IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABDULRAHMAN ABDOU ABOU AL GHAITH SULEIMAN (ISN 223), *Petitioner*, v. BARACK H. OBAMA, *et al*., *Respondents*.	Civil Action No. 15-CV-1626 (RBW)

RESPONDENTS' REPLY MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS OR FOR JUDGMENT

Petitioner Abdulrahman Abdou Abou Al Ghaith Suleiman (ISN 223) is lawfully detained under the 2001 Authorization for Use of Military Force ("AUMF"), Pub. L. No. 107-40, § 2(a), 115 Stat. 224, as informed by the laws of war, because active hostilities against al-Qa'ida, Taliban, and associated forces are currently ongoing. The parties agree that the key to resolving this petition is a question that in this context may only be answered by the Executive and the "courts are bound by that [Executive] determination." *See* Pet'r's Opp'n at 10 (ECF No. 13). As explained below, that question is whether active hostilities are ongoing. The Executive has answered that question in the affirmative, repeatedly and consistently, through public statements of high-ranking Executive Branch officials, including the President of the United States himself. Most recently, in December 2015, the President sent a letter to Congress addressing the deployment of U.S. Armed Forces in Afghanistan and stated: "The United States currently remains in an armed conflict against al-Qa'ida, the Taliban, and associated forces, and active hostilities against those groups remain ongoing." *See* Letter from the President – Six Month Consolidated War Powers Resolution Report (June 11, 2015) (Respt's' Ex. 2) ("WPR Letter").

Thus, consistent with the principles reflected in Article 118 of the Third Geneva Convention and the relevant decisions by the Supreme Court and Court of Appeals, Petitioner's continued detention is lawful. Accordingly, the Court should grant Respondents' motion to dismiss or for judgment, and deny the petition for writ of habeas corpus.[1]

ARGUMENT

I. The Legal Standard That Governs Petitioner's Claim Is The End of Active Hostilities.

Throughout the opposition brief, Petitioner argues that the Court should order his release because the President has said in speeches that the "*war* against the Taliban is over," Pet'r's Opp'n at 10 (emphasis added), or that the "*combat mission* in Afghanistan is over," *id*. at 11 (emphasis added). The appropriate legal standard, however, is whether *active hostilities* are ongoing.

Article 118 of the Third Geneva Convention, which is entitled "Release and Repatriation of Prisoners of War at the Close of Hostilities[,]" states that "[p]risoners of war shall be released and repatriated without delay after the cessation of *active hostilities*." *See* Geneva Convention (III) Relative to the Treatment of Prisoners of War (Third Geneva Convention), Aug. 12, 1949, 6 U.S.T. 3316, 3406, Article 118 (emphasis added). Relying on this provision in construing the detention authority provided by the AUMF, the Supreme Court in *Hamdi v. Rumsfeld* explained that "[i]t is a clearly established principle of the law of war that detention may last no longer than

[1] At the outset, Petitioner incorrectly claims that there is "one pertinent factual dispute" related to his current petition that requires resolution by the Court: the identity and affiliation of the persons who captured him in 2001. *See* Pet'r's Opp'n at 3. But resolution of that factual issue has no bearing on whether active hostilities remain ongoing today. In any event, contrary to Petitioner's claim, Respondents do not dispute the Court's findings in its Memorandum Opinion denying Petitioner's first habeas petition that Petitioner was "taken into custody by Pakistani authorities" who then "transferred custody of the petitioner to the United States military." *Sulayman v. Obama*, 729 F. Supp. 2d 26, 30 (D.D.C. 2010). Petitioner also "accepts" this Court's "prior factual findings." *See* Petition for Writ of Habeas Corpus ¶ 13 (ECF No. l).

active hostilities." 542 U.S. 507, 520 (plurality opinion) (citing Third Geneva Convention, art. 118).

Indeed, the Court of Appeals has applied the "active hostilities" standard in response to arguments by a Guantanamo Bay detainee that his law of war detention was no longer justified because the conflict in which he was captured had purportedly ended. In *Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010), the petitioner argued that he "must now be released according to longstanding law of war principles because the *conflict* with the Taliban has allegedly ended." *Id.* at 874 (emphasis added). The Court of Appeals rejected that argument and held that "[t]he Geneva Conventions require release and repatriation only at the 'cessation of *active hostilities*.'" *Id.* (quoting Third Geneva Convention, art. 118) (emphasis added). The Court of Appeals explained that "the Conventions use the term 'active hostilities' instead of the terms 'conflict' or 'state of war' found elsewhere in the document" and found that usage "significant," concluding that "[t]he Conventions, in short, codify what common sense tells us must be true: release is only required when the fighting stops." *Id.*

Following this precedent, every Judge on this Court who has considered the issue has concluded that active hostilities is the proper standard for evaluating the lawfulness of detention under the AUMF. Most recently, on March 29, 2016, Judge Kessler applied the active hostilities standard in denying a motion filed by a Guantanamo Bay detainee who sought release based on the purported end of hostilities. *See Razak v. Obama*, No. 05-CV-1601 (GK), 2016 WL 1270979, at *5 (D.D.C. Mar. 29, 2016) ("the Court concludes that the appropriate standard is cessation of active hostilities"). This decision follows earlier decisions by Judges Lamberth and Kollar-Kotelly reaching the same conclusion. *See Al Warafi v. Obama*, No. 09-CV-2368 (RCL), 2015 WL 4600420, at *2, 7 (D.D.C. July 30, 2015), *vacated as moot*, No. 15-5266 (D.C. Cir. Mar. 4, 2016); *Al-Kandari v. United States,* No. 15-CV-329 (CKK), Memorandum Opinion at 19-21

(D.D.C. Aug. 31, 2015) (Resp'ts' Ex. 1), *vacated as moot*, No. 15-5268 (D.C. Cir. Mar. 4, 2016).[2] Petitioner has provided no basis for this Court to deviate from the standard applied in these decisions.

