

PETITION TO:

UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Jason Rezaian,

Citizen of the United States of America and the Islamic Republic of Iran

v.

Government of the Islamic Republic of Iran

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7*

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* Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, Mar. 15, 2006, ¶ 6, has further extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

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BASIS FOR “URGENT ACTION” REQUEST

As set forth in the attached Petition, the Government of the Islamic Republic of Iran is arbitrarily depriving Jason Rezaian of his liberty and subjecting him to abusive treatment in violation of international and Iranian law.

As of the date of this Petition, Rezaian has been imprisoned for a full year. Pursuant to Article 242 of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts, the detention of an accused shall not exceed the minimum duration of the legal punishment for the alleged crime, and detention shall not exceed one year for any crime, with the exception of death-penalty offenses, which are not alleged here.¹ Here, Rezaian’s detention violates both principles of Iranian law, as it exceeds both one year and the minimum legal punishment for the crimes alleged.

In addition, Rezaian has suffered unlawful treatment during his year-long incarceration. He is being held at Evin Prison in Tehran, a facility identified by this Working Group and other UN representatives as a location associated with widespread abuse of detainees and other severe human rights violations.² Political prisoners at Evin Prison are routinely forced to endure extensive physical mistreatment and psychological abuse, including relentlessly abusive interrogation tactics, prolonged periods of solitary confinement, and other cruel, degrading, and inhuman treatment.

Rezaian has not been spared such treatment. For many months he was placed in solitary confinement and subjected to grueling, full-day interrogation sessions that caused significant physical and psychological strain. The deplorable conditions at Evin Prison have resulted in Rezaian’s dramatic weight loss, respiratory problems, and chronic infections of the eye and urinary tract. He has been deprived of his prescribed blood pressure medication and of proper nutrition and healthcare. He has been isolated and cut off from most human contact, even with his mother, his brother, his counsel, and others from whom he might find help or comfort. Rezaian’s psychological well-being and physical health have severely declined, and his condition worsens with each day in confinement. Absent immediate action, Jason is in danger of further, more serious physical and psychological harm and continued decline.

Rezaian has also been deprived of his most basic fundamental rights and freedoms. He has been deprived of due process and denied his rights to counsel of his choosing and to consular visitation. Nearly five months of detention passed before Rezaian was charged with any crime, and to this day, the Government of Iran has failed to publicly disclose the charges against him.

¹ Article 242, Iran Criminal Code of Procedure for Public and Revolutionary Courts.

² See, e.g., *Report of the UN Working Group on Arbitrary Detention, Visit to the Islamic Republic of Iran*, E/CN.4/2004/3/Add.2, paras. 54-55, pp. 15-16, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/PDF/G0314777.pdf?OpenElement>; See Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Ahmed Shaheed*, Mar. 12, 2015 (advance unedited version), available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_70_en.doc.

He was allowed only one brief meeting with his counsel before trial and was not allowed to adequately prepare his defense. His trial has also been a sham, as he has not had a genuine opportunity to present his case, or even to challenge any purported evidence or witnesses against him.

These human rights violations are compounded by the fact that Rezaian's detention appears to have been used as leverage by a certain faction of the Iranian Government in the long-running nuclear negotiations with the United States and other nations—a diplomatic dialogue wholly unrelated to Rezaian, and over which he has no control. Jason Rezaian's freedom must not, and cannot, depend on the state of diplomatic relations between the United States and others.

For these reasons, it is hereby requested that the Working Group consider this Petition pursuant to its "Urgent Action" procedure.³ In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION⁴

I. IDENTITY

1. **Family name:** Rezaian
2. **First name:** Jason
3. **Sex:** Male
4. **Birth date:** March 15, 1976
5. **Nationality:** United States of America and Islamic Republic of Iran
6. **(a) Identity document (if any):** Passports
(b) Issued by: The United States Government; The Government of the Islamic Republic of Iran
(c) On (date): April 7, 2008 (United States); February 27, 2012 (Iran)
(d) Nos.: 441825718 (United States); J23348547 (Iran)
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**
Journalist

³ Report of the Working Group on Arbitrary Detention, A/HRC/16/47, Annex ¶ 7(b) ("Revised Methods of Work"), Jan. 19, 2011, at ¶ 22–24.

⁴ *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

8. Address of usual residence:

#1, 3rd Floor, Tower A
Burj Tehran Hormozan St.
Shahrak Gharb
Tehran, Iran

II. ARREST

1. **Date of arrest:** July 22, 2014
2. **Place of arrest (as detailed as possible):** Rezaian's residence in Tehran, Iran
3. **Forces who carried out the arrest or are believed to have carried it out:**
Iranian Revolutionary Guard Corps
4. **Did they show a warrant or other decision by a public authority?:** Yes
5. **Authority who issued the warrant or decision:** Warrant issued by the Judiciary
6. **Reasons for the arrest imputed by the authorities:** The Revolutionary Court has not publicly stated the charges against Rezaian. Reports indicate that Rezaian has been charged with: espionage; collecting information regarding Iran's domestic and foreign policy and providing it to individuals with malicious intent; collaborating with hostile governments; and conducting propaganda against the establishment of the Islamic Republic of Iran.
7. **Legal basis for the arrest including relevant legislation (if known):** Unknown

III. DETENTION

1. **Date of detention:** July 22, 2014 — present
2. **Duration of detention (if not known, probable duration):** In excess of twelve months
3. **Forces holding the detainee under custody:** Iranian Revolutionary Guard Corps and prison officials at Evin Prison
4. **Places of detention (indicate any transfer and present place of detention):**
Evin Prison (Tehran, Iran)
5. **Authorities that ordered the detention:** Warrant issued by the Revolutionary Court

6. **Reasons for the detention imputed by the authorities:** Rezaian is being held without bail on charges understood to be: espionage; collaborating with hostile governments; collecting and distributing information about foreign policies with malicious intent; and conducting propaganda against the establishment.
7. **Relevant legislation applied (if known):** Unknown

I. Introduction

The Government of the Islamic Republic of Iran (“Iran,” “Government of Iran,” or “Government”) is arbitrarily depriving Jason Rezaian of his liberty, in violation of international and Iranian law. Rezaian is a proud dual citizen of the United States of America and the Islamic Republic of Iran. He is also an acclaimed journalist who has worked to bridge the informational and cultural divide between Iran and the West, including especially the United States, where Rezaian was born and raised by an American mother and an Iranian father. Rezaian went to school in the United States, spoke English with his parents, and identifies culturally with the United States, and he has always had a keen interest in Iran, where some of his father’s family still lives. Rezaian took several trips to Iran with his father and eventually moved to Iran to work as a free-lance reporter and to facilitate a greater awareness and understanding of Iran and Iranian culture through fair and accurate journalism. In 2012, he became *The Washington Post’s* correspondent in Tehran. Although Rezaian was accredited as a journalist by the Iranian government and scrupulously followed Iranian laws and regulations applicable to journalists, his lawful work as a journalist in Iran eventually cost him his freedom. In July 2014, he and his wife—who is also a reporter—were arrested without warning by Iran’s Revolutionary Guard Corps (“IRGC”) for what Iran’s Chief Justice referred to as potential “enemies’ activities.”

Since his arrest, Rezaian has been harshly interrogated for days and weeks at a time, kept for long periods in solitary confinement, deprived of his rights to counsel and to consular visitation, and detained for almost a year without trial. Nearly five months of detention passed before Rezaian was charged with any crimes. To this day, the Revolutionary Court has failed to publicly disclose the charges, which reportedly include “espionage” and related illegal conduct. These charges—characterized as “patently absurd” by the U.S. Government—are wholly without factual basis or legal justification. To the contrary, the so-called “evidence” on which the Iranian Government purports to rely illustrates that Rezaian broke no laws and acted as a committed and law-abiding journalist.

Notwithstanding Rezaian’s adherence to law, the Iranian Government has flouted both domestic and international law in its conduct toward Rezaian and his wife. At the time of the arrest, Iranian agents broke down their front door, ransacked their home, and took them custody without ever informing them of the legal basis for their arrest. Thereafter, Rezaian and his wife were held separately in isolation for extended periods, harshly interrogated, deprived of much-needed medical attention, and otherwise poorly treated. They were denied access to counsel, and Rezaian was never allowed to see a consular representative of the United States or its protecting power, Switzerland. Rezaian was detained without formal charges for nearly five months and without a trial for nearly ten months. Rezaian was denied the right to counsel of his choosing, and his access to a court-approved lawyer was significantly limited, fundamentally undermining his ability to present a defense. Rezaian was allowed to meet with his lawyer just once prior to his trial, and that meeting was limited to roughly 90 minutes in the presence of Iranian government officials. Other than that sole meeting, Rezaian’s only engagement with counsel has been in connection with formal trial proceedings in the presence of a court-appointed translator.

The trial itself has been a complete farce of a legal proceeding. It has been closed entirely to the public—and even to Jason’s wife and mother—leaving no opportunity for public

monitoring, transparency, or accountability. It started in late May 2015 and progressed in piecemeal fashion with long, unexplained delays between proceedings. Rezaian has been allowed very limited interaction with his counsel, which has always occurred in the presence of Iranian officials. He has had no opportunity to present witnesses or evidence in his defense; nor has he had any opportunity to examine and challenge witnesses and evidence against him. Instead, the judge asks “yes” or “no” questions of Rezaian’s counsel and then describes purported evidence that supposedly supports the prosecution’s case but is, in fact, irrelevant to the charges against him. The prosecution has presented no live witnesses, no real evidence, and nothing else to justify the charges, much less anything to prove that Rezaian is guilty of any crime. The proceedings have been entirely perfunctory, with no semblance of due process or pursuit of truth and justice. In short, the trial has been a sham, as the Iranian Government has deprived Rezaian of his most fundamental rights under international law.

As of the date of this filing, Rezaian has been detained for one year at Evin Prison in Tehran, a facility notorious for its brutal conditions and harsh—at times life-threatening—treatment of political prisoners. Iran’s routine detention of intellectuals at the prison have earned it the moniker “Evin University.” Inmates at Evin are subjected to extensive periods of solitary confinement and relentless interrogation by officials who are known to use threats, harassment, abuse, and other unlawful measures to force prisoners to provide false confessions. Rezaian has not been spared such mistreatment, which has continued even during his trial. He has been subjected to grueling, full-day interrogation sessions involving severe physical and psychological strain. He has been intimidated, disoriented, hooded, and transported around the prison; held in solitary confinement; denied access to counsel; denied visitation by both foreign government representatives and family members; and threatened, psychologically abused, and faced with threats to the safety and security of his wife and others. At the same time, he has been denied prompt and adequate medical care for serious medical conditions including high blood pressure, respiratory issues, and chronic infections of the eye and urinary tract. Rezaian’s physical and emotional wellbeing are in jeopardy and continue to deteriorate with each passing day.

Iran’s detention of Rezaian is arbitrary and unlawful, and can only be viewed as an attempt to punish and silence him, and perhaps also to use him as some form of leverage in the negotiations and tentative agreement regarding Iran’s nuclear program. His ongoing imprisonment, like the unjustified detentions of dozens of other journalists in Iran, reflects Iran’s lack of respect for internationally recognized human rights, including freedom of opinion and expression, freedom of assembly, freedom to participate in public affairs, and the right to due process of law.

DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

The Statement of Facts presented in Part II below details Rezaian’s arrest and detention. The analysis set forth in Part III explains the specific basis upon which Rezaian asserts that his detention is an arbitrary deprivation of liberty.

II. Statement of Facts

A. *Rezaian's Career as an Accomplished and Respected Journalist*

Jason Rezaian is an accomplished and respected journalist, both in the United States and in Iran.⁵ Rezaian was born in 1976, in Marin County, California, to an Iranian father and an American mother. Rezaian, who is a dual national of the United States and Iran, moved to Iran in 2008 to work as a freelance journalist.⁶ After moving to Iran, Rezaian reported for several years for a variety of highly respected news outlets, including *Bloomberg*, *The New York Times*, *Le Monde*, *GlobalPost*, and *PBS*. In April 2012, Rezaian was hired by *The Washington Post* (“*Post*”) as its Tehran correspondent.⁷

As a *Post* reporter, Rezaian researched and reported news; in the process, he developed and relied upon a broad network of sources and contacts. He often wrote stories that helped bridge the cultural divide between Iran and the West and generally improved international understandings of Iran by providing unique insight into the country’s culture and its people.⁸ He provided fair, accurate, and in-depth coverage of important domestic and international events, including the election of President Hassan Rouhani in 2013,⁹ and international negotiations over the fate of Iran’s nuclear program.¹⁰ As one of the few American journalists to be granted reporting credentials in Iran,¹¹ Rezaian was aware of the challenges facing foreign journalists. Despite these obstacles, he remained committed to providing neutral and comprehensive

⁵ Mark Berman, *Washington Post Reporter “Facing Interrogation,” Iranian Official Says*, Wash. Post, Sept. 17, 2014 (quoting Foreign Minister Zarif as remarking, “I know him to be a fair reporter, so I had hoped all along that his detention would be short, and I continued to try to make it shorter, [rather] than longer.”), available at http://www.washingtonpost.com/world/national-security/washington-post-reporter-facing-interrogation-iranian-official-says/2014/09/17/b9b4f2b4-3e98-11e4-9587-5dafd96295f0_story.html.

⁶ See Laura Secor, *Why is Iran Detaining Jason Rezaian?*, *The New Yorker*, Aug. 15, 2014, available at <http://www.newyorker.com/news/daily-comment/iran-detaining-jason-rezaian>.

⁷ See *Iran Indicts Washington Post Reporter Jason Rezaian*, NBC NEWS, Jan. 15, 2015, available at <http://www.nbcnews.com/news/world/iran-indicts-washington-post-reporter-jason-rezaian-report-n286576>.

