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April 30, 2005

Delivered to OARDEC via Court Security Office

Administrative Review Board  
Guantánamo Bay Naval Station  
Guantánamo Bay, Cuba

(FOUO) Re: ARB Hearing for Abd Al Malik Abd al Wahab, ISN 037

Dear Members of the Board:

(u) I am an attorney representing Abd Al Malik Abd al Wahab in habeas corpus proceedings in federal court in the District of Columbia. I respectfully submit this letter in support of his release from detention at Guantánamo Bay. Over the past few months, my colleagues and I have spent many hours with Abd Al Malik and we have come to know him quite well. We are convinced that he is not – and has never been – a danger to the United States.

(u) I understand that this hearing is not intended to revisit the CSRT's determination that Abd Al Malik is an "enemy combatant." While I respect the boundaries of the proceeding, I must note that the federal judge in Abd Al Malik's case ruled on January 31, 2005, that the CSRT hearings were unconstitutional and fundamentally unfair, in part because the panel was allowed to consider statements derived from abusive or torturous interrogations. Regrettably, the judge's observations have particular relevance in Abd Al Malik's case, since during his interrogations he was threatened with torture, rape and violence against his family. In addition, statements by another detainee incriminating Abd Al Malik also appear to have obtained by use of torture, as a recently leaked letter from the FBI to the Pentagon – not available to the CSRT panel – reveals. I therefore ask that the Board, when making its determination about Abd Al Malik's "dangerousness," take into account the weakness of the evidence supporting his categorization as an "enemy combatant."

(u) **1. Abd Al Malik Has Never Been an Enemy Combatant**

(u) Abd Al Malik, who is only 26, is not and has never been a member of Al Qaeda. The reason he was in Afghanistan in late 2002, accompanied by his wife and infant, was to teach the Koran, something he had previously done in his home village in Yemen after graduating from an Islamic cultural institute in Taiz.

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(u) Abd Al Malik accepted assistance from the Taliban - i.e., living quarters and a teaching job - while he was in Afghanistan. This is the single "accusation" against him that is true. As Abd Al Malik himself explained to the CSRT panel, "About the Taliban, if a person goes to another person's house, you can't go and eat or sleep until you get permission from the owner. That was my relation to the Taliban. I wanted to go to Afghanistan to teach and I didn't know anyone. The Taliban was the government at the time and provided me the house." Summarized Detainee Statement at 1 (UNCLASSIFIED/FOUO).

(u) The remainder of the accusations against Abd Al Malik are false and are supported only by the flimsiest and most unreliable of evidence. For present purposes, I will highlight only a few of the problems that are obvious from the face of the record.

(u) But Detainee 063 had more reason to tell interrogators anything they wanted to hear. On July 14, 2004, T.J. Harrington, the Deputy Assistant Director of the Counterterrorism Division of the Federal Bureau of Investigation, wrote a letter to Army Major General Donald J. Ryder, complaining about some of the abusive interrogation tactics he had witnessed at Guantánamo. The letter, which was only recently made public and which was not shown to the CSRT panel, describes a profoundly upsetting scene:

(u) In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee #63 and, in November 2002, FBI agents observed Detainee #63 after he had been subjected to intense isolation for over three months. During that time period, #63 was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on

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end). It is unknown to the FBI whether such extended isolation was approved by DoD authorities.

(u) This document is attached hereto as an exhibit. It should be apparent from this FBI letter that Detainee 063's incriminating statements about Abd Al Malik are patently untrustworthy in light of the abuse he suffered. This detainee had every reason to implicate as an Al Qaeda associate *anyone* that interrogators asked him to implicate, since the punishment for failing to cooperate was extreme isolation – while the reward for cooperation was a promised release from prison. The CSRT panel was not privy to this document.

(u) Second, and sadly, Abd Al Malik himself was threatened with just this type of treatment and worse. In conversations with me and other associates of my firm, Abd Al Malik described lengthy interrogations during which he was deprived of sleep and repeatedly threatened. For example, he was told that if he did not “confess,”

- he would be taken “underground” and never again allowed to see the sun;
- he would be taken to the United States and “put ... in a jail with all blacks” who “will do whatever they please to you” and “nobody will help you”;
- he would be taken “to Egypt and Jordan, and they will torture you”; and
- he would be raped by a male at Guantánamo.

(u) In addition, Abd Al Malik stated that interrogators also threatened his family, telling him that “we can reach your family if we want.” Under these circumstances, no inculpatory statement allegedly made by Abd Al Malik during interrogation is at all reliable; he would say anything to avoid the kind of torture that was actually experienced by Detainee 063 and that was threatened against him and his family.

