

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TAHA YASSIN RAMADAN
Civilian Detained in US Military Custody
in, or near, Baghdad, Iraq

Petitioner,

v.

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

ROBERT M. GATES
Secretary of Defense
United States Department of Defense
The Pentagon Arlington, Virginia

General DAVID PETRAEUS
Commander of US Forces in Iraq, US Army
United States Department of Defense
The Pentagon Arlington, Virginia

General JOHN ABIZAID
Commander of CENTCOM, US Army
United States Department of Defense
The Pentagon Arlington, Virginia

Vice-Admiral DAVID C. NICHOLS Jr.
Deputy Commander of CENTCOM, US Army
Commander of CENTCOM, US Army
United States Department of Defense
The Pentagon Arlington, Virginia

Major General TIMOTHY F. GHORMLEY
Chief of Staff of Command of CENTCOM, US Army
Commander of CENTCOM, US Army
United States Department of Defense
The Pentagon Arlington, Virginia

Respondents,

All Respondents are sued in their official capacities.

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, a civilian and former Vice President of Iraq, seeks a Writ of Habeas Corpus.
2. Petitioner is in the actual and exclusive physical custody of United States military personnel, or other officers, personnel or contractors of the U.S. government.
3. In August, 2003, Petitioner was captured and transferred to the custody of the United States. His seizure was by the United States and, of course, had nothing to do with the current Iraqi Government as the seizure occurred even before the creation of the Sovereign Interim Government of Iraq.
4. Although petitioner is at this time, and has been at all times during more than the past three years, in the actual custody of United States, he faces the imminent threat that the United States will transfer his custody to personnel of the government of Iraq.
5. If so transferred, Petitioner will immediately face torture, cruel, inhuman and degrading treatment and cruel and unusual punishment and death. Furthermore, this Court would be stripped of its jurisdictional authority to issue any relief whatsoever.
6. Transfer is expected to occur now at the request either of the Iraq Government or the Iraqi Special Tribunal (“IST”). The IST “convicted” Ramadan of capital offenses after a widely publicized show trial in which he was denied even the most fundamental and basic rights of due process or fair trial.

7. The IST, sometimes also called the Iraqi High Criminal Court, was created by the United States by an order of Paul Bremer, the U.S. appointed head of the Coalition Provisional Authority. It is a special Court created by Occupying Powers in violation of international law. It is unlike any prior Court in Iraq, and it is neither is legal nor legally competent. Nor is it independent of the control and influence of the United States. It does not respect or adhere to even the most basic tenets of due process.
8. The Iraqis have hanged to their death the three co-defendants of Petitioner, who were sentenced to death by the IST. These killings, including the beheading of one, have been widely reported. The related IST “trial” was a show trial and has been widely condemned for a complete absence of due process or fair trial.
9. The seizure of Petitioner by the United States was also not pursuant to any request, order, charge or judgment of the IST or prosecutor. The IST was not in existence at the time of seizure.
10. The relief sought herein however runs, not to the Iraqi Government, but to the United States who seized Petitioner in 2003 and who maintain custody to this day. Their detention and “release” of Petitioner to be killed is unlawful and tantamount to extrajudicial murder.
11. Nor does the relief sought collaterally attack the “judgment” of the IST. The IST “judgment” will not be affected, altered or amended. Ultimately, Ramadan would be surrendered to Iraq if and when it is determined by U.S. Courts that the surrender does not violate U.S. or international law. The writ of *habeas corpus* will only inform and direct the

U.S. military custodian to act in accordance with the Constitution and laws of the U.S. in their exercise of power over Petitioner.

12. Legal obligation as well as the public interest operate to bar the United States from transferring Petitioner to his death absent any due process or fair trial.
13. Nor may the United States transfer Ramadan where, as here, there are substantial grounds for believing the person would be in danger of being subjected to torture. See Convention Against Torture Act, Pub. L. No. 105-277§2242(a) (1988) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically in the United States.”); See also Article 3 of the International Covenant Against Torture and other Cruel, Inhuman and Degrading Treatment, or Punishment, 1465 UNTS 85, enacted into the laws of the US. at 18 USC §2340. Et seq,
14. Petitioner has not been determined by the U.S. to have been properly detained as enemy combatant, and is not now awaiting such determination for purposes of trial before a U.S. Military Commission, to his knowledge.

JURISDICTION

15. Petitioners invoke this Court's jurisdiction under 28 U.S.C. §§1331, 1350, 1651, 2201, 2202, 2241(a), (c)(1) and (c)(3), 2242, and 2243; 5 U.S.C. §702; the U.S. Constitution, Article I, §9, cl. 2, Article III, the Due Process Clause of the Fifth Amendment, the Sixth Amendment, and the Eighth Amendment; the Convention Against Torture; the

International Covenant on Civil and Political Rights ("ICCPR"); Article 3 of the International Covenant Against Torture and other Cruel, Inhuman and Degrading Treatment, or Punishment, 1465 UNTS 85, enacted into the laws of the U.S. at 18 U.S.C. §2340. et seq.; the American Declaration on the Rights and Duties of Man ("ADRDM"); the American Convention on Human Rights, (ACHR); the Third Geneva Convention Relative to the Treatment of Prisoners of War; the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and Customary International Law. For declaratory relief, Petitioner also relies on Fed. R. Civ. P. 57.

