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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII and ISMAIL	:	
ELSHIKH,	:	Case No. 1:17-cv-00050-DKW-KJM
Plaintiffs,	:	
	:	<b>[PROPOSED] INTERVENOR</b>
v.	:	<b>VINCENT LUCAS'S CROSS</b>
	:	<b>COMPLAINT AGAINST THE STATE</b>
DONALD J. TRUMP, President of the	:	<b>OF HAWAII AND ISMAIL</b>
United States, et al.	:	<b>ELSHIKH</b>
Defendants,	:	
	:	
VINCENT LUCAS,	:	
Intervenor.	:	

INTRODUCTION

1. If the Plaintiffs succeed in this action, they will put all Americans at greater risk of death or grave injury from terrorism by impeding the power of the President of the United States to address vulnerabilities in U.S. visa and refugee programs.

SUMMARY OF MY INTEREST IN THIS ACTION

2. I often go to places that would be likely targets of a terrorist attack in the event that al-Qaida or ISIL operatives were admitted into this country under its visa

or refugee programs and those operatives were to commit an act of terror in Southwest Ohio. For example, I often go to the federal courthouse, theatres and restaurants in downtown Cincinnati.

3. Al-Qaida and ISIL have targeted similar places for terrorist attacks. For example, two of Al-Qaida's targets in the 9/11 terror attacks were government buildings: the Pentagon and White House<sup>1</sup>.
4. In the November 13, 2015 ISIL Paris terror attacks, which killed 130 and injured 368 people in total, terrorists targeted numerous restaurants for shootings and bombings. The terrorists also took hostages and murdered innocent civilians in Bataclan theatre. 89 people died at that theatre.
5. As such, my life is threatened by the admission of al-Qaida or ISIL operatives into this country. I have a tangible interest in the President's efforts to defend this country from terrorists.
6. That tangible interest is directly threatened by this lawsuit and the efforts of the Plaintiffs to handcuff the President from executing his Constitutional and statutory powers to defend this country by addressing weaknesses in U.S. visa and refugee programs.

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<sup>1</sup> The planned White House attack was thwarted by passengers of the hijacked plane

## THE UNITED STATES IS AT WAR WITH AL-QAIDA AND ISIL

7. The United States has continuously been in a state of war with Al-Qaida, and associated groups such as ISIL, since Sept. 11, 2001.
8. Al-Qaida committed an act of war in the terror attacks of Sept. 11, 2001.
9. In response, Congress passed Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224, authorizing the President to use military force against nations, organizations, and persons that he determines were responsible for the Sept. 11, 2001 terror attacks.
10. Since at least 1964, it has been the practice of Congress to exercise its power to “declare War”, U.S. Const. Art. I, Sect. 8, by passing Authorizations for Use of Military Force (AUMF) rather than invoking some magic phrase such as “We declare war”. The courts have acknowledged that an AUMF has the same effect as a declaration of war by Congress. *See, e.g., Doe v. Bush*, 323 F.3d. 133, 141 n.10 (1st Cir. 2003).
11. The Bush Administration understood the 2001 AUMF to be equivalent to a declaration of war. The Administration repeatedly referred to its use of military force pursuant to the 2001 AUMF as a “war on terror”.<sup>2</sup>
12. The Obama Administration recognized that the 2001 AUMF also authorizes the President to wage war against ISIL. As explained in Report on the Legal

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<sup>2</sup> [https://www.nytimes.com/2005/07/26/politics/26strategy.html?\\_r=0](https://www.nytimes.com/2005/07/26/politics/26strategy.html?_r=0)

Frameworks Guiding the United States' Use of Military Force and Related National Security Operations by The White House, December 2016 (“Framework Report”)<sup>3</sup>, Exhibit A, the AUMF covers “al-Qa’ida, the Taliban, or associated forces” and ISIL is an “associated force” due to its past affiliation with al-Qaida. Framework Report at 4-5.

13. The Obama Administration submitted a report to Congress pursuant to the War Powers Resolution at least every six months throughout his Presidency, Framework Report at 2, thus demonstrating that the United States has been continuously at war against al-Qaida and ISIL throughout the entire Obama Presidency.
14. The Obama Administration used the 2001 AUMF as legal justification to wage war against al-Qaida and ISIL in six countries that it identified as particular areas of concern because they are hot spots for al-Qaida and ISIL activity: Afghanistan, Iraq, Syria, Somalia, Libya, and Yemen. Framework Report at 15-18.
15. These are the same six countries particularly identified in the March 6, 2017 Executive Order, except for the addition of Iran and Sudan and removal of Afghanistan and Iraq. Iraq was in the list on the first Executive Order but is

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<sup>3</sup> Available at [https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report\\_Final.pdf](https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf) and also at <https://www.lawfareblog.com/white-house-releases-report-legal-and-policy-frameworks-american-uses-military-force>

treated as a “special case” in the current Executive Order. Iran and Sudan were included in the list because they have been identified as “state sponsors of terrorism”. See the Obama Administration’s Country Reports on Terrorism 2014, Chapter 3.<sup>4</sup>

16. The Trump Administration has affirmed that the United States is still in a state of war against ISIL. In a Feb. 28, 2017 speech to Congress, President Trump said:

As promised, I directed the Department of Defense to develop a plan to demolish and destroy ISIS -- a network of lawless savages that have slaughtered Muslims and Christians, and men, women, and children of all faiths and beliefs. We will work with our allies, including our friends and allies in the Muslim world, to extinguish this vile enemy from our planet.

#### AL-QAIDA EXPLOITED VULNERABILITES IN THE U.S. VISA SYSTEM TO COMMIT THE 9/11 TERROR ATTACKS

17. The National Commission on Terrorist Attacks Upon the United States (a/k/a 9-11 Commission) made findings in Entry of the 9/11 Hijackers into the United States, Staff Statement No. 1 (“Staff Statement”)<sup>5</sup>, Exhibit B, presented in the Commission’s public hearing on 1/26/2004. The Commission found that terrorist leader Mohamed Atta gained admission to the U.S. on a tourist visa and overstayed his period of admission. When he attempted to gain reentry into the U.S. in January 2001, INS investigators noticed that his story clashed

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<sup>4</sup> <https://www.state.gov/j/ct/rls/crt/2014/239410.htm>

<sup>5</sup> [http://govinfo.library.unt.edu/911/staff\\_statements/staff\\_statement\\_1.pdf](http://govinfo.library.unt.edu/911/staff_statements/staff_statement_1.pdf)

with his attempt to reenter on a tourist visa. Nevertheless, Atta was readmitted to the U.S. Staff Statement at 7.

18. The Staff Statement details how the other 9/11 terrorists gamed the U.S. visa system, violated immigration law, and exploited weaknesses in U.S. visa policies. Staff Statement at 9 says:

Considered collectively, the 9/11 hijackers:

- Included among them known al Qaeda operatives who could have been watchlisted;
- Presented passports “manipulated in a fraudulent manner;”
- Presented passports with “suspicious indicators” of extremism;
- Made detectable false statements on their visa applications;
- Were pulled out of the travel stream and given greater scrutiny by border officials;
- Made false statements to border officials to gain entry to the United States; and
- Violated immigration laws while inside the United States

These circumstances offered opportunities to intelligence and law enforcement officials [to prevent the 9/11 attacks].

19. Had the U.S. implemented improved vetting procedures for visas, it is likely that the 9/11 terror attacks would have been prevented.

20. A terrorist from one of the six countries designated by the Executive Order, seeking to repeat the modus operandi of Mohamed Atta, would raise many of the same claims that the State of Hawai`i makes: namely, that the Executive Order deprives him of his supposed “right” to enter the U.S. as a tourist or to attend U.S. flight schools. Compare with Sec. Am. Compl. ¶¶ 5, 93, 100.

ISIL EXPLOITS EUROPE'S REFUGEE PROGRAM TO COMMIT  
NUMEROUS ACTS OF TERROR IN EUROPE

21. Since 2015, Germany has had a policy of open migration of refugees, taking in more than 1 million refugees. Once in Germany, refugees can easily cross the border into neighboring countries.
22. Europe's experiment with open refugee migration has been a complete disaster. Since 2015, there has been a dramatic increase in major ISIL terror attacks in Europe.<sup>6</sup>
- a. Jan 7, 2015 Île-de-France attacks, 20 killed, 22 injured
  - b. Nov 13, 2015 Paris attacks, 137 killed, 368 injured
  - c. Mar 22, 2016 Belgium Brussels suicide bombings, 35 killed, 340 injured
  - d. Jul 14, 2016 France Nice truck attack, 87 killed, 434 injured
  - e. Dec 19, 2016 Berlin Christmas market attack, 12 killed, 56 injured
23. There has also been a dramatic increase in smaller ISIL-inspired terrorist attacks. Germany experienced "an axe attack, a mass shooting, a machete assault and a suicide bomb" all in a single week.<sup>7</sup> The suicide bomb was done

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<sup>6</sup> [https://en.wikipedia.org/wiki/Terrorism\\_in\\_Europe](https://en.wikipedia.org/wiki/Terrorism_in_Europe)

<sup>7</sup> Kate Connolly, [Pressure grows on Angela Merkel to start closing Germany's open door](https://www.theguardian.com/world/2016/jul/25/pressure-grows-on-angela-merkel-to-start-closing-germanys-open-door), The Guardian, 7/25/2016, <https://www.theguardian.com/world/2016/jul/25/pressure-grows-on-angela-merkel-to-start-closing-germanys-open-door>

by a Syrian refugee.<sup>8</sup> The machete assault, also done by a Syrian refugee, killed a pregnant woman and injured two others.<sup>9</sup> The axe attack was done by an Afghan shouting “Allahu Akbar”.<sup>10</sup>

#### OTHER DANGERS TO SAFETY

24. Terrorism per se is not the only danger posed by inadequate vetting of aliens from the six designated countries. In parts of these countries – especially tribal and poorly educated areas – there is widespread belief in several practices that are contrary to human dignity. These practices would pose an imminent threat to the safety of Americans if imported into this country.

