No. 11-683

In the Supreme Court of the United States

HUSSAIN SALEM MOHAMMED ALMERFEDI,
PETITIONER

v.

BARACK H. OBAMA,
PRESIDENT OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that petitioner is subject to military detention under the Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, as part of al-Qaida, where the evidence established that petitioner stayed at the headquarters of Jama'at al-Tablighi, an organization infiltrated by al-Qaida; that he was housed at an al-Qaida guesthouse in Tehran; and that he served as a facilitator for the transport of others who were part of al-Qaida moving to and from Afghanistan and other countries.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and rule:

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 654 F.3d 1. The unclassified version of the opinion of the district court (Pet. App. 25a-52a) is reported at 725 F. Supp. 2d 18.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2011 (Pet. App. 23a-24a). On August 23, 2011, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 7, 2011, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner is an alien detained at the United States Naval Station at Guantanamo Bay, Cuba, under the Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001). He petitioned for a writ of habeas corpus, and the district court granted the writ and ordered his release. The court of appeals reversed. Pet. App. 1a-22a.

1. In response to the attacks of September 11, 2001, Congress enacted the AUMF, which authorizes "the President * * * to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons." AUMF § 2(a), 115 Stat. 224. The President has ordered the Armed Forces to subdue both the al-Qaida terrorist network and the Taliban regime that harbored it in Afghanistan. Armed conflict with al-Qaida and the Taliban remains ongoing, and in connection with those military operations, some persons captured by the United States and its coalition partners have been detained at Guantanamo Bay.

In Section 1021 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), Pub. L. No. 112-81, 125 Stat. 1562 (2011), Congress "affirm[ed]" that the authority granted by the AUMF includes the authority to detain, "under the law of war," any "person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners."

2. Petitioner, an alien detained at Guantanamo Bay under the AUMF, filed a petition for a writ of habeas corpus. His petition was filed before this Court held in

Boumediene v. *Bush*, 553 U.S. 723 (2008), that the district court has jurisdiction to consider habeas petitions filed by Guantanamo detainees, and proceedings were stayed pending resolution of that jurisdictional issue. After *Boumediene*, the government filed a factual return to the habeas petition, and petitioner filed a traverse. Pet. App. 26a-27a, 29a.

3. The district court held an evidentiary hearing. Petitioner chose not to testify at the hearing, but he submitted a declaration in which he admitted that, in early September 2001, he left his home in Aden, Yemen, and traveled to Karachi after bribing a guard at the Pakistani Embassy in order to obtain a visa. He went on to Lahore, Pakistan, where he spent about two and a half months at the headquarters of Jama'at al-Tablighi (JT), an Islamic missionary organization. In November 2001, he secretly entered Iran and traveled through Tehran to Mashad, a city in northeastern Iran near the Afghan border. Around the end of 2001, he returned to Tehran, where he was arrested by Iranian officials who later turned him over to the United States. Pet. App. 3a, 31a-33a.

Petitioner maintained that he wanted to go to Europe for economic reasons and that he became involved with JT so that he could be sent to Europe as a missionary. He said that he arranged to be smuggled into Iran so that he could later be smuggled into Turkey and then Greece. Pet. App. 31a-32a.

The government presented evidence that petitioner had in fact been an al-Qaida facilitator who was posted at an al-Qaida guesthouse in Iran and was responsible for helping fighters infiltrate Afghanistan from Iran. Pet. App. 34a. Specifically, the government presented background evidence about al-Qaida's network of guest-

houses in Afghanistan and Pakistan, as well as a guesthouse in Tehran funded by Usama bin Laden and managed by Hamza al-Qaiti, *id.* at 33a-34a, 60a-62a; interrogation reports from another detainee at Guantanamo Bay, al-Jadani, who said that a man named "Hussain Al-Adeni"—that is, "Hussain from Aden"—had lived at an al-Qaida guesthouse in Iran that was used to house fighters traveling to Afghanistan, *id.* at 35a-37a; and an interrogation report from al-Jadani indicating that another detainee, al-Bihani, reported that al-Bihani had lived in al-Qaida guesthouses in Iran and knew that al-Qaiti operated one of the Tehran guesthouses, *id.* at 41a-44a; C.A. App. 566-567. In addition, the government presented evidence that al-Qaida had infiltrated JT, including evidence that other detainees had admitted to using a JT center in Lahore to help them escape after they had fought in Afghanistan. Pet. App. 47a-49a.

