

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

O.K., <i>et al.</i>)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1136 (JDB)
)	
GEORGE W. BUSH,)	
President of the United States,)	
<i>et al.</i> ,)	
)	
Respondents.)	

**RESPONDENTS' FACTUAL RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS BY PETITIONER O.K.**

Respondents hereby submit, as explained herein, the record of proceedings before the Combatant Status Review Tribunal pertaining to petitioner O.K. as a factual return to petitioner's petition for writ of habeas corpus. See Exhibit A. For the reasons explained in the record, petitioner O.K. has been determined to be an enemy combatant. Accordingly, petitioner O.K. is lawfully subject to detention pursuant to the President's power as Commander in Chief or otherwise, and is being detained.

The portion of the record suitable for public release is attached hereto, and the remaining portions of the record, including information that is classified or not suitable for public release, will be filed under seal and made available to petitioner's counsel upon the entry of a protective order governing such information by the Court, and the issuance of security clearances to petitioner's counsel.

Respondents reserve the right to rely, in addition to the complete record, on legal grounds for petitioner O.K.'s continued detention, which will be presented in briefing opposing the petition for writ of habeas corpus in accordance with a schedule to be determined by the Court.

Dated: September 15, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

BRIAN D. BOYLE
Principal Deputy Associate Attorney General

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Assistant to the Solicitor General

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/s/ Preeya M. Noronha

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Attorneys for Respondents

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_____)

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 O.K. that are suitable for public release. The portions of the record that are classified or considered law enforcement sensitive are not attached hereto. I have redacted

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

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

Dated: 14 Sep 04



James R. Grisfield Jr.
CDR, JAGC, USN



Department of Defense
Director, Combatant Status Review Tribunals

OARDEC/Ser:
10 September 2004

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From: Director, Combatant Status Review Tribunal

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

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

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

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

J. M. MCGARRAH
RADM, CEC, USNR

Distribution:
NSC (Mr. John Bellinger)
DoS (Ambassador Prosper)
DASD-DA
JCS (J5)
SOUTHCOM (CoS)
COMJTFGTMO
OARDEC (Fwd)
CITF Ft Belvoir

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10 Sep 04

MEMORANDUM

From: Legal Advisor
To: Director, Combatant Status Review Tribunal

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

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

Encl: (1) Appointing Order for Tribunal #5 of 17 August 2004
(2) Record of Tribunal Proceedings

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

- a. The detainee was properly notified of the Tribunal process and voluntarily elected not to participate in the Tribunal.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with the provisions of references (a) and (b). Note that some information in exhibits R-3, R-6, and R-8 was redacted. The FBI properly certified in exhibit R-2 that the redacted information would not support a determination that the detainee is not an enemy combatant.
- d. The detainee made no requests for witnesses or other evidence.
- e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.
- f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and declined to submit comments to the Tribunal.

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

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

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



James R. Crisfield, Jr.
CDR, JAGC, USN

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Department of Defense
Director, Combatant Status Review Tribunals

17 Aug 04

From: Director, Combatant Status Review Tribunals

Subj: APPOINTMENT OF COMBATANT STATUS REVIEW TRIBUNAL #5

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

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

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

MEMBERS:

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

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

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

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



HEADQUARTERS, OARDEC FORWARD
GUANTANAMO BAY, CUBA
APO AE 09360

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.

A handwritten signature in black ink, appearing to read "D.L. Taylor", is written over the typed name.

DAVID L. TAYLOR
Colonel, USAF

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(U) Combatant Status Review Tribunal Decision Report Cover Sheet

(U) This Document is UNCLASSIFIED Upon Removal of Enclosures (2) (3) and (4).

(U) TRIBUNAL PANEL: #5

(U) ISN#:

Ref: (a) (U) Convening Order for Tribunal #5, 17 August 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 (Not Used)
(4) (U) Copies of Documentary Evidence Presented (S/NF)
(5) (U) Personal Representative's Record Review (U)

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

2. (U) On 7 September 2004 the Tribunal determined, by a preponderance of the evidence, that Detainee # 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, USAF
Tribunal President

DERV FM: Multiple Sources
DECLASS: XI

SECRET//NOFORN//X1

UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL
DECISION

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

TRIBUNAL PANEL: #5
ISN #: [REDACTED]

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 classified information only. The following is an account of the Tribunal proceedings. Classified evidence considered by the Tribunal is discussed in Enclosure (2) to the CSRT Decision Report.

2. Synopsis of Proceedings

The Detainee chose not to participate in the Tribunal process. Because the unclassified evidence only consisted of the Unclassified Summary of evidence and the FBI redacted information statement, the Tribunal relied exclusively on classified information in reaching its decision.

3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a, R-1 through R-12

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

The Detainee requested no witnesses or evidence.