#### Group sexual assault and rape (“taharrush gamea”)

25. In Cologne, Germany, during New Year’s celebrations, hundreds of women were surrounded, sexually assaulted, some raped, by large groups of men. The men were refugees, according to prosecutors.<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Matt Hunter, Angela Merkel in backlash over open door immigration after German attacks, Daily Mail UK, 7/24/2016, <http://www.dailymail.co.uk/news/article-3705817/Angela-Merkel-backlash-open-door-immigration-German-attacks.html>

<sup>10</sup> *Id.*

<sup>11</sup> BBC News, Cologne attackers were of migrant origin, 1/11/16, <http://www.bbc.com/news/world-europe-35280386>

Nick Gutteridge, Cologne rapists WERE refugees: Prosecutor slam reports exonerating migrants as 'nonsense', Express UK, <http://www.express.co.uk/news/world/644379/Cologne-attacks-German-prosector-New-Years-Eve-rapists-migrants-refugees>



26. As reported in Daily Mail UK<sup>12</sup>:

Police fear a gang-rape phenomenon known as 'taharrush gamea' in the Arab world and seen in attacks on women across German cities at the New Year has now spread to Europe. The name of the practice translates to 'collective harassment' and is carried out by large groups of men who sexually assault lone women, either by groping, or in some instances, raping them. The men first surround their victim in circles. Some then sexually assault her, while others not directly involved watch or divert outsiders' attention to what is occurring. ... [T]he attack usually goes unpunished because the large number of perpetrators and chaos of the attack means authorities are unable to identify those involved.

27. Because the attacks were an embarrassment to Germany's open migration policies, they were originally covered up/downplayed. However, leaked documents report that over 2000 men sexually assaulted over 1200 German women in the New Year's attacks.<sup>13</sup>

#### Honor killings

28. In an honor killing, a woman is killed usually by a family member for having sex outside of marriage. Frequently, the woman was raped. I.e. the woman is raped and then murdered by a family member because she "dishonored" the family by being raped.

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<sup>12</sup> Corey Charlton, The Arabic gang-rape 'Taharrush' phenomenon which sees women surrounded by groups of men in crowds and sexually assaulted... and has now spread to Europe, Daily Mail UK, 1/12/16, <http://www.dailymail.co.uk/news/article-3395390/The-Arabic-gang-rape-Taharrush-phenomenon-sees-women-surrounded-groups-men-crowds-sexually-assaulted-spread-Europe.html>

<sup>13</sup> Rick Noack, Leaked document says 2,000 men allegedly assaulted 1,200 German women on New Year's Eve, Washington Post, 7/11/16, <https://www.washingtonpost.com/news/worldviews/wp/2016/07/10/leaked-document-says-2000-men-allegedly-assaulted-1200-german-women-on-new-years-eve>

29. Honor killings are a prevalent problem in Yemen and Syria, two of the countries identified by the Executive Order.<sup>14</sup>

#### Female genital mutilation

30. According to a UNICEF Feb. 2015 report, 98% of females aged between 15 and 49 years are subjected to female genital mutilation in Somalia<sup>15</sup>, another country listed in the Executive Order.

#### Conclusion

31. The practices described in this section are abhorrent to American values and should not be imported into this country.<sup>16</sup>

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<sup>14</sup> M. Jamjoom, H. Almasmari, and S. Abedine, Yemeni girl, 15, 'burned to death by father', CNN, 10/24/13, <http://edition.cnn.com/2013/10/24/world/meast/yemeni-girl-burned-to-death-by-father> ("Honor killings are a problem in Yemen"); M. Keylan, No More Honor Killings, Forbes, 1/29/10, <https://www.forbes.com/2010/01/28/honor-killings-islam-women-rape-opinions-columnists-melik-kaylan.html> (reporting on honor killing of Syrian girl. "In Syria, as elsewhere, many conservative Muslims—including women—see any creeping sympathy for rape victims as the beginnings of westernization by stealth, the tip of the iceberg of feminism. In plenty of Muslim countries—Morocco, Yemen, Bangladesh—honor killings are often not punishable by law if they're deemed 'justified,' and not infrequently the rapist benefits from customary codes of mercy in place of the victim.")

<sup>15</sup> [https://data.unicef.org/wp-content/uploads/country\\_profiles/Somalia/FGMC\\_SOM.pdf](https://data.unicef.org/wp-content/uploads/country_profiles/Somalia/FGMC_SOM.pdf)

<sup>16</sup> For the record, these practices are not part of Islam in general. To the contrary, they directly contradict the true teachings of Islam. So too the intentional targeting and murder of innocent civilians is contrary to true Islam.

ISIL INTENDS TO COMMIT TERROR ACTS IN THE U.S. AND HAS HAD  
THE MEANS TO FALSIFY RECORDS USED FOR VETTING

32. ISIL has professed that it wishes to commit acts of terror in the U.S. similar to those in Europe.
33. ISIL operated as the de facto government for months or years in several areas of Syria and Iraq.
34. As the de facto government, ISIL had access to vast amounts of wealth. According to one report, ISIL made at least \$1 million per day in oil sales.<sup>17</sup>
35. Because of its wealth and position as de facto government, ISIL has had the means and opportunity to falsify many records that would be used to vet many aliens from Iraq and Syria. ISIL has the ability to falsify the travel documents and other records of its operatives in an effort to put its operatives in the U.S. to commit terror.

INTERVENOR'S CLAIMS AGAINST THE PLAINTIFFS

I. Attempted usurpation of the Constitutional powers of the President and Congress to make decisions on how to defend the country during war, to the manifest detriment of public safety

36. U.S. Constitution, Article II, Section 1 vests the executive power of this country in the President and Section 2 makes the President the Commander in Chief of the nation's defenses.

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<sup>17</sup> Scott Bronstein and Drew Griffin, Self-funded and deep-rooted: How ISIS makes its millions, CNN, 10/7/14, <http://www.cnn.com/2014/10/06/world/meast/isis-funding/>

37. U.S. Constitution, Article I, Section 8 gives Congress power to declare war and to finance the common defense and to pass other legislation for the nation's defense.
38. Pursuant to its Constitutional powers, Congress has authorized the President to wage war against al-Qaida and ISIL. Congress has also authorized the President to suspend the entry of classes of aliens into this country when the President determines that the entry of such aliens is detrimental to the "interests" of the United States. 8 U.S.C. 1182(f).<sup>18</sup>
39. Pursuant to the President's Constitutional wartime powers as Commander in Chief of the nation's defenses, and statutory powers under 8 U.S.C. 1182(f) and other statutes, the President issued the March 6, 2017 Executive Order.
40. The wartime powers of the President are extraordinarily broad and include authority to deny admission to the U.S. of classes of aliens who pose a threat to the nation's safety.
41. The Executive Order has the implicit support of Congress. Congress has taken no action to disapprove of the Executive Order.

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<sup>18</sup> "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate"

42. “[G]reat deference is afforded the President's exercise of his authority as Commander-in-Chief. \* \* \* [W]hen Congress and the President act together in the conduct of war, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.” *Padilla v. Rumsfeld*, 352 F. 3d 695, 712-3 (2d Cir. 2003), *rev'd on other grounds*, 541 U.S. 426 (internal quotes omitted).

43. Through this lawsuit, the Plaintiffs have sought to usurp the wartime powers of the President to defend this country, to substitute their judgment or the judgment of unelected judges for the judgment of the President and Congress.

44. If Plaintiffs are successful, the President would be unable to defend the country from the admission of al-Qaida and ISIL terrorists into this country, to the manifest detriment of my safety and public safety.

45. I deny the jurisdictional allegations of the Plaintiffs. Sec. Am. Compl. ¶ 8. The power to decide how to wage war is vested in the President and Congress, not the judiciary. This Court should dismiss this case for lack of subject matter jurisdiction or for failure to state a claim upon which relief can be granted.

## II. The Plaintiffs seek to deprive me of the Constitution's promise of a Republican Form of government

46. U.S. Const. Art. IV, Sect. 4 guarantees Ohio (and presumably its citizens) “a Republican Form of Government”.

47. Under a Republican Form of Government, the authority to make decisions of national defense is vested in the President, elected by the people to be its Commander in Chief, and Congress, not unelected judges.

III. The Plaintiffs would deprive the United States of its ability to protect the States from invasion

48. If the Plaintiffs are successful, the United States would be unable to fulfill its Constitutional duty to “protect each [State] against Invasion” and “domestic Violence” by terrorists. U.S. Const. Art. IV, Sect. 4.

IV. The Plaintiffs seek to disenfranchise nearly 63 million Americans by depriving them of the benefits of their vote

49. The arguments raised by the Plaintiffs regarding the President’s anti-terrorism proposals and the supposed “animus” of the President were also raised at great length during the 2016 presidential campaign. The voters considered those arguments and nevertheless decided to elect Donald J. Trump as President.

50. The courts go to great length to protect individual voting rights, when in truth a single vote in a national election is one vote in over 100 million.

51. The Plaintiffs seek to effectively disenfranchise the nearly 63 million voters who voted for Donald Trump, by depriving him of his power to defend the country, as if their side had won the election, instead of President Trump.

V. The State of Hawai'i is violating its duty to provide for public health and safety

52. By prosecuting this action, Hawai'i's Governor and Attorney General are violating their duties under the Hawai'i Constitution, Art. IX, Sect. 1 to "provide for the protection and promotion of the public health." The admission of terrorists into this country is contrary to public health.

53. Hawai'i actions also violate its duty under Hawai'i Constitution, Art. IX, Sect. 10 to "provide for the safety of the people from crimes against persons and property."

