

U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

INVESTIGATIVE ACTION

17JUN06

CONTROL: 10JUN06-MPGT-0031-7HNA

V/AL ZAHRANI, YASSER TALAL/CIVILIAN
M/W/FNSA/N//26DEC83/SAUDI ARABIA

RESULTS OF RE-CREATION OF DEATH SCENES

1. On 14JUN06, Reporting Agent and Participating Agents ROGISH and HANSEN re-created the death scenes of V/AL ZAHRANI, V/AL TABI, and V/AHMED, located at Camp Delta, Camp One, Alpha Block, Cell Numbers A-8, A-12, and A-5, respectively. Using the death scene photographs from 10JUN06, the scenes were re-created for the purpose of documenting visibility conditions. Participating Agent (b)(7)(C) then recorded the conditions of Alpha Block using a Sony Digital Handycam DCR-PC101. This occurred from approximately 2150-2218 on 14JUN06. The bank of fluorescent lights outside of cells A-1 through A-24 was turned off, which replicated the lighting conditions on the evening of 09-10JUN06. The videotape is attached as enclosure (A).

2. In addition to the videotape, the scenes were photographically documented using a Nikon D2X digital camera on 15JUN06 from approximately 2124-2152. Photographs were taken by (b)(3):10 USC USN, who is assigned to Combat Camera, J-3, Joint Task Force, Naval Station Guantanamo Bay, Cuba. Photographs were exposed using ambient light only. As above, the fluorescent lights outside of cells A-1 through A-24 were turned off. The photographs of cells A-8, A-12, and A-5 are attached as enclosures (B) through (D).

3. Note that the victims' cells were documented in the order in which they were discovered by the Joint Detention Group guard force: cell A-8 belonging to V/AL ZAHRANI, cell A-12 belonging to V/AL TABI, and cell A-5 belonging to V/AHMED.

ENCLOSURES

- (A) Videotape of Alpha Block/14JUN06
- (B) Photographs of Cell A-8/15JUN06
- (C) Photographs of Cell A-12/15JUN06
- (D) Photographs of Cell A-5/15JUN06

(b)(3):10 USC §130b,(b)(6),(b)(7)(C)

OFFICE: NCISHQ Washington, DC

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1392

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Page(s) 1393 - 1421 Enclosures (B) - (D)

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U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

INVESTIGATIVE ACTION

19JUN06

CONTROL: 10JUN06-MPGT-0031-7HNA

V/AL ZHRANI, YASSER TALAL/CIV
M/W/FNSA/N//26DEC83/SAUDI ARABIA
SUPP: DETAINEE BEING HELD AT JTF-GTMO

Packaging and shipment of evidence obtained from detainee cells

1. On 19JUN06, agents assigned to NCISRA Guantanamo Bay, Cuba packaged the documents seized from the detainees being held at Delta Camp, Joint Task Force, Guantanamo Bay, Cuba. The documents were packaged in 34 boxes and one bag. The combined weight was 1065 pounds.

REPORTED BY: (b)(7)(C)
OFFICE: NCISRA GUANTANAMO BAY, CUBA

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NCIS

1422

U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

REPORT OF INVESTIGATION (CHANGE)

17JUN06

DEATH (II)

CONTROL: 10JUN06-MPGT-0031-7HNA

V/AL ZAHRANI, YASSER TALAL/CIV
 M/W/FNSA/N//26DEC83/SAUDI ARABIA
 SUPP: DETAINEE BEING HELD AT JTF-GTMO

V/AL TABI, MANA SHAMAN ALLABARD/CIV
 M/W/FNSA/N//01JAN76/SAUDI ARABIA
 SUPP: DETAINEE BEING HELD AT JTF-GTMO

V/AHMED, ALI ABDULLA H/CIV
 M/W/FNYM/N//01AUG79/YEMEN
 SUPP: DETAINEE BEING HELD AT JTF-GTMO

COMMAND/JOINT TASK FORCE GUANTANAMO BAY, CUBA/31886

MADE AT/MPGT/GUANTANAMO BAY CUBA/ (b)(7)(C) SPECIAL AGENT

REFERENCE(S)

- (A) NCISRU GUANTANAMO BAY, CUBA ROI (OPEN) /11JUN06
- (B) NCIS CASE FILE: V/AL TABI, MANA SHAMAN ALLABARD/CIV
CCN: 10JUN06-MPGT-0032-7HNA
- (C) NCIS CASE FILE: V/AHMED, ALI ABDULLA H/CIV
CCN: 10JUN06-MPGT-0033-7HNA

NARRATIVE

1. Subsequent to the transmission of reference (A), (B) and (C) it was determined by NCISHQ that it would be better to have only one investigation for the three deaths that occurred at Joint Task Force Guantanamo Bay, Cuba (JTF-GTMO), Detention Facility. NCISHQ directed references (B) and (C) be closed and the victims from those investigations be added as additional victims to reference (A).

ACTION

DIST: Note addition of two additional victim titles. ✓

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1423

U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

REPORT OF INVESTIGATION (ACTION)

15JUN06

DEATH (II)

CONTROL: 10JUN06-MPGT-0031-7HNA

V/AL ZAHRANI, YASSER TALAL/CIV
M/W/FNSA/N//26DEC83/SAUDI ARABIA
SUPP: DETAINEE BEING HELD AT JTF-GTMO

COMMAND/JOINT TASK FORCE GUANTANAMO BAY, CUBA/31886

MADE AT/0023/NCISHQ WASHINGTON DC (b)(7)(C) SPECIAL AGENT

REFERENCE(S)

- (A) NCISRA GUANTANAMO BAY ROI (OPEN)/11JUN06
- (B) NCIS 1, Chapter 25-10, Special Interest "SI" Investigations

NARRATIVE

1. Subsequent to the submission of Reference (A), this case has been designated "Special Interest" (SI) by NCISHQ.

ACTION

MPGT: As per guidance provided in Reference (B), reporting requirements are increased in frequency as significant information is developed. Weekly contact is to be made with the SI desk officer, (b)(3):10 USC §130b (b)(6) (b)(7)(C) for status updates.

