

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Omar ABU ALI and Faten ABU ALI,)
as Next Friends of)
Ahmed ABU ALI,)
presently detained in Saudi Arabia, his)
residence and that of his Next Friends is)
3245 Rio Drive, Apt. 1015)
Falls Church, VA 22041)
Petitioners)
v.)
John ASHCROFT, Attorney General of the)
United States;)
Robert S. MUELLER, III, Director of the)
Federal Bureau of Investigation;)
Luke KULIGOSKI, Special Agent, Federal)
Bureau of Investigation;)
Other Special Agents of the FBI to be)
Identified and Named;)
Thomas RIDGE, Secretary of the)
Department of Homeland Security; and)
Colin POWELL, United States Secretary)
of State,)
Respondents)

CIVIL ACTION NO. _____

PETITION FOR WRIT OF
HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Ahmed Abu Ali, a citizen of the United States of America, has been unlawfully detained in Saudi Arabia for over a year under the direction of the United States in order to interrogate him and hold him indefinitely without affording him due process protections. Omar Abu Ali and Faten Abu Ali, the father and mother of Ahmed Abu Ali, acting as his Next Friends,

seek relief from this court on behalf of their son by respectfully requesting, alternatively or additionally, a Writ of Habeas Corpus and such Mandamus relief, declaratory judgment, and injunctive relief as will secure Ahmed Abu Ali's release and return to the United States, as well as a determination that his detention under the conditions described has been and is unlawful, and must be terminated forthwith.

2. This Petition is filed pursuant to 28 U.S.C. §§ 2241, 2242 for Writs of Habeas Corpus, 28 U.S.C. § 1361 for Mandamus relief, and 28 U.S.C.S. §§ 2201, 2202 for injunctive relief. *See also National Conf. on Ministry to the Armed Forces v. James*, 278 F. Supp. 2d 37, 42-43 (D.D.C. 2003) (establishing the standard for mandatory injunctive relief).

3. In an attempt to gather information regarding the prosecution of suspected terrorists and to prevent potential acts of terrorism, Respondents have directed Saudi officials, as their agents, to assist them in detaining and interrogating Petitioner Ahmed Abu Ali on an arbitrary and indefinite basis in violation of his Constitutional and statutory rights. Just as the Executive Branch attempted to deny prisoners access to U.S. courts to challenge their detention by detaining them in Guantanamo Bay, Cuba, (*See Rasul v. Bush*, 124 S.Ct. 2686, 2004 U.S. LEXIS 4760 (June 28, 2004)), the Respondents in this case seek to deny Petitioner Ahmed Abu Ali any recourse to U.S. courts by detaining him abroad on an arbitrary and indefinite basis, without observing his due process protections, through their agents, who are Saudi officials.

4. In their official capacities, Respondents owe Petitioner Ahmed Abu Ali specific protection and treatment as an American citizen under the Constitution and laws of the United States. Respondents have the authority and responsibility to request Petitioner Ahmed Abu Ali's release from Saudi custody and must do so to prevent the continued violation of his rights as an American citizen. By detaining Petitioner Ahmed Abu Ali through their Saudi agents and by

refusing to request his return to the U.S. despite assurances from the Saudi government that Saudi Arabia had no reason to continue to hold the Petitioner and would release him to U.S. custody if requested, Respondents continue to inflict serious and irreparable harm on him in violation of his rights. Saudi Arabia acknowledges that it has no independent basis for detaining Petitioner Ahmed Abu Ali. Thus, Respondents are in control of Petitioner Ahmed Abu Ali's custody through their Saudi agents, and must either release him, by ordering their Saudi agents to release him from detention, or issue a warrant and extradite him to the United States where his rights may be protected.

5. Respondents have denied Petitioner Ahmed Abu Ali his fundamental rights as a citizen of the United States by violating the following Constitutional and statutory obligations:

- a. Respondents have deprived Petitioner Ahmed Abu Ali of his liberty without affording him due process of law, guaranteed to all American citizens in the Fifth Amendment of the United States Constitution. They have violated several protections of the Fourth, Sixth, and potentially Eighth Amendments, granting American citizens the right to be secure against unreasonable searches and seizures, the right to a speedy trial, and the right to be free from cruel and unusual punishment.
- b. Respondents have violated the Citizen Non-Detention Act, 18 U.S.C. § 4001, by ordering Petitioner Ahmed Abu Ali's arbitrary and indefinite detention in a foreign nation without plans to extradite him or to charge him with any crime.
- c. Respondents may have violated the Convention Against Torture and its implementing statutes by acting with their agents, who are Saudi officials, to use coercive methods in interrogating Petitioner Ahmed Abu Ali, which, on information and belief, may amount to torture. *See* Convention Against Torture and Other Cruel, Inhuman, or

Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85; 18 U.S.C. § 2340A.

d. Respondents have violated treaty-based and customary international law binding on the U.S., as embodied by Article 9 of the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (ratified Sept. 8, 1992), reprinted in 6 I.L.M. 368 (hereinafter “ICCPR”), by arbitrarily depriving Petitioner Ahmed Abu Ali of his liberty without charges and without trial for over a year. Respondents may have also violated Article 7 of the ICCPR by using coercive methods to interrogate Petitioner Ahmed Abu Ali.

