



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:
GUANTANAMO BAY
DETAINEE LITIGATION

Misc. No. 08-442 (TFH)

Civil Action No.
05-CV-2386 (RBW)

FACTUAL RETURN





Respondents hereby submit, as explained herein, a factual return pertaining to the petitioner identified as the subject of the attached Narrative. This return sets forth factual bases¹ supporting petitioner's lawful, ongoing detention pursuant to the Authorization for the Use of Military Force and the President's power as Commander in Chief.

Dated: November 26, 2008

Respectfully submitted,

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¹ Respondents reserve the right to seek leave to further supplement the record with additional factual bases supporting petitioner's detention, as necessary.



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

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GUANTANAMO BAY)	Misc. No. 08-442 (TFH)
DETAINEE LITIGATION)	
)	Civil Action No.
)	05-CV-2386 (RBW)
)	
)	
)	

DECLARATION OF REAR ADMIRAL DAVID THOMAS

Declaration of Rear Admiral David M. Thomas, Jr.

Pursuant to 28 U.S.C. § 1746, I, David M. Thomas, Jr., hereby declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

I am a Rear Admiral in the United States Navy, with 31 years of active duty service. I currently serve as Commander, Joint Task Force-Guantanamo (JTF-GTMO); at Guantanamo Bay, Cuba. I have held this position since 27 May 2008. As such, I am directly responsible for the successful execution of the JTF-GTMO mission to conduct detention and interrogation operations in support of the Global War on Terrorism, coordinate and implement detainee screening operations, and support law enforcement and war crimes investigations.

The attached narrative and supporting materials from files of the Department of Defense or other government agencies contain information used by the Department of Defense to establish the status of the individual who is the subject of the narrative as an enemy combatant and to substantiate their detention as an enemy combatant at Guantanamo Bay, Cuba.

Dated:



DAVID M. THOMAS, JR.
Rear Admiral, U.S. Navy



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHER EL FALESTENY,)
)
Petitioner,)
)
v.)
)
GEORGE WALKER BUSH, <i>et al.</i> ,)
)
Respondents.)

Civil Action No. 05-2386 (RBW)

NARRATIVE FOR MAHRAR RAFAT AL-QUWARI (ISN 519)

Introduction

1. Mahrar Rafat al-Quwari (listed in the petition as Maher el Falesteny) is an

b(1) [redacted] national posing as a Palestinian. [redacted]



[redacted] Al-Quwari ultimately traveled to the Tora Bora region of Afghanistan in the fall of 2001, where he provided support to al-Qaida and Taliban fighters by, among other things,



[redacted] Al-Quwari and [redacted] were captured

by coalition forces as they made their way to the Pakistan border.



2. The materials discussed herein relating to the factual bases for al-Quwari's detention, and the assessment that he is a lawfully detained enemy combatant, include interviews of him and others conducted by law enforcement and intelligence personnel, as well as information derived from other intelligence sources and methods. The officers who collect this intelligence routinely draft reports containing the information received from these sources. Military and intelligence personnel routinely rely upon these reports and intelligence products in making decisions to act upon threats to our national security. See Decl. of ^{D3} [redacted] ^{D3} [redacted] *Background Declaration—Intelligence 101* (Sept. 19, 2008); Decl. of Robert H. Holmes, *Use of Intelligence Products in the Targeting and Operation Cycles in Operation Enduring Freedom* (Aug. 22, 2008).

3. As with all detained enemy combatants at Guantanamo Bay, Cuba, al-Quwari has been assigned an Internment Serial Number or ISN. The ISN is an administrative code assigned to military detainees. Al-Quwari's full ISN is ^{b(2)} [redacted]-00519^{b(2)} [redacted] in which the number "519" is al-Quwari's unique identifier. Al-Quwari has steadfastly claimed to be a Palestinian having no country of citizenship.¹ ^{b(1)} [redacted]

^{b(1)} [redacted] al-Quwari as ^{b(1)} [redacted]

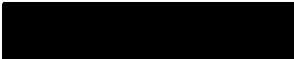
^{b(1)} [redacted] See ^{b(2)} [redacted] ^{b(2)} [redacted] ^{b(2)} [redacted] Decl. of

^{D3} [redacted] *Background Declaration—Names, Aliases, Kunyas and Variants* (Sept. 19, 2008).