(u//FOUO) The remainder of the evidence against Abd Al Malik is equally weak, but for the most part he was not given an opportunity to rebut it at all during his CSRT hearing. (Of course, he was not allowed to have a lawyer at the hearing to assure the fairness of the proceeding.) For instance, Abd Al Malik was told that the CSRT panel would allow him to call witnesses in his defense. He asked to call three men – Faruq Ahmed, Al Rahim Uthman and Majid Mahmoud – all of whom knew him his whole life as a student in Yemen, all of whom were arrested at the same time as Abd Al Malik in Khost, and all of whom happen to be represented by my law firm. Abd Al Malik's request for witnesses was denied on the ground that “these witnesses were not relevant in that the fact that the detainee had been captured by Pakistanis was not in issue, and because these witnesses apparently had no knowledge of this detainee's activities prior to

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meeting him in captivity." Unclassified Summary of Basis for Tribunal Decision at 2 (UNCLASSIFIED/FOUO).

(UNCLASSIFIED/FOUO) This rationale for determining that the three witnesses were not relevant was wrong, as Abd Al Malik himself clearly explained both before and *during* the CSRT hearing: "I studied in the village until the end of middle school. I then moved to the city of Taiz and went to an institute that taught Islamic culture. I studied the Koran. The institute is known for its students who graduate and teach the Koran. I requested the three witnesses to verify that." See Summarized Detainee Statement at 1 (UNCLASSIFIED/FOUO). Notwithstanding this statement, the refusal of the Tribunal President to call the witnesses was affirmed by the Legal Advisor for the CSRT even *after* his review of the record. See Legal Sufficiency Review Memorandum at 1 (UNCLASSIFIED).

(U) In fact, Abd Al Malik was never given an opportunity to make even the most modest defense to the secret charges he faced. Always respectful during the hearing, he was repeatedly stymied in his effort to learn anything about the evidence against him in order to respond to it:

Detainee: ... Regarding [the charge that] I worked at various guesthouses and offices. What was the work?

Tribunal President: I cannot answer that. This is the first time we have seen this evidence. I know nothing more than what is written here.

Detainee: The same with me, I don't know anything about this. I had a house that the Taliban gave me to live in with my wife, that's it.

... Regarding [the charge that I was] frequently seen at Usama Bin Ladin's side. Who saw me?

Tribunal President: I do not know.

Detainee: If it says, was frequently seen, you have to prove that. I am aware of the laws and the courts. This is the first time I have been in prison and the first time in a court like this. And I know that the accused is innocent until proven guilty. You have to come up with the proof. Regarding, also, the detainee attended various other training camps and resided at a Kandahar, Afghanistan guesthouse. What training camps?

Tribunal President: Did you attend any training camps while you were in Afghanistan?

Detainee: Never.

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Tribunal President: Then that answers the question.

Detainee: That I resided at a Kandahar guesthouse. This guesthouse, do you mean my house, was my house a guesthouse?

Tribunal President: I would assume so.

Detainee: If it was my house then of course I was there. But, if it is another person's guesthouse, then no.

Summarized Detainee Statement at 2-4 (UNCLASSIFIED/FOUO).

(U) Moreover, the CSRT panel seemed to be in a terrible rush to hold the hearing and issue its decision, perhaps because the hearing was scheduled for October 6, 2004, *see* Ex. R-19 (Email from Lieutenant Colonel Tuck E. Boyson to Major James P. Rowlett, October 4, 2004) (SECRET/NOFORN), and the federal judge in this case had ordered that the full record of the CSRT proceedings be provided to habeas counsel by the end of that month. Whatever the reason, Abd Al Malik's right to a fair and reasoned determination of his "enemy combatant" status – even under the CSRT's own standards – was unquestionably denied.

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But AL-WAHAB claimed that he *did not* receive a fatwa" and that "the only reason for his travel to Afghanistan was to teach the Koran." Ex. R-5 at 1 (emphasis added) (FOUO/LES).

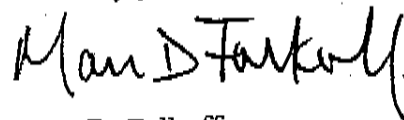
(u) Abd Al Malik has never had any association with Al Qaeda. Because the evidence relied upon by the CSRT panel was paltry and unreliable, its determination that he was an "enemy combatant" should be accorded little weight as this Board considers whether Abd Al Malik is or is not presently "dangerous."

(u) 2. Abd Al Malik is Not "Dangerous"

(u) Abd Al Malik has told me that he wants nothing more than to leave this chapter of his life behind him and return to Yemen to care for his wife and young daughter. He intends to stay his family home, working with his father on their farm and helping out in the family tailor shop. He also would like to return to school and complete his college education. Abd Al Malik will, in sum, be returning to a loving and supportive environment where he has a home and job waiting for him.