VI. The Plaintiffs make allegations in bad faith and for an improper purpose

54. Contrary to Fed.R.Civ.P. 11, the Plaintiffs make various allegations in bad faith and for an improper purpose, such as to delay and harass and advance their political careers.

55. Plaintiffs' allegation that "The March 6, 2017 Executive Order was motivated by animus and a desire to discriminate on the basis of religion and/or national origin, nationality, or alienage", Sec. Am. Compl. ¶¶ 113, et seq. is made in bad faith, for an improper purpose, and is utterly without merit.

56. Hawai'i's Governor and Attorney General make their allegations based on their own animus against the President, their resentment that their candidate did not

win the election, and their own selfish desires to score political points and advance their own political careers.

57. In demonstration of his own animus against the President, the Hawai`i Attorney General has repeatedly, maliciously mischaracterized the Executive Order as “Muslim Ban 2.0”. He made such statements contemporaneously with filing Hawai`i’s Second Amended Complaint.<sup>19</sup>

58. In reality, the Executive Order is not any sort of “Muslim Ban” at all. The Executive Order lists just seven countries for special treatment. Those same countries were identified by the Obama Administration, either as hot spots of al-Qaida and ISIL activity, Framework Report, or as state sponsors of terrorism. There are 49 Muslim majority countries in the world.<sup>20</sup> Hence, only a tiny percentage of Muslim majority countries are listed for special treatment,<sup>21</sup> and that special treatment is not based on the fact that they are

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<sup>19</sup> Cheryl Chumley, Hawaii’s ‘Muslim Ban 2.0’ fight vs. Trump lacking in logic, Washington Times, 3/8/17, <http://www.washingtontimes.com/news/2017/mar/8/hawaiis-muslim-ban-20-fight-v-trump-lacking-logic/>

Press release of D. Chin, 3/6/17, <http://governor.hawaii.gov/newsroom/latest-news/statement-of-attorney-general-doug-chin-in-response-to-the-presidents-new-executive-order/>

<sup>20</sup> Pew Research Center, Muslim-Majority Countries, 1/27/11, <http://www.pewforum.org/2011/01/27/future-of-the-global-muslim-population-muslim-majority/>

<sup>21</sup> Similarly, many of the statements in the Second Amendment Complaint about the President’s campaign statements are deliberate mischaracterizations. Due to time constraints, I shall not go into detail in this document.



Muslim majority countries, but rather because of their connection with terrorism.

59. To believe that the special treatment of the seven countries is based on anti-Muslim animus, one would have to believe in a vast conspiracy against Muslims, started by the Obama Administration. Since Congress does not object to the Executive Order, Congress must also have the same animus against Muslims. Since the Obama Administration identified those countries as areas of particular concern in its Framework Report and designations of state sponsors of terrorism, the Obama Administration must also have had the same animus towards Muslims. Why does Barack Obama hate Muslims? The Plaintiffs' whole theory does not make any sense.

60. The Plaintiffs seek not just to block the current Executive Order, but any other action that President Trump would ever take in the future to secure the country's visa and refugee programs. Any action the President would take would be met with the same arguments by the Plaintiffs, that he is motivated by animus, and that any statements that he says to the contrary are just a ruse to hide his true motivations. The President is the duly elected Commander in Chief. The Plaintiffs seek to permanently cripple his ability to act as Commander in Chief. Crippling the President's ability to defend the country is fundamentally detrimental to the nation.

61. Indeed, the Plaintiffs are so unreasonable that they will not even accept a temporary 120 day limitation on migration from a few terror hot spots while the President evaluates whether current vetting procedures are adequate. Compare with ¶ 35 (“As [the] de facto government, ISIL has had the means and opportunity to falsify many records that would be used to vet many aliens from Iraq and Syria.”)

WHEREFORE, I ask this Court to grant the following relief:

1. Dismiss this case for lack of subject matter jurisdiction or failure to state a claim upon which relief can be granted.
2. In the alternative, if this Court finds that it does have jurisdiction, this Court should decline to exercise that jurisdiction for prudential reasons under the political question doctrine.
3. In the alternative, this Court should declare that the Executive Order is a proper exercise of the President’s wartime powers as Commander In Chief.

Respectfully submitted

s/Vincent Lucas

Vincent Lucas, Ph.D.  
Intervenor

## EXHIBIT A

Selected pages from White House, Report on the Legal Frameworks Guiding the United States' Use of Military Force and Related National Security Operations,  
December 2016

REPORT ON THE LEGAL AND POLICY  
FRAMEWORKS GUIDING THE  
UNITED STATES' USE OF MILITARY  
FORCE AND RELATED NATIONAL  
SECURITY OPERATIONS

December 2016



# FOREWORD

From President Lincoln's issuance of the Lieber Code during the Civil War to our nation's leadership at the Nuremberg Trials following World War II, the United States has a long history of emphasizing the development and enforcement of a framework under which war can be waged lawfully and effectively, with due regard for humanitarian considerations, and consistent with our national interests and values.

Consistent with this long tradition, since my first days in office I have underscored the importance of adhering to standards—including international legal standards—that govern the use of force. Far from eroding our nation's influence, I have argued, adherence to these standards strengthens us, just as it isolates those nations who do not follow such standards. Indeed, as I have consistently emphasized, what makes America truly remarkable is not the strength of our arms or our economy, but rather our founding values, which include respect for the rule of law and universal rights.

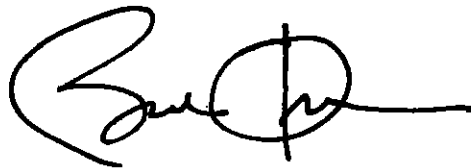
Decisions regarding war and peace are among the most important any President faces. It is critical, therefore, that such decisions are made pursuant to a policy and legal framework that affords clear guidance internally, reduces the risk of an ill-considered decision, and enables the disclosure of as much information as possible to the public, consistent with national security and the proper functioning of the Government, so that an informed public can scrutinize our actions and hold us to account. When I took office, our nation was already years into a new and different kind of conflict against enemies who do not wear uniforms or respect geographic boundaries and who disregard the legal principles of warfare. Recognizing the novelty of this threat and the difficult legal and policy questions it raised and continues to raise, the United States complies with all applicable domestic and international law in conducting operations against these enemies. And, over the course of my Administration, I directed my team to work continually to refine, clarify, and strengthen the standards and processes pursuant to which the United States conducts its national security operations.

This report details the results of these efforts. It describes, among other things, how my Administration has ensured that our uses of force overseas are supported by a solid domestic law framework and consistent with an international legal framework predicated on the concepts of sovereignty and self-defense embedded in the United Nations Charter. And it describes how the United States has applied rules, practices, and policies long used in traditional warfare to this new type of conflict. In addition, the report recounts actions my Administration has taken to institutionalize a policy framework to ensure that, in carrying out certain critical operations, the United States not only meets but also in important respects exceeds the safeguards that apply as a matter of law in the course of an armed conflict—particularly in the areas of the preservation of civilian life, transparency, and accountability. For, as I have previously emphasized, to say that a military tactic is legal, or effective, is not to say that it is wise or moral in every instance.

To be sure, even with the release of this report today, there remains information about U.S. national security operations that we cannot disclose consistent with national security. Nor does this report address all conceivable legal aspects or justifications for the use of military force in every context or provide an exhaustive discussion of how the United States wages war. Rather, this report is intended to explain the domestic and international bases for the United States' ongoing use of military force overseas and to describe some of the key legal and policy frameworks my Administration has developed to govern such uses of force and related national security operations, such as detention, transfer, and interrogation operations. The report builds on a long line of public speeches and statements by members of my Administration that reflect my commitment to being as transparent as possible about how and in what circumstances the United States conducts national security operations. Even as working toward that degree of transparency can be challenging at times, it is ultimately critical to reinforcing the process of democratic decision-making, to demonstrating the legitimacy of our actions, and to reinforcing our relationships with our allies and partners.

Given the dynamic nature of today's security environment, the United States will no doubt continue to confront new issues as our nation's national security professionals work tirelessly to protect U.S. persons and interests. That is why, in conjunction with the release of this report, I am issuing a Presidential Memorandum that encourages future Administrations to build on this report and carry forward the principles of transparency it represents. In particular, the memorandum states that the National Security Council staff shall be asked, as appropriate, to update the report at least on an annual basis and to arrange for the report to be released to the public.

Through this report, I hope to enhance the public's understanding of the legal and policy principles that have guided U.S. national security operations, and to reinforce the fact that we defend our interests at home and around the world in a manner consistent with the laws, values, and traditions that are the source of our greatest strength.

A handwritten signature in black ink, appearing to be "Barack Obama", with a stylized circular flourish on the right side.

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# INTRODUCTION

This report has been drafted pursuant to the Presidential Memorandum of December 5, 2016, which directed national security departments and agencies to prepare for the President a formal report that describes key legal and policy frameworks that currently guide the United States' use of military force and related national security operations.

The Presidential Memorandum of December 5, 2016, further states that the National Security Council staff shall be asked to, as appropriate, coordinate a review and update of this report, provide any updated report to the President, and arrange for the report to be released to the public.<sup>1</sup>

# PART ONE: KEY FRAMEWORKS RELATED TO THE USE OF U.S. MILITARY FORCE OVERSEAS

The primary focus of Part One is to describe the domestic and international legal frameworks for the United States' current uses of military force overseas.

The War Powers Resolution states that the President shall submit a report to Congress within 48 hours after, among other things, U.S. Armed Forces are introduced into "hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."<sup>2</sup> It further requires the President to report to Congress no less than every six months on the status of such hostilities. President Obama has submitted these periodic War Powers reports every June and December of his Presidency, and they provide a summary of the circumstances in which the United States is using military force overseas.

