

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHIMON ROSENBERG et al.,

Plaintiff,

-against-

LASHKAR-E-TAIBA et al.,

Defendants.
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1:10-cv-05381

KIA SCHERR, Individually, and as Personal
Representative of the Estates of Naomi Scherr and
Alan Scherr,

Plaintiff,

-against-

LASHKAR-E-TAIBA et al.,

Defendants.
----- X

1:10-cv-05382

EMUNAH CHROMAN, Individually, and as
Personal Representative of the Estate of Ben Zion
Chroman,

Plaintiff,

-against-

LASHKAR-E-TAIBA et al.,

Defendants.
----- X

1:10-cv-05448

**DECLARATION OF KEVIN J. WALSH IN SUPPORT OF THE MOTION BY THE
DEFENDANTS, THE INTER-SERVICES INTELLIGENCE DIRECTORATE OF THE
ISLAMIC REPUBLIC OF PAKISTAN AND ITS CURRENT AND FORMER
DIRECTOR GENERALS, FOR DISMISSAL**

Kevin J. Walsh hereby declares, under penalty of perjury under the laws of the United States of America, as follows:

Reason for This Declaration

1. I am an attorney and partner in the firm of Locke Lord Bissell & Liddell LLP, counsel in these cases for Defendants, Inter-Services Intelligence Directorate of the Islamic Republic of Pakistan (“ISI”), Lieutenant General Ahmed Shuja Pasha, the current Director General of ISI and Lieutenant General Nadeem Taj, Director General of ISI from October, 2007 to October, 2008.

2. I submit this declaration in support of the motion by these Defendants for dismissal. In particular, I make this declaration to provide the Court with: (1) documents relating to the foreign policy decision of the United States regarding its alliance with the Government of Pakistan as set by the Executive and Legislative branches; (2) documents regarding the potential adverse effects of these cases on the relationship between the United States and Pakistan¹.

BACKGROUND REGARDING THE UNITED STATES – PAKISTAN RELATIONSHIP

3. Attached hereto as Exhibit A is the **United States Department of State’s Official Background Note On the Islamic Republic of Pakistan** (“Background Note”), maintained online² by the State Department. The Background Note provides a broad outline of the history of the United States – Pakistan relationship, primarily a military-assistance relationship during the Cold War period (particularly during the Soviet invasion of Afghanistan) followed by years of estrangement and sanctions when Pakistan would not forego its effort to

¹ There are two volumes of exhibits submitted with this Declaration: Volume I includes Exhibits A-M; Volume II includes Exhibits N-AG.

² Many of the documents attached to this Declaration are available online. The Table of Exhibits included with each of the two volumes of exhibits provides the internet address, where possible, for each referenced document.

develop nuclear weapons (largely in response to nuclear-armed India). *See* Ex. A, pp. 14-17, “U.S. – Pakistan Relations”. The relationship changed dramatically following the September 11, 2001 attacks on the World Trade Center in New York. As described in the Background Note (from the point of view of the State Department):

The U.S.-Pakistan relationship changed significantly once Pakistan agreed to support the U.S. campaign to eliminate the Taliban in Afghanistan and to join the United States in efforts against terrorism. Since September 2001, Pakistan has provided extensive assistance in counterterrorism efforts by capturing more than 600 al-Qaida members and their allies.

In 2004, the United States recognized closer bilateral ties with Pakistan by designating Pakistan as a Major Non-NATO Ally.

The Barack Obama administration has reaffirmed a U.S. strategic partnership with Pakistan. In particular, the U.S. Congress passed the Kerry Lugar-Berman (KLB) legislation to authorize \$1.5 billion in non-military assistance to Pakistan annually for 5 years, which President Obama signed into law on October 15, 2009.

See Ex. A, at 16; *see generally* pp. 14-17, “U.S. – Pakistan Relations” (emphasis added). In 2008, democratic elections were held in Pakistan, resulting in the control of the Parliament by the opposition Pakistan People’s Party (“PPP”), and the departure of General Pervez Musharraf. The installation of a democratically elected government, and ensuring the stability and survival of that Government, has been a major factor in the cooperation of the two countries against the common enemy of terrorism in Pakistan. *See generally* Ex. A, pp. 7-8. Asif Ali Zardari, widower of assassinated PPP leader Benazir Bhutto, was elected president and head of state for Pakistan in September, 2008 and remains in office today. *Id.*

4. Even prior to the election of the PPP Government, however, Pakistan was, in June, 2004, designated as a “Major Non-NATO Ally of the United States.” Attached hereto as

Exhibit B is the Presidential Determination, No. 2004-37, June 16, 2004. “Major Non-NATO Ally” designation demonstrates a special strategic relationship with the United States and provides a variety of military and financial resources that are not otherwise obtainable by non-NATO countries, including, e.g., eligibility to receive U.S.-owned war reserve stockpiles on its territory, receipt of U.S. Foreign Military Financing for the commercial leasing of certain defense articles. *See* Andrew Prosser, “U.S. Arms Transfers to America's Newest ‘Major Non-NATO Ally’”, Center for Defense Information, dated April 30, 2004 and attached hereto as Exhibit C.

UNITED STATES POLICY REGARDING PAKISTAN

5. **Partnership With Pakistan – A Central Policy for This Administration** Even prior to his inauguration, President Obama asserted that close, ongoing cooperation with Pakistan was vital to the security of the United States in the context of the war against terrorism, the Taliban and al Qaeda.

What I want to do is to create the kind of effective, **strategic partnership with Pakistan** that allows us, in concert, to assure that terrorists are not setting up safe havens in some of these border regions between Pakistan and Afghanistan.

I think this democratically-elected government understands that threat, and I hope in the coming months that we’re able to establish the kind of close, effective, working relationship that makes both countries safer.