6. Petitioners seek the release of Ahmed Abu Ali from his arbitrary, indefinite, and unlawful detention by the Respondents acting with their agents, his return to the United States, and a determination by this Court that his long-term detention and interrogation without charge in Saudi Arabia by the U.S. government through their agents is unlawful and unconstitutional.

PARTIES

A. Petitioners

7. Petitioner Ahmed Abu Ali is a citizen and resident of the United States, and possesses dual citizenship with Jordan. Pursuant to Respondents’ direction, he is presently detained under conditions that suggest that he may have been subjected to abusive treatment for purposes of interrogation, and has been detained for over one year, without charge at Al-Hair prison in Saudi Arabia.

8. Petitioners Omar Abu Ali and Faten Abu Ali are Ahmed Abu Ali’s father and mother, respectively. Omar Abu Ali is a citizen and long-term resident of the United States and Faten

Abu Ali is a permanent resident of the United States. They both possess dual citizenship with Jordan. They seek relief as “Next Friends” of Ahmed Abu Ali pursuant to the requirements of 28 U.S.C.S. § 2242, which states that “[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf,” and *Whitmore v. Arkansas*, 495 U.S. 149, 150 (1990), which states “next friends” can file suit on behalf of a detainee if they can provide an adequate explanation for why the real party in interest cannot appear or grant approval in his own behalf, if they can demonstrate that they are dedicated to the best interests of the real party in interest, and if they have a significant relationship with the real party in interest.

9. In the instant case, Petitioner Ahmed Abu Ali cannot sign and approve this Petition or appear in his own behalf because he is detained without charge on an indefinite basis in Saudi Arabia. He does not have access to an attorney or to U.S. courts of law. His family has attempted to send him various items, including personal letters and a privacy release form, through U.S. officials, but all have failed to reach Ahmed Abu Ali. Saudi Arabian intelligence officials, the Mubahith, prevent delivery of documents to him, possibly under the instructions of the U.S. government. For example, Petitioners Omar and Faten Abu Ali were informed that when Consul Charles Glatz, an officer at the U.S. Embassy in Riyadh assigned to work on Ahmed Abu Ali’s case, attempted to bring him a privacy release form on July 8, 2003, which would allow the Department of State to provide information to the family on the status and treatment of Ahmed Abu Ali, the Mubahith said the form must be sent through two Saudi Arabian Ministries and the Mubahith before reaching Ahmed Abu Ali. The Department of State submitted the form to Saudi officials on July 14, 2003 pursuant to these instructions. On October

7, 2003, Consul Glatz stated, “Most probably, the form would never reach me.” The form still has not been returned.

10. These failed previous attempts to deliver documents to Ahmed Abu Ali and to receive his signed approval for legal actions to be taken in his behalf illustrate that this Petition, if sent to Ahmed Abu Ali for his approval, are unlikely to reach him or to be returned. Furthermore, the family is concerned that Ahmed Abu Ali may be under duress or coercion and thus may be unable to make an independent decision. Considering the urgency of this action and the status and treatment of Petitioner Ahmed Abu Ali, and the seriousness of the legal and constitutional issues he seeks to raise, it is reasonable for Petitioners Omar and Faten Abu Ali to act as their son’s Next Friends.

11. Petitioners Omar and Faten Abu Ali have a significant relationship with Ahmed Abu Ali. They have lived with and cared for Ahmed Abu Ali for his entire life, and as his parents, they are dedicated to his best interests.

B. Respondents

12. Respondent John Ashcroft is the Attorney General of the United States. As the highest level official responsible for the operations of the Federal Bureau of Investigation (FBI), he is ultimately responsible for the interrogation of Petitioner Ahmed Abu Ali by agents of the FBI in September 2003 and on other occasions, and for the search of his parents’ home concurrent with his detention in Saudi Arabia. As the highest level official responsible for the operations of the Department of Justice, he is ultimately responsible for the grand jury investigation and the investigation conducted by the United States Attorney’s Office for the Eastern District of Virginia of Petitioner Ahmed Abu Ali in connection with the *United States v. Royer* case. *See Royer*, Crim. No. 03-296-A (E.D.Va. filed Mar. 4, 2004). In his capacity as the

highest level official responsible both for the FBI and Department of Justice, Respondent Ashcroft is likely to have played a major role and was in a position to exercise command responsibility in the decision to detain and interrogate Petitioner Ahmed Abu Ali in Saudi Arabia through Respondents' agents, who are Saudi officials.

13. Respondent Robert Mueller is the Director of the FBI and is the supervisory official directly responsible for directing the activities of agents of the FBI who interrogated Petitioner Ahmed Abu Ali in September 2003, and who conducted a search of his parents' home. The substantial involvement of the FBI in the interrogation and detention of Petitioner Ahmed Abu Ali suggests that Respondent Mueller may have played a substantial role and was in a position to exercise command responsibility in acting with Respondents' agents, who are Saudi authorities, in this process.

14. Respondent Luke Kuligoski is a Federal Bureau Investigation Special Agent who led the raid of the Petitioner Ahmed Abu Ali's family home in Falls Church, Virginia and who played a leading role in Petitioner Ahmed Abu Ali's interrogation in Saudi Arabia.