16. The U.S. Supreme Court has held that federal habeas corpus jurisdiction "requires nothing more" than a claim that a petitioner is "being held in federal custody in violation of the laws of the United States" once personal jurisdiction over a custodian is established. Rasul v. Bush, 542 U.S. 466, 483, 124 S. Ct. 2688, 2698 (2004).
17. Petitioner is in the complete and exclusive "jurisdiction or dominion exercised in fact" over him by officials of the U.S., the Respondents, who are within the jurisdiction of this Court. This Court has jurisdiction over Petitioner's claims. Rasul v. Bush, 542 U.S. 466, 482, 124 S. Ct. 2688, 2697 (2004).
18. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus. 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.

19. This Court has personal jurisdiction over Respondents because they are officers or agents of the U.S. performing their duties in the District of Columbia, having substantial contacts in the District, and being physically located within this Court's territorial jurisdiction. The U.S. Supreme Court has held that a court's jurisdiction over a habeas corpus petition rests on its jurisdiction over the petitioner's custodian. Rasul v. Bush, 542 U.S. 466, 478-479, 124 S.Ct. 2686, 159 L.Ed. 2nd. 548 (2004) and Rumsfeld v. Padilla, 542 U.S. 426, 442, 124 S.Ct. 2711, 159 L.Ed. 2d 513 (2004).
20. To the extent the United States Government asserts a lack of jurisdiction claiming that Petitioner is in the legal custody of the Multi-National Force- Iraq (MNF-I), and not the United States, citing Hirota v. MacArthur, 338 U.S. 197 (1948), that case is clearly distinguishable. In Hirota, the Court found that it lacked jurisdiction over acts attributed to the coalition of the Allied Powers over which the United States had no authority. Here, however, the MNF-I is subordinate in law and fact to the United States according to U.S. General George W. Casey, Jr., former Commander of the Multi-National Force-Iraq. See Ex. 1, Advance Questions for General George W. Casey, Jr., U.S., Army Nominee for Commander, Multi-National Force-Iraq. 108th Cong. 3 (2004) available at http://www.senate.gov/~armed_services/statemnt/2004/June/Casey.pdf at 2 (stating repeatedly that "the Multi-National Force-Iraq is a subordinate command to CENTCOM"). In his Senate confirmation hearing, General Casey was asked whether there would be any limits on the U.S. Central Command's authority due to the International nature of the MNF-1. He replied that there were "none at all," adding there is "no reporting chain that goes back to the United Nations... my chain of command is through the secretary of

defense and the president.” Nomination of General George W. Casey, Jr., U.S.A. for Reappointment to the Grade of General and to be Commander, Multi-National Force-Iraq: Hearing Before the S. Comm. On Armed Svcs. 108th Cong. (June 24, 2004) (Statement of Gen. George W. Casey, Jr.) (Lexis-News-All) (“Casey Hearing Testimony”).

21. In all of the cases in which the Supreme Court has denied to review the petitions for *habeas corpus* by foreign nationals, the petitioners had been afforded due process of law and a fair trial before legally and properly constituted tribunals. See Hirota (military tribunal established by Allied Powers); In re Yamashita 327 U.S. 1 (1946) (concluding that U.S. military tribunal was lawfully and duly constituted and that proceeded without violations of constitutional or other law); See also Johnson v. Eisentrager, 339 U.S. 763 (1950) (U.S. military tribunal). There has never been an adjudication on the merits where a foreign national is in the physical custody of the United States and is to be subjected to an extra-judicial killing in the absence of a duly constituted tribunal, due process or fair trial.

VENUE

22. Venue is proper in the U.S. District Court for the District of Columbia for this writ of *habeas corpus* because one or more of Respondents resides within the jurisdiction of this Court, a substantial part of the acts or omissions giving rise to the claim occurred in the district, where at least one Respondent may be found, and all Respondents are officers and employees of the U.S., acting in their official capacities on all matters related to petitioner and are amenable to service of process in the district. 28 U.S.C. §§1391(b) and 1391(e).

