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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION;  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION,

Plaintiffs,

v.

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

Defendants.

**DECLARATION OF  
HINA SHAMSI**

09 Civ. 8071 (BSJ) (FM)

ECF Case

**DECLARATION OF HINA SHAMSI**

I, Hina Shamsi, under penalty of perjury, declare as follows:

1. I am counsel for the plaintiffs in the above-captioned action. I make this declaration in support of the plaintiffs' Cross-Motion for Partial Summary Judgment and in opposition to the defendants' Motion for Partial Summary Judgment and Related Relief.

2. Attached to this declaration are true and correct copies of the following:

<u>Document</u>	<u>Exhibit</u>
President Barack Obama, Remarks by the President on National Security, at the National Archives (May 21, 2009) .....	A
Redacted List of 645 Detainees Held at Bagram Air Base .....	B
Kevin Sieff, <i>Afghan Prison Transfer Delayed</i> , Wash. Post, Aug. 12, 2011.....	C
Deputy Sec'y of Def., Memorandum re: Policy Guidance on Review Procedures and Transfer and Release Authority at Bagram Theater Internment Facility (BTIF), Afghanistan (July 2, 2009) ("July 2009 Bagram Policy Guidance") .....	D

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Robert S. Harward, Vice Admiral, U.S. Navy & Deputy  
 Commander, Detention Operations, Memorandum re: Detainee  
 Review Board Policy Memorandum, Afghanistan (July 11, 2010)  
 (“July 2010 DRB Policy Memorandum”)..... E

Detainee Review Board File, Detainee ISN 3806 ..... F

Detainee Review Board File, Detainee ISN 4193 ..... G

Request Under Freedom of Information Act from ACLU to Dep’t  
 of Def., Cent. Intelligence Agency, Dep’t of State & Dep’t of  
 Justice (Apr. 23, 2009)..... H

Email exchange between Hina Shamsi, Director, ACLU National  
 Security Project, and Jean-David Barnea, Assistant United States  
 Attorney (May 24-25, 2011) ..... I

Letter from Hina Shamsi, Director, ACLU National Security  
 Project, to Jean-David Barnea, Assistant United States Attorney  
 (June 3, 2011).....J

Transcript of Oral Argument, *Am. Civil Liberties Union v. Dep’t of  
 Def.*, No. 09-Civ.-8071(BSJ)(FM), Oct. 12, 2011 ..... K

Detainee Review Board File, Detainee ISN 1432 ..... L

Detainee Review Board File, Detainee ISN 20256 .....M

Julian E. Barnes, *U.S. Seeks Role in Afghan Jail*, Wall St. J., Sept.  
 22, 2010..... N

Detainee Review Board File, Detainee ISN 3111 ..... O

Detainee Review Board File, Detainee ISN 20257 ..... P

Detainee Review Board File, Detainee ISN 3665 ..... Q

Detainee Review Board File, Detainee ISN 20024 ..... R

Detainee Review Board File, Detainee ISN 4180 ..... S

Tarek Mahmoud El Sawah, Charge Sheet, Guantanamo Military  
 Commission (Dec. 12, 2008) ..... T

Faiz Mohammed Ahmed Al Kandari, Charge Sheet, Guantanamo  
 Military Commission (Oct. 21, 2008)..... U

Fouad Mahmoud Hasan Al Rabia, Charge Sheet, Guantanamo  
 Military Commission (Oct. 21, 2008)..... V

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Mohammed Hashim, Charge Sheet, Guantanamo Military Commission (May 30, 2008) ..... W

Mohammed Kamin, Charge Sheet, Guantanamo Military Commission (Mar. 11, 2008) ..... X

Mohammed Ahmed Haza Al Darbi, Charge Sheet, Guantanamo Military Commission (Dec. 20, 2007) ..... Y

Ali Hamza Ahmad Suliman Al Bahlul, Charge Sheet, Guantanamo Military Commission (Feb. 8, 2008)..... Z

Ibrahim Ahmed Mahmoud Al Qosi, Charge Sheet, Guantanamo Military Commission (Feb. 8, 2008).....AA

Detainee Review Board File, Detainee ISN 4191 ..... AB

Joint Motion for Summary Judgment By Defendants Department of Health and Human Services and Intervenor Guidant Corporation, *Hersh & Hersh v. U.S. Dep’t of Health & Human Servs.*, 2008 WL 901539 (N.D. Cal. Mar. 31, 2008) (No. C 06-4234 PJH), ECF No. 96. .... AC

Memorandum of Points and Authorities in Support of Plaintiff’s Opposition to Joint Motion for Summary Judgment By Defendants Department of Health and Human Services and Intervenor Guidant Corporation, *Hersh & Hersh v. U.S. Dep’t of Health & Human Servs.*, 2008 WL 901539 (N.D. Cal. Mar. 31, 2008) (No. C 06-4234 PJH), ECF No. 107 .....AD

Mark S. Martins, Brigadier General, U.S. Army, Memoranda re: Detainee Review Board (DRB) Recommendation for Continued Internment Approval/Disapproval ISN Nos. 1464, 3863 & 4037 (Mar. 27, 2010, Feb. 23, 2010 & Feb. 15, 2010) (Sample Convening Authority Memos (“CAMs”)) ..... AE

3. As counsel for plaintiffs, I have reviewed records released by defendants pursuant to the Freedom of Information Act (“FOIA”) request giving rise to this litigation, as well as other publicly available sources of information about the detention regime and operations at the U.S. military facility at Bagram Airfield, Afghanistan.

4. In accordance with a stipulation filed with the Court on August 2, 2010, the Department of Defense disclosed to plaintiffs several hundred Convening Authority Memos

("CAMs"), which generally indicate the detainee status determination and recommendations made by Detainee Review Board ("DRB") panels after hearings for each of 906 detainees held by the U.S. military at Bagram between September 2009 and June 2010. *See* Second Stipulation and Order Regarding Doc. Processing and Produc. by the Department of Defense ¶ 2(b), Aug. 2, 2010, ECF No. 44. The CAMs also generally indicate the final determination made by the Bagram Commander or his designee regarding detention decisions, as well as whether the detainee was determined to be an "enduring security threat" ("EST"). The one-page CAMs do not always include all of this information, and appear to contain a few transcription errors, so they are not a fully reliable source of comprehensive analysis of detention outcomes. Sample CAMs are attached hereto as Exhibit AE. Nevertheless, based on the ACLU's analysis of the CAMs, between September 2009 and June 2010, at least 100 detainees out of the 906 detainees for whom DRBs were held during that period were labeled ESTs.

5. The ACLU's analysis of information from FOIA records produced to the ACLU, court filings by U.S. military officials, and court filings made in Pakistan by the Pakistani government in response to a challenge by the human rights group Reprieve indicate that at least 6 detainees captured outside Afghanistan and brought to Bagram without judicial process have been designated as ESTs.

6. Upon information and belief, although DOD has not released the exact number of Bagram detainees designated as ESTs, the number is likely in the hundreds.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 31st day of October 2011.

  
Hina Shamsi