

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Muhammed Khan Tumani and)
Abd Al Nisr Khan Tumani,)
 Detainees,)
 Guantanamo Bay Naval Station)
 Guantanamo Bay, Cuba;)

Petitioners/Plaintiffs,)

v.)

PETITION FOR WRIT
OF HABEAS CORPUS
AND COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

No. _____

GEORGE W. BUSH,)
 President of the United States)
 The White House)
 1600 Pennsylvania Ave., N.W.)
 Washington, D.C. 20500;)

DONALD RUMSFELD,)
 Secretary, United States)
 Department of Defense)
 1000 Defense Pentagon)
 Washington, D.C. 20301-1000;)

ARMY BRIG. GEN. JAY HOOD,)
 Commander, Joint Task Force - GTMO)
 JTF-GTMO)
 APO AE 09360; and)

ARMY COL. BRICE GYURISKO,)
 Commander, Joint Detention)
 Operations Group, JTF - GTMO)
 JTF-GTMO)
 APO AE 09360,)

Respondents/Defendants.)

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Petitioners Muhammed Khan Tumani and Abd Al Nisr Khan Tumani seek the Great Writ. Citizens of Syria, they act on their own behalf. Petitioners are civilians wrongly classified as “enemy combatants” by the President of the United States, and are being held virtually *incommunicado* in military custody at the Guantánamo Bay Naval Station. Their detention is without lawful basis, without charge, without access to counsel and without being afforded any fair process by which they might challenge their detention. Petitioners are being held under color and authority of the Executive, and in violation of the Constitution, laws and treaties of the United States as well as in violation of customary international law. Accordingly, this Court should issue a Writ of Habeas Corpus compelling Respondents either to release Petitioners or to establish in this Court a lawful basis for Petitioners’ detention. This Court should also order injunctive and declaratory relief.

**I.
JURISDICTION**

1. Respondents are detaining Petitioners “under or by color of the authority of the United States” and “in violation of the Constitution or laws or treaties of the United States.” Petitioners bring this action under 28 U.S.C. §§ 2241(a), (c)(1) and (c)(3) and 2242. Petitioners further invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1350, 1651, 2201, and 2202; 5 U.S.C. § 702; Articles I and II of, and the Fifth, Sixth, and Eighth Amendments to, the United States Constitution. Because they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

2. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. § 2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. § 2202, as this case involves an actual controversy within the Court's jurisdiction, and to issue all writs necessary or appropriate in aid of its jurisdiction by 28 U.S.C. § 1651.

II. PARTIES

3. Petitioners are Syrian citizens who are presently incarcerated at Guantánamo and held in Respondents' unlawful custody and control.
4. Respondent George W. Bush is the President of the United States and Commander-in-Chief of the United States Military. Petitioners are being detained pursuant to President Bush's authority as Commander-in-Chief and under the laws and usages of war or, alternatively, pursuant to the Executive Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833 (November 13, 2001) ("Executive Order"). President Bush is responsible for Petitioners' unlawful detention and is sued in his official capacity.
5. Respondent Donald Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to either the Executive Order or the President's authority as Commander-in-Chief and under the laws and usages of war, Respondent Rumsfeld has been charged with maintaining the custody and control of Petitioners. He is sued in his official capacity.
6. Respondent Brigadier Gen. Jay Hood is the Commander of Joint Task Force-GTMO, the task force running the detention operation at Guantánamo Bay. He has supervisory responsibility for Petitioners and is sued in his official capacity.

7. Respondent Col. Brice Gyurisko is the Commander of the Joint Detention Operations Group and the JTF-GTMO detention camps, including the U.S. facility where Petitioners are presently held. He is the immediate custodian responsible for Petitioners' detention and is sued in his official capacity.

