

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Shimon ROSENBERG, et al.; Kia SCHERR,
et al.; and Emunah CHROMAN, et al.,

Plaintiffs,

v.

LASHKAR-E-TAIBA (also known as Idara
Khidmat-e-Khalq, Jamat ud Dawa, Markaz ud
Dawa and Tehrik-e-Tahaffuz-e-Qibla Awal);
MOHAMAED HAFIZ SAYEED; ZAKI ur
REHMAN LAKHVI; SAJID MAJID (also
known as Sajid Mir); AZAM CHEEMA;
INTER-SERVICES INTELLIGENCE of the
ISLAMIC REPUBLIC OF PAKISTAN;
AHMED SHUJA PASHA, NADEEM TAJ,
MAJOR IQBAL and MAJOR SAMIR ALI,

Defendants.

**DECLARATION OF JAMES P.
KREINDLER IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
MOTION TO DISMISS AND
REQUEST FOR
JURISDICTIONAL DISCOVERY**

10-cv-5381

10-cv-5382

10-cv-5448

DECLARATION OF JAMES P. KREINDLER

James P. Kreindler, Esq. an attorney duly admitted to the practice of law in New York and before this court, declares under penalty of perjury that:

1. I am an attorney duly licensed to practice law under and by virtue of the laws of the State of New York and in the Eastern District of New York and represent all plaintiffs in these consolidated actions.
2. I am submitting this declaration in support of plaintiffs' opposition to the motion to dismiss filed by defendants Inter-Services Intelligence ("ISI"), Ahmed Shuja Pasha ("Pasha") and Nadeem Taj ("Taj").
3. I have spoken with senior staff members of the State Department and the United States Senate regarding this litigation and have advised them of the claims plaintiffs are making

against the ISI, Pasha and Taj. To date, the United States Government has not submitted a statement of interest regarding the political question or immunity issues raised by those three defendants.

4. The moving defendants have submitted a declaration from Pakistan's Attorney General, who included with his declaration a document in translation (with no indication of its original language) bearing no official seal or other proof of authenticity. Plaintiffs have not had the opportunity to depose the declarant or to test the credibility and veracity of the document upon which the moving defendants rely in asserting that the ISI is a legitimate political subdivision of the Government of Pakistan.

**Evidence Raises Questions as to Whether the ISI is
a Political Subdivision of the Pakistani State**

5. During a hearing in Pakistan arising out of a constitutional petition filed by family members of 11 people allegedly abducted by the ISI, Maulvi Anwar ul Haq, the Attorney General of Pakistan (and the declarant upon whom defendants rely in their moving papers here), informed the Chief Justice of the Supreme Court of Pakistan in November 2010 that there is no legislative statute or executive order that created the ISI. *See Umer Farooq, Revealing the Secret, THE DAWN, Jan. 24, 2011, <http://www.dawn.com/2011/01/24/revealing-the-secret.html>, a true and accurate copy of which is attached hereto as Exhibit A (“*Revealing the Secret*”); Nasir Iqbal, *No Laws to Govern Spy Agencies, SC Told, THE DAWN, Nov. 26, 2010, <http://www.dawn.com/2010/11/26/no-laws-to-govern-spy-agencies-sc-told.html>, a true and accurate copy of which is attached hereto as Exhibit B (“*No Laws*”).* In the January 24, 2011 article, Mr. ul Haq is reported as having represented to the Supreme Court that no legal instrument supports the creation or functioning of the ISI. *See Exhibit A, Revealing the Secret.* In the November 26, 2010 piece, Mr. ul Haq is said to have conceded to the court that there were*

no rules or laws that governed the ISI. *See Exhibit B, No Laws.* Plaintiffs are making efforts to obtain the official records and/or transcripts of the November 2010 Pakistan Supreme Court hearing and Mr. ul Haq's sworn statements to the Pakistani court.

6. Attorney General ul Haq's November 2010 statement is consistent with questions previously raised by members of the Supreme Court of Pakistan, in which individual justices probed as to what law, if any, the ISI had been created under. *See Ardeshir Cowasjee, We Never Learn From History - 6, THE DAWN, Aug. 5, 2007, <http://archives.dawn.com/weekly/cowas/20070508.htm>, a true and accurate copy of which is attached hereto as Exhibit C ("We Never Learn From History").* Plaintiffs are making efforts to obtain the records and/or transcripts of the proceeding reported in that article.