PARTIES

23. Petitioner Taha Yassin Ramadan is a citizen of Iraq who is in the exclusive, unlawful physical custody of the U.S. military in Iraq. The IST at the trial level originally sentenced Ramadan to life imprisonment. However *sua sponte* the Appeals Division of the IST remanded the case with a directive that Ramadan be killed. Confirmation of this death sentence is expected to occur on February 12, 2007.
24. If he is surrendered, or released to personnel of the government of Iraq, its paramilitary forces, or other groups, or persons in Iraq allied with an official, or agency of the Iraqi government – he will be placed in jeopardy of summary or illegal execution, torture, cruel, inhuman and degrading treatment, and cruel and unusual punishment.
25. Respondent Bush is the President of the U.S. and Commander-in-Chief of the U.S. Military. He ordered the war of aggression, invasion and continuing illegal use of force in Iraq. He authorized the arrest and detention of Petitioner and he must authorize his surrender, or release to the government of Iraq, or others and is responsible for his unlawful detention and any violation of his rights if he is surrendered, or released to the government of Iraq, or others. Respondent Bush is sued in his official capacity.
26. Respondent Gates is the Secretary of the U.S. Department of Defense and has his principal office in Arlington, Virginia. Respondent Gates has been charged with overall responsibility for the conduct of hostilities against Iraq and the maintenance of the occupation of Iraq by U.S. armed forces, including the custody and control of the detained petitioners. Respondent Gates is sued in his official capacity.

27. Respondent General David Petraeus is the Commander of U.S. military forces in Iraq. He is sued in his official capacity.
28. Respondent General John Abizaid is Commander of CENTCOM, U.S. Army. He is sued in his official capacity.
29. Respondent Vice-Admiral David C. Nichols Jr. is Deputy Commander of CENTCOM, U.S. Army. He is sued in his official capacity.
30. Respondent Major General Timothy F. Ghormley is Chief of Staff of Command of CENTCOM, U.S. Army. He is sued in his official capacity.

STATEMENT OF FACTS

A. Background to Arrest of Petitioner

31. Petitioner, Taha Yassin Ramadan, age 68, was the Vice President of Iraq from March, 1991 until the time of the U.S. invasion and occupation of Iraq in March 2003.
32. The former government of Iraq was driven from power by the U.S. war of aggression and occupation of Iraq in violation of international law, as the overwhelming consensus of international legal opinion confirms. See Ex. 2, Ramsey Clark and Curtis F. J. Doebbler, *The Iraqi Special Tribunal: A Corruption of Justice*, documenting inter alia, the illegality of the U.S. attack at 16-21, *especially* nn. 16.
33. On information and belief, Petitioner was seized by the U.S. military in August, 2003.
34. The precise circumstances of his seizure and arrest are within the knowledge of the Respondents.

35. The U.S. government has consistently acknowledged that it is holding Petitioner from the time of his surrender, or seizure by the U.S. military to date.

B. Petitioner's Detention by The United States

36. Petitioner has remained in the exclusive and illegal custody of the United States at all times since first placed under arrest by U.S. military forces in or about August, 2003, from that moment to this date, including the days in which he has been brought by the U.S. before the IST in court in Baghdad.

37. It is believed that Petitioner is being held in Camp Cropper, an area of the International Airport near Baghdad under the exclusive control of the United States.

38. Petitioner has been at all times and is now in the exclusive custody of U.S. military personnel, but personnel of the U.S. Department of Justice, other U.S. personnel and contractors of the U.S. may on occasion be present. Several unarmed Iraqi's in T-shirts act as bailiffs within the courtroom which is under the physical control of the U.S. military and to which all access is guarded by U.S. military personnel. All visits by defense counsel and communications between counsel and petitioner outside the courtroom are arranged and controlled by U.S. military personnel.

39. Petitioner was interrogated by U.S. military personnel and other U.S. personnel after his detention for months before he was allowed counsel. After he was allowed counsel, interrogations continued without notice to, or the presence of, his counsel. All meetings with his defense counsel during his custody have been monitored audibly and visually, by U.S. military personnel, or other U.S. personnel.

40. While Petitioner and later his defense counsel have protested his arrest and detention by the U.S., he has never been advised of his rights under U.S. and international law and his rights under the Constitution and laws of the United States, the Geneva Convention, the International Covenant on Civil and Political Rights, other international treaties of the United States. International law have been regularly disregarded and violated by U.S. personnel.
41. The Respondents authorized, directed and supervised the seizure, detention and arrest of Petitioner. They directed and supervised Petitioner's detention and the conduct of U.S. personnel in whose custody Petitioner is placed, and the conditions under which he is detained. They authorized the violations of his rights.
42. The Respondents authorized, directed and participated in creating the illegal IST and financing, selecting, training its Judges and other personnel and authorized, directed and approved its control by U.S. personnel and its lack of independence and impartiality.
43. U.S. military personnel control all communication by defense counsel with Petitioner and with the IST outside the courtroom. The United States controls the physical protection of the judges and their families. Consequently, the judges and their families are dependent upon the United States for their lives. The United States maintains large staffs including military and civilian lawyers from the U.S. Department of Justice and others retained by it to advise, consult and direct the Judges of the IST. These staffs work both in the Court and in its immediate proximity.

