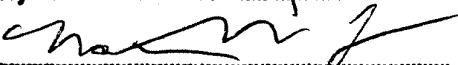


Muneer I. Ahmad

American University
Washington College of Law
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Washington, DC 20016-8184
(202) 274-4389
mahmad@wcl.american.edu <mailto:mahmad@apalc.org>

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This is Exhibit.....^{'A'}.....referred to in the
affidavit of.....Muneer Ahmad
sworn before me, this.....^{8th}.....
day of.....February.....2005

A COMMISSIONER FOR TAKING AFFIDAVITS

PROFESSIONAL EXPERIENCE

Matthew I. Milne-Smith

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, Washington, DC 2001-present
Associate Professor of Law, teaching in International Human Rights Clinic and Immigration Law. Provide instruction and supervision to students in live-client clinical representation in cases involving asylum, immigrant worker exploitation, and international human rights issues. Student cases are brought before domestic courts as well as international human rights bodies. Areas of expertise include immigrants' rights, clinical legal education, labor and employment, and poverty law. Previously taught in Criminal Justice Clinic.

ASIAN PACIFIC AMERICAN LEGAL CENTER, Los Angeles, CA, Staff Attorney 1997-2001
Skadden Fellow, 1997-1999. Represented Latino and Asian immigrant garment workers in federal litigation for claims under federal Fair Labor Standards Act, California Business and Professions Code, and negligence. Drafted declarations, took and defended depositions, and wrote sections of summary judgment motion for *Bureerong et al., v. Uvawas et al.*, suit by enslaved Thai garment workers against manufacturers and retailers. Represented individual garment workers in wage claims before the California Labor Commissioner. Advocated for passage of California anti-sweatshop statute AB 633. Represented immigrant domestic worker trafficked and enslaved by employers in connection with immigration, civil and criminal proceedings. Lead counsel on language access complaint filed with U.S. Department of Health and Human Services, Office for Civil Rights against Los Angeles welfare department under Title VI of Civil Rights Act of 1964. Advocated with federal, state, and local officials to ensure linguistically and culturally appropriate welfare-to-work services for immigrants and workers' rights protections for all recipients. Advised welfare recipients and advocates on immigrant-specific provisions of welfare reform and labor and employment rights in welfare-to-work programs. Conducted legal research and assisted in design of job training-oriented welfare-to-work program for City of Los Angeles Private Industry Council. Supervised summer law students and full time legal externs. Worked in collaboration with other civil rights, public interest law, and community-based organizations.

SOUTH ASIAN NETWORK, Artesia, CA, Legal Task Force Chair 1997 - present
Coordinated provision of legal referrals and direct legal services to low-income immigrants from India, Pakistan, Bangladesh and Sri Lanka in Los Angeles area. Developed domestic violence legal resources for South Asian community. Initiated design for revolving loan fund for domestic violence victims to facilitate access to family law attorney representation.

U.S. DISTRICT COURT, Burlington, VT, Law Clerk 1996-97
Clerk to Judge William K. Sessions III. Assisted judge in preparation for oral arguments and in research and writing of published opinions on civil and criminal matters.

LA RAZA CENTRO LEGAL, San Francisco, CA, Summer Law Intern 1996
Aided in representation of clients in wage and hour, employment discrimination, and housing cases. Conducted client interviews and drafted court documents for litigation.

15

AGHS LEGAL AID CELL, Lahore, Pakistan, Intern 1996
Assisted in client representation on family law, bonded labor, and religious persecution cases at largest legal aid organization in Pakistan. Assessed effectiveness of organization and drafted proposal for significant structural change based on principles of client participation.

MORRISON & FOERSTER, New York, NY, Summer Associate 1995
Drafted memoranda of law on conflicts of law, successor liability, spousal right of election, enforceability of rights under Section 1983, Eleventh Amendment protections, and on-line contracting. Prepared motions *in limine* for death penalty case.

HALE AND DORR LEGAL SERVICES CENTER, Jamaica Plain, MA, Student Intern 1994
Interned as part of Harvard Law School clinical legal education program. Assisted clients in public benefits claims, including disability and other Supplemental Security Insurance (SSI)-related issues. Represented clients in administrative hearings. Drafted estate planning documents for HIV-positive clients.

ACLU IMMIGRANTS' RIGHTS PROJECT, New York, NY, Summer Law Intern 1994
Prepared memoranda on judicial review of INS decisions, and due process rights of political asylum applicants. Assisted in preparation of Congressional testimony on U.S.-Haiti immigration policy.

