

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ZAYN AL ABIDIN MUHAMMAD)	
HUSAYN (ISN # 10016),)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 08-CV-1360 (EGS)
)	
LLOYD J. AUSTIN III,)	
)	
<i>Respondent.</i>)	
)	

**PETITIONER’S MOTION FOR AN ORDER REQUIRING
HIS IMMEDIATE RELEASE AND REPATRIATION**

Petitioner Zayn al Abidin Muhammad Husayn, commonly known as Abu Zubaydah, by and through undersigned counsel, respectfully submits this motion for an order requiring his immediate release from detention at Guantánamo Bay and repatriation to a country to be named on the basis that Respondent no longer has the legal authority to detain him for the reasons set forth in the annexed Memorandum of Law, the Declaration of Mark P. Denbeaux, and the exhibits thereto. Petitioner has conferred with counsel for Respondent, and he does not consent to the relief sought herein.

If the Court does not grant Petitioner’s Motion, and Respondent continues to assert that the U.S. government has legal authority to detain him, despite the statements made by the Executive as detailed in the Memorandum of Law, then Petitioner requests this Court to order the government to state: (1) the factual and legal basis for its detention authority; and (2) whether that

authority will, in its view, continue to exist after the complete withdrawal of U.S. troops from Afghanistan.

Dated: June 25, 2021

Respectfully submitted,

/s/ Charles R. Church

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Local Rule 5.4(d)(2), that the foregoing motion and related documents have been served electronically on counsel of record for Respondent.

Date: June 25, 2021

/s/ Charles R. Church

**IN THE UNITED STATES DISTRICT COURT
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN
ORDER REQUIRING PETITIONER’S IMMEDIATE RELEASE AND
REPATRIATION**

President Joseph R. Biden has stated that the United States is no longer at war in Afghanistan, and that U.S. troops will be fully withdrawn by September 11, 2021. His administration has further stated that the United States has achieved its “objective” with respect to al Qaeda in Afghanistan. The United States’ detention authority over prisoners of war is by law coterminous with the war itself, and based upon the foregoing, that authority has now, at long last, expired. Petitioner therefore files this motion seeking an order requiring his immediate release and repatriation to a country to be named. If the government contends that it continues to have detention authority, Petitioner requests that the Court order the government to state: (1) the factual and legal basis for its detention authority; and (2) whether that authority will, in its view, continue to exist after the complete withdrawal of U.S. troops from Afghanistan. Petitioner further urges this Court not to entertain whatever novel theory the government may devise at the eleventh hour in the name of justifying indefinite detention. The law is clear: Abu Zubaydah

gets to go home now, regardless of whether, as the government incorrectly contends, he was part of, or substantially supported al Qaeda or associated forces.

I. RELEVANT FACTS

It is undisputed that Petitioner (commonly known as Abu Zubaydah) is a Palestinian born and raised in Saudi Arabia who was captured on or about March 28, 2002, during a raid by Pakistani authorities working with the CIA on a guesthouse in Faisalabad, Pakistan in which Abu Zubaydah was shot multiple times causing wounds so dire that he nearly died from them. During the period from his arrest until he was transferred to military detention at Guantánamo Bay on or about September 6, 2006, Petitioner was held by the CIA in incommunicado detention, transferred among a number of different secret black sites across the world, and subjected to harsh conditions of detention and, at times, “enhanced interrogation techniques” and worse.¹ Petitioner has remained immured at Guantánamo’s military detention facility ever since his transfer there. He has never been charged.

On April 14, 2021, President Biden declared the end to “America’s longest war”—the war in Afghanistan.² U.S. troops would begin their “final withdrawal” on May 1, 2021,³ a deadline established by a preexisting agreement; they will be completely withdrawn before

¹ See generally Senate Select Committee on Intelligence Executive Summary (“SSCI ES”) of its *Study of the [CIA] Detention and Interrogation Program* (Declass. Revs. Dec. 3, 2014). <https://www.feinstein.senate.gov/public/index.cfm/senate-intelligence-committee-study-on-cia-detention-and-interrogation-program>

² Declaration of Mark P. Denbeaux, ¶ 2, Ex. 1 at 2: “Remarks by President Biden on the Way Forward in Afghanistan,” Apr. 14, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>

³ In reality, the U.S. military began its withdrawal on April 25, 2021. D. Zuccino, “The War in Afghanistan: How It Started and How It Is Ending,” *The New York Times*, May 6, 2021, <https://www.nytimes.com/article/afghanistan-war-us.html>

September 11, 2021. Unlike the previous drawdown of U.S. forces in which the combat mission of Operation Enduring Freedom was supplanted by the counterterrorism and training mission of Operation Freedom’s Sentinel, the withdrawal originally scheduled to begin on May 1 marks no new mission, but rather is the actual end of the of the U.S. war in Afghanistan. President Biden further declared “[W]e will not stay involved in Afghanistan militarily....” Rather, [t]he remaining military presence in Afghanistan will be the force required to protect our diplomatic presence.”⁴ Withdrawal is a certainty, not a possibility; a senior administration official stated that “[t]he President has judged that a conditions-based approach, which has been the approach of the last two decades, is a recipe for staying in Afghanistan forever.”⁵ President Biden has rejected⁶ such an approach and made a categorical decision: “[I]t’s time to end America’s longest war. It’s time for American troops to come home.”⁷

⁴ Denbeaux Decl. ¶ 2, Ex. 1 at 4, and ¶ 3, Ex.2 at 5.

⁵ *Id.* ¶ 3, Ex. 2 – Background Press Call by a Senior Administration on Afghanistan, Apr. 13, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/13/background-press-call-by-a-senior-administration-official-on-afghanistan/> at 5.

⁶ According to a published report, Secretary of Defense Lloyd J. Austin III and General Mark A. Milley, Chairman of the Joint Chiefs of Staff, “wanted to make certain” that President Biden was ordering “all American troops out of Afghanistan by Sept. 11, the 20th anniversary of the attacks on New York and the Pentagon.” General Milley was quoted by officials with knowledge of the meeting between them and President Biden in the Oval Office, as saying: “I take what you said as a decision, sir. Is that correct, Mr. President?” President Biden reportedly replied that “it was.” Furthermore, President Biden reportedly told Secretary Austin and General Milley that “there would be no conditions put on the withdrawal ... cutting off the last thread -- one that had worked with Mr. Trump – and that Mr. Austin and General Milley hoped could stave off a full drawdown. They were told, Zero meant zero.” H. Cooper, E. Schmitt, and D. Sanger, *Debating Exit, Biden Rejected Generals’ Views*, *The New York Times*, April 19, 2021, <https://www.nytimes.com/2021/04/19/us/biden-debating-exit-from-afghanistan-rejected-generals-views.html>

⁷ Denbeaux Decl. ¶ 2, Ex. 1 at 2.

To be clear, the war with respect to al Qaeda is over as well, and appears to have been for some time. President Biden stated that the United States has defeated al Qaeda in Afghanistan in line with the goals the invasion had set out to accomplish:

War in Afghanistan was never meant to be a multi-generational undertaking. We were attacked. **We went to war with clear goals. We achieved those objectives. Bin Laden is dead, and al Qaeda is degraded in Iraq—in Afghanistan.** And it's time to end the forever war.

Denbeaux Decl. ¶ 2, Ex. 1 at 7. (Bold supplied.) The Biden Administration further clarified that al Qaeda and the United States are not engaged in active hostilities. Instead, the United States is only monitoring what remains of them:

[W]e are not taking our eye off the terrorist threat or signs of al Qaeda's resurgence. **They do not currently present an external—or do not currently possess an external plotting capability that can threaten the homeland.** But this is something we have to focus on: its potential for reemerging in the years ahead.