**III.
STATEMENT OF FACTS**

8. Upon information and belief, Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind under any definition adopted by the government in any civil or military proceedings.
9. Petitioners seek to enforce their right to a judicial determination of the lawfulness of their detention.
10. Upon information and belief, at the time of their seizure and detention, Petitioners were not members of the Taliban Government's armed forces or Al Qaeda. Prior to their detention, they did not commit any violent act against any American person or property. They had no involvement, direct or indirect, in either the terrorist attacks on the United States on September 11, 2001, the ensuing armed conflict, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. They remain incarcerated at the U.S. Naval base at Guantánamo, Cuba, a territory over which the United States exercises exclusive jurisdiction and control.
11. Petitioners have not been afforded any procedures that satisfy their rights under the most fundamental common law notions of due process, the U.S. Constitution, the laws and treaties of the United States, or customary international law.

The Joint Resolution

12. In the wake of the September 11, 2001 attacks on the United States, the United States, at the direction of President Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized President Bush to use force against the “nations, organizations, or persons” that “planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons.” Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001) (“Joint Resolution”).
13. As Petitioners did not participate in the armed conflict at any point in time, they are not properly detained pursuant to President Bush's authority as Commander-in-Chief, under the laws and usages of war, or the Joint Resolution.

The Executive Order

14. On November 13, 2001, Respondent Bush issued an Executive Order authorizing Respondent Rumsfeld to detain indefinitely anyone Respondent Bush has “reason to believe”:
 - i. is or was a member of the organization known as al Qaeda;
 - ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
 - iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

See Executive Order, 66 Fed. Reg. 57,833, §2 (November 13, 2001). President Bush must make this determination in writing. The Executive Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

15. The Executive Order purports to vest President Bush with the sole discretion to identify individuals who fall within its purview. It establishes no standards governing the exercise of his discretion. Once a person has been detained, the Executive Order contains no provision for that person to be notified of the charges he may face. The Executive Order authorizes detainees to be confined indefinitely without charges. It contains no provision for a detainee to be notified of his rights under domestic and international law, and provides neither the right to counsel, nor rights to notice of consular protection or to consular access at the detainee's request. It provides no right to appear before a neutral tribunal to review the basis for or the legality of a detainee's continued detention and contains no provision for recourse to an Article III court. In fact, the Executive Order expressly bars review by any court. The Executive Order authorizes indefinite and unreviewable detention, based on nothing more than President Bush's written determination that an individual is subject to its terms.
16. The Executive Order was promulgated in the United States and in this judicial district, the decision to incarcerate Petitioners was made by Respondents in the United States and in this judicial district, the decision to detain Petitioners at Guantánamo was made in the United States and in this judicial district, and the decision to continue detaining Petitioner was, and is, being made by Respondents in the United States and in this judicial district.
17. Upon information and belief, President Bush has never certified or determined in any manner, in writing or otherwise, that Petitioners are subject to the Executive Order.
18. Petitioners are not properly subject to the Executive Order.
19. Petitioners have not been, and are not being, detained lawfully either pursuant to the Executive Order, President Bush's authority as Commander-in-Chief and/or the laws and

usages of war in that Petitioners have been denied the process due to them under the common law and the Due Process Clause of the Fifth Amendment to the Constitution of the United States, domestic civil and military law, and international law.

Guantánamo Bay Naval Station

20. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray at the United States Naval Base in Guantánamo Bay, Cuba. In April 2002, all prisoners were transferred to Camp Delta, a more permanent prison facility at Guantánamo. Currently, prisoners are housed in Camp Delta and Camp Five, an additional maximum-security interrogation and detention center.
21. Prisoners incarcerated at Guantánamo are entitled to test the legality of their detention in the federal courts. *Rasul v. Bush*, 542 U.S. ___, 124 S.Ct. 2686, 2698 (June 28, 2004).
22. On a date unknown to counsel, but known to Respondents, the United States military transferred Petitioners to Guantánamo, where they have been held ever since, in the custody and control of Respondents.

