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DEPARTMENT OF DEFENSE
JOINT TASK FORCE 435
APO AE 09356

IN REPLY REFER TO:

JUL 6 2010

MEMORANDUM FOR Commander, Task Force Protector, Bagram Airfield, Afghanistan
Director, Legal Operations, Bagram Airfield, Afghanistan

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation for Continued Internment Approval for ISN 3782

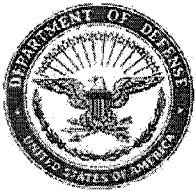
1. I reviewed the findings and recommendations of the DRB that convened on 5 June 2010 concerning the internment of Detainee ISN 3782. By a vote of 2 to 1, the board members found that internment is necessary to mitigate the threat ISN 3782 poses. After consideration, I approve the DRB's finding and direct that ISN 3782 continue to be detained at the Detention Facility in Parwan.
2. The DRB's recommendation that ISN 3782 not be assessed as an Enduring Security Threat is approved.
3. The point of contact for this memorandum is CAPT ^{(b)(3), 10 USC 130b; (b)(6)}, Director of Legal Operations, JTF 435, at DSN ^{(b)(2)}

ROBERT S. HARWARD
Vice Admiral, U.S. Navy

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Bagram-CENTCOM-DRB-548

~~SECRET//NOFORN~~



REPLY TO
ATTENTION OF:

DEPARTMENT OF DEFENSE
JOINT TASK FORCE 435
APO AE 09354



JTF-435-LO

7 June 2010

MEMORANDUM FOR Deputy Commander, Joint Task Force 435, Kabul Afghanistan, APO
AE 09356

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation, Continue Internment
of Nek Marjan s/o Shah Wazir, ISN 3782

1. DRB FINDINGS AND RECOMMENDATIONS. The DRB met on 5 June 2010 and made
the following findings and recommendations concerning the internment of Nek Marjan s/o (b)(6)
, ISN 3782:

a. That Nek Marjan, ISN 3782, met criteria for initial internment because he was assessed to
be a part of or a substantial supporter of insurgent forces opposing Coalition Forces.

b. That internment is necessary to mitigate the threat posed by Nek Marjan, ISN 3782. That
Nek Marjan, ISN 3782, should continue to be interned at the Detention Facility in Parwan.

c. The DRB recommends approval for the continued internment of Nek Marjan, ISN 3782.

d. That Nek Marjan, ISN 3782, should be considered for reintegration programs within the
DFIP.

e. That Nek Marjan, ISN 3782, is not an Enduring Security Threat.

2. DRB ASSESSMENT. (b)(1); (b)(2); (b)(5)

Notwithstanding the majority vote, the evidence was so weak that one board member found no
internment criteria. (b)(1); (b)(2); (b)(5)

3. CIRCUMSTANCES OF CAPTURE. Nek Marjan s/o (b)(6) , ISN 3782, was captured
(b)(1); (b)(2); (b)(5)

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Bagram-CENTCOM-DRB-549

JTF-435-LO

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation, Continue Internment of Nek Marjan s/o (b)(6), ISN 3782

(b)(1); (b)(2); (b)(5)

4. BASIS FOR TARGETING AND INTERNMENT. In making its findings and recommendations, the DRB considered the following evidence:

- a. Physical Evidence: Cell phone.
- b. (b)(1); (b)(2); (b)(5)
- c. Explosive Residue Testing: None.
- d. Classified Reporting: (b)(1); (b)(2); (b)(5)

(b)(1); (b)(2); (b)(5)

(b)(1); (b)(2); (b)(5); (b)(6)

(b)(1); (b)(2); (b)(5)

5. DETAINEE ADMISSIONS AND CLAIMS (PRE-DRB). In making its findings and recommendations, the DRB considered information from interrogations and interviews, including but not limited to the following:

- a. Interrogations and Interviews: (b)(1); (b)(2); (b)(5)

- b. Polygraph: (b)(1); (b)(2); (b)(5)

6. EXHIBITS SUBMITTED & DETAINEE TESTIMONY AT DRB. In making its findings and recommendations, the DRB considered the following exhibits and detainee testimony:

- a. Recorder's Unclassified and Classified Exhibits.

