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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IBRAHIM TURKMEN; ASIF-UR-REHMAN :
SAFFI; SYED AMJAD ALI JAFFRI; :
YASSER EBRAHIM; HANY IBRAHIM; :
SHAKIR BALOCH; AKHIL SACHDEVA; :
and ASHRAF IBRAHIM, :
on behalf of themselves and all others : 02 CV 2307 (JG)
similarly situated, :
: :
: :
Plaintiffs, : **THIRD AMENDED CLASS**
: **ACTION COMPLAINT AND**
- against - : **DEMAND FOR JURY TRIAL**
: :
: :
JOHN ASHCROFT, Attorney General of the :
United States; ROBERT MUELLER, Director of :
the Federal Bureau of Investigation; JAMES W. :
ZIGLAR, Commissioner of the Immigration and :
Naturalization Service; DENNIS HASTY, :
former Warden of the Metropolitan Detention :
Center (MDC); MICHAEL ZENK, MDC Warden; :
MDC Associate Warden for Custody SHERMAN; :
MDC Captain SALVATORE LOPRESTI; MDC :
Lieutenants STEVEN BARRERE, WILLIAM :
BECK, LINDSEY BLEDSOE, JOSEPH CUCITI, :
HOWARD GUSSAK, MARCIAL MUNDO, :
DANIEL ORTIZ, STUART PRAY, and :
ELIZABETH TORRES, and MDC Correctional :
Officers PHILLIP BARNES, SIDNEY CHASE, :
MICHAEL DEFRANCISCO, RICHARD DIAZ, :
KEVIN LOPEZ, MARIO MACHADO, MICHAEL :
MCCABE, RAYMOND MICKENS, JOHN :
OSTEEN, BRIAN RODRIGUEZ, SCOTT :
ROSEBERY, and CHRISTOPHER WITSCHERL, :
MDC Counselors RAYMOND COTTON, :

CUFFEE, and CLEMMET SHACKS; JOHN :
DOES 1-20, Metropolitan Detention Center, :
Corrections Officers, and the UNITED :
STATES, :
: :
: :
Defendants. :
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Plaintiffs Ibrahim Turkmen, Asif-ur-Rehman Saffi, Syed Amjad Ali Jaffri, Yasser Ebrahim, Hany Ibrahim, Shakir Baloch, Akhil Sachdeva, and Ashraf Ibrahim (collectively “Plaintiffs” or “Named Plaintiffs”) by and through their attorneys, the Center for Constitutional Rights, allege the following:

NATURE OF ACTION

1. Plaintiffs bring this class action on behalf of themselves and the class of male non-citizens from the Middle East, South Asia, and elsewhere who are Arab or Muslim or have been perceived by Defendants to be Arab or Muslim, who have been arrested and detained on minor immigration violations at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York and/or the Passaic County Jail in New Jersey, following the September 11, 2001 terrorist attacks on the United States (“post-9/11 detainees”), treated as “of interest” to the government’s terrorism investigation and subjected to a blanket “hold until cleared” policy pursuant to which the Immigration and Naturalization Service (“INS”) denied them bond without regard to evidence of dangerousness or flight risk, and detained them until the Federal Bureau of Investigation (“FBI”) cleared them of terrorist ties. (OIG Report¹ at 69-70). All Plaintiffs and virtually all class members were in fact cleared of any connection to terrorism. (Id. at 27).

¹ References throughout to the “OIG Report” are to a report released by the Office of the Inspector General of the U.S. Department of Justice on June 2, 2003, entitled “The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks.” A copy of this report was appended to the Second Amended Complaint as Exhibit 1 and is incorporated by reference. It is also available at <http://www.usdoj.gov/oig/special/0306/full.pdf>.

Plaintiffs and class members have been subjected to one or more of the following unconstitutional policies and practices: (a) once placed in detention, they were not timely served with a Notice to Appear or any other notice of the charges on which they were being held and were thereby impaired in their ability to understand the reason for their detention, obtain legal counsel, and request release on bond (id. at 27-31); (b) some were classified as being “of high interest” to the government’s terrorism investigation, or as “Witness Security” and/or “Management Interest Group 155” detainees in the absence of adequate standards or procedures for making such a determination or evidence that they were involved in terrorism and, on the basis of these classifications, housed in one of the most highly restrictive prison settings possible, the MDC’s Administrative Maximum Special Housing Unit (“ADMAX SHU”) (id. at 18, 115-16); (c) they were subjected to a communications blackout and other actions that interfered with their access to counsel and their ability to seek redress in the courts (id. At 112-14); (d) they were denied release from detention on bond pursuant to a blanket no-bond policy and other fundamentally unfair procedures; and/or (e) after receiving final removal orders or grants of voluntary departure, they were held in immigration custody far beyond the period necessary to secure their removal or voluntary departure from the United States, again without regard to whether they posed a danger or flight risk, and never afforded on a timely basis a hearing before a neutral judicial officer for a determination as to whether probable cause existed to justify detaining them beyond the time necessary to secure their removal or voluntary departure from the United States (id. at 105).

2. As a matter of policy and practice, Defendants have kept Plaintiffs and class members in custody for extended time periods without evidence that they posed a danger of flight risk pursuant to a “hold until cleared policy,” not for any legitimate immigration law enforcement

purpose, but to incarcerate them – without probable cause – while law enforcement authorities sought to determine whether they had any ties to terrorism. Individuals were deemed “of interest” to the terrorism investigation even where Defendants had no affirmative evidence of a connection to terrorism, so long as the FBI could not immediately rule out any connection. (Id. at 18). After the September 11 attacks, Defendants also adopted a policy of denying bond to any non-citizen deemed “of interest” to the terrorism investigation, even when Defendants had no evidence that the person was dangerous, a flight risk, or connected to terrorism. (Id. at 76, 78). Instead of being presumed innocent until proven guilty, these post-9/11 detainees have been presumed guilty of terrorism until proven innocent to the satisfaction of law enforcement authorities. By adopting, promulgating, and implementing these policies and practices, Defendants John Ashcroft, Robert Mueller, James Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fourth and Fifth Amendments to the United States Constitution, customary international law, and treaty law.

3. While in detention, the Plaintiffs and class members have been subjected to unreasonable and excessively harsh conditions. Like Plaintiffs Turkmen and Sachdeva, some class members have been held in overcrowded and unsanitary county jail facilities and housed with potentially dangerous criminal pretrial detainees, even though they themselves have never been charged with a crime. Like Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, and A. Ibrahim, other class members have been kept in federal facilities, such as the ADMAX SHU of the MDC where they were placed in tiny cells for over 23 hours a day and strip-searched, manacled, and shackled when taken out of their cells. Like Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, and A. Ibrahim, some class members have suffered physical and verbal abuse by their guards. Many, including Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, and A. Ibrahim, have been badly

beaten. Like the Plaintiffs, many class members have been denied access to counsel and to the judicial system. Like the Plaintiffs, many class members have been denied the ability to practice their faith during their detention. By subjecting Plaintiffs and class members to excessive force, unreasonable and excessively harsh and inhumane conditions, and penalizing them for the practice of their faith, the Defendants in this action have intentionally and/or recklessly violated rights guaranteed to Plaintiffs and class members under the First, Fourth, and Fifth Amendments to the United States Constitution, and under customary international law and treaty law.

4. Even though Defendants have kept Plaintiffs and other class members in detention for the sole purpose of criminal investigation, Defendants have not provided them with the rights to which those suspected of crimes are entitled under the Constitution. Defendants have failed to provide them with a hearing before a neutral judicial officer to determine whether Defendants had probable cause to believe that the Plaintiffs and other class members were engaged in criminal activity. In addition, Defendants have failed to provide Plaintiffs and other class members with a criminal indictment or information citing criminal charges on which the detention was based, much less with counsel or a speedy trial. Instead of being afforded these fundamental protections, Plaintiffs and other class members were detained indefinitely pending the outcome of FBI and INS "clearances." In adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fourth and Sixth Amendments to the Constitution.

5. Defendants adopted policies and practices that impeded and interfered with Plaintiffs' ability to obtain legal representation and thereby gain access to court. They did so by, among other things, not serving Notices to Appear on a timely basis, thereby delaying bond

redetermination hearings (*id.* at 27-31); imposing an initial communications blackout (*id.* at 112-14) and severely limiting phone calls to lawyers even after the blackout ended (*id.* at 130-31); and assigning certain Plaintiffs to the ADMAX SHU. (*Id.* at 18, 115-116). In adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the First and Fifth Amendments to the Constitution.

6. At the time of Plaintiffs' arrests, Defendants confiscated personal identification, money, and valuable personal items from all Plaintiffs and many class members. In addition, Defendants searched the homes of Plaintiffs and other class members while they were in detention and confiscated items in their homes. When Plaintiffs Turkmen, Baloch, and other class members demanded the return of these items upon release for removal or voluntary departure from the United States, Defendants deliberately deprived Plaintiffs and other class members of these items. By adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, and Ziglar, and others have intentionally violated rights guaranteed to Plaintiffs and class members under the Fifth Amendment to the Constitution.

7. During their confinement, Defendants subjected Plaintiffs such as Saffi, Ebrahim, H. Ibrahim, Baloch, A. Ibrahim, and other class members to coercive and involuntary custodial interrogation designed to overcome their will and coerce involuntary and incriminating statements from them. By adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, Ziglar, John Does 1-20, and others have intentionally violated rights guaranteed to Plaintiffs and class members under the Fifth Amendment to the Constitution.

8. In arresting Plaintiffs and class members, denying them bond without an adequate evidentiary basis, detaining them under unreasonable and excessively harsh conditions, and

holding them far beyond the time necessary to effectuate their removal, Defendants Ashcroft, Mueller, Ziglar, and others have also engaged in racial, religious, ethnic, and/or national origin profiling. Plaintiffs' and class members' race, religion, ethnicity, and/or national origin have played a determinative role in Defendants' decision to detain them initially, to subject them to a blanket no-bond policy, to subject them to punishing and dangerous conditions of confinement, and then to keep them detained beyond the point at which removal or voluntary departure could have been effectuated, in violation of the rights guaranteed to them by the Fifth Amendment to the Constitution.

9. Plaintiffs and other class members seek a judgment declaring that Defendants' actions, practices, customs, and policies, and those of all persons acting on their behalf and/or their agents and/or employees, alleged herein, are illegal and violate the constitutional rights of Plaintiffs and class members as to each applicable count. Plaintiffs and other class members also seek a declaration that each individual Plaintiff's detention was unjustified, unconstitutional, unlawful and without probable cause to believe that he had any involvement in the September 11 terrorist attacks or other terrorist activity. Plaintiffs further seek an injunction compelling Defendants to return all personal identification, money and valuable personal items that were confiscated from them. In addition, Plaintiffs seek compensatory and punitive damages for themselves and all class members, and an award of costs and reasonable attorneys' fees.

10. Plaintiffs also seek relief under the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., ("FTCA") for the torts of false imprisonment, negligence, assault, battery, and the intentional infliction of emotional distress. Plaintiffs seek compensatory damages from the United States for the harm suffered as a result of Defendants' tortious conduct. All Defendants were acting within the scope of their employment by the United States when they committed the conduct in

question. The conduct in question occurred at the times and places where Defendants were performing the duties of their employment, that are traditionally a part of their employment duties in their service to the United States. All Defendants employed at MDC at the time of the conduct at issue in this suit were working as law enforcement officers under 28 U.S.C. § 2680(h).

JURISDICTION AND VENUE

11. This action is brought pursuant to the First, Fourth, Fifth, and Sixth Amendments to the Constitution, customary international law, and treaty law as incorporated into federal common law and statutory law.

12. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act), and 28 U.S.C. § 1350 (the Alien Tort Claims Act).

13. The Federal Tort Claims Act confers original jurisdiction on the federal district courts to hear tort claims against the United States. 28 U.S.C. § 1346

14. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to Plaintiffs' claims occurred in this District.

JURY DEMAND

15. Plaintiffs demand trial by jury in this action on each and every one of their claims except that, in keeping with 28 U.S.C. § 1346, Plaintiffs do not demand trial by jury for their claims arising under the FTCA.

PARTIES

The MDC Plaintiffs

16. Plaintiff ASIF-UR-REHMAN SAFFI is a native of Pakistan and a citizen of France. He currently lives on Reunion Island with his wife and three children. He is a Muslim. An employee of Pakistani International Airlines for the past 19 years, Saffi came to the United States on July 6, 2001 on a three-month tourist visa. He has no criminal record in this country or in any other country. Saffi has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

17. Plaintiff SYED AMJAD ALI JAFFRI is a native of Pakistan and a landed immigrant of Canada. Jaffri, a Muslim, has a wife and four children who reside in Lahore, Pakistan. Since May 1997, Jaffri has periodically visited family and friends in the United States, entering this country from Canada or Pakistan on tourist visas. He has no criminal record in this country or in any other country. Jaffri has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

18. Plaintiffs YASSER EBRAHIM and HANY IBRAHIM (“H. Ibrahim”), brothers whose surnames are spelled differently, and who are not related to plaintiff Ashraf Ali Ibrahim, are natives of Egypt and Muslims. Since 1992, Yasser has visited the United States on four occasions, each time on a tourist visa. In 1996, while in this country on a tourist visa, he married a United States citizen, with whom he lived in Queens, New York, until they separated in 1998. Shortly thereafter, Yasser returned to Egypt. In September 2001, Yasser and Hany were in the United States on tourist visas. Neither Yasser nor Hany has a criminal record in this country or in any other country. Neither has ever been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, both Yasser and Hany abhor terrorism.

