EXHIBIT 18

Jeena Shah

From: Jeena Shah
Sent: Monday, April 22, 2013 5:29 PM
To: trip@dhs.gov
Cc: Aliya Hana Hussain
Subject: DHS TRIP Traveler Inquiry Form (2173724)
Attachments: Asaad-PP.pdf; Asaad-DHS-signed forms.pdf

To Whom It May Concern:

I am an associate with the Center for Constitutional Rights, which represents Mr. Asaad Alnamri. Mr. Alnamri submitted a TRIP Traveler Inquiry Form on the DHS's online system on April 18, 2013. His Redress Control Number is 2173724. Attached is a copy of the biographical pages of his passport, a signed DHS TRIP Authorization Release Information to Another Person form, and a signed copy of the confirmation page for his application.

Should you have any questions or require any further information, you can contact me at jshah@ccrjustice.org or 212-614-6464.

Best,

Jeena Shah
Center for Constitutional Rights
666 Broadway, 7th Floor | New York, NY 10012
212-614-6464 | www.ccrjustice.org

DEPARTMENT OF HOMELAND SECURITY

AUTHORIZATION TO RELEASE INFORMATION TO ANOTHER PERSON

Please complete this form to authorize the Department of Homeland Security (DHS) or its designated DHS Component element to disclose your personal information to another person. You are asked to provide your information only to facilitate the identification and processing of your request. Without your information DHS or its designated DHS Component element may be unable to process your request.

SECTION I. Personal Information

Name: Asaad Hamzah Hanfoosh Alnamri		
Address: [redacted]		
City: Baghdad	State:	Zip Code:
Country: Iraq	Telephone Number(s): [redacted]	
Date of Birth: 07/01/1973	Place of Birth (city, state, country): Baghdad, Iraq	

SECTION II. Representative Information

Name: Center for Constitutional Rights		
Address: 666 Broadway, 7th floor		
City: New York	State: NY	Zip Code: 10012
Country: USA	Telephone Number(s): +1 (212) 614-6464	

Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a(b)), I authorize DHS and/or its DHS Component elements to release any and all information relating to my redress request to my representative .

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above in Section I. I understand that falsification of this statement is punishable under the provisions of 18 U.S.C. §1001 by a fine of not more than $10,000 or by imprisonment of not more than five years, or both.

Signature: _____ Date: April 22, 2013

PRIVACY ACT STATEMENT:

AUTHORITY: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect.

PRINCIPAL PURPOSE(S): DHS will use this information in order to assist you with seeking redress in connection with travel.

ROUTINE USE(S): DHS will use and disclose this information to appropriate governmental agencies to verify your identity, distinguish your identity from that of another individual, such as someone included on a watch list, and/or address your redress request. Additionally, limited information may be shared with non-governmental entities, such as air carriers, where necessary for the sole purpose of carrying out your redress request.

DISCLOSURE: Furnishing this information is voluntary; however DHS may not be able to process your redress request without the information requested.

Homeland Security

-- PRINT THIS PAGE FOR YOUR RECORDS --

DHS TRAVELER REDRESS INQUIRY IDENTITY PROGRAM (TRIP)
Traveler Inquiry Form

Thank You: Asaad Alnaimi

Your Redress Control Number is: **2173724**

To complete the process, please mail or e-mail COPIES of the following documents to DHS:

1. Passport
2. If you are filing a complaint on behalf of someone else; please complete the DHS TRIP Authorization Release Information to Another Person form at: http://www.dhs.gov/xlibrary/assets/tsa/dhs-form-590.pdf
3. AND a signed copy of this page.

You can mail or e-mail the documents and signed form to:
DHS TRIP
Attention: Control number 2173724
601 South 12th Street TSA-901
Arlington, Virginia 20598-6901

OR BY Email to trip@dhs.gov

If DHS does not receive the documents within 30 days, including a signed copy of this page, your request for redress will not be processed.
To check on the status of your Redress request, please go to the TRIP Status Page and enter your control number.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and is provided in good faith. I understand that knowingly and willfully making any materially false statement, or omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code).

Privacy Act Notice:

Authority: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect. **Principal Purposes:** DHS will use this information in order to assist you with seeking redress in connection with travel. **Routine Uses:** DHS will use and disclose this information to appropriate governmental agencies to verify your identity, distinguish your identity from that of another individual, such as someone included on a watch list, and/or address your redress request. Additionally, limited information may be shared with non-governmental entities, such as air carriers, where necessary for the sole purpose of carrying out your redress request. **Disclosure:** Furnishing this information is voluntary; however, the Department of Homeland Security may not be able to process your redress inquiry without the information requested.

I understand the above information and am voluntarily submitting this information to the Department of Homeland Security.

/ April 22, 2013

Signature / Date
FORM APPROVED OMB NO. 1652-0044.

Click here to return to the website.

Jeena Shah

From: Jeena Shah
Sent: Monday, April 22, 2013 5:27 PM
To: trip@dhs.gov
Cc: Aliya Hana Hussain
Subject: DHS TRIP Traveler Inquiry Form (2173723)
Attachments: Suhail-PP.pdf; Suhail-DHS-signed forms.pdf

To Whom It May Concern:

I am an associate with the Center for Constitutional Rights, which represents Mr. Suhail Shammari. Mr. Shammari submitted a TRIP Traveler Inquiry Form on the DHS's online system on April 18, 2013. His Redress Control Number is 2173723. Attached is a copy of the biographical pages of his passport, a signed DHS TRIP Authorization Release Information to Another Person form, and a signed copy of the confirmation page for his application.

Should you have any questions or require any further information, you can contact me at jshah@ccrjustice.org or 212-614-6464.

Best,

Jeena Shah
Center for Constitutional Rights
666 Broadway, 7th Floor | New York, NY 10012
212-614-6464 | www.ccrjustice.org

DEPARTMENT OF HOMELAND SECURITY

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SECTION I. Personal Information

Name: Suhail Najm Abdullah Shammari		
Address: [redacted]		
City: Baghdad	State:	Zip Code:
Country: Iraq	Telephone Number(s): [redacted]	
Date of Birth: 10/11/1959	Place of Birth (city, state, country): Baghdad, Iraq	

SECTION II. Representative Information

Name: Center for Constitutional Rights		
Address: 666 Broadway, 7th floor		
City: New York	State: NY	Zip Code: 10012
Country: USA	Telephone Number(s): +1 (212) 614-6464	

Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a(b)), I authorize DHS and/or its DHS Component elements to release any and all information relating to my redress request to my representative .

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above in Section I. I understand that falsification of this statement is punishable under the provisions of 18 U.S.C. §1001 by a fine of not more than $10,000 or by imprisonment of not more than five years, or both.

Signature: _____ Date: April 22, 2013

PRIVACY ACT STATEMENT:

AUTHORITY: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect.

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DISCLOSURE: Furnishing this information is voluntary; however DHS may not be able to process your redress request without the information requested.

Homeland Security

-- PRINT THIS PAGE FOR YOUR RECORDS --

DHS TRAVELER REDRESS INQUIRY IDENTITY PROGRAM (TRIP)
Traveler Inquiry Form

Thank You: Suhail Shammari

Your Redress Control Number is: **2173723**

To complete the process, please mail or e-mail COPIES of the following documents to DHS:

1. Passport
2. If you are filing a complaint on behalf of someone else; please complete the DHS TRIP Authorization Release Information to Another Person form at: http://www.dhs.gov/xlibrary/assets/tsa/dhs-form-590.pdf
3. AND a signed copy of this page.

You can mail or e-mail the documents and signed form to:
DHS TRIP
Attention: Control number 2173723
601 South 12th Street TSA-901
Arlington, Virginia 20598-6901

OR BY Email to trip@dhs.gov

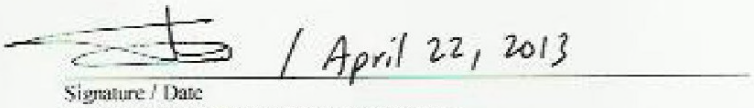
If DHS does not receive the documents within 30 days, including a signed copy of this page, your request for redress will not be processed.
To check on the status of your Redress request, please go to the TRIP Status Page and enter your control number.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and is provided in good faith. I understand that knowingly and willfully making any materially false statement, or omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code).

Privacy Act Notice:

Authority: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect. **Principal Purposes:** DHS will use this information in order to assist you with seeking redress in connection with travel. **Routine Uses:** DHS will use and disclose this information to appropriate governmental agencies to verify your identity, distinguish your identity from that of another individual, such as someone included on a watch list, and/or address your redress request. Additionally, limited information may be shared with non-governmental entities, such as air carriers, where necessary for the sole purpose of carrying out your redress request. **Disclosure:** Furnishing this information is voluntary; however, the Department of Homeland Security may not be able to process your redress inquiry without the information requested.

I understand the above information and am voluntarily submitting this information to the Department of Homeland Security.



/ April 22, 2013

Signature / Date

FORM APPROVED OMB NO. 1652-0044.

Click here to return to the website.

Jeena Shah

From: Jeena Shah
Sent: Monday, April 22, 2013 5:25 PM
To: 'trip@dhs.gov'
Cc: Aliya Hana Hussain
Subject: DHS TRIP Traveler Inquiry Form (2173725)
Attachments: Taha_PP.pdf; Taha-DHS-signed forms.pdf

To Whom It May Concern:

I am an associate with the Center for Constitutional Rights, which represents Mr. Taha Arrak. Mr. Arrak submitted a TRIP Traveler Inquiry Form on the DHS's online system on April 18, 2013. His Redress Control Number is 2173725. Attached is a copy of the biographical pages of his passport, a signed DHS TRIP Authorization Release Information to Another Person form, and a signed copy of the confirmation page for his application.

Should you have any questions or require any further information, you can contact me at jshah@ccrjustice.org or 212-614-6464.

Best,

Jeena Shah
Center for Constitutional Rights
666 Broadway, 7th Floor | New York, NY 10012
212-614-6464 | www.ccrjustice.org

DEPARTMENT OF HOMELAND SECURITY

AUTHORIZATION TO RELEASE INFORMATION TO ANOTHER PERSON

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SECTION I. Personal Information

Name: Taha Yaseen Arrak		
Address: [redacted]		
City: Baghdad	State:	Zip Code:
Country: Iraq	Telephone Number(s): [redacted]	
Date of Birth: 12/10/1981	Place of Birth (city, state, country): Baghdad, Iraq	

SECTION II. Representative Information

Name: Center for Constitutional Rights		
Address: 666 Broadway, 7th Floor		
City: New York	State: NY	Zip Code: 10012
Country: USA	Telephone Number(s): +1 (212) 614-6464	

Pursuant to the Privacy Act of 1974 (5 U.S.C. §552a(b)), I authorize DHS and/or its DHS Component elements to release any and all information relating to my redress request to my representative .

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above in Section I. I understand that falsification of this statement is punishable under the provisions of 18 U.S.C. §1001 by a fine of not more than $10,000 or by imprisonment of not more than five years, or both.

Signature: _____ Date: April 22, 2013

PRIVACY ACT STATEMENT:

AUTHORITY: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect.

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Homeland Security

-- PRINT THIS PAGE FOR YOUR RECORDS --

DHS TRAVELER REDRESS INQUIRY IDENTITY PROGRAM (TRIP)
Traveler Inquiry Form

Thank You: Taha Arrak

Your Redress Control Number is: **2173725**

To complete the process, please mail or e-mail COPIES of the following documents to DHS:

1. Passport
2. If you are filing a complaint on behalf of someone else; please complete the DHS TRIP Authorization Release Information to Another Person form at: http://www.dhs.gov/xlibrary/assets/tsa/dhs-form-590.pdf
3. AND a signed copy of this page.

You can mail or e-mail the documents and signed form to:
DHS TRIP
Attention: Control number 2173725
601 South 12th Street TSA-901
Arlington, Virginia 20598-6901

OR BY Email to trip@dhs.gov

If DHS does not receive the documents within 30 days, including a signed copy of this page, your request for redress will not be processed.
To check on the status of your Redress request, please go to the TRIP Status Page and enter your control number.

The information I have provided on this application is true, complete, and correct to the best of my knowledge and is provided in good faith. I understand that knowingly and willfully making any materially false statement, or omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code).