5. Discussion of Unclassified Evidence

The Tribunal considered no unclassified evidence in making its determinations. The recorder offered Exhibits R-1 and R-2 into evidence during the unclassified portion of the proceeding. Exhibit R-1 is the Unclassified Summary of Evidence. While this summary is helpful in that it provides a broad outline of what the Tribunal can expect to see, it is not persuasive in that it provides conclusory statements without supporting unclassified evidence. Exhibit R-2, an FBI certification regarding redacted information, provided no usable evidence. Accordingly, the Tribunal had to look to classified exhibits for support of the Unclassified Summary of Evidence. A discussion of the classified evidence is found in Enclosure (2) to the Combatant Status Review Tribunal Decision Report.

6. Consultations with the CSRT Legal Advisor

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

7. Conclusions of the Tribunal



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

- a. The detainee was mentally and physically capable of participating in the proceeding. No medical or mental health evaluation was deemed necessary.
- b. The detainee understood the Tribunal proceedings. The detainee chose not to participate in the Tribunal process, as indicated in Exhibit D-a.
- c. The detainee is properly classified as an enemy combatant because he is a member of, or affiliated with al-Qaida.

8. Dissenting Tribunal Member's report

None. The Tribunal reached a unanimous decision.

Respectfully submitted,


, Colonel, USAF
Tribunal President

DETAINEE ELECTION FORM

Date: 4 Sept 2004

Start Time: 1000

End Time: 1055

ISN#: [REDACTED]

Personal Representative: [REDACTED]
(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:

[REDACTED] will not commit to participation in Tribunal. If, he participates there will not be any witness.

6 September 2004, the detainee will not participate in the CSRT.

Personal Representative: [REDACTED]

Exhibit D-a

FOUO

Recorder Exhibit List
For

ISN [REDACTED]

#	Title	Number of Pages	Classification
R1	Unclassified Summary	1	UNCLASSIFIED
R2	FBI Certification Re: Redaction of National Security Information dtd 03 Sep 04	1	UNCLASSIFIED
R3	FBI FD-302 25-NOV-02	2	FOUO//LES
R4	CITF Form 40 05-NOV-02	4	FOUO//LES
R5	CITF Form 40 17-MAR-04	6	FOUO//LES
R6	FBI Memorandum 03-SEP-04	1	SECRET//NOFORN
R7	IIR 6034025103 07-OCT-02	3	SECRET
R8	FBI FD-302 06-DEC-02	3	FOUO//LES
R9	CITF Form 40 28-OCT-02	5	FOUO//LES
R10	JTF GTMO Baseball Card	2	SECRET//NOFORN
R11	JTF GTMO Memo 05-JAN-04	3	SECRET//NOFORN
R12	CITF KB Mar-02	3	SECRET

FOUO

Unclassified

Combatant Status Review Board

TO: Personal Representative

FROM: OIC, CSRT (31 August 04)

Subject: Summary of Evidence for Combatant Status Review Tribunal. [REDACTED]

O.K.

1. Under the provisions of the Secretary of the Navy Memorandum, dated 29 July 2004, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base Cuba*, a Tribunal has been appointed to review the detainee's designation as an enemy combatant.
2. An enemy combatant has been defined as "an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces."
3. The United States Government has previously determined that the detainee is an enemy combatant. This determination is based on information possessed by the United States that indicates that he is a member of al Qaida and participated in military operations against U.S. forces.
 - a. The detainee is an al Qaida fighter:
 1. The detainee admitted he threw a grenade which killed a U.S. soldier during the battle in which the detainee was captured.
 2. The detainee attended an al Qaida training camp in the Kabul, Afghanistan area where he received training in small arms, AK-47, Soviet made PK guns, RPGs.
 3. The detainee admitted to working as a translator for al Qaida to coordinate land mine missions. The detainee acknowledged that these land mine missions are acts of terrorism and by participating in them would make him a terrorist.
 - b. The detainee participated in military operations against U.S. forces.
 1. Circa June 2002, the detainee conducted a surveillance mission where he went to an airport near Khost to collect information on U.S. convoy movements.
 2. On July 20, 2002 detainee planted 10 mines against U.S. forces in the mountain region between Khost and Ghardez. This region is a choke point where U.S. convoys would travel.
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

Page 1 of 1

Exhibit R-1



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

Date: 09/03/2004

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.

FD-302 dated 11/25/02

" " 12/06/02

FBI Memo dated 09/03/04

By
9/3/04

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

²See Executive Order 12958

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Personal Representative Review of the Record of Proceedings

I acknowledge that on 8 September 2004 I was provided the opportunity to review the record of proceedings for the Combatant Status Review Tribunal involving ISN # [REDACTED]

I have no comments.

My comments are attached.

[REDACTED]
Name

8 Sept 04
Date

[REDACTED]
Signature

ISN # [REDACTED]
Enclosure (5)

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