup>65</sup> Prisoners cannot see or rebut any information the government considers classified, even though the CSRTs in 2004 relied substantially on classified information in making their determinations.<sup>66</sup> While detainees have the right to present witnesses and evidence their tribunal deems are relevant and “reasonably available,” in practice, most detainee requests to present documentary evidence were denied, and all requests for witnesses who were other than other Guantánamo detainees were denied.<sup>67</sup> Formal rules of evidence do not apply and there is a presumption in favor of the government’s “evidence.”<sup>68</sup> Evidence obtained through torture can be used as a basis for continued detention.<sup>69</sup> The detainees have no right to counsel,<sup>70</sup> but only a “personal representative” who has no legal training, no duty to maintain confidentiality and an obligation, in fact, to disclose to the CSRT any relevant inculpatory information she or he receives from the detainee.<sup>71</sup> Not surprisingly, given these procedures, the CSRTs conducted in 2004 found most of the detainees at Guantánamo to be “enemy combatants.”<sup>72</sup>

<sup>65</sup> See CSRT Procedures § B; ARB Procedures § 1. See also 2007 Sheinin Report, *supra* note 19, para. 14.

<sup>66</sup> See CSRT Procedures § D(2); Brief for Petitioners El-Banna et al. in *Al Odah v. United States*, No. 06-1196, at 33.

<sup>67</sup> See CSRT Procedures §§ D & E; Seton Hall University School of Law, *No-Hearing Hearings: An Analysis of the Proceedings of the Government’s Combatant Status Review Tribunals at Guantánamo*, at 2-3 (Nov. 17, 2006). See also IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.

<sup>68</sup> See CSRT Procedures §§ G(7) & G(11).

<sup>69</sup> See *id.* Encl. (1) § G(7).

<sup>70</sup> See *id.* § F.

<sup>71</sup> See Dep’t of Defense, Deputy Secretary of Defense, Memorandum for Secretaries of Military Departments et al. (July 14, 2006), Encl. (3), available at <http://www.defenselink.mil/news/Aug2006/d20060809CSRTProcedures.pdf>.

<sup>72</sup> IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.



32. The CSRTs have been widely criticized by military officers who served on them,<sup>73</sup> U.S. courts and international bodies alike.<sup>74</sup> In January 2005, the D.C. District Court held in *In re Guantánamo Detainees Cases* that the CSRT proceedings failed to provide detainees “a fair opportunity to challenge their incarceration” and thus fail to comply with the Supreme Court’s decision in *Rasul*.<sup>75</sup> The Commission has also found the CSRTs inadequate; in 2005, the Commission concluded that “it remains entirely unclear from the outcome of those proceedings what the legal status of the detainees is or what rights they are entitled to under international or domestic law.”<sup>76</sup>

33. Again, the review provided by the D.C. Circuit Court of Appeals under the DTA is too limited to correct these flaws.

### 3. Military Commissions

34. In June 2006, the military commissions authorized by the President in his November 2001 executive order were ruled unconstitutional by the Supreme Court in *Hamdan v. Rumsfeld*.<sup>77</sup> The MCA was enacted in direct response to *Hamdan* and authorized a new system of military commissions, but, for the second time, with procedures deviating from traditional U.S. court martial rules and the laws of war.<sup>78</sup>

<sup>73</sup> See, e.g., William Glaberson, *Unlikely Adversary Arises to Criticize Detainee Hearings*, N.Y. Times, July 23, 2007, available at <http://www.nytimes.com/2007/07/23/us/23gitmo.html>.

<sup>74</sup> See Brief of *Amicus Curiae* United Nations High Commissioner for Human Rights in Support of Petitioners in *Boumediene v. Bush* and *Al Odah v. United States*, Nos. 06-1195, 06-1196; UN Special Mandate Holders’ Report, *supra* note 10, para. 28; 2007 Scheinin Report, *supra* note 19, para. 14.

<sup>75</sup> See *In re Guantánamo Detainees Cases*, 355 F. Supp. 2d 443, 468-478 (2005).

<sup>76</sup> IACHR Precautionary Measures No. 259 (Oct. 28, 2005) at 8.

<sup>77</sup> *Hamdan*, 548 U.S. 557 (2006).

<sup>78</sup> Among other shortcomings, the military commissions authorized by the MCA reject the right to a speedy trial, allow a trial to continue in the absence of the accused, allow for the introduction of coerced evidence at hearings, permit the introduction of hearsay and evidence obtained without a warrant, and deny the accused full access to exculpatory evidence. The MCA also delegates the procedure for appointing military judges to the discretion of the Secretary of Defense. See U.S. Dep’t of Defense, Manual for Military Commissions [hereinafter “Military Commissions Manual”]. For a thorough examination of the procedural

35. U.S. officials have indicated that they expect to charge approximately 80 of the remaining prisoners at Guantánamo.<sup>79</sup> As of August 2008, charges had been announced against 20 detainees<sup>80</sup> and one trial has begun.<sup>81</sup> Even if detainees are acquitted by a military commission or complete the term of imprisonment imposed by such a commission, they are not entitled to release from U.S. custody.<sup>82</sup>

## II. STATEMENT OF FACTS

### A. Background

36. Mr. Ameziane was born on April 14, 1967 in Algiers, the sixth in a close-knit family of eight brothers and sisters. Mr. Ameziane's brother remembers that as a child, Mr. Ameziane was quiet and loved to read, and was content to sit in his room for hours surrounded by stacks of books. Mr. Ameziane attended primary school, secondary school and university in Algeria, and worked as a hydraulics technician after obtaining his university diploma.

37. Mr. Ameziane's hometown is in Kabylie, an unstable region in the north of Algeria known for frequent, violent clashes between the Algerian army and Islamic resistance groups. Practicing Muslims living in that region, such as Mr. Ameziane and his family, are

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inadequacies of the military commissions created by the MCA, *see* CEJIL, CCR, American University Washington College of Law International Human Rights Law Clinic, "Observations presented before the Inter-American Commission on Human Rights, July 20, 2007, Precautionary Measures. No. 259, Detainees in Guantánamo Bay, Cuba."

<sup>79</sup> See News Release, U.S. Dep't of Defense, Charges Referred on Detainee al Bahlul, No. 156-08 (Feb 26, 2008), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=11718>. See *Judge denies prisoner-of-war status to Guantánamo detainee*, Int. Herald Tribune, Dec. 20, 2007.

<sup>80</sup> See Donna Miles, *Guantánamo Detainee Charged for Role in USS Cole Attack*, American Forces Press Service, June 30, 2008, available at <http://www.defenselink.mil/news/newsarticle.aspx?id=50362>.

<sup>81</sup> See William Glaberson & Eric Lichtblau, *Military Trial Begins for Guantánamo Detainee*, N.Y. Times, July 22, 2008 (reporting commencement of Salim Ahmed Hamdan's military commission). In addition, one of the first detainees to be charged, Australian David Hicks, pled guilty. Under increasing pressure from the Australian government to return their citizen, Hicks was returned to Australia after a highly politicized plea agreement was reached in which he admitted to a charge of material support for terrorism and received a sentence of nine months' imprisonment, served in Australia, and a yearlong "gag" order. See, e.g., Spencer S. Hsu, "Guantánamo Detainee Returns to Australia," Wash. Post., May 21, 2007, p. A10.

<sup>82</sup> See 2007 Scheinin Report, *supra* note 19, para. 32.

automatically suspected of being supporters of such groups and are frequently harassed and targeted by the government solely by virtue of being observant Muslims. Mr. Ameziane left his family home in 1992 to escape this discrimination and insecurity and to seek greater stability and peace abroad. He obtained a visa to travel to Italy, through which he transited to Vienna, Austria, where he lived for three years.

38. In Austria, Mr. Ameziane began working as a dishwasher, but his skill and talent led him to rise quickly to become the highest-paid chef at *Al Caminetto Trattoria*, a well-known Italian restaurant. In 1995, following the election of a conservative anti-immigrant government, new immigration policies prevented Mr. Ameziane from extending or renewing his visa, and his work permit was denied without explanation. Mr. Ameziane was forced to leave the country. He traveled directly to Canada, hoping that country's French-speaking population and progressive immigration policies would allow him to settle down and make a permanent home. Immediately upon his arrival, he told immigration officials at the airport that he wanted to apply for asylum because he was afraid of being deported to Algeria. As he awaited a decision, he obtained a temporary work permit and worked diligently for an office supply company and various restaurants in Montreal. His application was ultimately denied in 2000, and he was forced once again to uproot his life and leave the country he had made his home for five years.

39. Displaced, fearful of being forcibly returned to Algeria and – after eight years of searching for refuge only to be denied time and again – perceiving that he had few options, he went to Afghanistan, where he felt he could live without discrimination as a Muslim man, and where he would not fear deportation to Algeria. As soon as the war started, he fled to escape the fighting. He was captured by local police while trying to cross the border into Pakistan, and turned over by Pakistani authorities to U.S. forces, presumably for a bounty. Later, in

Guantánamo, soldiers told Mr. Ameziane that the Pakistanis sold people to them in Afghanistan for \$2,000 and in Pakistan for \$5,000.

40. Mr. Ameziane was transferred to the prison at the U.S.-occupied airbase at Kandahar, Afghanistan in January 2002 and to Guantánamo Bay on or around February 11, 2002, where he was one of the first prisoners to arrive. More than six years later, Mr. Ameziane remains detained at Guantánamo without charge or, to date, judicial review of the legality of his detention.

**B. Administrative and Judicial Proceedings**

41. Like many other detainees at Guantánamo, Mr. Ameziane did not participate in his CSRT in 2004 or his subsequent annual ARBs<sup>83</sup> because he did not believe that they provided any measure of due process and would be used only to justify his indefinite detention. Indeed, after a sham proceeding held in his absence, a CSRT determined that he was properly detained as an “enemy combatant.” His annual ARBs have also found him ineligible for release, although it appears that the United States has previously attempted to negotiate his transfer to Algeria, where he would be at risk of persecution.

42. Mr. Ameziane categorically rejects all of the U.S. government’s allegations against him, which are entirely unsupported by actual, reliable evidence. Even taken at face value, they do not justify his detention. He has never been alleged by the U.S. government to have engaged in any acts of terrorism or other hostilities against anyone, to have picked up a weapon or participated in any military training, or to be a member of an alleged terrorist organization. Nor has he ever had any involvement with extremism, terrorism or any act of violence whatsoever.

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<sup>83</sup> See Mr. Ameziane’s unclassified CSRT & ARB records, annexed to this petition.

43. Furthermore, the United States itself states in the unclassified "summary of evidence" presented to Mr. Ameziane's CSRT panel that he went to Afghanistan for religious purposes and not because he wanted to fight.<sup>84</sup> The government also notes that Mr. Ameziane stated to his "personal representative" that he was not a member of the Taliban or al-Qa'ida; that he neither trained for, witnessed, nor engaged in any fighting; and that he had no intention of participating in any fighting or terrorist activity if he were released.<sup>85</sup>

44. On February 24, 2005, Mr. Ameziane filed a petition for *habeas corpus* in the D.C. District Court.<sup>86</sup> He was among the first to file after *Rasul* afforded prisoners that right. After surviving several attempts for dismissal by the government, his case was stayed pending the Supreme Court's decision in *Boumediene*. That decision now paves the way for his case finally to be heard on the merits, but, more than three years after he first petitioned the court, it remains unclear when this will occur.

45. No criminal charges have been brought against Mr. Ameziane by the United States.

### **C. Torture and other Inhumane Treatment**

46. Mr. Ameziane has suffered torture and other inhumane treatment in the custody of the United States at Kandahar and Guantánamo, which he has recorded in letters to his attorneys. In one letter, Mr. Ameziane describes the brutality of his treatment at Kandahar, where he was transferred by U.S. authorities in January 2002 and held for more than a month.<sup>87</sup> Upon his

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<sup>84</sup> See unclassified Government Summary of Evidence, annexed to this petition.

<sup>85</sup> See *id.*

<sup>86</sup> See Petition for Writ of Habeas Corpus in *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C.), annexed to this petition.

<sup>87</sup> Letter from Djamel Ameziane to Wells Dixon, Nov. 6, 2007 (unclassified). Letters from Mr. Ameziane to his attorneys are on file with the Center for Constitutional Rights and can be made available to the Commission on a confidential basis if necessary.

arrival, Mr. Ameziane describes how soldiers punched, kicked and pushed him to the ground, pinned him down with their knees in his back, and slammed his head against the ground.<sup>88</sup> He and other prisoners were subjected to abusive searches each day and night, and soldiers would sometimes come armed with working dogs. When prisoners were moved to different sections of the camp, soldiers would take them outside and order them to kneel with their hands on their heads facing a barbed-wire fence, on the other side of which a dozen armed soldiers would stand with rifles aimed, yelling things like "kill him! kill him!" to the soldiers handling the prisoners. The soldiers would then push the prisoners flat on the ground on their stomachs and bring barking dogs close to their heads while they shackled the men's hands and ankles. Mr. Ameziane remembers the dogs being so close that he could feel their breath on the side of his face. The prisoners would then be ordered to get up and walk for dozens of meters on bare feet and in shackles until they reached their destination.

47. From Kandahar, Mr. Ameziane was transferred to Guantánamo, arriving on or around February 11, 2002. For the duration of his 15-hour journey, Mr. Ameziane was hooded, shackled and chained to the floor of the plane, and forbidden from speaking. Upon his arrival at Guantánamo, he was put a bus and transported to Camp X-Ray, during which he was once again chained to the floor of the bus and forbidden from speaking or making the slightest movement. When his body swayed to the bus bumping along the road, soldiers struck him repeatedly on the back and head.

48. At Camp X-Ray, where Mr. Ameziane was detained for his first two and a half months at Guantánamo, from February to April 2002, he was held in a 6-feet-by-6-feet wire mesh cell, with a cement floor and a make-shift roof of metal sheets. In a letter to his attorneys,

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<sup>88</sup>

*Id.*

Mr. Ameziane described how guards would gratuitously yell obscenities and insults at him every time they walked by his cell or gave him an order, often for no reason other, for example, than to demand that he arrange his basic personal items in a certain order. Mr. Ameziane described the abusiveness and cruel absurdity of the situation:

I had to put the buckets, the tube of toothpaste, the toothbrush, the flask, the bar of soap, and the 'flip-flop' sandals on the side of the cage where the door is. A guard asks me to place these articles in a row in a certain order. A few minutes later, another guard comes by and yells at me to put the toothbrush to the right of the toothpaste, the flask to the left of the soap bar. Later, another guard yells again for me to place the toothbrush to the left of the toothpaste; the flask to the right of the soap bar and so on; several times per day and often waking me in the middle of the night to scream at me and tell me to move, for instance, the toothbrush to the left of the toothpaste. ... things that I am not sure we should laugh or cry about.<sup>89</sup>

49. Prisoners who replied to the guards' insults or defied their orders were visited by the "Immediate Reaction Force team" ("IRF team") and punished.<sup>90</sup> Mr. Ameziane witnessed these teams beat prisoners and chain them up in painful positions for several hours at a time, for example, with their hands and feet cuffed together behind their back in such a way that their legs remained flexed.<sup>91</sup>

50. Mr. Ameziane has been moved between different blocks and camps since Camp X-ray. Several times for stretches of up to one month, he was held in solitary confinement in Camp I, where he was put in a cold steel cell with a steel bed and a rusted floor, with no article of clothing or warmth other than a shirt, a pair of pants and flip flops, and where guards would

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<sup>89</sup> Letter from Djamel Ameziane to Pardiss Kebriaei, May 2008 (unclassified) (on file with CCR).

<sup>90</sup> Comparable to a riot squad, the IRF functions as a disciplinary force within the camps. Military police rotate on and off IRF duty and carry Plexiglas shields and frequently use tear gas or pepper spray. Guantánamo prisoners are frequently "IRF'd" as punishment. See CCR, *Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba*, at 21 (July 2006).

<sup>91</sup> Letter from Djamel Ameziane to Pardiss Kebriaei, May 2008 (unclassified).

prevent him from sleeping by making loud noise at night.<sup>92</sup> For a period of about six months in 2006, for no infraction, Mr. Ameziane was transferred to the "Romeo" block of Camp 3 and the "Mike" block of Camp 2, which the military reserved for detainees who were perceived to be uncooperative. He was given only a thin mat on which to sleep, a pair of pants, a smock, and a pair of flip-flops, and a sheet that was handed to him at 10 p.m. and taken away at 5 a.m.<sup>93</sup> At night, guards would wake him each quarter or half hour by kicking on the wall or the door of his cell and yelling, "Wake up!"<sup>94</sup> When he was taken out of his cell shackled and chained each day to go to the "recreation yard," he was forbidden from speaking with other prisoners or moving his eyes left and right as he was escorted to the yard. Sometimes, when his eyes would shift slightly to the side, his escort guards would brutally shove him against the wall, slamming his head against the wall with such force once that blood came out of his nose and mouth.<sup>95</sup>

51. In another violent incident, guards entered his cell and forced him to the floor, kneeling him in the back and ribs and slamming his head against the floor, turning it left and right. The bashing dislocated Mr. Ameziane's jaw, from which he still suffers. In the same episode, guards sprayed cayenne pepper all over his body and then hosed him down with water to accentuate the effect of the pepper spray and make his skin burn. They then held his head back and placed a water hose between his nose and mouth, running it for several minutes over his face and suffocating him, an operation they repeated several times. Mr. Ameziane writes, "I had the impression that my head was sinking in water. I still have psychological injuries, up to this day. Simply thinking of it gives me the chills."<sup>96</sup> Following his waterboarding, he was

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<sup>92</sup> Letter from Djamel Ameziane to Wells Dixon, Mar. 17, 2008 (unclassified) (on file with CCR).

<sup>93</sup> Letter from Djamel Ameziane to Wells Dixon, Nov. 6, 2007 (unclassified).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Letter from Djamel Ameziane to Wells Dixon, Mar. 17, 2008 (unclassified).



taken to an interrogation room, where his feet were chained to a metal ring fixed to the floor and he was left writhing in pain and shivering under the cold air of the air conditioner, his clothes soaked and his body burning from the effect of the pepper spray.<sup>97</sup>

52. Mr. Ameziane has also been subjected to many harsh interrogations. He was once kept inside an interrogation room for over 25 hours and allowed out only once for half an hour. Another time, he was kept in an interrogation room for over 30 hours with loud techno music blasting, "enough to burst your eardrums."<sup>98</sup>

53. Since the beginning of January 2008, Mr. Ameziane has had late night interrogation sessions with an interrogator he identifies as "Antonio," who chain smokes for the duration of their two-hour sessions, blows smoke in Mr. Ameziane's face, yells obscenities and taunts him, and has threatened him with the use of "other" harsher methods. Before these sessions begin, Mr. Ameziane sits bound to a chair waiting for up to an hour, with his feet shackled to the floor and his wrists cuffed so tightly that his hands are left swollen and discolored. He is left shackled and cuffed in the interrogation room for up to another hour after these sessions end waiting to be returned to his isolation cell, making these interrogations an abusive four-hour ordeal. While Mr. Ameziane's attorneys made a formal complaint in February to the military about Antonio's conduct, the sessions and the abuse have continued.

#### **D. Camp VI Conditions**

54. According to the most recent unclassified version of attorney-client meeting notes from visits to Mr. Ameziane at Guantánamo,<sup>99</sup> Mr. Ameziane is being held in solitary

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> The most recent meetings between Mr. Ameziane and his attorneys from which unclassified information is available took place on June 10-11, 2008 at Guantánamo Bay, Cuba.

confinement in Camp VI, one of the harshest facilities at the prison.<sup>100</sup> He says his interrogators used to threaten him with being moved to Camp VI as punishment for refusing to speak to them. He was finally transferred there in March 2007.

55. Mr. Ameziane is detained in a windowless 6-foot-by-12-foot concrete and steel cell, with a solid steel door and no openings for natural light or air.<sup>101</sup> The only openings are a metal food slot and three narrow “windows” that all face the interior of the prison and serve only to allow prison guards to look in and keep watch. The temperature inside his cell is extremely cold, so much so that he describes even the air as a “tool of torture.”

56. The only staple items Camp VI prisoners are permitted in their cells are a thin mat on which to sleep, a pair of pants, a shirt, and a pair of flip flops. All other items – things like a toothbrush, toothpaste, a Styrofoam cup, and a towel – are considered “comfort items” and can be taken away for any infraction. Mr. Ameziane writes, “I would even venture that if they could confiscate the air we breathe, it would be counted as a [Comfort Item].”

57. The only time Mr. Ameziane is allowed outside is for a two-hour break for “recreation,” but even then, he is surrounded by solid walls two stories high that block the sun and wire mesh stretched across the top that obstructs his view of the sky.<sup>102</sup> The recreation area itself is partitioned by fencing into small 4-meters-by-3-meters areas, which Mr. Ameziane likens to a kennel. Until recently, each detainee spent his recreation time by himself in one of these “kennels,” although two prisoners are now allowed in the same area.