The government also showed that petitioner's story was incomplete and internally inconsistent. For example, petitioner began his journey with about $2000 in cash, Pet. App. 3a, spent a large amount of money on bribes and travel expenses, C.A. App. 366, but still had about $2000 in cash at the time of his capture, Pet. App. 4a. Petitioner also failed to explain what he had been doing during his two-and-a-half-month stay at JT headquarters in Lahore, where, he said, he encountered only one other person who spoke Arabic. *Id.* at 3a-4a, 51a. Nor could he explain what he did during his one-month stay in Mashad. *Id.* at 44a. Finally, if petitioner had really intended to travel from Tehran to Turkey, it made no sense for him to go to Mashad, which is more than 500 miles east of Tehran while Turkey is roughly the same distance to the west. *Ibid.*

4. The district court granted the petition and ordered petitioner's release. Pet. App. 25a-52a. The court recognized that petitioner's explanations for his travels were "at the very least, perplexing" and "not * * * convincing." *Id.* at 44a, 51a. It also called petitioner's two-and-a-half month stay with JT "strange and unexplained." *Id.* at 51a. But the court stated that evidence of al-Qaida's infiltration of JT was not evidence that petitioner himself had used JT's facilities for an al-Qaida-related purpose. *Id.* at 46a-52a. Noting that "Hussain is a very common name, and 'Al-Adeni' could refer to any man from the city of Aden," the court also expressed doubt about whether al-Jadani was referring to petitioner when he spoke of "Hussain al-Adeni." *Id.* at 36a. In any event, the court concluded that four of the intelligence reports describing al-Jadani's statements about petitioner were unreliable because al- Jadani described what others had told him about petitioner but did not identify his sources. *Id.* at 39a. In the court's view, information that "could be based on personal knowledge, hearsay, multiple hearsay, or rumor" amounted to "no more than jailhouse gossip, if that," and the court refused to credit it. *Ibid.* Two other intelligence reports described al-Jadani's own conversations with petitioner, but the court found "other reasons" besides hearsay concerns "to question their accuracy and reliability," including discrepancies in the dates of some of the events described in the statements. *Id.* at 42a.

The district court concluded that "the government has not shown by a preponderance of the evidence that petitioner ever stayed in an Iranian guesthouse, let alone one run by or affiliated with al Qaeda." Pet. App. 34a. In the court's view, "[w]hile the government has cast suspicion on petitioner's explanation * * * [it]

simply has not shown by a preponderance of the evidence that petitioner had any ties to al Qaeda or to the Taliban." *Id.* at 51a.

5. The court of appeals reversed. Pet. App. 1a-22a.

a. The court of appeals explained that the government bore the burden of proving by a preponderance of the evidence that petitioner is properly detained. Pet. App. 8a-9a. It noted that the district court's "specific factual determinations are reviewed for clear error," *id.* at 9a, but it determined "as a matter of law that the government has demonstrated by a preponderance of the evidence that [petitioner] can be detained," *id.* at 2a.

In reaching that conclusion, the court of appeals emphasized petitioner's admission that he had stayed for two and a half months with JT. Pet. App. 11a. Although the court described that evidence as "probative," it explained that "by itself it presumably would not be sufficient to carry the government's burden." *Id.* at 12a. But the court viewed petitioner's association with JT in conjunction with his "travel route, which is quite at odds with his professed desire to travel to Europe (and brought him closer to the Afghan border where al Qaeda was fighting)," as well as the fact that petitioner "had at least $2,000 of unexplained cash on his person." *Ibid.* The court "conclude[d] that all three facts, when considered together, [were] adequate to carry the government's burden of deploying 'credible evidence that the habeas petitioner meets the enemy-combatant criteria.'" *Ibid.* (quoting *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 534 (2004) (plurality opinion)) (citation omitted).

