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## UNCLASSIFIED SUMMARY OF BASIS FOR TRIBUNAL DECISION

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

TRIBUNAL PANEL: #7  
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 was part of or supporting Al Qaida forces. 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

The Tribunal commenced this hearing on 2 October 2004. The Recorder presented Exhibit R-1, the Unclassified Summary of Evidence, during the unclassified portion of the Tribunal. It indicates, among other things, that the detainee admits he served as a personal driver to Usama Bin Laden (UBL) both before and after the attacks of 11 September 2001; admits he served as a member of UBL's bodyguard detachment and armed himself with a weapon; and admits was captured by Northern Alliance forces in the vicinity of Kandahar in possession of a weapon. The Recorder presented several other unclassified exhibits, including the detainee's Petition for Writ of [REDACTED] filed in the U.S. District Court for the Western District of Washington. The Recorder called no witnesses.

The detainee participated actively in the Tribunal process. His Personal Representative submitted documents on his behalf, including a signed, sworn affidavit dated 9 February 2004 (Exhibit D-b). In the sworn affidavit, the Detainee admits he worked for Usama Bin Laden as a driver, the latest period being from February 2001 until after the Northern Alliance began its October 2001 offensive with American support. He was subsequently captured by the Northern Alliance and turned over to U.S. forces. The detainee also answered several questions posed by the Tribunal President, in response to which he indicated he was forced to drive for Usama Bin Laden and the allegations against him are all lies. The detainee's unsworn answers to the questions posed by the Tribunal President are summarized in Enclosure (3) to the CSRT Decision Report. The Personal Representative also offered additional documents into evidence. A summary of the Detainee's witness and document requests, and the Tribunal President's answers thereto, are presented in paragraph 4, below. After the conclusion of the unclassified session, the Tribunal recessed until the following day.

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The Tribunal commenced the classified session on 3 October 2004. During the classified session of the Tribunal, the Recorder presented Exhibits R-3 through R-11. The Recorder did not comment on the evidence. The Personal Representative presented no classified evidence and made no comments. The Tribunal considered both the unclassified and classified exhibits, as well as the detainee's unsworn responses to the Tribunal President's questions, in reaching its decision.

### 3. Evidence Considered by the Tribunal

The Tribunal considered the following evidence in reaching its conclusions:

- a. Exhibits: D-a, D-b, D-b2, X, and R-1 through R-13.
- b. Testimony of the following persons: None.
- c. Statement of the detainee:

See Enclosure (3) to the CSRT Decision Report and Exhibit D-b.

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

- a. Witness request. (Copies of all e-mails referenced in this section are included as Enclosure (5) to the CSRT Decision Report.)

(1) On 25 September 2004, the Personal Representative confirmed with the detainee's attorney for the U.S. Military Commissions, [REDACTED] JAGC, USN, that the detainee desired [REDACTED] to testify as a witness at the detainee's Tribunal hearing. In support of the request, on 28 September 2004, [REDACTED] indicated he had conducted an extensive investigation into the detainee's activities in Afghanistan before and at the time of his capture.

(2) On 30 September 2004, the Tribunal President granted the detainee's request for [REDACTED] to testify as a witness on behalf of the detainee, finding his testimony relevant and [REDACTED] reasonably available. The Tribunal President indicated that the Tribunal would be conducted at 1700 on Saturday, 2 October 2004. The Tribunal was scheduled for 1700 to permit [REDACTED] to arrive on the next regularly scheduled military flight to Naval Base Guantanamo Bay, Cuba. The Personal Representative sent an e-mail to [REDACTED] at 1745 on 30 September 2004 notifying [REDACTED] of the President's decision, and also spoke to him late in the day by telephone.