Petitioner ignores this well-established precedent and asks the Court to adopt a new legal standard that is contrary to both law and common sense. But the end of a "combat mission" or "war" is not necessarily the same as an end of "active hostilities." *See* The Handbook of Humanitarian Law in Armed Conflicts § 732 (Dieter Fleck ed., 1995) (explaining that "cessation of active hostilities" involves a situation where "the fighting has stopped"); Int'l Comm. of the Red Cross, Commentary: Geneva Convention Relative to the Treatment of Prisoners of War, art. 118 at 547 (J. Pictet ed., 1960) (release is only required when "the fighting is over") ("Third Geneva Convention Commentary"); *see also* Respt's' Mot. at 26-28. Further, Petitioner's proposed standard, in which release of enemy belligerents would be legally required before the end of the fighting, would undermine the "fundamental" purpose of law of war detention, which is "to prevent a combatant's return to the battlefield." *Hamdi*, 542 U.S. at 519; *see* Third Geneva Convention Commentary at 546-47 ("In time of war, the internment of captives is justified by a legitimate concern – to prevent military personnel from taking up arms once more against the captor State."). Nothing in the commentary, history, or development of Article 118's "active

[2] Petitioner mistakenly contends that the Court should disregard the *Al-Kandari* and *Al-Warafi* decisions because the Court of Appeals vacated them as moot following the transfer of the detainees from United States custody to other countries. *See* Pet'r's Opp'n at 9-10. To the contrary, circuit precedent establishes that these decisions still retain their persuasive value on the factual and legal issues decided. *See* Resp'ts' Mot. at 25-26 n.14 (citing *National Black Police Assn v. District of Columbia*, 108 F.3d 346, 354 (D.C. Cir. 1997) ("Moreover, since the district court's opinion will remain 'on the books' even if vacated, albeit without any preclusive effect [between the parties to the case], future courts will be able to consult its reasoning.")). Indeed, Judge Kessler cited this precedent in relying on Judge Lamberth's decision in *Al-Warafi* even after that decision was vacated. *See Razak*, 2016 WL 1270979, at *3 n.2 ("The case was mooted by the petitioner's subsequent transfer from the United States' custody. Despite this, the case remains 'on the books' and retains its persuasive value.").

hostilities" standard suggests that it should be understood to require release of enemy belligerents prior to the end of fighting.[3]

Petitioner claims that because he did not fight against U.S. forces, "there is no battle to which he could return" and his detention is inconsistent with the principles underlying law-of-war detention. *See* Pet'r's Opp'n at 9. But this argument overlooks the well-established principle that detention of enemy belligerents may last until the cessation of active hostilities, and that the

[3] The "cessation of active hostilities" standard was first adopted in the 1949 Geneva Conventions following problems associated with delayed repatriation of prisoners of war in earlier armed conflicts. *See* Third Geneva Convention Commentary, art. 118 at 540-47; Christiane Shields Delessert, Release and Repatriation of Prisoners of War at the End of Active Hostilities: A Study of Article 118, Paragraph 1 of the Third Geneva Convention Relative to the Treatment of Prisoners of War 50-72 (1977) ("Delessert"). Two multilateral law of war treaties that were predecessors to the 1949 Geneva Conventions – the Hague IV Convention Respecting the Laws and Customs of War on Land and its Annexed Regulations of 1907 and the Geneva Convention Relative to the Treatment of Prisoners of War of 1929 – required repatriation of prisoners of war "after the conclusion of peace." *See* Article 20 of the Regulations Annexed to the Hague Convention (IV) on Laws and Customs of War on Land, Oct. 18, 1907 ("After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible."); Article 75 of the Convention Between the United States of America and other Powers Relating to Prisoners of War, July 27, 1929, 47 Stat. 2021, 2055 (1932) ("repatriation of prisoners shall be effected with the least possible delay after the conclusion of peace"). Problems arose with application of these provisions during World Wars I and II because there was often a substantial gap of time between the cessation of active hostilities and the date when formal peace treaties were entered into force, if at all. *See* Third Geneva Convention Commentary, art. 118 at 541-43; Delessert at 52-64. Consequently, prisoners of war, whose detention under the law of war is to prevent them from returning to the field of battle and taking up arms once again, remained in detention "for no good reason," well beyond the end of "the fighting" when "there was no danger of any resumption of hostilities." *See* Third Geneva Convention Commentary, art.118 at 541, 546-47. The 1949 Geneva Conventions sought to correct this problem by requiring release of prisoners of war upon "cessation of active hostilities" without being contingent on a formal peace accord or political agreement between the belligerent parties. *See* Third Geneva Convention Commentary, art. 118 at 541, 543, 546-47; Delessert at 64-72; *see also* Yoram Dinstein, The Release of Prisoners of War, in Studies and Essays on International Humanitarian Law and Red Cross Principles in Honor of Jean Pictet 37-45 (1984). Respondents' position here is entirely consistent with the history and purpose of Article 118, because active hostilities against al-Qa'ida, Taliban, and associated forces remain ongoing. On the other hand, Petitioner's position is inconsistent with the Article 118, as it would require Respondents to release enemy belligerents well before "the fighting is over," thereby undermining the central purpose of law of war detention. *See* Third Geneva Convention Commentary, art. 118 at 546-47.

purpose of that detention is to prevent return to the battlefield and not to a specific battle or previous engagement with particular forces. As this Court previously found, Petitioner traveled from Yemen to Afghanistan with assistance of the Taliban, stayed at Taliban guesthouses, and remained in the front lines with Taliban forces while in possession of a weapon. *See Sulayman*, 729 F. Supp. 2d at 44, 53. Petitioner's continued detention is consistent with the purpose of law-of-war detention as it prevents him, at a minimum, from the rejoining the ranks of the Taliban forces that continue to engage in active hostilities against U.S. forces in Afghanistan. *See also infra* note 6.

