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I. Interest of the NYU International Human Rights Clinic

The International Human Rights Clinic (IHRC) is a program of the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law. The Center, directed by Professors Philip Alston (Chair), Smita Narula and Margaret Satterthwaite, aims to generate substantive, cutting-edge and sophisticated contributions to human rights research and legal scholarship, and to actively engage in public affairs by making original and constructive contributions to on-going policy debates relating to human rights. The IHRC, directed by Professors Narula and Satterthwaite, partners with non-governmental and intergovernmental human rights organizations based in the United States and abroad. Working as legal advisers, co-counsel, or advocacy partners, IHRC students work side-by-side with human rights advocates from around the world, performing research, drafting briefs and advocating before United Nations (U.N.), regional, and national human rights bodies. In recent years, the IHRC has focused on the justiciability of economic, social and cultural rights; the rights of marginalized communities; and human rights in the “war on terror.” The IHRC and the CHRGJ have developed a special expertise on issues of secret detention and informal transfer – so-called rendition – through an intensive research project on this subject, which has resulted in the publication of several reports.¹

¹ See, e.g., Association of the Bar of the City of New York & Center for Human Rights and Global Justice, *Torture by Proxy: International and Domestic Law Applicable to “Extraordinary Renditions”* (October 29, 2004), available at <http://www.nyuhr.org/docs/TortureByProxy.pdf> [hereinafter *Torture by Proxy*]; Center for Human Rights and Global Justice, *Beyond Guantánamo: Transfers to Torture One Year After Rasul v. Bush*, at 4 (June 28, 2005), available at <http://www.nyuhr.org/docs/Beyond%20Guantanamo%20Report%20FINAL.pdf> [hereinafter *Beyond*

II. Introduction

This case concerns the legality of so-called “renditions to justice,” whereby a State forcibly brings an individual within its territory to face trial. Since Mr. Alikhani’s abduction in 1995, the ensuing “war on terrorism” has illustrated the dangers posed to individual human rights by States’ increasing use of informal methods of transfer. States relying upon informal methods of transfer, such as rendition to justice, circumvent the formal extradition process and assert that they are able to operate in a law-free zone to apprehend, transfer and detain individuals at will.

This Brief rejects this approach, and argues that *all* transfers, whether or not they occur within the formal extradition process, must comply with two fundamental principles to be permissible under international law. First, all transfers must respect the sovereignty of the State where the individual facing transfer is located. Second, all transfers must respect the human rights of the individual facing transfer. These two principles assure that no person is beyond the protection of the law, no matter where s/he is located and no matter what crime s/he is suspected of having committed.

On the basis of facts alleged in the petition, by luring and abducting Mr. Alikhani, the United States violated the sovereignty of the Bahamas and harmed Mr. Alikhani’s

Guantánamo]; Center for Human Rights and Global Justice, *Fate and Whereabouts Unknown: Detainees in the “War on Terror,”* (Dec. 17, 2005), available at <http://www.nyuhr.org/docs/Whereabouts%20Unknown%20Final.pdf>.

human rights. As a result, the transfer was illegal under international law and it should be condemned as a violation of Mr. Alikhani's human rights under the American Declaration of the Rights and Duties of Man (the American Declaration).

III. Inalienable Elements of Extradition and Other Types of Formal Transfer

Historically, States have pursued the transfer of individuals sought for trial or detention from one jurisdiction to another through the means of extradition² and other formal legal mechanisms.³ The extradition system and other formal mechanisms are designed to safeguard two fundamental interests: State sovereignty and human rights.⁴ Formal transfers are permissible under international law precisely because they involve procedures that are designed to protect these interests. The sovereignty that is protected is that of the State in which the individual is located.⁵ The human rights that are protected are those of the individual facing transfer; legal procedures safeguard those rights at all stages of the individual's trajectory, including apprehension, transfer, and detention. These human rights protections are provided by both the State in which the

² M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW & PRACTICE 29 (4th ed. 2002)[hereinafter BASSIOUNI, UNITED STATES LAW] (defining extradition as a process by which "one sovereign surrenders to another sovereign a person sought as an accused criminal or a fugitive offender.").

³ This Brief will focus on the protections inherent in extraditions, however, formal removal under the immigration system also provides these protections. *See, e.g., Beyond Guantánamo, supra* note 1, at 4.

⁴ BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 252 (identifying three violations – "world public order"; State sovereignty and territorial integrity; and human rights of the unlawfully seized individual – that occur when States act outside formal mechanisms and through devices such as abduction and kidnapping).

⁵ The phrase "State in which the individual is located" will be used interchangeably with the term "host State" in order to refer to the State where the individual facing transfer is located at the time of the transfer. The terms "State that seeks to transfer" or "State seeking transfer" will be used to refer to the State that seeks to remove the individual from the State in which s/he is located.

individual is located and the State that seeks to transfer the individual. The human rights obligations of the latter will primarily be the focus of this Brief given that the present circumstances concern the conduct of the United States in seeking and executing the transfer of Mr. Alikhani.

a. The extradition system and other formal mechanisms are designed to safeguard two fundamental interests: State sovereignty and human rights

i. The extradition system and other formal mechanisms are explicit agreements between States governing how one State can obtain jurisdiction over a suspect in a foreign territory; circumventing those legal procedures violates the territorial sovereignty of the host State

Respect for the territorial sovereignty of States is a fundamental principle of international law.⁶ The Security Council has unequivocally stated that “the violation of

⁶ See, e.g., Patrick M. Haggan, *Government Sponsered Extraterritorial Abductions In The New World Order: The Unclear Role Of International Law In United States Courts And Foreign Policy*, 17 SUFFOLK TRANSNAT'L L. REV. 438, 462 (1994) (arguing that “Regardless of the existence of an extradition treaty, extraterritorial law enforcement activities violate the U.N. Charter and its espoused fundamental principle of international law, the territorial sovereignty of nations.”)

the sovereignty of a Member State is incompatible with the Charter of the United Nations.”⁷

Formal mechanisms, such as bilateral or multilateral extradition treaties are, like any other treaties, explicit agreements between States⁸ governing how one State can obtain jurisdiction over a suspect in a foreign territory without violating the sovereignty of that State, as would occur if persons were arrested and detained without valid consent of the host State.⁹ In this way, formal mechanisms exist precisely to make lawful conduct that would otherwise be illegal under public international law.¹⁰

⁷ S.C. Res. 138, U.N. Doc. S/4349 (June 23, 1960) (entitled *Question Relating to the Case of Adolf Eichmann*) (following Israel’s abduction of former Nazi Adolf Eichmann from Argentina in order to face trial in Israel); see also Haggan, *supra* note 6, at 462 (arguing that “Regardless of the existence of an extradition treaty, extraterritorial law enforcement activities violate the U.N. Charter and its espoused fundamental principle of international law, the territorial sovereignty of nations.”).

⁸ See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969) (art. 2, ¶1(a) defines “treaty” to mean “an international agreement concluded between States.”); Farah Hussain, *A Functional Response to International Crime: An International Justice Commission*, 70 ST. JOHN’S L. REV. 755, 760 (1996) (noting that “[b]oth treaties and principles of comity between nations govern the extradition process” and that extradition treaties are “usually bilateral agreements.”).

⁹ See, e.g., U.N. Int’l Law Comm’n, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 55/152, art. 20, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (Dec. 12, 2001) [hereinafter Draft Articles on State Responsibility], available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf; U.N. Int’l Law Comm’n, Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries, at 176, ¶ 8, available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf [hereinafter Commentary to the Draft Articles on State Responsibility]; see also Hussain, *supra* note 8, at 759 (noting that “Absent a system of international criminal law, extradition treaties are the sole means by which a state can gain jurisdiction over an individual outside its borders whom it seeks to prosecute for an alleged wrongdoing.”).

¹⁰ For statements indicating how abductions and other processes occurring without the consent of the State in whose jurisdiction an individual is located, violate the sovereignty and territorial integrity of that State and public international law, see BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 252; Matthew Slater, *Trumpeting Justice: The Implications of U.S Law and Policy for the International Rendition of Terrorists from Failed or Uncooperative States*, 12 U. MIAMI INT’L & COMP L.REV. 151, 179 (2004); Inter-American Juridical Committee, *Legal opinion on the decision of the Supreme Court of the United States of America*, 4 CRIM. L.F. 119 (1993); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432 (1987); S.C. Res. 138, U.N. Doc. S/4349 (June 23, 1960) (entitled *Question Relating to the Case of Adolf Eichmann*); International Penal Law Association Congress (Sept 10, 1994), Part II, ¶ 9.

