

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID W. QUALLS,
104 Buchanan Street
Morrlilton AR 72110,

and JOHN DOES 1-7,

Plaintiffs,

v.

DONALD RUMSFELD
Secretary of Defense
1000 Defense Pentagon
Washington DC 20301-1000,

LES BROWNLEE
Acting Secretary of the Army
101 Army Pentagon
Washington DC 20310-0101,

REGINALD BROWN
Assistant Secretary of the
Army for Manpower and
Reserve Affairs
111 Army Pentagon
Washington DC 20310-0111,

Defendants.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF AND
PETITION FOR HABEAS CORPUS

INTRODUCTION

1. In this action, six soldiers stationed in Iraq and two soldiers in Kuwait on their way to Iraq, challenge the so-called Stop Loss policy of the United States Armed Forces. That policy has been invoked to justify involuntary extension of the periods of service required of Plaintiffs by their individual enlistment contracts. Plaintiffs who have served beyond the terms of

service set forth in their enlistment contracts ask the Court to order their immediate release from military service.

JURISDICTION

2. This action arises under the due process clause of the Fifth Amendment to the United States Constitution, the laws of the United States, and the Administrative Procedure Act, 5 U.S.C. § 706. Plaintiffs are in the custody of the United States military serving overseas in Iraq or Kuwait. This Court has jurisdiction under 28 U.S.C. §§ 2241, 2242, 1331, 1346 and 1361.

VENUE

3. Defendants are officials and employees of the United States whose place of work is in this district. Further, the Stop Loss policy of the United States Armed Forces at issue in this litigation was formulated in this district, and thus, the course of events giving rise to this lawsuit originated here. Pursuant to 28 U.S.C. §§ 1391(e)(1) and 1391(e)(2), venue is proper in this district.

PARTIES

Plaintiffs

4. Plaintiffs bring this action as soldiers serving in Iraq, or in Kuwait en route to Iraq, whose contractual terms of service have been involuntarily extended by application of the Stop Loss policy of the Armed Forces.

5. Plaintiffs David W. Qualls, John Doe 1, and John Doe 2 enlisted in the "Try One" program of the Army National Guard

which allows a veteran "to serve for only one year on a trial basis before committing to a full enlistment." Each has been involuntarily extended beyond the term of service set forth in his enlistment contract. Mr. Qualls is stationed at a base north of Baghdad, John Doe 1 is in Kuwait on his way to Iraq, and John Doe 2 is in Iraq.

6. The enlistment contracts of Plaintiffs John Doe 3, John Doe 4, John Doe 5, and John Doe 6 provided for termination of service prior to the date on which this lawsuit was filed, but their terms of service have been involuntarily extended under the authority of the Stop Loss program. All four are stationed in Iraq.

7. Plaintiff John Doe 7 is a member of the Army National Guard with an ETS (Expiration of Term of Service) date in April 2005. However, he has been ordered to active duty and informed that he should expect that duty to last up to a year and a half. He is in Kuwait on his way to Iraq.

Defendants

8. The individual Defendants named below are sued in their individual and official capacities.

9. Defendant Donald Rumsfeld is Secretary of Defense of the United States, and as such exercises control over the Stop Loss policy that purports to authorize Plaintiffs' involuntary retention in the Armed Forces.

10. Defendant Les Brownlee is Acting Secretary of the United States Army, and as such exercises control over the Stop

Loss policy that purports to authorize Plaintiffs' involuntary retention in the Armed Forces.

11. Defendant Reginald Brown is Assistant Secretary of the Army for Manpower and Reserve Affairs, and as such exercises control over the Stop Loss policy that purports to authorize Plaintiffs' involuntary retention in the Armed Forces.

STATEMENT OF FACTS

12. The Stop Loss policy at issue in this litigation derives from a federal statute which states:

(a) Notwithstanding **any other provision of law**, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend **any provision of law** relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

10 U.S.C. §12305(a) (emphasis added). The statute says nothing about suspending the provisions of bilateral enlistment contracts.

