NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

GHALEB NASSAR AL BIHANI,

Petitioner,

- v -

BARACK H. OBAMA, et al.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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Petitioner Al-Bihani, respectfully prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the District of Columbia entered on August 31, 2010.[1]

OPINIONS BELOW

On August 31, 2010, the District of Columbia Court of Appeals issued an opinion[2] affirming denial of Al-Bihani's habeas corpus petition under 28 U.S.C. § 2241, concluding that petitioner was lawfully detained indefinitely under the Authorization for Use of Military Force ("AUMF"). Pub. L. No. 107-40, §2(a), 115 Stat. 224 (2010) (reprinted at 50 U.S.C. §1541 note). Petitioner's Petition for Rehearing and Rehearing En Banc was denied on August 31, 2010.[3]

[1] On this date, the appeals court denied Petitioner's rehearing petition.

[2] The published opinion, 590 F.3d 866 (D.C. Cir. 2010), is attached as Appendix A.

[3] A copy of the order denying petitioner's petition for rehearing and rehearing en banc, reported at 619 F.3d 1 (D.C. Cir. 2010), is attached hereto as Appendix B. The district court's order denying the writ of habeas corpus is attached as Appendix C.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., Amend. V:

No person shall ... be deprived of life, liberty, or property, without due process of law.

AUMF §2(a)

Sec. 2. Authorization for use of United States Armed Forces.

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

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner filed a *pro se* habeas corpus petition in 2005, seeking relief from detention, Joint Appendix on Appeal ("JA"):166, and Federal Defenders of San Diego was appointed to represent him on October 14, 2005. JA:166-167. Petitioner challenged his detention, which commenced in 2001, as violating the Fifth Amendment, exceeding AUMF authority and violating applicable international laws. JA:167. His case was stayed for years until this Court decided *Boumediene v. Bush,* 553 U.S. 723 (2008). JA:167. After *Boumediene*, the district court rapidly advanced Petitioner's case, finally requiring Respondents to file a factual return, setting forth their basis for detaining Petitioner, and held a habeas hearing on January 15, 2009. JA:179.[4]

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[4] Petitioner objected to the timing and form of the hearing. He hadn't sufficient time to prepare and objected to the district court's procedures for what it called "wartime habeas." JA:48-76; 71-172; 337-338; 602-603.

On January 28, 2009, the district court denied Mr. Al-Bihani's petition, issuing both a classified, JA: 655-663, and an unclassified opinion. JA:121-130, Attached as Appendix C.

The district court ordered Petitioner detained as an "enemy combatant," finding it "more probable than not that he was 'part of or supporting Taliban or Al-Qaeda forces.'" JA:663 (quotation omitted). It concluded that Mr. Al-Bihani, a Yemeni citizen, went to Afghanistan prior to September 11 2001, where he served as a cook for an independent military group which had allied itself with the Taliban in its battle against the Northern Alliance. *See Al-Bihani*, 590 F.3d at 869-70.

The district court concluded that the independent militia had Al-Qaeda "affiliations" though there were no findings that Petitioner was either an Al-Qaeda or Taliban member. JA:205, 305, *see also Al-Bihani*, 590 F.3d at 869. While he was issued a weapon, Petitioner never used it. *Id.* When the United States commenced bombing Afghanistan in October 2001,Petitioner fled, eventually surrendering to Northern Alliance forces who turned him over to U.S. authorities. *Id.* The district court made no findings, nor was evidence presented, that the independent militia for whom Petitioner cooked food, ever planned, authorized, committed, or aided the September 11 attacks, or harbored any such organizations or persons. *See id.*; *see also* JA: 661-669. Nor did the district court find that the independent militia group took steps to ally itself with the Taliban against the United States after the U.S. commenced war against the Taliban-governed Afghanistan. *See id.* Finally, there was no finding that Petitioner posed any current or future threat to U.S. or its allies' forces. *Id.*; *see also* JA:121-130.

B. Appellate Proceedings

On appeal, Petitioner argued that his detention exceeded statutory and constitutional authority and that applicable international law principles required his release. Specifically, he contended that

AUMF detention authority only allows detention of those who "planned, authorized, committed or aided the terrorist attacks on September 11, 2001, or harbored such organizations or persons in order to prevent any future acts of international terrorism against the United States . . . " Al-Bihani's Unclassified Opening Brief ("AOB") at 43. Since he was neither a member of Al-Qaeda nor the Taliban, but was only a cook for an independent militia, having no knowledge of the September 11, 2001 attacks and no terrorist intentions, the AUMF detention authority didn't apply. *Id.* He also contended that law of war principles, incorporated by the AUMF required his release because the conflict within which the district court concluded he was captured, the international conflict between the United States and Afghanistan, JA:663, which began October 7, 2001, had concluded. *Al-Bihani*, 590 F.3d at 870-71. Absent a finding that Petitioner posed any present or future threat, detention could no longer be justified. *See id.*

The appeals court held that "[t]here is no indication in the AUMF, the Detainee Treatment Act of 2005 . . . or the MCA of 2006 or 2009, that Congress intended the principles of international law to act as an extra-textual limiting principle for the President's war powers under the AUMF." 590 F.3d at 871. The court rejected all of Mr. Al-Bihani's arguments claiming that they "rely heavily" on application of international law principles. *Id.*

After rejecting application of international law, the court decided that because the Military Commissions Act ("MCA") of 2006, Pub.L. No. 109-366, 120 Stat. 2600 (codified in part at 28 U.S.C. § 2241 & note), and 2009, Military Commissions Act of 2009 sec. 1802, §§ 948a(7), 948b(a), 948c, Pub.L. No. 111-84, tit. XVIII, 123 Stat. 2190, 2575-76, permit individuals who "purposefully and materially supported hostilities against the United States or its co-belligerents . . . (including a person who is part of the Taliban, al-Qaeda, or associated forces)" to be charged by military

commissions, 590 F.3d at 872 (citations omitted), AUMF detention authority must be at least as broad. *Id.* Thus, the court reasoned that those individuals who supported the Taliban are subject to indefinite detention without charges because the Taliban harbored Al-Qaeda. *Id.*

Finally, the opinion concludes that the AUMF itself provided detention authority because:

> the actual and foreseeable result of the 55th's defense of the Taliban was the maintenance of Al-Qaeda's safe haven in Afghanistan. This result places the 55th within the AUMF's wide ambit as an organization that harbored Al-Qaeda, making it subject to U.S. military force and its members and supporters -- including Al-Bihani – eligible for detention.

