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DISTRICT OF COLUMBIA
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Majid Khan)
 Detainee,)
 Guantánamo Bay Naval Station;)
 Guantánamo Bay, Cuba)
)
Rabia Khan,)
 as Next Friend of Majid Khan;)
)
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;)
)
REAR ADMIRAL HARRY B. HARRIS, JR.,)
 Commander, Joint Task Force - GTMO)
 JTF-GTMO)
 APO AE 09360; and)
)
ARMY COL. WADE F. DAVIS,)
 Commander, Joint Detention)
 Operations Group - JTF-GTMO,)
 JTF-GTMO)
 APO AE 09360,)

**PETITION FOR WRIT
OF HABEAS CORPUS**

No. _____

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Majid Khan seeks the Great Writ. A citizen of Pakistan and long term resident of the United States, Petitioner Khan acts on his own behalf and through his Next Friend, Rabia

Khan, his wife. He is a civilian wrongly treated as an “enemy combatant” by the President of the United States, and is being held *incommunicado* in military custody at Guantánamo Bay Naval Station, Guantánamo Bay, Cuba, after being held secretly by the United States Central Intelligence Agency for three and a half years. Petitioner Khan is and has been imprisoned 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 Khan or to establish in this Court the lawful basis for Petitioner Khan’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, under the November 13 Executive Order, or under the reported September 17 Presidential Directive, Respondents George W. Bush, President of the United States; Donald H. Rumsfeld, U.S. Secretary of Defense; Rear Admiral Harry B. Harris, Jr., Commander of Joint Task Force-GTMO; and Army Colonel Wade F. Davis, 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 Khan at Guantánamo.

I. JURISDICTION

1. This action arises under the Constitution, laws and treaties of the United States, including Articles I and II of, and the Fifth and Sixth Amendments to the United States Constitution, 28 U.S.C. §§ 1331, 1651, 2201, 2202, 2241(c)(1) & (c)(3), 2242 and 5

U.S.C. § 702, Geneva Convention (Third) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention (Fourth) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, the International Covenant on Civil and Political Rights, Dec. 19, 1966, S. Exec. Doc. E (1978), 999 U.N.T.S. 1975, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 112, and customary international law. Because they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

2. This Court has subject-matter jurisdiction under 28 U.S.C. §2241, and may grant relief pursuant to this statute as well as 28 U.S.C. §1331, 5 U.S.C. § 702 and 28 U.S.C. §1651. Furthermore, Paragraph (a)12 of Article 2 of the UCMJ, 10 U.S.C. §802(a)(12), grants jurisdiction over a petition for judicial review filed by or on behalf of parties incarcerated at Guantánamo.
3. This Court is empowered under 28 U.S.C. § 2241 to grant this Writ of Habeas Corpus, and to entertain the Petition filed by Rabia Khan, the Next Friend of Petitioner Majid Khan, 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.

DETAINEE TREATMENT ACT OF 2005

4. On December 30, 2005, Respondent President Bush signed into law the Detainee Treatment Act of 2005, Pub. L. No. 109-148, §§ 1001-1006, 119 Stat. 2680, 2739-45 (2005) (“DTA”). Section 1005(e)(1) of the DTA amended 28 U.S.C. § 2241 to eliminate the jurisdiction of the federal courts to hear or consider petitions for Writs of Habeas Corpus and other actions brought by or on behalf of detainees held in Guantánamo filed after the date of its enactment.
5. Section 1005(e)(2)(A) of the DTA granted the United States Court of Appeals for the District of Columbia Circuit “exclusive jurisdiction” to determine the validity of any final decision of a Combatant Status Review Tribunal (“CSRT”) that a noncitizen is properly detained as an “enemy combatant.” Section 1005(e)(2)(C) also provided that the applicable “scope of review” by the Court of Appeals is limited to determining whether a final CSRT decision “was consistent with the standards and procedures specified by the Secretary of Defense,” and “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.”
6. Section 1005(e)(3)(A) of the DTA granted the United States Court of Appeals for the District of Columbia Circuit “exclusive jurisdiction” to determine the validity of any final decision rendered by a military commission. Section 1005(e)(3)(D) specified a “scope of review” analogous to that provided for the CSRT determinations.
7. The Respondents have not conducted a CSRT for Petitioner Khan, nor do they purport to justify his detention based upon the findings of a previous CSRT.

8. Petitioner Khan's challenge to his detention includes, *inter alia*, that the Executive is acting *ultra vires* in imprisoning Petitioner, a civilian seized in a zone of peace far from any battlefield and who has not engaged in hostilities against the United States. Petitioner contends that the military lacks any jurisdiction or authority to detain him or to subject him to any military proceedings whatsoever.
9. Section 1005(e) of the DTA is unconstitutional on its face and as applied to Petitioner Khan because it violates the Suspension Clause of the United States Constitution, Art. I, § 9, cl. 2, and therefore does not deprive this Court of jurisdiction to hear or consider this Petition, and grant the relief that Petitioner Khan seeks herein.

III. PARTIES

10. Petitioner Majid Khan is a twenty-six-year-old long-term resident of the United States and a citizen of a U.S. ally, Pakistan. The United States detained Petitioner Khan in a secret location or locations operated by the Central Intelligence Agency ("C.I.A.") from on or about March 5, 2003 until on or about September 4, 2006. On or about September 4, 2006, Petitioner Khan was reportedly hooded, shackled, sedated and transferred by the Respondents to the U.S. Department of Defense ("D.O.D."). Dafna Linzer & Glenn Kessler, *Decision to Move Detainees Resolved Two-Year Debate Among Bush Advisers*, Wash. Post, Sept. 8 2006, at A1. Petitioner Khan is presently incarcerated at Guantánamo Bay Naval Station, Guantánamo Bay, Cuba, ("Guantánamo") and held in Respondents' unlawful custody and control. See Press Release, Office of the Press Secretary, President Discusses Creation of Military Tribunals to Try Suspected Terrorists (Sept. 6, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html> ("*President Bush's Speech*").

