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Afghanistan War Resister to “Put the War on Trial”

by Dahr Jamail
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US Army Specialist Victor Agosto served a 13-month deployment in Iraq with the 57th Expeditionary Signal Battalion. “What I did there, I know I contributed to death and human suffering,” Agosto told Truthout from Fort Hood, in Killeen, Texas, in May, “It’s hard to quantify how much I caused, but I know I contributed to it.”

His experience in Iraq, coupled with educating himself about US foreign policy and international law, has led Agosto to refuse to deploy to Afghanistan. “It’s a matter of what I’m willing to live with,” he said of his recent decision, “I’m not willing to participate in this occupation, knowing it is completely wrong.”

Agosto’s lawyer, James Branum, who is also the legal adviser to the GI Rights Hotline and co-chair of the Military Law Task Force, told Truthout during a phone interview on July 10 that, contrary to mainstream opinion that believes Afghanistan to be a “justified” war, the invasion and ongoing occupation are actually in violation of the US Constitution and international law.

“Victor is approaching this from the standpoint of law and ethics,” Branum explained, “It’s his own personal ethics and principles of the Nuremberg Principles, that the war in Afghanistan does not meet the criteria for lawful war under the UN Charter, which says that member nations who joined the UN, as did the US, should give up war forever, aside from two exceptions: that the war is in self-defense, and that the use of force was authorized by the UN Security Council. The nation of Afghanistan did not attack the United States. The Taliban may have, but the nation and people of Afghanistan did not. And under US Law, the Supremacy Clause of the US Constitution, any treaty enacted by the US is now the “supreme law of the land.” So when the United States signed the UN Charter, we made that our law as well.”

The Supremacy Clause is a clause in the United States Constitution, Article VI, Paragraph 2. The clause establishes the Constitution, Federal Statutes, and US treaties as “the supreme law of the land.” The text establishes these as the highest form of law in the American legal system, mandating that state judges uphold them, even if state laws or constitutions conflict.

This was also the basis for the stand taken by Lt. Ehren Watada of the US Army, who in 2006 was the first commissioned officer to publicly refuse a combat deployment to Iraq.

In [an article for Truthout published August 14, 2006](#), I posted the text of a speech given by Watada at a National Convention of Veterans for Peace in Seattle, Washington, where I was present.

Watada outlined the principled stand he took, which applies to that of Victor Agosto today:

“The oath we take swears allegiance not to one man but to a document of principles and laws designed to protect the people. Enlisting in the military does not relinquish one’s right to seek the truth - neither does it excuse one from rational thought nor the ability to distinguish between right and wrong. “I was only following orders” is never an excuse.

“The Nuremberg Trials showed America and the World that citizenry as well as soldiers have the unrelinquishable obligation to refuse complicity in war crimes perpetrated by their government. Widespread torture and inhumane treatment of detainees is a war crime. A war of aggression born through an unofficial policy of prevention is a crime against the peace. An occupation violating the very essence of international humanitarian law and sovereignty is a crime against humanity. These crimes are funded by our tax dollars. Should citizens choose to remain silent through self-imposed ignorance or choice, it makes them as culpable as the Soldier in these crimes.

“Aside from the reality of indentured servitude, the American Soldier in theory is much nobler. Soldier or officer - when we swear our oath - it is first and foremost to the Constitution and its protectorate, the people. If soldiers realized this war is contrary to what the Constitution extols - if they stood up and threw their weapons down - no president could ever initiate a war of choice again. When we say, “... Against all enemies foreign and domestic” - what if elected leaders became the enemy? Whose orders do we follow? The answer is the conscience that lies in each soldier, each American, and each human being. Our duty to the Constitution is an obligation, not a choice.”

In a victory for Lieutenant Watada, the Justice Department [decided in May](#) to drop any further attempts to retry the officer for his refusal to deploy to Iraq.

Having served three years and nine months in the US Army, Agosto was to complete his contract and be discharged on August 3, but due to his excellent record of service and accrued leave, he was to be released at the end of June. Nevertheless, due to the stop-loss program (a program used to keep soldiers enlisted beyond the terms of their contracts which has affected over 185,000 soldiers since September 11, 2001) the Army decided to deploy him to Afghanistan anyway.

When Agosto refused, the Army issued him a Counseling Statement (a punitive US Army memo) on May 1, which outlined actions taken by the Army to discipline Agosto for his refusal to obey a direct order from his company commander, Michael J. Pederson. Agosto wrote on the form, “There is no way I will deploy to Afghanistan. The occupation is immoral and unjust. It does not make the American people any safer. It has the opposite effect,” and posted it on his FaceBook page.

