

**JUSTICE SCALIA, THE DEPARTMENT OF DEFENSE,  
AND THE PERPETUATION OF AN URBAN LEGEND:**

**The Truth about Recidivism of Released Guantánamo Detainees**

By

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## Executive Summary

The defining characteristic of an “urban legend” is its ability to perpetuate itself not only without factual support but in the face of overwhelming factual evidence that it is false. While it is not surprising to find urban legends in the unmoderated precincts of the internet, it is shocking to discover one in an opinion written by a Justice of the United States Supreme Court.

Last week, however, Justice Antonin Scalia, in his dissent in *Boumediene v. Bush*, repeated the false accusation that “[a]t least 30 of those prisoners hitherto released from Guantánamo Bay have returned to the battlefield.” His source was a year-old Senate Minority Report, which in turn was based on misinformation provided by the Department of Defense.

Justice Scalia’s reliance on these sources would have been more justifiable had the urban legend he perpetuated not been (one would have thought) permanently interred by later developments, including a 2007 Department of Defense Press Release and hearings before the House Foreign Relations Committee less than two weeks before Justice Scalia’s dissent was released.

On December 10, 2007 The Seton Hall Center for Policy and Research issued a Report, *THE MEANING OF "BATTLEFIELD": An Analysis of the Government’s Representations of ‘Battlefield Capture’ and ‘Recidivism’ of the Guantánamo Detainees*, which demonstrated that statements asserting 30 detainees had returned to the battlefield were incorrect. Further developments since then, including recent hearings before Congress at which more information was provided by the Department of Defense, confirm that the 30 recidivist claim is simply wrong and has no place in a reasoned public debate about Guantánamo.

This Report concludes the following:

- At most 12, not 30, detainees “returned to the fight.”
- Of these 12, it is by no means clear that all are properly characterized as having been so engaged since their release.
- According to the Department of Defense’s published and unpublished data not a single detainee was ever released by a court. Moreover, every released detainee was released by political appointees of the Department of Defense, sometimes over the objection of the military.
- According to the Department of Defense’s published and unpublished data and reports, not a single released Guantánamo detainee has ever attacked any Americans.
- The Department of Defense’s statements regarding recidivism are inconsistent with each other and often contradictory.
- This may be because, despite the importance of detainee recidivism, the Department of Defense’s sources of information are media reports.
- Despite national security concerns, the Department of Defense does not have a system for tracking the conduct or even the whereabouts of released detainees.
- The only indisputable detainee who took up arms against the United States or its allies was ISN 220.

- ISN 220 was not released as a result of any legal process, whether a CSRT or a federal habeas proceeding; no detainee has been released as a result of either process.
- The decision to release ISN 220 was made by political officers in the Department of Defense and was contrary to the recommendations of the military officers.
- The Department of Defense has never explained why ISN 220 was released or who is responsible for the decision.
- It is at least plausible that a more transparent process would have resulted in ISN 220 still being detained.

### **Introduction**

In the opening lines of his dissent in *Boumediene v. Bush*,<sup>1</sup> Associate Supreme Court Justice Antonin Scalia wrote, “[the Court’s decision] will almost certainly cause more Americans to be killed.”<sup>2</sup> To buttress his argument Justice Scalia stated, “In the short term, however, the decision is devastating. At least 30 of those prisoners hitherto released from Guantánamo Bay have returned to the battlefield.”<sup>3</sup>

Justice Scalia’s claim of 30 recidivist detainees is belied by all reliable data. Such a statement simply repeats, without appropriate judicial analysis or skepticism towards the statements of parties before the Court, inaccurate data disseminated by the Department of Defense. Despite being repeatedly debunked, this statement has been reflexively accepted as true by Members of Congress and much of the American public. Justice Scalia is only the most recent disseminator of an urban legend that refuses to die.

### **Claims of Detainee Recidivism**

As documented in the Center’s earlier report *The Meaning of Battlefield*, there have been a wide variety of claims of detainee recidivism by high ranking executive branch officials, Members of Congress and members of the judiciary. However, the source of Justice Scalia’s “30” is Senate Report No. 110-90, pt. 7, p. 13 (June 26, 2007), *Minority Views of Sens. Kyl, Sessions, Graham, Cornyn, and Coburn*:

At least 30 detainees who have been released from the Guantanamo Bay detention facility have since returned to waging war against the United States and its allies.

