No. 13-10450

IN THE SUPREME COURT OF THE UNITED STATES

ABDUL RAZAK ALI, PETITIONER

v.

BARACK H. OBAMA, PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the government carried its burden to demonstrate that petitioner more likely than not was part of al Qaeda, the Taliban, or associated forces at the time of his capture in 2002 and therefore is lawfully detained under the Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224.

PARTIES TO THE PROCEEDING

In addition to the parties listed in the petition for a writ of certiorari, Rear Admiral Kyle J. Cozad, Commander, Joint Task Force-Guantánamo, is a defendant-appellee in this case.

Colonel John Bogdan has been succeeded by Colonel David Heath as Commander of the Joint Detention Group, Joint Task Force-Guantánamo. Colonel Heath should be substituted for Colonel Bogdan as respondent in this case. See S. Ct. R. 35.3.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-24a) is reported at 736 F.3d 542. The unclassified version of the opinion of the district court is reported at 770 F. Supp. 2d 1. An earlier unclassified opinion of the district court (Pet. App. 25a-31a) is reported at 741 F. Supp. 2d 19.

JURISDICTION

The judgment of the court of appeals was entered on December 3, 2013. A petition for rehearing was denied on February 28, 2014 (Pet. App. 1a). The petition for a writ of

certiorari was filed on May 8, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner is an alien detained at the United States Naval Station at Guantánamo Bay, Cuba, under the Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, § 2(a), 115 Stat. 224. He petitioned for a writ of habeas corpus, and the district court denied the writ. The court of appeals affirmed. Pet. App. 2a-24a.

1. In response to the attacks of September 11, 2001, Congress enacted the AUMF, which authorizes "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." AUMF § 2(a), 115 Stat. 224. The President has exercised the authority granted by the AUMF to order United States armed forces to fight both al Qaeda and the Taliban regime that harbored al Qaeda in Afghanistan, as well as forces associated with them. Armed conflict with al Qaeda, the Taliban, and associated forces remains ongoing, and in connection with those military operations, some persons captured by the United States and its coalition partners have been detained at Guantánamo.

In Section 1021 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), Pub. L. No. 112-81, 125 Stat. 1562, Congress "affirm[ed]" that the authority the AUMF granted the President in 2001 includes detention of persons who were "part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces." NDAA § 1021(a) and (b)(2), 125 Stat. 1562. In choosing that definition, Congress codified the Executive's interpretation of the AUMF in light of the law of war, which had been presented to courts in a March 13, 2009, Memorandum Regarding Government Detention Authority[1] and repeatedly applied and upheld by the courts.

2. Petitioner, an alien detained at Guantánamo under the AUMF, was captured, together with "al Qaeda associated terrorist leader" Abu Zubaydah, during a March 2002 raid of a safehouse in Pakistan. Pet. App. 3a. Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Columbia. After a four-day hearing, the district court held that petitioner is lawfully detained under the AUMF because a preponderance of the evidence established that he was

[1] www.justice.gov/opa/documents/memo-re-det-auth.pdf.

part of a force led by Zubaydah that constitutes an "associated force" of al Qaeda or the Taliban under the AUMF. See 770 F. Supp. 2d at 2-6; Pet. App. 28a-31a.[2]

In reaching that conclusion, the district court first explained that the D.C. Circuit has "recognized that Abu Zubaydah and his band of followers have well established ties to al Qaeda and the Taliban and thus constitute an 'associated force' under the AUMF," noting that "petitioner does not dispute this." 770 F. Supp. 2d at 3 (citing Barhoumi v. Obama, 609 F.3d 416, 420 (D.C. Cir. 2010)). The only dispute, the district court observed, was "whether [petitioner] was actually a member of Abu Zubaydah's force." Ibid. (emphasis omitted).

