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CA: This periodic review board is being conducted at 0856 hours on 8 April 2014, at the Periodic Review Secretariat Headquarters with regard to the following detainee: Ghaleb Nasser al-Bihani.

As a reminder, the unclassified portions of these proceedings are being recorded for the purpose of generating a transcript to be posted on the PRS website.

TRANS 1: [Translation of above.]

CA: Representatives from the following agencies are present:

DEPARTMENT OF DEFENSE;
DEPARTMENT OF STATE;
DEPARTMENT OF JUSTICE;
DEPARTMENT OF HOMELAND SECURITY;
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE;
OFFICE OF THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF;
LEGAL ADVISOR TO THE BOARD;
CASE ADMINISTRATOR;
PRIVATE COUNSEL;
PERSONAL REPRESENTATIVES;
TWO TRANSLATORS;
DETAINEE; and,
SECURITY OFFICER.

TRANS 1: **[Translation of above.]**

CA: The detainee's personal representatives, detainee, and one of two translators are located at the detention facility, U.S. Naval Station Guantanamo Bay, Cuba, and are attending this hearing via video teleconference.

This session is being observed by foreign, national, and local media; foreign government officials, and representatives from nongovernmental organizations, as applicable.

TRANS 1: **[Translation of above.]**

PM: This board is called to order. This board is convened to determine whether continued law of war detention is warranted for Ghaleb Nasser al-Bihani in order to protect against a continuing significant threat to the security of the United States.

TRANS 1: **[Translation of above.]**

PM: This periodic review board hearing session is unclassified. Classified documents and classified discussion relating to classified information shall not be presented or discussed during the unclassified session of this hearing.

TRANS 1: **[Translation of above.]**

PM: Mr. al-Bihani, this is your periodic review board to determine whether continued law of war detention is warranted in

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your case. Your continued law of war detention will be warranted if such detention is necessary to protect against a continuing significant threat to the national security of the United States. The focus of this hearing is on the threat you may pose to the United States and its interests if transferred or released from U.S. custody, and not on the lawfulness of your detention.

TRANS 1: **[Translation of above.]**

PM: The private counsel and personal representative are your representatives to assist you during this process.

Finally, the translators ensure that everyone understands your statements and that you understand what is being said here during the hearing.

TRANS 1: **[Translation of above.]**

PM: I would now like to ask the private counsel and personal representative has Mr. al-Bihani had an opportunity to review the unclassified summary?

PR: Yes, sir.

PC: Yes, sir.

PM: Thank you.

I will now read the unclassified summary:

Ghaleb Nasser al-Bihani, Yemeni 128, before his capture, traveled to Afghanistan for jihad and almost certainly

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was a member of Al-Qaeda. In Afghanistan, he attended Al-Qaeda- and Taliban-affiliated training camps, including al-Farouq, where he received in-depth instruction on the use of small arms and, probably, anti-aircraft weapons, IEDs, mortars, and land mines.

A body of reporting indicates that the detainee then operated on the front lines against the Northern Alliance in various capacities. His extensive knowledge of Al-Qaeda and Taliban leadership and operational procedures suggest he actively supported both groups, although he probably did not hold a leadership position in either.

The detainee has been a problematic detainee throughout his tenure at Guantanamo Bay Detention Facility, having committed several significant personal-disciplinary infractions and incited or participated in mass protests. During interviews, he has provided some information of value, but probably withheld this information until after he assessed it would yield little actionable intelligence. And he frequently contradicted himself when discussing his own involvement in terrorism.

The detainee has associations with at-large extremists, primarily his brothers, at least one of whom is a member of Al-Qaeda in the Arabian Peninsula and six of whom

fought jihad in Afghanistan. His family is closely tied to high-ranking Al-Qaeda members, and almost certainly would induce the detainee to reengage in extremist activities if he were repatriated to Yemen.

The detainee, since 2010, has expressed a fear of repatriation to the Middle East, stating that he no longer wishes to fight and would prefer to be transferred to Europe to establish a life away from jihad. The detainee's long-standing tendency to provide conflicting statements about his own involvement in terrorism, however, does not allow for an assessment with confidence about whether his stated intent to renounce jihad is credible.