15. Respondents "Other FBI Special Agents to be Identified and Named" also took part in Petitioner Ahmed Abu Ali's interrogation in Saudi Arabia and/or were involved in the search of his parents' home. They are not listed by name in this petition because their names are not presently known.

16. Respondent Thomas Ridge is the Secretary of the Department of Homeland Security, and exercises primary responsibility for directing anti-terrorism activities for the U.S. government. In this capacity he is likely to have played a major role and to have been in a position to exercise command responsibility in indefinitely detaining and interrogating Petitioner Ahmed Abu Ali in Saudi Arabia through Respondents' agents, who are Saudi authorities.

17. Respondent Colin Powell is the United States Secretary of State and is the official directly responsible for carrying out contacts and communications with foreign governments. As such, he bears direct responsibility for the process of directing Saudi authorities, Respondents' agents, to indefinitely detain and interrogate Petitioner Ahmed Abu Ali. It is Respondent Powell's responsibility as chief administrator of the Department of State to deliver a formal request to Saudi Arabia for Petitioner Ahmed Abu Ali's release, and Respondent Powell also is responsible for not making such a request when the Saudi government made it clear that they did not have any further basis or interest in holding the Petitioner. Respondent Powell also is ultimately responsible for carrying out the Department of State's function of protecting U.S. citizens abroad.

JURISDICTION

18. Petitioners bring this action under 28 U.S.C. §§ 2241, 2242, and 1361, and invoke this Court's jurisdiction under the Constitution, laws, and treaties of the United States, including but not limited to 28 U.S.C. §§ 1331, 1391, 1651 (the All Writs Act), 2201, and 2202 and 5 U.S.C.S. § 702, as well as the Fourth, Fifth, Sixth, and potentially Eighth Amendments to the United States Constitution, the Citizen Non-Detention Act (18 U.S.C. § 4001), the Convention Against Torture and its implementing statute (18 U.S.C. § 2340A), and the International Covenant on Civil and Political Rights (ICCPR).

19. Two of the independent grounds for habeas jurisdiction in 28 U.S.C. § 2241(c), subsections (1) and (3), are met in this case. Although Petitioner Ahmed Abu Ali presently is physically confined in Saudi Arabia, Respondents directed their Saudi agents to carry out his arrest and indefinite detention in that country without due process protections and in violation of

other statutory and Constitutional standards. The Respondents, acting in their official capacity and under color of law, continue to hold Ahmed Abu Ali in custody in Saudi Arabia through their Saudi agents in violation of these statutory and Constitutional requirements. As recently as May 2004, the FBI indicated to Petitioners Omar and Faten Abu Ali's then-attorney that they would agree to release Ahmed Abu Ali if he gave up his U.S. citizenship and agree to go to another country.

20. The Supreme Court recently highlighted the role of "the Great Writ of habeas corpus ... as an important check on the Executive's discretion in the realm of detentions," especially where U.S. citizens are involved. *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 2004 U.S. LEXIS, at *51-53 (June 28, 2004). Just as detainees held at Guantanamo were deemed eligible to submit habeas challenges to federal courts in order "to determine the legality of the Executive's potentially indefinite detention of individuals," Petitioner Ahmed Abu Ali in this case meets similar jurisdictional criteria and, especially as a U.S. citizen, should be afforded this fundamental right. *See Rasul v. Bush*, 124 S.Ct. 2686, 2004 U.S. LEXIS 4760, at *34 (June 28, 2004). The fact that Petitioner Ahmed Abu Ali is an American citizen detained overseas and outside the territorial jurisdiction of this Court "does not present a jurisdictional obstacle to the consideration of the claim," especially given the involvement of U.S. officials in these unlawful actions and the fact that these actions would have been initiated by these officials here in the U.S. *See id.* at *23-24; *Braden v. Thirtieth Judicial Court of Kentucky*, 410 U.S. 484, 498 (1973).

21. Petitioners recognize that the "immediate custodian" rule ordinarily applies where present physical confinement is challenged in a habeas petition, and that this Court does not have jurisdiction over Petitioner Ahmed Abu Ali's immediate physical custodian in this case because that custodian is not a U.S. official and is instead an agent of the United States located in Saudi

Arabia. *Cf. Rumsfeld v. Padilla*, 124 S.Ct. 2711, 2004 U.S. LEXIS 4759, at *17, 39-40 (June 28, 2004). But this case presents an unusual circumstance, where the identified Respondent U.S. officials have exercised substantial legal control over Petitioner Ahmed Abu Ali's challenged custody through their role in indefinitely detaining and interrogating Ahmed Abu Ali through their Saudi agents in Saudi Arabia in the context of anti-terrorism activities, and in conjunction with a criminal prosecution of alleged terrorists taking place in the U.S. *Id.* at *23-26, 30. For these reasons, the Respondents must be considered Petitioner Ahmed Abu Ali's legal custodians. They are directly responsible for the illegal detention and custody of the Petitioner Ahmed Abu Ali abroad, and habeas jurisdiction can properly be exercised over them in connection with their direction here in the U.S. of an unlawful detention of a U.S. citizen taking place abroad at their request, and subject to their control. Since the detention itself is taking place abroad and no U.S. court has physical jurisdiction in the district of confinement, habeas jurisdiction properly rests in any court with jurisdiction over the legal custodians responsible for the unlawful detention, that is, the named U.S. officials. *Cf. id.* at *30, 32-33; *Braden*, 410 U.S. at 495. To deny this basis for jurisdiction would mean that U.S. citizens unlawfully detained outside the territorial jurisdiction of the U.S. at the request and direction of U.S. officials would have no remedy available to them in U.S. courts. Just as an exception to the immediate custodian rule has previously been recognized for U.S. citizens detained abroad in the military context, the exception should be extended to cases such as the present one where U.S. citizens are detained abroad by U.S. officials and their agents. *See Padilla*, 124 S.Ct. at *19 n.9 (citing *Braden*, 410 U.S. at 498).