11. Petitioner Rabia Khan is Petitioner Khan's wife. She is a Pakistani citizen. Because her husband has been and continues to be denied access to legal counsel and to the courts of the United States, Mrs. Khan acts as his Next Friend.
12. Respondent President Bush is the President of the United States and Commander-in-Chief of the United States Military. Petitioner Khan is being detained purportedly pursuant to Respondent President Bush's authority as Commander-in-Chief, under the laws and usages of war or, alternatively, pursuant to either 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) ("November 13, 2001 Executive Order") or the reported September 17 Presidential Directive, or both. Respondent President Bush is responsible for Petitioner Khan's unlawful detention and is sued in his official capacity.
13. 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 November 13, 2001 Executive Order, Respondent Rumsfeld has been charged with the responsibility of maintaining the custody and control of Petitioner Khan. He is sued in his official capacity.
14. Respondent Rear Admiral Harry B. Harris, Jr. is the Commander of Joint Task Force-GTMO, the task force running the detention operation at Guantánamo Bay. He has supervisory responsibility for Petitioner Khan and is sued in his official capacity.
15. Respondent Army Col. Wade F. Davis is the Commander of the Joint Detention Operations Group and the JTF-GTMO detention camps, including the U.S. facility where Petitioner Khan is presently held. He is the immediate custodian responsible for Petitioner Khan's detention and is sued in his official capacity.

16. 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. All references to Respondents’ actions in this Petition include activities performed by Respondents’ agents or employees, other government agents or employees or contractor employees.

**IV.
STATEMENT OF FACTS**

17. Petitioner Khan has not, nor has he ever been, an enemy alien, a lawful or unlawful belligerent, or a combatant of any kind under any definition adopted by the government in any civil or military proceeding.
18. Petitioner Khan 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 [was] engaged in an armed conflict against the United States there.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 516 (2004) (internal quotation marks omitted).
19. Petitioner seeks to enforce his right to a judicial determination by an appropriate and lawful authority as to whether there is a lawful and factual basis for Respondents’ determination that he is an “enemy combatant” either 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 (“CSRTs”) conducted at Guantánamo, *see* Deputy Secretary of Defense Paul Wolfowitz’s July 7, 2004 Order Establishing Combatant Status Review Tribunal (“July 7, 2004 Wolfowitz Order”).
20. In 1996, when Petitioner Khan was sixteen years old, he moved to the United States from Pakistan with his parents and siblings. On July 14, 1998, Petitioner’s application for

asylum in the United States was granted. Throughout high school, Petitioner Khan was a good, quiet student and graduated from Owings Mills High School in 1999. In July 1999, Petitioner applied for Permanent Resident Status in the United States.

21. After graduation, Petitioner Khan worked for the Maryland Office of Planning as a certified Oracle Database Administrator and for a computer training center as an Oracle Database Administration Instructor.
22. Petitioner Khan also volunteered at the Islamic Society of Baltimore (“ISB”) as an Oracle Database Administration teacher in the center’s youth enrichment program. Technology training has provided Petitioner Khan with valuable job skills and he desired to help other young people improve their job skills.
23. The Islamic Society of Baltimore is the only Islamic organization with which Petitioner Khan has been involved in the United States. A well-established, mainstream community organization, ISB began as a small group at Johns Hopkins University in 1969 and now resides at an 8-acre site in a Baltimore suburb with a membership of more than 3,000 Muslim families from the region. ISB provides a wide array of services to local Muslim families, including prayer services, daycare, education and recreational classes, and community programs, including meet-the-candidate forums during state and national elections.
24. ISB encourages interfaith activities, promotes allegiance to democracy in America and hails its members as proud, outstanding citizens. The organization and its members condemned the attacks on September 11, 2001. After September 11th, the leadership of ISB reached out to the local community to show sympathy with the victims of the attack, including Muslim victims, and to promote interfaith dialogue about the role of Muslims in the United States.

25. After completing working at the Maryland Department of Public Works and volunteering as a computer instructor at ISB, Petitioner Khan began working at Electronic Data Systems Technology & Engineering as an Infrastructure Specialist in March 2001. As part of the hiring process, Petitioner Khan was subject to and successfully passed a background investigation and drug screening.
26. In 2002, Majid Khan and one of his older brothers went to Pakistan both to get married. After his wedding on February 26, 2002, Majid returned to the United States in early March 2002 to continue working and to provide financial support for his new wife, as well as to comply with the terms of his Immigration and Naturalization Services travel document.
27. After working in the United States, he returned to Pakistan at the end of the year to be with his wife again.
28. In the middle of the night, on March 5, 2003, individuals identified as Pakistani security officials pounded on the door of the home of Petitioner Khan's brother, Mohammed, in Gulistan-e-Jauhar, Karachi, and rushed into the flat. The family members at home included Petitioner Khan, his brother Mohammed, his brother's wife and their one-month-old daughter. As the family was trying to wake up, the officials hooded and bound all of them before placing them in a vehicle. Petitioner Khan, his brother, sister-in-law and infant niece were taken to an unknown location.
29. Petitioner Khan's sister-in-law and infant niece were imprisoned for a week. Pakistan officials imprisoned his brother for approximately one month. Upon Mohammed Khan's release, officials threatened him not to make any public statements or inquire as to Petitioner Khan.

