

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

INTRODUCTORY STATEMENT

1. This case involves the detention of an American citizen at the behest of the United States government. The FBI intensively surveilled and interrogated Naji Hamdan, an American citizen, over a two year period, during most of which he lived in the United Arab Emirates. The culmination of this surveillance occurred in August 2008, when two FBI agents flew from Los Angeles to the United Arab Emirates to interrogate him at the U.S. Embassy there. Approximately three weeks later, the Emirati State Security forces arrested him at his house. He has been detained ever since – for eighty days – largely incommunicado and without access to any legal process at an undisclosed location in that nation.
2. Mr. Hamdan’s family and others acting on his behalf have gone to extraordinary lengths to learn the reason for his detention and the nature of the U.S. government’s involvement in it, but their attempts have met with little success. Most telling, the U.S. government has never denied that it is responsible for Mr. Hamdan’s detention, despite repeated queries to various government officials.

3. In response to this horrifying turn of events, Petitioners Mona Mallouk (“Ms. Mallouk”) and Hossam Hemdan (“Hossam” or “Mr. Hemdan”) seek a Writ of Habeas Corpus on behalf and as next friends of Naji Hamdan (“Naji” or “Mr. Hamdan”). Ms. Mallouk is Mr. Hamdan’s wife; Mr. Hemdan is his brother.
4. The most elemental legal principles by which we govern ourselves cannot countenance the lawless detention of a United States citizen at the behest of his own government. Our Constitution, consistent with bedrock rules of international law, does not permit our government to effect the arrest of its citizens without cause and imprison them indefinitely without legal process. Yet that is precisely what has happened here. Mr. Hamdan is now imprisoned by the authority of the United States, but without any of the protections that the Constitution requires for U.S. citizens detained at the behest of their government. For nearly three months he has been imprisoned without cause that he has committed any crime, without presentment before any judicial officer, without charge of any kind, without access to counsel, and without any explanation as to when or how his detention will end. Apart from one short monitored phone call to his wife and one monitored visit from an American consular official, he has had no contact with the outside world for eighty days.
5. That the nominal detaining authority here is the government of the United Arab

Emirates does not alter these basic rules. Our government cannot evade its obligations under the Constitution by enlisting other governments to act as its proxies, thereby rendering the Constitution's protections obsolete. If, as Petitioners allege, the United States government has caused Mr. Hamdan's detention, then the Constitution's protections, including the protection of the Great Writ, must apply.

6. Therefore, Petitioners now respectfully request that this Court order Respondents – the federal officials who caused Mr. Hamdan's detention and those responsible for supervising those officials – to refrain from requesting or otherwise causing Mr. Naji Hamdan's continued detention and interrogation, and, instead, to request his release.

JURISDICTION AND VENUE

7. Petitioners allege that Mr. Hamdan is detained under or by color of the authority of the United States, and that his detention violates 18 U.S.C. § 4001(a) (“the Non-Detention Act”), the Fourth Amendment, the Fifth Amendment, customary international law and the International Covenant on Civil and Political Rights (ICCPR) and, possibly, the Convention Against Torture (CAT). This Court has jurisdiction to entertain such claims under the

general federal habeas statute codified at 28 U.S.C. § 2241. Section 2241(c)(1) establishes jurisdiction for prisoners held in custody under or by color of the authority of the United States, and Section 2241(c)(3) establishes jurisdiction for prisoners held in custody who allege violations of federal statutory or constitutional law. Here, this Court has jurisdiction under either jurisdictional requirement. *Cf. Rasul v. Bush*, 542 U.S. 466, 483-84 (2004) (“Petitioners contend that they are being held in federal custody in violation of the laws of the United States. . . . Section 2241, by its terms, requires nothing more.”).

8. This Court also has federal question jurisdiction over all the claims presented here under 28 U.S.C. § 1331, and jurisdiction at least with respect to the Non-Detention Act claim under 28 U.S.C. § 1343(a)(4). The Court also has additional authority to grant all appropriate relief in this case under the mandamus statute, 28 U.S.C. § 1361, the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. To the extent that the federal officials responsible for Mr. Hamdan’s detention work for an administrative agency such as the FBI, this Court also has authority to grant relief under the Administrative Procedures Act, 5 U.S.C. § 702.
9. Were none of the above-mentioned statutes to confer jurisdiction, several provisions of the Constitution itself would require that Petitioner have some

federal judicial forum in which to raise his claims. Those provisions include the Suspension Clause (Article I § 9, cl. 2), the separation of powers principles established in Article III, the Petition Clause of the First Amendment, and the Due Process Clause of the Fifth Amendment. *See generally Boumediene v. Bush*, 128 S. Ct. 2229, 2259 (2008) (holding that the government could not avoid Suspension Clause constraints by detaining petitioner outside United States territory at Guantanamo Bay because “the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers. The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain.”). *See also Hamdi v. Rumsfeld*, 542 U.S. 507, 536-37 (2004) (plurality opinion of O’Connor, J.) (holding that even an alleged enemy combatant captured abroad must be afforded judicial process to contest the validity of his detention because “it would turn our system of checks and balances on its head to suggest that a citizen could not make his way to court with a challenge to the factual basis for his detention by his government, simply because the Executive opposes making available such a challenge. Absent suspension of the writ by Congress, a citizen detained as an enemy combatant is entitled to this process.”).