See Transcript from a December 7, 2008 “Meet the Press” interview with Tom Brokaw, the relevant portion of which is attached hereto as Exhibit D (emphasis added). A full transcript of this interview is available at <http://www.msnbc.com/id/28097635> (last visited on May 3, 2011).

6. **Appointment of a Special Representative for Afghanistan and Pakistan**

Reflecting the status of the alliance with Pakistan against terrorism as a key component of United States foreign policy in this area of the world, on his second day in office, January 22, 2009, President Obama attended the ceremony for the appointment of Richard Holbrooke as “Special Representative for Afghanistan and Pakistan”. Secretary of State Hillary Clinton spoke regarding the reason for the unusual appointment of a “Special Representative” for Afghanistan and Pakistan:

Ambassador Holbrooke will coordinate **across the entire government an effort to achieve United States’ strategic goals in the region.** This effort will be closely coordinated, not only within the State Department and, of course, with USAID, but also with the Defense Department and under the coordination of the National Security Council.

It has become clear that dealing with the situation in Afghanistan requires an integrated strategy that works with both Afghanistan and Pakistan as a whole, as well as engaging NATO and other key friends, allies, and those around the world who are interested in supporting these efforts.

See Transcript of the Announcement of Appointment of Richard Holbrooke ceremony, attached hereto as Exhibit E, and dated January 22, 2009, at p. 3 (emphasis added). In his own remarks at the ceremony, Ambassador Holbrooke noted the significance of a coordinated strategy for the region.

Mr. President, Madame Secretary, Mr. Vice President, you’ve asked me to deal with Afghanistan and Pakistan, two very distinct countries with extraordinarily different histories, and yet intertwined by geography, ethnicity, and the current drama. This is a very difficult assignment, as we all know. Nobody can say that the war in Afghanistan has gone well. And yet, as we sit here today, American men and women and their coalition partners are fighting a very difficult struggle against a ruthless and determined enemy without any scruples at all...an enemy that has done some of the most odious things on earth.

And across the border [i.e. Pakistan], lurks a greater enemy still: the people who committed the atrocities of September 11th, 2001...

I hope I will be able to fill out the mandate which Secretary Clinton has mentioned: to help coordinate a clearly chaotic foreign assistance program, which must be pulled together, to work closely with General Petraeus, CENTCOM, Admiral Mullen, and the Joint Chiefs of Staff, General McKiernan and the command in Afghanistan, **to create a more coherent program.**

He also underscored the need to respect the sovereignty of Pakistan

In Pakistan the situation is infinitely complex, and I don't think I would advance our goals if I tried to discuss it today...

But I will say that in putting Afghanistan and Pakistan together under one envoy, we should underscore that we fully respect the fact that Pakistan has its own history, its own traditions, and it is far more than the turbulent, dangerous tribal areas on its western border. And we will respect that as we seek to follow suggestions that have been made by all three of the men and women standing behind me in the last few years on having a more comprehensive policy.

Id. at 3 (emphasis added).

7. **The Administration's "Whole Government" Comprehensive Strategy for**

Pakistan On March 27, 2009, in a major policy address to the Nation, President Obama articulated the critical importance of defeating al Qaeda and the Taliban both in Afghanistan, where the United States and its NATO allies play an active combat role, and in Pakistan, where the President announced a policy of active support, both civil and military, for the Government of Pakistan in its campaign against terrorism within its own borders.

The situation is increasingly perilous. It has been more than seven years since the Taliban was removed from power, yet war rages on, and insurgents control parts of Afghanistan and Pakistan. Attacks against our troops, our NATO allies, and the Afghan government have risen steadily. Most painfully, 2008 was the deadliest year of the war for American forces.

So let me be clear: al Qaeda and its allies – the terrorists who planned and supported the 9/11 attacks – are in Pakistan and Afghanistan. Multiple intelligence estimates have warned that al Qaeda is actively planning attacks on the U.S. homeland from its safe-haven in Pakistan. And if the Afghan government falls to the Taliban – or allows al Qaeda to go unchallenged – that country will again be a base for terrorists who want to kill as many of our people as they possibly can.

The future of Afghanistan is inextricably linked to the future of its neighbor, Pakistan. In the nearly eight years since 9/11, al Qaeda and its extremist allies have moved across the border to the remote areas of the Pakistani frontier. This almost certainly includes al Qaeda's leadership: Osama bin Laden and Ayman al-Zawahiri. They have used this mountainous terrain as a safe-haven to hide, train terrorists, communicate with followers, plot attacks, and send fighters to support the insurgency in Afghanistan. **For the American people, this border region has become the most dangerous place in the world.**

But this is not simply an American problem – far from it. It is, instead, an international security challenge of the highest order....If there is a major attack on an Asian, European, or African city, it – too – is likely to have ties to al Qaeda's leadership in Pakistan. **The safety of people around the world is at stake.**

Let me start by addressing the way forward in Pakistan.

The United States has great respect for the Pakistani people. They have a rich history, and have struggled against long odds to sustain their democracy. The people of Pakistan want the same things that we want: an end to terror, access to basic services, the opportunity to live their dreams, and the security that can only come with the rule of law. The single greatest threat to that future comes from al Qaeda and their extremist allies, and that is why we must stand together.

The terrorists within Pakistan's borders are not simply enemies of America or Afghanistan – they are a grave and urgent danger to the people of Pakistan. Al Qaeda and other violent extremists have killed several thousand Pakistanis since 9/11. They have killed many Pakistani soldiers and police. They assassinated Benazir Bhutto. They have blown up buildings, derailed foreign investment, and threatened the

stability of the state. Make no mistake: al Qaeda and its extremist allies are a cancer that risks killing Pakistan from within.

It is important for the American people to understand that Pakistan needs our help in going after al Qaeda. This is no simple task. The tribal regions are vast, rugged, and often ungoverned. That is why we must focus our military assistance on the tools, training and support that Pakistan needs to root out the terrorists...

