

PERIODIC REVIEW BOARD STATEMENT
BY ATTORNEY MARK DENBEAUX ON BEHALF OF
ZAYN AL-ABIDIN MUHAMMAD HUSAYN (ISN 10016)

Full Review, 7/14/2021

Zayn Al-Abidin Muhammad Husayn (ISN 10016), better known as Abu Zubaydah respectfully submits the following Statement in support of his request that this Periodic Review Board approve his release from the U.S. Naval Station at Guantanamo Bay Prison. The attached statement is the same as submitted February 4, 2020. The facts and circumstances of his detention have not changed, except he has now served another year in custody without charge, had another year for his health to deteriorate, and had another year to reflect on the life he might lead should he be released.

Abu Zubaydah has been detained by the United States for nineteen years without being charged. He has been isolated and subject to brutal torture, on the basis of allegations regarding his involvement with Al Qaida that have been almost entirely discredited, including by the United States Senate Select Committee on Intelligence. More recently, the United Nations Security Council has determined that he is not affiliated with Al Qaida, and is unlikely to affiliate with them in the future.

Despite this, this Board has relied on discredited and overblown allegations in making determinations about Abu Zubaydah's potential threat to the United States in the past and declining to grant him release. The Board should consider Abu Zubaydah as he is today, on the basis of the best evidence regarding his activities. Once it does, Abu Zubaydah, believes that this Board will find that he meets the criteria for release.

Like so many of us, this year of isolation and uncertainty has reinforced the value of the important things in life to Abu Zubaydah, chiefly family and faith. He has plenty of resources and plans for when he is released. He has become an accomplished artist and he has plans to write and start a family. The European Court of Human Rights has over 200,000 Euros waiting to be distributed that will allow him to begin this life legitimately. He therefore respectfully requests that this Board approve his release, allow him to live a peaceful life in another country.

The decision by the Office of Legal Counsel to approve the use of Enhanced Interrogation Techniques (EITs) on Abu Zubaydah was allegedly based on intelligence received from the CIA.¹ One memorandum from Deputy Assistant U.S. Attorney General in the Office of Legal Counsel (OLC), John Yoo, to the Acting General Counsel for the CIA, John A. Rizzo, included a disclaimer concerning the veracity of the statements provided by the CIA:

"Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts outlined here, and this opinion is limited to these facts. If the facts were to change, this advice would not necessarily apply."²

The "facts" provided by the CIA were false and known to be false when written.

Before addressing all the false allegations and the facts that prove their falsity, it is important to make clear the extent to which the CIA has a conflict when it comes to considering the release of Abu Zubaydah. Before the torture began the CIA, one of the agencies represented on this panel, had asked for and received an assurance that Abu Zubaydah must be held incommunicado for the rest of his life. And yet the representative of the CIA sits on the very panel charged with determining whether and when he might be released. Thus, the CIA has the most egregious conflict that could be imagined, and its representative must be recused from

¹ In July of 2002, Yoo contacted John Rizzo at the CIA to personally tell him of the approval for six EITs: attention grasp, walling, facial hold, facial slap, cramped confinement and wall standing. *The Report of the Constitution Project's Task Force on Detainee Treatment*, The Constitution Project 144 (2013) (citing DOJ Office of Prof'l Resp. Report, *Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Intelligence Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists* 53 (July 29, 2009), available at <http://cdm266901.cdmhost.com/cdm/ref/collection/p266901coll4/id/2317>).

Yoo was waiting on further CIA information to address other EITs. *Id.*

² Memorandum from Jay S. Bybee to John Rizzo, *Interrogation of Al Qaeda Operative* (Aug. 1, 2002), available at [dspace.wrlc.org/doc/bitstream/2041/70967/00355_020801_004display.pdf](https://www.dspace.wrlc.org/doc/bitstream/2041/70967/00355_020801_004display.pdf). Note that this memorandum included ten EITs, three more than the six EITs discussed between Yoo and Rizzo. *Id.*; *The Report of the Constitution Project's Task Force on Detainee Treatment*, supra note [], at 144. These ten EITs include attention grasp, walling, facial hold, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in a confinement box and the waterboard. *Memorandum from Jay S. Bybee to John Rizzo*, supra note [].

participating in any decision pertaining to Abu Zubaydah. I ask that the CIA or those representing the CIA be recused.

After all the CIA has a great deal of reason to want Abu Zubaydah to be held incommunicado for the rest of his life. That is because the fabrication of the facts used to justify the creation of the torture program would no longer be held incommunicado.

