



authority granted by the Authorization for Use of Military Force, Pub. L. 107-40, 115 Stat. 224 (2001), the Authorization for Use of Military Force against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002), and the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298 (2011).

Petitioner American Civil Liberties Union Foundation, as next friend, petitions this Court for a writ of habeas corpus directing Respondent to: (1) provide attorneys from the ACLU Foundation with

provided Unnamed U.S. Citizen with access to a court or to counsel.

to, *inter alia*, the Supreme Court's rulings in *Boumediene v. Bush*, 553 U.S. 723 (2008), *Munaf v. Geren*, 553 U.S. 674 (2008), *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), and *Rasul v. Bush*, 542 U.S. 466 (2004).

### **VENUE**

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondent in his official capacity resides in this District, and pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

### **STATEMENT OF FACTS**

6. The Defense Department has been detaining Unnamed U.S. Citizen since on or around September 14, 2017, after Syrian forces transferred him to U.S. custody. *See* Betsy Woodruff & Spencer Ackerman, *U.S. Military: American Fighting for ISIS 'Surrenders'*, Daily Beast (Sept. 14, 2017), [www.thedailybeast.com/us-military-american-isis-fighter-reportedly-surrenders](http://www.thedailybeast.com/us-military-american-isis-fighter-reportedly-surrenders); Ryan Browne,

identity.

10. The Defense Department has not publicly disclosed the name or location of the facility where Unnamed U.S. Citizen is being detained.

11. The Defense Department has labeled Unnamed U.S. Citizen an “enemy combatant.” *See* Baldor, *supra*.

12. The Defense Department is holding Unnamed U.S. Citizen without charge, without access to a court or other meaningful opportunity to challenge his detention before a neutral decisionmaker, and without access to counsel.

13. On September 28, a Defense Department official stated that the International Committee of the Red Cross (“ICRC

18. On September 29, the ACLU sent via facsimile a letter to Respondent Mattis and to Attorney General Jeff Sessions expressing deep concern about Unnamed U.S. Citizen's detention, and the fact that the detention violates the Constitution, federal statutes, and international law. *See* ACLU Letter to Trump Administration on Detained American Suspected of Fighting for ISIS (Sept. 29, 2017), *available at* [www.aclu.org/letter/aclu-letter-trump-administration-detained-american-suspected-fighting-isis](http://www.aclu.org/letter/aclu-letter-trump-administration-detained-american-suspected-fighting-isis). The ACLU urged that if the U.S. government has grounds to suspect Unnamed U.S. Citizen of fighting with ISIS, Respondent Mattis should transfer Unnamed U.S. Citizen without further delay to the United States to face charges in the federal criminal justice system in a proceeding governed by the constitutional safeguards due to all criminal defendants. The ACLU emphasized that regardless of the claimed source of detention authority, Unnamed U.S. Citizen has a constitutional right to counsel. The ACLU further informed Respondent Mattis that ACLU attorneys are available to advise Unnamed U.S. Citizen of his rights and to assist him in securing legal representation, and urged Respondent Mattis to provide that access. The ACLU has not received a response to its letter.

19. Unnamed U.S. Citizen is being detained indefinitely without access to a lawyer, without access to any court, and without a meaningful opportunity to challenge his detention before a neutral decisionmaker.

20. The Defense Department has not indicated whether, or for how long, it will continue Unnamed U.S. Citizen's military detention. The United States government has previously asserted, and continues to assert, legal authority to detain "enemy combatants," including U.S. citizens, indefinitely.

21. The Defense Department has referred questions regarding Unnamed U.S. Citizen to the Department of Justice, indicating that transfer of Unnamed U.S. Citizen for prosecution in



detention authority must conform to the Constitution and to international humanitarian law (“IHL”). *See Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004); *accord Boumediene v. Bush*, 553 U.S. 723, 733 (2008) (discussing *Hamdi*).

26. In the 2012 NDAA, Congress confirmed that the President’s authority to use necessary and appropriate military force includes the authority to detain covered persons consistent with IHL. *See* 2012 NDAA § 1021(a). The 2012 NDAA defines a covered person as someone who: 1) “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks”; or 2) was “part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners.” *Id.* § 1021(b). The 2001 AUMF and 2012 NDAA provide no additional detention authority.

