

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

**SHAFIQ RASUL,** )  
    **Detainee, Camp X-Ray** )  
    **Guantanamo Bay Naval Base** )  
    **Guantanamo Bay, Cuba** )  
    ) )  
**SKINA BIBI,** )  
    **as Next Friend of Shafiq Rasul** )  
    **14 Inverness Street** )  
    **London NW1 7HJ** )  
    **United Kingdom** )  
    ) )  
**ASIF IQBAL,** )  
    **Detainee, Camp X-Ray** )  
    **Guantanamo Bay Naval Base** )  
    **Guantanamo Bay, Cuba** )  
    ) )  
**MOHAMMED IQBAL,** )  
    **as Next Friend of Asif Iqbal** )  
    **14 Inverness Street** )  
    **London NW1 7HJ** )  
    **United Kingdom** )  
    ) )  
**DAVID HICKS,** )  
    **Detainee, Camp X-Ray** )  
    **Guantanamo Bay Naval Base** )  
    **Guantanamo Bay, Cuba** )  
    ) )  
**TERRY HICKS,** )  
    **as Next Friend of David Hicks** )  
    **345 King William Street** )  
    **Adelaide, SA 5000** )  
    ) )  
**Petitioners,** )

**FIRST AMENDED  
PETITION FOR WRIT  
OF HABEAS CORPUS**

**No. CV: 02-0299 (CKK)**

**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** )  
) )  
**BRIGADIER GEN. MICHAEL LEHNERT,** ) )  
**Commander, Joint Task Force-160** )  
**Guantanamo Bay Naval Base** )  
**Guantanamo Bay, Cuba** )  
) )  
**COLONEL TERRY CARRICO,** )  
**Commander, Camp X-Ray,** )  
**Guantanamo Bay Naval Base** )  
**Guantanamo Bay, Cuba** )  
) )  
**Respondents** )  
**All sued in their official** )  
**and individual capacities.** )

**FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

1. **Petitioners Shafiq Rasul, Asif Iqbal, and David Hicks seek the Great Writ. They act on their own behalf and through their Next Friends: Skina Bibi acts for her son Shafiq Rasul, Mohammed Iqbal acts for his son Asif, and Terry Hicks acts for his son David. David Hicks is a citizen of Australia. Mr. Iqbal and Mr. Rasul are citizens of the United Kingdom. They are being held virtually *incommunicado* in respondents' unlawful custody.**

## I.

### JURISDICTION

2. Petitioners bring this action under 28 U.S.C. §§2241 and 2242, and invoke this Court's jurisdiction under 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 ("ICCPR"), the American Declaration on the Rights and Duties of Man ("ADRDM"), and Customary International Law. Because they seek declaratory relief, Petitioners also rely on F. R. Civ. P. 57.

3. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by Terry Hicks, Mohammed Iqbal, and Skina Bibi as Next Friend under 28 U.S.C. §2242. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. §2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. §2202, 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. 28 U.S.C. §§1391(b); 1391(e).

### **III. PARTIES**

5. **Petitioner David Hicks is an Australian citizen presently incarcerated and held in respondents' unlawful custody at Camp X-Ray, United States Naval Base, Guantanamo Bay, Cuba. See Exhibit A, Birth Certificate of David Hicks.**

6. **Petitioner Terry Hicks is David Hicks' father. He too is an Australian citizen. Terry Hicks has received a letter from his son, delivered through the Australian Red Cross, asking for legal assistance. Because his son cannot secure access either to legal counsel or the courts of the United States, the elder Mr. Hicks acts as Next Friend. See Exhibit B, Affidavit of Terry Hicks, incorporated by reference herein.**

7. **Through counsel, Terry Hicks has tried repeatedly to contact his son, and to learn more about his condition and status. The United States has either rebuffed or ignored counsel's requests. In a letter dated January 17, 2002, for instance, Steven Kenny, Australian counsel for Terry and David Hicks, asked the Australian Government to confirm, *inter alia*, whether David Hicks was being held at Guantanamo, whether the United States intended to charge him with any offense, and whether the Australian Government could work with counsel to secure representation for Mr. Hicks. In the same letter, Mr. Kenny asked the Australian Government to "arrange contact between David and his family." See Exhibit C, Affidavit of Stephen Kenny, Australian Counsel for Petitioners; Letter from Stephen Kenny to Hon. Daryl Williams, Attorney-General (Jan. 17, 2002), all correspondence incorporated herein by reference. The following day, the Australian Government advised counsel that Mr. Hicks was being held in Guantanamo, that**

he “does not currently have legal representation due to the nature and circumstances of his detention,” and that “the matter of access to Mr. Hicks by his family” was “ultimately a matter for the United States.” *Id.* at Letter from Robert Cornall, Attorney-General’s Department (Jan. 18, 2002).

