

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

SAMIULLAH JALATZAI,  
Detainee #3633, United States Air Base at  
Bagram, Afghanistan;

SIBGHATULLAH JALATZAI,  
Detainee #3624, United States Air Base at  
Bagram, Afghanistan;

HAJI HABIBULLAH JALATZAI,  
as the Next Friend of Samiullah Jalatzai and  
Sibghatullah Jalatzai,

Petitioners,

v.

ROBERT GATES,  
in his Official Capacity as Secretary of Defense;

MARK MARTINS,  
in his Official Capacity as Acting Commander of  
Detention Operations, Bagram Air Base and  
Custodian of Petitioners;

BARACK OBAMA  
in his official capacity as President of the United  
States,

Respondents.

No.

**PETITION FOR WRIT OF HABEAS CORPUS**

1. Samiullah Jalatzai and Sibghatullah Jalatzai petition this Court for a writ of habeas corpus compelling Respondents to release them or to provide this Court with a lawful basis for their detention.

2. Samiullah Jalatzai, a 25-year-old information technology (“IT”) specialist, and his brother Sibghatullah Jalatzai, a 24-year-old who served as a translator for the United States for

approximately four years, have been imprisoned without charge by the U.S. military at the Bagram Theater Internment Facility (“Bagram”) at the Bagram Air Base in Afghanistan for approximately 23 months and 20 months, respectively, after U.S. forces seized them, separately, from their places of employment. To this day, it appears that neither Samiullah Jalatzai or Sibghatullah Jalatzai has been told why he is being detained. They have never been permitted to meet with a lawyer. They have never seen the evidence upon which the U.S. government relies to support their detention. Nor have they ever been afforded a meaningful or adequate opportunity to challenge their detention.

3. The U.S. government claims the authority to detain Samiullah Jalatzai and Sibghatullah Jalatzai indefinitely. But, on information and belief, they have never engaged in hostilities against the United States or coalition forces in Afghanistan or anywhere else in the world. They have never been a part of or substantially supported al-Qaeda, the Taliban, or any other associated organization engaged in hostilities against the United States or coalition forces. Nor have they ever committed a belligerent act, or directly supported hostilities, in aid of such enemy armed forces.

4. The U.S. government is imprisoning Samiullah Jalatzai and Sibghatullah Jalatzai without any legal or factual basis, without access to any court, and without providing them a meaningful process to challenge their detention in violation of the Constitution, laws, and treaties of the United States.

5. Because the U.S. government is denying both men access to counsel and the ability to challenge their detention themselves, their father, Haji Habibullah Jalatzai, submits this petition as Next Friend of Samiullah Jalatzai and Sibghatullah Jalatzai.

## JURISDICTION

6. Petitioners bring this action under 28 U.S.C § 2241 and invoke this Court's jurisdiction under 28 U.S.C. § 1331 (Federal Question Statute); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act); as well as Article I, Section 9, Clause 2 of the Constitution of the United States; Article III, Section 2 of the Constitution of the United States; and the Fifth and Sixth Amendments to the Constitution of the United States.

7. The Court is empowered to grant the Writ of Habeas Corpus under 28 U.S.C. § 2241 *et. seq.* and the Suspension Clause of the U.S. Constitution, and to entertain the instant Petition filed by Mr. Habibullah Jalatzai as Next Friend under 28 U.S.C. § 2242. This Court also has jurisdiction over this Petition pursuant to the Supreme Court's rulings in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008), and *Rasul v. Bush*, 542 U.S. 466 (2004), because, like the detention facility at Guantánamo Bay, the U.S. detention facility at Bagram is subject to the exclusive jurisdiction and control of the U.S. government.

8. This Court has personal jurisdiction over Respondents because they are officers or agents of the U.S. who have custody of and control over Samiullah Jalatzai and Sibghatullah Jalatzai, carry out their responsibilities in the District of Columbia, have substantial contacts in the District, and one or more of the Respondents are physically located within the territorial jurisdiction of the Court.