Part One describes the domestic and international legal framework for the uses of military force described in the recent periodic War Powers report, submitted in December 2016.<sup>3</sup> In particular, as described in that report, the United States is currently using military force in the following countries:<sup>4</sup>

- *Afghanistan:* In Afghanistan, U.S. Armed Forces have transitioned the lead for security to Afghan security forces while preventing Afghanistan from being used to launch attacks against the United States. A limited number of U.S. forces remain in Afghanistan for the purposes of, among other things, training, advising, and assisting Afghan forces; conducting and supporting counterterrorism operations against the remnants of core al-Qa'ida, as well as the Islamic State of Iraq and the Levant (ISIL); and taking appropriate measures against those who directly threaten U.S. and coalition forces in Afghanistan. Active hostilities are ongoing.<sup>5</sup>
- *Iraq and Syria:* U.S. Armed Forces are conducting a systematic campaign of airstrikes and other necessary operations against ISIL forces in Iraq and Syria. U.S. Armed Forces are also conducting airstrikes and other necessary operations against al-Qa'ida in Syria. In Iraq, U.S. Armed Forces are advising and coordinating with Iraqi forces and providing training, equipment, communications support, intelligence support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. Additionally, small teams of U.S. special operations forces have deployed to Syria to help coordinate U.S. operations with indigenous ground forces conducting operations against ISIL.<sup>6</sup>
- *Yemen:* The U.S. military continues to work closely with the Government of Yemen to dismantle operationally and ultimately eliminate the threat posed by al-Qa'ida in the Arabian Peninsula (AQAP). U.S. joint efforts have resulted in direct action, including airstrikes, against a limited number of AQAP operatives and senior leaders who posed a terrorist threat

to the United States.<sup>7</sup> The United States has also deployed small numbers of U.S. military personnel to Yemen to support operations against AQAP, including support for operations to capture AQAP leaders and key personnel. Additionally, on October 12, 2016, the United States conducted military strikes on radar facilities in Houthi-controlled territory in Yemen in response to anti-ship cruise missile launches that threatened U.S. Navy warships in the international waters of the Red Sea on October 9 and October 12, 2016. The targeted radar facilities were involved in the October 9, 2016 launches and other recent attacks.<sup>8</sup>

- *Libya:* U.S. military forces have conducted airstrikes against ISIL targets in Libya, including in support of ongoing efforts by forces aligned with the Government of National Accord (GNA) to recapture the city of Sirte from ISIL.
- *Somalia:* U.S. forces in Somalia continue to counter the terrorist threat posed by al-Qa'ida and al-Shabaab and to provide advice and assistance to regional counterterrorism forces, including Somali and African Union Mission in Somalia (AMISOM) forces. U.S. forces have conducted airstrikes against al-Qa'ida and al-Shabaab and in the defense of U.S. and partnered forces.<sup>9</sup>

When using military force overseas, the United States complies with domestic law—including relevant constitutional and statutory authorities—and international law. In doing so, the Administration regularly informs Congress and the public of the status and circumstances of its use of military force overseas.

## **I. The Domestic Law Bases for the Ongoing Use of U.S. Military Force**

### *A. Statutory Authorization: The 2001 AUMF*

Shortly after the September 11th attacks, Congress passed the Authorization for Use of Military Force (2001 AUMF). In that joint resolution, Congress authorized the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”<sup>10</sup> Through the 2001 AUMF, Congress intended to give the President the statutory authority he needed “in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”<sup>11</sup> The 2001 AUMF plainly covers al-Qa'ida, the “organization” that “planned, authorized, committed, [and] aided the terrorist attacks that occurred on September 11, 2001,” as well as the Taliban, which “harbored” al-Qa'ida.<sup>12</sup> Thus, in accordance with this statutory authorization, the United States commenced military operations against al-Qa'ida and the Taliban on October 7, 2001. The 2001 AUMF continues to provide the domestic legal authority for the United States to use military force against the terrorist threats identified above.

## 1. The Scope of the 2001 AUMF

All three branches of the U.S. Government have affirmed the ongoing authority conferred by the 2001 AUMF and its application to al-Qa'ida, to the Taliban, and to forces associated with those two organizations within and outside Afghanistan.<sup>13</sup>

In March 2009, the Department of Justice filed a brief addressing the question of the scope of the government's detention authority under the 2001 AUMF in litigation over detention at Guantanamo Bay.<sup>14</sup> The brief explained that the 2001 AUMF authorizes detention of enemy forces as an aspect of the authority to use force.<sup>15</sup> With respect to the scope of detention authority under the 2001 AUMF, the brief explained that the 2001 AUMF authorized the detention of "persons who were part of, or substantially supported, Taliban or al-Qa'ida forces 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 hostilities, in aid of such enemy armed forces."<sup>16</sup> The brief stated that, in applying that standard, "[p]rinciples derived from law-of-armed-conflict rules governing international armed conflicts . . . must inform the interpretation of the detention authority Congress has authorized" in the 2001 AUMF.<sup>17</sup>

In the National Defense Authorization Act for Fiscal Year 2012 (2012 NDAA), Congress expressly affirmed "that the authority of the President to use all necessary and appropriate force pursuant to the [2001] Authorization for Use of Military Force includes the authority for the Armed Forces of the United States to detain covered persons (as defined in subsection (b)) pending disposition under the law of war."<sup>18</sup> In turn, subsection (b) of that Act defined a "covered person" as "any person" who either "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks" or "who was a part of or substantially supported al-Qa'ida, 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."<sup>19</sup>

Similarly, the Federal courts have issued rulings in the detention context that affirmed the President's authority to detain individuals who are part of al-Qa'ida, the Taliban, or associated forces, or who substantially supported those forces in the armed conflict against them.<sup>20</sup>

## 2. Definition of "Associated Forces"

As noted in the previous sub-section, all three branches of government have recognized that the 2001 AUMF authorizes the use of force against "al-Qa'ida, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners."

To be considered an "associated force" of al-Qa'ida or the Taliban for purposes of the authority conferred by the 2001 AUMF, an entity must satisfy two conditions. First, the entity must be an organized, armed group that has entered the fight alongside al-Qa'ida or the Taliban. Second, the group must be a co-belligerent with al-Qa'ida or the Taliban in hostilities against the United States or its coalition partners. Thus, a group is not an associated force simply because it

aligns with al-Qa'ida or the Taliban or embraces their ideology. Merely engaging in acts of terror or merely sympathizing with al-Qa'ida or the Taliban is not enough to bring a group within the scope of the 2001 AUMF. Rather, a group must also have entered al-Qa'ida or the Taliban's fight against the United States or its coalition partners.

3. Application of the 2001 AUMF to Particular Groups and Individuals

Consistent with the above, the 2001 AUMF does not authorize the President to use force against every group that commits terrorist acts. Rather, the U.S. military is currently taking direct action against solely the following individuals and groups under the authority of the 2001 AUMF: al-Qa'ida;<sup>21</sup> the Taliban; certain other terrorist or insurgent groups affiliated with al-Qa'ida or the Taliban in Afghanistan; AQAP; al-Shabaab; individuals who are part of al-Qa'ida in Libya;<sup>22</sup> al-Qa'ida in Syria;<sup>23</sup> and ISIL.

A determination was made at the most senior levels of the U.S. Government that each of the groups named above is covered by the 2001 AUMF only after a careful and lengthy evaluation of the intelligence concerning each group's organization, links with al-Qa'ida or the Taliban, and participation in al-Qa'ida or the Taliban's ongoing hostilities against the United States or its coalition partners. Moreover, the Administration also regularly briefs Congress about U.S. operations against these groups and the legal basis for these operations.

Although much of the intelligence underlying a determination that a group is covered by the 2001 AUMF is necessarily sensitive, many of these groups have made plain their continued allegiance and operational ties to al-Qa'ida. For example, this determination was made recently with respect to al-Shabaab because, among other things, al-Shabaab has pledged loyalty to al-Qa'ida in its public statements; made clear that it considers the United States one of its enemies; and been responsible for numerous attacks, threats, and plots against U.S. persons and interests in East Africa. In short, al-Shabaab has entered the fight alongside al-Qa'ida and is a co-belligerent with al-Qa'ida in hostilities against the United States, making it an "associated force" and therefore within the scope of the 2001 AUMF.

A particularly prominent group that the Administration has determined to fall within the ambit of the 2001 AUMF is the enemy force now called ISIL. As discussed below, Congress has expressed support for this action.<sup>24</sup>

As the Administration has explained publicly, the 2001 AUMF has authorized the use of force against the group now called ISIL since at least 2004. The facts underlying this determination are as follows: a terrorist group founded by Abu Mu'sab al-Zarqawi—whose ties to Osama bin Laden dated from al-Zarqawi's time in Afghanistan and Pakistan before the September 11th attacks—conducted a series of terrorist attacks in Iraq beginning in 2003. These attacks prompted bin Laden to ask al-Zarqawi to merge his group with al-Qa'ida. In 2004, al-Zarqawi publicly pledged his group's allegiance to bin Laden, and bin Laden publicly endorsed al-Zarqawi as al-Qa'ida's leader in Iraq. For years afterwards, al-Zarqawi's group, which adopted the name al-Qa'ida in Iraq (AQI) when it merged with al-Qa'ida, conducted deadly terrorist attacks against U.S. and coalition forces. In response to these attacks, U.S. forces engaged in combat operations against the group from 2004 until U.S. and coalition forces left

Iraq in 2011. The group has continued to plot attacks against U.S. persons and interests in Iraq and the region—including the brutal murder of kidnapped American citizens in Syria and threats to U.S. military personnel that are now present in Iraq at the invitation of the Iraqi Government.