7. In a human rights petition relating to the alleged abduction of six people by the ISI filed in the Sindh High Court in Karachi, Pakistan in 2006, Lieutenant Colonel Khalid Iqbal Sahoo, then the Assistant Judge Advocate General of the Pakistan Army, filed a brief on behalf of the Pakistan Ministry of Defence. In that July 11, 2006 brief, Lt. Col. Sahoo stated that Pakistan's Ministry of Defence has no operational control over the ISI. *See No Operational Control Over ISI and MI, Defence Ministry Tells Court, THE DAWN, July 12, 2006, <http://archives.dawn.com/2006/07/12/top3.htm>, a true and accurate copy of which is attached hereto as Exhibit D.* Plaintiffs are making efforts to obtain the brief the Ministry of Defence filed in that proceeding.

8. In the same proceeding, on July 19, 2006, Pakistan's then-Defence Secretary, Tariq Waseem Ghazi, filed an affidavit in which he, like Lt. Col. Sahoo, asserted that the Government of Pakistan has no control over the ISI. *See We Have No Control Over ISI, EXPRESS INDIA, July 20, 2006, <http://www.expressindia.com/news/fullstory.php?newsid=71367>, a true*

and accurate copy of which is attached hereto as Exhibit E. Plaintiffs are making efforts to obtain Secretary Ghazi's affidavit.

The ISI is Not Under the Control of the Government of Pakistan and it Has Acted to Undermine, Thwart and Subvert the Legitimate Government

9. In addition to the materials submitted in court proceedings in Pakistan, set forth above, an array of other statements and facts in the public record (though not yet in admissible form) raise questions as to whether the ISI is operating autonomously and pursuant to its own interests, and undermining, thwarting and subverting the goals and directives of the Government of Pakistan. Those questions merit additional investigation through discovery and other means.

10. Publicly available information warranting discovery includes the following:

- a. A United States Department of Defense Joint Task Force-Guantanamo Assessment dated June 17, 2005 states that “[r]ogue factions of the ISID have routinely pursued private interests and acted against the stated policy of the Government of Pakistan.” *See* Joint-Task Force-Guantanamo Detainee Assessment (“JTF-Guantanamo Assessment”), a true and accurate copy of which is attached hereto as Exhibit F.¹
- b. In 2008, according to public statements by Pakistan's Prime Minister, as confirmed by United States Department of State cable communications, the civilian Government of Pakistan attempted to put the ISI under the control of Pakistan's Ministry of the Interior, but the ISI refused to comply with those efforts. A true and accurate copy of the July 26, 2008 Government of Pakistan Press Release is attached hereto as Exhibit G; a true and accurate copy of the March 3, 2009 United States Department of State Cable “Scenesetter for FBI Director Mueller” is attached hereto as Exhibit H.²

¹ The copy of the JTF-Guantanamo Detainee Assessment plaintiffs currently have in their possession was disseminated by Wikileaks. Plaintiffs have submitted a request to the Office of the Secretary of Defense pursuant to the Freedom of Information Act to obtain an official version of that document. As soon as they are provided the official document, they will submit it to the Court and distribute it to all parties.

² All Department of State cables cited herein were obtained via Wikileaks. Plaintiffs have made requests pursuant to the Freedom of Information Act to the Department of State and the Department of Defense for official versions of these materials. As soon as those documents are received, plaintiffs will submit them to the Court and serve them on all parties.

- c. According to Hussain Haqqani, a former advisor to three different Pakistani Prime Ministers (Benazir Bhutto, Nawaz Sharif and Ghulam Jatoi) and currently the Pakistani Ambassador to the United States,³ the ISI has thwarted the aims and goals of the legitimate Pakistani government for decades. In 2005, the Carnegie Endowment for Peace published Mr. Haqqani's book "Pakistan: Between Mosque and Military," in which he stated that the ISI manipulated the Pakistani elections of 1977, 1988, 1990, 1997, and 2002. *See* HUSSAIN HAQQANI, PAKISTAN: BETWEEN MOSQUE AND MILITARY 382 (Carnegie Endowment for Peace 2005) ("BETWEEN MOSQUE AND MILITARY"), of which true and accurate copies of excerpts are attached hereto as Exhibit J. According to Mr. Haqqani, the ISI repeatedly "clearly violated the law by using the military to influence parliamentary elections[.]" *Id.*, p. 279. Plaintiffs will seek to depose and/or serve interrogatories on Ambassador Haqqani.

