

ORAL ARGUMENT SCHEDULED ON APRIL 5, 2018

No. 18-5032

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

JOHN DOE,

Petitioner-Appellee,

v.

JAMES MATTIS, in his official capacity as SECRETARY OF DEFENSE,

Respondent-Appellant.

On Appeal from the United States District Court
for the District of Columbia

**PUBLIC APPENDIX—SEALED MATERIAL IN SEPARATE
SUPPLEMENT**

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TABLE OF CONTENTS

	<u>Page</u>
1. Docket Sheet.....	1
2. Habeas Petition (ECF 4) [Oct. 5, 2017]	11
3. District Court Opinion of Dec. 23, 2017 (ECF 29) [Dec. 23, 2017]	27
4. District Court Order of December 23, 2017 (ECF 30) [Dec. 23, 2017]	39
5. District Court Order of Jan. 18, 2018 (ECF 43) [Jan. 18, 2017].....	40
6. District Court Opinion (ECF 51) [Jan. 23, 2018]	42
7. District Court Order (ECF 52) [Jan. 23, 2018]	50
8. Transcript of Jan. 22, 2018 Status Conference (ECF 55) [Jan. 31, 2018].....	51
9. Notice of Appeal (ECF 56) [Feb. 2, 2018].....	86
10. Response to Factual Return (ECF 59) [Feb. 9, 2018]	88
11. Public Version of <i>Ex Parte</i> Declaration, filed as ECF 44 (ECF 64) [Feb. 14, 2018].....	150
12. Public Version of Factual Return, filed as ECF 46 (ECF 66) [Feb. 14, 2018].....	155
Certificate of Service	

- [Query](#)
- [Reports](#)
- [Utilities](#)
- [Logout](#)

APPEAL,HABEAS,TYPE-G

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-02069-TSC

DOE v. MATTIS

Assigned to: Judge Tanya S. Chutkan

Case in other court: USCA, 18-05032

Cause: 28:2241 Petition for Writ of Habeas Corpus (federa

Date Filed: 10/05/2017

Jury Demand: None

Nature of Suit: 530 Prisoner Petition: General
(Habeas Corpus)

Jurisdiction: U.S. Government Defendant

Petitioner**JOHN DOE**represented by **Arthur B. Spitzer**AMERICAN CIVIL LIBERTIES UNION OF
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Date Filed	#	Docket Text
10/05/2017	1	ENTERED IN ERROR.....COMPLAINT against JAMES N. MATTIS (Filing fee \$ 400 receipt number 0090-5146078), CIVIL COVER SHEET by JOHN DOE, AMERICAN CIVIL LIBERTIES UNION FOUNDATION filed by JOHN DOE, AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # 1 Civil Cover Sheet, # 2 Summons)(Shamsi, Hina) Modified on 10/6/2017 (zsb). (Entered: 10/05/2017)
10/05/2017	2	ENTERED IN ERROR.....Corporate Disclosure Statement by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, JOHN DOE. (Shamsi, Hina) Modified on 10/6/2017 (zsb). (Entered: 10/05/2017)
10/05/2017	3	NOTICE of Appearance by Arthur B. Spitzer on behalf of AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Spitzer, Arthur) (Entered: 10/05/2017)
10/05/2017	4	PETITION for Writ of Habeas Corpus (Filing fee \$ 5 receipt number 4616087445.) filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # 1 Civil Cover Sheet)(Shamsi, Hina) (Entered: 10/05/2017)
10/05/2017	5	Corporate Disclosure Statement by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Shamsi, Hina) (Entered: 10/05/2017)
10/06/2017		Case Assigned to Judge Tanya S. Chutkan. (zsb) (Entered: 10/06/2017)
10/12/2017	6	NOTICE of Appearance by Jonathan L. Hafetz on behalf of AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Exhibit Pro Bono Certification)(Hafetz, Jonathan) (Entered: 10/12/2017)
10/12/2017	7	Emergency MOTION for Order to Show Cause <i>on Counsel Access and Memorandum of Law in Support</i> by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Text of Proposed Order)(Shamsi, Hina) (Entered: 10/12/2017)
10/19/2017	8	ORDER granting in part and denying in part 7 Petitioner's Emergency Motion for Order to Show Cause on Counsel Access. Petitioner shall promptly serve a copy of this Order, 4 the Petition for a Writ of Habeas Corpus, and 7 the Petitioner's Emergency Motion for Order to

		Show Cause on Counsel Access on the Respondent, the U.S. Attorney General and the U.S. Attorney for the District of Columbia, Special Proceedings Division. Within 10 days of service of this Order, Respondent shall explain, in writing, why Respondent should not give the Petitioner access to the Unnamed U.S. Citizen. The Petitioner shall file a reply within 3 days of service of the opposition. Signed by Judge Tanya S. Chutkan on 10/19/2017. (lctsc2). (Entered: 10/19/2017)
10/20/2017	9	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 10/20/2017. Answer due for ALL FEDERAL DEFENDANTS by 12/19/2017. (Attachments: # 1 Declaration of Service) (Spitzer, Arthur) (Entered: 10/20/2017)
10/20/2017	10	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. JAMES N. MATTIS served on 10/20/2017, RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 10/20/2017. (Attachments: # 1 Declaration of Service)(Shamsi, Hina) (Entered: 10/20/2017)
10/30/2017	11	MOTION to Dismiss <i>and Response to Court's Order of October 19, 2017</i> by JAMES N. MATTIS (Attachments: # 1 Declaration of Steven W. Dalbey, # 2 Text of Proposed Order) (Wyer, Kathryn) (Entered: 10/30/2017)
10/30/2017	12	RESPONSE TO ORDER OF THE COURT re 8 Order on Motion for Order to Show Cause filed by JAMES N. MATTIS. (See Docket Entry 11 to view document). (znmw) (Entered: 10/31/2017)
11/02/2017	13	Memorandum in opposition to re 11 MOTION to Dismiss <i>and Response to Court's Order of October 19, 2017 and Reply in Support of Emergency Motion for Counsel Access</i> filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # 1 Declaration Declaration of Gabor Rona, # 2 Declaration Declaration of Belkis Wille)(Shamsi, Hina) (Entered: 11/02/2017)
11/02/2017	14	REPLY to opposition to motion re 7 Emergency MOTION for Order to Show Cause <i>on Counsel Access and Memorandum of Law in Support</i> filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (See Docket Entry 13 to view document). (znmw) (Entered: 11/03/2017)
11/09/2017	15	REPLY to opposition to motion re 11 MOTION to Dismiss <i>and Response to Court's Order of October 19, 2017</i> filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 11/09/2017)
11/20/2017	16	MOTION for Hearing <i>or Status Conference</i> by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Shamsi, Hina) (Entered: 11/20/2017)
11/21/2017		MINUTE ORDER granting 16 Motion for Hearing or Status Conference. A motions hearing is hereby set for 11/30/17 at 10:00 a.m. in Courtroom 9. Signed by Judge Tanya S. Chutkan on 11/21/2017. (lctsc2). (Entered: 11/21/2017)
11/26/2017		Set/Reset Hearings: A Motions Hearing is set for 11/30/2017 at 10:00 AM in Courtroom 9 before Judge Tanya S. Chutkan. (jth) (Entered: 11/26/2017)
11/27/2017	17	NOTICE of Appearance by Brett Max Kaufman on behalf of AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Kaufman, Brett) (Entered: 11/27/2017)
11/30/2017	18	RESPONSE TO ORDER OF THE COURT re Order on Motion for Hearing filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 11/30/2017)
11/30/2017	19	RESPONSE re 18 Response to Order of the Court filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Shamsi, Hina) (Entered: 11/30/2017)

11/30/2017		<p>Minute Entry: Motion Hearing held on 11/30/2017 before Judge Chutkan. MOTION to Dismiss and Response to Court's Order of October 19, 2017 filed by JAMES N. MATTIS; motion heard and taken under advisement. The government shall inform the Court by COB on 11/30/17 whether (1) the detainee has been advised of his constitutional rights, including any right to counsel or to pursue habeas or other remedies in U.S. courts and; (2) if the detainee has invoked or asserted any such rights. (Court Reporter Bryan Wayne) (tb) (Entered: 12/01/2017)</p>
12/01/2017	20	<p>RESPONSE to <i>Petitioner's Proposed Relief</i> 19 filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 12/01/2017)</p>
12/01/2017	21	<p>ERRATA re <i>Respondent's Response to Court's Order</i> 18 by JAMES N. MATTIS. (Attachments: # 1 Corrected Response to Court's Order)(Wyer, Kathryn) (Entered: 12/01/2017)</p>
12/01/2017		<p>MINUTE ORDER: The court hereby orders both parties to file supplemental briefs addressing the court's authority to order limited jurisdictional discovery in this case, as proposed in the 19 Petitioner's Response to Respondent's November 30, 2017, 5 P.M. Filing. The Government shall file its brief by Monday, December 4, 2017 at 5 p.m. The Petitioner shall file a brief in response by Thursday, December 7, 2017 at noon. The parties' supplemental briefs should be no longer than 10 pages. The court will hold a hearing on the supplemental briefing on Friday, December 8, 2017 at 11:15 a.m. Signed by Judge Tanya S. Chutkan on 12/1/2017. (lctsc2). (Entered: 12/01/2017)</p>
12/01/2017		<p>AMENDED MINUTE ORDER: The court hereby orders both parties to file supplemental briefs addressing the court's authority to order limited jurisdictional discovery in this case, as proposed in the 19 Petitioner's Response to Respondent's November 30, 2017, 5 P.M. Filing. In their briefs, in light of the Government's representation that the detainee has requested an attorney in its 18 Response to the Court's Order, the parties shall also address the Government's independent obligation to comply with the detainee's request and provide him with access to counsel. The Government shall file its brief by Monday, December 4, 2017 at 5 p.m. The Petitioner shall file a brief in response by Thursday, December 7, 2017 at noon. The parties' supplemental briefs should be no longer than 10 pages. The court will hold a hearing on the supplemental briefing on Friday, December 8, 2017 at 11:15 a.m. Signed by Judge Tanya S. Chutkan on 12/1/2017. (lctsc2). (Entered: 12/01/2017)</p>
12/02/2017	22	<p>TRANSCRIPT OF 11/30/17 MOTIONS HEARING before Judge Tanya S. Chutkan held on November 30, 2017. Page Numbers: 1-42. Date of Issuance: December 2, 2017. Court Reporter: Bryan A. Wayne. Transcripts may be ordered by submitting a Transcript Order Form at www.dcd.uscourts.gov under Request Transcript tab. For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov. Redaction Request due 12/23/2017. Redacted Transcript Deadline set for 1/2/2018. Release of Transcript Restriction set for 3/2/2018.(Wayne, Bryan) (Entered: 12/02/2017)</p>
12/04/2017	23	<p>MOTION to Continue <i>Hearing Currently Scheduled for December 8, 2017 due to Conflict of Counsel</i> by JAMES N. MATTIS (Attachments: # 1 Text of Proposed Order)(Wyer, Kathryn) (Entered: 12/04/2017)</p>
12/04/2017		<p>Set/Reset Deadlines/Hearings: Government's brief due by 12/4/2017. Response due by 12/7/2017. Status Conference set for 12/8/2017 at 11:15 AM in Courtroom 9 before Judge Tanya S. Chutkan. (tb) (Entered: 12/04/2017)</p>

12/04/2017		MINUTE ORDER Regarding 23 Motion to Continue Due to Conflict of Courts The hearing currently scheduled for December 8, 2017 is hereby rescheduled for December 11, 2017 at 10:00 a.m. Signed by Judge Tanya S. Chutkan on 12/4/2017. (lctsc2). Modified event title on 12/5/2017 (znmw). (Entered: 12/04/2017)
12/04/2017	24	SUPPLEMENTAL MEMORANDUM to re 11 MOTION to Dismiss <i>and Response to Court's Order of October 19, 2017</i> filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 12/04/2017)
12/05/2017		Set/Reset Hearings: Status Conference reset for 12/11/2017 at 10:00 AM in Courtroom 9 before Judge Tanya S. Chutkan. (tb) (Entered: 12/05/2017)
12/07/2017	25	SUPPLEMENTAL MEMORANDUM to re Order,,, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Hafetz, Jonathan) (Entered: 12/07/2017)
12/11/2017	26	RESPONSE TO ORDER OF THE COURT re Order,,, (<i>Addendum Regarding Court's Inquiry</i>) filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 12/11/2017)
12/11/2017		Minute Entry: Status Conference held on 12/11/2017 before Judge Tanya S. Chutkan: Oral argument heard and court ruling forthcoming. (Court Reporter Bryan Wayne) (tb) (Entered: 12/12/2017)
12/21/2017	27	NOTICE of Filing of Additional Information Pertinent to Emergency Motion for Counsel Access by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Hafetz, Jonathan) (Entered: 12/21/2017)
12/21/2017		MINUTE ORDER: The Government is hereby ordered to respond to Petitioner's Notice of Filing of Additional Information (ECF No. 27) by Friday December 22, 2017 at noon. The response shall be no more than 5 pages. Signed by Judge Tanya S. Chutkan on 12/21/17. (DJS) (Entered: 12/21/2017)
12/22/2017	28	RESPONSE re 27 Notice (Other) filed by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 12/22/2017)
12/23/2017	29	MEMORANDUM AND OPINION: Re Defendant's Motion to Dismiss 11 . Signed by Judge Tanya S. Chutkan on 12/23/17. (DJS) (Entered: 12/23/2017)
12/23/2017	30	ORDER: Denying Respondent's Motion to Dismiss 11 . Respondent is hereby ordered to: (1) permit the ACLUF immediate and unmonitored access, in person or via videoconferencing, to the detainee for the sole purpose of determining whether the detainee wishes for the ACLUF to continue this action on his behalf; and (2) refrain from transferring the detainee until the ACLUF informs the court of the detainees wishes. (see order for further details) Signed by Judge Tanya S. Chutkan on 12/23/17. (DJS) (Entered: 12/23/2017)
01/05/2018	31	RESPONSE TO ORDER OF THE COURT re 30 Order on Motion to Dismiss,, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Attachments: # 1 Text of Proposed Order)(Hafetz, Jonathan) (Entered: 01/05/2018)
01/05/2018	32	MOTION Regarding Continued Interim Relief re 30 Order on Motion to Dismiss,, by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Text of Proposed Order)(Hafetz, Jonathan) (Entered: 01/05/2018)
01/05/2018		MINUTE ORDER: The government is hereby ordered to respond to Petitioner's Motion Regarding Continued Interim Relief (ECF No. 32) by Monday, January 8, 2018 at 5:00 p.m. Signed by Judge Tanya S. Chutkan on 1/5/2018. (lctsc2). (Entered: 01/05/2018)
01/08/2018	33	Memorandum in opposition to re 32 MOTION Regarding Continued Interim Relief re 30 Order on Motion to Dismiss,, filed by JAMES N. MATTIS. (Attachments: # 1 Text of Proposed Order)(Wyer, Kathryn) (Entered: 01/08/2018)

01/08/2018		MINUTE ORDER: Petitioner's reply, if any, to the government's Opposition to Petitioner's Motion Seeking Continued Interim Relief (ECF No. 33) is due by Wednesday, January 10, 2018 at noon. Signed by Judge Tanya S. Chutkan on 1/8/2018. (lctsc2). (Entered: 01/08/2018)
01/09/2018		Set/Reset Deadlines: Any Reply by Petitioner's to the Government's Opposition to Petitioner's Motion Seeking Continued Interim Relief (Dkt. #33) is due by 1/10/2018 at 12:00 PM (noon). (jth) (Entered: 01/09/2018)
01/10/2018	34	REPLY re 31 Response to Order of the Court of December 23, 2017, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Hafetz, Jonathan) (Entered: 01/10/2018)
01/10/2018	35	REPLY to opposition to motion re 32 MOTION Regarding Continued Interim Relief re 30 Order on Motion to Dismiss,, filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. (Hafetz, Jonathan) (Entered: 01/10/2018)
01/10/2018	36	MOTION for Leave to Continue Under Pseudonym by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Text of Proposed Order)(Hafetz, Jonathan) (Entered: 01/10/2018)
01/10/2018		MINUTE ORDER: The government's response, if any, to Petitioner's Motion for Leave to Continue Under Pseudonym (ECF No. 36) is due by Friday, January 12, 2018 at 10 a.m. Signed by Judge Tanya S. Chutkan on 1/10/2018. (lctsc2). (Entered: 01/10/2018)
01/10/2018		Set/Reset Deadlines: Response due by 1/12/2018. (tb) (Entered: 01/10/2018)
01/12/2018	37	RESPONSE re 36 MOTION for Leave to Continue Under Pseudonym filed by JAMES N. MATTIS. (Attachments: # 1 Text of Proposed Order)(Wyer, Kathryn) (Entered: 01/12/2018)
01/12/2018	38	ORDER granting 36 Petitioner's Motion for Leave to Continue Under Pseudonym. Signed by Judge Tanya S. Chutkan on 1/12/2018. (lctsc2). (Entered: 01/12/2018)
01/12/2018		MINUTE ORDER: The court will hold a hearing on Petitioner's Motion Regarding Continued Interim Relief (ECF No. 32) on Thursday, January 18, 2018 at 11:30 a.m. Signed by Judge Tanya S. Chutkan on 1/12/2018. (lctsc2). (Entered: 01/12/2018)
01/12/2018	39	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Dror Ladin, :Firm- American Civil Liberties Union Foundation, :Address- 125 Broad St., 18th Floor, New York, NY 10004. Phone No. - 212-284-7303. Fax No. - 212-549-2654 Filing fee \$ 100, receipt number 0090-5285885. Fee Status: Fee Paid. by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Declaration of Dror Ladin)(Hafetz, Jonathan) (Entered: 01/12/2018)
01/12/2018	40	NOTICE of Proposed Order by AMERICAN CIVIL LIBERTIES UNION FOUNDATION re 39 MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Dror Ladin, :Firm- American Civil Liberties Union Foundation, :Address- 125 Broad St., 18th Floor, New York, NY 10004. Phone No. - 212-284-7303. Fax No. - 212-549-2654 Filing fee (Hafetz, Jonathan) (Entered: 01/12/2018)
01/12/2018		MINUTE ORDER: Granting 39 Motion for Leave to Appear Pro Hac Vice. Attorney Dror Ladin is hereby admitted pro hac vice to appear in this matter on behalf of the ACLU, as next friend on behalf of Unnamed U.S. Citizen in U.S. Military Detention. Signed by Judge Tanya S. Chutkan on 1/12/18. (DJS) (Entered: 01/12/2018)
01/12/2018	41	ORDER: It is hereby ordered that the government shall file a Return to the Petition for a Writ of Habeas Corpus (ECF No. 4) by Monday, January 22, 2018 at noon. Petitioner's reply to the government's Return, if any, is due by Wednesday, January 24, 2018 at noon. Signed by Judge Tanya S. Chutkan on 1/12/2018. (lctsc2). (Entered: 01/12/2018)
01/16/2018	42	NOTICE of Appearance by James Mahoney Burnham on behalf of JAMES N. MATTIS (Burnham, James) (Entered: 01/16/2018)

01/17/2018		Set/Reset Deadlines: Return to the Petition for a Writ of Habeas Corpus (ECF no. 4) due by 1/22/2018. Reply due by 1/24/2018. (tb) (Entered: 01/17/2018)
01/17/2018		Set/Reset Hearings: Motion Hearing [Regarding Petitioner's Motion for Continued Interim Relief (ECF No. 32)] is set for 1/18/2018 at 11:30 AM in Courtroom 9 before Judge Tanya S. Chutkan. (jth) (Entered: 01/17/2018)
01/18/2018		Minute Entry for Proceedings held before Judge Tanya S. Chutkan: Motion Hearing held on 1/18/2018 re: Petitioner's 32 Motion Regarding Continued Interim Relief filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION. The Motion 32 was Heard and Taken Under Advisement. The Government shall file a Supplemental Memorandum by the Close of Business today (1/18/2018). (Court Reporter: Cathryn Jones) (jth) (Entered: 01/18/2018)
01/18/2018	43	ORDER: The court hereby orders the government to refrain from transferring the detainee until Tuesday, January 23, 2018. Signed by Judge Tanya S. Chutkan on 1/18/2018. (lctsc2). (Entered: 01/18/2018)
01/18/2018		MINUTE ORDER: The government's deadline to submit its supplemental brief is hereby extended until 11:30 a.m. on Friday, January 19, 2018.Signed by Judge Tanya S. Chutkan on 1/18/2018. (lctsc2). (Entered: 01/18/2018)
01/19/2018		MINUTE ORDER: The court will hold a hearing regarding Petitioner's Petition for a Writ of Habeas Corpus (ECF No. 4) on Monday, January 29, 2018 at 3:00 p.m. Signed by Judge Tanya S. Chutkan on 1/19/2018.(lctsc2). (Entered: 01/19/2018)
01/19/2018		Set/Reset Hearings: Motion Hearing set for 1/29/2018 at 03:00 PM in Courtroom 9 before Judge Tanya S. Chutkan. (tb) (Entered: 01/19/2018)
01/19/2018		MINUTE ORDER: The court will hold a status hearing on Monday, January 22, 2018 at 4:00 p.m. Signed by Judge Tanya S. Chutkan on 1/19/2018. (lctsc2). (Entered: 01/19/2018)
01/19/2018	44	NOTICE of Ex Parte Filing by JAMES N. MATTIS (Wyer, Kathryn) (Entered: 01/19/2018)
01/19/2018	45	SEALED DOCUMENT filed by JAMES N. MATTIS(This document is SEALED and only available to authorized persons.) (Attachments: # 1 Sealed Filing)(Wyer, Kathryn) (Entered: 01/19/2018)
01/22/2018	46	SEALED DOCUMENT filed by JAMES N. MATTIS(This document is SEALED and only available to authorized persons.) (Attachments: # 1 Sealed Document, # 2 Sealed Document, # 3 Sealed Document, # 4 Sealed Document, # 5 Sealed Document)(Wyer, Kathryn) (Entered: 01/22/2018)
01/22/2018	47	SEALED DOCUMENT filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION re 44 Notice (Other), 45 Sealed Document (This document is SEALED and only available to authorized persons.)(Hafetz, Jonathan) (Entered: 01/22/2018)
01/22/2018	48	MOTION to Unseal Document 47 Sealed Document filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, 45 Sealed Document filed by JAMES N. MATTIS by AMERICAN CIVIL LIBERTIES UNION FOUNDATION (Attachments: # 1 Text of Proposed Order) (Hafetz, Jonathan) (Entered: 01/22/2018)
01/22/2018	49	SEALED DOCUMENT filed by JAMES N. MATTIS(This document is SEALED and only available to authorized persons.) (Attachments: # 1 SEALED DOCUMENT)(Wyer, Kathryn) (Entered: 01/22/2018)
01/22/2018	50	NOTICE of Appearance by Terry Marcus Henry on behalf of JAMES N. MATTIS (Henry, Terry) (Entered: 01/22/2018)
01/22/2018		Minute Entry: Status Conference held on 1/22/2018 before Judge Tanya S. Chutkan: The parties

will meet and confer and file a proposed briefing schedule. The Court VAGATES the petitioner's reply due on 01/24/18 and the motions hearing set for 01/29/18. (Court Reporter Bryan Wayne) (tb) (Entered: 01/23/2018)

01/23/2018	51	MEMORANDUM AND OPINION re 32 Petitioner's MOTION Regarding Continued Interim Relief. Signed by Judge Tanya S. Chutkan on 1/23/18. (DJS) (Entered: 01/23/2018)
01/23/2018	52	ORDER granting in part and denying in part 32 Petitioner's Motion Regarding Continued Interim Relief. Respondent is hereby ordered to provide the court and Petitioner's counsel seventy-two hours' notice prior to transferring Petitioner, at which time Petitioner may file an emergency motion contesting his transfer. Signed by Judge Tanya S. Chutkan on 1/23/18. (DJS) (Entered: 01/23/2018)
01/26/2018	53	PROPOSED BRIEFING SCHEDULE (<i>Joint</i>) by JAMES N. MATTIS. (Wyer, Kathryn) (Entered: 01/26/2018)
01/29/2018	54	ORDER adopting the 53 Parties' Proposed Briefing Schedule. Signed by Judge Tanya S. Chutkan on 1/29/2018. (lctsc2). (Entered: 01/29/2018)
01/30/2018		Set/Reset Deadlines: Petitioner's response to Respondent's Factual Return due by 2/9/2018. Respondent's memorandum in opposition to Petitioner's Motion to Unseal due by 2/12/2018. Petitioner's reply in support of his Motion to Unseal due by 2/22/2018. (tth) (Entered: 01/30/2018)
01/31/2018	55	TRANSCRIPT OF 1/22/18 STATUS HEARING before Judge Tanya S. Chutkan held on January 22, 2018. Page Numbers: 1-35. Date of Issuance: January 31, 2018. Court Reporter: Bryan A. Wayne. Transcripts may be ordered by submitting the Transcript Order Form For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days , the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov . Redaction Request due 2/21/2018. Redacted Transcript Deadline set for 3/3/2018. Release of Transcript Restriction set for 5/1/2018.(Wayne, Bryan) (Entered: 01/31/2018)
02/02/2018	56	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 52 Order on Motion for Miscellaneous Relief, by JAMES N. MATTIS. Fee Status: No Fee Paid. Parties have been notified. (Wyer, Kathryn) (Entered: 02/02/2018)
02/02/2018	57	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the appeal was filed by the government re 56 Notice of Appeal to DC Circuit Court. (td) (Entered: 02/02/2018)
02/02/2018		USCA Case Number 18-5032 for 56 Notice of Appeal to DC Circuit Court filed by JAMES N. MATTIS. (zrdj) (Entered: 02/06/2018)
02/09/2018	58	Consent MOTION to Modify <i>Briefing Schedule</i> as to 48 MOTION to Unseal Document 47 Sealed Document filed by AMERICAN CIVIL LIBERTIES UNION FOUNDATION, 45 Sealed Document filed by JAMES N. MATTIS by JAMES N. MATTIS (Attachments: # 1 Text of Proposed Order)(Wyer, Kathryn) Modified event title on 2/12/2018 (znmw). (Entered: 02/09/2018)

02/09/2018	59	RESPONSE re 49 Sealed Document, 46 Sealed Document, to <i>Respondent's Factual Return</i> filed by JOHN DOE. (Attachments: # 1 Appendix)(Hafetz, Jonathan) (Entered: 02/09/2018)
02/12/2018	60	MOTION for Leave to File <i>Response to Petitioner's Response to Factual Return</i> by JAMES N. MATTIS (Attachments: # 1 Text of Proposed Order)(Wyer, Kathryn) (Entered: 02/12/2018)
02/12/2018	61	RESPONSE re 60 MOTION for Leave to File <i>Response to Petitioner's Response to Factual Return</i> filed by JOHN DOE. (Attachments: # 1 Text of Proposed Order)(Spitzer, Arthur) (Entered: 02/12/2018)
02/13/2018	62	NOTICE of Appearance by Olivia R. Hussey Scott on behalf of JAMES N. MATTIS (Scott, Olivia) (Entered: 02/13/2018)
02/14/2018	63	ORDER granting 58 Respondent's Consent Motion to Amend Briefing Schedule. Respondent shall file a memorandum in opposition to Petitioners Motion to Unseal by March 5, 2018. Petitioner shall file a reply in support of Petitioners Motion to Unseal by March 19, 2018. Signed by Judge Tanya S. Chutkan on 2/14/2018. (lctsc2). (Entered: 02/14/2018)
02/14/2018		Set/Reset Deadlines: Memorandum in opposition to motion to unseal due by 3/5/2018 Reply due by 3/19/2018. (tb) (Entered: 02/14/2018)
02/14/2018	64	NOTICE OF FILING REDACTED DOCUMENT to 44 Notice (Other) by JAMES N. MATTIS (The original PDF Document contained privacy information and was restricted pursuant to the E-Government Act.) (Attachments: # 1 ECF 44 (Redacted))(Wyer, Kathryn) (Entered: 02/14/2018)
02/14/2018	65	SEALED DOCUMENT filed by JAMES N. MATTIS(This document is SEALED and only available to authorized persons.) (Attachments: # 1 SEALED DOCUMENT)(Wyer, Kathryn) (Entered: 02/14/2018)
02/14/2018	66	NOTICE OF FILING REDACTED DOCUMENT to 49 Sealed Document, 46 Sealed Document, by JAMES N. MATTIS (The original PDF Document contained privacy information and was restricted pursuant to the E-Government Act.) (Attachments: # 1 ECF 46 (Redacted), # 2 ECF 49 (Redacted))(Wyer, Kathryn) (Entered: 02/14/2018)

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

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION, as Next Friend, on behalf of
Unnamed U.S. Citizen in U.S. Military Detention,
125 Broad Street, 18th Floor
New York, NY 10004

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,
1400 Defense Pentagon
Washington, DC 20301-1400

Respondent.

Civil Action No. _____

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner American Civil Liberties Union Foundation is filing this petition for a writ of habeas corpus as next friend on behalf of an unnamed U.S. citizen (“Unnamed U.S. Citizen”) currently being unlawfully detained by the United States military in Iraq without charge, without access to counsel, and without access to a court. The U.S. military has refused to disclose publicly the name or location of this U.S. citizen. Respondent, General James N. Mattis, is the United States Secretary of Defense and Unnamed U.S. Citizen’s ultimate military custodian. Respondent’s failure to present Unnamed U.S. Citizen to a federal court or to otherwise justify his detention violates the federal habeas corpus statute, 28 U.S.C. § 2241 *et seq.*, the Non-Detention Act of 1971, 18 U.S.C. § 4001(a), and the Fourth, Fifth, and Sixth Amendments to, and the Suspension Clause of, the United States Constitution. It also exceeds any detention

authority granted by the Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001), the Authorization for Use of Military Force against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002), and the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298 (2011).

Petitioner American Civil Liberties Union Foundation, as next friend, petitions this Court for a writ of habeas corpus directing Respondent to: (1) provide attorneys from the ACLU Foundation with prompt access to Unnamed U.S. Citizen to inform him of his legal rights and to afford him the opportunity of legal assistance; (2) transfer Unnamed U.S. Citizen into civilian law-enforcement custody to face criminal charges or release him; (3) provide Unnamed U.S. Citizen with a meaningful opportunity to challenge his detention before a federal judge; and, (4) halt any continued interrogation of Unnamed U.S. Citizen.

PARTIES

1. Petitioner and next friend the American Civil Liberties Union Foundation (“ACLUF”) employs lawyers who provide legal representation free of charge in cases involving civil liberties, and educates the public about civil liberties. The ACLUF and the American Civil Liberties Union (“ACLU”), a nationwide, non-profit, non-partisan public interest organization of more than 1.6 million members, are both dedicated to defending the civil liberties guarantees by the Constitution. The ACLUF has previously represented individuals detained by the United States as “enemy combatants” and sought to vindicate their individual legal and constitutional rights in the federal courts. The ACLU previously wrote to Respondent expressing its concern about Unnamed U.S. Citizen, who is being detained by the U.S. military in Iraq. The U.S. military has detained Unnamed U.S. Citizen since on or around September 14, 2017. The U.S. military has not disclosed publicly this citizen’s identity or the place of his detention, and has not

provided Unnamed U.S. Citizen with access to a court or to counsel. The ACLU requested that Respondent provide the ACLU access to Unnamed U.S. Citizen to inform of him of his rights and provide legal assistance, but Respondent has failed to respond. Because Respondent is denying Unnamed U.S. Citizen both access to counsel and the ability to challenge his executive detention himself, the ACLUF submits this Petition as next friend of Unnamed U.S. Citizen to inform him of his rights and to afford him the opportunity of legal assistance in challenging that detention.

2. Respondent General James N. Mattis (“Respondent”) is the United States Secretary of Defense. As the nation’s highest-ranking official in the Department of Defense, Respondent maintains custody and control over Unnamed U.S. Citizen and is therefore his ultimate military custodian. Secretary Mattis is sued in his official capacity.

JURISDICTION

3. Respondent is detaining Unnamed U.S. Citizen under or by color of the authority of the United States and in violation of the Constitution and laws of the United States. The ACLU Foundation accordingly brings this action under 28 U.S.C § 2241 *et seq.* The ACLU Foundation further invokes this Court’s jurisdiction under the Federal Question Statute, 28 U.S.C. § 1331, the All Writs Act, 28 U.S.C. § 1651, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and Article I, Section 9, Clause 2 of the United States Constitution (“Suspension Clause”).

4. This Court is empowered to grant a writ of habeas corpus under 28 U.S.C. § 2241 *et seq.* and the Suspension Clause, and has the authority to adjudicate this Petition under 28 U.S.C. § 2242 and the Suspension Clause. This Court has jurisdiction over this Petition pursuant

to, *inter alia*, the Supreme Court’s rulings in *Boumediene v. Bush*, 553 U.S. 723 (2008), *Munaf v. Geren*, 553 U.S. 674 (2008), *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), and *Rasul v. Bush*, 542 U.S. 466 (2004).

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondent in his official capacity resides in this District, and pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

STATEMENT OF FACTS

6. The Defense Department has been detaining Unnamed U.S. Citizen since on or around September 14, 2017, after Syrian forces transferred him to U.S. custody. *See* Betsy Woodruff & Spencer Ackerman, *U.S. Military: American Fighting for ISIS ‘Surrenders’*, Daily Beast (Sept. 14, 2017), www.thedailybeast.com/us-military-american-isis-fighter-reportedly-surrenders; Ryan Browne, *US citizen fighting for ISIS captured in Syria*, CNN.com (Sept. 14, 2017), www.cnn.com/2017/09/14/politics/us-citizen-isis-captured-syria/index.html.

7. The Defense Department is presently detaining Unnamed U.S. Citizen in Iraq. *See* Lolita C. Baldor, *Red Cross will soon see American IS fighter held in Iraq*, Associated Press (Sept. 28, 2017), www.apnews.com/52f60506d1a54ed0b9414ab4369e1a1a/Red-Cross-will-soon-see-American-IS-fighter-held-in-Iraq.

8. The Defense Department asserts it is detaining Unnamed U.S. Citizen because he allegedly was fighting for the Islamic State of Iraq and Syria (“ISIS”) in Syria. *See* Browne, *supra*.

9. The Defense Department has not publicly disclosed Unnamed U.S. Citizen’s

identity.

10. The Defense Department has not publicly disclosed the name or location of the facility where Unnamed U.S. Citizen is being detained.

11. The Defense Department has labeled Unnamed U.S. Citizen an “enemy combatant.” *See* Baldor, *supra*.

12. The Defense Department is holding Unnamed U.S. Citizen without charge, without access to a court or other meaningful opportunity to challenge his detention before a neutral decisionmaker, and without access to counsel.

13. On September 28, a Defense Department official stated that the International Committee of the Red Cross (“ICRC”) had been notified of Unnamed U.S. Citizen’s detention, *see id.*, and on October 2, the ICRC confirmed that it had met with Unnamed U.S. Citizen, *see* Josh Gerstein, *Red Cross confirms visit with American captured in Syria*, Politico (Oct. 3, 2017), www.politico.com/story/2017/10/02/red-cross-american-syria-isis-243381.

14. In accordance with the ICRC’s strict policy of confidentiality, the ICRC did not provide publicly any details about Unnamed U.S. Citizen’s identity, location, or conditions of detention. *See* Gerstein, *supra*.

15. The ICRC does not serve as or replace legal counsel.

16. On information and belief, the Defense Department has not notified any member of Unnamed U.S. Citizen’s family of his detention or provided any member of his family with access to him.

17. On information and belief, the Defense Department has not notified any individual or organization capable of providing legal assistance to Unnamed U.S. Citizen of his detention or provided any such individual or organization with access to Unnamed U.S. Citizen.

18. On September 29, the ACLU sent via facsimile a letter to Respondent Mattis and to Attorney General Jeff Sessions expressing deep concern about Unnamed U.S. Citizen's detention, and the fact that the detention violates the Constitution, federal statutes, and international law. *See* ACLU Letter to Trump Administration on Detained American Suspected of Fighting for ISIS (Sept. 29, 2017), *available at* www.aclu.org/letter/aclu-letter-trump-administration-detained-american-suspected-fighting-isis. The ACLU urged that if the U.S. government has grounds to suspect Unnamed U.S. Citizen of fighting with ISIS, Respondent Mattis should transfer Unnamed U.S. Citizen without further delay to the United States to face charges in the federal criminal justice system in a proceeding governed by the constitutional safeguards due to all criminal defendants. The ACLU emphasized that regardless of the claimed source of detention authority, Unnamed U.S. Citizen has a constitutional right to counsel. The ACLU further informed Respondent Mattis that ACLU attorneys are available to advise Unnamed U.S. Citizen of his rights and to assist him in securing legal representation, and urged Respondent Mattis to provide that access. The ACLU has not received a response to its letter.

19. Unnamed U.S. Citizen is being detained indefinitely without access to a lawyer, without access to any court, and without a meaningful opportunity to challenge his detention before a neutral decisionmaker.

20. The Defense Department has not indicated whether, or for how long, it will continue Unnamed U.S. Citizen's military detention. The United States government has previously asserted, and continues to assert, legal authority to detain "enemy combatants," including U.S. citizens, indefinitely.

21. The Defense Department has referred questions regarding Unnamed U.S. Citizen to the Department of Justice, indicating that transfer of Unnamed U.S. Citizen for prosecution in

the federal civilian criminal justice system is at least one option being considered. *See* Karen DeYoung, *Pentagon: U.S. citizen fighting with ISIS has been captured in Syria*, Wash. Post (Sept. 14, 2017), www.wapo.st/2eZmSxu.

**THE LACK OF AUTHORITY TO DETAIN
UNNAMED U.S. CITIZEN IN MILITARY CUSTODY**

22. The Non-Detention Act of 1971, 18 U.S.C. § 4001(a), provides, “No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.”

23. Only three sources of domestic legal authority could potentially justify Unnamed U.S. Citizen’s detention: (1) the Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001) (“2001 AUMF”), in conjunction with the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298 (2011) (“2012 NDAA”) (clarifying the scope of AUMF detention authority); (2) the Authorization for Use of Military Force against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002) (“2002 AUMF”); or (3) pre-trial detention authority exercised by a court in connection with properly filed criminal charges.

24. The 2001 AUMF provides: “[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.” 2001 AUMF § 2(a).

25. As the Supreme Court stated, the 2001 AUMF gives the President the power to use force only “for the duration of the relevant conflict,” and the scope and exercise of any

detention authority must conform to the Constitution and to international humanitarian law (“IHL”). See *Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004); accord *Boumediene v. Bush*, 553 U.S. 723, 733 (2008) (discussing *Hamdi*).

26. In the 2012 NDAA, Congress confirmed that the President’s authority to use necessary and appropriate military force includes the authority to detain covered persons consistent with IHL. See 2012 NDAA § 1021(a). The 2012 NDAA defines a covered person as someone who: 1) “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks”; or 2) was “part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” *Id.* § 1021(b). The 2001 AUMF and 2012 NDAA provide no additional detention authority.

27. The 2001 AUMF and the 2012 NDAA authorize, at most, the military detention of individuals who participated in the September 11, 2001 attacks (or harbored the participants) or who were part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities with the United States or coalition partners. The United States has made no public allegation that Unnamed U.S. Citizen was involved in the terrorist attacks of September 11, 2001. The United States has made no public allegation that Unnamed U.S. Citizen has directly participated in any hostilities against the United States that would fall within the ambit of the 2001 AUMF or 2012 NDAA.

28. Neither the 2001 AUMF nor the 2012 NDAA provides a domestic legal basis to detain an individual, such as Unnamed U.S. Citizen, based on allegations that he was part of or substantially supported ISIS, a group that did not exist at the time of the 9/11 attacks, that is distinct from al-Qaeda, and that has, in fact, opposed al-Qaeda.

29. The 2002 AUMF authorized the president to use United States armed forces to “defend the national security of the United States against the continuing threat posed by Iraq” and to “enforce all relevant United Nations Security Council resolutions regarding Iraq.” 2002 AUMF § 3(a).

30. The 2002 AUMF is directed specifically at the former Government of Iraq, and does not cover a different armed conflict against a different enemy and different threat.

31. Because Respondent’s detention of Unnamed U.S. Citizen is not authorized under the terms of the 2001 AUMF, the 2012 NDAA, or the 2002 AUMF, the only lawful basis for U.S. government detention of him would be pre-trial detention if ordered by an Article III court pursuant to properly filed criminal charges.

CLAIMS FOR RELIEF

FIRST CLAIM

(Unauthorized and Unlawful Detention)

(Violation of the Federal Habeas Corpus Statute, the Non-Detention Act, the Suspension Clause of the U.S. Constitution, and the Fifth and Sixth Amendments to the U.S. Constitution)

32. Any authority to detain a U.S. citizen must derive from the Constitution and laws of the United States.

33. Neither the Constitution nor any other U.S. law authorizes the current military detention of Unnamed U.S. Citizen.

34. The Non-Detention Act of 1971, 18 U.S.C. § 4001(a), expressly prohibits the detention of a U.S. citizen except pursuant to an Act of Congress.

35. Respondent’s detention of Unnamed U.S. Citizen is not authorized by any Act of Congress and is not authorized by the 2001 AUMF, the 2012 NDAA, or the 2002 AUMF, the sole possible bases for Unnamed U.S. Citizen’s military detention.

36. Therefore, the detention of Unnamed U.S. Citizen by Respondent is in violation of the Constitution and laws of the United States.

SECOND CLAIM

*(Unlawful Detention and Denial of Right to Presentment)
(Violation of the Fourth Amendment to the U.S. Constitution)*

37. The Fourth Amendment requires that individuals seized by federal officials, including but not limited to U.S. citizens seized overseas, be brought promptly before a judicial officer to establish the basis for their detention.

38. Unnamed U.S. Citizen's detention without charge, without probable cause, and without presentment before a judicial officer violates the Fourth Amendment.

THIRD CLAIM

*(Denial of Access to the Courts and to a Fair and Meaningful Opportunity to Contest His Detention Before a Neutral Decisionmaker)
(Violation of the Suspension Clause, the Fifth Amendment to the U.S. Constitution, the Federal Habeas Corpus Statute, and International Law)*

39. The process due to any U.S. citizen ostensibly detained pursuant to the 2001 AUMF, the 2012 NDAA, and/or the 2002 AUMF must conform to the U.S. Constitution, to federal law, and to international humanitarian and human rights law by which the United States is bound.

40. Under the Suspension Clause of the U.S. Constitution, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the provisions of the federal habeas corpus statute set forth at 28 U.S.C. § 2241 *et seq.*, a U.S. citizen must have a meaningful opportunity to challenge his detention before a neutral decisionmaker with the assistance of counsel, even when detained by the military as an alleged "enemy combatant."

41. Both international humanitarian law and human rights law prohibit arbitrary detention and recognize the right of all detainees to habeas corpus.

42. Respondent's detention of Unnamed U.S. Citizen without access to any court, without access to counsel, and without a meaningful opportunity to challenge his detention before a neutral decisionmaker violates the Suspension Clause of the U.S. Constitution, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the provisions of the federal habeas corpus statute set forth at 28 U.S.C. § 2241 *et seq.*, and international law.

FOURTH CLAIM

(Denial of Right to Counsel)

(Violation of the Federal Habeas Corpus Statute, the Suspension Clause of the U.S. Constitution, and the Fifth and Sixth Amendments to the U.S. Constitution)

43. The Supreme Court has held that U.S. citizens detained as enemy combatants have the right to the assistance of counsel and the right to a meaningful opportunity to challenge their detention before a neutral decisionmaker, even when allegedly captured on a foreign battlefield bearing arms against the United States or its allies. *Hamdi*, 542 U.S. at 539.

44. Unnamed U.S. Citizen has the constitutional right to communicate with counsel regarding his legal rights and to the assistance of counsel in challenging his detention.

45. By detaining Unnamed U.S. Citizen in secret and without the ability to access to counsel, Respondent is violating his right to counsel.

FIFTH CLAIM

(Unlawful Detention for Purposes of Interrogation)

(Violation of the Fifth and Sixth Amendments to the U.S. Constitution)

46. Upon information and belief, Unnamed U.S. Citizen was designated an enemy combatant so that the government could interrogate him while he was held *incommunicado* and Unnamed U.S. Citizen, in fact, has been and continues to be interrogated by the U.S. government.

47. The Supreme Court has stated that detention for purposes of interrogation is prohibited. *Hamdi*, 542 U.S. at 521.

48. Therefore, the detention and interrogation of Unnamed U.S. Citizen is in violation of the Constitution and laws of the United States.

PRAYER FOR RELIEF

WHEREFORE, Petitioner American Civil Liberties Union Foundation respectfully requests that this Court:

A. Order Respondent forthwith to permit counsel for the American Civil Liberties Union Foundation to meet and confer with Unnamed U.S. Citizen in private and unmonitored attorney-client conversations, in person or via videoconferencing, in order for counsel to advise him of his legal rights and to provide him with legal assistance.

B. Order Respondent to make a prompt return to the writ in accordance with 28 U.S.C. § 2243 and the Suspension Clause of the U.S. Constitution.

C. Order Respondent to cease all interrogations of Unnamed U.S. Citizen while this litigation is pending.

D. Order Respondent to provide notice to the Court and to counsel for the American Civil Liberties Union Foundation prior to any transfer of Unnamed U.S. Citizen, including, but not limited to, transfer to another U.S.-controlled facility or U.S. jurisdiction, or transfer to the custody of another nation.

E. Order Respondents to specify, in the case of any transfer of Unnamed U.S. Citizen, the receiving facility, jurisdiction, authority, or country.

F. Declare that the indefinite detention of Unnamed U.S. Citizen in military custody is unauthorized, arbitrary, and unlawful, and a deprivation of liberty in violation of the Constitution and laws of the United States.

G. Order Respondent to charge Unnamed U.S. Citizen with a federal criminal offense in an Article III court or release him.

H. Grant such other relief as the Court deems necessary and appropriate.

Dated: October 5, 2017

Respectfully submitted,

/s/ Hina Shamsi

Hina Shamsi (D.C. Bar No. MI0071)
Jonathan Hafetz (*application for admission pending*)
American Civil Liberties Union Foundation
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Tel: 202-457-0800
Fax: 202-457-0805
aspitzer@acludc.org

Counsel for Petitioner

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

<p>I. (a) PLAINTIFFS AMERICAN CIVIL LIBERTIES UNION FOUNDATION, as Next Friend, on behalf of Unnamed U.S. Citizen in U.S. Military Detention, 125 Broad Street, 18th Floor New York, NY 10004 (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>DEFENDANTS GEN. JAMES N. MATTIS Secretary of Defense, U.S. Department of Defense 1000 Defense Pentagon Washinaton. D.C. 20530-1000 COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>																								
<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) American Civil Liberties Union Foundation 125 Broad St., 18th Floor New York, NY 10004 (212) 549-2500</p>	<p>ATTORNEYS (IF KNOWN)</p>																								
<p>II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil</p>			
<p><u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement</p> <p><u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark</p>	<p><u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p> <p><u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation</p>	<p><input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>

<input checked="" type="radio"/> G. Habeas Corpus/ 2255 <input checked="" type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)	
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)	
V. ORIGIN <input checked="" type="radio"/> 1 Original Proceeding <input type="radio"/> 2 Removed from State Court <input type="radio"/> 3 Remanded from Appellate Court <input type="radio"/> 4 Reinstated or Reopened <input type="radio"/> 5 Transferred from another district (specify) <input type="radio"/> 6 Multi-district Litigation <input type="radio"/> 7 Appeal to District Judge from Mag. Judge <input type="radio"/> 8 Multi-district Litigation – Direct File				
VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.) 28 U.S.C. § 2241 et. seq. - U.S. military is unlawfully detaining Petitioner.				
VII. REQUESTED IN COMPLAINT		CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____ JURY DEMAND: <input type="checkbox"/>	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY		(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form
DATE: 10/05/2017		SIGNATURE OF ATTORNEY OF RECORD <i>Hina Shamsi</i>		

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

AMERICAN CIVIL LIBERTIES UNION)	
FOUNDATION, as Next Friend, on behalf)	
of Unnamed U.S. Citizen,)	
)	
Petitioner,)	
)	
v.)	Case No. 17-cv-2069 (TSC)
)	
GEN. JAMES N. MATTIS, in his official)	
Capacity as SECRETARY OF DEFENSE,)	
)	
Respondent.)	

MEMORANDUM OPINION

Somewhere in Iraq, a United States citizen has been in the custody of the U.S. armed forces for over three months. The detainee, who has been classified as an enemy combatant and whose name has not been released, was advised of his right to counsel and requested the assistance of counsel. To date, the detainee remains unnamed, uncharged, and, despite his request, without access to counsel. This court must now consider whether Petitioner shall be permitted to proceed in this matter as the detainee’s next friend.

Petitioner American Civil Liberties Union Foundation (“ACLUF”) seeks a writ of habeas corpus as putative next friend on behalf the detainee.¹ (ECF No. 4, Pet.). The Defense Department has moved to dismiss the petition for lack of subject matter jurisdiction, arguing that the ACLUF lacks standing to seek habeas relief on the detainee’s behalf, and that the circumstances do not warrant the ACLUF’s immediate access to the detainee. (ECF No. 11,

¹ The court orally granted the ACLUF’s request to proceed pseudonymously *nunc pro tunc* at the November 30, 2017 hearing. (ECF No. 22, Tr. at 4:23–5:1).

Mot.). For the reasons stated herein, the court finds that the ACLUF has standing for the limited purpose of ascertaining whether the detainee wishes for it to file a petition on his behalf.