8. Mr. Kenny responded the same day, repeating his request for information about Mr. Hicks, and seeking the assistance of the Australian Government “with a view to arranging” legal advice for Mr. Hicks. On February 1, 2002, Mr. Kenny renewed his request for “access by [Terry Hicks] to his son. He wishes to see his son face to face but would appreciate being able to make even a telephone call to him. Will you please make a direct request to the United States authorities for such a meeting” *Id.* at Letter from Stephen Kenny (Feb. 1, 2002). On February 8, 2002, the Australian Government left no doubt that David Hicks, and all detainees, were cut off:

*Your request for Mr. Hicks’ family to have access to him was referred to the United States authorities. The United States has advised that, at this stage, no family access will be allowed any of the detainees held at Guantanamo Bay.*

*Id.* at Letter from Robert Cornall (Feb. 8, 2002)(emphasis added).

9. In addition to his correspondence with the Australian Government, on January 25, Mr. Kenny wrote to President Bush, asking *inter alia*, if he would “permit David to be seen by legal counsel,” and if he would allow Terry Hicks “to have contact with his son.” To date, the United States Government has not responded to this request.

10. Petitioner Asif Iqbal is a citizen of the United Kingdom presently incarcerated and held in respondents’ unlawful custody at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba. *See Exhibit D, Birth Certificate of Asif Iqbal.*

11. Petitioner Mohammed Iqbal is Asif Iqbal’s father. He too is a British citizen. Mohammed Iqbal received a telephone call from the Foreign and Commonwealth Office on

January 21, 2002, during which he was informed that his son was being detained in Guantanamo Bay. Because his son cannot secure access either to legal counsel or the courts of the United States, Mohammed Iqbal acts as his Next Friend. See Exhibit E, Affidavit of Mohammed Iqbal, incorporated by reference herein.

12. Through counsel, Mohammed Iqbal has attempted to gain access to his son. The United States has declined to accede to counsel's requests. See Exhibit F, First Affidavit of Gareth Peirce, United Kingdom Counsel for Petitioners Asif and Mohammed Iqbal and Shafiq Rasul and Skina Bibi.

13. The British Foreign and Commonwealth Office advised Ms. Peirce that any request for access to Mr. Iqbal must be made to the United States Ambassador in London. Immediately upon receiving instructions from Mr Iqbal's family, on January 25, 2002, Ms. Peirce telephoned and also sent a faxed request to the Ambassador, seeking immediate access to Mr. Iqbal in Guantanamo Bay in order to provide legal advice. In addition, she asked the Foreign and Commonwealth Office in London to pursue this request directly with the United States government. Ms. Peirce has been advised by the Foreign and Commonwealth Office that this request has been passed to the United States government on behalf of Mr Iqbal, together with requests by Mr Iqbal's Member of Parliament that he and Mr Iqbal's family be permitted access to him. Counsel is advised by the Foreign and Commonwealth Office that as of February 13, 2002, these requests have not received a response, and nor has a request for further consular access to Mr Iqbal, i.e. a second consular visit, been granted.

14. Petitioner Shafiq Rasul is a citizen of the United Kingdom presently incarcerated and held in respondents' unlawful custody at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba. See Exhibit G, Birth Certificate of Shafiq Rasul.