A dozen released detainees have been killed in battle by U.S. forces, while others have been recaptured. Two released detainees later became regional commanders for Taliban forces. One released Guantanamo detainee later attacked U.S. and allied soldiers in Afghanistan, killing three Afghan soldiers.

Another former detainee has killed an Afghan judge. One

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<sup>1</sup> *Boumediene v. Bush*, 2008 U.S. LEXIS 4887 (U.S. June 12, 2008)(Scalia, J., dissenting).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

released detainee led a terrorist attack on a hotel in Pakistan, and also led a kidnapping raid that resulted in the death of a Chinese civilian. This former detainee recently told Pakistani journalists that he plans to "fight America and its allies until the very end."<sup>4</sup>

*Minority Views* cites for this information Attachment A, which is a CNN story of May 14, 2007. CNN, in turn, sources the Department of Defense for the number 30.

The most authoritative Department of Defense source for that number is testimony of Department of Defense Principal Deputy General Counsel Daniel J. Dell’Orto on April 26, 2007 before the Senate Armed Services Committee.

The general number is around—just short of thirty, I think...It’s a combination of thirty we believe have either been captured or killed on the battlefield, so some of them have actually died on the battlefield.

In short, Justice Scalia’s citation of the number 30 ultimately rests on statements made by the Department of Defense, which was, of course, the respondent in *Boumediene*, the case in which Scalia dissented. While it may be permissible to credit information from a litigant, especially if provided under oath as Mr. Dell’Orto’s testimony, it is certainly inappropriate to accept such statements at face value without probing further.

In fact, Dell’Orto’s testimony and the *Minority Views* occurred almost a year before Scalia’s opinion was written. During that year, two Department of Defense documents established that it was false. First, a Department of Defense Press Release in July 2007 belied both Mr. Dell’Orto’s testimony and the *Minority Views* relying on it. Second, and even more definitively, a Department of Defense document produced at a House Foreign Relations Subcommittee Hearing on May 20, 2008 abandons the claim of 30.

### **Department of Defense’s Backpedaling: The July 2007 News Release**

The July 2007 press release issued by the Department of Defense raised serious questions about the claims of recidivism made by the Department’s own Principal Deputy General Counsel and *Minority Views*.<sup>5</sup> Although it did repeat the number 30, the Press Release made clear that that number included not only those former detainees who could have in any sense been said to have engaged in combat against the United States or its allies but also those who returned “to militant activities, participat[ed] in anti-US propaganda or other activities through intelligence gathering and media reports.”<sup>6</sup>

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<sup>4</sup> *Minority Views*, p. 13.

<sup>5</sup> Although not widely commented on, the Release also raised serious questions about the Government’s diligence in protecting our national security. The release proclaimed that the Government’s does “not generally track ex-GTMO detainees after repatriation or resettlement[.]”

<sup>6</sup> The preamble of the release stated:

In short, while Principal Deputy General Counsel Dell’Orto and the *Minority Views* publicly insisted that some 30 former Guantánamo detainees have “returned to waging war against the United States and its allies,” the Department’s July 2007 News Release flatly contradicted this claim. Rather than thirty supposed recidivists waging war, the Press Release described at most fifteen (15) possible recidivists. Even more surprising, only seven (7) of these individuals are identified by name and were alleged to have returned to any battlefield or any combat. The other eight (8) of the fifteen (15) individuals alleged by the Government to have “returned to the fight” are accused of nothing more than speaking critically of the Government’s detention policies.

As we developed in detail in *The Meaning of “Battlefield,”* these other “recidivists” included the Tipton Three (who recounted their Guantánamo experiences for Michael Winterbottom’s commercial film, *The Road to Guantánamo*) whose speech was apparently viewed as problematic and five (5) Uighur’s who remained detained in a refugee camp in Albania but who had an editorial submitted on their behalf which was critical of the US Guantánamo policy.

The July 2007 Press Release identified seven (7) individuals not by their ISN number but by name.<sup>7</sup> As *The Meaning of “Battlefield”* reported, three (3) of these seven could not be matched up with Department of Defense’s lists of detainees.<sup>8</sup> Subsequent information released by the Department of Defense confirmed that one of the seven had never been in Guantanamo.<sup>9</sup> However, it provided the names and ISNs for the remaining six, who presumably had been in Guantánamo.

In any event, six recidivists are obviously a small fraction of the 30 that Justice Scalia reported almost a year later.

