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Petitioners Lakhdar Boumediene, Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudella, Saber Lahmar, and Mohamed Nechla respectfully traverse the Amended Factual Return (“Return”) submitted by the Government in response to their Petition for a Writ of Habeas Corpus.

In light of the nature of the Return, Petitioners’ Traverse is being filed in two parts. This Public Traverse, based entirely on unclassified information, sets forth Petitioners’ response to unclassified allegations that are common to all six Petitioners. Petitioners are also filing a separate Classified Traverse under seal, which responds to the Government’s remaining allegations and is incorporated by reference herein.

PRELIMINARY STATEMENT

In 2001, Petitioners were living peaceful lives in Bosnia and Herzegovina, an Eastern European ally of the United States that suffered a devastating war and genocide but was recovering thanks in part to a functioning government and civil institutions, of which the United States was the principal architect through the Dayton Peace Agreement of 1995. All six Petitioners held Bosnian citizenship or lawful permanent residence, as well as their native Algerian citizenship. All were married and lived with their wives and children. None was present on what may even remotely be characterized as a battlefield; none is accused of any involvement in the attacks of September 11, 2001; none is accused of engaging in any hostile or belligerent act against the United States or its allies. Nevertheless, the Government has held them for well over six years, without charging them with any crime, in indefinite military detention at Guantanamo Bay.

Now that the Government at last faces a merits hearing before an Article III Court, the thinness of its basis for detaining Petitioners is plain. The Return is notably devoid of any allegation that Petitioners ever engaged in any combat against the United States or its allies, a

critical omission given that the Government claims to imprison Petitioners as “enemy combatants.” The allegations the Government does make are not based on credible evidence, but rather ask this Court to accept speculation rather than proof.

The Return rests almost entirely on stale and questionable allegations regarding Petitioners’ lives in Bosnia. But the Government nowhere acknowledges—and indeed, has done its utmost to avoid—the thorough investigation performed on the ground by Bosnian authorities in 2001. With cooperation from U.S. and international law enforcement authorities, Bosnia, the sovereign nation with jurisdiction over Petitioners’ persons and conduct, performed a three-month investigation into their lives, work, and activities. Expert investigators pored through Petitioners’ personal documents, computer files, and work-related papers. They interviewed live witnesses, family members, and Petitioners themselves. By mid-January 2002, both the prosecutor and the investigating judge had concluded that no basis had been established to hold Petitioners *even for further investigation*.

Bosnian authorities had every incentive to find some reason to keep Petitioners in detention, because the United States Government was threatening to withdraw all military and diplomatic support from Bosnia if Petitioners were not arrested and handed over. Three senior officials in Bosnia at the time—former Prime Minister of the Federation of Bosnia and Herzegovina Alija Behmen, former Bosnian Council of Ministers Chairman and Foreign Minister Zlatko Lagumdžija, and former High Representative for Bosnia and Herzegovina Wolfgang Petritsch—have submitted sworn declarations confirming the seriousness of the U.S. threats and the Bosnian government’s fear that, if it did not comply, the fragile peace in that country could collapse. Traverse Exhibit (“Trav. Ex.”) 11 ¶ 13 (Behmen Decl.); Trav. Ex. 10 ¶ 22 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 25 (Petritsch Decl.). The Deputy U.S. Ambassador in

Sarajevo minced no words in 2001, telling Prime Minister Behmen that, if the Petitioners were not arrested, “then let God protect Bosnia and Herzegovina.” Trav. Ex. 11 ¶ 12 (Behmen Decl.). And when the Bosnian court was preparing to order Petitioners’ release in January 2002, Prime Minister Behmen was informed that President Bush, Vice President Cheney, and Defense Secretary Rumsfeld had been briefed about this possibility, and that the White House had ordered U.S. troops stationed in Bosnia as part of the NATO Stabilization Force to seize Petitioners in that eventuality, using whatever force was necessary. *Id.* ¶ 18; Trav. Ex. 10 ¶ 22 (Lagumdžija Decl.).

Faced with unequivocal positions approved at the highest levels of the U.S. government, Bosnian officials agreed to hand Petitioners over to the United States, anticipating that the United States would submit to a U.S. court whatever evidence it had against Petitioners. Instead, the United States government transported Petitioners to Guantanamo Bay and assiduously avoided any merits hearing for over six years, forcing all Guantanamo prisoners to endure crushing imprisonment while multiple rounds of briefing and argument ensued in federal courts, including three Supreme Court decisions. *See Rasul v. Bush*, 542 U.S. 466 (2004) (rejecting Government’s argument that the habeas corpus statute did not apply to Guantanamo prisoners); *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006) (rejecting Government’s argument that the Detainee Treatment Act stripped jurisdiction over pending Guantanamo habeas petitions); *Boumediene v. Bush*, 128 S. Ct. 2229 (2008) (rejecting, in this very case, Government’s argument that section 7 of the Military Commissions Act validly stripped habeas jurisdiction and invalidating that section under the Suspension Clause of the Constitution).

Now that the Court has finally ordered the Government to provide reasons for its continued military detention of Petitioners, its assertions in 2008 bear very little relation to its

reasons for Petitioners' initial extrajudicial rendition from Bosnia in 2002. The United States' original claim was that Petitioners were supposedly plotting a terrorist attack on the U.S. Embassy in Sarajevo. Indeed, in the 2002 State of the Union Address, delivered fewer than ten days after Petitioners were flown by plane to Guantanamo, President Bush stated: "Our soldiers, working with the Bosnian government, seized terrorists who were plotting to bomb our embassy." President's Address on the State of the Union, 1 Pub. Papers 129, 131 (Jan. 29, 2002), *transcript also available at* <http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>. Notably omitted from the President's account was the fact that the three-month investigation carried out by Bosnian authorities failed to unearth any evidence to warrant further investigation, let alone sufficient evidence to charge Petitioners with any terrorism-related crime. Equally unacknowledged was the fact that the Supreme Court of the Federation of Bosnia and Herzegovina had ordered Petitioners released from custody twelve days before, with the concurrence of the Bosnian Prosecutor, and that the Human Rights Chamber for Bosnia and Herzegovina—a Bosnian court, staffed by international and Bosnian judges and established by the Dayton Agreement to ensure protection of civil rights—had forbidden their removal from Bosnia. And the claim that the United States was "working with the Bosnian government" was incomplete at best, as the Bosnian authorities' actions were not the result of any actual evidence of terrorist activity, but rather a capitulation to U.S. threats to withdraw all military and diplomatic support from Bosnia if Petitioners were not arrested and handed over.

The Government's unclassified Return makes no mention of the claim that Petitioners "were plotting to bomb our embassy." But rather than acknowledge its errors, the Government has compounded them through vague allegations of "support," "links," or "association," many of which (the Government's unclassified Exhibit List reveals) are based on raw intelligence

reports—documents that, as a twenty-five year veteran of the CIA and the former Chief of East Asia Division for the CIA’s Clandestine Service explains, are “at best a basis for further inquiry,” not grounds for lifelong military detention. Trav. Ex. 21 ¶ 30 (Brown Decl.). The Government itself has recently acknowledged the unreliability of at least one of its exhibits: it has withdrawn its Exhibit 29, an FBI report of an interview with a federal prisoner named Enaam Arnaout, which the Department of Justice itself said, in a federal court filing five years ago, was not reliable.¹ On Sunday, October 12, 2008, two days before Petitioners’ counsel was scheduled to meet with Mr. Arnaout, counsel for the Government advised that it was withdrawing the numerous allegations that derived from Arnaout’s account, including most of the allegations against Petitioner Hadj Boudella.

As Petitioners show in this Traverse and the classified submissions filed herewith, the Bosnian authorities reached the right conclusion over six years ago. There is no credible evidence to show that Petitioners were enemy combatants in Bosnia in 2001. Whatever mistakes led to the Government’s continued detention of Petitioners, and no doubt there were many, it is now time to correct them. This Court should order the Government to release Petitioners from Guantanamo forthwith.

¹ In June 2003, only four months after the FD-302 report of Arnaout’s interview (which comprises Exhibit 29 of the Return) was prepared, the Government argued that Arnaout had not been truthful in the interview, stating that “the government cannot make much use in an investigation or prosecution of an account by a witness it does not believe.” Trav. Ex. 109 at 9 (Gov’t’s Consol. Resp. to Def.’s Mot. to Strike Portions of the PSIR, Sentencing Mem., & Mot. for Downward Departure, *United States v. Arnaout*, No. 02 CV 892 (N.D. Ill.) (filed June 13, 2003)).

FACTUAL BACKGROUND

The Government's allegations against Petitioners rest primarily on alleged activity in Bosnia before October 2001. The background of Petitioners' lives and their arrest and investigation by Bosnian authorities are highly relevant to a proper understanding of the Government's present allegations against Petitioners.

A. The Petitioners

1. Mustafa Ait Idir

Mr. Ait Idir was born in 1970 in Sidi M'hmad, Algeria, where he attended high school and later studied computers at a local institute. Trav. Ex. 4 ¶¶ 1-2 (Ait Idir Decl.).² In 1993, he obtained a position with the International Islamic Relief Organization (IIRO) and moved to Split, Croatia. *Id.* ¶ 4. There he met his future wife, Sabiha Delic, and made plans to return with her to Bosnia, her native country. He obtained Bosnian citizenship in 1995 (*id.* ¶¶ 5-7), and found employment in Bosnia providing computer and administrative support for Qatar Charities (*id.* ¶ 10). In 1997, when Qatar Charities closed the small Tuzla office where he worked, Mr. Ait Idir moved his family to Sarajevo. There, he worked for Taibah International, a charity that provided computer classes for the general public. *Id.* ¶¶ 10-11; Trav. Ex. 53 (certificate from Taibah International).

A talented athlete, Mr. Ait Idir engaged in karate competitions with people of diverse backgrounds. Trav. Ex. 4 ¶¶ 27-28 (Ait Idir Decl.); Trav. Exs. 49-51 (Diplomas from Karate Associations). He also volunteered at the Red Crescent Society of the United Arab Emirates, which employed his friends Mohamed Nechla and Lakhdar Boumediene. Trav. Ex. 4 ¶ 44 (Ait

² Petitioners' counsel are traveling to Guantanamo shortly and expect to obtain signed copies of Exhibit 1 (Declaration of Belkacem Bensayah), Exhibit 3 (Declaration of Mohamed Nechla), Exhibit 4 (Declaration of Mustafa Ait Idir) and Exhibit 5 (Declaration of Lakhdar Boumediene), which will be substituted upon return.

Idir Decl.). Mr. Ait Idir and his wife have three sons: Muhamed (aged eleven), Hamza (aged eight), and Abdullah (aged six). *Id.* ¶ 17. Abdullah was born five months after Mr. Ait Idir was transported to Guantanamo; Mr. Ait Idir has never met him. *Id.*

2. Mohamed Nechla

Mohamed Nechla was born in 1968 in Laghouat, Algeria to a family of modest means. After his father was permanently disabled in a job-related accident, he helped his family from a young age by selling fruits and vegetables at a street market. Trav. Ex. 3 ¶¶ 1-2 (Nechla Decl.). With limited educational and employment opportunities then available in Algeria, Mr. Nechla sought better employment, first in Pakistan, where he studied at a Yemeni school and worked as a clerk, and then in the Philippines, where he taught school. *Id.* ¶¶ 3-4, 6. He began working at the Red Crescent Society of the United Arab Emirates in Albania. *Id.* ¶ 7. In 1997, when civil war broke out in Albania, the Red Crescent transferred Mr. Nechla and his family to relative safety in Bosnia. *See id.* ¶ 9. Mr. Nechla was sent to the Bihać office of the Red Crescent Society in Bosnia, where he continued his humanitarian relief work by helping children orphaned during the Bosnian war. *Id.* ¶¶ 10-11; *see also* Trav. Ex. 35 (Mahmoud Decl.); Trav. Ex. 36 (Declaration of Organization of the Families of Fallen Soldiers); Trav. Ex. 38 (Petition by guardians of Bosnian war orphans for Mr. Nechla).

While working at the Red Crescent Society, Mr. Nechla met and befriended fellow Algerian émigré Lakhdar Boumediene, whose wife introduced Mr. Nechla to his future wife, Badra Baouche. Trav. Ex. 5 ¶ 19 (Boumediene Decl.). Mr. Nechla and Ms. Baouche have been married over ten years, and have two children, Enas (aged eleven) and Alaa (aged two). Trav. Ex. 3 ¶ 12 (Nechla Decl.); Trav. Ex. 24 ¶ 2 (Baouche Decl.).

