

Current Class: CONFIDENTIAL
Current Handling: NODIS
Document Number: 2003STATE196182

UNCLASSIFIED

Page: 1
Channel: n/a

2133

<<<>>

RELEASED IN PART
B1, 1.4(D)

ORIGIN NODS-00

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

196182

SOURCE: DISKETTE.028797

DRAFTED BY: S/WCI:RMILLER -- 07/08/03 (202) 647-5093

APPROVED BY: S/WCI:PPROSPER

DOD/OGC:PCOBB DOD/SOLIC:AFORTUNE DOJ:JMCATAMNEY CIA:LVOGT

L/PM:JDOROSIN P:BBRINK D:DPITTMAN NEA/ARP:DJONES AF:DRAAD

S/CT:SMOLNAR S/ES-O:UZEYA

DESIRED DISTRIBUTION:

S/WCI, L, P, S/CT, NEA/ARP, EAP/ANP, SA/PAB

-----80F8B3 072228Z /38

O 072224Z JUL 03 ZFF4

FM SECSTATE WASHDC



B1

DECAPTIONED

C O N F I D E N T I A L STATE 196182

NODIS

E.O. 12958: DECL: 07/07/13

TAGS: PTER, KAWC, PHUM, PINR,

SUBJECT: MILITARY COMMISSION DETERMINATIONS

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

1. (U) THIS IS AN ACTION MESSAGE, SEE PARAGRAPHS 3 - 4.
2. (C) BACKGROUND. UNDER THE MILITARY ORDER OF NOVEMBER 13, 2001, DETENTION, TREATMENT AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM, THE PRESIDENT HAS RESERVED THE AUTHORITY TO DETERMINE WHO IS SUBJECT TO TRIAL BEFORE A MILITARY COMMISSION. THE PRESIDENT HAS DETERMINED THAT SIX ENEMY COMBATANTS CURRENTLY DETAINED BY THE UNITED STATES ARE SUBJECT TO THIS MILITARY ORDER. THE PRESIDENT MADE THIS DETERMINATION BECAUSE HE HAD REASON TO BELIEVE THAT THESE ENEMY COMBATANTS: 1) ARE OR WERE MEMBERS OF AL QAIDA; 2) ENGAGED IN, AIDED OR ABETTED, OR CONSPIRED TO COMMIT, ACTS OF INTERNATIONAL TERRORISM, OR ACTS IN PREPARATION THEREFOR, THAT HAVE CAUSED, THREATEN TO CAUSE, OR HAVE AS THEIR AIM TO CAUSE, INJURY TO OR ADVERSE EFFECTS ON THE UNITED STATES, ITS CITIZENS, NATIONAL SECURITY, FOREIGN POLICY, OR ECONOMY;

Current Class: CONFIDENTIAL

Page: 1

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: SHARON E AHMAD
DATE/CASE ID: 15 MAR 2005 200303827

UNCLASSIFIED

OR 3) KNOWINGLY HARBORED ONE OR MORE INDIVIDUALS DESCRIBED ABOVE; AND THE PRESIDENT DETERMINED THAT IT IS IN THE INTEREST OF THE UNITED STATES THAT SUCH INDIVIDUAL BE SUBJECT TO THE PRESIDENT'S ORDER. THE ACTUAL DECISION AS TO WHETHER ALL OR SOME OF THE INDIVIDUALS WILL HAVE CHARGES REFERRED TO A MILITARY COMMISSION WILL BE MADE BY THE APPOINTING AUTHORITY, DEPSEC WOLFOWITZ. END BACKGROUND.

3. (C) POST IS AUTHORIZED TO INFORM THE GOVERNMENTS OF [REDACTED] THAT ONE OR MORE OF THEIR NATIONALS, CURRENTLY IN U.S. CONTROL AT THE U.S. NAVAL BASE, GUANTANAMO BAY, CUBA HAS BEEN DESIGNATED FOR TRIAL BY MILITARY COMMISSION. [REDACTED]

[REDACTED] POST MAY DRAW UPON THE FOLLOWING POINTS.