Petitioner also incorrectly argues that the Court of Appeals decision in *Al-Maqaleh v. Hagel*, 738 F.3d 312 (D.C. Cir. 2013), supports his view that release of enemy belligerents is required when the President declares that the "war," as opposed to "active hostilities," is over. *See* Pet'r's Opp'n at 10-11. *Al-Maqaleh* addressed whether the Court had jurisdiction over habeas corpus petitions filed by detainees held by the United States at Bagram Military Base in Afghanistan. *See* 738 F.3d at 328. In answering that question in the negative, the Court of Appeals evaluated the practical obstacles to resolving the petitions and concluded that "war-borne practical obstacles" overwhelmingly weighed against extending habeas jurisdiction to detainees held in Afghanistan. *Id.* at 341. In reaching this conclusion, the Court of Appeals emphasized the fact that the "United States remains at war in Afghanistan" and cited well-established authority dating back to the 19th century that "[w]hether an armed conflict has ended is a question left exclusively to the political branches." *Id.* The Court of Appeals had no occasion in that case to consider, and certainly did not address, the active hostilities standard or the point in time when release of enemy belligerents would be required under the law of war. Consequently, the fact that the Court of Appeals used the terms "war" and "armed conflict" in the context of describing the general legal principle that the political branches have the authority to say when armed conflicts

end does not undermine *Al-Bihani*, *Hamdi*, or the other extensive authority Respondents have cited to support application of the active hostilities standard in the current context. The Court should reject Petitioner's argument that *Al-Maqaleh*, a case addressing an entirely separate question, somehow controls this case or overrules the more specific authority from the detention context applying the active hostilities standard.

Additionally, Petitioner contends that he should be released because a "conflict of a different kind is now underway in Afghanistan" and the United States' current mission in Afghanistan – Operation Freedom's Sentinel – marked the end of the "relevant conflict" or "particular conflict" in which he was captured. *See* Pet'r's Opp'n at 4-9 (quoting *Hamdi*, 542 U.S. at 518, 521). But by arguing that the terms "relevant conflict" or "particular conflict" as used in *Hamdi* apply to a particular military mission rather than active hostilities against al-Qa'ida, Taliban, and associated forces, Petitioner misconstrues the meaning of those terms and attributes greater meaning to these phrases than they can bear in context. As discussed previously, the *Hamdi* Plurality, in addressing the question of when release is required, cited the language from Article 118 to answer, "no longer than active hostilities." 542 U.S. at 520. The Plurality's later use of the phrases "particular conflict" and "relevant conflict" when discussing detention authority in the context of ongoing hostilities does not undermine that answer; rather, in context, those phrases primarily refer to the parties involved in the hostilities and, in all events, not to a particular military mission. *Id*. at 518 (explaining that "individuals who fought against the United States in Afghanistan as part of the Taliban, an organization known to have supported the al Qaeda terrorist network," are detainable "for the duration of the particular conflict in which they were captured"); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 628-631 (2006) (discussing the "relevant conflict" by reference to the parties to the conflict, such as the United States, the Taliban, and al-Qa'ida). The

"relevant conflict" here is the conflict against al-Qa'ida, Taliban, and associated forces, and active hostilities against those groups continue.

Indeed, as a common sense matter, there can be no merit to the contention that Petitioner should be released simply because the United States announced a transition of its mission in Afghanistan at the beginning of 2015, and correspondingly renamed the current military mission "Freedom's Sentinel." To be sure, the transition of the United States' military mission in Afghanistan at the beginning of 2015 is a significant milestone, but it reflects just that, a transition, and not a cessation of active hostilities. Armed conflict is unpredictable, and the nature of hostilities can change dramatically in the course of any conflict, as evidenced by the increase in hostilities in Afghanistan during 2015. *See* Respt's' Mot. at 10-23; *see also* United Nations Report: The Situation in Afghanistan and its Implications for International Peace and Security at 4-6 (Mar. 7, 2016) (Exhibit 57) (stating that "the security situation [in Afghanistan] deteriorated further in 2015" and "Taliban activities continued at a rapid pace" between December 2015 and March 2016). Accordingly, it should be unsurprising that military missions undergo transitions as they are adjusted to respond to current facts and circumstances, which is precisely what occurred at the beginning of 2015 when the United States transitioned to a support and counterterrorism mission in Afghanistan, in which active hostilities remain ongoing. To require the release of enemy belligerents at each transition point within an ongoing armed conflict would defy common sense and conflict with the purpose of law of war detention, which is "to prevent captured individuals from returning to the field of battle and taking up arms once again." *Hamdi*, 542 U.S. at 518.

In fact, Petitioner's argument is the same one the Court of Appeals rejected in *Al-Bihani*. *See* 590 F.3d at 874 (rejecting detainee's argument that "each successful campaign of a long war" required release because, if accepted, such a rule would be "a Pyrrhic prelude to defeat" and

"would trigger an obligation to release Taliban fighters captured in earlier clashes" and result in "constantly refresh[ing] the ranks" of enemy forces"). Like Petitioner here, the petitioner in *Al-Bihani* argued that the conflict had reached a point that necessitated his release because the conflict "has allegedly ended." *Id*. ("Al-Bihani contends the current hostilities are a different conflict, one against the Taliban reconstituted in a non-governmental form" and argues that release was required when the Taliban was removed as the governing power in Afghanistan). Petitioner here identifies a different alleged end point – the transition of the U.S. mission in 2015 to Operation Freedom's Sentinel – but his argument suffers the same flaw the Court of Appeals identified in *Al-Bihani*: active hostilities have not ceased. The Court of Appeals rejected the attempt in that case to "draw such fine distinctions" regarding the point at which release is required under the laws of war and, instead, reaffirmed the longstanding rule that "release is only required when the fighting stops." *Id*. As in *Al-Bihani*, Petitioner has merely identified a transition point in the armed conflict, not the end of active hostilities.

Further, in *Al-Kandari*, Judge Kollar-Kotelly considered and rejected the same argument regarding the "relevant conflict" language in *Hamdi* that Petitioner raises here. *See Al-Kandari*, Memorandum Opinion at 16 ("The Court rejects Petitioner's argument that the relevant conflict is Operation Enduring Freedom."). Agreeing with Respondents, Judge Kollar-Kotelly concluded that the "relevant conflict at issue in the instant action is the conflict in Afghanistan involving al-Qaeda, the Taliban, and its associated enemy forces." *Id*. . "As such, the fact that there has been a transition from Operation Enduring Freedom to Operation Freedom's Sentinel does not necessarily signal an end of the 'particular conflict.'" *Id*. at 16-17. This Court should follow the same approach in this case.