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Authority: Title IV of the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes DHS to take security measures to protect travel, and under Subtitle B, Section 4012(1)(G), the Act directs DHS to provide appeal and correction opportunities for travelers whose information may be incorrect. **Principal Purposes:** DHS will use this information in order to assist you with seeking redress in connection with travel. **Routine Uses:** DHS will use and disclose this information to appropriate governmental agencies to verify your identity, distinguish your identity from that of another individual, such as someone included on a watch list, and/or address your redress request. Additionally, limited information may be shared with non-governmental entities, such as air carriers, where necessary for the sole purpose of carrying out your redress request. **Disclosure:** Furnishing this information is voluntary; however, the Department of Homeland Security may not be able to process your redress inquiry without the information requested.

I understand the above information and am voluntarily submitting this information to the Department of Homeland Security.

4/18/2013 7:43 PM

/ April 22, 2013

Signature Date

FORM APPROVED OMB NO. 1652-0044.

Click here to return to the website.

EXHIBIT 19

https://ceac.state.gov/CEACStatTracker/Status.aspx?eQs=WwjqOlbeRYzCYubaSQI+RA==

U.S. DEPARTMENT of STATE
CONSULAR ELECTRONIC APPLICATION CENTER

BACK | VISA STATUS CHECK

Visa Status Check

Welcome! On this website, you can check your U.S. visa application status.

Visa Application Type
NONIMMIGRANT VISA (NIV)

Please select a location and enter your Application ID or Case Number

Select a location
IRAQ, BAGHDAD

Application ID or Case Number
AA002Z37HH
(e.g., AA0020AKAX or 2012118 345 0001)

Submit

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U.S. Department of State
NONIMMIGRANT VISA APPLICATION

Administrative Processing

Application ID or Case Number: **AA002Z37HH**
Case Creation Date: 17-Mar-2013
Status Updated Date: 17-Mar-2013

Your visa case is currently undergoing necessary administrative processing. This processing can take several weeks. Please follow any instructions provided by the Consular Officer at the time of your interview. If further information is needed, you will be contacted. If your visa application is approved, it will be processed and mailed/available within two business days.

For more information, please visit U.S. Embassy Baghdad.

Close

https://ceac.state.gov/CEACStatTracker/Status.aspx

U.S. DEPARTMENT of STATE
CONSULAR ELECTRONIC APPLICATION CENTER

BACK | VISA STATUS CHECK

Visa Status Check

Welcome! On this website, you can check your U.S. visa application status.

Visa Application Type
NONIMMIGRANT VISA (NIV)

Please select a location and enter your Application ID or Case Number.

Select a location
IRAQ, BAGHDAD

Application ID or Case Number
AA002Z39T5
(e.g., AA0020AKAX or 2012118 345 0001)

Submit

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Copyright Information Disclaimers

U.S. Department of State
NONIMMIGRANT VISA APPLICATION

Administrative Processing

Application ID or Case Number: **AA002Z39T5**
Case Creation Date: 17-Mar-2013
Status Updated Date: 17-Mar-2013

Your visa case is currently undergoing necessary administrative processing. This processing can take several weeks. Please follow any instructions provided by the Consular Officer at the time of your interview. If further information is needed, you will be contacted. If your visa application is approved, it will be processed and mailed/available within two business days.

For more information, please visit U.S. Embassy Baghdad.

Close

https://ceac.state.gov/CEACStatTracker/Status.aspx?eQs=WwjqOlbeRYzCYubaSQI+RA==

U.S. DEPARTMENT of STATE
CONSULAR ELECTRONIC APPLICATION CENTER

BACK | VISA STATUS CHECK

Visa Status Check

Welcome! On this website, you can check your U.S. visa application status.

Visa Application Type
NONIMMIGRANT VISA (NIV)

Please select a location and enter your Application ID or Case Number.

Select a location
IRAQ, BAGHDAD

Application ID or Case Number
AA002Z3E41
(e.g., AA0020AKAX or 2012116 345 0001)

Submit

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Copyright Information Disclaimers

U.S. Department of State
NONIMMIGRANT VISA APPLICATION

Administrative Processing

Application ID or Case Number: **AA002Z3E41**
Case Creation Date: 17-Mar-2013
Status Updated Date: 17-Mar-2013

Your visa case is currently undergoing necessary administrative processing. This processing can take several weeks. Please follow any instructions provided by the Consular Officer at the time of your interview. If further information is needed, you will be contacted. If your visa application is approved, it will be processed and mailed/available within two business days.

For more information, please visit U.S. Embassy Baghdad.

Close

EXHIBIT 20

~~SECRET//REL MCFI~~

DEPARTMENT OF THE ARMY
JOINT INTERROGATION AND DEBRIEFING CENTER
205TH MILITARY INTELLIGENCE BRIGADE
ABU GHURAYB, IRAQ, APO AE 09335

11 January 2004

MEMORANDUM FOR S3, 320TH MP BN

SUBJECT: Request for Movement to General Population

1. Request the following detainee be removed from segregation and returned to general population.

   153913 SUHAYL NAJIM ((ABDULLAH))

   No further information of intelligence value can be gained from these individuals that cannot be gained from them in general population..

2. POC for this action is SSG Burgess, or the undersigned at DNVT 559-1768.

JON D. GRAHAM
CW2, USA
Interrogation OIC

~~SECRET//REL MCFI~~

PERSONAL DATA REPORT

GENERAL INFORMATION

Dossier: {882120EC-DD5F-4B45-9A72-7C8D69771C93}
Enroll Date: 3/19/2004 8:43:19 PM
Enrollment Station: IRQ:CENTCOM
Person Type:
Reason Enrolled:
Title:
Name (F,M,L,T): SUHAIL NAJIM/ABB ALAH ABDULLAH/AL SHEMARY AL-SHAMMARI ()
Full Name:
Native Full Name:
WMD Category:
Operational Status:
Occupation: FARMER
National ID #: 153913
Gender: MALE
Race: MIDDLE EAST
Hair Color: BLACK
Eye Color: BROWN
Build:
Height (in): Min: 66 Max:
Weight (lb): Min: 167 Max:

PHOTOGRAPH

ON ALERT? YES

DENY BASE ACCESS / DO NOT HIRE / DISQUALIFY FROM ARMY OR POLICE TRAINING SUBJECT WAS PLACED ON THE NGIC BIOMETRIC WATCHLIST ON 8 DECEMBER 2008 DUE TO DEROGATORY INFORMATION WHICH SUGGESTS SUBJECT POSES A THREAT TO COALITION FORCES. CONTACT NGIC BIOMETRICS WATCHLIST TEAM AT RMNGICBEWL@MI.ARMY.SMIL.MIL OR NGIC BIOMETRICS AT (434) 951-1444 OR DSN: 312-521-1444 [STE]; BAC@NGIC.ARMY.SMIL.MIL IF THERE ARE ANY QUESTIONS.

MI HOLD II, CID HOLD II

THIS INDIVIDUAL WAS DETAINED AT REMEMBRANCE II FROM 2003/11/07 TO 03/27/2008 AND RELEASED BY ORDER OF [redacted] ON 03/27/2008.

PERSON COMMENTS

PERSONAL DATA

Birthdate: 04JAN1959
Death Date:
Religion: ISLAM-SUNNI
Primary Nationality: IRAQ
2nd Nationality:
Ethnicity: ARAB
Marital Status: MARRIED
Personnel Status: UNKNOWN

WATCH LIST

Alert Category: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

Alert Value: Low Alert Region: CENTCOM

Alert Contact: NGIC Biometrics at (434) 951-1444 or DSN: 312-521-1444 [STE] or at RMngicbewl@mi.army.smil.mil

Alert Detail: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

ALIASES

Alias (F,M,L,T): SUHAIL NAJIM AL SHMARY

AKA Full Name:

Nickname:

Comments: From original MP inprocessing.

PLACE OF BIRTH

Birthplace: Ahatitiyah, MB 49274 52464, MB 49274 52464, IRAQ

ID NUMBERS

ID Number Type	ID Number
ISN Last6	153913
CAPTURE TAG	0213474
ID PARTICULARS	22636
ISN	(b)(1) 153913 (b)

CAPTURE INFORMATION

Evacuation Date:

MP Number: 22636

Capture Date: 100130ZNOV2003

Capture Unit: 300 MP; US/Coalition Forces

Place: IRAQ, AL LOTEFIA, AL LOTEFIA, AL LOTEFIA,

Comments: MB 49274 52464; Home in Alatifiyah

Documents:

Circumstances: Circumstances: Raid on house, wpns violations. Capture Place: (b)(1)

Weapons/Equip:

INDIVIDUAL STATUS INFORMATION

JITF-CT Status	US Persons Status	US DoD Status

PASSPORT INFORMATION

Type	Number	Issue Date	Expiration Date	Country	Authority

BADGES

PERSONAL TRAITS

LANGUAGE(S)

Language Name:	Language Proficiency	Is Native Language
Arabic	Educated Native Speaker	

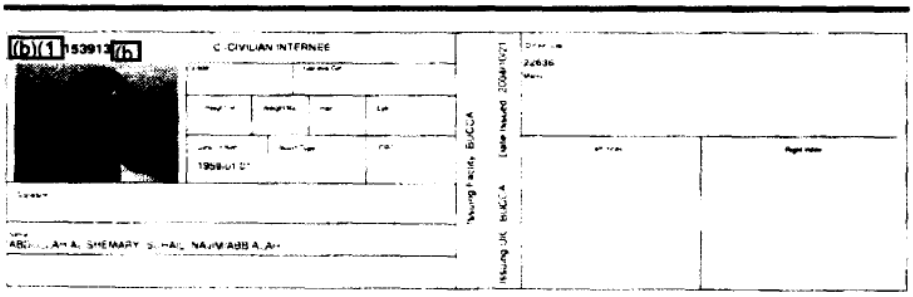
Comments:

INFORMATION SUBJECT TO PROTECTIVE ORDER (C.A. No. 08-cv-0827 GBL-JFA)

(b)(1) 153913 (b)

Last Name	ABDULLAH/AL SHEMARY
First Name	SUHAIL
Middle	NAJIM/ABB ALAH
Category	CI-CIVILIAN INTERNEE
Power	IZ-Iraq
Arm of Service	
MOS	
COS	13-FARMER (AGRICULTURE)
Service No	
Grade	
Geneva Cat.	
ICRC	
Camp Name	BUCCA
Enclosure	06-COMPOUND 6
Holding/Cell	DNR 4.8

Height		Nationality	IZ-Iraq	Sex	M
Weight				Blood Type	
Hair Color		Religion	33-SUNNI-ISLAM	DOB	1959/01/01
Eye Color		Race	X OTHER	Complexion	
		Marks			



~~SECRET//REL USA, MCFI~~

ENEMY COMBATANT DETERMINATION

(Global Screening Criteria for Detainees, 20 Feb 04, TAB B, sec III)

ISN: **153913** Detainee Name: **SUHAIL NAJIM AL SHIMARY**

Yes	No	
	✓	1. The detainee is an international terrorist or member of an international terrorist organization who poses a threat to the United States or U.S. interests (that is, Al Qaeda or associated movement). *If yes, continue to step 2
		2. The detainee is of operational or strategic intelligence or law enforcement value to the United States because: ____ The detainee has information of operational or strategic value related to terrorist activities or actions, as evidenced by: ____ Knowledge related to any attack against U.S. or Coalition Forces ____ Involvement with Weapons of Mass Destruction ____ Financing specified terrorist organizations ____ Information of specified terrorist senior leaders, members, or support organizations ____ Information of recruiting, training, etc., of specified terrorist organizations ____ Knowledge of logistical support of specified terrorist organizations ____ Ability or willingness to cooperate with US on war on terrorism **OR** ____ The detainee possesses information relevant to a criminal investigation or is a possible target for criminal prosecution
		3. The operational or strategic intelligence or law enforcement value is: ____ High ____ Low (those individuals who are not a threat beyond the immediate battlefield or that do not have high operational or strategic intelligence or law enforcement value that requires the specialized type of exploitation capability available at Guantanamo).

Screening:

____ The detainee meets all of the above criteria, and is therefore an **Enemy Combatant in the Global War on Terror. (__High __ Low)**

✓ ____ Otherwise, the detainee **is not** an Enemy Combatant in the Global War on Terror.