The Conditions of Detention at Guantánamo

23. Since gaining control of Petitioners, the United States military has held them virtually *incommunicado* under conditions that violate their constitutional and international rights to dignity and freedom from torture, and from cruel, inhuman and degrading treatment or punishment. *See, e.g.*, United Nations Press Release, “United Nations Human Rights Experts Express Continued Concern About Situation of Guantánamo Bay Detainees,” Feb. 4, 2005; International Committee of the Red Cross, Press Release, “The ICRC’s Work at Guantánamo Bay,” Nov. 30, 2004; International Committee of the Red Cross, Operational Update, “US Detention Related to the Events of September 11, 2001 and Its Aftermath - the Role of the ICRC,” July 26, 2004; Amnesty International, *United States*

of America: Human Dignity Denied: Torture and Accountability in the 'War on Terror', at 22 (Oct. 27, 2004) (available at <http://web.amnesty.org/library/Index/ENGAMR511452004>); *see also* Barry C. Scheck, *Abuse of Detainees at Guantanamo Bay*, The Nat'l Assoc. of Criminal Defense Lawyers Champion, Nov. 2004, at 4-5. Indeed, many of these violations – including isolation for up to 30 days, 28-hour interrogations, extreme and prolonged stress positions, sleep deprivation, sensory assaults, removal of clothing, hooding, and the use of dogs to create anxiety and terror – were actually interrogation techniques approved for use at Guantánamo by the most senior Department of Defense lawyer. *See* Action Memo from William J. Haynes II, General Counsel, DOD, to Secretary of Defense (Nov. 27, 2002); *Pentagon Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations*, at 62-65 (Apr. 4, 2003).¹

24. On information and belief, Petitioners have been forced to provide involuntary statements to Respondents' agents at Guantánamo and have been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, and the Central Intelligence Agency, though they have not been charged with an offense and have not been notified of any pending or contemplated charges. They have not appeared before a lawful military or civilian tribunal, and have not been provided access to counsel or the means to contact and secure counsel. They have not been adequately informed of their

¹ Additional details of the cruel and degrading conditions suffered by detainees at Guantanamo are set out at length in a statement by numerous released British detainees. *See* Shafiq Rasul, Asif Iqbal & Ruhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantanamo Bay*, 300, at <http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23july04.pdf>. The Department of Defense also informed the Associated Press that a number of interrogators at Guantanamo have been demoted or reprimanded after investigations into accusations of abuse at the facility. *See Report Details Guantanamo Abuses*, Assoc. Press, Nov. 4, 2004.

rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, the 1954 Convention Relating to the Status of Refugees, or customary international law. Indeed, Respondents have taken the position that Petitioners should not be informed of these rights. As a result, Petitioners lack any ability to protect or to vindicate their rights under domestic and international law.

25. In a confidential report to the United States government, the ICRC charged the U.S. military with intentional use during interrogations of psychological and physical coercion on prisoners at Guantánamo that is “tantamount to torture.” *See* Neil A. Lewis, “Red Cross Finds Detainee Abuse in Guantánamo,” *New York Times*, Nov. 30, 2004, at A1. The report includes claims that doctors and other medical workers at Guantánamo participated in planning for interrogations. *Id.*; *see also* M. Gregg Bloche and Jonathan H. Marks, “When Doctors Go to War,” *New England Journal of Medicine*, Jan. 6, 2005, at 3-4. Since details of the ICRC’s report emerged, new revelations of abuse and torture at Guantánamo have appeared, including FBI memos detailing torture and “highly aggressive interrogation techniques” including 24-plus hour interrogations involving temperature extremes, dogs, prolonged isolation, and loud music. *See Guantánamo: An Icon of Lawlessness*, Amnesty International, Jan. 6, 2005, at 3-5; *see also* Neil A. Lewis, “Fresh Details Emerge on Harsh Methods at Guantánamo,” *New York Times*, Jan. 1, 2005, at A11; Carol D. Leonnig, “Further Detainee Abuse Alleged; Guantánamo Prison Cited in FBI Memos,” *Washington Post*, Dec. 26, 2004, at A1; Neil A. Lewis and David Johnston, “New F.B.I. Memos Describe Abuses of Iraq Inmates,” *New York Times*,

Dec. 21, 2004, at A1; Dan Eggen and R. Jeffrey Smith, “FBI Agents Allege Abuse of Detainees at Guantánamo Bay,” *Washington Post*, Dec. 21, 2004, at A1; Neil A. Lewis, “F.B.I. Memos Criticized Practices at Guantánamo,” *New York Times*, Dec. 7, 2004, at A19. Even more recently, the Associated Press has reported allegations that female Guantánamo interrogators have used sexual taunting, including smearing fake menstrual blood on a detainee’s face, to try to break Muslim detainees. Associated Press, *Gitmo Soldier Details Sexual Tactics*, Jan. 27, 2005.