With respect to that question, the district court noted that not only was petitioner "capture[d] in the same guesthouse as Abu Zubaydah," 770 F. Supp. 2d at 2, who was "at that very time assembling a force to attack U.S. and Allied forces," ibid., but the government had presented substantial inculpatory evidence about petitioner's activities, see id. at 3-5. For example, the government had "set[] forth credible accounts by

[2] The petition appendix includes an unclassified opinion issued by the district court. See Pet. App. 25a-31a. That opinion notes that "[a] classified version of this opinion setting forth in greater particularity the factual basis of the Court's ruling will be distributed in the upcoming weeks." Id. at 26a. The unclassified version of that subsequent classified opinion is reported at 770 F. Supp. 2d 1.

fellow guesthouse dwellers who not only positively identified the petitioner," but "who also credibly account for petitioner participating in one of Abu Zubaydah's various training programs while he was staying in the guesthouse (i.e., taking a class in English)." Id. at 3-4. The court relied on the "common-sense inference that a terrorist leader like Abu Zubaydah would not tolerate an unknown and untrusted stranger to dwell in a modest, two-story guesthouse for two weeks with himself and ten or so of his senior leadership, while they are preparing for their next operation against U.S. and Allied forces." Id. at 4. The court also pointed to petitioner's lack of credibility and his admission shortly after his capture "that he had gone to Afghanistan to fight in the jihad," among other findings. Id. at 4-5.[3]

[3] In addition, the district court held that its conclusion was supported by its findings that: (i) one of the names petitioner went by at the safehouse was Usama al Jaza'iri, 770 F. Supp. 2d at 3-4; (ii) a diary authored by one of Zubaydah's associates lists Usama al Jaza'iri as a permanent member of Zubaydah's force, id. at 4 n.6, 5; and (iii) the diary and other evidence "plac[ed] the petitioner," under the name Usama al Jaza'iri, with Zubaydah's force in Afghanistan prior to his stay at the safehouse, id. at 4-5. In response to petitioner's post-judgment motion challenging the reliability of Muhammed Noor Uthman, a detainee witness who identified petitioner as Usama al Jaza'iri, the district court held that a new hearing was unnecessary because other evidence was sufficient to establish that petitioner was part of Zubaydah's force, and that in any event petitioner's allegations were not correct. See 2011 WL 1897393, at *1 (unpublished); Pet. App. 17a n.5. The court of appeals affirmed the district court without relying on any statements by Uthman. Ibid.

The district court accordingly had "no difficulty concluding that the Government more than adequately established that it is more probable than not that the petitioner was in fact a member of Abu Zubaydah's force that had gathered in that Faisalabad safehouse to prepare for future attacks against U.S. and Allied forces" and therefore that he "is being lawfully detained under the AUMF." Pet. App. 30a-31a.

3. The court of appeals affirmed. Pet. App. 2a-24a.

a. Like the district court, the court of appeals first observed that petitioner did not dispute that the force commanded by Zubaydah constitutes an "associated force" of al Qaeda or the Taliban for purposes of the AUMF and the NDAA. Pet. App. 5a & n.1. Thus, the court explained, the only issue was the factual question whether petitioner "more likely than not was part of Abu Zubaydah's force." Id. at 5a.

The court held that he was. The court explained that "[t]he central fact in this case" -- that petitioner "was captured in 2002 at a terrorist guesthouse in Pakistan" with members of Zubaydah's force -- was compelling evidence of his membership in Zubaydah's force. Pet. App. 7a-13a. A "person's decision to stay with the members of a terrorist force at a terrorist guesthouse," the court said, "can be highly probative evidence that he is part of that force and thus a detainable enemy combatant." Id. at 8a.

The court of appeals reserved the question, however, whether a person could be detained if his "presence at a terrorist guesthouse constitutes the only evidence against him." Pet. App. 8a. The court found "at least six additional facts support[ing] the conclusion that [petitioner] more likely than not was part of Abu Zubaydah's force." Id. at 8a-9a.