Id. ¶ 3, Ex. 2 at 3. (Bold supplied.) But keeping an eye on whatever remnants remain of al Qaeda does not permit detention authority under domestic or international law, even if Petitioner were “part of al Qaeda,” which he never was. Indeed, according to the SSCI ES, the CIA itself concluded that Abu Zubaydah “was not a member of al Qaeda.”⁸ And Ali Soufan, the FBI Special Agent who first interrogated Abu Zubaydah after his capture, agrees in his book that Petitioner “was not a member of Al Qaeda....”⁹ Finally, in 2017 Abu Zubaydah was delisted from the UN Security Council “ISIL (Da’esh) and al Qaeda Sanctions List,” based on the

⁸ SSCI ES at 410, citing CIA Intelligence Assessment, Aug. 16, 2006, “Countering Misconceptions About Training Camps in Afghanistan, 1990-2001.”

⁹ A. Soufan, “The Black Banners: How Torture Derailed the War on Terror—Declassified edition,” (W.W. Norton 2020) at 373.

recommendation of the UN Ombudsperson, who also concluded that Abu Zubaydah was not a member of al Qaeda. *See* Dec. 26, 2017 letter from the Legal Officer, Office of the Ombudsperson to Mark Denbeaux, Subj. “Delisting Request for Abu Zubaydah,” Case No. 78, and Annex—Summary of the analysis, observations, arguments and recommendation set out in the Ombudsperson’s report; Denbeaux Decl., ¶ 5, Ex. 4.

In light of the Executive’s public declarations described above, counsel for Petitioner on June 24, 2021 wrote to counsel for Respondent pursuant to Local Rule 7(m). Counsel’s response on June 25 stated that “We will oppose your motion. Denbeaux Decl. ¶ 4, Ex. 3.

II. ARGUMENT

The end of the war in Afghanistan marks the end of the government’s authority to detain prisoners of war captured during that conflict, including Abu Zubaydah. The obligation to release and repatriate Petitioner is crystal clear under domestic and international law.

The Geneva Convention Relative to the Treatment of Prisoners of War mandates:

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

Article 118, titled “Release and Repatriation,” of the Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949 [1955], 6 U.S.T. 3316, 3406, T.I.A.S. No. 3364 (Bold supplied.) This is a central tenet of the law of war and has been codified for well over 100

years.¹⁰ The cessation of active hostilities benchmark is intended to push the detaining authority to release prisoners of war sooner rather than later. The Conventions use the term “active hostilities” instead of the terms “conflict” or “state of war” “to distinguish the physical violence of war from the official beginning and end of a conflict, because fighting does not necessarily track formal timelines.” *Al-Bihani v. Obama*, 590 F.3d 866, 874 (D.C. Cir. 2010). For this reason, the authorities incorporating Article 118 require only a cessation of hostilities, not an agreement to cease hostilities, nor complete withdrawal of the troops. The sole possible justification for continued captivity is where the prisoner has been charged with a crime, convicted, and is serving a sentence. This exception does not apply to Petitioner.

The Third Geneva Convention was ratified by the United States; Article 118’s mandate to repatriate detainees at the end of hostilities is found in U.S. Army Regulation 190-8.¹¹ This regulation “implements international law, both customary and codified” and identifies the Geneva Conventions as “[t]he principal treaties relevant to [this] [R]egulation.” Army Reg. 190-8, ¶ 1-1(b). AR 190-8 formally incorporates the Third Geneva Convention’s requirement to repatriate at the end of hostilities: “Prisoners who are not sick or wounded will be repatriated or released at the cessation of hostilities as directed by [the Office of the Secretary of Defense].” AR 190-8 ¶ 3-13 (“Repatriation of Other EPW/RP”)

¹⁰ Article 20 of the Hague Convention (II) on Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1817, required repatriation “as speedily as possible” after “conclusion of peace.” The Hague Convention (IV), Oct. 18, 1907, 36 Stat. 2301 incorporated the requirement of repatriation at the “conclusion of peace.” (Art. 20). The Second Geneva Convention, Article 75, July 27, 1929, 47 Stat. 2055, also demanded repatriation with the least possible delay after the conclusion of peace.

¹¹ See https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r190_8.pdf

This is not a waivable obligation or subject to discretion. AR 190-8 states that “in the event of conflicts or discrepancies between this regulation and the Geneva Conventions, **the provisions of the Geneva Conventions take precedence.**” Army Reg. 190-8, ¶ 1-1(b)(4). (Bold supplied.) Hence, the minor difference in the language of Article 118 and Section 3-13 “does not alter” the United States’ legal obligation to release Abu Zubaydah now. *See Aamer v. Obama*, 58 F.Supp.3d 16, 21 (D.D.C. 2014). With or without a direction from the Secretary of Defense, the obligation to release and repatriate Petitioner is compulsory, immediate, and unequivocal.

Congress codified the requirement of release and repatriation at the end of hostilities specifically with regard to the war in Afghanistan. The National Defense Authorization Act of 2012 (“NDAA”) defines the scope of the United States’ detention authority as it pertains to the 2001 Authorization of the Use of Military Force. Respondent may only “detain covered persons [p]ending disposition under the law of war.” NDAA § 1021(a)(1), PL 112-81, December 31, 2011, 125 Stat. 1298. This “disposition” is either “detention under the law of war without trial until the end of the hostilities authorized by the Authorization for the Use of Military Force,” trial, or transfer to the country of origin or other foreign power. *Id.* § 1021(c)(1). Congress did not authorize the continued detention of a person at Guantánamo Bay who has never been charged beyond the cessation of hostilities. Those hostilities have been publicly declared by the President to have ceased. Abu Zubaydah’s detention is therefore unlawful.

The Supreme Court also has recognized that “[d]etention may last no longer than active hostilities.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 520-21 (2004). According to the plurality opinion in *Hamdi*, active hostilities are to be determined in connection with “the duration of the **particular conflict** in which they were captured. *Id.* at 518 (O’Connor, J.; bold supplied.) The

Supreme Court reaffirmed this analytical framework for the government’s detention authority in *Boumediene v. Bush*, 553 U.S. 723, 733 (2008). This Circuit has, on multiple occasions, dealt with facts where the relevant conflict is the war in Afghanistan. In *Al-Bihani v. Obama*, 590 F.3d 866, 874 (D.C. Cir. 2010), the Court held that the petitioner could be detained until there was a determination by a political branch that “hostilities in Afghanistan have ceased.” That “political decision” can be either the opinion of the Executive or a congressional declaration. *Id.* In *Al-Alwi v. Trump*, 236 F.Supp.3d 417, 420 (D.D.C. 2017), *aff’d*, 901 F.3d 294 (D.C. Cir. 2018), the Court’s analysis of the conflict pertained exclusively to events transpiring within the theater of war in Afghanistan.

As of President Biden’s declarations of April 14, 2021, there exists a political decision on the state of the conflict: the war on Afghanistan is over, and moreover the United States has defeated al Qaeda in Afghanistan and there are no active hostilities, but rather the U.S. will keep an eye on them. Denbeaux Decl., ¶ 3, Ex. 2 at 3. (“[W]e are not taking our eye off of the terrorist threat or signs of al Qaeda’s resurgence.”) That al Qaeda remains an enemy of the United States is in no way equivalent to being in a state of active hostilities with them in Afghanistan or elsewhere. The only permissible justification for detention is “to prevent a combatant’s return to the battlefield.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 519 (2004). There is no longer a battlefield for Abu Zubaydah to return to.