The court of appeals went on to note that petitioner had not rebutted the government's evidence with more persuasive evidence of his own. Pet. App. 12a. It observed that the district court had "correctly" chosen not

to "credit [petitioner's] account" of his actions, *ibid.*, but it held that the district court had "erred by ignoring the implication of what it found to be dubious accounts because 'false exculpatory statements' amount to evidence in favor of the government," *id.* at 13a (quoting *Al-Adahi* v. *Obama*, 613 F.3d 1102, 1107 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1001 (2011)).

The court of appeals explained that "the government's evidence, combined with [petitioner's] incredible explanations," were sufficient to "satisfy[] the government's burden without regard to consideration of al-Jadani's statements." Pet. App. 13a. But it also held that the district court had "clearly erred in regarding al-Jadani's statements as unreliable." *Ibid.* The court stated that the government "persuasively argues that al-Jadani's timing confusion is inconsequential. And it points out that al-Jadani's 'reliability has been established'—with support in a classified declaration." *Id.* at 14a. The court of appeals further held that there was no reasonable basis for the district court's suggestion that the "Hussain al-Adeni" discussed by al-Jadani might be someone other than petitioner. "Buttressing al-Jadani's credibility," the court observed, was the fact that he "reported to his interrogators the circumstances of 'Hussain al-Adeni's' capture, which included arrest by the Iranians, transfer to the Afghans, and ultimate transfer to the Americans," circumstances that "match [petitioner's] unique experiences and therefore make clear that [petitioner] and Hussain al-Adeni are the same man." *Id.* at 14a-15a. The court added that "[t]hat detailed description of [petitioner's] travels further indicates that al-Jadani's occasional mistakes in dates are inconsequential." *Id.* at 15a.

b. Judge Rogers concurred in part and concurred in the judgment. Pet. App. 16a-22a. She disagreed with the court's analysis of certain of al-Jadani's statements, but she agreed that the remaining evidence was sufficient to establish "that the district court erred, under a preponderance of the evidence standard, in granting the petition for a writ of habeas corpus." *Id.* at 17a.

ARGUMENT

Petitioner argues (Pet. 11-27) that the court of appeals applied an overly expansive standard for military detention under the AUMF, misapplied the preponderance of the evidence standard, and failed to give appropriate deference to the district court's factual findings. Those contentions are contradicted by the express statements of the court of appeals. Petitioner also suggests that the court erred in evaluating the evidence in his case, but that claim is factbound and lacks merit in any event. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

1. According to petitioner (Pet. 12), the decision below "expands the scope of the executive's detention authority far beyond anything provided by the AUMF." That is incorrect. In fact, in this and other cases, the lower courts have properly performed the task that this Court assigned them in *Boumediene* v. *Bush*, 553 U.S. 723 (2008)—they have developed "procedural and substantive standards," *id.* at 796, for habeas proceedings for military detainees that provide the requisite meaningful review of the lawfulness of detention, *id.* at 779. This Court has declined to review numerous decisions applying those established standards, and there is no reason for a different result in this case.

The court of appeals held in this case, as it has repeatedly held elsewhere, that an individual may be detained under the AUMF if he was part of al-Qaida at the time of his capture. Pet App. 2a; see, *e.g.*, *Al-Adahi* v. *Obama*, 613 F.3d 1102, 1103 (D.C. Cir. 2010) ("The government may * * * hold at Guantanamo and elsewhere those individuals who are 'part of' al-Qaida, the Taliban, or associated forces."), cert. denied, 131 S. Ct. 1001 (2011); accord *Al Odah* v. *United States*, 611 F.3d 8, 10 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1812 (2011); *Awad* v. *Obama*, 608 F.3d 1, 11 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1814 (2011); *Al-Bihani* v. *Obama*, 590 F.3d 866, 872 (D.C. Cir. 2010), cert. denied, 131 S. Ct. 1814 (2011); accord NDAA § 1021, 125 Stat. 1562 ("affirm[ing] * * * the authority of the President to * * * detain" any "person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners").