30. As a result of the threats, the family waited anxiously and fearfully for Petitioner Khan's return. He was not released. Instead, officials refused to give the family official notification about where Petitioner Khan was imprisoned or the basis for his detention. Occasionally, Majid's brother in Pakistan received periodic phone calls from an unknown individual stating that Majid was alive and would return soon.
31. Similarly, Petitioner Khan's family residing in the United States had no further information about Majid's welfare or location, despite diligent efforts to learn any information about him. After scores of meetings with members of the Khan family, officials from the Federal Bureau of Investigation and other government offices refused to provide the family with any information about Majid. His family had no means to confirm whether Majid was living or dead.
32. Finally, on September 6, 2006, Respondent President Bush announced that Majid Khan had been secretly imprisoned by the C.I.A. and had been transferred into military custody at Guantánamo. Respondent President Bush also confirmed that U.S. officials had used "an alternative set of procedures" designed for use against individuals like Petitioner Khan who were held secretly by the C.I.A. As described in detail below, during interrogations involving torture; cruel, inhuman or degrading treatment; and/or outrages upon his personal dignity, Petitioner Khan was coerced into making false and unreliable statements. Respondent President Bush also stated on September 6, 2006 that Petitioner Khan, and the other detainees transferred from C.I.A. detention to Guantánamo, would now be questioned subject to the new U.S. Army Field Manual. *See President Bush's Speech.*
33. At the time of his arrest at his brother's home in Karachi, Pakistan, Petitioner Khan was not a member of the Taliban government's armed forces or Al Qaeda. Prior to his

detention, he did not engage in any hostilities against the United States or against any American person or property. Petitioner Khan had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001; the subsequent armed conflict in Afghanistan; or any act of terrorism attributed by the United States to Al Qaeda. After being held *incommunicado* in secret C.I.A. detention for three and a half years and subjected to torture; cruel, inhuman and degrading treatment; and outrages upon his personal dignity, Petitioner Khan was transferred to the custody of D.O.D. and remains incarcerated at Guantánamo, a territory over which the United States exercises exclusive jurisdiction and control. This transfer into military custody occurred despite the fact that Petitioner Khan is a civilian who has never engaged in any hostilities against the United States and who was seized in a zone of peace far from any battlefield.

34. Petitioner Khan 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.
35. Petitioner Khan desires to pursue in the courts of the United States every available legal challenge to the lawfulness of his detention.

A. The Authorization for the Use of Military Force

36. In the wake of the September 11, 2001 attacks, the United States, at the direction of Respondent 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 Respondent President Bush “to use all necessary and appropriate force against those nations, organizations, or persons he determined planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of

international terrorism against the United States by such nations, organizations or persons.” Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001) (“AUMF”). The AUMF was limited to the parties involved in the attack on September 11, 2001.

37. Because Petitioner Khan is a civilian seized away from any battlefield and who did not at any time plan, authorize, commit, or aid the attacks of September 11, 2001 or the armed conflict against the Taliban government in Afghanistan, and who did not participate in or harbor individuals who participated in, those attacks, he is not properly detained pursuant to Respondent President Bush's military authority as Commander-in-Chief, under the laws and usages of war, or under the AUMF.

**B. The Central Intelligence Agency's
Secret Detention and Enhanced Interrogation Program**

38. On or about September 17, 2001, Respondent President Bush initiated a secret program to transfer suspected terrorists to the custody of the C.I.A. for imprisonment and interrogation outside the usual regulations and laws. Respondent President Bush authorized the C.I.A. to administer the program in a still-classified presidential directive or finding signed on or about September 17, 2001 (“Presidential Finding”). Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, at 1; Douglas Jehl & David Johnston, *CIA Now Acting Independently to Move Prisoners*, NY Times, Mar. 7 2005, at 4.
39. According to published reports, in the Presidential Finding, Respondent President Bush gave the C.I.A. covert action authority to operate independently and without case-by-case approval from the President or other Departments. The President also delegated day-to-day decision making to the C.I.A. Director, including the ability to decide to kill individuals if necessary. Under the Presidential Finding, the C.I.A. has virtually

unfettered power to use interrogation techniques against suspected terrorists that violate domestic and international prohibitions against torture; cruel, inhuman and degrading treatment; and outrages upon personal dignity. Dana Priest, *Covert CIA Program Withstands New Furor – Anti-Terror Efforts Continue to Grow*, Wash. Post, Dec. 30, 2005, at A1; Priest, *CIA Holds Terror Suspects*; Jehl & Johnston, *CIA Now Acting Independently*.

40. The Presidential Finding was broad and sweeping in its nature, granting the C.I.A. powers unprecedented since World War II. In response to the Finding, the C.I.A. established a covert action program which has been labeled GST, an abbreviation of a classified code name. Priest, *Covert CIA Program Withstands New Furor*.
41. The GST program apparently consists of several components, which: arrest suspects with the assistance of foreign security services, secretly detain them overseas, employ enhanced interrogation techniques, transfer detainees between countries and even use paramilitary teams to find and kill suspects anywhere in the world. Priest, *Covert CIA Program Withstand New Furor*. The Council of Europe has recently described the system of “targeting, apprehending and detaining terrorist suspects” as a “global spider’s web” of which the United States is “chief architect.” Committee on Legal Affairs and Human Rights, Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states* (June 12 2006) paras. 24-26 (Rapporteur: Dick Marty), available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>.
42. On September 6, 2006, the Respondent acknowledged that Petitioner Khan and others had been held in a secret C.I.A. detention program (“secret C.I.A. Program”) designed for interrogations of terrorism suspects, including citizens of U.S. allies using “alternative

procedures.” Purportedly established pursuant to the Presidential Finding, the Commander-in-Chief power, and/or the laws of war, the secret C.I.A. Program has concealed at least 100 individuals. Dafna Linzer & Glenn Kessler, *Decision to Move Detainees Resolved Two-Year Debate Among Bush Advisers*, Wash. Post, Sept. 8 2006, at A1; Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, at A1.