10. Petitioners Mallouk and Hemdan have power to act as “next friends” of Naji

Hamdan pursuant to 28 U.S.C. § 2242. Naji Hamdan cannot file or even authorize this petition because his captors have refused to let his family and his attorneys speak with him. *See* Exh. 1 (Declaration of Jennie Pasquarella) (documenting attempts to communicate with Mr. Hamdan through both the U.S. government and the U.A.E. government); Exh. 1 Sub-Exh. F (ACLU letter to the Ambassador of the United Arab Emirates); Exh. 1 Sub-Exh. A (Mona Mallouk's letter to the government of the United Arab Emirates); Exh. 2 at ¶ 54-70 (Declaration of Mona Mallouk) (documenting her attempts to communicate with her husband); Exh. 3 at ¶ 37-44 (Declaration of Hossam Hemdan) (documenting his attempts to communicate with his brother).

11. Because Mr. Hamdan is held incommunicado, Petitioners' special relationship with him entitles them to act on his behalf. Petitioner Mallouk is his wife and the mother of his children, *see* Exh. 2 at ¶ 3-4, and Petitioner Hemdan is his brother and closest relative in the United States, *see* Exh. 3 at ¶ 6. *See generally* *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990) (describing prerequisites for next friend standing).
12. The fact that Mr. Hamdan's physical custodian may be an employee of the government of the United Arab Emirates does not deprive this Court of jurisdiction over this petition, for several reasons. First, the text of the statute

itself – Section 2241(c)(3) – requires only that the petitioner be in custody and that he allege a violation of U.S. law, it does not require custody by the United States. Federal courts routinely exercise jurisdiction under the statute where the petitioner is not in federal custody, most obviously when the petitioner is in state custody. Similarly, the Supreme Court has held that a prisoner detained at the behest of U.S. officials may test the validity of his detention by habeas corpus even if the detaining agent himself is not a government official. *See United States v. Jung Ah Lung*, 124 U.S. 621, 622, 626 (1888) (holding that the petitioner was “in custody” for habeas purposes where he was detained “by the master of a steamship” who “held him in custody by direction of the customs authorities” of the United States).

13. Second, our government cannot simply “contract away” the Constitution’s constraints by directing another government to act as its agent to detain a U.S. citizen. *Cf. Boumediene*, 128 S.Ct. at 2258 (noting problem arising if government could “contract[] away” the Suspension Clause, and holding that “the political branches [do not] have the power to switch the Constitution on or off at will”).
14. Third, a number of courts have held in the Fourth and Fifth Amendment contexts that actions against criminal defendants by foreign government

officials must be subject to constitutional constraints where, *inter alia*, U.S. officials are acting in a “joint venture” with the foreign agents, or where the foreign officials’ involvement is designed to circumvent constitutional constraints. *See, e.g., United States v. Maturo*, 982 F.2d 57, 61 (2d Cir. 1992); *United States v. Karake*, 443 F. Supp. 2d 8, 52 n.74, 93 n.114 (D.D.C. 2006). As this Court has already held, analogous principles serve to establish habeas jurisdiction where the U.S. government has caused the detention of one of its own citizens. *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 41 (D.D.C. 2004) (holding that “the United States may not avoid the habeas jurisdiction of the federal courts by enlisting a foreign ally as an intermediary to detain the citizen.”).

15. Venue is proper in this district because one or more of the Respondents reside within the jurisdiction of this Court and are accordingly amenable to service of process in this district. *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 499-500 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.9 (2004) (noting that a longstanding exception to the immediate custodian rule authorizes venue in the District Court of the District of Columbia for people detained abroad). Venue is also proper because at least one of the Respondents resides in this district and because a substantial part of the events giving rise

to the claim occurred in this district. 28 U.S.C. § 1391(e).

PARTIES

16. Petitioner Mona Mallouk is a United States citizen and the wife of Naji Hamdan. Because Mr. Naji Hamdan has been denied access to any legal process, Ms. Mallouk acts as his next friend. She has repeatedly sought to contact her husband, but has only been permitted one extremely brief phone call, which occurred shortly after his detention. *See* Exh. 2 at ¶¶ 60-70. She has also repeatedly sought to learn information concerning her husband's detention, including the reason for it, but neither the federal government nor anyone else has provided her an explanation as to why he is detained. *Id.*
17. Petitioner Hossam Hemdan is a United States citizen and the brother of Naji Hamdan. He is a resident of Los Angeles, California. Because Mr. Naji Hamdan has been denied access to any legal process, Mr. Hemdan acts as his next friend. Mr. Hemdan has repeatedly sought to contact his brother and to learn information concerning his detention, including the reason for it. However, the American authorities have largely ignored his requests, and have refused to provide to Mr. Hemdan the reasons for his brother's continued

