



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

The Honorable Richard J. Durbin  
United States Senate  
Washington, DC 20510

The Honorable Patrick Leahy  
United States Senate  
Washington, DC 20510

Dear Senators Durbin and Leahy:

Thank you for your May 13, 2022, letter to Attorney General Garland, Secretary Austin and Secretary Blinken regarding the government's position on the use of evidence obtained by torture or by cruel, inhuman, or degrading treatment in the military commissions. The Departments of Justice, Defense, and State provide this consolidated response to your questions.

The government has committed not to seek admission of statements within the scope of 10 U.S.C. § 948r(a) at any stage of a military commission proceeding against any party. Most recently, on May 20, 2022, the government reiterated in federal court its ongoing commitment to this position stating, "[u]nder Section 948r(a), statements obtained by the use of torture, or by cruel, inhuman, or degrading treatment, are inadmissible regardless of whether the defendant or another person made the statement. That is the position of the United States and we have recently made clear that this bar applies at any stage of the proceedings, not just at trial." In re: Abd Al-Rahim Hussein Muhammed Al-Nashiri, No. 21-1208, Response to Letter under Federal R. App. P. 28j (Response) at 1. A copy of that Response is enclosed. In addition, on April 29, 2022, the military prosecution team in In re: Abd Al-Rahim Hussein Muhammed Al-Nashiri expressly acknowledged that, as to any statements obtained by torture, Section 948r(a)'s exclusionary rule "[c]learly applies to third parties." See Response to Rule 28j Letter, at 1 (quoting United States v Al-Nashiri, unofficial, unauthenticated transcript of hearing, p. 16367, dated Apr. 29, 2022).

The military commission has not yet resolved whether or how Section 948r(a) applies to derivative evidence, nor has it determined how doctrines such as attenuation and independent source apply in this context. These questions are the subject of pending litigation, and the government will articulate its position in future filings as appropriate.


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We are committed to fully complying with the Military Commissions Act of 2009 and will continue to pursue justice in the military commissions.

Thank you for your continued support.

Sincerely,

Peter S. Hyun  
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