58. When Mr. Ameziane’s attorneys visited him in October 2007, they were allowed to meet with him outside in a large yard adjacent to the prison. He commented that the meeting

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<sup>100</sup> See Human Rights Watch Report, *supra* note 3.

<sup>101</sup> See *id.*

<sup>102</sup> See *id.* at 12.

was one of the few times in his then eight months at Camp VI that he had been in the yard and allowed an unobstructed view of the sky.

**E. Denial of Adequate Medical Care**

59. Because Mr. Ameziane spends nearly all of his time staring at the walls of his small cell in Camp VI, his vision is steadily deteriorating. He has made repeated requests for an eye exam and eyeglasses, which were ignored for almost a year. The glasses he did finally receive are the wrong prescription and he cannot wear them for more than half an hour without getting a headache. Because of the extremely cold temperatures in Camp VI, he also suffers from rheumatism in his legs, for which his requests for care have been denied as well.

60. Mr. Ameziane has also felt pain in an area on the side of his head for almost a year. After a doctor at the prison gave him a cursory examination and told him there was nothing the matter, Mr. Ameziane asked how he could be sure without conducting further tests. The doctor replied, "I am the test." He told Mr. Ameziane that there was nothing further he could do and left the room.<sup>103</sup>

61. The medical treatment Mr. Ameziane has received at Guantánamo has not only been inadequate and negligent, but also abusive. On one occasion, Mr. Ameziane went into convulsions in his cell, where guards left him writhing on the floor for hours before taking him to the infirmary. The attending doctor inserted a serum in Mr. Ameziane's arm, but asked one of the soldiers standing watch to assist him by inserting a syringe needle into Mr. Ameziane's vein. With Mr. Ameziane lying prostrate and cuffed to the examination table, the guard stuck the needle into his forearm, which began spurting blood. The doctor and the guards laughed while Mr. Ameziane lay chained to the table.

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<sup>103</sup> Letter from Djamel Ameziane to Wells Dixon, Apr. 4, 2008 (unclassified) (on file with CCR).

62. Mr. Ameziane's health care needs have also been used as a tool to coerce him into cooperating with interrogators. For months, Mr. Ameziane has been requesting a pair of socks from the infirmary to help with rheumatism he suffers in his feet and legs. Recently, when Mr. Ameziane asked the medical military staff once again for the socks, he was told, "the medical' no longer supplies socks. You have to ask your interrogator for that."

**F. Religious Abuse**

63. Mr. Ameziane has been subjected to various offensive and intentionally disruptive acts with respect to his Islamic beliefs and practices both at Guantánamo and Kandahar. He describes one occasion when during dawn prayer, a guard began howling like a dog in imitation of the ritual Muslim call to prayer. When Mr. Ameziane asked the guard why he was imitating the call, the guard came over to his cell and threw water in his face. A few minutes later, Mr. Ameziane was taken to solitary confinement, where he was held for five days. He was told it was punishment for throwing water at the guard.

64. During his time in the "Romeo" and "Mike" blocks in Camps 2 and 3, Mr. Ameziane suffered routine abuse and disruptions. Guards would yell insults and obscenities at him while he prayed and sometimes throw stones at the metal grill window of his cell.

65. Now in Camp VI, his conditions of isolation create a structural interference with his religious practice. Since he and his fellow prisoners can only pray in their separate, individual cells, they cannot see or hear their prayer leader well enough to pray communally as they would otherwise.

66. Mr. Ameziane has also witnessed acts of abuse against his fellow detainees. He has seen prisoners punished by having their eyelids and eyebrows, beards, mustaches, and hair

completely shaved,<sup>104</sup> or the shape of a cross or a soccer ball shaved on their heads. He has also described incidents where soldiers have desecrated prisoners' Qur'ans, for example, by spraying water on them, trampling on them, or scrawling obscenities into them.

67. At Kandahar, Mr. Ameziane has told of similar desecration of the Qur'an during guards' daily searches of prisoners' cells, for example, by throwing the holy books on the ground, stepping on them, or ripping their pages and throwing them away. On one particular occasion, a soldier brandished a Qur'an in his hand for all the prisoners in the vicinity to see, and then plunged it into a tank full of excrement into which prisoners' toilet buckets had been emptied. Following this incident, the prisoners decided to return their Qur'ans to the camp authorities so as to prevent further abuse, but the authorities refused to take them back.

**G. Impact on Private and Family Life**

68. Mr. Ameziane has been deprived of critical moments with his family during his more than six years at Guantánamo. His father passed away during this period, before Mr. Ameziane could see or talk to him one last time. His brothers and sisters have had wedding ceremonies he has been unable to attend and have had children who have never known their uncle. He has also been deprived of news of family events because letters sent from his family often do not reach him until years later. He saw photographs of his nieces and nephews for the first time in years when his attorneys brought the photographs to Guantánamo.

69. Mr. Ameziane has told his attorneys that had he not been imprisoned in Guantánamo for the past six and a half years, he would have wished to train as an automobile mechanic and open his own garage, and get married and start a family.

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<sup>104</sup> This level of shaving apparently no longer occurs, but Mr. Ameziane says detainees' beards are sometimes still closely shaved, leaving only about one centimeter of hair.

**H. Risk of Return to Algeria**

70. Mr. Ameziane would be at risk of persecution if he is forcibly repatriated to Algeria and needs the protection of a third country for resettlement in order to leave Guantánamo safely.

71. His family still resides in Kabylie and if he were returned, he would face a continuing risk of being targeted and subject to arbitrary arrest and detention – and in detention, further harm – by virtue of the fact that he and his family are observant Muslims. Mr. Ameziane's prior application for political asylum in Canada on the basis of a fear of persecution in Algeria would also likely draw the attention of the Algerian security services and put him at further risk of being targeted and imprisoned. The fact that Mr. Ameziane has spent time in Guantánamo, and the resulting stigma of that association, would alone be enough to put him at risk of being imprisoned if he is returned.

72. Mr. Ameziane has been threatened on at least one occasion by U.S. interrogators who told him that he would be sent back to Algeria if he did not cooperate with them. They told him knowingly that *he* knew how he would be treated if he were to return. His brother believes that Mr. Ameziane would be shot if he were returned to Algeria and, according to him, "everyone thinks my family is connected to terrorism because [Mr. Ameziane] is in Guantánamo." The Algerian Ambassador to the United States has also stated to lawyers for Guantánamo prisoners that all Algerian citizens in Guantánamo would be considered serious security threats, and would be subject to further detention and investigation if returned. The Ambassador stated specifically that there is no reason an Algerian citizen who had lived in Canada or Europe would go to Afghanistan except to engage in unlawful activity.

73. Mr. Ameziane is currently seeking resettlement in Canada, the country in which he legally resided for five years and would not have left had he not been denied asylum in 2000.

### III. ADMISSIBILITY

#### A. Mr. Ameziane's Petition is Admissible Under the Commission's Rules of Procedure.

74. Mr. Ameziane's petition is admissible in its entirety under the IACHR Rules.<sup>105</sup>

In particular, the Commission has jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* to examine the petition, and Mr. Ameziane is exempt from the exhaustion of domestic remedies requirement under the terms of 31.2 of the IACHR Rules. The Commission should therefore reach a favorable admissibility finding and proceed in earnest to examine the merits of this grave case of human rights abuse.

#### 1. The Commission has Jurisdiction *Ratione Personae*, *Ratione Materiae*, *Ratione Temporis*, and *Ratione Loci* to Consider Mr. Ameziane's Petition.

75. The Commission is competent *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* to examine the complaints presented by Mr. Ameziane.

76. The Commission is competent *ratione personae* to consider Mr. Ameziane's complaint because Mr. Ameziane is a natural person who was subject to the jurisdiction of the United States and whose rights were protected under the American Declaration when the violations detailed in this petition occurred.<sup>106</sup> Although the violations took place outside the formal territory of the United States, the Commission has long established that it may exercise jurisdiction over conduct with an extra-territorial locus where the person concerned is present in

<sup>105</sup> Article 28 of the Rules of Procedure of the Inter-American Commission on Human Rights sets forth the Requirements for the Consideration of Petitions, in which it details factual information that the Commission needs to initiate proceedings in a contentious case and procedural requirements with which petitioners must comply. Rules of Procedure of the Inter-American Commission on Human Rights [hereinafter "IACHR Rules"], Art. 28.a-i.

<sup>106</sup> See *Jessica Gonzales and others v. United States*, Petition 1490-05, Inter-Am. C.H.R., Report No. 52/07 (Admissibility), para. 37 (2007).

the territory of one State, but subject to the authority and control of another OAS Member State.<sup>107</sup>

77. The Commission's authority to hear such extra-territorial claims was directly addressed and upheld in two 1999 decisions, *Coard et al. v. United States*<sup>108</sup> and *Alejandro v. Cuba*.<sup>109</sup> In *Coard*, the Commission, considering allegations of U.S. violations during its 1983 invasion of Grenada, held that the Commission's jurisdictional analysis focuses on the state control over the individual whose rights have been violated.<sup>110</sup> The Commission found that the phrase "subject to [the OAS country's] jurisdiction," the jurisdictional language commonly used in international human rights instruments,<sup>111</sup> "may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state...."<sup>112</sup>

78. In *Alejandro*, the Commission found that Cuba, an OAS member state, exercised "authority and control" over the unarmed civilian aircraft the Cuban military shot down,

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<sup>107</sup> See, e.g., *Coard et al. v. United States*, Case 10.951, Inter-Am. C.H.R., Report No. 109/99, para. 37, (1999).

<sup>108</sup> Case 10.951, Report No. 109/99 (1999).

<sup>109</sup> Case 11.589, Report No. 86/99 (1999)

<sup>110</sup> See *Case of Coard*.

<sup>111</sup> See, e.g., International Covenant on Civil and Political Rights [hereinafter ICCPR], Art. 2 ("[T]o respect and to ensure to all individuals within its territory and subject to its jurisdiction"); European Convention on Human Rights, Art. 1, ("[S]hall secure to everyone within their jurisdiction"); American Convention on Human Rights, Art. 1, ("[T]o ensure to all persons subject to their jurisdiction"). While article 2 of the ICCPR refers to all individuals within a State's territory and subject to its jurisdiction, the Human Rights Committee has interpreted these two grounds to be independent as regards application of the ICCPR. See, e.g., *Burgos/Delia Saldias de Lopez v. Uruguay*, Communication No. 52/1979 (29 July 1981), U.N. Doc. CCPR/C/OP/1 at 88 (1984). The International Court of Justice endorsed this position in its Advisory Opinion on *Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, July 9, 2004, 43 International Legal Materials 1009 (2004). One U.S. court, however, has stated that the ICCPR applies to the United States only when the affected person is both within U.S. territory and subject to its jurisdiction. See *United States v. Duarte-Acero*, 296 F.3d 1277 (11th Cir. 2002).

<sup>112</sup> See *Case of Coard*.



sufficient for the Commission to hear the petitioners' complaint.<sup>113</sup> In *Alejandro*, there was no territorial nexus between the victims of the alleged violations and the state of Cuba, or between the actions themselves and Cuban territory. Two of the victims had been born in the United States; none of the activities relevant to the petition took place on Cuban soil; and none of the victims were in a Cuban airplane.<sup>114</sup> Nevertheless, in taking aim upon the civilian passenger plane, the Commission found, "the agents of the Cuban state, although outside their territory, placed the civilian pilots...under their authority."<sup>115</sup> This placed the victims within the jurisdiction of Cuba for purposes of triggering Cuba's human rights obligations: "In principle, the [jurisdictional] investigation refers not to the nationality of the alleged victim or his presence in a particular geographic area, but to whether, in those specific circumstances, the state observed the rights of a person subject to its authority or control."<sup>116</sup> In other words, the jurisdictional analysis is not predicated on the nature and characteristics of the alleged victim of the claim. Rather, whether the Commission has the authority to contemplate an OAS Member State's actions turns on whether the state has lived up to its responsibilities regarding the human rights of persons over whom the state exercised control.

79. Under the "authority and control" theory, the Commission has already established that Guantánamo detainees are subject to the jurisdiction of the United States and therefore benefit from the protection of the American Declaration.<sup>117</sup> On this basis, the Commission has exercised its own jurisdiction to enforce the American Declaration to the benefit of such

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<sup>113</sup> See *Case of Alejandro*.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> See IACHR Precautionary Measures No. 259 (March 13, 2002) at 2.

persons.<sup>118</sup> In the present case, there is no doubt that Mr. Ameziane has been subject to the jurisdiction of the United States since being transferred to Guantánamo Bay – he has been detained by the United States on a U.S. military base governed by an indefinite lease establishing U.S. control since 1903. The U.S. Supreme Court itself has referred to the “obvious and uncontested fact that the United States, by virtue of its complete jurisdiction and control over the [Guantánamo Bay Naval] base, maintains *de facto* sovereignty over this territory.”<sup>119</sup> The Commission is therefore competent *ratione personae* to hear claims based on Mr. Ameziane’s detention at Guantánamo.

80. Furthermore, Mr. Ameziane was under the authority and control of the United States while detained by the U.S. military at the airbase in Kandahar, Afghanistan. The airbase was occupied by U.S. Marines in December 2001<sup>120</sup> and, during the five-week period when Mr. Ameziane was detained there from January to February 2001 the facility was clearly under U.S. control. The Commission may therefore exercise its *ratione personae* jurisdiction with respect to all the facts described in this petition, whether they occurred in Kandahar, Afghanistan or Guantánamo Bay, Cuba.

81. As Mr. Ameziane’s petition alleges the violation of several articles of the American Declaration, the Commission is also competent *ratione materiae* to consider the complaint.<sup>121</sup> Although the United States has repeatedly contested the authority of the Commission to declare violations of rights enshrined in the American Declaration, the

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<sup>118</sup> See *id.*

<sup>119</sup> *Boumediene*, 128 S. Ct. 2229, 2253 (June 12, 2008).

<sup>120</sup> See Myers, *A Nation Challenged: In the South; Anticipating Many Captives, U.S. Marines Build a Prison Camp at Kandahar Airport*, *supra* note 26.

<sup>121</sup> See *id.* at para. 38.

Commission has long held that the Declaration constitutes a source of binding international obligations for the United States.<sup>122</sup>

82. Furthermore, the Commission is competent *ratione temporis* to consider the petition, as the violations of Mr. Ameziane's rights occurred subsequent to the adoption of the American Declaration in 1948, to the United States' ratification of the OAS Charter on June 19, 1951, and to the creation of the IACHR in 1959.<sup>123</sup>

83. Finally, the Commission is competent *ratione loci* to consider the violations alleged by Mr. Ameziane, as the petition alleges facts which occurred while he was under the jurisdiction of the United States as described above.<sup>124</sup>

## **2. Mr. Ameziane Has Met the Exhaustion of Domestic Remedies Requirement.**

84. Pursuant to Article 31 of the IACHR Rules of Procedure, individual petitions are admissible only where domestic remedies have been exhausted or where such remedies are unavailable as a matter of law or fact.<sup>125</sup> The rule that requires prior exhaustion of domestic

<sup>122</sup> See, e.g., *Wayne Smith v. United States*, Petition 8-03, Inter-Am. C.H.R. Report No. 56/06 (Admissibility), paras. 32-33 (2006).

<sup>123</sup> See *id.* at para. 34.

<sup>124</sup> See *Case of Gonzales* at para. 40.

<sup>125</sup> See IACHR Rules of Procedure, art. 31:

1. In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.
2. The provisions of the preceding paragraph shall not apply when:
  - a. the domestic legislation of the State concerned does not afford due process of law for protection of the right or rights that have allegedly been violated;
  - b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
  - c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.
3. When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the

remedies was conceived in the interest of the State, as it seeks to dispense the State from having to respond to an international body for actions imputed to it before having had the opportunity to remedy them by its own means.<sup>126</sup> However, because this fundamental admissibility requirement is directly related to the need to protect victims of human rights abuse from the arbitrary exercise of government power,<sup>127</sup> domestic remedies must be “adequate to protect the rights allegedly infringed and effective in securing the results envisaged in establishing them.”<sup>128</sup> It must also be clear that the desired remedy is achievable.<sup>129</sup>

85. The admissibility decision in a case in which the petitioner requests an Article 31 exception turns on the Commission’s finding that a domestic remedy has been proven unavailable as a matter of law or fact, inadequate or ineffective to rectify the violations alleged.<sup>130</sup>

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remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

<sup>126</sup> See *In the Matter of Viviana Gallardo et al.*, Inter-Am. Ct. H.R. (ser. A) No. G 101/81, para. 28 (1984).

<sup>127</sup> *Godínez Cruz Case*, Inter-Am. Ct. H.R. (ser. C), Judgment of June 26, 1987, para. 95.

<sup>128</sup> *El Mozote Massacre v. El Salvador*, Case 10.720, Inter-Am. C.H.R., Report No. 24/06 (Admissibility), para. 33 (2006); see also *Case of Velásquez Rodríguez Case*, cit., paras. 62-66; *Fairén Garbí and Solís Corrales Case* Inter-Am. Ct. H.R., Preliminary Objections, Judgment of March 15, 1989, paras. 86-90; *Godínez Cruz Case*, Judgment of January 20, 1989, paras. 65-69; *Santander Tristán Donoso v. Panama*, Petition 12.360, Inter-Am. C.H.R., Report No. 71/02 (Admissibility), paras. 21-22 (2002). The Commission has incorporated the longstanding jurisprudence of the Inter-American Court which states that “[a]dequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.” *Fernando A. Colmenares Castillo v. Mexico*, Case No. 12.170, Inter.-Am. C.H.R., Report No. 36/05 (Inadmissibility), para. 37 (2005), citing *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., Merits, Judgment of July 29, 1988 (Ser. C No. 4), para. 64.

<sup>129</sup> See *Velásquez Rodríguez Case*, cit., at para. 72; *Fairén Garbí and Solís Corrales Case*, cit., at para. 97; *Godínez Cruz Case*, cit., at para. 75.

<sup>130</sup> See *Mariblanca Staff Wilson and Oscar E Ceville R. v. Panamá*, Case No. 12.303, Inter.-Am. C.H.R., Report No 57/03 (Inadmissibility), at para. 42 (2003).

**a) The "Adequate Domestic Remedies" in Mr. Ameziane's Case**

86. Mr. Ameziane alleges violations of several substantive rights enshrined in the American Declaration—the right not to be arbitrarily deprived of his liberty; to freedom from torture and cruel, inhumane and degrading treatment; to health; to religious freedom and worship; to private and family life; and to protection of his personal reputation – in addition to the procedural rights protected by articles XVIII and XXVI of the Declaration. In order to assess the admissibility of his petition, it is necessary first to identify whether there are available domestic remedies that would have been adequate and effective to address the violations of these rights, and then to determine whether such remedies have been exhausted or whether Mr. Ameziane is exempt from exhausting domestic remedies under one of the exceptions contemplated in Article 31 of the Commission's Rules of Procedure.

87. As the violations Mr. Ameziane alleges stem from his detention by the United States and the abuse he has suffered while detained, Mr. Ameziane had a duty to exhaust the domestic remedies that were uniquely suitable to addressing the infringement of these rights before petitioning this Commission: *habeas corpus*, in relation to his arbitrary and indefinite detention; and criminal proceedings, in relation to the torture and mistreatment he suffered at the hands of the U.S. government. In addition, Mr. Ameziane had the duty to seek injunctive relief from the violations of his rights to health, religious freedom, private and family life, and protection of his reputation, as well as criminal sanctions (where applicable) against the individual State agents responsible for these violations.

88. With regard to Mr. Ameziane's claim of arbitrary detention, the Commission's jurisprudence clearly establishes the writ of habeas corpus as the appropriate domestic remedy to be pursued. In issuing precautionary measures in favor of Guantánamo detainees, the

Commission referred to the “longstanding and fundamental role that the writ of habeas corpus plays as a means of reviewing Executive detention.”<sup>131</sup> The Commission’s resolution also favorably cited the U.S. Supreme Court’s decision in *Rasul* to uphold Guantánamo detainees’ right to habeas.<sup>132</sup> Indeed, habeas is specifically protected by the U.S. Constitution and has long served as the U.S. legal system’s ultimate bulwark against arbitrary deprivations of liberty.<sup>133</sup> As the U.S. Supreme Court has stated, “The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless [government] action.”<sup>134</sup> Thus, this Commission and the U.S. government alike consider the writ of habeas corpus to be the appropriate remedy for addressing arbitrary and unlawful detention.

89. With regard to Mr. Ameziane’s torture and mistreatment while in U.S. custody, the Commission has repeatedly held that in such cases the appropriate remedy is criminal prosecution of those responsible for the harm. In *Wilson Gutierrez Soler v. Colombia*, for example, the victim alleged a violation of Article 5 of the American Convention for torture he suffered while detained by the Colombian National Police.<sup>135</sup> Although the petitioner had multiple remedies available to him under Colombian law, including the possibility of filing a civil suit against the state, the Commission declared the case admissible based solely on the fact that criminal proceedings against the individuals accused of torturing the petitioner had concluded.<sup>136</sup> As the Commission made clear in another Colombian case, when a criminal law remedy is available, neither disciplinary proceedings against individual state employees nor civil

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<sup>131</sup> IACHR Precautionary Measures No. 259 (Oct. 28, 2005), para. 8.