Id. at 873.

Judge Williams concurred, though acknowledging that the majority's holding–which rejected interpretation of the AUMF as informed by law of war principles–conflicts with this Court's cases. *See id.* at 883 (Williams, J., concurring) ("the laws of war have -- even in the government's view -- a role to play in the interpretation of the AUMF's grant of authority"); *see also id.* at 885 (the majority's rejection of international law "appears hard to square with the approach the Supreme Court took in *Hamdi*") (citations omitted). He assumed Petitioner was a member of the 055 Brigade, though no proof of 055 membership existed, Unclassified ARB:15 & n.6 (noting there was never proof, only allegations of 055 affiliation), and concluded the U.S. could target and capture him as an 055 member because:

> The 55th Brigade fought to preserve the Taliban regime in Afghanistan even as the Taliban was harboring Al-Qaeda in Afghanistan. This makes the 55th Brigade itself, an organization that "harbored" al-Qaeda within the meaning of the AUMF.

Id. at 883 (Williams, J., concurring).

The *en banc* court of appeals for the District of Columbia denied Petitioner's rehearing petition with some panel members denying rehearing because "the panel's discussion of [the role of international law] . . . is not necessary to the disposition of the merits." 619 F.3d at 1 (Sentelle, C.J., Ginsburg , Henderson , Rogers, Tatel, Garland., and Griffith, JJ., concurring in denial of rehearing). Other judges, however, believed that the majority opinion's "clear holding" was that the law of war would not properly inform the interpretation of AUMF authority, *see* 619 F.3d 1 (Brown, J., concurring in denial of rehearing), and that the holding is not dictum, but, rather is precedent. *Id.* at 2-3 (Brown, J., concurring in denial of rehearing) (noting that "alternative holdings each possess precedential effect") (citation omitted); *see also id.* at 23 (Kavanaugh, J., concurring in denial of rehearing) ("International law principles are not automatically part of domestic U.S. law enforceable in federal courts").

SUMMARY OF ARGUMENT

The District of Columbia court of appeals improperly concludes that AUMF detention authority is not governed by laws-of-war. The majority's opinion conflicts with *Hamdi v. Rumsfeld*, 542 U.S. 507, 518, 521 (2004) and *Boumediene v. Bush*, 553 U.S. at 733. The applicability of the law of war to the AUMF and this case is further clouded by the court and Judge Kavanaugh's invocation of section 5 of the 2006 MCA as precluding reliance on the laws of war. *See* 590 F.3d at 875; 619 F.3d at 21 (Kavanaugh, J., concurring in denial of rehearing *en banc*). Justice Thomas has already explained the necessity for the Court's review of this issue in his dissent to a recent denial of *certiorari*. *See Noriega v. Pastrana*, 130 S. Ct. 1002 (2010). But because the AUMF does incorporate the laws of war, in particular the *Hamdi/Boumediene* particular conflict analysis, Petitioner's continued detention is unjustified because the particular conflict within which he was

captured, the international conflict between the United States and the Taliban government of Afghanstian, has long since ended, and there has been no showing that Petitioner poses a danger of engaging in any ongoing conflict in the Afghanistan theater.

Putting aside any question about the applicability of law of war principles to the Executive's detention authority under the AUMF, the court of appeals also misinterprets the plain meaning of the AUMF, which authorizes detention only for those who "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons," AUMF §2(a), expanding detention authority beyond its text to allow detention of those who may have only aided those who harbored the entities responsible for the September 11, 2001, attacks. Neither the AUMF nor subsequent congressional enactments pertaining to military commissions support this expansion.

ARGUMENT

I.

THE COURT SHOULD GRANT THE PETITION AND REAFFIRM THE TEACHING OF *HAMDI* AND *BOUMEDIENE*: THE DETENTION POWER GRANTED BY THE AUMF IS COEXTENSIVE WITH, AND LIMITED BY, THE DETENTION POWER RECOGNIZED UNDER THE LAW OF WAR.

A. Introduction

The D.C. Circuit's multiple, and conflicting, opinions in Petitioner's case have obscured central tenets of the Court's decisions in *Hamdi,* 542 U.S. 507, and *Boumediene,* 553 U.S. 723: the *Hamdi* plurality concluded that persons covered by the AUMF could be detained "for the duration of the particular conflict in which they were captured," 542 U.S. at 518, and explained that its "understanding [of the authority granted by the AUMF] is based on longstanding law-of-war

principles." *Id.* at 521. *Accord Boumediene,* 553 U.S. at 733. Even so, the *Hamdi* plurality observed that "[i]f the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, that understanding may unravel." *Id.*

Both the majority opinion in Petitioner's case, 590 F.3d at 871, and the separate opinions of Judges Brown and Kavanaugh concurring in the denial of Petitioner's petition for rehearing, *see* 619 F.3d at 1-9, 9-53, effectively reject the *Hamdi/Boumediene* analysis.[5] While seven judges of the D.C. Circuit opined that the cited portion of the majority opinion in Petitioner's case was "not necessary to the disposition of merits," 619 F.3d at 1 (Sentelle, C.J., Ginsburg, J., Henderson, J., Rogers, J., Tatel, J., Garland, J., and Griffith, J., concurring), that "resolution" of the conflict is subject to criticism on two fronts. First, resolution of the law of war question is essential to disposition of Petitioner's claim; properly applied, that body of law compels Petitioner's release. *See infra* at 18-24. Second, as Judge Brown points out, "[i]t is a longstanding principle that alternative holdings each possess precedential effect." 619 F.3d at 2 (Brown, J., concurring). Either way, the D.C. Circuit's post-*Hamdi* jurisprudence is in disarray on an issue of surpassing importance.