(3) [REDACTED] responded to the Personal Representative by e-mail at 1808 on 30 September 2004 indicating he could attend, but would need assistance with the country clearance and flight arrangements. He sent a follow-on e-mail to the Personal

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Representative at 0841 on 1 October 2004, indicating there could be problems arranging for his translator to accompany him on such short notice and for an entire week, and he needed help with the country clearance. [REDACTED] sent a third e-mail to the Personal Representative at 1148 on 1 October 2004 indicating that both he and his translator were available for the flight, but that they had to have OARDEC assistance in gaining the country clearance. Without it, they would not be permitted to board the regularly scheduled flight to Naval Base Guantanamo Bay, Cuba. He further indicated that he was previously scheduled to be in Guantanamo Bay on 9 October 2004, and he asked for a delay until that time to permit him to testify at the hearing. He also indicated that he was willing to submit a written statement with his testimony, but he needed to consult with his client concerning waiving the attorney-client privilege before doing so.

(4) Because of the Personal Representative's work schedule, he did not check his unclassified e-mail until the afternoon of 1 October 2004. By that time, it was too late to attempt to arrange country clearance for [REDACTED] and his attorney. Given the need to complete all detainee Tribunals for whom habeas petitions are pending in Federal District Court, Director, CSRT instructed the Tribunal to hold the hearing on 2 October 2004 as scheduled, rather than delay the proceeding until 9 December 2004 as requested by [REDACTED]. [REDACTED] did submit written material for the Tribunal to consider. This material is discussed in the paragraphs that follow.

b. Evidence.

(1) The Detainee requested a document stating who the Northern Alliance and coalition partners are. The Tribunal's response to the detainee's request is attached as Enclosure (7) to the CSRT Decision Report.

(2) On the morning of the Tribunal hearing (2 October 2004), [REDACTED] sent the Personal Representative an e-mail with a letter to the detainee in Arabic only (to be sealed and delivered to the detainee via the SJA prior to the hearing) and a sworn affidavit from the detainee in Arabic, together with an English translation, which had been filed in Federal Court in support of his Petition for Writ of [REDACTED]. Because [REDACTED] instructions were not in accord with the Personal Representative's standing practice of showing everything he received to the detainee, he retained all of the material he received from [REDACTED] to present to the detainee. The Personal Representative did not have the letter from [REDACTED] to the detainee translated into English.

(a) Prior to the Tribunal hearing on Saturday, 2 October 2004, the Personal Representative met with the detainee to discuss the documents he received from [REDACTED]. Based on that discussion, it was the Personal Representative's understanding that the detainee wanted all of the documents he received from [REDACTED] presented to the Tribunal. The detainee also wanted an unsigned document presented that he had given to the Personal Representative during one of their earlier meetings.

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(b) Just before the Tribunal was to begin, the Personal Representative met with the Recorder and the Tribunal President to inform them of the documents to be submitted. They were: [REDACTED] letter to the detainee, which was in Arabic only; the signed affidavit in both English and Arabic; a memo from [REDACTED] to the [REDACTED] and the unsigned copy of the affidavit in Arabic only. Because two of the documents the Personal Representative intended to submit were in Arabic only, the Tribunal President indicated they would have to be translated before the hearing could commence. The Arabic translator for the Tribunal then reviewed the documents. He indicated that the signed Arabic affidavit and the unsigned Arabic affidavit were in different fonts but were otherwise the same. He also looked at the letter from [REDACTED] to the detainee and indicated it was just that, but did not relay the contents of the letter. The Tribunal President was also unaware of the instructions [REDACTED] had given indicating that his letter should be sealed and presented to the detainee through the SJA. Accordingly, the Tribunal President determined that because the letter was short, the Translator could read the letter into the record sentence by sentence, first in Arabic and then in English. The Tribunal President then instructed the Personal Representative to take all of the documents back to the detainee to ensure that he wanted them presented as evidence to the Tribunal. The Personal Representative did that, and after talking to the detainee, informed the Tribunal President that the detainee wanted all of the documents presented.

