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**APPENDIX**

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued April 11, 2011

Decided June 10, 2011

No. 10-5291

HUSSAIN SALEM MOHAMMED ALMERFEDI, DETAINEE AND  
SALEM MOHAMMED SALEM ABDULLA ALMERFEDI, AS NEXT  
FRIEND OF HUSSAIN SALEM MOHAMMED ALMERFEDI,  
APPELLEES

v.

BARACK OBAMA, ET AL.,  
APPELLANTS

Appeal from the United States District Court  
for the District of Columbia  
(No. 1:05-cv-01645)

*Robert M. Loeb*, Attorney, U.S. Department of Justice, argued the cause for appellants. With him on the briefs were *Tony West*, Assistant Attorney General, *Ian Heath Gershengorn*, Deputy Assistant Attorney General and *Douglas N. Letter* and *Matthew M. Collette*, Attorneys.

*S. William Livingston* argued the cause for appellees. With him on the brief were *Jason A. Levine* and *David H. Remes*. *Judith B. Chomsky*, *Brian E. Foster*, and *Alan A. Pemberton* entered appearances.

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Before: ROGERS and KAVANAUGH, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*.

Opinion for the Court by *Senior Circuit Judge SILBERMAN*.

Opinion concurring in part and concurring in the judgment by *Circuit Judge ROGERS*.

**SILBERMAN, *Senior Circuit Judge*:** The United States appeals from the district court's decision granting Hussain Salem Mohammad Almerfedi's petition for a writ of habeas corpus. The district court concluded that the government failed to demonstrate by a preponderance of the evidence that Almerfedi was, as alleged, "part of" al Qaeda. The government contends that this conclusion was erroneous because the district court incorrectly found certain evidence unreliable, thereby improperly excluding it from consideration, and failed to give sufficient weight to the reliable evidence it did consider. We agree, and conclude as a matter of law that the government has demonstrated by a preponderance of the evidence that Almerfedi can be detained. We therefore reverse the district court's decision granting Almerfedi's petition.

I.

Almerfedi was captured in Tehran by Iranian authorities sometime after September 11, 2001. He was turned over to Afghani authorities in March 2002 as part of a prisoner exchange. Then, in May 2003, he was, in turn, transferred to Guantanamo Bay by United States forces. Little in the record indicates the circumstances of his apprehension in Iran, or his Afghan custody. The evidence the government presents to support its allegation that Almerfedi is "part of" al Qaeda comes from two sources: Almerfedi's own admissions and the statements of another Guantanamo detainee, Humoud al-Jadani.

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A Yemeni national, Almerfedi submits that he left his home of Aden, in southern Yemen, sometime in 2001 in order to seek a better life in Europe. He set out with approximately \$2,000, which he asserts he obtained by doing various menial jobs and by selling qat. Almerfedi said that he bribed a guard at the Pakistan Embassy to obtain a visa, and thereafter traveled to Lahore, Pakistan, where he stayed at the headquarters of Jama'at Tablighi, an Islamic missionary organization, which U.S. intelligence has designated a Terrorist Support Entity. That is a category of organizations that has "demonstrated intent and willingness to provide financial support to terrorist organizations," or to provide "witting operational support" to terrorist groups.

Almerfedi stayed at the Jama'at Tablighi center for two and one half months. He acknowledged that he stayed for free, paying only for food. He said that he kept to himself during this time because there were very few Arabic speakers like himself at the headquarters. He asserts that, in fact, he met only one other Arabic speaker while at the headquarters – Mohammad Ali. Ali, according to Almerfedi, offered to help Almerfedi travel to Europe by smuggling him into Iran, then to Turkey, and finally to Greece. Almerfedi accepted, paying Ali much of his life savings. They traveled from Lahore to the Iranian border, bribing border guards to cross into Iran before moving into Tehran. But then, instead of traveling towards Turkey, the two went in the opposite direction – 896 kilometers east – to Mashad, Iran, where they spent a month. They then returned to Tehran, where Almerfedi was captured by the Iranian authorities. When captured, Almerfedi admits that he still had at least \$2,000 in cash, which the Iranians confiscated.

The government contends that Almerfedi, after he had returned to Tehran from Mashad, stayed at an al Qaeda-affiliated guesthouse. To support this allegation, the government relies on

statements Almerfedi made to al-Jadani while both were at Guantanamo Bay. Al-Jadani reported that Almerfedi told him that Almerfedi was housed in a guesthouse in Tehran maintained by al Qaeda in 2002 or 2003. And al-Jadani disclosed that other, unnamed detainees had said that a "Hussain al-Adeni" was an al Qaeda facilitator who resided at a guesthouse in Tehran. The government believes that Hussain al-Adeni was the same person as Almerfedi because the *nisha*<sup>1</sup> "al-Adeni" means "from Aden," which is where Almerfedi is from. According to the government, there was only one Hussain from Aden at Guantanamo Bay.

Although Almerfedi does not contest much of the government's narrative, he disputes that he ever stayed at an al Qaeda-affiliated guesthouse in Tehran. He points out that the dates al-Jadani reports Almerfedi having been at a guesthouse in Tehran are obviously incorrect -- because it is undisputed that Almerfedi was captured by the Iranians in December 2001 or January 2002, Almerfedi could not have been at a guesthouse in 2002 or 2003.

Almerfedi, moreover, offers an innocent explanation for his travels. He says that he began his journey by proceeding through Pakistan for two reasons: he thought it would be easier for him to obtain a visa to Europe from Pakistan than from Yemen, and he wished to travel to Europe with Jama'at Tablighi in the hope that he could take advantage of the travel discounts it gives to its members, even though he admits that he was not a member of the organization and he repeatedly resisted attempts by Tablighi members to recruit him. He does not

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<sup>1</sup> A *nisha* is a secondary Arabic name that describes the occupation, descent, tribe or residence of a person. The government alternatively refers to "al-Adeni" as a *kunya*, which can be used to represent the region an individual is from.

explain how they spoke to him since he contends he spoke only Arabic, or why they permitted him to remain at the headquarters despite his continued rebuffs.

The September 11 attacks, according to Almerfedi, interfered with his plans to travel to Europe with the Jama'at Tablighi, and so he paid Ali to smuggle him to Europe. He explains that he went to Mashad because he was in Ali's control and had little independent experience with foreign travel, and stayed there because Ali remained there. After his month in Mashad – during which time Almerfedi said that he sat all day in a house rented by Ali – Almerfedi claims that he began to worry that Ali had deceived him because the two took no further steps towards Europe. After raising this concern, Almerfedi contends that he and Ali returned to Tehran, where he was arrested.

Following his detention at Guantanamo Bay, Almerfedi petitioned for a writ of habeas corpus. The government alleged that Almerfedi was “part of” al Qaeda because he served as an al Qaeda facilitator, which is why he possessed an unexplained large amount of cash at the time of his capture.<sup>2</sup> The district court granted Almerfedi's petition. It refused to consider al-Jadani's statements, finding them unreliable. The district court, however, did recognize that Almerfedi's explanations for his travels were both “perplexing” and “not . . . convincing.” Nevertheless, after reviewing all of the evidence, the court

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<sup>2</sup> As we have explained, the government may detain any individual “engaged in hostilities . . . against the United States,” who “purposefully and materially supported hostilities against the United States or its coalition partners,” or who “is part of the Taliban, al Qaeda, or associated forces.” *Al-Bihani*, 590 F.3d 866, 871-72 (D.C. Cir. 2010); see also *Hatim v. Gates*, 632 F.3d 720, 721 (D.C. Cir. 2011); *Awad v. Obama*, 608 F.3d 1, 9 n.1 (D.C. Cir. 2010).

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concluded that the government had not met its burden to show by a preponderance of the evidence that Almerfedi was “part of” al Qaeda.<sup>3</sup>

## II.

The government, on appeal, points out that the district court’s decision was issued before we decided *Al-Adahi v. Obama*, 613 F.3d 1102 (D.C. Cir. 2010), holding that district courts must not consider each piece of government evidence by itself, but rather in connection with all the other evidence. It is argued that the district court erroneously rejected al-Jadani’s statements as unreliable without considering them in light of the balance of the government’s evidence. The government also contends that the district court committed error by giving insufficient weight to the rest of the evidence – particularly the incredible nature of Almerfedi’s explanations. The government maintains that these errors are errors of law and seeks a remand to order the district court to reevaluate the evidence.

Almerfedi argues, rather persuasively, that at least as to the government’s argument concerning al-Jadani’s statement, it is really challenging the district court’s fact finding – which we can only reverse under a clear error standard. As for the remaining evidence, Almerfedi contends that the district court properly weighed it to conclude that the government had not demonstrated by a preponderance of the evidence that Almerfedi was “part of” al Qaeda.

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<sup>3</sup> The district court noted that Almerfedi had been approved for transfer from Guantanamo Bay. But whether a detainee has been cleared for release is irrelevant to whether a petitioner may be detained lawfully. *See Awad*, 608 F.3d at 11.

At oral argument, able counsel for petitioner compared the government's evidence in this case against two standards: first, the evidence the government has produced in other cases, and second, the burden of proof necessary for a criminal conviction—which is, of course, beyond a reasonable doubt. With regard to the first comparison, the government's evidence may well have been stronger in previous cases than in this case. But that is irrelevant; all of those cases were not close. *See, e.g., Esmail v. Obama*, — F.3d —, 2011 WL 1327701 (D.C. Cir. 2011); *Uthman v. Obama*, 637 F.3d 400 (D.C. Cir. 2011); *Al-Adahi*, 613 F.3d 1102; *Barhoumi v. Obama*, 609 F.3d 416 (D.C. Cir. 2010); *Awad*, 608 F.3d 1. We listed all the evidence supporting the government in those cases without needing to consider the minimum amount of evidence that would establish a preponderance.

Turning to counsel's criminal case comparison, we understand why counsel would seek to analogize a habeas case to a criminal case — in the latter situation, which is appealed after trial only by a defendant, we must ask ourselves whether the government's proof meets a strict hypothetical standard — beyond a reasonable doubt. But that is not the analytical framework called for by the preponderance of evidence standard used in civil cases, which applies to these detainee habeas corpus petitions.

The preponderance standard instead asks the court simply to “make a comparative judgment about the evidence” to determine whether a proposition is more likely true than not true based on the evidence in the record. *Lindsay v. NTSB*, 47 F.3d 1209, 1213 (D.C. Cir. 1995); *see also Concrete Pipe & Prods., Inc. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622 (1993). It does not require a court to reach a conclusion about whether that proposition is actually true; “[c]ertainty [is] not necessary, nor [is] absence of any reasonable doubt.” *Id.* In

other words, “[t]he preponderance of the evidence standard requires the party with the burden of proof to support its position [only] with the greater weight of the evidence.” *Nutraceutical Corp. v. Von Eschenbach*, 459 F.3d 1033, 1040 (10th Cir. 2006); accord *United States v. Garcia-Guizar*, 160 F.3d 511, 523 n.9 (9th Cir. 1998). See also *United States v. Montague*, 40 F.3d 1251, 1253-54 (D.C. Cir. 1994) (“The preponderance of the evidence standard generally puts evidence on an evenly balanced scale.”). That does not mean that we simply weigh, in a mechanical sense, the number of pieces of probative evidence on the government’s side against that offered by a petitioner. See *In re Winship*, 397 U.S. 358, 371 n.3 (1970) (Harlan, J., concurring). Rather, the court makes a judgment about the persuasiveness of the evidence offered by each party and decides whether it is more likely than not that the petitioner meets the detention standard.<sup>4</sup>

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A district court’s decision granting or denying a habeas petition is a mixed question of law and fact. The court’s specific factual determinations are reviewed for clear error, whereas its ultimate determination – whether a detainee’s conduct justifies detention – is a question of law reviewed *de novo*. See *Barhoumi v. Obama*, 609 F.3d 416, 423 (D.C. Cir. 2010). On review, we ask whether the evidence in the *whole* record – taking into account the premise that two unreliable pieces of information may corroborate each other, *Bensayah v. Obama*, 610 F.3d 718, 726 (D.C. Cir. 2010) – establishes that a

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<sup>4</sup> Our cases have stated that the preponderance of the evidence standard is constitutionally sufficient and have left open whether a lower standard might be adequate to satisfy the Constitution’s requirements for wartime detention. See, e.g., *Uthman*, 637 F.3d at 404 n.3.

petitioner's detainability is more likely justified than not (under *de novo* review).<sup>5</sup> As we noted, the court is never called upon to decide whether a petitioner definitively meets the detention standard – instead, it merely makes a comparative judgment about the evidence.

In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), a plurality of the Supreme Court – to be sure considering due process limitations – suggested the appropriate framework for a court's determination of the ultimate legal question whether an individual could be detained: the government must put forth credible facts demonstrating that the petitioner meets the detention standard, which is then compared to a detainee's facts and explanation. 542 U.S. at 534 (plurality opinion). The ultimate burden, under our cases, is on the government.<sup>6</sup> We have said that this *Hamdi* approach “mirrors” the preponderance standard. *Al-Bihani*, 590 F.3d at 878. This approach meets “the goal of ensuring that the errant tourist, embedded journalist, or local aid worker has a chance to prove military error while giving due regard to the Executive once it has put forth meaningful support for its conclusion that the detainee is in fact an enemy combatant.” *Hamdi*, 542 U.S. at 534 (plurality

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<sup>5</sup> That the preponderance burden governs resolution of an ultimate legal issue is not without analogy. In determining the voluntariness of a criminal confession, the government must establish voluntariness by a preponderance of the evidence. *United States v. Reed*, 522 F.3d 354, 359 (D.C. Cir. 2008). But the ultimate issue of voluntariness is a legal question that is reviewed *de novo*. *Id.* There, as here, the court must ask whether, as a matter of law, there are sufficient facts on the record to demonstrate the ultimate legal issue by a preponderance of evidence.

<sup>6</sup> The *Hamdi* plurality, however, contemplated putting the burden of proof on the detainee once the government had put forth credible evidence.

opinion). The government's evidence, then, must meet at least a certain minimum threshold of persuasiveness.<sup>7</sup> But that is worlds apart from the beyond a reasonable doubt standard as the evidence need not convince the court of the doubtless merit of the detention.

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In this case, the government seeks to satisfy its burden by deploying Almerfedi's own admissions. First, Almerfedi acknowledges that he stayed for two and a half months at Jama'at Tablighi, an Islamic missionary organization that is a Terrorist Support Entity "closely aligned" with al Qaeda. *Almerfedi v. Obama*, 725 F. Supp. 2d 18, 29 (D.D.C. 2010). He asserts he refused to join the organization and remained largely incommunicado, but he stayed there for free. Although that evidence is probative, by itself it presumably would not be sufficient to carry the government's burden because there are surely some persons associated with Jama'at Tablighi who are not affiliated with al-Qaeda. But if we add Almerfedi's travel route, which is quite at odds with his professed desire to travel

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<sup>7</sup> As an example, if the only evidence the government offered in a particular case was that a petitioner had been apprehended with an AK-47 in rural Afghanistan – which would be at least probative – it would not be sufficient to establish a basis for detention. Possession of a rifle is commonplace in Afghanistan, and therefore does not meaningfully distinguish an al Qaeda associate from an innocent civilian. But the government could satisfy its burden by showing that an individual was captured carrying an AK-47 on a route typically used by al Qaeda fighters. *Cf. Al-Odah v. United States*, 611 F.3d 8, 11, 16 (D.C. Cir. 2010) (significant that individual captured near Tora Bora in late 2001). And, of course, that a petitioner trained at an al Qaeda camp or stayed at an al Qaeda guesthouse "overwhelmingly" would carry the government's burden. *See Al-Bihani*, 590 F.3d at 873 n.2.

to Europe (and brought him closer to the Afghan border where al Qaeda was fighting), and also that he had at least \$2,000 of unexplained cash on his person when captured, notwithstanding his claim to have given that much to Ali (which was all he brought from Yemen), the government's case that Almerfedi is an al Qaeda facilitator is on firmer ground.

We conclude that all three facts, when considered together, *see Awad*, 608 F.3d at 7, are adequate to carry the government's burden of deploying "credible evidence that the habeas petitioner meets the enemy-combatant criteria," *Hamdi*, 542 U.S. at 534 (plurality opinion). We consistently have found such circumstantial evidence damning, *see Uthman*, 637 F.3d at 407 (collecting cases), and sufficient to distinguish a petitioner from the "errant tourist, embedded journalist, or local aid worker." So too here.

Almerfedi therefore must "rebut [the government's] evidence with more persuasive evidence that he falls outside the criteria." *Hamdi*, 542 U.S. at 534 (plurality opinion). He has not. He offers no evidence other than an explanation for his behavior. The district court correctly, in our view, did not credit his account. It labeled his reasons for residing with Jama'at Tablighi "not . . . convincing," concluding that Almerfedi had not explained why he stayed with Jama'at Tablighi, what he was doing during that period of time, and why he did not seek out other Arabic speakers aside from Mohammad Ali. *See Almerfedi*, 725 F. Supp. 2d at 30. And it regarded Almerfedi's explanations for traveling to Mashad as "perplexing." *Id.* at 27. The district court, however, erred by ignoring the implication of what it found to be dubious accounts because "false exculpatory statements" amount to evidence in favor of the government. *Al-Adahi*, 613 F.3d at 1107; *cf. Aka v. Wash. Hosp. Center*, 156 F.3d 1284, 1294 (D.C. Cir. 1998) ("The jury can conclude that an employer who fabricates a false explanation has something

to hide; that ‘something’ may well be discriminatory intent [– the ultimate legal issue.]”). In sum, we regard the government’s evidence, combined with Almerfedi’s incredible explanations – as satisfying the government’s burden without regard to consideration of al-Jadani’s statements.

Nevertheless, we agree with the government’s implicit argument that the district court clearly erred in regarding al-Jadani’s statements as unreliable – merely “jail house gossip.” Although this is a factual finding of the district court, it was not a credibility determination based on witness testimony. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 574-75 (1985). The district court rejected al-Jadani’s statements about Almerfedi’s direct admissions concerning Almerfedi’s time in an al-Qaeda guesthouse because al-Jadani said that Almerfedi told him that Almerfedi was in that guesthouse in 2002 and 2003, whereas he had been captured earlier than those dates. However, one of the reports of al-Jadani’s interrogations gives both an incorrect date and a correct date for Almerfedi’s capture. The other report of his interrogation gives only the correct date. The government acknowledges the discrepancy in dates, but persuasively argues that al-Jadani’s timing confusion is inconsequential. And it points out that al-Jadani’s “reliability has been established” – with support in a classified declaration.<sup>3</sup>

The district court was also unpersuaded that al-Jadani’s recounting of other detainee conversations confirmed Almerfedi’s admission because al-Jadani did not identify those

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<sup>3</sup> The government argued below that the evidence showed that al Qaeda maintained guesthouses in Tehran, which the district court noted but did not adopt as a finding. It, of course, buttresses al-Jadani’s statements. Nor did the district court “find” that al Qaeda used hotels in Mashad as way stations for fighters despite the government’s assertion. *See* Concurrence at 1.

other detainees. We think, however, it is quite understandable that al-Jadani would be reluctant to point them out to U.S. authorities. The district court also emphasized that they referred not to Almerfedi by last name, but rather only to "Hussain al-Adeni." Yet, as we noted, the phrase "al-Adeni", in Arabic, means "from Aden" – which, of course, is Almerfedi's home. Buttressing al-Jadani's credibility and that of the unnamed other detainees, al-Jadani reported to his interrogators the circumstances of "Hussain al-Adeni's" capture, which included arrest by the Iranians, transfer to the Afghans, and ultimate transfer to the Americans. These circumstances match Almerfedi's unique experiences and therefore make clear that Hussain Almerfedi and Hussain al-Adeni are the same man. (Indeed, the government maintains that there was only one Hussain from Aden at Guantanamo Bay.) That detailed description of Almerfedi's travels further indicates that al-Jadani's occasional mistakes in dates are inconsequential. Based on this evidence, we conclude that the district court clearly erred in finding unreliable al-Jadani's statements.

