















decision; or (2) refrain from capturing a non-Afghan combatant outside Afghanistan, even if capturing him away from the safe havens provided by al-Qaida or the Taliban forces is consistent with the laws of war and in the interest of national security. And, detaining an individual in the country where he is captured is not always going to be an option because the military does not have detention facilities in every country in which it may capture individuals engaged in hostilities against the United States or our allies for a host of practical, political, and other reasons.

Similarly, the military would be unable to move non-Afghan citizens captured across the border in Pakistan to the theater's long-term internment facility at Bagram for security or centralized intelligence gathering reasons unless it is prepared to engage in civil habeas litigation as to those individuals. *See* Statement of the President Regarding New Strategy in Afghanistan and Pakistan (March 27, 2009) (announcing the deployment of a total of 21,000 additional troops to the region "to disrupt, dismantle, and defeat al Qaeda in Pakistan and Afghanistan" and noting that "Afghanistan and Pakistan" will be treated "as two countries but one challenge").<sup>2</sup> Drawing a jurisdictional line at the border of Afghanistan creates a disincentive to move to Bagram individuals captured in Pakistan, where there is neither a temporary screening and processing facility nor a long-term theater internment facility. This jurisdictional line also provides the enemies of the United States an incentive to conduct operations from Pakistan, using it as a safe haven and using the U.S. court system as a tactical weapon.

Fourth, this Court's proper assessment of the practical obstacles inherent in extending the writ to the site of detention – a factor weighed heavily by the Supreme Court in *Boumediene* – is

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<sup>2</sup> Available at [http://www.whitehouse.gov/the\\_press\\_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan/](http://www.whitehouse.gov/the_press_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan/) (last accessed April 10, 2009).



























































