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PERIODIC REVIEW BOARD
KHALID AHMED QASIM / ISN 242
FEBRUARY 4, 2015

OPENING STATEMENT OF
PERSONAL REPRESENTATIVE

Good morning members of the board. We are the Personal Representatives for Khalid Ahmed Qasim and joined with us here today is Khalid's Private Counsel, Mr. Clive Stafford Smith. This is Khalid's first PRB since his arrival to Guantanamo in May 2002. Today's PRB is in many ways a glimmer of hope for Khalid, who has expressed his detention as nearly 13-years of being lost within a deep dark hole.

Coming from a small town within an already austere and far removed country in the world and possessing little to no money or an appreciation for what he could offer, he set off to be and do something greater than himself. After hearing of the injustices being levied on Muslims in the late summer- fall of 1999 in Pakistan, Khalid traveled unaware that his influential abilities would be thwarted by the political environment to which he was ill-prepared. With his hopes abated he was informed about the persistent matters still emanating from within Afghanistan and once again traveled to help fellow Muslims that needed assistance in a land ravaged by war.

After arriving and settling in Afghanistan, Khalid worked to provide assistance to people in need. But this peaceful life would be shaken in the wake of the U.S.S. Cole attack and worse, the assassination of an influential Afghan military and political leader, Ahmad Shah Massoud. It was this latter event which caused Khalid to turn himself in, confident that he would be protected and released as he had no involvement with this attack in which the Afghan government sought anyone of Arab descent. Rather than being released as had been communicated by Afghan authorities, he was harshly interrogated and ultimately turned over to Americans and shipped to Guantanamo, where he has spent the last 4,662 days in detention. The dossier lacks any real substance or support to classify Khalid as a continuing and significant threat to the security of the United States.

Since Khalid's arrival to Guantanamo he has been driven by teaching himself numerous subjects including English and Spanish. He has broadened his cultural sensibilities by

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sketching, singing and writing poetry. Khalid is a peaceful man who wants nothing more than the most basic of human needs - his freedom.

Khalid has spent most of his adult life here in Guantanamo. He is not the young man he was when he arrived in 2002, he has matured and grown and looks forward to resettling in a country that is free of turmoil and political unrest. He knows he cannot go home but has many dreams and aspirations for his new life. With the assistance of Reprieve, to which Mr. Smith will discuss in greater detail, we are confident that Khalid will thrive and improve himself in helping others despite being deprived of years which cannot be replaced.

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Opening Statement of Counsel, Clive Stafford Smith, on behalf of Khaled Qasim (ISN 242)

It is my privilege both to represent Khalid Qassim today, and to appear before this Board. I am the director of the London based charity *Reprieve*. I am a dual citizen of both the U.S. and the U.K. I was born in Cambridge, in the U.K., and moved to the U.S. in 1978 where I was a Morehead Scholar at the University of North Carolina. I then studied law at Columbia Law School, where I graduated in 1984, as a Harlan Fiske Stone academic scholar for each of my three years.

I am a member of the Bars of the U.S. Supreme Court, of various other federal courts, and of the States of Louisiana and Mississippi. I have spent my entire career, now 31 years, working for charity. I spent nine years with the *Southern Center for Human Rights* in Atlanta; I then founded the *Louisiana Capital Assistance Center* in New Orleans, where I spent eleven years trying capital cases for indigent clients; since 2004 I have been director of the charity *Reprieve* which, while based in London, now has a branch in the U.S. I have never accepted payment from anyone I have represented, since it is my view that those of us who are privileged – as I certainly am – owe a duty to those who are less fortunate. All our funds are raised through charitable means.

I have been fortunate enough to receive a number of awards for this work, no doubt many more than I deserve, including the Gandhi Peace Prize and an OBE bestowed by Her Majesty the Queen for services to humanity. I would rather not belabor the point, and will include a *curriculum vitae* as *Attachment B*.

Since 2002, I have been representing detainees in Guantánamo Bay. I do this because I firmly agree with President Obama that Guantánamo has not helped our image internationally, and the sooner we revert to the proud traditions of Article III courts and full military courts martial, the better it will be for everyone. We must learn from this and put it firmly behind us.

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Over all, through *Reprieve*, I have been a part of the representation of some 85 detainees, which reflects rather more than ten percent of the whole population of the prison, and therefore provides a fairly good cross-section of the detainees. Of these, some 74 have been released from the base. We have tried to keep up with our clients after release, to help them back into society. In the early days, this was somewhat *ad hoc*, but since 2009 we have received a grant from the United Nations to establish a project that we call *Life After Guantánamo*. We have, I am glad to say, had extraordinary good fortune both in helping detainees settle in countries all around the world, and in reintegrating with a minimum of fuss in back into society. A little later, you will hear from Katie Taylor, one of our staff members, about what we have done for Khalid, and what we plan for him in the future.

