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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

1LT EHREN K. WATADA,

Petitioner,

vs.

LT. COL. JOHN HEAD, Military Judge,  
Army trial Judiciary, Fourth Judicial  
District; LT. GEN. CHARLES JACOBY,  
Convening Authority, Ft. Lewis,  
Washington;

Respondents.

NO.

PETITION FOR A WRIT OF HABEAS  
CORPUS

Emergency Relief Requested

Petitioner Ehren K. Watada, by through his attorney, James E. Lobsenz, states as follows:

PETITION FOR A WRIT OF  
HABEAS CORPUS- 1

CARNEY  
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1 I. Parties.

2 1.1. First Lieutenant Ehren K. Watada is an officer in the United States Army. He is  
3 stationed at Ft. Lewis, which is located within the Western District of Washington. Lt. Watada  
4 is currently charged and facing court-martial at Ft. Lewis, Washington on charges of missing  
5 movement and conduct unbecoming an officer. The court-martial is scheduled to commence on  
6 October 9, 2007.

7 1.2. Respondent Head is the Military Judge presiding over the court-martial  
8 proceedings being held at Fort Lewis, Washington in the Fourth Judicial District of the Army  
9 Trial Judiciary. He is stationed at Ft. Lewis, which is located within the Western District of  
10 Washington.

11 1.3. Respondent Jacoby is the Convening Authority for the court-martial proceeding  
12 against Lt. Watada. He is stationed at Ft. Lewis, Washington, which is located within the  
13 Western District of Washington.

14 II. Jurisdiction.

15 2.1. The United States District Court has jurisdiction over this petition for a writ of  
16 habeas corpus pursuant to 28 U.S.C. §§ 2241 and 1331. Petitioner is in the custody of the United  
17 States Army and is subject to the restraints imposed upon him by the Convening Authority and  
18 the Military Judge presiding over his court-martial. Petitioner seeks relief on the ground that the  
19 current proceedings now pending against him are being maintained in violation of the Double  
20 Jeopardy Clause of the Fifth Amendment to the United States Constitution.

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PETITION FOR A WRIT OF  
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1 III. Venue.

2 3.1. Venue is proper in the Western District of Washington because the Petitioner and  
3 all Respondents are stationed at Ft. Lewis, which is within the Western District of Washington,  
4 and because the events at issue – his first court-martial trial, which ended with a declaration of  
5 mistrial over his objection, and the currently-scheduled second trial – have all taken place and  
6 are scheduled to take place within the Western District of Washington. Thus, the “restraint  
7 complained of” is occurring within this Court’s territorial jurisdiction. 28 U.S.C. § 2241 (a).

8 IV. Procedural History.

9 4.1. On November 9, 2006, Lt. General James Dubik, the Convening Authority and  
10 the predecessor to Respondent Lt. General Charles Jacoby, approved the referral of three  
11 criminal charges against Petitioner Watada to a general court-martial. In Count 1, Petitioner was  
12 charged with Through Design Missing Movement Required in the Course of Duty (Article 87),  
13 alleged to have been committed on June 22, 2006. In Count 2, Petitioner was charged with One  
14 Specification of Conduct Unbecoming an Officer (article 133), alleged to have been committed  
15 on August 12, 2006. And in Count 3, Petitioner was charged with three Specifications of  
16 Conduct Unbecoming an Officer (Article 133) alleged to have been committed on June 7, 2006.

17 4.2. Trial commenced on these charges on February 5, 2007. Pursuant to a Pretrial  
18 Agreement, entered into and approved that day by the Military Judge, Specifications 2 and 3 of  
19 Count II were dismissed in exchange for Petitioner’s entry into a Stipulation of Fact.  
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PETITION FOR A WRIT OF  
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1           4.3. Trial continued on February 6, 2007. The Government rested its case that  
2 afternoon.

3           4.4. When trial resumed on February 7, 2007, the Military Judge announced that he  
4 had discovered a problem with the Stipulation of Fact the parties had entered into, and which the  
5 Military Judge had approved. Counsel for both the Government and for Petitioner repeatedly  
6 advised the Military Judge that they did *not* see any defect or problem with the Stipulation of  
7 Fact, and did *not* see that any reason existed for setting aside that Stipulation.