The court of appeals has emphasized that the determination whether a person is part of al-Qaida should be made "on a case-by-case basis * * * using a functional rather than a formal approach and by focusing upon the actions of the individual in relation to the organization." *Salahi* v. *Obama*, 625 F.3d 745, 751-752 (D.C. Cir. 2010) (quoting *Bensayah* v. *Obama*, 610 F.3d 718, 725 (D.C. Cir. 2010)). That test appropriately takes account of the nature of al-Qaida. In particular, many of al-Qaida's operations are carried out by terrorist cells made up of volunteers acting with significant autonomy but taking direction from al-Qaida leadership. See Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2109 (2005). Moreover, individuals who are part of

al-Qaida typically seek to hide their association. They often do not wear uniforms or carry "official membership card[s]," and they may purposefully attempt to disguise their connection to the organization. *Al-Bihani*, 590 F.3d at 873. Accordingly, the fact "[t]hat an individual operates within al Qaeda's formal command structure is surely sufficient but is not necessary to show he is 'part of' the organization." *Bensayah*, 610 F.3d at 725; accord *Awad*, 608 F.3d at 11. Instead, "[i]ndicia other than the receipt and execution of al Qaeda's orders may prove 'that a particular individual is sufficiently involved with the organization to be deemed part of it.'" *Uthman* v. *Obama*, 637 F.3d 400, 403 (D.C. Cir. 2011) (quoting *Bensayah*, 610 F.3d at 725), petition for cert. pending, No. 11-413 (filed Aug. 29, 2011). Under that functional test, proof of attending an al-Qaida training camp, staying at al-Qaida guest houses that were not open to the public, and travel and close association with other al-Qaida fighters are highly probative of whether a detainee is properly deemed to have been part of the group. See, *e.g.*, *Al Alwi* v. *Obama*, 653 F.3d 11, 17 (D.C. Cir. 2011), petition for cert. pending, No. 11-7700 (filed Dec. 5, 2011); *Al-Madhwani* v. *Obama*, 642 F.3d 1071, 1075 (D.C. Cir. 2011), petition for cert. pending, No. 11-7020 (filed Oct. 24, 2011); *Barhoumi* v. *Obama*, 609 F.3d 416, 427 (D.C. Cir. 2010); *Awad*, 608 F.3d at 9-10.

Conversely, the court of appeals has correctly recognized that not everyone having some association with al-Qaida is "part of" that organization. For example, the court has held that "the purely independent conduct of a freelancer is not enough" to show that he is "part of" al-Qaida. *Salahi*, 625 F.3d at 752 (quoting *Bensayah*, 610 F.3d at 725). Similarly, "intention to fight is inade-

quate by itself to make someone 'part of' al Qaeda." *Awad*, 608 F.3d at 9. At bottom, the inquiry is whether "a particular individual is sufficiently involved with the organization to be deemed part of it." *Bensayah*, 610 F.3d at 725.