II. The President Has Determined That Active Hostilities Remain Ongoing And Petitioner's Contrary Arguments Lack Merit.

Because the "cessation of active hostilities" is the correct legal standard that governs the claim Petitioner has asserted in this case, the only remaining issue for the Court to decide is whether the President has made the requisite determination that active hostilities have ceased. He has not. To the contrary, the President has expressly stated: "The United States currently remains in an armed conflict against al-Qa'ida, the Taliban, and associated forces, and active hostilities against those groups remain ongoing." *See* WPR Letter. As explained in detail in Respondents' Motion, that position is supported by undisputed facts that U.S. military forces are continuing to engage in fighting against al-Qa'ida, Taliban, and associated forces in Afghanistan. *See* Resp'ts' Mot. at 10-23.

As an initial matter, Respondents agree with Petitioner that in the current context the President "has the say" on whether active hostilities have ceased and that "courts are bound by that determination[.]" Pet'r's Opp'n at 4, 10; *see Al-Bihani*, 590 F.3d at 874 ("The determination of when hostilities have ceased is a political decision, and we defer to the Executive's opinion on the matter, at least in the absence of an authoritative congressional declaration purporting to terminate the war."); Resp'ts' Mot. at 30-32 (citing cases dating back to the Civil War). As the Supreme Court has explained, vesting this decision in the political branches make sense from a practical perspective, given the "inherent difficulty of determining" when hostilities end and the absence of "clearly definable criteria for decision" by courts, and also to ensure there is "finality in the political determination" involving such an important question of national security. *See United States* v. *Anderson,* 76 U.S. 56, 70-71 (1869); *Baker v. Carr*, 369 U.S. 186, 213-14 (1962).

Petitioner mistakenly contends, however, that the President's statements announcing and explaining the transition of the U.S. military operation in Afghanistan constitute the requisite

determination that active hostilities have ceased, thereby ending the authority to detain Petitioner. *See* Pet'r's Opp'n at 7-8, 13-14. As support for this claim, Petitioner cites to a variety of the President's statements, beginning at the end of 2014 and continuing into 2015, in which the President stated that "our combat mission in Afghanistan is over, and American's longest war has come to a reasonable and honorable end." *See id*.[4] But, as explained above, the "end of the combat mission is not synonymous with the end of active hostilities." *See Razak*, 2016 WL 1270979, at *5. Further, in none of these statements has the President declared that active hostilities against al-Qa'ida, Taliban, and associated forces have ceased or that fighting in Afghanistan has stopped. Indeed, Judges Kessler and Kollar-Kotelly found this fact significant in concluding that active hostilities remain ongoing. *See id*. ("notably, none of these statements discuss the end of 'active hostilities'" and "the President has expressly stated that active hostilities continue"); *Al-Kandari*, Memorandum Opinion at 13-14 ("However, notably, none of these statements nor the other statements relied on by Petitioner discuss the end of 'active hostilities.' Rather, the statements indicate that the war is 'coming to a responsible conclusion,' and note the end of the 'combat mission' and the 'ground war.'").

The President's prior statements announcing the end of the combat mission have significant meaning, just not the inaccurate meaning Petitioner attributes to them. The President's

[4] Petitioner also claims the President "justified the release of the five Taliban commanders" who were detained at Guantanamo Bay and exchanged for the release of Sergeant Bowe Bergdahl "by explaining that prisoners are typically exchanged when hostilities cease." *See* Pet'r's Opp'n at 7. But the congressional testimony that Petitioner cites for this position does not contain any statement from the President and, in any event, actually supports Respondents' position. In February 2015, the Principal Deputy Under Secretary of Defense for Policy testified before the Senate Armed Services Committee, following the return of Sergeant Bergdahl, and in response to questions from Senator Graham asking whether hostilities in Afghanistan had ceased, such that the United States was required by law to release Guantanamo Bay detainees, stated that hostilities remain ongoing. *See* Guantanamo Detention Facility and Future of U.S. Detention Policy: Hearing Before The Senate Armed Services Committee, 114th Cong. (Feb. 5, 2015) at 24 (Resp'ts' Ex. 50). Petitioner has not identified any statement by the President in which he says that active hostilities have ceased.

statements announcing the end of the combat mission in Afghanistan reflect an important milestone, not the least of which is the return home for thousands of service men and women. *See* Statement by the President on the End of the Combat Mission in Afghanistan (Dec. 28, 2014) (Resp'ts' Ex. 12). But Petitioner is wrong to assert that the statements announcing and explaining the transition of the U.S. military operation in Afghanistan mean that active hostilities have ceased. Such a determination would have significant consequences not only for the Government's detention authority, but also for the United States' relationship with the Government of Afghanistan as well as the continued status and operation of U.S. military forces in Afghanistan. There is no basis for the Court to attribute such unintended consequences to certain of the President's words selected by Petitioner. If the President had concluded that active hostilities were over, the President would have issued a clear statement to that effect to ensure U.S. military personnel, foreign officials, and the American public understood what action had been taken. *Compare* Presidential Proclamation, 12 Fed. Reg. 1 (Jan. 1, 1947) ("I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946."). The President, however, has not done so. The words and actions of the Executive – from the public statements, to the President's decision to continue deployment of U.S. forces in Afghanistan, to the execution of the Security and Defense Cooperation Agreement Between the Islamic Republic of Afghanistan and the United States Agreement ("Bilateral Security Agreement") (Resp'ts' Ex. 11) – clearly reflect that active hostilities remain ongoing.

In addition to misconstruing the meaning of the President's statements, Petitioner also incorrectly claims the "Bilateral Security Agreement signed by the United States and Afghanistan supports his position because it "prohibits U.S. forces from conducting combat operations in [Afghanistan] without the express agreement of Afghanistan." *See* Pet'r's Opp'n at 7-8. To be

sure, the Bilateral Security Agreement provides: "Unless otherwise mutually agreed, United States forces shall not conduct combat operations in Afghanistan." *See* Resp'ts' Ex. 11, art. 2. But the fact that U.S. forces must obtain Afghanistan's consent before engaging in combat operations does not mean that those operations have ceased. To the contrary, under the framework of the BSA, the United States continues to maintain combat capabilities in Afghanistan and regularly participates in combat activities, when appropriate and with Afghan consent, as explained in Respondents' motion. *See* Resp'ts' Mot. 10-23. Further, the agreement specifically anticipates that U.S. forces may engage in hostilities working together with the Afghan Government. *See* Bilateral Security Agreement, art 2(4) ("The Parties acknowledge that U.S. military operations to defeat al-Qaida and its affiliates may be appropriate in the common fight against terrorism."). In any event, "active hostilities" is not coextensive with "combat operations," as "active hostilities can continue after combat operations have ceased." *See Razak*, 2016 WL 1270979, at *5. For this reason, "[t]he Bilateral Security Agreement is not evidence that active hostilities have ceased." *Id*.

