ALLIED PAPERS

IN THE
MILITARY COMMISSION
CASE OF

UNITED STATES
V.
JABRAN SAID BIN AL QAHTANI

ALSO KNOWN AS:

SALAM AL FARSI-----HATEB
JABRAN AL QAHTAN-----JABRAN WAZAR
SAAD WAZAR HATIB JABRAN
JABRAN SAAD WAZAR SULAYMAN

NO. 050007

VOLUME VI OF ___ TOTAL VOLUMES

FEDERAL COURT LITIGATION-FILED BY AL SHARBI'S COUNSEL
CASE NO. 05-CV-02387-RMC
AT U.S. DISTRICT COURT, DISTRICT OF COLUMBIA
(WASHINGTON D.C.)
(NO REDACTIONS OF COURT'S PUBLIC RECORDS)
(AVAILABLE AT: HTTP://WWW.DCD.USCOURTS.GOV/DISTRICT-COURT.HTML)

United States v. Jabran Said Bin al Qahtani, NO. 050007

INDEX OF VOLUMES

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at http://www.defenselink.mil/news/commissions.html.

Some volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and *United States v. Castleman*, 10 M.J. 750, 751 (AFCMR 1981) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

[1] **Interim volume numbers. Final numbers to be added when trial is completed.**

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U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:05-cv-02387-RMC

AL-QUHTANI et al v. BUSH et al
Assigned to: Judge Rosemary M. Collyer
Cause: 28:2241 Petition for Writ of Habeas Corpus (federa

Date Filed: 12/12/2005
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: U.S. Government Defendant

Petitioner

JOBRAN SAAD AL-QUHTANI
Detainee, Guantanamo Bay Naval Station

represented by **Mary Manning Petras**
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Petitioner

NAWAL MADAY AL-QUHTANI
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Ketanji Brown Jackson
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V.

Respondent

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Respondent

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Secretary, United States Department of Defense

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

JAY HOOD
Army Brigadier General, Commander, Joint Task Force

represented by **Terry Marcus Henry**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

MIKE BUMGARNER
Army Colonel, Commander, Joint Detention Operations Group

represented by **Terry Marcus Henry**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/12/2005	1	PETITION for Writ of Habeas Corpus (Filing fee $ 5.) filed by JOBRAN SAAD AL-QUHTANI, NAWAL MADAY AL-QUHTANI.(tg,) Modified on 12/16/2005 (ks,). (Entered: 12/15/2005)
12/15/2005	2	NOTICE *of Filing Certificate of Service* by JOBRAN SAAD AL-QUHTANI re 1 Petition for Writ of Habeas Corpus (Petras, Mary) (Entered: 12/15/2005)
12/16/2005	3	MOTION to Appoint Counsel by JOBRAN SAAD AL-QUHTANI. (Attachments: # 1 Text of Proposed Order for Appointment)(Petras, Mary) (Entered: 12/16/2005)
12/20/2005	4	AMENDED PETITION for Writ of Habeas Corpus filed by JOBRAN SAAD AL-QUHTANI, NAWAL MADAY AL-QUHTANI. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C)(nmw,) (Entered: 12/21/2005)
01/04/2006	5	NOTIFICATION OF SUPPLEMENTAL AUTHORITY by respondents GEORGE WALKER BUSH, and DONALD RUMSFELD, et al. (Attachments: # 1 Exhibit)(jeb,) (Entered: 01/04/2006)
01/05/2006	6	NOTICE of Appearance by Terry Marcus Henry on behalf of GEORGE W. BUSH, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER (Henry, Terry) (Entered: 01/05/2006)
01/27/2006	7	ORDER denying without prejudice all pending motions until such time as the District of Columbia Circuit resolves the question of this Court's jurisdiction to adjudicate these cases; and staying the action pending the jurisdictional ruling of the District of Columbia Circuit. Signed by Judge Rosemary M. Collyer on 1/27/06. (ebb) (Entered: 01/27/2006)
05/10/2006	8	MOTION *for Referral to Magistrate* by JOBRAN SAAD AL-QUHTANI. (Petras, Mary) (Entered: 05/10/2006)

Multiple Documents

Number 3

Filed: Dec. 16, 2005

Part	Description	
1	Main Document	5 pages
2	Text of Proposed Order for Appointment	1 page

Number 4

Filed: Dec. 20, 2005

Part	Description	
1	Main Document	54 pages
2	Exhibit A	2 pages
3	Exhibit B	18 pages
4	Exhibit C	6 pages

Number 5

Filed: Jan. 4, 2006

Part	Description	
1	Main Document	11 pages
2	Exhibit	7 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI,
Detainee,
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba;

NAWAL MADAY AL-QUHTANI,

as Next Friend of Jobran Saad Al-Quhtani;

Petitioners/Plaintiffs,

v.

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. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group - JTF-GTMO,
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

PETITION FOR WRIT OF HABEAS CORPUS

CASE NUMBER 1:05CV02387
JUDGE: Rosemary M. Collyer
DECK TYPE: Habeas Corpus/2255
DATE STAMP: 12/[redacted]/2005

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jobran Saad Al-Quhtani seeks the Great Writ. A citizen of ____, Petitioner Al-Quhtani acts on his own behalf and through his Next Friend, Nawal Maday Al-Quhtani, his wife. He is a civilian wrongly classified as an "enemy combatant" by the President of the United States, and is being held virtually *incommunicado* in military custody at the United States Naval Station at Guantánamo Bay, Cuba ("Guantánamo"), without basis, without charge, without access to counsel and without being afforded any fair process by which he might challenge his detention. Petitioner is being held by color and authority of the Executive, and in violation of the Constitution, laws and treaties of the United States as well as customary international law. Accordingly, this Court should issue a Writ of Habeas Corpus compelling Respondents either to release Petitioner Al-Quhtani or to establish in this Court the lawful basis for Petitioner Al-Quhtani 's detention. This Court should also order injunctive and declaratory relief.

Pursuant to the President's authority as Commander-in-Chief, his authority under the laws and usages of war, or under the November 13 Executive Order, Respondents George W. Bush, President of the United States, Donald H. Rumsfeld, U.S. Secretary of Defense, Army Brigadier General Jay Hood, Commander of Joint Task Force-GTMO, and Army Colonel Mike Bumgarner, Commander, Joint Detention Operations Group, Joint Task Force-GTMO, are either ultimately responsible for or have been charged with the responsibility of maintaining the custody and control of the detained Petitioner Al-Quhtani at Guantánamo.

I. JURISDICTION

1. Petitioners bring this action under 28 U.S.C. §§ 2241(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 and Sixth Amendments to the United States Constitution. Because they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

2. This Court is empowered under 28 U.S.C. § 2241 to grant this Writ of Habeas Corpus, and to entertain the Petition filed by Nawal Maday Al-Quhtani, the Next Friend of Petitioner Jobran Saad Al-Quhtani, under 28 U.S.C. § 2242. 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. Finally, this Court is authorized to issue all writs necessary or appropriate in aid of its jurisdiction by 28 U.S.C. § 1651.

II. PARTIES

3. Upon information and belief, Petitioner Jobran Saad Al-Quhtani is a Saudi Arabia citizen who is presently incarcerated at Guantánamo and held in Respondents' unlawful custody and control. *See* Exhibit A Authorization of Nawal Maday Al-Quhtani.

4. Petitioner Nawal Maday Al-Quhtani is Petitioner Jobran Saad Al-Quhtani's wife. *Id.* She is a citizen Saudi Arabia. *Id.* Because her has been denied access to legal counsel and to the courts of the United States, she acts as his Next Friend. *Id.*

5. Respondent George W. Bush is the President of the United States and Commander-in-Chief of the United States Military. Petitioner Al-Quhtani is being detained pursuant to President Bush's authority as Commander-in-Chief, 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 Petitioner Al-Quhtani's unlawful detention and is sued in his official capacity.

6. Respondent Donald Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to the President's authority as Commander-in-Chief, under the laws and usages of war or, alternatively pursuant to the Executive Order, Respondent Rumsfeld has been charged with the responsibility of maintaining the custody and control of Petitioner Al-Quhtani. He is sued in his official capacity.

7. 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 Petitioner Al-Quhtani and is sued in his official capacity.

8. Respondent Army Col. Mike Bumgarner is the Commander of the Joint Detention Operations Group and the JTF-GTMO detention camps, including the U.S. facility where Petitioner Al-Quhtani is presently held. He is the immediate custodian responsible for Petitioner Al-Quhtani's detention and is sued in his official capacity.

9. Respondents are directly responsible for any activities undertaken by or under the supervision of any agents or employees acting on their behalf, or of agents or employees of private contractors ("contractor employees") with whom any agency under Respondents' authority or supervision has contracted for the provision of services at Guantanamo. All references to Respondents' actions in this Petition include activities performed by Respondents' agents or employees, other government agents or employees or contractor employees.

III. STATEMENT OF FACTS

10. Upon information and belief, Petitioner Al-Quhtani is not, nor has he ever been, an enemy alien, lawful or unlawful belligerent, or combatant of any kind under any definition adopted by the government in any civil or military proceeding.

11. Upon information and belief, Petitioner Al-Quhtani is not, nor has he ever been, an "enemy combatant" who was "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there." *Hamdi v. Rumsfeld*, 542 U.S. __, 124 S. Ct. 2633, 2639 (plurality) (2004).

12. Petitioner Al-Quhtani seeks to enforce his right to a judicial determination by an appropriate and lawful authority that there is a factual and legal basis for Respondents' determination that he is either an "enemy combatant" as defined by the United States Supreme Court in *Hamdi* or an "enemy combatant" as that term is defined and used by the Executive in the Combatant Status Review Tribunals.

13. Upon information and belief, at the time of his seizure and detention, Petitioner Al-Quhtani was not a member of the Taliban Government's armed forces or Al Qaeda. He did not cause or attempt to cause any harm to American personnel or property prior to his detention. He had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, the ensuing international armed conflict, or any act of international terrorism attributed by the United States to Al Qaeda. He remains incarcerated at the U.S. Naval base at Guantánamo, Cuba, a territory over which the United States exercises exclusive jurisdiction and control.

14. Petitioner Al-Quhtani has not been afforded any procedures that would satisfy his 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.

15. Upon information and belief, Petitioner Al-Quhtani desires to pursue in the courts of the United States every available legal challenge to the lawfulness of his detention.

The Joint Resolution

16. 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").

17. As, upon information and belief, Petitioner Al-Quhtani did not participate in the armed conflict at any point in time, he is not properly detained pursuant to President Bush's authority as Commander-in-Chief, under the laws and usages of war, or under the Joint Resolution.

18. Upon information and belief, Petitioner Al-Quhtani is not, and has never been, a member of Al Qaeda or any other terrorist group. Prior to his detention, he did not commit any violent act against any American person or espouse any violent act against any American person or property. He had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. He is not properly subject to the detention order issued by

President Bush. As he did not participate in the armed conflict at any point in time, he is not properly subject to President Bush's authority as Commander-in-Chief or under the laws and usages of war.

The Executive Order

19. 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.

20. 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 the 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 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 the President Bush's written determination that an individual is subject to its terms.

21. The Executive Order was promulgated in the United States and in this judicial district, the decision to incarcerate Petitioner Al-Quhtani was made by Respondents in the United States and in this judicial district, the decision to detain Petitioner Al-Quhtani at Guantánamo was made in the United States and in this judicial district, and the decision to continue detaining Petitioner Al-Quhtani, was, and is, being made by Respondents in the United States and in this judicial district.

22. Petitioner Al-Quhtani is not properly subject to the Executive Order.

23. Petitioner has not been, and is not being, detained lawfully either pursuant to the Executive Order, President Bush's authority as Commander-in-Chief and/or under the laws and usages of war. Petitioner was not arrested or detained by the United States in the course of an armed conflict. Petitioner Al-Quhtani is not properly detained under President Bush's authority as Commander-in-Chief or under the laws and usages of war.

Guantánamo Bay Naval Station

24. 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 a 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.

25. 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).

26. By at least early 2002, the precise date being unknown to counsel, but known to Respondents, the United States military transferred Petitioner Al-Quhtani to Guantánamo, where he has been held ever since, in the custody and control of Respondents.

The Conditions of Detention at Guantanamo

27. Since gaining control of Petitioner Al-Quhtani, the United States military has held him virtually *incommunicado*.

28. Upon information and belief, Petitioner Al-Quhtani has been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, and the Central Intelligence Agency, though he has not been charged with an offense and has not been notified of any pending or contemplated charges. He has not appeared before a lawful military or civilian tribunal, and has not been provided access to counsel or the means to contact and secure counsel. He has not been adequately informed of his 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 Petitioner Al-Quhtani should not be informed of these rights. As a result, Petitioner Al-Quhtani lacks any ability to protect or to vindicate his rights under domestic and international law.

29. Upon information and belief, Petitioner Al-Quhtani has been forced to provide involuntary statements to Respondents' agents at Guantanamo.

30. Upon information and belief, Petitioner Al-Quhtani has been held under conditions that

violate his constitutional and international rights to dignity and freedom from torture and from cruel, inhuman and degrading treatment or punishment. *See, e.g.*:

a. Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May 2005);

b. Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces," Ch.3 (2005);

c. United Nations Press Release, "United Nations Human Rights Experts Express Continued Concern About Situation of Guantánamo Bay Detainees," Feb. 4, 2005;

d. International Committee of the Red Cross, Press Release, "The ICRC's Work at Guantánamo Bay," Nov. 30, 2004;

e. 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;

f. 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/ENGAMR 511452004); *see also*

g. Barry C. Scheck, *Abuse of Detainees at Guantanamo Bay,* The Nat'l Assoc. of Criminal Defense Lawyers Champion, Nov. 2004, at 4-5.

31. 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 e.g.*, 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).

32. 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.

33. 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 beatings, temperature extremes, dogs, prolonged isolation, and loud music. *See e.g.*:

a. Carol D. Leonnig, "Guantanamo Detainee Says Beating Injured Spine; Now in Wheelchair, Egyptian-Born Teacher Objects to Plan to Send Him to Native Land," *Wash. Post*, Aug. 13, 2005, at A18

b. Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May

2005);

c. *Guantánamo: An Icon of Lawlessness,* Amnesty International, Jan. 6, 2005, at 3-5; *see also*

d. Neil A. Lewis, "Fresh Details Emerge on Harsh Methods at Guantánamo," *New York Times*, Jan. 1, 2005, at A11;

e. Carol D. Leonnig, "Further Detainee Abuse Alleged; Guantánamo Prison Cited in FBI Memos," *Washington Post*, Dec. 26, 2004, at A1;

f. Neil A. Lewis and David Johnston, "New F.B.I. Memos Describe Abuses of Iraq Inmates," *New York Times*, Dec. 21, 2004, at A1;

g. Dan Eggen and R. Jeffrey Smith, "FBI Agents Allege Abuse of Detainees at Guantánamo Bay," *Washington Post*, Dec. 21, 2004, at A1;

h. Neil A. Lewis, "F.B.I. Memos Criticized Practices at Guantánamo," *New York Times*, Dec. 7, 2004, at A19.

34. As well, 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; *and see* Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 89-90, Ch. 12, AMR 51/063/2005 (13 May 2005).

35. In fact, some of the well-publicized and egregious interrogation techniques used in the Abu Ghraib torture debacle —such as aggressive use of dogs, sexual humiliation, stress positions and sense deprivation—were pioneered at Guantánamo. *See* Josh White, "Abu Ghraib Dog Tactics Came From Guantanamo; Testimony Further Links Procedures at 2 Facilities," *Wash.*

Post, July 27, 2005, at A14; *and* Josh White, "Abu Ghraib Tactics Were First Used at Guantanamo," *Wash. Post*, July 14, 2005 at A1.

36. 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.

37. As well, military defense lawyers have been instructed to materially limit their representation disfavorably to their detainee clients in violation of due process. *See* David Johnston & Neil Lewis, "Lawyer Says Military Tried To Coerce Detainee's Plea," *NY Times*, June 16, 2005 at A25 (Late Ed.).

38. Respondents, acting individually or through their agents, have stated that limitations, which normally 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. *See e.g.*, Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 27-43, Ch. 5, AMR 51/063/2005 (13 May 2005); 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.

39. In published statements, President Bush and Secretary Rumsfeld, and predecessors of Hood and Bumgarner, respectively, Lenhert and Carrico, have proclaimed that the United States

may hold the detainees under their current conditions indefinitely. *See, e.g.*, Roland Watson, *The Times* (London), Jan. 18, 2002 ("Donald Rumsfeld, the U.S. Defense Secretary, suggested last night that Al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them."); Lynne Sladky, Assoc. Press, Jan. 22, 2002 ("Marine Brig. Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held [...] 'We have to look at Camp X-ray as a work in progress [...]' Lehnert told CNN. Lehnert said plans are to build a more permanent prison 'exactly in accordance with federal prison standards"); John Mintz, "Extended Detention in Cuba Mulled," *The Washington Post*, February 13, 2002. ("As the Bush Administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Guantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.").

40. According to the Department of Defense, 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 August 24, 2005).

41. Counsel for Respondents have also consistently maintained 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 Oral Argument on Motion 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.

42. In fact, the Government has failed to release detainees even after they have been found to be non-enemy combatants by the CSRTs. *See* Robin Wright, "Chinese Detainees Are Men Without a Country; 15 Muslims, Cleared of Terrorism Charges, Remain at Guantanamo With Nowhere to Go," *Wash. Post*, August 24, 2005, at A1 (Final Ed.); *and* Ben Fox, "U.S. to Ease Conditions for Some Detainees," *Chicago Trib.*, Aug. 11, 2005 at C4.

43. 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.

Rendition

44. During interrogations, detainees have also been threatened with rendition or transfer to countries that permit indefinite detention without charge or trial and/or 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 "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.