3. Hadj Boudella

Mr. Boudella was born in 1965, in Laghouat, Algeria. Trav. Ex. 6 ¶ 1 (Boudella Decl.). He worked as a social worker in a state-run elementary school and completed two years of mandatory service in the Algerian Army, where he served mainly as a postman. Trav. Ex. 6 ¶¶ 2-8. Mr. Boudella traveled to Pakistan in 1990, where he earned a correspondence degree (Trav. Ex. 56 (Boudella diploma)), supporting himself doing administrative work for a charitable organization, the Islamic Committee for Benevolence, that sponsored Muslim orphans. In 1992, his organization transferred him to Bosnia, where he continued to work with war orphans at the charity's offices in Tešanj and Zenica. Trav. Ex. 6 ¶ 18.

In 1993, Mr. Boudella married Emina Planja, a Bosnian citizen, who lived in Zenica with her family. *Id.* ¶ 20. They have three children: Abdulrahman (aged fourteen), Aisha (aged twelve), and Ali (aged six). *Id.* ¶ 21. Mr. Boudella has never met his son Ali, born after Mr. Boudella was taken to Guantanamo. *Id.* Mr. Boudella and Ms. Planja's other daughter, Shaimaa, died of a heart defect in 2006 when she was six years old. *Id.*; Trav. Ex. 27 ¶ 5 (E. Planja Decl.). Because the United States forbade Mr. Boudella from talking to his family, he last spoke to Shaimaa when she was two years old. *Id.*

In 1994, the Islamic Committee for Benevolence closed the office where Mr. Boudella worked. Mr. Boudella found work teaching at a local mosque and provided religious instruction to soldiers in the Bosnian Army. Trav. Ex. 6 ¶ 34 (Boudella Decl.). In late 1993, Mr. Boudella married his second wife, Nadja Dizdarević, in accordance with Islamic law. *Id.* ¶ 36. They have three children: Omar Abdul Aziz (aged twelve), Iman (aged eleven), and Nur (aged six). *Id.* In January 1995, Mr. Boudella received Bosnian citizenship through naturalization. *Id.* ¶ 35. At the time of his arrest in 2001, Mr. Boudella was working at Human Appeal International, a

charitable organization based in Sarajevo, where he directed humanitarian aid to poor children and orphans. *Id.* ¶¶ 43-44.

4. Lakhdar Boumediene

Lakhdar Boumediene was born in Ain Sulttan, Algeria in 1966. Trav. Ex. 5 ¶ 1 (Boumediene Decl.). He performed his mandatory service in the Algerian Army as a border guard, worked as a mechanic for two years, and then left Algeria in 1990 in search of better employment. *See id.* ¶¶ 3-5. He supervised students in a boarding school (in the hours when they were not in the classroom) in Babi, Pakistan, and then traveled to Yemen to find work. *Id.* ¶¶ 6, 14. He was unable to find work, but he learned French and took computer courses at the French Cultural Center. *Id.* ¶ 16; *see also* Trav. Ex. 104 (March 5, 1994 Ad'Dalil Computer and Investment Services Certificate); Trav. Ex. 101 (June 21, 1994 Diploma for French Language Studies for Lakhdar Boumediene).

Unemployed and fearful of the civil war in Yemen that broke out several months after his arrival, Mr. Boumediene left Yemen in 1994 for Albania and found employment at the Red Crescent Society of the United Arab Emirates. *Id.* ¶¶ 17-18. In 1997, following civil unrest in Albania, Mr. Boumediene's employer transferred him to Bosnia. In Bosnia, Mr. Boumediene oversaw the distribution of aid to orphans. *Id.* ¶¶ 25-27; *see also* Trav. Ex. 35 (Mahmoud Decl.); Trav. Ex. 39 (Petition for Lakhdar Boumediene re: Red Crescent Society).

Mr. Boumediene married Abassia Bouadjmi in October 1995 in Albania. They have two daughters: Radjaa (aged twelve) and Rahma (aged eight). Trav. Ex. 5 ¶¶ 21-22 (Boumediene Decl.). Mr. Boumediene first met Mr. Nechla when the two worked for the Red Crescent Society in Albania. *Id.* ¶ 19. Mr. Nechla also introduced Mr. Boumediene to Mr. Boudella in Bosnia. *Id.* ¶¶ 44-45. Later Mr. Boumediene met Mr. Ait Idir, who also worked for a charity in Bosnia. *Id.* ¶ 46.

Mr. Boumediene also assisted Mr. Bensayah with charitable aid. *Id.* ¶¶ 48-50. Because of Mr. Boumediene's previous assistance to Mr. Bensayah's family, Mr. Bensayah's wife turned to Mr. Boumediene for help when Mr. Bensayah was arrested in October 2001. *Id.* ¶¶ 49-51. Mr. Boumediene had never met Mr. Lahmar before their arrest.

5. Belkacem Bensayah

Mr. Bensayah was born in 1962 in Ouargla, Algeria. Trav. Ex. 1 ¶ 1 (Bensayah Decl.). After secondary school, he worked as a records clerk. *Id.* ¶ 2-3. He completed two years of mandatory military service in the Algerian Army, performing primarily civil service tasks such as planting trees. *Id.* ¶ 3.

In 1990, Mr. Bensayah traveled to Mecca, Saudi Arabia on pilgrimage. *Id.* ¶ 5. In 1995, Mr. Bensayah sought better economic opportunities in Bosnia, which was rebuilding its infrastructure and communities after years of war. *Id.* ¶¶ 8-10. Initially he worked at a charitable organization, preparing food packages for room and board. When this organization closed, Mr. Bensayah worked as a small-time trader of goods he purchased on trips to Turkey. *Id.* ¶¶ 11, 15. He was often unable, however, to achieve more than bare subsistence. *Id.* ¶ 15.

Mr. Bensayah married Anela Kobilica in 1997. *Id.* ¶ 12. They have two daughters, Shayma (aged eleven) and Sara (aged nine). Mr. Bensayah acquired Bosnian citizenship by naturalization. *Id.* ¶ 14. Mr. Bensayah initially obtained this citizenship using a fictitious name, Abdulkarim Al-Sabahi, but later voluntarily relinquished this name through open legal proceedings in Bosnia. *Id.*

Mr. Bensayah was casually acquainted with Mr. Lahmar, whom he met at a public market in Bosnia. *Id.* ¶ 28; Trav. Ex. 2 ¶ 65 (Lahmar Decl.). He also had limited interaction with Mr. Boumediene, to whom he turned for charitable assistance. Trav. Ex. 1 ¶ 28 (Bensayah Decl.); Trav. Ex. 5 ¶ 48 (Boumediene Decl.). Prior to his arrest, he had never met Messrs. Ait

Idir, Nechla, or Boudella. Trav. Ex. 4 ¶ 43 (Ait Idir Decl.); Trav. Ex. 3 ¶ 19 (Nechla Decl.); Trav. Ex. 6 ¶ 65 (Boudella Decl.); Trav. Ex. 75 at DOC100030 (October 20, 2001 Minutes of Belkacem Bensayah Before Supreme Court Judge).

6. Saber Lahmar

Mr. Lahmar was born in Constantine, Algeria in 1969. Trav. Ex. 2. ¶ 1 (Lahmar Decl.). He obtained lawful permanent residency in Bosnia in April 1997; he never sought Bosnian citizenship. *Id.* ¶ 14.

Mr. Lahmar attended university in Constantine, Algeria, *id.* ¶ 5, and studied Islamic law at Medina Islamic University in Saudi Arabia from 1992 to 1996, where he received a bachelor's degree with high marks. *Id.* ¶ 7; Trav. Ex. 45 (Diploma from Medina Islamic University). Upon graduation, he was recruited by the Saudi High Commission for Relief for a position as a language teacher in Bosnia. Trav. Ex. 2 ¶ 9 (Lahmar Decl.). Shortly thereafter, Mr. Lahmar married Kadrija Cizmic, a Bosnian citizen. *Id.* ¶ 18. Mr. Lahmar and Ms. Cizmic lived together with Ms. Cizmic's mother, sister, and brother-in-law in a small home outside Zenica, Bosnia. *Id.* ¶ 19.

Mr. Lahmar and Ms. Cizmic's brother-in-law, Ali Ahmed Ali Hamad, were convicted of robbery in the fall of 1997. *Id.* ¶ 20. Mr. Lahmar was later pardoned and released from jail. *Id.* ¶ 32; Trav. Ex. 95 (Pardon). Mr. Lahmar has never been charged with any other crime, and the life he has led since his pardon reflects his strenuous efforts to improve his situation and put past mistakes and associates behind him. Trav. Ex. 2 ¶ 38. However, his early release, combined with his acrimonious 1999 divorce from Ms. Cizmic, soured his relationship with Hamad. *Id.* ¶ 37. As is discussed more fully below, Petitioners have strong reasons to believe that Hamad's vindictive and false statements to Bosnian and American investigators are largely to blame for Mr. Lahmar's (and the other Petitioners') detention at Guantanamo.

Mr. Lahmar married Emina Susic in 2001. *Id.* ¶ 39. The couple's daughter, Sara, was born in 2002. *Id.* Ms. Susic was pregnant with Sara when the United States seized Mr. Lahmar and transported him to Guantanamo, and thus Mr. Lahmar has never seen his daughter. *Id.* Mr. Lahmar's son from his first marriage, Muad, lives with Ms. Cizmic, near Zenica, Bosnia. *Id.* ¶¶ 26, 45, 65. In late 2000 or early 2001 at a Zenica marketplace, Mr. Lahmar met Mr. Bensayah casually when they recognized each other as fellow Algerians. *Id.* ¶ 65. Prior to his arrest, Mr. Lahmar had never met Messrs. Ait Idir, Nechla, Boudella, or Boumediene. Trav. Ex. 4 ¶ 43 (Ait Idir Decl.); Trav. Ex. 3 ¶ 21 (Nechla Decl.); Trav. Ex. 6 ¶ 64 (Boudella Decl.); Trav. Ex. 5 ¶ 58 (Boumediene Decl.).

B. Bosnian Authorities Arrest, Investigate, And Release Petitioners

Although the Government portrays the six men as being closely acquainted before their arrest, the evidence is otherwise. Four of the Petitioners—Messrs. Nechla, Boumediene, Ait Idir and Boudella—were friends and have never denied the fact. *See, e.g.*, Trav. Ex. 6 ¶ 63 (Boudella Decl.). Of these four, however, only Mr. Boumediene knew Mr. Bensayah with any familiarity. Mr. Bensayah occasionally approached Mr. Boumediene for charitable assistance for himself and his family. Trav. Ex. 5 ¶¶ 48-50 (Boumediene Decl.). Only Mr. Bensayah knew Mr. Lahmar, and then only as a casual acquaintance after a chance meeting in a marketplace in 2000 or 2001 when they realized that they were fellow Algerian immigrants. *See* Trav. Ex. 2 ¶ 65 (Lahmar Decl.). It was only after Bosnian authorities arrested them, at the demand of the United States, that their cases became intertwined.

All but one of the Petitioners had immigrated to Bosnia after the crippling war and genocide of Bosnian Muslims that lasted between 1992 and 1995 (Mr. Boudella arrived earlier, in 1992).³

The plight of the Bosnian Muslims during the war was widely known throughout the Muslim world. Humanitarian aid and aid workers, including from various United Nations agencies, poured into the country. Trav. Ex. 20 ¶¶ 8, 12-13 (Ripley Decl.). An influx of foreigners not formally affiliated with aid organizations but galvanized by the threat of genocide of Bosnian Muslims also volunteered their services to the cause of the beleaguered Bosnian Muslim population. *Id.* ¶¶ 13, 19; Trav. Ex. 15 ¶ 10 (Banac Decl.). These foreign volunteers provided humanitarian aid to Bosnian refugees and assisted in defending non-Serb communities against Serb aggression. Trav. Ex. 20 ¶ 19 (Ripley Decl.); Trav. Ex. 15 ¶ 10 (Banac Decl.). Most, if not all, of these volunteers entered the territory of Bosnia via Croatia, with the acquiescence of the Croatian government. Trav. Ex. 15 ¶ 12 (Banac Decl.).