The government's ability to destroy these safe-havens is tied to its own strength and security. To help Pakistan weather the economic crisis, we must continue to work with the IMF, the World Bank and other international partners. To lessen tensions between two nuclear-armed nations that too often teeter on the edge of escalation and confrontation, we must pursue constructive diplomacy with both India and Pakistan. **To avoid the mistakes of the past, we must make clear that our relationship with Pakistan is grounded in support for Pakistan's democratic institutions and the Pakistani people.** And to demonstrate through deeds as well as words a commitment that is enduring, we must stand for lasting opportunity.

A campaign against extremism will not succeed with bullets or bombs alone. Al Qaeda offers the people of Pakistan nothing but destruction. We stand for something different. So today, I am calling upon Congress to pass a bipartisan bill co-sponsored by John Kerry and Richard Lugar that authorizes \$1.5 billion in direct support to the Pakistani people every year over the next five years – resources that will build schools, roads, and hospitals, and strengthen Pakistan's democracy...

These steps in Pakistan are also indispensable to our effort in Afghanistan...

Security demands a new sense of shared responsibility. That is why we will launch a standing, trilateral dialogue among the United States, Afghanistan and Pakistan. Our nations will meet together regularly, with Secretary Clinton and Secretary Gates leading our effort. Together, we must **advance intelligence sharing and military cooperation** along the border...

See Transcript of President Obama's March 27, 2009 address, attached hereto as Exhibit F

(emphasis added).

8. **Congressional Support for the Policy** Consistent with the policy for Pakistan announced by the Administration, the bill sponsored by Senator Kerry and Congressman Lugar (mentioned in the President's March 27, 2009 address) was enacted by Congress as the **Enhanced Partnership with Pakistan Act of 2009**, 22 U.S.C. § 8401 *et seq.*, which designated Pakistan as a "critical ally" of the United States in the war against terrorism and confirmed the policy of a "long-term multifaceted relationship between the two countries", including "all elements of national power, diplomatic, military, intelligence..." *Id.* at § 8402(9). The Joint Explanatory Statement issued by Senator Kerry and Congressman Lugar, and attached hereto as Exhibit G: (1) underscores the intent to articulate a comprehensive, unified approach to Pakistan; and (2) reflects a careful effort to respect the sovereignty of Pakistan.

The core intent of the Enhanced Partnership with Pakistan Act is to demonstrate the American people's long-term commitment to the people of Pakistan. The United States values its friendship with the Pakistani people and honors the great sacrifices made by the Pakistani security forces in the fight against extremism, and the legislation reflects the goals shared by our two governments.

The overall level of economic assistance authorized annually by this legislation is tripled over FY 2008 U.S. funding levels...

This Act fully recognizes and respects the independence of Pakistan as a sovereign nation. The purpose of this Act is to form a closer collaborative relationship between Pakistan and the United States, not to dictate the national policy or impinge on the sovereignty of Pakistan in any way. Any interpretation of this Act which suggests that the United States does not fully recognize and respect the sovereignty of Pakistan would be directly contrary to Congressional intent.

See Ex. G, at 1-2 (emphasis added). The Joint Statement noted specific findings in the Act, including Pakistan's status as a major non-NATO ally, Pakistan's role as a "critical friend and ally to the United States", and also specifically noted the sacrifices of Pakistan's "security

forces” (defined, in the Act, to include the ISI) in the war against terrorism. Sections of the Act entitled “Findings”, “Statement of Principles” and “Purposes of Assistance” outline the policy of the United States.

§ 8402(1) The people of the Islamic Republic of Pakistan and the United States share a long history of friendship and comity, and the interests of both nations are well-served by strengthening and deepening this friendship.

§ 8402(3) With the free and fair election of February 18, 2008, Pakistan returned to civilian rule, reversing years of political tension and mounting popular concern over military rule and Pakistan’s own democratic reform and political development.

§ 8402(9) **[T]he [A]dministration’s national security strategies and Congress have recognized that a comprehensive plan that includes all elements of national power, diplomatic, military, intelligence, development assistance, economic and law enforcement support was needed to address the terrorist threat emanating from [Pakistan border areas]...**

§ 8403(5) The United States intends to work with the Government of Pakistan –

(A) to build mutual trust and confidence by actively and consistently pursuing **a sustained, long-term, multifaceted relationship between the two countries, devoted to strengthening the mutual security, stability, and prosperity of both countries;**

(B) to support the people of Pakistan and their democratic government in their efforts to consolidate democracy, including strengthening Pakistan’s parliament, helping Pakistan reestablish an independent and transparent judicial system and helping to extend the rule of law in all areas in Pakistan;

§ 8421 The purposes of assistance under this subchapter are—

(1) to support Pakistan’s paramount national security need to fight and win the ongoing counterinsurgency within its borders in accordance with its national security interests;

(2) to work with the government of Pakistan to improve Pakistan’s border security **and control and help prevent any Pakistani territory from being used as a base or conduit for terrorist attacks in Pakistan, or elsewhere;**

(3) to work in close cooperation with the Government of Pakistan to coordinate action against extremist and terrorist targets; and

(4) to help strengthen the institutions of democratic governance and promote control of military institutions by a democratically elected civilian government.

See 22 U.S.C. § 8402, "Findings"; § 8403, "Statement of Principles"; § 8421, "Purposes of Assistance" (emphasis added).

9. In December of 2009, at West Point, President Obama announced the "surge" – the addition of 30,000 U.S. combat troops in Afghanistan. A transcript of this December 1, 2009 address is attached hereto as Exhibit H. In his address, President Obama again highlighted the alliance of the Government of the United States and the Government of Pakistan in the war against the common enemy of terrorism and again noted that alliance as critical to the security of the United States.

