

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABD AL AZIZ SAYER UWAIN)
AL SHAMMERI, *et al.*)
Plaintiffs,)
v.) Civil Action No. 02-CV-0828 (CKK)
UNITED STATES OF AMERICA,)
et al.,)
Defendants.)

DECLARATION OF JAMES R. CRISFIELD JR.

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

1. I am the Legal Advisor to the Combatant Status Review Tribunals. In that capacity I am the principal legal advisor to the Director, Combatant Status Review Tribunals, and provide advice to Tribunals on legal, evidentiary, procedural, and other matters. I also review the record of proceedings in each Tribunal for legal sufficiency in accordance with standards prescribed in the Combatant Status Review Tribunal establishment order and implementing directive.

2. I hereby certify that the documents attached hereto constitute a true and accurate copy of the portions of the record of proceedings before the Combatant Status Review Tribunal related to petitioner Abd Al Aziz Sayer Uwain Al Shammeri that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted information that would personally identify members of the detainee's family, as well as their addresses and phone numbers, and certain U.S. Government

personnel in order to protect the personal security of those individuals. I have also redacted internee serial numbers because certain combinations of internee serial numbers with other information become classified under applicable classification guidance.

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

Dated: 15 Oct 04



James R. Cristfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser: 0217
15 October 2004

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From: Director, Combatant Status Review Tribunal

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

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

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

A handwritten signature in black ink, appearing to read "J. M. McGARRAH".

J. M. McGARRAH
RADM, CEC, USN

Distribution:
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14 Oct 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #8 of 13 September 2004
(2) Record of Tribunal Proceedings

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

- a. The detainee was properly notified of the Tribunal process and made a sworn statement at the Tribunal.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with all provisions of references (a) and (b). Note that some information in exhibits R-5 and R-6 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. Note also that the Translator was allowed to essentially give expert testimony regarding the explanation of "Omra" to the Tribunal without being placed under oath (see page 3 of enclosure (3)). The oath administered to interpreters during the tribunal only states that they "will faithfully perform the duties of interpreter." Giving testimony is not one of the duties of an interpreter. Nonetheless, in my opinion this was a minor error that did not prejudice the detainee. I do not believe that any corrective action is necessary.
- d. The detainee made no requests for witnesses or other evidence.
- e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

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

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

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



JAMES R. CRISFIELD JR.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

13 Sep 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #8

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] Colonel, U.S. Army; Member

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

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



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

8 October 2004

MEMORANDUM FOR DIRECTOR, CSRT

FROM: OARDEC FORWARD Commander

SUBJECT: CSRT Record of Proceedings ICO ISN# [REDACTED]

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

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


DAVID L. TAYLOR
Colonel, USAF

(U) Combatant Status Review Tribunal Decision Report Cover Sheet

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

(U) TRIBUNAL PANEL: #8

(U) ISN#:

Ref: (a) (U) Convening Order for Tribunal #8 of 13 September 2004 (U)
(b) (U) CSRT Implementation Directive of 29 July 2004 (U)
(c) (U) DEPSECDEF Memo of 7 July 2004 (U)

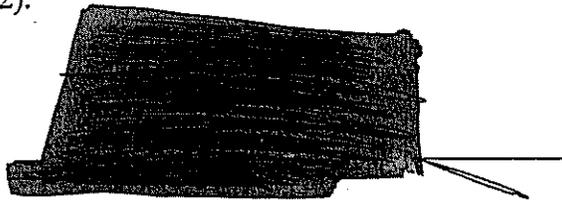
Encl: (1) (U) Unclassified Summary of Basis For Tribunal Decision (U)
(2) (U) Classified Summary of Basis for Tribunal Decision (S/NF)
(3) (U) Summary of Detainee/Witness Testimony (U/FOUO)
(4) (U) Copies of Documentary Evidence Presented (S/NF)
(5) (U) Personal Representative's Record Review (U)

1. (U) This Tribunal was convened on 29 September 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 29 September 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee # [REDACTED] is properly designated as an enemy combatant, as defined in reference (c).

3. (U) In particular, the Tribunal finds that this detainee is a member of, or affiliated with, al Qaida, 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

**UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION**

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

TRIBUNAL PANEL: _____ #8 _____

ISN #: _____

1. Introduction

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

2. Synopsis of Proceedings

a. The unclassified evidence presented to the Tribunal by the Recorder indicated that the Detainee traveled from Kuwait to Iran and then to Afghanistan soon after 11 September 2001. He was arrested by the Pakistani Army while attempting to cross into Pakistan from Afghanistan without identification documents. One of the Detainee's known aliases was on a list of captured hard drives associated with a senior al Qaida member. The Detainee chose to participate in the Tribunal process. He called no witnesses, requested no unclassified or classified documents be produced, made an oral, sworn statement and also provided a written statement.

b. The Detainee, in his oral/written statement (Exhibit D-b), denied being a member of al Qaida by saying that "this accusation does not have anything to support it, but it is merely words with no evidence to prove it." The Detainee went on to say that he journeyed to Afghanistan to teach and to help the needy and that he had thought that the fighting would be far away from where he was going. However, once he arrived in Afghanistan and the Taliban fell from power, every Arab in Afghanistan was wanted dead or alive. He claimed he did not need a passport while traveling around Afghanistan and had left it at the home of his Afghani guide. Since the situation was so bad, the Detainee decided to not return to the Afghani's home to retrieve his passport, but instead starting walking toward Pakistan. He crossed into Pakistan assuming that the Pakistani police would detain him and turn him over to his home country (Kuwait) once they found out his identity. Furthermore, the Detainee claimed that he did not use an alias, that he had, and used, no other name but his own name. He could not prevent someone from putting his name on a computer. If he wanted to hurt Americans, he didn't have to travel to Afghanistan to do it, as there are Americans in Kuwait and he could have hurt them there.

c. The Tribunal recessed the proceedings in order to attempt to produce additional information that was referenced in the Classified portion of the session.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a through D-d and R-1 through R-19.
- b. Testimony of the following persons: None
- c. Sworn statement of the Detainee.

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

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

5. Discussion of Unclassified Evidence

The Tribunal found the following unclassified evidence persuasive in making its determinations:

- a. The Recorder offered the following exhibits.

(1) Exhibit R-1 was introduced 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.

(2) Exhibit R-2, the request from the Federal Bureau of Investigation to redact certain information from the FBI Form 302 (or FD 302), was not helpful to the Tribunal in determining whether the Detainee was properly classified as an enemy combatant. The Tribunal therefore found Exhibit R-2 to be without merit.

(3) Exhibit R-3, Answers to the Questions for the Family of Abd Alaziz Sayir Al Shamari, undated. This document gave the Tribunal background information from the Detainee's family about ISN [REDACTED]. The Detainee's family was unaware that he went to Afghanistan and knew only that he was traveling to Pakistan. They believed he traveled on 15 October 2001. The family additionally stated that he did not quit his job (as will be discussed in the Classified portion of this Tribunal Decision Report) and that his brother filed a resignation on his behalf rather so that the Detainee would not be fired. While the Tribunal could infer, for the most part, to which questions the family was responding, the

questions were not included in the packet. There were some answers, however, to questions that the Tribunal could not figure out. The Tribunal President directed the Tribunal Judge Advocate to contact the Legal Advisor to ensure that these questions be included in the case packages.

b. The Personal Representative offered Exhibit D-b, Written and Signed Statement by the Detainee with Translation. This document was authored by the Detainee. As outlined in paragraph 2(b), the Detainee details his answers in response to allegations made against him in the Unclassified Summary of Evidence (Exhibit R-1).

The Tribunal found the following unclassified evidence unpersuasive in making its determinations: The Recorder offered Exhibit R-4, a civil complaint filed on behalf of the Detainee by legal counsel in U.S. Federal Court. A cover sheet from the Detainee's legal counsel is dated 8 July 2002. This document was a copy of an "amended complaint" that has been filed for the Detainee in the United States District Court for the District of Columbia by [REDACTED], the "next friend" of the Detainee. While it illustrated that fact that the Detainee is listed as a plaintiff in a civil case currently pending with the U.S. District Court, it had no bearing on the Detainee's enemy combatant status.

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

Other than the issue raised in paragraph 5a(3) above, 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 requested or deemed necessary.

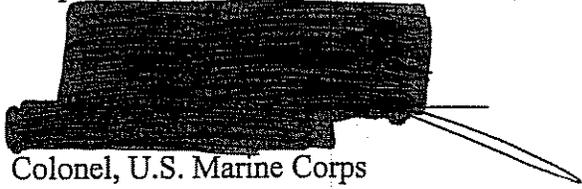
b. The Detainee understood the Tribunal proceedings. He actively participated in the hearing. He also asked questions about the Tribunal members' background in legal affairs, fairness of the proceedings, and wanted to know who was present in the room. The Tribunal President introduced the individuals present in the room and provided generic information about the composition of the Tribunal panel.

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

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

A large black rectangular redaction covers the signature of the Tribunal President. The redaction is positioned above the typed name and title.

Colonel, U.S. Marine Corps
Tribunal President

Unsworn Detainee Statements

Detainee: I would like to know who is present with us in the Tribunal.

Tribunal President: As identified, the Tribunal Members, the Recorder, the Reporter, the Translator, and you know your Personal Representative. These other two gentlemen are journalists.

Detainee: Reporters [referring to the journalists]?

Tribunal President: Yes, for this open session.

Detainee: Tell them welcome.

Tribunal President: You have no objections that they attend this session?

Detainee: No. I have no objections, but the Commanders of the Tribunal, do they have a background in law or law diplomas, or are they just officers?

Tribunal President: They are military officers and one is a Judge Advocate General, which is a military lawyer.

Detainee: The others, do they know anything about the law?

Tribunal President: We have a general knowledge of the military and the Tribunal proceedings.

Detainee: I am a civilian, so how can you try me in a military court? Under what basis?

Tribunal President: This is not a legal proceeding. This is an administrative hearing to determine your enemy combatant status.

Detainee: Good.

The Detainee asked what the Detainee Election Form was and the Tribunal President read it to him. The Detainee then stated he would explain why he did not call any witnesses when he makes his statement.

When the Tribunal President stated the Tribunal Members needed a minute to look over the unclassified evidence to become familiar with it, the Detainee stated it would have been better if the Tribunal Members had been familiar with it [the unclassified evidence] beforehand; that way, if there were any comment about it, the Detainee would have been able to respond. Additionally, the Detainee was concerned that a question would arise after he had left the Tribunal and he would not have the opportunity to answer the question.

The Tribunal President stated he would have an opportunity to review the evidence while the Detainee was still in the Tribunal and would be able to address any questions to the Detainee.

The Tribunal President told the Detainee the reason the Tribunal Members had not looked at any evidence prior to the Tribunal was to keep a clear mind as to the Detainee and his enemy combatant status.