Therefore, the court will DENY the Defense Department's motion to dismiss, and order the Defense Department to provide the ACLUF with temporary, immediate and unmonitored access to the detainee so that it may inquire as to whether he wishes to have the ACLUF or court-appointed counsel continue this action on his behalf. The Defense Department may renew its motion should the court learn that the detainee does not wish for the ACLUF to continue in this action. Finally, the court will order the Defense Department to refrain from transferring the detainee until the ACLUF informs the court of the detainee's wishes.

I. BACKGROUND

On or about September 12, 2017, the detainee, who is a United States citizen, surrendered to Syrian Democratic Forces, who then transferred him to the custody of United States armed forces, who classified him as an enemy combatant. (ECF No. 11-1, Decl. of Steven W. Dalbey ¶ 3). According to the Defense Department, he remains detained within an armed conflict zone with restricted civilian access. (*Id.*). Other than two visits from representatives of the International Committee of the Red Cross—on September 29, 2017 and October 23, 2017—the detainee has had no contact or communication with anyone except government personnel since his detention. (*Id.* ¶ 4; Pet. ¶¶ 16–17).

On September 29, the American Civil Liberties Union sent a letter to Secretary of Defense James Mattis and Jefferson Sessions, the United States Attorney General. (*Id.* ¶ 18). The ACLU expressed its concern regarding the Department's continuing detention of a United States citizen, and emphasized the detainee's constitutional right to counsel. (*Id.*). The ACLU also informed Secretary Mattis that ACLU attorneys were available to advise the detainee of his

rights and to assist him in securing legal representation. (*Id.*) The ACLU received no response from either government official. (*Id.*).

On October 5, the ACLUF filed a petition for a writ of habeas corpus, requesting the court to order the Defense Department to allow counsel for the ACLUF to meet and confer with the detainee so that they may advise him of his legal rights and provide him with legal assistance. (*Id.* at p. 12). On October 12, the ACLUF filed an Emergency Motion requesting the same relief, noting that the detainee had been in custody for almost a month. (ECF No. 7 at 1). In response to the court's October 19 order to show case (ECF No. 8), the Defense Department filed a motion seeking dismissal of the petition for lack of standing, or in the alternative, denial of the ACLUF's request for immediate and unmonitored access to the detainee. (Mot.).

The court held a hearing on the government's motion to dismiss on November 30, 2017. In response to the court's inquiry at the hearing as to whether the detainee had been advised of his rights, the Defense Department filed a response in which it disclosed that, during questioning by FBI agents, the detainee was advised of "his right to remain silent and not to answer questions," and informed of "his right to consult counsel prior to questioning, to have counsel present during questioning, to have counsel appointed for him before questioning if he could not afford a lawyer, and, if he chose to answer questions without counsel present, to stop answering at any time." (ECF No. 18, Gov't Nov. 30 Filing at 1-2). The filing further stated:

The individual stated he understood his rights, and said he was willing to talk to the agents but also stated that since he was in a new phase, he felt he should have an attorney present. The agents explained that due to his current situation, it was unknown when he would be able to have an attorney, and the individual stated that it was ok and that he is a patient man. The individual then asked whether when he saw the agents next with his attorney, would it be at his current location or somewhere else. The agents told him they were uncertain when they would see him again. No further questioning for law enforcement purposes has taken place.

(*Id.* at 2).

The Defense Department has not indicated how long it expects to hold the detainee, other than to state that it is “still in the process of determining what its final disposition regarding the individual will be.” (Mot. at 21); *see also* (ECF No. 28) (“The Government continues to work diligently to reach a decision regarding what to do with the detainee, but no final decision has yet been reached.”). On December 21, 2017, the ACLUF filed a copy of a New York Times article, which reported that national security officials may transfer the detainee to Saudi Arabia, and that such a transfer may require him to renounce his U.S. Citizenship. (ECF No. 27). The court ordered the Defense Department to respond to the ACLUF’s notice, but the agency did not confirm or deny whether the detainee will be transferred. (*See generally* ECF No. 28).

II. LEGAL STANDARD

A motion to dismiss a petition for habeas corpus for lack of subject matter jurisdiction is subject to review under Rule 12(b)(1) of the Federal Rules of Civil Procedure. *See Rasul v. Bush*, 215 F. Supp. 2d 55, 61 (D.D.C. 2002), *aff’d*, *Al Odah v. United States*, 321 F.3d 1134 (D.C. Cir. 2003), *rev’d on other grounds*, *Rasul v. Bush*, 542 U.S. 466 (2004) (applying Fed. R. Civ. P. 12(b)(1) to the government’s motion to dismiss a pending habeas petition on jurisdictional grounds). Under Rule 12(b)(1), the petitioner bears the burden of establishing the court’s jurisdiction. *See Am. Farm Bureau v. U.S. E.P.A.*, 121 F. Supp. 2d 84, 90 (D.D.C. 2000). The petition should be liberally construed, and the court should view the facts in the light most favorable to the petitioner. *See Settles v. U.S. Parole Comm’n*, 429 F.3d 1098, 1106 (D.C. Cir. 2005). The court need not limit itself to the allegations in the petition, but may consider any materials outside the pleadings as it deems appropriate to determine whether it has jurisdiction

over the case. See *Jerome Stevens Pharm., Inc. v. Food & Drug Admin.*, 402 F.3d 1249, 1253 (D.C. Cir. 2005) (citing *Herbert v. Nat’l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992)).

III. DISCUSSION

A. Standing

Under Article III of the Constitution, a federal court cannot consider the merits of a claim until the party seeking to invoke the jurisdiction of the court can establish the requisite standing to sue. *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). In order to do so, a plaintiff “must show that he has suffered an injury in fact that is fairly traceable to the challenged action of the defendant, and that is likely to be redressed by a favorable decision.” *Hamdi v. Rumsfeld*, 294 F.3d 598, 602 (4th Cir. 2002) (citing *Whitmore*, 495 U.S. at 155) (other citations omitted). Recognizing that some individuals may be unable to seek judicial relief on their own, however, the Supreme Court held in *Whitmore v. Arkansas*, 495 U.S. at 161–62, that a person who does not satisfy Article III’s standing requirements may still proceed in federal court through a mechanism known as “next friend” standing. Next friend standing originated in the habeas corpus context, and is codified in the federal habeas statute. See 28 U.S.C. § 2242 (“Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.”). The onus is on the putative next friend to establish the requirements for standing. *Whitmore*, 495 U.S. at 164.

Whitmore established two requirements for next friend standing. First, the next friend must provide “an adequate explanation—such as inaccessibility, mental incompetence, or other disability—why the real party in interest cannot appear on his own behalf to prosecute the action.” *Id.* at 163 (citations omitted). Second, the next friend must demonstrate that it is “truly dedicated to the best interests of the person on whose behalf [it] seeks to litigate.” *Id.* The Court

also noted *in dicta* that “it has been further suggested that a ‘next friend’ must have some significant relationship with the real party in interest,” but did not opine on that issue. *Id.* at 163–64.

The ACLUF argues that it has next friend standing here because (1) the detainee is inaccessible, (2) the detainee has requested the assistance of counsel, and (3) “no other putative next friend has come forward” to represent him. (ECF No. 13, Opp. at 4). The ACLUF emphasizes that it is able to properly represent the detainee given its longstanding commitment to “upholding the constitutional rights of individuals” and its experience in representing other U.S. citizens detained under similar circumstances. (*Id.* at 5). Additionally, it argues that given the extreme circumstances of this case, including the Defense Department’s refusal to allow anyone (other than the Red Cross) access to the detainee, the ACLUF’s lack of a personal relationship with the detainee should not be a bar to next friend standing. (*Id.* at 11–13).

For “purposes of this filing,” the Defense Department does not dispute that the first prerequisite to next friend standing is satisfied: the detainee is currently inaccessible, and therefore cannot bring a habeas petition on his own behalf. (Mot. at 6–7 n.1). But the Department argues that the ACLUF cannot meet the second *Whitmore* requirement because it cannot show that it is dedicated to the detainee’s best interests, nor can it establish a significant relationship with him. (*Id.* at 6). Having considered the arguments of the parties, and under the facts of this case, the court finds that the ACLUF has demonstrated that it is dedicated to the detainee’s best interests, and that a showing of a significant relationship is not required in this case.

1. The “Best Interests” Prong of the *Whitmore* Test

The Defense Department argues that next friend standing should be denied because the ACLUF has not conferred or met with the detainee, and therefore cannot prove that it is pursuing his best interests, and, most importantly, the ACLUF does not know if the detainee wants the ACLUF to pursue habeas relief on his behalf. (*Id.* 7–10). The court finds the Defense Department’s position to be disingenuous at best, given that the Department is the sole impediment to the ACLUF’s ability to meet and confer with the detainee. Moreover, having informed the detainee of his right to counsel, and the detainee having asked for counsel, the Department’s position that his request should simply be ignored until it decides what to do with the detainee and when to allow him access to counsel is both remarkable and troubling.

In support of its argument, the Defense Department cites to three cases where next friend standing was denied, based, in part, on the putative next friend’s failure to meet and confer with the detainee to learn of his wishes. (*Id.* at 8–9). However, in one of the cases, *Sanchez–Velasco v. Sec’y of Dep’t of Corrections*, 287 F.3d 1015 (11th Cir. 2002), the putative next friend had never even attempted to meet with the detainee whose best interests he claimed to represent, despite having the opportunity to do so. 287 F.3d at 1015, 1027. In the other two cases, the factual records, in addition to showing that the putative next friends failed to meet and confer with the detainees, indicated that the detainees *did not* wish to pursue habeas relief. *See Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 21 (D.D.C. 2010) (“Indeed, to the extent that Anwar Al-Aulaqi has made his personal preferences known, he has indicated precisely the opposite—i.e., that he believes it is *not* in his best interests to prosecute this case.”); *see also Idris v. Obama*, 667 F. Supp. 2d 25, 28 (D.D.C. 2009) (“By refusing to meet with counsel on at least five

occasions, petitioner has unequivocally refused to authorize counsel to go forward with his case.”) (emphasis in original).

The situation here is significantly different. Unlike in *Sanchez*, the ACLUF has tried to meet and confer with the detainee. Its letter to the Secretary of Defense and the Attorney General, just seventeen days after the detainee was taken into custody by U.S. forces, was met with silence. Here, it is the Defense Department’s—not the ACLUF’s—inaction that has prevented the ACLUF from meeting with the detainee. Moreover, unlike the other two cases upon which the Defense Department relies, in which the detainees did not want to avail themselves of the legal system, there is no indication here that the detainee does not wish to do so. Indeed, it is clear—and not mere speculation—that he wishes to have the assistance of a lawyer. Given the conditions under which the detainee is currently being held, his request for legal assistance is certainly evidence from which this court could infer a desire to avail himself of the legal system. Therefore, the court finds that the ACLUF has satisfied the “best interests” prong of the *Whitmore* test.

2. Significant Relationship

The D.C. Circuit has not adopted the significant relationship requirement for next friend standing. *Does v. Bush*, 2006 WL 3096685, at *6 (D.D.C. Oct. 31, 2006) (“[T]his circuit has not addressed whether there must be ‘some significant relationship’ between a ‘next friend’ and the individual on whose behalf the ‘next friend’ seeks to act.”). Moreover, it has been suggested that “a court should consider whether or not a proposed ‘next friend’ has a ‘significant relationship’ with the detained individual as a consideration (rather than a separate requirement) when determining whether or not a proposed ‘next friend’ is dedicated to a detainee’s best interests.” *Id.* at *6 (citing *Sanchez*, 287 F.3d at 1026–27). Nonetheless, the Defense Department argues

that a significant relationship—i.e., such as that of a close family member or previous attorney—is necessary in order to establish next friend standing in this case. (Mot. at 13). The court disagrees.

Even where no relationship—significant or otherwise—exists, next friend standing may be warranted in extreme circumstances. *See Coal. of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153, 1167 (9th Cir. 2002) (Berzon, J., concurring) (“In the extreme case, where there is no next friend under traditional criteria, the showing required to meet *Whitmore*’s second prong should be relaxed, to the degree that no relationship should be required if none is practically possible.”). Specifically, under Judge Berzon’s interpretation of the doctrine, next friend standing may be established in the absence of a relationship if: (1) the petitioner makes “an affirmative and convincing demonstration” of its dedication to the detainee’s best interests, “including a showing that [it has] made a reasonable effort to establish a relationship if none exists;” and (2) the petitioner can also show “that the circumstances entirely preclude both the appearance as next friend of anyone with a relationship to the detainee[] as well as the practical representation of the detainee[]’s interests in court by others similarly situated.” *Id.* at 1168.

The court finds Judge Berzon’s interpretation to be persuasive, and concludes that the ACLUF satisfies both requirements and therefore does not need to establish a significant or prior relationship with the detainee in this case. First, as discussed above, the ACLUF has demonstrated a dedication to the detainee’s best interests, and it attempted, prior to filing a petition in this court, to establish a relationship with the detainee by writing the Defense Department to note the detainee’s right to counsel and to offer to act on his behalf. (Pet. ¶ 18). It received no response. (*Id.*). Second, the court finds that the circumstances in this case preclude someone with a significant relationship from serving as the detainee’s next friend. For over three

months, the detainee's identity and location have remained unknown. Aside from two visits from the Red Cross, the detainee has had no contact with anyone other than armed forces and law enforcement personnel. (Decl. of Steven W. Dalbey ¶ 4; Pet. ¶¶ 16–17).

The Defense Department maintains that if the detainee wished to have someone take legal action on his behalf, he could have made this request during his visits with the Red Cross. (Mot. at 15). But the record is devoid of any information regarding the Red Cross visits (including whether the Red Cross was informed of the detainee's name), whether the detainee has family members or associates who know about his detention, whether he wants them to know of his detention, or whether any such individuals would be willing or able to take legal action on his behalf.

Moreover, the detainee's own statements, as proffered by the Defense Department, indicate that he appears to believe that counsel *will* be appointed for him. After the detainee told the FBI agents that he “felt he should have an attorney present,” the agents indicated they were unsure when he would have access to an attorney, and the detainee “stated that it was ok and that *he is a patient man*. [He] then asked whether when he saw the agents *next with his attorney*, would it be at his current location or somewhere else.” (Gov't Nov. 30 Filing at 2) (emphasis added). His statements indicate that not only does he want counsel, but that he is waiting for counsel to be provided. This would certainly explain why he may not have asked the Red Cross for assistance in obtaining counsel.

The court's ruling on the “significant relationship” issue in this case does not “open the floodgates to ‘intruders or uninvited meddlers’” as the Defense Department suggests. (Mot. at 13) (quoting *Whitmore*, 495 U.S. at 164). By its decision, the court does not sanction any “unwitting stranger” to establish next friend standing. (*Id.*). The court's limited finding is based

on the ACLUF's willingness and ability to serve as the detainee's next friend, and the likelihood that absent the ACLUF's appearance as next friend, the detainee will have no other avenue through which to obtain the assistance he seeks, and to which he is constitutionally entitled. Accordingly, given that the ACLUF has satisfied both prongs of the *Whitmore* test, and that a significant relationship with the detainee is not required under these extreme circumstances, the court finds that the ACLUF has standing in this case.

B. Access to Counsel

The Defense Department argues that the detainee does not have the *immediate* right to meet with counsel because his "final disposition" has yet to be determined. (Mot. at 16–21). Relying on *Boumediene v. Bush*, 553 U.S. 723, 795 (2008), the Department argues that it is entitled to a "reasonable period of time to determine the detainee's status before a court entertains" the habeas petition. (Mot. at 18). Specifically, it claims that it needs time to decide whether to "criminally prosecute the individual," "transfer the individual," "release the individual," or "further detain the individual." (Tr. at 21:22–22:2). The Department also contends that it would be difficult to allow the ACLUF access because the detainee is being held in a restricted U.S. military zone. (*Id.* at 21). The court finds these arguments unavailing.

Nothing in *Boumediene* restrains this court from ordering the Defense Department to grant the ACLUF immediate access. In that case, the Supreme Court, having found that foreign nationals were entitled to habeas relief, simply noted that the government should be permitted a reasonable amount of time in which to determine whether such detainees are enemy combatants before a court entertains a writ of habeas corpus. 553 U.S. at 733-34, 783, 795. Here, the Defense Department, which has had the detainee in custody for over three months, has already made this determination. (Decl. of Steven W. Dalbey ¶ 3).

Finally, the Defense Department cannot strip the detainee of his right to habeas relief simply because the Department contends that allowing the ACLUF access “would be no easy matter.” (Mot. at 21). The Department is experienced in managing such difficulties in other cases, and has provided no reason why such inconvenience should outweigh the necessity of providing the detainee with the access to counsel he requested months ago.

IV. CONCLUSION

For the foregoing reasons, the court will: (1) DENY the Defense Department’s motion to dismiss; (2) order that the Defense Department allow the ACLUF immediate and unmonitored access to the detainee for the sole purpose of determining whether the detainee wishes for the ACLUF to continue this action on his behalf; and (3) order the Defense Department to refrain from transferring the detainee until the ACLUF informs the court of the detainee’s wishes. The Defense Department may renew its motion to dismiss should the court learn that the detainee does not wish for the ACLUF to continue this action.

Date: December 23, 2017

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

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

AMERICAN CIVIL LIBERTIES UNION)	
FOUNDATION, as Next Friend, on behalf)	
of Unnamed U.S. Citizen,)	
)	
Petitioner,)	
)	
v.)	Case No. 17-cv-2069 (TSC)
)	
GEN. JAMES N. MATTIS, in his official)	
Capacity as SECRETARY OF DEFENSE,)	
)	
Respondent.)	

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the court hereby DENIES Respondent’s Motion to Dismiss (ECF No. 11). Respondent is hereby ordered to: (1) permit the ACLUF immediate and unmonitored access, in person or via videoconferencing, to the detainee for the sole purpose of determining whether the detainee wishes for the ACLUF to continue this action on his behalf; and (2) refrain from transferring the detainee until the ACLUF informs the court of the detainee’s wishes. The Defense Department may renew its motion to dismiss should the court learn that the detainee does not wish for the ACLUF to continue this action.

Date: December 23, 2017

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

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

JOHN DOE,

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,

Respondent.

No. 17-cv-2069 (TSC)

ORDER

At the hearing on Petitioner's Motion Regarding Continued Interim Relief (ECF No. 32), counsel for the Petitioner requested that the court order the government to refrain from transferring the Petitioner until the court rules on the motion. In response to the court's inquiry as to whether the government intends to transfer the Petitioner within the next forty-eight hours, government counsel indicated that it had no basis to believe that a transfer would take place within this timeframe. Counsel added, however, that it is the government's position that it has the authority to transfer Petitioner as soon as another country is ready. Given the government's position, and the court's impending ruling on Petitioner's Motion Regarding Continued Interim Relief, the court hereby orders the government to refrain from transferring the detainee until Tuesday, January 23, 2018.

Date: January 18, 2018

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

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

JOHN DOE,

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,

Respondent.

No. 17-cv-2069 (TSC)

MEMORANDUM OPINION

Petitioner—a United States citizen—remains in Iraq in the custody of U.S. armed forces. While Petitioner now has access to counsel in order to pursue this habeas petition, the Department of Defense (“Defense Department”) may seek to transfer him prior to this court’s decision on his petition. The Defense Department is unable to provide a timeline for when this transfer might take place. Petitioner has requested that this court enjoin the Defense Department from transferring him to another country during the pendency of this litigation. Upon consideration of the parties’ filings, the oral arguments of counsel, and for the reasons stated herein, Petitioner’s Motion Regarding Continued Interim Relief will be GRANTED in part and DENIED in part. The court will not enjoin the Defense Department from transferring the Petitioner, but will require the Defense Department to provide the court and Petitioner’s counsel seventy-two hours’ notice prior to any such transfer.

I. BACKGROUND

On December 23, 2017, this court entered an order (1) denying the Defense Department's Motion to Dismiss (ECF No. 11), (2) requiring the Defense Department to permit the American Civil Liberties Union Foundation ("ACLUF") immediate and unmonitored access to Petitioner to determine whether he wanted the ACLUF to pursue this action on his behalf, and (3) requiring the Defense Department to "refrain from transferring the detainee until the ACLUF informs the court of the detainee's wishes." (ECF No. 30). On January 5, 2018, the ACLUF informed the court that Petitioner wanted the ACLUF to represent him in this action. (ECF No. 32 ("Mot.") at 1). The ACLUF also requested that the court extend the interim relief provided in its December 23 Order, and order the Defense Department not to transfer Petitioner until the court renders its decision on Petitioner's habeas petition. (*Id.* at 2).

On January 18, 2018, the court held a hearing on Petitioner's motion for continued relief. In response to the court's inquiry as to whether the Defense Department intended to transfer the Petitioner within the next forty-eight hours, Department counsel indicated that it had no basis to believe that a transfer would take place within that timeframe. Counsel added, however, that it is the Defense Department's position that it has the authority to transfer Petitioner as soon as another country is ready to receive him. Given the Defense Department's position, and the court's impending ruling on Petitioner's motion, the court ordered the Defense Department to refrain from transferring Petitioner until Tuesday, January 23, 2018. (ECF No. 43).

At the January 18 hearing, the Defense Department also offered to provide the court with a classified declaration which would provide more detail regarding the Department's position as to Petitioner. On January 19, 2018, the Defense Department filed a classified *ex parte* declaration through a Classified Information Security Officer. (*See* ECF No. 44). That evening,

the Defense Department filed a redacted, sealed version of the same declaration. (ECF No. 45-1 (“Classified Declaration”)).

On January 22, 2018, the court held a status hearing, during which the court asked the parties whether they opposed an order requiring the Defense Department to provide the court and Petitioner’s counsel notice prior to transferring Petitioner. The Defense Department indicated that it would object to such an order. Petitioner’s counsel informed the court that Petitioner would not object to such an order, as long as he had the opportunity to contest his transfer.

II. LEGAL STANDARD

In order to prevail on a motion for a preliminary injunction, the movant must show that: “[1] he is likely to succeed on the merits, [2] . . . he is likely to suffer irreparable harm in the absence of preliminary relief, [3] . . . the balance of equities tips in his favor, and [4] . . . an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is an “extraordinary remedy” that is “never awarded as of right.” *Id.* at 24 (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008)). The D.C. Circuit has applied a sliding scale approach to evaluating preliminary injunctions, such that an unusually strong showing on one factor could make up for a weaker showing on another. *See, e.g., Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009). It has been suggested that a movant’s showing of a likelihood of success, however, is a “free-standing requirement for a preliminary injunction.” *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (quoting *Davis*, 571 F.3d at 1296 (Kavanaugh, J., concurring)).

III. DISCUSSION

A. Likelihood of Success on the Merits

Petitioner has shown a likelihood of success on the merits of his claim that there should be some restriction on the Defense Department's ability to transfer him during the pendency of this litigation. Prior to transferring Petitioner, the Defense Department must present "positive legal authority" for his transfer. *See Omar v. McHugh*, 646 F.3d 13, 24 (D.C. Cir. 2011) ("None of this means that the Executive Branch may detain or transfer Americans or individuals in U.S. territory at will, without any judicial review of the positive legal authority for the detention or transfer."); *see also Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 8 (1936) (power to provide for extradition "is not confided to the Executive in the absence of treaty or legislative provision").

The court has reviewed the classified information provided by the Defense Department and finds that it does not present "positive legal authority" for Petitioner's transfer. Neither does the Defense Department's assertion that "international relations" with the receiving country would be harmed should the court prohibit his transfer at this time.

Despite its failure to present legal authority for Petitioner's transfer, such as an extradition request or an allegation of criminal conduct committed in the receiving country, the Defense Department maintains that the court nonetheless cannot restrict Petitioner's transfer while it considers his claim of unlawful detention. Relying on *Munaf v. Geren*, 553 U.S. 674 (2008), and *Kiyemba v. Obama* ("*Kiyemba IP*"), 561 F.3d 509 (D.C. Cir. 2009), the Defense Department argues that the court is barred from restricting Petitioner's transfer because of the "significant national security and foreign relations concerns" surrounding his transfer. (ECF No. 33 ("*Opp.*") at 7–8). The court finds this argument unavailing.

Nothing in *Munaf* or *Kiyemba II* restrains this court from restricting the Defense Department's ability to transfer Petitioner in this case. In *Munaf*, two U.S. citizens—charged by the Iraqi government for crimes committed on Iraqi soil—were detained in Iraq by U.S. military forces as part of a multi-national force acting on behalf of the Iraqi government. 553 U.S. at 681–685. The detainees filed petitions for writs of habeas corpus, seeking to enjoin the multi-national forces from transferring them to Iraqi custody. *Id.* The Supreme Court held that the district court did not have the power to enjoin the transfers, explaining that “[h]abeas corpus does not require the United States to shelter . . . fugitives from the criminal justice system of the sovereign with authority to prosecute them.” *Id.* at 705. Here, unlike in *Munaf*, there is no evidence in the record that Petitioner: (1) committed crimes in violation of the laws of another country; (2) is facing prosecution in another country; or (3) is being held on another country's behalf. Therefore, this case does not implicate another country's “sovereign right” to punish offenses within its borders. *Id.* at 693.

In *Kiyemba II*, the Court held that a district court did not have the power to enjoin the transfer of detained non-citizens or to require the government to provide 30 days' notice prior to their transfer “based upon the expectation that a recipient country” will detain, prosecute or torture them. 561 F.3d at 514–15. But *Kiyemba II* involved non-citizens who, by virtue of their classification as wartime alien detainees, could not be released into the United States. Here, Petitioner—a U.S. citizen—seeks to enjoin transfer solely to ensure that he is able to pursue his habeas petition. He does not argue fear of detention, prosecution or torture in another country.

The court finds that Petitioner has shown a likelihood of success on his claim that this court may temporarily restrict the Defense Department's ability to transfer him to another country. The court does not find, however, that the specific relief Petitioner seeks—prohibition

of his transfer for the duration of these proceedings—is warranted at this time. Transferring the Petitioner is just one of the options the Defense Department is currently considering. (*See* Opp. at 7 (“Releasing Petitioner from U.S. custody into the custody of another country with a legitimate interest in him is one of the options under consideration.”)). Providing the relief Petitioner seeks would require the court to prohibit an action that the Defense Department has not yet decided to take. The court finds it more prudent to require the Defense Department to provide notice prior to transferring Petitioner, and to afford Petitioner the opportunity to contest his transfer should he decide to do so.

B. Irreparable Harm

The Defense Department does not—because it cannot—argue that Petitioner will not be irreparably harmed absent some relief from this court. Without a restriction on Petitioner’s transfer, the Defense Department may transfer Petitioner to the custody of another country prior to a decision on his habeas petition, and without providing any notice to this court or Petitioner’s counsel. Were that to occur, Petitioner would no longer be in U.S. custody, and will likely be unable to pursue his habeas petition. *See In re Petitioners Seeking Habeas Corpus Relief in Relation to Prior Detentions at Guantanamo Bay*, 700 F. Supp. 2d 119, 126 (D.D.C. 2010), *aff’d sub nom. Chaman v. Obama*, 2012 WL 3797596 (D.C. Cir. Aug. 10, 2012) (“For a petitioner in United States custody, the controversy is clear since he is attempting to secure his release from the United States Government. . . . For a petitioner released from United States custody, the case-or-controversy requirement is problematic because the remedy sought is more elusive.”) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)); *see also Qassim v. Bush*, 466 F.3d 1073, 1076–77 (D.C. Cir. 2006) (finding petitioners’ claims for declaratory and injunctive relief moot because

they had been released from U.S. custody and did not show a collateral consequence of their prior detention).

C. Balance of Equities

The balance of equities also weighs in Petitioner's favor. The government has argued that a ruling in Petitioner's favor would result in serious harm to the government's international relations with another country, and the court recognizes the government's significant interest in maintaining fruitful, diplomatic relations. But the court is not convinced—based on the record here—that these diplomatic interests override the Petitioner's well-established right “to contest the factual basis for [his] detention” through a habeas petition. *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004). Absent an articulated legal reason for the transfer, such as an extradition request or an allegation of criminal conduct committed in the receiving country, Petitioner's right to habeas relief does not yield to the government's desire to maintain good diplomatic relations.

Balancing the equities in Petitioner's favor here is particularly appropriate, given that this court's decision merely requires the Defense Department to provide notice prior to any transfer. The Defense Department is not prevented from continuing negotiations or discussions regarding the transfer, or from obtaining further information that might support a transfer. Absent a showing that the government—for international relations reasons or otherwise—needs to transfer Petitioner *now*, the court does not find that the government's interests outweigh the Petitioner's right to challenge his detention without fear of his transfer to another country. The Defense Department's Classified Declaration does not convince the court otherwise.

D. Public Interest

Judicial authority to review habeas corpus petitions derives from U.S. citizens' rights to “freedom from arbitrary and unlawful restraint.” *Boumediene v. Bush*, 553 U.S. 723, 797 (2008).

While this court is mindful of the government's right to conduct diplomacy and foreign relations as it sees fit, this right must be balanced against United States citizens' rights to contest the lawfulness of their detentions and transfers at the hands of the Executive.

IV. CONCLUSION

For the foregoing reasons, Petitioner's motion for continued relief will be GRANTED in part and DENIED in part. The Defense Department will be ordered to provide the court and Petitioner's counsel seventy-two hours' notice prior to transferring Petitioner, at which time Petitioner may file an emergency motion contesting his transfer. A corresponding order will issue separately.

Date: January 23, 2018

Tanya S. Chutkan
TANYA S. CHUTKAN
United States District Judge

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

JOHN DOE,

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,

Respondent.

No. 17-cv-2069 (TSC)

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the court hereby GRANTS in part and DENIES in part Petitioner's Motion Regarding Continued Interim Relief (ECF No. 32). Respondent is hereby ordered to provide the court and Petitioner's counsel seventy-two hours' notice prior to transferring Petitioner, at which time Petitioner may file an emergency motion contesting his transfer.

Date: January 23, 2018

Tanya S. Chutkan

TANYA S. CHUTKAN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,	.	
	.	
Petitioner,	.	CA No. 17-2069 (TSC)
	.	
v.	.	
	.	
JAMES N. MATTIS,	.	Washington, D.C.
	.	Monday, January 22, 2018
Respondent.	.	4:00 p.m.
.	

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Petitioner:	JONATHAN HAFETZ, ESQ. DROR LADIN, ESQ. American Civil Liberties Union Foundation 125 Broad Street 18th Floor New York, NY 10004 (212) 549-2500
	ARTHUR B. SPITZER, ESQ. American Civil Liberties Union District of Columbia 4301 Connecticut Avenue, NW Suite 434 Washington, DC 20008 (202) 457-0800 x1004
For the Respondent:	TERRY M. HENRY, ESQ. KATHRYN L. WYER, ESQ. JAMES M. BURNHAM, ESQ. RONALD J. WILTSIE, ESQ. U.S. Department of Justice Federal Programs Branch 20 Massachusetts Avenue, NW Washington, DC 20530 (202) 514-4107

Court Reporter:

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U.S. Courthouse, Room 4704-A
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3186

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Your Honor, we have civil action
3 17-2069, American Civil Liberties Union Foundation versus James
4 Mattis. Will counsel please stand and identify yourselves and
5 those at your respective tables.

6 MR. HAFETZ: Good afternoon, Your Honor.
7 Jonathan Hafetz for the ACLU, joined by Dror Ladin from the
8 New York office and Arthur Spitzer from the ACLU for the
9 District of Columbia.

10 THE COURT: Good afternoon.

11 MR. HENRY: Good afternoon, Your Honor. Terry Henry
12 with the Department of Justice. With me at counsel table are
13 James Burnham, Kathy Wyer, and Ronald Wiltsie.

14 THE COURT: Good afternoon.

15 All right. Thank you for being here. There are a few
16 things I want to resolve. Obviously, this is a challenging case
17 which presents a number of difficulties in resolution, and
18 procedural issues as well. But what I did not ask, Mr. Hafetz,
19 the last time you were here, and I should have and I will ask
20 you now, is what is your client's position regarding release?

21 In other words, does your client -- in the government's
22 proffered information that I don't want to allude to in open
23 court, and you've been provided under seal a redacted version of
24 that information, is there any country -- and if you need to
25 make your statement under seal at the bench, that's fine.

1 Is there any country to which your client does not oppose
2 transfer to? I guess my question is, at the last hearing, I
3 asked you what your definition of "release" would be, and you
4 said you want the door of the jailhouse to be opened. But what
5 does that really mean? You stop short of saying whether that
6 meant the jailhouse door needs to be open in Iraq or somewhere
7 else. So I'm trying to push you a little on what you mean by
8 "release" in this case.

9 MR. HAFETZ: If I may have a moment?

10 THE COURT: Yes.

11 (Counsel conferring.)

12 THE COURT: With the understanding that I understand
13 from Mr. Burnham when he was here last that the government's
14 position is "release" means release to another country is
15 release. Obviously, that's not your position, but I want to
16 kind of know what is.

17 MR. HAFETZ: Yes. Your Honor, to start release to
18 another country, forceable transfer, is not a release. Our
19 position is that -- the client's position is that release is
20 simply to allow him to go free. He has not been charged with a
21 crime. There's no authority, legal authority, and we also would
22 establish there's no factual basis. But there's no authority to
23 detain him, and if there's no authority to detain him, the
24 remedy in habeas is release from custody.

25 So it is simply -- I mean, what he's asking this Court for

1 is to allow him to -- open the doors, allow him to go free.
2 There's no pending charges against him in any country. There
3 are no charges against him in Iraq, there are no charges against
4 him in any country, and that's what distinguishes this case from
5 *Munaf*. He's an American citizen. He is wrongfully detained,
6 without legal basis, and what we're asking for is release.
7 We're not asking this Court to do any more other than to enjoin
8 his transfer --

9 THE COURT: I guess this is where I want to stop you.
10 Does your client oppose this transfer?

11 MR. HAFETZ: Our client opposes his -- yes. Our
12 client opposes a transfer, a forcible transfer. He's seeking
13 release. That's not to say there are not other countries to
14 which he might go, right? I mean, he has, for example, a family
15 elsewhere. If freed, it's not that he's saying -- he's
16 basically -- well, he's asking to be free.

17 He would seek to return to his family, but he's not -- so
18 I'm not saying there's not other countries he won't go to, but
19 he's opposing a forcible hand-over to a sovereign. And the
20 basis for the authority to transfer him is the authority to
21 detain him, and he does not -- that's the question that's before
22 Your Honor.

23 So he's asking this Court to enjoin his forcible transfer
24 to another country until the Court determines whether or not he
25 is properly held. If the Court either finds that he is properly

1 held, the government may at that point, you know, have wartime
2 authority to transfer him or not, or if there's --

3 THE COURT: I'm sorry, what?

4 MR. HAFETZ: So if he is, in fact, found to be an
5 enemy combatant, the basic question that's before you, the
6 merits of this case, the government might at that point have
7 authority to transfer him as a wartime detainee, or not. Or if
8 there were a country that had -- you know, if there were a
9 formal request based on a criminal charge and there were
10 positive legal authority to transfer him as was the case in
11 *Munaf*, as is the case in extradition cases, then the Court, if
12 there were the authority, the government could transfer him.
13 But it's essentially a lawless hand-over when he's not yet been
14 -- when his detention itself is lawless.

15 THE COURT: I guess that's what was -- obviously, if
16 your client doesn't oppose a hand-over, then this case is moot.
17 But I can't determine that, really, without -- I can't.

18 Let me ask you, Mr. Henry, are you speaking for the
19 government today?

20 MR. HENRY: Yes, Your Honor.

21 MR. HAFETZ: Your Honor, can I just one more --

22 THE COURT: Yes.

23 MR. HAFETZ: Yeah. So just -- I wasn't sure I
24 followed the last word. He opposes a forcible hand-over.

25 THE COURT: To any authority.

1 MR. HAFETZ: To any authority, yes. He's seeking
2 release from custody.

3 THE COURT: Okay.

4 MR. HAFETZ: That's not saying he would not, of his
5 own volition, go to another country, but he is opposing absolutely
6 a forcible hand-over. He's asking for release, and release is
7 not a physical hand-over to another sovereign. Release, in
8 common parlance and as a legal matter, is a release or a
9 relinquishment of government custody.

10 THE COURT: Is it Mr. Burnham or Mr. Henry?

11 MR. BURNHAM: On transfer, it will be me.

12 THE COURT: All right. And I mean -- and I don't mean
13 to reopen oral argument. We have classified information that we
14 need to be mindful of here and other matters.

15 But I want go back to what I think was a month ago now.
16 We had one of our first hearings in this case, and it was
17 Ms. Wyer, not Mr. Burnham. But when you were first before me,
18 the government, in opposing the petition not only on standing
19 grounds -- well, on standing grounds, said the government was
20 entitled to a reasonable period of time to determine what to do
21 with the detainee.

22 Is this potential desire, because I understand the
23 government hasn't made up its mind yet, to possibly transfer the
24 detainee, does that -- is that the decision? In other words, is
25 that -- or is that just an option you're weighing?

1 In other words, what Ms. Wyer said at oral argument
2 previously was the government is entitled to a certain amount
3 of time to decide whether to charge the detainee, whether to
4 release the detainee or something else. Is this what you all
5 have decided to do, or is this simply another option that you
6 wish to have in your array of options?

7 MR. BURNHAM: So in order to -- we would need another
8 country -- we're not there yet because there's obviously two
9 countries involved in any transfer, and so I want to be a little
10 careful.

11 THE COURT: I guess my question is, is this in lieu of
12 charging him? In other words, is this potential transfer in
13 lieu of charging him --

14 MR. BURNHAM: Oh, yes.

15 THE COURT: -- as an enemy combatant and initiating
16 formal charges?

17 MR. BURNHAM: Yes, Your Honor. So our position would
18 be that this is a relinquishment of custody, it's release, and
19 at that point the U.S. would no longer have any control over
20 what happens to petitioner. And just to be clear, Your Honor,
21 and I hope I haven't said anything contrary to this, we are
22 keeping sort of all of our options open at this point and have
23 made no final decisions yet.

24 THE COURT: I understand.

25 MR. BURNHAM: And one other point, if I may,

1 Your Honor? I didn't get to mention this at the last hearing.
2 If you look at pages 704 and 705 of the Supreme Court's decision
3 in *Munaf*, they discuss *Valentine* at length, and they make pretty
4 clear that when a person is being held overseas who's captured
5 overseas, the extradition cases just don't apply.

6 And in *Munaf* itself, there'd been no determination by a
7 court that the detention was itself lawful. No U.S. court had
8 said the U.S. had the power to hold those American citizens
9 there either. And, in fact, that's what they wanted. They
10 wanted exactly what petitioner wants here, which was no transfer
11 until a federal court in the United States decides whether --

12 THE COURT: Except *Munaf* really -- *Munaf* was a case
13 where the Multinational Forces were simply acting as a jailor
14 for Iraq. The U.S. citizens there had allegedly committed
15 crimes in Iraq in violation of Iraqi law, and the Iraqi
16 authorities sought to prosecute them. I mean, that's not the
17 case here by a long shot.

18 MR. BURNHAM: So that may have been alleged to have
19 committed crimes. That's true. They had not been convicted,
20 so they were --

21 THE COURT: Well, they couldn't be convicted because
22 they were in the custody of the Multinational Forces, and as I
23 recall *Munaf*, the Multinational Forces wanted to release the
24 defendants so that they could be prosecuted by Iraqi
25 authorities. That's not the case here. We don't have any

1 request, extradition or otherwise, for the transfer of this
2 detainee so that he can face charges in another country.

3 MR. BURNHAM: My point, I think, is a little narrower,
4 Your Honor. There was no extradition request in *Munaf* either.

5 THE COURT: Because in *Munaf*, no one sought
6 extradition of *Munaf*.

7 MR. BURNHAM: Right.

8 THE COURT: He was in Iraq --

9 MR. BURNHAM: Right.

10 THE COURT: -- and he would have simply been -- he
11 was going to be handed over from Multinational Forces to Iraqi
12 authorities in the same country.

13 MR. BURNHAM: Right.

14 THE COURT: So, of course, there wouldn't have been an
15 extradition.

16 MR. BURNHAM: As I understand what petitioner is
17 requesting, Your Honor, the injunction they're asking for would
18 prohibit just that. So if we wanted to open the door in Iraq
19 and he was arrested by the Iraqi authorities, I think the
20 injunction they're asking for would prohibit that.

21 THE COURT: I don't -- well, I'll let Mr. Hafetz --

22 MR. BURNHAM: And I don't mean to suggest that's what
23 we're planning.

24 THE COURT: Right.

25 MR. BURNHAM: I'm just saying that --

1 THE COURT: And I don't want to get --

2 MR. BURNHAM: And I don't mean to digress, but --

3 THE COURT: We can go into flights of fancy regarding
4 all sorts of hypothetical situations, and it is difficult to
5 discuss this in the abstract and not reveal classified
6 information. But I'll let Mr. Hafetz answer that, because I
7 think when I asked Mr. Hafetz last week if release simply meant
8 opening the -- figuratively or literally -- opening the door to
9 the jail in Iraq and letting the petitioner go free, I believe
10 his answer was, yes, that would be release from custody. So
11 I'll allow him to speak on that.

12 MR. BURNHAM: Thank you, Your Honor. I appreciate
13 your time.

14 THE COURT: Now I have to remember where I was.
15 I think I had a question for Mr. Henry, but maybe not. So
16 I guess -- you indicate in your filings that transferring the
17 petitioner to another country is one of the options under
18 consideration. Can you speak, either you or Mr. Henry or
19 anybody from the government, if you can --

20 MR. BURNHAM: Sure.

21 THE COURT: -- here, whether there are other options
22 under consideration?

23 MR. BURNHAM: So, as I understand it, Your Honor,
24 there's really four things that can happen. He could be brought
25 to the United States and charged with a federal crime of some

1 sort.

2 THE COURT: But I believe, in one of the filings that
3 was provided, that there had been no further law enforcement
4 questioning of --

5 MR. BURNHAM: Oh, no.

6 THE COURT: -- the detainee.

7 MR. BURNHAM: That's right.

8 THE COURT: So I assume that --

9 MR. BURNHAM: But that investigation's ongoing.

10 THE COURT: Okay.

11 MR. BURNHAM: So if they found evidence, we could do
12 that. He can be detained under *Hamdi* over there or somewhere
13 else outside the United States as an enemy combatant, but that
14 of course is subject to this Court's habeas jurisdiction under
15 *Hamdi*. The United States could relinquish custody of him in a
16 way where another country takes him or he goes to another
17 country, or we could just relinquish custody outright.

18 THE COURT: And there's another wrinkle in this case,
19 isn't there, Mr. Burnham? As I understand it, and the facts are
20 sketchy, this detainee was taken into custody by -- correct me
21 if I'm wrong -- by Syrian Democratic fighters on the battlefield
22 in Syria. Correct?

23 MR. HAFETZ: That's correct, Your Honor.

24 THE COURT: And turned over to U.S. forces in Iraq.
25 Correct?

1 MR. HAFETZ: I am not clear on which side of the
2 border, but --

3 THE COURT: So I guess there's a difficult question
4 which I certainly hope I -- I don't know, but there's a question
5 as to whether the laws that apply to enemy combatants are going
6 to apply to someone who was fighting in that conflict that I
7 would assume the ACLU might argue is not related to the laws
8 under which Hamdi was prosecuted. That's going very far afield,
9 but there's issues that lie in that direction as well.

10 MR. BURNHAM: I think if the government asked the
11 Court to, I guess, in a sense to approve -- if we wanted to
12 continue detaining him as an enemy combatant, one of the issues
13 that would come up in his habeas case I think Your Honor has
14 identified.

15 THE COURT: All right. Other than the information
16 that you've provided under seal, and I appreciate that, is there
17 any other information that the government wants to provide
18 regarding the prejudice that it would face if I were to
19 temporarily bar the government from transferring the petitioner
20 at this time?

21 MR. BURNHAM: May I, Your Honor?

22 THE COURT: Yes. And if you need to do it at the
23 bench under seal with Mr. Hafetz, we can do that too.

24 (Government counsel conferring.)

25 MR. BURNHAM: I don't think so, Your Honor. There

1 have been no developments.

2 THE COURT: All right. Thank you, Mr. Burnham.

3 Mr. Hafetz. Am I pronouncing your name correctly?

4 MR. HAFETZ: Absolutely. Thank you.

5 Your Honor, on *Munaf*, I think Your Honor has exactly
6 characterized the issue, that because they were in Iraq, it was
7 in fact an extradition. It wasn't -- it was -- it was basically
8 the U.S. was acting as an arm of the Iraqi criminal justice
9 system, and the injunction that was at issue there and had been
10 granted by the district court would actually have thwarted or
11 interfered with ongoing criminal proceedings in Iraq.

12 And *Munaf* is premised on the notion that a sovereign has
13 exclusive territorial jurisdiction to punish offenses committed
14 by individuals in that country; and *Munaf* and Omar, the other
15 petitioner, had traveled there and committed those offenses.

16 And I would just say, as we cited in our brief and in the
17 filing today in response to the government's supplemental
18 memorandum, *Omar II* by the D.C. Circuit which postdates *Munaf*,
19 says that the executive branch may not detain or transfer
20 Americans at will without any judicial review of the positive
21 legal authority for the detention and transfer, and the
22 government has supplied no positive legal authority for the
23 transfer.

24 As we say, if and when there is that positive legal
25 authority, there is a formal request by another sovereign, for

1 example, for prosecution subject to a law or treaty that allows
2 for the transfer, the government could raise that claim at that
3 point and Your Honor would have -- be able to review whether
4 that was valid and allow for the transfer. But at this point,
5 it's simply a lawless hand-over to another government.

6 And we seek -- as Your Honor said, the client that we've
7 been in touch with seeks release; that is, a relinquishment of
8 U.S. custody. And it's different than *Munaf*, because they're
9 not accused of committing any crimes in Iraq. So there's not
10 the question of *Munaf* that it would simply be -- that they would
11 be picked up by Iraqis and prosecuted for the pending
12 proceedings that were at issue in that case.

13 THE COURT: Let me ask you a question. At the last
14 hearing -- and again, I don't mean to beat this point to death
15 here, but the government argued -- Mr. Burnham argued that
16 transferring the petitioner to another country would constitute
17 release for habeas purposes, thereby providing the petitioner
18 with the relief that he seeks, and you obviously disagree with
19 that.

20 Is there a case that you have that says that the
21 government's position is wrong, or are there any cases where the
22 courts have explicitly detailed what qualifies as release in a
23 specific habeas context where petitioner is being held overseas?
24 I haven't found any, but maybe you know of some.

25 MR. HAFETZ: Well, I think, Your Honor -- well, let me

1 just start -- it's not directly responsive, but the notion of --
2 you know, the *Valentine* case, which deals with extradition, that
3 is from the United States. But the notion that if transfer were
4 merely release, there would be no judicial review of extradition
5 proceedings. Right?

6 Because they would just say you're just being relinquished
7 to another country and there's no -- but there is in fact review
8 of the -- as the D.C. Circuit said in *Omar II*, which dealt with
9 the transfer of prisoners, in that case it was *Omar* to the *Munaf*
10 petitioners, that there has to be legal authority to transfer
11 individuals to foreign custody.

12 THE COURT: I was just wondering -- and I probably
13 know there isn't because I haven't found it -- whether there was
14 a case that said, well, habeas isn't needed because you've been
15 released, because you've been turned over to another country.

16 MR. HAFETZ: Well, it's not the normal case for the
17 United States to take someone into another country, hold them in
18 another country, and then seek to transfer them to a different
19 country. That's not been the United States' practice.

20 THE COURT: Although I don't suppose it matters that
21 he was taken from -- I mean, as long as he's in U.S. custody
22 somewhere. It's sort of irrelevant for the purpose of a habeas
23 petition where he started, as long as he's in U.S. custody.

24 MR. HAFETZ: Yes. I think the proper way -- our
25 position, I think the way to read *Munaf* is as a narrow exception

1 to the basic principle of *Valentine* and the other cases where,
2 if it's a hand-over to a different country, it's an extradition
3 or it's a functional equivalent, and there has to be authority.

4 In those limited circumstances where you had individuals
5 who traveled to a country, allegedly committed crimes there,
6 were being held by the United States on behalf of that country
7 and were being prosecuted in that country for those crimes, it
8 wasn't a transfer in that sense.

9 So I think *Munaf* is -- but, again, if you're talking about
10 the language, I think, of the *Valentine* case, which is grounded
11 in due process and habeas corpus, says that there's no executive
12 prerogative to dispose of the liberty of the individual, that it
13 has to be positively granted by authority.

14 So it has to be -- the congress has to authorize that, and
15 it's subject to judicial review. The government is, again, just
16 seeking essentially a completely extrajudicial power to transfer
17 without any legal authority, and it's not release.

18 THE COURT: All right. Let me ask you, either
19 Mr. Henry or Mr. Burnham, or whoever wants to address this
20 point, because it seems to me that, obviously, the relief that's
21 being asked is unprecedented, let's say, and I'm always eager to
22 find a solution short of an unprecedented act.

23 What if I were to order -- because it seems to me as if
24 the government has not made a final decision as to whether to
25 transfer this petitioner, and I don't know how long it's going

1 to take to make that decision while this petition is pending.

2 If I were to simply order that the government is to give
3 the Court and the parties 48 hours or 72 hours' notice once they
4 have made a final decision, which would enable the ACLU to come
5 to court to seek any emergency relief, would the government have
6 an objection to that?

