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 12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15

16 ABDEL JABBAR HAMDAN,

17 *Petitioner,*

18 *vs.*

19 ALBERTO GONZALEZ, Attorney  
 20 General of the United States;  
 21 MICHAEL CHERTOFF, Secretary  
 22 of the U.S. Department of  
 23 Homeland Security; MICHAEL J.  
 24 GARCIA, Assistant Secretary of the  
 25 U.S. Immigration and Customs  
 26 Enforcement; GLORIA KEE, ICE  
 27 District Director for the Los  
 28 Angeles District; ARTURO SUBIA,  
 ICE Officer-in-Charge of Detention  
 and Removal Operations, San Pedro  
 Processing Center,

26 *Respondents.*

CASE NO.

**PETITION FOR WRIT OF  
 HABEAS CORPUS**

## JURISDICTION AND VENUE

1  
2 1. Petitioner, who is presently in the custody of respondents under color  
3 of law, petitions this Court for a writ of habeas corpus releasing him from custody.  
4 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9,  
5 cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1361.  
6 This action arises under the First Amendment to the United States Constitution,  
7 the Due Process Clause of the Fifth Amendment to the United States Constitution,  
8 the Immigration and Nationality Act of 1952 ("INA"), as amended, 8 U.S.C. §  
9 1101 et seq., and international law. This Court may grant relief under, inter alia,  
10 the habeas corpus statute, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act,  
11 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

12 2. Venue is proper in this district because petitioner is presently  
13 detained at the San Pedro Service Processing Center in San Pedro, California,  
14 located within the Central District of California. See 28 U.S.C. § 2241(d).

## INTRODUCTION

15  
16 3. Petitioner Abdel-Jabbar Hamdan has lived in this country for over  
17 twenty-five years. He is the father of six U.S. citizen children and a prominent  
18 member of the Muslim-American community of Orange County. Although the  
19 government charged him only with technical visa violations, it has detained him  
20 for nearly one year based on his association with the Holy Land Foundation  
21 (hereinafter "HLF"), a charitable organization which the government shut down in  
22 December of 2001 after designating it as a terrorist organization.

23 4. Several of Mr. Hamdan's superiors at the HLF were criminally  
24 indicted on charges of diverting HLF donations to support a terrorist organization,  
25 but they have been released on bond pending their trials, and the government did  
26 not even argue at those bond proceedings that the defendants were dangers to the  
27 community or to national security. Yet Mr. Hamdan, who undisputedly played no  
28 role in distributing HLF donations, and who was never criminally indicted,

1 remains in detention while his wife and six children struggle to survive without  
2 their family's primary breadwinner and moral support.

3 5. The facts underlying Mr. Hamdan's employment with the Holy Land  
4 Foundation and his subsequent activities unambiguously demonstrate that he is not  
5 a danger to anyone. After having seized and reviewed every file, document and  
6 videotape ever made or maintained by HLF, the government still cannot show any  
7 connection between Mr. Hamdan and HLF's disbursement of funds. This is  
8 because Mr. Hamdan was never involved with HLF's finances, as his job was  
9 limited to making religious speeches to potential donors. He was not an executive,  
10 Board member, officer, or manager of HLF. Like thousands of American donors  
11 who gave money to HLF in support of charitable causes, Mr. Hamdan believed  
12 that HLF was a legitimate charity, and his intent in working at HLF was purely  
13 humanitarian. The government cannot justify its decision to detain Mr. Hamdan  
14 while releasing HLF executives who it conceded were more knowledgeable about  
15 and responsible for HLF's activities. After HLF was shut down, Mr. Hamdan  
16 worked at another charitable organization for three years, and the government does  
17 not even allege that he did anything unlawful during that time. In short, there is  
18 not one shred of evidence suggesting that Mr. Hamdan poses a danger to national  
19 security; his continued detention is clearly arbitrary.

20 6. In addition, Mr. Hamdan's detention is likely to continue for an  
21 extremely long time. The Immigration Judge granted him deferral under the  
22 Convention Against Torture (CAT), thus barring the government from removing  
23 him to Jordan, his country of citizenship. The government has appealed that  
24 decision, but the appeal has been stayed indefinitely at the Board of Immigration  
25 Appeals ("BIA") because of problems with the transcription of the hearing. If the  
26 BIA rejects Mr. Hamdan's appeal, he will exercise his constitutional right to seek  
27 judicial review of his removal order, which will take at least eighteen months. As  
28 a result, Mr. Hamdan could easily be detained another three years while his case

1 remains pending. If the BIA affirms the grant of deferral, the government will be  
2 barred from removing Mr. Hamdan to Jordan, making his removal extremely  
3 unlikely. Under these circumstances, the government's prolonged and potentially  
4 indefinite detention of Mr. Hamdan is unlawful.