19. Plaintiff SHAKIR BALOCH is a native of Pakistan. Baloch, a Muslim, comes from a prominent political family. He himself is a member of the Progressive Peoples Party, which is dedicated to the promotion of progressive secularism in Pakistan. Baloch holds a medical degree from Bolan Medical College in Quetta, Pakistan. He briefly worked as a family physician in government service in that country. Baloch became a landed immigrant in Canada in 1989 and a Canadian citizen in 1994. He has a wife and a 15 year old daughter, both of whom reside in Toronto. Unable to find work in Canada, Baloch has entered and stayed in the United States for several extended periods over the past decade, most recently in April 2001. Baloch has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

20. Plaintiff ASHRAF IBRAHIM (“A. Ibrahim”) is a native of Egypt. He entered the United States on a six month visa in January 1992. A. Ibrahim lived continuously in the United States for ten years without petitioning for an adjustment of status. In August, 2001, A. Ibrahim started up a bottled-water distribution business in Philadelphia. Mr. Ibrahim has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

The Passaic Plaintiffs

21. Plaintiff IBRAHIM TURKMEN is a native and citizen of Turkey, where he lives with his wife and four daughters. A Muslim Imam by profession, Turkmen came to the United States on October 4, 2000, on a six-month tourist visa. He has no criminal record either in this country or in any other country. Turkmen has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

22. Plaintiff AKHIL SACHDEVA is a native of India and a Hindu. He holds a bachelor of arts degree in commerce from the University of Delhi. In December 1998, Sachdeva was

granted landed immigrant status in Canada, and in December 2003, he became a citizen of Canada. Between 1995 and April 2002, when he was deported to Canada following the events complained of herein, Sachdeva had lived in the United States for extended periods of time. In 1998, while working as a travel agent in Canada, Sachdeva married a green card holder who owned a gas station in Long Island, New York. For the next several years, Sachdeva lived with his wife in Long Island and worked at her gas station. During this period, Sachdeva applied to the INS for resident status in the United States. In early 2001, however, Sachdeva and his wife decided to divorce, and he briefly returned to Canada. In late September or early October 2001, Sachdeva re-entered the United States to finalize his divorce and pack his belongings for his move back to Canada. Mr. Sachdeva has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

Defendants

23. Defendant JOHN ASHCROFT is the Attorney General of the United States. As Attorney General, Defendant Ashcroft has ultimate responsibility for the implementation and enforcement of the immigration laws. He is a principal architect of the policies and practices challenged here. On information and belief, he also authorized, condoned, and/or ratified the unreasonable and excessively harsh conditions under which Plaintiffs and other class members have been detained. Defendant Ashcroft is being sued in his individual capacity.

24. Defendant ROBERT MUELLER is the Director of the Federal Bureau of Investigation. Defendant Mueller was instrumental in the adoption, promulgation and implementation of the policies and practices challenged here. On information and belief, he also authorized, condoned, and/or ratified the unreasonable and excessively harsh conditions under which Plaintiffs and

other class members have been detained. Defendant Mueller is being sued in his individual capacity.

25. Defendant JAMES W. ZIGLAR is the former Commissioner of the INS. As INS Commissioner, Defendant Ziglar had immediate responsibility for the implementation and enforcement of the immigration laws. He was the INS's chief executive officer. Defendant Ziglar was instrumental in the adoption, promulgation, and implementation of the policies and practices challenged here. On information and belief, he also authorized, condoned and/or ratified the unreasonable and excessively harsh conditions under which Plaintiffs and other class members have been detained. Defendant Ziglar is being sued in his individual capacity.

The MDC Defendants

26. Defendant DENNIS HASTY, until the spring of 2002, was the Warden of the MDC. While warden, Defendant Hasty had immediate responsibility for the conditions under which Plaintiffs and other class members have been confined at the MDC. While Warden, Defendant Hasty subjected Plaintiffs and other class members confined at the MDC to unreasonable and excessively harsh conditions in violation of the Constitution and international law norms. Defendant Hasty is being sued in his individual capacity.

27. Defendant MICHAEL ZENK is currently the warden of the MDC. As Warden, Defendant Zenk has immediate responsibility for the conditions under which Plaintiffs and other class members have been confined at the MDC. On information and belief, as Warden, Defendant Zenk has subjected Plaintiffs and class members confined at the MDC to unreasonable and excessively harsh conditions in violation of the Constitution and international law norms. Defendant Zenk is being sued in his individual capacity.

28. Defendant SHERMAN, at all times relevant to this complaint, was the MDC Associate Warden for Custody. Sherman is being sued in his individual capacity

29. Defendant SALVATORE LOPRESTI, at all times relevant to this complaint, was a Captain at the MDC. LoPresti is being sued in his individual capacity

30. Defendant STEVEN BARRERE, at all times relevant to this complaint, was a Lieutenant at the MDC. Barrere is being sued in his individual capacity.

31. Defendant WILIAM BECK, at all times relevant to this complaint, was a Lieutenant at the MDC. Beck is being sued in his individual capacity.

32. Defendant LINDSEY BLEDSOE, at all times relevant to this complaint, was a Lieutenant at the MDC. Bledsoe is being sued in his individual capacity.

33. Defendant JOSEPH CUCITI, at all times relevant to this complaint, was a Lieutenant at the MDC. Cuciti is being sued in his individual capacity

34. Defendant HOWARD GUSSAK, at all times relevant to this complaint, was a Lieutenant at the MDC. Gussak is being sued in his individual capacity.

35. Defendant MARCIAL MUNDO, at all times relevant to this complaint, was a Lieutenant at the MDC. Mundo is being sued in his individual capacity.

36. Defendant DANIEL ORTIZ, at all times relevant to this complaint, was a Lieutenant of the MDC. Ortiz is being sued in his individual capacity

37. Defendant STUART PRAY, at all times relevant to this complaint, was a Lieutenant at the MDC. Pray is being sued in his individual capacity.

38. Defendant ELIZABETH TORRES, at all times relevant to this complaint, was a Lieutenant at the MDC. Torres is being sued in her individual capacity.

39. Defendant PHILLIP BARNES, at all times relevant to this complaint, was a Correctional Officer at the MDC. Barnes is being sued in his individual capacity.

40. Defendant SIDNEY CHASE, at all times relevant to this complaint, was a Correctional Officer at the MDC. Chase is being sued in his individual capacity.

41. Defendant MICHAEL DEFRANCISCO, at all times relevant to this complaint, was a Correctional Officer at the MDC. DeFrancisco is being sued in his individual capacity.

42. Defendant RICHARD DIAZ, at all times relevant to this complaint, was a Correctional Officer at the MDC. Diaz is being sued in his individual capacity.

43. Defendant KEVIN LOPEZ, at all times relevant to this complaint, was a Correctional Officer at the MDC. Lopez is being sued in his individual capacity.

44. Defendant MARIO MACHADO, at all times relevant to this complaint, was a Correctional Officer at the MDC. Machado is being sued in his individual capacity.

45. Defendant MICHAEL MCCABE, at all times relevant to this complaint, was a Correctional Officer at the MDC. McCabe is being sued in his individual capacity.

46. Defendant RAYMOND MICKENS, at all times relevant to this complaint, was a Correctional Officer at the MDC. Mickens is being sued in his individual capacity.

47. Defendant JOHN OSTEEEN, at all times relevant to this complaint, was a Correctional Officer at the MDC. Osteen is being sued in his individual capacity.

48. Defendant BRIAN RODRIGUEZ, at all times relevant to this complaint, was a Correctional Officer at the MDC. Rodriguez is being sued in his individual capacity.

49. Defendant SCOTT ROSEBERY, at all times relevant to this complaint, was a Correctional Officer at the MDC. Rosebery is being sued in his individual capacity.

50. Defendant CHRISTOPHER WITSCHER, at all times relevant to this complaint, was a Correctional Officer at the MDC. Witscher is being sued in his individual capacity.

51. Defendant RAYMOND COTTON, at all times relevant to this complaint, was a Counselor at the MDC. Cotton is being sued in his individual capacity.

52. Defendant CUFFEE, at all times relevant to this complaint, was a Counselor at the MDC. Cuffee is being sued in his individual capacity.

53. Defendant CLEMMET SHACKS, at all times relevant to this complaint, was a Counselor at the MDC. Shacks is being sued in his individual capacity.

CLASS ACTION ALLEGATIONS

54. Plaintiffs seek to represent a certified Plaintiff class consisting of all male non-citizens from the Middle East, South Asia and elsewhere who are Arab or Muslim or have been perceived by Defendants as Arab or Muslim and who have been:

- (a) arrested by the INS or FBI after the September 11, 2001 terrorist attacks and charged with immigration violations;
- (b) treated as being “of interest” to the government’s terrorism investigation and subjected to a blanket “hold until cleared” policy pursuant to which they were held without bond, without regard to evidence of dangerousness or flight risk, until cleared of terrorist ties by the FBI; and
- (c) detained at the MDC or the Passaic County Jail.

In addition, Plaintiffs and the other members of the class were subjected to one or more of the following policies and practices:

- (a) once placed in detention, they were not timely served with a Notice to Appear or any other notice of the charges on which they were being held and were thereby impaired in their ability to understand the reason for their detention, obtain legal counsel, and request release on bond;
- (b) some were classified as being “of high interest” to the government’s terrorism investigation or as “Witness Security” and/or “Management Interest Group 155” detainees in the absence of adequate standards or procedures for

making such a determination or evidence that they were involved in terrorism and, on the basis of these classifications, housed in the highly restrictive ADMAX SHU of the MDC in Brooklyn, New York;

(c) they were subjected to a communications blackout and other actions that interfered with their access to counsel and their ability to seek redress in the courts;

(d) they were denied release from detention on bond pursuant to a blanket no-bond policy and other fundamentally unfair procedures; and/or

(e) after receiving final removal orders or grants of voluntary departure, they were held in immigration custody far beyond the period necessary to secure their removal or voluntary departure from the United States, without regard to any evidence that they were dangerous or a flight risk, and never afforded, or else not timely afforded, a hearing before a neutral judicial officer for a determination as to whether probable cause existed to justify detaining them beyond the time necessary to secure their removal or voluntary departure from the United States.

55. The members of the class are too numerous to be joined in one action, and their joinder is impracticable in part because Defendants have kept their identities secret. While the exact number is presently unknown to Plaintiffs' counsel, the Department of Justice Office of Inspector General was able to identify approximately 475 September 11 detainees who were held at MDC and Passaic and were subjected to the policies challenged in this action. (OIG Report at 5). Moreover, the subclass of Plaintiffs detained after they could have been deported likely exceeds 87 individuals. See *Though Not Linked to Terrorism, Many Detainees Cannot Go Home*, N.Y. Times, Feb. 18, 2002, at A1 (reporting that the United States Department of Justice blocked the departure of 87 mostly Arab or Muslim non-citizens who received voluntary departure or removal orders, "while investigators comb[ed] through information pouring in from overseas to ensure that they have no ties to terrorism").

56. Common questions of law and fact exist as to all class members and predominate over questions that affect only the individual members. These common questions include, but are not limited to:

- (a) whether Defendants adopted, promulgated, and implemented a policy and practice of depriving Plaintiffs and class members of their Fourth Amendment right to be free from unreasonable seizures by detaining them months longer than necessary to secure their removal or voluntary departure from the United States;
- (b) whether Defendants adopted, promulgated, and implemented a policy and practice depriving Plaintiffs and class members of their liberty without due process of law in violation of the Fifth Amendment and customary international law by detaining them months longer than necessary to secure their removal or voluntary departure from the United States;
- (c) whether Defendants adopted and implemented a policy of denying bond to all “of interest” detainees, without regard to evidence of danger or flight risk;
- (d) whether Defendants adopted, promulgated, and implemented policies and practices depriving Plaintiffs and class members of their liberty without due process of law in violation of the Fifth Amendment and in violation of their rights under customary international law, by subjecting them to outrageous, excessive, cruel, inhumane, and degrading conditions of confinement;
- (e) whether Defendants adopted, promulgated and implemented a policy and practice depriving Plaintiffs and class members of their rights under the Fourth and Sixth Amendments, including the right to a probable cause determination made by a neutral judicial officer, the right to be provided on a timely basis with a criminal indictment or information citing the criminal charges on which the detention is based, and the right to a speedy trial;
- (f) whether Defendants adopted, promulgated, and implemented a policy and practice under which Plaintiffs and class members were subjected to coercive and to involuntary custodial interrogation designed to overcome their will and to coerce involuntary and incriminating statements from them, depriving Plaintiffs and class members of their right to due process of law under the Fifth Amendment;
- (g) whether Defendants adopted, promulgated, and implemented a policy depriving Plaintiffs and class members of equal protection of the law in violation of the Fifth Amendment by detaining them months longer than necessary to secure their removal or voluntary departure from the United States because of their race, religion, ethnicity, and/or national origin;
- (h) whether Defendants adopted, promulgated, and implemented a policy confiscating the personal property of Plaintiffs and class members in violation of the Fifth Amendment;

(i) whether Defendants adopted, promulgated, and implemented a policy under which Plaintiffs and class members were interrogated by FBI and other federal agents and deprived of the opportunity to obtain counsel in violation of the Sixth Amendment to the Constitution; and

(j) whether Defendants adopted, promulgated, and implemented a policy which violated Plaintiffs' and class members' rights under the First Amendment to practice their religion.

57. Plaintiffs' claims are typical of those of the class for reasons that include the following.

First, each Plaintiff is a male non-citizen of Middle Eastern or South Asian descent who is Arab or Muslim or has been perceived by Defendants to be Arab or Muslim. Second, each Plaintiff was arrested and detained subsequent to the September 11 terrorist attacks and charged with minor (but deportable) immigration violations. Third, each Plaintiff has been treated as “of interest” to the government’s terrorism investigation, and subjected to a blanket “hold until cleared” policy pursuant to which he was held in INS detention without regard to evidence of danger or flight risk, until cleared of terrorist ties by the FBI. Fourth, each Plaintiff subsequently received a removal or voluntary departure order and was held for months longer than necessary to secure his removal or voluntary departure from the United States while he was cleared of terrorist ties, again without regard to evidence of danger or flight risk. Fifth, each Plaintiff was held under unreasonable and excessively harsh conditions of confinement and those housed in MDC were subjected to a communications blackout. Sixth, each Plaintiff was never afforded, or else not afforded on a timely basis, a hearing before a neutral judicial officer to determine whether there was probable cause to detain them beyond the time when all legitimate immigration law enforcement purposes had been served. Seventh, the race, religion, ethnicity and/or national origin of each plaintiff played a determinative role in Defendants' decision to detain them.

58. The legal theories on which Plaintiffs rely are the same or similar to those on which all class members would rely, and the harms suffered by them are typical of the harms suffered by the other class members.

59. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are consistent with those of the class members. In addition, Plaintiffs' counsel are experienced in class actions and civil rights litigation.

60. Plaintiffs' counsel know of no conflicts of interest among class members or between the attorneys and class members that would affect this litigation.

61. Use of the class action mechanism here is superior to other available methods for the fair and efficient adjudication of the claims and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and on this Court which individual litigation of these claims would impose.

62. The Plaintiff class should be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure ("Rule 23(b)(3)") for determination of liability because Defendants have acted on grounds generally applicable to the class, thereby making class-wide declaratory relief appropriate.