7 MR. BURNHAM: Your Honor, I think we would, and in
8 *Kiyemba II*, the D.C. Circuit expressly and directly held that
9 the court cannot order pre-transfer notice because it interferes
10 with our ability to negotiate with the other country given the
11 sensitivity of the negotiations.

12 THE COURT: But that notice would be provided under
13 seal, and that doesn't have to be public notice.

14 MR. BURNHAM: I'm just -- I mean, I'm just quoting
15 from the D.C. Circuit's opinion. The requirement that the
16 government provide pre-transfer notice interferes with the
17 executive's ability to conduct the sensitive diplomatic
18 negotiations required to arrange --

19 THE COURT: That's only if you object.

20 MR. BURNHAM: Well, and I think I'd have to object,
21 Your Honor, because part of the government's ability to
22 negotiate is to be able to do so credibly, and it's pretty
23 sensitive when you're talking about somebody like this person
24 who -- you know, Mr. Hafetz keeps saying we brought him to Iraq.
25 He was brought to Iraq from ISIL on the border of Syria. So

1 it's not as though he was brought to Iraq from the United States.

2 THE COURT: So you're saying that your ability to
3 negotiate with the transfer country would be impeded if you had
4 to let this Court know once you had made a decision that you
5 wanted to transfer him?

6 MR. BURNHAM: Again, it's not that it -- it's just not
7 up to us alone. I mean, the recipient country would have to
8 say, yes, we agree to take this person. And I think -- and I'd
9 like to consult my...

10 THE COURT: Yes, because I just sprung it on you.

11 MR. BURNHAM: Let me just check.

12 (Government counsel conferring.)

13 THE COURT: Because the reality is that, you know,
14 this process has been going on for some time now. It could go
15 on for another month or two months. I don't know how long this
16 petition will take to resolve, but I don't imagine it's going to
17 drag on and on and on, at least I certainly hope it doesn't.

18 So we may be in here litigating about whether I should
19 issue an order that might be unnecessary, and obviously I would
20 rather not issue unnecessary orders.

21 MR. HAFETZ: I appreciate the Court's frustration.
22 I guess I can't agree on behalf of the government even to the
23 notice because that would itself mean that the transfer is
24 contingent on the court's approval to the other country.

25 THE COURT: Well, I disagree. All it's simply doing

1 is allowing the detainee's lawyer to file an emergency request
2 that the transfer not go forward. It's not contingent on
3 anything. I don't have approval over that. I'm not getting
4 involved in that diplomatic process.

5 MR. BURNHAM: I was perhaps inarticulate, Your Honor.
6 Their ability to file an emergency motion to block the transfer
7 would introduce uncertainty.

8 THE COURT: They're filing to block the transfer right
9 now.

10 MR. BURNHAM: When we're asking the Court to deny it --

11 THE COURT: Right.

12 MR. BURNHAM: -- so that we have certainty so that we
13 can negotiate with other countries --

14 THE COURT: Well, if I grant the motion, you've got no
15 certainty.

16 MR. BURNHAM: That's -- that's -- that's true, but we
17 think the Court should deny the motion and --

18 THE COURT: It just seems premature in an instance
19 when you have -- I guess -- I suppose if you all have made your
20 decision and you're just simply waiting for another country to
21 make a decision, that obviously it doesn't matter; you have
22 decided what you want to do. But it just seems that it might
23 not be necessary. But all right. That's the government's
24 position.

25 MR. BURNHAM: Thank you, Your Honor.

1 THE COURT: Mr. Hafetz?

2 MR. HAFETZ: We've briefed this, but on *Kiyemba*,
3 the *Kiyemba* decision, very different. Those were noncitizens
4 detained at a secure military base with no right to enter the
5 United States.

6 THE COURT: They couldn't come here.

7 MR. HAFETZ: They couldn't come here. And it was
8 consistent with the practice of transferring or repatriating,
9 as the Court termed them, alien -- you know, wartime prisoners
10 to their home countries or a third country when they were no
11 longer subject to detention or the U.S. -- U.S. citizens is a
12 very different case.

13 This U.S. citizen has a right to travel, including to the
14 United States. He has a right to enter the United States. The
15 remedy for him is release. There was no possibility of a remedy
16 of release in *Kiyemba II*. I mean, they were not going to open
17 the doors. They would be in Guantánamo.

18 THE COURT: Right.

19 MR. HAFETZ: This is a person, open the doors, and he
20 would carry on with his life.

21 THE COURT: What is your position regarding my
22 proposal that, rather than this Court issue an order on your
23 motion to stop any involuntary transfer pending resolution of
24 his habeas petition, that I simply require the government to
25 give notice within some period of time once they had decided

1 to transfer him? Do you have any objection to that?

2 MR. HAFETZ: And that notice, Your Honor, would
3 include an opportunity to be heard?

4 THE COURT: Well, yes. I mean, in other words, the
5 notice would be, obviously, so that he could, through his
6 counsel, challenge that decision in the same way we're doing it
7 right now. In other words -- again, and I have to say this over
8 and over. I don't want to give orders that I don't have to give.

9 So right now, I'm barring something that the government
10 hasn't decided whether or not they're going to -- you're asking
11 me to bar something that the government hasn't decided whether
12 or not they're going to do. Rather than do that, it would seem
13 more prudent to the Court to wait until the government has made
14 a decision and then consider where we are with the petition.

15 MR. HAFETZ: And, Your Honor, we're asking for that
16 relief because the government's position is they're under no
17 restraint whatsoever. They can transfer --

18 THE COURT: Well, the restraint --

19 MR. HAFETZ: Well, until Tuesday. Till Tuesday. But
20 after that, they're under no restraint whatsoever. They can
21 transfer him at any point, in the dead of night, to any place.

22 So, Your Honor, to respond to your question directly, in
23 essence, I think that's similar to what we say, which is that
24 should the government have the -- the injunction we ask for
25 would be to the end of the habeas case, till the case is

1 decided. Should the government come forward, as we say in our
2 papers, present Your Honor with a valid, lawful basis to
3 transfer him, the Court could revisit the issue.

4 So, Your Honor, we would not object to an order enjoining
5 the --

6 THE COURT: Well, that's not what I'm talking about.
7 I'm talking about allowing my order to expire tomorrow with the
8 requirement -- but ordering that the government, should it come
9 to a final decision to transfer the petitioner, or the detainee,
10 to provide this Court and you with 72 hours' notice so that you
11 could come to me and ask to stop it.

12 And that is simply because it may be at a point where, you
13 know, we're almost through, or we're just -- I mean, it would
14 seem to be more prudent to consider the issue then than at the
15 point where the government's still in the decision-making mode.

16 MR. HAFETZ: Your Honor, we would not object to that
17 if we had time to respond. The one point is, Your Honor, and
18 this pertains to the *ex parte* nature of the file -- I'll be
19 careful of what I say, but essentially we would need to know
20 whether that, filed publicly or not, we as his counsel would
21 need to know the country to where the intended transfer was,
22 because there might be a lawful basis to transfer the petitioner
23 to Country X but not Country Y. Right?

24 THE COURT: Right. And that's the other thing, which
25 is, by that point, the need for that information to be kept

1 secret may be lessened. I don't know. But it would seem to me,
2 yes, that that may be something that we have to consider.
3 Again, I'm not going to start giving advisory opinions, but it
4 just seems to me that the issue would be riper for resolution at
5 that point than it is right now.

6 MR. HAFETZ: Well, I think that's right, Your Honor,
7 in the sense that there's -- at this point, this is the position
8 we lay out in the papers we filed today, that the government has
9 not offered any legal basis. If they come forward with a legal
10 basis, whether that's in response to the injunction we requested
11 or the 72-hour notice Your Honor provided for, that's -- yeah.

12 THE COURT: The government would -- I think
13 Mr. Burnham would probably disagree with you and say he has
14 offered a legal basis in terms of the classified information
15 that he provided to me. It may be better for the government to
16 be able to supplement that record later on if there is a final
17 decision to transfer the detainee, but that's the government's
18 choice.

19 MR. HAFETZ: I don't see any -- yeah. Your Honor, I
20 don't want to -- not to belabor the point, but there's nothing.
21 There's no statute, there's no treaty, there's nothing in the
22 filing other than claims of unchecked executive discretion, and
23 that's not --

24 THE COURT: I will say in open court that I find
25 the information provided to me to be somewhat deficient.

1 MR. HAFETZ: Yeah. So, as we said, Your Honor, that
2 72-hour notice with an opportunity to be heard, we would agree
3 to that.

4 THE COURT: Okay. Thank you. Unless there's
5 something -- was there something else you wanted to offer,
6 Mr. Burnham?

7 MR. HAFETZ: I have just another matter related to
8 further proceedings, but I'll let Mr. Burnham go.

9 MR. BURNHAM: We've gone around a bit about the lawful
10 authority? That *Omar* case which Mr. Hafetz has been talking
11 about, the lawful authority to transfer was Article II. So it
12 was not as though there was some specific treaty that they were
13 citing and that the Supreme Court relied on.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Mr. Hafetz? Oh, here we go. We're back in.

17 (Laughter)

18 MR. HAFETZ: Your Honor, the Supreme Court has never
19 said that the commander in chief, the president as commander
20 in chief, has Article II power to transfer an American citizen
21 without treaty, without statute, and that's simply what the
22 *Valentine* case says, and that was after -- that decision and
23 that legal framework was the product of -- we didn't brief this,
24 but we'd be happy to, of massive opposition to that very notion
25 that the president, on executive say-so, could hand over a

1 citizen to another country. And *Hamdi* itself talks about when,
2 even in the matters of foreign relations during wartime, the
3 liberties of a citizen require all three branches.

4 THE COURT: Thank you all. I am cognizant of our
5 deadlines, and I will issue some kind of ruling shortly.

6 Just a minute. (Court conferring.)

7 Oh, yes. The government filed a motion to seal? Oh, you
8 wanted a motion to unseal?

9 MR. HAFETZ: Yeah. We have a motion to unseal, and,
10 Your Honor, there are just a couple of other matters, brief
11 matters, for Your Honor, but on the motion to unseal --

12 THE COURT: Mr. Burnham or Mr. Henry, what's your
13 position with regard to the ACLU's motion to unseal the redacted
14 filing?

15 MR. HENRY: Your Honor, we'd oppose that motion, and
16 we'd appreciate the opportunity to put in a written filing on it.

17 THE COURT: Certainly. Go ahead. I'm not going to
18 grant that motion at this point. I may, but given the
19 sensitivity of the situation we're in, I will -- I'll allow
20 further briefing. So I'll allow you the opportunity to respond
21 to the ACLU's motion.

22 MR. HENRY: Thank you, Your Honor.

23 THE COURT: And, Mr. Hafetz, you had something else?

24 MR. HAFETZ: Yeah. Just a housekeeping matter on the
25 transfer issue. As Your Honor's aware, Your Honor's order

1 expires tomorrow. I don't recall if there was a time on that,
2 but tomorrow was the -- for the restriction on transfer pending
3 the decision on our motion for the injunction.

4 So we ask that if Your Honor does not issue a decision
5 prior to that time, we respectfully request that Your Honor
6 extend that interim deadline, a restriction on transfer until
7 Your Honor issues a decision unless the government agrees not to
8 transfer during that period.

9 THE COURT: I don't think Mr. Burnham -- Mr. Burnham,
10 feel free to jump up if you agree, but I don't think they're
11 going to. All right. Thank you.

12 MR. HAFETZ: Yeah. And then the other issue is,
13 we have a court date on Monday the 29th.

14 THE COURT: I don't think we need that. Do you?

15 MR. HAFETZ: We don't, and I don't know --

16 THE COURT: Excuse me.

17 (Court conferring.)

18 Oh, yes. On the petition.

19 MR. HAFETZ: Yeah. So right now we have two dates.
20 We have a reply to the return which was just filed under seal at
21 noon today and due Wednesday, and then we have the hearing on
22 the petition on Monday. So I wanted a minute just to address
23 both of those. And I don't know if Your Honor had thoughts
24 about the merits proceedings, but just to give you what our take
25 is, with respect to the reply, as we said, we have just received

1 the sealed petition return, and we're here today.

2 We really envision two types of responses. One is a
3 factual response. It's a lengthy return, and we'll need to not
4 only consult with our client, obviously, before filing a return,
5 but also, as Your Honor -- I don't know if Your Honor's had a
6 chance to read it yet, but this will require some significant
7 investigation.

8 THE COURT: I haven't read it yet, and I was not --
9 I wanted to have them -- I have not read it yet.

10 MR. HAFETZ: Yeah. So it's a -- as Your Honor will
11 read, it's a substantial document with multiple allegations in
12 it. I can't say more. It was filed under seal. But we will
13 need time to respond to that, which will include not only
14 meetings with our client who we've not had an opportunity to
15 show the basis for the government's detention, but also to
16 conduct investigation.

17 And, essentially, you know, this is something that we got
18 today. The government's had five months essentially to -- I
19 mean to gather its evidence. They were under a shorter deadline
20 to actually put it on paper, but to develop their case. So
21 that's one issue that we think will take time for us to -- you
22 know, and we intend to refute them vigorously, but we'll need
23 time to do that.

24 The second issue is we also intend a legal challenge to the
25 detention, that our client's detention, as Your Honor suggested

1 earlier I believe in her comments, that the detention is not
2 authorized by the AUMF.

3 THE COURT: You're taking me right into that bramble.

4 MR. HAFETZ: Well, I will say this, Your Honor.

5 Whatever --

6 THE COURT: "Thicket" is the word I was looking for.

7 MR. HAFETZ: Our position is that it does not --
8 whatever else it authorizes, it does not authorize the detention
9 of an American citizen. And, obviously, that's an issue that
10 the government, you know, has briefed, and we intend to brief.
11 That issue we are going to ask the Court to decide first,
12 because if there's no authority to detain him, then there's no
13 -- there's simply no authority. His detention is illegal.

14 And I should add, too, another part of this which is that,
15 as the government said when they were up at the podium, they are
16 still -- they still believe they have multiple options. They
17 talk about transfer, continued detention as enemy combatant, but
18 they also talk about criminal prosecution.

19 And so we know from what was -- or at least, you know, we
20 read about the case and from what's -- inferences from the
21 filings that they had looked at a prosecution --

22 THE COURT: Or so you believe. We don't know. We
23 know very little.

24 MR. HAFETZ: Yeah. But the prosecution was certainly
25 something that the government had, you know, had attempted to

1 do, thought about doing, and as the government said today,
2 continues to consider.

3 So another reason why we want this Court to decide the
4 legal authority first is because they could turn around tomorrow
5 and try to prosecute him in federal court here or in the
6 Southern District or in Virginia or somewhere else --

7 THE COURT: But you could always challenge their
8 authority to prosecute him at any time. Right? If they did
9 that, his lawyers, whoever they are, you or whoever was
10 appointed to defend him in that prosecution, could challenge
11 them on that basis. He's not going away.

12 MR. HAFETZ: That's correct. But he's essentially --
13 a factual response to the return will require him to essentially
14 lay out his defense, his strategy. Right? I mean, he's --

15 THE COURT: I understand.

16 MR. HAFETZ: That's the issue. So that's another
17 reason, as Your Honor understands.

18 THE COURT: Bifurcation of --

19 MR. HAFETZ: Correct.

20 THE COURT: -- the briefing.

21 MR. HAFETZ: Correct. And so I don't know in terms of
22 dates -- now that we have the return, I don't know if Your Honor
23 wants to set a schedule now, but we would like to propose a
24 longer time to file our response to that, to their -- to the
25 return, which will be focused on legal issues in the first

1 instance.

2 THE COURT: Mr. Burnham or Mr. Henry?

3 MR. HENRY: Thank you, Your Honor. I think we're not
4 opposed to trying to confer with the other side and try to agree
5 on how things should go moving forward. I think on the issue of
6 just deciding the bramble, as Your Honor referred to it, in the
7 abstract, absent any kind of factual consideration --

8 THE COURT: Well, I have your return.

9 MR. HENRY: You have the return? Yes. My
10 understanding is that --

11 THE COURT: Do you object to the bifurcation of the
12 briefing schedule and having the Court resolve or consider the
13 legality of the detention first before the merits of the petition?

14 MR. HENRY: So I'm not sure that we would oppose
15 bifurcating the briefing schedule. I think we would, and I
16 think what you would see from us in the briefing is an argument
17 that the Court should not decide the issue merely in the abstract.

18 THE COURT: Right. Well, is it too much to hope for
19 me to ask you all to meet, confer, and submit a proposed schedule?

20 MR. HAFETZ: Yes. That's --

21 THE COURT: All right. I'd like you to do that, and
22 get it to me as quickly as possible.

23 MR. HAFETZ: And just one more point?

24 THE COURT: Yes.

25 MR. HAFETZ: I don't believe that our ability to

1 challenge the detention as a matter of law is up to the
2 government. I think under a basic -- you know, the Federal
3 Rules of Civil Procedures and principles applicable to habeas as
4 a -- and there's precedent in the habeas enemy combatant cases
5 for challenging the -- that there's -- you know, it's in the
6 nature of a -- something of a judgment on the pleadings or
7 summary judgment or just as a matter of law, there's no
8 authority to hold him.

9 Even taking the facts as alleged, we intend to contest them
10 vigorously. But even on the facts alleged, there's no authority
11 to hold him and -- you know, and this is certainly, I think, a
12 -- not something that, you know, is really up to the government
13 to refuse us.

14 THE COURT: Well, I'd like you all to confer, at least
15 on a briefing schedule, and get that to me. If you can get it
16 to me tomorrow, that would be great, or sometime this week. And
17 I suppose in that case I would -- do we need to have a hearing
18 on Monday? In that case, we'll have a longer schedule. I'm
19 going to vacate that date unless you all have just not had
20 enough of coming into my courtroom.

21 MR. HAFETZ: Your Honor, we love being here, but I
22 think we would not oppose your vacating that as well as the
23 Wednesday reply date.

24 THE COURT: Yes.

25 MR. HAFETZ: Yes. Okay.

1 THE COURT: I'll vacate that. I'll await a proposed
2 joint schedule, and I'll vacate Monday's hearing.

3 MR. HAFETZ: And my co-counsel has dutifully reminded
4 me there's one minor housekeeping issue which we referenced in a
5 previous filing, since the Court has granted the Doe motion,
6 that the clerk should change the docket to -- the caption of the
7 case, yeah.

8 THE COURT: To John Doe versus Mattis?

9 MR. HAFETZ: Correct.

10 THE COURT: All right.

11 MR. HAFETZ: So we'd make a motion.

12 THE COURT: All right. That motion is granted.

13 Was there an opposition?

14 MR. BURNHAM: Not at this time, Your Honor.

15 THE COURT: All right. The motion is granted, and the
16 case will be recaptioned.

17 All right. Thank you all. At this point, I'm going to
18 allow the -- I'm going to let my order remain in place as to the
19 deadline for tomorrow. If I need to extend it, I will.
20 Otherwise, I'll issue a ruling in accordance with that.

21 MR. HAFETZ: Your Honor, I just want to make sure
22 we're clear. As I understood what the Court just said, the
23 order will stand as written unless the Court issues something
24 else?

25 THE COURT: Yes.

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MR. HAFETZ: Thank you, Your Honor.
(Proceedings adjourned at 4:49 p.m.)

* * * * *

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

Bryan A. Wayne
BRYAN A. WAYNE

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
)	
Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

NOTICE OF APPEAL

NOTICE is hereby given that Respondent General James N. Mattis, Secretary, United States Department of Defense, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the Court’s Order filed and entered January 23, 2018 (Dkt. 52), which requires the Respondent to provide the Court and Petitioner’s counsel seventy-two hours’ notice prior to transferring Petitioner, providing Petitioner an opportunity to file an emergency motion contesting his transfer.

February 2, 2018

Respectfully submitted,

CHAD A. READLER
 Acting Assistant Attorney General

JESSIE K. LIU
 United States Attorney

TERRY M. HENRY
 Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN DOE,

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,

Respondent.

No. 17-cv-2069 (TSC)

PETITIONER'S RESPONSE TO RESPONDENT'S FACTUAL RETURN

TABLE OF CONTENTS

INTRODUCTION 1

SUMMARY OF ARGUMENT 2

ARGUMENT 5

 I. The indefinite military detention of an American citizen requires clear statutory authorization. 5

 A. Under the Constitution, Congress must clearly authorize the indefinite military detention of an American citizen. 5

 B. The Non-Detention Act reinforces the clear-statement requirement. 6

 II. The 2001 AUMF does not provide the clear and unmistakable authorization necessary to detain indefinitely an American citizen for alleged membership in ISIS. 9

 A. Congress did not authorize detention of U.S. citizens under the 2001 AUMF except as to individuals and groups directly connected to the September 11, 2001 attacks. 10

 B. The 2001 AUMF does not authorize Petitioner’s detention as an alleged member of ISIS under the government’s theory that ISIS is “part of” or an “associated force” of al Qaeda. 13

 1. ISIS is not a “part of” al Qaeda under the 2001 AUMF. 13

 2. The 2001 AUMF does not authorize the detention of American citizens as members of “associated forces” of al Qaeda, and in any event ISIS is not such an “associated force.” 18

 a. Congress has not clearly and unmistakably authorized the detention of U.S. citizens as members of “associated forces.” 18

 b. There is no legal support for the government’s self-created definition of “associated force.” 20

 c. The government’s allegations fail to establish that ISIS was an “associated force” of al Qaeda at the time of Petitioner’s detention in September 2017. 24

 III. The 2002 AUMF specifically targeted the Saddam Hussein regime in Iraq and does not authorize Petitioner’s indefinite military detention. 29

 IV. The National Defense Appropriations Act of 2012 and other appropriations acts do not support the government’s claims of detention authority. 33

V. The president has no inherent authority to detain indefinitely an American citizen. 36
CONCLUSION..... 41

TABLE OF AUTHORITIES

Cases

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785 F.3d 787 (2d Cir. 2015)..... 29

Al Genco v. Obama,
626 F. Supp. 2d 123 (D.D.C. 2009)..... 16, 25

al Odah v. United States,
62 F. Supp. 3d 101 (D.D.C. 2014)..... 16

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698 F. Supp. 2d 48 (D.D.C. 2010)..... 16

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590 F.3d 866 (D.C. Cir. 2010)..... 20, 21, 25

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736 F.3d 542 (D.C. Cir. 2013)..... 22, 25

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654 F.3d 1 (D.C. Cir. 2011)..... 22

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764 F. Supp. 2d 60 (D.D.C. 2011)..... 16

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539 U.S. 396 (2003)..... 40

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562 F.2d 1310 (D.C. Cir. 1977)..... 30

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609 F.3d 416 (D.C. Cir. 2010)..... 21, 22, 25

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553 U.S. 723 (2008)..... 40

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554 U.S. 570 (2008)..... 30

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533 U.S. 167 (2001)..... 27

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8 U.S. (4 Cranch) 75 (1807)..... 39

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 323 U.S. 283 (1944)..... 5, 6

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 71 U.S. (4 Wall.) 2 (1866) 39

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 609 F. Supp. 2d 43 (D.D.C. 2009)..... 16

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 501 U.S. 452 (1991)..... 5

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 396 U.S. 295 (1970)..... 6

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 548 U.S. 557 (2006)..... 37

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 542 U.S. 507 (2004)..... passim

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 616 F. Supp. 2d 63 (D.D.C. 2009)..... 24, 27

Hedges v. Obama,
 724 F.3d 170 (2d Cir. 2013)..... 19, 34

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 452 U.S. 473 (1981)..... 7

Hussain v. Obama,
 134 S. Ct. 1621 (2014)..... 12

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 718 F.3d 964 (D.C. Cir. 2013)..... 22

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 533 U.S. 289 (2001)..... 5, 37

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 No. 05-CV-1189, 2010 WL 2382925 (D.D.C. May 28, 2010)..... 16

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 655 F.3d 20 (D.C. Cir. 2011)..... 21, 22, 24, 25

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 352 F.3d 695 (2d Cir. 2003)..... 8

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 532 F.3d 834 (D.C. Cir. 2008)..... 21, 22

Rasul v. Bush,
 542 U.S. 466 (2004)..... 37

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 625 F.3d 745 (D.C. Cir. 2010)..... 16

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 345 U.S. 206 (1953)..... 38

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 481 U.S. 739 (1987)..... 5

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 531 U.S. 457 (2001)..... 29

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 132 U.S. 174 (1889)..... 30

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 343 U.S. 579 (1952)..... 13, 37, 38

Statutes

8 U.S.C. § 1189..... 29

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18 U.S.C. § 4001(b) 8

28 U.S.C. § 2241..... 40

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 (“2001 AUMF”)..... passim

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 128 Stat. 2130 (2014)..... 34

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 (“2006 MCA”) 20

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INTRODUCTION

For nearly five months, the government has been detaining an American citizen without charge or trial, based on legal theories that no court has ever endorsed. The government asserts that it may rely on either a sixteen-year-old Congressional authorization targeting those responsible for the September 11, 2001 attacks, a fifteen-year-old Congressional authorization targeting the Saddam Hussein regime in Iraq, or the president's inherent authority to imprison American citizens indefinitely. But on the government's own allegations, Petitioner has no connection to the September 11 attacks, or to any organization that even existed at the time of those attacks. Likewise, Petitioner has no connection to the U.S. war against the Saddam Hussein regime or to that war's statutory authorization, which the government itself previously abandoned as obsolete. Finally, the president has no unilateral authority to detain indefinitely an American citizen absent congressional suspension of habeas corpus.

Because the executive lacks the legal authority to detain Petitioner even on the facts it alleges about him, *see* Respondent's Factual Return ("Return"), Petitioner seeks an expeditious ruling on that question.¹ Petitioner therefore accepts the government's allegations about him as true for the limited purpose of this threshold challenge, and has reserved his right to challenge those allegations at a later stage. However, Petitioner notes that those allegations are riddled with inaccuracies, fundamentally misleading, and replete with irrelevant information. Contrary to the thrust of the government's contentions that Petitioner is an ISIS fighter, and as Petitioner told the government, he sought to understand firsthand and report about the conflict in Syria, Return ¶ 86; was kidnapped and imprisoned by ISIS, Return ¶ 71; and tried numerous times to escape,

¹ The government will be filing a redacted version of its Return on the public docket.

Return TIR 03 at 3—and not even the government alleges that he ever took up arms against the United States or anyone else.

Petitioner has now been detained without charge for nearly five months. A lengthy adjudication over the government’s factual allegations, which would necessarily require investigation of evidence, production of corroborating witnesses and materials, and testimony by experts, would not only further prolong Petitioner’s unlawful detention by the executive—it would also be manifestly unfair. The government’s unlawful use of “enemy combatant” detention would force Petitioner to present a defense at a hearing where he is denied bedrock criminal procedural safeguards to which he, as an American citizen, is constitutionally entitled. *See* Return ¶ 6 (enemy-combatant habeas hearing “need not resemble a criminal trial” (citation omitted)).

If the government wishes to continue to detain Petitioner, it must immediately charge him with a crime in federal court. Otherwise, it must release him from unlawful executive imprisonment. The Constitution and laws of the United States require no less.

SUMMARY OF ARGUMENT

The executive’s indefinite detention of Petitioner without charge is unlawful, even assuming the facts alleged about him are true.

First, the Constitution and federal law mandate that Congress clearly and unmistakably authorize the detention of an American citizen, whether in time of war or peace. This clear-statement rule is rooted in the abiding constitutional norm that citizens not be detained indefinitely without trial and in the Non-Detention Act, 18 U.S.C. § 4001(a). Notably, Congress specifically enacted the Non-Detention Act to prevent the executive from imprisoning American citizens for national-security purposes without express and deliberate legislative action.

Second, the 2001 Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001) (“2001 AUMF”), does not provide the requisite clear statement to justify Petitioner’s detention. In enacting the 2001 AUMF, Congress targeted the specific individuals and organizations responsible for the September 11 attacks and refused to give the executive broad and open-ended authority to use military force to deter future terrorism threats. The limited authority Congress conveyed to detain American citizens under the 2001 AUMF cannot be stretched to reach Petitioner under either theory advanced by the government: that ISIS is “part of” or an “associated force” of al Qaeda.

The government’s “part of” argument rests largely on its assertions that ISIS’s former founder and leader (who was killed more than a decade ago and who had no connection to the September 11 attacks) was once “associated” with Osama bin Laden; that the predecessor group to ISIS was once aligned with bin Laden’s al Qaeda organization; and that ISIS today claims to be the “true executor of bin Laden’s legacy.” Even if taken as true, these facts are legally insufficient to make ISIS “part of” al Qaeda under the 2001 AUMF. Congress did not authorize force against all individual “associates” of those responsible for the September 11 attacks—much less issue the president a blank check to detain every future member of every future organization that might one day be led by such an “associate” or that might broadly claim bin Laden’s mantle, whether for ideological reasons or to bolster its own ranks.

Likewise, the government’s own facts cannot justify Petitioner’s indefinite detention on the theory that ISIS is an “associated force” of al Qaeda. The 2001 AUMF does not authorize any “associated force” detention authority over American citizens. But even if it did, that authority requires a close nexus to the armed conflict against al Qaeda and the Taliban in Afghanistan—a nexus that does not exist here. Further, the government’s “associated force”

argument—like its “part of” argument—fails for the additional reason that Petitioner was not detainable at the time of capture, the relevant time period for determining detainability under the 2001 AUMF. As the government acknowledges, whatever the prior relationship between ISIS and al Qaeda, that relationship had completely dissolved by the time of Petitioner’s capture.

Third, the Authorization for Use of Military Force against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002) (“2002 AUMF”), also does not authorize Petitioner’s detention because the operative language of that statute plainly applies only to the Iraqi regime under Saddam Hussein and does not empower the executive to detain any American citizen whom it believes poses a threat to Iraq. The 2002 AUMF did not give the president open-ended detention power to lock up American citizens without charge in support of a worldwide military campaign against any group that can trace its origins to Iraq.

Fourth, the appropriations measures on which the government relies do not support Petitioner’s indefinite military detention. The various measures the government references authorize the president to spend government money against ISIS, but they not only fail to clearly authorize the detention of U.S. citizen members of ISIS, they fail to mention detention *at all*.

Finally, no court has ever suggested, let alone held, that the president has unilateral authority to imprison an American citizen without trial—unless Congress suspends habeas corpus, which of course it has not done. This Court should reject this extraordinary assertion of executive power.

ARGUMENT

I. The indefinite military detention of an American citizen requires clear statutory authorization.

A. Under the Constitution, Congress must clearly authorize the indefinite military detention of an American citizen.

Since the Founding, it has been the abiding norm under the Due Process Clause of the Fifth Amendment that citizens are not to be indefinitely deprived of their liberty without trial. *See, e.g., Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality op.) (“‘In our society, liberty is the norm,’ and detention without trial ‘is the carefully limited exception.’” (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987))); *see also Foucha v. Louisiana*, 504 U.S. 71, 80, 92 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”).

Any departure from this constitutional bedrock—if permitted at all—requires an explicit statement from Congress. *See Ex parte Endo*, 323 U.S. 283, 298–300 (1944) (absent an express statement, statutes must be construed not to infringe a citizen’s fundamental constitutional right against detention without trial); *see also Hamdi*, 542 U.S. at 568 (Scalia, J., dissenting) (requirement of express congressional action to authorize “indefinite wartime detention over citizens” reflects the “Founders’ general mistrust of military power permanently at the Executive’s disposal”). This clear-statement requirement serves a vital purpose under the Constitution and its separation of powers. It ensures that when the government acts in a constitutionally sensitive area, such as individual liberty, “the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.” *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (emphasis added) (quotation marks and citations omitted); *see, e.g., INS v. St. Cyr*, 533 U.S. 289, 299–300, 304–05 (2001) (narrowly construing statutes’

elimination of all judicial review over final immigration-deportation orders so as not to eliminate habeas corpus review); *Greene v. McElroy*, 360 U.S. 474, 507 (1959) (“[E]xplicit action [by lawmakers], especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws.”). As the Supreme Court said almost a half-century ago, “[w]here the liberties of the citizen are involved,” courts must “construe narrowly all delegated powers that curtail or dilute them.” *Gutknecht v. United States*, 396 U.S. 295, 306–07 (1970) (citation omitted). The clear-statement requirement applies equally in time of war as in time of peace. As the Supreme Court instructed in *Ex parte Endo*: “We must assume, when asked to find implied powers in a grant of legislative or executive authority, that the law makers intended to place no greater restraint on the citizen than was clearly and unmistakably indicated by the language they used.” 323 U.S. at 300.

B. The Non-Detention Act reinforces the clear-statement requirement.

To protect against executive detention of Americans, Congress reinforced the Constitution’s clear-statement requirement with an explicit statutory backstop. The Non-Detention Act provides: “No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.” 18 U.S.C. § 4001(a). Congress enacted the Non-Detention Act to repeal the Emergency Detention Act of 1950, which had authorized the president to detain any person, including a U.S. citizen, whom he reasonably believed posed a threat to U.S. security. Pub. L. No. 81-831, §§ 102–103, 64 Stat. 1019, 1021 (1950) (repealed by Pub. L. No. 92-128, 85 Stat. 347 (1971)). In passing the Non-Detention Act, Congress sought “to guard against a repetition of the World War II internments” by “requir[ing] clear congressional authorization before any citizen can be placed in a cell.” *Hamdi*, 542 U.S. at 543 (Souter, J., concurring in part and dissenting in part). With respect to American citizens, Congress thus

“intended to preclude reliance on vague congressional authority . . . as authority for detention or imprisonment at the discretion of the Executive.” *Id.* at 543–44. Congress passed the Non-Detention Act against “an interpretive regime [subjecting] enactments limiting liberty in wartime to the requirement of a clear statement,” and the Act “must be read to have teeth in its demand for congressional authorization.” *Id.* at 544. Indeed, and as discussed more fully below, the plurality in *Hamdi* upheld the military detention of a citizen *only after* finding that Congress had “clearly and unmistakably authorized detention in the narrow circumstances” presented there. 542 U.S. at 519.

The government incorrectly argues in a footnote that the Non-Detention Act does not apply to military detentions. Return ¶ 50 n.28. To the contrary, the Non-Detention Act’s “plain language . . . proscrib[es] detention of *any kind* by the United States, absent a congressional grant of authority to detain.” *Howe v. Smith*, 452 U.S. 473, 479 n.3 (1981). This includes military detention, as the four Justices who reached that question concluded in *Hamdi*. *See* 542 U.S. at 545–47 (Souter, J., joined by Ginsburg, J., concurring in part and dissenting in part) (Non-Detention Act requires clear statement for a citizen’s military detention during wartime); *id.* at 574 (Scalia, J., joined by Stevens, J., dissenting) (same).² The Non-Detention Act’s legislative history reinforces the statute’s plain language. As noted above, Congress enacted the statute to prevent a repeat of the notorious internment of Japanese–American citizens who were held in military areas during World War II. *See id.* at 543 (Souter, J., concurring in part and dissenting in part) (Congress repealed the 1950 Act and adopted section 4001(a) to “avoid[] another *Korematsu*”). Further, a chief opponent of the bill had specifically objected that the Non-Detention Act would “deprive the President of his emergency powers” to detain without criminal

² The four Justices in the plurality did not reach that question. *See id.* at 517 (plurality op.).

charge “in war-related crises.” 117 Cong. Rec. 31542 (daily ed. Sept. 13, 1971) (statement of Rep. Ichord). And the bill’s sponsor similarly described it in absolute terms: “in order to prohibit arbitrary executive action, [the bill] assures that no detention of citizens can be undertaken by the Executive without the prior consent of the Congress.” *Id.* at 31551 (statement of Rep. Railsback). Thus, when Congress passed the Non-Detention Act, it was unmistakably “aware that § 4001(a) would limit the Executive’s power to detain citizens in wartime to protect national security” and deliberately extended the clear-statement requirement to “detention by the Executive for reasons of security in wartime.” *Hamdi*, 542 U.S. at 546–47 (Souter, J., concurring in part, dissenting in part). The government’s effort to confine the Non-Detention Act to “civil detentions”—and thereby render it inapplicable to the military’s detention of an American citizen without congressional authorization—contradicts the statute’s language, purpose, and history.³

* * *

In sum, both the Constitution and federal law require clear statutory authorization to detain an American citizen. As explained below, the government cannot meet this rigorous requirement.

³ The government relies on 18 U.S.C. § 4001(b)(1), which addresses the “control and management of Federal penal and correctional institutions.” *See* Return ¶ 50 n.28. But sections 4001(a) and 4001(b)(1) share only a code designation—not a common origin or meaning. *See Padilla v. Rumsfeld*, 352 F.3d 695, 721 (2d Cir. 2003), *rev’d on other grounds*, 542 U.S. 426 (2004). Congress enacted section 4001(b)(1) “many decades prior to the Emergency Detention Act as part of entirely different legislation.” *Id.* Further, in subsection (b)(1), “Congress explicitly distinguished between military and civilian jurisdiction by authorizing the Attorney General to control all prisons except military institutions.” *Id.* at 722. The absence of any such distinction in subsection (a) underscores that “none exists and that the Non-Detention Act applies to both civilian and military detentions.” *Id.*

II. The 2001 AUMF does not provide the clear and unmistakable authorization necessary to detain indefinitely an American citizen for alleged membership in ISIS.

The government makes a mockery of the clear-statement requirement by claiming that a law Congress passed more than sixteen years ago and aimed narrowly at those responsible for the September 11 attacks provides authority now to detain Petitioner. As the Supreme Court has explained, the authority Congress conveyed to detain U.S. citizens under the 2001 AUMF is narrowly limited to combatants belonging to those groups directly connected to the attacks: al Qaeda and the Taliban.⁴ Nonetheless, the government now seeks to indefinitely detain an American citizen under the 2001 AUMF despite the fact that on the government's own allegations, Petitioner had no involvement in the September 11 attacks, no connection to the organization (al Qaeda) responsible for those attacks, and no connection to the group (the Taliban) that harbored the perpetrators.

The government tries to escape the strictures Congress carefully imposed on detention authority over American citizens by attempting to shoehorn ISIS into the 2001 AUMF as “part of” or an “associated force” of al Qaeda. But the government itself concedes that ISIS did not exist at the time of the September 11 attacks. And although the government claims that ISIS later “aligned” with al Qaeda, Return ¶ 28, it concedes that by 2014, ISIS and al Qaeda had “split . . . over theological and strategic disagreements,” Return ¶ 18, and that since that point, ISIS has been “entirely independent” from al Qaeda, Return ¶ 18 n.23. Thus, even accepting as true the factual assertions the government relies on to render ISIS “part of” or an “associated force” of al Qaeda, those assertions are insufficient, as a matter of law, to radically rewrite the narrow

⁴ The full text of the 2001 AUMF is appended hereto.

authority conveyed by Congress—particularly in light of the clear statement necessary to detain American citizens.⁵

A. Congress did not authorize detention of U.S. citizens under the 2001 AUMF except as to individuals and groups directly connected to the September 11, 2001 attacks.

Congress intended the 2001 AUMF to be a narrow statute that directly responded to the September 11 attacks. In enacting the 2001 AUMF, Congress explicitly rejected a substantially broader authorization the executive branch sought at that time—“to take military action against any nation, terrorist group or individuals in the world without having to seek further authority from the Congress.” Richard F. Grimmett, Cong. Research Serv., RS22357, Authorization for Use of Military Force in Response to the 9/11 Attacks (Pub. L. 107-40): Legislative History 2 (Jan. 16, 2007), <https://fas.org/sgp/crs/natsec/RS22357.pdf> (describing Congress’s rejection of the White House’s proposed statutory authority “to deter and pre-empt any future acts of terrorism or aggression against the United States”); *see also, e.g.*, David Abramowitz, *The President, the Congress, and Use of Force: Legal and Political Considerations in Authorizing Use of Force Against International Terrorism*, 43 Harv. Int’l L.J. 71, 74 (2002) (in response to legislative concerns about executive “overreach,” a “consensus quickly developed [in Congress] that the authority [to use military force] should be limited to those responsible for the September 11 attacks, and to any country harboring those responsible”). Congress rejected the executive branch’s proposal to ensure that the president seek authorization for the use of force to combat “future acts of terrorism.” Abramowitz, *supra*, at 73.

⁵ As explained throughout this brief, the factual assertions in the government’s Return are insufficient as a matter of law to support Petitioner’s detention. Should the government seek another bite at the apple by requesting leave to introduce additional facts concerning the relationship between al Qaeda and ISIS—whether at or prior to the relevant time of Petitioner’s capture—Petitioner requests the opportunity to submit his own evidence as part of a more fulsome factual hearing on that issue.

Contemporaneous congressional statements from the 2001 AUMF’s legislative history underscore the statute’s intended limits. For example, Rep. Lamar Smith complained at the time that “the resolution limits the President to using force only against those responsible for the terrorist attacks last Tuesday,” constituting “a significant restraint on the President’s ability to root out terrorism wherever it may be found.” 147 Cong. Rec. H5654 (daily ed. Sept. 14, 2001) (statement of Rep. Smith); *see also, e.g., id.* at H5666 (statement of Rep. Cardin) (“This resolution limits [the use of military force] to respond[ing] to the September 11 attack on our Nation.”); 147 Cong. Rec. S9417 (daily ed. Sept. 14, 2001) (statement of Sen. Feingold) (“[I]t does not contain a broad grant of powers, but is appropriately limited to those entities involved in the attacks that occurred on September 11.”); *id.* at S9416 (statement of Sen. Levin) (“It is not a broad authorization for the use of military force against any nation, organization, or persons who were not involved in the September 11 terrorist attacks.”); 147 Cong. Rec. H5663 (statement of Rep. Schakowsky) (“This resolution has been carefully drafted to restrict our response to those we know to be responsible for this atrocity.”); *id.* at H5671 (statement of Rep. Udall) (“It covers the culpable but it is not aimed at anyone else.”).

Congress’s deliberate rejection of the expansive detention authority the executive sought in 2001 reinforces the absence of the necessary clear statement to detain an American citizen outside the narrow context approved in *Hamdi*. When the Supreme Court considered the scope of the 2001 AUMF in *Hamdi*, it emphasized that Congress did not provide an unlimited grant of wartime detention authority over U.S. citizens. Instead, the Court said, the 2001 AUMF authorizes force only “against ‘nations, organizations, or persons’ associated with the September 11, 2001, terrorist attacks.” *Hamdi*, 542 U.S. at 518 (plurality op.) (quoting 2001 AUMF).

As *Hamdi* describes, shortly after Congress enacted the 2001 AUMF, the president dispatched the U.S. military to Afghanistan “to subdue al Qaeda and quell the Taliban regime that was known to support it.” *Id.* at 510. Soon thereafter, Yaser Hamdi, an American citizen who fought on the side of the Taliban in Afghanistan, was captured and detained as an “enemy combatant.” *Id.* at 513. Hamdi had joined the Taliban prior to the September 11 attacks, had “remained with his Taliban unit following the attacks,” and carried arms in battle in Afghanistan against the United States and its allies. *Id.* at 513. Limiting its decision to these “narrow circumstances,” the plurality explained that Congress “clearly and unmistakably” authorized Hamdi’s military detention. *Id.* at 519.

Central to the lawfulness of Hamdi’s detention was the clarity of the congressional intent to authorize detention in the *specific* conflict in which Hamdi fought and in the course of which he was detained: the war against al Qaeda and the Taliban in Afghanistan. As the plurality explained: “There can be no doubt that individuals who fought against the United States *in Afghanistan* as part of the Taliban, an organization known to have supported the al Qaeda terrorist network responsible for those attacks, are individuals Congress sought to target in passing the AUMF.” *Id.* at 518 (emphasis added). The plurality repeatedly stressed the limited reach of its holding and refused to imply any greater power to detain American citizens. *See, e.g., id.* at 516 (“answer[ing] only the narrow question” of whether Congress authorized the detention of an individual who was “part of or supporting” hostile Taliban forces in Afghanistan *and* “who engaged in an armed conflict against the United States there”); *id.* at 518 (authorization to detain in “the limited category we are considering”); *id.* at 509 (authorization to detain “in the narrow circumstances alleged here”); *see also Hussain v. Obama*, 134 S. Ct. 1621, 1622 (2014) (statement of Breyer, J., respecting the denial of certiorari) (underscoring that

Hamdi did not address whether the 2001 AUMF authorizes the detention of an alleged al Qaeda and Taliban member who had “not engaged in an armed conflict against the United States *in Afghanistan* prior to his capture” (emphasis added) (quotation marks omitted)).

Congress, in short, refused to grant elastic and open-ended military detention authority in the 2001 AUMF, and—consistent with both the Constitution and the Non-Detention Act—the Court in *Hamdi* approved only the detention of an American citizen who fell clearly and unmistakably within the statute’s scope. This Court should thus reject the government’s claim that the 2001 AUMF authorizes the indefinite detention authority of American citizens based on alleged involvement with an organization that, as explained below, did not exist in 2001, is unconnected to the September 11 attacks or the war in Afghanistan that followed, and is entirely disassociated from the group specifically targeted by the statute. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609 (1952) (Frankfurter, J., concurring) (“It is quite impossible . . . when Congress did specifically address itself to a problem . . . to find secreted in the interstices of legislation the very grant of power which Congress consciously withheld.”).

B. The 2001 AUMF does not authorize Petitioner’s detention as an alleged member of ISIS under the government’s theory that ISIS is “part of” or an “associated force” of al Qaeda.

The government postulates two theories to justify Petitioner’s detention: first, that ISIS is “part of” al Qaeda; and second, that ISIS is an “associated force” of al Qaeda. Both are meritless.

1. ISIS is not a “part of” al Qaeda under the 2001 AUMF.

In contrast to *Hamdi*, where there was no doubt that “Congress sought to target” the Taliban in Afghanistan and thereby authorized Hamdi’s detention for fighting against U.S. and allied forces on a battlefield there, the government here offers no evidence that Congress could have intended the 2001 AUMF to target a U.S. citizen like Petitioner or the organization he

allegedly belonged to. Instead, the government cobbles together only a few factual assertions that it maintains sweep ISIS within the ambit of the 2001 AUMF. The government’s extraordinary premise is that ISIS is *itself* the same al Qaeda organization targeted by Congress in 2001—even as it concedes that neither ISIS nor any of its predecessor organizations existed in 2001, and even as it admits that whatever their prior relationship, ISIS split with al Qaeda before Petitioner even allegedly “registered” with the group (let alone was detained by the United States). Return ¶ 57. The government asserts that a predecessor group to ISIS, formed in 2003, later “aligned with bin Laden’s al-Qaida organization” in the fight against the United States, including by pledging allegiance; that “ISIL was founded and led by associates of Osama bin Laden”; and that “ISIL now claims that it—not al-Qaida’s current leadership—is the true executor of bin Laden’s legacy,” Return ¶¶ 20, 28. Even accepting those assertions, they do not establish that ISIS is “part of” al Qaeda.

The D.C. Circuit has not addressed what makes one organization “part of” another for purposes of the 2001 AUMF, and the government does not even offer argument on that question, despite bearing the burden of showing Petitioner’s detainability under the 2001 AUMF. The facts the government does present, however, are a far cry from the kind of evidence that might tend to establish that an entire group was part of the same organization.⁶

The government’s spare factual assertions undercut the very premise it seeks to advance. The assertion that in 2003 a predecessor group to ISIS became “aligned with bin Laden’s al-

⁶ In fact, the government itself has drawn distinctions between an organization’s leader being “part of” al Qaeda *as an individual* and the entire organization being part of al Qaeda under the 2001 AUMF. See Charlie Savage, Eric Schmitt & Mark Mazzetti, *Obama Expands War with Al Qaeda to Include Shabab in Somalia*, N.Y. Times, Nov. 27, 2016, <http://nyti.ms/2FULD9q> (“In Somalia, the United States had long taken the position that a handful of Shabab leaders, as individuals, had sufficient ties to Al Qaeda to make them wartime targets [under the 2001 AUMF]. But it has debated internally for years whether the Shabab as a whole, including their thousands of foot soldiers, can or should be declared part of the enemy.”).

Qaida organization,” Return ¶ 28, could not establish that ISIS is *itself* “part of” al Qaeda. It is facially nonsensical to claim that two organizations could become “aligned” for a period of time if the two organizations were, in fact, the same organization all along.⁷ And even accepting that a predecessor organization to ISIS was in the past “founded and led” by associates of Osama bin Laden, Return at ¶ 20, and that this history carries through to present-day ISIS, the presence of “associates of Osama bin Laden” in ISIS’s historical leadership is irrelevant. Congress did not authorize force against all individual “associates” of those responsible for the September 11 attacks—much less issue the president a blank check to detain every future member of every future organization that would one day be led by such an “associate.”

In short, the government here seeks to radically expand the authority Congress did confer by way of limitless daisy-chaining. According to the government’s logic, it may imprison a U.S. citizen based on the allegation that he is associated with an organization (ISIS) that was once associated with a leader (al-Zarqawi, although he was killed more than a decade ago), who was in turn an associate of bin Laden. Notably absent from this daisy chain is any connection of Petitioner, ISIS (or its predecessors), or al-Zarqawi, to the September 11 attacks themselves, as required by the plain text of the 2001 AUMF. Petitioner, who allegedly joined ISIS thirteen years after the September 11 attacks and after ISIS completely dissolved whatever prior relationship it had with al Qaeda, cannot be subjected to indefinite detention on so attenuated a chain of associations.

