NO. 10-7814

IN THE SUPREME COURT OF THE UNITED STATES

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GHALEB NASSAR AL-BIHANI,

Petitioner,

- v -

BARACK H. OBAMA, et al.,

Respondent.

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

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*

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I.

INTRODUCTION

Assuming Petitioner's initial detention was proper, even though he was never found to be a member of either Al-Qaeda or the Taliban,[1] he may only be detained "for the duration of the particular conflict in which [he was] captured." *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plur. op.). *Accord Boumediene v. Bush*, 553 U.S. 723, 733 (2008). Petitioner's continued detention is unjustified because the "particular conflict" in which he was captured, the international conflict between the United States and the Taliban government of Afghanistan, has long since ended, *and* there has been no showing that Petitioner poses a danger of joining any ongoing conflict in Afghanistan.

[1] The district court confirmed that it did not find petitioner was a member of Al-Qaeda. Joint Appendix filed in the court of appeals ("JA"):305. It ultimately found that he was a member of an independent militia. *See id.* at 662-63.

The Deputy Solicitor General agrees with Petitioner that "the court of appeals misunderstood the role of international law in construing the AUMF," *see* Opposition ("Opp.") at 8,[2] yet he urges the Court to deny the petition because he believes that even a proper application of the Court's precedents would not justify Petitioner's release. *Id.* at 7-12. His arguments, however, turn on the notion that, under the *Hamdi/Boumediene* interpretation of the AUMF, the phrase "duration of the particular conflict" places no real limitation on the detention power granted by the AUMF: he contends that so long as there is *any* conflict in Afghanistan, Petitioner may be detained (1) even though the conflict is not the "particular" international conflict in which Petitioner was captured, and (2) even though there has been no finding that Petitioner would seek to join any successor conflict. Neither the court of appeals nor the Deputy Solicitor General have demonstrated that the law-of-war is that malleable. Because the open-ended detention authority urged by the Deputy Solicitor General is unprecedented, and there has been no finding Petitioner poses a threat to join a successor conflict, the law-of-war basis for Petitioner's detention has indeed "unravel[led]" as the plurality warned in *Hamdi*. *See* 542 U.S. at 521. Therefore, the Court should grant the petition and decide whether the AUMF authorizes continuing detention (1) even though the particular conflict of capture is over and (2) there is no finding that Petitioner poses a threat of joining any other conflict.

Petitioner next contended that as a matter of statutory interpretation, the AUMF fails to authorize his detention. In response, the Deputy Solicitor General does not engage in any statutory analysis. Rather, he claims, *see* Opp. at 15-17, that both Judge Williams' concurring opinion and an alternative theory of detention, co-belligerency, allow him to interpret the AUMF as authorizing

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[2] "AUMF" refers to the Authorization for Use of Military Force, Pub. L. No. 107-40, §2(a), 115 Stat. 224 (2010) (reprinted at 50 U.S.C. §1541 note).

detention of "aiders of harborers" of the Taliban and/or Al-Qaeda. However, Judge Williams' approach lacks statutory support, and the Deputy Solicitor General's alternative was flatly rejected by the *Al-Bihani* majority. *See Al-Bihani v. Obama*, 590 F.3d 866, 873, *reh'g denied*, 619 F.3d 1 (D.C. Cir. 2010). The Deputy Solicitor General fails to demonstrate why *certiorari* should not be granted to resolve the reach of the AUMF's detention authority.

II.

THE COURT SHOULD GRANT THE PETITION AND DECIDE WHETHER THE AUMF PERMITS DETENTION WHEN (1) THE INTERNATIONAL CONFLICT IN WHICH PETITIONER WAS CAPTURED IS OVER, AND (2) THERE IS NO FINDING THAT PETITIONER WOULD JOIN ANY OTHER CONFLICT.