44. The United States has directed, facilitated and approved the violations of due process of law and the many acts of unfairness in the trial of Petitioner.

45. Respondents plan to deliver and release Petitioner to personnel of the government of Iraq, its Minister of Interior, paramilitary organizations, or persons acting under the direction of Prime Minister Maliki. The immediate consequence will be summary or illegal execution, torture, cruel, inhuman and degrading treatment and cruel and unusual punishment.

C. Petitioner's Illegal and Unfair Trial

46. Petitioner was tried, convicted and will be sentenced to death by an illegal court. Defense counsel tried repeatedly to present the law and facts which demonstrate the illegality of the IST to the Court from October 19, 2005 the day the trial began, but were prevented by the court from addressing the issue, though various briefs on the subject were filed during the trial. A major brief was prepared and submitted to the Trial Panel in September 2006 and an updated copy of the same memo was submitted to the appellate court in November 2006 with additional and new facts presented. These additions were placed at the end of the September brief. It presents all the major deficiencies and failures of the Court and trial including the issue of the legality of the IST. The updated brief is attached as Ex. 2, Ramsey Clark and Curtis F. J. Doebbler, *The Iraqi Special Tribunal: A Corruption of Justice*. The principal arguments on legality which arise from the illegal invasion and occupation of Iraq by the U.S. were presented to both Courts at pages 14-30, Ex. 2, hereto.

47. The IST lacks independence from outside influences that have directly affected its personnel, conduct and decisions which prejudiced Petitioner. The Iraqi Study Group

described outside influences on Iraqi courts as "ruthless." The direct influence of Respondents and their subordinates is greatest. In late January of 2006, after hearing more than 30 witnesses since commencement of the trial on October 19, 2005, the President of the IST, Chief Judge Amin was forced to resign by political pressure, his successor as Chief Judge Saeed al-Hammash, publicly announced by the Court, was removed from the court several days later on grounds first raised and pressed by the U.S., that he was a former member of the Baathist party, among millions of others, though he had sat on the trial panel from the beginning of the proceeding. Judge Abdel Rahman, who replaced Judge al-Hammash, had not been on the Court theretofore, was then made Chief Judge of the Court. The Chief Judge conducts the entire trial proceedings and has been the only judge on the trial panel identified to defendants, including Petitioner, or named publicly or shown in the courtroom video tapes with rare exceptions.

48. The U.S. has funded the IST at a cost of hundreds of millions of dollars, including judicial salaries. The U.S. protects the judges from violence with U.S. personnel. Further examples and details of the Courts lack of independence are found in Ex. 2 primarily at pages 56-60. The requirement that the Judiciary be independent of external influences in hearing and deciding cases is essential to the judicial function and rule of law. It is universally recognized. See Ex. 2 Endnotes, 153-158 at pp. 126.
49. The IST lacked impartiality in the trial. As a single illustration of the fact and appearance of bias, the final Chief Judge of the Court, Judge Abdel Rahman, a Kurd, placed on the Court and in charge of the trial after it was more than 1/3 complete, is from Halabja, a Kurdish town where it is claimed 5,000 people were killed by nerve gas used by Iraqi forces in

1988. Relatives and friends of Judge Abdel Rahman were killed. It was alleged in a motion for his recusal that before his appointment to the Court, he had said, of this trial, "a trial is not necessary, only a hanging". Judge Abdel Rahman refused to withdraw from the Court, but never denied any of the many allegations that he was bitterly prejudiced. For more examples of judicial bias see Ex. 2, pp. 61-64. Near the end of the defense case in May 2006, Judge Abdel Rahman addressed the defendants in anger, and in an extreme expression of prejudice said, "You have had blood on your hands since childhood". See Ex. 3, Human Rights Watch, Judging Dujail: The First Trial before the Iraqi High Tribunal, Vol. 18, No.9(E) November 2006 at 65-69, criticizing Judge Abdel Rahman's many displays of prejudice. Judge Abdel Rahman, who was the only member of the Court active in conducting the trial speaking in the Courtroom to counsel, the accused, including Petitioner, and courtroom personnel manifested, prejudice against Petitioner and all the accused every day of the trial.

50. The IST and the United States failed to provide adequate protection for the Court and trial participants to function without an overwhelming sense of fear. The general prevalence of violence in Iraq and its concentration in Baghdad caused a constant awareness of the risk of violence by all participants in the trial and made fairness improbable. In the nature of things the U.S. military and its contractors were the only reliable source of protection for the court, its personnel and families, and defense counsel and their families. Despite pleas by defense counsel for U.S. protection, which included a formal request from Chief Judge Amin for such protection in December 2005, meaningful protection was never provided defense counsel and their families. Most removed their immediate families from Iraq.