⁸ See Secor, *supra* note 6; Editorial Board, *Iran Should Free Post Journalist Jason Rezaian and his Colleagues Immediately*, Wash. Post, July 28, 2014, available at http://www.washingtonpost.com/opinions/iran-should-free-post-journalist-jason-rezaian-and-his-colleagues-immediately/2014/07/28/d1bf586a-1673-11e4-9e3b-7f2f110c6265_story.html. One of the last articles Rezaian published for the *Post* was a story about the growing popularity of the sport of baseball in Iran. See Jason Rezaian, *In Iran, a Spark of Enthusiasm for America's National Pastime*, Wash Post., July 17, 2014, available at http://www.washingtonpost.com/world/middle_east/baseball-in-iran-is-more-like-the-bad-news-bears-than-the-major-leagues/2014/07/16/767f8752-3ea8-4b96-9198-e44136771a25_story.html.

⁹ See Jason Rezaian and Joby Warrick, *Moderate Cleric Hassan Rouhani Wins Iran's Presidential Vote*, Wash. Post, June 15, 2013, available at http://www.washingtonpost.com/world/iranians-await-presidential-election-results-following-extension-of-polling-hours/2013/06/15/3800c276-d593-11e2-a73e-826d299ff459_story.html/.

¹⁰ See Jason Rezaian and Anne Gearan, *Iran's Foreign Ministry Takes Over Nuclear Negotiations, in Sharp Break with Past*, Wash. Post, Sept. 5, 2013, available at http://www.washingtonpost.com/world/middle_east/irans-foreign-ministry-takes-over-nuclear-negotiations-in-sharp-break-with-past/2013/09/05/2e54942e-1647-11e3-961c-f22d3aaf19ab_story.html.

¹¹ See Anne Gearan, *Photojournalist Held in Iran is Released on Bail, but Washington Post Reporter Still Held*, Wash. Post, Aug. 20, 2014, available at http://www.washingtonpost.com/world/national-security/photojournalist-held-in-iran-is-released-on-bail-but-washington-post-reporter-still-held/2014/08/20/e324edb6-2877-11e4-8593-da634b334390_story.html.

reporting about Iran to the rest of the world, while also respecting and complying with Iranian rules applicable to journalists in that country.¹²

In 2012, four years after moving to Iran, Rezaian married Iranian citizen and fellow journalist Yeganeh Salehi, who writes for *The National* of Abu Dhabi. The couple lived and worked in Tehran until they were arrested on July 22, 2014.

B. *The Political Environment in Iran*

Rezaian's arrest and continued detention must be viewed in the context of Iran's political environment, where the rule-of-law and basic human rights are routinely ignored or flouted, despite Iran's public rhetoric and representations to the contrary.

The Government of the Islamic Republic of Iran was established by constitutional referendum in 1979, following the revolution that ended the Shah-led regime that had governed the country for decades.¹³ Although Iran elected its first president, Abolhasan Bani-Sadr, the following year,¹⁴ elections in Iran generally are subject to governmental influence and thus are neither free nor democratic. Rather, elections are tightly controlled, such that the Islamic Republic of Iran is a republic in name only; Shia clergy control every aspect of the country's political and military systems.¹⁵ Iran's Supreme Leader, Ayatollah Ali Khamenei, controls the legislative, executive, and judicial branches of government, as well as the military.¹⁶ Although Iran now holds national public elections for the presidency, legislature, and Assembly of Experts (the religious body charged with electing the Supreme Leader), elections are often pre-determined, with the Council of Guardians, a clerical body, selecting candidates through arbitrary requirements and vetting processes.¹⁷

¹² Prior to his arrest, Rezaian wrote articles on economic sanctions, nuclear negotiations, the 2013 elections, and the arrests of fellow journalists in Iran, among other stories. *See, e.g., Iran Hopes to Resist Sanctions by Boosting Production*, Wash. Post, Oct. 28, 2012, available at http://www.washingtonpost.com/world/middle_east/iran-hopes-to-resist-sanctions-by-boosting-production/2012/10/27/a3531670-1f3e-11e2-8817-41b9a7aaabc7_story.html; *Iran Ministry Suggests Openness to Nuclear Talks*, Wash. Post, Nov. 8, 2012, available at http://www.washingtonpost.com/world/middle_east/iranian-ministry-suggests-openness-to-talks/2012/11/07/dbd0fa18-28f2-11e2-bab2-eda299503684_story.html; *Iranian Politicians Call for Free Elections*, Wash. Post, Jan. 26, 2013, available at http://www.washingtonpost.com/world/iranian-politicians-call-for-free-elections/2013/01/24/bd2ce78a-6564-11e2-889b-f23c246aa446_story.html; *Iran Ministry Says Detained Journalists Worked Illegally with Foreign News Media*, Wash. Post, Jan. 31, 2012, available at http://www.washingtonpost.com/world/middle_east/iranian-ministry-says-detained-journalists-worked-illegally-with-foreign-news-media/2013/01/30/1e509ce0-6b15-11e2-9a0b-db931670f35d_story.html.

¹³ *See Iran 2013 Human Rights Report*, U.S. Department of State, available at <http://www.state.gov/documents/organization/220564.pdf>; *Iran Profile – Timeline*, BBC, Nov. 25, 2014, available at <http://www.bbc.com/news/world-middle-east-14542438>.

¹⁴ *See Iran Profile – Timeline*, *supra* note 13.

¹⁵ *See Iran 2013 Human Rights Report*, *supra* note 13.

¹⁶ *See id.* at 1.

¹⁷ *See Suzanne Maloney, Iran Surprises Itself and the World: A New President May Take His Country in a New Direction*, Brookings Institute, Sept. 11, 2013, available at <http://www.brookings.edu/research/essays/2013/iran-surprises-itself-and-the-world-a#>.

Iranian citizens are ostensibly guaranteed certain freedoms under both Iranian and international law, but in reality the Government severely limits—or, in some cases, flatly denies—these freedoms when competing political and other governmental interests are at stake. For example, the Government’s restrictions of its citizens’ fundamental freedoms—including but not limited to the freedoms of opinion, expression, and association—have grown even more severe following mass protests and demonstrations that erupted in 2009, after former President Mahmoud Ahmadinejad was reelected in what many Iranians and others believe was a rigged election.¹⁸ During this period, in the wake of the protests and accompanying reporting of the unrest, the Government detained and abused a number of political activists and journalists.¹⁹ Leading up to the 2013 presidential elections, the Government imposed further restrictions, limiting citizens’ fundamental freedoms by controlling and interfering with internet service and speed in an effort to restrict and manipulate access to election-related information.²⁰

Despite this interference with the political process by hardline factions, the 2013 elections resulted in a surprise victory for a less extreme presidential candidate, Hassan Rouhani.²¹ Although President Rouhani’s election was welcomed by many as a sign of modest progress toward reform and potential partial reconciliation with the West, Rouhani’s authority has remained subject to the will of the Supreme Leader, Ayatollah Khamenei.²² The IRGC, which was established in the wake of the Islamic Revolution to act as the country’s “ideological custodian,”²³ and which arrested Rezaian, has remained loyal to the Supreme Leader and is generally understood to be one of the most conservative factions of the Iranian Government.²⁴ Significant tensions reportedly exist between the IRGC and the less extreme President Rouhani.²⁵ President Rouhani’s willingness to engage with the United States and other Western powers in discussions over Iran’s nuclear program in recent months has only heightened those tensions.²⁶ There are reasons to believe that Rezaian’s arrest, detention, and trial are linked not only to the nuclear negotiations and recent deal, but also to the internal tensions among the political factions within Iran.

C. *The Iranian Judiciary*

The Islamic Revolution of 1979 brought with it an extreme, sectarian approach to government. The new regime de-secularized nearly every aspect of Iranian society, including Iran’s legal system. The regime also amended Iranian law to incorporate Shari’ah law and

¹⁸ See, e.g., *Q&A: Was the Iranian Election Rigged*, CNN, June 15, 2009, available at <http://www.cnn.com/2009/WORLD/meast/06/15/iran.elections.qa/>.

¹⁹ See Human Rights Watch, *Iran: Threats to Free, Fair Elections*, May 24, 2013, available at <http://www.hrw.org/news/2013/05/24/iran-threats-free-fair-elections>.

²⁰ See *id.*

²¹ See Maloney, *supra* note 17.

²² See Thomas Erdbrink, *Iran Moderate Wins Presidency by a Large Margin*, N.Y. TIMES, June 15, 2013, available at http://www.nytimes.com/2013/06/16/world/middleeast/iran-election.html?_r=0.

²³ Greg Bruno, *et al.*, *Iran’s Revolutionary Guard*, Council on Foreign Relations, June 14, 2013, available at <http://www.cfr.org/iran/irans-revolutionary-guards/p14324>.

²⁴ *Id.*

²⁵ Geneive Abdo, *Rouhani is Walking a Political Tightrope at Home*, Al Jazeera America, Oct. 3, 2013, available at <http://america.aljazeera.com/articles/2013/10/3/rouhani-iran-domesticpolitics.html>.

²⁶ See *id.*

established new religious requirements for judges. Under these requirements, which remain in force today, judges must be trained clerics with degrees from religious law schools; only high-ranking clerics are eligible to be Supreme Court judges.²⁷ When confronted with a vague or ambiguous law or a law that is silent on an issue in dispute, judges are required by law to base their judgments on Shari'ah Law.²⁸

Article 156 of the Iranian Constitution purports to establish an independent and impartial Judiciary,²⁹ but in reality Iran's judicial branch lacks both impartiality and independence.³⁰ Just as with Iran's legislative and executive branches and its military, the Iranian judicial branch is completely beholden to Ayatollah Khamenei.³¹

As a result, hardline factions within the Iranian Government frequently use the Judiciary as a means to a political end. For example, Iran's sectarian leadership frequently uses the courts to suppress free expression, limit the dissemination of information, and punish various forms of dissent and peaceful protest.³² The sectarian leadership also established Islamic Revolutionary Courts to hear cases involving alleged crimes against national security and acts against Islam. It also has used the Revolutionary Courts to target opposition leaders, dissidents, and journalists.³³ Indeed, the Revolutionary Courts are notorious for trying and convicting such defendants on sham charges without due process of law. The Revolutionary Courts are closely aligned with the IRGC and the Iranian intelligence service.³⁴ As one human rights advocate observed, the Revolutionary Courts "work hand in hand with the intelligence service officers and to a great extent follow the instructions from them."³⁵

Corruption, ranging from nepotism and political cronyism,³⁶ to financial exploitation,³⁷ is reportedly widespread in the judicial branch. Conservative and reformist leaders alike have acknowledged the corrupt state of the Judiciary,³⁸ a perception that is shared by many Iranian

²⁷ Hadi Ghaemi, *The Islamic Judiciary*, THE IRAN PRIMER, U. S. Inst. for Peace, available at <http://iranprimer.usip.org/resource/islamic-judiciary>.

²⁸ See *Iran 2013 Human Rights Report*, *supra* note 13, at 12-13.

²⁹ Constitution of the Islamic Republic of Iran, art.156 ("The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice...").

³⁰ See *Iran 2013 Human Rights Report*, *supra* note 13, at 12-13.

³¹ The Supreme Leader appoints the head of the Supreme Court (the highest court of the public court system), who in turn appoints the chief public prosecutor. See Omar Sial, *A Guide to the Legal System of the Islamic Republic of Iran*, N.Y. Univ. Hauser Global Law Program (2006), available at <http://www.nyulawglobal.org/globalex/Iran.htm>.

³² See Ghaemi, *The Islamic Judiciary*, *supra* note 27.

³³ *Id.*; see also *Iran 2013 Human Rights Report*, *supra* note 13, at 13.

³⁴ See Saeed Kamali Dehghan, *Six Judges Accused of Leading Role in Iranian Crackdown on Free Speech*, *The Guardian*, July 31, 2014, available at <http://www.theguardian.com/world/2014/jul/31/six-judges-iran-crackdown-journalists-activists>.

³⁵ See *id.*

³⁶ See *Iran 2013 Human Rights Report*, *supra* note 13, at 12.

³⁷ See Ghaemi, *The Islamic Judiciary*, *supra* note 27; Golnaz Esfandiari, *Corruption "Taints Iran's Judiciary"*, *Radio Free Europe Radio Liberty*, Apr. 28, 2010, available at http://www.rferl.org/content/Corruption_Taints_Irans_Judiciary/2027454.html.

³⁸ See Esfandiari, *supra* note 37.

citizens.³⁹ Because the Judiciary is aligned with and accountable to the Supreme Leader and operates in service to the Supreme Leader's objectives, any efforts to root out corruption and implement reforms have been unsuccessful.⁴⁰

In addition, the trial procedures employed by courts throughout the Judiciary, and specifically by the Revolutionary Courts, contravene Iran's Constitution and other domestic legal requirements, as well as customary international law and international human rights conventions. The Constitution and criminal code of Iran in theory provide defendants with numerous rights and protections, including the right to a fair trial, the right to the presumption of innocence, the right to a lawyer of one's choosing, and the right to an appeal,⁴¹ but in practice the courts do not afford or protect such rights.⁴² Rather, the reality is that Iranian courts routinely deny defendants their most basic fundamental rights, even in the most serious cases involving long prison sentences or the death penalty.⁴³

Notably, because the right to counsel supposedly does not attach under Iranian law to some charges involving national security, organized crime, theft, or drug-related offenses, defendants are frequently charged with such crimes—often in the absence of any supporting evidence—merely as a means of depriving them of fundamental rights and preventing them from gaining access to counsel.⁴⁴ Compounding these injustices, counsel who represent such defendants can be punished for handling these cases, and those who are too zealous in their representation may face suspension, disbarment, and even prosecution. Since 2009, more than 50 lawyers have been prosecuted—and imprisoned in some of Iran's harshest prisons—merely for representing prisoners of conscience and defendants facing national security charges.⁴⁵ Obviously, such treatment severely limits the ability of counsel to mount an effective defense in a highly political case like the one brought against Rezaian.