5 7. The government's claim that Mr. Hamdan is a danger to national  
6 security is based solely on his association with HLF and nothing more. In a bond  
7 hearing before an Immigration Judge, the government claimed that Mr. Hamdan's  
8 fundraising for the HLF's charitable activities before it was designated as a  
9 terrorist organization, as well as the rhetoric of other speakers and the lyrics of  
10 singers at events where Mr. Hamdan spoke, rendered him a danger. The  
11 government never even attempted to prove, nor could it, that Mr. Hamdan raised  
12 funds for HLF with the intent to further terrorist activity. Detention based solely  
13 on association and others' speech clearly violates the First Amendment.

#### 14 PARTIES

15 8. Petitioner Abdel-labbar Hamdan is a citizen and national of Jordan  
16 who has resided in the United States since 1979. Before he was detained, Mr.  
17 Hamdan resided in Buena Park, California with his wife and six United States  
18 citizen children. He is currently detained at the San Pedro Service Processing  
19 Center in San Pedro, California under color of authority of the United States  
20 government.

21 9. Respondent Alberto Gonzalez is the Attorney General of the United  
22 States and as such, he is responsible for the administration of ICE and the  
23 implementation and enforcement of the immigration laws. In his official capacity,  
24 he is the ultimate legal custodian of Mr. Hamdan.

25 10. Respondent Michael Chertoff is the Secretary of the U.S. Department  
26 of Homeland Security ("DHS"), the agency charged with enforcement of the  
27 nation's immigration laws. In his official capacity, he is a legal custodian of Mr.  
28 Hamdan.



1 11. Respondent Michael J. Garcia is the Assistant Secretary of the U.S.  
2 Immigration and Customs Enforcement ("ICE"), the arm of DHS charged with  
3 detaining and removing aliens pursuant to federal immigration law. In his official  
4 capacity, Mr. Garcia is a legal custodian of Mr. Hamdan.

5 12. Respondent Gloria Kee is ICE's District Director for the Los Angeles  
6 District. In her official capacity, Ms. Kee is authorized to release Mr. Hamdan  
7 from detention, and she is the local ICE official who has legal custody of Mr.  
8 Hamdan.

9 13. Respondent Arturo Subia is ICE's Officer-in-Charge of Detention and  
10 Removal Operations at San Pedro Service Processing Center in San Pedro,  
11 California. As such, he is the local ICE official who has immediate custody of Mr.  
12 Hamdan.

#### 13 STATEMENT OF FACTS

14 14. Petitioner Abdel-sabbar Hamdan was born in 1959 in a Palestinian  
15 refugee camp. He is a citizen of Jordan.

16 15. In 1979, Mr. Hamdan came to the United States as a student, and he  
17 has resided in the United States since that time. In 1986, he graduated from the  
18 University of Southern California with an engineering degree.

19 16. Mr. Hamdan is married and has six U.S. citizen children ranging in  
20 age from eight to twenty-one years old, who have lived their whole lives in the  
21 United States. He and his family live in Buena Park, California, where they own a  
22 home. His children attend college and school in the area.

23 17. Mr. Hamdan has no prior criminal history either in the United States  
24 or in his native Jordan.

25 18. Mr. Hamdan has been the President of the West Coast Islamic  
26 Society, a mosque located in Anaheim, California, for seven years. As the  
27 President of the mosque, Mr. Hamdan was responsible for mosque administration,  
28 and he delivered religious lectures, arranged marriage contracts, counseled

1 families, helped coordinate mosque events, and met regularly with the mosque's  
2 Board of Directors. Mr. Hamdan is a well-respected member of the Muslim  
3 American community in Orange County, and he enjoys tremendous community  
4 support. See Declaration of Ranjana Natarajan In Support of Petition, Exh. 1.

5 19. After obtaining his engineering degree, Mr. Hamdan worked as an  
6 engineer for several years.

7 20. In the early 1990's, Mr. Hamdan began to volunteer for the Holy Land  
8 Foundation, a non-profit charitable organization that collected donations from  
9 Muslim Americans and distributed them to humanitarian projects in the U.S. and  
10 abroad. Natarajan Dec., Exh. 2.