## III.

For the foregoing reasons we conclude as a matter of law that the district court erred in applying the preponderance standard and in finding unreliable the statements of al-Jadani. We therefore reverse and remand with instructions to the district court to deny Almerfedi's petition for a writ of habeas corpus.

*So Ordered.*

ROGERS, *Circuit Judge*, concurring in part and concurring in the judgment. I join the court in holding that the government met its burden of proof to show by a preponderance of the evidence that its detention of petitioner Hussain Almerfedi is lawful based on the evidence in the record regarding: (1) Almerfedi's two and one half month stay at the Jama'at Tablighi center in Lahore, Pakistan; (2) his eastward travel from Tehran to Mashad near the Afghan border in late 2001 or early 2002, which was 500 miles in the opposite direction of his purported destination of Greece via Turkey; (3) his possession upon his capture thereafter in Tehran of a large unexplained sum of money; and (4) undisputed evidence about the existence of Bin Laden-funded "guesthouses" in Tehran and the use of hotels in Mashad as waystations for fighters traveling to or fleeing from Afghanistan. *See generally* Maj. Op. at 10–11. Viewed together, this evidence supports a reasonable inference that Almerfedi was an al-Qaeda facilitator by the time of his capture in early 2002. Almerfedi presented no evidence that would suffice to "rebut [the government's] evidence with more persuasive evidence," *Hamdi v. Rumsfeld*, 542 U.S. 507, 534 (2004).<sup>1</sup> The district court found that Almerfedi's explanation of his travels was "not . . . a convincing explanation," *Almerfedi*

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<sup>1</sup> In connection with being approved for release from Guantanamo, Almerfedi notes in his brief that the report on his voluntary polygraph examination in 2003 stated that "it appeared he had been truthful" when he denied ever associating with al Qaeda and when he explained his reasons for leaving home in Yemen. The reliability of such evidence is not beyond doubt, *see United States v. Scheffer*, 523 U.S. 303, 309–11 & nn. 6–8 (1998), but, in any event, the report noted that Almerfedi's description of his stay at the Jama'at Tablighi center for over two months months "appeared unrealistic." Report of Polygraph Examination May 2, 2003, JA 374. Further, the determination whether to release a detainee pursuant to the Executive Order of Jan. 22, 2009 involves a different question not at issue in a habeas corpus proceeding. *See Awad v. Obama*, 608 F.3d 1, 11 (D.C. Cir. 2010).

v. *Obama*, 725 F. Supp. 2d 18, 30 (D.D.C. 2010), and was “at the very least, perplexing,” *id.* at 27. These findings are not clearly erroneous and their implications buttress the government’s “credible evidence,” *Hamdi*, 542 U.S. at 534, that Almerfedi’s behavior and travel route fit the profile of an al-Qaeda facilitator. *See* Maj. Op. at 11 (referring to false exculpatory statements).

The court, consequently, need go no further to conclude that the district court erred, under a preponderance of the evidence standard, in granting the petition for a writ of habeas corpus. But it has, Maj. Op. at 12–13, and I write separately to explain why I am unable to join the majority’s analysis of certain recorded statements by another Guantanamo detainee, Humoud al-Jadani.

Under a preponderance of the evidence standard, the district court must “determine whether a proposition is more likely true than not true based on evidence *in the record*,” Maj. Op. at 7 (emphasis added). The majority rejects the district court’s evaluation of al-Jadani’s statements based on unnamed sources as “jailhouse gossip” and “inherently unreliable,” *Almerfedi*, 725 F. Supp. 2d at 25. The district court found that the government cited no record evidence to verify that Almerfedi had been transferred to Guantanamo by the time of the first set of al-Jadani statements, *id.* at 24 n.4, or that al-Jadani was referring specifically to Almerfedi, *see id.* at 26.

The majority implies that this court owes a lesser standard of deference to the district court’s factual findings regarding al-Jadani’s statements because the district court did not make “a credibility determination based on [live] witness testimony.” Maj. Op. at 12. Our review, however, of “a district court’s factual findings [is] for clear error, regardless of whether the factual findings were based on live testimony or, as in this case,

documentary evidence.” *Awad v. Obama*, 608 F.3d 1, 6–7 (D.C. Cir. 2010). The court explained in the identical procedural context that “[a] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.” *Id.* at 7 (quoting *Boca Investeringss Partnership v. United States*, 314 F.3d 625, 629–30 (D.C. Cir. 2003)). If the district court’s factual finding is “plausible in light of the record viewed in its entirety,” this court “may not reverse” because “[w]here there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Id.* (quoting *Overby*, 595 F.3d at 1294) (omission in original).

The record evidence does not lead to a “firm conviction” that the district court’s analysis of al-Jadani’s statements was mistaken, much less implausible. The first set of statements by al-Jadani purported to recount statements by four unnamed Guantanamo detainees that someone referred to as “Hussein ((Al-Adeni))” stayed in a Tehran “guesthouse” in late 2000 into early 2001. *Almerfedi*, 725 F. Supp. 2d at 24–25. The district court found these statements were “inherently unreliable” and “jailhouse gossip” because al-Jadani did not identify the four detainees or the sources for their information, *id.* at 25. This evaluation by the district court is “plausible in light of the record,” *Awad*, 618 F.3d at 7, inasmuch as the dates these sources provided, as related by al-Jadani, are inconsistent with the date of Almerfedi’s departure from Yemen in September 2001, *Almerfedi*, 725 F. Supp. 2d at 25. The majority hypothesizes that it is “quite understandable” that al-Jadani would be reluctant to identify the four detainees. *Maj. Op.* at 13. Even if true, the district court’s finding was consistent with the proposition that a damning accusation from unidentified sources without any indication of the basis for their knowledge provides no basis to credit the accusation even if the person recounting

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the accusation is otherwise credible. *Cf. Aguilar v. Texas*, 378 U.S. 108, 113–14 (1964). And, as the district court found, the government had not verified that Almerfedí was at Guantanamo by the time al-Jadani recounted this information. *Id.* at 24 n.4. The government states for the first time in its reply brief that at the time of al-Jadani's statements Almerfedí was "the only person named Hussein from Aden at Guantanamo," Reply Br. 4 (emphasis in original).<sup>2</sup> Assuming this argument is properly before the court, *but see Khadr v. United States*, 529 F.3d 1112, 1117 (D.C. Cir. 2008), a website cited in the reply brief as support does not, as asserted, assist the government, *id.* at 14 n.2.<sup>3</sup>

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<sup>2</sup> The government also states in its reply brief that Almerfedí was the only person named "Hussein" at Guantanamo at the time. Reply Br. 4. Almerfedí's given name is "Hussain" not "Hussein." This may be a typographical error in the reply brief or both spellings may be alternative transliterations of the same Arabic name.

<sup>3</sup> The extra-record Department of Defense website (<http://www.defense.gov/news/May2006/d20060515%20List.pdf>) is a list of the detainees at Guantanamo from January 2002 through May 15, 2006, with the date and location of their birth, but not their residence prior to the time of capture. Assuming the court may take judicial notice of this document, in that its contents are "not subject to reasonable dispute" and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned," FED. R. EVID. 201, the document is of limited value. In its opening brief, the government explained that "al-Adeni" or "al-Adani" is a *kunya*, i.e., an honorific indicating the bearer is a father or mother (with a father's beginning with "Abu"), although some insurgents use a *kunya* representing the region they are from; by contrast, a *nisha* may describe the occupation, descent, tribe or residence of the person and begins with "al." Appellant's Br. 35 (citing a 2008 Defense Intelligence Agency ("DIA") report on "Names, Alias, Kunyas and Variants"). The majority rejects the government's view that "al-Adeni" is a *kunya*, concluding it is, if anything, a *nisha*. Maj. Op. at

By contrast, al-Jadani identified two sources for his information about al Qaeda guesthouses in Tehran and how those sources obtained their knowledge, specifically that the sources had themselves stayed in the guesthouses. The district court described this evidence, 725 F. Supp. 2d at 24, and in findings never rejected it, instead concluding, in effect, that assuming the existence of such guesthouses, the government had not shown by a preponderance of the evidence that Almerfedi was ever in Iran before the fall of 2001, *id.* at 25. Absent a finding to which this court could defer, our review is *de novo*. See, e.g., *United States v. Microsoft Corp.*, 147 F.3d 935, 945 n.7 (D.C. Cir. 1998). As the government notes, “the district court did not question the reliability of al-Jadani’s statements relaying information he received directly from al-Qaiti, who provided detailed — and consistent — information about the operation of al-Qaeda guesthouses in Tehran.” Pet’r’s Br. 44. Of course, the existence of the guesthouses and whether Almerfedi stayed in a such a house are two different questions; Almerfedi contests only the latter, leaving the former evidence un rebutted.

The second set of statements by al-Jadani purport to be a conversation with “Hussain al-Adeni.” *Almerfedi*, 725 F. Supp. 2d at 26 & n.6. The district court did not credit these statements because there was an insufficient basis in the record to conclude

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4. The website list of detainees indicates Almerfedi was the only Guantanamo detainee named Hussein who was born in Aden. The list, however, does not refer to the place of the detainee’s residence, and a suggestion that a *nisha* is based on place of birth would contradict the government’s evidence defining *nishas*. *But see* Maj. Op. at 4 n.1. Thus the list does not confirm that Almerfedi was the only detainee named Hussain (or Hussein) to have resided in Aden; at least two other detainees named Hussain (or Hussein) were born in Yemen.

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that al-Jadani was referring to Almerfedi and other government evidence did not corroborate al-Jadani's account, *id.* at 26–27; Maj. Op. at 13. The district court's conclusion that the statements "cannot be credited" and are "unreliable," *Almerfedi*, 725 F. Supp. 2d at 27, is at least "plausible in light of the record," *Awad*, 608 F.3d at 7. To the extent the majority suggests that the circumstances of al-Adeni's capture seem to match those of Almerfedi (who was arrested by Iran, transferred to Afghan custody, and then transferred to U.S. custody) and posits this path was "unique," Maj. Op. at 13, the government neither makes such a claim nor points to record evidence that would undermine the district court's conclusion that the coincidence of paths "add[s] little" to the government's case that Almerfedi stayed in Tehran guesthouses, *Almerfedi*, 725 F. Supp. 2d at 27, much less to show that this evaluation was not plausible.

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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 10-5291**

**September Term, 2010**  
FILED ON: JUNE 10, 2011

HUSSAIN SALEM MOHAMMED ALMERFEDI, DETAINEE AND SALEM MOHAMMED SALEM ABDULLA  
ALMERFEDI, AS NEXT FRIEND OF HUSSAIN SALEM MOHAMMED ALMERFEDI,  
APPELLEES

v.

BARACK OBAMA, ET AL.,  
APPELLANTS

Appeal from the United States District Court  
for the District of Columbia  
(No. 1:05-cv-01645)

Before: ROGERS and KAVANAUGH, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*

**JUDGMENT**

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

**ORDERED and ADJUDGED** that the judgment of the District Court appealed from in this cause is hereby reversed and the case is remanded with instructions to the District Court to deny Almerfedi's petition for writ of habeas corpus, in accordance with the opinion of the court filed herein this date.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY:  
/s/  
Jennifer M. Clark  
Deputy Clerk

Date: June 10, 2011

Opinion for the court filed by Senior Circuit Judge Silberman.  
Concurring opinion filed by Judge Rogers.



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association with al Qaeda or other terrorist groups and maintains that his association with Jama'at al-Tablighi was innocent.

In order to determine whether petitioner's detention is lawful, the Court has carefully considered the documents admitted in evidence, the extensive legal briefs submitted by the parties, and the arguments presented by counsel at the three day Merits Hearing held on March 3, 4 and 5, 2010. At the beginning of the Merits Hearing, petitioner listened by telephone to the unclassified opening statements presented by his counsel and by government counsel. Thereafter, the proceedings were closed. Counsel presented no witnesses at the Merits Hearing, but relied exclusively on documentary evidence and the inferences they asked the Court to draw from the evidence. Based on the evidence and the arguments presented, the Court finds that the government has not met its burden to show by a preponderance of the evidence that it has legal authority to detain the petitioner. Accordingly, the Court will grant the petition for *habeas corpus*.

## I. BACKGROUND

### A. Procedural History

Petitioner filed his petition for a writ of *habeas corpus* on August 16, 2005. Shortly thereafter, this case was stayed pending resolution of the question whether this Court has jurisdiction over *habeas* petitions filed by Guantanamo detainees. After extensive litigation regarding these *habeas* petitions, the Supreme Court's 2008 decision in Boumediene v. Bush finally made clear that this Court does have jurisdiction to consider *habeas* petitions from detainees held at Guantanamo Bay, and advised the judges of the Court that "[t]he detainees in

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these cases are entitled to a prompt *habeas corpus* hearing.” Boumediene v. Bush, 553 U.S. 723, \_\_\_, 128 S. Ct. 2229, 2275 (2008). Following the Boumediene decision, the undersigned and most of the other judges of this Court agreed to consolidate their Guantanamo Bay *habeas* cases before former Chief Judge Thomas F. Hogan for coordination and management. Judge Hogan issued numerous invaluable decisions that established a procedural framework for these unique cases. The individual judges retained the cases for resolution of the merits of the *habeas* petitions.

Decisions of the Supreme Court and the D.C. Circuit have made plain that the government bears the burden of establishing that a Guantanamo detainee’s detention is lawful, and it must do so by a preponderance of the evidence. See Boumediene v. Bush, 553 U.S. at \_\_\_, 128 S. Ct. at 2229; Awad v. Obama, No. 09-5351, slip op. at 18 (D.C. Cir. June 2, 2010); Al-Bihani v. Obama, 590 F.3d 866, 878 (D.C. Cir. 2010); see also In re Guantanamo Bay Detainee Litig., Misc. No. 08-0442, CMO § IIA, 2008 WL 4858241 (D.D.C. Nov. 6, 2008). The petitioner need not prove his innocence or that his detention is unlawful. See Al Mutairi v. United States, 644 F. Supp. 2d 78, 86 (D.D.C. 2009). Rather, the government must prove that it is more probable than not that he was part of or substantially supported the Taliban or al Qaeda. See Al Odah v. United States, No. 09-5331, slip op. at 10 (D.C. Cir. June 30, 2010) (preponderance of the evidence standard is constitutional in evaluating a *habeas* petition from Guantanamo Bay detainee).

The Supreme Court’s decision in Boumediene left open the scope of the government’s detention authority. See Boumediene v. Bush, 553 U.S. at \_\_\_, 129 S. Ct. at 2240.

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In its wake, judges of this Court have issued numerous thoughtful opinions addressing the scope of the government's legal detention authority. *See, e.g., Ghorebi v. Obama*, 609 F. Supp. 2d 43, 62-71 (D.D.C. 2009); *Hamlijly v. Obama*, 616 F. Supp. 2d 63, 68-77 (D.D.C. 2009). The court of appeals recently resolved some of the different approaches taken by the judges of this Court in its decision in *Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010). The court concluded that the government could lawfully detain "an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners," or "an individual [who] 'substantially support[s]' enemy forces." *Id.* at 872. This two-pronged definition — both membership and substantial support — includes "those who are part of al Qaeda or the Taliban or those who purposefully and materially support such forces in hostilities against U.S. Coalition partners." *Id.* The court of appeals concluded that "both prongs are valid criteria that are independently sufficient" to justify detention. *Id.* at 874.<sup>1</sup>

The government filed an amended Factual Return in this case on October 29, 2008. Petitioner filed a Traverse on May 29, 2009. The parties engaged in discovery and motions practice both before and after the filing of the Traverse. On August 5, 2009, over petitioner's objection, the Court granted the government's motion to stay the case on the ground that petitioner had been approved for transfer from Guantanamo Bay. *See Sealed Memorandum Opinion and Order*, Dkt. No. 183 (Aug. 5, 2009). The government was unable to secure

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<sup>1</sup> Because the Court concludes that the government has not shown by a preponderance of the evidence that petitioner had any association with or provided any support to al Qaeda, it need not address the question of what level of involvement and intent is necessary before someone is determined to be a part of or to substantially support a terrorist organization.

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petitioner's transfer by December 1, 2009, however, and the Court then lifted the stay and set a schedule for briefing on the merits and a Merits Hearing. The Court thereafter ordered the government to provide petitioner with additional discovery. The government was unable to complete production of this discovery by the date of the Merits Hearing, but petitioner decided to proceed with the Merits Hearing even though the discovery to which he was entitled had not been fully produced.

Prior to the Merits Hearing, the Court issued an Order stating that it would admit hearsay evidence, as required by the court of appeals' decision in Al-Bihani. See Almerfedi v. Obama, Civil Action No. 05-1645, 2010 U.S. Dist. LEXIS 17706 at \*2 (D.D.C. Mar. 1, 2010). See also Al Odah v. United States, slip op. at 11 (hearsay evidence is admissible if it is reliable). The Court explained that it would accord any evidence that had been created and maintained in the ordinary course of business a rebuttable presumption of authenticity. See Almerfedi v. Obama, 2010 U.S. Dist. LEXIS 17706 at \*2. But the Court denied the government's request to give such evidence a presumption of accuracy. It stated that instead it would "consider the accuracy, reliability, and credibility of all of the evidence presented on a case-by-case basis in the context of the evidence as a whole and the arguments presented by counsel during the merits hearing. . . . The proponent of any piece of evidence must establish its accuracy, reliability, and credibility." See id. at \*3.

### III. DISCUSSION

The government argues that petitioner is detained lawfully because he was part of al Qaeda. More specifically, the government asserts that petitioner was an al Qaeda facilitator

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who frequented al Qaeda guesthouses in Iran [REDACTED] and helped fighters infiltrate Afghanistan from Iran to fight against coalition forces. The government also asserts that petitioner's active association with Jama'at al-Tablighi — an Islamic missionary organization that the government says provides logistical support and operational coverage to terrorist organizations — further justifies petitioner's lawful detention.