(u) He has assured me, moreover, that he harbors no bitterness over his lengthy detention at Guantánamo, and that any resentment he feels will melt away as soon as he is reunited with his family. He is a forward-looking young man who has much to contribute to his society. I respectfully request that the Board recommend his release from Guantánamo.

Sincerely yours,



Marc D. Falkoff

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U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

July 14, 2004

Major General Donald J. Ryder  
Department of the Army  
Criminal Investigation Command  
6010 6th Street  
Fort Belvoir, Virginia 22060-5506

Re: Suspected Mistreatment of Detainees

Dear General Ryder:

I appreciate the opportunity I had to meet with you last week. As part of a follow up on our discussion on detainee treatment, I would like to alert you to three situations observed by agents of the Federal Bureau of Investigation (FBI) of highly aggressive interrogation techniques being used against detainees in Guantanamo (GTMO). I refer them to you for appropriate action.

1. During late 2002, FBI Special Agent James Clemente was present in an observation room at GTMO and observed Sergeant (first name unknown) Lacey conducting an interrogation of an unknown detainee. (SA Clemente was present to observe the interrogation occurring in a different interrogation room.) Sgt. Lacey entered the observation room and complained that curtain movement at the observation window was distracting the detainee, although no movement of the curtain had occurred. She directed a marine to duct tape a curtain over the two-way mirror between the interrogation room and the observation room. SA Clemente characterized this action as an attempt to prohibit those in the observation room from witnessing her interaction with the detainee. Through the surveillance camera monitor, SA Clemente then observed Sgt. Lacey position herself between the detainee and the surveillance camera. The detainee was shackled and his hands were cuffed to his waist. SA Clemente observed Sgt. Lacey apparently whispering in the detainee's ear, and caressing and applying lotion to his arms (this was during Ramadan when physical contact with a woman would have been particularly offensive to a Moslem male). On more than one occasion the detainee appeared to be grimacing in pain, and Sgt. Lacey's hands appeared to be making some contact with the detainee. Although SA Clemente could not see her hands at all times, he saw them moving towards the detainee's leg. He also observed the detainee pulling away and against the restraints. Subsequently, the marine who had previously taped the curtain and had been in the interrogation room with Sgt. Lacey during the interrogation re-entered the observation room.

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General Donald J. Ryder

- SA Clements asked what had happened to cause the detainee to grimace in pain. The marine said Sgt. Lacey had grabbed the detainee's thumbs and bent them backwards and indicated that she also grabbed his genitals. The marine also implied that her treatment of that detainee was less harsh than her treatment of others by indicating that he had seen her treatment of other detainees result in detainees curling into a fetal position on the floor and crying in pain.
2. Also in October 2002, FBI Special Agent Robert Morton was observing the interrogation of a detainee when Dave Becker, a civilian contractor, came into the observation room and asked SA Morton to come see something. SA Morton then saw an unknown bearded, long-haired detainee in another interrogation room. The detainee had been gagged with duct tape that covered much of his head. SA Morton asked Mr. Becker whether the detainee had spit at the interrogators. Mr. Becker laughed and stated that the detainee had been chanting the Koran and would not stop. Mr. Becker did not answer when SA Morton asked how the duct tape would be removed from the detainee.
  3. In September or October of 2002 FBI agents observed that a canine was used in an aggressive manner to intimidate detainee #63 and, in November 2002, FBI agents observed Detainee #63 after he had been subjected to intense isolation for over three months. During that time period, #63 was totally isolated (with the exception of occasional interrogations) in a cell that was always flooded with light. By late November, the detainee was evidencing behavior consistent with extreme psychological trauma (talking to non-existent people, reporting hearing voices, crouching in a corner of the cell covered with a sheet for hours on end). It is unknown to the FBI whether such extended isolation was approved by appropriate DoD authorities.

These situations were referenced in a May 30, 2003 electronic communication (EC) from the Behavioral Analysis Unit of the FBI to FBI Headquarters. That EC attached, among other documents, a draft Memorandum for the Record dated 15 January 2003 from Capt. Mark E. McCary (USAFR), that refers to the first two events among others in a time line of events related to discussions concerning the use of aggressive interrogation techniques. Marion Bowman of the FBI's Office of General Counsel discussed the contents of those communications with Mr. Dietz, Deputy General Counsel (Intelligence) and Mr. Del'Orto, Deputy General Counsel of DoD, around the time the EC was received. Although he was assured that the general concerns expressed, and the debate between the FBI and DoD regarding the treatment of detainees was known to officials in the Pentagon, I have no record that our specific concerns regarding these three situations were communicated to DoD for appropriate action.

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General Donald J. Ryder

If I can provide any further information to you, please do not hesitate to call.

Sincerely yours,



E.J. Harrington  
Deputy Assistant Director  
Counterterrorism Division