

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

**LAKHDAR BOUMEDIENE,** )  
**Detainee, Camp Delta;** )

**ABASSIA BOUADJMI,** )  
**as Next Friend of** )  
**Lakhdar Boumediene;** )

**MOHAMMED NECHLE,** )  
**Detainee, Camp Delta;** )

**BADRA BAOUCHE,**  
**as Next Friend of Mohammed Nechle;**

**HADJ BOUDELLA**  
**Detainee, Camp Delta;**

**EMINA PLANJA**  
as Next Friend of Hadj Boudella;

**BELKACEM BENSAYAH** )  
**Detainee, Camp Delta** )

**ANELA KOBILICA**  
as Next Friend of Belkacem Bensayah;

**MUSTAFA AIT IDIR**  
**Detainee, Camp Delta;**

**SABIHA DELIC – AIT IDIR**  
**as Next Friend of Ait Idir Mustafa;**

**SABER LAHMAR**  
**Detainee, Camp Delta;**

**EMINA LAHMAR**  
as Next Friend of Saber Lahmar,

*Petitioners,*

**V.** )

**04-1166 (R,JL)**

# FIRST AMENDED PETITION FOR A WRIT OF HABEAS CORPUS

(continued on next page)

**GEORGE WALKER BUSH,** )  
**President of the United States** )  
**The White House** )  
**1600 Pennsylvania Ave., N.W.** )  
**Washington, D.C. 20500** )

**DONALD RUMSFELD,** )  
**Secretary, United States** )  
**Department of Defense** )  
**1000 Defense Pentagon** )  
**Washington, D.C. 20301-1000** )

**ARMY BRIG. GEN. JAY HOOD,** )  
**Commander, Joint Task Force – GTMO** )  
**Guantánamo Bay Naval Base, Cuba** )  
**c/o United States Army,** )  
**Army Pentagon** )  
**Washington, DC 20310-0200** )

**ARMY COL. NELSON J. CANNON,** )  
**Commander, Camp Delta,** )  
**Guantánamo Bay Naval Base, Cuba** )  
**c/o United States Army,** )  
**Army Pentagon** )  
**Washington, DC 20310-0200** )

*Respondents,* )

*All in their official* )  
*and individual capacities.* )

### **PETITION FOR WRIT OF HABEAS CORPUS**

1. Petitioners Lakhdar Boumediene, Mohammed Nechle, Hadj Boudella, Belkacem Bensayah, Mustafa Ait Idir and Saber Lahmar seek the Writ of Habeas Corpus. Mr. Boumediene acts on his own behalf and through his Next Friend, Ms. Abassia Bouadjmi, his wife. Mr. Nechle acts on his own behalf and through his Next Friend, Ms. Badra Baouche, his wife. Mr. Boudella acts on his own behalf and through his Next Friend, Ms. Planja, his wife. Mr. Bensayah acts on his own behalf and through his Next Friend, Ms. Kobilica, his wife. Mr. Ait Idir acts on his

own behalf and through his Next Friend, Ms. Delic-Ait Idir, his wife. Mr. Lahmar acts on his own behalf and through his Next Friend, Ms. Lahmar, his wife. Petitioners Boumediene, Nechle, Boudella, Bensayah, Mustafa and Lahmar (the “Detained Petitioners”) are citizens of Algeria being held *incommunicado* in Respondents’ unlawful custody in Delta Camp, Guantánamo Bay Naval Station, Cuba (“Guantánamo Bay”).

## **I. JURISDICTION**

2. Petitioners bring this action pursuant to 28 U.S.C. §§ 2241 and 2242. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1350, 1651, 2201, and 2202; 5 U.S.C. § 702; as well as the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, and customary international law. Insofar as they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.
3. This Court has authority under 28 U.S.C. § 2241 to grant the Writ of Habeas Corpus. This Court has authority under 28 U.S.C. § 2242 to entertain the petition filed on behalf of the Detained Petitioners by their wives, each of whom acts as the Next Friend of her husband. Pursuant to 28 U.S.C. § 2201 this Court has authority to declare the rights and other legal relations of the parties herein, and under 28 U.S.C. § 2202 to effectuate and enforce declaratory relief by all necessary and proper means, as this case involves an actual controversy within the Court’s jurisdiction.