22. This Court has personal jurisdiction over the Respondents, as legal custodians of Petitioner Ahmed Abu Ali, because they are officers or employees of the United States carrying

out their responsibilities in the District of Columbia, having substantial contacts in the District, and being physically located within this Court's territorial jurisdiction.

23. This Court therefore has the jurisdictional authority under 28 U.S.C. § 2241 to grant a Writ of Habeas Corpus, under 28 U.S.C. § 2242 to entertain the Petition filed by Omar and Faten Abu Ali, as Next Friends, and under 28 U.S.C. § 1361 to grant Mandamus relief. This Court is further empowered to issue a declaratory judgment concerning the rights of the Petitioners and the remedies available to them under 28 U.S.C. § 2201, and to effectuate and enforce any necessary declaratory relief under 28 U.S.C. § 2202, since this case involves an actual case or controversy within the Court's jurisdiction involving federal questions concerning the application and interpretation of federal statutes and Constitutional standards under 28 U.S.C. § 1331.

VENUE

24. Venue is proper in the United States District Court for the District of Columbia for this Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 1331, 2241, and 2242. Moreover, a substantial part of the events or omissions giving rise to this claim occurred in this District, and the Respondents are physically located and may be found within the District. Traditional venue considerations applicable to habeas cases, including where the material events occurred, where witnesses and records pertinent to the claim are likely to be found, convenience of the forum to the parties, and the familiarity of the court with applicable laws, suggest that this Court is a proper and convenient forum. *See Braden*, 410 U.S. at 493-94. These traditional venue considerations also apply to injunctive and declaratory relief. This District also is an appropriate venue to consider Mandamus relief pursuant to 28 U.S.C. § 1391 (b) and (e) because all

Respondents are employees or officers of the United States or an agency thereof, who are acting in their official capacities within the territorial jurisdiction of this Court.

STATEMENT OF FACTS

25. Ahmed Abu Ali is a citizen of the United States of America. He was born in Houston, Texas on March 19, 1981. *See* Exhibit A.

26. Ahmed Abu Ali is a resident of Virginia, where he graduated from high school and was valedictorian of his class in 1999.

27. At the time of his arrest, Petitioner Ahmed Abu Ali was a student on full scholarship at the Islamic University of Medina in Saudi Arabia. On or around June 11, 2003, while Petitioner was taking a final exam at the university, Saudi security officers entered the exam room and arrested him. On information and belief, and on a number of facts made clear after the arrest took place, the security officers acted on U.S. government orders or at the request of U.S. government officials.

28. Subsequent to the arrest, Adel Al-Jubeir, a Saudi Embassy spokesperson, is on record as stating that the U.S. Embassy had “full and complete and direct access” to Petitioner Ahmed Abu Ali, and specifically that U.S. officials at the Legal Attache office, which includes overseas securities operations, had access to Ahmed Abu Ali from the moment of his arrest. Karen Branch-Brioso, *Document Ties American Held by Saudis to al-Qaida*, St. Louis Post Dispatch, July 26, 2003, at 6.

29. Saudi officials arrested three other American citizens in Saudi Arabia around the same time as Petitioner Ahmed Abu Ali’s arrest: Sabri Benkhala, Khwaja Mahmood Hasan, and Seifullah Chapman. All three were extradited back to the United States on July 18, 2003. Jerry

Markon, *Judge Frees 4th Va. Jihad Suspect; Prosecutors Tried to Show Direct Link to al Qaeda Member*, Wash. Post, July 26, 2003, at B02. All three stood trial as defendants in the criminal case of *United States v. Royer*, involving the prosecution of eleven defendants indicted for alleged ties a recently named terrorist organization. See *Royer*, Crim. No. 03-296-A (E.D.Va. filed Mar. 4, 2004). Only Ahmed Abu Ali was left uncharged and detained in Saudi Arabia.

30. On January 23, 2004, in a motion hearing for Sabri Benkhala in the *Royer* case, Benkhala testified that the U.S. consul visited him in Saudi Arabia about two weeks after his arrest. The U.S. consul told him he had been arrested at the request of the FBI. Since Benkhala was arrested in Saudi Arabia at the same time and presumably for the same reasons as Petitioner Ahmed Abu Ali, this admission applies to Ahmed Abu Ali as well.

