

March 31, 2005

~~CONFIDENTIAL~~ Annual Review Board ("ARB" or "Board") Submission on behalf of Hadj Boudella by his Attorneys Stephen H. Oleskey, Robert C. Kirsch, Douglas Curtis, and Melissa A. Hoffer Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

(U) This Classified ARB Submission ("Classified Submission") is made by the law firm of Wilmer Cutler Pickering Hale and Dorr LLP on behalf of its client, Hadj Boudella.<sup>1</sup> It replaces our February 1, 2005, submission to the Board, which is hereby withdrawn. The procedures set forth in the Administrative Review Board Process ("ARB Process") require this Board to undertake "careful consideration" of a number of factors, including the likelihood that Mr. Boudella "will take up arms against the United States or its allies," and Mr. Boudella's "intelligence value." This Classified Submission will provide the Board with information concerning those factors to assist its determination that Mr. Boudella does not pose a threat to the United States or its allies, and that there are no other factors supporting the need for Mr. Boudella's continued detention.<sup>2</sup> Because the CSRT, as well as the underlying allegations, focus largely on the asserted relationships among Mr. Boudella and the five other Bosnian-Algerians taken into custody by U.S. forces in Bosnia in January 2002, we respectfully request that this Board consider the Classified Submissions for all six of our clients when evaluating each of their cases. For the reasons explained below, this Board should find that Mr. Boudella does not pose a threat to the United States or its allies, and has no intelligence value.

<sup>1</sup> (U) WCPHD provides this submission and the accompanying materials without waiving any claims submitted on behalf of Mr. Boudella in the *habeas corpus* action *Boumediene et al. v. Bush et al.*, currently pending in the United States Court of Appeals for the District of Columbia. WCPHD has contended in those proceedings that Mr. Boudella was seized unlawfully by U.S. military authorities from Bosnia Herzegovina and is being detained unlawfully at Guantanamo.

<sup>2</sup> (U) This Classified Submission necessarily focuses on the classified contents of the record relied upon by the CSRT, which is the only classified information available at this time to counsel for Mr. Boudella. The CSRT record, however, includes only a small portion of the written record reflecting information and statements provided by Mr. Boudella during his internment at Guantanamo. For example, we are aware that every detainee subject to the Department of Defense's order establishing the CSRTs was determined to be an enemy combatant through "multiple levels of review." See Order Establishing Combatant Status Review Tribunal, § (a) (July 7, 2004).

(U) The Board should affirmatively enquire whether additional information exists that bears on the facts that Mr. Boudella does *not* pose a risk to the United States or its interests and has no intelligence value. Further, this Board is mandated by its own procedures to assess the reliability of any piece of information presented in the ARB proceeding, including whether the information is "specific as to the matters described," "corroborated by other information," and was obtained by a source that "appears credible." *Administrative Review Board Process*, ARB proceedings at (e)(3). The ARB procedures specifically recognize that information that is "vague, unsupported, or not established through reliable sources" is considered less reliable.

(U) To the extent the Board relies on any such additional information, we request that it also be made available for review by us as Mr. Boudella's security-cleared counsel. See *In Re Guantanamo Detainee Cases Memorandum Opinion Denying in Part and Granting in Part Respondents' Motion to Dismiss or for Judgment as a Matter of Law* at 45-53 (Jan. 31, 2005) (Classified) (finding CSRT process unconstitutional on the ground that, *inter alia*, counsel must have access to all information relied upon for purposes of reaching "enemy combatant" determination), attached to Joint App. at Ex. N.

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(u) As an initial matter, this Board should place great weight on the fact that the unanimous decision of CSRT Panel No. 12, submitted by Tribunal President Colonel George W. Dunbar, found that Mr. Boudella "acquitted himself well at the hearing," "was particularly respectful, appeared sincere, and apologized to the Tribunal for some of the responses given, and attitudes displayed, by his witnesses." *Boudella Unclassified Summary of Basis for Tribunal Decision*, 7(d), attached to Joint App. at Ex. D(a). The CSRT noted that Mr. Boudella asked them to consider his record of cooperative behavior while detained at Guantanamo, and his statements that he does not consider the United States as an enemy, and has never participated in terrorist activities against the U.S. and did not attempt to elude being taken into custody in Bosnia. Accordingly, the Tribunal recommended that

(u) [A]ny Administrative Review Board convened in the future concerning this Detainee **consider these matters, and, should the Board conclude he no longer represents a danger to the United States or its allies, that he be considered for release to his home country.**

*Id.* For that and the additional reasons explained below, this Board should find that Mr. Boudella does not pose a threat to the United States or its allies, and should be released.

I. (u) DISCUSSION OF ARB CRITERIA.

A. (u) Mr. Boudella's Personal Information, Work History, and Family Status

(FOUO//LES) The classified CSRT record shows that Mr. Boudella grew up in Algeria where he lived with his family and attended and graduated high school.<sup>3</sup> After high school, he was employed at a middle school in Algeria, until he was drafted by the Algerian Army.

(FOUO//LES) He served in the Algerian Army for two years, and returned to his job at the middle school. Before attending university, he traveled to Saudi Arabia as part of a religious delegation. Mr. Boudella went on to achieve a degree in Arabic and Islamic studies at a two-year university in Pakistan. Because his family had limited resources, he continued to work with children—this time taking care of orphans—to support himself while obtaining his advanced degree.

(FOUO//LES) After graduation in the early 1990s, he moved to Croatia where he continued his social work, and also taught children. For a short time, he worked in the capacity of a chaplain, teaching Islamic studies to soldiers in Bosnia. He next took a position with an organization that provided English, Arabic, and computer instruction. In 1996, he and his family moved to Sarajevo, where he formed his own business selling watches and

<sup>3</sup> (u) The information in these opening paragraphs is based on *Encl. (2) to CSRT Decision Report at Exhibit R-32*, attached to Joint App. at Ex. D(hh).

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electronics. The business was not successful enough to continue, however, and after a short time he returned to social work. He continued working with war-orphaned children until he was placed under arrest (after voluntarily reporting to the police) in 2001. With the exception of his brief stint as a businessman, Mr. Boudella has devoted his adult life to teaching and assisting others in need.

