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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE WRITS OF HABEAS CORPUS FILED BY DETAINEES AT
THE U.S. NAVAL STATION GUANTANAMO BAY, CUBA

DECLARATION OF ARTHUR M CUMMINGS II, EXECUTIVE ASSISTANT DIRECTOR,
NATIONAL SECURITY BRANCH
FEDERAL BUREAU OF INVESTIGATION

City of Washington :
: ss.
District of Columbia :

I, Arthur M. Cummings II, hereby declare the following:

1. (U) I am the Executive Assistant Director (EAD) of the National Security Branch (NSB) of the Federal Bureau of Investigation ("FBI"), United States Department of Justice, a component of an Executive Department of the United States Government (USG). One of my responsibilities is to oversee the national security operations of the FBI's Counterterrorism Division.
2. (U) The matters stated herein are based upon my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information furnished by Special Agents and other employees of the FBI. My conclusions have been reached in accordance therewith.
3. (U) This declaration is submitted to provide information regarding the type and scope of FBI information provided to the Guantanamo Review Task Force ("Task Force") established pursuant to Executive

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Order 13492 for its consideration in reviewing detainees held at the U.S. Naval Station, Guantanamo Bay, Cuba (GTMO). Additionally, this declaration will address the resources and time required to conduct searches of FBI databases available to the Task Force and producing information provided by the FBI in the context of the habeas cases.

4. (U) On January 22, 2009, the President issued three related Executive Orders (EO) regarding national security matters. Executive Order 13492 called for an immediate review of the status of individuals currently detained at GTMO. In furtherance of this EO, the Attorney General created an interagency Guantanamo Review Task Force. The Attorney General included employees of the Federal Bureau of Investigation (FBI) on the Task Force staff.

5. (U) E.O. 13492 requires that the Attorney General, to the extent reasonably practicable, assemble all information in the possession of the Federal Government that pertains to any individual currently detained at Guantanamo Bay and that is relevant to determining the proper disposition of any such individual. In furtherance of this order, the Office of the Director of National Intelligence (ODNI) issued a formal request to all the intelligence agencies, including the FBI, to provide to the Task Force all reasonably available information on any individual currently detained at GTMO.

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(U) Documents Provided to Task Force

6. (U) In response to the EO and the ODNI request, the FBI provided the following documents, information or access to the Task Force:

(a) a copy of the database of documents and information the FBI compiled for the Department of Justice (DOJ) Civil Division for the habeas litigation. These documents were originally compiled in response to DOJ's request for information as well as court orders relating to discovery in the habeas litigation. This database was uploaded into the Task Force network.

(b) FBI documents previously provided to the Department of Defense for review in Office of Military Commission (OMC) proceedings and included in the OMC Office of the Chief Prosecutor's database known as the EAGLE database. The FBI conducted prudential searches for records pertaining to detainees that were being investigated and/or charged under the Military Commission Act of 2006. (10 U.S.C. § 948a). Prudential searches are a process the FBI uses when performing searches of information technology systems at the request of prosecutors seeking to identify any potentially discoverable information contained within the FBI electronic records system. These documents have been uploaded into the Task Force network.

(c) FBI documents relied upon by the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) for Combatant Status Review Tribunals and Administrative Review Board

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hearings. These documents have been uploaded into the Task Force network.

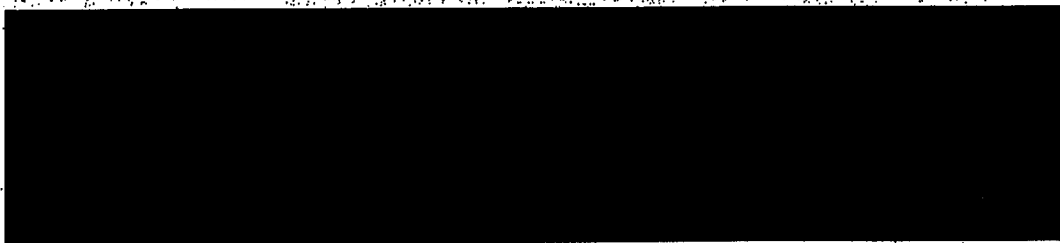
The FBI understands that DOJ Civil Division would have similar access to the FBI information discussed in paragraphs 6 (a) & (c) in the habeas litigation through the various USG agencies.

7. (U) The FBI personnel assigned to the Task Force staff also have access to and the ability to conduct searches of FBI databases for information pertaining to Guantanamo detainees. FBI personnel assigned to the Task Force are not conducting system wide searches for information regarding each detainee, but targeted searches based on specific factual inquiries. The relevant information obtained from the targeted searches of FBI databases is then made part of the Task Force network.