13. The authority to determine when and how to implement the Stop Loss policy has been delegated to the Secretary of Defense and later to various subordinates making the ultimate Stop Loss decisions. On November 21, 2002, Defendants caused to be issued Milper Message Number : 03-040 concerning "RC Unit Stop Loss Procedures for the Army National Guard."

14. The standard Enlistment/Reenlistment form used by the Armed Forces of the United States contains a section entitled "C.

Partial Statement of Existing United States Laws." The Stop Loss policy is not mentioned in this section of the standard form.

15. The Army National Guard has an enlistment policy known as "Try One." The Official Web Site of the Army National Guard, in a section entitled "Frequently Asked Questions," states in part:

Veterans who have served in any branch of the military have additional options available to them including a "Try One" program which allows a veteran **to serve for only one year on a trial basis before committing to a full enlistment.**

(Emphasis added.) The identical language appears in the recruiting materials of the state National Guards.

Facts Concerning Plaintiff David W. Qualls

16. Plaintiff David W. Qualls, S.S. #432-51-8598, resides at 104 Buchanan Street, Morrilton, Arkansas. Mr. Qualls is married and has a daughter 18 years old.

17. Mr. Qualls was born on February 4, 1969. His father, a Navy veteran, died when Mr. Qualls was one and a half years old, and he has never seen his mother. He was raised in foster homes.

18. Mr. Qualls enlisted in the United States Army on February 22, 1986. He was on active duty until October 31, 1990. For the following four years he was a member of the Individual Ready Reserves. From 1994 until 2003 he was no longer affiliated with the military in any way.

19. On July 7, 2003, Mr. Qualls enlisted in the "Try One" program of the Arkansas National Guard with the hope of becoming a commissioned officer. Under this program, veterans such as Mr. Qualls may enlist "for only one year on a trial basis before

committing to a full enlistment." Mr. Qualls' Enlistment

Document stated:

I do hereby acknowledge to have voluntarily enlisted/reenlisted this 07 day of July, 2003, in the Arkansas National Guard and as a Reserve of the United States Army with membership in the Army National Guard of the United States **for a period of 1 years, 0 months, and 0 days**, under the conditions prescribed by law, unless sooner discharged [Emphasis added.]

Thus, according to his contract, Mr. Qualls' term of service was to end in one year, or on July 6, 2004. Mr. Qualls signed his enlistment contract in reliance on this language.

20. Mr. Qualls was recruited for the Try One program at the Morrilton, Arkansas National Guard Armory. Staff Sergeant Frame, who recruited Mr. Qualls to the program, told him that he would serve for 12 months and would be required to perform 24 days of drill and two weeks of training during that time. Nothing was mentioned about the possibility of a rotation in Iraq. Nothing was said about a "Stop Loss" program that could prevent Mr. Qualls from leaving the National Guard at the end of his one-year contract. Mr. Qualls was shown no papers concerning the Stop Loss program, nor was the Stop Loss program mentioned in his enlistment contract, although the Stop Loss policy at issue had already been promulgated.

21. In October 2003, Mr. Qualls was ordered to report to the National Guard base at Camp Robinson, Arkansas, for an Iraq rotation. He was shown a paper giving him the option of saying Yes or No to an extension of his one-year contract, and checked the box for No.

22. On March 5, 2004, Mr. Qualls and his unit arrived in the Iraq theater. On March 17, 2004, the unit left Kuwait and convoyed three days to Taji, Iraq, where Mr. Qualls has been stationed ever since.

23. The unit to which Mr. Qualls belongs is the Headquarters and Headquarters Support Battery (HHSB) 1/206 FA Russellville, Arkansas.

24. Mr. Qualls' civilian education was in computer science. His military training has been in communications. He has been performing duties such as radio watch, sand bag detail, and guard duty. As of October 5, 2003, Mr. Qualls has not held an MOS (Military Occupation Specialty) that was authorized in his brigade. Because Mr. Qualls is not MOS-qualified on any job in his unit, and does not even hold a slot on the Unit Manning Roster, he is being held as "excess."