That disarray is compounded by the uncertain effect of Section 5 of the Military Commissions Act of 2006, Pub. L. No. 109-366 ("2006 MCA").[6] Justice Thomas, joined by Justice Scalia, recently dissented from denial of *certiorari* in *Noriega v. Pastrana*, 130 S. Ct. 1002 (2010), arguing that the Court should have decided whether §5(a) of the 2006 MCA barred General Noriega from reliance upon the Geneva Conventions. The majority opinion in Petitioner's case applied it to

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[5] Neither the *Al-Bihani* majority opinion nor Judge Brown's statement address the *Hamdi/Boumediene* analysis.

[6] Section 5 of the 2006 MCA is codified as a note to 28 U.S.C. § 2241.

one[7] of his claims, *see* 590 F.3d at 875, and Judge Kavanaugh contends that, in section 5 of the 2006 MCA, "Congress has ... unambiguously repudiated whatever domestic legal effect the [Geneva] Conventions otherwise might have had in this habeas setting." 619 F.3d at 21. Petitioner disagrees, contending that his claims arise not from free-standing reliance on the Geneva Conventions but from the AUMF's incorporation of the law of war as set forth in *Hamdi* and *Boumediene*. Additionally, he contends that the Court's canons of statutory construction counseling avoidance of constitutional questions and avoidance of retroactive applications of statutes both undercut Judge Kavanaugh's construction: Judge Kavanaugh's reading of section 5 implicates the Suspension Clause and he urges application of the 2006 MCA to a petition that was pending when that legislation was passed. Finally, the structure of the 2006 MCA itself refutes his reading, particularly in light of the fact that section 5, unlike other provisions of the 2006 MCA, is not expressly retroactive. *See generally Hamdan v. Rumsfeld*, 548 U.S. 557, 576-84 (2006) (finding a portion of the Detainee Treatment Act of 2005 was not retroactive based upon a negative implication analysis). This issue, too, is ripe for decision.

The instant case is the appropriate vehicle to resolve these questions. First, the question of the viability of the *Hamdi/Boumediene* interpretation of the AUMF is squarely presented by the majority opinion in Petitioner's case and the opinions of Judges Brown and Kavanaugh concurring in the denial of Petitioner's petition for rehearing. Similarly, the application of section 5 of the 2006 MCA is also squarely presented as discussed in Justice Thomas' dissenting opinion in *Noriega* and as addressed in Judge Kavanaugh's opinion concurring in the denial of Petitioner's petition for rehearing. Resolution of these questions is essential here because if the law of war indeed describes

[7] That claim is not raised here.

and limits the detention power granted by the AUMF, then Petitioner's detention is unlawful. *See infra* at 18-23. The Court should grant the petition.

B. The Court Should Reaffirm *Hamdi* and *Boumediene*: the Law of War Informs and Limits the AUMF's Authorization of Detention Authority.

Petitioner's case squarely presents the issue whether the law of war informs and restricts the detention power Congress authorized in the AUMF. The *Hamdi* plurality concluded that the AUMF authorizes "detention of individuals [that Congress sought to target in passing the AUMF], for the duration of the particular conflict in which they were captured," 542 U.S. at 518, and explained that its conclusion was "based on longstanding law-of-war principles." *Id.* at 521. *Accord Boumediene*, 553 U.S. at 733. *See also Hamdi*, 542 U.S. at 521 (observing that "[i]f the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, that understanding may unravel."). The government conceded the law of war point, *see Al-Bihani*, 590 F.3d at 883 (Williams, J. concurring) (noting the concession), and leading scholars concur. *See, e.g.*, Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War On Terrorism*, 118 Harv. L. Rev. 2047, 2094 (2005) ("Since the international laws of war can inform the powers that Congress has implicitly granted the President in the AUMF, they logically can inform the boundaries of such powers.").[8]

Moreover, the Court has long applied international law in related contexts. *See, e.g., Ex Parte Quirin*, 317 U.S. 1, 27-28 (1942) ("From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes,

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[8] Judge Williams adopted the approach of Professors Bradley and Goldsmith. *See Al-Bihani*, 619 F.3d at 54-55. *But see id.* at 44 n.23 (Kavanaugh, J., concurring) (disagreeing with them on this point although favorably citing their article throughout his concurring statement).

for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals."). *Accord The Paquete Habana*, 175 U.S. 677, 700 (1900) (stating that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination."); *Talbot v. Seeman*, 5 U.S. 1, 19 (1801) (observing that "congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed"). Indeed, the Court has held "that an act of Congress ought never to be construed to violate the law of nations if any possible construction remains." *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804). *Accord Talbot*, 5 U.S. at 43 (noting the Court's "duty to believe [that] the legislature of the U.S. will always hold sacred" its obligation not to violate the law of nations). *See also* Ingrid Brunk Wuerth, *Authorizations For the Use of Force, International Law, and the* Charming Betsy *Canon*, 46 B.C. L. Rev. 293 (2005) (advocating application of the *Charming Betsy* canon to the AUMF).

Nonetheless, the majority in Petitioner's case, *see Al-Bihani*, 590 F.3d at 871 (stating that "[t]here is no indication in the AUMF, ..., that Congress intended the international laws of war to act as extra-textual limiting principles for the President's war powers under the AUMF"), as well as the statements of Judges Brown and Kavanaugh concurring in the denial of Petitioner's petition for rehearing, *see Al-Bihani*, 619 F.3d at 1-9, 9-53 reject the *Hamdi/Boumediene* reading of the AUMF. Of those three opinions, only Judge Kavanaugh's concurring statement, *see id.* at 42-44, addresses the portions of *Hamdi* and *Boumediene* cited here. Judge Kavanaugh however (1) argues for a strikingly limited reading of the Court's cases applying international law and, (2) disputes Petitioner's

reading of *Hamdi* and *Boumediene*. Because Judge Kavanaugh urges limitation of several of the Court's precedents, his arguments further demonstrate the need for the Court's review. *See generally Agostini v. Felton*, 521 U.S. 203, 237 (1997) (only the Court may overrule its precedents).[9]

