

Carl J. Mayer (CM -6589)  
MAYER LAW GROUP LLC  
1040 Avenue of the Americas, Suite 2400  
New York, NY 10018  
212-382-4686

Bruce I. Afran (BA – 8583)  
10 Braeburn Drive  
Princeton, New Jersey 08540  
609-924-2075

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER HEDGES, DANIEL ELLSBERG,  
JENNIFER BOLEN, NOAM CHOMSKY  
ALEXA O'BRIEN, US DAY OF RAGE,  
KAI WARGALLA, HON. BRIGITTA  
JONSDOTTIR M.P.

Plaintiffs,

INDEX NO. 1:12-CV-331 (KBF)

v.

AMENDED  
VERIFIED  
COMPLAINT

BARACK OBAMA, individually and as  
representative of the UNITED STATES  
OF AMERICA; LEON PANETTA, individually  
and in his capacity as the  
executive and representative of the  
DEPARTMENT OF DEFENSE; JOHN McCAIN,  
JOHN BOEHNER, HARRY REID, NANCY PELOSI,  
MITCH McCONNELL, ERIC CANTOR  
as representatives of the UNITED STATES OF AMERICA

Defendants.

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Plaintiffs, by their attorneys CARL J. MAYER and BRUCE I. AFRAN (who neither endorse nor promote the statements and activities of the named plaintiffs) individually and on behalf of all others similarly situated, as and for their Complaint against defendants, assert as follows:

1. Plaintiff Christopher Hedges is a United States citizen and a journalist who in the course of his ordinary journalistic work from time to time writes about and covers entities, organizations and persons and their associated forces that are engaged in hostilities with the United States or its coalition partners, as described under the Authorization for Use of Military Force (AUMF) (Public Law 107-40). Plaintiff Hedges has similar contacts in the course of his work with entities described in the Homeland Battlefield Act of the National Defense Authorization Act (NDAA) of 2012 (the “Homeland Battlefield Act”) signed by President Obama on December 31, 2011. As a veteran Pulitzer-Prize winning Middle-Eastern correspondent for the New York Times he has met many times with groups such as Hamas, Hezbollah, Al Qaeda and other organizations deemed “terrorist” organizations under the Homeland Battlefield Act and continues to do so in the course of his ongoing work. Plaintiff Hedges legitimately fears that the federal government will enforce the Homeland Battlefield Act against him in that his daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and his free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act. Further, Plaintiff Hedges is already incurring additional expenses and obligations to pursue his profession due to the impending implementation of the Homeland Battlefield Act.

2. Plaintiff Daniel Ellsberg, a United States citizen, is perhaps one of the most lauded analysts, authors and whistle-blowers in US history. He is responsible for leaking the “Pentagon Papers”, which brought to light the false statements made by the Johnson administration over the Vietnam War, to the New York Times in 1971. Mr. Ellsberg was nearly jailed for his involvement in leaking the Pentagon Papers. In the ensuing decades Mr. Ellsberg has assisted whistle-blowers, journalists, activists and others in supporting their First Amendment rights to speak out about government action and to publish misleading or deceptive government information. On March 21, 2011, Ellsberg along with 35 other demonstrators, were arrested during a demonstration outside the Marine Corps Base Quantico, in protest of Bradley Manning's current detention at Marine Corps Brig, Quantico. Bradley Manning, who leaked government documents, was charged by the United States government in 2011 with aiding terrorists. In closing statements at a pre-trial hearing, Capt. Ashden Fein, for the United States government, stated that Manning had actual knowledge that what he gave to WikiLeaks would end up in the hands of the enemy and that enemy was Al Qaeda, Al Qaeda in the Arabian Peninsula (AQAP) and similar enemies.<sup>1</sup> The Chairman of the House Homeland Security Committee has said that WikiLeaks – an organization supported by Ellsberg and which published Manning’s documents – should be classified as a “terrorist organization.”<sup>2</sup> Mr. Ellsberg travels widely and comments frequently and works with entities, organizations and persons and their associated forces that the United States government deems or reasonably could deem are engaged in hostilities with the United States or its coalition partners, as described under the Homeland Battlefield Act. Plaintiff Ellsberg

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<sup>1</sup> [http://www.salon.com/2011/12/23/manning\\_to\\_be\\_charged\\_with\\_aiding\\_terrorists/](http://www.salon.com/2011/12/23/manning_to_be_charged_with_aiding_terrorists/).