8           4.5. Over the objection of both parties, the Military Judge set aside the Stipulation of  
9 Fact. The Military Judge then invited Counsel for the Government to either move to reopen or  
10 to move for a mistrial. Following a recess, Counsel for the Government made a motion for  
11 declaration of a mistrial. Counsel for Petitioner immediately objected and opposed the motion  
12 for a mistrial.

13           4.6. The Military Judge then immediately declared a mistrial, without considering  
14 any alternative procedure for continuing the trial with the panel of officers that had been hearing  
15 the case. The members of the court-martial panel were then dismissed.

16           4.7. Petitioner Watada subsequently discharged his previous civilian counsel and  
17 hired new civilian counsel to represent him.

18           4.8. Petitioner sought a ruling from the Army Court of Criminal Appeals on his claim  
19 that a retrial was barred by the Double Jeopardy Clause. On May 17, 2007, Petitioner filed a  
20 Petition for Extraordinary Relief in the Nature of a Writ of Prohibition in the Army Court of  
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PETITION FOR A WRIT OF  
HABEAS CORPUS— 4

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1 Criminal Appeals, and asked that Court to stay all proceedings in the military trial court pending  
2 appellate review.

3 4.9. On May 18, 2007, the Army Court of Criminal Appeals issued a temporary stay,  
4 prohibiting the court-martial trial from going forward until further order of the Court, but  
5 permitting the pending pretrial motions litigation to proceed.

6 4.10. On June 29, 2007, the Army Court of Criminal Appeals entered an Order stating  
7 that Petitioner had asked it to enjoin his upcoming court-martial on former jeopardy grounds  
8 without first moving to dismiss in the trial court, and that under those circumstances, his petition  
9 for extraordinary relief was denied. The temporary stay of the court-martial trial was dissolved  
10 on that date.

11 4.11. Taking note of the avenue for relief suggested by the Army Court of Criminal  
12 Appeals, on July 2, 2007, Petitioner filed a Motion to Dismiss on Double Jeopardy grounds in  
13 the trial court. That motion was argued in the trial court on July 6, 2007, and the Military Judge  
14 orally denied the motion on that hearing date. The Military Judge followed his oral ruling with a  
15 written ruling entered on July 11, 2007.

16 4.12. On July 26, 2007, Petitioner filed a Renewed Petition for Extraordinary Relief in  
17 The Nature of a Writ of Prohibition in the Army Court of Criminal Appeals, pointing out that the  
18 Double Jeopardy motion had now been presented and denied by the trial court. He also filed an  
19 Application for a Stay of Trial Proceedings on that same date, noting that the trial was scheduled  
20 to occur on October 9-12, 2007.

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PETITION FOR A WRIT OF  
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1           4.13. On July 27, 2007, the Army Court of Criminal Appeals referred the renewed  
2 petition to Panel 2 of the Court for consideration.

3           4.14. On July 31, 2007, the Government filed its Initial Response in Opposition to the  
4 Renewed Petition for Extraordinary Relief.

5           4.15. On August 2, 2007, the Army Court of Criminal Appeals directed the  
6 Government to file an authenticated copy of the Record of Trial and to submit it to the Court.

7           4.16. On August 9, 2007, Petitioner filed in the Army Court of Criminal Appeals a  
8 response to the Government's brief in opposition to his Renewed Petition.

9           4.17. On August 27, 2007, Petitioner filed in the Army Court of Criminal Appeals a  
10 Motion for an Expedited Ruling on his application for a stay of the court-martial trial.

11           4.18. On August 28, 2007, the Army Court of Criminal Appeals denied the Renewed  
12 Petition for Extraordinary Relief and denied the Application for a Stay of Trial Proceedings.  
13 The Army Court of Criminal Appeals considered and addressed the merits of Petitioner's claim,  
14 and in a brief five-sentence Order, rejected the claim, finding no abuse of discretion by the  
15 Military Judge who declared the mistrial over Petitioner's objection.

16           4.19. On September 17, 2007, Petitioner sought review of his Double Jeopardy claim  
17 by the United States Court of Appeals for the Armed Forces. On this date, he filed Petitioner's  
18 "Writ Appeal Petition for Review of the Army Court of Criminal Appeals Decision on his  
19 Renewed Petition for Extraordinary Relief." On this same date, he also filed an Application for  
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PETITION FOR A WRIT OF  
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1 Immediate Stay of Trial Proceedings in the United States Court of Appeals for the Armed  
2 Forces.