I make this decision because I am convinced that our security is at stake in Afghanistan and Pakistan. This is the epicenter of the violent extremism practiced by al Qaeda. It is from here that we were attacked on 9/11, and it is from here that new attacks are being plotted as I speak. This is no idle danger; no hypothetical threat. In the last few months alone, we have apprehended extremists within our borders who were sent here from the border region of Afghanistan and Pakistan to commit new acts of terror.

The danger will only grow if the region slides backwards and al Qaeda can operate with impunity. **We must keep the pressure on al Qaeda, and to do that, we must increase the stability and capacity of our partners in the region.**

The people and governments of both Afghanistan and Pakistan are endangered. And the stakes are even higher within a nuclear-armed Pakistan, because we know that al Qaeda and other extremists seek nuclear weapons, and we have every reason to believe they would use them.

[O]ur success in Afghanistan is inextricably linked to our partnership with Pakistan.

We're in Afghanistan to prevent a cancer from once again spreading through that country. But this same cancer has also taken root in the border region of Pakistan. That is why we need a strategy that works on both sides of the border....[T]here is no doubt that the United States and Pakistan share a common enemy.

In the past we too often defined our relationship with Pakistan too narrowly. Those days are over. Moving forward we are committed to a partnership with Pakistan that is built on a foundation of mutual interests, mutual respect and mutual trust. We will strengthen Pakistan's capacity to target those groups that threaten our countries...

America is also providing substantial resources to support Pakistan's democracy and development....And going forward, the Pakistani people must know: America will remain a strong supporter of Pakistan's peace and prosperity long after the guns have fallen silent...

These are the three core elements of our strategy: a military effort to create the conditions for a transition; a civilian surge that reinforces positive action; and an effective partnership with Pakistan.

See Ex. H, at 3-5 (emphasis added).

IMPLEMENTATION OF THE STRATEGY

10. **Strategic Dialogue** As noted in the Background Note prepared by the State Department, as part of the U.S.– Pakistan strategic relationship, the governments are participating in an ongoing “Strategic Dialogue” with high-level ministerial meetings to allow the two governments to cooperate on all issues, including security issues. On security issues, the sub-group is the Defense Consultative Group, which regularly meets to “continue dialogue on strategic security issues and discuss ways to accelerate cooperation...in order to combat the threat of extremism to peace and security in the region”. *See, e.g.*, Press Release: “U.S.-Pakistan

Joint Statement: Pakistan-United States Defense Consultative Group Meeting” dated August 6, 2010 and attached hereto as Exhibit I; Press Release: “Joint Statement: U.S.-Pakistan Strategic Dialogue at the Ministerial Level,” dated October 23, 2010 and attached as Exhibit J.

11. **Monitoring of the Efficacy of the Partnership** Attached hereto as Exhibit K, is the **February 2010 “Afghanistan and Pakistan Regional Stabilization Strategy”** issued by the Office of the Special Representative for Afghanistan and Pakistan, and by both the Secretary of State and the Secretary of Defense as required by The Enhanced Partnership with Pakistan Act. In her introductory section entitled “Message From the Secretary of State”, Secretary Clinton echoed the theme of the need for a coordinated, comprehensive strategy toward Pakistan:

President Obama has outlined a strategy that includes supporting the Afghan and Pakistani governments’ efforts to defeat the extremist threat.

We shaped our political, economic, and diplomatic efforts in Afghanistan and Pakistan with these realities in mind...They are aligned with our security objectives and have been developed in close consultation with the Afghan and Pakistani Governments, as well as our international partners. When combined with U.S. combat operations and efforts to build Afghan and Pakistani security capacity, **these programs constitute an innovative, whole-of-government strategy to protect our vital interests in this volatile region of the world.**

[F]or the first time since this conflict began, we have a true whole-of-government approach. The Afghan and Pakistani Governments have endorsed this strategy and are committed to achieving our shared objectives.

See Ex. K, “Message from the Secretary of State” at 2 (emphasis added).

12. In addition to formal reports, members of the armed forces and civilian employees of the State Department and the Department of Defense have regularly reported to Congress on

the efficacy of the alliance with the Government of Pakistan. For example, on March 16, 2010, General David H. Petraeus, U.S. Army Commander, U.S. Central Command (CENTCOM) testified before the Senate Armed Services Committee. Attached hereto as Exhibit L is the “Statement of General David H. Petraeus...Before the Senate Armed Services Committee on the Posture of U.S. Central Command”, dated March 16, 2010. In his testimony, he referred to “instability” in Pakistan and Afghanistan as “the most urgent problem set in the CENTCOM AOR [area of operations]” (Ex. L, pp. 9, 22), noted the need for a “**whole of government approach**...to secure host-nation populations [and] conduct comprehensive counterinsurgency and security operations” (*Id.* at 3) and stated that, “[t]he possibility of significant instability in Pakistan poses a serious threat to regional and global security...” (*Id.* at 28) (emphasis added). General Petraeus identified close cooperation with Pakistan’s military and support of Pakistan’s Government as key to American policy in the region:

We are working to forge a stronger partnership with Pakistan and to support its efforts two ways. First, we aim to strengthen the military’s capacity to target insurgent groups through the development of Pakistan’s counterinsurgency capabilities. Second, we support Pakistan’s governmental and economic development.

Id. at 29 (emphasis added). The General noted the significance of the presence of nuclear weapons in the area, stating “the acquisition of nuclear arms by hostile states or terrorist organizations would constitute a grave threat to the United States, our allies, and the countries of the region...”. *Id.* at 8-9. Additionally, General Petraeus noted the need to reduce tensions between India and Pakistan.