<sup>2</sup> <http://dailycaller.com/2010/11/29/top-gop-congressman-says-wikileaks-should-be-named-terrorist-organization/>

legitimately fears that the federal government will enforce the Homeland Battlefield Act against him in that his daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and his free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act .

3. Plaintiff Noam Chomsky, a U.S. citizen, is Institute Professor emeritus in the MIT Department of Linguistics and Philosophy. He is the author of numerous best-selling political works. In the course of his research and engagement in international affairs Plaintiff Chomsky has met with figures active in Palestinian, Lebanese, Turkish, Colombian, Cuban, South African and other organizations that are sometimes listed as “terrorists” by the US government. Professor Chomsky has published articles the government likely considers supportive of terrorists or terrorist groups.<sup>3</sup> At least one commentator has concluded that Professor Chomsky is a defender of terrorist Bin Laden.<sup>4</sup> Mr. Chomsky travels widely and comments frequently and has contacts with entities, organizations and persons and their associated forces that the United States government deems or reasonably could deem are engaged in hostilities with the United States or its coalition partners, as described under the Homeland Battlefield Act. Professor Chomsky believes his travel, speaking and writing activities will be curtailed if the Homeland Battlefield Act takes effect due to its authorization of military detention and trial. Plaintiff Chomsky legitimately fears that the federal government will enforce the Homeland Battlefield Act against him in that his daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and his free speech

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<sup>3</sup> [http://www.guernicamag.com/blog/2652/noam\\_chomsky\\_my\\_reaction\\_to\\_os/](http://www.guernicamag.com/blog/2652/noam_chomsky_my_reaction_to_os/)

<sup>4</sup> “Bin Laden Defender: Noam Chomsky.” <http://www.stonegateinstitute.org/2115/bin-laden-defender-noam-chomsky>.

activities are already chilled by the looming implementation of the Homeland Battlefield Act.

4. Plaintiff Jennifer “Tangerine” Bolen, a U.S. Citizen, is the young leader of RevolutionTruth, a large grass-roots organization that, for over a year, conducted a web-based campaign in defense of WikiLeaks and Bradley Manning. She was informed, in her work with WikiLeaks, that all of her communications would be monitored by the NSA. The US Department of Justice claims that both Julian Assange and Bradley Manning have supported terrorists through the release of a large number of low-level classified documents. Ms. Bolen finds the enactment of the Homeland Battlefield Act, in her words, “extraordinarily frightening” and believes that once it takes effect it will curtail her activities and the activities of her organization because of its -- unprecedented in 200 years of American legal history -- substitution of military criminal justice for civilian justice. Plaintiff Bolen legitimately fears that the federal government will enforce the Homeland Battlefield Act against her in that her daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and her free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act. Further, Plaintiff Bolen is already incurring additional expenses and obligations to pursue her profession due to the impending implementation of the Homeland Battlefield Act.

5. Plaintiff Kai Wargalla, a German citizen working in London for RevolutionTruth was a key organizer of Occupy London. Occupy London was designated a “terrorist group” by the London Police.<sup>5</sup> Such a designation could place Ms. Wargalla, a German

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<sup>5</sup> <http://uk.news.yahoo.com/police-include-occupy-movement-on-%E2%80%98terror%E2%80%99-list.html>

citizen, in the crosshairs of the Homeland Battlefield Act. Ms. Wargalla fears based on the text of the Act that she could be legally detained on foreign soil by the United States government, accused of being a member of a terrorist organization and aiding “associated forces” of terrorists, and held indefinitely until the “end of hostilities”. Plaintiff Wargalla legitimately fears that the federal government will enforce the Homeland Battlefield Act against her in that her daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and her free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act. Further, Plaintiff Wargalla is already incurring additional expenses and obligations to pursue her profession due to the impending implementation of the Homeland Battlefield Act.