11 21. HLF gave humanitarian aid to people in areas hit by natural disaster,  
12 war, and other calamities, including Oklahoma City, Somalia, Kashmir, Turkey,  
13 Lebanon, Bosnia, and the Occupied Territories in Palestine. Thousands of  
14 Americans donated to HLF's charitable causes. Through its charitable projects,  
15 HLF distributed food, water, clothing, shelter, medical equipment, and other  
16 humanitarian assistance to the needy.

17 22. In the early to mid 1990's, Mr. Hamdan began working for HLF full-  
18 time as a religious fundraiser. HLF was headquartered in Texas.

19 23. As a religious fundraiser for HLF, Mr. Hamdan's responsibilities  
20 included traveling across the country to give religious speeches to Muslim  
21 Americans to motivate them to make charitable donations to HLF for humanitarian  
22 aid projects. Natarajan Dec., Exh. 3. HLF employees in the Texas office selected  
23 venues and made travel arrangements for Mr. Hamdan's speaking engagements.  
24 Mr. Hamdan's speeches focused on religious texts and themes. In addition to  
25 motivating audiences to give to charity, Mr. Hamdan's speeches were aimed at  
26 educating Muslim Americans on Islamic values relating to family unity,  
27 community participation, inter-faith harmony, and avoiding drug and alcohol  
28 abuse.

1           24. Mr. Hamdan's role at HLF was limited. Most importantly, he had no  
2 knowledge, control, or responsibility over HLF's finances. Mr. Hamdan was not  
3 an executive, a member of the Board of Directors, an officer, or department  
4 manager at HLF. He did not supervise any other HLF employees. He did not  
5 work from the HLF headquarters in Texas. He did not select, review, administer,  
6 or fund HLF's humanitarian aid projects.

7           25. As a fundraiser for HLF, Mr. Hamdan's knowledge of HLF's  
8 humanitarian aid projects was based primarily on marketing videos, letters, annual  
9 reports, and brochures created and distributed by the HLF office in Texas, as well  
10 as on his superiors' summaries of the aid projects. The marketing materials  
11 contained numerous testimonials from needy children and families who described  
12 having received essential humanitarian aid from HLF. Mr. Hamdan did not travel  
13 abroad at any time for his job at HLF.

14           26. Mr. Hamdan had no reason to believe that the money he collected on  
15 HLF's behalf was sent to anything other than legitimate humanitarian aid projects  
16 serving the needy.

17           27. Mr. Hamdan's intent in working for HLF as a fundraiser was purely  
18 humanitarian. He believed that by motivating others to give charitable donations,  
19 he was making a positive impact in the lives of the needy and promoting core  
20 Islamic values.

21           28. In the late 1990s, Mr. Hamdan heard rumors that HLF was accused of  
22 diverting donations away from charitable purposes and in support of terrorist  
23 organizations. He was extremely concerned and asked his HLF superiors if these  
24 rumors were true. HLF executives repeatedly assured him and other employees  
25 that the rumors were false and that HLF supported only legitimate humanitarian  
26 aid projects.

27           29. In December 2001, the U.S. Treasury Department designated the  
28 Holy Land Foundation as a Specially Designated Global Terrorist ("SDGT") and

1 froze its assets on suspicions of terrorism financing, effectively shutting it down.

2 30. The government designated the Holy Land Foundation as an SDGT  
3 while it was investigating the charity because it suspected HLF of diverting  
4 charitable donations to support Hamas, an organization that the U.S. Secretary of  
5 State designated as a "Foreign Terrorist Organization" in October 1997.

6 31. When the government shut down HLF, Mr. Hamdan was surprised to  
7 learn that the HLF had been involved in supporting terrorist organizations because  
8 it was a well-respected charity, and his superiors had repeatedly assured him that it  
9 was completely legitimate. As President George W. Bush himself stated at the  
10 time the government closed HLF, "I'm confident that most of the donors to the  
11 Holy Land Foundation and perhaps even some of the individuals who are  
12 associated with the foundation had no idea how its money was being used. They  
13 wanted to relieve suffering in a region of the world that has suffered too much."  
14 Natarajan Dec., Exh. 4 (emphasis added).