The Justice may have been misled by the *Minority Views*, which he cited as authority, even though it did not purport to be based on any intelligence but merely press accounts, or he may have been misled by the Department of Defense’s July 2007 press release. Still, a careful

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Former Guantánamo Detainees who have returned to the fight:

Our reports indicate that at least 30 former GTMO detainees have taken part in anti-coalition militant activities after leaving U.S. detention. Some have subsequently been killed in combat in Afghanistan.

...Although the US Government does not generally track ex-GTMO detainees after repatriation or resettlement, we are aware of dozens of cases where they have returned to militant activities, participated in anti-US propaganda or other activities through intelligence gathering and media reports. (Examples: Mehsud suicide bombing in Pakistan; Tipton Three and the Road to Guantánamo; Uighurs in Albania).

The following seven former detainees are a few examples of the 30; each returned to combat against the US and its allies after being released from Guantánamo. . . .

<sup>7</sup> See *The Meaning of “Battlefield”* at p. 3.

<sup>8</sup> Abdul Rahman Noor, Abdullah Mehsud, and Maulavi Abdul Ghaffar do not appear on the Department of Defense Records on detainees. See *The Meaning of “Battlefield”* at p. 11-12.

<sup>9</sup> The July 2007 Press Release included a detainee named “Abdul Rahman Noor.” *The Meaning of “Battlefield”* concluded that Mr. Noor was “never officially detained at Guantanamo.” The May 20, 2008 document apparently reached a similar conclusion, as Mr. Noor was not included in the current list of twelve (12) recidivists.

reading of the latter would have made clear that it was inappropriate to cite the number 30 as having “returned to the battlefield.” The Press Release makes clear that that number can be defended, if at all, only by lumping together the handful who actually engaged in some sort of “combat” with those who engaged in “militant activities,” “anti-US propaganda,” and unspecified “other activities.”<sup>10</sup>

Whether a Justice of the Supreme Court should have been so misled is another question, but developments after the July 2007 press release make Justice Scalia’s unexamined repetition of the 30 number even less defensible.

### **The Department of Defense’s Position of May 20, 2008**

Whether or not it would have been appropriate for a Supreme Court justice to cite the number 30 after the July 2007 Department of Defense Press Release, it was clearly inappropriate in June 2008 to accept it at face value as did Justice Scalia.

On May 20, 2008, the Subcommittee on International Organizations, Human Rights and Oversight of the House Foreign Affairs Committee held a hearing on this question, among others, concerning Guantánamo. At that hearing, there was considerable skepticism about the reliability of the number of recidivists. The highpoint of the hearing, in this regard, was the production by the Department of Defense of a document (on plain paper, without letterhead), sent by facsimile to Congressman Dana Rohrabacher (R. Cal.). The document, which is attached as Appendix 4, referenced Professor Denbeaux and was provided to him after his testimony.

The May 20<sup>th</sup> document expressly distinguishes between the twelve names (together with eleven ISN numbers) it lists as having “returned to the fight” and former detainees who have merely “spoken critically of the Government’s detention policy.” (quoting *The Meaning of “Battlefield”*) This constitutes an admission that the number 30 is incorrect.

Six of the twelve names were on the July 2007 Press Release, and six are new. It is not clear whether the six new names were individuals who had “returned to the fight” after July 2007 or whether they had been left off the July 2007 Press Release for some unknown reason.<sup>11</sup>

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<sup>10</sup> See *The Meaning of “Battlefield”*

<sup>11</sup> Although the May 20<sup>th</sup> document clarified mistakes in the July 2007 Press Release, the May 20<sup>th</sup> document is itself inaccurate in at least one respect. It lists the same ISN number for two different detainees. A Moroccan named “Ibrahim Bin Shakaran” is listed as ISN 587 is an Afghani named “Mohamed Yusif Yaaqoub aka Mullah Shanzada.” According to the May 20<sup>th</sup> document, the Moroccan remains alive and was arrested in Morocco; however, the May 20<sup>th</sup> document reports the Afghani as killed.

As *The Meaning of “Battlefield”* reports, Department of Defense records do not have record of any detainee named “Mullah Shazda,” but there is record of an ISN 367 with the name “Mohammed Yusif Yaqub.” *Id.* The May 2008 document indicates that this detainee (now numbered ISN 587) was transferred to Afghanistan in March 2003. Department of Defense records however indicate that ISN 367 was still in Guantanamo until at least April 17, 2003.

Accordingly, it appears that even with the May 2008 document, the Department of Defense is unclear as to identity of some of the twelve detainees that it claims are recidivists.