In 1995, the U.S.-brokered General Framework Agreement for Peace in Bosnia and Herzegovina (commonly known as the Dayton Peace Agreement) ended the war and established the State of Bosnia and Herzegovina as it is constituted today. Trav. Ex. 12 ¶ 5 (Petritsch Decl.). The decentralized governmental structure set up after the war consisted of a relatively weak central or “State” government, with two ethnically-divided Entities—the primarily Croat and Muslim Federation of Bosnia and Herzegovina (“Federation”) and the primarily Serb Republika Srpska (“Serb Republic”)—retaining most governmental powers. Trav. Ex. 10 ¶¶ 6, 9 (Lagumdžija Decl.); *see also* Trav. Ex. 12 ¶ 12 (Petritsch Decl.). This fragile coalition of ethnic

³ See Trav. Ex. 6 ¶ 18 (Boudella Decl.); Trav. Ex. 1 ¶ 9 (Bensayah Decl.); Trav. Ex. 2 ¶¶ 9-10 (Lahmar Decl.); Trav. Ex. 3 ¶ 9 (Nechla Decl.); Trav. Ex. 4 ¶¶ 5-6, 8 (Ait Idir Decl.); Trav. Ex. 5 ¶ 25-27 (Boumediene Decl.).

interests and the destruction wrought by the war made Bosnia heavily dependent on the support and assistance of the major Western powers, particularly the United States. Trav. Ex. 12 ¶ 12 (Petritsch Decl.). Following the Dayton Peace Agreement, the international aid organizations that had provided Bosnia with aid during the war continued to provide aid to reconstruct and rehabilitate the Bosnian state. Trav. Ex. 20 ¶ 18 (Ripley Decl.).

1. Bosnian authorities arrest Petitioners based not on evidence, but on the United States' threat to withdraw support for the Bosnian peace process

After the devastating attacks of September 11, 2001, Bosnia was eager to cooperate in the fight against terrorism. See Trav. Ex. 11 ¶ 8 (Behmen Decl.); Trav. Ex. 10 ¶ 10 (Lagumdžija Decl.). When President Bush addressed the Joint Session of Congress on September 20, 2001, vowing to treat nations harboring or supporting terrorists as hostile regimes, Bosnian leaders viewed his words as a direct warning to Bosnia. Trav. Ex. 10 ¶ 12 (Lagumdžija Decl.).

In late September or early October 2001, the Department of Police for the Federation of Bosnia and Herzegovina ("Federation Police") received a message from the U.S. Embassy indicating that an unknown individual in Zenica was engaged in communications with a suspected al Qaeda operative. *Id.* ¶ 13. The Federation Police soon targeted Mr. Bensayah, who was one of a number of foreign Muslims living in Zenica, a town about forty miles north of Sarajevo, the capital. *Id.* Lacking evidence to arrest Mr. Bensayah on any terrorism-related charges, the Federation Police arrested Mr. Bensayah on immigration charges on October 8, 2001. *Id.*; Trav. Ex. 40 ¶ 7 (Pivić Decl.). After taking Mr. Bensayah to the police station, Federation Police returned with him to conduct a thorough search of Mr. Bensayah's home. That same afternoon, very shortly after the search began, the Bosnian media reported that an individual had been arrested in Zenica on suspicion of involvement with terrorist activities. Trav. Ex. 40 ¶¶ 7, 12 (Pivić Decl.).

The FBI interrogated Mr. Bensayah on October 17 and again on October 25, 2001. *Id.* ¶¶ 17, 19. During the second interrogation, the FBI showed Mr. Bensayah a piece of paper that, the FBI agents said, had been found in Mr. Bensayah's home. *Id.* ¶ 22. The piece of paper allegedly had a telephone number written on it. *Id.* Mr. Bensayah stated that he did not know to whom the paper belonged. *Id.*

The events of October 8, 2001 raise serious questions about the provenance and admissibility of the "piece of paper" that the Federation Police allegedly found in Mr. Bensayah's residence. Mr. Bensayah was brought back from the police station to his house at 1:20 p.m.; by 1:30 p.m., the search of his residence had begun in earnest. A mere thirty minutes later, at approximately 2 p.m., the Minister of Interior Affairs, Muhamed Bešić, held a press conference to announce that Mr. Bensayah had been arrested and that a phone number belonging to a senior aide of Osama bin Laden had been found that day. Trav. Ex. 19 ¶¶ 4-7 (Dervišbegović Decl.). Someone in the Bosnian Ministry of Interior Affairs apparently knew the police would "find" this "piece of paper" before the police actually found it. The search of Mr. Bensayah's papers and effects in his bedroom—including the book in which the "piece of paper" reportedly was found—did not start until Mr. Bensayah and his wife had completed their afternoon prayers, which occurred at approximately 3:30 p.m. local time. Trav. Ex. 22 ¶¶ 10-12 (Kobilica Decl.). If the police ever actually found the "piece of paper" during their search, Mr. Bensayah's wife, who was allowed to be present for all but a few minutes of the search, did not observe it. Trav. Ex. 22 ¶ 22 (Supp. Kobilica Decl.). Mr. Bensayah recalls one of the searchers dramatically plucking a "piece of paper" from a book stored in his bedroom closet. Trav. Ex. ¶ 21. He had never seen it before, and consistently told later interrogators that he did not know where the paper came from. Trav. Ex. 40 ¶ 22 (Pivić Decl.).

On October 17, 2001, the Federation Police received another message from the U.S. Embassy, requesting the arrest of eight men, including all six Petitioners, on suspicion of posing a threat to American interests in Bosnia. Trav. Ex. 10 ¶ 14 (Lagumdžija Decl.). The Embassy did not, however, provide any specific evidence that would support its allegation. Trav. Ex. 10 ¶ 15 (Lagumdžija Decl.). On the same day as the United States requested the arrest of the Petitioners, the United States also closed its embassy in Sarajevo, in spite of the belief of the then-Prime Minister of the Federation that such a measure was unnecessary. Trav. Ex. 11 ¶ 11 (Behmen Decl.).

Three of the most senior civilian officials in Bosnia at the time—the international High Representative for Bosnia and Herzegovina Wolfgang Petritsch, Chairman of the Council of Ministers and Foreign Minister Zlatko Lagumdžija, and Prime Minister Behmen—attest to the extreme pressure that the United States then began to exert on the government of Bosnia to accede to the United States’ demand to arrest and detain the six men, despite the lack of evidence to do so. *See generally* Trav. Ex. 12 (Petritsch Decl.); Trav. Ex. 10 (Lagumdžija Decl.); Trav. Ex. 11 (Behmen Decl.). The Deputy U.S. Ambassador to Bosnia and Chargé d’Affaires, Christopher Hoh, threatened Prime Minister Behmen that, if the men were not arrested, the United States would withdraw its military and diplomatic support for the Bosnian peace process. Trav. Ex. 11 ¶ 12 (Behmen Decl.); Trav. Ex. 10 ¶ 17 (Lagumdžija Dec.). With a clear allusion to the possible renewal of war, Mr. Hoh said that, if the United States withdrew, “then let God protect Bosnia and Herzegovina.” Trav. Ex. 11 ¶ 12 (Behmen Decl.).

It was clear to all in authority that a U.S. withdrawal from the Bosnian peace process would have de-legitimized the Bosnian government in the eyes of its people; the removal of U.S. personnel from the NATO Stabilization Force stationed in Bosnia (“SFOR”) would have

endangered the ability to maintain order; and state-building efforts in Bosnia would have been seriously jeopardized, with the likely consequence of renewed strife. Trav. Ex. 11 ¶ 13 (Behmen Decl.); Trav. Ex. 10 ¶ 17 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 25 (Petritsch Decl.). The officials of the fledgling state considered that such a grave threat to its very existence left them with no option but to comply with the United States' demands. *See* Trav. Ex. 11 ¶ 13 (Behmen Decl.); Trav. Ex. 10 ¶ 17 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 25 (Petritsch Decl.). The Federation Police thus proceeded to arrest Petitioners, not based on any evidence in their possession of any plot against the United States, but solely on assertions by the U.S. Embassy that the United States had such evidence. Trav. Ex. 11 ¶ 13 (Behmen Decl.); Trav. Ex. 10 ¶ 15 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 16 (Petritsch Decl.).

Between October 18 and 21, 2001, the Bosnian police took the remaining five Petitioners into custody (Mr. Bensayah had been in custody in Zenica since October 8, 2001). Trav. Ex. 11 ¶ 14 (Behmen Decl.). The first two were arrested on October 18, 2001 and the last on October 21, 2001. In the two weeks elapsing between Mr. Bensayah's arrest on October 8, 2001 and the last arrest on October 21, 2001, the remaining Petitioners did not attempt to flee or go underground. Trav. Ex. 11 ¶ 14 (Behmen Decl.); *see also* Trav. Ex. 1 ¶ 17 (Bensayah Decl.); Trav. Ex. 2 ¶ 46 (Lahmar Decl.); Trav. Ex. 4 ¶ 19 (Ait Idir Decl.); Trav. Ex. 6 ¶ 45 (Boudella Decl.). All of them cooperated with Bosnian authorities. Trav. Ex. 11 ¶ 14 (Behmen Decl.).

2. Bosnian authorities order Petitioners' release after a thorough investigation yields no evidence of terrorism

With all six Petitioners in investigative detention, Bosnian authorities, in close coordination with the United States, next engaged in an exhaustive investigation to locate evidence linking the Petitioners to terrorist activities. Trav. Ex. 11 ¶¶ 14-15 (Behmen Decl.); Trav. Ex. 10 ¶¶ 18-19 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 18 (Petritsch Decl.); Trav. Ex. 40

¶¶ 35-36 (Pivić Decl.). Bosnian authorities searched the Petitioners' homes and offices, seized and evaluated their home and work computers and papers, interviewed witnesses, and sought information from overseas agencies such as INTERPOL and the FBI, and security forces on the ground such as NATO and the International Police Task Force. Trav. Ex. 11 ¶ 15 (Behmen Decl.); Trav. Ex. 10 ¶ 19 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 18 (Petritsch Decl.); Trav. Ex. 40 ¶¶ 34-36 (Pivić Decl.); Trav. Ex. 1 ¶ 18-20 (Bensayah Decl.); Trav. Ex. 2 ¶ 50 (Lahmar Decl.); Trav. Ex. 4 ¶ 20 (Ait Idir Decl.); Trav. Ex. 5 ¶ 55 (Boumediene Decl.); Trav. Ex. 6 ¶ 46 (Boudella Decl.). Numerous pieces of evidence were seized and examined, such as video and audio tapes, computer parts, cameras, and correspondence. Trav. Ex. 40 ¶¶ 34-35 (Pivić Decl.).⁴

Bosnian officials charged with the investigation, such as the Federation Police and the Office of the Federal Prosecutor, complained about the lack of evidence supporting these grave charges made by the United States. Trav. Ex. 11 ¶ 15 (Behmen Decl.); Trav. Ex. 10 ¶¶ 15, 18 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 18 (Petritsch Decl.); Trav. Ex. 40 ¶¶ 34-36 (Pivić Decl.). The Bosnians, however, felt that they could not question whether the United States—a key ally and a major source of support for the peace process in Bosnia—ever actually possessed any

⁴ See also Trav. Ex. 1 ¶¶ 18-20 (Bensayah Decl.); Trav. Ex. 2 ¶ 46 (Lahmar Decl.); Trav. Ex. 5 ¶ 55 (Boumediene Decl.); Trav. Ex. 6 ¶ 46 (Boudella Decl.); Trav. Ex. 74 (Report of Seized Objects from Belkacem Bensayah); Trav. Ex. 77-78 (October 20, 2001 Materials Seized from Lakhdar Boumediene); Trav. Ex. 89 (January 15, 2002 List of Materials Seized from Lakhdar Boumediene); Trav. Ex. 79 (October 21, 2001 List of Materials Seized from Hadj Boudella); Trav. Ex. 80 (November 9, 2001 Expert Finding on Materials Seized from Saber Lahmar); Trav. Ex. 81 (November 9, 2001 Expert Finding on Materials Seized from Mohamed Nechla); Trav. Ex. 82 (November 9, 2001 Expert Finding on Materials Seized from Mustafa Ait Idir); Trav. Ex. 83 (November 9, 2001 Expert Finding on Materials Seized from Lakhdar Boumediene); Trav. Ex. 84 (November 9, 2001 Expert Finding on Materials Seized from Hadj Boudella); Trav. Ex. 85 (November 13, 2001 Expert Finding on Binoculars and Camera Seized); Trav. Ex. 90 (January 29, 2002 Report by bank on accounts of Mustafa Ait Idir and two other individuals); Trav. Ex. 91 (January 30, 2002 Report by bank on accounts of Saber Lahmar and Belkacem Bensayah).

concrete evidence supporting the charges. Trav. Ex. 10 ¶ 15 (Lagumdžija Decl.). Rather, Bosnian “officials worked under the assumption that such evidence did exist.” *Id.*