## VENUE

9. Venue is proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(b) & (e) because President Obama resides in the district, a substantial part of the events or omissions giving rise to the claims alleged occurred in the district, and Respondents are all officers or employees of the United States or an agency thereof acting in their official capacities.

## PARTIES

10. Petitioner Samiullah Jalatzai, an Afghan citizen, is presently held in the unlawful custody of the U.S. government at the U.S. detention facility at Bagram Air Base in Afghanistan.

11. Petitioner Sibghatullah Jalatzai, an Afghan citizen, is presently held in the unlawful custody of the U.S. government at the U.S. detention facility at Bagram Air Base in Afghanistan.

12. Haji Habibullah Jalatzai is the father of Samiullah Jalatzai and Sibghatullah Jalatzai. Because Respondents are denying Samiullah Jalatzai and Sibghatullah Jalatzai access to counsel and the ability to challenge their detention, Haji Habibullah Jalatzai acts as their Next Friend. Attached hereto as Exhibit A is the Next Friend Authorization executed by Mr. Jalatzai.

13. Respondent Robert Gates is the United States Secretary of Defense. He maintains custody and control of Samiullah Jalatzai and Sibghatullah Jalatzai, and is therefore their ultimate custodian. Secretary Gates is sued in his official capacity.

14. Respondent Mark Martins is Acting Commander of Detention Operations at Bagram Air Base and Samiullah Jalatzai and Sibghatullah Jalatzai are in his immediate physical custody. Brigadier General Martins is sued in his official capacity.

15. Respondent Barack Obama is President of the United States and Commander-in-Chief of the U.S. Armed Forces. Accordingly, he is ultimately responsible for Samiullah Jalatzai and Sibghatullah Jalatzai's unlawful detention. President Obama is sued in his official capacity.

## STATEMENT OF FACTS

### **The Conflict in Afghanistan and the Legal Framework that Governs U.S. Detentions There**

16. In the wake of the September 11, 2001 attacks on the United States, Congress passed a Joint Resolution that authorized the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines 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.” Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (Sept. 18, 2001) (“AUMF”).

17. In October 2001, the United States launched Operation Enduring Freedom, a military campaign in Afghanistan.

18. Since the fall of the Taliban regime in December 2001, the United States has continued military operations against al-Qaeda and the Taliban, in cooperation with the Afghan government.

19. In the nomenclature of international law, the current conflict in Afghanistan is a “non-international armed conflict,” which is an armed conflict that is not between nation states.

20. The United States is the only member of the International Security Assistance Force (“ISAF”) – the coalition of NATO countries participating in the armed conflict in Afghanistan – that subjects individuals it captures in Afghanistan to indefinite military detention. Upon information and belief, all other nations participating in ISAF, pursuant to official ISAF policy, detain individuals for a maximum of 96 hours. After 96 hours, the individual is either released or transferred to Afghan custody. The United States operates its indefinite military detention program as part of Operation Enduring Freedom, which is distinct from the NATO ISAF mission in Afghanistan.

21. The AUMF does not give the U.S. military the authority to detain every person it captures in Afghanistan. In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the United States Supreme Court interpreted the AUMF to permit the military detention of an individual who allegedly was a Taliban combatant, captured on the battlefield and armed with a rifle while directly engaged in armed conflict against the United States. The AUMF is limited by, and must be read consistently with, the U.S. Constitution; International Humanitarian Law (“IHL”), which includes the

Geneva Conventions and the customary international law of armed conflict; and International Human Rights Law (“IHRL”), which includes the International Covenant on Civil and Political Rights (“ICCPR”). In a non-international armed conflict, IHL does not authorize or provide for the detention of civilians who have never engaged in hostilities against U.S. forces.

22. If a person is not lawfully detainable by the United States under the AUMF, he or she must be released from custody or charged with a crime under Afghan or U.S. law.