Sworn Detainee Statement

In the name of God, most Gracious, most Merciful. Thanks to Allah who, there is no God but him, and prayers and peace be upon our prophet Mohammed, the last of the prophets and messengers.

Hear now: From the beginning, the reason I didn't call any witnesses is because this matter does not require calling any witnesses. I know that the accused is innocent until proven guilty. In all of the law, witnesses are brought for the accused. I haven't heard of witnesses being called to prove that someone is innocent and has not committed a crime. First of all, prove that I'm a criminal, and after that I would need to prove that I'm innocent, and I will bring witnesses. That's why I did not present any witnesses.

Regarding my answer to the accusation that I am a member of Al Qaeda, so I say: that this accusation does not have anything to support it, but it is merely words with no evidence to prove it. As if monetary receipts were found on me to indicate that I had given financial support to Al Qaeda, or that I was arrested in a place specific to Al Qaeda, or that I was seen attending their meetings, or that it was found that I have a strong relationship with Usama Bin Laden, or during the time of my arrest or capture, I was found with a weapon. So on what grounds have I been associated with Al Qaeda when none of these things have happened?

The answer to the accusations that have been brought upon me. The first point, number 1. What is the relationship between traveling to Afghanistan and Al Qaeda? How can it be that travel to a large country with millions of people is travel for Al Qaeda, which does not even represent 1% of that number or population? For is a person who traveled to China considered a communist? And is a person who traveled to Iraq considered loyal to the Baath Party? So, how did you make the fact that I traveled to Afghanistan an accusation that I am a part of Al Qaeda?

As for the fact that I traveled from my country, Kuwait, after the events of September, this is a very natural thing. These events, the events of September, occurred in America. So the chaos and confusion was not present anywhere but America only. But as for the rest of the countries in the world, the situation was very normal. People were going about their routine lives. So, there was nothing strange about my trip.

Also I had met an Afghani man on one of my trips to the "Omra" whose name was Mohamed and he lives in Iran.

The translator clarified "Omra" is when you travel to Mecca for worship. You can do it any time of year, except for the designated time for Hajj.

This "Omra," millions of people go and do it every year. So this Afghani man proposed to me to travel to Afghanistan to teach the Koran and the Arabic language and Islamic studies. Because there are so many people in Mecca at that time, it is very normal for you to meet people and say "where are you from" and things like that. So, even though a person might have been a friend from before, it is normal to meet people during that time.

Returning to the subject. So, he proposed to me to travel to Afghanistan to teach the Quran, the Arabic language and Islamic studies. Of course, this is after he learned that I studied Islamic Studies for 4 years at the Imam Mohamed Bin Saud Islamic University. I had graduated with a "Very Good," just a few marks away from "Excellent."

I don't recall the date I met him [the Afghani man]. This man gave me his phone number and said to me "If you wish to accept my offer" and I mean traveling to Afghanistan to teach, "then call me on my phone and I will arrange everything." Then I returned to Kuwait and after a period of time when the problems happened in Afghanistan, I decided to accept the offer to teach in addition to helping some of the needy after my family had transferred some money to me. That was the idea, especially after I had seen on television the needs of the people.

That is not a peculiar thing because rescue work does not happen unless it is after a disaster or problem. In times of peace and security and prosperity, no one needs rescuing.

For your knowledge, war in Afghanistan had not stopped for many long years so there was no difference between before September or after. I had thought that the war would only be on the battlegrounds because I had seen when Iraq was in my country; I saw the fighting was only on the front lines. It would not go into the cities or villages, or that there would be an assassination attempt on certain individuals, for example, Usama Bin Laden, Mullah Omar, or any of the big figures that were wanted by America. For example, when they bombed the palaces of Moammar Khadafi in Lybia. After the event of a plane in Lockerbie [Scotland] or their kidnapping, as it had happened to the president of Panama, Noreiga, and that the matter would end at that.

I thought my trip would be via Iran, then Pakistan, and that is what I told my family, because I knew that the relationship between Iran and Afghanistan was bad because Afghanistan had killed diplomatic individuals who were Iranian, and that's when things started to deteriorate between the two countries. I thought the borders would be closed. But after calling that Afghani man Mohamed, he said to me "It is possible for us to enter

ISN# [REDACTED]

Enclosure (3)

Page 3 of 14

Afghanistan via Iran, for the border crossing point between them is operating," so I said "Then there is no need to travel to Pakistan, particularly since it requires another visa."

I just want to say that it is my nature to smile. I am always smiling, so it's nothing out of the ordinary. Don't think it is anything else.

The Detainee had been smiling throughout the proceedings.

And I had intended to stay for a short period then return. There are several facts that support that, including that I had sent my High school and University diplomas to the Arab Republic of Egypt so that I could continue my studies towards my Masters in Islamic Studies. I had paid my registration dues, and I was waiting for an answer to my application. This was before my travel. This was done through the Ministry of Higher Education in the country of Kuwait. It is a Government organization. My application, this ministry, was not closed until after my imprisonment.

If you want to verify this point, you can get in touch with your embassies in Kuwait and they will get a hold of the Ministry of Higher Education in Kuwait and they will give them receipts or documents that will show that I had registered with them and was waiting for my acceptance into that university.

I also presented my paperwork in order to improve my position at work from a teacher at Dar Al Quran, which is a part of the Ministry of Islamic Affairs and Charity, to a teacher at the Institute of Applications after I was sent by the government to obtain a Doctorate Degree. Those institutes award diplomas higher than High School and less than Bachelors. This did not happen because I was imprisoned.

You can also verify this. I had sent an application and I was waiting for a reply to set up an interview. After I came to this prison, I heard from my family that they [Ministry of Higher Education] had called my family and were looking for me to set up an interview.

So, how could I have traveled to meet with Al Qaeda, when I had made all those arrangements? And for your knowledge, my trip was via official channels and with government issued travel documents. There was nothing in my Kuwaiti passport to indicate that it was forbidden to travel to Afghanistan, for if there was a restriction, the mistake is on my government's part that did not tell me of this restriction. But it was written in my passport, on the first page, "This passport is valid for travel to all countries in the world unless it is otherwise mentioned" and they did not mention Afghanistan.

The Kuwaiti government does not restrict travel to any countries, even any Kuwaiti national who wants to travel to Iraq; the government does not tell them that they cannot travel to Iraq. The border point between Kuwait and Iraq is closed. If someone wanted to travel there, there is no law in Kuwait that says it is forbidden.

So, how can you say that my travel to Afghanistan was a crime, when my government did not restrict that travel?

This is the answer to the second point. After the fall of the Taliban, every Arab in Afghanistan was wanted dead or alive, whether or not he was a combatant in the first place. I heard they had started buying Arabs and selling them, so I became afraid at hearing this news so I decided to escape quickly.

It is known by you that a traveler, most of the time, does not carry his passport with him but leaves it with his valuables and luggage, especially in a country like Afghanistan. There is no one to ask anyone about identification in Afghanistan. You know that there are many highway robberies in Afghanistan, so how can I carry my passport and official documents with me?

That's why I could not return to my luggage. The events had started to evolve a very fast and dangerous evolution, so I said to the man that was with me "I want to leave quickly," so he arranged my departure for me.

As you know the war or fighting inside the country started and the government fell and people started to fight amongst themselves and the weak escaped. They would not have taken refuge at the known border stations, because the armed individuals, or assassins or mercenaries had taken them over and would kill anyone who went there. That is exactly what happened in Afghanistan. Of course, you know that people in Afghanistan kill for money. Killing had become the simplest thing.

So it became natural for me to walk and escape to Afghanistan, until I could go to the embassy there which would arrange my situation. What indicates that I am not a dangerous person, and that I have no secrets, is that I turned myself into the police without a chase or resistance or anything else. I went to them.

And then what is the relationship between my crossing the border and Al Qaeda? Is everyone who crossed the border at that time a person who is loyal to Al Qaeda? Those are words that cannot be said, for when Iraq invaded my country, Kuwait, and men and children and women were escaping to Saudi Arabia, Jordan and Iran, we did not see anyone arrest them and tell them you are followers of Saddam Hussein. Knowing that they were crossing over at the border stations secretly and without travel documents, and those countries' authorities would not arrest them but would help them and construct medical tents for them to treat them in. Under those circumstances no one asks for documents because the circumstances are not normal in that part of the world.

And then let's assume that I made a mistake in this matter, I mean in my crossing the border without identification documents. The known procedure in a situation like this in all countries in the world is to detain me until the Pakistani authorities could find out my identity and country then send me back to my country. Not to turn me over to the American authorities, as a member of Al Qaeda and the Taliban, for this is an

unbelievable thing. Knowing that they asked me for my personal information and I gave it to them at the first moment, and they said to me "We will verify this with the Kuwaiti government." So, on what basis did they turn me over to you?

This is the answer to the third point. My name is Abd Al Aziz Sayer Al Shammri, and I have no other name but this name. There is no relationship between me and any person from Al Qaeda. If a name like mine was found on a list with one of the people, then this would be a likeness in names because there are millions of Arab people that have my same name. My tribe is very large in the Gulf. My tribe is present in Kuwait, Saudi Arabia, Jordan, Syria and Iraq. The name, Abdul Aziz, and the name of the tribe is very well known and spread out. For my name, many others have it as well.

You haven't found my personal identification with that man, so you could say you placed these things with him, so this indicates a relationship between you two, other than a name similar to mine was found.

And let's assume the name found was my name. I cannot prevent any person from writing my name in anything they want because this is not under my control. For example, if Hitler wrote my name, I would not go to him, and tell him why did you write my name. As long as I don't have a relationship with him, then I am not responsible for his writing. And whomever wants to, will write whatever they want. I don't have a relationship with anyone. Also, I asked my Personal Representative, "What was the title to these names?" He said they were just names, there was no title. To this, I say, besides that list is nothing but names only nothing else and nothing is known about it. How can you say it is from Al Qaeda? And you found just names, nothing else.

That is if this list is not a fake from the interrogators, for any person can type into the computer whatever they wanted any time they wanted, then say this was found on the computer.

I have a final note. How could I be associated with Al Qaeda and I never traveled to them? Not even one time. I'm sure the Kuwaiti government gave you a list of my travel, dates and locations and not one of those travel dates or locations was to Afghanistan, or the countries that are surrounding Afghanistan. So, how can I be part of an organization when I never went and traveled and met them?

Also, you know that Al Qaeda is not a political organization, so that it would give political instructions. They are people who fight. Which means, that someone that was part of them has to go and train to learn how to fight. So, how can I be a part of them when I never went to train with them and I never went to their meetings?