A. The "Particular" International Conflict In Which Petitioner Was Captured Is Over.

Petitioner and the Deputy Solicitor General agree that "the court of appeals misunderstood the role of international law in construing the AUMF." *See* Opp. at 8. Even so, the Deputy Solicitor General urges the Court to deny the petition because he contends that the law-of-war justifies Petitioner's continued detention. It does not, and neither the court of appeals nor the Deputy Solicitor General cite any sources suggesting that a combatant may be captured in a specific conflict -- here the international conflict between the United States and Afghanistan -- yet be detained after that conflict is undisputably over based upon the existence of a different conflict -- a non-international conflict between the Afghan government and an insurgency -- without any showing that Petitioner would likely join that new and different conflict.

The *Hamdi* plurality construed the AUMF to limit its detention authority to "*the duration of the particular conflict* in which [Petitioner was] captured." *See* 542 U.S. at 518 (emphasis added). *See also id.* at 521 ("we understand Congress' grant of authority for the use of 'necessary and

appropriate force' to include the authority to detain for *the duration of the relevant conflict*") (emphasis added). *Accord Boumediene*, 553 U.S. at 733. President George W. Bush determined that "the war with al Qaeda . . . . is distinct from the war with the Taliban in Afghanistan." *Hamdan v. Rumsfeld*, 548 U.S. 557, 628 (2006). The U.S./Afghanistan conflict was an *international* one as Afghanistan, unlike Al-Qaeda, is a "High Contracting Party" to the Geneva Conventions. *See id.*[3] The district court found that Petitioner was captured in the international conflict between the United States and Afghanistan. JA:663. That international conflict is undisputably over: the United States is not at war against Afghanistan.[4]

Thus, under the approach devised by the Executive Branch, Petitioner was captured in an international conflict that is now over. It therefore cannot justify his continued detention nearly ten years after his capture. The Deputy Solicitor General has no response to Petitioner's invocation of the Executive Branch's own analysis. Without authority, he claims

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[3] When Petitioner was captured, "the Taliban was the 'Afghani government.'" *See Parhat v. Gates*, 532 F.3d 834, 845 (D.C. Cir. 2008).

[4] The Deputy Solicitor General argues that only the political branches may decide when hostilities are over. *See* Opp. at 11-12. Petitioner has already explained the limitations on that doctrine: courts may "refer to some public act of the political departments of the government to fix the dates [that hostilities began or terminated]." *See* Petition(" Pet.") at 21-22 (citing *The Protector*, 79 U.S. 700, 702 (1871), and *Baker v. Carr*, 369 U.S. 186, 214 (1962)). Numerous "public acts" of the Executive confirm the obvious: the United States is not at war against the government of Afghanistan; indeed, it provides that government with military support. *See id.* The Deputy Solicitor General's argument is a red herring; not even he contends that the international conflict between the United States and the government of Afghanistan persists today -- such a claim would be preposterous -- and Petitioner does not deny that there is an ongoing non-international conflict in Afghanistan. Thus, his petition turns on the significance of the facts that (1) the particular conflict in which he was captured is over, and (2) a non-international conflict in which he never participated began after his capture and continues today. Petitioner contends that he cannot continue to be detained absent a finding that he would join that non-international conflict.

> Petitioner's argument depends upon a distinction -- between an international conflict between two nations and a non-international conflict -- that sheds no light on whether the conflict has ended such that captured detainees must be released. The authority to detain petitioner does not depend on how the conflict is defined at any given time; it rests upon whether hostilities in that conflict have ceased. A conflict can change from an international one to a counter-insurgency -- and back again -- without a cessation of active hostilities between the relevant parties, and complex modern conflicts often contain both international and non-international elements. Petitioner's definition of the "particular conflict" ignores common sense and finds no support in law.

Opp. at 10.

As an initial matter, the Deputy Solicitor General's claims make clear the necessity of the Court's review; he offers no support for his views from either the Geneva Conventions or even secondary sources interpreting those Conventions. In effect, he advocates nothing short of permanent detention of anyone captured in the international conflict between the United States and the Taliban-governed Afghanistan, without requiring any showing that the detainee is likely to join whatever conflict happens to exist in Afghanistan. His "morphing conflict" approach bears no relation to the conflicts that animated the drafters of the Geneva Conventions, and the Court has repeatedly refused to endorse such open-ended commitment authority: "If the practical circumstances of a given conflict are entirely unlike those of the conflicts that informed the development of the law of war, [the *Hamdi* plurality's] understanding [of the detention authority] may unravel." *Hamdi*, 542 U.S. at 521. *Accord Boumediene*, 553 U.S. at 797-98 ("Because our Nation's past military conflicts have been of limited duration, it has been possible to leave the outer boundaries of war powers undefined. If, as some fear, terrorism continues to pose dangerous threats to us for years to come, the Court might not have this luxury."). Because the Deputy Solicitor