Under the current international legal order, extradition treaties should therefore be interpreted as “...the *sole* means by which a State can gain jurisdiction over an individual outside its borders whom it seeks to prosecute for an alleged wrongdoing.”¹¹ The resort to informal transfers with disregard to the existence of an extradition treaty “circumvents the intent of states who enter into extradition treaties for the specific purpose of avoiding disguised extradition” and as a result, “detrimentally affects the international rule of law.”¹² The need to comply with extradition treaties in good faith¹³ and the consequences of non-compliance have also been addressed by the Inter-American Juridical Committee in its *Legal Opinion on the Decision of the Supreme Court of the United States of America*. This *Legal Opinion* criticizes the U.S. Supreme Court decision in *United States v. Alvarez-Machain*¹⁴ and emphasizes that the abduction of an individual from a State with which the United States has an extradition treaty violates the fundamental principle of international law: respect for the territorial sovereignty of all States.¹⁵

¹¹ See Hussain, *supra* note 8, at 759 (emphasis added).

¹² BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 248.

¹³ Inter-American Juridical Committee, *supra* note 10, at 131.

¹⁴ *United States v. Alvarez-Machain*, 504 U.S. 655 (1992) (holding that the abduction of a Mexican national from Mexico and his forcible transfer to the United States did not prevent his trial in a U.S. court, despite the existence of a valid extradition treaty between Mexico and the United States).

¹⁵ Inter-American Juridical Committee, *supra* note 10, at 131.

ii. Formal transfer mechanisms have built-in due process guarantees; any State seeking transfer must respect the human rights of the individual being transferred by following existing legal procedures

Formal mechanisms also function to ensure protection of the human rights of the person being apprehended, transferred and detained.¹⁶ Inter-State cooperation for transfer of individuals through extradition or other means must respect human rights.¹⁷ This rule applies both to the State seeking jurisdiction over the individual¹⁸ and the State in whose jurisdiction the individual is located.¹⁹

¹⁶ BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 252; John Quigley, *Government Vigilantes at Large: The Danger to Human Rights From Kidnapping Suspected Terrorists*, 10 HUM. RTS. Q. 193, 201-02 (1987-88) (arguing that because “the abductee is under no legal regime until delivered to the authorities in the abductors’ state,” the abductee has no way to enforce or avail himself of his rights); Joan Fitzpatrick, *Rendition and Transfer in the War Against Terrorism: Guantánamo and Beyond*, 25 LOY. L.A. INT’L & COMP. L. REV. 457, 468 (2003).

¹⁷ *See, e.g., Öcalan v. Turkey*, Eur. Ct. H.R. ¶ 86 (2005) (stating that “The Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention (see *Stocké*, opinion of the Commission cited above, pp. 24-25, § 169).”), *available at* <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=%22ocalan%20v.%20turkey%22&sessionId=8862416&skin=hudoc-en>.

¹⁸ *See, infra*, section (V)(a)(ii)(1) for a discussion of the extraterritorial application of a State’s human rights obligations.

¹⁹ Human rights treaties require the protection of individuals within the “jurisdiction” of a State party. *See, e.g.,* Theodor Meron, *The 1994 US Action in Haiti: Extraterritoriality of Human Rights Treaties*, 89 AM. J. INT’L L. 78, n.19 (1995); PETER ROWE, *THE IMPACT OF HUMAN RIGHTS LAW ON THE ARMED FORCES* 122 (2006) (stating that the “reach of the relevant human rights treaties is based upon ‘jurisdiction’”). While the precise terms of the treaty may vary and are subject to some interpretation, each requires, at the very minimum, that a State must apply its human rights obligations within its sovereign territorial limits. *See, e.g.,* J. HERMAN BURGERS & HANS DANIELIUS, *THE UNITED NATIONS CONVENTION AGAINST TORTURE: A HANDBOOK ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT* 59, 131 (1988) (in relation to the drafting of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment specifically). In cases where the individual is located

Formal mechanisms serve to protect individual human rights in two principal ways. First, formal mechanisms ensure that the individual facing transfer can exercise his or her right to due process of law in the extradition or other formal proceedings themselves.²⁰ These proceedings are designed to ensure that certain general principles of international law are observed. These principles, in particular, include the rule of dual or double criminality and the doctrine of specialty.²¹ Second, and relatedly, formal mechanisms ensure that the individual will only be transferred to a State that will respect his or her human rights. Such mechanisms require that the State in whose jurisdiction the individual is located must comply with its obligation to respect, protect and ensure human rights when making decisions about whether to execute a transfer. This is stressed in the U.N. Model Treaty on Extradition, which precludes extradition “if that person has not received or would not receive the minimum guarantees in criminal proceedings [in the state seeking transfer], as contained in the International Covenant on Civil and Political Rights, Article 14.”²² This protection is exemplified by the long-standing political offence exception in extradition treaties.²³ This protection is also exemplified in the

within the sovereign territorial limits of the State, one of the most basic jurisdictional principles is therefore engaged: the State’s obligation to respect, protect and ensure human rights in its own territory.

²⁰ BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 63 (As Bassiouni explains, an extradition process should be premised on “the effective application of minimum standards of fairness and justice to the relator in the extradition process.”).

²¹ *See, e.g.*, IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 319 (5th ed. 1998) (describing the principle of “double criminality” as being “that the act charged must be criminal under the laws of both the state of refuge and the requesting state” and stating that according to the principle of specialty, “. . . the person surrendered shall be tried and punished exclusively for offences for which extradition has been requested and granted.”).

²² G.A. Res. 45/116, Annex, U.N. GAOR, 45th Sess., Supp. No. 49A, at 211, UN Doc. A/45/49 (Dec. 14, 1990), 30 I.L.M. 1407 (1991), art. 3 (b) & (e).

²³ The political offence exception allows states to refuse extradition in respect of persons seen to be engaged in the struggle for human rights in the requesting State. *See* John Dugard & Christine Van Der Wyngaert, *Reconciling Extradition with Human Rights*, 92 AM. J. INT’L L. 187 (1998). It must be noted that it is still debatable whether the safeguards contained in extradition treaties are designed to protect the

principle of *non-refoulement*, under which the State has an obligation not to authorize extradition of an individual where there are substantial grounds for believing that she or he would be in danger of being subjected to torture in the requesting State.²⁴

Formal mechanisms therefore protect the human rights of the individual subject to transfer by ensuring that his or her right to due process is respected in the extradition proceedings themselves; and that s/he is not transferred to a State which will violate his or her human rights. Formal mechanisms also protect the sovereignty of the State in which the individual facing transfer is located because they require that the State seeking transfer operate with the consent of the host State. Because formal mechanisms for transfer protect both human rights and State sovereignty, when a State seeks to transfer

sovereignty of the requested State or the rights of the individuals subject to extradition. The traditional view is that extradition treaties are inter-State arrangements enforced by State parties only and do not give rise to individual rights to raise human rights objections to extradition in both the requesting and the requested States. *See id.*, at 188-91; BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 56-57. However, there is significant support for the view that extradition safeguards in modern practice inure to the benefit of individuals and the State cannot waive these human rights protective provisions. *See* M. Cherif Bassiouni, *Reforming International Extradition: Lessons of the Past for a Radical New Approach*, 25 LOY. L.A. INT'L & COMP. L. REV. 389 (2003); Marsha W. Yee, *Hong Kong's Legal Obligation to Require Fair Trial for Rendition*, 102 COLUM. L. REV. 1373 (2002).

²⁴ *See Soering v. U.K.*, 161 EUR. CT. H.R. (ser. A) (1989); *Ng v. Canada*, UN Doc. CCPR/C/49/D/469/1991 (1993), 98 I.L.R. 479; *Agiza v. Sweden*, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/2003 (2005) (holding that Sweden violated articles 3 and 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment for relying upon "diplomatic assurances" of formal guarantees from the Egyptian government that the applicants would not be tortured upon their return in seeking to repatriate them to Egypt.); *Arana v. France*, Communication No. 63/1997, U.N. Doc. CAT/C/23/D/63/1997 (2000), at ¶ 11.5 (holding that article 3 had been violated because, among other reasons, the transfer of the individual by the French authorities to the hands of the Spanish police had not been subjected to judicial review). The U.N. Human Rights Committee has also interpreted Article 7 of the International Covenant on Civil and Political Rights to contain a protection against *refoulement*. *See* U.N. HUMAN RIGHTS COMMITTEE, GENERAL COMMENT 20, *Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment* (44th Sess. 1992), U.N. Doc. HRI/GEN/1/Rev.1 (1994); *Kindler v. Canada*, Communication No. 470/1991 (1993), U.N. Doc. CCPR/C/48/D/470/1990. In the context of the U.S., the State Department must consider the question of whether a person facing extradition from the U.S. "is more likely than not" to be tortured in the State requesting extradition when determining whether to surrender an alleged fugitive to the requesting State by extradition. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, Title XXII, § 2242(a); *see also Torture by Proxy*, *supra* note 1, at 21.

an individual from the territory of another State, it must use all existing formal mechanisms designed to authorize and regulate such transfers, such as an extradition treaty or a multilateral treaty with similar provisions.²⁵

IV. The Concept of Rendition: Different Types of Informal Transfer

a. In recent years States have increasingly resorted to transfers outside of the extradition system and other formal mechanisms

Despite the important protections inherent in formal mechanisms for the inter-State transfer of individuals, in recent years States have increasingly resorted to transfers outside of the extradition system and other formal mechanisms.²⁶ As the Inter-American Commission on Human Rights (“the Commission”) has recognized, “the permissibility under international law of [...] extraordinary methods of rendering individuals to the jurisdiction of a State is the subject of legitimate debate.”²⁷ To inform this debate both generally and in relation to the petition presently before the Commission, this section identifies and discusses three practices that occur outside of formal mechanisms for

²⁵ This means that an extraordinary process must be preceded by the exhaustion of all ordinary procedures available and cannot be admitted as a surrogate procedure to the existing ordinary channels. *See, e.g.*, BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 139.