In these circumstances, release is required under the law of armed conflict. According to the Commentary on the Third Geneva Convention, “[a] clear indication that hostilities have ended would be the...general demobilization of one Party, even if there are isolated or sporadic acts of violence by remnants of that Party. Geneva Convention (III), Art. 118, Commentary of

2020, 4456-57. “The mere possibility that hostilities could resume at some time is insufficient reason to justify delaying the start of repatriation.” *Id.* at 4555.

This motion is readily distinguishable from previous challenges in which detainees have alleged that the war in Afghanistan is over. Here, President Biden has firmly stated that “we will not stay involved in Afghanistan militarily,” and that withdrawal will be complete by September 11, 2021. Denbeaux Decl. ¶ 2, Ex. 1 at 4. And, the United States has entered into an agreement with the Taliban which the Executive has agreed to enforce:

I inherited a diplomatic agreement, duly negotiated between the government of the United States and the Taliban, that all U.S. forces would be out of Afghanistan by May 1, 2021, just three months after my inauguration. That’s that we inherited – that commitment.

Denbeaux Decl. ¶ 2, Ex. 1 at 2. There can be no clearer indication that the war officially is over, and with it, any defensible theory that the United States may force Abu Zubaydah to live out his days in a cell at Guantánamo Bay.

CONCLUSION

Wherefore, Petitioner respectfully requests the Court to enter an order requiring Respondent immediately to release Abu Zubaydah and repatriate him to a country to be named. If the Court declines to grant Petitioner’s motion, he requests the Court to require Respondent to state: (1) the factual and legal basis for its detention authority in light of the Executive’s declaration, and (2) whether that authority will persist beyond the complete withdrawal of U.S. troops from Afghanistan.

June 25, 2021

Respectfully submitted,

/s/ Charles R. Church

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Local Rule 5.4(d)(2), that the foregoing motion and related documents have been served electronically on counsel of record for Respondent.

Date: June 25, 2021

/s/ Charles R. Church

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**DECLARATION OF MARK P. DENBEUX IN SUPPORT OF MOTION
FOR AN ORDER REQUIRING IMMEDIATE RELEASE AND
REPATRIATION**

I, Mark P. Denbeaux, hereby declare:

1. I am Lead Counsel of the team of attorneys representing the Petitioner in this case, and have actual knowledge of the facts stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of Remarks by President Biden dated April 14, 2021, which is available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Background Press Call by a Senior Administration Official on Afghanistan, dated April 13, 2021, which is available at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/13/background-press-call-by-a-senior-administration-official-on-afghanistan/>.

4. Attached hereto as Exhibit 3 are true and correct copies of correspondence between my colleague Charles R. Church and Respondent's Lead Counsel Ronald Wiltsie written pursuant to Local Rule 7(m).

5. Attached hereto as Exhibit 4 are true and correct copies of: (1) 26 December 2017 letter from Natacha Wexels-Riser to Professor Mark P. Denbeaux, Subj. Delisting Request and (2) the Annex—Summary of the analysis, observations, arguments and recommendation set out in the Ombudsperson's report.

I declare under the penalty of perjury that the foregoing is true and correct.

June 29, 2021


Mark P. Denbeaux

EXHIBIT 1

[whitehouse.gov](https://www.whitehouse.gov)

Remarks by President Biden on the Way Forward in Afghanistan | The White House

12-16 minutes

2:29 P.M. EDT

THE PRESIDENT: Good afternoon. I'm speaking to you today from the Roosevelt — the Treaty Room in the White House. The same spot where, on October of 2001, President George W. Bush informed our nation that the United States military had begun strikes on terrorist training camps in Afghanistan. It was just weeks — just weeks after the terrorist attack on our nation that killed 2,977 innocent souls; that turned Lower Manhattan into a disaster area, destroyed parts of the Pentagon, and made hallowed ground of a field in Shanksville, Pennsylvania, and sparked an American promise that we would “never forget.”

We went to Afghanistan in 2001 to root out al Qaeda, to prevent future terrorist attacks against the United States planned from Afghanistan. Our objective was clear. The cause was just. Our NATO Allies and partners rallied beside us. And I supported that military action, along with overwhelming majority of the members of Congress.

More than seven years later, in 2008, weeks before we swore the oath of office — President Obama and I were about to swear — President Obama asked me to travel to Afghanistan and report back on the state of the war in Afghanistan. I flew to Afghanistan, to the Kunar Valley — a rugged, mountainous region on the border with Pakistan. What I saw on that trip reinforced my conviction that only the Afghans have the right and responsibility to lead their country, and that more and endless American military force could not create or sustain a durable Afghan government.

I believed that our presence in Afghanistan should be focused on the reason we went in the first place: to ensure Afghanistan would not be used as a base from which to attack our homeland again. We did that. We accomplished that objective.

I said, among — with others, we'd follow Osama bin Laden to the gates of hell if need be. That's exactly what we did, and we got him. It took us close to 10 years to put President Obama's commitment to — into form. And that's exactly what happened; Osama bin Laden was gone.

That was 10 years ago. Think about that. We delivered justice to bin Laden a decade ago, and we've stayed in Afghanistan for a decade since. Since then, our reasons for remaining in Afghanistan are becoming increasingly unclear, even as the terrorist threat that we went to fight evolved.

Over the past 20 years, the threat has become more dispersed, metastasizing around the globe: al-Shabaab in Somalia; al Qaeda in the Arabian Peninsula; al-Nusra in Syria; ISIS attempting to create a

califit

[caliphate] in Syria and Iraq, and establishing affiliates in multiple countries in Africa and Asia.

With the terror threat now in many places, keeping thousands of troops grounded and concentrated in just one country at a cost of billions each year makes little sense to me and to our leaders. We cannot continue the cycle of extending or expanding our military presence in Afghanistan, hoping to create ideal conditions for the withdrawal, and expecting a different result.

I'm now the fourth United States President to preside over American troop presence in Afghanistan: two Republicans, two Democrats. I will not pass this responsibility on to a fifth.

After consulting closely with our allies and partners, with our military leaders and intelligence personnel, with our diplomats and our development experts, with the Congress and the Vice President, as well as with Mr. Ghani and many others around the world, I have concluded that it's time to end America's longest war. It's

time for American troops to come home.

When I came to office, I inherited a diplomatic agreement, duly negotiated between the government of the United States and the Taliban, that all U.S. forces would be out of Afghanistan by May 1, 2021, just three months after my inauguration. That's what we inherited — that commitment.

It is perhaps not what I would have negotiated myself, but it was an agreement made by the United States government, and that means something. So, in keeping with that agreement and with our national interests, the United States will begin our final withdrawal — begin it on May 1 of this year.

We will not conduct a hasty rush to the exit. We'll do it — we'll do it responsibly, deliberately, and safely. And we will do it in full coordination with our allies and partners, who now have more forces in Afghanistan than we do.

And the Taliban should know that if they attack us as we draw down, we will defend ourselves and our partners with all the tools at our disposal.

Our allies and partners have stood beside us shoulder-to-shoulder in Afghanistan for almost 20 years, and we're deeply grateful for the contributions they have made to our shared mission and for the sacrifices they have borne.

The plan has long been "in together, out together." U.S. troops, as well as forces deployed by our NATO Allies and operational partners, will be out of Afghanistan before we mark the 20th anniversary of that heinous attack on September 11th.