Of the twelve, five (5) are listed as “killed” (one of whom is ISN 220, a Kuwaiti national whose story is spelled out below), and one is listed as “at large.” There are five more listed as “arrested” and only one listed as “captured.” It is not clear what the distinction is, but it may indicate where the apprehension occurred – “on the battlefield” or elsewhere. The “arrested individuals” included two Moroccans, two Russians, and one Turkish national, all of whom were arrested in their home country. There is no information about the charges filed, nor any information that these individuals attacked or plan to attack America. Further, it is not clear that actions against Morocco, Russia, and Turkey can be fairly characterized as “return[ing] to the fight.”

In short, the May 20, 2008 Department of Defense document claimed twelve (12), not thirty (30), detainees had returned to the fight. This is a significant difference, but it is not clear that 12 is the correct number either. As this Report has developed, the information provided is too fragmentary to be sure that all 12 can fairly be described as having “returned to wage war.” Further, the history of the Department of Defense’s disclosures in this area provides no basis for confidence in its accuracy or completeness. We have documented at least three instances where the Department of Defense erred in its releases: the misidentification of one of the named individuals in the July 2007 Press Release as a detainee (Noor), the mistake in the May 20<sup>th</sup> document as to ISN 587 (or perhaps 367), and the Department’s admission in the May 20<sup>th</sup> document that its earlier number of 30 could not fairly be described as having “returned to the fight.”

ISN	Name	On July 2007 Press Release	Disposition	Citizenship	Country of Act	Killed Americans
92	SHAH, SAID MOHAMMED ALIM	Yes	Killed	Afghanistan	Afghanistan	No
930	ISMAIL, MOHAMMED	Yes	Capture	Afghanistan	Afghanistan	No
363	GHAFOOR, SHAI JAHN	Yes	Killed	Afghanistan	Afghanistan	No
587	YAQUB, MOHAMMED YUSIF	Yes	Killed	Afghanistan	Afghanistan	No
633	FAROUQ, MOHAMMED NAYIM	Yes	At Large	Afghanistan	Afghanistan	No
211	ODIJEV, RUSLAN ANATOLIVICH	Yes	Killed	Russia	Russia	No
203	GUMAROV, RAVIL SHAFEYAVICH	No	Arrest	Russia	Russia	No
674	ISHMURAT, TIMUR RAVILICH	No	Arrest	Russia	Russia	No
297	SEN, IBRAHIM SHAFIR	No	Arrest	Turkey	Turkey	No
587	SHAKARAN, IBRAHIM BIN	No	Arrest	Morocco	Morocco	No
294	MIZOUZ, MOHAMMED	No	Arrest	Morocco	Morocco	No
220	AL AJMI, ABDALLAH SALEH Ali	No	Killed	Kuwait	Iraq	No

### The Political Release of ISN 220

While Justice Scalia is clearly wrong about the number of detainee recidivists, his larger point seems to be that the Government, not the courts, should be trusted with separating the sheep from the goats. However, one of the greatest ironies of the whole recidivism debate is that not a single detainee has been released as a result of habeas corpus. All recidivists have been released by the Department of Defense, which has never explained why it released such individuals to “return to waging war” against us. Any assessment of the relative strengths of judicial and political processes should be made with full awareness of the story of ISN 220, who

“returned to the fight” not as the result of any judicial ruling but rather because of a decision made by the political appointees at the Department of Defense who released him despite the objections of the military.

The May 20<sup>th</sup> list reports that ISN 220 was blown up in Iraq. According to press accounts, he was a suicide bomber who left a video tape describing his hostility to America and reporting on his Guantánamo experience.

Available records indicate that the US military did not want ISN 220 released because it had determined that, were he released, he would attempt to kill Americans.

ISN 220’s Combatant Status Review Tribunal (CSRT) and Administrative Review Board records reflect that he specifically identified himself as a terrorist and even warned the Government that he would kill Americans as soon as he was released. As a result, the CSRT evaluated ISN 220 as a threat, and the ARB recommended that his detention continue. Following his ARB, however, the Department of Defense inexplicably released ISN 220.