The subsequent 2014 split between ISIL and current al-Qa'ida leadership does not remove ISIL from coverage under the 2001 AUMF. Although ISIL broke its affiliation with al-Qa'ida, the same organization continues to wage hostilities against the United States as it has since 2004, when it joined bin Laden's al-Qa'ida organization in its conflict against the United States. As AQI, ISIL had a direct relationship with bin Laden himself and waged that conflict in allegiance to him while he was alive. ISIL now claims that it—not al-Qa'ida's current leadership—is the true executor of bin Laden's legacy. There are rifts between ISIL and parts of the network bin Laden assembled, but some members and factions of al-Qa'ida-aligned groups have publicly declared allegiance to ISIL. At the same time, ISIL continues to denounce the United States as its enemy and to target U.S. citizens and interests. In these circumstances, the President is not divested of the previously available authority under the 2001 AUMF to continue using force against ISIL—a group that has been subject to that AUMF for more than a decade—simply because of conflicts between the group and al-Qa'ida's current leadership. A contrary interpretation of the statute would allow an enemy force—rather than the President and Congress—to control the scope of the 2001 AUMF by splintering into rival factions while continuing to prosecute the same conflict against the United States.<sup>25</sup>

As is also true with respect to the broader conflict against al-Qa'ida, the Taliban, and associated forces, Congress has repeatedly and specifically funded the President's military actions against ISIL through an unbroken stream of appropriations over multiple years. Shortly after announcing the military operation against ISIL in 2014, the President asked for and obtained from Congress \$5.6 billion for the express purpose of carrying out specific military activities against ISIL in Iraq and Syria.<sup>26</sup> Congress has since appropriated an additional \$5 billion in support of the U.S. counter-ISIL effort, virtually all of it in line with the specific amounts and categories requested by the President. These funds were made available over the course of two annual budget cycles, in connection with close congressional oversight of the status and scope of U.S. counter-ISIL activities, and with knowledge of the specific measures the President was taking to counter ISIL and the statutory provisions under which he was acting.<sup>27</sup>

Congressional support for the military campaign against ISIL extends beyond the appropriation of funds for specific military activities. Congress has also authorized the President to provide lethal and nonlethal assistance to select groups and forces fighting ISIL in Iraq and Syria. In doing so, Congress has defined the parameters of the assistance programs and provided specific direction for the use of its appropriations. Throughout this period, Congress has also reinforced its oversight role through reporting requirements relating to the costs and status of U.S. counter-ISIL operations, including monthly reports documenting incremental costs of the operation<sup>28</sup>; quarterly reports on the status of U.S. forces deployed in support of the operation<sup>29</sup>; regular reporting from the inspector general for the military operation against ISIL<sup>30</sup>; and reporting consistent with the requirements in the War Powers Resolution.<sup>31</sup> This reporting is in addition to information Congress receives from the Executive Branch during regular oversight hearings.<sup>32</sup>

These funding, oversight, and authorizing measures convey Congress's support for the President's use of force against ISIL, including his determination that he had and continues to have authority to act under prior congressional authorizations for the use of military force.<sup>33</sup>

In summary, the Executive Branch's decision that a group is covered by the 2001 AUMF is not taken lightly. That determination is made at the most senior levels of the U.S. Government, and it follows careful consideration and fact-intensive reviews by senior government lawyers and is informed by departments and agencies with relevant expertise and institutional roles, including all-source intelligence from the U.S. Intelligence Community. Finally, the fact that an al-Qa'ida or Taliban-affiliated group has not been identified as covered by the 2001 AUMF does not mean that the United States has made a final determination that it lacks the statutory authority to use force against the group. The United States remains prepared to review this question whenever a situation arises in which it may be necessary to take direct action against a terrorist group.

*B. The President's Constitutional Authority to Take Military Action in Certain Circumstances Without Specific Prior Authorization of Congress*

In addition to directing the exercise of force pursuant to the 2001 AUMF, the President has also recently directed the use of military force overseas pursuant to his authority under Article II of the U.S. Constitution.

The President's power to employ military force abroad in the absence of specific prior congressional approval derives from his constitutional responsibility as Commander in Chief and Chief Executive for foreign and military affairs, and it has been confirmed by longstanding Executive Branch practice.<sup>34</sup> In considering the President's authority to use military force in Libya in 2011, the Department of Justice's Office of Legal Counsel (OLC) asked whether the operations would "serve sufficiently important interests to permit the President's action as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations."<sup>35</sup> In that opinion, OLC noted that defense of the United States to repel a direct and immediate military attack is one basis—but not the exclusive one—on which the President may use military force without congressional approval.<sup>36</sup> OLC also recognized that a "possible constitutionally-based limit" on such Presidential authority may exist where a planned military engagement constitutes a "war" within the meaning of the U.S. Constitution's Declaration of War Clause.<sup>37</sup> OLC explained that "whether a particular planned engagement constitutes a 'war' for constitutional purposes . . . requires a fact-specific assessment of the 'anticipated nature, scope, and duration' of the planned military operations."<sup>38</sup>

As an example, the President recently relied on his constitutional authority to direct U.S. military strikes against radar facilities in Houthi-controlled territory in Yemen in October 2016. The strikes advanced the important national interest in, among other things, protecting U.S. forces, and their limited nature, scope, and duration meant that the operation did not rise to the level of "war" within the meaning of the Declaration of War Clause.

When the President is acting under his constitutional authority, the War Powers Resolution calls for the President to submit a report to Congress within 48 hours after U.S.

## V. Application to Key Theaters

This section of the report outlines the application of these key domestic and international legal principles to the six theaters identified at the outset—Afghanistan, Iraq, Syria, Somalia, Libya, and Yemen.

### A. Afghanistan

*Background.* Since October 7, 2001, the United States has conducted counterterrorism combat operations in Afghanistan. Active hostilities in Afghanistan remain ongoing, and U.S. persons and interests continue to be actively targeted by terrorist and insurgent groups operating there. Although the United States has transitioned the lead for security to Afghan security forces, a limited number of U.S. forces remain in Afghanistan for the purposes of, among other things: training, advising, and assisting Afghan forces; conducting and supporting U.S. counterterrorism operations against the remnants of core al-Qa'ida and against ISIL; and taking appropriate measures against those who directly threaten U.S. and coalition forces in Afghanistan.

*Domestic Law.* As a matter of domestic law, the 2001 AUMF authorizes U.S. counterterrorism combat operations in Afghanistan.<sup>70</sup> Congress has also repeatedly authorized U.S. support for Afghan military forces. In the National Defense Authorization Act for Fiscal Year 2016 (2016 NDAA), for example, Congress extended authorization of the Afghanistan Security Forces Fund.<sup>71</sup>

*International Law.* As a matter of international law, the United States initiated counterterrorism combat operations in Afghanistan in U.S. national self-defense. On October 7, 2001, the United States notified the U.N. Security Council consistent with Article 51 of the U.N. Charter that the United States was taking action in the exercise of its right of self-defense in response to the September 11th attacks.<sup>72</sup> U.S. military operations and support for Afghan military forces in the ongoing armed conflict in Afghanistan are now undertaken consistent with the Bilateral Security Agreement between the United States and Afghanistan and with the consent of the Government of Afghanistan.<sup>73</sup>

### B. Iraq

*Background.* In Iraq, the United States is conducting a systematic campaign of airstrikes against ISIL and has also captured some of its members. More broadly, the United States is also advising and coordinating with Iraqi forces and providing training, equipment, communications support, and other support to select elements of the Iraqi security forces, including Iraqi Kurdish Peshmerga forces. U.S. forces are also providing support and security for U.S. citizens and property.

*Domestic Law.* As a matter of domestic law, the 2001 AUMF and the 2002 AUMF authorize the U.S. use of force against ISIL in Iraq. As previously noted, Congress has supported the



President's military actions against ISIL through an unbroken stream of appropriations.<sup>74</sup> Among other actions it has taken, Congress has authorized the United States to provide "the military and other security forces of or associated with the Government of Iraq, including Kurdish and tribal security forces and other local security forces, with a national security mission, with defense articles, defense services, and related training to more effectively partner with the United States and other international coalition members to defeat ISIL."<sup>75</sup>

*International Law.* As a matter of international law, the United States is using force against ISIL in Iraq at the request and with the consent of the Government of Iraq, which has sought U.S. and coalition support in its defense of the country against ISIL.<sup>76</sup> U.S. operations against ISIL in Iraq are thus conducted in the context of an armed conflict and in furtherance of Iraq and others' armed operations against the group and in furtherance of U.S. national self-defense.

### C. Syria

*Background.* As part of the campaign against ISIL outlined above, the United States is using force against ISIL in Syria. The United States is conducting a systematic campaign of airstrikes against ISIL and has provided U.S. military equipment, ammunition, and other assistance to indigenous ground forces conducting operations against ISIL in Syria. Small teams of U.S. special operations forces have also deployed to Syria to help coordinate U.S. operations with some of these indigenous ground forces. Furthermore, the United States is conducting airstrikes against al-Qa'ida in Syria, including against those leaders of al-Qa'ida in Syria who are involved in plotting against the United States and its partners.