23. Even where legal authority exists to detain a properly defined class of persons in a non-international armed conflict, all individuals detained pursuant to such authority are entitled to a meaningful and adequate process for determining whether they fall within the category of persons who may lawfully be subjected to military detention. In order to be adequate, the process must be consistent with, and informed by, the requirements of the U.S. Constitution, as well as IHL and IHRL.

24. IHRL, which applies in this non-international armed conflict (and thus informs the process that is due), and the U.S. Constitution require that a person deprived of his or her liberty by the United States – whether through military or civilian detention – must have a meaningful opportunity to challenge the legality and propriety of his or her detention before a court.

25. Alternatively, IHL requires, at a minimum, that a person subjected to military detention have a meaningful opportunity to challenge his or her detention either before a court or before an independent and impartial administrative board.

26. Whether the process is a judicial or administrative one, all individuals detained in a non-international armed conflict are entitled to the assistance of counsel and must receive meaningful notice of the basis for their detention; a meaningful opportunity to see the evidence against them; a meaningful opportunity to rebut that evidence and to present all witnesses and evidence in their favor; a meaningful opportunity to see relevant exculpatory information in the

government's possession; the opportunity to have the detention determination made by a fair, independent, and impartial body; and a meaningful opportunity to appeal the detention determination to a court or other judicial or administrative body.

**Bagram**

27. Respondents are currently detaining Samiullah Jalatzai and Sibghatullah Jalatzai at the U.S. prison at the Bagram Air Base in Afghanistan, where, since 2002, the United States has detained indefinitely thousands of people in harsh conditions and without charge, without access to lawyers, without access to courts, and without a meaningful process to challenge their detention.

The United States' Exclusive Jurisdiction and Control Over Bagram

28. The Bagram Air Base, a permanent U.S. Air Base situated approximately 40 miles north of Kabul, is operated by the U.S. Army Task Force Guardian under U.S. Central Command.

29. The United States exercises complete and exclusive jurisdiction and control over the Bagram Air Base.

30. Pursuant to a lease agreement executed by the U.S. and Afghan governments, Afghanistan ceded exclusive use and control of Bagram Air Base to the United States. The lease grants the United States "exclusive use," "exclusive control," and "exclusive, peaceable, undisturbed and uninterrupted possession," of all facilities and land at Bagram Airfield, without cost, and without interference by the Afghan government. The Lease continues in effect in perpetuity unless and until the United States determines unilaterally that it "no longer require[s]" use of the base.

31. Pursuant to a separate agreement between the U.S. and Afghan governments, U.S. civil and military personnel at Bagram are subject only to U.S. jurisdiction, not Afghan

jurisdiction, and cannot be transferred to Afghan courts, an international tribunal, or any other country without U.S. consent. Third party civil claims against U.S. personnel are addressed by the United States at its discretion. U.S. contracts for materials and services at Bagram are exempt from Afghan taxes and are awarded in accordance with U.S. law.

32. The United States exercises exclusive control over detention operations at Bagram prison. Neither NATO forces nor Afghan forces play any role in the operation of Bagram prison. Prisoners at Bagram are in the immediate physical custody of U.S. soldiers who answer only to the U.S. chain of command.

33. Bagram prisoners have no access to Afghan courts and cannot claim or assert rights or protections under Afghan law.

#### Bagram Prison Population and Detention Standards

34. The U.S. government is currently detaining approximately 750 people at Bagram.

35. Some prisoners at Bagram were captured in Afghanistan but far from any battlefield. Other prisoners at Bagram were captured in other countries, often far from Afghanistan, and transferred to Bagram for detention.

36. The U.S. government claims the authority to detain people at Bagram indefinitely. Some prisoners at Bagram have been detained there for nearly eight years.