43. According to documents released by the Office of the Director of National Intelligence following Respondent President Bush’s announcement on September 6, 2006, Petitioner Khan had been imprisoned approximately three and a half years in (an) undisclosed location(s) by the C.I.A. prior to his transfer to the custody of the U.S. military at Guantánamo. See Announcement, Office of the Director of National Intelligence, Biographies of High Value Terrorist Detainees Transferred to the US Naval Base at Guantanamo Bay (Sept. 6, 2006), available at <http://www.dni.gov/announcements/content/DetaineeBiographies.pdf>.
44. On information and belief, in order to establish the secret C.I.A. Program, the United States government negotiated agreements with foreign governments to set up secret detention facilities (“black sites”). These agreements included immunity clauses for United States personnel from both the government and private companies. John Barry, Michael Hirsh, Michael Isikoff, *The Roots of Torture*, Newsweek, May 24, 2005. As at November 2005, these black sites were believed to be located, at various times, in eight countries including possibly Romania, Poland, Thailand, Afghanistan (including the “Salt Pit”); and at Guantánamo Bay. *Human Rights Watch Statement on U.S. Secret Detention Facilities in Europe*, Nov. 7, 2005, available at <http://hrw.org/english/docs/2005/11/07/usint11995.htm>; Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post,

Nov. 2, 2005, at A1; Daniel McGrory *CIA Accused of Running Secret Jails in Europe for Terrorists*, Times Online, Nov. 3, 2005, available at <http://www.timesonline.co.uk/article/0,,11069-1855381,00.html>. Reports later indicated the existence of a C.I.A. facility in North Africa. Stephen Grey & Sarah Baxter, *CIA still hiding 'ghost' captives*, The Sunday Times, Sept. 10, 2006, available at <http://www.timesonline.co.uk/article/0,,2089-2350485,00.html>; Brian Ross & Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC News, Dec. 5, 2005. In February 2006, it was reported that the United States was assisting Morocco to build a facility for interrogation and detention of Al-Qaeda suspects. Tom Walker Rabat & Sarah Baxter, *Revealed: the terror prison US is helping build in Morocco*, The Sunday Times, Feb. 12, 2006, available at <http://www.timesonline.co.uk/article/0,,2089-2036185,00.html>.

45. Respondent President Bush has announced that the secret C.I.A. Program will remain operational, though as of the date of the speech, "there are now no terrorists in the CIA program." Press Release, Office of the Press Secretary, *President Discusses Creation of Military Tribunals to Try Suspected Terrorists* (Sept. 6, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>. The Respondents have not disclosed at any time the locations where C.I.A. detainees were held, including the locations where Petitioner Khan was previously detained and interrogated. The President has signaled his intention not to disclose this information. Press Release, Office of the Press Secretary, *President Discusses Creation of Military Tribunals to Try Suspected Terrorists* (Sept. 6, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>

46. Detainees such as Petitioner Khan are typically picked up by local security forces, often with the assistance of U.S. agents. *See, e.g.* Center for Human Rights & Global Justice, *Fate and Whereabouts Unknown: Detainees in the "War on Terror,"* (2005) (describing several cases in which U.S. agents worked with local agencies to effect apprehensions of suspected terrorists). After initial interrogation by local and/or U.S. agents, "Members of the Rendition Group follow a simple but standard procedure: Dressed head to toe in black, including masks, they blindfold and cut the clothes off their new captive, then administer an enema and sleeping drugs. They outfit detainees in a diaper and jumpsuit for what can be a day-long trip." Dana Priest, *Wrongful Imprisonment: Anatomy of a CIA Mistake German Citizen Released after months in 'Rendition'*, Wash. Post, Dec. 4, 2005 at A1; Committee on Legal Affairs and Human Rights, Council of Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states* (June 12 2006) para. 85 (Rapporteur: Dick Marty), available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf>
47. Detainees such as Petitioner Khan are then handcuffed, blindfolded and bundled onto a plane. The C.I.A. uses a small fleet of private jets to transfer detainees into secret C.I.A. detention. These covert airplanes are often leased by fictional front companies. James Risen, *State of War: The Secret History of the CIA and the Bush Administration* (2006); Adrian Levy & Cathy Scott-Clark, *'One huge US jail'*, Guardian Unlimited, Mar. 19, 2005, available at <http://www.guardian.co.uk/afghanistan/story/0,1284,1440836,00.html>; Dana Priest & Joe Stephens, *Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prison is Coming to Light*, Wash. Post, May 11, 2004 at A1. There are also reports of the D.O.D. contracting planes used by the C.I.A. and of military aircraft being used in flight operations. Committee on Legal Affairs and Human Rights, Council of

Europe, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states* (June 12 2006) paras. 40 (Rapporteur: Dick Marty), available at <http://assembly.coe.int/Documents/WorkingDocs/doc06/doc10957.pdf>); Amnesty International, *Below the radar: Secret flights to torture and 'disappearance'* (April 5 2006, AMR 51/051/2006); Seth Hettena, *Navy Secretly Contracted Jets Used by CIA*, Associated Press, September 24, 2005.

48. The details of Petitioner Khan's detention are unknown to Petitioner, but known to Respondents. Detainees who have been released from secret U.S. detention have described the types and conditions of facilities in which they were detained. Three Yemeni detainees describe two different types of U.S. detention centers. The first detention center they were held in was "an old style underground facility with high walls. The cells were approximately 1.5m x 2m with buckets instead of toilets." They were held in solitary confinement for six to eight months with Western music played 24 hours a day into the cell. Amnesty International, *USA/Jordan/Yemen: Torture and Secret Detention: Testimony of the 'Disappeared' in the 'War on Terror'* (August 4, 2005, AMR 41/108/2005).
49. The second detention center they were transferred to was a modern purpose-built detention facility run by U.S. officials. It was underground, with modern facilities and surveillance cameras. The men were held in this facility for over 18 months in solitary confinement, mostly shackled and in handcuffs. The facility was designed to make it look as anonymous as possible. There were no pictures, ornaments, floor coverings, windows or natural light. Guards never spoke, instead communicating by hand gestures and were completely clothed in black. The facility was designed to induce maximum disorientation and sensory deprivation in the detainees. Amnesty International, *USA/Jordan/Yemen:*

Torture and Secret Detention: Testimony of the 'Disappeared' in the 'War on Terror' (August 4, 2005, AMR 41/108/2005); Amnesty International, *United States of America/Yemen: Secret Detention in CIA "Black Sites"*, (November 2005, AMR 51/177/2005).