Additionally, Petitioner contests as a factual matter the President's determination that active hostilities remain ongoing, erroneously claiming that "attacks on American soldiers in Afghanistan" and "sporadic domestic and foreign attacks do not constitute active hostilities[.]" *See* Pet'r's Opp'n at 8-9. Petitioner provides no legal support for this position and ignores the well-established authority that release under the active hostilities standard is required only when the "fighting stops." *See Al-Bihani,* 590 F.3d at 874; Respt's' Mot. at 29. Further, Petitioner also summarily dismisses the overwhelming evidence Respondents submitted that establishes that active hostilities remain ongoing. *See* Respt's' Mot. at 10-23.[5] Three other Judges

[5] The Taliban recently announced the beginning of the spring fighting season on April 12, 2016, with a pledge to employ "large-scale attacks" in its continued "Jihad against the American

of this Court examined this evidence and concluded that active hostilities continue. *See Al Warafi v. Obama*, 2015 WL 4600420, at *7 ("Respondents have offered convincing evidence that U.S. involvement in the fighting in Afghanistan, against al Qaeda and Taliban forces alike, has not stopped."); *Al-Kandari*, Memorandum Opinion at 21 ("A review of the documents submitted by Respondents supports the President's assertion that fighting has not stopped in Afghanistan and that active hostilities remain ongoing at this time."); *Razak*, 2016 WL 1270979 at *6 ("Respondents have provided convincing examples of ongoing hostilities in Afghanistan. Given this evidence, combined with the deference accorded the Executive's determination of when hostilities have ceased, the Court concludes that active hostilities continue in Afghanistan."). There is no basis for this Court to conclude differently.[6]

III. The Petitioner's Detention Pursuant to the AUMF Remains Lawful.

Petitioner next argues that his detention under the AUMF has become unnecessary and unreasonably long because he never "engaged in armed combat against the United States" or

---

invasion" and its "infidel army." *See* Statement by Leadership Council of the Islamic Emirate (April 12, 2016) (Resp'ts' Ex. 58), at http://shahamat-english.com/statement-by-leadership-council-of-islamic-emirate-regarding-inauguration-of-spring-offensive-entitled-operation-omari; Margherita Stancati, Taliban Announce Spring Offensive in Afghanistan, Wall Street Journal, April 12, 2016 (Resp'ts' Ex. 59).

[6] Petitioner also misconstrues Respondents' position that the Court should consider additional evidence in the event the Court determines that active hostilities against Taliban forces have ceased. *See* Pet'r's Opp'n at 3. During the merits hearing in Petitioner's prior habeas case, Respondents argued Petitioner was lawfully detained under the AUMF because he was part of both al-Qa'ida and Taliban forces. The Court concluded Petitioner was detainable as part of Taliban forces and, therefore, determined it was unnecessary to address Respondents' evidence regarding Petitioner's ties to al-Qai'da. *See Sulayman,* 729 F. Supp. 2d at 34-35, 42, 44 n.14. Given this posture, if the Court determines that active hostilities with Taliban forces have ceased, the Court would then have to consider whether Petitioner is detainable as part of al-Qa'ida forces. Because the parties submitted evidence and argument on that issue approximately six years ago, the appropriate course of action would be allow both parties to submit their most current evidence and argument for the Court's consideration. Contrary to Petitioner's claim, Respondents are not suggesting a one-sided procedure in which only Respondents have the opportunity to present additional evidence.

"fought with the enemy against the United States." *See* Pet'r's Mot. at 9, 11-14. Petitioner's only support for this position is the statement of Justice Breyer, joined by no other Justice, respecting the denial of certiorari in *Hussain v. Obama*, 134 S. Ct. 1621 (2014), another Guantanamo Bay habeas case that was previously before this Court. *See Hussein v. Obama*, 821 F. Supp. 2d 67, 69 (D.D.C. 2011) (Walton, J.), *aff'd*, 718 F.3d 964 (D.C. Cir. 2013). Justice Breyer noted that the Supreme Court "has not directly addressed whether the AUMF authorizes, and the Constitution permits, detention on the basis that an individual was part of al Qaeda, or part of the Taliban, but was not engaged in an armed conflict against the United States in Afghanistan prior to his capture." *Hussain*, 134 S. Ct. at 1622 (Breyer, J., respecting the denial of cert.). Justice Breyer also remarked that, "assuming detention on these bases is permissible," the Supreme Court has not addressed whether "the AUMF or the Constitution limits the duration of detention." *Id*. Justice Breyer did not provide his views on these issues; rather, he concluded that denying certiorari in *Hussain* was appropriate because the petitioner "does not ask us to answer them." *Id*.

The fact that a single Justice of the Supreme Court has identified issues related to detention under the AUMF that have not been "directly addressed" by the Supreme Court is not a basis on which this Court can grant Petitioner's request for release. Moreover, Petitioner ignores the binding precedent on these very issues from the Court of Appeals, which has consistently stated that the AUMF authorizes the detention of a Guantanamo Bay detainee who was "part of al Qaeda, the Taliban, or associated forces at the time of his capture" without regard to whether the detainee directly engaged in hostilities against U.S. forces. *See Khairkhwa v. Obama*, 703 F.3d 547, 550 (D.C. Cir. 2012) ("In order to detain individuals who were part of the Taliban or al-Qaeda forces, proof that the individuals also actively engaged in combat against the United States and its allies is unnecessary.") (citing cases); *Al-Bihani*, 590 F.3d at 884 (rejecting argument that

detainees who were otherwise part of enemy forces "can't permissibly be detained unless they themselves take hostile acts directly against their would-be detainers").

The Court of Appeals has also held "the Constitution allows detention of enemy combatants for the duration of hostilities." *See Ali v. Obama*, 736 F.3d 542, 552 (D.C. Cir. 2013). Accordingly, there is no merit to Petitioner's suggestion that the Court should construe the AUMF to avoid a constitutional problem that does not exist. *See* Petr's Opp'n at 12-13. Petitioner's only response to these binding Court of Appeals cases is to note that they were decided before Justice Breyer issued his statement in *Hussain*, *see id.* at 13, but that argument lacks merit because this Court cannot ignore clear Court of Appeals precedent. *See* Resp'ts' Mot. at 29-30.