51. As a direct consequence, three defense lawyers were assassinated during the trial. There were only a total of seven defendants in the trial.
52. The first lawyer was kidnapped by a large group of men in business suits arriving in new SUV's and proclaiming themselves to be from the Ministry of Interior. He was seen on television on October 19, 2006, acting as a defense counsel on the first day of the trial. Late the next evening, October 20, 2006, he was taken from his office and brutally murdered.
53. Petitioner's selected defense lawyer was murdered on the street by gunman driving a government vehicle and appearing to be from the Interior Ministry on November 8, 2005. This occurred after repeated requests for better security arrangements were ignored by the United States. A third attorney was later kidnapped from his home early in the morning by men claiming to be from the Interior Ministry of Iraq, and murdered on June 21, 2006.
54. The Dujail Trial, as it is called, was a trial over the alleged response of the Government of Iraq to an assassination attempt on the life of President Saddam Hussein on July 8, 1982 on a main highway running through a town called Dujail.
55. It was one of several assassination attempts against officials of the Iraqi government by members of the Dawa party, a Shia party funded by Iran, and committed to overthrow the government of Iraq. Current Iraqi Prime Minister Nouri Al-Maliki is a prominent member of the Dawa party. As Prime Minister, Maliki has the authority to replace the presiding IST judges at will and without cause, a power which he exercised to replace the presiding judge in the Dujail trial when Maliki felt he was insufficiently harsh towards the defendants.

56. A judicial investigation into responsibility for the assassination attempt was conducted and processed by investigative judges from 1982 to 1984. The files of the investigative judge contained confessions to capital offenses by 148 males and guilty pleas by each of the 148 men. Judgments of guilt and death sentences were mandatory for treason or taking up arms against Iraq in support of Iran during the Iran-Iraq war. The convictions and sentences were reviewed by a large national panel and were confirmed and 148 orders of execution signed by President Saddam Hussein in mid 1985, three years after the assassination attempt. The very theory of the Dujail case is extreme: In the midst of a very deadly and dangerous war with Iran after assassination attempts on Minister Tariz Aziz, and other officials including the President of the country, that Iraq would delay three years, fabricating a trial and a review by eminent national figures, before imposing death sentences.

57. Even though the purported basis of Dujail proceedings before the IST was the allegation that improper trial proceedings were conducted against the 148 men, the IST refused to allow the defendants access to the judicial records of the 1982–1985 proceedings that led to the death sentences. The prosecutor was not required to introduce the records of the proceedings. The defendants demanded the ability to access those proceedings to demonstrate the lawfulness of those very proceedings, but their repeated demands were denied. The records, the existence of which were not in dispute, were in fact now in the custody and possession of the United States Government.

58. Typical of his conduct, Judge Abdel Rahman taunted the defendants, “Asking for dossiers (the records of the earlier trial) is the work of the defense, but don’t ask us to do it.” Co-defendant and former Judge Bandar replied, “The Americans have seized all the

documents of the Iraqi government, and the Court can ask them to bring it, but if you want to try me without knowing the truth..." to which Judge Abdel Rahman famously replied, "I don't do that ... I won't issue a sentence on 148 within one hour, I am not this type!" (See Ex. 3 at 66-67.) U.S. military and civilian lawyers working closely with the IST and observed the entire trial were aware of the pleas for access to the records.

59. The Dujail case was brought solely because of political pressure from members of the Dawa Party, in Iraq's present government, including former Prime Minister Jaffari, and present Prime Minister Maliki, and the dominant role of the Dawa Party in the present Parliament of Iraq. The Dawa Party was founded in Iran primarily by Iraqi's in exile. From its creation, the Dawa Party was committed to the overthrow of the government of Iraq. Before, during the Iran-Iraq war and thereafter, members of the Dawa Party committed acts of violence and sabotage against the people and government of Iraq. During the period of 1980-82 members of the Dawa Party planned and conducted attempts to assassinate leaders of the government of Iraq including President Saddam Hussein and Foreign Minister Tariq Aziz. These planned assassinations were supported by current members of the Dawa Party in the government of Iraq including the office of the Prime Minister. The Dawa Party had significant secret membership and supporters in Dujail who conducted and supported the assassination attempt on President Saddam Hussein in July 1982 and conspired with and supported Iran in the Iran-Iraq war which was raging at the time. Saddam Hussein testified in the trial that the announcement of the assassination attempt on his life was first made in Tehran and participants in its planning and execution fled to Iran.