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1424

U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE

REPORT OF INVESTIGATION (OPEN)

11JUN06

DEATH (II)

CONTROL: 10JUN06-MPGT-0031-7HNA

V/AL ZAHRANI, YASSER TALAL/CIV
M/W/FNSA/N//26DEC83/SAUDI ARABIA
SUPP: DETAINEE BEING HELD AT JTF-GTMO

COMMAND/JOINT TASK FORCE GUANTANAMO BAY, CUBA/31886

MADE AT/MPGT/GUANTANAMO BAY CUBA, (b)(7)(C) SPECIAL AGENT

NARRATIVE

1. This is a reactive investigation initiated to determine cause and manner of death of V/AL ZAHRANI.

2. Investigative was initiated on 10Jun06, subsequent to the receipt of information from the Joint Task Force Guantanamo Bay, Cuba (JTF-GTMO) Staff Judge Advocate (SJA) of the death of V/AL ZAHRANI, a detainee, within JTF-GTMO Camp Delta. V/AL ZAHRANI was found hanging inside his cell, within Alpha Block, Camp Delta, at approximately 0039, on 10Jun06, by Joint Detention Group (JDG) personnel. V/AL ZAHRANI was cut down by JDG personnel, placed on a backboard and transported to the Detention (DET) Clinic inside Camp Delta. DET Clinic medical personnel assessed V/AL ZAHRANI and initiated Cardio Pulmonary Resuscitation (CPR). A Naval Hospital Guantanamo Bay, Cuba (NAVHOSP GTMO) ambulance responded to the DET Clinic and transported V/AL ZAHRANI to the NAVHOSP. Upon initiation CPR continued until V/AL ZAHRANI was pronounced dead at 0150. During a search of the person of V/AL ZAHRANI, a note written in Arabic was discovered. All movement of V/AL ZAHRANI from the death scene occurred prior to NCIS arrival on scene. Investigation continues.

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Filter Team Procedure

I. Background

Various documents were seized from detainees by the Naval Criminal Investigative Service (NCIS) as part of an investigation into the apparently coordinated suicides of three detainees at Guantanamo Bay in June 2006. The investigation includes a determination of whether any other detainees or third parties were involved in encouraging, assisting or planning these or future suicide attempts by detainees. (See Declarations of Special Agent Carol Kisthardt and Admiral Harry Harris, at Appendix A).

Ultimately, NCIS seized all materials from the cells of many detainees. The 1,100 pounds of collected material includes paperwork and some of this paperwork is attorney-client privileged material (which includes communications between counsel and client as well as work product prepared by a detainee or counsel as part of the litigation). Before reviewing the paperwork (and thus reviewing attorney-client material), the government sought authorization from the federal court for its proposed review process.

The attorney-client privilege is a fundamental and important right in the American legal system. The United States District Court recognized, however, that the need to maintain safety and security within a wartime detention facility is also important. For this reason, the District Court judges overseeing some of the habeas cases have now authorized the government to review the seized documents that may be protected by the attorney-client privilege. Because other judges have not yet authorized the review for their cases, the materials of the detainees in those habeas cases should not be reviewed at this time.

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This review, however, must be conducted with procedures that safeguard the attorney-client privilege. (See Appendix C for the District Court opinion).

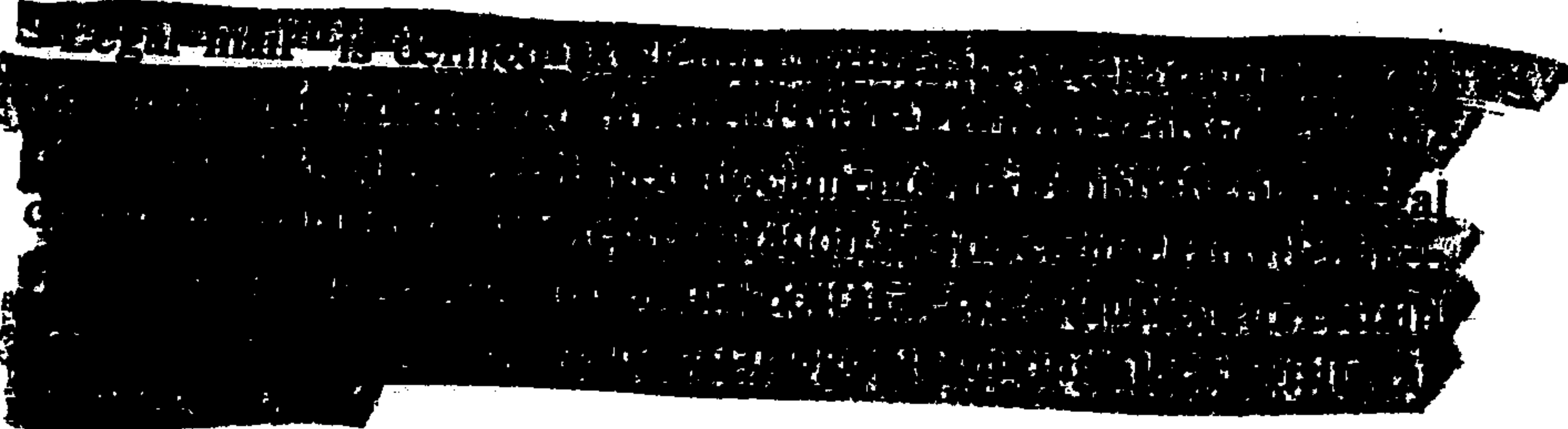

II. Attorney Involvement with Detainees at Guantanamo

A variety of civilian and military attorneys have been provided access to detainees at Guantanamo over the past several years. Those attorneys have been meeting and communicating in writing with detainees through a "legal mail" process.

Starting in December 2003, military defense lawyers have been appointed to represent 10 detainees who have been charged with war crimes under the military commission process. (A list of the detainees who have commission cases pending and their attorneys has been provided to the Filter Litigation Team).

Starting in August 2004, civilian attorneys who represent detainees in federal habeas corpus proceedings have been permitted access to their clients at Guantanamo. (See Appendix D for a fact sheet regarding the history of the habeas corpus litigation. A list of the detainees who have habeas cases pending and their attorneys has been provided to the Filter Litigation Team). The attorneys' access to these detainees is governed by a Protective Order entered by the federal judges overseeing the habeas cases. (See Appendix E).