- d. Benazir Bhutto was twice elected Prime Minister of Pakistan, once in 1988 and again in 1993. According to Ms. Bhutto, Ramzi Yousef, a long-time associate of the ISI, with the support and encouragement of the ISI, unsuccessfully attempted to assassinate Ms. Bhutto in the 1990's, admitting that "[w]e had [Prime Minister Benazir Bhutto] right in our sights, but the weapons didn't arrive on time." *See* BENAZIR BHUTTO, DAUGHTER OF THE EAST 411 – 413 (Pocket Books 2008), of which true and accurate copies of excerpts are attached hereto as Exhibit K. Mr. Yousef is currently serving a life sentence in the United States Bureau of Prisons Administrative Maximum Security Prison in Florence, Colorado for his role in the 1993 World Trade Center attack. Plaintiffs will seek to depose or serve interrogatories on Mr. Yousef regarding his relationship with the ISI and its efforts to assassinate Pakistan's elected leaders.

- e. While running for Prime Minister again in 2007, Benazir Bhutto was assassinated. The United Nations Secretary General subsequently appointed a Commission of Inquiry to investigate Ms. Bhutto's assassination. The United Nations Commission was severely hampered by the ISI, "which impeded an unfettered search for the truth." *See* U.N. SECRETARY-GENERAL, Comm'n of Inquiry, *Report of the Inquiry Into the Death and Circumstances of the Assassination of Former Pakistani Prime Minister Mohtarma Benazir Bhutto* ("U.N. Report on Bhutto Assassination"), April 15, 2010, pp. 3, 63, a true and accurate copy of which is attached hereto as Exhibit L. The ISI went so far as to conduct "parallel investigations, gathering evidence and detaining suspects. Evidence gathered from such parallel investigations was selectively shared with the police" at the direction of the ISI. *Id.*, p. 63.

- f. After its investigation into the Bhutto assassination, the United Nations Commission stated that it had received credible information regarding the ISI's systematic wire-tapping of legitimate politicians, government officials, journalists

³ Mr. Haqqani's biography is available for review at www.husainhaqqani.com/detailbio.html. A true and accurate copy of that biography is attached hereto as Exhibit I.

and social activists. *See id.*, p. 59. “These activities are not authorized or overseen by judicial authorities and are not in keeping with the operations of such agencies in a democratic society. . . This pervasive involvement of intelligence agencies in diverse spheres, which is an open secret, has undermined the rule of law, distorted civilian – military relations and weakened some political and law enforcement institutions. At the same time, it has contributed to wide-spread public distrust in those institutions and fed a generalized political culture that thrives on competing conspiracy theories.” *Id.*, pp. 59-60. Plaintiffs will seek to depose or serve interrogatories on the members of the United Nations Commission regarding their knowledge of the ISI.

- g. Ms. Sherry Rehman, a member of the Pakistan National Assembly who became the Pakistan Minister of Information in 2008, has written that the “inter-services intelligence agencies remain above the law and unaccountable.” *See* Sherry Rehman, *Enigma of the Defence Budget*, THE DAWN, June 16, 2005, <http://archives.dawn.com/2005/06/16/op.htm>, a true and accurate copy of which is attached hereto as Exhibit M. Ms. Rehman also stated that the ISI uses “secret funds and ghost bank accounts to destabilize civilian political parties and their governments.” *Id.* Ms. Rehman specifically identified a scandal involving the Mehran Bank as “an example of such financial corruption, when bribes worth . . . 14 million [Rupees] were unearthed as paid out by the ISI to manipulate the 1990 elections, a fact which was admitted in court by General Aslam Beg, the former [Chief of Army Services].” *Id.* Plaintiffs will seek to serve interrogatories on Ms. Rehman and are making efforts to obtain the transcript or other records of the court proceedings in which General Beg made the statements cited by Ms. Rehman.
- h. United States officials have also made public and private statements expressing concerns about the ISI’s extra-governmental conduct over the last two decades. Secretary of State James Baker sent a letter to Pakistani Prime Minister Nawaz Sharif in 1992 that Ambassador Haqqani read. *See* Exh. J, BETWEEN MOSQUE AND MILITARY, p. 294. Mr. Haqqani reported that Secretary Baker wrote “[the United States has] information indicating that [the ISI] and others intend to continue to provide material support to groups that have engaged in terrorism.” *Id.* Following up on the Secretary Baker letter, United States Ambassador to Pakistan James Platt wrote to Prime Minister Sharif in May 1992 that he was very confident that the ISI was “supporting Kashmiri and Sikh militants who carry out acts of terrorism. . . . This support takes the form of providing weapons, training, and assistance in infiltration. . . . There is no doubt in our mind about this. . . . Our information is certain. It does not come from the Indian government.” *Id.*, pp. 294 – 295.
- i. Bruce Riedel, at the request of President Obama, served recently as the chairperson of an interagency review of policy for Afghanistan and Pakistan and is currently a senior fellow at the Brookings Institution. He was also an adviser to Presidents George W. Bush, Bill Clinton and George H.W. Bush, as well as a CIA