²⁶ *See generally* D. Cameron Findlay, *Abducting Terrorists Overseas for Trial in the United States: Issues of International and Domestic Law*, 23 TEX. INT’L L.J. 1 (1988).

²⁷ *Hossein Alikhani v. United States*, Petition 4618/02, Report No 63/05 (Oct. 12, 2005), at ¶48, available at <http://www.cidh.org/annualrep/2005eng/USA4618.02eng.htm> (Admissibility Decision).

transfer: “rendition to justice”; “extraordinary rendition”; and “reverse rendition.”²⁸ Because the actions of the United States are under review, this Brief focuses on how the United States has utilized these various forms of informal transfer. It also notes where these forms of informal transfer have been explicitly censured by international human rights bodies.

i. “Renditions to justice”: informal transfers that bring an individual to trial

The United States has developed a practice of using abduction, luring, and forcible transfer to gain criminal jurisdiction over an individual.²⁹ Known as “rendition to justice,” this approach gained prominence during the 1980s. In 1986,³⁰ President Reagan reportedly authorized U.S. law enforcement personnel to covertly apprehend suspected terrorists in locations³¹ where the traditional extradition process was not expected to work³² and where it was argued that incursions on another State’s

²⁸ Note that transfers outside of formal mechanisms such as extradition can be categorized in a number of different ways. See *Beyond Guantánamo*, *supra* note 1, at 1.

²⁹ See *Torture by Proxy* *supra* note 1, at 15-17; *Beyond Guantánamo*, *supra* note 1, at 9-15; Margaret Satterthwaite & Angelina Fisher, *Tortured Logic: Renditions to Justice, Extraordinary Rendition, and Human Rights Law*, 6 THE LONG TERM VIEW 46, 49-52 (2006).

³⁰ Findlay, *supra* note 26, at 2-3; see also Shaun Waterman, *Analysis: Rendition a Routine Practice*, UNITED PRESS INTERNATIONAL, March 8, 2005; Dana Priest, *CIA Challenged About Suspects’ Torture Overseas*, WASH. POST, March 17, 2005.

³¹ These three locations were: countries in which there is no government exercising effective control; States that planned and supported terrorism; and international airspace or waters. See Findlay, *supra* note 26, at 3.

³² See Findlay, *supra* note 26, at 6-15; Satterthwaite & Fisher, *supra* note 29, at 49.

sovereignty might be justified.³³ Once apprehended, the individual would be forcibly transferred to the United States for trial on regular criminal charges.³⁴

In several cases of “rendition to justice,” the American courts accepted criminal jurisdiction irrespective of the means by which the defendants were captured and brought to the United States (the *Ker-Frisbie* doctrine).³⁵ Despite judicial³⁶ and non-judicial³⁷ concern about this practice, the 1992 U.S. Supreme Court decision in *United States v. Alvarez-Machain*³⁸ accepted the policy of rendition to justice.

During the 1990s, renditions to justice continued, with President H.W. Bush authorizing specific rendition procedures in 1993³⁹ and President Clinton expanding the program.⁴⁰ On December 5, 2005, Secretary Rice confirmed that the United States had

³³ These circumstances would include, for example, States where no government exerted effective territorial control and States sponsoring or carrying out terrorist attacks. *See, e.g.,* Satterthwaite & Fisher, *supra* note 29, at 60 n.19 (“Disintegrating states, by the 1980s, were perceived as penetrable by the international community, and foreign agents could carry out discrete operations on their territory without raising significant sovereignty concerns.”).

³⁴ *See generally* Findlay, *supra* note 26.

³⁵ *See Torture by Proxy, supra* note 1, at 21; *Beyond Guantánamo, supra* note 1, at 9-13; Satterthwaite & Fisher, *supra* note 29, at 49-52.

³⁶ *See, e.g., United States v. Toscanino*, 500 F.2d 267, 274-75 (2d Cir. 1974).

³⁷ *See, e.g.,* Fitzpatrick, *supra* note 16, at 468-69; Royal J. Stark, Comment, *The Ker-Frisbie-Alvarez Doctrine: International Law, Due Process, and the United States Sponsored Kidnapping of Foreign Nationals Abroad*, 9 CONN. J. INT’L L. 113 (1993).

³⁸ *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).

³⁹ Satterthwaite & Fisher, *supra* note 29, at 51-52; *see also Torture by Proxy, supra* note 1, at 15; *Beyond Guantánamo, supra* note 1, at 9-11.

⁴⁰ Satterthwaite & Fisher, *supra* note 29, at 51-52; *see also Torture by Proxy, supra* note 1, at 15; *Beyond Guantánamo, supra* note 1, at 9-11.

used “renditions” in situations where the United States believes traditional means of transfer are “not a good option.”⁴¹

ii. Extraordinary Rendition: informal transfers that expose the individual to a risk of torture

In the aftermath of the events of September 11, 2001, media and other reports allege that the United States authorized the transfer of terrorist suspects to locations where it was likely that they might be tortured.⁴² This practice, entailing the transfer of an individual by a State from one foreign jurisdiction to another for the purpose of interrogation in a situation where there is a risk of torture, has come to be known as “extraordinary rendition”⁴³ or rendition to torture. This practice has recently been condemned by both the U.N. Committee Against Torture⁴⁴ and the U.N. Human Rights Committee⁴⁵ in their recent State party examinations of the United States.

⁴¹ See Condoleezza Rice, U.S. Sec’y of State, Remarks Upon Her Departure for Europe, Andrews Air Force Base (Dec. 5, 2005), <http://www.state.gov/secretary/rm/2005/57602.htm> (“For decades, the United States and other countries have used ‘renditions’ to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice. In some situations a terrorist suspect can be extradited according to traditional judicial procedures. But there have long been many other cases where, for some reason, the local government cannot detain or prosecute a suspect, and traditional extradition is not a good option.”).

⁴² *Torture by Proxy*, *supra* note 1, at 13-15.

⁴³ *Id.* at 4.

⁴⁴ Committee Against Torture, *Concluding Observations*, United States, CAT/C/USA/CO/2, ¶ 20 (2006) [hereinafter CAT Committee, *Concluding Observations*, United States].

⁴⁵ U.N. Human Rights Committee, *Concluding Observations*, United States, CCPR/C/USA/CO/3, ¶ 16 (2006) [hereinafter Human Rights Committee, *Concluding Observations*, United States].

The term “extraordinary rendition” encapsulates the extent to which this practice both relates to, and perverts, the acknowledged practice of “renditions to justice.”⁴⁶ The “extraordinary” aspects of this more recent form of rendition stem from a fundamental shift in purpose – from rendition as a means to extra-legally obtain criminal jurisdiction over fugitives or individuals – to rendition for interrogation purposes.⁴⁷

Despite these “extraordinary” elements, it is important to note that “extraordinary rendition” grew out of the United States’ policy of using “rendition to justice.” Both “extraordinary rendition” and “rendition to justice” are founded on the general precept that States can act unchecked by the laws regulating inter-State transfer of individuals.⁴⁸ The acceptance of this principle enables States to (incorrectly)⁴⁹ assert that there is a legal black hole when it comes to the apprehension, transfer and detention of individuals. Within this black hole, violations of human rights and State sovereignty are unilaterally recast as legitimate acts of the State.

⁴⁶ *Torture by Proxy*, *supra* note 1, at 13; *see generally* Satterthwaite & Fisher, *supra* note 29, at 52-54 (tracking the transformation from rendition to justice to extraordinary rendition).