<sup>132</sup> *Id.*

<sup>133</sup> See U.S. Const. art. I, § 9; *Boumediene*, 128 S. Ct. 2229, 2246 (June 12, 2008).

<sup>134</sup> *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969).

<sup>135</sup> See *Wilson Gutierrez Soler v. Colombia*, Case 12.291, Inter.-Am. C.H.R., Report. No. 76/01 (Admissibility), at paras. 8-9 (2001).

<sup>136</sup> See *id.* paras. 11, 16, 19.

suits against the State itself need be exhausted in order for a case to be deemed admissible.<sup>137</sup>

Notwithstanding the availability of civil, disciplinary and administrative remedies, then, the Commission has clearly established that the appropriate remedy in cases of torture and abuse is the criminal prosecution of the responsible individuals.

90. With regard to Mr. Ameziane's remaining claims – those based on violations of his rights to health, religious freedom, private and family life, and protection of his personal reputation – the Commission's jurisprudence is less clear but reveals a more *ad hoc* approach based on the judicial remedies available in the relevant national jurisdiction. In general, past precedent suggests that the appropriate avenue for relief in Mr. Ameziane's case would be some combination of injunctive relief and criminal proceedings, respectively aimed at halting and punishing the violations of these fundamental rights. In *Maya Indigenous Communities and their Members v. Belize*, for example, the petitioners alleged that the Belize government had issued licenses permitting logging activities to occur on Mayan traditional land, in violation, *inter alia*, of the communities' rights to family, health and religious freedom and worship.<sup>138</sup> In declaring the case admissible, the Commission found that the petitioners had attempted to exhaust the appropriate judicial remedy by seeking an injunctive order from the Supreme Court of Belize suspending the licenses for resource extraction.<sup>139</sup> In *Santander Tristán Donoso v. Panama*, the petitioner, an attorney, alleged a violation of his right to privacy based on the wiretapping of a conversation between him and one of his clients, and on the subsequent dissemination of the

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<sup>137</sup> See *La Granja, Ituango v. Colombia*, Case 12.050, Inter.-Am. C.H.R., Report No. 57/00 (Admissibility), at para. 41 (2000).

<sup>138</sup> See *Maya Indigenous Communities and their Members v. Belize*, Case 12.053, Inter-Am. C.H.R. Report No. 78/00, at paras. 36-37 (2000).

<sup>139</sup> *Id.* at paras. 38, 54.

content of the conversation by the Attorney General.<sup>140</sup> In admitting the right to privacy claim, the Commission found that the petitioner had exhausted domestic remedies by filing a criminal complaint against the Attorney General, which was ultimately dismissed by the Panamanian Supreme Court.<sup>141</sup>

91. In summary, the Commission's jurisprudence makes clear that in cases of arbitrary detention and torture, the adequate domestic remedies that must be exhausted before presenting a claim to the Commission are the writ of habeas corpus and criminal proceedings, respectively. The Commission has been less firm in establishing the appropriate domestic remedies for violations of the rights to health, religious freedom and privacy, often displaying a degree of deference to the remedies available at the national level. In order to be adequate and effective, however, such remedies must be capable of establishing criminal sanctions against the responsible individuals or providing injunctive relief to halt an ongoing violation.

**(b) Mr. Ameziane is Exempt from the Exhaustion of Domestic Remedies Requirement under Article 31(2) of the Commission's Rules.**

92. Article 31(2) of the Commission's Rules of Procedure establishes an exception to the exhaustion of domestic remedies requirement where: (a) the domestic legislation of the State concerned does not afford due process of law; (b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay.<sup>142</sup> In the present case, Mr. Ameziane has been denied access to the appropriate domestic remedies identified in the previous section by a combination of *de jure* and *de facto* prohibitions and unwarranted delays. Mr. Ameziane may

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<sup>140</sup> See *Case of Santander*, cit., at para. 2.

<sup>141</sup> *Id.* at para. 18.

<sup>142</sup> IACHR Rules of Procedure, art. 31.2(a)-(c).



therefore successfully invoke the exceptions contemplated in Article 31(2) of the IACHR Rules, and the Commission should consider his petition admissible on such grounds.

**(i) Mr. Ameziane Has Been Denied the Right to  
*Habeas Corpus* for over Six Years.**

93. The Commission's jurisprudence establishes the writ of habeas corpus as the appropriate remedy for addressing Mr. Ameziane's arbitrary deprivation of liberty, but more than six years into his detention, Mr. Ameziane has been prevented from exhausting this remedy. Mr. Ameziane's claim is thus exempt from exhaustion on Article 31(2)(b) and (c) grounds.

94. The Commission underlined the purpose of *habeas corpus* as a "timely remedy,"<sup>143</sup> while the U.S. Supreme Court has described its "principal aim" as providing for "swift judicial review."<sup>144</sup> Perhaps more than any other judicial remedy, habeas claims must be resolved quickly if the writ is to serve its fundamental purpose of providing relief from arbitrary deprivations of liberty. After being denied access to lawyers and the courts for over two years, Mr. Ameziane filed a petition for *habeas corpus* on February 24, 2005. After pending in federal court for more than three years, his petition was finally stayed in anticipation of the Supreme Court's decision in *Boumediene*. On June 12, 2008, the Court ruled in *Boumediene* that section 7 of the MCA "operates as an unconstitutional suspension of the writ" and that Guantánamo detainees have a constitutional right to habeas.<sup>145</sup>

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<sup>143</sup> IACHR, Precautionary Measures No. 259, *Detainees in Guantánamo Bay, Cuba*, October 28, 2005, ¶ 8.

<sup>144</sup> *Peyton v. Rowe*, 391 U.S. 54, 63 (1968).

<sup>145</sup> See *Boumediene*, 128 S.Ct. at 2240. The MCA, cit., § 7 established:

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

[...]

The amendment...shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of

95. As a result of *Boumediene*, Mr. Ameziane may finally have the opportunity to challenge his detention in federal court in the near future. His access to this remedy, however, is more than six years after he was transferred to Guantánamo, and more than three years after he first sought habeas relief. This is a far cry from the “timely remedy” envisioned by the Commission and the guarantee of review “without delay” explicitly enshrined in the American Declaration. In the case of Mr. Ameziane and other Guantánamo prisoners, justice delayed is indeed justice denied. Mr. Ameziane may thus successfully invoke the exceptions contemplated in Article 31(2)(a) and 31(2)(c) of the Commission’s Rules of Procedure with regard to the admissibility of his arbitrary deprivation of liberty claim.

**(ii) The DTA Review is an Inadequate Substitute for Habeas Corpus and Need Not Be Exhausted.**

96. The DTA creates and the MCA incorporates an alternative process of limited review by the D.C. Circuit Court of Appeals, whereby the Court may only examine whether the CSRTs were conducted in accordance with military procedures promulgated for the CSRTs and, to the extent they apply, the laws and Constitution of the United States.<sup>146</sup> The government created this limited review process as a substitute for habeas and intended it to be the only access that Guantánamo detainees such as Mr. Ameziane would have to the courts.<sup>147</sup>

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the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

<sup>146</sup> DTA, cit., § 1005(e)(2).

<sup>147</sup> *Boumediene*, 128 S.Ct. at 2266 (“In passing the DTA Congress did not intend to create a process in name only. It intended to create a more limited procedure... It is against this background that we must interpret the DTA and assess its adequacy as a substitute for habeas corpus.”).

97. The review provided under the DTA is exceedingly limited.<sup>148</sup> Limiting the scope of review to whether CSRTs complied with procedures that themselves violate fundamental due process norms does little to ensure an adequate review of detainees' status or the legality of their detention. While the language of the DTA does allow for judicial review of the constitutionality of the CSRT procedures, the United States has argued that the Constitution and laws of the United States do not apply to detainees held in Guantánamo or anywhere outside the U.S. mainland.<sup>149</sup> In addition, neither the DTA nor the MCA require the D.C. Circuit Court of Appeals to order a detainee released upon finding his CSRT's "enemy combatant" determination to be invalid, which the Supreme Court found "troubling" in *Boumediene*.<sup>150</sup> The government's position is that the appropriate remedy would be a new CSRT.

98. In *Boumediene*, the Supreme Court examined the DTA's myriad flaws before concluding that its review procedures are an inadequate substitute for habeas corpus.<sup>151</sup> Furthermore, the Court explicitly stated that detainees need not exhaust the DTA before proceeding with their habeas actions.<sup>152</sup>

99. The D.C. Circuit Court of Appeals has itself recognized the severe limitations of the DTA review in *Parhat* – the first and, thus far, only DTA petition on behalf of a Guantánamo

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<sup>148</sup> For a thorough discussion of the procedural shortcomings in the DTA review process—including the prohibition on presenting evidence, the rebuttable presumption in favor of the government's evidence, the lack of speed, the restrictions on the attorney-client relationship, and the lack of authority to order release—see Reply Brief for the Petitioners at 15-20, *Boumediene*, 128 S.Ct. 2229, available at <http://ccrjustice.org/files/reply%20brief%20boumediene.pdf>.

<sup>149</sup> See, e.g., U.S. Dep't of Justice, Office of Legal Counsel, Memorandum of Deputy Assistant Attorney General John C. Yoo for William J. Haynes, *Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba* (Dec. 28, 2001), available at <http://www.gwu.edu/%7Eensarchiv/NSAEBB/NSAEBB127/01.12.28.pdf>.

<sup>150</sup> See *Boumediene*, 128 S.Ct. at 2271 ("The DTA does not explicitly empower the Court of Appeals to order the applicant in a DTA review proceeding released should the court find that the standards and procedures used at his CSRT hearing were insufficient to justify detention. This is troubling.").

<sup>151</sup> *Id.* at 2274.

<sup>152</sup> *Id.* at 2275.

detainee to be decided. Concluding that the petitioner's "enemy combatant" designation was invalid, the Court noted that a habeas corpus proceeding was a better path to release than a new CSRT.<sup>153</sup> The Court noted that the "habeas proceeding will have procedures that are more protective of Parhat's rights than those available under the DTA.... Most important, in that proceeding there is no question but that the court will have the power to order him released."<sup>154</sup>

100. The recent federal court decisions in *Boumediene* and *Parhat* make abundantly clear that DTA review is a deeply flawed process incapable of remedying Mr. Ameziane's arbitrary detention. Requiring Mr. Ameziane to exhaust this remedy would thus compel him to jump through an additional, ineffective legal hoop that does not contemplate the desired remedy and promises only to delay the process further so as to render international support ineffective, a result that the Commission has found unacceptable.<sup>155</sup> As a result, and in light of the Commission's determination that "if a remedy is not adequate in a specific case, it obviously need not be exhausted,"<sup>156</sup> Mr. Ameziane need not pursue DTA review under the exhaustion of domestic remedies rule.

**(iii) The DTA and the MCA Bar Mr. Ameziane from Pursuing Criminal Sanctions against Individuals Responsible for his Torture and Mistreatment.**

101. The United States sought not only to strip Mr. Ameziane's right to habeas, but to bar him from pursuing criminal proceedings against those responsible for his torture and abuse in

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<sup>153</sup> *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977, \*15 (C.A.D.C. June 20, 2008).

<sup>154</sup> *Id.*

<sup>155</sup> See *Velásquez Rodríguez Case*, Preliminary Objections, Inter. Am. Ct. H.R., Judgment of June 26, 1987, Series C No. 1, para. 93; *Godínez Cruz Case*, Preliminary Objections, Inter. Am. Ct. H.R., Judgment of June 26, 1987, Series C No. 3, para. 93. As the Commission has indicated, remedies which are unduly delayed essentially lose their efficacy. See, e.g., *Ramón Mauricio García-Prieto Giralt v. El Salvador*, Case 11.697, Inter.-Am. C.H.R., Report No. 27/99 (Admissibility), at para. 47 (1999).

<sup>156</sup> See *Fernando A. Colmenares Castillo v. Mexico*, Petition 12.170, Inter.-Am. C.H.R., Report No. 36/05 (Inadmissibility), at para. 37 (2005), citing *Velásquez Rodríguez Case*, Inter-Am. Ct. H.R., Merits, Judgment of July 29, 1988, Ser. C N° 4, para. 64.

U.S. custody.<sup>157</sup> U.S. legislation currently provides ongoing and retroactive immunity to the State agents responsible for Mr. Ameziane's mistreatment.<sup>158</sup>

102. The DTA establishes that in a civil or criminal action against a U.S. agent engaged in the "detention and interrogation of aliens" determined by the President or his designees to be engaged in terrorism, a finding that the activities were "officially authorized and determined to be lawful at the time that they were conducted" and that the agent "did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful" shall act as a complete defense to the civil or criminal action.<sup>159</sup>

103. The MCA exacerbates this immunity provision by making it retroactive for both civil actions and criminal prosecutions related to actions occurring between September 11, 2001 and the enactment of the DTA on December 30, 2005.<sup>160</sup> As modified by the MCA, therefore, Section 1004 of the DTA provides official retroactive immunity for actions authorized by the Executive branch that constitute torture or cruel, inhuman or degrading treatment under international law.

104. This legislatively-enshrined immunity effectively bars Mr. Ameziane from pursuing criminal law remedies under U.S. law. Mr. Ameziane's designation as an "enemy combatant" means that alleged actions in violation of his rights fall within the scope of the

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<sup>157</sup> Petitioners do not ignore the fact that in cases of grave human rights violations, such as torture, the State has an *ex officio* obligation to investigate, an obligation that the United States has failed to discharge for over six years in the present case. *See, e.g., La Cantuta v. Peru*, Inter-Am. Ct. H.R., November 29, 2006, para. 110. We contend that even if the onus were on Mr. Ameziane to initiate criminal proceedings, he is legislatively barred from doing so.

<sup>158</sup> *See* MCA, cit., § 8(b).

<sup>159</sup> DTA, cit., § 1004. Furthermore, "Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful."

<sup>160</sup> MCA, cit., § 8(b)(3).

DTA's immunity provision. As his detention began after September 11, 2001, the entirety of his detention period is covered by the immunity provision as amended by the MCA. And as those responsible for his detention and interrogation were agents of the U.S. government whose actions were officially authorized and considered lawful at the time they were committed,<sup>161</sup> the DTA as modified by the MCA effectively blocks Mr. Ameziane from pressing criminal charges.

<sup>161</sup>

Since September 11, 2001, the U.S. government has repeatedly permitted and even authorized military personnel to employ aggressive interrogation tactics such as the ones used against Mr. Ameziane. In early 2002, as the first detainees were arriving at Guantánamo Bay, President Bush announced that the Geneva Conventions would not apply to Taliban and al Qaeda suspects. See Amnesty International, *United States of America: Justice Delayed and Justice Denied: Trials under the Military Commissions Act*, at 3 (March, 2007). Furthermore, on December 2, 2002, then Secretary of Defense Donald Rumsfeld authorized a series of interrogation techniques that included, "yelling at the detainee," "stress positions (like standing) for a maximum of four hours," "the use of the isolation facility for up to 30 days," "deprivation of light and auditory stimuli," "removal of all comfort items (including religious items)," "20 hour interrogations," "removal of clothing," "forced grooming (shaving of facial hair, etc.)," "exposure to cold weather or water (with appropriate medical monitoring)," and "use of wet towel and dripping water to induce the misperception of suffocation." In approving the December 2, 2002 memorandum, Secretary Rumsfeld signed the document and added a handwritten note stating, "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

Document available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.12.02.pdf>.

Though Rumsfeld later rescinded this memorandum, the U.S. government has continued to issue a dizzying series of interrogation technique authorizations and Department of Justice Office of Legal Counsel opinions that provide official cover for U.S. agents who engage in conduct prohibited by international law. One such opinion, issued on August 1, 2002, acknowledged the U.S. legislative prohibition on torture but established that the legislation was intended to proscribe only "physical pain...equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Document available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf>. This memorandum was rescinded in June 2004 after it was leaked to the media, but its replacement, issued in December 2004, included a footnote clarifying that it was not declaring previous interrogation tactics illegal. See Scott Shane et al., *Secret U.S. Endorsement of Severe Interrogations*, N.Y. Times, Oct. 4, 2007, available at <http://www.nytimes.com/2007/10/04/washington/04interrogate.html?pagewanted=all>.

Many of the rules and opinions regarding the treatment and interrogation of detainees remain secret, including the rules governing the more aggressive interrogations conducted by the Central Intelligence Agency (CIA). The press and human rights organizations have reported, however, that in 2005 the OLC explicitly authorized the CIA to employ "a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures." See *id.*

Moreover, in early 2008, CIA Director Michael V. Hayden publicly acknowledged for the first time that the Agency had used the torture technique known as waterboarding as part of its "enhanced interrogation" program. The Bush Administration subsequently asserted that waterboarding is legal, and that the President had the authority to continue authorizing the CIA to use the technique. See Greg Miller, *Waterboarding is legal, White House says*, L.A. Times, Feb. 7, 2008, available at <http://www.latimes.com/news/nationworld/nation/la-na-torture7feb07,13156438.story>. The White House further stated that "every" enhanced interrogation technique employed by the CIA had been determined to be lawful by the Department of Justice. See Dan Eggen, *White House Defends CIA's Use of Waterboarding in Interrogations*, Wash. Post, Feb. 7, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/05/AR2008020502764.html>. Indeed,

105. In light of the fact that U.S. law provides retroactive immunity for those who participated in Mr. Ameziane's torture and mistreatment, any and all of Mr. Ameziane's claims for which the adequate remedy would be a criminal proceeding against the responsible individuals should be deemed admissible under the Article 31(2)(a) exception to the exhaustion of domestic remedies rule.

**(iv) The DTA and the MCA Bar Mr. Ameziane from Pursuing "Any Other Action" Capable of Remediating the Violations He has Suffered.**

106. In addition to provisions that seek specifically to prohibit habeas corpus claims (ruled unconstitutional in *Boumediene*) and criminal complaints regarding torture and mistreatment, the DTA and MCA also include sweeping language barring those detained as "enemy combatants" by the United States from presenting any claims, civil or criminal, in U.S. courts.<sup>162</sup>

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Attorney General Michael Mukasey subsequently announced that the Justice Department "cannot possibly" investigate the use of waterboarding by CIA agents because the technique was part of the program approved by Justice Department lawyers. Mukasey remarked, "That would mean that the same department that authorized the program would now consider prosecuting somebody who followed that advice." See Dan Eggen, *Justice Department 'Cannot' Probe Waterboarding, Mukasey Says*, Wash. Post, Feb. 7, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020701542.html?hpid=topnews>. In March 2008, President Bush vetoed a bill passed by Congress that would have explicitly outlawed waterboarding by the CIA. See Steven Lee Meyers, *Bush vetoes bill to limit CIA interrogation methods*, Int. Herald Tribune, March 9, 2008, available at <http://www.iht.com/articles/2008/03/09/america/policy.php>.

Finally, recent press reports confirm that top government officials, including Vice President Dick Cheney, National Security Advisor Condoleezza Rice, Defense Secretary Donald Rumsfeld and Secretary of State Colin Powell, met in the White House, with President Bush's knowledge, to personally discuss and approve the details of the CIA's enhanced interrogation program. See Jan Crawford Greenburg et al., *Sources: Top Bush Advisors Approved 'Enhanced Interrogation'*, ABC NEWS, April 9, 2008, available at: <http://abcnews.go.com/TheLaw/LawPolitics/story?id=4583256>; Editorial, *The Torture Sessions*, N.Y. Times, April 20, 2008, available at [http://www.nytimes.com/2008/04/20/opinion/20sun1.html?\\_r=1&ref=opinion&oref=slogin](http://www.nytimes.com/2008/04/20/opinion/20sun1.html?_r=1&ref=opinion&oref=slogin).

<sup>162</sup> See MCA and DTA, cit.

107. As previously discussed, the MCA's retroactive immunity provision applies not only to criminal prosecutions but also to civil actions.<sup>163</sup> Under U.S. legislation, Mr. Ameziane is therefore prohibited from bringing both civil and criminal actions for any of the other substantive harms he has suffered in detention at the hands of U.S. officials and agents. The MCA also provides a sweeping provision eliminating the right of non-citizens determined to be "unlawful enemy combatants" or "awaiting such determination" from bringing any claim "relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement."<sup>164</sup> This provision applies to cases pending at the time of the MCA's enactment, as well as those brought subsequently.<sup>165</sup> With the exception of the DTA review process and, only recently, the writ of habeas corpus, existing U.S. legislation thus bars Mr. Ameziane from pursuing any other avenue of relief in U.S. courts.

108. Based on the preceding considerations, Mr. Ameziane's petition is wholly admissible under one or more of the exceptions to the exhaustion of domestic remedies rule established in Article 31(2) of the Commission's Rules of Procedure.

### **3. The Petition is Submitted within a Reasonable Time.**

109. Article 32(2) of the Commission's Rules of Procedure provides that where, as in this case, an exception to the exhaustion of domestic remedies rule is invoked, "the petition shall be presented within a reasonable time," with the Commission considering the date of the alleged

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<sup>163</sup> DTA, cit., § 1004:

No court, justice or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

<sup>164</sup> MCA, cit., § 7(a).