Turning first to Judge Kavanaugh's reading of *Hamdi* and *Boumediene*, he quotes the *Hamdi* plurality's observation that "we understand Congress' grant of authority for the use of 'necessary and appropriate force' to include the authority to detain for the duration of the relevant conflict, and our understanding is based on longstanding law-of-war principles." *Id.* at 43 (quoting *Hamdi*, 542 U.S. at 521) (internal quotations omitted). But he dismisses the plurality's limiting language -- "for the duration of the relevant conflict" -- as merely "commonsensical." *Id.* But the plurality's next sentence refutes that interpretation: the plurality noted that "[i]f the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the plurality's] understanding [of the AUMF] may unravel." *Hamdi*, 542 U.S. at 521. Surely the plurality's reference to the "duration of the relevant conflict" cannot both be loose language -- as Judge Kavanaugh suggests, *see* 619 F.3d at 43-44 -- and a consideration that may cause its understanding of the AUMF to "unravel." *See Hamdi*, 542 U.S. at 521. *See also* David Mortlock, *Definite Detention: the Scope of the President's Authority to Detain Enemy Combatants*, 4 Harv. L. & Pol'y Rev. 375, 397 (2010) (observing that the plurality's concern that it understanding might "unravel" served to "address[] the danger of indefinite detention in a war without a traditional

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[9] Although seven judges of the D.C. Circuit opined that the cited portion of the majority opinion in Petitioner's case was "not necessary to the disposition of merits," 619 F.3d at 1 (Sentelle, C.J., Ginsburg, Henderson, Rogers, Tatel, Garland, and Griffith, JJ., concurring), that comment does nothing to resolve the tension between the *Al-Bihani* majority opinion, as well as the concurring statements of Judges Brown and Kavanaugh, on the one hand and the Court's precedents on the other.

endpoint"); Robert Chesney & Jack Goldsmith, *Terrorism and the Convergence of Criminal and Military Detention Models*, 60 Stan. L. Rev. 1079, 1100 & n.97 (2008) (citing the plurality's concerns that its understanding might "unravel" and noting that the current conflicts may "span generations" and that there "is an unusually high risk that preventive detention may prove indefinite").

Ultimately, Judge Kavanaugh simply does not believe that the *Hamdi* plurality could have construed the AUMF as granting detention authority to the President that is both informed and limited by the law of war. *See Al-Bihani* 619 F.3d at 44. And he does not address the *Boumediene* majority's adoption of *Hamdi*'s language describing the detention authority as applicable "'for the duration of the particular conflict in which [the detainees] were captured.'" 553 U.S. at 733 (quoting *Hamdi*, 542 U.S. at 733). Because the Court's decisions plainly can be read to support limitation of the detention authority to "the duration of the relevant conflict," *id.*, the Court should grant the petition and decide whether its jurisprudence should conform to Judge Kavanaugh's gloss on the *Hamdi* plurality opinion.

The same is true as to the arguments advanced by both Judges Brown and Kavanaugh seeking to cabin application of the Court's cases applying international law, such as *The Paquete Habana*, 175 U.S. 677. Judge Kavanaugh argues, *inter alia*, that the Court's international law jurisprudence was effectively repudiated by the Court's decision in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938). *See generally Al-Bihani*, 619 F.3d at 10-11. He further contends that application of the *Charming Betsy* canon, which provides "that an act of Congress ought never to be construed to violate the law of nations if any possible construction remains," 6 U.S. at 118, should be sharply limited. *See Al-Bihani*, 619 F.3d at 10.

The Court has not adopted Judge Kavanaugh's approach as to either point. In *Paquete Habana*, the Court stated that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination," 175 U.S. at 700, and it has not repudiated that statement. Rather, the Court cited *Paquete Habana* with favor in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729-30 (2004). And not long after the Court's decision in *Erie*, the Court reiterated that "[f]rom the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals." *Ex Parte Quirin*, 317 U.S. at 27-28. In short, the domestic application of the law of war is far less uncertain than Judge Kavanaugh suggests, and, if anything, the limitations he would impose on the Court's jurisprudence counsel in favor of review here.

The proposal to cabin application of the *Charming Betsy* canon similarly calls for limitations on the applicability of the Court's precedent that only it can impose. *See Al-Bihani*, 619 F.3d at 10. *See also id.* at 7 n.6 (Brown, J., concurring) ("I note the *Charming Betsy* canon was not invoked in the panel opinion because it is not applicable in this case."). As was the case with *Pacquete Habana*, *Charming Betsy* has also been cited with favor post-*Erie*, with no suggestion that its application was at all diminished. *See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 814-15 (1993).

Judge Williams, in his concurring opinion, reached a similar conclusion, observing that *Erie* "left intact the preexisting alternative role of international law as a store of information regarding the sense of words Congress enacts into laws governing international matters...." *Al-Bihani*, 619 F.3d at 54. Although it did not cite *Charming Betsy*, that is exactly the sort of analysis the *Hamdi*

plurality employed in adopting a reading of the AUMF "based on long-standing law-of-war principles." 542 U.S. at 521. *Accord Al-Bihani*, 619 F.3d at 55 (Williams, J., concurring). *See also* Wuerth, *Authorizations For the Use of Force, International Law, and the* Charming Betsy *Canon*, 46 B.C. L. Rev. at 352 (arguing that "construe[ing] general authorizations for the use of force to avoid a potential conflict with the Third Geneva Convention ... is most consistent with the historical use of the [*Charming Betsy*] canon...."). Thus, once again, Judge Kavanaugh's analysis cannot easily be reconciled with the Court's cases, and especially not with *Charming Betsy* which, after all, states "that an act of Congress ought *never* to be construed to violate the law of nations if any possible construction remains." 6 U.S. at 118 (emphasis added).

In short, the Court has not limited application of the *Charming Betsy* canon. While Judges Brown and Kavanaugh urge such limitations -- which only the Court may impose -- their arguments in favor of modifying the Court's precedent only serve to the illustrate the acute need for the Court's review.