37. The standards employed by the military to determine who should be detained at Bagram have changed many times since detention operations began in 2002. But they have never afforded detainees imprisoned at Bagram access to any court, access to counsel, or a meaningful or adequate process to challenge their executive detention without charge.

38. In July 2009, the Defense Department announced a new standard for who could be detained at Bagram. Under the new standard, the U.S. military is authorized to detain anyone who “planned, authorized, committed, or aided the terrorist attacks that occurred on September



11, 2001, and persons who harbored those responsible for those attacks;” or who “were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces.” Further, under this standard, persons meeting these criteria can be detained as long as detention is “necessary to mitigate the threat the detainee poses.”

#### Conditions

39. Bagram prisoners have been detained for years in harsh conditions. Until very recently, prisoners were housed in primitive pens made from cages surrounded by razor wire.

40. In 2002, two prisoners died in U.S. custody at Bagram; Army investigators concluded that these deaths were homicides.

41. Allegations of torture, abuse, and mistreatment of prisoners at Bagram are legion and well-documented. Former Bagram detainees have described being threatened with dogs; sexually abused and humiliated; stripped and photographed in shameful and obscene positions; beaten; forced into stress positions for prolonged periods of time; subjected to sensory deprivation; deprived of sleep, food, and water; and held for lengthy periods of time in excessive temperatures and/or blaring music.

42. In or around December 2009, prisoners were moved to a newly-constructed, permanent facility that is designed to hold approximately 1,100 detainees.

43. The International Committee of the Red Cross (“ICRC”) is allowed access to Bagram prisoners. Other human rights monitors, including Afghanistan’s independent Commission for Human Rights are not allowed access.

44. Lawyers, whether Afghan or American, are not permitted to visit or communicate with Bagram prisoners.

45. Until April 2008, prisoners at Bagram were not permitted to speak with or to see their families. In April 2008, the U.S. military permitted prisoners to speak with immediate family members via telephone and video links. More recently, the U.S. military began to permit immediate family members to visit with prisoners. The U.S. military, however, censors the topics of conversation permitted between prisoners and their families. Family members are told that they are prohibited from speaking with their loved ones about any legal or administrative proceedings pertaining to a detainee's imprisonment or about Bagram more generally.

Process Afforded Bagram Prisoners to Challenge Their Detention

46. Hundreds of prisoners at Bagram have languished for years without being told why they are being detained, without access to lawyers, without access to any judicial forum in which to challenge their prolonged and indefinite detention, and without any other meaningful or adequate process to challenge the basis for their detention.

47. The process employed by the U.S. military to determine who can be detained indefinitely at Bagram, like the standard for who is detainable, has changed a number of times since detention operations began there in 2002. In April 2009, a judge of this Court found that the U.S. military process for determining prisoners' status at Bagram fell "well short of what the Supreme Court found inadequate at Guantanamo." *Al Malaqeh v. Gates*, 604 F. Supp. 2d 205 (D.D.C. 2009), *appeals pending*, Nos. 09-5265, -5226, -5227 (D.C. Cir. argued Jan. 7, 2010).

48. On September 14, 2009, the Obama administration released guidelines that mandated a new administrative process for determining whether people could be imprisoned indefinitely at Bagram. Implementation of the new procedures reportedly began in December 2009.

49. Even under the new process, Bagram prisoners are not permitted any access to lawyers. Bagram prisoners are instead assigned a "personal representative" – a member of the

U.S. military responsible to the U.S. chain of command, who is not a lawyer, who has no duty of confidentiality to the prisoner, who has no ethical duty to zealously advocate on the prisoners' behalf, and who is assigned to detainees by the military convening authority.

50. Bagram prisoners also are not permitted any access to a judge or an independent and impartial tribunal. Prisoners' status determinations are made by Detainee Review Boards ("DRBs") comprised of three military officers responsible to the U.S. chain of command. These officers need not be lawyers. The officers are appointed, and can be removed at will by, the military convening authority. They have no protection against command influence or protections against retaliation for DRB rulings.

