

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
LAKHDAR BOUMEDIENE, <i>et al.</i> ,)	
)	
Petitioners,)	Civil Action No. 04-CV-1166 (RJL)
)	
v.)	
)	
GEORGE W. BUSH)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

PETITIONERS' MOTION FOR LEAVE TO SUPPLEMENT TRAVERSE

Petitioners hereby request leave to supplement their Traverse To The Government's Return To The Petition For Habeas Corpus ("Traverse").

Subsequent to the filing and service of the Traverse on October 17, 2008, the Government produced several previously unavailable material documents, and the Court issued its Order on the definition of enemy combatant. Mem. Order (Oct. 27, 2008). The proposed Supplement to Petitioner's Traverse is narrowly tailored to address these issues and, accordingly,

could not have been included with the original Traverse.¹ Petitioners' Supplemental Exhibit List is attached hereto.²

The Government has not assented to this motion.

Respectfully submitted,

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/s/ Allyson J. Portney
Stephen H. Oleskey (*admitted*)
Robert C. Kirsch (*admitted*)
Gregory P. Teran (*admitted pro hac vice*)
Allyson J. Portney (*admitted pro hac vice*)
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
(617) 526-6000

November 4, 2008

¹ Petitioners recognize that the Court's Case Management Order ("CMO") anticipated that a supplement was to be filed seven days before the hearing commenced. CMO §1.F, at 2-3 (Aug. 27, 2008). However, Petitioners respectfully submit the CMO did not anticipate that the Government would require so much time to complete its discovery obligations. To avoid a multiplicity of filings, Petitioners submitted the Supplement the day after receiving the Government's oral representation that no further documents would be forthcoming.

² As the Government produced documents after Petitioners' Counsel last traveled to meet with Petitioners at Guantanamo Bay on October 18, 2008, Petitioners reserve the right to offer these documents this week, following consultations between Petitioners and Petitioners' Counsel.

CERTIFICATE OF SERVICE

I, Allyson J. Portney, hereby certify that on November 4, 2008, I electronically filed and served the foregoing Petitioners' Motion For Leave To Supplement Traverse, and arranged to deliver a copy of Petitioners' Motion for Leave to Supplement Traverse and Supplemental Traverse to the Government by providing a duly marked envelope containing that copy to the Court Security Officer.

/s/ Allyson Portney

Allyson Portney

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[PROPOSED] ORDER

Upon consideration of Petitioners’ Motion for Leave to Supplement Traverse (the “Motion”), and response thereto, it is hereby ORDERED that the Motion is GRANTED. Petitioners shall file and serve the Supplement to the Traverse no later than November _____, 2008.

November _____, 2008

RICHARD J. LEON
United States District Judge

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PETITIONERS' SUPPLEMENTAL EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
155.	Government Discovery document USG 04-CV-1166-0103 — USG 04-CV-1166-0110 (<i>Filed Under Seal</i>)
156.	Government Discovery document USG 04-CV-1166-0098 — USG 04-CV-1166-0100 (<i>Filed Under Seal</i>)
157.	Government Discovery document USG 04-CV-1166-0111 — USG 04-CV-1166-0114 (<i>Filed Under Seal</i>)
158.	Supplemental Declaration of Gary D. Solis, J.D., Ph.D.
159.	Government Discovery document USG 04-CV-1166-0138 — USG 04-CV-1166-0143 (Nechla's Bosnian Passport)

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EXHIBIT 158

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	<i>Respondents.</i>)
_____)

SUPPLEMENTAL DECLARATION OF GARY D. SOLIS, J.D., Ph.D.

I, Gary D. Solis, hereby declare:


1. My name is Gary D. Solis. I am over 18 years old and I am prepared to testify to the facts and opinions stated herein, if called upon to do so.
2. I submit this supplemental declaration in light of information that has come to my attention since the submission of my first declaration in this case. I am prepared to testify about the knowledge, skill, training, education and experiences that I have acquired which informs my opinions, and the principles and methods I applied in reaching them.
3. I have not received any compensation or benefit of any kind for providing this Declaration.
4. I have reviewed the brief regarding the definition of "enemy combatant" submitted by the Government in this case on October 22, 2008. I have also reviewed the Court's definition of "enemy combatant" in the order dated October 27, 2008.
5. As noted in my previous declaration, I am not aware of any definition of "combatant" under the laws of war that employs the term "support." However, the Government's brief dated October 22 appears to interpret the word "support" to refer to the category of "persons who accompany the armed forces." (Respondents' Memorandum Regarding the Definition of Enemy Combatant pp. 11-12, 14 n.4.)
6. The Government's position assumes that the Third Geneva Convention applies to the common Article 3 war on terrorism, which carries with it the implication that the "direct participation" standard is the governing legal test for determining whether civilians may be treated as combatants. Accepting that assumption, it is correct that Article 4.A.(4) of the Third Convention includes "persons who