15 32. From 2002 forward, Mr. Hamdan worked as a religious fundraiser for  
16 a non-profit charitable organization known as LIFE for Relief and Development,  
17 which also raised charitable donations from Muslim Americans for humanitarian  
18 aid projects. Mr. Hamdan worked for that organization until his arrest in this case.  
19 The government has never suggested that LIFE for Relief and Development,  
20 which has worked with the U.S. Department of Defense and continues to function  
21 to this day, is anything but a legitimate charity.

22 33. After HLF was shut down, Mr. Hamdan voluntarily spoke with FBI  
23 investigators on two occasions. He gave the FBI all the information he had about  
24 HLF.

25 34. On July 27, 2004, DHS agents arrested Mr. Hamdan at his home and  
26 took him into DHS custody. He was placed in detention at San Pedro Service  
27 Processing Center in San Pedro, California, where he has remained since that time.

28 35. Also in July 2004, seven executives of HLF, who had been Mr.



1 Hamdan's superiors, were indicted in federal court on criminal charges for  
2 providing material support to a terrorist organization. Five of the indictees who  
3 were in the United States were taken into federal government custody. In  
4 subsequent bond proceedings, the government did not even allege that these  
5 indictees were dangers to national security. Presiding magistrate judges released  
6 the indictees from custody within a month. See Natarajan Dec., Exh. 5 (United  
7 States v. Abu Baker et al., (No. 3:04-CR-240-G) (N.D. Tex. Aug. 5, 2004) ("the  
8 Government – after years of investigation – does not allege that these defendants  
9 currently pose a danger to the community, and the court has no basis to conclude  
10 otherwise"); United States v. El-Mezain, (No. 3:04-CR-240-G) (N.D. Tex. Aug.  
11 11, 2004)).

## 12 Procedural History

13 36. In 1989, Mr. Hamdan applied for permanent residency status through  
14 the amnesty program. He was granted work authorization, which was renewed  
15 annually while his application was pending.

16 37. On November 8, 2001 Mr. Hamdan applied for lawful residency  
17 based on "LIFE Legalization" as a member of the "Zambrano" late amnesty class.  
18 See Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000,  
19 Pub. L. No. 106-553, 114 Stat. 2762 (Dec. 21, 2000) *amended by* LIFE Act  
20 Amendments, Pub. L. No. 106-554, 114 Stat. 2763 (Dec. 21, 2000). His  
21 application for permanent residency was still pending at the time of his arrest in  
22 July 2004.

23 38. Upon his arrest in July 2004, DHS agents transported Mr. Hamdan to  
24 their office in Santa Ana, where they then held a "spontaneous," unscheduled  
25 interview for Mr. Hamdan concerning his permanent residency application. At the  
26 end of the purported amnesty interview, DHS denied his application and served  
27 him with a notice denying his permanent residency. (This "decision" was  
28 reversed on appeal for failure to provide proper notice.) Natarajan Dec., Exh. 8.

1 DHS also served him with a notice containing immigration charges and  
2 commencing removal proceedings against him.

3 39. In the removal proceeding, DHS charged Mr. Hamdan with failing to  
4 comply with the conditions of non-immigrant status pursuant to Immigration and  
5 Nationality Act ("INA") § 237(a)(1)(C)(I), 8 U.S.C. § 1227(a)(1)(C)(I), and for  
6 being present in the United States without lawful status, pursuant to INA §  
7 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B). No other charges were filed.

8 40. DHS also determined to continue holding Mr. Hamdan in its custody  
9 pursuant to INA § 236(a), 8 U.S.C. § 1226(a).

10 41. On August 4, 2004, Mr. Hamdan requested a hearing before an  
11 Immigration Judge to redetermine his bond status. Immigration Judge D.D.  
12 Sitgraves held bond hearings in his case for several days from August 5 to October  
13 26, 2004.

14 42. During the bond hearing, the government alleged that HLF gave  
15 charitable aid to the families of Hamas suicide bombers and gave aid to  
16 Palestinians in the Occupied Territories using local government-affiliated  
17 charities, known as zakat committees, that were allegedly affiliated with Hamas.  
18 The government did not provide documentary or testimonial evidence to support  
19 either of these contentions.

20 43. Nor did the government provide any evidence whatsoever to prove its  
21 allegation that Mr. Hamdan knew that HLF was diverting funds to support Hamas.  
22 Indeed, the government conceded that despite having seized and reviewed every  
23 document, videotape, and computer file ever made or maintained by HLF, it had  
24 no evidence linking Mr. Hamdan to HLF's disbursement of funds.