<sup>165</sup> MCA, cit., § 7(b).



violation and the circumstances of each case.<sup>166</sup> In considering the timeliness of petitions filed under an exception to the exhaustion rule – and therefore exempt from the six-month deadline provided by Article 31(1) of the Rules of Procedure – the Commission has taken into account factors such as the existence of precautionary measures in favor of the petitioner and whether the violations alleged continued to be committed following the adoption of such measures,<sup>167</sup> as well as the fact that the petitioner is in detention.<sup>168</sup>

110. In the present case, Mr. Ameziane has been in detention since early 2002 and is a beneficiary of the precautionary measures first issued by the Commission in favor of Guantánamo detainees in 2002, expanded several times since then, and continuing in effect.<sup>169</sup> Nonetheless, the violations of Mr. Ameziane's fundamental rights have continued unabated. Given the continuing nature of these violations and Mr. Ameziane's detention, and the fact that the United States has repeatedly failed to comply with the precautionary measures, the Commission should conclude that Mr. Ameziane's petition has been presented within a reasonable time.

#### **4. The Petition is Not Pending before another International Body.**

111. Article 33 of the Commission's Rules of Procedure establishes that the Commission may not consider a petition if its subject matter is pending before another international governmental organization or essentially duplicates a petition already decided by the Commission or another international governmental organization.<sup>170</sup> Neither of these

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<sup>166</sup> See IACHR Rules of Procedure art. 32(2).

<sup>167</sup> See *Members of José Alvear Restrepo Lawyers' Collective v. Colombia*, Petition No. 12.380, Inter-Am. C.H.R., Report 55/06 (Admissibility), at para. 41 (2006).

<sup>168</sup> See *Antonio Zaldana Ventura v. Panama*, Petition No. 977-06, Inter-Am C.H.R., Report 77/07 (Admissibility), at para. 54 (2007).

<sup>169</sup> See IACHR Precautionary Measures No. 259.

<sup>170</sup> See IACHR Rules of Procedure art. 33.

provisions applies to the present case, as Mr. Ameziane's case is not pending before, and has not been decided by, any other international governmental organization. Mr. Ameziane's petition therefore complies with the prohibition on duplicate proceedings.

**5. Conclusion: Mr. Ameziane's Petition is Admissible under the Commission's Rules of Procedure.**

112. Mr. Ameziane's petition plainly complies with the admissibility requirements established in the Commission's Rules of Procedure. The Commission has jurisdiction *ratione personae* because Mr. Ameziane is a natural person who is subject to the complete jurisdiction and control of the United States and whose rights have been protected under the American Declaration since the ongoing violations alleged in the petition commenced. The Commission has *ratione materiae*, *ratione temporis* and *ration loci* jurisdiction because the petition alleges violations of rights protected under the American Declaration; the violations occurred subsequent to the adoption of the American Declaration, the United States' ratification of the OAS Charter and the creation of the Commission; and they occurred while Mr. Ameziane was under the jurisdiction of the United States. Furthermore, one or more exceptions to the exhaustion to the domestic remedies rule applies to each of the violations alleged in the petition because judicial remedies are either unavailable by law or have been rendered ineffective by excessive delay. Finally, this petition complies with the formal requirements outlined in Article 28 of the Rules of Procedure, with the timeliness requirement, and with the prohibition on duplicate proceedings. The Commission should therefore determine Mr. Ameziane's petition to be admissible.

**IV. VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN<sup>171</sup>**

**A. The United States has Arbitrarily Deprived Mr. Ameziane of his Liberty and Denied his Right to Prompt Judicial Review in Violation of Article XXV of the American Declaration.**

113. The ongoing detention of Mr. Ameziane as an “enemy combatant” – until recently without the prospect of court review – constitutes an arbitrary deprivation of his liberty and a denial of his right to prompt judicial review of the legality of his detention in violation of Article XXV of the American Declaration. While the U.S. Supreme Court recently ruled in *Boumediene* that Guantánamo detainees have the right to habeas, as it did in 2004,<sup>172</sup> the fact is that Mr. Ameziane remains imprisoned after more than six years, and a court has yet to examine the lawfulness of his detention, despite his best efforts to seek review. The violation of his right not to be arbitrarily detained and to have a court ascertain the legality of his detention without delay occurred years ago, and it will continue until the day that a U.S. federal court rules on his habeas petition.

<sup>171</sup> Petitioners note at the outset of this section that in “interpreting and applying the Declaration” and its individual protections, the Commission has reiterated on numerous occasions that “it is necessary to consider its provisions in light of developments in the field of international human rights law since the Declaration was first composed.” Following this reasoning, the Commission has found that the American Convention on Human Rights (“American Convention” or “Convention”) “may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.” *Solidarity Statehood Committee v. United States*, Case 11.204, Inter-Am C.H.R., Report No. 98/03, at para. 87, n. 79 (2003). See, e.g., *Juan Raul Garza v. United States*, Case 12.243, Inter-Am. C.H.R., Report No. 52/01, at paras. 88, 89 (2000) (citing Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) N° 10 (1989), at para. 37). See also Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. C.H.R., OEA/Ser.L/V/II.106, doc. 40 rev., at para. 38 (2000) (confirming that while the Commission clearly does not apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

<sup>172</sup> *Rasul*, 542 U.S. 466 (2004).

Article XXV of the American Declaration provides:

No person may be deprived of his liberty except ... according to the procedures established by pre-existing law.

...

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court.<sup>173</sup>

114. These protections, like international human rights law in general, apply in all situations, including those of armed conflict.<sup>174</sup> In the latter context, however, international humanitarian law may serve as the *lex specialis* in interpreting international human rights instruments, such as the American Declaration.<sup>175</sup> Under international humanitarian law, certain deprivations of liberty, which would otherwise constitute violations of international human rights law, may be justified.

115. Properly determining the legal status of Mr. Ameziane, and whether international humanitarian law is indeed the *lex specialis* in interpreting his rights or whether his rights are governed strictly by international human rights law, is of critical importance in assessing the legality of his detention, and is an obligation of the United States as the detaining state.<sup>176</sup> This determination has been rendered impossible by the U.S. government's definition of "enemy combatant," pursuant to which Mr. Ameziane is being held at Guantánamo, and furthermore by the inadequacy of the CSRT review process. The failure of the United States to determine Mr.

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<sup>173</sup> American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, O.A.S. Res. XXX, OEA/Ser.L/V/II.82 doc 6 rev. 1, Article XXV.

<sup>174</sup> See, e.g., IACHR Report on Terrorism and Human Rights, cit., at para. 61; 2007 Scheinin Report, *supra* note 19, para. 7.

<sup>175</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 61.

<sup>176</sup> See IACHR Precautionary Measures No. 259 (March 13, 2002), at 3 (citing Article 5 of the Third Geneva Convention).

Ameziane's status and define the law pursuant to which his detention is governed has deprived him and other Guantánamo detainees of the ability to know and exercise their rights.

116. The sections that follow begin by establishing the United States' failure to properly determine Mr. Ameziane's status under international law, the result of which is that the exact legal framework applicable to Mr. Ameziane's deprivation of liberty remains unclear. As the subsequent sections demonstrate, however, regardless of whether Mr. Ameziane's right to personal liberty would be properly analyzed under international human rights or humanitarian law, his detention at Guantánamo Bay for more than six years without charge or a fair judicial process to challenge his detention constitutes a clear violation of his Article XXV right not to be arbitrarily detained.

**1. The United States' Failure to Adequately Determine Mr. Ameziane's Legal Status has Frustrated the Appropriate Application of Article XXV to his Case.**

117. The United States has an obligation to determine Guantánamo detainees' legal status. It has failed to satisfy this obligation in two ways: by applying an ambiguous definition of "enemy combatant" as the basis for holding detainees at Guantánamo, and by creating the flawed CSRTs as the only mechanism to review detainees' status.

118. Since it first adopted precautionary measures in March 2002, the Commission has insisted that the United States take the "urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal," expressing concern that "it remains entirely unclear from their treatment by the United States what minimum rights under international human rights and humanitarian law the detainees are entitled to."<sup>177</sup> The Commission reiterated this request in 2003, 2004 and 2005, before calling on the United States

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<sup>177</sup> See IACHR Precautionary Measures No. 259 (March 13, 2002).

to close Guantánamo in 2006.<sup>178</sup> As the Commission has explained, determining detainees' status is indispensable to identifying the scope of their rights and assessing whether their rights have been respected.<sup>179</sup>

119. Notwithstanding the Commission's repeated admonitions, the United States has failed in its obligation to determine detainees' legal status in two critical ways.

120. First, the definition of "enemy combatant" eludes a determinate status for detainees. The class of individuals whose detention the United States has authorized pursuant to its "war on terror" has been variously defined since 2001,<sup>180</sup> but at the time of Mr. Ameziane's CSRT in 2004, Guantánamo detainees were determined to be properly held if they met the following definition:

An "enemy combatant" ... shall mean an individual who was part of or supporting Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.<sup>181</sup>

Currently, the MCA authorizes the detention of "unlawful enemy combatants" at Guantánamo and under U.S. custody elsewhere, which are defined as:

(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

<sup>178</sup> See IACHR Precautionary Measures No. 259 (March 18, 2003; July 29, 2004; and Oct. 28, 2005); Press Release No. 27/06.

<sup>179</sup> See, e.g., IACHR Precautionary Measures No. 259 (March 13, 2002), at 3.

<sup>180</sup> See Exec. Order No. of Nov. 13, 2001, *supra* note 7 (defining the class of individuals as "any individual who is not a United States citizen with respect to whom [the President] determine[s] from time to time in writing that: (1) there is reason to believe that such individual, at the relevant times, (i) is or was a member of the organization known as al Qaida; (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism or acts in preparation therefore, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States...; or (iii) has knowingly harbored one or more individuals described [above]; and (2) it is in the interest of the United States that such individual be subject to this order").

<sup>181</sup> CSRT Procedures, *cit.*, § B.

(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.<sup>182</sup>

121. The breadth and vagueness of these definitions, which conflate different categories of individuals whose detention and rights would be governed by different regimes of international law, render it impossible to determine the specific rights of Guantánamo detainees and the obligations of the United States.<sup>183</sup> In the context of armed conflict, international humanitarian law distinguishes between, and provides different protections for, “combatants,” who take direct part in the hostilities and whose rights are governed by the Third Geneva Convention, and “non-combatants” (or civilians), who are present in the zone of conflict but do not directly participate in the hostilities and whose rights are governed by the Fourth Geneva Convention.<sup>184</sup> The Geneva Conventions further distinguish between lawful (or privileged) and unlawful (or unprivileged) combatants, the former of which are entitled to prisoner-of-war (POW) status.<sup>185</sup>

<sup>182</sup> The MCA is the first instance in which “unlawful enemy combatant” is statutorily defined. MCA, cit., § 3(a)(1), amending § 948a(1)(A).

<sup>183</sup> Commenting on the inadequacy of status determinations by the CSRTs, the UN Special Mandate holders concluded, “[i]n determining the status of detainees the CSRT has recourse to the concepts recently and unilaterally developed by the United States Government, and not to the existing international humanitarian law regarding belligerency and combatant status[.]” UN Special Mandate Holders’ Report, *supra* note 10, para. 28(d).

<sup>184</sup> Combatants are defined as persons who take direct part in the hostilities by “participating in an attack intended to cause physical harm to enemy personnel or objects.” IACHR Report on Terrorism and Human Rights, at para. 67 (citing Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, Article 4). Generally, non-combatants are defined as persons who are present in zones of international armed conflict, but who do not directly participate in the hostilities; they fall under the protection of the Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949.

<sup>185</sup> Privileged combatants are entitled to all the protections and rights emanating from the Third Geneva Convention, or from the First and Second Conventions if they are wounded or otherwise placed *hors de combat*. Unprivileged combatants are not entitled to POW status, although they do enjoy non-derogable, fundamental protections under both international human rights and humanitarian law. These include, *inter*

122. The definition of “enemy combatant” or “unlawful enemy combatant” collapses all of these categories into one, blurring the distinctions between individuals who may have participated directly in hostilities and may be classified as POWs,<sup>186</sup> individuals who may not have directly participated in any attacks,<sup>187</sup> and individuals who may not have been captured in the context of an armed conflict at all and whose rights would be governed strictly by international human rights law.<sup>188</sup> Thus, as an initial matter, the classification the United States uses to purportedly justify the detention of Mr. Ameziane and other Guantánamo detainees makes it impossible to determine their rights and assess the legality of their detention with any precision.

123. Secondly, the CSRTs only review whether detainees are properly held according to this broad and muddled definition and, because of their myriad flaws and procedural shortcomings, are incapable of making even that determination fairly and accurately. As such, they are wholly inadequate in clarifying detainees’ status and rights. As the Commission has previously found, “it remains entirely unclear from the outcome of [the CSRTs and ARBs] what

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*alia*, the right that their status be determined by a competent court or tribunal, as opposed to a political authority, and other fundamental guarantees embodied in Common Article 3 of the Geneva Conventions and Article 75 of the First Optional Protocol. See Knut Dormann, *The Legal Situation of “Unlawful/Unprivileged Combatants,”* 85 Int’l Rev. Red Cross 45, 50-51, 73 (2003).

<sup>186</sup> For instance, the MCA presumptively classifies members of the Taliban and “associated forces” as “unlawful enemy combatants,” instead of POWs.

<sup>187</sup> Commentaries on the Geneva Protocols define the term “direct” as requiring “a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place,” a standard not satisfied by merely providing financial support to persons involved in hostilities against the United States. See INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, PARA. 1679 (Yves Sandoz et al. eds., 1987).

<sup>188</sup> For example, a number of detainees were captured far from Afghanistan, in Europe and in Africa.



the legal status of the detainees is or what rights they are entitled to under international or domestic law.”<sup>189</sup>

124. The failure of the United States to adequately determine Mr. Ameziane’s status – in clear defiance of repeated admonitions by the Commission since 2002 – has had serious consequences for the clarity and exercise of his rights, particularly those protected by Article XXV. In effect, the lack of an effective status determination makes it impossible to know whether his detention should be analyzed exclusively under international human rights law, or whether international humanitarian law should also apply as *lex specialis*. However, regardless of which legal regime is applied, the ensuing sections demonstrate that Mr. Ameziane has been and continues to be arbitrarily deprived of his liberty.

**2. Regardless of Whether International Human Rights or Humanitarian Law Governs Mr. Ameziane’s Detention, his Imprisonment for over Six Years without Charge or Judicial Review Constitutes an Arbitrary Deprivation of his Liberty.**

125. The United States has violated Mr. Ameziane’s right not to be arbitrarily deprived of his liberty by imprisoning him for more than six years without charge and by denying him the opportunity to challenge the legality of his detention *without delay* in a court, regardless of whether his detention is governed exclusively by international human rights law or whether international humanitarian law also applies as *lex specialis* in interpreting his rights. For detainees whose treatment is governed strictly by international human rights law, prolonged and indefinite detention without charge or prompt judicial review violates established norms, even in

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See IACHR Precautionary Measures No. 259 (Oct. 28, 2005) (“While the State argues that the procedures before the Combatant Status Review Board and the Administrative Review Boards likewise satisfy the Commission’s request, it remains entirely unclear from the outcome of those proceedings what the legal status of the detainees is or what rights they are entitled to under international or domestic law. [...] Accordingly, the Commission does not consider that these procedures have adequately responded to the concerns at the base of the Commission’s request for precautionary measures.”).

the context of alleged terrorism.<sup>190</sup> For detainees where the rules of international humanitarian law are the *lex specialis*, the United States' failure to make proper status determinations and to try or release detainees at the end of hostilities constitutes an arbitrary deprivation of liberty.

**(a) Under a Strict Human Rights Law Analysis, the United States has Violated Mr. Ameziane's Right Not to be Arbitrarily Detained.**

126. Given that international human rights law applies to the conduct of states at all times, including in times of threats to national security, and that international humanitarian law provides specific rules of interpretation only in the context of armed conflict,<sup>191</sup> the detention of Guantánamo prisoners captured in the *absence* of armed conflict is governed solely by international human rights law. If Mr. Ameziane was captured outside of a situation of armed conflict, then under international human rights law, his imprisonment for over six years without charge and the opportunity to seek prompt judicial review of his detention constitutes a violation of his rights under Article XXV.

127. As stated above, Article XXV of the Declaration provides that anyone deprived of his liberty has the right to have the legality of his detention reviewed without delay by a court.<sup>192</sup> Article 7(6) of the American Convention, which governs the remedy of habeas corpus, echoes this guarantee, providing that anyone who is deprived of his liberty "shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful."<sup>193</sup> The Commission has emphasized, including in its precautionary measures in favor of Guantánamo

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<sup>190</sup> See IACHR Report on Terrorism and Human Rights, cit., at paras. 139-40.

<sup>191</sup> See *id.* at paras. 136, 141.

<sup>192</sup> American Declaration, *supra* note 173, art. XXV.

<sup>193</sup> American Convention, art. 7.6. See also ICCPR, art. 9(4) ("Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.").

detainees, “the longstanding and fundamental role that the writ of habeas corpus plays as a means of reviewing Executive detention” in particular.<sup>194</sup>

128. While neither the Court nor the Commission has established a definitive rule for determining the length of detention without charge or judicial review that would rise to the level of an arbitrary deprivation of liberty, the jurisprudence of the Inter-American system indicates that more than six years would clearly constitute a violation. The Commission has emphasized that habeas is intended to be a timely remedy.<sup>195</sup> In ordinary circumstances, the Commission has suggested that a delay of more than two or three days in bringing a detainee before a judicial authority would generally not be considered reasonable.<sup>196</sup> In the context of alleged terrorism, both the Commission and the Court have found that holding an individual suspected of terrorism for 20 days without charge or judicial review violated the right to be free from arbitrary detention.<sup>197</sup>

129. Furthermore, while derogations of the right to personal liberty are permissible in certain contexts, the Inter-American system’s jurisprudence makes clear that certain fundamental aspects of the right, such as the writ of habeas corpus, are non-derogable even in times of

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<sup>194</sup> IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8.

<sup>195</sup> See, e.g., IACHR Precautionary Measures No. 259 (Oct. 28, 2005), at 8 (*citing* Castillo Paez Case, Inter-Am. Ct. H.R., Judgment of November 3, 1997 (Ser. C) No. 34, para. 83).

<sup>196</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 122, n. 334. See also *Suarez-Rosero v. Ecuador*, Inter-Am. Ct. H.R., Judgment of November 12, 1997 (Ser. C) No. 35 (finding that a judicial proceeding occurring one month after a defendant’s arrest constituted arbitrary detention), available at <http://www1.unm.edu/humanrts/Inter-Am. C.H.R./C/35-ing.html>.

<sup>197</sup> See, e.g., *Cantoral Benavides v. Peru*, Inter-Am. Ct. H.R., Judgment of August 18, 2000 (Ser. C) No. 69, at paras. 63, 66, 74.

emergency and threats to national security<sup>198</sup> – position in accordance with the interpretations of UN bodies.<sup>199</sup>

130. Mr. Ameziane was transferred to Guantánamo on or around February 2002, purportedly on the basis of a unilateral determination by the Executive that he is an “enemy combatant.” He has been held without charge and without judicial review of the lawfulness of his detention during the six intervening years since then, and the United States has made no indication of either charging or releasing him in the future.

131. For the first two years of his detention, Mr. Ameziane was held virtually *incommunicado*, without access to counsel or even administrative review of his status and detention. In June 2004, with the U.S. Supreme Court’s ruling in *Rasul*, he and other detainees were for the first time afforded access to lawyers and the right to habeas in U.S. courts, but the government opposed and successfully stalled each and every one of detainees’ habeas petitions, including Mr. Ameziane’s, and ultimately stripped their right to habeas through the DTA in 2005 and the MCA in 2006.

132. Habeas is now again available to detainees pursuant to the Court’s recent decision in *Boumediene* and will be pursued, but Mr. Ameziane’s habeas petition will have been pending for at least three and a half years by the time it is heard. To date, not a single Guantánamo prisoner has had a hearing on the merits of his habeas case. The only review the prisoners have had is by the sham CSRTs and ARBs, which have been amply criticized by the Commission and other international human rights bodies.

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<sup>198</sup> IACHR Report on Terrorism and Human Rights, cit., at paras. 127, 139. The Inter-American Court has ruled that the right to habeas corpus under Article 7(6) may not be subject to derogation in the Inter-American system. *Id.* at para. 126, n. 342.

<sup>199</sup> See U.N. Human Rights Committee, General Comment No. 29 (2001), para. 11 (explaining that Article 9(4) is non-derogable even in times of emergency); 2007 Scheinin Report, *supra* note 19, para. 14.

133. Thus, notwithstanding the habeas remedy now available and being pursued, in the case of Mr. Ameziane and the over 250 other detainees past their sixth year of imprisonment without charge, habeas has long since ceased to be the timely remedy it was intended to be. Under a strict international human rights framework, Mr. Ameziane's right not to be arbitrarily detained under Article XXV of the American Declaration was violated long ago, and the violation will continue until a federal court reviews and rules on the legality of his detention.