(U) He has been married for over a decade to his first wife, and for six years to his second wife.<sup>4</sup> He has three children with his wife Nadja Dizdarevic, and four children with his wife, Emina Planja, one of whom was born with a heart ailment shortly after Mr. Boudella was taken to Guantanamo. A photograph of Mr. Boudella's daughter, Iman, is attached as Exhibit 3. Prior to his arrest in Bosnia in October 2001 at the request of the U.S. government, Mr. Boudella had no criminal record.

1. (U) *Mr. Boudella's Friendships Do Not Demonstrate Dangerousness.*

(U) That Mr. Boudella formed friendships while living in Bosnia with three other men who shared in common his Algerian birthplace is unremarkable and in no way presents competent evidence of dangerousness. It is, as the Board knows, quite common for Americans living abroad to form associations and friendships with each other, or to gravitate to the same communities.

(b)(1)



<sup>4</sup>(U) Consistent with his faith, Mr. Boudella is lawfully married to both of his wives, and enjoys separate residences with each of his families.

<sup>5</sup>(U) Mr. Boumediene has never denied the fact that he provided food and charitable assistance to Mr. Bensayah on a few occasions, and paid a few hundred dollars toward legal assistance for him when he was arrested on immigration-related charges. *See generally*, Boumediene Classified ARB Submission.

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**B.(a) Mr. Boudella Was Never Apprehended and Voluntarily Reported to Police for Questioning**

(Four) Detainees Nechla No. 10003 , Bensayah No. 10001, Ait Idir No. 10004, Lahmar No. 10002, Boudella No. 10006, and Boumediene No. 10005 all were born in Algeria and had been living in Bosnia for six to twelve years by 2001 when they were arrested by Bosnian authorities

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<sup>7 (FOUO)</sup> Counsel has learned that Detainee No. 10001's name is Mr. Belkacem Bensayah , not Bensayah Belkacem.

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(u) All were ordered released by Bosnia's highest court in January 2002 on the ground that there was insufficient evidence to detain them. *See Supreme Court of the Federation of Bosnia and Herzegovina Decision*, attached to Joint App. at Ex. B(b). Immediately after the order was issued, and before their release could occur, the six were turned over to United States forces stationed in Bosnia and then flown to Guantanamo where they are entering their fourth year as prisoners. *See Summary of Action of the Government of Bosnia and Herzegovina Concerning the Return of the Six Detainees Taken from Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba,*

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(u) In June, 2004, the Chief Federal Prosecutor for Bosnia and Herzegovina dismissed all charges against Mr. Boudella, and closed his almost three-year investigation into the alleged terrorism activities involving Mr. Boudella and the other five men. See *Letter from Bosnian Chief Federal Prosecutor to UNOHCHR* attached to Joint App. at Ex. B(d). Following a successful appeal made to the Human Rights Chamber Court of Bosnia, Mr. Boudella's Bosnian citizenship, stripped at the time of his arrest in 2001, was reinstated.<sup>10</sup> See *Bosnian Citizenship Certificate* attached as Exhibit 2.

1.(a) *Mr. Boudella Voluntarily Reported to Police in Sarajevo.*

(u) On October 21, 2001, Mr. Boudella received a call from the Bosnian police in Sarajevo, and voluntarily went to the police station. See *Encl. (2) to CSRT Decision Report* at Exhibit R-6, ¶ 6, attached to Joint App. at Ex. D(b); *Mr. Boudella's Statement to the Tribunal* at pp.2-3, attached to Joint App. at Ex. D(jj). At that time, he already had heard that three men had been taken into custody a few days prior to police contacting him. See *Id.* He could easily have escaped from Bosnia at that time; as he pointed out to the CSRT – he had a passport, and he had money. If he was the dangerous terrorist he is purported to be, he could—and would—have fled the country.

(u) Instead, he voluntarily went to the police station, and accompanied officials back to his home where a search was conducted by SFOR, Sarajevo police, and others. No evidence against Mr. Boudella was discovered during the search.

(u) Mr. Boudella was not "captured." He calmly and peacefully responded to the telephone call from the Sarajevo police. These are not the acts of a dangerous individual, much less a would-be terrorist.

(u) 2. *Newly Disclosed Evidence Sheds Light on Source of U.S. Suspicion*

(u) The information in Mr. Boudella's CSRT file purports to tie him to the five other Algerian men arrested in Bosnia in October 2001. Recent information may explain how the United States arrived at this erroneous assumption.

