

EXHIBIT 3

grounds, Boumediene v. Bush, 128 S. Ct. 2229 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)).

At a minimum, the President's power to detain includes the ability to detain as enemy combatants those individuals who were part of, or supporting, forces engaged in hostilities against the United States or its coalition partners and allies. This includes individuals who were part of or directly supporting Taliban, al-Qaida, or associated forces, that are engaged in hostilities against the United States, its coalition partners or allies. *Ex parte Quirin*, 317 U.S. 1, 37-38 (1942). This also includes any persons who have committed a belligerent act or supported hostilities in aid of enemy forces. *Id.* at 37.

Thus, individuals "who associate themselves with the military arm of the enemy government"—or enemy organization—"are enemy belligerents," even if "they have not actually committed or attempted to commit any act of depredation or entered the theatre or zone of active military operations." *Id.* at 37-38. Those who participate in or support enemy forces away from an active "battlefield" by, among other things, freeing up resources for enemy and associated forces to commit belligerent acts, are no less enemy combatants than those actually on the front lines.

The global terrorist threat existed before the attacks of September 11, 2001, but became fully manifest through that event. The Executive's detention powers aim to repel and defeat this threat, which does not stop at the geographic borders of any active battlefield, nor are its participants restricted to defined engagement lines. Likewise, the detention powers of the Executive are not limited to the boundaries of an active battlefield or solely to those individuals found on the front lines. The AUMF's authorization "to use all necessary and appropriate force

against those nations, organizations, or persons” with which we are in conflict imposes no geographical limitation on the parameters of the President’s authority to wage this war against terrorists—a war in which the active “battlefield” already has included New York City, Arlington, Virginia, and rural Pennsylvania.

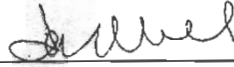
In any event, as the plurality in *Hamdi* made clear, “[t]he legal category of enemy combatant has not been elaborated upon in great detail,” and “[t]he permissible bounds of the category will be defined by the lower courts as subsequent cases are presented to them.” 542 U.S. at 522 n.1. Regardless, though, of the precise scope of the Executive’s authority lawfully to detain enemy combatants—either under the AUMF or Constitution—this petitioner falls squarely within it.

Dated: December 9, 2008

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:)
GUANTANAMO BAY)
DETAINEE LITIGATION)
_____)

Misc. No. 08-442 (TFH)

Civil Action No.
08-CV-1153 (HHK)

FACTUAL RETURN

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Respondents hereby submit, as explained herein, a factual return pertaining to the petitioner identified as the subject of the attached Narrative. This return sets forth factual bases¹ supporting petitioner's lawful, ongoing detention pursuant to the Authorization for the Use of Military Force and the President's power as Commander in Chief.

Dated: November 26, 2008

Respectfully submitted,

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¹ Respondents reserve the right to seek leave to further supplement the record with additional factual bases supporting petitioner's detention, as necessary.

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DECLARATION OF REAR ADMIRAL DAVID THOMAS


Declaration of Rear Admiral David M. Thomas, Jr.

Pursuant to 28 U.S.C. § 1746, I, David M. Thomas, Jr., hereby declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

I am a Rear Admiral in the United States Navy, with 31 years of active duty service. I currently serve as Commander, Joint Task Force-Guantanamo (JTF-GTMO), at Guantanamo Bay, Cuba. I have held this position since 27 May 2008. As such, I am directly responsible for the successful execution of the JTF-GTMO mission to conduct detention and interrogation operations in support of the Global War on Terrorism, coordinate and implement detainee screening operations, and support law enforcement and war crimes investigations.

The attached narrative and supporting materials from files of the Department of Defense or other government agencies contain information used by the Department of Defense to establish the status of the individual who is the subject of the narrative as an enemy combatant and to substantiate their detention as an enemy combatant at Guantanamo Bay, Cuba.

Dated:



DAVID M. THOMAS, JR.
Rear Admiral, U.S. Navy

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOHAMMED SOLIMAN BARRE,

Petitioner,

v.

Civil Action No. 08-CV-1153 (HHK)

GEORGE W. BUSH,
President of the United States, et al.,

Respondents.

