

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION;  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

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

Defendants.

09 Civ. 8071 (BSJ) (FM)

ECF Case

**SUPPLEMENTAL DECLARATION OF MELISSA GOODMAN**

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

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

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

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

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

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

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

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

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

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

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

[ . . . ]

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

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

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

[ . . . ]

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

**Detainee:** “Yes.”

[ . . . ]

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

[ . . . ]

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

*The detainee did not respond to the question.*

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

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

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

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

**Tribunal Member:** “Jacob too?”

**Detainee:** Yes.

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

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

[ . . . ]

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

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

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

**Detainee:** “Yes”

[ . . . ]

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

*The detainee did not respond to the question*

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


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

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

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

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

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



Melissa Goodman