First, let us discuss the historical allegations against Khalid. It is my firm belief that much of what is said about him is not based in truth. I cannot address the details here, as many of the facts are classified. However, I am familiar with all the informants involved in this case, as they have appeared in cases where I have been through complete discovery in federal habeas corpus petitions in Washington D.C. on behalf of other clients. Referring only to unclassified facts here, the Board should be aware that one particularly notorious informant was shown to have told stories about some 200 of the detainees. One enterprising military officer, who was not even a lawyer, determined that while this informant said that he had seen more than a dozen named Guantánamo detainees at al Farouq training camp, not a single one had even been in the country at the time. Indeed, it is public knowledge he was found by a federal judge to be inherently untrustworthy.

For this reason, I have asked that classified dossiers concerning a number of "informants" against Mr. Qasim should be transferred from the Secure Habeas Facility near Washington DC to you (the Board) for your consideration. These involve the various people who have at one time or another said that Mr. Qasim was involved in this and that in Afghanistan (I obviously cannot go into details in this unclassified statement). These men are notorious as being the

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most unreliable informants in Guantánamo Bay, and have made similar, unfounded accusations against other people who I have represented. As a result, I have done a fairly thorough investigation into them and identified documents where they have been deemed shown to be unworthy of belief.

If these documents have been delivered to you, they will speak for themselves in terms of this information. If not, I need hardly remind you that all nine members of the U.S. Supreme Court have recognized the "elemental due process requirement" that nobody should be condemned bad "on the basis of information which he had no opportunity to deny or explain." *Skipper v. South Carolina*, 476 U.S. 1, 5 n.1 (1986); accord *id.* at 10 (Rehnquist & White, JJ., and Burger, C.J., concurring). In other words, it would not be legal to consider allegations where we are not permitted to refute them.

Be that as it may, this PRB process looks forward more than it looks backwards, and so let me turn to who Khalid Qassim is today.

I took his case on rather more than a year ago because one of my other clients requested it and then Khalid wrote to the judge asking whether I would help him – a copy of the letter he wrote is attached as *Attachment A*.

First, let me address Khalid's disciplinary record. I have, it must be said, represented a significant percentage of those who the Guantánamo administration might reasonably characterize as the non-compliant detainees. This has not taken place through any concerted plan on my part, but because I have often taken on cases where one of my clients has asked me to, and very often the non-compliant detainees have been in the same block in the prison.

I have had more compliant than non-compliant clients, but there are two observations that I would make. One, that compliance with the rules appears to have little relationship to whether the detainee is affiliated with terrorism. Only one detainee in my experience has been oppositional because of an extremist ideology. Most of those who go on a long-term hunger strike are

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actually those most focused on justice – either because they are still in Guantánamo several years after being cleared for transfer, or because they have not had a meaningful chance (perhaps until now) of putting their case for clearance.

The second issue is that non-compliance appears to have little or no relationship to the detainee's chances of rehabilitation. Let me give a few examples from my own experience. Consider Ahmed Errachidi, ISN 590: he was a Moroccan client of mine who was released in April 2007. He had lived illegally in the UK for 16 years before his incarceration in Guantánamo. The allegations against him were similar to those against Khalid here – for example, he was alleged to have been not just in the al Farouq training camp, but a leader there (I cannot say here, but experience would suggest that it was based on the same informant). The assertion was false: we were able to prove that Ahmed had been working as a chef in London at the time.

His disciplinary record was pretty deplorable, worse than Khalid's. He had many incidents in the much shorter time he was held in Guantánamo. He was nicknamed "The General" because it was the authorities' view that he was inciting others to dissent, including to several hunger strikes. Part of his perceived opposition to the authorities was based on his fluency in English, which placed him in the position of an interlocutor with the military. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Despite this, he was cleared in 2006, and then released. We followed up closely with him – I personally visited him on his release in Tangiers. We helped with his speedy release from Moroccan custody, and then assisted him [REDACTED] with setting up his own restaurant. He returned to his wife and now, eight years later, is doing

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well both with his family and his business. He has had no trouble, and caused none.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Shaker Aamer (ISN 239) is another client worth mentioning, if only because his disciplinary record is perhaps the worst of all current detainees. He has had many incidents during his time in Guantánamo Bay, [REDACTED]
[REDACTED] He, though, was cleared for transfer in 2007, and has therefore spent more than half of his tenure in Guantánamo after clearance. This is a source of immense frustration to him, and is the main reason he is non-compliant, as it is with others (and even to those who are not cleared, who see that half of the remaining prisoners are cleared, and yet remain here). Again, despite long being cleared, he was thrown into the role of spokesman in Guantánamo because he is a British resident and speaks perfect English. However, the fact that he was long since cleared, and cleared again in 2009, shows that his behavior in prison is not expected to reflect his behavior when released.