*Domestic Law.* The 2001 AUMF and, in certain circumstances, the 2002 AUMF authorize the use of force in Syria against al-Qa'ida in Syria and ISIL; as previously noted, Congress has also supported this military campaign through an unbroken stream of appropriations.<sup>77</sup> As previously mentioned, Congress has also authorized assistance to appropriately vetted Syrian groups and individuals for certain purposes. In the 2015 NDAA, for example, Congress authorized the Secretary of Defense, in coordination with the Secretary of State, to "provide assistance, including training, equipment, supplies, stipends, construction of training and associated facilities, and sustainment, to appropriately vetted elements of the Syrian opposition and other appropriately vetted Syrian groups and individuals."<sup>78</sup>

*International Law.* As a matter of international law, the United States is using force in Syria against ISIL and providing support to opposition groups fighting ISIL in the collective self-defense of Iraq (and other States) and in U.S. national self-defense. Upon commencing airstrikes against ISIL in Syria in September 2014, the United States submitted a letter to the U.N. Security Council consistent with Article 51 of the U.N. Charter explaining the international legal basis for its use of force.<sup>79</sup> As the letter explained, Iraq has made clear that it is facing a serious threat of continuing armed attacks from ISIL coming out of safe havens in Syria. The Government of Iraq has asked the United States to lead international efforts to strike ISIL sites and strongholds in Syria in order to end the continuing armed attacks on Iraq, to protect Iraqi citizens, and ultimately to enable Iraqi forces to regain control of Iraqi borders.<sup>80</sup> Moreover, ISIL is a threat not only to Iraq and U.S. partners in the region, but also to the United States. Consistent with the

inherent right of individual and collective self-defense, the United States therefore initiated necessary and proportionate actions in Syria against ISIL in 2014, and those actions continue to the present day.

Similarly, the United States is using force in Syria against al-Qa'ida in Syria in self-defense of the United States and in furtherance of the security of U.S. partners and allies.

In its 2014 letter to the U.N. Security Council, the United States explained that Syria is unable or unwilling to confront effectively the threat that ISIL poses to Iraq, the United States, and U.S. partners and allies. The Syrian Government has shown that it cannot and will not confront ISIL effectively.<sup>81</sup> Syria is similarly unable or unwilling to confront effectively the threat posed by al-Qa'ida in Syria.

#### *D. Somalia*

*Background.* In Somalia, the United States continues to counter the terrorist threat posed by al-Qa'ida and its Somalia-based associated force, al-Shabaab. The United States has conducted airstrikes and other operations against al-Qa'ida and al-Shabaab.<sup>82</sup> As part of its campaign against al-Qa'ida and its associated force al-Shabaab, the United States is also providing advice and assistance to regional counterterrorism forces, including Somali and African Union Mission in Somalia (AMISOM) forces.

*Domestic Law.* As noted above, the 2001 AUMF authorizes counterterrorism combat operations in Somalia against al-Qa'ida and al-Shabaab.<sup>83</sup>

*International Law.* As a matter of international law, U.S. counterterrorism operations in Somalia, including airstrikes, have been conducted with the consent of the Government of Somalia in support of Somalia's operations in the context of the armed conflict against al-Shabaab and in furtherance of U.S. national self-defense.

#### *E. Libya*

*Background.* In Libya, the United States is conducting airstrikes against ISIL targets, including in support of efforts by forces aligned with the GNA to recapture the city of Sirte from ISIL.

*Domestic Law.* As previously described, the 2001 AUMF provides authority as a matter of domestic law for U.S. airstrikes in Libya against ISIL.<sup>84</sup>

*International Law.* As a matter of international law, airstrikes in Libya against ISIL are being conducted at the request and with the consent of the GNA in the context of the ongoing armed conflict against ISIL and in furtherance of U.S. national self-defense.

## *F. Yemen*

*Background.* The United States has been working closely with the Government of Yemen to dismantle operationally and ultimately eliminate the terrorist threat posed by AQAP. As part of this effort, the United States has taken direct action, including airstrikes, against a limited number of AQAP operatives and senior leaders in Yemen who posed a threat to the United States. The United States has also deployed small numbers of U.S. military personnel to Yemen to support operations against AQAP, including support for operations to capture AQAP leaders and key personnel.

In addition, on October 12, 2016, in response to the launch of anti-ship cruise missiles by Houthi insurgents that threatened U.S. Navy warships in the international waters of the Red Sea, the President ordered missile strikes on radar facilities in Houthi-controlled territory in Yemen that were involved in the missile launch that had threatened U.S. warships.

Since 2015, the United States has also provided limited support to Saudi-led coalition military operations against Houthi and Saleh-aligned forces in Yemen. U.S. forces are not taking direct military action in Yemen in this Saudi-led effort; instead, the United States provides certain logistical support (including air-to-air refueling), intelligence sharing, best practices, and other advisory support when requested and appropriate. Additionally, the United States has provided advice to the Saudi-led coalition regarding compliance with the law of armed conflict and regarding best practices for reducing the risk of civilian casualties.

*Domestic Law.* As discussed above, the 2001 AUMF confers authority to use force against AQAP.<sup>85</sup> And, also as noted above, the October 12, 2016, strikes were taken to protect U.S. vessels and personnel and were directed by the President pursuant to his constitutional authority as Commander in Chief and Chief Executive. Certain statutory authorities and the President's constitutional authorities as Commander in Chief and Chief Executive and to conduct the foreign affairs of the United States authorize the provision of limited support for counter-Houthi operations by the Saudi-led coalition.

*International Law.* As a matter of international law, the United States has conducted counterterrorism operations against AQAP in Yemen with the consent of the Government of Yemen in the context of the armed conflict against AQAP and in furtherance of U.S. national self-defense. The October 12, 2016, strikes taken to protect U.S. vessels and personnel were also conducted with the consent of the Yemeni Government.<sup>86</sup> The U.S. support for the Saudi-led coalition military operations is being provided in the context of the Coalition's military operations being undertaken in response to the Government of Yemen's request for assistance, including military support, to protect the sovereignty, peace, and security of Yemen.

## EXHIBIT B



## **Entry of the 9/11 Hijackers into the United States**

### ***Staff Statement No. 1***

Members of the Commission, we have developed initial findings on how the individuals who carried out the 9/11 attacks entered the United States. We have also developed initial findings on terrorists who failed in their efforts to enter the United States. These findings lead us to some tentative judgments on the way the United States targets the travel of international terrorists.

This staff statement represents the collective effort of several members of our staff. Susan Ginsburg, Thomas Eldridge, and Janice Kephart-Roberts did most of the investigative work reflected in this statement.

The Commission was able to build upon a large and strong body of work carried out by many talented public servants at the Department of State, the Central Intelligence Agency, the former Immigration and Naturalization Service, the Department of Homeland Security, and the Federal Bureau of Investigation. The American people should be proud of the many extraordinary professionals now serving them. To the extent we have criticisms, they are comments less on the talent available and more on how that talent was used.

As we know from the sizable illegal traffic across our land borders, a terrorist could attempt to bypass legal procedures and enter the United States surreptitiously. None of the 9/11 attackers entered or tried to enter our country this way. So today we will focus on the hijackers' exploitation of legal entry systems. We have handed out a list of the names of 9/11 attackers to help you follow our discussion.

To break down some of al Qaeda's travel problem, view it from their perspective. For most international travel, a terrorist has to have a passport. To visit some countries, terrorists of certain nationalities must obtain a document permitting them to visit—a visa. Finally the terrorist must actually enter the country and keep from getting detained or deported by immigration or other law enforcement officials. Susan Ginsburg, Senior Counsel to the Commission, will begin by examining how the hijackers navigated these stages.

### **Passports**

Four of the hijackers' passports have survived in whole or in part. Two were recovered from the crash site of United Airlines Flight 93 in Pennsylvania. One belonged to a hijacker on American Airlines Flight 11. A passerby picked it up and gave it to an NYPD detective shortly before the World Trade Center towers collapsed. A fourth

passport was recovered from luggage that did not make it from a Portland flight to Boston onto the connecting flight, which was American Airlines Flight 11. In addition to these four, some digital copies of the hijackers' passports were recovered in post-9/11 operations.

Two of the passports that have survived, those of *Satam al Suqami* and *Abdul Aziz al Omari*, were clearly doctored. To avoid getting into the classified details, we will just state that these were "manipulated in a fraudulent manner," in ways that have been associated with al Qaeda. Since the passports of 15 of the hijackers did not survive, we cannot make firm factual statements about their documents. But from what we know about al Qaeda passport practices and other information, we believe it is possible that six more of the hijackers presented passports that had some of these same clues to their association with al Qaeda.

Other kinds of passport markings can be highly suspicious. To avoid getting into the classified details, we will just call these "suspicious indicators." Two of the hijackers, *Khalid al Mihdhar* and *Salem al Hazmi*, presented passports that had such suspicious indicators. We know now that each of these two hijackers possessed at least two passports. All of their known passports had these suspicious indicators. We have evidence that three other hijackers, *Nawaf al Hazmi*, *Ahmed al Nami*, and *Ahmad al Haznawi* may have presented passports containing these suspicious indicators. But their passports did not survive the attacks, so we cannot be sure.

Fifteen of the 19 hijackers were Saudi nationals. There were significant security weaknesses in the Saudi government's issuance of Saudi passports in the period when the visas to the hijackers were issued. Two of the Saudi 9/11 hijackers may have obtained their passports legitimately or illegitimately with the help of a family member who worked in the passport office.

We do not yet know the answer to the question whether the knowledge of these particular clues existed in the intelligence community before 9/11. From the mid-1970s, when terrorists began to launch attacks in the Middle East and Europe, intelligence and border authorities knew that terrorists used forged or altered travel documents. By the 1980s the U.S. government had developed a "Red Book" used to guide and train consular, immigration, and customs officers throughout the world on spotting terrorists. It included photographs of altered or stolen passports, and false travel stamps (also known as cachets) used by terrorists. The importance of training border officials on use of the Red Book is evident from a U.S. government film entitled "The Threat is Real." Here is a brief excerpt.

The U.S. government ceased publication of the "Red Book" by 1992, in part because it had fallen into the hands of terrorist groups, although there continued to be a number of government efforts to provide information about generic forgery detection and document inspection techniques.