Although the members of the Filter Team must read and be familiar with the Amended Protective Order governing the habeas cases, the following information is highlighted:

- In order to have access to detainees at Guantanamo, all counsel (that terms includes attorneys, paralegals, translators, support staff, etc) must have a valid SECRET security clearance.
- Once the Protective Order has been entered in a habeas case, cleared counsel are permitted to correspond with their client through the "legal mail" process. The materials sent through this process are considered privileged and thus are not reviewed by the Department of Defense.
- 
- The "legal mail" process cannot be used to send "correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys)." Furthermore, "written 
- When counsel send legal mail to their clients, the only inspection of the materials is for a search for physical contraband (weapons, drugs, etc). Once that inspection is completed, the envelope is marked "Legal Mail approved by Privilege Team" and it is delivered to the detainee at Guantanamo. When (and after) the "legal mail" is delivered to a detainee, it is not reviewed by government personnel.

Subject to certain space limitations, it will remain in the detainee's cell for his review and use.

- [REDACTED]
- All communications (written and oral) from a detainee to his lawyer are treated as presumptively SECRET/NOFORN and must be handled accordingly by the counsel. This is to prevent the inadvertent disclosure of classified material by the habeas counsel. If the counsel want to handle the material in any other way, the counsel will submit the material to a "Privilege Team" for a classification review. (Like the Filter Team, the Privilege Team is restricted from disclosing the contents of these communications, except in some limited circumstances.)
- [REDACTED]

The habeas litigation has included a variety of counsel challenges to the conditions of detention, medical care problems, oppositions to transfers from Guantanamo and a variety of "collateral" matters.

Guidance on determining whether a document is covered by the attorney-client privilege is found at Appendix F.

III. General Instructions

In its authorization, the court cautioned the Filter Team to remember that the team must perform its task with the following restrictions:

- The Filter Team must keep meticulous records and maintain a chain of custody for every document reviewed. [REDACTED]
- [REDACTED] If disputes later arise as to how individual documents were treated, the Filter Team's records must clearly show who had access to the document, what determinations were made regarding its content, and to whom the document was given.
- The Filter Team must not disclose the contents of any attorney-client privileged materials to any individuals outside the Filter Team except for information pertaining to future

events that threaten national security or involve imminent violence. Such information may be disclosed only to the Department of Justice Filter Litigation Team.

The Department of Justice Filter Litigation Team (FLT) will be responsible for handling all attorney-client privileged materials that threaten national security or involve imminent violence. It is essential that the Filter Team only disclose such materials to the FLT. The Filter Team's point of contact at the FLT will be _____ should only be contacted as follows:

<INSERT CONTACT INSTRUCTIONS HERE>

Each member of the Filter Team will be assigned a unique identification number. When indicating in the team's records who reviewed a document, never use the Filter Team member's actual name. Always use the Filter Team members' ID number. This precaution is necessary to protect the privacy of the Filter Team members.

Each member of the Filter Team, after reading these instructions and prior to reviewing any documents, must sign the statement on the final page of this packet.

IV. Document Review Instructions

1. Remove the paper items from the bag.
2. Apply Bates numbers to each document. The Bates-numbers should be applied to every page in a document on which any writings, markings, drawings, or other text appears. Apply the Bates-numbers in a location as close to the bottom right hand corner of the page as possible, without obstructing the content of the document.
3. Attach a document review form to each individual document. If a document includes one or more attachments, such as a letter from an attorney to a detainee that includes a newspaper article, treat the letter and the article as a single document. Blank document review forms will be provided and an example form appears in the appendix of these instructions.
4. Examine the document. Complete a Document Review Form for each document. In completing the form, you should identify all information that is relevant to the case, including but not limited to the following: (a) the name of the person or entity that created the document; (b) the date the document was created; (c) the location where the document was created; (d) the name of the person or entity that received the document; (e) the name of the person or entity that reviewed the document; (f) the name of the person or entity that disclosed the document; (g) the name of the person or entity that is responsible for the document; (h) the name of the person or entity that is responsible for the information contained in the document.

5. Three questions must be answered for each document:

- a. Does the document contain information pertaining to future events that threaten national security or involve imminent violence?

If so, alert the Filter Litigation Team immediately.

- b. Is the document relevant to the NCIS investigation?
- c. Is the document potentially protected by the attorney-client privilege?

Documents are potentially protected by attorney-client privilege if they are correspondence or other written material in the possession of a detainee that appears to have been provided to that detainee by his attorney or created by the detainee to provide to or communicate with his attorney.

Any materials created by the detainee that appear to be intended for his attorney will be processed as if they are attorney-client material. This may include hand-written notes on documents that would not be considered attorney-client privileged without the notes. Some documents prepared by the detainee will be written on paper that has been stamped with a marking indicating that the document is attorney-client privileged, even though the contents of the document would not be considered attorney-client privileged if it appeared on paper without the stamp. Such documents at the outset should be considered to be attorney-client material unless determined otherwise by further evaluation. See Appendix F for further guidance regarding the determination of attorney-client privilege.

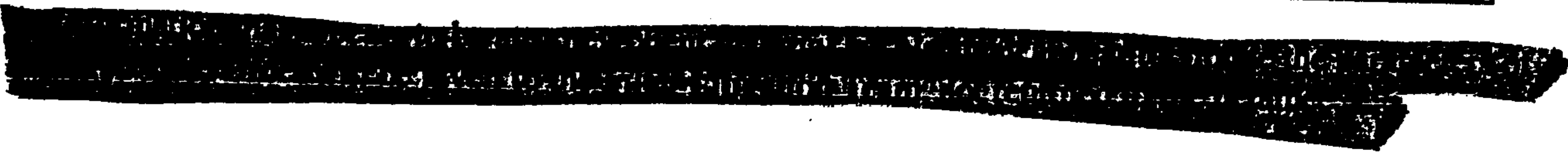
Some material may appear to be attorney-client material but also may appear to violate the parameters of the Protective Order. If the information is also deemed to be relevant to the investigation, the Filter Team should inform the Filter Litigation Team of this apparent violation when forwarding the document. If the information is deemed to not be relevant to the investigation, the material should be forwarded to the Filter Litigation Team.