detention. *See* Exh. 3 at ¶¶ 37-42.¹

18. Respondent George W. Bush (“President Bush”) is the President of the United States and Commander-in-Chief of the United States Military. Mr. Naji Hamdan is being detained pursuant to President Bush’s ultimate authority to enforce all federal law and to conduct foreign relations. He has authority to rescind the request directing Mr. Hamdan’s detention. Accordingly, President Bush is responsible for Mr. Hamdan’s unlawful detention. He is sued in his official capacity.
19. Respondent Michael Mukasey is the Attorney General of the United States. Respondent Mukasey has been charged with enforcing the laws of the United States. Upon information and belief, he too has authority to rescind the request directing Mr. Hamdan’s detention. Accordingly, Attorney General Mukasey is responsible for Mr. Hamdan’s unlawful detention. He is sued in his official capacity.
20. Respondent Robert Mueller is the Director of the Federal Bureau of Investigations (FBI). As the federal official ultimately responsible for the conduct of the FBI’s field officers, he was responsible for the FBI’s

¹The different spellings of the two brothers’ names is the result of transliteration between Arabic and English – they share the same last name notwithstanding the spelling difference.

investigation of Mr. Naji Hamdan. Upon information and belief, he too has authority to rescind the request directing Mr. Hamdan's detention. Accordingly, Director Mueller is responsible for Mr. Hamdan's unlawful detention. He is sued in his official capacity.

21. Respondent Doe I is an employee of the United States federal government. He or she is the person who requested that the authorities of the United Arab Emirates detain Mr. Naji Hamdan on behalf of the United States government or otherwise caused the U.A.E. to detain him. He or she is sued in his or her official capacity.
22. Respondent Doe II is an employee of the United States federal government. He or she is the highest-ranking federal official who authorized and approved Mr. Hamdan's detention. He or she is sued in his or her official capacity.

STATEMENT OF FACTS

Biographical Information

23. Naji Hamdan was born in Lebanon on May 26, 1966. He grew up in Lebanon, and moved to the United States in the early 1980s. He has five siblings, including Hossam Hemdan. *See* Exh. 2 at ¶ 3-5; Exh. 3 at ¶ 5.
24. After living here for several years, Mr. Hamdan became a United States citizen.

See Exh. 1, Sub-Exh. B (Ambassador's letter acknowledging his citizenship).²

He subsequently married Mona Mallouk. The couple have three children – Khaled, 16, Hamza, 8, and Noor, 2. Ms. Mallouk and the children are also U.S. citizens. *See* Exh. 2 at ¶ 2-4.

25. Mr. Hamdan studied in the United States. He then started and ran a highly-successful auto parts business. *See* Exh. 2 at ¶ 10-14; Exh. 3 at ¶ 9. He also was active in the Islamic Center of Hawthorne, a mosque community in Los Angeles, California. *See* Exh. 4 at ¶ 6 (Declaration of Jehad Suleiman); Exh. 5 at ¶ 9-11 (Declaration of Ahmed Azam).

FBI Surveillance and Interrogation

26. Starting in 1999, the FBI began to target Mr. Hamdan. They approached him for interrogation at his house on the morning of December 30, 1999, at which time they asked him, among other things, if he knew Osama bin Laden. Exh. 7 (Teresa Watanabe & Eric Lichtblau, *FBI Accused of Terror Overreaction*, L.A. TIMES, Jan. 10, 2000, at B-1, *available at* <http://articles.latimes.com/2000/jan/10/local/me-52684>). The FBI approached

²Mr. Hamdan's passport and citizenship papers are in the possession of either the United States government or the United Arab Emirates government.

him again shortly after September 11, 2001. Exh. 3 at ¶ 21; Exh. 5 at ¶ 13. In the next few years, they returned to interrogate him on several occasions. Exh. 2 at ¶ 17-18; Exh. 4 at ¶ 11-12.

27. Mr. Hamdan and his wife decided to move to the Middle East in 2006, primarily because they preferred to raise the children there. After that time, the FBI greatly increased the intensity of its surveillance and targetting of Mr. Hamdan.
28. In August 2006, at the time of Mr. Hamdan's departure for the Emirates, federal officials intercepted the family at the airport and interrogated them for several hours prior to their departure. As a result, they missed their flight and had to leave the next day. Exh. 2 at ¶ 22-24; Exh. 3 at ¶ 23; Exh. 4 at ¶ 15.
29. When he arrived in the U.A.E., Mr. Hamdan opened an auto business and helped to establish his family there. After several months, however, his family found it difficult to remain in the U.A.E., primarily because of the weather. So Mona and the children moved to Lebanon, which allowed them to be nearer to the couples' extended families, and Naji began to fly back and forth between his business in the U.A.E. and Lebanon. Exh. 2 at ¶ 26.
30. Several months later, Mr. Hamdan returned to the United States for a brief visit. During that visit, he was subject to constant and intensive FBI

surveillance. He again endured extensive questioning upon arrival at the airport. Agents also followed him throughout his trip, and also followed at least some of those with whom he met. *See* Exh. 3 at ¶ 26-29; Exh. 4 at ¶ 17-19; Exh. 5 at ¶ 14-17.

