

DECLARATION OF RICHARD PANDIS, LCDR, USNR

I, Lieutenant Commander RICHARD PANDIS, U.S. Naval Reserve, declare as follows:

Background and Qualifications.

1. I am an investigator currently on a one-year assignment to the Office of the Chief Defense Counsel, Military Commissions. My assignment began on February 27, 2011. On or about March 4, 2011 the Chief Defense Counsel detailed me to provide investigative support to the defense of an Afghan detainee named Obaidullah, sometimes spelled Obaydullah, who is in U.S. custody at Guantanamo Bay, Cuba, and who has been assigned Internment Serial Number (ISN) 0762. All of my investigative work on this case has been conducted under the supervision and at the direction of the military defense counsel currently detailed to this case: Lieutenant Colonel Michael L. Acuff, USAR, JAGC; Major Derek A. Poteet, USMC; and Captain Jason D. Wright, USA, JAGC.

2. I have been authorized by these supervisory attorneys to provide this information for the limited purpose of disclosing newly discovered evidence that may assist in the habeas action, resulting from witness interviews in Afghanistan and in other countries. These supervisory attorneys have not authorized me to release any other information regarding our defense investigation, or to release information for any other purpose. I have an appropriate security clearance to work on this case. This declaration contains only unclassified information.

3. I have endeavored to investigate and to make myself thoroughly familiar with the facts of this case and the defense investigation. I am familiar with the unclassified, publicly released documents in the habeas case of Obaidullah, including the District Court's unclassified habeas opinion of October 19, 2010. I am also familiar with the unclassified, publicly released documents in the habeas case of Karim Bostan. If called upon to do so, I could and would competently testify to the facts stated in this declaration.

4. My prior investigation-related experience includes the following: I am currently assigned to Naval Criminal Investigative Service (NCIS) 2794. I am an Intelligence Officer (1835/IDWO). I have been assigned to NCIS since 2007. I have supported Counter Intelligence, Counter Terrorism and

Counter Narcotic operations with NCIS and other naval commands. I have supported operations in El Salvador, Korea, Kuwait, Bahrain, North Arabian Gulf and Afghanistan.

5. In my civilian capacity, I am a Special Agent (1811) with the Office of Personnel Management, Office of the Inspector General. I am a senior criminal investigator and hold a GS13/4 position. I have been employed in this position since 2005. My investigative duties include working complex fraud investigations with the Department of Justice and United States Attorney's Office. My investigations have successfully resulted in convictions on fraud cases in the Federal District Courts in California, Arizona, Nevada, Washington and Hawaii. My collateral duties include training new agents on evidence procedures, interviewing and crime scene management.

6. I have received numerous awards for working complex fraud investigations to include the Office of the Inspector General Investigator of the Year award on three occasions. In addition, I recently received the Department of Justice Distinguished Agent award in the Central District of California in 2011. Prior to working for OPM/OIG I had worked for both the Los Angeles, California Police Department and the Cobb County, Georgia Police Department from 1998 to 2003. I hold a Basic and Intermediate Police Officer Standards and Training (POST) credential in the state of Georgia, and a Basic POST certification in California from the Orange County Sheriff's Academy. I have a Master's Degree in Public Administration, University of La Verne; Bachelors in Criminal Justice, California State University Fullerton and an Associate's degree in Social and Behavioral Science, Citrus College California.

Status of the Military Commissions Defense.

7. In September 2008, members of the prosecution in the military commissions system filed charges against detainee Obaidullah for Material Support for Terrorism and Conspiracy. Soon after the charges were filed in 2008, the Chief Defense Counsel detailed military defense counsel to the case. In June 2011, the Convening Authority for military commissions dismissed Obaidullah's charges without prejudice. Despite the dismissal, our office has been told by the prosecution that this remains an active case, so the defense has continued to investigate and prepare.

8. In Spring and Summer 2011, as part of our independent defense investigation and under the supervision and guidance of military defense counsel, I interviewed most of the U.S. military personnel involved in 2002 in taking Obaidullah into custody.