General's approach ignores the Court's expressions of concern and simply posits an indefinite detention regime, the Court should grant the petition.[5]

Not only does the Deputy Solicitor General ignore the Court's concerns expressed in *Hamdi* and *Boumediene*, his approach cannot withstand scrutiny. First, Petitioner did not, as the Deputy Solicitor General implies, *see* Opp. at 10, invent the distinction between international and non-international conflicts. Rather, it is contained in the Geneva Conventions, and the Executive has invoked it in differentiating between the United States' conflicts with Al-Qaeda and the Taliban. *See Hamdan*, 548 U.S. at 628 & n.60.

Second, the Deputy Solicitor General offers no explanation why the Executive's analysis "sheds no light on whether the conflict has ended." Opp. at 10. In fact, President Bush well knew that the distinction he drew affected analysis of the conflict under the Geneva Conventions. *See Memorandum of Jay S. Bybee, Assistant Attorney General* 31 (Jan. 22, 2002), available at http://www.washingtonpost.com/wp-srv/nation/documents/012202bybee.pdf (last visited March 9, 2011) (advising the Bush Administration that "pursu[ing the President's] line of reasoning [means] the executive branch would have to find that the Afghanistan conflict qualifies as an international war between two state parties to the [Geneva] Conventions."). Petitioner invokes the Executive's determination now, and the Deputy Solicitor General offers no reason why its determination that the conflict in which Petitioner was captured was an international one should not inform determination whether the "particular" conflict of capture has ended (along with the detention authority derived from it).

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[5] The initial three-judge panel also failed to explain how the Geneva Conventions support Petitioner's continuing detention. *See Al-Bihani*, 590 F.3d at 874.

Nor is there any support for the Deputy Solicitor General's fluid conception of the relevant conflict. He argues that

> [t]he authority to detain petitioner does not depend on how the conflict is defined at any given time; it rests upon whether hostilities in that conflict have ceased. A conflict can change from an international one to a counter-insurgency -- and back again -- without a cessation of active hostilities between the relevant parties . . . .

Opp. at 10. Under this analysis, it is somehow possible for Petitioner to be captured in an international conflict, yet his detention can continue nearly ten years later because "hostilities in *that conflict* have [not] ceased." *Id.* (emphasis added). Because "that conflict" -- the international one -- is over, it cannot still be the subject of hostilities. Apparently acknowledging the reality that there is no ongoing international conflict, the Deputy Solicitor General posits a metamorphizing conflict "that can change from an international one to a counter-insurgency -- and back again . . . ." *Id.* There is considerable tension between the notion of a morphing conflict and a detention scheme predicated on the "the duration of the *particular* conflict in which [a detainee was] captured." *Boumediene*, 553 U.S. at 733 (emphasis added, quotation omitted). The Court should resolve that tension.

Finally, the Deputy Solicitor General claims that Petitioner's approach "ignores common sense," Opp. at 10, an ironic view in light of his advocacy of a definition of "particular conflict" in which that "conflict can change from an international one to a counter-insurgency . . . and back again." *Id.* On the contrary, Petitioner's approach is entirely sensible. It avoids reflexive, indefinite detention based upon an international conflict that no longer exists. It provides the Executive with the ability to continue detention based upon a showing that the particular detainee poses a threat to join an existing conflict if released.[6]

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[6] The court of appeals overlooked this aspect of Petitioner's proposal when it erroneously claimed that his approach would require the United States and the Karzai government "to constantly