## **II. VENUE**

4. Venue is proper in the United States District Court for the District of Columbia, since at least one Respondent resides in the district, a substantial part of the events or omissions giving rise to the claim occurred in the district, at least one Respondent may be found in the district, and all Respondents are either officers or employees of the United States or any agency thereof acting in their official capacities. *See* 28 U.S.C. §§ 1391(b); 1391(e).

### III. THE PARTIES

#### A. Lakhdar Boumediene

5. Petitioner Lakhdar Boumediene is an Algerian citizen incarcerated and held in Respondents' unlawful custody at Camp Delta, Guantánamo Bay. See Exhibit A, Affidavit of Abassia Bouadjmi, incorporated by reference herein, attached to Affidavit of Stephen H. Oleskey, Esq. ("Bouadjmi Aff.").
6. Petitioner Abassia Bouadjmi is the wife of Petitioner Boumediene. (Bouadjmi Aff. ¶¶ 1–2.) They were married in Albania in October, 1995. (*Id.* ¶ 3.) They have two children together. (*Id.* ¶ 4.) Since Mr. Boumediene has been detained, Ms. Bouadjmi and the children have faced many difficulties. (*Id.*) She seeks to act as his Next Friend by bringing this Petition.

#### B. Mohammed Nechle

7. Petitioner Mohammed Nechle is an Algerian citizen incarcerated and held in respondents' unlawful custody at Camp Delta, Guantánamo Bay. See Exhibit B, Affidavit of Badra Bouche and attachments thereto, incorporated by reference herein, and attached to Affidavit of Stephen H. Oleskey, Esq. ("Bouche Aff.").
8. Petitioner Badra Bouche is the wife of petitioner Mohammed Nechle. (Bouche Aff ¶ 1.) She seeks to act as his Next Friend by bringing this Petition.

#### C. Hadj Boudella

9. Petitioner Hadj Boudella is a citizen of Algeria and of Bosnia and Herzegovina, and is incarcerated and held in Respondents' unlawful custody at Camp Delta, Guantánamo Bay. See Exhibit C Affidavit of Emina Planja incorporated by reference herein, attached to the Affidavit of Stephen H. Oleskey, Esq. ("Planja Aff.").
10. Petitioner Emina Planja is the wife of Petitioner Hadj Boudella (Planja Aff. ¶ 1). They were married on February 20, 1999. (*Id.* ¶ 1). She seeks to act as his Next Friend by bringing this Petition.

#### D. Belkacem Bensayah

11. Petitioner Belkacem Bensayah is a citizen of Algeria and Bosnia and Herzegovina, and is incarcerated and held in Respondents' unlawful custody at Camp Delta, Guantánamo Bay. See

Exhibit D Affidavit of Anela Kobilica incorporated by reference herein, attached to the Affidavit of Stephen H. Oleskey, Esq. (“Kobilica Aff.”)

12. Petitioner Anela Kobilica is the wife of Petitioner Belkacem Bensayah (Kobilica Aff. ¶ 1). They were married in March 1997. They have two daughters ages 7 and 5. (*Id.* ¶ 1). She seeks to act as his Next Friend by bringing this Petition.

E. Mustafa Ait Idir

13. Petitioner Mustafa Ait Idir is a citizen of Algeria who was detained in and improperly removed from Bosnia and Herzegovina by forces of the United States, and is incarcerated and held in Respondents’ unlawful custody at Guantánamo Bay. *See* Exhibit E Affidavit of Sabiha Delic-Ait Idir incorporated by reference herein, attached to the Affidavit of Stephen H. Oleskey, Esq. (“Ait Idir Aff.”).

14. Petitioner Sabiha Delic-Ait Idir is the wife of Petitioner Mustafa Ait Idir (Ait Idir Aff. ¶ 1). They were married in Bosnia in 1996, and have three children who were born there in 1997, 2000 and 2002. (*Id.* ¶ 1). She seeks to act as his Next Friend by bringing this Petition.