9. In November and December 2011, I traveled to Afghanistan and other countries to conduct defense investigation. Members of this investigative trip included a Dari/Pashto/English translator assigned to support the defense of this case within the military commissions system, and one of the defense counsel detailed to Obaidullah's case, Maj Derek A. Poteet, USMC. Our team conducted interviews of family-member and non-family-member witnesses with personal knowledge of matters related to this case.

Obstacles to Investigation.

10. Among the many challenges to investigating a case such as this, cross-cultural communication is significant. For example, there is a strong cultural taboo against speaking about a woman being in labor and the process of childbirth, in Afghanistan and particularly in Pashtun tribal culture. For reasons described below, our investigation led us to ask about childbirth. I was told that Pashtun women may speak about such things among themselves, but that they would not speak about such things to males, and never to males outside the family. I came to understand that it is considered shameful for someone outside of one's family to have knowledge of such things. It was difficult to get any witnesses to discuss the subject of childbirth, even generally. Witnesses outside the family expressed embarrassment at questions about another man's child being born.

11. Afghan witnesses were also extremely reluctant to talk about who may have provided information leading to the raid on the Obaidullah compound because of concerns over potential feuds that could erupt between relatives of the people involved if accusations were made. Nevertheless, individuals who had lived in Obaidullah's village identified two males who were not originally from the same village but had lived there for a period, and who were rumored to have sold false information to Americans. It was stated that those two men later disappeared and it is not known whether they are alive.

Newly Discovered Evidence.

12. I am familiar with the prior defense investigative efforts in the military commissions case, although the prosecution has provided no discovery information to the defense. This is the first time to my knowledge that information has been obtained from witnesses with personal knowledge about the source of the dried blood in the car, the reason the car was in the compound, and the existence of a non-family-member eyewitness to landmines present on the compound during the Soviet war of the same type as some of those found in 2002 when Obaidullah was taken into custody. Previously this information and evidence was not reasonably available due to the extraordinary difficulties in conducting investigations in an overseas combat area and the cultural reluctance to discuss childbirth and other sensitive matters.

Whether Obaidullah was seen using a vehicle to ferry wounded individuals.

13. The District Court's habeas opinion of October 19, 2010 stated that an intelligence report indicates that Obaidullah was seen taking injured individuals from the scene of an allegedly premature IED explosion, and I sought to learn about this alleged contemporaneous visual identification of Obaidullah. I am familiar with an intelligence report relevant to this allegation, which I believe to be the primary report about this incident. I have also interviewed key U.S. personnel who would have been involved in making statements related to this allegation. I have read a redacted, unclassified and publicly-released version of a Report of Investigative Activity from the Karim Bostan habeas case (pages 94 and 95 of Document 222-3 in the Karim Bostan habeas case), which indicates that second document was authored by one person taking a statement from another U.S. person.

14. As part of my investigation, I sought to test the accuracy of the allegation that Obaidullah and Karim were "seen," or visually identified at the time by the person who made the original report of persons ferrying wounded individuals. A key U.S. witness with personal knowledge told me that he made the inference that Obaidullah may have been one of the people described in the earlier report after seeing the blood in the vehicle found at the compound. The document from the Karim Bostan habeas case refers to a previous incident but does not purport to be the original report of that incident. I have reviewed what I believe to be the original report of the allegation that persons were seen ferrying wounded individuals from an accidental IED explosion. I cannot divulge classified information in this unclassified context,

and I cannot describe the content of a classified report. I can state that my investigation has given me no reason to believe that Obaidullah or any other particular person was actually visually identified at the time of the report about injured persons being ferried in a vehicle. Instead, my investigation leads me to believe that the intelligence was unintentionally mischaracterized by individuals and documents describing it to the District Court.

Blood residue in the Toyota Corolla.

15. Publicly-released unclassified government documents discuss the alleged presence of dried blood residue in one of the two automobiles that was parked in the courtyard of Obaidullah's family compound on the night Obaidullah and two of his cousins were taken into custody. In light of this allegation and the alleged connection to the IED incident mentioned previously, I sought to learn the source of the alleged blood residue and whether this could have been some substance other than blood, or other than human blood. I sought to learn more about the ownership and lineage of the vehicles.