Also, if I had wanted to fight against the Americans, the matter did not require me traveling to Afghanistan. The Americans are present in Kuwait. So, if I wanted to fight with them, I would have fought them in Kuwait. You saw how people are bombing Americans in Saudi Arabia. If I had any hatred on my part, I would have done that to the

Americans in Kuwait. There was no need for me to travel. If you're saying that the American is my enemy, these Americans are there in front of me. The mind does not say to leave my enemy when he is in front of me and go to another country to fight him. When that did not happen, it is proof that there is no hatred on my part towards the Americans.

This answer that I just read to you is based on the information that you presented to me. If you gave me any other information, I can answer it. I am sure that if all the interrogators in America came in and interrogated me, they cannot bring anything to me that will harm me because I am a peaceful person and I don't have anything.

I think the words I told you are sufficient, that is, if these proceedings are real and legal official proceedings, and it is not, as some say, a play or movie.

These are the words of Abd Al Aziz Sayer Al Shammeri, presented to you. You look at whatever you want to look at.

Based on the accusations and the points you have shown me, this concludes my statement. If there is something else that I do not know, if you tell me, I will clarify it.

I have one more thing to say. Some of the things I wrote down and some of the things I added today.

The Detainee is referring to his written statement that was entered as Exhibit D-b. The Detainee read from his statement and elaborated on certain points.

Questions by the Tribunal President

Q: Referencing the family affidavit, have you seen it?

A: Yes, my Personal Representative showed it to me.

Q: It identifies that you joined the Kuwaiti military in 1992. Is that true?

A: Yes.

Q: 1990 is when Iraq invaded Kuwait. Do you recall?

A: I don't remember the exact date.

Q: You recall that tragic event?

A: Of course I remember, but I forgot the date.

Q: Can you tell us how that affected you and your family?

- A: My older brother, God rest his soul, was killed by the Iraqi forces. I saw the tragedy in the streets. They were killing people in the streets. Yes, I saw this. One of the students that was with me at school, they killed him in front of his mother and brothers and sisters. So, yes, of course, it affected me very much.
- Q: I am sorry about the loss of your brother.
- A: Thank you, very much.
- Q: Is this part of the reason you joined the military in Kuwait?
- A: No, a lot of people in Kuwait join the military just as a job. It pays good wages. You know that Kuwait is a country that cannot really fight. It is a very small country; it is not capable of going to war.
- Q: Your father is a retired policeman?
- A: Yes, he's retired.
- Q: Why did you pick September of 2001 to travel to Afghanistan?
- A: It's just like I told you, because of the trouble that was over there; to help. Before the events, I had gotten the offer to go to Afghanistan. It was kind of like an excuse to travel. You know that charity organizations, they only go to places where there is trouble or need. They don't go to any other countries.
- The situation in Afghanistan was not dependent on the events of September. Wars had been going on in Afghanistan for 20 or 25 years.
- Q: You had no opportunity prior to that to travel to Afghanistan?
- A: Travel is of my own will. There is nothing really that made me travel at this moment. It was just travel.
- Q: Have you traveled to other countries with the same charitable intent?
- A: It was to close neighboring countries, but just to give some money to the poor or something. For example, in Kuwait, any person who is poor, the government gives them wages. In other countries, like Saudi Arabia and the United Arab Emirates, we know that there are very poor people there and the government does not help them. Sometimes you travel; you would have some money and just distribute it because you know in those places there are people who are needy. My studies were in the United Arab Emirates, so I know that situation there.

Also, I traveled to Mecca several times and saw the beggars there. People pay or give a lot of money in Mecca because they think that place is blessed.

There was no need for me to travel to far places, except for this one time.

Q: While you were in Afghanistan, did you ever have, in your possession, a weapon?

A: No.

Q: While you were in Afghanistan, did you observe violent acts against Afghans or other individuals?

A: The nature of the reason why I went there is very far from the things you are talking about.

The Tribunal President stated that his questions were relevant for determining the Detainee's enemy combatant status. The Detainee did not understand, so the Tribunal President read the definition of enemy combatant to the Detainee. The Detainee understood.

Okay, I didn't see any violent acts.

Questions by the Tribunal Members

Q: Do you speak English?

A: Little.

Q: That you've learned here?

A: In Kuwait they teach us English for about 8 years. It has now been 12 years. Being around the soldiers here helps us.

Q: How long have you been here, at the camp?

A: Almost 3 years.

Q: I want to stay on the line of questioning you heard a few minutes ago. The problem we have with a certain portion of your statement is that you indicated you chose not to carry your passport with you because you said Afghanistan was such a dangerous place. We understand that there was no government functioning there because you said it was after the fall of the Taliban. We presume, therefore, virtually everyone carried weapons or sought personal protection of some kind, yet you said you did not carry a weapon, even though you were concerned with the danger. In addition, even though Afghanistan had no functioning government,

Pakistan did. We wonder how it was that you thought you could gain entry into Pakistan with no passport?

A: Good. Please continue what you were saying.

Q: Can you please reconcile these concerns for us?

A: Yes. I didn't say I left my passport in my bag just after the fall of the Taliban; I did that all the time. One of the reasons that made me not carry my passport with me, in Afghanistan no one asks you about documentation or identification. In that particular time, I was away from the place that had my luggage and my bags. It was with the people that had taken me in. I forgot the name of the place I was in, but the Afghani man that was with me told me that the forces that were followers, part of the Northern Alliance had entered the closest city to us. They started killing any Arab they saw and captured them, even if he wasn't a combatant. You know they killed some of the women as well. And you know that women in Islam are not killed; they don't fight or participate in the fighting. So, when I hear something like that, I don't think of going back and getting my passport, I just think of my life.

Like I told you, I thought if I went to Pakistan, they would detain me for a while until they found out my country and then return me to my country. I didn't think they would tell me "Since you don't have identification or a passport, that means you're a follower of Usama Bin Laden." I have never heard of this before, if you don't have a passport, you are a follower of Usama Bin Laden.

Like I told you, all they had to do was find out my identity and return me to my country. Even if it's true that I made a mistake, this doesn't have anything to do with America. This is a problem between me and the government of Pakistan. I don't know what America has to do with me crossing the border with no identification. That is in addition to the things I said before. It ties to it.

Q: I'm sure that one of the major concerns surrounds your name being found on a computer hard drive, or so the U.S. Government says. We understood what you said during your statement, that perhaps the U.S. Government could have planted that document there, but there must be a more reasonable reason those names appeared on the hard drive. Is there anything else you would like to say to address that concern?

A: First, when the Pakistanis turned me over, they did not turn me over because my name was found on that list, because that list you are talking about, they only told me about it a few months ago in interrogation. They captured me 3 years ago; before you captured this person you are talking about. So, you didn't even capture me because of this list. My name was not on the international Interpol list for them to turn me over to you.

In that sense, from the beginning the Pakistani government was wrong; it was illegal for them to turn me over to you.

I will give you an example. Let's say any country in the world put my name on a list of people who are not allowed to enter that country. Are you going to come and ask me why this country put my name on their list? Or, will you go to that country and ask them why they put my name on their list? I don't have anything to do with this. This is not something I am responsible for. If Bin Laden, himself, had written my name, is this considered a crime that I committed? Your duty is, first of all, to ask Bin Laden, and second, you have to look at are the words of Bin Laden the truth? Let's say that you called him and he said I knew this person in China and his name is so and so. Are you automatically going to detain that person or will you look for that man? Are you going to see if he had any meetings with Bin Laden? Did he meet with any people that met with Bin Laden? You have to see if the words Bin Laden said are the truth. It doesn't mean that any name you find with Bin Laden you go and catch all those people. This is not my mistake or my fault that this man wrote my name.

Right now, if you wrote my name, I don't have the ability to come and take the piece of paper and rip it up. How can you fault me for the actions of others?

Those are my words and I hope they are good.

Q: As I understand your statement and the information provided by your family, you are considered to be an educated man in Kuwait?

A: Thank you.

Q: You are, in fact, a lawyer, aren't you?

A: No, in my studies I study some things, but I am not a lawyer. If I wanted to be a lawyer, my degree would enable me to work as a lawyer.

Q: You do have a degree in Islamic law, do you not?

A: That's what brought me here to this prison, this degree.

Q: That's unfortunate.

A: God willing, when I get out of here I won't study any of this Islamic law. I'll just raise sheep or cattle and live in the desert.

Q: In your statement, you claim to be quite well informed of world events and history?

A: I don't live in the desert. I live in a city that has television and radio.

Q: At the time you made your decision to travel to Afghanistan, you were well aware of the civil war there?

A: Yes.

Q: And, you knew that it had been going on for quite some time?

A: Yes.

Q: You were not concerned for your personal safety?

A: I told you, when Iraq invaded Kuwait the fighting between these forces was only occurring on the front lines. You saw, in Europe, there was a war there in the days of Hitler, Italy, the fighting was on the battlegrounds or front lines, but in the cities, the people were living their normal lives.

The markets were functioning. The places of worship, mosques and churches, were functioning. The hospitals were functioning. Men would marry women and they would start new families. Life was going on; it would not be interrupted except on the battleground or places where there was fighting.

The danger is if the fighting was in the streets. In that case, the people would be scared and all aspects of life would be interrupted. I didn't think the situation would be that way in Afghanistan. I thought the lines where the fighting was, the fighting, the government would fall and that would be it.

I also did not realize or think that the government of Afghanistan would fall in the blink of an eye. Everyone there thought the war would go on for a very long time. I was just traveling there for a very short time and then would return. When I went there, I didn't think the situation would explode like that.

Q: On September 11, 2001 were you still in Kuwait?

A: Yes.

Q: According to information your family provided, it says you went to Pakistan on October 15, 2001. Is that close to being accurate?

A: I think it is close to the date, but I don't remember exactly.

Q: Is the October time frame reasonable?

A: Approximately.

Q: By that time, a reasonable person could infer that the conflict in Afghanistan was about to widen substantially.

A: Quite the opposite. It wasn't like that. I think maybe your watching the news was very little at that time. The Americans were saying at the time that this war would take a long time. They were saying that the Taliban fighters were very ferocious in their fighting. That is what they were saying in the news. They weren't saying their enemy was weak and they were going to finish this in moments. Maybe the news in your country was something political and they wanted to gain something political from it. We, the simple people, take in the news as we hear it and that's what we heard.

Q: When you were in Afghanistan, I know you said you didn't remember the town you left your valuables in, but can you tell us a little bit about what you did before things turned bad?

A: First of all, why did I forget the name of the place? The names of these places were in a language that was not my own. It was for the first time I was hearing the names of these places. My work, the charity work, is always in villages, so it wasn't very useful to me or it didn't mean much to memorize the names of these villages. That is the reason I forgot the name.

After this Afghan man took me in and I stayed with him, by the way, I just want to make you aware that this Afghani man spoke Arabic. He was the middleman between me and the people I was going to teach. I would teach in Arabic and he would translate it into Afghan. With the Koran, you have to teach it in Arabic. We don't have any translations; it has to be read in Arabic.