In particular, the only specific claim that the United States advanced against the Petitioners, that Mr. Bensayah had allegedly made telephone calls to an al Qaeda operative, was shown in the investigation to be unsupported by any evidence. The Bosnian authorities contacted U.S. officials requesting that the United States confirm whether the telephone number allegedly found in Mr. Bensayah’s apartment matched any numbers known to belong to persons connected to terrorist activities. *See* Trav. Ex. 40 ¶ 30 (Pivić Decl.). On October 19, 2001, the U.S. Embassy responded with a comparison of the phone number with a database of phone numbers connected with terrorist activities and stated that U.S. authorities had no information that the phone number in question was connected to any terrorist activities. *Id.*

The Bosnian authorities also attempted to find the transcripts of alleged intercepted communications between Mr. Bensayah and the suspected al Qaeda operative. To this end, the Bosnian authorities contacted INTERPOL Washington to request the transcripts; INTERPOL responded that its personnel were not the source of the alleged intercepts. Trav. Ex. 40 ¶ 32 (Pivić Decl.). The Investigative Judge then requested transcripts from the U.S. Embassy as directed by INTERPOL. *Id.* The U.S. Embassy responded on November 23, 2001 that it could not fulfill this request but was standing by to offer any other assistance. *Id.*

The Chief Federal Prosecutor of the Federation of Bosnia and Herzegovina concluded after this investigation that no evidence existed to justify the continued detention of the Petitioners. Trav. Ex. 11 ¶ 16 (Behmen Decl.); Trav. Ex. 10 ¶ 20 (Lagumdžija Decl.). The Investigative Judge and Prosecutor informed Prime Minister Behmen personally about the lack of evidence, in the presence of a Bosnian Supreme Court Judge, Mr. Vlado Adamović, indicating

how seriously the Bosnians viewed the allegations and the investigation. Trav. Ex. 11 ¶ 16 (Behmen Decl.). Applying Bosnian law, the Prosecutor recommended the release of the Petitioners. *Id.*; Trav. Ex. 10 ¶ 20 (Lagumdžija Decl.). On January 17, 2002, the Federation Supreme Court of Bosnia ordered all six Petitioners released from what was, by then, more than ninety days of investigative detention. Trav. Ex. 11 ¶ 20 (Behmen Decl.); Trav. Ex. 10 ¶ 32 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 19 (Petritsch Decl.); Trav. Ex. 40 ¶ 36 (Pivić Decl.). On the same day, the Human Rights Chamber for Bosnia and Herzegovina—a tribunal established under the U.S.-brokered Dayton Peace Agreement and staffed by judges from various European countries as well as Bosnia—issued an order forbidding Petitioners’ removal from Bosnian territory. Trav. Ex. 12 ¶ 20 (Petritsch Decl.); Trav. Ex. 86 (January 17, 2001 Human Rights Chamber Decision in *Lahmar, Boudella, Nechla and Boumediene v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*). The Human Rights Chamber’s order ultimately could not withstand the United States’ pressure.

C. The United States Pressures Bosnia To Deliver Petitioners In An Illegal “Hand-Over” Contrary To Bosnian Law

Bosnia’s leaders believed that evidence justifying the arrest and detention of the six men, “which was not available to [them] in such circumstances - and which [they] believed the U.S. representatives had in their possession but would not share with [them] in such circumstances,” would be presented to an American court. Trav. Ex. 10 ¶ 22 (Lagumdžija Decl.); *see also* Trav. Ex. 11 ¶ 26 (Behmen Decl.). They considered it clear that the United States “was determined to take custody of these six men under any circumstances.” Trav. Ex. 10 ¶ 22 (Lagumdžija Decl.); *see also* Trav. Ex. 11 ¶ 19 (Behmen Decl.). Any refusal on Bosnia’s part to hand Petitioners over would have led to the unilateral use of force—perhaps deadly force—by SFOR to seize the men, and would likely have precipitated the threatened withdrawal of support from the United

States. *Id.* Bosnia's leaders saw the choice in stark terms: "either to provide an orderly transfer of those people under the custody of SFOR and risk not a single life and no serious political consequences for Bosnia, or to risk action by U.S. SFOR troops and accept likely losses of human lives and grave negative political ramifications for [the] existence of [Bosnia], including possibly the renewal of the war." Trav. Ex. 10 ¶ 22 (Lagumdžija Decl.); *see also* Trav. Ex. 11 ¶¶ 19, 22, 24 (Behmen Decl.); Trav. Ex. 12 ¶ 27 (Petritsch Decl.).

Late in the night of January 17, 2002, as the Petitioners were being released from the Central Prison in Sarajevo, Federation Police officers and U.S. personnel seized the six men, placed them in shackles, placed hoods over their heads, and put them into vehicles. Trav. Ex. 1 ¶ 27 (Bensayah Decl.); Trav. Ex. 2 ¶¶ 50-51 (Lahmar Decl.); Trav. Ex. 4 ¶¶ 21-24 (Ait Idir Decl.); Trav. Ex. 5 ¶¶ 59-62 (Boumediene Decl.); Trav. Ex. 6 ¶ 49 (Boudella Decl.). The men were transported the next day to the U.S. Air Force base in Bosnia, and from there flown in stages on U.S. military planes to the U.S. Naval Station at Guantanamo Bay. Trav. Ex. 1 ¶ 27 (Bensayah Decl.); Trav. Ex. 2 ¶ 51 (Lahmar Decl.); Trav. Ex. 3 ¶ 19 (Nechla Decl.); Trav. Ex. 4 ¶ 24 (Ait Idir Decl.); Trav. Ex. 5 ¶ 62 (Boumediene Decl.); Trav. Ex. 6 ¶ 49 (Boudella Decl.). During the trip, the Petitioners were hooded and shackled to the floor. Trav. Ex. 2 ¶ 51 (Lahmar Decl.); Trav. Ex. 4 ¶¶ 23-24 (Ait Idir Decl.); Trav. Ex. 5 ¶¶ 61-62 (Boumediene Decl.). They were not given food or access to the restrooms for the entire trip. Trav. Ex. 4 ¶ 23 (Ait Idir Decl.); Trav. Ex. 2 ¶ 51 (Lahmar Decl.). The Petitioners arrived on January 20, 2002 and have remained at Guantanamo ever since. Trav. Ex. 1 ¶ 27 (Bensayah Decl.); Trav. Ex. 2 ¶ 52 (Lahmar Decl.); Trav. Ex. 3 ¶¶ 19-22 (Nechla Decl.); Trav. Ex. 4 ¶ 24 (Ait Idir Decl.); Trav. Ex. 5 ¶¶ 62, 70-71 (Boumediene Decl.); Trav. Ex. 6 ¶ 49 (Boudella Decl.).

D. Bosnia Terminates Its Investigation And States Its Willingness To Receive Petitioners' Return

Since the time the men were handed over, the Bosnian authorities have not uncovered any evidence that the six men were connected with terrorist activities. Trav. Ex. 11 ¶ 27 (Behmen Decl.); Trav. Ex. 10 ¶ 33 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 27 (Petritsch Decl.). The Bosnian investigation into charges of terrorism against the Petitioners was formally dropped in 2004. Trav. Ex. 13 (Letter from Zdravko Knezevic to Madeleine Rees (November 8, 2004)). The Human Rights Chamber subsequently ruled that the Bosnian authorities' actions in handing over Petitioners to the United States violated Bosnian and binding European law. *See* Trav. Ex. 64 ¶¶ 5, 186, 204 (2002 Ministry of Internal Affairs Decision); Trav. Exs. 63, 67, 68 (Human Rights Chamber Decisions). The Bosnian Foreign Minister later confirmed that Petitioners' expulsion was not a lawful extradition or deportation, but an illegal "hand-over." Trav. Ex. 72 (Letter from Mladen Ivanic to Terry Davis (Apr. 6, 2006)). Finally, although Petitioners' handover was purportedly based on revoking their Bosnian citizenship or residency, Bosnian courts later annulled these decisions and reinstated the Petitioners' right to live in Bosnia. *E.g.*, Trav. Ex. 65 (November 7, 2002 Lakhdar Boumediene Citizenship Order); Trav. Ex. 66 (December 19, 2002 Lakhdar Boumediene Citizenship Order). The Bosnian government has repeatedly stated its willingness to accept Petitioners' return. Trav. Ex. 71 (Letter from Bosnian Ambassador to Petitioners' counsel (Oct. 3, 2005)); Trav. Ex. 10 ¶ 35 (Lagumdžija Decl.).

PROCEDURAL HISTORY

Petitioners commenced this proceeding following *Rasul v. Bush*, 542 U.S. 466 (2004), in which the Supreme Court confirmed the availability of habeas corpus to Guantanamo prisoners. The Government produced original factual returns for each Petitioner in late 2004, specifically

on October 12 (Boumediene), October 14 (Bensayah), October 22 (Lahmar), October 27 (Ait Idir), October 29 (Nechla), and November 1 (Boudella), 2004.

This Court initially dismissed the habeas petition, holding that Petitioners had no rights that could be vindicated on habeas. *Khalid v. Bush*, 355 F. Supp. 2d 311 (D.D.C. 2005). The court of appeals vacated and remanded, holding that section 7 of the intervening Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (MCA), removed federal jurisdiction. *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007). The Supreme Court reversed, holding that section 7 of the MCA violated the Suspension Clause of the Constitution, and remanded with instructions that the case be remanded to this Court for a prompt merits hearing. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008).

Following briefing and argument on the procedures to govern this and other cases, this Court ordered the Government to file any motion to amend its factual returns, together with the proposed amendment, no later than August 22, 2008. On that date, the Government submitted a single Return as to all six Petitioners, consisting of a 53-page unsigned “Narrative for Petitioners” (“Narrative”) and approximately 650 pages of exhibits.⁵ The Government’s proposed Return was filed entirely under seal; a redacted public version was only filed on September 5, 2008. The Government also submitted additional materials *ex parte* and *in camera* that it claimed further supported its imprisonment of Petitioners, without previously seeking leave or even informing the Court or Petitioners that it would make such a filing. On October

⁵ Petitioners moved to compel the Government to sign the Narrative. *See* Dkts. 176, 202 (Motion to Compel Signature and Reply). The Court denied that motion without opinion in a minute entry order on October 10, 2008. To this day, no officer of the Court has signed the allegations contained in the Narrative. The Government has, however, withdrawn several of them, including (as described above) allegations relying on the 2003 interview with Enaam Arnaout.

10, 2008, the Court granted the Government's motion for leave to amend the return over Petitioners' opposition. Dkt. 206.⁶

REASONS FOR GRANTING THE WRIT OF HABEAS CORPUS

I. LEGAL STANDARDS FOR DETENTION

In order to support any Petitioner's detention as purported "enemy combatants" under "longstanding law-of-war principles" (*Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (plurality opinion)), the Government must demonstrate, at a minimum, that he "directly participate[d] in hostilities" against the United States, as that term is recognized and applied in State practice. Trav. Ex. 18 ¶ 6.j (Solis Decl.). State practice under the law of armed conflict, including U.S. practice, confirms that persons who are not uniformed members of a State's armed forces, *i.e.*, who (like Petitioners) are civilians, may only be treated as "combatants" if they take action that has a direct harmful effect on an opposing force's combat operations. *See id.* ¶ 6.g. Persons who provide material "support" for terrorists may be prosecuted and sentenced to lengthy prison terms (*see, e.g.*, 18 U.S.C. § 2339), but they may not be treated as "combatants" if they have not personally directly participated in hostilities in some way. Trav. Ex. 18 ¶ 6.i (Solis Decl.).⁷

It was incumbent on Respondents to "put[] forth credible evidence" of direct participation in hostilities by each Petitioner. *Hamdi*, 542 U.S. at 534 (plurality opinion). The Return falls far short. Because most of the evidence relied upon by the Government was filed under seal (*see*

⁶ The Court confirmed that it would not review the *ex parte* materials without first notifying the parties and providing an opportunity to be heard. Dkt. 206 at 2 n.1. On October 10, 2008, Petitioners moved to strike the *ex parte* materials. Dkt. 209. Petitioners reserve the right to supplement their Traverse in the event that the Court decides to consider the *ex parte* materials in reaching its decision on the habeas petition.

⁷ Pursuant to this Court's order, Petitioners will expand further on the proper legal standard for detention of "enemy combatants" in their filing of October 20.

Gov't Ex. List), the bulk of Petitioners' response is also filed under seal. The remainder of this document addresses certain Government allegations that can be refuted publicly.

II. OVERALL WEAKNESSES IN THE GOVERNMENT'S EVIDENCE

A. The Lack Of Quality Control In Intelligence Reporting After September 11, 2001

The Return is based, in large measure, on raw or unfinished intelligence reports, including "Intelligence Information Reports" or "IIRs." *See* AFR Exhibit List (publicly identifying AFR Exhibits 34-37 and 39-66 as IIRs). While the Government would have the Court credit such documents as reliable evidence for the truth of the matters stated in these raw reports, such documents cannot provide a credible foundation for the Government's continued detention of Petitioners.