51. Bagram prisoners are not entitled to see most of the evidence the U.S. military is relying upon to justify their detention. Prisoners must receive notice of the basis for their detention and an unclassified summary of the facts that support the basis for their detention, but are denied access to classified and other evidence in the government's possession.

52. DRBs may rely on evidence obtained through torture or coercion.

53. The military has no obligation to disclose relevant exculpatory information to the detainee or to his personal representative.

54. A Bagram prisoner's ability to present witnesses or documentary evidence is left to the discretion of the DRB. Prisoners may present witnesses or evidence only if the military panel deems the witnesses or evidence to be "reasonably available."

55. Bagram prisoners can be excluded from their own hearings if "operational" concerns arise as to their presence.

56. DRB determinations cannot be appealed to any court or to any higher, independent and impartial administrative body.

**Petitioners**

**Samiullah Jalatzai**

57. Samiullah Jalatzai is an Afghan citizen who is approximately 25 years of age.

58. Samiullah Jalatzai lives with his parents and his brother in Kabul, Afghanistan.

59. Prior to his capture by U.S. forces, Samiullah Jalatzai worked as an IT customer support officer at the New Dunia Telecommunications Company in Kabul, which provides Internet services throughout Afghanistan. Samiullah was widely-regarded as a responsible, talented, highly-valued, and well-liked employee.

60. On April 9, 2008, at approximately 2:00 p.m., Afghan forces arrived unexpectedly at Samiullah Jalatzai's workplace and arrested him.

61. A few hours later that same day, U.S. forces brought Samiullah to his home and conducted a search there. Samiullah's father and his brother Sibghatullah were at home at the time. Samiullah was not permitted to enter the home and remained in a vehicle, with U.S. military personnel, outside. U.S. forces seized a number of items from the home, including money, a briefcase, and a radio that belonged to Sibghatullah which had been given to him by his U.S. military employers.

62. After U.S. forces completed the search they left the premises, taking Samiullah Jalatzai with them.

63. U.S. forces did not provide Samiullah Jalatzai's family members any explanation as to why Samiullah had been seized or why their home had been searched. Nor did U.S. forces tell Samiullah's family members where Samiullah was being taken.

64. For approximately three months after Samiullah Jalatzai was taken away from his home in the U.S. forces vehicle, his family had no idea where he was or what had happened to

him. Samiullah's father did everything in his power to ascertain his son's whereabouts but to no avail.

65. Approximately three months after Samiullah disappeared with U.S. forces, Samiullah's father received a letter from the ICRC informing him that that Samiullah was in U.S. custody at Bagram.

66. Samiullah Jalatzai remains in U.S. custody at Bagram. His publicly-available detainee number is 3633.

67. Upon information and belief, Samiullah Jalatzai has never been told why he is being detained. Samiullah's father has visited Samiullah at Bagram on multiple occasions; Samiullah has told his father that he does not know why he is being detained and has never received any explanation for his detention from the U.S. government.

68. Samiullah Jalatzai has never been permitted to meet with a lawyer.

69. Samiullah Jalatzai has not been permitted to challenge his detention before a court or judicial officer.

70. Upon information and belief, Samiullah Jalatzai has never seen the evidence upon which the U.S. military relies to support his detention.

71. Upon information and belief, Samiullah Jalatzai has not had a hearing before the DRB or any other administrative hearing at which he could challenge the basis for his detention.

72. Upon information and belief, Samiullah Jalatzai did not plan, authorize, commit, or aid the September 11 terrorist attacks, nor has he harbored such organizations or persons that planned, authorized, committed, or aided those attacks.

73. Upon information and belief, Samiullah Jalatzai has never engaged in hostilities against the United States or coalition forces in Afghanistan or anywhere else in the world.