C. Section 5 of the 2006 MCA Does Not Preclude Application of Law of War Principles In Analyzing the Detention Authority.

Judge Kavanaugh contends that, in section 5 of the 2006 MCA, "Congress has ... unambiguously repudiated whatever domestic legal effect the [Geneva] Conventions otherwise might have had in this habeas setting." 619 F.3d at 21. *See also Al-Adahi v. Obama*, 613 F.3d 1102, 1111 n.6 (D.C. Cir. 2010) (citing 2006 MCA § 5(a) and rejecting detainee's claim that "his statements should be suppressed pursuant to the Third Geneva Convention [because e]ven if the Convention had been incorporated into domestic U.S. law and even if it provided an exclusionary rule, Congress has provided explicitly that the Convention's provisions are not privately enforceable in habeas

proceedings."); *Al-Bihani*, 590 F.3d at 875 (rejecting one of Petitioner's claims based on section 5). Even so, Justice Thomas has already explained that section 5 merits the Court's review in *Noriega*, 130 S. Ct. 1002 (Thomas, J., dissenting from denial of certiorari). His analysis is equally applicable here.

In addition, Judge Kavanaugh's approach fails to address additional barriers to application of section 5. First, if *Hamdi* and *Boumediene* read the AUMF to grant detention power consistent with the law of war, then section 5 would be inapplicable on its own terms. It provides that "[n]o person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus ... proceeding ... *as a source of rights* in any court in the United States...." 2006 MCA § 5(a). Petitioner contends that his claims arise not from free-standing reliance on the Geneva Conventions but from the AUMF's incorporation of the law of war as set forth in *Hamdi* and *Boumediene*. Thus, the AUMF itself, not the Conventions, is his "source of rights," and section 5(a) is therefore inapplicable.

Additionally, as Justice Thomas explains, application of section 5(a) here to preclude Petitioner from advancing claims based on the Geneva Convention would require the Court to address whether such preclusion works a suspension of the writ. *See Noriega*, 130 S. Ct. at 1006-07 (Thomas, J., dissenting from denial of *certiorari*). While Judge Kavanaugh rejects any suggestion that section 5(a) implicates the Suspension Clause, 619 F.3d at 22-23, Justice Thomas recognizes both that the Court has "left open the question whether statutory efforts to limit [28 U.S.C.] § 2241 implicate the Suspension Clause," *Noriega*, 130 S. Ct. at 1006, and that the "question ... has already divided the Court in other contexts." *See id. See also id.* at 1009 (noting that invalidating 2006

MCA § 5(a) "could well allow us to reach the question we left open in *Hamdan*[, 548 U.S. 557] -- whether the Geneva Conventions are self-executing and judicially enforceable.").

Finally, the structure of the 2006 MCA suggests that section 5(a) does not apply retrospectively to habeas petitions pending at the time the MCA was passed. First, Congress did not specify that section 5(a) was to have retroactive effect: unlike other provisions of the 2006 MCA, it has no effective date provision. The Court applies a "presumption against retroactive legislation," which can only be overcome when its "language compels this result." *Landgraf v. USI Film Products*, 511 U.S. 244, 271 (1994). *See also INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) ("Cases where this Court has found truly 'retroactive' effect adequately authorized by statute have involved statutory language that was so clear that it could sustain only one interpretation.").

Moreover, section 7 of the 2006 MCA -- the jurisdiction-stripping provision the Court struck down in *Boumediene* -- is explicitly retroactive. *See* 2006 MCA § 7(b). Section 5(a) contains no such language, supporting the notion that it not intended to apply to pending petitions, as the Court found as to a portion of the Detainee Treatment Act of 2005 in *Hamdan*. *See* 548 U.S. at 578 ("A familiar principle of statutory construction ... is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.").[10] Indeed, it is highly unlikely that Congress intended section 5(a) to apply to detainee petitions at all; it had stripped the courts of jurisdiction to hear such petitions and could hardly be expected to have legislated in section 5(a) which claims could be raised in proceedings it had barred. *See* 2006 MCA § 7(a). In short, there is a substantial question that section 5(a) applies to habeas

[10] Even if Judge Kavanaugh is correct that the *Landgraf* presumption does not apply here, *see Al-Bihani*, 619 F.3d at 22, the Court's negative implication analysis in *Hamdan* remains applicable. *See* 548 U.S. at 576-84.

petitions pending at the time the statute was passed, particularly in the instant case, where Petitioner's detention is based solely on past acts and the particular conflict in which he was captured, the international conflict between the United States and Afghanistan, ended long before the 2006 MCA was passed. *See infra* at 21-23.

D. The AUMF, as Informed by Law of War Principles, Does Not Authorize Petitioner's Continuing Detention.

1. The AUMF Provides No Continuing Detention Authority Because the International Conflict Between the U.S. and Afghanistan, In Which Petitioner Was Captured, Is Over.

The authority granted by the AUMF to detain Petitioner is defined by the duration of the "particular conflict of capture." *See Hamdi*, 542 U.S. at 518 (plur. op.). The Executive determined that the conflict between the United States and Afghanistan was international and distinct from the non-international conflict between the United States and Al Qaeda. The U.S./Afghanistan conflict is Petitioner's "particular conflict of capture," and that international conflict is undisputably over. AUMF detention authority thus no longer exists as to him.

a. The "Particular Conflict" Test.

The *Hamdi* plurality construed the AUMF to limit its detention authority to "*the duration of the particular conflict* in which [Petitioner was] captured." *See id.* (emphasis added). *See also id.* at 521 ("we understand Congress' grant of authority for the use of 'necessary and appropriate force' to include the authority to detain for *the duration of the relevant conflict*") (emphasis added). *Boumediene* confirmed this limitation. *See* 553 U.S. at 733 (citations omitted).