F. Saber Lahmar

15. Petitioner Saber Lahmar is a citizen of Algeria and in 1997 was issued a permit as a permanent resident of Bosnia and Herzegovina. He is incarcerated and held in Respondents’ unlawful custody at Camp Delta, Guantánamo Bay. *See* Exhibit F Affidavit of Emina Lahmar incorporated by reference herein, attached to the Affidavit of Stephen H. Oleskey, Esq. (“Lahmar Aff.”).

16. Petitioner Emina Lahmar is the wife of Petitioner Saber Lahmar (Aff. ¶ 1). They were married in April 2001 and have one daughter. (*Id.* ¶ 1). She seeks to act as his Next Friend by bringing this Petition.

G. Respondents

17. Respondent George W. Bush is the President of the United States and Commander in Chief of the Armed Forces of the United States. The Detained Petitioners are being held at Guantánamo Bay, purportedly pursuant to the Executive Order promulgated by Respondent Bush on

November 13, 2001, *see Exhibit G*, Order on Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, November 13, 2001, attached to Affidavit of Stephen H. Oleskey (“Detention Order”), or alternatively, consistent with his authority as Commander in Chief and under the laws and usages of war. Accordingly, Respondent Bush is responsible for the Detained Petitioners’ unlawful detention. He is sued in both his official and personal capacities.

18. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to either the Detention Order or the President’s authority as Commander in Chief and under the laws and usages of war, Respondent Rumsfeld has been charged with maintaining the custody and control of the Detained Petitioners. He is sued in both his official and personal capacities.
19. Respondent Hood is the Commander of Joint Task Force-GTMO, which operates the detention facilities at Guantánamo Bay. He has supervisory responsibility for the Detained Petitioners and is sued in both his official and personal capacities.
20. Respondent Cannon is the Commander of Camp Delta at Guantánamo Bay. He is the custodian immediately responsible for their detention, and is sued in both his official and personal capacities.

#### **IV. STATEMENT OF FACTS**

##### **A. Petitioners’ Detention**

21. The Detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants in any context involving hostilities against the citizens, government or armed forces of the United States.
22. The Detained Petitioners are not, nor have they ever been, “enemy combatants,” who were “part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there,” *see Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2639 (2004) (internal quotations omitted), or anywhere.
23. Petitioners seek a judicial determination of the adequacy of the Respondents’ determination that the Detained Petitioners are “enemy combatants.”

24. Until shortly before Respondents unlawfully detained him, Petitioner Boumediene had worked for the Red Crescent of the Emirate of Abu-Dhabi since at least 1995. (Bouadjmi Aff. ¶ 3.) The Red Crescent is the arm of the International Federation of Red Cross and Red Crescent Societies that operates in Islamic countries. *See* International Federation of Red Cross and Crescent Societies, *available at* <http://www.ifrc.org/who/movement.asp> (last visited August 16, 2004). In October 2001, at the time of his arrest and detention in Bosnia and Herzegovina (“Bosnia”), Mr. Boumediene had been living and working there for four years. (Bouadjmi Aff. at ¶¶ 5, 6.)
25. Following his arrest, Mr. Boumediene was held in pre-trial detention in Bosnia for three months, but was then ordered released from confinement on January 17, 2002, by the investigating judge of the Supreme Court of Bosnia and Herzegovina, who had determined there were no further reasons or circumstances upon which pre-trial detention could be ordered. *See Boudellaa v. Bosnia and Herzegovina*, Nos. CH/02/8679; CH/02/8689; CH/02/8690; CH/02/8691, H.R. Chamber for Bosnia and Herzegovina, at ¶ 53 (Oct. 11, 2002), attached as Exhibit H to Affidavit of Stephen Oleskey, Esq. (“H.R. Chamber Decision”).
26. Contrary to the judge’s Order, however, Mr. Boumediene was not released but instead was immediately taken into custody by the Federation Police of Bosnia and Herzegovina under the authority of the Federal Ministry of Interior. (*Id.* at ¶ 55.) Those forces, and forces of the Ministry of the Interior of Sarajevo Canton, then handed over Mr. Boumediene to U.S. forces at 6:00 a.m. on January 18, 2002. (*Id.*) United States forces then flew Mr. Boumediene out of Bosnia and delivered him to what was then called Camp X-Ray at Guantánamo Bay. (*Id.*) Ms. Bouadjmi has not been able to learn since that time why her husband is being held. (Bouadjmi Aff. at ¶ 9.)
27. When he originally was detained, Petitioner Nechle, like Petitioner Boumediene, worked for the United Arab Emirates’ Society of the Red Crescent. (Baouche Aff. ¶ 5.) He worked as an aid worker, helping orphans. (*Id.*) Mr. Nechle and Ms. Baouche had lived in Bihartch, Bosnia, for approximately five years. (*Id.* at ¶ 6.)

