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IMPRISONMENT OF 2 EX-DETAINEES  
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Classified By: POLITICAL MINISTER COUNSELOR JOSIAH ROSENBLATT, FOR REAS

ONS 1.4 B/D

1. (C) Summary: A Paris appeals court recently ordered two investigating judges, Sophie Clement and Nathalie Frydman, to investigate charges that ex-Guantanamo detainees Nizar Sassi and Mourad Benchellali (currently in pretrial detention in France) were "illegally arrested and arbitrarily detained" in the aftermath of their capture in Afghanistan. Under French law, investigative judges have significant maneuvering room in the conduct of their investigations. A French counter-terrorism investigating judge queried about this investigation said he believed Clement and Frydman were not favorably disposed to the U.S. and that he expected they would be aggressive in the pursuit of their investigation.



End summary.

2. (U) This case began with a civil suit filed by the families of Sassi and Benchellali while the two were being held in Guantanamo. The families filed their civil suit in Lyon charging that the two men were illegally arrested by the U.S. and were being arbitrarily detained in Guantanamo. An appeals court ruled on May 20, 2003, that the civil suit was without merit and ordered it denied without even a preliminary investigation. In January 2005, the Cour de Cassation, France's highest court for criminal and civil matters, overruled the Lyon appeals court and ordered that a preliminary investigation be conducted. In response, a Paris appeals court in May appointed Clement and Frydman to conduct the investigation. Since their July 2004 return to French custody, Sassi and Benchellali have been formally charged with terrorism conspiracy, (which brings with it a maximum imprisonment of ten years) and are in detention pending trial.

3. (C) On June 7, poloff spoke with anti-terrorism investigating judge Jean-Francois Ricard (strictly protect) about this case and his analysis of next steps. Ricard said the case had the potential to be a problem. As he noted in previous conversations, the decision by the Lyon appeals court to reject the civil suit did not conform with French law, and the Cour de Cassation was right to overturn it. In French law, civil and criminal suits must be investigated by investigating judges, barring only certain exceptional circumstances. In overturning the Lyon court's decision, the Cour de Cassation directly and publicly ordered an investigation, the high profile of which has given the civil suit more credibility, said Ricard. If the Lyon court had simply approved a preliminary investigation of the civil suit, Ricard speculated that the matter would have been perfunctorily investigated and later, dropped.

4. (C) Ricard said that with the direct intervention of the Cour de Cassation and the naming of the two investigation judges by a Paris appeals court, the families' civil suit has the potential to be problematic for the U.S., though he said he did not believe the suit would have any impact on the current pretrial detentions of the ex-Guantanamo detainees. Clement and Frydman, said Ricard, are "not among the (French judges) most favorable to the U.S." Also, they have reputations as being media savvy and ambitious. He expected that they would use all the tools at their disposal, possibly to include MLAT requests, to pursue their investigations of the civil suit. In short, Ricard believed that the two judges would pursue their investigations of the civil suit "very far."

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This record is a partial extract of the original cable. The full text of the original cable is not available.