31. Upon his return to the Middle East after this trip, Mr. Hamdan's problems became more severe. Happily, his wife Mona gave birth to their daughter, Noor, in Lebanon in August 2007. However, when he submitted his passport to the U.S. Embassy in Lebanon in order to obtain proof of her citizenship, the Embassy inexplicably failed to return his passport for approximately two weeks. Exh. 2 at ¶ 30.
32. Several months after this, on a return trip from Lebanon to the U.A.E., Lebanese intelligence officers detained Mr. Hamdan for no apparent reason. They interrogated him for several days in Beirut, during which time they hit him and even detained his teenage son for questioning about him. *See* Exh. 2 at ¶ 31-43; Exh. 6 (Declaration of Khaled Hamdan). When he went with his wife to the U.S. embassy shortly after his release, embassy officials interrogated him still further. *See* Exh. 2 at ¶ 44-45.
33. At around the same time, the U.S. government began to question Mr. Hamdan's associates about him. Mr. Hamdan's brother Hossam was

repeatedly questioned about his brother when he traveled to and from the United States. FBI agents also specifically sought Hossam out at his business, where they interrogated him concerning Naji shortly after Naji's release from detention in Lebanon. Exh. 3 at ¶ 32-33. The FBI also sought out and interrogated Mr. Hamdan's friend and business associate Jehad Suleiman at the same time. Exh. 4 at ¶ 20.

34. A friend of Hossam's later learned from a friend of his who was a general in the Lebanese Military Intelligence Services that a foreign power was responsible for Mr. Hamdan's detention there. That official spoke on condition of anonymity and declined to reveal his identity or to name the particular foreign power because he feared for his own safety for speaking out about Mr. Hamdan's detention. Exh. 3 at ¶ 43.
35. Shortly after Mr. Hamdan's detention in Lebanon, in July 2008, Mr. Hamdan's family moved back to be with him in the U.A.E. Around the beginning of August – the following month – the FBI contacted Mr. Hamdan's brother Hossam again. The FBI official told Hossam that FBI agents wanted to interrogate Mr. Hamdan at the U.S. Embassy in Abu Dhabi. Exh. 3 at ¶ 34. Hossam contacted Naji, who agreed to meet with the agents. Two agents, Joshua Stone and Jerry Price, both of whom work for the FBI in Los Angeles,

then flew from Los Angeles to the U.A.E. to interrogate him. They met Mr. Hamdan there and interrogated him for several hours. Exh. 2 at ¶ 50; Exh. 3 at ¶ 35.

Detention in the U.A.E.

36. Approximately three weeks later, on August 29, 2008, the State Security forces of the United Arab Emirates (the “Amn al-Dawla”) arrested Mr. Hamdan at his house, in the presence of his family, for no apparent reason. He has remained detained without charge ever since. Exh. 1 at Sub-Exh. B (Ambassador’s letter to Mona Hamdan); Exh. 2 at ¶ 51-52; Exh. 3 at ¶ 36-45.
37. Approximately one week later, Ms. Mallouk received a brief call from Naji. In the call, which she sensed was monitored, he told her to go to Lebanon with their children and not to come back to the U.A.E. That conversation, now over two months ago, was the last time she spoke with her husband. Exh. 2 at ¶ 60, ¶ 70.

Post-Detention Attempts to Obtain Information

38. Since Mr. Hamdan’s detention, all attempts to learn of the reasons for the detention, the nature of the U.S. government’s involvement, and what if

anything the U.S. government is doing in response to it have met with remarkably little success.

39. Ms. Mallouk called the U.S. Embassy the day after he was detained seeking information about her husband, but the officials who responded claimed not to know of his detention. She called repeatedly over the next few days, and eventually spoke to Saeed Mootar, another Embassy employee. He told her that the Embassy had known of her husband's detention from the day it occurred. Exh. 2 at ¶ 54, 58. Similarly, in written responses to queries made on Mr. Hamdan's behalf, both Richard G. Olson, Jr., the American Ambassador to the United Arab Emirates, and R. Sean Cooper, Consul, stated that the United States Embassy learned of his detention on the date it occurred: August 29, 2008. Exh. 1 at Sub-Exh. B (Ambassador's letter to Mona Hamdan).
40. Nearly two months after Naji's detention, an American consular official finally visited him. Exh. 1 at Sub-Exh. B. That official, R. Sean Cooper, then spoke to Naji's family and his attorneys about the visit. Mr. Cooper related that Naji had told him that he was being questioned by his captors every day. Exh. 1 at ¶ 10.
41. In response to a question from an attorney concerning whether or not the U.S.

government had caused Mr. Hamdan's detention, Mr. Cooper stated that he would not know if the U.S. government were responsible for the detention because such information would be "above his pay grade." Mr. Cooper implicitly acknowledged the fact that the U.S. had caused such detentions in the past, but added that he was unaware of any U.S. involvement. Exh. 1 at ¶ 11. Mr. Cooper claimed to have no information as to why Mr. Hamdan was detained and what procedures, if any, were available to obtain his release. Id. at ¶ 7.