Even before the attacks of September 11, intelligence collection of raw data was a flawed process resulting in unreliable reports, but the reporting problems worsened thereafter as the intelligence community rushed to respond, and appear to respond, by producing as many reports concerning terrorism as possible, with little regard for the reliability of the source or the reporting agent. *Trav. Ex. 21* ¶¶ 9-11 (Brown Decl.). This resulted in a flood, really an ocean, of intelligence reports, including raw human intelligence reports that have been put out by the Defense Intelligence Agency (DIA), Department of Defense Human Intelligence (DoD HUMINT) Services, and the CIA, of little to no credibility. *Id.* ¶ 22. As the former Chief of East Asia Division for the CIA's Clandestine Service, Arthur Brown, attests in a declaration filed herewith, "tens of thousands, if not hundreds of thousands [of] these reports are still on the record and it is now possible, for instance, for a person attempting to support a particular narrative or agenda to cherry-pick snippets of reports that appear to support that agenda." *Id.* The Return and its mountain of raw intelligence reports are a profound example of this problem.

Reasonable quality control over a raw human intelligence report requires that the collector, among other things, “investigate a source’s basis for knowing the information reported (known in the intelligence community as the ‘chain of acquisition’), evaluate whether the source appears to be reporting credibly, and evaluate whether it is reasonable to believe that the source has the information he is reporting.” *Id.* ¶ 8. In addition, the collector himself would have to be experienced and knowledgeable, speak the same language as the source, and have familiarity with the local culture and high-level awareness of the political and social situation in the relevant territory. *Id.*

After September 11, “the intelligence community was palpably concerned about the ‘next’ possible terrorist attack and the risk that the community would be blamed for failing to detect it.” *Id.* ¶ 11. This caused intelligence collectors to record and disseminate virtually all raw information they received, regardless of reliability or quality, so that the community could not be accused of having withheld information later deemed relevant to counterterrorism efforts. *Id.* ¶¶ 11-12. All of the Government’s intelligence, defense, and law enforcement organizations, were affected, including the FBI, military intelligence entities such as the DIA and DoD HUMINT services. *Id.* ¶ 11. As a result, the intelligence community was awash in poor reporting.

Some examples of the unsubstantiated intelligence reports distributed into the intelligence community’s message traffic included a CIA report disseminated nine months after September 11, “about a kamikaze-style air attack on a United States Navy Base in a South Pacific island location.” *Id.* ¶ 14. The report originated from a CIA office in the Middle East and cited a source by first name only. *Id.* “At the time of the report, the United States Navy did not have a base on that island, had never had [a base] there, nor had a single ship from the Navy’s Seventh

Fleet—the Pacific fleet—ever visited the island’s port. Nonetheless, the raw report was disseminated in the message traffic to the U.S. intelligence community worldwide.” *Id.* In the winter of 2001, Mr. Brown “received a report from a United States military investigations unit stating that Osama bin Laden had been spotted [shopping] in the Post Exchange on a U.S. military base in East Asia.” *Id.* ¶ 15. “The report was utterly unbelievable, yet it was disseminated to the intelligence community.” *Id.*

By the summer of 2002, senior U.S. military commanders in Asia complained that the proliferation of intelligence reports was “numbing” the system, meaning that because there were so many unreliable reports those who received them no longer could “distinguish real threats from noise.” *Id.* ¶ 17. The military commanders asked that Mr. Brown, as the senior CIA representative in the region, personally call them when he thought that an intelligence report was truly significant, but CIA headquarters rejected the proposal and Mr. Brown was not permitted to discard the intelligence reports that he did not find credible. *Id.*

The intelligence agencies also produced more and more reports, without regard for the quality of the reports, in order to satisfy “[t]he Executive and Legislative branches [which] demanded proof that the intelligence community was taking the threat of terrorism seriously.” *Id.* ¶ 19. Intelligence officials, including the CIA, DIA, DoD HUMINT Services, and FBI, “routinely made presentations [to their superiors] showing the numerical increase in raw intelligence reports compared to the previous year.” *Id.* Case officers and managers, too, were often evaluated by the number of reports they produced. *Id.* ¶ 20. The problem with such an approach is obvious: Mr. Brown compares it to “evaluating marksmanship by measuring rounds fired on a shooting range, rather than measuring how many rounds actually hit their targets.” *Id.*

¶ 21. “More is more, but it is not necessarily better. In the case of intelligence reporting on terrorist threats after September 11, more was worse.” *Id.*⁸

Even in the absence of this enormous quality control problem, raw written intelligence reporting is not the basis for action in the field and should not be the basis for decision by this Court. It is “not possible to make a determination as to whether an individual is a threat based solely on a raw intelligence report, because raw intelligence reports do not contain sufficient information to judge the credibility of the source or the reliability of the information reported.” *Id.* ¶ 24. Raw written intelligence reports are “at best a basis for further investigation.” *Id.* ¶ 30. Accordingly, such reports are an inappropriate basis for the Court to justify approving the Government’s continued detention of Petitioners, especially seven years after Petitioners were first arrested by the Bosnians at the direction of the U.S. Government.

B. The Government’s Reliance On Manifestly Unreliable Sources

The Government’s submission reveals a disturbing willingness to rely on sources that are manifestly unreliable. The Government has already acknowledged one instance of this by withdrawing the FBI’s lengthy interview of Enaam Arnaout. *See* Amended Factual Return Exhibit (“AFR Ex.”) 29. The Government’s withdrawal of Exhibit 29 leaves very little evidence in the case against Petitioner Hadj Boudella. Moreover, this evidence was not withdrawn until shortly before Petitioners’ counsel traveled to Indiana to interview Arnaout in prison. Petitioners then learned that the Government itself had argued, in opposing lenience in Arnaout’s case five years ago, that information gathered from Arnaout was not credible. *Trav. Ex. 108 at 9 (Gov’t Sentencing Brief in Arnaout)*. Nevertheless, the Government had previously relied on Arnaout’s

⁸ Mr. Brown explains that although current CIA management may have taken steps to correct the quality of their reporting after 2005, the intelligence community still has not undertaken to review all of the 2001 – 2005 sources. *Id.* ¶ 23.

statement as the main evidence against Petitioner Boudella, and offered to withdraw it only when it became clear that Petitioners' counsel were about to discover the truth.

This last-minute withdrawal of a major part of the Government's case raises the significant question of whether the Government's other documents are just as unreliable as Exhibit 29. Petitioners' inability even to *identify*, let alone cross-examine, the sources referenced in the Government's exhibits—such as the “Intelligence Information Reports” (IIRs) that make up Exhibits 34-37 and 39-66—make it highly unlikely that either Petitioners or the Court would uncover such unreliability.

Petitioners' concern is not hypothetical. Petitioners have significant reason to believe that some, and perhaps many, of the Government's accusations derive directly or indirectly from statements made by Ali Ahmed Ali Hamad, Petitioner Lahmar's former brother-in-law. Hamad is a convicted terrorist bomber with personal animus against Mr. Lahmar and a proven track record of lying to U.S. investigators in an effort to reduce his own prison sentence. A Bahraini citizen, Hamad moved to Bosnia in 1992 in order to fight on the Bosnian side against the Serbs. Trav. Ex. 2 ¶ 19 (Lahmar Decl.). In Bosnia, Hamad was married to the sister of Mr. Lahmar's ex-wife. *Id.* Lahmar and Hamad lived together with their wives and mother-in-law in a town outside Sarajevo. *Id.*

In 1997, Mr. Lahmar, along with Ali Hamad and two other men, was involved in two robberies that took place on October 18 and 20, in the area of Zenica, Bosnia. Trav. Ex. 2 ¶ 22 (Lahmar Aff.). Hamad admits that he conceived of the robberies and played a central role in both. Trav. Ex. 92 at 3-6 (Jan. 7, 1998 Confession of Ali Hamad). Mr. Lahmar asserts that he was not intimately involved in the planning or execution of either robbery, but was only peripherally involved and unaware of the other culprits' intent to rob the victims. *See* Trav. Ex.

2 ¶ 22 (Lahmar Aff.). Mr. Lahmar received a sentence of five years and eight months for his role in the robberies, which was reduced to five years on appeal. Trav. Ex. 93 (July 9, 1998 Ruling of the Supreme Court of the Federation of Bosnia and Herzegovina). In January 2000, he was pardoned and released from prison after serving less than three years, since which time his record has been clean. Trav. Ex. 2 ¶ 32 (Lahmar Aff.); Trav. Ex. 95 (January 6, 2000 Pardon Decision for Saber Lahmar).

While he was in prison, Mr. Lahmar's relationship with his wife and her family rapidly deteriorated. Mr. Lahmar heard rumors that his wife was being unfaithful to him, and he eventually divorced her. *Id.* ¶¶ 28-29. Mr. Lahmar acknowledges that, in the heat of the moment, he spoke disrespectfully of both his wife and mother-in-law in a letter to his wife. *Id.* Unsurprisingly, Mr. Lahmar's ex-wife and her family, including Hamad, were extremely angry with Mr. Lahmar. *Id.* ¶ 30.

Hamad's anger at Mr. Lahmar was further stoked when Hamad and his associates were separately convicted of a September 1999 car bombing in Mostar, Bosnia in 1997. *Id.* ¶ 31. Mr. Lahmar had no involvement whatsoever with the bombing and was neither arrested nor charged in connection with this crime. *Id.* Mr. Lahmar was officially pardoned and released in late 1999, whereas Hamad continued to be imprisoned on the robbery and bombing convictions. *Id.* ¶ 35. Hamad had ample motivation to injure Mr. Lahmar personally by falsely inculcating Mr. Lahmar in terrorism, both because of Mr. Lahmar's badly ruptured relationship with Hamad's in-laws and because of Hamad's resentment at Mr. Lahmar's early release from prison. *Id.* ¶¶ 35, 37.

Hamad soon began a campaign of telling lies to intelligence agents about terrorist cells in Bosnia in a clear attempt to gain release from prison and to take revenge on Mr. Lahmar. By 2004, at least some American military authorities in Bosnia had seen through Hamad's lies. In a

July 2004 letter to U.S. Major General Virgil L. Packett II, commander of the SFOR troops in Bosnia, Hamad acknowledged that General Packett “do[es] not trust to what [Hamad has] publicly stated about al Qaeda and its engagement in [the] Federation of [Bosnia and Herzegovina]” and that General Packett “do[es] not think that [Hamad] talk[s] the truth.” Trav. Ex. 99 at 1 (Letter from Hamad to Gen. Packett (July 26, 2004)). Hamad disingenuously argued that General Packett was “mistaken if you think that with my letters to domestic and international authorities I am trying to gain the release from serving the rest of my prison term or to be pardoned” and “you are not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this . . . you have no reason to suspect the honesty of my allegations and accusations.” *Id.* at 1-2. Hamad stated that he would not write further to General Packett “since it is pointless to contact people who do not believe me.” *Id.* at 1. The letter confirms that Hamad had spoken repeatedly to domestic and international investigators, accusing various other persons and organizations of connections with al Qaeda, in futile efforts to improve his own situation. *Id.* at 1-2.

To the extent that the Government relies on unsourced statements that it claims inculpate the Petitioners, the Court should treat such statements with the heavy dose of skepticism they merit in view of Hamad’s many lies. Any information originating from Hamad, whether directly or indirectly, should be utterly disregarded.

C. The Government’s Misunderstanding Of Muslim Names

Early in its Narrative, the Government states that “[i]t is common for those engaged in terrorist activities to use an alias, commonly known in Arabic as a *kunya*.” Narrative ¶ 6. This assertion permeates the entire Narrative, in which the Government repeatedly portrays Petitioners as using “aliases,” which the Government suggests is evidence of terrorist activities. The Government not only misunderstands (and, frankly, insults) Muslim naming conventions,

but also highlights the ignorance surrounding cultural and religious differences that has been a persistent theme throughout the Government's detention of Petitioners through nearly seven years.

Contrary to the Government's misunderstanding, a *kunya* is an honorific used in the Muslim world, meaning, simply, "father of." Trav. Ex. 14 ¶ 10 (Riedlmayer Decl.); Annemarie Schimmel, *Islamic Names* 4-8 (1989) (attached to Trav. Ex. 14) ("the *kunya*, *agnomen*, is the designation of a person as father . . . or 'mother,' . . . the *kunya* was mentioned when one wished to honour someone"). A *kunya* is thus not an "alias," as that term is used pejoratively in the Western world. Trav. Ex. 14 ¶ 10 (Riedlmayer Decl.). Rather, a *kunya* is just one of as many as five or six elements comprising an Islamic name. Schimmel, *supra*, at 1 (attached to Trav. Ex. 14). It is common for Muslims engaged in perfectly legitimate everyday activities to use a *kunya*, and no particular inference—especially no inference of terrorist activity—can be drawn from its use by any individual or group. Trav. Ex. 14 ¶ 10 (Riedlmayer Decl.).