D. Human Rights Violations in Iran

Iran is bound by international human rights law. In addition to customary international human rights law, which binds all States, Iran has ratified five international human rights conventions, including the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").⁴⁶ Despite

³⁹ Iran was among the countries evaluated and ranked in an independent assessment of public perceptions of corruption around the world in 2014. Transparency International, *Corruption Perceptions Index: Results* (2014), available at <http://www.transparency.org/cpi2014/results>.

⁴⁰ See Ghaemi, *The Islamic Judiciary*, *supra* note 27.

⁴¹ See Behnam Daraeizadeh, *Legal Commentary: A Look at Criminal Procedure in Iran*, Iran Human Rights Documentation Center, Nov. 2010, available at <http://www.iranhrdc.org/english/publications/legal-commentary/3008-a-look-at-criminal-procedure-in-iran.html>.

⁴² See *Iran 2013 Human Rights Report*, *supra* note 13, at 12.

⁴³ See *id.*

⁴⁴ Ahmed Shaheed, *supra* note 2.

⁴⁵ See *id.*; see also Human Rights Council, *Report of the Working Group on Arbitrary Detention, Visit to the Islamic Republic of Iran* 15, June 2003, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/PDF/G0314777.pdf?OpenElement>.

⁴⁶ Iran has also ratified the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities. See *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Ahmed

these international commitments, Iran has a well-documented history of systemically violating even the most basic human rights.⁴⁷ The human rights situation in Iran, which has been abysmal for several decades, further deteriorated after the 2009 presidential election, when the Iranian Judiciary was used as a political tool to suppress political and religious activists, journalists, lawyers, human rights advocates, and others.⁴⁸

These conditions led the United Nations' Human Rights Council in 2011 to appoint a Special Rapporteur on the Situation of Human Rights in Iran.⁴⁹ In his first report issued in 2012, the Special Rapporteur, Ahmed Shaheed, noted that although Iran "possesses the basic legislative framework and tools to promote respect for human rights...elements of the legal framework, together with insufficient adherence to the rule of law, create systemic obstacles to the Government's ability to adhere to [human rights] commitments."⁵⁰ The Special Rapporteur's first report also found that due process violations are "chronic," particularly with respect to arbitrary detention without access to counsel, coercive treatment, and trial procedures.⁵¹ In 2012, Iran detained more journalists than any other country in the world, with more than 40 journalists imprisoned at the time.⁵² Numerous journalists were arrested for reporting about the 2009 presidential elections, and more than 100 journalists fled the country to avoid imprisonment.⁵³

The human rights situation in Iran, and in particular the treatment of journalists, has not improved since the Special Rapporteur's appointment in 2011. In August 2014, the Office of the High Commissioner for Human Rights expressed grave concern regarding the escalating trend of Iran arresting and sentencing people for exercising their rights to freedom of expression, and urged the Iranian Government to immediately release all individuals held in connection with their journalistic activities, including Rezaian.⁵⁴ In March 2015, the Special Rapporteur found

Shaheed, supra note 2; *see also* Jayshree Bajoria and Robert McMahon, *Human Rights in Iran*, Council on Foreign Relations, June 4, 2013, *available at* <http://www.cfr.org/iran/human-rights-iran/p26380>.

⁴⁷ *See* International Campaign for Human Rights in Iran, *Written Submission to the UN Universal Periodic Review 20th Session of the UPR Working Group*, Islamic Republic of Iran, Mar. 15, 2014, ¶ 2, *available at* <http://www.iranhumanrights.org/wp-content/uploads/ICHRI-UPR-Submission-2014-final.pdf>; United Nations, Press Release: *Human Rights Situation in Iran Warrants Serious Concern, UN Expert Reports*, Mar. 11, 2013 (Ahmed Shaheed, Special Rapporteur on the Situation of Human Rights in Iran, stated that "[t]he prevailing situation of human rights in Iran continues to warrant serious concern"), *available at* http://www.un.org/apps/news/story.asp?NewsID=44344&Cr=iran&Cr1=#.VUeE8_kcxyU.

⁴⁸ *See* International Campaign for Human Rights, *Monitoring Iran: One Year into the Mandate of the Special Rapporteur on the Situation of Human Rights in Iran* 5, Mar. 2012, *available at* <http://www.iranhumanrights.org/wp-content/uploads/Monitoring-Iran.pdf>.

⁴⁹ *See* Office of the High Commissioner for Human Rights, *Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, *available at* <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/IR/Pages/SRIran.aspx>.

⁵⁰ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran* 3, Mar. 6, 2012, *available at* <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/100000063-report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran.html>.

⁵¹ *Id.* at 10.

⁵² *Id.* at 17.

⁵³ *Id.*

⁵⁴ *See UN Experts Condemn Wave of Arrest, Sentencing of Activists In Iran*, Office of the High Commissioner for Human Rights, Aug. 8, 2014, *available at* <http://www.un.org/apps/news/story.asp?NewsID=48442#.VZiDcU3H-P9>.

that Iran had arrested and detained at least 13 journalists since July 2014 for “vaguely worded ‘national security’ crimes such as ‘propaganda against the system,’ ‘assembly and collusion against the system,’ ...and ‘spreading falsehoods with intent to agitate the public consciousness.’”⁵⁵ Iran sentenced one journalist to death for allegedly posting comments to a social media site that “insulted” the Prophet.⁵⁶

The social, religious, and political dynamic and context in Iran are critical to understanding how a respected, law-abiding journalist like Jason Rezaian could be arrested, detained, and tried by the Iranian Government without cause and in violation of universally recognized human rights.

E. Rezaian’s Arrest and Detention

Rezaian and his wife, Yeganeh Salehi, were arrested in their home in Tehran by the IRGC on July 22, 2014.⁵⁷ At the time of Rezaian’s and Salehi’s arrest, Iranian officials broke into their residence, ransacked their home, and confiscated their personal belongings, including their computers, books, notes, passports, and Salehi’s U.S. visa application.⁵⁸ The day before their arrests, Rezaian’s and Salehi’s computers were hacked.

A photojournalist who had worked with both Rezaian and Salehi, and her husband, both Iranian-Americans, were arrested the same evening as Rezaian and Salehi.⁵⁹ All four were detained without charges or access to counsel.⁶⁰ Both the photojournalist and her husband were released without explanation within one month⁶¹ (the photojournalist was released on bail⁶²). Salehi was also released on bail after approximately sixty days in prison and multiple rounds of interrogation.⁶³ Salehi is not permitted to leave Tehran and remains subject to prosecution.

For roughly five months after Rezaian’s and his wife’s arrest, the Iranian Government issued no formal charges against them and provided no explanation of the basis for their arrest, in contravention of Iran’s Constitution and the international conventions to which Iran is a

⁵⁵ *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Ahmed Shaheed, supra note 2, at 10.*

⁵⁶ *Id.*

⁵⁷ *See An Up-Close Look at Jason Rezaian, the Post Reporter Now in an Iranian Jail*, Wash. Post, Apr. 20, 2015, available at http://www.washingtonpost.com/posttv/world/an-up-close-look-at-jason-rezaian-the-post-reporter-now-in-an-iranian-jail/2015/04/20/1d604bca-e7a3-11e4-8581-633c536add4b_video.html.

⁵⁸ *See id;* see also *International Campaign for Human Rights in Iran, Raid Leaves Arrested Washington Post Journalist’s Home “Looking Like a Scene from Hell”*, July 24, 2014, available at <http://www.iranhumanrights.org/2014/07/rezaian/>.

⁵⁹ *See Man Arrested with Rezaian Freed without Explanation*, Iran Times, Aug. 8, 2014, available at <http://iran-times.com/man-arrested-with-rezaian-freed-without-explanation/>.

⁶⁰ *See Gearan, Photojournalist Held in Iran is Released on Bail, supra note 11.*

⁶¹ *See Man Arrested with Rezaian Freed Without Explanation, supra note 59.*

⁶² *See Gearan, Photojournalist Held in Iran is Released on Bail, supra note 11.*

⁶³ *See Carol Morello, Iran Frees Wife of Post’s Tehran Correspondent, But He Remains in Custody*, Wash. Post, Oct. 6, 2014, available at http://www.washingtonpost.com/world/national-security/iran-frees-wife-of-posts-tehran-correspondent-but-he-remains-in-custody/2014/10/05/608ecece-1495-4468-89b2-2d327c439983_story.html; *See Berman, supra note 5.*

party.⁶⁴ Rezaian was also prohibited from meeting with the lawyer hired by his family.⁶⁵ The Iranian Government continues to refuse to recognize Rezaian's status as a U.S. citizen, and has maintained that the United States has no interest in the arrest and detention of Rezaian or anyone else possessing Iranian citizenship. Iranian officials have refused to provide information about the basis for Rezaian's detention to the United States or to Switzerland in its role as the United States' protecting power and the designated intermediary between the United States and Iran.⁶⁶

Rezaian's detention—now one year and counting—is contrary not only to international law, but also Iran's own domestic law. According to Article 242 of Iran's Criminal Code of Procedure for Public and Revolutionary Courts, the detention of an accused shall not exceed the minimum duration of the legal punishment for the alleged crime. Detention shall not exceed one year for any crime, with the exception of an offense carrying a potential death penalty (which is not the case here). As a consequence, Rezaian's ongoing detention now violates Iran's Criminal Code, as well as Iran's human rights obligations under both Iranian and international law.

F. *The Charges and Trial*

Rezaian was finally charged on December 7, 2014, after a ten-hour court proceeding that was closed to the public.⁶⁷ Rezaian was denied legal representation during this initial hearing, and was accompanied only by a Government-appointed Farsi translator, whose English-speaking ability was too deeply flawed for Rezaian to fully understand.⁶⁸ Rezaian was denied bail, despite the lack of any legal and factual basis to detain him under Iranian or international law.⁶⁹

On January 14, 2015, Rezaian's case was transferred to Branch 15 of the Revolutionary Court.⁷⁰ On February 1, 2015, Rezaian's case was assigned to Judge Abolghassem Salavati, the same judge that issued several subsequent temporary detention orders authorizing Rezaian's

⁶⁴ Constitution of the Islamic Republic of Iran, art. 32 (“In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible.”).

⁶⁵ Article 35 of the Constitution of the Islamic Republic of Iran provides, “[b]oth parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.” Article 128 of the Criminal Code of Procedure, however, provides that “in cases of crimes against the security of the country; the court can only permit the presence of the lawyer in the examining stage.” Criminal Code of Procedure (1999), available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>; see also Morello, *Iran Frees Wife*, supra note 63.

⁶⁶ See Morello, *Iran Frees Wife*, supra note 63; see also Statement of John Kerry, Secretary of State, *Charges in Iran Against U.S. Citizen Jason Rezaian*, available at <http://www.state.gov/secretary/remarks/2014/12/234736.htm>.

⁶⁷ See Carol Morello, *Washington Post Reporter Charged by Tehran Court*, Wash. Post, Dec. 7, 2014, available at http://www.washingtonpost.com/world/washington-post-reporter-charged-by-tehran-court/2014/12/06/11885813-eeb8-4b7d-8d8b-34066f085c1e_story.html.

⁶⁸ See *id.*

⁶⁹ See Statement of John Kerry, supra note 66; Lauren Gambino, *Family of US Reporter Jailed in Iran Tells of “Inconceivable” Five-Month Ordeal*, The Guardian, Dec. 22, 2014, available at <http://www.theguardian.com/world/2014/dec/22/jason-rezaian-reporter-detained-iran>.

⁷⁰ See *Iran Court Holds Second Hearing in Espionage Trial of Washington Post Journalist*, REUTERS, June 8, 2015, available at <http://uk.reuters.com/article/2015/06/08/uk-iran-usa-trial-idUKKBN0000YP20150608>.

continued imprisonment.⁷¹ Judge Salavati is one of six Iranian judges accused in recent years of leading a politically motivated crackdown against journalists and political activists in Iran.⁷² He ordered the execution of several individuals following the 2009 elections.⁷³ In 2011, the European Union sanctioned Judge Salavati for human rights violations, including presiding over “show trials” in 2009 and sentencing more than one hundred political activists, human rights activists, and journalists to lengthy prison sentences.⁷⁴

After charging Rezaian, Judge Salavati rejected Rezaian’s and his family’s choice of counsel, an Iranian lawyer named Masoud Shafii, who has experience handling high-profile, political cases in the Revolutionary Courts. Shafii had previously represented the “American hikers” detained in Iran in their case before Salavati in 2011.⁷⁵ Although Shafii had obtained the endorsement of the Iranian Lawyer’s Guild and appealed to the Head of the Revolutionary Courts, Judge Salavati still prohibited Shafii from representing Rezaian; Judge Salavati offered no explanation or justification for his decision.⁷⁶ In late February 2015, Judge Salavati arbitrarily imposed on Rezaian a one-week deadline to select an attorney that the Court deemed “acceptable.”⁷⁷ Rezaian initially asked to be represented by at least one lawyer who spoke English, but ultimately agreed to be represented by Leila Ahsan, who was also representing Rezaian’s wife.⁷⁸

Ms. Ahsan appears to have done her utmost to represent Rezaian’s interests under near-impossible circumstances, but she has faced insurmountable limitations that have compromised her ability to effectively represent and defend Rezaian. Rezaian had no access to Ahsan or any other legal counsel for roughly nine months following his arrest.⁷⁹ The only meeting between Rezaian and Ahsan prior to trial occurred on April 20, 2015, shortly before his trial started, but even that meeting lasted only 90 minutes and was not private; rather, it was held in the presence

⁷¹ See Rick Gladstone, *Hardhanded Judge Is Picked for American Reporter’s Trial in Iran*, *Rights Group Says*, N.Y. TIMES, Jan. 31, 2015, available at <http://www.nytimes.com/2015/02/01/world/middleeast/hardhanded-judge-is-picked-for-american-reporters-trial-in-iran-rights-group-says.html>; International Campaign for Human Rights in Iran, *Jason Rezaian To Be Put on Trial Soon, Says Head of Tehran Judiciary*, Jan. 30, 2015, available at <http://www.iranhumanrights.org/2015/01/jason-rezaian-trial-soon/>.