The Court of Appeals, however, rejected the "particular conflict" test, reasoning that "the [Geneva] Conventions use the term '[cessation of] active hostilities' instead of the terms 'conflict' or

'state of war' found elsewhere in the document[s]." *Al-Bihani*, 590 F.3d at 874. Thus, the court apparently believes that *any* conflict in Afghanistan is sufficient to invoke AUMF detention authority, regardless of whether there is any showing that Petitioner would join it, and regardless of whether it is the "particular conflict" of capture. *See id.* (claiming that "release is only required when the fighting stops" without specifying the particular conflict in which the "fighting" is taking place). It is perplexing that here the court relies upon the Geneva Conventions, application of which it previously disavowed, *see id.* at 871, but only to shift the focus from *Hamdi* and *Boumediene*'s emphasis on the "particular conflict" of capture, *see Boumediene*, 553 U.S. at 733, to what the Court of Appeals claims is the Geneva Conventions' any-hostilities-at-all approach.

The Court of Appeals' points are not well taken. *Hamdi* and *Boumediene* mandate the "particular conflict" approach. The Court of Appeals cannot disavow the AUMF's incorporation of international law. Nor does the court provide support for its view. It cites nothing suggesting that the Geneva Conventions have been construed to eschew the *Hamdi/Boumediene* "particular conflict" approach.

b. The Executive, Not Petitioner, Determined That the International Conflict Between the United States and Afghanistan Was Separate From the Non-International Conflict With Al-Qaeda and That Interpretation of the Geneva Convention Is Owed Deference.

Petitioner explained that then-President Bush determined there were two separate conflicts in Afghanistan, with the conflict between the United States and Afghanistan being an international conflict. *See* Unclass'd AOB:25. The analysis is summarized in *Hamdan,* 548 U.S. at 628-29. The President determined that "the war with al Qaeda . .. is distinct from the war with the Taliban in Afghanistan." *See id.* at 628. The U.S./Afghanistan conflict was an international one as

Afghanistan, unlike Al-Qaeda, is a "High Contracting Party" to the Geneva Conventions. *See id.*[11] The conflict with Al-Qaeda is one "not of an international character," a term used "in contradistinction to a conflict between nations." *See id.* at 630. This Court owes deference to the Executive's conflict bifurcation approach. *See, e.g., El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 168 (1999) ("Respect is ordinarily due the reasonable views of the Executive Branch concerning the meaning of an international treaty.").

The Court of Appeals misses the significance of the Executive's conflict bifurcation approach, erroneously claiming that Petitioner contends he must be released "because the conflict with the Taliban has ended." 590 F.3d at 874. Petitioner has always contended that he must be released because the *international* U.S./Afghanistan conflict in which he was captured is over, and no showing was made that he would join any successor, non-international conflict. *See* Unclass'd Appellant's Reply Brief:2-3.

c. Petitioner Was Captured In the *International* Conflict.

The district court found that Petitioner was captured in the international conflict between the United States and Afghanistan. JA:663. While the Court of Appeals states that "it is not clear if Al-Bihani was captured in the conflict with the Taliban or with Al Qaeda," 590 F.3d at 874, it is simply wrong; there is no lack of clarity in the district court's findings, and the Court of Appeals doesn't claim that the district court's findings are clearly erroneous.[12] Rather, the court simply ignores the fact that Al Bihani was captured in the U.S./Afghanistan conflict that the President determined was

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[11] When Al-Bihani was captured, "the Taliban was the 'Afghani government.'" *See Parhat v. Gates,* 532 F.3d 834, 845 (D.C. Cir. 2008).

[12] Nor should "uncertainty" preclude relief. Respondents bear the burden.

a separate international conflict. That approach cannot be squared with the respect owed to that Presidential interpretation of the Geneva Convention. *See, e.g., El Al Israel Airlines,* 525 U.S. at 168.

It is no answer to say that the Taliban harbored Al-Qaeda, and therefore Al-Bihani was captured in the non-international (and ongoing) conflict with Al-Qaeda. *See* 590 F.3d at 883 (Williams, J., concurring). Then-President Bush determined that there were two separate conflicts, and he knew that the Taliban had harbored Al-Qaeda. He drew the conflict distinction anyway. The Court must defer to it.[13]

d. The International Conflict Between the United States and Afghanistan Is Over.

There is no colorable argument that the *international* conflict between the U.S. and Afghanistan is ongoing. The U.S. is currently providing military support to the Karzai government in Afghanistan. To suggest that the U.S.remains in an international conflict *against* Afghanistan, an ally, is simply wrong.[14]

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[13] Judge Williams argues that the U.S. could target and capture Al-Bihani as a 55th Brigade member, 590 F.3d at 883-85 (Williams, J., concurring), though no proof of 55th membership actually existed. Unclass'd ARB:15 & n.6. (noting there was never proof, only an allegation of 55th affiliation as a cook, member or otherwise). He conflates the authority to "use force" in battle in Afghanistan in 2001, where enemies were uncertain, with the assertion of continuing authority to detain today. Targeting analysis does not address the instant claim; Petitioner challenges his continued confinement, years after the termination of the particular conflict of capture. Judge Williams acknowledges that detention authority is limited by the duration of the particular conflict of capture but he doesn't discuss Petitioner's "particular conflict" argument. *See id.* at 884 (citation omitted).

[14] Petitioner does not deny that the U.S. is currently involved in a non-international conflict in Afghanistan. He simply was not captured in that non-international conflict, and the non-international conflict therefore cannot define the duration of any legitimate confinement of him under the AUMF.

The Opinion insists that under *Ludecke v. Watkins*, 335 U.S. 160 (1948), this Court must blind itself to the undeniable termination of the international conflict in Afghanistan, because "[t]he determination of when hostilities have ceased is a political decision." 590 F.3d at 874. Yet this Court holds that courts may "refer to some public act of the political departments of the government to fix the dates [that hostilities began or terminated]." *The Protector*, 79 U.S. 700, 702 (1871). While the Court of Appeals claims that Al-Bihani asks it to "ignore" *Ludecke*, *see Al-Bihani,* 590 F.3d at 874-75, *Ludecke* cited *The Protector* with favor. *See* 335 U.S. at 168. Under *The Protector*'s approach, any number of acts of the political departments make it obvious that the international conflict between the U.S. and Afghanistan is over: the two countries have formed an alliance under which the U.S. is currently providing military assistance to the Karzai regime.