28. On October 19, 2001, Mr. Nechle was arrested by police in Bihartch, Bosnia. (Baouche Aff. ¶ 7.) He was held and interrogated for approximately twenty-four hours. (*Id.*) Mr. Nechle was then held in pre-trial confinement for three months, but then ordered released on January 17, 2002 by the investigative judge of the Supreme Court of Bosnia and Herzegovina, also on the ground that there were no further reasons or circumstances upon which pre-trial detention could be ordered. *See* H.R. Chamber Decision at ¶ 53. Like Petitioner Boumediene, and in the same fashion, Mr. Nechle was delivered on January 18, 2002 to U.S. forces in Bosnia who transported him to Guantánamo Bay. (*Id.* ¶ 57.)
29. Until before Respondents unlawfully detained him, Petitioner Boudella, like Petitioners Boumendiene, and Nechle worked for a humanitarian aid organization in Bosnia and Herzegovina. (Planja Aff. ¶¶ 2, 5). He worked with war-orphaned children on behalf of a group named Human Appeal. (Planja Aff. ¶ 5).
30. On October 21, 2001, in response to a call from the local police, Mr. Boudella went to the police station in Sarajevo. (Planja Aff. ¶ 6). After the police accompanied him to his home and searched his home, they arrested him. On January 17, 2002, following three months of pre-trial detention, the Bosnian Supreme Court ordered the immediate release of Mr. Boudella. *See* H.R. Chamber Decision at ¶ 53. Contrary to the Chamber's Order, however, Mr. Boudella was not released and instead, the Federation Police delivered Petitioner Boudella to the custody of the forces of the United States at 6:00 a.m. on January 18, 2002. (Planja Aff. ¶ 6).
31. Petitioner Bensayah formerly worked in an administrative position at a local government office in Algeria. (*See* Kobilica Aff. ¶ 2). He was arrested in Zenica in Bosnia and Herzegovina on October 8, 2001 on unspecified criminal charges. (Kobilica Aff. ¶ 5). On January 16, 2002 a court in Zenica ended Petitioner Bensayah's detention (Kobilica Aff. ¶ 6). However, based on terrorism allegations lodged against him in Sarajevo while he was in custody, on January 16, 2002 Mr. Bensayah was transferred to the central prison in Sarajevo. The next day Mr. Bensayah was ordered released (Kobilica Aff. ¶ 7). However, despite that order, Federation Police transferred Mr. Bensayah to the forces of the United States on January 18, 2002. (*Id.*).



Mr. Bensayah thereafter was transferred to the United States facility at Guantánamo Bay, Cuba. (Kobilica Aff. ¶ 10).

32. Petitioner Mustafa Ait Idir moved from Algeria to Croatia in 1993. (*See* Ait Idir Aff. ¶ 4).

Since at least November 1994, he had been residing in Bosnia and Herzegovina and working for humanitarian aid agencies. At the time of his arrest, he was employed by the humanitarian aid agency, Taibah, as its IT system administrator. (Ait Idir Aff. ¶ 4). While employed by Taibah, he volunteered on many weekends to work with orphaned children at facilities operated by the Red Crescent in Bosnia and Herzegovina. (*Id.*)

