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Declaration of Joseph A. Benkert

Pursuant to 28 U.S.C. §1746, I, Joseph A. Benkert, hereby declare:

1. (U) I was confirmed as the Assistant Secretary of Defense for Global Security Affairs, Department of Defense (“DoD”) on July 23, 2008. I had served as the Principal Deputy Assistant Secretary of Defense for Global Security Affairs since December 2006 when the Global Security Affairs organization was established. Previously, I served as the Principal Deputy Assistant Secretary of Defense for International Security Policy, the predecessor organization to Global Security Affairs. In addition to being responsible for defense-related issues concerning building the capability of partners and allies, technology security policy, counter narcotics and countering global threats, the Global Security Affairs’ office is responsible for detainee affairs.
2. (U) This declaration is submitted to provide information regarding the type and scope of DoD information provided to the Guantanamo Review Task Force (“Task Force”), established pursuant to Executive Order 13492 for its consideration in reviewing detainees held by DoD at Guantanamo Bay. This declaration will also provide information on the resources and time required to conduct searches of DoD information made available to the Task Force and producing information provided by DoD in the context of the habeas cases.
3. (U) The matters stated herein are based upon my personal knowledge, my review of information made available to me in my official capacity and information furnished to me by other personnel within the Department.

Information Used in Creating Factual Returns

4. (U) As noted in the declaration of former Deputy Secretary of Defense Gordon England, DoD does not maintain centralized repositories of all information about detainees or received from detainees. *See* Nov. 18, 2008 Declaration of Hon. Gordon England, Deputy Secretary of Defense, ¶ 8 (dkt. no. 1004, No. 08-mc-0042). Instead, this information is disseminated, duplicated or maintained in databases or file systems of various DoD organizations, depending on the type of information and/or mission of the organization. *Id.*
5. In creating the factual returns, DoD determined that certain information compiled by two DoD organizations (described below) comprised the most complete, readily available information regarding these detainees. *See* England Declaration ¶ 8. Accordingly, DoD and DOJ attorneys reviewed a variety of materials from these organizations in creating the factual returns. *Id.* at ¶¶ 5-8.
6. (U) **OARDEC MATERIALS:**
 - a. In executing the Combatant Status Review Tribunal (“CSRT”) and Administrative Review Board (“ARB”) proceedings, the Office for the Administrative Review of Detained Enemy Combatants (“OARDEC) engaged in a comprehensive and robust

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- search for relevant information bearing on the detention of the detainees. As described in Secretary England's declaration, between 2004 and 2008, OARDEC spent 800,000 man hours compiling and reviewing that information. *See* England Declaration ¶ 6.
- b. The search and review process undertaken by OARDEC is described in detail in the Declaration of James McGarrah, (dkt. no. 1004, No. 08-mc-0042). In short, consistent with the requirements of the CSRT and ARB regulations, OARDEC personnel collected and then reviewed a vast number of documents and selected certain information to be presented to the ARB and CSRT members. OARDEC personnel were specifically required to seek out and provide the CSRT and ARB members with any information that suggested the detainee should not be classified as an enemy combatant (for CSRTs) or that suggested continued detention of the detainee was not necessary (for ARBs). That "exculpatory" information, as well as selected inculpatory information, was presented to the CSRT or ARB panels and ultimately was included in the official record of their proceedings. *See* McGarrah Declaration ¶¶ 5-15.
 - c. Since OARDEC had already completed its task of gathering, reviewing and presenting relevant material from a broad spectrum of DoD organizations (including databases), DoD determined that the official CSRT and ARB records, together with the Joint Intelligence Group ("JIG") files described below, constituted the most complete, readily accessible information regarding the detainees, especially given the compressed time frame imposed by the Court to begin production of the factual returns. *See* England Declaration ¶ 8.

7. (U/FOUO) Joint Intelligence Group information:

- a. (U) As described in the England declaration, the Joint Intelligence Group ("JIG") at Guantanamo has the mission of collecting, analyzing, and disseminating strategic intelligence in support of counterterrorism, force protection, and the ongoing war effort. The JIG collects and maintains information with the goal of providing actionable intelligence information to decision makers based on an extensive search of a variety of intelligence sources. The intelligence information is uploaded to the Joint Detainee Intelligence Management System ("JDIMS"), the JIG's multi-source database on Guantanamo detainees. *See* England Declaration ¶ 7.
- b. (U) Because the JIG's mission required it to gather, review and disseminate relevant material from a broad spectrum of government sources (including databases), DoD determined that certain information from the JIG, together with the OARDEC information described above, constituted the most complete, readily accessible information at Guantanamo regarding the detainees, especially given the compressed time frame imposed by the Court to begin production of the factual returns. *See* England Declaration ¶ 8.