2. Petitioner asserts (Pet. 10-11) that the court of appeals applied a "relaxed burden of proof" and "depart[ed] from the preponderance standard as defined by this Court." To the contrary, the court of appeals expressly stated that "the preponderance of evidence standard used in civil cases * * * applies to these detainee habeas corpus petitions," Pet. App. 8a, and it repeatedly made clear that it was applying that standard, see *id.* at 2a ("We * * * conclude as a matter of law that the government has demonstrated by a preponderance of the evidence that [petitioner] can be detained."); *id.* at 9a (explaining that, under the preponderance standard, "the court makes a judgment about the persuasiveness of the evidence offered by each party and decides whether it is more likely than not that the petitioner meets the detention standard"); *id.* at 16a (Rogers, J., concurring) ("[T]he government met its burden of proof to show by a preponderance of the evidence that its detention of petitioner * * * is lawful based on the evidence in the record."). That approach is consistent with the holdings of the court of appeals in its earliest cases following *Boumediene* and in every case since then. See *Al-Bihani*, 590 F.3d at 878; accord, *e.g.*, *Al-Madhwani*, 642 F.3d at 1076; *Al-Adahi,* 613 F. 3d at 1103-1104, 1106; *Al Odah*, 611 F.3d at 17; *Awad*, 608 F.3d at 11.

Petitioner emphasizes the court of appeals' statement that the government must present credible evidence that meets a "certain minimum threshold of persuasiveness." Pet. App. 11a. According to petitioner

(Pet. 17), "[t]he court's reliance" on the plurality opinion in *Hamdi* v. *Rumsfeld*, 542 U.S. 507 (2004), "was inappropriate" and demonstrates that the court applied a standard less demanding than the preponderance of the evidence. In fact, the court made clear that it understood the "*Hamdi* approach" to "'mirror[]' the preponderance standard." Pet. App. 10a (quoting *Al-Bihani*, 590 F.3d at 878). And the court's opinion demonstrates that the relevant "minimum threshold of persuasiveness" is defined by the preponderance standard—that is, the government crosses the "threshold" by demonstrating that "it is more likely than not that the petitioner meets the detention standard." *Id.* at 9a.

Petitioner also quotes (Pet. 25-26) a concurring opinion written by Judge Silberman in another case in which he suggested that detention could possibly be based on a showing that it is "somewhat likely that the petitioner is an al Qaeda adherent or an active supporter." *Esmail* v. *Obama*, 639 F.3d 1075, 1077-1078 (D.C. Cir. 2011) (Silberman, J., concurring). As Judge Silberman himself acknowledged, that is not the law of the circuit, and it was not the standard applied by the panel opinion that Judge Silberman joined in that case. See *id.* at 1077 (per curiam opinion) ("[W]e conclude as a matter of law that Esmail was more likely than not 'part of' al Qaeda at the time of his capture."). Nor, as explained above, is it the standard applied by the court of appeals in this case.

According to petitioner (Pet. 25), the court of appeals' supposed misapplication of the preponderance standard means that "bringing a detainee habeas case in the D.C. Circuit is becoming an exercise in futility." In fact, the rulings of the court of appeals have carefully examined the issues in each case in an even-handed fash-

ion. Petitioner emphasizes that the court of appeals has reversed and remanded in several cases in which the government has appealed the grant of a habeas petition, but he does not mention that it has also reversed or remanded in cases in which a detainee has appealed the denial of a habeas petition. See *Bensayah*, *supra*; *Warafi* v. *Obama*, 409 Fed. Appx. 360 (D.C. Cir. 2011). In addition, petitioner overlooks the many cases in which the district court has granted a writ of habeas corpus and the government has chosen not to appeal. More than 25 former detainees have been released from detention at Guantanamo Bay after the district court granted their petitions.

3. Petitioner also contends (Pet. 20) that "[t]he court of appeals improperly usurped the district court's role by conducting what can only be understood as a trial-court review of the evidence." Here again, petitioner ignores the court's express statements to the contrary in this and other cases. Pet. App. 9a (explaining that the district "court's specific factual determinations are reviewed for clear error"); accord, *e.g.*, *Awad*, 608 F.3d at 6-7. As the court explained, *de novo* review is limited to the ultimate determination whether a detainee's conduct justifies detention under the facts found. Pet. App. 9a; see *Barhoumi*, 609 F.3d at 423. Applying that deferential approach, the court of appeals has not reversed the grant of a habeas petition except in cases where the evidence, viewed as a whole, has demonstrated that it is more likely than not that the petitioner was "part of" al-Qaida. *See Uthman*, 637 F.3d at 402; *Al Adahi*, 613 F.3d at 1111.