6. Plaintiff Birgitta Jonsdottir, a citizen of Iceland, is an elected member of Iceland’s Parliament. She sponsored legislation that would ensure Iceland has the world’s strongest modern freedom of information, expression and speech laws. The European Union is considering adopting a model based on this legislation. Ms. Jonsdottir regularly works with leaders around the globe on human rights and freedom of information issues. Her Twitter account and three other social media accounts has been subpoenaed by the US government, and she currently can’t travel to the United States by advice from the Icelandic Foreign Affairs Ministry, due to her work as volunteer for WikiLeaks in 2010. She co-produced the video Collateral Murder – a movie showing footage of intentional targeting of civilians during the Iraq war -- and acted as a spokes-person for WikiLeaks in relation to the video and for a short time for the entire organization. Plaintiff Jonsdottir legitimately fears that the federal government will enforce the Homeland

Battlefield Act against her in that her daily professional work could be construed as giving “substantial support” to terrorists and/or “associated forces” and her free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act . Further, Plaintiff Jonsdottir is already incurring additional expenses and obligations to pursue her profession due to the impending implementation of the Homeland Battlefield Act.

7. Plaintiff Alexa O’Brien is a United States citizen and resident of New York. The enactment of the NDAA will have a chilling affect on her freedom of speech. In March 2011, plaintiff O’Brien started a grass roots organization called US Day of Rage. The organization’s avowed purpose is electoral reform.<sup>6</sup> Despite this, Plaintiff O’Brien became fearful when she was notified in 2011 by a friend, who is a federal agent, that US Day of Rage (whose organizers include ordinary American citizens and even former US military service members) was named in a September 2011 Department of Homeland Security Memo sent to law enforcement across the nation, as linked to a radical organization that was said to be engaging in cyber-terrorism. In late October 2011, Ms. O’Brien was told by the director of federal contracts at her previous job that multiple individuals in government had been asking about her by name. Further, private intelligence and security contractors and the media associated US Day of Rage with Al Qaeda.<sup>7</sup> Plaintiff O’Brien has designed digital content strategy solutions for the United Nations Development Program and Fortune 500 global companies. Since January 2011, she has covered as a journalist the WikiLeaks release of US State Department Cables,

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<sup>6</sup> <http://www.usdayofrage.org/about.html>

<sup>7</sup> ( "On Radical Islam: Global Influence In Domestic Affairs : Australian Security Magazine")  
<http://www.australiansecuritymagazine.com.au/2012/01/radical-islam-global-influence-in-domestic-affairs/>  
See also: <http://www.conunderground.com/breitbart-publishes-occupy-wall-street-confidential-emails/>

and revolutions across Egypt, Bahrain, Iran, and Yemen. She has also published hours of interviews with former Guantanamo Bay guards and detainees. Plaintiff O'Brien legitimately fears that the federal government will enforce the Homeland Battlefield Act against her in that her daily professional work could be construed as giving "substantial support" to terrorists and/or "associated forces" and her free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act. Further, Plaintiff O'Brien is already incurring additional expenses and obligations to pursue her profession due to the impending implementation of the Homeland Battlefield Act.

8. US Day of Rage is a grass-roots organization headquartered in New York City that was started to reform campaign finance laws in the United States, advocating that only citizens should be allowed to make campaign contributions and that those contribution be capped at a level that enfranchises all citizens. The group also has thousands of supporters around the world.

9. Defendant Barrack Obama is the President of the United States and has individual and executive responsibility for carrying out, enforcing and executing the laws of the United States and, in particular, as Commander in Chief with respect to laws governing acts of the military and service branches and the Department of Defense, including but not limited to the Homeland Battlefield Act of the National Defense Authorization Act (NDAA) of 2012 (the "Homeland Battlefield Act").

10. Defendant Leon Panetta is the Secretary of Defense and has individual and executive responsibility for carrying out, enforcing and executing laws of the United States respecting the Homeland Battlefield Acts and actions of the military and service branches including the Homeland Battlefield Act and, in particular, the prosecution of



purported war crimes and crimes and acts proscribed in wartime, the incarceration of prisoners of war or persons taken into custody as unlawful combatants, along with the supervision of military prisons and detention centers in the United States and abroad.

11. Defendants John McCain, John Boehner, Harry Reid, Nancy Pelosi, Mitch McConnell and Eric Cantor are named as leaders and representatives of the United States Congress and the United States Government.

### **JURISDICTION AND VENUE**

12. Jurisdiction is based upon a question or controversy arising under the Constitution and laws of the United States pursuant to 28 U.S.C. 1331.