33. Petitioner Mustafa Ait Idir was arrested at 3:15 a.m. following a two-hour police raid and search of his apartment, in front of his wife and children. (Ait Idir Aff. ¶ 5) Following three months of post pre-trial detention, the Bosnian Supreme Court ordered his immediate release on January 17, 2002 based on the grounds that there were no reasons upon which to continue pre-trial detention. As was the case with Petitioners Boumediene, Nechle and Boudella, however, rather than freeing Petitioner Mustafa Ait Idir, Federation Police instead delivered him to the custody of United States forces at 6:00 a.m. on January 18, 2002. (Delic Aff. ¶ 5) Since shortly after his transfer to the forces of the United States, Petitioner Mustafa has been held illegally at Guantánamo Bay. (*Id.* ¶ 8). The United States has informed Petitioner Sabiha Delic-Ait Idir that her husband may be held indefinitely at Guantánamo Bay. (*See* Dec. 31, 2002 Letter from Christopher Hoh, Chargé d’Affaires (attached to Ait Idir Aff.))

34. Petitioner Lahmar worked as a professor of Arab language at the Islamic Center of the High Saudi Commission. (Lahmar Aff. ¶ 4). The Bosnia and Herzegovina Ministry of Human Rights and Refugees terminated Lahmar’s permanent residency in 2001 because of a prior criminal conviction. (Lahmar Aff. ¶ 5). He appealed the decision of the Ministry of Human Rights and Refugees, but had not received a decision on his appeal when he was taken into custody by the forces of the United States.

35. Petitioner Lahmar was arrested on October 18, 2001. Following three months of pre-trial detention, on January 17, 2002 the Bosnian Supreme Court ordered his release on the grounds

that there were not reasons upon which pre-trial detention could be ordered. *See* H.R. Chamber Decision at ¶ 53. As was the case with the other Petitioners, Federation Police ignored that order and instead transferred Petitioner Lahmar to the custody of the forces of the United States on January 18, 2002. (Lahmar Aff. ¶ 8). At this time Petitioner Lahmar is being held in the custody of the United States at Guantánamo Bay. (*Id.*)

36. In the wake of the September 11, 2001 terrorist attacks, the United States, at the direction of Respondent Bush, began a massive military campaign against the Taliban government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized Respondent Bush to use force against the “nations, organizations, or persons” that “planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons.” Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Sept. 18, 2001).

37. On November 13, 2001, Respondent Bush issued the Detention Order, which purports to authorize indefinite detention without due process of law. The Detention Order authorizes Respondent Rumsfeld to detain anyone Respondent Bush has “reason to believe”:

- i. is or was a member of the organization known as al Qaeda;
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii).

*See Exhibit D* to Oleskey Aff. Respondent Bush must make this determination in writing. The Detention Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

38. On information and belief, at the time of their detention, Mr. Boumediene, Mr. Nechle, Mr. Boudella, Mr. Bensayah, Mr. Ait Idir and Mr. Lahmar were (i) not members of the al Qaeda terrorist network; (ii) had not caused any harm to American personnel or property; and

(iii) had no involvement in either the terrorist attacks of September 11, 2001, or any act of international terrorism attributed by the United States to al Qaeda or any terrorist group. They are not properly subject to the Detention Order issued by Respondent Bush. As they did not participate in any armed conflict involving the United States or its coalition allies, they are not properly subject to the Executive's authority as Commander in Chief and under the laws and usages of war.

39. None of the Detained Petitioners were in or near Afghanistan, or any other theater of war, at the time of their unlawful detention on January 18, 2002.
40. The recent involvement of each Detained Petitioner with local authorities and the fact that they were delivered to U.S. forces by those local authorities suggests U.S. forces should have had no questions about the identities of the Detained Petitioners. Because of the circumstances surrounding their seizure and detention, it is not possible to state whether the Detained Petitioners promptly requested that the United States provide them with access to their families and to legal counsel. However, the fact that four of the Detained Petitioners had pressed their cases in Bosnian courts, suggests the detainees were aware of the assistance lawyers could provide to them. On information and belief, all of the Detained Petitioners were kept blindfolded against their wills for lengthy periods while being taken involuntarily to Guantánamo Bay; have been and will be interrogated repeatedly there by agents of the United States Departments of Defense and Justice and by intelligence agencies of U.S. allies, though they have not been charged with any offense or been notified of any pending or contemplated charges; have made no appearance before either a military or civilian tribunal of any sort, or been provided counsel or the means to contact counsel; and have not been informed meaningfully of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, customary international law and the recent decisions of the United States Supreme Court. Indeed, press reports indicate Respondents have publicly taken the position that Guantánamo detainees should not be told of

such rights. Absent action by this Court, the Detained Petitioners are completely unable either to protect, or to vindicate their rights under U.S. and international law.