EDUCATION

HARVARD LAW SCHOOL, J.D., *cum laude*, 1996

Activities: *Harvard Civil Rights-Civil Liberties Law Review*, Articles Editor
Hale & Dorr Legal Services Center, Student Intern
South Asian Association

Third Year

Paper: *Reconsidering Borders: Immigrants and Affirmative Action*

HARVARD COLLEGE, A.B., *magna cum laude*, in Modern Middle Eastern Studies, 1993

Activities: Harvard Foundation for Intercultural and Race Relations, co-chair
South Asian Association, co-president

Thesis: *Radicalism in Orthodoxy's Clothing: The Law of Apostasy in Islam and the Salman Rushdie Affair*

HONORS

ROCKEFELLER FOUNDATION RESIDENT FELLOWSHIP IN THE HUMANITIES, California State University, Los Angeles, 2004-05 (Fellowship to support research on legal strategies to organize and empower women in the garment industries of Los Angeles, California and Ahmedabad, India)

SOUTH ASIAN NETWORK COMMUNITY LEADER AWARD, Artesia, CA, 2003

ASIAN PACIFIC AMERICAN BAR ASSOCIATION OF NEW YORK LEADERSHIP AWARD, New York, NY, 2003

SKADDEN FELLOWSHIP, 1997-1999

IRVING KAUFMAN PUBLIC INTEREST FELLOWSHIP, Harvard Law School, 1997-98

PUBLICATIONS

A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion, 92 Cal. L. Rev. 1259 (2004).

Homeland Insecurities: Racial Profiling the Day After 9/11, Social Text 72, Vol. 20, No. 3 (Fall 2002).

The Ethics of Narrative, 11 Amer. U. J. of Gender, Soc. Policy & Law 117 (2002).

Serving Market Needs, Not People's Needs: The Indignity of Welfare Reform, 10 Amer. U. J. of Gender, Soc. Policy & Law 27 (2002).

PRESENTATIONS

An Introduction to Clinical Legal Education in the United States, Delhi University Law College, New Delhi, India, December 14, 2004.

Language, Lawyering and Racial Treachery, Critical Race Lawyering Conference, Fordham Law School, New York, NY, November 5, 2004.

Cross-Racial Lawyering & Organizing, Law & Society Association Annual Conference, Chicago, IL, May 26, 2004.

Law & Organizing and Legal Clinics, AALS Clinical Conference, San Diego, CA, May 1, 2004.

Workshop for the Future: Immigration, Asylum, and International Human Rights Clinics (co-planner and facilitator), AALS Clinical Conference, in San Diego, May 2, 2004.

Lawyering for Limited English Proficient Clients, New York Law School Clinical Theory Workshop, New York, NY, March 26, 2004.

LGBT Immigrants' Rights and Organizing Post 9/11, Queer Asian Pacific Legacy, New York, NY, March 6, 2004.

Immigrants After September 11: What Process is Now Due?, American University Washington College of Law (symposium participant), Washington, DC, October 9, 2003.

Lessons of Korematsu: Balancing Civil Liberties and National Security, American University Washington College of Law, September 25, 2003.

Islam on Trial? Today's Religious and Ethnic Targeting and Its Historical Context, Patriotism in a Time of War: Defending the Bill of Rights and the Individual Accused in Terrorism Cases Federal Defenders Conference, Detroit, MI, May 9, 2003.

Lawyering for Limited English Proficient Clients, Mid-Atlantic Clinical Theory Workshop, University of the District of Columbia Law School, Washington, DC, April 25, 2003.

Why Diversity Matters, Society of American Law Teachers Discussion on *Grutter v. Bollinger*, Georgetown University Law Center, Washington, DC, April 1, 2003.

Lawyers as Activists: Responses to INS Racial Targeting, American University Washington College of Law, (moderator), Washington, DC, March 20, 2003.

Addressing Socio-Economic Disparities in South Asian America, Yale University, New Haven, CT, February 8, 2003.

Re-Racing Arabs, Muslims, and South Asians, Re-Imagining Asian America: Race, Religion and Asian America After 9/11. Simpson Center for the Humanities, University of Washington, Seattle WA, November 19, 2002.

The River Hasn't Changed, The Raft is Still the Same: Why September 11 is an Asian Pacific American Issue and What We Can Do About It, Asian American Bar Association of the Delaware Valley (keynote address), Philadelphia, PA, October 25, 2002.

Defending Immigrants After 9/11, National Association of Muslim Lawyers Conference, Columbia Law School, New York, NY, October 12, 2002.

