

Exhibit 3

Declaration I of Officer,
DoD Security Classification/ Declassification Review Team,
Dated April 14, 2010,
Filed With Classified Coordinated Motion

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:
GUANTANAMO BAY
DETAINEE LITIGATION

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) Misc. No. 08-442 (TFH)
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)
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FIRST DECLARATION OF [REDACTED]

1. I am the [REDACTED] of the Department of Defense Security Classification/Declassification Review Team (DoD SC/DRT), within the Department of Defense (DoD), a component of the Executive Branch of the United States. I am responsible for, among other things, overseeing the review of DoD-originated documents relevant to the Guantanamo Bay (GTMO) cases to determine the appropriate classification of the information contained therein. The matters stated herein are based on my personal knowledge, my review and consideration of documents and information available to me in my official capacity, and information furnished by DoD SC/DRT team members and other employees of the DoD; my conclusions have been reached in accordance therewith.

2. The DoD SC/DRT is composed of subject matter experts and declassification authorities from various DoD organizations involved in detainee operations. The team determines the appropriate classification of the information contained in the documents and clears and produces declassified versions, whether to be filed under seal with the Court or for public release.

3. I am responsible for ensuring that information is properly treated pursuant to Executive Order 12958, as amended, and DoD Directives and regulations regarding classification standards and the public release of information.

4. I have read the September 11, 2008 protective order entered in the Guantanamo Bay cases, entitled “Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba” and referred to in this declaration as the “Protective Order.” In particular, I have read and understand ¶¶ 10 and 34 and section E of the Protective Order and the procedures available therein for the Government to designate documents or information as “protected.”

5. I have also read the Court’s January 14, 2010 and June 1, 2009 orders directing that where the Government seeks to withhold sensitive but unclassified information from the publicly filed versions of factual returns filed in these habeas cases, the Government shall highlight in color the exact words or lines the Government seeks to be deemed protected. I understand that each such highlighted version of a factual return is to be filed under seal pursuant to the Court’s June 1, 2009 order, and that, pursuant to ¶ 34 of the Protective Order any such highlighted-as-protected information shall be treated as protected unless and until the Court rules that the information shall not be designated as protected.

6. This declaration is submitted in support of the Government’s Motion to Amend and for Clarification of the Court’s January 14, 2010 Order Regarding Public Returns. The purpose of this declaration is to outline the steps undertaken by DoD as the coordinating agency that compiles processed (reviewed, redacted, highlighted) factual returns from other relevant agencies — including the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). As explained more fully below, DoD obtains factual returns that have been reviewed and

marked by the other agencies and compiles the separate versions of a given unclassified/declassified return into a single version. DoD then circulates such single versions to the other agencies for a second review — a quality check — before finalizing the unclassified/declassified return and submitting it to the Department of Justice (DoJ) for use in the Guantanamo Bay cases. This declaration supports that part of the Government's motion seeking additional time to comply with the court's January 14, 2010.

**Overview of Multi-Agency Process for Preparing
Declassified/Unclassified Factual Returns**

7. I understand that the Court's January 14, 2010 Order requires the reprocessing of unclassified factual returns. Last summer DoD was involved with an earlier effort to process unclassified factual returns prior to a July 29, 2009 deadline set by the Court. During last summer's process, DoD started with each factual return, reviewed it, and applied redactions to protect classified, and sensitive but unclassified, information. DoD then sent that redacted version of the factual return to the FBI and the CIA which applied their own redactions and then submitted the final versions to the DoJ for filing. Because DoD documents account for approximately 75 to 80 percent of each factual return, the factual returns were already extensively redacted when they were sent by DoD to the other agencies for review last summer.

8. The declassification process during last summer's review period required 92 contract analysts working on average 45 hours per week for 8 weeks, costing the Government \$2,651,157.68 in addition to the salary of 13 Government civilians and military personnel who served as DoD SC/DRT declassification authorities last summer.

9. Since last summer, DoD has revised its declassification protocol. Specifically, DoD has created a Security Classification/Declassification Guide to serve as a single authoritative document within DoD for continuing classification or declassification of documents and

information used in detainee-related habeas corpus and Office of Military Commission legal proceedings. The guide serves to ensure consistent application of declassification decisions made by affected Original Classification Authorities and DoD SC/DRT. The Guide makes clear that when declassifying documents in support of habeas and commission proceedings, every effort will be made to declassify as much information as possible. This guide was signed on March 24, 2010, but even before that, DoD SC/DRT had accepted the draft version and was operating under it. DOD SC/DRT refers to the guide when processing the Factual Returns to determine which heretofore classified information could be declassified and also which information should be highlighted-as-protected. As a result in this change in protocol, DoD now releases a significant amount of information that previously was redacted as classified.