But — but we'll not take our eye off the terrorist threat. We'll reorganize our counterterrorism capabilities and the substantial assets in the region to prevent reemergence of terrorists — of the threat to our homeland from over the horizon. We'll hold the Taliban accountable for its commitment not to allow any terrorists to threaten the United States or its allies from Afghan soil. The Afghan government has made that commitment to us as well. And we'll focus our full attention on the threat we face today.

At my direction, my team is refining our national strategy to monitor and disrupt significant terrorist threats not only in Afghanistan, but anywhere they may arise — and they're in Africa, Europe, the Middle East, and elsewhere.

I spoke yesterday with President Bush to inform him of my decision. While he and I have had many disagreements over policies throughout the years, we're absolutely united in our respect and support for the valor, courage, and integrity of the women and men of the United States Armed Forces who served. I'm immensely grateful for the bravery and backbone that they have shown through nearly two decades of combat deployments. We as a nation are forever indebted to them and to their families.

You all know that less than 1 percent of Americans serve in our armed forces. The remaining 99 percent of them — we owe them. We owe them. They have never backed down from a single mission that we've asked of them.

I've witnessed their bravery firsthand during my visits to Afghanistan. They've never wavered in their resolve. They've paid a tremendous price on our behalf. And they have the thanks of a grateful nation.

While we will not stay involved in Afghanistan militarily, our diplomatic and humanitarian work will continue. We'll continue to support the government of Afghanistan. We will keep providing assistance to the Afghan National Defenses and Security Forces.

And along with our partners, we have trained and equipped a standing force of over 300,000 Afghan personnel today and hundreds of thousands over the past two decades. And they'll continue to fight valiantly, on behalf of the Afghans, at great cost. They'll support peace talks, as we will support peace talks between the government of Afghanistan and the Taliban, facilitated by the United Nations. And we'll continue to support the rights of Afghan women and girls by maintaining significant humanitarian and development assistance.

And we'll ask other countries — other countries in the region — to do more to support Afghanistan, especially Pakistan, as well as Russia, China, India, and Turkey. They all have a significant stake in the stable future for Afghanistan.

And over the next few months, we will also determine what a continued U.S. diplomatic presence in Afghanistan will look like, including how we'll ensure the security of our diplomats.

Look, I know there are many who will loudly insist that diplomacy cannot succeed without a robust U.S. military presence to stand as leverage. We gave that argument a decade. It's never proved effective — not when we had 98,000 troops in Afghanistan, and not when we were down to a few thousand.

Our diplomacy does not hinge on having boots in harm's way — U.S. boots on the ground. We have to change that thinking. American troops shouldn't be used as a bargaining chip between warring parties in other countries. You know, that's nothing more than a recipe for keeping American troops in Afghanistan indefinitely.

I also know there are many who will argue that we should stay — stay fighting in Afghanistan because withdrawal would damage America's credibility and weaken America's influence in the world. I believe the exact opposite is true.

We went to Afghanistan because of a horrific attack that happened 20 years ago. That cannot explain why we should remain there in 2021.

Rather than return to war with the Taliban, we have to focus on the challenges that are in front of us. We have to track and disrupt terrorist networks and operations that spread far beyond Afghanistan since 9/11.

We have to shore up American competitiveness to meet the stiff competition we're facing from an increasingly assertive China. We have to strengthen our alliances and work with like-minded partners to ensure that the rules of international norms that govern cyber threats and emerging technologies that will shape our future are grounded in our democratic values — values — not those of the autocrats.

We have to defeat this pandemic and strengthen the global health system to prepare for the next one, because there will be another pandemic.

You know, we'll be much more formidable to our adversaries and competitors over the long term if we fight the battles for the next 20 years, not the last 20.

And finally, the main argument for staying longer is what each of my three predecessors have grappled with: No one wants to say that we should be in Afghanistan forever, but they insist now is not the right moment to leave.

In 2014, NATO issued a declaration affirming that Afghan Security Forces would, from that point on, have full responsibility for their country's security by the end of

that year. That was seven years ago.

So when will it be the right moment to leave? One more year, two more years, ten more years? Ten, twenty, thirty billion dollars more above the trillion we've already spent?

"Not now" — that's how we got here. And in this moment, there's a significant downside risk to staying beyond May 1st without a clear timetable for departure.

If we instead pursue the approach where America — U.S. exit is tied to conditions on the ground, we have to have clear answers to the following questions: Just what conditions require to — be required to allow us to depart? By what means and how long would it take to achieve them, if they could be achieved at all? And at what additional cost in lives and treasure?

I'm not hearing any good answers to these questions. And if you can't answer them, in my view, we should not stay. The fact is that, later today, I'm going to visit Arlington National Cemetery, Section 60, and that sacred memorial to American sacrifice.

Section sixty [sic] — Section 60 is where our recent war dead are buried, including many of the women and men who died fighting in Afghanistan and Iraq. There's no — there's no comforting distance in history in Section 60. The grief is raw. It's a visceral reminder of the living cost of war.

For the past 12 years, ever since I became Vice President, I've carried with me a card that reminds me of the exact number of American troops killed in Iraq and Afghanistan. That exact number, not an approximation or rounded-off number — because every one of those dead are sacred human beings who left behind entire families. An exact accounting of every single solitary one needs to be had.

As of the day — today, there are two hundred and forty- —

2,488

[2,448] U.S. troops and personnel who have died in Operation Enduring Freedom and Operation Freedom's Sentinel — our Afghanistan conflicts. 20,722 have been wounded.

I'm the first President in 40 years who knows what it means to have a child serving

in a warzone. And throughout this process, my North Star has been remembering what it was like when my late son, Beau, was deployed to Iraq — how proud he was to serve his country; how insistent he was to deploy with his unit; and the impact it had on him and all of us at home.

We already have service members doing their duty in Afghanistan today whose parents served in the same war. We have service members who were not yet born when our nation was attacked on 9/11.

War in Afghanistan was never meant to be a multi-generational undertaking. We were attacked. We went to war with clear goals. We achieved those objectives. Bin Laden is dead, and al Qaeda is degraded in Iraq — in Afghanistan. And it's time to end the forever war.

Thank you all for listening. May God protect our troops. May God bless all those families who lost someone in this endeavor.

2:45 P.M. EDT

EXHIBIT 2

[whitehouse.gov](https://www.whitehouse.gov)

Background Press Call by a Senior Administration Official on Afghanistan | The White House

17-22 minutes

12:04 P.M. EDT

SENIOR ADMINISTRATION OFFICIAL: Hi, everyone. Good afternoon. And thanks for joining us on short notice. Today's call on Afghanistan will be attributable to a senior administration official, and the contents will be embargoed until the conclusion of this call.

With that, I'll turn it over to our speaker, [senior administration official].

SENIOR ADMINISTRATION OFFICIAL: Hi, everyone, and thank you for joining today. I am here to talk to you about the President's decision on the way forward in Afghanistan.

After a rigorous policy review, President Biden has decided to draw down the remaining U.S. troops from Afghanistan and finally end the U.S. war there after 20 years. We will begin an orderly drawdown of the remaining forces before May 1st and plan to have all U.S. troops out of the country before the 20th anniversary of 9/11.

The President is deeply grateful for the honor, courage, and determination of the U.S. men and women who have served in Afghanistan for almost two decades, as well as the sacrifices made not just by those troops, but also by their families.