The Government similarly misunderstands the prevalence of nicknames in the Islamic world, which are used for many wholly innocent reasons that have nothing to do with terrorism. *Id.* ¶ 8. A nickname or *laqab* is one of the elements in a full Muslim name; they are common in the Muslim world (particularly among expatriates) and are often substituted for given names. Schimmel, *supra*, 12-13 (attached to Trav. Ex. 14); Trav. Ex. 14 ¶¶ 6-9 (Riedlmayer Decl.). For example, the Government states that Mr. Nechla "admitted" that he used the "alias" Sharfuldin, as if it were *per se* wrongful to do so. Narrative ¶ 27.b.i; *see also* ¶¶ 30.e, 57. But it is neither unusual nor sinister that Mr. Nechla would be known by both his so-called given name and his nickname Sharfuldin, which means "honor of religion" and carries no other connotation. Trav. Ex. 14 ¶ 13 (Riedlmayer Decl.). Mr. Nechla's decision to use a nickname in Bosnia is

particularly understandable given that the name “Nechla” sounds like the Bosnian word *kašlje*, meaning “coughing.” *Id.* ¶ 17. The other nicknames that the Government alleges Petitioners used are similarly innocuous and are common Muslim nicknames. *See* Narrative ¶¶ 30.e, 27.d (alleging use of nicknames “Al-Majd” and “Al Muntaser”); Trav. Ex. 14 ¶¶ 14, 16 (Riedlmayer Decl.) (“Majd” or “Al-Majd” and its variants, meaning “honor, distinction, glory,” and “Al Muntaser” and its variants, meaning “victor,” are frequently used in the Muslim world and have no particular connotation). Petitioners’ alleged use of ordinary and commonplace Muslim names and naming conventions is not evidence of terrorist involvement, much less enemy combatancy.

Similarly, the Government repeatedly alleges that Petitioners are “*mujahideen*,” as if such a status were evidence of being an enemy combatant. *See* Narrative ¶¶ 1.a, 1.b, 1.d, 39. This evinces a clear lack of understanding of what the word *mujahed* (plural: *mujahideen*) means in Islamic culture. *Mujahed* is a generic term used to praise any fighter of a just cause. Trav. Ex. 20 ¶ 14 (Ripley Decl.). The term has no more pejorative connotation than the term “crusader” in English. Trav. Ex. 14 ¶ 19 (Riedlmayer Decl.). Indeed, during the Bosnian conflict, the term was used to describe any Muslim person who fought on the Bosnian side. *Id.* Not only did the United States actively support the *mujahideen* (*see, e.g.*, Trav. Ex. 111 (Testimony of U.S. Ambassador Galbraith to House International Relations Committee)), but some Western intelligence agencies even acted as middlemen in bringing the *mujahideen* to Bosnia to participate in the conflict. *See* Trav. Ex. 15 ¶ 14 (Banac Decl.). The same can be said of the United States’ support for, or at least tolerance of, the *mujahideen* in Afghanistan in the early 1990s. *See* Trav. Ex. 16 ¶¶ 8-10 (Rubin Decl.). Given the true meaning of the term *mujahideen* and the United States government’s support for the *mujahideen* in the Bosnian and Afghan

conflict, the Government's incantation of that word does not justify Petitioners' indefinite detention and should be ignored by this Court.

III. RESPONSE TO SPECIFIC ALLEGATIONS COMMON TO ALL PETITIONERS

A. The Government's Disregard Of The Bosnian Investigation

The Government sets out a highly incomplete and therefore misleading picture of the Bosnian authorities' involvement in Petitioners' case. The Government relies on the Bosnian government's involvement for only two events: (1) the Federation police arrest of Petitioners in October 2001 (Narrative ¶¶ 41, 54, 58) and, (2) the fact that "the Bosnian Supreme Court ordered [them] released from Bosnian detention on January 17, 2002" (Narrative ¶¶ 33, 43, 55, 59, 68, 81). The Government's now sanitized version entirely omits the thorough three-month investigation that the Bosnian authorities conducted between October 2001 and January 2002, with assistance from U.S. and international law enforcement organizations, at a time when the Bosnian Government had every motivation to find some basis for holding Petitioners on the terrorism charges upon which they had been arrested.

As discussed in the Factual Background section above, the United States directed and demanded the arrests of the six Petitioners, basing those demands on nothing more than its bare assertions that the Petitioners were suspected of involvement in an alleged attack on the United States embassy—an allegation that the Government has now abandoned in its unclassified Return. *See* Trav. Ex. 10 ¶¶ 13-15 (Lagumdžija Decl.); Trav. Ex. 40 ¶ 31 (Pivić Decl.). The United States provided no specific evidence whatsoever to support its claim. Trav. Ex. 10 ¶ 15 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 16 (Petritsch Decl.). The U.S. Deputy Ambassador and Chargé d'Affaires, Christopher Hoh, threatened to withdraw U.S. military and diplomatic support for Bosnia and its peace process if Bosnia did not make the arrests. *Id.* ¶ 17; Trav. Ex. 11 ¶ 12 (Behmen Decl.); *see also* Trav. Ex. 12 ¶ 16 (Petritsch Decl.). Mr. Hoh's threats were

apocalyptic: all stakeholders knew that a U.S. withdrawal at that time would have derailed the peace process and posed a serious risk of renewed strife in the fragile Bosnian state. Trav. Ex. 11 ¶ 12 (Behmen Decl.); (Trav. Ex. 10 ¶ 17 (Lagumdžija Decl.) (“success of numerous vitally important reforms in Bosnia depended on the continuation of support from the United States”); Trav. Ex. 12 ¶ 26 (Petritsch Decl.) (“likely renewed civil strife as a consequence” of the United States withdrawing). The Bosnian arrest orders for the remaining Petitioners issued shortly after this meeting. Trav. Ex. 11 ¶ 14 (Behmen Decl.).

After the Bosnian authorities capitulated and ordered Petitioners’ arrest, the Bosnian authorities undertook an intensive investigation of the Petitioners over the course of three months. Bosnian authorities had powerful incentives to leave no stone unturned, and senior Bosnian leadership were kept regularly informed of the progress of the investigation. Trav. Ex. 11 ¶ 15 (Behmen Decl.); Trav. Ex. 10 ¶ 18 (Lagumdžija Decl.). During that time, the Bosnian authorities worked with the FBI, representatives from the U.S. embassy, the European Union, the International Police Task Force, SFOR and INTERPOL. Trav. Ex. 11 ¶ 15 (Behmen Decl.); Trav. Ex. 10 ¶ 19 (Lagumdžija Decl.); Trav. Ex. 12 ¶ 18 (Petritsch Decl.). The Bosnian Federation police searched the Petitioners’ homes, cars and offices, examining everything from computer hard drives to wives’ handbags to a bathtub drain hole. *See, e.g.*, Trav. Ex. 5 ¶ 55 (Boumediene Decl.); Trav. Ex. 6 ¶ 46 (Boudella Decl.); Trav. Ex. 1 ¶ 19 (Bensayah Decl.); Trav. Ex. 4 ¶¶ 25, 19 (Ait Idir Decl.); Trav. Ex. 2 ¶ 46 (Lahmar Decl.); Trav. Ex. 22 ¶¶ 13-14 (Kobilica Dec.); Trav. Ex. 30 ¶ 12 (Susic Decl.). The Bosnian authorities also questioned witnesses, investigated Petitioners’ official documents, and examined pieces of physical evidence such as video and audio tapes, computer media, cameras, and correspondence. *See, e.g.*, Trav. Ex. 11 ¶ 15 (Behmen Decl.); Trav. Ex. 40 ¶¶ 32, 34-35 (Pivić Decl.); Trav. Ex. 5 ¶ 55 (Boumediene

Decl.); Trav. Ex. 1 ¶¶ 19-20 (Bensayah Decl.); Trav. Ex. 4 ¶¶ 19-20 (Ait Idir Decl.); Trav. Ex. 85 (November 13, 2001 Expert Finding on Binoculars and Camera Seized).

Importantly, the evidence shows that the Bosnian authorities did not restrict themselves to the false allegation of an embassy plot. Bosnian authorities looked into, for instance, the manner in which Petitioners acquired Bosnian citizenship and residency and, ultimately, took steps to strip Petitioners of any right to reside in Bosnia. Trav. Ex. 11 ¶ 17 (Behmen Decl.); Trav. Ex. 10 ¶¶ 18, 20 (Lagumdžija Decl.). These decisions were subsequently reversed on appeal, and all Petitioners had their citizenship or residency restored. *E.g.*, Trav. Ex. 11 ¶ 17 (Behmen Decl.); Trav. Ex. 10 ¶ 20 (Lagumdžija Decl.); Trav. Ex. 65 (Boumediene Citizenship Order (Nov. 7, 2002)). Moreover, the Bosnian authorities thoroughly investigated Petitioners' employment with various Islamic charities in Bosnia. *See, e.g.*, Trav. Ex. 5 ¶ 54 (Boumediene Decl.) (Mr. Boumediene was arrested by Bosnian authorities in his office at the Red Crescent). The Government has offered no basis to conclude that the Bosnian investigation overlooked any aspect of Petitioners' activities in Bosnia in investigating the U.S. allegations of terrorism. Indeed, while the investigation remained open for two more years after Petitioners were taken to Guantanamo, it was formally closed in 2004 without any criminal charges having been brought. Trav. Ex. 13 (Letter from Zdravko Knezevic to Madeleine Rees (November 8, 2004)).

The fact that Bosnian authorities handed Petitioners over to the United States in January 2002 does not suggest any wrongdoing on Petitioners' part. Again, the United States' authorities applied extraordinary political and military pressure, on the White House's order, to force the Bosnians to hand over the Petitioners in contravention of Bosnia's own laws. Once again, the Bosnians were faced with the choice of either jeopardizing the very existence of the Bosnian state—by risking a confrontation with SFOR troops, being branded as supporters of terrorism,

and losing the support of the United States—or handing over Petitioners without incident. Trav. Ex. 11 ¶ 19 (Behmen Decl.). Not surprisingly, the Bosnian government chose the latter option. *Id.* ¶ 22.

The Bosnian government’s actions furnish additional support for Petitioners’ release. Bosnia, whose institutions the United States helped create at Dayton, conducted a thorough investigation with police investigators on the ground; had full access to Petitioners’ papers, homes, and offices; consulted with U.S. and international law enforcement; was completely familiar with local language, organizations, and institutions; and had every incentive to find *something* of substance to permit Petitioners’ continued detention. In the end, even the Bosnian *prosecutor*, as well as the Bosnian court, agreed that there was insufficient evidence against Petitioners in January 2002 to justify any further detention. The Government has shown no basis for this Court to reach a different conclusion over six years later.

B. The Government’s Allegations Regarding Employment By Charitable Organizations

A major component of the Government’s emerging case against all Petitioners is their employment with, or alleged indirect connection to, various charitable organizations or non-governmental organizations (“NGOs”) in Bosnia and elsewhere, earlier in their lives. Narrative ¶¶ 15, 20-25, 38, 47, 64-65, 73-75, 84-88. The Government’s argument fails on two fronts.

First, the charities were, by all accounts, engaged in substantial, legitimate charitable work, and there is no evidence that Petitioners themselves were involved in any terrorist activity in which the particular NGO might also have been engaged. Petitioners were low-level employees involved in the day-to-day administration and delivery of aid, not executives with decision-making responsibility or control over the direction of any organization’s funds. *See, e.g.*, Trav. Ex. 6 ¶ 43 (Boudella Aff.); Trav. Ex. 5 ¶¶ 25-26 (Boumediene Aff.); Trav. Ex. 3 ¶ 11

(Nechla Aff.); Trav. Ex. 4 ¶ 11 (Ait Idir Aff.). Crucially, the Government has not shown that Petitioners—who worked far from the organizations’ headquarters in the United Arab Emirates or Saudi Arabia—would have even known of any terrorism-related activity.