On another Counseling Statement dated May 18, Agosto wrote, "I will not obey any order I deem to be immoral or illegal."

On May 27, rejecting an Article 15 - a nonjudicial punishment imposed by a commanding officer who believes a member of his command has committed an offense under the Uniform Code of Military Justice - Agosto demanded to be court-martialed instead.

In words prophetic of Agosto's ethical and lawful refusal to deploy to Afghanistan, Watada said:

"I have broken no law but the code of silence and unquestioning loyalty. If I am guilty of any crime, it is that I learned too much and cared too deeply for the meaningless loss of my fellow soldiers and my fellow human beings. If I am to be punished it should be for following the rule of law over the immoral orders of one man. If I am to be punished it should be for not acting sooner."

Agosto continues to show up for duty at Fort Hood in Killeen, Texas, where he is currently stationed, but refused to take part in any duties that supported either the occupations of Iraq or Afghanistan. He told Truthout during a recent telephone interview he was "cleaning the motor pool" and "pulling weeds," and that the Army was being careful not to order him to do anything that would cause him to refuse to comply.

Meanwhile, Branum was in negotiations with the Army in efforts to seek a lower-level court-martial so that Agosto would suffer the minimum penalties possible.

"We were working with the Army's Trial Defense Services (TDS), and Victor has a military lawyer on his side as well, which I recommended he have," Branum told Truthout during a July 10 phone interview.

"TDS had communicated to the prosecution for me that we were willing to accept an Article 15 and do a month of extra duty, then if he (Agosto) got a summary court-martial we'd take it - which would mean Victor would serve a maximum of 30 days in jail, and receive an Other Than Honorable discharge," Branum explained, "So TDS said they took this offer to the CG (Commanding General) who was to sign off on it, but they said he made a mistake and wrote "special" rather than "summary" on the court-martial and sent it back down."

Branum explained that "a summary court martial is little more than an Article 15. Supposedly there was an "honest" mistake made by them handing down this special court martial, but I think they are playing games with us."

Branum, angered by this recent turn of events, explained the difference between the types of court martial, "They (the Army) are not acting in good faith here. What this still means, is the cap went from 30 days (of possible jail time for Agosto with a summary court martial) to a year (with a special court martial), so a pretty big jump I would say, and a leap from an Other Than Honorable discharge (summary court martial) to a bad conduct discharge (special court martial), which means once he is convicted his pay would stop."

Due to the perceived breach of good faith by the Army during the negotiating process, Branum believes he has no choice now but to up the stakes in Agosto's upcoming court-martial.

“Now we’re going to put the war on trial with their special court-martial,” Branum said, “They had their chance to keep this quiet and move on, but now we’re going to pull out all the stops and put the war on trial, and show how the whole thing is illegal.”

The most significant factor in Agosto’s case is that he has taken a principled stand against the occupation of Afghanistan long before the “point of crisis,” according to Branum. The “point of crisis” to which he refers is generally an ethical crisis a soldier experiences when he or she is getting on the plane to deploy.

“He connected the dots long before that point of crisis,” Branum explained, “To me, this is a very morally developed point of view. Most resisters don’t reach that point until much later on.”

It is a similar point reached by Watada, who in the aforementioned speech precisely articulated this experience:

“Now it is not an easy task for the Soldier. For he or she must be aware that they are being used for ill-gain. They must hold themselves responsible for individual action. They must remember duty to the Constitution and the People supersedes the ideologies of their leadership. The Soldier must be willing to face ostracism by their peers, worry over the survival of their families, and of course the loss of personal freedom. They must know that resisting an authoritarian government at home is equally important to fighting a foreign aggressor on the battlefield. Finally, those wearing the uniform must know beyond any shadow of a doubt that by refusing immoral and illegal orders they will be supported by the people not with mere words but by action.”

Agosto spoke with Truthout on July 8, immediately after receiving the news of his “special” court-martial. “I was escorted over to the headquarters of Fort Hood and was handed a folder with the paperwork that said he (Commanding General Lt. Gen. Rick Lynch) approved this kind of court-martial. We were in the middle of negotiating a deal where I would have taken a summary court-martial, where the maximum penalty is 30 days in prison and an Other Than Honorable discharge. But somehow during this process someone submitted the case over to the general’s discretion, and that’s not something that is supposed to happen in this negotiation phase. I’m surprised, because I thought this deal was going to go down last week and it didn’t. I was with my military lawyer, and we were talking about the case, and during that discussion she got the call from the prosecuting attorney that the case had been referred to the general, and then we knew it wasn’t likely we would get the deal I’d signed off on. So yesterday I went to the III Corps building and got the news.”