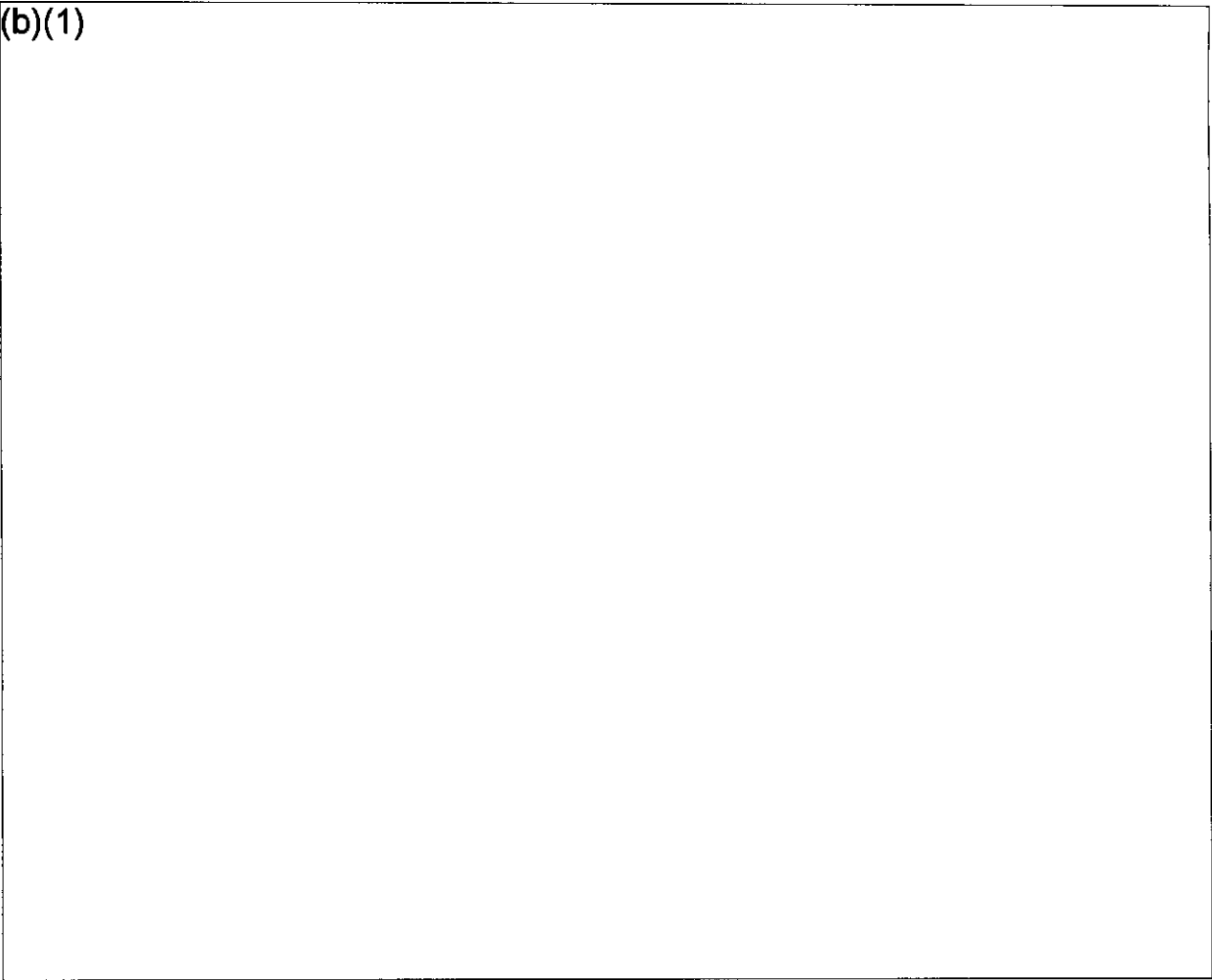
<sup>10</sup> (u) The Human Rights Chamber court was created pursuant to the Dayton Peace Accords convened by the United States government to end the terrible war in Bosnia and Herzegovina among Muslims, Serbs and Croats that began in 1991 following the break up of the former Yugoslavia. See *To End a War* by Richard Holbrooke, former Assistant Secretary of State for European and Canadian Affairs (1994-1996), the chief architect of the Dayton Accords. By its mandate, the decisions of the Human Rights Chamber (now the Human Rights Court) of Bosnia and Herzegovina are binding on the government of Bosnia and Herzegovina.

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<sup>11</sup> (u) See also Lahmar Classified ARB Submission for a full discussion of this evidentiary development.

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(b)(7)(A)

(u) The fact that Messrs. Boumediene, Boudella, Ait Idir and Nechla also repeatedly freely acknowledged – in interrogations and in their CSRT testimony – that they shared a social friendship encouraged interrogators to characterize them as “known associates.” But without the centerpiece element, the successful “smear campaign” run by Mr. Lahmar’s embittered and self-interested (see below) ex brother-in-law, what is left of the “GIA cell” and the “terrorist conspiracy” of the six, is little more than a handful of married men, gainfully employed in humanitarian aid work, all Algerian ex-patriots living in Bosnia, four of whom often socialized on weekends.

(b)(1)

(u) (b)(1) Through Hamad’s attorney in Bosnia, counsel recently obtained a copy of a long, rambling handwritten letter that Hamad sent from prison on July 26, 2004 to U.S. General (b)(6), then SFOR Commander in Bosnia.<sup>14</sup> A copy of this letter and an English translation of the letter are attached to the Joint Appendix at Exhibit M.

(u) The letter by Hamad apparently responds to earlier comments or communications to Hamad, which he attributes to (b)(6) or his aides. The letter begins with a remarkable admission: “I know that you do not trust to what I have publicly stated about Al Qaeda and its engagement in Federation of BiH... I spoke about that with investigators from the FBI on several occasions and we are still in touch.” Hamad complains in the

<sup>14</sup> (u) The letter is addressed to “Respected Mr. Commander of SFOR General (b)(6)” Major General (b)(6) was named SFOR commander in Bosnia on October 2, 2003 and served in that capacity until October 5, 2004, when he was replaced by Brigadier General (b)(6) SFOR itself was replaced on December 2, 2004 by UFOR.

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letter that General (b)(6) "has no reason to suspect the honesty of my allegations and accusations," and that General (b)(6) is "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."

(u) It is plain from the text of Hamad's letter that (1) he is incensed that General (b)(6) and SFOR no longer believe his "detailed data" concerning Muslim mujahedin activities in Bosnia from 1992 onward; (2) Hamad has been an informant for the FBI and "domestic and international investigators" in Bosnia for years in a long standing but unsuccessful effort to buy his way out of prison in exchange for all the information he can supply; and (3) he is deeply upset that "the honesty of my allegations that Al Qaeda was connected with many Islamic humanitarian organizations which were engaged in Bosnia during and after the war, under the lead of the High Saudi Committee for Relief" is now suspect. Obviously, General (b)(6) and SFOR did not find Hamad to be a credible source.

(s) This letter goes well beyond the information belatedly supplied by email to two members of Mr. Lahmar's CSRT on October 20, 2004. (b)(1)

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**C. (u) Statements Made by Mr. Boudella and Cooperation While in Detention**

(b)(1)

**D. (u) Bosnia's Willingness to Repatriate Mr. Boudella**

(u) The Bosnian government has taken a number of steps that demonstrate its unequivocal commitment to repatriating the six men to Bosnia. *See generally, Summary of Actions of the Government of Bosnia and Herzegovina Concerning the Return of the Six Detainees Taken From Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba*, attached to Joint App. at Ex. B.

(u) Specifically, on April 21, 2004, the Bosnia-Herzegovina Parliament House of Representatives Commission on Human Rights, Refugees, Immigration and Asylum ("Commission") issued a report, in accordance with Article 40 of the Rules of Procedure of the Bosnia-Herzegovina Parliament House of Representatives, requesting that BiH and FBiH authorities

(u) [I]nitiate immediately proceedings with the authorities of USA related to return of [ Mr. Boudella] and others in this case detainees [sic] held in the military base, Guantanamo Cuba.<sup>17</sup>

*Id.*, *Unofficial Translation of Commission Report*, at Ex. B(f).