27. The 2001 AUMF and the 2012 NDAA authorize, at most, the military detention of individuals who participated in the September 11, 2001 attacks (or harbored the participants) or who were part of or substantially supported al-Qaeda, the Taliban, or associated forces engaged in hostilities with the United States or coalition partners. The United States has made no public allegation that Unnamed U.S. Citizen was involved in the terrorist attacks of September 11, 2001. The United States has made no public allegation that Unnamed U.S. Citizen has directly participated in any hostilities against the United States that would fall within the ambit of the 2001 AUMF or 2012 NDAA.

28. Neither the 2001 AUMF nor the 2012 NDAA provides a domestic legal basis to detain an individual, such as Unnamed U.S. Citizen, based on allegations that he was part of or substantially supported ISIS, a group that did not exist at the time of the 9/11 attacks, that is distinct from al-Qaeda, and that has, in fact, opposed al-Qaeda.



29. The 2002 AUMF autho

36. Therefore, the detention of Unnamed U.S. Citizen by Respondent is in violation of the Constitution and laws of the United States.

SECOND CLAIM

*(Unlawful Detention and Denial of Right to Presentment)  
(Violation of the Fourth Amendment to the U.S. Constitution)*

37. The Fourth Amendment requires that individuals seized by federal officials, including but not limited to U.S. citizens seized overseas, be brought promptly before a judicial officer to establish the basis for their detention.

38.

42. Respondent's detention of Unnamed U.S. Citizen without access to any court, without access to counsel, and without a meaningful opportunity to challenge his detention before a neutral decisionmaker violates the Suspension Clause of the U.S. Constitution, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the provisions of the federal habeas corpus statute set forth at 28 U.S.C. § 2241 *et seq.*, and international law.

FOURTH CLAIM

*(Denial of Right to Counsel)*

*(Violation of the Federal Habeas Corpus Statute, the Suspension Clause of the U.S. Constitution, and the Fifth and Sixth Amendments to the U.S. Constitution)*

43. The Supreme Court has held that U.S. citizens detained as enemy combatants have the right to the assistance of counsel and the right to a meaningful opportunity to challenge their detention before a neutral decisionmaker, even when allegedly captured on a foreign battlefield bearing arms against the United States or its allies. *Hamdi*, 542 U.S. at 539.

44. Unnamed U.S. Citizen has the constitutional right to communicate with counsel regarding his legal rights and to the assistance of counsel in challenging his detention.

45. By detaining Unnamed U.S. Citizen in secret and without the ability to access to counsel, Respondent is violating his right to counsel.

FIFTH CLAIM

*(Unlawful Detention for Purposes of Interrogation)*

*(Violation of the Fifth and Sixth Amendments to the U.S. Constitution)*

46. Upon information and belief, Unnamed U.S. Citizen was designated an enemy combatant so that the government could interrogate him while he was held *incommunicado* and Unnamed U.S. Citizen, in fact, has been and continues to be interrogated by the U.S. government.

47. The Supreme Court has stated that detention for purposes of interrogation is prohibited. *Hamdi*, 542 U.S. at 521.

48. Therefore, the detention and interrogation of Unnamed U.S. Citizen is in violation of the Constitution and laws of the United States.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner American Civil Liberties Union Foundation respectfully requests that this Court:

A. Order Respondent forthwith to permit counsel for the American Civil Liberties Union Foundation to meet and confer with Unnamed U.S. Citizen in private and unmonitored attorney-client conversations, in person or via videoconferencing, in order for counsel to advise him of his legal rights and to provide him with legal assistance.

B. Order Respondent to make a prompt return to the writ in accordance with 28 U.S.C. § 2243 and the Suspension Clause of the U.S. Constitution.

C. Order Respondent to cease all interrogations of Unnamed U.S. Citizen while this litigation is pending.

D. Order Respondent to provide notice to the Court and to counsel for the American Civil Liberties Union Foundation prior to any transfer of Unnamed U.S. Citizen, including, but not limited to, transfer to another U.S.-controlled facility or U.S. jurisdiction, or transfer to the custody of another nation.

E.

G. Order Respondent to charge Unnamed U.S. Citizen with a federal criminal offense in an Article III court or release him.

H. Grant such other relief as the Court deems necessary and appropriate.

Dated: October 5, 2017

Respectfully submitted,

/s/ Hina Shamsi

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