UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, - versus - HAMZA NAJ AHMED, MOHAMED ABDIHAMID FARAH, ADNAN ABDIHAMID FARAH, ABDURAHMAN YASIN DAUD, GULED ALI OMAR, Defendants.	15-cr-49 (MJD/FLN)

DEFENDANTS' JOINT MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS COUNT ONE OF THE SECOND SUPERSEDING INDICTMENT ON GROUNDS OF COMBATANT IMMUNITY

The undersigned Defendants respectfully submit this memorandum of law in support of their motion to dismiss Count One of the Indictment on grounds of combatant immunity.

On October 21, 2015, a grand jury returned a second superseding indictment against Defendants ("Superseding Indictment"). As with the first superseding indictment, it charges each defendant with violations of 18 U.S.C. § 2339B(a)(1): conspiracy to provide material support and attempt to provide material support to the Islamic State of Iraq and the Levant (ISIL), a designated terrorist organization, based on their alleged agreement to travel to Syria to "fight with" ISIL. But this time, it adds a charge of conspiracy "to murder a person or persons outside the United States," in violation of 18 § U.S.C. 956(a) and 2, a charge that carries a potential sentence of life in prison. The murder charge is apparently based on the same allegations underlying the material support charges. In essence, the government's position appears to be that planning to "fight" with ISIL in Syria is the equivalent of conspiring to murder, that is, engage in *unlawful* killing.

In a separate filing, we challenge on due process grounds the government's categorization of alleged ISIL foreign recruits – described by President Obama as "young impressionable minds" "wrestling with identity" – as cold-blooded murderers.[1] In this motion, accepting the allegations in the Indictment as true, we challenge Count One on the grounds that it upends fundamental common and international law principles governing the treatment of combatants in war. One such principle is that lawful combatants are immune from *criminal* prosecution for acts of warfare, including the killing of human beings, "performed in the context

[1] *See* Remarks by the President at the Summit on Countering Violent Extremism, February 19, 2015 (hereafter "President Obama CVE Remarks"), available at https://www.whitehouse.gov/the-press-office/2015/02/19/remarks-president-summit-countering-violent-extremism-february-19-2015.

of ongoing hostilities against lawful military targets, [that] were not in violation of the law of war."[2] Put simply, in Justice Black's words, "it is no crime [merely] to be a soldier."[3]

ISIL has engaged in atrocious acts both within and without Syria. But however one might describe it as an entity, it has an organized professional army engaged in traditional military warfare – an army with which the Defendants are alleged to have intended to join in "combat." Superseding Indictment, ¶ 3(l). The Superseding Indictment makes no claim – because none can be made – that the Defendants intended to engage in *unlawful* combat, and that the Defendants – before ever setting foot in Syria – had ceded their right to the combatant's privilege against criminal prosecution. As such, the inchoate, and essentially speculative, murder charge against the Defendants must be dismissed under the doctrine of combatant immunity.

FACTS

Defendants are charged in a 14-count second superseding indictment. Count One charges all Defendants with conspiracy "to murder a person or persons outside the United States," in violation of 18 U.S.C. 956(a) and 2. Count Two charges all Defendants with conspiracy "to provide 'material support or resources,' as that term is defined in Title 18 United States Code, Section 2339A(b), including personnel, to a foreign terrorist organization, namely the Islamic State of Iraq and the Levant," from March 2014 through to the present, knowing such organization was a designated terrorist organization, that had engaged in or was engaging in terrorist activity and terrorism, in violation of § 2339B(a)(1). *Id.* Counts Three through Six charge all Defendants with attempting to provide material support and resources, including personnel, to a foreign terrorist organization, namely Islamic State in Iraq and the Levant, on

[2] *United States v. Khadr*, 717 F.Supp.2d 1215, 1221 (C.M.C.R. 2007)
[3] *Johnson v. Eisentrager*, 339 U.S. 763, 793 (1950) (Black, J., dissenting).

various dates, knowing such organization was a designated terrorist organization, that had engaged in or was engaging in terrorist activity and terrorism, in violation of § 2339B(a)(1). *Id.* Counts Seven through Thirteen charge various counts of perjury, false statement and misuse of financial aid.