NARRATIVE FOR MOHAMMED SOLIMAN BARRE, ISN 567

Introduction

01. Mohammed Soliman Barre (Barre or Petitioner) is a citizen of Somalia currently detained at the U.S. Naval Station, Guantanamo Bay, Cuba (Guantanamo). Petitioner has supported and trained with al-Qaida and its senior operatives and is thus an enemy of the United States. Consequently, Petitioner is lawfully detained at Guantanamo pursuant to, *inter alia*, the President's power as Commander in Chief and the Authorization for the Use of Military Force.

a. [REDACTED]

b. [REDACTED]

c. Petitioner performed money transfers for al-Qaida operatives.

d. [REDACTED]

02. The materials discussed herein relating to the factual bases for Barre's detention, and the assessment that he is a lawfully-detained enemy combatant, include interviews of him

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and others conducted by law enforcement and intelligence personnel, as well as information derived from other intelligence sources and methods. The officers who collect this intelligence routinely draft reports containing the information received from these sources. Such information is also commonly analyzed by intelligence or law enforcement personnel and used to produce other intelligence products. Military and intelligence personnel routinely rely upon these reports and intelligence products in making decisions to act upon threats to our national security. See generally Declaration of ³ [REDACTED] "Background Declaration -- Intelligence 101" (September 19, 2008); Declaration of Robert H. Holmes, "Use of Intelligence Products in the Targeting and Operation Cycles in Operation Enduring Freedom" (Aug. 22, 2008).

03. Certain of these materials submitted with this narrative contain classified national security information regarding intelligence activities, sources and methods, the disclosure of which could cause serious damage to the national security.

[REDACTED]

04. As with all detained enemy combatants at Guantanamo, petitioner has been assigned an Internment Serial Number or ISN. The ISN is an administrative code assigned to military detainees. Barre's full ISN is US9SO-000567DP, in which the number "567" is Petitioner's unique identifier and the "SO" designation indicates that he is a national of Somalia. Source documents attached as Exhibits to this narrative may refer to Barre by his name, full ISN, or various short forms of the ISN, such as "SO-000567" or "ISN 567." Likewise, other military

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detainees may be referred to in source documents and in this summary by name or ISN.

05. The following narrative and attached materials set forth the factual bases supporting Barre's lawful detention. This narrative is not intended to be an exhaustive explication of the information supporting Barre's detention that is contained in those source documents.

06. As a preliminary matter, it is not uncommon for those engaged in terrorist activities to use an alias or pseudonym, commonly known in Arabic as a *kunya*. Declaration of ³ [REDACTED] "Background Declaration -- Names, Aliases, Kunyas and Variants" (September 19, 2008). In addition, these names and aliases are sometimes spelled differently when transliterated to Latin characters. There are many transliterations of the same names and aliases in the materials cited herein. This narrative does not attempt to delineate every instance where the cited documents contain transliterations of the same name or alias. Barre has many aliases and variants for his name, including Abu Yusef, Muhammad Sulaymon Barre, Yusif, Maxamed Saleebaan Barre, Mohammed Soliman Barre, Mohammed Sulaymon Barre, Mohammed Suleman, Muhammad Sulayman Barre, Abu Ahmed, Maxed Saleban Barre, Khalil Mohd Soliman Barre, Maxed Suleyman, Yusif al-Somali, Abdullah al-Somali, Saleebaan Rajab, Saleebaan Barre, and Mohamed Suleiman Barre. [REDACTED] IIR 6 034 0253 06; IIR 6 034 0181 06; ISN 567 FM 40 (January 3, 2006); Handnote (March 1, 2002); ISN 760 SIR (February 17, 2006).

General Background

07. Al-Qaida (Arabic for "the base") was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence. See *Nat'l Comm'n On Terrorist Attacks Upon The United States, The 9/11*

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Commission Report 54 (2004) (9/11 Report). Usama bin Laden is recognized as the emir (prince or leader) of al-Qaida. *See id.* One purpose or goal of al-Qaida, as stated by UBL and other al-Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries. *See id.* at 59-61.