TRANS 1: **[Translation of above.]**

PM: Do the personal representative and private counsel wish to make an unclassified opening statement in this unclassified session?

PR: Yes, sir.

PC: Yes, sir.

PM: I would like to remind all participants that any information shared at this time must be unclassified. If there is a concern about the classification of the information, I will indicate such and proceedings will stop until the classification issue is resolved.

Translate that part.

TRANS 1: **[Translation of above.]**

PM: Personal representative and private counsel, you may proceed with your opening statements.

TRANS 1: **[Translation of above.]**

PR: Yes, sir.

Can you still hear us?

PM: Yes, we still have you.

PR: Thank you.

Ladies and gentlemen of the board, good morning.

[Translator 2 commenced simultaneous interpretation to the detainee.]

PR: I am the personal representative for Ghaleb Nasser al-Bihani, ISN Number 128.

In our submission, we have provided you with information that demonstrates that Mr. al-Bihani should not be considered a continuing significant threat to the security of the United States. Looking at the factors listed in DTM 12-005 for assessing whether a detainee meets this standard, they can be grouped into three general categories: factors that go to whether a detainee has the capacity to be a significant and continuing threat to the security of the United States, whether he has the motive, and whether he will have the opportunity. In

the vulnerability assessment methodologies with which I am familiar, if any of the three is absent or sufficiently low, then the threat is considered to be negligible.

Over the past six months, I worked closely with Mr. al-Bihani. I believe that he currently has neither the motive nor the capability to be a significant threat to U.S. national security and that he will not become one after his transfer. I say this both as a war fighter and as someone who has years of experience performing vulnerability assessments.

Starting with motive, Mr. al-Bihani's wish is, ideally, be transferred to a third country where he can build a new and independent life; camp records indicate that, while he has expressed this desire repeatedly over the past several years since 2009. While the compendium for Mr. al-Bihani implies that he may have ill intentions toward the U.S. when it states that he has been a problematic detainee throughout his tenure, camp records instead indicate that there have been only isolated and relatively minor incidents since 2009. He and his private counsel will speak more during their statements about his motives and his efforts to prepare for a better future. Our medical expert witness will address in her testimony how Mr. al-Bihani's health problems can affect behavior.

In terms of capability, Mr. al-Bihani does not have skills that would present a significant threat to U.S. national security. Mr. al-Bihani did not hold a leadership position with Al-Qaeda or the Taliban; he didn't even fight with them. He was not involved in any specific attacks.

Twelve years ago, he was an assistant cook in one of the groups that fought against the Northern Alliance, prior to U.S. combat operations, and then surrendered. The compendium itself states that he probably did not hold a leadership position in either Al-Qaeda or the Taliban. And while his compendium lists various training, even if he had received every bit of the training listed, it would be equivalent to that provided to a private in the U.S. Army; by himself, not a significant threat to a nation's security.

In terms of opportunity, any concerns the board may have about his environment after release can be mitigated. Again, if given a choice, Mr. al-Bihani wants to go to a third country to build an independent life. Wherever he is transferred, he is willing to agree to appropriate security measures, and he is willing to participate in a rehabilitation program. As you will hear, he will also have the support and positive influence of his relative and NGO support to help ensure his successful reintegration.

Based on these factors, the U.S. has insufficient reason to believe that Mr. al-Bihani has the motive or capability to be a significant continuing threat to U.S. national security or that any concerns about potential opportunity cannot be addressed. In closing, ladies and gentlemen, Ghaleb Nasser al-Bihani does not meet the standard to be considered a continuing significant threat to the security of the United States.

PC: Good morning. My name is Pardiss Kebriaei, and I am the private counsel for Ghaleb al-Bihani. Thank you for the opportunity to assist Mr. al-Bihani in this review process.

I have represented Guantanamo detainees since 2007, including men who have been resettled to third countries and repatriated to Yemen. I have represented Mr. al-Bihani since early 2011. I have had over two dozen meetings and phone calls with him since then, for a total of over 100 hours of conversation.