We went to Afghanistan to deliver justice to those who attacked us on September 11th and to disrupt terrorists seeking to use Afghanistan as a safe haven to attack the United States. We believe we achieved that objective some years ago. We

judge the threat against the homeland now emanating from Afghanistan to be at a level that we can address it without a persistent military footprint in the country and without remaining at war with the Taliban.

The President made the determination and is announcing tomorrow that the best path forward to advance American interests is to end the war in Afghanistan after 20 years so that we can address the global threat picture as it exists today, not as it was two decades ago.

We've long known that military force would not solve Afghanistan's internal political challenges, would not end Afghanistan's internal conflict. And so we are ending our military operations while we focus our efforts on supporting, diplomatically, the ongoing peace process.

Just a few points of context on all of this. When we came into office, the Biden administration inherited a number of things: the lowest number of U.S. and partner forces since the early days of the war; an agreement between the United States and the Taliban to draw down all U.S. troops by May 1, just three months after Inauguration Day; as well as a military stalemate between the Taliban and Afghan forces.

President Biden asked for a review of genuine, realistic options to advance and protect U.S. interests, and a review that would not and did not sugarcoat the likely outcomes or rely on best-case scenarios.

The President and his team consulted with his Cabinet, members of Congress, the Afghan government, NATO Allies, partners who are still serving alongside the United States in Afghanistan, as well as other donor nations, regional powers, and former officials from both parties here in the United States.

What emerged was a clear-eyed assessment of the best path forward. We have, as I said before, long known that there is no military solution to the problems plaguing Afghanistan, and we will focus our efforts on supporting the ongoing peace process. And that means putting the full weight of our government behind diplomatic efforts to reach a peace agreement between the Taliban and the Afghan government. But what we will not do is use our troops as bargaining chips in that process.

We will coordinate with NATO Allies and partners about a drawdown of their forces in the same timeframe: beginning before May 1, ending before the 20th anniversary of September 11th. And we have told the Taliban in no uncertain terms that any attacks on U.S. troops as we undergo a safe and orderly withdrawal will be met with a forceful response.

At this point, we have discussed the drawdown with our NATO Allies and operational partners. We will remain in lockstep with them as we undergo this operation. We went in together, adjusted together, and now we will prepare to leave together.

We are deeply grateful for the sacrifices so many of them made along the way, and we'll never forget the ultimate show of Allied support when NATO invoked Article 5 on September 12, 2001, after our country was attacked.

So President Biden was adamant that a hasty, ill-coordinated withdrawal that puts at risk our forces or those of our Allies and operational partners was not a viable option, which is how he landed where we are.

The United States is going to remain deeply engaged with the government of Afghanistan, committed to the Afghan people who have made extraordinary services — excuse me, extraordinary sacrifices during this conflict. We'll stand behind the diplomatic process, and we will use our full toolkit to ensure the future that the Afghan people are seeking has the best chance of coming about.

We will also look to work with other countries using diplomatic, economic, and humanitarian tools to protect the gains made by Afghan women.

And we will encourage any future government in Afghanistan to expand resources for refugees and internally displaced peoples while also working with Congress to expand and expedite Special Immigrant Visas for those Afghans and their families who supported U.S. efforts in Afghanistan.

Finally, we are not taking our eye off of the terrorist threat or signs of al Qaeda's resurgence. They do not currently present an external — or do not currently possess an external plotting capability that can threaten the homeland. But this is something that we have to focus on: its potential for reemerging in the years

ahead. And we have to continue relentlessly to work to prevent Afghanistan from again becoming a base from which terrorists can attack the United States.

So, in coordination with our Afghan partners and with other allies, we will reposition our counterterrorism capabilities, retaining significant assets in the region to counter the potential reemergence of a terrorist threat to the homeland from Afghanistan, and to hold the Taliban to its commitment to ensure al Qaeda does not once again threaten the United States or our interests or our allies. And we will refine our counterterrorism strategy to monitor and disrupt terrorist threats to the homeland and to our interests in a way that contends with the dispersed threats big picture we face today.

I want to finish on this point: This is not 2001; it is 2021. And in 2021, the terrorist threat that we face is real and it emanates from a number of countries — indeed a number of continents — from Yemen, from Syria, from Somalia, from other parts of Africa. And we have to focus on those aspects of a dispersed and distributed terrorist threat, even as we keep our eye on the ball to prevent the reemergence of a significant terrorist threat from Afghanistan through these repositioned counterterrorism capabilities.

Final point. The President deeply believes that in contending with the threats and challenges of 2021, as opposed to those of 2001, we need to be focusing our energy, our resources, our personnel, our — the time of our foreign policy and national security leadership on those threats and challenges that are most acute for the United States: on the challenge of competition with China, on the challenge presented by the current pandemic and future pandemics, on the challenge posed by this much more distributed terrorist threat across multiple countries. And that doing that requires us to close the book on a 20-year conflict in Afghanistan and move forward with clear eyes and an effective strategy to protect and defend America's national security interests.

So, I will stop there and would be happy to take some questions.

Q Thanks so much, [senior administration official] and team, for setting this up. First question is: I wonder what you'd base your assessment that al Qaeda does not currently possess an external plotting capability and what level of confidence

you and the intel community have with that assessment?

And just as a related question: Given the experience of the withdrawal from Iraq, and the subsequent rise of ISIS, what lesson — of course, you have a number of folks from the current administration who were veterans of that decision, the aftermath — what lessons did you learn from that? And how does that inform this decision or contribute to any hesitancy to withdraw from Afghanistan? Thanks.

SENIOR ADMINISTRATION OFFICIAL: I will — I'll let the intelligence community speak to the basis for their current assessment, which is, as I noted, a current assessment. I think you, rightly, raised the question of the potential for the reemergence of al Qaeda in the region, following a drawdown of U.S. and coalition forces. That is a genuine threat. It needs to be met with vigilance, and it will be.

And a lesson that we learned from the drawdown in Iraq is that we have to have the intelligence and military capabilities positioned in the region and the attention of our national security apparatus sufficiently focused to ensure that if the al Qaeda external plotting threat begins to reemerge, we deal with it. And we deal with it both directly and by holding the Taliban accountable through all the tools at our disposal for doing their part to keep their commitment, which, you know, we're not just going to take on faith that they will do.

So that is our intention, and we think we can do that in a way that applies and allocates sufficient resources to that threat, while also staying focused on the terrorist threat as it has emerged and evolved in multiple other countries where al Qaeda's and ISIS's capabilities have advanced considerably since we first went into Afghanistan in 2001.

Q Hi. Thanks for doing this. Just to clarify: Is September 11th a conditions-based target for withdrawal, or is it a hard commitment to get to zero? When I spoke to then-candidate Biden in February, at the time he was clear that he did feel some residual U.S. force was necessary in Afghanistan. Are you committing today to going to zero?

SENIOR ADMINISTRATION OFFICIAL: Yes. This is not conditions-based. The President has judged that a conditions-based approach, which has been the approach of the past two decades, is a recipe for staying in Afghanistan forever.

And so he has reached the conclusion that United States will complete its drawdown, will remove its forces from Afghanistan before September 11th. And I would hasten to note, for those on the call, that a lot of this is about operational and logistical issues related to ensuring that we have a safe and orderly withdrawal.

That withdrawal may be completed well in advance of September 11th. But that is the outside date by which it will be completed. And, as I said, it will begin before May 1. It will be completed over the course of that next period and no later than the 20th anniversary of 9/11, but potentially a meaningful amount of time before then.

Q Hi there. Can you tell me what, if any, U.S. personnel will remain in the country lastingly? Will there be any counterterror force based there? Will there be any training — keep open the military base there, for example?