A. Complaint Against Hamza Ahmed

Mr. Ahmed was arrested on February 4, 2015, and arraigned on a complaint charging him with making false statements to FBI agents (the "Complaint"). The Complaint alleged that on November 8, 2014, then 19 year-old Mr. Ahmed had been removed from a flight bound from JFK International Airport in New York for Istanbul, Turkey, with a forwarding ticket to Madrid, Spain. *Id.*, ¶ 7. Prior to his detention, JFK officials prevented three other 19 and 20 year-old Minneapolis residents – later identified as Mohamed Farah, Hanad Musse and Zacharia Abdurahman – from boarding flights to Istanbul, Sofia, Bulgaria, and Athens, Greece, respectively. *Id.*, ¶¶ 6, 7.

B. The Complaint Against Another Six Defendants

On April 20, 2015, an additional six Defendants were charged by complaint with conspiring to provide material support to ISIL ("Complaint II"), Guled Omar, Abdurahman Daud, Mohamed Farah, Hanad Musse, Zacharia Abudrahman, and Adnan Farah.

Complaint II recounted that Guled Omar had allegedly planned to leave the US "to join ISIL" in May 2014, but later abandoned the plan under parental pressure. *Id.*, ¶¶ 29-30. It further recounted how Mohamed Farah, Hanad Musse, Zacharia Abudrahman and Hamza Ahmed "attempted to leave the United States and make their way to Syria to join, and fight with, ISIL," between November 6 and November 8, 2014. *Id.*, ¶ 35. Omar attempted to fly from Minneapolis to San Diego but was not permitted to board by the FBI. *Id.*, ¶ 37. On

November 5 and 6, Mohamed Farah, Abdurahman, Musse and Ahmed traveled by Greyhound bus to New York City, and on November 8, purchased plane tickets to various destinations in southeastern Europe. *Id.*, ¶¶ 37, 38. All four were prevented from traveling by federal agents at JFK. *Id.*, ¶ 38.

Complaint II details how Omar, the Farah brothers, Musse, Abdurahman and Daud allegedly planned another attempt to leave the U.S. for Syria. Some of their conversations were recorded by a confidential human source. *Id.*, ¶ 51. In these recorded conversations, Defendants allegedly described their previous efforts to leave the United States, *id.*, ¶¶ 52-55, and a future effort using fake passports obtained in Mexico. *Id.*, ¶¶ 56-61. They also recounted conversations with Abdi Nur, an individual the government believes was fighting with ISIL in Syria, *id.*, ¶ 67, and who the government believes attempted to "encourage and assist [Defendants] in traveling from the United States to Syria to join ISIL." *Id.*, ¶ 20.

Hamza Ahmed is not alleged to have participated in any plans post-November 2014 to travel outside the United States.

C. The Second Superseding Indictment

The Second Superseding Indictment was returned on October 21, 2015, against the five captioned defendants.[4] The overt acts listed for the murder charge consisted of the following:

- Between March and May of 2014, Defendants Daud and Omar, the Farah brothers, and two co-conspirators separately charged, Abdulalhi Yusuf and Abdi Nur, "met and discussed ways in which to travel to Syria to join, and fight with, ISIL." Indictment, ¶ 3(a).

[4] Defendants Hanad Musse and Zacharia Abdurahman each pled guilty to one count of material support, respectively, September 9, 2015 [docket #252] and on September 17, 2015 [docket #275].