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- c. (U/FOUO) For the factual return process, the JIG was tasked to provide information on each of the detainees. The JIG provided information in bifurcated fashion. The initial production (Phase I) consisted of information compiled by the most recent factual summary prepared by the Detainee Assessment Branch, and all of the original source documentation cited in the that document. For Phase II, the JIG conducted a search for new information regarding any detainee with an assessment that had been completed before January 2008. The JIG expended approximately 11, 500 man-hours on Phase I and II. *See* England Declaration ¶ 7.

8. (U) Thus, the records of the CSRT/ARB proceedings and the JIG Phase I and Phase II materials were the initial universe of materials reviewed by DoD and DOJ attorneys in creating the factual returns. As the habeas cases progressed, information available to government attorneys working on the habeas cases has regularly been supplemented by materials received from other DoD organizations and sources as part of the discovery process.

Information Provided to Guantanamo Review Task Force

9. (U) Executive Order 13492 requires that the Attorney General, to the extent reasonably practicable, assemble all information in the possession of the federal government that pertains to individuals currently in DoD detention at Guantanamo Bay and that is relevant to the disposition of such individuals. In furtherance of this Executive Order, DoD was directed to provide all reasonably available information to the Task Force.

10. (U/FOUO) DoD determined, in consultation with senior DOJ officials on the information resources they required to conduct the mandated reviews, that it would be reasonably practicable to provide the Task Force access to the following information:

- a. Full access to the JDIMS database maintained by intelligence and detention personnel at Guantanamo;
- b. All information maintained by OARDEC regarding the detainees. This includes the complete set of CSRTs and ARBs conducted for the detainees;
- c. Access to the database that had previously been created and maintained solely for the use of prosecutors in the Office of Military Commissions (OMC);
- d. Select material gathered by the Defense Intelligence Agency (DIA) regarding each detainee;
- e. Factual returns filed in federal district court in habeas corpus proceedings;
- f. DIA's report on recidivism.

11. (U/FOUO) It is my understanding that, with two substantial exceptions, the material cited above was uploaded directly into the Task Force's principal database, the TF Network. The very

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large JDIMS and OMC databases, ¶ 10(a) & (c), on the other hand, were not uploaded. Instead, the Task Force was granted password access to those databases. These databases and materials together contain tens of thousands of DoD documents. There is no straightforward method for DoD to determine which of those documents were or will be reviewed by the Task Force in performing its duties.

12. ((U/FOUO)) The information described in paragraph 6 is largely classified as SECRET. The OMC database system maintains some material classified higher than SECRET.

13. (U/FOUO) As more fully described below, most, but not all, of the DoD material provided to the Task Force contained documents reviewed in the preparation of habeas factual returns or reviewed for responsive discovery in the habeas cases.

- a. (U) As indicated in the England Declaration, the CSRT and ARB records provided to the Task Force were among the materials that DoD made available for the purpose of creating the factual returns filed in the habeas cases. England Decl., ¶ 5. As former Secretary England explained, the CSRT and ARB records consist of detainee information that OARDEC has spent hundreds of thousands of hours collecting since 2004, through a comprehensive search for relevant information about the detainees, including material of both an inculpatory and exculpatory nature. *Id.*, ¶ 6. The Task Force was given access to the files of information gathered by OARDEC in preparation for those CSRT and ARB proceedings. These files contain inculpatory material that in some instances may not, for various reasons, have been presented to a detainee's CSRT or ARB. However, all nonduplicative material of an exculpatory nature (or, in the case of ARBs, that would suggest that continued detention was not necessary) should already be found in the records of CSRT and ARB proceedings already provided to DOJ. *See* McGarrah Declaration ¶ 13(a).
- b. (U/FOUO) JDIMS is the comprehensive database on Guantanamo detainees maintained by the JIG. OARDEC had access to JDIMS as it gathered information for use in the CSRTs and ARBs. The JIG also provided information from JDIMS for use in the creation of factual returns. England Decl, ¶ 5. While the records of the CSRT/ARB proceedings and the JIG information provided for use in the factual return creation did not contain every piece of information on the JDIMS database, these collections of information were based on the most pertinent information on each detainee found in JDIMS,
- c. (U/FOUO) The material provided to the Task Force by DIA consisted of finished intelligence products about the detainees. These products were previously disseminated throughout the intelligence community and therefore would have been available to the JIG for review and inclusion in the JDIMS database and to OARDEC during its work on the CSRT and ARB proceedings.
- d. (U/FOUO) The recidivism report would not have been available for use in the habeas cases through the JIG or OARDEC materials. The report discusses

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intelligence information about former detainees who have returned to combatant activities following their release from Guantanamo and is therefore irrelevant to the habeas litigation which addresses the legality of the continued detention of GTMO detainees. The Recidivism report *does not* discuss any unique intelligence information regarding current Guantanamo detainees.