Indeed, I have worked closely with Shaker to prepare him for release and I know this assessment to be accurate. He desires nothing more than to return to his wife and four children in London and I have no doubt that when he does he will reintegrate well, with our close monitoring and assistance.

And so it goes on. Emad Hassan (ISN 680) is another Yemeni client who is a long-term hunger striker, who does not have a good disciplinary record. He has again long been cleared for transfer, and once again his non-compliance has been a fruit of his frustration rather than anything else. Again, I suspect he will be released in the near future, and we will work with him to ensure that he does well.

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I have spent some considerable time on this point because it is important. However, I am convinced from my extensive experience both with Khalid and with many other detainees that he will adjust well to release.

There are various factors that lead me to this conclusion. First, it is my assessment that Khalid is not, and never was, interested in any form of extremism. I have never got the slightest indication from him that he was.

Second, he is an intelligent young man. I was struck by this when I initially received his letter to the judge asking for counsel. As you will see (*Attachment A*) he wrote in Arabic and then in near-perfect English, in copperplate script that is far better than my English handwriting will ever be. I have shown his letter to my six year old son, Wilfred, to encourage him to emulate Khalid's handwriting.

Khalid has taught himself English while in US custody. That is both an illustration of his hunger for learning, and his willingness to make the most of a bad situation. It is also perhaps a reason why his record of non-compliance got worse as his time went on, since his increasing fluency in English made him an interlocutor for other prisoners.

When I meet with Khalid, we have interesting discussions about the state or the world. He has a very inquiring and open mind. His main requests of me are less legal than for more materials that will help him to learn. For example, we provided him with a complete dictionary of English pronunciations, in rather tiny print, so that he could improve his diction.

Since the possibility that he might be released has come up, I have spoken with him about the alternatives. He would like to go home to Yemen, because his family is there, but he is equally open to other countries. He and I have discussed countries in South America, since Reprieve has devoted substantial resources trying to help to develop offers from different countries there. While there are obviously no promises, Khalid has already begun to

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learn Spanish. He feels that it cannot hurt – as he said to me, in terms of what is spoken around the world as a second language, English is number one and Spanish number two. Learning both will help him with his future, no matter where that may be.

Khalid continues to write to me in his beautiful English script, and I have watched over the past months as his grasp of the language has steadily improved.

You will hear later from Bara'a Shiban, who is a Reprieve fellow in Yemen and – I can say this, even if he cannot – a brilliant one. Bara'a can speak at greater length, but he has been our main point of contact with Khalid's family. Three important facts come out of this: one, that Khalid has always had a reputation as a shy and bookish kind of person, who wants nothing better than to study. Two, that the allegations that Khalid's brother Yasser was involved in the USS Cole incident are extremely questionable – he was held by the notorious Yemeni intelligence branch, and was never charged despite five years' detention. Yasser has anyway been a model citizen since his release, building up his own business. Three, Khalid's family have the means and the intention to help set him up in business, and facilitate his marriage, whether he should return to Yemen or be sent to another country.

You will also hear from Katie Taylor, who works with our *Life After Guantánamo* project. This is designed to help detainees reintegrate into society. It is based on the premise that it is good for the detainee, and good for America, to ensure that people get on with a constructive life. We have an extraordinary record in helping detainees, including those who had the most difficult time in Guantánamo. In this respect, regardless of where Khalid goes, we will expect to have one or more staff on the ground to meet him upon his arrival, and help him with whatever he may need to get on with his life. Our contacts with detainees continue for months and years after their release, and we are still working with people released eight years ago.

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I know what Khalid wants and needs when he leaves here. First, he needs a brief time to decompress, and basically do nothing, in order to come to grips with his liberty. Then, he needs to continue his education, which lapsed when he was all too young. I know he also means to make up for lost time by marrying, and starting a family. He knows that this is a weighty commitment, and he is fully aware of his duty to look after the family when he has it.

While I do not pretend that Reprieve is in the marriage business, we will be on hand to help him with each of his other needs. I look forward to working with him for the foreseeable future to ensure that he is able to make the most of his life.

Thank you for your time and your patience, and I will naturally be willing to respond as best I can to any questions you may have as the hearing proceeds.

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