25 44. On November 2, 2004, Immigration Judge Sitgraves issued an order  
26 denying Mr. Hamdan bond and finding that he was a danger to national security.  
27 Natarajan Dec., Exh. 6. The immigration Judge's finding was based on Mr.  
28 Hamdan having worked as a religious fundraiser for HLF and having attended

1 events sponsored by the Islamic Association for Palestine, a non-profit  
2 organization that has not been designated as a terrorist organization.

3 45. In denying Mr. Hamdan release on bond, the Immigration Judge held  
4 that a person who is associated with an organization that is not designated by the  
5 federal government as a terrorist organization may nevertheless be considered a  
6 danger to national security even if his association with the organization ends as  
7 soon as the government designates the organization as terrorist. Natarajan Dec.,  
8 Exh. 6, at 30.

9 46. The Immigration Judge also found that the Islamic Association for  
10 Palestine would be designated as a terrorist organization in the future, which even  
11 the government had not alleged. Natarajan Dec., Exh. 6, at 41.

12 47. The Immigration Judge also concluded that Mr. Hamdan was a  
13 danger because, *inter alia*, when he attended two events sponsored by the Islamic  
14 Association for Palestine as a guest speaker, he did not "dissociate" [sic] himself  
15 from other guest speakers who made speeches about the Israeli-Palestinian conflict  
16 containing nationalist rhetoric or sang folk songs with lyrics containing violent  
17 imagery. Natarajan Dec., Exh. 6, at 40. The Immigration Judge came to this  
18 conclusion despite the utter lack of evidence showing that any of the speeches or  
19 songs had incited the audience to imminent lawless action, or that Mr. Hamdan  
20 had participated in the speeches or songs.

21 48. The Immigration Judge also found that it to be irrelevant that the  
22 government had not even argued that the defendants in the HLF criminal cases  
23 were dangers to national security, even though those defendants undisputedly had  
24 greater knowledge and control of HLF finances than Mr. Hamdan. Natarajan  
25 Dec., Exh. 6, at 39.

26 49. In December 2004, Immigration Judge D.D. Sitgraves presided over  
27 Mr. Hamdan's removal proceeding. Mr. Hamdan applied for relief from removal  
28 in the form of cancellation of removal, asylum, withholding of removal, and

1 withholding under the United Nations Convention Against Torture and Other  
2 Cruel, Inhuman or Degrading Treatment or Punishment ("CAT").

3 50. On December 20, 2004, Mr. Hamdan appealed the Immigration  
4 Judge's bond decision to the Board of Immigration Appeals.

5 51. On February 8, 2005, Immigration Judge Sitgraves issued an order in  
6 Mr. Hamdan's removal case, granting him deferral under CAT and denying all  
7 other relief. A grant of deferral under CAT prohibits the government from  
8 removing Mr. Hamdan to his native Jordan.

9 52. On March 9, 2005, Mr. Hamdan appealed the Immigration Judge's  
10 decision denying him asylum, amnesty, and withholding of removal to the Board  
11 of Immigration Appeals, and the government appealed the grant of deferral under  
12 CAT. Those appeals are currently pending.

13 53. On April 8, 2005, the Board of Immigration Appeals affirmed the  
14 Immigration Judge's decision denying Mr. Hamdan release on bond, despite  
15 acknowledging the Immigration Judge's error that the Islamic Association for  
16 Palestine is not a designated terrorist organization. Natarajan Dec., Exh. 7.

17 54. On May 5, 2005, the Administrative Appeals Unit of the U.S.  
18 Citizenship and Immigration Services ("CIS") granted Mr. Hamdan's appeal of the  
19 denial of his application for LIFE Amnesty, on the ground that DHS had failed to  
20 properly issue a notice of intent to deny, as required by 8 C.F.R. § 245a.20(a)(2).  
21 His LIFE amnesty case was remanded back to the CIS, where it is currently  
22 pending. Natarajan Dec., Exh. 8.

23 55. On June 2, 2005, the Board of Immigration Appeals issued an order  
24 suspending the briefing schedule in the appeals of Mr. Hamdan's removal case  
25 because of problems in the transcription of the hearing. Natarajan Dec., Exh. 9.  
26 The BIA has not set a new briefing schedule for the appeal. Without a briefing  
27 schedule, there is no foreseeable date by which Mr. Hamdan's appeal will be heard  
28 or decided.



1 56. The government cannot remove Mr. Hamdan from the United States  
2 until both his LIFE application for permanent residency before CIS and his appeal  
3 before the BIA are finally determined. See 8 U.S.C. § 1255a(c)(2)(A), INA §  
4 245A(2)(A). If the BIA affirms the grant of deferral he cannot be removed to  
5 Jordan.