The government urges the Court to view the legality of petitioner's detention by looking at the totality of the evidence, which the Court has done. The Court has "evaluate[d] the raw evidence" to determine whether it is "sufficiently reliable and sufficiently probative to demonstrate the truth of the asserted proposition with the requisite degree of certainty." Bensayah v. Obama, No. 08-5537, slip op. at 13 (D.C. Cir. June 28, 2010) (quoting Parhat v. Gates, 532 F.3d 834, 847 (D.C. Cir 2008)). When individual pieces of evidence are unreliable, however, the Court has not presumed their contents to be true in order to buttress the presumed accuracy of other flawed evidence. See, e.g., Al-Adahi v. Obama, Memorandum Opinion, Civil Action No. 05-0280, 2009 U.S. Dist. LEXIS 75108 at \*17-18 (D.D.C. Aug. 21, 2009).

#### *A. Petitioner's Version of Events*

Petitioner was born in Yemen in 1977. See Joint Exhibit ("JE") 76, Declaration of Hussain Salem Mohammad Almerfedi ("Almerfedi Decl.") ¶ 2. According to petitioner, he lived with his parents in Aden, a city in southern Yemen, until September 2001. See id. ¶¶ 2, 8. Petitioner's family is poor. See id. ¶ 4. While in Yemen, petitioner held a series of odd jobs. See id. ¶ 5.

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Petitioner claims that he wanted to leave Yemen and travel to Europe in order to find freedom, tolerance, and opportunity and to make a better life for himself. See Almerfedi Decl. ¶ 8; see also JE 9, FBI 302 of May 27, 2003 Interrogation of Petitioner ("FBI 302") at 1; JE 11, Criminal Investigation Task Force Summary of December 1, 2003 Interview of Petitioner ("CIT Summary"). Petitioner explained that it would have been difficult for him to obtain a European visa while in Yemen. See Almerfedi Decl. ¶ 9; FBI 302 at 2. His plan, as he explains it, was to travel from Yemen to Pakistan, a trip that was relatively inexpensive and easy to make, and then to associate himself with the Islamic missionary group Jama'at al-Tablighi ("JT"), which he hoped would fund and facilitate a missionary trip for him to Europe. See Almerfedi Decl. ¶ 10; FBI 302 at 2; CIT Summary.

According to petitioner, he flew from Sana'a, Yemen, to Karachi, Pakistan in early September 2001. See Almerfedi Decl. ¶ 9; FBI 302 at 2. He stayed in Karachi for approximately four days before traveling to Lahore, Pakistan. See Almerfedi Decl. ¶ 16; FBI 302 at 2; CIT Summary. Upon arriving in Lahore, petitioner went to the JT headquarters, where he stayed for approximately two and one half months. See Almerfedi Decl. ¶¶ 18, 21; FBI 302 at 2-3. Petitioner's plans for traveling to Europe with JT were derailed by the September 11, 2001 attacks on the United States. See Almerfedi Decl. ¶¶ 15, 22.

Petitioner states that while at the JT headquarters in Lahore he associated with a man [REDACTED]. See Almerfedi Decl. ¶ 18; FBI 302 at 2-3; CIT Summary. Petitioner explains that he paid [REDACTED] to smuggle him to Greece via Iran and Turkey. See Almerfedi Decl. ¶ 22; FBI 302 at 3; CIT Summary. According to petitioner, [REDACTED] smuggled

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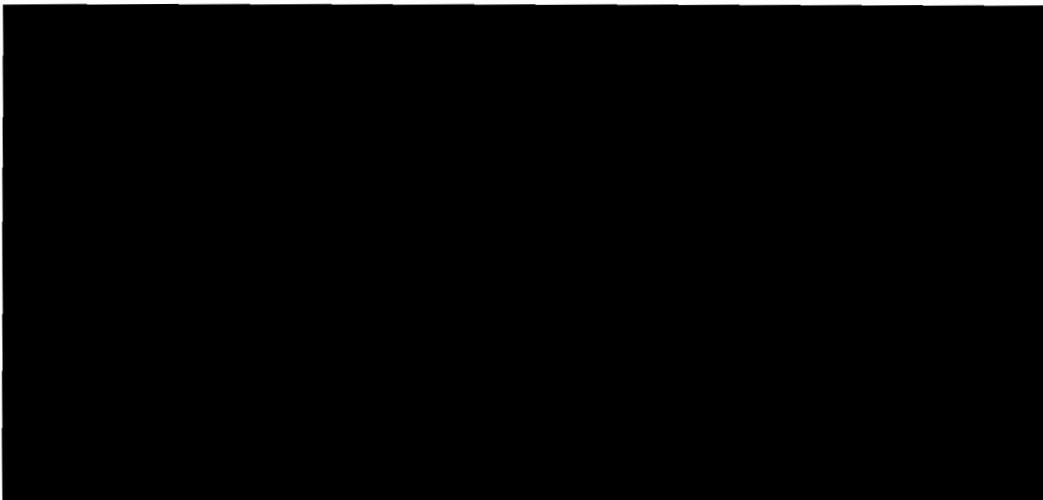
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petitioner over the border into Iran in November 2001. See Almerfedl Decl. ¶¶ 23, 24; FBI 302 at 3. They traveled to Tehran and then on to Mashad, a city in Northeast Iran near the Afghanistan border. See Almerfedl Decl. ¶ 25; FBI 302 at 3. Petitioner states that he remained in Mashad with [REDACTED] for about one month, without taking any further steps towards continuing on his journey to Europe. See Almerfedl Decl. ¶ 26; FBI 302 at 3. Petitioner further states that he and [REDACTED] eventually traveled back to Tehran in December 2001 or January 2002 where petitioner was immediately arrested by the Iranian police. See Almerfedl Decl. ¶ 27; FBI 302 at 3-4; CIT Summary. Petitioner has been in custody ever since, held first by the Iranians, then for almost a year in Afghanistan, and finally, since 2003, by the United States. See Almerfedl Decl. ¶¶ 32, 33.

*B. Al Qaeda Guesthouses in Iran; Petitioner as Al Qaeda Facilitator*

As explained by the government, a network of guesthouses exists in Iran and Afghanistan, among other countries, which are used by al Qaeda as part of its terrorist mission.

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The Court notes that all of the government's background information regarding al Qaeda guesthouses and their functions, including [REDACTED] declaration of [REDACTED] of the Defense Intelligence Agency, see JE 4, relates to guesthouses in Afghanistan or Pakistan, and does not specifically describe or discuss guesthouses in Iran. Neither party has presented the Court with any evidence of whether al Qaeda guesthouses in Iran are like or unlike those in Afghanistan and Pakistan.<sup>2</sup>

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<sup>2</sup> The court of appeals noted in Al-Bihani that "evidence supporting the military's reasonable belief of [visiting al Qaeda guesthouses in Afghanistan] with respect to a non-citizen seized abroad during the ongoing war on terror would seem to overwhelmingly, if not definitively, justify the government's detention of such a non-citizen." Al-Bihani v. Obama, 590 F.3d at 873 n. 2. While proof that an individual stayed at an al Qaeda affiliated guesthouse in Afghanistan or Pakistan, in the context of the facts and circumstances offered in evidence, may suggest that that person is a part of or substantially supports al Qaeda, the government has not proven that the word "guesthouse" is a term of art such that its use would always imply an al Qaeda affiliation. This uncertainty about the use of the word "guesthouse" is all the greater given the significant complications caused by Arabic translation. See JE 85, Declaration of Karen C. Ryding, Ph.D., Concerning Arabic Interpretation Issues. In addition, the government has not offered any evidence to show that a guesthouse in Iran is run in the same manner or serves the same function as the Afghani or Pakistani guesthouses described by [REDACTED]

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The Court, however, need not resolve the difficult question whether proof that petitioner frequented Iranian guesthouses by itself would be adequate to justify his detention, because, as explained below, it finds that the government has not shown by a preponderance of the evidence that petitioner ever stayed in an Iranian guesthouse, let alone one run by or affiliated with al Qaeda.

The government's direct evidence that petitioner stayed in al Qaeda-sponsored guesthouses in Iran and from there was a facilitator for foreign fighters entering Afghanistan is comprised entirely of statements made by one other detainee at Guantanamo Bay — al-Jadani (ISN 230). Much of the government's case, therefore, turns on whether ISN 230 is a reliable source and whether the intelligence documents before the Court are reliable representations of his statements or his knowledge. The parties have presented extensive evidence about the general reliability of ISN 230 and about the credibility of reports created by his interrogator. Rather than draw a general conclusion as to the credibility of ISN 230 as a witness, the Court has examined in detail each of the six reports relied upon by the government to determine whether the particular information contained in each should be credited.

An additional wrinkle presents itself in the Court's evaluation of the utility of these intelligence reports. When ISN 230 refers to the man the government identifies as petitioner, he typically refers to him as "Hussain Al-Adeni." The government argues that the Court should treat this name as synonymous with petitioner. Deciding to do so is not a straightforward conclusion, however. Arabic names often include "nishas," a secondary name derived from a person's home region or city. See JE 6, Declaration of [REDACTED]

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<sup>3</sup> ██████████ *Names, Alisas, Kuryas and Variants* at 2-3. Thus, for example, many people from Aden, petitioner's home city, might go by the name "Al-Adeni." Hussain is, of course, petitioner's first name. At times ISN 230 states that the Al Adeni to whom he refers is detained at Guantanamo. See JE 20. Even though it is possible that ISN 230 was referring to petitioner when he described the actions of "Hussain Al Adeni," the Court cannot be certain of this conclusion. Hussain is a very common name, and "Al-Adeni" could refer to any man from the city of Aden.<sup>3</sup> There is no evidence that ISN 230 was ever shown photographs of petitioner or that ISN 230 and petitioner knew each other prior to their detention at Guantanamo. Nor has the government presented evidence that petitioner referred to himself as "Al-Adeni" or that anyone else did so. While the Court will not discount entirely the documents in which ISN 230 refers to Al-Adeni, it cannot without further corroboration be certain that they refer to petitioner. See *Mishal v. United States*, 644 F. Supp. 2d 78, 96 (D.D.C. 2009) (finding identification of detainee unreliable because source referred to detainee by a different name).

#### 1. The First Set of Intelligence Reports

The first document on which the government relies is a summary interrogation report ("SIR") of a <sup>2</sup> ██████████ interrogation of ISN 230. In that summary, ISN 230 is reported to have said that another detainee, Hamza Al-Gaetti (or Al-Qaiti), told him that in December 2001 Al-Gaetti and others were traveling back and forth from Afghanistan to a guesthouse in Tehran. See JE 18 at 1. ISN 230 also told his interrogator that, according to a group of unnamed

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<sup>3</sup> For example, a man named Marwan Al-Adeni is reported to have supervised one of the guesthouses in Tehran. See JE 28 at 1.

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detainees who arrived in Guantanamo in 2004, people staying in the Tehran guesthouse were facilitators for al Qaeda fighters going into Konar, Afghanistan. See id. According to this group of detainees, both Tolfiq Nassar Ahmed Al-Bihani (ISN 893) and "Hussein ((Al-Adeni)), an Al-Qaida facilitator" were staying at the guesthouse. Id.

The second document relied upon by the government is a summary of a<sup>2</sup> [REDACTED] [REDACTED] interrogation of ISN 230, which contains similar information. According to that summary, the unnamed group of detainees who arrived in Guantanamo in 2004 reportedly told ISN 230 that "those in residence at the guesthouse [in Tehran] were facilitators for Mujahideen going into Konar, Af. Detainee (SA-893 ((Al-Bihani)) Tolfiq Nassar Ahmed) and Hussein ((Al-Adeni)), an Al-Qaida facilitator, lived at the guesthouse in Tehran, Ir." JE 17 at 1.

The third document relied upon by the government is an<sup>2</sup> [REDACTED] summary of an interrogation of ISN 230. It also reports that ISN 230 said that "Hamza Al Gayetti and Abu Hassan traveled to Iran together and founded two small guesthouses in Tehran. They had two people at the guesthouses who are now here at Gtmo: ISN 893 and Hussain Al Adani, who is in [REDACTED] JE 20 at 1.<sup>4</sup> The source for his information is not identified. See id.

Each of the three documents just discussed is a summary of an interview of ISN 230. These "summary interrogation reports" ("SIRs")<sup>1</sup> [REDACTED]  
[REDACTED]  
[REDACTED]<sup>1</sup> [REDACTED] See JE 47, Declaration of

<sup>4</sup> Neither petitioner nor the government has verified whether or not petitioner was, in fact, in [REDACTED] in Guantanamo at the time of this interrogation.

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<sup>3</sup> [REDACTED] (Sept. 19, 2008) at 7; JE 71, Declaration of <sup>3</sup> [REDACTED] Decl.”) ¶ 6. The final document in this group relied upon by the government is not an SIR but an “intelligence information report” (“IIR”). An IIR is a report written if an intelligence official determines that sufficient useful intelligence has been derived from human intelligence; it generally is to be disseminated more widely in the intelligence community than SIRs and synthesizes information from one or more SIRs. See JE 47 at 6-7.

The <sup>2</sup> [REDACTED] IIR relied upon by the government contains virtually the same information that is contained in the three SIR’s, except that for the first time ISN 230 purportedly provides dates for petitioner’s alleged activities, stating that Al Adeni lived at the Tehran guesthouse from late 2000 into early 2001. See JE 26. These dates do not appear in any of the SIRs produced for the earlier interrogations of ISN 230. In fact, this is the only document presented to the Court that places petitioner in Iran before the Fall of 2001. Assuming that ISN 230 actually made the statement about these dates, it must have been during an interrogation for which the government has not produced a summary contemporaneously prepared by the interrogator. The Court would have more confidence in the accuracy of the statements contained in this IIR if it had access to all of the underlying documents from which it was produced or if there was any evidence in the record to corroborate them. Cf. [REDACTED] Decl. ¶ 7 [REDACTED] interviewed ISN 230 approximately 100 times).

The Court finds these four intelligence documents inherently unreliable. The only source identified for ISN 230’s information about petitioner is an unnamed group of detainees who arrived in Guantanamo in 2004. Not only does ISN 230 not identify who they are, but there

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is no information provided about the source or sources of the group's information. It could be based on personal knowledge, hearsay, multiple hearsay, or rumor. Although hearsay evidence is admissible in these proceedings, the Court still must determine whether the hearsay statements are accurate, reliable and credible. Information that came from an unnamed group of detainees, for which the original source cannot be pinpointed, amounts to no more than jailhouse gossip, if that, and cannot serve as the basis for petitioner's detention. The Court will not credit any of these four documents.

In any event, the government has not shown by a preponderance of the evidence that the petitioner was ever in Iran before the Fall of 2001, so it is most unlikely that petitioner could have been in a guesthouse in Tehran in 2000 or early 2001. While the government points out that petitioner has not produced any evidence corroborating his assertion that he did not leave Yemen until early September 2001 and did not arrive in Iran until November 2001, information which does seem obtainable, the government has not produced any evidence to the contrary — other than the unreliable IIR that purports to place petitioner in Iran prior to November 2001.<sup>5</sup> And, it must be remembered, the burden of proof is on the government throughout these proceedings.

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## 2. Two Additional Intelligence Documents

The Court now turns to two additional intelligence documents relied on by the government and derived from later interrogations. In each of these documents, ISN 230 purports to be relaying information that he learned directly from petitioner. To support the reliability of these documents, the government points out that from October 2003 through June 2004 ISN 230 was housed in the same cell block as was petitioner, and that in April and May of 2006 they shared the same recreation yard. See JE 73, Declaration of <sup>3</sup> [REDACTED] ¶¶ 3-5. The government argues that this proximity enabled ISN 230 to speak directly with petitioner and that the Court therefore should credit the information that ISN 230 says he learned from petitioner. In addition, because the statements purportedly made by petitioner to ISN 230 concern the same matters that were the subject of the hearsay statements in the four documents discussed in Part III.B.1, the government attempts through these additional documents to bolster the reliability and trustworthiness of the others.

In a September 22, 2006 summary of interrogation report, ISN 230 is reported to have said that he had the opportunity to speak with Hussain Al-Adeni, who told ISN 230 that he had been housed in a guesthouse in Tehran and that there were two guesthouses in Tehran, one of which was supervised by Hamza Al-Qaiti. See JE 19 at 1. There is other information about this guesthouse reported in the SIR, but ISN 230 does not suggest that petitioner was the source for this additional information.<sup>6</sup>

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<sup>6</sup> The government points out that by September 2006, when this SIR was prepared, ISN 230 knew the circumstances of petitioner's capture — he reported to the interrogator that Hussain Al-Adeni was captured in Iran, that later that year he was returned to the Afghans, and

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An<sup>2</sup> [REDACTED] IIR based on interrogations of ISN 230 reports that ISN 230 told his interrogator that “according to detainees SA-893, Tolfiq Nassar Ahmed ((Al-Bihani)), and YM-1015, Hussein Salem ((Mohammed)), there were two guesthouses in Tehran. . . . Hamza Al-Qaiti supervised the second guesthouse . . . According to detainees SA-893 and YM-1015, Al-Qaiti received money from Bin Laden for the maintenance of both guesthouses. . . . Sometime during 2002 and 2003, SA-893, Tolfiq Nassar Ahmed ((Al-Bihani)), and YM-1015, Hussein Salem ((Mohammed)), lived in the second guesthouse for lower ranking fighters.” JE 28 at 1.<sup>7</sup> This IIR also states: “In approximately 2002, YM-1015 was captured in IR . . . Later in 2002, YM-1015 was returned to the Afghans and the Afghans turned YM-1015 over to the Americans.” *Id.* at 2. ISN 230 did not describe petitioner as a “facilitator” in either of these reports.

Although these documents do not suffer from the same hearsay problems as do the first four intelligence reports, there are other reasons to question their accuracy and reliability. Only in the<sup>2</sup> [REDACTED] IIR is it stated that ISN 230 ever referred to petitioner by his given name, but in this report he states that petitioner was in the Tehran guesthouse during 2002 and 2003. It was, however, virtually impossible for petitioner to have been in a Tehran guesthouse during those years. It is undisputed that the Iranian authorities arrested him in either December

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that the Afghans turned Al-Adeni over to the Americans — which corroborates the government’s argument that references to Hussain Al-Adeni are references to the petitioner. *See* JE 19 at 1. On the other hand, ISN 230 misreports the date that petitioner arrived in Guantanamo as 2002, when in fact it was 2003. *See id.*

<sup>7</sup> YM-1015 is petitioner.

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2001 or January 2002 and that he has been in custody ever since. Indeed, in a later paragraph of the same IIR, ISN 230 is said to have reported that YM-1015 was captured in Iran in 2002 and then, "later in 2002," he was returned to the Afghans and ultimately turned over to the Americans. *Id.* at 2. See also JE 34 at 1 (interrogation notes of petitioner interview stating that petitioner was captured in Tehran in January 2002); JE 50 at 5 (intelligence summary stating that detainee identified by government as petitioner was arrested in Tehran in December 2001). While the Court will accept the government's suggestions that ISN 230 simply was mistaken when he mentioned calendar year 2003, or that his interrogator misreported what he said, or that the person who synthesized various SIR's summarized them inaccurately, this mistake raises additional questions about the credibility of ISN 230 or the reliability of the interrogator or other government personnel.