SENIOR ADMINISTRATION OFFICIAL: The remaining military presence in Afghanistan will be the force required to protect our diplomatic presence. We obviously put the safety and security of our personnel overseas at the top of our priority list. And we are in the process of extensive planning, as well as consultations with our allies and partners on the shape and nature of that ongoing diplomatic presence to ensure that our diplomats in Afghanistan have what they need to fulfill their important and enduring mission.

Q Thank you. I'd like to go back to the timeline. One of the criticisms of the previous administration was that a May 1st deadline was arbitrary. I'd like to know why a September one isn't arbitrary, given that, practically speaking, you could withdraw well before that.

And what concerns do you have about increased violence against U.S. troops in that period? One of the threats from the Taliban had been that, had the troops stayed beyond out May 1st, there could be potential violence against them.

I guess what I'm trying to clarify: Is the September deadline because helping NATO troops get out? Is it because U.S. troops could get out far faster than that? And what security measures would be in place for U.S. forces in that period when the Taliban has threatened increased violence? Thank you.

SENIOR ADMINISTRATION OFFICIAL: The answer is — the answer is “yes” to

the question about NATO forces. Basically, President Biden has — will give our military commanders the time and space they need to conduct a safe and orderly withdrawal, not just of U.S. forces but of allied forces, as well, on the principle of “in together, out together.” And so, we will take the time we need to execute that, and no more time than that.

We believe that we certainly can complete that before September. And the question of “how long before September” depends on, you know, conditions as the — as the drawdown unfolds.

So that’s why I said there’s not — there’s not actually a date on the calendar for when we can guarantee you the last trip will be out, other than, you know, an outside — you know, it will be no later than the 20th anniversary of 9/11, meaning it could be, as I said before, well before then.

So it’s not arbitrary; it is what is required, in the judgment of our military commanders, to get not just U.S. forces safely drawn down, but to get our partners and allies safely drawn down as well.

We have communicated to the Taliban in no uncertain terms that if they do conduct attacks against U.S. or allied forces as we carry out this drawdown — which, again, as I indicated, will begin before May 1 — that we will hit back hard and that we will hold them accountable for that. And so, we believe we can execute this in an effective way and intend to do so.

Q Hey, guys. Thanks for doing this. I wanted to follow up on what [senior administration official] said about ensuring women’s rights. I’m just wondering how you’re expecting to do that if the Taliban has greater control, and if the U.S. would consider returning if women’s rights aren’t protected or, more broadly, if some of the other concerns that you mentioned, like the possible reemergence of al Qaeda or other terror networks in the region, would result in the U.S. redeploying troops to Afghanistan.

SENIOR ADMINISTRATION OFFICIAL: We believe that we retain substantial military and intelligence capabilities to disrupt the broader capacity of al Qaeda to successfully reconstitute the sustained homeland threat to the United States. And we will exercise those capabilities, again, both directly and by holding the Taliban

accountable with all the tools at our disposal for ensuring that Afghanistan is not a base for attacks against the West.

And then, with respect to protecting women's rights, the United States, as I mentioned in my opening comments, will use its full diplomatic, humanitarian, and economic toolkit to try to — as best we can — to protect the gains made by women and girls over the course of the past 20 years. We're committed to supporting our Afghan partners. We'll do so with an eye towards accountability. We will bolster support for civilian, economic, and humanitarian assistance programs.

Part of the drawdown and the time that we have to execute the drawdown will help us ramp up humanitarian assistance and support for Afghan civil society.

I would note that a lot has changed in two decades. In 2001, there were fewer than 900,000 children, almost all boys, in school. Today, there's over 9.2 million children, 40 percent of which are girls, in school. Life expectancy has gone from 44 years to 60 years. Maternal mortality rates remain far too high but have declined dramatically.

So, you know, we have made really substantial investments over two decades. And we will do all we can, working with the international community, to protect those gains but not with the continuation of a military force on the ground.

The last thing I would say on this is: We're going to make clear to any nation, any government, any party that wants to participate in a government that if they want international legitimacy or connection to the rest of the world and does not want to be deemed a "pariah state," then they must not interfere with the progress that has been made to advance human rights, including for women, girls, and minorities in Afghanistan. So we will — we will work at that.

But our view is that that has to be done through aggressive diplomatic, humanitarian, and economic measures, not through the continuation of the U.S. war in Afghanistan.

Q Hi. Thanks very much for doing this. When — where are you going to be repositioning these American troops? And also, it sounds like you are keeping the American Embassy in Afghanistan open then. Have you decided or judged how —

what kind of military presence you need there to protect the diplomats, since some officials estimate that it would be close to the same number as we have now?

SENIOR ADMINISTRATION OFFICIAL: The — so, first, the question of where these forces will be repositioned to, I'm going to refer to the Pentagon. They will be giving a fuller briefing on this — not probably in the next 48 or 72 hours, but as we move forward. So I can't speak to that, in this context, now.

On the question of the embassy presence: We are actively working through that contingency planning right now, including what will be required to protect the embassy. We are also in consultation with the Afghan government on that question. And we'll have more to say on that as we come to a firmer understanding, over the course of our drawdown, of what precisely will be required.

So we have not completed — or we have not reached our final conclusion, despite an immense amount of analysis over the last three years, of what the footprint will look like. We have a range of options, and we will tailor those options to the conditions as the drawdown unfolds.

SENIOR ADMINISTRATION OFFICIAL: All right, thanks everyone. That concludes our call this afternoon.

A reminder that we are on background, attributed to a "senior administration official." With that, the embargo is lifted. Thanks, everyone, and have a good day.

12:27 P.M. EDT

EXHIBIT 3

On Jun 24, 2021, at 4:25 PM, Charles Church <crchurch24@gmail.com> wrote:

Ron,

I trust you are well. Also, sorry to intrude on your week off.

We intend to file a Motion for Immediate Release and Repatriation of Petitioner based on President Biden's decision to withdraw all U.S. troops from Afghanistan, thereby terminating hostilities, and any claim to have detention authority over him. Please advise on the Government's position.

Thanks.

Sincerely,

Charles

--

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U.S. Treasury Regulations require us to inform you that any U.S. tax advice in this communication cannot be used by you (i) to avoid tax penalties or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

From: **Wiltsie, Ronald (CIV)** <Ronald.Wiltsie@usdoj.gov>
Date: Fri, Jun 25, 2021 at 12:06 AM
Subject: Re: Local Rule 7(m) compliance
To: Charles Church <crchurch24@gmail.com>

Charles

We will oppose your motion. Hope you are well.

Ron

Sent from my iPhone

EXHIBIT 4

UNITED NATIONS



NATIONS UNIES

POSTAL ADDRESS-ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS-ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: OMBP/1267/2016/78/Abu Zubaydah

26 December 2017

Professor Mark P. Denbeaux
Denbeaux & Denbeaux
366 Kinderkamack Road
Westwood, New Jersey 07675
amay@denbeauxlaw.com
Mark.Denbeaux@shu.edu

Dear Professor Denbeaux,

**Subject: Delisting Request – Zayn al-Abidin Muhammad Husayn (“Abu Zubaydah”)
(previously listed as Zayn al-Abidin Muhammad Hussein (QDi.010))**

This is to inform you, pursuant to paragraph 16 of Annex II to Security Council resolution 2368 (2017), that on 26 December 2017, the Security Council ISIL (Da’esh) and Al-Qaida Sanctions Committee decided to grant the request for delisting you presented on behalf of Mr. Zayn al-Abidin Muhammad Husayn (“Abu Zubaydah”) (previously listed as Zayn al-Abidin Muhammad Hussein (QDi.010)). As a result, the entry related to your client will be deleted from the ISIL (Da’esh) and Al-Qaida Sanctions List of the Security Council and he will no longer be subject to the related sanction measures.