**(b) Even if International Humanitarian Law is the *Lex Specialis* in Mr. Ameziane's Case, the United States has Violated his Right Not to be Arbitrarily Detained.**

134. With respect to detainees such as Mr. Ameziane who may have been captured by the United States in the context of an international armed conflict, the American Declaration and other international human rights instruments still apply, but international humanitarian law provides the *lex specialis* in interpreting their rights and assessing the legality of their detention.<sup>200</sup> Even if international humanitarian law were to prove relevant in the case of Mr. Ameziane, his detention for over six years by the United States would still constitute an arbitrary deprivation of his liberty.

135. Under the Third Geneva Convention, in the context of an international armed conflict, "combatants" who have fallen into the hands of a party to the conflict may be detained for the duration of the hostilities, so long as the detention serves the purpose of preventing them from continuing to take up arms against the detaining party.<sup>201</sup> Lawful (or privileged) combatants are entitled to POW status during the period of detention, and detainees whose status

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<sup>200</sup> See UN Special Mandate Holders' Joint Report, *supra* note 10, paras. 15-16.

<sup>201</sup> Geneva Convention Relative to the Treatment of Prisoners of War art. 118, Aug. 12, 1949, 6 U.S.T. 3116, 75 U.N.T.S. 135[hereinafter "Third Geneva Convention"]; see also UN Special Mandate Holders' Joint Report, *supra* note 10, para. 22.

is in doubt are also presumptively considered POWs.<sup>202</sup> The Fourth Geneva Convention also permits a party to the conflict to detain “non-combatants” (or civilians) if they pose a security threat or otherwise intend to harm the party, or for the purposes of prosecution on war crimes charges.<sup>203</sup> The power to continue holding detainees during a situation of armed conflict, regardless of how they are classified, is limited by the existence of an ongoing armed conflict and safeguards by which detainees can challenge their continued detention.<sup>204</sup> Once the conflict has come to an end, prisoners of war and non-combatants must be released, although they may be detained until the end of any criminal proceedings brought against them.<sup>205</sup> As the rationale for the detention of combatants not enjoying POW status (unlawful or unprivileged combatants) is to prevent them from taking up arms against the detaining party, they, too, should be released or charged once the conflict is over.<sup>206</sup>

136. The basic position of the United States is that it should be able to detain Mr. Ameziane and the other prisoners at Guantánamo as “enemy combatants,” without charge or access to counsel or the courts, for the duration of its “war on terror,” which by the government’s own admission is a war without end. However, as the UN Special Mandate Holders have noted,

<sup>202</sup> Third Geneva Convention, arts. 4 & 5. *See also* IACHR Report on Terrorism and Human Rights, cit., at para. 130 (citing Third Geneva Convention art. 5).

<sup>203</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 42, 1949, 6 U.S.T. 3516 [hereinafter “Fourth Geneva Convention”]; *see also* UN Special Mandate Holders Joint Report, *supra* note 10, at para. 22.

<sup>204</sup> *See, e.g.*, 2007 Scheinin Report, *supra* note 19, at para. 14 (“[T]he right to judicial review of any form of detention does not depend on whether humanitarian law is also applicable. All Guantánamo Bay detainees are entitled to this right, irrespective of whether they were involved in armed conflict or the status of proceedings against them.”).

<sup>205</sup> Third Geneva Convention, arts. 118-19; Fourth Geneva Convention, art. 133. *See also* UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 22.

<sup>206</sup> Third Geneva Convention, art. 118; *see also* UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 22. An unprivileged combatant, although unable to enjoy the protections of the Third Geneva Convention, still enjoys the core protections of Common Article 3 to the 1949 Geneva Conventions and Article 75 of Additional Protocol I in addition to the fundamental, non-derogable protections of international human rights law. *See, e.g.*, Knut Dormann, *The Legal Situation of “Unlawful/Unprivileged Combatants,”* 85 Int’l Rev. Red Cross 45, 50-51 (2003).

“the global struggle against international terrorism does not, as such, constitute an armed conflict for the purposes of the applicability of international humanitarian law.”<sup>207</sup> Assuming *arguendo* that the United States’ invasion of Afghanistan in October 2001 effectively launched an international armed conflict as defined under the laws of war,<sup>208</sup> according to the ICRC, that conflict ended with the establishment of the new Afghan government in June 2002.<sup>209</sup> Thus, while the detention of both lawful and unlawful combatants and civilians captured by the United States in Afghanistan may have been permissible during the period of hostilities, such detainees should have been repatriated or charged once the hostilities were over on or about June 2002. Any detention continuing past that point in time, unless of detainees against whom criminal proceedings were pending, would be in violation of international humanitarian law. While the United States continues to be involved in combat operations in Afghanistan and in other countries, as the UN Special Mandate Holders have observed, it is “not currently engaged in an international armed conflict between two Parties to the Third and Fourth Geneva Conventions.”<sup>210</sup> Furthermore, the government itself has confirmed that the objective of the ongoing detention of Guantánamo detainees is not primarily to prevent any individuals from taking up arms against the United States, but to obtain information and intelligence.<sup>211</sup>

137. Given that any international armed conflict between the United States and Afghanistan ended long ago, the detention of any Guantánamo detainees who may have been captured in the course and zone of that conflict can no longer be justified by international

<sup>207</sup> UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 21.

<sup>208</sup> See, ICRC, International Humanitarian Law and Terrorism: Questions and Answers at 3 (May 5, 2004), available at [www.icrc.org/Web/eng/siteeng0.nsf/html/5YNLEV](http://www.icrc.org/Web/eng/siteeng0.nsf/html/5YNLEV).

<sup>209</sup> See *id.*

<sup>210</sup> UN Special Mandate Holders’ Joint Report, *supra* note 10, at para. 24.

<sup>211</sup> See *id.* at para. 23. See also ARB Procedures, cit., § 3F(1)(c) (factors for continuing detention includes intelligence value).

humanitarian law.<sup>212</sup> Such detainees should have been released once the hostilities ended, and their continuing detention would have been lawful only if criminal proceedings were pending against them. Even if Mr. Ameziane's detention was initially permissible under the *lex specialis* of international humanitarian law, the fact that he continues to be held without charge more than six years after the conclusion of any international armed conflict in Afghanistan clearly constitutes an arbitrary deprivation of his liberty.

**B. Mr. Ameziane's Detention Conditions and Treatment Amount to Torture and Cruel, Inhuman, and Degrading Treatment in Violation of Articles I and XXV of the American Declaration.**

138. The Inter-American System prohibits and condemns the use of torture and cruel, inhuman, or degrading treatment or punishment ("CIDT") for any purpose and in all circumstances.<sup>213</sup>

139. It is now well-established through government memos and investigations, direct detainee accounts, and news and NGO reports that detention conditions and interrogation techniques amounting to torture were sanctioned and imposed at Guantánamo. The ICRC – the authoritative voice on government obligations under international humanitarian and human rights law in detentions operations – has described the entire detention regime at Guantánamo as an intentional system of cruel and degrading treatment and a form of torture.

140. Mr. Ameziane has personally been subjected to conditions of confinement and mistreatment that this Commission and other international bodies have recognized as rising to the level of torture and other inhumane treatment. The fact that these conditions and his mistreatment were part of a deliberate and purposeful system, whether to break his resistance for

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<sup>212</sup> See UN Special Mandate Holders' Joint Report, *supra* note 10, at para. 23.

<sup>213</sup> The System's prohibitions are embodied in the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.



the purposes of interrogation or to punish and discipline him, and that they were authorized and carried out by U.S. government officials and agents, renders them violations of Articles I and XXV of the American Declaration for which the United States must be held accountable.

**1. Torture and Cruel, Inhuman, and Degrading Treatment Are Prohibited in the Inter-American System.**

141. Protections against torture and abuse are guaranteed by at least two articles of the American Declaration. Article I protects the right of "[e]very human being ... to life, liberty and the security of his person."<sup>214</sup> The Commission has consistently interpreted personal security to include the right to humane treatment and has further specified that "[a]n essential aspect of the right to personal security is the absolute prohibition of torture."<sup>215</sup> Article XXV of the American Declaration specifically protects the right of persons in state custody to humane treatment: "[e]very individual who has been deprived of his liberty ... has the right to humane treatment during the time he is in custody."<sup>216</sup> Article 5 of the American Convention, the analog to Article I of the Declaration, in more explicit terms guarantees the right of "[e]very person ... to have his physical, mental, and moral integrity respected. ... No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."<sup>217</sup>

142. In interpreting the scope and content of the prohibition on torture, the Commission and the Court have generally looked to the Inter-American Convention to Prevent

<sup>214</sup> American Declaration, *supra* note 173, art. I.

<sup>215</sup> See IACHR Report on Terrorism and Human Rights, at para. 155, n.389; see also *Ovelario Tames v. Brazil*, Case 11.516, Inter-Am. C.H.R., Report No. 60/99, OEA/Ser. L/V/II.102, doc. 6 rev., para. 39 (1998).

<sup>216</sup> American Declaration, *supra* note 173, art. XXV. The Commission has found that, by depriving a person of his liberty, the state "places itself in the unique position of guarantor of his right to life and to humane treatment." *Minors in Detention v. Honduras*, Case 11.491, Inter-Am. C.H.R., Report No. 41/99, OEA/Ser.L/V/II.102, doc. 6 rev., para. 135 (1998).

<sup>217</sup> American Convention, art. 5. The Commission has interpreted Article I of the American Declaration as containing a prohibition similar to that under the American Convention. See IACHR Report on Terrorism and Human Rights, at para. 155 n.388.

and Punish Torture ("Inter-American Torture Convention").<sup>218</sup> Article 2(1) of the Inter-American Torture Convention defines torture as follows:

"For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article."<sup>219</sup>

143. Guided by this definition, the Commission has indicated that the following elements must exist for an act to constitute torture: (1) it must produce physical and mental pain and suffering in a person; (2) it must be committed with a purpose (such as personal punishment or intimidation) or intentionally (e.g., to produce a certain result in the victim); and (3) it must be committed by a public official or by a private person acting at the instigation of the former.<sup>220</sup>

144. The Commission has held that the key factor that distinguishes torture from other cruel, inhuman or degrading treatment or punishment is "the intensity of the suffering

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<sup>218</sup> *Raquel Martin de Mejia v. Peru*, Case 10.970, Inter-Am. C.H.R., Report No 5/96, at 185 (1995) (declaring that, while the American Convention does not define "torture," "in the Inter-American sphere, acts constituting torture are established in the Inter-American Convention to Prevent and Punish Torture"). The Inter-American Court has stated that the Inter-American Convention to Prevent and Punish Torture constitutes part of the Inter-American *corpus iuris*, and that the Court must therefore refer to it in interpreting the scope and content of Article 5(2) of the American Convention. See *Tibi v. Ecuador*, Inter-Am. Ct. H.R. (ser. C) No. 114, para. 145 (2004).

<sup>219</sup> Unlike many other international bodies, the Inter-American Convention to Prevent and Punish Torture is not limited to acts committed for the purpose of extracting information through interrogation but instead covers acts committed for any purpose whatsoever.

<sup>220</sup> See IACHR, Report on Terrorism and Human Rights, at para. 154 n.385; see also Robert K. Goldman, *Trivializing Torture: The Office of Legal Counsel's 2002 Opinion Letter and International Law Against Torture*, in 12 No. 1 Hum. Rts. Brief (2004).

inflicted.”<sup>221</sup> For treatment to be considered inhuman or degrading, it must attain a minimum level of severity, which the Commission has held is a relative measurement and dependent on the specific circumstances of each case, including the duration of the treatment, its physical and mental effects, and the sex, age and health of the victim, among other factors.<sup>222</sup> Severe mental and psychological suffering alone, including humiliation, can constitute inhuman and degrading treatment, even in the absence of physical injuries.<sup>223</sup> In *Loayza Tamayo*, the Court described degrading treatment as the fear, anxiety and inferiority induced in a victim for the purpose of humiliating the victim and breaking his physical and moral resistance.<sup>224</sup> It also noted that the degrading aspect of treatment can be exacerbated by the vulnerability of an individual unlawfully detained.<sup>225</sup>

145. The law of the Inter-American system, like international law in general, considers the prohibition of torture to be a non-derogable, *jus cogens* norm, meaning that it cannot be suspended for any reason, including war or any other emergency situation.<sup>226</sup> The Inter-American Court has repeatedly referred to the *jus cogens* character of the absolute prohibition of

<sup>221</sup> IACHR, Report on Terrorism and Human Rights, cit., at para. 158 (citing *Case of Luis Lizardo Cabrera*, at para. 80); see also *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005); *Lori Berenson-Mejia v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 119, para. 100 (Nov. 25, 2004).

<sup>222</sup> IACHR, Report on Terrorism and Human Rights, cit., at para. 157; see also *Case of Hermanos Gomez – Paquiyauri*, cit.; *Case of Loayza Tamayo*, cit.; *Case of Jailton Neri da Fonseca v. Brazil*, cit.

<sup>223</sup> IACHR, Report on Terrorism and Human Rights, cit., at paras. 156, 159.

<sup>224</sup> *Id.* at para. 159 n.395.

<sup>225</sup> *Id.* at para. 159.

<sup>226</sup> See IACHR, Report on the Situation of Human Rights Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, doc. 40 rev., para. 154 (Feb. 28, 2000); *Case of Lori Berenson-Mejia*, cit., at para. 100. The Court has stated that “the fact that a State is confronted with terrorism [or a situation of internal upheaval] should not lead to restrictions on the protection of the physical integrity of the person.” See *Case of Gomez Paquiyauri*, cit., at para. 37; *Case of Cantoral Benavidez*, cit., at para. 143; *Case of Castro*, cit., at para. 271; *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, para. 70 (Mar. 11, 2005).

all forms of torture,<sup>227</sup> and it is now clear that it also considers the prohibition on other forms of ill-treatment to be customary international law.<sup>228</sup> The Inter-American Torture Convention provides specifically that the existence of a state of war, threat of war, state of emergency, domestic disturbance or other type of emergency cannot be invoked to justify acts that constitute torture.<sup>229</sup>

146. The Inter-American and “universal condemnation of torture precludes any state not only from engaging in torture, but also from expelling, returning, ‘rendering,’ or extraditing a person to another state where there are substantial grounds for believing that the person would be in danger of being tortured.”<sup>230</sup>

**2. Mr. Ameziane Has Been Subjected to Physical and Psychological Torture and Cruel, Inhuman, and Degrading Treatment in Guantánamo and Kandahar.**

**(a) Detention Conditions, including Prolonged Incommunicado Detention and Isolation**

147. Mr. Ameziane’s conditions of detention at Guantánamo, including in particular his solitary confinement in Camp VI since March 2007, fail to meet the basic standards required by the American Declaration for the personal security and humane treatment of persons in state custody, as well as by other sources of international law to which the Commission looks in interpreting the Declaration’s provisions. As the ICRC has said of the conditions of detention at Guantánamo, “the construction of [the detention facilities], whose stated purpose is the

<sup>227</sup> *Goiburú v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 154, para. 128 (Sept. 26, 2006); *Case of Tibi*, cit., at para. 143; *Gómez-Paquiyaúri Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, para. 112 (July 8, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 92 (Nov. 27, 2003).

<sup>228</sup> *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 139, para. 127 (Nov. 30, 2005).

<sup>229</sup> Inter-American Torture Convention, art. 5.

<sup>230</sup> See Goldman, *supra* note 220.

production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and a form of torture.”<sup>231</sup>

148. The Inter-American system’s jurisprudence on the right to humane treatment establishes that persons deprived of their liberty have the right to conditions of detention that respect their personal dignity and that the State, as the primary entity responsible for prisons, is obligated to ensure conditions that safeguard prisoners’ fundamental rights.<sup>232</sup> The Commission and the Court have specifically found that detention conditions similar in many respects to those in which Mr. Ameziane has been held – e.g., prolonged incommunicado detention, isolation in a small cell without natural air or light, deficient medical care (discussed *infra*) – amount to inhumane treatment and even torture, and fail to safeguard those basic rights.

149. For example, in the *Velasquez Rodriguez* case, the Court held that “[p]rolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being” – a position the Court and the Commission have consistently held in their jurisprudence on prisoners’ right to humane treatment.<sup>233</sup>

150. The system’s caselaw has also specifically addressed situations of solitary confinement, holding that such conditions constitute cruel and inhuman treatment and even torture under certain circumstances. In *Lori Berenson Mejia v. Peru*, the Court found that a

<sup>231</sup> ICRC, *The ICRC’s Work at Guantánamo Bay* (Nov. 30, 2004), available at <http://www.icrc.org/Web/eng/siteeng0.nsf/iwplList4/C5667B446C9A4DF7C1256F5C00403967>.

<sup>232</sup> See *Case of Bulacio*, cit., at para. 126; *Case of Cantoral Benavides*, cit., at para. 87; *Case of Lori Berenson Mejia*, cit., at para. 102; *Case of Tibi*, cit., at para. 150; *Case of the “Juvenile Reeducation Institute”*, cit., at para. 151.

<sup>233</sup> *Velasquez Rodriguez case*, (ser. C) No. 4, para. 156 (July 28, 1988); see also *Godinez Cruz case*, (ser. C) No. 5, para. 164 (Jan. 20, 1989); *Camilo Alarcon Espinoza v. Peru*, Cases 10.941, 10.942, 10.944, 10.945, Inter-Am. C.H.R., Report No. 40/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 83 (1997); *Case of Lori Berenson*, cit., at para. 103; IACHR, Report on Terrorism and Human Rights, cit., at para. 162.

detention regime resembling Mr. Ameziane's conditions in many respects – continuous solitary confinement for one year in a small cell without ventilation, natural lighting or heating, adequate food, sanitary facilities or necessary medical care (for vision problems resulting from the lack of natural light in the small cell), and with severe restrictions on receiving visitors – constituted cruel, inhuman and degrading treatment.<sup>234</sup> The fact that some of these conditions changed or improved after a certain point in time, such as the continuous solitary confinement, did not affect the Court's finding.<sup>235</sup> The UN Committee Against Torture similarly found that the detention conditions in the *Berenson Mejia* case amounted to cruel and inhuman treatment and punishment.<sup>236</sup>

151. In addition to the suffering inherent in solitary confinement, such conditions place individuals "in a particularly vulnerable position, and increase[] the risk of aggression and arbitrary acts in detention centers."<sup>237</sup> Thus, in *Montero-Aranguren v. Venezuela*, the Court held that "solitary confinement cells must be used as disciplinary measures or for the protection of

<sup>234</sup> *Case of Lori Berenson*, cit., at paras. 106, 109; see also *Case of Tibi*, cit., at para. 150; *Case of the "Juvenile Reeducation Institute"*, cit., at para. 151; *Case of Cantoral Benavides*, cit., at para. 89; *Martin Javier Roca Casas v. Peru*, Case 11.233, Inter-Am. C.H.R., Report No. 39/97, OEA/Ser.L/V/II.98, doc. 6 rev., para. 90 (1997); *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197; *Nicaragua*, Case 9170, Inter-Am. C.H.R. (1986) (holding that a man who had been kept in isolation for nine months had been denied his right to humane treatment, in violation of Article 5 of the American Convention). See also First United Nations Congress on the Prevention of Crime and Treatment of Offenders, Aug. 22-Sept. 3, 1995, U.N. Standard Minimum Rules for the Treatment of Prisoners, adopted by U.N. Econ. & Soc. Council, Res. 663C (XXIV) (July 31, 1957) and Res. 2076 (LXII) (May 13, 1977) [hereinafter "UN Minimum Rules for the Treatment of Prisoners"].

<sup>235</sup> See *Case of Lori Berenson*, cit., at para. 108; see also *Case of Loayza Tamayo*, cit., at paras. 57-58; *Case of Castillo-Petruzzi*, cit., at para. 197.

<sup>236</sup> See *Case of Lori Berenson*, cit., at para. 107 (citing U.N. Committee Against Torture, Investigation in relation to Article 20: Peru, A/56/44, paras. 144-93 (May 16, 2001); Inquiry under Article 20, paras. 183-84).