(c) At the appropriate time in the proceedings, the Personal Representative entered the documents into evidence. When it came time to enter [REDACTED] letter to the detainee, the translator read it into the record sentence by sentence as had been previously discussed. Because the Tribunal did not know the contents of the letter until it was read into the record, the Tribunal members assumed there was something in the letter the detainee wanted the Tribunal to know. However, after the Translator finished reading the letter, there appeared to be no such revelation. Accordingly, the Tribunal President asked the detainee to confirm that he wanted [REDACTED] letter read. The detainee indicated he did not. He stated he was confused and thought that he had to submit everything he had into evidence. (The Personal Representative later explained that the reason for the confusion was that the detainee had asked the Personal Representative to take the documents back to his spaces for privacy. The Personal Representative told him that was not permitted, and that the Personal Representative had to keep all of the documents. The detainee apparently construed that to mean that the Personal Representative had to be allowed to submit all of the documents to the Tribunal for consideration, and that the detainee had no choice in the matter.)

(d) Because it was clear the detainee did not understand this aspect of the process, the Tribunal President informed the detainee that he would be given all of his exhibits back and that he could review them again and only offer into evidence what he desired the Tribunal to consider. The Tribunal President also informed the detainee that the Tribunal would not consider anything the detainee chose not to re-submit. The

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Tribunal then recessed to permit the detainee to review the documents with his Personal Representative.

(e) When the Tribunal reconvened, the detainee submitted the following documents, marked as indicated: Exhibit D-b – signed affidavit with English Translation; Exhibit D-b2 – unsigned copy of affidavit in different font; and Exhibit X – a memo from [REDACTED] to the General Counsel of the Department of the Navy. The detainee did not re-submit the letter to him from [REDACTED] and, accordingly, the Tribunal did not consider it.

#### 5. Discussion of Unclassified Evidence

The Tribunal considered the following unclassified evidence in making its determinations:

a. The recorder offered Exhibits R-1 and R-2, and R-12 and R-13 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 provides no usable evidence. Accordingly, the Tribunal had to look to other exhibits for support of the Unclassified Summary of Evidence.

b. As noted in paragraph 2, above, the detainee submitted through his Personal Representative a signed, sworn affidavit dated 9 February 2004 (Exhibit D-b). In the sworn affidavit, the detainee admits he worked for Usama Bin Laden as a driver, the latest period being from February 2001 until after the Northern Alliance began its October 2001 offensive with American support. He was subsequently captured by the Northern Alliance and turned over to U.S. forces. These admissions are consistent with the assertions made in the Petition for Writ of [REDACTED] filed by [REDACTED] in the U.S. District Court for the Western District of Washington on or about 6 April 2004 (Exhibit R-12, Arabic translation of relevant portions – Exhibit R-13). The Tribunal found the admissions by the detainee in his affidavit sufficient to confirm his status as an enemy combatant because he was part of or supporting Al Qaida. When considered in conjunction with the classified evidence, the evidence supporting the detainee's classification as an enemy combatant is overwhelming.

c. The Tribunal found the detainee's denials regarding his participation in, or his support for, Al Qaida unpersuasive. (See Exhibits D-b, R-12 and Enclosure (3) to the CSRT Decision Report.) The Tribunal also found that Exhibit X provided no persuasive information.

As noted above, 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.

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**6. Consultations with the CSRT Legal Advisor**

The witness and document requests made by the detainee, as discussed above in paragraph 4, were discussed with the CSRT Assistant Legal Advisor. In addition, the Tribunal discussed with the CSRT Assistant Legal Advisor the proper way to reflect the reading of [REDACTED] letter to the detainee in the transcript of the detainee's testimony. The letter was returned to the detainee and not considered by the Tribunal (as noted in paragraph 2, above). Finally, the Tribunal consulted the CSRT Assistant Legal Advisor regarding allegations of abuse made by the detainee in his sworn affidavit (Exhibit D-b). As per instructions, the OARDEC Forward Chief of Staff and the OARDEC Liaison to the Criminal Investigation Task Force and JTF-GTMO were notified of the allegations on 6 October 2004.

**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. Although he became confused during the presentation of exhibits, the proper procedures were explained to him and the Tribunal took appropriate corrective action.
- c. The detainee is properly classified as an enemy combatant and was part of or supporting Al Qaida forces.

**8. Dissenting Tribunal Member's report**

None. The Tribunal reached a unanimous decision.

Respectfully submitted,

[REDACTED]

Colonel, U.S. Army  
Tribunal President

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