NOTE: When it is unclear whether or not a document should be considered attorney-client material, the document should be presumed to be privileged.

6. For all documents that do not contain information relating to future acts of imminent violence or that threaten national security, sort the documents into four categories as noted below:

- a. **Category 1:** Documents that are relevant to the NCIS investigation *AND* are also attorney-client privileged.
- b. **Category 2:** Documents that are not relevant to the NCIS investigation but are attorney-client privileged.
- c. **Category 3:** Documents that are relevant to the NCIS investigation and are not attorney-client privileged.
- d. **Category 4:** Documents that are not relevant to the NCIS investigation and are not attorney-client privileged.

		Is the document relevant to the NCIS investigation?	
		Yes	No
Is the document protected by the Attorney-client privilege?	Yes	Category 1 Relevant & Privileged (Contact Filter Litigation Team)	Category 2* Irrelevant & Privileged (Return to Detainee)
	No	Category 3 Relevant & Not Privileged (Provide to NCIS)	Category 4 Irrelevant & Not Privileged (Return to JTF-GTMO)



7. Indicate the Category into which the document was placed on the document review form and place the document with the other documents placed in the same Category.

8. The document review form has an additional place for the Filter Team member to indicate any other information, notes, or comments that are deemed relevant. The reviewer should indicate any contact that he/she has with individuals outside the Filter Team in regard to the document here. For instance, the reviewer might contact a member of NCIS to ask a clarifying question without revealing the content of a document. This contact must be indicated on the document review form.

Handwritten initials or signature

9. Once all of the documents from a single detainee have been reviewed, secure all of the documents in each Category with a rubber band or other fastener as appropriate and place them in accordion redwell folders in preparation for transfer.

All of the document review forms should be arranged in the order of the Bates-numbers of the documents to which they pertain. Secure the forms with a fastener and placed the forms in their own redwell folder.

10. Either retain the documents or transfer the documents to the DOJ Filter Litigation Team, to NCIS, to the detainee, or to JTF-GTMO based on the Category, as required.¹

Category 1: The Filter Team will retain the Category 1 documents until it receives specific written instructions regarding their disclosure from the Department of Justice Filter Litigation Team (FLT).

The Filter Team must contact the FLT regarding all documents in Category 1, and may only disclose the documents or their contents to the FLT. The FLT will contact detainee's counsel for consent to disclosure of the documents to NCIS and/or will submit a filing under seal to the Court Security Officer (CSO) requesting permission for the documents to be disclosed to NCIS.

No disclosure of Category 1 documents may be made by the Filter Team prior to receiving documented consent of detainee's counsel or court approval.

- b. **Category 2:** If the information does not appear to violate the parameters of the Protective Order, the filter team must return all documents in Category 2 directly to the detainee. The documents should not be disclosed to JTF-GTMO command or to NCIS.

If it appears that the information violates the parameters of the Protective Order, the document must be forwarded to the Filter Litigation Team. The documents should not be disclosed to JTF-GTMO command or to NCIS.

- c. **Category 3:** The filter team should disclose all documents in Category 3 directly to NCIS. When NCIS has completed its investigation, the documents should be returned to JTF-GTMO for redistribution to the detainees to whom the documents belong, as appropriate.

- d. **Category 4:** The filter team should return all documents in Category 4 directly to JTF-GTMO. JTF-GTMO should return the documents to the detainees to whom the documents belong, as appropriate.

¹ Note that the NCIS agent members of the Filter Team will be responsible for the physical handling of the documents as part of mailing them to the appropriate receiving authority.

11. Once the documents have been transferred out of the possession of the Filter Team, indicate on each document review form to whom the document was transferred and the date of transfer.

Appendices:

- A. Declarations of Special Agent Carol Kiskhardt and Admiral Harry Harris**
- B. List of detainees whose materials can be reviewed**
- C. Judge Robertson's Opinion regarding the review**
- D. Habeas litigation fact sheet**
- E. Habeas case protective order**
- F. Guidance regarding attorney-client determination**

EXHIBIT A

NCIS

ENCLOSURE (A) 12

DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Harry B. Harris, hereby declare:

1. I am a Rear Admiral in the United States Navy, with 28 years of active duty service. I currently serve as Commander, Joint Task Force-Guantanamo, Guantanamo Bay, Cuba (JTF-GTMO). I have served in that position since March 2006. JTF-GTMO conducts detention and interrogation operations in support of the Global War on Terrorism, coordinates and implements detainee screening operations and supports law enforcement and war crimes investigations. Our detention mission is conducted in a humane manner intended to protect the security of both detainees and JTF personnel at GTMO. In my capacity as Commander, I am responsible for all aspects of JTF-GTMO operations. The information contained in this declaration is based on my personal knowledge or information supplied to me in my official capacity.
2. After the detainee suicides of 10 June 2006, the Naval Criminal Investigative Service (NCIS) began an investigation of the circumstances of the suicides at the U.S. Naval Base at Guantanamo Bay, Cuba. The NCIS is the primary criminal investigation service of the Department of the Navy; it investigates all deaths associated in any way with the Navy. Since JTF-GTMO is a tenant activity on Naval Station Guantanamo Bay, Cuba, the established Standard Operating Procedure calls for NCIS to investigate any detainee death. NCIS is an independent entity, completely outside the chain of command of JTF-GTMO. The NCIS sent an investigatory team to JTF-GTMO on 10 June 2006. The purpose of the investigation was to determine the manner and cause of death of the three detainees.

3. As Commander, JTF-GTMO, I was periodically updated on the status of the investigation to ensure force protection aspects of the case were brought to my attention. I was advised that NCIS had obtained information which suggested the suicides may have been part of a larger plan or pact for more suicides that day or in the immediate future.
4. After being briefed on these developments in the NCIS investigation, I was convinced of the need for a broad investigation into all of the relevant facts and circumstances surrounding the three suicides on 9/10 June 2006. On 22 June 2006, I specifically requested that NCIS include within their investigation, (1) whether the suicides on 9/10 June 2006 were related to a plot by detainees to commit suicide, or were otherwise encouraged, ordered, or assisted by other detainees or third persons; and (2) whether there exists any evidence of past, ongoing or future plots for detainees to commit suicide. The basis for my request was to ensure the safe and humane care and treatment of the enemy combatants detained at Guantanamo, as well as the safety of all personnel who enter and work in the detention facilities under my responsibility. I declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, information, and belief, the foregoing is true, accurate, and correct.