63. Common questions of law and fact also clearly predominate within the meaning of Rule 23(b)(3). Class action treatment provides a fair and efficient method for the adjudication of this controversy, affecting a large number of persons, joinder of whom is impracticable. The class action provides an effective method whereby the enforcement of Plaintiffs' and class members' rights can be fairly managed without unnecessary expense and duplication.

STATEMENT OF FACTS

General Allegations

64. In the wake of the September 11 terrorist attacks, the INS arrested and detained well over 1,200 male, non-citizens from the Middle East, South Asia, and elsewhere, who appeared to be Arab or Muslim, mostly on minor immigration violations -- such as overstaying visas, working illegally on tourist visas, or failing to meet matriculation and/or course work requirements for student visas. While the INS has sometimes in the past sought to remove non-citizens for these violations, it generally has not detained them during their removal proceedings.

65. On information and belief, the INS has taken a different approach with post-9/11 detainees, not because they violated the immigration laws -- that alone does not justify detention under the immigration laws -- but rather because federal law enforcement authorities deemed them potential (but not actual or even probable) terrorists, often based on vague suspicions rooted in racial, religious, ethnic, and/or national origin stereotypes rather than in hard facts.

66. On information and belief, many post-9/11 detainees have been held for weeks, even months in INS facilities or county jails, without any charges being filed against them and without any hearing on the reasons for their detention. Eventually, the INS has filed charges against most post-9/11 detainees, alleging that they committed minor immigration violations and not criminal offenses.

67. On information and belief, after immigration hearings, many post-9/11 detainees have received final removal orders or accepted voluntary departure orders. Even though the INS could have promptly secured the removal or voluntary departure of these individuals, it has kept them in custody in some cases over six months after the issuance of their final immigration orders -- far longer than necessary to secure their removal or voluntary departure from the United

States, and well beyond the time that the INS is statutorily authorized to detain them. 8 U.S.C. § 1231(a)(1) (90-day removal period); 8 U.S.C. § 1229c(b)(2) (60-day period for voluntary departure granted at the conclusion of removal proceedings).

68. On information and belief, most, if not all, post-9/11 detainees have been kept in custody after the issuance of final removal or voluntary departure orders until they have received two “clearances” -- one from the FBI and the other from INS -- absolving them of any linkage to terrorists or terrorist activities. In effect, federal law enforcement authorities have deemed post-9/11 detainees “guilty of terrorism until cleared,” instead of “innocent until proven guilty.” The FBI and INS clearances have frequently taken four months or longer.

69. On information and belief, from the outset, the arrest, processing, and detention of post-9/11 detainees have been shrouded in extreme secrecy. Most were held incommunicado for the first few weeks of their detention. Family members thus initially had great difficulty finding out whether their loved ones had been arrested and detained, and if so, where they were being held. To add to the secrecy, the INS has designated post-9/11 detainees as “special interest cases,” which had the effect of closing their immigration hearings, not only to the general public but also to family members, and sealing the records in their cases.

70. On information and belief, while in INS custody, most post-9/11 detainees have been repeatedly interrogated by both FBI and INS agents. Very few have been represented by counsel during these interrogations. Many have not even been told of their right to counsel. Others have been coerced to waive that right, even though they could not read the printed English language on the waiver forms which they were instructed to sign and even though they did not fully understand the nature of the right being waived. When post-9/11 detainees have asked to adjourn interrogations so they can consult with an attorney, FBI and INS agents have generally

refused to do so.

71. On information and belief, post-9/11 detainees have had great difficulty obtaining legal representation, even after they were no longer held incommunicado. Some post-9/11 detainees have been held for months following their arrest, with their status and whereabouts unknown to their lawyers and their families. Others have been moved to different facilities without their lawyers' knowledge. For several months after the September 11 terrorist attacks, post-9/11 detainees held at the MDC were allowed to make only one call per month to their attorneys and only one call per month to their families. At both the MDC and the Passaic County Jail, post-9/11 detainees are allowed to make only collect calls, which few law offices accept from strangers. While INS detainees typically receive a list of organizations that might provide free legal services, the lists given to post-9/11 detainees have been woefully inadequate, containing much inaccurate and outdated information.

72. On information and belief, while civil liberties, civil rights, and immigrant advocacy organizations have been ready, willing, and able to provide free legal services to post-9/11 detainees, Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk and their employees, agents, and contractors have substantially limited such organizations' access to post-9/11 detainees. They have imposed a virtual "blackout" on information on post-9/11 detainees, refusing to disclose their names, the facilities in which they are being held, or information about their cases. They have also denied requests by civil liberties, civil rights, and immigrant advocacy organizations to visit INS facilities or county jails to screen post-9/11 detainees in need of legal assistance.

73. On information and belief, even though non-citizen INS detainees must be advised of their right to seek assistance from their consulates under Article 36 of the Vienna Convention on Consular Relations, April 24, 1963, TIAS 6820, 21 U.S.T. 77 ("Vienna Convention"), many

post-9/11 detainees have not been advised of this right. Others have been coerced to waive that right, even though they cannot read the printed English language on the waiver forms which they are asked to sign and do not understand the nature of the right being waived. When post-9/11 detainees have sought to contact their consulates, their requests have been denied.

74. On information and belief, shortly after the September 11 terrorist attacks, Defendants Ashcroft, Mueller, and Ziglar adopted, promulgated and implemented policies within the INS and the FBI to detain Arab or Muslim men of Middle Eastern and South Asian origin as suspects in a criminal investigation, notwithstanding the fact that in many instances they lacked probable cause to do so, in violation of the Fourth Amendment. To accomplish this goal, Defendants used the pretext of violations of the INA to detain Plaintiffs and the class for criminal purposes. The circumstances of most of these detentions deviated from standard INS practice in the following respects:

- (a) nearly all of the detainees are Arab or Muslim men of Middle Eastern or South Asian origin;
- (b) nearly all have been arrested and detained for minor immigration violations and on scant evidence of dangerousness or flight risk;
- (c) nearly all have often been held for more than 48 hours without notice of the charges against them;
- (d) nearly all have been denied bond; and
- (e) nearly all have been held in detention without cause for as long as six months after their final deportation or voluntary departure orders could have been carried out.

75. Even though Plaintiffs and other class members have been detained indefinitely for the purposes of a criminal investigation, Defendants have deliberately denied them the mandatory constitutional, statutory, and common law protections afforded criminal defendants, including

access to the courts, by, among other things:

- (a) failing to comply with the requirement that a detained suspect in a criminal investigation be brought promptly before an independent magistrate for a probable cause determination;
- (b) precluding them from obtaining legal representation by holding them incommunicado and refusing access to legal services and civil rights organizations that would have provided legal assistance;
- (c) subjecting them to coercive interrogation, while in detention, despite repeated requests for adjournment to contact counsel;
- (d) subjecting them to outrageous, excessive, cruel, inhuman, and degrading conditions of confinement, and excessive force; and
- (e) coercing them to waive their right to consular access.

76. Defendants have adopted, promulgated, and implemented their detention policies, in whole or in part, based on invidious animus against Arabs and Muslims, in violation of the First and Fifth Amendments to the Constitution. Such invidious animus is evidenced by, among other things:

- (a) the above-mentioned unconstitutional policies have not been applied to all non-citizens in the United States alleged to have violated the immigration laws. Since the September 11 terrorist attacks, virtually all of these non-citizens arrested and detained on minor immigration violations have been Arab or Muslim or perceived to have been Arab or Muslim;
- (b) they have been detained in situations where similarly situated non-Arabs and non-Muslims have not been detained;
- (c) they have been detained beyond the time necessary to secure their removal or voluntary departure from the United States, while similarly situated non-Arab and non-Muslim detainees have been removed or allowed to depart within a matter of days or weeks after final removal or voluntary departure orders have been issued;
- (d) they have been verbally abused and subjected to statements slandering the Muslim faith and their adherence to it by the Defendants, including Defendant Ashcroft, who has expressed anti-Muslim sentiments, including, reportedly, a statement proclaiming the inferiority, moral and otherwise, of the Muslim people,

to wit: "Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you;" and

(e) they have been targeted for disparate treatment by Defendant Ashcroft who announced the policy that Plaintiffs and class members would be arrested and detained for any reason regardless of the *de minimis* nature of their infractions, and thereby eliminated for Plaintiffs and class members any access to the fair and reasonable discretion of law enforcement officials. This fair and reasonable discretion remains available to non-Arab and non-Muslim individuals who are non-citizens. Defendant Ashcroft's policy announcement stated: "Let the terrorists among us be warned. If you overstay your visa even by one day, we will arrest you. If you violate a local law we will...work to make sure that you are put in jail and...kept in custody as long as possible."

Inspector General's June 2003 Report on the September 11 Detainees

77. On June 2, 2003, the Office of the Inspector General of the United States Department of Justice released a 198-page report entitled "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks" ("OIG Report"). The OIG Report provides a wealth of details concerning the Government's treatment of the post-9/11 detainees. A copy of this report is attached to the Second Amended Complaint as Exhibit 1 and is incorporated by reference.

78. According to the OIG Report, the INS consistently delayed in issuing and serving the post-9/11 detainees with charging documents (known as Notices to Appear or NTAs) far beyond the 48-hour period specified in its regulations at 8 C.F.R. § 287.3 for issuing an NTA and its post-9/11 goal of serving an NTA within 72 hours. (OIG Report at 29-30). In doing so, the INS impaired the ability of detainees to know the charges on which they were being held, obtain legal counsel, and seek release on bond. (*Id.* at 35.) On information and belief, Plaintiffs Ebrahim and H. Ibrahim were not served with NTAs until seventeen days after their respective arrests; Plaintiff Sachdeva was not served until seven days after his arrest; Plaintiff Jaffri was not served until four days after his arrest; service of an NTA on Plaintiff A. Ibrahim was unreasonably

delayed; and, on information and belief, other class members were similarly impacted by these delays.

79. According to the OIG Report, as a matter of custom and policy, Defendants and other federal officials instituted a blanket “no bond” policy for all individuals arrested in connection with September 11 investigations that was applied without regard to whether the person posed a flight risk or a danger. (Id. at 76, 78.) INS District Directors were ordered to make an initial determination of no bond for all post-9/11 detainees. (Id. at 76-77.) Moreover, Defendants and other federal officials ordered INS Trial Attorneys to seek continuances and delays of bond redetermination hearings and to oppose bond even when there was no evidence to support the denial of bond. (Id. at 78-80.) All of the Plaintiffs and class members were subjected to Defendants’ blanket no bond policy.

80. According to the OIG Report, many post-9/11 detainees were classified as “of high interest” to the Government’s terrorism investigation without specific criteria or a uniform classification system. (Id. at 18.) The FBI requested that the INS place these “of high interest” detainees at Metropolitan Detention Center (“MDC”). (Id.) Once assigned to MDC, the Bureau of Prisons (“BOP”) classified the detainees as “Witness Security” and/or “Management Interest Group 155” detainees without individual assessment or uniform criteria of any sort. (Id. at 115-16.) Upon information and belief and according to the OIG Report, BOP regulations require an employee known as the Segregation Review Official to conduct a weekly review of the status of each inmate housed in the Special Housing Unit (“SHU”) after he has spent seven days in administrative detention or disciplinary segregation. (Id. at 118.) The Segregation Review Official is also required to conduct a formal hearing every 30 days assessing the inmate’s status. (Id.) These review processes were not conducted for the post-9/11 detainees. (Id.) Officials at

MDC were told by BOP headquarters that until the FBI had cleared a particular detainee, that detainee's report was to be automatically annotated with the phrase "continue high security," no hearing was to take place, and the detainee was to remain under restrictive detention in the Administrative Maximum ("ADMAX") SHU. (Id.) Upon information and belief, Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, A. Ibrahim, and other class members were improperly designed as high security status and denied a fair review process as the result of these procedures.

81. These arbitrary and capricious classifications resulted in severe deprivations of liberty. The "of high interest" detainees were placed in the ADMAX SHU, a particularly restrictive type of SHU uncommon to most BOP facilities because the normal SHUs "are usually sufficient for correcting inmate misbehavior and addressing security concerns." (Id. at 118-19.) The ADMAX SHU at MDC was established after September 11, 2001 to make available more restrictive confinement. (Id. at 119.) Unlike regular SHUs, ADMAX SHUs enforce four-man hold restraint policies, use hand-held cameras to record detainee movements, and have cameras in each cell to monitor detainees. (Id.) Unlike detainees in the general population at MDC, detainees in the ADMAX SHU were not allowed to move around the unit, use the telephone freely, or to have electronic equipment (such as small radios). (Id.) ADMAX SHU detainees could only move outside their cells while restrained and accompanied by four staff members, and only then for specific purposes. (Id.) ADMAX SHU detainees were strictly limited in their telephone use in terms of both frequency and duration of calls. (Id.) Unlike the general MDC population, all attorney and family visits were non-contact, with a clear partition between the parties. (Id. at 123.) Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, A. Ibrahim, and other

class members were subjected to these restrictive conditions in the ADMAX SHU for between three and eight months.

82. According to the OIG Report, detainees at the ADMAX SHU in MDC were subjected to a communications blackout that barred them from receiving telephone calls, visitors, mail, or placing telephone calls. (Id. at 113.) During this period, detainees were unable to make any contact with attorneys or their families. (Id. at 114.) Compounding this situation, the detainees' classification as "Witness Security" and/or "Management Interest Group 155" led MDC to turn away lawyers and family members who came to the facility seeking individual detainees by falsely stating that the individuals were not detained inside. (Id. at 115.) Upon information and belief, Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, A. Ibrahim, and other class members were subjected to the communications blackout for a period of time ranging from two weeks to two months or even longer.

83. According to the OIG Report, the detainees arbitrarily labeled "of high interest" were placed in the ADMAX SHU and subjected to the communication blackout pursuant to a joint policy of the FBI, INS, and Bureau of Prisons ("BOP"). (Id. at 18.) INS Commissioner Ziglar, FBI Director Mueller, and Attorney General Ashcroft ordered and/or condoned the prolonged placement of these detainees in extremely restrictive confinement. (Id. at 17, 37-39, 66, 77.)

84. According to the OIG Report, the INS held detainees long after removal could have been effectuated, simply because the FBI had not completed its "clearance" process. As a matter of policy and practice, and in keeping with its "hold until cleared" policy, INS did not conduct post-order custody reviews for post-9/11 detainees held more than 90 days after their final removal orders. (Id. at 91, 107-108.) These reviews are required by the INS regulations at 8 C.F.R. § 241.4, and provide that detainees must be given 30 days notice of the review and that the INS

complete the review 90 days after the issuance of a final removal order. On information and belief, Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Sachveda, A. Ibrahim, and other class members were not given notice of such a review and no such review was conducted.