45. The U.S. government's practice of extraordinary rendition has been well documented by American and international news organizations, including, *inter alia*, the *Washington Post*, *The Los Angeles Times*, and the British Broadcasting Corporation (the "BBC"). According to news 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.").

46. In fact, the Government has recently announced its intention to render many Guantanamo detainees to countries which have a poor record of respecting human rights and which engage in torture. *See e.g.,* Matthew Waxman, "Beyond Guantanamo," *Wash. Times*, Aug. 20, 2005, at A17; Robin Wright and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Times*, August 9, 2005, at A13; Neil Lewis, "Guantanamo Detention Site Is Being Transformed, U.S. Says," *NY Times*, August 6, 2005, at A8 (Late Ed.); Paul Richter, "U.S. to Repatriate 110 Afghans Jailed at Guantanamo Bay," *LA Times*, Aug. 5, 2005 at A18.

47. Moreover, upon belief and information, the Government is conditioning such rendering of detainees to their home countries on the requirement that the home country imprison the detainee, without regard to the detainee's individual factual or legal situation. *See* Robin Wright

and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Post*, August 9, 2005, at A13; BBC Worldwide Monitoring, "USA to release 107 Yemenis from Guantanamo Bay," August 10, 2005 (available from LEXIS, MWP90 file) ("The US authorities declared few days ago that they would extradite detainees from Guantanamo Bay to Afghanistan, Saudi Arabia and Yemen on the condition [that they are] to be put in jail").

48. Upon information and belief, Petitioner Al-Quhtani is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture during interrogations and incarceration.

Military Commission

49. Upon information and belief, Respondents have held Petitioner Al-Quhtani for more than three years without ever demonstrating a basis for his detention. They have now charged Petitioner Al-Quhtani with "crimes" that have been made up after the fact. Upon information and belief, respondents intend to try Petitioner Al-Quhtani for those "crimes" before a military panel that they have appointed and over which they exercise reviewing authority. The prospect of this lawless proceeding provides no basis for the continued detention of Petitioner Al-Quhtani.

50. Lacking any lawful basis for Al-Quhtani's continued detention, Respondents now seek to justify Al-Quhtani's detention by subjecting him to "trial" by military commission (the "Commission") on purported war crime charges of Respondents' own creation and definition, never before recognized under international law, and using a procedure that also has been made up out of whole cloth. Because Respondents' war crimes charges are indisputably invalid and the Commission's process and procedures unlawful, Al-Quhtani seeks habeas relief with respect to

his unlawful detention and trial by the Commission.

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

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

52. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the common law principles of due process as well 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 Petitioner Al-Quhtani 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 Regulation 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.

53. To the extent that Petitioner Al-Quhtani's detention purports to be authorized by the Executive Order, that Order violates the Fifth Amendment on its face and as applied to Petitioner, and therefore also violates 28 U.S.C. § 2241 (c)(3).

54. To the extent that Petitioner Al-Quhtani's detention is without basis in law and violates the common law principles of due process embodied in 28 U.S.C. § 2241 (c)(1), Petitioner's detention is unlawful.

55. Accordingly, Petitioner Al-Quhtani is 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

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

57. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of Petitioner Al-Quhtani 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.

58. Accordingly, Petitioner Al-Quhtani is 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)

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

60. By the actions described above, Respondents, acting under color of law, have denied and continue to deny Petitioner Al-Quhtani 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.

61. Violations of the Geneva Conventions are direct treaty violations and are also violations of customary international law, and constitute an enforceable claim under 28 U.S.C. § 2241 (c)(3).

62. 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.

63. Accordingly, Petitioner Al-Quhtani is 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

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

65. By the actions described above, Respondents have denied and continue to deny Petitioner Al-Quhtani the due process accorded 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.

66. Accordingly, Petitioner Al-Quhtani is 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

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

68. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about acts that deliberately and intentionally inflicted severe physical and psychological abuse and agony upon Petitioner Al-Quhtani in order to obtain coerced

information or confessions from him, punish or intimidate Petitioner Al-Quhtani or for other purposes. Among other abuses, Petitioner Al-Quhtani has been held in conditions of isolation; placed in constant vulnerability to repeated interrogation and severe beatings; kept in cages with no privacy; shackled with heavy chains and irons; placed in solitary confinement for minor rule infractions for prolonged periods of time; 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.

69. 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 violated 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.

70. 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 Petitioner Al-Quhtani.

71. Petitioner Al-Quhtani was forced to suffer severe physical and psychological abuse and agony and is entitled to habeas, declaratory, and injunctive relief, and other relief to be determined at trial.

SIXTH CLAIM FOR RELIEF

ALIEN TORT STATUTE - WAR CRIMES

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

73. By the actions described above, Respondents' acts directing, ordering, confirming, ratifying, and/or conspiring to bring about the torture and other inhumane treatment of Petitioner Al-Quhtani 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.

74. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been and is forced to suffer severe physical and psychological abuse and agony, and is therefore entitled to habeas, 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

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

76. The acts described herein had the intent and the effect of grossly humiliating and debasing Petitioner Al-Quhtani, forcing him to act against his will and conscience, inciting fear and anguish, and breaking his physical or moral resistance.

77. 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.

78. 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 Petitioner Al-Quhtani.

79. Petitioner Al-Quhtani was forced to suffer severe physical and psychological abuse and agony and is 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

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

81. The acts described herein constitute arbitrary arrest and detention of Petitioner Al-Quhtani 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.

82. 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 Petitioner Al-Quhtani 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.

83. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been and is deprived of his freedom, separated from his family, and forced to suffer severe physical and mental abuse, and is 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

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

85. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about the enforced disappearance of Petitioner Al-Quhtani 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.

86. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been, and continues to be deprived of his freedom, separated from his family, and forced to suffer severe physical and mental abuse, and is therefore entitled to 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**

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

88. Petitioner Al-Quhtani is not, nor has he ever been, an enemy alien, lawful or unlawful

belligerent, or combatant 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*, 542 U.S. __, 124 S. Ct. 2633, 2642 n.1 (2004).

89. 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 Petitioner Al-Quhtani and transfer him 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 Petitioner Al-Quhtani.

90. The military seizure and detention of Petitioner Al-Quhtani by the Respondents is *ultra vires* and illegal because it violates Article II of the United States Constitution. To the extent that the Executive asserts that Petitioner's 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 Petitioner.

91. To the extent that Respondents assert that their authority to detain Petitioner Al-Quhtani 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.

92. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

ELEVENTH CLAIM FOR RELIEF

VIOLATION OF THE APA - ARBITRARY AND CAPRICIOUS UNLAWFUL DETENTION

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

94. 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.").

95. By arbitrarily and capriciously detaining Petitioner Al-Quhtani in military custody for over three years 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).

96. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

TWELFTH CLAIM FOR RELIEF

VIOLATION OF THE APA - ARBITRARY AND CAPRICIOUS DENIAL OF DUE PROCESS

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

98. By the actions described above, Respondents, acting under color of law, have arbitrarily and capriciously denied and continue to deny Petitioner Al-Quhtani the process accorded to persons seized and detained by the United States military in times of armed conflict as established by Army Regulation 190-8 in violation of the Administrative Procedures Act, 5

U.S.C. § 706(2).

99. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

THIRTEENTH CLAIM FOR RELIEF

VIOLATION OF THE APA – TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

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

101. 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 Petitioner Al-Quhtani 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).

102. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

FOURTEENTH CLAIM FOR RELIEF

VIOLATION OF THE RIGHT TO COUNSEL AND TO ACCESS TO THE COURTS

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

104. Respondents, purportedly acting from a concern for national security, consistently have contrived to intrude upon Petitioner Al-Quhtani's right to consult with counsel by conditioning counsel's access to Petitioner on unreasonable terms, including classification/declassification procedures, all in violation of Petitioner Al-Quhtani's attorney-client privilege, his work product privilege, and the Fifth and Sixth Amendments to the U.S. Constitution.

105. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive

relief, as well as any other relief the court may deem appropriate.

FIFTEENTH CLAIM FOR RELIEF

DUE PROCESS CLAUSE - RENDITION

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

107. Upon information and belief, Petitioner Al-Quhtani is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a violation of Petitioner's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

108. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as well as any other relief the court may deem appropriate.

SIXTEENTH CLAIM FOR RELIEF

CONVENTION AGAINST TORTURE AND CONVENTION RELATING TO THE STATUS OF REFUGEES - RENDITION

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

110. Upon information and belief, Petitioner is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a direct violation of Petitioner's 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.

111. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as

well as any other relief the court may deem appropriate.

SEVENTEENTH CLAIM FOR RELIEF

ALIEN TORT STATUTE- RENDITION

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

113. Upon information and belief, Petitioner is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a violation of Petitioner's rights under customary international law, which may be vindicated under the Alien Tort Statute.

114. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as well as any other relief the court may deem appropriate.

ADDITIONAL CLAIMS FOR RELIEF

CLAIMS RELATED TO THE MILITARY COMMISSION

115. Petitioner re-alleges and incorporates by reference the paragraphs above.

116. Undersigned counsel has not yet received information relating to the specific charges or the proceedings by which Petitioner will be tried by Military Commission. Petitioner reserves the right to, and will, amend this petition upon receipt of that information.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Designate Nawal Maday Al-Quhtani as Next Friend of Jobran Saad Al-Quhtani;

2. Grant the Writ of Habeas Corpus and order Respondent to release Petitioner Jobran Saad Al-Quhtani from his current unlawful detention;

3. Order that Petitioner Al-Quhtani 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 his rights;

4. Order that Petitioner Al-Quhtani cannot be transferred to any other country without the specific written agreement of Petitioner and Petitioner's counsel while this action is pending;

5. Order that Petitioner Al-Quhtani cannot be delivered, returned, or rendered to a country where there is a foreseeable and imminent risk that Petition will be subject to torture

6. Order Respondents to allow counsel to meet and confer with Petitioner Al-Quhtani, in private and unmonitored attorney-client conversations;

7. Order Respondents to cease all interrogations of Petitioner Al-Quhtani, direct or indirect, while this litigation is pending;

8. Order Respondents to cease all acts of torture and cruel, inhuman and degrading treatment of Petitioner Al-Quhtani;

9. 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;

10. Order and declare that the prolonged, indefinite, and restrictive detention of Petitioner Al-Quhtani without due process is arbitrary and unlawful and a deprivation of liberty without due process in violation of the 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

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

Date: December 13, 2005

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

MARY MANNING PETRAS
Assistant Federal Public Defender

KETANJI JACKSON
Assistant Federal Public Defender

625 Indiana Avenue, N.W.
Suite 550
Washington, D.C. 20004
(202) 208-7500

Certificate of Service

I hereby certify a true and correct copy of the foregoing instrument has been served by Certified Mail, Return Receipt Requested, to the following persons:

Kenneth L. Wainstein
U.S. Attorney
District of Columbia District
Judiciary Center
555 4th Street, N.W.
Washington, DC 20530

George W. Bush
President, United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, Dc 20301-10000

Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
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Donald Rumsfeld
Secretary, U.S. Dep't. of Defense
1000 Defense Pentagon
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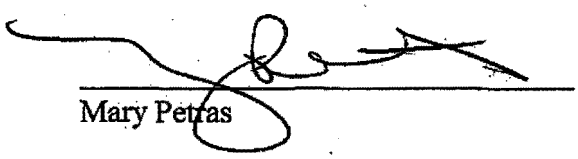
Army Brig. Gen. J. Hood
Commander, Joint Task Force-GTMO
JTF-GTMO
APO AE 09360

Army Col. Bumgarner
Commander, JDOG
JFT-GTMO
APO AE 09360

Brig. Gen. Hood
United States Army
Army Pentagon
Washington, DC 20310-0200

Army Col. Bumgarner
United States Army
Army-Pentagon
Washington, DC 20310-0200



Mary Petras

Dated: December 13, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI,
Detainee,
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba;

NAWAL MADAY AL-QUHTANI,

as Next Friend of Jobran Saad Al-Quhtani;

Petitioners/Plaintiffs,

v.

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. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group - JTF-GTMO,
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

PETITION FOR WRIT OF HABEAS CORPUS

No. 05-CV-2387 (RMC)

NOTICE

Attached for filing in the above referenced case is Exhibit A, Authorization of Nawal Maday Al-Quhtani, which counsel inadvertently failed to attach to the Petition for Writ of Habeas Corpus filed December 13, 2005.

Date: December 15, 2005

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

/S/

MARY MANNING PETRAS
Assistant Federal Public Defender

/S/

KETANJI JACKSON
Assistant Federal Public Defender

625 Indiana Avenue, N.W.
Suite 550
Washington, D.C. 20004
(202) 208-7500

Date: , 2005

Authorization

I am Nawal Maday Al-Quhtani and I have had the concept of 'next friend' explained to me in my native language. I wish to act as next friend for my husband, who is a prisoner being held in Guantanamo Bay, and whose name is Jabran Said Al-Quhtani (the 'prisoner'). I hereby authorize Tina Foster (and the Center for Constitutional Rights), as well as Clive Stafford Smith (and Justice In Exile), and any person assigned by these lawyers, to act on my behalf and on the prisoner's behalf, to secure any documents and information concerning the prisoner that are necessary for his defense, and to seek whatever redress they believe to be in his best interests, in the courts of the United States, and in any other legal forum available. I am sure that he would want me to assert these rights. He is a citizen of Saudi

X Nawal Maday Al-Quhtani

Next Friend

Witnessed:

Print Name:

Certificate of Service

I hereby certify a true and correct copy of the foregoing instrument has been served by Certified Mail, Return Receipt Requested, to the following persons:

Kenneth L. Wainstein
U.S. Attorney
District of Columbia District
Judiciary Center
555 4th Street, N.W.
Washington, DC 20530

George W. Bush
President, United States of America
The White House
1600 Pennsylvania Avenue, N.W.
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Alberto R. Gonzales
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Donald Rumsfeld
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United States Army
Army Pentagon
Washington, DC 20310-0200

Army Col. Bumgarner
United States Army
Army-Pentagon
Washington, DC 20310-0200

/S/

Mary Manning Petras

Dated: December 15, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI,
Detainee,
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba;

NAWAL MADAY AL-QUHTANI,

as Next Friend of Jobran Saad Al-Quhtani;

Petitioners/Plaintiffs,

v. **No. 05-CV-2387**

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. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group - JTF-GTMO,
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

MOTION FOR APPOINTMENT OF COUNSEL

Mr. Jobran Saad Al-Quhtani, through his wife and Next Friend Nawal Maday Al-Quhtani, respectfully moves this Honorable Court to appoint undersigned counsel. In support of this motion, counsel states:

1. On October 5, 2005, The Honorable Chief Judge Hogan, pursuant to the agreement of the Judges of the Court acting in Executive Session, September 13, 2005, appointed a number of Federal Public Defender offices to represent each of the petitioners held at the United States Naval Station at Guantánamo Bay, Cuba ("Guantanamo"),who had filed a *pro se* Petition for Writ of Habeas Corpus.

2. On December 13, 2005, undersigned counsel filed a Petition for Writ of Habeas Corpus in the above captioned case, on Mr. Al-Quhtani's behalf.

3. Undersigned counsel, Assistant Federal Public Defenders, were asked to file the petition in this case immediately. Because of the urgency involved, the petition was filed prior to appointment by the Court. Appointment of the Federal Public Defender Office in the District of Columbia does not present any of the issues presented by appointment of private counsel, who may seek fees and/or expenses under the Criminal Justice Act, or of other federal defender offices, whose lawyers may not be admitted to practice in D.C.

4. Petitioner Al-Quhtani has been held for several years at the United States Naval Station at Guantánamo Bay, Cuba, and does not have the ability to retain counsel. His wife, through the Center for Constitutional Rights, has requested and authorized counsel to act on his behalf.

WHEREFORE, for the foregoing reasons, Mr. Al-Quhtani, through undersigned counsel, respectfully requests that the Court issue the attached order, appointing the Federal Public Defender for the District of Columbia.

Date: December 16, 2005

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

MARY MANNING PETRAS
Assistant Federal Public Defender

/s/

KETANJI JACKSON
Assistant Federal Public Defender

625 Indiana Avenue, N.W.
Suite 550
Washington, D.C. 20004
(202) 208-7500

Certificate of Service

I hereby certify a true and correct copy of the foregoing instrument has been served by Certified Mail, Return Receipt Requested, to the following persons:

Kenneth L. Wainstein
U.S. Attorney
District of Columbia District
Judiciary Center
555 4th Street, N.W.
Washington, DC 20530

George W. Bush
President, United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, Dc 20301-10000

Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
Robert F. Kennedy Building
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Room 5111
Washington, DC 20301-1000

Donald Rumsfeld
Secretary, U.S. Dep't. of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Army Brig. Gen. J. Hood
Commander, Joint Task Force-GTMO
JTF-GTMO
APO AE 09360

Army Col. Bumgarner
Commander, JDOG
JFT-GTMO
APO AE 09360

Brig. Gen. Hood
United States Army
Army Pentagon
Washington, DC 20310-0200

Army Col. Bumgarner
United States Army
Army-Pentagon
Washington, DC 20310-0200

/s/
Mary Manning Petras

Dated: December 16, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI, et al.	)	
	)	
Petitioners/Plaintiffs,	)	
	)	
	)	**PETITION FOR WRIT**
	)	**OF HABEAS CORPUS**
v.	)	
	)	
	)	**No. 05-CV-2387 (RMC)**
	)	
GEORGE W. BUSH, et al.	)	
	)	
Respondents/Defendants.	)	

ORDER

Upon consideration of Petitioner's Motion for Appointment of Counsel and finding good cause shown, it is this __ day of _____, 2005, hereby

ORDERED that the motion is GRANTED, and it is further

ORDERED that the Federal Public Defender for the District of Columbia is appointed to represent Petitioner.