First, petitioner's "housemates at the terrorist guesthouse were not just foot soldiers, but included the terrorist leader Abu Zubaydah himself, as well as the senior leaders of Zubaydah's force." Pet. App. 9a. As the court explained, Zubaydah was using that safehouse "to prepare for attacks on U.S. and Coalition forces using remote-detonated explosives." Id. at 10a. Moreover, a diary written by Zubaydah's associate provides a "'veritable membership list' for Zubaydah's force," and members of the force on that list and petitioner identified one another by name and photo. Ibid. (quoting Barhoumi, 609 F.3d at 425-426, which credited the diary as reliable, see id. at 427-432). "It strains credulity," the court concluded, to assert that petitioner resided in early 2002 in a safehouse in Faisalabad "with Abu Zubaydah and the leaders of Zubaydah's force while having no idea what the people around him were doing." Ibid. Second, the court of appeals stated, petitioner "had been staying at the guesthouse for about 18 days"; "if [petitioner] were there for innocent purposes, he had more than

ample time to recognize the dangerous company he was keeping and leave." Id. at 9a, 12a. Third, "[t]he guesthouse in which [petitioner] was captured contained documents and equipment associated with terrorist operations," including materials that can be used to produce remote bombing devices. Ibid. Fourth, on multiple occasions at least one witness had reported that petitioner had participated in a program to learn English, which, the court stated, Abu Zubaydah had established to train terrorists. Id. at 9a, 13a-14a. Fifth, petitioner, at the very least, had admitted shortly after his capture that he "had traveled to Afghanistan after September 11, 2001, with the intent to fight in the war against U.S. and Coalition forces." Id. at 9a, 14a-15a. Finally, the court observed that petitioner had "lied about his identity, and he maintained his false cover story for more than two years" -- conduct that was inconsistent with his claim to be "an innocent traveler caught in the wrong place at the wrong time." Id. at 9a, 15a-16a.

In light of that evidence, the court of appeals held that "the Government has satisfied its burden to prove that [petitioner] more likely than not was part of Abu Zubaydah's force." Pet. App. 16a-17a. The court recognized that "this is a long war" and therefore that petitioner may be subject to detention for an extended period of time. But it explained that although "Congress and the President may choose to make long-

term military detention subject to different, higher standards," they have not done so. Id. at 20a-21a. The court further explained, however, that "for many years now, under the direction of two Presidents, the Executive Branch has unilaterally conducted periodic reviews and released or transferred to foreign countries a large number -- in fact, the vast majority -- of Guantanamo detainees." Id. at 20a-21a.

b. Judge Edwards concurred in the judgment. See Pet. App. 22a-24a. He characterized the majority's opinion as having determined that petitioner was detainable based solely on his "personal associations" with Zubaydah. Id. at 23a (emphasis omitted). He believed that type of connection to be an insufficient basis to detain petitioner, but stated that the majority's conclusion was consistent with binding circuit precedent. Ibid.

ARGUMENT

Petitioner challenges the court of appeals' well-settled holding that the AUMF authorizes the President to detain individuals who were "part of" al Qaeda, the Taliban, or associated forces at the time of their capture for the duration of hostilities. According to petitioner, even individuals who are part of an enemy force may not be detained in the absence of particularized showings that they (i) personally and actively participated in hostilities against the United States or

coalition partners in Afghanistan, and (ii) would be a threat to the United States if released. The court of appeals has correctly rejected those arguments in numerous cases, and this Court has declined review in cases raising those issues.[4] Petitioner's further contention that the court of appeals concluded that he is lawfully detained based solely on his "personal associations" with terrorist leader Abu Zubaydah rests on a misunderstanding of the court's decision, which relied on substantial additional evidence. The decision below does not conflict with a decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. a. As the D.C. Circuit has repeatedly recognized, an individual may be detained under the AUMF if he was part of al Qaeda, the Taliban, or associated forces at the time of his capture. See Pet. App. 4a-5a; see also, e.g., Uthman v. Obama, 637 F.3d 400, 401-402 (D.C. Cir. 2011), cert. denied, 132 S. Ct. 2739 (2012); Al-Adahi v. Obama, 613 F.3d 1102, 1103 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1001 (2011); Awad v. Obama, 608 F.3d 1, 11-12 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1814 (2011). That understanding of the President's detention