⁴⁷ *See Torture by Proxy*, *supra* note 1, at 13; *see also Beyond Guantánamo*, *supra* note 1, at 11, 19; Satterthwaite & Fisher, *supra* note 29, at 52-54.

⁴⁸ *See* Satterthwaite & Fisher, *supra* note 29, at 50-51 (noting that the decision in *United States v. Alvarez-Machain* “effectively removed the limits on the rendition policy by making practically irrelevant the existence of formal methods of approving transfer between countries. While the decision may not have appeared to increase the chances that an individual would be subjected to grave abuse – after all, those being rendered were being sent to the United States, where torture was not prevalent – the impact of the decision was just that. The Court’s acceptance of the policy of rendition may have provided one of the needed steps in the transformation of rendition to justice into extraordinary rendition during the ‘War on Terror.’” (citation omitted)); *see also* BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 250-51 (noting that “there is no deterrent to [forcible renditions] because they produce legally valid results.”).

⁴⁹ CAT Committee, Concluding Observations, United States, *supra* note 44; Human Rights Committee, Concluding Observations, United States, *supra* note 45.

iii. “Reverse rendition”: informal transfers by one State into the jurisdiction of another State for detention

“Reverse rendition”⁵⁰ has also emerged as an alternative to extradition and other formal mechanisms for the inter-State transfer of individuals. “Reverse rendition” involves the informal transfer of an individual from a foreign State to a State that seeks to detain the individual but not necessarily try him or her.

There have been a number of reported examples of “reverse rendition,”⁵¹ the most well-known of which is the 2002 Bosnian police handover of six individuals to U.S. military personnel, who then flew the detainees to Guantánamo Bay.⁵² This case exemplifies the ways in which informal transfers violate human rights. Although these individuals had just been released from detention pursuant to a Bosnian Supreme Court decision,⁵³ no explanation of the basis for U.S. detention was sought or received by Bosnian authorities.⁵⁴ Instead, the detainees were summarily transferred to Guantánamo

⁵⁰ This term was used by Human Rights Watch in relation to the practice of “foreign authorities picking up suspects in non-combat and non-battlefield situations and handing them over to the United States without basic protections afforded to criminal suspects.” Human Rights Watch, *Guantanamo: New “Reverse Rendition” Case: Detainee Captured in Egypt Disappeared in U.S. Custody*, (Mar. 30, 2005), available at <http://www.hrw.org/english/docs/2005/03/29/usint10382.htm> (last visited October 17, 2006).

⁵¹ *Beyond Guantánamo*, *supra* note 1, at 13-15.

⁵² For factual overview, see Brief of Appellant at ¶ 5-28, *Boumediene v. Bosnia and Herzegovina* (Eur. Ct. H.R. Sept. 26, 2006); *Beyond Guantánamo*, *supra* note 1, at 13-14; see also Request for Final Decision on Petition of Kenneth Walker and Reactivation of Petition of Hossein Alikhani and George Christoforou for the Violation of Their Human Rights by the United States of America at 15-16, Case No. 12.049 (Inter-Am. C.H.R. May 15, 2002) (referring to this incident as an example of the way in which “the U.S. is expanding its practice of abduction, and other illegal modes of apprehension as an alternative to extradition.”).

⁵³ Brief of Appellant at ¶ 22-24, *Boumediene v. Bosnia and Herzegovina* (Eur. Ct. H.R. Sept. 26, 2006).

⁵⁴ *Boudellaa v. Bosnia and Herzegovina*, Cases Nos. CH/02/8679, CH/02/8689, CH/02/8690 and CH/02/8691, H.R. Chamber for Bosnia & Herzegovina, ¶ 233 (Oct. 11, 2002) (holding in respect of the three applicants before the Chamber that the transfer into custody of the U.S. “without seeking and

Bay, where they have been detained for several years.⁵⁵ In addition to the human rights violation inherent in their capture and transfer, human rights violations have also been alleged in relation to the conditions of U.S. detention.⁵⁶

Having established the various methods of informal transfer practiced by States, the next section of this Brief argues that the two fundamental principles protected by formal mechanisms of transfer are applicable to *all* transfers of an individual from the jurisdiction of one State to another. Even when the State seeking transfer circumvents existing formal mechanisms for transfer, the State is at all times required to respect the same fundamental principles of state sovereignty and individual human rights. While these two principles apply to *all* informal forms of transfer, given the facts alleged in Mr. Alikhani's petition, this Brief will primarily focus on how these principles are implicated in the practice of "rendition to justice."

receiving any information as to the basis of the detention constitutes a breach of [Bosnia and Herzegovina's and the Federation of Bosnia and Herzegovina's] obligations to protect the [individuals] against arbitrary detention by foreign forces.").

⁵⁵ See Brief of Appellant at ¶ 25-30, *Boumediene v. Bosnia and Herzegovina* (Eur. Ct. H.R. Sept. 26, 2006). (describing how the detainees were transferred to U.S. authorities and then flown to Guantánamo Bay without any extradition proceedings, even though the laws of Bosnia and Herzegovina require formal extradition proceedings before a person may be handed over to foreign authorities.).

⁵⁶ See, e.g., Brief of Appellant, *Boumediene v. Bosnia and Herzegovina* (Eur. Ct. H.R. Sept. 26, 2006).

V. Human Rights Law Requires That All Transfers, Whether Formal or Informal, Must Be Conducted Legally

- a. When the State seeking transfer acts outside the legal framework, the State must, at a minimum, respect the territorial sovereignty of the host State and the human rights of the individual being transferred**

The European Court of Human Rights has accepted that, under certain circumstances, a State may transfer a person from the territory of another State without making use of the formal extradition system.⁵⁷ Even in such cases, however, the Court has emphasized the importance of two minimum requirements that apply to all transfers. First, the State is required to respect the sovereignty of the host State, which requires, at a minimum, that the State obtain the consent of the host State for the transfer. Second, the State seeking transfer must in all cases, irrespective of whether there is or is not consent, respect the human rights of the individual facing transfer.⁵⁸

⁵⁷ See *Öcalan v. Turkey*, Eur. Ct. H.R. ¶¶ 87 & 89 (2005); see also *Stocké v. Germany*, 13 E.H.R.R. 839 (1991).

⁵⁸ See *Öcalan*, at ¶ 85 (“An arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affects the person concerned’s individual rights to security under Article 5 § 1”), ¶ 86 (“The Convention does not prevent cooperation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention (see *Stocké*, opinion of the Commission cited above, pp. 24-25, § 169).”)

i. A transfer carried out without the consent of the host State violates the territorial sovereignty of the host State and is therefore illegal under international law

The State is required in all cases to obtain the consent of the host State in order to transfer an individual from inside that State's territory.⁵⁹ As noted in the Third Restatement on Foreign Relations Law, "[a] state's law enforcement officers may exercise their functions in the territory of another state *only with the consent of the other state*, given by duly authorized officials of that state."⁶⁰ Without consent of the host State, the transfer is a violation of the State's sovereignty because the State that seeks to transfer is exercising its police powers on the territory of the host State.⁶¹ As a result, a transfer carried out without the consent of the host State is illegal under international law.⁶² In *Öcalan*, the European Court of Human Rights upheld the informal transfer of

⁵⁹ There are some suggestions in the literature that there may be cases where the consent of the State is not required under international law. For example, it has been argued that no consent is required when the host State refuses to carry out its duty to extradite or prosecute a person accused of serious international crimes, as in the case of Adolf Eichmann. See, e.g., Beverly Izes, *Drawing Lines in The Sand: When State-Sanctioned Abductions Of War Criminals Should Be Permitted*, 31 COLUM. J.L. & SOC. PROBS. 1, 18 (1991). It has also been argued that no consent is required in the case of a failed State, where no effective government exists. See, e.g., Findlay, *supra* note 26, at 16-17.

⁶⁰ RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 432 (1987) (emphasis added); see also BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 255; Draft Articles on State Responsibility, *supra* note 9, at art. 20; Commentary to the Draft Articles on State Responsibility, *supra* note 9, at 176, ¶ 8.

⁶¹ BASSIOUNI, UNITED STATES LAW, *supra* note 2, at 256; Commentary to Draft Articles on State Responsibility, *supra* note 9, at 176, ¶ 8; see *Öcalan*, at ¶¶ 89, 91-98.

⁶² Jianming Shen, *Responsibilities and Jurisdiction Subsequent to Extraterritorial Apprehension*, 23 DENV. J. INT'L L. & POL'Y 43, 58 (1994); Slater, *supra* note 10, at 179 ("It is a fundamental principle under international law that a violation of a state's territory is a violation of its sovereignty. A state may not exercise its power within the territory of another State without consent.").