The Combat Status Review Tribunal (CSRT) declared ISN 220 to be an enemy combatant. See Appendix 2. The Tribunal held that he was a “fighter for” the Taliban who engaged in “hostilities” against either the United States or its coalition partners. The Tribunal based its first finding that ISN 220 was a Taliban fighter on two incidents. First, he went AWOL from the Kuwaiti military so that he could travel to Afghanistan to participate in the Jihad. Second, the Taliban issued ISN 220 an AK-47, ammunition, and hand grenades. With respect to the latter finding, the Tribunal considered allegations of five events to conclude that ISN 220 engaged in hostilities: he admitted that he fought with the Taliban in the Bagram area of Afghanistan; the Taliban placed him in a defensive position to block the Northern alliance; he spent eight months on the front line at the Aiubi Center in Afghanistan; he participated in two or three fire fights against the Northern Alliance; and he retreated to the Tora Bora region, and was later captured while attempting to escape to Pakistan.

Less than a year after ISN 220’s CSRT, on May 11, 2005, the Administrative Review Board of the Department of Defense affirmed the CSRT assessments and decided that ISN 220 should be further detained. See Appendix 3. Even with the extraordinary redaction of the Review Board’s report, ample evidence apparently existed for these assessments and the recommendation for continued detention.<sup>12</sup> Specifically, a Government memorandum prepared for the ARB identified three factors that favored continued detention for ISN 220: (1) he is a Taliban Fighter; (2) he participated in military operations against the coalition; and (3) he is committed to Jihad.<sup>13</sup> Moreover, the ARB primarily relied upon two factual bases for its conclusion that ISN 220 was committed to Jihad:

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<sup>12</sup> “The preponderance of the information presented to the ARB supports [REDACTED]...” ISN 220.

<sup>13</sup> Critics have challenged the government’s use of the word Jihad in this context, noting that Jihad can mean many things, many of which are the opposite of criminal conduct. In this case, however, the government defines its use of Jihad in this circumstance.



1. [ISN 220] went AWOL [from the Kuwaiti military] because he wanted to participate in the jihad in Afghanistan but could not get leave from the military.<sup>14</sup>
2. In Aug 2004, [ISN 220] wanted to make sure that when the case goes before the Tribunal, they know that he is a Jihadist, an enemy combatant, *and that he will kill as many Americans as he possibly can.*

(Emphasis added).<sup>15</sup> Furthermore, the ARB found ISN 220's behavior while detained to be "aggressive and non-compliant."<sup>16</sup>

While the documents which have been released strongly suggest that ISN 220 should still be detained, there are no available records indicating why he was released or who is responsible for the release. The only thing that can be said with assurance is that, Justice Scalia to the contrary notwithstanding, no federal judge is responsible. Perhaps if the process were more transparent, such a grave mistake would not have been made.

## CONCLUSION

Justice Scalia's recent perpetuation of the urban legend of 30 detainee recidivists is both false and unfortunate. It neither contributes to a meaningful public debate nor reflects appropriate judicial skepticism about representations by parties before the Court. Further, as a party to *Boumediene*, the Department of Defense had a duty to the Court to correct any false impressions that its Principal Deputy Counsel had created by his testimony. The perpetuation of this particular urban legend concerning a matter of literally life and death does not reflect well on any of those involved.

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<sup>14</sup> ISN 220, CSRT 1452.

<sup>15</sup> Jarrett Brachman, *et al.*, Combating Terrorism Ctr., *An Assessment of 516 Combatant Status Review Tribunal (CSRT) Unclassified Summaries* (2007) (hereinafter "WP Report").

<sup>16</sup> ISN 220, Administrative Review Board (hereinafter "ARB") 952.

# **APPENDIX 1**

### **Former Guantanamo Detainees who have returned to the fight:**

Our reports indicate that at least 30 former GTMO detainees have taken part in anti-coalition militant activities after leaving U.S. detention. Some have subsequently been killed in combat in Afghanistan.

These former detainees successfully lied to US officials, sometimes for over three years. Many detainees later identified as having returned to fight against the U.S. with terrorists falsely claimed to be farmers, truck drivers, cooks, small-scale merchants, or low-level combatants.

Other common cover stories include going to Afghanistan to buy medicines, to teach the Koran, or to find a wife. Many of these stories appear so often, and are subsequently proven false that we can only conclude they are part of their terrorist training.

Although the US government does not generally track ex-GTMO detainees after repatriation or resettlement, we are aware of dozens of cases where they have returned to militant activities, participated in anti-US propaganda or other activities through intelligence gathering and media reports. (Examples: Mehsud suicide bombing in Pakistan; Tipton Three and the Road to Guantanamo; Uighurs in Albania)

The following seven former detainees are a few examples of the 30; each returned to combat against the US and its allies after being released from Guantanamo.