_____
Rosemary M. Collyer
United States District Judge

Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI,
Detainee,
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba;

NAWAL MADAY AL-QUHTANI,

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Commander, Joint Task Force - GTMO
JTF-GTMO
APO AE 09360; and

ARMY COL. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group - JTF-GTMO,
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

No. 05-cv-02387-RMC

Petitioner Jobran Saad Al-Quhtani seeks the Great Writ. Petitioner Al-Quhtani acts on his own behalf and through his Next Friend, Nawal Maday Al-Quhtani, his wife. He is a civilian wrongly classified as an "enemy combatant" by the President of the United States, and is being held virtually *incommunicado* in military custody at the United States Naval Station at Guantánamo Bay, Cuba ("Guantánamo"), without basis, without charge, without access to counsel and without being afforded any fair process by which he might challenge his detention. Petitioner is being held by color and authority of the Executive, and in violation of the Constitution, laws and treaties of the United States as well as customary international law. Accordingly, this Court should issue a Writ of Habeas Corpus compelling Respondents either to release Petitioner Al-Quhtani or to establish in this Court the lawful basis for his detention. This Court should also order injunctive and declaratory relief.

I. JURISDICTION

1. Petitioners bring this action under 28 U.S.C. §§ 2241(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, under 5 U.S.C. § 702, and under Articles I and II of, as well as the Fifth and Sixth Amendments to, the United States Constitution. Because they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

2. This Court is empowered under 28 U.S.C. § 2241 to grant this Writ of Habeas Corpus, and to entertain the Petition filed by Nawal Maday Al-Quhtani, the Next Friend of Petitioner Jobran Saad Al-Quhtani, under 28 U.S.C. § 2242. 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. Finally, this Court is authorized to issue all writs necessary or appropriate in aid of its jurisdiction by 28 U.S.C. § 1651.

II. PARTIES

3. Upon information and belief, Petitioner Jobran Saad Al-Quhtani ("Petitioner Al-Quhtani") is presently incarcerated at Guantánamo and held in Respondents' unlawful custody and control. *See* Authorization of Nawal Maday Al-Quhtani (attached hereto as **EXHIBIT A**).

4. Petitioner Nawal Maday Al-Quhtani is Petitioner Jobran Saad Al-Quhtani's wife. *Id.* She is a citizen Saudi Arabia. *Id.* Because Petitioner Al-Quhtani has been denied unfettered access to legal counsel and to the courts of the United States, Petitioner Nawal Maday Al-Quhtani acts as his Next Friend. *Id.*

5. Respondent George W. Bush is the President of the United States and Commander-in-Chief of the United States Military. Petitioner Al-Quhtani is being detained pursuant to President Bush's authority as Commander-in-Chief, 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"). Respondent Bush executed the Military Order that created the military commissions and designated Petitioner Al-Quhtani a person eligible for trial by the commission. Respondent Bush is responsible for Petitioner Al-Quhtani's unlawful detention and is sued in his official capacity.

6. Respondent Donald Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to the President's authority as Commander-in-Chief, under the laws and

usages of war or, alternatively pursuant to the Executive Order, Respondent Rumsfeld has been charged with the responsibility of maintaining the custody and control of Petitioner Al-Quhtani. Respondent Rumsfeld also commands the Office of Military Commissions established by the applicable Presidential Military Order, and is ultimately in charge of the prosecution of Petitioner Al-Quhtani by the Commission. He is sued in his official capacity.

7. 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 Petitioner Al-Quhtani and is sued in his official capacity.

8. Respondent Army Col. Mike Bumgarner is the Commander of the Joint Detention Operations Group and the JTF-GTMO detention camps, including the U.S. facility where Petitioner Al-Quhtani is presently held. He is the immediate custodian responsible for Petitioner Al-Quhtani's detention and is sued in his official capacity.

9. Respondent Gordon R. England is Secretary of the Navy, and is Respondent Secretary Rumsfeld's designee for the Combatant Status Review Tribunals.

10. Respondent John D. Altenburg, Jr., is the Appointing Authority for Military Commissions, and in that capacity exercises authority over the entire Commission process.

11. Respondents are directly responsible for any activities undertaken by or under the supervision of any agents or employees acting on their behalf, or of agents or employees of private contractors ("contractor employees") with whom any agency under Respondents' authority or supervision has contracted for the provision of services at Guantanamo. All references to Respondents' actions in this Petition include activities performed by Respondents' agents or employees, other government agents or employees or contractor employees.

III. STATEMENT OF FACTS

12. Upon information and belief, Petitioner Al-Quhtani was seized in Pakistan in or around March 2002. Petitioner Al-Quhtani is currently incarcerated at the U.S. Naval base at Guantánamo, Cuba, a territory over which the United States exercises exclusive jurisdiction and control.

13. Upon information and belief, at the time of Petitioner Al-Quhtani's seizure and detention, he was not a member of the Taliban Government's armed forces or Al Qaeda. He had not caused or attempted to cause any harm to American personnel or property prior to his detention. Nor did he have any involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, the ensuing international armed conflict, or any act of international terrorism attributed by the United States to Al Qaeda.

14. Upon information and belief, Petitioner Al-Quhtani has not been afforded any procedures that would satisfy his 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.

15. Moreover, Respondents have now charged Petitioner Al-Quhtani with "crimes" that have been made up after the fact, and they intend to try Petitioner Al-Quhtani for those "crimes" before a military panel that they have appointed and over which they exercise reviewing authority. The prospect of this lawless proceeding provides no basis for the continued detention of Petitioner Al-Quhtani.

16. Petitioners seek to enforce Petitioner Al-Quhtani's right to a judicial determination by an appropriate and lawful authority that there is a factual and legal basis for Respondents' determination that Petitioner Al-Quhtani is either an "enemy combatant" as defined by the

United States Supreme Court in *Hamdi* or an "enemy combatant" as that term is defined and used by the Executive in the Combatant Status Review Tribunals.

17. Upon information and belief, Petitioner Al-Quhtani is not, nor has he ever been, an "enemy combatant" who was "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there." *Hamdi v. Rumsfeld*, 542 U.S. __, 124 S. Ct. 2633, 2639 (plurality) (2004).

18. Moreover, upon information and belief, Petitioner Al-Quhtani is not, nor has he ever been, an enemy alien, lawful or unlawful belligerent, or combatant of any kind under any definition adopted by the government in any civil or military proceeding.

19. Petitioners desire to pursue in the courts of the United States every available legal challenge to the lawfulness of Petitioner Al-Quhtani's detention and "trial" by military commission.

The Joint Resolution

20. 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").

21. Upon information and belief, Petitioner Al-Quhtani did not participate in the armed conflict at any point in time; thus, he is not properly detained pursuant to President Bush's

authority as Commander-in-Chief, under the laws and usages of war, or under the Joint Resolution.

22. Upon information and belief, Petitioner Al-Quhtani is not, and has never been, a member of Al Qaeda or any other terrorist group. He had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. Nor did he participate in the armed conflict at any point in time. Consequently, Petitioner Al-Quhtani is not properly subject to the detention order issued by President Bush or to President Bush's authority as Commander-in-Chief or under the laws and usages of war.

The Executive Order

23. 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.

24. 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 the 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 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 the President Bush's written determination that an individual is subject to its terms.

25. The Executive Order was promulgated in the United States and in this judicial district; the decision to incarcerate Petitioner Al-Quhtani was made by Respondents in the United States and in this judicial district; the decision to detain Petitioner Al-Quhtani at Guantánamo was made in the United States and in this judicial district; and the decision to continue detaining Petitioner Al-Quhtani, was, and is, being made by Respondents in the United States and in this judicial district.

26. Petitioner Al-Quhtani is not properly subject to the Executive Order.

27. Upon information and belief, Petitioner Al-Quhtani was not arrested or detained by the United States in the course of an armed conflict, and thus has not been, and is not being, detained lawfully either pursuant to the Executive Order, President Bush's authority as Commander-in-Chief and/or under the laws and usages of war.

Guantánamo Bay Naval Station

28. 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 a 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.

29. 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).

30. In 2002, the precise date being unknown to counsel but known to Respondents, the United States military transferred Petitioner Al-Quhtani to Guantánamo, where he has been held ever since, in the custody and control of Respondents.

The Conditions of Detention at Guantanamo

31. Since gaining control of Petitioner Al-Quhtani, the United States military has held him virtually *incommunicado.*

32. Upon information and belief, Petitioner Al-Quhtani has been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, and the Central Intelligence Agency. He has not appeared before a lawful military or civilian tribunal, and has not been provided the means to contact or secure counsel. Upon information and belief, Petitioner Al-Quhtani has not been adequately informed of his 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 he should not be informed of these rights. As a result, Petitioner Al-Quhtani lacks the ability to protect or to vindicate his rights under domestic and international law.

33. Upon information and belief, Petitioner Al-Quhtani has been forced to provide involuntary statements to Respondents' agents at Guantanamo.

34. Upon information and belief, Petitioner Al-Quhtani has been held under conditions that violate his constitutional and international rights to dignity and freedom from torture and from cruel, inhuman and degrading treatment or punishment. *See, e.g.*:

a. Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May 2005);

b. Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces," Ch.3 (2005);

c. United Nations Press Release, "United Nations Human Rights Experts Express Continued Concern About Situation of Guantánamo Bay Detainees," Feb. 4, 2005;

d. International Committee of the Red Cross, Press Release, "The ICRC's Work at Guantánamo Bay," Nov. 30, 2004;

e. 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;

f. 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/ENGAMR 511452004); s*ee also*

g. Barry C. Scheck, *Abuse of Detainees at Guantanamo Bay*, The Nat'l Assoc. of Criminal Defense Lawyers Champion, Nov. 2004, at 4-5.

35. 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 e.g.*, 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).

36. 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.

37. 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 beatings, temperature

extremes, dogs, prolonged isolation, and loud music. *See e.g.*:

a. Carol D. Leonnig, "Guantanamo Detainee Says Beating Injured Spine; Now in Wheelchair, Egyptian-Born Teacher Objects to Plan to Send Him to Native Land," *Wash. Post*, Aug. 13, 2005, at A18

b. Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May 2005);

c. *Guantánamo: An Icon of Lawlessness,* Amnesty International, Jan. 6, 2005, at 3-5; *see also*

d. Neil A. Lewis, "Fresh Details Emerge on Harsh Methods at Guantánamo," *New York Times*, Jan. 1, 2005, at A11;

e. Carol D. Leonnig, "Further Detainee Abuse Alleged; Guantánamo Prison Cited in FBI Memos," *Washington Post*, Dec. 26, 2004, at A1;

f. Neil A. Lewis and David Johnston, "New F.B.I. Memos Describe Abuses of Iraq Inmates," *New York Times*, Dec. 21, 2004, at A1;

g. Dan Eggen and R. Jeffrey Smith, "FBI Agents Allege Abuse of Detainees at Guantánamo Bay," *Washington Post*, Dec. 21, 2004, at A1;

h. Neil A. Lewis, "F.B.I. Memos Criticized Practices at Guantánamo," *New York Times*, Dec. 7, 2004, at A19.

38. As well, 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; *and see* Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 89-90, Ch. 12, AMR 51/063/2005 (13 May 2005).

39. In fact, some of the well-publicized and egregious interrogation techniques used in the Abu Ghraib torture debacle —such as aggressive use of dogs, sexual humiliation, stress positions and sense deprivation—were pioneered at Guantánamo. *See* Josh White, "Abu Ghraib Dog Tactics Came From Guantanamo; Testimony Further Links Procedures at 2 Facilities," *Wash. Post*, July 27, 2005, at A14; *and* Josh White, "Abu Ghraib Tactics Were First Used at Guantanamo," *Wash. Post*, July 14, 2005 at A1.

40. 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.

41. As well, military defense lawyers have been instructed to materially limit their representation disfavorably to their detainee clients in violation of due process. *See* David Johnston & Neil Lewis, "Lawyer Says Military Tried To Coerce Detainee's Plea," *NY Times,* June 16, 2005 at A25 (Late Ed.).

42. Respondents, acting individually or through their agents, have stated that limitations, which normally 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. *See e.g.,* Amnesty International, "Guantánamo

and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 27-43, Ch. 5, AMR 51/063/2005 (13 May 2005); 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.

43. In published statements, President Bush and Secretary Rumsfeld, and predecessors of Hood and Bumgarner, respectively, Lenhert and Carrico, have proclaimed that the United States may hold the detainees under their current conditions indefinitely. *See, e.g.,* Roland Watson, *The Times* (London), Jan. 18, 2002 ("Donald Rumsfeld, the U.S. Defense Secretary, suggested last night that Al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them."); Lynne Sladky, Assoc. Press, Jan. 22, 2002 ("Marine Brig. Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held [...] 'We have to look at Camp X-ray as a work in progress [...]' Lehnert told CNN. Lehnert said plans are to build a more permanent prison 'exactly in accordance with federal prison standards"); John Mintz, "Extended Detention in Cuba Mulled," *The Washington Post*, February 13, 2002. ("As the Bush Administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Guantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.").

44. According to the Department of Defense, 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 August 24,

2005).

45. Counsel for Respondents have also consistently maintained 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 Oral Argument on Motion 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.

46. In fact, the Government has failed to release detainees even after they have been found to be non-enemy combatants by the CSRTs. *See* Robin Wright, "Chinese Detainees Are Men Without a Country; 15 Muslims, Cleared of Terrorism Charges, Remain at Guantanamo With Nowhere to Go," *Wash. Post*, August 24, 2005, at A1 (Final Ed.); *and* Ben Fox, "U.S. to Ease Conditions for Some Detainees," *Chicago Trib.*, Aug. 11, 2005 at C4.

47. 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.

Rendition

48. During interrogations, detainees have also been threatened with rendition or transfer to countries that permit indefinite detention without charge or trial and/or 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 "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.

49. The U.S. government's practice of extraordinary rendition has been well documented by American and international news organizations, including, *inter alia*, the *Washington Post*, *The Los Angeles Times*, and the British Broadcasting Corporation (the "BBC"). According to news 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.").

50. In fact, the Government has recently announced its intention to render many Guantanamo detainees to countries which have a poor record of respecting human rights and which engage in torture. *See e.g.,* Matthew Waxman, "Beyond Guantanamo," *Wash. Times*, Aug. 20, 2005, at A17; Robin Wright and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Times*,

August 9, 2005, at A13; Neil Lewis, "Guantanamo Detention Site Is Being Transformed, U.S. Says," *NY Times*, August 6, 2005, at A8 (Late Ed.); Paul Richter, "U.S. to Repatriate 110 Afghans Jailed at Guantanamo Bay," *LA Times*, Aug. 5, 2005 at A18.

51. Moreover, upon belief and information, the Government is conditioning such rendering of detainees to their home countries on the requirement that the home country imprison the detainee, without regard to the detainee's individual factual or legal situation. *See* Robin Wright and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Post*, August 9, 2005, at A13; BBC Worldwide Monitoring, "USA to release 107 Yemenis from Guantanamo Bay," August 10, 2005 (available from LEXIS, MWP90 file) ("The US authorities declared few days ago that they would extradite detainees from Guantanamo Bay to Afghanistan, Saudi Arabia and Yemen on the condition [that they are] to be put in jail").

52. Upon information and belief, Petitioner Al-Quhtani is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture during interrogations and incarceration.

Military Commission

53. Upon information and belief, Respondents have held Petitioner Al-Quhtani for more than three years without ever demonstrating a basis for his detention. Nevertheless, on July 6, 2004, Respondent President Bush designated Al-Quhtani as a person eligible for "trial" by military commission (the "Commission").

54. The Commission was established by Presidential Military Order, dated November 13, 2001, *see* 66 Fed. Reg. 57,833 (November 13, 2001) (hereinafter "PMO"), and the March 21,

2002, Military Commission Order No. 1 (hereinafter "MCO No. 1"), subsequently revised and re-issued on August 31, 2005 (A copy of revised MCO No. 1 is attached hereto as **EXHIBIT B**.)

55. On November 9, 2005, over a year after Al-Quhtani was designated a person eligible for trial, charges against him were publicly released. They were approved by Respondent Altenburg on November 4, 2005. The charges allege one offense: Conspiracy. *See United States v. Jabran Said Bin Al Qahtani,* Charge Sheet (attached hereto as **EXHIBIT C**).

56. Lacking any lawful basis for Al-Quhtani's continued detention, Respondents seek to justify Al-Quhtani's detention by subjecting him to "trial" by military commission on purported war crime charges of Respondents' own creation and definition, never before recognized under international law, and using a procedure that also has been made up out of whole cloth.

57. Some of the procedures for the military commissions under which Al-Quhtani will be tried were set up in the MCO No. 1. *See* Exhibit B. Many other procedures, fundamental to accepted concepts of due process and procedural fairness will be made up as the proceedings go along, precluding the accused from having any practical understanding of the procedures under which he will be tried.

58. Even those procedures that have been clearly established are deficient and will not result in a full and fair trial. Under these existing procedures, Respondent Secretary Rumsfeld has appointed an "Appointing Authority," Respondent Altenburg, a retired Army officer who is currently employed by the Department of Defense in a civilian capacity. The Appointing Authority will in turn appoint members of the Commission. Thus, Respondent Secretary Rumsfeld and his appointee, who are investigating and prosecuting Al Qahtani, will ultimately be responsible for choosing the panel that will judge him. *Id.* at ¶ 6. This violates the principle

established and universally accepted by civilized nations that no one should be a judge in his own cause. *See Federalist Papers #10* (James Madison)("No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.").

59. During the military commission proceedings, there is no bar to admission of evidence that courts normally deem unreliable -- such as statements coerced from Al-Quhtani at a time when he had no counsel, or statements coerced from other detainees. Indeed, witness statements can be used even if the witnesses are not available to testify and their testimony is presented as unsworn hearsay.