Liberty, Security and the Constitution: A Town Hall Meeting for the Muslim Community, The Constitution Project and Karamah, George Mason University, Fairfax, VA, September 25, 2002.

International and Domestic Implications of September 11: Identifying the Legal Issues and Enriching Public Debate, American University Washington College of Law, Washington, DC, September 11, 2002.

Hate Crimes Against South Asians, Congressional Staff Briefing (sponsored by U.S. Reps. Lynn Woolsey and Mike Honda), Washington, DC, July 25, 2002.

Labour Law and the Informal Economy (moderator), Women in Informal Employment: Globalizing and Organizing, Geneva, Switzerland, June 15-16, 2002.

9.11 Global Emergencies, University of California, San Diego, Institute for International Comparative and Area Studies, San Diego, CA, May 7, 2002.

September 11 and the Challenge to Coalition, Opening Plenary Speaker, LatCrit VII (Latina and Latino Critical Race Theory) Conference, Portland, OR, May 2, 2002.

9/11 and the Asian American Community, American Bar Association of the Delaware Valley Annual Conference, Philadelphia, PA, April 27, 2002.

Racial Profiling, Feminism and 9/11, Feminism and Legal Theory Workshop, Cornell Law School, Ithaca, NY, April 20, 2002.

Hate Crimes Against South Asians: A Legal, Social, and Cultural History, South Asian American Leaders of Tomorrow (SAALT) Program: Raising Our Voices, Washington, DC, March 28, 2002.

The Ethics of Narrative, Homophobia in the Halls of Justice: Sexual Orientation Bias and Its Implications Within the Legal System Conference, American University Washington College of Law, Washington, DC, March 26, 2002.

A Place at the Table: Legal Rights of Women in Afghanistan (moderator), American University Washington College of Law, Washington, DC, March 21, 2002.

Immigrants' Rights Before and After 9/11 and the Challenge of Coalition, National Coalition of Asian Pacific Americans Dialogue: South Asian Americans Post 9/11, Washington, DC, February 12, 2002.

Labor Law and the Informal Economy, Women in Informal Employment Globalizing and Organizing (WIEGO) Annual Meeting, Ahmedabad, India, January 20, 2002.

(Re)Racialization of Arab, Muslim and South Asian Communities Post- 9/11, American Studies Association Conference, Washington, DC, November 10, 2001.

Trafficked Women as Labor Activists, National Asian Pacific American Women's Forum Meeting, Washington, DC, November 7, 2001.

Media Representations of Arabs and Muslims Post 9/11, American University Washington College of Law, October 16, 2001.

Human Trafficking in the U.S. of South Asian and Southeast Asian Women, U.S. State Department International Visitor Program, Presentation to South Asian Delegation, Washington, DC, August 21, 2001.

Informalization of the Formal Economy in the Los Angeles Garment Industry, "The Informal Economy in North America," Harvard Trade Union Program, May 21-22, 2001.

Trafficked Women, Labor Activists, and the Making of Victims, "Transgressing Borders: Women's Bodies, Identities and Families," (Conference in honor of Mary Jo Frug), New England School of Law, March 31, 2001.

Labor Standards and Worker Health in the Informal Economy: A Look at the Los Angeles Garment Industry, "Work and Health: New Relationships in a Changing Economy" (sponsored by the Rockefeller Foundation, the California Endowment, and the California Wellness Foundation), San Francisco, CA, March 16, 2001.

Diversity, Marginality and Cross-Racial Work Within the Asian Pacific American Civil Rights Community, National Asian Pacific American Bar Association Annual Convention, Civil Rights Forum, Washington, DC, October 14, 2000.

Lecturer, Washington College of Law, American University, Asian Pacific Americans and the Law Class (Prof. Leti Volpp), October 16, 2000; February 29, 2000.

Lecturer, University of California, Los Angeles, Asian Americans and the Law Class (Profs. Kent Wong and Stewart Kwoh), October 17, 2000.

Lecturer, California State University, Northridge, "Los Angeles: Past, Present Future" Class (Prof. Mary Ovnick), Northridge, CA, March 8, 2000.

Lecturer, Loyola Marymount University, Contemporary Issues in Asian Pacific American Communities (Prof. Dennis Arguelles), Los Angeles, CA, February 23, 2000.

The Perversity of Impoverishment: The Case for Public Interest Law in Los Angeles, Plenary Panel Speaker, UCLA Law School Symposium, "Speaking Truth to Power: A Conference on Progressive Law and Community Action Strategies," Los Angeles, CA, September 27, 1999.