⁷² See Dehghan, *Six Judges*, *supra* note 34.

⁷³ See Gladstone, *Hardhanded Judge*, *supra* note 71.

⁷⁴ Council Regulation (EU) No. 359/2011, Apr. 12, 2011, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0359>.

⁷⁵ Farhad Pouladi, *Iran Judiciary ‘Picks’ Lawyer for Detained Washington Post Reporter*, Payvand Iran News, Mar. 3, 2015, available at <http://www.payvand.com/news/15/mar/1011.html>.

⁷⁶ See Nargess Tavassolian, *Judge Blocks Progress in Jason Rezaian Case*, Iran Wire, Feb. 20, 2015, available at <http://en.iranwire.com/features/6320/>.

⁷⁷ See *id.* See also Lydia DePillis, *Iran Allows Lawyer for Post Reporter, But Not His Choice*, Wash. Post, Mar. 1, 2015, available at http://www.washingtonpost.com/world/detained-post-correspondent-is-allowed-a-lawyer-but-not-one-he-wants/2015/03/01/2779648a-c056-11e4-a188-8e4971d37a8d_story.html.

⁷⁸ Rick Gladstone, *After Seven Months in Jail, U.S. Journalist in Iran is Allowed to Hire Lawyer*, N.Y. Times, Mar. 2, 2015, available at http://www.nytimes.com/2015/03/03/world/middleeast/iran-allows-jason-rezaian-to-hire-lawyer-after-7-months-in-jail.html?_r=0.

⁷⁹ Rezaian hired defense attorney Leila Ahsan in March 2015. See DePillis, *supra* note 77; Martin Baron *Issues New Statement on Jason Rezaian’s Lack of Access to a Lawyer*, Wash. Post, Apr. 14, 2015, available at <http://www.washingtonpost.com/pr/wp/2015/04/14/martin-baron-issues-new-statement-on-jason-rezaians-lack-of-access-to-a-lawyer/>.

of two Government interrogators and a translator.⁸⁰ Furthermore, because Ahsan speaks only limited English and Rezaian speaks only limited Farsi, they could not converse directly and instead were forced to speak through the translator, which effectively reduced by half the time they had to discuss the case. This introductory meeting—in the presence of Iranian officials—was the only opportunity Rezaian had to prepare for trial with his counsel.⁸¹

Rezaian’s trial began with a short, perfunctory proceeding on May 26, 2015; after this first day, the trial was promptly adjourned and delayed without explanation.⁸² The trial resumed on June 8 and July 13, with very little notice, and each time was adjourned after one day and further delayed without explanation.⁸³ Various media outlets speculated that the timing of the hearings and intermittent delays was driven by the nuclear negotiations between the United States (and five other countries) and Iran, which were extended several times.⁸⁴ The details of the hearings that have taken place have not been publicly disclosed. In fact, the Prosecutor General informed the Iranian Student News on June 8 that “making public the events of even a public trial is illegal.”⁸⁵ The article indicated that the Prosecutor General will investigate and prosecute another news agency that purported to describe (albeit inaccurately) parts of Rezaian’s first court appearance.⁸⁶

Although the trial commenced nearly two months ago, the Revolutionary Court has yet to publicly state the charges against Rezaian and the proceedings remain closed to the public. According to publicly reported statements by Rezaian’s attorney in Iran and others, Rezaian has been charged with espionage, collaborating with hostile governments, collecting and distributing information about foreign policies “with malicious intent,” and conducting “propaganda against the establishment.”⁸⁷ Notably, Iran has not suggested that Rezaian committed any of the “culpable criminal acts” that may be prosecuted under Iranian law, including “abusing the

⁸⁰ See *Full Statement on Jason Rezaian from Post’s Executive Editor Martin Baron*, Wash. Post, Apr. 20, 2015, available at http://www.washingtonpost.com/world/full-statement-on-jason-rezaian-from-posts-executive-editor-martin-baron/2015/04/20/1fbb97b2-e771-11e4-9767-6276fc9b0ada_story.html.

⁸¹ See *Martin Baron Issues New Statement*, supra note 79.

⁸² See Thomas Erdbrink, *Jason Rezaian of Washington Post Goes on Trial in Iran*, N.Y. Times, May 26, 2015, available at <http://www.nytimes.com/2015/05/27/world/middleeast/american-journalist-jason-rezaian-goes-on-trial-in-iran.html>.

⁸³ See Rick Gladstone, *Iran Hearing is Held in Reporter’s Trial*, N.Y. Times, June 8, 2015, available at http://www.nytimes.com/2015/06/09/world/middleeast/iran-hearing-is-held-in-reporters-trial.html?_r=0.

⁸⁴ See, e.g., Rick Gladstone, *Jason Rezaian Trial in Iran May Be More About Leverage than Justice*, May 27, 2015, available at <http://www.nytimes.com/2015/05/28/world/middleeast/jason-rezaian-trial-in-iran-may-be-more-about-leverage-than-justice.html>.

⁸⁵ See Daniela Deane and Brian Murphy, *Post Reporter Faces Tehran Court as Closed-Door ‘Espionage’ Trial Resumes*, Wash. Post, June 8, 2015, available at http://www.washingtonpost.com/world/trial-of-post-correspondent-resumes-behind-closed-doors-in-tehran/2015/06/08/992c6c24-032e-11e5-93f4-f24d4af7f97d_story.html.

⁸⁶ See *id.*

⁸⁷ See Rick Gladstone and Thomas Erdbrink, *Charges Against Jason Rezaian, Washington Post Reporter Held in Iran, Include Espionage*, N.Y. Times, Apr. 20, 2015, available at http://www.nytimes.com/2015/04/21/world/middleeast/washington-post-reporter-held-in-iran-faces-4-charges-lawyer-says.html?_r=0.

press,” “dishonoring of persons,” or “disclosure of private secrets.”⁸⁸ To the contrary, a comprehensive review of the articles written by Rezaian reflects the legality, accuracy, and integrity of his reporting on myriad topics, including the effect of economic sanctions against Iran, the currency market in Tehran, and, most recently, the growing enthusiasm for baseball among Iranians.⁸⁹ Not one of Rezaian’s articles contains any propaganda, much less any evidence of criminal activity, such as espionage or the unlawful disclosure of secret information. The Government of Iran therefore cannot credibly assert that Rezaian’s reporting was unlawful, even under Iranian law.⁹⁰

The vague espionage-related charges the Government has alleged, which closely resemble those in other cases that Special Rapporteur Shaheed deemed concerning in 2014, carry a maximum sentence of ten to twenty years⁹¹—yet there plainly are no legal or factual bases for such charges here. The U.S. Department of State has described the charges against Rezaian as “patently absurd.”⁹² Rezaian’s employer, *The Washington Post*, has likewise described the charges as “ludicrous,” “absurd,” and “transparently baseless.”⁹³ Other reporters and news organizations around the world have observed that these charges are so baseless and broad that they could be leveled at any journalist simply for cultivating sources and gathering and disseminating information as part of his or her job.⁹⁴ Reporters Without Borders stated that “[i]t is time the international community seriously tackled the Iranian authorities about respect for

⁸⁸ Iran “only considers liable [for] prosecution those who, in their engagement in the contempt, abusing the press, disrepute, or dishonoring of persons or their denigration or the disclosure of private secrets, and slandering, commit culpable or criminal acts.” Human Rights Council, *Response of the Islamic Republic of Iran to Draft Report of Special Rapporteur for Submission to the 69th Session of the UN General Assembly*, at 13-14, available at <http://shaheedoniran.org/wp-content/uploads/2014/10/Response-of-the-Islamic-Republic-of-Iran-to-Draft-Report-of-Special.pdf>. These limited bases for prosecution “assist the community to benefit to the utmost from freedom of expression.” *Id.*

⁸⁹ See, e.g., Jason Rezaian, *Iranian Authorities Acknowledge Impact of Sanctions*, Wash. Post, July 3, 2012, available at http://www.washingtonpost.com/world/middle_east/iranian-authorities-acknowledge-impact-of-sanctions/2012/07/02/gJQA1hDcIW_story.html; Jason Rezaian, *Trades at Tehran’s Currency Bazaar Ripple Through Iran’s Struggling Economy*, Wash. Post, July 10, 2012, available at http://www.washingtonpost.com/world/middle_east/trades-at-tehrans-currency-bazaar-ripple-through-irans-struggling-economy/2012/07/09/gJQAjbrDZW_story.htm; Rezaian, *In Iran, A Spark of Enthusiasm for America’s National Pastime*, *supra* note 8.

⁹⁰ For a complete list of the articles Rezaian has written for *The Washington Post* (as well as articles in which Rezaian’s name otherwise appears), see <http://www.washingtonpost.com/newssearch/search.html?query=%22Jason+Rezaian%22&contenttype=&searchType=&blogName=&sort=Date#page-15>.

⁹¹ See Carol Morello, *Post Reporter Jailed In Iran Faces 4 Charges Including Espionage*, Wash. Post, Apr. 20, 2015, available at https://www.washingtonpost.com/world/national-security/post-reporter-jailed-in-iran-faces-4-charges-including-espionage/2015/04/20/3ea79ac8-e757-11e4-aae1-d642717d8afa_story.html.

⁹² Bill Trott, *No Confirmation of Iranian Charges Against U.S. Journalist: State Department*, Reuters, Apr. 20, 2015, available at <http://www.reuters.com/article/2015/04/20/us-usa-iran-detainees-state-idUSKBN0NB1WU20150420>.

⁹³ See *Full Statement on Jason Rezaian from Post’s Executive Editor Martin Baron*, *supra* note 80.

⁹⁴ See Simon Carswell, *America Letter: Journalist Jailed for Reporting on Life in Iran*, Irish Times, June 13, 2015, available at <http://www.irishtimes.com/news/world/uk/america-letter-journalist-jailed-for-reporting-on-life-in-iran-1.2247887>.

fundamental rights and the release of detained journalists and online activists.”⁹⁵ An independent group of human rights experts, including the Chair-Rapporteur of the United Nations Working Group on Arbitrary Detention, issued a statement on August 8, 2014, condemning the detention of Rezaian and other journalists, remarking, “[i]ndividuals and journalists exercising their right to freedom of expression and opinion must be protected, not arrested and prosecuted.”⁹⁶ In short, there is universal agreement outside the most conservative faction of the Iranian Government that Rezaian’s rights have been violated and that the charges against him lack any legal or factual basis whatsoever.

G. Conditions of Rezaian’s Imprisonment

Since his arrest, Rezaian has been held in Iran’s Evin prison,⁹⁷ a facility notorious for “cruel and prolonged torture” and “abuse” of detainees.⁹⁸ For the first weeks and months of his detention, Rezaian was relentlessly interrogated, held in solitary confinement, and denied much-needed medical care. He has been humiliated, mistreated, and deprived of even the most basic facilities; at various points in his detention, he has even been denied access to a bathroom. For roughly the first forty-five days, he was prohibited from having any contact with individuals inside or outside the prison; during this period, he was not even allowed to see or speak with his wife.⁹⁹ When Rezaian and his wife were finally allowed to speak to each other, they were permitted only a four-minute conversation. Since then, Rezaian has been allowed only tightly controlled, periodic contact with his wife and only two visits from his mother.¹⁰⁰ He has otherwise been isolated and cut off from the outside world. A diplomatic envoy from Switzerland, acting as the protecting power for the United States in Iran, was denied consular access to Rezaian in August 2014.¹⁰¹ Counsel on this brief have had not access to Rezaian since his arrest on July 22, 2014.

Rezaian has been consistently denied adequate medication for his high blood pressure, a condition that requires daily medication and regular treatment by a physician.¹⁰² His blood

⁹⁵ *Detained US Journalist Used in Iranian Power Struggle*, Reporters Without Borders, Apr. 22, 2015, available at <http://en.rsf.org/iran-detained-us-journalist-used-in-22-04-2015,47794.html>.

⁹⁶ *Iran: UN Rights Experts Condemn the Recent Wave of Arrest and Sentencing of Civil Society Actors*, United Nations Office of the High Commissioner for Human Rights, Aug. 8, 2014, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14926&LangID=E>.

⁹⁷ See Saeed Kamali Dehghan, *Washington Post’s Tehran Reporter and Three Other Journalists Arrested in Iran*, *The Guardian*, July 25, 2014, available at <http://www.theguardian.com/world/2014/jul/25/iran-washington-post-tehran-reporter-jason-rezaian-journalists-arrested>

⁹⁸ See *Iran 2014 Human Rights Report*, U.S. Department of State, June 25, 2015, at 5, available at <http://www.state.gov/documents/organization/236810.pdf>.

⁹⁹ See Dehghan, *Washington Post’s Tehran Reporter*, *supra* note 97.

¹⁰⁰ Mary Rezaian, *Opinion, Please, Respect My Son’s Rights*, CNN, Feb. 26, 2015, available at <http://www.cnn.com/2015/02/13/opinion/rezaian-iran-detainee/>. Jason Rezaian’s mother, Mary Rezaian, wrote this in February 2015: “[A]s a dual citizen and therefore Iranian mother, it is my right to visit my son in prison. In fact, in the early months, I was told the Iranians were asking Jason, ‘Where is your mother?’ when I wasn’t there all the time because they are so accustomed to seeing mothers waiting outside the prison gates. Yet in January, I was given no assurances of permission for further visits.” *Id.*

¹⁰¹ See Dehghan, *Washington Post’s Tehran Reporter*, *supra* note 97; Morello, *Iran Frees Wife*, *supra* note 63.