The Challenged MDC Policies and Customs and the Inspector General's December 2003 Supplemental Report on the September 11 Detainees

85. In December 2003, the OIG released a 47-page report entitled “Supplemental Report on September 11 Detainees’ Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York” (“Supp. OIG Report”) (attached without appendices as Exhibit 1, and available at <http://www.usdoj.gov/oig/special/0312/final.pdf>). The Supplemental Report sheds further light on the Government’s mistreatment of Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Sachveda, Baloch, A. Ibrahim (“MDC Plaintiffs”), and other class members who were detained at MDC.

86. None of the MDC Plaintiffs or class members had terrorist ties or posed any danger to others. Yet, because the FBI and BOP classified them as “high interest” or “WTC” detainees, the MDC Defendants viewed the MDC Plaintiffs and class members as terrorists responsible for the bombings of the World Trade Center and displayed tremendous anger towards them. (See *id.* at 4, 26.) In the highly charged atmosphere at MDC in the weeks and months following the September 11 attacks, the MDC Plaintiffs and class members were routinely subjected to threats and violence, despite the fact that they were fully compliant and the use of force was completely unnecessary and against BOP policy. (See *id.* at 8, 10, 11, 13, 15.) Not only were the MDC Correctional Officers (“CO’s”) out of control, their Lieutenants condoned and even encouraged the physical and verbal abuse and in some cases joined in it.

COMMUNICATIONS BLACKOUT AT MDC

Policy to Hold Detainees Incommunicado

87. From the outset, the arrest, processing, and detention of the post-9/11 detainees were shrouded in extreme secrecy. Most were held incommunicado for the first few weeks of their detention. Family members, friends, and even attorneys initially had great difficulty finding out whether their loved ones had been arrested and detained, and if so, where they were being held. The classification of Post-9/11 Detainees as “special interest cases” had the effect of closing their immigration hearings, not only to the general public, but also to family members, and the sealing of their case records. (OIG Report at 115-18.) During this period, the MDC Plaintiffs and class members were subjected to a communications blackout and were unable to make any contact whatsoever with attorneys or their families. (See *id.* at 113-14.) Compounding this situation, their classification as “Witness Security” and/or “Management Interest Group 155” led MDC staff to turn away their lawyers and family members who came to the facility seeking individual detainees by falsely stating that the individuals were not detained in the facility. (See *id.* at 115.)

Policy To Deny Detainees Access to Counsel

88. While in custody, the MDC Plaintiffs and class members were not told of their right to counsel during interrogations by INS and FBI agents or were coerced into waiving that right. Moreover, the MDC Plaintiffs and class members were repeatedly and deliberately denied access to counsel. (*Id.* at 42.) When Plaintiffs Ebrahim, H. Ibrahim, Baloch, and other class members asked to adjourn interrogations so they could consult with an attorney, FBI and INS agents refused to do so. Plaintiffs Ebrahim and H. Ibrahim and other class members signed affidavits indicating that they had been informed of their right to counsel and that they were willing to make their statements without anyone else present only after they had asked to call an attorney

again and again and their requests were denied, leading them to conclude that they would not be permitted access to counsel in any case.

89. Upon information and belief, the MDC Plaintiffs and class members had great difficulty obtaining legal representation, and some were held for months following their arrest while their lawyers and their families made unsuccessful requests to learn their status and whereabouts.

90. Upon information and belief, even when the MDC Plaintiffs and class members were finally permitted to make telephone calls in or about the end of October, 2001, they were allowed to make only one call per week to their attorneys and only one social call per month; in practice, they were frequently denied even these limited calls. According to the OIG Report, “detainees complained that legal calls that resulted in a busy signal or calls answered by voicemail counted as their one legal call for that week,” leading the OIG to conclude that counting calls that “only reached a voicemail, resulted in a busy signal, or went to the wrong number was unduly restrictive and inappropriate.” (OIG Report at 161.)

91. On information and belief, the officers in charge of inmate phone calls were Raymond Cotton, Cuffee, and Clemmet Shacks. These officers, but especially Cotton, consistently and deliberately obstructed the MDC Plaintiffs and class members in their efforts to make phone calls. The officers would bring a phone around to each cell, often before offices opened for business, and each inmate who requested a phone call was required to place a call request form outside of their cell. Upon information and belief, Cotton, Cuffee, and Shacks would regularly pretend to dial a number or deliberately dial the wrong number and then claim that the line was dead or busy. They would then refuse to dial again, saying the call failed to go through and that the detainee had exhausted his quota for calls for the week or month. As a result, the MDC Plaintiffs and class members’ access to attorneys was impaired.

92. Once the MDC Plaintiffs and class members were permitted social calls at MDC in or about the end of October 2001, these, too, were severely restricted. Furthermore, the MDC Plaintiffs and class members were denied access to paper, pens, envelopes, and stamps and were unable to communicate to their worried families via mail.

93. Some MDC Plaintiffs found their access to counsel blocked even during immigration hearings. Plaintiff A. Ibrahim repeatedly requested permission to make phone calls but was not permitted to contact his family or a lawyer until October 17, 2001, despite having had two hearings scheduled before an immigration judge between his detention and that date. After a hearing on October 3, 2001, at which Immigration Judge Vomacka told MDC personnel that A. Ibrahim should be permitted to contact a lawyer, A. Ibrahim repeated his requests for a legal phone call. His requests were again denied. Moreover, Officer Chase and Raymond Cotton ridiculed A. Ibrahim when he made these requests. For example, Raymond Cotton would say in a sarcastic tone “Oh yeah, right away,” but then fail to act on A. Ibrahim’s request.

94. The MDC Plaintiffs and class members were not provided with sufficient information to obtain legal counsel. Immigration detainees typically receive a list of organizations that might provide free legal services, but the lists given to post-9/11 detainees were woefully inadequate, containing much inaccurate and outdated information. (See OIG Report at 137-38, 161.)

95. The OIG concluded that “the manner in which the MDC inquired whether the detainees wanted to place a legal call was unclear and inappropriate. In many instances, the unit counsel inquired whether September 11 detainees in the ADMAX SHU wanted their weekly legal call by asking, ‘are you okay?’ For some period, several detainees told the OIG that they did not realize that an affirmative response to this rather casual question meant they opted to forgo their legal call for that week.” (Id.)

96. While civil liberties, civil rights, and immigrant advocacy organizations sought to provide free legal services to post-9/11 detainees, the MDC substantially limited such organizations' access to post-9/11 detainees. (OIG Report at 137.) The MDC refused to disclose detainees' names, the facilities in which they were held, or information about their cases. They also denied requests by civil liberties, civil rights, and immigrant advocacy organizations to visit INS facilities or county jails to screen post-9/11 detainees in need of legal assistance. (Id. at 136.) On information and belief, MDC Defendants applied these policies to the MDC Plaintiffs and class members, further obstructing their access to counsel and contact with family members.

Video and Audio Taping Attorney/Client Conversations Policy

97. MDC instituted a policy of intentionally videotaping and audiotaping detainees' visits with their attorneys in violation of the law. (Supp. OIG Report at 31.) Such recording of inmates' meetings with attorneys is prohibited by 28 C.F.R. § 543.13(e), which provides that "Staff may not subject visits between an attorney and an inmate to auditory supervision." (Supp. OIG Report at 31.) While Attorney General Ashcroft instituted a directive allowing monitoring of attorney-inmate meetings under limited circumstances when approved by the Attorney General (28 C.F.R. § 501.3(d)), "[a]ccording to BOP's Office of General Counsel, this authority was not used at the MDC". (Supp. OIG Report at 32.) Similarly, a December 18, 2001 memorandum to wardens in the Northeast Region (including the MDC), provided guidance for *video* taping attorney visits, but clearly indicated "Visits from attorneys may be visually recorded, but not *voice* recorded." (Id.) "No BOP or MDC memorandum specifically authorized taping attorney visits for the September 11 detainees for identified reasons to depart from standard BOP policy or the federal regulation." (Id.)

98. According to the Supplemental OIG Report, “[r]ecording the detainees’ attorney visits . . . was not necessary for the MDC’s security purposes.” (Id.) The OIG concluded that “audio taping attorney visits violated the law and interfered with the detainees’ effective assistance of counsel.” (Id. at 33.)

99. On information and belief, when Plaintiffs Ebrahim, H. Ibrahim, Baloch, and Jaffri and other class members finally succeeded in meeting with attorneys, their meetings were videotaped by MDC Defendants, with the sound recording turned on. Their attorneys’ objections to the taping of meetings were ignored by the MDC Defendants. As a result, they were extremely reluctant to speak candidly with their attorneys out of fear that their conversations were being recorded.

Denial of Consular Rights Policy

100. According to the OIG Report, the classification of the post-9/11 detainees as “WITSEC” (Witness Security) by the BOP “made it difficult for consulates to contact detainees who were citizens of their countries. (OIG Report at 142.)

101. Though non-citizen immigration detainees must be advised of their right to seek assistance from their consulates under Article 36 of the Vienna Convention on Consular Relations, Apr. 24, 1963, TIAS 6820, 21 U.S.T. 77 (“Vienna Convention”), many Plaintiffs and class members were not advised of this right. Others were coerced into waiving that right by signing forms they did not understand. When the MDC Plaintiffs and class members sought to contact their consulates, their requests were repeatedly denied by the MDC Defendants.

ABUSE AND INHUMANE CONDITIONS OF CONFINEMENT AT MDC

Physical Abuse

102. The MDC Plaintiffs and class members were routinely physically abused by MDC staff, including by all of the MDC Correctional Officer Defendants. Such abuse was more frequent before the MDC began videotaping detainee escorts in early October 2001 (see Supp. OIG Report at 4), but continued even after that time, as substantiated by the OIG investigation

103. The OIG reported that “30 detainees reported allegations against approximately 20 MDC staff members.” (Id. at 6) The OIG found six categories of physical abuse alleged by detainees (id.), all of which were substantiated through interviews with MDC staff, detainees’ attorneys, and by observing MDC videotapes:

- (a) Slamming detainees against walls: Many detainees alleged that MDC staff members slammed them in to walls during escorts, including when they first arrived and on the way to attorney and doctor visits and recreation. (Supp. OIG Report at 8.) Upon arrival to the MDC, staff slammed post-9/11 detainees against the wall and pushed their faces into a t-shirt hanging on the wall which displayed the slogan “These Colors Don’t Run” and the American Flag. (Id. at 11-12, 14, 31, 37-38.) The slamming caused extreme pain, bruises, and lacerations, at times drawing blood. (Id. at 8, 12-13, 15.) The OIG substantiated these allegations in interviews with a former MDC lieutenant (Id. at 10), and videotapes also show officers slamming detainees on walls, as well as a tennis-ball sized bruise on one detainee from wall-slamming (Id. at 11.) The wall-slamming was also witnessed by a visiting attorney. (Id.)
- (b) Bending or twisting detainees’ arms, hands, wrists, and fingers: According to the Supplemental OIG report, ten detainees “alleged that while their hands were cuffed behind their backs, [staff] pulled their thumbs back, twisted their fingers and wrists, and bent their wrists forward towards their arms (referred to by MDC staff members as ‘goosenecking.’)” (Id. at 16-17.) The OIG substantiated these allegations through interviews with MDC staff and by observing MDC videotapes: “[I]n our review of videotapes we observed several instances when MDC staff members bent compliant detainees’ arms, hands, wrists, and fingers for no apparent reason.” (Id. at 17-18.)
- (c) Lifting detainees, pulling arms, and pulling handcuffs: Detainees alleged officers lifted them off the ground by their arms, and pulled on their arms and handcuffs to cause pain. (Id. at 18-20.)

- (d) Stepping on detainees' leg restraint chains: According to the Supplemental OIG Report, detainees "alleged that MDC staff members purposely stepped on their leg restraint chains while they were stationary and also while they were walking, injuring their ankles and causing them to fall." (Id. at 20.)
- (e) Using restraints improperly: Detainees alleged that MDC staff used their physical restraints as a form of punishment by leaving them in a cell in restraints too long. (Id. at 23.) The OIG found there was no evidence the detainees had engaged in misconduct, and that this treatment was in violation of BOP policy. (Id.)
- (f) Handling detainees in an otherwise rough or inappropriate manner: Detainees report a range of other rough or inappropriate physical mistreatment, which the OIG also observed on videotape and substantiated in interviews with MDC staff: "[V]ideotape and witness' statements indicate that some staff members often handled detainees roughly or inappropriately." (Id. at 26-28.)

104. According to the Supplemental OIG Report, all of the above forms of physical abuse were completely against BOP policy, which provides that it is improper for staff members to use more force than necessary on detainees or cause detainees unnecessary physical pain or extreme discomfort. (Id. at 8, 9, 15, 16, 19, 20, 23, 28; BOP P.S. 5566.05.) In each instance of abuse investigated by the OIG, it concluded that the officers' conduct violated policy. (Id.)

105. Furthermore, the OIG concluded that all post-9/11 MDC detainees were always fully compliant, making any use of force completely unnecessary and against BOP policy. (Id. at 8, 10, 11, 13, 15.) In fact, the OIG noted that the only incidences of detainee misconduct were peeling paint off walls, injuring themselves, hiding from cameras, or refusing to come to the cell door to be handcuffed. (Id. at 15, n.15.)

106. All MDC Plaintiffs and class members were frequently physically abused in the manner described above by, on information and belief, all of the MDC Correctional Officer Defendants and by MDC Supervisor Defendants, including Lt. Cuciti, Lt. Beck, and Lt. Ortiz.

On information and belief, all MDC Supervisor Defendants encouraged or were deliberately indifferent to these abuses, and failed to correct or prevent them.

Verbal Abuse

107. According to the Supplemental OIG Report, detainees alleged that MDC staff members verbally abused them by referring to them as “terrorists” and other offensive names; threatened them with violence; cursed at them; insulted their religion; and made humiliating sexual comments during strip searches. (Supp. OIG Report at 6, 28-30.) These allegations were substantiated by interviews, videotapes, and statements by a visiting attorney. (Id. at 29-30.)

108. According to the Supplemental OIG Report, all of the above forms of verbal abuse were contrary to BOP policy which provides that “An employee may not use . . . intimidation towards inmates,” and “[a]n employee may not use profane, obscene, or otherwise abusive language when communicating with inmates. [Employees] shall conduct themselves in a manner which will not be demeaning to inmates.” (Id. at 8, 29; BOP P.S. 3420.09.)

