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March 31, 2005

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

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LLP on behalf of its client, Saber Lahmar.¹ It replaces our February 1, 2005, submission to the Board, which is hereby withdrawn.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

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

² (u) This Classified Submission necessarily focuses on the classified contents of the record relied upon by the CSRT, which is the only classified information available at this time to counsel for Mr. Lahmar. The CSRT record, however, includes only a small portion of the written record reflecting information and statements provided by Mr. Lahmar during his internment at Guantanamo. For example, we are aware that every detainee subject to the Department of Defense's order establishing the CSRTs was determined to be an enemy combatant through "multiple levels of review." See Order Establishing Combatant Status Review Tribunal, § (a) (July 7, 2004). We have not been furnished with documentation demonstrating either the facts or process used in such previous "multiple levels of review" for either Mr. Lahmar or our other five clients.

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

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

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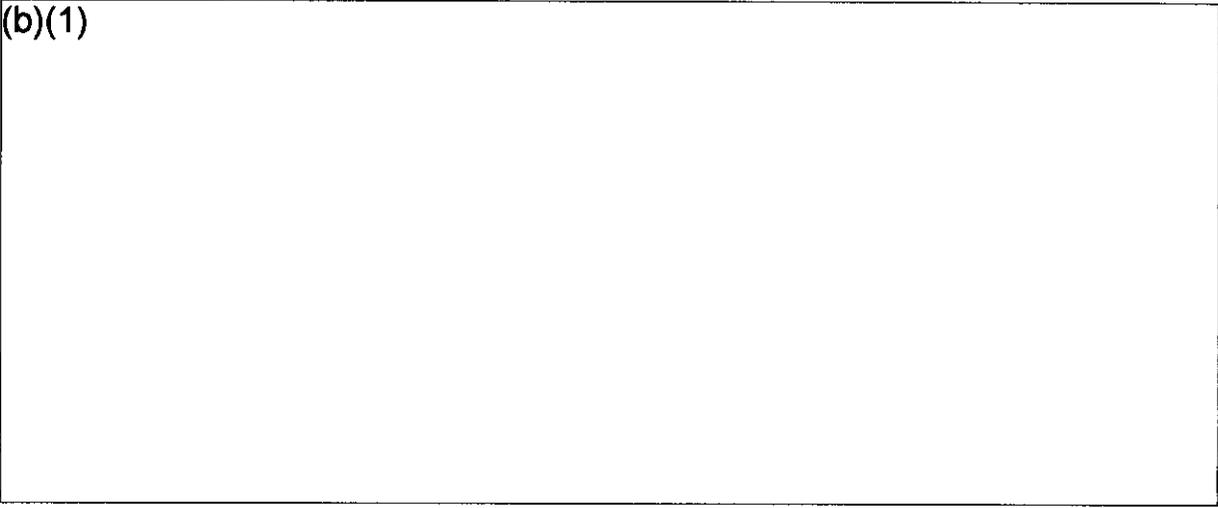
the reasons explained below, this Board should find that Mr. Lahmar does not pose a threat to the United States or its allies, and has no intelligence value.

Summary (u)

(u) Consistent with the procedures and standards set out in the "Administrative Review Board Process" ("ARB Process"),³ *see generally* section 3(f) (1), this submission provides the following information (each point is addressed in greater detail below):

- (u) 1. Personal information about Mr. Lahmar, including his age, work history, health, education, marital and family status. As detailed below, Mr. Lahmar is a 35-year-old married father of two children. In the years prior to his detention, he had a steady history of employment working in Bosnia and Herzegovina ("Bosnia") with the Saudi High Committee, where he was a librarian, scholar, and teacher of Arabic language. He holds a bachelor's degree in Islamic Law from Medina Islamic University in Saudi Arabia. A certificate from his *alma mater* is attached to this submission as Exhibit 3.
- (u) 2. The circumstances of Mr. Lahmar's apprehension and subsequent detention. Mr. Lahmar is a Bosnian resident who was turned over to U.S. authorities on Bosnian soil at the demand of the U.S. government – thousands of miles from the battlefield in Afghanistan, and only after he had been ordered released by Bosnian authorities who had determined following lengthy proceedings that there was no evidentiary support for allegations against him. He has now been held at Guantanamo for over three years.

(b)(1)



(u) ³ The ARB Process is attached to the Memorandum re: Implementation of Administrative Review Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba, dated September 14, 2004), and is publicly available at <http://www.defenselink.mil/news/Sep2004/d20040914adminreview.pdf>.

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significant additional information about the ex brother-in-law and his motivations, as discussed below.

- (u) 3. Statements made by Mr. Lahmar prior to or while in detention, and cooperation of Mr. Lahmar and conduct while in detention. Mr. Lahmar has consistently and adamantly maintained that he has no connection to al Qaeda or any other terrorist organization. Nothing in Mr. Lahmar's statements or conduct while in detention suggests that he poses any threat.
- (u) 4. Information regarding Bosnia, including whether Bosnia will accept return of Mr. Lahmar. Bosnia, an American ally, is actively engaged in diplomatic efforts to bring Mr. Lahmar home to his family in Bosnia. A separate memorandum addressing events in Bosnia, and the position of the Bosnian government, is included in the Joint Appendix at Exhibit B.
- (~~SECRET~~) 5. The likelihood of Mr. Lahmar taking up arms against the United States or its allies. Unlike many other detainees who have been deemed "enemy combatants," Mr. Lahmar was not apprehended on the battlefield, and in fact there is no evidentiary support whatsoever to suggest that he has ever taken up arms against the United States or its allies. Notably, no arms, weapons, plans, maps, or bomb-making equipment was ever found in his possession or control. (b)(1)

(b)(1)

Lahmar has consistently and adamantly denied any connection with any such alleged "conspiracy" or with any other terrorist activity.

- (u) 6. Possible intelligence value.⁴ Notwithstanding the original stated basis for Mr. Lahmar's apprehension and transfer to Guantanamo- the alleged U.S. Embassy bombing plot- interrogations of Mr. Lahmar at Guantanamo over the past three years have focused almost entirely on questions relating to his knowledge of Muslim charitable organizations operating in Bosnia. The record amply reflects that Mr. Lahmar has been questioned repeatedly on this topic, and by all appearances, any and all information on this topic he has long since disclosed. There is no reason to believe, at this late date, and following all that has transpired since 2001 that Mr. Lahmar is a source for any additional intelligence information.

(u) ⁴ Detention for purposes of interrogation and intelligence gathering is unlawful, *see Hamdi v. Rumsfeld*, 542 U.S. __, slip op. at 13 (2004).

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- (u) 7. Mr. Lahmar's health. Based on a detailed form of psychological examination prepared by our consulting forensic psychologist, Dr. Daryl Matthews, which was administered to Mr. Lahmar in Guantanamo Prison by us as counsel in February 2004, Dr. Matthews has now given his professional opinion (discussed below) that Mr. Lahmar is likely to suffer continuing and exacerbated symptoms of depression and stress disorder if he remains confined and subject to interrogation at Guantanamo. In addition, while we have been denied access to Mr. Lahmar's health records, he has told us in counsel interviews of a variety of ailments and illnesses which he has experienced as a detainee at Guantanamo.
- (u) ARB Process requires the Board to undertake "careful consideration of all of the foregoing applicable factors" and to balance them (section 3(f) (1) (e)). The Board must make an assessment of the reliability of any information presented in the proceeding, including "whether the information is specific as to the matters discussed," "corroborated by other information," and "whether the source appears credible" (section 3(e) (3)). Moreover, the Board should give less weight to information – such as much of the information relied upon by the CSRT's – that is "vague, unsupported, or not established through reliable sources" (*id.*). In the end, critically, the Board is specifically admonished to "make an independent recommendation *notwithstanding any prior determinations*" (section 1(b) (emphasis added)).
- (u) These factors, and the available record, show that Mr. Lahmar presents no present security risk to the United States or its allies, and he consequently should be released and returned home to Bosnia. In contrast to all but a handful of other detainees at Guantanamo Bay, Mr. Lahmar was effectively exonerated by both the Supreme Court and the Chief Prosecutor of Bosnia and Herzegovina of the very allegations that formed the basis for his arrest and subsequent detention in Guantanamo. This is particularly significant as Bosnia is a key U.S. ally in that part of Europe, (b)(1)
- (b)(1) Under these circumstances, and in light of Mr. Lahmar's history as a devoted scholar, teacher and family man, Mr. Lahmar poses no risk to the United States. Given the devastating effects of continued detention on Mr. Lahmar and his family, justice and human decency require his release forthwith.

A. (u) Detailed Discussion of ARB Criteria

1. (u) Personal information about Mr. Lahmar, including his age, work history, health, education, marital and family status.

(u) All of the evidence we have been able to obtain concerning Mr. Lahmar's history and family life shows that his life prior to his detention focused not on violence or terrorism, but on scholarship, teaching and his family.

(u) Mr. Lahmar is 35 years old. He is married to Emina Susic Lahmar, a Sarajevo native, whom he met in Bosnia in 2000. Mr. Lahmar has two children – a son, Muad,

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who is six years old,⁵ and a daughter, Sara, who is three years old. Mr. Lahmar's daughter was born after he was flown by American forces to Guantanamo for indefinite confinement, and thus father and daughter have never met. See *Affidavit of Emina Lahmar*, dated 8/10/04, at paragraphs 1, 4 ("*Emina Aff.*"), attached as Exhibit 6; see also Photographs of Mr. Lahmar's children attached as Exhibit 2.

(u) Mr. Lahmar was born in Constantine, Algeria, where he attended elementary, middle and high schools. After a year off with illness, he enrolled and studied Islamic studies from 1990 to 1992 at a University in Constantine. After that, he traveled to Italy and spent four month as an imam at a mosque in Perugia. Through a combination of illness and student deferments, Mr. Lahmar was excused from service in the Algerian Army. Mr. Lahmar left Algeria in 1992 to study Islamic Theology at the Medina Islamic University in Medina, Saudi Arabia, another key U.S. ally, from which he graduated in 1996 with a bachelor's degree in Islamic Law. See *Medina Islamic University Certificate* at Ex. 3; see also *Encl. (2) to CSRT Decision Report* at Exhibit R-11, p.2, attached to Joint App. at Ex. E(m). After emigrating from Algeria to Bosnia in the late 1990's, Mr. Lahmar dedicated himself to studying and teaching. He has no documented history of involvement in the advocacy of any terrorist or radical Islamic activities

(u) After completing his Saudi studies in 1996, Mr. Lahmar was offered a job with the Saudi High Committee, a charitable organization established and operated by the Saudi Government, teaching the Arabic language to children in Bosnia. Mr. Lahmar began teaching in Bosnia in 1997. *Emina Aff.* at paragraph 2. After his emigration from Algeria to Bosnia in the late 1990's, Mr. Lahmar dedicated himself to studying and teaching. He has no documented history of involvement in the advocacy of any terrorist or radical Islamic activities. He continued to teach Arabic to children and act as librarian at the Islamic Cultural Center in Sarajevo as an employee of the Saudi High Committee until he was arrested. He is a serious scholar of the Arabic language and theology and was planning to leave Bosnia for study in Lebanon or Syria to seek a master's degree in Islamic Studies at the time of his arrest. Mr. Lahmar is also a major fan of international soccer and devoted substantial amounts of his time to following soccer matches on television.

(u) Mr. Lahmar's commitment to his wife and children in Bosnia and his desire to return to them indicate that he is unlikely to present any danger to the United States upon his release.

2. (u) The circumstances of Mr. Lahmar's apprehension and subsequent detention.

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⁵ (u) Mr. Lahmar's son is from his first marriage, and he resides with his mother in Zenica, Bosnia. Until his arrest and detention, Mr. Lahmar visited his son weekly and provided financial support for him.

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(b)(1)

(u) All were ordered released by Bosnia's highest court in January 2002 after a three month investigation on the ground that there was insufficient evidence to detain them. *See Supreme Court of the Federation of Bosnia and Herzegovina Decision of January 17, 2002 attached to Joint App. at Ex. B(b).* Immediately after that order was issued, and before their release could occur, the six were instead turned over to United States forces stationed in Bosnia and then flown to Guantanamo where they are entering their fourth year as prisoners. (b)(1)

(b)(1)

(u) In June 2004, the Chief Federal Prosecutor for Bosnia and Herzegovina dismissed all charges against Mr. Lahmar, and closed his almost three-year investigation into the alleged terrorism activities claimed to have involved Mr. Lahmar and the other five men. *See Summary of Action of the Government of Bosnia and Herzegovina Concerning the Return of the Six Detainees Taken from Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba attached to Joint App. at Ex. B. and attached Letter from Bosnian Chief Federal Prosecutor to UNOHCHR Sarajevo at Ex. B(d)* (confirming Chief Prosecutor's June 24, 2004 decision to end all criminal investigation against Messrs. Boumediene, Nechla, Lahmar, Boudella, Ait Idir, and Bensayah).

(u) 1. *Newly Disclosed Evidence Sheds Light on Source of U.S. Suspicion*

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(b)(1)

Id. (emphasis added).

(b)(1)

(b)(1)

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

(b)(7)(A)

(u) ⁶ This memorandum addresses the GIA in more detail in paragraph 5.1.b. *infra*.

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(b)(1)

(b) (Hamad is married to the sister of Mr. Lahmar's ex-wife) Through Hamad's attorney in Bosnia, counsel recently obtained a copy of a long, rambling handwritten letter that Hamad sent from prison on July 26, 2004 to U.S. General (b)(6) then SFOR Commander in Bosnia.⁷ A copy of this letter and an English translation of the letter are attached to the Joint Appendix at Exhibit M.

(u) The letter by Hamad apparently responds to earlier comments or communications to Hamad which he attributes to General (b)(6) or his aides. The letter begins with a remarkable admission: "I know that you do not trust to what I have publicly stated about Al Qaeda and its engagement in Federation of BiH...I spoke about that with investigators from the FBI on several occasions and we are still in touch." Hamad complains in the letter that General (b)(6) "has no reason to suspect the honesty of my allegations and accusations," and that General (b)(6) is "not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this."

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

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

(b)(1)

⁷(u) The letter is addressed to "Respected Mr. Commander of SFOR General [redacted]" Major General (b)(6) was named SFOR commander in Bosnia on October 2, 2003 and served in that capacity until October 5, 2004, when he was replaced by Brigadier General (b)(6) SFOR itself was replaced on December 2, 2004 by UFOR.

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3. (u) Statements made by Mr. Lahmar prior to or while in detention, and cooperation of Mr. Lahmar and conduct while in detention.

(b)(1)

a. (u) Mr. Lahmar's employment by the Saudi High Commission does not indicate that he supports terrorism

(b)(1)

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(b)(1)

b. (u) Anti-American statements ascribed to Mr. Lahmar by unreliable sources
do not indicate that he supports terrorism

(b)(1), (b)(7)(A)

(F)

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~~(S//NF)~~ For whatever reason – whether it was the press of time, the lack of legal training, or the passive role of Mr. Lahmar’s personal representative (who played virtually no role as advocate for Mr. Lahmar at the hearing and either was never copied on the (b)(6) (b)(1) and/or never commented on it) – the CSRT failed to step back and seriously reassess the documentary record (b)(1)

(b)(1)

(b)(1)

(b)(1), (b)(7)(A)

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(b)(1)

c. (u) Application for a visa from the Iranian Embassy is not evidence that Mr. Lahmar supports terrorism

(b)(1)

(u) In any event, Mr. Lahmar, as noted earlier, told his interrogators that he had planned to leave Bosnia in October 2001 to go to Lebanon or Syria to obtain a Master's degree in Islamic Studies. Flying from Bosnia though Iran to get there would be an obvious, easy, and inexpensive way to travel.

4. (u) Information regarding Bosnia, including whether Bosnia will accept return of Mr. Lahmar.

The Bosnian government has taken a number of steps that demonstrate its unequivocal commitment to repatriating the six men to Bosnia. *See generally, Summary of Actions of the Government of Bosnia and Herzegovina Concerning the Return of the*

(b)(1)

~~(u)~~ The classified CSRT does not show any contradiction of Mr. Lahmar's written CSRT submission on this point: "As for the allegation that I applied for a visa to enter Afghanistan in Sarajevo this is also plain lying as there is absolutely no embassy in Bosnian and Hescovia (sic) that gives Afghanistani entry visas." *See unclassified file of Lahmar CSRT, written submission of Saber Lahmar, page two, October 11, 2004, as witnessed by his Personal Representative* (b)(6) USA, attached to Joint App. at Ex. E(y).

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Six Detainees Taken From Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba, attached to Joint App. at Ex. B.

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

(u) [I]nitiate immediately proceedings with the authorities of USA related to return of [Nadja Dizdarevic's] spouse and others in this case detainees [sic] held in the military base, Guantanamo Cuba.¹⁴

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

(u) The Commission also "order[ed] BiH authorities (the Council of Ministers of BiH) and FBiH authorities (government of FBiH) to completely implement the decision of the HR Chamber number CH/02/8697 and others from 3 September 2002." *Id.* That Court (HR Chamber) concluded—and the Commission accepted its conclusions—that various rights of the six were violated as a result of Bosnia's handover of them to the U.S. *Id. at (c).*

(u) While Mr. Lahmar's permanent residency was attacked in Bosnian courts in the days after his October 2001 arrest, the most recent decision on this topic was made by the Bosnian Federation Ministry of Internal Affairs in November 2002. *See* Exhibit 4. That decision abolished an earlier denial of entry to Mr. Lahmar. Based on this decision and the recent actions taken by the Bosnian Government to negotiate for the return of Mr. Lahmar, he is free to return to his home in Bosnia.

(u) On November 16, 2004, the Bosnian Council of Ministers adopted the recommendations of the Ministry of Justice with respect to the six detainees, including Recommendation 9 that stated it is necessary to begin negotiations with the United States government for their repatriation. Additionally, on January 31, 2005, Slobodan Kovac, the Bosnian Minister of Justice confirmed in a statement that his office intends to seek the return of Mr. Lahmar and the other five men to Bosnia from Guantanamo.¹⁵ *Id.*

(u) Whatever the terrorist threat level was thought to have been in 2001, last week NATO reported that currently the possibility of a terrorist threat in Bosnia is very low.

¹⁴(u) Nadja Dizdarevic is married to Mr. Boudella, and she submitted an application to the Commission on February 26, 2004, to initiate proceedings to repatriate all six of the men to Bosnia.

¹⁵(u) On March 30, 2005, the House of Representatives of the Parliament of Federation of Bosnia and Herzegovina (a regional government body in Sarajevo) declared to the Bosnian Prime Minister that the Bosnian government should actively seek the release of the six men from Guantanamo. *See Declaration* attached to Joint App. at Ex. Q.

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See *NATO: Possibility of Terrorist Threat in BiH Very Low, Fena* (March 22, 2005) attached to Joint App. at Ex. P.

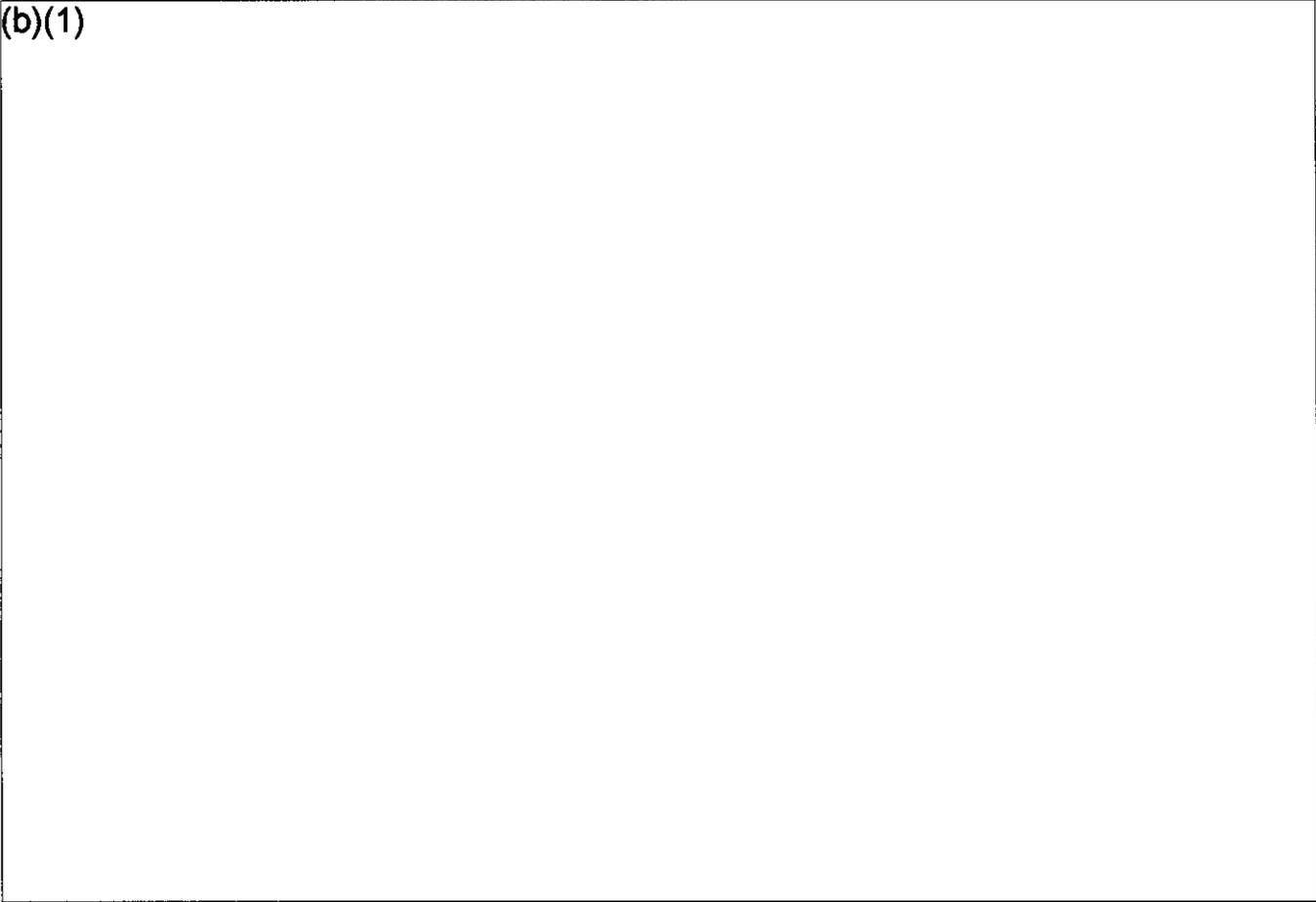
5. (u) The likelihood of Mr. Lahmar taking up arms against the United States or its allies

(u) For the reasons described previously, there is no sound basis upon which to assert that Mr. Lahmar has ever taken up arms against the United States. He was not captured on a battlefield – indeed, he was on his way home after being released from Bosnian prison when he was captured by American forces. Significantly, when thorough searches were conducted of his home and personal effects, no arms, weapons, plans, maps, sketches, bomb-making equipment or any other tangible evidence of an Embassy bombing plot was ever found in his possession or control.