Critically, the government incorrectly asserts that it need show only that ISIS was “part of” al Qaeda in 2003, when it alleges that “military action against the group now known as ISIL

⁷ As a matter of logic and common sense, the threshold is necessarily higher for an organization to be “part of” another organization than merely to be “associated” with it. As explained below, *see infra* Part II.B.2, because the government cannot even establish that ISIS is an “associated force” of al Qaeda, it cannot establish that ISIS is “part of” al Qaeda.

commence[d],” Return ¶ 27, rather than in September 2017, at the time of Petitioner’s capture. The government fails to provide any legal justification for its chosen temporal focus—and its position is foreclosed by D.C. Circuit law. Courts in this Circuit have repeatedly made clear that for purposes of the 2001 AUMF, an individual must be detainable at the *time of capture*. See, e.g., *Alsabri v. Obama*, 764 F. Supp. 2d 60, 94–95 (D.D.C. 2011) (“As noted, it is not enough for the government to show simply that the petitioner was, at one time, a member of the Taliban, al-Qaida of associated forces; to be lawfully detained, the petitioner must have been ‘part of’ those forces *at the time of his capture*.” (emphasis added)), *aff’d*, 684 F.3d 1298 (D.C. Cir. 2012); *Salahi v. Obama*, 625 F.3d 745, 751 (D.C. Cir. 2010) (“Here, as noted, the relevant inquiry is whether Salahi was ‘part of’ al-Qaida *when captured*.” (emphasis added)); *Al Ginco v. Obama*, 626 F. Supp. 2d 123, 128 (D.D.C. 2009); see also, e.g., *al Odah v. United States*, 62 F. Supp. 3d 101, 112–13 (D.D.C. 2014); *Khalifh v. Obama*, No. 05-CV-1189, 2010 WL 2382925, at *2 (D.D.C. May 28, 2010); *Al-Adahi v. Obama*, 698 F. Supp. 2d 48, 56 (D.D.C. 2010); *Gherebi v. Obama*, 609 F. Supp. 2d 43, 71 (D.D.C. 2009). Indeed, the government itself has previously conceded that time of capture is the relevant time for the purposes of detention authority under the 2001 AUMF. See, e.g., *Salahi*, 625 F.3d at 750; *Al Ginco*, 626 F. Supp. 2d at 127.

The only allegation the government advances with respect to ISIS’s relationship to al Qaeda at the time of Petitioner’s capture is that ISIS claims to be “the true executor of bin Laden’s legacy.” Return ¶ 28. But that has nothing to do with the authority conferred in the AUMF against those connected to the September 11 attacks. As described above, although the White House sought a forward-looking AUMF aimed at future terrorism threats, Congress expressly declined to issue such an unlimited authorization. In passing the 2001 AUMF,

Congress did not authorize the military to wage war against and detain members of any group that has “inspired” or “claimed credit” for acts of terrorism, Return ¶ 20.

Unsurprisingly, when the government announced its “part of” theory concerning ISIS in late 2014, the theory provoked incredulity from experts and scholars. Ryan Goodman, who served as Special Counsel to the General Counsel of the Department of Defense in the Obama administration, noted the “remarkable consensus of opinion” among experts “that ISIS is not covered by the 2001 AUMF.” Ryan Goodman, *The President Has No Congressional Authorization to Use Force Against ISIS in Iraq*, Just Security, June 19, 2014, <https://www.justsecurity.org/11873/president-congressional-authorization-force-isis-iraq>. Jack Goldsmith, who had earlier occupied the same position in the Bush administration and later headed the Office of Legal Counsel, wrote that the premise was “unconvincing,” and warned that “if this remarkably loose affiliation with al Qaeda brings a terrorist organization under the 2001 law, then Congress has authorized the President to use force endlessly against practically any ambitious jihadist terrorist group that fights against the United States.” Jack Goldsmith, *Obama’s Breathtaking Expansion of a President’s Power to Make War*, Time, Sept. 11, 2014, <http://time.com/3326689/obama-isis-war-powers-bush>. Robert Chesney, who served in the Obama administration on the Detention Policy Task Force, called the argument that ISIS is included in the 2001 AUMF “just stunning from a legal perspective.” Robert Chesney, *The 2001 AUMF: From Associated Forces to (Disassociated) Successor Forces*, Lawfare, Sept. 10, 2014, <https://www.lawfareblog.com/2001-aumf-associated-forces-disassociated-successor-forces>. Jennifer Daskal, who served as counsel to the Assistant Attorney General for National Security at the Department of Justice during the Obama administration, wrote, “[C]all me naïve, but law matters. The re-interpretation of laws in totally implausible ways shakes the principles of legality

at its core.” Jennifer Daskal, *Democracy’s Failure*, Just Security, Sept. 11, 2014,
<https://www.justsecurity.org/14820/democracys-failure>.

2. The 2001 AUMF does not authorize the detention of American citizens as members of “associated forces” of al Qaeda, and in any event ISIS is not an “associated force.”

Like its “part of” theory, the government’s “associated force” theory fails for several reasons. As an initial matter, Congress has never provided the requisite clear statement to detain a U.S. citizen as a member of an “associated force” of al Qaeda or the Taliban. But even if American citizens were detainable under the 2001 AUMF as members of certain “associated forces,” the government cannot establish the lawfulness of Petitioner’s detention under this theory because: (1) the definition of “associated force” the government offers is insupportable; and (2) even under its own test, the government’s proffered facts fail to establish that ISIS is an “associated force” of al Qaeda.

a. Congress has not clearly and unmistakably authorized the detention of U.S. citizens as members of “associated forces.”

The government claims that its broad authority under the 2001 AUMF to “detain U.S. citizens as enemy combatants” extends beyond members of al Qaeda or the Taliban and reaches members of certain “associated forces.” *See* Return ¶¶ 21, 24. But the requisite clear statement to detain U.S. citizens who are members of such groups on this basis is nowhere to be found, and no court has ever upheld the detention of a U.S. citizen as a member of an “associated force.”

The government appears to rely on an overbroad reading of *Hamdi* to argue this authority is implicit in the 2001 AUMF. *See* Return ¶ 24. But none of the opinions in *Hamdi*—like nothing in the text of the 2001 AUMF itself—say anything about “associated forces.” Instead, as described above, the *Hamdi* plurality emphasized repeatedly that its holding applied only to individuals fighting in Afghanistan who personally associated themselves with the explicit

targets of the 2001 AUMF: al Qaeda and the Taliban. *See supra* Part II.A; *see also Hamdi*, 542 U.S. at 517 (“[T]he AUMF is explicit congressional authorization for the detention of individuals in the narrow category we describe.”). The Supreme Court was fractured over the issue of whether—if at all—the government could detain U.S. citizens militarily, and the plurality carefully hewed its narrow finding of U.S. citizen detention authority to the text of the statute. *See* 542 U.S. at 518. Because of this, there is simply no room to read into the 2001 AUMF the authority to detain U.S. citizen members of an untold number of “associated” groups.

Nor can this authority be found in the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298 (2012) (“2012 NDAA”), in which Congress sought to clarify the meaning of the 2001 AUMF.⁸ Although there Congress *did* acknowledge some detention authority over members of “associated forces,” *see* 2012 NDAA § 1021(b)(2), it was careful not to expand any authority to detain U.S. citizens. *See id.* § 1021(e) (“Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens . . .”). By its own terms, therefore, the 2012 NDAA cannot serve as the clear statement of authority the government needs to detain a U.S. citizen member of an “associated force.”

Moreover, because Congress took pains to preserve the status quo in the 2012 NDAA, the statute should be interpreted in light of the law at the time. *See Hedges v. Obama*, 724 F.3d 170, 181–82 (2d Cir. 2013) (explaining the legislative history of section 1021(e), the “compromise amendment”). Significantly, Congress was legislating against a backdrop in which no court had ever held that a U.S. citizen member of an “associated force” could be detained under the 2001 AUMF. The D.C. Circuit’s limited application of the term “associated forces” has come

⁸ The text of the relevant portions of the 2012 NDAA is appended hereto.

exclusively in the context of cases involving noncitizens. *See infra* Part II.B.2.b. And when addressing the scope of detention authority over associated forces, the D.C. Circuit looked for guidance to statutory authorizations that specifically excluded citizens from their reach. In particular, in *Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010), the court’s conclusion that it possessed detention authority rested on Congress’s “guidance on the class of persons subject to detention under the AUMF” in other statutes—specifically, the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006) (“2006 MCA”), and the Military Commissions Act of 2009, Pub. L. No. 111-84, tit. XVIII, 123 Stat. 2190 (2009) (“2009 MCA”). *Al-Bihani*, 590 F.3d at 872. Critically, the 2006 MCA was expressly limited to noncitizens, as was its replacement, the 2009 MCA. *See* 2006 MCA sec. 3, § 948b(a); 2009 MCA sec. 1902, §§ 948b(a).

Congress must clearly and unmistakably grant authority for the detention of U.S. citizens. It has not done so here with respect to the category of “associated forces.”

b. There is no legal support for the government’s self-created definition of “associated force.”

Because the 2001 AUMF does not refer at all to an “associated force,” the government has created its own definition of the term. According to the government, an “associated force” is an entity that satisfies two independent conditions: (1) “the entity must be an organized, armed group that has entered the fight alongside al-Qaida or the Taliban”; and (2) “the group must be a co-belligerent with al-Qaida or the Taliban in hostilities against the United States or its coalition partners.” Return ¶ 26. To justify this self-created definition, the government invokes D.C. Circuit precedent, the 2012 NDAA, and law-of-war principles. But none of these sources support it.

First, D.C. Circuit precedent underscores that the term “associated forces” must be interpreted narrowly.⁹ And the only forces the D.C. Circuit has held to be “associated” under the AUMF are armed groups fighting closely alongside al Qaeda and the Taliban in Afghanistan.

In *Parhat v. Gates*, 532 F.3d 834 (D.C. Cir. 2008), the court declined to “decide the precise meaning of [‘associated forces’],” but underscored that “even under the government’s own definition, the evidence must establish a connection between [an alleged associated force] and al Qaeda or the Taliban that is considerably closer than the relationship suggested by the usual meaning of the word ‘associated.’” *Id.* at 844; *see also id.* (explaining that the government itself maintained that an “associated force” under the 2001 AUMF must be an entity that “subsequent to September 11, becomes *so closely associated* with al Qaeda or the Taliban that it is *effectively ‘part of the same organization’* . . . that perpetrated the September 11 attacks” (emphases added)). The D.C. Circuit has determined only three groups to be “associated forces” of al Qaeda or the Taliban—all of which are armed groups fighting U.S. forces closely alongside the Taliban and/or al Qaeda in Afghanistan:

- The Arab 55th Brigade. In *Al-Bihani v. Obama*, the court upheld the district court’s conclusion that “associated forces” encompassed “a paramilitary group allied with the Taliban, known as the 55th Arab Brigade, which included Al Qaeda members within its command structure and which fought on the front lines against the Northern Alliance [a U.S. Coalition partner].” 590 F.3d at 869; *see id.* at 872 (“The district court found Al Qaeda members participated in the command structure of the 55th Arab Brigade, making the brigade an Al Qaeda-affiliated outfit, and it is unquestioned that the 55th fought alongside the Taliban while the Taliban was harboring Al Qaeda.” (citation omitted)).
- Abu Zubaydah’s militia. In a few cases, the D.C. Circuit has held that a second group qualifies as an “associated force” under the 2001 AUMF: a militia

⁹ The D.C. Circuit has also confirmed that the meaning of “associated forces” is a legal question for courts to decide. *See Khan v. Obama*, 655 F.3d 20, 26 (D.C. Cir. 2011) (“[W]hether the alleged connections between [a] force and al Qaeda and/or the Taliban are sufficient to render it an ‘associated force’ [is a] legal question[] that we review de novo.”); *accord Barhoumi v. Obama*, 609 F.3d 416, 423 (D.C. Cir. 2010).

commanded by Abu Zubaydah, “a reputed terrorist leader” who allegedly ran a training camp called Khaldan and “agreed with Usama bin Laden to coordinate training efforts and allow Khaldan recruits to join al-Qaida.” *Barhoumi v. Obama*, 609 F.3d at 418; *see Ali v. Obama*, 736 F.3d 542, 543–44 (D.C. Cir. 2013) (following *Barhoumi* to conclude that “the force commanded by Abu Zubaydah constitutes an ‘associated force’ for purposes of the AUMF”). Notably, the petitioners in *Barhoumi* and *Ali* did not dispute the militia’s status as an “associated force.” *Barhoumi*, 609 F.3d at 423; *Ali*, 736 F.3d at 544.

- Hezb-i-Islami Gulbuddin. In *Khan v. Obama*, the D.C. Circuit identified a third “associated force”: Hezb-i-Islami Gulbuddin, which shared a “joint office” with the Taliban intended to “recruit new members and raise money for attacks on Afghan and U.S. security forces” and had “long-established ties with Bin Ladin.” 655 F.3d at 32 (quotation marks omitted).¹⁰

As these cases make clear, the D.C. Circuit’s acceptance of the “associated forces” theory has been extremely limited, and it has never even addressed (let alone endorsed) an interpretation of the term that would reach a new group without a close nexus to the 2001 AUMF-authorized conflict against al Qaeda and the Taliban in Afghanistan.¹¹ If the government’s self-created definition of “associated forces” were to include Petitioner’s detention, it would radically expand the limited authority approved by the D.C. Circuit.

¹⁰ The D.C. Circuit has discussed other groups in determining whether the detentions of individuals pursuing habeas petitions are lawful. But while the Circuit has sometimes considered evidence of individuals’ associations with certain groups that were themselves connected to al Qaeda or the Taliban, the court has never held that any group other than the three named above legally constitutes an “associated force” under the 2001 AUMF.

For example, in a pair of cases, the D.C. Circuit discussed individuals’ extended contacts with Jama’at Tablighi, a Pakistan-based “Islamic missionary organization that is a [government-designated] Terrorist Support Entity closely aligned with al Qaeda.” *Almerfeddi v. Obama*, 654 F.3d 1, 6 (D.C. Cir. 2011) (quotation marks omitted); *see Hussain v. Obama*, 718 F.3d 964, 969–70 (D.C. Cir. 2013). But in both, the courts concluded that the relevant AUMF group was al Qaeda itself. *See Hussain*, 718 F.3d at 970; *Almerfeddi*, 654 F.3d at 6.

¹¹ Notably, in *Parhat*, the D.C. Circuit held that the government’s evidence was insufficient to establish that an independence group from western China with camps in Afghanistan, the East Turkistan Islamic Movement, was an “associated force” under the 2001 AUMF. *See* 532 F.3d at 844–46.

Second, as explained above, the 2012 NDAA, which references “associated forces,” does not support the government’s expansive conception of the term. In the 2012 NDAA, Congress legislated against the backdrop of the D.C. Circuit’s cabined interpretation of this term under the 2001 AUMF. *See supra* Part II.B.2.a. Based on the D.C. Circuit case law described above, Congress thus could have understood “associated force” as reaching only those groups with a tight nexus to armed groups fighting in Afghanistan alongside, and in close coordination with, al Qaeda and the Taliban, the two entities targeted by the 2001 AUMF.

Third, the government claims that its definition of associated forces is “inform[ed]” by the “traditional law-of-war principles” of neutrality and co-belligerency. *See* Return ¶¶ 25–26. But the government concedes that the law-of-war concepts of neutrality and co-belligerency apply exclusively to conflicts between states (*i.e.*, international armed conflicts). Return ¶ 25. It nevertheless claims that these concepts “provide useful guidance” in the armed conflict against al Qaeda and the Taliban. *Id.* But these concepts are neither compatible with nor applicable to armed conflicts against non-state actors such as al Qaeda, and do not provide a firm grounding for interpreting “associated forces” under the 2001 AUMF. *See, e.g.*, Rebecca Ingber, *Co-Belligerency*, 42 *Yale J. Int’l L.* 67, 89 (2017) (“[N]eutrality law as a general framework simply does not map onto the conflict between the United States and ISIS or al Qaeda, neither as a formal matter nor as a functional one.”); Marko Milanovic, *The End of Application of International Humanitarian Law*, in 96 *Int’l Rev. of Red Cross: Scope of the Law in Armed Conflict* 163, 187 (2014) (concept of co-belligerency “was imported [by the United States] from the law of [international armed conflict] without much consideration as to whether the analogy can actually be drawn”). Neutrality and co-belligerency, in short, are not remotely the kind of

“longstanding law-of-war principles” on which to ground the clear legislative authority necessary to detain an American citizen under the 2001 AUMF. *Cf. Hamdi*, 542 U.S. at 521.

c. The government’s allegations fail to establish that ISIS was an “associated force” of al Qaeda at the time of Petitioner’s detention in September 2017.

Even accepting the government’s account as true, the government’s allegations are insufficient to detain Petitioner because the government’s allegations address the wrong time period—2003, rather than 2017—for purposes of detention under the 2001 AUMF.

Because ISIS was not an “associated force” at the time of capture, Petitioner’s detention is not authorized under the AUMF. As explained above, courts in this Circuit have repeatedly made clear that for purposes of the 2001 AUMF, an individual must be detainable at the *time of capture*. *See supra* Part II.B.1; *Khan*, 655 F.3d at 32–33 (analyzing whether “[Hezb-i-Islami Gulbuddin] was an associated force of al Qaeda and the Taliban in November 2002,” when petitioner was captured). Here, the government concedes that beginning in 2013, the leaders of ISIS and al Qaeda “split . . . over theological and strategic disagreements,” and that since then ISIS has been “conducting operations in Syria and Iraq entirely independent” of al Qaeda, Return ¶ 18 n.23. The sole allegation the government puts forward concerning ISIS’s connection to al Qaeda at the time of Petitioner’s capture is that “ISIL now claims that it—not al Qaeda’s current leadership—is the true executor of bin Laden’s legacy.” Return ¶ 28. But a mere abstract ideological connection is legally insufficient to make ISIS an “associated force” (let alone “part of”) al Qaeda. *See, e.g., Hamlily v. Obama*, 616 F. Supp. 2d 63, 75 n.17 (D.D.C. 2009) (rejecting sufficiency of “common purpose” or shared “philosophy” and requiring “actual association in the current conflict with al Qaeda or the Taliban”). Plainly, whatever the “pre-existing relationship” between ISIS and al Qaeda, that relationship had, by September 2017, “sufficiently eroded” such

that any association has been conclusively “vitiating,” *Al Gingo*, 626 F. Supp. 2d at 128–29. Indeed, the former executive-branch official on whom the government principally relies for its co-belligerency theory, *see* Return ¶ 25, says the theory that ISIS is an associated force of al Qaeda is “presidential unilateralism masquerading as implausible statutory interpretation.” Goldsmith, *supra*.

Additionally, even putting aside the public and conceded split between al Qaeda and ISIS, the government has failed even to allege anything close to the type of evidence that the D.C. Circuit has required to deem a group an “associated force” under the 2001 AUMF. *See, e.g., supra* Part II.B.2.b; *Al-Bihani*, 590 F.3d at 869, 872 (finding Arab 55th Brigade was an “associated force” because it included al Qaeda members in its command structure and fought on front lines with Taliban against U.S. coalition partner in Afghanistan); *Barhoumi*, 609 F.3d at 419 (same for militia, when it was commanded by leader who trained recruits and coordinated with bin Laden to send them to al Qaeda in Afghanistan); *Ali*, 736 F.3d at 543–44 (same); *Khan*, 655 F.3d at 32 (same for group that shared office with Taliban, had longstanding ties to bin Laden, and recruited members and raised money for attacks on U.S. forces in Afghanistan).¹²

Indeed, it would be particularly improper to detain Petitioner based on a purported association between al Qaeda and ISIS that ended before he is alleged to have even joined the latter group, and long before the time he was captured. *See, e.g., Al Gingo*, 626 F. Supp. 2d at 128 (“By taking a position that defies common sense, the Government forces this Court to address an issue novel to these habeas proceedings: whether a prior relationship between a detainee and al Qaeda (or the Taliban) can be sufficiently vitiating by the passage of time,

¹² Although the government doesn’t suggest it, even if the relevant time period were somehow deemed to be the time of Petitioner’s “registration” as an ISIS fighter, the result would be the same. According to the government, Petitioner “registered” with ISIS in July 2014, Return ¶¶ 57–58, but ISIS’s split with al Qaeda began in 2013, Return ¶¶ 18, 28.

intervening events, or both, such that the detainee could no longer be considered to be ‘part of’ either organization at the time he was taken into custody. The answer, of course, is yes.”

(footnote omitted)).¹³

For similar reasons, even if the principle of co-belligerency were somehow to be superimposed on the United States’ current conflict with al Qaeda (despite the lack of any international-law basis for doing so), it would be of no help to the government. Even among states, a relationship of co-belligerency does not arise simply from the fact that two separate entities are fighting the same enemy. Rather, co-belligerency requires allied cooperation and working in concert. *See* Int’l Comm. of Red Cross, *Commentary IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 49 (Jean S. Pictet ed. 1958) (equating “co-belligerent States” with “allies”); *see also* Nathalie Weizmann, *The End of Armed Conflict, the End of Participation in Armed Conflict, and the End of Hostilities: Implications for Detention Operations Under the 2001 AUMF*, 47 Colum. Hum. Rts. L. Rev. 204, 230 (2016) (“[O]nly certain *relationships* will render a State a *co-belligerent*,” including “[t]hat State’s *association, cooperation, or common cause* with the pre-existing belligerent”). And those alliances revolve around cooperation, “*assistance to*,” or making “*common cause* with belligerent forces.” Report

¹³ Recognizing the weakness of its position concerning the proper temporal focus of the Court’s inquiry here, the government puts forward a policy argument that “[a] contrary interpretation of the statute would allow an enemy force to manipulate the scope of the 2001 AUMF by splintering into rival factions while continuing to prosecute the same conflict against the United States.” Return ¶ 28. But even accepting that fanciful theoretical possibility, the government has not provided any evidence of such gamesmanship *concerning ISIS’s split with al Qaeda*, and it does not dispute that the split was genuine. Indeed, government officials admit that “there is no doubt the [expulsion of ISIS from AQ] was real and not a ruse.” Karen DeYoung & Greg Miller, *Al-Qaeda’s Expulsion of Islamist Group in Syria Prompts U.S. Debate*, Wash. Post, Feb. 10, 2014, <http://wapo.st/1fb2mR1>.

of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 60, Gen. Assembly, U.N. Doc. A/68/382 (Sept. 13, 2013) (emphasis added).¹⁴

The term “co-belligerency,” moreover, must be interpreted in a manner consistent with the statutory grant of authority in the 2001 AUMF. That authority does not extend to *any* force contemporaneously involved in a fight against the United States; instead, the force must both be “engaged in hostilities against the United States or its coalition partners” *and* be “associated.” *See* 2012 NDAA § 2012(b)(2). If “co-belligerency” were interpreted to mean that simply any two forces with a common enemy, without any cooperation or relationship between them, were co-belligerents, it would deprive the term “associated” in the 2012 NDAA of any effect. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) (describing the Court’s “duty, to give effect, if possible, to every clause and word of a statute” (quotation marks omitted)). This black-letter principle of statutory construction is fatal to the government’s claim that al Qaeda and ISIS are properly considered to be co-belligerents against the United States under the 2001 AUMF—indeed, far from cooperating in common cause, those groups are independent from and at odds with each other.

Thus, the government’s allegations are plainly insufficient to establish co-belligerency between al Qaeda and ISIS at the time of Petitioner’s capture.

Finally, the credibility of the government’s position that it has had 2001 AUMF authority to detain members of ISIS as an “associated force” of al Qaeda *since 2003*, Return ¶¶ 27–28, is undermined by its failure to articulate that position prior to *late 2014*. Indeed, not only had the

¹⁴ Indeed, in a 2009 district court decision that *did* interpret the term “associated forces” through a co-belligerency lens, the court interpreted the term in a similar manner, concluding that “‘associated forces’ do not include terrorist organizations who merely share an abstract philosophy or even a common purpose with the al Qaeda—there must be an actual association in the current conflict with al Qaeda or the Taliban.” *Hamlily*, 616 F. Supp. 2d at 75 n.17.

government never articulated this position to the public, it had apparently failed to even articulate it to Congress. As late as July 2014, the executive branch submitted a statutorily mandated report to Congress explaining the government’s designations of various groups as “associated forces” under the AUMF. *See* U.S. Dep’t of Defense, Report on Associated Forces (July 2014), https://www.aclu.org/sites/default/files/field_document/drone_tk3_Report_on_Associated_Forces.pdf. The document is partially classified, but nevertheless makes clear that the government had only named two sets of groups as “associated forces”: “Groups Fighting in Afghanistan . . . alongside al-Qa’ida and the Taliban,” and “Al-Qa’ida in the Arabian Peninsula.” *Id.* at 2. ISIS’s omission from the “associated forces” category—a mere three months before the executive branch would land upon its new 2001 AUMF theory—is striking.

* * *

In sum, sixteen years ago, Congress deliberately declined to provide the government with unlimited authorization to wage war and engage in military detention “to deter and pre-empt any future acts of terrorism or aggression against the United States.” Grimmett, *supra*, at 2 (quoting rejected White House proposal). Congress instead required that the executive secure new authority for conflicts unrelated to responsibility for the September 11, 2001 attacks. The government must now respect Congress’s decision and return to the legislature for new authority if it wishes to subject U.S. citizens to indefinite military detention in new conflicts against new adversaries, rather than implausibly and insupportably claiming that they are “part of” or “associated forces” of al Qaeda.¹⁵

¹⁵ Congress knows how to provide the executive with the type of authority to address newly developed terrorist threats the government claims here. For example, in authorizing the executive to designate “foreign terrorist organizations,” Congress clearly stated that the Secretary of State is authorized to evaluate whether an “organization” threatens U.S. security and to impose repercussions that include the creation of criminal liability and the freezing of financial assets.

III. The 2002 AUMF specifically targeted the Saddam Hussein regime in Iraq and does not authorize Petitioner’s indefinite military detention.

More than fifteen years ago, Congress authorized the executive to use military force against the Saddam Hussein regime in Iraq. *See* 2002 AUMF.¹⁶ The government concedes that “the focus of the Iraq AUMF was the threat posed by Saddam Hussein’s regime,” Return ¶ 35, but nonetheless maintains that the 2002 AUMF constitutes congressional authorization for indefinite military detention of an American citizen in 2018 based solely on alleged activities in Syria. In the face of statutory text clearly authorizing force only against the “threat posed by Iraq” in 2002, the government offers several unconvincing reasons why this authority should be read to now authorize the indefinite detention of Americans throughout the entire Middle East and perhaps beyond. First, the government suggests that the preamble to the 2002 AUMF establishes broad authority to indefinitely detain Americans if it deems them threats to “international peace and security [in] the Persian Gulf region.” Return ¶ 35. Second, the government maintains that the 2002 AUMF applies not merely to the threat “posed by Iraq” under Saddam Hussein, but also authorizes the use of force in perpetuity against any threats posed *to* Iraq, with “no geographic limitation.” Return ¶ 38. Finally, the government asserts that in authorizing force against Iraq in 2002, Congress also implicitly authorized perpetual war against any terrorist group that would in the future arise on Iraqi soil, no matter where in the world such a group ended up. Return ¶ 38. None of these arguments is grounded in the actual

See 8 U.S.C. § 1189. It would be particularly anomalous for Congress to silently provide the executive with the ability to add “associated forces” not otherwise covered in the 2001 AUMF indefinitely into the future. The powers conferred by that statute, including indefinite military detention of U.S. citizens, far exceed the powers conferred in section 1189. Congress “does not . . . hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001); *see also* *ACLU v. Clapper*, 785 F.3d 787, 818–19 (2d Cir. 2015) (“Such a monumental shift in our approach to combating terrorism requires a clearer signal from Congress . . .”).

¹⁶ The full text of the 2002 AUMF is appended hereto.

text of the 2002 AUMF or can satisfy the constitutionally and statutorily required clear-statement rule concerning the detention of U.S. citizens. None, therefore, can justify the indefinite detention of an American citizen whose only connection to Iraq is that the government transferred him there—for detention—from Syria.

First, although the operative language of the 2002 AUMF authorizes force only against the “threat posed by Iraq” under Saddam Hussein and says nothing about other regional actors, 2002 AUMF § 3(a)(1), 116 Stat. at 1501, the government asserts that this limitation should be disregarded and instead urges the Court to rely on the preamble’s broad concerns, “with, among other things, ‘restor[ing] international peace and security to the Persian Gulf region,’” and “terrorist organizations,” Return ¶ 35 (citing preamble). But as the Supreme Court made clear over a century ago, “the preamble is no part of the act, and cannot enlarge or confer powers” that Congress did not grant in the operative text of the act. *Yazoo & M.V.R. Co. v. Thomas*, 132 U.S. 174, 188 (1889). The Supreme Court recently confirmed that a preamble can in no way modify the authorization conferred by a statute: “[I]n America the settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms.” *District of Columbia v. Heller*, 554 U.S. 570, 578 n.3 (2008); see also, e.g., *Ass’n of Am. Railroads v. Costle*, 562 F.2d 1310, 1316 (D.C. Cir. 1977) (“A preamble no doubt contributes to a general understanding of a statute, but it is not an operative part of the statute and it does not enlarge or confer powers on administrative agencies or officers.”). The government’s resort to the preamble thus merely serves to demonstrate the weakness of its reliance on the 2002 AUMF. No part of the operative language in the 2002 AUMF can be read to broadly and in perpetuity authorize force and indefinite detention against

whomever the government deems a threat to regional peace and security, let alone provide the clear legislative authorization necessary to detain an American citizen.

But even if the Court were to consider the preamble, both the preamble and the operative language indicate that when Congress authorized force against the threat posed by Iraq, it was referring to the Saddam Hussein regime in Iraq, and not any threat that might arise in Iraq in perpetuity. For example, the preamble refers to “Iraq’s war of aggression against an illegal occupation of Kuwait,” “Iraq’s continuing weapons of mass destruction program,” “Iraq persist[ing] in violating resolution of the U.N. Security Council,” and “Iraq’s demonstrated capability and willingness to use weapons of mass destruction.” Preamble, 2002 AUMF, 116 Stat. at 1498–99. Moreover, the operative language of the statute confirms this meaning of Iraq as the Saddam Hussein regime in Iraq. *Id.* sec. 2, 116 Stat. at 1501 (affirming congressional support for “obtain[ing] prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion, and noncompliance”).

Second, the government’s argument that the 2002 AUMF actually authorizes force against all “threats *to* Iraq,” Return ¶ 36, is baseless, and proves far too much. Once again, the statute’s text unambiguously refers only to the threat posed *by* Iraq (under Saddam Hussein); the text nowhere supports the government’s claim that it may search for and attack all perceived threats *to* Iraq. The government’s reading is thus wholly divorced from Congress’s enacted language and plainly insufficient under the clear-statement rule. Moreover, endorsing the government’s reading of the 2002 AUMF as authorizing war against all perceived threats *to* Iraq with “no geographic limitation,” Return ¶ 38, would lead to absurd and dangerous results. U.S. military leaders, for example, have recently described Iran as the single greatest threat to regional peace and security and to Iraq’s future. *See, e.g.,* Cristina Silva, *Iran is the ‘Greatest Long-Term*

Threat to Stability, ' Army General Warns, Newsweek, Mar. 29, 2017, <http://www.newsweek.com/iran-threat-us-and-middle-east-army-general-warns-576363>; Jake Miller, *David Petraeus: Biggest Threat to Iraq's Future is Iran, Not ISIS*, CBS News, Mar. 20, 2015, <https://perma.cc/9US8-SGTH>. Under the government's expansive reading of the 2002 AUMF, then, the president need not consult Congress if he decides to invade Iran. According to the sweeping theory the government advances here, the president may use military force—and therefore indefinitely detain Americans—anywhere in the world to protect Iraq. This reading of the 2002 AUMF is implausible on its face. Congress did not provide the government with a blank check to make war and imprison Americans without charge to keep Iraq safe in perpetuity.

Finally, the government argues that it has unlimited authorization to use force against any group that at some point emanated “*from* Iraq,” Return ¶ 36, even though that term does not appear in the 2002 AUMF. According to this logic, the government maintains that it may indefinitely detain Petitioner after his capture in Syria, and for his alleged activities in Syria, based only on the fact that long before Petitioner allegedly joined ISIS, the organization originated in Iraq. But there is no indication in the statutory text that Congress intended the 2002 AUMF to authorize indefinite military detention of American citizens in support of a worldwide military campaign against any group that can trace its origins to Iraq. Such a strained reading of the 2002 AUMF cannot meet the clear-statement rule or the clear targeting required by the Supreme Court in *Hamdi*.

Not only are the government's statutory arguments as to the 2002 AUMF implausible on their face and unsupported by the text of the statute, they contradict the government's own representations. On August 31, 2010, President Obama addressed the nation to announce “the end of our combat mission in Iraq.” M. Alex Johnson, *Obama Formally Ends Iraq Combat*

Mission, NBC News, Aug. 31, 2010, <http://nbcnews.to/2GYtkSp>. In July 2014, the White House issued an official statement through Susan E. Rice, Assistant to the President for National Security Affairs, that “the Iraq AUMF is no longer used for any government activities and the Administration fully supports its repeal.” Letter from Susan E. Rice, Assistant to the President for Nat’l Security Aff., to John A. Boehner, Speaker of the House of Representatives (July 25, 2014), <http://freebeacon.com/wp-content/uploads/2014/07/3989-Boehner.pdf>. Having admitted for years that the war Congress authorized in 2002 is over, the government cannot credibly claim that the 2002 AUMF now authorizes the indefinite military detention of an American citizen as part of a different conflict.

IV. The National Defense Appropriations Act of 2012 and other appropriations acts do not support the government’s claims of detention authority.

The government readily concedes that congressional “funding, oversight, and authorizing measures do not themselves authorize the military campaign against IS[I]L.” Return ¶ 45 (emphasis omitted). Despite this concession, the government makes two arguments about these subsequent measures: first, that Congress specifically “ratified [the government’s] construction of the 2001 AUMF in the detention context” in the 2012 NDAA, Return ¶ 24; and second, that other congressional measures “confirm” that the 2001 and 2002 AUMFs authorize the campaign against ISIS, Return ¶¶ 40–45. Both arguments fail.

First, far from “ratifying” the government’s expansive interpretation of its detention authority as to U.S. citizens, the 2012 NDAA explicitly remains silent on the question. Section 1021(e) of that Act is explicit that “[n]othing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens” 2012 NDAA § 1021(e); *see also, e.g.*, 157 Cong. Rec. S8094, S8124 (daily ed. Dec. 1, 2011) (statement of Sen. Graham) (“We are doing nothing to change the law when it comes to American citizen detention to

enhance it or to restrict whatever rights the government has or the citizen has.”). The Second Circuit confirmed that “Section 1021 says nothing at all about the President’s authority to detain American citizens.” *Hedges*, 724 F.3d at 174.¹⁷

Second, the government argues that other congressional measures “confirm” that the 2001 and 2002 AUMFs authorize the campaign against ISIS. *See* Return ¶¶ 40–45. This argument is meritless: when it comes to detaining U.S. citizens, the government needs clear congressional authorization. *See supra* Part I. The various provisions the government references authorize the president to spend government money against ISIS and impose reporting requirements, but they not only fail to clearly authorize the detention of U.S. citizen members of ISIS, they fail to mention detention *at all*. *See* Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2276, 2285–95 (2014); Consolidation Appropriations Act, 2016, Pub. L. No. 114-13, § 8093, 129 Stat. 2242, 2373 (2015); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, §§ 1223–24, 129 Stat. 726, 1049 (2015).

Notably, the government attempted to make a similar argument in *Hamdi*, asserting that a “statutory authorization to spend money appropriated for the care of prisoners of war” constituted a detention-authorizing “Act of Congress.” *Hamdi*, 542 U.S. at 547 n.3 (Souter, J., concurring in part and dissenting in part). The plurality in *Hamdi* disregarded that argument, and four other Justices rejected it. As Justice Souter noted in summarily dismissing the government’s argument, “this statute is an authorization to spend money if there are prisoners, not an

¹⁷ As the government implicitly acknowledges, section 1021(e) applies without geographical limitation to U.S. citizens—not just U.S. citizens captured in the United States. *See* Return ¶ 24; *see also Hedges*, 724 F.3d at 192 n.134 (statutory language and legislative history confirm that Congress restricted the 2012 NDAA from any application to “the detention of American citizens generally”).

authorization to imprison anyone to provide the occasion for spending money.” *Id.* And Justice Scalia dismissed this argument as well, since he rejected all of the government’s arguments put forth to justify Hamdi’s military detention. *Id.* 574–75 (Scalia, J., dissenting).

* * *

While Congress has not authorized military detention of U.S. citizens with alleged ties to ISIS, it has provided ample tools to address the threat posed by ISIS. The U.S. government routinely uses the federal court system to prosecute American citizens captured abroad and accused of providing material support to ISIS and other foreign terrorist organizations,¹⁸ and even, as particularly relevant here, to prosecute another American citizen captured in Syria by Kurdish forces and accused of joining ISIS.¹⁹ And Justice Department officials have repeatedly

¹⁸ *See, e.g.*, Press Release, U.S. Dep’t of Justice, Wisconsin Man Sentenced to 10 Years in Prison for Attempting to Provide Material Support to ISIS (Feb. 17, 2017), <https://perma.cc/W7FH-6WNG> (U.S. citizen detained in Turkey and transported back to the U.S., where he was charged with providing material support to ISIS); Press Release, U.S. Dep’t of Justice, New Jersey Man Admits Conspiring to Provide Material Support to ISIS (Oct. 29, 2015), <https://perma.cc/8EY8-8WL6> (U.S. citizen detained in Jordan and returned to the U.S., where he was charged with providing material support to ISIS); Press Release, U.S. Dep’t of Justice, Queens Man Charged with Attempting to Provide Material Support to ISIS (Aug. 29, 2017), <https://perma.cc/6ML9-GNTN> (U.S. citizen “detained in a Middle Eastern country bordering Syria” as he allegedly attempted to join ISIS and deported back to the U.S. for prosecution); Press Release, U.S. Dep’t of Justice, United States Citizen Pleads Guilty to Providing Material Support to Al Shabaab (Sept. 8, 2017), <https://perma.cc/38UR-4YXY> (U.S. citizen who traveled to Somalia and was a member of Al Shabaab returned to the U.S. to face prosecution); Press Release, U.S. Dep’t of Justice, American Citizen Convicted of Conspiring to Murder U.S. Nationals in Bombing Attack Against Military Base in Afghanistan (Sept. 29, 2017), <https://perma.cc/P75T-6EQV> (U.S. citizen captured in Pakistan and brought back to the U.S. for criminal prosecution related to his involvement with al Qaeda).

¹⁹ *See, e.g.*, Press Release, U.S. Dep’t of Justice, American Sentenced to 20 Years for Joining ISIS (Oct. 27, 2017), <https://perma.cc/8PBR-C4W6> (U.S. citizen captured in Syria by “Kurdish Peshmerga military forces” and brought back to the U.S. to stand trial).

emphasized their capacity to prosecute alleged terrorists, including alleged ISIS members, captured anywhere in the world.²⁰

It is undisputed that members of ISIS have attacked U.S. citizens and other civilians, and that the group apparently “continues to denounce the United States as its enemy and to target U.S. citizens and interests.” Return ¶ 28. For those who participate in them, ISIS’s violent actions against Americans are undeniably criminal. But as former CIA Director and Deputy National Security Advisor for Homeland Security and Counterterrorism John Brennan underscored, “when it comes to U.S. citizens involved in terrorist-related activity, whether they are captured overseas or at home, we will prosecute them in our criminal justice system.” Remarks of John O. Brennan, Director, CIA, Remarks at Harvard Law School, *Strengthening Our Security by Adhering to Our Values and Laws* (Sept. 16, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/09/16/remarks-john-o-brennan-strengthening-our-security-adhering-our-values-an>.²¹

V. The president has no inherent authority to detain indefinitely an American citizen.

Finally, the government argues that the president has “inherent” authority under Article II of the Constitution to detain Petitioner indefinitely without congressional authorization. Return ¶¶ 46–51. No court has ever suggested, let alone held, that the president has unilateral authority to imprison an American citizen without trial—unless Congress suspends habeas

²⁰ See, e.g., Queens Man Charged with Attempting to Provide Material Support to ISIS (Aug. 29, 2017), *supra* (FBI Assistant Director-in-Charge William F. Sweeney, Jr., discussing charges against a U.S. citizen captured abroad and asserting that “like others before him who chartered a similar path to join [ISIS, this citizen] now finds his journey ends the same way—in a New York courtroom answering for his actions”).

²¹ In fact, the U.S. government has not subjected a U.S. citizen captured abroad to indefinite military detention under the 2001 AUMF since Hamdi, who was captured in Afghanistan that same year.

corpus, which of course it has not done. This Court should reject this extraordinary assertion of executive power.

Because Congress has not authorized Petitioner’s military detention, and because Congress expressly prohibited any such unauthorized detention in the Non-Detention Act, the president’s “power is at its lowest ebb.” *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 593 n.23 (2006) (the president “may not disregard limitations that Congress has, in the proper exercise of its own war powers, placed on his powers”). The president may therefore “rely only on his own constitutional powers minus any powers of Congress over the matter.” *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring). To sustain the government’s claim of Article II power here, therefore, would “disabl[e] Congress” from protecting the right of American citizens against executive detention without trial. *Id.* at 637–38. Not even the most expansive reading of the president’s Article II authority can justify the powers claimed here.

Constitutional text and history demonstrate that executive detention was a central concern of the Framers. *See, e.g., St. Cyr*, 533 U.S. at 301 (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest”); *Hamdi*, 542 U.S. at 552 (Souter, J., concurring in part and dissenting in part) (“[W]e are heirs to a tradition given voice 800 years ago by Magna Carta, which, on the barons’ insistence, confined executive power by ‘the law of the land.’”); *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (“Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned . . . save by the judgment of his peers or by the law of the land. . . . [Judges] developed the writ of habeas corpus largely to preserve these immunities from executive

restraint.” (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 218–19 (1953) (Jackson, J., dissenting))).

Time and again, the Supreme Court has therefore reaffirmed Alexander Hamilton’s oft-cited observation that the powers conferred on the president by the Commander-in-Chief Clause “amount to nothing more than the supreme command and direction of the military and naval forces.” *The Federalist No. 69*, at 418 (Alexander Hamilton) (Clinton Rossiter ed., 1961); see, e.g., David J. Barron & Martin S. Lederman, *The Commander-in-Chief at the Lowest Ebb—Framing the Problem, Doctrine, and Original Understanding*, 121 Harv. L. Rev. 689, 802 (2008) (“Far from reflecting impracticality, the system of war powers the Framers appear to have favored comports . . . with their well-established embrace of checks and balances, a belief that was itself rooted in their practical experience with the dangers of unconstrained executive authority, particularly in war.”). In *Youngstown*, the Supreme Court rejected the president’s claim of Article II authority to seize the nation’s steel mills, despite his impassioned plea that it was vital to the war effort. 343 U.S. at 587. As Justice Jackson explained, “[a]side from suspension of the privilege of the writ of habeas corpus in time of rebellion or invasion,” the Framers “made no express provision for exercise of extraordinary authority because of a crisis.” *Youngstown*, 343 U.S. at 650 (Jackson, J., concurring). For such “emergency powers” to remain “consistent with free government,” their control must be “lodged elsewhere than in the Executive who exercises them.” *Id.* at 652; see, e.g., Barron & Lederman, *supra*, at 804 (“[C]onstitutional practice, no less than originalist understanding, also fails to provide a grounding for the claim to preclusive presidential power.”).

Even assuming that in “a moment of genuine emergency, when the Government must act with no time for deliberation, the Executive may be able to detain a citizen if there is reason to

fear he is an imminent threat to the safety of the Nation and its people,” *Hamdi*, 542 U.S. at 552 (Souter, J., concurring in part and dissenting in part), no such circumstances exist here. Petitioner has been detained for nearly five months, and the federal courts have, of course, remained open throughout Petitioner’s detention. During this time, moreover, the government has sought to engage in law-enforcement interrogations of Petitioner. *See* Respondent’s Resp. to Court’s Order, ECF No. 18. As in *Hamdi*, there is no genuine emergency that remotely justifies Petitioner’s indefinite military detention by executive fiat. *See Hamdi*, 542 U.S. at 552 (any “emergency power of necessity must at least be limited by the emergency”); *see also Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 127 (1866) (military jurisdiction over a citizen justified only by “actual and present” necessity that renders regular civilian courts unavailable).

Unlike Congress, the president has no power to suspend the writ. *See, e.g., Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 101 (1807) (“If at any time the public safety should require the suspension of the [habeas] powers vested . . . in the courts of the United States, it is for the legislature to say so.”); Joseph Story, 3 *Commentaries on the Constitution* § 676, at 483 (1833) (“[A]s the power is given to Congress to suspend the writ of habeas corpus in cases of rebellion or invasion, . . . the right to judge, whether exigency had arisen, must exclusively belong to that body.”). The situations of wartime contemplated by the Suspension Clause are exactly the situations in which the inherent power claimed by the executive to detain citizens as “enemy combatants” without statutory authorization under the Commander-in-Chief Clause would be most relevant; and yet the Constitution allows such executive detention only when Congress has suspended habeas corpus. *See, e.g.,* Amanda L. Tyler, *The Forgotten Core Meaning of the Suspension Clause*, 125 Harv. L. Rev. 901, 991–92 (2012) (noting that “[e]ven Lincoln did not

believe the President had inherent authority to detain” citizens captured fighting on a battlefield against U.S. forces).

The government cannot sustain its radical contention that the president, acting in contravention of congressional legislation, and absent a compelling military exigency warranting suspension of the writ, can condemn an American citizen to indefinite military detention without charge. The government cites *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), for support, Return ¶ 47, but *Garamendi* is not remotely relevant. In that case, the Supreme Court addressed the president’s authority to enter into executive agreements to settle monetary claims of U.S. nationals against foreign governments, *id.* at 414–15; nowhere in that decision or anywhere else has the Court suggested that the president has inherent authority to imprison an American citizen. The government also cites instances in which the president authorized the use of military force without prior specific authorization legislation. Return ¶¶ 48–51. But these presidential actions are irrelevant here. Whatever the scope of the president’s Article II authority to use military force in Syria or elsewhere, that authority does not give the president *carte blanche* to imprison American citizens indefinitely in defiance of the Constitution’s explicit protection of habeas corpus and the essential requirement that detention be pursuant to the law of the land.²²

²² The government seeks to resuscitate its argument that this Court should not exercise its habeas jurisdiction because “Petitioner’s request for release is premature.” Return ¶ 9. This argument was meritless when the Court effectively rejected it after Petitioner had been detained for three months. Mem. Op. 11–12, ECF No. 29 (denying motion to dismiss habeas petition and rejecting government’s misplaced reliance on *Boumediene v. Bush*, 553 U.S. 723, 795 (2008), to deny immediate counsel access). It is even more meritless today, after Petitioner has been detained for nearly five months and where he challenges the government’s legal authority to imprison him. See 28 U.S.C. § 2241(c)(1), (3) (habeas extends to individuals detained without legal “authority” and/or “in violation of the Constitution or laws . . . of the United States”).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Habeas Corpus should be granted, and the Court should order the Petitioner's release from unlawful U.S. custody.

Dated: February 9, 2018

Respectfully submitted,

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Appendix

**2001 Authorization for Use of Military Force
Pub. L. 107-40, 115 Stat. 224 (2001)
("2001 AUMF")**

115 STAT. 224

PUBLIC LAW 107–40—SEPT. 18, 2001

Public Law 107–40
107th Congress

Joint Resolution

Sept. 18, 2001
[S.J. Res. 23]

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Authorization for
Use of Military
Force.
50 USC 1541
note.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Authorization for Use of Military Force”.

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

President.

(a) **IN GENERAL.**—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) **WAR POWERS RESOLUTION REQUIREMENTS.**—

(1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

PUBLIC LAW 107-40—SEPT. 18, 2001

115 STAT. 225

(2) APPLICABILITY OF OTHER REQUIREMENTS.—Nothing in this resolution supercedes any requirement of the War Powers Resolution.

Approved September 18, 2001.

LEGISLATIVE HISTORY—S.J. Res. 23 (H.J. Res. 64):

CONGRESSIONAL RECORD, Vol. 147 (2001):

Sept. 14, considered and passed Senate and House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 37 (2001):

Sept. 18, Presidential statement.

○

Authorization for Use of Military Force Against Iraq Resolution of 2002
Pub. L. No. 107-243, 116 Stat. 1498 (2002)
(“2002 AUMF”)

116 STAT. 1498

PUBLIC LAW 107–243—OCT. 16, 2002

Public Law 107–243
107th Congress

Joint Resolution

Oct. 16, 2002
[H.J. Res. 114]

To authorize the use of United States Armed Forces against Iraq.

Whereas in 1990 in response to Iraq’s war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;

Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;

Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;

Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq’s weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;

Whereas in Public Law 105–235 (August 14, 1998), Congress concluded that Iraq’s continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in “material and unacceptable breach of its international obligations” and urged the President “to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations”;

Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;

Whereas Iraq persists in violating resolution of the United Nations Security Council by continuing to engage in brutal repression of its civilian population thereby threatening international peace

PUBLIC LAW 107-243—OCT. 16, 2002

116 STAT. 1499

and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;

Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;

Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;

Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;

Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of United States citizens;

Whereas the attacks on the United States of September 11, 2001, underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;

Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

Whereas United Nations Security Council Resolution 678 (1990) authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 (1990) and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687 (1991), repression of its civilian population in violation of United Nations Security Council Resolution 688 (1991), and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949 (1994);

Whereas in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1), Congress has authorized the President "to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolution 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677";

Whereas in December 1991, Congress expressed its sense that it "supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against

116 STAT. 1500

PUBLIC LAW 107–243—OCT. 16, 2002

Iraq Resolution (Public Law 102–1),” that Iraq’s repression of its civilian population violates United Nations Security Council Resolution 688 and “constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region,” and that Congress, “supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688”;

Whereas the Iraq Liberation Act of 1998 (Public Law 105–338) expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;

Whereas on September 12, 2002, President Bush committed the United States to “work with the United Nations Security Council to meet our common challenge” posed by Iraq and to “work for the necessary resolutions,” while also making clear that “the Security Council resolutions will be enforced, and the just demands of peace and security will be met, or action will be unavoidable”;

Whereas the United States is determined to prosecute the war on terrorism and Iraq’s ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;

Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States, as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107–40); and

Whereas it is in the national security interests of the United States to restore international peace and security to the Persian Gulf region: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Authorization for
Use of Military
Force Against
Iraq Resolution
of 2002.
50 USC 1541
note.