¹⁰² Rezaian is being provided with some medication for his blood pressure condition, although it is not the medication prescribed to him. See Joby Warrick and Carol Morello, *Detention Taking ‘Devastating Toll’ on Post*

pressure condition worsens in times of acute stress, yet his prescribed medication has been withheld, and he has been given at most an inadequate substitute medication, even during his trial. For more than a month, Rezaian was denied medical treatment for debilitating and painful eye and urinary tract infections.¹⁰³ He also suffers from a respiratory condition, which has worsened as a result of conditions in prison.¹⁰⁴ As a result of stress, poor nourishment, and the cumulative effect of his detention and mistreatment, Rezaian has lost a dramatic amount of weight—estimated at 50 pounds—since his arrest and incarceration.¹⁰⁵

For at least two months following his arrest, Rezaian was forced to endure near-daily interrogation sessions lasting an average of eight to ten hours. He was typically hooded when transported between his cell and the interrogation room, apparently in an effort to shame and alienate him, and to keep him disoriented and anxious about his imprisonment. Rezaian's interrogators also used isolation and threats of physical harm to Rezaian's wife in unsuccessful attempts to force Rezaian to confess to crimes that he did not commit. All of this misconduct in blatant violation of Iran's obligations under international human rights law and notwithstanding the fact that the Iranian Constitution purports to prohibit all forms of torture.¹⁰⁶ Moreover, it is illegal under Iranian law to subject a detainee to anything beyond 20 consecutive days of solitary confinement,¹⁰⁷ yet Rezaian was held in solitary confinement for as much as 90 days or more, following his arrest. Prolonged solitary confinement, in and of itself, is widely regarded as a form of abuse or even torture.¹⁰⁸ After a year in captivity, the longest detention of any Western journalist in Iran, Rezaian is suffering, his mental health and emotional well-being are in decline,¹⁰⁹ and his physical health continues to deteriorate.

Reporter Locked up in Iran, Wash. Post, Dec. 10, 2014, available at http://www.washingtonpost.com/national/detention-taking-devastating-toll-on-post-reporter-detained-in-iran/2014/12/10/bf4036a8-8015-11e4-9f38-95a187e4c1f7_story.html. A recent report discussing conditions at Evin Prison indicates that even so-called medication at the facility can be dangerous and possibly life-threatening: "There were reports that medical staff at Evin Prison routinely mixed a variety of medications into a common solution, which they distributed to inmates with little regard to individual medical conditions, leading to side effects that included heart attacks." See *Iran 2014 Human Rights Report*, *supra* note 98.

¹⁰³ See *Brother of WaPo Journalist Held in Iran: "It's Taken a Huge Toll on Him"*, On the Record with Greta Van Susteren, Apr. 20, 2015, available at <http://insider.foxnews.com/2015/04/20/brother-wapo-journalist-held-iran-its-taken-huge-toll-him>; see also Gambino, *Family of US Reporter Jailed in Iran*, *supra* note 69.

¹⁰⁴ Ali Rezaian, Testimony Before the House of Representatives, Foreign Affairs Committee, Americans Detained in Iran, June 2, 2015.

¹⁰⁵ See On the Record with Greta Van Susteren, *supra* note 103; Joby Warrick and Carol Morello, *Detention Taking 'Devastating Toll' on Post Reporter Locked up in Iran*, Wash. Post (Dec. 10, 2014), available at http://www.washingtonpost.com/national/detention-taking-devastating-toll-on-post-reporter-detained-in-iran/2014/12/10/bf4036a8-8015-11e4-9f38-95a187e4c1f7_story.html.

¹⁰⁶ See *Iran 2014 Human Rights Report*, *supra* note 98.

¹⁰⁷ Regulatory Code of 11 Dec. 2005 (Governing the Prisons Organization and Security and Corrective Measures), art. 175 (2005), available at <http://www.prisons.ir/index.php?Module=SMMPageMaster&SMMOp=View&PageId=27>.

¹⁰⁸ See *Iran 2014 Human Rights Report*, *supra* note 98.

¹⁰⁹ See On the Record with Greta Van Susteren, *supra* note 103; Warrick and Morello, *Detention taking 'devastating toll'*, *supra* note 105.

III. Legal Analysis

For the reasons set forth in this Petition, the detention of *The Washington Post* correspondent Jason Rezaian constitutes an arbitrary deprivation of liberty¹¹⁰ under Categories I, II, and III, as set forth by the United Nations Working Group on Arbitrary Detention (“Working Group”).¹¹¹

Rezaian’s arrest and detention must be assessed in the context of the international legal and human rights instruments and obligations that Iran has ratified and repeatedly pledged to uphold. Under Article 9 of the Iranian Civil Code, Iran must give effect to every international treaty to which it is a party.¹¹² In 1948, Iran became an original signatory to the Universal Declaration of Human Rights (“UDHR”), thereby committing to adhere to the most basic and universal principles of human rights law.¹¹³ The UDHR has served as the foundation of modern international human rights law and is broadly recognized as customary international law.¹¹⁴ Many of the UDHR’s provisions, including those most relevant here, have been further codified in the ICCPR and the ICESCR. Iran signed and ratified without reservation both the ICCPR and the ICESCR, and Iran therefore is fully bound by those treaties as well.¹¹⁵ Finally, Iran is a party to the Charter of the United Nations and the Statute of the International Court of Justice, both of which recognize the binding force of customary international law.¹¹⁶

Iran has also publicly recognized on numerous occasions its obligation to abide by international human rights law as embodied in these various conventions and instruments. In 2006, for example, the representative from the Permanent Mission of the Islamic Republic of Iran to the United Nations (“Permanent Mission”) publicly recommitted Iran to fully honoring

¹¹⁰ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), art. 9(1), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

¹¹¹ Some arguments made below are relevant to more than one category of arbitrariness, but, for the sake of brevity, will not be repeated throughout.

¹¹² Article 9 states that “Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other government, shall have the force of law.”

¹¹³ See *The Foundation of International Human Rights Law*, the Universal Declaration of Human Rights, United Nations, available at http://www.un.org/en/documents/udhr/hr_law.shtml.

¹¹⁴ Customary international law is generally understood to consist of a set of principles that “results from a general and consistent practice,” which are followed by States based on a “sense of legal obligation.” See Statute of the International Court of Justice, art. 38.b. (defining customary international law as “international custom, as evidence of a general practice accepted as law”); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102(2) (1987); see also Statute of International Court of Justice, Art. 38.b. (defining customary international law). “These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations.” *Definition of Key Terms Used in the UN Treaty Collection*, UN Treaty Collection, available at https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml.

¹¹⁵ International Covenant on Civil and Political Rights (“ICCPR”) of Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976; signed by Iran on Apr. 4, 1968; ratified by Iran on June 24, 1975); International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 933 U.N.T.S. 3 (entered into force on Jan. 3, 1976; signed by Iran on Apr. 4, 1968; ratified by Iran on June 24, 1975).

¹¹⁶ See Statute of the International Court of Justice, art. 38.b. (defining customary international law as “international custom, as evidence of a general practice accepted as law”).

the international human rights instruments to which Iran is a party, stating that Iran is “firmly determined and prepared to maximally utilize its potentials and capacities” to advance “the noble and common objectives” of international human rights.¹¹⁷ In addition, just last year, Iran’s Permanent Mission submitted a response to the Draft Report of the Special Rapporteur for Submission to the 69th Session of the UN General Assembly, stating that Iran “has consistently demonstrated its firm resolve[] to cooperate with international human rights mechanism[s].”¹¹⁸ Iran’s Permanent Mission also emphasized in that submission that Iran has taken “numerous steps to promote and improve [the] situation of human rights at national and international levels” and noted that Iran “considers itself fully committed in practice to protect and observe these rights.”¹¹⁹ The Chargé d’Affaires of the Permanent Mission of the Islamic Republic of Iran to the UN reaffirmed Iran’s commitment to human rights before the General Assembly in October 2014, stating that Iran “has consistently demonstrated its firm resolve to cooperate with the international human rights mechanisms...has taken numerous steps to promote and protect the situation of human rights at the national and international levels and considers itself fully committed to protecting and observing these rights.”¹²⁰

Iran has also pledged to assist the Working Group in investigating cases of deprivation of liberty that appear arbitrary or otherwise inconsistent with applicable international standards. Iran noted in February 2015 that it cooperated with the Working Group during its visits to Iran and “spared no efforts” to ensure that the Working Group could hold its meetings in Iran “in a transparent manner” and “without any obstructions.”¹²¹ Iran stated its willingness to “have constructive cooperation with all UN mechanisms, including with the Working Group on Arbitrary Detention.”¹²²

The arrest and unlawful detention of Rezaian—one of many journalists and activists imprisoned by Iran without legal cause or justification—flouts international law and demonstrates that certain conservative, hardline factions in Iran simply do not take seriously Iran’s treaty obligations and binding commitments to international human rights law. Indeed, Iran has demonstrated in this case and many others that it has a fundamental lack of respect for any rule of law when individuals seek to exercise certain rights and assert particular freedoms.

The freedom of speech, freedom of expression, and freedom of the press are three such categories of rights and freedoms that Iran consistently violates and suppresses. In 2014, the Government of Iran continued to “severely restrict[] freedom of speech and of the press,” to “use[] the law [as a tool] to intimidate or prosecute”, and to carry on “a campaign of press

¹¹⁷ *The Islamic Republic of Iran’s Pledges and Commitments on Human Rights*, Permanent Mission of the Islamic Republic of Iran, May 8, 2006, available at <http://www.un.org/ga/60/elect/hrc/iran.pdf>.

¹¹⁸ *Response of the Islamic Republic of Iran to Draft Report of Special Rapporteur for Submission to the 69th Session of the UN GA*, *supra* note 88.

¹¹⁹ *Id.*

¹²⁰ *Letter and Annex to the Letter Dated 24 October 2014 from the Chargé d’affaires of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General for Submission to the 69th Session of the UN GA*, 2/27 (Oct. 29, 2014).

¹²¹ *See Response of the Islamic Republic of Iran to Draft Report of the Special Rapporteur for Submission at the 28th Session of the United Nations Human Rights Council* ¶ 30 (Feb. 19, 2015).

¹²² *Id.*

intimidation.”¹²³ The Government of Iran “ignored or denied repeated requests for visits from the UN special rapporteurs” throughout 2014 and for years prior, making 2005 the last time a UN human rights agency was able to visit Iran.¹²⁴ On June 5, 2015, UN Special Rapporteur Shaheed expressed concern regarding Iran’s “detention of journalists and human rights defenders[,] [which] weakens the protection of human rights of all in Iran.”¹²⁵ Referring to Rezaian’s detention specifically, Special Rapporteur Shaheed stated that “[s]ilencing these critical voices is unacceptable—it undermines public debate and deprives Iranians and the rest of world of important information on the reality in the country.”¹²⁶

Iranian President Rouhani responded to this criticism on June 11, 2015, stating that he is “committed to pursuing the *legal rights of all Iranians*, even citizens of other countries who live in Iran, and ... Rezaian’s case is *no exception*.”¹²⁷ Yet, Iran’s actions stand in stark contrast to those words, much as Iran’s actions stand in stark contrast to its international human rights obligations. If Iran’s legal obligations are to mean anything, President Rouhani and the Government of Iran must follow through on their commitments and release Rezaian immediately.

A. Category I: No Basis For Rezaian’s Detention

An arbitrary detention falls under Category I when there is no legal basis justifying the detention. Specifically, a Category I deprivation of liberty occurs “[w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.”¹²⁸ The Working Group regards detention as “arbitrary” when a government’s disregard for international norms and its own protections for the right to a fair trial “is of such gravity as to give the deprivation of liberty an arbitrary character.”¹²⁹

As detailed below, Rezaian’s detention is arbitrary under Category I because no evidence exists to show that he committed any of the crimes for which he is being prosecuted. Rezaian has been detained simply because he is a journalist and a dual U.S.-Iranian national, making his detention *per se* unlawful under Working Group precedent.

Although Iran has refused to make public the charges against Rezaian, they appear to include: engaging in espionage; collecting confidential information about Iran’s domestic and foreign policy issues; collaborating with hostile governments; and spreading propaganda about the Islamic Republic. Special Rapporteur Shaheed has noted that such “vague references to

¹²³ See *Iran 2014 Human Rights Report*, *supra* note 98, at 15.

¹²⁴ See *id.*, at 29-30.

¹²⁵ *Silencing Journalist and Activists Weakens Protection of Human Rights in Iran, UN Expert Warns*, UN Office of the High Commissioner on Human Rights, June 5, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16042&LangID=E>.

¹²⁶ *Id.* A report released in June 2015 by the United States Department of State, which “draws heavily on non-[U.S.] government sources,” describes a climate of censorship and intimidation aimed at journalists. See *Iran 2014 Human Rights Report*, *supra* note 98, at 16.

¹²⁷ *Rouhani Says He is Following Case of Post Reporter*, Associated Press, June 13, 2015 (emphasis added), available at <http://wncn.com/ap/rouhani-says-he-is-following-case-of-post-reporter/>.

¹²⁸ *Report of the Working Group on Arbitrary Detention*, A/HRC/16/47, Annex ¶ 7(b) (“Revised Methods of Work”), Jan. 19, 2011, ¶¶ 22–24.

¹²⁹ *Id.*

threats to national security, propaganda against the system and insult to authorities to prosecute and detain journalists or activists is in contradiction to both international norms relating to freedoms of expression and association and the principle of legality.”¹³⁰ Incarcerating and prosecuting Rezaian for such vague and ambiguous crimes is itself indicative of arbitrary detention.¹³¹

Iran has also failed to provide Rezaian and his counsel any opportunity to present or cross-examine witnesses or even examine and challenge the purported evidence against him. It has declined to allow independent monitors to be present during the series of legal proceedings that have occurred to date. Indeed, not even family or representatives of Rezaian’s employer, *The Washington Post*, have been allowed to attend any of the pre-trial or trial proceedings.