6 57. DHS has never alleged that Mr. Hamdan would pose a flight risk if he  
7 were released from detention, and there is no evidence of flight risk. Since Mr.  
8 Hamdan has already won deferral, and he has extensive family and community ties  
9 in Orange County, he poses no flight risk.

10 58. There is no evidence to support the government's claim that Mr.  
11 Hamdan is a danger to national security. His intent in working for HLF was  
12 entirely humanitarian; he lacked any knowledge of HLF's alleged connections to  
13 terrorism, and his association with HLF was prior to its designation as a terrorist  
14 organization.

15 59. Mr. Hamdan suffers from numerous medical conditions for which he  
16 requires medication and treatment, including diabetes, high cholesterol,  
17 degenerative disc disease in his neck, and recurrent colon pain. Natarajan Dec.,  
18 Exh. 10. A physician who examined him after several months of detention  
19 concluded that this health has greatly declined while in detention.

## 20 FIRST COUNT

### 21 Violation of Fifth Amendment Due Process

22 60. Mr. Hamdan realleges and incorporates by reference each and every  
23 allegation contained in the preceding paragraphs as if set forth fully herein.

24 61. The Due Process Clause of the Fifth Amendment provides that "[n]o  
25 person shall be . . . deprived of life, liberty, or property, without due process of  
26 law." U.S. CONST. Amend. V. Freedom from bodily restraint is at the core of the  
27 liberty protected by the Due Process Clause. Zadydas v. Davis, 533 U.S. 678  
28 (2001); Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

1           62. Due process prohibits detention that is arbitrary and based on no  
2 evidence whatsoever. Zadvydas, 533 U.S. at 696; Demore v. Kim, 538 U.S. 510,  
3 527 (2003). Mr. Hamdan's continued detention is arbitrary because it lacks all  
4 valid factual basis and cannot be reconciled with the government's position in the  
5 HLF inditees' cases. The government has never alleged that Mr. Hamdan's HLF  
6 superiors are dangers to national security, even though they were criminally  
7 indicted and they undisputedly administered and controlled HLF's finances and  
8 aid projects, which Mr. Hamdan did not. Mr. Hamdan's detention on the basis of  
9 national security cannot be justified if the government never even attempted to  
10 detain his HLF superiors on the same basis. In addition, as a religious fundraiser  
11 for HLF, Mr. Hamdan played no role in HLF's disbursement of charitable  
12 donations. There is absolutely no evidence that he knew that HLF's funds were  
13 used for any non-charitable purpose, much less that he intended them to be so  
14 used. He reasonably believed that HLF's humanitarian aid projects, which were  
15 amply documented in annual reports and marketing materials, were legitimate and  
16 unconnected to terrorism. Finally, he never worked for HLF after it was  
17 designated as a terrorist organization, and lived for nearly three years after HLF  
18 was shut down without engaging in any even arguably dangerous or criminal  
19 activity. Under these circumstances, his detention is entirely arbitrary and lacks  
20 any valid evidentiary basis. Demore, 538 U.S. at 527.

21           63. Due process also protects aliens like Mr. Hamdan from prolonged,  
22 potentially indefinite detention. Zadvydas, 533 U.S. at 696; Clark v. Martinez,  
23 U.S. \_\_\_, 125 S.Ct. 716, 160 L.Ed.2d 764 (2005). As detention becomes  
24 prolonged, an immigrant's interest in freedom becomes greater, and the  
25 government may not detain absent some "special justification." Zadvydas, 533  
26 U.S. at 690. Mr. Hamdan has already been detained for one year. His continued  
27 detention is prolonged, potentially indefinite, and not likely to end in the  
28 reasonably foreseeable future. His application for legalization under the LIFE Act

1 remains pending, and there is no time period in which his LIFE application must  
2 be finally determined by CIS. In addition, the BIA has suspended the parties'  
3 briefing in the appeal of his removal case for an unspecified period of time. That  
4 appeal could well take a year to determine, after which time he must be allowed to  
5 exercise his constitutional right to review by the Ninth Circuit Court of Appeals,  
6 which could easily take another eighteen months. Under the circumstances, Mr.  
7 Hamdan's case will likely take another three years to complete. Moreover, if the  
8 BIA affirms the grant of deferral, Mr. Hamdan cannot be returned to Jordan.