60. The Dujail trials came during an extremely dangerous time for Iraq, 1982 when Iran drove Iraqi troops from most of southern Iran and invaded parts of Iraq along their common border. Over a million people were killed during the Iran-Iraq war, largely forgotten even by Iraqis except by the Dawa Party and former Iraqi government officials directly threatened by them. That such a case was brought before the IST surprised anyone familiar with the history of Iraq from 1970 through 2003. It was brought because of the insistence of the Dawa Party to show its power and exact revenge making the Dujail incident in 1982 and its prosecution over a three year period the first case against former regime.
61. Before the trial began, Judge Dara Nureddin withdrew his name after having been nominated to the Dujail trial panel because he had allegedly been convicted and sentenced to prison by the courts functioning under the government of Iraqi President Saddam Hussein. Another Judge withdrew from the Dujail trial panel in late November 2005, because it was alleged his brother had been killed by the government of President Saddam Hussein. Judge Abdel Rahman lost more than one relative at Habalja and was twice sentenced to death by Iraqi courts, the second time during President Saddam Hussein's administration.
62. Shortly after joining the IST, new Chief Judge Raouf Rasheed Abdel-Rahman was challenged to recuse himself because of prejudice. He failed to provide a reasoned decision on the motion seeking his disqualification for bias. He first ignored, then refused to decide the motion, but later stated that the Court of Appeal of the IST has decided the motion. No written decision was provided at that time however. When a decision was finally provided it rejected the defense motion for recusal on the sole basis that under Iraqi law it should

have been submitted *before* the proceedings on the merits started in October 2005, more than three months before Judge Abdel-Rahman, whose disqualification was sought, had joined the IST and was known to Petitioner. It was impossible for defense counsel to have challenged his impartiality at that time.

63. Violence has continued to plague defense counsel. Just a few days after the second trial before the IST/IHCC began and while the verdict and judgment in the Dujail trial were under consideration, in September 2006, a fourth defense lawyer, Abdel-Moneim Hussein Yassin, was murdered.

63. The Dujail trial proceedings include the following additional acts and failures by U.S. authorities, the IST/IHCC, and persons acting under their authority.

a. Failure to provide Petitioner basic due process rights during interrogations and investigations by denying him legal counsel¹ and the right to see the evidence against him; Ex. 2 at 52-53, 69-70;

b. Failure to ensure a trial before a competent tribunal and instead holding a trial before an exceptional court that was created in violation of Iraqi and international law; *id.* at 5-7, 33-35;

¹ See generally Ex. 2 at 68. See *id.* at 68 (The President was not allowed even one meeting with senior lawyers before the proceeding started in October 2005.); *Id.* at 65 (“The only meeting that took place between the President and his IST appointed lawyers were not private and took place with constant surveillance from several United States soldiers. There were no meetings between the President and his lawyer for more than a year including no face-to-face meeting during the whole of the defense case during May and June 2006.”).

- c. Failure to ensure a trial before an independent tribunal and instead holding a trial before an exceptional court that is subject to interference by the political authorities in Iraq and outside Iraq that has prejudiced Petitioner²; *id.* at 8-9, 39, 55-59;
- d. Failure to ensure a trial before an impartial tribunal and instead holding a trial before an exceptional court where the judges have repeatedly acted and made statements that reveal deep prejudice against Petitioner and constitute fundamental unfairness³; *id.* at 60-63;
- e. Failure to provide Petitioner timely statements of the charges against him by first presenting the charges against him in June 2006 more than two years after he was detained, eight months into his trial⁴, and one month after Judge Abdel Rahman cut off all further

² See generally Ex.3 at 55 - 59; Ex. 3, Human Rights Watch report, Judging Dujail: The First Trial Before the Iraqi High Tribunal, November 2006 at 37 - 43. See, e.g., *id.* at 38 (The IHT Statute has multiple provisions that seriously undermine the independence of the court, including the transfer or suspension of judges in the midst of ongoing trials “for any reason” and the prohibition of any person who belonged to the Ba’th Party from holding any position within the court.) See generally Ex. 4, International Center for Transitional Justice briefing paper, Dujail: Trial and Error? at 6 - 9. See, e.g., *id.* at 6 - 7 (“Iraqi political leaders have continually made remarks and exerted pressure, creating an atmosphere that is not conducive to the exercise of the presumption of innocence or to fair trials.”); *id.* at 7 (“The IHT has undergone several rounds of de-Ba’athification, a political process which has ignored the high threshold required by international standards before judges can be removed from ongoing cases.”).

³ See generally Ex. 2 at 74; *id.* at 74 (One judge of the tribunal stated that the President “persecuted the Kurds. He killed them, wiped many of them out. He used chemical weapons with the aim of committing genocide against this race, against this people, to eradicate them as a nation. He also went after the Shiites due to their religious beliefs.”); *Id.* (Another judge remarked that the President is “one of the worst tyrants in history.”); See generally Ex. 2 at 37 - 43.