109. All MDC Plaintiffs and class members were frequently verbally abused in the manner described above by, on information and belief, all of the MDC Correctional Officer Defendants and by all MDC Supervisor Defendants. On information and belief, all MDC Supervisor Defendants encouraged or were deliberately indifferent to these abuses, and failed to correct or prevent them.

Physical Restraints

110. During transport between the MDC Receiving and Discharge Area (“R&D Area”) and the ADMAX SHU on the ninth floor of the MDC, post-9/11 detainees at the MDC were “fully restrained in metal handcuffs attached to a waist chain that was connected to ankle cuffs.” (Supp. OIG Report at 3.) Similarly, “[d]uring routine escorts on the ADMAX SHU, the

detainees also were handcuffed behind their backs and placed in leg restraints. When they were escorted to visits, interviews, or out of the MDC, the detainees were handcuffed in front, restrained in a waist chain, and placed in leg restraints.” (Supp. OIG Report at 4.) On information and belief, the MDC Defendants subjected all MDC Plaintiffs and class members to such restraints routinely and as a matter of policy. In addition, MDC Defendants kept all MDC Plaintiffs and class members confined to their cells for nearly 24 hours a day almost every day while they were housing in the ADMAX SHU.

Arbitrary and Abusive Strip Searches

111. Post-9/11 detainees were strip searched upon arrival to the MDC at the R&D Area and again after they had been escorted, shackled and under continuous guard, to the ninth floor ADMAX SHU. (Supp. OIG Report at 3.) “Some of the same officers who were present for a detainee’s strip search in R&D were present for the detainee’s strip search on the ADMAX SHU.” (Id. at 34.) Detainees were also often strip searched after attorney and family visits and after using the recreation area. (Id.) The OIG found that it “[did] not appear that the MDC issued written policies regarding when detainees were to be strip searched.” (Id.) In interviews, officers cited MDC policy for the basis of the frequent strip searches, but “they could not point . . . to any written policy.” (Id.) Furthermore, “even if such searches were consistent with policy, they were applied inconsistently to the detainees and appeared to be unnecessary.” (Id.)

112. Upon information and belief, strip searches were employed by MDC staff as a way to punish and humiliate the MDC Plaintiffs and class members, using such tactics as having female officers present, videotaping the strip searches against BOP policy, strip searching detainees unnecessarily, and making jokes and humiliating comments during strip searches. According to the Supplemental OIG Report, detainees told OIG investigators that strip searches “were used by

MDC staff as punishment.” (Id.) In observing videotapes of post-9/11 detainees’ strip searches, “female voices can be heard in the background. In addition, one videotape shows a female staff member walking in the vicinity of a detainee undergoing a strip search.” (Id.)

113. Furthermore, “many of the strip searches conducted on the ADMAX SHU were filmed in their entirety and frequently showed the detainees naked.” (Id. at 33.) The OIG Report notes that “BOP P.S. 5521.05 provides that the strip search ‘shall be made in a manner designed to assure as much privacy to the inmate as practicable.’ . . . However, the very act of filming the entire search seems to run counter to this policy.” (Id. at 33 n.27.) The OIG concluded that “it was inappropriate for staff members in the ADMAX SHU to routinely film strip searches showing the detainees naked . . .” (Id. at 35.)

114. The OIG Report also found that “[i]n a few videotapes . . . officers [were] laughing while observing the strip searches.” (Id.) Additionally,

in one videotape four officers escorted one detainee into a recreation cell and ordered him to strip while they berated him for talking too much with other detainees and for encouraging them to go on a hunger strike. We could see no correctional purpose or justification for strip searching this detainee, who had just been taken from his cell, pat searched, and then escorted into the recreation cell by the four officers. (Supp. OIG Report at 35.)

The OIG concluded that “staff members inappropriately used strip searches to intimidate and punish detainees,” and “questioned the need for the number of strip searches.” (Id.)

115. The MDC Plaintiffs and class members were strip searched every time they were removed from or returned to their cells, including before and after meeting with a lawyer, receiving medical care, using the recreation area, attending a court hearing, or being transferred to another cell. These strip searches occurred even when they had no conceivable opportunity to obtain contraband, such as before and after non-contact attorney visits which they had been

escorted to and from while shackled and under continuous four-man guard, and before and after being transferred directly from one cell to another. As such, the strip searches had no rational relation to any legitimate penological objective. On information and belief, these strip searches were carried out by MDC Correctional Officer Defendants under the direction of MDC Supervisor Defendants.

116. The strip searches caused all of the MDC Plaintiffs and class members embarrassment and humiliation. MDC Correctional Officer Defendants, including CO DeFrancisco, routinely made inappropriate sexual comments and laughed at the MDC Plaintiffs' anatomy. Defendant Lt. Elizabeth Torres would force Plaintiff Ebrahim to remove his clothes in front of her before she provided him with new clothes and a new towel. On one occasion, Defendant Torres refused to give Plaintiff Ebrahim a new towel because he had not returned his old towel, and forced him to stand naked in front of his cell while she searched his cell for the towel. On information and belief, the MDC Correctional Officer Defendants carried out these deliberately humiliating practices under the supervision and often under the direct observation of MDC Supervisor Defendants, yet the MDC Supervisor Defendants did not prevent or correct the practices.

Sleep Deprivation

117. The MDC Defendants deprived the MDC Plaintiffs and class members of sleep by keeping lights on in the cells at all times of the day or night until late February 2002. (See OIG Report at 153-55; Supp. OIG Report at 3.) According to the OIG, “[m]any detainees alleged that officers loudly banged on their cell doors in an attempt to wake them up, interrupt their prayers, or generally harass them.” (Id at 35.) The MDC Defendants, including, on information and belief, Barrere, McCabe, Machado, Osteen, Lopez, Chase, Diaz, and others, banged on cell doors

at night to disturb the MDC Plaintiffs and class members' sleep. MDC and BOP policy required that staff count detainees at midnight, 3 a.m., and 5 a.m., "permit[ting] officers to wake detainees up at that time if they could not see their skin" (BOP P.S. 5500.09). (Id.) However, "detainees alleged that several officers went beyond what was required for the count by kicking the door hard with their boots, knocking on the door at night much more frequently than required, and making negative comments when knocking on the door." (Id.) Detainees reported that officers "walked by about every 15 minutes throughout the night, kicked the doors to wake up the detainees, and yelled things such as, "Motherfuckers," "Assholes," and "Welcome to America;" "officers made loud noises at night to keep the detainees awake and that these officers appeared to have fun conducting the counts by knocking on the cell doors;" "officers would not let the detainees sleep during the day or night." (Id.) One detainee's attorney reported that "his client stated that every time he fell asleep the officers came and kicked the doors to wake him up . . . not [as] part of the officers prescribed counts, but . . . the officers would watch the in-cell cameras and come kick on the doors as soon as they thought the detainee was asleep." (Id.)

118. MDC staff were not required to videotape nighttime activities in cells, but the OIG found that "a combination of cells being continuously illuminated and the BOP requirement that officers had to see the detainees during each count in the evenings caused detainees to be awakened regularly and suffer from sleep deprivation. (Supp. OIG Report at 36.)

119. All the MDC Plaintiffs and class members experienced sleep deprivation as a direct result of the actions and policies of the MDC Defendants.

De Facto Denial of Recreation / Inadequate Clothing and Exposure to the Elements

120. The ADMAX SHU recreation cells were exposed to the elements and could be freezing cold. Periodically, the MDC Plaintiffs and class members were offered transport to

these recreation cells, often at the early hour of 5 or 6 a.m., but they were denied any extra clothing besides their cotton prison garb. Detainees who accepted these offers were often physically abused along the way by their MDC CO escorts, and were sometimes left for hours in the cold recreation cell, over their protests, as a form of punishment. (See OIG Report at 152.) Thus, while “recreation” was nominally offered several times a week, the MDC Plaintiffs and class members were constructively denied exercise during the Fall and Winter months.

121. Throughout the Fall and Winter, the cells of the MDC Plaintiffs and class members were extremely cold. On information and belief, MDC Defendants refused to give the MDC Plaintiffs sweaters or other warm clothing, or bedding adequate to keep them warm.

Lack of Hygiene Items and Provision of Inadequate and Unhealthy Food

122. Upon information and belief, MDC Defendants intentionally deprived the MDC Plaintiffs and class members of adequate, healthy, and religiously appropriate food.

123. The MDC Plaintiffs and class members were deliberately denied access to basic hygiene items like toilet paper, soap, towels, toothpaste, eating utensils, personal reading glasses, and a cup to drink water. (See OIG Report at 155-56.) For the first several months of their detention, the MDC Plaintiffs and class members were not allowed to keep a toilet paper, towel, soap, toothbrush, cup, or other personal hygiene items in their cells, making it difficult to maintain proper health and hygiene. For example, there were only a few days during his detention when Plaintiff Ebrahim was allowed to keep a cup in his cell, and this allowance was made only at the direction of Physician Assistant Lorenzo so that he could drink water during the day, as the sole “treatment” for a kidney stone condition.

124. Meals in the ADMAX SHU were barely edible and meager, leaving the MDC Plaintiffs hungry.

Inadequate Medical Attention

125. Upon information and belief, MDC Defendants deprived the MDC Plaintiffs and class members of adequate medical care. According to the Supplemental OIG Report, a doctor conducting a medical investigation of a bruise caused by an officer slamming a detainee into a wall did not ask the detainee how he got the bruise. (Id. at 13.) The OIG also found other failures to examine injuries or discern how detainees were injured while at MDC. (Id.) This was just one instance of a “don’t look for signs of abuse, don’t tell on the COs” creed that was pervasive on the MDC medical staff. The MDC Plaintiffs and the class members often did not ask for doctors when they were abused for fear of retaliation by those officers. (See id. at 13.)

126. For example, after MDC Defendants physically abused Plaintiffs Ebrahim and H. Ibrahim on their arrival at MDC, they were not treated for their injuries, even though both received “physical exams” on October 2, 2001, the next day. Physician Assistant Lorenzo, who gave the brothers their medical exams, did not look at, ask about, comment on, or treat their injuries. Plaintiffs Ebrahim and H. Ibrahim were also denied necessary medical care for subsequent ailments. On information and belief, although Plaintiff H. Ibrahim tested positive for tuberculosis and was suffering from a severe, painful and persistent cough, the medical staff at MDC refused to treat him for this condition. Plaintiff Ebrahim complained about his kidney stones to PA Lorenzo and she said she was not authorized to do anything to treat his kidney stones. Plaintiff Ebrahim’s pain from the kidney stones was extremely severe, so much so that it kept him awake at night and made him involuntarily cry out; the Tylenol offered him no relief from this pain. PA Lorenzo told him to drink 12 cups of water a day, but he was only given one cup with meals three times a day. Even when PA Lorenzo arranged for him to keep his cup in his cell, guards took it away after two or three days, when he was transferred to a new cell.

Plaintiff Ebrahim was also forced to wait weeks to get an x-ray and was deported before the results had returned. After returning to Egypt, Plaintiffs Ebrahim and H. Ibrahim both received confirmation from medical doctors that they were suffering, respectively, from tuberculosis and kidney stones, and obtained treatment for these conditions.

127. Similarly, Baloch complained of an earache in his left ear. He had two surgeries on his left ear prior to being detained and had had repeated problems with ear infections. PA Lorenzo refused to treat his earache, and the ear remained infected until after Plaintiff Baloch's release from detention. He was prescribed antibiotics in Canada after his deportation. In addition, Plaintiff Baloch wrote a letter to the then-current Warden requesting a transfer to a new room because his roommate had tuberculosis. On information and belief, the Warden took no action in response to this letter, and Plaintiff Baloch was not transferred and remained with his roommate for approximately four weeks. Medical tests have since shown that he was exposed to tuberculosis.

Deliberate Interference with Religious Rights

128. MDC Defendants adopted, promulgated, and implemented policies and customs that substantially burdened and interfered with the MDC Plaintiffs' and class members' ability to practice and observe their Muslim faith. These policies and customs included:

- (a) Refusing to give them a copy of the Koran, thereby deliberately denying the means to maintain their religious practices: Soon after their arrival at MDC, the MDC Plaintiffs requested copies of the Koran. They did not receive them until weeks or even months later. Plaintiff Saffi's repeated requests for the Koran were denied until mid-December 2001. Saffi was, however, unable to read his Koran for several days more, because his eyeglasses had been confiscated from him on arrival at the MDC on October 1, 2001. Finally, on December 18, 2001 he was brought to an eye doctor and given new glasses.
- (b) Refusing to provide food which would allow them to conform to a Halal diet: While detained in the ADMAX SHU, the MDC Plaintiffs and class members were all denied the Halal food required by their Muslim faith, despite many

requests for Halal meals. The MDC Plaintiffs and class members often chose not to eat the main part of their meals because they could not identify the type of meat it contained. This exacerbated the hunger caused by their already meager meals, and as a result, they were hungry almost every day of confinement at MDC. While in the ADMAX SHU, Plaintiff Baloch lost between 15 and 20 pounds. Sometimes the MDC Plaintiffs' hunger was so extreme that they ate the meat products, which caused them great emotional distress.

- (c) Refusing to provide them the time of day in order to conform to their daily prayer requirements and refusing to disclose the dates to them, making it difficult for them to know when Ramadan began: After their cell windows were painted over in late January or early February, the MDC Plaintiffs and class members became totally dependent on the MDC Defendants to tell them what time of day it was so that they could know when to say their daily prayers. The MDC Defendants frequently withheld the time of day from them or deliberately told them the incorrect time. As a result, they had to time their prayers by guesswork. On one occasion, Plaintiff Ebrahim and another inmate were disciplined for being late for a prison count because they were in the midst of finishing their prayers. The other MDC Plaintiffs had similar experiences.
- (d) Constantly interrupting their prayers: McCabe, Osteen, and other MDC COs constantly interrupted the MDC Plaintiffs and class members' prayers by regularly banging on cell doors, screaming derogatory anti-Muslim comments, and telling them to "shut the fuck up" while they were trying to pray. (See OIG Report at 147-48.)

Campaign of Intentional Infliction of Emotional Distress

129. Upon information and belief, MDC Defendants used the above-mentioned harsh detention conditions as an intentional means of punishing, harassing, and "breaking" the MDC Plaintiffs and class members.