Second, the Government fails even to show that the organizations at issue engaged in any terrorism-related activities at the relevant time. The Government asserts that certain NGOs operating in Bosnia were later listed as “Specially Designated Global Terrorists” by the Treasury Department’s Office of Foreign Assets Control (OFAC), included as Foreign Terrorist Organizations on a U.S. State Department list, or placed on the U.N. Security Council’s Al-Qaida and Taliban Sanctions Committee Consolidated List. Narrative ¶¶ 23-25. In the first place, none of the organizations for which Petitioners worked appear on the State Department’s list. See U.S. Dep’t of State, Fact Sheet, *Foreign Terrorist Organizations* (Oct. 11, 2005), available at <http://www.state.gov/s/ct/rls/fs/37191.htm> (“State Department list”). Most, including the Red Crescent of the UAE, the Saudi High Commission, and Qatar Charities, do not appear on the OFAC or U.N. lists, either. See U.S. Dep’t of Treas., *Details of Specially Designated Global Terrorist Entities*, in *Terrorism: What You Need to Know About U.S. Sanctions*, available at <http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf> (last visited Oct. 17, 2008) (“OFAC list”); U.N. Security Council Al-Qaida and Taliban Sanctions Committee, *Consolidated List* (last updated Oct. 10, 2008), available at <http://www.un.org/sc/committees/1267/pdf/consolidatedlist.pdf> (“U.N. list”).⁹ As for the few

⁹ It is also clear that an individual does not become an “enemy combatant” merely because he works for a listed organization. The lists include many entities with which the United States is not engaged in armed conflict. The State Department list includes 42 groups, including “Basque Fatherland and Liberty (ETA)” and the “Continuity Irish Republican Army”; the OFAC and U.N. lists contain hundreds of entities and individuals. There is no suggestion that the United States or the United Nations considers every employee of a listed organization as targetable with military force or subject to military detention. Congress plainly has not

relevant organizations that do appear on the OFAC or U.N. lists, they were designated long after Petitioners left, and there is no showing that the organizations engaged in terrorism at all while Petitioners worked there. For example, as the Government concedes, Petitioner Boudella had no interaction with Benevolence International Foundation after 1994; it was not listed as “blocked pending investigation” until December 14, 2001, and was not placed on the OFAC list until November 19, 2002. Trav. Ex. 119 at 5, 17, 42, 60 (OFAC list). Human Appeal International, the organization for which Mr. Boudella was working when Bosnian authorities arrested him, does not appear on any of the Government’s lists. Taibah International, where Mr. Ait Idir repaired computers, did not appear on the OFAC list until May 6, 2004— more than two years after Mr. Ait Idir was taken to Guantanamo Bay. *Id.* at 8, 9, 18, 74.¹⁰

authorized the use of military force against every organization on the lists. *See* Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001) (authorizing the use of force only against “nations, organizations, or persons” who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001” and those who “harbored such organizations or persons”). The Government’s lists appear to be used only to block assets and trigger sanctions, not to guide the use of military force. *See* U.S. Dep’t of Treas., *Executive Order 13224, in Terrorism: What You Need to Know About U.S. Sanctions*, available at <http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf> (blocking property and prohibiting transactions with listed persons); U.N. Security Council Al-Qaida and Taliban Sanctions Committee, *Consolidated List, General Information*, available at <http://www.un.org/sc/committees/1267/consolist.shtml> (last visited Oct. 17, 2008) (U.N. member states should freeze funds and “other financial assets or economic resources” of listed organizations, “prevent the entry into or the transit through their territories” of individuals belonging to or associated with the listed organizations, and “prevent the direct or indirect supply, sale, or transfer of arms and related material” to listed organizations).

¹⁰ Moreover, all of the other organizations mentioned in the Government’s Narrative— many of which had no connection with Petitioners—appeared on the lists long after Petitioners had been taken to Guantanamo Bay. Lajnat al-Dawa al-Islamia did not appear until January 9, 2002 (Trav. Ex. 119 at 6, 53, 59 (OFAC list)); al-Haramayn (Bosnian branch) did not appear until March 11, 2002 (*id.* at 4, 9); the IIRO did not appear until August 3, 2006 (*id.* at 17, 50, 55); and al-Furqan did not appear until May 6, 2004 (*id.* at 8, 17, 41).

C. The Government's Allegations Regarding Military Service And Presence In Countries Engaged In Conflicts Not Involving The United States

The Government's Return rests in large measure on attempts to "associate" Petitioners with groups that, at the relevant times, were not involved in armed conflict against the United States and, in many cases, were acting consistently with United States foreign policy and were possibly even acting with the direct support of the United States government. Such allegations do not show any engagement in hostilities against the United States, or even a willingness to engage in such hostilities.

The Government alleges that Mr. Nechla, Mr. Boumediene and Mr. Boudella were present in Peshawar, Pakistan in 1990, but offers no evidence of any acts by those Petitioners that were hostile to the United States (or anyone else) during that time and at no point clarifies how mere presence in Pakistan could prove enemy combatancy. Narrative ¶¶ 52, 67, 81.

Pakistan was then, as it is now, a U.S. ally. *See, e.g.,* U.S. Dep't of State, *Background Note: Pakistan* (July 2008), available at <http://www.state.gov/r/pa/ei/bgn/3453.htm> ("[i]n 2004, the United States recognized closer bilateral ties with Pakistan by designating Pakistan as a Major Non-NATO Ally").

The Government similarly errs in attempting to infer enemy combatancy from the fact that some Petitioners were present in Algeria, Yemen, or Bosnia during the civil wars in those countries, or that they performed mandatory service in the Algerian military. The Government asserts that Mr. Boumediene moved to Yemen in 1993 and "has a history of traveling to areas of conflict." Narrative ¶ 78. At no point does the Government offer any evidence to show that Mr. Boumediene engaged in any combat-related activity during his time in Yemen. *See also* Narrative ¶ 35.b.i (making similar allegations of presence in Yemen against Mr. Bensayah without allegation of engagement in hostilities). The Government also says that Mr.

Boumediene traveled to Algeria—the country of his birth—in 1999, but offers no showing that he engaged in any activity hostile to the United States. Notably, Mr. Boumediene never denied traveling to either location. Nor has the Government contended that either nation was engaged in armed conflict against the United States at those times. Narrative ¶ 79. Mere presence in a country engulfed in a civil war does not make one an enemy combatant.

The Government similarly alleges that Mr. Boudella served in the Algerian Army from 1987 to 1989. Narrative ¶ 82.b. Mr. Boudella has never denied this service, but as he has repeatedly pointed out, it was mandated by Algerian law. Trav. Ex. 6 ¶ 4 (Boudella Decl.); AFR Ex. 87 at 6; AFR Ex. 28 at 2-3; Trav. Ex. 17 ¶ 8 (Layachi Decl.). Apart from a short period of basic training—mandatory for all enlistees, see Trav. Ex. 6 ¶¶ 4,5 (Boudella Decl.); Trav. Ex. 17 ¶ 8 (Layachi Decl.)—Mr. Boudella served as a postman. Trav. Ex. 6 ¶ 7 (Boudella Decl.); AFR Ex. 87 at 7; AFR Ex. 28 at 2; Narrative ¶ 82.b. At no point does the Government purport to show how Mr. Boudella’s mandatory national service in the late 1980s is evidence of any hostile act against the United States or its allies. Algeria has not been at war with the United States or any of its allies at any relevant time in Mr. Boudella’s life.

Similarly, Mr. Boudella’s presence in Bosnia during the 1992-1995 war was limited to providing humanitarian aid to families and, between 1994 and 1995, religious education to soldiers. Trav. Ex. 6 ¶¶ 34, 37 (Boudella Decl.); AFR Ex. 87 at 7; AFR Ex. 28 at 5; Trav. Ex. 57 (1996 certificate from the Army of Bosnia and Herzegovina). The support for the parallel allegation that Mr. Bensayah “went to a mujahideen camp” in Bosnia in 1993 (Narrative ¶ 39) is dubious at best. Even assuming that the Government had shown that Mr. Boudella fought in the Bosnian war on the side of the Bosnian Muslims—which it has not, particularly after its recent and sudden disavowal of Arnaout’s unreliable interrogation (AFR Ex. 29)—that would not help

the Government, as the United States *supported* the Bosnian Muslims in their resistance to Serb aggression and genocide. Trav. Ex. 20 ¶ 20 (Ripley Decl.) (noting lack of support for a link between Arab men who came to fight in war and al Qaeda); Trav. Ex. 111 (Galbraith Testimony) (noting that the “well known” policy of the United States was to “not object[] to the flow of arms through Croatia to the Bosnian [Muslims]”). Members of the Bosnian Army or their allied units, even if treated as “combatants,” cannot therefore be viewed as “enemies.” Moreover, the Bosnian war ended thirteen years ago with the Dayton Peace Agreement. Trav. Ex. 12 ¶ 5 (Petristch Decl.); Trav. Ex. 11 ¶ 7 (Behmen Decl.). Action in those hostilities, even if proven, cannot support detention in 2008.

D. The Government’s Allegation Regarding The Armed Islamic Group (GIA)

The Government suggests that the Petitioners are or were members of the Armed Islamic Group (“Groupe Islamique Armé” or GIA) and that the GIA has been designated as a foreign terrorist group. *See* Narrative ¶¶ 30.b, 57.a. The Government does not, however, elaborate on how the Petitioners could have been active in the GIA, given that they were *all absent from Algeria* during the critical operational period of the GIA. The Government also does not explain how the GIA, a group whose locus was Algeria (and to a lesser extent, France) and whose concerns were largely confined to establishing an Islamic state in Algeria, could have any appeal for Petitioners, who *left* Algeria in search of better opportunities. Finally, the Government’s insistence on bringing GIA into the case at all is puzzling, given that the GIA has been largely irrelevant to Algerian affairs since 1997.

In the period during which the Petitioners were growing into adulthood, Algeria’s youth confronted difficult economic conditions, high unemployment, and a lack of educational and recreational opportunities. Trav. Ex. 17 ¶ 9 (Layachi Decl.). The ascendancy of an Islamic political party in 1989 encouraged young Algerian men to seek their fortunes abroad. *See id.*

¶¶ 9-10. Four of the Petitioners left Algeria in 1990 for better opportunities. Trav. Ex. 1 ¶ 5 (Bensayah Aff.); Trav. Ex. 6 ¶ 10 (Boudella Aff.); Trav. Ex. 5 ¶ 10 (Boumediene Aff.); Trav. Ex. 3 ¶ 2-3 (Nechla Aff.). The two remaining Petitioners were pursuing higher education, but they too left Algeria by 1992, as did many others in response to military coup d'états, cancelled elections, martial law, and worsening economic conditions. Trav. Ex. 17 ¶¶ 11-14, 22 (Layachi Decl.); Trav. Ex. 4 ¶ 2 (Ait Idir Aff.); Trav. Ex. 2 ¶¶ 5-7 (Lahmar Aff.). The GIA was formed in 1992, after four of the Petitioners had left Algeria and only shortly before the remaining two left. Trav. Ex. 17 ¶ 15 (Layachi Decl.).

The GIA's focus was parochial and xenophobic and focused on perceived grievances within Algeria. *Id.* ¶¶ 17, 24. Thus, Algerians such as Petitioners, who had made a deliberate choice to leave Algeria, were more likely to be the target of the wrath of the GIA than to be members of it. Furthermore, the GIA's attacks were confined to Algeria and France, Algeria's former colonial master. Trav. Ex. 17 ¶¶ 17, 23 (Layachi Decl.). Petitioners, on the contrary, sought employment in countries far removed from the GIA's sphere of influence, such as Pakistan, Bosnia, and Yemen. *See id.* ¶ 25. Finally, the GIA's violent activities led to its decline due to a series of struggles over leadership and bloody purges within the group itself. *Id.* ¶ 18. The GIA's final public communiqué was issued in September 1997. *Id.*

The reality of the Petitioners' lives does not accord in any way with the membership, chronology, aims, activities or influence of the GIA. Indeed, if Petitioners were truly involved in GIA activities, they would have attempted to avoid contact with the Algerian Government. Yet the evidence shows that several of them regularly visited the Algerian Embassy in other countries, either to register or to obtain updated passports. Trav. Ex. 2 ¶¶ 8, 11-12, 33-34 (Lahmar Aff.); Trav. Ex. 5 ¶¶ 10-11, 40-41 (Boumediene Aff.); Trav. Ex. 4 ¶ 9 (Ait Idir Aff.).

They would hardly have done this had they belonged to an Algerian extremist group—and the Algerian government would hardly have renewed their passports if it truly believed they were GIA members. Trav. Ex. 17 ¶ 26 (Layachi Decl.).

