HANTED CT ATEC) IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW
UNITED STATES,)
) MOTION FOR LEAVE TO FILE
	Appellee,	REPSONSE TO LETTER BRIEF
		AMICUS CURIAE OF
) NATIONAL CONGRESS OF
) AMERICAN INDIANS
)
v.) CMCR Case No. 09-001
)
ALI HAMZA AHMAD SULIMAN, AL BAHLUL,		Tried at Guantanamo Bay, Cuba
		7 May 2008 – 3 Nov 2008
,		before a Military Commission
	Appellant.	convened by Hon. Susan J. Crawford
	пррепант.) convened by from Busair 3. Crawford
) }
) Prosiding Military Judge
		Presiding Military Judge
		Colonel P. Brownback, JA, USA
) Colonel R. Gregory, USAF
)
		DATE: 21 MARCH 2011

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW

COMES NOW Appellee, and, noting that it does not object to the Court granting of the motion of the National Congress of American Indians for leave to file a letter brief *amicus curiae* in regard to the position of the United States in this litigation, respectfully moves this Honorable Court, pursuant to Rule 20(d), Rules of Practice for the Court of Military Commission Review, for leave to file the appended Response to Letter Brief *Amicus Curiae* of the National Congress of American Indians.

The letter brief *amicus curiae* of the National Congress of American Indians presents

Appellee an important opportunity to clarify points made in its brief on the specified issues, with which *amicus curiae* National Congress of American Indians takes issue.

Appellant's counsel has informed the undersigned that he consents to the filing of this motion and does not oppose the relief requested.

WHEREFORE, Appellee moves the Court to grant it leave to file the appended Response to Letter Brief of *Amicus Curiae*.

Respectfully submitted,

JOHN F. MURPHY Captain, JAGC, U.S. Navy Chief Prosecutor

EDWARD S. WHITE Captain, JAGC, U.S. Navy Appellate Counsel

FRANCIS GILLIGAN Appellate Counsel

Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by electronic mail to Mr. Michel Paradis, detailed appellate defense counsel, on this 21st day of March 2011.

EDWARD S. WHITE
Captain, JAGC, U.S. Navy
Appellate Counsel for the United States

UNITED STATES, Appellee,) IN THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW) APPELLEE'S RESPONSE TO LETTER BRIEF AMICUS CURIAE OF NATIONAL CONGRESS OF AMERICAN INDIANS
v.))) CMCR Case No. 09-001
ALI HAMZA AHMAD SULIMAN, AL BAHLUL, Appellant.	 Tried at Guantanamo Bay, Cuba 7 May 2008 – 3 Nov 2008 before a Military Commission convened by Hon. Susan J. Crawford
) Presiding Military Judge) Colonel P. Brownback, JA, USA) Colonel R. Gregory, USAF) DATE: 21 MARCH 2011

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF MILITARY COMMISSION REVIEW

Appellee welcomes the letter brief *amicus curiae* filed with this Court by the National Congress of American Indians ("NCAI"), as it presents an important opportunity for Appellee to clarify certain points made in Appellee's Response to the Specified Issues with respect to the military tribunal cases of Ambrister and Arbuthnot.

First, Appellee wishes to make perfectly clear that it in no way questions or impugns the valor, bravery and honorable military service of Native Americans, past and present.

Second, Appellee likewise wishes to make perfectly clear that it does not, in fact, equate the conduct of the Seminoles in the 1817-1818 period with that of al Qaeda and its affiliated

terrorist groups. As the NCAI letter brief *amicus curiae* demonstrates, however, Appellee's brief on this point could have benefited from greater precision.

Putting aside, for the purposes of this case, the true facts concerning General Jackson's campaign into northern Florida in 1818, and his treatment of the Seminoles during that campaign, as we now understand them with the cool dispassion of nearly 200 years remove, the relevance of the Ambrister and Arbuthnot precedent for the second specified issue is that, as justified at the time by the commanding general, the Secretary of State, and the President of the United States, the conduct of Ambrister and Arbuthnot violated the law of war in that their conduct was viewed as aiding an unlawful belligerency and assisting the enemy to carry out war crimes. That modern historians now understand the facts to be otherwise does not undermine the precedential value of the Ambrister and Arbuthnot cases as an example of a U.S. military tribunal punishing conduct understood (at the time) to be in aid of what was then viewed as unprivileged belligerency carried out by unlawful means.

Appellee cites General Jackson's campaign and the tribunals he convened not as an example of moral right, but as legal precedent; the morality or propriety of General Jackson's military operation in Florida is irrelevant. In point of fact, and despite the repugnance with which Jackson's actions may be viewed today, the focus of Appellee's argument is on the criminal nature of the acts undertaken by Ambrister and Arbuthnot. General Jackson's treatment of those acts as violations of the law of war, and the contemporaneous approval of their military trial by the then-Secretary of State and then-President of the United States, provides the historical example necessary to defeat Appellant's *ex post facto* argument.

Respectfully submitted,

JOHN F. MURPHY Captain, JAGC, U.S. Navy Chief Prosecutor

EDWARD S. WHITE Captain, JAGC, U.S. Navy Appellate Counsel

FRANCIS GILLIGAN Appellate Counsel

Counsel for Appellee

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