In any event, that leaves the government to argue only that petitioner could have been in a Tehran guesthouse "for a portion of 2002" see Transcript of Merits Hearing at 57 (Mar. 3, 2010) -- in other words, during the month of January 2002. This one-month window is a slender reed on which to base the argument that these two documents support petitioner's detention. The government essentially urges the Court to accept as true only the information in these interrogation documents that supports petitioner's detention, while discounting information that conflicts with its theory for detention.

In addition, the <sup>2</sup> [REDACTED] IIR attributes the information provided by ISN 230 to statements allegedly jointly or separately made to him by petitioner and by SA-893, Al-Bihani. But Al-Bihani's own statements under oath are inconsistent with what ISN 230

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reports that Al-Bihani and petitioner allegedly told him about their stay in Iranian guesthouses in 2002 and perhaps 2003. Significant doubt exists as to whether ISN 893 was ever in a Tehran guesthouse, or certainly that he was in one at the same time as petitioner. See JE 91, Declaration of Toffiq al Bihani ¶ 28 (stating that he was arrested almost immediately after crossing the border into Iran within the weeks or months after September 11, 2001); JE 92 at 2 (intelligence report of FBI interrogation in which Al-Bihani denies being in Iran prior to 2002). Al-Bihani's statements that he was in a Tehran guesthouse in 2000, JE 52, and in a [REDACTED] guesthouse after September 11, 2001, JE 53, hardly support the government's theory that he and petitioner stayed together in a Tehran guesthouse in 2002 or possibly 2003.

The documents just discussed are the government's only direct evidence that petitioner stayed in al Qaeda guesthouses in Tehran in 2002. For the reasons just explained, however, they cannot be credited.

The government has identified other evidence that it maintains corroborates ISN 230's statements. Specifically, it points out that petitioner admitted to being in Iran in late 2001 or early 2002. See Almerfedi Decl. ¶¶ 25, 27. It notes that ISN 893, Al-Bihani, stated that he was in the same prisoner exchange between Iran and Afghanistan in mid-March 2002 as Hussain Al-Adeni, which the government argues would put Al-Bihani in Iran at the same time as petitioner. See JE 30 at 1. ISN 893 also has admitted to meeting with Hamza Al-Qaiti, which the government says provides some corroboration for ISN 230's statements that ISN 893 stayed in Al-Qaiti's guesthouses in Tehran with petitioner. See JE 53 at 2. Furthermore, as the government correctly points out, petitioner's story that he stayed in Mashad, Iran for one month

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without making any additional effort to continue his journey to Europe is, at the very least, perplexing. Mashad is much closer to the border with Afghanistan than it is to the border with Turkey. On the other hand, petitioner has consistently asserted that he was in the control of Muhammad Ali, he did not speak Farsi, and he had little experience with foreign travel, much less with illegal border crossings. Unfortunately for the government -- which bears the burden of proof in these proceedings -- these snippets of circumstantial or "corroborating" evidence add little to the government's unreliable direct evidence that petitioner stayed in Tehran guesthouses in 2002, or, indeed, at any time.

### 3. Was Petitioner an Al Qaeda Facilitator?

As for the government's contention that petitioner was an al Qaeda facilitator in Iran helping fighters infiltrate Afghanistan, the government has provided no direct or persuasive circumstantial evidence other than petitioner's alleged association with Iranian guesthouses and the description of petitioner as a "facilitator" in the unreliable documents discussed in Part III.B.1. If petitioner had been a "facilitator" for al Qaeda, other witnesses likely would have known about it and would have been able to testify about his work for al Qaeda. The government has presented no such evidence, no evidence of petitioner's motive, no evidence that he had any history of anti-western or pro-al Qaeda beliefs, and no evidence that he associated with those who advocated such beliefs. Nor is there any evidence that petitioner, who is uneducated, is a sophisticated traveler or document forger -- skills that likely would be necessary for al Qaeda facilitators. Furthermore, it is implausible that al Qaeda would post petitioner to a

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guesthouse in Tehran, because it is undisputed that he does not speak Farsi.<sup>8</sup> Most importantly, having failed to prove that petitioner stayed at al Qaeda guesthouses in Iran in 2000 and early 2001, the argument that he facilitated the movement of foreign fighters into Afghanistan while residing in such guesthouses during that period falls of its own weight.<sup>9</sup>

A handful of interrogation reports, based upon at least one, and frequently numerous levels of hearsay, which may not even be referring to petitioner, which report implausible allegations alongside a few arguably incriminating ones, and which are not supported by significant additional corroborating evidence, do not show by a preponderance of the evidence that petitioner stayed in a Tehran guesthouse, much less that he was a facilitator for al Qaeda.



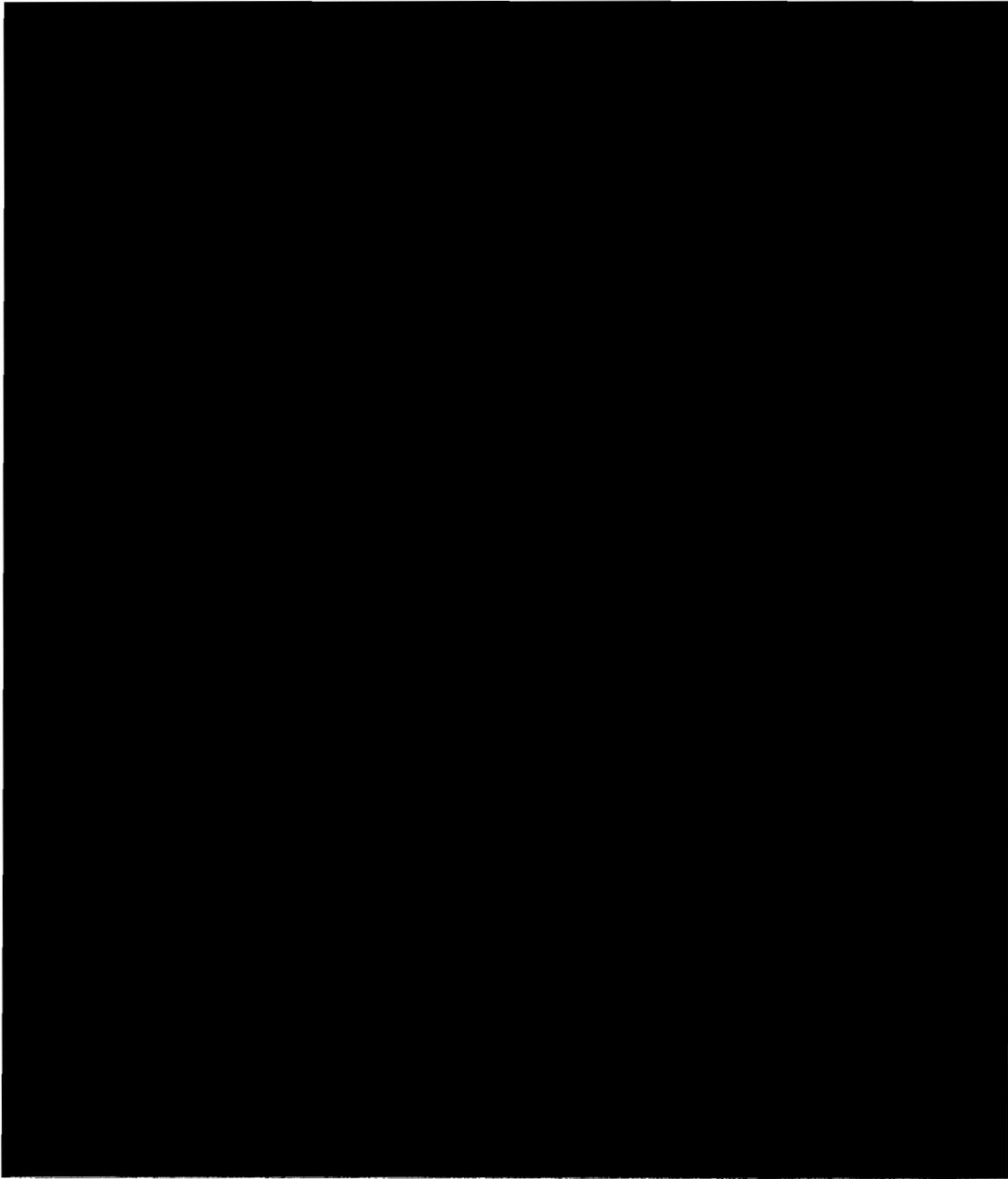
<sup>8</sup> The government makes much of the fact that petitioner was carrying a significant amount of cash when he was arrested in Tehran, but he explained that he had saved the money for years in order to finance his immigration to Europe. The parties dispute the amount of cash that petitioner would have had at the time he was captured if it were his own savings and not al Qaeda funds, but this dispute does not aid the Court in its resolution of this issue.

<sup>9</sup> The government's argument that petitioner was an al Qaeda facilitator is even weaker with respect to its assertions that petitioner also stayed in al Qaeda guesthouses in Iran in 2002 and (perhaps) 2003. Neither the September 22, 2006 SIR nor the <sup>2</sup> [REDACTED] SIR describe petitioner as a facilitator during this period.

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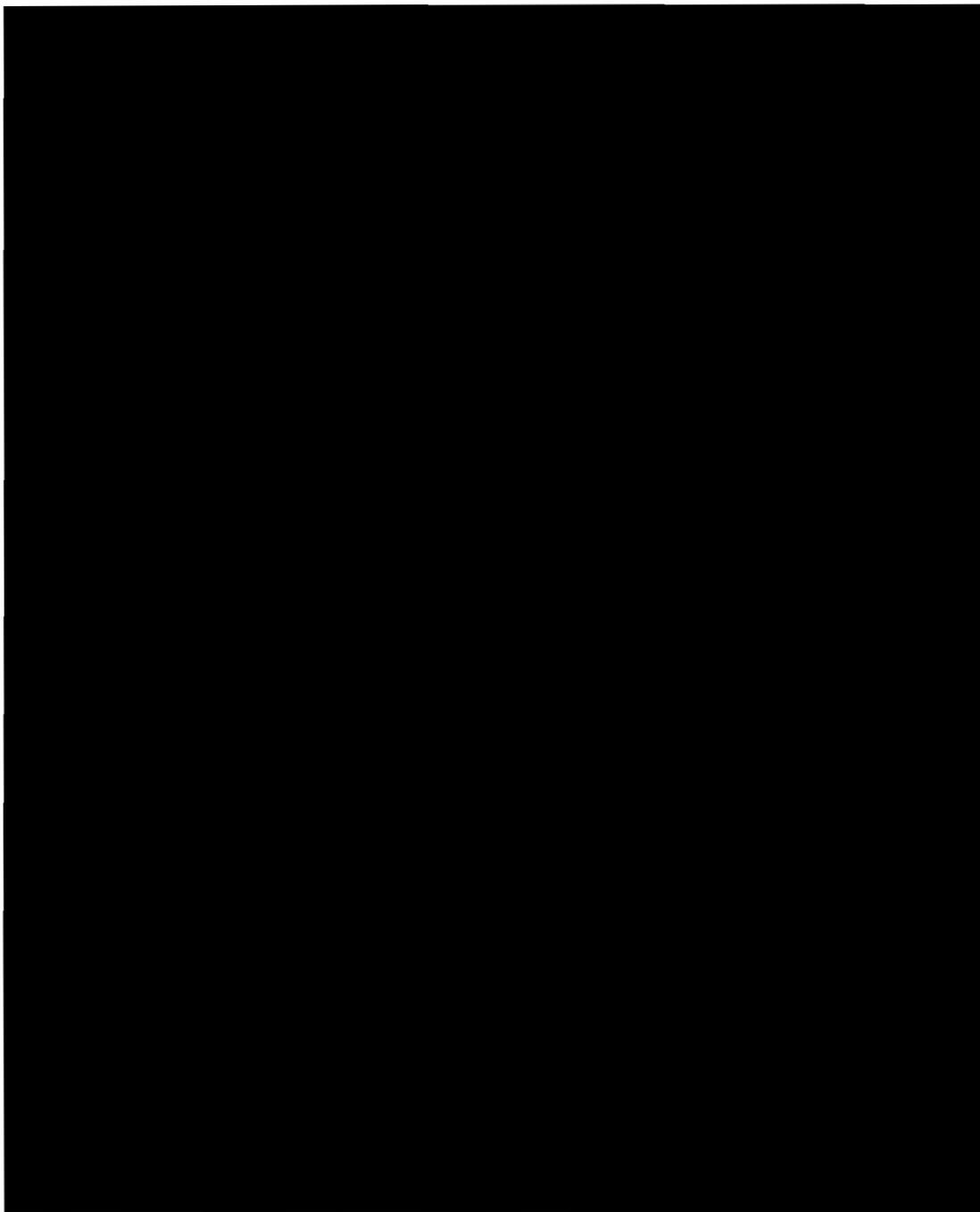
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~~SECRET//NOFORN~~*D. Petitioner's Association with Jama'at al-Tablighi*

The government argues that, in conjunction with its other evidence, evidence of petitioner's association with Jama'at al-Tablighi at the same time this organization was helping foreign fighters flee Afghanistan supports petitioner's legal detention. The government does not argue that petitioner is lawfully detained "simply because he admitted to associating with JT." Respondent's Opposition to Petitioner's Motion for Judgment on the Record and Memorandum in Support at 23. Rather, it argues that the circumstances of his involvement with JT "are consistent with other evidence in this case establishing that petitioner was an al Qaeda facilitator who frequented al-Qaeda guesthouses in Iran [REDACTED] *Id.* See also Transcript of Merits Hearing at 12 (Mar. 5, 2010).

JT is a complex organization. The Islamic scholar, Dr. Qamar-ul Huda, explains that JT originated in British India as a response to aggressive conversion campaigns by Hindu fundamentalist and Christian religious groups. *See* JE 78, Letter from Qamar-ul Huda at 1. Its emergence was part of a broader trend of Islamic revivalism or the reaffirmation of faith and Muslim cultural identity. *See id.* JT hosts an annual meeting in Raiwind, Pakistan that attracts approximately one million people from 85 countries, the second largest gathering of Muslims after the pilgrimage to Mecca. *See id.* at 3. The teachings of JT emphasize internal change, not political doctrine. *See id.* at 2-3.

The government's own intelligence documents describe JT as a "legitimate Islamic missionary group." [REDACTED] *see also* JE 32 at 1 (describing missionary activities of JT). The government argues, however, that although JT functions as a legitimate organization,

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Islamic extremists worldwide, including al Qaeda, have infiltrated it and have used it as a cover for terrorist activities. The United States government has classified JT as a <sup>1</sup> [REDACTED] Terrorist Support Entity, which means that the government believes it has “demonstrated intent and willingness to provide financial support to terrorist organizations willing to attack U.S. persons or interests, or provide witting operational support to <sup>1</sup> [REDACTED] terrorist groups.” JE 47, Declaration of <sup>3</sup> [REDACTED] at 25 (Sept. 19, 2008). An intelligence report <sup>2</sup> [REDACTED] <sup>2</sup> [REDACTED] states that the “Tablighi Jamaat organization has been supporting Islamic terrorist groups in South and Southeast Asia under the cover of conducting religious activities. The group is closely aligned with other Pakistani terrorist organizations and the Al-Qaida network.” JE 31 at 3.<sup>12</sup> The Court has no reason to question any of these assertions.

According to the government, the organizations or persons who have infiltrated JT are terrorists and use the organization as a cover to assist the movement of fighters between Pakistan and Afghanistan. The government presented statements from three other detainees who admit that they were assisted by JT in some way during or after time spent fighting on behalf of al Qaeda in Afghanistan. ISN 702, who the government asserted trained at the al Qaeda training camp al Farouq, admitted that he stayed in JT’s Center in Lahore, Pakistan for two to three months for free, much like petitioner did. See JE 62 at 2.<sup>13</sup> ISN [REDACTED] told the FBI that after

<sup>12</sup> The sources for this report are the websites of three news organizations — the PakTribune, the Asia Times, and the South Asia Analysis Group. See JE 31 at 1.

<sup>13</sup> ISN 702 later disavowed training at al Farouq, but, like petitioner, he did not disavow staying at the JT Center in Lahore, Pakistan. See PE 7, Declaration of Ravil Mingazov ¶ 16 (“I was with the Muslims of the Tablighi for approximately two months in early 2002. I was never a member of the Tablighi organization. I never heard or observed anything that would lead me to believe that the Tablighi was involved in any way with militant or terrorist activity.”).

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spending approximately two months fighting for the Taliban in Afghanistan, he fled to Pakistan and stayed in a house in Lahore run by JT members, which he described as "a group that shelters and gives aid to Muslims in Pakistan attempting to return to their own countries." See JE 61 at 3. An interrogation report of ISN 703 reports him telling his interrogator that JT members assisted him and other Taliban fighters fleeing Afghanistan by giving them Pakistani clothes, instructing them to shave their heads, and driving them to Lahore and housing them there. See JE 33 at 2. ISN 839 also described the assistance that JT provided him in leaving Afghanistan, and getting to Lahore, Pakistan; he told his interrogator that JT members were in Afghanistan assisting foreigners with travel out of the country. See JE 32 at 2.

The government argues that the details of petitioner's association with JT are sufficiently suspicious to raise doubts about his story that he only approached the organization in order to secure a trip to Europe. Instead, it argues, petitioner's association with JT corroborates the assertion that petitioner was an al Qaeda facilitator who provided the kind of assistance to fighters fleeing Afghanistan described by ISN 703. See Transcript of Merits Hearing at 12 (Mar. 5, 2010). The government points out that while still in Yemen, petitioner claimed to be a member of JT when he bribed a guard at the Pakistani embassy in order to receive a visa and when he purchased his airplane ticket at a travel agency in order to receive a discount. See JE 9 at 1-2. Furthermore, even though he is not religious and had no interest in participating in JT's

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In the time since the Merits Hearing in this case, Judge Kennedy granted ISN 702's petition for a writ of *habeas corpus*, and, in the accompanying Opinion, concluded that the government had not shown by a preponderance of the evidence that ISN 702 stayed at al Farouq or that he fought on behalf of any terrorist organization. See *Al-Harbi v. Obama*, Civil Action No. 05-2479, 2010 U.S. Dist. LEXIS 59666 at \*46, 61-62 (D.D.C. May 13, 2010).

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religious activities, see Almerfedi Decl. ¶ 17, petitioner stayed at the JT Center in Lahore for approximately two and one half months beginning in September 2001. See id. ¶ 21; see also JE 9 at 1-2.

The evidence that the government has presented strongly suggests that individual JT members or those who had infiltrated JT assisted foreign fighters traveling between Afghanistan and Pakistan, and served as a cover for terrorist groups, and that al Qaeda or Taliban members have stayed at the JT Center in Lahore or in other JT facilities. The government has not presented evidence, however, that leads the Court to conclude that such assistance was official or otherwise known JT policy, or even that a substantial number of those at the Center in Lahore were associated with al Qaeda or assisting those associated with al Qaeda. JT is by all accounts a massive organization, and any assistance provided by its members to al Qaeda or the Taliban, may have been the work of individual members or factions, not the organization as a whole. Thus, while it certainly appears more likely than not that some elements of JT, including some at the JT Center in Lahore, provide financial and other support to Islamic terrorist groups, this premise does not lead to the conclusion that petitioner did so.