31. On or about June 16, 2003, about five days after Petitioner Ahmed Abu Ali's arrest, more than 15 armed agents from the Federal Bureau of Investigation raided the home of Ahmed Abu Ali's family in Falls Church, VA. The search warrant, issued by the United States District Court for the Eastern District of Virginia, instructed the agents to look for items and documents relating to any of four defendants being prosecuted in the *Royer* case and information revealing conspiracy between Ahmed Abu Ali and any of four defendants in *Royer*. See Exhibit B. In the trial of Seifullah Chapman in *Royer*, Special Agent Jim Sopchack of the FBI testified that the Falls Church home was searched as part of the *Royer* investigation.

32. The prosecutor in *Royer* openly acknowledged that about five days after Petitioner Ahmed Abu Ali's arrest, members of the FBI were directly involved in the interrogation of Ahmed Abu Ali. The prosecutor provided this information on July 25, 2003, during a bond hearing for Sabri Benkhala in the *Royer* case.

33. Ahmed Abu Ali was held *incommunicado* for the first two months of his arrest. Petitioners Omar and Faten Abu Ali were unaware of Ahmed Abu Ali's whereabouts. Department of State and U.S. Embassy officials refused to inform Petitioners Omar and Faten Abu Ali of the prison in which Ahmed Abu Ali was detained. They received their first phone call from Ahmed Abu Ali on July 31, 2003.

34. On information and belief, Petitioner Ahmed Abu Ali may have been subjected to sufficiently extensive abuse during his detention that he suffered some physical disability.

35. At the end of 2003 or beginning of 2004, the Department of Justice held a closed grand jury hearing for Petitioner Ahmed Abu Ali. U.S. officials subpoenaed numerous witnesses who were friends or acquaintances of Petitioner Ahmed Abu Ali. On information and belief, no indictment or charge resulted from the hearing. Despite this, Ahmed Abu Ali has remained detained without charge in Saudi Arabia for more than a year.

36. In September 2003, three months after Petitioner Ahmed Abu Ali's arrest, FBI agent Luke Kuligoski and three other FBI agents went to Saudi Arabia. They directly interrogated Petitioner Ahmed Abu Ali for at least four days and questioned him about the *Royer* defendants. The agents also threatened Petitioner Ahmed Abu Ali that he would be designated an "enemy combatant" and sent to Guantanamo Bay, Cuba if he did not cooperate and provide the answers they wanted. The agents told Ahmed Abu Ali he could be put on trial in Saudi Arabia without the right to an attorney. On January 10, 2004, Consul Charles Glatz informed the family that Petitioner Ahmed Abu Ali also told him of the FBI's threat to designate him an "enemy combatant."

37. The FBI similarly threatened to try *Royer* defendant Sabri Benkhala as an "enemy combatant." Benkhala also testified on January 23, 2004 in a motion hearing in the *Royer* case

that he had been psychologically abused while detained in Saudi Arabia. He testified that Saudi authorities showed him pictures of people who had been tortured, leaving the implicit suggestion that he would be subjected to similar treatment. Benkhala in fact alleges that he suffered similar abuse in U.S. custody. The FBI blindfolded him with goggles and duct tape, took nude pictures of him, and used other “stressful” interrogation techniques that resulted in the U.S. court excluding his statements as being made under a coercive atmosphere without the full protection of his Constitutional rights. Further, Benkhala’s request for a lawyer prior to talking with an FBI agent was denied.

38. After the FBI interrogation in September 2003, Petitioner Ahmed Abu Ali was put in solitary confinement for three months, presumably as punishment for not cooperating with his FBI interrogators. During this period, Ahmed Abu Ali lost over 30 pounds.

39. In the fall of 2003, in conversations with his family, Ahmed Abu Ali began to indicate that he was being subjected to mistreatment and abuse during his detention.

40. On December 7, 2003, Petitioner Omar Abu Ali contacted State Department Consular official Charles Glatz, stating his suspicions that his son was being tortured. Consul Glatz dismissed the concern. He neither investigated the possibility nor lodged a complaint with Saudi Arabia.

41. On December 21, 2003, Petitioner Omar Abu Ali again contacted Consul Glatz, noting that Petitioner Ahmed Abu Ali was detained without charge, a violation of the International Covenant on Civil and Political Rights. Petitioner Omar Abu Ali also stated concern about Ahmed Abu Ali’s diet and health care. Again, Consul Glatz failed to file a complaint with Saudi Arabia concerning Ahmed Abu Ali’s prison conditions. Consul Glatz also refused to lodge a protest regarding Ahmed Abu Ali’s food.

42. In May 2004, the FBI again, this time with the United States Attorney's Office for the Eastern District of Virginia, which led the prosecution in *Royer*, sought to interview Petitioner Ahmed Abu Ali in Saudi Arabia.

43. On information and belief, Ahmed Abu Ali presently continues to be subjected to "stress and duress" techniques, such as sleep deprivation and solitary confinement.

44. On information and belief, U.S. officials also have sought to coerce Petitioner Ahmed Abu Ali into abandoning his U.S. citizenship so that he could be sent to Sweden or some other country. The FBI indicated to Petitioners Omar and Faten Abu Ali's former lawyer as recently as May, 2004, that they would agree to his release if he renounced his U.S. citizenship and moved to a third country.