officer with substantial experience in the region and information about the political relationships in Pakistan.⁴ Mr. Riedel recently wrote that the ISI's conduct does not "implicate" the Pakistani civilian government. *See* Bruce Riedel, *On the Line*, TABLET MAGAZINE, June 27, 2011, <http://www.tabletmag.com/news-and-politics/70968/on-the-line> ("*On the Line*"), a true and accurate copy of which is attached hereto as Exhibit O.

- j. Classified United States intelligence obtained by The New York Times "show[s] that senior officials of the ... [ISI] directed the attack on" and killing of investigative journalist Saleem Shahzad, whose tortured body was recovered last month after he went missing on May 29, 2011. *See* Jane Perlez and Eric Schmitt, *Pakistan's Spies Tied to Slaying of a Journalist*, THE NEW YORK TIMES, at A1, July 5, 2011, a true and accurate copy of which is attached hereto as Exhibit P. In light of the furor over rumors of the ISI's involvement in Shahzad's death, the Government of Pakistan has convened an investigation into the matter. *Id.*

The Relationship Among the ISI, Lashkar-e-Taiba, Osama bin Laden and Al Qaeda

11. As with the information raising troubling questions about the authority and legitimacy of the ISI, a variety of information, though not presently in admissible form, also illuminates the relationship among the ISI, Lashkar-e-Taiba ("LeT"), Osama bin Laden (indicted on federal criminal charges and on the United States' top ten most wanted list, *see* Exhibits Q and R hereto, true and accurate copies of excerpts from the bin Laden indictment and the Federal Bureau of Investigation's fugitive notice) and Al Qaeda (designated as a terrorist organization by the United States Department of State 1999, *see* Exhibit S hereto, a true and accurate copy of that designation). For example:

- a. According to Bruce Riedel, LeT was originally a vehicle for turning young Kashmiri men into fighters in the anti-Soviet war in Afghanistan. *See* BRUCE RIEDEL, *THE SEARCH FOR AL QAEDA* 43 (Brookings Institution Press 2008) ("THE SEARCH FOR AL QAEDA"), of which true and accurate copies of excerpts are attached hereto as Exhibit T. By the early 1990's with the withdrawal of the Soviet Army from Afghanistan, the ISI refocused LeT's activities on the disputed region of Kashmir. *Id.*

⁴ Mr. Riedel's biography, experience and background are available for review at www.brookings.edu/experts/riedelb.aspx, a true and accurate copy of which is attached hereto as Exhibit N.