26. The unlawful and unconstitutional interrogation techniques used by Respondents at Guantánamo include not only physical and psychological abuse but also other impermissible conduct contrary to due process requirements, including, upon information and belief, having agents of the Government present themselves as lawyers for the detainees during meetings with the detainees, for the purpose of extracting information from the detainees. See Sam Hannel, “Lawyers Describe Guantánamo Detainees,” *Seattle Post-Intelligencer*, Jan. 19, 2005.
27. Respondents, acting individually or through their agents, have stated that whatever limitations apply on coercive interrogation techniques used by U.S. military officials under the auspices of the Department of Defense *do not apply* to interrogations conducted by agents of the CIA or other entities under President Bush. Eric Lichtblau, “Gonzales Says ’02 Policy on Detainees Doesn’t Bind CIA,” *New York Times*, Jan. 19, 2005, at A17; Dan Eggen and Charles Babington, “Torture by U.S. Personnel Illegal, Gonzales Tells Senate,” *Washington Post*, Jan. 18, 2005, at A4.
28. Counsel for Respondents maintain that the United States may hold the detained Petitioners under their current conditions indefinitely. *In re Guantánamo Detainee*

Cases, Nos. 02-CV-0299 (CKK), *et al.*, (D.D.C.), Tr. of Dec. 1, 2004 Or. Argument on Mot. to Dismiss at 22-24, statements of Principle Deputy Associate Att’y Gen. Brian Boyle; *see also* Dana Priest, “Long-Term Plan Sought for Terror Suspects,” *Wash. Post*, Jan. 2, 2005, at A1. Moreover, the Government has recently acknowledged plans to begin constructing a new, more permanent facility at Guantánamo. Christopher Cooper, “In Guantánamo, Prisoners Languish in a Sea of Red Tape,” *Wall Street Journal*, Jan. 26, 2005, at A1; Associated Press, “Guantánamo Takes on the Look of Permanency,” Jan. 9, 2005.

29. According to the Department of Defense, even detainees who are adjudged innocent of all charges by a military commission may nevertheless be kept in detention at Guantánamo indefinitely. *See* Department of Defense Press Background Briefing of July 3, 2003, at <http://www.defenselink.mil/transcripts/2003/tr20030703-0323.html> (last visited Feb. 14, 2005).

Rendition

30. During interrogations, detainees have also been threatened with rendition or transfer to countries that routinely practice torture. Upon information and belief, the United States has secretly transferred detainees to such countries without complying with the applicable legal requirements for extradition. This practice, known as “rendition” or “extraordinary rendition,” is used to facilitate interrogation by subjecting detainees to torture. *See* Jane Mayer, “Outsourcing Torture: The Secret History of American’s “Extraordinary Rendition” Program, *The New Yorker*, Feb. 14, 2005, at 106.
31. The U.S. government’s practice of rendition has been well documented by various major American and international news organizations, including, *inter alia*, the *Washington*

Post, *The Los Angeles Times*, and the British Broadcasting Corporation (the “BBC”).

According to new accounts,

Since September 11, the U.S. government has secretly transported dozens of people suspected of links to terrorists to countries other than the United States bypassing extradition procedures and legal formalities, according to Western diplomats and intelligence source. The suspects have been taken to countries, . . . whose intelligence services have close ties to the CIA and where they can be subjected to interrogation tactics -- including torture and threats to families -- that are illegal in the United States, the sources said. In some cases, U.S. intelligence agents remain closely involved in the interrogations, the sources said.

Rajiv Chanrasekaran & Peter Finn, “U.S. Behind Secret Transfer of Terror Suspects,” *Wash. Post*, Mar. 11, 2002, at A1; *see also* Dana Priest, “Long Term Plan Sought for Terror Suspects,” *Wash. Post*, Jan. 2, 2005, at A1 (“The transfers, called ‘renditions,’ depend on arrangements between the United States and other countries, such as Egypt . . . , that agree to have local security services hold certain suspects in their facilities for interrogation by CIA and foreign liaison officers.”).