Presumably Iran has denied would-be observers access to the proceedings because any independent observer would quickly recognize the lack of due process and the complete absence of legal and factual merit to the charges and allegations.¹³² Given the complete absence of evidence and the lack of any due process, mere observation of the trial would satisfy any independent observer that the detention was both arbitrary and baseless.

By way of example, the Iranian Government purports to rely on two pieces of what it calls “evidence” in support of the charges against Rezaian. Although the Iranian Government has failed to produce the evidence, it is apparent from public descriptions that the first is an unsolicited job application that Rezaian submitted electronically via an online form on the Obama-Biden “transition team” website following the 2008 election of U.S. President Barack Obama. Rezaian submitted his application online, along with countless others who were interested in becoming part of the new administration. In his online application, Rezaian offered to help “break down barriers” between the United States and Iran. Rather than reflect criminal intent, this application reveals the pride and optimism of an Iranian-American seeking to improve relations between Iran and the United States. In any case, Rezaian’s application was unsuccessful; it did not result in any contact with the Obama-Biden transition team or the Obama Administration, and Rezaian was never offered a position in the U.S. government. Instead, Rezaian continued working as a freelance journalist in Iran until roughly four years later when he began working for *The Washington Post* in Iran.

The second piece of “evidence” discussed in public reports consists of correspondence between Rezaian and U.S. officials in Dubai, relating to a U.S. visa application for Rezaian’s wife. In the correspondence, Rezaian asked U.S. officials to expedite processing of the visa in light of the looming Iranian election, and he identified his concern that “sometimes [Iran is] not

¹³⁰ *Silencing Journalist and Activists Weakens Protection of Human Rights in Iran*, *supra* note 125.

¹³¹ *See, e.g., Chérif Al Karoui and Hichem Matri v. Kingdom of Saudi Arabia*, Op. No. 45/2011, UN Doc. A/HRC/WGAD/2011/45, ¶¶ 11, 55 (2011) (finding that two applicants had been arbitrarily detained where they had not been informed of the charges against them or the reasons for their detention “except for a vague reference to suspicions of terrorism”).

¹³² These due process violations are addressed in further detail *infra* III.C.

the best place to be a journalist.”¹³³ Such correspondence is commonplace between U.S. nationals and U.S. officials overseas; it in no way supports the charges against Rezaian and instead conforms with the very widely held view that there is “a climate of fear” among journalists working in Iran.¹³⁴ During and after the 2009 Iranian elections, many reporters were arrested, detained, interrogated, and further imprisoned or deported. Rezaian’s request reflects the reality that he and his wife had a reasonable concern for their safety in Iran, especially given their positions as journalists in a country that routinely arrests, detains, and tries journalists simply for doing their jobs. If anything, Iran’s detention of Rezaian and his wife makes clear that his request for an expedited U.S. visa was prudent.

The Government’s amorphous allegations of espionage and related crimes are best interpreted as penalties for Rezaian’s work as a journalist in Iran, and as a misuse of Rezaian as leverage by hardliners in Iran who apparently are opposed to the tentative nuclear deal and any form of détente with the West. The pretextual nature of the charges against Rezaian is made plain by the Government’s inexcusable delay in bringing formal charges against him and by the Government’s arrest of three other journalists, including Rezaian’s wife, on the same day that Rezaian was arrested.¹³⁵ Moreover, the Government has not—and, indeed, cannot—allege that Rezaian committed any of the crimes for which journalists may be prosecuted under Iran’s domestic law, such as so-called abuse of the press, dishonoring of persons, disclosure of private secrets, and slandering.¹³⁶ To the extent Rezaian communicated with a network of sources inside and outside Iran, he did so lawfully in his role as a journalist and with the tacit approval of Iran’s Ministry of Culture and Islamic Guidance (Ershad), which issued his credentials, reviewed his articles, and closely monitored his professional work as a journalist.

The Working Group has consistently found that Iran’s detention of individuals for practicing journalism and for otherwise exercising their civil and political human rights is arbitrary and violates international law.¹³⁷ For example, in 2001, the Working Group found that a group of journalists and academics had been wrongfully prosecuted for peacefully exercising their rights to freedom of opinion and expression, and thus that their detention had been politically motivated and arbitrary.¹³⁸ In 2006, the Working Group similarly found that Arash

¹³³ Nasser Karimi, *Iranian Security Court Begins Closed-Door Espionage Trial of Detained Washington Post Reporter*, Associated Press, May 26, 2015, available at <http://www.startribune.com/iran-begins-trial-of-detained-washington-post-reporter/304963681/>.

¹³⁴ See *Iran 2014 Human Rights Report*, *supra* note 98, at 15.

¹³⁵ Ramin Mostaghim and Patrick J. McDonnell, *Iran Detains Washington Post Reporter, Others Without Explanation*, LA Times, Aug. 6, 2014, available at <http://www.latimes.com/world/middleeast/la-fg-iran-journalists-20140807-story.html>.

¹³⁶ *Response of the Islamic Republic of Iran to Draft Report of Special Rapporteur for Submission to the 69th Session of the UN GA*, *supra* note 88.

¹³⁷ *Ezzatollah Sahabi v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, UN Doc. E/CN.4/2003/8/Add.1 at 41 (2001); *Syamak Pourzand v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, UN Doc. E/CN.4/2004/3/Add.1 at 45 (2003); *Arash Sigarchi v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 19/2006, UN Doc. A/HRC/4/40/Add.1 at 88 (2006); *Khosro Kordpour and Massoud Kordpour v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 52/2013, UN Doc. A/HRC/WGAD/2013/52 (2014).

¹³⁸ *Ezzatollah Sahabi v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, UN Doc. E/CN.4/2003/8/Add.1 at 41 (2001).

Sigarchi, a journalist who was wrongfully convicted on charges of espionage and related “crimes” based upon his work defending other journalists, had been arbitrarily detained for exercising his freedom of expression.¹³⁹ In 2013, the Working Group found that two journalist brothers, Kohsro and Massoud Kordpour, had been illegally prosecuted by the Iranian Government for exercising their rights to freedom of expression. The Working Group noted that the Government’s ransacking of the journalists’ home evinced the Government’s political motivation, and that the charges against the brothers were “general, vague, and ambiguous.”¹⁴⁰ The Government’s similar ransacking of Rezaian’s residence and unjustified detention of Rezaian and his wife are likewise evidence that Rezaian is yet another example of the Iranian Government’s misuse of criminal allegations as a pretext for targeting journalists for their exercise of fundamental rights.

In short, the Government of Iran has provided no evidence or legal basis for Rezaian’s continued detention. His arrest and detention on dubious charges violates the fundamental prohibition under international law against arbitrary detention; accordingly, Rezaian’s arrest and detention constitute a clear Category violation and he should be set free.

B. *Category II: Violation of Rezaian’s Substantive Fundamental Rights*

A detention is considered arbitrary under Category II when it results from the exercise of certain substantive fundamental rights protected by international law.¹⁴¹ These rights include, among others, the freedom of opinion and expression,¹⁴² the freedom of association,¹⁴³ and the freedom to participate in public affairs.¹⁴⁴ The Government of Iran has deprived Jason Rezaian of his liberty based solely on his exercise of these most basic rights. Rezaian’s detention is therefore arbitrary and unlawful under Category II.

1. The Iranian Government Detained Rezaian Because He Exercised His Rights to Freedom of Opinion and Expression

Article 19 of the ICCPR and Article 19 of the UDHR recognize a fundamental right to freedom of opinion and expression, including the “freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁴⁵ Iran must comply with these provisions, which ensure that journalists, authors, artists,

¹³⁹ *Syamak Pourzand v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, UN Doc. E/CN.4/2004/3/Add.1 at 45 (2003).

¹⁴⁰ *Arash Sigarchi v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 19/2006, UN Doc. A/HRC/4/40/Add.1 at 88 (2006).

¹⁴¹ A detention is arbitrary under Category II “[w]hen 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 [UDHR] and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the [ICCPR].” *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, available at <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

¹⁴² *ICCPR* arts. 18, 19; *UDHR* arts. 18, 19.

¹⁴³ *ICCPR* arts. 21, 22; *UDHR* art. 20.

¹⁴⁴ *ICCPR* art. 25; *UDHR* art. 21.

¹⁴⁵ *ICCPR* art. 19; *UDHR* art. 19. *ICCPR* Article 18 and *UDHR* Article 18 relatedly provide for the “right to freedom of thought, conscience and religion.” *ICCPR* art. 18; *UDHR* art. 18.

human rights advocates, political activists, and individuals in similar professions cannot be punished simply for doing their jobs and exercising the freedoms of press and expression.¹⁴⁶

There are no applicable exceptions in this case. Under ICCPR Article 19, minor restrictions on the exercise of free expression may be tolerated in some cases on the basis of “respect of the rights and reputations of others” or “the protection of national security or of public order (*ordre public*) or of public health or morals,”¹⁴⁷ but only if the government can show that the restrictions imposed were “absolutely necessary” and “proportionate.”¹⁴⁸ “Necessity” for purposes of this analysis does not exist solely because the expression at issue is provocative, or critical of, or even offensive to, a person or a government.¹⁴⁹ Indeed, it is well settled that the freedoms of opinion and expression include the freedom “to criticize or openly and publicly evaluate [one’s] Government[] without fear of interference or punishment,” even when that expression “may offend public figures, including political leaders,” and regardless of whether the expression is made through a news article, a blog post, or communication with another person or entity.¹⁵⁰ The Human Rights Committee has emphasized that Article 19 likewise protects persons engaged in “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.”¹⁵¹ Here, Rezaian was arrested and detained for nothing more than his lawful practice of journalism, in violation of Iran’s obligations under international law.

The Government of Iran has ratified, codified, and recognized publicly the important and inalienable rights to freedom of expression and opinion. According to the Iranian Government’s own interpretation of Article 19 of the ICCPR, the “freedom of expression and opinion cannot be curtailed.”¹⁵² Freedoms of expression and opinion are also protected under Iran’s domestic law, and the Government of Iran has openly acknowledged this, stating that:

Careful consideration of the Press Law of 1986, further amendments and annexes thereto included, makes it evident and certain that the attention of the legislator fully denotes securing freedom of expression and access to information with full respect to the public

¹⁴⁶ See General Comment No. 34, UN Human Rights Committee, 102nd Session, International Covenant on Civil and Political Rights, General Remarks ¶ 20, Sept. 12, 2011 (internal citations omitted), *available at* <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (“The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint”).

¹⁴⁷ *ICCPR* at art. 19(3).

¹⁴⁸ See *Abdel Rahman al-Shaghouri v. Syrian Arab Republic*, Working Group on Arbitrary Detention, Op. No.4/2005, UN Doc. E/CN.4/2006/7/Add.1, ¶13, *available at* <http://www1.umn.edu/humanrts/wgad/4-2005.html>; *Abdul Kareem Nabil Suliman Amer v. Egypt*, UN Doc. A/HRC/13/30/Add.1 at 146 (2010), Op. No. 35/2008.

¹⁴⁹ The Human Rights Committee has made clear that the exceptions in ICCPR Article 19(3) are extremely narrow and any government attempts to invoke these exceptions to justify limitations on free expression must “meet a strict test of justification.” General Comment No. 34, *supra* note 146, ¶ 23.

¹⁵⁰ See *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002 (2005); *Mohammed Abbou v. Tunisia*, Working Group on Arbitrary Detention, Op. No. 41/2005, UN Doc. A/HRC/4/40/Add.1, ¶ 28.

¹⁵¹ General Comment No. 34, *supra* note 146, ¶ 11.

¹⁵² *Response of the Islamic Republic of Iran to Draft Report of Special Rapporteur for Submission to the 69th Session of the UN GA*, *supra* note 88, at 17.

rights. It only considers liable to prosecution those who, in their engagement in the contempt, abusing the press, disrepute or dishonoring of persons or their denigration or the disclosure of private secrets, and slandering, commit culpable or criminal acts. This is to assist the community to benefit to the utmost from freedom of expression atmosphere provide by the legislator.¹⁵³

Here, the detention and prosecution of Rezaian—for his work as a journalist, with no evidence of criminal activity—squarely violates Iran’s own public pronouncement and the legal obligations that underlie it.

Punishment for the exercise of free expression is no more acceptable simply because it is imposed under the guise of prosecuting vague crimes pertaining to “national security” and “public order.”¹⁵⁴ The Human Rights Committee has made clear that “[a] law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”¹⁵⁵ In March 2015, UN Special Rapporteur Shaheed identified numerous violations of the freedom of expression by the Iranian Government based on its use of “vaguely worded ‘national security’ crimes, such as ‘propaganda against the system,’ ‘assembly and collusion against the system,’ ‘insulting the Supreme Leader,’ and ‘spreading falsehoods with intent to agitate the public consciousness.’”¹⁵⁶ The Special Rapporteur concluded that “[h]igh priority should be placed on amending laws and policies that undermine or violate internationally recognized rights and standards...[that regard the exercise of] legitimate rights under international law as offenses, including those that restrict the press, criminalize expression, limit access to information and give rise to the ongoing arrests of civil society actors...”¹⁵⁷

Iran’s rebuttals to the Special Rapporteur fail to dispel concerns that Iran is simply not a safe place for journalists. According to Iran’s response, “[m]edia activities in Iran are being carried out on a large scale and with freedom,”¹⁵⁸ and “[w]hile a few journalists are being tried on charges of violation of law, thousands of other journalists and media are freely performing their professional tasks.”¹⁵⁹ Yet, in fact, the number of journalists, reporters, and bloggers detained in Iran is estimated to be far more than a “few” and many of these journalists have been detained for lawful activities and have never been informed of the charges against them.¹⁶⁰ During the last decade, Iran has arrested and detained many journalists and activists, year after

¹⁵³ *Id.* at 13-14.

