

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

HAJI ABDUL WAHID,
 Detainee #3901, United States Air Base at
 Bagram, Afghanistan;

ZIA-UR-RAHMAN,
 Detainee #3887, United States Air Base at
 Bagram, Afghanistan;

HAJI NOOR SAEED,
 as the Next Friend of Haji Abdul Wahid and Zia-
 ur-Rahman,

 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. Haji Abdul Wahid and Zia-ur-Rahman 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. Haji Wahid, a 61-year-old Afghan government employee, and his nephew Zia-ur-Rahman, a 27-year-old food merchant, 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 more than one year after U.S. forces seized them from their homes. To this day, neither Mr. Wahid nor Mr. Rahman has been told why he is being detained. They have never been permitted to meet with a lawyer. They have never seen – let alone had the opportunity to rebut – 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 Mr. Wahid and Mr. Rahman 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 Mr. Wahid and Mr. Rahman 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, Haji Noor Saeed, Mr. Wahid’s cousin, submits this petition as Next Friend of Mr. Wahid and Mr. Rahman.

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. Saeed 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 Mr. Wahid and Mr. Rahman, 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 Haji Abdul Wahid, 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 Zia-ur-Rahman, 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 Noor Saeed is Haji Abdul Wahid's cousin and Zia-ur-Rahman's second cousin. Because Respondents are denying Mr. Wahid and Mr. Rahman access to counsel and the ability to challenge their detention, Haji Noor Saeed acts as their Next Friend. Attached hereto as Exhibit A is the Next Friend Authorization executed by Mr. Saeed.

13. Respondent Robert Gates is the United States Secretary of Defense. He maintains custody and control of Mr. Wahid and Mr. Rahman, 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 Mr. Wahid and Mr. Rahman 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 Mr. Wahid and Mr. Rahman'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 Mr. Wahid and Mr. Rahman 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 Maleqeh 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

Zia-ur-Rahman

57. Zia-ur-Rahman is an Afghan citizen who is approximately 22 years of age.

58. Mr. Rahman, along with many of his family members, lives in Jalalabad, Afghanistan, a city near the Afghan-Pakistani border.

59. Prior to his capture by U.S. forces, Mr. Rahman worked as a food merchant in Jalalabad.

60. On December 8, 2008, Mr. Rahman was at his home with his family celebrating Eid, the holy night which marks the end of Ramadan, the Islamic month of fasting.

61. That night, U.S. and Afghan forces conducted a sweep of Mr. Rahman’s neighborhood, searching approximately 100 homes, and arresting a number of Mr. Rahman’s neighbors.

62. Mr. Rahman’s home was among those searched by U.S. forces that night. Upon information and belief, U.S. forces did not seize any property from Mr. Rahman’s home.

63. U.S. forces, did, however, arrest Mr. Rahman and took him into their custody.

64. U.S. forces did not provide Mr. Rahman or his family with any explanation as to why Mr. Rahman was being seized or why his home had been searched.

65. For approximately two-and-a-half to three months after Mr. Rahman was taken from his home by U.S. forces, his family had no idea where he was or what had happened to him. His family tried to ascertain his whereabouts but was not successful.

66. Approximately two-and-a-half to three months after Mr. Rahman was taken from his home, his father received a letter from the ICRC informing him that that his son was in U.S. custody at Bagram.

67. Mr. Rahman remains in U.S. custody at Bagram. His publicly-available detainee number is 3887.

68. Upon information and belief, Mr. Rahman has never been told why he is being detained. Mr. Rahman's father and his brothers have traveled to Bagram to visit Mr. Rahman on multiple occasions; Mr. Rahman has told them that he does not know why he is being detained and has never received any explanation for his detention from the U.S. government.

69. Mr. Rahman has never been permitted to meet with a lawyer. Upon information and belief, Mr. Rahman has not been assigned a personal representative.

70. Mr. Rahman has not been permitted to challenge his detention before a court or judicial officer.

71. Upon information and belief, Mr. Rahman has never seen the evidence upon which the U.S. military relies to support his detention.

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

73. Upon information and belief, Mr. Rahman 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.

74. Upon information and belief, Mr. Rahman has never engaged in hostilities against the United States or coalition forces in Afghanistan or anywhere else in the world.

75. Upon information and belief, Mr. Rahman 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.

76. Upon information and belief, Mr. Rahman poses no threat to U.S. or coalition forces and his detention is not necessary to mitigate any threat.

Haji Abdul Wahid

77. Haji Abdul Wahid is an Afghan citizen who is approximately 61 years of age.

78. Mr. Wahid is Mr. Rahman's uncle.

79. Mr. Wahid, like his nephew, lives in Jalalabad, Afghanistan.

80. Prior to his capture by U.S. forces, Mr. Wahid was employed by the Afghan government, supervising the construction of a canal.

81. On December 8, 2008, U.S. and Afghan forces came to Mr. Wahid's home while he was celebrating Eid with his family and searched his home. This was the same night that U.S. and Afghan forces conducted a neighborhood sweep, searched over 100 homes, and arrested Mr. Wahid's nephew.