32. Upon information and belief, Petitioners are at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture during interrogations and incarceration.

IV. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF (COMMON LAW DUE PROCESS AND DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES - UNLAWFUL DEPRIVATION OF LIBERTY)

33. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
34. By the actions described above, Respondents, acting under color of law, have violated and continue to violate common law principles of due process as well as the Due Process Clause of the Fifth Amendment to the Constitution of the United States. President Bush

has ordered the prolonged, indefinite, and arbitrary detention of individuals, without due process of law, and the remaining Respondents have implemented those orders. Respondents' actions deny Petitioners the process accorded to persons seized and detained by the United States military in times of armed conflict as established by, *inter alia*, the Uniform Code of Military Justice, Army Regulations 190-8, Articles 3 and 5 of the Third and Fourth Geneva Conventions, and customary international law as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

35. To the extent that Petitioners' detention purports to be authorized by the Executive Order, that Order violates the Fifth Amendment on its face and as applied to Petitioners.
36. Accordingly, Petitioners are entitled to habeas, declaratory and injunctive relief as well as any other relief the court may deem appropriate.

SECOND CLAIM FOR RELIEF
(DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES - UNLAWFUL CONDITIONS OF CONFINEMENT)

37. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
38. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of Petitioners to be free from unlawful conditions of confinement, in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.
39. Accordingly, Petitioners are entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

THIRD CLAIM FOR RELIEF
(GENEVA CONVENTIONS - ARBITRARY DENIAL OF DUE PROCESS)

40. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

41. By the actions described above, Respondents, acting under color of law, have denied and continue to deny Petitioners the process accorded to persons seized and detained by the United States military in times of armed conflict as established by specific provisions of the Third and Fourth Geneva Conventions.
42. Violations of the Geneva Conventions are direct treaty violations, are violations of customary international law, and constitute an enforceable claim under 28 U.S.C. § 2241 (c)(3).
43. Respondents are liable for this conduct described above, insofar as they set the conditions, directly and/or indirectly facilitated, ordered, acquiesced, confirmed, ratified, and/or conspired to violate the Geneva Conventions.
44. Accordingly, Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FOURTH CLAIM FOR RELIEF
(INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW –
ARBITRARY DENIAL OF DUE PROCESS)

45. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
46. By the actions described above, Respondents have denied and continue to deny Petitioners the process due to persons seized and detained by the United States military in times of armed conflict as establish by customary international humanitarian and human rights law as reflected, expressed, and defined in multilateral treaties and other international instruments and domestic judicial decisions, and other authorities.
47. Accordingly, Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FIFTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE - TORTURE)

48. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
49. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired together and with others to bring about acts that deliberately and intentionally inflicted severe physical and psychological abuse and agony upon Petitioners in order to obtain coerced information or confessions from them, punish or intimidate Petitioners or for other purposes. Among other abuses, Petitioners have, on information and belief, been placed in constant vulnerability to repeated interrogation and severe beatings; kept in cages with no privacy; shackled with heavy chains and irons; subjected to solitary confinement or the threat of solitary confinement for prolonged periods of time for minor rule infractions; interrogated while shackled and chained in painful positions; exposed to extremes of temperature; subjected to violent behavior or the threat of violence; threatened with rendition to countries that practice torture; sexually humiliated; denied access to counsel and family; deprived of adequate medical care; and subjected to repeated psychological abuse.
50. The acts described herein constitute torture in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violate customary international law prohibiting torture as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
51. Respondents are liable for said conduct because they directed, ordered, confirmed, ratified, and/or conspired together and with others to commit the acts of torture against Petitioners.

52. Petitioners were forced to suffer severe physical and psychological abuse and agony and are entitled to habeas, declaratory, and injunctive relief and other relief to be determined at trial.

SIXTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE – WAR CRIMES)

53. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein.
54. By the actions described above, Respondents' acts directing, ordering, confirming, ratifying, and/or conspiring to bring about the torture and other inhumane treatment of Petitioners constitute war crimes and/or crimes against humanity in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated, among others, the Fourth Geneva Convention, Common Article III of the Geneva Conventions and Additional Protocols I and II of the Geneva Conventions as well as customary international law prohibiting war crimes as reflected, expressed, and defined in other multilateral treaties and international instruments, international and domestic judicial decision, and other authorities.
55. As a result of Respondents' unlawful conduct, Petitioners, on information and belief, have been and are forced to suffer severe physical and psychological abuse and agony, and are therefore entitled to declaratory, and injunctive relief, and such other relief as the court may deem appropriate.

SEVENTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE –
CRUEL, INHUMAN OR DEGRADING TREATMENT)

56. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein.

57. On information and belief, the acts described herein had the intent and the effect of grossly humiliating and debasing Petitioners, forcing them to act against their will and conscience, inciting fear and anguish, and breaking their physical or moral resistance.
58. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting cruel, inhuman or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
59. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to cause the cruel, inhuman or degrading treatment of Petitioners.
60. On information and belief, Petitioners were forced to suffer severe physical and psychological abuse and agony and are entitled to declaratory and injunctive relief as well as other relief to be determined at trial.

EIGHTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE -
ARBITRARY ARREST AND PROLONGED ARBITRARY DETENTION)

61. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
62. The acts described herein constitute arbitrary arrest and detention of Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
63. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to bring about the arbitrary arrest and

prolonged arbitrary detention of Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary arrest and prolonged arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

64. As a result of Respondents' unlawful conduct, Petitioners have been and are deprived of their freedom, separated from their families, and forced to suffer severe physical and mental abuse, and are therefore entitled to habeas, declaratory, and injunctive relief and such other relief as the court may deem appropriate.

NINTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE - ENFORCED DISAPPEARANCE)

65. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
66. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about the enforced disappearance of Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting enforced disappearances as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
67. As a result of Respondents' unlawful conduct, Petitioners have been and are deprived of their freedom, separated from their families, and forced to suffer severe physical and mental abuse, and are therefore entitled to habeas, declaratory and injunctive relief and such other relief as the court may deem appropriate.

TENTH CLAIM FOR RELIEF
(ARTICLE II OF THE UNITED STATES CONSTITUTION -
UNLAWFUL DETENTION)

68. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
69. Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind. The Executive lacks the authority to order or direct military officials to detain civilians who are seized far from the theater of war or occupied territory or who were not “carrying a weapon against American troops on a foreign battlefield.” *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2642 n.1 (2004).
70. By the actions described above, President Bush has exceeded and continues to exceed the Executive’s authority under Article II of the United States Constitution by authorizing, ordering and directing that military officials seize Petitioners and transfer them to military detention, and by authorizing and ordering their continued military detention at Guantánamo. All of the Respondents acted and continue to act without lawful authority by directing, ordering, and/or supervising the seizure and military detention of Petitioners.
71. The military seizure and detention of Petitioners by the Respondents is *ultra vires* and illegal being in violation of Article II of the United States Constitution. To the extent that the Executive asserts that Petitioners’ detention is authorized by the Executive Order, that Order exceeds the Executive’s authority under Article II and is *ultra vires* and void on its face and as applied to Petitioners.
72. To the extent that Respondents assert that their authority to detain Petitioners derives from a source other than the Executive Order, including without limitation the Executive’s inherent authority to conduct foreign affairs or to serve as Commander-in-

Chief of the U.S. Armed Forces, whether from Article II of the Constitution or otherwise, Respondents lack that authority as a matter of fact and law.

73. Accordingly, Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

ELEVENTH CLAIM FOR RELIEF
(APA - ARBITRARY AND CAPRICIOUS UNLAWFUL DETENTION)

74. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
75. Army Regulation 190-8 prohibits the detention of civilians who were seized away from the field of battle or outside occupied territory or who were not engaged in combat against the United States. *See, e.g.*, Army Reg. 190-8 at 1-6(g) (“Persons who have been determined by a competent tribunal not to be entitled to prisoner of war status may not be executed, imprisoned, or otherwise penalized without further proceedings to determine what acts they have committed and what penalty should be imposed.”).
76. By arbitrarily and capriciously detaining Petitioners in military custody in the manner described above, Respondents have acted and continue to act *ultra vires* and unlawfully in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).
77. Accordingly, Petitioners are entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

TWELFTH CLAIM FOR RELIEF
(APA - ARBITRARY AND CAPRICIOUS DENIAL OF DUE PROCESS)

78. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
79. By the actions described above, Respondents, acting under color of law, have arbitrarily and capriciously denied and continue to deny Petitioners the process accorded to persons seized and detained by the United States military in times of armed conflict as established

by Army Regulations 190-8 in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).

