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September 29, 2011

VIA ECF

Hon. Dora L. Irizarry
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Room 4A South
Brooklyn, NY 11201-1818

Re: ***Rosenberg et al. v. Lashkar-e-Taiba et al, 1:10-cv-05381***
Scherr v. Lashkar-e-Taiba et al, 1:10-cv-05382
Chroman v. Lashkar-e-Taiba et al, 1:10-cv-05448
Ragsdale v. Lashkar-e-Taiba et al, 1:11-cv-3893

Dear Judge Irizarry:

On behalf of Defendants, the **Inter-Services Intelligence Directorate of the Islamic Republic of Pakistan (“ISI”)** and the current and former **Director Generals of ISI, Ahmed Shuja Pasha and Nadeem Taj**, I write in response to the letter from counsel for Plaintiffs (dated September 28, but filed today) which purports to provide the Court with “relevant information regarding plaintiffs’ action”.

Defendants’ pending motion seeks dismissal because: (1) Plaintiffs’ claims are against a foreign state (and its officials) and no exception to the FSIA has been or can be alleged; and (2) Plaintiffs’ central claim, that Pakistan is a state supporter of terrorism, is quintessentially a “political question”.

Nothing in Admiral Mullen’s recent testimony impacts either ground.

It is significant that Admiral Mullen’s comments were made in the context of **testimony of a member of the executive branch before a congressional committee**. The entire context was the need to address United States Government concerns about the (alleged) conduct of Pakistan through an ongoing diplomatic relationship, and the importance (and difficulties) of this relationship was repeatedly stressed – even by Admiral Mullen:

...With Pakistan’s help we have disrupted al-Qaeda and its senior leadership in the border regions and degraded its ability to plan and conduct terror attacks.

We must and will remain steadfast partners...and yes work closely with Pakistan, as difficult or as uneven that relationship might be...I have been dedicated to this task because I know the importance of this relationship, strained as it is, and because I recognize the difficulties Pakistan had had and the many sacrifices it has made in its own internal fight against terrorism. And despite deep personal disappointments in the decisions of the Pakistani military and government, I still believe that we must stay engaged. (Statement of Admiral Mullen at p. 7, attached as Ex. A to 9/28/11 Kreindler letter)

* * * * *

I believe in the importance of Pakistan to the region, because I believe we share a common interest against terrorism and because I recognize the great political and economic difficulties Pakistan faces... [A] flawed and difficult relationship is better than no relationship at all...Military cooperation again is warming. Information flow between us and across the border is quickening. Transparency is returning slowly...What matters most right now is moving forward...(Transcript of Hearing at p. 13-14, 9/22/11, attached as Ex. A).

In the context of a congressional hearing to explore legislative and executive actions, the Committee discussed State Department designation of the Haqqani group as a terrorist organization (Ex. A, p. 3) and legislative restrictions on aid to Pakistan, which the Committee clearly identified as an issue for the Congress to consider, with input from State. (Ex. A, p. 49-50). There was no discussion regarding addressing such issues in private civil litigation before the courts of the United States. The Committee also was informed that the concerns raised by Admiral Mullen had been raised by the United States Government in direct discussions with members of the Government of Pakistan, including General Kayani and General Pasha, a defendant in this case. (Ex. A, p. 16).

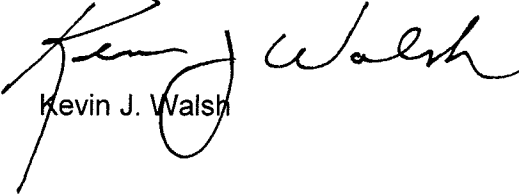
In the days after Admiral Mullen's testimony, the State Department and the White House noted that the "safe haven" issue was being raised "at the highest levels" and confirmed that "we are committed to this relationship" and "[w]e're going to work constructively with them to address the challenges we face." (State Department Regular Briefing, 9/26/11, attached as Ex. B). See also, to the same effect, the White House Press Briefing from 9/23/11, attached as Ex. C. ("We have an important relationship with Pakistan").

Just yesterday the White House Press Secretary (again) characterized the United States - Pakistan relationship as "complicated" and "important", noted (again) that "Pakistan has been an important partner" in the war against terrorism and, with regard to Admiral Mullen's broad characterization of the Haqqani Network as "a veritable arm of the ISI", noted "it's not language I would use". (White House Press Briefing, 9/28/11, attached at Ex. D). Press Secretary Carney characterized this issue as a continuing concern about the existence of "safe havens" for insurgents in Pakistan and noted that the Pakistan and U.S. governments continue to be involved in discussions regarding those issues.

In short, nothing about Admiral Mullen's testimony, and the resulting, ongoing policy discussions, in any way supports a conclusion that this Court should take jurisdiction of the political question at the heart of this case.

Finally, insofar as Plaintiffs' letter and this response are filed as part of the public record, for that record, we note that the Government of Pakistan has firmly denied providing assistance to the Haqqani organization and has condemned the recent attack upon the United States Embassy in Afghanistan.

Respectfully submitted,



Kevin J. Walsh

KJW:md

cc: James P. Kreindler, Esq.