Screened by: [redacted]
MNFRC Pres

Screening Date: 4 Feb 04

~~SECRET//REL USA, MCFI~~

INFORMATION SUBJECT TO PROTECTIVE ORDER (C.A. No. 08-cv-0827 GBL-JFA)

~~SECRET//REL USA, MCFI~~

ENEMY COMBATANT DETERMINATION

(Global Screening Criteria for Detainees, 20 Feb 04, TAB B, sec III)

ISN: 153913 Detainee Name: SUHAIL NAJIM AL SHIMARY

Yes	No	
	N	1. The detainee is an international terrorist or member of an international terrorist organization who poses a threat to the United States or U.S. interests (that is, Al Qaeda or associated movement). *If yes, continue to step 2
	Y	2. The detainee is of operational or strategic intelligence or law enforcement value to the United States because: ___ The detainee has information of operational or strategic value related to terrorist activities or actions, as evidenced by: ___ Knowledge related to any attack against U.S. or Coalition Forces ___ Involvement with Weapons of Mass Destruction ___ Financing specified terrorist organizations ___ Information of specified terrorist senior leaders, members, or support organizations ___ Information of recruiting, training, etc., of specified terrorist organizations ___ Knowledge of logistical support of specified terrorist organizations ___ Ability or willingness to cooperate with US on war on terrorism **OR** ___ The detainee possesses information relevant to a criminal investigation or is a possible target for criminal prosecution
	Y	3. The operational or strategic intelligence or law enforcement value is: ___ High ___ Low (those individuals who are not a threat beyond the immediate battlefield or that do not have high operational or strategic intelligence or law enforcement value that requires the specialized type of exploitation capability available at Guantanamo).

Screening:

___ The detainee meets all of the above criteria, and **is** therefore an **Enemy Combatant in the Global War on Terror.** (__**High** __**Low**)

N Otherwise, the detainee **is not** an Enemy Combatant in the Global War on Terror.

Screened by: [redacted]
MNFRC President

Screening Date: 10 JUL 2007

~~SECRET//REL USA, MCFI~~

INFORMATION SUBJECT TO PROTECTIVE ORDER (C.A. No. 08-cv-0827 GBL-JFA)

FILED UNDER SEAL

Date: 18 June 2004

ISN (b)(1)

[redacted] reviewed this case and the following disposition decision was made:

✓ No Prosecution—Case file lacks sufficient information to warrant a prosecution or there is insufficient information in the file to make an informed decision

_____ Prosecution—Case file contains sufficient information to warrant further prosecution considerations.

_____ Refer to Iraqi Criminal Court—Information contained in file suggests that this be considered as the proper forum.

- No connection between detainee and truck when weapons were found

FILED UNDER SEAL

FILED UNDER SEAL

EXHIBIT 21

PERSONAL DATA REPORT

GENERAL INFORMATION

Dossier: {E0D903AD-2F49-44CA-BB0D-C7E495364DC3}
Enroll Date: 3/19/2004 3:12:57 PM
Enrollment Station: IRQ:CENTCOM:BAGHDAD
Person Type:
Reason Enrolled:
Title:
Name (F,M,L,T): TAHA YASSIN ARRAK/AL GHERARI AL GURAIRI ()
Full Name:
Native Full Name:
WMD Category:
Operational Status:
Occupation: FARMER
National ID #: 150803
Gender: MALE
Race: MIDDLE EAST
Hair Color: BLACK
Eye Color: BROWN
Build: SMALL/SLENDER
Height (in): Min: 66 Max:
Weight (lb): Min: 161 Max:

PHOTOGRAPH

ON ALERT? YES

DENY BASE ACCESS / DO NOT HIRE / DISQUALIFY FROM ARMY OR POLICE TRAINING - Subject was placed on the NGIC Biometric Watchlist on 24 SEP 2010 due to derogatory information which suggests subject poses a threat to Coalition Forces. Contact NGIC Biometrics at (434) 951-1444 or DSN: 312-521-1444 [STE]; rmngicbewl@mi.army.smil.mil if there are any questions. ***Requires Further Vetting*** INDIVIDUAL IS ON ALERT, contact Force Protection immediately

PERSON COMMENTS

Reference #:
Reference Date:
Reference URL:
Comment: [!!! CID HOLD !!! SUSPECTED TERRORIST/ IED//ON MI HOLD]
DAI COMP 06JUN2005

PERSONAL DATA

Birthdate: 03JAN1980
Death Date:
Religion: ISLAM-SUNNI
Primary Nationality: IRAQ
2nd Nationality:
Ethnicity: ARAB
Marital Status: MARRIED
Personnel Status:

WATCH LIST

INFORMATION SUBJECT TO PROTECTIVE ORDER (C.A. No. 08-cv-0827 GBL-JFA)

Alert Category: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

Alert Value: LOW Alert Region: CENTCOM

Alert Contact: NGIC Biometrics at (434) 951-1444 or DSN: 312-521-1444 [STE] or at RMngicbewl@mi.army.smil.mil

Alert Detail: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

ALIASES

Alias (F,M,L,T): TAHA YASSIN ARRAK

AKA Full Name:

Nickname:

Comments: From original MP inprocessing.

PLACE OF BIRTH

Birthplace: , , BAGHDAD, IRAQ

ID NUMBERS

ID Number Type	ID Number
CAPTURE TAG	4670370
ISN	(b)(1) 150803(7)
ISN Last6	150803

CAPTURE INFORMATION

Evacuation Date

Capture Date (b)(1)

MP Number

Capture Unit D CO 3/505 PIR

Place: IRAQ, BAGHDAD, , BAGHDAD,

Comments: UNK

Documents:

Circumstances: Circumstances: DETAINEE WAS MAKING AND EMPLACING IEDS WITH HIS BROTHER SABEA JASSIM ((SABEA)) Capture Place: UNK

Weapons/Equip

INDIVIDUAL STATUS INFORMATION

JITF-CT Status	US Persons Status	US DoD Status

PASSPORT INFORMATION

Type	Number	Issue Date	Expiration Date	Country	Authority

BADGES

PERSONAL TRAITS

LANGUAGE(S)

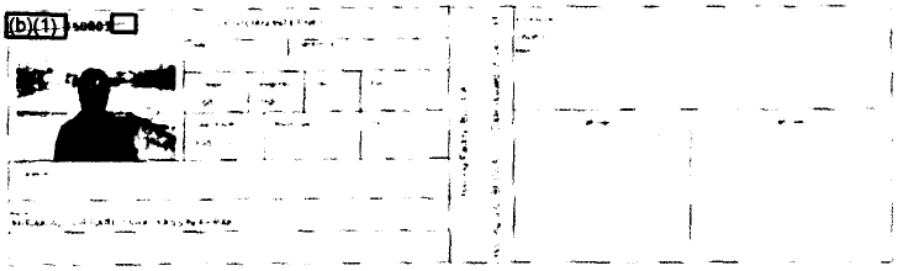
Language Name:	Language Proficiency	Is Native Language

(b)(1) (b)(1) 150803

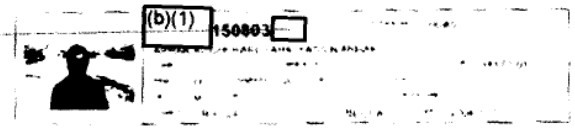
Last Name ARRAKAL GHERARI
First Name FAHA
Middle YASSIN ARRAK
Category CIVILIAN INTERNEE
Power (b)(1)
Arm of Service
MOS
COS 13 FARMER (AGRICULTURE)
Service No
Grade
Geneva Cat
ICRC
Camp Name BUCCA
Enclosure #7 COMPOUND 04
Holding/Cell DNR 4 8

Height
Weight
Hair Color
Eye Color
Nationality IZ IRQ
Religion
Race
Marks
Sex M
Blood Type
DOB
Complexion

(b)(1) (b)(1)



(b)(1) (b)(1) 150803



COALITION PROVISIONAL AUTHORITY FORCES APPREHENSION FORM

Why was this person detained? Suspected terrorist. IZ was seen in the vicinity of an IED explosion. He appeared to be signaling to locate the IED and was possibly the trigger man.

Who witnessed this person being detained or the reason for detention? Give names, contact numbers, addresses [redacted] - A CO Commander

How was this person traveling (car, bus, on foot)? foot

Who was with this person? [redacted]

What weapons was this person carrying? /

What contraband was this person carrying? ~~Money~~

What other weapons were seized? /

What other information did you get from this person?

Additional Helpful Information: With his right hand he gave a Thumbs down while he kicked with his left foot. He may have been holding something in his left hand. It is believed that this is a TTP to signal initiation of an IED.

UNCLASSIFIED

14 March 2004

ISN [(b)(1)]

This case was reviewed by [redacted] and the following disposition decision was made:

_____ No Prosecution—Case file lacks sufficient information to warrant a prosecution.

_____ Prosecution—Case file contains sufficient information to warrant further prosecution consideration.

_____ Refer to Iraqi Criminal Court—Information contained in file suggests that this be considered as the proper forum.

UNCLASSIFIED

FILED UNDER SEAL

EXHIBIT 22

FILED UNDER SEAL

PERSONAL DATA REPORT

GENERAL INFORMATION

Dossier: {5259207E-5756-42F5-AA77-1B083F500D51}

Enroll Date: 3/22/2004 4:13:13 AM

Enrollment Station: IRQ:CENTCOM:BAGHDAD

Person Type:

Reason Enrolled:

Title:

Name (F,M,L,T): Assad Hamza HANFOSH AL-ZUBAYDI ()

Full Name:

Native Full Name:

WMD Category:

Operational Status:

Occupation:

National ID #: 152529

Gender: MALE

Race: CAUCASIAN

Hair Color: BLACK

Eye Color: BROWN

Build:

Height (in): Min: Max:

Weight (lb): Min: Max:

PERSON COMMENTS

PHOTOGRAPH

ON ALERT? YES

DENY BASE ACCESS / DO NOT HIRE / DISQUALIFY FROM ARMY OR POLICE TRAINING - Subject was placed on the NGIC Biometric Watchlist on 21 SEP 2010 due to derogatory information which suggests subject poses a threat to Coalition Forces. Contact NGIC Biometrics at (434) 951-1444 or DSN: 312-521-1444 [STE]; rmngicbewl@mi.army.smil.mil if there are any questions. ***Requires Further Vetting*** INDIVIDUAL IS ON ALERT, contact Force Protection immediately

PERSONAL DATA

Birthdate: 07JUL1973

Death Date:

Religion: ISLAM-SUNNI

Primary Nationality: IRAQ

2nd Nationality:

Ethnicity: ARAB

Marital Status: MARRIED 2 WIVES

Personnel Status:

WATCH LIST

Alert Category: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

Alert Value: LOW Alert Region CENTCOM

Alert Contact: NGIC Biometrics at (434) 951-1444 or DSN: 312-521-1444 [STE] or at RMngicbewl@mi.army.smil.mil

Alert Detail: DO NOT HIRE / DENY BASE ACCESS / DISQUALIFY FOR POLICE OR ARMY TRAINING

ALIASES

Alias (F,M,L,T):

AKA Full Name: Abu Saif

Nickname:

Comments:

EXHIBIT 23

PERSONAL DATA REPORT

GENERAL INFORMATION

Dossier: {8D0446F2-A862-40B4-A359-7146DBB37656}
Enroll Date: 3/21/2004 2:43:14 AM
Enrollment Station: IRQ:CENTCOM:Baquba
Person Type:
Reason Enrolled:
Title:
Name (F,M,L,T): Salah Hassan NSAYEF Al- Ajiri ()
Full Name:
Native Full Name:
WMD Category:
Operational Status:
Occupation:
National ID #: 152735
Gender: MALE
Race:
Hair Color:
Eye Color:
Build:
Height (in): Min: Max:
Weight (lb): Min: Max:

PHOTOGRAPH

NO PHOTO ON RECORD

ON ALERT? YES

////NGIC// DENY BASE ACCESS - SUBJECT WAS PLACED ON THE NGIC BIOMETRIC WATCHLIST DUE TO CRIMINAL BEHAVIOR OR MISCONDUCT ON A US/COALITION FORCES INSTALLATION. CONTACT NGIC BIOMETRICS WATCHLIST TEAM AT RMNGICBEWL@MI.ARMY.SMIL.MIL OR NGIC BIOMETRICS AT (434) 951-1444 OR DSN: 312-521-1444 [STE]: BAC@NGIC.ARMY.SMIL.MIL IF THERE ARE ANY QUESTIONS

ATTN: IF ANY SUBSEQUENT WATCHLIST INFORMATION FOLLOWS BELOW, IT MAY BE OUTDATED AND/OR OBSOLETE. //END NGIC////

DENY BASE ACCESS - Subject was placed on the USF-I Biometric Watchlist on 29 SEP 2010 due to base access ban for misconduct or criminal behavior. Contact the USF-I Watchlist Manager at SVOIP: 708-243-7020 or DSN: 318-485-9802 or usfij35watchlistmanager@s-iraq.centcom.smil.mil for further information. ***Requires Further Vetting*** INDIVIDUAL IS ON ALERT, contact Force Protection immediately

PERSON COMMENTS

PERSONAL DATA

Birthdate: 24JAN1971
Death Date:
Religion: ISLAM-SUNNI
Primary Nationality: IRAQ
2nd Nationality:
Ethnicity: ARAB

EXHIBIT 24

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	
v.	)	C.A. No. 08-cv-0827 GBL-JFA
CACI INTERNATIONAL, INC., *et. al*.,	)	
Defendants	)	

EXPERT REPORT OF
GEOFFREY S. CORN

REPORT OF PROFESSOR GEOFFREY CORN, ESQ.
February 1, 2013

OVERVIEW

This Report addresses the obligations owed to individuals under the body of international law called International Humanitarian Law, and more specifically the fundamental humanitarian obligations reflected in the four Geneva Conventions of 1949, the 1977 Additional Protocols to these Conventions, and customary international law. In sum, this Report concludes: (1) under binding international humanitarian law, individuals who are *hors de combat*, such as the four plaintiffs in this case were owed a clear and absolute duty of humane treatment, such that a violation of that duty likely constituted a "grave breach" of the Geneva Conventions; (2) in light of the stress and dehumanization of the "enemy" inherent in armed conflict, soldiers, interrogators and others must be thoroughly trained to respect these obligations and must be carefully supervised by those in authority to ensure that the obligations are observed; (3) the treatment alleged by the plaintiffs (as set forth in their answers to interrogatories provided to me) unquestionably violated duties under international humanitarian law.