9 64. Prolonged immigration detention of indefinite duration, especially  
10 when the likelihood of removal is not reasonably foreseeable, violates due process.  
11 Zadvydas, 533 U.S. at 690; Liz v. Hansen, 351 F.3d 263 (6th Cir. 2003) (affirming  
12 grant of habeas petition for alien detained over one year while challenging  
13 removal order); Oyedeji v. Ascroft, 332 F.Supp. 2d 747 (M.D. Pa. 2004)  
14 (granting habeas relief to alien detained for several years while pursuing challenge  
15 to removal order); Lawson v. Gerlinski, 332 F.Supp.2d 735 (M.D. Pa. 2004)  
16 (same, for alien detained eighteen months) Nguyen v. Alcantar, No. C 04-3280  
17 (WHA) (N.D.Cal. Jan. 19, 2005) (ordering release of alien detained sixteen  
18 months during pendency of removal proceedings); Parlak v. Baker, \_\_\_ F.Supp.2d  
19 \_\_\_, 2005 WL 1412173 (E.D. Mich. May 20, 2005) (same, for alien detained eight  
20 months). In addition, Mr. Hamdan's prolonged detention lacks any "special  
21 justification" required for its continuance. Zadvydas, 533 U.S. at 690.

22 65. Respondents' actions in detaining Mr. Hamdan have violated the Due  
23 Process Clause, and declaratory and injunctive relief are therefore appropriate.

## 24 SECOND COUNT

### 25 Violation of Immigration and Nationality Act and Regulations

26 66. Mr. Hamdan re-a leges and incorporates by reference each and every  
27 allegation contained in the preceding paragraphs as if set forth fully herein.

28 67. Respondents' continued detention of Mr. Hamdan based on no factual

1 evidence of danger or flight risk is arbitrary and capricious and contrary to the  
 2 Immigration and Nationality Act and implementing regulations. INA § 236; 8  
 3 U.S.C. § 1226.

4 68. Respondents' actions in detaining Mr. Hamdan have violated the  
 5 Immigration and Nationality Act and implementing regulations, and declaratory  
 6 and injunctive relief are therefore appropriate.

7 **THIRD COUNT**

8 **Violation of First Amendment Rights of Free Speech and Free Association**

9 69. Mr. Hamdan realleges and incorporates by reference each and every  
 10 allegation contained in the preceding paragraphs as if set forth fully herein.

11 70. Respondents' continued detention of Mr. Hamdan on the basis of his  
 12 prior association with the Holy Land Foundation and with the Islamic Association  
 13 for Palestine, and on the basis of his activities as a charitable fundraiser for those  
 14 organizations and his speeches at those organizations' fundraising events violates  
 15 his rights to freedom of association and speech under the First Amendment to the  
 16 United States Constitution.

17 71. The First Amendment prohibits the government from penalizing  
 18 people based solely on their associations with others. NAACP v. Claiborne  
 19 Hardware, 458 U.S. 886, 932 (1982) ("guilt by association is alien to the traditions  
 20 of a free society and the First Amendment itself"). The Immigration Judge found  
 21 Mr. Hamdan dangerous based purely on his association with others, stating that  
 22 "joining or previous membership in an organization that has been designated by  
 23 the Secretary of State or Department of Treasury as a terrorist organization is  
 24 reasonable grounds to believe the alien is a danger to the security of the United  
 25 States." Natarajan Dec., Exh 6 at 30. The Judge also penalized Mr. Hamdan for  
 26 being present at events where others spoke using violent imagery or nationalist  
 27 rhetoric. Id. at 40 ("Respondent claims that he did not agree with some of the  
 28 radical speakers [sic] at some of the conferences he attended, yet he did nothing to



1 disassociate [sic] himself or the HLF from fund-raising at those same functions.”).  
2 In addition to improperly penalizing Mr. Hamdan for others’ speech, see infra at  
3 ¶73, the Immigration Judge also erroneously punished him for associating with  
4 others based on their speech. Such findings, absent evidence that Mr. Hamdan  
5 himself intended to engage in activity that would threaten the nation’s security,  
6 violates his First Amendment right to free association.