Failure to Provide Handbooks

130. The usual channels for filing complaints of mistreatment were cut off at MDC. The MDC Plaintiffs and class members were not provided with MDC handbooks on how to file complaints about their treatment on a timely basis, if at all. (OIG Report at 162.) By putting them in an extremely isolated ADMAX SHU, imposing a communications blackout, and

shutting down their ability to file complaints, the MDC Defendants blocked the MDC Plaintiffs and class members' access to normal channels for lodging complaints of abuse and mistreatment.

Confiscated Items

131. At the time of Plaintiffs' arrests, Defendants confiscated personal identification, money, and valuable personal items from Plaintiffs and many class members. In addition, Defendants searched the homes of Plaintiffs and other class members while they were in detention and confiscated items from their homes. When Plaintiffs demanded the return of these items at the time of their release, Defendants deliberately deprived Plaintiffs and other class members of these items.

132. Plaintiffs Ebrahim and H. Ibrahim have made attempts to have personal belongings and money confiscated from them during and following their arrests returned to them, including \$27 of H. Ibrahim's and \$250 of Ebrahim's. To date, none of these items have been returned to them. Upon information and belief, FBI and INS agents conducted a search of Plaintiff Baloch's apartment without his consent. The agents seized his laptop computer and other items from his apartment. Additionally, his personal identification, money, two watches, and a briefcase, were confiscated upon his booking. These items have never been returned to Baloch. On information and belief, these or other government agents confiscated all of the possessions in Plaintiff A. Ibrahim's home and over \$300 cash. Upon information and belief, the FBI took everything that A. Ibrahim had accumulated over ten years of living and working in New York City, including \$300-400 in cash, clothes, watches, cameras, books, documents, and credit cards. On information and belief, all of Plaintiff Saffi's personal belongings, including his personal identification, eyeglasses, and \$1492 in cash, were confiscated. On information and belief, all of Plaintiff Jaffri's personal belongings, including his identification, were confiscated.

133. By adopting, promulgating, and implementing this policy and custom, Defendants have intentionally violated rights guaranteed to Plaintiffs and class members under the Fifth Amendment to the Constitution.

Personal Participation of the Defendants

134. The MDC Policy and Implementation Defendants, MDC Supervisor Defendants, MDC Correctional Officer Defendants, MDC Counselor Defendants, and the John Doe Defendants are referred to collectively in this complaint as the “MDC Defendants.”

MDC Policy and Implementation Defendants

135. Former MDC Warden Dennis HASTY, MDC Warden Michael ZENK, MDC Associate Warden for Custody SHERMAN, Captain Salvatore LOPRESTI, MDC Lieutenants Steven BARRERE and Joseph CUCITI, and JOHN DOE Policy and Implementation Defendants are referred to as “MDC Policy and Implementation Defendants.”

136. The MDC Policy and Implementation Defendants created the unconstitutional and unlawful policies and customs relating to the manner in which the post-9/11 detainees were detained at the MDC that are at issue in this suit. Moreover, they allowed the continuation of these policies and customs, exhibited gross negligence and/or deliberate indifference in the supervision of subordinates who committed unconstitutional acts, and/or participated directly in the implementation of such policies or customs. These policies and customs included: subjecting the MDC Plaintiffs and class members to unreasonable and excessively harsh conditions; placing and keeping them in the MDC’s ADMAX SHU “without conducting the routine individualized assessment” (see OIG Report at 112, 126-127) and maintaining them there for “days or weeks after they were supposed to be transferred to the MDC’s less restrictive general population” following clearance by the FBI (see OIG Report at 127); implementing the communications

blackout policies and other policies by which Plaintiffs and class members detained at the MDC were denied access to counsel (see OIG Report at 112, 113, 126-127) and access to their consulates (see OIG Report 140-142); overseeing the implementation of the BOP policy of audiotaping their conversations with their lawyers (see Supp. OIG Report at 32); and developing procedures for the full restraint and strip searching of Plaintiffs and class members.

MDC Supervisor Defendants

137. Captain LOPRESTI and Lieutenants Steven BARRERE, William BECK, Lindsey BLEDSOE, Joseph CUCITI, Howard GUSSAK, Marcial MUNDO, Daniel ORTIZ, Stuart PRAY, Elizabeth TORRES, and JOHN DOE Supervisor Defendants are referred to collectively as “MDC Supervisor Defendants.”

138. The MDC Supervisor Defendants were grossly negligent in supervising subordinate correctional officers who committed wrongful acts, or were deliberately indifferent to the constitutional rights of MDC Plaintiffs and the plaintiff class by failing to act on information that such wrongful and unconstitutional acts were occurring. Upon information and belief MDC Supervisor Defendants were aware of the inappropriate and unconstitutional activities of their subordinates and nevertheless failed to act to stop such activities or to properly discipline their subordinates.

139. The MDC Supervisor Defendants participated in the creation and continuation of inhumane conditions of confinement for Plaintiffs and other class members at the MDC, including but not limited to physical and verbal abuse, inhumane conditions of confinement, arbitrary and dehumanizing use of strip searches, disruption of sleep, deliberate interference with

religious rights, unreasonable restrictions on communications, inadequate provision of medical attention, de facto denial of recreation, and denial of hygiene items and adequate food.

140. On information and belief, Defendants CUCITI, ORTIZ, BECK, and JOHN DOE Supervisor Defendants were also involved directly in deprivations of plaintiffs' constitutional rights, including the use of excessive force against Plaintiffs and other class members. Upon information and belief, such use of force included pushing and slamming compliant MDC Plaintiffs and class members into walls, bending the arms and hands of compliant MDC Plaintiffs and class members in a manner that constituted excessive restraining force, and improperly using restraints to punish Plaintiffs and other class members.

141. Upon information and belief, all MDC Supervisor Defendants directly incited other officers to treat the MDC Plaintiffs and class members in an unconstitutional fashion.

MDC Correctional Officer Defendants

142. Correctional Officers Phillip BARNES, Sidney CHASE, Michael DEFRANCISCO, Richard DIAZ, Kevin LOPEZ, Mario MACHADO, Michael MCCABE, Raymond MICKENS, John OSTEEN, Brian RODRIGUEZ, Scott ROSEBERY, Christopher WITSCHER, and JOHN DOE Correctional Officers are referred to collectively as the "MDC CO Defendants."

143. The MDC CO Defendants directly infringed on the constitutional rights of Plaintiffs and other class members detained at the MDC, participated in the creation of the inhumane conditions of confinement challenged here, including physical and verbal abuse, inhumane conditions of confinement, arbitrary and dehumanizing use of strip searches, disruption of sleep, deliberate interference with religious rights, unreasonable restrictions on

communications, inadequate provision of medical attention, de facto denial of recreation, and denial of hygiene items and adequate food.

144. On information and belief, all of the MDC CO Defendants engaged in physical and/or verbal abuse against the MDC Plaintiffs and class members, including but not limited to:

- (a) Beating and kicking them;
- (b) Pushing, slamming, and throwing them against walls (see OIG Supp. Report 8-11.);
- (c) Stepping on and tightening their leg restraints and handcuffs in an unduly harmful manner (see OIG Supp. Report 18-19, 20-22.);
- (d) Twisting, pulling, “goosenecking,” and otherwise harmfully bending their fingers, arms, and hands while they were restrained and compliant, in order to cause injury, and which in fact caused injury (see OIG Supp. Report 16-18);
- (e) Verbally threatening and otherwise verbally abusing Plaintiffs and other class members (see OIG Supp. Report 28-30).

145. On information and belief, MDC CO Defendants deliberately and unlawfully interfered with the free exercise of Plaintiffs’ and other class members’ religious practices by, *inter alia*, banging on cell doors or calling arbitrary counts during prayer times or group prayers.

146. On information and belief, MDC CO Defendants deliberately and unlawfully interfered with attorney-client meetings and visitations for Plaintiffs and other class members by, *inter alia*, telling lawyers and clients they had to speak in English in order for their conversations to be recorded, and preventing Plaintiffs and other class members from speaking to their lawyers by phone. (See OIG Supp. Report 31-32.)

MDC Counselor Defendants

147. Defendants Raymond COTTON, CUFFEE, Clemmet SHACKS, and JOHN DOE Counselor Defendants are referred to collectively as “MDC Counselor Defendants.”

148. On information and belief, MDC Counselor Defendants engaged in conduct to deliberately and unlawfully restrict Plaintiffs’ and other class members’ access to legal counsel, their consulates, and the outside world generally, by, *inter alia*, severely limiting the use of MDC phones by Plaintiffs and other class members. Said Defendants verbally taunted and threatened Plaintiffs and other class members, denied them the opportunity to make phone calls, simply pretended to make phone calls, or falsely claimed that no one was answering the phone number dialed.

Allegations Concerning the Plaintiffs

MDC PLAINTIFFS

149. Plaintiffs Asif Saffi, Syed Jaffri, Yasser Ebrahim, Hany Ibrahim, Shakir Baloch, and Ashraf Ibrahim are collectively referred to herein as the “MDC Plaintiffs.” None of the plaintiffs have ever been involved with terrorism and, pursuant to the challenged blanket “hold until cleared policy,” each was cleared of terrorism by the FBI and INS prior to his removal from the United States.

Plaintiff Asif-ur-Rehman Saffi

150. Asif-ur-Rehman Saffi entered the United States through Los Angeles on July 6, 2001, on a three-month tourist visa, which was to expire on October 4, 2001. After briefly staying with family and friends in Los Angeles, he flew to New York City to see other friends. While in New York City, Saffi, who holds a Master’s Degree in Political Science and is a

Microsoft Certified Professional, earned a small sum fixing computers and doing data entry for a small business.

151. On September 29, 2001, shortly before his tourist visa was to expire, Saffi flew to Toronto to spend a few days. Canadian immigration officials, however, refused to allow him into the country. Consequently, Saffi flew back to New York City the next day, September 30, 2001. He was arrested at LaGuardia Airport by an FBI agent and three INS agents as soon as he stepped off the plane at LaGuardia Airport.

152. On that same day, September 30, 2001, after being interrogated by an INS agent, Saffi was taken to the INS facility on Varick Street in Manhattan, where he was again questioned by two FBI agents for approximately one to two hours. Saffi, who is fluent in English, answered their questions truthfully. He denied any involvement with terrorists or terrorist activity. The two FBI agents, however, disputed Saffi's veracity, accusing him of involvement in the September 11 terrorist attacks. Accusing Saffi with having a strong association with terrorists, the agents made threatening remarks to him such as "you will be rotting in jail if you don't give us names" and "Muslims are terrorists and we know you are one of them." Taking two telephone books that Saffi had on his person, they told him that they would check every contact in his books and if they found any of them to be suspicious, he would be in serious trouble. At the request of an INS agent, Saffi signed a written statement that he had been working in the United States without authorization. Saffi asked to see the French Consulate. That request was never granted, even after Saffi put that request in writing.

153. The next day, October 1, 2001, Saffi was transported by van to the MDC in handcuffs with chains around his waist and shackles on his legs. Saffi arrived in a caravan of two vans carrying a total of eight detainees. At the MDC, Saffi was first taken from the sally

port area to the R&D Area. On information and belief, Lt. Pray and a team of about four to five people dragged each of the eight detainees like ragdolls one by one out of the van, including Saffi, into the building, slamming his face into several walls on the way. Despite the pain, Saffi offered no resistance, fearing that would only make matters worse. On information and belief, after being fingerprinted, Saffi was strip-searched in the R&D area by Defendant Pray's team and given an orange jumpsuit. All of his personal belongings, including his personal identification, eyeglasses, and cash in the amount of \$1492.00, were confiscated.

154. While still in handcuffs, chains, and shackles, Saffi was then taken by, on information and belief, Defendant Beck, a lieutenant, and four other junior officers, COs Chase, Diaz, DeFrancisco, and Machado to the Special Housing Unit on the Ninth Floor of the MDC. On the way there, this team banged his head on the walls, kicked him, slammed him against the walls, and verbally abused him. The lieutenant in charge did nothing to stop the abuse, nor did he instruct his team to stop. Once there, this team again strip-searched Saffi and subjected him to physical and verbal abuse. Among other things, they bent back his thumbs so far that he could not use them for ten days, stepped on his bare feet with their shoes, and pushed him into a wall so hard that he fainted. After Saffi fell to the floor, they kicked him in the face and in the ribs. On information and belief, Defendant Beck, the lieutenant in charge, called Saffi a "terrorist," boasting that Saffi could expect continued harsh treatment because of his involvement in the September 11 terrorist attacks and vowed to make his stay as horrible as possible. The lieutenant threatened to punish him if he even so much as smiled and that he would "take it as an offense and as an attack on my people." The lieutenant also said that Saffi killed 7,000 people (then believed to be the number of people killed in the 9/11 attacks) and threatened to beat him if he did not behave. Saffi offered no resistance.

155. Like most or all of the other MDC Plaintiffs, Saffi was placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to counsel and to his consulate, arbitrarily and abusively strip searched, and subjected to inhumane conditions of confinement including sleep deprivation, constructive denial of recreational activities and hygienic items, and deprivation of adequate food and medical attention. Like most or all of the other MDC Plaintiffs, Saffi was, at all times relevant to the acts complained of, and remains, a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Like most or all of the other MDC Plaintiffs, Saffi was not provided with timely notice of MDC's complaint procedures and had his personal items confiscated by MDC Defendants.

156. Saffi was placed in a 10-foot-by-six-foot cell shared by another post-9/11 detainee. He was confined to his cell all day long, nearly every day, for the next five months. Saffi's cell was cold and uncomfortable on most days, though considerably warmer than the "recreation" cell.

157. Saffi was denied all reading material initially. The inmates were given a copy of the Bible and were denied the Koran until mid-December 2001, when the MDC Defendants finally gave him a copy of the Koran. Saffi was, however, unable to read for several days more, because his eyeglasses were confiscated from him on October 1, 2001. Finally, on December 18, 2001 he was brought to an eye doctor and given new glasses.

158. While Saffi was confined at the MDC, the MDC Defendants deliberately interfered with his ability to observe the mandatory practices of his religion. They denied him the Halal food required by his faith. On one occasion, Saffi asked, on information and belief, Lt. Torres for Halal food and she responded that this was a jail not a hotel and to ask Allah for food.

The lieutenant was verbally abusive other times by referring to inmates as "sons of bitches, motherfuckers, and troublemakers." For the first month or so, MDC Defendants constantly interrupted him during his daily prayers. They further withheld from him the time of day making it impossible for Saffi, caged in a windowless cell, to know when to say his mandatory prayers.