4. Source documents attached as Exhibits to this narrative may refer to al-Quwari by name, full ISN, or various short forms, such as "ISN 519." Likewise, other military

¹ Al-Quwari brought this habeas action under the name Maher el Falesteny, which translates to "Maher the Palestinian." See Decl. of ^{D3} [redacted] *Background Declaration—Names, Aliases, Kunyas and Variants* (Sept. 19, 2008).





detainees may be referred to in source documents and this summary by name or various forms of their ISNs.

5. The following narrative and attached materials set forth the factual bases supporting al-Quwari's lawful detention. This narrative is not intended to be an exhaustive explication of the information supporting al-Quwari's detention that is contained in those source documents.

6. As a preliminary matter, it is not uncommon for those engaged in terrorist activities to use an alias, commonly known in Arabic as a *kunya*. Decl. of ^{D3} [redacted] ^{D3} [redacted] *Background Declaration—Names, Aliases, Kunyas and Variants* (Sept. 19, 2008); ISN [redacted] FD-302 (May 24, 2003). In addition, variations in spelling arise when Arabic names and other words are transliterated to Latin characters. Decl. of ^{D3} [redacted] *Background Declaration—Names, Aliases, Kunyas and Variants* (Sept. 19, 2008). There are many transliterations of the same names and aliases in the materials cited and this narrative does not attempt to delineate every instance where the cited documents contain transliterations of the same name or alias. ^{b(1)} [redacted] al-Quwari ^{b(1)} [redacted]

^{b(1)} [redacted] See ISN 519 ARB Testimony (Sept. 7, 2006); ^{b(2)} [redacted] Al-Quwari ^{b(1)} [redacted]

^{b(1)} [redacted] ^{b(2)} [redacted]

General Background

7. Al-Qaida (Arabic for "the base") was founded by Usama bin Laden (UBL) and others in about 1989 for the purpose of opposing certain governments and officials with force and violence. National Comm'n on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* 56 (2004) (*9/11 Commission Report*). UBL is recognized as the emir (prince or leader) of al-Qaida. See *id.* One purpose or goal of al-Qaida, as stated by UBL and other al-



[REDACTED]

Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries. *See id.* at 59-61.

8. Between 1989 and 2001, al-Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan and other countries for the purpose of training and supporting violent attacks against property and peoples of the United States and other countries. *See id.* at 64-67. In 1996, UBL issued a public "Declaration of Jihad Against the Americans." This declaration called for the murder of U.S. military personnel serving on the Arabian Peninsula. *See id.* at 48. In February 1998, UBL and Ayman al Zawahiri (bin Laden's deputy) purportedly issued a religious *fatwa* (purported religious ruling) declaring it "the duty of every Muslim that can do it" to kill Americans "in any country in which it is possible to do it." *See id.* at 47; *see also* Declaration of ^{D3} [REDACTED] *Background Declaration—Al-Qaida* (Sept. 22, 2008).

9. Since 1989, members and associates of al-Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to, the attacks against the American Embassies in Kenya and Tanzania in August 1998, which killed about 250 people, *see 9/11 Commission Report* at 68-70; the attack against the USS *Cole* in October 2000, which killed 17 United States Navy sailors, *see id.* at 190-93; and the attacks on the United States on September 11, 2001, which killed about 3,000 people. *See id. passim.*

10. The Taliban (students of Islamic knowledge) is an Islamic fundamentalist group that was formed in Afghanistan in 1994. *See* *The Taliban in Afghanistan*, at www.cfr.org/publication/10551. After two years of violent conflict that included the capture of Kabul, Afghanistan's capital, the Taliban took control of Afghanistan's national government in 1996. *See 9/11 Commission Report* at 65. Although it was never formally recognized by the

[REDACTED]

United States, *see id.* at 124, the Taliban controlled Afghanistan's national government from 1996 until the United States-led military campaign ousted the Taliban from power in 2001. *See id.* at 337-38. During the period in which the Taliban controlled Afghanistan's national government, it provided safe harbor and support to al-Qaida and UBL. *See id.* at 64-67.