Qualifications to give my opinion:

I am currently the Presidential Research Professor of Law at South Texas College of Law in Houston, where I teach courses in the law of armed conflict (international humanitarian law), national security law, counter-terrorism law, criminal law, and criminal procedure. I joined the South Texas faculty in the summer of 2005. Prior to doing so, I served in the U.S. Army for 22 years, retiring in the rank of Lieutenant Colonel. In my final year of government service, I served as a civilian attorney with the Department of the Army, in Rosslyn, Virginia, as the Chief of the Law of War Branch for the Office of The Judge Advocate General, Headquarters, United States Army. In this position, I was also designated as the Special Assistant to the Judge Advocate General for Law of War Matters – the Army's senior law of war expert advisor. In that capacity, which I held from July 27, 2004 through July 15, 2005, I advised senior officials of the Department of the Army on all matters related to the law of war. Prior to that, I served for 21 years on active duty in the U.S. Army, first as an intelligence officer and later in the Judge Advocate General's Corps. My military experience included serving as the Chief of International and Operational Law for Headquarters, U.S. Army Europe from June 2001 through July 2003, and as a Professor of International Law at the U.S. Army Judge Advocate General's School from May 1997 through June 2000. I began his military career in 1983 as a tactical intelligence officer before attending law school in 1989 and transitioning to the Judge Advocate General's Corps. My CV is attached, which sets forth my qualifications and publications in more detail.

Bases of my opinion:

In giving my opinion, I relied upon: my knowledge and expertise in relation to International Humanitarian Law (Law of Armed Conflict), including the four 1949 Geneva Conventions and the 1977 Additional Protocols to those Conventions; my review of plaintiffs' answers to defendants' interrogatories and plaintiffs' second amended complaint.

Compensation:

Counsel for Plaintiffs have agreed to compensate me at a rate of $350 per hour for my work in preparing this report. I spent approximately 5 hours preparing this report.

Opinion:

International humanitarian law (IHL) is a branch of international law developed to regulate armed conflicts and thereby mitigate as much as possible the humanitarian suffering associated with such conflicts. In U.S. practice, this branch of international law is often referred to as the law of armed conflict (LOAC). While IHL provides extensive authority for parties to armed conflict to employ force in order to achieve legitimate military objectives, it is founded on the principle that "the right of belligerents to adopt means of injuring the enemy is not unlimited"[1], and that as a result only those measures justified by military necessity are legally permissible. To this end, IHL includes numerous absolute humanitarian obligations derived from the determination that certain conduct can never be justified by military necessity.

First among these obligations is the humane treatment mandate. This obligation requires parties to a conflict to extend humane treatment to any individual not actively participating in hostilities. This obligation is especially relevant to members of opposition forces or other individuals posing a threat to the security of friendly forces who, as the result of capture or surrender, are subject to detention. No matter how implicated in opposition, dissident, or hostile activities such individuals may have been prior to incapacitation, once under the control of a detaining power they must at all times be treated humanely. Furthermore, this humane treatment obligation is unqualified and absolute. As a result, military necessity may never be invoked to justify treatment that violates this baseline standard of protection, as military necessity justifies only those measures *not otherwise prohibited by international law* necessary for securing the prompt submission of an enemy.

---

[1] *See* United States Army Field Manual 27-10, The Law of Land Warfare, (1956), par. 33 (citing Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land, art. 22).

This humane treatment obligation is reflected in numerous IHL treaty provisions, including each of the four 1949 Geneva Conventions and the 1977 Additional Protocols to these Conventions. The humane treatment obligation does not, however, arise only as a matter of treaty law. Instead, as a fundamental IHL principle, customary international law requires the humane treatment of all individuals detained in the context of any armed conflict (and even in the context of military operations that might not even qualify as armed conflicts). The binding effect of such customary IHL rules on U.S. forces is clearly indicated in the U.S. Army Field Manual on the Law of Land Warfare:

> The unwritten or customary law of war is binding upon all nations. It will be strictly observed by United States forces, subject only to such exceptions as shall have been directed by competent authority by way of legitimate reprisals for illegal conduct of the enemy (see par. 497). The customary law of war is part of the law of the United States and, insofar as it is not inconsistent with any treaty to which this country is a party or with a controlling executive or legislative act, is binding upon the United States, citizens of the United States, and other persons serving this country.

For the United States armed forces, ensuring the humane treatment of all detainees is also mandated by Department of Defense policy during all military operations, even those that might not qualify as armed conflicts (an indication of the recognized significance of this principle as it relates to the effectiveness and credibility of U.S. military operations). In short, the humane treatment of detainees and other individuals not actively participating in hostilities as at the very core of the regulation of armed conflict and essential to effective mission accomplishment.

In the context of an international armed conflict (an inter-state armed conflict or the belligerent occupation of the territory of one state by the armed forces of another state), each of the four Geneva Conventions include specific treaty provisions requiring the humane treatment of individuals protected by those Conventions. For example, captured enemy personnel who qualify as prisoners of war are protected persons within the meaning of the Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention). Article 13 of that Convention mandates that "prisoners of war must at all times be humanely treated." During belligerent occupation, civilians subjected to preventive security internment are, in contrast, protected by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Article 27 of this Convention mandates that protected persons "shall at all times be humanely treated." Perhaps an even more significant indication of the non-derogable nature of the humane treatment obligation is found in Article 5 of the Fourth Geneva Convention. This article authorizes denial of many of the Convention's privileges for civilians detained as the result of conduct that threatens the security of a state or an

occupying power, but nevertheless obligates the detaining power to ensure that even these detainees be treated humanely:

> Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State. Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention. *In each case, such persons shall nevertheless be treated with humanity . . .*[2]

As a party to both of these Conventions, these obligations are applicable to U.S. armed forces as a matter of treaty law, and are also considered obligatory as a matter of customary international law. Furthermore, the significance of this humane treatment obligation is bolstered by the fact that the Fourth Convention classifies inhuman treatment (and other maltreatment) of a person protected within the meaning of the treaty (including a civilian detained for reasons of imperative security) as a Grave Breach of the Convention. Grave Breaches are, quite simply, violations of the Geneva Conventions considered so severe and unacceptable that they trigger both an obligation to prosecute the wrongdoer as well as universal jurisdiction over the violation. This is established by Article 147 of the Fourth Convention, which states:

> Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or *inhuman treatment*, including biological experiments, willfully causing great suffering or serious injury to body or health

Finally, in order to ensure that no individual could be excluded from this humane treatment obligation by asserting they failed to qualify for the protections of one of these Conventions, Article 75 of the 1977 Additional Protocol I to the Geneva Conventions indicates that "persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances . . ." Although the U.S. is not a party to AP I, this article and the humane treatment obligation it implements has

[2] Convention (IV) Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S 287, at art. 147.

been treated as a customary international law obligation by U.S. forces for decades.[3] Perhaps more importantly, it reflects a premise at the core of U.S. compliance with humanitarian law: no person falls below this baseline standard of protection, no matter how the operation or the individual is legally classified.

Respect for this humane treatment obligation is equally applicable to armed conflicts not of an international character. While the armed conflict in Iraq qualified as international in character, the extension of this non-derogable obligation to the non-international armed conflict context is a further indication that it is a core principle of IHL. Indeed, Article 3 to the four Geneva Conventions of 1949 (Common Article 3) is widely regarded as the most significant treaty articulation of the humane treatment principle, and establishes a prohibition against cruel, inhuman, or degrading treatment, to include violence to life and person, including any physical abuse, torture, mental abuse or coercion, and outrages upon personal dignity, in particular humiliating and degrading treatment. Although Common Article 3 applies as a matter of treaty law only to situations of non-international armed conflict, the obligation it reflects has since 1949 been recognized as applicable to both non-international and international armed conflicts. Indeed, the International Committee of the Red Cross Commentary associated with Common Article 3 emphasized that because the obligation it created was so fundamental, it applied *a fortiori* to situations of international armed conflict.[4] This Commentary indicates why the principle of humane treatment provides the very foundation for the humanitarian focus of the Geneva tradition of protecting victims of war:

---

[3] *See, e.g.,* United States Army Field Manual 27-10, The Law of Land Warfare, (1956), par. 2(b):

> The conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten. It is inspired by the desire to diminish the evils of war by:
>
> a. Protecting both combatants and noncombatants from unnecessary suffering;
>
> b. *Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians*; and
>
> c. Facilitating the restoration of peace.

Id. (emphasis added); see also INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, OPERATIONAL LAW HANDBOOK 86 (MAJ Gillman and MAJ Johnson, ed., 2012), at 159 (noting that "The Army doctrine for specific treatment of detainees and the internment or resettlement of civilians is contained in AR 190-8 and FM 3-19.40, both of which are drafted with Geneva Conventions III and IV as the standard. These standards of treatment are the default standards for detainee operations, unless directed otherwise by competent authority (usually the Combatant Commander or higher).

[4] JEAN PICTET, ET. AL., COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, (1952) at 52 ("The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied in the least determinate of conflicts, its terms must a fortiori be respected in the case of international conflicts proper when all the provisions of the Convention are applicable. For "the greater obligation includes the lesser", as one might say.").

> Humane treatment. '-- We find expressed here the fundamental principle underlying the four Geneva Conventions. It is most fortunate that it should have been set forth in this Article, in view of the decision to dispense with a Preamble. The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied *in the least determinate of conflicts,* its terms must a fortiori be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable.[5]

Compliance with the humane treatment obligation is the essential component to respect for the concept of humanity – a fundamental principle of law related to military operations. It reflects the basic concept that all individuals, even those who actively oppose friendly armed forces are, when no longer capable of manifesting such opposition, entitled to respect as human beings, which in turn is premised on a truism that animates the LOAC: the execution of military operations represents the implementation of national purpose, and is not motivated by personal interests, anger, or revenge.

While the humane treatment mandate for any person who is *hors de combat* is regarded as a core IHL principle, it is more difficult to comprehensively define the full scope of the protection provided by this principle. However, this is not difficult at its core: any physical abuse or violence, mental coercion, or conduct that would be objectively viewed as humiliating in nature violates this principle. This is all reflected in the content of common article 3, which states the broad humane treatment mandate, but then uses a non-exclusive list of prohibited acts to define conduct that is "especially prohibited." This approach to giving meaning to the principle is emphasized in another excerpt from the ICRC Commentary:

> Lengthy definition of expressions such as "humane treatment" or "to treat humanely" is unnecessary, as they have entered sufficiently into current parlance to be understood. It would therefore be pointless and even dangerous to try to enumerate things with which a human being must be provided for his normal maintenance as distinct from that of an animal, or to lay down in detail the manner in which one must behave towards him in order to show that one is treating him "humanely", that is to say as a fellow human being and not as a beast or a thing. The details of such treatment may, moreover, vary according to circumstances -- particularly the climate -- and to what is feasible.
>
> On the other hand, there is less difficulty in enumerating things which are

[5] *Id.* (emphasis added).

> incompatible with humane treatment. That is the method followed in the Convention when it proclaims four absolute prohibitions. The wording adopted could not be more definite: "To this end, the following acts ' are ' and ' shall remain prohibited at any time and in any place whatsoever [murder; summary execution; torture; cruel, inhuman, and degrading treatment . . .]. '" No possible loophole is left; there can be no excuse, no attenuating circumstances.[6]

Although the Commentary suggests the impracticability of a comprehensive definition of humane treatment, the reference to "treatment like a human being" has tremendous significance. This is particularly true with regard to captured enemy fighters or civilians subject to internment due to conduct posing a threat to the security of occupation forces.