- e. (U/FOUO) The OMC database was not available to OARDEC or the JIG and therefore would not have been available for use in the habeas cases through the JIG or OARDEC files. It does, however, contain DoD information that would have been available to the JIG and OARDEC as they gathered information from other sources.

14. (U) As former Secretary England explained, because of the respective missions of OARDEC and the JIG and their long-term involvement in searching for, collecting, and evaluating information on the Guantanamo detainees, the information compiled by OARDEC and the JIG comprises the most complete, readily available source of information, including exculpatory information, regarding these detainees. England Decl., ¶¶ 8, 12.

**Burden of conducting searches of
DoD information provided to Task Force**

15. (U) Searching the information provided by DoD to the Task Force would be extremely time-consuming and resource-intensive. For example, the JDIMS and OMC databases together contain tens of thousands of documents. Moreover, following any such search the attorneys assigned to these *habeas* cases would have to cull through the documents retrieved and weed out materials that have already been disclosed. This sifting process will divert DoD attorney resources (DoD has already assigned over 50 attorneys to the litigation of more than 200 *habeas* petitions) from preparing the cases for decision and thus delay the Court's consideration of those cases.

16. (U/FOUO) In addition, because this information is largely classified as SECRET, any responsive document must be approved for use in the litigation by the Department's Security Classification/Declassification Review Team, *see* England Declaration at ¶¶ 16-17 and interested intelligence agencies.

- a. (U/FOUO) The DoD Security Classification/Declassification Review Team consists of more than 80 intelligence officers, lawyers, managers and analysts dedicated to the review and clearance of documents at current classification. *See id* at ¶17. The Team has representatives from many of the Combatant Commands. (Aside from *habeas* litigation, this team is also tasked with collateral duties to assist the Office of Military Commissions in the handling and production of evidence for trial by military commission.) To date, this team and the intelligence agencies have processed more than 9,000 individual documents expending thousands of man-hours. The extraordinary volume of material already provided in discovery, or in the process of clearance for discovery, has taxed the clearance team and slowed the rate of

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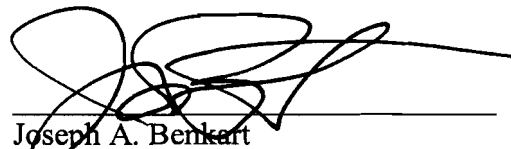
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production. *See* Declaration of former Deputy General Counsel, Christian Bonat ¶¶ 7, 8 dated April 24, 2009 dk no. 490, Case No 04-02154).

- b. (U/FOUO) Additionally, the Security Classification/Declassification Review Team is responsible for the declassification of documents used in the *habeas* litigation. Declassification is an exacting process with more than 73 rules and requirements to be applied to each document passing through the process. The declassification process has recently expanded from review of specific exhibits from the factual return to declassification of briefs, memoranda, the petitioner's traverse and judicial orders. Of the more than 9,000 documents, containing tens of thousands of pages, the team evaluated for use in litigation, almost 5, 000 of those documents have been resubmitted for declassification. *Id.* ¶ 8
- c. (U/FOUO) Intelligence agencies must also review all documents that are going to be produced in the *habeas* cases for intelligence information and they often request redaction of information where its disclosure could have an adverse impact on National Security. This review process is time-consuming and labor-intensive but is necessary to protect information that is critical to National Security efforts. The intelligence agencies conducting this review have dedicated a team of analysts to respond to and to coordinate these reviews in as timely a manner as possible without compromising accuracy.

17. (U) In short, DoD has been engaged in robust administrative processes since 2004, expending hundreds of thousands of man hours conducting extensive searches and reviews of material about the Guantanamo detainee population. These processes were designed to collect vital information about the detainees and present that information for use by senior DoD officials as they made critical assessments and decisions about whether these individuals should remain in DoD custody. Requiring a search of the DoD material provided to the Task Force would impose an enormous burden, not unlike that already undertaken by DoD in conducting these administrative processes, and is likely to be highly duplicative of those efforts.

Dated this 7th Day of May, 2009



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for Global Security Affairs

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