JTF-435-LO

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation, Continue Internment of Nek Marjan s/o (b)(6), ISN 3782

b. Personal Representative's Exhibits. Exhibit A, indicating that Nek Marjan, ISN 3782, was advised of the basis for internment and the facts supporting internment. Exhibit B, indicating that Nek Marjan, ISN 3782, met with a personal representative and was advised of his rights at the DRB.

c. Detainee Criminal Investigative Detachment (DCID) Report of Investigation (ROI) dated 3 May 2010.

d. (b)(1); (b)(2); (b)(5)

e. Detainee's DRB Statement and Responses to Questions: Nek Marjan, ISN 3782, said he is not Taliban. He built his house for himself and his children, not for Taliban. He is not aware of a Taliban presence in his village (Mana Village, Spira District, Khowst Province). He denied assisting Taliban. He has no interest in the Haqqani group.

Nek Marjan, ISN 3782, described his capture. (b)(1); (b)(2); (b)(5)

Nek Marjan has animosities. Some people killed his father. Certain people killed his cousin because he married a certain woman.

If released he will try to get his car back and resume cab-driving. His back-up plan will be to reopen his shop.

His brother, (b)(6), ISN (b)(6), is currently interned at the DFIP. (b)(6) lived in another village for the last four years. For this reason, Nek Marjan is unaware of (b)(6) nefarious activities.

7. WITNESS INFORMATION. In making its findings and recommendations, the DRB considered the following witness information: The personal representative called one telephonic witness to attest to Nek Marjan's background and character. The Recorder called the (b)(1); (b)(2); (b)(5)

There are four associated personnel who are detained, namely the following: (b)(6)

None of these witnesses were called, because none of them mentioned Marjan, ISN 3782, in their interrogations.

JTF-435-LO

SUBJECT: 5 June 2010 Detainee Review Board (DRB) Recommendation, Continue Internment of Nek Marjan s/o(b)(6), ISN 3782

Cousin of Nek Marjan (telephonic witness). The person on the phone identified himself as the cousin of Nek Marjan. The witness said that Nek Marjan is a shopkeeper and taxi driver. Nek Marjan has never been involved with the Taliban. He thinks Nek Marjan was arrested as a result of wrong information. (b)(1); (b)(2); (b)(5)

His wife's father is taking care of the family during Nek Marjan's internment. Nek Marjan has always worked. He bought a vehicle and he has already paid for about half the purchase price. Nek Marjan's father was killed by some enemies. He has visited Nek Marjan at face-to-face family visits in the past.

LT ^{(b)(3), 10 USC 130b, (b)(6)}, LNO from capturing unit, ^{(b)(1); (b)(2)} (live witness), (b)(1); (b)(2); (b)(5)

LT ^{(b)(3), 10 USC 1} said (b)(1); (b)(2); (b)(5)

8. SUMMATION OF DRB FINDINGS AND RECOMMENDATIONS, THREAT ASSESSMENT. In determining whether continued internment is necessary to mitigate the threat posed by Nek Marjan, ISN 3782, the DRB assessed the detainee's level of threat and weighed, among other things, his potential for rehabilitation, reconciliation, and eventual reintegration into society. In considering this recommendation, the DRB noted the risk posed by Nek Marjan, ISN 3782, in relation to the COIN impact of release versus continued internment. As a result of all of these considerations, the DRB believes that internment is necessary to mitigate the threat posed by Nek Marjan, ISN 3782.

9. The point of contact for this review is MAJ ^{(b)(3), 10 USC 130b; (b)(6)}, JTF-435 DRB, at DSN (b)(2) (b)(2) or (b)(2); (b)(3), 10 USC 130b; (b)(6).