13. Venue is properly within the Southern District of New York in that the United States maintains governmental offices and bases and branches of the military in this district and also maintains in this district civil and military prisons and detention centers along with military and civil prosecutorial offices and staff.

14. Venue is further properly grounded within this jurisdiction in that plaintiff Hedges, in connection with his journalistic profession, conducts his work in this district, is a fellow of The Nation Institute in which capacity he performs journalistic activities in this District and travels to and from this district to meet with, interview and report upon “covered persons” under the Homeland Battlefield Act and departs from this district in connection with travel abroad for such purposes. Plaintiff O’Brien resides in this district and organizational Plaintiff US Days of Rage is headquartered in this district.

### **FACTUAL BACKGROUND**

15. On December 31, 2011 President Obama signed into law the Homeland Battlefield Act that will take effect on or by March 1, 2012.

16. The Homeland Battlefield Act provides for indefinite detention of United States citizens and permanent residents taken into custody in the United States on suspicion of providing substantial and/or direct support for persons or entities engaged in hostilities against the United States. Particularly, section 1031 of the Homeland Battlefield Act defines a “covered person” subject to indefinite detention in the following manner:

“(b) Covered Persons- A covered person under this section is any person as follows:

- (1) A person who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored those responsible for those attacks.
- (2) A person who was a 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, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces.”

Homeland Battlefield Act, §1031(b).

17. The Homeland Battlefield Act provides that any person detained under the Homeland Battlefield Act whether detained within or without the United States may be held without trial until the end of hostilities authorized by the Authorization for Use of Military Force (2001). Section 1031(c) states:

“(c) Disposition Under Law of War- The disposition of a person under the law of war as described in subsection (a) may include the following:

- (1) Detention under the law of war without trial until the end of the hostilities authorized by the Authorization for Use of Military Force.
- (2) Trial under chapter 47A of title 10, United States Code (as amended by the Military Commissions Act of 2009 (title XVIII of Public Law 111-84)).
- (3) Transfer for trial by an alternative court or competent tribunal having lawful jurisdiction.

(4) Transfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity.”

Homeland Battlefield Act, §1031(c).

18. The Homeland Battlefield Act does not define the terms “substantially supported”, “directly supported” or “associated forces” as used in section 1031, supra.

19. Section 1032 provides that any persons irrespective of U.S. citizenship or permanent resident status who are taken into custody “in the course of hostilities” authorized under the Homeland Battlefield Act shall be held indefinitely until the end of such hostilities:

“(a) Custody Pending Disposition Under Law of War

(1) IN GENERAL- Except as provided in paragraph (4), the Armed Forces of the United States shall hold a person described in paragraph (2) who is captured in the course of hostilities authorized by the Authorization for Use of Military Force (Public Law 107-40) in military custody pending disposition under the law of war.

(2) COVERED PERSONS- The requirement in paragraph (1) shall apply to any person whose detention is authorized under section 1031 who is determined—

(A) to be a member of, or part of, al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda; and

(B) to have participated in the course of planning or carrying out an attack or attempted attack against the United States or its coalition partners.

(3) DISPOSITION UNDER LAW OF WAR- For purposes of this subsection, the disposition of a person under the law of war has the meaning given in section 1031(c), except that no transfer otherwise described in paragraph (4) of that section shall be made unless consistent with the requirements of section 1033.

Homeland Battlefield Act, §1032(a)(1)(2)(3).

20. Section 1032(b) permits but does not require that U.S. citizens and U.S. Permanent Residents “captured” in the “course of hostilities” be held in military custody; section 1032(b) does not exempt U.S. citizens and U.S. Permanent Residents from the requirement of “indefinite detention” set forth in section 1031, supra:

(b) Applicability to United States Citizens and Lawful Resident Aliens-

(1) UNITED STATES CITIZENS- The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

(2) LAWFUL RESIDENT ALIENS- The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

Homeland Battlefield Act, §1032(b)(1)(2).

21. In his signing statement, President Obama acknowledged the constitutionally questionable nature of the Homeland Battlefield Act. The President’s signing statement says:

“I have signed this bill despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists.”

22. Based upon the foregoing, the Homeland Battlefield Act provides for the indefinite detention of any person, including but not limited to U.S. citizens and permanent residents, and/or trial of such persons by the military courts for acts that “substantially supported” or “directly supported” any person, entity or organization defined as being in a state of hostilities with the United States under the Homeland Battlefield Act whether occurring within or without the United States and irrespective of whether such person is arrested or detained within the United States.