#### **Mohamed Yusif Yaqub AKA Mullah Shazada:**

After his release from GTMO on May 8, 2003, Shazada assumed control of Taliban operations in Southern Afghanistan. In this role, his activities reportedly included the organization and execution of a jailbreak in Kandahar, and a nearly successful capture of the border town of Spin Boldak. Shazada was killed on May 7, 2004 while fighting against US forces. At the time of his release, the US had no indication that he was a member of any terrorist organization or posed a risk to US or allied interests.

#### **Abdullah Mehsud:**

Mehsud was captured in northern Afghanistan in late 2001 and held until March of 2004. After his release he went back to the fight, becoming a militant leader within the Mehsud tribe in southern Waziristan. We have since discovered that he had been associated with the Taliban since his teen years and has been described as an al Qaida-linked facilitator. In mid-October 2004, Mehsud directed the kidnapping of two Chinese engineers in Pakistan. During rescue operations by Pakistani forces, a kidnapper shot one of the hostages. Five of the kidnapers were killed. Mehsud was not among them. In July 2007, Mehsud carried out a suicide bombing as Pakistani Police closed in on his position. Over 1,000 people are reported to have attended his funeral services.

#### **Maulavi Abdul Ghaffar:**

After being captured in early 2002 and held at GTMO for eight months, Ghaffar reportedly became the Taliban's regional commander in Uruzgan and Helmand provinces, carrying out attacks on US and Afghan forces. On September 25, 2004, while planning an attack against Afghan police, Ghaffar and two of his men were killed in a raid by Afghan security forces.

**Mohammed Ismail:**

Ismail was released from GTMO in 2004. During a press interview after his release, he described the Americans saying, "they gave me a good time in Cuba. They were very nice to me, giving me English lessons." He concluded his interview saying he would have to find work once he finished visiting all his relatives. He was recaptured four months later in May 2004, participating in an attack on US forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member in good standing.

**Abdul Rahman Noor:**

Noor was released in July of 2003, and has since participated in fighting against US forces near Kandahar. After his release, Noor was identified as the person in an October 7, 2001, video interview with al-Jazeera TV network, wherein he is identified as the "deputy defense minister of the Taliban." In this interview, he described the defensive position of the mujahideen and claimed they had recently downed an airplane.

**Mohammed Nayim Farouq:**

After his release from US custody in July 2003, Farouq quickly renewed his association with Taliban and al-Qaida members and has since become re-involved in anti-Coalition militant activity.

**Ruslan Odizhev:**

Killed by Russian forces June 2007, shot along with another man in Nalchik, the capital of the tiny North Caucasus republic of Kabardino-Balkaria. Odizhev, born in 1973, was included in a report earlier this year by the New York-based Human Rights Watch on the alleged abuse in Russia of seven former inmates of the Guantanamo Bay prison after Washington handed them back to Moscow in 2004.

As the facts surrounding the ex-GTMO detainees indicate, there is an implied future risk to US and allied interests with every detainee who is released or transferred.

## **APPENDIX 2**

**Combatant Status Review Board**

TO: Personal Representative

FROM: Recorder

Subject: Summary of Evidence for Combatant Status Review Tribunal – AL AJMI, Abdallah Salih Ali

29 JUL 03 412

1. Under the provisions of the Department of the Navy Memorandum, dated ~~16 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 was a fighter for the Taliban and engaged in hostilities against the United States or its coalition partners.
  - a. The detainee is a Taliban fighter:
    1. The detainee went AWOL from the Kuwaiti military in order to travel to Afghanistan to participate in the Jihad.
    2. The detainee was issued an AK-47, ammunition and hand grenades by the Taliban.
  - b. The detainee participated in military operations against the coalition.
    1. The detainee admitted he was in Afghanistan fighting with the Taliban in the Bagram area.
    2. The detainee was placed in a defensive position by the Taliban in order to block the Northern Alliance.
    3. The detainee admitted spending eight months on the front line at the Aiubi Center, AF.
    4. The detainee admitted engaging in two or three fire fights with the Northern Alliance.
    5. The detainee retreated to the Tora Bora region of AF and was later captured as he attempted to escape to Pakistan.
4. The detainee has the opportunity to contest his determination as an enemy combatant. The Tribunal will endeavor to arrange for the presence of any reasonably available witnesses or evidence that the detainee desires to call or introduce to prove that he is not an enemy combatant. The Tribunal President will determine the reasonable availability of evidence or witnesses.