(b)(3), 10 USC 130b; (b)(6)

2 Encls.

1. DRB Voting Packet
2. Summarized Testimony

COL, QM, USA
President, Detainee Review Board

<u>Date of Board</u> 5 JUN 10	<u>Detainee Name</u> Nek Marjan s/o (b)(6)	<u>Detainee ISN</u> 3782
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STEP 1 (FINDINGS): By a preponderance of the information presented, as a member of the Detainee Review Board (DRB), I find that:

The detainee DOES NOT MEET THE CRITERIA for internment and will be released. *Stop here and sign at the bottom.*

OR

The detainee listed above MEETS CRITERIA FOR INTERNMENT because he is a person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harbored those responsible for those attacks; *(Continue to Step 2) OR*

The detainee listed above MEETS CRITERIA FOR INTERNMENT because he is a person who was part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces. *(Continue to Step 2)*

STEP 2 (THREAT ASSESSMENT RECOMMENDATION): After taking into account the detainee's potential for rehabilitation, reconciliation, and eventual reintegration into society, by a preponderance of the information, I find that continued internment:

(b)(1); (b)(5)

IS NOT NECESSARY to mitigate the threat the detainee poses; (Go to Step 3A)

OR

IS NECESSARY to mitigate the threat the detainee poses (* the detainee will remain at the Detention Facility in Parwan (DFIP) to ensure detention required to mitigate his threat) (Go to Step 3B;

Explain the facts presented at the DRB which led to your recommendation/

(Mandatory regardless of which threat assessment is made):

(b)(1); (b)(2); (b)(5)

Notably weak evidence. One board member voted "does not meet criteria" making this a SPLIT VOTE DECISION

STEP 3A: If your Recommendation in STEP 2 is that continued internment is not necessary to mitigate the threat the Detainee poses, then make one of the following recommendations: In light of the findings listed above, I recommend that the detainee be (PICK ONLY 1):

- Released without conditions; or
- Transferred to Afghan authorities for their consideration of criminal prosecution.
- Transferred to Afghan authorities for participation in a reconciliation or reintegration program.
- (For non-Afghan and non-U.S. third-country national): Transferred to a third country for: criminal prosecution // participation in a reconciliation program // or release. *(circle one)*

STEP 3B: If your Recommendation in STEP 2 is that continued internment is necessary to mitigate the threat the Detainee poses, make the following further recommendation, and then Go to Step 4.

While the Detainee remains interned at the DFIP, he SHOULD / SHOULD NOT *(circle one)* be considered for Reintegration programs within the DFIP.

STEP 4: The Detainee IS or IS NOT an Enduring Security Threat *(circle one)*.

(b)(3), 10 USC 130b; (b)(6)

DRB President (Printed) _____
(b)(3), 10 USC 130b; (b)(6)

DRB President (Signature) _____

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(2); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(b)(1); (b)(3), 10 USC 130b; (b)(5); (b)(6)

(U//FOUO) [ISN (b)(2)-003782DP, Nek Marjan, entered the boardroom, took seat in front of the board members, and the unclassified hearing was called to order at 0812, 5 June 2010.]

(U) Persons Present:

- (U) COLONEL (b)(3), 10 USC 130b; (b)(6), PRESIDENT OF THE BOARD;
- (U) Major (b)(3), 10 USC 130b; (b)(6), MEMBER ONE;
- (U) Major (b)(3), 10 USC 130b; (b)(6), MEMBER TWO;
- (U) CAPTAIN (b)(3), 10 USC 130b; (b)(6), DETAINEE REVIEW BOARD
RECORDER O
- (U) LIEUTENANT JUNIOR GRADE (b)(3), 10 USC 130b; (b)(6), PERSONAL
REPRESENTATIVE ONE;
- (U) MAJOR (b)(3), 10 USC 130b; (b)(6), LEGAL REPRESENTATIVE; and
- (U) TECHNICAL SERGEANT (b)(3), 10 USC 130b; (b)(6), PARALEGAL.

(U) [The recorder was sworn.]

(U) The detainee was advised by the president of how this board was not a criminal trial and how this board was to determine whether or not he met the criteria for further internment.

(U) The president also notified the detainee that he may be present at all open sessions of the board permitting that he acted appropriately. ISN 3782 was also advised that he could testify under oath or unsworn if he wished to do so, that he had a personal representative who was present at the hearing, that he may present information at the hearing including the testimony of witnesses, and that he can examine documents presented to the board all of which the detainee understood.