Before addressing the known falsity of the facts presented by the CIA, I should note that the treatment of Abu Zubaydah subsequent to his capture has soiled everyone who has been involved in his case.

The New York Times recently addressed the treatment of Abu Zubaydah in a major editorial which followed a front-page New York Times story about the details of the torture that was inflicted upon him. The editorial admonished all American citizens "Don't Look away" from the pictures of his treatment. The instruction "Don't Look Away" speaks to this panel not only because of how he was treated by why he is still being detained incommunicado.

Please "Don't Look Away" from the UN Security council's decision to unfreeze his assets and especially the report from the UN Reporter which thoroughly and precisely exposed the previous panel's reasoning for refusing to release Abu Zubaydah. The Security Council's report exposed the truth about the previous PRS decision. That decision and its rationale were a mockery of the PRS's own purpose, duty and its procedures

But please also, "Do Not Look Away" from the other entities that also found as the UN did. For instance, "Do Not Look Away" from the EU decision to unfreeze his assets, the two decisions of the European Court of Human Rights awarding Abu Zubaydah over 100,000 Euros against both Poland and Lithuania because they permitted Abu Zubaydah to be tortured there. And of course, the Senate Select Committee on Intelligence's Executive Report which found that

the CIA, and others, allegations against him were false. And finally, please "Don't Look Away" from the CIA's own admission, after the SSCI report was completed, but before it was published, that Abu Zubaydah was not a member of Al Qaida.

If the CIA had described Abu Zubaydah accurately, he would have been released long ago. Please "Do Not Look Away" from the extent of the false facts that were alleged against Abu Zubaydah.

What follows is a list of the "facts" that the CIA presented to justify its request for permission to torture and then the truth refuting the knowing falsity of each of the facts will be addressed thereafter. It can not be denied that if the following false claims had never been made, Abu Zubaydah would have been released decades ago. The claims are significant because they are so inflammatory and because these inflammatory facts are all false based on the governments own documents and admissions. The basis upon which each of the corrections of the false claims is consistently from government documents.

1. CIA's false and inflammatory allegations against Abu Zubaydah include:

1. Abu Zubaydah was the "third or fourth man in al-Qa'ida" and the "senior Usama Bin Laden lieutenant"; Abu Zubaydah was author of "al Qa'ida's manual on resistance techniques" and lecturer on the topic; Abu Zubaydah was "involved in every major al-Qa'ida terrorist operation";

But these and all other allegations were false as established by multiple sources.

By way of example consider the claim of his membership and rank in Al Qaida.

Prior to the capture of Abu Zubaydah, the CIA acquired intelligence based on single-source reporting that he was "the third or fourth" highest ranking al-Qa'ida leader."³ That information was retracted in July 2002, prior to using EIT's on Abu Zubaydah.⁴ Other CIA databases indicated the Abu Zubaydah was not a senior member of al-Qa'ida.⁵ After Abu Zubaydah was subjected to EITs, the chief of the base wrote, "I do not believe that Abu Zubaydah was as wired with al-Qa'ida as we believed him to be prior to his capture."⁶ An August 2006 CIA assessment stated that the reporting, "miscast Abu Zubaydah as a 'senior al-Qa'ida lieutenant.'" The assessment further stated "al-Qa'ida rejected Abu Zubaydah's request in 1993 to join the group."

FBI interrogator Ali Soufan wrote, in reaction to the psychological assessment listing Abu Zubaydah as a high-ranking al Qaeda operative, "To this day, I don't understand how anyone could write such a profile. Not only did we know this to be false before we captured Abu Zubaydah, but it was patently false from information obtained after we captured him."⁷

The CIA Office of the Inspector General commented on the lack of quality CIA information prior to interrogation:

The Agency lacked adequate linguists or subject matter experts and had very little hard knowledge of what particular Al-Qa'ida leaders – who later became detainees – knew. This lack of knowledge led analysts to speculate about what a detainee 'should know,' [versus] information the analyst could objectively demonstrate the detainee did know. [REDACTED] When a detainee did not

³ SIC Report at 465; Fax from [Redacted to John Yoo, *Draft Psychological Assessment of Zain al-'Abidin al-Abideen Muhammad Hassan, a.k.a. Abu Zubaydah* (July 24, 2002), available at <https://www.aclu.org/torturefoia/released/082409/olcremand/2004olc4.pdf>.

⁴ Id.

⁵ Id.

⁶ Id. at 466; See also, Ali Soufan, *Black Banners*, 411 ("To people who knew what they were talking about, the insistence that Abu Zubaydah was the number three or four in al-Qaeda was flatly ridiculous.")