Accordingly, pursuant to paragraph 15 of Annex II to Security Council resolution 2368 (2017), the requirement for States to apply the assets freeze, travel ban and arms embargo set out in paragraph 1 of Security Council resolution 2368 (2017) no longer applies with respect to your client.

Although the Committee completed its consideration of this case on 26 December 2017, the Office of the Ombudsperson is yet to receive the reasons for the decision from the Committee. The deadline for the Committee to provide reasons for the decision is 26 January 2018 and I expect the Office of the Ombudsperson to be able to inform you the same day.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "N. W. Riser".

Natacha Wexels-Riser
Legal Officer
Office of the Ombudsperson

Annex - Summary of the analysis, observations, arguments and recommendations set out in the Ombudsperson's report:

These reasons are a summary of the analysis contained in the Ombudsperson's Comprehensive Report, which includes the key points of the analysis of the Ombudsperson and which are not attributable to the Committee or any individual Committee member. The analysis, observations, arguments and recommendations set out in the Ombudsperson's report were based upon the information available to her at the time of the report as envisaged by Annex II of resolution 2368 (2017). No assumptions were made in the report as to the information before the Committee at the time of listing.

The Ombudsperson considered a number of preliminary issues. With respect to the jurisdiction of the Committee, she noted that the mere fact that the Petitioner was not a formal member of Al-Qaida was insufficient to justify his delisting based on the Security Council listing criteria. The Ombudsperson further noted that the European Court of Human Rights *inter alia* found that the treatments inflicted upon the Petitioner while in CIA custody amounted to torture within the meaning of Article 3 of the European Convention on Human Rights and Fundamental Freedoms, and that a foreword to the SSCI's Study of the CIA's Detention and Interrogation Program noted the Chairwoman's personal conclusion that under any common meaning of the term, CIA detainees were tortured, that the conditions of confinement and the use of authorized and unauthorized interrogation and conditioning techniques were cruel, inhuman, and degrading, and that the evidence of this is overwhelming and incontrovertible. The Ombudsperson therefore scrutinized the information gathered in this case to ensure that none of the information relied upon in the context of the delisting request was obtained through the use of such techniques, whether against the Petitioner or others.

As for the deposition and other statements from Ahmed Ressam, the Ombudsperson was unable to question him about the motive of the recantation of all his previous statements during his sentencing hearing and whether he maintains the accusations against the Petitioner. She therefore only considered sufficiently reliable and took into account those of Ressam's statements that were corroborated by other information.

As for information which emanated from other individuals mentioned in the Factual Return who are detained in Guantanamo Bay, or from sources that could not be identified because of redactions, or which did not include references to sources, in the particular circumstances of this case and the treatments inflicted on the petitioner while in CIA custody amounting to torture (as noted above), unless such information was corroborated by other verifiable information or confirmed by the Petitioner's Counsel, the Ombudsperson did not rely on it in her analysis.

This included the information in the Narrative Summary that between 1994 and early 2000, the Petitioner often smuggled both persons and chemicals, including cyanides and nitrates for use by Al-Qaida in making weapons, from Pakistan into Afghanistan.

Relationship with Usama bin Laden and Al-Qaida

Examining the Petitioner's relationship with Usama bin Laden and Al-Qaida, the Ombudsperson was of the view that the information in this case demonstrated that if the Petitioner never formally joined Al-Qaida nor pledged allegiance to Usama bin Laden, he nonetheless had a close nexus to Al-Qaida and its leader. However, his circumstances were not in her view sufficient to meet the criteria of association with Al-Qaida as defined by the resolution, even as another form of support.

Facilitation of travel and training for jihadists in support of Al-Qaida (1994-2000)

With the exception of his alleged recruitment by Al-Qaida, which is not established by the Ombudsperson, the Narrative Summary's information concerning the Petitioner's activities in facilitating the travel and training of jihadists and document forgery in support of Al-Qaida from 1994 to 2000 was consistent with his Diaries. His primary role was to operate one or two guesthouses that moved individuals into and out of Afghanistan for training at the Khaldan camp. This camp was operationally and organizationally independent from Al-Qaida.

However, for reasons explained in her report, the Ombudsperson was satisfied to the standard that by accepting jihadists who the Petitioner could reasonably expect to use their training for the benefit of Al-Qaida, into his guesthouse and the Khaldan camp, providing false identification papers and facilitating their travel to and from the Khaldan training camp, the Petitioner provided support to Al-Qaida.

Facilitating financial transactions for terrorism activities

For reasons described in her report, the Ombudsperson was of the view that the information relating to the Petitioner's involvement in financial transactions did not show support to Al-Qaida or a listed entity and thus did not provide a reasonable and credible basis for his listing. This assessment concerned *inter alia* the information in the Narrative Summary that in the late 1990s, the Petitioner procured funds which he distributed to various contacts in Pakistan-based extremist networks for their terrorist activities.

The Petitioner's views and expressions on armed jihad, Usama bin Laden and Al-Qaida after 9/11

The Ombudsperson then analysed the Petitioner's views and expressions on armed jihad, Usama bin Laden and Al-Qaida after 9/11. On the one hand, the Ombudsperson considered the Petitioner's statements in his Diary constitute expressions of opinion and sympathy which evidently were not meant to be disseminated or to incite any activity in support of Al-Qaida activity. As such, the Ombudsperson was of the view that they could not be construed as constituting support to Al-Qaida or a listed entity and as a basis for his listing. On the other hand, as stated by Petitioner's Counsel, the video was meant to incite people to become mujahedeen fighters to defend Afghanistan. In view of the Petitioner's prominent role as coordinator of the Khaldan camp, his words of support and unity for Usama bin Laden and Al-Qaida in a video which was meant as a propaganda recruitment tool had the potential to persuade individuals to join Al-Qaida. In the view of the Ombudsperson, by making the video, the Petitioner materialized his intention to incite people to join Al-Qaida. In these circumstances, it is unnecessary to examine the question whether the video was indeed disseminated or whether it was effective in achieving its goal. The Ombudsperson was of the view that his statements in the video, because of the Petitioner's profile and their format and purpose of incitement, met the threshold to constitute another form of support to the relevant standard and thus association to Al-Qaida at the time it was made.

The Ombudsperson noted that regardless of the reasons he may have had at the time, it was undeniable that in the aftermath of 9/11, the Petitioner felt sympathy and identified himself with Al-Qaida and Usama bin Laden and their cause, and that his support to this organization and its leader met the threshold to justify his listing at the time.

Other actions after 9/11

In her analysis of the Petitioner's other actions after 9/11, the Ombudsperson noted that there is information that, within weeks of the 9/11 attacks, he was involved in Usama bin Laden's plan to confront an American counterattack. There was also information that well-known members of Al-Qaida were in Kandahar in November 2001, at the same time as the Petitioner. These men included Abu Hafs al-Masri, Abu Mus'ab al-Zarqawi and Khalid Sheikh Mohammed. There was information that after the fall of Kandahar, the Petitioner fled from Afghanistan and played an important role in facilitating the retreat and escape of mujahedeen fighters. The Ombudsperson noted that without having had a chance to engage with the Petitioner, she was not in a position to conclude whether the Petitioner's efforts formed part of Bin Laden's plan or otherwise involved members of Al-Qaida, or whether it was the Petitioner's initiative. The Ombudsperson declined to take these facts into account in assessing the Petitioner's association with Al-Qaida.