159. While confined at the MDC, Saffi received constant verbal abuse. The MDC Defendants swore at him, belittled and insulted his religion, and degraded him. They called him a "religious fanatic" and a "terrorist."

160. On October 8, 2001, the District Director of INS for the New York District issued a removal order to Saffi ordering his removal from the United States.

161. On October 14, 2001, two weeks after his arrest, Saffi was interrogated by two FBI agents and two INS agents, who asked him wide-ranging questions about his family back in France, his work for Pakistan International Airlines, his faith, and his political views. Saffi again denied any involvement with terrorists, terrorist organizations or terrorist activity. The FBI agents concluded thereafter that he had no knowledge of terrorist activity. As early as October 14, 2001 a report by one of the FBI agents who had interviewed Saffi resulted in the following recommendation, "It is recommended that Saffi be allowed to return to France...Saffi's interview and the subsequent investigation have revealed nothing that indicate that Saffi had any knowledge of the attack on the World Trade Center, or any other terrorist activities"

162. Three days later, on October 17, 2001, the issued removal order appears to have been served to Saffi. When Saffi asked whether he needed a lawyer, an INS official told him that counsel was unnecessary since the INS would soon put him on a plane back to France. Saffi nonetheless remained in custody for another four and one-half months.

163. On information and belief, on November 2, 2001, Kenneth Maxwell, FBI Assistant Special Agent in Charge, wrote to Daniel Molerio, INS Assistant District Director for Investigations in New York, to inform him that the FBI did not have an investigative interest in Saffi relating to the events of September 11, and instructed the INS to continue normal and appropriate processing of Saffi. Despite the fact that the FBI clearly had no more interest in investigating Saffi for ties to terrorism after having issued this second “clearance” and the INS could have effectuated his removal immediately, the INS without cause failed to timely release or remove him.

164. Instead, Saffi was detained for four and one-half months longer than necessary to effectuate his removal from the United States solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that Saffi engaged in terrorist activity. Nor was an indictment or information against Saffi ever filed with a court citing criminal charges on which his continued detention was based.

165. On December 18, 2001, an INS agent and a NYPD detective visited Saffi at the MDC. They questioned him about his family back in France, his work for Pakistan International Airlines, his faith, and his political views. Saffi again denied any involvement with terrorists, terrorist organizations or terrorist activity. After the interrogation was over, Saffi’s two interrogators assured him that he would soon be released. Saffi, however, remained detained at the MDC for nearly three more months.

166. On March 5, 2002, INS agents took Saffi from the MDC to JFK airport and put him on an airplane to France, without, however, returning his critical employment identification

cards. The INS has yet to return his employment identification card that entitles him to discounted airfare.

167. As a result of his prolonged detention in the United States, Saffi's employer, Pakistan International Airlines, has begun proceedings to terminate his employment, evidently deeming him a security risk. A presumption of guilt thus continues to follow Saffi even after his deportation from the United States, despite the fact that he has never been involved in terrorist activity and the complete absence of any evidence that he has been involved in such activity. Saffi, who loves to travel, from now on has to explain when he enters some countries whether he has been banned from entry to other countries. He then must disclose his ban on reentry into the United States, which is both embarrassing and causes difficulties with immigration officials.

168. Saffi continues to suffer the emotional and psychological effects of his four and one-half months detention in the United States. He has great difficulty, for example, sleeping at night because he continues to dwell on what happened to him at MDC.

Plaintiff Syed Amjad Ali Jaffri

169. In September 2001, Plaintiff Syed Amjad Ali Jaffri was living and working in the Bronx, New York, though without a valid visa. He was renting a room in a three-room apartment leased to Melvin Curzado and his family. One night, Jaffri and Curzado had a heated verbal dispute over the living arrangements. Curzado threatened to report Jaffri to the INS.

170. Several days later, on September 27, 2001, approximately 10 INS and FBI agents, accompanied by a United States Department of Labor official and several police officers, came to Curzado's apartment to see Jaffri. They searched Jaffri's room, without a search warrant and without his consent, finding in a closet several stun guns that belonged not to Jaffri but rather to

Curzado's children. Jaffri was arrested and charged with criminal possession of a weapon, a charge which was dismissed two days later because the stun guns did not belong to Jaffri.

171. On September 28, 2001, Jaffri was taken to an INS facility in Manhattan. There, FBI and INS agents interrogated him about possible involvement in the September 11 terrorist attacks and other terrorist activity, without advising him of his right to counsel, or, for that matter, any of his Miranda rights. One FBI agent asked Jaffri to sign a form retroactively consenting to the search of his room. Jaffri, however, refused to do so, prompting the agent to angrily say: "Now you will learn the hard way." Jaffri also asked that the Pakistani Consulate be notified and requested a hearing before an immigration judge.

172. Two days after his arrest, on September 29, 2001, Jaffri was taken to the MDC, where he was strip searched, fingerprinted and given an orange jumpsuit. All of his personal belongings, including his personal identification, were confiscated. He was placed in a tiny solitary (windowless) cell in the SHU. Jaffri was confined to that cell nearly all day, nearly every day, for the next six months, until April 1, 2002.

173. Like most or all of the other MDC Plaintiffs, Jaffri was placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to counsel and to his consulate, arbitrarily and abusively strip searched, and subjected to inhumane conditions of confinement including sleep deprivation, constructive denial of recreational activities and hygienic items, and deprivation of adequate food and medical attention. Like most or all of the other MDC Plaintiffs, Jaffri was, at all times relevant to the acts complained of, and remains, a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Like most or all of the other MDC Plaintiffs,

Jaffri was not provided with timely notice of MDC's complaint procedures and had his personal items confiscated by MDC Defendants.

174. Whenever Jaffri was removed from his cell, he was first strip searched and then placed in handcuffs, chains, and shackles. Four or more MDC Defendants typically escorted him to his destination, frequently inflicting unnecessary pain along the way, for example, by deliberately kicking Jaffri's manacles and shackles into his lower body. Despite the pain, Jaffri offered no resistance, fearing that resistance would only make matters worse.

175. While there were other post-9/11 detainees held in adjoining cells, Jaffri was forbidden to talk with them, and vice-versa. The MDC Defendants threatened to cut off visits from his attorney if he broke the rule.

176. While Jaffri was confined in the MDC, he was subjected to repeated physical and verbal abuse by the MDC Defendants. When he was first brought to the MDC's Special Housing Unit, for example, one MDC Defendant, in the presence of other MDC Defendants, told him: "Whether you [participated in the September 11 terrorist attacks] or not, if the FBI arrested you, that's good enough for me. I'm going to do to you what you did." Several MDC Defendants then slammed Jaffri's head into a wall, severely loosening his lower front teeth and causing him extreme pain. Despite the pain, Jaffri offered no resistance, again fearing that resistance would only make matters worse. Throughout his stay at the MDC, Jaffri felt pain and discomfort in the vicinity of his lower front teeth. Although he made more than six requests to see a dentist, he was seen only once in 2001, and when seen again in late March 2002 he had advanced bone loss, advanced periodontal disease, and needed to have many teeth extracted.

177. Jaffri was served with a Notice to Appear on October 1, 2001, four days after his arrest. That same day he requested a re-determination of his custody decision and signed a request for a prompt merits hearing before an immigration judge.

178. On December 20, 2001, during a closed immigration hearing held at MDC, an immigration judge ordered Jaffri's removal. On information and belief, no bond hearing was held prior to this date solely because of the hold until cleared policy. Neither Jaffri nor the INS contested that order. Jaffri, nonetheless, remained in custody for months until he received "clearances" from the FBI and INS, even though the INS could have effectuated his removal within a matter of days.

179. Jaffri was detained for nearly three and one-half months longer than necessary to effectuate his removal from the United States solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that Jaffri engaged in terrorist activity. Nor was an indictment or information against Jaffri ever filed with a court citing criminal charges on which his continued detention was based.

180. On April 1, 2002, INS agents took Jaffri to LaGuardia Airport, putting him on a plane to Canada, without any identification or money. On information and belief, the FBI has cleared Jaffri of any association with terrorism and closed its investigation of him.

Plaintiffs Yasser Ebrahim and Hany Ibrahim

181. Plaintiff Yasser Ebrahim re-entered the United States on a tourist visa in January 2001, joining his younger brother, plaintiff Hany Ibrahim, who had entered the United States on a tourist visa in 1998. For the next nine months, they shared an apartment in Brooklyn, New

York with several friends from Egypt and Morocco. During that time, Ebrahim began a website design business, while H. Ibrahim continued his occasional work in a local delicatessen.

182. On Sunday, September 30, 2001, at about 2 p.m., Ebrahim and H. Ibrahim, along with their roommates, were in their apartment when they heard a knock on the door. When Ebrahim opened the door, he saw 12 men standing there, one of whom announced that they were FBI and INS agents and New York City police officers who wanted to talk with Ebrahim, H. Ibrahim, and their roommates about the September 11 terrorist attacks. Ebrahim invited them in.

183. Once inside the apartment, these FBI and INS agents and New York City police officers interrogated Ebrahim, H. Ibrahim, and their roommates separately, asking them questions about their immigration status and terrorist activity in the United States, without advising them of their right to counsel, or, for that matter, of any of their Miranda rights. Ebrahim, H. Ibrahim, and their roommates all denied any involvement in the September 11 terrorist attacks or any other terrorist activity. When the interrogation was over, the FBI and INS agents told Ebrahim, H. Ibrahim, and one Egyptian roommate that “we have to take you with us.” The agents arrested and handcuffed all three, denying Ebrahim’s and H. Ibrahim’s request to call an attorney. Without consent, the agents conducted a search of the apartment, seizing all of Ebrahim’s religious and other books in the process.

184. Ebrahim and H. Ibrahim were then held for approximately 24 hours at the Varick Street facility, before being taken to the MDC. During this time, they were denied access to bathroom facilities and forced to sleep overnight on the floor. All of their personal belongings, including their personal identification and money, were confiscated. Twenty-seven dollars were taken from H. Ibrahim, and \$250 was taken from Ebrahim.

185. Neither Ebrahim nor H. Ibrahim was served with a Notice to Appear (NTA) until October 17, 2001, seventeen days after their arrests.

186. On November 6, 2001, Ebrahim and H. Ibrahim were taken separately from their cells, in handcuffs, waist chain, and leg shackles, to see Immigration Judge Alan Vomacka, who was holding closed immigration hearings for post-9/11 detainees on another floor of the facility. This was their first hearing of any kind since their arrest. On the way, CO Scott Rosebery whispered to Ebrahim, “The camera is your best friend. If not for the camera, I would have smashed your faces, you mother fuckers.” When Ebrahim complained about this verbal abuse at his immigration hearing, Judge Vomacka abruptly cut Ebrahim off, stating “I don’t care. This is not my job.” Ebrahim complained verbally to Lt. Steven Barrere, who said he would speak with Rosebery’s supervising lieutenant. The supervising lieutenant told Ebrahim that he watched the videotape of the incident but did not see anything amiss.

187. Ebrahim’s and H. Ibrahim’s immigration cases were heard together. Marianne Yang of the Legal Aid Society, whom they had met for the first time that day, appeared on their behalf, while an INS trial attorney appeared on behalf of the government. A female FBI or INS agent was also present, though she neither entered an appearance nor spoke on the record. Ms. Yang asked that Ebrahim and H. Ibrahim be granted voluntary departure and bond. The Immigration Judge, however, denied the request after the agent handed him a note off the record, stating that he could not grant bond until he received “clearance.” The hearing was adjourned.

188. Two weeks later, on November 20, 2001, Ebrahim and H. Ibrahim were again brought before Immigration Judge Vomacka at MDC. This time they were represented by new counsel, Matthew Guadagno. The judge denied Ebrahim’s and H. Ibrahim’s request for bond, stating that they were “disappearance risks.” Desperate to expedite their release and return home

to their ailing mother in Egypt, Ebrahim and H. Ibrahim reluctantly accepted final deportation orders, effective immediately, upon being assured that they would be removed from the country within four to five days. No appeal was taken from those orders.

189. The INS could have secured Ebrahim's and H. Ibrahim's removal within a matter of days, but the agency kept Ebrahim and H. Ibrahim in custody for another six months. On information and belief, the INS made plans to deport H. Ibrahim two and a half months earlier than his actual deportation – going so far as to book a February 1, 2002 flight to deport him and issuing an order to escort him to JFK on that day for deportation. But this order was not carried out.

190. On information and belief, FBI memos dated December 7, 2001 state that pre- and post-interview clearance checks on Ebrahim and H. Ibrahim were negative, and note with respect to Ebrahim that links to terrorist groups appear negative.

191. Ebrahim and H. Ibrahim were detained for more than six months longer than necessary to effectuate their removal orders solely on the remote possibility that law enforcement authorities might someday connect them to terrorist activity. However, they were never brought before a neutral judicial officer to determine whether there was probable cause to believe that they engaged in terrorist activity. Nor were Ebrahim or H. Ibrahim ever charged with a crime.

192. Ebrahim and H. Ibrahim arrived at the MDC on October 1, 2001, and were immediately assigned to the ADMAX SHU section of the facility. On information and belief, this assignment was made solely because of the entirely unfounded assumption that Ebrahim and H. Ibrahim were connected to the September 11 terrorist attacks. Once in the ADMAX SHU, Ebrahim and H. Ibrahim were placed in separate cells and were not allowed to see or speak with each other for 35 days. On November 5, 2001, however, they were moved into the same cell.

While H. Ibrahim was eventually transferred out of the Special Housing Unit into MDC's general prison population on January 17, 2002, Ebrahim remained confined in the Special Housing Unit for the entire duration of his confinement at MDC.

193. Like most or all of the other MDC Plaintiffs, Ebrahim and H. Ibrahim were placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to counsel and to their consulate, arbitrarily and abusively strip searched, and subjected to inhumane conditions of confinement including sleep deprivation, constructive denial of recreational activities and hygienic items, and deprivation of adequate food and medical attention. Like most or all of the other MDC Plaintiffs, Ebrahim and H. Ibrahim were, at all times relevant to the acts complained of, and remain, devout Muslims, and the MDC Defendants deliberately and substantially interfered with their religious practice. Like most or all of the other MDC Plaintiffs, Ebrahim and H. Ibrahim were not provided with timely notice of MDC's complaint procedures and had their personal items confiscated by MDC Defendants.