23. This Complaint is not an acknowledgment or admission as a matter of law or fact that Plaintiffs are a "covered person" or otherwise within the scope of the Homeland Battlefield Act but the Complaint asserts that the Homeland Battlefield Act is sufficiently broad or overbroad as to cause Plaintiffs and similarly situated persons to be in foreseeable jeopardy of being brought within its textual provisions.

24. Plaintiff Christopher Hedges is a journalist whose profession requires, in part: 1) that he have communication with and personal and direct intercourse with persons who are likely to be deemed engaged in hostilities with the United States under the Homeland Battlefield Act; 2) that he travel to see and meet with such persons; 3) that he report on the Homeland Battlefield Activities and beliefs of such persons; and 4) through his journalistic endeavors to convey their philosophy and belief systems to the public at large.

25. As a journalist, essayist, author and war correspondent, Plaintiff Hedges publishes and conveys the opinions, programs and ideas of "al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners,..." Homeland Battlefield Act, §1031(b)(2), such journalistic activity being brought within the scope of the statute's provision defining a "covered person" as one who has "substantially supported" or "directly supported" the Homeland Battlefield Acts and activities of such individuals or their organizations, allies or associated forces. *Id.*

26. For example, on or about January 31 2011, Plaintiff Hedges wrote on Truthdig.com, a published website, the following essay:

"The secular Arab regimes from Morocco to Yemen, for all their ties with the West, have not provided freedom, dignity, opportunity or prosperity for their people. They have failed as spectacularly as the secular Palestinian resistance movement led by Yasser Arafat. And Arabs, frustrated and enduring mounting

poverty, are ready for something new. Radical Islamist groups such as the Palestinian Hamas, the Shiite Hezbollah in Lebanon and the jihadists fighting in Iraq and Afghanistan are the new heroes, especially for the young who make up most of the Arab world. And many of those who admire these radicals are not observant Muslims. They support the Islamists because they fight back."

Truthdig.com, January 31, 2011. Plaintiff has and expects to again publish other writings of a similar nature.

27. As detailed in paragraphs 2-8 above, Plaintiffs Ellsberg, Chomsky, Bolen, Wargalla, O'Brien, Josphottir and US Day of Rage all engage in their professional capacity in activities similar to plaintiff Hedges in that they have contact with organizations and groups considered to be engaged in hostilities against the United States and they all expect to publish and engage in similar activities in the very near and distant future. The Plaintiffs travel widely and comment frequently and have contacts with entities, organizations and persons and their associated forces that the United States government deems or reasonably could deem are engaged in hostilities with the United States or its coalition partners, as described under the Authorization for Use of Military Force (AUMF) (Public Law 107-40) and the Homeland Battlefield Act. The Plaintiffs all believe that their travel, professional, speaking and writing activities will be curtailed if the Homeland Battlefield Act takes effect due to its authorization of military detention and trial. Plaintiffs legitimately fear that the federal government will enforce the Homeland Battlefield Act against them in that their daily professional work could be construed as giving "substantial support" to terrorists and/or "associated forces" and their free speech activities are already chilled by the looming implementation of the Homeland Battlefield Act. Further, Plaintiffs are already incurring additional expenses and

obligations to pursue their professions due to the impending implementation of the Homeland Battlefield Act.

28. The statutory text in the Homeland Battlefield Act is sufficiently broad to include Plaintiffs as a “covered person” who, by way of such writings, interviews and/or communications, “substantially supported” or “directly supported” “al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners,...” under §1031(b)(2) and The Homeland Battlefield Act is sufficiently broad as to include within its scope Plaintiffs’ writings and journalistic, academic and activist endeavors that have the effect of conveying, promoting or disseminating the ideas, philosophy and program of organizations, persons and entities in a state of hostility with the United States since September 11, 2001 or with organizations, persons and entities allied or associated with persons in a state of hostilities as defined under the Homeland Battlefield Act. Accordingly, Plaintiffs are in imminent jeopardy of detention under the Homeland Battlefield Act because they produce material, examples of which are set forth, *supra*, that may be deemed within the scope of “substantially” or “directly” supporting persons, organizations, entities and their associates, allies and colleagues, who are in a state of hostility with the United States under the Homeland Battlefield Act as follows:

- A. Under §1031(c)(1) such detention may be indefinite at the discretion of the United States without recourse to a court proceeding until the end of hostilities;

- B. Under §1031(c)(2 or (3) plaintiffs or any other “covered person” may be tried by military courts or commissions without recourse to the civil courts.
- C. Under Section 1031(c) (4) Plaintiffs or any other “covered person” may be subject to continued, indefinite “rendition” to any foreign country, jurisdiction or any location at the discretion of the United States without recourse to a court or other proceeding and without notice to any legal representative or other person.