Understanding the reality that mortal combat always presents a risk of evoking the darker side of human instinct – instinct that can and often has led to acts of revenge and retribution directed towards captured opponents - is essential to understanding the profound significance of the simple assertion that humane treatment means treating a former opponent as a human being. One of the most difficult challenges for any soldier is to overcome the natural aversion of civilized society to the killing of another human being. Because of this, professional armed forces have long understood that preparing warriors for battle requires a certain level of dehumanization of the enemy. An interesting pop culture illustration of this is seen in a movie about the Korean War, "Fixed Bayonets!" During one scene, a young soldier confronts his first opportunity to kill an enemy with direct fire from his rifle. He is incapable of pulling the trigger, and another soldier must then shoot the enemy. However, his Sergeant mistakenly believes that the soldier who froze was actually the one who killed the enemy, and the following dialogue ensues: "[A]ll you gotta remember is that you're not shooting at a man; you're shooting at an enemy. Once you remember this you are over the hump; you are a rifleman."[1] This fictional episode reflects the reality that transforming a civilian into a warrior requires dehumanization of the enemy. As brutal as this may sound, it has become a core tenet of military training, particularly in response to empirical studies following World War II that indicated that a large percentage of front line soldiers, like the fictional soldier in this episode, were unable to overcome their aversion to killing and as a result never fired a shot. It is therefore no accident that soldiers train by shooting at "silhouettes" and that the enemy is referred to with negative characterizations.

The humane treatment mandate accordingly requires warriors to "restore" to a status of human being opponents who may have been trying to kill the detaining forces only moments prior to capture. This is no small challenge, and it does not necessarily

[6] *Id*. at 53.

become easier the more attenuated the detainee becomes from the immediate fight. Soldiers who have been trained to vilify the enemy are required to treat that enemy in a fundamentally different manner upon capture and during all phases of detention. Thus, when the Commentary refers to "treatment as a human being", it is really indicating that at its core, humane treatment obligates detaining forces to discard the dehumanized vision of an enemy and see that enemy through an entirely different lens upon capture: a lens of humanity.

The humane treatment obligation in the context of any armed conflict is triggered when the forces of one of the parties to the conflict gain control over an individual subject to detention as a result of suspicion of or perception of being a member of an opposition force or of conduct posing a threat to friendly forces. At this point, the captured individual is *hors de combat.* The humane treatment of a captive made *hors de combat* begins when they are subdued and no longer capable of actively participating in hostilities or threatening friendly forces. Once captured, detention of the individual commences, and conditions of detention then become the critical elements of implementing the humane treatment obligation. However, it is important to analyze this obligation based on the differing levels of detention. While the basic obligation to do no harm arises at the moment of capture, the provision of resources for a detainee's benefit at the point of capture is obviously not identical to what is required in a mature detention facility, because the provision of resources for detainees will often be far more operationally restricted at the point of capture than in detention facilities established for short or longer term internment. This contextual analysis of the obligation is supported by the common article 3 Commentary cited above, which indicates that "[T]he details of such treatment may, moreover, vary according to circumstances -- particularly the climate -- and to what is feasible."[7]

Acknowledging the constant applicability of the humane treatment obligation does not, however, resolve every question regarding detainee treatment. The combat environment is one of extreme uncertainty, and even the most comprehensive detainee treatment doctrine is susceptible to this uncertainty. Implementation of this obligation therefore requires a comprehensive approach to preparing forces and other personnel for dealing with these issues, anticipating logistical and security requirements related to detention operations, and providing responsible leadership oversight of such operations. Accordingly, in operational practice, compliance with the humane treatment obligation is most effectively implemented by building detainee treatment on a three-pillar foundation. The first pillar is to ensure detaining forces recognize that once *hors de combat,* an opponent is no longer the permissible object of hostility. The second pillar is to comply with the express prohibitions enumerated in common article 3. The final pillar is to ensure that at a minimum, conditions for detainees are never worse than those for the detaining forces. This last pillar is the essential solution to the variables of

[7] GCI Commentary, at 53.

the combat environment, for it ensures that "situational" application of the humane treatment obligation is linked to a standard of reasonableness. For example, if rations are in short supply, they will be shared equally by detaining and detained forces; medical treatment will always be based on principles of triage applied equally to detaining and detained personnel; the shelter provided for detainees will mirror that provided for detaining forces, and so on. This last pillar, however, has no impact on the express prohibition against cruel, inhuman, or degrading treatment, or against the use of coercion to obtain information. Indeed, because any such maltreatment would be considered unacceptable if inflicted on U.S. forces, this actually emphasizes the absolute impermissibility of such maltreatment.

It therefore apparent why it is in the context of detention operations that the list of enumerated prohibitions in common article 3 becomes critical, as they indicate that even at the point of capture in the midst of intense combat, "circumstances" can never justify abusive treatment of a detainee. This obligation continues through all phases of detention. This does not, of course, impede the ability of the detaining force to take measures to secure the captured individual and protect security interests. Accordingly, there is nothing inhumane about following what are known in U.S. military practice as the five "S's": Secure, Search, Segregate, Safeguard, and Speed to the Rear. Nor would blindfolding a captured enemy be inhumane *at this point of the detention process*, so long as there is a security-based justification.

As the detainee progresses from the point of initial capture to more mature detention facilities, the treatment standards should become more "mature" and less *ad hoc*. Additional aspects of implementing this obligation arise at the established detention facility level. These include first and foremost the provision of basic needs of human existence: adequate food, shelter, clothing, and medical care. In addition, the right to free exercise of religion, respect for religious and cultural meal preferences, and access to impartial humanitarian relief agencies also should fall within the definition of humane treatment.[8] (It is instructive to note that all of these aspects of implementing the humane treatment obligation are expressly provided for in the 1977 Additional Protocol II to the Geneva Conventions. While this treaty applies only to non-international armed conflicts, the fact that these specific protections were provided for in this category of armed conflict bolsters the conclusion that, like Common Article 3 itself, they must be respected during international armed conflicts. It is also important to note that while the U.S. is not a party to Additional Protocol II, both President Reagan and President Clinton sought Senate advice and consent for this treaty and indicated that the U.S. would apply the treaty to any armed conflict triggering the provisions of Common Article 3).

[8] *See* Article 5 of Additional Protocol II.

Respect for the human dignity of detainees or internees is equally central to compliance with the humane treatment obligation. As a result, the obligation prohibits not only severe types of maltreatment rising to the level of torture, but also any maltreatment that is cruel, inhuman, or degrading. The fact that the pressures produced by the brutality and intensity of armed hostilities make it foreseeable that individuals tasked with securing, controlling, and interrogating detainees may be inclined to subject detainees to cruel or inhuman treatment is the very genesis of Common Article 3 and other provisions mandating humane treatment. To this end, it is instructive that the enumeration of "especially prohibited" conduct included in Common Article 3 and Article 75 of AP I focus primarily on physically abusive conduct.

It is probably impossible to provide a comprehensive list of all acts or omissions that would transgress this prohibition against cruel, inhuman, or degrading treatment, just as it is impossible to define comprehensively all maltreatment qualifying as torture. Indeed, enumerating such a list would invite creative avoidance of the humane treatment obligation by use of inhumane treatment not explicitly prohibited. Instead, the objective of the obligation is clear: treat detainees as human beings who are subjected to deprivation of liberty as a preventive (non-punitive) measure. In 1984, during my training as a new Army intelligence officer, I was instructed on a standard for assessing the propriety of detainee treatment that resonates with me to this day (this instruction was provided by a seasoned Army interrogator, not a military lawyer): "ask simply whether you would consider what you are about to do to the detainee, if done to your subordinate by the enemy, improper." This pragmatic touchstone of humane treatment reflects the prohibition against cruel and degrading treatment, as any such treatment if inflicted on a U.S. soldier detained by an enemy would unquestionably be perceived as improper.

It is therefore clear that any physical or mental maltreatment of a detainee violates the humane treatment mandate and the express prohibition against cruel treatment; that any conduct intended to humiliate the detainee would violate the prohibition against degrading treatment; and that any act or omission that subjects the detainee to conditions or treatment inconsistent with the minimum standards we would demand for our own forces upon capture must be considered inhumane. Implementation of this humane treatment obligation is essential for a number of reasons beyond the humanitarian objective of protecting victims of war from unnecessary suffering. First, it is directly linked to the strategic end state of military operations. Abuse of individuals under the control of a detaining power has proved throughout history to alienate the enemy population, stiffen resistance by enemy operatives, and discredit the legitimacy of friendly operations. Second, and not frequently understood, requiring respect for the human dignity of individuals subject to the control of a detaining power protects the moral integrity of the friendly forces tasked with conducting detention and interrogation operations. These IHL rules evolved from the reasoned judgment of military professionals who recognized that non-derogable humanitarian protections for individuals rendered *hors de combat* by capture

protect friendly forces from the corrosive moral consequences of mortal combat. This aspect of IHL is reflected in virtually every codification of laws and customs of war. Indeed, the widely regarded foundation for all of the modern IHL treaties, the venerated Lieber Code for U.S. forces engaged in the struggle to preserve the nation during the American Civil War, emphasized that "Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God", and that "Military necessity does not admit of cruelty -- that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions."

Ensuring compliance with the humane treatment obligation is obviously a challenge in the midst of intense combat operations that necessitates both effective training of those entrusted with the control of and interaction with detainees, and effective leadership oversight of detention operations. The dehumanization of opposition forces and the inevitable instinct for revenge or retribution even among the most disciplined forces cannot be ignored. It is for this reason that effective training and responsible command leadership are essential to facilitate respect for and compliance with this obligation. The efficacy of even the most comprehensive humanitarian regulatory regime is absolutely contingent on the proper training and leadership of those tasked with the capture, detention, and interrogation of detainees. This is especially important with interrogators, who will be under intense pressure to produce actionable intelligence to facilitate tactical and operational success of friendly forces. While use of positive incentives is both authorized and encouraged, IHL strictly forbids coercive measures even to secure the most vital intelligence.

Nor is training alone sufficient to effectively implement this obligation. Commanders and those responsible for leadership of subordinates engaged in detention operations must embrace their obligation to provide constant oversight of such operations in order to identify and correct deficiencies rapidly and efficiently. A critical aspect of this oversight is the recognition that the risk of breach by subordinates will inevitably increase with the increased intensity and pressures associated with combat operations. This is almost axiomatic in respect to interrogation operations. Interrogators face the daunting task of providing actionable information from captured and detained personnel to contribute to the intelligence development process. The perceived importance of this "human" source information is extremely high during counter-insurgency operations precisely because other sources of intelligence – such as imagery and signals intelligence – are of diminished effectiveness against insurgent enemies. Effective leaders will recognize that the pressure to deliver actionable information will inevitably push even the very best trained interrogators to fall into the trap of acting on the belief that the means justifies the ends, and will therefore increase oversight and supervisory efforts precisely when this pressure is most intense. Indeed, the IHL concept of command responsibility is built on the premise that the exercise of "responsible command" is an indispensable element in ensuring compliance with IHL obligations.

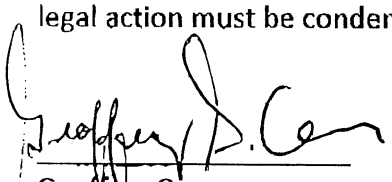
I have reviewed the four plaintiffs' responses to interrogatories, in which they describe the maltreatment they suffered during their detention at Abu Ghraib. According to his interrogatory response, Mr. Al-Ejaili was subjected to repeated beatings; periodically deprived of food for multiple days; forced to remain naked for lengthy periods; repeatedly placed in stress positions for long periods of time; exposed to cold temperatures and cold water; threatened with unleashed dogs; kept in solitary confinement; and subjected to sexually humiliating taunting. Mr. Al-Shimari states that he was held in a closed, windowless cell and in conditions of sensory deprivation; that he was subject to gratuitous and humiliating sexual touching; choked, punched, and hit on the side of his head; hooded while a dog was unleashed on his body; forced to exercise to the point of exhaustion; and exposed to extremely cold temperatures; during his interrogations, he states he was frequently beaten, kicked, attacked by dogs, and electrically shocked. Mr. Al-Zuba'e states that he had his head smashed against the wall and was handcuffed to the upper bunk of the bed with his arms above his head and his feet barely touching the floor; stripped naked and left naked for three days in the extreme cold; and beaten with fists and/or wooden sticks or attacked by dogs. He also states that was exposed to cold temperatures, imprisoned in solitary confinement in conditions of sensory deprivation, and forced to crawl or slide on his stomach while naked down the length of a hallway. Mr. Rashid states was forced to remain naked for lengthy period; sexually assaulted several times, electrically shocked, and beaten with wooden sticks all over his body until he lost consciousness; dragged out of his cell and suspended from the ceiling while being beating. During an interrogation he states he was subject to mock execution and seriously injured, and at the end of the interrogation, dragged naked across the floor. He also states that he was forced to watch the rape of two female detainees and forced into a pyramid, while hooded and naked, with other naked detainees.