16. Afghan witnesses with personal knowledge stated during interviews that the car containing blood stains was a Toyota Corolla hatchback borrowed, only days before Obaidullah's arrest, for the express purpose of taking Obaidullah's wife to the hospital for the birth of their first child, a daughter.

17. According to family-member witnesses with personal knowledge, it is normal custom for an expectant father to move out of the home as his wife nears term in her pregnancy, and other females in the family move in to take care of the expectant mother. According to family-member witnesses with personal knowledge, Obaidullah had done so although he still lived in the family compound, and Obaidullah's wife began to experience labor on a night about two days before the U.S. military raid which resulted in Obaidullah's capture. Family members took Obaidullah's wife in the Toyota Corolla which had been borrowed for that purpose, and began the drive toward the hospital in the city of Khost, about six kilometers east. Obaidullah was not in the vehicle. According to family-member witnesses with personal knowledge, at this time in July 2002, militia checkpoints were prevalent on roads in this area. The family was required to stop at each checkpoint, wait for the cars in front of them to go through, and then explain their situation. Their progress driving Obaidullah's wife to the hospital was significantly

impeded by the many militia checkpoints along the road. Eventually, their trip was taking so long that they had to pull off to the side of the road because the infant was being born. According to family-member witnesses, Obaidullah's wife gave birth in the back of the Toyota Corolla hatchback, with the seat folded down, off the side of the road near the city of Khost, Afghanistan in July 2002. Family members stated that the blood stains and residue resulted from the child's birth inside the Toyota Corolla. According to a family-member witness with personal knowledge, after the daughter was born, the family members continued on to the hospital for an examination but the hospital did not keep birth or examination records at this time in 2002. According to family-member witnesses with personal knowledge, Obaidullah's daughter was born approximately two days before U.S. forces took Obaidullah into custody and seized the car. A non-family-member witness confirmed that Obaidullah's daughter was born shortly before Obaidullah was taken into custody.

18. In Afghanistan, I interviewed the owner of the other vehicle that was parked in the compound on the night Obaidullah was taken into custody, who stated that he never allowed others to drive his car, and that he would not have allowed Obaidullah's family to borrow his car. He stated that Obaidullah's family allowed him to park his car in their courtyard because he had no access to the road from his own house.

19. According to witnesses with personal knowledge, on the same night that Obaidullah was taken into custody, the U.S. forces seized the Toyota Corolla with blood stains from the courtyard. According to witnesses with personal knowledge, family members tried to recover the Toyota Corolla which had been borrowed to transport Obaidullah's wife, but they were unable even to learn the ultimate outcome or disposition of the car. According to witnesses with personal knowledge, the owner of the car contacted the family seeking reimbursement for the value of the car. According to witnesses with personal knowledge, the family tried to earn enough money to pay for the seized car for several years, and eventually had to sell off part of their farm in order to pay for the seized car.

20. According to U.S. personnel, the car containing blood stains was kept for several weeks at a nearby base, but the car was eventually given by the U.S. forces to the local Afghan militia forces which

had been working with them. I have found no indication that samples of the blood residue were preserved. Because the current location of the car is unknown, I have not been able to find a way to obtain any sample of the blood stains for scientific testing.

21. During my investigative trip in Afghanistan, family-member and non-family-member witnesses with personal knowledge stated that Obaidullah had never owned a car, and that they had never seen a Toyota Corolla parked in the compound before the birth of Obaidullah's daughter.

22. During my 2011 trip, I observed that white Toyota Corollas and white-and-yellow Toyota Corollas together are by far the most common type of car in Khost, Afghanistan. In fact, Afghan witnesses with personal knowledge told me, and I confirmed through informal personal observation, that these color Toyota Corollas appear to comprise fifty percent or greater of the vehicles in Khost province. In this region, taxis are most commonly identified by use of a white and/or white-and-yellow color scheme. Because of the common nature of Toyota Corollas such a taxi-like color scheme, it is not surprising that the vehicle seized from the compound with this color scheme would match a general description of a vehicle involved in another incident or report.

23. According to Afghan witnesses with personal knowledge, Obaidullah had very limited driving experience. Family members stated that Obaidullah's main driving experience was operating a tractor while farming. This evidence may make it less likely that Obaidullah would have been involved in any other incident involving him driving a car.