15. **Petitioner Skina Bibi is Shafiq Rasul's mother. She too is a British citizen. Ms. Bibi received a telephone call from the Foreign and Commonwealth Office on January 21, 2002, during which she was informed that her son was being detained in Guantanamo Bay. Skina Bibi has also received news of a message from her son, delivered through the Red Cross, asking for legal representation. Because her son cannot secure access either to legal counsel or the courts of the United States, she acts as his Next Friend. See Exhibit H, Affidavit of Skina Bibi, incorporated by reference herein.**

16. **Through counsel, Skina Bibi has attempted to gain access to her son. The United States has declined to accede to counsel's requests. See Exhibit I, Second Affidavit of Gareth Peirce, United Kingdom Counsel for the Petitioners Asif and Mohammed Iqbal and Shafiq Rasul and Skina Bibi.**

17. **The British Foreign and Commonwealth Office advised Ms. Peirce that any request for access to Mr. Rasul must be made to the United States Ambassador in London. Immediately upon receiving instructions from Mr. Rasul's family, on January 25, 2002, Ms. Peirce telephoned and also sent a faxed request to the Ambassador, seeking immediate access to Mr. Rasul in Guantanamo Bay in order to provide legal advice. In addition, she asked the Foreign and Commonwealth Office in London to pursue this request directly with the United States government. Ms. Peirce has been advised by the Foreign and Commonwealth Office that this request has been passed to the United States government on behalf of Mr. Rasul, together with requests by Mr. Rasul's Member of Parliament that he and Mr. Rasul's family be permitted access to him. Counsel is advised by the Foreign and Commonwealth Office that as of February 13, 2002, these requests have not received a response, and nor has a request for further consular access to Mr Rasul, i.e. a second consular visit, been granted.**

**18. Respondent Bush is the President of the United States and Commander in Chief of the United States Military. He is the author of the Order directing that David Hicks, Asif Iqbal, and Shafiq Rasul be detained, and is ultimately responsible for their unlawful detention. He is sued in his official and personal capacities.**

**19. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to the Order described in Para. 18, respondent Rumsfeld has been charged with maintaining the custody and control of the detained petitioners. Respondent Rumsfeld is sued in his official and personal capacities.**

**20. Respondent Lehnert is the Commander of Joint Task Force-160, the task force running the detention operation at the Guantanamo Naval Station, Guantanamo Bay, Cuba. He has supervisory responsibility for the detained petitioners and is sued in his official and personal capacities.**

**21. Respondent Carrico is the Commandant of Camp X-Ray, where the detained petitioners are presently held. He is the immediate custodian responsible for their detention, and is sued in his official and personal capacities.**

#### **IV.**

#### **STATEMENT OF FACTS**

**22. The detained petitioners are not, nor have they ever been, enemy aliens or unlawful combatants. David Hicks is an Australian citizen in respondents' unlawful custody. At the time of his seizure by the United States Government, Mr. Hicks was living in Afghanistan.**

**23. Petitioner Asif Iqbal is a UK citizen in respondent's unlawful custody. In July, 2001, Iqbal's family arranged for him to marry a woman living in the same village in Pakistan as**



**Iqbal's father. He left Britain after September 11, 2001, and traveled to Pakistan solely for the purpose of this arranged marriage. In early October, 2001, shortly before the arranged marriage, Petitioner Iqbal's father allowed him to leave the village briefly. On information and belief, after he left the village, Petitioner Iqbal was captured and kidnapped by groups working in opposition to the United States in Afghanistan and Pakistan.**

**24. Petitioner Shafiq Rasul is a UK citizen in respondents' unlawful custody. In the summer of 2001, Petitioner Rasul decided to take time off from his computer engineering degree to travel. His brother persuaded him to visit Pakistan. Petitioner Rasul traveled to Pakistan to visit relatives and explore his culture. He also hoped to continue his education, and wanted to find computer courses equivalent to, but more reasonably priced, than those he could take in Britain. He left Britain after September 11, 2001, and traveled to Pakistan solely for these purposes. Following his arrival in Pakistan, he stayed with an aunt in Lahore before beginning further travel in the country. On information and belief, after he left Lahore, Petitioner Rasul was captured and kidnapped by groups working in opposition to the United States in Afghanistan and Pakistan.**

## **Petitioners' Seizure By The United States**

25. In the wake of September 11, 2001, the United States, at the direction of respondent Bush, began a massive military campaign against the Taliban, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President 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.” Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001). The Resolution did not authorize the indefinite detention of persons seized on the field of battle.

