



# NATIONAL CONGRESS OF AMERICAN INDIANS

March 17, 2011

United States Court of Military Commission Review  
United States Department of Defense  
Presiding Military Judge  
Colonel P. Brownback, JA, USA  
Colonel R. Gregory, USAF

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## NCAI HEADQUARTERS

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**Re: United States v. Al Bahlul, CMCR CASE NO. 09-001**

**To the Honorable Judges of the Court of Military Commission Review:**

On behalf of the National Congress of American Indians (NCAI), I write to request leave to file this letter brief amicus curiae in regard to the position of the United States in the litigation. NCAI is the nation's oldest and largest association of Indian tribal governments. Since 1944, NCAI has worked to protect the rights of Indian tribes, advocate for the welfare of Indian people, and enlighten the federal government and the public toward a better understanding of American Indian tribes and their history in the United States.

We wish to express our significant concern at the distorted and offensive historical analogy used by the United States in this case when it compared the first "Seminole War" of 1817-18 to the terrorism of al Qaeda. The United States cites to the Ambrister and Arbuthnot incident, where General Andrew Jackson summarily executed two British subjects who were trading with the Seminole Indians.

Ambrister and Arbuthnot, both British subjects without any duty or allegiance to the United States, were tried and punished for conduct amounting to aiding the enemy. Examination of their case reveals that their conduct was viewed as wrongful, in that they were assisting unlawful hostilities by the Seminoles and their allies. *Further, not only was the Seminole belligerency unlawful, but, much like modern-day al Qaeda, the very way in which the Seminoles waged war against U.S. targets itself violated the customs and usages of war.* Because Ambrister and Arbuthnot aided the Seminoles both to carry on an unlawful belligerency and to violate the laws of war, their conduct was wrongful and punishable.

Response Brief of United States at 25, emphasis added.

This is an astonishing statement of revisionist history. General Jackson was ordered by President Monroe to lead a campaign against Seminole and Creek Indians in Georgia. The politically ambitious Jackson used these orders as an excuse to invade Spanish-held Florida and begin an illegal war, burning entire Indian villages in a campaign of extermination. The Seminole efforts to defend themselves from an invading genocidal army could be termed an "unlawful belligerency" only by the most jingoistic military historian. General Jackson narrowly escaped censure in the U.S. Congress, was condemned in the international community, and his historical

**Re: United States v. Al Bahlul, CMCR CASE NO. 09-001**

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**Page Two**

reputation was stained with dishonor. That the United States would reach for such an offensive legal precedent in the present era calls into question the reasoning and judgment of those who are representing the United States in this case.

Further, the comparison of Native Americans to al Qaeda is disrespectful to American Indian military veterans as well as those in active military service. Nearly 24,000 American Indians are currently serving and there are an estimated 383,000 American Indian military veterans. It is well recognized that American Indians have the highest record of military service per capita compared to any other group in the United States. Native Americans in the Military, Oxford Companion to American Military History, 2000.

Thank you for your consideration of the views of the National Congress of American Indians in this matter.

Respectfully,

A handwritten signature in cursive script that reads "John H. Dossett". The signature is written in black ink and is positioned above the typed name and title.

John H. Dossett  
General Counsel

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