50. In addition, both Laid Saidi, an Algerian citizen, and Khaled el-Masri, a German citizen, describe being held in secret detention in Afghanistan in the same facility. El-Masri describes being held in a "small, filthy, concrete cell...In place of a bed there was one dirty, military-style blanket and some old, torn clothes bundled into a thin pillow. It was cold and dark," Opening Br. for Pl.-Appellant at 6-7, *El-Masri v. Tenet*, (4th Cir. 2006) (No. 06-1667), available at <http://www.aclu.org/pdfs/safefree/20060724elmasriplsopeningbrief.pdf>; Decl. of Khaled El-Masri in Support of Pl.'s Op. to the United States' Mot. to Dismiss or, in the Alternative, for Summ. J. at ¶ 36, No. 1:05-cv-1417, *El-Masri v. Tenet*, 437 F. Supp. 2d 530 (E.D.Va. 2006) available at http://www.aclu.org/pdfs/safefree/elmasri_decl_exh.pdf, and Saidi refers to the two rows of six cells in the basement as "filthy, not even suitable for animals." Craig S. Smith & Souad Mekhennet, *Algerian Tells of Dark Odessey in U.S. Hands*, N.Y. Times, July 7, 2006, at A1.
51. It has been widely recognized that "disappearances" are conducive to torture and other forms of human rights violations, and can itself constitute torture or ill-treatment of the "disappeared" person and in certain circumstances, ill-treatment of their families. See, e.g. Louise Arbour, *In our Name and on our Behalf*, 55 INT'L & COMP. L.Q 511, 520 (2006). See also *Kurt v Turkey*, Eur Ct Hum Rts Case No 15/1997/799/1002, 25 May 1998, para 134; The Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of 29 July 1988. Series C No 4, para 187; *Quinteros v Uruguay* (107/1981, para 14); *Mojica v Dominican Republic* (449/1991, para 5.7).

52. The United States designed the C.I.A.'s secret detention system to facilitate the gathering of intelligence unhindered by the very factors that normally guard against this abuse, *e.g.* due process. Human Rights Watch, *The United States' Disappeared: The CIA's Long-Term "Ghost Detainees" 5-15 (2004)*, available at <http://www.hrw.org/background/usa/us1004/us1004.pdf>. In the last several months, United Nations human rights bodies have called on the United States to close its secret detention facilities and bring their systems of detention in line with human rights standards binding on the U.S. See Concluding Observations of the U.N. Human Rights Committee, United States of America, U.N. Doc. CCPR/C/SR.2395 at ¶ 12 (July 27, 2006) and Conclusions and Recommendations of the Committee Against Torture, United States of America, U.N. Doc. CAT/C/USA/C/2 at ¶ 17 (May 18, 2006) (characterizing secret detention as a "per se" violation of the Torture Convention).
53. In his speech of September 6, 2006, Respondent President Bush stated that detainees in the secret C.I.A. Program were subjected to an "alternative set of procedures," which appears to be a reference to the set of techniques known as "enhanced interrogation techniques." Press Release, Office of the Press Secretary, President Discusses Creation of Military Tribunals to Try Suspected Terrorists (Sept. 6, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>; see also Announcement, Office of the Director of National Intelligence, Summary of the High Value Terrorist Detainee Program (Sept. 6, 2006), available at <http://www.dni.gov/announcements/content/TheHighValueDetaineeProgram.pdf>.
54. These "enhanced Interrogation Techniques" were reportedly approved by the C.I.A. in March 2002. These techniques include:

- a. Water Boarding: A form of mock execution, the detainee is strapped to a board inclined so that the detainee's head is below his feet. Cellophane is wrapped over the detainee's face and water is poured over the detainee. The detainee experiences the terrifying fear of drowning which can leave permanent psychological scarring.
- b. Cold cell: The detainee is stripped naked and doused with cold water in a cell with a temperature of approximately 50 degree Fahrenheit. Cold cell can lead to life-threatening hypothermia and resulting psychological trauma.
- c. Long Time Standing: The detainee is handcuffed and shackled to the floor and forced to stand for more than 40 hours causing extreme exhaustion, sleep deprivation, and emotional distress.
- d. The Attention Grab: The interrogator forcefully grabs the shirt of the detainee and shakes him violently.
- e. Attention Slap: An open-handed slap inflicting pain and causing fear.
- f. Belly Slap: An open-handed slap to the stomach which causes pain but causes no lasting internal damage.

See: Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, 1 (water boarding); *Vice President for Torture*, Wash. Post, Oct. 26, 2005, A18 (water boarding); Brian Ross & Richard Esposito, *Sources Tell ABC News Top Al Qaeda Figures Held in Secret CIA Prisons*, ABC News, Dec. 5, 2005, <http://abcnews.go.com/WNT?Invesigation/story?id=1375123> (water boarding, cold cell, attention slap); Brian Ross & Richard Esposito, *CIA's Harsh Interrogation Techniques Described*, ABC News, Nov. 18, 2005, <http://abcnews.go.com/WNT/print?id=1322866> (all six techniques); Jane Mayer, *A Deadly Interrogation: Can the CIA Legally Kill a*

Prisoner?, The New Yorker, 14 Nov. 2005 (water boarding); Evan Thomas and Michael Hirsh, *The Debate over Torture*, Newsweek, Nov. 21, 2005 (water boarding).