25. Camp Taji, where Mr. Qualls is stationed, is located about 15 miles north of Baghdad. It is the destination to which 18 soldiers of the 343rd Quartermaster Company based in Rock Hill, South Carolina, refused to drive from Tallil Air Base near Nasariya on October 13, 2004, claiming that to do so would be a "suicide mission."

26. Camp Taji has sustained numerous attacks from mortars, rockets, and vehicle-borne improvised explosive devices (IEDs). One of Mr. Qualls' best friends in the unit was killed.

27. Like other members of his unit, Mr. Qualls has been awarded the National Defense Medal, the Global War On Terrorism

Medal, and the Reserve Component Expeditionary Medal. He believes that an Honorable Discharge is awarded when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, and he considers that his service has been "honorable" under this definition.

28. Mr. Qualls has never been officially notified that his service was to be extended involuntarily because of the "Stop Loss" program. On July 6, 2004, Mr. Qualls told his company commander: "Today's the day I'm no longer contractually liable to the United States Army." His commanding officer replied: "You're stuck here." One day Mr. Qualls' pay stub showed a new ETS (Expiration of Term of Service) date: not July 6, 2004, as his Try One contract provided, but December 24, 2031, when Mr. Qualls will be over 60 years old.

29. The involuntary extension of service to December 24, 2031, is directed by paragraph 6(C)(2) of Stop Loss Procedures for the Army National Guard to apply to "enlisted soldiers projected to separate due to ETS, but who are being **involuntarily retained** under Stop Loss" (emphasis added). December 24, 2031 is defined elsewhere in the procedures as an "arbitrary" date which ensures that these soldiers "can be readily identified in the data base." In reality, use of this termination date in the distant future appears to function as a coercive mechanism which threatens a soldier seeking to enforce his enlistment contract with service for an indefinite period. Paragraph

6(C)(3) of the Procedures provides: "Commanders will continue to encourage soldiers to reenlist or extend. Soldiers who reenlist/extend at any time during their mobilization **will have their ETS dates changed** [to the date specified in the soldier's new enlistment contract] instead of the date established by Paragraph 6(C)(2) above" (emphasis added).

30. Mr. Qualls returned to the United States in late November 2004 for an "environmental leave." His leave papers call for him to be back at base on December 12, 2004, which will require him - unless assisted by this Court - to leave the United States on December 10, 2004.

31. In civilian life, Mr. Qualls works in the trucking business. His take-home pay has been reduced approximately 80 per cent by his deployment to Iraq. His wife has not been able to make a house payment or a payment on vehicles owned by the family since his deployment.

32. Mr. Qualls' wife and daughter have experienced emotional distress during his extended service in Iraq. Both have been taking anti-depressants. Mrs. Qualls has unsuccessfully applied for a hardship discharge for her husband.

Facts Concerning John Doe 1

33. John Doe 1 also enlisted in the Try One program. His enlistment documents describe him "as a 'Try One in the Guard' program enlistee."

34. Mr. Doe enlisted in the Try One program at Fort Hood, Texas, on August 19, 2003.

35. Mr. Doe was married in January 2004. He had no intention of re-enlisting. The couple signed a contract to build a new home on July 11, 2004.

36. On August 25, 2004, Mr. Doe was called up for a period of active duty not to exceed 545 days and deployed to Kuwait.

Facts Concerning John Doe 2

37. John Doe 2 served six years of active duty in the Marine Corps, and almost one year as a Marine reservist. He enlisted in the Try One program of the Army National Guard on June 4, 2003.

38. Mr. Doe was scheduled to complete his one year trial enlistment on June 3, 2004. On April 13, 2004, he was ordered to active duty in Iraq for an initial period of up to 18 months.