With respect to the length of Petitioner's detention, Petitioner concedes that the "AUMF has no specified time limit." *See* Pet'r's Opp'n at 13; *see Ali*, 736 F.3d at 552. Petitioner errs, however, in arguing that the President has ended the Government's detention authority under the AUMF, as informed by the laws of war, by announcing a transition of the United States military operations in Afghanistan in 2015. *See* Pet'r's Opp'n at 13-14. As explained above and in Respondents' Motion to Dismiss, the President has not announced an end to active hostilities, and his statements explaining that the United States transitioned in 2015 to a support and counterterrorism mission in Afghanistan did not terminate the Government's detention authority. *See supra* at 9-14; Resp'ts' Mot. at 34-40.

In reaching its conclusion that law of war detention under the AUMF may last until the end of active hostilities, the *Hamdi* plurality cautioned that "[i]f the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, that understanding may unravel." *Hamdi*, 542 U.S. at 521. Petitioner points to this language and contends that the conflict in Afghanistan has "evolved" to such an extent that the authority to detain has "unraveled." Petr's Opp'n at 12-13. But just as *Hamdi* noted, "that is not the situation

we face as of this date." *Hamdi*, 542 U.S. at 521. Consistent with the President's determination as Commander-in-Chief that active hostilities remain ongoing, approximately 9,800 U.S. service members are currently stationed in Afghanistan. *See* WPR Letter. These forces engage, when and where appropriate, in uses of force against al-Qa'ida, Taliban, and associated forces, consistent with the laws of war in a context similar to that presented to the Supreme Court in *Hamdi* and that presented in other, traditional military operations. *See* Resp'ts' Mot. at 10-23; *Hamdi*, 542 U.S. at 521. This case, thus, does not present a situation in which Petitioner's detention would be inconsistent with "the clearly established principle of the law of war that detention may last no longer than active hostilities" or the rationales underlying that principle. *Hamdi*, 542 U.S. at 520; *see Al-Kandari*, Memorandum Opinion at 18 (rejecting the same argument that Petitioner asserts in this case and holding that "while the plurality in *Hamdi* did caution that the facts of a particular conflict may unravel the Court's understanding of the Government's authority to detain enemy combatants, the Court does not agree with Petitioner that such a situation exists at this point in time").

IV. Petitioner's Due Process and Equal Protection Claims Lack Merit.

The Court should also reject Petitioner's argument that his continued detention violates the Due Process Clause of the Fifth Amendment. The Court of Appeals has held in the context of the Guantanamo habeas litigation that "the due process clause does not apply to aliens without property or presence in the sovereign territory of the United States." *Kiyemba v. Obama*, 555 F.3d 1022, 1026 (D.C. Cir. 2009) (*Kiyemba I*), *vacated and remanded*, 559 U.S. 131 (2010) (per curiam), *reinstated*, 605 F.3d 1046 (D.C. Cir. 2010).[7]

[7] Respondents' motion inadvertently misquoted this passage from *Kiyemba I* as stating: "the due process clause does not apply to aliens detained at Guantanamo Bay who have no property or presence in the sovereign territory of the United States." *See* Resp'ts' Mot. at 3-4, 40; Pet'r's Mot. at 15. Counsel for Respondents apologize for this mistake.

In an effort to overcome this precedent, Petitioner incorrectly claims that *Kiyemba I* "cannot reasonably be read as excluding Guantanamo from the reach of the Due Process Clause" because the case only addressed the issue of whether detainees have a due process right to be brought to the United States and released. *See* Pet'r's Opp'n at 15-16. Another Judge of this Court, however, has not interpreted the plain language of *Kiyemba I* so narrowly. *See Rabbani v. Obama*, 76 F. Supp. 3d 21, 25 n.5 (D.D.C. 2014) (Lamberth, J.) (addressing a similar argument and stating "the Circuit placed no such limiting qualification on its assertion that the due process clause does not apply to aliens like Rabbani"). Contrary to Petitioner's suggestion, the Court of Appeals has – post-*Kiyemba I* – noted that the Due Process Clause does not extend to alien detainees at Guantanamo Bay. *See al Madhwani v. Obama*, 642 F.3d 1071, 1077 (D.C. Cir. 2011) (citing *Kiyemba I*'s due process holding and stating that it did "not accept" the "premise[]" that the petitioner "had a constitutional right to due process"); *see also al Bahlul v. United States*, 767 F.3d 1, 33 (D.C. Cir. 2014) (en banc) (Henderson, J, concurring) (noting that "it remains the law of this circuit that, after *Boumediene*, aliens detained at Guantanamo may not invoke the protections of the Due Process Clause of the Fifth Amendment"). Furthermore, this Court as well as other Judges on this Court have continued to follow *Kiyemba I*'s holding in a variety of legal contexts in the Guantanamo Bay habeas cases outside of transferring detainees to the United States. *See Bostan v. Obama*, 674 F. Supp. 2d 9, 29 (D.D.C. 2009) (Walton, J.) ("The detainees at Guantanamo Bay, however, have no due process rights"); *see also Salahi v. Obama*, No. CV 05-0569 (RCL), 2015 WL 9216557, at *5 (D.D.C. Dec. 17, 2015) (Lamberth, J.) ("petitioner's only proffered source for such a right, the Due Process Clause of the Fifth Amendment, does not apply to Guantanamo detainees"); *Ameziane v. Obama*, 58 F. Supp. 3d 99, 103 n.2 (D.D.C. 2014) (Huvelle, J.) (noting that petitioner's Due Process Clause arguments "fail" "[u]nder Circuit precedent").