26. In the course of the military campaign, and as part of their effort to overthrow the Taliban, the United States provided military assistance to the Northern Alliance, a loosely knit coalition of Afghani and other military groups opposed to the Taliban Government. On information and belief, no American casualties were caused by the Taliban prior to when Mr. Hicks, Mr. Iqbal, and Mr. Rasul were apprehended, and the detained petitioners neither caused nor attempted to cause any harm to American personnel prior to their capture.

27. On or about December 9, 2001, the precise date unknown to counsel but known to respondents, the Northern Alliance captured David Hicks in Afghanistan. On or about December 17, 2001, the Northern Alliance transferred him to the custody of the United States military. See Exhibit J, Joint News Release of the Australian Attorney General and the Minister for Defense (December 17, 2001). David Hicks has been held in United States custody since that time.

**28. No proper or adequate information has been provided by the United States government as to the date or circumstances of Mr. Iqbal's and Mr. Rasul's seizure by U.S. forces. The precise date of their capture by U.S. forces is unknown to counsel but known to respondents. On information and belief, they have been held in United States custody since early December, 2001.**

**29. The detained petitioners are not, and have never been, members of Al Qaida or any other terrorist group. Prior to their detention, they did not commit any violent act against any American person, nor espouse any violent act against any American person or property. On information and belief, they had no involvement, direct or indirect, in either the terrorist attacks on the United States September 11, 2001, or any act of international terrorism attributed by the United States to al Qaida or any terrorist group. They are not properly subject to the detention Order issued by respondent Bush, and discussed *infra* in Paras. 34-38.**

**30. On information and belief, the detained petitioners have had no military or terrorist training. On information and belief, they at no time voluntarily joined any terrorist force. On information and belief, if any of the detained petitioners ever took up arms in the Afghani struggle, it was only on the approach of the enemy, when they spontaneously took up arms to resist the invading forces, without having had time to form themselves into regular armed units, and carrying their arms openly and respecting all laws and customs of war.**

**31. On information and belief, the detained petitioners were not initially taken into custody by American forces. They were taken into custody against their will, and handed over to the Americans. There is no evidence they engaged in combat against American forces. On information and belief, if the detained petitioners were ever in Afghanistan prior to being taken involuntarily into custody, it was in order to facilitate humanitarian assistance to the Afghani**

**people. The detained petitioners have taken no step that was not fully protected as their free exercise of their religious and personal beliefs.**

**32. On information and belief, the detained petitioners promptly identified themselves by correct name and nationality to the United States. They requested that the United States provide them with access to their families and to legal counsel. On information and belief, the detained petitioners were kept blindfolded, and sedated against their will for lengthy periods while they were taken involuntarily to Guantanamo Bay. On information and belief, in the course of being taken to Guantanamo Bay, the detained petitioners were transported via other American territory. On information and belief, the detained petitioners have been forced to provide involuntary statements to Respondents' agents in Guantanamo Bay.**

**33. On information and belief, the detained petitioners have been held under conditions that violate their international and constitutional rights to dignity and freedom from cruel, unusual and degrading punishment. They have not been provided with housing that even has proper walls. They have been forced to use a bucket for a toilet, and have not been provided with basic hygienic facilities. They have not been provided with meaningful access to their families. They have not been provided with the opportunity fully to exercise their religious beliefs. They have been exposed to the indignity and humiliation of the cameras of the national and international press, brought to Guantanamo Bay with the express consent and control of Respondents. Anyone who has seen them has been under instructions not to tell them even where they are being held.**

## **The Detention Order**

**34. On November 13, 2001, respondent Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes respondent Rumsfeld to detain anyone respondent Bush has “reason to believe”:**

1. is or was a member of the organization known as al Qaida;
2. 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
3. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii)

*See* Exhibit K, Military Order of November 13, 2001. President Bush must make this determination in writing. The Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

35. The Military Order vests the President with complete discretion to identify the individuals that fall within its scope. It establishes no standards governing the use of his discretion. Once a person has been detained, the Order contains no provision for him to be notified of the charges he may face. On the contrary, the Order authorizes detainees to be held without charges. It contains no provision for detainees to be notified 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 no provision for appeal to an Article III court. In fact, the Order expressly bars review by any court. Though the

Order directs respondent Rumsfeld to create military tribunals, it sets no deadline for his task. And for those detainees who will not be tried before a tribunal, the Order authorizes indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.

