

UNCLASSIFIED

Current Class: CONFIDENTIAL
Current Handling: NODIS
Document Number: 2002STATE204847

Page: 1

Channel: n/a

CONFIDENTIAL PTQ1628

E117

PAGE 01 STATE 204847 172207Z
ORIGIN NODS-00

INFO LOG-00 CCOE-00 SAS-00 /000R

RELEASED IN PART

204847

SOURCE: DISKETTE.023497 B1, 1.4(B), 1.4(D), B6, B7(A), B7(C), B3, CIA

DRAFTED BY: S/WCI:RMILLER -- 10/17/02 (202) 647-5093

APPROVED BY: [REDACTED]

B1, B7(A), B7(C)

DOD/OGC:EDAVIDSON DOD/SOLIC:RHYAMS DOJ:MINCONTRO

PM:SPETERS L/NESA:JDOLAN P:AGORDON NSC/LEGAL:JSCHARFEN

S/CT:DSCOTT CIA/CTC:[REDACTED]S/ES-O:MSCHELAND

B3

DESIRED DISTRIBUTION:

S/WCI, L, P, S/CT, INR, EUR

-----F9887E 172208Z /38

O 172201Z OCT 02 ZFF6

FM SECSTATE WASHDC

TO AMEMBASSY [REDACTED] IMMEDIATE

B1, B7(A), B7(C)

INFO JOINT STAFF WASHDC IMMEDIATE 6772

USSOUTHCOM MIAMI FL IMMEDIATE

USCENTCOM MACDILL AFB FL IMMEDIATE

C O N F I D E N T I A L STATE 204847

NODIS

DECAPTIONED

MILITARY HANDLE AS SPECAT EXCLUSIVE

E.O. 12958: DECL: 06/18/12

TAGS: PTER, KAWC, PHUM, PINR, [REDACTED]

B1, B7(A), B7(C)

SUBJECT: QUESTIONS POSED BY COUNSEL OF [REDACTED] DETAINEE ON
CONFIDENTIAL

PAGE 02 STATE 204847 172207Z

BEHALF OF [REDACTED]

B1, B7(A), B7(C)

REF: STATE 20095

CLASSIFIED BY S/WCI, AMBASSADOR PIERRE-RICHARD PROSPER FOR
REASONS 1.5(B) AND (D)

1. (U) THIS IS AN ACTION MESSAGE, SEE PARA. 3.

2. (C) [REDACTED] RECENTLY SUBMITTED A SERIES OF QUESTIONS RAISED
BY THE LAWYERS REPRESENTING A [REDACTED] DETAINEE, [REDACTED]

B1, B7(A), B7(C)

[REDACTED] THE PROPOSED MESSAGE TEXT IN PARAGRAPH 3 ATTEMPTS
TO RESPOND TO MANY OF THESE QUESTIONS. PLEASE DELIVER THE

B1, B6, B7(A), B7(C)

Current Class: CONFIDENTIAL

Page: 1

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SHARON E AHMAD
DATE/CASE ID: 08 DEC 2004 200303827

UNCLASSIFIED

DOS-002110

Current Class: CONFIDENTIAL
 Current Handling: NODIS
 Document Number: 2002STATE204847

Page: 2

Channel: n/a

DRAFT RESPONSE BELOW. NO SIGNED ORIGINAL WILL FOLLOW.

3. (SBU/REL) MESSAGE TEXT:

THE DEPARTMENT OF STATE ACKNOWLEDGES RECEIPT OF A NOTE DATED SEPTEMBER 12, 2002 FROM THE [REDACTED] TRANSMITTING QUESTIONS ON BEHALF OF AN ATTORNEY, [REDACTED] CONCERNING AN INDIVIDUAL SAID TO BE DETAINED BY UNITED STATES FORCES IN GUANTANAMO BAY. FOR OPERATIONAL AND SECURITY REASONS, THE DEPARTMENT OF STATE IS NOT IN A POSITION TO RESPOND TO INQUIRIES OF THIS NATURE CONCERNING THE SPECIFIC CIRCUMSTANCES PERTAINING TO THE DETENTION OF ANY PARTICULAR INDIVIDUAL DETAINED AT GUANTANAMO BAY.