(u) The Commission also "order[ed] BiH authorities (the Council of Ministers of BiH) and FBiH authorities (government of FBiH) to completely implement the decision

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<sup>17</sup> (u) Nadja Dizdarevic, Mr. Boudella's wife, submitted an application to the Commission on February 26, 2004, to initiate proceedings to repatriate all six of the men to Bosnia.

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of the HR Chamber number CH/02/8697 and others from 3 September 2002." *Id.* The Human Rights Chamber concluded—and the Commission accepted its conclusions—that various rights of the six were violated as a result of Bosnia's handover of them to the U.S. *Id.* at (c).

(u) On November 16, 2004, the Bosnian Council of Ministers adopted the recommendations of the Ministry of Justice with respect to the six detainees, including Recommendation 9, that stated it is necessary to begin negotiations with the United States government for their repatriation.

(u) Additionally, Mr. Boudella's citizenship, which was temporarily revoked when he was handed over by the Bosnians at the insistence of the U.S. government, was fully restored following the decisions of the Human Rights Chamber and the Bosnian Supreme Court. *See Bosnian Citizenship Certificate* attached as Ex. 2. On January 31, 2005, Slobodan Kovac, the Bosnian Minister of Justice confirmed in a statement that Messrs. Boudella, Nechla, Boumediene, and Ait Idir are all citizens of Bosnia, have not been convicted by the court in Bosnia, and are not subject to any on-going criminal proceedings. *See Statement by Bosnian Minister of Justice* attached to Joint App. at Ex. B(h). Mr. Kovac stated unequivocally, "Ministry of Justice oh BiH is interested in getting these individuals back in BiH . . ." <sup>18</sup> *Id.*

(u) If Mr. Boudella was the dangerous terrorist he is accused of being, why would the Bosnian government have fully restored his citizenship and initiated proceedings to secure his safe return to Bosnia?

(u) Notably, whatever the terrorist threat level was thought to have been in 2001, last week NATO reported that currently the possibility of a terrorist threat in Bosnia is very low. *See NATO: Possibility of Terrorist Threat in BiH Very Low, Fena* (March 22, 2005) attached to Joint App. at Ex. P.

## **E. (u) Mr. Boudella Never Took Up Arms Against the United States and There Is No Basis in the Record to Conclude That He Would In the Future Do So**

1. (u) *Mr. Ait Idir's and Mr. Boudella's CSRTs Recognized the Absence of Evidence Purporting to Show that the Six Were Involved in a Plot to Bomb the U.S. Embassy.*

(u) a. *Finding of Ait Idir Tribunal.*

<sup>18</sup> (u) On March 30, 2005, the House of Representatives of the Parliament of Federation of Bosnia and Herzegovina (a regional government body in Sarajevo) declared to the Bosnian Prime Minister that the Bosnian government should actively seek the release of the six men from Guantanamo. *See Declaration* attached to Joint App. at Ex. Q.

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(u) b. *Finding of Boudella Tribunal.*

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*Boudella Classified Summary of Basis for Tribunal Decision* at para. 1(g), attached to Joint App. at Ex. D(b).

(u) This Board is mandated by its own procedures to make an assessment, as Mr. Boudella's CSRT did, of the reliability of any piece of information presented in the proceeding, including whether the information is "specific as to the matters described," "corroborated by other information," and was obtained by a source that "appears credible." *Administrative Review Board Process*, ARB proceedings at (e)(3). The procedures specifically recognize that information that is "vague, unsupported, or not established through reliable sources" is considered less reliable.

(s) Notably, there is no evidence cited in Mr. Boudella's CSRT record—or the CSRT records of the other five—linking them to any purported bomb plot—no allegations that they possessed maps, sketches, bombs or bomb-making components, weapons, or any other tangible evidence that would show their intent or demonstrate their involvement in such a plan. This Board should take note of the complete absence of credible evidence showing that the six were involved in any alleged plot to bomb the U.S. Embassy in Bosnia, and the conclusions of two CSRTs calling into question the existence of any plot involving the six.

2. (u) *There is No Basis in the Record to Support the Assertion that Mr. Boudella is a Member of the Armed Islamic Group ("GIA").*

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(u) Additionally, the United States Department of State has confirmed that the GIA "began its violent activities in 1992 after Algiers voided the victory of Islamic Salvation Front (FIS)—the largest Islamic opposition party—in the first round of legislative elections in December 1991." *Patterns of Global Terrorism, 2003* (U.S. Department of State, June 2004). Mr. Boudella was not present in Algeria after 1992, however, and could not have been involved with GIA, which carried out its activities against targets in Algeria.

~~There~~ There is no evidentiary basis in the record to support the assertion that Mr. Boudella is now, or ever has been, a member of GIA. Notably, the *Terrorist Organization Reference Guide* (U.S. Dept. of Homeland Security January 2004), see *Encl. (2) to Lahmar CSRT Decision Report* at Exhibit R-3, attached to Joint App. at Ex. E(e) describes the GIA as follows:

Description: An Islamic extremist group, the GIA aims to overthrow the secular Algerian regime and replace it with an Islamic state.

Activities: Frequent attacks against civilians and government workers [in Algeria].

Strength: Precise Numbers Unknown, probably fewer than 100.

Location/Area of Operation: *Algeria.*

(Emphasis supplied). This official U.S. government information hardly supports a serious contention that Mr. Boudella—or the others—could plausibly be considered to be active GIA terrorists fixed on bombing the U.S. and British embassies in *Bosnia* in 2001. Rather, the *Guide* actually undermines that contention. However, it is easy to see

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(u) Mr. Boudella is not a member of GIA, and does not pose any threat to the U.S. or its allies that such a member may pose.

3.(u) *There Is No Basis in the Record to Support the Assertion that Mr. Boudella is a Former Mujahedin Member.*

(u) Similarly, there is no basis in the record to support the assertion that Mr. Boudella is a former mujahedin fighter. To the extent the CSRT found persuasive, for purposes of its enemy combatant determination, evidence purporting to show that Mr. Boudella is a former Afghan and Bosnian mujahedin, those findings do not show that Mr. Boudella presents a threat to the United States.