**36. The Military Order was promulgated in the United States and in this judicial district, the decision to detain petitioners was made by respondents in the United States and in this judicial district, the decision to detain petitioners on Guantanamo Bay was made in the United States and in this judicial district, and the decision to continue detaining petitioners was, and is, being made by respondents in the United States and in this judicial district.**

37. The United States  
Government has advised the Australian Government that Mr. Hicks is being held at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba, pursuant to this Order. *See* Exhibit L, Letter from Robert Cornall, Australian Attorney General's Department, to Stephen Kenny, Australian counsel for Petitioners (Jan. 18, 2002).

38. British Foreign Office  
Minister Ben Bradshaw advised Parliament on January 21, 2002, that British officials had visited three British citizens being detained at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba, who were held pursuant to this Order. Only one of the detainees was named; the name given was neither Mr. Iqbal nor Mr. Rasul. However, Petitioners Mohammed Iqbal and Skina Bibi received telephone calls from the Foreign and Commonwealth Office January 21, 2002, during which they were informed that their sons were being detained at Camp X-Ray, in Guantanamo Bay.

39. On information and belief, respondent Bush has never certified or determined in any manner, in writing or otherwise, that the detained petitioners are subject to this detention order.

40. The detained petitioners are not properly subject to this detention order.

### **Guantanamo Bay Naval Station**

41. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray, at the United States Naval Base, in Guantanamo Bay, Cuba. Guantanamo 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. Guantanamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. It has its own schools, generates its own power, provides its own internal transportation, and supplies its own water. Offenses committed by both civilians and foreign nationals living on Guantanamo are brought before federal courts on the mainland, where defendants enjoy the full panoply of Constitutional rights.

42. The United States has occupied Guantanamo Bay since 1903, and has repeatedly declared its intention to remain there indefinitely. For several decades, the United States has resisted claims of national sovereignty

**made by Cuba over Guantanamo Bay, insisting that its occupation of the land is legal and will remain so in perpetuity, so long as the United States chooses to exercise dominion and control over the land. The area is now, and has been for many years, under exclusive United States jurisdiction.**

**43. Guantanamo**

**Bay has developed into a fully American enclave with all the residential, commercial, and recreational trappings of a small American city. The infrastructure is permanent and complex, providing for a wholly self-sufficient American community. The “Gitmo Guide”, available online, lists fifteen restaurants, a bowling alley, and a Baskin Robbins. See The Gitmo Guide, at <http://www.geocities.com/Pentagon/6625/dining.html>. Guantanamo Bay contains an outdoor movie theater, a McDonald’s and a mini-mall. <http://www.cubanet.org/CNews/y02/jan02/15e5.htm>. Residents, as well as their children, enjoy a number of recreational activities and clubs, including the Boys Scouts, Cub Scouts, USA Girl Scouts, the Guantanamo Bay Little Theater Company, an Archery Club, a golf club and even a Star Trek club. Residents may participate in a number of different sports including golf, hunting tennis, horseback riding football, softball and soccer.**

**44.**

**A small children’s zoo**

**has been established on the naval base which contains “goats, donkeys, iguanas and banana rats. To facilitate water recreation for the residents, the bay side beaches have been dredged and pooled to protect bathers from the undertow and swift tidal current in the bay. “Gitmo boasts its own yacht club, which conducts races nearly every week ... [requiring] all boats ... to fly the United**



**States flag”<sup>1</sup> The United States has established ‘America’s Slice of Cuba,’<sup>2</sup> where the residents “live in American-style homes, shop for American products and drive American cars. They have cable TV and radio stations, and their children attend schools that could be found in any suburban neighborhood.”<sup>3</sup>**

**45. In light of the foregoing the United States Navy has accurately described Guantanamo Bay as “a Naval reservation which, for all practical purposes, is American territory. Under the [lease] agreements, the United States has for approximately [ninety] years exercised the essential elements of sovereignty over this territory, without actually owning it. Unless we abandon the area or agree to a modification of the terms of our occupancy, we can continue in the present status as long as we like. [According to the United States p]ersons on the reservation are amenable only to United States legislative enactments.” See The History of Guantanamo Bay: An Online Edition (1964), available at <http://www.nsgtmo.navy.mil/history.htm>.**

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<sup>1</sup> Theodore K Mason, “Across the Cactus Curtain” at 106 (1984)(Library of Congress Cataloging in Publication Data).