- b. Mr. Riedel explains that “Osama (Bin Laden) . . . worked with the ISI in the creation of a key Kashmiri jihadist group in the late 1980’s, the [LeT] . . . [The] ISI played a key role in LeT’s creation, supplemented by Osama’s donation of \$200,000, almost certainly with the ISI’s encouragement.” *See* Exh. T, THE SEARCH FOR AL QAEDA, p. 43. The ISI thereafter asked bin Laden to assist in overthrowing the democratic government of Pakistan. *See* Exh. K, DAUGHTER OF THE EAST, p. 405.
- c. Between 1991 and 1996, when bin Laden was in Sudan, the ISI maintained its relationship with him and, according to the 9/11 Commission, at the time bin Laden and al Qaeda returned to Afghanistan from Sudan, the ISI “probably had advance knowledge of his coming, and its officers may have facilitated his travel.” *See* National Commission on Terrorist Attacks upon the United States, The 9/11 Commission Report, p. 64 (2004), of which true and accurate copies of excerpts are attached hereto as Exhibit U. The ISI then continued their oversight of and assistance to bin Laden, reportedly introducing him “to Taliban leaders in Kandahar.” *Id.*, pp. 64 – 65. The ISI’s objectives in setting up these meetings was to convince the Taliban to allow bin Laden to reestablish control over his former training camps in the hope that bin Laden would make the camps available to ISI “for training Kashmiri militants.” *Id.*
- d. The United States designated the LeT a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Naturalization Act (8 U.S.C. § 1189) on December 26, 2001. *See* Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations, 66 Fed. Reg. 247,66492 (Dec. 26, 2001), a true and accurate copy of which is attached hereto as Exhibit V. The Department of the Treasury designated LeT as a “specially designated global terrorist” entity pursuant to 31 C.F.R. 595 and 31 C.F.R. 596 on December 20, 2001. A true and accurate copy of that designation is attached hereto as Exhibit W.
- e. General Pervez Musharraf of Pakistan outlawed LeT on January 12, 2002 and shortly after doing so ordered the arrest of LeT’s leader, Hafiz Mohamed Saeed. *See* Exh. J, BETWEEN MOSQUE AND MILITARY, p. 303. Thereafter, the ISI ensured that Mr. Saeed was released from custody. “It was clear that the ISI was not keen to offend its jihadi partners by keeping them in prison for too long.” *Id.* The ISI then made financial payoffs to LeT through Mr. Saeed, after which LeT went dormant for a short period. *Id.*, p. 306.
- f. In 2002, Jack Straw, the Foreign Secretary of the United Kingdom, in an address to Parliament stated that “[a] number of these terrorist organizations including [LeT] . . . have been at the forefront of violent activity in the region. India has long charged that such terrorism has had the covert support . . . of the main intelligence agency in Pakistan, the Inter Services Intelligence Directorate, the ISID. Her Majesty’s Government accepts that there is a clear link between the

ISID and those groups.” See Exhibit X, a true and accurate copy of Secretary Jack Straw’s statements in Parliament on June 10, 2001.

- g. In its report regarding the Benazir Bhutto assassination, the United Nations noted that “Lashkar e Taiba ... has close ties with the ISI.” Exh. L, U.N. Report on Bhutto Assassination, p. 49.
- h. Individual operatives for the LeT have confirmed this relationship. David Hicks, a Guantanamo detainee now released to Australia, said that the ISI controlled the infiltration of LeT terrorists into the Indian controlled section of Kashmir. A true and accurate copy of United States Army Brigadier General Jay W. Hood’s report concerning David Hicks is attached hereto as Exhibit Y. Brigadier General Hood’s report states that the “Inter-Service Intelligence Directorate (ISID) control[ed] the number of troops in Kashmir,” and also that the “Inter-Service Intelligence Directorate ... has strong ties with the LeT in regard to insertion tactics into Kashmir.” See *id.*, p. 2.
- i. Another Guantanamo detainee, Wali Mohammed Saraf, facilitated money transfers for Al Qaeda weapons purchases and terrorist operations, some of which were done with the assistance and support of the ISI. A true and accurate copy of United States Rear Admiral D.M. Thomas Jr.’s report concerning Wali Mohammed Saraf is attached hereto as Exhibit Z (“Rear Admiral Thomas Report”). Rear Admiral Thomas’s report finds that, at the direction of bin Laden, “In March 2000, and with ISI[]’s assistance, detainee facilitated the financing for the purchase of shoulder-fired surface-to-air missiles ... for fighters in Chechnya. ... Two ISI[] officers ... supported ... efforts to purchase [missile] systems for al-Qaida. The ISI[] support included providing a subsidy of \$4,000 US for each [missile] purchased from suppliers in Afghanistan and Pakistan. [The detainee’s associate] had previously purchased over 180 weapons for al-Qaida with the assistance of the ISI[].” *Id.*, pp. 2, 6, 7.
- j. In a document produced to assist Guantanamo investigators, titled *Joint Task Force-Guantanamo Matrix of Threat Indicators for Enemy Combatants*, the ISI is contained in “a list of terrorist and terrorist support entities identified as associate forces. . . . Through associations with these groups and organizations, a detainee may have provided support to al-Qaida or the Taliban, or engaged in hostilities against US or Coalition forces.” A true and accurate copy of the *Joint Task Force-Guantanamo Matrix of Threat Indicators for Enemy Combatants* is attached hereto as Exhibit AA (“JTF-Guantanamo Threat Matrix”).⁵

⁵ The copy of the JTF-Guantanamo Threat Matrix plaintiffs currently have in their possession was disseminated by Wikileaks. Plaintiffs have submitted a request to the Office of the Secretary of Defense pursuant to the Freedom of Information Act to obtain an official version of that document. On June 23, 2011, the Office of the Secretary of Defense asked for additional information in order to process the request. As soon as they are provided the official document, they will submit it to the Court and to all parties.