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

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

(b)(1)

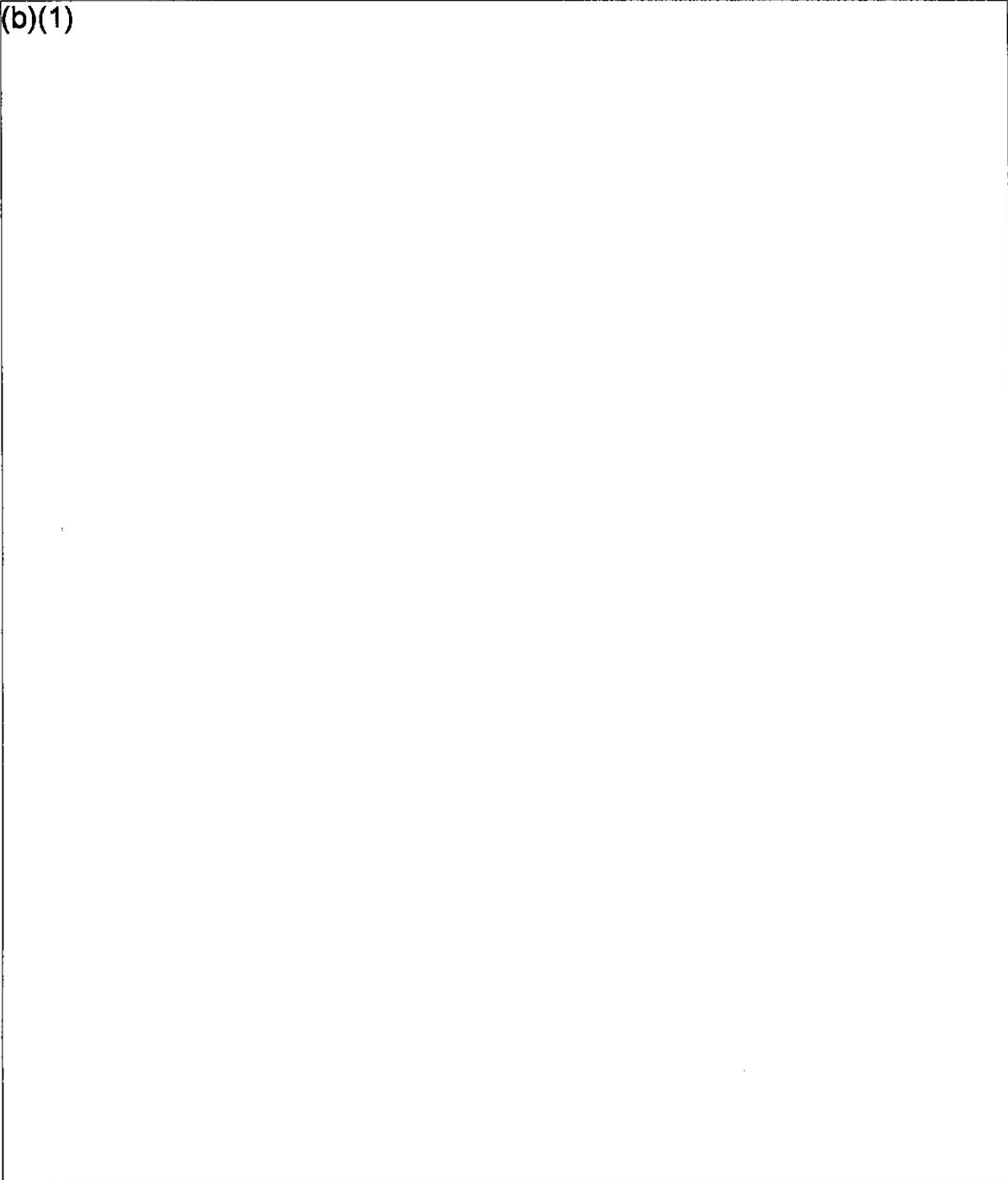


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(U) b. *Finding of Boudella Tribunal.*

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(b)(1)

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

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

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

(u) Strength: Precise Numbers Unknown, probably fewer than 100.

(u) Location/Area of Operation: *Algeria*.

(u) This official U.S. government publication hardly supports a serious contention that Mr. Lahmar—or the others—could plausibly be determined to be active GIA terrorists fixed on bombing the U.S. and British embassies in *Bosnia* in 2001. Rather, the *Guide* actually undermines that contention. (b)(1)

(b)(1)

(u) The CSRT classified file does not provide credible evidence from which to conclude that Mr. Lahmar was a member of the GIA or that he poses the threat to the U.S. or its allies that such a member could pose.

6.(u) Possible intelligence value

(u) Notwithstanding the original stated basis for Mr. Lahmar's apprehension, the

(b)(1)

~~(u)~~ Mr. Lahmar himself stressed in both his written and oral CSRT testimony how implausible it was for anyone to seriously contend that the Algerian government ever considered him a GIA terrorist when it repeatedly allowed him to register at its Jeddah, Saudi Arabia and Rome, Italy embassies, the latter in the year 2000 after a four month wait while the Home Affairs Department in Algeria (Ministry of Interior) reviewed his passport renewal request. Mr. Lahmar put the point very directly and very correctly in his written CSRT submission:

~~(u)~~ What is meant here is that if I were a member of the (AIA G) (sic) then I would have been arrested and my passport would not have been renewed. And if I were a member of the (AIAG) (sic) I would not have registered myself in the Embassy as it makes my arrest easy and I would have uncovered myself." See Lahmar CSRT unclassified file, page two, written statement of Saber Lahmar October 11, 2004, witnessed by his CSRT Personal Representative (b)(6) USA.

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(b)(1) The record amply reflects that Mr. Lahmar has been questioned repeatedly on this topic, and by all appearances, any information he had on this topic has been disclosed during his over three-year long detention. There is no reason to believe, at this late date, and following all that has transpired since 2001 that Mr. Lahmar is a source for any additional intelligence information on this topic.

(b)(1)

(b)(1)

His stubbornness in refusing to engage in further extended discussions with interrogators reflects the frustration of a proud man held in Guantanamo for over three years, mistreated, unhealthy, arrested on specific charges but only questioned on other issues, who simply has nothing left he can say.¹⁸

(u) An interrogator relying on a casual reading of Mr. Lahmar's CSRT file, without the benefit of the dozens of hours that have gone into preparing this Submission alone or of the investigation that we have undertaken for Mr. Lahmar and our five other clients over the last eight months, might superficially conclude that Mr. Lahmar has not disclosed everything of value he knows, when the much more plausible and reasonable conclusion from our detailed deconstruction of the classified CSRT file is that Mr. Lahmar, in plain fact, never had much of value that he could disclose. It is not that Mr. Lahmar has been withholding useful intelligence, but rather that he has no intelligence to offer.

7.(u) Mr. Lahmar's Health Issues

(u) Mr. Lahmar has been physically damaged and his mental health has deteriorated substantially due to his ongoing detention in Guantanamo. Counsel have requested and been denied access to Mr. Lahmar's medical records in Guantanamo but were able to survey Mr. Lahmar's mental health using a detailed questionnaire prepared by forensic psychiatrist, Dr. Daryl Matthews. *See Sample Proxy Psychiatric Exam and Mental Status Examination*, attached to Joint App. at Ex. L. Dr. Matthews is the Director of the Forensic Psychiatry Program at the John Burns School of Medicine, University of

(u//~~FOUO~~) Mr. Lahmar in his written CSRT submission put this matter with a mixture of extreme frustration and bluntness:

(u//~~FOUO~~) "As for the accusation that I tried to blow up the American Embassy in Sarajevo. This is all bull shit and plain wrong for the following reasons: Since the day I was arrested and up to this people's(sic) day No one had interrogated me on this subject. Yet so many times have I asked the interrogators to interrogate me for that but they were evading this each time. They even said to me about a year back, we do not want to talk to you about the Embassy subject because it is not at all in your file. We brought you here to give us information only. Accordingly I say that how can I face such an allegation that I have not been interrogated for, they even deny it."

See Lahmar written submission, pages one-two, October 11, 2004, witnessed by his Personal Representative, (b)(6) USA, attached to Joint App. at Ex. E(z).

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March 31, 2005

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

Hawaii. *See Curriculum Vitae of Dr. Daryl B. Matthews*, attached to Joint App. at Ex. K. For the last ten years, Dr. Matthews has also served as a Consultant to the U.S. Army Medical Command and Co-Director of Training in Forensic Psychiatry at Tripler Army Medical Center in Honolulu, Hawaii. *Id.*

(u) Based on Dr. Matthew's review and analysis of Mr. Lahmar's responses to the questionnaire, it is his professional opinion that Mr. Lahmar may be suffering from a Major Depressive Episode due to his treatment and prolonged detention at Guantanamo. *See Letter from Forensic Psychiatrist, Dr. Daryl B. Matthews*, attached as Exhibit 6. Mr. Lahmar also may be suffering from Post Traumatic Stress Disorder, in light of his sleeplessness, numbing, feeling of detachment and other symptoms. According to Dr. Matthews, the experiences Mr. Lahmar has encountered in detention, including kicks to his head, near suffocation, and forced isolation, are well-known to trigger major depression and stress disorders in previously healthy people. Dr. Matthews concludes that Mr. Lahmar is likely to suffer continuing and exacerbated symptoms of depression and stress disorder if he is not removed from the "stressors" he currently faces in his Guantanamo detention.

B.(u) CSRT Errors Concerning Availability of Evidence.

(u) At his CSRT, Mr. Lahmar requested and was denied access to exculpatory evidence, which was in fact readily available to the CSRT and the public. The CSRT found that the "Bosnian government document finding detainee not guilty of attempting to bomb US Embassy," requested by Mr. Lahmar, was not "readily available." *See Encl. (1) CSRT Decision Report, Unclassified Summary of Basis for Tribunal Decision*, attached to Joint App. at Ex. E(a). This was incorrect. By the time of Mr. Lahmar's CSRT, the Bosnia Supreme Court order that he requested had been appended to at least two court filings made by us as his counsel and served on the Department of Justice in the District Court for the District of Columbia in Mr. Lahmar's habeas proceeding. *See requested Bosnia Supreme Court Decision of January 17, 2002*, attached to Joint App. at Ex. B(b). It was also a document that was publicly available at the Supreme Court of Bosnia and Herzegovina in Sarajevo. As Mr. Lahmar's counsel, we were easily able to obtain a copy of that order.

(u) Additionally a Human Rights Chamber Decision, which discussed the Bosnian Supreme Court ruling, and was also appended to multiple court filings served on the Department of Justice, *see Joint App. at Ex. B(c)*, was also posted on the Internet, most notably on the website of the National Institute of Military Justice (a well-known U.S. non-profit organization) at www.nimj.org immediately after it was issued in 2002. There is no credible reason why these documents were not made available to the CSRT by the Department of State or the Bosnian government upon request.

(u) When men's liberty, health, families and futures are in the balance, such critical evasions as occurred on this important point either by the Department of State or by

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March 31, 2005

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

someone in the Bosnian government is no small matter. This ARB has the opportunity, indeed the duty, to correct this wrong and the others we have detailed which were committed against Mr. Lahmar over the last three and one-half years by recommending that he is returned to Bosnia without conditions.

C. Conclusion

~~(S//NF)~~ When Mr. Lahmar's CSRT classified file is subjected to any real scrutiny (even without our ability at this time to call and cross examine witnesses or to seek additional exculpatory evidence in intelligence files, for example), it cannot support a good faith determination that he now presents any meaningful security risk to the U.S. or its allies.

(b)(1)

(u) The ARB panel cannot give Mr. Lahmar or his family back those now lost three and one-half years. It cannot salvage the damage to his reputation after he was publicly labeled and charged as a mujahedin and terrorist in his adopted home and then interned at Guantanamo. It cannot restore his mental or physical well-being, which has been diminished by over three years of close confinement and mistreatment in Guantanamo in order to permit extended interrogation of Mr. Lahmar about Muslim charities in Bosnia-information that the record before this Board now shows he never had, in any meaningful intelligence sense The Board can and should declare that he is not now a threat to U.S. citizens or its allies and thereby allow the Bosnian government to negotiate his return - as well as that of the five other Bosnian Detainees - to their families, community and jobs at an early date.

Respectfully Submitted,

Stephen H. Oleskey 403

Stephen H. Oleskey
Robert C. Kirsch
Douglas Curtis
Melissa A. Hoffer
Wilmer Cutler Pickering Hale and Dorr LLP
617.526.6000

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Saber Lahmar Exhibits to ARB Submission

1. Algerian Citizenship Certificate
2. Photographs of Mr. Lahmar and his children
3. Medina Islamic University Certificate
4. Unofficial translation of Federation of Bosnia and Herzegovina, Ministry of Interior Affairs Decision (November 7, 2002)(abolishing January 2002 decision to deny Mr. Lahmar entry to Bosnia)
5. Affidavit of Emina Susic Lahmar
6. Letter from Forensic Psychiatrist Dr. Daryl B. Matthews (March 24, 2005)

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Lahmar Exhibit 1

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Ambasciata
della Repubblica Algerina
Democratica e Popolare
Roma

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سفارة
الجمهورية الجزائرية
الديمقراطية الشعبية
روما

N° 12/05 A.C

**ATTESTATION
DE
NATIONALITE**

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

Nom : LAHMAR

Prénom : Saber

Né le : 22/05/1969 à : Constantine

Fils de : Mahfoud et de : CHIKH Akila

**Titulaire du passeport n° 0705315 délivré par notre Ambassade le
03/10/2000 valable au 02/10/2005.**

Est de nationalité Algérienne

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

Rome, le 13 janvier 2005



Le Chargé des Affaires Consulaires

Passport

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UNCLASSIFIED

Lahmar Exhibit 2

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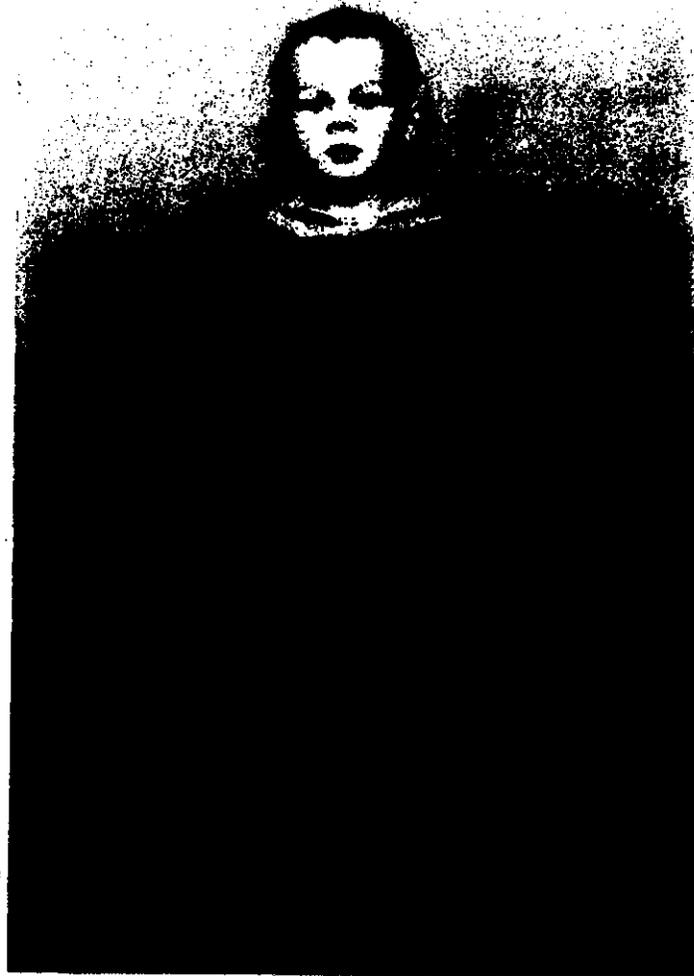
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Saber Lahmar

UNCLASSIFIED

UNCLASSIFIED



Saber Lahmar's son, Muad

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Saber Lahmar has never met his young daughter, Sara, who was born soon after he was detained.

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Lahmar Exhibit 3

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Arabic Saudi Kingdom
Ministry of Higher Education
Medina Islamic University
Shari'ah College (Islamic Law)

High Certificate

The Director of Medina Islamic University certify that Lahmar Sabir from Algeria born in Constantine year 1389 Hijri / 1969 has completed higher studying in the Shari'ah College and has passed the final exams for the academic year of 1416/1417 Hijri corresponding to 1995/1996 with grade GOOD . According to this the University committee has awarded him the High Degree Licence.

Certified # 5442 Dated 20/2/1417 Hijri 6/7/1996

Signed by the College Dean
Pr : Abd Al Salam Ben Salem

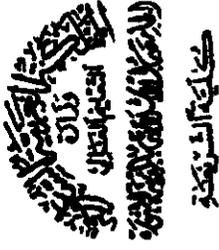
Singed by the University Director

Pr Saleh Ben Abd Allah Aleboud

University Stamp

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



الإجازة العالمية

أشهد لله رب العالمين، وأصلاة والسلام على سيدنا الأنبياء والمرسلين، وعلى آله وصحبه، أما بعد، فإن ميدان الإجازة الإنسانية بمدينة النورة يشهد بأن لحسن مصراير من الجزائر شر للولود في قسنطينة عام ١٣٨٩م ١٦٦٩م قدام الدراسة العالمية في كليات الشريعة وتحت إشراف إختصاصنا النهائي للعالم الدراسي ١١٦٧م الموافق ١٩٩٥م بتقدير جيد وثقة كل ذلك فقرر مجلس الجامعة منحه درجة الإجازة العالمية، والجلسة إذ تمتحه هذه الشهادة، بوصفه يتقوى بالله تعالى، ولأنك لله عز وجل أن يسلك به سبيل العلماء العالمين.

عينة الكلية



مدير الجامعة

[Handwritten signature]

م. صالح عبد الله العبود

سجلت برفق ٥٤٩٠ و تاريخ ١٤٧٧/٢/٢٠ على كل

توقيع صاحب الشهادة ١٩٩٧/٧/٦

م. حيدر بن محمد السميوي

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Lahmar Exhibit 4

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**Bosnia and Herzegovina
Federation of Bosnia and Herzegovina
Federation Ministry of Internal Affairs
SARAJEVO**

Number: 02/1-04-3-639

Date: 7 November 2002

**KOCO MIDHAT
Ul. Kolodvorska 11**

SARAJEVO

Subject: Implementation of the Decision by the Human Rights Chamber for Bosnia Herzegovina from 3 September 2002 in the case of the so called "Algerian Group"

In attachment we submit you the Decision of this Ministry on abolition of Decision on declining the entering to territory of Bosnia and Herzegovina for SABER LAHMAR, dated 10 January 2002, which was taken with the goal of implementation of obligations from chapter IX, item 12 of the Decision of the Human Rights Chamber for Bosnia and Herzegovina.

Attachment:

- **The Decision on abolition of Decision on declining the entering to territory of Bosnia and Herzegovina for SABER LAHMAR**

Minister

Dr. Ramo Maalica

(signature)

Seal stamp of Ministry of Internal Affairs

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Bosnia and Herzegovina

Federation of Bosnia and Herzegovina

FEDERATION MINISTRY OF INTERNAL AFFAIRS

SARAJEVO

Number: 02/1-04-3-639

Date: 7 November 2002

On basis of provisions of article 35, item 2 of the Law on Immigration and Asylum of Bosnia and Herzegovina ("Official Gazette of BiH" number 23/99), Annex 6, item XI paragraph 3 and 6 of General Framework on Peace in Bosnia and Herzegovina, and Decision of the Human Rights Chamber for Bosnia and Herzegovina on admissibility and meritum number CH02/8691 from 3 September 2002, the Federal Minister of Internal Affairs issues;

DECISION

Abolished is the Decision of this Ministry number 02/1-04-3-639 from 10 January 2002 by which the entering to territory of Bosnia and Herzegovina was declined for SABER (Mahfura) LAHMAR, born on 22 May 1969 in place Constantinos, state of Algeria.