3 4.20. On September 24, 2007, the Government filed, in the United States Court of  
4 Appeals for the Armed Forces, its response in opposition to Petitioner's Application for a Stay of  
5 Court Martial Proceedings.

6 4.21. On September 26, 2007 the Government filed, in the United States Court of  
7 Appeals for the Armed Forces, its response in opposition to Petitioner's Writ Appeal Petition for  
8 Review of the Army Court of Criminal Appeals Decision

9 4.22. On September 27, 2007, Petitioner filed his reply brief in support of his  
10 Application for Immediate Stay of Court-Martial Proceedings in the United States Court of  
11 Appeals for the Armed Forces.

12 4.23. On October 3, 2007, Petitioner filed his reply brief in support of his Writ Appeal  
13 Petition.

14 4.24. As of the close of business (i.e., 5:00 p.m. EDT) on October 3, 2007, the Court of  
15 Appeals for the Armed Forces has made no ruling on either the Petitioner's Application for  
16 Immediate Stay of Court-Martial Proceedings, or on his Writ Appeal Petition for Review of  
17 Army Court of Criminal Appeals Decision on Petition for Extraordinary Relief.

18 4.25. Because October 8, 2007 is a federal holiday, the last judicial business day before  
19 the scheduled start of Petitioner's court-martial trial is Friday, October 5, 2007.  
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PETITION FOR A WRIT OF  
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1 V. Restraint

2 5.1. Petitioner's term of service as an officer expired on December 4, 2006.  
3 However, because court-martial charges were pending against him at that time, he was held over  
4 and has not been discharged from military service. Thus, his continued military service is being  
5 compelled by the United States Army. Petitioner is being held to answer to the referred criminal  
6 charges now pending against him in the Fourth Judicial Circuit of the Army Trial Judiciary.

7 VI. Grounds for Relief.

8 6.1. Petitioner contends that convening the currently-scheduled court-martial trial,  
9 which is set to commence on October 9, 2007, will violate the prohibition against Double  
10 Jeopardy, which is set forth in the Fifth Amendment to the United States Constitution, because  
11 he was previously tried on these charges and a mistrial was declared, over his objection, without  
12 there being the requisite manifest necessity for such declaration.

13 VII. Exhaustion.

14 7.1. Petitioner has presented his claim to all the Article I Courts in the military court  
15 system. His claim was presented to the trial court (the Fourth Judicial Circuit of the Army Trial  
16 Judiciary), to the Army Court of Criminal Appeals, and to the United States Court of Appeals  
17 for the Armed Forces.

18 VIII. Evidentiary Hearing Unnecessary

19 8.1. No evidentiary hearing need be held in this Court in order to determine the merits  
20 of this Petition. This Court need only review the record that was made of Petitioner's first trial.  
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PETITION FOR A WRIT OF  
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1 IX. Emergency Relief Requested

2 9.1. Petitioner, 1LT Ehren K. Watada, prays that this Court issue an Emergency Stay  
3 that enjoins Respondents from proceeding with the court-martial trial now scheduled to  
4 commence on October 9, 2007, and to continue this Stay in effect until this § 2241 habeas  
5 corpus petition proceeding is concluded.

6 X. Relief Requested.

7 Wherefore, Petitioner Ehren K. Watada, prays that this Court take the following action:

8 10.1. Require Respondents to file an Answer to the Petition, specifically admitting or  
9 denying the allegations set forth in Petitioner's Petition.

10 10.2. Direct the filing of a complete and accurate record of the proceedings conducted  
11 with respect to Petitioner's first trial, including all proceedings held in connection with the  
12 declaration of mistrial over Petitioner's objection.

13 10.3. Allow Petitioner sufficient time to brief the issues of law raised by this Petition.

14 10.4. Issue a Writ of Habeas Corpus releasing Petitioner from all restraint imposed by  
15 the pending court-martial charges, and declaring any trial on such charges to be barred and  
16 prohibited by the Double Jeopardy Clause of the Fifth Amendment.

17 10.5. Grant such other and further relief as may be appropriate.

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PETITION FOR A WRIT OF  
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1 DATED this 3rd day of October, 2007.

2  
3 /s/ James E. Lobsenz \_\_\_\_\_

4 WSBA No. 8787

5 Kenneth S. Kagan

6 WSBA No. 12983

7 Attorneys for Petitioner

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PETITION FOR A WRIT OF  
HABEAS CORPUS— 10

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