80. Accordingly, Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

THIRTEENTH CLAIM FOR RELIEF
(APA - TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT)

81. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
82. By the actions described above, the Respondents have acted and continue to act arbitrarily and capriciously by directing, ordering, confirming, ratifying, and/or conspiring to unlawfully subject Petitioners to torture and/or cruel, inhuman or degrading treatment in violation of Army Regulation 190-8 and the Administrative Procedures Act, 5 U.S.C. § 706(2).
83. Accordingly, Petitioners are entitled to declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FOURTEENTH CLAIM FOR RELIEF
(DUE PROCESS CLAUSE - RENDITION)

84. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
85. Upon information and belief, Petitioners are at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a violation of Petitioners' rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.
86. Accordingly, Petitioners are entitled to declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FIFTEENTH CLAIM FOR RELIEF
(CONVENTION AGAINST TORTURE AND
CONVENTION RELATING TO THE STATUS OF REFUGEES - RENDITION)

87. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
88. Upon information and belief, Petitioners are at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a direct violation of Petitioners' rights under the Covenant Against Torture and the 1954 Convention Relating to the Status of Refugees, 19 U.S.T. 6259, 189 U.N.T.S. 150 *entered into force* Apr. 22, 1954.
89. Accordingly, Petitioners are entitled to declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

SIXTEENTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE- RENDITION)

90. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
91. Upon information and belief, Petitioners are at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a violation of Petitioners' rights under customary international law, which may be vindicated under the Alien Tort Statute.
92. Accordingly, Petitioners are entitled to declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

V.
PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Grant the Writ of Habeas Corpus and order Respondents to release Petitioners from their current unlawful detention;
2. Order that Petitioners be brought before the Court or before a Magistrate Judge assigned by the Court to conduct proceedings under the supervision of the Court to vindicate their rights;
3. Order that Petitioners cannot be transferred to any other country without the specific, written agreement of Petitioner and Petitioners' counsel while this action is pending;
4. Order that Petitioners cannot be delivered, returned, or rendered to a country where there is a foreseeable and imminent risk that Petitioners will be subject to torture;
5. Order Respondents to allow counsel to meet and confer with Petitioners, in private and unmonitored attorney-client conversations;
6. Order Respondents to cease all interrogations of Petitioners, direct or indirect, while this litigation is pending;
7. Order Respondents to cease all acts of torture and cruel, inhuman and degrading treatment of Petitioners;
8. Order and declare the Executive Order of November 13, 2001 is *ultra vires* and unlawful in violation of Article II of the United States Constitution, the Fifth Amendment to the U.S. Constitution, the Uniform Code of Military Justice, the Administrative Procedures Act, 5 U.S.C. § 702, the treaties of the United States and customary international law;
9. Order and declare that the prolonged, indefinite, and restrictive detention of Petitioners without due process is arbitrary and unlawful and a deprivation of liberty without due process in violation of common law principles of due process, the Due Process Clause of the Fifth Amendment to the United States Constitution, the regulations of the United

States military, the treaties of the United States, and customary international humanitarian law; and

10. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the common law, the United States Constitution, federal statutory law and international law.

Dated: March 14, 2005

Respectfully submitted,

Counsel for Petitioners:

/s/ Elizabeth Ainslie

Elizabeth Ainslie
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street
Suite 3600
Philadelphia, PA 19103-7286
Telephone: (215) 751-2359
Facsimile: (215) 751-2205

/s/ Gordon S. Woodward

Gordon S. Woodward (DC Bar No. 452626)
SCHNADER HARRISON SEGAL & LEWIS LLP
2001 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20006-1825
Telephone: (202) 419-4215
Facsimile: (202) 419-3454