Other Allegations.

24. Publicly-released unclassified government documents allege an association between Obaidullah and Al Qaeda and/or Taliban forces. I sought to test this allegation during my investigation in Afghanistan. Family-member and non-family-member witnesses with personal knowledge stated that Obaidullah did not associate with Al Qaeda or Taliban members except for the few days he was forcibly conscripted to attend a Taliban training school. Witnesses with personal knowledge stated that Obaidullah fled from that school and hid from the Taliban after attending only a few days.

25. Family-member and non-family-member witnesses with personal knowledge stated that, given the size, layout and number of occupants of the family compound and adjoining compounds, the presence of Al Qaeda or Taliban fighters could not have gone unnoticed. The witnesses stated that no such fighters were present.

26. Afghan non-family-member witnesses with personal knowledge described the process by which the Taliban conscripted young men to train to fight Massood's forces. According to these witnesses, the Taliban leadership in the province stated how many men were needed, and then tribal leaders designated which villages were responsible for providing how many conscripts. Village elders would then designate which young men were to be conscripted. A wealthy family could pay another person to attend instead. Obaidullah's family was not wealthy, so Obaidullah was forced to go to training at the location of the Khost Mechanical School.

27. Family-member witnesses with personal knowledge stated that Obaidullah attended only a few days of training before fleeing it and hiding from the Taliban.

28. Afghan witnesses with personal knowledge stated that during the 1980s Soviet war a communist official named Ali Jan used the Obaidullah family compound as his residence and used the nearby high school as his garrison headquarters. Obaidullah and most of his family were refugees in Pakistan during this time. Afghan witnesses with personal knowledge stated that Ali Jan is often referred to as a commander but he was actually a sub-governor, or a communist political official with direct military authority over the area. One non-family-member Afghan witness I interviewed stated that he continued to live in the area during the Soviet war and stated that he was in the Obaidullah family compound on occasion when it was used by Ali Jan. This witness stated that he personally witnessed landmines and other munitions present in the compound during this time. I showed him a photograph, obtained during our independent defense investigation, which U.S. personnel had previously told us showed the landmines seized on the night Obaidullah was taken into custody. Without describing the photograph to him I asked if he recognized any of the items present. The witness positively identified one of the types of landmines from the photograph as being a type of landmine he recalls seeing in the

compound when Ali Jan lived there. This statement is consistent with statements that the landmines were left over from the Soviet war and had been buried by the family when they returned to their home after that war.

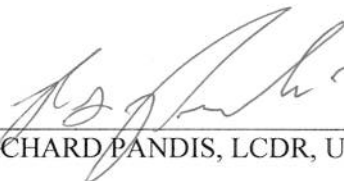
29. Publicly-released unclassified documents indicate that the landmines found on the night Obaidullah was captured were located about 30 meters from the compound. Based on my interviews of U.S. and Afghan witnesses with personal knowledge, and my review of unclassified overhead imagery, the straightline distance from the family compound to the location from which the landmines were recovered is about 140 meters, and the walking distance is approximately 160 meters.

30. U.S. witnesses with personal knowledge stated that, during the raid in which Obaidullah was taken into custody, the U.S. forces were looking for a person missing a finger, and that no one in or near the compound was found to be missing a finger.

31. Based on my interviews of U.S. and Afghan witnesses with personal knowledge, Obaidullah was subjected to sleep deprivation and was physically abused while at FOB Chapman. According to U.S. witnesses with personal knowledge, one servicemember was punished for having another servicemember photograph him as he struck Obaidullah in the head with a rifle, and the camera was destroyed by U.S. personnel.

32. Based on my interviews of Afghan witnesses with personal knowledge and my other investigative efforts, detainees at Bagram during this period in 2002, including Obaidullah, were subjected to extraordinarily coercive measures which cause me to question the reliability of resulting statements.

33. I declare under penalty of perjury pursuant to 28 U.S.C. §1746, and under the laws of the Commonwealth of Virginia, that the foregoing is true and correct and was executed this 8th day of February 2012.


RICHARD PANDIS, LCDR, USNR