42. In a desperate attempt to find more information, Mr. Hamdan's aging father planned a trip to the U.A.E. He died, apparently of a heart attack, shortly before the trip. His family believed that the stress of his son's detention caused his death. Exh. 2 at ¶ 69.
43. In a similarly desperate attempt to find more information, Hossam Hemdan contacted a friend of his who has a connection to the ruling family of the U.A.E. The friend, who wished to remain anonymous out of fear for his own safety, contacted someone in the U.A.E., who also wished to remain anonymous. That person made inquiries and confirmed that Naji Hamdan had been detained at the behest of a foreign government, and that the U.A.E. itself had no independent desire to detain him. Exh. 3 at ¶ 44.

44. Responding to queries from a reporter, a spokesman for the FBI's Los Angeles Office named Alonzo Hill described Mr. Hamdan's case as "a counter-terrorism case," but declined to comment further. Another FBI spokesman responding to the reporter's query asserted that the FBI does not ask foreign nations to detain U.S. citizens in order to circumvent their rights. *See* Exh. 19 (Jonathan S. Landay, *FBI Questions American Held Without Charges in Gulf State*, MCCLATCHY WASHINGTON BUREAU, Nov. 17, 2008, *available at* <http://www.mcclatchydc.com/homepage/story/56051.html>.) However, as shown below, the U.S. government has repeatedly asked foreign governments to detain people on its behalf as part of its counter-terrorism activities.

Proxy Detention Practices by the U.S. and U.A.E.

45. Mr. Hamdan's case would not present the first instance in which the U.S. government has relied on another country to detain someone who could not be detained under American law. On the contrary, "[m]edia, foreign governments, human rights organizations, and inter-governmental entities, have reported on the use of proxy detention, or detention by foreign

authorities at the behest of the United States.” Exh. 8 at 17 (CTR. FOR HUMAN RIGHTS AND GLOBAL JUSTICE, ON THE RECORD: U.S. DISCLOSURES ON RENDITION, SECRET DETENTION, AND COERCIVE INTERROGATION (2008).) (describing several cases of proxy detention as part of broader report on rendition practices). *See also* Exh. 9 at 1-2, 9-10 (HUMAN RIGHTS WATCH, GHOST PRISONER: TWO YEARS IN SECRET CIA DETENTION (Feb. 2007)) (describing account of prisoner subject to proxy detention in Pakistan, where Pakistani authorities detained him at the behest of the United States);³ Exh. 10 at 1 [(Michelle Shephard, *U.S. Put Bounty on Abdullah Khadr, Court Records Show*, THESTAR.COM, May 12, 2008, available at <http://www.thestar.com/comment/columnists/article/424585>.) (describing how U.S. officials paid the Pakistani government to detain a Canadian man, whom the FBI then interrogated in Pakistan). In these cases, the U.S. government has worked with other governments that served as proxies to detain people whom the U.S. government seeks to interrogate (either directly or through proxy interrogators), but who apparently cannot

³Because the report is lengthy, only the relevant pages are appended. The entire report is available online at <http://www.hrw.org/en/reports/2007/02/26/ghost-prisoner>. Counsel will file the complete report if the Court so directs.

lawfully be held under U.S. law.

46. Even U.S. citizens have been subject to such proxy detention. *See* Exh. 11 (Jonathan S. Landay & Shashank Bengali, *CIA Didn't Try to Stop Secret Deportation of U.S. Citizen, Officials Say*, MCCLATCHY WASHINGTON BUREAU, Mar. 19, 2007, *available at* http://www.mcclatchydc.com/staff/shashank_bengali/story/15813.html;
Shashank Bengali & Jonathan S. Landay, *American's Rendition May Have Broken International, U.S. Laws*, MCCLATCHY WASHINGTON BUREAU, Mar. 21, 2007, *available at* http://www.mcclatchydc.com/staff/shashank_bengali/story/15827.html;
Jonathan S. Landay, *Imprisoned American Denies Being Al-Qaida Operative*, MCCLATCHY WASHINGTON BUREAU, Mar. 24, 2007, *available at* <http://www.mcclatchydc.com/homepage/story/23032.html>;
Jonathan S. Landay, *Ethiopia Frees an American Detained Fleeing Somalia*, MCCLATCHY WASHINGTON BUREAU, May 26, 2007, *available at* http://www.mcclatchydc.com/staff/jonathan_landay/story/16490.html;
Dafna Linzer, *U.S. Presses for Release of American Held in Ethiopia*, WASHINGTONPOST.COM, Mar. 23, 2007, at A14, *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/22/AR200>

7032202128.html.) (several articles describing account of two U.S. citizens in Kenya and Ethiopia who were interrogated by the FBI while in foreign detention, apparently at behest of U.S. government). One of those U.S. citizens, Amir Meshal, was ultimately permitted to return to the United States and was not charged with any crime, even though FBI officials had accused him of being associated with al-Qaeda. *See id.* at 1.