45. As of the date of this Petition, Ahmed Abu Ali has not been accused or charged with any criminal offense either by the government of Saudi Arabia, or by any United States government office or department. The fact that he is not considered to have violated any Saudi laws is further indication that the Saudis were acting in the case solely as the agents of the U.S. and did not have any basis for Ahmed Abu Ali's long-term detention and interrogation other than the request from the U.S. that this be done.

46. Over the course of the past year, Petitioners Omar and Tamen Abu Ali have retained previous counsel to secure Ahmed Abu Ali's return to the United States. These counsel made numerous attempts through both Saudi and U.S. officials to secure Ahmed Abu Ali's release. These extensive efforts proved fruitless.

47. On November 22, 2003, Saudi Embassy spokesperson Al-Jubeir stated, "The U.S. government is aware of the case of [Ahmed Abu Ali] and why he is detained."

48. On May 10, 2004, Consul Glatz sent a cable to Matthew Gillen, at the Bureau of Consular Affairs for Overseas Citizens at the Department of State, stating that Colonel Al-Qahtani, Director of the Mubahith at Al-Hair Prison, indicated to him that Ahmed Abu Ali could be returned to the U.S. at anytime if the U.S. issued a formal request.

49. On May 12, 2004, Michael A. Mason of the FBI communicated in writing, and orally as reported in The Washington Post, “that this office has no further interest in [Petitioner Ahmed Abu Ali]’s detention.” *See* Caryle Murphy, *Protesters Seek Release of Saudi Prisoner: U.S. Citizen Was Detained During “Va. Jihad” Probe*, Wash. Post, June 18, 2004, at B03.

50. According to Petitioners Omar and Faten Abu Ali, on May 14, 2004, Petitioner Ahmed Abu Ali’s family met with Mr. Mathew Gillen, Director of the Bureau of Consular Affairs of Overseas Citizens Service. Gillen stated that no current investigation of Ahmed Abu Ali by either the U.S. or Saudi Arabian government was taking place. He promised to make the formal request to Saudi Arabia necessary for the Government of Saudi Arabia to release him. But, on June 21, 2004, Gillen informed the family he could not make a formal request due to an investigation taking place in the Department of Justice.

51. As of the date of this Petition, the U.S. government has failed to make a formal request for Petitioner Ahmed Abu Ali’s release, despite the clear indication by the Saudi government that they had no further interest in Petitioner Ahmed Abu Ali’s detention and would release him if requested to do so by the U.S. government.

EXHAUSTION OF REMEDIES

52. Petitioners Omar and Faten Abu Ali have used every means available to them to secure Petitioner Ahmed Abu Ali’s release, but these efforts have not been successful in part

because he is being detained in a foreign country. Only in a U.S. court can Petitioners can raise a legal challenge to the detention of a U.S. citizen abroad at the direction or request of officials of the U.S. government. Petitioners Omar and Faten Abu Ali's efforts to resolve their son's status through diplomatic channels have proven unsuccessful for over a year. Petitioners Omar and Faten Abu Ali had previously retained legal counsel who made extensive efforts to secure Ahmed Abu Ali's return to the United States. On several occasions, previous counsel met with U.S. and Saudi officials and attempted to make arrangements to secure Ahmed Abu Ali's return. None of these efforts to find a resolution to this problem succeeded. Accordingly, Petitioners Omar and Faten Abu Ali have exhausted any remedies that would be an alternative to this Petition. Because Petitioner Ahmed Abu Ali is being detained in a foreign country pursuant to the Executive Branch's unlawful orders, a habeas petition in a U.S. court is the only means available to secure his release and the protection of his constitutional and legal rights.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (DUE PROCESS, UNLAWFUL AND ARBITRARY DETENTION – FOURTH, FIFTH, SIXTH, AND EIGHTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

53. Petitioners incorporate paragraphs 1-52 by reference.

54. By directing their agents, unnamed Saudi authorities, to arrest and arbitrarily and indefinitely detain Petitioner Ahmed Abu Ali, as well as possibly subject him to coercive interrogation techniques, mistreatment, and torture, without any due process protections, probable cause for arrest, access to counsel or the courts, or notice for the basis of his detention, Respondents, acting in their official capacities and under color of law, have violated and

continue to violate the Fourth, Fifth, Sixth, and potentially Eighth Amendments to the United States Constitution.

55. The United States Constitution affords Petitioner Ahmed Abu Ali, as a U.S. citizen, its full protection, even where he is abroad. *See Reid v. Covert*, 354 U.S. 1, 5-6, 32-33 (1957) (When the Government exercises its power over a citizen who is abroad, “the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land.”).

56. By the actions described above, the Respondents, acting in their official capacities and under color of law, have violated and continue to violate the Due Process Clause of the Fifth Amendment, which establishes that no person can be deprived of life or liberty without due process of law. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001) (“Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that [Due Process] Clause protects. ... And this Court has said that government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections.”) (emphasis in original).