Finally, we are working to reduce regional tensions to enable adequate focus on the existential threat of militant Islamist movements in Pakistan. Though Indo-Pakistani tensions have eased since 2008, they could easily reignite...**A major escalation in these tensions would almost certainly result in the immediate redeployment to the east [sic] of Pakistani forces**

currently deployed to confront militants in the West, risking forfeiture of gains in FATA and the NWFP. This suggests a need for India and Pakistan to continue discussions begun on February 25th in order to reduce the strategic tension and the risk of miscalculation between these nuclear states.

Id. at 30. (emphasis added).

13. On **March 25, 2010**, Secretaries Robert Gates (Defense) and Hillary Clinton (State) testified before the Senate Appropriations Committee regarding the “whole of government” approach, as Secretary Clinton outlined the strategy and its significance for United States foreign policy:

[I]t is pleasure to testify alongside Secretary Gates...

We are here *together* because our civilian and military efforts in front-line states cannot be separated. The challenges we face demand that we draw on all the tools of American leadership and American power. And the strategies we now have in place in Afghanistan, Pakistan, and Iraq do exactly that.

This whole-of-government approach has shown results.

In Pakistan, our efforts are vital to success in Afghanistan, and also to American security in their own right. We have made it a strategic priority to strengthen our partnership with the Pakistani people and to bolster the Pakistani state’s ability to counter extremism...

See Secretary Clinton’s Congressional Testimony before the Senate Appropriations Committee, dated March 25, 2010 and attached hereto as Exhibit M, at pp. 1-2 (italics in original, bold added).

14. On **April 29, 2010**, Andrew J. Shapiro, Assistant Secretary, Political-Military Affairs, testified before the U.S. House Armed Services Committee, stressing the policy of close U.S. cooperation with the security forces and military of Pakistan. Echoing the testimony of Secretary Clinton and General Petraeus, Assistant Secretary Shapiro again stressed that “our

partnership with the Government of Pakistan...[is] **key[] to success in Afghanistan**, and to the security of the United States” and “[t]herefore, we are **broadening and deepening our relationship...**”. See Transcript of Assistant Secretary Shapiro’s testimony before the House Armed Services Committee, dated April 29, 2010 and attached hereto as Exhibit N, at pp. 1-2 (emphasis added). Assistant Secretary Shapiro’s testimony focused on the security assistance managed by the State Department, and he outlined the magnitude of that assistance, and the close, ongoing cooperation.

Security assistance funds managed by the Bureau of Political-Military Affairs, which collectively total over \$7 billion worldwide in the President’s FY 2011 request, provide important tools to the United States in today’s security environment.

U.S. security assistance programs aim to improve Pakistan’s counterinsurgency and counterterrorism operation capacities, **enhance U.S.–Pakistan interoperability, and help to deepen our bilateral relations and reduce the trust deficit between the United States and Pakistan.** These programs also support ongoing Coalition activities in Afghanistan by improving Pakistan’s ability to coordinate and synchronize operations along their side of the Afghanistan-Pakistan border. Our robust military-to-military relationship with Pakistan also underscores our long-term commitment to remain engaged in the region, as well as our commitment to regional stability...

The FY 2011 Foreign Military Financing (FMF) request for Pakistan is \$296 million...Pakistan is one of the biggest FMF recipients globally and it would be difficult to overstate the importance of this program to the U.S. –Pakistani relationship.

FMF is the foundation of a long-term U.S.-Pakistan security relationship. FMF supports the transformation and modernization of Pakistan’s military into a more professional and capable force through equipment upgrades, training, and new acquisitions. It promotes closer U.S.-Pakistani security ties and enhances U.S.-Pakistani interoperability.

In order to accelerate the development of the Government of Pakistan’s capacity to secure its borders, deny safe haven to extremists, fight insurgents, and provide security for its

indigenous population, the Administration has requested \$1.2 billion in FY 2011 for the Pakistan Counterinsurgency Capability Fund (PCCF).

See Ex. N at pp. 2-4 (emphasis added).

While Assistant Secretary Shapiro's testimony was focused on cooperation between the military and security forces of the United States (presumably including the ISI), he also commented on the civilian state-to-state aid and again articulated the rationale for the U.S. "whole-of-government" long term partnership policy for Pakistan.

In keeping with the President's pledge of a long-term partnership with Pakistan, we are also making a substantial long-term commitment of non-military assistance to Pakistan. The assistance is targeted at helping the Pakistani people overcome the political, economic, and security challenges that threaten Pakistan's stability, and in turn, undermine regional stability. With the Enhanced Partnership with Pakistan Act, which authorized \$7.5 billion in civilian assistance from FY 2010 to FY 2014, we are moving towards the most effective civilian/military assistance balance. Our three objectives are to: improve the deteriorating economic infrastructure that obstructs economic growth and the daily lives of ordinary Pakistani citizens; **improve the Government of Pakistan's management capacity and commitment to policy reform**; and reduce the poverty and lack of opportunity that breeds vulnerability to extremism.

Id. at 6 (emphasis added). *See also* the testimony of Ambassador Holbrooke before the Senate Committee on Foreign Relations on **July 14, 2010**, attached hereto as Exhibit O, where he testified that "what happens in Pakistan has tremendous implications not only for our goals in Afghanistan, but also for the stability of South-Central Asia and for U.S. national security". *See* Ex. O at p. 1. Ambassador Holbrooke continued, stating "[p]olitically, Pakistan's civilian and military leaders have settled into a relatively stable equilibrium as a result of recent constitutional reforms" and referenced the need for continued cooperation between the military and security operations of the two countries: "Our focused security assistance and close cooperation with the

Pakistani military are, of course, critical tools for building Pakistani counterinsurgency capabilities and shaping Pakistan's counterterrorism operations." *Id.* at 1, 2.