- In April 2014, Mohamed Farah and a co-coconspirator applied for passports. *Id.*, ¶ 3(b)-(e).
- In May 2014, Yusuf attempted to travel, and Nur traveled to, Syria with the purpose of joining, and fighting with, ISIL. *Id.*, ¶ 3(i)-(j).
- Defendant Daud downloaded an app to his telephone "in order to communicate securely with his co-conspirators" without being surveilled. *Id.*, ¶ 3(k).
- In August 2014, Defendants Daud and Omar and the Farah brothers "participated in a session of paintball intended to serve as training in preparation for combat." *Id.*, ¶ 3(l).
- In October 2014, Defendants Daud and Adnan Farah "communicated via social media with Antar, a self-described member of ISIL, located in Syria, who provided information to members of the conspiracy about how best to travel to Syria in order to join, and fight with, ISIL." *Id.*, ¶ 3(m).
- In October 2014, Defendants Daud and Omar and the Farah brothers, along with other separately charged co-conspirators, "met to discuss routes, methods and the timing of leaving the United States to join ISIL." *Id.*, ¶ 3(n).
- In November 2014, Musse, Abdurahman, Mohamed Farah and Ahmed opened bank accounts and made deposits in them, and purchased bus tickets to New York City. *Id.*, ¶ 3(o)-(v).
- In November 2014, Musse and Abdurahman lied to federal agents about the purpose of their planned overseas travel in early November 2014. *Id.*, ¶ 3(w)-(x).

- In March 2015, Defendant Daud and the brothers Farah provided photographs and money to a confidential human source for the purpose of creating false passports. *Id.*, ¶ 3(y)-(cc).
- In April 2015, Defendant Daud "communicated with a member of ISIL inside Syria" regarding the best way to travel through Turkey to reach the Turkey-Syria border without interception. *Id.*, ¶ 3(dd).
- In April 2015, Defendants Daud and Mohamed Farah received false passports. *Id.*, ¶ 3(ee)-(ff).

ARGUMENT

I

THE MURDER COUNT SHOULD BE DISMISSED BECAUSE, ACCEPTING THE TRUTH OF THE GOVERNMENT'S ALLEGATIONS, THE DEFENDANTS ARE ENTITLED TO PRIVILEGED COMBATANT STATUS THAT IMMUNIZES THEM FROM CRIMINAL PROSECUTION

A. Privileged Combatant Status – Applicable Principles

1. Common Law

The common law has long acknowledged the concept of privileged combatant status, which grants immunity from prosecution to armed forces of belligerents in an armed conflict. *See* 4 Blackstone, *Commentaries on the Laws of England* 198 (1769) (killing an enemy "in time of war" is not murder); 1 Hale, Pleas of the Crown § 433 (1847) ("If a man kill an alien enemy within this kingdom, yet it is felony, unless it be in the heat of war, and in the actual exercise thereof."). Combatant immunity doctrine has been applied equally in the context of civil wars as in international armed conflicts. *See Underhill v. Hernandez*, 168 U.S. 250, 253 (1897) ("If the political revolt fails of success, still, if actual war has been waged, acts of legitimate warfare cannot be made the basis of individual liability.")

The common law distinguished privileged combatants from unprivileged or unlawful combatants. As the Supreme Court elaborated in *Ex Parte Quirin*:

> By universal agreement and practice, the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations, and also between those who are lawful and unlawful combatants. *Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces*. *Unlawful combatants* are likewise subject to capture and detention, but, *in addition, they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful.* The spy who secretly and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or *an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property, are familiar examples of belligerents who are generally deemed not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals.*

Id., 317 U.S. 1, 30-31 (1942) (citations omitted) (emphasis added).

Privileged combatants cannot be prosecuted for any crime, much less murder, under domestic criminal laws. *Johnson v. Eisentrager*, 339 U.S. 763, 793 (1950) (Black, J., dissenting) ("[L]egitimate 'acts of warfare,' however murderous, do not justify criminal conviction .... [I]t is no 'crime' to be a soldier."); *William Winthrop, Military Law and Precedents* 778 (2d ed. 1920) (noting that Indian chief Pretty Horses was not guilty of "the alleged murder of an officer of our army, on the ground that the killing was legitimate as being incidental to a state of war then pending"); ."); *Freeland v. Williams*, 131 U.S. 405, 416 (1889) ("For an act done in accordance with the usages of civilized warfare, under and by military authority of either party, no civil liability attached to the officers or soldiers who acted under such authority"); Instructions for the Government of the Armies of the United States in the Field, General Orders No. 100, Art. 41 (Prepared by Francis Lieber, 1863 and known as the