This Court explains why courts should not, in the name of deference, blind themselves to facts that are beyond question. There are cases where "clearly definable criteria for decision may be available. In such case the political question barrier falls away: '[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.'" *Baker v. Carr*, 369 U.S. 186, 214 (1962) (citation omitted). Here, the U.S./Afghanistan alliance provides a "clearly definable criteri[on]." Ignoring it, and denying the termination of the international U.S./Afghanistan conflict, leads only to "obvious mistake." In short, because "deference rests on reason, not habit," *id.* at 213, *Ludecke* provides no basis for ignoring the undisputable termination of the international conflict in Afghanistan.

2. There Is No Basis For Further Detention Because There Is No Finding That Al-Bihani Would Join Another Conflict Now That the Conflict Of Capture Is Over.

Petitioner must be released not only because the "particular conflict" in which he was captured terminated, but also because he never participated in the successor non-international conflict involving the neo-Taliban insurgency, nor have Respondents attempted to show he would do so. The district court agreed that Respondents didn't prove that Mr. Al-Bihani was Al-Qaeda or Taliban or that he harbored a "future intent to participate in Jihadist activities." JA Vol. 2:522-523. Consistent with both *Basardh v. Obama,* 612 F. Supp.2d 30, 34-35 (D.D.C. 2009) (further AUMF detention requires a determination that the detainee is likely to return to the battlefield), and the approach advocated by Professors Bradley & Goldsmith in *Congressional Authorization and the War On Terrorism*, 118 Harv. L. Rev. at 2124-25 (2005) (law-of-war requires an individualized determination of the likelihood of returning to battle in light of the open-ended nature of the current conflicts), Petitioner contends that both the "particular conflict" approach and the lack of any finding of future dangerousness require his release. Unclass'd ARB:3, 8-9.

Rather than address that argument, the Court of Appeals set up a straw man, supposing Petitioner advocates an approach where the U.S. and Afghanistan "would be commanded to constantly refresh the ranks of the fledgling [Afghan] democracy's most likely saboteurs." *Al-Bihani*, 590 F.3d at 874. Petitioner's advocacy of a future dangerousness inquiry makes plain that his approach wouldn't require "constant[]" release of the Karzai regime's "most likely saboteurs." His approach complies with the laws-of-war, accounts for the reality that the international conflict in which he was captured is over, and permits the U.S. to vindicate any legitimate interest it may have

in his continued detention by showing that he is a future danger. The Court of Appeals' approach falls short on all fronts. *Certiorari* should be granted.

II.

THE AUMF DOES NOT PERMIT DETENTION OF THOSE WHO DID NOT HARBOR THE ENTITIES WHO PLANNED THE 9/11 ATTACKS; NOR DOES RELIANCE ON NON-APPLICABLE LAWS SUPPORT SUCH AUTHORITY.

Regardless of whether international law informs interpretation of the AUMF, the appeals court's alternative holding that the AUMF authorizes detention, on its own, misinterprets the AUMF and violates the most basic and preeminent canons of statutory construction. The AUMF specifies precisely to whom it applies: those who "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons," AUMF §2(a). Thus, by the statute's plain terms, the AUMF and the concomitant war powers it grants to the Executive permit detention of those organizations or persons who harbored those responsible for the 9/11 attacks, not organizations or persons that may have assisted other organizations "harboring" those responsible before the attacks ever occurred. *See id.*

Expanding this list is impermissible as it violates well-established principles of statutory construction which require adherence to statutory text. *See, e.g., Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (courts must "presume that a legislature says in a statute what it means and means in a statute what it says there"). Moreover, reading in an additional entity against whom detention authority can be exercised violates principles of negative implication. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) (a negative inference may be drawn by exclusion of language from one statutory section that is included in another section of the same statute). Neither the panel's whole-cloth creation of its "actual and foreseeable result" test, *see Al-Bihani*, 590 F.3d at 873, nor

its misplaced reliance on laws concerning who can be charged with a war crime before a military commission, *see id.* at 871, support an expansion of detention authority in this case.

A. The AUMF Excludes From Its Ambit Those Who May Have Aided the Harborers of Al Qaeda.

The D.C. Circuit held that it is "not in dispute that the 55th Arab Brigade defended the Taliban against the Northern Alliance's efforts to oust the regime from power." *Al-Bihani*, 590 F.3d at 873. Putting aside for the moment the fact that Petitioner never conceded that he was a member of the 55th Brigade, *see* Unclassified ARB:15 & n.6 (there was never proof, only allegation of 055 affiliation), it is also undisputed that Petitioner was not a member of the Taliban. And it is similarly undisputed that the President never determined that the 55th Arab Brigade ever "harbored" Al Qaeda. *See* AUMF § 2(a) (authorizing the use of "all necessary and appropriate force against those nations, organizations, or persons [the President] determines . . . harbored [Al-Qaeda]"). And there certainly has never been a determination that a civilian cook who assisted the 055, such as Petitioner, ever independently harbored Al Qaeda. *See* JA:121-130; 655-663. Nevertheless, despite the complete disconnect between Petitioner and the terms of the AUMF, the appeals court held that the 55th Brigade falls "within the AUMF's wide ambit as an organization that harbored Al Qaeda" because "the actual and foreseeable result of the 55th's defense of the Taliban was the maintenance of Al Qaeda's safe haven in Afghanistan." *Al-Bihani*, 590 F.3d at 873.