15. On **December 16, 2010**, Secretary Clinton, Secretary Gates and Vice Chairman of the Joint Chiefs of Staff, General James Cartwright, held a press conference to report on the progress and effect of the Administration policy toward Pakistan, in which they again stressed the importance of the coordinated approach for U.S. policy. Attached hereto as Exhibit P is a transcript of the remarks from that press conference. Secretaries Clinton and Gates noted Pakistan's deployment of **140,000** troops to the critical border areas to deny safe haven to al Qaeda and the Taliban and also mentioned cooperation between the CIA and ISI, with specific reference to contact between CIA Chief Leon Panetta and the (Defendant) Director General of ISI, General Pasha.

In Pakistan, we have moved beyond a purely transactional relationship dominated by military cooperation. We now have broad engagement on both the civilian and military sides. Through the strategic dialogue that we established last year, Pakistan and the United States have begun a long-term commitment to work together...

[O]ur conclusion is that our partnership is slowly but steadily improving. We have greater cooperation and understanding, and that is yielding tangible results on the ground.

The growth of local security initiatives is helping communities protect themselves against the Taliban, while denying insurgents sanctuary and freedom of movement. **At the same time, Pakistan has committed over 140,000 troops to operations in extremist safe havens along the border in coordination with Afghan and coalition forces on the Afghan side.**

The Pakistanis...moved...140,000 troops off the Indian border. They waged an ongoing conflict against their enemies who happen also to be the allies of our enemies. They began to

recognize what we see as a mortal threat to Pakistan's long-term sovereignty and authority. That was not something that was predicted two years ago that they would do. They've done it.

They've also maintained a civilian government against great odds, and something that has provided more legitimacy to our interactions with them. And we have started what has turned out to be quite effective, robust strategic dialogue with them, engaging the whole of their government with ours.

And I think as with any question about leadership or who's in charge, we deal with the entire government. We – as the President said, he talks to President Zardari. I deal with the civilian leadership. We also talk to the military leadership. Admiral Mullen has developed a very positive, cooperative relationship with General Kayani. Leon Panetta deals regularly with the Director General of the ISI, General Pasha. We are in constant communication.

And there are certain decisions that are made by different leaders within their government. **But it would be a mistake, and it's a mistake that the United States has made continuously over the last 63 years, to move away from the democratically elected civilian leadership of Pakistan.**

SECRETARY GATES: I would say, though, that this underscores, the importance of the broader strategic dialogue between ourselves and the Pakistanis. I think that they are coming to have a better understanding of the threat that is posed to them by this syndicate of terrorists that's not just the Pakistani Taliban that's a problem for them. And I think that the degree of cooperation and bilateral cooperation on both sides of the border is a manifestation.

This is something we've wanted to do for a long time. We're now doing it. We've wanted the Pakistanis to be on that border for a long time. Eighteen months ago I would have thought the idea of 140,000 troops on that border was an impossibility.

So I believe that the relationship that we have with them and the more confident that they are that we have a long-term relationship in mind with Pakistan, then I think the more willing they're going to be to take actions that serve both our interests.

See Ex. P at pp. 2-4; 6; 8; 11 (emphasis added).

16. The policy of an enduring close relationship with the Government of Pakistan as a critical ally of the United States, begun after 9/11 and emphasized by this Administration, continues to be the policy of the United States. In **December of 2010**, President Obama reported on the progress of, and reiterated the rationale for, the policy and emphasized the need for continuity:

Finally, we will continue to focus on our relationship with Pakistan. Increasingly the Pakistani government recognizes that terrorist networks in its border regions are a threat to all our countries, especially Pakistan. We've welcomed major Pakistani offensives in the tribal regions. We will continue to strengthen Pakistani's [sic] capacity to root out terrorists...

As part of our strategic dialogue with Pakistan, we will work to deepen trust and cooperation... And next year I look forward to an exchange of visits, including my visit to Pakistan, because the United States is committed to an enduring partnership that helps deliver improved security, development and justice for the Pakistani people.

See Transcript of the Statement by the President on the Afghanistan-Pakistan Annual Review, dated December 16, 2010 and attached hereto as Exhibit Q. And, more formally, the Executive continues to report to the Congress on the efficacy of the relationship. See "Report on Afghanistan and Pakistan", declassified document dated "March 2011" and attached hereto as Exhibit R. The policy did not and has not changed, even after the U.S. Government arrested one of the alleged Mumbai conspirators and obtained from him a plea agreement which imposed on him an obligation to "fully and truthfully cooperate" in providing information to the Government. See Plea Agreement, United States v. Headley, No. 09 CR 830-3 (N.D. Ill. Mar. 18, 2010), attached hereto as Exhibit S. In March 2011, Secretary Clinton, supporting the Administration's budget proposal before the Senate Appropriations Committee, stressed the importance of the United States-Pakistan relationship. See Hillary Clinton, Opening Remarks

Before the Senate Appropriations Committee on State and Foreign Operations, March 2, 2011, attached hereto as Exhibit T. (“Equally important is our assistance to Pakistan, a nuclear-armed nation with strong ties and interests in Afghanistan. We are working to deepen our partnership and keep it focused on addressing Pakistan’s political and economic challenges as well as our shared interests.”)

**THE NEED TO RESPECT THE CONSIDERED
FOREIGN POLICY OF THE UNITED STATES**

17. **Threat of Religious Extremism in Pakistan** As noted above, one of the key elements of United States foreign policy is to support the stability of the democratically elected Government of Pakistan. Recent events have demonstrated that proponents of toleration and moderation are under attack in Pakistan, and underscore the need for the United States Government to avoid actions which might inflame the situation. On January 4 of this year, Salman Taseer, governor of Punjab Province of Pakistan, was assassinated, a murder apparently motivated by Tasser’s vocal opposition to an anti-blasphemy law and to the religious parties and their extremism. As noted in the New York Times, the killing underscores the difficulties faced by the Pakistani Government in actively participating as an ally in the war against terrorism:

The killing of Salman Taseer, the prominent governor of Punjab Province, was another grim reminder of the risks that Pakistani leaders take to oppose religious extremists, at a time when the United States is pushing Pakistan for greater cooperation in the war in Afghanistan by cracking down on militant groups like the Taliban.