(u) In fact, during both the Soviet invasion of Afghanistan and the war in Bosnia, the United States was allied with the mujahedin. The United States supplied material support and training to the Afghan mujahedin to repel Soviet forces in Afghanistan. *See generally, The Fragmentation of Afghanistan*, Barnett R. Rubin (2d ed. 2002).<sup>20</sup> The United States also came to the aid of Bosnian Muslims—as

<sup>20</sup> (u) After the Soviet invasion of Afghanistan, the U.S. provided ever-increasing support to the mujahidin: "The Carter administration allocated \$30 million in 1980 and about \$50 million in 1981. Under the Regan administration this amount increased to \$120 million by fiscal 1984 . . . In the fall of 1984 Congress took the initiative of nearly tripling the administration's 1985 request to \$250 million. . . . In April 1985, President Reagan signed National Security Directive 166, which authorized a new policy, consistent with the Reagan Doctrine, of driving the Soviets from Afghanistan 'by all means available.' The U.S. budget for aid to the mujahidin, reportedly still matched by Saudi contributions, climbed to \$470 million in 1986 and \$630 million in 1987. Starting in September 1986, the United States supplied shoulder-held, laser-guided Stinger antiaircraft missiles to the mujahidin, the first time this ultrasophisticated weapon had been distributed outside of NATO. Cross-border assistance programs provided civilians living in areas controlled by mujahidin with food, cash for food, and support for health care, educational, and agricultural programs. . . . during 1986-1990, USAID spent \$60.0 million on health, \$30.2 million on education, and \$60 million on agriculture. Additional USAID money financed engineering projects, training programs in various fields, medical care in the United States for the wounded, road building, demining, and direct food supplies." *Id.* at 180-81. The U.S. also facilitated other countries' support of its allies, the mujahidin: "The Chinese contributed to the effort mainly by selling soviet-style weapons to the CIA for transfer to the [Pakistani] ISI and then to the mujahidin. In addition to the CIA and the ISI, the Saudi General Intelligence Agency, . . . helped to manage the immense flow of money and arms. The Afghan operation became the single largest program of each of these agencies. . . . The arms pipeline consisted of three parts, controlled by the CIA, the ISI, and the resistance parties. The CIA, using Saudi and American funds, bought weapons from China, Egypt, Israel, and elsewhere." *Id.* at 197.

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did the mujahedin—defending against Serbian “ethnic cleansing” from 1992-1995. *See generally, To End A War*, Holbrooke (1998).<sup>21</sup> Even if it were true that Mr. Boudella was formerly a mujahedin fighter in either of these conflicts, there is no basis to conclude that such involvement—which would have been in alignment with U.S. interests at the time—makes him a danger to the United States today.

4. (4) *The CSRT's Findings Acknowledge the Weakness of Much of the Purported Evidence it Considered in Reaching its Decision.*

The foundation on which the CSRT rested its determination that Mr. Boudella is an enemy combatant is, by the CSRT's own admission, weak. This Board should consider that fact, since that determination itself is subject to significant doubt. For example, the CSRT found the majority of documents it considered unhelpful, or somewhat persuasive, and only three exhibits persuasive without qualification.

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<sup>21</sup> In the summer of 1995, at the urging of the United States, NATO initiated an air bombing campaign in Bosnia on the heels of a bloody massacre by the Serbs of thousands of Muslim men and boys in Srebrenica. As this Board knows, that massacre, and many similar atrocities of the Bosnian conflict, are the subject of on-going prosecutions in The Hague by the International Tribunal for War Crimes in the former Yugoslavia.

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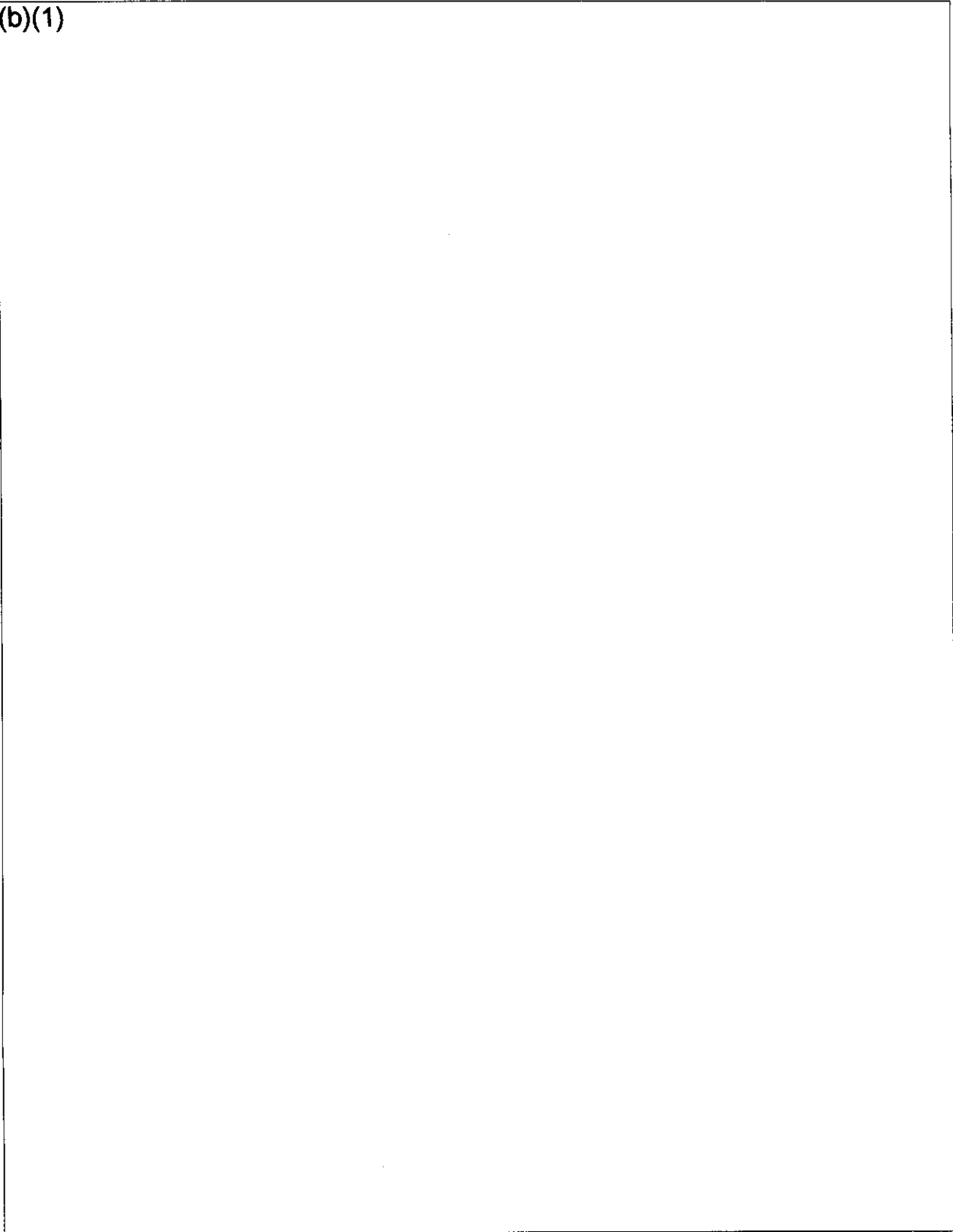