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the “Authorization for Use of Military Force Against Iraq Resolution of 2002”.

PUBLIC LAW 107-243—OCT. 16, 2002

116 STAT. 1501

SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS.

The Congress of the United States supports the efforts by the President to—

- (1) strictly enforce through the United Nations Security Council all relevant Security Council resolutions regarding Iraq and encourages him in those efforts; and
- (2) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions regarding Iraq.

SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) **AUTHORIZATION.**—The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to—

- (1) defend the national security of the United States against the continuing threat posed by Iraq; and
- (2) enforce all relevant United Nations Security Council resolutions regarding Iraq.

(b) **PRESIDENTIAL DETERMINATION.**—In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that—

- (1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq; and

- (2) acting pursuant to this joint resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorist and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001.

(c) **WAR POWERS RESOLUTION REQUIREMENTS.**—

- (1) **SPECIFIC STATUTORY AUTHORIZATION.**—Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

- (2) **APPLICABILITY OF OTHER REQUIREMENTS.**—Nothing in this joint resolution supersedes any requirement of the War Powers Resolution.

SEC. 4. REPORTS TO CONGRESS.

(a) **REPORTS.**—The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 3 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of the Iraq Liberation Act of 1998 (Public Law 105-338).

President.

116 STAT. 1502

PUBLIC LAW 107-243—OCT. 16, 2002

(b) SINGLE CONSOLIDATED REPORT.—To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of the War Powers Resolution (Public Law 93-148), all such reports may be submitted as a single consolidated report to the Congress.

(c) RULE OF CONSTRUCTION.—To the extent that the information required by section 3 of the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1) is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of such resolution.

Approved October 16, 2002.

LEGISLATIVE HISTORY—H.J. Res. 114 (S.J. Res. 45) (S.J. Res. 46):

HOUSE REPORTS: No. 107-721 (Comm. on International Relations).
CONGRESSIONAL RECORD, Vol. 148 (2002):

Oct. 8, 9, considered in House.

Oct. 10, considered and passed House and Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 38 (2002):

Oct. 16, Presidential remarks and statement.



National Defense Authorization Act for Fiscal Year 2012, § 1021
Pub. L. No. 112-81, 125 Stat. 1298, 1562 (2012)
(“2012 NDAA”)

125 STAT. 1562

PUBLIC LAW 112–81—DEC. 31, 2011

required by subsection (a), the Comptroller General of the United States shall submit to Congress an assessment by the Comptroller General of the report, including a determination whether or not the report complies with applicable best practices.

Subtitle D—Counterterrorism

10 USC 801 note. **SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED FORCES OF THE UNITED STATES TO DETAIN COVERED PERSONS PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.**

(a) **IN GENERAL.**—Congress affirms that the authority of the President to use all necessary and appropriate force pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war.

(b) **COVERED PERSONS.**—A covered person under this section is any person as follows:

(1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.

(2) A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.

(c) **DISPOSITION UNDER LAW OF WAR.**—The disposition of a person under the law of war as described in subsection (a) may include the following:

(1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.

(2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111–84)).

(3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

(4) Transfer to the custody or control of the person’s country of origin, any other foreign country, or any other foreign entity.

(d) **CONSTRUCTION.**—Nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.

(e) **AUTHORITIES.**—Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.

(f) **REQUIREMENT FOR BRIEFINGS OF CONGRESS.**—The Secretary of Defense shall regularly brief Congress regarding the application of the authority described in this section, including the organizations, entities, and individuals considered to be “covered persons” for purposes of subsection (b)(2).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:17-cv-2069 (TSC)
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

RESPONDENT’S NOTICE OF FILING PUBLIC VERSION OF EX PARTE FILING

NOTICE is hereby given that attached is a redacted version, suitable for public filing, of Respondent’s January 19, 2018, ex parte filing in this matter. (See ECF No. 44.)

February 14, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
JESSIE K. LIU
United States Attorney
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Assistant Director, Federal Programs Branch

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
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v.)	Civil Action No. 1:17-cv-2069 (TSC)
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in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

ECF 44

REDACTED VERSION FOR PUBLIC FILING

SECRET//NOFORN

Declaration of [REDACTED]

I, [REDACTED] pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. I have been [REDACTED] at the U.S. Department of State since [REDACTED]. In my capacity as Deputy Assistant Secretary, I am responsible for coordinating U.S. foreign policy for the [REDACTED].

[REDACTED]

2. The Department of State is currently engaged in diplomatic discussions with the [REDACTED] [REDACTED] regarding the situation of [REDACTED] a dual United States and Saudi Arabian citizen, who is currently in Department of Defense custody. In particular, [REDACTED].

[REDACTED]

Consistent with Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, regardless of whether a person is physically present in the United States, it is U.S. government policy not to effect the involuntary transfer of a person to a country where the U.S. has

SECRET//NOFORN

determined that it is more likely than not that the person would be tortured. Any transfer of [REDACTED] would be undertaken consistent with this policy.

3. [REDACTED]
[REDACTED] As of writing, we understand the case is still pending with [REDACTED] for decision. Pending a final decision, [REDACTED]
[REDACTED]. The Department of State is currently working with the Department of Defense to facilitate such communications.
4. A preliminary injunction prohibiting [REDACTED] transfer would hinder the Department's ability to engage constructively with [REDACTED] on this matter. Our discussions with [REDACTED] would necessarily be contingent upon the outcome of uncertain future litigation to vacate the transfer injunction and would have to occur without clarity about whether or not it will be possible to implement the transfer arrangements once they are concluded. Furthermore, [REDACTED] [REDACTED] is awaiting a final United States decision on the possibility of transfer. Based on our prior experience with [REDACTED] regarding previous detainee transfers, we assess that once arrangements have been concluded, [REDACTED] is likely to have a strong expectation of prompt implementation. Any delay on the part of the United States is likely to raise concerns regarding our credibility, and harms the diplomatic process. The Department of State must have the ability to make reliable representations and commitments when engaging directly with [REDACTED] on a matter of such sensitivity. A preliminary injunction on [REDACTED] transfer could also damage ongoing bilateral cooperation with [REDACTED] including on future detainee transfers. [REDACTED] has maintained an interest [REDACTED] in this and other cases, which has been a significant benefit to the United States in combatting terrorism.

SECRET//NOFORN

5. Because this declaration discloses aspects of sensitive diplomatic communications with [REDACTED] as well as internal U.S. Government deliberations, it is being submitted ex parte. Disclosure of such matters outside the U.S. Government would be inappropriate and could undermine the U.S. Government's diplomatic engagement with [REDACTED] and the U.S. Government's ability to reach acceptable detainee transfer arrangements with this and other countries. I know from experience that the type of dialogue required in this context can only occur in a confidential setting, that is, within government to government channels. Even in circumstances in which the content of diplomatic discussions is made public by non-governmental actors, it is important that the United States honor its commitment to keep these discussions confidential in order to avoid the harms discussed above.

I declare under the penalty of perjury that the foregoing is true and correct

Executed on January 19, 2018

[REDACTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:17-cv-2069 (TSC)
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

RESPONDENT’S NOTICE OF FILING PUBLIC VERSION OF FACTUAL RETURN

NOTICE is hereby given that attached are redacted versions, suitable for public filing, of Respondent’s Factual Return and Supplemental Exhibit, previously filed under seal as ECF Nos. 46 and 49. This filing incorporates redactions requested by Petitioner for the purpose of preventing disclosure of Petitioner’s identity, as well as limited redactions by Respondent protecting the identity of declarants in the Return and Supplemental Exhibit.

February 14, 2018

Respectfully submitted,

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Acting Assistant Attorney General
JESSIE K. LIU
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Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

ECF 46

REDACTED VERSION FOR PUBLIC FILING

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

RESPONDENT'S FACTUAL RETURN

TABLE OF CONTENTS

INTRODUCTION 1

LEGAL JUSTIFICATION FOR DETENTION..... 4

 I. ISIL Originated from the Al-Qaida Terrorist Organization..... 5

 II. The 2001 AUMF Authorizes Military Detention of Individuals Who Are Part of or Substantially Support ISIL..... 12

 III. The 2002 Iraq AUMF Authorizes Military Detention of Individuals Who Are Part of or Substantially Support ISIL..... 20

 IV. Congress Has Ratified Applying the AUMFs to ISIL 22

 V. The President Has Authority Under Article II to Militarily Detain Individuals Who Are Part of or Substantially Support ISIL..... 25

FACTUAL JUSTIFICATION FOR DETENTION..... 28

 I. Evidentiary Considerations..... 28

 II. Al-Baghdadi Declared the Islamic State a Caliphate on July 5, 2014 30

 III. An Internal ISIL Document Shows Petitioner Registered as an ISIL Fighter on July █, 2014 31

 IV. Petitioner Was Identified as an ISIL Member When Captured Near ISIL-Held Territory in September 2017 32

 V. Petitioner Has Described His Activities as a Member of ISIL 33

 A. Summary of Petitioner’s Account..... 33

 B. Petitioner’s Background..... 34

 C. Petitioner’s Account of His Travel From June 2014 to January 2015 34

 D. Petitioner’s Account of His Time With ISIL 35

 VI. Other Evidence Further Corroborates the Conclusion that Petitioner Joined and Worked for ISIL..... 40

 A. Evidence Found at Petitioner’s Capture Suggests He Worked for ISIL 40

 B. Petitioner Sought Weapons During His Time With ISIL 41

 C. Petitioner Was in or Close to ISIL-Held Territory on July █, 2014 and for a Period in 2014 That Was Significantly Longer Than He Claimed 42

D. Petitioner Sought to Engage With and Advise ISIL on Social Media in the Months Before July 5, 2014..... 44

E. Petitioner’s Online Search History in the Months Before July █, 2014 Show His Support for ISIL and Suggest He Planned to Join 47

F. Petitioner Was Described by a Friend as a Likely ISIL Recruit..... 50

G. Petitioner’s Second Trip to Syria in March 2015 Followed Months of Online Preoccupation With ISIL Activity 51

CONCLUSION..... 53

INTRODUCTION

1. Pursuant to the Court's Order of January 12, 2018 [ECF 41], Respondent respectfully submits this Factual Return.

2. On or about September 11, 2017, [REDACTED] ("Petitioner"), a dual citizen of the United States and Saudi Arabia, was captured by Syrian Democratic Forces at a checkpoint on an active battlefield adjacent to territory controlled by the Islamic State of Iraq and the Levant ("ISIL"). Because Petitioner holds U.S. citizenship, the Syrian Democratic Forces transferred custody of Petitioner to U.S. forces stationed in Iraq. The Government had not set out to capture Petitioner that day; thus, over the past four months that Petitioner has been in U.S. military custody, the Government has worked diligently to investigate Petitioner, identify his reasons for traveling to ISIL-controlled territory in Syria, and determine an appropriate disposition of him, including whether the appropriate course of action is to prosecute Petitioner criminally (such as for material support of terrorism), to continue detaining Petitioner as an enemy combatant, or to relinquish custody of Petitioner to another sovereign with its own legitimate interest in him.

3. While the Government was still engaged in this decisional process, Petitioner's counsel filed a petition for habeas corpus with this Court and, having been granted access to Petitioner and secured his consent to their representation, now ask the Court to order Petitioner's immediate release. That request should be denied.

4. The following narrative and attached materials set forth the legal and factual bases for the Government's case and demonstrate by a preponderance of the evidence that Petitioner is lawfully detained. This narrative is not intended to be a complete explication of the information in

support of Petitioner’s detention contained in those materials. Further, Respondent reserves the right to seek to amend this Return to add additional information supporting the lawfulness of Petitioner’s detention as needed.

5. The Government’s legal authority to detain Petitioner is clear and rests on three independent bases: The 2001 Authorization for Use of Military Force,¹ the 2002 Authorization for Use of Military Force Against Iraq,² and the President’s authority under Article II.

6. The Government’s factual basis for detaining Petitioner is similarly clear. When assessing the bases for detention, the Supreme Court has explained that “[h]abeas corpus proceedings [with respect to enemy-combatant detainees] need not resemble a criminal trial,” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008), while the D.C. Circuit has affirmed that this Court can and should consider evidence that would not be admissible in a criminal prosecution, *see, e.g., Al-Bihani v. Obama*, 590 F.3d 866, 879 (D.C. Cir. 2010).

7. The evidence the Government has compiled shows that Petitioner joined ISIL on or about July ■, 2014, on an initial visit to Syria. Petitioner returned to Syria in March 2015 and, by his own admission, was an ISIL fighter recruit, attended an ISIL training camp, swore loyalty to the ISIL leader, and worked for and provided support to ISIL through his work in various capacities for two-and-a-half years, until air strikes and other military offensives against ISIL forced him to flee. When Petitioner was captured during his flight by Syrian Democratic Forces

¹ Pub. L. No. 107-40, 115 Stat. 224 (2001) (“2001 AUMF”).

² Pub. L. No. 107-243, 116 Stat. 1498 (“2002 Iraq AUMF”).

on ISIL-controlled territory, he was carrying a thumb drive that not only contained ISIL administrative spreadsheets consistent with some of the work that he described, but that was filled with files explaining how to make bombs, how to use different types of weapons, and how to interrogate captives, as well as other how-to manuals for an ISIL fighter. In addition, Petitioner was carrying over \$4000 in cash and a GPS device—both of which were recognized by the SDF as marks of an ISIL fighter, not a civilian. Moreover, Petitioner is listed, by name and other identifying details, as a “fighter” in an internal ISIL document that independently came into the Government’s possession. The Government therefore has met its burden to show that Petitioner is part of or substantially supported ISIL.

8. ISIL is a terrorist group engaged in armed conflict against the United States and military operations against U.S. forces overseas. It is one of the most dangerous terrorist organizations in the world, responsible for countless murders and violent attacks against innocent civilians. Petitioner traveled to Syria to support that group’s efforts and came into U.S. custody as a result of that voluntary choice. The Court should decline Petitioner’s request to be immediately released and should, instead, recognize that Petitioner’s current detention is lawful.

LEGAL JUSTIFICATION FOR DETENTION

9. As an initial matter, the authorities discussed below authorize the United States to hold individuals like Petitioner—captured on the battlefield in a zone of armed conflict—pending review, evaluation, and decision on the appropriate disposition; accordingly, Petitioner’s request for release is premature and should be denied on that basis alone. *See Boumediene*, 533 U.S. at 795 (“[A] habeas court should [not] intervene the moment an enemy combatant steps foot in a

territory where the writ runs.”). But should the Court nonetheless entertain Petitioner’s habeas corpus petition, the United States has lawful authority to hold Petitioner in military custody for the duration of relevant hostilities on three independent bases: the 2001 AUMF, the 2002 Iraq AUMF, and the President’s constitutional authority under Article II.

I. ISIL Originated from the Al-Qaida Terrorist Organization

10. ISIL began as a terrorist group founded and led by Abu Mu’sab al-Zarqawi. That group was originally called Jam’at al-Tawhid wa’al Jihad, and it conducted a series of terrorist attacks in Iraq in 2003, around the time of the U.S. arrival.³ Al-Zarqawi was an associate of Osama bin Laden, the leader of the al-Qaida terrorist group, dating back to al-Zarqawi’s time in Afghanistan and Pakistan before al-Qaida attacked the United States on September 11, 2001.⁴ In 2003 the United States Department of Treasury designated al-Zarqawi as a Specially Designated

³ See United States Department of State, *2005 Country Report on Terrorism*, ch.6 (April 27, 2005), available at <https://www.state.gov/j/ct/rls/crt/45394.htm>.

⁴ [intentionally left blank]

Global Terrorist under Executive Order 13224,⁵ based on his involvement with and actions in support of al-Qaida.⁶

11. On October 15, 2004, the U.S. Secretary of State designated Jam'at al-Tawhid wa'al Jihad as a Specially Designated Global Terrorist under Executive Order 13224 and as a Foreign Terrorist Organization under Section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189).⁷ Because the group and its leader were connected to al-Qaida, the United States

⁵ Following al-Qaida's September 2001 terrorist attacks on the United States, President Bush issued Executive Order No. 13224 (Sept. 23, 2001), pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.* ("IEEPA"), in which he declared a national emergency with respect to the "grave acts of terrorism . . . and the continuing and immediate threat of further attacks on United States nationals or the United States." This Executive Order blocked all property and interests in property of "Specially Designated Global Terrorists" ("SDGT's"), prohibited the provision of funds, goods or services for the benefit of SDGTs, and authorized the U.S. Treasury to block the assets of individuals and entities that provide support, services, or assistance to, or otherwise associate with, SDGTs, as well as their subsidiaries, front organizations, agents, and associates. Under the IEEPA, a violation of this Executive Order is a federal criminal offense. *See* 50 U.S.C. § 1705

⁶ United States Department of Treasury, *Treasury Designates Six Al-Qaida Terrorists* (September 24, 2003), *available at* <https://www.treasury.gov/press-center/press-releases/Pages/js757.aspx>.

⁷ *See* 69 Fed. Reg. 61292 (Oct. 15, 2004). The announcement of these designations explained:

The Jama'at al-Tawhid wa'al-Jihad is a radical Islamist terrorist organization led by Abu Mus'ab al-Zarqawi, who has been designated and listed for international sanctions by the UN 1267 Committee for his ties to al-Qaida. The group's main goal is to undermine the establishment of a free and pluralistic Iraqi state by fomenting civil war in Iraq. Via Internet jihadi websites containing video broadcasts, this organization has publicly admitted responsibility for the brutal abductions and videotaped executions this year of seven civilians: Americans Nicholas Berg, Eugene Armstrong, and Jack Hensley; Briton Kenneth Bigley; South Korean Kim Sun-Il; Bulgarian Georgi Lazov; and Turk Murat Yuce. The group's operatives have also been responsible for the assassinations of the former Iraqi Governing Council President, the governor of Mosul, and U.S. diplomat

asked the United Nations Sanctions Committee to include the group on its list of entities subject to international sanctions based on that association.⁸ On October 18, 2004, the al-Qaida and Taliban Sanctions Committee of the United Nations approved the addition of Jam'at al-Tawhid wa'al Jihad, a.k.a. al-Qaida in Iraq ("AQI"), to its al-Qaida list for "participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf or in support of"; "supplying, selling or transferring arms and related materiel to"; or "otherwise supporting acts or activities of" Usama bin Laden and Al-Qaida.⁹

12. Al-Zarqawi's group, AQI, targeted Coalition forces and civilians by planting vehicle improvised explosive devices (IEDs), engaging in suicide bombing, and executing

Laurence Foley in Amman, Jordan in 2002. The Zarqawi network specifically targets those Iraqis attempting to rebuild their country and provide for its security. Hundreds of innocent Iraqis have died and many hundreds more have been injured during the last year in the group's targeted bombings throughout Iraq - in Mosul, Baqouba, Falujah, Ramadi, Najaf, and Baghdad. The group was also responsible for the U.N. headquarters bombing in Baghdad which killed U.N. Special Representative of the Secretary General for Iraq, Sergio Vieira de Mello.

United States Department of State, *Foreign Terrorist Organization: Designation of Jama'at al-Tawhid wa'al-Jihad and Aliases* (October 15, 2004), available at <https://2001-2009.state.gov/r/pa/prs/ps/2004/37130.htm>.

⁸ *Id.*

⁹ See United Nations Security Council, *Security Council Committee Pursuant to Resolutions 1267 (1999) 1989 (2011) and 2253 (2015) Concerning ISIL (Da'esh) Al-Qaida and Associated Individuals Groups Undertakings and Entities* (Jan. 18, 2018), available at https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/al-qaida-in-iraq.

hostages—all as part of a campaign to expel Coalition forces and establish an Islamic state in Iraq.¹⁰

13. In October 2004, shortly after his group was designated as a Foreign Terrorist Organization, al-Zarqawi publicly pledged his group’s allegiance to bin Laden.¹¹ Bin Laden also publicly endorsed al-Zarqawi as al-Qaida’s leader in Iraq.¹²

14. Following al-Zarqawi’s pledge, his group issued statements on jihadi websites claiming responsibility for anti-U.S. attacks in Iraq, and continued to engage in terrorist activities.¹³ The United States amended the group’s Foreign Terrorist Organization designation on December 17, 2004, by adding the group’s new alias Tanzin Qaidat al-Jihad Fi Bilad al-Rafidayn—translated as al-Qaida of the Jihad Organization in the Land of Two Rivers [Iraq].¹⁴

¹⁰ See 2005 Country Report on Terrorism, ch. 6, *supra* note 3.

¹¹ See United States Department of State, *Addition of Al-Manar to the Terrorist Exclusion List* (December 28, 2004), available at <https://2001-2009.state.gov/r/pa/prs/ps/2004/40081.htm>.

¹² See “Purported bin Laden tape endorses al-Zarqawi,” *CNN* (Dec. 27, 2004), <http://edition.cnn.com/2004/WORLD/meast/12/27/binladen.tape/> (calling al-Zarqawi “the prince of al Qaeda in Iraq” and asking “all our organization brethren to listen to him and obey him in his good deeds”).

¹³ *Addition of Al-Manar to the Terrorist Exclusion List*, *supra* note 11.

¹⁴ See United States Department of State, *Country Reports on Terrorism: Chapter 6 Foreign Terrorist Organizations* (2015) (“Al-Qaida in Iraq (AQI) was designated as a Foreign Terrorist Organization on December 17, 2004.”), available at <https://www.state.gov/j/ct/rls/crt/2013/224829.htm>.

The United Nations Al-Qaida and Taliban Sanctions Committee also added this alias to their listing for the group.¹⁵

15. The United States killed al-Zarqawi in an airstrike in June 2006, and Abu Ayyub al-Masri was named his successor. Abu Ayyub al-Masri issued a statement pledging to continue what al-Zarqawi had started and, in October 2006, moved towards al-Qaida's goal of establishing a caliphate in the region by declaring the "Islamic State of Iraq" ("ISI") and claiming AQI's attacks under that new name.¹⁶ AQI further declared that ISIL would become a platform from which AQI would launch jihad throughout the world.¹⁷

16. After U.S. forces killed Osama bin-Laden in May of 2011, AQI reaffirmed its support for al-Qaida and its new leader, Ayman al-Zawahiri.¹⁸

17. Also in 2011, Abu Bakr al-Baghdadi, who, like his predecessors, had ties to senior al-Qaida leaders, assumed leadership of AQI.¹⁹ In 2013, al-Baghdadi expanded the group's

¹⁵ See United Nations, *Security Council Committee Adds Seven A.K.A.'s of One Entity in Al-Qaida Section of Its Consolidated List* (December 6, 2004), available at <https://www.un.org/press/en/2004/sc8260.doc.htm>.

¹⁶ See United States Department of State, *Country Reports on Terrorism: Chapter 6 Terrorist Organizations* (2008), available at <https://www.state.gov/j/ct/rls/crt/2008/122449.htm>

¹⁷ See United States Department of State, *Country Reports on Terrorism: Chapter 6 Foreign Terrorist Organizations* (2007) ("In October 2006, AQI declared the ISI would become a platform from which AQI would launch jihad throughout the world."), available at <https://www.state.gov/j/ct/rls/crt/2006/82738.htm>.

¹⁸ See Global Security, *Al-Qaeda in Iraq* (June 13, 2014) ("AQI reaffirmed its support for al-Qa'ida and Ayman al-Zawahiri following Usama Bin Ladin's death in May 2011."), available at <https://www.globalsecurity.org/military/world/para/aqi-2.htm>.

¹⁹ In October 2011, the Secretary of State added al-Baghdadi to the Specially Designated Global Terrorist list under Executive Order 13223. See <https://2009-2017.state.gov/r/pa/prs/ps/2011/10/174971.htm>. Al-Baghdadi was also added to the United

operations into Syria and changed its public name to the Islamic State in Iraq and al-Sham (“ISIS”).²⁰ The following year, the Department of State designated the group’s primary name as the Islamic State of Iraq and the Levant (“ISIL”).²¹ In short, as Brett McGurk, the then-Deputy Assistant Secretary for Iraq and Iran in Bureau of Near Eastern Affairs at the Department of State, has testified: “ISIL basically is al-Qaeda in Iraq.”²²

Nations Security Council’s al-Qaida sanctions list in October 2011. *See* United Nations Security Council, *Security Council al-Qaida Sanctions Committee Ibrahim Awwad Ibrahim Ali Al-Badri Al-Samarrai to Its Sanctions List* (Oct. 5, 2011), *available at* <https://www.un.org/press/en/2011/sc10405.doc.htm>.

²⁰ *See* United States Department of State, *Country Reports on Terrorism: Chapter 6 Foreign Terrorist Organizations* (2016), *available at* <https://www.state.gov/j/ct/rls/crt/2016/272238.htm>.

²¹ *See* United States Department of State, *Terrorist Designations of Groups Operating in Syria* (May 14, 2014), *available at* <https://2009-2017.state.gov/r/pa/prs/ps/2014/05/226067.htm>.

²² United States Cong. House. Committee on Foreign Affairs, *Hearing on Al-Qaeda’s Resurgence in Iraq: A Threat to U.S. Interests*, at p. 6 February 5, 2014. 113th Cong., 2nd Sess. Washington: GOP, 2014 (testimony of Brett McGurk, Deputy Assistant Secretary for Iraq and Iran, Bureau of Near Eastern Affairs, U.S. Department of State) (“McGurk Testimony”) (*available at* <https://www.gpo.gov/fdsys/pkg/CHRG-113hhr86588/pdf/CHRG-113hhr86588.pdf>); *see also generally id.* at pp. 6, 23, 59; Stephen W. Preston, Department of Defense General Counsel, “*The Legal Framework for the United States’ Use of Military Force Since 9/11*” ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW (2015) (“The name may have changed, but the group we call ISIL today has been an enemy of the United States within the scope of the 2001 AUMF continuously since at least 2004.”), *available at* <https://www.defense.gov/News/Speeches/Speech-View/Article/606662/the-legal-framework-for-the-united-states-use-of-military-force-since-911/> (“Preston Speech”); William S. Castle, Department of Defense, Performing the Duties of General Counsel, “*The Global War on Terrorism: Do We Need a New AUMF?*” NEW YORK CITY BAR ASSOCIATION EVENT (2017), at pp. 3-4, *available at* <https://www.scribd.com/document/366923593/Dod-Acting-General-Counsel-William-Castle-NYC-Bar-Remarks-Aumf-Dec-11> (“2017 Castle Speech”); White House Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations (Dec. 2016), at pp. 4-5, *available at* <https://fas.org/man/eprint/frameworks.pdf> (“2016 White House Report”).

18. Over the course of 2013 and 2014, a split reportedly emerged between ISIL and al-Qaida over theological and strategic disagreements.²³ ISIL now claims that it, not al-Qaida's current leadership, is the true inheritor of bin Laden's legacy, while some members and factions of al-Qaida-aligned groups have even publicly declared allegiance to ISIL. *See* 2016 White House Report at 6, *supra* note 22; Preston Speech, *supra* note 22.

19. In 2014, ISIL was responsible for the majority of the 12,000 Iraqi civilians killed that year. It was heavily involved in the fight in Syria in 2014 and engaged in widespread terrorism, including kidnapping civilians, aid workers, and reporters. ISIL remained active throughout 2015 and 2016 and has conducted several large-scale attacks in Iraq and Syria, as well as inspiring and aiding acts of terrorism throughout the world.²⁴ ISIL continues to identify the United States as its enemy and target U.S. citizens and interests worldwide; even as recently as September 2017—the month Petitioner was captured by the SDF—ISIL's leader, Abu Bakr al-Baghdadi, called for attacks against the United States.²⁵

²³ As Deputy Assistant Secretary McGurk has testified:

We believe [the rift] happened because of ISIL's unwillingness to follow Ayman al-Zawahiri's orders that it allow for al-Nusra Front's continued independence within Syria and only fight in Iraq. Zawahiri has publicly distanced the AQ leadership from ISIL's unpopular actions against Syria's Sunni population, and it now appears that ISIL is conducting operations in Syria and Iraq entirely independent of any counsel or assistance from AQ core leadership.

McGurk Testimony at 59.

²⁴ *See generally* United States Department of State, *Country Reports on Terrorism: Chapter 6 Foreign Terrorist Organizations* (2016), available at <https://www.state.gov/j/ct/rls/crt/2016/272238.htm>.

²⁵ [intentionally left blank].

20. As this history demonstrates, ISIL was founded and led by associates of Osama bin Laden, was al-Qaida’s official affiliate in Iraq, was publicly allied with al-Qaida until recently, and now claims to be the true successor of the man who directed the 9/11 attacks. For over a decade, ISIL has carried out attacks against U.S. persons and interests in Iraq and the region—including the brutal murder of kidnapped American citizens in Syria and attacks against U.S. military personnel that are present in Iraq at the invitation of the Iraqi Government—and has inspired and claimed credit for terror attacks in the United States and around the world.

II. The 2001 AUMF Authorizes Military Detention of Individuals Who Are Part of or Substantially Support ISIL

21. The United States has the authority to detain persons who were “part of,” or provided “substantial support” to al-Qaida and “associated forces” at the time of their capture, even with respect to U.S. citizens. This authority is derived from the 2001 AUMF, which provides Congressional authorization for the President to use all necessary and appropriate force to prosecute the war, in light of law-of-war principles that inform the understanding of what is “necessary and appropriate.” Those longstanding law-of-war principles recognize that the “capture and detention” of enemy forces “are ‘important incident[s] of war.’” *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality) (quoting *Ex Parte Quirin*, 317 U.S. 1, 28 (1942)); *see also Hamdi*, 542 U.S. at 579, 589 (Thomas, J., dissenting) (“I agree with the plurality that the Federal Government has power to detain those that the Executive Branch determines to be enemy combatants.”).

22. The 2001 AUMF authorizes the use of “all necessary and appropriate force against those nations, organizations, or persons [who the President] determines planned, authorized,

committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.” 2001 AUMF, § 2(a), 115 Stat. at 224. There is longstanding consensus that this provision authorizes the use of military force not only against al-Qaida, which planned and carried out the September 11 attacks; and the Taliban, which harbored al-Qaida in Afghanistan; but also against “associated forces” of al-Qaida or the Taliban. *See, e.g., Hedges v. Obama*, 724 F.3d 170, 178 (2d Cir. 2013); *Parhat v. Gates*, 532 F.3d 834, 838 (D.C. Cir. 2008); Respondent’s Memorandum Regarding the Government’s Detention Authority Relative to Detainees Held at Guantanamo Bay, *In Re: Guantanamo Bay Detainee Litigation* at 7 (D.D.C. Misc. No. 08-442 (TFH)) (ECF No. 1690, filed Mar. 13, 2009).

23. Courts have approved and accepted this interpretation of the 2001 AUMF in detainee litigation. *See, e.g., Khan v. Obama*, 655 F.3d 20, 32-33 (D.C. Cir. 2011); *Barhoumi v. Obama*, 609 F.3d 416, 432 (D.C. Cir. 2010); *Al-Bihani v. Obama*, 590 F.3d 866, 872 (D.C. Cir. 2010).

24. And Congress ratified this construction of the 2001 AUMF in the detention context in the National Defense Authorization Act for Fiscal Year 2012 (“FY 2012 NDAA”), Pub. L. No. 112-81, § 1021(b)(2), 125 Stat. 1298, 1562 (2011). That Act includes a provision that makes clear it neither increases nor decreases the authority, recognized in *Hamdi*, to detain U.S. citizens as enemy combatants. *See id.* § 1021(e) (“Nothing in this section shall be construed to affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States.”).

25. This interpretation of the 2001 AUMF flows from the fact that the statute is construed in light of the principles underlying the law of war. *See Hamdi*, 542 U.S. at 518 ; *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 593-94 (2006); FY 2012 NDAA, § 1021(a), 125 Stat. at 1562; *cf.* Geneva Convention (III) Relative to the Treatment of Prisoners of War of Aug. 12, 1949, art. 4, 6 U.S.T.S. 3316 (contemplating detention of, *inter alia*, members of state armed forces, militias, and certain support personnel). Law-of-war principles inform which “organizations” and “persons” the AUMF covers as well as what force is “necessary and appropriate” to combat those organizations and persons. 2001 AUMF, 115 Stat. at 224. Under traditional law-of-war principles, a nation engaged in an international armed conflict may lawfully use military force against both its principal enemy and any other State that becomes a co-belligerent of that enemy by, for example, joining in the conflict. *See “Protected Person” Status in Occupied Iraq Under the Fourth Geneva Convention*, 28 Op. O.L.C. 35, 43-44 (Mar. 18, 2004). Although principles of neutrality and co-belligerency do not apply directly to the armed conflict between the United States, al-Qaida, the Taliban, and associated forces, they provide useful guidance in that conflict, and they suggest that it would be “necessary and appropriate” under the 2001 AUMF for the President to use force against “organizations” that would qualify as co-belligerents of al-Qaida or the Taliban as analogized to an international armed conflict between States. *See, e.g.*, Curtis A. Bradley and Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2112 (2005); 2 Halleck’s International Law ch. 19 § 5, at 3 (4th ed. 1908); *id.* ch. 28 § 2, at 307; Michael Bothe, *The Law of Neutrality*, Handbook of Humanitarian Law in Armed Conflict § 1107, at 485-94, 580-81 (Dieter Fleck, ed., 1995).

26. To be considered an associated force of al-Qaida or the Taliban for purposes of the 2001 AUMF, an entity must satisfy two conditions. First, the entity must be an organized, armed group that has entered the fight alongside al-Qaida or the Taliban. Second, the group must be a co-belligerent with al-Qaida or the Taliban in hostilities against the United States or its coalition partners. *See* 2017 Castle Speech at p. 3, *supra* n. 22; 2016 White House Report at pp. 4-5, *supra* n. 22. As the General Counsel of the Department of Defense in the prior Administration explained, “The determination that a particular group is an associated force is made at the most senior levels of the U.S. Government, following reviews by senior government lawyers and informed by departments and agencies with relevant expertise and institutional roles, including all-source intelligence from the U.S. intelligence community.” Preston Speech, *supra* n. 22.

27. The 2001 AUMF authorizes the use of force against ISIL because, as detailed above, at the time military action against the group now known as ISIL commence in 2003, that group was either part of, or an associated force of, al-Qaida.

28. To be sure, as noted above, there was a reported rift between ISIL and current al-Qaida leadership in that began over the course of 2013 and 2014, but that rift did not remove ISIL from coverage under the 2001 AUMF. ISIL continues to wage hostilities against the United States as it has since 2003, when it aligned with bin Laden’s al-Qaida organization in its conflict against the United States. As when it was known as AQI, ISIL had a direct relationship with bin Laden himself and waged that conflict in allegiance to him while he was alive. ISIL now claims that it—not al-Qaida’s current leadership—is the true executor of bin Laden’s legacy. Although there are reported rifts between ISIL and parts of the network bin Laden assembled, some members

and factions of al-Qaida-aligned groups have publicly declared allegiance to ISIL. At the same time, ISIL continues to denounce the United States as its enemy and to target U.S. citizens and interests.²⁶ In these circumstances, the President is not divested of the previously available authority under the 2001 AUMF to continue using force against ISIL simply because of conflicts between the group and al-Qaida's current leadership. A contrary interpretation of the statute would allow an enemy force to manipulate the scope of the 2001 AUMF by splintering into rival factions while continuing to prosecute the same conflict against the United States. *See generally* 2016 White House Report at 6, *supra* note 22; 2017 Castle Speech at pp. 3-4, *supra* note 22; Preston Speech, *supra* note 22; McGurk Testimony at pp. 6, 23, 59, *supra* note 22.

29. The 2001 AUMF's authorization to wage war against ISIL includes the power to detain individuals under the laws of war for the duration of relevant hostilities, *Hamdi*, 542 U.S. at 521, once it is shown that those individuals are part of ISIL or substantially supported its forces. *See, e.g., Ali v. Obama*, 736 F.3d 542, 544 & n.1 (D.C. Cir. 2013) ("This Court has stated that the AUMF authorizes the President to detain enemy combatants, which includes (among others) individuals who are part of al Qaeda, the Taliban, or associated forces As this Court has explained in prior cases, the President may also detain individuals who substantially support al Qaeda, the Taliban, or associated forces in the war."); *Hussain*, 718 F.3d at 967 ("[The AUMF] justifies holding a detainee at Guantanamo if the government shows, by a preponderance of the evidence, that the detainee was part of al Qaeda, the Taliban, or associated forces at the time of his

²⁶ [intentionally left blank]

capture.” (internal citations omitted)); *Khan v. Obama*, 655 F.3d 20, 23 (D.C. Cir. 2011) (“We have held that the AUMF grants the President authority (inter alia) to detain individuals who are ‘part of forces associated with Al Qaeda or the Taliban.’”) (citation omitted); *Al-Adahi v. Obama*, 613 F.3d 1102, 1103 (D.C. Cir. 2010) (“The government may therefore hold at Guantanamo and elsewhere those individuals who are ‘part of’ al-Qaida, the Taliban, or associated forces.”).

30. The D.C. Circuit has adopted a functional approach to determining whether an individual is “part of” an enemy force under the AUMFs:

[D]etermining whether an individual is part of al Qaeda, the Taliban, or an associated force almost always requires drawing inferences from circumstantial evidence, such as that individual’s personal associations. Unlike enemy soldiers in traditional wars, terrorists do not wear uniforms. Nor do terrorist organizations issue membership cards, publish their rosters on the Internet, or otherwise publicly identify the individuals within their ranks. So we must look to other indicia to determine membership in an enemy force.

Ali, 736 F.3d at 546. In assessing detention, enemy forces can be detained even if “they have not actually committed or attempted to commit any act of depredation or entered the theatre or zone of active military operations,” see *Ex Parte Quirin*, 317 U.S. at 38; direct participation in hostilities is not required, see *Hussain v. Obama*, 718 F.3d 964, 967 (D.C. Cir. 2013). Further, it “is impossible to provide an exhaustive list of criteria for determining whether an individual is ‘part of’ al-Qaida. That determination must be made on a case-by-case basis” and must “focus[] upon the actions of the individual in relation to the organization.”²⁷ *Bensayah v. Obama*, 610 F.3d 718,

²⁷ This functional test focuses on an individual’s actions, rather than his motivations or ideology. The Court of Appeals has held that “there is no requirement” that an individual “embrace every tenet of al-Qaida before United States forces may detain him,” see *al-Adahi*, 613

725 (D.C. Cir. 2010), *judgment vacated as moot by Bensayah v. Obama*, No. 08-5537, Order (D.C. Cir. Jan. 9, 2014); *see Salahi v. Obama*, 625 F.3d 745, 751-52 (D.C. Cir. 2010).

31. Relevant indicia and circumstances may include whether (1) the individual intended to fight against the United States or its coalition partners, *see, e.g., Awad v. Obama*, 608 F.3d 1, 9 (D.C. Cir. 2010) (“The government acknowledges that intention to fight is inadequate by itself to make someone ‘part of’ al Qaeda, but it is nonetheless compelling evidence when, as here, it accompanies additional evidence of conduct consistent with an effectuation of that intent.”); (2) the individual closely associated with members of enemy forces, *see, e.g., id.* at 11; *Uthman v. Obama*, 637 F.3d 400, 404-05 (D.C. Cir. 2011); *Al Alwi v. Obama*, 653 F.3d 11, 17 (D.C. Cir. 2011); *Hussain v. Obama*, 718 F.3d at 968-69; *Ali*, 736 F.3d at 546; *al Odah v. United States*, 611 F.3d 8, 15-17 (D.C. Cir. 2010); *al-Bihani*, 590 F.3d at 873; (3) other members of the enemy forces or documents created by the enemy forces have identified the individual as a member, *see, e.g., Awad*, 608 F.3d at 7-8; *Barhoumi*, 609 F.3d at 425-26, 428-29; (4) the individual trained in a camp associated with an enemy force, *see, e.g., Barhoumi*, 609 F.3d at 425; *al-Adahi*, 613 F.3d at 1109; *Al Alwi*, 653 F.3d at 17-18; (5) the individual stayed at a guesthouse associated with an enemy force, *see, e.g., Ali*, 736 F.3d at 546; *Barhoumi*, 609 F.3d at 427; *al-Adahi*, 613 F.3d at 1109; *Uthman*, 637 F.3d at 406; *Al Alwi*, 653 F.3d at 17-18; *al Odah*, 611 F.3d at 16; (6) the individual followed practices associated with enemy forces, such as the practice of turning over passports and

F.3d at 1109, and has rejected analysis that focuses on an individual’s motivations for taking actions on behalf of al-Qaida, *see id.*

money, *see, e.g., Al Alwi*, 653 F.3d at 20; *Uthman*, 637 F.3d at 405-06; (7) the individual swore an oath of allegiance to an enemy force, *see, e.g., Salahi*, 625 F.3d at 751; (8) the individual hosted leaders of the enemy force, *see, e.g., id.* at 751-52; (9) the individual recruited or referred aspiring members to the enemy force, *see, e.g., id.*; (10) the individual traveled along routes conventionally used by the enemy force, *see, e.g., Uthman*, 637 F.3d at 406; *al Odah*, 611 F.3d at 15-16; (11) the individual lied to interrogators or provided implausible explanations for his or her behavior, *see, e.g., Uthman*, 637 F.3d at 406; *Ali*, 736 F.3d at 546; and (12) the individual possessed a weapon, *see, e.g., Hussain*, 718 F.3d at 969; *al Odah*, 611 F.3d at 15-16. In addition, “[e]vidence that an individual operated within al-Qaida’s command structure is ‘sufficient but is not necessary to show he is ‘part of’ the organization’” for purposes of detention. *Salahi*, 625 F.3d at 752.

32. Under the 2001 AUMF, as informed by the law of armed conflict, detention is generally authorized until the end of hostilities. *See Hamdi*, 542 U.S. at 521; *Ali*, 736 F.3d at 544 (“Detention under the AUMF may last for the duration of hostilities.”). During ongoing hostilities, the U.S. Government’s legal authority to detain “is not dependent on whether an individual would pose a threat to the United States or its allies if released but rather upon the continuation of hostilities.” *Awad*, 608 F.3d at 11.

33. As a matter of policy, a detainee may be released or transferred while hostilities are ongoing if a competent authority determines that the threat the individual poses to the security of the United States can be mitigated by other lawful means. This discretionary designation of a detainee for possible transfer from a detention facility does not affect the legality of his continued

detention under the 2001 AUMF pending transfer. *See id.*; *Almerfed v. Obama*, 654 F.3d 1, 4 n.3 (D.C. Cir. 2011).

III. The 2002 Iraq AUMF Authorizes Military Detention of Individuals Who Are Part of or Substantially Support ISIL

34. The 2002 Iraq AUMF authorizing the use of military force against Iraq likewise provides legal authority for military operations against ISIL in Iraq and, in some circumstances, against ISIL in Syria.

35. The Iraq AUMF states that the “President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to . . . defend the national security of the United States against the continuing threat posed by Iraq.” 2002 Iraq AUMF, § 3(a)(1), 116 Stat. at 1500. Although the focus of the Iraq AUMF was the threat posed by Saddam Hussein’s regime, the preamble makes clear that the Iraq AUMF was more broadly concerned with, among other things, “restor[ing] international peace and security to the Persian Gulf region.” 116 Stat. at 1500. The preamble further establishes that Congress understood the “threat to the national security of the United States” posed by Iraq also to include the threat to the lives and safety of United States citizens and to international peace and security in the region posed by “terrorist organizations” operating in Iraqi territory. 116 Stat. at 1498.

36. The 2002 Iraq AUMF thus authorizes the use of force both to help establish a stable, democratic Iraq to succeed Saddam Hussein’s regime by addressing threats *to* Iraq, as well as using force to address terrorist threats emanating *from* Iraq. Accordingly, after Saddam Hussein’s regime fell in 2003, “the United States, with its coalition partners, continued to take military action in Iraq under the 2002 AUMF to further these purposes, including action against AQI, which then, as

now, posed a terrorist threat to the United States and its partners and undermined stability and democracy in Iraq.” Preston Speech, *supra* note 22. Thus, “the 2002 AUMF authorizes military operations against ISIL in Iraq and, to the extent necessary to achieve these purposes, in Syria,” *id.*, including detaining anyone who is part of or substantially supports ISIL. *See also* 2016 White House Report at 6 n.25, *supra* note 22; 2017 Castle Speech at pp. 4-5, *supra* note 22; McGurk Testimony at pp. 6, 23, 59, *supra* note 22.

37. The Executive Branch has repeatedly confirmed for Congress that the 2002 AUMF authorized the continued use of military force in Iraq from 2008 through the initial U.S. withdrawal in 2011. *See, e.g., Iraq After the Surge*, Hearing before the Sen. Comm. on Foreign Relations, S. Hrg. 110-757, at 396 (Apr. 2, 3, 8 and 10, 2008) (testimony of Amb. Satterfield); *id.* at 444 (Joint Responses of Ambassador David Satterfield and Assistant Secretary Mary Beth Long to Questions Submitted for the Record by Senator Joseph R. Biden, Jr.).

38. Because ISIL’s operations in Iraq pose both a threat to a stable, democratic Iraq and a terrorist threat to the United States and the region, the Iraq AUMF authorizes the use of the Armed Forces of the United States to counter those threats. Furthermore, although the Iraq AUMF limits the use of force to threats to or stemming from Iraq, it, like the 2001 AUMF, contains no geographic limitation on where authorized force may be employed. That AUMF thus also provides authority for U.S. military operations against ISIL in Syria, to the extent such operations are necessary to counter the threat that ISIL poses to a stable, democratic Iraq or the threat that ISIL’s terrorist activities in Iraq pose to the United States and the region.

39. For the same reasons as with respect to the 2001 AUMF, the 2002 Iraq AUMF's statutory authorization to use military force against ISIL includes the power to militarily detain enemy combatants who are part of or substantially support ISIL as part of the exercise of "necessary and appropriate" force. The power to detain enemy combatants under the 2002 Iraq AUMF and the validity of such detentions depend on the same factors as under the 2001 AUMF.

IV. Congress Has Ratified Applying the AUMFs to ISIL

40. Congress has repeatedly ratified the Executive Branch's invocation of the AUMFs to authorize military operations against ISIL in Iraq and Syria.

41. Congress has repeatedly and specifically funded military actions against ISIL through an unbroken stream of appropriations over multiple years. Shortly after announcing the military operation against ISIL in 2014, President Obama asked for and obtained from Congress \$5.6 billion for the express purpose of carrying out specific military activities against ISIL in Iraq and Syria. *See* Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2285-95 (2014) ("2015 Consolidated Appropriations Act").

42. Congress later appropriated an additional \$5 billion in support of the U.S. counter-ISIL effort, virtually all of it in line with the specific amounts and categories requested by the President. These funds were made available over the course of two annual budget cycles, in connection with close congressional oversight of the status and scope of U.S. counter-ISIL activities, and with knowledge of the specific measures the Obama Administration was taking to counter ISIL and the statutory provisions under which that Administration was acting. *See, e.g.*, Consolidated Appropriations Act, 2016, Committee Print of the H. Comm. on Appropriations,

Explanatory Statement at 289, Pub. L. No. 114-113 (2015) (highlighting threat posed by the “rise of [ISIL]” and noting that the Act “moves funding from the base appropriation to the [overseas contingency operations] appropriation” for the military “to conduct counter-ISIL operations”) (*available at* <https://www.gpo.gov/fdsys/pkg/CPRT-114HPRT98155/pdf/CPRT-114HPRT98155.pdf>); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, §§ 1223-1224, 129 Stat. 726, 1049 (2015) (“2016 NDAA”) (expressing Congress’s sense that ISIL “poses an acute threat to the people and territorial integrity of Iraq” and that “defeating ISIL is critical to maintaining a unified Iraq”).

43. Further, Congressional support for the military campaign against ISIL extends beyond the appropriation of funds for specific military activities. Congress has also authorized the President to provide lethal and nonlethal assistance to select groups and forces fighting ISIL in Iraq and Syria. In doing so, Congress has defined the parameters of the assistance programs and provided specific direction for the use of its appropriations. Throughout this period, Congress has also reinforced its oversight role through reporting requirements relating to the costs and status of U.S. counter-ISIL operations, including monthly reports documenting incremental costs of the operation, *see* 2015 Consolidated Appropriations Act, 128 Stat. at 2276, § 8097; Consolidation Appropriations Act, 2016, Pub. L. No. 114-113, § 8093, 129 Stat. 2242, 2373 (2015) (“2016 Consolidated Appropriations Act”); quarterly reports on the status of U.S. forces deployed in support of the operation, *see* 2016 NDAA § 1223; regular reporting from the inspector general for the military operation against ISIL, *see* LEAD INSPECTOR GENERAL FOR OVERSEAS CONTINGENCY OPERATIONS, OPERATION INHERENT RESOLVE, REPORT TO THE U.S. CONGRESS ii, 116-22 (Mar. 31,

2016), available at https://oig.state.gov/system/files/oir_quarterly_march2016.pdf; see also 5 U.S.C. app. 3 § 8L (2013); and reporting consistent with the requirements in the War Powers Resolution, see 2015 Consolidated Appropriations Act, 128 Stat. at 2285, 2300, §§ 8140, 9014; 2016 Consolidated Appropriations Act, 129 Stat. at 2380, 2397, §§ 8122, 9019 (providing that funds could not be used “in contravention of the War Powers Resolution,” including the congressional consultation and reporting requirements).