HARRY B. HARRIS, JR.
REAR ADMIRAL, U.S. NAVY

EXHIBIT B

NCIS

ENCLOSURE (B) 75

DECLARATION OF CAROL KISTHARDT

Pursuant to 28 U.S.C. § 1746, I, Carol Kisthardt, hereby declare:

1. I am the Special Agent in Charge, Southeast Field Office, Naval Criminal Investigative Service ("NCIS"). I have served in this position since May 2004. In this capacity I supervise all NCIS investigations within the jurisdiction of the Southeast Field Office, which includes Georgia, Florida (less the Pan Handle), the Caribbean (to include the U.S. Naval Base at Guantanamo Bay, Cuba), as well as South and Central America. The following declaration, which is based on my personal knowledge or information supplied to me in my official capacity, pertains to the investigation that was initiated at my direction into the deaths of three detainees at the U.S. Naval Base at Guantanamo Bay, Cuba.
2. After the detainee suicides of 10 June 2006, the Naval Criminal Investigative Service (NCIS) initiated an investigation into the circumstances of the suicides at the U.S. Naval Base at Guantanamo Bay, Cuba. The NCIS is the primary criminal investigation service of the Department of the Navy and is responsible for investigating unattended deaths on U.S. Naval installations. The Navy has primary jurisdiction over Guantanamo Bay, Cuba.
3. On 10 June 2006, NCIS found what appeared to be handwritten suicide notes on the deceased detainees' persons. NCIS conducted searches of the detainees' cells and discovered a handwritten note hidden in the mesh wall of one of the deceased detainee's cell which, when translated, was found to be related to the suicides. That note was written in Arabic on notepaper that had been stamped "Attorney Client Privilege," on the back of the paper, and after translation was found to have been written by someone using a name different from the name of the detainee who lived in the cell. NCIS investigators

then searched other occupied cells in the cellblock for additional evidence surrounding the deaths of the three detainees and/or additional planned suicides. The NCIS team searched for, among other items, handwritten notes that could be relevant to the three suicides, including anything that would reflect a suicide plan or pact. Notes were subsequently found in the cell of a detainee other than the three suicide victims. These notes were written in Arabic, and after translation, were considered to be relevant to the investigation and potentially authored by at least two of the deceased detainees. These notes were handwritten, many of them on stationery stamped "Attorney-Client Communication", "Privileged and Confidential", and "Attorney-Detainee Materials", in both English and Arabic.

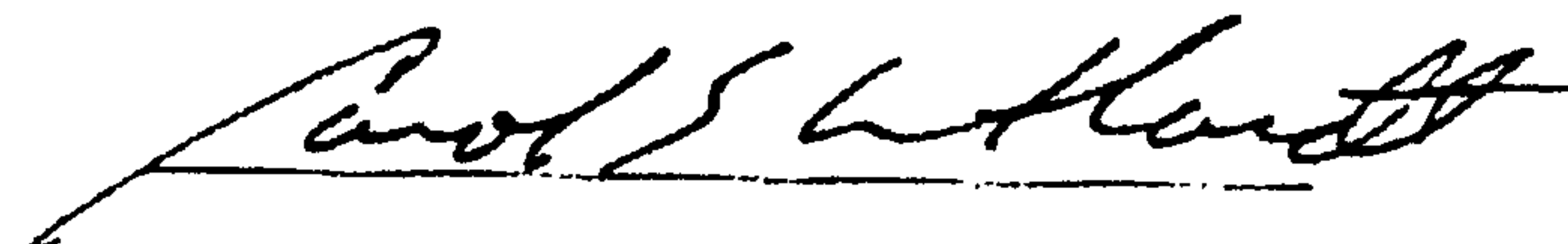
4. The discovery of these notes led NCIS to expand the scope of the search to include handwritten materials in all enemy combatant detainees' cells throughout the Guantanamo detention facility beginning on 14 June 2006. The purpose of the expanded search was to pursue logical investigative leads concerning the deaths of the three detainees and to determine whether other suicides were planned or likely to be planned. On 14 June 2006, the NCIS team recovered personal items and papers, including legal material and other correspondence. The NCIS collected the written materials, not for immediate review by the investigative team, but for review at a later time due to the large volume of materials that was recovered and the need for translators. Approximately 1100 pounds of materials/documents were recovered during the searches. The materials collected from each detainee's cell and effects were separately bagged for eventual sorting and review.

5. On 18 June 2006, NCIS personnel began sorting materials from bags pertaining to eleven detainees. This process involved separating Attorney Client Privileged information from non-privileged information, and conducting a preliminary scan of non-

privileged information for items that could be of evidentiary value. Several items were discovered that were deemed relevant to the investigation, including one that contained instructions on tying knots. In addition, in the materials recovered from one detainee's cell was an original JTF-GTMO generated email that appeared to contain classified or sensitive information regarding cell locations of detainees as well as details concerning camp operational matters. While examining other materials from the same detainee to determine whether there were other potentially classified U.S. Government documents, the NCIS investigators discovered three envelopes that were marked as attorney-client privileged information. I looked at the contents of the three envelopes and determined that one of them contained a document with a "Secret" stamp lined out and marked "Unclassified" by an unknown individual. A second envelope contained a typed document stamped "FOUO." The third envelope contained documents that did not bear any classification or special handling markings. Neither I nor any other member of the NCIS review team read any of the documents in the three envelopes. I then suspended further examination of the materials due to the volume of materials, the apparent multitude of foreign languages within the materials, and the need for guidance regarding the handling of purported attorney-client material.