11. On September 18, 2001, following the attacks on the United States on September 11, 2001, Congress adopted the Authorization for the Use of Military Force (AUMF). *See* 115 Stat. 224 (2001). Recognizing that the attacks of September 11, 2001 "render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens at home and abroad," Congress authorized the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Within weeks, United States military forces were deployed in Afghanistan. *See 9/11 Commission Report* at 337.

12. The United States led the initial aerial bombing campaign of Afghanistan that supported ground forces composed of United States forces and Afghanistan militia opposed to the Taliban, including an association of Afghan groups called the Northern Alliance. The Northern Alliance has assisted the United States in its military campaign in Afghanistan to defeat al-Qaida and the Taliban. *See id.* at 330-34; 336-38. In December 2001, the United States-led military campaign removed the Taliban from control of Afghanistan's national government. *See id.* at 337-38. Taliban and al-Qaida forces, however, have continued to operate in Afghanistan and attack coalition forces.

[REDACTED]

13. Currently, two major military operations continue in Afghanistan. The first, Operation Enduring Freedom (OEF), is a multinational coalition operation, led by the United States. OEF was initiated in October 2001 to counter terrorism and bring security to Afghanistan in collaboration with Afghan forces. *See* www.state.gov/r/pa/prs/ps/2006/60083.htm. OEF operations led to the collapse of the Taliban government and helped bring security and stability to Afghanistan. *See id.* OEF involves troops from more than 20 nations, including about 19,000 U.S. forces and about 3,000 non-U.S. troops. *See id.* Second, the International Security Assistance Force (ISAF) is a United Nations-mandated international coalition operating under the command of the North Atlantic Treaty Organization (NATO). *See* www.nato.int/isaf/issues/afghanistan/index.html. ISAF was established in 2002 with the goal of creating conditions for stabilization and reconstruction in Afghanistan. ISAF is comprised of approximately 50,000 troops from 40 countries. *See id.*

[REDACTED]

14.

[REDACTED] 73

[REDACTED]

[REDACTED]

[REDACTED]

15. Al-Quwari denied training at al-Farouq. ISN 519 CSRT Testimony (Oct. 12, 2004); ISN 519 FM40 (Jan. 29, 2004).² [REDACTED]

[REDACTED] b(1), b(2), b(6)

[REDACTED] b(1), b(2), b(6) [REDACTED] b(2) [REDACTED] b(2)

[REDACTED] b(2)³

16. [REDACTED] b(1), b(6) al-Quwari [REDACTED] b(1), b(6)

[REDACTED] b(1), b(6) [REDACTED] b(2) [REDACTED] b(2)

[REDACTED] b(2) [REDACTED] b(1), b(6) al-Quwari [REDACTED] b(1), b(6)

[REDACTED] b(1), b(6) [REDACTED] b(2)

[REDACTED]

17. [REDACTED] b(1), b(6) al-Quwari [REDACTED] b(1), b(6)

[REDACTED] b(1), b(6) [REDACTED] b(2) [REDACTED] b(1)

[REDACTED] b(1)

[REDACTED] b(1) *Id.*

² Al-Quwari [REDACTED] b(1)

[REDACTED] b(1) [REDACTED] b(1) *See infra* ¶¶ 19, 23-26; ISN 519 FM40 (Jan. 29, 2004); ISN 519 FM40 (May 19, 2004); [REDACTED] b(2) ISN 519 CSRT Testimony (Oct. 12, 2004); [REDACTED] b(2) ISN 519 FD-302 (June 15, 2002).

³ The author of a Department of Defense Criminal Investigation Task Force (DOD/CITF) memorandum commented in describing ISN^{A2} ^{A6} [REDACTED] statement with respect to another detainee that his credibility was in question with interrogators. DOD/CITF Memorandum (May 14, 2004). [REDACTED] b(1), b(5), b(6)

[REDACTED] b(1), b(5), b(6) [REDACTED] b(2) [REDACTED] b(2)