39. Mr. Doe finished the New York City Police Academy in December 2003. He looked forward to finishing his military obligation, and is very disappointed about what is being done to him. He feels that the government reneged on its contract with him.

Facts Concerning John Doe 3

40. On September 7, 1998, John Doe 3 reenlisted for six years. Since his contract provided that his military service would end on September 6, 2004, he was asked to sign a waiver of his contractual ETS date. He declined. He had decided not to reenlist. Mr. Doe and his fiancée planned to start a family in December without the threat of being called up. Mr. Doe says that his employer has been very understanding, but he has missed

at least one promotion because of his service in Iraq. In June 2004 Mr. Doe was called up for 18 months of active duty.

41. Mr. Doe reports that every convoy he goes out on is exposed to the possibility of conflict with insurgents, Improvised Explosive Devices, or some other form of enemy activity. He believes that he and his colleagues have not been on a meaningful mission except to survive. He says that the theme throughout his unit is to ask, Why are we here? He says that the military say they are peacekeepers but he has not seen any peacekeeping.

42. Mr. Doe considers that it is not fair for everyone who is trying to prepare for their lives after the military to be placed on hold by the Stop Loss policy.

Facts Concerning John Doe 4

43. John Doe 4 is a sergeant in the United States Army stationed in Iraq.

44. Mr. Doe's enlistment contract contained an ETS of 040327 (March 27, 2004). In February 2004, he was within a few days of completing the service specified in his enlistment contract when his enlistment was extended under the Stop Loss policy until May 2005, with a new ETS date of 050531 (May 31, 2005).

45. Mr. Doe was then deployed to Iraq. Prior to coming under the Stop Loss policy, Mr. Doe was planning on getting married and had paid for his honeymoon and wedding in the Virgin Islands. All of the plans and contracts had to be cancelled.

46. Mr. Doe is a guitar player in the Army band. He has been in harm's way several times. Due to extreme heat in July 2004, he was dehydrated and on life support for four days.

Facts Concerning John Doe 5

47. John Doe 5's father retired from the United States Air Force. Soon after September 11, 2001, Mr. Doe signed a three-year enlistment contract with the National Guard. He was ordered to active duty on December 12, 2003, and is serving in Iraq.

48. Mr. Doe's original ETS date was in October 2004. When he arrived in Iraq, he was verbally informed by his Battery and Battalion Commanders that anyone whose ETS date fell before the unit returned home would be involuntarily extended.

49. Mr. Doe has a wife and two children. During his service his wife and oldest daughter have begun to take anti-depressants. Mr. Doe's first wife was a victim of a brutal homicide that occurred while his daughters were at home. The anniversary of her death in January is approaching, and the girls are struggling to deal with the absence of both their natural parents. The emotional turmoil of having their father not only away, but in a war in which his life is in jeopardy daily, is markedly affecting the children's behavior, grades, and mental health. The Doe family considers it imperative that Mr. Doe be reunited with his children.

Facts Concerning John Doe 6

50. John Doe 6's ETS date under his enlistment contract was August 15, 2004. He was stationed in Korea as this date

approached. In December 2003 he redeployed to Fort Lewis, Washington, to begin out-processing.

51. At Fort Lewis, Mr. Doe was issued orders for discharge on August 15, 2004. He began the Army Career Alumni Program (ACAP), which is like a jobs search workshop.

52. A few weeks later Mr. Doe received new orders. His previous orders were rescinded. When his original ETS date arrived, his leave and earnings statement changed his ETS date to January 31, 2006.

53. Mr. Doe says that he has heard of people who served in the military being called up again after getting out, but never of someone's original contract being changed without his permission and without his putting his signature on anything.

54. A year ago, Mr. Doe was planning to leave the Army, get married, and begin a new life. Presently he is in Mosul, Iraq, in what seems like combat everyday.

Facts Concerning John Doe 7

55. John Doe 7 enlisted in the Army on April 3, 1997, for a term of eight years. He was first stationed for two years at Fort Drum, New York. The termination date for his Reserve obligation is April 2, 2005.