B7(A), B7(C)

B6, B7(A), B7(C)

AS A GENERAL MATTER, [REDACTED] MAY ADVISE MR. [REDACTED] THAT INDIVIDUALS DETAINED UNDER THE CONTROL OF UNITED STATES MILITARY AUTHORITIES AT GUANTANAMO BAY ARE ENEMY COMBATANTS CAPTURED WHILE ENGAGED IN ONGOING HOSTILITIES OR
 CONFIDENTIAL

B7(A), B7(C)

PAGE 03 STATE 204847 172207Z
 DIRECTLY SUPPORTING HOSTILE FORCES. ENEMY COMBATANTS POSE A SERIOUS THREAT TO THE UNITED STATES, NATO NATIONS, AND COALITION PARTNERS. THEY ARE BEING HELD IN ACCORDANCE WITH THE LAWS AND CUSTOMS OF WAR, WHICH PERMIT THE UNITED STATES TO CAPTURE AND DETAIN ENEMY COMBATANTS TO PREVENT THEIR RE-ENGAGING IN THE ON-GOING ARMED CONFLICT.

AS LONG AS HOSTILITIES CONTINUE, THE UNITED STATES, AS A MATTER OF MILITARY NECESSITY AND COMMON SENSE, AND CONSISTENT WITH THE LAWS AND CUSTOMS OF WAR, HAS A RIGHT TO DETAIN ENEMY COMBATANTS WHO COULD REJOIN THE FIGHT IF PROVIDED THE OPPORTUNITY. THE UNITED STATES TREATS ALL ENEMY COMBATANTS HUMANELY AND, IN A MANNER CONSISTENT WITH THE PRINCIPLES OF THE GENEVA CONVENTIONS OF 1949.

THERE IS NO LAW REQUIRING A DETAINING POWER TO PROSECUTE ENEMY COMBATANTS OR TO RELEASE THEM PRIOR TO THE END OF HOSTILITIES. THE AUTHORITY TO DETAIN ENEMY COMBATANTS EXISTS IN LAW INDEPENDENT OF THE JUDICIAL OR CRIMINAL JUSTICE SYSTEM. WHILE THE UNITED STATES GOVERNMENT AND ITS COALITION PARTNERS ARE DOING EVERYTHING THEY CAN TO DETERMINE WHETHER PARTICULAR COMBATANTS SHOULD BE TRIED FOR CRIMES IN ACCORDANCE WITH INTERNATIONAL NORMS, THE DECISION WHETHER, OR WHEN, TO PROSECUTE A COMBATANT HAS NO IMPACT ON THE UNDERLYING AUTHORITY TO DETAIN THEM DURING THE ARMED CONFLICT.

LIKewise, UNDER THE LAWS AND CUSTOMS OF WAR, CAPTURED ENEMY

Current Class: CONFIDENTIAL

Page: 2

Current Class: CONFIDENTIAL
Current Handling: NODIS
Document Number: 2002STATE204847

Channel: n/a

COMBATANTS HAVE NO RIGHT OF ACCESS TO COUNSEL OR THE COURTS
TO CHALLENGE THEIR DETENTION. IF AND WHEN A DETAINEE IS
CHARGED WITH A CRIME, HE WOULD HAVE THE RIGHT TO COUNSEL AND
CONFIDENTIAL

PAGE 04 STATE 204847 172207Z
FUNDAMENTAL PROCEDURAL SAFEGUARDS. TO DATE, NO DETAINEE AT
GUANTANAMO HAS BEEN CHARGED WITH ANY PARTICULAR CRIME.

WITH RESPECT TO ACCESS TO DETAINEES AT GUANTANAMO BAY,
REPRESENTATIVES OF THE INTERNATIONAL COMMITTEE FOR THE RED
CROSS INDIVIDUALLY AND PRIVATELY VISIT THE ENEMY COMBATANTS
ON A REGULAR BASIS. SOME DETAINEES HAVE ALSO MET WITH
GOVERNMENT OFFICIALS FROM THEIR COUNTRY OF NATIONALITY. THE
UNITED STATES MAINTAINS THAT ACCESS TO COUNSEL BY ENEMY
COMBATANTS, IN THE ABSENCE OF CRIMINAL CHARGES, WOULD
DIRECTLY INTERFERE WITH THE ONGOING EFFORTS OF THE UNITED
STATES AND ITS COALITION PARTNERS TO GATHER AND EVALUATE
INTELLIGENCE ABOUT THE ENEMY, ITS CAPABILITIES, AND ITS
PLANS. GAINING SUCH INTELLIGENCE IS CRITICAL TO THE WAR
EFFORT AND INSTRUMENTAL IN PREVENTING FURTHER ATTACKS
AGAINST THE UNITED STATES, THE NATO NATIONS AND OUR
COALITION PARTNERS. THIS IS OUR LEGAL POSITION IN JUDICIAL
PROCEEDINGS WHENEVER THE ISSUE IS RAISED.

DEPARTMENT OF STATE,
WASHINGTON, OCTOBER , 2002.
POWELL

CONFIDENTIAL

<< END OF DOCUMENT >>