- k. In 2008, the NATO Commander in Afghanistan, United States General David D. McKiernan, told reporters that “[t]here certainly is a level of ISI complicity in the militant areas in Pakistan and organizations such as the Taliban.” *See* Exhibit BB, a true and accurate copy of the article appearing in Agence-France Press on August 10, 2008 (“*Pakistan intelligence helping Taliban: NATO general*”).
- l. On November 30, 2008, the United States Ambassador to Pakistan, Anne Patterson wrote to Secretary of State Hilary Clinton, noting the troubling “extent of [Lashkar-e-Taiba’s] current relationship with ISI.” *See* Exhibit CC, a true and accurate copy of the November 30, 2008 United States Department of State Cable “Zardari Promises to Send an ISI Director to India” (“*Zardari Promises Cable*.”) Ambassador Patterson later wrote that “[t]he Mumbai attacks were masterminded by LeT operatives and they continue to focus on militancy against India. The group was created and trained by Pakistani intelligence services to fight a proxy war against India.” *See* Exhibit DD, a true and accurate copy of the October 23, 2009 United States Department of State Cable “Extremism in Southern Punjab and Northern Sindh.” She had also, earlier, said it was not clear that Pakistani government leaders had “the power to force ISI to take action” regarding Lashkar-e-Taiba’s activities inside Pakistan borders. Exh. CC, *Zardari Promises Cable*.
- m. The United States Special Representative on Afghanistan and Pakistan, Richard Holbrooke, met with Indian government representatives in February 2010. The United States Ambassador to India, Timothy J. Roemer, attended that meeting and wrote of it in a cable, noting that Holbrooke pressed Pakistan to take action against the ISI and that Holbrooke “assessed that the civilian government in Pakistan had a limited capacity to take such steps.” *See* Exhibit EE, a true and accurate copy of the February 1, 2009 United States Department of State Cable “SRAP Holbrooke Meets Indian External Affairs Minister Krishna.”
- n. Recently, David Headley testified under oath for the United States Government as a cooperating witness in the prosecution of Tahawwur Rana. During that testimony, Mr. Headley said that after training with LeT for some time, he travelled to the Pakistani tribal territories in the summer of 2006. *See* Exhibit FF, attached hereto, a true and accurate copy of excerpts from Mr. Headley’s trial testimony, *United States v. Rana*, 09-cr-830 (N.D.Ill. 2011) (“Headley Testimony”), p. 671 – 73. After being stopped and detained first by ISI Major Ali, Mr. Headley was introduced to Major Iqbal, who was represented to be a member of the ISI. *Id.*, pp. 95, 674 – 75. Over the next three years, Mr. Headley received training from the ISI on over 50 occasions. *Id.*, p. 677. That training was provided by, among others, Major Iqbal and a number of other ISI non-commissioned officers. *Id.*, p. 676 (“Q: In fact, [the ISI] kind of took off – took up where LeT had let off, correct? A: Yes.”)
- o. The New York Times published an article on June 24, 2011 on the information recovered from a cellular telephone seized during the raid of bin Laden’s

Abbottabad, Pakistan compound. In that article, two sources, described as a “militant commander” and a “senior fighter,” both of whom “have received support from the ISI for years,” were reported as having said “they were convinced that the ISI played a part in sheltering Bin Laden.” *See* Carlotta Gall, Pir Zubair Shah and Eric Schmitt, *Seized Phone Offers Clues to Bin Laden’s Pakistani Links*, THE NEW YORK TIMES, June 24, 2011, at A1, a true and accurate copy of which is attached hereto as Exhibit GG.

- p. In another New York Times report, several retired high-level officers of the ISI have been named as having participated in meetings with militant groups disfavored or outlawed by the Government of Pakistan. *See* Carlotta Gall, *Pakistani Military Still Cultivates Militant Groups, Former Fighter Says*, THE NEW YORK TIMES, July 3, 2011, at A4, a true and accurate copy of which is attached hereto as Exhibit HH.