Petitioner's approach is consistent with the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 132, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist."). Absent a finding that Petitioner would join an extant conflict, "the reasons which necessitated his internment no longer exist." *See id.* Similarly, Professors Bradley and Goldsmith advocate an approach under which "the question is not whether hostilities have ceased with al Qaeda and related terrorist organizations, but rather whether hostilities have, in essence, ceased with the individual because he no longer poses a substantial danger of rejoining hostilities." Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War On Terrorism*, 118 Harv. L. Rev. 2047, 2125 (2005). Although they were addressing "the power to detain terrorist combatants outside the conflict in Afghanistan," *id.*, they offer no reason why their analysis would not also apply to an individual detained in connection with the now-terminated international conflict. *See id.* Thus, rather than "ignor[ing] common sense," Petitioner's approach acknowledges reality (i.e., the international conflict is over), addresses the concerns expressed in *Hamdi* and *Boumediene* regarding indefinite detention, and permits the Executive to vindicate its security interests in a proper case.

B. Petitioner's Approach Is Consistent With *Hamdi*.

The Deputy Solicitor General, Opp. at 10-11, argues that Petitioner's approach is inconsistent with *Hamdi*'s observations that, at the time of the decision, "[a]ctive combat operations against Taliban fighters apparently are ongoing in Afghanistan," 542 U.S. at 521, and

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refresh the ranks of the fledgling democracy's most likely saboteurs." *Al-Bihani*, 590 F.3d at 874.

> [t]he United States may detain, for the duration of these hostilities, individuals legitimately determined to be Taliban combatants who "engaged in an armed conflict against the United States." If the record establishes that United States troops are still involved in active combat in Afghanistan, those detentions are part of the exercise of "necessary and appropriate force," and therefore are authorized by the AUMF.

Id. Here, there is no finding that Petitioner "engaged in an armed conflict against the United States." Moreover, Hamdi did not contend that the international conflict was his particular conflict of capture and that it had terminated. *See Webster v. Fall*, 266 U.S. 507, 511 (1924) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."). Indeed, President Bush's official recognition of Hamid Karzai's Afghan government post-dated the issuance of *Hamdi*. *See Whitehouse Press Release* (May 23, 2005), available at http://merln.ndu.edu/archivepdf/afghanistan/WH/20050523-2.pdf (last visited March 10, 2011). Thus, Petitioner's argument that a public act of the Executive Branch terminated the international conflict, *see The Protector*, 79 U.S. at 702, would not necessarily have been available to Hamdi. In short, the *Hamdi* plurality did not address Petitioner's contentions and does not counsel against the Court's review here, particularly in light of the indefinite detention scheme that will surely result from endorsing the Deputy Solicitor General's approach.

III.

THE AUMF DOES NOT AUTHORIZE DETENTION FOR AIDERS OF THE HARBORERS OF AL-QAEDA.

Petitioner contends that the plain meaning of the AUMF precludes his detention: he is not a "nation[], organization[] or person[] [the President] determine[d] planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 . . ." nor is he someone who

"harbored such organizations or persons . . . ." AUMF at §2a; Pet. at 4, 24-27. The Executive determined that Al-Qaeda planned, authorized, and committed the terrorist attacks occurring on September 11, 2001, and that the Taliban supported and harbored Al-Qaeda. *See Hamdi*, 542 U.S. at 510, 512. Even though there was no evidence that Petitioner was either Al-Qaeda or Taliban, or even that he assisted the Taliban against the United States after the United States entered the war in Afghanistan on October 7, 2001, the Deputy Solicitor General insists Petitioner can be detained because by assisting the Taliban, he "harbored" Al Qaeda. *See* Opp. at 15. Yet he fails to explain how the AUMF supports his reading. *See id*. Even accepting his unsupported conclusion that Petitioner, a cook, was a "member" of the "055 Arab Brigade" (a controverted point), all that establishes is that Petitioner was part of a militia which supported the Taliban's fight against the Northern Alliance before the United States was either an enemy of the Taliban or an ally with the Northern Alliance.

Next, as an apparent alternative theory, the Deputy Solicitor General claims that the AUMF authorizes detention against independent military brigades who did not actually harbor Al-Qaeda but rather assisted the Taliban, making them "associated forces . . . under principles of co-belligerency." Opp. at 15 (citations omitted). The Deputy Solicitor General's alternative approach is doubly flawed: first, neither the majority nor the concurrence adopted it, *see Al-Bihani*, 590 F.3d 873, 881-85, and second, Respondents did not raise the "co-belligerency" theory in district court. Suggesting an alternative position rejected by the court of appeals is no reason to deny this petition.