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by his Attorneys Stephen H. Oleskey, Robert C. Kirsch, Douglas Curtis, and Melissa A. Hoffer  
Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

(b)(1)

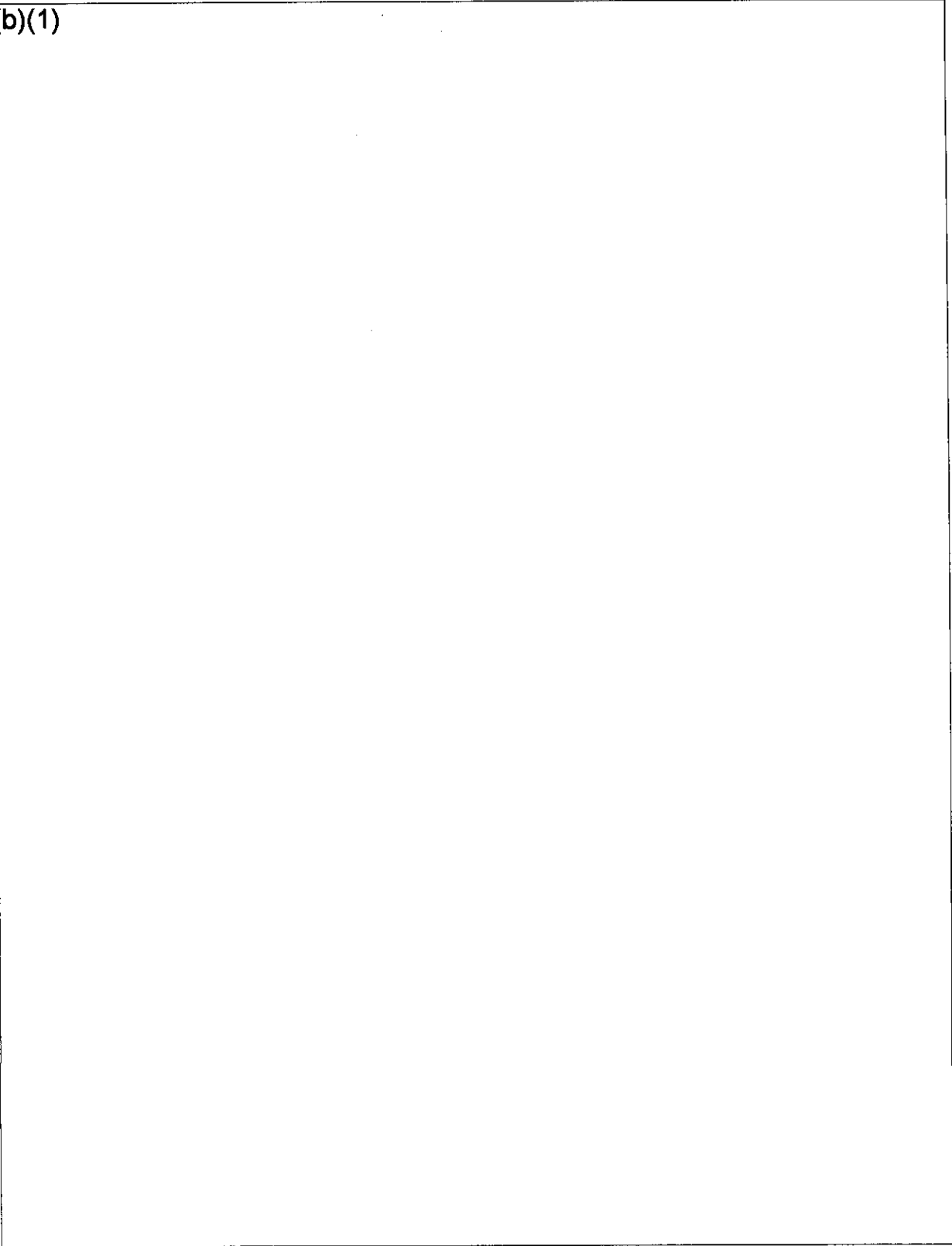


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(u) To the extent the enemy combatant determination itself is considered by this Board to be evidence of dangerousness, this Board should note that the CSRT's determination with respect to Mr. Boudella was based on evidence of purported links, associations, and assertions that the Tribunal itself did not accept.

**F. (u) Mr. Boudella Has No Intelligence Value.**

(u) The classified CSRT record shows that the principal reason Mr. Boudella was detained was to attempt to gain further understanding of the workings of Islamic charities. There is almost no mention of the purported U.S. Embassy bombing plot in any of the classified summaries of his interrogations. Rather, the interrogators' questions focus on charities. Aside from the fact that detention for purposes of interrogation and intelligence gathering is unlawful, *see Hamdi v. Rumsfeld*, 542 U.S. \_\_\_, slip op. at 13 (2004), it shows Mr. Boudella poses no risk.

(u) Mr. Boudella was never interrogated about his participation in any activity that actually has resulted in harm to the United States or its interests, and the record reflects no evidence of any actual plan to undertake such activity. Rather, the record reflects that Mr. Boudella has been cooperative and answered, to the extent possible, the numerous

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(b)(1) none of which appears from the record to be of particular value and most of which appears to have already been known to the government by other sources, some of which are publicly available. He consistently has provided the same answers. Year four of interrogation on the same topic is just as unlikely to yield new or useful information as years one, two, and three have been, because Mr. Boudella simply has no information that would be of any intelligence value to the United States.