74. Upon information and belief, Samiullah Jalatzai has never been a part of or substantially supported al-Qaeda, the Taliban, or any other associated organization engaged in hostilities against the United States or coalition forces. Nor has he ever committed a belligerent act, or directly supported hostilities, in aid of such enemy armed forces.

75. Upon information and belief, Samiullah Jalatzai poses no threat to U.S. or coalition forces and his detention is not necessary to mitigate any threat.

Sibghatullah Jalatzai

76. Sibghatullah Jalatzai is an Afghan citizen who is approximately 24 years of age.

77. Sibghatullah and Samiullah Jalatzai are brothers.

78. Prior to his capture by U.S. forces, Sibghatullah Jalatzai worked for the U.S. military as a translator. Prior to his capture, he had worked for the U.S. military in this capacity for approximately four years. Sibghatullah Jalatzai had received numerous certificates of appreciation and certificates of achievement from the U.S. military for the excellent translation services he provided to them.

79. When he was not traveling as part of his duties as translator for U.S. forces, Sibghatullah Jalatzai lived with his parents and his brother in Kabul, Afghanistan.

80. Sibghatullah Jalatzai was at home on April 9, 2008, the day after his brother Samiullah was seized by U.S. forces and the day U.S. forces conducted a search of his home. He remained at home for approximately 10 days thereafter but then left for Herat, Afghanistan, to resume his translation duties with the U.S. military.

81. For approximately two months thereafter, Sibghatullah remained in regular phone contact with his father, often calling home to inquire about the search for Samiullah.

82. After approximately two months, Sibghatullah's father stopped receiving calls from his son. Sibghatullah's father grew very concerned about Sibghatullah's well-being and initiated the same desperate search for information he was conducting for Samiullah.

83. Approximately two to three weeks after Sibghatullah's father stopped receiving phone calls from his son, he received a phone call from an official with the ICRC inquiring whether he had a son named Sibghatullah, and informing him that Sibghatullah was in U.S. custody at Bagram.

84. Approximately two weeks thereafter Habibullah Jalatzai received a letter from the ICRC informing him that his other son, Samiullah, was in U.S. custody at Bagram as well.

85. Sibghatullah Jalatzai remains in U.S. custody at Bagram. His publicly-available detainee number is 3624.

86. Upon information and belief, Sibghatullah Jalatzai has never been told why he is being detained. Sibghatullah's father has visited Sibghatullah at Bagram on multiple occasions; Sibghatullah has told his father that he does not know why he is being detained and has never received any explanation for his detention from the U.S. government.

87. Sibghatullah Jalatzai has never been permitted to meet with a lawyer.

88. Sibghatullah Jalatzai has not been permitted to challenge his detention before a court or judicial officer.

89. Upon information and belief, Sibghatullah Jalatzai has never seen the evidence upon which the U.S. government relies to support his detention.

90. Upon information and belief, Sibghatullah Jalatzai has not had a hearing before the DRB or any other administrative hearing at which he could challenge the basis for his detention.

91. Upon information and belief, Sibghatullah Jalatzai did not plan, authorize, commit, or aid the September 11 terrorist attacks, nor has he harbored such organizations or persons that planned, authorized, committed, or aided those attacks.

92. Upon information and belief, Sibghatullah Jalatzai has never engaged in hostilities against the United States or coalition forces in Afghanistan or anywhere else in the world.

93. Upon information and belief, Sibghatullah Jalatzai has never been a part of or substantially supported al-Qaeda, the Taliban, or any other associated organization engaged in hostilities against the United States or coalition forces. Nor has he ever committed a belligerent act, or directly supported hostilities, in aid of such enemy armed forces.

94. Upon information and belief, Sibghatullah Jalatzai poses no threat to U.S. or coalition forces and his detention is not necessary to mitigate any threat.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM**

#### **(Unauthorized and Unlawful Detention)**

95. The U.S. military does not have the authority to detain indefinitely every person it captures during the course of the non-international armed conflict in Afghanistan. Any authority to detain must derive from the Constitution and laws of the United States.