This Court should grant this petition to decide if the AUMF's language can, consistent with statutory construction authorities, expand the organizations subject to detention beyond those who

"planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons . . . ." *See* AUMF §2(a).

A. The AUMF Specifies To Whom It Applies and The Solicitor General's Detention Theory Does Not Adhere To Its Text.

The AUMF provides a clear and unambiguous statement of detention authority that does not encompass either the court of appeals' alternative conclusion that "the actual and foreseeable result of the 55th's defense of the Taliban was the maintenance of Al Qaeda's safe haven in Afghanistan," *Al-Bihani*, 590 F.3d at 873, or Judge Williams' position that because "[t]he 55th Brigade fought to preserve the Taliban regime in Afghanistan even as the Taliban was harboring al Qaeda in Afghanistan, 'the 55th Arab Brigade . . ."harbored" al Qaeda within the meaning of the AUMF,'" *id*. at 884-885 *See* Pet. at 4, 24-27.[7] The AUMF simply does not provide for detention of antecedent "aiders of the harborers." *See id.* Instead of responding to Petitioner's statutory construction arguments, *see* Pet. at 24-27 (setting forth plain meaning and negative implication arguments), the Deputy Solicitor General claims that "the Brigade was effectively part of Al-Qaida and Taliban forces," and relies upon Judge Williams' concurrence claiming that the AUMF doesn't limit "the organizations" it included, and that Congress "authorized military action 'aimed at removing the Taliban from the seat of government and minimizing its ongoing influence in Afghanistan, including * * * attacks on ancillary forces aiding the Taliban,'" Opp. at 15 (quoting 590 F.3d at 884).

First, the AUMF does not authorize the Deputy Solicitor General's "effectively part of" theory of detention. *See* AUMF at §2. The district court did not make any such finding; Respondents didn't brief it below; and no member of the *Al-Bihani* panel endorsed it.

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[7] Nor was either the finding of the district court in Petitioner's case.

The Deputy Solicitor General also takes liberties with the factual record in his Response. When Petitioner presented uncontroverted evidence that the 55th Arab Brigade was actually independent and not part of nor shared the ideals of Al-Qaeda in district court, *see* JA:478-480,795, Respondents only attempted to prove Petitioner "supported" the Taliban, but even then, there was no evidence of "support" after the United States commenced its bombing campaign in Afghanistan. JA:450-451, 346-347.

Second, contrary to the Solicitor General's statements, the AUMF does limit the "organizations" it covers to those who "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or [those who] harbored such organizations or persons," *see* AUMF at §2a, and nowhere does it set forth authorization to detain those who aid or harbor the harborers or "ancillary forces" so as to minimize Taliban control. *See id*. The Deputy Solicitor General does not attempt to square Judge Williams' concurrence with the AUMF's language, nor does he justify his current detention standard or the different standard applied to detain Petitioner in district court by examining the actual statutory text. *See* Opp. at 14-17.[8] Nor does the Deputy Solicitor General endorse the majority's alternative "actual and foreseeable result" analysis or find it necessary to address Petitioner's discussion of the majority's misplaced reliance upon the Military

[8] Contrary to the Deputy Solicitor General's response, *see* Opp. at 157 Petitioner has consistently challenged Respondents' evolving "support" and "substantial support" detention standards as lacking in support from the authorizing statute. *See* Pet. at 26; s*ee also Hamlily v. Obama,* 612 F. Supp.2d 63, 76 (D.D.C. 2009) (questioning the viability of the "support" concept).