Evidence Proffered by the United States Government Confirms Plaintiffs’ Allegations that the ISI was Involved in the Mumbai Attacks

12. Information both in admissible and non-admissible form reveals the extent of the ISI’s involvement with the Mumbai attacks.

13. During grand jury proceedings, David Headley testified under oath that he “had been asked to perform espionage work for ISI” and that, at the behest of the ISI, he was on “assignment to conduct surveillance in Mumbai.” *United States v. Rana*, 09-cr-830, docket entry no. 197, slip op. at 3 - 4 (N.D.Ill. April 1, 2011), a true and accurate copy of which is attached hereto as Exhibit II.

14. Later, during the Rana criminal trial in the United States District Court for the Northern District of Illinois, Headley testified that the ISI trained him to go into India on secret missions, including in preparation for the Mumbai attacks. *See* Exh. FF, Headley Testimony, p. 681. Mr. Headley also stated that in 2006 his ISI handlers provided him with funding in order to open a cover business in Mumbai called First World Immigration. *Id.*, pp. 689, 141. Headley testified that his first contact with the ISI was with non-moving defendant Major Ali, who then turned him over to Major Iqbal. Once Mr. Headley was settled in Mumbai, his training with the ISI continued. *Id.*, pp. 732 – 33. The ISI training Mr. Headley received was specifically tailored

to what the ISI wanted him to do in Mumbai. *Id.*, p. 733. That training included looking for a landing site into Mumbai as well as an escape route. *Id.*, p. 733 – 34. Mr. Headley would return to Pakistan in order to brief his ISI handler, Major Iqbal, on the preparation work in Mumbai and provide him with copies of video surveillance from Mumbai. *Id.*, p. 744. It was Major Iqbal who selected the Chabad House as one of the targets. *Id.*, pp. 280 – 281. The debriefings in anticipation of the Mumbai attack between Headley and the ISI members would take place in the ISI's safehouse in Lahore, Pakistan. *Id.*, pp. 745 – 746. Headley, though directed by ISI Major Iqbal, also worked with numerous low-level ISI members. *Id.*, pp. 676 – 677. Plaintiffs will seek to depose Mr. Headley regarding the ISI's involvement in the Mumbai attacks as well as any information he has regarding whether the ISI was operating without the consent and knowledge of the Pakistani government.

15. According to the information provided by the United States Department of Justice in the *Santiago* proffer filed in anticipation of Mr. Headley's testimony, Mr. Headley met with Major Iqbal, his ISI handler in November 2007, during which meeting the handler told Headley that once the Mumbai attacks were complete, "he wanted Headley to travel to Delhi, India, to perform surveillance of military facilities, again using an office of First World Immigration as a his cover." See *United States v. Rana*, 09-cr-830 (N.D.Ill. April 11, 2011), Docket Entry No. 199, p. 27, a true and accurate copy of which is attached hereto as Exhibit JJ. The United States Government has also asserted that Mr. Headley, after completing surveillance activities in Mumbai, returned to Pakistan to report to his ISI handler about his discussions with "Lashkar regarding the planning of and preparation for the attacks." *Id.*, p. 28.

16. According to an indictment unsealed in the Federal District Court for the Northern District of Illinois on April 21, 2011, a grand jury has indicted Major Iqbal, Mr. Headley's ISI

handler, in relation to his role in the Mumbai terror attacks. *See United States v. Kashmiri et al.*, 09-cr-830 (N.D.Ill. April 11, 2011), docket entry number 213. A true and accurate copy of that indictment is attached hereto as Exhibit KK. Plaintiffs will seek to depose or serve interrogatories on Major Iqbal, if and when he is found.

17. Following the Mumbai attack, the Indian government conducted an 18 month investigation. Indian Home Secretary G.K. Pillai announced the investigation's findings in a journalists' forum, stating that the ISI had been "literally controlling and coordinating the [Mumbai] attack from beginning to end." *See The ISI didn't just play a peripheral role in the 26/11 attacks*, INDIAN EXPRESS, July 14, 2010, <http://www.indianexpress.com/story-print/647705>, a true and accurate copy of which is attached hereto as Exhibit LL.