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EXHIBIT B1

## **APPENDIX 3**

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

From: Presiding Officer  
To: AL AJMI, ABDALLAH SALIH ALI  
Via: Assisting Military Officer  
SUBJECT: UNCLASSIFIED SUMMARY OF EVIDENCE FOR ADMINISTRATIVE  
REVIEW BOARD IN THE CASE OF AL AJMI, ABDALLAH SALIH ALI

1. An Administrative Review Board will be convened to review your case to determine if your continued detention is necessary.

2. The Administrative Review Board will conduct a comprehensive review of all reasonably available and relevant information regarding your case. At the conclusion of this review the Board will make a recommendation to: (1) release you to your home state or to a third state; (2) transfer you to your home state, or a third state, with conditions agreed upon by the United States and your home state, or the third state; or (3) continue your detention under United States control.

3. The following primary factors favor continued detention:

A. Al Ajmi is a Taliban fighter:

1. Al Ajmi went AWOL from the Kuwaiti military in order to travel to Afghanistan to participate in the Jihad.

2. Al Ajmi was issued an AK-47, ammunition and hand grenades by the Taliban.

B. Al Ajmi participated in military operations against the coalition.

1. Al Ajmi admitted he was in Afghanistan fighting with the Taliban in the Bagram area.

2. Al Ajmi was placed in a defensive position by the Taliban in order to block the Northern Alliance.

3. Al Ajmi admitted spending eight months on the front line at the Aiubi Center, Afghanistan.

4. Al Ajmi admitted engaging in two or three fire fights with the Northern Alliance. **EXHIBIT DMO- 1**

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5. Al Ajmi retreated to the Tora Bora region of Afghanistan and was later captured as he attempted to escape to Pakistan.

C. Al Ajmi is committed to jihad.

1. Al Ajmi went AWOL because he wanted to participate in the jihad in Afghanistan but could not get leave from the military.

2. In Aug 2004, Al Ajmi wanted to make sure that when the case goes before the Tribunal, they know that he now is a Jihadist, an enemy combatant, and that he will kill as many Americans as he possibly can.

D. Upon arrival at GTMO, Al Ajmi has been constantly in trouble. Al Ajmi's overall behavior has been aggressive and non-compliant, and he has resided in GTMO's disciplinary blocks throughout his detention.

E. Based upon a review of recommendations from U.S. agencies and classified and unclassified documents, Al Ajmi is regarded as a continued threat to the United States and its Allies.

4. The following primary factors favor release or transfer:

No information available.

5. You will be afforded a meaningful opportunity to be heard and to present information to the Board; this includes an opportunity to be physically present at the proceeding. The Assisting Military Officer (AMO) will assist you in reviewing all relevant and reasonably available unclassified information regarding your case. The AMO is not an advocate for or against continued detention, nor may the AMO form a confidential relationship with you or represent you in any other matter.

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(U) CLASSIFIED RECORD OF PROCEEDINGS AND BASIS FOR ADMINISTRATIVE REVIEW BOARD DECISION FOR ISN 220

1. (U) Introduction

(U) The Administrative Review Board (ARB) determined ISN 220 [REDACTED]. In reaching this determination, the ARB considered both classified and unclassified information. The following is an account of the proceedings and the factors the ARB used in making its determination.

2. (U) Synopsis of Proceedings

(U) The ARB was convened and began its proceedings with the Enemy Combatant (EC) present. The Designated Military Officer (DMO) presented the unclassified summary in written form followed with an oral summary of the unclassified primary factors to retain the EC and the primary factors for release. The Assisting Military Officer (AMO) presented the Enemy Combatant Notification as exhibit EC-A and the Enemy Combatant Election Form indicating the EC elected to participate, documented as exhibit EC-B. The AMO commented that the EC protested everything in the unclassified summary and wants to change all of his previous testimony. The EC addressed each item on the unclassified summary, followed by the ARB asking questions concerning the EC's testimony. This dialogue is contained in the Summary of Enemy Combatant Testimony. The unclassified portion of the proceeding was adjourned. The ARB moved to the classified portion of the session and the DMO presented the classified summary. The ARB members had no questions and the session was closed for deliberation.

3. (U) Primary Documents, Assessments, Testimony, and other Considerations by the Administrative Review Board

(U) The ARB considered all relevant information and primary factors in the exhibits presented as EC-B, DMO-1 through DMO-17, and the testimony of the EC during the ARB session.

(U) During the unclassified portion of the ARB, the EC claimed all the statements in the unclassified summary were untrue. He then attempted to offer an explanation for each item as documented in the Summary of Enemy Combatant Testimony. The ARB considers that the EC brought no substantial evidence in his testimony to refute the established documentation of various agencies; evidence he previously admitted to.