Lieber Code) ("All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field."); *see also Hamilton v. McClaughry*, 136 F. 445, 447-48 (C.C.D. Kan. 1905) (observing that American soldier participating in operation to quell the Boxer Rebellion was not subject to Chinese criminal laws); *Tennessee v. Hibdom*, 23 F. 795, 797 (C.C.M.D. Tenn. 1885) (holding that a Union soldier participating in occupation of Confederate Tennessee was not subject to Tennessee's criminal laws); *In re Lo Dolce*, 106 F. Supp. 455, 460-61 (W.D.N.Y. 1952) (holding that an American soldier serving behind enemy lines in German-occupied Italy, who confessed to murdering a fellow American soldier, was not subject to Italian criminal laws).

2. International Law

In addition, the lawful combatant doctrine is an integral component of the Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949.6 U.S.T. 3316, 75 U.N.T.S. 135 ("GPW"), to which the United States is a signatory. As such, under the Supremacy Clause of the United States Constitution, its provisions are part of U.S. law and binding on federal courts. *See* U.S. Const. art. VI, § 2.

Under the GPW, privileged combatants consist of those who are members of regular armed forces, or who are members of irregular armed forces who comply with the certain requirements. Thus, they include:

> (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
>
> (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:

> (a) that of being commanded by a person responsible for his subordinates;
> (b) that of having a fixed distinctive sign recognizable at a distance;
> (c) that of carrying arms openly;
> (d) that of conducting their operations in accordance with the laws and customs of war.
>
> (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

GPW Art. 4(A).

Like the common law, the GPW precludes municipal criminal prosecution of law privileged combatants. *See* GPW Art. 87 ("Prisoners of war may not be sentenced … to any penalties except those provided for in respect of members of the armed forces of the said power who have committed the same acts").

3. Significance

As the above authorities demonstrate, the principle of combatant immunity is a critical protection for American soldiers overseas as much as it for foreign soldiers captured by the U.S. in a time of war. *See Dow v. Johnson*, 100 U.S. 158, 169 (1979) ("This doctrine of non-liability to the tribunals of the invaded country for acts of warfare is as applicable to members of the Confederate army, when in Pennsylvania, as to members of the National army when in the insurgent States.").[5]

The immunity carries particular resonance here, where the defendants are not foreign soldiers, but young Americans who are charged with responding to one of the most compelling

[5] It thus protects, for example, the Navy SEALS accused of detainee abuse from prosecution by municipal authorities in Afghanistan. *See* Kulish et al., *Navy Seals, a Beating Death and Claims of a Cover-Up*, NY Times, 12/17/2015 (describing the allegations), available at http://www.nytimes.com/2015/12/17/world/asia/navy-seal-team-2-afghanistan-beating-death.html

siren calls on the Internet,[6] and the very people that the government states in other fora deserve empathy, understanding and restorative justice measures rather than punitive ones.[7]

B. Accepting the Truth of the Government's Allegations, the Defendants Are Entitled to Privileged Combatant Status And Thus Immune From Criminal Prosecution

Accepting the truth of the government's allegations – that the defendants conspired and attempted to travel to Syria to join ISIL to "fight" – the defendants are entitled to privileged combatant status, at least unless and until they conspire to engage in unlawful acts of war. *See Ex Parte Quirin,* 317 U.S. at 30-31 (unlawful combatants only "subject to trial and punishment by military tribunals *for acts which render their belligerency unlawful*") (emphasis added).[8]

However one might describe ISIL as an entity, it has an army, with a rigid command structure, equipped with insignia, weapons, and military vehicles.[9] While ISIL and ISIL-inspired supporters have committed gross atrocities against civilians, it also engages in

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[6] ISIL has engaged in an international propaganda campaign, featuring glossy online magazines, videos with high production values, and intensive and sophisticated use of social media – propaganda efforts President Obama has acknowledged are "designed to target today's young," especially "those who may be disillusioned or wrestling with their identity." *See* Remarks by the President at the Summit on Countering Violent Extremism, February 19, 2015 (hereafter "President Obama CVE Remarks"), available at https://www.whitehouse.gov/the-press-office/2015/02/19/remarks-president-summit-countering-violent-extremism-february-19-2015. At its heart, this propaganda markets a seductive ideology of statehood and citizenship. Writing in the Boston Globe in June 2014, Thanassis Cambanis explains that despite its "repugnant" tactics, ISIL "has gotten one important thing right: It has created a clear – and to some, compelling – idea of citizenship and state-building in a region almost completely bereft of either." *See The Surprising Appeal of ISIS, Boston Globe, June 29, 2014.*