Based on the information provided to me, it appears these detainees were civilians subjected to internment[9]. As such, they qualified as protected persons within the meaning of Article 4 of that Convention, and Article 27 prohibited any inhumane treatment or coercion against them. Furthermore, Article 147 of this same treaty condemns any inhuman treatment – even if it does not rise to the level of torture – as a grave breach of the Convention resulting in both an *obligation* to prosecute those responsible and universal jurisdiction over these offenses. Based on the foregoing, it is my opinion that all of the alleged acts of maltreatment inflicted on these detainees violated fundamental IHL obligations and almost certainly violated the specific protective provisions of the Fourth Geneva Covnention and qualified as grave breaches of that Convention.

[9] While the reasons for the four plaintiffs' detention have not been established by a tribunal, it appears that the purported reason for their detention was be that they were deemed to be an imperative security risk to U.S. occupation forces in Iraq in accordance with Article 78 of the Fourth Geneva Convention. But whatever the grounds for their detention, as discussed in text above, they would be entitled under IHL to humane treatment by the detaining force.

Assuming *arguendo* that these detainees did not qualify for protected person status pursuant to the Fourth Convention (based on a theory that they were properly classified as unprivileged belligerents and therefore not protected by either the Third or Fourth Geneva Conventions) does not alter my conclusion that this maltreatment violated IHL. While it would not have qualified as a grave breach of the Fourth Convention, it is clear from the analysis provided above that no person falls outside the scope of the humane treatment protection. As noted above, Article 75 of AP I was included precisely to ensure that even a detainee disqualified from the more explicit protections of one of the Geneva Conventions fell within the protection of the humane treatment mandate. Accordingly, customary international law required that even unprivileged belligerents to be treated humanely once captured and detained, and designation of a detainee in such a manner could not release the U.S. from this obligation nor diluted the protective scope of the obligation.

Finally, I note that any assertion that these detainees fell outside the protection of this fundamental IHL norm based on a theory that the conflict they engaged in was somehow not contemplated by the drafters of the Geneva Conventions is fatally flawed. First, as noted throughout this opinion, the combined effect of the Conventions, Common Article 3, and the 1977 Additional Protocols render the conclusion that no individual may be excluded from this protection virtually irrefutable. Second, even conceding this remotely viable hypothesis does not end the analysis. Instead, it would merely require resort to the Marten's Clause – a proverbial "last line" defense against any suggestion that cruel or inhumane treatment may be permissible. This treaty provision, which first appeared in the preamble to the 1899 Hague Convention and was subsequently included (with slight modification) in the Geneva Conventions and the Additional Protocols, provides in its most recent version, "Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience." Thus, IHL actually anticipated the unanticipated, and established a baseline norm: even in situations of conflict arising in the future that may not have been anticipated sufficiently to ensure they trigger the humanitarian provisions of relevant IHL treaties, the principle of humanity is an indelible limit on the authority of participants in hostilities. No place has this been, nor will it be more profound than in the treatment of individuals at the mercy of a detaining power, and it is for this reason that the maltreatment at the center of this legal action must be condemned.



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PUBLICATIONS

WORKS IN PROGRESS

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Legal Issues in the Treatment of Unlawful Enemy Combatants, Annual Legal Conference for United States Northern Command, New Orleans, LA, April 2008

Triggering the Law of Armed Conflict, Hebrew University School of Law Annual Humanitarian Law Symposium, Jerusalem, Israel, May 2008

Customary International Law and the Treatment of Detainees, Conference on Customary International Humanitarian Law, Institute for International Humanitarian Law, San Remo, Italy, March 2006 (sponsored by the Swiss and Italian Ministries of Foreign Affairs)

The Effectiveness of Humanitarian Law in Regulating the War on Terror, Panel Participant, International Law Weekend sponsored by the Bar Association of the City of New York, November 2005

Customary Norms Regulating Armed Conflict, Conference on Customary International Humanitarian Law, McGill University, Canada, October 2005 (sponsored by the Canadian Red Cross)

The Law of Armed Conflict, NATO Allied Rapid Reaction Force Legal Course, March 2003

Guest Lecturer, NATO Allied Rapid Reaction Corps Legal Symposium, Rheindallen, Germany – Topic: Application of International Humanitarian Law to United Nations Sponsored Military Operations 2002

Lecturer, Red Cross Institute of International Humanitarian Law, San Remo, Italy – Topic: The Application of International Human Rights Norms to Military Operations Other Than War, 2001 and 2002

Lecturer, German-American Legal Symposium, Garmisch, Germany – Topic: War and the United States Constitution, 2001

Guest Lecturer, The University of Virginia School of Law, Charlottesville, VA. - TOPIC: The Foundations of International Humanitarian Law 2000

Guest Lecturer, The University of Virginia School of Law Annual Summer National Security Law Symposium, Charlottesville, VA. - TOPIC: The Foundations of International Humanitarian Law 1998 and 1999

Guest Lecturer, Partnership for Peace Legal Symposium, Tallinn, Estonia – Topic: Compliance with International Human Rights Obligations During Peacekeeping Operations 1999

Guest Lecturer, Symposium for Kenyan Military and Civilian Leaders, Nairobi, Kenya – Topics: International Humanitarian and Human Rights Obligations; National Security Structures 1999

Invited Professor, Naval Justice School Legal Symposium for Partnership for Peace Nations, Newport, RI – Topic: Protection of the Environment During Military Operations 1997

EXPERT CONSULTING AND WITNESS

Expert defense consultant and witness, United States v. Boskovic, Federal District Court (Portland, OR), (assisted in defending Mr. Spiric against allegations of criminal fraud during his refugee application process for failing to disclose that he had been a member of the Bosnian Serb militia during the Bosnian civil war)

Expert consultant to the Republic of Georgia to assist in reviewing the legality of Georgian military operations during the armed conflict with Russia in August 2008

Expert defense consultant and witness in the case of Prosecutor v. Gotovina, International Criminal Tribunal for the Former Yugoslavia, (testified on the legality of the use of indirect fire weapons systems against enemy targets located in a populated area)

Expert defense consultant and witness in the case of United States v. Hamdan, U.S. Military Commission, (testified on the applicability of the law of armed conflict to the struggle against transnational terrorism)

Expert defense consultant on law of war issues in United States v. Hassoun (Jose Padilla's co-defendant)

Expert defense consultant on law of war issues in the original Military Commission case of United States v. Khadr (assisted defense team in developing strategy to challenge the charge of "Murder by an Unlawful Combatant").

Expert consultant for attorneys representing Guantanamo detainee Al Bihani in his effort to obtain *habeas* relief

Expert consultant and witness in the General Court-Martial trial of Captain Rogelio Maynulet (a U.S. Army officer charged with the murder of a wounded Iraqi insurgent during Operation Iraqi Freedom), (provided expert assistance and testimony on the law of armed conflict)

PROFESSIONAL EXPERIENCE

INTERNATIONAL AND NATIONAL SECURITY LAW

Special Assistant to the Judge Advocate General for Law of War Matters and Chief of the Law of War Branch, Office of the Judge Advocate General, U.S. Army, August 2004-July 2005

Senior U.S. Army expert for legal issues related to the Law of War, international law, national security law, and the law of military operations

Chief, International Law and Operations Division, Office of the Judge Advocate, U.S. Army Europe, June 2001-July 2003

Subject matter expert for U.S. Army Europe on all legal issues related to international law, national security law, and the law of military operations

Professor of Law, United States Army Judge Advocate General's School, Charlottesville, VA, May 1997 – June 2000.

Evaluated as the most effective teacher in this ABA Accredited degree granting Institution

Responsible for curriculum development, teaching, advising career attorneys enrolled in an LL.M. program

CRIMINAL LAW

Regional Defense Counsel, United States Army Trial Defense Service, July 2003-July 2004.

Supervised the delivery of criminal defense services for all U.S. Army personnel in the Western United States, Alaska, and Hawaii

Represented service-members at felony level criminal proceedings.

Chief of Criminal Law and Senior Criminal Trial Attorney, Office of the Staff Judge Advocate, 101st Airborne Division and Fort Campbell, Fort Campbell, KY, May 1993 – May 1997.

Supervised the administration of criminal justice for one of the largest military communities in the United States:

Represented the United States in over 50 felony level prosecutions.

OTHER MILITARY EXPERIENCE

Legal Assistance Attorney, Office of the Staff Judge Advocate, 101st Airborne Division and Fort Campbell, Fort Campbell, KY, January 1993 – May 1993

Provided "legal aid" type services to military and civilian personnel assigned to Fort Campbell.

U.S. Army Judge Advocate General's Corps, 1990 and 1991, Fort Belvoir, Virginia Summer Intern.

Tactical Intelligence Officer, U.S. Army South, Republic of Panama, 1984 – 1988

Served as the staff intelligence officer at the Regional Command, Infantry Brigade, and Infantry Battalion levels during the period of intense political and security disruption caused by the exposure of corruption in the Noriega regime.

Military Education: U.S. Army Command and Staff College (2000-2001); Judge Advocate Graduate Course (1996-1997); Judge Advocate Basic Course (1992); Military Intelligence Officer Advance Course (1988); Military Intelligence Officer Basic Course (1984); Officer Candidate School (1984);

BAR ADMISSIONS

Virginia

United States Court of Appeals for the Armed Force

CURRENT PROFESSIONAL MEMBERSHIPS

International Society for Military Law and the Law of War

Institute for International Humanitarian Law

National Institute of Military Justice

American Bar Association

Houston Bar Association

REFERENCES AND WRITING SAMPLE AVAILABLE UPON REQUEST

EXHIBIT 25

9 FAM 41.121
PROCEDURAL NOTES

(CT:VISA-1079; 10-17-2008)
(Office of Origin: CA/VO/L/R)

9 FAM 41.121 PN1 REFUSAL PROCEDURES

9 FAM 41.121 PN1.1 Visa To Be Issued or Refused

(CT:VISA-1079; 10-17-2008)

A nonimmigrant visa (NIV) must be issued or refused in all cases once an application is executed. Visa refusals must be based on legal grounds; that is, on the provisions of INA 212(a), (e), or (f), INA 214(b) or (l), INA 221(g), INA 222(g), or some other specific legal provision. A quasi-refusal (e.g., P6C, P6E, etc.) *may not be used as the sole* ground for a refusal (see 9 FAM 41.121 PN2 for quasi-refusal procedures).

9 FAM 41.121 PN1.2 Procedures When Alien Is Found Ineligible

(CT:VISA-1079; 10-17-2008)

When an alien is found ineligible to receive a visa, *you* must take the steps listed in the following notes.

9 FAM 41.121 PN1.2-1 Inform Alien Orally and Return Certain Documents

(CT:VISA-1079; 10-17-2008)

a. *You* must inform all visa applicants orally of both the section of law under which the visa was refused and the factual basis for the refusal, unless the information is classified, sensitive but unclassified (SBU), or obtained from another agency of the U.S. Government. If the case is sent to the Department for an advisory opinion (other than a security advisory opinion), *you* must so inform the applicant, and unless the matter is classified or SBU, he or she must indicate why the case has been referred to the Department. (See 9 FAM 41.121 PN3 for cases deferred for advisory opinions or other reasons.)

b. *You* must return to the applicant all documents not pertinent to the

refusal or indicative of possible ineligibility. Letters and other documents addressed to an officer or the post should be retained and either filed or destroyed.