Rationale

By the Decision of this Ministry number 02/1-04-3-639 from 10 January 2002, the entering to territory of Bosnia and Herzegovina was declined to SABER (Mahfura) LAHMAR, born 22 May 1969 in place Constantinos, state of Algeria.

By that Decision the named individual was ordered to immediately leave the territory of Bosnia and Herzegovina, that the Decision would be implemented by the Federal Ministry of Interior Affairs in co-operation with the Sector for relations with INTERPOL of the Ministry for Civil Affairs and communications of BiH and State Border Service of Bosnia and Herzegovina, and that appeal against this Decision does not delay its execution.

SABER LAHMAR, through his lawyer, submitted an application to the Human Rights Chamber of Bosnia and Herzegovina against the Decision of this Ministry number 02/1-04-3-639 from 10 January 2002.

The Human Rights Chamber - after its proceedings, in its Decision on admissibility and merits from 3 September 2002, in chapter IX, item 12, and while considering its findings related to

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delivery of the Decision on declining the entering to the applicant, which it obtained in the context of discussion according to the article 1 Protocol number 7 of Convention - has ordered to the Federation of BiH to take all necessary measures toward abolition of the Decision of this Ministry on declining the entering from 10 January 2002, and thus it was decided as in the disposition of this Decision.

INSTRUCTION ON LEGAL REMEDY

Against this Decision it is possible to submit the appeal to the Ministry for Civil Affairs and Refugees of BiH within 15 days from the day of receiving this Decision.

TO BE DELIVERED TO:

- The named individual
- Council of Ministers of Bosnia and Herzegovina
- Ministry for Human Rights and Refugees of BiH
- Ministry of Civil Affairs and Communications of BiH
- State Border Service
- The Human Rights Chamber for BiH
- Government of Federation of BiH - Department for co-operation and representation
- Commission for Human Rights
- Archive

MINISTER

Dr. Ramo Maslesa

(signature)

Seal Stamp of Ministry of Interior

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08-11-2002

Bosna i Hercegovina
Federacija Bosne i Hercegovine
FEDERALNO MINISTARSTVO UNUTRAŠNJIH POSLOVA
FEDERALNO MINISTARSTVO UNUTRAŠNJIH POSLOVA
SARAJEVO



Bosnia and Herzegovina
Federation of Bosnia and Herzegovina
FEDERATION MINISTRY OF INTERNAL AFFAIRS
SARAJEVO

08-11-2002

Broj: 02/1-043-639
Datum: 07.11.2002. godine

KOČO MIDHAT
Ul. Kolodvorska 11.

SARAJEVO

PREDMET: Provedba Odluke Doma za ljudska prava za Bosnu i Hercegovinu od 03.09.2002.godine,
u slučaju tzv. "Alžirsko grupe"

U prilogu vam dostavljamo rješenje ovog ministarstva o poništenju rješenja o odbijanju
ulaska na teritoriju Bosne i Hercegovine od 10.01.2002. godine, na ime SABER LAHMAR, a koje je
donijeto u cilju sprovođenja obaveza iz poglavlja IX tač. 12. Odluke Doma za ljudska prava za Bosnu
i Hercegovinu:

PRILOG:

- Rješenje o poništenju Rješenja o
odbijanju ulaska na teritoriju BiH na ime
SABER LAHMAR



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Bosna i Hercegovina
Federation of Bosnia and Herzegovina
FEDERALNO MINISTARSTVO UNUTRAŠNJIH POSLOVA
FEDERALNO MINISTARSTVO UNUTARNJIH POSLOVA
SARAJEVO



Bosnia and Herzegovina
Federation of Bosnia and Herzegovina
FEDERATION MINISTRY OF INTERNAL AFFAIRS
SARAJEVO

Broj: 02/1-04-3-639
Datum: 07.11.2002. godine

Na osnovu odredbi člana 35. stav 2. Zakona o imigraciji i azilu Bosne i Hercegovine ("Službeni glasnik BiH" broj 23/99), Aneksa 6. član XI tač. 3. i 6. Opšteg okvirnog sporazuma za mir u Bosni i Hercegovini i Odluke Doma za ljudska prava za Bosnu i Hercegovinu o prihvatljivosti i meritumu broj CFI02/8691 od 03.09.2002. godine, **f e d e r a l n i m i n i s t a r u n u t r a š n j i h p o s l o v a , d o n o s i**

R J E Š E N J E

Poništava se rješenje ovog ministarstva broj 02/1-04-3-639 od 10.01.2002. godine, kojim se odbija ulazak na teritoriju Bosne i Hercegovine SABER (Mahfuda) LAJMAR-u, rođenom 22.05.1969. godine, u mjestu Constantinos, država Alžir.

Obrazloženje

Rješenjem ovog ministarstva broj 02/1-04-3-639 od 10.01.2002. godine, odbijen je ulazak na teritoriju Bosne i Hercegovine SABER (Mahfuda) LAJMAR-u, rod. 22.05.1969. godine, u mjestu Constantinos, država Alžir.

Tim rješenjem imenovanom je naloženo da odmah napusti teritoriju Bosne i Hercegovine, te da će rješenje izvršiti Federalno ministarstvo unutrašnjih poslova u saradnji sa Sektorom za odnose sa INTERPOL-om Ministarstva civilnih poslova i komunikacija BiH i Državnom graničnom službom Bosne i Hercegovine, a da žalba protiv tog rješenja ne odlaže njegovo izvršenje.

SABER LAJMAR podnio je putem zastupnika prijavu Domu za ljudska prava za Bosnu i Hercegovinu protiv rješenja ovog ministarstva broj 02/1-04-3-639 od 10.01.2002. godine.

Dom za ljudska prava za BiH je nakon provedenog postupka u svojoj Odluci o prihvatljivosti i meritumu od 03.09.2002. godine u poglavlju IX u tački 12, a razmatrajući svoje nalaze u pogledu uručenja Odluke o odbijanju ulaska podnosiocu prijave do kojih su došlo u kontekstu diskusije prema članu 1. Protokola broj 7. uz konvenciju, naredio Federaciji BiH da preduzme sve neophodne mjere radi poništenja rješenja ovog ministarstva o odbijanju ulaska od 10.01.2002. godine, pa je s tim u vezi rješeno kao u dispozitivu ovog rješenja.

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FROM : ICG

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-2-

POUKA O PRAVNOM LJEDKU:

Protiv ovog rješenja može se uložiti žalba Ministarstvu za ljudska prava i izbjeglice BiH u roku od 15 dana od dana prijema ovog rješenja.

DOSTAVITI:

- imenovani,
- Vijeću ministara Bosne i Hercegovine
- Ministarstvo za ljudska prava i izbjeglice BiH
- Ministarstvo civilnih poslova i komunikacija BiH
- Državna granična služba
- Dom za ljudska prava BiH
- Vlada FBiH - Ured za saradnju i zastupanje
- pred Komisijom za ljudska prava
- s/a



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Lahmar Exhibit 5

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UNCLASSIFIED

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

Petitioners,

vs.

04-1166 (RJL)

GEORGE WALKER BUSH, President
of the United States of America;
DONALD RUMSFELD, Secretary of
Defense; GENERAL JAY HOOD,
Commander, Joint Task Force;
COLONEL NELSON J. CANNON,
Commander, Camp Delta; *in their
individual and official capacities,*

Respondents.

AFFIDAVIT OF EMINA LAHMAR

I, Emina Lahmar, of Mahmutovac 24, Sarajevo, Bosnia and Herzegovina ("BiH"), depose and state as follows:

1. I was born on September 17, 1976, in Sarajevo, BiH as Emina Susic. I am a Bosnian citizen. I married Saber Lahmar in April 2001. We have one child, our daughter Sara, born February 13, 2002. My husband has another child, his son Muad, born in 1999. Muad lives with his mother in Zenica. Both children are citizens of BiH.
2. My husband was born on May 22, 1969, in Algeria, in the settlement of Constantine, as an Algerian citizen. His parents are Mahfud and Akila nee Sadj. My husband completed his Islamic Theological faculty studies in Medina in 1996. He then came to BiH in 1997 to work for the High Saudi Committee and on April 4, 1997, he was granted a permit for permanent residence in BiH.
3. I completed my training as a dentist technician in Sarajevo. I then began my theological studies at the Islamic Theological Faculty in Sarajevo. My studies were interrupted during the second year when my husband was removed from BiH and I did not resume my studies. I have never worked. When my husband was living in BiH, we lived with my parents. I continue to live with my parents, brother, and daughter in my parents' home.
4. My husband worked as a professor of Arab language and worked at the Islamic Center of the High Saudi Committee. When my husband first arrived in BiH in 1997, he lived in

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Mostar. He moved to Sarajevo in 2000, where we first met. He paid for my education. He also provided financial support to his son in Zenica, and we often went from Sarajevo together to visit his son. My husband had regular contacts with his family in Algeria, and, in his free time, he liked to play football and read literature.

5. My husband never had Bosnian citizenship, because he never applied for it. On November 23, 2001, the Ministry of Human Rights and Refugees issued a decision terminating my husband's permanent residence permit on the ground that he had been sentenced to imprisonment in 1998 for 5 years. He had served part of his sentence, and on January 6, 2000, was released on parole. My husband appealed the decision of the Ministry for Human Rights and Refugees terminating his residency permit. However, he was taken into United States' custody before the appeal was decided. The revocation of my husband's residence permit was affirmed on May 27, 2002; but due to his absence he was not able to appeal this decision.
6. My husband was arrested on October 18, 2001, in connection with suspected terrorist activity. On January 17, 2002, the Bosnian Supreme Court ordered my husband's immediate release on the ground that there were no reasons upon which pre-trial detention could be ordered. Disregarding that decision, the Federation Police transferred my husband to United States custody at 6:00 a.m. on January 18, 2002.
7. On January 16, 2002, my husband lodged an application with the Human Rights Chamber for BiH ("Chamber"). According to the decision of the Chamber, the respondent parties, BiH and the Federation of Bosnia Herzegovina, violated my husband's right not to be arbitrarily expelled and his right not to be subjected to death penalty. The Chamber also ordered the respondent parties to take all necessary action to protect my husband's rights while in United States custody and to pay compensation for non-pecuniary damages.
8. Presently, my husband is being held in custody of the United States military at Guantanamo Bay, Cuba. I was first notified of my husband's removal from BiH by a Bosnian police officer a few days after January 18, 2002. A few days later, a representative of the International Committee of the Red Cross ("ICRC") told me that my husband was in Guantanamo Bay. At the beginning, I regularly received letters from him but since September 2002 I have not received any correspondence from him. In response to my concerns, the United States Embassy in Sarajevo told me that I most likely did not receive any new letters from my husband because he did not want to write to me. I cannot accept this explanation because my husband was always very considerate and interested in family matters and would not simply stop communicating with us. In fact, a representative of the ICRC told me that he was present when my husband opened a letter from me containing a picture of our new baby and observed that my husband was overjoyed. Until approximately two months ago, I had no more news at all about my husband. Recently, I received news through released inmates of Guantanamo Bay, who told me my husband is alive. I am extremely worried, however, about the conditions under which my husband is being held.

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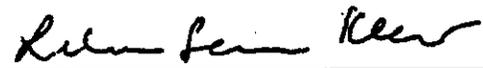
9. My financial situation has been very difficult since my husband was taken to Guantanamo. I interrupted my studies, and now spend a lot of my time trying to seek assistance for my husband. My activities include regular contacts with the BiH government, international organizations and human right groups. My only income is child support provided by the BiH government. My daughter and I receive support from my family and my husband's family in Algeria. In our family, my mother is the only one who has a job; my father used to work for the United States Embassy in Sarajevo, but he lost his job on October 20, 2001, as a result of my husband's arrest a few days before. My brother lost his job for the same reason. Since my stepson's family in Zenica is also in serious economic difficulties, we try to help them as well.
10. It is my belief, based on the messages my family received, and from everything I know about my husband, that he is seeking my assistance and support and would want me to take appropriate legal action on his behalf as his next friend. In this capacity, I have retained and hereby request Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to act on my own and Saber Lamar's behalf and to take whatever legal steps they consider to be in our best interests in connection with my husband's detention at Guantanamo.

I know the facts deposed herein to be true to the best of my knowledge.

Sworn to by the deponent on this 10. day of August, 2004.



Emina Lahmar



Witness : Lilianna Scasascia Kleiser

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.

Petitioners,

vs.

04-1166 (RJL)

GEORGE WALKER BUSH, President
of the United States of America;
DONALD RUMSFELD, Secretary of
Defense; GENERAL JAY HOOD,
Commander, Joint Task Force;
COLONEL NELSON J. CANNON,
Commander, Camp Delta; *in their
individual and official capacities,*

Respondents.

AFFIDAVIT OF EMINA LAHMAR AUTHORIZING REPRESENTATION

I, Emina Lahmar, hereby depose and say:

1. I am Emina Lahmar, of Mahmutovac 24, Sarajevo, Bosnia and Herzegovina.
2. I am acting as the next friend of my husband Saber Lahmar, who is in the custody of the United States at Guantanamo Bay Naval Base, Cuba.
3. I hereby authorize Wilmer Cutler Pickering Hale and Dorr LLP, and any person authorized by that Firm, to represent me in all proceedings relating to my husband's detention by the United States, and any and all proceedings related to my husband's status under custody of the United States.

Signed:

Emina Lahmar

Date:

10.8., 2004

Witnessed:

Liliana Scasascia Kleiser

Liliana Scasascia Kleiser

Date:

10. August, 2004

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Lahmar Exhibit 6

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FORENSIC PSYCHIATRY

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

March 24, 2005

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

Re: Saber Lahmar

Dear Mr. Oleskey:

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

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

Findings and Opinions

Mr. Lahmar endorsed sufficient symptoms to suggest that he may meet full criteria for a diagnosis of a Major Depressive Episode. These symptoms included decrease in appetite, loss of energy, insomnia, psychomotor retardation or agitation, dysphoric mood and hopelessness about the future.

Mr. Lahmar also endorsed symptoms suggestive of Acute Stress Disorder or Post Traumatic Stress Disorder. These symptoms included irritability, difficulty concentrating, feeling of detachment from others, numbing, difficulty falling or staying asleep, and intrusive distressing recollections of traumatic events/images.

Mr. Lahmar reported being subjected to being kicked in the head, forced isolation,

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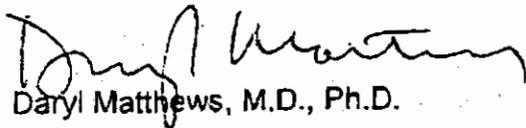
violation of very important religious practices, and near suffocation. He also reported being threatened with attacks dogs. These experiences are well known to precipitate major depression and stress disorders in previously healthy individuals.

It should be noted that the manner in which Mr. Lahmar responded to the questions suggested that it was likely he was reporting accurately. He did not show the over-endorsement of symptoms or experiences that might be seen in a person who is malingering. (For example, he did not claim to have witnessed murder, given electric shock, or to have been threatened with execution, and did not claim all symptoms that might appear to be related to depression or trauma responses.)

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

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

Sincerely,



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

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

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

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

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

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

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Markings

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I. DISCUSSION OF ARB CRITERIA

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

(S//NF) A review of Mr. Bensayah's full CSRT file consistently depicts a simple, uneducated man who lived modestly since leaving his native Algeria approximately 15 years ago. He dealt with people in many contexts, but made few close relationships, as is evident in the CSRT file. He comes from a large family, most members of which still live in Algeria, and his most important relationship during the past several years has been and remains that with his wife and daughters in Bosnia. Since marrying, he has settled in Bosnia. His financial ventures and needs remain modest and he has demonstrated the traits of a law abiding, respectable husband, father and citizen. The record does not describe instances of anti-American rhetoric or conduct. With the exception of (b)(1)

(b)(1)

(b)(1) the record does not suggest Mr. Bensayah planned to assist other people with positions adverse to the U.S.

(S//NF) There is no statement or allegation among the many documents selected to be included in the CSRT file relating to Mr. Bensayah that shows him as inclined toward violence, or ever acting or speaking in a way that was deemed anti-American by any intelligence officer whose work is present in that file. Indeed, read in its entirety, even the CSRT material, which was assembled to support the proceeding conducted to confirm his status as an "enemy combatant," shows, at worst, that one or two intelligence officers (who, it appears, did not meet or personally evaluate Mr. Bensayah) filed statements, without independent support, suggesting links to an Algerian extremist group³ or to al Qaeda that Mr. Bensayah, and the other Bosnian detainees purportedly "linked" to him (principally by coincidence of their Algerian birth) consistently denied throughout three years of questioning by both Bosnian and U.S. authorities.

(u) Mr. Bensayah is the least educated and least articulate of the six Algerian-born Bosnians, and the one who has suffered the most physically and psychologically as a result of his internment at Guantanamo. Unlike the other five men he is alleged to be in association with, he was only sporadically employed and lived in very humble surroundings, often surviving on the charity of other Muslims or his Bosnian wife's family. Although the CSRT file includes unsupported statements about funds he

³ (u) Our discussions with Algerian Embassy personnel and others indicate that the Armed Islamic Algerian Group, known as the GIA, was active in the early to mid 1990s. Mr. Bensayah left Algeria in 1990. His travels after leaving are well documented in the materials offered to support the CSRT record.

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controlled, he was living with his wife's parents at the time of his arrest, after losing his apartment, had virtually nothing in his personal bank account, and did not own a cell phone. His acquaintance with Mr. Boumediene was limited to the context of asking for charity assistance from Mr. Boumediene, an aid worker of common descent, for his wife and children.

~~(b)(1)~~ (b)(1)

(b)(1)

(b)(1) Counsel respectfully submit that Mr. Lahmar had nothing personal to gain by such a statement, (b)(1)

(b)(1)

1. (u) *Mr. Bensayah's Acquaintances Do Not Demonstrate Dangerousness*

(u) The Board should take note of the consistency of the answers provided by Mr. Bensayah (and the five other Bosnians) during the 90 days he was detained in Bosnia, and during his three plus years in Guantanamo. There is no dispute that each of the six men was living at home with his family when detained, and there is not even a suggestion in the combined files of all six of any effort or opportunity to coordinate alibis. Under the circumstances, the consistency of their independently and repeatedly collected statements about their histories and relationships [including the lack of any relationship among some of them] indicates they are telling the truth, and consequently, should raise material questions for this Board (which has the ability, and perhaps the duty to review their records as a collection) about whether any of them poses a threat to the interests of the U.S. or its allies.

(b)(1)

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(b)(1)

(S//NF) Mr. Bensayah should not be assessed as a threat to the U.S. or as having any intelligence value based (b)(1)

(b)(1)

(b)(1) Mr. Lahmar had the misfortune to have a former brother-in-law who hoped to benefit from implicating Mr. Lahmar to U.S. and Bosnian authorities. See discussion below. Mr. Boumediene's alleged infraction was giving food and paying to retain a lawyer for Mr. Bensayah, a poor man with a wife and children. Neither connection suggests any risk to the U.S.; both are easily explicable in the context of an expatriate Muslim community.

B. (u) Circumstances of Mr. Bensayah's Apprehension

(FOUO) Detainees Nechla No. 10003, Bensayah No. 10001, Ait Idir No. 10004, Lahmar No. 10002, Boudella No. 10006, and Boumediene No. 10005 all were born in Algeria and had been living in Bosnia for six to twelve years by 2001 when they were arrested by Bosnian authorities (b)(1)

(b)(1)

(b)(1)

(b)(2)

(b)(7)(A)

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(b)(1)

(u) The six Algerian men were ordered released by Bosnia's highest court in January 2002 on the ground that there was insufficient evidence to detain them.⁶ Immediately after the order was issued, and before their release could occur, the six were turned over to United States forces stationed in Bosnia and then flown to Guantanamo where they are entering their fourth year as prisoners. (b)(1)

(b)(1)

(u) In June 2004, the Chief Federal Prosecutor for Bosnia and Herzegovina closed his almost three-year investigation into the alleged terrorism activities involving Mr. Bensayah and the other five men. See *Letter from Bosnian Chief Federal Prosecutor*, attached to Joint App. at Ex. B(d).

(u) 1. *Newly Disclosed Evidence Sheds Light on Source of U.S. Suspicions*

(u) Mr. Bensayah's alleged link to terrorist organizations such as the GIA and terrorist activities such as a "suspected" embassy attack presumed from his acquaintance with Mr. Lahmar have been undermined by recent information.

(b)(1)

⁶ See *Summary of Action of the Government of Bosnia and Herzegovina Concerning the Return of the Six Detainees Taken from Bosnia and Herzegovina to the U.S. Prison at Guantanamo Bay, Cuba*, attached to Joint App. at Ex. B, and; *Supreme Court of the Federation of Bosnia and Herzegovina Decision* (January 17, 2002), attached to Joint App. at Ex. B(b).

⁷ See also Lahmar Classified ARB Submission for a full discussion of this evidentiary development.

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(SINF) (b)(1)

[Redacted]

Id. (emphasis added).

(SINF) Colonel (b)(6) failed to send this essential information, which arrived after the conclusion of Mr. Lahmar's CSRT proceedings, to the President of the Lahmar Tribunal.⁸ Colonel (b)(6) also took no action to send it to the members of the Bensayah Tribunal or to any members of the Tribunals for Messrs. Boudella, Boumediene, Ait Idir or Nechla, even though all their CSRT files, (b)(1)

(b)(1)

(b)(1)

(SINF) See October 19 and 20, 2004, email exchange in Lahmar CSRT Classified File, attached to Joint App. at Ex. E(y). Those documents show that when the two members of the Lahmar Tribunal stated that this information would not change their conclusions, it was never forwarded to Col. (b)(6) the Tribunal President and its ranking officer.