4. (SBU) TALKING POINTS:

-- THE PRESIDENT DETERMINED THAT SIX INDIVIDUALS, CURRENTLY DETAINED BY THE UNITED STATES AT GUANTANAMO BAY, CUBA, ARE SUBJECT TO HIS MILITARY ORDER OF NOVEMBER 13, 2001, DETENTION, TREATMENT AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM. THE PRESIDENT MADE THIS DETERMINATION BECAUSE HE HAD REASON TO BELIEVE THESE DETAINEES WERE A MEMBER OF AL QAIDA OR WAS OTHERWISE INVOLVED IN TERRORISM DIRECTED AGAINST THE UNITED STATES.

-- THIS DETERMINATION IS SIMILAR TO THE CONCEPT OF JURISDICTION. IT IS NOT A DECISION THAT ONE OF THESE DETAINEES WILL NECESSARILY BE CHARGED OR STAND TRIAL BEFORE A MILITARY COMMISSION. THE PRESIDENT'S DECISION MEANS THAT IF TRIED, THEY WILL BE TRIED BEFORE A MILITARY COMMISSION.

-- THE ACTUAL DECISION WHETHER ONE OF THESE DETAINEES WILL HAVE CHARGES REFERRED TO A MILITARY COMMISSION WILL BE MADE BY THE APPOINTING AUTHORITY AT A LATER DATE. THE DEPUTY SECRETARY OF DEFENSE IS SERVING AS THE APPOINTING AUTHORITY.

-- SINCE NO CHARGES HAVE BEEN APPROVED AGAINST THESE DETAINEES AT THIS TIME, THEIR NAMES WILL NOT BE CONFIRMED OR RELEASED BY THE UNITED STATES GOVERNMENT IN ASSOCIATION WITH THE PRESIDENT'S DETERMINATION.

-- OFFENSES THAT MAY BE CHARGED INCLUDE THOSE LISTED IN THE CRIMES AND ELEMENTS FOR TRIALS BY MILITARY COMMISSION, DEPARTMENT OF DEFENSE MILITARY COMMISSION INSTRUCTION NO. 2. THE OFFENSES MAY INCLUDE: ATTACKING CIVILIANS, TAKING HOSTAGES, TORTURE, TERRORISM AND MURDER BY AN UNPRIVILEGED

BELLIGERENT.

-- MILITARY COMMISSIONS HAVE HISTORICALLY BEEN USED TO TRY VIOLATIONS OF THE LAW OF ARMED CONFLICT AND RELATED OFFENSES.

-- THE DEPARTMENT OF DEFENSE IS PREPARED TO CONDUCT FULL AND FAIR TRIALS IF AND WHEN THE APPOINTING AUTHORITY APPROVES CHARGES ON AN INDIVIDUAL SUBJECT TO THE PRESIDENT'S MILITARY ORDER.

-- THE PRESIDENT'S DETERMINATION IS AKIN TO PROVIDING JURISDICTION OVER THE PERSON. MORE SIMPLY PUT, IT IS A DETERMINATION THAT IF A DESIGNATED ENEMY COMBATANT IS TRIED, HE WILL BE TRIED BY MILITARY COMMISSION; IT IS NOT A DECISION TO TRY HIM.

-- WE WILL NORMALLY RELEASE THE NAMES AND NATIONALITIES OF ENEMY COMBATANTS WHEN CHARGES ARE APPROVED OR WHEN A DETAINEE HAS BEEN ASSIGNED COUNSEL.

-- UNDER THE PRESIDENT'S MILITARY ORDER OF NOV. 13, 2001 AND DOD MILITARY COMMISSION ORDER NO. 1 FROM MARCH 21, 2002, THE PRESIDENT DETERMINES AN ENEMY COMBATANT IS SUBJECT TO HIS MILITARY ORDER AND THE APPOINTING AUTHORITY DECIDES WHICH CASE(S) TO REFER TO TRIAL.