**COUNT I**

**(FIFTH AMENDMENT DUE PROCESS)**

**INDEFINITE DETENTION OF U.S. CITIZENS OR OTHER PERSONS DETAINED IN THE U.S. UNDER §1031(C)(1), TRIAL OF U.S. CITIZENS BY COURT MARTIAL OR MILITARY COMMISSION, DENIAL OF ACCESS TO CIVIL JUDICIAL AUTHORITIES UNDER §1031(C)(2) AND (3), RENDITION UNDER §1031(C)(4).**

29. The Homeland Battlefield Act, §1031(C)(1) authorizes the indefinite detention, imprisonment and incarceration of U.S. citizens and other “covered persons” in the United States, including persons such as Plaintiffs, without trial or judicial recourse in violation of the U.S. Constitution, Amendment V.

30. §1031(C)(2) authorizes trial of civilian U.S. Citizens, permanent residents or other “covered persons” arrested or detained in the U.S., including persons such as Plaintiffs, by court martial or military commission in violation of the U.S. Constitution, Amendment V.

31. §1031(C)(3) authorizes trial of civilian U.S. Citizens, permanent residents or other “covered persons” arrested or detained in the U.S., including persons such as Plaintiffs, by military commission in violation of the U.S. Constitution, Amendment V.

32. §1031(C)(4) authorizes rendition without judicial recourse of any “covered person” person arrested or detained in the United States, including U.S. citizens and persons such as Plaintiffs, by, “[t]ransfer to the custody or control of the person's country of origin, any other foreign country, or any other foreign entity,” in violation of the U.S. Constitution, Amendment V.

WHEREFORE, the Homeland Battlefield Act, §1031 violates the due process provisions of the Fifth Amendment to the United States Constitution and Plaintiffs

respectfully requests judgment declaring §1031 to be void as unconstitutional and permanently enjoining its enforcement, along with attorney's fees and cost of suit.

**COUNT II**  
(FIFTH AMENDMENT DUE PROCESS)  
RENDITION OF "COVERED PERSONS"  
TO ANY JURISDICTION UNDER §1031(C)(4)

33. The Homeland Battlefield Act authorizes the permanent indefinite removal from the United States via rendition or other means to any place, country, location or jurisdiction of any "covered persons", including but not limited to U.S. citizens and persons such as Plaintiffs, arrested or detained in the United States.

WHEREFORE, §1031(c)(4) of the Homeland Battlefield Act is unconstitutional in that it violates the due process provisions of the Fifth Amendment to the United States Constitution and the judicial recourse provisions of Article III of the United States Constitution and Plaintiffs respectfully request judgment declaring §1031(c)(4) to be void and permanently enjoining its enforcement, along with attorney's fees and cost of suit.

**COUNT III**  
(FIFTH AMENDMENT DUE PROCESS)  
ABSENCE OF ADEQUATE STATUTORY NOTICE

34. The Homeland Battlefield Act is unconstitutional in that imposes incarceration, detention, rendition and/or military prosecution without adequate notice of the nature and substance of the charge that a "covered person" has "substantially supported" or "directly supported" the Homeland Battlefield Activities of any person, organization, entity or their allies or associates who are in a state of hostility with the U.S. under the Homeland Battlefield Act.

35. In particular, the Homeland Battlefield Act, §1031 fails to give adequate statutory notice of its material terms including the terms “covered person”, “covered persons”, “substantially supported”, “directly supported” or “associated forces”.

36. As a result of the absence of proper notice and statutory definitions of said material terms Plaintiffs and others similarly situated do not have adequate notice of the Homeland Battlefield Acts and matters that will render them “covered persons” under §1031 and subject to indefinite detention without trial, made subject to military trial or to rendition outside the United States.