96. Respondents' detention of Samiullah Jalatzai and Sibghatullah Jalatzai exceeds any detention authority granted the Executive branch under the AUMF because Samiullah Jalatzai and Sibghatullah Jalatzai did not plan, authorize, commit, or aid the September 11 terrorist attacks; did not harbor such organizations or persons that planned, authorized, committed, or aided those attacks; have never engaged in hostilities against the United States or coalition forces in Afghanistan; and have never been a part of or substantially supported al-Qaeda, the Taliban, or any other associated organization engaged in hostilities against the United



States or coalition forces, or committed a belligerent act, or directly supported hostilities, in aid of such enemy armed forces.

97. Respondents' detention of Samiullah Jalatzai and Sibghatullah Jalatzai is not authorized by and is inconsistent with IHL, which informs and constrains the proper construction of the AUMF, because in a non-international armed conflict IHL does not authorize or provide for the detention of civilians who have never engaged in hostilities against the United States or coalition forces.

98. Neither the United States Constitution nor any other U.S. law authorizes the detention of Samiullah Jalatzai and Sibghatullah Jalatzai.

SECOND CLAIM

(Denial of Access to the Courts, a Fair and Meaningful Hearing Before an Impartial Judicial Tribunal, and Assistance of Counsel)

99. Just as the scope of any detention authority granted under the AUMF is limited by, and must be read consistently with, IHL and IHRL, the process due those detained pursuant to the AUMF must be informed by the requirements of IHL and IHRL. IHRL, which includes the Article 9(4) of the ICCPR, and which applies in non-international armed conflicts, requires that all individuals detained by the United States have a meaningful opportunity to challenge the legality and propriety of their detention before a court, with the assistance of counsel.

Respondents' prolonged and indefinite detention of Samiullah Jalatzai and Sibghatullah Jalatzai, without access to any court, without access to counsel, without a meaningful or adequate opportunity to challenge their detention in a fair and meaningful judicial hearing is inconsistent with IHRL.

100. Respondents' prolonged and indefinite detention of Samiullah Jalatzai and Sibghatullah Jalatzai, without access to any court, without access to counsel, without an adequate opportunity to challenge their detention in a fair and meaningful judicial hearing, including the denial of notice of the allegations against them, the denial of a meaningful opportunity to see the

evidence against them, the denial of a meaningful opportunity to rebut that evidence and to present witnesses and evidence in their favor before a court, the denial of access to relevant exculpatory information, violates the Suspension Clause of, and the Due Process Clause of the Fifth Amendment to, the U.S. Constitution.

THIRD CLAIM

(Denial of a Fair and Meaningful Hearing Before an Independent and Impartial Administrative Tribunal, and Assistance of Counsel)

101. Again, the process due those detained pursuant to the AUMF must be informed by the requirements of IHL and IHRL. Even if no judicial proceeding is required, at a minimum, IHRL and IHL require that all individuals detained by the United State have a meaningful opportunity to challenge the legality and propriety of their detention before a fair, independent and impartial administrative board, with the assistance of counsel. Respondents' prolonged and indefinite detention of Samiullah Jalatzai and Sibghatullah Jalatzai, without notice of the allegations against them or the reasons for their detention, and the ability to challenge their detention before an independent and impartial administrative board, with the assistance of counsel, is inconsistent with IHL and IHRL.