[7] *See, e.g.,* Liz Goodwin, *Minnesota tries softer approach in battling Islamic State, Yahoo News*, 2/16/2015 (discussing Twin Cities' strategy to use a "community intervention team" of religious and business leaders to respond to concerns of radicalization—not law enforcement), available at http://news.yahoo.com/minnesota-tries-softer-approach-in-battling-islamic-state-233324226.html

[8] A party in a criminal case may "raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." Fed. R. Crim. P. 12(b)(1).

[9] Harriet Alexander, *How Isil is funded, trained and operating in Iraq and Syria*, The Telegraph, August 23, 2014 (noting that "every [ISIL] fighter reportedly has three sets of M16 rifles and body armour, captured from Syrian and Iraqi government forces"), available at http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/11052919/How-Isil-is-funded-trained-and-operating-in-Iraq-and-Syria.html.

conventional military warfare through "a centralized command structure . . . that is superior to all of the regional military commands in Iraq."[10] Notably, there is no allegation, nor evidence, that the defendants contemplated, intended or planned to engage in anything but conventional military warfare. The Superseding Indictment merely states that they planned to "fight" for ISIL, and reinforces the conventionality of their alleged role by stating that they engaged in "combat" practice at a paintball arena. "Fighting" and "combat" practice are precisely the activities that grant soldiers and alleged putative soldiers privileged combatant immunity. As such, the Defendants are immune from prosecution both under common law and under international law made part of U.S. law by treaty under the Supremacy Clause.

1. Under Common Law

Defendants are charged with conspiracy to commit murder under 18 U.S.C. § 956(a), which under the United States' maritime and territorial jurisdiction, is defined as "the *unlawful* killing of a human being with malice aforethought." 18 U.S.C. § 1111 (emphasis added). The common law combatant immunity doctrine is a variant of the public authority doctrine. *See* Model Penal Code § 3.03 ("conduct is justifiable when it is required or authorized by … (d) the law governing the armed services or the lawful conduct of war"); Boyce, Dripps, & Perkins, Criminal Law & Procedure 886 (11th ed. 2010) ("Nothing done under valid public authority is a crime if such authority is in no way exceeded or abused . . . The typical instances in which even the extreme act of taking human life is done by public authority are (1) the killing of an enemy as an act of war and within the rules of war."); *see also United States v. Achter*, 52 F.3d 753, 755 (8th Cir.1995) (the public authority defense allows the defendant to seek exoneration based

[10] Alex Bilger, *ISIS Annual Reports Reveal A Metrics-Driven Military Command*, May 22, 2014, available at http://understandingwar.org/backgrounder/ISIS-Annual-Reports-Reveal-Military-Organization.

on the fact that he reasonably relied on the authority of a government official to engage him in a covert activity).

In *United States v. Hamidullin*, 2015 WL 4241397 (E.D. Va. July 13, 2015), the court declined to apply the public authority defense to an accused member of the Taliban. *Id.* at *16. The court reasoned the defendant's "purported authority affords him no protection under the common law," absent proof that the defendant was operating "under national military authorities, occurring during a state of war and in accordance with the principles of civilized warfare," and where the Taliban leadership "was not a government recognized by the United States or even a *de facto* government." *Id.* (*quoting* the government's brief).

Here, by contrast, ISIL has a colorable claim at least to being a *de facto* government;[11] this "government" has a national military authority; and it is pure speculation that the "combat" in which the Defendants allegedly intended to engage and allegedly would in fact have engaged in would not be "in accordance with the principles of civilized warfare." *Id.* As such, the public authority doctrine immunizes the Defendants from prosecution.