So, I was moving around between different mosques and every so often I would stay with different people with this Afghani man that had offered me this opportunity. I would teach them whatever was related to that certain period of time. For example, teaching them how to pray and to read short passages. They can't pray without those passages. I would teach them things that were not disputed between Muslims.

I moved around from place to place for a short while and then everything went bad. Then, the phase of trying to escape began.

Q: I know it may be difficult, but can you estimate how long that was? A couple days or weeks?

A: I swear to God it's difficult because I went through difficult situations at that time. These periods of time are very far away right now. It wasn't long, but I just can't remember exactly.

Q: You were on vacation from your job?

A: By God I remember that I did take a vacation, but I don't remember if it was a medical leave. I don't remember exactly, but I know there was something. Just keep in mind that when I was here, I stopped eating and drinking for about 100 days, so I have forgotten a lot of things. The details, I cannot remember. You can take that information from my interrogation files. I'm sure that I gave it to them [interrogators] in the beginning.

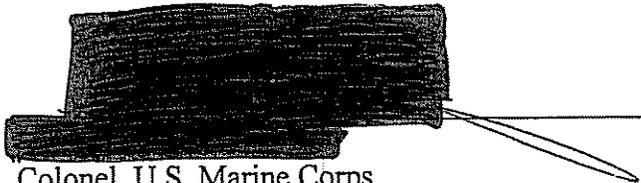
The Detainee made the following final statement:

I hope that you really are fair in this Tribunal and that you do not punish me for things that other people have done. If I made a mistake, and you want to punish me for that, I don't have a problem with that because it was something that I did. Don't place other people's mistakes on me.

The Detainee asked to speak with his Personal Representative following the Unclassified portion of the Tribunal and the Tribunal President allowed this, as long as the Personal Representative's schedule allows it.

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 covers the signature of the Tribunal President. Two thin lines extend from the right side of the box, pointing towards the text below.

Colonel, U.S. Marine Corps
Tribunal President

ISN# 
Enclosure (3)
Page 14 of 14

DETAINEE ELECTION FORM

Date: 24 Sep 04

Start Time: 1820

End Time: 1950

ISN#: [REDACTED]

Personal Representative: [REDACTED], MAJOR, USAF
(Name/Rank)

Translator Required? YES Language? ARABIC

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

Detainee Election:

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

Personal Representative Comments:

Detainee wants to participate.

Detainee wants to make both an oral and written statements

Detainee did not request any witnesses.

Personal Representative: [REDACTED]

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Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (20 September 04)

Subject: Summary of Evidence for Combatant Status Review Tribunal - AL SHAMMERI, Abd Al Aziz Sayer Uwain

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 Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is a member of al Qaeda.
 - a. The detainee is a member of al Qaeda.
 1. The detainee traveled from Kuwait to Iran and then to Afghanistan soon after 11 September 2001.
 2. Detainee was arrested by the Pakistani Army while attempting to cross into Pakistan from Afghanistan without identification documents.
 3. One of the detainee's known aliases was on a list of captured hard drives associated with a senior al Qaeda member.
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

Memorandum

UNCLASSIFIED



To : Department of Defense Date 09/15/2004
Office of Administrative Review
for Detained Enemy Combatants
Col. David Taylor, OIC, CSRT

From : FBI GTMO
Counterterrorism Division
OSC [REDACTED] *all SM*

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

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

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

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

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

FD-302 dated 12/10/2002
FD-302 dated 06/11/2003

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

²See Executive Order 12958

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Memorandum from [REDACTED] to Col. David Taylor
Re: REQUEST FOR REDACTION, 09/15/2004

If you need additional assistance, please contact On
Scene Commander [REDACTED]
[REDACTED] or Intelligence Analyst
[REDACTED]

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5. Abdulaziz Sayer Owain Al-Shammari

UNCLASSIFIED

pg 1085

Exhibit R3

**ANSWERS TO THE QUESTIONS FOR THE FAMILY OF
ABD ALAZIZ SAYIR AL SHAMARI**

1. Name : Abd Alaziz Sayir Al Shamari.
 No other names :
 Date of Birth : [REDACTED] 1973 (Kuwait).
 Address : [REDACTED]

2. Father Name : [REDACTED]
 Mother Name : [REDACTED]
 Brother's Names : [REDACTED]
 Sister's Names : [REDACTED]

 Wife's Name : [REDACTED]
 Date of Marriage : 2nd of May 1994
 Children Names : [REDACTED]

3. Educational Background:
 Kindergarten : Al Reg'a Kindergarten
 Elementary : Abutharr Al-Ghafari, Reg'a
 Secondary School : Naufal Ben Al Harith , Reg'a
 High School : Salem Al Mubarak, Reg'a

4. Yes, he did attend University in United Arab Emirates in Al Sharja, Imam Mohammed Ebn Saud University as Scholarship. He studied Islamic Law (Shari'a). He earned a degree in Islamic Law.

5. The latest home address he has is the same the same address on Answer No. 1
 [REDACTED] Telephone No.
 [REDACTED]

6. He went to Pakistan on the 15th October 2001 to help and aid the poor people and the refugees on the borders of Pakistan and Afghanistan. He traveled by Airplane.

7. He did tell us that he is going to Pakistan, he says that "I am going there to help these refugees and poor people at the borders and also to contribute some money on behalf of my sick and old mother to gain more blessing from God for her."

8. He joined the military in 1992 and he attended a three month course of training, then he become Sergeant , he worked as the Head of the Clerk in one of the sections in the Kuwait Army Headquarters for approximately three months, and then he resigned and worked in the Ministry of Islamic Affairs as an employee in the Department of Mosque's Affairs for about 4 years, his salary was KD270/-. He got a scholarship from Kuwait Government and then he took educational leave and went to Sharja to attend the University. He graduated in early 2001 and he came back and become a teacher of Quran (Dar Al-Quran) in the same Ministry. His salary become approximately KD680/-.

- 9 His father is a retired policeman (Chief Sergeant in the Department of General Investigations).
10. This question being answered in Answer No. 8
11. This question being answered in Answer No. 8
12. He did not quit his job, what happens is that when Abdulaziz exceeds his vacation days, his brother [REDACTED] was afraid that he will be fired (kicked-out) from his job and in Kuwait regulations if any governmental employee is fired from his job he will not be allowed to work in the Government again for a year time. Also at that time there was no communication with Abdulaziz. So he decided to file a resignation on behalf of Abdulaziz to his work, so when Abdulaziz comes back he can easily re-employed again without waiting for a year time.
13. Yes, he is married. His wife understand that he went to Pakistan to help and aids the poor people after he learned that a lot of refugees coming toward the borders of Pakistan from Afghanistan, and he always thinks of the others suffering and always try to help them. So he left Kuwait in a short vacation (2 weeks) to help those poor people and come back very shortly.
14. We have no idea about this. All we understand that he left Kuwait to Pakistan.
15. He funded his trip to Pakistan, and as we said previously, we have no idea about his trip to Afghanistan, if he did go there.
16. He usually attends the mosque close to the neighborhood, named (Al Reg'a Mosque).
17. No, he was not a member of any charitable non-governmental organizations nor Al Wafa Organization.
18. No, he was not supposed to meet anyone in particular upon his arrival to Pakistan.
19. He did call the family three days after his arrival to Pakistan and says that he arrived there safely and he is in good health and he will participate on aiding the refugees flooding to the borders and within two weeks he will be back and that was his first and last phone call.
20. No, he did not.
21. He did traveled sometimes to Saudi Arabia to visit Makkah for worshipping and the other trip was from and to Sharja while he was studying there. We do not know who he might met with.

دولة الكويت
الطاقة المدنية
الرقم المدني ٢٧٣٠٩٢٣٠٠٧٢٤



الاسم
عبد العزيز ماهر عوين
الشعري



الجنسية كويتي
الجنس ذكر
الميلاد
تاريخ انتهاء البطاقة ٢٠٠٥ / ٣ / ٨



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110067943

State of Kuwait

Civil ID Card

Civil No. 273092300724
Name Abdulaziz Sayer Owain Zaher Al-Shammari.
Nationality Kuwait
Date of birth [REDACTED] 1973 Sex Male
Expiry Date 8/3/2005

Overleaf:

Civil No. of the concerned party 273092300724
Nationality No. 105014175
Address [REDACTED]
Street [REDACTED]
Building/ Plot [REDACTED] Type of Unit [REDACTED]
Unit No. [REDACTED] Floor [REDACTED]
Tel. No. [REDACTED] Blood Group O +

SHEARMAN & STERLING

Washington, D.C.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2604
Telephone: (202) 508-8000

FAX NUMBERS

(202) 508-8100
(202) 508-8101
(202) 508-8102

2002 JUL -8 P 5:30

FAX COVER SHEET

July 8, 2002.

Reference No. 33472/2

| Fax Recipient(s) | | | | |
|------------------|-------------------------|------------------|--------------|--------------|
| Name | Firm | Location | Fax Number | Office Phone |
| Robert Okun | Assistant U.S. Attorney | Washington, D.C. | 202-514-8784 | 202-514-7282 |

From

Name: Katharine Brown
Telephone: 202-654-4050
Fax Number: 202-508-8100

Pages transmitted (including cover sheet): 20

Comments:

Please find a copy of the Amended Complaint filed with the Court today.

Please call with any questions.