⁴ See generally Ex. 2 at 64 - 65; *id.* at 64 (“The specific charges against the President were not provided to the defense until 15 May 2006, approximately two and half years after the President had been arrested, and approximately seven months into the trial and after the prosecution had presented its case, including all its witnesses and evidence.”); Ex. 3 at 44 - 48. See Exhibit 5 at 11 (“[The charges were] attached to the charging document presented in May 2006 at the end of the case for the prosecution (an occasion on which charges of disappearances and other inhumane acts were added).”).

defense testimony with the statement “If you cannot prove your innocence with 34 witnesses, 100 will not help”; and forced him to proceed at times during the trial and close his defense in the absence of his lawyers of choice; id. at 64;

f. Failure to allow Petitioner adequate time and facilities to prepare his defense by confiscating his resources⁵, failing to provide resources for a defense⁶, withholding and refusing to compel the production of vital exculpatory evidence⁷, withholding all transcripts of the proceedings, and rushing the defense unreasonably; Id. at 45, 65-67;

g. Failure to provide a public trial by denying the general public access to the trial, frequently closing the trial to the attending press, and public by drawing curtains after the glass through which they viewed the trial and cutting off all video-audio transmissions which cut off the media and public elsewhere, and by later showing only edited versions of the trial that present Petitioner in the worst light possible; Id. at 67;

h. Failure to allow Petitioner time to choose replacement counsel after the murder of his first lawyer, and to meet adequately with counsel of his own choosing and by assigning counsel to which Petitioner objected when his chosen defense counsel was prevented from participating; Id. at 48-51, 68-70;

⁵ See generally Ex. 2 at 65 - 67. See id. at 66 (The defense was given a matter of minutes after being provided the charges to begin presenting its case with no time to prepare or evaluate the prosecutions’ case.). See generally Ex. 3 at 48 - 60; Ex. 4 at 12 - 13.

⁶ See generally Ex. 3 at 60 - 63. See, e.g., id. at 61 (The trial chamber read 23 prosecution statements into the court record without making any available for questioning by defense counsel.); Id. at 63 (The trial chamber - - without a ruling, order or explanation - - allowed blanket usage of protective measures that amounted to “constructive anonymity” of prosecution witnesses and complainants.). See generally Exhibit 3 at 11 - 12.

⁷ See Exhibit 1 at 66 (“[T]he prosecution did not provide the defense lawyers any exculpatory evidence.”); See generally Exhibit 2 at 52 - 53.

- i. Allowing the intimidation of witnesses in which even the judges of the court participated by sending court officials to coach witnesses and by threatening witnesses with repercussion if they provide testimony that is not what the Prosecution wishes; Id. at 70-72
- j. Relying on *ex post facto* laws by applying domestic laws of Iraq which did not exist until decades after the acts which are the basis of the charges against Petitioner; Id. at 72-73, see also id. at 79;
- k. Violating the presumption of innocence by Judge Abdel Rhaman stating defendants must prove their innocence and making biased statements and the withholding of relevant exculpatory evidence; Id. at 74;and
- l. Failure to ensure equality of arms between the parties by allowing the prosecution more than eight months to present its case with massive funding and constant threat assistance of officers and attorneys of the Prosecution. The U.S. provide the Court, its Judges and Prosecution to prepare, present and judge the case while no compulsory process, refusing exculpatory evidence, denying any resources to defense counsel for protecting the investigation and present their defense, and only five weeks to present the entire defense case; Id. at 74-76.

Fuller descriptions of the factual basis and support for the allegations in paragraph 45 are in Ex. 2.

D. Threat of the Unlawful Surrender, or Release of Ramadan to Representatives of the Government of Iraq, or Its Designee

64. Unless restrained, the Respondents will surrender or transfer Ramadan, who is in the exclusive custody of the U.S., to the government of Iraq.
65. Respondents will violate U.S. and international law if they surrender or release Petitioner to the government of Iraq, its designee, or others at any time under present conditions.
66. If Petitioner is surrendered, or released by Respondents to any person, or persons designated in, or in any way associated with the government of Iraq, or the IST/IHCC, or to any other organization or person in Iraq, he will be immediately threatened with extra judicial, or summary execution, or illegal execution, torture, cruel and unusual punishment and cruel inhuman and degrading treatment in violation of his rights and the laws set forth below.
67. The Respondents will violate the Constitution and laws of the United States and International law as set forth below if it surrenders or release Petitioner to any person, or persons designated, or in any way associated with the government of Iraq, or the IST/IHCC, or any other organization, or person in Iraq, or expose him to seizure by anyone.

E. Bases for Granting the Writ of Habeas Corpus

68. First, Respondents know (1) that the government of Iraq intends to execute Petitioner and will do so if Petitioner is placed in the hands of anyone the government of Iraq designates, (2) from the conduct of the government of Iraq which Respondents have observed toward prisoners in its custody it is assured that Petitioner will be tortured and subjected to cruel inhuman and degrading treatment, and cruel and unusual punishment before execution (3) the U.S. waged a war of aggression against Iraq continuing to occupy it in the midst of

great violence and the U.S. created, financed, protects, monitors and guides the daily workings of the IST which is neither legal, nor independent and repeatedly violated Petitioner rights to due process of law and fundamental fairness all caused, or condoned by Respondents, (4) that they hold Petitioner in their exclusive custody and have subjected him to an illegal and unfair trial by the IST as a result of which he is threatened as aforesaid; that for these reason Respondents surrender, or release Petitioner and he is executed, tortured or subjected to cruel, unusual, inhuman and degrading punishment. Respondents will be charged as principals with murder, torture, assault, or as accomplices, accessories, or for aiding and abetting such crimes.