#### B. The Detention Order

41. The Detention Order seeks to vest Respondent Bush with unfettered discretion to identify the individuals that fall within its scope. It establishes no standards governing his discretion. The Detention Order contains no provision requiring notice to a person detained of the charges he may face. On the contrary, the Detention Order purports to authorize that detainees be held without charges. It contains no provision requiring that detainees receive notice of their rights under domestic and international law, and provides neither the right to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and does not provide for appeal to an Article III court. In fact, the Detention Order seeks expressly to bar review by any court. The Detention Order purports to authorize indefinite and unreviewable detention, based on nothing more than Respondent Bush's written determination that an individual is subject to its terms.
42. The Detention Order was promulgated in this judicial district, the decision to detain Petitioners was made by Respondents in this judicial district, the decision to detain the Petitioners at Guantánamo Bay was made in this judicial district, and the decision to continue detaining the Petitioners was, and is, being made by Respondents and in this judicial district.
43. On information and belief, Respondent Bush has never certified or determined, in writing or otherwise, that the Detained Petitioners are subject to this Detention Order.
44. The Detained Petitioners are not properly subject to the Detention Order.
45. In a related case, Respondents have contended that the Petitioners in that case are being detained not pursuant to the Detention Order, but rather, under the authority of Respondent Bush as Commander in Chief and under the laws and usages of war. *See Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002). However, that rationale cannot, in good faith, be applied here because—unlike the petitioner in *Rasul*—the Detained Petitioners in this matter were not arrested or detained by the United States in the course of an armed conflict.

### C. Guantánamo Bay Naval Base

46. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray, at Guantánamo Bay. The United States military transported the Detained Petitioners to Camp X-Ray approximately one week later. In April 2002, all prisoners, including the Detained Petitioners, were transferred to a more permanent internment facility at Camp Delta. Guantánamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the sole and complete jurisdiction and control of the United States. Guantánamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. Offenses committed by both civilians and foreign nationals living at Guantánamo Bay are brought before federal courts on the mainland, where defendants enjoy the full panoply of Constitutional rights. In *Rasul v. Bush*, decided on June 28, 2004, the United States Supreme Court held that the habeas statute §§ 2241–2243, App. 19, confers a right to judicial review of the legality of an indefinite Executive detention of aliens such as these Petitioners at Guantánamo Bay, a territory over which the United States exercises plenary and exclusive jurisdiction but not “ultimate sovereignty.” *Rasul v. Bush*, 124 S. Ct. 2686, 2698 (2004).

## V. CAUSES OF ACTION

### FIRST CLAIM FOR RELIEF (DUE PROCESS – FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION)

47. Petitioners incorporate paragraphs 1–46 by reference as if fully set forth herein.

48. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of the Detained Petitioners, without Due Process of Law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of the Fifth Amendment, since they act at the direction of Respondent Bush. The Detention Order violates the Fifth Amendment.

SECOND CLAIM FOR RELIEF  
(DUE PROCESS – FIFTH AMENDMENT  
TO THE UNITED STATES CONSTITUTION)

49. Petitioners incorporate paragraphs 1–48 by reference as if fully set forth herein.

50. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the Detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. The Detention Order, as applied to Petitioners, violates the Fifth Amendment.

THIRD CLAIM FOR RELIEF  
(DUE PROCESS – INTERNATIONAL LAW)

51. Petitioners incorporate paragraphs 1–50 by reference as if fully set forth herein.

52. By the actions described above, Respondents, acting under color of law, have violated and continue to violate customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of the Detained Petitioners, without legal process, in violation of binding obligations of the United States under international law. Respondents Rumsfeld, Hood, and Cannon are likewise acting in violation of international law, since they act at the President's direction. On its face, the Detention Order violates international law.