44. This extensive reporting is in addition to information Congress receives from the Executive Branch during regular oversight hearings. See, e.g., *U.S. Policy Towards Iraq and Syria and the Threat Posed by the Islamic State of Iraq and the Levant (ISIL): Hearing Before the S. Comm. on Armed Services*, 113th Cong. 5-72 (Sept. 2014) (statements of Chuck Hagel, Secretary of Defense, and General Martin E. Dempsey, Chairman of the Joint Chiefs of Staff); *The Administration’s Strategy and Military Campaign Against Islamic State in Iraq and the Levant: Hearing Before the H. Comm. On Armed Services*, 113th Cong. 4-46 (Nov. 2014) (statements of Chuck Hagel, Secretary of Defense, and General Martin E. Dempsey, Chairman, Joint Chiefs of Staff).

45. These funding, oversight, and authorizing measures do not *themselves* authorize the military campaign against ISL; rather, they *confirm* that the campaign is authorized by the 2001 AUMF and, in certain circumstances (including those Petitioner presents), the 2002 Iraq AUMF. In other words, these repeated congressional enactments make clear that the specific authorizations in the 2001 and 2002 AUMFs apply here. See, e.g., *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 116 (1947) (“[T]he appropriation by Congress of funds for the use of such agencies

stands as confirmation and ratification of the action of the Chief Executive.” (citing *Brooks v. Dewar*, 313 U.S. 354, 361 (1941)); *Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 19 n.7 (D.C. Cir. 2006) (“Congress may ratify an agency action through appropriation acts.” (internal quotation omitted)).

V. The President Has Authority Under Article II to Militarily Detain Individuals Who Are Part of or Substantially Support ISIL

46. In addition to relying on the statutory authority Congress provided in the 2001 and 2002 AUMFs, Presidents have long directed the use of military force overseas in defense of the nation pursuant to their authority under Article II of the U.S. Constitution. The United States has, for the reasons described above, relied upon the statutory authorities contained in the 2001 and 2002 AUMFs as the legal justification for its ongoing military operations against ISIL in Iraq and Syria (including the current detention of Petitioner). But the Executive Branch also has inherent authority to direct the deployment of military forces and, as part of that authority, the power to detain combatants captured on the battlefield for as long as U.S. troops are engaged in active hostilities on that battlefield.

47. The President’s power to employ military force abroad derives from his constitutional responsibility as Commander in Chief and Chief Executive for foreign and military affairs, and it has been confirmed by “the historical gloss on the ‘executive Power’ vested in Article II of the Constitution,” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003). This authority “has long been recognized as extending to the dispatch of armed forces outside of the United States, either on missions of goodwill or rescue, or for the purpose of protecting American lives

or property or American interests.” *Training of British Flying Students in the United States*, 40 Op. Att’y Gen. 58, 62 (1941).

48. Indeed, there are over two centuries of Executive Branch practice in support of this authority. Examples from recent decades in which Presidents directed the use of military force without specific prior authorization legislation include “bombing in Libya (1986), an intervention in Panama (1989), troop deployments to Somalia (1992), Bosnia (1995), and Haiti (twice, 1994 and 2004), air patrols and airstrikes in Bosnia (1993-1995), and a bombing campaign in Yugoslavia (1999).” Memorandum for Eric Holder, Attorney General of the United States, from Caroline D. Krass, Principal Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, to the Attorney General, *Re: Authority to Use Military Force in Libya* at 7 (April 1, 2011), *available at* https://www.justice.gov/sites/default/files/olc/opinions/2011/04/31/authority-military-use-in-libya_0.pdf. (“Krass Memo.”). President Obama authorized the use of military force against Libya in 2011. President Trump similarly did so against a Syrian military airfield following a 2017 chemical weapons attack by the Syrian regime.

49. In considering the President’s authority to use military force in Libya in 2011, the Department of Justice’s Office of Legal Counsel (OLC) asked whether the operations would “serve sufficiently important interests to permit the President’s action as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations.” Krass Memo. at 10. In that opinion, OLC noted that defense of the United States to repel a direct and immediate

military attack is one basis—but not the exclusive one—on which the President may use military force without congressional approval. *Id.* at 10 n.2

50. This constitutional authority is likewise sufficient basis to exercise military force against ISIL, a hostile organization that has both inspired and aided attacks on United States soil and that has attacked U.S. military forces overseas. And “[b]ecause detention to prevent a combatant’s return to the battlefield is a fundamental incident of waging war,” *Hamdi*, 542 U.S. at 519, the President’s constitutional authority to use military force against ISIL includes the power to detain individuals who are part of or substantially support ISIL “for the duration of these hostilities,” *id.* at 521.²⁸ There can be no dispute that U.S. operations against ISIL continue given the ongoing deployment of forces in Iraq and Syria. While the 2001 and 2002 AUMF provide clear statutory authorization for those operations, even absent those provisions, the United States would have the authority to conduct operations against ISIL and detain ISIL combatants apprehended by the United States or its co-belligerents in that military theater of operations.

51. Finally, for purposes of this case, the fact remains that United States forces are currently engaged in hostilities in Syria. Regardless of the specific authorizations for such

²⁸ This constitutional authority exists regardless of 18 U.S.C. § 4001(a), which does not intrude on the authority of the Executive to capture and detain enemy combatants in wartime. To the contrary, Congress placed § 4001 in Title 18 of the United States Code—which governs “Crimes and Criminal Procedure”—and addressed it to the control of *civilian* prisons and related detentions rather than military ones. And indeed, the legislative history of § 4001(a) confirms it was enacted to repeal the Emergency Detention Act of 1950, 50 U.S.C. §§ 811 *et seq.* (1970), which was addressed solely to civil detentions. The fact that § 4001(a) does not apply to military detentions is bolstered by subsection (b) of § 4001, which is addressed to “control and management of Federal penal and correctional institutions,” and exempts “military or naval institutions.” 18 U.S.C. § 4001(b).

hostilities, the Executive necessarily has the inherent power under Article II to detain enemy combatants captured on a battlefield where U.S. forces are deployed and in harm's way. *See, e.g.*, Krass Memo at 6-9 (explaining that the President has the authority to "take military action for the purpose of protecting important national interests") (citing dozens of authorities) (quotations omitted). Just as the U.S. military has the inherent authority to defend itself using deadly force on a battlefield, it has the inherent authority to detain enemy combatants captured on that battlefield. While this inherent detention authority likely exists throughout the "duration of hostilities," *Hamdi*, 542 U.S. at 521, it certainly exists until U.S. forces either leave the military theater of operations (and are out of harm's way), or are able to arrange for release of a battlefield detainee in a manner that does not endanger U.S. forces (such as by relinquishing custody of the detainee to another sovereign).

FACTUAL JUSTIFICATION FOR DETENTION

I. Evidentiary Considerations

52. The Supreme Court has recognized that, when a court presides over the petition for habeas corpus of a detained individual, "[t]he intended duration of the detention and the reasons for it bear upon the precise scope of the inquiry"; thus, "[h]abeas corpus proceedings [with respect to enemy combatants detainees] need not resemble a criminal trial." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 538–39 (2004) (plurality) ("[A] habeas court in a case such as this [involving a U.S. citizen captured overseas and detained as an enemy combatant] may accept affidavit evidence . . . so long as it also permits the alleged combatant to present his own factual case to rebut the Government's return. We anticipate that a

District Court would proceed with the caution that we have indicated is necessary in this setting, engaging in a factfinding process that is both prudent and incremental.”).²⁹

53. In the materials discussed herein related to the factual basis for Petitioner’s detention, there are documents reflecting interviews with Petitioner and others conducted by law enforcement and intelligence personnel, as well as information derived from other sources and methods. The D.C. Circuit has held that hearsay evidence is admissible in habeas proceedings, including reports of the type relied upon by Respondent to establish the lawfulness of Petitioner’s detention in this case. *See Al-Bihani v. Obama*, 590 F.3d 866, 879 (D.C. Cir. 2010) (“[T]he question a habeas court must ask when presented with hearsay is not whether it is admissible—it is always admissible—but what probative weight to ascribe to whatever indicia of reliability it exhibits.”).

54. The D.C. Circuit has also expressly held that the district court must afford a rebuttable presumption of regularity to official government records, including intelligence reports. *See Latif v. Obama*, 666 F.3d 746, 755 (D.C. Cir. 2011); *see also id.* at 750–51 (explaining that the presumption of regularity means that a government interview report is presumed to have accurately recorded a statement).

²⁹ The Supreme Court’s *Hamdi* plurality suggested that “once the Government puts forth credible evidence that the habeas petitioner meets the enemy-combatant criteria, the onus could shift to the petitioner to rebut that evidence with more persuasive evidence that he falls outside the criteria.” *Id.* at 534; *see also Salahi v. Obama*, 625 F.3d 745, 750-51 (D.C. Cir. 2010). The Court of Appeals has held that the Government bears the burden of proving by no more than a preponderance of the evidence the lawfulness of the detention of a Guantanamo Bay detainee. *See, e.g., Al-Adahi v. Obama*, 613 F.3d 1102, 1105 (D.C. Cir. 2010).

55. Further, a court should assess the probative value and reliability of the evidence by viewing the evidence collectively rather than in isolation. *See Latif v. Obama*, 677 F.3d 1175, 1193 (D.C. Cir. 2012) (“[A] habeas court may not ignore relevant evidence, for a court cannot view collectively evidence that it has not even considered.”); *Awad v. Obama*, 608 F.3d 1, 7 (D.C. Cir. 2010) (“We will begin with Awad’s challenges to the individual items of evidence. In evaluating these challenges, we do not weigh each piece of evidence in isolation, but consider all of the evidence taken as a whole. . . . [T]he fact that the district court generally relied on items of evidence that contained hearsay is of no consequence. To show error in the court’s reliance on hearsay evidence, the habeas petitioner must establish not that it is hearsay, but that it is unreliable hearsay.”).

II. Al-Baghdadi Declared the Islamic State a Caliphate on July 5, 2014

56. Abu Bakr al-Baghdadi was ISIL’s leader during all the material events set forth herein. Declaration [REDACTED] ([REDACTED] Decl.,” attached hereto) ¶ 8. On or about July 5, 2014, in a public address within a mosque in Mosul, Iraq, Al-Baghdadi declared the Islamic State a caliphate, and he anointed himself the caliph, or leader, of the organization.³⁰ *Id.* The objective of the terrorist organization is the forcible acquisition of land for the stated goal of

³⁰ Al-Baghdadi’s July 5, 2014 address was widely reported, including in United States media outlets. *See* Alissa J. Rubin, *Militant Leader in Rare Appearance in Iraq*, *New York Times* (July 5, 2014), available at <https://www.nytimes.com/2014/07/06/world/asia/iraq-abu-bakr-al-baghdadi-sermon-video.html>; Hannah Strange, *Islamic State Leader Abu Bakr al-Baghdadi Addresses Muslims in Mosul*, *The Telegraph* (July 5, 2014), available at <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/10948480/Islamic-State-leader-Abu-Bakr-al-Baghdadi-addresses-Muslims-in-Mosul.html>.

creating an Islamic State without recognizing any national boundaries. *Id.* ISIL seeks to accomplish its goals through the commission of various criminal acts and acts of terror against the United States and the world community. *Id.* In furtherance of those goals, ISIL's leadership seeks to recruit and accept new members from across the globe, including the United States, primarily through the Internet and social media platforms. *Id.*

III. An Internal ISIL Document Shows Petitioner Registered as an ISIL Fighter on July [REDACTED], 2014

57. In November 2015, the Department of Defense came into possession of data from a thumb drive that had been found by local Syrian forces during an offensive into ISIL-held Syrian territory in July 2015 [REDACTED] Decl. ¶ 12. The data consists of foreign fighter bio sheets, including a form that indicates Petitioner registered as an ISIL fighter on July [REDACTED], 2014. *Id.* ¶¶ 12-13 & ex.9; *see also* Intelligence Investigation Report (“IIR,” attached hereto), at 7.³¹

58. The form, which appears to essentially be an intake form for new ISIL recruits, contains registration information for [REDACTED], a citizen of Saudi Arabia, born in the United States on or about [REDACTED]. IIR, at 8; [REDACTED] Decl. ¶ 13. The intake form identifies [REDACTED]'s role within ISIL as “fighter.” IIR, at 8; [REDACTED] Decl. ¶ 13. His date of entry into the terrorist organization is listed as July [REDACTED], 2014, with a point of entry of Jarabulus, Syria (a town that ISIL captured in or about July 2013). IIR, at 8; [REDACTED] Decl. ¶ 13. Significantly, July [REDACTED], 2014 was [REDACTED] after Abu Bakr al-Baghdadi declared the Islamic State a caliphate and anointed

³¹ A footer has been added in the lower right-hand corner of this document, identifying it as “IIR,” along with the page number (*e.g.*, “IIR page 1”).

himself the caliph, an event which ISIL later used as a recruiting tool for attracting foreign fighters.

██████ Decl. ¶ 13. The data also notes that ██████ is married with one child, that his mother's name is ██████, and that he surrendered some of his personal belongings, including a passport, phone and camera. IIR, at 8; ██████ Decl. ¶ 13. ██████'s contact telephone number is listed as ████████████████████. IIR, at 8; ██████ Decl. ¶ 13.

59. Petitioner is a dual citizen of the United States and Saudi Arabia. *Id.* ¶ 11. He was born on ██████ in ██████. *Id.* He is currently married with one daughter approximately three and a half years old. *Id.* The FBI has determined that, based on the similarity of the information, the ISIL intake form identifies and pertains to Petitioner. *Id.* ¶ 13.

IV. Petitioner Was Identified as an ISIL Member When Captured Near ISIL-Held Territory in September 2017

60. On or about September 11, 2017, Petitioner was taken into custody by Syrian Democratic Forces (“SDF”) at a screening point near ISIL-held territory and turned over to United States forces. *Id.* ¶¶ 54, 58; *see also* Declaration of Steven W. Dalbey (“Dalbey Decl.,” ECF 11-1) ¶ 3 (Oct. 30, 2017). As described in interviews with the FBI, the SDF encountered Petitioner while the SDF was engaged in a military offensive heading south towards Dayr az Zur, Syria. ██████ Decl. ¶ 54. The screening point was set up because fleeing ISIL fighters sometimes attempted to blend in with civilians who were also attempting to flee the conflict. *Id.*

61. Petitioner appeared at the screening point, traveling alone on foot. *Id.* ¶ 56. SDF forces identified Petitioner's physical appearance, including his beard, as typical of an ISIL devotee. *Id.* His clothing also did not resemble the traditional clothing worn in the region. *Id.* According to SDF forces, there would be no reason for a foreigner to be in this area unless he were

supporting ISIL. *Id.* ¶ 55. ISIL employed many foreign fighters, and although foreign fighters tended to be stationed in Raqqa and Dayr az Zur city, foreigners had begun to flee into the desert due to the SDF offensive. *Id.* When questioned, Petitioner stated that he had been walking for two days. *Id.* ¶ 56. The SDF noted that all territory within two days' walk of the screening point was ISIL-held territory. *Id.*

62. Petitioner identified himself to SDF forces as “daesh”—an ISIL alias—and stated that he wanted to turn himself in and to speak to the Americans. *Id.* ¶ 56. The SDF took Petitioner into custody. *Id.* ¶ 58. As noted above, the SDF then turned Petitioner over to United States forces.

V. Petitioner Has Described His Activities as a Member of ISIL

A. Summary of Petitioner's Account

63. In a series of Department of Defense interviews, conducted after Petitioner came into U.S. custody, Petitioner described his involvement with ISIL over a period of at least thirty-one months. During that period, according to Petitioner's own description as set forth in detail below, Petitioner joined ISIL, attended an ISIL training camp, swore bayat to ISIL's leader, and worked for ISIL in various capacities, including as an Administrator responsible for distributing vehicles and money to other ISIL members; as a guard for an oil field under ISIL control; as a monitor ensuring adherence by Imams and prayer callers to Sharia requirements; and as a monitor of civilians working in ISIL's heavy equipment office.

64. During this period, again according to his own description, Petitioner continued to have access to his cell phone and was in contact with his wife and sister. Petitioner also had the freedom to travel, rented 200 acres of land from ISIL near Hamah, and was allowed to cultivate

the land and raise sheep. Having entered Syria with \$40,000, Petitioner was also able to keep possession and control over his money, and use that money to rent land, cultivate almond and olive trees, buy sheep, buy a car, and buy a GPS device.

65. The relevant details of Petitioner's interviews are set forth below:

B. Petitioner's Background

66. In Petitioner's first interview, he described his background as follows: Petitioner attended [REDACTED] and [REDACTED], graduating in [REDACTED] with a bachelor's degree in electrical engineering. Tactical Interrogation Report ("TIR") 01 at 3.³² Petitioner spent the years from 2006 to 2014 in Saudi Arabia and Bahrain, working in various family businesses, including a women's tailoring shop and a construction company. *Id.* He married his wife in 2008 and had a child in June 2014. *Id.* Petitioner traveled to Indonesia, Singapore, China, and Malaysia on business from March to May 2014, while his wife was pregnant. *Id.* After his trip, he returned to Bahrain and took his wife to Saudi Arabia to have their child. *Id.* Petitioner provided his cell phone number to the interviewer as [REDACTED], *id.*, which is the same phone number reflected in ISIL's internal document registering Petitioner as a "fighter."

C. Petitioner's Account of His Travel From June 2014 to January 2015

³² A TIR is a raw intelligence report containing information derived from interrogations of detainees. TIRs 01–08, referenced here and below, are attached hereto. A footer has been added in the lower right-hand corner below the page number, identifying the TIR (*e.g.*, "TIR 01").

67. Petitioner described going to the United States three weeks after his daughter was born in order to “register” his daughter. *Id.* He spent two months in New Orleans but was unsuccessful in getting his daughter “registered” because the baby was not present. *Id.*

68. Petitioner stated he returned to Bahrain in August 2014, remained there for one month, then went to Istanbul, Turkey for one day, and then flew to Gaziantep, Turkey. *Id.* Petitioner stated that he stayed in Gaziantep for two to three weeks and returned to Bahrain in September 2014. *Id.*

69. Petitioner stated that he submitted journalism articles to the U.S. press and then informed his wife they were going to the United States on vacation. *Id.* According to Petitioner, he, his wife, and his daughter traveled to New Orleans in August 2014.³³ *Id.* Petitioner stated that they spent six to seven months in the United States. *Id.* He stated that he returned to Bahrain in late December 2014 and that he stayed in Bahrain for four months. *Id.* He stated that he then flew to Athens, Greece, stayed there for three weeks, and then flew to Gaziantep, Turkey. *Id.* at 3-4.

70. Petitioner then stated that he entered Syria in January 2015 with \$40,000 in his possession. *Id.* at 4. He stated that he paid an individual by the name of Abu Muhammad \$300 to be smuggled from Gaziantep, Turkey, into Syria. *Id.* Abu Muhammad took him to a house in Ar-Rai, Syria, where he remained for three days. *Id.* Petitioner claimed that he intended to enter Syria to be a freelance writer and that he obtained press credentials from the [REDACTED] using his U.S. passport, as well as from other press outlets. *Id.*

³³ This timeline contains clear inconsistencies, but it is set forth as related by Petitioner during his interview.

D. Petitioner's Account of His Time With ISIL

71. According to Petitioner, he was kidnapped by ISIL members three days after his arrival in Syria and was imprisoned for seven months, until October 2015. *Id.* at 4, 5. Petitioner stated that ISIL eventually took him to Dayr az Zawr, Syria, and he registered as an ISIL recruit at the ISIL recruiting office there. *Id.* at 4. Petitioner stated that he then was taken to an ISIL Sharia training site near Mayadin, Syria, where he stayed for two months, until December 2015. *Id.* at 4, 5.

72. Petitioner attended Sharia training with fifty other ISIL recruits, most of whom were Syrian. *Id.* at 4. The Sharia training was provided by Abu Hafs al-Maghrebi. *Id.* Petitioner swore bayat (an oath of allegiance to a leader) to Abu Hafs al-Maghrebi acting on behalf of Abu Bakr al-Baghdadi. *Id.*

73. After Petitioner's training, ISIL assigned him to be a fighter in ISIL's Provincial Army in the ISIL Zarqawi Brigade, a brigade that was responsible for guarding the front lines and operated in the Dayr az Zawr province in Syria. *Id.* at 4-5. As part of the Zarqawi Brigade, Petitioner was the Administrator for Asud Sharia, a subunit of the Zarqawi Brigade. *Id.* at 5. In that role, Petitioner's responsibilities included getting fuel (gasoline) for ISIL vehicles, handing out money to the Amir of the Brigade for expenses, and coordinating with the Liwa Administrator Amir. *Id.* Petitioner continued as a fighter in the Zarqawi Brigade until February 2016. *Id.*

74. That month, ISIL relocated Petitioner to an oil field in Dayr az Zawr Province, where he was assigned to guard the gate of a compound. *Id.* He remained there until April 2016. *Id.*

75. Petitioner stated that he left his assignment at the oil field without permission and went to the city of Dayr az Zawr, where he was caught by ISIL military police and detained in an ISIL security prison in Mayadin for two months, until July 2016. *Id.*

76. Thereafter, Petitioner resumed his activities for ISIL. *Id.* He spent one month in the ISIL Missionary and Mosques Diwan (section), monitoring whether the Imam and prayer caller were present. *Id.* In August 2016, ISIL moved Petitioner to the ISIL Solider Diwan, or heavy equipment section, where Petitioner was responsible for monitoring civilians working on heavy equipment. *Id.* Petitioner remained in that position until December 2016. *Id.*

77. During the period when Petitioner was living in Dayr az Zawr, on or about September 2016, Petitioner and other ISIL members were asked to identify any special skills. *Id.* at 7. Petitioner told ISIL that he had an electrical engineering background. *Id.* Petitioner was given a car to drive to Raqqah, Syria, in order to meet with Abu Umar al-Masri. *Id.* Petitioner met Abu Umar as scheduled and joined two other individuals in an apartment. *Id.* Abu Umar and the others told Petitioner about an ISIL plan to use a type of machine, similar to a satellite dish, to transmit microwaves that could bring down an airplane. *Id.* Abu Umar asked Petitioner if he wanted to work on this special project but did not offer any money for doing so. *Id.* Petitioner remained at the meeting for two to three hours. *Id.* According to Petitioner, he declined to work on the special project. *Id.*

78. Petitioner met again with Abu Umar the following day. Abu Umar showed him ISIL's plans, videos, and documents pertaining to ISIL's use of electronic bombs and the plan to build a device that would use microwaves to bring down an aircraft. *Id.* According to Petitioner,

he declined to work on the special project and returned to Dayr az Zawr. *Id.* Petitioner stated that approximately four or five months later, on or about January or February 2017, he purchased a GPS device in Raqqa. *Id.* at 6.

79. In December 2016, while still assigned to ISIL's heavy equipment section in Dayr az Zawr, Petitioner went to Hamah, Syria, which was then under ISIL control, and rented 200 acres of land from ISIL by paying \$750 to the ISIL Diwan of Agriculture. *Id.* at 5. Petitioner spent \$12,000 to \$15,000 on almond and olive tree cultivation on this land. *Id.*

80. Meanwhile, Petitioner returned to Dayr az Zawr and continued working at the heavy equipment section. *Id.* Petitioner received approval for a transfer and spent the next three and a half months going back and forth between Dayr az Zawr and Hamah. *Id.* Petitioner spent \$4000 to buy 80 sheep. *Id.* According to Petitioner, he hoped to flee into Turkey as a shepherd. *Id.*

81. Ultimately, Petitioner sold his 80 sheep for \$4800. *Id.* at 6. He also claimed he sold 20 acres but lost \$12,000 because of air strikes. *Id.* He was forced to leave Hamah because of the danger from air strikes and left in June 2017. *Id.*

82. Petitioner then returned to Dayr az Zawr and from there went to al-Salihya, three kilometers to the northwest. *Id.* He spent three months in al-Salihya and bought a car for \$3500. *Id.* Petitioner still had his cell phone and continued using it until sometime in August 2017. *Id.* Petitioner remained in contact with his wife, and last spoke with her via WhatsApp in July 2017. *Id.* at 7. Petitioner and his wife were fighting because she would travel without telling him. *Id.* Petitioner went to Mayadin and contacted his sister by text and through WhatsApp, telling her that everyone was leaving the Islamic State, which made it easier for him to leave, and asking that she

send him money so he could do so. *Id.* at 6. Petitioner stated that this communication occurred two or three weeks before he was captured and was the last time he used his cell phone. *Id.* He waited in Mayadin for a week, but his sister was not able to send him money. *Id.* He returned to al-Salihya. *Id.*

83. Petitioner heard from civilians that many people were attempting to leave the Dayr az Zawr area. *Id.* Petitioner attempted to hire someone to take him to an SDF area for \$700, but the man he tried to hire took Petitioner's money and left without him. *Id.* Petitioner left al-Salihyah by taxi, then attempted to join several groups of refugees to cross the front line, but the refugees did not allow him to join them. *Id.* at 6-7. Petitioner eventually jumped onto the back of a water truck approximately 100 meters before the SDF checkpoint and was seen at that time by an SDF soldier. *Id.* at 7. Petitioner identified himself to the SDF soldier as an American. *Id.*

84. A second interview with Petitioner took place on September 12, 2017. *See* TIR 02, at 1. In that interview, Petitioner provided three email addresses but claimed he had never used or had any social media accounts. *Id.* at 3. Petitioner indicated his cell phone was either lost or stolen some time during the previous month and that he had not bought a replacement because he did not see a purpose in doing so. *Id.*

85. Petitioner also provided information about ISIL locations and personnel, primarily in Dayr az Zawr and Mayadin. *Id.* at 4-5; *see also* TIR 06, at 2-3.

86. In his third interview, Petitioner attempted to minimize his involvement with ISIL, stating that he was a freelance writer for the U.S. press and only wanted to learn the truth of what was happening in the war in Syria. *See* TIR 03, at 2-3. Petitioner claimed that he was released from

ISIL's prison on condition that he work for ISIL, and that he attempted to escape. *Id.* at 3. Petitioner also acknowledged that even after his attempted escape, ISIL continued to trust him, so much so that it allowed him to work in various mosques in and around Mayadin, allowed him to move freely, and even rented him a farm. *Id.* In later interviews, Petitioner provided no information, and the substantive content in subsequent TIRs is limited to remarks by the interviewer. *See* TIR 04; TIR 05; TIR 07; TIR 09.

87. In one later interview, Petitioner acknowledged that he spent time in an ISIL military prison, which is a kind of prison reserved for ISIL members who have broken ISIL laws or are deserters. TIR 06, at 3. As described by Petitioner, ISIL has a separate prison system for civilians, as well as a separate prison for those who are suspected of being a spy. *Id.*

88. The last interview occurred on September 18, 2017. TIR 09, at 1.

VI. Other Evidence Further Corroborates the Conclusion that Petitioner Joined and Worked for ISIL

A. Evidence Found at Petitioner's Capture Suggests He Worked for ISIL

89. Physical evidence corroborates Petitioner's admission that he was an ISIL member and engaged in the activities he described on behalf of ISIL.

90. After SDF forces took Petitioner into custody, they inventoried his possessions, which included a GPS device, \$4210 in U.S. currency, two thumb drives, clothes, hats, a scuba snorkel and mask, and a Koran. *Id.* ¶ 58. SDF forces found the GPS device highly suspicious because GPS devices were strictly controlled in ISIL territory and, if possessed by a civilian, would immediately lead to accusations of being a spy. *Id.* ¶ 59. SDF forces also found the amount of currency in Petitioner's possession very unusual because civilians fleeing the conflict rarely had

time or ability to sell their possessions before fleeing. *Id.* Attempting to sell possessions could alert ISIL to the individual's plan to flee and lead to imprisonment. *Id.*

91. The FBI's later search of Petitioner's thumb drives revealed thousands of files, including over 10,000 jpegs or photos. Many of the photos depicted pages of military style handbooks with information on weaponry, warfare combat, building trenches, and interrogation techniques. *Id.* ¶ 60. There were also numerous files on how to make specific types of improvised explosive devices ("IEDs") and bombs. *Id.* Among the files were approximately ten excel spreadsheets in Arabic, including one, dated November 11, 2016, and labeled "Islamic State Spoils and Booty Bureau" in the upper right corner. *Id.* The title of that spreadsheet was "Disclosure for the Battalion, Participants in the Attack," and the spreadsheet listed six ISIL fighters, with information about whether they were killed or injured, their ID number, type of participation (which for all six fighters indicated their involvement with IEDs), the name of the group they were in (al-Zar' Battalion), and the name of the group leader (Abu al-Zubary al-Sahili). Another spreadsheet, dated November 16, 2016, was labeled "Islamic State Plunder Bureau." *Id.* The title was "Ledger for Battalion Participation in the Attack," and eight fighters were listed, including their names, ID numbers, battalion group, and whether they were killed or injured. *Id.* Another spreadsheet was labeled "Islamic State Soldiers Bureau Military Machinery" and included lists of vehicles. *Id.*

B. Petitioner Sought Weapons During His Time With ISIL

92. Between April 1 and April 30, 2016, Petitioner conducted approximately 120 weapons-related searches on Google in Arabic and English, on sites including purchasing sites

such as Ebay, AliExpress, and Gunauction.com. *Id.* ¶ 43. The majority of these searches were for the Dragunov sniper rifle and accessories, including a scope for the Dragunov rifle. *Id.*

C. Petitioner Was in or Close to ISIL-Held Territory on July [REDACTED], 2014 and for a Period in 2014 That Was Significantly Longer Than He Claimed

93. While Petitioner's account places him in the United States in July 2014, other evidence contradicts that account and corroborates the information in internal ISIL records obtained by the Department of Defense, which state that Petitioner joined ISIL on July [REDACTED], 2014. Travel records indicate that, coinciding with Al-Baghdadi's declaration of an Islamic State Caliphate on July 5, 2014, Petitioner left the United States and, [REDACTED] later, on July [REDACTED], 2014, arrived in Gaziantep, Turkey, near the Syrian border. Petitioner also stayed in that area far longer than he claimed, not leaving until October 2014. Petitioner was thus well-positioned to enter Syria and join ISIL [REDACTED] later, on July [REDACTED], 2014, exactly as the ISIL intake form indicates. Meanwhile, Petitioner's social media activity during the preceding months, engaging directly with a known media arm of ISIL, demonstrates his keen interest in encouraging and participating in ISIL's efforts to unify different groups and oppose the Syrian regime. Petitioner's second trip to the United States was only two months, not seven, and he was back in Gaziantep by March 2015, when he entered Syria once again and began the activities in support of ISIL that he described in his Department of Defense interviews.

94. U.S. Custom and Border Protection ("CBP") records confirm that Petitioner did not return to the United States, after spending several years in Louisiana during college, until June 19, 2014. [REDACTED] Decl. ¶ 14. However, Petitioner stayed in the United States only two and a half weeks, until July 5, 2014, *Id.*, not two months as he claimed, *see* TIR 01, at 3. An individual interviewed

by the FBI, who was Petitioner's friend from the time he was in college (referred to herein as "Identified Associate" or "IA") and who indicated that Petitioner stayed with him during his June 2014 visit, confirmed that Petitioner spent only a few weeks in the United States at that time. [REDACTED] Decl. ¶ 63. IA confirmed that, as Petitioner stated, Petitioner came to the United States to try to get a U.S. passport for his daughter. *Id.* But according to IA, Petitioner was unable to get the passport not because the baby was not present, as Petitioner claimed, TIR 01, at 3, but because Petitioner could not prove his U.S. residency for the requisite period and did not have his paperwork in order. [REDACTED] Decl. ¶ 63.

95. The day that Petitioner left the United States for Saudi Arabia—July 5, 2014— was the same day that Al-Baghdadi declared the Islamic State a caliphate. *Id.* ¶¶ 8, 14. [REDACTED] later, on July [REDACTED], 2014, Petitioner booked a trip to Gaziantep, Turkey, a known entry point into ISIL-controlled territory, often used by foreigners wishing to join ISIL. *Id.* ¶¶ 19-20. [REDACTED] later, on July [REDACTED], 2014, Petitioner traveled from Bahrain to Gaziantep. *Id.* ¶ 19 & n.1.³⁴ The internal ISIL intake form for Petitioner indicates that [REDACTED] after that, he entered Syria and joined ISIL. *Id.* ¶¶ 12-13.

96. While Petitioner claimed his trip to Turkey lasted only two to three weeks, TIR 01, at 3, travel records show that Petitioner did not return to Bahrain until October 6, 2014—over two and a half months later. [REDACTED] Decl. ¶ 20.

³⁴ The town identified on the July [REDACTED], 2014 ISIL intake form as the point where Petitioner entered Syria, Jarabulus, is approximately 100 miles from Gaziantep, Turkey, and, according to Google Maps, can be reached by car in less than four hours.

D. Petitioner Sought to Engage With and Advise ISIL on Social Media in the Months Before July 5, 2014

97. Although Petitioner claimed that he had never used or had any social media accounts, TIR 02, at 3, the FBI was able to identify Petitioner's Twitter account. [REDACTED] Decl. ¶ 44. Petitioner's tweets during the months leading up to July 5, 2014, demonstrate Petitioner's support for ISIL. As detailed below, Petitioner not only posted his own ISIL propaganda on Twitter during this period but also attempted to engage directly with ISIL in order to advise it on how to best overthrow the Syrian government.

98. ISIL makes extensive and sophisticated use of social media to spread information and propaganda and recruit foreign fighters to join its cause. *Id.* ¶ 9. One of the most prominent ISIL media presences is Asawirti Media. Asawirti Media creates pro-ISIL videos, posts, and graphics. *Id.* Asawirti Media's Twitter account has been active since at least 2014 (under hundreds of different "handles," which are changed when the account is suspended) and is recognized as a prominent "face" of the ISIL online community. *Id.* Tweets from Asawirti Media's Twitter account are viewed within the ISIL community as conveying the official message of ISIL, not just a related association or ISIL sympathizer. *Id.* Asawirti Media has distributed graphic anti-American content through its Twitter account, such as a picture of British ISIL executioner "Jihadi John" striking former President Barack Obama with a knife. *Id.* Between February 2014 and May 2014, Asawirti Media used the Twitter handle @AsawirtiMedia. At that time the account had over 10,000 followers. *Id.* (Some Asawirti Media Twitter handles have had as many as 90,000 followers. *Id.*)

99. Between February and May 2014, Petitioner, using the Twitter handle @ [REDACTED], tweeted to @AsawirtiMedia 22 times, providing standard 140 character limit

diatribes, links to articles calling for unity within the jihadist ranks, and recruitment and propaganda postings and pictures from different countries of ISIL flags with Koran surahs. *Id.* ¶ 45.

100. During this period, Petitioner traveled to Indonesia and then to Singapore and China. *Id.* ¶ 18. On or about [REDACTED], 2014, while in Indonesia, *Id.* ¶ 18(a)-(f), Petitioner issued the following tweet, in Arabic, directed to Asawirti Media (@AsawirtiMedia): “The Islamic State of Iraq and Sham support for the Islamic State in Iraq and Sham It will endure; this is God’s promise.” *Id.* ¶ 46 & ex. 1. The tweet included a picture of the ISIL flag on a piece of paper that also stated, in Arabic, “All will be vanquished and be gone. I wish my people understand,” with a signature block stating, “Your brother, [REDACTED].” *Id.*

101. On or about [REDACTED], 2014, also while in Indonesia, *Id.* ¶ 18(a)-(f), Petitioner issued two tweets, in Arabic, directed to Asawirti Media (@AsawirtiMedia) “The Islamic State of Iraq and Sham support for the Islamic State in Iraq and Sham It will endure; this is God’s promise.” *Id.* ¶ 47 & exs. 2-3. Both tweets included a picture of the ISIL flag on a piece of paper that also stated, in Arabic, “All will be vanquished and be gone. I wish my people understand,” with a signature block stating, “Your brother, [REDACTED].” *Id.*

102. On or about [REDACTED], 2014, Petitioner sent three tweets to @AsawirtiMedia. First, he tweeted: “Peace be upon you, my noble brother. I would like you to do a service for the sake of God. God provided you with a great weapon—that is the media, so use it to reconcile the brothers, because reconciliation is good.” *Id.* ¶ 48. Petitioner’s second tweet stated: “I swear, I am longing for this day, and I pray to God for it night and day. Let’s unite that the word of God may be realized

in us and that we may cut off the hand and cut out the tongue of the troublemakers.” *Id.* ¶ 49. Petitioner’s third tweet to @AsawirtiMedia that day stated: “Muhammed is the messenger of God, and those who are with him are harsh against the infidels and merciful among themselves.” *Id.* ¶ 50.

103. On or about [REDACTED], 2014, while in Singapore, *Id.* ¶ 18(1)-(m), Petitioner sent the following tweet to @AsawirtiMedia: “In support of the Islamic State in Iraq and Sham. From the far east.” *Id.* ¶ 51 & ex.4. The tweet included a picture of a piece of paper showing the ISIL flag with Arabic script above and below, including the statement “All will be vanquished and be gone. I wish my people understand,” signed “Your brother, [Petitioner].” *Id.* The piece of paper appeared against a background where the [REDACTED] in Singapore were visible. *Id.* ¶ 51 & exs.4-6.

104. Also on or about [REDACTED], 2014, Petitioner tweeted to @AsawirtiMedia an article he had written, which was posted on justpaste.it, a known ISIL propaganda tool. *Id.* ¶ 52. The article, titled “[REDACTED],” detailed the groups involved in the fighting in Syria, and called for someone within ISIL to unite the current groups fighting in order to fight together in a united effort. *Id.* He called for ISIL leadership to unite the groups under the ISIL flag and form the Caliphate. *Id.* In his tweet containing the URL to the article, he asked AsawirtiMedia: “Important; I implore you to edit and publish it. The Islamic State in Iraq and Sham. Hidden hands

in the jihadist conflicts.” *Id.* Petitioner sent three additional tweets to @AsawirtiMedia on the same day, urging it to publish more calls for unity. *Id.*³⁵

105. On or about [REDACTED], 2014, Petitioner tweeted to @AsawirtiMedia “The Islamic State in Iraq and Sham. In support of the Islamic State of Iraq and Sham. It will endure, this is God’s promise.” *Id.* ¶ 51 & ex.7. The tweet included a picture of a piece of paper showing the ISIL flag with Arabic script above and below, including the statement “All will be vanquished and be gone. I wish my people understand,” signed “Your brother, [Petitioner].” *Id.* The piece of paper appeared against a background where views of or from the [REDACTED], where Petitioner had recently stayed in China, were visible. *Id.* ¶ 51 & exs.7-8.

106. On June 14, 2014, Asawirti Media announced an international day of support for ISIL on June 20, 2014, tweeting a new hashtag “Friday of support for ISIS.” *Id.* ¶ 10. The account tweeted “We want demonstrations of support in every country where there are supporters of ISIS” and instructed supporters to hold protests, raise the flags of ISIL, film the protests and distribute the videos on YouTube. *Id.*

E. Petitioner’s Online Search History in the Months Before July [REDACTED], 2014 Show His Support for ISIL and Suggest He Planned to Join

107. Petitioner’s internet searches on Google and YouTube during this period further demonstrate his support for ISIL and suggest he was planning to join the terrorist organization.

³⁵ It was approximately two and a half months after Petitioner’s [REDACTED] posts that al-Baghdadi declared the Islamic State a caliphate, declared himself the leader, and called for unity “under a single flag and goal.” *Id.* ¶ 8.

108. Between January 1, 2014, and March 18, 2015, Petitioner searched YouTube for videos related to “Islamic State” approximately 859 times, and “Daesh” approximately 285 times. *Id.* ¶ 29.

109. From January 1, 2014, to February 28, 2014, Petitioner conducted approximately twenty-five Google searches, in Arabic, for Quran Surah 54, Ayat 45, which roughly translates to: “[T]heir assembly will be defeated, and they will turn their backs [in retreat].” *Id.* ¶ 33.

110. On or about January 10-11, 2014, Petitioner searched for and visited the Wikipedia webpage for Al-Baghdadi. *Id.* ¶ 34.

111. On or about January 28, 2014, Petitioner conducted the following Google searches, in Arabic: “Is the road open to Syria?”; “Abu Khaled Syrian.” *Id.* ¶ 35.

112. On or about February 2 and 4, Petitioner searched and visited websites regarding “al-Rihaniya,” a town on the border between Turkey and Syria. *Id.* ¶ 36.

113. One day in late February 2014, before traveling to Indonesia, Petitioner conducted the following Google searches, in Arabic: “Demonstrations for ISIS in Indonesia” (one time); “Demonstrations in support of ISIS in Indonesia” (approximately four times); “The poor and downtrodden area in Indonesia” (two times); “The poor areas of Indonesia” (approximately one time). *Id.* ¶ 37. On another day during the same period, Petitioner conducted the following Google searches, in Arabic: “ISIS” (approximately eight times); “the ISIS flag” (approximately six times);

“Abu-Khalid al-Suri”³⁶ (approximately three times); “The death of Abu-Khalid al-Suri” (approximately two times). *Id.* ¶ 38.

114. On or about March 3, 2014, Petitioner conducted the following Google searches, in Arabic: photos of the person who killed Abu-Khalid al-Suri (approximately three times); photos of the person who blew himself up against Abu-Khalid al-Suri (approximately one time).

115. On or about April 3, 2014, Petitioner conducted the following Google searches, in Arabic: Abu-Usamah al-Maghribi (approximately three times); The killing of Abu-Usamah al-Maghribi (approximately two times).³⁷ *Id.* ¶ 40.

116. On or about May 30, 2014, Petitioner sent an email to the [REDACTED] at [REDACTED], expressing his interest in applying for [REDACTED] *Id.* ¶ 25. In June 2014, Petitioner emailed the [REDACTED] [REDACTED], indicating that he planned to cover “various events and stories in a number of areas/countries in the Middle East.” *Id.* ¶ 26. [REDACTED] is a registered international press and journalist press agency that, unlike many other journalist organizations or agencies, allows anyone claiming to be engaged as a part-time freelance journalist to obtain a press pass upon payment of a fee. *Id.* ¶ 24. In October 2014, Petitioner sent additional emails to [REDACTED], indicating

³⁶ Abu Khalid al-Suri cofounded the Sunni Syrian Islamist Group Ahrar al-Sham. *Id.* He was allegedly assassinated in an ISIL suicide operation in late February 2014. [REDACTED] Decl. ¶ 33 n.2.

³⁷ Abdel Aziz Al Mehdali AKA Abu-Usamah al-Maghribi was an early member of Al Nusrah Front but later joined ISIL. [REDACTED] Decl. ¶ 34 n.3. In March 2014, Mehdali was killed in an ambush while traveling to negotiate on behalf of ISIL with senior members of Al Nusrah Front. *Id.*

that he “gathered a great deal of information living in refugee tents on the Turkish-Syrian border.” *Id.* ¶ 26. He requested a link to upload his written articles, and ██████ provided one. *Id.* The FBI investigation of Petitioner has thus far not revealed any instances where Petitioner published any news stories, blogs, or other written accounts relating to the Middle East or otherwise. *Id.*

F. Petitioner Was Described by a Friend as a Likely ISIL Recruit

117. Almost immediately after Petitioner returned to Bahrain on October 6, 2014, he began another effort to obtain a U.S. passport for his daughter. *Id.* ¶ 65. Petitioner traveled with his wife and daughter from Saudi Arabia to the United States on October 15, 2014. *Id.* ¶ 15. Although Petitioner claimed that he spent six to seven months in the United States on this second trip, TIR 01, at 3, CBP records indicate that he stayed in the United States less than two months, departing December 11, 2014. ██████ Decl. ¶ 15. Petitioner’s friend IA confirmed that Petitioner stayed in the United States approximately two months during this second visit, staying in a hotel near another friend, who was married. *Id.* ¶ 65.

118. IA stressed Petitioner’s persistence in seeking to obtain a U.S. passport for his daughter. *Id.* ¶ 70. IA expressed the belief that Petitioner undertook the great effort to obtain a U.S. passport for his daughter because he wanted to secure her future before he left to fight with ISIL, knowing he likely would not return home. *Id.* ¶ 70.

119. IA characterized Petitioner as easily misled, and as passionate in his opposition to the Syrian regime of Hafez al-Assad and in the belief that the regime must be overthrown. *Id.* ¶¶ 67, 69. IA expressed the view that it would not be hard to recruit and radicalize Petitioner or for

Petitioner to radicalize himself. *Id.* ¶ 67. IA regarded Petitioner as someone who would not recognize that ISIL was not the solution. *Id.*

120. IA described two conversations with Petitioner in late 2014 that led IA to believe Petitioner would join ISIL. *Id.* ¶ 69. The first was when Petitioner spoke very passionately about the Syrian regime and that it had to be overthrown. *Id.* The second discussion focused on ISIL's beheading its prisoners. *Id.* IA stated that he told Petitioner that the prophet Mohammed, during a time of war, did not kill his prisoners and would set them free at the end of the war. *Id.* Petitioner said that times were different now and spoke of how it was justified for ISIL to behead prisoners. *Id.*

121. According to IA, Petitioner disappeared shortly after he left the United States in late 2014, and his wife did not know where he had gone. *Id.* ¶ 66. IA stated that when he heard that Petitioner had disappeared, he thought Petitioner may have gone to Syria to join ISIL because jihadis don't tell anyone what they are going to do, and then one day they just disappear. *Id.* ¶ 68.

G. Petitioner's Second Trip to Syria in March 2015 Followed Months of Online Preoccupation With ISIL Activity

122. Although Petitioner claimed that he entered Syria in January 2015, TIR 01, at 4,³⁸ the FBI's search of travel records in his email indicates that Petitioner flew from Athens, Greece,

³⁸ Petitioner's own account is inconsistent, first stating that he stayed four months in Bahrain and three weeks in Athens after leaving the United States in December 2014, and then stating that he entered Syria in January 2015. *See id.* at 3-4.

to Istanbul, and on to Gaziantep, Turkey on March 10, 2015. [REDACTED] Decl. ¶ 11. Petitioner also had a 90-day electronic visa for the Republic of Turkey valid beginning on March 4, 2015. *Id.*³⁹

123. On March 16, 2015, Petitioner emailed the [REDACTED] and the [REDACTED], stating an intent to “cover some recent events in Turkey as well as in some Syrian refugee camps in Turkey.” *Id.* ¶ 27. Petitioner did not mention his intended entry into Syria. *See id.*

124. Petitioner’s online activity in the months before March 2015 indicates his preoccupation with ISIL, including ISIL’s recent acts of violence.

125. Between December 24, 2014 and February 9, 2015, Petitioner conducted approximately 191 searches on YouTube for videos of the Jordanian pilot who was captured by ISIL and burned alive in a cage. *Id.* ¶ 30. ISIL released the video depicting the pilot being burned alive on February 3, 2015. *Id.* Petitioner conducted approximately seven YouTube searches for videos of the Jordanian pilot on that day. *Id.*

126. Between January 31 and February 1, 2015, Petitioner searched YouTube for videos of ISIL’s beheading of a Japanese hostage approximately 35 times. *Id.* ¶ 31.

127. On March 4, 2015, Petitioner conducted the following YouTube searches: “Abu Bakr Al Baghdadi” (approximately two times), “Abu Bakr Al Baghdadi and Mossad” (approximately eight times), “Islamic State” (approximately 30 times), “Daesh” (approximately eight times). *Id.* ¶ 32.

³⁹ While Petitioner’s flight from Athens to Turkey was round trip, Petitioner apparently never used the return flight, scheduled for June 4, 2015. *See id.*

128. Emails reviewed by the FBI are consistent with Petitioner's continuing presence in Syria over the next thirty months. Petitioner received Google login notifications on November 17, 2015, from Mosul, Iraq; and on July, 2016 from Turkey. *Id.* ¶¶ 22-23. Both notifications indicated that the location was approximate and determined by the IP address used. *Id.*

CONCLUSION

The evidence attached to this Return and described above is more than enough to carry the Government's burden of showing by a preponderance of the evidence that Petitioner is part of or substantially supported ISIL and is thus properly detained as an enemy combatant. Among other things, (1) documents created by ISIL forces identify Petitioner as a member, *see, e.g., Awad*, 608 F.3d at 7-8; *Barhoumi*, 609 F.3d at 425-26, 428-29; (2) there is evidence Petitioner intended to take up the fight by joining ISIL as a fighter, *Awad*, 608 F.3d at 9; (3) there is evidence that Petitioner spent significant time in ISIL territory and closely associated with the group, *see, e.g., id.* at 11; *Uthman*, 637 F.3d at 404-05; *Al Alwi*, 653 F.3d at 17; *Hussain*, 718 F.3d at 968-69; *Ali*, 736 F.3d at 546; *al Odah*, 611 F.3d at 15-17; *al-Bihani*, 590 F.3d at 873; (4) Petitioner admitted that he trained in a camp run by ISIL, *see, e.g., Barhoumi*, 609 F.3d at 425; *al-Adahi*, 613 F.3d at 1109; *Al Alwi*, 653 F.3d at 17-18; (5) Petitioner followed practices associated with ISIL, *see, e.g., Al Alwi*, 653 F.3d at 20; *Uthman*, 637 F.3d at 405-06; (6) Petitioner swore an oath of allegiance to ISIL's leader, *see, e.g., Salahi*, 625 F.3d at 751; (7) Petitioner's accounts of his travel and the amount of time he spent with ISIL are inconsistent with objective evidence and facially implausible, *see, e.g., Uthman*, 637 F.3d at 406; *Ali*, 736 F.3d at 546; and (8) when captured, Petitioner was armed with bomb-making schematics and military manuals useful only for someone

who intends to engage in armed conflict, *see, e.g., Hussain*, 718 F.3d at 969; *al Odah*, 611 F.3d at 15-16.