60. There will be no direct appeal from a decision of the Commission. *Id.* The proceedings will be reviewed, but not in federal court. The "review" provided by the PMO and MCO 1 is to take place entirely within the Executive Branch, by officials appointed by the very officials accusing Al-Quhtani of criminal misconduct. Thus, not only has Al-Quhtani been held without trial for over three years, there is no future prospect of a trial by an impartial tribunal based upon reliable evidence. Because Respondents' war crimes charges are indisputably invalid and the Commission's process and procedures unlawful, Al-Quhtani seeks habeas relief with respect to his unlawful detention and trial by the Commission.

61. Just as there has not been and will not be an unbiased determination that Al-Quhtani is guilty of any crimes, there also has been no determination by a neutral tribunal that Al-Quhtani can justifiably be held as an enemy combatant. On June 28, 2004, the United States Supreme Court decided *Hamdi,* 542 U.S. 507, 124 S. Ct. 2633 (2004), in which it determined that individuals could not be detained as enemy combatants unless such a determination was made by

a neutral tribunal that accorded them due process.

62. Subsequently, the United States created a Combatant Status Review Tribunal ("CSRT") to make determinations as to whether those held were enemy combatants. The CSRT was hastily formed in the wake of the Supreme Court's decisions in *Rasul* and *Hamdi*, and does not qualify as the neutral tribunal that satisfies the requirements of due process. For example, the CSRT fails even to meet the standards for Article 5 hearings as set forth in U.S. Army regulations.

63. The CSRT varies from both the Army regulations and *Hamdi* (and due process generally) materially and dispositively, including with respect to, *inter alia*: (1) the standard of proof required [Regulation 190-8, §1-6(e)(9)'s preponderance of the evidence standard as opposed to the CSRT's "rebuttable presumption" that the detainee is an enemy combatant]; (2) the availability of an appeal by the government of a ruling favorable to the detainee; (3) the categories in which a detainee may be placed (*i.e.*, the CSRT fails to allow for prisoner of war (POW) status, but instead purport to determine only whether or not a detainee is an "enemy combatant"); (4) the detainee's right to counsel and/or representation by a personal representative of choice before the Tribunal; (5) whether the hearings are open to the public; (6) the government's reserved power to rescind or change the conditions of the Tribunals at its whim; (7) the composition of the Tribunal(s) (in contrast with *Hamdi's* requirement of "neutral decisionmaker[s,]" 542 U.S. at 533, 124 S. Ct. at 2648); and (8) even the definition of "enemy combatant." These deficiencies are individually and collectively fatal to the CSRT.

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

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

65. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the common law principles of due process as well 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 Petitioner Al-Quhtani 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 Regulation 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.

66. To the extent that Petitioner Al-Quhtani's detention purports to be authorized by the Executive Order, that Order violates the Fifth Amendment on its face and as applied to Petitioner, and therefore also violates 28 U.S.C. § 2241 (c)(3).

67. To the extent that Petitioner Al-Quhtani's detention is without basis in law and violates the common law principles of due process embodied in 28 U.S.C. § 2241 (c)(1), Petitioner's detention is unlawful.

68. Accordingly, Petitioner Al-Quhtani is 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

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

70. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of Petitioner Al-Quhtani 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.

71. Accordingly, Petitioner Al-Quhtani is 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)

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

73. By the actions described above, Respondents, acting under color of law, have denied and continue to deny Petitioner Al-Quhtani 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.

74. Violations of the Geneva Conventions are direct treaty violations and are also violations of customary international law, and constitute an enforceable claim under 28 U.S.C. § 2241 (c)(3).

75. 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.

76. Accordingly, Petitioner Al-Quhtani is 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

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

78. By the actions described above, Respondents have denied and continue to deny Petitioner Al-Quhtani the due process accorded 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.

79. Accordingly, Petitioner Al-Quhtani is 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

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

81. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about acts that deliberately and intentionally inflicted severe physical

and psychological abuse and agony upon Petitioner Al-Quhtani in order to obtain coerced information or confessions from him, punish or intimidate Petitioner Al-Quhtani or for other purposes. Among other abuses, Petitioner Al-Quhtani has been held in conditions of isolation; placed in constant vulnerability to repeated interrogation and severe beatings; kept in cages with no privacy; shackled with heavy chains and irons; placed in solitary confinement for minor rule infractions for prolonged periods of time; 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.

82. 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 violated 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.

83. 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 Petitioner Al-Quhtani.

84. Petitioner Al-Quhtani was forced to suffer severe physical and psychological abuse and agony and is entitled to habeas, declaratory, and injunctive relief, and other relief to be determined at trial.

SIXTH CLAIM FOR RELIEF

ALIEN TORT STATUTE -- WAR CRIMES

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

86. By the actions described above, Respondents' acts directing, ordering, confirming, ratifying, and/or conspiring to bring about the torture and other inhumane treatment of Petitioner Al-Quhtani 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.

87. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been and is forced to suffer severe physical and psychological abuse and agony, and is therefore entitled to habeas, 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

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

89. The acts described herein had the intent and the effect of grossly humiliating and debasing Petitioner Al-Quhtani, forcing him to act against his will and conscience, inciting fear and anguish, and breaking his physical or moral resistance.

90. 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.

91. 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 Petitioner Al-Quhtani.

92. Petitioner Al-Quhtani was forced to suffer severe physical and psychological abuse and agony and is 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

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

94. The acts described herein constitute arbitrary arrest and detention of Petitioner Al-Quhtani 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.

95. 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 Petitioner Al-Quhtani 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.

96. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been and is deprived of his freedom, separated from his family, and forced to suffer severe physical and mental abuse, and is 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

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

98. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about the enforced disappearance of Petitioner Al-Quhtani 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.

99. As a result of Respondents' unlawful conduct, Petitioner Al-Quhtani has been, and continues to be deprived of his freedom, separated from his family, and forced to suffer severe physical and mental abuse, and is therefore entitled to 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

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

101. Petitioner Al-Quhtani is not, nor has he ever been, an enemy alien, lawful or unlawful belligerent, or combatant 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*, 542 U.S. __, 124 S. Ct. 2633, 2642 n.1 (2004).

102. By the actions described above, Respondent 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 Petitioner Al-Quhtani and transfer him 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 Petitioner Al-Quhtani.

103. The military seizure and detention of Petitioner Al-Quhtani by the Respondents is *ultra vires* and illegal because it violates Article II of the United States Constitution. To the extent that the Executive asserts that Petitioner's 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 Petitioner.

104. To the extent that Respondents assert that their authority to detain Petitioner Al-Quhtani

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.

105. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

ELEVENTH CLAIM FOR RELIEF

VIOLATION OF THE APA -- ARBITRARY AND CAPRICIOUS UNLAWFUL DETENTION

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

107. 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.").

108. By arbitrarily and capriciously detaining Petitioner Al-Quhtani in military custody for over three years 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).

109. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

TWELFTH CLAIM FOR RELIEF

VIOLATION OF THE APA -- ARBITRARY AND CAPRICIOUS DENIAL OF DUE PROCESS

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

111. By the actions described above, Respondents, acting under color of law, have arbitrarily and capriciously denied and continue to deny Petitioner Al-Quhtani the process accorded to persons seized and detained by the United States military in times of armed conflict as established by Army Regulation 190-8 in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).

112. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

THIRTEENTH CLAIM FOR RELIEF

VIOLATION OF THE APA – TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

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

114. 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 Petitioner Al-Quhtani 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).

115. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

FOURTEENTH CLAIM FOR RELIEF

VIOLATION OF THE RIGHT TO COUNSEL AND TO ACCESS TO THE COURTS

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

117. Respondents, purportedly acting from a concern for national security, consistently have contrived to intrude upon Petitioner Al-Quhtani's right to consult with counsel by conditioning counsel's access to Petitioner on unreasonable terms, including classification/declassification procedures, all in violation of Petitioner Al-Quhtani's attorney-client privilege, his work product privilege, and the Fifth and Sixth Amendments to the U.S. Constitution.

118. Accordingly, Petitioner Al-Quhtani is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

FIFTEENTH CLAIM FOR RELIEF

DUE PROCESS CLAUSE -- RENDITION

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

120. Upon information and belief, Petitioner Al-Quhtani is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a violation of Petitioner's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

121. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as well as any other relief the court may deem appropriate.

SIXTEENTH CLAIM FOR RELIEF

CONVENTION AGAINST TORTURE AND CONVENTION RELATING TO THE STATUS OF REFUGEES -- RENDITION

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

123. Upon information and belief, Petitioner is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a direct violation of Petitioner's 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.

124. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as well as any other relief the court may deem appropriate.

SEVENTEENTH CLAIM FOR RELIEF

ALIEN TORT STATUTE-- RENDITION

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

126. Upon information and belief, Petitioner is at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture. The transfer of the Petitioner to a country that creates a foreseeable and direct risk that he will be subjected to torture constitutes a violation of Petitioner's rights under customary international law, which may be vindicated under the Alien Tort Statute.

127. Accordingly, Petitioner Al-Quhtani is entitled to declaratory and injunctive relief, as well as any other relief the court may deem appropriate.

EIGHTEENTH CLAIM FOR RELIEF

RESPONDENTS MAY NOT DETAIN PETITIONER AL-QUHTANI FOR TRIAL BEFORE AN INVALIDLY CONSTITUTED MILITARY COMMISSION

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

129. The Commission in this case is invalid and improperly constituted, and the grant of subject matter jurisdiction to the Commission is overbroad and unlawful for at least the following reasons:

A. The Commission lacks jurisdiction because the President lacked congressional authorization to establish the Commission

130. The Supreme Court has noted that "[w]hen the President acts in absence of . . . a congressional grant . . . of authority, he can only rely upon his own independent powers." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637, 72 S. Ct. 863, 872 (1952) (Jackson, J. concurring). *See also Hamdi v. Rumsfeld*, 542 U.S. ___, 124 S. Ct. 2633, 2650 (2004). The Constitution expressly grants Congress the sole power to create military commissions and define offenses to be tried by them. The Constitution vests Congress, not the Executive, with "All legislative powers," with the power "[t]o define and punish offences against the Law of Nations" and "[t]o constitute Tribunals inferior to the Supreme Court." U.S. Const., Art. I § 8, cl. 9, cl. 10.

131. Congress has not authorized the establishment of military commissions to try individuals captured during the Afghanistan war. Accordingly, Respondents' detention of Petitioner Al-Quhtani for trial by the Commission is improper, unlawful and invalid as an *ultra vires* exercise of authority. It exceeds the President's powers under Article II and thus violates the constitutional principles of separation of powers.

132. The Supreme Court's assertion of jurisdiction for the federal courts in *Rasul* establishes indisputably that aliens held at the base in Guantanamo Bay, no less than American citizens, are entitled to invoke the federal courts' authority under 28 U.S.C. § 2241. *Rasul,* 542 U.S. at ___, 124 S. Ct. at 2696 ("[c]onsidering that the statute draws no distinction between Americans and aliens held in federal custody, there is little reason to think that Congress intended the geographical coverage of the statute to vary depending on the detainee's citizenship") (footnote omitted). Thus, both Congress and the judiciary possess constitutional authority to check and balance the power of the Executive to act unilaterally. *Rasul*, 542 U.S. at ___, 124 S. Ct. at 2700 (Kennedy, J., concurring).

B. The Appointing Authority lacks power to exercise military authority to appoint a military commission

133. Because there is no statute expressly stating who can appoint members of a Commission, the power to appoint members of a military commission is based upon the power to convene a general courts-martial. Only the Executive, the Secretary of Defense (or Secretaries of the other branches of the armed forces) or a commanding officer to whom the Secretary has delegated authority may convene a general court-martial.

134. In this case, the Respondent Secretary Rumsfeld purportedly has delegated authority to John D. Altenburg, Jr. to appoint the members of military commissions. John D. Altenburg is a civilian, not a commissioned officer, and thus lacks the power to exercise military jurisdiction in any form.

135. As a result, the Commission by which the Respondents intend to try Petitioner Al-Quhtani is improperly constituted and invalid, such that Petitioner Al-Quhtani is entitled to a writ

of habeas corpus preventing his unlawful detention and trial before that improper tribunal.

C. The Commission lacks jurisdiction to try individuals at Guantanamo Bay

136. Military commissions have no jurisdiction to try individuals far from the "locality of actual war." *See Milligan*, 71 U.S. at 127.

137. The Commission that will try Petitioner Al-Quhtani is situated far outside any zone of conflict or occupation, and Petitioner Al-Quhtani's alleged conduct on which the charges are based did not occur at Guantanamo Bay. As such, the Commission lacks authority to try Petitioner Al-Quhtani, and therefore, the Respondents lack the authority to continue to detain Petitioner Al-Quhtani for any purported trial at Guantanamo Bay.

NINETEENTH CLAIM FOR RELIEF

RESPONDENTS MAY NOT DETAIN PETITIONER AL-QUHTANI FOR OFFENSES THAT HAVE BEEN CREATED AFTER THE FACT

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

139. Respondent President Bush is attempting to try Petitioner Al-Quhtani for crimes that were created long after the alleged "offenses" were committed.

140. Upon information and belief, none of the criminal offenses stated in the charges against Petitioner Al-Quhtani previously existed. These "offenses" were in effect created by the PMO, MCO No. 1, and Military Commission Instruction No. 2, well after they were allegedly committed by Petitioner Al-Quhtani. In essence, the government alleges that Petitioner Al-Quhtani is *criminally* liable for allegedly conspiring to participate in combat against the United States and its allies. That has never been a criminal offense.

A. The Executive cannot define crimes.

141. Congress, not the Executive, has the authority to legislate under Article I of the Constitution. This expressly includes the power "[t]o define and punish . . . Offences against the Law of Nations." Absent Congressional authorization, the Executive lacks the power to define specific offenses. If he attempts to do so, as he has done here, his actions are *ultra vires* and violate the principles of separation of powers. Accordingly, Petitioner Al-Quhtani may not be detained for trial on newly-created offenses established and defined solely by the President.

B. Crimes cannot be defined after the fact

142. In addition, any charges instituted by the Commission must constitute offenses under the law of war as it existed at the time the alleged conduct was committed. Applying laws created after the conduct (such as the definition of offenses set forth in MCO No. 2 and those which have been included in the charge against Petitioner Al-Quhtani) would violate the *ex post facto* clause of the Constitution (Art. 1, §9, cl. 3) and the principle that a person must have reasonable notice of the bounds of an offense. (Offenses defined to criminalize the conduct of a single person or group of people -- such as those in MCO No. 2 also violate the Constitutional prohibition on bills of attainder.)

143. Since the charged conduct does not allege any offense against Petitioner Al-Quhtani under the law of war as it existed at the time he allegedly committed these acts, Petitioner Al-Quhtani cannot be detained as a result of the charge. Accordingly, Petitioner Al-Quhtani is entitled to a writ of habeas corpus, and Petitioner Al-Quhtani should be released immediately.

TWENTIETH CLAIM FOR RELIEF

RESPONDENTS MAY NOT DETAIN PETITIONER AL-QUHTANI FOR TRIAL ON CHARGES OUTSIDE THE JURISDICTION OF THE MILITARY COMMISSION

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

145. Petitioner Al-Quhtani's confinement is unlawful because he is being detained to face a charge before a Commission that is not empowered to hear and/or adjudicate the charge instituted against him. Petitioner Al-Quhtani's continued detention purportedly to face trial is unlawful because the charge is outside the parameters established by the Uniform Code of Military Justice (hereinafter "UCMJ"), 10 U.S.C. §801, *et seq.*, the statutory scheme that controls military detentions and that limits the offenses triable by military commissions (even in instances where Congress has provided any jurisdiction to the military commissions, which it has not with respect to the conflict in Afghanistan).

146. Under the UCMJ, military commissions may not hear and adjudicate any offenses other than those that are recognized by the traditional law of war or those that Congress has expressly authorized them to hear. Here, the charged offense is not within either of these categories.

147. The purported offense of "conspiracy" is not a valid offense triable by the Commission under recognized principles of the law of war, the UCMJ, or any other statutory authorization. Because civil law countries do not recognize a crime of conspiracy, conspiracy has never been part of the laws of war. No international criminal convention has ever recognized conspiracy to violate the laws of war as a crime. This includes the Geneva Conventions, as well as those setting up the international criminal tribunals in Yugoslavia and Rwanda, as well as the

international criminal court. Indeed, the government is making up charges that have been specifically rejected as violations of the laws of war -- including at Nuremberg, for example.

148. As a plurality of the Supreme Court held in *Reid v. Covert*:

> [t]he jurisdiction of military tribunals is a very limited and extraordinary jurisdiction derived from the cryptic language in Art. I, § 8 [granting Congress the power to "define and punish . . . Offences against the Law of Nations"], and, at most, was intended to be only a narrow exception to the normal and preferred method of trial in courts of law. Every extension of military jurisdiction is an encroachment on the jurisdiction of the civil courts, and, more important, acts as a deprivation of the right to jury trial and of other treasured constitutional protections.
>
> 354 U.S. 1, 21, 77 S. Ct. 1222, 1233 (1957).

149. Since the charging document does not allege any offense against Petitioner Al-Quhtani under the law of war or express statutory authority, the Commission lacks jurisdiction to try and/or punish Petitioner Al-Quhtani. Accordingly, Petitioner Al-Quhtani is entitled to a writ of habeas corpus, and should be released immediately.

TWENTY-FIRST CLAIM FOR RELIEF

THE MILITARY COMMISSION PROCEDURES VIOLATE PETITIONER AL-QUHTANI'S RIGHTS UNDER STATUTORY, CONSTITUTIONAL, AND INTERNATIONAL LAW

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

151. Even if the Commission had jurisdiction, Petitioner Al-Quhtani's detention to stand trial before the Commission still would be unlawful because the Commission's procedures violate applicable principles of statutory, constitutional, and international law.