<sup>237</sup> *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, para. 150 (Nov. 25, 2000). See also *De la Cruz Flores v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 115, para. 129 (Nov. 18, 2004); *Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 87 (Nov. 27, 2003); *Castillo Petruzzi v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 52, para. 195 (May 30, 1999); *Suárez-Rosero v. Ecuador*, Inter-Am. Ct. H.R. (Series C) No. 35, para. 90 (Nov. 12, 1997); *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, para. 323 (Nov. 25, 2006).

persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality,” and specifically stated that minimum standards for conditions of detention must still be met.<sup>238</sup>

152. Even the threat of solitary confinement may be enough to constitute inhuman treatment.<sup>239</sup>

153. In *Cabrera v. Dominican Republic*, the Commission found that the solitary confinement to which Mr. Cabrera had been subjected amounted to torture, reasoning that: (i) it was deliberately imposed on the applicant; (ii) the measure was imposed under circumstances in which the applicant’s health was in a delicate state; (iii) the solitary confinement was imposed for the purpose of personal punishment; and (iv) the act of torture was attributable to the State as it was perpetrated by its agents in the course of official duties.<sup>240</sup>

154. The Commission has also interpreted Article XXV’s guarantee of humane treatment for individuals in state custody along the lines of international standards for the confinement and treatment of prisoners. In *Oscar Elias Biscet v. Cuba*, the Commission made specific reference to the United Nations’ Standard Minimum Rules for the Treatment of Prisoners as prescribing basic benchmarks<sup>241</sup> in such areas as accommodation,<sup>242</sup> hygiene,<sup>243</sup>

<sup>238</sup> *Montero-Aranguren v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 150, para. 94 (July 5, 2006). The Inter-American Court specifically referred to other international instances in this regard, including the report of the UN Committee Against Torture on Turkey, the U.N. Standard Minimum Rules for the Treatment of Prisoners and the findings of the European Court in *Mathew v. Netherlands*, No. 24919/03, Eur. Ct. H.R. (2005).

<sup>239</sup> *Case of the “Juvenile Reeducation Institute,”* cit., at para. 167; see also *supra* section 3.1.1.

<sup>240</sup> *Luis Lizardo Cabrera v. Dominican Republic*, Case No. 10.832, Inter-Am. C.H.R., Report No. 35/96, at para. 86 (1997).

<sup>241</sup> *Oscar Elias Biscet et al. v. Cuba*, Case 12.476, Inter-Am. C.H.R., Report No. 67/06, at paras. 153-58 (2006). See also *Paul Lallion v. Grenada*, Case 11.765, Inter-Am. C.H.R., Report No. 55/02, at para. 86 (2003); *Benedict Jacob v. Grenada*, Case 12.158, Inter-Am. C.H.R., Report No. 56/02, at para. 43 (2003). See also IACHR Report on Terrorism and Human Rights, cit., at para. 167.

<sup>242</sup> “All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic

clothing and bedding,<sup>244</sup> exercise and sport,<sup>245</sup> discipline, punishment, and instruments of restraint,<sup>246</sup> and contact with the outside world.<sup>247</sup>

155. For the first few years of his imprisonment at Guantánamo, Mr. Ameziane and other prisoners were largely cut off from and unknown to the outside world. The U.S. government denied anyone other than military and government officials and the ICRC access to the base, and refused to disclose even the names and nationalities of the prisoners publicly until four years after they were brought to Guantánamo. Lawyers were finally permitted to visit the base after June 2004, although Mr. Ameziane did not actually meet with a lawyer until several months later. Prisoners' ability to communicate with their lawyers and their families, and access to any outside news or information remains extremely restricted. Letters from Mr. Ameziane to his family often do not reach them for a year or more. Letters from his attorneys are often held for weeks. While incommunicado detention has been the norm at Guantánamo for over six years, the law of the Inter-American system has warned that "[i]ncommunicado may only be

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content of air, minimum floor space, lighting, heating and ventilation." U.N. Minimum Rules for the Treatment of Prisoners, rule 10. "In all places where prisoners are required to live or work, a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; [and] b) [a]rtificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight." *Id.* at rule 11.

<sup>243</sup> "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner." *Id.* at rule 12. "Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate." *Id.* at rule 13.

<sup>244</sup> "Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health." *Id.* at rule 17(1).

<sup>245</sup> "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits." *Id.* at rule. 21(1).

<sup>246</sup> "Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life." *Id.* at rule 27.

<sup>247</sup> "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." *Id.* at rule 37. "Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications...." *Id.*



used exceptionally, taking into account its severe effects, because 'isolation from the exterior world produces moral suffering and mental stress on any individual, which place him in an exacerbated situation of vulnerability, ....'<sup>248</sup>

156. In addition to the general isolation of prisoners at Guantánamo from the outside world, Mr. Ameziane's solitary confinement in Camp VI for over a year has been further isolating, restricting his contact even with other prisoners. His small cell is cold, completely sealed and lets in no natural air or light. The only openings are two thin "windows" that face the interior of the prison and allow guards to look in and keep watch day and night, and a food slot in his door, which he crouches down to and yells through to other prisoners in his block – one of the few if only ways they can communicate. He sits, sleeps, eats and uses the toilet all in the same small space, which he is unable to clean because he is given no cleaning supplies. He is confined to this space for most of every day, with the exception of a five minute shower, often without any hot water, and a short "recreation" time, when he is shuffled outside in chains to a small fenced-in area surrounded by walls five meters high and covered in wire mesh. Even outside, his only view of the sky is through metal wires.

157. His confinement in these conditions has taken a heavy physical and psychological toll. His deteriorating eyesight and rheumatism are some of the physical manifestations of being held in solitary confinement for so long. There are also psychological scars that are less visible. As the Court has held, "the injuries, sufferings, damage to health or prejudices suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing

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<sup>248</sup> *Case of Lori Berenson*, cit., at para. 104; cf. *Case of Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 103, at para. 87 (Nov. 27, 2003); *Case of Bámaca-Velásquez*, cit., at para. 150; *Case of Cantoral Benavides*, cit., at para. 84.

to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity.”<sup>249</sup>

158. Given the length and severity of Mr. Ameziane’s incommunicado and solitary conditions at Guantánamo, in general and in Camp VI specifically, their intentional and purposeful nature, whether to produce intelligence and/or to punish and torture, and their authorization and enforcement by U.S. government officials and agents, Mr. Ameziane’s conditions of detention at Guantánamo rise to the level of torture in violation of Articles I and XXV of the American Declaration.

**(b) Physical and Verbal Assaults, Modified Waterboarding, Abusive Interrogations, and Sleep Deprivation in the Context of Detention and Interrogation.**

159. In addition to his incommunicado and solitary conditions of confinement, Mr. Ameziane has been subjected to specific acts of torture and abuse in the context of his detention and interrogations over the past six years that constitute additional violations of Articles I and XXV of the American Declaration. These include physical beatings resulting in injuries, simulated drowning, 30-hour interrogation sessions, prolonged periods of sleep deprivation, threats of rendition and menacing by military dogs. These methods were often applied in combination, compounding his suffering.

160. Inter-American jurisprudence has held that many of the acts to which Mr. Ameziane has been subjected constitute inhumane treatment, including beatings,<sup>250</sup> holding a person’s head in water until the point of drowning,<sup>251</sup> threats of a behavior that would constitute

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<sup>249</sup> *Case of Lori Berenson*, cit., at para. 102. See also *Case of “Juvenile Reeducation Institute,”* cit., at para. 168 (finding that the subhuman and degrading detention conditions that inmates were forced to endure inevitably affected their mental health, with adverse consequences for the psychological growth and development of their lives and mental health).

<sup>250</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 161 n.405.

<sup>251</sup> *Id.* at para. 161 n.403.

inhumane treatment,<sup>252</sup> death threats,<sup>253</sup> and standing or walking on top of individuals.<sup>254</sup> More broadly, the Court has held that “any use of force that is not strictly necessary to ensure proper behavior [by] the detainee constitutes an assault on the dignity of the person in violation of Article 5 of the American Convention.”<sup>255</sup>

161. International authorities also provide guidance in identifying specific acts that constitute torture or other inhumane treatment. The UN Human Rights Committee has considered beatings and stress positions such as forcing a prisoner to remain standing for extremely long periods of time to constitute torture or other inhumane treatment.<sup>256</sup> In a 1997 report on interrogation tactics used by the Israeli Defense Forces, the UN Committee Against Torture concluded that sleep deprivation for “prolonged periods” constitutes torture for purposes of Article 1 of the Convention Against Torture.<sup>257</sup> The UN Special Rapporteur on Torture has identified similar and additional acts that involve the infliction of suffering severe enough to constitute torture, including beating, suspension, suffocation, exposure to excessive light or noise, prolonged denial of rest, sleep or medical assistance, total isolation and sensory deprivation, and being held in constant uncertainty in terms of space and time.<sup>258</sup>

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<sup>252</sup> *Id.* at para. 161 n.410.

<sup>253</sup> *Id.* at para. 161 n.412.

<sup>254</sup> *Id.* at para. 161 n.404.

<sup>255</sup> *Id.* at para. 166.

<sup>256</sup> *Id.* at para. 162 n.414.

<sup>257</sup> See Office of the High Commissioner for Human Rights, Concluding Observations of the Committee Against Torture: Israel, A/52/44, para. 257 (Sept. 5, 1997) [hereinafter “Concluding Observations: Israel”]. The Committee does not state what constitutes a “prolonged period”; however, in making this determination, the Committee considered a case in which the detainee was “interrogated and tortured over the course of the next 30 days” while another detainee was “forced to sit handcuffed and hooded in painful and contorted positions, subjected to prolonged sleep deprivation and beaten over the course of three weeks.” Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted to the UN Commission on Human Rights, E/CN.4/1998/38/Add.1 (Dec. 24, 1997).

<sup>258</sup> IACHR Report on Terrorism, *cit.*, at para. 162 n.413. See also Concluding Observations: Israel, *supra* note 257, at para. 257.

162. The Commission and the Court have also relied on European Court of Human Rights jurisprudence, including the case of *Ireland v. UK*, and suggested that techniques similar to those addressed by the European Court, including forcing detainees to remain in stress positions for periods of several hours, hooding, subjecting detainees to continuous loud noise and depriving detainees of sleep pending their interrogations are prohibited in any interrogations by state agents.<sup>259</sup> The European Court has also found that shackling a prisoner, where shackling causes pain and discomfort, constitutes a breach of Article 3 of the European Convention.<sup>260</sup>

163. Mr. Ameziane has been subjected to numerous acts of mistreatment at the hands of the U.S. military at Guantánamo that this Commission and other international bodies recognize as torture or other inhuman treatment. He has endured violent beatings and head bashings that have resulted in physical injuries, including a dislocated jaw, a bloody nose and a split lip. He has been subjected to a method similar to waterboarding, with the same intended effect of suffocation, whereby guards held his head back and placed a hose of running water between his nose and mouth for several minutes, giving him the sensation “that my head was sinking in water.” He has been denied sleep for stretches of time, for example, in the “Romeo” and “Mike” blocks, when guards would wake him every quarter or half-hour by kicking on the wall or the door of his cell and yelling at him to wake up. He has been subjected to dozens, if not hundreds of interrogations, some of which have lasted more than 25 and 30 hours. During one of these sessions, he was chained to the floor and held in a freezing room with techno music blasting his eardrums. Interrogators have also threatened him with return to Algeria if he does not cooperate, where they have suggested he would be tortured. More recently and routinely, with the interrogator “Antonio,” he has been forced to sit through hours of having Antonio assail

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<sup>259</sup> IACHR Report on Terrorism and Human Rights, cit., at para. 164 n. 419-22.

<sup>260</sup> See *Henaf v. France*, App. No. 65436/01, 2003-XI Eur. Ct. H.R., para. 56.

him with obscenities, insults and threats, and blow smoke in his face. At Kandahar and at Guantánamo, he has been subjected to brutal searches and, at Kandahar, guards were sometimes accompanied by military dogs. These acts have not only inflicted severe physical pain and injuries, but traumatized him psychologically as well. Of his waterboarding experience, for example, Mr. Ameziane writes, "I still have psychological injuries, up to this day. Simply thinking of it gives me chills."

164. In addition, these acts have all been intentional and purposeful, whether for interrogation purposes or as a means of punishment or intimidation, and they have all been carried out and sanctioned as a matter of policy by the state and its agents.

165. Mr. Ameziane's mistreatment thus constitutes torture in violation of Articles I and XXV of the American Declaration because of the high intensity of suffering it has caused, particularly in considering the cumulative effect his abuse, its purposeful and deliberate nature, and the fact that it was sanctioned and perpetrated by state agents.

**(c) Denial of Adequate Medical Care**

166. Mr. Ameziane has sustained specific injuries and developed chronic health conditions as a result of his inhumane conditions and treatment at Guantánamo, for which he has never received adequate medical treatment. The deterioration of his physical and psychological health over the course of his more than six years of unlawful detention, and the denial of medical care to address the injuries and effects of his imprisonment, constitute additional violations under Articles I and XXV of the Declaration, in conjunction with the right to health under Article XI.<sup>261</sup>

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<sup>261</sup> Article XI of the American Declaration guarantees "every person ... the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

167. The Inter-American system's jurisprudence has consistently held that the denial of regular and adequate medical care to prisoners in state custody constitutes a violation of their right to humane treatment.

168. In *Tibi v. Ecuador*, a prisoner detained by state agents, who was physically beaten and on one occasion had his head submerged in a water tank during interrogation, was denied a proper medical examination and treatment for injuries resulting from his abuse. Citing UN standards, European Court case law, and its own jurisprudence, the Inter-American Court held that the State has a duty to provide medical examinations and care to detainees in its custody on a regular basis and when necessary for specific health conditions, and that Ecuador's denial of adequate and timely medical treatment for the prisoner constituted a violation of his right to humane treatment under Article 5 of the American Convention.<sup>262</sup>

169. In *Juan Hernández v. Guatemala*, a prisoner incarcerated in a Guatemalan jail died from a common and easily curable case of cholera for which prison authorities neglected to provide treatment.<sup>263</sup> The Commission held that the Guatemalan government had a duty to take the necessary measures to protect the prisoner's health and life.<sup>264</sup> The government's failure to take reasonable steps and act with a certain level of diligence, including transferring the prisoner to a hospital, violated the prisoner's right to humane treatment under Article 5.<sup>265</sup>

170. In *Montero-Aranguren v. Venezuela*, the Court emphasized that assistance by a doctor *without* links to the detention center authorities constitutes "an important safeguard

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<sup>262</sup> *Case of Tibi*, cit., at paras. 154-57 (citing United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24). See *Kudla v. Poland*, No. 30210/96, 2000-XI Eur. Ct. H.R., para. 93-94; *Case of Bulacio*, cit., at para. 131; *De La Cruz-Flores*, cit., at paras. 131-34, 136.

<sup>263</sup> See *Juan Hernández v. Guatemala*, Case No. 11.297, Inter-Am. C.H.R., Report No. 28/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1997).

<sup>264</sup> See *id.* at paras. 58-60.

<sup>265</sup> See *id.* at para. 61.

against torture and physical or mental ill-treatment of inmates” and protection of their right to humane treatment.<sup>266</sup>

171. The Commission has also previously found the denial of adequate medical care to prisoners in state custody to constitute an additional violation of Article XI of the Declaration. In a series of cases on behalf of political prisoners in Cuban jails, the prisoners were subjected to torture and inhuman conditions and treatment, including the denial of adequate medical care. The provision of care was also made contingent on the prisoners’ compliance with authorities’ demands, such that, if the prisoners refused to cooperate, their needs for medical treatment were also refused. The Commission found that the facts constituted both a violation of the prisoners’ right to humane treatment under Article XXV of the Declaration, as well as a separate violation of their right to the preservation of health and well-being under Article XI.<sup>267</sup>

172. The Commission’s precautionary measures also provide guidance in determining the scope of states’ obligations to protect prisoners’ rights to humane treatment and health. The Commission has regularly issued precautionary measures to address the inadequate provision of medical care in prison contexts and to protect prisoners’ health, including asking states to provide inmates with necessary medical exams and specialized care. In one case, the Commission asked the Cuban government to transfer an inmate suffering from a lung tumor to a specialized hospital and provide him with specialized medical care administered with a physician selected by his family. Despite being diagnosed with the tumor almost one year before the Commission’s intervention, the only medical attention the inmate had received under the prison’s watch, and only after he commenced a hunger strike to protest his lack of treatment, was

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<sup>266</sup> *Case of Montero-Aranguren*, cit., at para. 102. The Court made reference to the findings of the European Court in *Mathew v. Netherlands* (2005) in this respect.

<sup>267</sup> *See Cuba*, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982).

by a physician who told the prisoner there was nothing wrong with him and returned him to the prison.<sup>268</sup> In another case, the Commission asked the Peruvian government to provide a medical exam and treatment to a prisoner who was being denied medical care for a prostate condition.<sup>269</sup>

173. The Commission and the Court have also often looked to UN standards and the case law of the European human rights system in finding that states have a duty to provide adequate medical care to prisoners in their custody. The UN Body of Principles for the Protection of Persons under Detention or Imprisonment provides that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”<sup>270</sup> The UN’s Standard Minimum Rules for the Treatment of Prisoners further define the scope and content of the rights of persons deprived of their liberty to medical treatment, providing for example:

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.<sup>271</sup>

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures

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<sup>268</sup> See Annual Report of the Inter-American Commission on Human Rights 2001, OEA/Ser.L/V/II.114, doc. 5 rev. (2002), ch. III.C.1, para. 28.

<sup>269</sup> See Annual Report of the Inter-American Commission on Human Rights 2002, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003), ch. III.C.1, para. 78. See also Annual Report of the Inter-American Commission on Human Rights, para. 50 (issuing precautionary measures asking state to provide a specialized medical exam for a prisoner to protect her health).

<sup>270</sup> UN Office of the High Commissioner for Human Rights, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, Dec. 9, 1988, Principle 24.

<sup>271</sup> UN Minimum Rules for the Treatment of Prisoners, rule 22(2).

<sup>272</sup> *Id.* rule 24.



The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed; and (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.<sup>273</sup>

174. The conditions of Mr. Ameziane's imprisonment at Guantánamo and the torture and abuse he has endured have led directly to the deterioration of his health and well-being over the past six years. His failing vision, convulsions and rheumatism are some of the physical manifestations of his declining health. Like other detainees, his conditions and treatment combined with the reality of indefinite detention have also taken a toll on his psychological health and well-being.

175. In response to Mr. Ameziane's needs for medical care, the government has either deliberately denied him care or provided him with wholly incompetent care. His repeated requests for a simple eye exam to address his deteriorating eyesight were denied for almost a year, and he has still not received a pair of eyeglasses with the correct prescription. He has also not received any care for the rheumatism he has developed in his legs from the cold temperatures in Camp VI, let alone socks or additional clothing to stay warm. When he has received treatment, it has been more abusive than healing, for example, when he was taken to the infirmary for his convulsions and recklessly stuck with a needle by a guard who had been asked by the attending doctor to assist him.

176. His requests for health care have also been met with a response to ask his interrogator, thus conditioning the provision of care on his cooperation in interrogations, which is unlawful per the Commission's caselaw.<sup>274</sup>

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<sup>273</sup> *Id.* rule 25(1).

<sup>274</sup> See, e.g., Cuba, Case No. 6091, Inter-Am. C.H.R., Res. No. 3/82, OEA/Ser.L/V/II.57, doc. 6 rev. 1 (1982).

177. The right to humane treatment, taken together with Article XI of the Declaration's right to health, create a duty of states not only to provide adequate medical care to persons in their custody, but to take other affirmative measures to ensure the health and well-being of such individuals. As Inter-American and international human rights standards make clear, the right to health is not confined to the right to health care, but should be "understood to mean the enjoyment of the highest level of physical, mental and social well-being."<sup>275</sup> Mr. Ameziane's current poor state of health – the result of both his conditions and treatment at Guantánamo and the denial of adequate medical care for his injuries and ailments – is thus far from the high standard of health that this system and international bodies envision as a fundamental right for all human beings, whether in detention or not, and evidences a breach of the government's duties to protect his right to humane treatment and health under Articles I and XXV in conjunction with Article XI.

**(d) Religious Abuse and Interference**

178. Mr. Ameziane has suffered religious insult, humiliation and interference during his imprisonment at Guantánamo, which amounts to an additional violation of his right to humane treatment under Article XXV, in conjunction with his right to religious freedom under Article III.

179. As previously discussed, the Commission has held that the concept of "inhumane treatment" includes that of degrading treatment.<sup>276</sup> The Court has described degrading treatment as "the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the

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<sup>275</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," art. 10(1). *See also* Committee on Economic, Social and Cultural Rights, General Comment 14 (2000), para. 1 ("[E]very human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.").

<sup>276</sup> *See Case of Luis Lizardo Cabrera*, cit., at para. 79 (citing the *Greek Case*, cit., at para. 186).

victim and breaking his physical and moral resistance,” which can be felt even more intensely by a person unlawfully detained.<sup>277</sup>

180. In addition, Article III of the American Declaration provides, “[e]very person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.”<sup>278</sup> Article 12 of the American Convention more explicitly provides that the right to profess one’s religion or beliefs may be done individually or together with others, and that any permissible restrictions of this right must be prescribed by law and necessary to protect public safety, order, health or morals, or the rights or freedoms of others.<sup>279</sup> While the Commission has not considered the right to religious freedom in the context of a case such as Mr. Ameziane’s, it has emphasized that measures to prevent and punish terrorism must be carefully tailored to recognize and guarantee due respect for the right to freedom of conscience and religion.<sup>280</sup>

181. The UN Human Rights Committee has considered a case involving religious abuse similar to that which Guantánamo detainees have suffered. The Committee found that Trinidad and Tobago had violated a detainee’s right to religious freedom where the detainee’s government captors had forcibly shaved him, removed his prayer books and prevented him from participating in religious services.<sup>281</sup>

182. The verbal and physical abuse to which Mr. Ameziane has been subjected with respect to his Muslim faith, either personally or in witness, has had the purpose and effect of humiliating and demoralizing him. Mr. Ameziane has described how prison guards have

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<sup>277</sup> *Case of Loayza Tamayo*, cit., at paras. 36, 57.