69. Second, Respondents have held Petitioner in their exclusive custody and subjected him to a trial before the IST in which Respondents have participated in the violation of Petitioner rights under the Fifth, Sixth and Eight Amendments of the Constitution of the United States in which he was deprived of life and liberty without due process of law, a public trial by an impartial trier of fact, the rights to be informed of the nature and source of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, to be provided exculpatory evidence for his defense, to have law assistance of counsel of his choice for his defense, among other rights.

70. Third, Respondents have held Petitioner in their exclusive custody and subjected him to a trial before the IST in which Respondents have participated in the violation of Petitioner's rights protected by treaties made under the authority of the United States and customary international law which are part of the supreme Law of the Land as provided in Article VI of the Constitution of the United States, including Article 6, 7, 10, 14, 15 and 19 of the International Covenant on Civil and Political Rights, 999 UNTS 171; Article 3 of the

International Covenant Against Torture and other Cruel, Inhuman and Degrading Treatment, or Punishment, 1465 UNTS 85, enacted into the laws of the U.S. at 18 USC §2340, et seq, and related provisions stated in Pub.L. 105-277, §224(a); Articles 10, 84, 87, 99, 104 and 105 of the Third Geneva Convention Relating to the Treatment of Prisoners of War; the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Article I, et seq, of the American Declaration on the Rights and Duties of Man and Article 4.4 of the American Convention on Human Rights which prohibits capital punishment for political crimes or common crimes related threats, both reflecting customary international law.

71. Fourth The United States will deprive Petitioner of rights guaranteed persons seized by the U.S. military in times of armed conflict as set forth in the Uniform Code of Military Justice, U.S. Army Regulation 190-8, and The Law of Land Warfare, U.S. Army Field Manual 27-10 (1956).
72. Fifth, the aforestated provisions of international law prohibit every state, including the United States, and Respondents from surrendering, or releasing a person to another state, or person when the transfer of custody will result in violation of their provisions. See, the United Nations Human Rights Committee, Ng. v Canada (1993) 98 ILR 479; the European Court of Human Rights, Soering v. United Kingdom, Series A, No. 161, Application No. 14038/88 [1989] ECHR 14 (7 July 1989).
73. The Court has habeas corpus jurisdiction over petitioner's case, and is bound, in the exercise of this jurisdiction, to take cognizance of the violations of law, identified and

described in this petition, to which Petitioner has been subjected and which place him in jeopardy of torture and death, and grant appropriate relief.

PRAYER FOR RELIEF

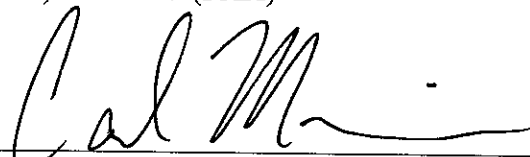
WHEREFORE, Petitioner for relief prays that the Court:

1. Order Respondents to retain exclusive custody of Petitioner until this Court has considered and decided the merits of this Petition,
2. Order Respondents to prohibit the surrender, or release of Petitioner or to allow him to be turned over to the government of Iraq, or any of its Ministries, agents, the IST or designees or any other entity, or person without the prior approval of this Court,
3. Order Respondents to allow his attorneys to meet and confer with Petitioner, in private and unmonitored attorney-client conversations at all reasonable times;
4. Order Respondents to cease all interrogations of Petitioner, without the presence or consent of counsel;
5. Order Respondents to bring Petitioner before this Court;
6. Issue a Writ of *Habeas Corpus* requiring Respondents not to release Petitioner to anyone in Iraq or outside Iraq until his physical safety is assured.
7. Order an evidentiary hearing and order Respondents to produce Petitioner for the hearing,
8. Order such other relief as the Court may deem necessary and proper to protect Petitioner's rights under the U.S. Constitution and International Law.

Dated: February 9, 2007

Respectfully submitted,

Ramsey Clark [73833]
Counsel of Record
Lawrence W. Schilling
37 West 12th Street 2B
New York, New York 10011
(212) 989-6613
(212) 979-1583 (FAX)

A handwritten signature in black ink, appearing to read "Carl Messineo", written over a horizontal line.

Carl Messineo [450033]
Mara Verheyden-Hilliard [450031]
10 G Street, N.E.
Ste 650
Washington, D.C. 20002
(202) 789-4330
(202) 789-4333 (FAX)