Öcalan from Kenya to Turkey in part because it found that Kenya had consented to the transfer, thus there had been no violation of Kenyan sovereignty.⁶³

The requirement that a State consent to a transfer is not only about safeguarding a State's sovereignty and territorial integrity;⁶⁴ it also functions as a check for ensuring human rights protection for the individual. As the European Court of Human Rights noted in *Öcalan*, “[a]n arrest made by the authorities of one State on the territory of another state, without the consent of the latter, *affects the person concerned's individual rights to security under Art.5(1).*”⁶⁵

When a State seeking to transfer acts without the consent of the host State, the host State is unable to fulfill its human rights obligations, such as those set out in the American Declaration. Under human rights law, the State is the primary guarantor of the human rights of all individuals within its jurisdiction.⁶⁶ When a State exercises its police powers within the territory of another State, one of the greatest safeguards of individual human rights – the protection of the host State – is lost.

⁶³ *Öcalan*, at ¶ 89-90 (“[T]he Court requires proof in the form of concordant inferences that the authorities of the state to which the applicant has been transferred have acted extra-territorially in a manner that is inconsistent with the sovereignty of the host state and therefore contrary to international law.”).

⁶⁴ See generally Quigley, *supra* note 16, at 211-13 (identifying the problems with viewing forcible abduction primarily as a question concerning the rights of the asylum State).

⁶⁵ *Öcalan*, at ¶ 85 (emphasis added).

⁶⁶ See, e.g., U.N. HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, at ¶ 3 (2004) (“A general obligation is imposed on States Parties to *respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction . . .*”) (emphasis added); Makau wa Mutua, *Hope and Despair for a New South Africa: the Limits of Rights Discourse*, 10 HARV. HUM. RTS. J. 63, 67 (1997) (“The modern state is the primary guarantor of human rights . . .”).

- ii. The State seeking transfer must, in all cases, respect the human rights of the individual facing transfer, irrespective of whether the State is acting with the consent of the host State**

Although the consent of the host State provides important protection for the human rights of the individual, such consent is not sufficient in and of itself to make a transfer legal under international law. States cannot collude to violate the fundamental human rights of the individual facing transfer; therefore, the State seeking and conducting the transfer must also ensure that the human rights of the individual being transferred are respected all along the trajectory of the transfer – from apprehension to transfer, trial and detention.

- 1. A State must uphold the human rights of individuals under its authority and control, regardless of whether it acts within its own territory or extraterritorially**

A State is required to uphold the human rights of the individual being transferred during the entire trajectory of the transfer. The physical location of the individual is immaterial: so long as s/he is under the authority and control of the State seeking and conducting the transfer, the transferee is subject to the jurisdiction of that State. Whether a State acts within its territory or extraterritorially, therefore, it is bound by all of its human rights obligations in relation to apprehension, transfer, and detention.

It is clear that a State's human rights obligations under the American Declaration do not cease to apply when a State acts outside of its own territory. Rather, a State is bound to respect the human rights of all individuals under its authority and control, regardless of whether those individuals are within the State's territory or not. In *Coard v. United States*, the Commission held that:

[g]iven that individual rights inhere simply by virtue of a person's humanity, each American State is obliged to uphold the protected rights of any person subject to its jurisdiction. While this most commonly refers to persons within a state's territory, it may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state - usually through the acts of the latter's agents abroad.⁶⁷

The Commission has also explicitly held, in *Alejandro v. Cuba*, that an individual in international airspace can be within a State's authority and control, thus triggering the State's responsibility to protect that individual's human rights.⁶⁸

⁶⁷ *Coard v. United States*, Case 10.951, Inter-Am. C.H.R., Report No. 109/99, OEA/Ser. L/V/II.106, doc. 3 rev. ¶ 37 (1999) (holding that petitioners, who were *detained* by U.S. forces in Grenada, were subject to the extraterritorial authority and control of the U.S., therefore the U.S. had violated the American Declaration).

⁶⁸ *Alejandro v. Republica de Cuba*, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, OEA/Ser. L/V/II.106, doc. 3 rev. ¶¶ 23, 25 (1999) (holding that people in plane shot down by Cuban military in international airspace were under Cuban authority, therefore they were within the State's jurisdiction and Cuba was bound by the American Convention on Human Rights to protect their human rights).

When a State exercises its police powers to apprehend, detain, and transfer a person, whether or not those actions take place within the territory of another State or in international airspace, that person is within the authority and control of the State and the State is obliged to protect their human rights.⁶⁹ As the Commission has noted:

Because individual rights are inherent to the human being, all the American states are obligated to respect the protected rights of any person subject to their jurisdiction . . . In principle, the investigation refers not to the nationality of the alleged victim or his presence in a particular geographic area, but to whether, in those specific circumstances, the State observed the rights of a person subject to its authority and control.⁷⁰

⁶⁹ This applies not only to an American state's obligations under the American Convention and Declaration, but also to a State's international human rights obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and the International Covenant on Civil and Political Rights. *See, e.g.*, GENERAL COMMENT NO. 31, *supra* note 66, at ¶ 10 ("States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. . . . This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory . . ."); COMM'N ON HUMAN RIGHTS, SUB-COMM'N ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, *Transfer of Persons*, U.N. Doc. E/CN.4/Sub.2/2005/L/12 (Aug. 4, 2005) (" . . . the transfer of a person to a State where that person faces a real risk of being subjected to torture, cruel, inhuman or degrading treatment or extrajudicial killing would be a breach of customary international law."); *Torture by Proxy*, *supra* note 1, at 48, 58-59.

⁷⁰ *Alejandro*, at ¶ 23; *see also Precautionary Measures for the Guantanamo Detainees*, 41 I.L.M. 532, 532 (2002) (concluding that the detainees at Guantánamo Bay are wholly within the authority and control of the U.S. and that "no person under the authority and control of a state, regardless of his or her circumstances, is devoid of legal protection for his or her fundamental and non-derogable human rights"); *The Haitian Centre for Human Rights v. United States (U.S. Interdiction of Haitians on the High Seas)*, Case 10.675, Inter-Am. C.H.R., Report No. 51/96, OEA/ser. L/V.II. 95 doc. 7 rev. ¶¶ 167-71 (1997) (finding that that Haitians brought aboard U.S. Coast Guard boats were under U.S. jurisdiction, therefore the U.S. had violated the Haitians' rights to liberty when they were intercepted; their right to personal security with their forcible return to Haiti; and their right to life when they were subsequently killed by Haitian officials); *Lilian Celiberti de Casariego v. Uruguay*, Communication No. 56/1979 at ¶ 11 (July 29, 1981), U.N. Doc. CCPR/C/OP/1 at 92 (1984) (finding a violation of ICCPR of "[a]rticle 9 (1), because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention"); *id.* at ¶ 10.3 ("[I]t would be

At the international level, the U.N. Committee Against Torture and the U.N. Human Rights Committee have explicitly stated that the United States is required to apply its *non-refoulement* obligations to individuals outside of its territory⁷¹ and has expressed concern about the lack of “judicial procedure”⁷² and “appropriate safeguards”⁷³ in the United States’ rendition practices.

unconscionable . . . to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.”).

⁷¹ CAT Committee, Concluding Observations, United States, *supra* note 44 (“The Committee is concerned that the State party considers that the non-refoulement obligation, under article 3 of the Convention, does not extend to a person detained outside its territory. The Committee is also concerned by the State party’s rendition of suspects, without any judicial procedure, to States where they face a real risk of torture (art. 3). The State party should apply the *non-refoulement* guarantee to all detainees in its custody, cease the rendition of suspects, in particular by its intelligence agencies, to States where they face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspects have the possibility to challenge decisions of *refoulement*.”); Human Rights Committee, Concluding Observations, United States, *supra* note 45 (“...The Committee notes with concern the State party’s restrictive interpretation of article 7 of the Covenant according to which it understands (a) that the obligation not to subject anyone to treatment does not include an obligation not to expose anyone to such treatment by means of transfer, rendition, extradition, expulsion or refoulement; (b) that, in any case, it is not under any other obligation not to deport an individual who may undergo cruel, inhumane or degrading treatment or punishment other than torture, as the State party understands the term; and (c) that it is not under any international obligation to respect a non-refoulement rule in relation to persons it detains outside its territory...The State party should take all necessary measures to ensure that detainees, including in facilities outside its own territory, are not removed to another country by way of, *inter alia*, transfer, rendition, extradition, expulsion or refoulement, if there are substantial reasons to believe that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.”).

⁷² CAT Committee, Concluding Observations, United States, *supra* note 44 (stating that “The Committee is also concerned by the State party’s rendition of suspects, without any judicial procedure, to States where they face a real risk of torture (art. 3)”).