See Salman Masood and Carlotta Gall, “Killing of Governor Deepens Crisis in Pakistan”, The New York Times, January 5, 2011, at A1, attached hereto as Exhibit U.

18. On March 2, 2011, unknown gunmen shot and killed Shahbaz Bhatti, Pakistan’s cabinet-level Minister For Religious Minorities, in an attack for which the Pakistani Taliban

claimed responsibility. *See* “Minorities minister Shahbaz Bhatti assassinated in Islamabad”, as reported on March 2, 2011 on Dawn.com a Pakistani online newspaper, attached hereto as Exhibit V.

19. In an editorial published in the Washington Post on March 6, 2011, the President of Pakistan, Asif Ali Zardari, (whose wife, former PPP leader Shaheed Benazir Bhutto, was also assassinated) noted the threat faced by the Government of Pakistan in its fight against terrorism:

These assassinations painfully reinforce my wife’s words and serve as a warning that the battle between extremism and moderation in Pakistan affects the success of the civilized world’s confrontation with the terrorist menace.

We will not be intimidated, nor will we retreat. Such acts will not deter the government from our calibrated and consistent efforts to eliminate extremism and terrorism. It is not only the future of Pakistan that is at stake but peace in our region and possibly the world.

Our nation is pressed by overlapping threats. We have lost more soldiers in the war against terrorism than all of NATO combined. We have lost 10 times the number of civilians who died on Sept. 11, 2001. Two thousand police officers have been killed...The religious fanaticism behind our assassinations is a tinderbox poised to explode across Pakistan. The embers are fanned by the opportunism of those who seek advantages in domestic politics by violently polarizing society.

We are fighting terrorists for the soul of Pakistan and have paid a heavy price.

See Asif Ali Zardari, Op-Ed, “As Pakistan battles extremism, it needs allies’ patience and help”, The Washington Post, March 6, 2011, attached hereto as Exhibit W. While the reference was specific to the shooting of two Pakistani citizens by a CIA employee, President Zardari noted the need for the United States to avoid actions which might place further stress on the relationship:

If Pakistan and the United States are to work together against terrorism, we must avoid political incidents that could further inflame tensions and provide extremists or opportunities with a pretext for destabilizing our fledgling democracy.

Id. (emphasis added).

20. That the instant cases may provide such a pretext is evidenced by the reports of reaction in Pakistan when these cases were filed. As reported in the New York Times in December of 2010, opposition parties and the press have presented these cases in Pakistan as an imposition on Pakistan's sovereignty, with the "summons" being issued by this Court being portrayed as an intrusive invasion of U.S. power.

Earlier in the National Assembly session on Thursday, Chaudhry Nisar Ali Khan, the leader of the opposition, had expressed concerns over news that the ISI chief had been summoned by a court in the United States.

The speech by the opposition leader seemed intended to whip up nationalist sentiment. Mr. Khan denounced the United States court summons as a move to pressure Pakistan. "We will not allow any institution to be taken hostage by any international organization."

See Salman Masood, "Pakistan Spy Chief to Ignore U.S. Summons", The New York Times, December 23, 2010 at A11, attached hereto as Exhibit X. The Prime Minister was forced to address the issue of these cases in an address to the National Assembly and to assure the Legislators that Pakistan expected that its sovereign immunity would be respected by the United States. *See Id.* Indeed, opposition parties threatened to and did in fact briefly withdraw from the governing coalition as a result of these filings, raising fears of collapse of the current Government.

Muttahida Quami Movement (MQM) chief Altaf Hussain on Saturday slammed the summoning of the Inter-Services Intelligence (ISI) Chief by the US, threatening to topple the incumbent government if the ISI chief was sent to the US...[T]he MQM chief said, 'If the US summons someone from Pakistan, the Supreme Court of Pakistan must do the same.'...[H]e said the

people of the country wanted independence from international powers...

See "MQM to topple government if ISI chief sent to US: Atlaf", Pakistan Today, December 26, 2010, attached hereto as Exhibit Y.

21. **Pakistan-India Relations** Since the partition in 1947, relations with India and Pakistan have been fraught with tension, with three full-scale wars having been fought between the countries since independence. See Ex. A, pp. 12-14. In articulating United States policy for this area of the world, President Obama, in his March, 2009 policy address, specifically noted the need to reduce tension between these two nuclear armed powers.

To lessen tensions between two nuclear-armed nations that too often teeter on the edge of escalation and confrontation, we must pursue constructive diplomacy with both India and Pakistan

See Transcript of President Obama's Policy Address, March 27, 2009, Ex. F; see also, Statement of General David H. Petraeus, Senate Armed Services Committee, March 16, 2010, Ex. L.

22. **Effect of the Mumbai Attacks/Pakistan's Effort to Prosecute** Immediately after the Mumbai attacks, the Government of Pakistan issued a formal statement decrying the attacks. See, November 28, 2008 Statement of Ministry of Foreign Affairs of Pakistan, PR. No. 367/2008, attached hereto as Exhibit Z. ("Pakistan at the highest levels has strongly condemned the horrific terrorist attacks in Mumbai and the President and the Prime Minister have conveyed to the Indian leadership our sense of shock and deep sorrow on the loss of life".) Pakistan also instituted criminal prosecutions, under the law of Pakistan, against LeT leaders, including some of the defendants in this case (Zaki ur Rehman Lakhvi) by registration of First Investigation Report 1/2009 with the Federal Investigation Agency of Pakistan, which resulted in the commencement of trial before a specially assigned judge in Anti-Terrorism Court No. 1 in Rawalpindi, Pakistan. See Pakistan Current Criminal Rulings, 2010 P. C.R. 670 (January 26,

2010), Report of Decision by Lahore High Court attached hereto as Exhibit AA, at 674 (regarding pendency of proceedings). Those prosecutions in Pakistan are proceeding, although the difficulties of prosecuting a trans-national criminal conspiracy under a legal system not designed for such has created issues in the Pakistani prosecutions. *See e.g., Id.* at 681 (regarding procedural difficulties of utilizing, in the Pakistan criminal trials, the confession of Ajmal Qasab, the surviving member of the LeT Mumbai terrorists, held in India, with the High Court directing a procedure for use of his statements against co-conspirators).