(b)(1)

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(b)(1)

(b)(1)

(b)(1)

Through Hamad's attorney in Bosnia, counsel recently obtained a copy of a long, rambling handwritten letter that Hamad sent from prison on July 26, 2004 to U.S. General (b)(6), then SFOR Commander in Bosnia.¹⁰ A copy of this letter and an English translation of the letter are attached to the Joint Appendix at Exhibit M.

(u) The letter by Hamad apparently responds to earlier comments or communications to Hamad, which he attributes to General (b)(6) or his aides. The letter begins with a remarkable admission: "I know that you do not trust to what I have publicly stated about Al Qaeda and its engagement in Federation of BiH...I spoke about that with investigators from the FBI on several occasions and we are still in touch." Hamad complains in the letter that General (b)(6) "has no reason to suspect the honesty of my allegations and accusations," and that General (b)(6) is "not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this."

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

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

(b)(1)

¹⁰ (u) The letter is addressed to "Respected Mr. Commander of SFOR General [REDACTED]" Major General (b)(6) was named SFOR commander in Bosnia on October 2, 2003 and served in that capacity until October 5, 2004, when he was replaced by Brigadier General (b)(6). SFOR itself was replaced on December 2, 2004 by UFOR.

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(b)(1)

C. (u) Statements Made by Mr. Bensayah and Cooperation Wile in Detention.

(b)(1),(b)(7)(A)

(b)(1)

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(b)(1)

(u) The fact that Mr. Bensayah voluntarily confessed to having used a false name and documents in the past does not change the fact that he took those actions in the early 1990s. However, it does suggest that he had, by then, decided to settle in Bosnia and to raise his new family there peacefully as a member of Bosnian society. These are among the facts this Board should consider in evaluating whether Mr. Bensayah poses a threat to the United States.

~~(S)~~ Nor was his effort to correct his name the only step Mr. Bensayah took that was inconsistent with the theory that he intended to harm the U.S. or its allies. (b)(1)

(b)(1)

~~(S)~~ This Board also should evaluate anew what conclusions to draw from Mr. Bensayah's lack of financial success. (b)(1)

(b)(1)

¹² (u) Mr. Bensayah initially was held by Bosnian authorities because his immigration records included more than one name.

¹³ ~~(S)~~ This is a particularly important point for this Board to consider. (b)(1)

(b)(1)

(b)(1)

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(b)(1)

D. (u) Bosnia's Intent to Seek the Return of Mr. Bensayah

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

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

(u) [I]nitiate immediately proceedings with the authorities of USA related to return of [Hadj Boudella] and others in this case detainees [sic] held in the military base, Guantanamo Cuba.¹⁶

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

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

(b)(1)

(b)(1)

¹⁶ (u) Nadja Dizdarevic, Mr. Boudella's wife, submitted an application to the Commission on February 26, 2004, to initiate proceedings to repatriate all six of the men to Bosnia.

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of the HR Chamber number CH/02/8697 and others from 3 September 2002." *Id.* That Court concluded—and the Commission accepted its conclusions—that various rights of the six were violated as a result of Bosnia's handover of them to the U.S. *See Human Rights Chamber Decision of October 11, 2002, Ex. B(c).*

(U) On November 16, 2004, the Bosnian Council of Ministers adopted the recommendations of the Ministry of Justice with respect to the six detainees, including Recommendation 9 that stated it is necessary to begin negotiations with the United States government for their repatriation. Additionally, on January 31, 2005, Slobodan Kovac, the Bosnian Minister of Justice confirmed in a statement that his office intends to seek the return of Mr. Bensayah to Bosnia from Guantanamo.¹⁷ *See Joint App. at Ex. B(h).*

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

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

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

(u) a. Finding of Ait Idir Tribunal.

(b)(1)

¹⁷ (u) On March 30, 2005, the House of Representatives of the Parliament of Federation of Bosnia and Herzegovina (a regional government body in Sarajevo) declared to the Bosnian Prime Minister that the Bosnian government should actively seek the release of the six men from Guantanamo. *See Declaration* attached to Joint App. at Ex. Q.

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(b)(1)

(b)(1)

b. Finding of Boudella Tribunal.

(b)(1)

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

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

2. (u) *Mr. Bensayah was not a member of the GIA*

(u) There is no basis in the record to believe Mr. Bensayah was part of the GIA, an organization with which he appears to have had no contact. (b)(1)

(b)(1)

(u) Moreover, the GIA is an organization with the intent to harm the government of Algeria, not Bosnia or the United States, and its activities from 1992 through the mid-1990's were limited to Algeria.¹⁹ The organization has been largely inactive since that time. Mr. Bensayah had long since departed Algeria when this group became active there. See *Terrorist Organization Reference Guide* (U.S. Dept. of Homeland Security January 2004), *Encl. (2) to Lahmar CSRT Decision Report* at Exhibit R-3, attached to Joint App. at Ex. E(e). However, it is easy to see why an embittered and self-interested ex-brother-in-law wanting to smear Mr. Lahmar, would have considered it useful to tell U.S. intelligence that Mr. Lahmar was the leader of a GIA cell in Bosnia, and to supply a list of purported Algerian GIA members "operating" in Bosnia.

(b)(1)

¹⁹ (u) The United States Department of State has confirmed that the GIA "began its violent activities in 1992" after Algiers voided the victory of Islamic Salvation Front (FIS)—the largest Islamic opposition party—in the first round of legislative elections in December 1991." *Patterns of Global Terrorism, 2003* (U.S. Department of State, June 2004).

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(b)(1)

F. Mr. Bensayah Has no Intelligence Value

(u) There is almost no mention of the purported U.S. Embassy bombing plot, the pretext for his continued detention, in any of the classified summaries of his interrogations. Aside from the fact that detention for purposes of interrogation and intelligence gathering is unlawful, *see Hamdi v. Rumsfeld*, 542 U.S. ___, slip op. at 13 (2004), it shows Mr. Bensayah poses no risk. Mr. Bensayah was never interrogated about his participation in any activity that actually has resulted in harm to the United States or its allies, and the record reflects no evidence of any actual plan to undertake such activity.

(u) The record amply reflects that Mr. Bensayah has been questioned repeatedly, and by all appearances any information he had of any intelligence value has been disclosed during his over three-year long detention. Year four of interrogation on the same topics is just as unlikely to yield new or useful information as years one, two, and three have been, because Mr. Bensayah simply has no information that would be of any intelligence value to the United States. Moreover, due to the poor state of Mr. Bensayah's mental health, his participation in future interrogations is likely to be particularly unhelpful to the United States.

G. Mr. Bensayah's Health

(u) The Board may be aware that Mr. Bensayah suffers from certain medical conditions that will make it difficult for him to present himself favorably to the Board in person, should he have the opportunity to do so. He was known to bang his head against the bars of his cell during his confinement, and he has been required to take certain medication while at Guantanamo. He believes he has been treated for mental illness, but we are not in a position to say so with certainty. He has asked that we receive his medical file to review it, but so far our requests have been rejected.

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

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(u) Based on his review of Mr. Bensayah's responses to the questionnaire, Dr. Matthews determined that Mr. Bensayah may be suffering from a Major Depressive Episode due to his treatment and prolonged detention at Guantanamo. See Letter from Forensic Psychiatrist, Dr. Daryl B. Matthews, attached as Exhibit 3. Mr. Bensayah also may be suffering from Post Traumatic Stress Disorder, based on his nightmares, numbing, feeling of detachment and other symptoms. The experiences Mr. Bensayah has encountered in detention, including beatings, forced isolation and witnessing torture of others, are well-known to trigger major depression and stress disorders in previously healthy people. Dr. Matthews concludes that Mr. Bensayah is likely to suffer continuing and exacerbated symptoms of depression and stress disorder if he is not removed from the stressors he currently faces in detention.

II. (u) CSRT ERRORS

A. (u) The Classified CSRT Summary Has Errors This Board Should Note²⁰

(u) We are reluctant to spend too much time pointing out inconsistencies in the CSRT record. That is not the issue before this Board. Nevertheless, pointing out some of the errors made clear in that record [and we have not tried to identify all we found] will help this Board avoid similar errors. That review also should assist this Board in better understanding the facts in the record before it. The fact that the CSRT was asked by DOD to consider a *Time Magazine* article in reaching its determination is just one sign that DOD has no actual, damning intelligence about Mr. Bensayah. See Encl. (2) to Bensayah CSRT Decision Report at Ex. R-4, attached to Joint App. at Ex. F(f).

(u) For the sake of simplicity, we now review paragraphs 1 (a) – (d) found on page 1 of 2 of the *Classified Summary of Basis for Tribunal Decision*, attached to Joint App. at Ex. F(b). We do not repeat, but rely on the detailed explanations offered above. (The letter designations below correspond to those found in that CSRT page.)

- (S//NF) a. (b)(1)
- (S//NF) b.

²⁰ Classified Summary, page 1, attached to Joint App. at Ex. F(b).

~~SECRET//NOFORN~~

March 31, 2005 revised April 21, 2005

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

(~~SECRET~~) c.

(b)(1), (b)(7)(A)

(U) Rel. SFO
d.

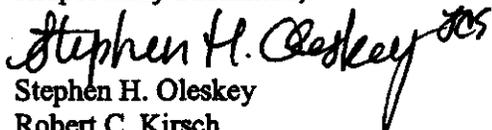
III. (U) CONCLUSION

(U) Even with the types of contrary, but not supported, statements identified above, nothing in the record provided to us, as counsel for Mr. Bensayah, is sufficient to conclude he poses any risk to the U.S. or its allies. He is, as he was in 2001, a simple, poor, uneducated man who is confused about why he was taken away from his wife and two young daughters more than three years ago. His family has also suffered greatly due to his absence. In his wife's affidavit, she reports that her daughters require psychiatric treatment since their father's disappearance. See *Affidavit of Anela Kobilica*, ¶ 11, Joint App. Ex. F(e).

(U) This Board should carefully examine the information available to it, including the analysis provided above, and should find that Mr. Bensayah does not pose a threat to the U.S. or its allies.

(u) We stand ready to provide any further information the Board requests.

Respectfully Submitted,



Stephen H. Oleskey

Robert C. Kirsch

Douglas Curtis

Melissa A. Hoffer

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

617 526 6000

Attorneys for Belkacem Bensayah

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Belkacem Bensayah
Exhibits to ARB Submission

1. **Algerian Citizenship Certificate**
2. **Photograph of Mr. Bensayah**
3. **Letter from Forensic Psychiatrist Dr. Daryl B. Matthews (March 24, 2005)**

UNCLASSIFIED

Bensayah Exhibit 1

UNCLASSIFIED

Ambasciata
della Repubblica Algerina
Democratica e Popolare
Roma

سفارة
الجمهورية الجزائرية
الديمقراطية الشعبية
روما

N° 1505 A.C

**ATTESTATION
DE
NATIONALITE**

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

Nom : **BENSAYAH**
Prénom : **Belkacem**
Né le : **10/09/1962** à : **Ouargla**

Est de nationalité Algérienne

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

Rome, le 13 janvier 2005



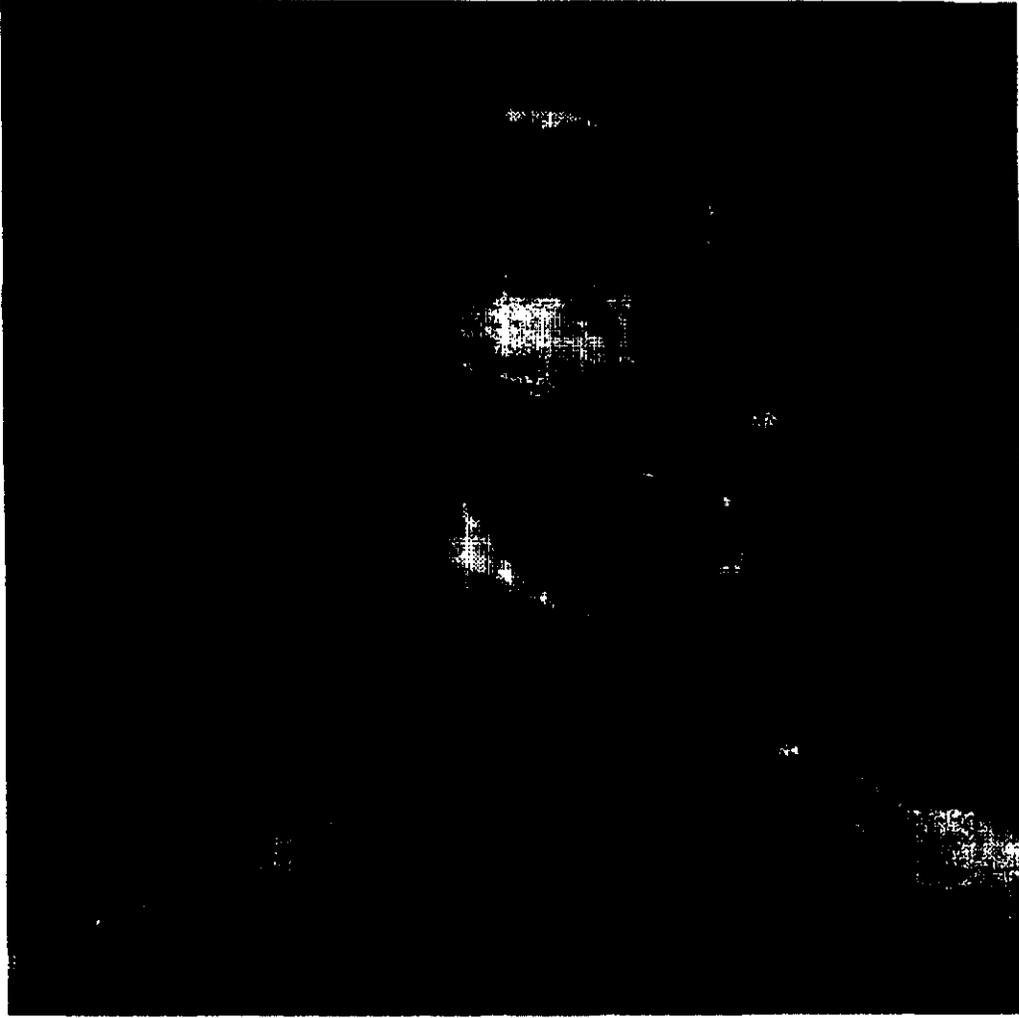
Le Chargé des Affaires Consulaires

Fares

UNCLASSIFIEL

Bensayah Exhibit 2

UNCLASSIFIED



Belkacem Bensayah

UNCLASSIFIED

Bensayah Exhibit 3

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

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

FORENSIC PSYCHIATRY

March 24, 2005

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

Re: Belkacem Bensayah

Dear Mr. Oleskey:

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

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

Findings and Opinions

Mr. Bensayah endorsed sufficient symptoms to suggest that he may meet full criteria for a diagnosis of a Major Depressive Episode. These symptoms included decrease in appetite, loss of energy, insomnia, psychomotor retardation or agitation, dysphoric mood and hopelessness about the future.

Mr. Bensayah also endorsed symptoms suggestive of Acute Stress Disorder or Post Traumatic Stress Disorder. These symptoms included irritability, difficulty concentrating, feeling of detachment from others, numbing, difficulty falling or staying asleep, and intrusive distressing recollections of traumatic events/images.

Mr. Bensayah reported being subjected to beatings, forced isolation, violation of very

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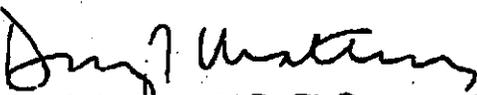
important religious practices, near suffocation, and being kept in painful positions. He also reported having to witness torture of other detainees and being threatened with attacks by animals or insects. These experiences are well known to precipitate major depression and stress disorders in previously healthy individuals.

It should be noted that the manner in which Mr. Bensayah responded to the questions suggested that it was likely he was reporting accurately. He did not show the over-endorsement of symptoms or experiences that might be seen in a person who is malingering. (For example, he did not claim to have witnessed murder, given electric shock, or to have been threatened with execution, and did not claim all symptoms that might appear to be related to depression or trauma responses.)

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

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

Sincerely,



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

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March 31, 2005

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Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

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

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

² (4) This Classified Submission necessarily focuses on the classified contents of the record relied upon by the CSRT, which is the only classified information available at this time to counsel for Mr. Nechla. The CSRT record, however, includes only a small portion of the written record reflecting information and statements provided by Mr. Nechla during his internment at Guantanamo. For example, we are aware that every detainee subject to the Department of Defense's order establishing the CSRTs was determined to be an enemy combatant through "multiple levels of review." See Order Establishing Combatant Status Review Tribunal, § (a) (July 7, 2004). We have not been furnished with documentation demonstrating either the facts or process used in such previous "multiple levels of review" for either Mr. Nechla or for our other five clients.

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

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

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Classified by Multiple Sources
Declassify on X1/ORDR by PRU-MARKING
584 per NSDC of State

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the reasons explained below, this Board should find that Mr. Nechla does not pose a threat to the United States or its allies, and has no intelligence value.

(u) **I. DISCUSSION OF ARB CRITERIA**

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

(u) The CSRT record shows that Mr. Nechla came from a family of modest resources in Algeria, and that his father was permanently disabled in a job-related accident in 1968. To support his family, Mr. Nechla, who did not pass his high school graduation exam, worked selling fruits and vegetables in a street market in Algeria. Like many other youths of his age and education at that time, he left Algeria in 1990 in search of a better paying job, given the high unemployment rates. For eleven years following his departure from Algeria, Mr. Nechla was a teacher and a charity worker, including particularly the period 1994-2001 when he did relief work in Albania and then Bosnia. See Encl. (2) to Nechla CSRT Decision Report at Exhibits R-5, R-8, attached to Joint App. at Ex. H.

(u) Mr. Nechla and his family moved to Bosnia after the end of the Bosnian war from Albania, where he had worked for the Red Crescent Society of the United Arab Emirates ("UAE"), an international charitable organization sponsored by the UAE, a U.S. ally. In 1997, his employer relocated Mr. Nechla and his family to Bosnia because war broke out in Albania making it unsafe to stay.

(u) From 1997 until his arrest in 2001, he continued to work for the Red Crescent Society of the UAE in Bihac, Bosnia. The Red Crescent of the UAE is affiliated with the International Red Cross and Red Crescent Societies ("ICRC").³ The U.S. Government has never determined that the Red Crescent Society of the UAE has any link to al Qaeda or other terrorist organizations. To the contrary, as a member of the ICRC, the Red Crescent Society is part of an internationally respected organization that the United States itself relies upon to monitor the conditions of U.S. prisoners of war.

(u) Mr. Nechla's job with the Red Crescent Society was to provide aid and assistance to some of the thousands of children orphaned during the Bosnian civil war in the period 1991-1995. He was essentially a social worker in American terms, visiting the orphans at their homes (typically they lived with their surviving mothers or other relatives) to ensure that they had adequate food and clothing and were receiving an education. See Ex. 4 (photographs of Mr. Nechla at work with the orphaned children). He was in charge of the Red Crescent Society's Bihac office in the northwestern most part of Bosnia, near the border of Croatia, and hundreds of kilometers from Sarajevo. Bihac was within driving distance of Budapest, Hungary, where Mr. Nechla sometimes went to buy

(u)³ See background information on the Red Crescent of the UAE attached to Joint App. at Ex. I.

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clothing and food at good prices for his orphans. The Organization of Fallen Soldiers and many of the families whom Mr. Nechla assisted in his work at the Red Crescent Society have signed a statement for the Board's consideration testifying to his good work and character. See Ex. 6 and 7.

(u) As counsel for Mr. Nechla, we recently interviewed Mr. Nechla's supervisor, the Director at the Red Crescent Society of the UAE, at his office in Sarajevo. The Director confirmed that Mr. Nechla was always a peaceful, law-abiding, and gentle family man, devoted to the hundreds of Bosnian war orphans whom he supervised. The Director has furnished counsel with a certification of Messrs. Boumediene and Nechla's good employment and character. See *Statement from Red Crescent Society*, Joint App. at Ex. J. Speaking of Mr. Nechla and Mr. Boumediene, the Director notes that the orphan's families "miss them and always ask about them, when they will come, [sic] to complete what they began and to fill the emptiness they left." *Id.* The Director has said he will eagerly welcome Messrs. Boumediene and Nechla back to their old jobs should this Board determine they should be released.

(u) Mr. Nechla has been married for nearly a decade and has two children with his wife, Badra Baouche. Prior to his arrest in Bosnia in 2001, (b)(1) (b)(1) Mr. Nechla had no criminal record in Bosnia, Algeria, or anywhere else.

1. (u) *Mr. Nechla's Friendships Do Not Demonstrate Dangerousness.*

(b)(1)

(u) That Mr. Nechla formed friendships while living in Bosnia with three other men who shared in common his Algerian birthplace and who were also generally involved in humanitarian relief work in Bosnia is entirely unremarkable and in no way presents competent evidence of dangerousness. It is, as the Board knows, quite common for ex-patriot Americans, living in Mexico or Central America, for example, to form

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associations and friendships with each other, and to gravitate to the same areas and communities. This is particularly true of Mr. Nechla's close friendship with Mr. Boumediene, who was not only a fellow Algerian, but a colleague who also worked with him for the UAE Red Crescent in Bosnia and before that also worked for the UAE Red Crescent doing the same general relief work in Albania (1994-1996).⁴

(b)(1)

(b)(1)

⁴(u) The CSRT files reflect that both men were married to Algerian women from the same village and that the Boumedienes had introduced Mr. Nechla to his wife, Badra. Both couples left Albania after the outbreak of war there in 1996 in order to work and raise their families in a safer environment. Their employer, the Red Crescent Society of the UAE, relocated them to Bosnia where it established an office to do relief work following the conclusion of the war in Bosnia in late 1995. The Red Crescent Society of the UAE in Sarajevo denounces terrorism and states that both men were exemplary employees of honesty and integrity. See *Statement from Red Crescent Society*, Joint App. at Ex. J.