102. Respondents' prolonged and indefinite detention of Samiullah Jalatzai and Sibghatullah Jalatzai, without access to counsel and without a meaningful or adequate administrative process, including, among other things, the inability to challenge their detention before an independent and impartial body, the denial of notice of the allegations against them, the denial of a meaningful opportunity to see the evidence against them, the denial of a meaningful opportunity to rebut that evidence and to present witnesses and evidence in their favor, the denial of access to relevant exculpatory information, and the inability to appeal any DRB determination to a court or other judicial or administrative body, violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

**PRAYER FOR RELIEF**

Petitioners therefore request that this Court:

- A. Order Respondents to make a prompt return to the writ in accordance with 28 U.S.C. § 2243 and, to the extent Respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations and confront the government's allegations.
- B. Order Respondents allow counsel to meet and confer with Samiullah Jalatzai and Sibghatullah Jalatzai in private and unmonitored attorney-client conversations, in-person or via videoconferencing.
- C. Order Respondents to cease all interrogations of Samiullah Jalatzai and Sibghatullah Jalatzai while this litigation is pending.
- D. Order Respondents to provide notice to the Court and to petitioners' counsel thirty days prior to any transfer of Samiullah Jalatzai and Sibghatullah Jalatzai, including but not limited to transfer to another U.S.-run facility or transfer to the custody of another nation, specifying the receiving country or authority.
- E. Declare that the prolonged and indefinite detention of Samiullah Jalatzai and Sibghatullah Jalatzai is unauthorized, arbitrary, and unlawful, and a deprivation of liberty without due process of law.
- F. Declare that the process employed to determine whether Samiullah Jalatzai and Sibghatullah Jalatzai can be detained indefinitely at Bagram is unlawful and unconstitutional.
- G. Declare that the standard applied to determine whether Samiullah Jalatzai and Sibghatullah Jalatzai can be detained indefinitely at Bagram is unlawful and unconstitutional.
- H. Order Petitioners Samiullah Jalatzai and Sibghatullah Jalatzai released from Respondents' unlawful custody.

I. Grant such other relief as the Court deems necessary and appropriate.

Respectfully submitted,

/s/ Arthur B. Spitzer

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February 26, 2010

# Exhibit A

**NEXT FRIEND AUTHORIZATION**

My name is Haji Habibullah (name of Next Friend), and I am a citizen of Afghanistan (country). I am the Father (example, brother, father, etc.) of Sami-ullah Jalatzai (Detainee Name), who is a citizen of Afghanistan (country), currently being detained incommunicado by United States forces at Bagram prison in Afghanistan.

I have had the American legal concept of "Next Friend" explained to me in my native language of Pashto (example Arabic, Pashto, etc.), and I know that Sami-ullah Jalatzai (detainee name) would want me to take legal action on his behalf to secure his release.

I hereby authorize U.S. human rights attorneys Tina Monshipour Foster and Barbara Olshansky of the International Justice Network, and any attorneys assigned by them, to file a case in U.S. courts seeking the release of prisoner Sami-ullah Jalatzai (name of detainee), and to take any other legal action in US or international venues that is necessary and appropriate to defend his Fundamental human rights.

DATE: 16-Apr-2008

Signature of Next Friend: 

Name of person taking authorization: \_\_\_\_\_

Signature of person taking authorization: \_\_\_\_\_

NEXT FRIEND AUTHORIZATION

My name is Haji Habibullah (name of Next Friend), and I am a citizen of Afghanistan (country). I am the Father (example, brother, father, etc.) of Sebghatullah Jalatzai (Detainee Name), who is a citizen of Afghanistan (country), currently being detained incommunicado by United States forces at Bagram prison in Afghanistan.

I have had the American legal concept of "Next Friend" explained to me in my native language of Pashto (example Arabic, Pashto, etc.), and I know that Sebghatullah Jalatzai (detainee name) would want me to take legal action on his behalf to secure his release.

I hereby authorize U.S. human rights attorneys Tina Monshipour Foster and Barbara Olshansky of the International Justice Network, and any attorneys assigned by them, to file a case in U.S. courts seeking the release of prisoner Sebghatullah Jalatzai (name of detainee), and to take any other legal action in US or international venues that is necessary and appropriate to defend his Fundamental human rights.

DATE: Unspecified

Signature of Next Friend: 

Name of person taking authorization: \_\_\_\_\_

Signature of person taking authorization: \_\_\_\_\_