Commissions Act of 2009, Pub. L. No. 111-8, tit. XVIII, 123 Stat. 2574, and the Military Commissions Act of 2006, Pub. L. No.109-366, 120 Stat. 2600. *See* Opp. at 14-17 & n.1.[9]

Petitioner will not restate his arguments, but both the court of appeals' alternative holding and Judge Williams' concurring opinion misinterpret the AUMF and violate canons of statutory construction. *See* Pet. at 4, 24-27. The AUMF specifies to whom it applies: those who "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons." AUMF §2(a). The AUMF and the concomitant war powers it grants to the Executive permit detention of those organizations or persons who harbored those responsible for the September 11, 2001, attacks, not organizations or persons that may have assisted other organizations "harboring" those responsible before the attacks ever occurred or organizations who should have "foreseen" that they were assisting those who harbored Al-Qaeda. *See id.*

Expanding the AUMF's reach is impermissible under canons of statutory construction. *See* Pet. at 24-27. Such an expansive reading allows the Executive unfettered discretion to define these "ancillary forces," evade temporal limitations, and ensnare even unwitting aiders of the Taliban or Al-Qaeda.

B. <u>The Solicitor General's Reliance Upon "Co-Belligerency" Principles To Save Its Overbroad Reading of the AUMF Is Not Only Misplaced, It Is Misapplied.</u>

As an alternative explanation for its broad reading of the AUMF, the Deputy Solicitor General claims that the AUMF authorizes detention of independent military brigades who did not actually harbor Al-Qaeda but rather assisted the Taliban, making them "associated forces . . . under principles of co-belligerency." Opp. at 15 (citations omitted). This was not the holding of the court

[9] While the Deputy Solicitor General urges denial of *certiorari*, he does not appear to endorse any reasoning from the majority's opinion. *See* Opp. at 14-17.

of appeals, nor could it be since "co-belligerency" is a law-of-war concept. *See* 590 F.3d at 873 (rejecting co-belligerency as inapplicable). The theory of co-belligerency was not advanced in the district court nor was evidence supporting it offered in that court.

If, contrary to the majority opinion, co-belligerency is a viable theory, it doesn't assist the Deputy Solicitor General. Co-belligerency principles require that the 55th Arab Brigade manifest hostile intention towards the United States once the United States declared war on the Taliban. *See, e.g,, Oppenheim's International Law: A Treatise* § 77 & n.1 (1906)(defining law-of-war principle of co-belligerency); *see also id*. at §307 at 666-667 ("[A]n immediate notification of war by belligerents is of great importance . . . . a neutral State may in no way be made responsible for acts . . . performed before it knew of the war although the outbreak of war might have been expected."); Michael Bothe, *The Law Of Neutrality* 1106-1109 (Fleck ed. 1995) (discussing the duties of neutral states and the fundamental right to remain outside a conflict). Petitioner has always made clear that the 55th Arab Brigade had no notice of the U.S. entry into the Taliban/Northern Alliance conflict, and Respondents offered no evidence below that the 55th violated the neutrality principle as to the U.S.

The authorities cited by the Deputy Solicitor General actually establish that neither Petitioner nor "his" Brigade could be considered co-belligerents. *See* Opp. at 15 (citing Bradley & Goldsmith, 118 Harv. L. Rev. at 2112, and *Hamlily,* 616 F.Supp. 2d at 75). For example, according to Bradley & Goldsmith, a co-belligerent is:

> a fully fledged belligerent fighting in association with one or more belligerent powers. One way a state can become a co-belligerent is through systematic or significant violations of its duties under the law of neutrality. A neutral state's fundamental duties are nonparticipation in the conflict and impartiality towards belligerents. Among other things this means that the neutral state must not

> participate in acts of war by the belligerent, must not supply war materials to a belligerent, and must not permit belligerents to use its territory to move or munitions, or to establish wartime channel communications.

118 Harv. L. Rev. at 2112; *see also id*. at 2113 (giving examples of conduct such as to "participate with al-Qaeda in acts of war against the United States, systematically provide military resources to al-Qaeda, or serve as fundamental communication links in the war against the United States and perhaps those that systematically permit their buildings and safehouses to be used by al-Qaeda in the war against the United States, [is] analogous to co-belligerents in a traditional war"). Demonstrating a violation of the duty of neutrality is the "only [way to] attain[] co-belligerent status." *Hamlily*, 616 F. Supp. 2d at 75.

Both the court of appeals and the Deputy Solicitor General misinterpret the AUMF.

IV.

CONCLUSION

The Court should grant the petition.

Respectfully submitted

Date: March 15, 2011

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