⁷³ Human Rights Committee, Concluding Observations, United States, *supra* note 45 (noting that “The Committee is concerned that in practice the State party appears to have adopted a policy to remove, or to assist in removing, either from the United States or other States’ territories, suspected terrorists to third countries for the purpose of detention and interrogation, *without the appropriate safeguards to protect them from treatment prohibited by the Covenant.*” (emphasis added)).

2. The State conducting an arrest must comply with all of the domestic procedures attendant upon arrest in order to respect the human rights of the arrestee even where the arrest is carried out outside the State's territory.

All arrests must respect the arrestee's human rights, even in cases where the arrest takes place within the territory of another State, or in international airspace or waters. In order to comport with individual human rights protections, the apprehending State is required to comply with all of the domestic procedures that would be attendant upon an arrest within its own territory.

In *Pinheiro & Santos v. Paraguay*, for example, in order to determine whether Paraguay had violated the right to personal security set out in Article 7 of the American Convention on Human Rights (the Convention), the Commission examined whether Paraguay had complied with Paraguayan legislation in force at the time of the arrest.⁷⁴ The Commission laid out a three part test to determine whether an arrest was lawful,⁷⁵

⁷⁴ *Pinheiro & Dos Santos v. Paraguay*, Case 11.506, Inter-Am. C.H.R., Report No. 77/02, OEA/Ser. L/V/II.106 doc. 3 rev. ¶ 48 (2002); see also *Pérez v. Mexico*, Case 11.565, Inter-Am. C.H.R., Report No. 53/01, OEA/ser. L/V/II.111 doc. 20 rev. ¶ 24-27 (2001) (finding Mexico in violation of the American Convention on Human Rights because there was no domestic legal provision authorizing the military officers to detain civilians). The analysis of art. 7 of the American Convention on Human Rights, Nov. 22, 1969, 114 U.N.T.S. 123, should apply to art. XXV of the Declaration, as the Commission states at para. 48 that the provisions in Article 7 (2) of the Convention are "the same as those appearing in Article XXV of the Declaration."

⁷⁵ *Pinheiro & Dos Santos*, at ¶ 50 ("The first step consists in determining the legality of the arrest in a material and procedural sense, for which purpose the compatibility of the arrest with the national laws of the state in question must be ascertained. The second step involves an analysis of the relevant domestic law

wherein “[t]he first step consists in determining the legality of the arrest in a material and procedural sense, for which purpose *the compatibility of the arrest with the national laws of the state in question must be ascertained.*”⁷⁶ The Commission found the arrest to be a violation of the Convention because “the procedural requirements for arrest established in Paraguayan law were not met.”⁷⁷ The same reasoning should guide the interpretation of Article XXV of the Declaration, which also safeguards the right to personal security by requiring that any deprivation of liberty must be accomplished “according to the procedures established by pre-existing law.” Because a State’s human rights obligations continue to apply extraterritorially, an extraterritorial arrest is subject to the test laid out in *Pinheiro & Dos Santos* and must comply with all of the domestic procedures that would be attendant upon arrest within the State’s territory.

in the light of the guarantees established in the American Convention, in order to determine whether it is arbitrary. Finally, if the detention complies with the requirements of a national law that is compatible with the American Convention, then it must be determined whether application of the law to the specific case in point was arbitrary.”); *Pérez*, at ¶ 23 (In determining whether or not there had been a violation of Article 7, the Commission applied the three-part test: “The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether *this action is compatible with the domestic legislation of the State in question.* The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.”) (emphasis added); *Da Fonseca v. Brazil*, Case 11.634, Inter-Am. C.H.R., Report No. 33/04, OEA/Ser. L/V/II.122 doc. 5 rev. 1 ¶53 (2004) (The Commission stated that “[a]n arrest is arbitrary and illegal when it does not occur in accordance with the causes and procedures established by law, when it is effected without observing the practices stipulated by law, and when it has been effected as a distortion of the authority to arrest, or in other words, when it is effected for purposes other than those stipulated and required by law...[A]rrest for inappropriate purposes is, in and of itself, a punishment that constitutes a type of punishment without due process, or an extralegal punishment that violates the guarantee of a prior trial.”).

⁷⁶ *Pinheiro & Dos Santos*, at ¶ 50 (emphasis added); see also *Öcalan v. Turkey*, Eur. Ct. H.R. ¶ 83 (2005) (“On the question whether detention is ‘lawful,’ including whether it complies with ‘a procedure prescribed by law,’ the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof.”).

⁷⁷ *Pinheiro & Dos Santos*, at ¶ 56. In *Öcalan*, on the other hand, the European Court concluded that the arrest had not violated the European Convention because the arrest complied with Turkish domestic law: Öcalan was arrested pursuant to a valid arrest warrant, was brought before a court following his arrest, and was charged, tried, and convicted under the Turkish Criminal Code. See *Öcalan*, at ¶ 92.

3. In addition to complying with its own domestic procedures, for an arrest to be lawful under international law, the apprehending State must uphold all international human rights protections relevant to arrest under international human rights law

The system of international human rights is designed to ensure the full protection of individuals, including where the protection afforded to the individual's human rights under domestic law is insufficient.⁷⁸ It follows that an apprehending State must comply with all of the human rights protections relevant to arrest.

The second step of the *Pinheiro & Dos Santos* test is “an analysis of the relevant domestic law in the light of the guarantees established in the American Convention, in order to determine whether [the arrest was] arbitrary.”⁷⁹ The U.N. Human Rights Committee has also held, specifically in cases of extraterritorial arrests, that an arrest can

⁷⁸ On the means by which the international human rights system operates to protect the rights of individuals, see generally HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 987 (2nd ed. 2000) (explaining that “...the international system seeks to persuade or pressure states to fulfill their obligations through one or another method – either observing national law (constitutional or statutory) that is consistent with the international norms, or making the international norms themselves part of the national legal and political order”.); LILICH, HANNUM, ANAYA & SHELTON, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY AND PRACTICE 442 (4th ed. 2006) (“States are...bound to uphold their obligations under applicable treaties or customary law and may incur international responsibility for failing to do so, regardless of any domestic doctrine that subordinates international norms to internal law.”); Caran Hirsch, *Policing Undercover Agents in The United Kingdom: Whether the Regulation of Investigatory Powers Act Complies with Regional Human Rights Obligations*, 25 FORDHAM INT’L L.J. 1282 (2002) (explaining that the European Convention provides international remedy for violations of European Convention rights, in situations where domestic remedy is inadequate) (citing HUMAN RIGHTS 551-52 (Louis Henkin et al. eds., 1999)).

⁷⁹ *Pinheiro & Dos Santos*, at ¶ 50; see also *Öcalan*, at ¶ 83 (in addition to compliance with national law, the Convention “requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness.”).

be arbitrary under the International Covenant on Civil and Political Rights (ICCPR) even if it is considered lawful under domestic law.⁸⁰

More specifically, in conducting an arrest, a State is required to observe the individual's right to be free from arbitrary arrest,⁸¹ to humane treatment,⁸² and to be free from being returned ("refoulé") to a State where there are substantial grounds for believing that he or she would be tortured (see further below).⁸³ International human rights law prohibits arbitrary arrest and in the event of arrest, the arrestee must be promptly informed of the reasons for his or her arrest and of any charges against him or her.⁸⁴

⁸⁰ See, e.g., *Lopez Burgos v. Uruguay*, Commc'n No. R.12/52 at ¶ 13 (July 29, 1981), U.N. Doc. Supp. No. 40 (A/36/40) at 176 (1981) (finding a violation of art. 9(1) of the International Covenant on Civil and Political Rights "...because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention"); *id.* at ¶ 11.6 ("The Government of Uruguay has referred to provisions, in Uruguayan law, of prompt security measures. However, the Covenant (article 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances"); *Lilian Celiberti de Casariego v. Uruguay*, Commc'n No. 56/1979 at ¶ 11 (July 29, 1981), U.N. Doc. CCPR/C/OP/1 at 92 (1984) (finding a violation of art. 9(1) of the International Covenant on Civil and Political Rights "...because the act of abduction into Uruguayan territory constituted an arbitrary arrest and detention"); see also U.N. HUMAN RIGHTS COMMITTEE, GENERAL COMMENT 8, *Article 9* (Sixteenth session, 1982), U.N. Doc. HRI/GEN/1/Rev.1 at 8, at ¶ 2 (1994) (allowing that domestic law can provide the precise time-limits on how quickly an individual must be brought before a judge and also asserting its own interpretation of the requirements of the Covenant that "delays must not exceed a few days.").

