

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

LAKHDAR BOUMEDIENE, <u>et al.</u> ,	)	
	)	
Petitioners,	)	
	)	Civ. No. 04-1166 (RJL)
v.	)	
	)	
GEORGE W. BUSH, <u>et al.</u> ,	)	
	)	
Respondents.	)	
	)	

**RESPONDENTS’ MOTION TO STRIKE PORTIONS OF  
PETITIONERS’ PUBLIC AND CLASSIFIED TRAVERSES**<sup>1</sup>

On October 17, 2008, petitioners filed their public and classified traverses (collectively, the “Traverse”). Respondents move to strike the portions of Petitioners’ Traverse that discuss the arrest and detention of Petitioners by Bosnian authorities, the investigation of Petitioners commenced in 2001 by Bosnian authorities, and the “handover” of Petitioners to U.S. custody by the Bosnian authorities (collectively referred to as the “Bosnian investigation”). Simply put, the Bosnian investigation is immaterial to the resolution of Petitioners’ petitions for writ of habeas corpus that challenge their lawful, non-punitive and prospective detention by U.S. authorities as enemy combatants. Given the schedule and issues presented in this proceeding, the Court should restrict its focus to only those issues necessary to resolve the petitions. Consequently, the Court should strike the portions of the Traverse that are plainly immaterial to this case and which could create an unnecessary distraction and thereby prolong this proceeding; or, at the very least, the

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<sup>1</sup> Respondents submit additional support for this Motion in a classified appendix, which will be served and filed under seal through the Court Security Office.

Court should issue an order declaring that the Bosnian investigation is immaterial to Petitioners' petitioners for writ of habeas corpus and need not and should not be addressed at the upcoming hearing in this matter.

The Supreme Court has acknowledged that a court retains the inherent power to manage its affairs, separate and apart from the Federal Rules of Civil Procedure. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 42-45, 49 (1991). *See also Link v. Wabash Railroad Company*, 370 U.S. 626, 629-31 (1962). Striking immaterial sections of Petitioners' Traverse is consistent with allowing courts to control their own affairs to "achieve the orderly and expeditious disposition of cases." *Link* at 631. *See Chambers* at 49. *See also Hagan v. Schwarzenegger*, 2007 WL 760589\*11 (N.D. Cal. 2007) (acknowledging a respondent's ability to move to strike parts of a traverse as well as a court's authority to rule on such a motion). *Cf.* Fed. R. Civ. P. 12(f) ("The court may strike from a pleading an insufficient defense or any redundant, *immaterial*, impertinent, or scandalous matter.") (emphasis added).<sup>2</sup>

Significant portions of the Traverse are immaterial to resolution of the petitions at issue in this proceeding. Respondents do not dispute that Petitioners were arrested by Bosnian authorities in October 2001, that the Bosnian authorities investigated Petitioners in part because

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<sup>2</sup> In *Boumediene v. Bush*, the Supreme Court held that detainees are entitled to "fundamental" habeas rights. 128 S. Ct. at 2277 (noting that the "opinion does not address the content of the law that governs petitioners' detention"); *id.* at 2278 ("[L]egislation eliminated the statutory habeas jurisdiction over these claims, so that now there must be constitutionally based jurisdiction or none at all.") (Souter, J., concurring). It is far from clear that the habeas statute applies here. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality) (noting implicitly that § 2243 is not binding); *Boumediene*, 128 S. Ct. at 2291 (same) (Roberts, C.J., dissenting). Moreover, the Federal Rules of Civil Procedure do not necessarily apply to statutory habeas petitions, let alone constitutional habeas claims. *See* Fed. R. Civ. P. 81(a)(4); Section 2255 Habeas Rule 12; *Rumsfeld v. Padilla*, 542 U.S. 426, 452 (2004) (Kennedy, J., concurring).

of allegations that they planned to bomb the U.S. Embassy in Sarajevo, that the Bosnian Supreme Court ordered Petitioners released on January 17, 2002, or that the Bosnian authorities transferred Petitioners to U.S. custody. Respondents thus do not seek to prohibit mention by Petitioners of these basic facts of arrest, detention, investigation and transfer, but rather dispute the relevance of Petitioners' lengthy and inflammatory discussion of the details surrounding those basic facts.<sup>3</sup> Specifically, the details of Petitioners' arrest and detention by Bosnian authorities, as well as the details of the Bosnian investigation and findings of that investigation, are not material to whether Petitioners are lawfully detained by U.S. authorities as enemy combatants. Moreover, the details of why the Bosnian authorities determined that they should transfer Petitioners to U.S. custody are not material to the reasons why the U.S. authorities are lawfully detaining the Petitioners. Indeed, Petitioners' reliance on declarations by former Bosnian officials describing discussions between the United States and Bosnia, including their perceptions as to why the United States wished to have the Petitioners detained by the Bosnian authorities, and speculating as to why the Bosnian authorities thought that the United States wished to detain the Petitioners upon their release from Bosnian custody, are completely irrelevant to the present proceeding.<sup>4</sup>

Given the urgency of this proceeding and its necessarily shortened litigation timeline, it is

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<sup>3</sup> In discussing the Bosnian investigation, Petitioners make numerous inflammatory accusations about the conduct of representatives of the Department of State. Although the Department of State does not accept the accuracy of a number of those allegations, Respondents do not intend to submit evidence disputing those accusations unless the Court deems the accusations material to resolution of the petitions.

<sup>4</sup> Further information is provided in section B of the classified appendix to this motion.

both unduly burdensome and unnecessary for the Government to prepare, and for this Court to hear, any information beyond the basic facts regarding the Bosnian investigation because the Bosnian investigation is immaterial to resolution of the petitions.

### **CONCLUSION**

Respondents, therefore, respectfully request that this Court strike those portions of the Traverse that discuss (1) the arrest and detention of Petitioners by the Bosnian authorities; (2) the investigation of Petitioners by the Bosnian authorities; and (3) the transfer of Petitioners from Bosnian to U.S. custody in January 2002. In the alternative, Respondents request that the Court issue an order that the above information is not material to resolution of the petitions, prohibiting discussion of such information except as to the basic facts of arrest, detention, investigation and transfer.

Dated: November 4, 2008

Respectfully submitted,

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