10. Following the Court's January 14, 2010 Order, and extensive consultations between the DoJ, DoD, FBI, and CIA, the agencies collectively realized that the unclassified factual returns needed to be completely reprocessed. That is, in order to comply with the Court's January 14, 2010 Order, the agencies realized that they need to re-review and process not only the sensitive but unclassified information to be highlighted in the factual returns, but also the classified information to be redacted. That was the case because of the recent change in DoD's declassification guide, under which DoD is able to release substantially more information that DoD redacted as classified or protected last summer.

11. This time each agency — DoD, FBI, and CIA — is starting with a separate copy of each factual return and redacting in black the classified information in which it has equities. In addition, DoD and FBI are highlighting in green the sensitive but unclassified information that they seek to deem "protected" from public release pursuant to the Court's January 14, 2010 and June 1, 2009 Orders and the operative Protective Order. CIA-related information is either

classified (redacted) or unclassified (not redacted); the CIA does not highlight any information because it does not seek to deem information “protected.” After completing the initial review and applying redactions/highlights for a given factual return, each agency sends its highlighted and redacted return to DoJ for further processing. DoJ collects and tracks the factual returns from each agency and sends them to DoD to compile the single versions.

12. In each of the next two sections of this declaration, I explain respectively: a) DoD SC/DRT’s process for reviewing those portions of the Factual Returns that contain information that was acquired by DoD employees as part of their official duties or because of their official status within the Department or that otherwise is within the custody and control of the Department of Defense or relating to information in the custody and control of the Department, and b) DoD SC/DRT’s process for compiling the single version of each factual return from the separate versions marked by each agency (DoD, FBI, and CIA). I also describe some of the issues that that have led to delays in the reprocessing of the unclassified/declassified factual returns. In the final section, I explain why DoD requires an extension of time to comply with the Court’s January 14, 2010 Order.

**DoD SC/DRT’s Process for Reviewing
DoD Information Within the Factual Returns**

13. This section of my declaration provides details about the DoD SC/DRT team and the DoD SC/DRT’s process for reviewing those portions of the factual returns that contain DoD-related information, that is information that was acquired by DoD employees, or is otherwise within the custody and control of the Department of Defense, or relates to information in the custody and control of the Department. Such DoD-related information accounts for approximately 75-80% of each factual return.

14. The DoD SC/DRT team consists of 86 contract classification analysts and 16 DoD employees with declassification authority. The team consists of seven declassification teams, with 6-8 people per team for a total of 45 personnel, which propose classified and highlighted-as-protected redactions to DoD documents within the factual returns. Additionally, each DoD component represented on the team is assigned a Quality Control (QC) team to review the proposed redactions made by the declassification teams and make any necessary corrections. 17 contract personnel serve as Quality Control analysts. After a DoD employee with delegated declassification authority approves a document as declassified, the DoD SC/DRT Quality Assurance team, composed of 6 contract analysts, reviews an entire factual return for any inconsistencies or errors. The remaining 18 contract personnel hold supervisory, training, or administrative positions and do not declassify documents.

15. Only the DoD employees who serve as classification/declassification authorities have the authority under Executive Order 12958, as amended, to classify or declassify information. These persons are referred to throughout this declaration as “declassification authorities.” The declassification authorities represent different components within DoD, including the United States Southern Command (SOUTHCOM)/Joint Task Force-Guantanamo Bay (JTF-GTMO), the Criminal Investigation Task Force (CITF), United States Central Command (CENTCOM), the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), and the Defense Intelligence Agency (DIA). The declassification authorities must review and approve any redactions or highlights recommended by the contract personnel. Although the contract classification analysts may assist the classification review process by marking the factual returns and identifying information for potential redactions/highlights, one of the 16 declassification authorities must approve and formally assert

any redaction or highlight. Thus every factual return must be reviewed by at least one of the 16 employees at least one time.

16. The DoD SC/DRT team conducts line-by-line, word-by-word reviews of DoD-related documents in this litigation, including the factual returns, to determine what information within those documents is properly classified and requires redaction, as well as what sensitive but unclassified information should be protected from public release pursuant to the Court's Protective Order. DoD information within the Factual returns originates from different components within DoD, and the sensitivity of any particular information may depend on the component from which it originated, for example whether from CITF, a law enforcement component, or one of the intelligence gathering components.