9 FAM 41.121 PN1.2-2 Inform Applicant and Attorney in Writing

(CT:VISA-1079; 10-17-2008)

a. In any NIV case involving a refusal under any provision of the law, the post must also provide the applicant and any attorney of record with a completed page 1 of Form OF-194, *The Foreign Service of the United States of America Refusal Worksheet* (see 9 FAM 41.121 Exhibit *III*), setting forth the ground(s) of refusal. Posts may also draft their own non-standard, case-specific refusal letters in high profile or otherwise sensitive cases, to lay out the specific factual basis for the finding or to address rebuttal points made by an applicant. Such letters may be used at *your* discretion and may be drafted without Departmental approval. However, any such letters are to be used in addition to, not in lieu of, page 1 of the Form OF-194 (see 9 FAM 41.121 Exhibits III and IV).

b. Posts should reproduce page 1 of *the* Form OF-194 in the language of the host country, and the letter should be addressed to the applicant using the applicant's complete name. Posts may translate the Form OF-194 without prior approval of the Department, provided that any translation accurately conveys the English language text.

c. INA 212(b), which requires that *you* provide the applicant with a timely written notice in most cases involving a 212(a) refusal, also provides for a waiver of this requirement. Consular officers are reminded that only the Department may grant a waiver of the written notice requirement. Furthermore, although 212(b) also exempts findings of ineligibility under INA 212(a)(2) and (3) from the written notice requirement, the Department expects that, in accordance with the Department's regulations and these notes, such notices will be provided to the alien in all 212(a)(2) and (3) cases unless *you have* received specific approval from the Department not to provide a notice in a specific case or group of cases.

9 FAM 41.121 PN1.2-3 Refusal Letter in 214(b) and 221(g) Cases

(CT:VISA-1079; 10-17-2008)

A written notification must be given in the case of an NIV refusal based on Sections 214(b) or 221(g) of the INA. Posts may draft optional refusal letters in the manner they deem appropriate and without Departmental

approval, so long as the letter explicitly states the provision of the law under which the visa is refused. (Examples are located at 9 FAM 41.121 Exhibit III and IV). 214(b) refusal letters must neither encourage nor discourage the applicant from reapplying, but rather should explain the post's reapplication procedures. 221(g) letters which inform the applicant that a personal appearance before *a* consular officer is necessary must not discourage the applicant from appearing, even if *you* believe that eventual issuance of a visa is unlikely.

9 FAM 41.121 PN1.2-4 Annotate Refusal in Computer

(CT:VISA-1079; 10-17-2008)

The reason(s) for the refusal (the officer's notes) must be entered directly into the NIV computer system in the "remarks" section. *You* must also annotate the following on the upper right hand section of page 1 of the Form DS-156, Nonimmigrant Visa Application, *or in the comment field of Form DS-160, Electronic Nonimmigrant Visa Application*:

(1) The date of the refusal;

(2) The initials of the refusing officer; and

(3) The section of the law under which the applicant was refused.

9 FAM 41.121 PN1.2-5 Category I and Category II Refusals

(CT:VISA-1079; 10-17-2008)

If the case involves a Category I refusal (i.e., generally one involving a permanent ground of inadmissibility), *you* must explain whether or not administrative relief (usually a waiver) is available. If the refusal falls within Category II (non-permanent grounds of inadmissibility), the officer should explore the availability of any means of relief, and inform the applicant of such. 9 FAM Appendix D Exhibit I contains a list of lookout codes and states whether the codes are Category I or Category II.

9 FAM 41.121 PN1.2-6 Prepare Refusal Worksheet in Category I Cases

(CT:VISA-1079; 10-17-2008)

a. For all Category I cases, *you* must prepare page 2 of the Form OF-194 (see 9 FAM 41.121 Exhibit *III*).

b. The completed *Form OF-194* must include:

(1) Internal data regarding the reason(s) for the refusal;

(2) Reference to relevant classified documents;

(3) Data regarding review of the refusal within the office; and

(4) Notations regarding documents subsequently submitted to overcome the refusal.

9 FAM 41.121 PN1.2-7 Initiate Internal Review of Refusal

(CT:VISA-1079; 10-17-2008)

a. Consular supervisors must review as many nonimmigrant visa (NIV) refusals as is practical but not fewer than 20% of such refusals. Such a review is a significant management and instructional tool useful in maintaining the highest professional standards of adjudication. It ensures uniform and correct application of the law and regulations.

b. Reviewing officers should pay particular attention to refusals of inexperienced officers. The less visa adjudication experience an officer has, the greater the percentage of refusals *that* should be reviewed. As an officer gains experience and competence over time, the percentage of issuances reviewed should decline as determined appropriate by the reviewing officer.

c. The reviewing officer should be the adjudicating consular officer's direct supervisor. If the adjudicating consular officer's direct supervisor has a consular commission and title, he or she must review the case and either confirm or disagree with the refusal. The reviewing officer must indicate his or her decision for all refusals reviewed by marking the appropriate box in the NIV Adjudication Review report in the Consular Consolidated Database (CCD). Additionally, he or she must also indicate his or her decision on page 2 of the electronic version of Form OF-194 for Category I cases. The Department's regulation at 22 CFR 41.121(c) specifies that a refusal must be reviewed without delay; that is, on the day of the refusal or as soon as is administratively possible.

d. If the chain of command rule of the previous paragraph results in a reviewing officer who does not have a consular commission and title (some *d*eputy *c*hiefs of *m*ission, for example, may not be authorized to adjudicate visas), that officer must nevertheless review refusals, following the guidelines in paragraphs b and c *above*. In order to evaluate performance, the supervisor needs to see a regular and representative sampling of the adjudicating officer's work. The review should focus on, but not necessarily be limited to, the potential over-use of 221(g) refusals when 214(b) should be applied, the clear articulation of 214(b) refusals, and verification that 212(a) refusals satisfy applicable law and regulations. While reviewing officers without recent consular experience cannot be expected to know the breadth and depth of visa statutes and regulations, the adjudicating officer should be able to cite Departmental

guidance (the INA, FAM, ALDACs, etc.) in support of the refusal. The Regional Consular Officer (RCO) for posts with a single consular officer should review all Category I refusals. This review can be completed via the NIV Adjudication Review Report in the CCD. The RCO must also review a random sample of at least 20% of the refusals adjudicated during the RCO's visit to post, and the RCO must include the quality of adjudication as a regular topic of discussion. The RCO must meet with the adjudicating officer and his or her supervisor and review with them a sampling of refused NIV cases.

e. If a reviewing officer as described *in the above paragraph* concurs with the refusal, he or she, like any other reviewing officer, must indicate his or her decision in the NIV Adjudication Review report in the CCD for all refusals and on page 2 of the electronic Form OF-194 for Category I cases.

9 FAM 41.121 PN1.2-8 Non-concurrence with Refusal by Reviewing Officer

(CT:VISA-1079; 10-17-2008)

a. If a reviewing officer with a consular commission and title does not concur with the refusal, he or she may assume responsibility and re-adjudicate the case. The reviewing officer must discuss the case fully with the original adjudicating officer before taking any action. The reviewing officer must not reverse a 214(b) refusal without re-interviewing the applicant, as subtle information gained during the interview is an essential component of any 214(b) decision. If the disagreement involves a matter of law, the reviewing officer may assume personal responsibility for the case and reverse the decision, after discussing with the original adjudicating officer.

b. A reviewing officer without a consular commission and title may not issue or refuse a visa. Therefore, if such a reviewing officer does not concur with the refusal, he or she must:

(1) Discuss the basis for the original refusal, especially elements of fact, with the adjudicating officer in a good faith attempt to arrive at a mutually acceptable final adjudication of the application.

(2) If such a discussion cannot resolve the issue, the RCO should be consulted for his or her insight with a view to coming to a mutually agreed upon adjudication.

(3) If the difference of opinion turns on a legal or procedural issue that cannot be resolved by consulting Departmental guidance at post (the INA, FAM, CMH, cable guidance, etc.), post should seek Visa Office guidance (legal questions should be referred to *the Advisory*

*Opinions Division (*CA/VO/L/A*)* and procedural questions to *the Post Liaison Division (*CA/VO/F/P*)*).

(4) If, despite these efforts, no mutually agreed upon adjudication can be achieved, the refusal stands. In any case, *a* note of discrepancy must be made on the Form DS-156, *Nonimmigrant Visa Application, Form OF-194,* and in the NIV Adjudication Review in the CCD. *If the applicant utilizes Form DS-160, Electronic Nonimmigrant Visa Application, a note of discrepancy must still be made in the comment field.*

9 FAM 41.121 PN1.2-9 Enter Refusal into Visa Lookout System

(CT:VISA-895; 06-14-2007)

All refusals must be entered into the Consular Lookout and Support System (CLASS). (See 9 FAM Appendix D, 200 for procedures.)

9 FAM 41.121 PN1.2-10 File Relevant Material in Appropriate Post Refusal File

(CT:VISA-1079; 10-17-2008)

a. For Category I refusals*, the following relevant materials are required to be filed in post's refusal file and scanned into the CCD record of the case:*

(1) Form DS-156, Nonimmigrant Visa Application;

(2) Form DS-157, Supplemental Nonimmigrant Visa Application (if applicable),

(3) Page 2 of Form OF-194, The Foreign Service of the United States of America Refusal Worksheet;

(4) A copy of page 1 of Form OF-194; and

(5) Any other items relevant to the refusal are to be filed by the last name of the applicant in the post's Category I refusal file.

b. For Category II refusals, the paper Form DS-156, Nonimmigrant Visa Application, and, if applicable, the Form DS-157 should be scanned into the CCD record of the case and filed chronologically in the post's Category II refusal file.

c. Until further notice from the Department, posts must retain all visa refusal files indefinitely. In issued visa cases, posts must maintain *the paper* Form DS-156 (Form OF-156 in older cases) and, if applicable, *the* Form DS-157 indefinitely. (See also 9 FAM Appendix F, 101.)

9 FAM 41.121 PN1.2-11 Manner in Refusing Applicants

(CT:VISA-928; 02-26-2008)

a. The manner in which visa applicants are refused can be very important in relations between the post and the host country. You must be careful not to appear insensitive and should be courteous at all times.

b. The need for clear language is essential; however, explanations of why a visa could not be issued need not be lengthy. You should provide the precise legal citation relied upon and explain the law and the refusal politely and in clear layman's terms. Use of jargon or terms not familiar to the average person can create confusion, frustration and, often, additional work in the form of congressional and public inquiries. An example: In a case involving a refusal under INA 214(b), it is essential that you tell the applicant that the reason for the refusal is that he or she has not persuaded you that he or she will return to his or her country. Fitting a certain demographic profile ("young", "single", etc.) is not grounds for a visa refusal. In a 214(b) refusal, the denial must always be based on a finding that the applicant's specific circumstances failed to overcome the intending immigrant presumption. Written 214(b) and 221(g) refusal letters *are more than just optional forms; they can be* an effective method of conveying information to the applicant.

c. You must not discourage the visa applicant from reapplying, even if you believe that eventual issuance of a visa is unlikely (see 9 FAM 41.121 PN1.2-1). You should make clear to applicants that they may reapply if they believe they genuinely qualify since there is no formal appeal of an NIV refusal. Efforts to control previous refusals must not unduly restrict applicants' ability to reapply, though they may be warned that applicants who have not yet had the opportunity to apply may be scheduled before they are rescheduled.

9 FAM 41.121 PN1.2-12 Additional Procedure when Refusing Applicants who Possess a Valid Form I-94, Arrival and Departure Record

(CT:VISA-1079; 10-17-2008)

a. In addition to recording the refusal electronically, you should take additional steps in certain cases involving aliens who might seek to take advantage of the automatic visa revalidation provisions of 22 CFR 41.112(d) but who are not eligible to do so due to their unsuccessful visa application.

b. On April 1, 2002, 22 CFR 41.112(d) was amended to remove applicants who apply for but do not receive visas from the provision for automatic extension of visa validity (and, in some cases, conversion of visa

category) for persons entering the United States from contiguous territory provided they have a valid Form I-94, Arrival and Departure Record. Because applying for a visa automatically excludes applicants from using the revalidation option, you should collect any valid corresponding Form I-94 from the applicant. This action prevents refused applicants (including those subject to mandatory waiting periods, *Security Advisory Opinion (*SAO*)* checks, etc.) from attempting to use 22 CFR 41.112(d) to enter the United States. In addition, in order to alert *the* Department of Homeland Security (DHS) to any such attempt, you should mark the back of *the* Form I-94 with the date and post name and return the form to DHS. If there is a DHS office at post, *the* Form I-94 must be turned over to that office. In other cases, the form should be sent as expeditiously as possible to:

when using the U.S. mail or pouch ACS, Inc. P.O. Box 7125 London, KY 40743

when using another delivery method ACS, Inc. 1084 South Laurel Road London, KY 40744

c. If *the* Form I-94 cannot be collected, you should reflect this in the case notes.

d. You may only revoke an unexpired visa if the grounds set forth in 22 CFR 41.122(a) and 9 FAM 41.122 are present.