-Katharine Brown
Legal Assistant

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Exhibit R4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH FAHAD AL ODAH)
Detainee, Camp X-Ray/Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)

KHALED A. F. AL ODAH)
Next Friend of Fawzi Khalid Abdullah Fahad)
Al Odah)
Kuwait)

OMAR RAJAB AMIN,)
Detainee, Camp X-Ray/Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)

MOHAMMAD R. M. R. AMEEN)
Next Friend of Omar Rajab Amin)
Kuwait)

No. CV 02-0828 (CKK)

NASSER NIJER NASER AL MUTAIRI)
Detainee, Camp X-Ray/Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)

NAYEF N.N.B.J. AL MUTAIRI)
Next Friend of Nasser Nijer Naser Al Mutairi)
Kuwait)

KHALID ABDULLAH MISHAL AL MUTAIRI)
Detainee, Camp X-Ray/Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)

MESHAL A.M. TH AL MUTAIRI)
Next Friend of Khalid Abdullah Mishal)
Al Mutairi)
Kuwait)

ABDULLAH KAMAL ABDULLAH KAMAL)
AL KANDARI)
Detainee, Camp X-Ray/Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)

MANSOUR K.A. KAMEL)
 Next Friend of Abdullah Kamal Abdullah)
 Kamal Al Kandari)
 Kuwait)

ABDULAZIZ SAYER OWAIN AL SHAMMARI)
 Detainee, Camp X-Ray/Camp Delta)
 Guantanamo Bay Naval Base)
 Guantanamo Bay, Cuba)

)
 Next Friend of Abdulazziz Sayer Owain)
 Al-Shammari)
 Kuwait)

ABDULLAH SALEH ALI AL AJMI)
 Detainee, Camp X-Ray/Camp Delta)
 Guantanamo Bay Naval Base)
 Guantanamo Bay, Cuba)

MESFER SALEH ALI AL AJMI)
 Next Friend of Abdullah Safeh Ali Al Ajmi)
 Kuwait)

MOHAMMED FUNAITEL AL DIHANI)
 Detainee, Camp X-Ray/Camp Delta)
 Address Unknown)

MUBARAK F.S.M. AL DAIHANI)
 Next Friend of Mohammed Funaitel Al Dihani)
 Kuwait)

FAYIZ MOHAMMED AHMED AL KANDARI)
 Detainee, Camp X-Ray/Camp Delta)
 Address Unknown)

MOHAMMAD A.J.M.H. AL KANDARI)
 Next Friend of Fayiz Mohammed Ahmed)
 Al Kandari)
 Kuwait)

FWAD MAHMOUD AL RABIAH)
 Detainee, Camp X-Ray/Camp Delta)
 Address Unknown)

MONZER M.H.A. AL RABIEAH)
Next Friend of Fwad Mahmoud Al Rabiah)
Kuwait)

ADIL ZAMIL ABDULL MOHSSIN AL ZAMIL)
Detainee, Camp X-Ray/Camp Delta)
Address Unknown)

WALID Z.A. AL ZAMEL)
Next Friend of Adil Zamil Abdull Mohssin)
Al Zamil)
Kuwait)

SAAD MADAI SAAD HAWASH AL-AZMI)
Detainee, Camp X-Ray/Camp Delta)
Address Unknown)

HAMAD MADAI SAAD)
Next Friend of Saad Madai Saad Hawash)
Al Azmi)
Kuwai)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA,)

GEORGE W. BUSH,)
President of the United States)
The White House)
1600 Pennsylvania Avenue)
Washington, D.C. 20500)

DONALD H. RUMSFELD,)
Secretary of Defense)
Department of Defense)
1000 Defense Pentagon)
Washington, D.C. 20301-1000)

GENERAL RICHARD B. MYERS)
Chairman, Joint Chiefs of Staff)
9999 Joint Chiefs of Staff Pentagon)
Washington, D.C. 20318-9999)

BRIGADIER GENERAL RICK BACCUS,)
 Commander, Joint Task Force-160)
 Guantanamo Bay Naval Base)
 Guantanamo Bay, Cuba)
)
 COLONEL TERRY CARRICO)
 Commander, Camp X-Ray/Camp Delta)
 Guantanamo Bay Naval Base)
 Guantanamo Bay, Cuba,)
)
 Defendants.)
)

AMENDED COMPLAINT

This is a civil action brought by 12 Kuwaiti nationals (the "Kuwaiti Detainees") who are being detained in the custody of the United States at the Guantanamo Bay Naval Base, Guantanamo Bay, Cuba ("Guantanamo"), and by 12 of their family members (the "Family Members") who are also Kuwaiti nationals and who speak on their behalf. The Kuwaiti Detainees have been held virtually *incommunicado* since as early as January 11, 2002. Although the Secretary of Defense was authorized by the President in the President's Military Order of November 13, 2001, to detain non-citizens if the President has made a written determination that there is reason to believe they are or were members of al Qaida, or engaged in terrorist acts against the United States, the President has made no such determination with respect to the Kuwaiti Detainees.

FYE

(Plaintiffs do not seek release from confinement in this Amended Complaint. Rather, they seek modest but essential relief while they are being detained and interrogated by defendants. They seek the right to (1) meet with their families, (2) be informed of any charges against them, (3) be able to consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal.) These are fundamental rights of due process guaranteed to detainees under the Fifth Amendment to the Constitution and customary international law. The grant of

this limited relief will not interfere in any way with the ability of the United States to conduct its essential war against terrorism or to determine who was responsible for the horrible acts of September 11, 2001, and to bring those individuals to justice.

**I.
JURISDICTION AND VENUE**

1. The Court has subject matter jurisdiction of this civil action under 28 U.S.C. §§ 1331, 1350, and 1361. A cause of action exists under the Constitution, 5 U.S.C. § 702, 28 U.S.C. §§ 1350, 2241-2243, and the laws of nations and treaties of the United States. To the extent immunity to this suit may be asserted by defendants, that immunity is waived by 5 U.S.C. § 702. The Court is authorized to grant the relief requested by plaintiffs under 5 U.S.C. § 706, and 28 U.S.C. §§ 1350, 1361, 1651, 2201, 2202, and 2241-2243.

2. Venue lies in this Court under 28 U.S.C. §§ 1391(b), (e).

**II.
PARTIES**

3. Plaintiffs Fawzi Khalid Abdullah Fahad Al Odah, Omar Rajab Amin, Nasser Nijer Naser Al Mutairi, Khalid Abdullah Mishal Al Mutairi, Abdullah Kamal Abdullah Kamal Al Kandari, Abdulaziz Sayer Owain Al Shammari, Abdullah Saleh Ali Al Ajmi, Mohammed Funaitel Al Dihani, Fayiz Mohammed Ahmed Al Kandari, Fwad Mahmoud Al Rabiah, Adil Zamil Abdull Mohssin Al Zamil, and Saad Madai Saad Alzmi (the "Kuwaiti Detainees") are Kuwaiti nationals who are detained under the custody of the United States at Guantanamo.

4. Plaintiff Khaled A.F. Al Odah is a Kuwaiti national and the father of plaintiff Fawzi Khalid Abdullah Fahad Al Odah; plaintiff Mohammad R.M.R. Ameen is a Kuwaiti national and the brother of plaintiff Omar Rajab Amin; plaintiff Nayef N.N.B.J. Al Mutairi is a Kuwaiti national and the brother of plaintiff Nasser Nijer Naser Al Mutairi; plaintiff Meshal A.M.TH Al

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Mutairi is a Kuwaiti national and the brother of plaintiff Khalid Abdullah Mishal Al Mutairi; plaintiff Mansour K.A. Kamel is a Kuwaiti national and the brother of plaintiff Abdullah Kamal Abdullah Kamal Al Kandari; plaintiff [REDACTED] is a Kuwaiti national and the father of plaintiff Abdulaziz Sayer Owain Al Shammari; plaintiff Mesfer Saleh Ali Al Ajmi is a Kuwaiti national and the brother of Abdullah Saleh Ali Al Ajmi; plaintiff Mubarak F.S.M. Al Daihani is a Kuwaiti national and the brother of plaintiff Mohammed Funaitel Al Dihani; plaintiff Mohammad A.J.M.H. Al Kandari is a Kuwaiti national and the father of plaintiff Fayiz Mohammed Ahmed Al Kandari; plaintiff Monzer M.H.A. Al Rabieah is a Kuwaiti national and the brother of plaintiff Fwad Mahmoud Al Rabiah; plaintiff Walid Z.A. Al Zamel is a Kuwaiti national and the brother of plaintiff Adil Zamil Abdull Mohssin Al Zamil, and plaintiff Hamad Madai Saad is a Kuwaiti national and the brother of plaintiff Saad Madai Saad Al-Azmi. The plaintiffs other than the Kuwaiti Detainees are referred to as the Family Members.

5. Defendant George W. Bush is the President of the United States; defendant Donald H. Rumsfeld is the Secretary of Defense; defendant General Richard B. Myers is the Chairman of the Joint Chiefs of Staff; defendant Brigadier General Rick Baccus is the Commander of Joint Task Force-160, which is responsible for the detention operation at Guantanamo; defendant Colonel Terry Carrico is the Commandant of Camp X-Ray/ Camp Delta at Guantanamo and the custodian of the detainees at Guantanamo. They are sued in their official and individual capacities. The Executive Branch of the United States Government, designated as the United States of America, is also a defendant.

III. FACTS

The Terrorist Attacks of September 11, 2001

6. On September 11, 2001, terrorists struck the United States, hijacking four airplanes and flying three of them into the twin towers of the World Trade Center in New York City and the Pentagon, killing thousands of innocent people. Soon after this terrorist attack, the United States Government identified the terrorists as members of the al Qaida terrorist organization.

7. In the wake of the terrorist attack of September 11, 2001, President Bush launched a military campaign against al Qaida headquartered in Afghanistan and supported by the Taliban Regime. On September 18, 2001, Congress adopted a Joint Resolution that authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Joint Resolution 23, Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224. The United States' military campaign against al Qaida and the Taliban is being conducted in cooperation with other nations, including Pakistan, as well as a coalition of Afghani groups known as the Northern Alliance, which opposes the Taliban.

8. On information and belief, some members and supporters of al Qaida and the Taliban have attempted to hide from the United States and its allies during the military campaign in dispersed areas of Afghanistan and Pakistan. On information and belief, the United States and its allies have encouraged local authorities in Afghanistan and Pakistan to assist in the location, identification, and apprehension of these al Qaida and Taliban members and supporters.

President Bush's Military Order of November 13, 2001

9. On November 13, 2001, President Bush issued the Military Order of November 13, 2001, entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (the "Military Order"). 66 Fed. Reg. 57,831 (Nov. 16, 2001).

10. Section 1 of the Military Order recites "Findings" about the terrorist attacks of September 11, 2001, including a finding that "it is necessary for individuals subject to this order * * * to be detained."

11. In section 2(a) of the Military Order, President Bush defines the term "individual subject to this order" to mean "any individual who is not a United States citizen with respect to whom I determine 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 therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order, and

(2) it is in the interest of the United States that such individual be subject to this order.

12. Section 2(b) of the Military Order declares that "[i]t is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4."

13. Section 3 of the Military Order provides that "[a]ny individual subject to this order shall be (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States."

Seizure of the 12 Kuwaiti Detainees

TV (14) On information and belief, the Family Members allege that the Kuwaiti Detainees were in Afghanistan or Pakistan, some before and some after September 11, 2001, as volunteers for charitable purposes to provide humanitarian aid to the people of those countries, such as assisting in developing potable water sources, working in hospitals, and arranging for the sponsorship of orphans. There is a long tradition of such volunteer service by Kuwaiti nationals in countries of crisis worldwide, including Afghanistan and Pakistan. Such volunteer service is encouraged by the Kuwaiti Government and Kuwaiti employers. One aspect of the Kuwaiti Government support of volunteer service is by continuing to pay the salaries of its Kuwaiti employees while they are engaged in such volunteer service abroad.

TV (15) On information and belief, the Family Members allege that none of the Kuwaiti Detainees is or ever has been a combatant or belligerent against the United States, or a member or supporter of al Qaida or the Taliban, or a member of any terrorist organization, and that none of the Kuwaiti Detainees has ever engaged in or supported any terrorist or hostile act against the United States. None of the Family Members has ever engaged in or supported any terrorist or hostile act against the United States, and on information and belief the Family Members allege that no other member of their families has ever engaged in or supported any terrorist or hostile act against the United States.