Additionally, and importantly, the United States is not and has never been engaged in conflict against the GIA, nor is there any evidence that the GIA ever committed any terrorist acts against the United States, much less that Petitioners were involved in any such act. To the extent any Algerian organization has been sympathetic to or supportive of al Qaeda, it would be the Salafist Group for Preaching and Combat (the Groupe Salafiste Pour la Prédication et le Combat or GSPC, which now calls itself al Qaeda in the Islamic Maghreb), not the GIA. Trav. Ex. 17 ¶¶ 19-20 (Layachi Decl.). Accordingly, the Government’s GIA allegations—even if they were well-founded, which they are not—do not support Petitioners’ indefinite military detention as “enemy combatants.”

INCORPORATION BY REFERENCE

This document contains only Petitioners’ response to as much of the Government’s Return as could be conveniently rebutted without discussion of classified information. Petitioners hereby incorporate by reference the Classified Traverse submitted herewith under seal, as well as all classified and unclassified exhibits. Petitioners also incorporate the points made in their prior pleadings, motions, memoranda, and oral arguments before this Court.

SUPPLEMENTATION AND FURTHER DISCOVERY

Petitioners reserve the right to supplement this Traverse, including to take account of any additional information that may come to their attention or that of their counsel, such as (but not limited to) any discovery ordered by the Court or additional disclosure by the Government.

CONCLUSION

For the foregoing reasons and the further reasons stated in the Classified Traverse and all exhibits submitted, Petitioners respectfully requests that this Court:

1. Grant the Petition for Habeas Corpus;
2. Order and declare that Respondents have no lawful basis for detaining each Petitioner;
3. Order the immediate release, under appropriate conditions to safeguard their liberty, of Petitioners Ait Idir, Boudella, Boumediene, Bensayah, Nechla and Boumediene; and
4. Grant such order or further relief as is just and proper.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LAKHDAR BOUMEDIENE, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1166 (RJL)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
)	
)	
)	

PETITIONERS' EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
1.	Declaration of Belkacem Bensayah
2.	Declarations of Saber Lahmar
3.	Declaration of Mohamed Nechla
4.	Declarations of Mustafa Ait Idir
5.	Declaration of Lakhdar Boumediene
6.	Declaration of Hadj Boudella (Attaching Certificate from the Army of the Republic of Bosnia and Herzegovina.)
7.	Declaration of Philip Zelikow (filed under seal)
8.	Declaration of Paul Pillar (filed under seal)
9.	Declaration of Richard Shiffrin (filed under seal)
10.	Declaration of Zlatko Lagumdzija
11.	Declaration of Alija Behmen
12.	Declaration of Wolfgang Petritsch
13.	November 8, 2004 letter from Zdravko Knezevic to Madeleine Rees
14.	Declaration of Andras Riedlmayer
15.	Declaration of Ivo Banac
16.	Declaration of Barnett Rubin
17.	Declaration of Azzedine Layachi
18.	Declaration of Gary Solis
19.	Declaration of Nedim Dervisbegovic
20.	Declaration of Tim Ripley
21.	Declarations of Arthur Brown
22.	Declarations of Anela Kobilica
23.	Declaration of Emina Lahmar

24. Declaration of Badra Baouche
25. Declaration of Sabiha Delic – Ait Idir
26. Declaration of Abassia Bouadjmi
27. Declaration of Emina Planja
28. Declaration of Muhidin Planja
29. Declaration of Fuad Sedic
30. Declaration of Mesud Susic
31. Declaration of Suad Cupina
32. Declaration of Mamdouh Ahmed Habib
33. Declaration of Jamil El-Banna
34. Declaration of Bisher Al-Rawi
35. Declaration of Said Mahmoud
36. Declaration of Organization of the Families of Fallen Soldiers re: Mohamed Nechla
37. Letter from Dr. Mustafa Ceric re: Mohamed Nechla and Lakhdar Boumediene
38. Petition for Mohamed Nechla re: Red Crescent Society
39. Petition for Lakhdar Boumediene re: Red Crescent Society
40. Declaration of Nermina Pivic
41. Declaration of Mevludin Durgutovic
42. Declaration of Keith Watenpaugh
43. *Intentionally Left Blank*
44. *Intentionally Left Blank*
45. Saber Lahmar's Medina Islamic University Certificate
46. Certificate from Medina Islamic University for Preaching
47. Letter from the Saudi High Commission to the Supreme

Court of Bosnia and Herzegovina re: Saber Lahmar

48. Certificate from the Canton Ministry for Education, Science, Religion and Sport Issued to Mohamed Nechla in the Area of Administration
49. Diploma from the Karate Association of Split, Croatia for Mustafa Ait Idir for Passing his Black Belt Exam
50. Diploma from the Karate Association of Dalmatia for Mustafa Ait Idir for 3rd place finish in Senior Category
51. Diploma from the Karate Association of Dalmatia for Mustafa Ait Idir for 1st place finish in Senior, Light-Middleweight Category
52. Certificate of Qatar Charitable Society's Bosnia and Herzegovina Office re: Mustafa Ait Idir
53. Certificate from Taibah International re: Mustafa Ait Idir
54. Decision of the Federal Ministry of Internal Affairs of BiH granting citizenship to Mustafa Ait Idir
55. Letter from Federation of BiH Federal Ministry of Displaced Persons and Refugees re: Lakhdar Boumediene and Mohamed Nechla
56. Hadj Boudella's Diploma from the Alliance of Salafi Schools of Pakistan for Islamic and Arabic Sciences
57. 1996 Certificate from the Army of Bosnia and Herzegovina re: Hadj Boudella
58. 1997 Certificate of Membership in Bosnian Army for Hadj Boudella
59. October 30, 2001 Order of Supreme Court of Federation of Bosnia and Herzegovina
60. January 16, 2002 Bosnian Court Document
61. January 17, 2002 U.S. Embassy letter to Bosnian government
62. January 17, 2002 Supreme Court Document Setting Petitioners Free

63. October 11, 2002 Human Rights Chamber Decision in Lahmar, Boudella, Nechla, and Boumediene v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina
64. November 7, 2002 Decision of Ministry of Internal Affairs of Federation of Bosnia and Herzegovina re: Saber Lahmar
65. November 7, 2002 Decision of Ministry of Internal Affairs of Federation of Bosnia and Herzegovina re: Lakhdar Boumediene
66. December 19, 2002 Decision of Supreme Court of Federation of Bosnia and Herzegovina re: Lakhdar Boumediene
67. April 4, 2003 Human Rights Chamber Decision in Mustafa Ait Idir v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina
68. April 4, 2003 Human Rights Chamber Decision in Belkacem Bensayah v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina
69. April 21, 2004 Bosnia and Herzegovina Parliament House of Representatives Commission on Human Rights, Refugees, Immigration and Asylum
70. March 30, 2005 Letter from Muhamed Ibrahimovic
71. October 3, 2005 Letter from Ambassador Bisera Turkovic (Ambassador of Bosnia and Herzegovina to United States) to Rob Kirsch
72. April 6, 2006 Letter from Mladen Ivanic (Foreign Minister of Bosnia and Herzegovina to Terry Davis (Secretary General of the Council of Europe)
73. October 8, 2001 Order of the Municipal Court in Zenica to search Belkacem Bensayah's House
74. October 8, 2001 Receipt of Seized Objects from Belkacem Bensayah
75. October 20, 2001 Minutes of Belkacem Bensayah Before Supreme Court Judge
76. October 20, 2001 Materials Seized from Lakhdar

- Boumediene (1-4)
77. October 20, 2001 Materials Seized from Lakhdar Boumediene (1)
 78. October 20, 2001 Materials Seized from Lakhdar Boumediene (1-5)
 79. October 21, 2001 Materials Seized from Hadj Boudella
 80. November 9, 2001 Expert Finding on Materials Seized from Saber Lahmar
 81. November 9, 2001 Expert Finding on Materials Seized from Mohamed Nechla
 82. November 9, 2001 Expert Finding on Materials Seized from Mustafa Ait Idir
 83. November 9, 2001 Expert Finding on Materials Seized from Lakhdar Boumediene
 84. November 9, 2001 Expert Finding on Materials Seized from Hadj Boudella
 85. November 13, 2001 Expert Finding on Binoculars and Camera Seized
 86. January 17, 2002 Human Rights Chamber Decision in Lahmar, Boudella, Nechla, and Boumediene v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina
 87. *Intentionally Left Blank*
 88. *Intentionally Left Blank*
 89. January 15, 2002 List of Materials Seized from Lakhdar Boumediene
 90. January 29, 2002 Report by bank on accounts of Mustafa Ait Idir and two other individuals
 91. January 30, 2002 Report by bank on accounts of Saber Lahmar and Belkacem Bensayah
 92. January 7, 1998 Confession of Ali Hamad
 93. July 9, 1998 Ruling of the Supreme Court of the Federation

- of Bosnia and Herzegovina
94. July 13, 1998 Testimony of Ali Hamad recanting confession
 95. January 6, 2000 Pardon Decision for Saber Lahmar
 96. April 18, 2000 Rulings on Appeal in Mostar Car Bomb Case
 97. *Intentionally Left Blank*
 98. Proof of Accommodation for Lakhdar Boumediene
 99. July 26, 2004 Letter from Ali Hamad to General Virgil Packett
 100. August 26, 1996 letter from Senahid Bristric (Bosnian Ambassador to Saudi Arabia) to Bosnian Ministry of Foreign Affairs
 101. June 21, 1994 Diploma for French Language Studies for Lakhdar Boumediene
 102. January 25, 2002 Report on Turkish Bank Account
 103. Photograph of Saber Lahmar's son Muad
 104. March 5, 1994 Ad'Dalil Computer and Investment Services Certificate for Lakhdar Boumediene
 105. January 24, 2000 Algerian National Identification Card for Lakhdar Boumediene
 106. September 27, 2001 Algerian Passport for Lakhdar Boumediene
 107. September 27, 2001 Algerian Embassy in Rome Registration Card for Lakhdar Boumediene
 108. Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10016
 109. Government's Consolidated Response to Defendant's Motion to Strike Portions of the PSIR, Sentencing Memorandum, and Motion for Downward Departure in U.S. v. Arnaout
 110. Senate Select Committee on Intelligence Report on Iranian Arms Transfers to the Bosnian Army

111. House International Relations Committee Hearing Transcript re: Iran/Bosnia Arms
112. Profile of Red Crescent Society of UAE
113. “Reconstructing Bosnia, Constructing Civil Society,” by Smillie and Todorovic, Chapter 2 of *Patronage or Partnership*, Smillie ed.
114. United Nations Consolidated Terror List updated October 3rd, 2008
115. Information on United Nations consolidated list
116. “The Suspects: A Bosnian Subplot” internet article
117. *Intentionally Left Blank*
118. National Commission on Terrorist Attacks against the United States, Monograph on Terrorist Financing: by John Roth, Douglas Greenburg and Serena Wille, Chapter 7 (Al Haramayn Case Study) (excerpt)
119. Treasury Department Terror list
120. *Intentionally Left Blank*
121. Excerpts from The Dark Side by Jane Mayer (excerpt)
122. *Intentionally Left Blank*
123. *Intentionally Left Blank*
124. *Intentionally Left Blank*
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139. *Intentionally Left Blank*
140. Exhibit R-10 to 2004 Factual Return for Lakhdar Boumediene (filed under seal)
141. Government Discovery document USG 04-CV-1166-0064 – USG 04-CV-1166-0066 (filed under seal)
142. Government Discovery document USG 04-CV-1166-0067 – USG 04-CV-1166-0069 (filed under seal)
143. Government Discovery document USG 04-CV-1166-0001 – USG 04-CV-1166-0005 (filed under seal)
144. Government Discovery document USG 04-CV-1166-0006 – USG 04-CV-1166-0010 (filed under seal)
145. Government Discovery document USG 04-CV-1166-0011 – USG 04-CV-1166-0023 (filed under seal)
146. Government Discovery document USG 04-CV-1166-0040 – USG 04-CV-1166-0047 (filed under seal)
147. Government Discovery document USG 04-CV-1166-0048 – USG 04-CV-1166-0056 (filed under seal)
148. Government Discovery document USG 04-CV-1166-0024 – USG 04-CV-1166-0026 (filed under seal)
149. Exhibit R-28 to 2004 Factual Return for Mustafa Ait Idir (filed under seal)
150. Document from 2004 Factual Return for Saber Lahmar (filed under seal)

151. Exhibit R-15 to 2004 Factual Return for Belkacem Bensayah (filed under seal)
152. Government Discovery document USG 04-CV-1166-0095 – USG 04-CV-1166-0097 (filed under seal)
153. Exhibit R-11 to 2004 Factual Return for Saber Lahmar (filed under seal)
154. Exhibit R-17 to 2004 Factual Return for Saber Lahmar (filed under seal)