[4] See Al Warafi v. Obama, 134 S. Ct. 2134 (2014) (first issue); Al-Bihani v. Obama, 132 S. Ct. 2739 (2012) (same); Al-Madhwani v. Obama, 132 S. Ct. 2739 (2012) (same); Uthman v. Obama, 132 S. Ct. 2739 (2012) (first and second issues); Al-Bihani v. Obama, 131 S. Ct. 1814 (2011) (second issue).

authority in the context of this war is also reflected in the NDAA, which "affirm[s] * * * the authority of the President to * * * detain" any "person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners." NDAA § 1021(a) and (b)(2), 125 Stat. 1562.

The D.C. Circuit has held that the determination whether a person is part of al Qaeda, the Taliban, or associated forces should be made "on a case-by-case basis * * * using a functional rather than a formal approach and by focusing upon the actions of the individual in relation to the organization." Uthman, 637 F.3d at 403 (citation omitted). As the court of appeals explained here, "terrorists do not wear uniforms," and "terrorist organizations [do not] issue membership cards, publish their rosters on the Internet, or otherwise publicly identify the individuals within their ranks." Pet. App. 8a. Courts thus "must look to other indicia to determine membership in an enemy force." Ibid.

Proof that an individual engaged in fighting, Khairkhwa v. Obama, 703 F.3d 547, 550 (D.C. Cir. 2012), or that an individual was part of an organization's "command structure," Awad, 608 F.3d at 11, is sufficient, but not necessary, to demonstrate that an individual is part of enemy forces. As the D.C. Circuit

has explained, permitting detention only for those detainees who engage in actual combat would be inconsistent with the realities of "modern warfare," in which "commanding officers rarely engage in hand-to-hand combat; supporting troops behind the front lines do not confront enemy combatants face to face; [and] supply-line forces, critical to military operations, may never encounter their opposition." Khairkhwa, 703 F.3d at 550; see also Hussain v. Obama, 718 F.3d 964, 968 (D.C. Cir. 2013), cert. denied, 134 S. Ct. 1621 (2014).

Under the D.C. Circuit's functional test, maintaining a close association with fighters from al Qaeda, the Taliban, or associated forces; staying at safehouses maintained by such forces; and receiving training from such forces, are all highly probative of whether the detainee is properly deemed to have been part of one of those groups. See, e.g., Alsabri v. Obama, 684 F.3d 1298, 1303, 1306 (D.C. Cir. 2012); Suleiman v. Obama, 670 F.3d 1311, 1314 (D.C. Cir.), cert. denied, 133 S. Ct. 353 (2012); Al Alwi v. Obama, 653 F.3d 11, 17 (D.C. Cir. 2011), cert. denied, 132 S. Ct. 2739 (2012); Al-Madhwani v. Obama, 642 F.3d 1071, 1075-1076 (D.C. Cir. 2011), cert. denied, 132 S. Ct. 2739 (2012); Pet. App. 11a-14a. But the D.C. Circuit has also recognized that not everyone having some interaction with al Qaeda, the Taliban, or associated forces is "part of" those forces. "[T]he purely independent conduct of a freelancer," it

has explained, "is not enough to establish that an individual is 'part of' al-Qaida." Salahi v. Obama, 625 F.3d 745, 752 (D.C. Cir. 2010) (internal quotation marks and citation omitted). Similarly, the D.C. Circuit has held that "intention to fight is inadequate by itself to make someone 'part of' al Qaeda." Awad, 608 F.3d at 9. Rather, the ultimate question in every case is whether "a particular individual is sufficiently involved with the organization to be deemed part of it," an inherently case-specific inquiry that will turn on the particular evidence presented. Uthman, 637 F.3d at 403 (citation omitted).