⁵(u) Mr. Boumediene has never denied the fact that he provided food and charitable assistance to Mr. Bensayah on a few occasions, and retained a lawyer for him when Mr. Bensayah was arrested in Zenica, Bosnia on October 8, 2001, on the charge that he had falsified his immigration filings. See generally, Boumediene Classified ARB Submission.

(b)(1)

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(b)(1)

(b)(1)

(b)(1)

⁷ (u) The orphans told Mr. Nechla that in local dialect the pronunciation of his name, Nechla, sounded like the word for phlegm or stuffed nose. They found this humorous and laughed when he introduced himself. He told them therefore to call him Sherif EdDein, his childhood nick name, which in Arabic means one blessed or honored of religion. The name "Sharfuldin" as it appears in the transcript of Mr. Nechla's statement to the CSRT, and as it appears in various forms ("Sharuldin") in the classified file compiled for the CSRT, is obviously a phonetic spelling used by someone who did not know or understand Arabic well. The actual English spelling of the proper translation, as noted above, is Sherif EdDein. Cf. *Encl. (2) to CSRT Decision Report* at Exhibit R-5 attached to Joint App. at Ex. H(g) ("Mohammed Nechla, aka Mohammed Sharif Al Din,") which comes close to the correct English translation of Mr. Nechla's childhood nick name but was not noted, understood, or properly taken into account by the CSRT).

(u) Notably, nowhere in the Classified CSRT file is there any explanation at all for the names Sharfuldin or Sharuldin emphasized by the CSRT in its Classified Summary (neither the Classified Record nor the CSRT are even clear on which name it is that Mr. Nechla allegedly used), just the repeated claim that he is also known by these names and that they are therefore considered an "alias." Once again, changing a descriptive word from "nick name" to "alias" gives the word itself an entirely different characterization, especially when applied to a detainee being held in Guantanamo for alleged terrorist activities.

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B. Circumstances of Mr. Nechla's Apprehension.

(FOUO//SBU) Detainees Nechla No. 10003 , Bensayah No. 10001, Ait Idir No. 10004, Lahmar No. 10002, Boudella No. 10006, and Boumediene No. 10005 all were born in Algeria and had been living in Bosnia for six to twelve years by 2001 when they were arrested by Bosnian authorities in October (b)(1)

(b)(1)

(u) All were ordered released by Bosnia's highest court in January 2002 on the ground that there was insufficient evidence to detain them. *See Supreme Court of the Federation of Bosnia and Herzegovina Decision*, attached to Joint App. at Ex. B(b). Immediately after the order was issued, and before their release could occur, the six were turned over to United States forces stationed in Bosnia and then flown to Guantanamo where they are entering their fourth year as prisoners. (b)(1)

(b)(1)

(b)(1),(b)(7)(A)

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despite the order of Bosnia's highest court for their immediate release.

(b)(1)

(b)(1)

(u) In June 2004, the Chief Federal Prosecutor for Bosnia and Herzegovina dismissed all charges against Mr. Nechla, and closed his almost three-year investigation into the alleged terrorism activities involving Mr. Nechla and the other five men. See *Letter from Bosnian Chief Federal Prosecutor to UNOHCHR Sarajevo*, attached to Joint App. at Ex. B(d). Following a successful appeal made to the Human Rights Chamber Court of Bosnia, Mr. Nechla's Bosnian citizenship, stripped at the time of his arrest in 2001, was reinstated.⁹ See *Bosnian Citizenship Certificate* attached as Exhibit 2.

(u) 1. *Newly Disclosed Evidence Sheds Light on Source of U.S. Suspicions*

(b)(1)

⁹ (u) The Human Rights Chamber court was created pursuant to the Dayton Peace Accords convened by the United States government to end the terrible war in Bosnia and Herzegovina among Muslims, Serbs and Croats that began in 1991 following the break up of the former Yugoslavia. See *To End A War* by Richard Holbrooke, former Assistant Secretary of State for European and Canadian Affairs (1994-1996), the chief architect of the Dayton Accords which brought the war in Bosnia to a negotiated end in late 1995.. By its mandate, the decisions of the Human Rights Chamber (now the Human Rights Court) of Bosnia and Herzegovina are binding on the government of Bosnia and Herzegovina.

¹⁰ (u) See also Lahmar Classified ARB Submission for a full discussion of this evidentiary development.

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(b)(1)

Id. (emphasis added).

(S//NF) Colonel (b)(6) failed to send this essential information, which arrived after the conclusion Mr. Lahmar's CSRT proceedings, to Col. (b)(6) the President of the Boumediene Tribunal.¹¹ Colonel (b)(6) took no action to send it to the members of the Nechla Tribunal or to any members of the Tribunals for Messrs. Boudella, Ait Idir, Bensayah or Boumediene, even though all their CSRT files, like Mr. Nechla's and Mr.

(b)(1)

¹¹ See October 19 and 20, 2004, email exchange in Lahmar CSRT Classified File, attached to Joint App. at Ex. E(x). Those documents show that when the two members of the Lahmar Tribunal stated that this information would not change their conclusions, it was never forwarded to Col. (b)(6) the Tribunal President and its ranking officer.

(b)(1)

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March 31, 2005

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(b)(1)

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

(b)(1)

(b)(1)

Through Hamad’s attorney in Bosnia, counsel recently obtained a copy of a long, rambling handwritten letter that Hamad sent from prison on July 26, 2004 to U.S. General (b)(6) then SFOR Commander in Bosnia.¹³ A copy of this letter and an English translation of the letter are attached to the Joint Appendix at Exhibit M.

(u) The letter by Hamad apparently responds to earlier comments or communications to Hamad which he attributes to General (b)(6) or his aides. The letter begins with a remarkable admission: “I know that you do not trust to what I have publicly stated about Al Qaeda and its engagement in Federation of BiH...I spoke about that with investigators from the FBI on several occasions and we are still in touch.” Hamad complains in the letter that General (b)(6) “has no reason to suspect the honesty of my allegations and accusations,” and that General (b)(6) is “not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this.”

(u) It is plain from the text of Hamad’s letter that (1) he is incensed that General (b)(6) and SFOR no longer believe his “detailed data” concerning Muslim mujahedin activities in Bosnia from 1992 onward; (2) Hamad has been an informant for the FBI and “domestic and international investigators” in Bosnia for years in a long standing but unsuccessful effort to buy his way out of prison in exchange for all the information he can supply; and (3) he is deeply upset that “the honesty of my allegations that Al Qaeda was connected with many Islamic humanitarian organizations which were engaged in Bosnia during and after the war, under the lead of the High Saudi Committee for Relief”

¹³(u) The letter is addressed to “Respected Mr. Commander of SFOR General (b)(6)” Major General (b)(6) was named SFOR commander in Bosnia on October 2, 2003 and served in that capacity until October 5, 2004, when he was replaced by Brigadier General (b)(6) SFOR itself was replaced on December 2, 2004 by UPOR.

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is now suspect. Obviously, (b)(6) and SFOR did not find Hamad to be a credible source.

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

(b)(1)

(b)(1)

C. (u) Statements Made By Mr. Nechla and Cooperation and Conduct While In Detention.

~~(b)(1)~~ As the content of the interrogation memoranda in the classified CSRT record reflects, Mr. Nechla has been cooperative with his interrogators, and has answered, to the best of his ability given his general knowledge, their numerous and repeated inquiries (b)(1) This cooperation is reflected in his camp status at Guantanamo and the color and type of clothing he is allowed to wear.

(b)(1)

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

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

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

- (u) [I]nitiate immediately proceedings with the authorities of USA related to return of [Nadja Dizdarevic's] spouse and others in this case detainees [sic] held in the military base, Guantanamo Cuba.¹⁵

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

(u) The Commission also "order[ed] BiH authorities (the Council of Ministers of BiH) and FBiH authorities (government of FBiH) to completely implement the decision of the HR Chamber number CH/02/8697 and others from 3 September 2002." *Id.* That Court (HR Chamber) concluded—and the Commission accepted its conclusions—that various rights of the six were violated as a result of Bosnia's handover of them to the U.S. Attached to Joint App. at Ex. B(c)

(u) On November 16, 2004, the Bosnian Council of Ministers adopted the recommendations of the Ministry of Justice with respect to the six detainees, including Recommendation 9, which stated it is necessary to begin negotiations with the United States government for their repatriation. On January 31, 2005, Slobodan Kovac, the Bosnian Minister of Justice confirmed in a statement that Messrs. Boudella, Nechla, Boumediene, and Ait Idir are all citizens of Bosnia, have not been convicted by the court in Bosnia, and are not subject to any on-going criminal proceedings. *See Statement by Bosnian Minister of Justice*, attached to Joint App. at Ex. B(h). Mr. Kovac stated unequivocally, "Ministry of Justice of BiH is interested in getting these individuals back in BiH..." *Id.*

¹⁵ (u) Nadja Dizdarevic is married to Mr. Boudella, and she submitted an application to the Commission on February 26, 2004, to initiate proceedings to repatriate all six of the men to Bosnia.

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March 31, 2005

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

(u) If Mr. Nechla was the dangerous terrorist he is accused of being, why would the Bosnian government have fully restored his citizenship and initiated proceedings to secure his safe return to Bosnia?¹⁶

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

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

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

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

(b)(1)

¹⁶ (u) On March 30, 2005, the House of Representatives of the Parliament of Federation of Bosnia and Herzegovina (a regional government body in Sarajevo) declared to the Bosnian Prime Minister that the Bosnian government should actively seek the release of the six men from Guantanamo. See *Declaration* attached to Joint App. at Ex. Q.

(b)(1)

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(b)(1)

b. (u) Finding of Boudella Tribunal.

(b)(1)

(u) This Board should take note of the complete absence of credible evidence showing that the six were involved in any alleged plot to bomb the U.S. Embassy in Bosnia, and the well-reasoned conclusions of two CSRTs calling into question the existence of any plot involving the six.

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

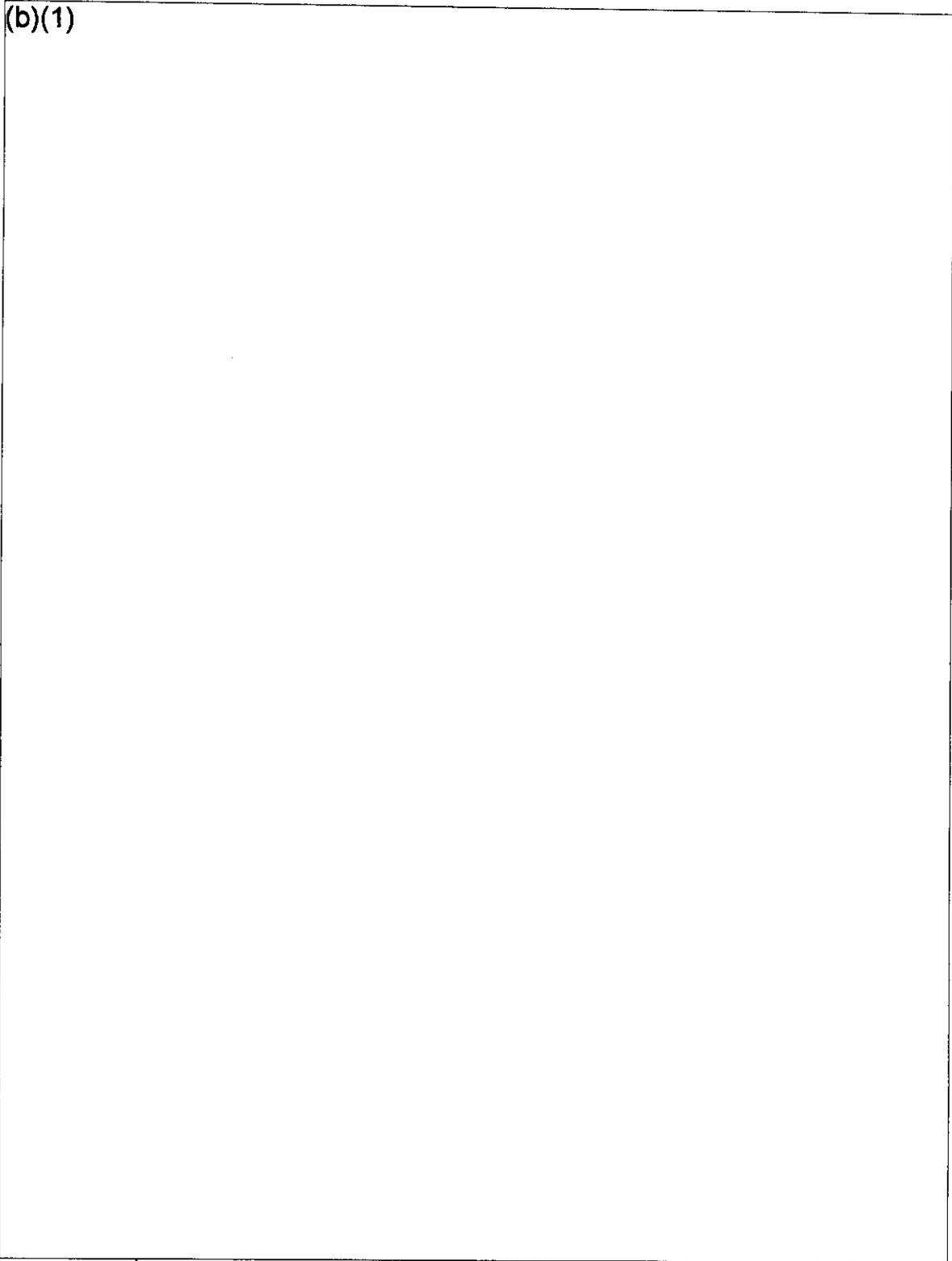
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~~SECRET//NOFORN~~

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Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

(b)(1)



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(b)(1)

(u) Additionally, the United States Department of State has confirmed that the GIA "began its violent activities in 1992 after Algiers voided the victory of Islamic Salvation Front (FIS)—the largest Islamic opposition party—in the first round of legislative Elections in December 1991." *Patterns of Global Terrorism, 2003* (U.S. Department of State, June 2004). (emphasis added). Mr. Nechla was not present in Algeria after 1990, however, and could not have been involved with GIA, which carried out its activities against targets in Algeria.

(u) There is no evidentiary basis in the record to support the assertion that Mr. Nechla is now, or ever has been, a member of GIA. Notably, the *Terrorist Organization Reference Guide* (U.S. Dept. of Homeland Security January 2004), *Encl. (2) to Lahmar CSRT Decision Report* at Exhibit R-3 (but not included in the record considered by Mr. Nechla's CSRT panel) describes the GIA as follows:

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

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

Strength: Precise Numbers Unknown, probably fewer than 100.

Location/Area of Operation: *Algeria.*

(Emphasis supplied), attached to Joint App. at Ex. E(e). This official U.S. government information hardly supports a serious contention that Mr. Nechla—or the others—could plausibly be considered to be active GIA terrorists fixed on bombing the U.S. and British embassies in *Bosnia* in 2001. Rather, the *Guide* actually undermines that contention. However, it is easy to see why an embittered ex-brother-in-law wanting to smear the Algerian Mr. Lahmar, *see* footnote 6, would have considered it useful to tell American intelligence that Mr. Lahmar was the leader of a GIA cell in Bosnia, and to supply a list of purported Algerian GIA members "operating" in Bosnia.

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

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

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(u) Similarly, there is no basis in the record to support the assertion that Mr. Nechla is a former mujahedin fighter. There is no record in his CSRT that he ever had weapons or military training. There is no record in that file that, during the extensive search of his home and office at the time of his October 2001 arrest, any weapons, bombs, plans, sketches, bomb-making materials or other indicia of bomb making were found in his possession or control, or in the possession or control of any of the other five men we represent.

(b)(1)

¹⁸ (u) After the Soviet invasion of Afghanistan, the U.S. provided ever-increasing support to the mujahedin: "The Carter administration allocated \$30 million in 1980 and about \$50 million in 1981. Under the Regan administration this amount increased to \$120 million by fiscal 1984 . . . In the fall of 1984 Congress took the initiative of nearly tripling the administration's 1985 request to \$250 million. . . . In April 1985, President Reagan signed National Security Directive 166, which authorized a new policy, consistent with the Reagan Doctrine, of driving the Soviets from Afghanistan 'by all means available.' The U.S. budget for aid to the mujahedin, reportedly still matched by Saudi contributions, climbed to \$470 million in 1986 and \$630 million in 1987. Starting in September 1986, the United States supplied shoulder-held, laser-guided Stinger anti-aircraft missiles to the mujahedin, the first time this ultrasophisticated weapon had been distributed outside of NATO. Cross-border assistance programs provided civilians living in areas controlled by mujahedin with food, cash for food, and support for health care, educational, and agricultural programs. . . . during 1986-1990, USAID spent \$60.0 million on health, \$30.2 million on education, and \$60 million on agriculture. Additional USAID money financed engineering projects, training programs in various fields, and medical care in the United States for the wounded, road building, demining, and direct food supplies." *Id.* at 180-81. The U.S. also facilitated other countries' support of its allies, the mujahedin: "The Chinese contributed to the effort mainly by selling soviet-style weapons to the CIA for transfer to the [Pakistani] ISI and then to the mujahedin. In addition to the CIA and the ISI, the Saudi General Intelligence Agency, . . . helped to manage the immense flow of money and arms. The Afghan operation became the single largest program of each of these agencies. . . . The arms pipeline consisted of three parts, controlled by the CIA, the ISI, and the resistance parties. The CIA, using Saudi and American funds, bought weapons from China, Egypt, Israel, and elsewhere." *Id.* at 197.

¹⁹ (u) In the summer of 1995, at the urging of the United States, NATO initiated an air bombing campaign in Bosnia on the heels of a bloody massacre by the Serbs of thousands of Muslim men and boys in Srebrenica. As this Board knows, that massacre, and many similar atrocities that took place during the Bosnian conflict, is the subject of on-going prosecutions in The Hague by the International Tribunal for War Crimes in the former Yugoslavia.

~~SECRET//NOFORN~~

March 31, 2005

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(b)(1)

F.(u) Mr. Nechla Has No Intelligence Value.

(u) The classified CSRT record shows that the principal reason Mr. Nechla has been detained in Guantanamo for over three years has been in an attempt to gain further understanding of the workings of certain Islamic charities in Bosnia, particularly the UAE Red Crescent which employed him. There is almost no mention of the purported U.S. Embassy bombing plot in any of the classified summaries of his interrogations. Rather, the interrogators' questions focus on Muslim charities.

~~(S)~~ During his CSRT, Mr. Nechla stated that he was told by an interrogator, "forget about the fact that you were here because of the American Embassy or because you're from Al Qaida or because you are a terrorist. . . . You came here to give us information about relief and rescue operations in Bosnia." See Encl. (3), 2 of 15, attached to Joint App. at Ex. H(jj).²⁰ (b)(1)

(b)(1)

(b)(1) Aside from the fact that detention for purposes of interrogation and intelligence gathering is unlawful, see *Hamdi v. Rumsfeld*, 542 U.S. ___, slip op. at 13 (2004), for Board purposes this record of his interrogation in fact shows that Mr. Nechla poses no risk. As noted earlier, the UAE Red Crescent has not been listed by the US government as a terrorist organization; it is sponsored by the UAE government, a US ally, and there is nothing in the classified CSRT file that indicates it undertook terrorist sponsorship or otherwise supports terrorism. Notably, Mr. Nechla was never interrogated about his participation in any activity that actually has resulted in harm to the United States or its allies, and the CSRT record also that reflects no evidence was ever uncovered of any actual plan to undertake such activity.

(u) Importantly, the record does reflect that Mr. Nechla has been cooperative and answered, to the extent possible, the numerous and repeated questions, directed to him by interrogators under extremely difficult conditions, (b)(1) none of which appears from the record to be of particular value and most of which appears to have already been known to the government by other sources, some of which are publicly available. He consistently has provided the same answers. There is no additional information to be gleaned from interrogating Mr. Nechla in year four that was not already provided by him during his over three years at Guantanamo. The harm to Mr.

(b)(1)

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Nechla, however, from continued indefinite detention at Guantanamo, will be considerable.

G. (u) Mr. Nechla's Health

(u) Since entering detention, Mr. Nechla's physical and mental health has deteriorated. Counsel have met with Mr. Nechla in December 2004 and in February 2005 and observed his physical and mental condition. This previously physically vigorous man, as can be seen in attached photographs, is now a shadow of his former self. See photographs attached as Exhibit 4. Moreover, while he has kept his gentle, kind spirit, he is often despondent.

(u) Due to insufficient time, counsel were unable to survey Mr. Nechla using a questionnaire prepared by forensic psychiatrist, Dr. Daryl B. Matthews, which was used with our five other clients. See Sample Proxy Psychiatric Exam and Mental Status Examination, attached to Joint App. at Ex. L. The Board should draw no negative inference from this fact - counsel simply ran out of time in our February 2004 interview with Mr. Nechla.