<sup>2</sup> See Tom Gibbs, “World Americas, America’s Slice of Cuba” (BBC Online Network, Friday January 1, 1999).

<sup>3</sup> <http://www.sun-sentinel.com/news/local/cuba/sns-gitmo-galleryindex.photogallery?coll=sfla-news-cuba>(Inside Guantanamo Bay Naval Station).

46. **On or about January 11, 2002, the precise date unknown to counsel but known to respondents, the United States military transferred the detained petitioners to Camp X-Ray, Guantanamo Bay, where they have been held ever since, in the custody of respondents Bush, Rumsfeld, Lehnert, and Carrico.**

47. **Since gaining control of the detained petitioners, the United States military has held them virtually *incommunicado*. They have been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor have they been notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, nor have they been provided counsel or the means to contact counsel. They 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, the respondents have taken the position that the detainees should not be told of these rights. As a result, the detained petitioners are completely unable either to protect, or to vindicate their rights under domestic and international law.**

48. **David Hicks has been allowed to write a single, brief letter to his father, which was delivered by the Australian Red Cross. In that letter, he asked his father for legal assistance. See Exhibit B, Affidavit of Terry Hicks.**

49. **Shafiq Rasul has attempted to pass messages to his family, through the Red Cross. The U.S. authorities did not permit the details of these messages to be delivered. A summary was provided, however, indicating that Mr. Rasul was well and that he had asked for legal**

representation. *See Exhibit H, Affidavit of Skina Bibi.* Asif Iqbal communicated with his family, through the Red Cross, when he was detained in Afghanistan. It is unknown whether he has attempted to communicate with his family since his detention in Guantanamo.

50. In published statements, respondents Bush, Rumsfeld, Lehnert and Carrico have indicated the United States may hold the detained petitioners under these conditions indefinitely. *See, e.g., Roland Watson, The Times (London), Jan. 18, 2002* (“Donald Rumsfeld, the U.S. Defence Secretary, suggested last night that al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them.”); *Lynne Sladky, Associated Press, Jan. 22, 2002* (“Marine Brig Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held... ‘We have to look at Camp X-ray as a work in progress...,’ Lehnert told CNN. ... Lehnert said plans are to build a more permanent prison ‘exactly in accordance with federal prison standards’”); *John Mintz, THE WASHINGTON POST, “Extended Detention In Cuba Mullied,” Feb. 13, 2002* (“As the Bush administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Gantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.”)<sup>4</sup>

## V. CAUSES OF ACTION

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<sup>4</sup> *See also Time Magazine, “Welcome to Camp X-Ray” (February 3, 2002):*

“More curious still is the matter of the prisoners’ ultimate fate. Rumsfeld has laid out four options: a military trial, a trial in U.S. criminal courts, return to their home countries for prosecution, or continued detention ‘while additional intelligence is gathered.’ The last seems a distinct possibility; the Pentagon plans to build 2,000 cells at Camp X-Ray.”

**FIRST CLAIM FOR RELIEF**

**(DUE PROCESS – FIFTH AND FOURTEENTH AMENDMENTS  
TO THE UNITED STATES CONSTITUTION)**

51. Petitioners incorporate paragraphs 1-50 by reference.

52. By the actions described above, respondents, acting under color of law, have violated and continue to violate the Fifth and Fourteenth Amendments to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without Due Process of Law. Respondents Rumsfeld, Lehnert, and Carrico are likewise acting in violation of the Fifth Amendment, since they act at the President's direction. On its face, the Executive Order violates the Fifth and Fourteenth Amendments.

**SECOND CLAIM FOR RELIEF**

**(DUE PROCESS – FIFTH AND FOURTEENTH AMENDMENTS  
TO THE UNITED STATES CONSTITUTION)**

53. Petitioners incorporate paragraphs 1-52 by reference.

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 the Due Process Clause of the Fifth and

**Fourteenth Amendments to the United States Constitution. The Executive Order, as applied to Mr. Hicks, Mr. Iqbal, and Mr. Rasul, violates the Fifth and Fourteenth Amendments.**

**THIRD CLAIM FOR RELIEF**  
**(DUE PROCESS – INTERNATIONAL LAW)**

55. Petitioners incorporate paragraphs 1-54 by reference.

56. By the actions described above, respondents, acting under color of law, have violated and continue to violate Customary International Law, Arts. 9 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without legal process, in violation of binding obligations of the United States under International Law. Respondents Rumsfeld, Lehnert, and Carrico are likewise acting in violation of International Law, since they act at the President's direction. On its face, the Executive Order violates International Law.