Impact of Welfare Reform on Refugee Communities: Identifying Language Access Issues, California Statewide Refugee Information Exchange Conference, San Diego, CA, September 2, 1999.

Strategies for Improving Language Access to Public Benefits Programs, Western Center on Law and Poverty, Health and Welfare Statewide Task Force, Riverside, CA, May 14, 1999.

Race, Identity, and Multi-Racial Legal Advocacy: The Role of Advocate Identity in Public Interest Law, University of Michigan Journal of Race and Law Martin Luther King, Jr. Symposium, "Trying the System: Lawyers and Racial Justice," Ann Arbor, MI, January 25, 1999.

The Role of Private Industry Councils, the County, Private Sector and Advocates in Welfare-to-Work, Getting it to Work: A Conference on Welfare-to-Work and Families, Los Angeles, CA, September 24, 1998.

BAR ADMISSION

Admitted to District of Columbia Bar, 2003
Admitted to New York Bar, 1997
Admitted to California Bar, 1997

LANGUAGES

Proficient in Hindi and Urdu. Read and understand French. Learning Spanish.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Omar Khadr,
 Detainee, Camp Delta,
 Guantánamo Bay Naval Station,
 Guantánamo Bay, Cuba; and

Fatmah Elsamnah,

as Next Friend of Omar Khadr;

Petitioners,

v.

GEORGE W. 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 Station
 Guantánamo Bay, Cuba,
 c/o United States Army,
 Army Pentagon
 Washington, DC 20310-0200; and

This is Exhibit.....¹⁸.....referred to in the
affidavit of.....Muneer Ahmad
sworn before me, this.....8th
day of.....February.....2005


A COMMISSIONER FOR TAKING AFFIDAVITS

Matthew I. Milne-Smith

PETITION FOR WRIT
OF HABEAS CORPUS

CASE NUMBER 1:04CV01136

JUDGE: John D. Bates

DECK TYPE: Habeas Corpus/2255

DATE STAMP: 07/02/2004

(continued on next page)

Respondents.
All sued in their official capacity.

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PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Omar Khladi (“Omar”) seeks the Great Writ. He acts on his own behalf and through his Next Friend, Ms. Fatmah Elsamnah, his grandmother.
2. Omar is a Canadian citizen. He is being held virtually *incommunicado* in Respondents’ unlawful custody.
3. Pursuant to either the President’s authority as Commander in Chief and under the laws and usages of war or a military order issued November 13, 2001, (“the Military Order”), Respondents George W. Bush, President of the United States, Donald H. Rumsfeld, U.S. Secretary of Defense, Army Brigadier General Jay Hood, Commander of Joint Task Force- GTMO, and Army Colonel Nelson J. Cannon, Commander, Camp Delta, Guantánamo Bay Naval Station, Cuba (“Guantanamo”) are either ultimately responsible for or have been charged with the responsibility of maintaining the custody and control of Omar at Guantánamo.

I JURISDICTION

4. Petitioners bring this action under 28 U.S.C. §§2241 and 2242, and invokes this Court’s jurisdiction under 28 U.S.C. §§1331, 1350, 1651, 2201, and 2202; 5 U.S.C. §702; the Fifth, Sixth, and Eighth 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. Because they seek declaratory relief, Petitioners also rely on Fed.

R. Civ. P. 57.

5. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by Fatmah Elsamnah 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 PARTIES

6. Omar is a Canadian citizen presently incarcerated and held in Respondents' unlawful custody at Camp Delta, Guantánamo. *See* Exhibit A, Affidavit of Fatmah Elsamnah.
7. Petitioner Fatmah Elsamnah is Omar's grandmother. She has received several messages from her grandson expressing concern over his detention. Because her grandson cannot secure access either to legal counsel or to the courts of the United States, Fatmah Elsamnah acts as his Next Friend. *See* Exhibit A, Affidavit of Fatmah Elsamnah.
8. On her own and through Canadian Counsel, Nathan Whitling, Fatmah Elsamnah has tried repeatedly to contact her grandson, to learn more about his condition and status and to gain access to him. The United States has either rebuffed or ignored counsel's requests. The United States has provided no information either to Ms. Elsamnah or to Mr. Whitling regarding their requests for access to Omar, the date and circumstances of Omar's arrest or the specific reasons for his continued detention at Guantánamo. *See* Exhibit B, Affidavit of Nathan Whitling, Canadian Counsel for Petitioner Omar Kadhr and Fatmah Elsamnah and attachments thereto.
9. Respondent George W. Bush is the President of the United States and Commander in Chief of the United States Military. It is pursuant to the Military Order promulgated by him or alternatively, under his authority as Commander in Chief and under the laws and usages of war that Omar is being detained. Accordingly, Respondent Bush is ultimately responsible for Petitioner's unlawful detention. He is sued in his official capacity.
10. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to

either the November 13, 2001 Military 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 Omar. He is sued in his official capacity only.