b. In holding that the government had met its burden in this case, the court of appeals correctly applied its established functional test to the evidence considered by the district court. The court concluded that petitioner was part of an associated force led by Abu Zubaydah based on the district court's detailed findings, none of which petitioner now contends were clearly erroneous, see Pet. ii.[5]

[5] At points in his petition for certiorari, petitioner appears to attack discrete factual determinations by the courts below, without citing the record. See, e.g., Pet. 5, 7-8 (implying, contrary to the district court's findings, that petitioner never admitted that he had gone to Afghanistan to fight in the war); Pet. 5-6 (making unsupported assertions about a diary of Zubaydah's associate upon which the courts below relied in part). Petitioner, however, has forfeited any challenges to the court of appeals' assessment of the district court's factual findings by failing to develop those arguments in the petition. In any event, there is no dispute that the court of appeals applied the correct standard to evaluating the

Specifically, the court of appeals noted that petitioner was captured, together with Zubaydah himself -- "an associate and longtime ally of Osama bin Laden," Pet. App. 9a (internal quotation marks omitted) -- in a safehouse where petitioner had stayed for about 18 days, id. at 7a-11a. The court explained that other residents of the safehouse included Zubaydah's senior leadership, and petitioner and those residents identified one another by name and photo. Id. at 9a-10a. Moreover, the court determined that Zubaydah was using the safehouse where he and petitioner were captured "to prepare for attacks on U.S. and Coalition forces using remote-detonated explosives," id. at 10a-11a, noting that "documents and equipment associated with terrorist operations" were found there, id. at 12a-13a. The courts below properly concluded that it "strains credulity" that petitioner was unaware of the terrorist activities taking place at the safehouse during his weeks-long stay there, and it is "unfathomable that avowed terrorist leaders like Abu Zubaydah would tolerate" the presence of a stranger for that period of time. Id. at 10a-11a.

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district court's factual findings -- the clear-error standard, Pet. App. 6a, 13a, 15a. Any challenge to the application of that standard to the facts of this case would not present a question of general applicability warranting this Court's review.

The court of appeals also relied on the district court's factual findings that petitioner had admitted in an interview that he had traveled to Afghanistan prior to his arrival at the safehouse with the intent of fighting in the war against U.S. and coalition forces, Pet. App. 14a-15a, and that petitioner took English classes at the safehouse, id. at 13a-14a. In his petition, petitioner repeatedly characterizes the English classes as benign. Pet. 8, 11. But even putting aside that petitioner's participation in the classes was only one of multiple findings supporting the court of appeals' decision, the government presented evidence showing that Zubaydah was providing English classes at the safehouse as part of a terrorist-training program, and petitioner does not argue that the district court clearly erred in crediting this evidence. Pet. App. 9a, 13a-14a. Eyewitness accounts of petitioner's participation in that training is powerful evidence that petitioner was a member of Zubaydah's force.

The court of appeals and the district court thus properly concluded that, in light of the totality of the evidence, the government had established that petitioner was more likely than not part of Zubaydah's force at the time of his capture.

2. Petitioner argues (Pet. 5, 7-10) that because the courts below did not specifically find that he "'engaged in an armed conflict against the United States' in Afghanistan," id.

at 9, his detention exceeds the authorization provided by the AUMF as construed by the plurality opinion in Hamdi v. Rumsfeld, 542 U.S. 507 (2004). According to petitioner (Pet. 7-10), the Hamdi plurality interpreted the AUMF as permitting detention only of an individual who "was part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there." Hamdi, 542 U.S. at 516 (opinion of O'Connor, J.) (emphasis added) (internal quotation marks omitted). Petitioner misunderstands both the AUMF and the Hamdi plurality opinion.