47. The U.A.E. in particular has cooperated with the U.S. government in its proxy detention program on at least a few occasions in the past. Each of these proxy detentions was similarly carried out by the U.A.E. State Security forces (“Amn al-Dawla”). A report written by the New York University Center for Human Rights and Global Justice, Amnesty International, and other human rights organizations stated that U.A.E. officials detained a Pakistani man because the U.S. wanted to interrogate him in 2004. *See* Exh. 12 at 18 (AMNESTY INT’L ET AL., OFF THE RECORD: U.S. RESPONSIBILITY FOR ENFORCED DISAPPEARANCES IN THE “WAR ON TERROR”). The U.A.E. government publicly acknowledged assisting in the arrest of another man whom the U.S. government wanted to interrogate because they believed he was an al Qaeda operative. *See* Exh. 13 at 4 (Kenneth Katzman, CRS REPORT FOR CONGRESS, *The United Arab*

Emirates (UAE): Issues for U.S. Policy, May 9, 2005, available at <http://www.libertyparkusafd.org/lp/Hale/Special%20Reports%5COutsourcing%20US%20Ports%5CUAE%20and%20Military%20Purchases%20from%20USA.pdf>). The State Department has stated that the U.A.E. has engaged in such arrests on behalf of the U.S. as well. *See* Exh. 14 at 3-4 (Kenneth Katzman, CRS REPORT FOR CONGRESS, *The United Arab Emirates (UAE): Issues for U.S. Policy*, July 31, 2008, available at <http://fas.org/sgp//crs/mideast/RS21852.pdf>).⁴

48. At least some of the men subject to proxy detention in the U.A.E. faced torture while in detention. This is unsurprising, as torture by the U.A.E. State Security forces is a regular, if not widespread, occurrence. *See* Exh. 17 at 3 (“Amnesty International raises with the authorities around three to five times per year

⁴The U.A.E. also appears to have been willing to serve as a proxy detaining authority for the British government, and to have tortured a detainee at the behest of the U.K. during that incident. *See* Exh. 15 at 46-47 (CAGEPRISONERS, FABRICATING TERRORISM: BRITISH COMPLICITY IN RENDITIONS AND TORTURE 1-2, 46-7 (Mar. 2006).); *see also* Exh. 16 at 1 [*Britain 'Ordered Torture of 9/11 Suspect'*, GUARDIAN.CO.UK, available at <http://www.guardian.co.uk/world/2006/jan/24/terrorism.september11/print>]. Because the complete “Fabricating Terrorism” report is lengthy, counsel undersigned have appended only the relevant pages. The full report is available online at http://www.cageprisoners.com/downloads/FabricatingTerrorism_Report.pdf. Counsel will file the whole report if the Court so directs.

reports of persons – both Emirati and foreign – arbitrarily arrested and held incommunicado for prolonged periods of time, commonly in undisclosed locations where they face torture and other ill treatment. Those responsible are usually said to be members of *Amn al-Dawla* (State Security).” (AMNESTY INT’L, UNITED ARAB EMIRATES: AMNESTY INTERNATIONAL SUBMISSION TO THE U.N. UNIVERSAL PERIODIC REVIEW (Dec. 2008).); Exh. 18 at ¶ 1 (AMNESTY INT’L, UAE - AMNESTY INTERNATIONAL REPORT 2008: HUMAN RIGHTS IN UNITED ARAB EMIRATES (2008).).

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Unlawful Detention under the Non-Detention Act

49. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
50. The Non-Detention Act forbids the detention of United States citizens absent legal authorization from Congress. *See* 18 U.S.C. § 4001(a) (“No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.”).
51. Mr. Najji Hamdan’s detention is “by the United States” insofar as U.S. officials

caused the government of the U.A.E. to detain him. No Act of Congress authorizes the detention of a United States citizen for eighty days without any charge or other process. Therefore, his detention violates the Act.

SECOND CLAIM FOR RELIEF
Unlawful Detention Under the Fourth Amendment

52. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
53. The Fourth Amendment protects United States citizens subject to action by the United States government while abroad. *See Best v. United States*, 184 F.2d 131, 138 (1st Cir. 1950) ("For present purposes we assume, and we think it is probably so, that the protection of the Fourth Amendment extends to United States citizens in foreign countries under occupation by our armed forces"). The federal government has conceded in prior litigation that the Fourth Amendment protects United States citizens on foreign soil. *See United States v. Bin Laden*, 126 F. Supp. 2d 264, 270 (S.D.N.Y. 2000) ("The Government seems to concede the general applicability of the Fourth Amendment to American citizens abroad"). The government's conduct here violates the

Fourth Amendment in two ways.