152. In a series of "Military Commission Orders" (the "MCOs"), issued on March 21, 2002, Respondent Secretary Rumsfeld prescribed the procedural rules of these special military

commissions. If Petitioner Al-Quhtani is tried according to these proposed procedures, he will receive less protection than he is entitled to under American law, the Constitution, and international law and treaties. The procedures set forth by the MCOs provide Petitioner Al-Quhtani with far less protection than those set forth in the UCMJ. The MCOs violate Petitioner Al-Quhtani's rights to certain basic procedural safeguards. The MCOs fail to provide Petitioner Al-Quhtani an impartial tribunal to adjudicate the charges against him or review those charges. Petitioner Al-Quhtani's accusers effectively appoint the "judge and jury" and then review their decision. And during these proceedings themselves, his accusers can introduce unreliable evidence of the worst sort -- unsworn allegations derived from coerced confessions with no right of confrontation.

153. The absence of procedural protections makes the Commission inadequate as a matter of law.

A. The UCMJ

154. Petitioner Al-Quhtani is entitled to the protections of the basic trial rights set forth by Congress in the UCMJ. By its own terms, the UCMJ applies to all persons, including Petitioner Al-Quhtani, who are detained within the territory or leased properties of the United States. And the UCMJ prohibits biased tribunals and the use of unreliable evidence of the sort the commissions intend to permit.

B. The Geneva Convention

155. The Geneva Convention requires that prisoners of war ("POW"s), as defined by the Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, be treated

with the same procedural protections as the soldiers of the country detaining them. Under Article 5 of the Geneva Convention (III) ("Article 5"), Petitioner Al-Quhtani is entitled to be treated as a POW until a competent tribunal has determined otherwise. As a result, he is entitled to the procedural protections that would apply in a court martial.

156. Even if Petitioner Al-Quhtani were not a prisoner of war, any proceeding would still have to meet the requirements of Common Article III of the Geneva Convention and Article 75 of Protocol I to the Geneva Conventions. These provide that conviction can only be pronounced by an impartial court respecting generally recognized principles of judicial procedure. Article 75 of Protocol I to the Geneva Conventions specifically provides that no one can be compelled to confess guilt. Upon information and belief, Petitioner Al-Quhtani's interrogations defy the requirements of Article 75, and the Conventions's requirements are not met by the Commission.

C. The Due Process Clause

157. The Constitution's guarantee of due process also guarantees Petitioner Al-Quhtani the basic trial rights he will be denied before the Commission. A trial without these basic procedural safeguards lacks the fundamental fairness required in any judicial proceedings -- especially in criminal proceedings that can result in life imprisonment.

158. Since the Commission procedures violate statutory, constitutional, and international law, and in so doing, fail to provide Petitioner Al-Quhtani with the basic safeguards necessary to constitute a fundamentally fair criminal proceedings, Petitioner Al-Quhtani is entitled to a writ of habeas corpus and should be released immediately.

TWENTY-SECOND CLAIM FOR RELIEF

TRIAL BEFORE THE COMMISSION VIOLATES PETITIONER AL-QUHTANI'S RIGHT TO EQUAL PROTECTION OF THE LAWS OF THE UNITED STATES

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

A. Petitioner Al-Quhtani's detention violates the Equal Protection Clause.

160. Petitioner Al-Quhtani is being detained by Respondents under the claimed authority of the PMO and MCO No. 1. These Orders violate Petitioner Al-Quhtani's right to equal protection of the laws of the United States. Under the PMO and MCO No. 1, Petitioner Al-Quhtani may be held for trial by the Commission only because of his alienage, since the Orders, by their terms, apply *only* to *non*-citizens. Consequently, thus detention runs afoul of the very purpose of the Equal Protection Clause of the United States Constitution.

161. The Supreme Court has held that any discrimination against aliens not involving governmental employees is subject to strict scrutiny. Here, the government cannot show a compelling governmental reason, advanced through the least restrictive means, for granting *citizens* access to the fundamental protections of civilian justice (including, *inter alia*, indictment, evidentiary rules ensuring reliability and fairness, a system consistent with previously prescribed rules developed by the legislature and enforced by impartial courts, a jury trial presided over by an independent judge not answerable to the prosecutor, and the right to an appeal before a tribunal independent of the prosecuting authority), but affording *non-citizens* a distinctly less protective and inferior brand of adjudication. While the government may have latitude in

differentiating between citizens and aliens in areas such as immigration, it has no such latitude with respect to criminal prosecutions.

162. Thus, the blatant and purposeful discriminatory nature and impact of MCO No. 1 violates the Equal Protection clause.

B. Petitioner Al-Quhtani's detention violates 42 U.S.C. § 1981.

163. Petitioner Al-Quhtani's detention for trial by the Commission also violates 42 U.S.C. § 1981. That fundamental statutory provision guarantees equal rights for all persons to give evidence, to receive equal benefit of all laws and proceedings for the security of persons, and to receive like punishment. Petitioner Al-Quhtani is being unlawfully detained for purposes of trial by the Commission solely because he is a non-citizen. A citizen who committed the very same acts as Petitioner Al-Quhtani could not be detained under the PMO and held for trial before the Commission. Accordingly, Petitioner Al-Quhtani's detention for trial by the Commission on that discriminatory basis is unlawful.

164. Respondents have detained Petitioner Al-Quhtani for trial before the Commission in violation of equal protection of the laws of the United States.

165. Accordingly, Petitioner Al-Quhtani is entitled to a writ of habeas corpus, a determination that the Commission proceedings against him are unlawful, and he should be released immediately.

TWENTY-THIRD CLAIM FOR RELIEF

RESPONDENTS HAVE DENIED PETITIONER AL-QUHTANI THE RIGHT TO A SPEEDY TRIAL AND THE RIGHT TO BE FREE FROM UNREASONABLE PRE-TRIAL CONFINEMENT

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

A. Petitioner Al-Quhtani was entitled to a speedy trial under the UCMJ.

167. The PMO, pursuant to which Petitioner Al-Quhtani has been detained for trial, purports to be based, in part, on congressional authorization embodied in selected provisions of the UCMJ. In promulgating the PMO, Respondent President Bush relied, in part, on his authority under 10 U.S.C. §836, which allows the Executive to prescribe rules for military commissions so long as they are not inconsistent with the UCMJ.

168. However, the PMO, and its implementation through MCO No. 1, clearly contravene Article 10 of the UCMJ, 10 U.S.C. §810, which provides that any arrest or confinement of an accused must be terminated unless charges are instituted promptly and made known to the accused, and speedy trial afforded for a determination of guilt on such charges:

> [w]hen any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or dismiss the charges and release him.

10 U.S.C. § 810.

169. Petitioner Al-Quhtani is a person subject to the UCMJ by virtue of Respondent President Bush's PMO and MCO No. 1, as well as by virtue of Article 2 of the UCMJ, 10 U.S.C. § 802(a)(12), which provides that "persons within an area leased by or otherwise reserved or acquired for the use of the United States" and under the control of any of the various branches of the military are subject to the UCMJ. Under the Supreme Court's decision in *Rasul*, 542 U.S. at ___, 124 S. Ct. at 2696-98, Guantanamo Bay qualifies under both prongs.

170. The type of delays to which Petitioner Al-Quhtani has been subjected are intolerable in the absence of extraordinary or compelling circumstances. Here, the Respondents have not provided any reason whatsoever for their inordinate delays in charging Petitioner Al-Quhtani. Since Respondents did not take "immediate steps . . . to inform" Petitioner Al-Quhtani "of the specific wrong of which he is accused," they now have a clear and nondiscretionary duty under the UCMJ to "release him" from his confinement.

B. Petitioner Al-Quhtani was entitled to a speedy trial under the Geneva Convention.

171. Petitioner Al-Quhtani's lengthy pre-trial confinement violates Article 103 of Geneva Convention (III), as well as United States government regulations. Article 103 of Geneva Convention (III) provides that:

> [j]udicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. *In no circumstances shall this confinement exceed three months.*

6 U.S.T. 3316, 3394, 75 U.N.T.S. 135 (emphasis added).

172. In addition, Article 5 of Geneva Convention (III) declares that:

> should any doubt arise as to whether persons . . . belong to any of the categories [entitled to protection as a P.O.W. under the Convention], such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

173. Likewise, §1-6(a) U.S Army Regulation 190-8, entitled Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, requires that United States military forces abide by the provisions of Article 5 of Geneva Convention (III). Similarly, the

Commander's Handbook on the Law of Naval Operations states that "individuals captured as spies or as illegal combatants have the right to assert their claim of entitlement to prisoner-of-war status before a judicial tribunal and to have the question adjudicated." Department of the Navy, NWP 1-14M, The Commander's Handbook on the Law of Naval Operations 11.7 (1995).

174. Respondents are under a clear nondiscretionary duty under Geneva Convention (III), and under the U.S. Army's (and Navy's) own regulations to release Petitioner Al-Quhtani because he has been detained in segregation for more than three months – indeed, for more than *ten times* the permissible period.

175. Even if Petitioner Al-Quhtani were not a presumptive POW, the Geneva Convention would not sanction such delay. The Geneva Convention requires that all civilians and protected persons must be "promptly informed" of the charges and brought to trial "as rapidly as possible." Geneva Convention IV, art. 7. Similarly the fundamental guarantees of Protocol I require that Petitioner Al-Quhtani be "informed without delay" of the particulars of charges, and incorporate the International Covenant on Civil and Political Rights.

C. Petitioner Al-Quhtani was entitled to a speedy trial under the Sixth Amendment.

176. Moreover, the Sixth Amendment to the United States Constitution requires that in all criminal prosecutions, "the accused shall enjoy the right to a speedy . . . trial." U.S. Const. amend. VI. Respondents' unlawful detention violates Petitioner Al-Quhtani's right to a speedy trial.

177. Respondents have denied Petitioner Al-Quhtani his right to a speedy trial as required by American law, the Constitution, and international law and treaty, and Petitioner Al-Quhtani therefore is entitled to a writ of habeas corpus and immediate release.

TWENTY-FOURTH CLAIM FOR RELIEF

RESPONDENTS FAIL TO JUSTIFY HOLDING AL-QUHTANI AS AN ENEMY COMBATANT

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

179. Just as the government has no authority to detain Al-Quhtani for his alleged violations under a nonexistent version of the law of war, the government has no authority to detain Al-Quhtani as an enemy combatant. Respondents' actions to date in detaining Al-Quhtani constitute a violation of the process accorded persons seized by the military in times of armed conflict as defined by Geneva Conventions III and IV and customary international law, as well as being inconsistent with the provisions set forth below.

A. Under *Hamdi*, the Due Process Clause requires a neutral tribunal with significant procedural protections to determine whether Al-Quhtani is an enemy combatant.

180. The CSRT process and procedures that have now been established violate due process at least with respect to: (1) the failure to adhere to an appropriate standard of proof; (2) the granting of an appeal to the government of a determination favorable to the detainee; (3) the failure to make an appropriate status determination by limiting the inquiry to consideration only of "enemy combatant" status; (4) the denial of a detainee's right to counsel or other appropriate representation; (5) the denial of a public hearing; (6) the government's power to arbitrarily rescind or change the CSRT process

and procedures; and (7) the failure to constitute the CSRT in a manner to assure a neutral decision maker.

B. The Geneva Convention and army regulations require that the enemy combatant determination be made by a fair tribunal.

181. Under Article 5 of the Geneva Convention, Al-Quhtani is entitled to a "competent tribunal" to determine whether he can be held as an enemy combatant. The same procedural deficiencies that render the CSRT proceedings inadequate for purposes of due process also render the CSRT deficient as a competent tribunal. Army Regulations 190-8 and the Administrative Procedures Act also show these procedures are unlawful as, for example, the burden of proof is not consistent with that established in the regulations.

182. Moreover, it is now too late to establish a competent tribunal. Article 5 of Geneva Convention III, provides that "should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy belong to any of the categories enumerated in [Article 4 of the Geneva Convention (III), defining the different categories of belligerents,] such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

183. Respondents have unlawfully detained Al-Quhtani in violation of their obligation to treat Al-Quhtani presumptively as a POW, as required by Article 5, and in violation of the procedural requirements of the Third and Fourth Geneva Conventions and customary international law more generally. Thus, the government's failure to accord Petitioner Al-Quhtani the protections of Article

5 violates the provisions of Geneva Convention (III) as well as the U.S. military regulations promulgated to implement them.

C. The government cannot continue to hold Al-Quhtani under its own regulations.

184. Indeed, even under the Army's own Regulations 190-8 at 1-6(g), "Persons who have been determined 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."

185. By arbitrarily and capriciously detaining Petitioner in custody for over three years while claiming he is not entitled to prisoner of war status, Respondents have acted and continue to act *ultra vires* and in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2). Under the Army's own regulations, Petitioner cannot be held unless he has committed specific acts under which he can be punished. But as alleged in the Counts on the Commission, the government has not charged Petitioner with any acts that could form a basis to hold him.

D. The government cannot continue to hold Petitioner Al-Quhtani as an enemy combatant once hostilities have ended.

186. Under Article 118 of Geneva Convention (III), "[p]risoners of war shall be released and repatriated without delay after the cessation of active hostilities." *See also Hamdi*, 542 U.S. at 520, 124 S. Ct. at 2641. Respondents and their agents have acknowledged that hostilities in Afghanistan have ceased or will soon cease (even if they were ongoing to some extent until shortly before the Supreme Court's decision in *Hamdi*). Similarly, Respondent Secretary Rumsfeld, in a joint May 1, 2003 press conference with Afghan President Hamid Karzai in Washington, announced that "we're

at a point where we clearly have moved from major combat activity to a period of stability and stabilization and reconstruction activities. The bulk of this country today is permissive, it's secure."

187. Petitioner Al-Quhtani is presumptively a POW entitled to all protections afforded by Geneva Convention (III), including, under Article 118, release after hostilities have ceased.

188. Petitioner Al-Quhtani also is entitled to the protection of Common Article 3 of Geneva Convention (III). Article 3(1)(d) prohibits the contracting parties from "passing. . . sentences . . . without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

189. In this case, the prolonged confinement of Petitioner Al-Quhtani without charge, and without process to contest his guilt or challenge his detention, amounts to an arbitrary and illegally imposed sentence that is incompatible with fundamental guarantees of due process recognized by all civilized people, in violation of Article 3 of the Geneva Convention (III), and in violation of the due process clause of the Fifth Amendment. Further, Respondents' confinement of Petitioner Al-Quhtani is a form of punishment in violation of the 8th Amendment to the Constitution. Accordingly, Petitioner Al-Quhtani is entitled to a writ of habeas corpus and should be released immediately.

V. PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Designate Nawal Maday Al-Quhtani as Next Friend of Jobran Saad Al-Quhtani;

2. Order that Petitioner Al-Quhtani 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 his rights;

3. Order that Petitioner Al-Quhtani cannot be transferred to any other country without the specific written agreement of Petitioner and Petitioner's counsel while this action is pending;

4. Order that Petitioner Al-Quhtani cannot be delivered, returned, or rendered to a country where there is a foreseeable and imminent risk that Petition will be subject to torture;

5. Order Respondents to allow counsel to meet and confer with Petitioner Al-Quhtani, in private and unmonitored attorney-client conversations;

6. Order Respondents to cease all interrogations of Petitioner Al-Quhtani, direct or indirect, while this litigation is pending;

7. Order Respondents to cease all acts of torture and cruel, inhuman and degrading treatment of Petitioner Al-Quhtani;

8. Order Respondents to show cause why a writ of *habeas corpus* should not be granted and why Al-Quhtani should not be immediately released;

9. If an Order to Show Cause is issued, issue as part of the Order a schedule to receive briefing from the parties, including a factual return and a Response from Respondents, and a Reply from Petitioner, on the issues raised in this Petition, followed by a hearing before this Court on any contested factual or legal issues, and production of Petitioner Al-Quhtani as appropriate;

10. Issue an Order declaring Commission proceedings unconstitutional and invalid and enjoining any and all Commission proceedings and/or findings against Petitioner Al-Quhtani;

11. Issue an Order declaring the Combatant Status Review Tribunal unconstitutional and invalid, and enjoin its operation with respect to Petitioner Al-Quhtani;

12. Issue an order declaring the Executive Order of November 13, 2001 *ultra vires* and an 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;

13. Issue a writ of mandamus and an Order that prohibits Respondents from using the PMO and/or the Military Commission Orders and Instructions to detain Al-Quhtani, or adjudicating charges against Petitioner Al-Quhtani, or conducting any proceedings related to such charges, because those Orders and instructions violate the U.S. Constitution, U.S. law, and U.S. treaty obligations, both facially and as applied to Petitioner Al-Quhtani and are therefore *ultra vires* and illegal;

14. Determine and declare that the prolonged, indefinite, and restrictive detention of Petitioner Al-Quhtani without due process is arbitrary and unlawful and a deprivation of liberty without due process in violation of the 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;

15. Determine and declare that Petitioner Al-Quhtani's detention violates the laws, treaties, and regulations of the United States; that the PMO is unconstitutional; that Al-Quhtani has been denied a speedy trial; and that Respondents lack any jurisdiction over Petitioner Al-Quhtani;

16. Grant a writ of *habeas corpus* on behalf of Petitioner Al-Quhtani ordering his immediate release;

17. Issue a writ of mandamus that directs Respondents to obey their clear, nondiscretionary duty to follow the Constitution, laws, regulations, and treaties of the United States, and therefore to release Petitioner Al-Quhtani immediately;

18. Enter an Order that the Court shall retain jurisdiction over this matter to permit Petitioner Al-Quhtani to respond to arguments advanced by Respondents on matters related to his continued detention; and

19. Grant such other relief on behalf of Petitioner Al-Quhtani and against Respondents as the Court may deem necessary and appropriate to protect Petitioner's rights under the common law, the United States Constitution, federal statutory law, and international law.