8. (U/ [REDACTED]



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(U) Electronic Searches

9. (U) The FBI has two methods to search FBI databases. The first is to search the FBI's Automated Case Support System (ACS), the electronic system which has the most complete repository of FBI material. ACS is an operational system used to support every FBI function from white-collar and violent crime investigations to counterespionage and counterterrorism investigations. The second method is to search the Investigative Data Warehouse (IDW) system. IDW is a "warehouse" of information that provides a single source repository for information utilizing extensive data sources, including those located in FBI files and information from sources outside FBI sources. The highest classification of documents on these systems is SECRET.

10. (U) ACS is an old mainframe computer system and searches of its data must be "literal." For example, in order to search for documents relating to a particular petitioner, separate searches must be run for each spelling variant of each name (first, middle, last and alias). Additional searches must be run for every combination of names (e.g., first-last, first-middle-last,

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alias-last, last-first, etc.). Each of these searches is run against the approximately 27 million documents in the electronic files. The FBI does not maintain detainee-related information on a separate dedicated system.

11. (U/ [REDACTED]



12. (U) Searches like the one described above encumber ACS because all of the electronic files of the FBI are being searched for the various terms. These searches generally take place after normal business hours and on weekends so as not to impair the FBI's electronic

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record search capacity and thereby adversely affect the ability of other FBI employees to use ACS in support of the FBI's primary missions.¹ Even if ACS searches were run around the clock from multiple computers, the FBI would have difficulty meeting the short deadlines.

13. (U) As an alternative to searching ACS, the FBI could conduct these searches through IDW. IDW is populated with approximately two-thirds of the information that is contained in ACS. As is pertinent to these cases, IDW does not contain information from ACS that has restricted access, such as tax records and grand jury materials. Because counterterrorism records are generally not restricted, however, IDW searches are likely to reveal most, if not all of the documents that would be revealed through ACS searches. If IDW were an acceptable route through which to conduct these searches, the FBI could conduct ACS searches only when there is some reason to believe that information pertaining to a particular petitioner is in restricted files.

14. (U) Unlike ACS, IDW can be efficiently used to conduct batch (or bulk) data searches. Those searches can be conducted in a more condensed time frame and will have no effect on ACS, because the

¹ (U) ACS is used for investigative and analytical searches, uploading or downloading documents, and setting investigative leads not only in national security operations and foreign intelligence collection, but all criminal investigations.

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searches are not run against the ACS mainframe computer system. This approach would significantly reduce the negative impact on FBI operational matters, as compared with an approach focused on ACS. That said, IDW is no more easily searched now by the FBI members of the Task Force than it would have been by the FBI itself last fall when on the Government's motion for reconsideration of the initial case management order, the Court relieved the Government of any general discovery obligation that would have necessitated searches within IDW as a matter of course.

(U) Review of Responsive Documents

15. (U) In addition to the foregoing issues, if potentially responsive documents were identified through either ACS or IDW searches, the FBI would have to provide the documents to the DOJ. The DOJ would then conduct its own review to determine which documents are actually pertinent to a particular petitioner and responsive to the Court's order. Once the process is completed, the DOJ would then return those pertinent documents to the FBI to determine what sensitive or classified information may be released. Agents and analysts would be required to review the documents carefully in order to identify any highly sensitive information and techniques.
16. (U) While it is not possible at this time to estimate the number of agents and analysts who would be required to perform such a final review of responsive documents, it is likely to be significant.

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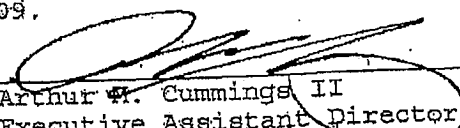
Due to the specialized subject matter of the documents, it is expected that the review would be performed by agents and analysts assigned to the Counterterrorism Division (CTD) of the FBI, taking them away from daily operational duties.

(U) Conclusion

17. (U) Therefore, to the extent reasonably practicable, the FBI has provided the FBI records compiled for the habeas litigation to the Task Force for their review and consideration. Additionally, the Task Force has been provided with FBI records previously provided to the Department of Defense for review in the Office of Military Commission proceedings, the Combatant Status Review Tribunals and Administrative Review Board hearings. Furthermore, additional searches of FBI databases, document reviews and clearances of FBI documents are a significant undertaking, both in time and resources, on the counterterrorism operational units of the FBI.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2009.


Arthur W. Cummings II
Executive Assistant Director
National Security Branch
Federal Bureau of Investigation

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