17. The DoD SC/DRT follows DoD policy which specifies that the public release of official DoD information is prohibited only as necessary to safeguard information requiring protection in the interest of national security or other legitimate governmental interest, as authorized by law, including DoD Directives 5200.1, 5230.24, 5230.25, 5400.7, 5400.11, 5205.02, and 5500.07; DoD Instruction 5230.27; DoD 5400.7-R; DoD 5400.11-R; International Traffic in Arms Regulations; Executive Order 12958, as amended; section 4353 of title 22, United States Code (U.S.C.); and Presidential Memoranda.

18. The analysis of what information within the factual returns should be asserted as protected from public disclosure is guided by Department of Defense Directives, including DoD Directive 5230.09 ("Clearance of DoD Information for Public Release") and 5405.2 ("Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses"). These determinations require thoughtful deliberation of multiple variables, including the damage to national security if classified or sensitive but unclassified information is publicly released. The

review process is time-consuming and resource-intensive because of the nature of the sensitive or highly sensitive information involved.

19. As part of the DoD SC/DRT workflow process, declassification authorities representing each DoD organization represented on the DoD SC/DRT — i.e., JTF-GTMO, CITF, CENTCOM, OARDEC, and DIA — review the documents created by their respective organizations. The DoD SC/DRT extracts every DoD exhibit from the factual return and sorts the documents based on the originating or responsible organization within DoD, and distributes the documents to the appropriate teams based on the organizational affiliation of the declassification authorities with which they work. This process of extracting and distributing the individual exhibits takes between 1-2 hours per factual return.

20. Each contract declassification team then reviews line-by-line the appropriate DoD documents for its DoD organization, analyzes the information contained within the documents, and marks the documents as appropriate, applying redactions to the classified information and green highlights to the sensitive but unclassified information requiring protection.

21. Team leads review each document, checking for accuracy after the document is completed by a declassification team member. When reviewing a document, the team lead compares the document to the redacted versions of the document included in last summer's factual returns. As the team leads identify errors, they communicate with the team member and, as necessary, work with the team member to resolve discrepancies among the redactions/highlights being recommended by the team member. This review step takes 4-9 hours, including the time to correct identified errors, per factual return.

22. After the team lead's review, the document is sent to the second-level Quality Control (QC) Team of the DoD organization which originally produced the document. The QC

Teams review each document to ensure its accuracy and then forward it to the appropriate DoD declassification authority for final approval. This step can take from 5-10 hours to complete per factual return.

23. After the QC Teams complete their review, the documents are sent to the appropriate DoD declassification authority for final approval. If the declassification authority approves the document, it is considered to be the final "DoD version" of the document, and it will be later compiled with the FBI and CIA versions into a single version. The DoD SC/DRT Operations Team compiles all of the documents in a factual return, along with the narrative, and sends the completed DoD version of each factual return to the DoD Office of General Counsel, which keeps tracks of DoD's completed versions. If the declassification authority finds errors or deficiencies in the document, he or she will send the document back to the QC Team and/or declassification teams to be redone. This step can take anywhere from 5-10 hours per factual return.

24. The DoD SC/DRT Operations Team oversees the accounting of all documents, assembles the individual documents back into the original factual return format, and sends the factual returns to DoD OGC as completed. If any documents are missing during this compilation step, the Operations Team must coordinate with the declassification teams, the QC Teams, and the declassification authorities to locate the document and determine its status. This step can take between 1-2 hours to complete per factual return.

25. The declassification team members, team leads, QC team, and declassification authorities also review the narrative in each factual return, performing a similar classification analysis and also comparing the narrative to the exhibit documents to ensure that like information is treated similarly. The review of each narrative can take 2-4 hours to complete.

26. The SC/DRT's process for reviewing just the DoD information within the factual returns can take 18-37 working hours per factual returns, assuming there are no computer network or software problems that interrupt the processing time. Unfortunately, in the past two months, there have been numerous network and software glitches that have interrupted the reprocessing work. DoD SC/DRT processes the factual returns on an internal computer network appropriate for reviewing classified information. Several times since January 14, the network has experienced delays or temporary shutdowns, adding additional hours or even days to the processing of a given factual return. In addition, it took DoD SC/DRT several weeks following the Court's January 14, 2010, to work out software issues with a support person (software consultant) for Adobe Acrobat, whose software DoD SC/DRT uses, and to train its staff to uniformly use the highlighting, redaction, and document-security features within Acrobat. One such delay concerned the inability of Acrobat to apply green highlights to information in the factual returns that did not appear as a straight line of text. Another problem that has now been corrected was the unexplained disappearance of some highlights applied by team members in the final DoD-version of the factual returns. In January and early February, DoD SC/DRT worked with support persons from Adobe Acrobat to address these issues, which contributed approximately two weeks' delay to the reprocessing efforts.