56. During his years in the Reserves, Mr. Doe performed many services. He and other members of his company received a letter of commendation from the Commanding General of his state's National Guard for their services on and after September 11, 2001. In January 2004, Mr. Doe was ordered into active military

service for the state of New York and performed guard duty at the Triboro Bridge for an entire month in very cold weather.

57. On August 17, 2004, Mr. Doe's employer was informed that Doe had been mobilized to federal active duty for "an initial time period of up to 18 months."

58. On August 18, 2004, Mr. Doe was informed that he had been ordered to active duty for a period not to exceed 560 days.

59. A Personnel Action dated August 26, 2004, informed Mr. Doe: "You are involuntarily extended for the convenience of the government through 24 December 2031 under the provisions of 10 USC 12305." On a page entitled "Certification of Prior Active Service in Support of the Global War on Terrorism," Mr. Doe wrote in by hand: "Involuntary Extension."

60. Mr. Doe's grandparents were liberated from a concentration camp. Mr. Doe's father was born in a displaced persons' camp and emigrated to the United States from Austria.

61. Mr. Doe's mother is a diabetic who has been undergoing dialysis treatments three times a week. Mr. Doe is a viable candidate to be tested for a match.

62. Mr. Doe and his wife are high school sweethearts who have just turned 29. Having been married for four years, they are ready to buy a house and begin a family.

63. Mr. Doe is just one semester away from completion of a Bachelor's Degree at City University of New York for which he has worked for eleven years. He enlisted in military service because

he needed help from the GI bill and Army College Fund to become the first in his family to graduate from college.

**FIRST CAUSE OF ACTION:
BREACH OF ENLISTMENT CONTRACT**

64. Paragraphs 1-63 of this Complaint are realleged as if fully restated herein.

65. The involuntary extension of Plaintiffs' enlistment violates Plaintiffs' enlistment contracts.

**SECOND CAUSE OF ACTION:
FRAUDULENT INDUCEMENT AND MATERIAL MISREPRESENTATION**

66. Paragraphs 1-65 of this Complaint are incorporated as if fully restated herein.

67. Defendants fraudulently induced Plaintiffs to enter into their enlistment contracts. With respect to the "Try One" plaintiffs (David Qualls, John Doe 1, and John Doe 2), Defendants induced them to enter into their enlistment agreements by material misrepresentations that their enlistment under the Try One program was for a trial period of one year, after which they could decide whether or not to re-enlist for a full term in the National Guard. In recruiting these Plaintiffs, Defendants and their agents never informed Mr. Qualls and John Doe 1 before they signed their enlistment contracts that their enlistment could be involuntarily extended under a Stop Loss order, and Defendants and their agents omitted from these contracts any mention of the involuntary extension of military service under the Stop Loss policy. Defendants and their agents made these material

omissions despite knowing that a Stop Loss order which could apply to Mr. Qualls and John Doe 1 was already in effect at the time these Plaintiffs signed their enlistment contracts. These misrepresentations about the nature of the Try One program were material in inducing Mr. Qualls and John Doe 1 to sign their enlistment contracts. The Plaintiffs relied on these misrepresentations to their detriment.

**THIRD CAUSE OF ACTION:
ABSENCE OF STATUTORY AUTHORITY**

68. Paragraphs 1-67 of this Complaint are incorporated as if fully restated herein.

69. Defendants have ordered the involuntary extension of Plaintiffs' enlistment without statutory authority. The statute upon which Defendants rely for their orders extending Plaintiffs' enlistment, 10 U.S.C. § 12305, does not provide that Defendants can involuntarily extend Plaintiffs' enlistment in violation of their enlistment contracts or by fraudulently inducing them to enlist in the military under a trial program of one year and then extending their military service indefinitely.