57. By the actions described above, the Respondents, acting under color of law and their authority as federal officials, have violated and continue to violate the Fourth Amendment, which grants the right to be free from unreasonable searches and seizures. Respondents have violated the Fourth Amendment guarantee that U.S. citizens have “the absolute right to be free from unreasonable searches and seizures carried out by virtue of federal authority.” *See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 392 (1971). The Respondents did not have the authority to request the detention of Petitioner Ahmed Abu Ali, an American citizen, without a finding of probable cause. *See, e.g., Parretti v. United States*, 112

F.3d 1363 (9th Cir. 1997) (granting a habeas petition to a French national who was arrested in the United States pursuant to a French arrest warrant that did not meet the standards of probable cause).

58. By the actions described above, the Respondents, acting under color of law and their authority as federal officials, have violated and continue to violate the Sixth Amendment, granting the right to a speedy trial, the right to be informed of charges, the right to face one's accusers, and the right to have assistance of counsel.

59. By the actions described above, the Respondents, acting under color of law and their authority as federal officials, may have violated and may continue to violate the Eighth Amendment. In interrogating Petitioner Ahmed Abu Ali, directly and through their agents, while arbitrarily and indefinitely detained in Saudi Arabia, a country that the Department of State has cited on numerous occasions for its mistreatment and torture of prisoners, especially during interrogations, the Respondents may have subjected and/or knowingly and intentionally subjected Petitioner Ahmed Abu Ali to coercive interrogation, mistreatment, and/or torture. *See* Country Reports on Human Rights Practices 2003 – Saudi Arabia (U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor February 25, 2004), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2003/27937.htm> (last visited July 13, 2004). “The unnecessary and wanton infliction of pain ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Whitley v. Albers*, 475 U.S. 312, 319 (1986) (some internal quotation marks omitted).

**SECOND CLAIM FOR RELIEF
(CITIZEN NON-DETENTION ACT)**

60. Petitioners incorporate paragraphs 1-59 by reference.

61. By ordering Petitioner Ahmed Abu Ali's detention through their agents under color of law, Respondents have violated and continue to violate the Citizen Non-Detention Act, 18 U.S.C. § 4001, which establishes that: "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress." There has been no Congressional authorization to detain Petitioner Ahmed Abu Ali; Respondents have lacked even the minimum requirements to establish probable cause necessary to issue a warrant for his arrest. No legal basis for his arrest and detention has ever been provided.

62. Petitioner Ahmed Abu Ali has been detained "by the United States," *id.*, since Respondents, acting in their official capacities, arrested and imprisoned Ahmed Abu Ali indefinitely without charges through their agents, who are Saudi officials.

**THIRD CLAIM FOR RELIEF
(CONVENTION AGAINST TORTURE AND ITS IMPLEMENTING STATUTE)**

63. Petitioners incorporate paragraphs 1-62 by reference.

64. By the actions described above, Respondents, acting under color of law, may have violated and may be continuing to violate international law and U.S. treaty obligations binding on the U.S. under Article VI of the Constitution, *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, art. 5, 13, 16, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85. Respondents, acting under color of law, have further violated the CAT implementing statute, fully incorporating these requirements into domestic law, 18 U.S.C. § 2340A.

65. On information and belief, Respondents Kuligoski and other special agents of the FBI may have interrogated Petitioner Ahmed Abu Ali under torture or threat of torture. Respondents

Ashcroft and Mueller likewise may have acted in violation of CAT as the agents' superior officer.

66. By acting in with unnamed Saudi Arabian officials, their agents, Respondents may have violated Ahmed Abu Ali's right not to be tortured under U.S. domestic law and international law.

67. By the actions described above, respondents, acting under color of law, have further violated Public Law 105-277 § 2242, Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, § 2242, 1999 U.S.C.C.A.N. (112 Stat. 2681), by engaging in the practice of rendition to torture, namely placing an individual in the custody of a foreign government for purposes of interrogation in connection with suspected terrorist activities where harsh forms of interrogation are employed.

68. After Petitioner Ahmed Abu Ali's arrest, Respondents chose not to extradite him to the United States but rather chose to keep him in Saudi Arabia for interrogation purposes. Although Respondents did not send Petitioner Ahmed Abu Ali to Saudi Arabia, they accomplished the same objective as the rendition for interrogation policy by requesting their agents, Saudi officials, to arrest, detain, and interrogate him in furtherance of U.S. interests. Respondents were aware of the prison conditions in Saudi Arabia, and the reputation of the Saudi government to torture detainees, when they directed Petitioner Ahmed Abu Ali's detention in Saudi Arabia. *See* Country Reports on Human Rights Practices 2003 – Saudi Arabia (U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor February 25, 2004), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2003/27937.htm> (last visited July 13, 2004). Such prison conditions and practices include, but are not limited to, detention without charge, detainee and prisoner abuse, torture, and denial of legal counsel. *Id.*

**FOURTH CLAIM FOR RELIEF
(INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND
CUSTOMARY INTERNATIONAL LAW)**

69. Petitioners incorporate paragraphs 1-68 by reference.

70. By detaining Petitioner Ahmed Abu Ali through their agents in Saudi Arabia under color of law, Respondents have violated Article 9 of the ICCPR, a binding treaty the U.S. has ratified, which states that: “No one shall be subjected to arbitrary arrest or detention.” International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (ratified by the U.S. Sept. 8, 1992), reprinted in 6 I.L.M. 368, at art. 9(1). Article 9 also requires that: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.” *Id.* at art. 9(4). Respondents, under color of law, violated Article 9 of the ICCPR by detaining Petitioner Ahmed Abu Ali through their agents, who are Saudi officials, without issuing a warrant for his arrest, charging him with a crime, or affording him a hearing.