27. Because of inclement weather, Federal agencies in the Washington, DC area, including DoD, were closed on Monday through Thursday, February 8 - 11, 2010. A number of DoD SC/DRT staff were also unable to report to work on Friday, February 5 and Friday, February 12. The inclement weather and snow days interrupted the work of the DoD SC/DRT to reprocess the factual returns and caused at least one week's delay, since all of the work of the DoD SC/DRT must be performed in DoD offices on computers appropriate for classified

processing. One staff member, the declassification authority for JTF-GTMO, was on travel the week of the snow storms and was unable to return to the DC area, or to report to work, for ten days in February. This caused a backlog in the review process of JTF-GTMO originated documents within factual returns.

DoD SC/DRT's Work To Compile the Separate Versions of Each Factual Return, as Marked by DoD, FBI, and CIA, Into a Single Version of the Factual Return, and the Quality Check Process that Follows

28. The DoD SC/DRT is also involved with the compiling of the separate versions of each factual return prepared by each relevant U.S. Government agency. My understanding is that each agency — including FBI and CIA — reviewing the factual returns has a process for reviewing the agency's information within the factual returns that is similar but not identical to that employed by DoD for reviewing DoD information, as outlined in paragraphs 19 - 25 above. After the FBI and CIA complete their own reviews of a given factual return, the FBI and CIA versions are forwarded to DoD SC/DRT, which incorporates the redactions/highlights of all the agencies, including those of DoD, into a single declassified factual return.

29. In the event that agencies treat differently the same information within a factual return, the information is considered to be covered by the highest protective level asserted by an agency. For example, where one agency redacts information as classified that another agency highlights as protected, the information appears redacted as classified in the compiled single version of the return.

30. DoD SC/DRT compares the version of the factual return submitted by each agency to the versions of the factual returns previously filed/submitted by DoJ in the habeas litigation, to ensure that there are no documents or pages missing from the versions that the other agencies reviewed/submitted. If a version of the factual return sent by another agency appears

incomplete, DoD SC/DRT communicates with that agency to obtain the missing information. This step takes 2-4 hours for each factual return, and DoD SC/DRT has spent approximately 20-30 personnel hours total for the first 40 factual return submissions from the FBI and CIA communicating with the other agencies about documents that are missing or other inconsistencies discovered by DoD SC/DRT during the review and compilation process.

31. DoD SC/DRT manually combines the various versions of a given factual return into a single version, using Adobe Acrobat. DoD SC/DRT compares the three versions of each document as prepared by each agency, determines the highest level of protection for any information contained therein, extracts the pertinent pages from the separate versions, and inserts the separate pages into the single version. Each factual return can be up to 400-500 pages, and this process can require inserting 40 - 60 separate chunks of pages into the compiled version. As necessary, the DoD SC/DRT applies highlights and redactions reflecting the separate versions, for example if on one page of a document DoD redacted a line and the FBI highlighted another line. This compilation step takes 2-4 hours for each factual return.

32. DoD SC/DRT performs a similar compilation process for each narrative, comparing the three versions prepared by DoD, CIA, FBI, and combining the redactions and highlights into a single version. It takes 1-2 hours to compile the single version of each narrative.

33. Declassification team members perform much of the processing of the compiled single versions, but when issues arise, such as when a team member notices inconsistencies within the redactions marked by one of the agencies, the team member must consult with the team leads and declassification authorities, who may in turn consult with the other agencies involved in the factual return review. This internal consultative process, when necessary, can add 4-6 hours to the compilation/review time for a given factual return.

34. After each factual return is compiled, DoD SC/DRT must remove old headers and footers (indicating for example that a document within the factual returns is classified as “SECRET”) from within the factual return and apply a new header and footer (indicating that the compiled, highlighted version of the factual return is unclassified but For Official Use Only and protected pursuant to the Court’s Protective Order) to all the pages. DoD SC/DRT also performs a check comparing the new compiled version to the separate versions submitted by each agency. On average, it takes 3 - 5 hours to compile the separate agency factual returns into one single factual return, including the steps described in this paragraph, if there are no discrepancies found during the compiling process. If issues are discovered in a given factual return, it can take 6 - 8 hours to do the compiling process, communicate with the other agencies to resolve any issues, and apply the fixes to the factual return.