11. Respondent Hood is the Commander of Joint Task Force-GTMO, the task force running the detention operation at Guantánamo. He has supervisory responsibility over Omar and is sued in his official capacity only.
12. Respondent Cannon is the Commander of Camp Delta, the U.S. facility where Omar is presently held. He is the immediate custodian responsible for Omar's detention, and is sued in his official capacity only.

III STATEMENT OF FACTS

13. On information and belief, Omar is not, nor has he ever been, an enemy alien, lawful or unlawful belligerent, or combatant of any kind.
14. On information and belief, Omar is not, nor has he ever been, "enemy combatants" who were "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there." *See Hamdi v. Rumsfeld*, 542 U.S. ___, slip op. at 8-9 (June 28, 2004).
15. Omar seeks to enforce his right to a judicial determination of whether there is a factual basis for Respondent's determination that he is an "enemy combatant."
16. Omar was born in September, 1986. In 1997, he moved with his family from Pakistan to Kabul, Afghanistan so that his father could seek employment there. In November 2001, in order to avoid the bombing that was taking place in Kabul, Omar's father directed Omar and his brother to move their belongings to an orphanage outside of the city. During this time, Omar and his brother were separated. Omar's family learned in late 2002 that he had been arrested on July 27, 2002, when he was just 15 years old. They learned that Omar had been transferred to the custody of the U.S. Military and transported to Guantánamo in the late fall of 2002. *See Exhibit A, Affidavit of Fatmah Elsamnah.* Omar has been held in United States custody at

Guantánamo since that time. *See* Exhibit A, Affidavit of Fatmah Elsamnah.

17. On information and belief, at the time of his detention, Omar was not a member of either the Taliban government armed forces or the Al Qaida armed forces, and he did not cause or attempt to cause any harm to American personnel or property prior to his capture.

The Joint Resolution

18. In the wake of the September 11, 2001 attacks on the United States, 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 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).
19. On information and belief, Omar: i) is not, and has never been, a member of Al Qaeda or any other terrorist group; ii) prior to his detention, did not commit any violent act against any American person or espouse any violent act against any American person or property; iii) was not involved in the ensuing armed conflict; and iv) had no involvement, direct or indirect, in either the terrorist attacks on the United States on September 11, 2001, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. He is therefore not properly subject to the detention order issued by the President, nor is he properly subject to the Executive's authority as Commander in Chief or under the laws and usages of war.
20. On information and belief, Omar has had no military or terrorist training, nor has he at any time voluntarily joined any terrorist force.
21. Omar was not initially taken into custody by American forces. On information and belief, Omar was taken into custody against his will and handed over to the Americans. Petitioners are aware of no evidence that he engaged in combat against American forces.
22. On information and belief, Omar promptly identified himself by his correct name and

nationality to the United States and requested that the United States provide him with access to his family and to legal counsel. Omar was kept blindfolded against his will for lengthy periods while being taken involuntarily to Guantánamo. In the course of being taken to Guantánamo, Omar believes he was transported via other American territory.

The Detention Order

23. 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":

- i. is or was a member of the organization known as al Qaida;
- 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 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.

24. 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 the person 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 illegally bars review by any court. The Order also illegally authorizes indefinite and unreviewable detention, based exclusively on the President's written determination that an

individual is subject to its terms.

25. The Military Order was promulgated in the United States and in this judicial district, the decision to detain Petitioner was made by Respondents in the United States and in this judicial district, the decision to detain Petitioner at Guantánamo was made in the United States and in this judicial district, and the decision to continue detaining the Petitioner was, and is, being made by Respondents in the United States and in this judicial district.
26. Respondent Bush has never certified or determined in any manner, in writing or otherwise, that Omar is subject to the Military Order.
27. Omar is not properly subject to the Military Order.

Guantánamo Bay Naval Station

28. 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 Guantánamo Bay, Cuba. In April 2002, all prisoners were transferred to a more permanent prison facility in Guantánamo, Camp Delta. Offenses committed by both civilians and foreign nationals living on Guantánamo are brought before federal courts on the mainland, where respondents enjoy the full panoply of Constitutional rights. Detainees incarcerated at Guantánamo are entitled to test the legality of their detention in the federal courts. *Rasul v. Bush*, 542 U.S. ___, (June 28, 2004).
29. In or about the spring of 2003, the precise date unknown to counsel but known to Respondents, the United States military transferred Omar to Guantánamo, where he has been held ever since, in the custody of Respondents Bush, Rumsfeld, Hood, and Cannon.