Before 9/11, the FBI and CIA did know of some of the practices employed by al Qaeda. They knew this from training manuals recovered in the mid-1990s and from tracking and interrogations of al Qaeda operatives. Some of this knowledge was revealed in individual criminal cases prosecuted in the United States in the 1990s. And yet, between 1992 and September 11, 2001, we have not found any signs that intelligence, law enforcement, or border inspection services sought to acquire, develop, or disseminate systematic information about al Qaeda's or other terrorist groups' travel and passport practices. Thus, such information was not available to consular, immigration, or customs officials who examined the hijackers' passports before 9/11.

## **Visas**

The State Department is principally responsible for administering U.S. immigration laws outside of the United States. Consular officers, a branch of our diplomatic corps, issue several kinds of visas for visitors and for permanent immigrants. In 2000, these diplomats processed about 10 million applications for visitors' visas at over 200 posts overseas. U.S. law allows nationals of certain countries to enter without visas on a reciprocal basis, under the visa waiver program. None of the 9/11 hijackers, however, were nationals of a visa waiver country.

Before 9/11, visa applicants provided their passport and a photograph. A State Department employee checked the passport for any apparent questionable features. A consular officer could call the applicant in for an interview. The applicant's essential information went into a State Department database. The information was then checked against a large "consular lookout" database called CLASS, which included a substantial watchlist of known and suspected terrorists, called TIPOFF.

Our immigration system before 9/11 focused primarily on keeping individuals intending to immigrate from improperly entering the United States. In the visa process, the most common form of fraud is to get a visa to visit the United States as a tourist and then stay to work and perhaps become a resident. Consular officers concentrated on interviewing visa applicants whom they suspected might leave and not return.

Saudi citizens rarely overstayed their visas or tried to work illegally in the United States. The same was true for citizens of the United Arab Emirates. So, while consular officials in both countries always screened applicants in CLASS, including TIPOFF, they would not interview them unless there was something about the applications that seemed problematic.

Visa applicants from these countries frequently had their applications submitted by third party facilitators, like travel agencies. In June 2001, the U.S. consular posts in Saudi Arabia instituted a third party processing program called Visa Express. It required applicants to apply through designated travel agencies instead of by mail or in person. The program was established in part to try to keep crowds of people from congregating outside the posts, which was a security risk to the posts and to the crowds themselves. We have found no evidence that the Visa Express program had any effect on the

interview or approval rates for Saudi applicants, or that it reduced the scrutiny given to their applications. It actually lengthened the processing time.

With the exception of our consulates in Mexico, biometric information—like a fingerprint—was not routinely collected from visa applicants before 9/11. Terrorists therefore easily could exploit opportunities for fraud. *Khalid Sheikh Mohamed*, the chief tactical planner and coordinator of the 9/11 attacks, was indicted in 1996 by Federal authorities in the Southern District of New York for his role in earlier terrorist plots. Yet, KSM, as he is known, obtained a visa to visit the United States on July 23, 2001, about six weeks before the 9/11 attacks. Although he is not a Saudi citizen and we do not believe he was in Saudi Arabia at the time, he applied for a visa using a Saudi passport and an alias, *Abdulrahman al Ghamdi*. He had someone else submit his application and a photo through the Visa Express program. There is no evidence that he ever used this visa to enter the United States.

Beginning in 1997, the 19 hijackers submitted 24 applications and received 23 visas. The pilots acquired most of theirs in the year 2000. The other hijackers, with two exceptions, obtained theirs between the fall of 2000 and June 2001. Two of the visas were issued in Berlin, and two were issued in the United Arab Emirates. The rest were issued in Saudi Arabia. One of the pilots, *Hani Hanjour*, had an application denied in September 2000 for lack of adequate documentation. He then produced more evidence in support of his student visa application, and it was approved. Except for *Hanjour*, all the hijackers sought tourist visas.

Of these 24 visa applications, four were destroyed routinely along with other documents before their significance was known.

To our knowledge, State consular officers followed their standard operating procedures in every case. They performed a name check using their lookout database, including the TIPOFF watchlist. At the time these people applied for visas, none of them—or at least none of the identities given in their passports—were in the database. We will say more about this in another staff statement later today.

All 20 of these applications were incomplete in some way, with a data field left blank or not answered fully. Such omissions were common. The consular officials focused on getting the biographical data needed for name checks. They generally did not think the omitted items were material to a decision about whether to issue the visa.

Three of the 19 hijackers submitted applications that contained false statements that could have been proven to be false at the time they applied. The applications of *Hani Hanjour*, *Saeed al Ghamdi*, and *Khalid al Mihdhar* stated that they had not previously applied for a U.S. visa when, in fact, they had. In *Hanjour's* case the false statement was made in an earlier application for a visit, in 1997, not his final visa application in 2000. *Hanjour* and *Mihdhar* also made false statements about whether they had previously traveled to the United States. Information about these prior applications was retrievable at the Jeddah post where each applied.



These false statements may have been intentional, to cover up the applicants' travel on old passports to suspect locations like Afghanistan for terrorist training. On the other hand, these statements may have been inadvertent. During this period, Saudi citizens often had their applications filled out and submitted by third parties. Most importantly, evidence of the prior visas or travel to the United States actually would have reduced concern that the applicants were intending to immigrate, so consular officers had no good reason to deny the visas or travel.

*Al Mihdhar's* case was uniquely problematical. He had not been entered into the TIPOFF watchlist at the time of his second visa application in June 2001. In January 2000 the American consulate in Jeddah had been asked about *Mihdhar's* visa status in conjunction with an ongoing urgent terrorist intelligence investigation and confirmed that this al Qaeda operative had a U.S. visa. When *Mihdhar* applied again in June 2001, the check against the worldwide TIPOFF watchlist took place, but no system then in place included a notation of the prior visa status check. Neither the investigating agency nor the post had made the appropriate lookout entry. Thus, in effect, the post could not 'remember' relevant suspicions a year-and-a-half earlier about this same person, who was traveling again with the same biographical information.

At least two of the hijackers were actually interviewed in person in connection with their visa applications. *Hanjour* was interviewed twice. *Satam al Suqami* was apparently interviewed in Riyadh. Another hijacker, *Ahmed al Nami*, was apparently interviewed briefly, but just to clarify an entry on his application. The three consular officers involved have some memory of these interviews. All stated that the reason for their interviews had nothing to do with terrorism. They saw nothing suspicious.

At least four individuals implicated in the 9/11 plot tried to get visas and failed: *Ramzi Binalshibh*, *Zakariya Essabar*, *Ali Abdul Aziz Ali*, and *Saeed al Gamdi*. This *Saeed al Gamdi* is a different person from the *Saeed al Ghamdi* who actually became a hijacker.

*Ramzi Binalshibh*, a Yemeni, apparently intended to train as a pilot along with his Hamburg friends, *Mohamed Atta*, *Marwan al Shehhi*, and *Ziad Jarrah*. *Binalshibh* applied for a visa three times in Berlin and once in Yemen. He first applied in Berlin on the same day as *Atta*. He was interviewed twice and denied twice. Yemen is a much poorer country than Saudi Arabia. Both times, consular officers determined he did not have strong ties to Germany and he might be intending to immigrate unlawfully to the United States. *Binalshibh* tried again in Berlin, this time for a student visa to attend aviation school in Florida. He was denied again for lack of adequate documentation and failure to show sufficient ties to Germany.

*Essabar*, a Moroccan who may also have intended to be a pilot, tried to get a visa in Berlin at least once and failed because he failed to demonstrate sufficient ties to Germany, such as a job or family there. Third country visa applicants in Berlin were held to significantly higher standards—in terms of documentation and showing ties with their country of residence—than were Saudi and Emirati citizens applying from their own countries.

*Ali Abdul Aziz Ali* is the nephew of Khalid Sheikh Mohamed and was heavily involved in financial and logistical aspects of the 9/11 plot. He tried to get a U.S. visa in Dubai about two weeks before the attacks. His visa application states that he intended to enter the United States on September 4, 2001, for one week. As a Pakistani visa applicant in a third country, he would have received greater scrutiny from U.S. officials from the start. In any event, it was deemed possible that he intended to immigrate, and accordingly he was denied a visa.

*Saeed al Gamdi*, also known as "Jihad" al Gamdi, apparently intended to participate in the 9/11 attacks. He is a Saudi and applied for a tourist visa in Jeddah on November 12, 2000, the same date as 9/11 hijacker *Ahmad al Haznawi*. *Haznawi* was approved, but *al Gamdi* was denied after an interview with a consular officer, because the consular officer believed he was intending to immigrate.

### **Entry into and exit from the United States**

With a visa, an individual can travel to a United States port of entry. Upon arrival, the individual must seek admission into the United States from an inspector of what used to be called the INS, an agency whose personnel now form part of the Department of Homeland Security. Property being brought into the United States is checked by inspectors of the U.S. Customs Service, whose personnel are now also part of DHS.

The 19 hijackers entered the United States a total of 33 times. They arrived through ten different airports, though more than half came in through Miami, JFK, or Newark. A visitor with a tourist visa was usually admitted for a stay of six months. All but two of the hijackers were admitted for such stays. *Hanjour* had a student visa and was admitted for a stay of two years, and *Suqami* sought and was admitted for a stay of 20 days.

The four pilots passed through INS and Customs inspections a total of 17 times before 9/11. *Hanjour* came to the United States to attend school in three stints during the 1990s. His final arrival was in December 2000, through the Cincinnati/Northern Kentucky airport. The other three pilots, *Atta*, *al Shehhi*, and *Jarrah*, initially came in May and June 2000. They arrived for the last time between May and August 2001. All made a number of trips abroad during their extended stays in the United States.

Of the other 15, only *Mihdhar* entered the United States, left, and returned. *Nawaf al Hazmi* arrived in January 2000 with *Mihdhar* and stayed. *Al Mihdhar* left in June 2000 and returned to the United States on July 4, 2001. Ten of the others came in pairs between April and June 2001. Three more arrived through Miami on May 28.