08. Between 1989 and 2001, al-Qaida established training camps, guesthouses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against the property and peoples of the United States and other countries. *See id.* at 64-67. In 1996, UBL issued a public "Declaration of Jihad Against the Americans." This declaration called for the murder of U.S. military personnel serving on the Arabian Peninsula. *See id.* at 48. In February 1998, UBL and Ayman al Zawahiri (bin Laden's deputy) purportedly issued a religious fatwa (interpretation of Islamic law) declaring it is "the duty of every Muslim that can do it" to kill Americans "in any country in which it is possible to do it." *See id.* at 47; *see also* Declaration of ³ [REDACTED] "Al- Qaida" (September 22, 2008) ³ [REDACTED] Decl.).

09. Since 1989, members and associates of al-Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to, the attacks against the American Embassies in Kenya and Tanzania in August 1998, which killed approximately 250 people, *9/11 Report* at 68-70; the attack against the USS *Cole* in October 2000, which killed 17 United States Navy sailors, *id.* at 190-93; and the attacks on the United States on September 11, 2001, which killed approximately 3,000 people. *See id. passim.*

10. The Taliban (students of Islamic knowledge) is an Islamic fundamentalist group that was formed in Afghanistan in 1994. *See* The Taliban in Afghanistan, available at www.cfr.org/publication/10551. After two years of violent conflict that included the capture of

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Kabul, Afghanistan's capital, the Taliban took control of Afghanistan's national government in 1996. *See 9/11 Report* at 65. Although it was never formally recognized by the United States, *see id.* at 124, the Taliban controlled Afghanistan's national government from 1996 until the United States-led military campaign ousted the Taliban from power in 2001. *See id.* at 337-38. During the period in which the Taliban controlled Afghanistan's national government, it provided safe harbor and support to al-Qaida and UBL. *See id.* at 64-67.

11. On September 18, 2001, following the attacks on the United States on September 11, 2001, Congress adopted the Authorization for the Use of Military Force ("AUMF"). *See* 115 Stat. 224 (2001). Recognizing that the attacks of September 11, 2001 "render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens at home and abroad," Congress authorized 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, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Within weeks, United States military forces were deployed in Afghanistan. *See 9/11 Report* at 337.

12. The United States led the initial aerial bombing campaign of Afghanistan that supported ground forces composed of United States forces and Afghanistan militia opposed to the Taliban, including an association of Afghan groups called the Northern Alliance. The Northern Alliance is an association of Afghan groups opposed to the Taliban. The Northern Alliance has assisted the United States in its military campaign in Afghanistan to defeat al-Qaida and the Taliban. *See id.* at 330-34; 336-38. In December 2001, the United States-led military campaign removed the Taliban from control of Afghanistan's national government. *See id.* at

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337-38. Taliban and al-Qaida forces, however, have continued to operate in Afghanistan and attack coalition forces.

13. Currently, two major military operations are underway in Afghanistan. The first, Operation Enduring Freedom (OEF) is a multinational coalition military operation, led by the United States. OEF was initiated in October 2001 to counter terrorism and bring security to Afghanistan in collaboration with Afghan forces. *See* www.state.gov/r/pa/prs/ps/2006/60083.htm. OEF operations led to the collapse of the Taliban government and helped bring security and stability to Afghanistan. *Id.* OEF involves troops from over 20 nations, including about 19,000 United States forces and about 3,000 non-United States troops. *Id.* The second, the International Security Assistance Force (ISAF), is a United Nations-mandated international coalition operating under the command of the North Atlantic Treaty Organization (NATO). *See* www.nato.int/isaf/index.html. ISAF was established in 2002 with the goal of creating conditions for stabilization and reconstruction in Afghanistan. ISAF is comprised of approximately 50,000 troops from 41 countries. *Id.*

Petitioner's Links to al-Qaida

14. Barre was born in Somalia on [REDACTED] 1964. ISN 567 FD-302 (May 22, 2002). He is a member of the Isak tribe. *Id.* Barre received a Bachelor of Science degree in Agriculture from the Somali National University in 1989. *Id.* Petitioner worked for a banana exporting company called Libsoma for one year in 1990. *Id.* After completing this year, Barre was allowed to farm two hectares for free. *Id.* Then Barre claims that he worked for his father until 1994 selling animals for export. *Id.*