The Conditions of Detention at Guantánamo

30. Since gaining control of Omar, the United States military has held him virtually *incommunicado*. He has been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though he has not been charged with an offense, nor has

he been notified of any pending or contemplated charges. He has made no appearance before either a military or civilian tribunal of any sort, nor has he been provided counsel or the means to contact counsel. He has not been informed of his 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, Respondents have taken the position that Petitioner should not be told of these rights. As a result, Omar is completely unable either to protect or to vindicate his rights under domestic and international law.

31. On information and belief, Omar: i) has been forced to provide involuntary statements to Respondents' agents at Guantánamo; ii) has been held under conditions that violate his international and constitutional rights to dignity and freedom from cruel, unusual and degrading treatment or punishment; iii) has been housed throughout his detention in accommodation that fails to satisfy both domestic and internationally accepted standards of accommodation for any person subject to detention; and iv) was initially forced to use a bucket for a toilet, and was not provided with basic hygienic facilities. He has been refused meaningful access to his family. He has not been provided with the opportunity fully to exercise his religious beliefs. He has been exposed to the indignity and humiliation of the cameras of the national and international press, brought to Guantánamo with the express consent and control of Respondents.
32. In published statements, Respondents Bush, Rumsfeld, and officers Lehnert and Carrico who preceded Hood and Cannon in their respective positions, indicated the United States may hold Omar 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, ASSOC. 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

International Law.

FIFTH CLAIM FOR RELIEF
(ALIEN TORT CLAIMS ACT – TORTURE)

42. Petitioner incorporates paragraphs 1 - 41 by reference.
43. The acts described herein were inflicted deliberately and intentionally for purposes which included, among others, punishing or intimidating the victim, the detained Petitioner.
44. The acts described herein constitute torture in violation of the law of nations under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting torture as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
45. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to commit the acts of torture against the detained Petitioner.
46. Petitioner is entitled to monetary damages and other relief to be determined at trial for any and all physical or psychological abuse or agony he suffered as a result of his detention.

SIXTH CLAIM FOR RELIEF
(ALIEN TORT CLAIMS ACT – CRUEL, INHUMAN OR DEGRADING TREATMENT)

47. Petitioner incorporates paragraphs 1 – 46 by reference.
48. The acts described herein had the intent and the effect of grossly humiliating and debasing the detained Petitioner, forcing him to act against his will and conscience, inciting fear and anguish, and breaking his physical or moral resistance.
49. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the law of nations under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting cruel, inhuman or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
50. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified,

and/or conspired together and with others to cause the cruel, inhuman or degrading treatment of the detained Petitioner.

51. Petitioner is entitled to monetary damages and other relief to be determined at trial for any and all physical or psychological abuse or agony he suffered as a result of his detention.

SEVENTH CLAIM FOR RELIEF
(ALIEN TORT CLAIMS ACT – ARBITRARY ARREST AND DETENTION)

52. Petitioner incorporates paragraphs 1 - 51 by reference.
53. The acts described herein constitute arbitrary arrest and detention of Petitioner in violation of the law of nations under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.
54. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to bring about the arbitrary arrest and detention of the detained Petitioner.
55. As result of Respondents' unlawful conduct, the detained Petitioner was deprived of his freedom, separated from his family and forced to suffer severe physical and mental abuse, and is entitled to monetary damages and other relief to be determined at trial.

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

56. Petitioner incorporate paragraphs 1 - 55 by reference.
57. 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.

NINTH CLAIM FOR RELIEF
(WAR POWERS CLAUSE)

58. Petitioner incorporate paragraphs 1 - 57 by reference.
59. 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 Petitioner without Congressional authorization.

TENTH CLAIM FOR RELIEF
(SUSPENSION OF THE WRIT)

60. Petitioner incorporate paragraphs 1 - 59 by reference.
61. To the extent the Executive Order of November 13, 2001, disallows any challenge to the legality of the Petitioner's 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.

ELEVENTH CLAIM FOR RELIEF
(ARBITRARY AND UNLAWFUL DETENTION - VIOLATION OF THE APA)

62. Petitioner incorporate paragraphs 1 - 61 by reference.
63. By detaining Petitioner for the duration and in the manner described herein, Respondents have arbitrarily, unlawfully, and unconstitutionally detained the Petitioner, in violation of the Administrative Procedures Act, 5 U.S.C. §706(2).