She was of the view however that the Petitioner's direct involvement in Usama bin Laden's plan to confront an American counterattack in the immediate aftermath of 9/11 attacks amounted to a form of support to Al-Qaida. The exact role played by the Petitioner in the preparation for this plan is unclear. At a minimum, the information showed that he was well aware of the details of the plan and had some role to play in it. As a result, the Ombudsperson was satisfied that the Petitioner was associated to Al-Qaida through support provided to the organisation in the immediate aftermath of the 9/11 attacks.

In her analysis of the Petitioner's circumstances, actions and plans prior to his capture, the Ombudsperson found that the information relating to the Petitioner's role in a plot to build improvised explosive devices for attacks on coalition forces and his plans to attack the United States on its soil, in the absence of a link to Al-Qaida or a listed entity, were insufficient to establish a reasonable and credible basis to maintain the listing. However, this information was revealing about the Petitioner's resolve and preparation to attack America on its soil after 9/11 and the American counterattack on Afghanistan, and also via the cell in Iran to prepare for another project in Palestine. The Ombudsperson understood the Petitioner's Counsel's explanation that this was a reaction to the counterattack after 9/11 and that the Petitioner previously opposed attacks against civilians, and has since then recovered this belief. She felt however that this did not undo the fact that the Petitioner held these beliefs at that time and participated in the above-mentioned activities.

Conclusion as to association with Al-Qaida

In conclusion on the Petitioner's overall association to Al-Qaida, the Ombudsperson was satisfied to the standard that the Petitioner was never a formal member of Al-Qaida. However, he had a close nexus to the group and its leader, whom he met on numerous occasions, including in an undisclosed location after the attack against the USS Cole, and whom he respected, and she was satisfied to the standard that the Petitioner has been associated with Al-Qaida. This association is based on the following facts: by accepting jihadists who the Petitioner could reasonably expect to use their training for the benefit of Al-Qaida, into his guesthouse and the Khaldan camp, providing false identification papers and facilitating their travel to and from the Khaldan training camp, the Petitioner provided support to Al-Qaida from approximately 1994 to 2000. In the aftermath of 9/11 and the American counterattack on Afghanistan, the Petitioner felt sympathy and identified himself with Al-Qaida and Usama bin Laden and their cause and he expressed this through a propaganda video. The Petitioner's direct involvement in Usama bin Laden's plan to confront an American counterattack in the same period also amounts to a form of support to Al-Qaida.

Changed circumstances/Disassociation

Considering the question of the Petitioner's changed circumstances and disassociation, the Ombudsperson noted that the very serious nature of the facts that are established with respect to the Petitioner's conduct allows for strong inferences to be drawn as to present, continued association and possible re-involvement if the sanctions were lifted.

The Ombudsperson first assessed how his state of mind has evolved since his capture in March 2002. The Ombudsperson understood that there was a time when the Petitioner considered himself at war with the United States and that this is the context in which the entries in his diary after 9/11 should be read. After this parenthesis, the according to the Petitioner's Counsel, the Petitioner went back to his former view of the wrongness of killing civilians. After knowing the Petitioner for many years, the Petitioner's Counsel stated that he is confident that armed jihad is no longer part of the Petitioner's plans and that he would not engage in fighting against Israel or the United States if he was ever released.

The Ombudsperson noted that not only has the Petitioner not received any support or guidance to engage in disassociation, he has been inflicted treatments which the European Court of Human Rights qualified as torture. The Ombudsperson was denied the possibility of engaging directly with the Petitioner in any form and thus to develop her own opinion about his state of mind. She was therefore not prepared to draw any negative inference against the Petitioner as to his current state of mind. She found the Petitioner's Counsel genuine in his responses generally, and to her questions in this respect in particular. She therefore accepted his sense of the Petitioner's state of mind which she found more convincing than the assertion in the March 2016 Guantanamo Detainee Profile that the Petitioner "probably retains an extremist mindset, judging from his earlier statements". As a result, the Ombudsperson was satisfied to the standard that the Petitioner has disassociated from Al-Qaida.

Because of the particular circumstances in which the Petitioner is detained, which prevent the Petitioner's Counsel from transmitting any documents from the Petitioner, the Ombudsperson did not seek from the Petitioner a signed statement which declares that he has no ongoing association with Al-Qaida, ISIL, or any cell, affiliate, splinter group, or derivative thereof, and undertakes not to associate with Al-Qaida or ISIL in the future. However, the Ombudsperson determined that this was unnecessary to ascertain the Petitioner's lack of association at this time.

Conduct in prison

In her analysis of the Petitioner's conduct in prison, the Ombudsperson noted that over 15 years have passed since the Petitioner was captured, and she accepted that he no longer holds the extremist views that he exhibited at the time. She considered his high level of cooperation with the staff at Guantanamo Bay to corroborate the same. This attitude and efforts weigh in favour of delisting.

The Ombudsperson considered the assessment in the March 2016 detainee profile that although he readily and consistently responded to most if not all lines of questioning by the debriefers, including providing detailed information on his terrorist activities and those of his associates, he nonetheless "withheld information, which might have been to protect historical or current activities." The Petitioner is said to have "used his time in Guantanamo to hone his organizational skills, assess U.S. custodial and debriefing practices, and solidify his reputation as a leader of his peers, all of which would help him should he choose to reengage in terrorist activity." It is also said that he "probably retains an extremist mind-set, judging from his earlier statements."

Further, "some of the Petitioner's former colleagues continue to engage in terrorist activities and could help him return to planning attacks against Israel and the United States in Pakistan, should he choose to do so." The Ombudsperson was of the view that the assessment of the Petitioner in the March 2016 Detainee Profile was a totally unsubstantiated speculation as to the Petitioner's current state of mind. In her view, steps that would be considered positive in any other environment are held against him based on unsubstantiated suspicions. The Ombudsperson found it difficult in these circumstances to imagine what he could possibly do to obtain a fully positive assessment. In the absence of concrete information available to the Ombudsperson supporting such suspicions, she was not prepared to reach the same conclusion. The Ombudsperson added that, in the extremely high security conditions in which he is detained, if the Petitioner had attempted to maintain any associations either with other detainees or in the outside world through his limited contacts with his family, it is highly unlikely, if not impossible, that such attempts would have gone undetected for 15 years. No information was provided by relevant authorities to the Ombudsperson to suggest that this might be the case.

Threat of future involvement and cumulative assessment

The Ombudsperson notes that the Petitioner's Counsel, who is the Petitioner's only direct link with the outside world and who has heard what the Petitioner has to say, is not concerned in the slightest way that he would want to use the funds allocated by the European Court of Human Rights as compensation for the violation of his rights in support of terrorism.

Cumulatively, the Ombudsperson was of the view that the gathered information in totality shows that the Petitioner was associated with Al-Qaida from 1994 to his arrest in March 2002. However, the Ombudsperson was of the view that it also supports to the standard that the Petitioner has completely severed his links to extremists and changed his behavior and views such that he is not presently associated with Al-Qaida, an Al-Qaida linked group or other listed entity. Having

reviewed his current behavior and state of mind, she did not believe that he would support a listed entity should he be delisted and sanctions be lifted. She concluded that it was no longer justified to maintain the sanctions.

As a result, the Ombudsperson recommended that the Committee consider delisting the name of Zayn al-Abidin Muhammad Hussein.