I began representing Mr. al-Bihani after the close of his *habeas* case, so most of those hours have been spent discussing the here and now and the future. I would like to share two main observations of Mr. al-Bihani based on our conversations and interactions.

The first is that Mr. al-Bihani has been talking about his wish for a new start in a third country for years. From our first phone call in April of 2011, he spoke about wanting resettlement. He has continued to express this desire in virtually every conversation we have had since then, asking me about possibilities from Qatar to Spain to Costa Rica to Uruguay. As he will tell you, he will accept transfer to any country the government determines is appropriate, including Yemen or Saudi Arabia. But if he had a choice, he would be sent to a third country.

This is not because he thinks a third country is the fastest route for release, although certainly he wants that route; it is not because he thinks this is what the board wants to hear, because he has been saying for years that he wants resettlement. He will tell you more about his motivations, but what he has expressed to me continuously is his desire for a new beginning; a break from what has come before; a real chance to build a better life in an environment where there is stability, economic and educational opportunity, and calm. I believe that he wants these things.

The second is that I have observed Mr. al-Bihani try hard to prepare himself for the life that he wants to build. We have submitted to the board a long list of books he has

requested over the years. He has asked for Arabic and English dictionaries, Spanish-language books, GED books, and DVDs on Latin America. He has asked for the latest research on diabetes, for yoga magazines, and self-help books. He has taken pages of notes on his readings. He has worked with his doctors to make various medical requests. He has come to every meeting we have scheduled over the past three years to work with me. He has come to every meeting his personal representative and I have scheduled over the past six months to prepare for this review, and he said he was hopeful about it.

Two weeks ago, he sat in a 3-hour meeting pushing through a migraine headache to work on the statement that he is going to read to you. He began these efforts years ago before anyone was checking, and he has tried to persevere in spite of his chronic health problems which have, at times, been debilitating.

Wherever Mr. al-Bihani is transferred, my organization will help support his rehabilitation and his reintegration. For several clients who were resettled and repatriated by the administration in 2009 and 2010, we worked with the State Department and host governments on transition plans for clients, we visited clients multiple times after release, we served as an ongoing point-of-contact for local authorities, we provided

financial assistance and referrals for needs ranging from live-in interpreters to mental health care, and we partnered with other NGOs and organizations to help address other needs. We were a trusted and experienced resource in facilitating a successful transition for these clients who are now rebuilding their lives; we would offer the same assistance for Mr. al-Bihani.

We are still in contact with a client who was approved for transfer and resettled in a European country in 2009. The government's assessment of him was not dissimilar to some of the assertions about Mr. al-Bihani. Like dozens of resettled men, he went to a country where he had never been, where support had to be provided; and it was. It is five years later: He is fluent in the language of that country and working as an interpreter, he got married a couple of years ago, and he just had his first child.

The United States successfully transferred him as it has many others, and it can do so again with Mr. al-Bihani. He is his own person, and he should be evaluated on his own merits.

Thank you very much.

PM: Thank you, personal representative, private counsel.

We understand board members may reserve questions until the detainee and witness statements have been presented in

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their entirety.

TRANS 1: **[Translation of above.]**

PM: Does any member of the board have a question for the personal representative or private counsel in this unclassified session?

[No verbal response from the members.]

PM: Seeing no further questions, this concludes this portion of the hearing. Request all members remain seated until further instructed by the hearing clerk.

CA: We will take a 15-minute recess to prepare for the remaining sessions.

TRANS 1: **[Translation of above.]**

[The public session closed at 0921, 20 March 2014.]

[At this point, the unclassified portion of the hearing ended.]

[END OF PAGE]

ABBREVIATION AND ACRONYM KEY

CA: CASE ADMINISTRATOR
PC: PRIVATE COUNSEL
PM: PRESIDING MEMBER
PR: PERSONAL REPRESENTATIVE
TRANS 1: TRANSLATOR ONE
TRANS 2: TRANSLATOR TWO