Date: December 20, 2005

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

MARY MANNING PETRAS
Assistant Federal Public Defender

/s/

KETANJI BROWN JACKSON
Assistant Federal Public Defender

625 Indiana Avenue, N.W., Suite 550
Washington, D.C. 20004
(202) 208-7500

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing instrument has been served by Certified Mail, Return Receipt Requested, to the following persons:

Kenneth L. Wainstein
U.S. Attorney
District of Columbia District
Judiciary Center
555 4th Street, N.W.
Washington, DC 20530

George W. Bush
President, United States of America
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
Robert F. Kennedy Building
Tenth Street & Constitution Avenue, N.W.
Room 5111
Washington, DC 20301-1000

Donald Rumsfeld
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Army Brig. General Jay Hood
Commander, Joint Task Force-GTMO
JTF-GTMO
APO AE 09360

Army Col. Mike Bumgarner
Commander, Joint Detention Operations
Group- JTF-GTMO
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Brig. General Jay Hood
United States Army
Army Pentagon
Washington, DC 20310-0200

Army Col. Mike Bumgarner
United States Army
Army Pentagon
Washington, DC 20310-0200

/s/

MARY MANNING PETRAS

/s/

KETANJI BROWN JACKSON

Dated: December 20, 2005

EXHIBIT A

NEXT FRIEND AUTHORIZATION

Date: , 2005

Authorization

I am Nawal Maday Al-Quhtani, and I have had the concept of 'next friend' explained to me in my native language. I wish to act as next friend for my husband, who is a prisoner being held in Guantanamo Bay, and whose name is Jabran Said Al-Quhtani (the 'prisoner'). I hereby authorize Tina Foster (and the Center for Constitutional Rights), as well as Clive Stafford Smith (and Justice In Exile), and any person assigned by these lawyers, to act on my behalf and on the prisoner's behalf, to secure any documents and information concerning the prisoner that are necessary for his defense, and to seek whatever redress they believe to be in his best interests, in the courts of the United States, and in any other legal forum available. I am sure that he would want me to assert these rights. He is a citizen of Saudi

X Nawal Maday Al-Quhtani

Next Friend

Witnessed:

Print Name:

EXHIBIT B

MOC No. 1 PROCEDURES

Department of Defense

Military Commission Order No. 1

August 31, 2005

SUBJECT: Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism

References: (a) United States Constitution, Article II, Section 2

(b) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001) ("President's Military Order")

(c) DoD 5200.2-R, "Personnel Security Program," current edition

(d) Executive Order 12958, "Classified National Security Information" (April 17, 1995, as amended, or any successor Executive Order)

(e) Section 603 of title 10, United States Code

(f) DoD Directive 5025.1, "DoD Directives System," current edition

(g) Military Commission Order No. 1 (March 21, 2002)

1. PURPOSE

This Order implements policy, assigns responsibilities, and prescribes procedures under references (a) and (b) for trials before military commissions of individuals subject to the President's Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President's Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President's Military Order or this Order, the procedures prescribed herein and no others shall govern such trials. This Order supersedes reference (g).

2. ESTABLISHMENT OF MILITARY COMMISSIONS

In accordance with the President's Military Order, the Secretary of Defense or a designee ("Appointing Authority") may issue orders from time to time appointing one or more military

commissions to try individuals subject to the President's Military Order and appointing any other personnel necessary to facilitate such trials.

3. JURISDICTION

A. Over Persons

A military commission appointed under this Order ("Commission") shall have jurisdiction over only an individual or individuals ("the Accused") (1) subject to the President's Military Order and (2) alleged to have committed an offense in a charge that has been referred to the Commission by the Appointing Authority.

B. Over Offenses

Commissions established hereunder shall have jurisdiction over violations of the laws of war and all other offenses triable by military commission.

C. Maintaining Integrity of Commission Proceedings

The Commission may exercise jurisdiction over participants in its proceedings as necessary to preserve the integrity and order of the proceedings.

4. COMMISSION PERSONNEL

A. Members

(1) Appointment

The Appointing Authority shall appoint the Presiding Officer, other members, and the alternate member or members of each Commission. The alternate member or members shall attend all sessions of the Commission except sessions with members deliberating and voting on findings and sentence and sessions conducted by the Presiding Officer under Section 4(A)(5)(a), but the absence of an alternate member shall not preclude the Commission from conducting proceedings. Alternate members shall attend deliberations on matters other than findings or sentence, but may not participate in such deliberations or in any voting. In case of incapacity, resignation, or removal of any member, an alternate member, if available, shall take the place of that member, in the sequence designated by the Appointing Authority. Any vacancy among the members or alternate members occurring after a trial has begun may, but need not, be filled by the Appointing Authority, but the substance of all prior proceedings and evidence taken in that case shall be made known to that new member or alternate member before the trial proceeds.

(2) Number of Members

Each Commission shall consist of a Presiding Officer and at least three other members, the number being determined by the Appointing Authority. For each such Commission, the

Appointing Authority shall also appoint at the outset of proceedings one or more alternate members, the number being determined by the Appointing Authority.

(3) Qualifications

Each member and alternate member shall be a commissioned officer of the United States armed forces ("Military Officer"), including without limitation reserve personnel on active duty, National Guard personnel on active duty in Federal service, and retired personnel recalled to active duty. The Appointing Authority shall appoint members and alternate members determined to be competent to perform the duties involved. The Appointing Authority may remove members and alternate members for good cause.

(4) Presiding Officer

The Appointing Authority shall designate a Presiding Officer to preside over the proceedings of that Commission. The Presiding Officer shall be a Military Officer who is a judge advocate of any United States armed force.

(5) Duties of the Presiding Officer

(a) The Presiding Officer shall rule upon all questions of law, all challenges for cause, and all interlocutory questions arising during the proceedings. The Presiding Officer may conduct hearings (except hearings on the admissibility of evidence under Section 6(D)(1)) outside the presence of the other members for the purposes of hearing and determining motions, objections, pleas, or such other matters as will promote a fair and expeditious trial. If the Presiding Officer determines that deliberations are necessary to resolve a challenge by another member under Section 6(D)(1) to a ruling by the Presiding Officer on the admissibility of evidence, the Presiding Officer shall deliberate and vote with the other members to determine the admissibility of the evidence in question. The Presiding Officer shall not deliberate or vote with the other members on findings or sentence, nor shall the Presiding Officer be present at such deliberations or votes.

(b) The Presiding Officer shall admit or exclude evidence at trial in accordance with Section 6(D). The Presiding Officer shall have authority to close proceedings or portions of proceedings in accordance with Section 6(B)(3) and for any other reason necessary for the conduct of a full and fair trial.

(c) The Presiding Officer shall ensure that the discipline, dignity, and decorum of the proceedings are maintained, shall exercise control over the proceedings to ensure proper implementation of the President's Military Order and this Order, and shall have authority to act upon any contempt or breach of Commission rules and procedures. Any attorney authorized to appear before a Commission who is thereafter found not to satisfy the requirements for eligibility or who fails to comply with laws, rules, regulations, or other orders applicable to

the Commission proceedings or any other individual who violates such laws, rules, regulations, or orders may be disciplined as the Presiding Officer deems appropriate, including but not limited to revocation of eligibility to appear before that Commission. The Appointing Authority may further revoke that attorney's or any other person's eligibility to appear before any other Commission convened under this Order.

(d) The Presiding Officer shall ensure the expeditious conduct of the trial. In no circumstance shall accommodation of counsel be allowed to delay proceedings unreasonably.

(e) The Presiding Officer shall certify all interlocutory questions, the disposition of which would effect a termination of proceedings with respect to a charge, for decision by the Appointing Authority. The Presiding Officer may certify other interlocutory questions to the Appointing Authority as the Presiding Officer deems appropriate.

(f) As soon as practicable at the conclusion of each Commission session, the Presiding Officer shall transmit an authenticated copy of the proceedings to the Appointing Authority.

(6) Duties of the Other Members

The other members of the Commission shall determine the findings and sentence without the Presiding Officer, and may vote on the admission of evidence, with the Presiding Officer, in accordance with Section 6(D)(1).

B. Prosecution

(1) Office of the Chief Prosecutor

The Chief Prosecutor shall be a judge advocate of any United States armed force, shall supervise the overall prosecution efforts under the President's Military Order, and shall ensure proper management of personnel and resources.

(2) Prosecutors and Assistant Prosecutors

Consistent with any supplementary regulations or instructions issued under Section 7(A), the Chief Prosecutor shall detail a Prosecutor and, as appropriate, one or more Assistant Prosecutors to prepare charges and conduct the prosecution for each case before a Commission ("Prosecution"). Prosecutors and Assistant Prosecutors shall be (a) Military Officers who are judge advocates of any United States armed force, or (b) special trial counsel of the Department of Justice who may be made available by the Attorney General of the United States. The duties of the Prosecution are:

(a) To prepare charges for approval and referral by the Appointing Authority;

(b) To conduct the prosecution before the Commission of all cases referred for trial; and

(c) To represent the interests of the Prosecution in any review process.

C. Defense

(1) Office of the Chief Defense Counsel

The Chief Defense Counsel shall be a judge advocate of any United States armed force, shall supervise the overall defense efforts under the President's Military Order, shall ensure proper management of personnel and resources, shall preclude conflicts of interest, and shall facilitate proper representation of all Accused.

(2) Detailed Defense Counsel.

Consistent with any supplementary regulations or instructions issued under Section 7(A), the Chief Defense Counsel shall detail one or more Military Officers who are judge advocates of any United States armed force to conduct the defense for each case before a Commission ("Detailed Defense Counsel"). The duties of the Detailed Defense Counsel are:

(a) To defend the Accused zealously within the bounds of the law without regard to personal opinion as to the guilt of the Accused; and

(b) To represent the interests of the Accused in any review process as provided by this Order.

(3) Choice of Counsel

(a) The Accused may select a Military Officer who is a judge advocate of any United States armed force to replace the Accused's Detailed Defense Counsel, provided that Military Officer has been determined to be available in accordance with any applicable supplementary regulations or instructions issued under Section 7(A). After such selection of a new Detailed Defense Counsel, the original Detailed Defense Counsel will be relieved of all duties with respect to that case. If requested by the Accused, however, the Chief Defense Counsel may allow the original Detailed Defense Counsel to continue to assist in representation of the Accused as another Detailed Defense Counsel.

(b) The Accused may also retain the services of a civilian attorney of the Accused's own choosing and at no expense to the United States Government ("Civilian Defense Counsel"), provided that attorney: (i) is a

United States citizen; (ii) is admitted to the practice of law in a State, district, territory, or possession of the United States, or before a Federal court; (iii) has not been the subject of any sanction or disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct; (iv) has been determined to be eligible for access to information classified at the level SECRET or higher under the authority of and in accordance with the procedures prescribed in reference (c); and (v) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the course of proceedings. Civilian attorneys may be pre-qualified as members of the pool of available attorneys if, at the time of application, they meet the relevant criteria, or they may be qualified on an *ad hoc* basis after being requested by an Accused. Representation by Civilian Defense Counsel will not relieve Detailed Defense Counsel of the duties specified in Section 4(C)(2). The qualification of a Civilian Defense Counsel does not guarantee that person's presence at closed Commission proceedings or that person's access to any information protected under Section 6(D)(5).

(4) Continuity of Representation

The Accused must be represented at all relevant times by Detailed Defense Counsel. Detailed Defense Counsel and Civilian Defense Counsel shall be herein referred to collectively as "Defense Counsel." The Accused and Defense Counsel shall be herein referred to collectively as "the Defense."

D. Other Personnel

Other personnel, such as court reporters, interpreters, security personnel, bailiffs, and clerks may be detailed or employed by the Appointing Authority, as necessary.

5. PROCEDURES ACCORDED THE ACCUSED

The following procedures shall apply with respect to the Accused:

A. The Prosecution shall furnish to the Accused, sufficiently in advance of trial to prepare a defense, a copy of the charges in English and, if appropriate, in another language that the Accused understands.

B. The Accused shall be presumed innocent until proven guilty.

C. A Commission member, other than the Presiding Officer, shall vote for a finding of Guilty as to an offense if and only if that member is convinced beyond a reasonable doubt, based on the evidence admitted at trial, that the Accused is guilty of the offense.

D. At least one Detailed Defense Counsel shall be made available to the Accused sufficiently in advance of trial to prepare a defense and until any findings and sentence become final in accordance with Section 6(H)(2).

E. The Prosecution shall provide the Defense with access to evidence the Prosecution intends to introduce at trial and with access to evidence known to the Prosecution that tends to exculpate the Accused. Such access shall be consistent with Section 6(D)(5) and subject to Section 9.

F. The Accused shall not be required to testify during trial. A Commission shall draw no adverse inference from an Accused's decision not to testify. This subsection shall not preclude admission of evidence of prior statements or conduct of the Accused.

G. If the Accused so elects, the Accused may testify at trial on the Accused's own behalf and shall then be subject to cross-examination.

H. The Accused may obtain witnesses and documents for the Accused's defense, to the extent necessary and reasonably available as determined by the Presiding Officer. Such access shall be consistent with the requirements of Section 6(D)(5) and subject to Section 9. The Appointing Authority shall order that such investigative or other resources be made available to the Defense as the Appointing Authority deems necessary for a full and fair trial.

I. The Accused may have Defense Counsel present evidence at trial in the Accused's defense and cross-examine each witness presented by the Prosecution who appears before the Commission.

J. The Prosecution shall ensure that the substance of the charges, the proceedings, and any documentary evidence are provided in English and, if appropriate, in another language that the Accused understands. The Appointing Authority may appoint one or more interpreters to assist the Defense, as necessary.

K. The Accused shall be present at every stage of the trial before the Commission, to the extent consistent with Section 6(B)(3), unless the Accused engages in disruptive conduct that justifies exclusion by the Presiding Officer. Detailed Defense Counsel may not be excluded from any trial proceeding or portion thereof.

L. Except by order of the Presiding Officer for good cause shown, the Prosecution shall provide the Defense with access before sentencing proceedings to evidence the Prosecution intends to present in such proceedings. Such access shall be consistent with Section 6(D)(5) and subject to Section 9.

M. The Accused may make a statement during sentencing proceedings.

N. The Accused may have Defense Counsel submit evidence to the Commission during sentencing proceedings.

O. The Accused shall be afforded a trial open to the public (except proceedings closed by the Presiding Officer), consistent with Section 6(B).

P. The Accused shall not again be tried by any Commission for a charge once a Commission's finding on that charge becomes final in accordance with Section 6(H)(2).

6. CONDUCT OF THE TRIAL

A. Pretrial Procedures

(1) Preparation of the Charges

The Prosecution shall prepare charges for approval by the Appointing Authority, as provided in Section 4(B)(2)(a).

(2) Referral to the Commission

The Appointing Authority may approve and refer for trial any charge against an individual or individuals within the jurisdiction of a Commission in accordance with Section 3(A) and alleging an offense within the jurisdiction of a Commission in accordance with Section 3(B).

(3) Notification of the Accused

The Prosecution shall provide copies of the charges approved by the Appointing Authority to the Accused and Defense Counsel. The Prosecution also shall submit the charges approved by the Appointing Authority to the Presiding Officer of the Commission to which they were referred.

(4) Plea Agreements

The Accused, through Defense Counsel, and the Prosecution may submit for approval to the Appointing Authority a plea agreement mandating a sentence limitation or any other provision in exchange for an agreement to plead guilty, or any other consideration. Any agreement to plead guilty must include a written stipulation of fact, signed by the Accused, that confirms the guilt of the Accused and the voluntary and informed nature of the plea of guilty. If the Appointing Authority approves the plea agreement, the Presiding Officer will, after determining the voluntary and informed nature of the plea agreement, admit the plea agreement and stipulation into evidence and the Commission will be bound to adjudge findings and a sentence pursuant to that plea agreement.

(5) Issuance and Service of Process; Obtaining Evidence

The Commission shall have power to:

(a) Summon witnesses to attend trial and testify;

(b) Administer oaths or affirmations to witnesses and other persons and to question witnesses;

(c) Require the production of documents and other evidentiary material; and

(d) Designate special commissioners to take evidence.

The Presiding Officer shall exercise these powers on behalf of the Commission at the Presiding Officer's own initiative, or at the request of the Prosecution or the Defense, as necessary to ensure a full and fair trial in accordance with the President's Military Order and this Order. The Commission shall issue its process in the name of the Department of Defense over the signature of the Presiding Officer. Such process shall be served as directed by the Presiding Officer in a manner calculated to give reasonable notice to persons required to take action in accordance with that process.

B. Duties of the Commission During Trial

The Commission shall:

(1) Provide a full and fair trial.

(2) Proceed impartially and expeditiously, strictly confining the proceedings to a full and fair trial of the charges, excluding irrelevant evidence, and preventing any unnecessary interference or delay.

(3) Hold open proceedings except where otherwise decided by the Appointing Authority or the Presiding Officer in accordance with the President's Military Order and this Order. Grounds for closure include the protection of information classified or classifiable under reference (d); information protected by law or rule from unauthorized disclosure; the physical safety of participants in Commission proceedings, including prospective witnesses; intelligence and law enforcement sources, methods, or activities; and other national security interests. The Presiding Officer may decide to close all or part of a proceeding on the Presiding Officer's own initiative or based upon a presentation, including an *ex parte, in camera* presentation by either the Prosecution or the Defense. A decision to close a proceeding or portion thereof may include a decision to exclude the Accused, Civilian Defense Counsel, or any other person, but Detailed Defense Counsel may not be excluded from any trial proceeding or portion thereof. Except with the prior authorization of the Presiding Officer and subject to Section 9, Defense Counsel may not disclose any information presented during a closed session to individuals excluded from such proceeding or part thereof. Open proceedings may include, at the discretion of the Appointing Authority, attendance by the public and accredited press, and public release of transcripts at the appropriate time. Proceedings should be open to the maximum extent practicable.