7 72. The Constitution also bars the government from detaining Mr.  
8 Hamdan based on his charitable fundraising activities. Religious and charitable  
9 fundraising activity is undoubtedly expression protected by the First Amendment.  
10 Cf. Buckley v. Valeo, 424 U.S. 1, 24-25 (1976) (political fundraising protected by  
11 First Amendment). Purportedly charitable fundraising may be penalized only  
12 where the fundraiser raises funds for a designated terrorist organization or actually  
13 intends to fund terrorist activity. Humanitarian Law Project v. Ashcroft, 205 F.3d  
14 1130 (9th Cir. 2000). Here, there is no evidence that Mr. Hamdan fundraised for a  
15 designated organization or that he intended to fund terrorist activity.

16 73. The First Amendment also prevents the government from penalizing  
17 people on the basis of their speech unless that speech is “directed to inciting or  
18 producing imminent lawless action and is likely to incite or produce such action.”  
19 Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). Here, the government justifies  
20 Mr. Hamdan’s detention based on the speeches and songs of those with whom he  
21 appeared at fundraisers, even though there is no evidence that these speeches and  
22 songs were likely to produce lawless action of any kind. Natarajan Dec., Exh. 6 at  
23 31-37 (extensively reviewing lyrics of songs sung at two events attended by Mr.  
24 Hamdan). The First Amendment forbids the conclusion that the songs and political  
25 rhetoric of speakers at these events is evidence of Mr. Hamdan’s dangerousness.  
26 Cf. McCullum v. CBS, Inc., 202 Cal.App.3d 989, 1002 (1988) (holding that  
27 company publishing violent lyrics of Ozzy Osbourne could not be held liable for  
28 suicide of person who listened to Osbourne’s music because “[n]o rational person

1 would or could . . . mistake musical lyrics and poetry for literal commands or  
2 directives to immediate action"). The government's reliance on songs and rhetoric  
3 to justify Mr. Hamdan's detent on violates the First Amendment.

4 74. Respondents' actions in detaining Mr. Hamdan on the bases of speech  
5 and association have violated the First Amendment, and declaratory and injunctive  
6 relief are therefore appropriate

#### 7 FOURTH COUNT

##### 8 Violations of International Law

9 75. Mr. Hamdan realleges and incorporates by reference each and every  
10 allegation contained in the preceding paragraphs as if set forth fully herein.

11 76. Mr. Hamdan is a refugee as that term is defined under the Convention  
12 Relating to the Status of Refugees ("Refugee Convention"), July 28, 1951, 19  
13 U.S.T. 6259, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954).

14 77. Respondents' arbitrary and prolonged civil detention of Mr. Hamdan,  
15 as elaborated supra, violates his rights to be free from arbitrary detention under  
16 Article 9, Section 1 of the International Covenant on Civil and Political Rights  
17 ("ICCPR"), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into  
18 force Mar. 23, 1976), as interpreted through Article 2, Section 1 of the ICCPR;  
19 and his rights as a refugee to freedom of movement without punishment, under  
20 Articles 26 and Article 31, Sections 1 and 2, of the Refugee Convention.

21 78. These sections of international law have been incorporated into  
22 domestic law and are binding upon respondents.

23 79. Respondents' actions in detaining Mr. Hamdan have violated the  
24 above-enumerated sections of international law, causing injury to Mr. Hamdan,  
25 and declaratory and injunctive relief are therefore appropriate.

#### 26 PRAYER FOR RELIEF

27  
28 Wherefore, Petitioner Abdel-Jabbar Hamdan respectfully requests that the

1 Court grant the following relief:

2 (1) Assume jurisdiction over this matter;

3 (2) Grant Petitioner a writ of *habeas corpus* directing the Respondents to  
4 immediately release Petitioner from custody;

5 (3) Pending a final resolution of this habeas petition, release Petitioner  
6 pursuant to the Court's equitable powers;

7 (4) Declare Respondents' continued detention of Petitioner to be  
8 arbitrary and capricious, in violation of the Immigration and Nationality Act and  
9 implementing regulations, in violation of the Due Process Clause of the Fifth  
10 Amendment, in violation of the First Amendment's guarantees of freedom of  
11 speech and association, in violation of Article 9, Section 1 of the International  
12 Covenant on Civil and Political Rights, and in violation of Articles 26 and 31 of  
13 the Convention Relating to the Status of Refugees;

14 (5) Grant Petitioner reasonable attorneys' fees, costs, and other  
15 disbursements pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

16 (6) Grant such other and further relief this Court may deem appropriate.  
17

18 Dated: July 14, 2005

Respectfully submitted,

19

ACLU FOUNDATION OF SOUTHERN  
20 CALIFORNIA

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By: R. Natarajan  
Ranjana Natarajan

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