<sup>278</sup> American Declaration, *supra* note 173, art. III.

<sup>279</sup> American Convention, arts. 12(1), (3).

<sup>280</sup> See IACHR, Report on Terrorism and Human Rights, cit., at para. 363.

<sup>281</sup> See *Clement Boodoo v. Trinidad and Tobago*, Communication No. 721/1996, para. 6.6, UN Doc. CCPR/C/74/D/721/1996 (Apr. 2, 2002).

screamed insults and obscenities at him during his daily prayers and imitated howling dogs during the distinctive Muslim call to prayer. He has witnessed guards shave crosses into his Muslim brothers' hair and demand prisoners to turn over their pants so that they cannot pray. At Kandahar, he and other prisoners were subjected to watching a guard rip pages from a Qur'an and then toss it into a bucket of human excrement. The degrading aspect of these acts is all the more injurious given the unlawfulness of his imprisonment. In addition to the harm to his personal dignity and security, this mistreatment has also had the effect of interfering with his religious practice freely and in peace. As such, the religious abuse Mr. Ameziane has suffered amounts to inhuman treatment and an interference with his right to freedom of religion in violation of Article I and XXV, in conjunction with Article III.

**C. Mr. Ameziane's Conditions of Detention Violate his Right To Private and Family Life and to Protection for his Personal Reputation under Articles V and VI of the American Declaration.**

183. Mr. Ameziane's imprisonment at Guantánamo has profoundly impacted his private and family life. He has effectively been denied any meaningful contact with his family for over six years, and deprived of founding his own family and developing his own personal life during some of the prime years of his life. The stigma of being labeled an "enemy combatant" and a "terrorist" has also damaged his and his family's good name and reputation, and will continue to follow him for years after his release. The deprivations and stigma of his imprisonment and their far-reaching repercussions, particularly in light of the fact that he is unlawfully detained, amount to an arbitrary and illegal interference with his rights under Articles V and VI of the American Declaration.

Article V of the Declaration provides:

Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation and his private and family life.

Article VI of the Declaration provides:

Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

184. The Commission has established that Articles V and VI of the American Declaration, taken together, prohibit arbitrary or illegal government interference with family life,<sup>282</sup> where “arbitrary interference” refers to elements of “injustice, unpredictability and unreasonableness.”<sup>283</sup> While the rights to private and family life are thus not absolute, they may only be circumscribed where restrictions are prescribed by law, necessary to protect public order, and proportional to that end.<sup>284</sup>

185. With regard to Article VI of the Declaration specifically, the Commission has noted that the right to establish and protect the family cannot be derogated under any circumstances, however extreme.<sup>285</sup> Thus, while situations such as incarceration or military service inevitably restrict the exercise and enjoyment of the right, they may not suspend it.<sup>286</sup>

**1. Mr. Ameziane has been Deprived of Developing his Private and Family Life.**

186. The Commission has consistently held that the State is obliged to facilitate contact between a prisoner and his family, notwithstanding the restrictions of personal liberty implicit in the condition of imprisonment.<sup>287</sup> In this respect, the Commission has repeatedly indicated that visiting rights are a fundamental requirement for ensuring the rights of prisoners and their

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<sup>282</sup> IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, Feb. 28, 2000, para. 162.

<sup>283</sup> *X and Y v. Argentina*, Case No. 10.506, Inter-Am. C.H.R., Report. No. 38/96, para. 92 (1996).

<sup>284</sup> IACHR, Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, cit., at para 166; *Case of X and Y v. Argentina*, cit., at para. 92.

<sup>285</sup> See *id.* at para 96; see also *Case of Biscet et al.*, cit., at para 236.

<sup>286</sup> See *Case of X and Y v. Argentina*, cit., at para 96.

<sup>287</sup> See *id.* at para. 98.

families.<sup>288</sup> The Commission has gone further and stated that because of the exceptional circumstances of imprisonment, the State must indeed take positive steps to guarantee prisoners' right to maintain and develop family relations.<sup>289</sup>

187. Similarly, the European Court of Human Rights has held that a total prohibition on visits by a detainee's family constitutes a violation of Article 8, the European Convention on Human Rights' analog to Article V of the Declaration.<sup>290</sup> The Court has held that the State must enable a detainee to maintain contact with his family and, further, that there is a positive obligation on the State to assist the detainee to maintain that contact if need be.<sup>291</sup>

188. Article 37 of the United Nations Standard Minimum Rules for the Treatment of Prisoners provides that "[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and receiving visits."<sup>292</sup> Principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that "[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family

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<sup>288</sup> See *Case of Biscet*, cit., at para 237; *Case of X and Y v. Argentina*, cit., at para. 98. See also IACHR, *The Situation of Human Rights in Cuba Seventh Report* at Chap. III, para. 25 (1983); IACHR, *Annual Report of the Inter-American Commission on Human Rights (Uruguay)* Chap. IV, para. 10 (1983-1984).

<sup>289</sup> See *Case of X and Y v. Argentina*, cit., at para. 98; *Case of Biscet*, cit., at para. 237.

<sup>290</sup> See *McVeigh, O'Neill and Evans v. United Kingdom*, App. Nos. 8022/77, 8025/77 and 8027/77, 5 Eur. Ct. H.R. 71, at paras. 52-53 (1983) (Commission Report), in which the European Commission on Human Rights held that a failure to allow persons detained under anti-terrorism legislation to communicate with their spouses constituted a denial of private and family life contrary to Article 8. Similarly, in *PK, MK and BK v. United Kingdom*, App. No. 19086/91 (1992), the European Commission noted, whilst finding no violation in the instant case, that significant limits on visits from family members may well raise Article 8 issues.

<sup>291</sup> *X v. United Kingdom*, App. No. 9054/80 30 DR 113 (Oct. 8, 1982); *Baginski v. Poland*, App. No. 37444/97, Eur. Ct. H.R., at para. 89 (Oct. 11, 2005).

<sup>292</sup> U.N. Minimum Rules for the Treatment of Prisoners, cit.

and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions, as specified by law or lawful regulation.”<sup>293</sup>

189. Since he was taken into U.S. custody in 2002, Mr. Ameziane has been deprived of virtually all communication with his family. He has not seen his parents, his seven brothers and sisters, or his nieces and nephews for over six years, as family visits are prohibited under the regime at Guantánamo. Until recently, telephone calls between detainees and their families were prohibited as well, although in March 2008, the U.S. Department of Defense announced that it would allow detainees one hour-long telephone call up to twice a year to a family member.<sup>294</sup> On February 29, 2008, the ICRC facilitated the first telephone call Mr. Ameziane has been permitted to make to a family member or to anyone since 2002. The only other more “regular” method of communication available to Mr. Ameziane is the mail system, but letters between him and his family have sometimes taken a year or more to reach the other side.

190. Mr. Ameziane’s father passed away while he has been at Guantánamo. He was deprived not only of the chance to see or speak to his father before his death, but to attend his funeral, pay his respects and be with his family during an emotionally difficult time instead of alone in his cell thousands of miles away. While the Commission has not directly considered circumstances such as these, the European Court has found that a refusal to permit a prisoner to attend his parents’ funeral constituted an unjustified interference with his private and family life.<sup>295</sup> That Court also held that where a detainee’s request to visit his dying father had been refused, respect for his Article 8 right to private and family life required the state to afford him

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<sup>293</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, *supra* note 270, Principle 19.

<sup>294</sup> Reuters, *U.S. says some Guantanamo prisoners can phone home*, Mar. 12, 2008, available at <http://www.reuters.com/article/latestCrisis/idUSN12190031>.

<sup>295</sup> *Ploski v. Poland*, App. No. 26761/95, Eur. Ct. H.R., at para. 39 (2002).

an alternative opportunity to bid farewell to his dying father. A failure to permit the detainee to do so constituted a violation of Article 8.<sup>296</sup>

191. In addition to being deprived of all meaningful contact with his family, his years at Guantánamo have prevented him from developing other personal relationships and aspects of his life during what would otherwise have been prime years of his life. As the European Court has held, the concept of private life “encompasses the right for an individual to form and develop relationships with other human beings”<sup>297</sup> and should be interpreted broadly.<sup>298</sup> For over six years, the only individuals Mr. Ameziane has seen or spoken to are his prison guards, his interrogators, his fellow prisoners, his lawyers, and the ICRC, and because of the security regime at Guantánamo and his isolation in Camp VI, his contact with other prisoners and his lawyers has been extremely restricted.

192. Beyond arresting his ability to develop personal and social relationships, his imprisonment at Guantánamo has also deprived him of opportunities for educational and vocational development. To fill this void, his lawyers can only mail a restricted range of books and magazines to a general detainee library, which take months to reach him, if at all. He has also taken it upon himself to teach himself English. He described the painstaking process in a letter to his lawyers:

“Since we weren’t allowed to have a dictionary and we didn’t have the right to keep more than one book in our cells, the library had some ‘Harry Potter’ books in English and French, so I took out a Harry Potter book in English and copied a hundred and seventy pages from the book onto sheets of paper, then I returned the book and took out the same book in French. I would read a sentence in French, translate it myself into English, then compare my translation with the one on the paper that I had copied and correct my mistakes. I would move on to the next sentence, translate it, and compare my translation to that on paper, and so on,

<sup>296</sup> *Lind v. Russia*, App. No. 25664/05, Eur. Ct. H.R., at para. 98 (2007).

<sup>297</sup> *C v. Belgium*, App. No. 21794/93, Eur. Ct. H.R., at para. 25 (1996).

<sup>298</sup> *Niemietz v. Germany*, App. No. 13710/88, 16 Eur. Ct. H.R. 97, at para. 29 (1992).



sentence by sentence until I had finished the hundred and seventy pages. When the guards who walked by my cell asked what I was doing, seeing my copy from the book, I answered that I was an illiterate and that I was learning how to write. I told them that because I was afraid that if they knew my real intentions, they would talk about them to their superiors who would confiscate my papers.”<sup>299</sup>

193. In depriving him of meaningful communication with his family and the ability to develop the personal and professional aspects of his life, the United States has violated Mr. Ameziane’s rights under Articles V and VI of the American Declaration. The violation is even more egregious given the unlawful nature of Mr. Ameziane’s imprisonment.

**2. Mr. Ameziane has Suffered Unfair Attacks on his Personal Honor and Reputation.**

194. The Commission has previously found that a petitioner’s honor and reputation were harmed by the imposition of a penalty that the State recognized as “arbitrary.”<sup>300</sup> Further, the Inter-American Court has found that descriptions of detainees as “terrorists” by a state in circumstances where such individuals have not been convicted of a criminal offence may constitute a violation of the rights of the detainees and their next of kin under Article 11 of the American Convention.<sup>301</sup>

195. Mr. Ameziane has been classified and held by the United States for over six years at Guantánamo as an “enemy combatant,” a status labeling him as an individual who is a member of or associated with al Qaeda or the Taliban, and who committed or was otherwise involved in hostilities against the United States or its allies. Despite the gravity of this classification, Mr. Ameziane was neither allowed to see the government’s purported evidence against him, mount his own defense, nor seek review of his status and the legality of his detention by a court. Rather, he was designated an enemy combatant solely on the basis of a

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<sup>299</sup> Letter from Djamel Ameziane to Wells Dixon, June 15, 2008 (unclassified) (on file with CCR).

<sup>300</sup> *Cirio v. Uruguay*, Case 11.500, Inter-Am. C.H.R., Report No. 124/06 (2006).

<sup>301</sup> *Case of The Miguel Castro Prison v. Peru*, Case 11.015, Inter-Am. C.H.R., para. 359 (2006).

unilateral determination by the President and a subsequent review by a CSRT designed in effect to rubber stamp that determination. Despite the fact that his enemy combatant status was derived through a process wholly lacking in rigor and fairness, that the legality of his detention has yet to receive judicial review and that he has never been charged, the United States persists in describing him and other detainees as, for example, “dangerous terrorists,” and fueling public misconceptions.

196. Were a court to find his imprisonment unlawful and order him released, the stain of Guantánamo would continue to trail him and his family long after his name is officially cleared, impacting his life in myriad ways – in his social relationships, his employment prospects, his mobility and ability to travel, and his safety, among others.

197. In arbitrarily imprisoning Mr. Ameziane at Guantánamo, labeling him an “enemy combatant” on the basis of an unfair process and persisting in calling detainees terrorists despite the fact that the majority have not been charged and none have received judicial review of their status or the legality of their detention, the United States has damaged Mr. Ameziane’s honor and reputation in violation of Article V of the Declaration.

**D. The United States Has Denied Mr. Ameziane his Rights to Due Process and Judicial Remedies under Articles XVIII and XXVI of the American Declaration.**

**1. The CSRTs Violate Fundamental Due Process Norms.**

198. The fact that Mr. Ameziane was until recently denied access to judicial review of the legality of his detention and afforded the CSRTs and the DTA as his only recourse constitutes not only an Article XXV violation of his right to liberty as previously discussed, but a separate violation of his rights to due process and a fair hearing under Articles XVIII and XXVI of the American Declaration.

199. The Commission has held that Articles XVIII and XXVI of the American Declaration guarantee certain fundamental due process protections to defendants,<sup>302</sup> including the right to a hearing by a competent, independent and impartial tribunal within a reasonable time,<sup>303</sup> to have access to the evidence against oneself and to obtain witnesses and evidence in one's defense,<sup>304</sup> and to the assistance of counsel.<sup>305</sup> These protections are non-derogable even in situations of armed conflict.<sup>306</sup>

200. The due process protections of Articles XVIII and XXVI have been considered most frequently by the Commission and the Court in the context of criminal proceedings, but the system's jurisprudence clearly establishes that such protections are also applicable in "non-criminal proceedings for the determination of a person's rights and obligations of a civil, labor, fiscal or any other nature."<sup>307</sup> The Inter-American Court has observed, for example, that "the due process of law guarantee must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons."<sup>308</sup>

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<sup>302</sup> See IACHR Report on Human Rights and Terrorism, cit., at para. 218.

<sup>303</sup> See *id.* at para. 218.

<sup>304</sup> See *id.* at para. 238.

<sup>305</sup> See *id.* at para. 236.

<sup>306</sup> See *id.* at paras. 258-59; see also Human Rights Committee, General Comment No. 29 (2001), at para. 11.

<sup>307</sup> See IACHR, Report on Human Rights and Terrorism, cit., at para. 240.

<sup>308</sup> *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Int-Am. Ct. H.R., Merits, Reparations and Costs, Judgment of March 29, 2006 (Ser. C), No. 146, at para. 82. See also *Case of Baena-Ricardo et al. v. Panama*, Int-Am. Ct. H.R., Merits, Reparations and Costs, Judgment of February 2, 2001 (Ser. C), No. 72, at paras. 127. The judgment, at paras. 124-126, further states:

"Although Article 8 of the American Convention is entitled 'Right to a Fair Trial,' its application is not limited to judicial remedies in a strict sense, 'but [to] all the requirements that must be observed in the procedural stages,' in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature.

[...]

"the individual has the right to the due process as construed under the terms of Articles 8(1) and 8(2) in both penal matters, as in all of these other domains.

201. In more than six years of detention at Guantánamo, Mr. Ameziane has never had a fair hearing in court on the legality of his detention, although the right is finally available to him. He has only been permitted the flawed administrative proceedings of the CSRTs and ARBs,<sup>309</sup> and the limited review of the D.C. Circuit Court under the DTA, which individually and together fall far short of the due process and fair hearing guarantees of Articles XVIII and XXVI.

202. As previously discussed, the composition and the lack of institutional safeguards of the CSRTs and ARBs render them insufficiently independent and impartial to make fair determinations of detainees' status. In addition, the rules and evidentiary procedures of the tribunals deny detainees access to and the ability to confront much of the "evidence" against them; the government need only provide detainees with a summary of its unclassified evidence supporting continued detention and none of the classified information otherwise considered by the tribunals. In practice, detainees' ability to call witnesses in their defense has been limited to calling fellow prisoners, and even those requests are regularly refused. The rules for the tribunals also deny detainees access to counsel, affording them only a "personal representative" who is not a lawyer and who owes no duty of confidentiality to the detainee. These and other shortcomings leave detainees without any meaningful opportunity to mount an effective defense or otherwise receive a fair hearing. While detainees may appeal the determination of their CSRT to the D.C.

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[...]

"In any subject matter, even in labour and administrative matters, the discretionality of the administration has boundaries that may not be surpassed, one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects. For instance, the administration may not dictate punitive administrative actions without granting the individuals sanctioned the guarantee of the due process.

"The right to obtain all the guarantees through which it may be possible to arrive at fair decisions is a human right, and the administration is not exempt from its duty to comply with it. The minimum guarantees must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons."

<sup>309</sup> See 2007 Sheinin Report, *supra* note 19, at paras. 13, 14; UN Special Mandate Holders' Report, *supra* note 10, at paras. 27-29.

Circuit Court of Appeals, that Court is limited to examining the compliance of the CSRTs with their own flawed procedures and does not have the authority to take up the merits of the case, as fundamental fair hearing protections require.<sup>310</sup> Denied access to a court to seek review of the legality of his detention, and with the deficient CSRTs and DTA as his only recourse until now, Mr. Ameziane has been deprived of his rights to a fair hearing and the accompanying due process guarantees necessary to ensure fairness under Articles XVIII and XXVI of the American Declaration.

203. Furthermore, while the Supreme Court in *Boumediene* held that Guantánamo detainees are entitled to seek the writ of *habeas*, and that the DTA's procedures for reviewing detainees' status are not an adequate or effective substitute for *habeas*, the Court was also clear in stating that the DTA and CSRT process remain intact.<sup>311</sup> Thus, despite the CSRTs' failure to comport with international due process and fair hearing standards, under the existing domestic framework, they continue to serve as initial status review tribunals for "enemy combatants" held by the United States.<sup>312</sup>

## **2. U.S. Legislation Deprives Mr. Ameziane of Judicial Remedies for Violations He has Suffered in U.S. Custody.**

204. The Commission has established that Article XVIII protects the right of victims of human rights violations to have their violations investigated, prosecuted and punished, as well as to receive compensation for the damages and injuries they sustained.<sup>313</sup>

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<sup>310</sup> See IACHR, Report on Human Rights and Terrorism, cit., at para. 239 (citing Case of Castillo Petruzzi et al., cit., at para. 161).

<sup>311</sup> *Boumediene*, 128 S. Ct. 2229, 2275 (2008).

<sup>312</sup> *Id.* at 66-67 (holding that the Executive is entitled to a reasonable period of time to determine a detainee's status, via the CSRT, before a court entertains that detainee's habeas corpus petition).

<sup>313</sup> See *Franz Britton v. Guyana*, Case 12.264, Inter-Am. H.R., Report No. 1/06, at para. 30 (2006).

205. As discussed in the admissibility section of this petition, the United States has effectively eliminated the right of Guantánamo detainees such as Mr. Ameziane to seek judicial remedies for the human rights violations (including torture and other CIDT) they have suffered at the hands of the United States. The DTA and MCA establish broad and retroactive immunity—both civil and criminal—for U.S. agents involved in the detention and interrogation of non-citizens determined by the President or his designees to be “enemy combatants.”<sup>314</sup>

206. As discussed above, the DTA further contains sweeping language barring those detained as non-citizen “enemy combatants” from presenting “any other action” against the United States or its agents in U.S. courts.<sup>315</sup> The result, in practice, is a legal framework that denies Mr. Ameziane the right to pursue justice—criminal, civil or administrative—in any court of law for many of the harms, enumerated elsewhere in this petition, committed against him by the U.S. government.

207. The denial of a right to a remedy for violations of Mr. Ameziane’s fundamental rights runs contrary to clearly established principles of human rights law<sup>316</sup> and the terms of Article XVIII of the American Declaration. In particular, it is worth recalling the longstanding and oft-repeated jurisprudence of the Inter-American system establishing that:

“all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or

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<sup>314</sup> See DTA, cit., § 1004; MCA, cit., § 8(b)(3).

<sup>315</sup> DTA, cit., § 1004:

“No court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”

<sup>316</sup> See *Almonacid-Arellano et al. v. Chile*, Inter-Am. Ct. H.R., Preliminary Objections, Merits, Reparations and Costs, Judgment of September 26, 2006 (Ser. C), No. 154 at para. 110.

arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”<sup>317</sup>

208. This Commission has likewise found that laws granting amnesty for human rights violations committed in response to perceived threats to national security violate Article XVIII of the American Declaration.<sup>318</sup>

209. The broad immunity and amnesty provisions adopted into law by the United States recall the now infamous “forgive and forget” legislation adopted by several Latin American governments in the 1980s and 1990s. The Inter-American system has stood firm against such systematic attempts to deprive the victims of gross human rights violations their day in court, even contributing to the overturning of some of the aforementioned laws. This Commission must now stand equally firm in the face of the United States’ attempts to shield its officials from any form of accountability for the torture and abuse suffered by Mr. Ameziane and others like him. The Commission should therefore find that the United States has violated Mr. Ameziane’s Article XVIII right to resort to the courts to protect his legal rights, and that the immunity provisions adopted into law by the United States *per se* violate Article XVIII.