**FOURTH CLAIM FOR RELIEF**  
**(DUE PROCESS – INTERNATIONAL LAW)**

57. Petitioners incorporate paragraphs 1-56 by reference.

58. 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 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. The Executive 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)**

59. Petitioners incorporate paragraphs 1-58 by reference.

60. By the actions described above, respondents, acting under color of law, have violated and continue to violate the rights accorded to persons 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)**

61. Petitioners incorporate paragraphs 1-60 by reference.

62. 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)**

63. Petitioners incorporate paragraphs 1-62 by reference.

64. To the extent the order of November 13, 2001, disallows any challenge to the legality of the detained petitioners' detention by way of habeas corpus, the 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 Terry Hicks Next Friend status, as Next Friend of David Hicks;**
- 2. Grant Petitioner Mohammed Iqbal Next Friend status, as Next Friend of Asif Iqbal;**
- 3. Grant Petitioner Skina Bibi Next Friend status, as Next Friend of Shafiq Rasul;**
- 4. Order the detained petitioners released from respondents' unlawful custody;**
- 5. Order respondents to allow counsel to meet and confer with the detained petitioners, in private and unmonitored attorney-client conversations;**
- 6. Order respondents to cease all interrogations of the detained petitioners, direct or indirect, while this litigation is pending;**
- 7. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth and Fourteenth Amendments to the United States Constitution;**
- 8. Order and declare that the detained petitioners are being held in violation of the Fifth and Fourteenth Amendments 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 Convention, 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;**

**15. Such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the United States Constitution and International Law.**

**Dated:**

**Respectfully submitted,**

**Counsel for Petitioners:**

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**Joseph Margulies\***  
Minnesota Bar No. 208528  
MARGULIES & RICHMAN, plc  
2520 Park Avenue, South  
Minneapolis, MN 55404  
612-872-4900 612-872-4967 (FAX)

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**Clive A. Stafford Smith\*\***  
Louisiana Bar No. 14444  
P.O. Box 50753  
New Orleans, LA 70150-0753  
(504) 558-0440

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**Michael Ratner\***  
William Goodman  
Anthony DiCaprio  
Center for Constitutional Rights  
666 Broadway  
New York, N.Y. 10012  
(212) 614-6464  
(212) 614-6499 (FAX)

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**Gareth Peirce\*\***  
Birnberg Peirce and Partners, Solicitors  
14 Inverness Street  
London NW1 7HJ  
United Kingdom  
0207-911-0166  
0207-911-0170 (FAX)

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**Stephen Kenny\***  
CAMATTA LEMPENS, PTY LTD.  
BARRISTERS AND SOLICITORS  
345 King William Street  
Adelaide, SA 5000  
(011) 618-8410-0211  
(011) 618-8410-0566 (FAX)

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**Jon W. Norris**  
D.C. Bar No. 426105  
The Law Office of Jon W. Norris  
641 Indiana Avenue, N.W.  
Washington, D.C. 20002  
(202) 546-1500  
(202) 842-2622 (FAX)

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**L. Barrett Boss**  
Bar No. 398100  
ASBILL MOFFITT & BOSS, Chtd. 1615  
New Hampshire Avenue, NW Suite  
200 Washington, DC 20009(202) 234  
9000 (x119)(202) 332 6480 (FAX)

**\*Mr. Margulies, Mr. Kenny, and the Center for Constitutional Rights appear for Petitioners Terry and David Hicks.**

**\*\*Mr. Stafford Smith and Ms. Peirce appear for Petitioners Asif and Mohammed Iqbal, as well as Petitioners Rasul and Bibi.**

**Mr. Norris and Mr. Boss appear 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 \_\_\_\_ day of \_\_\_\_\_, 2002.**

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**L. Barrett Boss**