¹⁵⁴ See *Abdulahdi Abdulla Alkhawaja v. Bahrain*, Working Group on Arbitrary Detention, Op. No. 6/2012, UN Doc. A/HRC/WGAD/2012/6.

¹⁵⁵ General Comment No. 34, *supra* note 146, ¶¶ 25, 35.

¹⁵⁶ *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Ahmed Shaheed, supra* note 2, at 10.

¹⁵⁷ *Id.* at 21.

¹⁵⁸ *Response of the Islamic Republic of Iran to Draft Report of the Special Rapporteur for Submission at the 28th Session of the United Nations Human Rights Council*, Feb. 19, 2015, available at <http://shaheedoniran.org/wp-content/uploads/2015/03/Islamic-Republic-of-Iran%E2%80%99s-reply-to-the-SR%E2%80%99s-draft-report.pdf>

¹⁵⁹ *Response of the Islamic Republic of Iran to Draft Report of Special Rapporteur for Submission to the 69th Session of the UN GA, supra* note 88, at 13-14.

¹⁶⁰ See *Raising Visibility for Journalists Imprisoned by Iran*, PBS News Hour, June 12, 2015, available at <http://www.pbs.org/newshour/bb/raising-visibility-journalists-imprisoned-iran/>.

year, on the basis of unsubstantiated allegations of crimes against the State.¹⁶¹ The fact that other journalists have not been detained does nothing to disprove or excuse the widespread abuses that have occurred; nor does it take into account the profound chilling effect that widespread detentions have on those journalists who are not detained.

Review of the Working Group’s decisions makes clear that Iran has systematically detained journalists in violation of international law. Such detentions apparently are part of a pattern and strategy to keep journalists in check and to stifle the free exchange of ideas. By controlling journalists and media outlets, the Iranian regime is able to control the marketplace of ideas, which, in turn, helps the regime maintain power without serious challenge or meaningful dissent. In 2014 alone, the “government and its agents harassed, detained, abused, and prosecuted publishers, editors, [and] journalists . . . harassed many journalists’ families . . . [and] often subjected [journalists] to solitary confinement.”¹⁶² As of August 2014, approximately 35 journalists were detained in Iran, a statistic reflecting the government’s pattern and practice of arbitrarily detaining members of the press.¹⁶³

For example, following Iran’s conviction of human rights activist and lawyer Abdolfattah Soltani on charges of “disclosing classified information, divulg[ing] of State secrets, relations with two foreign diplomats, interviews with journalists related to State secrets subjects and propaganda against the country regime,” the Working Group concluded that the Government of Iran had failed to provide any “indication of the nature of the alleged classified intelligence or State secret that a lawyer and human rights activist could hold,” and thus “the detention of Mr. Soltani [was in fact] motivated exclusively by his . . . peaceful exercise of the right to freedom of expression as guaranteed by article 19 of the [ICCPR].”¹⁶⁴

Similarly, in reviewing the detention of journalist Arash Sigarchi on charges of “espionage, blasphemy to the founder of the Islamic Republic and dissemination of false information,” the Working Group found that Iran “failed to explain how Mr. Sigarchi’s activities could have amounted to [those crimes]” and that, “[i]n the absence of any convincing argument that his conviction and detention was necessary . . . the Working Group cannot but conclude that he was punished for the expression of his opinion.”¹⁶⁵

¹⁶¹ See *Report of the Special Rapporteur On the Situation of Human Rights In the Islamic Republic of Iran, Ahmed Shaheed*, *supra* note 2. “At least 13 journalists and bloggers have been arrested or detained since July 2014.” *Id.* at 10.

¹⁶² See *Iran 2014 Human Rights Report*, *supra* note 98, at 16.

¹⁶³ *Id.*

¹⁶⁴ *Abdolfattah Soltani v. Iran*, Working Group on Arbitrary Detention, Op. No. 26/2006, UN Doc. A/HRC/4/40/Add.1 (2007), ¶¶ 4, 27.

¹⁶⁵ *Arash Sigarchi v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 19/2006, UN Doc. A/HRC/WGAD/2012/6, Op. No. 6/2012 (“[T]he vague nature of these charges raise doubts as to the actual purpose of detention. A number of questions remain unanswered in the Government’s response. For example...[w]hat evidence demonstrates that Mr. Alkhawaja called for the use of force for political change or committed any of the other crimes mentioned in the Government’s response? If these allegations were, in fact, brought by a competent authority, surely more evidence would have been provided to show good cause for Mr. Alkhawaja’s arrest. The vagueness of these claims and the fact they were not provided at the time of arrest, nor in the weeks following it, raise serious questions as to their validity...Mr. Alkhawaja’s arrest in fact resulted on account of his political and

In the case of journalist and economist Bahman Amouee, convicted by Iran for “gathering and colluding with the intent to harm national security; spreading propaganda against the system; disrupting public security; and insulting the President,” the Working Group held that these “[v]ague charges . . . [were] contrary to the rights protected and guaranteed under the [UDHR] and [ICCPR] and [could not] . . . justify [Amouee’s] arrest and detention;” rather, he “was arrested and detained for exercising his right to freedom of opinion and expression.”¹⁶⁶

As these cases and other cases demonstrate, the Government of Iran has engaged in a pattern and practice of imprisoning individuals whose exercise of the fundamental freedoms of opinion and expression may threaten or challenge the Iranian Government. Although Rezaian did nothing to threaten or challenge the Government, the Iranians responsible for his arrest, detention, and trial apparently believe they can make an example of him, use his case to discourage other reporters from speaking freely and meeting with other governments, and perhaps use his detention as leverage in the context of the tentative nuclear deal and ongoing diplomatic negotiations. Whatever the political reason for Rezaian’s detention, his detention is unlawful and unjust and his case is yet another example of Iran’s widespread, systematic practice of detaining journalists and other individuals in response to their exercise of certain fundamental freedoms.

Since Rezaian’s arrest in July 2014, the Government has been unable to offer any evidence or other legitimate support for its claims that Rezaian “spied” on the regime or otherwise committed any crime. No evidence suggests that he did anything other than carry out his duties as a reporter to establish and foster a network of contacts with private citizens and government actors, to obtain information from private citizens and government actors, and to publish articles based on information he gathers, consistent with international and Iranian law. The fact that the Government arrested one of the only other American journalists accredited in Iran on the very same day it arrested Rezaian further suggests that Rezaian’s detention is part of an effort to intimidate or silence foreign journalists in Iran—and perhaps to gain leverage in the context of diplomatic negotiations that recently resulted in a tentative nuclear deal—in plain violation of international law.

Jason Rezaian has been detained because of his special status as a U.S.-Iranian reporter and because he exercised his rights under ICCPR Article 19 and UDHR Article 19; accordingly, his detention is arbitrary under Category II and he should be set free.

2. The Iranian Government Detained Rezaian Because He Exercised His Right to Freedom of Association

UDHR Article 20 provides that “[e]veryone has the right to freedom of peaceful assembly and association.” ICCPR Article 22(1) also codifies the individual right to “freedom of

human rights advocacy, or exercising his fundamental rights, including freedom of expression, association, and assembly. Such a detention based on the exercise of these freedoms is classified as arbitrary under category II of the categories applicable to the consideration of cases submitted to the Working Group”).

¹⁶⁶ *Bahman Ahmadi Amouee v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 55/2013, UN Doc. A/HRC/WGAD/2013/55 (2014).

association with others,” and ICCPR Article 22(2) adds that “[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

A restriction on the freedom of association derived from the enforcement of a national law does not, by itself, make that restriction acceptable under international law: according to the UN Human Rights Committee, “[i]t is not compatible with [ICCPR Article 22] for instance, to invoke [national] laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”¹⁶⁷

Moreover, the freedom of association includes the right to associate generally—not only with private actors, but also with governments. Iran acknowledged as much when it implemented a law that it had adopted in 2009 concerning the rights of individuals, including members of the media, in Iran to certain information about the Government.¹⁶⁸ According to Mohsen Esmaeli, a jurist and member of the Guardian Council in Iran, “[t]he law recognizes the rights of reporters to release and have free access to information.”¹⁶⁹ As such, a journalist’s efforts to maintain open communications with his or her sources in both the private and the public sectors is protected conduct under Iranian and international law, and cannot alone constitute a basis for arrest and detention.

Jason Rezaian’s detention appears to have occurred as a direct result of his association with news sources, which, by necessity, included some individuals working for, or having connections to, the U.S. and Iranian Governments. Rezaian was the foreign correspondent in Iran for a major American newspaper, so it is natural that he would develop contacts within the United States Government and the Iranian Government, in order to develop and support his understanding of U.S.–Iranian relations. Nothing about those contacts supports Iran’s allegations that Rezaian was acting illegally. Indeed, even after ransacking Rezaian’s home and confiscating his notes, laptop, and other personal belongings, Iran has been unable to identify *any* evidence of criminal conduct. If anything, the scant purported “evidence” apparently relied on by Iran makes clear there is no basis for the allegations against him.¹⁷⁰

For these reasons, Jason Rezaian’s detention is contrary to his right to the freedom of association under ICCPR Article 22 and his detention is therefore arbitrary under Category II.

¹⁶⁷ General Comment No. 34, *supra* note 144.

¹⁶⁸ *Iran Implements 2009 Law on Access to Information*, FreedomInfo.org, June 4, 2015, <http://www.freedominfo.org/2015/06/iran-implements-2009-law-on-access-to-information/>.

¹⁶⁹ *Free Access to Information Bylaw Confirmed*, Iran Front Page, Dec. 3, 2014, *available at* <http://iranfrontpage.com/news/legal/laws/2014/12/free-access-information-bylaw-confirmed/>.

¹⁷⁰ *See supra* III.A.

3. The Iranian Government Detained Rezaian Because He Exercised the Right to Freedom of Participation in Public Affairs

ICCPR Article 25¹⁷¹ and UDHR Article 21¹⁷² further protect the right to participate in public affairs. Article 25 of the ICCPR guarantees every person the right and opportunity to “take part in the conduct of public affairs . . . without unreasonable restrictions.” It follows from Article 25, as well as the ICCPR and UDHR provisions protecting freedom of expression, discussed above, that the right of journalists to report on their own and others’ political and cultural opinions as a means to contribute to the public discourse is protected by international law. Special Rapporteur Shaheed has similarly emphasized that “[j]ournalists must be protected, not harassed and prosecuted for doing their jobs...[and yet, the] detention and trial of Mr. Rezaian...not only violate[s] [his] individual rights, but also intimidates those working in the media in Iran.”¹⁷³

As a foreign correspondent in Iran, Rezaian’s success depended upon being a relevant voice among the communities he reported to and on, both domestically and globally. His ability to develop relationships with sources of news about public affairs and to report on the information he learned was, and is, a crucial part of his job. Yet, it was that very activity that supposedly prompted the Iranian Government to arrest him. Iran’s actions are therefore arbitrary under Category II.

C. Category III: Violation of Rezaian’s Due Process Rights

A deprivation of liberty constitutes a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established 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.”¹⁷⁴ Additionally, the Working Group considers the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (“Body of Principles”) when determining a Category III violation.

While the Government of Iran relies on superficial, baseless justifications for Rezaian’s treatment and detention, the international community has unambiguously condemned the procedural irregularities surrounding his unlawful arrest, wrongful detention, and unfair trial. Because the Iranian Government has violated numerous procedural due process requirements

¹⁷¹ “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”

¹⁷² “(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

¹⁷³ *Silencing Journalist and Activists Weakens Protection of Human Rights in Iran*, *supra* note 125.

¹⁷⁴ *UNWGAD Revised Methods of Work* ¶ 8(c).

under both international and domestic law, the continued detention of Rezaian is arbitrary under Category III.

1. The Iranian Government Failed to Inform Rezaian of the Charges Against Him

Article 9 of the ICCPR provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest.”¹⁷⁵ Article 14 of the ICCPR further guarantees that a detainee “be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”¹⁷⁶ Iran’s Constitution similarly requires that “[i]n case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing.”¹⁷⁷

Rezaian was not informed of the reasons for his arrest or the charges against him for approximately five months following his arrest and detention on July 22, 2014. He was finally informed of the charges in December 2014, but this notification occurred in a closed court proceeding that was held in Farsi, a language Rezaian does not speak with proficiency. The charges were translated by a Government-appointed translator, but Rezaian could not fully understand the translator’s English. Moreover, Rezaian had no access to an attorney who could explain the charges and counsel him accordingly and, in contravention of the Iranian Constitution, he was not provided a written copy of those charges.¹⁷⁸ The charges were eventually revised and revealed to Rezaian and his attorney only weeks prior to his trial, which commenced in May 2015. To this day, the charges have not been provided in writing to Rezaian and have not been publicly disclosed.

Indeed, Iran has steadfastly refused to disclose publicly any information about the charges against Rezaian. The only information made publicly available is the accusation that Rezaian allegedly “participat[ed] in activities outside the scope of journalism.”¹⁷⁹ No other information has been publicly disclosed in the context of the legal proceedings. This lack of transparency is part of a pattern in which the Iranian Government routinely refuses to inform political prisoners of the charges against them. For example, the Working Group recently found that the Iranian Government violated ICCPR Articles 9(2) and 14(3) when it took six months to inform another American prisoner of the charges against him.¹⁸⁰ The failure to inform Rezaian of the charges he faces similarly violates his due process rights and makes his detention arbitrary under Category III.

¹⁷⁵ *ICCPR* art. 9(2).

¹⁷⁶ *Id.*, art. 14(3).

¹⁷⁷ Constitution of the Islamic Republic of Iran, art. 32.