Petitioner also attempts to circumvent this binding precedent by arguing that *Boumediene v. Bush*, 553 U.S. 723 (2008), held that the Due Process Clause applies to Guantanamo Bay

detainees. *See* Pet'r's Opp'n at 14-15. In *Boumediene*, however, the Supreme Court held only that the Suspension Clause of the Constitution extends to aliens detained at Guantanamo and concluded that "[Section] 7 of the Military Commissions Act of 2006, 28 U.S.C. § 2241(e), operates as an unconstitutional suspension of the writ" as applied to detainees at Guantanamo. 553 U.S. at 733, 753-771. Indeed, the Court of Appeals has determined that *Boumediene* explicitly confined its constitutional holding "only" to the extraterritorial reach of the Suspension Clause and "disclaimed any intention to disturb existing law governing the extraterritorial reach of any constitutional provisions, other than the Suspension Clause." *See Rasul v. Myers*, 563 F.3d 527, 529 (D.C. Cir. 2009) (per curiam) (citing *Boumediene*, 553 U.S. at 798) (stating that the Court's decision "does not address the content of the law that governs petitioners' detention"). Relying on *Rasul*, this Court has rejected the same argument that Petitioner makes here. *See Bostan*, 674 F.Supp.2d at 29 n.10; *see also Rabbani*, 76 F. Supp. 3d at 25 n.5.

Petitioner is correct that the Government has taken the position that the Ex Post Facto Clause applies in military commission prosecutions of detainees at Guantanamo Bay, but that position has no bearing on whether the Due Process Clause applies in this case. *Al Bahlul*, 767 F.3d at 18; *see* Pet'r's Mot at 15. Although the controlling *en banc* opinion in *Al Bahlul* accepted the government's position, it merely assumed without deciding that the clause applied to detainee criminal trials. *See Al Bahlul*, 767 at 18.[8] More to the point, the Government's position was premised on "the unique combination of circumstances in th[e] case," only one of which alluded to *Boumediene* (and solely for the proposition that the United States "maintains de facto sovereignty" over Guantanamo Bay). Brief of the United States (D.C. Cir. No. 11-1324), 2013 WL 3479237 at *64 (quoting *Boumediene*, 553 U.S. at 755). Of note, the primary circumstance was the Ex Post

[8] To be clear, a majority of the *en banc* court indicated that it would apply the Ex Post Facto Clause to Guantanamo detainees. *See* 767 F.3d at 18 n.9.

Facto Clause's "structural function in U.S. law" as a check on the Legislature's power to punish. *Id*. (citing *Weaver v. Graham*, 450 U.S. 24, 29-30 (1981) ("The presence or absence of an affirmative, enforceable right is not relevant . . . to the *ex post facto* prohibition.")). Additionally, the fact that the appeal of Al Bahlul's conviction lay ultimately with the Court of Appeals, an Article III court, counseled strongly in favor of applying the clause there just as it would apply in any criminal appeal. *Id*. But the United States never conceded that *Boumediene*—or its functional analysis—compelled a finding that the clause must apply. *See id*. Accordingly, Petitioner's reference to the Government's litigation position in *Al Bahlul* cannot support the weight that he seeks to place on it.

Petitioner's equal protection claim fails for the same reason as his Due Process claim. With respect to actions of the federal government, equal protection is a component of the Due Process Clause. *See, e.g., Atwell v. Merit Systems Protection Board*, 670 F.2d 272, 286 n.20 (D.C. Cir. 1981) ("The fifth amendment's due process clause does, of course, contain an equal protection component that prohibits the United States from invidiously discriminating between individuals or groups.") (internal quotations and citations omitted). Petitioner, therefore, does not have an independent basis for his equal protection claim outside of the Due Process Clause.

In any event, even if Petitioner could assert an equal protection claim on the merits, the Court should reject his position that that the Government has detained him arbitrarily because other, more dangerous detainees have been transferred from Guantanamo Bay. As explained in Respondents' motion, this argument improperly asks the Court to evaluate the threat posed by Petitioner as compared to other detainees. *See* Resp'ts' Mot. at 40-42. Accordingly, it is foreclosed by the Court of Appeals decision in *Awad v. Obama*, 608 F.3d 1, 11 (D.C. Cir. 2010), which held that a court may not consider the threat posed by a Guantanamo detainee as a basis for ordering release.

Petitioner contends that no such threat evaluation is necessary because Respondents have determined that Petitioner "is not dangerous." Pet'r's Opp'n at 17. Petitioner is incorrect; Respondents have never conceded that Petitioner presents no danger. In approving Petitioner for transfer from Guantanamo Bay, Petitioner was placed among "a group of 30 Yemeni detainees who pose a lower threat than the 48 detainees designated for continued detention under the AUMF." *See* Final Report, Guantanamo Review Task Force at 12 (Jan. 22, 2010) (Respt's' Ex. 60), at https://www.justice.gov/ag/guantanamo-review-final-report.pdf. These detainees were placed in "conditional detention" status, "meaning they may be transferred if one of the following conditions is satisfied: (1) the security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available." *Id*. at 12-13. In reaching this decision, Respondents did not determine that Petitioner poses no threat. Rather, the decision reflected a judgment that the "threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country." *Id*. at 17. Because Petitioner's equal protection argument is premised entirely on the Court conducting a comparison of the threat he poses relative to other detainees who have been transferred, his argument is foreclosed by the Court of Appeals' decision in *Awad*.[9]

Petitioner also takes issues with Respondents' reliance on the line of well-established authority holding that equal protection claims cannot be based on allegations of arbitrary Government decisionmaking in areas where the Government exercises significant discretionary

[9] Given the Court of Appeals holding in *Awad* that the threat a detainee would pose if released is not relevant to the legality of his detention under the AUMF, there is no basis for Petitioner to argue that Respondents' position regarding Petitioner's equal protection claim "contradicts the very basis for their claim to hold" Petitioner. *See* Pet'r's Opp'n at 17. Respondents' basis for detaining Petitioner under the AUMF, as informed by the laws of war, is that he is part of al-Qaeda, Taliban, or associated forces. This authority "is not dependent on whether an individual would pose a threat to the United States or its allies if released but rather on the continuation of hostilities." *Awad*, 608 F.3d at 11.