## **V. APPLICATION OF ARTICLE 37.4 OF THE IACHR RULES**

### **A. The Commission’s Rules of Procedure Provide for an Exceptional Procedure to Join the Admissibility and Merits Phases of Urgent Cases in order to Expedite the Proceedings.**

210. The Commission’s Rules of Procedure provide for an expedited process whereby, “in serious and urgent cases, or when it is believed that the life or personal integrity of a persona is in real and imminent danger,” the Commission may hear the admissibility and merits phases of a case simultaneously.

<sup>317</sup> *Barrios-Altos v. Peru*, Inter-Am. Ct. H.R., Judgment of March 14, 2001 (Ser. C) No. 75 at para. 41.

<sup>318</sup> See IACHR, Report No. 28/92 (Oct. 2, 1992) and Report No. 29/92 (Oct. 2, 1992).

211. In this regard, Article 30.4 of the Rules states:

In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission shall request the promptest reply from the State, using for this purpose the means it considers most expeditious.<sup>319</sup>

Article 30.7 of the Rule states:

In the cases envisioned in subparagraph 4, the Commission may request that the State presents [sic] its response and observations on the admissibility and the merits of the matter. The response and observations of the State shall be submitted within a reasonable period, to be determined by the Commission in accordance with the circumstances of each case.<sup>320</sup>

Finally, Article 37.4 of the Rules provides:

When the Commission proceeds in accordance with Article 30.7 of these Rules of Procedure, it shall open a case and inform the parties in writing that it has deferred its treatment of admissibility until the debate and decision on the merits.<sup>321</sup>

212. As Article 37(4) was only recently incorporated into the Commission's Rules of Procedure, it is difficult to glean an interpretation of the article from the Commission's jurisprudence. Two considerations, however, shed light on the Commission's intentions in adopting Article 37(4) and on the circumstances in which it should be applied. The first such consideration is that Article 30(4) mirrors Article 25(1)'s reference to "serious and urgent cases."<sup>322</sup> Article 25 of the Commission's Rules defines the circumstances under which the IACHR may adopt precautionary measures. In cases where precautionary measures have already

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<sup>319</sup> IACHR Rules, art. 30.4.

<sup>320</sup> *Id.* art. 30.7.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* art. 25 ("In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.").



been adopted, a presumption of seriousness and urgency may therefore be said to exist, potentially requiring the application of Article 37(4) in the event that a petition alleges facts similar to those that led the Commission to issue precautionary measures.

213. Second, the Commission has a long record of combining the admissibility and merits phases of contentious cases, although it has traditionally done so under the more ambiguous terms of Article 37(3) of the Rules.<sup>323</sup> Article 37(3) refers generally to “exceptional circumstances,” without defining such circumstances. The Commission’s jurisprudence, however, sheds some light on its interpretation. The Commission applied Article 37(3), for example, in the *Toronto Markkey Patterson v. United States* case, after the State violated the precautionary measures issued by the Commission by putting the petitioner to death while his case was still pending.<sup>324</sup> Article 37(3) was also applied in the *Martin Pelico Coxic v. Guatemala* case, in part due to an ongoing risk of harm to the victims, relatives of an indigenous human rights defender who had been arbitrarily executed by members of Civil Self-Defense Patrols (PAC).<sup>325</sup>

214. If the Commission’s interpretation of Article 37(4) is guided by its prior interpretation of Article 37(3), it is likely to apply the former in cases where precautionary measures have been issued and the State has failed to comply with such measures, and/or where there is an ongoing risk of harm to the life or integrity of the victims. Indeed, a plain reading of Article 30(4), which alludes to “serious and urgent cases, or when it is believed that the life or

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<sup>323</sup> *Id.* art. 37.3 (“In exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The case shall be opened by means of a written communication to both parties.”).

<sup>324</sup> *Toronto Markkey Patterson v. United States*, Case 12.439, Inter-Am C.H.R., Report No. 25/05 (2005).

<sup>325</sup> *Martin Pelico Coxic v. Guatemala*, Case 11.658, Inter-Am C.H.R., Report No. 80/07 (2007).

personal integrity of a persona is in real and imminent danger,” reveals that Article 30(4) (and thus, Article 37(4)) largely codifies the Commission’s historic interpretation of Article 37(3).

**B. Mr. Ameziane’s case presents urgent circumstances that call for Application of Article 37(4) of the Commission’s Rules.**

215. In light of the preceding analysis, it is imperative that the Commission invoke Article 37(4), and proceed to examine the admissibility and merits of Mr. Ameziane’s petition simultaneously and with all due speed.

216. Shortly after Mr. Ameziane’s arrival at Guantánamo Bay, the Commission adopted precautionary measures in favor of Mr. Ameziane and all other Guantánamo detainees. The Commission subsequently reiterated and expanded these measures in 2003, 2004 and 2005 (while also calling for Guantánamo’s closure in 2006), in response to emerging information on the situation at Guantánamo and the United States’ continuing non-compliance with the measures, e.g., by establishing the flawed CSRTs as the initial status review mechanisms for detainees by stripping detainees’ right to habeas in the DTA and later the MCA, by continuing to detain and interrogate detainees under conditions and using techniques amounting to torture, by continuing to return detainees to countries where they face a real risk of torture or persecution – in short, by continuing the illegal and inhumane regime at Guantánamo for more than six years and counting.

217. As this petition demonstrates, Mr. Ameziane has directly and intensely suffered – legally, physically, psychologically, morally, and socially – the effects of the United States’ refusal to comply with the Commission’s precautionary measures. These harms will continue as his illegal detention drags on into what will soon be its seventh year.

218. Given the United States’ consistent non-compliance with precautionary measures meant to protect Mr. Ameziane from irreparable harm, as well as the ongoing and serious nature

of the harm to Mr. Ameziane's personal integrity, the Commission should not hesitate to invoke Article 37(4) of its Rules of Procedure in the instant case. After six and a half years without charge, Mr. Ameziane should be afforded the most expedited procedure possible before this Commission. He therefore respectfully urges the Commission to join the admissibility and merits of his case.

## **VI. REQUEST FOR PRECAUTIONARY MEASURES**

### **A. The Commission Has Authority to Issue Precautionary Measures.**

219. Under Article 25(1) of its Rules of Procedure, the Inter-American Commission has the authority to receive and grant requests for precautionary measures.<sup>326</sup> Where such measures are essential to preserving the Commission's mandate under the OAS Charter, OAS member states such as the United States are subject to an international legal obligation to comply with a request for such measures.<sup>327</sup>

220. Since 2002, the Commission has repeatedly exercised its authority to issue precautionary measures in order to protect Guantánamo detainees from irreparable harm. Mr. Ameziane is undoubtedly a beneficiary of these collective precautionary measures. Nonetheless, given the individualized nature of the harm to which Mr. Ameziane is exposed, as well as the U.S. government's past failure to comply with precautionary measures in favor of Guantánamo detainees, petitioners respectfully request that the Commission issue additional precautionary measures to prevent the particular harm to which Mr. Ameziane is uniquely exposed.

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<sup>326</sup> IACHR Rules, art. 25.1 ("In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.").

<sup>327</sup> See IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEASer.L/V/II.111 doc. 21 rev., paras. 71-72 (2001); *Juan Raul Garza v. United States*, Case No. 12,243, Inter-Am C.H.R., Report No. 52/01; Annual Report of the Inter-Am. C.H.R. 2000, at para. 117.

**B. The Commission Should Issue Precautionary Measures Requiring the United States to Honor its Non-Refoulement Obligations and To Refrain from Transferring Mr. Ameziane To a Country Where He Will Be at Risk of Harm.**

**1. The United States Continues to Violate its Non-Refoulement Obligations.**

221. In issuing its Precautionary Measures of October 28, 2005 on the situation of Guantánamo Bay detainees, the Commission considered information that the United States had at that point repatriated some 240 detainees from Guantánamo, including to countries where the U.S. government itself had documented a record of disappearances, torture, arbitrary arrests and detention, and unfair trials, and where some detainees faced a substantial risk of harm upon return. While the United States, for its part, indicated that its policy was to obtain specific assurances from the receiving State against torture of the detainee being transferred, the Commission held that such assurances were inadequate safeguards because the United States had no method of enforcing or monitoring compliance with the assurances once the detainee was removed – a “defect” that the Commission noted had been criticized by other international human rights bodies. Noting the “absolute nature” of the obligation of *non-refoulement* – an obligation that does not depend on the claimant’s status as a refugee – the Commission requested that the United States:

“[T]ake the measures necessary to ensure that any detainees who may face a risk of torture or other cruel, inhuman or degrading treatment if transferred, removed or expelled from Guantánamo Bay are provided an adequate, individualized examination of their circumstances through a fair and transparent process before a competent, independent and impartial decision-maker. Where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other mistreatment, the State should ensure that the detainee is not transferred or removed and that diplomatic assurances are not used to circumvent the State’s non-refoulement obligation.”<sup>328</sup>

<sup>328</sup>

IACHR Precautionary Measures No. 259 (2005).

222. In the face of this request in 2005 and again in 2006,<sup>329</sup> the United States has continued to repatriate detainees to countries with well-documented records of abuse where detainees have faced a substantial risk of torture or mistreatment – a risk that has played out in each case. Since 2005, the Department of Defense has transferred more than half a dozen detainees to Libya,<sup>330</sup> Tajikistan,<sup>331</sup> and Tunisia,<sup>332</sup> where they have effectively disappeared, been tortured and/or sentenced to lengthy prison terms after unfair trials. These are countries where, again, the United States itself has recognized torture, arbitrary arrest, incommunicado detention, poor prison conditions and unfair trials as persistent concerns, despite the prohibition of such practices under the domestic laws of these countries,<sup>333</sup> and where persons detained on terrorism-related charges in particular receive harsher treatment than other detainees.<sup>334</sup>

223. In June 2007, for example, the United States repatriated two Tunisian detainees, relying in part on promises of humane treatment from the Tunisian government.<sup>335</sup> One of the men had been convicted in absentia on terrorism-related charges by a Tunisian military court and was transferred from Guantánamo without ever being informed of the conviction or afforded the chance to speak with his lawyer.<sup>336</sup> Both men were hooded and taken for several days of abuse interrogation by Tunisian authorities upon arrival, and then held in solitary confinement for more

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<sup>329</sup> IACHR Resolution No. 2/06 on Guantánamo Bay Precautionary Measures, Jul. 28, 2006.

<sup>330</sup> See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 1287-06, Dec. 17, 2006; No. 1166-07, Sept. 29, 2007.

<sup>331</sup> See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 233-07, Mar. 1, 2007.

<sup>332</sup> See U.S. Dep't. Defense, "Detainee Transfer Announced," News Release No. 765-07, June 19, 2007.

<sup>333</sup> See, e.g., U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Libya (Mar. 11, 2008). The report noted, e.g., that domestic law prohibits torture and cruel and inhuman treatment, but security personnel routinely tortured prisoners during interrogations or as punishment.

<sup>334</sup> See, e.g., U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Tunisia (Mar. 11, 2008).

<sup>335</sup> See Human Rights Watch, *Ill-fated Homecomings: A Tunisian Case Study of Guantánamo Repatriations*, at 3, Vol. 19, No. 4(E) (Sept. 2007).

<sup>336</sup> See *id.* at 4.

than a month.<sup>337</sup> One of the detainees reported that things were so bad that he would have rather stayed in Guantánamo.<sup>338</sup>

**2. Mr. Ameziane Would Be at Risk of Serious Harm if Returned to Algeria.**

224. Should the United States transfer Mr. Ameziane to Algeria, it would expose him to a real risk of being mistreated or tortured and arbitrarily deprived of his liberty. As previously stated, separate from his association with Guantánamo, Mr. Ameziane would already be at risk of being targeted by the Algerian government if returned by virtue of his and his family's religious observance, and the fact of his prior application for asylum in Canada. His association with Guantánamo and Afghanistan alone are enough to create a substantial risk that he would be subjected to abuse or torture in detention and during interrogations upon his return, and perhaps convicted and sentenced to several years of imprisonment.

225. Concerns for Mr. Ameziane's safety are warranted by the findings of the U.S. government itself. In its latest report on human rights conditions in Algeria, the Department of State noted reports that government officials and members of the Department of Information and Security (DRS) – the military's intelligence agency, which plays a key role in interrogating though to possess information about alleged terrorist activities<sup>339</sup> – frequently use torture to obtain confessions, despite the prohibition of torture in the Algeria Constitution and penal code, and that individuals arrested in connection with alleged terrorist activities are at particular risk.<sup>340</sup> Such detainees have reportedly been beaten, tortured with electric shocks, suspended from the

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<sup>337</sup> See *id.* at 4-8.

<sup>338</sup> See *id.* at 8.

<sup>339</sup> See Amnesty International, *Unrestrained Powers: Torture by Algeria's Military Security* at 7 (July 10, 2006), available at <http://www.amnesty.org/en/library/info/MDE28/004/2006> (last visited August 5, 2008).

<sup>340</sup> See U.S. Dep't. State, Country Reports on Human Rights Practices 2007, Algeria (Mar. 11, 2008).

ceiling and forced to swallow large amounts of urine, dirty water or chemicals to force confessions.<sup>341</sup>

226. Amnesty International reports that individuals suspected of terrorism can legally be held by the DRS without charge or access to lawyers for as long as 12 days – a period of detention called *garde à vue* – and that the DRS frequently violates this already excessive time limit, in some cases by several months or even years.<sup>342</sup> During *garde à vue* detention by the DRS, detainees are routinely held incommunicado in effectively secret facilities and denied access to medical care.<sup>343</sup> In one of the most frequently used DRS facilities, detainees are held in small, poorly ventilated cells without access to daylight. They are forced to sleep on concrete floors, and are allowed little or no access to toilets and showers.<sup>344</sup>

227. In July 2008, the United States transferred two Algerian detainees from Guantánamo. The men were held incommunicado in *garde à vue* for a period of approximately 12 days.<sup>345</sup> Their treatment during this time is still unknown. They have since appeared and currently face terrorism-related charges.

### 3. Request for Precautionary Measures

228. As the Commission stated in its October 2005 Precautionary Measures, “[t]here is no question that transferring or removing a detainee to a country where he or she may face a real risk of torture or other mistreatment can give rise to a serious and urgent risk of irreparable harm

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<sup>341</sup> See *id.* (citing Amnesty International Report 2007).

<sup>342</sup> Amnesty International, *Unrestrained Powers: Torture by Algeria's Military Security*, *supra* note 339, 16-17.

<sup>343</sup> *Id.* at 19.

<sup>344</sup> *Id.* at 22-23.

<sup>345</sup> See U.S. Dep't. Defense, “Detainee Transfer Announced,” News Release No. 561-08, July 2, 2008; Human Rights Watch, “US/Algeria: Reveal Location of Guantánamo Detainees,” Press Release, Jul. 11, 2008.

warranting precautionary measures from this Commission.”<sup>346</sup> In light of the real risk of irreparable harm that Mr. Ameziane would face if forcibly returned to Algeria, petitioners respectfully request that the Commission issue precautionary measures requesting the United States to honor its non-refoulement obligations with respect to Mr. Ameziane. Specifically, the United States should:

1. Take the measures necessary to ensure that, prior to any potential transfer or release, Mr. Ameziane is provided an adequate, individualized examination of his circumstances through a fair and transparent process before a competent, independent, and impartial decision-maker.
  2. Ensure that Mr. Ameziane is not transferred or removed to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture or other mistreatment, and that diplomatic assurances are not used to circumvent the United States’ non-refoulement obligations;
  3. Comply with a court order in Mr. Ameziane’s habeas case to provide 30 days’ advance notice to his lawyers prior to any transfer from Guantánamo Bay, including the proposed destination and conditions of transfer; and<sup>347</sup>
  4. In the event that his release from Guantánamo is authorized by the government or ordered by a court, accept him into the United States or facilitate his resettlement in a safe third country (for example, Canada).
- C. The Commission should Issue Precautionary Measures Requiring the United States to Cease All Abusive Interrogations and Any Other Mistreatment of Mr. Ameziane and to Ensure him Humane Conditions of Confinement, Adequate Medical Treatment, and Regular Communication with his Family.**
- 1. Mr. Ameziane’s Treatment and Conditions of Detention at Guantánamo Continue To Violate His Right to Humane Treatment.**

229. Despite the Commission’s repeated emphasis in its jurisprudence as well as its precautionary measures regarding Guantánamo detainees on the non-derogable nature of the right to humane treatment and the prohibition against torture, Mr. Ameziane’s physical, psychological and moral integrity have been and continue to be violated daily by his treatment

<sup>346</sup> IACHR Precautionary Measures No. 259 (Oct. 2005).

<sup>347</sup> See Order, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. April 12, 2005), annexed to this petition.



and conditions at Guantánamo. He continues to be subjected to abusive and unlawful interrogations, despite his lawyers' repeated requests to the authorities at Guantánamo for an investigation into the matter. For over a year, he has been detained in a small cold cell in Camp VI in conditions of solitary confinement, deprived of natural light and air, contact with other prisoners and exposure to the sun or exercise save for his "recreation" time in a small caged-in area. In Camp VI, his "comfort items," such as his toothbrush or toothpaste, can be taken away for any infraction at his guards' discretion, and the facility's structure and acoustics make communal prayer effectively impossible. To this day, he has never received adequate and effective medical treatment for his failing eyesight, his rheumatism or his various injuries resulting from physical beatings by guards. The provision of care for his needs has also been made contingent on his cooperation with interrogators. For six and a half years, he has also been deprived of virtually all communication with his family.

230. In its previous precautionary measures, the Commission has repeatedly called for the United States thoroughly and impartially to investigate, prosecute and punish all instances of torture and other mistreatment against Guantánamo detainees. No one has ever been investigated or held accountable for any of the mistreatment Mr. Ameziane has suffered at Guantánamo, or, if any inquiries, reviews or disciplinary action have been carried out, they have not resulted in effective protection against continuing harm both in his conditions and treatment at Guantánamo.

## **2. Request for Precautionary Measures**

231. In light of Mr. Ameziane's continuing mistreatment and his current conditions of confinement, petitioners respectfully request that the Commission issue precautionary measures to protect Mr. Ameziane from further irreparable physical and psychological harm while he remains in U.S. custody. Specifically, the United States should:

1. Cease all abusive interrogations of Mr. Ameziane;

2. Ensure that Mr. Ameziane's conditions of confinement comply with international standards for the treatment of prisoners for the remainder of his detention at Guantánamo, namely: prohibit his detention in conditions of isolation; ensure that his cell meets minimum requirements for floor space, lighting, ventilation and temperature, and has windows affording natural light and air, and ensure that he is permitted adequate daily exercise in open air;
3. Prohibit all corporal punishment and punishment that may be prejudicial to Mr. Ameziane's physical or mental health, and prohibit the use of chains and irons as restraints;
4. Take immediate measures to provide Mr. Ameziane with prompt and effective treatment for his physical and psychological health, and ensure that such care is not made contingent on his cooperation with interrogators or any other condition;
5. Ensure that Mr. Ameziane is able to satisfy the needs of his religious life without interference, including group prayer with other prisoners;
6. Enable Mr. Ameziane to communicate regularly with his family through correspondence and visits.

## **II. CONCLUSION AND PRAYER FOR RELIEF**

232. For the aforementioned reasons, Petitioners respectfully request that the

Honorable Commission:

1. With regard to Mr. Ameziane's request for precautionary measures:
  - a. Urgently issue the necessary and appropriate precautionary measures to prevent further irreparable harm to Mr. Ameziane's fundamental rights, in accordance with Sections VI.B.3 and VI.C.2;
2. With regard to Mr. Ameziane's individual petition against the United States:
  - a. Consider the admissibility and merits of this petition simultaneously, in accordance with Article 37(4) of the Commission's Rules of Procedure, given the serious and urgent nature of the case and the ongoing violations of Mr. Ameziane's fundamental rights;
  - b. Declare the petition admissible and find that the United States has violated Mr. Ameziane's rights enshrined in Articles I, III, V, VI, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man; and

- c. Order the United States to provide prompt and adequate reparations for the violations suffered by Mr. Ameziane.

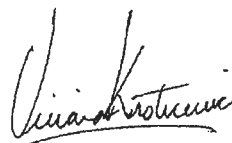
The Petitioners thank the Commission for its careful attention to this pressing matter.

Dated: August 6, 2008

Respectfully submitted,



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## **LIST OF APPENDICES**

1. Petition for Writ of Habeas Corpus, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. Feb. 24, 2005)
2. Order, *Ameziane v. Bush*, Civil Action No. 05-392 (D.D.C. April 12, 2005)
3. Combatant Status Review Tribunal (CSRT) and Administrative Review Board (ARB) unclassified records from 2004-2006

The Road to Guantanamo [FULL Documentary] - YouTube.flv