⁸¹ Organization of American States [OAS], American Declaration of the Rights and Duties of Man, June 2, 1998, AG/RES.1591 (XXVIII-O/98), art. XXV [hereinafter American Declaration of the Rights and Duties of Man]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (Mar. 23, 1976), art. 9(1) [hereinafter ICCPR].

⁸² American Declaration of the Rights and Duties of Man, *supra* note 81, at art. XXVI; ICCPR, *supra* note 81, art. 10; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984), art. 16 [hereinafter CAT].

⁸³ CAT, *supra* note 82, art. 3.

⁸⁴ ICCPR, *supra* note 81, at art. 9(1)-(2); see also *Lilian Celiberti de Casariego v. Uruguay*, at 92 (finding a violation of ICCPR of article 9 (1), because the transborder abduction by Uruguayan agents in Brazil constituted arbitrary arrest).

It is clear, therefore, that, at a minimum, a State seeking an extraterritorial transfer is bound to respect the individual's human right to due process, regardless of the geographic location of the events of apprehension, transfer and detention. In order to respect the individual's right to due process, at a minimum, a State is required to comply with the arrest procedures established in its own domestic law and the standards established in international human rights law.

4. The individual subject to a transfer has a procedural right to challenge the transfer, which, at a minimum, encompasses a right to claim protection against *refoulement*

Where a State transfers an individual from the territory of another State, it is bound by its human rights obligations vis-à-vis the individual being transferred and is required to afford the individual an opportunity to challenge the transfer. At a minimum, this procedural right encompasses the right to make a claim of *non-refoulement*.

The principle of *non-refoulement* is well-established in international law⁸⁵ and imposes an obligation on the State to ensure that an individual it seeks to transfer will not be exposed to a risk of torture through the transfer.⁸⁶ In the context of Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the U.N. Committee Against Torture has underlined the importance of both the principle of *non-refoulement* and the procedural guarantees needed to safeguard that prohibition.⁸⁷ In the case of *Agiza v. Sweden*, the Committee clearly stated that “the right to an effective remedy contained in article 3 requires...*an opportunity for effective, independent and impartial review of the decision to expel or remove*, once that decision is made, when there is a plausible allegation that article 3 issues arise.”⁸⁸ The Committee has also found a violation of Article 3 in a case of an informal transfer between police forces of different States, expressing “its concern at the practice whereby the police hand over individuals to their counterparts in another country

⁸⁵ See CAT, *supra* note 82, at art. 3 (expressly prohibits the transfer of individuals to States where they are in danger of torture). The Human Rights Committee has also stated that under the ICCPR “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.” GENERAL COMMENT 20, *supra* note 24, at ¶ 9. See also INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH TORTURE art. 13, ¶ 4 (providing that “extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.”). Further, the prohibition against *refoulement* is often recognized as a norm of customary international law. See GUY S. GOODWIN-GILL, INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES 141 (1978).

⁸⁶ BURGER & DANIELIUS, *supra* note 19, at 125.

⁸⁷ See also Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 29, U.N.Doc. A/59/324 (Sep. 1, 2004) (expressing concern about how the principle of *non-refoulement* is “undermined” by a number of practices, including the practice whereby “police authorities of one country [to] hand over persons to their counterparts in other countries without the intervention of a judicial authority and without any possibility for the persons concerned to contact their families or their lawyers” and stating that “...in cases where the risk of torture and ill-treatment is elevated, it is particularly important that proceedings leading to expulsion respect appropriate legal safeguards, at the very least a hearing before a judicial instance and the right to appeal.”).

⁸⁸ *Agiza v. Sweden*, Communication No. 233/2003 ¶ 13.7, U.N. Doc. CAT/C/34/D/233/2003 (2005) (emphasis added).

. . . without the intervention of a judicial authority . . . That meant that a detainee's rights had not been respected and had placed the author in a situation where he was particularly vulnerable to possible abuse."⁸⁹ Moreover, after critiquing the U.S. practice of "rendition of suspects," the Committee concluded that the United States should guarantee *non-refoulement* protections to such suspects, cease rendition to torture, and "...should always ensure that suspects have the possibility to challenge decisions of *refoulement*."⁹⁰

In a similar vein, the European Court of Human Rights held, in *Shamayev and others v. Georgia and Russia*,⁹¹ that Georgia had violated the applicants' right to an effective remedy and the right to be free from torture, when it failed to provide the applicants with the opportunity to challenge their transfer to Russia on the basis of *non-refoulement*.

These cases plainly demonstrate that *at a minimum*, individuals facing transfer have the procedural right to challenge the decision to execute a transfer on the basis of their fear of being subjected to torture upon transfer.

⁸⁹ See *Arana v. France*, Communication No. 63/1997 ¶ 11.5 & n.12, U.N. Doc. CAT/C/23/D/63/1997 (2000) (holding that article 3 had been violated because, among other reasons, the transfer of the individual by the French authorities to the Spanish police had not been subjected to judicial review).

⁹⁰ CAT Committee, Concluding Observations, United States, *supra* note 44.

⁹¹ *Affaire Chamaïev et autres c. Géorgie et Russie (Shamayev and others v. Georgia and Russia)*, Requête no 36378/02, Eur. Ct. H.R. ¶ 460-71 (2005), available at <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=1132746FF1FE2A468ACCBBCD1763D4D8149&key=10173&sessionId=8862446&skin=hudoc-en&attachment=true>.

Furthermore, in addition to the right to challenge the transfer on the basis of *non-refoulement*, the individuals have a procedural right to challenge the transfer on the ground that the State seeking transfer has failed to comply with existing legal procedures. While this proposition has not yet been tested in international law, it may be gleaned from the Commission's decision in *U.S. Interdiction of Haitians on the High Seas*.⁹² This case concerned Haitian asylum seekers who were interdicted by the U.S. on the high seas and summarily repatriated to Haiti. The Commission found that the United States had violated Article XXVII of the American Declaration⁹³ by failing to grant them a hearing to ascertain whether they qualified as 'refugees.'⁹⁴ Further, the Commission held that the United States violated their right to equality before the law, given that the United States duly processed refugee claims of nationals of other countries who were similarly intercepted on the high seas, but not those of Haitians. To the extent that the Commission found violations of the American Declaration based on the failure of the United States to comply with its domestic legal procedures, this case illustrates the proposition that individuals facing a transfer have a procedural right to challenge the transfer where the State seeking transfer has failed to follow its existing legal procedures, in addition to the minimum right to present a claim of *non-refoulement*.

⁹² *The Haitian Centre for Human Rights v. United States (U.S. Interdiction of Haitians on the High Seas)*, Case 10.675, Inter-Am. C.H.R., Report No. 51/96, OEA/ser. L/V.II. 95 doc. 7 rev. (1997).

⁹³ Article XXVII of the American Declaration of the Rights and Duties of Man, *supra* note 81, provides that "every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements."

⁹⁴ *U.S. Interdiction of Haitians on the High Seas*, at ¶ 163.

5. The individual being transferred must be afforded the human rights relevant to trial and detention under international law

The State seeking transfer is bound to respect the human rights of the individual it is transferring all along the trajectory of the transfer, from apprehension and transfer, to trial and detention. This is the case irrespective of whether a State seeks to try and detain an individual outside its territory but within its jurisdiction,⁹⁵ or to try and detain an individual within its territory.⁹⁶ In both scenarios,⁹⁷ States must also, at a minimum, comply with its own domestic procedures relevant to trial and detention. However, because this Brief focuses on “rendition to justice,” where States would not contest that an individual brought to its territory is to be subject to its domestic laws (this being in large part the function of the transfer),⁹⁸ this section does not focus on the application of domestic law. Instead, it emphasizes the international human rights norms applicable to trial and detention.

In relation to trial, Article XVIII of the American Declaration provides that “every person may resort to the courts to ensure respect for his legal rights.” Further, Article XXVI of the American Declaration provides that “every accused person is

⁹⁵ See *supra* section (V)(a)(ii)(1) (A State must uphold the human rights of individuals under its authority and control, regardless of whether it acts within its own territory or extraterritorially).

⁹⁶ See *supra* note 19.

⁹⁷ See *supra* section (V)(a)(ii)(2) (regarding the application of domestic procedures outside a State’s territory).