TV (16) On information and belief, the Family Members alleged that the Kuwaiti Detainees were seized against their will in Afghanistan or Pakistan after September 11, 2001, by local

villagers seeking promised bounties or other financial rewards, and that, subsequently, they were taken into custody by the United States. Several of the families of the Kuwaiti Detainees received letters from several of the Kuwaiti Detainees after they were taken into custody by the United States expressing the sentiment: "Thank God I am now with the Americans," and a confidence that they would soon be able to return home to their families.

United States' Detention of the Kuwaiti Detainees

17. President Bush has not determined in writing that there is reason to believe that, at the relevant times, any of the Kuwaiti Detainees is or was a member of the organization known as al Qaida, or has engaged in any of the acts described in section 2 of the Military Order, or that it is in the interest of the United States that any of the Kuwaiti Detainees be subject to the Military Order.

18. None of the other defendants has stated publicly or informed plaintiffs why or on what basis the Kuwaiti Detainees are being detained. None of the defendants has stated publicly or informed plaintiffs that the Kuwaiti Detainees are enemy combatants or belligerents against the United States.

19. William T. Monroe, Deputy Chief of Mission of the Embassy of the United States in Kuwait, sent a letter dated March 25, 2002, to the Ministry of Foreign Affairs of Kuwait, stating that plaintiff Fawzi Khalid Abdullah Fahad Al Odah has been in detention under United States custody at Guantanamo since February 13, 2002; plaintiff Omar Rajab Amin has been in detention under United States custody at Guantanamo since January 11, 2002; plaintiff Nasser Nijer Naser Al Mutairi has been in detention under United States custody at Guantanamo since February 7, 2002; plaintiff Khalid Abdullah Mishal Al Mutairi has been in detention under United States custody at Guantanamo since February 9, 2002; plaintiff Abdullah Kamal

Abdullah Kamal Al Kandari has been in detention under United States custody at Guantanamo since February 11, 2002; and plaintiff Abdulaziz Sayer Owain Al Shammari has been in detention under United States custody at Guantanamo since February 9, 2002.

20. The family of plaintiff Abdullah Saleh Ali Al Ajmi received a letter from him dated February 28, 2002, mailed from Guantanamo on March 1, 2002, which indicates that he is in detention under United States custody at Guantanamo.

21. On May 6, 2002, a Kuwaiti attorney representing the Family Members was informed by the Government of Kuwait that it received written confirmation from the United States Government that plaintiffs Fayiz Mohammed Ahmend Al Kandari, Fwad Mahmoud Al Rabiiah, Adil Zamil Abdull Mohssin Al Zamil, and Saad Madai Saad Al-Azmi are in detention under custody of the United States at Guantanamo. No confirmation has been received to date concerning plaintiff Mohammed Funaitel Al Dihani.

22. On April 3, 2002, Abdul Rahman R. Al-Haroun, a Kuwaiti attorney retained by the families of the Kuwaiti Detainees, received from the Government of Kuwait a copy of the letter referred to in paragraph 19, from William T. Monroe, Deputy Chief of Mission of the Embassy of the United States in Kuwait, to the Ministry of Foreign Affairs of Kuwait.

23. On April 6, 2002, Mr. Al-Haroun and plaintiff Khaled A.F. Al Odah, representing the families of the Kuwaiti Detainees, met at the United States Embassy in Kuwait with Andrew Morrison, First Secretary and Head of the Political Section of the Embassy, and Yousef Khalil, a political specialist at the Embassy. Plaintiff Khaled A.F. Al Odah had previously submitted to the United States Embassy a list containing the names of ten of the 12 plaintiff Kuwaiti Detainees, seeking information about them. At the time of the meeting, plaintiff Khaled A.F. Al

Odah did not have information that plaintiffs Adil Zamil Abdull Mohssin Al Zamil and Saad Madai Saad Al-Azmi were in the custody of the United States.

24. During the meeting of April 6, Mr. Al-Haroun and plaintiff Khaled A.F. Al-Odah asked Mr. Morrison and Mr. Khalil to provide them with information about the ten Kuwaiti Detainees on the list previously submitted by plaintiff Khaled A.F. Al Odah. Specifically, they asked Mr. Morrison and Mr. Khalil to confirm that these ten Kuwaiti Detainees were in the custody of the United States; to identify the location of their detention; to provide their families with the opportunity to contact and meet with them; to advise whether any of them were being accused of wrongdoing, and if not, why they were not being released; and, if any of the ten were being investigated, to grant them access to counsel of their choice and conditional release during the pendency of the investigation.

25. At the meeting of April 6, Mr. Morrison and Mr. Khalil did not provide Mr. Al-Haroun and plaintiff Khaled A.F. Al Odah with any information about the ten plaintiff Kuwaiti Detainees on the list submitted by plaintiff Khaled A.F. Al Odah, and would neither confirm nor deny that any of those Kuwaiti Detainees were in the custody of the United States. However, Mr. Morrison said he would take Mr. Al-Haroun's and plaintiff Khaled A.F. Al Odah's requests under consideration, consult with others, and provide them with a reply.

26. Mr. Al-Haroun and plaintiff Khaled A.F. Al Odah have not received any reply to their requests from Mr. Morrison or Mr. Khalil or from anyone else at the United States Embassy in Kuwait or in the United States Government.

27. Counsel for plaintiffs have been told by the Defense Department that, to maintain "force protection," the Defense Department has adopted a policy not to disclose the identities of, or other information about, specific individuals detained by the United States to their families or

representatives. Counsel for plaintiffs further have been told by the Defense Department that the United States is making such disclosures only to the governments of the countries in which those individuals are nationals.

28. The Family Members have not been permitted to meet with the Kuwaiti Detainees.

29. On information and belief, the Family Members allege that the Kuwaiti Detainees have not been informed of the charges, if any against them; they have not been granted the right to designate or consult with counsel of their choice; and they have not been granted access to the courts or any other impartial tribunal during their detention.

Guantanamo

30. ~~Under the Lease of Lands for Coaling and Naval Stations, Feb. 16-23, 1903, U.S.-~~

Cuba, T.S. No. 418, 6 Bevans 1113, as extended by the Treaty on Relations with Cuba, May 29, 1934, U.S.-Cuba, art. III, 48 Stat. 1682, 1683, T.S. No. 866, although the United States recognizes the sovereignty of Cuba over Guantanamo, "the Republic of Cuba consents that * * * the United States shall exercise complete jurisdiction and control over and within" Guantanamo during the lease. The United States has occupied Guantanamo Bay since 1903, and has repeatedly declared its intention to remain there indefinitely.

31. According to the Office of Legal Counsel of the Department of Justice, "the Guantanamo Base would constitute land 'acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof.' Accordingly, it would appear to come within [18 U.S.C.] § 7's definition of land 'within the special maritime and territorial jurisdiction of the United States.'" 6 Op. O.L.C. 236, 1982 OLC LEXIS 58 (Mar. 29, 1982). Consistent with this opinion, criminal prosecutions under Title 18 of the United States Code of civilians and aliens who commit offenses at Guantanamo are triable exclusively in mainland United States courts.

See, e.g., United States v. Chambers, 940 F.2d 653 (4th Cir. 1991), unpublished opinion available at No. 90-5664, 1991 WL 137232 (July 29, 1991); *United States v. Lee*, 906 F.2d 117, 117 n. 1 (4th Cir. 1990); *United States v. Rogers*, 388 F. Supp. 298, 301 (E.D. Va. 1975). *See also* 25 Op. Atty. Gen. 157 (1904) (Guantanamo Naval Station "is practically a part of the Government of the United States").

32. The United States Navy has described Guantanamo as "a Naval reservation which, for all practical purposes, is American territory. Under the [lease] agreements, the United States has for approximately [ninety] years exercised the essential elements of sovereignty over this territory, without actually owning it. Unless we abandon the area or agree to a modification of the terms of our occupancy, we can continue in the present status as long as we like. [According to the United States p]ersons on the reservation are amenable only to United States legislative enactments." *See The History of Guantanamo Bay: An Online Edition* (1964), available at <http://www.nsgtmo.navy.mil/history.htm>.

Defendants' Statements About Detention at Guantanamo

33. According to a "Fact Sheet" issued by the White House on February 7, 2002, President Bush has determined that the principles of the Third Geneva Convention of 1949 apply to the treatment of the "Taliban detainees" at Guantanamo, but not to the "al Qaida detainees" at Guantanamo. However, the President has determined that neither the "Taliban detainees" nor the "al Qaida detainees" will be accorded prisoner-of-war status.

34. Defendants have not publicly disclosed or informed plaintiffs whether any of the Kuwaiti Detainees are "Taliban detainees" or "al Qaida detainees," as those terms are used in the White House "Fact Sheet" of February 7, 2002.

35. In a radio interview on February 27, 2002, Secretary Rumsfeld said with respect to the approximately 300 detainees at Guantanamo: "[T]hey have all now, except for one or two, been questioned and interrogated, looking for intelligence information so that we could stop other terrorist threats, people from attacking our country and our friends and allies and our deployed forces," and that "[w]e're now starting the process of doing a series of interrogations that involve law enforcement. That is to say to determine exactly what these individuals have done. Not what they know of an intelligence standpoint, but what they've done from a law enforcement standpoint. That process is underway." United States Department of Defense News Transcript, Rumsfeld Interview with KTSP-ABC, St. Paul, Minnesota, February 27, 2002, p. 2. Secretary Rumsfeld continued that the detainees "will fall into four or five baskets. One is if we find that someone's an innocent and shouldn't have been brought there, why they would be released." *Id*

36. In a Pentagon news briefing on March 28, 2002, Secretary Rumsfeld said with respect to the detainees at Guantanamo: "The fact is that the first people we brought down were in fact the hardest of the hard core, because we wanted to get them out of the Kandahar and Bagram facilities. Now we have brought down a large portion of the people, and now it is [a] mix, and they vary. They run pretty much across the spectrum. It seems to me that that being the case one can expect that what will happen will be exactly what I said: that some may be transferred to other countries, some may be released, some may be held for the duration, some may be tried in one or more of the various mechanisms that are available – the United States criminal justice system, military commissions, or the Uniform Code of Military Justice. * * * I think the better way to look at it is not at that group of people in the aggregate, but as I've

indicated, individually." United States Department of Defense, News Transcript, DoD News Briefing – Secretary Rumsfeld and Gen. Myers, March 28, 2002, pp. 3, 4.