15. [REDACTED]

[REDACTED] He attended a

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training camp near Khost, Afghanistan, in January 1992. ISN 760 SIR (February 17, 2006); *see generally* Declaration of ³ [REDACTED] "Background Declaration—Terrorist Training Camps" (September 19, 2008) (noting that in 1990 bin Laden opened the al-Farouq and Jihad Wal training facilities in Khost and Jalalabad.) [REDACTED]

16. At the time of his arrest, Barre was living in Pakistan without a passport or valid travel papers. Barre's passport is missing but he denies giving his passport to anyone. ISN 567 FD-302 (May 22, 2002). He has given conflicting accounts of how he became dispossessed of his passport. He claims that in approximately February or March 1994, his passport was either lost or stolen in Rawalpindi, Pakistan. ISN 567 FD-302 (May 22, 2002). On another occasion, Barre stated that he lost his passport while traveling on a bus to "Arwa-El Bendy." ISN 567 FM 40 (December 17, 2002).

17. ¹ [REDACTED] such as the Petitioner did in 1992 ¹ [REDACTED] Declaration of ³ [REDACTED] "Guesthouses" (September, 19, 2008 ¹ [REDACTED] [REDACTED] [REDACTED] *see also* Declaration of ³ [REDACTED] "Tora Bora". (September 19, 2008).

18. Petitioner claimed that in 1994, he purchased a plane ticket which included an Indian visa. *Id.* He traveled to India and then went to Islamabad, Pakistan. ISN 567 FD-302 (May 22, 2002). In Pakistan he claims to have registered as a refugee and received money on a regular basis. *Id.*; ISN 567 FD-302 (December 17, 2002). Prior to leaving Somalia, Barre grew

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a beard and dressed like a devout Muslim. 567 FD-302 (May 22, 2002).

19. Petitioner's travel to Pakistan was sponsored by Jama'at Tablighi. IIR 6 034 0331 03; FD-320 (May 22, 2002) (referring to Gama'at Tabliakh, which is a transliteration of Jama'at Tablighi). The Jama'at Tablighi is a Pakistan-based international Islamic missionary organization. Although it is not formally associated with politics or the advocacy of violence, certain Islamic terrorist leaders have exploited the Jama'at Tablighi's religious practices and the willingness of its members to make jihadist sacrifices. IIR 2 227 0131 03. Some Jama'at Tablighi members cooperate unwittingly with terrorists, but some clearly know with whom they are working. *Id.* Jama'at Tablighi preachers have supported Islamic terrorist groups in South and Southeast Asia under the cover of conducting religious activities. *Id.* The group is closely aligned with Pakistani terrorist organizations and the al-Qaida network. *Id.* Recruited foreigners were, with Jama'at Tablighi funding, taken to Pakistan, trained at various *madrassas* and sent to Afghanistan. *Id.* One Issa safe-house resident stated that the Pakistani government sometimes suspected claims of missionary work with Jama'at Tablighi as a cover for terrorist activities, and denied visas on that basis. ISN 691 SIR (June 6, 2002); [REDACTED] Petitioner admits that he lied on his visa application by stating that he was traveling for business when in fact his visa to travel to Pakistan was sponsored by Jama'at Tablighi. ISN 567 FD-302 (May 22, 2002).

20. In 1997, Petitioner married [REDACTED] also known as [REDACTED] ISN 567 FM 40 (May 22, 2002); IIR 6 034 0181 06. [REDACTED] father is Muhammad Hussain Abdallah, ISN 704, a detainee at Guantanamo. ISN 567 FM 40 (January 20, 2003); IIR 6 034 0334 03. [REDACTED]

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Barre Performed Money Transfers for al-Qaida Operatives