## G. (u) Mr. Boudella's Physical and Mental Health

(u) Mr. Boudella's mental health has deteriorated substantially due to his ongoing detention in Guantanamo. Counsel have requested and been denied access to Mr. Boudella's medical records in Guantanamo but were able to survey Mr. Boudella's mental health using a questionnaire prepared by forensic psychiatrist, Dr. Daryl Matthews. *See Sample Proxy Psychiatric Exam and Mental Status Examination*, attached to Joint App. at Ex. L. Dr. Matthews is the Director of the Forensic Psychiatry Program at the John Burns School of Medicine, University of Hawaii. *See Curriculum Vitae of Dr. Daryl B. Matthews*, attached to Joint App. at Ex. K. For the last ten years, Dr. Matthews has also served as a Consultant to the U.S. Army Medical Command and Co-Director of Training in Forensic Psychiatry at Tripler Army Medical Center in Honolulu, Hawaii. *Id.*

(u) Based on his review of Mr. Boudella's responses to the questionnaire, Dr. Matthews determined that Mr. Boudella may be suffering from clinical depression due to his treatment and prolonged detention at Guantanamo. *See Letter from Forensic Psychiatrist, Dr. Daryl B. Matthews*, attached as Exhibit 4. The experiences Mr. Boudella has encountered in detention, including sexual humiliation, deprivation of water and threats of torture, are well-known to trigger depression and stress disorders in previously healthy people. Dr. Matthews concludes that Mr. Boudella is likely to suffer continuing and exacerbated symptoms of depression if he is not removed from the stressors he currently faces in detention.

## (u) II. ERRORS CONCERNING AVAILABILITY OF EVIDENCE AND REQUEST FOR ACCESS TO EVIDENCE.

### A. (u) CSRT Errors Concerning Availability of Evidence.

(u) The Tribunal President determined that two pieces of documentary evidence, requested by Mr. Boudella were "not reasonably available." Those documents are described in the Unclassified Summary of Basis for Tribunal Decision as (1) "Copy of court document (apparently, a Bosnia Supreme Court Decision declaring him not guilty)"

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and (2) "Copy of Humanity of the People Document (Bosnia) dealing with his detention in Cuba."

(u) By the time of Mr. Boudella's CSRT, the Bosnia Supreme Court order that he requested had been appended to at least two court filings made by his counsel and served on the Department of Justice in the District Court for the District of Columbia. Mr. Boudella's counsel easily were able to obtain a copy of that order. The "Humanity of the People" document is likely a poorly translated reference to the BiH Human Rights Chamber Court decision, which discussed the Bosnian Supreme Court ruling, and was also appended to multiple court filings served on the Department of Justice. See Joint App. at Ex. B(c). Additionally, that document was posted on the Internet, most notably on the website of the National Institute of Military Justice (a well-known U.S. non-profit organization) at [www.nimj.org](http://www.nimj.org) immediately after it was issued in 2002. There is no credible reason to believe that these documents were not reasonably available to the CSRT, particularly in light of the fact that the Government had no difficulty locating and presenting to the Tribunal a copy of the BiH Federation Supreme Court's January 11, 2001 investigation order. See Exhibit R-4, attached to Joint App. at Ex. D(f); Enclosure (1) at 3 of 5, attached to Joint App. at Ex. D(a).

**B. (u) Request for Evidence Not Provided to CSRT or Counsel**

(b)(1)

**III. (u) CONCLUSION.**

(u) Nothing in the record provided to us, as counsel for Mr. Boudella, is sufficient to support a conclusion that he currently poses, or ever posed, any threat to the United States or its allies.

(u) Instead, the factors this Board must consider, with the CSRT record, show that Mr. Boudella presents no security risk to the United States or its allies, and has no intelligence

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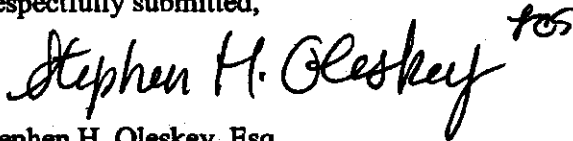
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value. He should be released and returned to his home and family in Bosnia. Mr. Boudella and the other five Bosnians have been exonerated by the Bosnian Supreme Court and Federal Prosecutor of the very allegations that formed the basis for their detention. We know of no other similarly situated detainees at Guantanamo. There is every reason to believe that Mr. Boudella was unfortunately and mistakenly swept up in the confusion and fear following the events of September 11, 2001. Mr. Boudella has devoted his adult life to assisting others in need. He is eager to return to his family. The ARB now has the opportunity, and the obligation, to review the facts independently, and should order his release to Bosnia.

(u) Should the Board require any further information, please contact one of us.

Respectfully submitted,

 <sup>tos</sup>

Stephen H. Oleskey, Esq.  
Robert C. Kirsch, Esq.  
Douglas Curtis, Esq.  
Melissa A. Hoffer, Esq.  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
(617) 526-6000

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## Hadj Boudella Exhibits to ARB Submission

1. Algerian Citizenship Certificate
2. Bosnian Citizenship Certificate
3. Photographs of Mr. Boudella and his family
4. Letter from Forensic Psychiatrist Dr. Daryl B. Matthews (March 24, 2005)

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**Boudella Exhibit 1**

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Ambasciata  
della Repubblica Algerina  
Democratica e Popolare  
Roma

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سفارة  
الجمهورية الجزائرية  
الديمقراطية الشعبية  
روما

N° 16/05 A.C

ATTESTATION  
DE  
NATIONALITE

L'Ambassade de la République Algérienne Démocratique et  
Populaire à Rome atteste par la présente que :

Nom : BOUDELAA  
Prénom : Hadj  
Né le : 18/04/1965 à : Laghouat

Est de nationalité Algérienne

La présente attestation est délivrée pour servir et valoir ce que  
de droit.

Rome, le 13 janvier 2005



Le Chargé des Affaires Consulaires

Farouk AHOUD

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# **Boudella Exhibit 2**

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**BOSNA I HERCEGOVINA**  
**FEDERACIJA BOSNE I HERCEGOVINE**

Kanton: ZENIČKO-DOBOJSKI

Općina: TEŠANJ

Služba: MATIČAR

Broj: 03-13.11.-548/05.