(U) Further, ISN 3782 was instructed that, at the conclusion of the board after the legal review, the board would determine whether he met the criteria for further internment at the Detention Facility in Parwan. The detainee understood the fact

(U//~~FOUO~~) that if he does not meet the criteria, he would be released as soon as possible. However, if he did meet the criteria, then he would be recommended for further internment, transferred to Afghan authorities, or released without conditions.

(U) CPT ^{(b)(3), 10 USC 130b; (b)(6)} presented the following unclassified information to the board:

(U//FOUO) Nek Marjan, ISN 3782, (b)(1); (b)(2); (b)(5)

(U//~~FOUO~~) (b)(1); (b)(2); (b)(5)

(U//~~FOUO~~) Nek Marjan denies being a member of the Taliban. He says he was a taxi driver who smoked a lot of hashish. He has denied any knowledge of attacks on Coalition Forces. He has denied knowing (b)(6) . He says he has enemies who have killed his father and who must have paid the police to arrest him.

(U//~~FOUO~~) The Detainee meets the internment criteria if this board determines he was part of, or substantially supported the Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the US or its coalition partners, or if he has committed a belligerent act, or has directly supported hostilities in aid of such enemy armed forces.

(U) The detainee, ISN 3782, made the following statements to the board:

(U//~~FOUO~~) I am accused of being Taliban and a Taliban commander and none of this is true. He does not store anything for the Taliban in my house. My house is for my wife and children only. I'm not against coalition forces

(U//~~FOUO~~) or government. I'm a poor person making a living driving a cab. You can verify this by anybody in my village. Someone paid money to the police to detain me. I
(b)(1); (b)(2); (b)(5)

Before I started driving taxi I had a retail shop and I was living there. You can ask anybody about me. Anything they say will be the truth about me. The US is improving our country, making roads, schools and hospitals. Why would I do anything to the U.S. I like the coalition forces I have never been involved with attacks against coalition forces. There might be two reasons I'm here, if someone paid money to keep me here, or somebody has animosities toward me.

(U) DETAINEE TESTIMONY

(U//~~FOUO~~) Nek Marjan, **(b)(2)**-003782DP, was called for the board and testified, in subs , as follows:

(U) DIRECT EXAMINATION

(U) CPT ^{(b)(3), 10 USC 130b, (b)(6)} asked, in substance, the following questions:

(U//~~FOUO~~) My name is Nek Marjan, son of **(b)(6)**. I lived in Sukart. Sukart is in the Sour kwo'st province. There is no Taliban in my village. I don't know Taliban CC **(b)(6)**. I do not know **(b)(6)**. I do not know any Taliban at all. I don't know of any Taliban in my village. I have not ever done anything to help Taliban because I barely can take care of my family. I don't have time to help the Taliban. I don't know **(b)(6)**. I've never had anyone in my village come to my house that has attacked CF. I know nothing about **(b)(6)**.

(U//~~FOUO~~) **(b)(1); (b)(2); (b)(5)**

Of course I have enemies; my father was killed by our enemies. The three enemies I speak of specifically are **(b)(6)**, **(b)(6)** and

(U//~~FOUO~~) (b)(6), they are my enemies who killed my father. They killed my cousin for marrying a woman they did not approve of. I did own a cell phone prior to capture.

(U) [Recorder showed detainee unclassified exhibit page 4]

(U//~~FOUO~~) That is my cell phone. I don't remember my cell phone number.

(U//~~FOUO~~) The people in my village government are corrupt but I don't know if it's for money or because they're Taliban members. I have never lived in Magara village. If I were released I'd resume driving my taxi or work as a shop keeper.

(U//~~FOUO~~) I don't see anything wrong with Americans. They are rebuilding our country.

(U) CROSS-EXAMINATION

(U) LT ^{(b)(3), 10 USC 1506} asked, in substance, the following questions:

(U//~~FOUO~~) (b)(1): (b)(2): (b)(5)

(U//~~FOUO~~) I own my taxi vehicle. My nephew drives my taxi seldom.

(U//~~FOUO~~) I have four children and one wife. While I'm detained I don't know who's taking care of my family.