55. Prisoners in the secret C.I.A. Program have also been subject to other forms of cruel, inhuman and degrading treatment such as being beaten, shackled and subject to electric shocks. Douglas Jehl and David Johnston, *CIA Now Acting Independently to Move Prisoners*, N.Y. Times, Mar. 7 2005, 4.
56. These detainees are not allowed any contact with the outside world. They do not have access to their families, legal counsel, or independent human rights or humanitarian agencies. Even those treated as combatants by the United States are not registered anywhere, including, where appropriate, with the International Committee of the Red Cross, a failure that is in violation of the Geneva Conventions in situations of armed conflict. International Committee of the Red Cross, *US Detention Related to the Events of 11 September 2001 and its Aftermath – the Role of the ICRC*, Mar. 29 2005, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/66FGEL>.
57. A number of persons held secretly by the C.I.A. have reported that they were subjected to torture while in C.I.A. custody. See Decl. of Khaled El-Masri in Support of Pl.'s Op. to the United States' Mot. to Dismiss or, in the Alternative, for Summ. J. at ¶ 36, No. 1:05cv1417, *El-Masri v. Tenet*, 437 F. Supp. 2d 530 (E.D.Va. 2006), available at http://www.aclu.org/pdfs/safefree/elmasri_decl_exh.pdf; Craig S. Smith and Souad Mekhennet, *Algerian Tells of Dark Odyssey in U.S. Hands*, N.Y. Times, July 7, 2006, A1; Michael Isikoff & Mark Hosenball, "Don't Ask, Don't Tell", Newsweek, Dec. 8, 2005, available at <http://msnbc.msn.com/id/10385133/site/newsweek/>; Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, at A1; Human Rights

First, *Behind the Wire: An Update to Ending Secret Detentions 2* (2005), available at http://www.humanrightsfirst.org/us_law/PDF/behind-the-wire-033005.pdf;

58. Many of the documents released by the Department of Defense pursuant to the FOIA lawsuit brought by the Center for Constitutional Rights, ACLU and other human rights organizations, available at <http://www.aclu.org/torturefoia/released/030905/>, describe torture and mistreatment of individuals held secretly by the C.I.A. in military facilities. See, e.g., Sworn Statement of SGT, Member of GTMO team, "Shut Up Group," Annex to Fay/Jones/Kern Report (June 4, 2004); Sworn Statement of SGT, 372nd MP, Annex to Fay/Jones/Kern Report (May 7, 2004); Sworn statement of CW2, A/519th MI Bn, Annex to Fay/Jones/Kern Report (May 19, 2004); Statement of B/Co, 470th MI Grp. SGT, Annex to Fay/Jones/Kern Report (May 18, 2004); see also Douglas Jehl & Tim Golden, *C.I.A. is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. Times, Oct. 23, 2005, at 6; Jane Mayer, *A Deadly Interrogation: Can the C.I.A. legally kill a prisoner?*, New Yorker, Nov. 14, 2005, at 44.
59. Petitioner Khan has been interrogated repeatedly by agents of the C.I.A. and possibly other U.S. and foreign agencies and was subjected to one or more forms of coercion. These sessions may have yielded involuntary statements. Involuntary statements such as these, obtained through torture; cruel, inhuman or degrading treatment; or outrages upon personal dignity, frequently contain false or flawed information. Douglas Jehl, *Qaeda-Iraq Link U.S. Cited is Tied to Coercion Claim*, N.Y. Times, Dec. 9, 2005.
60. On June 29, 2006, the United States Supreme Court handed down its decision in *Hamdan v. Rumsfeld*, No. 05-184, __U.S.__, 126 S.Ct. 2749 (June 29, 2006). It is reported that in the aftermath of this decision, government lawyers debated its implications for the secret C.I.A. Program, with the "most senior Justice Department lawyers believ[ing] the ruling

would force the government to close the CIA's 'black sites'" before a "compromise" was reached that the decision did not require closure, but "that the CIA could no longer handle suspects outside the boundaries of the Geneva Conventions." Dafna Linzer & Glenn Kessler, *Decision to Move Detainees Resolved Two-Year Debate Among Bush Advisers*, Wash. Post, Sept. 8 2006, at A1. An earlier report also refers to a decision to apply Geneva Conventions' Common Article 3 protections to detainees in secret C.I.A. detention. Charles Babington and Michael Abramowitz, *U.S. Shifts Policy on Geneva Conventions*, Wash. Post, July 12, 2006, at A1. Several reports refer to growing unease and dissent within the C.I.A. about its counter-terrorism activities, and particularly concern among C.I.A. officers about their vulnerability to legal action for their role in these activities. R. Jeffrey Smith, *Worried CIA Officers Buy Legal Insurance*, Wash. Post, Sept. 11, 2006, at A1; Ken Silverstein, *The CIA "Wehrmacht,"* Harper's Magazine, April 19, 2006, available at <http://www.harpers.org/sb-cia-wehrmacht.html>.

61. Despite Respondent President's Bush's statement on September 6 that the secret C.I.A. Program had been determined by Department of Justice and C.I.A. lawyers to be legal, in his Press Conference of September 15, 2006, the President repeatedly argued that the standards of Common Article 3 of the Geneva Conventions are "so vague that our professionals won't be able to carry forward the program, because they don't want to be tried as war criminals"; stated that unless there are "clear standards in the law" the "program is not going to go forward"; and emphasized that the military commissions bill must "...allow this vital program to continue." Press Conference of the President, Office of the Press Secretary, (Sept. 15, 2006), available at <http://www.whitehouse.gov/news/releases/2006/09/print/20060915-2.html>; Press Release, Office of the Press Secretary, President Discusses Creation of Military Tribunals to Try Suspected Terrorists

(Sept. 6, 2006), *available at* <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>.

C. The Executive Order

62. After approximately three and a half years of interrogation in the secret C.I.A. program, on or around September 6, 2006, Respondents transferred the custody of Petitioner Khan to the military authorities at Guantánamo. In transferring Petitioner to military custody, the President purportedly invoked his authority under the Executive Order of November 13, 2001, the Commander-in-Chief power, and/or the laws of war.
63. On November 13, 2001, Respondent President Bush issued an Executive Order authorizing Respondent Secretary of Defense Rumsfeld to detain indefinitely anyone President 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 therefore, 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).