**IV.
CLAIMS FOR RELIEF**

Based on the allegations in paragraphs 1 through 36, plaintiffs claim:

First Claim: Denial of Due Process – Violation of the Fifth Amendment

37. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even during law enforcement interrogations which may lead to criminal proceedings against them, defendants have denied and are denying the Kuwaiti Detainees fundamental due process, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

Second Claim: Tortious Conduct Within the Meaning of the Alien Tort Claims Act

38. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even during law enforcement interrogations which may lead to criminal proceedings against them, defendants have engaged and are engaging in arbitrary detention, which is tortious conduct in violation of the law of nations and a treaty of the United States, and actionable under the Alien Tort Claims Act, 28 U.S.C. § 1350.

Third Claim: Arbitrary and Unlawful Conduct -- Violation of APA

39. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even

during law enforcement interrogations which may lead to criminal proceedings against them, defendants have engaged and are engaging in arbitrary, unlawful, and unconstitutional conduct, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 555, 702, 706.

V.
PRAAYER FOR RELIEF

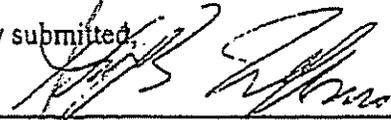
Based on the allegations in paragraphs 1 through 39, plaintiffs pray for the following relief:

40. A preliminary and permanent injunction, enjoining defendants from refusing to permit the Kuwaiti Detainees at Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, subject to reasonable national security and safety requirements.

41. A declaration that defendants' refusal to permit the Kuwaiti Detainees at Guantanamo to 1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, subject to reasonable national security and safety requirements, is a violation of the Due Process Clause of the Fifth Amendment to the Constitution, tortious conduct under the Alien Tort Claims Act, and arbitrary, unlawful, and unconstitutional conduct in violation of the Administrative Procedure Act.

42. Reasonable attorneys' fees and the costs of this action, and such other and further relief as the Court may deem necessary or appropriate.

Respectfully submitted,



Thomas B. Wilner (D.C. Bar #173807)
Neil H. Koslowe (D.C. Bar #361792)
Kristine A. Huskey (D.C. Bar #462979)
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Attorneys for Plaintiffs

Dated: July 8, 2002

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,)

v.)

No. CV 02-0828 (CKK)

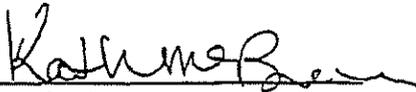
UNITED STATES OF AMERICA, *et al.*,)

Defendants.)

CERTIFICATE OF SERVICE

I certify that today, July 8, 2002, I served Plaintiffs' Amended Complaint upon
defendants by causing a copy to be mailed by first-class mail, postage prepaid, and by causing a
copy to be transmitted by facsimile, to defendants' counsel of record:

Roscoe C. Howard, Jr.
United States Attorney
Robert Okun
Assistant United States Attorney
Room 11-858
555 Fourth Street, N.W.
Washington, D.C. 20530


Katherine Brown
Legal Assistant

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بسم الله الرحمن الرحيم
الحمد لله الذي لا اله الا هو ، والصلاة والسلام على سيدنا محمد خاتمة
الانبياء والرسل
أما بعد :

بالنسبة لرددي على إتهامي بأني عضو في جماعة القاعدة ، فأني أقول : إن هذا الإتهام
ليس له أي شئ يستند عليه ، بل هو مجرد كلام ليس عليه دليل يدل عليه ، كان
يكون وجد معي وصولات مالمية تفيد أنني قدمت زعم مالي للقاعدة ، أو يكون التي
القبض علي في مكان خاص بجماعة القاعدة ، أو شهودت وأنا أحضر اجتماعاتهم ، أو
عرف بأني على علاقة قوية بأسماء ابن لادن ، فأني دليل نسبت إلى القاعدة ،
ولم يحصل أي شئ من هذا .

أولاً : ما علاقة السفر إلى أفغانستان بالقاعدة ، وكيف يجعل السفر إلى بلد كبير
فيه ملايين الناس هو سفر إلى القاعدة التي لا تمثل بالنسبة لذلك العدد نسبة
1% ، فهل يعتبر من سافر إلى الصين شيوعي ؟ ، وهل يعتبر من سافر إلى العراق
تابع لحزب البعث ؟

أما كوني سافرت من بلدي الكويت بعد أحداث سبتمبر فهذا أمر طبيعي
جداً ، فإن هذه الأحداث حصلت في أمريكا ، فالإضطراب والارتباك لم يكن موجود
إلا في أمريكا ، وأما باقي دول العالم فإن الإوضاع كانت طبيعية ، والناس كانوا
يمارسون حياتهم الروتينية ، فلا يوجد أي غرابه في سفري .

ثم إنني تعرفت على رجل أفغاني في إحدى سفراتي إلى العمرة إسمه محمد وهو مقيم
في إيران ، فعرض علي السفر إلى أفغانستان لتدريس القرآن واللغة العربية طبعاً هذا
بعد ما عرف أنني درست العلوم الإسلامية لمدة أربع سنوات في جامعة الإمام محمد بن
سعود الإسلامية وتخرجت بدرجة جيد جداً ببارق قليل عن الإمتياز - وأنا لا أذكر
تاريخ تعرفي عليه لأني نسيت الآن - وكان هذا الرجل أعطاني رقم هاتفه وقال لي :
إذا أردت أن تحجيب الدعوة فاتصل على هاتفني وأنا أرتب كل شئ لك .

ثم رجعت إلى الكويت ، وبعد فترة من الزمن عندما حصلت الإضطرابات في
أفغانستان قررت إجابة الدعوة في التدريس بالإضافة إلى مساعدة بعض المحتاجين ، بعد
تحويل أهلي لي بعض الأموال ، هكذا كانت الفكرة ، خصوصاً بعدما شاهدت في التلفاز
حاجة الناس ، وهذا أمر غير مستغرب لأن عمل الإغاثات لا يكون إلا بعد حصول الكوارث
والإضطرابات ، وأسافي حال السلم والأمان والرخاء فلا أحد يحتاج إلى إغاثته ، وللعلم
أن أفغانستان لم تقف فيها الحرب منذ سنوات طويلة فلا يوجد فرق بين ما قبل سبتمبر
أو بعده ، وكنت أظن أن الحرب ستكون في أماكن القتال ، وأن القتال لن يصل إلى المدن
والقرى ، أو ستكون هناك محاولة إغتيال لأشخاص معينين أو إختطاف لهم كما حصل
لرئيس بنما وسيقف الأمر عند هذا الحد .

وكنت أظن أن سفري سوف يكون عن طريق إيران ثم باكستان - وهذا ما أخبرني به عائلتي - لأني أعرف أن العلاقة بين إيران وأفغانستان سيئة ، ولكن عند إتصالي بهذا الرجل الأفغاني «محمد» قال لي: أن بإمكاننا الدخول إلى أفغانستان عن طريق إيران فإن النقطة الحدودية التي بينهما تعمل ، فقلت: إذاً لا توجد حاجة للسفر إلى باكستان خصوصاً أنه يحتاج إلى فيزة أخرى ..»

وكنت أنوي أن اجلس فترة قصيرة ثم أرجع ، وهناك عدة أدلة على هذا ، منها أنني كنت أرسلت شهاداتي الثانوية والجامعية إلى جمهورية مصر العربية حتى أكمل دراسة الماجستير في العلوم الإسلامية ، وقد دفعت رسوم التسجيل ، وكنت أنتظر الإجابة على طلبي ، وكانت هذه المراسلة قبل سفري بأشهر قليلة ، وهي عن طريق وزارة التعليم العالي بدولة الكويت ، وهي مؤسسة حكومية . ولم يوافق ملفي إلا بعد سجنني . ثم أيضاً كنت قدمت أوراقى حتى أحسن ووضعي الوظيفي من مدرس بدار القرآن التابعة لوزارة الأوقاف والشؤون الإسلامية ، إلى مدرس في المعاهد التطبيقية بعد ابتعاني من قبل الحكومة حتى أحصل على شهادة الدكتوراة وهذه المعاهد تعطي شهادة أعلى من الثانوية وأقل من البكالوريوس وطبعاً هذا لم يحصل لأني سجننت ، فكيف أكون سافرت حتى التحق بالقاعدة ، وأنا لأعمل كل هذه الترتيبات .

وللعلم أن سفري كان عن طريق المنافذ الرسمية وبوثائق سفر حكومية ولم يكن موجود في جواز سفري الكويتي أي شيء يدل على عدم جواز السفر إلى أفغانستان ، فإن كان يوجد منع فالحظاً على حكومتي التي لم تخبرني بهذا المنع . بل كتبت في جوازي " هذا الجواز صالح للسفر لجميع دول العالم مالم يذكر خلاف ذلك " ولم يذكروا أفغانستان .

ثانياً : بعد سقوط جلالبان ، طُلب أي عربي في أفغانستان حياً أوميتاً ، بغض النظر هل هو مقاتل أولاً ، لأنهم كما سمعت أصبحوا يشنون العرب ويبيدونهم فحفت عند سماع هذه الأخبار ففكرت للهروب بسرعة ، وكما هو معلوم لديكم أن المسافر في أغلب الأوقات لا يحمل جواز سفره معه بل يتركه مع أماناته وحقائبه ، خصوصاً في بلد أفغانستان ، لأنه لا يوجد أحد يسأل أحداً عن إثباته ^{أفغانستان} ، لذلك لم يكن باستطاعتي الرجوع إلى حقائبى ، لأن الأحداث بدأت تتطور تطور سريع جداً وخطير ، فقلت للرجل الذي معي أريد أن أخرج بسرعة فرتب لي خروجي ، وكما تعلمون أن الحرب إذا بدأت وسقطت الحكومة ويرأ الناس يتقاتلون فيما بينهم وهرب الضعفاء ، فإنهم لا يلجأون إلى المراكز الحدودية المعروفة ، لأنهم يعرفون أن المسلحون سيطروا عليها وسيفتلون من يأتيتهم ، وهذا بالضبط ما حصل في أفغانستان ، فقد أصبح القتل أبسط شيء .

لذلك كان من الطبيعي أن ألجأ إلى باكستان ماشياً على الأقدام ، حتى أذهب إلى السفارة هناك فترتب أوضاعي ، ومما يدل على أنني إنسان غير خطير ، وليس عندي أي أسرار ، أنني سلمت نفسي إلى الشرطة من غير مطاردة أو مقاومة أو شيء آخر . ثم معاملة فظة تتجاوزي للحدود بالقاعدة ، هل كل من تجاوز الحدود في ذلك الوقت فهو شخص ينتمي للقاعدة ، هذا كلام لا يقال ، فإن العراق حين إحتل بلدي الكويت ، وهدم الخطى الرجال والشباب والنساء إلى السعودية والأردن وإيران لم نرى أحداً يقبض عليهم ويقول أنتم تتبعون صدام حسين . مع العلم أنهم كانوا يتسللون خفية عند قطع الحدود ومن غير وثائق سفر ، ولم تقبض عليهم سلطات تلك البلاد بل كانت تساعدهم وتعمل لهم مخيمات طبية ~~تعالجهم~~ فيها ، فإنه في تلك الظروف لا أحد يسأل عن الوثائق لأن الظروف غير عادية في تلك البقعة من الأرض .