71. The United States of America ratified the ICCPR on September 8, 1992, without any specific reservations or understandings related to the stated provisions of Article 9. S. Rep. No. 102-23 (1992) (hereinafter “Senate Report”). Although the Senate noted that they considered the treaty to be not self-executing, the Senate ratified the treaty with the understanding that the original provisions and specific reservations were already “compatible with existing U.S. domestic law,” *Id.* at 650, and, therefore required no “implementing legislation,” *Id.* at 657. Accordingly, any violation of Petitioner Ahmed Abu Ali’s Constitutional and statutory rights to be free from arbitrary and indefinite detention also is covered by Article 9 standards.

72. Article 9 of the ICCPR codifies binding customary international law prohibiting state-sponsored prolonged arbitrary detention and mirrors similar provisions in a number of other international human rights treaties. Restatement (Third) of Foreign Relations Law of the United States § 702 (1987); American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, 9th Int'l Conference of American States, arts. 18, 25, and 26, O.A.S. Official Record, OEA/Ser.L/V./II.23, doc.21 rev.6 (1948). Respondents violated customary international law as codified in Article 9 of the ICCPR by detaining Petitioner Ahmed Abu Ali through their agents for over a year without charges.

73. Respondents may have also violated Article 7 of the ICCPR, which prohibits “torture” and “cruel, inhuman or degrading treatment or punishment,” by acting with their agents, Saudi officials, to coercively interrogate Petitioner Ahmed Abu Ali. The United States Senate’s reservation to Article 7 stipulates that it should conform to the standards already set forth in the Fifth, Eighth, and/or Fourteenth Amendments of the Constitution, Senate Report, *supra*, at 654, such that a violation of Ahmed Abu Ali’s right to be free from coercive interrogation, embodied in the Fifth Amendment, constitutes a violation of Article 7 of the ICCPR.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Grant Petitioners Omar Abu Ali and Faten Abu Ali “Next Friend” status, as Next Friends of their son Ahmed Abu Ali;
2. After notice and hearing, issue a Writ of Habeas Corpus requiring Respondents to release Petitioner Ahmed Abu Ali by directing their agents, Saudi officials, to release him from

- detention, and requiring Respondents to bring Petitioner Ahmed Abu Ali before this Court, in order to properly determine his legal status in the United States;
3. After notice and hearing, issue Mandamus relief ordering Respondents to fulfill their clear, nondiscretionary duties to obey the Constitution and laws of the United States by immediately releasing Petitioner Ahmed Abu Ali, by making a formal request to their agents, the Saudi authorities, for his release and return to the United States;
 4. After notice and hearing, issue a mandatory injunction ordering Respondents to cease and desist any further abridgements of Petitioner Ahmed Abu Ali's legal and Constitutional rights, including actions taken through Respondents' agents, Saudi authorities, at the request of U.S. officials;
 5. Order and declare that Petitioner Ahmed Abu Ali is detained in violation of the Fourth, Fifth, Sixth, and potentially Eighth Amendments of the Constitution;
 6. Order and declare that Petitioner Ahmed Abu Ali is detained in violation of the Citizens Non-Detention Act, 18 U.S.C. § 4001;
 7. Order and declare that Petitioner Ahmed Abu Ali was and continues to be unlawfully detained and interrogated in violation of the Convention Against Torture and its implementing statutes;
 8. Order and declare that Petitioner Ahmed Abu Ali is detained in violation of the International Covenant on Civil and Political Rights and customary international law;
 9. Order Respondents to ensure that Petitioner Ahmed Abu Ali receives a copy of this Petition;

10. Order Respondents to cease all interrogations of Petitioner Ahmed Abu Ali, either by U.S. officials or Saudi officials acting as Respondents' agents and under U.S. direction, while this case is pending;
11. Order Respondents to obtain prior approval of this Court before taking any action that would affect the legal status, physical detention, or treatment of Petitioner Ahmed Abu Ali in the United States, Saudi Arabia, or any other foreign country;
12. To the extent Respondents contest any material factual allegation in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations;
13. After notice and hearing, issue Mandamus relief ordering Respondents to fulfill their clear, nondiscretionary duties to obey the Constitution and laws of the United States by ceasing and desisting from the practice of directing authorities of other nations as their agents to detain and interrogate individuals abroad at the request of the United States;
14. Order such other relief as the Court may deem necessary and appropriate to protect Petitioner Ahmed Abu Ali's Constitutional and statutory rights, and to prevent the unlawful and arbitrary detention of U.S. citizens by foreign governments at the request of the United States.

Respectfully submitted this 28th day of July, 2004, in Washington, D.C. by:

Omar Abu Ali, as Next Friend of Ahmed Abu Ali

Faten Abu Ali, as Next Friend of Ahmed Abu Ali

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