⁷ ALI SOUFAN, *BLACK BANNERS* 428 (2011).

respond to a question posed to him, the assumption at Headquarters was that the detainee was holding back and knew more; consequently Headquarters recommended resumption of EITs.⁸

"Soufan said that he saw this play out during his interrogations of Abu Zubaydah: 'Abu Zubaydah is not an al-Qaeda member. We knew that at the time, but the moment we arrested Abu Zubaydah, the President was saying he's the number three guy in al-Qaeda.' According to Soufan, this contradicted both the intelligence about Abu Zubaydah from the investigation of the millennium plot, and documents captured with Abu Zubaydah. But CIA analysts 'convinced themselves he's number three' and that '[if] he's not admitting he's number three, then he's not cooperating. Well, 83 sessions [of waterboarding] and he admitted he's number three.'" Abu Zubaydah stated the following after the torture in his Guantanamo Bay combatant status review tribunal: "I say, 'yes, I was partner of BIN LADEN. I'm his number three in al Qaida and I'm his partner of RESSAM.' I say okay but leave me. So, they write but they want what's after, more information about more operations, so I can't. They keep torturing me.'"⁹ Abu Zubaydah said that later, "they told me sorry we discover that you are not number three, not a partner even not a fighter."¹⁰

This document does not permeate the full presentation of the government's concession that they are false. And the falsity of the other allegations is established in the Senate Select Committee on Intelligence report.

But for these false facts Abu Zubaydah would not be detained, much less detained and held incommunicado for almost 20 years.

⁸ CIA, Office of the Inspector General, *Special Review, Counterterrorism Detention and Interrogation Activities* 83 (May 7, 2004), available at <https://www.aclu.org/human-rights-national-security/cia-office-inspector-generals-may-2004-counterterrorism-detention-and>.

⁹ Transcript of Combatant Status Review Tribunal Hearing for Abu Zubaydah, ISN #10016 (Mar. 27, 2007), available at http://www.defense.gov/news/transcript_isn10016.pdf.

¹⁰ Transcript of Combatant Status Review Tribunal Hearing for Abu Zubaydah, *supra* note [13].

The Department of Justice admonishment to the CIA:

"Our advice is based upon the following facts, which you have provided to us. We also understand that you do not have any facts in your possession contrary to the facts outlined here, and this opinion is limited to these facts. If the facts were to change, this advice would not necessarily apply."¹¹

The facts upon which he was tortured and detained were all wrong and that made all the difference. Truth requires that Abu Zubaydah be set free.

This document contains two Appendices. The first is information used as part of the UN's decision to "delist" Abu Zubaydah and unfreeze his assets. This was approved by the Security Council and makes clear why this Board should approve his release. The document is long and contains many reasons supporting his release.

While the truth of Abu Zubaydah is enough to set him free there are other reasons. The second is a New York Times editorial regarding the brutal torture he underwent from the CIA, as depicted in his own drawings.

¹¹ Memorandum from Jay S. Bybee to John Rizzo, *Interrogation of Al Qaeda Operative* (Aug. 1, 2002), available at dspace.wrlc.org/doc/bitstream/2041/70967/00355_020801_004display.pdf. Note that this memorandum included ten EITs, three more than the six EITs discussed between Yoo and Rizzo. *Id.*; *The Report of the Constitution Project's Task Force on Detainee Treatment*, supra note [], at 144. These ten EITs include attention grasp, walling, facial hold, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, insects placed in a confinement box and the waterboard. *Memorandum from Jay S. Bybee to John Rizzo*, supra note [].

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PERIODIC REVIEW BOARD SUBSEQUENT HEARING #2, 15 JUL 2021
ZAYN AL-IBIDIN MUHAMMED HUSAYN, ISN 10016
PERSONAL REPRESENTATIVE STATEMENT

Good morning Ladies and Gentlemen of the Board. I am the Personal Representative for ISN 10016, Mr. Zayn al-Ibidin Muhammed Husayn. Mr. Husayn and I thank you for the opportunity to present his case for this hearing.

Undeterred by the dissapointing results of his last hearing Mr. Husayn continues to participate with hopes of gaining release from Guantanamo Bay. During or meetings he is courteous and respectful and as I have stated previosly Mr. Husayn is highly intelligent and humorous and is willing to discuss any topic.

I would like to reiterate from his past hearings that Mr. Husayn claims that he has never been a member of al-Qa'ida, despite multiple invitations including one from Usama Bin Laden.

As in his last hearing Mr. Husayn feels it is better to answer your questions directly than in prepared statements. We thank you for this opportunity and look forward to answering questions from the Board.

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