

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 NECHLA,)
 Detainee, Camp Delta;)

BADRA BAUCHE,)
 as Next Friend of Mohammed Nechla,)

Petitioners,)

 v.)

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)

PETITION FOR A WRIT
OF HABEAS CORPUS

No. _____

(continued on next page)

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 Nechla

7. Petitioner Mohammed Nechla is an Algerian citizen presently 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 Nechla. (Bouche Aff ¶ 1.) She seeks to act as his Next Friend by bringing this Petition.

C. Respondents

9. Respondent George W. Bush is the President of the United States and Commander in Chief of the Armed Forces of the United States. Mr. Boumediene and Mr. Nechla are being detained

pursuant to the Executive Order promulgated by him on November 13, 2001, *see Exhibit C*, 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, under his authority as Commander in Chief and under the laws and usages of war. Accordingly, Respondent Bush is responsible for Petitioners’ unlawful detention. He is sued in both his official and personal capacities.

10. 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.
11. 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.
12. 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

13. The Detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants in any context involving the citizens, government or armed forces of the United States.
14. 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 et al. v. Rumsfeld, Secretary of Defense, et al.*, No. 03-6696, slip op. at 8-9 (June 28, 2004) (internal quotations omitted), or anywhere.
15. Petitioners seek a judicial determination of the adequacy of the Respondents’ determination

that the Detained Petitioners are “enemy combatants.”

16. 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, which operates in Islamic countries. *See* International Federation of Red Cross and Crescent Societies *available at* <http://www.ifrc.org/who/movement.asp>. 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.)
17. 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, et al. v. Bosnia and Herzegovina, et al.*, 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). *See Exhibit D* to Affidavit of Stephen Oleskey, Esq. [hereinafter “H.R. Chamber Decision”].
18. Contrary to the judge’s Order, however, Mr. Boumediene was not released, and 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. These 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.)
19. When he originally was detained, Petitioner Nechla, 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. Nechla and Ms. Baouche had lived in Bihartch, Bosnia, for approximately five years. (*Id.* at ¶ 6.)

20. On October 19, 2001, Mr. Nechla was arrested by police in Bihartch, Bosnia. (Baouche Aff. ¶ 7.) He was held and interrogated for approximately twenty-four hours. (*Id.*) Mr. Nechla 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. Nechla was delivered on January 18, 2002 to U.S. forces in Bosnia who transported him to Guantánamo Bay. (*Id.* ¶57.)
21. 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, Pub. L. 107-40, 115 Stat. 224 (Sept. 18, 2001).
22. On November 13, 2001, Respondent Bush issued an Executive Order authorizing indefinite detention without due process of law (the “Detention Order” referenced top of page 4). 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 Affidavit. 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.

23. On information and belief, at the time of their detention, Mr. Boumediene and Mr. Nechla 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.
24. Neither Mr. Boumediene nor Mr. Nechla was in or near Afghanistan, or any other theater of war, at the time of their unlawful detention on January 18, 2002.
25. Because of the circumstances surrounding their seizure and detention, it is not possible to state whether the Detained Petitioners promptly identified themselves by their correct names and nationality to the forces of the United States, or whether they requested that the United States provide them with access to their families and to legal counsel. On information and belief, Mr. Boumediene and Mr. Nechla were both kept blindfolded against their wills for lengthy periods while being taken involuntarily to Guantánamo Bay; have been or will be interrogated repeatedly there by agents of the United States Departments of Defense and Justice, 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 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, or customary international law. Indeed, press reports indicate Respondents have publicly taken the position that Guantánamo detainees should not be told of such rights. As a result, absent action by this Court, the Detained Petitioners are completely unable either to protect, or to vindicate their rights under domestic

and international law.

B. The Detention Order

26. 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.
27. 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.
28. 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.
29. The Detained Petitioners are not properly subject to the Detention Order.
30. 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, 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

31. On or about January 11, 2002, the United States military began transporting prisoners captured

in Afghanistan to Camp X-Ray, at Guantánamo Bay. In April 2002, all prisoners, including the Detained Petitioners, were transferred to a more permanent prison facility at Camp Delta. Guantánamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the 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 Respondents enjoy the full panoply of Constitutional rights. In *Rasul v. Bush*, decided on June 28, 2004, the U.S. 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*, Nos. 03-334, 03-343, slip op. at 15–16 (June 28, 2004).

V. CAUSES OF ACTION

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

32. Petitioners incorporate paragraphs 1–31 by reference as if fully set forth herein.
33. 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)

34. Petitioners incorporate paragraphs 1 – 33 by reference as if fully set forth herein.

35. 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)

36. Petitioners incorporate paragraphs 1 – 35 by reference as if fully set forth herein.

37. 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)

38. Petitioners incorporate paragraphs 1 – 37 by reference as if fully set forth herein.

39. 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)

40. Petitioners incorporate paragraphs 1 – 39 by reference as if fully set forth herein.

41. 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)

42. Petitioners incorporate paragraphs 1 – 41 by reference as if fully set forth herein.

43. 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)

44. Petitioners incorporate paragraphs 1 – 43 by reference as if fully set forth herein.

45. 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. PRAYER 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 Nechla;
3. Order the Detained Petitioners released from Respondents' unlawful custody;
4. Order Respondents to allow counsel to meet and confer with the Detained Petitioners, in private and unmonitored attorney-client conversations;
5. Order Respondents to cease all interrogations of the Detained Petitioners, direct or indirect, while this litigation is pending;
6. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth Amendment to the United States Constitution;
7. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Administrative Procedures Act, 5 U.S.C. § 702;
8. Order and declare that the Detained Petitioners are being held in violation of the Fifth Amendment to the United States Constitution;
9. 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;
10. 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;
11. 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;
12. Order and declare that the Executive Order of November 13, 2001, violates the War Powers Clause;
13. Order and declare that the provision of the Executive Order that bars 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;

14. 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
15. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the United States Constitution and international law.

Dated: New York, New York
July 8, 2004

Respectfully submitted,

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: _____

Christopher J. Herrling* (D.C. Bar No. 354837)
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Douglas F. Curtis (D.C. Bar No. 420270)
Peggy Kuo (D.C. Bar. No. 449271)
Robert W. Trenchard, *pro hac vice* to be filed
399 Park Avenue
New York, NY 10022
(212) 230-8800

Stephen H. Oleskey, *pro hac vice* to be filed
Robert C. Kirsch, *pro hac vice* to be filed
Melissa A. Hoffer, *pro hac vice* to be filed
60 State Street
Boston, MA 02109
(617) 526-6000

Lead Counsel for Petitioners

MARGULIES & RICHMAN, PLC
Joseph Margulies
2520 Park Avenue, South
Minneapolis, MN 55404
(612) 872-4900
(612) 872-4967
Counsel for Petitioners

CENTER FOR CONSTITUTIONAL RIGHTS
Michael Ratner
Barbara Olshansky
Steven Macpherson Watt
666 Broadway, 7th Floor
New York, NY 10012
(212) 243-3805
Counsel for Petitioners

GIBBONS, DEL DEO, DOLAN, GRIFFINGER
& VECCHIONE, P.C.
John J. Gibbons
Gitanjali S. Gutierrez
One Riverfront Plaza
Newark, NJ 07102
(973) 596-4500
Counsel for Petitioners
JUSTICE IN EXILE
Clive Stafford-Smith
636 Baronne Street
New Orleans, LA 70113
(504) 558-9867
Counsel for Petitioners

* Mr. Herrling appears as local counsel for all attorneys.

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 8th day of July, 2004.