4. At bottom, petitioner's argument amounts to a claim that the court of appeals misapplied the established detention standard, the preponderance of the evi-

dence standard, and principles of clear error review in concluding that the evidence in this case was sufficient to justify his detention. Even if that were true, that factbound claim of the "misapplication of * * * properly stated rule[s] of law" would not warrant this Court's review. Sup. Ct. R. 10. In any event, petitioner's factual challenge to the decision below lacks merit.

As the court of appeals explained, the preponderance of the evidence shows that petitioner is properly detained. Petitioner "stayed for two and a half months at [JT], an Islamic missionary organization that is a Terrorist Support Entity 'closely aligned' with al Qaeda." Pet. App. 11a (quoting *id.* at 48a). As the district court acknowledged, the evidence "strongly suggests that individual JT members or those who had infiltrated JT assisted foreign fighters traveling between Afghanistan and Pakistan, and served as a cover for terrorist groups, and that al Qaeda or Taliban members have stayed at the JT Center in Lahore or in other JT facilities." *Id.* at 50a. The district court called petitioner's two-and-a-half month stay with JT "strange and unexplained." *Id.* at 51a. Significantly, this is not a case in which petitioner has given no explanation for his stay at the JT center. Rather, petitioner *attempted* to explain his stay, but the district court found that his explanation was not convincing. *Ibid.*

In addition, petitioner's travel route was "quite at odds with his professed desire to travel to Europe" in that it instead "brought him closer to the Afghan border where al Qaeda was fighting." Pet. App. 12a. Specifically, petitioner admitted that he traveled from Pakistan to Tehran and then traveled on to Mashad, near the Afghan border, before heading back to Tehran. *Id.* at 3a-4a. But if petitioner was truly seeking to go to Eu-

rope, traveling to Mashad took him more than 500 miles in the wrong direction. The district court correctly recognized that petitioner's explanations for his travels were "at the very least, perplexing." *Id.* at 44a. A far more plausible explanation for petitioner's travel pattern is suggested by the government's evidence that al-Qaida's guesthouses in Tehran—which were maintained by an associate of Usama bin Laden—were used as way stations for fighters moving in and out of Afghanistan, as were its guesthouses in Mashad. *Id.* at 36a-37a, 60a-62a; C.A. App. 337-338.

Moreover, petitioner began his journey with about $2000 in cash, Pet. App. 3a, itself a remarkable sum for a laborer who described his family as "poor" and who had "held a series of odd jobs," *id.* at 31a, in Yemen, a country with a per capita GDP of $820, C.A. App. 606. But after admittedly spending a large amount of money on bribes and travel expenses, which by his own description should have exhausted his funds, *id.* at 366, petitioner still had "at least $2000 in cash" at the time of his capture, Pet. App. 4a. Petitioner could not explain the discrepancy, but his transfers of large sums of cash are consistent with the conclusion that he was an al-Qaida facilitator. C.A. App. 557.

That evidence is reinforced by petitioner's implausible explanations for his conduct. As Judge Rogers explained, the district court's findings that petitioner's stories were not credible "buttress the government's" other evidence showing "that [petitoner's] behavior and travel route fit the profile of an al-Qaeda facilitator." Pet App. 17a. Indeed, although this habeas case is not governed by the standards of criminal prosecutions, even in criminal cases, it is well settled that false exculpatory statements can be strong evidence of guilt. See,

e.g., *United States* v. *Penn*, 974 F.2d 1026, 1029 (8th Cir. 1992); *United States* v. *Meyer*, 733 F.2d 362, 363 (5th Cir. 1984).