35. After the return is so compiled, it is forwarded back to the FBI and CIA for a second round of review, as part of a quality check to ensure that each agency’s respective redactions and, for the FBI, highlights were incorporated during DoD’s compilation and review process. During this second round review, each agency must again go line-by-line through each factual returns, and compare the compiled single versions to their previously submitted separate versions. If any other agency discovers a discrepancy during this quality control check, that agency notifies DoD. DoD applies any redaction/highlighting changes necessary and re-circulates the revised single version. Once a compiled version of a given factual return is approved as final by all three agencies, it is provided to DoJ for filing.

**DoD’S Need for An Extension of Time to Comply
With the Court’s January 14, 2010 Order**

36. DoD SC/DRT has devoted 102 people, working on average 50 hours per week, to the classification and declassification work required by the Guantanamo Bay Detainee Litigation and

the Office of Military Commission legal proceedings. In addition to the reprocessing of the proposed public factual returns, DoD SC/DRT must simultaneously perform all of the necessary classification / declassification reviews and processing necessary to clear DoD documents for production to petitioners in discovery; to prepare unclassified versions of returns and other documents for petitioners' use in the habeas litigation; to prepare unclassified versions of judicial opinions, as well as briefs and appendices required by the Court of Appeals; to make available various documents required for use by the government and defendants in various detainee-related prosecutions; and to address a deluge of "clear at current classification" tasks. I estimate that the reprocessing of the proposed public factual returns, required by Judge Hogan's January 14, 2010 Order, has accounted for 85 % of our work since January.

37. Since January 2010, DoD SC/DRT has spent \$3,544,220.57 for contractor support for its classification and declassification review projects, including the reprocessing of the proposed public factual returns. Because the factual return project has accounted for approximately 85% of our work, I estimate that we have spent approximately \$2.9 million so far on the reprocessing of the proposed public factual returns.

38. As of the date of this declaration, DoD SC/DRT has completed 72 "DoD versions" of the factual returns. This means that 72 factual returns have been reviewed by DoD and either have been compiled with the versions prepared by the other agencies or are ready to be compiled. DoD SC/DRT's review of DoD information within the factual returns required several weeks of start-up time after January 14, as the agencies were communicating and coordinating with each other to determine a cohesive overall process, and as DoD SC/DRT was working out its software issues and training its review team for this project. Since mid-February, DoD SC/DRT has been completing DoD versions of the factual returns at a rate of 8 per week.

DoD SC/DRT expects to finish processing by 14 May 2010 the DoD versions of the factual returns for the approximately 140 active cases in which the Government filed public returns in July 2009. DoD SC/DRT expects to finish processing by 18 June 2010 the DoD versions of all (approximately 190) factual returns.

39. As of the date of this declaration, DoD SC/DRT has received 71 FBI versions and 71 CIA versions to compile into single versions. DoD SC/DRT has completed the compilation process for more than 50 factual returns, with 30 of these having undergone quality control review and approval by FBI and CIA. The more than 50 compiled versions incorporate the highlighting and redaction marks indicated by each of three agencies — DoD, FBI, and CIA. The time required by DoD SC/DRT to complete the compilation process for the factual returns is dependent on when the other agencies are able to send their versions of each factual return to DoJ and DoD. Generally, considering the issues discussed above, DOD can compile 25 sets of agency-versions of the factual returns in two - three weeks. Thereafter, each agency requires time to complete the second-round review and essential quality review step, and it can take several days for each agency to perform a second-round review of a batch of factual returns. If a discrepancy is found in one or more compiled factual returns, one or more additional days are need for DoD to resolve the issues and produce final versions of the factual returns. As noted, 30 proposed public returns have completed the second round review to date. These 30 returns, which represent the government's proposed public factual returns, have been sent to DoJ to submit to petitioners' counsel and the court.

40. Based on the production rate thus far, and the rate that the other agencies are able to provide their versions of the factual returns to DoD for inclusion in the compiled version, I

estimate that an additional three months are needed to complete the reprocessing of the factual returns and prepare final compiled versions of unclassified/declassified returns.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 14, 2010



Security Classification/Declassification Review Team
Department of Defense