Petitioner has not provided a convincing explanation for why he stayed in the JT Center for two and one half months without pursuing his stated goal of going to Europe, what he was doing during that period of time, or even why he did not seek out other Arabic speakers aside from Mohammad Ali. See Almerfedi Decl. ¶¶ 18, 21. Nevertheless, the strange and unexplained circumstance of these two and one half months does not lead to the conclusion that petitioner worked as an al Qaeda facilitator while at the JT Center or thereafter at al Qaeda

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guesthouses. See Bensoyah v. Obama, No. 08-5537, slip op. at 17 (D.C. Cir. June 28, 2010) (questions about a petitioner's whereabouts or explanations may undermine his credibility but do not by themselves "tie[] him to al Qaeda or suggest[] he facilitated anyone's travel during that time"). While the government has cast suspicion on petitioner's explanation and raised doubts about parts of petitioner's story — a story which he has told consistently since the time of his capture — the government simply has not shown by a preponderance of the evidence that petitioner had any ties to al Qaeda or to the Taliban or that he ever stayed at an al Qaeda guesthouse in Iran [REDACTED].

To the extent that evidence about petitioner's association with JT was offered to "corroborate the [government's] evidence that establishes petitioner's role as a facilitator for al Qaeda in Iran," Respondents' Motion for Judgment on the Record and Memorandum in Support at 12, it fails utterly to do so. There is no evidentiary basis on which to conclude that petitioner's association with JT or his stay in its Lahore Center, either standing alone or in conjunction with other evidence presented by the government, are adequate to justify petitioner's detention. See Abdah v. Obama, Civil Action No. 04-1254, 2010 U.S. Dist. LEXIS at \*43-44 (D.D.C. May 26, 2010) (refusing to draw inculpatory inference from detainee's association with JT).

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IV. CONCLUSION

For the reasons stated above, the Court concludes that the government has failed to meet its burden of showing by a preponderance of the evidence that petitioner's detention is lawful. The Court will grant the petition for a writ of *habeas corpus*. An Order consistent with this Opinion will issue this same day.

DATE: 7/8/10

  
PAUL L. FRIEDMAN  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HUSSAIN SALEM MOHAMMED  
ALMERFEDI,

Petitioner,

v.

GEORGE W. BUSH,  
*et al.*,

Respondents.

Civil Action No. 05-CV-1645 (PLF)

ISN 230 SIR (July 18, 2005)

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## SUMMARY INTERROGATION REPORT:

~~(S//NF)~~ SUBJECT: ISN US9SA-000230DP, ((AL JAD AN)) HUMUD DAKHIL HUMUD SA ID WAS BORN ON MAY 22, 1973 AND CLAIMS SAUDI ARABIA CITIZENSHIP.

1. ~~(S//NF)~~ SUMMARY: 2 [REDACTED] 3 [REDACTED] INTERROGATED ((AL JAD AN)) HUMUD DAKHIL HUMUD SAID 2 [REDACTED] FOR 4 HOURS AND 30 MINUTES. THE INTERROGATION WAS CONDUCTED IN ENGLISH USING 2 [REDACTED] AN INTERPRETER. PURPOSE OF INTERROGATION WAS TO TALK ABOUT AN EXPLOSIVES EXPERT. DETAINEE ATTITUDE AND BEHAVIOR WAS COOPERATIVE.

2. ~~(S//NF)~~ APPROACH USED: DIRECT 1 [REDACTED]

3. ~~(S//NF)~~ EFFECTIVENESS OF APPROACH: 1, 5 [REDACTED]

4. ~~(S//NF)~~ COOPERATION/KNOWLEDGEABILITY/TRUTHFULNESS/EXPLOITED: 2 [REDACTED]  
1, 2, 5 [REDACTED]

5. ~~(S//NF)~~ RECOMMENDED APPROACH FOR NEXT MEETING: 1, 5 [REDACTED]

6. ~~(S//NF)~~ SUMMARY OF INFORMATION (ENSURE ANY INTELLIGENCE RESULTS IN AN IIR): AL-SHUMRANT, MUHAMMAD ABD ((AL-RAHMAN)) (ISN-195) STUDIED RELIGION IN SAUDI ARABIA FOR SIX YEARS WITH THE DECEASED SHEIKS ABDUL AZIZ ((BIN BAZ)) AND MOHAMMED BIN ((UTH AIMIN)). ABDULLAH ((BIN JABRIR)) IS CURRENTLY THE MOST RADICAL SHIEK IN SAUDI ARABIA AND CONTINUES TO COLLECT MONEY FROM WEALTHY CITIZENS TO SUPPORT TERRORISM ABROAD. BIN JABRIR ISSUED A FATWA IN 2000 TO KILL ALL AMERICANS IN EVERY ARAB COUNTRY BY MENS OF BEHEADING.

AL-RAHMAN WENT TO AFGHANISTAN TWICE. ONCE AL-RAHMAN FINISHED HIS TRAINING IN AL-FAROUQ AND KHALDEN CAMPS, AF, HE RETURNED TO SAUDI ARABIA AND BECAME A FACILITATOR AND RECRUITER FOR AL-QAIDA. HE WENT TO NAZARANE, SAUDI ARABIA TO WORK AS A HIGH SCHOOL TEACHER WHERE HE RECRUITED THE YOUNG STUDENTS. WITH THE HELP OF BIN JABRIR, HE GAVE THE STUDENTS MONEY TO TRAVEL TO AFGANISTAN. HE RECRUITED APPROXIMATELY 25 - 50 YOUNG MEN. DETAINEE SAW ABD AL-RAHMAN MEETING WITH USAMA BIN LADIN, SOLOMAN ((LNU)), AND ABU ((GAITH)) IN TORA BORA, AF APPROXIMATELY 3-4 TIMES IN 2001 (NFI).

HAMZA ((AL-GAETTI)) TOLD DETAINEE THAT AFTER THE FALL OF KABUL, AF, IN DECEMBER 2001, UBAYBAH ((AL-MASRI)), AL-GAETTI, AND ABU UMAR ((AL-NEDJI)) TRAVELED TOGETHER TO KHONAR, AF WITH APPROXIMATELY 400 ARABS AND AFGANS. WHILE IN KHONAR, AF, AL-MASRI, AL-GAETTI, AND NEDJI ALL WENT BACK AND FORTH TO A GUESTHOUSE IN TEHRAN, IRAN. ((DETAINEE COMMENT -- THE DETAINEES THAT ARRIVED IN 2004 SAID THE GOVERNMENT OF IRAN KNEW ABOUT THE GUESTHOUSE, AND THAT THE GOVERNMENT OF IRAN ASKED THEM TO LEAVE. THE GROUP PRETENDED TO LEAVE IRAN, BUT ACTUALLY LEFT APPROXIMATELY 30 PEOPLE IN PLACE AT THE GUESTHOUSE. THOSE AT THE GUESTHOUSE WERE FACILITATORS FOR MUJAHIDEEN GOING INTO KONAR, AF. TOLFIQ NASSAR AHMED AL-BIHANI (ISN 893) WAS AT THE GUESTHOUSE IN TEHRAN, IR AND HUSSEIN ((AL-ADENI)), AN AL-QAIDA FACILITATOR, LIVED IN THE SAME GUESTHOUSE (NFI))--.

THE DETAINEES THAT ARRIVED AT GUANTANAMO IN 2004 TOLD THEM THAT THERE WAS A FIGHT BETWEEN THIS GROUP OF ARABS AND AFGHANS AND THE AMERICANS IN 2001. AFTERWARDS, AL-GAETTI TOOK SOME OF THE FIGHTERS TO JALALABAD, KHOST THEN TO QUETTA, AF AND THEN INTO UZBEKISTAN. THEY TRAVELED INTO THE MOUNTAINS BY FOOT, DONKEYS, AND MULES. (DETAINEE COMMENT -- SAFIR, ONE OF THE DETAINEES THAT HAS ONE LEG, KNOWS EVERYTHING ABOUT THE MOVEMENT OF AL-GAETTI AND UBAYBAH. HE CAN PROVIDE A LOT MORE INFORMATION ON AL-GAETTI AND UBAYBAH BECAUSE HE WORKED IN BOTH OF THEIR HOUSES --.) THE TRAVELERS COMMUNICATED VIA RADIOS AND COURIERS.

ONE OF THE NEW DETAINEES TOLD DETAINEE THAT AL-GAETTI AND UBAYBAH ALSO OPERATED OUT OF INDONESIA. INDONESIA WAS THE PLACE WHERE ALL INITIAL PLANNING OPERATIONS WERE DONE, THEN THE PLANS WERE SENT TO IRAQ OR ANY OTHER PLACE. FROM INDONESIA, THE PLANNERS TRAVELED TO AND FROM IRAQ AND IRAN (NFI).

7. ~~(S//NF)~~ COLLECTORS COMMENTS: 3 [REDACTED] WILL CONTINUE TO TALK TO THE DETAINEE.
8. ~~(S)~~ POC FOR THIS MEMORANDUM IS 3 [REDACTED] JTF GTMO.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HUSSAIN SALEM MOHAMMED  
ALMERFEDI,

Petitioner,

v.

GEORGE W. BUSH,  
*et al.*,

Respondents.

Civil Action No. 05-CV-1645 (PLF)

ISN 230 SIR (September 22, 2006)

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SUMMARY INTERROGATION REPORT:

~~(S//NF)~~ SUBJECT: ISN US9SA-000230DP, ((AL JADANI)) HUMUD DAKHIL HUMUD SAID WAS BORN ON: MAY 22, 1973 AND CLAIMS SAUDI ARABIA CITIZENSHIP.

REASON ~~(S)~~ FOR VISIT:

1, 2, 5

1. ~~(S//NF)~~ SUMMARY: 2, 3 [REDACTED] INTERROGATED ((AL JADANI)) HUMUD DAKHIL HUMUD SAID 2 [REDACTED] FOR 5 HOURS AND 15 MINUTES. THE INTERROGATION WAS CONDUCTED IN ENGLISH USING 2 [REDACTED] AS AN INTERPRETER.

DETAINEE'S ATTITUDE AND BEHAVIOR WERE COOPERATIVE.

2 [REDACTED] DETAINEE 230 REQUESTED NOTHING.

THE PURPOSE OF THE INTERROGATION WAS TO PHOTO-ID HUDEIFA AL-BRITANI, 2 [REDACTED] (TERRORIST SAFEHAVEN ARANAS VILLAGE), FORCE PROTECTION ISSUES 1, 5 [REDACTED] AND QUESTIONS ABOUT GUESTHOUSES IN IRAN.

2. ~~(S//NF)~~ APPROACH USED: 3 [REDACTED] USED THE DIRECT, EMOTIONAL LOVE OF FAMILY 2 [REDACTED] APPROACHES.

3. ~~(S//NF)~~ EFFECTIVENESS OF APPROACH: 1, 5 [REDACTED]

4. ~~(S//NF)~~ COOPERATION/KNOWLEDGEABILITY/TRUTHFULNESS/EXPLOITED: 2 [REDACTED]

1, 2, 5

5. ~~(S//NF)~~ RECOMMENDED APPROACH FOR NEXT MEETING: 1, 5 [REDACTED]

1, 5

6. ~~(S//NF)~~ SUMMARY OF INFORMATION (ENSURE ANY INTELLIGENCE RESULTS IN AN IIR): DETAINEE WAS SHOWN SIX PHOTOGRAPHS. DETAINEE IDENTIFIED PHOTO NUMBER THREE AS HAMZA AL-MAGRUBI OR HAMZA AL-MOROCCAN. HAMZA LIVED IN ENGLAND. HAMZA LOST ONE ARM IN TORA BORA. DETAINEE LOOKED AT PICTURE NUMBER SIX AND SAID THE INDIVIDUAL IN THE PHOTO LOOKS LIKE HUDEIFA AL-BRITANI. (FIELD COMMENT--PHOTO NUMBER SIX IS ISN 558 MOAZZAM BEGG, A FORMER GUANTANAMO DETAINEE.)

DETAINEE STATED THAT APPROXIMATELY FOUR AND A HALF YEARS AGO HUSSEIN AL-ADANI WAS CAPTURED IN IRAN. LATER THAT YEAR HUSSEIN AL-ADANI WAS RETURNED TO THE AFGHANS. THE AFGHANS TURNED AL-ADANI OVER TO THE AMERICANS.

DETAINEE STATED HE HAD THE OPPORTUNITY TO SPEAK TO HUSSEIN AL-ADANI FROM YEMEN, WHO CAME TO GUANTANAMO IN 2002. HUSSEIN AL-ADANI TOLD ISN 230 THAT HE WAS HOUSED IN A GUESTHOUSE IN TEHRAN, IRAN (IR). HUSSEIN TOLD DETAINEE THAT THERE WERE TWO GUESTHOUSES IN TEHRAN, IR. ONE OF THE GUESTHOUSES WAS SUPERVISED BY HAMZA AL-QAITI. DETAINEE SAID HE DID NOT KNOW WHO SUPERVISED THE OTHER GUESTHOUSE.

THE GUESTHOUSE SUPERVISED BY HAMZA AL-QAITI HOUSED THE HIGH LEVEL AL-QAIDA MEMBERS. SOME OF THE PERSONNEL THAT WERE HOUSED AT HAMZA AL-QAITI GUESTHOUSE WERE: ABU MOHAMMED AL-MASRI, ABU OMAR SAIF, ASSAM AL-BEHANI AND ABU HAMIN AL-MASRI. HAMZA AL-QAITI RECEIVED MONEY FROM USAMA BIN LADEN FOR THE MAINTENANCE OF BOTH GUESTHOUSES (NFI). DETAINEE SAID THAT ISN 893 WAS ALSO LIVING IN THE

SECOND GUESTHOUSE OR THE GUESTHOUSE FOR LOWER RANKING MUJAHIDEEN.

DETAINEE STATED THAT IRANIAN INTELLIGENCE DETECTED THE GUESTHOUSES BECAUSE THE MUJAHIDEEN WERE SENDING MESSAGES VIA THE INTERNET AND USING THEIR CELL PHONE.

DETAINEE SAID THAT THE AMERICANS WERE AWARE OF THE LOCATION OF THE MUJAHIDEEN IN IRAN. THE AMERICANS STARTED TO PUT PRESSURE ON THE IRANIAN GOVERNMENT. BECAUSE OF THE PRESSURE OF THE AMERICAN GOVERNMENT, THE IRANIAN INTELLIGENCE SERVICE SPOKE TO THE AL-QAIDA LEADERS AND ASKED THEM TO LEAVE. THE IRANIAN INTELLIGENCE SERVICE ALSO PROPOSED AN ESCAPE PLAN TO THEM (NFI).

DETAINEE SAID WHILE HE WAS IN CHECHNYA IN 1999 ABU MUHAMMAD AL-MASRI, ABU ASSAM AL-BEHANI, ABU OMAR SAIF AND ABU HAMIN AL-MASRI WERE WORKING FOR IBN KHATTAB. DETAINEE ALSO STATED THAT THOSE FOUR INDIVIDUALS WERE FIGHTING IN AFGHANISTAN DURING THE LATE 1980'S. DETAINEE STATED THAT ABU MUHAMMAD AL-MASRI, ABU ASSAM AL-BEHANI, ABU OMAR SAIF, ABU HAMIN AL-MASRI AND ABU MUSAB AL-ZARQAWI KNEW ONE ANOTHER IN AFGHANISTAN DURING THE LATE 1980'S (NFI).

[REDACTED] DETAINEE DESCRIBED ABU HAMIN AL-MASRI AS SOMEONE WITH WHITE COMPLEXION, LIGHT SHORT BROWN HAIR, LIGHT BROWN EYES, LOTS OF BLACK FRECKLES ALL OVER HIS FACE, SMALL NOSE, SMALL BEARD, 69 INCHES TALL, WEIGHS APPROXIMATELY 90 KILOS, 45 YEARS OLD. DETAINEE MET HIM IN 1999 IN CHECHNYA. HAMIN AL-MASRI WAS A THREE STAR GENERAL IN THE EGYPTIAN ARMY. HAMIN AL-MASRI WAS AT AL-ANSAR GUESTHOUSE IN QANDAHAR WITH ABU MUHAMMAD AL-MASRI, ABU OMAR SAIF, ABU HAMIN AL-MASRI, AND ABU ASSAM AL-BEHANI. HE WAS LIVING IN BOSNIA WITH HIS WIFE AND HIS DAUGHTER. (NFI)

7. (S//NF) COLLECTORS COMMENTS: FORCE PROTECTION ISSUES WERE DISCUSSED [REDACTED] [REDACTED] MEMORANDUM WILL BE DRAFTED AND PUBLISHED BY [REDACTED] WILL CONTINUE TO QUESTION DETAINEE.

8. (S//NF) POC FOR THIS MEMORANDUM IS [REDACTED] JTF GTMO.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HUSSAIN SALEM MOHAMMED  
ALMERFEDI,

Petitioner,

v.

GEORGE W. BUSH,  
*et al.*,

Respondents.