-- THE PRESIDENT'S MILITARY ORDER LAID THE GROUNDWORK AND PROVIDED THE FLEXIBILITY FOR DOD MILITARY COMMISSION ORDER NO. 1, AND SUBSEQUENT MILITARY COMMISSION INSTRUCTIONS, TO PROVIDE FOR A FULL AND FAIR TRIAL WHILE PROTECTING NATIONAL SECURITY.

-- THE DETERMINATION THAT A DETAINEE IS SUBJECT TO THE PRESIDENT'S ORDER DOES NOT CHANGE HIS STATUS AS AN ENEMY COMBATANT. UNDER MILITARY COMMISSION ORDER NO. 1, AN ACCUSED IS GUARANTEED A DEFENSE COUNSEL SUFFICIENTLY IN ADVANCE OF TRIAL TO PREPARE A DEFENSE. THERE WOULD BE NO REASON TO PROVIDE COUNSEL UNLESS A CRIMINAL PROCESS WERE INITIATED.

-- THIS IS A MULTI-STEP PROCESS. THE PRESIDENT'S DESIGNATION THAT A DETAINEE IS SUBJECT TO HIS ORDER DOES NOT MEAN THAT ANY OF THEM WILL FACE A COMMISSION. THE APPOINTING AUTHORITY MAKES THE DECISION TO REFER ALL, SOME, OR NONE OF THE CASES TO A MILITARY COMMISSION. IT WOULD BE INAPPROPRIATE TO SPECULATE ON A TIMETABLE FOR MILITARY COMMISSIONS GIVEN THE MANY VARIABLES THAT FACTOR INTO THIS.

Current Class: CONFIDENTIAL

Page: 3

UNCLASSIFIED

Current Class: CONFIDENTIAL
Current Handling: NODIS
Document Number: 2003STATE196182

Page: 4

Channel: n/a

-- ITS POSSIBLE THAT MORE ENEMY COMBATANTS WILL BE MADE SUBJECT TO THE PRESIDENT'S ORDER, BUT IT IS NOT APPROPRIATE TO SPECULATE ON ANY FUTURE DETERMINATIONS AT THIS TIME.

-- THERE IS NO SPECIFIC NUMBER OF COMMISSIONS THAT MUST BE HELD. THE APPOINTING AUTHORITY WILL DETERMINE IF A CASE SHOULD BE REFERRED TO A MILITARY COMMISSION FOR TRIAL AND INDIVIDUALS WILL BE CHARGED (IF APPROPRIATE) ON A CASE-BY-CASE BASIS.

-- THE APPOINTING AUTHORITY WILL CONSIDER ALL RELEVANT, APPROPRIATE INFORMATION AVAILABLE INCLUDING THE CHARGE SHEET AND THE ADVICE OF THE LEGAL ADVISOR TO THE APPOINTING AUTHORITY.

-- THE PRESIDENT'S DETERMINATION ONLY INDICATES THAT A DETAINEE MAY BE TRIED BY MILITARY COMMISSION. THE PRESIDENT'S DETERMINATION AND THE APPOINTING AUTHORITY'S REFERRAL MERELY DIRECT THAT AN INDIVIDUAL RECEIVE A FULL AND FAIR HEARING AND DO NOT IMPLY THE GUILT OF THE ACCUSED. THE COMMISSION MEMBERS WILL PRESUME AN ACCUSED IS INNOCENT AND WILL ONLY FIND AN ACCUSED GUILTY IF THE PROSECUTION PROVES GUILT BEYOND A REASONABLE DOUBT. COMMISSION MEMBERS TAKE THEIR OATHS SERIOUSLY, AND THEY WILL PERFORM THEIR ASSIGNED TASKS IN MILITARY COMMISSIONS WITH THE DISCIPLINE AND SOBER SENSE OF DUTY THAT HAS BECOME THE HALLMARK OF UNITED STATES MILITARY OFFICERS.
POWELL

NNNN

Current Class: CONFIDENTIAL

Page: 4

UNCLASSIFIED

DOS 002972