I hereby declare under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: 7/5/06



Carol Kisthardt

EXHIBIT C

NCIS

ENCLOSURE (c7) 9

DECLARATION OF CAROL KISTHARDT

Pursuant to 28 U.S.C. § 1746, I, Carol Kisthardt, hereby declare:

1. I am the Special Agent in Charge, Southeast Field Office, Naval Criminal Investigative Service ("NCIS"). I have served in this position since May 2004. In this capacity I supervise all NCIS investigations within the jurisdiction of the Southeast Field Office, which includes the U.S. Naval Base at Guantanamo Bay, Cuba. This declaration is provided to supplement, and correct certain information in, my prior 7 July 2006 declaration. The information provided in this declaration is based on my personal knowledge or information supplied to me in my official capacity.
2. As noted in my prior declaration on or about 14 June 2006, the Naval Criminal Investigative Service (NCIS) team involved in investigating the 10 June 2006 detainee suicides at the U.S. Naval Base at Guantanamo Bay, Cuba, recovered personal items and papers, including legal material and other correspondence, of enemy combatant detainees in the Guantanamo detention facility. Approximately 1100 pounds of materials/documents were recovered during the searches.
3. The materials collected from each detainee's cell and effects were separately bagged for eventual sorting and review. As material was recovered, it was placed into either clear, plastic, resealable bags (approximately 12 x 12 inches in size) or into paper bags and labeled with information identifying the detainee (for example, the detainee's ISN, camp, cell block, cell number). These bags were then placed in large, brown paper bags (approximately the size of grocery bags, 21 x 12 x 6.75 in inches). The bags were safeguarded by NCIS during the collection process by being placed in a locked van at the detention facility. The bags were then transported by NCIS personnel to NCIS office spaces on the Base and afterward placed in cardboard boxes that were sealed with tape.

The building is alarmed.

The NCIS office spaces within the building have their own controlled entry security system. The boxes were thereafter placed into and are now stored in a locked and alarmed NCIS evidence room inside the NCIS office spaces. Only NCIS personnel are permitted access to the evidence room, through designated evidence custodians.

4. As noted in my 7 July 2006 declaration, on 18 June 2006, NCIS personnel began sorting a number of bags of collected materials. My prior declaration erroneously stated, however, that "materials from bags pertaining to eleven detainees" were sorted. In fact, however, materials from eleven of the paper bags containing detainee-specific bags of materials were sorted. These eleven bags were taken from the larger total number of paper bags containing the collected materials. This error in my prior declaration resulted from an inadvertent oversight with respect to the wording of my prior declaration.

5. The nature of the sorting process of the eleven large paper bags of materials involved separating any documents or envelopes containing documents that appeared even remotely to be possible Attorney Client Privileged information from information that gave no indication of being privileged, and conducting a preliminary scan of non-privileged information for items that could be of evidentiary value. Items were discovered that are described in my prior declaration. As noted in my prior declaration, however, while examining other materials from the detainee who had possession of the JTF-GTMO generated e-mail discovered, the NCIS investigators participating in the sorting found three envelopes that were marked as attorney-client privileged information. I looked at the contents of the three envelopes as described in my prior declaration, though neither I nor any other member of the NCIS review team read any of the documents in the three envelopes. Also during the sorting process, some of the non-privileged information could not be assessed because it was written in languages for

which translators were not present on the review team. As noted in my prior declaration, after this initial attempt at sorting of materials, I suspended any further examination of the collected materials, including those that were part of the initial sorting, due to the overall volume of materials, the apparent multitude of foreign languages within the materials, and the need for guidance regarding the handling of purported attorney-client material. No further review of the documents contained within the bags of collected materials has taken place.

5. I estimate that the eleven large paper bags contained detainee-specific bags from approximately 155 detainees total. The large paper bags were selected for sorting because they appeared to be among the lightest and least full of all the large paper bags; I estimate that the bags constituted approximately 10% by weight of the approximately 1100 pounds of materials collected, or roughly 110 pounds.

I hereby declare under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: 11 AUG 06


Carol Kisthardt

Filter Team Procedure

I. Background

Various documents were seized from detainees by the Naval Criminal Investigative Service (NCIS) as part of an investigation into the apparently coordinated suicides of three detainees at Guantanamo Bay in June 2006. The investigation includes a determination of whether any other detainees or third parties were involved in encouraging, assisting or planning these or future suicide attempts by detainees. (See Declarations of Special Agent Carol Kisthardt and Admiral Harry Harris, at Appendix A).

Ultimately, NCIS seized all materials from the cells of many detainees. The 1,100 pounds of collected material includes paperwork and some of this paperwork is attorney-client privileged material (which includes communications between counsel and client as well as work product prepared by a detainee or counsel as part of the litigation). Before reviewing the paperwork (and thus reviewing attorney-client material), the government sought authorization from the federal court for its proposed review process.

The attorney-client privilege is a fundamental and important right in the American legal system. The United States District Court recognized, however, that the need to maintain safety and security within a wartime detention facility is also important. For this reason, the District Court judges overseeing some of the habeas cases have now authorized the government to review the seized documents that may be protected by the attorney-client privilege. Because other judges have not yet authorized the review for their cases, the materials of the detainees in those habeas cases should not be reviewed at this time. ~~A list of the detainees whose material can not be reviewed is found in~~
~~Appendix B.~~

This review, however, must be conducted with procedures that safeguard the attorney-client privilege. (See Appendix C for the District Court opinion).

II. Attorney Involvement with Detainees at Guantanamo

A variety of civilian and military attorneys have been provided access to detainees at Guantanamo over the past several years. Those attorneys have been meeting and communicating in writing with detainees through a "legal mail" process.

Starting in December 2003, military defense lawyers have been appointed to represent 10 detainees who have been charged with war crimes under the military commission process. (A list of the detainees who have commission cases pending and their attorneys has been provided to the Filter Litigation Team).

Starting in August 2004, civilian attorneys who represent detainees in federal habeas corpus proceedings have been permitted access to their clients at Guantanamo. (See Appendix D for a fact sheet regarding the history of the habeas corpus litigation. A list of the detainees who have habeas cases pending and their attorneys has been provided to the Filter Litigation Team). The attorneys' access to these detainees is governed by a Protective Order entered by the federal judges overseeing the habeas cases. (See Appendix E).