64. Respondent President Bush must make this determination in writing.
65. The November 13, 2001 Executive Order purports to vest Respondent 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 November 13, 2001 Executive Order contains no provision for that person to be notified of the charges he may face or the basis for his detention. The November 13, 2001 Executive Order authorizes detainees to be confined indefinitely without charges or an opportunity to challenge the basis for their detention. It contains no provision for a

detainee to be notified of his rights under domestic and international law, and provides neither the means to contact and secure 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 basis for or the legality of a detainee's continued detention and contains no provision for recourse to an Article III court. Indeed, the United States Supreme Court in *Rasul v. Bush*, 542 U.S. 466 (2004), invalidated the order's provision barring federal habeas review of the legality of the detainees' imprisonment. Respondents have also taken the position that Petitioner Khan should not be informed of his rights or have access to existing civil counsel. As a result, Petitioner Khan lacks any ability to protect or vindicate his right under domestic and international law.

66. The Executive Order purports to authorize indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.
67. The Executive Order was promulgated in the United States and in this judicial district, the decision to incarcerate Petitioner Khan was made by Respondents in the United States and in this judicial district, the decision to detain Petitioner Khan was made in the United States and in this judicial district, and the decision to continue detaining Petitioner Khan, was, and is, being made by Respondents in the United States and in this judicial district.
68. Respondent President Bush has never formally certified or determined in any manner that Petitioner Khan is subject to the Executive Order.
69. The November 13, 2001 Executive Order was neither authorized nor directed by Congress, and is *ultra vires*, and violates the Constitution, laws, and treaties of the United States.

V.
CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
(ARTICLES I AND II OF THE CONSTITUTION –
UNLAWFUL DETENTION)

70. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
71. Petitioner Majid Khan is not, nor has he ever been, an enemy alien, lawful or unlawful belligerent, or combatant of any kind. He is a permanent resident of the United States and citizen of an ally country, Pakistan. The Executive lacks the authority to order or direct military officials to accept custody of and 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. 507, 522 n.1 (2004).
72. By the actions described above, Respondent 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 Petitioner Khan, a civilian, be seized; detained *immunicado* in the custody of the Central Intelligence Agency at an unknown location; interrogated using tactics amounting to torture and cruel, inhuman and degrading treatment, and outrages upon his personal dignity; transferred to the custody of the U.S. military; and imprisoned in military detention at Guantánamo. All of the Respondents acted and continue to act without lawful authority by directing, ordering, and/or supervising the seizure, transfer and detention of Petitioner Majid Khan.
73. The seizure, transfer and detention of Petitioner Majid Khan 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 of November 13, 2001, that Order exceeds the Executive's authority under Article II and is *ultra vires* and void on its face and as applied to Petitioner.

74. To the extent that Respondents assert that their authority to detain Petitioner Majid Khan derives from a source other than the Executive Order of November 13, 2001, 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.
75. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

SECOND CLAIM FOR RELIEF
(COMMON LAW DUE PROCESS AND DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE CONSTITUTION - DENIAL OF DUE PROCESS)

76. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
77. By the actions described above, Respondents, acting under color of law, have violated and continue to violate common law principles of due process as well the Due Process Clause of the Fifth Amendment to the Constitution of the United States. Respondent President Bush has ordered the unlawful transfer of a civilian into the custody of the United States military and then ordered the prolonged, indefinite and arbitrary military detention of Petitioner Khan without due process of law and the remaining Respondents have implemented those orders.
78. To the extent that Petitioner Majid Khan's detention is without basis in law or fact and violates common law principles of due process and the Due Process Clause of the Fifth Amendment to the Constitution, Petitioner's detention is unlawful.
79. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

THIRD CLAIM FOR RELIEF
(INTERNATIONAL HUMAN RIGHTS TREATIES AND CUSTOMARY LAW –
ARBITRARY DETENTION AND DENIAL OF DUE PROCESS)

80. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
81. By the actions described above, Respondents have denied and continue to deny Petitioner Majid Khan the due process accorded to civilian persons seized and detained by United States' officials as established by the International Covenant on Civil and Political Rights, the Convention Against Torture, the American Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights, as well as by customary international human rights law as reflected, expressed, and defined in multilateral treaties and other international instruments and domestic judicial decisions, and other authorities.
82. Violations of the ICCPR and CAT are direct treaty violations under 28 U.S.C. §1331, are violations of customary international law under 28 U.S.C. §1331, and constitute enforceable claims under 28 U.S.C. §2241(c)(3).
83. 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 these treaties and customary international humanitarian law.
84. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

FOURTH CLAIM FOR RELIEF
(COMMON LAW DUE PROCESS AND DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE CONSTITUTION – DENIAL OF DUE PROCESS)

85. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
86. Alternatively, if the Respondents purport to reply upon the laws of war as the source of authority to detain Petitioner Khan without due process, by the actions described above, Respondents, acting under color of law, have violated and continue to violate common

law principles of due process as well the Due Process Clause of the Fifth Amendment to the Constitution of the United States. Respondent 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 Majid Khan the process accorded to persons seized and detained by the United States military in times of both international and noninternational 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.

87. To the extent that Respondents purport to authorize Petitioner Khan's detention under the Executive Order, that Order violates the Fifth Amendment on its face and as applied to Petitioner.
88. To the extent that Petitioner Khan's detention is without basis in law and violates common law principles of due process, Petitioner's detention is unlawful.
89. Accordingly, Petitioner Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

FIFTH CLAIM FOR RELIEF
(GENEVA CONVENTIONS AND CUSTOMARY INTERNATIONAL LAW OF ARMED
CONFLICT- ARBITRARY DENIAL OF DUE PROCESS)

90. Alternatively, if the Respondents purport to rely upon the laws of war as the source of authority to detain Petitioner Khan without due process, by the actions described above, Respondents, acting under color of law, have denied and continue to deny Petitioner Majid Khan the process due to all persons seized and/or detained by the U.S. military in

times of both international and noninternational armed conflict as established by, *inter alia*, Articles 3 and 5 of the Third and Fourth Geneva Conventions as well as customary international humanitarian law as reflected, expressed, and defined in , *inter alia*, Article 75 of the Protocol Additional to the Geneva Conventions of 1949, and multilateral treaties and other international instruments and domestic judicial decisions, and other authorities.