37. Accordingly, the Homeland Battlefield Act, §1031 authorizes the arrest and indefinite detention of U.S. citizens and other persons without adequately defining or giving notice as to “covered persons” or the Homeland Battlefield Acts that render a person one who “substantially supported” or “directly supported” the described entities including “al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States”.

WHEREFORE, §1031 of the Homeland Battlefield Act is unconstitutional in that it fails to provide adequate statutory notice of the nature and substance of the Homeland Battlefield Acts for which a “covered person” shall be subject to arrest, detention and other treatment under the statute and Plaintiff respectfully requests judgment declaring §1031 to be void and permanently enjoining its enforcement, along with attorney’s fees and cost of suit.

**COUNT IV**  
(MILITARY JURISDICTION TO BE IMPOSED UPON CIVILIANS ARRESTED  
WITHIN THE UNITED STATES AS “COVERED PERSONS” UNDER §1031)

38. Under §1031 persons arrested as “covered persons” within the United States may be made subject to the military jurisdiction and the military courts in violation of the United States Constitution that provides for civilian access to a civil court system for all crimes and offenses within the United States.

WHEREFORE, §1031(c)(2) and (3) of the Homeland Battlefield Act are unconstitutional in that they impose military jurisdiction upon civilians in violation of the U.S. Constitution and particularly Article III and Amendment V of the United States Constitution and Plaintiff respectfully requests judgment declaring §1031(c)(2) and (3) to be void and permanently enjoining their enforcement, along with attorney’s fees and cost of suit.

**COUNT V**  
(FIRST AMENDMENT)  
EXPRESSIVE AND JOURNALISTIC ACTIVITIES

39. The Homeland Battlefield Act, §1031 is unconstitutional in that it imposes indefinite incarceration without trial or judicial recourses for expressive conduct such as that of Plaintiffs in their work as journalists, authors, organizers and web-campaigners and chills and burdens the freedom of speech, press, expression and association guaranteed by the First Amendment to the United States Constitution.

40. Such interference with protected expressive and associative rights arises by rendering persons who promote, publicize or endorse the views, ideas, philosophy and program of persons defined as being engaged in hostilities with the United States under

the Homeland Battlefield Act subject to indefinite detention without trial in the United States, made subject to trial by military courts or military commission, or made subject to rendition to any jurisdiction at the sole discretion of the United States without recourse to any civil court.

41. In their professions Plaintiffs must travel from time to time to theatres of combat and other locations where persons engaged in hostilities with the United States reside and conduct their business.

42. In their professions, Plaintiffs must interview, report upon and promote and publicize the views and opinions of persons engaged in a state of hostility with the U.S. as described in §1031 and §1032.

43. Plaintiffs and others similarly situated will be chilled and burdened in the exercise of their First Amendment rights because of the continued threat of incarceration and other treatment under §1031 and §1032 that arises in connection with his work as a journalist, as described above.

44. In the alternative, §1031 is unconstitutionally overbroad in that it renders subject to incarceration and other treatment persons who “substantially supported” the persons and entities described in the Homeland Battlefield Act in the AUMF, conduct that embraces a wide range of protected expressive and associative rights under the First Amendment.

WHEREFORE, §1031 of the Homeland Battlefield Act is unconstitutional in that it chills, burdens and intrudes upon protected rights of expression under the United States Constitution, Amendment I, or, in the alternative, is unconstitutionally overbroad, and

Plaintiffs respectfully request judgment declaring §1031 to be void and permanently enjoining its enforcement, along with attorney's fees and cost of suit.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and for all others similarly situated respectfully requests judgment as follows:

1. Declaring the Homeland Battlefield Act, §1031 and §1032 to be void as unconstitutional;
2. Permanent injunctive relief barring its enforcement, along with attorney's fees and cost of suit;
3. Such other relief as to the Court may seem just and proper.

Respectfully,

S/Carl J. Mayer

Carl J. Mayer  
MAYER LAW GROUP LLC  
1040 Avenue of the Americas, Suite 2400  
New York, NY 10018  
212-382-4686

S/Bruce I. Afran

Bruce I. Afran, Esq.  
10 Braeburn Drive  
Princeton, New Jersey 08540  
609-924-2075

Attorneys for Plaintiff

Dated: New York, New York  
February 23, 2012