Although the members of the Filter Team must read and be familiar with the Amended Protective Order governing the habeas cases, the following information is highlighted:

- In order to have access to detainees at Guantanamo, all counsel (that terms includes attorneys, paralegals, translators, support staff, etc) must have a valid SECRET security clearance.
- Once the Protective Order has been entered in a habeas case, cleared counsel are permitted to correspond with their client through the "legal mail" process. The materials sent through this process are considered privileged and thus are not reviewed by the Department of Defense.

• ~~Legal mail is defined as written communication between a detainee and his counsel. It includes all documents, letters, and other materials sent through the legal mail process. It does not include correspondence sent through the general mail process. Legal mail is not subject to review by government personnel.~~

- The "legal mail" process cannot be used to send "correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys)." Furthermore, "written communications from a detainee shall not include any information that is classified, unclassified, or otherwise restricted by any national security law, executive order, or other authority. Such communications shall not include any information that is the property of the United States Government or any other person or entity." ~~Legal mail is not subject to review by government personnel.~~

- When counsel send legal mail to their clients, the only inspection of the materials is for a search for physical contraband (weapons, drugs, etc). Once that inspection is completed, the envelope is marked "Legal Mail approved by Privilege Team" and it is delivered to the detainee at Guantanamo. When (and after) the "legal mail" is delivered to a detainee, it is not reviewed by government personnel.

Subject to certain space limitations, it will remain in the detainee's cell for his review and use.

• ~~Classified materials, including classified materials but are not permitted to be disclosed to the detainee. Thus, no classified materials are found in the detainee's possession.~~

- All communications (written and oral) from a detainee to his lawyer are treated as presumptively SECRET/NOFORN and must be handled accordingly by the counsel. This is to prevent the inadvertent disclosure of classified material by the habeas counsel. If the counsel want to handle the material in any other way, the counsel will submit the material to a "Privilege Team" for a classification review. (Like the Filter Team, the Privilege Team is restricted from disclosing the contents of these communications, except in some limited circumstances.)

~~Classified materials, including classified materials but are not permitted to be disclosed to the detainee. Thus, no classified materials are found in the detainee's possession.~~

The habeas litigation has included a variety of counsel challenges to the conditions of detention, medical care problems, oppositions to transfers from Guantanamo and a variety of "collateral" matters.

Guidance on determining whether a document is covered by the attorney-client privilege is found at Appendix F.

III. General Instructions

In its authorization, the court cautioned the Filter Team to remember that the team must perform its task with the following restrictions:

- The Filter Team must keep meticulous records and maintain a chain of custody for every document reviewed. ~~It is the duty of the Filter Team to maintain a chain of custody for every document reviewed, to record who reviewed the document, when it was reviewed, and to whom the document was given.~~ If disputes later arise as to how individual documents were treated, the Filter Team's records must clearly show who had access to the document, what determinations were made regarding its content, and to whom the document was given.
- The Filter Team must not disclose the contents of any attorney-client privileged materials to any individuals outside the Filter Team except for information pertaining to future

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events that threaten national security or involve imminent violence. Such information may be disclosed only to the Department of Justice Filter Litigation Team.

The Department of Justice Filter Litigation Team (FLT) will be responsible for handling all attorney-client privileged materials that threaten national security or involve imminent violence. It is essential that the Filter Team only disclose such materials to the FLT. The Filter Team's point of contact at the FLT will be _____ should only be contacted as follows:

<INSERT CONTACT INSTRUCTIONS HERE>

Each member of the Filter Team will be assigned a unique identification number. When indicating in the team's records who reviewed a document, never use the Filter Team member's actual name. Always use the Filter Team members' ID number. This precaution is necessary to protect the privacy of the Filter Team members.

Each member of the Filter Team, after reading these instructions and prior to reviewing any documents, must sign the statement on the final page of this packet.

IV. Document Review Instructions

1. Remove the paper items from the bag.
2. Apply Bates number to each document. The Bates-numbers should be applied to every page in a document on which any writings, markings, drawings, or other text appears. Apply the Bates-numbers in a location as close to the bottom right hand corner of the page as possible, without obstructing the content of the document.
3. Document review form must be filled out for each individual document. If a document includes one or more attachments, such as a letter from an attorney to a detainee that includes a newspaper article, treat the letter and the article as a single document. Blank document review forms will be provided and an example form appears in the appendix of these instructions.
4. Examine the document. Complete Document Review Form for each document. In completing the form, describe the document's content as accurately as possible. If the document is a communication, describe the communication contained in the document.

JH

5. Three questions must be answered for each document:

- a. Does the document contain information pertaining to future events that threaten national security or involve imminent violence?

If so, alert the Filter Litigation Team immediately.

- b. Is the document relevant to the NCIS investigation?
- c. Is the document potentially protected by the attorney-client privilege?

Documents are potentially protected by attorney-client privilege if they are correspondence or other written material in the possession of a detainee that appears to have been provided to that detainee by his attorney or created by the detainee to provide to or communicate with his attorney.

Any materials created by the detainee that appear to be intended for his attorney will be processed as if they are attorney-client material. This may include hand-written notes on documents that would not be considered attorney-client privileged without the notes. Some documents prepared by the detainee will be written on paper that has been stamped with a marking indicating that the document is attorney-client privileged, even though the contents of the document would not be considered attorney-client privileged if it appeared on paper without the stamp. Such documents at the outset should be considered to be attorney-client material unless determined otherwise by further evaluation. See Appendix F for further guidance regarding the determination of attorney-client privilege.

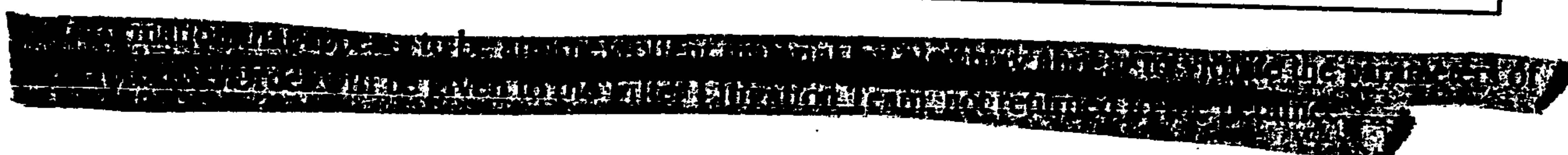
Some material may appear to be attorney-client material but also may appear to violate the parameters of the Protective Order. If the information is also deemed to be relevant to the investigation, the Filter Team should inform the Filter Litigation Team of this apparent violation when forwarding the document. If the information is deemed to not be relevant to the investigation, the material should be forwarded to the Filter Litigation Team.