II. (u) THE CLASSIFIED CSRT SUMMARY HAS ERRORS THIS BOARD SHOULD NOTE.

A. (u) Errors in Findings and In Exhibits Relied Upon by CSRT

(u) We are reluctant to spend too much time pointing out inconsistencies in the CSRT record. That is not the issue before this Board. Nevertheless, pointing out some of the errors (and we have not identified here all that we found) will help this Board avoid similar errors, as well as to put in context certain comments and observations made by the CSRT. Our review of these errors also should assist this Board in better understanding the facts in the record before it. The letter designations below correspond to those found on Encl. (2), Classified Summary of Basis for Tribunal Decision, attached to Joint App. at Ex. H.

(S//NF)

(b)(1)

(S//NF)

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Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

(S//NF)(b)(1)

(u) Obvious and glaring errors like these call into serious question the integrity of the information relied upon by the CSRT for purposes of its enemy combatant determination.

B. (u) CSRT Errors Concerning Availability of Evidence.

(u) Mr. Nechla requested that his former supervisor at the Red Crescent in Sarajevo, Mr. Mahmoud Yousef Said, appear as a witness in Mr. Nechla's CSRT. The Tribunal President determined that Mr. Said was "not reasonably available," because the Department of State "could not locate the witness in Bosnia or in any other location based on the limited information and identifiers provided by the Detainee to locate the witness." See *Unclassified Summary of Basis for Tribunal Decision*, Enclosure (1) at p. 2 of 5, attached to Joint App. at Ex. H(a). Knowing only the same information provided by Mr. Nechla to the CSRT—Mr. Said's name and the place of his employment—counsel for Mr. Nechla easily were able to locate Mr. Said by calling him on a telephone at his office at the Red Crescent Society offices in Sarajevo. Mr. Said agreed to meet with counsel in Bosnia, and provided the statement attached to the Joint Appendix as Exhibit J.

(u) There is no credible basis to believe that Mr. Said was not reasonably available to participate as a witness in Mr. Nechla's CSRT. If he had been called, it is highly likely that his testimony would have been entirely consistent with the personal statement he has now furnished counsel for us in this proceeding (Joint Appendix at Exhibit J).

~~SECRET//NOFORN~~

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March 31, 2005

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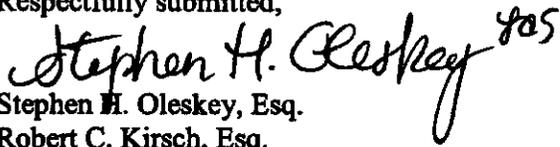
III. (u) CONCLUSION.

(u) Nothing in the record provided to us, as counsel for Mr. Nechla, is sufficient to support a conclusion that he currently poses, or ever posed, any threat to the United States or its allies. Instead, the factors this Board must consider, with the CSRT record, show that Mr. Nechla presents no security risk to the United States or its allies, and has no intelligence value. He should be released and returned to his home and family in Bosnia.

(u) Mr. Nechla and the other five Bosnians have been exonerated by the Bosnian Supreme Court and Federal Prosecutor of the very allegations that formed the basis for their detention. We know of no other similarly situated detainees at Guantanamo. There is every reason to believe that Mr. Nechla was unfortunately and mistakenly swept up in the confusion and obvious concern for U.S. security following the terrible events of September 11, 2001. Mr. Nechla has devoted his adult life to assisting others in need. He is eager to return to his family. The Board now has the opportunity, and the obligation, to review the facts independently, and should recommend his unconditional release to Bosnia.

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

Respectfully submitted,


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

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Mohamed Nechla Exhibits to ARB Submission

1. Algerian Citizenship Certificate
2. Bosnian Citizenship Certificate
3. Photograph of Mr. Nechla
4. Photographs of Mr. Nechla working with orphaned children in Bosnia
5. Petition from Organization of Fallen Soldiers in Buzim, Bosnia
6. Petition from Organization of Fallen Soldiers in Velika Kladusa, Bosnia
7. Petition of Trustees of Fifty Orphans Helped by Mr. Nechla

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Nechla Exhibit 1

UNCLASSIFIED

Ambasciata
della Repubblica Algerina
Democratica e Popolare
Roma

UNCLASSIFIED

سفارة
الجمهورية الجزائرية
الديمقراطية الشعبية
روما

N° 13/05 A.C

**ATTESTATION
DE
NATIONALITE**

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

Nom : **NECHLA**
Prénom : **Mohamed**
Né le : **02/04/1968** à : **Laghouat**
Fils de : **Abdelkader** et de : **DAHKANE Keltoum**
Titulaire du passeport n° **3914224** délivré par Laghouat -Algerie le
14/10/1990 valable au **13/10/1995**.
Est de nationalité Algérienne

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

Rome, le 13 janvier 2005



Le Chargé des Affaires Consulaires

MOUD

UNCLASSIFIED

UNCLASSIFIED

Nechla Exhibit 2

UNCLASSIFIED

UNCLASSIFIED

BOSNA I HERCEGOVINA
FEDERACIJA BOSNE I HERCEGOVINE
ZENIČKO-DOBOJSKI KANTON
Opština ZENICA
Služba za opću upravu i građanske poslove

Broj : 03-13-5-1006/05

Dana : 22.02.2005

Na osnovu člana 189. Zakona o općem upravnom postupku i člana 39. Zakona o državljanstvu Bosne i Hercegovine, ("Službeni glasnik Bosne i Hercegovine" br. 4/97), na zahtjev
DIZDAREVIĆ NADE iz SARAJEVA izdaje se

UVJERENJE

0204088190037
Jednolinični matični broj

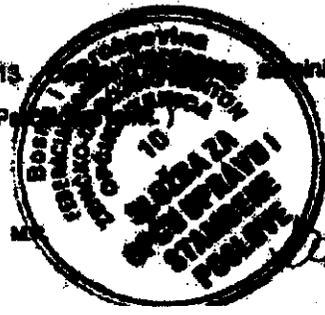
da je NECHLA MOHAMED rođen-a
02.04.1988 godine u LAGHOVAT LAGHOVAT opština ALŽIR
državljanin-ka

Ovo uvjerenje izdaje se na osnovu podataka iz upisa u MATIČNU KNJIGU
ROĐENIH koja se vodi za naseljeno mjesto ZENICA
opština ZENICA na strani 129 pod rodnim brojem 3071
za godinu 1985

Taksa po tarifnom broju 12 Odluka o općinskim administrativnim taksume općine
ZENICA u iznosu od 0 KM naplaćena je i
na odresku poništena.

Osiobođeno od plaćanja takse po članu 12 . 13 administrativnim taksume
("Službene novine općine Zenica", broj 304 -Pe

UNCLASSIFIED



Popis
službenog čina
Mirza Bajramović
Mirza Bajramović

UNCLASSIFIED

Nechla Exhibit 3

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla

UNCLASSIFIED

UNCLASSIFIED

Nechla Exhibit 4

UNCLASSIFIED

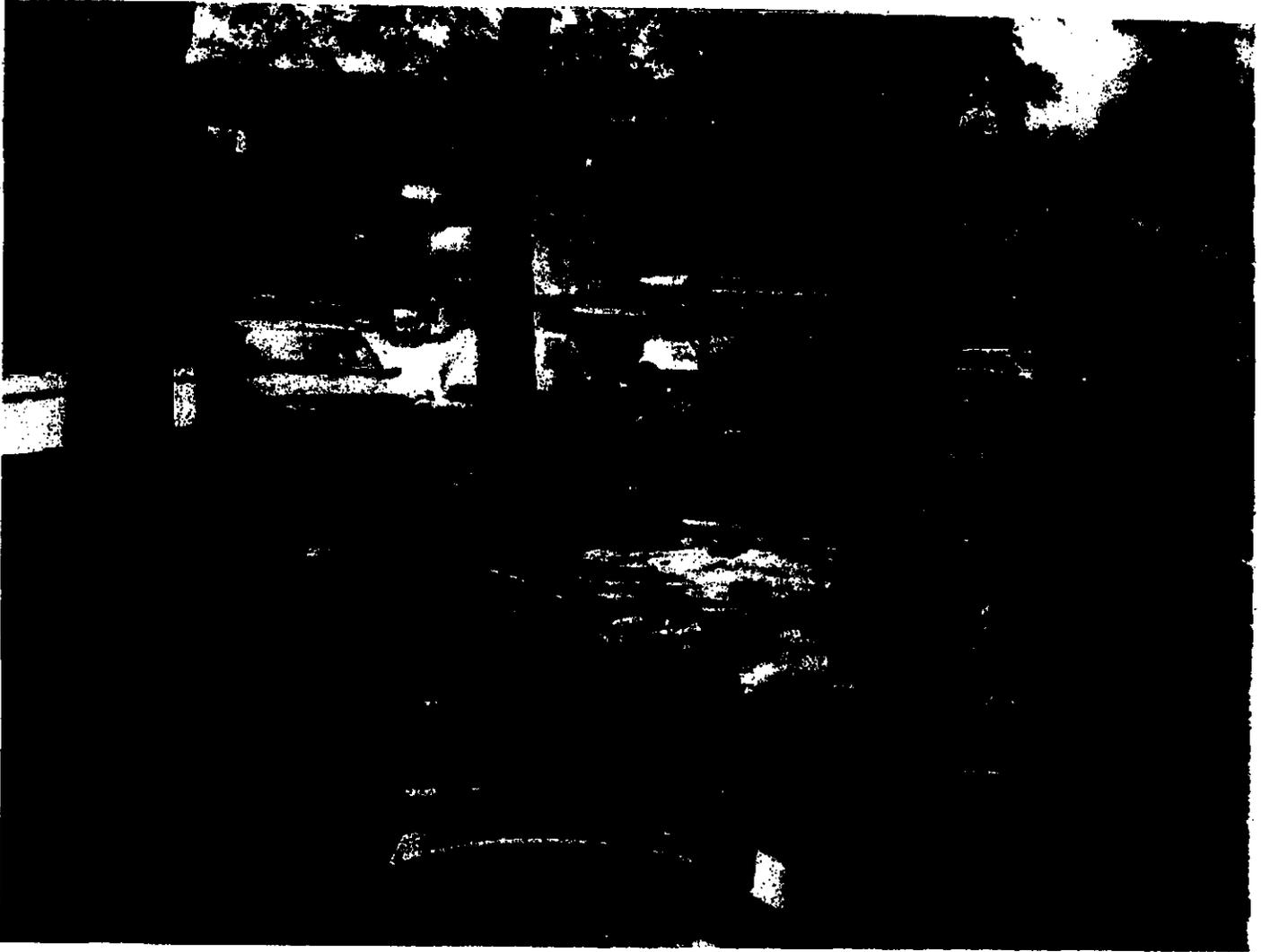
UNCLASSIFIED



Mohamed Nechla (upper right corner with arms crossed in yellow shirt) working with children in Bosnia through the Red Crescent Society of the UAE

UNCLASSIFIED

UNCLASSIFIED



**Mohamed Nechla (standing with
white hat) working with children**

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla

UNCLASSIFIED

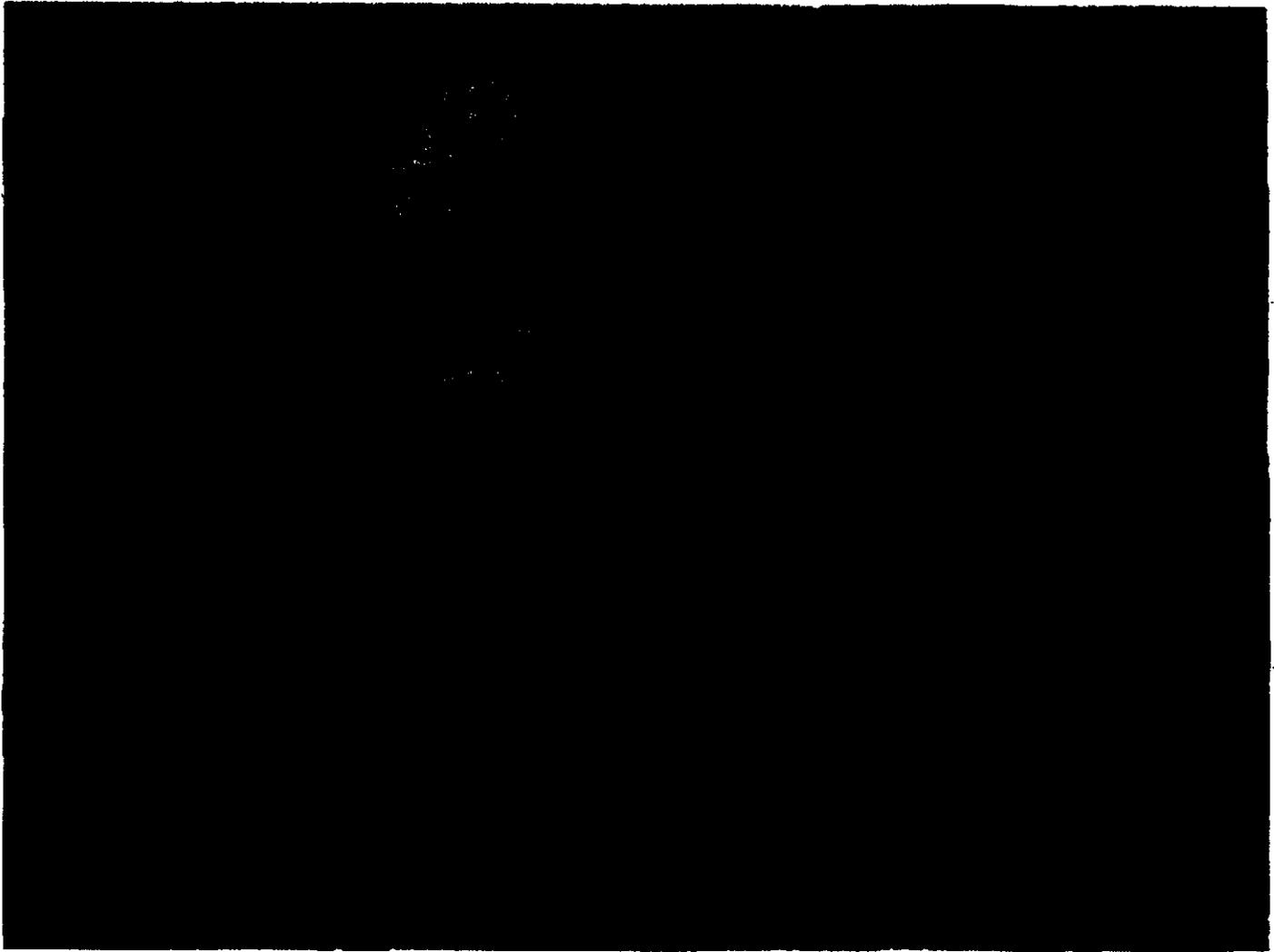
UNCLASSIFIED



**Mohamed Nechla (in necktie)
working with Bosnian children**

UNCLASSIFIED

UNCLASSIFIED



**Mohamed Nechla (on the right)
delivering supplies to children**

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla working with children in Bosnia

Mohamed Nechla



UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla (upper right corner with goatee in yellow shirt) working with children in Bosnia through the Red Crescent Society of the UAE

UNCLASSIFIED

UNCLASSIFIED



2
1 Mohamed Nechla
1 (center in tan suit)

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla (center in athletic clothes) delivering supplies to Bosnian children

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla with children he assisted while working for the Red Crescent Society of the UAE.

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla

UNCLASSIFIED

UNCLASSIFIED



Mohamed Nechla (on the right
w/sunglasses on top of his head)

UNCLASSIFIED

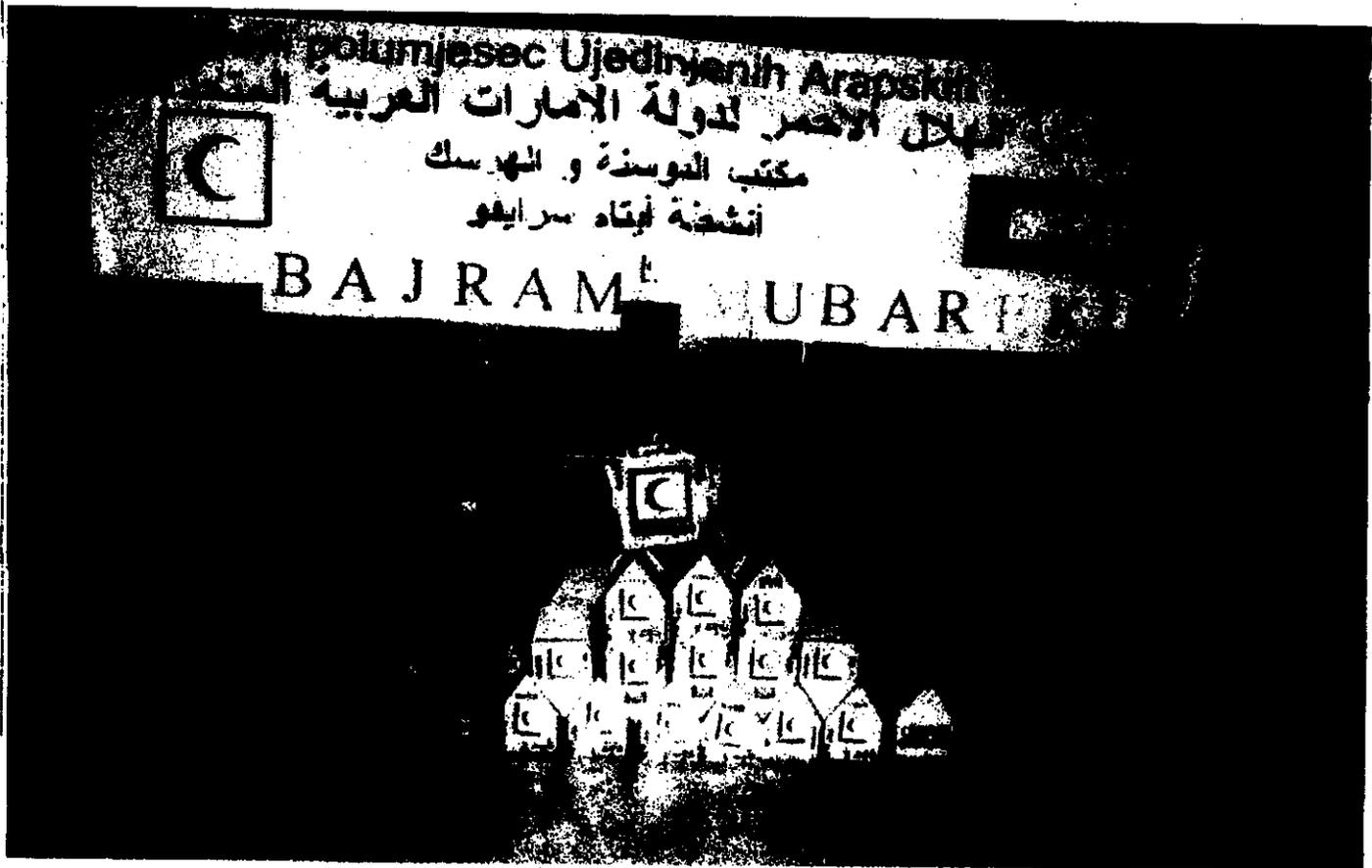
UNCLASSIFIED



**A computer program for Bosnian
children through the Red Crescent
Society of the UAE**

UNCLASSIFIED

UNCLASSIFIED



A program for Bosnian children
through the Red Crescent Society of
the UAE

UNCLASSIFIED



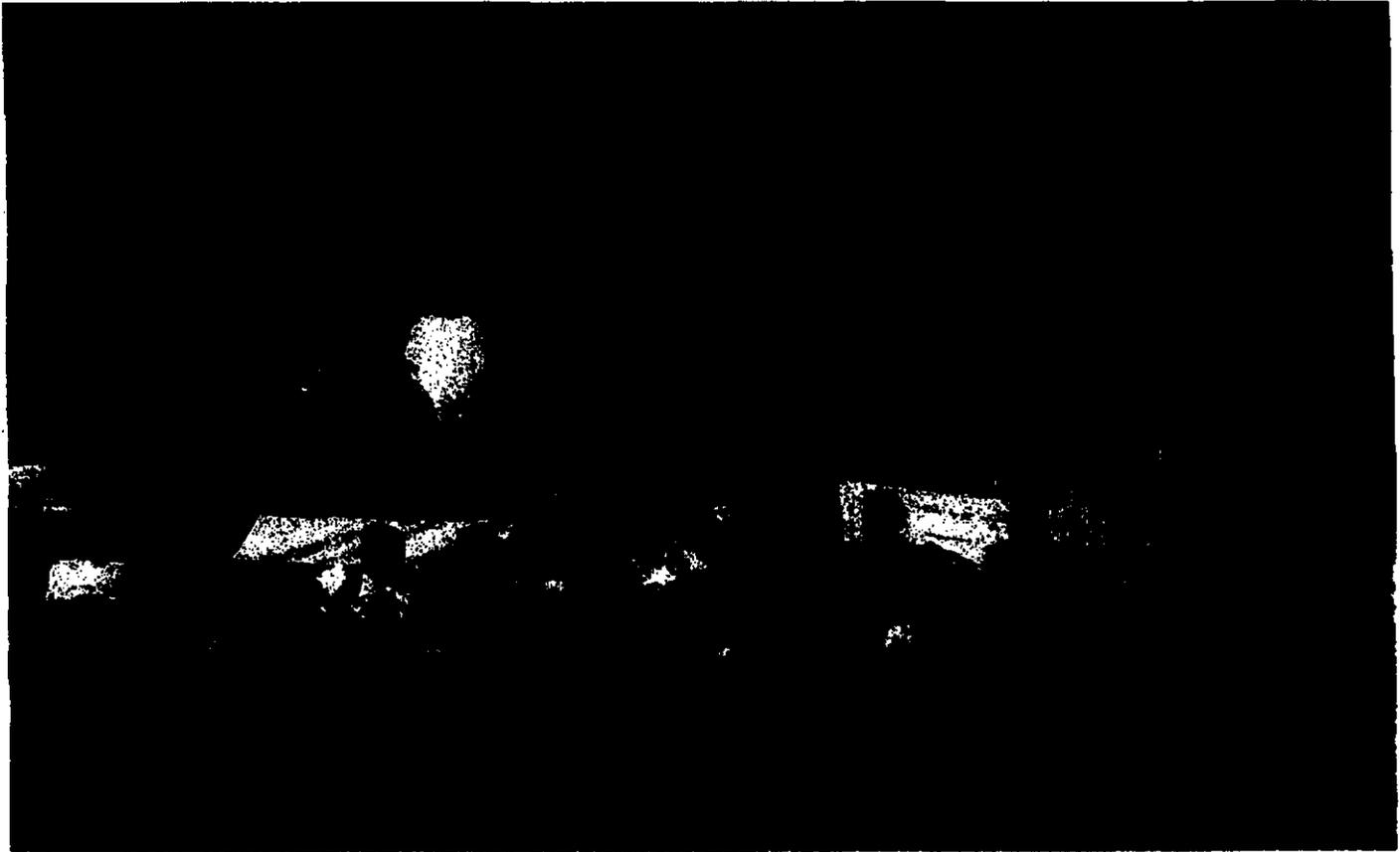
UNCLASSIFIED



**A program for Bosnian children
through the Red Crescent Society of
the UAE**

UNCLASSIFIED

UNCLASSIFIED



**A program for Bosnian children
through the Red Crescent Society of
the UAE**

UNCLASSIFIED

UNCLASSIFIED

Nechla Exhibit 5

UNCLASSIFIED

UNCLASSIFIED

Bosnia and Herzegovina

Federation of Bosnia and Herzegovina

Una-Sana Canton

Municipality Buzim

Organization of families of fallen soldiers in municipality Buzim

Number: 07-81-05

Buzim, 25 February 2005

Subject: Statement

Respected,

On behalf of the organization of the families of fallen soldiers of municipality Buzim I write this to confirm that Mohamed Nechle from Algeria has worked for the Red Crescent Society from United Arab Emirates' office in period from 1 April 1997 until 21 October 2001.