18. As part of its investigation, the Indian National Investigation Agency interrogated David C. Headley and the agency's report on the interrogation implicated several leaders of the ISI in the Mumbai attacks. A true and accurate copy of excerpts of the Indian National Investigation Agency Report on the Interrogation of David C. Headley ("NIA Headley Report") are attached hereto as Exhibit MM. For example, defendant Zaki ur Rehman, a high-ranking member of the LeT, was assigned Brigadier Riyaz as an ISI handler for purposes of planning and executing the Mumbai attack. *See id.*, p. 5. Additionally, ISI Colonel Shah established and oversaw the Karachi safehouse, from which the attacks on India were planned and launched. *Id.*, p. 6. ISI Colonel Hamza was defendant ISI Major Iqbal's superior. *See id.*, p. 9. Plaintiffs will seek to serve interrogatories on Indian officials involved in the NIA investigation into the Mumbai attacks.

19. According to the United States Ambassador to Pakistan, Anne Patterson, the Mumbai attacks "exposed the fruits of previous ISI policy to create Lashkar-e-Taiba and still

threatens potential conflict between nuclear powers.” *See* Exhibit NN, a true and accurate copy of the February 19, 2009 United States Department of State Cable “Scenesetter for General Kayani’s Visit to Washington.”

20. A year after the Mumbai attacks, Secretary of State Hillary Clinton was still complaining that “some officials from the Pakistan’s Inter-Services Intelligence Directorate (ISI) continue to maintain ties with a wide array of extremist organizations, in particular the Taliban, LeT and other extremist organizations.” *See* Exhibit OO, a true and accurate copy of the December 30, 2009 United States Department of State Cable “Terrorist Finance: Action Request for Senior Level Engagement on Terrorism Finance.”

The Discovery of bin Laden In Abbottabad, Pakistan

21. On May 1, 2011, the President of the United States announced that he had authorized a military strike inside Pakistan’s borders targeting Osama bin Laden’s hideout. *See* Exhibit PP hereto, a true and accurate copy President Barack Obama’s Remarks issued on May 2, 2011. Two dozen Navy Seals and Central Intelligence Agency operatives surreptitiously entered Pakistani territory, infiltrated a compound in Abbottabad, Pakistan and killed Osama bin Laden, who had been living there. *Id.* President Obama explained that prior to the strike, he had “met repeatedly with my national security team as we developed more information about the possibility that we had located bin Laden hiding within a compound deep inside of Pakistan.” *Id.* The United States Government undertook this operation without any prior warning to or approval from the Pakistan Government. *See id.* As White House Counterterrorism Advisor John Brennan publicly stated, “We didn’t contact the Pakistanis until after all of our people, all of our aircraft were out of Pakistani airspace. [The Pakistanis] had no idea about who might

have been on [our aircraft].” *See* Exhibit QQ, a true and accurate copy of White House Counterterrorism Advisor John Brennan’s statements.

22. In light of the apprehension of bin Laden, on May 6, 2011, Senator Christopher Coons, in a hearing before the Senate Foreign Relations Committee, stated that “at best, the ISI was unable to detect bin Laden’s presence, at worst it was complicit in providing him safe haven, probably for six years and in either way, it then challenges us to recalibrate our relationship.” *See* Exhibit RR, a true and accurate copy of excerpts from Senator Coons’s May 6, 2011 remarks.

This Motion Should be Deferred (1) to Allow Plaintiffs to Conduct Jurisdictional Discovery; and (2) to Allow the Executive Branch an Opportunity to Submit a Statement of Interest

23. As set forth in the accompanying memorandum of law, this Court should deny defendants’ political question dismissal motion or, at the least, defer a decision on it. As for the immunity arguments, the moving defendants have submitted documentary evidence that plaintiffs have not had the opportunity to test. Statements by, among others, the moving defendants’ declarant Attorney General ul Haq warrant additional inquiry into the creation and operation of the ISI and whether it is a legitimate political subdivision. Until plaintiffs have an opportunity to pursue discovery on these issues, dismissal on FSIA or common law immunity grounds is unwarranted.

24. I have met with high-ranking officials in the Executive and Legislative Branches to discuss this litigation and advised them of plaintiffs’ position. I have advised those officials that if the United States Government states to plaintiffs and to this Court that these lawsuits against defendants ISI, Pasha and Taj hinder United States foreign policy toward Pakistan, we would dismiss against those defendants. I have also informed those officials that we are seeking the same compensation -- \$10 million per death and \$3 million per injury – that was received by