Photography, video, or audio broadcasting, or recording of or at Commission proceedings shall be prohibited, except photography, video, and audio recording by the Commission pursuant to the direction of the Presiding Officer as necessary for preservation of the record of trial.

(4) Hold each session at such time and place as may be directed by the Appointing Authority. Members of the Commission may meet in closed conference at any time authorized by the Presiding Officer.

C. Oaths

(1) All members of a Commission, all Prosecutors, all Defense Counsel, all court reporters, all security personnel, and all interpreters shall take an oath to perform their duties faithfully.

(2) Each witness appearing before a Commission shall be examined under oath, as provided in Section 6(D)(2)(b).

(3) An oath includes an affirmation. Any formulation that appeals to the conscience of the person to whom the oath is administered and that binds that person to speak the truth, or, in the case of one other than a witness, properly to perform certain duties, is sufficient.

D. Evidence

(1) Admissibility

Evidence shall be admitted if, in the opinion of the Presiding Officer (or instead, if any other member of the Commission so requests at the time the Presiding Officer renders that opinion, the opinion of the Commission rendered at that time by a majority of the Commission) the evidence would have probative value to a reasonable person.

(2) Witnesses

(a) Production of Witnesses

The Prosecution or the Defense may request that the Commission hear the testimony of any person, and such testimony shall be received if found to be admissible and not cumulative. The Presiding Officer on his own initiative, or if requested by other members of the Commission, may also summon and hear witnesses. The Presiding Officer may permit the testimony of witnesses by telephone, audiovisual means, or other means; however, the Commission shall consider the ability to test the veracity of that testimony in evaluating the weight to be given to the testimony of the witness.

(b) Testimony

Testimony of witnesses shall be given under oath or affirmation. The Commission may still hear a witness who refuses to swear an oath or make a solemn undertaking; however, the Commission shall consider the refusal to swear an oath or give an affirmation in evaluating the weight to be given to the testimony of the witness.

(c) Examination of Witnesses

A witness who testifies before the Commission is subject to both direct examination and cross examination. The Presiding Officer shall maintain order in the proceedings and shall not permit badgering of witnesses or questions that are not material to the issues before the Commission. Members of the Commission may submit written questions to the Presiding Officer for the witnesses at any time.

(d) Protection of Witnesses

The Presiding Officer shall consider the safety of witnesses and others, as well as the safeguarding of Protected Information as defined in Section 6(D)(5)(a), in determining the appropriate methods of receiving testimony and evidence. The Presiding Officer may hear any presentation by the Prosecution or the Defense, including an *ex parte, in camera* presentation, regarding the safety of potential witnesses before determining the ways in which witnesses and evidence will be protected. The Presiding Officer may authorize any methods appropriate for the protection of witnesses and evidence. Such methods may include, but are not limited to: testimony by telephone, audiovisual means, or other electronic means; closure of the proceedings; introduction of prepared declassified summaries of evidence; and the use of pseudonyms.

(3) Other Evidence

Subject to the requirements of Section 6(D)(1) concerning admissibility, the Commission may consider any other evidence including, but not limited to, testimony from prior trials and proceedings, sworn or unsworn written statements, physical evidence, or scientific or other reports.

(4) Notice

The Presiding Officer may, after affording the Prosecution and the Defense an opportunity to be heard, take conclusive notice of facts that are not subject to reasonable dispute either because they are generally known or are capable of determination by resort to sources that cannot reasonably be contested. The Presiding Officer shall inform the other members of any facts conclusively noticed under this provision.

(5) Protection of Information

(a) Protective Order

The Presiding Officer may issue protective orders as necessary to carry out the President's Military Order and this Order, including to safeguard "Protected Information," which includes: (i) information classified or classifiable pursuant to reference (d); (ii) information protected by law or rule from unauthorized disclosure; (iii) information the disclosure of which may endanger the physical safety of participants in Commission proceedings, including prospective witnesses; (iv) information concerning intelligence and law enforcement sources, methods, or activities; or (v) information concerning other national security interests. As soon as practicable, counsel for either side will notify the Presiding Officer of any intent to offer evidence involving Protected Information.

(b) Limited Disclosure

The Presiding Officer, upon motion of the Prosecution or *sua sponte*, shall, as necessary to protect the interests of the United States and consistent with Section 9, direct (i) the deletion of specified items of Protected Information from documents to be made available to the Accused, Detailed Defense Counsel, or Civilian Defense Counsel; (ii) the substitution of a portion or summary of the information for such Protected Information; or (iii) the substitution of a statement of the relevant facts that the Protected Information would tend to prove. The Prosecution's motion and any materials submitted in support thereof or in response thereto shall, upon request of the Prosecution, be considered by the Presiding Officer *ex parte, in camera*, but no Protected Information shall be admitted into evidence for consideration by the Commission if not presented to Detailed Defense Counsel. The Accused and the Civilian Defense Counsel shall be provided access to Protected Information falling under Section 5(E) to the extent consistent with national security, law enforcement interests, and applicable law. If access to such Protected Information is denied and an adequate substitute for that information, such as described above, is unavailable, the Prosecution shall not introduce the Protected Information as evidence without the approval of the Chief Prosecutor; and the Presiding Officer, notwithstanding any determination of probative value under Section 6(D)(1), shall not admit the Protected Information as evidence if the admission of such evidence would result in the denial of a full and fair trial.

(c) Closure of Proceedings

The Presiding Officer may direct the closure of proceedings in accordance with Section 6(B)(3).

(d) Protected Information as Part of the Record of Trial

All exhibits admitted as evidence but containing Protected Information shall be sealed and annexed to the record of trial. Additionally, any Protected Information not admitted as evidence but reviewed *in camera* and subsequently withheld from the Defense over Defense objection shall, with the associated motions and responses and any materials submitted in support thereof, be sealed and annexed to the record of trial as additional exhibits. Such sealed material shall be made available to reviewing authorities in closed proceedings.

E. Proceedings During Trial

The proceedings at each trial will be conducted substantially as follows, unless modified by the Presiding Officer to suit the particular circumstances:

(1) Each charge will be read, or its substance communicated, in the presence of the Accused and the Commission.

(2) The Presiding Officer shall ask each Accused whether the Accused pleads "Guilty" or "Not Guilty." Should the Accused refuse to enter a plea, the Presiding Officer shall enter a plea of "Not Guilty" on the Accused's behalf. If the plea to an offense is "Guilty," the Presiding Officer shall enter a finding of Guilty on that offense after conducting sufficient inquiry to form an opinion that the plea is voluntary and informed. Any plea of Guilty that is not determined to be voluntary and informed shall be changed to a plea of Not Guilty. Plea proceedings shall then continue as to the remaining charges. If a plea of "Guilty" is made on all charges, the Commission shall proceed to sentencing proceedings; if not, the Commission shall proceed to trial as to the charges for which a "Not Guilty" plea has been entered.

(3) The Prosecution shall make its opening statement.

(4) The witnesses and other evidence for the Prosecution shall be heard or received.

(5) The Defense may make an opening statement after the Prosecution's opening statement or prior to presenting its case.

(6) The witnesses and other evidence for the Defense shall be heard or received.

(7) Thereafter, the Prosecution and the Defense may introduce evidence in rebuttal and surrebuttal.

(8) The Prosecution shall present argument to the Commission. Defense Counsel shall be permitted to present argument in response, and then the Prosecution may reply in rebuttal.

(9) After the members of the Commission, other than the Presiding Officer, deliberate and vote on findings in closed conference, the senior-ranking member who voted on findings shall announce the Commission's findings in the presence of the entire Commission, the Prosecution, the Accused, and Defense Counsel. The individual votes of the members of the Commission shall not be disclosed.

(10) In the event a finding of Guilty is entered for an offense, the Prosecution and the Defense may present information to aid the Commission in determining an appropriate sentence. The Accused may testify and shall be subject to cross examination regarding any such testimony.

(11) The Prosecution and, thereafter, the Defense shall present argument to the Commission regarding sentencing.

(12) After the members of the Commission, other than the Presiding Officer, deliberate and vote on a sentence in closed conference, the senior-ranking member who voted on a sentence shall announce the Commission's sentence in the presence of the entire Commission, the Prosecution, the Accused, and Defense Counsel. The individual votes of the members of the Commission shall not be disclosed.

F. Voting

In accordance with instructions from the Presiding Officer, the other members of the Commission shall deliberate and vote in closed conference. Such a Commission member shall vote for a finding of Guilty as to an offense if and only if that member is convinced beyond a reasonable doubt, based on the evidence admitted at trial, that the Accused is guilty of the offense. An affirmative vote of two-thirds of the other members is required for a finding of Guilty. When appropriate, the other members of the Commission may adjust a charged offense by exceptions and substitutions of language that do not substantially change the nature of the offense or increase its seriousness, or it may vote to convict of a lesser-included offense. An affirmative vote of two-thirds of the other members is required to determine a sentence, except that a sentence of death requires a unanimous, affirmative vote of all of the other members. Votes on findings and sentences shall be taken by secret, written ballot. The Presiding Officer shall not participate in, or be present during, the deliberations or votes on findings or sentence by the other members of the Commission.

G. Sentence

Upon conviction of an Accused, in accordance with instructions from the Presiding Officer, the other members of the Commission shall impose a sentence that is appropriate to the offense or offenses for which there was a finding of Guilty, which sentence may include death, imprisonment for life or for any lesser term, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the other members of the Commission shall determine to be proper. Only a Commission that includes at least seven other members may sentence an Accused to death. A Commission may (subject to rights of third parties) order confiscation of any property of a convicted Accused, deprive that Accused of any stolen property, or order the delivery of such property to the United States for disposition.

H. Post-Trial Procedures

(1) Record of Trial

Each Commission shall make a verbatim transcript of its proceedings, apart from all Commission deliberations, and preserve all evidence admitted in the trial (including any sentencing proceedings) of each case brought before it, which shall constitute the record of trial. The court reporter shall prepare the official record of trial and submit it to the Presiding Officer for

authentication upon completion. The Presiding Officer shall transmit the authenticated record of trial to the Appointing Authority. If the Secretary of Defense is serving as the Appointing Authority, the record shall be transmitted to the Review Panel constituted under Section 6(H)(4).

(2) Finality of Findings and Sentence

A Commission finding as to a charge and any sentence of a Commission becomes final when the President or, if designated by the President, the Secretary of Defense makes a final decision thereon pursuant to Section 4(c)(8) of the President's Military Order and in accordance with Section 6(H)(6) of this Order. An authenticated finding of Not Guilty as to a charge shall not be changed to a finding of Guilty. Any sentence made final by action of the President or the Secretary of Defense shall be carried out promptly. Adjudged confinement shall begin immediately following the trial.

(3) Review by the Appointing Authority

If the Secretary of Defense is not the Appointing Authority, the Appointing Authority shall promptly perform an administrative review of the record of trial. If satisfied that the proceedings of the Commission were administratively complete, the Appointing Authority shall transmit the record of trial to the Review Panel constituted under Section 6(H)(4). If not so satisfied, the Appointing Authority shall return the case for any necessary supplementary proceedings.

(4) Review Panel

The Secretary of Defense shall designate a Review Panel consisting of three Military Officers, which may include civilians commissioned pursuant to reference (e). At least one member of each Review Panel shall have experience as a judge. The Review Panel shall review the record of trial and, in its discretion, any written submissions from the Prosecution and the Defense and shall deliberate in closed conference. The Review Panel shall disregard any variance from procedures specified in this Order or elsewhere that would not materially have affected the outcome of the trial before the Commission. Within seventy-five days after receipt of the record of trial, the Review Panel shall either (a) forward the case to the Secretary of Defense with a recommendation as to disposition, or (b) return the case to the Appointing Authority for further proceedings, provided that a majority of the Review Panel has formed a definite and firm conviction that a material error of law occurred.

(5) Review by the Secretary of Defense

The Secretary of Defense shall review the record of trial and the recommendation of the Review Panel and either return the case for further proceedings or, unless making the final decision pursuant to a Presidential designation under Section 4(c)(8) of the President's Military Order, forward it to the President with a recommendation as to disposition.

(6) Final Decision

After review by the Secretary of Defense, the record of trial and all recommendations will be forwarded to the President for review and final decision (unless the President has designated the Secretary of Defense to perform this function). If the President has so designated the Secretary of Defense, the Secretary may approve or disapprove findings or change a finding of Guilty to a finding of Guilty to a lesser-included offense, or mitigate, commute, defer, or suspend the sentence imposed or any portion thereof. If the Secretary of Defense is authorized to render the final decision, the review of the Secretary of Defense under Section 6(H)(5) shall constitute the final decision.

7. REGULATIONS

A. Supplementary Regulations and Instructions

The Appointing Authority shall, subject to approval of the General Counsel of the Department of Defense if the Appointing Authority is not the Secretary of Defense, publish such further regulations consistent with the President's Military Order and this Order as are necessary or appropriate for the conduct of proceedings by Commissions under the President's Military Order. The General Counsel shall issue such instructions consistent with the President's Military Order and this Order as the General Counsel deems necessary to facilitate the conduct of proceedings by such Commissions, including those governing the establishment of Commission-related offices and performance evaluation and reporting relationships.

B. Construction

In the event of any inconsistency between the President's Military Order and this Order, including any supplementary regulations or instructions issued under Section 7(A), the provisions of the President's Military Order shall govern. In the event of any inconsistency between this Order and any regulations or instructions issued under Section 7(A), the provisions of this Order shall govern.

8. AUTHORITY

Nothing in this Order shall be construed to limit in any way the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons. Nothing in this Order shall affect the authority to constitute military commissions for a purpose not governed by the President's Military Order.

9. PROTECTION OF STATE SECRETS

Nothing in this Order shall be construed to authorize disclosure of state secrets to any person not authorized to receive them.

10. OTHER

This Order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable by any party, against the United States, its departments, agencies, or

other entities, its officers or employees, or any other person. No provision in this Order shall be construed to be a requirement of the United States Constitution. Section and subsection captions in this document are for convenience only and shall not be used in construing the requirements of this Order. Failure to meet a time period specified in this Order, or supplementary regulations or instructions issued under Section 7(A), shall not create a right to relief for the Accused or any other person. Reference (f) shall not apply to this Order or any supplementary regulations or instructions issued under Section 7(A).

11. AMENDMENT

The Secretary of Defense may amend this Order from time to time.

12. DELEGATION

The authority of the Secretary of Defense to make requests for assistance under Section 5 of the President's Military Order is delegated to the General Counsel of the Department of Defense. The Executive Secretary of the Department of Defense shall provide such assistance to the General Counsel as the General Counsel determines necessary for this purpose.

13. EFFECTIVE DATE

This Order is effective immediately.

Donald H. Rumsfeld
Secretary of Defense

EXHIBIT C

COPY OF CHARGES

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
JABRAN SAID BIN AL QAHTANI	)	**CHARGE:**
a/k/a Salam al Farsi	)	**CONSPIRACY**
a/k/a Hateb	)	
a/k/a Jabran al Qahtan	)	
a/k/a Saad Wazar Hatib Jabran	)	
a/k/a Jabran Saad Wazar Sulayman	)	
a/k/a Jabran Wazar	)	
	)	

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 6, 2004 that Jabran Said Bin al Qahtani (a/k/a/ Salam al Farsi a/k/a Hateb a/k/a Jabran Qahtan a/k/a/ Saad Wazar Hatib Jabran a/k/a/ Jabran Saad Wazar Sulayman a/k/a Jabran Wazar) is subject to his Military Order of November 13, 2001.

2. The charged conduct alleged against al Qahtani is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("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.

4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.

5. A purpose or goal of al Qaida, as stated by Usama bin Laden 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 for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.

7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of training and supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.

8. In 1992 and 1993, al Qaida supported violent opposition of US. property and nationals by, among other things, transporting personnel, weapons, explosives, and ammunition to Yemen, Saudi Arabia, Somalia, and other countries.

9. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian peninsula.

10. In February 1998, Usama bin Laden, Ayman al Zawahiri, and others, under the banner of "International Islamic Front for Fighting Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."

11. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize the enemies of God."