(U) The President of the Board asked, in substance, the following questions:

(U//~~FOUO~~) My brother's names are (b)(6) , (b)(6) , and (b)(6) . None of them are members of Taliban. My brothers are not members of the Haqqani. One brother is a farmer, the other works in Dubai and the other is a detainee. Before he was detained he was working in the province. I don't know why my other brother, (b)(6) , is detained. He does not associate with any enemy insurgents. I've never been detained before. I've never been wounded.

(U) AFGHAN CIVILIAN WITNESS TESTIMONY

(U//~~FOUO~~) (b)(6), Afghan Civilian, was called telephonically as a witness e board, and testified, in substance, as follows:

(U) DIRECT EXAMINATION

(U) LT ^{(b)(3), 10 USC 1306} asked, in substance, the following questions:

(U//~~FOUO~~) Nek Marjen is my cousin. The detainee is a taxi driver and a shop keeper. He has not been involved with the Taliban or anti-CF. All I know is that they captured him based on wrong information. I do not know who captured him. His wife's father is taking care of his family. I have never seen the detainee do anything wrong. Before the detainee was captured he was under my care. As long as I've known the detainee, he works hard, he bought his own vehicle and he's already paid half on the taxi.

(U) CROSS-EXAMINATION

(U) CPT ^{(b)(3), 10 USC 1306; (b)(6)} asked, in substance, the following questions:

(U//~~FOUO~~) Nobody in his family is involved with the Taliban. There is no Taliban in my village but there are lots of animosities. The detainee has enemies in my village due to long standing animosity. One person's name who is an enemy of the detainee is (b)(6) . I do not know any other names.

(U) [The call was terminated.]

(U) The recorder did offer unclassified exhibits.

(U) The personal representative did offer unclassified exhibits.

(U) The recorder had no further unclassified information to offer the board and, per the recorder's request, the president granted a closed hearing at the culmination of the unclassified hearing.

(U) The president announced the conclusion of the unclassified hearing.

(U) The president of the board instructed the detainee that he would be notified of the board's decision within a couple of weeks and that he would be released if the decision is made that further internment would not be required. However, if the board decided that further internment is required, he would be retained at the Detention Facility in Parwan, transferred to Afghan authorities for participation in a reconciliation program, or released transferred to his national country for participation in a reconciliation program. Furthermore, if continued internment was recommended, then an additional Detainee Review Board would be reconvened in 6 months.

(U) The detainee made the following statement:

(U//~~FOUO~~) I appreciate you allowing me to come to this board.

(U) [The unclassified hearing adjourned at 1411, 5 June 2010.]

(U) [The detainee withdrew from the boardroom.]

(U) [The classified hearing was called to order at 1422, 5 June 2010.]

(U) MILITARY INTEL ANALYST WITNESS TESTIMONY

(U//~~FOUO~~) LT ^{(b)(3), 10 USC 130b; (b)(6)} entered the b United States Navy Intel Analyst, testified, in substance, as follows:

(U) DIRECT EXAMINATION

(U) CPT ^{(b)(3), 10 USC 130b; (b)(6)} asked, in substance, the following questions:

~~(S//NF)~~ My names Lt ^{(b)(3), 10 USC 130b; (b)(6)}, and I'm familiar with
ISN 3782. (b)(1): (b)(2): (b)(5)

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) The President of the Board asked, in substance, the following questions:

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) REDIRECT EXAMINATION

(U) CPT ^{(b)(3), 10 USC 130b; (b)(6)} asked, in substance, the following questions:

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) RE-CROSS-EXAMINATION

(U) LT ^{(b)(3), 10 USC 1306:} asked, in substance, the following questions:

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) [The witness withdrew from the boardroom.]

(U) Capt ^{(b)(3), 10 USC 1306; (b)(6)} presented the following information to the board:

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) LT ^{(b)(3), 10 USC 1306:} presented the following information to the board:

~~(S//NF)~~ (b)(1): (b)(2): (b)(5)

(U) The recorder did offer classified exhibits.

(U) The personal representative did offer classified exhibits.

(U) [The classified session adjourned at 1453, 5 June 2010.]

[END OF PAGE]