Agosto said he has “gotten the indication” that he will be leaving the company he is currently in to be moved to the Battalion’s rear-detachment company “because that’s the one that will stay here. I think they want to avoid a Jeff Paterson moment, I guess that’s their thinking. They won’t try to deploy me, they just want to punish me for my intentions and for what I’ve done so far.”

Jeff Paterson was a US Marine during the US attack against Iraq in 1991. Paterson opted to apply for conscientious objector status. When that was denied, he refused to board the plane that was heading to Saudi Arabia during the build-up to the war by literally sitting down on the tarmac and refusing to move. Eventually his unit left without him. Paterson told his story to Truthout last summer in Oakland, California.

“Leaving without me is what I thought they were going to do. I was a sort of liability. Also I had been on a hunger strike the previous week, and had at that point become a medical issue for them. So they left me behind, and I was taken instead to the Pearl Harbor brig, where I did the next two months in pre-trial confinement. I was court-martialed for a number of offenses. Ultimately they chose to cut their losses and give me a quiet discharge even before the court-martial ended.”

Agosto’s stand has already inspired another member of his unit to refuse to deploy to Afghanistan as well. Sgt. Travis Bishop, who served 14 months in Baghdad with the 57th Expeditionary Signal Battalion - the same battalion as Agosto, who served north of the Iraqi capital - recently went AWOL from his station at Fort Hood, Texas, when his unit deployed to Afghanistan. He insists that it would be unethical for him to deploy to support an occupation he opposes on moral grounds.

On his blog, he writes about his position:

“I love my country, but I believe that this particular war is unjust, unconstitutional and a total abuse of our nation’s power and influence. And so, in the next few days, I will be speaking with my lawyer, and taking actions that will more than likely result in my discharge from the military, and possible jail time ... and I am prepared to live with that.”

Truthout spoke with him briefly after he turned himself in at his base in early June. He said he’d chosen to follow Specialist Agosto’s example of refusal, which had inspired him, and wanted to be present at his post to accept the consequences of his actions. Like Agosto, he, too, hoped others might follow his lead.

Agosto and Bishop are not alone. In November 2007, the Pentagon revealed that between 2003 and 2007 there had been an 80 percent increase in overall desertion rates in the Army (desertion refers to soldiers who go AWOL and never intend to return to service), and Army AWOL rates from 2003 to 2006 were the highest since 1980. Between 2000 and 2006, more than 40,000 troops from all branches of the military deserted, more than half from the Army. Army desertion rates jumped by 42 percent from 2006 to 2007 alone.

Branum, who has defended over a dozen war resisters, told Truthout, “As far as I know, this is the first time since Vietnam that we’ve had two resisters in the same unit.”

Adam Szyper-Seibert, a counselor and administrative associate at Courage to Resist, an organization that supports war resisters, recently told Truthout that “in recent months there has been a dramatic rise of nearly 200 percent in the number of soldiers that have contacted Courage to Resist.” Szyper-Seibert suspects this may reflect the decision of the Obama administration to dramatically increase efforts, troop strength and resources in Afghanistan. “We are actively supporting over 50 military resisters like Victor Agosto,” Szyper-Seibert says. “They are all over the world, including André Shepherd in Germany and several people in Canada. We are getting five or six calls a week just about the IRR [Individual Ready Reserve] recall alone.”

The IRR is composed of troops who have finished their active duty service but still have time remaining on their contracts. The typical military contract mandates four years of active duty followed by four years in the IRR, though variations on this pattern exist. Ready Reserve members live civilian lives and are not paid by the military, but they are required to show up

for periodic musters. Many have moved on from military life and are enrolled in college, working civilian jobs, and building families.

Agosto told Truthout he stands willing to face the consequences of his actions.

“Yes, I’m fully prepared for this. I have concluded that the wars [in Iraq and Afghanistan] are not going to be ended by politicians or people at the top. They’re not responsive to people, they’re responsive to corporate America. The only way to make them responsive to the needs of the people is for soldiers to not fight their wars. If soldiers won’t fight their wars, the wars won’t happen. I hope I’m setting an example for other soldiers.”

“One who breaks an unjust law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law,” Dr. Martin Luther King Junior said, words that concisely explain the ramifications of Agosto’s position.

As evidenced by the stand being taken by Sergeant Bishop, Agosto’s hope has already been realized. However, with 19,000 US soldiers recently added to the occupation of Afghanistan (bringing the total to 68,000) and violence continuing to escalate, there is an increasing likelihood for more to follow Agosto’s lead.