ثم لنفترض فرضاً أنني أخطأت في هذا الأمر - أقصد في تجاوزي للحدود من غير وثائق - فإن الإجراء المعروف في مثل هذه الحالة في جميع دول العالم ، أنه يتم إعتقالي حتى تتعرف السلطات الباكستانية على هويتي وبلدي ثم ترسلني إلى بلدي إلا أن تسلمني إلى السلطات الأمريكية ، على أنني فرد من أفراد القاعدة أو طالبان ، فإن هذا يعني غير معقول ، مع العلم بأنهم سألوني عن بياناتي الشخصية وأعطيتهم من أول لحظة ، وقالوا لي سنأكد منها من حكومة الكويت ، فعلى أي شيء سلموني لكم .

ثالثاً - أنا اسمي عبدالعزيز سايز الشمري ، ولا يوجد لي أي اسم غير هذا الاسم ، ولا يوجد لي أي علاقة بأي شخص من القاعدة ، ولما إذا وجد اسم مثل اسمي على جدول عند أحد الأشخاص ، فهذا قد يكون تشابه في الأسماء لأنه يوجد ملايين الأشخاص العرب يحملون نفس اسمي ، فإن اسمي تكثر التسمية به ، ثم إنتم لم تجدوا إثباتاتي الشخصية عنده حتى تقولوا أنت وضعت هذه الأشياء عنده فهذا يدل على علاقة بينكما ، غاية ما وجد اسم يشبه اسمي .

ثم لنفترض أن الاسم المكتوب اسمي ، فأنا لا أستطيع أن أمنع أي شخص من كتابة اسمي في أي شيء يريد لأن هذا ليس باستطاعتي ، فعلى سبيل المثال لو أن هتار كتب اسمي فأنا لن أذهب إليه وأقول له لماذا كتبت اسمي ، طالما أنا ليس لي علاقة به فأنا غير مسؤول عن كتابته . وليكتب من شاء ما شاء ، ليس لي علاقة بأحد ، ثم إن هذا الجدول ماهو إلا مجرد أسماء فقط لا يعرف أي شيء عنها ، وكيف تقولون أنها من القاعدة .

هذا إذا لم تكن هذه القائمة تزوير من قبل المحققين ، فإن أي إنسان يستطيع أن يطبع في الكمبيوتر ما شاء في أي وقت شاء ، ثم يقول وجدت هذا في الكمبيوتر هذا وصلى الله وسلم على نبينا محمد .

ملاحظة : كيف أنسب إلى القاعدة ولم أسافر لهم ولولمة واحدة ، ولم أشارك في اجتماعاتهم وفتاتهم . ثم لو كنت أريد أن أقاتل ضد الأمر وكان لما إحتاج الأمر لسفري إلى أفغانستان لأن الأمر كان موجودون في الكويت عندي فلو أرزت قتالهم لقاتلتهم في الكويت ولوفرت أموال التي سافرت فيها ولكن لما لم يحصل هذا دل على وجود أي عداة عندي للأمر فكان

كتبه : عبد العزيز سايز الشمري

في ١٩/٢٨/٢٠٠٤ م

In the name of God, most Gracious, most Merciful

Thanks to Allah who there is no God but him, and prayers and peace be upon our prophet Mohammed, the last of the prophets and messengers.

Here now:

Regarding my answer to the accusation that I am a member of Al Qaeda, so I say: That this accusation does not have anything to support it, but it is merely words with no evidence to prove it, as if monetary receipts were found on me to indicate that I had given financial support to Al Qaeda, or that I was arrested in a place specific to Al Qaeda, or that I was seen attending their meetings, or that it was found that I have a strong relationship with Usama Bin Laden, so on what grounds have I been associated with Al Qaeda, when none of these things have happened.

First:

What is the relationship between traveling to Afghanistan and Al Qaeda, and how can it be that travel to a large country with millions of people is travel for Al Qaeda which does not represent 1% of that number, for is a person who traveled to China considered a communist? And is a person who traveled to Iraq considered loyal to the Baath Party? As for the fact that I traveled from my country, Kuwait, after the events of September, this is a very natural thing, for these events occurred in America, so the chaos and confusion was not present anywhere but America, but as for the rest of the countries in the world the situation was normal, and people were going about their routine lives, so there was nothing strange about my trip.

Also I had met an Afghani man on one of my trips to the "Omra" whose name was Mohamed and he lives in Iran, so he proposed to me to travel to Afghanistan to teach the Quran and the Arabic language and Islamic studies. Of course this is after he learned that I studied Islamic Studies for 4 years at the Imam Mohamed Bin Saud Islamic University and I had graduated with a "Very Good" just a few marks away from "Excellent"-and I don't recall the date I met him because I have forgotten at this time-and this man gave me his phone number and said to me: If you wish to accept my offer, then call me on my phone and I will arrange everything.

Then I returned to Kuwait and after a period of time when the problems happened in Afghanistan I decided to accept the offer to teach in addition to helping some of the needy, after my family had transferred some money to me, that was the idea, especially after I had seen on television the need of the people, and that is not a peculiar thing because rescue work does not happen unless it is after a disaster or problem, whereas in times of peace and security and prosperity, no one needs rescuing, and for your knowledge war in Afghanistan had not stopped for many long years so there was no difference between before September or after, and I had thought that the war would be on the battlegrounds and that the fighting would not reach the cities and villages, or that there would be an assassination attempt on certain individuals or their kidnapping as it had happened to the president of Panama and that the matter would end at that.

And I thought my trip would be via Iran, then Pakistan-and that is what I told my family- because I knew that the relationship between Iran and Afghanistan was bad, but after

calling that Afghani man Mohamed he said to me: It is possible for us to enter Afghanistan via Iran, for the border crossing point between them is operating, so I said: Then there is no need to travel to Pakistan, particularly since it requires another Visa. And I had intended to stay for a short period then return, and there are several facts that support that, including that I had sent my High school and University diplomas to the Arab Republic of Egypt so as to continue my studies towards my Masters in Islamic Studies, and I had paid my registration dues, and I was waiting for an answer to my application, and this was done through the Ministry of Higher Education in the country of Kuwait, and it is a Government organization. And my application was not closed until after my imprisonment. Then I also presented my paperwork in order to improve my position at work from a teacher at Dar Al Quran, which is a part of the Ministry of Islamic Affairs and Charity, to a teacher at the Institute of Applications after I was sent by the government to obtain a Doctorate Degree and those institutes award diplomas higher than High School and lower than a Bachelors and of course that did not happen because I was imprisoned, so how could I have traveled to meet with Al Qaeda, when I had made all those arrangements? And for your knowledge my trip was via official channels and with government issued travel documents and there was nothing in my Kuwaiti passport to indicate that it was forbidden to travel to Afghanistan, for if there was a restriction, then the mistake is on my government's part that did not tell me of this restriction. But it was written in my passport that "This passport is valid for travel to all countries in the world unless it is otherwise mentioned" and they did not mention Afghanistan.

Second:

After the fall of the Taliban, every Arab in Afghanistan was wanted dead or alive, whether or not he was a combatant in the first place, because as I heard they had started buying Arabs and selling them, so I became afraid at hearing this news so I decided to escape quickly, and as it is known by you that the traveler most of the time does not carry his passport with him but leaves it with his valuables and luggage, especially in a country like Afghanistan, because no one asks anyone about their identification in Afghanistan, that's why I could not return to my luggage because the events had started to evolve a very fast and dangerous evolution, so I said to the man that was with me I want to leave quickly so he arranged my departure for me and as you know had the war started and the government fell and people started to fight amongst themselves and the weak escaped, they would not have taken refuge at the known border stations, as they know that armed individuals had taken over them and would kill anyone who went there, and that is exactly what happened in Afghanistan, for killing had become the simplest thing. So it became natural for me to escape to Afghanistan walking, until I could go to the embassy there which would arrange my situation, and what indicates that I am not a dangerous person, and that I have no secrets, is that I turned myself in to the police without a chase or resistance or anything else. And then what is the relationship between my crossing the border and Al Qaeda, is everyone who crossed the border and that time a person who is loyal to Al Qaeda, those are words that cannot be said, for when Iraq invaded my country Kuwait, and men and

children and women were escaping to Saudi Arabia and Jordan and Iran we did not see anyone arrest them and tell them you are followers of Saddam Hussein.

Knowing that they were crossing over at the border stations secretly and without travel documents, and those countries' authorities would not arrest them but would help them and construct medical tents for them to treat them in, for under those circumstances no one asks for documents because the circumstances are not normal in that part of the world.

And then lets assume the assumption that I made a mistake in this matter-I mean in my crossing the border without identification documents- the known procedure in a situation like this in all countries in the world, is to detain me until the Pakistani Authorities find out my identity and country then send me back to me country not to turn me over to the American Authorities, as a member of Al Qaeda and the Taliban, for this is an unbelievable thing, knowing that they asked me for my personal information and I gave it to them at the first moment, and they said to me we will verify this with the Kuwaiti government so on what basis did they turn me over to you.

Third:

My name is Abd Al Aziz Sayer Al Shammri, and I have no other name but this name, and there is no relationship between me and any person from Al Qaeda, and if a name like mine was found on a list with one of the people, then this would be a likeness in names because there are millions of Arab people that have my same name for my name many others have it as well. And then you haven't found my personal identification with him so you could say you placed these things with him so this indicates a relationship between you two, other than a name similar to mine was found.

And lets assume the name found was my name, well I cannot prevent any person from writing my name in anything they want because that is not under my control, so for example if Hitler wrote my name, I would not go to him, and tell him why did you write my name, as long as I don't have a relationship with him then I am not responsible for his writing. And whoever wants to will write whatever they want I don't have a relationship with anyone, besides that list is nothing but names only nothing else and nothing is known about it, so how can you say it is from Al Qaeda.

That is if this list is not a fake from the interrogators, for any person can type into the computer whatever they wanted any time they wanted , then say this was found on the computer.

And with this, prayers and peace from Allah be upon our prophet Mohammed.

Note: How could I be associated with Al Qaeda and I never traveled to them not even one time, and I did not participate in their meetings and gatherings.

Also if I wanted to fight against the Americans, the matter did not require me travelling to Afghanistan because The Americans are present in Kuwait with me, so if I wanted to fight them, I would have fought them in Kuwait and saved my money that used to travel but since that didnt happen, it is proof that there was no hatred on my part towards the Americans.

Personal Representative Review of the Record of Proceedings

I acknowledge that on 2 October 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

I have no comments.

My comments are attached.

[REDACTED], Major, USAF
[REDACTED]

Signature

2 OCT 04
Date

ISN # [REDACTED]
Enclosure (5)