In short, Petitioner travelled to ISIL territory on two occasions; is reflected in an internal ISIL document as a registered ISIL “fighter”; has admitted to serving ISIL in a variety of roles; and was captured by an enemy force at war with ISIL on an active battlefield with bomb-making manuals and ISIL administrative spreadsheets on a thumb drive in his pocket. Petitioner is part of or substantially supported ISIL and is thus detainable as an enemy combatant. His request for immediate release should be denied.

January 22, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document, along with attachments, will be served today by email on counsel for Petitioner.

/s/ Kathryn L. Wyer

[REDACTED]

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SECTION 1 OF 3
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SERIAL: (U) IIR 6 089 1568 16.

DATE OF PUBLICATION: 181729Z JAN 16.

DEPARTMENT OF DEFENSE
INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE.

PAGE 12 RUZDHTR6570 ~~SECRET//NOFORN~~
COUNTRY OR NONSTATE ENTITY: (U) Syria (SYR); Iraq (IRQ); CT Level 1
Terrorist Groups and Terrorist Support Entities (TC); al-Qa ida and

Sunni Affiliates (GU); Insurgents in Iraq (TU); United States (USA); Saudi Arabia (SAU); Turkey (TUR).

SUBJECT: (S//NF) IIR 6 089 1568 [REDACTED] - ISIL General Border
Administr [REDACTED] Saudi
Citizen [REDACTED]
Found on [REDACTED] in [REDACTED]
[REDACTED]

DATE OF INFORMATION: (U) 15 Jan 2016.

CUTOFF: (U) 14 Dec 2015.

SUMMARY: (U) SEE EXECUTIVE SUMMARY, TEXT PARAGRAPH 1, BELOW.

SOURCE NUMBER A: (U//FOUO) Exploited media - SYR

PAGE 13 RUZDHTR6570 ~~S E C R E T~~//NOFORN

SOURCE A: (U//FOUO) Media exploited during operations in Syria.

CONTEXT A: (U//FOUO) The source of information for this report came from a Black 4GB Sandisk Cruzer thumb drive recovered during operations in Syria and provided by [REDACTED] Foreign Terrorist Fighter Task Force. All translations, summaries, and gists of a foreign language represent the viewpoint of its origin. Where statements of fact appear in the translated text, they are made from the originator's point of view as translated into English. Unless otherwise stated, all references are taken directly from the original material found in the captured media.

WARNING: (U) THIS IS AN INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE. ~~REPORT CLASSIFIED SECRET~~//NOFORN.

TEXT: 1. (U//FOUO) EXECUTIVE SUMMARY. Islamic State of Iraq and the Levant (IS [REDACTED]) a form for [REDACTED] a fighter and [REDACTED] was born in the United States. [REDACTED] entered ISIL-controlled [REDACTED]

PAGE 14 RUZDHTR6570 ~~S E C R E T~~//NOFORN

[REDACTED] 20 [REDACTED] ria, facilitated by [REDACTED].
[REDACTED] ve [REDACTED]
[REDACTED] provides the probable Saudi A [REDACTED]
[REDACTED], as a point of contact.

2. (U//FOUO) (U//FOUO) This product contains U.S. Persons information, which has been deemed necessary for the intended

recipient to understand, assess or act on the information provided, in accordance with Department of Defense Directive 5240.1R and Executive Order 12333. It should be handled in accordance with the recipient's intelligence oversight and/or information handling procedures.

3. (U//FOUO) This report includes the information on terrorism/extremism linked identities and related biographic, biometric, and/or terrorism association or activity information. The provided information may include individuals of interest who should be considered for input into a Terrorist Identity Nomination (TIN) for entry into NCTC'S TIDE, and subsequent onward movement of this

PAGE 15 RUZDHTR6570 ~~S E C R E T~~//NOFORN
information to the TSC for inclusion in the Terrorist Screening Database (TSDB).

4. (~~S//REL TO USA, MESE~~) Access was provided to a 4GB thumb drive acquired in Syria from Islamic State in Iraq and Levant (ISIL) [REDACTED]. The thumb drive contains more than 5,000 forms created by the ISIL General Border Administration to document individual foreign fighters who traveled to Syria to join the group in 2013 and 2014. On 15 December 2015, a forensic image of the 4GB (Sandisk Cruzer) black thumb drive was provided to NMEC for exploitation.

5. (U//FOUO) NMEC-2016-105770 (MD5: 37F2E8F13EAEEDBD674C8CCB982E793D) is a Mujahid information form issued by ISIL's General Border Administration for [REDACTED], who is a citizen of United States of Saudi Arabian origin. The form states that his most recent place of residence was [REDACTED], Saudi Arabia, that he has previously traveled to the U.S. and the [REDACTED], and that he entered ISIL territory through Jarabulus. He was recommended by [REDACTED] and under

PAGE 16 RUZDHTR6570 ~~S E C R E T~~//NOFORN
address where he can be reached the form provides the phone number [REDACTED] as a point of contact. The file was found at the filepath [REDACTED] and has a last modified date of [REDACTED] July 2014. A copy of NMEC-2016-105770 is attached as ENCLOSURE 1, and a full translation follows.

[Begin Full Translation]

1. Full name: [REDACTED]
- 2(a). Nickname: [REDACTED]
- 2(b). Nickname location: Saudi Arabia.
3. Mother's name: [REDACTED].

4. Blood type: O+.
5(a). Date of birth (Hijri): [REDACTED]
5(b). Date of birth (Gregorian) Bracketed, if converted from a Hijri date: [REDACTED].
5(c). Citizenship: Jaziri [Saudi Arabia] born in the United States.
6(a). Marital status: Married.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
~~SECRET//NOFORN~~

SECTION 2 OF 3

QQQQ

- 6(b). Number of children: 1.
7(a). Full address: [REDACTED] [Saudi Arabia].
7(b). City of residence: [REDACTED].
7(c). Region of residence: [Blank]
7(d). Country of residence: Saudi Arabia.
8. Education Level: College, Electrical [Engineering].
9. Level of Sharia expertise Advanced student, Intermediate, Basic: [Blank]
10. Previous occupation: Commerce.

PAGE 12 RUZDHTR6571 ~~SECRET//NOFORN~~

11. Countries visited and time spent in each: America [United States] and [REDACTED].
12(a). Point of entry: Jarabulus.
12(b). Entry facilitator or method of entry: [REDACTED].
13(a). Recommending party (first): [REDACTED] [Saudi Arabia].
13(b). Recommending party (second): [Blank]
14(a). Date of entry (Hijri): [REDACTED]/1435.
14(b). Date of entry (Gregorian) bracketed, if a converted Hijri date: [07/[REDACTED]/2014].
15. Have you engaged in Jihad before and where?: No.
16. Fighter, suicide bomber, or inghimasi suicide fighter: Fighter.
17. Specialty Fighter, Security, Sharia, or Admin: [Blank]
18. Current work location: [Blank]
19. Personal belongings handed over: Passport, phone, and camera.
20. Level of compliance: [Blank]
21(a). (First) Address/Phone number where he can be reached: Unspecified: [REDACTED]
21(b). (Second) Address/Phone number where he can be reached: [Blank]

22. Date and location of Death: [Blank]

PAGE 13 RUZDHTR6571 ~~S E C R E T~~//NOFORN

23. Notes, affiliations, general information, and whether or not he is wanted: [Blank]

[End Full Translation]

COMMENTS: (Other Comments) 1. (U//~~FOUO~~) All date stamps are only as accurate as the original settings on the device. Created dates represent the dates files first appear on a device. A created date may not reflect the actual date of file creation, particularly if one file overwrote another. An accessed date represents the last date a file was opened by a user, and it can represent the date a file was transferred to a new media device. A modified date, aka last written date, represents the last date a file was altered. In cases of file transfer, a modified date can be earlier than a created date.

[REDACTED]

PAGE 14 RUZDHTR6571 ~~S E C R E T~~//NOFORN

B. [REDACTED]

2. [REDACTED]

3. [REDACTED]

PAGE 15 RUZDHTR6571 ~~S E C R E T~~//NOFORN
428-1393.

4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5. (U//FOUO) DISSEM: Field: None. Sent to: [REDACTED].

6. (U) Source A is available for recontact.

ATTACHMENTS: (U) TO FOLLOW - 1 ATTACHMENT(S).

1. Digital, Document - (U//FOUO) 6089156816ENCL01.01, 1/Powerpoint copy of NMEC-2016-105770/1 page, 20160115, 6089156816ENCL01.01.PPTX (U//FOUO)

TOPIC: (U) TERR; SRCC; DEPS.

[REDACTED];

PAGE 16 RUZDHTR6571 ~~S E C R E T~~//NOFORN

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

MGT CODE: (U) [REDACTED].

INSTR: (U) U.S. YES 5.

PREP: (U) [REDACTED].

JOINT REP: (U) NONE.

DATE OF ACQUISITION: (U) 14 Dec 2015; Syria.

POC: (U//FOUO) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

~~SECRET//NOFORN~~
FINAL SECTION OF 3
QQQQ

A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PAGE 12 RUZDHTR6572 ~~SECRET//NOFORN~~

B. [REDACTED]
- [REDACTED]
- [REDACTED]).
- [REDACTED].

WARNING: (U) THIS IS AN INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE. ~~REPORT CLASSIFIED SECRET//NOFORN.~~

=====DISSEMINATION=====

AGENCY: (U) None.

U.S. MISSION: (U) None

MILITARY: (U) None.

STATE/LOCAL: (U) None

=====CLASSIFICATION=====

CLASSIFIED BY: [REDACTED]

PAGE 13 RUZDHTR6572 ~~SECRET//NOFORN~~

DERIVED FROM: [REDACTED]

DECLASSIFY ON: [REDACTED].

~~SECRET//NOFORN~~

[REDACTED]
[REDACTED]
[REDACTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

DECLARATION OF [REDACTED]

I, [REDACTED], hereby declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have served in this capacity since [REDACTED]. I am currently assigned to a [REDACTED] [REDACTED], where I work on investigations of crimes related to international terrorism. As a Special Agent with the FBI, it is part of my duties to investigate violations of federal criminal law, including terrorism-related violations. I am authorized to execute search and arrest warrants issued under the authority of the United States.

2. The statements made below are based upon: (a) my personal participation in this investigation; (b) my review of records and reports generated by other law enforcement agents in the United States and elsewhere; (c) my review of communications data recovered during the investigation; (d) information provided to me by other agents and law enforcement officials; (e) information otherwise obtained by credible and reliable sources; and (f) my training and experience as a Special Agent.

3. Unless otherwise noted, the documents referenced by or attached to this Declaration are or reflect content from true and correct copies of documents and other materials from the official files of the FBI, including returns from duly issued and executed search warrants. This Declaration does not contain an exhaustive recitation of all information developed by the FBI in its investigation relevant to Petitioner.

4. I am aware that the above-captioned proceeding involves a petition for habeas corpus relating to an individual named [REDACTED]. [REDACTED] is a dual citizen of the United States and Saudi Arabia currently detained by the Department of Defense

BACKGROUND

A. ISIL-Designated Foreign Terrorist Organization

5. Based on my training and experience as a counterterrorism agent of the FBI, including my review of open source materials, law enforcement materials, and my conversations with other FBI agents who have reviewed, among other things, the materials referenced below, I have learned the following:

6. Foreign Terrorist Organizations (“FTO’s”) are foreign organizations that are designated by the Secretary of State. On or about October 15, 2004, the United States Secretary of State designated al-Qa’ida in Iraq (“AQI”), then known as Jama‘at al Tawhid wa’al-Jihad, as a PTO under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist under section I(b) of Executive Order 13224.

7. On or about May 15, 2014, the Secretary of State amended the designation of

AQI as a FTO under section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist entity under section 1(b) of Executive Order 13224 to add the alias Islamic State of Iraq and the Levant (“ISIL”) as its primary name. The Secretary of State also added the following aliases to the ISIL FTO listing: the Islamic State of Iraq and al-Sham, the Islamic State of Iraq and Syria, ad-Dawla al-Islamiyya fi al-‘Iraq wa-sh-Sham, Daesh, Dawla al-Islamiya, and Al-Furqan Establishment for Media Production. On September 21, 2015, the Secretary added the following aliases to the ISIL FTO listing: Islamic State, ISIL, and ISIS (a term that is interchangeable with ISIL). To date, ISIL remains a designated FTO.

8. Abu Bakr al-Baghdadi was ISIL’s leader during all the material events set forth herein. On or about July 5, 2014, in a rare public address within a mosque in Mosul, Iraq, al-Baghdadi declared the ISIL a caliphate, and he anointed himself the caliph, or leader, of the organization. The objective of the terrorist organization was, and remains, the forcible acquisition of land for the stated goal of creating an Islamic State without recognizing any national boundaries. ISIL seeks to accomplish its goals through the commission of various criminal acts and acts of terror against the United States and the world community. In furtherance of those goals, ISIL’s leadership seeks to recruit and accept new members from across the globe, including the United States, primarily through the Internet and social medial platforms.

B. Asawirti Media

9. Based on information obtained during the course of the investigation, FBI conducted open source research on Asawirti Media. The following information is based on that research and an overall working knowledge of ISIL from other investigations and experience. ISIL makes extensive and sophisticated use of social media to spread information and propaganda and recruit foreign fighters to join its cause. One of the most prominent ISIL media presences is Asawirti Media, also known as Turjuman Asawirti, or al-Asawirti. Asawirti Media creates pro-ISIL videos, posts, and graphics. Asawirti Media's Twitter account has been active since at least 2014 (under hundreds of different "handles," which are changed when the account is suspended) and is recognized as a prominent "face" of the ISIL online community. Tweets from Asawirti Media's Twitter account are viewed within the ISIL community as conveying the message of ISIL, not just a related association or ISIL sympathizer. Asawirti Media has distributed graphic anti-American content through its Twitter account, such as a picture of British ISIL executioner "Jihadi John" striking former President Barack Obama with a knife. Between February 2014 and May 2014, Asawirti Media used the Twitter handle @AsawirtiMedia. At that time the account had over 10,000 followers. (Some Asawirti Media Twitter handles have had as many as 90,000 followers.)

10. On June 14, 2014, Al-Asawirti announced an international day of support for ISIL on June 20, 2014, tweeting a new hashtag "Friday of support for ISIS." The account tweeted "We want demonstrations of support in every country where there are supporters of

ISIS” and instructed supporters to hold protests, raise the flags of ISIL, film the protests and distribute the videos on YouTube.

[REDACTED]

11. [REDACTED] is a [REDACTED]-year-old, dual United States and Saudi Arabian citizen, who was born in [REDACTED] on [REDACTED]. Between 1999 and 2004, he attended college in Louisiana. He is currently married with one daughter approximately three and a half years old.

U.S. GOVERNMENT RECORDS

12. I am aware that, since at least 2013, ISIL has engaged in a concerted campaign to acquire by force substantial land in Syria. Since then, and continuing to the present day, military forces have engaged in an effort to push out and/or capture ISIL fighters in Syria, to include foreign fighters, in an effort to reclaim land that ISIL had acquired by force. According to information passed by the Department of Defense to the FBI, in or about July 2015, local Syrian forces overran ISIL positions in Tal Abyad, Syria. In one of the captured ISIL Headquarters, these forces found the data associated with foreign fighter bio sheets stored on a thumb drive. The data was stored by these forces until late November of 2015 when it was passed through a vetted, trusted contact to the Department of Defense.

13. Contained within the above-described data is an entry record listing [REDACTED] [REDACTED], with a date of birth of [REDACTED]. [REDACTED]'s citizenship is listed as Saudi Arabia, along with a note stating that he was born in the United States. [REDACTED]

██████'s role within ISIL is listed as "fighter." His date of entry into the terrorist organization is listed as July █████, 2014, with a point of entry of Jarabulus, Syria (a town that ISIL captured in or about July 2013). Significantly, July █████, 2014 was approximately █████ after Abu Bakr al-Baghdadi declared the Islamic State a caliphate and anointed himself the caliph, an event which ISIL later used as a recruiting tool for attracting foreign fighters. The data also notes that █████ █████ is married with one child, that his mother's name is █████, and that he surrendered some of his personal belongings, including a passport, phone and camera. █████'s contact telephone number is listed as █████. Based on the similarity of the information and known information about the Petitioner, █████, from other sources and FBI investigation, the FBI assesses that the ISIL entry record obtained by the Department of Defense identifies and pertains to █████, the Petitioner in the instant matter.

14. U.S. Customs and Border Protection ("CBP") records indicate that on May 2, 2006, █████ departed the United States aboard a flight from Baton Rouge, Louisiana to Dammam, Saudi Arabia. █████ reentered the United States on June 19, 2014 on a flight from Dammam, Saudi Arabia to New Orleans, Louisiana. █████ provided the phone numbers, █████ and █████, and the e-mail address, █████@gmail.com, as methods of contact on his airline reservation. █████ departed the United States on a flight on July 5, 2014 from New Orleans, Louisiana to Dammam, Saudi Arabia. █████ again provided █████, █████, and █████@gmail.com as methods of contact on his airline reservation.

15. █████ returned to the United States on October 15, 2014 aboard a flight from

Bahrain to New Orleans, Louisiana. [REDACTED] once again provided [REDACTED], [REDACTED], and [REDACTED]@gmail.com as methods of contact on the reservation. [REDACTED] departed the United States on December 11, 2014 aboard a flight from New Orleans, Louisiana to Bahrain. [REDACTED] yet again provided [REDACTED], [REDACTED], and [REDACTED]@gmail.com as methods of contact on the reservation. [REDACTED] has not returned to the United States since departing in December 2014.

16. In his most recent (2014) U.S. Department of State passport renewal application, [REDACTED] listed his mother's maiden name as [REDACTED]. The passport application also indicates that [REDACTED] was born in the United States (in [REDACTED]). [REDACTED] also listed the email, [REDACTED]@gmail.com, on the application.

SEARCH WARRANT RETURNS

GOOGLE

17. On September 15, 2017, FBI served Google with a search warrant for email account [REDACTED]@gmail.com. Google provided the returns on September 20, 2017. Search warrant returns for the content of [REDACTED]@gmail.com are described below. Along with the search warrant returns, Google provided a Certificate of Authenticity which, in summary, verifies: the Records Custodian is employed by Google Inc., is authorized to submit the Certificate of Authenticity, has personal knowledge of the facts and could testify if called as a witness; Google Inc., provides Internet based services to subscribers and does not verify any personal information that is submitted by a user at the time of account creation; the records provided are true and correct; the information is a record made and retained by Google.

18. The search warrant returns on [REDACTED]@gmail.com contained airline and accommodation travel bookings reflecting travel by [REDACTED] from about late February 2014 through mid-May 2014 from Saudi Arabia to Indonesia, Singapore, and China. In particular, the search warrant returns contain the following:

- a. A confirmation email dated on or about February 23, 2014, from Qatar Airways for a round trip flight departing February [REDACTED], 2014 from Dammam, Saudi Arabia to Jakarta, Indonesia (through Doha, Qatar). The return flight is listed as March [REDACTED], 2014. The passenger's name is listed as Mr. [REDACTED], [REDACTED]@gmail.com, mobile phone [REDACTED];
- b. A Lion Air eTicket Itinerary / Receipt dated on or about February 23, 2014, for a one way ticket from Jakarta to Denpasar, Bali on February [REDACTED], 2014, for passenger [REDACTED];
- c. An eTicket Itinerary / Receipt dated on or about February 23, 2014, for a one-way ticket from Denpasar Bali to Jakarta, departing March [REDACTED], 2014, for passenger [REDACTED];
- d. An Airbnb customer receipt dated on or about February 26, 2014, for accommodation in Bali February [REDACTED], 2014;
- e. A confirmation email from [REDACTED] in Lombok, Indonesia, dated on or about March 9, 2014, for accommodation March [REDACTED], 2014;
- f. An eTicket Itinerary / Receipt dated on or about March 23, 2014, for a one-way ticket from Denpasar, Bali to Jakarta on March [REDACTED], 2014;

- g. A confirmation email from Qatar Airways dated on or about April 5, 2014, for a round trip flight departing on April [REDACTED], 2014 from Dammam, Saudi Arabia to Jakarta, Indonesia. The return flight is listed as May [REDACTED], 2014. The passenger's name is listed as Mr. [REDACTED] [REDACTED]@gmail.com, mobile phone [REDACTED];
- h. An eTicket Itinerary / Receipt dated on or about April 5, 2014, for a one-way ticket from Jakarta to Denpasar, Bali on April [REDACTED], 2014, for passenger [REDACTED];
- i. An eTicket Itinerary / Receipt dated on or about April 12, 2014, for a one-way ticket from Denpasar, Bali to Surabaya on April [REDACTED], 2014, for passengers Mr. [REDACTED] and Ms. [REDACTED];
- j. An eTicket Itinerary / Receipt dated on or about April 12, 2014, for a one-way ticket from Surabaya to Denpasar, Bali on April [REDACTED], 2014, for passengers Mr. [REDACTED] and Ms. [REDACTED];
- k. A booking confirmation email dated on or about April 18, 2014, from [REDACTED] [REDACTED] in Surabaya for April [REDACTED], 2014, guest name [REDACTED];
- l. A reservation confirmation email dated on or about April 22, 2014, through booking.com for [REDACTED] in Singapore, April [REDACTED], 2014, booked by [REDACTED];
- m. An eTicket Itinerary / Receipt dated on or about April 22, 2014, for a one-way

ticket on Tiger Airlines from Singapore to Shenzhen, China on April [REDACTED], 2014, for passenger [REDACTED];

- n. An itinerary dated on or about April 23, 2014, for a one-way ticket on Tiger Airlines from Shenzhen, China to Singapore on May [REDACTED], 2014, for passenger [REDACTED];
- o. A hotel receipt dated on or about April 24, 2014, for the [REDACTED] in Shenzhen, China, April 25-27, 2014, for [REDACTED];
- p. A hotel receipt dated on or about April 26, 2014, for the [REDACTED] in Shenzhen, China, April 27-28, 2014, for [REDACTED];
- q. A hotel receipt, dated on or about April 26, 2014, for the [REDACTED] in Shenzhen, China, April 23-May 1, 2014, for [REDACTED];
- r. A hotel receipt dated on or about April 30, 2014, for the [REDACTED] in Shenzhen, China, May 1-2, 2014, for [REDACTED];
- s. An eTicket Itinerary / Receipt dated on or about April 30, 2014, for a one-way ticket on Mandala Airlines from Singapore to Denpasar, Bali on May [REDACTED], 2014.

19. The search warrant returns also reflect that, on or about July 9, 2014, [REDACTED]@gmail.com received an email from makemytrip.com. The email contained flight reservations for [REDACTED] for a roundtrip ticket from Bahrain to Gaziantep, Turkey, on Turkish Airlines.¹ The flight departed Bahrain on July [REDACTED], 2014, with a layover in Istanbul, Turkey, and arrived in Gaziantep, Turkey, the same day. The return flight departed Gaziantep,

¹ Based on my training, experience, and other investigations I know that, during this time frame, foreign fighters frequently used Gaziantep, Turkey, as an entry point to come into Syria in order to join ISIL.

Turkey on October █, 2014, with a layover in Istanbul, Turkey, and arriving in Bahrain on October █, 2014.

20. On or about July 9, 2014, █@gmail.com received an email from █@hotmail.com, which was a reservation for █ hotel. █ hotel is listed in online hotel booking websites as located in Gaziantep, Turkey. The email stated “Mr. █, I am the owner of the hotel. Please let me know if there is anything I can do to make your stay more comfortable at Gaziantep.”

21. The search warrant returns on █@gmail.com also contained a booking receipt for █ from onetravel.com for an Air Pegasus flight on March █, 2015, from Athens, Greece, to Istanbul (Sabiha Gokcen), Turkey, and onward to Gaziantep, Turkey. The booking, which was a round-trip ticket, contained a return flight on June █, 2015. Search warrant returns for █@gmail.com also contained a 90-day electronic visa for the Republic of Turkey valid beginning on March 4, 2015.

22. On or about November 17, 2015, Google sent an email to █@gmail.com, which stated “Your Google account █@gmail.com was just used to sign in from Chrome on Android.” The email provided the date, time and location of login, which was Tuesday November 17, 2015 at 3:19 PM (Arabian Standard Time) in Mosul, Iraq. The email also stated the location is approximate and determined by the IP address it was coming from.

23. On or about July 4, 2016, Google sent an email to █@gmail.com, which stated “Your Google account █@gmail.com was just used to sign in from Chrome on Samsung Galaxy Note IL.” The email provided the date, time and location of login, which was Monday July 4, 2016 at 4:59 PM (Eastern European Summer Time) in Turkey. The email also

stated the location is approximate and determined by the IP address it was coming from.

24. Search warrant returns for the account [REDACTED]@gmail.com also revealed a number of emails in which [REDACTED] communicated with the [REDACTED] and the [REDACTED] about obtaining an identification for \$25 that identified him as a member of the press. From their website FAQ's, the [REDACTED] is a registered international press and journalist press agency with a registered office in the USA. Anyone who is employed or works as a freelance journalist can apply for membership. Unlike many other journalist organizations or agencies, the [REDACTED] does not differentiate between part- or full-time workers. [REDACTED] offers fee based membership and press passes for persons who apply through their website.

25. On or about May 30, 2014, [REDACTED]@gmail.com sent an email to [REDACTED], which stated: "Dear Sir, my name is [REDACTED] and I am interested to apply for [REDACTED]. I tried clicking on the application and there was a malfunction. Can you assist me by sending me the application form link via e-mail? For future reference, I am currently overseas and therefore, the shipping address will be an international (overseas) address. I prefer DHL as the shipping service and I will provide you with the necessary information later on. Thank you, [REDACTED]."

26. Through review of the initial search warrant returns, [REDACTED]@gmail.com was identified as another email address utilized by [REDACTED]. Search warrant returns for [REDACTED]@gmail.com revealed that [REDACTED] sent an email to the [REDACTED] in June 2014 indicating that he planned to cover "various events and stories in a number of areas/countries in the Middle East," followed by additional emails to the [REDACTED] in October 2014 indicating that he "gathered a

great deal of information living in refugee tents on the Turkish-Syrian border” by interviewing “various individuals to obtain the true stories behind this Middle Eastern conflict.” [REDACTED] then indicated, in a subsequent email to the [REDACTED], that one “cannot imagine how many stories I gathered in the short time I was on my journey and this is only the beginning.” He then requested a link to upload his written articles, and stated that he does not “mind having my name mentioned (i.e. I don’t need to remain anonymous).” [REDACTED] also offered to “do much more” if requested by the [REDACTED], to include gathering photographs and videos, but indicated that he needed “the financial means to do so.” The [REDACTED] provided him with a link to upload his materials. However, to date, FBI investigation has not revealed any instances where [REDACTED] published any news stories, blogs or any written accounts of any sort, whether they be related to events in the Middle East, or anywhere else in the world.

27. In a communication from [REDACTED]@gmail.com to [REDACTED] on or about March 16, 2015, [REDACTED] indicated that he wanted to travel to Turkey to cover recent events in Turkey as well as in some Syrian refugee camps in Turkey. On or about March 16, 2015, [REDACTED]@gmail.com emailed [REDACTED] and stated “To Whom It May Concern, I want to cover some recent events in Turkey as well as in some Syrian refugee camps in Turkey. Therefore, I will need a Residence Permit in Turkey. They need a letter from the press company that I am working for to be sent to the Ministry of Foreign Affairs in Turkey to get the Residence Permit in Turkey. Thank you for your cooperation, [REDACTED].” On or about March 16, 2015, [REDACTED] responded to the above email and stated “Dear Mr. [REDACTED], A letter of Accreditation did you get already

(sic)! Further confirmation cannot be given.”

28. The search warrant returns for [REDACTED]@gmail.com also provided search history information for searches conducted through that email account on YouTube and Google.

YouTube Searches

29. Between January 1, 2014 and March 18, 2015, [REDACTED] searched YouTube for “Islamic State” approximately 859 times, and for “Daesh” approximately 285 times.

30. Between December 24, 2014 and February 9, 2015, [REDACTED] conducted approximately 191 searches on YouTube for the Jordanian pilot who was captured by ISIL and burned alive in a cage. ISIL released the video depicting the pilot being burned alive on or about February 3, 2015. [REDACTED] conducted approximately seven YouTube searches of the Jordanian pilot on that day.

31. Between January 31 and February 1, 2015, [REDACTED] searched YouTube for ISIL’s beheading of a Japanese hostage approximately 35 times.

32. On or about March 4, 2015, [REDACTED] conducted the following YouTube searches: “Abu Bakr Al Baghdadi” (approximately two times), “Abu Bakr Al Baghdadi and Mossad” (approximately eight times), “Islamic State” (approximately 30 times), “Daesh” (approximately eight times).

Google Searches

33. From January 1, 2014 to February 28, 2014, [REDACTED] conducted approximately twenty-five Google searches, in Arabic, for Quran Surah 54, Ayat 45, which roughly translates to: “[Their] assembly will be defeated, and they will turn their backs [in retreat].”

34. On or about January 10-11, 2014, ██████████ searched for and visited the Wikipedia webpage for Al-Baghdadi.

35. On or about January 28, 2014, ██████████ conducted the following Google searches, in Arabic: “Is the road open to Syria?”; “Abu Khaled Syrian.”

36. On or about February 2 and 4, ██████████ searched and visited websites regarding “al-Rihaniya” on the border between Turkey and Syria

37. On or about February 22, 2014, ██████████ conducted the following Google searches, in Arabic: “Demonstrations for ISIS in Indonesia” (approximately one time); “Demonstrations in support of ISIS in Indonesia” (approximately four times); “The poor and downtrodden area in Indonesia” (approximately two times); “The poor areas of Indonesia” (approximately one time). These searches coincide with the email confirmation referenced above, that ██████████ received on February 23, 2014, for a round trip flight with him as passenger from Damman to Doha and Doha to Jakarta, Indonesia. The flight departed Damman on February 26, 2014 and returned on March 21, 2014.

38. On or about February 26, 2014 ██████████ conducted the following Google searches, in Arabic: “ISIS” (approximately eight times); “the ISIS flag” (approximately six times); “Abu-Khalid al-Suri”² (approximately three times); “The death of Abu-Khalid al-Suri” (approximately two times).

39. On or about March 3, 2014, ██████████ conducted the following Google searches,

² Abu Khalid al-Suri cofounded the Sunni Syrian Islamist Group Ahrar al-Sham. He was allegedly assassinated in an ISIL suicide operation in late February 2014.

in Arabic: photos of the person who killed Abu-Khalid al-Suri (approximately three times); photos of the person who blew himself up against Abu-Khalid al-Suri (approximately one time).

40. On April 3, 2014, ██████████ conducted the following Google searches, in Arabic: Abu-Usamah al-Maghribi (approximately three times); The killing of Abu-Usamah al-Maghribi (approximately two times).³

41. On November 18, 2014, ██████████ conducted the following Google searches, in Arabic: “video of the al-Furquan foundation” (approximately two times); “new videos for daesh” (approximately two times).

42. On November 18, 2014, ██████████ also visited the website and Facebook page of Da‘wat Al-Haq, a pro-ISIL website (approximately two times). ██████████ again visited the website and Facebook page of Da‘wat Al-Haq on or about February 9-11, 2015 (approximately eight times).

43. Between April 1 and April 30, 2016, ██████████ conducted approximately 120 weapons-related searches on Google in Arabic and English, on sites including purchasing sites such as Ebay, AliExpress, and Gunauction.com. The majority of these searches were for the Dragunov sniper rifle and accessories, including a scope for the Dragunov rifle.

TWITTER

44. Located in ██████████’s email account [██████████@gmail.com] was an email sent on February 1, 2014 from Twitter related to Twitter account [@██████████]. The email stated:

³ Abdel Aziz Al Mehdali AKA Abu-Usamah al-Maghribi was an early member of Al Nusrah Front but later joined ISIL. In March 2014, Mehdali was killed in an ambush while traveling to negotiate on behalf of ISIL with senior members of Al Nusrah Front.

“You recently changed the password associated with your Twitter account @ [REDACTED].” On September 23, 2017, FBI served a search warrant on Twitter Inc. for Twitter account @ [REDACTED]. Twitter Inc. provided the search warrant returns on September 25, 2017. Search warrant returns related to this Twitter handle identified an active Twitter account. Review of Twitter account @ [REDACTED], UID [REDACTED], revealed, among other content, the indicated Twitter information described below.

45. Review of Twitter account @ [REDACTED], UID [REDACTED], revealed that during the period from February 2014 to May 2014, [REDACTED] tweeted to @AsawirtiMedia approximately 22 times. Within those 22 tweets, [REDACTED] provided standard 140 character limit diatribes, provided links to articles calling for unity within the Jihadist ranks, and provided recruitment and propaganda postings and pictures across multiple countries of ISIL flags with Koran surahs.

46. On or about [REDACTED], 2014, [REDACTED] issued a tweet, in Arabic, directed to Asawirti Media (@AsawirtiMedia): “The Islamic State of Iraq and Sham support for the Islamic State in Iraq and Sham It will endure; this is God's promise.” The tweet included a picture of the ISIL flag on a piece of paper that also stated, in Arabic, “All will be vanquished and be gone. I wish my people understand,” with a signature block stating, “Your brother, [REDACTED].” A true and correct copy of this tweet is attached as Exhibit 1.

47. On or about [REDACTED], 2014, [REDACTED] issued two tweets, in Arabic, directed to Asawirti Media (@AsawirtiMedia): “The Islamic State of Iraq and Sham support for the Islamic State in Iraq and Sham It will endure; this is God's promise.” Both tweets included a picture of

the ISIL flag on a piece of paper that also stated, in Arabic, “All will be vanquished and be gone. I wish my people understand,” with a signature block stating, “Your brother, [REDACTED].”

True and correct copies of these tweets are attached as Exhibits 2 and 3.

48. On or about [REDACTED], 2014, [REDACTED] tweeted to @AsawirtiMedia: “Peace be upon you, my noble brother. I would like you to do a service for the sake of God. God provided you with a great weapon-that is the media, so use it to reconcile the brothers, because reconciliation is good.”

49. On the same day, [REDACTED] tweeted to @AsawirtiMedia: “I swear, I am longing for this day, and I pray to God for it night and day. Let's unite that the word of God may be realized in us and that we may cut off the hand and cut out the tongue of the troublemakers.”

50. On the same day, [REDACTED] tweeted to @AsawirtiMedia: “Muhammed is the messenger of God, and those who are with him are harsh against the infidels and merciful among themselves.”

51. On or about [REDACTED], 2014 [REDACTED] tweeted to Asawirti Media (@AsawirtiMedia): “In support of the Islamic State in Iraq and Sham. From the far east.” The tweet included a picture of a piece of paper showing the ISIL flag with Arabic script above and below, including the statement “All will be vanquished and be gone. I wish my people understand,” signed “Your brother, [REDACTED].” The piece of paper appeared against a background where the [REDACTED] in Singapore were visible. A true and correct copy of this tweet is attached as Exhibit 4. This posting coincides with an email confirmation [REDACTED] received on or about April 22, 2014 from booking.com for [REDACTED]

██████████ in Singapore. The booking was for two nights, checking in April 23, 2014 and checking out April 25, 2014. Open source images of views near the hotel indicate that the ██████████ is visible. *See* Exhibits 5 & 6, attached.

52. On or about ██████████, 2014, ██████████ tweeted to @AsawirtiMedia an article he had written, which was posted on justpaste.it, a known ISIL propaganda tool. The article, titled “██████████,” detailed the groups involved in the fighting in Syria, and called for someone within ISIL to unite the current groups fighting in order to fight together in a united effort. He called for ISIL leadership to unite the groups under the ISIL flag and form the Caliphate. In his tweet containing the URL to the article, he asked AsawirtiMedia: “Important; I implore you to edit and publish it. The Islamic State in Iraq and Sham. Hidden hands in the jihadist conflicts.” ██████████ sent three additional tweets to @AsawirtiMedia on the same day, urging it to publish more calls for unity.

53. On or about ██████████, 2014, ██████████ tweeted to @AsawirtiMedia “The Islamic State in Iraq and Sham. In support of the Islamic State of Iraq and Sham. It will endure, this is God’s promise.” The tweet included a picture with a piece of paper with Arabic script above an ISIL flag, additional Arabic below the flag, and a signature block, which stated “Remaining, that’s God’s promise. All will be vanquished and be gone. I wish my people understand. Your brother, ██████████.” A true and correct copy of this tweet is attached as Exhibit 7. This tweet was sent approximately two weeks after ██████████’s e-mail receipts from the ██████████ in Shenzhen, China, identified above. A view of the hotel found through open source research is attached as Exhibit 8.

██████████'S CAPTURE

54. According to FBI interviews conducted on or about September 12, 2017, the Syrian Democratic Forces (“SDF”) encountered ██████████ on or about September 11, 2017 while manning a screening point near Abu Khashab, Syria. At that time, the SDF was engaged in a military offensive near Dayr az Zur, Syria. As the SDF moved across the battlefield, they set up screening points because fleeing ISIL fighters sometimes attempted to blend in with civilians who were also attempting to flee the conflict.

55. All territory within two days’ walk of the screening point was ISIL-held territory. The area south of Shaddadi was primarily desert and had been under ISIL control since 2014. ISIL used this desert area for fighter training camps. According to SDF forces interviewed, there would be no reason for a foreigner to be in this area unless he were supporting ISIL. ISIL employed many foreign fighters. Although foreign fighters tended to be stationed in Raqqa and Dayr az Zur city, foreigners had begun to flee into the desert due to the SDF offensive.

56. ██████████ appeared at the screening point, traveling alone on foot. SDF forces identified ██████████'s physical appearance, including his beard, as typical of an ISIL devotee. His clothing did not resemble the traditional clothing worn in the region. ██████████ told the soldiers he was “daesh,” and that he wanted to turn himself in and wanted to speak to the Americans. ██████████ also told the soldiers that he had been walking for two days and, as set forth above, the SDF noted that all territory within two days’ walk of the checkpoint was ISIL territory.

57. Based on information ██████████ provided to SDF, the SDF provided a report to

the FBI, which included photos of [REDACTED] and the following information:

- a. Name: [REDACTED]
- b. Nickname: [REDACTED]
- c. Mother Name: [REDACTED]
- d. Father Name: [REDACTED]
- e. DPOB: [REDACTED]
- f. General Info: Arab from Saudi origin, American, Muslim, married to [REDACTED]
[REDACTED] (Bahrain citizen)
- g. Occupation: Electrical Engineer, Merchant
- h. Reason for Arrest: ISIS member
- i. Captured by: Al-Shaddadi Group

58. SDF forces took [REDACTED] into custody and searched and inventoried his possessions. Among [REDACTED]'s possessions were the following:

- a. Thumb drive, Kingston Datatraveler 64 GB, yellow
- b. Thumb drive, Kingston 256 GB, blue
- c. Turk Cell 4.5 Sim card, Sim 8990011326000369678
- d. Navigon GPS, S/N 01N9280442A, black
- e. Personal effects including clothes, hats, scuba snorkel and mask, a Koran, an Arabic book, \$4,210 USD.

59. SDF forces stated that they found the GPS device to be highly suspicious because GPS devices were highly controlled in ISIL territory and, if possessed by a civilian, would

immediately lead to accusations of being a spy. SDF forces also stated that they found the amount of currency in ██████'s possession very unusual because civilians fleeing the conflict rarely had time or ability to sell their possessions before fleeing. An attempt to sell possessions could alert ISIL to the individual's plan to flee and lead to imprisonment.

60. On September 18, 2017, FBI obtained a search warrant to search these possessions. A search of the thumb drives revealed thousands of files which included over 100,000 jpegs or photos. A large number of the photos depicted pages of military style handbooks with information on weaponry, warfare combat, building trenches, and interrogation techniques. There were also numerous files on how to make specific types of IED's and bombs. Among the files were approximately ten excel spreadsheets in Arabic, which included ISIL identification. One spreadsheet, dated November 11, 2016, was labeled "Islamic State Spoils and Booty Bureau" in the upper right corner. The title of the spreadsheet was "Disclosure for the Battalion, Participants in the Attack." The spreadsheet listed six names of ISIL fighters, whether they were killed or injured, their ID number, type of participation (all of which listed IED), the name of the group they were in (al-Zar' Battalion) and the name of the group leader (Abu al-Zubary al-Sahili). Another spreadsheet, dated November 16, 2016, was labeled "Islamic State Plunder Bureau." The title was "Ledger for Battalion Participation in the Attack." The spreadsheet included names of eight fighters, their ID numbers, battalion group, and whether they were killed or injured. Another spreadsheet was labeled, "Islamic State Soldiers Bureau Military Machinery." The spreadsheet included entries for vehicles, vehicle chassis number, type of vehicle, condition of the vehicle, color of vehicle, and fuel type.

INTERVIEW OF AN IDENTIFIED ASSOCIATE OF [REDACTED]

61. [REDACTED] listed an identified associate (hereinafter referred to as “IA”) as his emergency contact on his 2014 U.S. Passport Renewal Application. FBI interviewed IA on September 15, 2017. IA indicated that he met [REDACTED] in New Orleans, Louisiana in July 2005, when [REDACTED] was a student at [REDACTED]. IA described [REDACTED]'s behavior during the time he was in college as “wild” and typical of a college student with drinking, partying, gambling, and using marijuana. According to IA, [REDACTED] did not work but received a sizable amount of money from the Saudi Arabian government each month; in addition, [REDACTED]'s mother was very wealthy.

62. IA further stated that after [REDACTED] left [REDACTED] in approximately 2005 or 2006, he briefly lived in Covington, Louisiana, where he frequently gambled at casinos and frequented strip clubs. [REDACTED] repeatedly borrowed money from other friends in order to gamble and did not pay them back, leading to an argument with some friends. [REDACTED] left Louisiana and returned to Saudi Arabia in late 2005 or 2006.

63. From 2005 to 2014, IA did not have any direct contact with [REDACTED]. IA agreed that [REDACTED] could stay with him in the summer of 2014 when [REDACTED] came to the United States in an attempt to obtain a United States passport for his daughter. According to IA, [REDACTED] had visited the U.S. Embassy in Saudi Arabia several times but was unable to obtain a U.S. passport for his daughter; [REDACTED] thought he would have greater success obtaining the passport in the United States. According to IA, [REDACTED] continued to have problems getting the U.S. passport for his daughter due to the fact that he could not prove his U.S. residency for the

requisite period and he did not have his paperwork in order.

64. IA reported that he noticed a change in ██████'s behavior in 2014 in that he was not as "wild" as he had been. However, during the time ██████ stayed with IA in 2014, ██████ repeatedly gambled at Harrah's Casino in New Orleans.

65. ██████ stayed only a few weeks in the United States during this first visit in summer 2014. ██████ then returned to New Orleans after a short period of time with his wife and daughter. During this second visit, ██████ and his family stayed at a hotel near another friend of ██████, who was married. ██████ and his wife and daughter left the United States after a couple months, in late 2014. IA had no contact with ██████ after that time.

66. Approximately two months after ██████ left the United States, IA heard from ██████'s other friend that ██████'s wife had contacted the other friend's wife. ██████'s wife informed the other friend's wife that she was contacting everyone she knew in an attempt to try and find ██████, who had disappeared.

67. IA described ██████ as having a good heart but noted ██████ could be misled. ██████ was very enthusiastic and committed to what he was passionate about. IA provided the example that ██████ was very angry at the regime of Hafez al-Assad in Syria and was supportive of anyone fighting against Assad. IA stated his opinion that it would not be hard to recruit and radicalize ██████ or for ██████ to radicalize himself. IA also stated that ██████ was very smart, but not smart enough to recognize that ISIL was not the solution. IA stated that if ██████ had become a jihadi, he would not have told IA.

68. IA advised that when he heard ██████ had gone missing, he thought that ██████

██████ may have gone to Syria to join ISIL because jihadis don't tell anyone what they are going to do and then one day they just disappear. IA again emphasized that ██████ was enthusiastic to an extreme.

69. IA described two prior conversations with ██████ that made him believe ██████ would join ISIL. The first was when ██████ spoke very passionately about the Syrian regime and that it had to be overthrown. The second focused on ISIL beheading its prisoners. IA advised that he told ██████ that the prophet Mohammed, during a time of war, did not kill his prisoners and would set them free at the end of the war. ██████ said that times were different now and spoke of how justified ISIL was to behead their prisoners.

70. IA stated his belief that ██████ was trying to take care of his infant daughter's future by getting her a U.S. passport before he left to fight with ISIL, knowing he most likely would not return home. IA stressed how persistent ██████ was in trying to get the U.S. passport for his daughter and how hard he worked in that effort with repeated visits to the passport office.

71. IA stated that ██████ never worked as a journalist.

72. A true and correct copy of the foreign fighter bio sheet for ██████, described in Paragraph 13 above, is attached as Exhibit 9.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

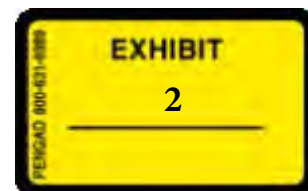
Executed January 19, 2018



Tweet on or about [REDACTED], 2014



Tweet on or about [REDACTED], 2014



On or about [REDACTED], 2014



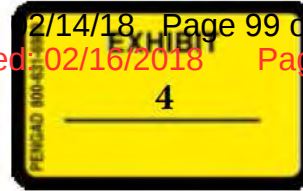
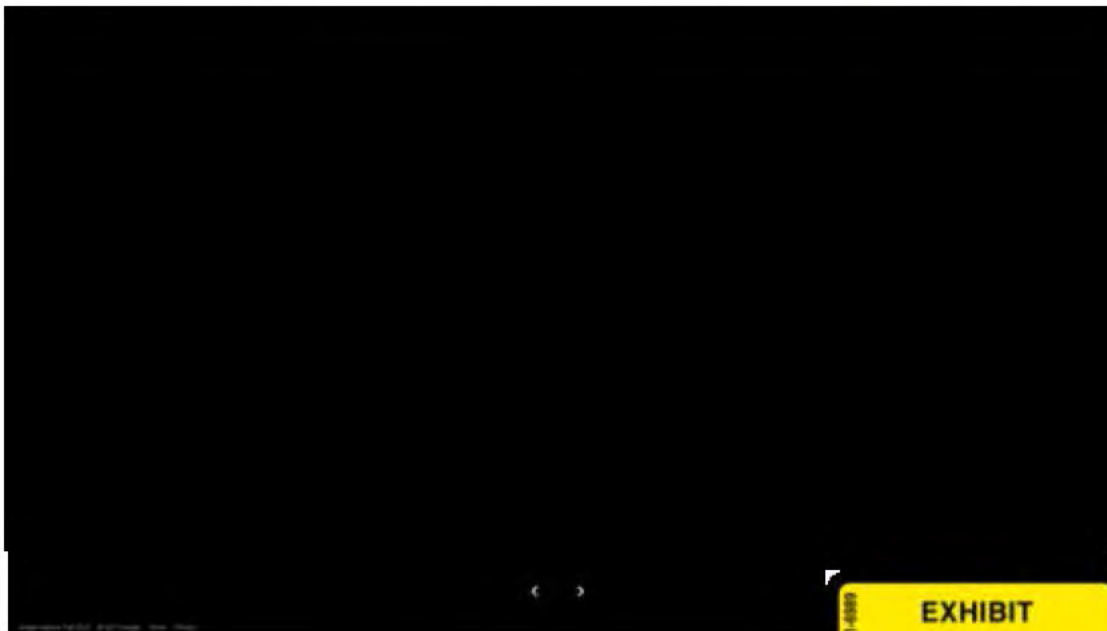


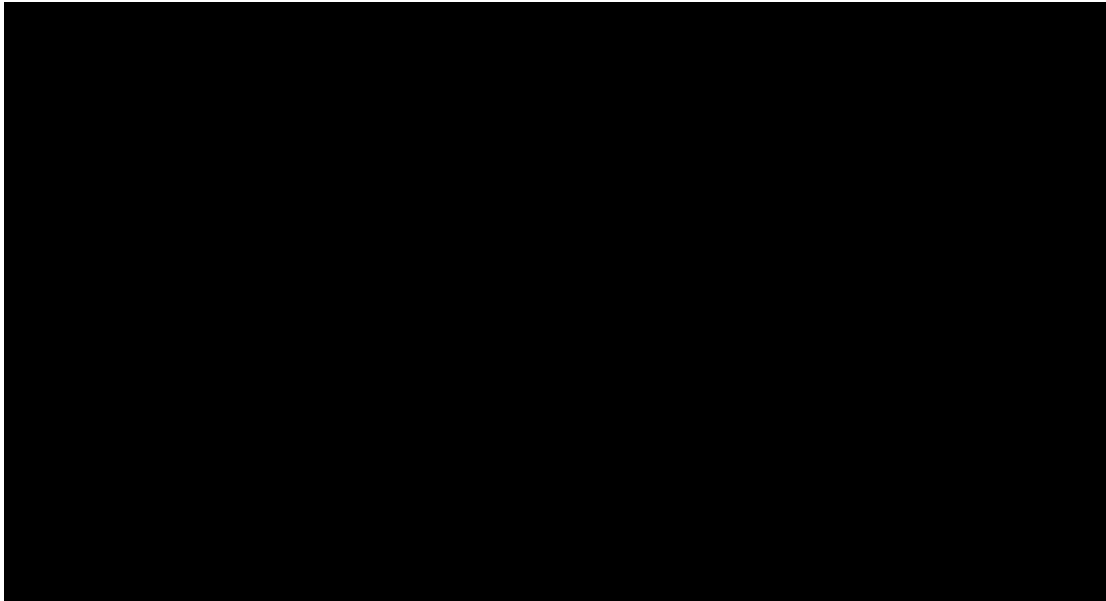
Photo of the tweet on or about [REDACTED], 2014

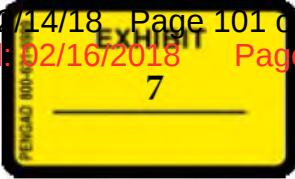


Open source research on the [REDACTED] provided the following image of the hotel .