82. In the course of searching Mr. Wahid's home, U.S. forces seized a small briefcase that contained Mr. Wahid's important papers, such as his property deeds. Although Mr. Wahid's home was searched, U.S. forces did not arrest him that night.

83. U.S. forces did not provide Mr. Wahid or his family with any explanation as to why his home had been searched.

84. Approximately 12 days later, U.S. and Afghan forces once again arrived on his doorstep. These soldiers arrested Mr. Wahid. They did not provide Mr. Wahid or his son, who was at home at the time, with any explanation as to why Mr. Wahid had been seized.

85. For approximately two-and-a-half months after Mr. Wahid was taken from his home by U.S. forces, his family had no idea where he was or what had happened to him. His family tried to ascertain his whereabouts but was not successful.

86. Approximately two-and-a-half months after Mr. Wahid was taken from his home, his family received a letter from the ICRC informing him that that Mr. Wahid was in U.S. custody at Bagram.

87. Mr. Wahid remains in U.S. custody at Bagram. His publicly-available detainee number is 3901.

88. Upon information and belief, Mr. Wahid has never been told why he is being detained. Mr. Saeed, Mr. Wahid's cousin and Next Friend, has twice spoken to Mr. Wahid via video link since he was arrested. Mr. Wahid has told Mr. Saeed that he does not know why he is being detained and has never received any explanation for his detention from the U.S. government.

89. Mr. Wahid has severe back problems which require treatment with medication.

90. Upon information and belief, Mr. Wahid has not been permitted to see or speak with his nephew, Mr. Rahman, during their detention at Bagram.

91. Mr. Wahid has never been permitted to meet with a lawyer. Upon information and belief, Mr. Wahid has not been assigned a personal representative.

92. Mr. Wahid has not been permitted to challenge his detention before a court or judicial officer.

93. Upon information and belief, Mr. Wahid has never seen the evidence upon which the U.S. government relies to support his detention.

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

95. Upon information and belief, Mr. Wahid 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.

96. Upon information and belief, Mr. Wahid has never engaged in hostilities against the United States or coalition forces in Afghanistan or anywhere else in the world.

97. Upon information and belief, Mr. Wahid 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.

98. Upon information and belief, Mr. Wahid 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)

99. 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.

100. Respondents' detention of Mr. Wahid and Mr. Rahman exceeds any detention authority granted the Executive branch under the AUMF because Mr. Wahid and Mr. Rahman 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.

101. Respondents' detention of Mr. Wahid and Mr. Rahman 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.

102. Neither the United States Constitution nor any other U.S. law authorizes or allows the detention of Mr. Wahid and Mr. Rahman.

SECOND CLAIM

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

103. 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 Mr. Wahid and Mr. Rahman, 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.

104. Respondents' prolonged and indefinite detention of Mr. Wahid and Mr. Rahman, 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)

105. 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 Mr. Wahid and Mr. Rahman, 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.

106. Respondents' prolonged and indefinite detention of Mr. Wahid and Mr. Rahman, 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 Mr. Wahid and Mr. Rahman in private and unmonitored attorney-client conversations, in-person or via videoconferencing.

C. Order Respondents to cease all interrogations of Mr. Wahid and Mr. Rahman 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 Mr. Wahid and Mr. Rahman, 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 Mr. Wahid and Mr. Rahman is unauthorized, arbitrary, and unlawful, and a deprivation of liberty without due process of law.

F. Declare that the process employed to determine whether Mr. Wahid and Mr. Rahman can be detained indefinitely at Bagram is unlawful and unconstitutional.

G. Declare that the standard applied to determine whether Mr. Wahid and Mr. Rahman can be detained indefinitely at Bagram is unlawful and unconstitutional.

H. Order Petitioners Mr. Wahid and Mr. Rahman released from Respondents' unlawful custody.

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

Respectfully submitted,

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar No. 235960)
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February 26, 2010

Exhibit A

NEXT FRIEND AUTHORIZATION

My name is Haji Noor Saeed (name of Next Friend), and I am a citizen of Afghanistan (country). I am the Cousin (example, brother, father, etc.) of Haji Abdul Wahid (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 Haji Abdul Wahid (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 Haji Abdul Wahid (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: 18-Dec-2008

Signature of Next Friend: 

Name of person taking authorization: _____

Signature of person taking authorization: _____

NEXT FRIEND AUTHORIZATION

My name is Haji Noor Saeed (name of Next Friend), and I am a citizen of Afghanistan (country). I am the Cousin's Grand Son (example, brother, father, etc.) of Zia-ur-Rahman (Detainee Name), who is a citizen of Afghanistan, 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 Zia-ur-Rahman (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 Zia-ur-Rahman (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: 06-Dec-2008

Signature of Next Friend: 

Name of person taking authorization: _____

Signature of person taking authorization: _____