The INS inspector usually had about one to one and a half minutes to assess the traveler and make a decision on admissibility and length of stay. For all the entries, a primary INS inspector would work a lane of incoming travelers and check the people and their passports. The inspector would try to assess each individual's demeanor. No one noted any anomalies in these passports despite the fact, we now believe, that at least two and as

many as eight showed evidence of fraudulent manipulation. The inspector would use the passport data, especially if it was machine readable to check various INS and Customs databases. The databases would show the person's immigration history information, as well as terrorist watchlist and criminal history information.

Of the five hijackers who entered the United States more than once, three of them violated immigration law.

*Ziad Jarrah* entered in June 2000 on a tourist visa and then promptly enrolled in flight school for six months. He never filed an application to change his immigration status from tourist to student. Had the INS known he was out of status, they could have denied him entry on any of the three subsequent occasions he departed and returned while he was a student.

*Marwan al Shehhi* came in through Newark in late May 2000, followed a week later by *Mohamed Atta*. Both were admitted as tourists and soon entered flight school in Florida. In September they did file applications to change their status. Before 9/11, regulations allowed tourists to change their status at any time, so they were in compliance. But both overstayed their periods of admission and completed flight school to obtain commercial pilot licenses. *Atta* and *al Shehhi* then left within a few days of one another and returned within a few days of one another in January 2001, while their change in visa status from tourist to student was still pending.

*Atta* and *al Shehhi* did get some attention when both said they were coming back to finish flight school. Primary inspectors noticed with each that their story clashed with their attempt to reenter on tourist visas. The rules required them to get proper student visas while they had been overseas, since their earlier pending applications for a change of status were considered abandoned once they left the United States. *Atta* and *al Shehhi* were each referred by the primary inspectors to secondary inspection.

At secondary, more experienced inspectors could conduct longer interviews, check more databases, take fingerprints, examine personal property, and call on other agencies for help. The inspectors involved have stated they do not remember these encounters. The reports indicate that both men repeated their story about still going to flight school and their pending applications for a change of status. The secondary inspectors admitted *Atta* and *al Shehhi* as tourists.

Flight 93 hijacker *Saeed al Ghamdi* was referred to secondary immigration inspection when he arrived in late June 2001. He had no address on his I-94 form. He spoke little English. He had a one-way ticket and about \$500. The inspector wondered whether he was possibly intending to immigrate. *Al Ghamdi* convinced the inspector that he was a tourist and had enough money.

Customs officers took a second look at two of the hijackers but then admitted them. On *Marwan al Shehhi's* first entry into the United States, a customs officer referred him to secondary inspection, completed the inspection, and released him. In May 2001, *Waleed*

*al Shehri* and *Satam Suqami* departed Florida for the Bahamas but were refused admission. On their way back to the United States, a customs officer conducting a pre-clearance in the Bahamas referred *al Shehri* to a secondary inspection. Customs then released *al Shehri* to return to the United States with *Suqami*.

We do know of one success by immigration secondary inspection that affected the 9/11 plot. An al Qaeda operative, *Mohamed al Kahtani*, arrived at Orlando airport on August 4, 2001. Evidence strongly suggests that *Mohamed Atta* was waiting there to meet him. *Kahtani* encountered an experienced and dedicated inspector, Jose Melendez-Perez. We will hear his story later this morning.

During their stays in the United States at least six of the 9/11 hijackers violated immigration laws. We have noted *Jarrah's* failure to adjust his status while he was in flight school and the violations by *Atta* and *al Shehhi*. *Hani Hanjour* came on a student visa in December 2000 but then did not attend the English language school for which his visa was issued. *Nawaf al Hazmi* overstayed his term of admission by nine months. *Suqami* overstayed his term of admission by four months. None of these violations were detected or acted upon by INS inspectors or agents.

Two programs might have helped detect such violations. One dealt with violations of student status. The other dealt with overstays.

National security concerns about foreign students are not new. By the late 1980s the INS had established a Student/School System to track students, but the system did not work. After the 1993 World Trade Center bombing, when it was discovered that a participant in the plot had been a student who had overstayed his visa, the Department of Justice asked INS to devise a better way to track students. INS officials recommended a new student tracking system and a student ID card that used biometric identifiers.

In 1996, Congress mandated a new system to be installed by 1998, without appropriating program funds. The INS scraped together \$10 million and piloted a successful student tracking program in the Atlanta area in June 1997, which included a flight school. However, advocates of education interests argued that the program would be burdensome and costly. Upon the order of senior INS management, the project manager was replaced. In 1998, INS indefinitely deferred testing of the biometric student ID card. The program stalled. Senators declared an interest in repealing the 1996 law and sought to obstruct further INS funding for it. Thus, when *Atta* and *al Shehhi* lied when questioned about their student status on their reentries in January 2001, and when *Hanjour* failed to show up for the school for which he was issued a visa in December 2000, a student tracking system was far from available to immigration inspectors or agents.

Congress required the Attorney General to develop an entry-exit system in 1996. The system's purpose was to improve INS's ability to address illegal migration and overstays of all types of foreign visitors. By 1998, Congress had appropriated about \$40 million to develop the system. Advocates for border communities, however, were concerned that

an entry-exit system would slow down trade. INS officials decided to forego the system at the land borders and only to automate the entry process. The automation process was not successful. The result was that when hijackers *Suqami* and *Nawaf al Hazmi* overstayed their visas, the system Congress envisaged did not exist. Moreover, when federal law enforcement authorities realized in late August 2001 that *Mihdhar* had entered with *Hazmi* in January 2000 at Los Angeles, they could not reliably determine whether or not *Hazmi* was still in the United States, along with *Mihdhar*.

## **Conclusion**

The Director of the FBI testified that “[e]ach of the hijackers ... came easily and lawfully from abroad.” The Director of Central Intelligence described 17 of the 19 hijackers as “clean.” We believe the information we have provided today gives the Commission the opportunity to reevaluate those statements. Based on our evaluation of the hijackers’ travel documents, the visa process, the entries into the United States, and the compliance with immigration law while the attackers were here, we have a few observations. Considered collectively, the 9/11 hijackers:

- Included among them known al Qaeda operatives who could have been watchlisted;
- Presented passports “manipulated in a fraudulent manner;”
- Presented passports with “suspicious indicators” of extremism;
- Made detectable false statements on their visa applications;
- Were pulled out of the travel stream and given greater scrutiny by border officials;
- Made false statements to border officials to gain entry to the United States; and
- Violated immigration laws while inside the United States.

These circumstances offered opportunities to intelligence and law enforcement officials. But our government did not fully exploit al Qaeda’s travel vulnerabilities.

Why weren’t they exploited? We do not have all the answers. Certainly neither the State Department’s consular officers nor the INS’s inspectors and agents were ever considered full partners in a national counterterrorism effort. This is exemplified by the Bureau of Consular Affairs’ statement that before 9/11 they were not informed by anyone in the State Department or elsewhere that Saudi citizens could pose security risks. Nor were the Consular Affairs bureau or INS given the resources to perform an expanded mission. Between 1998 and 2001, visa applications rose by nearly a third, an increase of 2.5 million per year. Trained staff did not keep pace with the volume increase. In Jeddah and Riyadh, for example, each consular officer had responsibility for processing, on average, about 30,000 applications per year and routinely interviewed about 200 people per day.

The INS before 9/11 had about 2,000 agents for interior enforcement. As long as the top enforcement priorities were removal of criminal aliens and prosecution of employers who hired illegal aliens, a major counterterrorism effort would not have been possible. This is

not to pass judgment on immigration policy generally. What we can do is highlight the way those policy choices affected counterterrorism efforts before 9/11, and potentially affect them today. For our front line border inspection services to have taken a substantially more proactive role in counterterrorism, their missions would have had to have been considered integral to our national security strategy and given commensurate resources.

Today, the level of systematic effort by the intelligence community focused on terrorist travel is much greater. But terrorist travel intelligence is still seen as a niche effort, interesting for specialists, but not central to counterterrorism. Nor have policymakers fully absorbed the information developed by terrorist mobility specialists. Much remains to be done, within the United States and internationally, on travel and identity document security, penalties and enforcement policy with respect to document fraud, and travel document screening efforts at the borders. If we have one conclusion from our work so far, it is that disrupting terrorist mobility globally is at least as important as disrupting terrorist finance as an integral part of counterterrorism.

*Appendix to Staff Statement No. 1*

**9/11 HIJACKERS AND CONSPIRATORS**

**American Airlines Flight 11**

Mohamed Atta	Hijacker (Pilot)
Abdul Aziz al Omari	Hijacker
Waleed al Shehri	Hijacker
Satam al Suqami	Hijacker
Wail al Shehri	Hijacker

**American Airlines Flight 77**

Hani Hanjour	Hijacker (Pilot)
Khalid al Mihdhar	Hijacker
Majed Moqed	Hijacker
Nawaf al Hazmi	Hijacker
Salem al Hazmi	Hijacker

**United Airlines Flight 93**

Ziad Samir Jarrah	Hijacker (Pilot)
Saeed al Ghamdi	Hijacker
Ahmed al Nami	Hijacker
Ahmad al Haznawi	Hijacker

**United Airlines Flight 175**

Marwan al Shehhi	Hijacker (Pilot)
Mohand al Shehri	Hijacker
Hamza al Ghamdi	Hijacker
Fayez Banihammad	Hijacker
Ahmed al Ghamdi	Hijacker

**Other Conspirators**

Khalid Sheikh Mohamed	Mastermind
Ramzi Binalshibh	Potential Pilot
Zakariya Essabar	Potential Pilot/Hijacker
Saeed "Jihad" al Gamdi	Potential Hijacker
Ali Abdul Aziz Ali	Financial Facilitator
Mohamed al Kahtani	Potential Hijacker