V
PRAYER FOR RELIEF

WHEREFORE, Petitioner pray for relief as follows:

1. Grant Petitioner Fatmah Elsamnah Next Friend status, as Next Friend of Omar Khadr;
2. Order the detained Petitioner to be released from Respondents' unlawful custody;

3. Order Respondents to allow counsel immediately to meet and confer with the detained Petitioner, in private and unmonitored attorney-client conversations;
4. Order Respondents to cease immediately all interrogations of the detained Petitioner, direct or indirect, while this litigation is pending;
5. Order and declare the Executive Order of November 13, 2001, as applied to the detained Petitioner, unlawful as a violation of the Fifth Amendment to the United States Constitution;
6. Order and declare the Executive Order of November 13, 2001, as applied to the detained Petitioner, unlawful as a violation of the Administrative Procedures Act, 5 U.S.C. § 702;
7. Order and declare the Executive Order of November 13, 2001, as applied to the detained Petitioner, 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;
8. Order and declare that the Executive Order of November 13, 2001, as applied to the detained Petitioner, violates the War Powers Clause;
9. Order and declare that the provision of the Executive Order that bars the detained Petitioner from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution;
10. Order and declare that the prolonged, indefinite, and restrictive detention of Petitioner is arbitrary and unlawful, a deprivation of liberty without due process in violation of the Fifth Amendment to the United States Constitution, and in violation of the law of nations and treaties of the United States;
11. Order and declare that the detained Petitioner is being held in violation of the Fifth Amendment to the United States Constitution;
12. Order and declare that the detained Petitioner is 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;
13. Order and declare that the detained Petitioner is being held in violation of the regulations of the United States Military, the Geneva Conventions, and international humanitarian law;

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. Order respondents to pay the detained Petitioner monetary damages for any physical or psychological abuse or agony he has suffered, in an amount to be determined at trial; and
16. Grant such other relief as the Court may deem necessary and appropriate to protect Petitioner's rights under the United States Constitution, federal statutory law, and international law.

Dated: July 2, 2004

Respectfully submitted,

Eric Freedman (TR)

Eric M. Freedman

COUNSEL FOR PETITIONER:


District of Columbia Bar No. 387064

250 W. 94th Street
New York, NY 10025
Tel. (212) 665-2713
Fax (212) 665-2714

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 2nd day of July, 2004

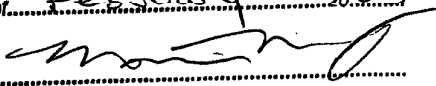
Eric Freedman 
Eric M. Freedman

This is Exhibit.....^{'C'}.....referred to in the
affidavit of.....Muneer Ahmad.....
sworn before me, this.....8th.....
day of.....February.....2005
[Signature]
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Matthew I. Milne-Smith



This is Exhibit.....D.....referred to in the
affidavit of.....Muneer Ahmad
sworn before me, this.....8th
day of.....February.....20..05



A COMMISSIONER FOR TAKING AFFIDAVITS

Matthew I. Milne-Smith

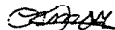


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SIGNATURE OMAR KHADR



I accept responsibility for the choice, use and return of all materials
borrowed and agree to all conditions on the back of this card.



Human Resources
Development Canada

Développement des
ressources humaines Canada

SOCIAL
INSURANCE
NUMBER

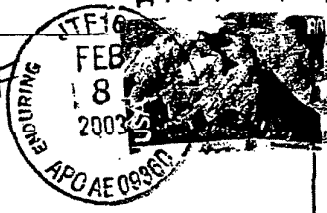
NUMÉRO
D'ASSURANCE
SOCIALE

520 284 753

OMAR AHMED KHADR

34

T007400

DETAINEE <u>766 JJJGFF</u> 160 Camp X-Ray Washington, DC 20353 USA		
SENDER		TO:
NAME (Last, First, MI) Khdav, Omar, Ahmed		EL-samnah family
INTERNMENT SERIAL NUMBER JJJGFF		STREET 13 Khartoum Ave
DATE AND PLACE OF BIRTH 19/9/1986 tro, Canada		CITY toronto,
NAME OF CAMP		COUNTRY Canada
COUNTRY WHERE POSTED Cuba		PROVINCE OR DEPARTMENT SCA, ont (M1K3Y1)

DA FORM 2668-R, May 82

EDITION OF 1 JUL 83 IS OBSOLETE.