**FOURTH CAUSE OF ACTION:
DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS**

70. Paragraphs 1-69 of this Complaint are incorporated as if fully restated herein.

71. Defendants have deprived Plaintiffs of their liberty in violation of the Fifth Amendment to the Constitution by

ordering them to deploy into, and remain in, combat situations where their lives are threatened after their enlistment periods had expired, without providing any notice at the time of enlistment that their military service could be involuntarily extended under these circumstances.

72. Defendants have deprived Plaintiffs of liberty in violation of the Constitution by ordering them to deploy into, and remain in, combat situations where their lives are threatened. Defendants have acted arbitrarily to deprive Plaintiffs of their liberty in that the orders extending their enlistment, and placing them in life-threatening situations, were (a) in violation of their contracts, (b) without statutory authority, and (c) a result of fraudulently inducing these Plaintiffs to enlist by offering what purported to be a one-year trial enlistment under a Try One program after which the enlistee, not Defendants, would decide whether he would remain in the military.

RELIEF REQUESTED

73. Plaintiffs request:

a. A Temporary Restraining Order directing Defendants not to require Plaintiff David W. Qualls' return to Iraq by December 12, 2004, as his present orders mandate, but to permit him to remain in the United States until further order of this Court so that the Court may fully adjudicate his claim on the merits.

b. A Declaratory Judgment declaring unlawful the involuntary extension by Defendants of Plaintiffs' military service obligations.

c. A Preliminary and Permanent Injunction, and a Writ of Habeas Corpus, ordering Defendants to release Plaintiffs from military service immediately.

d. Attorney's fees and costs for Plaintiffs' counsel to the extent that Plaintiffs prevail.

e. All such other relief as may appear to this Court appropriate in the circumstances.


December 6, 2004

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID W. QUALLS, et al.,

Plaintiffs,

v.

DONALD RUMSFELD, et al.,

Defendants.

Civil Action _____

MOTION FOR TEMPORARY RESTRAINING ORDER

Now come Plaintiffs pursuant to FRCP 65(b) and (d), and LCvR 65.1(a), and move that the Court issue a Temporary Restraining Order directing Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, not to require Plaintiff David W. Qualls' return to Iraq by December 12, 2004, as his present orders mandate, but to permit him to remain in the United States until further order of this Court so that the Court may fully adjudicate his claim in the abovementioned matter on the merits.

A proposed Order, and a Memorandum more particularly setting forth the reasons for issuing this Order, are being filed together with this Motion.

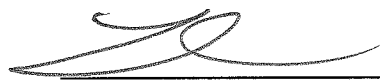
Undersigned counsel for Mr. Qualls certify that actual notice of the time of making this application, and copies of all pleadings and papers filed in the action to date or to be

presented to the court at hearing, have been furnished to counsel for the adverse party.

December 6, 2004

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT
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DAVID W. QUALLS, et al.,

Plaintiffs,

v.

DONALD RUMSFELD, et al.,

Defendants.

Civil Action _____

ORDER

And now, for good cause shown, the Court orders Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, not to require Plaintiff David W. Qualls' return to Iraq by December 12, 2004, as his present orders mandate, but to permit him to remain in the United States until further order of this Court so that the Court may fully adjudicate his claim in the above captioned matter on the merits.

Date

United States District Judge

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID W. QUALLS, et al.,

Plaintiffs,

v.

DONALD RUMSFELD, et al.,

Defendants.

Civil Action _____

MOTION FOR PRELIMINARY INJUNCTION


Now come Plaintiffs pursuant to FRCP 65(A) and (d), and LCvR 65.1(c) and (d), and move that the Court issue a Preliminary Injunction directing Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, immediately to release Plaintiff David W. Qualls from military service.

A proposed Order, and a Memorandum more particularly setting forth the reasons for issuing this Order, are being filed together with this Motion.

December 6, 2004

Respectfully submitted,

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ORDER

And now, for good cause shown, the Court orders Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, immediately to release Plaintiff David W. Qualls from military service.

Date

United States District Judge