23. Cooperation between India and Pakistan on this and other issues has been difficult insofar as the Mumbai attacks, apparently perpetrated by Pakistani nationals allegedly tied to LeT (originally started in Pakistan, although outlawed there since 2002), fractured relations between the two countries, causing the breakdown of high level talks which had been commenced in 2004 (“Composite Dialogue”) to broadly address many of the issues which had traditionally stressed the relationship. *See Ex. A*, pp. 13-14.

24. **Current Developments in Pakistan/India Relations** However, in February 2011, in a significant development, India and Pakistan announced the resumption of the Composite Dialogue. As reported in the New York Times:

India and Pakistan announced on Thursday that the two countries would resume peace talks that have been stalled since 2008, when Pakistani militants staged coordinated terrorist attacks in Mumbai India, killing 163.

The agreement announced in simultaneous statements put out by both governments followed high-level meetings on Sunday between the foreign secretaries of India and Pakistan and appeared to set the stage for high-level, open ended and wide-ranging talks on a variety of contentious issues from counterterrorism to improving economic relations.

See Lydia Polgreen and J. David Goodman, “India and Pakistan Agree to Renew Peace Talks”, The New York Times, February 11, 2011, at A4 and attached hereto as Exhibit AB. And, as

announced in a Joint Statement issued by both countries, an early result of the resumed talks was a specific agreement to allow both countries to better prosecute those responsible for the Mumbai attacks, i.e. Pakistan's willingness to allow an Indian Commission to come to Pakistan to cooperate in the investigation and prosecution of criminal cases against those alleged to have been involved in the Mumbai attack. *See* India-Pakistan Home/Interior Secretary Level Talks, Joint Statement, March 28-29, 2011, attached hereto as Ex. AC; Reuters Report, March 29, 2011, attached hereto as Exhibit AD. The cooperation with respect to the Mumbai prosecutions allowed the countries to proceed to further discussions to resolve other substantive disputes between these countries. On April 27-28, 2011, the Commerce Secretaries of India and Pakistan met in Islamabad to discuss developing commercial and economic cooperation. Both countries "agreed that increase in trade and economic engagement would help not only in the mutual quest for national development, but also contribute to building trust between the two countries." *See* Agreed Minutes of the 5th Round of Talks on Commercial and Economic Co-operation Between Commerce Secretaries of India and Pakistan, April 27-28, 2011, attached hereto as Ex. AE.

25. **United States Foreign Policy Interest in Stable Pakistan/India Relations** As noted above, President Obama has recognized the need to reduce tensions between nuclear armed Pakistan and nuclear armed India, and the Administration has further noted that a progress to better relations, in addition to being generally a favorable development for both countries and for peace in the region, is particularly important now, when Pakistan is able to devote troops to the border with Afghanistan and the common enemy of all three countries, terrorism, as opposed to diverting troops to the border with India. *See* Secretary Clinton's remarks at the December 16, 2010 press conference, Ex. P at pp. 1-3, 6. Again, as noted in the New York Times:

The renewal of talks is likely to be welcomed by the United States, which has been eager to ease tensions between the two government

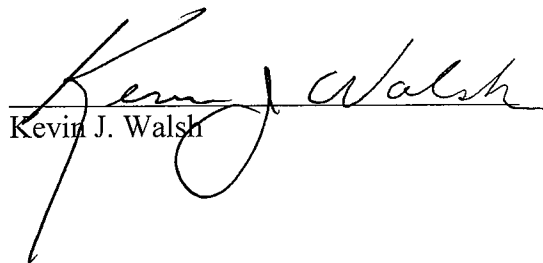
so that Pakistan can divert troops from its border with India to its frontier with Afghanistan and aid the American fight against Taliban insurgents.

See Ex. Z; *see also*, Statement of General David H. Petraeus, Senate Armed Services Committee, March 16, 2010, Ex. L (regarding the importance of Pakistan-India peace in the context of commitment of Pakistani troops to border areas).

26. **Current Developments in Pakistan-United States Relations** Late on the evening of May 1, 2011, President Obama announced that the leader of al Qaeda, Osama Bin Laden, had been killed in a United States military operation on Pakistani soil. *See* Remarks by the President on Osama Bin Laden, May 2, 2011, attached hereto as Ex. AF. In his statement, President Obama specifically noted Pakistan's assistance in providing intelligence which led to the operation, although the final strike was undertaken by U.S. forces alone:

[I]t's important to note that our counterterrorism cooperation with Pakistan helped lead us to bin Laden and the compound where he was hiding. Indeed, bin Laden had declared war against Pakistan as well, and ordered attacks against the Pakistani people.

Id. The impact, if any, on U.S. policy of the disclosure that Mr. Bin Laden appears to have hidden in a Pakistan city for some period of time will presumably be an issue to be considered by the Political Branches. *See* Emily Cadei, "Key Senators Warn Against Cutting Off Aid to Pakistan," CQ Today, May 3, 2011, attached hereto as Ex. AG.


Kevin J. Walsh

May 6, 2011
New York, New York.