9 FAM 41.121 PN1.3 Reactivation of Case Refused Under INA 221(g)

(CT:VISA-1079; 10-17-2008)

An applicant who has been refused under INA 221(g) need not complete a *new NIV application form*, or pay the machine readable visa (MRV) fee again, if less than one year has elapsed since the latest refusal. When the requested documentation is submitted by the applicant or the necessary clearances received, the original Form DS-156 or *Form DS-160* is to be retrieved from post's files, the new information noted, and the visa either issued or refused. If one year or more has elapsed since the latest refusal, the applicant must submit a new Form DS-156 and pay the MRV fee again in order for the case to proceed. If the cause of the delay leading to the

221(g) refusal is a lack of U.S. Government action, or U.S. Government error, the period of reapplication is extended indefinitely. Hence, the MRV fee is not charged again when the application is pursued.

9 FAM 41.121 PN1.4 Nonimmigrant Visa Reapplication Procedures

(CT:VISA-1079; 10-17-2008)

a. Previously refused visa applicants may reapply any time, using the same procedures as first-time applicants. Posts are not authorized to institute a written re-application procedure. Such procedures interpose an unnecessary step in the visa process, which does not result in a visa adjudication and for which no fees are collected.

b. Post may want to consider the following strategies to manage workload from previously refused applicants:

(1) Ensure that post is collecting MRV fees according to policy. A 214(b) refusal is a final adjudication. Using 221(g) to avoid decisions or hold open reapplication invites abuse. A new application and new fee is required for reconsideration;

(2) Stress NIV statutory requirement and explain 214(b) during outreach. Dispel the notion that there is an element of luck in visa processing and that applicants may be lucky the following weeks and be issued a visa. Emphasize the importance of facts. This may be a particularly useful tactic in countries aspiring to the Visa Waiver Program. Emphasize that repeat refusals contribute to the overall refusal rate in a country;

(3) Use the appointment system to triage previously denied applicants by limiting the number of slots for them;

(4) Alternatively, schedule previously refused applicants on only a few days a month or only during traditionally lower-volume periods of the year (i.e., not during summer work-travel season or pre-holidays peak season);

(5) Revise the 214(b) handout (see exemplar in 9 FAM 41.121 Exhibit IV) and review practices to make sure every refused applicant gets a copy. Train officers to emphasize the need for applicants to wait until there has been a significant change in circumstances before re-applying;

(6) Leave re-applications until all the day's new cases are complete; *and*

(7) Possibly assign one experienced officer to all reapplications who can move through these promptly once new applications are complete.

9 FAM 41.121 PN2 PROCEDURES IN QUASI-REFUSAL CASES

9 FAM 41.121 PN2.1 Inform Alien Orally and Return Certain Documents

(CT:VISA-1079; 10-17-2008)

a. *You must inform all visa applicants orally of both the section of law under which the visa was refused and the factual basis for the refusal (except that in some cases we may instruct you not to inform an applicant of the specific grounds of a refusal under INA 212(a)(2) or 212(a)(3)), unless the information is classified, sensitive but unclassified (SBU), or obtained from another agency of the U.S. Government. If the case is sent to the Department for an advisory opinion (AO) (other than a security advisory opinion (SAO)), you must so inform the applicant, and unless the matter is classified or SBU, must also indicate the reason or the referral to the Department. (See also 9 FAM 41.121 PN3 for cases deferred for advisory opinions or other reasons).*

b. *You must return to the applicant all documents not pertinent to the refusal or indicative of possible ineligibility. Letters and other documents addressed to an officer or the post should be retained and either scanned into the NIV system or destroyed.*

c. *You must not discourage the visa applicant from reapplying, even if you believe that eventual issuance of a visa is unlikely. You must explain that previously refused applicants who reapply must follow the same steps as first-time applicants: paying the MRV fee; submitting a new visa application form and photo; having their biometric data taken; and being interviewed by a consular officer. You may advise them that their interview may be delayed to accommodate applicants who have not yet applied. You must also emphasize that previously refused applicants who choose to reapply must be prepared to provide information that was not presented in their original application, or to demonstrate that their circumstances have changed since that application. Finally, you must emphasize that there is no guarantee that previously refused applicants who reapply will be successful in qualifying for a visa.*

9 FAM 41.121 PN2.2 Enter Quasi-Refusal Into Consular Lookout and Support System (CLASS)

(CT:VISA-895; 06-14-2007)

If, after being informed of apparent ineligibility, the alien decides not to make a formal application, then that particular situation does not constitute

a formal refusal, and it must not be reported as such by the post. A quasi-refusal entry, however, may be appropriate. If so, the post must enter the name of the alien into Consular Lookout and Support System (CLASS) as indicated in 9 FAM Appendix D, 200.

9 FAM 41.121 PN2.3 Quasi-Refusal Where Alien Has Not Inquired About Visa Eligibility

(TL:VISA-359; 02-28-2002)

See 9 FAM 41.122 PN2.

9 FAM 41.121 PN3 PROCEDURES IN CASES DEFERRED FOR ADVISORY OPINIONS OR FOR OTHER REASONS

(CT:VISA-1079; 10-17-2008)

a. When, as a result of the visa interview, *you* decide that an advisory opinion *(AO)* is necessary, the officer must first refuse the visa under INA 221(g). The officer must not inform the applicant that he or she has been refused under any other specific ground of inadmissibility, other than INA 221(g), even if the officer believes there is substantial evidence to sustain a refusal under INA 212(a) or some other substantive ground. However, in non-security advisory opinion *(SAO)* cases, *you* generally should inform the alien of what the suspected substantive ineligibility is and the underlying reason why post believes the ineligibility applies, unless the information is classified, SBU, or other-agency-derived, or unless revealing the information would compromise an ongoing investigation. The officer must record the refusal as being based on INA 221(g) only, pending a response to the *AO* request. The file copy of the request for advisory opinion is to be attached to the documents retained and filed in the post's A-Z file. Documents submitted are not to be returned until final action is taken.

b. The post should use a tickler system as a reminder to send the Department a follow-up request for a response after a reasonable period of time has elapsed. If it is later determined on the basis of the Department's advisory opinion that the alien is ineligible under a provision of INA 212(a), 212(e), 214(b), or some other specific legal provision, the alien must be formally refused under the pertinent section of the law. Under no circumstances may a final resolution of the question of eligibility be made before the Department's advisory opinion is received. (See 9 FAM 40.6 N1 and 9 FAM 40.6 N2.2.)

c. This same procedure is to be followed; that is, a refusal of the visa under INA 221(g) and an annotation of the Form DS-156, Nonimmigrant Visa Application *or the DS-160, Electronic Nonimmigrant Visa Application*, in other situations where the alien has formally applied, but a final determination is deferred for additional evidence, further clearance, namecheck*,* or some other reason.

9 FAM 41.121 PN4 CASES INVOLVING CLASSIFIED INFORMATION REPORTED TO DEPARTMENT

(TL:VISA-357; 02-25-2002)

See 9 FAM Appendix A for required reports.

9 FAM 41.121 PN5 REQUIRED REPORTS OF NONIMMIGRANT VISAS (NIV) ISSUED AND REFUSED

(CT:VISA-895; 06-14-2007)

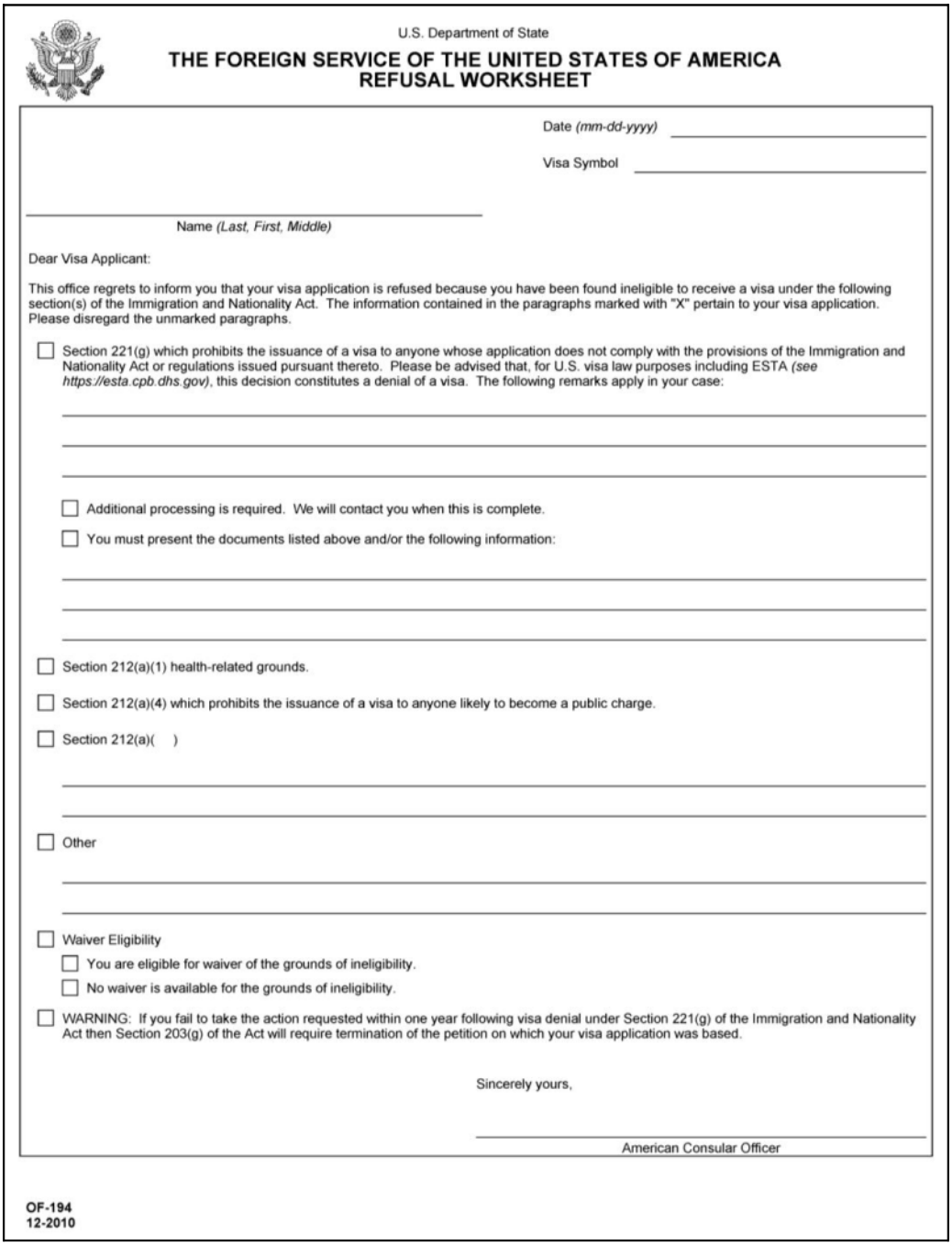
See 9 FAM Appendix I, 400.

EXHIBIT 26

9 FAM 42.81 EXHIBIT I
FORM OF-194, REFUSAL WORKSHEET

(CT:VISA-1616; 01-13-2011)

See Form OF-194.



U.S. Department of State

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
REFUSAL WORKSHEET

Date *(mm-dd-yyyy)* _____

Visa Symbol _____

_____
Name *(Last, First, Middle)*

Dear Visa Applicant:

This office regrets to inform you that your visa application is refused because you have been found ineligible to receive a visa under the following section(s) of the Immigration and Nationality Act. The information contained in the paragraphs marked with "X" pertain to your visa application. Please disregard the unmarked paragraphs.

☐ Section 221(g) which prohibits the issuance of a visa to anyone whose application does not comply with the provisions of the Immigration and Nationality Act or regulations issued pursuant thereto. Please be advised that, for U.S. visa law purposes including ESTA *(see https://esta.cpb.dhs.gov)*, this decision constitutes a denial of a visa. The following remarks apply in your case:

_____
_____
_____

☐ Additional processing is required. We will contact you when this is complete.

☐ You must present the documents listed above and/or the following information:

_____
_____
_____

☐ Section 212(a)(1) health-related grounds.

☐ Section 212(a)(4) which prohibits the issuance of a visa to anyone likely to become a public charge.

☐ Section 212(a)( )

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☐ Other

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☐ Waiver Eligibility

☐ You are eligible for waiver of the grounds of ineligibility.

☐ No waiver is available for the grounds of ineligibility.

☐ WARNING: If you fail to take the action requested within one year following visa denial under Section 221(g) of the Immigration and Nationality Act then Section 203(g) of the Act will require termination of the petition on which your visa application was based.

Sincerely yours,

_____
American Consular Officer

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12-2010