Civil Action No. 05-CV-1645 (PLF)

IIR 6 034 0088 07

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~~SECRET//NOT RELEASABLE TO FOREIGN NATIONALS~~SERIAL: ~~(U)~~ IIR 6 034 0088 07.COUNTRY: ~~(S)~~ AFGHANISTAN (AF); IRAN (IR).IPSP: ~~(U)~~ <sup>2</sup> [REDACTED]SUBJ: IIR 6 034 0088 07 <sup>2</sup> [REDACTED] IRANIAN GUESTHOUSES AND HOTELS USED TO SUPPORT AL-QAIDA OPERATIONS AND OTHER IRANIAN SUPPORT FOR AL-QAIDA ~~(U)~~WARNING: ~~(U)~~ THIS IS AN INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE. REPORT CLASSIFIED ~~SECRET//NOT RELEASABLE TO FOREIGN NATIONALS~~.-----  
DEPARTMENT OF DEFENSE  
-----DOI: ~~(U)~~ 20030101.REQS: ~~(U)~~ <sup>2</sup> [REDACTED]  
<sup>2</sup> [REDACTED]SOURCE: ~~(S//NF)~~ //ISN US9SA-000230DP//A SAUDI ARABIAN CITIZEN BORN IN 1973. DETAINEE HAD DIRECT ACCESS TO INFORMATION IN PARAGRAPHS 2A, 4A-5A, 5C, AND 7 FROM VISITS TO AFGHANISTAN AND IRAN. DETAINEE HAD INDIRECT ACCESS TO INFORMATION IN PARAGRAPHS 1A-1B, 2B-3D, AND 6 FROM SA-893, TOLFIQ NASSAR AHMED AL-BIHANI, AND YM-1015, HUSSEIN SALEM MOHAMMED; AND PARAGRAPH 5B FROM ABU HAMEEN. REPORTING RECORD HAS BEEN ESTABLISHED. CONTEXT STATEMENT - NONE.SUMMARY: ~~(S//NF)~~ TWO GUESTHOUSES IN TEHRAN, IRAN WERE SUPERVISED BY MARWAN AL-ADANI AND HAMZA AL-QAITI. IRANIAN HOTELS WERE USED AS WAYSTATIONS FOR FIGHTERS FLEEING AFGHANISTAN. IRANIAN INTELLIGENCE PROVIDED PASSPORTS TO AL-QAIDA MEMBERS IN IRAN, AND PROPOSED AN ESCAPE PLAN AFTER THE AMERICANS DISCOVERED THEIR LOCATION AND PRESSURED IRAN TO EXTRADITE THEM.TEXT: 1. ~~(S//REL)~~ <sup>2</sup> [REDACTED] IRANIAN GUESTHOUSES.1A. ~~(S//REL)~~ <sup>2</sup> [REDACTED] ACCORDING TO DETAINEES SA-893, TOLFIQ NASSAR AHMED ((AL-BIHANI)) AND YM-1015, HUSSEIN SALEM ((MOHAMMED)), THERE WERE TWO GUESTHOUSES IN TEHRAN/<sup>3</sup> [REDACTED] IRAN (IR). MARWAN ((AL-ADANI)) SUPERVISED THE MAIN GUESTHOUSE WHILE HAMZA ((AL-QAITI)) SUPERVISED THE SECOND GUESTHOUSE. THE MAIN GUESTHOUSE WAS USED BY THE FAMILIES OF USAMA ((BIN LADEN)), ABU-MOHAMMED (LNU) AL-MASRI, TAMIN (LNU) AL-MASRI, SAIF ((AL-ADEL)), ALSO KNOWN AS ABU-OMAR ((SAIF)), ABDUL-HADI (LNU) AL-IRAQI, ABU-JAFFAR ((AL-TAYYAR)), MANSUR ((AL-BIHANI)), ALSO KNOWN AS ABU-ASSAM ((AL-BIHANI)), ZACHARIYA ((AL-BIHANI)), ALSO KNOWN AS ABU-JAFFAR ((AL-BIHANI)), ABU-HAMEEN (LNU) AL-MASRI, HAMZA ((AL-QAITI)) AND APPROXIMATELY 50 OTHER MEMBERS OF AL-QAIDA.1B. ~~(S//REL)~~ <sup>2</sup> [REDACTED] ACCORDING TO DETAINEES SA-893 AND YM-1015, AL-QAITI RECEIVED MONEY FROM BIN LADEN FOR THE MAINTENANCE OF BOTH GUESTHOUSES. (NFI). SOMETIME DURING 2002 AND 2003, SA-893, TOLFIQ NASSAR AHMED ((AL-BIHANI)) AND YM-1015, HUSSEIN SALEM ((MOHAMMED)), LIVED IN THE SECOND GUESTHOUSE FOR LOWER RANKING FIGHTERS.

2. ~~(C//REL)~~<sup>2</sup> TRAVEL.
- 2A. ~~(C//REL)~~<sup>2</sup> WHEN DETAINEE SA-230, HUMUD DAKHIL HUMUD SAID ((AL JADANI)), WAS TRAVELING THROUGH IR. THE FIGHTERS USED A HOTEL CALLED FUROZ IN THE CITY OF MASHED/<sup>3</sup> IR. (NFI). APPROXIMATELY THREE OTHER HOTELS IN THE SAME AREA OF MASHED WERE USED AS WAYSTATIONS FOR FIGHTERS FLEEING AFGHANISTAN (AF) IN 2002. (NFI). BUT IN 2000 AND 2001, AL-QAIDA AND THE TALIBAN USED THESE HOTELS AS TRANSITION POINTS FOR FIGHTERS TRAVELING TO AF AND PAKISTAN (PK).
- 2B. ~~(C//REL)~~<sup>2</sup> ACCORDING TO DETAINEES SA-893 AND YM-1015, AL-QAIDA MEMBERS TRAVELED FROM IR TO JORDAN (JO), YEMEN (YM), MALAYSIA (MY), AND INDONESIA (ID).
3. ~~(S//NF)~~ AID FROM IRANIAN INTELLIGENCE. (FIELD COMMENT - THE INFORMATION IN PARAGRAPHS 3A - 3D IS ACCORDING TO DETAINEES SA-893 AND YM-1015.)
- 3A. ~~(S//REL)~~<sup>2</sup> IRANIAN INTELLIGENCE VISITED THE GUESTHOUSES IN 2002 AND 2003. DURING THE VISITS, THE IRANIAN INTELLIGENCE OPERATIVES TOOK PHOTOS OF THE AL-QAIDA AND TALIBAN MEMBERS WHO WERE PRESENT. WITHIN FOUR OR FIVE DAYS, THE IRANIAN INTELLIGENCE AGENTS RETURNED WITH FALSE PASSPORTS FOR THE FIGHTERS.
- 3B. ~~(S//REL)~~<sup>2</sup> IRANIAN INTELLIGENCE DETECTED THE GUESTHOUSES BECAUSE THE FIGHTERS WERE SENDING MESSAGES VIA THE INTERNET AND USING THEIR CELL PHONES. (NFI).
- 3C. ~~(S//NF)~~ THE AMERICANS BECAME AWARE OF THE LOCATION OF THE FIGHTERS IN IR AND PUT PRESSURE ON THE IRANIAN GOVERNMENT TO EXTRADITE THEM. (NFI). DUE TO THAT PRESSURE, THE IRANIAN INTELLIGENCE SERVICE SPOKE TO THE AL-QAIDA LEADERS AND ASKED THEM TO LEAVE. THE IRANIAN INTELLIGENCE SERVICE ALSO PROPOSED AN ESCAPE PLAN FOR THEM. (NFI).
- 3D. ~~(S//REL)~~<sup>2</sup> AL-ADANI AND AL-QAITI WERE CAPTURED IN ID IN EITHER LATE 2003 OR 2004. AT THAT TIME, AL-ADANI AND AL-QAITI WERE CARRYING FALSE PASSPORTS ISSUED BY IRANIAN INTELLIGENCE. (NFI).
4. ~~(C//REL)~~<sup>2</sup> MARWAN AL-ADANI.
- 4A. ~~(C//REL)~~<sup>2</sup> AL-ADANI WAS APPROXIMATELY 1.80 METERS (71 INCHES) TALL AND WEIGHED APPROXIMATELY 70 KILOGRAMS (154 POUNDS). AL-ADANI WAS VERY SKINNY AND WAS ABOUT 26 YEARS OLD IN 2000. (FIELD COMMENT - MARWAN AL-ADANI WAS BORN IN APPROXIMATELY 1974.) AL-ADANI HAD A DARK COMPLEXION. (DETAINEE COMMENT -- HIS SKIN LOOKS LIKE THE SKIN TONE OF SOMEONE FROM INDIA.--) HE HAD BLACK EYES, CURLY BLACK HAIR, AND WORE A SMALL BEARD. HE ALSO HAD A GAP IN HIS FRONT TEETH. AL-ADANI WAS FROM YM.
- 4B. ~~(C//REL)~~<sup>2</sup> AL-ADANI WAS AN INSTRUCTOR OF BASIC TRAINING AT THE AL-FAROUQ CAMP/<sup>3</sup> AF IN 2000 AND 2001. HE ALSO ACQUIRED AND DELIVERED FOOD TO THE CAMPS AND GUESTHOUSES. (NFI).
5. ~~(C//REL)~~<sup>2</sup> ABU-HAMEEN AL-MASRI.
- 5A. ~~(C//REL)~~<sup>2</sup> IN 1999, DETAINEE SA-230 MET ABU-HAMEEN IN CHECHNYA. ABU-HAMEEN WAS A THREE STAR GENERAL IN THE EGYPTIAN ARMY. (NFI). HE WAS ALSO AT AL-ANSAR GUESTHOUSE IN KHANDAHAR/<sup>3</sup> AF WITH ABU-MUHAMMAD AL-MASRI, AL-ADEL, AND MANSUR AL-BIHANI.
- 5B. ~~(C//REL)~~<sup>2</sup> ABU-HAMEEN ALSO LIVED IN BOSNIA (BK) WITH HIS WIFE AND DAUGHTER. (NFI).
- 5C. ~~(C//REL)~~<sup>2</sup> ABU-HAMEEN HAD A WHITE COMPLEXION, LIGHT, SHORT, BROWN HAIR, LIGHT BROWN EYES AND BLACK FRECKLES ALL OVER HIS FACE. HE HAD A SMALL NOSE AND WORE A SMALL BEARD. ABU-HAMEEN WAS 1.75 METERS (69 INCHES) TALL AND WEIGHED APPROXIMATELY 90 KILOGRAMS (198 POUNDS). ABU-HAMEEN WAS 45 YEARS OLD IN 1999. (FIELD COMMENT - ABU-HAMEEN WAS BORN IN APPROXIMATELY 1954.)
6. ~~(C//REL)~~<sup>2</sup> YM-1015, HUSSEIN SALEM ((MOHAMMAD)). IN APPROXIMATELY 2002, YM-1015 WAS CAPTURED IN IR. (NFI). LATER IN 2002, YM-1015 WAS RETURNED TO THE AFGHANS AND THE AFGHANS TURNED YM-1015 OVER TO THE AMERICANS. (NFI). (FIELD COMMENTS - DETAINEE SA-230 OBTAINED THIS INFORMATION FROM DETAINEES SA-893 AND YM-1015.)

COMMENTS: 1. ~~(U)~~ THE DETAINEE ANSWERED ALL QUESTIONS WITHOUT HESITATION AND IS AVAILABLE FOR FURTHER CONTACT.

2. ~~(U)~~ FOR FURTHER INFORMATION ON HAMZA AL-QAITI AND HIS GUESTHOUSE IN TEHRAN, SEE IIR 6 034 0395 05.

3. ~~(U)~~ THIS IIR PARTIALLY SATISFIES<sup>2</sup> [REDACTED] AND<sup>2</sup> [REDACTED]

4. ~~(C)~~ REQUEST THE ORIGINATORS<sup>2</sup> [REDACTED] PROVIDE JTF GTMO WITH AN OFFICIAL HUMINT IIR EVALUATION OF THIS REPORT IAW PROCEDURES OUTLINED<sup>2</sup> [REDACTED] REQUEST EVALUATION TO CONFIRM OR REFUTE THE INFORMATION IN THIS REPORT TO ALLOW FURTHER ASSESSMENT OF THIS DETAINEE BY JTF GTMO. FOLLOW-ON QUESTIONS FOR ADDITIONAL FOCUSED INTERROGATION ARE HIGHLY ENCOURAGED.

5. ~~(U)~~ AN AUTOMATED IIR EVALUATION TOOL IS AVAILABLE AT<sup>2,3</sup> [REDACTED]

PLEASE CLICK ON --IIR EVALUATION TOOL-- AND FOLLOW THE DIRECTIONS. JTF GTMO APPRECIATES ALL EVALUATIONS, POSITIVE AND NEGATIVE.

7. ~~(U)~~ INFORMATION ON ALL GTMO DETAINEES IS AVAILABLE ON THE<sup>2</sup> [REDACTED]

[REDACTED]

8. ~~(U)~~ ADDRESS ANY QUESTIONS CONCERNING THE CONTENTS OF THIS IIR TO<sup>2,3</sup> [REDACTED]

ALL FORMAL EVALUATIONS SHOULD BE SENT TO JTF GTMO<sup>2,3</sup> [REDACTED] WITH INFO COPIES<sup>2,3</sup> [REDACTED]

[REDACTED]

COMMENTS MAY BE EMAILED<sup>2,3</sup> [REDACTED]

9. ~~(U)~~ ADDRESS ALL REQUESTS FOR RELEASE OF INFORMATION OR FOR FURTHER DISSEMINATION TO<sup>2,3</sup> [REDACTED]

COLL: ~~(U)~~ BH; CA; DD.

INSTR: ~~(U)~~ U.S. NO.

PREP: ~~(U)~~ [REDACTED]

ACQ: ~~(U)~~ [REDACTED]

DISSEM: ~~(U)~~ FIELD -- NONE.

WARNING: ~~(U)~~ REPORT CLASSIFIED ~~S E C R E T~~//NOT RELEASABLE TO FOREIGN NATIONALS.

DRV FROM: DH SCG, OCT 2004

DECL: 25X1-HUMAN



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QQQQ  
SUBJ: IIR 6 044 5139 03<sup>2</sup> [REDACTED] ARABS HELD IN VARIOUS IRANIAN  
PRISONS - CORRECTED REPORT (C)  
SERIAL: (C) IIR 6 044 5139 03.  
CORRECTED COPY (CHANGE TO SOURCE NUMBERS)  
COUNTRY: (C) IRAN (IR); AFGHANISTAN (AF).  
PASS: (C)<sup>2</sup> [REDACTED]  
PAGE 6 RUIEPTUT6042 ~~SECRET//NOFORN~~  
IPSP: (C)<sup>2</sup> [REDACTED]  
SUBJ: IIR 6 044 5139 03<sup>2</sup> [REDACTED] ARABS HELD IN VARIOUS IRANIAN  
PRISONS - CORRECTED REPORT (C)  
WARNING: (C) THIS IS AN INFORMATION REPORT, NOT FINALLY EVALUATED  
INTELLIGENCE. REPORT CLASSIFIED ~~SECRET//NOFORN~~

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DEPARTMENT OF DEFENSE

DOI: (S) 20020400.

REOS: (S) 2

SOURCE: //MULTIPLE SOURCES//

A. (S//NF) [REDACTED] A 23 YEAR OLD YEMENI NATIONAL, WITH DIRECT  
PAGE 7 RUEPTUT6042 ~~SECRET//NOFORN~~  
ACCESS TO REPORTED INFORMATION. RELIABILITY IS NOT DETERMINED. SOURCE  
IS IN U.S. CUSTODY.

B. (S//NF) [REDACTED] A 26 YEAR OLD YEMENI NATIONAL, WITH  
DIRECT ACCESS TO REPORTED INFORMATION. RELIABILITY IS NOT  
DETERMINED. SOURCE IS IN U.S. CUSTODY.

C. (S//NF) [REDACTED] A 28 YEAR OLD JORDANIAN NATIONAL, WITH  
DIRECT ACCESS TO REPORTED INFORMATION. RELIABILITY IS NOT  
DETERMINED. SOURCE IS IN U.S. CUSTODY.

D. (S//NF) [REDACTED] A 31 YEAR OLD AFGHAN NATIONAL, WITH DIRECT ACCESS TO  
REPORTED INFORMATION. RELIABILITY IS NOT DETERMINED. SOURCE IS IN U.S.  
CUSTODY.

SUMMARY: (S//NF) FOUR AL QAIDA AND TALIBAN-CONNECTED INDIVIDUALS (THREE  
ARABS AND ONE AFGHAN) DESCRIBED THEIR TREATMENT IN IRANIAN PRISONS IN  
TEHRAN, MASHHAD AND ZAHEDAN. THEY WERE HELD BY THE IRANIAN REPUBLICAN  
GUARD CORPS AND THE MINISTRY OF INTELLIGENCE AND SECURITY. IRAN  
TRANSFERRED THEM TO AFGHANISTAN IN APRIL 2002.  
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TEXT:

1. (S//NF) AFGHAN GOVERNMENT AUTHORITIES SAID IRAN TRANSFERRED  
TEN AL QAIDA AND TALIBAN-RELATED INDIVIDUALS TO AFGHANISTAN (AF) IN APRIL  
2002 (SEE IIR: 6 044 3140 03). ALL WERE ILLEGAL IMMIGRANTS FROM AF. THEY WERE  
TRANSFERRED WITH NO DOCUMENTS. WHILE IN IRAN (IR) THEY WERE HELD BY THE  
IRANIAN REPUBLICAN GUARD CORPS (IRGC) AND MINISTRY OF INTELLIGENCE AND  
SECURITY (MOIS). FOUR OF THESE WERE INTERROGATED ABOUT THEIR PRISON  
EXPERIENCES IN IR. NONE OF THE FOUR WOULD ADMIT TO TERROR-RELATED ACTIVITIES  
IN AFGHANISTAN.

2. (S) SOURCE A1

A. (S//NF) [REDACTED] WAS APPREHENDED BY IRANIAN AUTHORITIES IN MASHHAD [REDACTED]  
[REDACTED] IR IN DECEMBER 2001. THE POLICE  
PUT HIM IN A PRISON WHERE HE WAS KEPT IN A CELL FOR 25 DAYS WITH 21 OTHER MEN.  
THERE WERE OTHER CELLS HE COULD NOT SEE. HE WAS ON THE SECOND FLOOR OF THE  
PRISON AND COULD NOT JUDGE THE SIZE OF THE WHOLE PRISON. THE GUARDS WORE  
DARK BLUE UNIFORMS THAT WERE NOT OF THE POLICE OR ARMY. THE GUARDS WERE  
NOT ARMED. THERE WERE NO WEAPONS INSIDE THE PRISON. PRISONERS WORE  
UNIFORMS THAT WERE LIGHT BLUE WITH  
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BLACK STRIPES. GUARDS CALLED THE PRISONERS BY THEIR NAMES, NOT BY THEIR  
NUMBERS.

B. (S//NF) OTHER PRISONERS IN THE CELL INCLUDED SIX IRANIANS AND  
15 ARABS. THESE WERE IRAQIS, YEMENIS, AND JORDANIANS. ONE IRANIAN WAS  
IMPRISONED BECAUSE HE WAS SU NNL HE SPOKE ARABIC. THE OTHER ARAB PRISONERS  
WERE DRUG DEALERS OR ACCUSED IRAQI SPIES. THE YEMENIS, JORDANIANS AND IRAQIS  
WERE ACCUSED OF HELPING IRAQ AGAINST IRAN, WHICH THEY DENIED.

C. (S//NF) PRISONERS IN HIS CELL WERE FREE TO WALK AROUND IN THE  
CELL AND CONVERSE WITH OTHERS. THEY COULD FREELY ACCESS THE RESTROOM AND

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SHOWER. THERE WERE NO CAMERAS OR MICROPHONES THAT HE COULD SEE. HE DID NOT GET THE IMPRESSION THAT ANY OF THE OTHER PRISONERS WERE PLANTS TO SPY ON THEM. THERE WERE NO VISITORS TO THE PRISON. THERE WAS NO COMMUNICATION TO THE OUTSIDE.

D. ~~(S//NF)~~ EVERY DAY AT 0900 LOCAL, THE INMATES OF HIS CELL WERE LED TO A LARGE INDOOR HALL WHERE THEY COULD PLAY VOLLEYBALL OR BASKETBALL FOR THIRTY MINUTES. ONLY ONE CELL GROUP AT A TIME OCCUPIED

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THE SPORTS ROOM. THEY WERE BLINDFOLDED AND LED TO THE SPORTS ROOM THREE AT A TIME.