⁹⁸ See *supra* section (IV)(a)(i) (explaining concept of rendition to justice).

presumed to be innocent until proved guilty.”⁹⁹ The right to a fair trial is also guaranteed in Article 14 of the ICCPR.¹⁰⁰

In relation to detention, Article I of the American Declaration provides that “every human being has the right to life, liberty and the security of his person.” Article XXV of the Declaration provides that “no person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law” and the same Article guarantees the right to humane treatment while in custody.¹⁰¹ A State has an obligation to ensure the right to liberty of all persons who are subject to its jurisdiction

⁹⁹ For cases in relation to the standards of fair trial, *see, e.g., Da Fonseca v. Brazil*, Case 11.634, Inter-Am. C.H.R., Report No. 33/04, OEA/Ser. L/V/II.122 doc. 5 rev. 1 (2004) (finding a violation by Brazil of the right to effective recourse and to a fair trial and holding that the military police and the military courts did not have the independence and autonomy required either to investigate or to judge in an impartial manner the presumed human rights violations allegedly committed by the military police.); *Myrie v. Jamaica*, Case 12.417, Inter-Am. C.H.R., Report No. 41/04, OEA/Ser. L/V/II.122 doc. 5 rev. 1 (2004) (recommending that the State grant Mr. Myrie an effective remedy, which includes a re-trial in accordance with due process protections prescribed under Article 8 of the American Convention on Human Rights).

¹⁰⁰ ICCPR, *supra* note 81, at art. 14 (1) provides that “all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” ICCPR art. 14 (1)(2) further provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

¹⁰¹ For an application of Article 5 of the American Convention on Human Rights, *see Myrie*. In addition, the U.N. Working Group on Arbitrary Detention states that deprivation of liberty is arbitrary if a case falls into one of the following three categories: A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him); B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character. *See Office of the High Commissioner for Human Rights, Fact Sheet No.26, The Working Group on Arbitrary Detention, available at <http://193.194.138.190/html/menu6/2/fs26.htm>; see also *Da Fonseca*, at ¶ 54; *Pinheiro & Dos Santos v. Paraguay*, Case 11.506, Inter-Am. C.H.R., Report No. 77/02, OEA/Ser. L/V/II.106 doc. 3 rev. ¶ 50 (2002).*

and over whom the State is exercising effective control.¹⁰² The ICCPR includes similar guarantees.¹⁰³

VI. Application to the Facts of Mr. Alikhani's Case

The United States' transfer of Mr. Alikhani amounted to a violation of international law because it failed to respect the two fundamental principles which govern all forms of inter-State transfer of individuals: State sovereignty and individual human rights.

First, the United States did not use all existing legal procedures designed to regulate the transfer of individuals between States, as it failed to even submit a request

¹⁰² OAS, *Annual Report of the Inter-American Commission on Human Rights 2001, Chapter VI: Special Studies - Third Progress Report of The Rapporteurship on Migrant Workers and Their Families*, OEA/Ser./L/V/II.114 (April 16, 2001) (The Inter-American Commission on Human Rights stated that the State is obliged to ensure and protect the rights of the Mariel Cubans as established in the American Declaration, including the right to liberty. The Commission said that even though the Mariel Cubans were assumed to be "excludable aliens" who never entered the territory of the U.S. for the purposes of the domestic legislation, they were under the jurisdiction of the U.S. and therefore the U.S. had the obligation to respect their rights established in the American Declaration.)

¹⁰³ ICCPR, *supra* note 81, at art. 9(1) provides that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." ICCPR art. 10(1) provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." With respect to the treatment of the persons deprived of their liberty, the U.N. Human Rights Committee has stated that they must not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, or any hardship or constraint other than that resulting from the deprivation of liberty. See U.N. HUMAN RIGHTS COMMITTEE, GENERAL COMMENT NO. 21, *Article 10* (Forty-fourth session, 1992), U.N. Doc. HRI/GEN/1/Rev.1 at 33, at ¶ 3 (1994).

for transfer under the Bahamas-United States Extradition Treaty, which was fully in effect at the time of Mr. Alikhani's transfer.¹⁰⁴

The United States' transfer of Mr. Alikhani also failed to meet the requirements for respect of the sovereignty of the host State and of the human rights of the individual that apply to all transfers between States, including transfers that occur outside of the formal extradition process. First, the United States failed to obtain the consent of the Bahamas to exercise its police powers within the territory of the Bahamas.¹⁰⁵ The United States' failure to seek consent from the Bahamian government resulted in a violation of the Bahamas' sovereignty, rendering the arrest and transfer illegal under international law. In addition, the failure to seek consent circumvented the Bahamas' ability to protect Mr. Alikhani's human rights.¹⁰⁶

Moreover, it is clear that from the moment Mr. Alikhani boarded the U.S. Customs agents' plane, he was within the authority and control of the United States;¹⁰⁷ therefore the United States was required to afford him the due process guarantees of both domestic American law and international human rights laws relating to arrest, transfer

¹⁰⁴ Extradition Treaty Between the Government of the United States and the Government of the Commonwealth of the Bahamas, Mar. 9, 1990, S. Treaty Doc. No. 102-17 (1991).

¹⁰⁵ See Original Petition, Exhibit J (Protest of the Government of the Bahamas).

¹⁰⁶ Cf. *Öcalan v. Turkey*, Eur. Ct. H.R. ¶ 85 (2005) ("An arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affects the person concerned's individual rights to security...").

¹⁰⁷ See *id.* at ¶ 91 ("It is common ground that, *directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was under effective Turkish authority and therefore within the 'jurisdiction' of that state for the purposes of Art.1 of the Convention, even though in this instance Turkey exercised its authority outside its territory.*") (emphasis added).

and detention. This was true even though the United States was acting outside of its territory (i.e. in Bahamian territory and in international airspace).

On the basis of facts alleged in this petition, the United States failed to protect Mr. Alikhani's human rights because his arrest did not comply with the procedures established in domestic American law.¹⁰⁸ As a result, his arrest represented a violation of his right to not be deprived of his liberty except on such grounds and in accordance with procedures established by pre-existing law, protected under Article XXV of the American Declaration and Article 9 of the ICCPR. Finally, the United States violated its obligation to provide Mr. Alikhani with a right to challenge his transfer; rather, U.S. agents lured Mr. Alikhani onto the plane under false pretences.¹⁰⁹

According to the facts before the Commission, it appears that the United States also failed to protect Mr. Alikhani's human rights once he was subject to detention within the United States, by violating his right to be treated humanely and his right to due process under the law, resulting in a violation of Articles XXV and XXVI of the American Declaration.¹¹⁰

¹⁰⁸ Response of Hossein Alikhani to March 11, 2003 Reply of the Government of the United States, Case No. P4618/02 (April 14, 2003), at 6 (arguing that the arrest warrant was not valid outside of the jurisdiction of the United States under then existing FED. R. CRIM. P. 4(d)(2)).

¹⁰⁹ Petition Alleging Violations of Human Rights of Messrs. Kenneth Walker (A Canadian Citizen), Hossein Alikhani (A Cypriot Citizen), and George Christoforou (A Cypriot Citizen) By the United States of America, Before the Inter-American Commission on Human Rights, Petition 4618/02 (filed July 17, 1995), at 29-30.

¹¹⁰ *Id.* at 45-46; Response of Hossein Alikhani to March 11, 2003 Reply of the Government of the United States, Case No. P4618/02 (April 14, 2003), at 7-8.

VII. Conclusion

This Brief has argued that to ensure that a transfer is legal under international law, the State seeking transfer must comply with two fundamental requirements: (1) respect the sovereignty of the State within which the individual facing transfer is located; and (2) respect the human rights of the individual facing transfer. These requirements apply to the State seeking transfer whether or not the transfers occur within the formal extradition process.

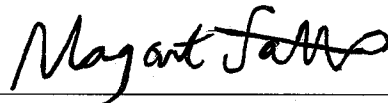
As argued above, the transfer of Mr. Alikhani by the United States plainly failed to meet these requirements. The United States circumvented the existing legal procedures under the Bahamas-United States Extradition Treaty and executed a transfer where it failed to obtain the consent of the Bahamas and to respect Mr. Alikhani's human rights guaranteed under the American Declaration.

We respectfully urge the Commission uphold the fundamental principles which underpin all transfers of persons, that is, the territorial sovereignty of States and the human rights of individuals subject to transfer. Accordingly, we urge that the Commission find the transfer of Mr. Alikhani by the United States in the present circumstances was executed in violation of international law and that Mr. Alikhani is entitled to relief for these wrongful acts.

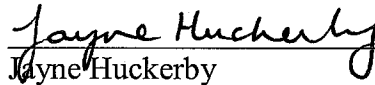
Submitted on this 20th day of October, 2006.

Respectfully submitted by:

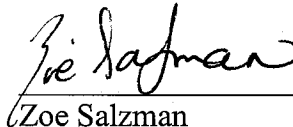
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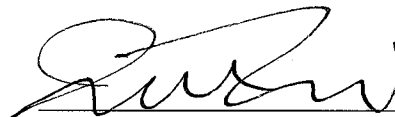
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