(S/NF) [REDACTED]

(U) The following assessments considered by the ARB are summarized as follows:

(S/NF) [REDACTED]

(S/NF) [REDACTED]

(FOUO/LES) [REDACTED]

**4. (U) Discussion of the primary factors (including intelligence value and law enforcement value of the Enemy Combatant).**

(U) The preponderance of the information presented to the ARB supports [REDACTED]. The ARB considered the following key indicators from Joint Task Force Guantanamo (JTF-GTMO), DASD-DA, CIA, FBI and other agencies in the decision to assess the EC [REDACTED] and in its recommendation [REDACTED].

a. (S/NF) [REDACTED]

b. (S/NF) [REDACTED]

c. (S/NF) [REDACTED]

d. (S/NF) [REDACTED]

e. (S/NF) [REDACTED]

f. (S/NF) [REDACTED]

g. (S/NF) [REDACTED]

**5. (U) Considerations by the Administrative Review Board on Enemy Combatant's requests for witness statements and home country statements provided through the United States**

(U) The EC is a citizen of Kuwait. No home country statements were provided. Statements were provided by the EC's lawyer and family members and are included as Enclosure (7).

**6. (U) Consultations with the Administrative Review Board Legal Advisor**

(U) There was no legal consultation prior to or during the ARB session.

**7. (U) Conclusions and Recommendation of the Administrative Review Board**

(U) Upon careful review of all the information presented, the ARB makes the following determination and recommendation:

(U) [REDACTED]

(U) [REDACTED]

(U) [REDACTED]

**8. (U) Dissenting Board Member's report**

(U) There were no dissenting members in the decision.

Respectfully submitted,

[REDACTED]  
Captain, U.S. Navy  
Presiding Officer

## **APPENDIX 4**

- 1) Ibrahim Shafir Sen, ISN 297, transferred to Turkey in November, 2003, arrested.
- 2) Ibrahim Bin Shakaran, ISN 587, transferred to Morocco in July, 2004, arrested.
- 3) Mohammed Bin Ahmad Mizouz, ISN 294, transferred to Morocco in July, 2004, arrested.
- 4) Abdullah Mahsud, aka Said Mohammed Alim Shah, ISN 092, transferred to Afghanistan in March, 2004, killed/blew himself up.
- 5) Ruslan Anatolovich Odishev, ISN 211, transferred to Russia in March, 2004, killed.
- 6) Ravil Shafeyavich Gumarov, ISN 203, transferred to Russia in March, 2004, arrested.
- 7) Timur Ravilich Ishmurat, ISN 674, transferred to Russia in March, 2004, arrested.
- 8) Mohammed Ismail, ISN 930, transferred back to Afghanistan in February, 2004, recaptured and still in US custody.
- 9) Maulvi Abdul Ghaffar, ISN AF 363, transferred to Afghanistan in March, 2003, killed.
- 10) Mohamed Yusuf Yaaqoub aka Mullah Shahzada, ISN 587, transferred to Afghanistan in March, 2003, killed.
- 11) Mohammed Nayim Farouq, ISN 633, transferred to Afghanistan in July, 2003, still at large.
- 12) Abdallah Salih al-Ajmi, ISN 220, transferred to Kuwait in November, 2005, killed himself in car bomb.

These are all confirmed by DIA as having returned to the fight. Definition of "Confirmed" - A preponderance of evidence - fingerprints, DNA, conclusive photographic match, or reliable, verified, or well-corroborated intelligence reporting - identifies a specific former DoD detainee from GTMO as directly involved in terrorist activities.

NOTE: This definition does NOT include listing a detainee as having returned to the fight if they have "spoken critically of the Government's detention policy."

The DIA report lists circumstances of each detainee to include what happened to them. I summarized that disposition (arrested, killed, etc.) above beside their name and ISN.

36 The derivative report, used to create the unclassified report previously shared, lists 36 that have either been confirmed or suspected as having returned to the fight. After that report was written, ISN 220 (al-Ajmi) participated in a suicide car bomb attack in Mosul on 26 April 2008. He would be #37. The Department was patient in confirming this fact until DIA had examined all the evidence before making the call that he had, in fact, returned to the fight.

Linking the name and short ISN is unclassified. Reporters have already gotten this information and are scanning CSRT documents released via FOIA for more information on these detainees' background. Not sure why Prof. Denbeaux can't do the same.