There are several problems with this approach. To begin, no matter how "wide" the ambit of the AUMF may be, *id.*, its scope is limited by its own terms to those who (1) "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001," or (2) "harbored such organizations or persons." AUMF § 2(a). While Congress explicitly permitted the Executive to act

against those who "aided" the 9/11 attacks, it just as explicitly did not authorize force against those who may have "aided" the harborers of Al Qaeda. *See Hamdan,* 548 U.S. at 578 (a negative inference may be drawn by exclusion of language from one statutory section that is included in another section of the same statute). In other words, even assuming that the 55th Brigade's attempt to defend the Taliban against the Northern Alliance somehow indirectly aided the Taliban in its independent efforts to harbor Al Qaeda, Congress did not extend the Executive's authority beyond those who actually harbored Al Qaeda, despite its use of extremely broad language -- covering not merely those who committed the 9/11 attacks but also planners, authorizers and aiders -- in the phrase that immediately preceded its authorization of the use of force against harborers. Congress plainly would have repeated the structure from the preceding phrase if it had wished to authorize the use of force against those who "planned, authorized, ..., or aided" the harborers of Al Qaeda.

The panel's solution to this dilemma is to simply say that in aiding the Taliban, the 55th Brigade nonetheless "harbored" Al Qaeda. But this *ipsi dixit* has no basis in the district court's findings nor Respondents' shifting justifications for detention. The district court never found that the 55th harbored Al Qaeda, nor did Respondents even present any evidence that this was the case. Instead, Respondents have variously contended that "support" or "substantial support" of the Taliban is sufficient under the AUMF to warrant detention. *See* Government's Response Brief, 2009 WL 2957826 at 21. Yet Respondents nowhere explain how this position is supported by the plain terms of the AUMF.

Instead, the Court of Appeals creates out of whole cloth its "actual and foreseeable result" test for claiming that the 55th harbored Al-Qaeda. *See Al-Bihani*, 590 F.3d at 873. With no citation or analysis, the court seems to suggest a kind of quasi-conspiracy liability for harboring, minus any

proof that an unlawful agreement even exists before assuming liability. *Cf. Pinkerton v. United States*, 328 U.S. 640, 647 (1946) (requiring an agreement to engage in unlawful activity before attaching vicarious liability for acts done by others). Thus, more akin to standard negligence liability in torts, *cf. Bigby v. United States*, 188 U.S. 400, 472 (1903) (recognizing tortuous negligence as 'an act or omission causing harm which the person so acting or omitting did not intend to cause, but might and should with due diligence have foreseen and prevented' (citation omitted)), the Court of Appeals held that Petitioner's indefinite detention as a "harborer" is premised on a conclusion that was never litigated and never found by the district court: If one helps the Taliban remain in power, that person necessarily foresees that this aid assisted the Taliban in any effort it may have made to harbor Al-Qaeda. *See Al-Bihani*, 590 F.3d at 873. Not only does this approach have absolutely no basis in the AUMF, it has no factual basis either. There is absolutely no evidence that Petitioner could know his cooking for an independent militia would assist the Taliban in its efforts to protect Al-Qaeda, much less that he was even aware that the Taliban was harboring Al-Qaeda. In sum, there is no basis, factually or legally, for the appeals court's conclusion. Because its analysis it totally unmoored from the statutory language, the Court's review is necessary to provide a coherent interpretation of the AUMF, one that will provide guidance to both the lower courts and the Executive.

B. Neither the 2006 Nor the 2009 MCA Define or Broaden the AUMF's Clear Scope of Authority.

Perhaps sensing the lack of authority for Petitioner's detention in the AUMF, the Court of Appeals turns instead to the subsequent enactment of the MCA in 2006 and 2009 as detention authority, *Al-Bihani*, 590 F.3d at 872, a position Respondents never took on appeal. The court

claims that the two versions of the MCA "provided guidance on the class of persons subject to detention under the AUMF by defining 'unlawful enemy combatants' [and 'unprivileged enemy belligerents'] who can be tried by military commission." *Al-Bihani*, 590 F.3d at 872. It concludes that the definition of who can be charged with war crimes "logically covers a category of persons no narrower than is covered by its military commission authority." *Id.*

But by its own terms, the MCA is explicitly limited to "establish[ing] procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commissions." 2006 MCA sec. 3, § 948b(a); *accord* 2009 MCA §1802, § 948b(a). The MCA is silent as to the Executive's detention authority under the AUMF. It says nothing about whether the Executive can detain someone such as Petitioner who has never been, and very likely never will be, charged with a war crime before a military commission.

Indeed, the only thing Congress said in the 2006 MCA about uncharged detainees in Petitioner's position was that they had no right to challenge their detention by means of a habeas corpus petition, regardless of whether such detention was lawful under the AUMF or not, so long as the detainee had "been properly detained as an enemy combatant or is awaiting such determination." S*ee* 2006 MCA §7. But the Court repudiated that section of the MCA in *Boumediene v. Bush*, 553 U.S. at 795 (holding 2006 MCA §7 to be unconstitutional), and Congress omitted this provision entirely, as well as any other mention of uncharged detainees' detention, in the 2009 MCA. Thus, even assuming Congress meant to address AUMF detention authority in the 2006 MCA –an assumption without support, the omission of any language whatsoever concerning

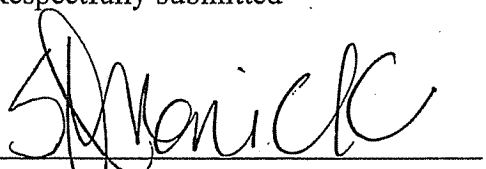
detainees not charged with war crimes in the 2009 MCA makes clear that Congress didn't intend to broaden or otherwise redefine the straightforward authorization of force in the AUMF.

A decision by Congress to broadly define who may be charged with a war crime or some other "offense triable by military commission" in a system replete with procedural protections is not inconsistent with an independent decision by Congress to limit the indefinite detention authority of the Executive for individuals who have not been, and may never be, charged with a crime. The AUMF, absent an explicit explanation or expansion of the President's war powers, must stand on its own. Contrary to the Court of Appeals' take on the MCA, it actually supports Petitioner's position. Had Congress intended to expand the scope of the AUMF, it could have done so using the very language it used in the MCA to define who could be charged with a crime before a military commission, *cf. Hamdan*, 548 U.S. at 578, but it didn't.

CONCLUSION

The Court should grant the petition.

Respectfully submitted



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