a. As the D.C. Circuit has correctly held, neither the AUMF nor the NDAA requires proof that a detainee personally took part in combat against the United States or coalition forces. See Hussain, 718 F.3d at 967-968; Khairkhwa, 703 F.3d at 550; Al-Bihani v. Obama, 590 F.3d 866, 871-874 (2010), cert. denied, 131 S. Ct. 1814 (2011). Moreover, neither statute requires that a detainee have engaged in any particular conduct in Afghanistan. To the contrary, the AUMF authorizes 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," AUMF § 2(a), 115 Stat. 224

(emphasis added), thus permitting the detention of individuals who are "part of" enemy forces covered by the statute.[6]

In addition, the NDAA specifically affirms that the President's detention authority encompasses any person "who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act * * * in aid of such enemy forces." § 1021(b)(2), 125 Stat. 1562 (emphasis added). Accordingly, the commission of a "belligerent act" is sufficient to establish that an individual is lawfully detained but is not necessary where the individual is "part of or substantially supported" al Qaeda, the Taliban, or an associated force.

Nor does the law of war, which informs the construction of the AUMF, limit the President's detention authority for those determined to be "part of" al Qaeda, the Taliban, or associated forces to individuals who personally engaged in combat. Cf. Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 4, Aug. 12, 1949, 6 U.S.T. 3320, 3322, 75 U.N.T.S. 138, 140 (defining different categories of

[6] Petitioner does not argue in his petition -- and did not argue in district court or the court of appeals, Pet. App. 5a; 770 F. Supp. 2d at 3 -- that Zubaydah's force is not an "associated force" of al Qaeda or the Taliban for purposes of the AUMF and NDAA. He has thus forfeited any such argument.

prisoners of war, without regard to whether the individual had personally engaged in combat). As the D.C. Circuit has explained, a rule requiring proof that a detainee "actively engaged in combat" is "untenable" because in "modern warfare, * * * supporting troops behind the front lines do not confront enemy combatants face to face." Khairkhwa, 703 F.3d at 550; Hussain, 718 F.3d at 968.

b. Petitioner errs in contending (Pet. 5, 7-10) that the plurality opinion in Hamdi supports his argument that his detention is unauthorized because the government did not establish that he "'engaged in an armed conflict against the United States' in Afghanistan," id. at 9. That opinion made clear that the plurality sought to answer "only the narrow question before us," which was whether a United States citizen who "was part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there" qualifies as an "enemy combatant" who may be detained under the AUMF. Hamdi, 542 U.S. at 516 (opinion of O'Connor, J.) (internal quotation marks omitted). The plurality concluded that the AUMF authorizes the detention of such persons, see id. at 518, 521, but did not suggest that the President's detention authority encompasses only individuals who personally engaged in combat against the United States or coalition forces in Afghanistan.

Moreover, the plurality stated that "[t]he legal category of enemy combatant has not been elaborated upon in great detail," and it instructed that "[t]he permissible bounds of the category will be defined by the lower courts as subsequent cases are presented to them." Id. at 522 n.1.

c. The argument that petitioner advances here has been asserted in certiorari petitions filed by other Guantánamo detainees, but this Court has declined review each time. See Al Warafi v. Obama, 134 S. Ct. 2134 (2014); Al-Bihani v. Obama, 132 S. Ct. 2739 (2012); Al-Madhwani v. Obama, 132 S. Ct. 2739 (2012); Uthman v. Obama, 132 S. Ct. 2739 (2012). Because the D.C. Circuit's interpretation follows from the plain text of the AUMF and the NDAA and is consistent with the background law-of-war principles that inform those statutes, no sound basis exists for a different result in this case.