2. Under International Law

Defendants' conduct is also protected under the Geneva Conventions, made part of U.S law under the Supremacy Clause. As an initial matter, to the extent combatant immunity under international law is limited to armed conflicts of an international character, the war in Syria and Iraq clearly meets this definition. *See* Jordan J. Paust, *Operationalizing Use of Drones Against*

[11] *See* Memorandum in Support of Defendants' Joint Motion to Dismiss the Superseding Indictment at p.6 [Docket No. 202] ("Terrorist networks, such as al Qaeda, generally have only dozens or hundreds of members, attack civilians, do not hold territory, and cannot directly confront military forces. ISIS, on the other hand, boasts some 30,000 fighters, holds territory in both Iraq and Syria, maintains extensive military capabilities, controls lines of communication, commands infrastructure, funds itself, and engages in sophisticated military operations. If ISIS is purely and simply anything, it is a pseudo-state led by a conventional army.") (*quoting* Audrey Kurth Cronin, *Isis Is Not a Terrorist Organization*, Foreign Affairs, March/April 2015).

Non-State Terrorists Under the International Law of Self-Defense, 8 Alb. Gov't L. Rev. 166 (2015) (noting that "direct U.S. participation in hostilities has internationalized the armed conflict [in Syria and Iraq] if it had not previously been an armed conflict of an international character").

Defendants – as alleged putative fighters with ISIL – receive combatant status under Geneva Convention III for three reasons. *First*, this status is based on membership "of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power." GPW Art.4(A)(3). The Indictment charges that the Defendants sought to travel to Syria to join and "fight" with ISIL. As noted above, ISIL has a conventional, uniformed army that engages in traditional military warfare and with which the Defendants allegedly intended to join in "combat." Superseding Indictment, ¶ 3(l). This army pledges allegiance to ISIL, a *de facto* government in a large territory in Syria and Iraq.

Second, combatant status is based on membership "of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces." GPW Art. 4(A)(1). ISIL controls and governs large swaths of Iraq and Syria. As such, ISIL has become a *de facto* government in these territories. *See* Memorandum in Support of Defendants' Joint Motion to Dismiss the Superseding Indictment at pp. 3 to 10 [Docket No. 202]. Moreover, it has been a "party" to the conflict in Iraq and Syria, both contracting parties to the Geneva Conventions, since 2006. ISIL is therefore a "Party to the conflict," for purposes of GPW Art. 4(A)(1).[12]

[12] Notably, combatant status under both GPW 4(A)(1) and 4(A)(3) does not require satisfaction of the four pre-requisites of combatant status set forth in GPW Art. 4(A)(2) - (command structure, distinction, open arms and compliance with the law of war). *See Paust*, *NAIC Nonsense, the Afghan War, and Combatant Immunity*, 44 Ga.J.Int.& Comp.L. No. 2, 20 (2016) (explaining that "[b]ecause most members of the armed forces (especially members of special forces) of parties

(footnote continued)

Finally, combatant status emanates from membership in a volunteer corps "belonging to a Party to [a] conflict and operating in or outside their own territory" satisfying the four conditions of GPW Art. 4(A)(2). Under the government's theory, the Defendants were essentially a corps of young men who aimed to "volunteer" to fight with ISIL. The government maintains they operated under their own command structure. Their alleged paintball practice reveals a commitment to open arms. And there is no allegation – and not a shred of evidence – that the Defendants intended to engage in any actions other than conventional warfare, in conformity with the laws of war. As such, their alleged conduct comes within the category set forth in GPW Art. 4(A)(2).

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to an international armed conflict will wear camouflage, and therefore will not have a fixed distinctive sign recognizable at a distance, it is critically important to adhere to the text of 4(A)(1) and (3) so that membership remains the determinative criterion for pow and combatant status"); *cf., Hamidullin*, 2015 WL 4241397 at * 14 (GPW 4(A)(1) and 4(A)(3) require satisfaction of four GPW Art. 4(A)(2) factors).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that their motion to dismiss Count One of the Second Superseding Indictment on grounds of combatant immunity be granted.

Dated: December 18, 2015

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