E. ~~(S//NF)~~ FOOD WAS SERVED THREE TIMES A DAY AND IT WAS OF GOOD QUALITY. THEY SERVED EGGS, CHEESE, RICE, VEGETABLES, BREAD AND BEANS. MEAT WAS SERVED ONCE A WEEK. PRISONERS SLEPT ON THE CONCRETE FLOOR WITH THREE BLANKETS AND A PILLOW. THE BLANKETS WERE VERY DIRTY. THEY WERE EXCHANGED ONCE A MONTH, BUT [REDACTED] WAS NOT THERE LONG ENOUGH TO EXCHANGE HIS. PRISONERS EXCHANGED THEIR UNIFORMS ONCE A WEEK.

F. ~~(S//NF)~~ THEY INTERROGATED HIM INTENSIVELY AT FIRST AND ONCE EACH WEEK FOR 30 TO 45 MINUTES AT A TIME AFTER THAT. THE FIRST DAY, THEY BEAT HIM DURING INTERROGATIONS AND KICKED HIM IN THE HEAD. THE INTERROGATORS STRUNG A TWO METER LONG WHITE CORD ALONG THE GROUND. HE WAS MADE TO HOLD ON TO THE CORD AS THE INTERROGATOR SENT AN ELECTRIC CURRENT THROUGH THE CORD. [REDACTED] SAID THAT HE WOULD BE BEATEN WITH A STICK OR KICKED IN THE HEAD IF HE REFUSED TO TAKE HOLD OF THE CORD. HE SAID HE RECEIVED THE SHOCK TREATMENT ABOUT TWICE A WEEK. HE SAID THAT THE INTERROGATORS NEVER PLACED THE CORD ON ANY OTHER PART OF HIS BODY. THEY ACCUSED HIM OF BEING A YEMENI SPY AND SAID

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SUBJ: IIR 6 044 5139 03<sup>2</sup> [REDACTED] - ARABS HELD IN VARIOUS IRANIAN THEY WOULD KILL HIM. THEN THEY ACCUSED HIM OF BEING AN IRAQI SPY. HE ONLY GAVE THEM THE ALIAS HE USED FOR WORKING IN SAUDI ARABIA, ASAM ABDULLAH SHAHIR. HE WAS BLINDFOLDED THE WHOLE TIME, BUT IT SOUNDED LIKE DIFFERENT INTERROGATORS AT EACH INTERROGATION. ONE INTERROGATOR SPOKE ARABIC; THE OTHERS CONVERSED IN FARSI. THEY ASKED ABOUT HIS TRAVEL AND TIMELINE AND HE TOLD THEM THE SAME STORY. THEY TOLD HIM THEY BELIEVED HIM AND WOULD HAND HIM OVER TO YEMEN.

G. ~~(S//NF)~~ FINALLY IN APPROXIMATELY JANUARY 2002, THEY TOLD HIM

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THEY WOULD DEPORT HIM TO YEMEN. THEY HANDCUFFED HIM, PUT HIM IN A CAR AND DROVE TO THE AIRPORT. THEY PUT HIM ON A NORMAL FLIGHT TO TEHRAN WITH WOMEN AND CHILDREN ON IT. HE WAS HANDCUFFED TO ONE GUARD. THEY PUT HIM IN A PRISON WHERE HE STAYED TWO TO TWO AND A HALF MONTHS. THE PRISON LOOKED EXACTLY LIKE NDS PRISON NUMBER TWO IN KABUL<sup>3</sup>

<sup>3</sup> [REDACTED] AF (SEE IIR 6 044 5144-03). THERE WAS A LONG HALL ON THE SECOND FLOOR WITH CELLS ON EACH SIDE. THERE WERE TWO PRISONERS IN A CELL AT MOST. HE WAS PUT IN A CELL BY HIMSELF MEASURING ABOUT TWO METERS BY THREE METERS. HE COULD SEE AND HEAR PRISONERS IN TWO OTHER CELLS. IT WAS A CLEAN ROOM WITH A MATTRESS ON THE FLOOR, WITH CLEAN SHEETS. HE WAS ALLOWED TO HAVE UP TO 100 USD OF HIS OWN MONEY. THE REST WAS KEPT IN A SAFE. EVERY WEEK, AN ARAB-SPEAKING GUARD CAME AROUND AND SOLICITED ORDERS FOR PERSONAL COMFORT ITEMS, WHICH HE BOUGHT WITH THE PRISONERS' MONEY AND BROUGHT BACK TO THEM. THESE COULD INCLUDE THINGS LIKE PEPSI, BREAD, TUNA, SHOES, ETC. HE HAD 1900 USD WITH HIM WHEN CAPTURED. THEY SAID THEY HAD HIS OTHER THINGS, BUT HE NEVER SAW THEM. H. ~~(S//NF)~~ WHILE HE STAYED AT THE TEHRAN PRISON, THE PRISONERS

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WERE GIVEN 30 MINUTES OF TIME TOGETHER IN A BIG ROOM IN WHICH THEY  
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 COULD ENJOY THE SUNLIGHT. THE REMAINDER OF THEIR TIME WAS SPENT IN THEIR  
 CELL. THE PRISONERS WERE FED THREE TIMES A DAY. FOR BREAKFAST, THE PRISONERS  
 RECEIVED BREAD TO EAT AND EITHER WATER, MILK OR TEA TO DRINK. THE PRISON  
 SERVED TEA FOR LUNCH. DINNER CONSISTED OF RICE SERVED WITH EITHER MEAT OR  
 BEANS. THE PRISONERS WERE ALLOWED TO FREELY SPEAK WITH ONE ANOTHER, BUT  
 THEY WERE NOT ALLOWED ANY CONTACT WITH THE OUTSIDE WORLD. PRISONERS WERE  
 NOT GIVEN THE RIGHT TO SEE VISITORS OR TO WRITE LETTERS TO THOSE ON THE  
 OUTSIDE. THE GUARDS AND/OR INTERROGATORS TORTURED PRISONERS TWO TO THREE  
 TIMES A WEEK. THEY USED ELECTRICAL CURRENT AND PHYSICAL BEATINGS TO  
 ENCOURAGE PRISONERS TO TALK.

1. (S/N) IN THE LAST DAYS AT THIS PRISON, THE INTERROGATORS  
 ASKED HIM WHERE HE WOULD LIKE TO GO AND THEY WOULD ARRANGE IT. HE KNEW  
 THEY WERE LYING. HE SAID HE WOULD LIKE TO GO TO EUROPE. THEY HAD HIM SIGN A  
 STATEMENT THAT HE WAS IN AN IRANIAN PRISON AND WOULD GO ON TO ITALY. HE  
 SIGNED IN HIS ALIAS NAME. THEY TOOK HIS MONEY FROM THE SAFE AND HANDCUFFED  
 HIM TO A YEMENI NAMED HUSSEIN (NOTE: HUSSEIN SALEM (MOHAMMED)) [REDACTED] THEY  
 TOOK HIM TO A BUS WITH SIX ARABS ON BOARD AND TOLD HIM HE WAS GOING TO  
 AFGHANISTAN. THEY MOVED TO A

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PRISON 15 MINUTES AWAY, WHERE HE STAYED THE NIGHT IN A CELL WITH HUSSEIN.  
 THEN THEY WERE DRIVEN TO A DIFFERENT PRISON IN MASHHAD WHERE THEY STAYED  
 FIVE DAYS. HE STAYED WITH FOUR OTHERS. THEY WERE HUSSEIN, WISAM, TAWFIQ OR  
 RAFIQ, AND AN AFGHAN NAMED ATTQUILLAH (TAWFIQ OR RAFIQ WAS IN NDS PRISON  
 NUMBER TWO WITH SUBJECT, BUT WAS TAKEN AWAY, PROBABLY TO ANOTHER PRISON.)  
 THEY WERE ALL BLINDFOLDED AND TAKEN TO MASHHAD AIRPORT WHERE THEY SAT  
 FOR A FEW HOURS. THEY

WERE RETURNED TO THE PRISON FOR ANOTHER NIGHT. THE NEXT DAY ON THE BUS  
 THEY ASKED WHERE THEY WERE GOING. THE DRIVER AND ONE GUARD TURNED  
 AROUND AND SHOUTED SOMETHING LIKE "AMRIKA ARDABAD!" IN FARSI, WHICH THEY  
 TOOK TO MEAN THEY WERE BEING TURNED OVER TO AMERICANS. THEY WERE  
 BLINDFOLDED ON THE PLANE AND COULD NOT TELL IF IT WAS A NORMAL FLIGHT OR A  
 SPECIAL FLIGHT TO KABUL.

3. (S) SOURCE B:

A. (S/N) WAS ARRESTED ON THE STREET IN TEHRAN IN DECEMBER  
 2001 AND TAKEN TO A POLICE STATION WHERE HE STAYED FOR ONE WEEK. THEY TOOK  
 HIM TO COURT AND HE WAS TOLD THAT HE WAS IN IRAN ILLEGALLY AND HE WOULD BE  
 DEPORTED BACK TO YEMEN. WHILE AT THE POLICE STATION

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JAIL, [REDACTED] WAS QUESTIONED BY A MAN WHO IDENTIFIED HIMSELF AS IRANIAN  
 INTELLIGENCE. THE MAN SPOKE ARABIC. THE MAN ASKED HIM ABOUT HIS TIMELINE  
 AND BIO DATA. THE MAN SPOKE TO [REDACTED] OVER THE COURSE OF TWO DAYS. [REDACTED] WAS  
 KEPT IN HIS OWN ROOM AND HAS NO IDEA WHAT OTHER PRISONERS WERE THERE.  
 COMMUNICATION OUTSIDE THE JAIL WAS NOT ALLOWED.

B. (S/N) AFTER ONE WEEK, [REDACTED] WAS TRANSFERRED TO ANOTHER  
 PRISON IN TEHRAN. HE STAYED THERE FOR APPROXIMATELY ONE TO ONE AND A HALF  
 MONTHS. THERE, HE CLAIMS, HE WAS TORTURED, BEATEN AND HANDCUFFED WHILE  
 BEING QUESTIONED. [REDACTED] STATED SOMETHING ABOUT ELECTRICITY BUT IT APPEARED  
 THAT IT WAS JUST USED AS A THREAT. DURING INTERROGATION, [REDACTED] WAS ACCUSED OF  
 BEING AN AMERICAN SPY IN IRAN. THE IRANIAN OFFICIALS JUSTIFIED THIS THEORY  
 WITH THE FACT THAT YEMEN AND THE U.S. HAVE GOOD RELATIONS. [REDACTED] WAS ALSO  
 ACCUSED OF FIGHTING FOR IRAQ AGAINST IRAN. [REDACTED] INFORMED [THE IRANIAN] THAT HE  
 WANTED TO GO TO EUROPE, BUT THEY TOLD HIM THAT HE WAS GOING BACK TO YEMEN.

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1 AGREED AND STATED THAT HE THOUGHT TO HIMSELF THAT GOING BACK TO YEMEN WAS BETTER THAN STAYING IN IRAN. 1 HAD HIS OWN CELL AND HE WAS NOT ALLOWED VISITORS. THE GUARDS TREATED HIM OKAY, BUT THE INVESTIGATORS TREATED HIM BADLY. COMMUNICATION OUTSIDE THE PRISON PAGE 10 RUEPTUT6043 ~~SECRET//NOFORN~~ WAS NOT ALLOWED.

C. (S//NF) NEXT, 1 WAS PUT ON A BUS AND TAKEN TO YET ANOTHER PRISON IN TEHRAN. 1 STATED THAT HE KNEW HE WAS STILL IN TEHRAN AND NEAR THE AIRPORT BECAUSE HE SAW A SIGN FOR THE TEHRAN AIRPORT CLOSE TO THE TIME THAT THE BUS COMPLETED ITS TRIP. 1 WAS WITH WALID AND TOUFIQ, BOTH YEMENIS, AT THIS PRISON. (FIELD COMMENT - TOUFIQ WAS AT NDS PRISON NUMBER TWO WITH 1 BUT HE LEFT A LONG TIME AGO). 1 WAS ALLOWED TO SPEAK WITH THE OTHER PRISONERS AND HE DID NOT HAVE ANY PROBLEMS WITH THE GUARDS. COMMUNICATION OUTSIDE THE PRISON WAS NOT ALLOWED. AFTER BEING AT THIS PRISON FOR ONE DAY, 1 WAS HANDCUFFED TO ANOTHER YEMENI AND TAKEN TO THE AIRPORT. HE WAS TOLD THAT HE WAS GOING TO BE SENT BACK TO YEMEN WITH THE OTHER ARABS. 1 WAS FLOWN TO THE MASHHAD AIRPORT AND TAKEN TO A PRISON IN MASHHAD. D. (S//NF) AT THE MASHHAD PRISON 1 WAS PUT IN A SMALL ROOM WITH OTHER PRISONERS. THERE WERE NOT ANY IRANIAN PRISONERS AT THIS PRISON. THREE ARABS AND ONE AFGHAN WERE AT THIS PRISON WITH 1. THE ARABS WERE WALID (A YEMENI), OSAM (A JORDANIAN) AND RAFIQ (A

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SUBJ: IIR 6-044 5139 032 - ARABS HELD IN VARIOUS IRANIAN (TUNISIAN). THE AFGHAN'S NAME WAS ATIKULLAH. ALL OF THESE MEN WERE KEPT IN THE SAME ROOM AND WERE ALLOWED TO TALK. THE GUARDS' TREATMENT OF THE PRISONERS WAS "NORMAL." COMMUNICATION OUTSIDE THE PRISON WAS NOT ALLOWED. HE STAYED THERE FOR FIVE DAYS AND THEN WAS BROUGHT BACK TO THE MASHHAD AIRPORT. HE ONLY STAYED AT THE AIRPORT FOR ONE HOUR AND THEN WAS BROUGHT BACK TO THE PRISON. THE NEXT DAY, 1 WAS TAKEN BACK TO THE AIRPORT AND FLOWN TO KABUL, AF.

4. (S//NF) SOURCE C:

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A. (S//NF) 1 WAS ARRESTED IN ZAHEDAN, 3 IR ON APPROXIMATELY 03 JANUARY 2002. IRANIAN AUTHORITIES TOOK 1 OFF A BUS HE WAS ON WITH HIS WIFE AND DAUGHTER. 1 INTENDED TO GO TO TEHRAN, THEN THROUGH IRAQ AND THEN BACK HOME TO JORDAN. HE DOES NOT KNOW THE NAME OF THE BUS (OR COMPANY THAT OWNS IT) THAT HE WAS ON. HE HAD ONLY BEEN IN ZAHEDAN FOR "HOURS" BEFORE HE WAS ARRESTED. (FIELD COMMENT - DURING A FBI INTERVIEW CONDUCTED ON 2 1 STATED THAT HE HAD BEEN IN ZAHEDAN FOR FOUR MONTHS PRIOR TO HIS ARREST) 1 WAS TOLD THAT AFTER QUESTIONING HE WOULD BE RETURNED TO HIS FAMILY. HOWEVER, 1 HAS BEEN UNDER EITHER IRANIAN OR AFGHAN CUSTODY EVER SINCE. 1 HAS RECEIVED WORD VIA THE INTERNATIONAL COMMITTEE FOR THE RED CROSS (ICRC) THAT HIS WIFE AND DAUGHTER HAVE RETURNED TO JORDAN AND ARE LIVING WITH FAMILY. 1 HAD HIS PASSPORT IN HIS POSSESSION WHEN HE WAS ARRESTED.

B. (S//NF) 1 WAS IN A ZAHEDAN PRISON FOR APPROXIMATELY 17 DAYS. HE WAS THEN TRANSFERRED TO A PRISON IN TEHRAN, IRAN AND STAYED THERE FOR APPROXIMATELY 90 DAYS. HE WAS TRANSFERRED AGAIN TO A PRISON IN MASHHAD, IRAN FOR ABOUT TWO DAYS. FROM MASHHAD, HE WAS TRANSFERRED

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TO A PRISON (NDS NUMBER ONE) IN KABUL, AF. THERE WERE NINE OTHERS WITH HIM WHEN HE WAS TRANSFERRED FROM THE MASHHAD PRISON TO NDS NUMBER ONE

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PRISON.

C. (S/N) ARRIVED IN AN IRANIAN PRISON IN ZAHEDAN ON 3 OR 4 JANUARY 2002, AND WAS IN A CELL BY HIMSELF. THERE WERE FOUR OR FIVE GUARDS DRESSED IN MILITARY UNIFORMS AND CARRYING MILITARY-STYLE WEAPONS. THE OTHER PRISONERS WERE ALL IRANIANS. HE WAS NEVER TAKEN OUTSIDE DURING THE 17-18 DAYS HE STAYED THERE. CONDITIONS THERE WERE BAD BUT HE WAS NOT BEATEN. HE WAS INTERROGATED THREE SEVERAL TIMES BY A MAN WHO WAS NOT NICE TO HIM AND ALWAYS ASKED HIM QUESTIONS LIKE "WHY DID YOU ENTER IRAN?" AND "WHAT TERRORIST PLANS DO YOU HAVE HERE?" THEY ASKED "WHY PAKISTAN AND/OR AL QAIDA SENT HIM TO IRAN. HE WAS SPOKEN TO FOUR OR FIVE TIMES AT IRANIAN PRISONS (FIELD COMMENT- IT IS UNCLEAR WHICH IRANIAN PRISONS HE WAS QUESTIONED AT). THE GUARDS AT THE ZAHEDAN PRISON TREATED HIM BADLY. THE GUARDS

DEMANDED MONEY FROM HIM, BUT HE RESPONDED TO THEIR DEMANDS BY ASKING WHERE HE WOULD GET THE MONEY. HE WAS KEPT IN A CELL THAT WAS 2.5 METERS LONG BY 1 OR 1.5 METER(S) WIDE. THERE WAS A TOILET AT THE END. HE WAS FED THREE MEALS PER DAY, BUT THEY WERE OF LOW QUALITY.