54. First, the Fourth Amendment forbids the government from arresting United States citizens abroad absent some cause, if not probable cause. *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) (probable cause is in general the minimum requirement for reasonable seizures in the domestic context). Here, Mr. Hamdan was arrested even though there is no probable cause, or indeed any cause, that he has committed a crime. Thus, whatever the precise quantum of proof required to justify the detention of a U.S. citizen abroad, that level of proof does not exist here.
55. Second, the Fourth Amendment requires the government to “present” the arrested individual to a neutral judicial officer for an independent determination that the arrest is justified. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (requiring “presentment” within forty-eight hours of arrest in domestic context). This Court has strongly suggested that the presentment requirement applies to U.S. citizens detained by the U.S. military in war zones, and has suggested that forty-eight days was too long to wait for such a presentment hearing. *Kar v. Rumsfeld*, 2008 U.S. Dist. LEXIS 73974, *11 (No. 07-cv-984 (JR)) (D.D.C. Sept. 26, 2008). Here, Mr. Hamdan has been imprisoned for eighty days without any kind of hearing.

THIRD CLAIM FOR RELIEF
Unlawful Detention Under the Due Process Clause of the Fifth Amendment

56. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
57. The Due Process Clause protects United States citizens detained at the behest of the United States government, even if the detention occurs abroad. *Reid v. Covert*, 354 U.S. 1, 5-6 (1957) (holding that Due Process Clause protects citizens abroad) (plurality opinion); *United States v. Toscanino*, 500 F.2d 267, 280 (2d Cir. 1974) ("That the Bill of Rights has extraterritorial application to the conduct abroad of federal agents directed against United States citizens is well settled."). The government's detention of Mr. Hamdan constitutes a denial of Due Process in at least three ways – because his detention is arbitrary, because he has been subject to coercive interrogation, and because he has been denied access to counsel.
58. Mr. Hamdan has been denied one of the most fundamental rights guaranteed by the Due Process Clause -- freedom from arbitrary detention. *See, e.g., Hamdi v. Rumsfeld*, 542 U.S. 507, 124 S.Ct 2633, 2646 (2004) (plurality opinion of O'Connor, J.) ("[Hamdi's claim] is the most elemental of liberty

interests -- the interest in being free from physical detention.”).

59. The United States government’s proxy detention of Mr. Hamdan is arbitrary both because Mr. Hamdan has not been afforded *any* legal process with respect to his detention and because it has no discernible temporal limit. The Constitution forbids the government from detaining a U.S. citizen without some process for determining the justification for the detention. *See, e.g., Hamdi*, 124 S.Ct at 2648 (holding, even for enemy combatant, that “a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decisionmaker.”) (plurality opinion). Here, the government has not offered any formal justification for Mr. Hamdan’s detention, nor explained how long it will last; he has not been declared to be dangerous to anyone or an enemy of this country or its security in any way. He has received no notice of charges, no hearing, nor any other process of any kind. Indeed, apart from one extremely short phone call to his wife over two months ago and one visit from an American consular official in the presence of his captors, he has had no contact with the outside world. This complete absence of any process violates the Due Process Clause.; completely unjustified detention is paradigmatically arbitrary.

60. Mr. Hamdan’s detention also violates the Due Process Clause because he has been subject to unusually coercive interrogation. *See, e.g., Darwin v. Connecticut*, 391 U.S. 346 (1968) (holding that officials violated Due Process Clause by interrogating suspect for 48 hours while keeping him incommunicado and denying him access to counsel). Here, upon information and belief, Mr. Hamdan has been interrogated nearly every day for eighty days while being held incommunicado without access to counsel. *See* Exh. 1 at ¶10. The interrogation independently violates the Due Process Clause.
61. Finally, Mr. Hamdan’s detention also violates the Due Process Clause because he has been denied access to counsel. *See Hamdi*, 124 S.Ct. at 2652 (holding that Hamdi “unquestionably has the right to access to counsel in connection with the proceedings” concerning the validity of his detention).⁵

FOURTH CLAIM FOR RELIEF
Prolonged Arbitrary Detention in
Violation of Customary International Law and

⁵Independent of the requirements established by the Fourth and Fifth Amendments, the Suspension Clause itself may also create substantive constraints on the government’s power to engage in detention absent some kind of legal process for review of that detention. *See Boumediene v. Bush*, 128 S. Ct. 2229, 2270 (2008) (“Even if we were to assume that the CSRTs satisfy due process standards, it would not end our inquiry. . . . Even when the procedures authorizing detention are structurally sound, the Suspension Clause remains applicable and the writ relevant.”).

