

Eleventh Cir. No. _____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

MARC HALL,

Petitioner

**APPEAL FROM THE
SOUTHERN DISTRICT
OF**

GEORGIA

Civil Action No. 4:10-cv-030

v.

**JOHN McHUGH, in his official capacity
as SECRETARY OF THE ARMY and
MAJOR GENERAL JEFFREY PHILLIPS,
in his official capacity as SENIOR
COMMANDER FORT STEWART**

Respondents

EMERGENCY MOTION FOR STAY AND INJUNCTION

NOW COMES, the Petitioner who hereby moves the Court for an emergency stay of the District Court's Order entered the 17th day of February 2010, from which a Notice of Appeal was filed on the 19th day of February, 2010, and for a temporary injunction pending this and any further appeals to the United States Supreme Court, or other court of competent jurisdiction.

Petitioner sought a temporary restraining order to stop his deployment to Iraq

by the US. Army, the Respondent herein, on the 14th day of February, 2010.

Petitioner is currently in confinement in the Liberty County, Georgia jail at the behest of the United States Army, through the authorities of Fort Stewart, Georgia, and is facing a court martial.

The Army is seeking to deploy Petitioner to Iraq to convene and court-martial in which he is charged with violations of Article 134, Uniform Code of Military Justice. All the alleged violations occurred in Fort Stewart. Due process requires that, under the circumstances in which he is to be tried, that the court-martial can only be take place in the United States, at a location reasonably convenient to the public, the media, witnesses and counsel. The court-martial of a member of the United States armed forces and a United States citizen for acts alleged to have occurred within the continental United States, should be held in the United States, if not at Fort Stewart specifically.

The evidence is undisputed¹ that members of the public and media who have been following this matter will be unable to attend a court-martial in Iraq (see Declarations of Dahr Jamail and Jeffery A. Paterson, Exhibits A and B to the petition), that at least one potential witness will not be able to attend and testify in

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Petitioner's petition for writ of habeas corpus included four declarations. Respondent provided, in support of its brief in opposition, only documentary evidence.

Iraq (see Declaration of Mary A. Wright, Exhibit C to the petition and that petitioner would be deprived of the opportunity to be represented by counsel of his choice (See Declaration of David Gespass, Exhibit D to the petition) if the court-martial is convened in Iraq.

The security interests of the Army are protected because Petitioner remains in confinement.

The Army can state no interest in requiring that Petitioner be court-martialed in Iraq that outweighs the interests of Petitioner and the public in having the court-martial in the United States. Rather, the Army, through respondents, has asserted only speculative allegations that its morale could be adversely affected if petitioner were to be tried in the United States and that federal courts have no right to intervene in this matter but must defer to the discretion of the military authorities.

In fact, respondents have been aware of the facts leading to the charges in this matter since July 2009 and took no action until on, or about, December 11, 2009 when petitioner was taken into custody and served with charges. Between July and December, all the prosecution's material witnesses were in the United States at Fort Stewart.

The district court found that it was required to abstain and that petitioner's appropriate course of action was through the military justice system. Petitioner

contends this would be true but for the fact that no court martial has as yet been convened some seven months after the facts giving rise to the charges were first known to respondents and more than two months after petitioner was confined and, therefore, there was no military authority from whom redress could be sought. Petitioner has been in this state of limbo since December 11 and remains so today. He has therefore exhausted all his administrative remedies (see Declaration of Capt. Anthony Schiavetti, filed separately in the district court following the initial pleadings).

Petitioner further contends that, in light of his confinement, he will suffer irreparable injury if this Court defers to the Army, which has as yet failed and refused to convene a court martial. The military system has failed already to protect his rights and continues to do so.

Petitioner attaches to, and in support of, this petition the following exhibits, documents previously filed in the district court:

1. Petition for writ of habeas corpus;
2. Exhibits A-D to the petition for writ of habeas corpus, the declarations of Dahr Jamail, Jeffery Peterson, Mary A. Wright and David Gespass;
3. The declaration of Anthony Schiavetti;
4. Petitioner's motion for temporary restraining order

5. Petitioner's brief in support of his motion for temporary restraining order;
6. Respondent's brief in opposition to petitioner's motion;
7. Exhibits 1-7 attached to respondent's brief; and
8. The district court order denying the motion.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing upon counsel for all parties in accordance with the notice of filing which was generated as a result of filing this document with the Court's electronic filing system Or by emailing the following persons through the following email addresses:

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submitted, this 19th day of February, 2010.

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