3. Echoing Judge Edwards's opinion concurring in the judgment, petitioner argues (Pet. 4-7) that the court of appeals improperly affirmed the denial of his habeas petition based "solely" on his "personal associations" -- i.e., the fact that he was captured together with Zubaydah. Pet. 6. That contention reflects a misunderstanding of the court of appeals' opinion. The court correctly concluded that petitioner's capture together with Zubaydah, a significant terrorist leader, is probative of petitioner's membership in Zubaydah's force, but

it did not hold that this single fact was sufficient to justify his detention. See Pet. App. 11a. To the contrary, the court relied on petitioner's presence at the terrorist safehouse in combination with "six additional facts support[ing] the conclusion that [petitioner] more likely than not was part of Abu Zubaydah's force," including that members of Zubaydah's senior leadership were staying at the safehouse and petitioner and those residents identified one another; that Zubaydah was using the safehouse where he and petitioner were captured to prepare for attacks on U.S. forces; that petitioner was observed participating in Zubaydah's terrorist-training program by taking English lessons at the safehouse; that petitioner had traveled to Afghanistan with the intent of fighting U.S. forces; and that he had fabricated his identity once captured. Id. at 8a-10a; see pp. 7-8, supra. Accordingly, this case presents no occasion to address whether reliance on "personal associations" alone would be sufficient to establish that an individual is lawfully detained.

4. Petitioner suggests (Pet. 10-13) that even if he was lawfully detained at one time, his detention is now unlawful because of its duration. Petitioner forfeited that argument by failing to advance it in the court of appeals, see Lawn v. United States, 355 U.S. 339, 362-363, n.16 (1958), and, in any event, it lacks merit. The plurality opinion in Hamdi made

clear that the AUMF permits the detention of enemy belligerents "for the duration of the relevant conflict." 542 U.S. at 521; see id. at 518; id. at 592 (Thomas, J., dissenting); Boumediene v. Bush, 553 U.S. 723, 733 (2008); see also, e.g., Abdullah v. Obama, 2014 WL 1329154, at *4 (D.C. Cir. 2014); Pet. App. 5a. Petitioner does not dispute the court of appeals' conclusion that the relevant conflict is ongoing.

Petitioner instead contends that Hamdi does not control where the government has not shown any "nexus between [a detainee's] continuing detention and preventing his return to the battlefield." Pet. 12-13. Nothing in Hamdi, however, suggests that the President's detention authority depends on an individualized showing that a detainee would reengage in hostilities if released. Rather, as the D.C. Circuit has repeatedly held, whether a detainee "would pose a threat to U.S. interests if released is not at issue in habeas corpus proceedings in federal courts concerning aliens detained under the authority conferred by the AUMF." Awad, 608 F.3d at 11; Khairkhwa, 703 F.3d at 550.

Petitioner's argument has been raised in certiorari petitions filed by other Guantánamo detainees, but this Court has declined review each time. See Uthman, 132 S. Ct. 2739; Al-Bihani v. Obama, 131 S. Ct. 1814 (2011); cf. Al-Madhwani, 132 S. Ct. 2739 (denying review in case where the petitioner

contended that the district court had found that he was not a threat). This Court should do the same here.[7]

5. Finally, petitioner asserts that "virtually no Guantánamo detainee can successfully challenge his detention" under the court of appeals' standards and therefore suggests that the court of appeals' standards amount to a suspension of the writ of habeas corpus. Pet. 11-12. That contention is wrong. The court of appeals has properly performed the task this Court assigned to it in Boumediene by developing "procedural and substantive standards," 553 U.S. at 796, for habeas proceedings that provide military detainees with "meaningful review," id. at 783.

[7] On March 7, 2011, the President issued an Executive Order providing for discretionary and periodic review by an interagency group to determine whether it is necessary to continue to detain individuals designated for continued law-of-war detention or possible prosecution (against whom no charges are pending and no judgment of conviction has been entered) to "protect against a significant threat to the security of the United States." Exec. Order No. 13,567, §§ 1(a)-(b), 2, 3, 76 Fed. Reg. 13,277; see also NDAA § 1023, 125 Stat. 1564-1565. A judgment about whether the transfer or release of petitioner would be consistent with national security is ultimately a question for the political branches. Cf. Ludecke v. Watkins, 335 U.S. 160, 170 (1948).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 2014