This is Exhibit E referred to in the
affidavit of Muneer Ahmed
sworn before me, this 8th
day of February 2005


A COMMISSIONER FOR TAKING AFFIDAVITS

Matthew I. Milne-Smith

بسم الله الرحمن الرحيم

POST CARD For use of this form, see the proponent agency is DCSPER.		DATE 2/1/2003
LANGUAGE English	POWER SERVED	
WRITE BETWEEN LINES AND AS LEGIBLY AS POSSIBLE		
To my dear family:- how are you I hope you are in good health, and i'm good and in good health (praise be to Allah) I miss you very much much and I wish I can see you in the ^{nearest} best time any ^{place} place , and I pray for you very much and don't forget me from your prayers and don't forget to write me and if there any problem write me the phone		

Reverse of DA Form 2658-R, May 82

your son :- anwar khadar

766



2003-652

3082

1. RED CROSS MESSAGE

رسائل الصليب الأحمر

2. SENDER / المرسل

ICRC No. 10710 رقم اللجنة الدولية
Full name Omar Ahmed Khadar الاسم بالكامل
Father's name Ahmed Khadar اسم الوالد بالكامل
Grand-father's name Khadar اسم الجد
Mother's name Maha El-Sammak اسم الوالدة
Nationality Canadian الجنسية
Date of birth 19/9/1986 تاريخ الميلاد Sex ☒ F ☒ M ☐ F ☐ M الجنس
Place of birth { village / القرية district / المنطقة province / المحافظة country / البلد } مكان الميلاد
{ Are. Sca. Ont. Canada }
Refugee camp/Detention place معسكر اللاجئين/ مكان الأسر
Street الشارع
Village, District or City القرية/ المنطقة أو المدينة
Province/Country Canada House No. رقم المنزل

CLEARED BY U.S. FORCES

3. ADDRESSEE / المرسل إليه

ICRC No. رقم اللجنة الدولية
Full name Entinn El-Sammak اسم بالكامل
Father's name El-Sammak اسم الوالد بالكامل
Grand-father's name El-Sammak اسم الجد
Mother's name اسم الوالدة
Nationality Canadian الجنسية
Date of birth تاريخ الميلاد Sex ☒ F ☒ M ☐ F ☐ M الجنس
Place of birth { village / القرية district / المنطقة province / المحافظة country / البلد } مكان الميلاد
{ Egypt }
Refugee camp/Detention place معسكر اللاجئين/ مكان الأسر
Street J. Khartoum Ave الشارع
Village, District or City Sca. Ont. Are. القرية/ المنطقة أو المدينة
Province/Country Canada House No. رقم المنزل
(MAX341)

4. INTERNATIONAL COMMITTEE OF THE RED CROSS

اللجنة الدولية للصليب الأحمر

CANADA 19, av. de la Paix - 1202 Geneva, Switzerland

MCR/EN-AR/10.01/ACR

5 MESSAGE
RECEIVED
CLEARED BY U.S. FORCES OFF. 10 2002
Family and/or private news only
 BY:

To my dear grand parents :-
 now are you I hope you are in good
 health and in good and sides (with
 food ...) I'm waiting for you to
 send me any letters (I'm here in
 Unibol) and its water then before in
 program, from day parents I don't have
 my new news or my brother
 [REDACTED]
 and don't forget us from
 your prayers

6.
 Date 10/12/2002
 Signature *Amir d. Khader*
 The addressee is my *grand father*
 علاءة العنة بنين الرسل إلى

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7. RED CROSS MESSAGE
 رسالة الصليب الأحمر
 117664
 1006497

8. SENDER / المرسل
 ICRC No. ABZ-010710
 Full name *AMAR AHMAD KHADER*
 Father's name *AMINAH SAIED*
 Grand-father's name *MUHAMMED EL-SAGANA*
 Mother's name *MAHR EL-SAMIR*
 Nationality *CAMADIAN*
 Date of birth *19/03/86* Sex ☒ M ☐ F
 Place of birth *TOHONIC / CARACOR*
 Village, District or City
 Province/Country
 Street
 Refugee camp/Detention place *CARACOR*
 Village, District or City
 Province/Country
 House No.

9. ADDRESSEE / المرسل إلى
 ICRC No.
 Full name *MUHAMMEL EL-SAMIR*
 Father's name
 Grand-father's name
 Mother's name
 Nationality *CAMADIAN*
 Date of birth
 Place of birth
 Village, District or City
 Province/Country
 House No.

10. INTERNATIONAL COMMITTEE OF THE RED CROSS
 اللجنة الدولية للصليب الأحمر
 19, av. de la Paix - 1202 Geneva, Switzerland

MCR/ENAR 0001ACR

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