¹⁷⁸ *Id.*

¹⁷⁹ DePillis, *supra* note 77.

¹⁸⁰ *Amir Nema Hekmati v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 28/2013, UN Doc. A/HRC/WGAD/2013/28 (2014).

2. The Iranian Government Unjustly Deprived Rezaian of His Right to Counsel

ICCPR Article 14(3) establishes the right of any person accused of a crime “to defend himself in person or through legal assistance of his own choosing.”¹⁸¹ Principle 18(1) of the Body of Principles further explains that “[a] detained or imprisoned person shall be entitled to communicate and consult with legal counsel.”¹⁸² Additionally, Principle 18(3) states that “[t]he right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted,” absent exceptional circumstances not present here.¹⁸³ The UN Human Rights Committee has also found that ICCPR Article 14 protects the right of the accused to speak with his or her lawyer “in conditions giving full respect for the confidentiality of their communications.”¹⁸⁴

While neither the ICCPR nor the Body of Principles identifies precisely when or how often access to counsel must be granted, Principle 15 notes that, but for exceptional circumstances, “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”¹⁸⁵ The UN Human Rights Committee has interpreted ICCPR Article 14 to mean that “[a]ll persons who are arrested must *immediately* have access to counsel.”¹⁸⁶ The Working Group has previously found a due process violation and deemed a detention arbitrary where Iran failed to provide counsel during “the detention period before the formal trial.”¹⁸⁷

Here, Iran has flouted Rezaian’s right to counsel of his choosing. Iran first violated Rezaian’s right to counsel when it arrested, detained, and interrogated him for months on end without any access to counsel. When Iran finally allowed Rezaian to have a lawyer—approximately nine months after his arrest—it further prohibited him from retaining the particular counsel of his choosing. Rezaian’s family selected Masoud Shafii, a specialist in handling legal issues involving high profile, politically motivated detentions in Iran. The Revolutionary Court denied that request without justification and provided Rezaian’s family only one week to select a lawyer who was “acceptable” to the Court. Iran never even attempted to identify any “exceptional” circumstances to justify its violation of Rezaian’s right to the counsel of his choosing.

Ultimately, the court allowed Leila Ahsan to represent Rezaian. Ahsan also represents Rezaian’s wife, but Rezaian was not allowed to meet with Ahsan until April 20, 2015—roughly nine months after his arrest. Thus, Rezaian did not have counsel present during the court hearing at which the charges against him were first announced. And since April 20, 2015, Rezaian has

¹⁸¹ ICCPR art. 14(3)(d).

¹⁸² Body of Principles 18(1).

¹⁸³ *Id.* 18(3).

¹⁸⁴ Human Rights Committee General Cmt. No. 13/21, ¶ 9.

¹⁸⁵ Body of Principles 19.

¹⁸⁶ UN Doc. CCPR/c/79, Add. 75, April 1, 1997, ¶ 27 (emphasis added).

¹⁸⁷ *Kiarash Kamrani v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 20/2011, UN Doc. A/HRC/WGAD/2011/20 (2011).

been permitted only two brief meetings with his lawyer outside of court. The meetings were not confidential, and the first was held in the presence of two government officials who interrogated Rezaian at Evin Prison. Moreover, Rezaian was not permitted to consult with his lawyer prior to or following his first two legal hearings. His only interactions with counsel during this stage of the trial took place in open court, in the presence of the judge and other Iranian officials.

The Iranian Government's failure to respect Rezaian's right to select counsel of his choosing and refusal to allow him any meaningful opportunity to consult confidentially with his counsel are flagrant violations of international law. As a result, Rezaian's detention is arbitrary under Category III.

3. The Iranian Government Denied Rezaian's Right to Prepare a Defense

Article 14(3) of the ICCPR enshrines the right of an individual charged with a crime "[t]o have adequate time and facilities for the preparation of his defense."¹⁸⁸ The UN Human Rights Committee has stated that the determination of "'adequate time' depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel"¹⁸⁹ In other words, "(t)he accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair."¹⁹⁰ The Working Group has also found that a denial of meaningful access to counsel also violates the right to prepare a defense and constitutes a category III violation.¹⁹¹

In violation of these commitments, Rezaian has been denied any meaningful opportunity to participate in his defense. As discussed *supra* part II.E, he was not informed of the charges against him for almost five months following his arrest and has never been provided a written copy of the charges, which were issued orally in Farsi, a language he does not speak. He has been unable to view the case file that supposedly contains the purported evidence against him. His attorney was notified of the initial trial date only a week before the trial, and subsequent hearings have been scheduled with extremely short notice, leaving no opportunity to prepare.¹⁹² At trial, Rezaian's ability to challenge the evidence, confront the witnesses against him, and present his case in defense, has been severely limited. These deprivations violate Rezaian's right to prepare and present a defense.

¹⁸⁸ ICCPR art. 14(3).

¹⁸⁹ Human Rights Committee General Comment No. 13/21 of April 12, 1984, ¶ 9.

¹⁹⁰ *Id.* ¶ 9(3)(b).

¹⁹¹ The Working Group recently held that Iran had violated the right to prepare a defense by providing a defendant only three meetings with counsel, totaling 90 minutes, prior to trial. *Amir Nema Hekmati v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 28/2013, UN Doc. A/HRC/WGAD/2013/28 (2014).

¹⁹² Ali Rezaian, Testimony Before the House of Representatives, Foreign Affairs Committee, Americans Detained in Iran, June 2, 2015.

4. Iran Violated Rezaian's Right to a Presumption of Innocence

ICCPR Article 14(2) provides that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”¹⁹³ This right is similarly enshrined in the UDHR.¹⁹⁴ The Human Rights Committee has found that the presumption of innocence creates “a duty for all public authorities to refrain from prejudging the outcome of a trial.”¹⁹⁵ Under Working Group jurisprudence, any interference with the right to be presumed innocent is a violation of the right to a fair trial.¹⁹⁶ Although the presumption of innocence is enshrined in Iran’s own constitution,¹⁹⁷ Iran has previously been censured by the Working Group for failure to treat the accused as innocent until proven guilty.¹⁹⁸

Iran’s handling of Rezaian’s case violates his right to a presumption of innocence and impartial trial. As discussed *supra* part III.A in relation to Category I, the vague charges against him have no basis in fact. Rezaian has been denied any meaningful opportunity to communicate with counsel in order to participate in his defense or review the evidence against him. Rezaian has not been permitted to present evidence or witnesses in his defense; nor has he had a genuine opportunity to examine or challenge the evidence or witnesses against him. Rezaian’s ability to present his defense has been limited to the point of being wholly meaningless. The Court’s treatment of the government and the so-called evidence further reflect the Court’s failure to afford Rezaian a presumption of innocence; to the contrary, the course and nature of the trial to this point indicate that the Revolutionary Court pre-determined the outcome of Rezaian’s trial well before the proceedings against him even began.

5. The Iranian Government Impeded Rezaian's Right to Trial without Undue Delay

ICCPR Article 14(3)(c) guarantees the right of the accused “to be tried without undue delay.”¹⁹⁹ Similarly, ICCPR Article 9(3) provides that “[a]nyone arrested or detained on a criminal charge... shall be entitled to trial within a reasonable time or to release.” In one case, the Working Group concluded that Iran had violated the ICCPR due to a delay of eight months between arrest and trial.²⁰⁰ Here, Rezaian was held for more than ten months before his trial began. This was a clear violation of Rezaian’s right to trial without undue delay and further renders his detention arbitrary under Category III.

¹⁹³ ICCPR art.14(2)

¹⁹⁴ UDHR art. 11(1) (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”).

¹⁹⁵ Human Rights Committee General Comment No. 13/21 of April 12, 1984, ¶7.

¹⁹⁶ *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, Communication No. 28/2012, UN Human Rights Committee, ¶ 29.3.

¹⁹⁷ *See Iran 2013 Human Rights Report*, *supra* note 13, at 12.

¹⁹⁸ *See e.g., Kobra Rahmanpour v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 14/2006, UN Doc. A/HRC/4/40/Add.1 at 70 (2006) (detention was arbitrary, in part, because “there was an absence of presumption of innocence”).

¹⁹⁹ ICCPR art. 14(3)(c).

²⁰⁰ *Muhammad Kaboudvand v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Op. No. 48/2012, UN Doc. A/HRC/WGAD/2012/48 (2012).

6. The Iranian Government Failed to Provide an Independent and Impartial Tribunal

ICCPR Article 14(1) provides that “[i]n the determination of any criminal charge” the accused “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”²⁰¹ UDHR Article 10 similarly provides that “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”²⁰²

Rezaian’s trial was assigned to Judge Salavati, a politically conservative, hardline judge who has been accused of leading a politically motivated crackdown against journalists and political activists, and who has been sanctioned by the European Union for human rights violations.²⁰³ Salavati issued several temporary detention orders authorizing Rezaian’s imprisonment without impartially weighing the evidence against him, effectively acting as both Rezaian’s prosecutor and judge. In addition to violating the right to an impartial tribunal, Judge Salavati’s dual role in this case is also highly irregular under Iranian law, which prohibits a judge from acting as both prosecutor and judge in the same case.²⁰⁴

The assignment of Rezaian’s case to Judge Salavati means that the Court is neither independent nor impartial; rather, it is politically controlled in violation of Rezaian’s fundamental right to adjudication by an independent and impartial tribunal. Iran’s failure to provide an independent and impartial tribunal is a violation of the right to due process and further evidence that Rezaian’s detention and trial constitute an arbitrary deprivation of liberty under Category III.

7. The Iranian Government Failed to Provide a Public Trial

Article 14(1) of the ICCPR and Article 10 of the UDHR both provide that “everyone shall be entitled to a fair and public hearing.”²⁰⁵ Principle 36 of the Body of Principles further elaborates that “a detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”²⁰⁶ The Working Group has previously held that a government’s failure to provide a public hearing is a violation of international law.²⁰⁷

All of the court proceedings in Rezaian’s case have been closed to the public. Even those closest to Rezaian have been unable to attend the closed-door proceedings. Rezaian’s mother

²⁰¹ ICCPR art. 14(1).

²⁰² UDHR art. 10.

²⁰³ Carol Morello, *Hard-Line Judge in Iran is Assigned Case of Jailed Post Reporter Jason Rezaian*, Wash. Post, Feb. 1, 2015, available at http://www.washingtonpost.com/world/national-security/hard-liner-judge-assigned-case-of-post-reporter-jason-rezaian-jailed-in-iran/2015/02/01/5f21de04-a8c2-11e4-a06b-9df2002b86a0_story.html.

²⁰⁴ See Behnam Daraeizadeh, *Legal Commentary*, supra note 41.

²⁰⁵ ICCPR art. 14(1); UDHR art. 10.

²⁰⁶ Body of Principles 36.

²⁰⁷ See, e.g. *Gulgedy Annaniyazov v. Turkmenistan*, Working Group on Arbitrary Detention, Opinion No. 22/2013, U.N. Doc. A/HRC/WGAD/2013/22 (2014).

traveled to Tehran to attend the trial but was denied access, as was Rezaian's wife. *The Washington Post*, Rezaian's employer, sought a visa for a senior editor to attend the trial, but the request was ignored by the Iranian government.²⁰⁸ Other independent observers were also prohibited from attending.²⁰⁹ Rezaian's counsel has also been informed that she would be violating the law if she publicly revealed any details regarding the closed-session proceedings. Prosecutor General Gholam Hossein Mohseni Ejei was quoted as telling reporters that "the publication of details of Jason Rezaian's closed-session trial is against the law Based on the current laws, making public the events of even a public trial is illegal. Not to mention that (Rezaian's) trial is closed-session."²¹⁰

The right to a public trial is one of the essential elements of due process under international law. Iran's refusal to allow public scrutiny or outside observation of the proceedings against Rezaian is a clear violation of that right and further evidence that Rezaian's detention is arbitrary under Category III.

Conclusion

The arrest, interrogation, detention, trial, and ongoing imprisonment of Jason Rezaian comprise extraordinary violations of his most fundamental human rights. The Government of Iran has violated each of the following rights that are guaranteed to Rezaian under Iranian and international law:

- Right to freedom from arbitrary detention
- Right to freedom of opinion and expression
- Right to freedom of association
- Right to freedom of political participation
- Rights to due process of law, including:
 - Right to presumption of innocence
 - Right to counsel of choice
 - Right to prepare and present a defense
 - Right to trial without undue delay
 - Right to fair and public hearing before a competent, independent, and impartial tribunal

In light of these violations, Rezaian's detention is plainly arbitrary within the meaning of Categories I, II, and III. We hereby request that the UN Working Group on Arbitrary Detention: issue an opinion finding Rezaian's ongoing detention to be in violation of Iran's obligations

²⁰⁸ Brian Murphy, *Lawyer: Trial of Post Reporter Held in Iran Set to Begin Next Week*, Wash. Post, May 19, 2015, available at http://www.washingtonpost.com/world/middle_east/lawyer-trial-of-post-reporter-held-in-iran-set-to-begin-next-week/2015/05/19/d7b035d0-fe0a-11e4-833c-a2de05b6b2a4_story.html.

²⁰⁹ Bill Chappell, *Iranian Court Begins Espionage Trial of 'Washington Post' Reporter*, Nat'l Public Radio, May 26, 2015, available at <http://www.npr.org/sections/thetwo-way/2015/05/26/409705035/iranian-court-begins-espionage-trial-of-u-s-newspaper-s-reporter>.

²¹⁰ See, e.g., Deane and Murphy, *supra* note 85.

under the relevant provisions of the ICCPR and UDHR; call for Rezaian's immediate release; request the Iranian Government investigate and hold accountable all those responsible for Rezaian's unlawful arrest, detention, trial, and imprisonment; and request the Iranian Government to award compensation to Rezaian for the harm caused by his arbitrary detention in violation of international law.

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