Datum: 18.02.2005.godine

Na osnovu člana 169 Zakona o općem upravnom postupku i člana 35 Zakona o državljanstvu

Bosne i Hercegovine, na zahtjev Dizdarević Nađe

iz kta Sarajeva izdaje se

**UVJERENJE**

1804967124131  
(IMB)

da je Boudellal Nađe sin - ka Omar

rođen-a 18.04.1965. godine u Laghouat općina Laghouat - Alžir

državljanin-ka Bosne i Hercegovine.

Ovo uvjerenje izdaje se na osnovu podataka iz upisa u matičnu knjigu  
rodjenih koja se vodi za naseljeno mjesto Jelah

općina Tešanj, na strani 49, pod rednim brojem 04.

za godinu 1995.

Taksa po tarifnom broju Odluke o administrativnim taksama Općine

u iznosu od naplaćena je i na podnesku poništena.

Osiobođeno od plaćanja takse po članu 107 Zakona o administrativnim taksama

("Službeni list RBiH", broj )



Potpis službenog lica:

Agić Dževad

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# **Boudella Exhibit 3**

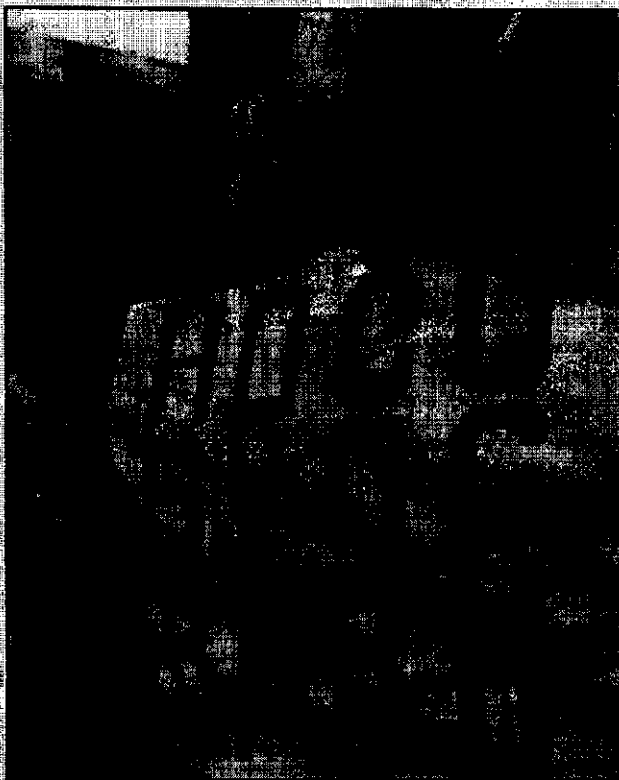
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**Hadj Boudella**

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Mon Jan 31, 9:01 AM  
ET

Associated Press

Iman Boudella, 8, attends a protest in front of a Bosnian government building in Sarajevo on Monday, Jan 31, 2005. The families and friends of six Bosnian citizens held in the U.S. military detention center in Guantanamo Bay, Cuba, demanded on Monday that Bosnia ask the United States to release them, during a demonstration outside the Justice Ministry in Sarajevo. The placard reads: 'I want my daddy'. (AP Photo/Hidajet Delic)

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Not at all **1 - 2 - 3 - 4 - 5** Highly

Avg Rating: 3.85, 26 votes

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Hadj Boudella's daughter, Iman, seeking return of her father

ack

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# **Boudella Exhibit 4**

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03/20/2005 11:40 AM 01 000 0000

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FORENSIC PSYCHIATRY

DARYL B. MATTHEWS, M.D., PH.D.  
345 QUEEN STREET, SUITE 900  
HONOLULU, HAWAII, 96813  
PHONE: 808-735-8505  
FAX: 808-356-0793  
EMAIL: dmatthews@jhu.edu

DIPLOMATE IN PSYCHIATRY AND FORENSIC  
PSYCHIATRY, AMERICAN BOARD OF  
PSYCHIATRY AND NEUROLOGY

March 24, 2005

Stephen H. Oleskey, Esq.  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109

Re: Hadj Boudella

Dear Mr. Oleskey:

You have asked me to provide you with assistance in evaluating Mr. Boudella's mental health situation in view of his ongoing detention at the United States Naval Base, Guantanamo Bay, Cuba. You have expressed concern about his mental condition, yet you have been unable to secure an independent mental health evaluation. Because of this inability, my colleagues and I at the University of Hawaii Forensic Psychiatry Program, with the assistance of Anita Schlank, Ph.D., have developed an attorney/translator-administered questionnaire which we believe to be appropriate for the proxy assessment of individuals in confinement without access to mental health evaluation. My qualifications for conducting such an assessment are outlined in the enclosed c.v.

The findings presented below are derived from attorney/translator administration of this questionnaire, interpreted by Dr. Schlank and me. This is not, however, to be considered a substitute for a full psychiatric or psychological evaluation and the opinions are limited as there was no personal examination.

#### Findings and Opinions

Mr. Boudella endorsed sufficient symptoms to suggest that he may meet the clinical criteria for a depressive disorder. These symptoms included decrease in appetite, loss of energy, insomnia, and loss of sexual interest.

Mr. Boudella reported being subjected to sexual abuse or sexual humiliation. There were beatings which he declined to describe. He also reported being deprived of water and being threatened with torture. These experiences are well known to precipitate major depression and stress disorders in previously healthy individuals.

It should be noted that the manner in which Mr. Boudella responded to the questions suggested that it was likely he was reporting accurately. He did not show the over-endorsement of symptoms or experiences that might be seen

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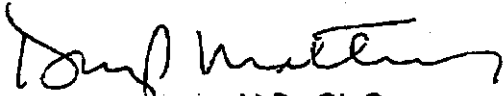
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in a person who is malingering. (For example, he did not claim to have witnessed murder or torture, given electric shock, or to have been threatened with execution, and did not claim a great many symptoms that might appear to be related to depression or trauma responses.)

In my opinion Mr. Boudella, is likely to suffer continuing and exacerbated symptoms if he is not removed from the stressors described.

Please let me know if you would like clarification of these findings.

Sincerely,



Daryl Matthews, M.D., Ph.D.

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