Mr. Mohamed Nechle was in that period helping and working for our organization, trying to help the children who lost their parents during the war. He has organized several excursions for kids and provided them with clothing and other goods. All his work was focused at orphans.

During our cooperation he has never forced or in any other way mentioned terrorism, which we deeply despise and condemn. During our cooperation we had no objections regarding his work. Had there been any reasons for that we would have immediately ceased any cooperation with him.

Our organization despises any form of terrorism and condemns all those who help terrorists; we support all legal domestic and international efforts in fight against terrorism and other forms of criminal.

President of municipal organization

Signature and seal of the organization of fallen soldiers of municipality Buzim

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BOSNA I HERCEGOVINA
FEDERACIJA BOSNE I HERCEGOVINE
UNSKO SANSKI KANTON
OPCINA BUZIM

ORGANIZACIJA PORODICA SEHIDA I
POGINULIH BORACA OPCINE BUZIM

Broj: 02-19-05
Buzim: 25.02.05.

PREDMET: I Z J A V A

Postovani!

Obracamo se u ime organizacije porodica sehida i poginulih boraca općine Buzim, sa pismenim dopisom što potvrđujemo da je MOHAMED NECHLE iz Alzira radio u periodu od 01.04.1997.god.do 21.10.2001.god.za RED CERSCENT SOCIETY FOR U.A.E.

Gos.Mohamed Nechle u navedenom periodu pomagao i radio za nasu Organizaciju, gdje je želio da pomogne našoj djeci koja su izgubila svoje roditelje u ratu. Organizao je više izleta, novčani sredstava, a više puta je vrsio i podjelu odjeće i drugi artikala, što je sve bilo namjenjeno za jetime.

Stoga navodimo da imenovani nije u toku naše saradnje nije nikog primoravo ili na bilo koji način spominjao terorizam, što i mi to duboko preziremo i osudjujemo. Takodjer u toku naše saradnje sa imenovanim nismo imali nikakve primjedbe na rad sa našom organizacijom, jer protiv toga su da bi prekinuli svaki vid saradnje.

Naša organizacija prezire svaki oblik terorizma, te osudjuje sve one koji pomazu teroristima, te dajemo podršku svim legalnim domacim i međunarodnim institucijama koje se bore protiv terorizma i svim ostalim vrstama kriminala.

U prilogu vam dostavljamo nekoliko potpisa roditelja cijij djeci gos.MOHAMED NCHLE pomagao i svim srcem imao je zelju da i dalje pomaze.

- 1.
- 2.
- 3.
- 4.
- 5.

Dostavljeno:

1. Naslovu,
2. a/a



PREDSJEDNIKA OPSIPB BUZIM

Catic Renzija

UNCLASSIFIED

UNCLASSIFIED

Nechla Exhibit 6

UNCLASSIFIED

UNCLASSIFIED

Bosnia and Herzegovina

Federation of Bosnia and Herzegovina

Una-Sana Canton

Municipality Velika Kladusa

Organization of families of fallen soldiers in municipality Velika Kladusa

Number: 05-02/05

25 February 2005

Subject: Statement

Respected,

On behalf of the organization of the families of fallen soldiers of municipality Velika Kladusa I write this to confirm that Mohamed Nechle from Algeria has worked for the Red Crescent Society from United Arab Emirates' office in period from 1 April 1997 until 21 October 2001.

Mr. Mohamed Nechle was in that period helping our organization, particularly by helping children who have lost one or both parents during the war. He has organized several trips and picnics for them and helped them with money donations and by providing other goods for them.

During our cooperation we have never noticed or been alerted to by our members of family members of the orphans that Mohamed Nechle supports, promotes or in any other way mentions terrorism, which we deeply despise and condemn. Also, during that time we had no objections regarding the work of Mr. Mohamed Nechle. Had there been any reasons for that, we would have immediately ceased any cooperation with him.

Our organization despises any form of terrorism and condemns all those who help terrorists; we support all legal domestic and international efforts in fight against terrorism and other forms of criminal.

In attachment here is several signatures of parents of kids to whom Mr. Mohamed Nechle has helped.

- 1. Lakic Rasima**
- 2. Okic Razija**
- 3. Tabakovic Seada**
- 4. Topalovic Mine**
- 5. Omeragic Refika**

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President of municipal organization

Signature and seal of the organization of fallen soldiers of municipality Velika Kladusa.

UNCLASSIFIED

UNCLASSIFIED BOSNA I HERCEGOVINA
UNSKO-SANSKI KANTON
ORGANIZACIJA PORODICA ŠEHIDA
I POGINULIH BORACA
VELIKA KLADUŠA

Broj: 5-02/05

Datum: 25. 02. 2005 god

PREDMET: IZJAVA

Postovani!

Obručamo Vam se sa dopisom u kojem vam potvrđujemo da je MOHAMED NECHLE iz Alžira radio u periodu od 01.04.1997god. do 21.10.2001god. za RED CERSCENT SOCIETY FOR U.A.E.

gosp. Muhamed Nechle je u tom periodu pomagao našu Organizaciju, prvenstveno je pažnju usmjerio na djecu koja su u ratu izgubila jednog ili oba roditelja. Organizovao je nekoliko putovanja-izleta za djecu, te je novčanim sredstvima, te drugim stvarima nastojao da pomogne djeci.

U toku naše saradnje nismo primjetili, niti smo bili obavješteni od naših članova t.j djece i njihovih roditelja da gosp. Muhamed Nechle potječe, promovira, ili na bilo koji drugi način spominje terorizam kojeg mi duboko preziremo i esudujemo. Također u tom periodu nismo imali nikakvih primjedbi na rad gosp. Muhameda Nechle jer bih u protivnom prekinuli svaki vid saradnje.

Naša Organizacija prezire svaki oblik terorizma, te osuđuje sve one koji pomažu teroristima te dajemo podršku svim legalnim domaćim i međunarodnim institucijama koji se bore protiv terorizma i svih ostali vrsta kriminala.

U prilog vam dostavljamo nekoliko potpisa roditelja čijoj je djeci gosp. MUHAMED NECHLE pomogao.

1. JAKIĆ RASINA 04CPB5982
2. OKIĆ RAZIJA 04GPC1324
3. Tahirović Sedoda 04CPB5445
4. TOPALović Milica 04CPA8956
5. ČERBAKić DEFIKA 04CPA2664

Dostavljeno
1. Naslovu
2. u

Pred
Velika Kladuša



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Nechla Exhibit 7

UNCLASSIFIED

UNCLASSIFIED

Wilmer Cutler Pickering

Hale and Dorr

Stephen H. Oleskey

60 State Street

Boston, MA 02109

PETITION

Under full moral and criminal responsibility I state here that I have personally known Mohamed Nechle, and that he has performed the duties of the head of department for orphans, for the period from 16 July 1997 until 21 October 2001. He has performed his work conscientiously, responsibly, morally and honestly, trying with his work to help our children and us. We could have always asked for help from him and he was always responsive to such calls.

Number	Full name and surname	BiH Identification Card Number	Signature
1.	Derviša Dervišević	04CLB9765	
2.	Hasija Begić	04CLB9762	
3.	Nurka Begić	03CLA2115	
4.	Kado Mušić	04CLD9792	
5.	Džehva Lipovača	04CLD5058	
6.	Asima Mizić	04CCD1395	
7.	Edina Kulenović	04CLB4954	
8.	Fikreta Dizdarević	04CLB9714	
9.	Fate Kasić	04CLD3570	
10.	Elvira Mahmutović	5226/98	
11.	Indira Jusić	04CLC6039	
12.	Enisa Mujadžić	04CLD0181	
13.	Fadila Jufić	04CLC7852	
14.	Dika Lonić	04CLC7249	
15.	Refika Veladžić	04CLD8776	
16.	Fatima Baručić	04CLD0664	

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17.	Emina Jusić	04QBB2428
18.	Enisa Duraković	04CDL0642
19.	Nisveta Abdijanović	04CLD4337
20.	Dijana Kurtović	988/01
21.	Senada Zukić	4043/96
22.	Vera Rekanović	04CLC2164
23.	Suada Mujarić	04CLC2708
24.	Emira Vojniković	04CLC1170
25.	Rasema Majstorović	04CLC1172
26.	Jasminka Alagić	8126/96
27.	Sabiha Fajković	04CLD1322
28.	Ismeta Kolaković	04CLB9499
29.	Azra Čavkić	03CLB9515
30.	Jasminka Berhrem	04CLC2654
31.	Semira Ibrilimović	04CLC7777
32.	Edina Hasanagić	03CLB3840
33.	Senada Bećirević	04CLB8377
34.	Rasima Huskić	04CLC0100
35.	Jasminka Midžić	04CLC7808
36.	Zlata Hafizović	04CLD9016
37.	Mersiha Dizdarević	04CLD2871
38.	Bekira Belić	04CLD3446
39.	Jasminka Salihagić	03CLB0529
40.	Rabija Šehić	03CLA7130
41.	Zemira Zulić	03CLA4897
42.	Sona Mujanović	03CLA4898
43.	Amra Korilić	04CLB5343
44.	Safija Toroman	04CLC9744
45.	Ismeta Sević	04CLB8821

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46.	Emina Čaušević	04CLC1140
47.	Samira Demirović	03CLB3612
48.	Safeta Pačić	04CLD8576
49.	Katka Žerić	04CLC8297
50.	Indira Totić	04CLC9336

This petition has been signed by trustees of orphans who have been receiving help from organization Red Crescent from United Arab Emirates, office in BiH.

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WILMER CUTLER PICKERING
HALE AND DORR

Stephen H. Oleskey
80 State Street
Boston, MA 02109

PETICIJA

Pod punom moralnom i krivičnom odgovornošću izjavljujem da mi je lično poznat MOHAMED NECHLE da je dugi niz godina od 16/07/1997 do 21/10/2001 obavljao dužnost šefa odjela za jetime. Svoj posao je obavljao savjesno, odgovorno, moralno i iskreno pomažući svojim radom nama i našoj djeci. Njemu smo se mogli uvijek obratiti za pomoć i svaki put bi našli na razumjevanje.

r.b.	Prezime i ime	br.l.k.	potpis
1	DERVIŠEVIĆ Derviša	04CLB9765	D. Derviša
2	BEGIĆ HASIJA	04CLB9762	Begić Hasija
3	BEGIĆ NURKA	03CLA2115	Begić Nurka
4	MUŠIĆ KADO	04CLO9792	Mušić Kado
5	LIPOVAČA DIČHVA	04CLO5058	Lipovača Dičhva
6	MIZIĆ ASIMA	04CLO1395	Mizić Asima
7	KULENOVIĆ EDINA	04CLB4954	Kulenović Edina
8	DIJADARVIĆ FERETA	04CLB9714	Dijadarović Fereta
9	KASIĆ FATE	04CLO3570	Kasić Fate
10	MAHMUTOVIĆ ELVIRA	5226/98	Mahmutović Elvira
11	JUSIĆ INDIRA	04CLO6039	Jusić Indira
12	MUJATIĆ ENISA	04CLO0121	Mujatić Enisa
13	JUSIĆ FADILA	04CLO7352	Jusić Fadila
14	LONIC DIKA	04CL7249	Lonić Dika
15	VELADŽIĆ REFIKA	04CLO8776	Veladžić Refika
16	BARUČIĆ FATIMA	04CLO0664	Baručić Fatima
17	JUSIĆ ENISA	04CLO5242	Jusić Enisa
18	MUJATIĆ ENISA	04CLO0642	Mujatić Enisa
19	ABDJIHANVIĆ MISVETA	04CLO4337	A. Misveta
20	KURTOVIĆ DIJANA	988/01	Kurtović Dijana
21	JUSIĆ JENADA	4043/90	Jusić Jenada
22	VERA PEKANOUĆ	04CLC2164	Vera Pekanović
23	MUJATIĆ SUADA	04CLC2708	Suada Mujatić
24	VOJNJKOVIĆ ENISA	04CLC1170	Vojnković Enisa
25	HAJROVIĆ RASMA	04CLC1172	Hajrović Rasma
26	ALABIĆ JASMINA	3126/96	Alabić Jasmina
27	FAJKOVIĆ SABIRA	04CLO1322	Fajković Sabira
28	KOLAKOVIĆ ISMETA	04CLB9499	Kolaković Ismeta

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30	BEHREM JASMINKA	04CLC2654	Behrem Jasminka
31	IBRISIMOVIC SEHIRA	04CLC7777	IBRISIMOVIC SEMIRA
32	HASANAGIC EDINA	03CLB3840	Hasanovic Edina
33	BECIREVIC SENADA	04CLB8377	Becirovic SENADA
34	MUSKIC RASIMA	04CLC0100	Music Rasima
35	MIDZIC JASMINKA	04CLC7808	Midzic Jasminka
36	HAFIZOVIC ZLATE	04CLD9016	Hafizovic Zlate
37	DIZDARVIC MERSIHA	04CLD2221	Dizdarcic Mersiha
38	BALIC BEKIRA	04CLD3446	Balic Bekira
39	SALIHAGIC JASMINKA	03CLB0529	Masminka Salihagic
40	ŠCIC REZJA	03CLA2130	Scic Rezja
41	ZULIC ZEMIRA	03CLA4897	Zulic Zemira
42	MUJANOVIC SEVA	03CLA4898	Mujanovic Seva
43	KORICIC AMRA	04CLB5343	Koricic Amra
44	TOROHAN SAFIJA	04CLC9244	Torohanic Safija
45	SOVIC ISMETA	04CLB8821	Sovic Ismeta
46	ČAUŠEVIĆ EMINA	04CLC1140	Čaušević Emina
47	DEMIRIĆ SAMIRA	03CLB3612	Demiric Samira
48	PASIĆ SAFETA	04CLD8576	Pasic Safeta
49	ŽERIC KATKA	04CLC8297	Zeric Katka
50	TOTIĆ INDIRA	04CLC9336	Totic Indira

Peticiju potpisali staratelji jetima koji primaju pomoć kod organizacije RED CRESCENT FOR U.A.E. ured u BiH.

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March 31, 2005

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

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

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

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

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

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

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

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

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

I. (u) DISCUSSION OF ARB CRITERIA.

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

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

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

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

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

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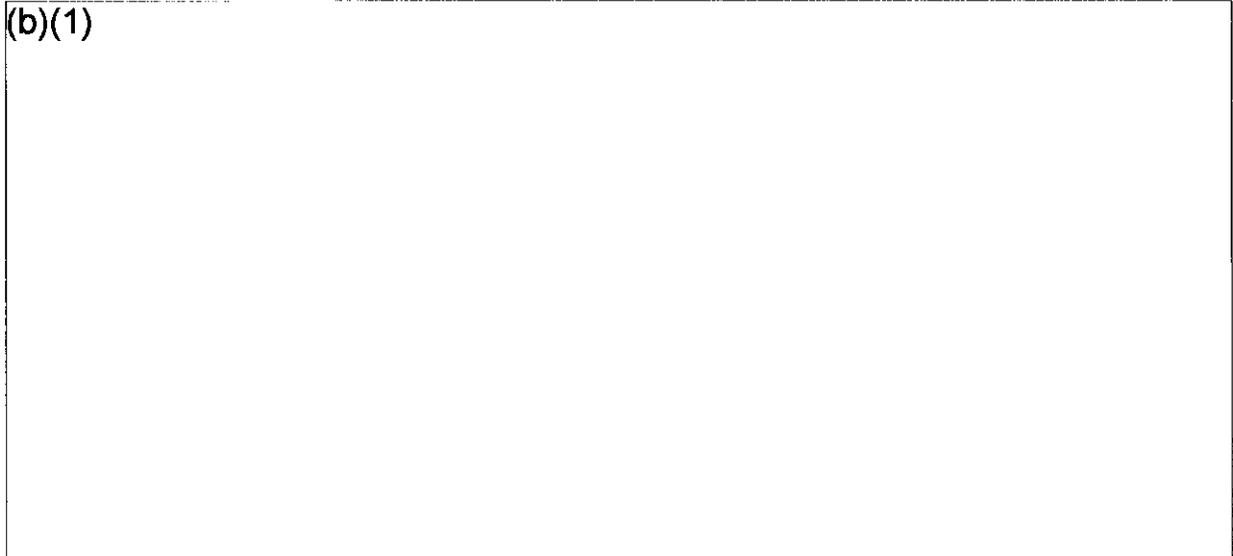
electronics. The business was not successful enough to continue, however, and after a short time he returned to social work. He continued working with war-orphaned children until he was placed under arrest (after voluntarily reporting to the police) in 2001. With the exception of his brief stint as a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

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

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

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

(b)(1)



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

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

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(b)(1)

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

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

(b)(1)

(b)(1)

^{7 (FOUO)} Counsel has learned that Detainee No. 10001's name is Mr. Belkacem Bensayah , not Bensayah Belkacem.