21. In 1994, Petitioner began to work out of his residence as a hawala agent for the the Dahabshiil Corporation. ISN 567 FM 40 (August 7, 2003) [REDACTED] IIR 2 340 6605 02; IIR 6 034 1087 04; IIR 6 034 1106 03; IIR 6 034 1264 04; IIR 6 034 0181 06. A hawala is an association of businesses that transfer money based on traditional Islamic custom. Hawalas generally move money within a framework of tribal trust and loyalties and are not regulated by government services. Somalia-based organizations rely on hawalas for the majority of their monetary transactions, and terrorist organizations worldwide utilize hawalas for their security as well as their privacy. Declaration of [REDACTED] "Background Declaration—Terrorist Organization" (September 19, 2008) [REDACTED] Decl.). Petitioner admits that his business was illegal because Pakistan law prohibits money transfer services and he did not pay taxes. ISN 567 FM 40 (August 7, 2003); IIR 6 034 0058 06; IIR 2 340 6605 02 (Pakistan law prohibits money transfer services); ISN 567 SIR (March 15, 2003).

22. The Dahabshiil Corporation is a financial company based in Somalia with offices in England and the United States. IIR 2 340 6605 02; IIR 6 034 0181 06. The head office of Dahabshiil Corporation in Somalia was in Hargeysa. ISN 567 FM 40 (August 7, 2003). Dahabshiil Corporation is suspected of being used by al-Qaida to move funds to a location in Somalia. *Id.*

23. Petitioner performed money transfers for al-Qaida operatives. IIR 6 034 0425 05. Shakir Mohammed, who is suspected of being a high level al-Qaida operative, contacted the Petitioner in Karachi in July 2001 to send \$20,000 from Karachi to Hargeysa, Somalia. ISN 567 FM 40 (August 7, 2003); IIR 034 0334 03. Petitioner completed the transaction. *Id.* Two weeks later, Petitioner transferred an additional \$5,000 on behalf of Shakir. IIR 6 034 0334 03; IIR 6

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034 0425 05; ISN 567 SIR (March 15, 2003); ISN 567 FM 40 (August 7, 2003).

24. Petitioner was arrested in Karachi by Pakistani authorities on November 1, 2001, for operating an illegal money transfer business. ISN 567 KB (May 12, 2002); IIR 6 034 1087 04; IIR 6 034 0334 03. [REDACTED]
[REDACTED] ISN 567 LHM (November 26, 2008).

Links to al-Qaida [REDACTED]

25. After his arrest by Pakistani authorities, [REDACTED]
[REDACTED] AFGP 2002 600667; AFGP 2002 600587; AFGP 2002 600589;
AFGP 2002 600593; AFGP 2002 600639; AFGP 2002 600642; AFGP 2002 600655.
Information [REDACTED] reveals that he has contacts with
persons with links to al-Qaida and other terrorist organizations, [REDACTED]
[REDACTED]
[REDACTED]

26. [REDACTED]
[REDACTED]
[REDACTED] On September 23, 2001, following the attack on the World Trade Center, President George W. Bush issued an executive order identifying AIAI as a terrorist organization and prohibiting persons from conducting transactions with AIAI. Executive Order 13224 (September 23, 2001) ("Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism".)

27. Petitioner is an associate of a former al-Wafa employee. IIR 6 034 0367 03; IIR 6 034 0425 05. [REDACTED]

[REDACTED]³ Decl. [REDACTED]¹

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1 [REDACTED] *Id.* See Executive Order 13224. 1 [REDACTED]
1 [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

28. 1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

29. Barre was transferred to the custody of the United States in February 2002. IIR 6 034 0334 03; IIR 6 034 1087 04. He claims that he never went to Afghanistan, and was never involved in an Islamic militant group, or knowingly transferred funds to a militant Islamic organization. ISN 567 FD-302 (May 22, 2002). He has denied an association with al-Wafa and denies that he knows the Shakir, who is in US custody and is suspected of being an al-Qaida operative. IIR 6 034 0334 03; ISN 567 FM 40 (May 12, 2005); ISN 567 FM 40 (August 7, 2003).

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Conclusion

For the reasons described above and in the attached exhibits, among others, petitioner is lawfully detained pursuant to, *inter alia*, the President's power as Commander in Chief and the Authorization for the Use of Military Force statute.

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