accompany the armed forces” of a State Party as prisoners of war. However, the category of “persons accompanying” is limited to persons who physically accompany and provide services to an armed force, such as engineers, scouts, cooks, or USO entertainers. Such persons are not considered “combatants” and may not be targeted with military force (unless they directly participate in hostilities). If the plain language of Article 4.A.(4) is not sufficiently clear in that regard, the ICRC *Commentary* to that Convention reinforces that the Article applies to those who “follow the armed forces during any future conflict.” As the United Kingdom’s Manual of the Law of Armed Conflict (§ 4.3.7.) also specifies, that Article applies to civilians who “accompany the armed forces *in the field*...” (Emphasis supplied.) No AUMF provision supersedes logic and settled customary law of armed conflict.

7. I note that, in the Government's filing of October 22, the Government accuses the Petitioners in this case of planning to travel to Afghanistan in October 2001 to fight against the United States. I have not reviewed any of the classified evidence in this case and do not know whether this allegation is well-founded. It is my opinion, however, that planning to travel to join an armed force does not make a person detainable as a “person who accompanies an armed force.” I know of no law of war doctrine that would authorize the targeting or detention of a person - either as a “combatant” or a “person who accompanies an armed force” - who had merely planned to travel to a foreign country to join an armed force.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 3, 2008.

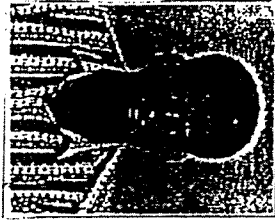


Gary D. Solis, J.D., Ph.D.

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EXHIBIT 159



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REPUBLIKA
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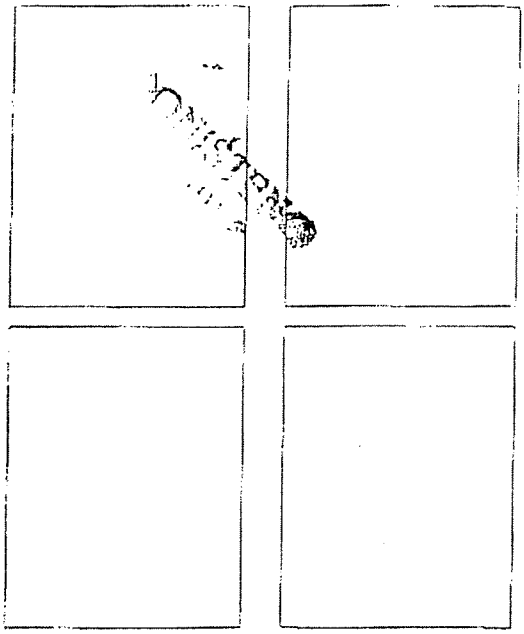
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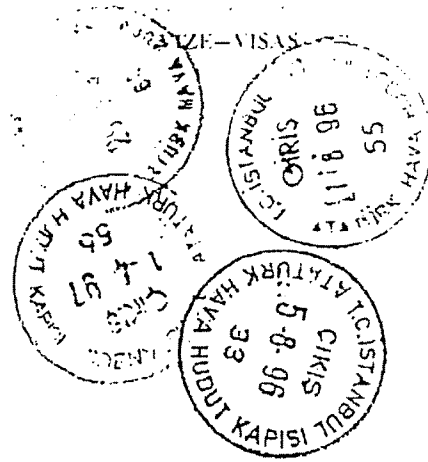
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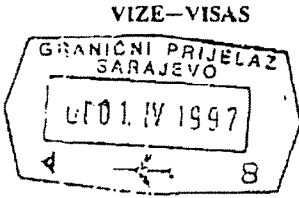
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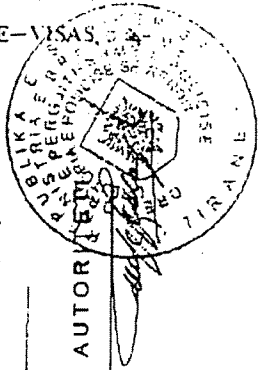
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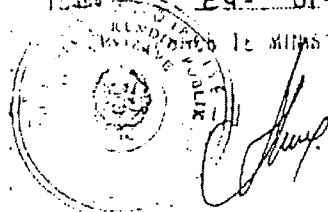
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