the International Covenant on Civil and Political Rights

62. Petitioners reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
63. Customary international law prohibits prolonged arbitrary detention. Respondents have breached and continue to breach their obligations under customary international law, accepted by and binding on the United States, by causing the seizure and indefinite imprisonment of Mr. Hamdan, a U.S. citizen, without charge or any other judicial process. Respondents have violated and continue to violate Mr. Hamdan's right to be free from prolonged arbitrary detention under customary international law.
64. Prolonged arbitrary detention is one of only seven universally condemned wrongs that the Restatement (Third) of Foreign Relations describes as violating customary international law (Rest. 3d Foreign Relations § 702), and is prohibited by, *inter alia*, Article 9 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights ("ICCPR"). 999 U.N.T.S 171, ratified by the United States on June 8, 1992, and by numerous other international treaties and documents. The United States has repeatedly affirmed its acceptance of this norm of customary international law, including, *inter alia*, in its submissions to the International Court of

Justice during the Iranian hostages case.

65. In addition, to the extent that the government asserts that its detention of Mr. Hamdan is somehow authorized by some aspect of its war power, the customary international law of armed conflict prohibits the arbitrary deprivation of liberty in both international and non-international armed conflicts. *See* Jean-Marie Henkaerts & Louise Doswald-Beck, eds., *Int'l Committee for the Red Cross, Customary International Humanitarian Law, Volume I: Rules*, 344-52 (2005) (stating the rule and collecting citations to U.N. Security Council resolutions, national legislation, national military manuals, and international and national jurisprudence supporting the rule); *id.* at 347 (“No official contrary practice was found with respect to either international or non-international armed conflicts. Alleged cases of unlawful deprivation of liberty have been condemned.”). The United States has officially endorsed this rule—even in “military operations other than war.” U.S. Judge Advocate General, *Operational Law Handbook* 59 (2003) (“*No one shall be subject to arbitrary arrest or detention.*”) (emphasis in original).⁶

⁶While Petitioners have no specific evidence by which to confirm or deny that Naji Hamdan has been subject to torture, circumstantial evidence suggests that possibility. The United Arab Emirates’ State Security forces have a history of torturing detainees arrested under similar circumstances. *See* Exh. 17 at 3; Exh. 18 at 1. As a result, Petitioners reserve the right to raise claims under customary

PRAYER FOR RELIEF

WHEREFORE, petitioners respectfully pray for relief as follows:

1. Order Respondents to Show Cause, within three days, why the Writ should not issue in this action, pursuant to 28 U.S.C. § 2243.
2. If Respondents deny that they caused Mr. Naji Hamdan's detention, permit Petitioners to conduct expedited, limited discovery on that issue. *See Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 67-69 (D.D.C. 2004) (ordering jurisdictional discovery in proxy detention case involving U.S. citizen detained by Saudi authorities at the behest of the United States); *Harris v. Nelson*, 394 U.S. 286, 299 (1969) (holding that habeas courts had power to "fashion appropriate modes of procedure" including with respect to discovery).
3. Order Respondents to rescind their request that Naji Hamdan be detained, and

international law and the Convention Against Torture and its implementing statute, once this Court orders discovery on this issue. *See* Foreign Affairs Restructuring and Reform Act § 2242(a) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger . . . regardless of whether the person is physically present in the United States.").

instead to request his release;⁷

4. Order Respondents to request permission to allow counsel to meet and confer with Naji Hamdan, in private and unmonitored attorney-client conversations, both by phone and in person;
5. Order Respondents to request the cessation of all interrogations of Naji Hamdan, direct or indirect, while this litigation is pending;
6. Declare that Mr. Hamdan's detention at the behest of the United States violates the Non-Detention Act;
7. Declare that Mr. Hamdan's seizure and detention without presentment at the behest of the United States violates the Fourth Amendment;
8. Declare that Mr. Hamdan's detention and interrogation without access to counsel at the behest of the United States violates the Fifth Amendment;
9. Declare that Naji Hamdan's detention violates customary international law, and

⁷Petitioner acknowledges that, in general, the federal courts should not dictate the substance of the requests that the U.S. government should make to foreign governments. However, where the U.S. has affirmatively created the danger that Petitioner now faces at the hands of the U.A.E.'s State Security forces, the Due Process Clause creates an obligation on the government to take steps to ameliorate the danger that it has created. *See Butera v. District of Columbia*, 235 F.3d 637, 651 (D.C. Cir. 2001) (holding "that, under the State endangerment concept, an individual can assert a substantive due process right to protection by the [state] from third-party violence when [state] officials affirmatively act to increase or create the danger that ultimately results in the individual's harm.")

the International Covenant on Civil and Political Rights;

10. To the extent Respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which the parties may adduce proof in support of their allegations, and order that Naji Hamdan be made present for that hearing telephonically or in person;
11. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the United States Constitution, federal statutory and regulatory law, and international law; and;
12. Grant Petitioners reasonable attorneys' fees and costs.

Respectfully submitted,

Dated: November ____, 2008

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* Application for *admission Pro Hac Vice*
forthcoming

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