FOURTH CLAIM FOR RELIEF  
(DUE PROCESS – INTERNATIONAL LAW)

53. Petitioners incorporate paragraphs 1–52 by reference as if fully set forth herein.

54. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the Detained Petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of customary international law, Arts. 9 and 14 of the International Covenant on Civil and Political Rights, and Arts. XXVIII, XXV, and XXVI of the American Declaration on the Rights and Duties of Man. The Detention Order, as applied to the

Detained Petitioners, violates these and other binding obligations of the United States under International Law.

FIFTH CLAIM FOR RELIEF  
(DUE PROCESS – FAILURE TO COMPLY  
WITH U.S. MILITARY REGULATIONS AND  
INTERNATIONAL HUMANITARIAN LAW)

55. Petitioners incorporate paragraphs 1–54 by reference as if fully set forth herein.

56. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the rights accorded to persons such as the Detained Petitioners seized by the United States Military in times of armed conflict, as established by, *inter alia*, the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and customary international law.

SIXTH CLAIM FOR RELIEF  
(WAR POWERS CLAUSE)

57. Petitioners incorporate paragraphs 1–56 by reference as if fully set forth herein.

58. By the actions described above, Respondents, acting under color of law, have exceeded the constitutional authority of the Executive and have violated and continue to violate the War Powers Clause by ordering the prolonged and indefinite detention of the Detained Petitioners without Congressional authorization.

SEVENTH CLAIM FOR RELIEF  
(SUSPENSION OF THE WRIT)

59. Petitioners incorporate paragraphs 1–58 by reference as if fully set forth herein.

60. To the extent the Detention Order of November 13, 2001, seeks to shield determination of Respondent Bush against any challenge to the legality of the Petitioners' detention by way of habeas corpus, the Detention Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

## **VI. PRAYERS FOR RELIEF**

WHEREFORE, Petitioners pray for relief as follows:

1. Grant Petitioner Abassia Bouadjmi Next Friend status, as Next Friend of Lakhdar Boumediene;
2. Grant Petitioner Badra Bouche Next Friend status, as Next Friend of Mohammed Nechle;
3. Grant Petitioner Emina Planja Next Friend status, as Next Friend of Hadj Boudella;
4. Grant Petitioner Anela Kobilica Next Friend status, as Next Friend of Belkacem Bensayah;
5. Grant Petitioner Sabiha Delic-Ait Idir Next Friend status, as Next Friend of Mustafa Ait Idir;
6. Grant Petitioner Emina Lahmar Next Friend status, as Next Friend of Saber Lahmar;
7. Order Respondents to allow counsel to meet and confer with the Detained Petitioners, in private and unmonitored attorney-client conversations;
8. Order Respondents to cease all interrogations of the Detained Petitioners, direct or indirect, while this litigation is pending;
9. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth Amendment to the United States Constitution;
10. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Administrative Procedures Act, 5 U.S.C. § 702;
11. Order and declare that the Detained Petitioners are being held in violation of the Fifth Amendment to the United States Constitution;
12. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;
13. Order and declare that the Detained Petitioners are being held in violation of customary international law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;
14. Order and declare that the Detained Petitioners are being held in violation of the regulations of the United States Military, the Geneva Conventions, and international humanitarian law;
15. Order and declare that the Executive Order of November 13, 2001, violates the War Powers



Clause;

16. Order and declare that the provision of the Executive Order that seeks to bar the Detained Petitioners from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution;
17. 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;
18. Grant Petitioners the right to such discovery as they reasonably may require to support this Petition; and
19. After hearing, Order the Detained Petitioners released from Respondents' unlawful custody;
20. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights in connection with the Writ, including under the United States Constitution and international law.

Dated: New York, New York  
August 16, 2004

Respectfully submitted,

WILMER CUTLER PICKERING  
HALE AND DORR LLP

By:                     /s/                      
Douglas F. Curtis (D.C. Bar No. 420270)  
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**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 16th day of August, 2004.

/s/

Douglas F. Curtis