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D. (S/N) AFTER 17 DAYS, HE WAS TRANSFERRED TO A PRISON IN TEHRAN, WHERE HE STAYED FOR THREE MONTHS. THE CELL WAS CLEAN AND CONDITIONS THERE WERE GOOD AND THE FOOD WAS GOOD. HIS CELL WAS ABOUT TWO METERS LONG IN EACH DIRECTION. THE ROOM WAS SQUARE AND THERE WAS A SINGLE WINDOW IN THE CEILING THROUGH WHICH HE COULD GET LIGHT AND FRESH AIR. THERE WAS NO FURNITURE IN HIS ROOM, AND NO CAMERAS THAT HE COULD SEE. THE DOOR HAD A REMOVABLE PLATE AT EYE LEVEL, WHICH THE GUARDS WOULD SOMETIMES REMOVE AND THROUGH WHICH HE WOULD BE OBSERVED OCCASIONALLY. HE COULD HEAR BIRDS THROUGH THE WINDOW IN THE CEILING. HE WAS NEVER TAKEN OUTSIDE, EXCEPT TO GO TO THE BATHROOM. HE ALWAYS HAD BLINDED GOGGLES ON WHEN HE WAS TAKEN OUT OF HIS CELL, BUT HE SAID THAT HE MANAGED TO DETERMINE THAT WHEN HE WAS GOING DOWN THE HALL TO THE BATHROOM, HIS DOOR WAS THE ONLY ONE ON THE RIGHT BUT THERE WERE MANY DOORS ON THE LEFT. THE GUARDS WORE CIVILIAN CLOTHES AND HAD CIVILIAN WEAPONS. THEY TREATED HIM WELL. EVERY FRIDAY THE GUARDS WOULD EXCHANGE HIS CLOTHING. HE DID NOT KNOW ANY PRISONERS, BUT HE REMEMBERED ONE GUARD, A LARGE MAN WITH A LARGE BEARD THAT HE JOKINGLY CALLED "THE MULLAH." THE GUARDS HAD A RADIO IN THE HALL THAT THEY KEPT PLAYING MUSIC CONTINUOUSLY, SO HE WAS NEVER ABLE TO ASCERTAIN

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THE LOCATION OF OTHER PRISONERS. ONE PRISONER THAT HE DID MEET THERE WAS NAMED LAZIZ, AND HE WAS AN UZBEKI NATIONAL THAT TAUGHT [REDACTED] SOME ENGLISH. [REDACTED] RECEIVED THREE MEALS A DAY AND FREE BATHROOM PRIVILEGES AT ANY TIME. E. (S/N) WHILE HE WAS THERE, [REDACTED] WAS INTERROGATED FOUR TIMES. THE FIRST TIME HE WAS INTERROGATED BY A VERY NICE IRANIAN WHO KNEW SOME ENGLISH. AFTER THAT, HE WAS INTERROGATED BY AN IRANIAN WHO KNEW PROPER, STANDARD ARABIC. TWICE THE INTERROGATORS CAME TO HIS CELL, AND TWICE HE WAS BROUGHT TO A SMALL ROOM FOR THE QUESTIONING. HIS VISION WAS KEPT OBSCURED WHENEVER HE LEFT HIS CELL, INCLUDING WHEN HE WAS BROUGHT OUT FOR INTERROGATION. ADDITIONALLY, IT WAS OBSCURED WHEN THE INTERROGATOR CAME TO HIS ROOM AND HE WAS ONLY ABLE TO SEE HALF OF THE INTERROGATORS' FACES. WHEN HE ASKED THEM WHERE HIS WIFE AND DAUGHTER WERE, THEY TOLD HIM THAT HIS FAMILY HAD CONTINUED ON TO JORDAN. F. (S/N) [REDACTED] THEN WAS MOVED TO A PRISON IN MASHHAD, WHERE HE WAS KEPT FOR ABOUT TWO DAYS. AFTER THE SECOND DAY HE WAS TRANSFERRED TO AFGHANISTANI AUTHORITIES. THE FIRST DAY, HE WAS PLACED IN A CELL

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WITH THREE PEOPLE, WALID, HUSSEIN AND RAFIQ. ON THE SECOND DAY, ATIQUILLAH, AN AFGHAN, WAS PLACED IN THE CELL WITH THEM. THE PRISON IN MASHHAD WAS VERY BAD AND THE FOOD WAS NOT GOOD. THERE WERE THREE GUARDS THAT HE COULD SEE AND THEY WORE CIVILIAN UNIFORMS AND HAD CIVILIAN-STYLE WEAPONS. [REDACTED] DID NOT HAVE MUCH CONTACT WITH THE GUARDS. HE WAS NOT QUESTIONED WHILE AT THIS PRISON. HE RECEIVED HARSH TREATMENT AT THIS PRISON. HE WAS NOT ALLOWED ANY VISITORS WHILE HE WAS IN THE IRANIAN PRISONS.

5. (S) SOURCE D:

A. (S) AFTER HAVING LIVED IN MASHHAD AND WORKING AS A TAXI DRIVER FROM 1997 TO 2002, [REDACTED] WAS ARRESTED ONE NIGHT IN FEBRUARY 2002 WHEN HE WAS IN THE AREA OF THE IMAM REZA MOSQUE, LOCATED ON FELAKIHA BOULEVARD. [REDACTED] HAD TO SHOW THE IRANIAN POLICE HIS PERMITS AND WHEN THEY REALIZED HE WAS ARGHANI, THEY ARRESTED HIM AND DETAINED HIM IN THE POLICE STATION OF THE KALANTERI DISTRICT OF TOWN.

B. (S) THE KALANTERI POLICE STATION IN MASHHAD WAS A TWO-FLOOR FACILITY; OFFICES FOR GOVERNMENT OFFICIALS ON THE TOP FLOOR  
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SUBJ: IIR 6 044 5139 03, [REDACTED] ARABS HELD IN VARIOUS IRANIAN AND THE DETENTION CENTER IN THE BASEMENT. THE DETENTION CELL WAS APPROXIMATELY 16 FEET BY 20 FEET. THE WALLS OF THE CELL WERE MADE OF CEMENT AND THE DOOR WAS MADE OF CROSSED IRON BARS. THERE WERE NO SEATS OR OTHER FURNITURE AND ONLY A BOWL IN THE CORNER TO BE USED FOR URINATION. PRISONERS WERE ALLOWED OUT OF THE CELL ONLY IN ORDER TO DEFECATE IN A REAL TOILET. DURING THE TWO DAYS [REDACTED] WAS HELD THERE, THERE WERE 15 TO 17 OTHER PEOPLE IN THE CELL. THE POLICE DID NOT GIVE THE PRISONERS ANY PROHIBITIONS; THEY COULD TALK, SMOKE, OR SLEEP, ASSUMING THAT ANYONE COULD FIND ENOUGH SPACE TO LAY DOWN.

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PRISONERS PAID FOR THEIR OWN MEALS. THE POLICE CONFISCATED 90 TO 75 THOUSAND IRANIAN TOMAN (USD \$9-94) FROM [REDACTED] AT THE TIME OF HIS ARREST AND GAVE HIM BACK 1000 TOMAN (USD 1.25) TO KEEP IN THE CELL. HE WAS CARRYING AN ABNORMALLY LARGE AMOUNT OF MONEY THAT DAY BECAUSE, BY COINCIDENCE, HE WAS GOING TO TAKE HIS TAXI TO THE REPAIR SHOP. PRISONERS WERE TOLD THAT NEITHER THE GOVERNMENT NOR PRISON AUTHORITIES WOULD PROVIDE THEM WITH FREE FOOD. PRISONERS WERE TOLD THAT IF THEY WANTED TO EAT THEY WOULD HAVE TO USE THEIR OWN MONEY TO BUY FOOD. PRISONERS WOULD GIVE MONEY TO THE GUARDS, AND THE GUARDS WOULD GO TO THE MARKET AND BUY FOOD FOR THE PRISONERS. THOSE PRISONERS WITH MONEY SHARED FOOD WITH THOSE PRISONERS WHO DID NOT. IN

ONE CASE, A PRISONER WHO HAD BEEN HELD 10 TO 15 DAYS HAD ONLY HAD ONE BISCUIT TO EAT DURING HIS IMPRISONMENT AND WAS SO HUNGRY THAT HE TRIED TO GRAB AND HOARD THE FOOD HE WAS GIVEN INSTEAD OF PASSING IT AROUND AMONG THE OTHER PRISONERS.

C. (S) ON THE THIRD DAY OF HIS IMPRISONMENT, [REDACTED] WAS TAKEN OUT OF THE DETENTION CELL (HE WAS THE ONLY ONE REMOVED) AND TAKEN UPSTAIRS INTO THE POLICE OFFICE. WAITING FOR [REDACTED] WERE THREE MEN IN CIVILIAN CLOTHES, WITH [REDACTED] VEHICLE PERMIT AND HIS AFGHAN IDENTITY

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CARD. [REDACTED] BELIEVED THEY WERE LINKED TO THE MOIS BECAUSE OF THE CIVILIAN CLOTHES. [REDACTED] WAS HANDCUFFED, BLINDFOLDED, AND TAKEN OUT OF THE POLICE STATION AND TRANSPORTED TO ANOTHER PRISON. THE TRIP LASTED BETWEEN 30 AND 45 MINUTES AND [REDACTED] KNEW HE WAS HEADING IN THE DIRECTION OF THE AIRPORT. THE SOUND OF THE PLANES BECAME LOUDER AND LOUDER. [REDACTED] DROVE A

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TAXI IN MASHHAD FOR SIX YEARS AND KNEW THAT PEOPLE CHOSE NOT TO LIVE ON THAT SIDE OF TOWN BECAUSE OF THE NOISE. STILL BLINDFOLDED, [REDACTED] WAS TAKEN OUT OF THE VEHICLE AND AT THE PRISON HE IMMEDIATELY WALKED UP FOUR OR FIVE STEPS AND THROUGH A SLIDING GLASS DOOR AND WAS TAKEN INTO HIS DETENTION CELL WHERE HE STAYED 20 TO 30 DAYS.

D. (S/N) IN HIS CELL, THE BLINDFOLD WAS REMOVED. HE WAS MADE TO STRIP, WAS SEARCHED AND WAS REDRESSED. THE CELL WAS APPROXIMATELY SIX FEET BY TEN FEET. THE CEILINGS WERE VERY HIGH. THE DOOR WAS METAL WITH A SLIDING DOOR TO PASS FOOD TRAYS AND A PEEP HOLE FOR THE GUARDS. THE DOORS AND PEEP HOLES WERE KEPT SHUT ALL THE TIME AND THE WALLS WERE THICK SO [REDACTED] COULD NOT SEE OR HEAR ANYTHING. THERE WAS NOTHING ELSE IN THE ROOM. WHEN [REDACTED] NEEDED TO USE THE BATHROOM, HE WOULD KNOCK ON THE DOOR TO ALERT THE GUARD WHO WOULD BLINDFOLD HIM AND TAKE

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HIM TO THE BATHROOM NEXT DOOR, MAKING A RIGHT-HAND TURN OUT OF THE CELL. HE WAS ALLOWED TO USE THE BATHROOM TWICE DAILY. HIS BREAKFAST CONSISTED OF A HALF A PIBECE OF BREAD AND TEA. RICE AND SOUP FOR LUNCH AND A "CAKE" OF MASHED VEGETABLES FOR DINNER. [REDACTED] WAS NEVER INTERROGATED OR QUESTIONED, BUT WAS TAKEN OUT OF HIS CELL, ALWAYS BLINDFOLDED, SIX OR SEVEN TIMES DURING THE 20 TO 30 DAYS OF HIS IMPRISONMENT FOR FINGERPRINTING. ON ONE OCCASION THE BLINDFOLD WAS REMOVED AND HIS PICTURE TAKEN. WHENEVER HE WAS TAKEN ANYWHERE, THE GUARDS WOULD PUSH AND SHOVE HIM AND MAKE INSULTING AND DEROGATORY COMMENTS ABOUT HIS AFGHAN HERITAGE. HE WAS TORTURED WHILE AT THIS PRISON. THE IRANIAN GUARDS WOULD HIT HIM IN THE HEAD WITH LARGE PIECES OF WOOD AND KICK HIM. THEY CURSED AT HIM AND YELLED. THEY ALSO THREW HIM AGAINST THE WALLS. HE FEELS THAT ALL THIS WAS DONE BECAUSE HE WAS AFGHAN AND THE IRANIANS DO NOT THINK MUCH OF AFGHANS.

E. (S/N) AFTER 20 TO 30 DAYS OF IMPRISONMENT, SEVEN TO TEN MEN IN CIVILIAN CLOTHES ENTERED HIS CELL, THREW HIM ON THE FLOOR, PUT HIM INTO HANDCUFFS AND LEG IRONS AND BLINDFOLDED HIM, THEN WALKED HIM TO A VEHICLE. HE DID NOT EXIT THE DETENTION CENTER BY THE SAME ROUTE THAT HE ENTERED, AS HE REMEMBERED THAT IT WAS A FOUR TO FIVE MINUTE

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WALK TO THE VEHICLE AND HE DID NOT GO DOWN ANY STAIRS. HE WAS DRIVEN 20 TO 25 MINUTES IN THE VEHICLE WEDGED BETWEEN TWO OFFICERS. WHEN [REDACTED] BLINDFOLD WAS REMOVED, HE REALIZED IMMEDIATELY THAT HE WAS AT MASHHAD AIRPORT. IN FRONT OF THE VEHICLE WHERE [REDACTED] WAS SEATED WAS A VAN WITH A REAR WINDOW. IN THE VAN WERE SEVEN OR EIGHT PEOPLE (FIELD COMMENT-- WHEN HE MADE A RETURN TRIP TO MASHHAD AIRPORT THE NEXT DAY, HE RODE IN THIS VAN. HE REALIZED THAT THE PERSONS HE SAW THE PREVIOUS DAY WERE ARGHAN PRISONERS). [REDACTED] SAT IN THE BACK OF THE VEHICLE FOR TWO TO THREE HOURS. DURING THIS TIME, THE TWO OFFICERS DRESSED IN CIVILIAN CLOTHES ON EITHER SIDE OF [REDACTED] SPOKE TO EACH OTHER, BUT DID NOT ADDRESS [REDACTED] EXCEPT TO SAY THAT [REDACTED] WAS BEING SENT BACK TO AFGHANISTAN. DURING THE TWO TO THREE HOURS [REDACTED] WAS AT MASHEAD AIRPORT, A VEHICLE DESCRIBED AS A "PATROL" (POSSIBLY A NISSAN PATROL) PULLED UP TO THE AREA WHERE THE TWO VEHICLES WERE PARKED. THE FIVE OR SIX OCCUPANTS EXITED THE VEHICLE AND SPOKE WITH THE IRANIANS. ONE OF THE MEN IN THE PATROL WAS WEARING A TRADITIONAL ARGHAN HAT CALLED A "PAKOL". [REDACTED] COULD NOT BE CERTAIN IF THE MEN WERE AFGHANS OR IRANIANS, BUT THE FACT THAT ONE WAS WEARING THE PAKOL SCENE SOME TIME LATER. [REDACTED] WAS BLINDFOLDED AGAIN AND FORCED DOWN ONTO THE FLOORBOARD OF THE VEHICLE. THE VEHICLE RETURNED TO THE SAME DETENTION

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CENTER AND [REDACTED] WAS TAKEN BACK TO HIS CELL.

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F. (S//NF) THE NEXT DAY, [REDACTED] WAS AGAIN TAKEN TO MASHHAD AIRPORT, THIS TIME AS A PASSENGER IN THE VAN DESCRIBED ABOVE. THERE WERE A TOTAL OF TEN PRISONERS, [REDACTED] INCLUDED. HE DID NOT TELL THE OTHER PRISONERS THAT THEY WERE GOING BACK TO AFGHANISTAN. UPON ARRIVAL AT MASHHAD AIRPORT, THE PRISONERS WERE TAKEN OUT OF THE VEHICLE AND WALKED TO THE WAITING AIRPLANE. [REDACTED] SAW THREE MEN CARRYING AUTOMATIC WEAPONS, THREE OTHER MEN IN CIVILIAN CLOTHES AND ONE MAN WEARING AN AFGHAN PAKOL HAT. THE TEN AFGHAN PRISONERS' ARMS WERE CUFFED BEHIND THEIR BACKS WITH "FLEXICUFFS", AND THEY WERE TIED TOGETHER AT THE ANKLE WITH ROPE IN TWO GROUPS OF FIVE. ALONG WITH THE PRISONERS ON THE PLANE, THERE WAS A BODY IN A COFFIN ACCOMPANIED BY A CARETAKER. THE DECEASED WAS DESCRIBED AS A MEMBER OF THE PANJSHIRI TRIBE OF AFGHANIS TAN (FIELD COMMENT— [REDACTED] COULD NOT REMEMBER IF THE CARETAKER TOLD HIM THE DECEASED WAS PANJSHIRI, OR IF IT WAS WRITTEN ON THE SIDE OF THE COFFIN.)

COMMENTS: (FIELD COMMENTS)—

1. (S//NF) SOURCES ARE AVAILABLE FOR RECONTACT.

QQQQ

SUBJ: IIR 6 044 5139 03 [REDACTED] ARABS HELD IN VARIOUS IRANIAN

2. (S//NF) REQUEST EVALUATION TO DETERMINE INTEREST ON THE PART OF CONSUMERS. TO AID COLLECTION EFFORTS, EVALUATIONS AND SOURCE DIRECTED REQUIREMENTS SHOULD BE SENT TO [REDACTED]

[REDACTED] OFFICE CODE - [REDACTED] 3 [REDACTED] VIA GENSER TRAFFIC.

3. (S//NF) DIRECT QUESTIONS OR COMMENTS TO [REDACTED] 3 [REDACTED] AT DEFENSE SUBSCRIBER NETWORK [REDACTED] 2 [REDACTED] THIS IS NOT A COMMERCIAL LINE.

4. (S//NF) ~~SECRET//NOFORN~~ IIR 6 044 5139 03 MESSAGE DTG 161555Z APR 03.

IS CHANGED TO DELETE REFERENCES TO [REDACTED]

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[REDACTED] 1 [REDACTED] FROM THE SOURCE LINE.

3 [REDACTED] COMMENT) - (S//NF) A CHECK OF LOCAL AND NATIONAL DATA BASES PROVIDED NO FURTHER INFORMATION ON THE PERSONALITIES LISTED IN THIS REPORT TO INCLUDE THE DEAD PANJSHIRI.

GOLL: (S//NF) DD.

INSTR: (S//NF) U.S. NO.

FRFP: (S//NF) [REDACTED] 2

[REDACTED] 2

ACQ: (S//NF) [REDACTED] 2

DISSEM: (S//NF) FIELD - NONE

WARNING: (S//NF) REPORT CLASSIFIED ~~SECRET//NOFORN~~

DERIVED FROM: (S//NF) USAINSCOM SCG 380-2, 5 AUGUST 1996.

DECLASSIFY ON: (S//NF) XI

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DMO Exhibit 25

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IN THE SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No. 11-\_\_\_\_\_

HUSSAIN SALEM MOHAMMED ALMERFEDI,

*Petitioner,*

v.

BARACK OBAMA, ET AL.,

*Respondents.*

**CERTIFICATE OF SERVICE**

I, S. William Livingston, a member of the Bar of this Court, hereby certify that on November 7, 2011, certify that true and correct copies of the foregoing classified brief were served today, via the Court Security Officer, the Solicitor General of the United States, at the following address:

Room 5614  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530-0001



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*Counsel for Petitioner*

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IN THE SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
No.11-\_\_\_\_\_

HUSSAIN SALEM MOHAMMED ALMERFEDI,

*Petitioner,*

v.

BARACK OBAMA, ET AL.,

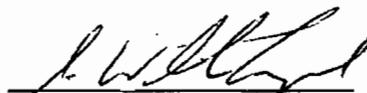
*Respondents.*

**CERTIFICATE OF COMPLIANCE**

As required by Supreme Court Rule 33.1(h), I certify that the Petition of a Writ Certiorari to the United States Court of Appeals for the District of Columbia Circuit contains 6,538 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Executed on November 7, 2011.



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