Finally, the government also presented reports documenting petitioner's conversations with al-Jadani, another detainee at Guantanamo Bay, who has been a reliable source of information. C.A. App. 812-817. Although the court of appeals determined that the government had satisfied its burden "without regard to consideration of al-Jadani's statements," those statements provide further support for its conclusion. Pet. App. 13a. Al-Jadani described conversations at Guantanamo Bay with "Hussain al-Adeni." While the district court questioned whether Hussain al-Adeni was in fact petitioner, *id.* at 36a, there is no dispute that "Hussain al-Adeni" means Hussain from Aden, Yemen, nor does petitioner dispute that he was the only Hussain from Aden at Guantanamo Bay, see *id.* at 15a. Moreover, as the court of appeals held, the information related by Hussain al-Adani to al-Jadani also shows that Hussain al-Adeni was in fact petitioner. Specifically, Hussain al-Adeni told al-Jadani of his stays in Tehran at an al-Qaida guesthouse, while petitioner admits that he was in Tehran and was captured there. In addition, al-Jadani also accurately described in detail the undisputed circumstances of petitioner's capture. *Id.* at 14a; see C.A. App. 303. Thus, the identity of the "Hussain al-Adeni" who spoke to al-Jadani at Guantanamo Bay was clear. Pet. App. 14a-15a.

On appeal and again in his petition, petitioner provided no legitimate basis for doubting the veracity of al-Jadani's key report of his conversation with petitioner, including petitioner's description of the two al-Qaida guesthouses in Tehran and petitioner's admission of be-

ing housed at one of those guesthouses.[1] That evidence was corroborated by petitioner's admitted presence and capture in Tehran, and by his admitted travel to Mashad. It was further corroborated by other Guantanamo Bay detainees who told al-Jadani that petitioner not only was at an al-Qaida guesthouse in Tehran but also but served as an al-Qaida facilitator there. See C.A. App. 297, 300, 326.

Petitioner's attempt (Pet. 21-24) to discount those statements reflects the flawed approach of ignoring any piece of evidence that does not, by itself, constitute proof that petitioner was part of al-Qaida. The statements are not the sole evidence in this case, but they were properly considered by the court of appeals together with petitioner's travels, his prolonged stay with JT, his false cover stories, and his unexplained large sums of cash. All of those pieces of the puzzle combine to show the

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[1] Petitioner argues (Pet. 23 & n.9) that the reports of the conversation between al-Jadani and petitioner should have been disregarded because one of the reports had an incorrect date (reporting that petitioner was in the guesthouse in Iran in 2002 and 2003, even though petitioner was captured in February 2002). There is no claim, however, that there was any date error in the Summary Interrogation Report, dated September 22, 2006, which originally reported al-Jadani's conversation with petitioner. C.A. App. 302-304. The fact that a subsequent Intelligence Information Report misdescribed the date stated by al-Jadani is therefore of little consequence. As the court of appeals recognized, the detailed information related by al-Jadani itself verifies that the information came from petitioner. Pet. App. 14a.

In a footnote, petitioner also alleges (Pet. 21 n.8) that al-Jadani "was subjected to very severe mistreatment at Guantanamo." The court of appeals, however, explained that it would have reached the same decision without regard to al-Jadani's statements. Pet. App. 13a. In any event, neither of the courts below has considered those allegations of mistreatment or whether the alleged mistreatment affected the reliability of the statements relevant to this case.

same picture: petitioner in Tehran, petitioner at the al-Qaida guesthouse funded by Usama bin Laden, and petitioner acting as an al-Qaida facilitator for deploying and retreating fighters.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2012

[2] Petitioner cites (Pet. 21) the district court's speculation that it would be "implausible" that al-Qaida would place him in a guesthouse in Tehran because he did not speak Farsi. That argument overlooks that the supervisor of one of the Tehran al-Qaida guesthouses was Marwan al-Adani, also a Yemeni from Aden. C.A. App. 337. It is hardly surprising that petitioner and his fellow Yemeni would be assigned to work together to help other Arabic-speaking fighters travel to Afghanistan.