(b)(1)

~~SECRET//NOFORN~~

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(b)(1)

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

(b)(1)

(b)(1)

~~SECRET//NOFORN~~

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(b)(1)

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

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

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

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

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

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

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

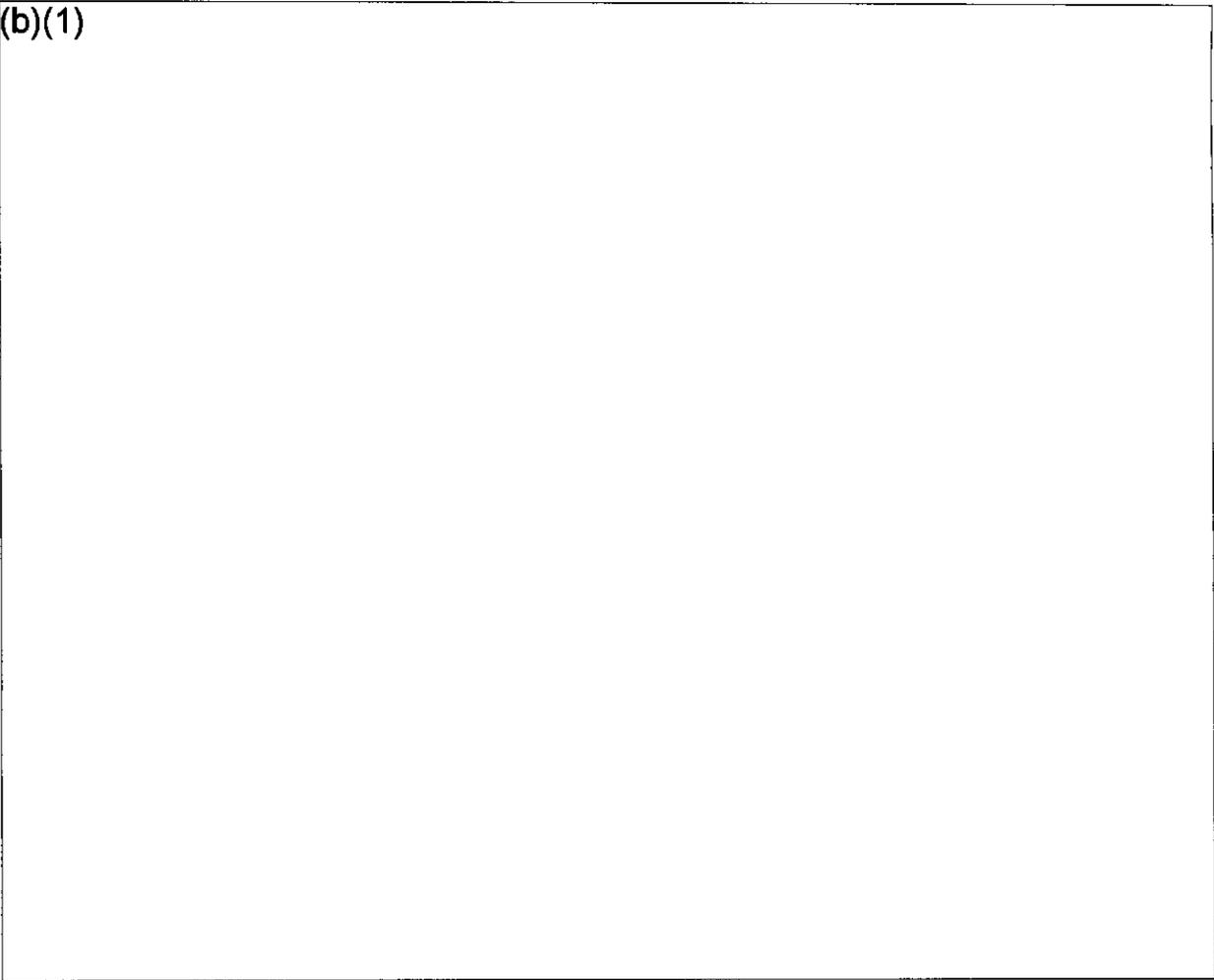
¹⁰ (u) The Human Rights Chamber court was created pursuant to the Dayton Peace Accords convened by the United States government to end the terrible war in Bosnia and Herzegovina among Muslims, Serbs and Croats that began in 1991 following the break up of the former Yugoslavia. See *To End a War* by Richard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

UNCLASSIFIED

March 31, 2005

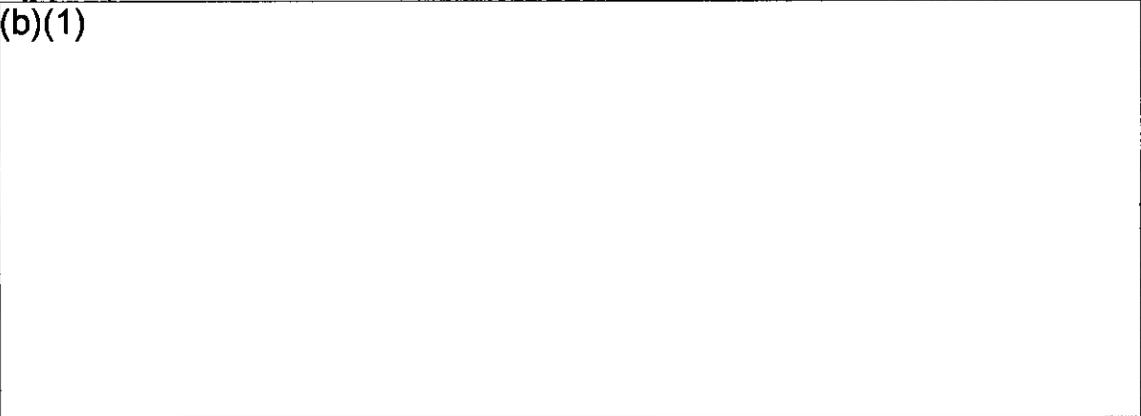
~~CLASSIFIED~~ Annual Review Board ("ARB" or "Board") Submission on behalf of Hadj Boudella by his Attorneys Stephen H. Oleskey, Robert C. Kirsch, Douglas Curtis, and Melissa A. Hoffer Wilmer Cutler Pickering Hale and Dorr LLP Boston, MA 02109

(b)(1)



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

(b)(1)



~~FOUOLES~~

March 31, 2005

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

(b)(7)(A)

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

(b)(1)

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

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

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

~~FOUOLES~~

March 31, 2005

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

letter that General (b)(6) "has no reason to suspect the honesty of my allegations and accusations," and that General (b)(6) is "not right when you think that I only lie, that I do not speak truth and that I only try to get myself out of prison by this."

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

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

(b)(1)

(b)(1)

March 31, 2006

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

(b)(1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

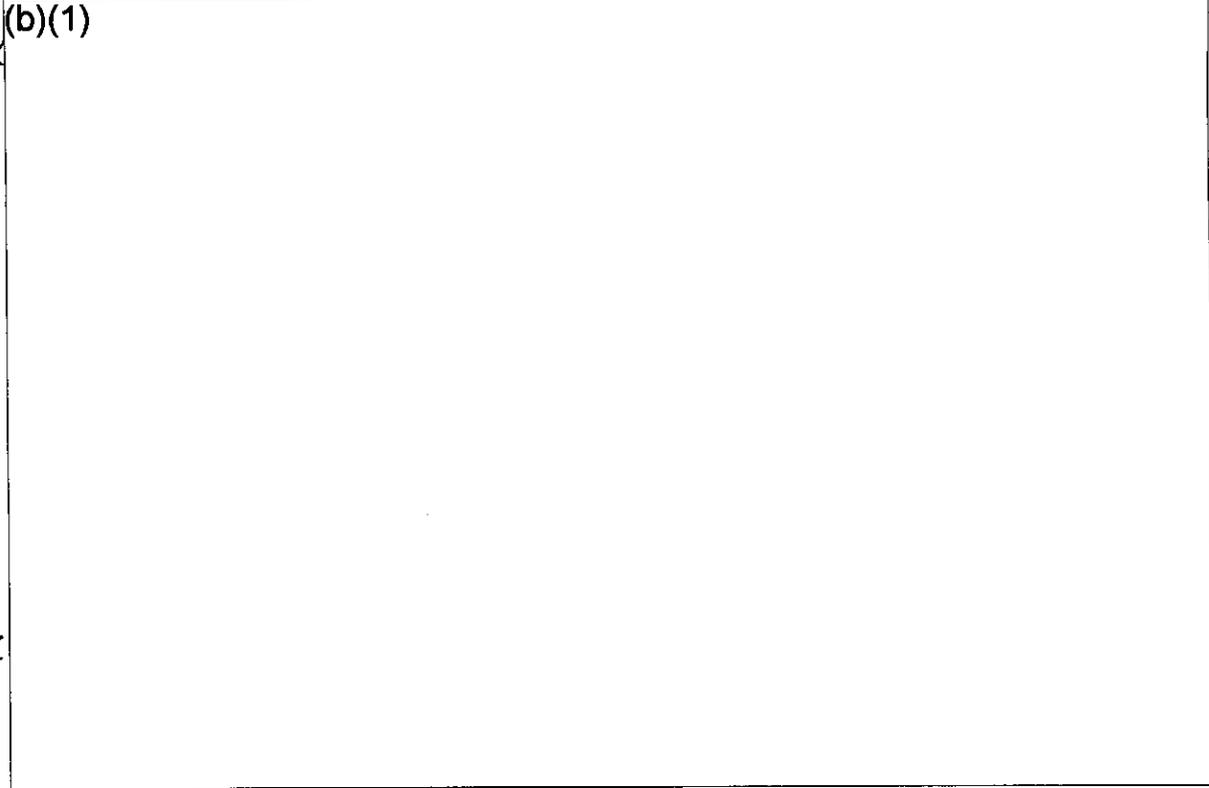
¹⁸ (u) On March 30, 2005, the House of Representatives of the Parliament of Federation of Bosnia and Herzegovina (a regional government body in Sarajevo) declared to the Bosnian Prime Minister that the Bosnian government should actively seek the release of the six men from Guantanamo. *See Declaration*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

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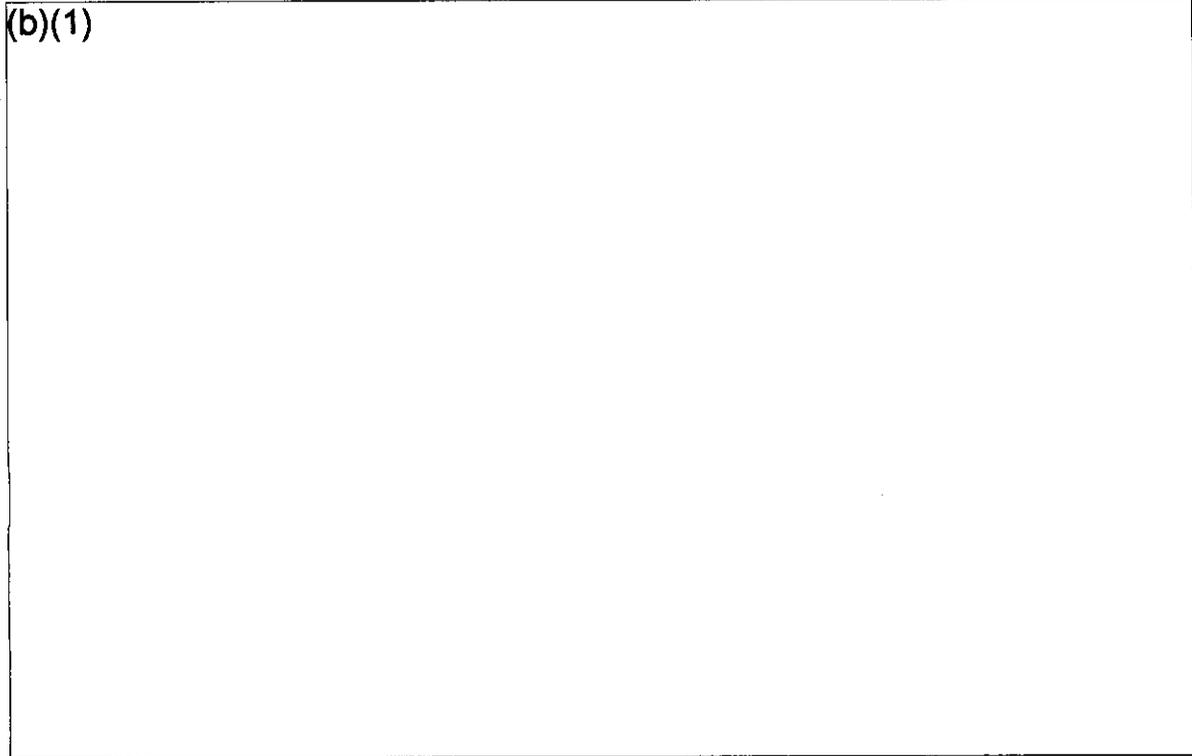
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(u) b. *Finding of Boudella Tribunal.*

(b)(1)



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

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

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

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

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(b)(1)

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

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

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

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

Strength: Precise Numbers Unknown, probably fewer than 100.

Location/Area of Operation: *Algeria.*

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

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

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

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

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

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

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

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

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

(b)(1)

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

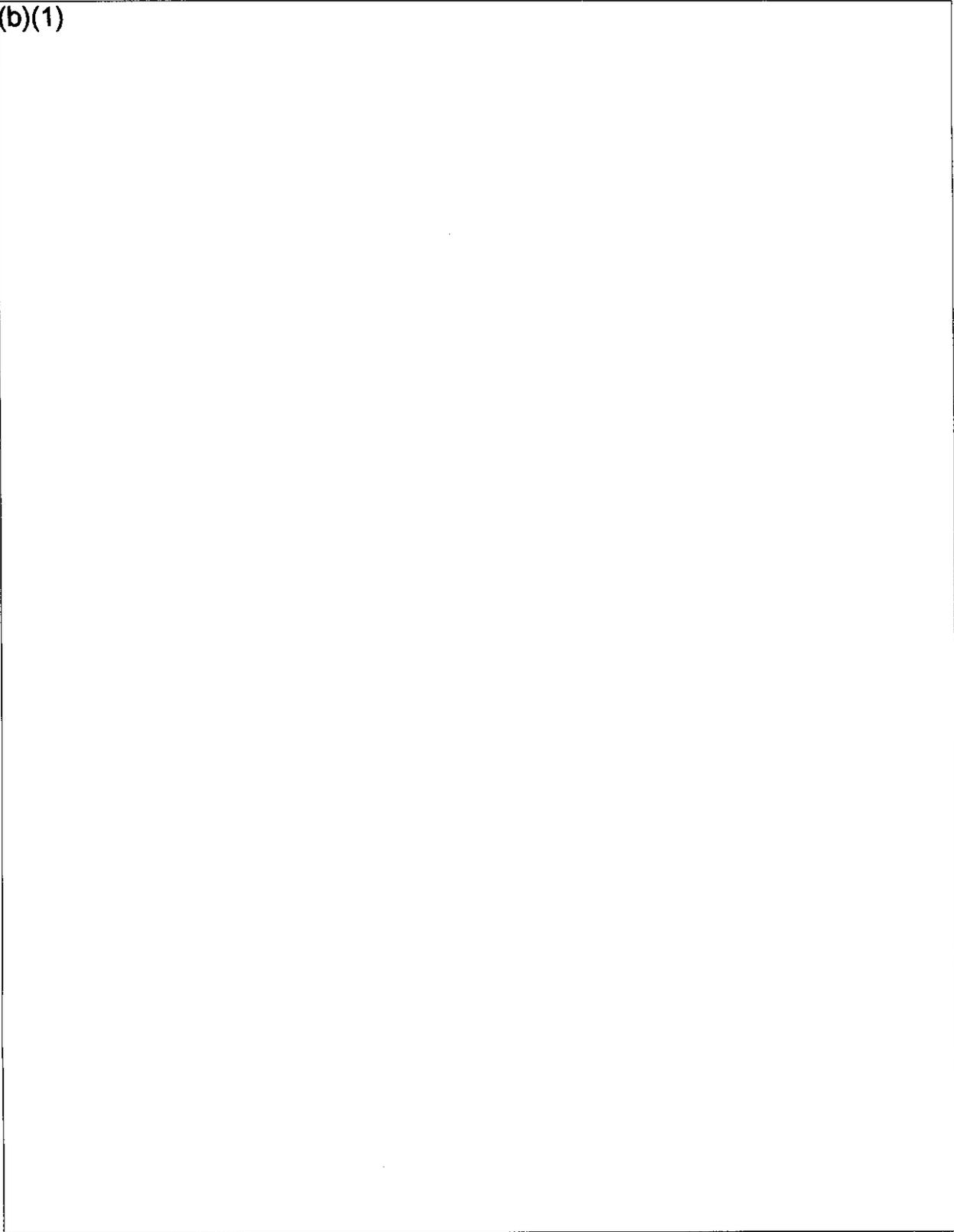
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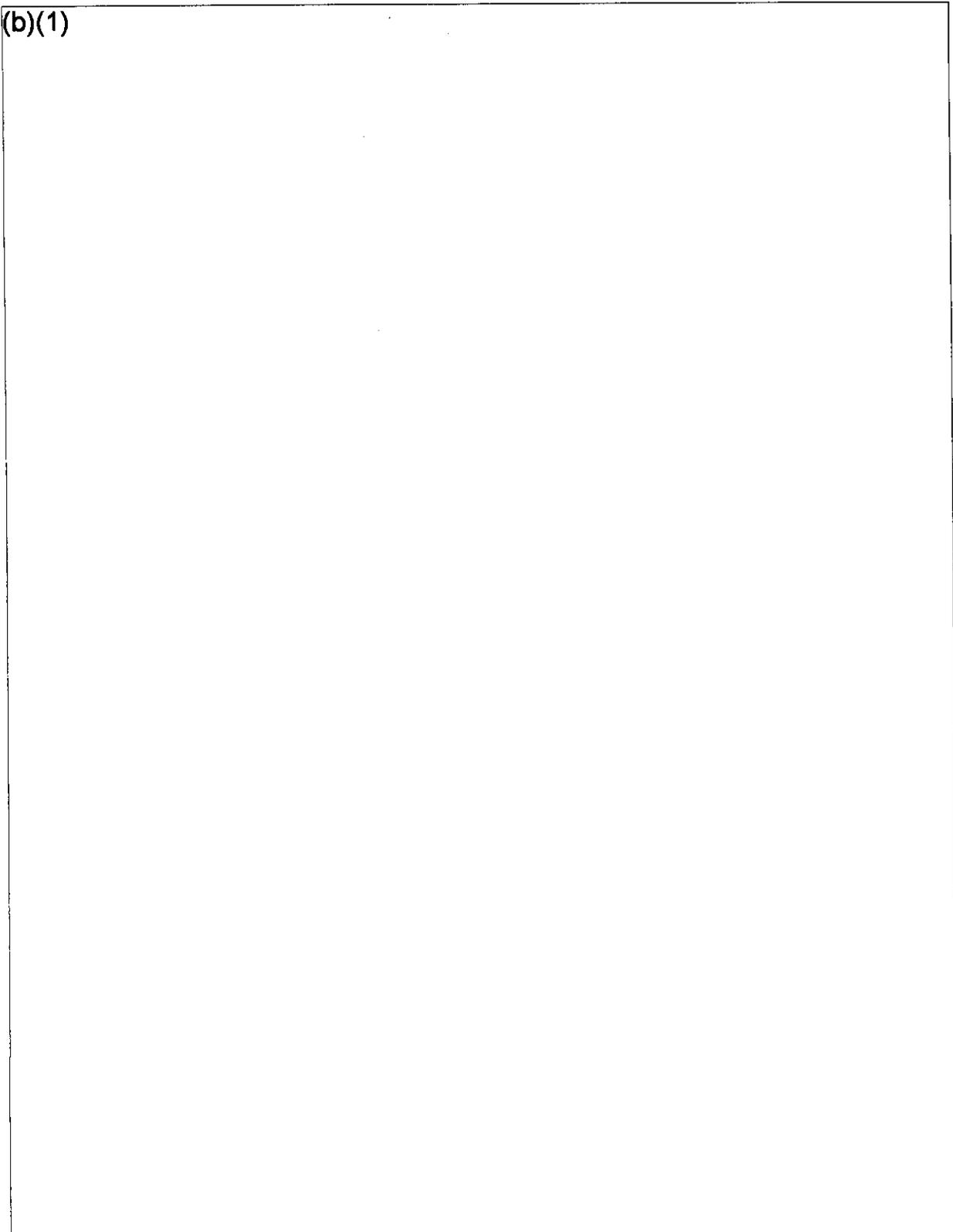


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(u) To the extent the enemy combatant determination itself is considered by this Board to be evidence of dangerousness, this Board should note that the CSRT's determination with respect to Mr. Boudella was based on evidence of purported links, associations,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

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

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

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

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(b)(1)

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

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

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

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

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

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

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

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

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

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

(b)(1)

III. (u) CONCLUSION.

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

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

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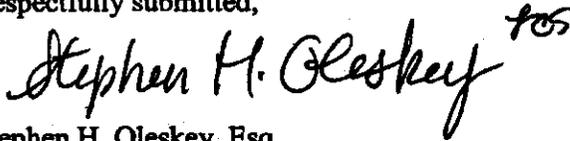
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value. He should be released and returned to his home and family in Bosnia. Mr. Boudella and the other five Bosnians have been exonerated by the Bosnian Supreme Court and Federal Prosecutor of the very allegations that formed the basis for their detention.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

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

Respectfully submitted,

 ^{tos}

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

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Hadj Boudella Exhibits to ARB Submission

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

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Boudella Exhibit 1

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Ambasciata
della Repubblica Algerina
Democratica e Popolare
Roma

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سفارة
الجمهورية الجزائرية
الديمقراطية الشعبية
روما

N° 16/05 A.C

ATTESTATION
DE
NATIONALITE

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

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

Est de nationalité Algérienne

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

Rome, le 13 janvier 2005



Le Chargé des Affaires Consulaires

Farouk AHOUD

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UNCLASSIFIED

Boudella Exhibit 2

UNCLASSIFIED

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**BOSNA I HERCEGOVINA
FEDERACIJA BOSNE I HERCEGOVINE**

Kanton: ZENIČKO-DOBOJSKI

Općina: TEŠANJ

Služba: MATIČAR

Broj: 03-13.11.-548/05.

Datum: 18.02.2005.godine

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

Bosne i Hercegovine, na zahtjev Dizdarević Nađe

iz kta Sarajeva izdaje se

UVJERENJE

1804967124131
(IMB)

da je Boudellal Nađe sin - ka Omar

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

državljanin-ka Bosne i Hercegovine.

Ovo uvjerenje izdaje se na osnovu podataka iz upisa u matičnu knjigu

rodjenih koja se vodi za naseljeno mjesto Jelah

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

za godinu 1995.

Taksa po tarifnom broju Odluke o administrativnim taksama Općine

u iznosu od naplaćena je i na podnesku poništena.

Osiobođeno od plaćanja takse po članu 107 Zakona o administrativnim taksama

("Službeni list RBiH", broj)



Potpis službenog lica:
Agić Dževad

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UNCLASSIFIED

Boudella Exhibit 3

UNCLASSIFIED

UNCLASSIFIED



Hadj Boudella

UNCLASSIFIED



Mon Jan 31, 9:01 AM
ET

Associated Press

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

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

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

ack

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Boudella Exhibit 4

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

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FORENSIC PSYCHIATRY

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

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

March 24, 2005

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

Re: Hadj Boudella

Dear Mr. Oleskey:

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

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

Findings and Opinions

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

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

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

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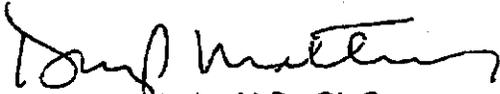
UNCLASSIFIED

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

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

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

Sincerely,



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

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