authority, such as the present context involving the Government's national security decisions to transfer certain detainees, where appropriate, while continuing to detain others pursuant to the AUMF, as informed by the laws of war. *See* Pet'r's Opp'n at 18; Resp'ts' Mot. at 41-42. Petitioner characterizes this argument as "curious" in light of Respondents' ongoing efforts to transfer Petitioner. *See* Pet'r's Opp'n at 18. The fact that Respondents have approved Petitioner for transfer and are actively seeking to transfer him, however, illustrates that the Government is appropriately engaged in the exercise of discretionary authority in the national security context that is not susceptible to judicial review through a "class of one" equal protection claim. *See* Resp'ts' Mot. at 30 n.18. Citing *Hamdi*, Petitioner argues that the "President's discretion to detain enemy belligerents is subject to judicial review." Pet'r's Opp'n at 18. But *Hamdi* did not address the type of equal protection claim that Petitioner raises here, and certainly did not envision that courts would be in the business of conducting comparative analyses of the Government's discretionary decisions to transfer some detainees but not others. In short, *Hamdi* does not support Petitioner's equal protection argument, nor does it displace the Supreme Court's holding that "class of one" equal protection claims are not cognizable in areas such as law-of-war detention authority where the Government exercises significant discretionary authority based on "subjective, individualized assessments." *Engquist v. Oregon Dep't of Agriculture,* 553 U.S. 591, 603 (2008).

V. Petitioner's Detention Does Not Violate the *Ex Post Facto* Clause.

As an initial matter, the Court should disregard Petitioner's argument that his detention violates the *Ex Post Facto* Clause of the Constitution because this claim for relief was not raised in his habeas petition. The Petition in this case raised multiple claims for relief, but it neither cited the *Ex Post Facto* Clause as basis for relief nor explained the specific facts that would form the basis for such a claim. *See* Petition for Writ of Habeas Corpus ¶¶ 14-36 (ECF No. l). "Habeas corpus petitions must meet heightened pleading requirements," and the petition in this case fails to

properly assert an *ex post facto* claim. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). *Cf.* 28 U.S.C. § 2254 Rule 2(c) (applicable to section 2241 habeas petitions through Habeas Rule 1(b) and stating that a habeas petition must "specify all the grounds for relief" and "state the facts supporting each ground").

Even assuming that the Court considers the merits of this claim, Petitioner's claim should be denied. Petitioner alleges an *ex post facto* violation because he claims the conduct that formed the basis for his detention took place before the AUMF took effect in October 2001. *See* Pet'r's Opp'n at 18-19.[10] The Ex Post Facto Clause, however, "forbids the application of any new punitive measure to a crime already consummated." *California Dept. of Corr. v. Morales*, 514 U.S. 499, 505 (1995) (citation omitted). Indeed, "it has long been recognized by this Court that the constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them." *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). Petitioner's law-of-war detention pursuant to the AUMF is not punitive. The AUMF is not a penal statute, and it does not define criminal conduct. Rather, the AUMF is a congressional authorization of military force against a designated enemy. Captured individuals such as Petitioner are detained under the AUMF, as informed by the laws of war, not because the Government wants to punish them, but "to prevent [them] from returning to the fie1d of battle and taking up arms once again." *Hamdi*, 542 U.S. at 518. Accordingly, the *Ex Post Facto* Clause has no application in this non-penal context.

In any event, contrary to Petitioner's suggestion, courts have long held that the *Ex Post Facto* Clause does not bar the Government from using evidence of pre-enactment conduct to prove

[10] In support of this claim, Petitioner refers to the Court to briefs he filed in the Court of Appeals in 2011 in the appeal of his first habeas case asserting the same argument. *See* Pet'r's Opp'n at 18-19. The Court of Appeals did not consider Petitioner's *ex post facto* argument because he had failed to raise it during the habeas litigation in this Court prior to appeal. *See Suleiman*, 670 F.3d at 1312 ("But we need not take up these legal arguments because Suleiman failed to make them below.")

a post-enactment fact. *See, e.g., United States v. Crockett*, 514 F.2d 64, 72 (5th Cir. 1975) ("Evidence of acts performed prior to the adoption of the criminal statute involved is . . . admissible."); *United States v. Ferrara*, 458 F.2d 868, 874 (2d Cir. 1972) (holding that the E*x Post Facto* Clause was not violated where a conspiracy involved overt acts both before and after passage of criminal statute). Here, the relevant post-enactment fact was, as found by this Court, that Petitioner was part of Taliban forces at the time of his capture, which the parties stipulated occurred in December 2001. *See Suleiman v. Obama*, 05-CV-2386 (RBW), Joint Pre-Trial Statement ¶ 32 (classified filing submitted on April 16, 2010); *see also Hussain*, 718 F.3d at 967 ("As we have stated repeatedly," AUMF detention is lawful "if the government shows, by a preponderance of the evidence, that the detainee was part of al Qaeda, the Taliban, or associated forces *at the time of his capture*.") (emphasis added). Because the Court's finding that Petitioner was part of Taliban forces addressed a state of affairs that occurred three months after passage of the AUMF, in September 2001, there is no *ex post facto* violation in this case.

VI. The Court Should Reject Petitioner's Reliance on Arguments Set Forth by the Petitioner in *Davliatov v. Obama*.

Lastly, Petitioner incorporates by reference certain arguments asserted by the petitioner in *Davliatov v. Obama*, No. 15-1959 (RBW), another Guantanamo Bay habeas case pending before this Court in which the detainee seeks release. *See* Pet'r's Opp'n at 19 (adopting arguments III and IV of Petitioner Davliatov's Reply in Further Support of Motion for Judgment and Opposition to Cross-Motion to Dismiss, ECF No. 25). The Court should dismiss these arguments because they were not properly raised in the habeas petition in this case. *See supra* at 22. In the event the Court considers these arguments on the merits, however, Respondents adopt by reference and respectfully refer the Court to Respondents' briefs in the *Daviliatov* case opposing the petitioner's motion for release. *See* ECF Nos. 18, 19, 21, 27. For the reasons stated therein, Petitioner's request for release in this case based on arguments raised by the petitioner in *Davliatov* should be denied.

CONCLUSION

For the reasons stated above, as well as those in Respondents' Motion to Dismiss or for Judgment, the Court should grant Respondents' motion and deny the petition for writ of habeas corpus.

Dated: April 28, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

JOSEPH H. HUNT
Branch Director

TERRY M. HENRY
Assistant Branch Director

/s/ Andrew I. Warden
ANDREW I. WARDEN (Indiana Bar #23840-49)
Senior Trial Counsel
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel: 202.616.5084
E-mail: Andrew.Warden@usdoj.gov

Counsel for Respondents