**Al-Quwari Provided Support to Al-Qaida and Taliban Forces at Tora Bora
During the Fall of 2001**

18. Tora Bora is a cave complex in the White Mountains of Afghanistan, built in the 1980s to support mujahedeen forces engaged in combat with the Soviet Union. Decl. of D3 [redacted] *Tora Bora* (Sept. 19, 2008). The cave complex has multiple entrances and exits, with some corridors leading to Pakistan. *Id.* The caves vary in size, and some are interconnected. *Id.*

19. [redacted]



20. b(1) [redacted] al-Quwari's

b(1) [redacted] al-Quwari b(1) [redacted]

b(1) [redacted] b(2) [redacted]

b(2) b(2) [redacted] b(2) [redacted] b(2) [redacted] Al-Quwari b(1), b(6) [redacted]

b(1), b(6) [redacted] b(1), b(6) [redacted]

b(1), b(6) [redacted] b(2) [redacted]

b(2) [redacted] b(2) [redacted] b(1) [redacted]

b(1) [redacted]



See [b(2)] [b(2)] Al-Quwari [b(1)]

[b(1)] See [b(2)] [b(2)]

21. [b(1), b(6)] al-Quwari [b(1), b(6)]

[b(1), b(6)]

[b(1), b(6)] [b(2)] [b(2)] Al-Quwari [b(1), b(6)]

[b(1), b(6)] [b(2)] Al-Quwari [b(1)]

[b(1)]

[b(1)] *Id.*

22. [b(1), b(6)] al-Quwari [b(1), b(6)]

[b(1), b(6)] al-Quwari [b(1), b(6)] [b(2)]

[b(2)] [b(2)] [b(2)] [b(1), b(2), b(6)] al-

Quwari [b(1), b(2), b(6)]

[b(1), b(2), b(6)]

[b(1), b(2), b(6)] [b(2)] [b(1), b(6)]

[b(1), b(6)] *Id.*

Al-Quwari Fled Tora Bora

23. [b(1)] al-Quwari [b(1)]

[b(1)] Decl. of [b(3)]

Tora Bora (Sept. 19, 2008); see [b(2)] [b(1), b(6)]

[b(1), b(6)]

[b(2)] [b(2)] [b(1), b(6)]

[b(1), b(6)]

[REDACTED]

b(1), b(6) [REDACTED] Decl. of ^{D3} [REDACTED]

Background Declaration—Terrorist Organization (Sept. 19, 2008) (“*Al-Wafa Declaration*”); ^{b(2)} [REDACTED]

b(2) [REDACTED] *see also* ^{b(2)} [REDACTED] ^{b(1), b(6)} [REDACTED]

24. ^{b(1), b(6)} [REDACTED] al-Quwari ^{b(1), b(6)} [REDACTED]

b(1), b(6) [REDACTED] ^{b(2)} [REDACTED] ^{b(1)} [REDACTED]

b(1) [REDACTED]

b(1) [REDACTED] *Id.*

25. Al-Quwari ^{b(1), b(6)} [REDACTED]

b(1), b(6) [REDACTED]

b(1), b(6) ^{b(2)} [REDACTED] ^{b(2)} [REDACTED]

26. ^{b(1)} [REDACTED]

b(1) [REDACTED] ISN 519 FM40 (Nov. 5, 2003); ^{b(2)} [REDACTED] ^{b(2)} [REDACTED]

b(2) [REDACTED] ^{b(1), b(6)} [REDACTED]

b(1), b(6) [REDACTED] al-Quwari ^{b(1), b(6)} [REDACTED] ISN 519

FM40 (Nov. 5, 2003); ^{b(2)} [REDACTED] ^{b(1), b(6)} [REDACTED]

b(1), b(6) [REDACTED] al-Quwari ^{b(1), b(6)} [REDACTED]

^{b(1), b(6)} al-Quwari’s ^{b(1), b(6)} [REDACTED] ^{b(2)} [REDACTED]

Al-Quwari admitted that he used the cover story because he was afraid of what would happen if the Northern Alliance forces knew he and ^{A6} [REDACTED] had been helping the Taliban and al-Qaida fighters in Tora Bora. ISN 519 FM40 (Nov. 5, 2003).



Conclusion

For the reasons described above and in the attached exhibits, among others, the petitioner is lawfully detained as an enemy combatant pursuant to, *inter alia*, the President's power as Commander in Chief and the Authorization for Use of Military Force.