Open source image searches provided the below image from the [REDACTED] looking out
across the street at the [REDACTED]

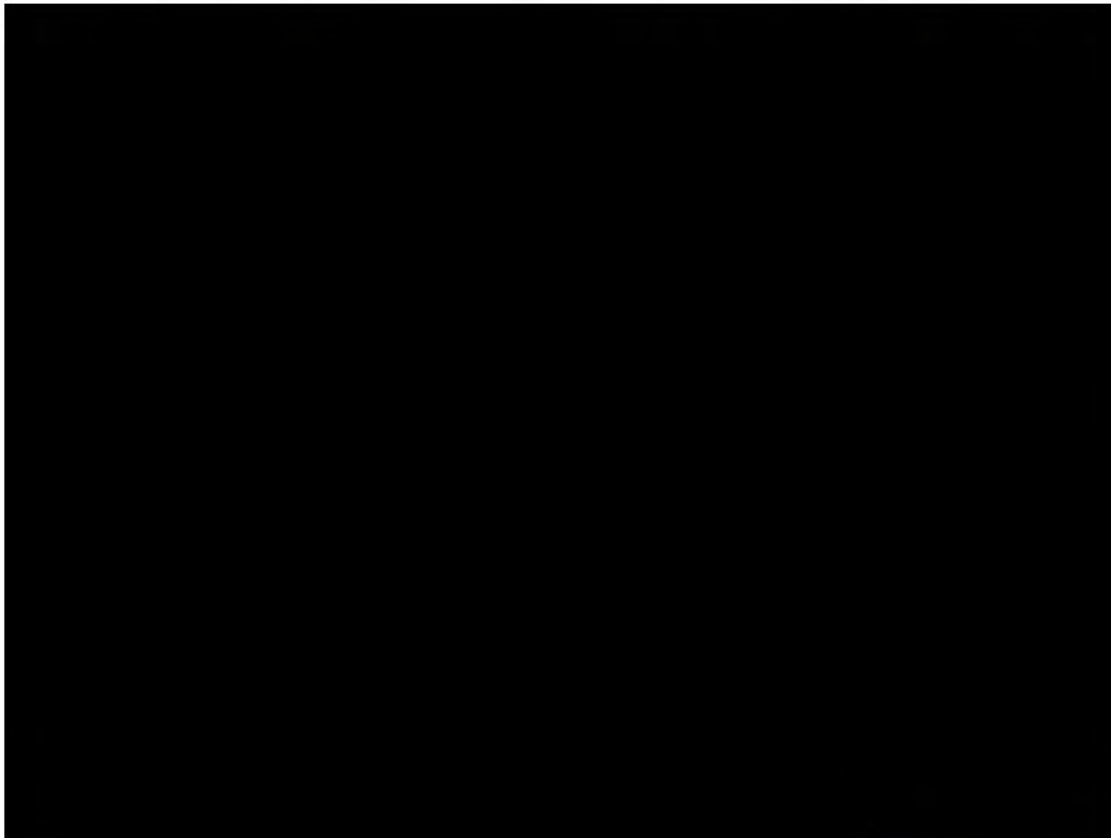




On or about [REDACTED], 2014



Open source research on the [REDACTED] provided the following image of the hotel.



الإدارة
العامة
للحدود

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الدولة الإسلامية في العراق والشام
الإدارة العامة للحدود
بيانات المجاهدين



		الإسم واللقب	1
		الكنية	2
		إسم الأم	3
	O+	فصيلة الدم	4
		تاريخ الولادة و الجنسية	5
	أعزب () متزوج (*) عدد الأطفال (1)	الحالة الإجتماعية	6
	بلاد الحرمين	العنوان و مكان الإقامة	7
	جامعي - الكهرياء	التحصيل الدراسي	8
	طالب علم () متوسط () بسيط ()	المستوى الشرعي	9
	تجاره	ماهي مهنتك قبل المجيى ؟	10
	امريكا	البلدان التي سافرت إليها وكم لبثت بها؟	11
	جرابلس	المنفذ الذي دخلت منه ؟ والواسطة ؟	12
		هل لديك تزكية ومن من ؟	13
	1435	تاريخ الدخول ؟	14
	لا	هل سبق لك الجهاد ؟ وأين ؟	15
	مقاتل	مقاتل أم إستشهادي أم إنغماسي ؟	16
	مقاتل () شرعي () أمني () إداري ()	الإختصاص ؟	17
		مكان العمل الحالي	18
	جواز - هاتف - كمره	الأمانات التي تركتها ؟	19
		مستوى السمع والطاعة ؟	20
		العنوان الذي نتواصل معه ؟	21
		تاريخ القتل و المكان	22
		ملاحظات	23

EXHIBIT

9

مسؤول الحدود

الدولة الإسلامية في العراق والشام _ سري _



App 28

Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR01

Alias: Abu [REDACTED]

Captive Tag #: [1.4a]

ISN#: [Click here to enter ISN#.](#)

Interrogator: [3.5c]

Date/Time: 111200ZSEP17

Language Used: English; Arabic

Interpreter: [1.4a]

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 10/1900/Z/SEP/17
- Place/OBJ:** 1.4c Abu Hashudah, Jazirah Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey.
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** U.S., Saudi Arabia
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married
- Religion:** Islam - Sunni

~~SECRET//NOFORN/LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers:** One
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

~~WARNING: THIS IS A U.S. MILITARY INTELLIGENCE REPORT. NO FURTHER DISTRIBUTION, DISSEMINATION, OR DOWNGRADE IS AUTHORIZED WITHOUT SPECIFIC APPROVAL FROM THE ORIGINATING AGENCY. THIS INFORMATION IS NOT FINISHED INTELLIGENCE AND IS NOT FOR USE WITH FOREIGN GOVERNMENTS OR DETAINEES WITHOUT PRIOR AUTHORIZATION. THIS INFORMATION SHOULD NOT BE CONSIDERED CORROBORATION OF SIMILAR INFORMATION DISSEMINATED IN SEPARATE INTELLIGENCE CHANNELS~~

~~OVERALL REPORT CLASSIFIED SECRET//NOFORN/LIMDIS~~

Part III: Information Obtained (~~S//NF~~)

Summary:

- Detainee provided information regarding Detainee's time while in Syria since 2015
- Detainee provided information pertaining to Detainee's activities in the years leading up to entering Syria
- Detainee provided information on joining ISIS and working in the Zarqawi Brigade and various ISIS Diwans in the Dayr az Zawr Province

~~SECRET//NOFORN/LIMDIS~~

~~SECRET//NOFORN//LIMDIS~~

1.4c

Detainee's social security number is [REDACTED] 3.5c Detainee attended [REDACTED] to pursue a degree in electrical engineering, but did not finish. Detainee graduated from [REDACTED] in [REDACTED] with a Bachelor's Degree in electrical engineering.

Detainee owned a business named [REDACTED] in [REDACTED] SA. Detainee owned the business with family. Detainee owned the business from 2006 to 2013. The business closed because the business was not profitable and took up too much time.

Detainee owned a women's tailoring shop in [REDACTED] SA. Detainee owned the business with Detainee's two sisters. Detainee owned the business from 2007 to 2010.

Detainee's family owned a three level apartment complex, which they rented out in [REDACTED] SA. Detainee's family owned the apartment complex 2009-2011.

Detainee owned a small construction company in [REDACTED] SA. Detainee employed 15 people. Detainee would have these 15 employees work across the other businesses, which Detainee and his family owned.

Detainee married his wife in 2008. Detainee and his wife had their only child in June 2014. Detainee travelled to Indonesia while Detainee's wife was pregnant in 2014. Detainee travelled to Indonesia, Singapore, China and Malaysia on business for [REDACTED]. Detainee spent three to four months on Detainee's business trip from March to May 2014.

Detainee returned to Bahrain from Detainee's Asian business trip. Detainee then took Detainee's wife to [REDACTED] SA to have their child.

Detainee went to the United States three weeks after Detainee's daughter was born. Detainee went to New Orleans. Detainee spent two months in New Orleans. Detainee went alone to register Detainee's daughter. Detainee was unsuccessful getting Detainee's daughter registered because the baby was not present.

Detainee went back to Bahrain in August 2014. Detainee remained in Bahrain for one month. Detainee left Bahrain and flew to Istanbul, TU. Detainee stayed in Istanbul for one day and then flew to Gaziantep, TU. Detainee stayed in Gaziantep for two to three weeks. Detainee then went back to Bahrain in September 2014.

1.4c

Detainee submitted his journalism articles to the U.S. press and then informed Detainee's wife they were going on a vacation to the United States. Detainee remained in Bahrain for less than one month.

Detainee, his wife, and daughter travelled to New Orleans in August 2014. Detainee spent six to seven months in the United States. Detainee returned to Bahrain in late December 2014. Detainee stayed in Bahrain for four months. Detainee flew to Athens, GE and remained there

~~SECRET//NOFORN//LIMDIS~~

for three weeks. Detainee flew to Istanbul, TU then to Gaziantep, TU to travel to various cities within Syria to be a freelance writer.

Detainee entered Syria with 40,000 USD in January 2015. Detainee acquired press credentials from the [REDACTED] using Detainee's U.S. passport. Detainee also acquired press credentials from the U.S. press and a German press outlet of which Detainee cannot remember the name.

Detainee was smuggled from Gaziantep, TU by Abu Muhammad for a fee of 300 USD. Abu Muhammad took Detainee to a house in Ar Rai, SY. Detainee remained at the house for three days and does not know the names of anyone at the house with Detainee. [REDACTED] 1.4c

[REDACTED] 1.4c

[REDACTED] 1.4c

After three days in Ar Rai, ISIS members kidnapped Detainee and took him to the Raqqah, SY prison located in the basement of the stadium. ISIS conducted three interrogations during Detainee's first week of detention. Over the next seven months of Detainee's detention, ISIS interrogated Detainee an additional four times. [REDACTED] 1.4c

Abu Ayyub AKA Abu Luqman conducted the fourth interrogation. Detainee assumes this information because of the way the others in the room respected the interrogator. Abu Luqman asked many questions about Detainee's father-in-law and told to contact Detainee's father-in-law. [REDACTED] Detainee's father-in-law was the former [REDACTED]

[REDACTED] 1.4c

ISIS called Detainee's wife while Detainee was detained and said her husband is captured. Detainee's wife was in Bahrain during Detainee's detention.

ISIS took Detainee to Dayr az Zawr, SY after Detainee spent seven months at the ISIS prison in Raqqah, SY. ISIS held Detainee for one week in Dayr az Zawr and then moved to an ISIS recruiting office in Dayr az Zawr.

Detainee registered with ISIS at the ISIS recruiting office and immediately moved from the ISIS recruiting office to an ISIS Sharia training site located near Mayadin, SY.

Detainee spent two months at the ISIS Sharia training site. Detainee was not allowed to leave and the location was underground.

Abu Hafs al-Maghrebi was the ISIS member who gave the Sharia lectures. Detainee was with 50 others ISIS recruits and most were Syrian. Detainee swore bayat to Abu Hafs al-Maghrebi on behalf of Abu Bakr al-Baghdadi.

ISIS then assigned Detainee to be a fighter in ISIS' Provincial Army in the ISIS Zarqawi Brigade. Detainee told ISIS detainee could not fight because Detainee has back problems. The Zarqawi

Brigade operated in the Dayr az Zawr province, SY. The Zarqawi Brigade was responsible for guarding the frontlines. Detainee was the Administrator for ISIS' Asud Sharia, which is subordinate to the Zarqawi Brigade. Detainee's responsibilities as the Administrator included getting gas for ISIS vehicles, handing out money to the ISIS group Amir for expenses and coordinating with the Liwa Administrator Amir.

Salah al-Din al-Belgiki was the ISIS Amir for the Zarqawi Brigade. Salah died in an airstrike. Detainee does not know when Salah al-Din died.

Abu Albukhari al-Shishani took over for Salah. An airstrike also killed Abu Albukhari. Detainee does not know who took over for Shishani after Shishani's death.

Abu Mawai Mayadin was the ISIS Liwa Administrative Amir. Abu Mawai was killed in 2015 after Detainee left the ISIS Liwa.

Detainee provided the following timeline for Detainee's time in Syria:

- Detained at a prison in Raqqah, SY for seven months, left October 2015
- ISIS prison in Dayr az Zawr, SY for one week, left October 2015
- Sharia training, near the city of Mayadin, SY, left December 2015
- Liwa Zaraqwi as fighter, two months in the unit, left February 2016
- ISIS relocated Detainee and moved to an oil field in Dayr az Zawr Province, two months there, guarding the gate of a compound, left April 2016
- Detainee quit and fled the job at the oil field without telling anyone, remained in city of Dayr az Zawr for one month, left May 2016
- ISIS military police captured Detainee in Dayr az Zawr because Detainee was an ISIS member who quit his post, detained at an ISIS prison in Dayr az Zawr for two days, then ISIS security moved Detainee to an ISIS security prison in Mayadin because Detainee was previously in prison and because Detainee was accused of being a spy for being American, stayed in Mayadin for one and a half months, left July 2016
- Detainee became an active member of ISIS again, working in ISIS Diwan Missionary and Mosques. Detainee would check if the Imam and prayer caller was present, at this job for one month, left August 2016
- ISIS moved Detainee to ISIS Solider Diwan, heavy equipment section, Detainee was responsible to check on the civilians working in the heavy equipment, stayed for five months, left December 2016
- Detainee searched for a way out of the Islamic State through Idlib, Detainee wanted to go to Turkey to the U.S. Embassy. Detainee went to Hamah, SY and rented land. ISIS was still in control of Hamah. Detainee rented 200 acres from ISIS for 750 USD. Detainee paid the money to the ISIS Diwan of Agriculture. Detainee's total expenses to grow almonds and olives was 12,000 to 15,000 USD, January 2017
- Detainee returned to the city of Dayr az Zawr and worked at the heavy equipment section. Detainee went to the first ISIS General Administrator for the heavy weapons section and asked for a transfer. Detainee caught many thieves stealing parts and money and the General Administrator said no to the ISIS transfer, but ISIS Wali office in Hamah said yes. Detainee spent approximately three and a half months going back and forth to Hamah to grow Detainee's land. Detainee bought 80 sheep and paid 4,000 USD in hopes to act as a shepherd to flee into Turkey, bought the sheep while in Hamah, left April 2017
- Detainee did not receive permission from Dayr az Zawr heavy weapons section, but Detainee went to Hamah. Detainee went to Hamah in hopes of escaping Syria from Idlib.

Detainee was sitting in the house on the rented land for three months. Detainee asked locals for routes into Turkey, but locals did not know and it was too dangerous. Detainee sold all 80 sheep for 4,800 USD at the end of Detainee's time in Hamah. Detainee sold 20 acres and lost 12,000 USD because of air strikes. The danger forced Detainee to leave Hamah, left June 2017.

- Detainee returned to Dayr az Zawr and went to al-Saliyah to find another route out of Syria. Detainee spent three months in al-Saliyah. Detainee bought a car for 3,500 USD during this time. Detainee went to Mayadin to contact Detainee's sister to ask for money during this time. August 2017.

Detainee last used Detainee's cell phone three weeks prior to date of capture (PTDOC). Detainee texted his sister and used WhatsApp. Detainee talked about needing money to leave Syria because everyone is leaving the Islamic State and with everyone leaving, it makes it easier to leave. Detainee asked his sister for money. Detainee texted his sister from Mayadin, SY 14 to 16 days PTDOC. Detainee remained in Mayadin, SY for one week because Detainee was waiting for Detainee's sister to wire Detainee money. Detainee's sister was never able to provide Detainee with money. Detainee left Mayadin for al-Salihya 10 days PTDOC.

Detainee returned to al-Salihya, which is three kilometers northwest of Dayr az Zawr. Detainee remained in al-Salihya for three days. Detainee heard from civilians many people were packing and attempting to leave the Dayr az Zawr area. Detainee approached civilians to see if they could take Detainee out of the area. Detainee asked a man in a red truck if he was going into an SDF area. Detainee paid the unknown man 700 USD, but the unknown man did not take Detainee with him and only took Detainee's money.

Detainee's residence in al-Salihya is located [REDACTED] 1.4c I-Salihya, SY. Detainee left al-Salihya in a taxi by himself in the morning and travelled to the desert near Hawji Musa. The unknown man in the red truck told Detainee to travel to Hawji Musa because a large group of refugees was trying to leave the area.

When Detainee left al-Salihya, Detainee had a duffle bag, which contained clothes, a snorkel, snorkel mask, scuba diving certification card, camera, shoes, GPS, two USB drives and 4,910 USD. Detainee bought the GPS while in Raqqah, SY eight to nine months PTDOC. Detainee uses the two thumb drives for business. The thumb drives were reformatted six months PTDOC while Detainee was in Dayr az Zawr, SY. Detainee had 4,910 USD to pay people money to smuggle Detainee out of the area and to buy food.

Detainee slept in a mud house located [REDACTED] 1.4c Hawji Musa, SY. Detainee slept in the mud house alone. Detainee woke up while at the mud house and asked the villagers where the refugees were located and the villagers told Detainee the refugees had already left.

Detainee paid an unknown man, who rode his motorcycle into the desert to find the refugees, 5,000 Syrian Lira. The unknown man returned, picked Detainee up and drove Detainee to the refugee location.

Detainee and approximately 40 refugees slept in the desert for four nights. Civilians on motorcycles would travel up to the front lines to see if there were any ISIS guards. Detainee and 40 refugees reached the front lines 30 minutes before on Detainee's time of capture, but the refugees got upset because the unknown man in the red truck was not with Detainee. Detainee was kicked out of the truck and waited for another refugee group. Detainee heard the

SDF would shoot anyone crossing the front line. Detainee begged each group of refugees who passed by to take Detainee across the front line. The last vehicle, which was attempting to cross the front line, was a water truck. Detainee jumped onto the back of the water truck approximately 100 meters before the SDF checkpoint. An SDF soldier told Detainee to get down on the ground and Detainee was searched. Detainee told the SDF soldier Detainee was an American.

ISIS members approached Detainee and other ISIS members approximately one year PTDOC while Detainee was living in Dayr az Zawr, SY and asked each member if they had any special skills. Detainee told the ISIS members Detainee had an electrical engineering background so the ISIS members told Detainee he needed to travel to Raqqah, SY the following day. ISIS members gave Detainee a white Hyundai Avanti to drive to the al-Naim traffic circle in Raqqah and meet Abu Umar al-Masri at 1600HLT.

Abu Umar al-Masri approached Detainee at the al-Naim traffic circle in Raqqah and told Detainee to drive to the first floor of an apartment building located IVO [REDACTED] 1.4c

[REDACTED] 1.4c

[REDACTED] 1.4c

Detainee and Abu Umar arrived at the first floor apartment and met Abu Abd-al-Rahman al-Masri and Abu Dhar al-Tunisi. Abu Umar, Abu Abd-al-Rahman and Abu Dhar discussed with Detainee ISIS' plan of using a type of machine, similar to a satellite dish, which would transmit microwaves to bring down an airplane. The satellite device would be comprised of used microwaves. Abu Umar asked Detainee if Detainee wanted to work on the special project. Abu Umar did not offer any money. Detainee said no to Abu Umar's offer of working on the special project. Detainee remained at the meeting for two to three hours.

Detainee left the meeting and went to an ISIS guesthouse located at [REDACTED] 1.4c
[REDACTED] 1.4c Detainee remained at the ISIS guesthouse for one night.

The following day, Detainee went to an ISIS house located at [REDACTED] 1.4c
[REDACTED] 1.4c for a second meeting with Abu Umar. Abu Umar requested Detainee come to the ISIS house to convince Detainee to join ISIS' special project. Abu Umar showed Detainee ISIS' plans, videos, and documents pertaining to ISIS' use of electronic bombs and theories regarding the use of microwave technology to bring down an aircraft. Abu Umar was the leader of the group discussing ISIS special projects. Detainee refused to assist and returned to the ISIS guesthouse. The following morning, Detainee returned to Dayr az Zawr, SY. [REDACTED] 1.4c

[REDACTED] 1.4c

Abu Umar told Detainee the microwave project had started and the project would move to the north side of the Euphrates River across from Mayadin, SY.

[REDACTED] 1.4c

Detainee last spoke with Detainee's wife two months PTDOC via WhatsApp. Detainee and his wife were fighting because Detainee's wife would travel without telling Detainee.

~~SECRET//NOFORN//LIMDIS~~

Part IV: Remarks (~~S//NF~~)

A. Interrogator Assessment of Detainee

1.4c

Approved For Release

C. Recommendations for Further Interrogations

1.4c
1.4c

~~SECRET//NOFORN//LIMDIS~~

~~SECRET//NOFORN/LIMDIS~~



Classified By: Manual 380-5 1 MAY 06
Declassify On: 25X1

Approved For Release

~~SECRET//NOFORN/LIMDIS~~

SECRET//NOFORN//LIMDIS

Tactical Interrogation Report

FROM: [REDACTED] 1.4c
TO:
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR02

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4a

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 121100ZSEP17

Language Used: English; Arabic

Interpreter: [REDACTED] 1.4c

Maps Used: None

Part I: General Information (~~S//NF~~)

1. Date/Time: 09/1900/Z/SEP/17
2. Place/OBJ: [REDACTED] 1.4c
3. Circumstance: Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey
4. Documents Captured: TBD
5. Equipment Captured: TBD
6. Weapons Captured: None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

1. Full Name: [REDACTED]
2. Nationality: US
3. Languages and Proficiency: Arabic (F), English (N),
4. Date/Place of Birth: [REDACTED]
5. Current Residence: Dayr az Zawr, SY
6. Sex: Male
7. Marital Status: Married; [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
8. Religion: Islam - Sunni

~~SECRET//NOFORN/LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers' Names:** One brother
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

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Part III: Information Obtained (S//NF)

Summary:

- Detainee provided a phone number for Detainee's father's house
- Detainee provided three email addresses and email passwords used by Detainee
- Detainee provided map tracks to an ISIS military prison and an ISIS office for track-enabled machinery in Dayr az Zawr, SY

~~SECRET//NOFORN/LIMDIS~~

- Detainee provided map tracks to a former ISIS Zarqawi Brigade Headquarters and ISIS tank workshop in Dayr az Zawr, SY
- Detainee provided information pertaining to ISIS Military Police Amir, 1.4c
1.4c
- Detainee provided information regarding ISIS military police member, 1.4c
1.4c
- Detainee provided information pertaining to ISIS Wail of Hamah, 1.4c
1.4c
- 1.4c

Detainee received Saudi Arabian citizenship following a trip to Saudi Arabia with Detainee's parents and family when Detainee was 10-years-old. Detainee's family was a middle-class family during this trip to Saudi Arabia. Detainee's father taught at the [REDACTED]. Detainee's father had a specialty working as a computer engineer. Detainee's father retired approximately 17 years prior to Detainee's date of capture (PTDOC). Detainee's mother did not work. Detainee's mother has a wealthy family and Detainee's cousins are [REDACTED] wristwatch dealers in Saudi Arabia.

Detainee's father's house phone number is [REDACTED] 1.4c

[REDACTED] 3.5c

Detainee last used a cell phone in Mayadin one month PTDOC. Detainee had a Samsung Galaxy S3. Detainee's phone was either lost or stolen within the month leading to Detainee's capture. Detainee did not purchase another cell phone because Detainee did not see a purpose.

Detainee has never used or had any social media accounts.

An ISIS military prison is located at [REDACTED] 1.4c Mayadin, SY. Detainee was last at the ISIS military prison because the military police arrested Detainee for not having official papers and being AWOL five to eight months PTDOC.

[Redacted]

1.4c

1.4c

[Redacted]

1.4c

1.4c

[Redacted]

1.4c

Zubayr Bin Awam is the largest ISIS Division within ISIS. There are approximately 4,000 ISIS fighters in the Division. Zubayr Bin Awam is responsible for the entire city of Dayr az Zawr. Since Dayr az Zawr is a military city, all ISIS locations belong to Zubayr Bin Awam.

The ISIS Office for Tracks and Tanks is located at [Redacted] Dayr az Zawr, SY. Ansari is the Amir of this office. Detainee went to this location because Detainee knew Abu Mahid al-Jazrawi is dead. Abu Dawla Ayyash is the Deputy Amir.

The ISIS shop for the Office of Tracks and Tanks is located at [Redacted] Dayr az Zawr, SY. Detainee has never been inside of the shop.

An ISIS Islamic Police Headquarters is located at [Redacted] Dayr az Zawr, SY. Detainee has never been inside of the headquarters, but all the people in Dayr az Zawr know this location. The ISIS Islamic Police Headquarters is approximately four stories tall.

1.4c

1.4c

SECRET//NOFORN//LIMDIS

1.4c

_____ 1.4c

The former ISIS Zaqawi Brigade Headquarters building is located at _____ 1.4c
_____ 1.4c Dayr az Zawr, SY. ISIS' Zaqawi Brigade vacated this location as their headquarters one year PTDOC. However, ISIS members are still using this location for an unknown reason.

_____ 1.4c

An ISIS tank workshop is located IVO _____ 1.4c Dayr az Zawr, SY. The ISIS tank workshop is located underground.

_____ 1.4c

Part IV: Remarks (~~S//NF~~)

A. Interrogator Assessment of Detainee

_____ 1.4c

C. Recommendations for Further Interrogations

_____ 1.4a, 3.5c

_____ 1.4c

SECRET//NOFORN//LIMDIS



1.4c

1.4c

Approved For Release

Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR03

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4(a)

ISN#: [Click here to enter ISN#](#)

Interrogator: [REDACTED] b(6)

Date/Time: 122100ZSEP17

Language Used: English; Arabic

Interpreter: [REDACTED] 1.4c

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** [REDACTED] 1.4c Abu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

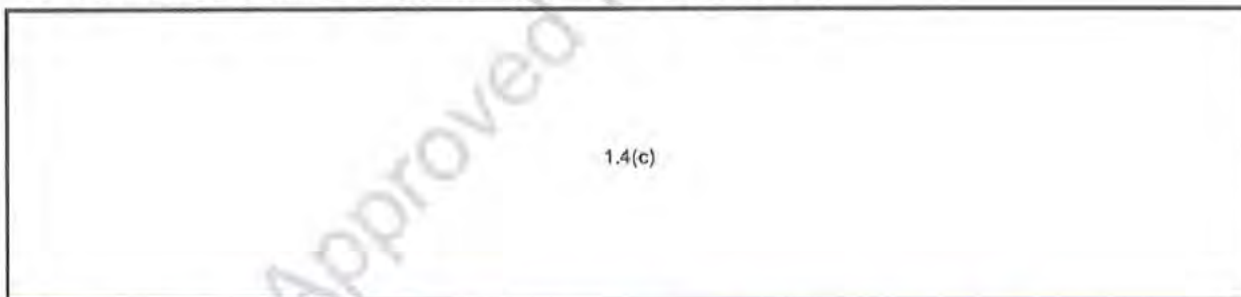
- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married; [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

~~SECRET//NOFORN/LIMDIS~~

- 9. **Occupation:** None
- 10. **Military Experience:** None
- 11. **Civilian Education:** Attended University, dropped out, attended trade school
- 12. **Children:** One daughter
- 13. **Father's Name:** TBD
- 14. **Grandfather's Name:** TBD
- 15. **Brothers' Names:** One brother
- 16. **Tribe/Subtribe:** None
- 17. **Jihad Experience:** Joined ISIS in 2015
- 18. **Foreign Travel:** TBD
- 19. **Previous Detention:** None

B. (U) Features

- 1. **Current Eye Color:** Brown
- 2. **Current Hair Color:** Black
- 3. **Current Height:** 65 inches
- 4. **Current Weight:** 140 pounds
- 5. **Distinguishing Features:** None
- 6. **Comments:** Detainee was medically cleared for questioning

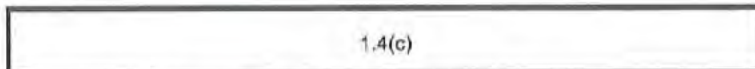


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Part III: Information Obtained (~~S//NF~~)

Summary:

- [Redacted] 1.4(c)



Detainee claims to be a freelance writer for the U.S. press. Detainee claims to have dropped out of school due to poor grades at [Redacted], Louisiana, US. Detainee traveled to Syria to discover the truth of what was happening in the war in Syria.

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Detainee traveled to refugee camps in Gaziantep, TU to interview the refugees there. Detainee later returned to Gaziantep to find a way into Syria. Once in Syria, ISIS blindfolded Detainee and took him to an ISIS prison located under a stadium in Raqqah, SY. Detainee claims to have been in this prison for approximately seven months. Convinced Detainee was a spy, Detainee claims ISIS members interrogated him thoroughly. Detainee claims he turned to god for help and became more religious while incarcerated by ISIS.

1.4(c)

After a Korean prisoner committed suicide, ISIS released Detainee under the condition Detainee worked for ISIS. Detainee claims Detainee moved around various departments within ISIS as ISIS attempted to discover what skills Detainee possessed. Detainee claims he made multiple attempts to escape ISIS custody. ISIS sent Detainee to be a security guard at a camp near the Umar Oil Fields located outside of Mayadin, SY. Detainee claims he attempted to escape, but was caught in Dayr az Zawr, SY. Detainee remained trusted by ISIS, enough to work in the various Mosques in and around Mayadin.

1.4(c)

Detainee was able to move freely and rented a farm south of Mayadin, SY to have an excuse to travel out of Mayadin. Detainee wanted to use the location of the farms IOT facilitate an escape though Idlib, SY.

Detainee claims to have no knowledge of intelligence value and maintains Detainee was a captive and gave all available information to the previous Collector.

Part IV: Remarks (~~S//NF~~)

1.4(c)

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1.4(c)

3.5c

1.4(c)

1.4c

Approved For Release

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Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR04

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4c

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 132200ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** [REDACTED] 1.4c Abu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married: [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

~~SECRET//NOFORN//LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers' Names:** One brother
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//REL TO USA, FRA, FVEY~~)

Summary:

1.4c

~~SECRET//NOFORN//LIMDIS~~

Part IV: Remarks (~~S//NF~~)

A. Interrogator Assessment of Detainee

1.4c

C. Recommendations for Further Interrogations

1.4c

1.4c

1.4c

~~SECRET//NOFORN//LIMDIS~~

~~SECRET//NOFORN//LIMDIS~~

Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR05

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4c

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 141800ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** [REDACTED] 1.4c Abu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey.
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married; [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

- 9. **Occupation:** None
- 10. **Military Experience:** None
- 11. **Civilian Education:** Attended University, dropped out, attended trade school
- 12. **Children:** One daughter
- 13. **Father's Name:** TBD
- 14. **Grandfather's Name:** TBD
- 15. **Brothers' Names:** One brother
- 16. **Tribe/Subtribe:** None
- 17. **Jihad Experience:** Joined ISIS in 2015
- 18. **Foreign Travel:** TBD
- 19. **Previous Detention:** None

B. (U) Features

- 1. **Current Eye Color:** Brown
- 2. **Current Hair Color:** Black
- 3. **Current Height:** 65 inches
- 4. **Current Weight:** 140 pounds
- 5. **Distinguishing Features:** None
- 6. **Comments:** Detainee was medically cleared for questioning

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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//REL TO USA, FRA, FVEY~~)

Summary:

1.4c

~~SECRET//NOFORN//LIMDIS~~

Part IV: Remarks (~~S//NF~~)

A. Interrogator Assessment of Detainee

1.4c

C. Recommendations for Further Interrogations

1.4c

1.4c

1.4c

Approved For Release

~~SECRET//NOFORN//LIMDIS~~

SECRET//NOFORN//LIMDIS

Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR06

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4c

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 151630ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** [REDACTED] 1.4c Albu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married: [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers' Names:** One brother
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//NF~~)

Summary:

- Detainee provided information on the ISIS prison system in SY
- Detainee provided information on ISIS Military Police in Mayadin, SY
- Detainee map tracked to the ISIS Military Prison complex
- Detainee map tracked to the ISIS Military Police headquarters
- Detainee provided a physical description of an ISIS Advisor

1.4c

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- **Detainee provided a physical description of the ISIS Military** 1.4c **Military**
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- **Detainee provided a physical description of an ISIS Military** 1.4c
1.4c
- **Detainee map tracked to the administration office of the ISIS Wali of** 1.4c
1.4c
- **Detainee map tracked to the ISIS Money Exchange in Mayadin, SY**

ISIS maintains a prison system consisting of three different types of prisons:

1. **Military prison.** Military Prisons are reserved for ISIS members who have broken ISIS laws or are deserters. Prisoners in Military Prisons are mistreated, but not tortured.
2. **Civilian Prison.** Civilian Prisons are reserved for local civilians who have committed basic crimes within ISIS territory. Civilians in these prisons are mistreated and beaten if not compliant.
3. **Security Prison.** Security Prison is reserved for anyone in ISIS custody who has committed murder, theft of large sums of money, or is suspected of being a spy. Security prisoners are tortured, interrogated, and abused.

ISIS does not hold western hostages in normal ISIS prison systems. Western hostages are held in homes with boarded up windows in Mayadin, SY. ISIS uses several homes in Mayadin, SY for western hostages and keeps several western hostages in each home. Detainee is unaware of the locations of these homes.

The Military Prison located at [redacted] 1.4c Mayadin, Dayr az Zawr, SY became over crowded at the time Detainee was imprisoned there. ISIS heard that another prison in the Mayadin area was going to be bombed and moved several prisoner's to the Military Prison in Mayadin, SY. 1.4c

1.4c

[redacted] 1.4c

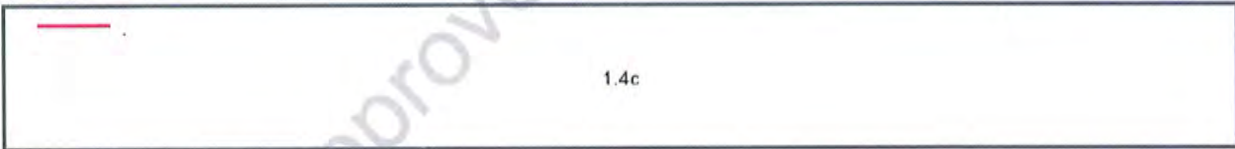
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1.4c



1.4a, 1.4c



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1.4c

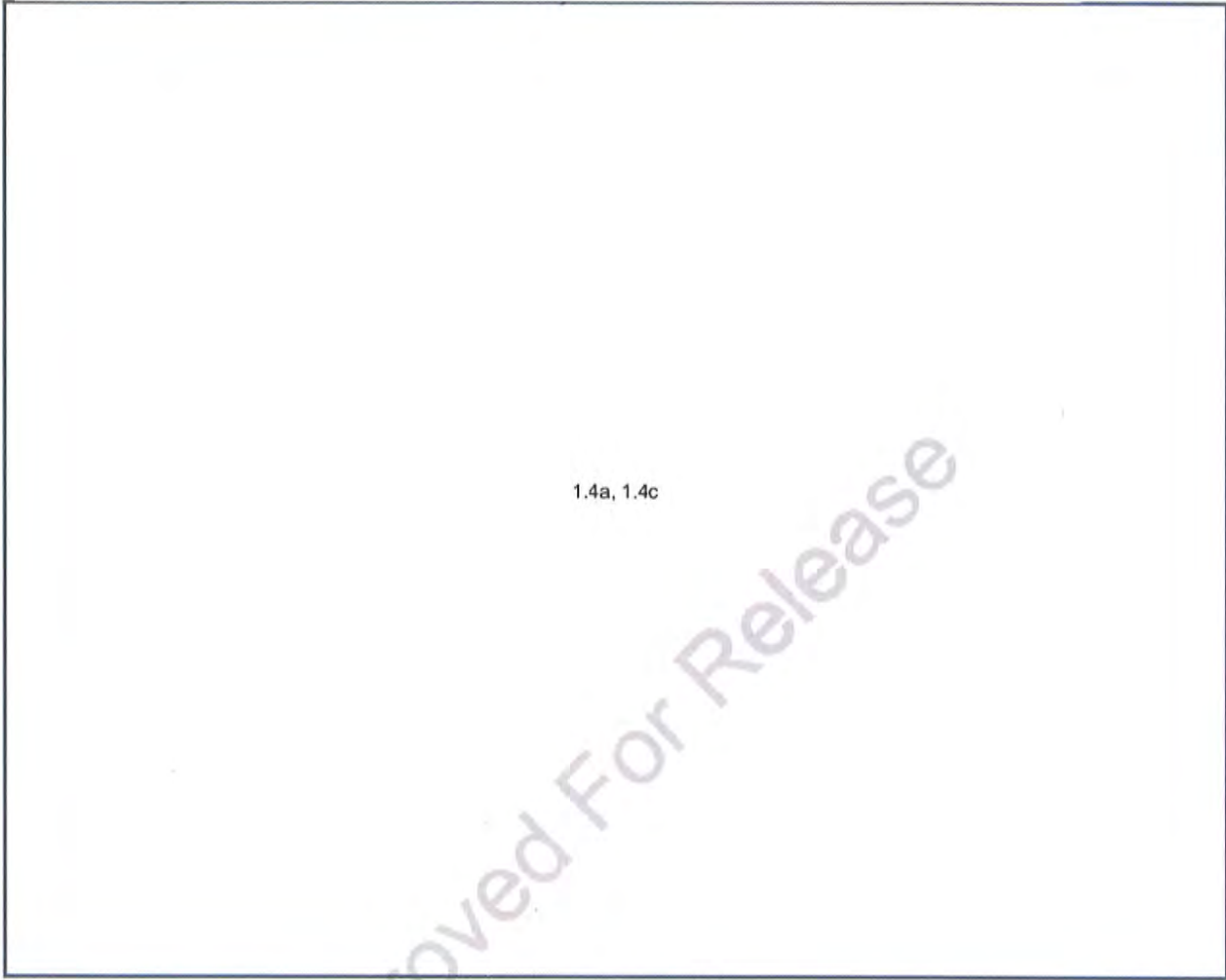
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1.4a, 1.4c

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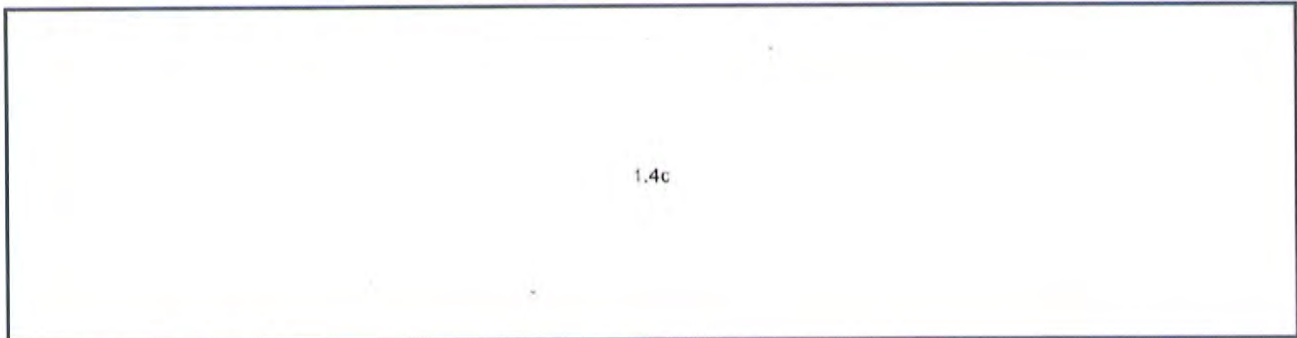
1.4c



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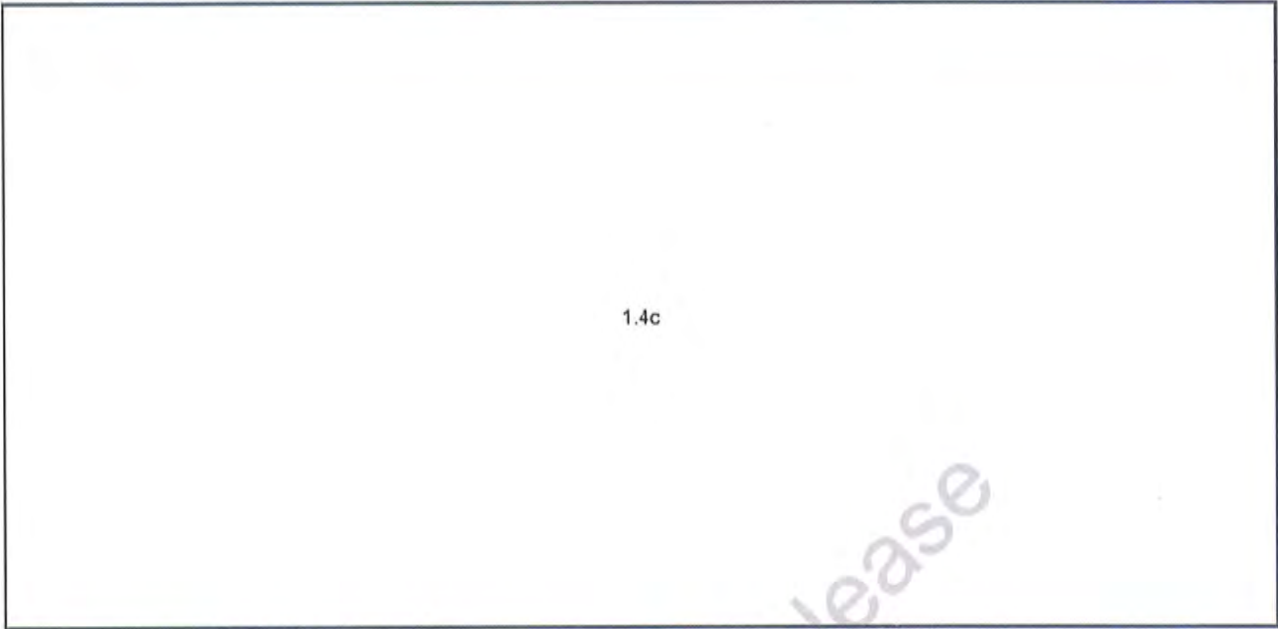
Part IV: Remarks (~~S//NF~~)



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Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR07

Alias: Abu [REDACTED]

Captive Tag #:

ISN#: [Click here to enter ISN#](#)

Interrogator:

Date/Time: 171500ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** / Albu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey.
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N),
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married: [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

~~SECRET//NOFORN//LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers' Names:** One brother
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//REL TO USA, FRA, FVEY~~)

Summary:

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Part IV: Remarks (~~S//NF~~)

A. Interrogator Assessment of Detainee

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Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR08

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4c

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 172100ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

1. **Date/Time:** 09/1900/Z/SEP/17
2. **Place/OBJ:** [REDACTED] 1.4c Albu Hashudah, Jazira Canton, SY
3. **Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey.
4. **Documents Captured:** TBD
5. **Equipment Captured:** TBD
6. **Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

1. **Full Name:** [REDACTED]
2. **Nationality:** US
3. **Languages and Proficiency:** Arabic (F), English (N),
4. **Date/Place of Birth:** [REDACTED]
5. **Current Residence:** Dayr az Zawr, SY
6. **Sex:** Male
7. **Marital Status:** Married: [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
8. **Religion:** Islam - Sunni

~~SECRET//NOFORN//LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
15. **Brothers' Names:** One brother
16. **Tribe/Subtribe:** None
17. **Jihad Experience:** Joined ISIS in 2015
18. **Foreign Travel:** TBD
19. **Previous Detention:** None

B. (U) Features

1. **Current Eye Color:** Brown
2. **Current Hair Color:** Black
3. **Current Height:** 65 inches
4. **Current Weight:** 140 pounds
5. **Distinguishing Features:** None
6. **Comments:** Detainee was medically cleared for questioning

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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//NF~~)

Summary:

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Part IV: Remarks (~~S/NF~~)

A. Interrogator Assessment of Detainee

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SECRET//NOFORN//LIMDIS

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Tactical Interrogation Report

FROM: J2
TO: Coalition Forces
SUBJ: TACTICAL INTERROGATION REPORT

Name of Detainee: [REDACTED]

Report No.: TIR09

Alias: Abu [REDACTED]

Captive Tag #: [REDACTED] 1.4c

ISN#: [Click here to enter ISN#.](#)

Interrogator: [REDACTED] 1.4c

Date/Time: 181500ZSEP17

Language Used: English

Interpreter: None

Maps Used: None

Part I: General Information (~~S//NF~~)

- Date/Time:** 09/1900/Z/SEP/17
- Place/OBJ:** [REDACTED] 1.4c Albu Hashudah, Jazira Canton, SY
- Circumstance:** Detainee was captured by Syrian Democratic Forces (SDF) while attempting to flee Syria to Turkey.
- Documents Captured:** TBD
- Equipment Captured:** TBD
- Weapons Captured:** None

Part II: Administrative (~~S//NF~~)

A. (U) Personal Particulars of Detainee

- Full Name:** [REDACTED]
- Nationality:** US
- Languages and Proficiency:** Arabic (F), English (N).
- Date/Place of Birth:** [REDACTED]
- Current Residence:** Dayr az Zawr, SY
- Sex:** Male
- Marital Status:** Married [REDACTED] lives in Bahrain, last seen early 2015, wife's father is Former [REDACTED]
- Religion:** Islam - Sunni

~~SECRET//NOFORN//LIMDIS~~

9. **Occupation:** None
10. **Military Experience:** None
11. **Civilian Education:** Attended University, dropped out, attended trade school
12. **Children:** One daughter
13. **Father's Name:** TBD
14. **Grandfather's Name:** TBD
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~~OVERALL REPORT CLASSIFIED SECRET//NOFORN//LIMDIS~~

Part III: Information Obtained (~~S//REL TO USA, FRA, FVEY~~)

Summary:

1.4c

~~SECRET//NOFORN/LIMDIS~~

Part IV: Remarks (~~S//NF~~)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
)	
Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

ECF 49

REDACTED VERSION FOR PUBLIC FILING

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE,)	
)	
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Petitioner,)	Civil Action No. 1:17-cv-2069 (TSC)
)	
v.)	
)	
GEN. JAMES N. MATTIS,)	UNDER SEAL
in his official capacity as SECRETARY)	
OF DEFENSE,)	
)	
Respondent.)	

NOTICE OF SUPPLEMENTAL EXHIBIT

Respondent hereby gives notice that attached hereto is an additional exhibit in support of Respondent's Return, filed today as ECF 46 in the above-captioned case. The exhibit was not available in time to be included in Respondent's noon filing of the Return.

January 22, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
JESSIE K. LIU
United States Attorney
TERRY M. HENRY
Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer
JAMES M. BURNHAM
Senior Counsel
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kathryn.wyer@usdoj.gov
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this document filed under seal, along with attachments, will be served today by email on counsel for Petitioner.

/s/ Kathryn L. Wyer

4. In October 2004, al-Zarqawi publicly pledged his group's allegiance to bin Laden, and bin Laden publicly endorsed al-Zarqawi as al-Qa'ida's leader in Iraq. At this time, al-Zarqawi's group adopted the name al-Qa'ida in Iraq ("AQI"). From that time and continuing through the time U.S. and coalition forces left Iraq in 2011, AQI conducted fatal terrorist attacks against those forces, even after al-Zarqawi was killed by a U.S. airstrike in June 2006. U.S. forces responded by engaging in combat operations against the group throughout this time period.

5. In 2013, now led by Abu Bakr al-Baghdadi (who had ties to al-Qa'ida's top leader Ayman al-Zawahiri), the group changed its name to the Islamic State in Iraq and al-Sham (ISIS, also referred to as ISIL). Since that time, the group has continued to plot and execute attacks against U.S. persons and interests in Iraq, Syria, and the region. ISIL is directly responsible for the murder and beheading of at least four kidnapped American citizens in Syria and multiple fatal attacks against U.S. military personnel who were present in Syria and in Iraq (at the invitation of the Iraqi Government).

6. ISIL split from al-Qa'ida in 2014. This rift was prompted by theological and strategic disagreements and included claims from ISIL that it is the true executor of bin Laden's legacy, rather than al-Qa'ida's current leadership. Some members and factions of al-Qa'ida-aligned groups subsequently publicly declared allegiance to ISIL. Meanwhile, ISIL continues to denounce the United States as its enemy and to target U.S. citizens and interests worldwide. ISIL emir Abu Bakr al-Baghdadi highlighted the group's continued intent on attacking the United States and its interests worldwide by specifically calling for attacks against the United States in a September 2017 statement.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of knowledge.

Dated this 22ND day of January 2018, at the Department of Defense, Washington, D.C.



CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2018, I electronically filed the foregoing Public Appendix with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system and by serving seven paper copies via hand delivery. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Sonia M. Carson

Sonia M. Carson