12. 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; the attack against the *USS COLE* in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

13. Sufyian Barhoumi, Jabran Said bin al Qahtani, and Ghassan al Sharbi in the United States, Afghanistan, Pakistan, and other countries, from on or about January 1996 to on or about March 2002, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden (a/k/a Abu Abdullah), Saif al Adel, Dr. Ayman al Zawahiri (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Zayn al Abidin Muhammad Husayn (a/k/a/ Abu Zubayda, hereinafter "Abu Zubayda"), Binyam Muhammad, Noor al Deen, Akrama al Sudani and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

14. In furtherance of this enterprise and conspiracy, al Sharbi, Barhoumi, al Qahtani, Abu Zubayda, Binyam Muhammad, Noor al Deen, Akrama al Sudani, and other members or associates of al Qaida committed the following overt acts:

    a. In 1998 Barhoumi, an Algerian citizen, attended the electronics and explosives course at Khalden Camp in Afghanistan, an al Qaida-affiliated

training camp, where he received training in constructing and dismantling electronically-controlled explosives.

b. After completing his training, Barhoumi became an explosives trainer for al Qaida, training members of al Qaida on electronically-controlled explosives at remote locations.

c. In or about August 2000, al Sharbi, a Saudi citizen and Electrical engineering graduate of Embry Riddle University, in Prescott, Arizona, departed the United States in search of terrorist training in Afghanistan.

d. In July 2001, Muhammad Atef (a/k/a/ Abu Hafs al Masri), the head of al Qaida's military committee and al Qaida's military commander, wrote a letter to Abu Muhammad, the *emir* of al Qaida's al Farouq Camp, asking him to select two "brothers" from the camp to receive electronically-controlled explosives training in Pakistan, for the purpose of establishing a new and independent section of the military committee.

e. In July 2001, al Sharbi attended the al Qaida-run al Farouq training camp, where he was first introduced to Usama bin Laden. At al Farouq, al Sharbi's training included, *inter alia*, physical training, military tactics, weapons instruction, and firing on a variety of individual and crew-served weapons.

f. During July and August 2001, al Sharbi stood watch with loaded weapons at al Farouq at times when Usama bin Laden visited the camp.

g. From July 2001 to September 13, 2001, al Sharbi provided English translation for another camp attendee's military training at al Farouq, to include translating the attendee's personal *bayat* ("oath of allegiance") to Usama bin Laden.

h. On or about September 13, 2001, anticipating a military response to al Qaida's attacks on the United States of September 11, 2001, al Sharbi and the remaining trainees were ordered to evacuate al Farouq. Al Sharbi and others fled the camp and were told to fire warning shots in the air if they saw American missiles approaching.

i. Shortly after the September 11 2001 attacks on the United States, al Qahtani, a Saudi citizen and Electrical engineering graduate of King Saud University in Saudi Arabia, left Saudi Arabia with the intent to fight against the Northern Alliance and American Forces, whom he expected would soon be fighting in Afghanistan.

j. In October 2001, al Qahtani attended a newly established terrorist training camp north of Kabul, where he received physical conditioning, and training in the PK Machine gun and AK-47 assault rifle.

k. Between late December 2001 and the end of February 2002, Abu Zubayda, a high-ranking al Qaida recruiter and operational planner, assisted in moving al Sharbi, al Qahtani and Binyam Muhammad from Birmel, Afghanistan to a guest house in Faisalabad, Pakistan where they would obtain further training.

l. By early March 2002, Abu Zubayda, Barhoumi, al Sharbi, al Qahtani, and Binyam Muhammad had all arrived at the guest house in Faisalabad, Pakistan. Barhoumi was to train al Sharbi, al Qahtani and Binyam Muhammad in building small, hand-held remote-detonation devices for explosives that would later be used in Afghanistan against United States forces.

m. In March 2002, after Barhoumi, al Sharbi and al Qahtani had all arrived at the guest house, Abu Zubayda provided approximately $1,000 U.S. Dollars for the purchase of components to be used for training al Sharbi and al Qahtani in making remote-detonation devices.

n. Shortly after receiving the money for the components, Barhoumi, Noor al Deen and other individuals staying at the house went into downtown Faisalabad with a five page list of electrical equipment and devices for purchase which included, *inter alia,* electrical resistors, plastic resistors, light bulbs for circuit board lights, plastic and ceramic diodes, circuit testing boards, an ohmmeter, watches, soldering wire, soldering guns, wire and coil, six cell phones of a specified model, transformers and an electronics manual.

o. After purchasing the necessary components, al Qahtani and al Sharbi received training from Barhoumi on how to build hand-held remote-detonation devices for explosives while at the guest house.

p. During March 2002, after his initial training, al Qahtani was given the mission of constructing as many circuit boards as possible with the intent to ship them to Afghanistan to be used as timing devices in bombs.

q. After their training was completed and a sufficient number of circuit boards were built, Abu Zubayda had directed that al Qahtani and al Sharbi were to return to Afghanistan in order to use, and to train others to construct remote-control devices to detonate car bombs against United States forces.

r. During March 2002 al Qahtani wrote two instructional manuals on assembling circuit boards that could be used as timing devices for bombs and other improvised explosive devices.

15. On March 28, 2002, Barhoumi, al Sharbi, al Qahtani, Abu Zubayda and others were captured in a safe house in Faisalabad after authorities raided the home.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Hicks (Rasul) v. Bush	)	Case No. 02-CV-0299 (CKK)
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Habib v. Bush	)	Case No. 02-CV-1130 (CKK)
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Kabir v. Bush	)	Case No. 05-CV-0431 (RGL)
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Al-Oshan v. Bush	)	Case No. 05-CV-0533 (RJL)
Salahi v. Bush	)	Case No. 05-CV-0569 (JR) (Consolidated with 05-CV-0881) (Consolidated with 05-CV-0995)
Mammar v. Bush	)	Case No. 05-CV-0573 (RJL)
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Al Rashaidan v. Bush	)	Case No. 05-CV-0586 (RWR)
Mokit v. Bush	)	Case No. 05-CV-0621 (PLF)
Al Daini v. Bush	)	Case No. 05-CV-0634 (RWR)
Errachidi v. Bush	)	Case No. 05-CV-0640 (EGS)
Ahmed v. Bush	)	Case No. 05-CV-0665 (RWR)
Battayav v. Bush	)	Case No. 05-CV-0714 (RBW)
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Aboassy v. Bush	)	Case No. 05-CV-0748 (RMC)
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Imran v. Bush	)	Case No. 05-CV-0764 (CKK)
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Mohammad v. Bush	)	Case No. 05-CV-0885 (GK)

Wahab v. Bush	)	Case No. 05-CV-0886 (EGS)
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Sadkhan v. Bush	)	Case No. 05-CV-1487 (RMC)
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Ahmad v. Bush	)	Case No. 05-CV-1492 (RCL)
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Al Rammi v. Bush	)	Case No. 05-CV-2381 (JDB)
Said v. Bush	)	Case No. 05-CV-2384 (RWR)
Mohammon v. Bush	)	Case No. 05-CV-2386 (RBW)
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Almjrd v. Bush	)	Case No. 05-CV-2444 (RMC)
Al Salami v. Bush	)	Case No. 05-CV-2452 (PLF)
Al Shareef v. Bush	)	Case No. 05-CV-2458 (RWR)
Khan v. Bush	)	Case No. 05-CV-2466 (RCL)
Hussein v. Bush	)	Case No. 05-CV-2467 (PLF)
Al-Delebany v. Bush	)	Case No. 05-CV-2477 (RMU)
Al-Harbi v. Bush	)	Case No. 05-CV-2479 (HHK)

NOTICE OF SUPPLEMENTAL AUTHORITY

Respondents hereby give notice of the recent enactment of legislation that, among other things, amends 28 U.S.C. § 2241 to remove court jurisdiction to hear or consider applications for writs of habeas corpus and other actions brought in this Court by or on behalf of aliens detained at Guantanamo Bay, Cuba. See Department of Defense Appropriations Act, 2006, Pub. L. No. ___, § 1005 (2005) (signed by President Bush on Dec. 30, 2005) (copy of relevant excerpts attached).[1] No sooner than the week of January 9, 2006, respondents anticipate filing in each of the above-captioned cases a motion to dismiss or for other appropriate relief based on the new legislation. Prior to or shortly after filing of such motion, respondents will consult with petitioners' counsel in an effort to agree upon a briefing schedule that can be proposed to the Court.

Dated: January 3, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DOUGLAS N. LETTER
Terrorism Litigation Counsel

[*signature block continued on following page*]

[1] Section 1005 is part of Title X of the Department of Defense Appropriations Act, 2006. Title X is also know as the Detainee Treatment Act of 2005. See Department of Defense Appropriations Act, 2006, Pub. L. No. ___, § 1001 (2005).

/s/ *Joseph H. Hunt*
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H. R. 2863

One Hundred Ninth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourth day of January, two thousand and five

An Act

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DIVISION A

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2006, for military functions administered by the Department of Defense and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty, (except members of reserve components provided for elsewhere), cadets, and aviation cadets; for members of the Reserve Officers' Training Corps; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $28,191,287,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; for members of the Reserve Officers' Training Corps; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $22,788,101,000.

(J) An assessment, in a classified annex if necessary, of United States military requirements, including planned force rotations, through the end of calendar year 2006.

SEC. 9011. Supervision and administration costs associated with a construction project funded with appropriations available for operation and maintenance, and executed in direct support of the Global War on Terrorism only in Iraq and Afghanistan, may be obligated at the time a construction contract is awarded: *Provided,* That for the purpose of this section, supervision and administration costs include all in-house Government costs.

SEC. 9012. Amounts appropriated or otherwise made available in this title are designated as making appropriations for contingency operations related to the global war on terrorism pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

TITLE X—MATTERS RELATING TO DETAINEES

SEC. 1001. SHORT TITLE.

This title may be cited as the "Detainee Treatment Act of 2005".

SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

SEC. 1003. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) CONSTRUCTION.—Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) LIMITATION ON SUPERSEDURE.—The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this section, the term "cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

SEC. 1004. PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ENGAGED IN AUTHORIZED INTERROGATIONS.

(a) PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL.—In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) COUNSEL.—The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.

SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are

in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the "Designated Civilian Official") shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

(B) the probative value (if any) of any such statement.

(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

(d) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

(A) The number of detainees whose status was reviewed.

(B) The procedures used at each location.

(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

"(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—

"(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

"(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—

"(A) is currently in military custody; or

"(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.".

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the

release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision was consistent with the standards and procedures specified in the military order referred to in subparagraph (A); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to reach the final decision is consistent with the Constitution and laws of the United States.

(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

(g) UNITED STATES DEFINED.—For purposes of this section, the term "United States", when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection

(e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

(a) REQUIRED POLICIES.—

(1) IN GENERAL.—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

(2) ACKNOWLEDGMENT OF TRAINING.—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

(3) DEADLINE FOR POLICIES TO BE PRESCRIBED.—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act.

(b) ARMY FIELD MANUAL.—

(1) TRANSLATION.—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

(2) DISTRIBUTION.—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

(c) TRANSMITTAL OF REGULATIONS.—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

(d) ANNUAL REPORT.—Not less than one year after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.

This division may be cited as the "Department of Defense Appropriations Act, 2006".

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAVIL MINGASA GAMIL, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2010 (JR)
JABBAROW OYBEK JAMOLIVICH, Petitioner, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2112 (RBW)
NAIF ABDULLA AL NAKHEELAN, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2201 (ESH)

MOHAMMED AL AMIN, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2336 (PLF)
GHASSAN ABDULLAH AL SHARBI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2348 (EGS)
AHMED BEN BACHA, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2349 (RMC)

ABDULLAH WAZIR ZADRAN, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2367 (RWR)
ABDULLAH ALI SALEH GERAB ALSAAEI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2369 (RWR)
ABDUR RAZAKAH, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2370 (EGS)

AHMED AL DARBY, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2371 (RCL)
ABDUL HALEEM, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2376 (RBW)
ABDUL HAMID ABDUL SALAM AL-GHIZZAWI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2378 (JDB)

ADHAM MOHAMMED ALI AWAD, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2379 (JR)
ZAKARIA AL-BAIDANY, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2380 (CKK)
ISMAIL ALI AL RAMMI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2381 (JDB)

SALIM SAID, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2384 (RWR)
AMER MOHAMMON, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2386 (RBW)
JOBRAN SAAD AL-QUHTANI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2387 (RMC)

THABID, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2398 (ESH)
ALKHADR ABDULLAH AL YAFIE, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2399 (RJL)
MOHAMMAD RIMI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2427 (RJL)

TALAH AHMED MOHAMMED ALI ALMJRD, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2444 (RMC)
SALEH ALI ABDULLAH AL SALAMI, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2452 (PLF)
FAHD UMAR ABDULMAJID AL SHAREEF, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2458 (RWR)

ANWAR KHAN, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2466 (RCL)
MUBARK HUSSEIN, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2467 (PLF)
AHMED AL-DELEBANY, *et al.*, Petitioners, v. GEORGE W. BUSH, President of the United States, *et al.*, Respondents.	Civil Action No. 05-CV-2477 (RMU)

GHANIM-ABDULRAHMAN AL-HARBI, *et al.*,	)	
Petitioners,	)	
v.	)	Civil Action No. 05-CV-2479 (HHK)
GEORGE W. BUSH, President of the United States, *et al.*,	)	
Respondents.	)	

ATTORNEY APPEARANCE

Undersigned counsel, Terry M. Henry, hereby enters his appearance as one of the counsel for respondents in the above-captioned cases.

Dated: January 5, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Terry M. Henry
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOAZZAM BEGG, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 04-1137 (RMC)**

OMAR DEGHAYES, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 04-2215 (RMC)**

ABDUL SALAM ZAEEF, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-660 (RMC)**

MOHSEN ABDRUB ABOASSY, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-748 (RMC)**

MUHIBULLAH, *et al.*, **Petitioner,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-884 (RMC)**

SHARBAT KHAN, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-890 (RMC)**

ALI SHAH MOUSOVI, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1124 (RMC)**

ABDUL HAKIM ABDUL KARIM AMIN BUKHARI, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1241 (RMC)**

MOTAI SAIB, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1353 (RMC)**

JAWAD JABBAR SADKHAN, **Petitioner,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1487 (RMC)**

NABIL, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1504 (RMC)**

ABBAR SUFIAN AL HAWARY, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1505 (RMC)**

SHAFIIQ, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1506 (RMC)**

MOHAMMED AL-QAHTANI, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-1971 (RMC)**

DR. ABU MUHAMMED, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-2087 (RMC)**

MOHAMMED ABDUL RAHMAN AL-SHIMRANI, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-2249 (RMC)**

AHMED BEN BACHA, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-2349 (RMC)**

JOBRAN SAAD AL-QUHTANI, *et al.*, **Petitioners,** **v.** **GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,** **Respondents.**	**Civil Action No. 05-2387 (RMC)**

TALAH AHMED MOHAMMED ALI ALMJRD, *et al.*,	)	
Petitioners,	)	
v.	)	**Civil Action No. 05-2444 (RMC)**
GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, *et al.*,	)	
Respondents.	)	

ORDER

On December 30, 2005, President Bush signed into law H.R. 2863, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006 ("the Act"). Section 1005(e) of the Act, entitled Judicial Review of Detention of Enemy Combatants, raises serious questions concerning whether this Court retains jurisdiction to hear the above-captioned cases. The question of whether this Court retains jurisdiction to entertain these matters is currently pending resolution by the United States Court of Appeals for the District of Columbia Circuit. Accordingly, it is this 27th day of January, 2006, hereby

ORDERED that all pending motions in the above-captioned cases are **DENIED WITHOUT PREJUDICE** until such time as the District of Columbia Circuit resolves the question of this Court's jurisdiction to adjudicate these cases.[1] It is further

ORDERED that all action in the above-captioned cases is **STAYED** pending the

[1] If the District of Columbia Circuit concludes that this Court retains jurisdiction of these cases, the parties may file motions to reinstate the pending motions.

jurisdictional ruling of the District of Columbia Circuit.

SO ORDERED.

/s/
ROSEMARY M. COLLYER
United States District Judge

Date: January 27, 2006.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOBRAN SAAD AL-QUHTANI,
Detainee,
Guantanamo Bay Naval Station
Guantanamo Bay, Cuba;

NAWAL MADAY AL-QUHTANI,

as Next Friend of Jobran Saad Al-Quhtani;

Petitioners/Plaintiffs,

v. **No. 05-CV-2387**

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. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group - JTF-GTMO,
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

MOTION FOR REFERRAL TO MAGISTRATE

Mr. Jobran Saad Al-Quhtani, through his wife and Next Friend Nawal Maday al-Quhtani, respectfully moves this Honorable Court to refer this matter to Magistrate Judge Alan Kay pursuant LCvR 72.2(a) to consider a motion for appointment of counsel and a motion for entry of the protective orders which would permit counsel to meet with Mr. al-Quhtani. In support of this motion, counsel states:

1. On October 5, 2005, the Honorable Chief Judge Hogan, pursuant to the agreement of the Judges of the Court acting in Executive Session, on September 13, 2005, appointed a number of Federal Public Defender offices to represent petitioners held at the United States Naval Station at Guantánamo Bay, Cuba ("Guantanamo") who had filed *pro se* petitions for a Writ of Habeas Corpus.

2. On November 2, 2005, the Honorable Gladys Kessler, acting on behalf of the Calendar and Case Management Committee of the United States District Court for the District of Columbia, issued an Order in all cases involving habeas petitions relating to the rights of detainees held at Guantanamo. The Order referred to Magistrate Kay "all disputes pertaining to logistical issues, such as communications with or visits to clients . . . ."

3. On December 13, 2005, undersigned counsel filed a Petition for Writ of Habeas Corpus in the above captioned case, on Mr. al-Quhtani's behalf.

4. Undersigned counsel, Assistant Federal Public Defenders, were asked to file the petition in this case immediately. Because of the urgency involved, the petition was filed prior to appointment by the Court. Counsel then filed a motion for appointment.

5. On December 30, 2005, the President signed into law the Detainee Treatment Act

("DTA"). In an Order dated, January 27, 2006, the Court denied without prejudice counsels' motion for appointment, along with all other motions pending in cases filed by detainees held at Guantánamo.

6. The issues counsel now seeks to have resolved – appointment of counsel and entry of the protective orders – relate to logistical and access issues. However, Judge Kessler's Order of November 2, 2005 has not been entered in this case because this matter was filed after the date of the Order. Without resolution of these issues, counsel has been unable to meet with Mr. al-Quhtani. Although counsel has been to Guantanamo on two occasions for legal visits with other clients, the government has refused to permit counsel to visit with Mr. al-Quhtani because the protective orders have not been entered.

WHEREFORE, for the foregoing reasons, Mr. al-Quhtani, through undersigned counsel, respectfully requests that the Court refer this matter to Magistrate Kay to determine motions regarding appointment of counsel and entry of the protective orders.

Respectfully submitted,

A.J. KRAMER
FEDERAL PUBLIC DEFENDER

/s/

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Assistant Federal Public Defender

/s/

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