NOTE: When it is unclear whether or not a document should be considered attorney-client material, the document should be presumed to be privileged.

6. For all documents that do not contain information relating to future acts of imminent violence or that threaten national security, sort the documents into four categories as noted below:

- a. **Category 1:** Documents that are relevant to the NCIS investigation *AND* are also attorney-client privileged.
- b. **Category 2:** Documents that are not relevant to the NCIS investigation but are attorney-client privileged.
- c. **Category 3:** Documents that are relevant to the NCIS investigation and are not attorney-client privileged.
- d. **Category 4:** Documents that are not relevant to the NCIS investigation and are not attorney-client privileged.

		Is the document relevant to the NCIS investigation?	
		Yes	No
Is the document protected by the Attorney-client privilege?	Yes	Category 1 Relevant & Privileged (Contact Filter Litigation Team)	Category 2* Irrelevant & Privileged (Return to Detainee)
	No	Category 3 Relevant & Not Privileged (Provide to NCIS)	Category 4 Irrelevant & Not Privileged (Return to JTF-GTMO)



7. Indicate the Category into which the document was placed on the document review form and place the document with the other documents placed in the same Category.

8. The document review form has an additional place for the Filter Team member to indicate any other information, notes, or comments that are deemed relevant. The reviewer should indicate any contact that he/she has with individuals outside the Filter Team in regard to the document here. For instance, the reviewer might contact a member of NCIS to ask a clarifying question without revealing the content of a document. This contact must be indicated on the document review form.

9. Once all of the documents from a single detainee have been reviewed, secure all of the documents in each Category with a rubber band or other fastener as appropriate and place them in accordion redwell folders in preparation for transfer.

All of the document review forms should be arranged in the order of the Bates-numbers of the documents to which they pertain. Secure the forms with a fastener and placed the forms in their own redwell folder.

10. Either retain the documents or transfer the documents to the DOJ Filter Litigation Team, to NCIS, to the detainee, or to JTF-GTMO based on the Category, as required.¹

Category 1:

The Filter Team will retain the Category 1 documents until it receives specific written instructions regarding their disclosure from the Department of Justice Filter Litigation Team (FLT).

The Filter Team must contact the FLT regarding all documents in Category 1, and may only disclose the documents or their contents to the FLT. The FLT will contact detainee's counsel for consent to disclosure of the documents to NCIS and/or will submit a filing under seal to the Court Security Officer (CSO) requesting permission for the documents to be disclosed to NCIS.

No disclosure of Category 1 documents may be made by the Filter Team prior to receiving documented consent of detainee's counsel or court approval.

- b. **Category 2:** If the information does not appear to violate the parameters of the Protective Order, the filter team must return all documents in Category 2 directly to the detainee. The documents should not be disclosed to JTF-GTMO command or to NCIS.

If it appears that the information violates the parameters of the Protective Order, the document must be forwarded to the Filter Litigation Team. The documents should not be disclosed to JTF-GTMO command or to NCIS.

Category 3:

The filter team should disclose all documents in Category 3 directly to NCIS. When NCIS has completed its investigation, the documents should be returned to JTF-GTMO for redistribution to the detainees to whom the documents belong, as appropriate.

- d. **Category 4:** The filter team should return all documents in Category 4 directly to JTF-GTMO. JTF-GTMO should return the documents to the detainees to whom the documents belong, as appropriate.

¹ Note that the NCIS agent members of the Filter Team will be responsible for the physical handling of the documents as part of mailing them to the appropriate receiving authority.

11. Once the documents have been transferred out of the possession of the Filter Team, indicate on each document review form to whom the document was transferred and the date of transfer.

Appendices:

- A. Declarations of Special Agent Carol Kiskhardt and Admiral Harry Harris**
- B. List of detainees whose materials can be reviewed**
- C. Judge Robertson's Opinion regarding the review**
- D. Habeas litigation fact sheet**
- E. Habeas case protective order**
- F. Guidance regarding attorney-client determination**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Khadar v. Bush : Civil Action No. 04-1136 (JDB)
Anam v. Bush : Civil Action No. 04-1194 (HHK)
Abdah v. Bush : Civil Action No. 04-1254 (HHK)
Al Qosi v. Bush : Civil Action No. 04-1937 (PLF)
Paracha v. Bush : Civil Action No. 04-2022 (PLF)
Deghayes v. Bush : Civil Action No. 04-2215 (RMC)
Mustapha v. Bush : Civil Action No. 05-0022 (JR)
Al Mohammed v. Bush : Civil Action No. 05-0247 (HHK)
El-Mashad v. Bush : Civil Action No. 05-0270 (JR)
Al-Wazan v. Bush : Civil Action No. 05-0329 (PLF)
Al-Anazi v. Bush : Civil Action No. 05-0345 (JDB)
Batarfi v. Bush : Civil Action No. 05-0409 (EGS)
Qayed v. Bush : Civil Action No. 05-0454 (RMU)
Al-Shihry v. Bush : Civil Action No. 05-0490 (PLF)
Aziz v. Bush : Civil Action No. 05-0492 (JR)
Al-Oshan v. Bush : Civil Action No. 05-0520 (RMU)
Tumani v. Bush : Civil Action No. 05-0526 (RMU)
Salahi v. Bush : Civil Action No. 05-0569 (JR)
Errachidi v. Bush : Civil Action No. 05-0640 (EGS)
Aboassy v. Bush : Civil Action No. 05-0748 (RMC)
Habashi v. Bush : Civil Action No. 05-0765 (EGS)
Khiali-Gul v. Bush : Civil Action No. 05-0877 (JR)
Muhibullah v. Bush : Civil Action No. 05-0884 (RMC)

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