91. Violations of the Geneva Conventions are direct treaty violations under 28 U.S.C. §1331; are violations of customary international law under 28 U.S.C. §1331; and constitute enforceable claims under 28 U.S.C. §2241(c)(3).
92. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE APA - ARBITRARY AND CAPRICIOUS DENIAL OF DUE
PROCESS)

93. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
94. Alternatively, if the Respondents purport to reply upon the laws of war as the source of authority to detain Petitioner Khan without due process by the actions described above, Respondents, acting under color of law, have arbitrarily and capriciously denied and continue to deny Petitioner Majid Khan the process due to all persons seized and/or detained by the United States military in times of both international and noninternational armed conflict as established by Army Regulation 190-8 in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).
95. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

SEVENTH CLAIM FOR RELIEF
(INTERNATIONAL HUMANITARIAN LAW AND COMMON LAW OF WAR-
UNLAWFUL DETENTION)

96. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
97. Alternatively, if the Respondents purport to reply upon the laws of international armed conflict as the source of authority to detain Petitioner Khan without due process and even assuming *arguendo* that the detention of Petitioner Majid Khan was lawful at the time of his transfer to military custody, the government has conceded that the Geneva Conventions entitle detainees held at Guantánamo to release at the cessation of active hostilities. Br. for the United States, *Al Odah, et al., v. United States*, Nos. 05-5064, 05-5095 through 05-5116, at 55 (filed June 17, 2005).
98. Accordingly, because the international armed conflict against Afghanistan has ended, so too has the authority, if any, of the United States Executive under the international humanitarian law of international armed conflict to continue detaining individuals in military custody. If it is pursuant to these laws of international armed conflict that the United States seeks to hold Petitioner Majid Khan, Petitioner Khan therefore, by the admission of the United States, is entitled to release or, alternatively to additional legal process under Army Regulation 190-8 to justify his detention beyond the end of the international armed conflict.

EIGHTH CLAIM FOR RELIEF
(COMMON LAW DUE PROCESS AND DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE CONSTITUTION - UNLAWFUL CONDITIONS OF
CONFINEMENT)

99. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.
100. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of Petitioner Majid Khan to be free from unlawful

conditions of confinement, in violation of common law due process and the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

101. Accordingly, Petitioner Majid Khan is entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

NINTH CLAIM FOR RELIEF
(FIFTH AND SIXTH AMENDMENTS TO THE CONSTITUTION - VIOLATION OF THE
RIGHT TO COUNSEL AND TO ACCESS TO THE COURTS)

102. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein.
103. Respondents, purportedly acting from a concern for national security, have violated Petitioner Majid Khan's right to consult with counsel by denying him any access to counsel or any means to obtain counsel during his detention by the C.I.A. and the D.O.D.
104. Accordingly, Petitioner Majid Khan is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

TENTH CLAIM FOR RELIEF
ARTICLE I – VIOLATION OF THE SUSPENSION CLAUSE)

105. Petitioner incorporates by reference all preceding paragraphs as if set forth fully herein.
106. To the extent that the Detainee Treatment Act purports to remove this court's jurisdiction over Petitioner Khan's habeas petition challenging the legality of his detention, Respondent's actions constitute an unlawful Suspension of the Writ of Habeas Corpus, in violation of Article I, §9, cl. 2 of the United States Constitution.
107. Accordingly, Petitioner is entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

**VI.
PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for relief as follows:

1. Designate Rabia Khan as Next Friend of Majid Khan;
2. Order and declare that Section 1005(e) of the DTA violates the Suspension Clause of the United States Constitution;
3. Grant the Writ of Habeas Corpus and order Respondent to release Petitioner Khan from his current unlawful detention, or alternatively, to show cause why the writ should not be granted;
4. Order that Petitioner Khan 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;
5. Order Respondents to allow counsel immediately to meet and confer with Petitioner Khan, in private and unmonitored attorney-client conversations;
6. Order Respondents to cease all interrogations of Petitioner Khan, direct or indirect, while this litigation is pending;
7. Order Respondents to cease all acts of torture; cruel, inhuman and degrading treatment; and outrages upon the personal dignity of Petitioner Khan;
8. Order and declare the Executive Order of November 13, 2001 is *ultra vires* and unlawful in violation of Article II of the United States Constitution, the Fifth Amendment to the U.S. Constitution, the Uniform Code of Military Justice, the Administrative Procedures Act, 5 U.S.C. § 702, federal common law, the treaties of the United States and customary international law;

9. Order Respondents to disclose the Presidential Finding and any related documents which purportedly authorize the GST program;
10. Order and declare the Presidential Finding 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, federal common law, the treaties of the United States and customary international law;
11. Order and declare that the prolonged, indefinite, and restrictive detention of Petitioner Khan 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, international human rights treaties and customary law, the regulations of the United States military, the treaties of the United States, and customary international humanitarian law on international and non-international armed conflict; and
12. 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.

Dated: September 28, 2006

Respectfully submitted,

Counsel for Petitioners:

William Goodman/ta

Michael Ratner (pursuant to L.Cv.R. 83.2(g))
William Goodman (pursuant to L.Cv.R. 83.2(g))
Gitanjali S. Gutierrez (pursuant to L.Cv.R. 83.2(g))
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CERTIFICATION OF REPRESENTATION WITHOUT COMPENSATION

Counsel for Petitioner certify, pursuant to L. Cv. R. 83.2(g), that they are representing
Petitioner without compensation.

Dated: September 28, 2006

William Goodman/ta

Michael Ratner (pursuant to L.Cv.R. 83.2(g))
William Goodman (pursuant to L.Cv.R. 83.2(g))
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