194. From the moment they arrived at the MDC on October 1, 2001, Ebrahim and H. Ibrahim were subjected to abuses and harsh and inhumane conditions of confinement, depriving them of basic life necessities such as adequate food, warmth, exercise, sleep, hygiene materials and medical care. Ebrahim and H. Ibrahim were transported to the MDC from Varick Street in a van, handcuffed, chained, and shackled. On arrival at MDC, H. Ibrahim was pulled from the van by several large MDC guards, who were accompanied and supervised by a lieutenant who was a white, balding male with grey hair, blue eyes and a mustache. On information and belief, this lieutenant was Stuart Pray. Although H. Ibrahim was cooperative and compliant, and posed no threat to anyone, the guards slammed H. Ibrahim face-first into the sally port wall with the American flag t-shirt taped to it, causing him great pain and serious bruising of his nose. H.

Ibrahim started to cry, and was told to “shut up,” called a “motherfucker,” and told to look at the flag on the t-shirt. Ebrahim was also pulled forcefully from the van, by a team of four guards, accompanied by a lieutenant who was a white, balding male with grey hair and a mustache. On information and belief, this lieutenant was Stuart Pray. Although Ebrahim was cooperative and compliant, he was also slammed face-first into the wall, causing him pain so severe that he felt as though his nose had been broken. On information and belief, Lt. Pray witnessed this abuse, yet did nothing to prevent it and appeared to be overseeing it.

195. Once inside the MDC’s R&D Area, Ebrahim and H. Ibrahim were fingerprinted, strip searched, and given orange jumpsuits to wear. Ebrahim and H. Ibrahim were then taken from R&D to the ninth floor ADMAX SHU by, on information and belief, Lt. Barrere and COs Richard Diaz and Sidney Chase. On the way, H. Ibrahim and Ebrahim were forcefully pushed into every wall and door that they passed, causing them more pain and further bruising. Officers on the escort team pushed H. Ibrahim’s wrist chains painfully into his hands, twisted his wrists and fingers painfully, and tightened his handcuffs so that his wrists bled. When H. Ibrahim was ordered to walk, guards would step on his leg chains, causing him to fall. When he fell, guards would pick him up and drag him by his cuffs or clothing, then stepping on his leg chains again and repeating the process, leaving H. Ibrahim’s ankles bruised and bloodied. Ebrahim was subjected to the same tripping and dragging process, leaving his wrists painful and red for days afterwards. Throughout the trip, guards verbally abused the two brothers, calling them “fucking Muslims” and “terrorists.” When H. Ibrahim tried to explain that he and his brother were only there on immigration charges, one MDC CO told him to shut up, stating “If you open your mouth, I will crush you under the elevator, just like at the World Trade Center.” The lieutenant on the team told H. Ibrahim, “I don’t want to hear you breathe and don’t look at me.”

Throughout this ordeal, H. Ibrahim and Ebrahim were fully cooperative and compliant, and neither provoked nor posed a threat to anyone.

196. Ebrahim and H. Ibrahim each suffered serious injuries as a result of the beatings received upon their arrival at MDC. Their arms and noses remained black and swollen for several days thereafter. H. Ibrahim was so badly frightened by the beatings that he did not eat during the first three days of his detention at MDC. For several days, Ebrahim and H. Ibrahim had visible injuries, were in considerable pain, and had great difficulty breathing. They were not treated for their injuries, even though both received physical exams on October 2, 2001, the day after their arrival at MDC. Physician Assistant Nora Lorenzo, who gave the brothers their medical exams, did not care to look at, ask about, comment on, or treat their obvious injuries.

197. Physical abuse was a regular part of Ebrahim and H. Ibrahim's lives at MDC, particularly during transports between their cells and other locations. Examples of this include MDC Defendants twisting their arms and slamming them against walls and making their handcuffs painfully tight. Additionally, MDC Defendants frequently stepped on and kicked their ankle shackles while transporting them. On information and belief, COs Sidney Chase, Richard Diaz, and other MDC Defendants frequently abused Ebrahim and H. Ibrahim in these ways, though other MDC Defendants also perpetrated such abuses.

198. Ebrahim and H. Ibrahim were also subjected to regular verbal abuse throughout their detention at MDC, contributing to their feelings of being under threat of physical harm. On one occasion, when H. Ibrahim asked for pen and paper to write a letter, Lt. Barrere responded: "Are you going to write to Osama bin Laden?" CO Sidney Chase regularly harassed Ebrahim and blamed him for the World Trade Center attacks. When Ebrahim raised the issue of human rights to Clemmet Shacks, Shacks responded: "Forget about human rights. Three thousand

people died in the World Trade Center. You have no rights.” They were also regularly subjected to ethnic and anti-Muslim slurs.

199. H. Ibrahim was released and deported on May 29, 2002. Ebrahim was released and deported on June 6, 2002. On the dates that they were deported, each was given old clothes (not their own), taken to the airport in handcuffs, chains, and shackles, and placed on a plane without any money. Both Ebrahim and H. Ibrahim have made attempts to have personal belongings and money confiscated from them during and following their arrests returned to them. To date, none of these items have been returned to them.

200. Ebrahim and H. Ibrahim were each deported to Egypt. Upon their respective arrivals in Cairo, Ebrahim and H. Ibrahim were summoned to Egyptian State Security Investigations, where each was detained and extensively interrogated for hours on his detention in the United States. On information and belief, State Security Investigations retains dossiers on both Ebrahim and H. Ibrahim. The presumption of guilt thus follows them even after their deportation from the United States, despite the fact that they have never been involved in terrorist activity and the complete absence of any evidence of their involvement in such activity.

201. Ebrahim and H. Ibrahim continue to suffer extreme emotional and psychological distress as a result of their eight months of detention in the United States. They each have sleepless nights thinking about the recent past. H. Ibrahim in particular has had extreme difficulty coming to terms with his detention ordeal and has suffered a “nervous breakdown” after returning to Egypt, which necessitated professional counseling. It was not until March 2003 that Ebrahim and H. Ibrahim had recuperated sufficiently to be able to work and hold jobs.

Plaintiff Shakir Baloch

202. Plaintiff Shakir Baloch was taken into custody at his residence on September 19, 2001 by a group of INS, FBI, Department of Labor and NYPD officers. The officers were conducting an investigation in connection with Amjad Baig for possession of a counterfeit social security card. Baig lived in the same apartment as Baloch. There, Baloch was interrogated for nearly four hours, primarily about the events on September 11, 2001. He was not advised of his rights to counsel or his other Miranda rights. Baloch denied any involvement with terrorists, terrorist organizations, or terrorist activity, but disclosed that he had used the alias Faisal Kurd to obtain false identification for employment purposes because he had previously been removed from the United States under his real name. Baloch was arrested at the close of the interrogation. Baloch was taken in handcuffs to the INS's Varick Street facility in Manhattan, where he was held for two nights.

203. On information and belief, FBI and INS agents conducted a search of Baloch's apartment without his consent. The agents seized his laptop computer and other items from his apartment. Additionally, his personal identification, money, two watches, and a briefcase, were confiscated upon his booking. These items have never been returned to Baloch.

204. On September 21, 2001, Baloch was processed for removal. Baloch was given a Notice of Rights and Request for Disposition form, which he refused to sign. He was not read his Miranda rights prior to being questioned.

205. On the night of September 21, 2001, Baloch was taken to MDC in Brooklyn, New York. Baloch was met at the MDC and taken from the sally port to another room on the first floor by five MDC guards, including, on information and belief, Lt. Steven Barrere, COs Michael McCabe, Kevin Lopez, and Jon Osteen. After escorting Baloch to an empty room, the

five guards worked as a team to pick him up from under the arms and throw him rapidly and forcefully from corner to corner in his cell, while hitting and kicking him in the back as he fell to the ground. As they did so, the some of the guards cursed at Baloch and called him “a fucking Muslim terrorist.” They repeatedly said such things as: “For what you did to us, we will kill you,” “You did this to us. We’re going to kill you,” and “You know why you are in here. The government thinks that you are a terrorist.” On information and belief, Lt. Barrere and COs McCabe, Lopez, and Osteen all participated in throwing Baloch into the corners of the room, hitting and kicking him, and verbally insulting him.

206. Despite the fact that Baloch was being held on a civil immigration violation and that no evidence connected Baloch to any terrorist activities, Baloch was designated as a possible terrorist and placed in the Special Housing Unit (SHU).

207. Like most or all of the other MDC Plaintiffs, Baloch was placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to counsel and to his consulate, arbitrarily and abusively strip searched, and subjected to inhumane conditions of confinement including sleep deprivation, constructive denial of recreational activities and hygienic items, and deprivation of adequate food and medical attention. Like most or all of the other MDC Plaintiffs, Baloch was, at all times relevant to the acts complained of, and remains, a devout Muslim, and the MDC Defendants deliberately interfered with his religious practice. Like most or all of the other MDC Plaintiffs, Baloch was not provided with timely notice of MDC’s complaint procedures and had his personal items confiscated by MDC Defendants.

208. On September 22, 2001, INS reinstated a prior deportation order against Baloch. Because Baloch had a prior deportation order against him, he was not provided a hearing. Rather,

the prior order was simply reinstated. However, despite the fact that the INS could have effectuated Baloch's removal from the United States within a matter of days, Baloch continued to be held in the MDC, solely on the remote possibility that he might be connected to terrorist activity, despite the complete absence of any evidence of terrorist connections. Baloch was never brought before a neutral judicial officer to determine whether there was probable cause to believe that he engaged in terrorist activity.

209. On September 28, 2001, Baloch was interviewed by SA Noreen Gleason (FBI) and SA Kevin Ryan (INS). Baloch was asked questions about his immigration and work history. Baloch was read his Miranda rights. He was also questioned about his connections to terrorism. Baloch was interviewed again by these same two agents on October 11, 2001. On October 14, 2001, Baloch was interviewed at the MDC by agents from the NYPD, FBI and INS. Baloch signed a statement that was prepared for him stating that he purchased false identification and passports. On October 29, 2001, Baloch was interviewed by two FBI agents and an NYPD detective. He was questioned further about his false identification documents. He was read his Miranda rights. During one of these interrogations, the agents threatened him by telling him things such as "If you don't cooperate with us, we will revoke your Canadian citizenship" and "If you're not cooperative, we'll put you in jail for 10 years or deport you back to Pakistan instead of Canada, where they'll put you in jail longer than 10 years."

210. On about December 21, 2001, having been detained for more than three months without any prospect for release, Baloch filed a habeas corpus petition through pro bono counsel in the United States District Court for the Southern District of New York. Less than two weeks later, on January 3, 2002, Baloch was indicted for illegal re-entry – a charge to which he pled

guilty on April 2, 2002. Baloch was sentenced to time served. Shortly thereafter, he was transferred from MDC to the Passaic County Jail.

211. On information and belief, Defendants Ashcroft, Mueller, and Ziglar rarely seek indictment of minor immigration violators for the offenses for which Baloch was indicted. On information and belief, Defendants Ashcroft, Mueller, and Ziglar caused Baloch to be indicted solely to prolong his detention for the purpose of their investigation into terrorist activity.

212. On February 7, 2002, Baloch was cleared to be placed in the general population.

213. On April 2, 2002, the INS took Baloch from Passaic County Jail to Newark Airport, where they put him on a plane to Toronto, without any personal identification or money. Since his deportation, Baloch has repeatedly requested return of the personal belongings confiscated from him during and after his arrest, including his personal identification.

Defendants have, however, refused to comply with these requests.

214. Baloch was subjected to on-going physical and verbal abuse while housed at the MDC. On information and belief, COs Michael McCabe, Mario Machado, Michael DeFrancisco, Kevin Lopez, Jon Osteen, Richard Diaz, and Brian Rodriguez would regularly drag Baloch forward by his waist chain, causing his ankle shackles to dig in; shove Baloch in the back while his chin was against the wall; slam Baloch into walls as they were transferring him; twist Baloch's hands, thumbs, and fingers; step on the chain connecting his ankle shackles, causing the ankle shackles to tighten painfully; and lift his arms or elbows painfully while his wrists were cuffed. On information and belief, Lts. William Beck, Steven Barrere, Howard Gussak and Marcial Mundo witnessed this treatment and did nothing to stop it.

215. On information and belief, Lts. Steven Barrere, Marcial Mundo, and Howard Gussak handled Baloch very roughly. They would regularly step on Baloch's leg chains, drag Baloch while he was shackled, and slam him into walls.

216. On October 20, 2001, on information and belief, COs Richard Diaz and Mario Machado deliberately brutalized Baloch. CO Diaz held Baloch's left elbow, while CO Machado lifted his handcuffs, holding Baloch in an extremely painful position. On information and belief, Lt. Beck was present and did nothing to stop the rough handling of Baloch.

217. Baloch was also subjected to constant verbal harassment by almost all the COs in the ADMAX SHU. CO Wilson regularly spoke to Baloch about getting revenge for the terrorist attacks. CO Kevin Lopez would regularly display his middle finger and curse Baloch. Lt. Barrere told Baloch, "Your lawyers can't help you out. You'll stay in here another 20 years." Similarly, Lt. Beck told Baloch "People have been here 20 years without seeing a judge." COs would regularly refer to Baloch as a "fucking Muslim" and "terrorist."

218. At one point while on the first floor, one of the guards had difficulty unlocking his handcuffs; the guard brought out a large pair of cutters and threatened to cut Baloch's hands off to unlock the cuffs.

219. Baloch requested to speak an attorney shortly after arriving at MDC and continuously thereafter. However, Baloch was not permitted to speak with an attorney until on or about November 7, 2001, six weeks into his detention, at which time he placed a call to the Legal Aid Society. (While in INS custody, Baloch was given extremely limited access to the telephone. He was denied all telephone access from the date of his arrest until early November 2001.)

220. Baloch met with an attorney for the first time on November 19, 2001. This interview was recorded on video with sound, as were all his subsequent meetings with his attorneys. Baloch was aware of the video camera in the room, and was very reluctant to speak candidly with his attorney because he feared the conversation was being recorded.

221. On information and belief, when officials with the Canadian consulate inquired as to Baloch's whereabouts, officials at the MDC denied that Baloch was held there. Baloch did not meet with a consular official until on or about December 13, 2001.

222. Baloch continues to suffer the effects of his detention in the United States. He recently tested positive for tuberculosis for the first time -- a disease that he doubtless contracted during his incarceration. He is also being treated for severe depression. Because of nightmares and anxiety, he cannot sleep at night. He is unable to take medication for his tuberculosis since the medication would exacerbate his depression. His physician has recommended that he not work for the next six months. Without his Canadian social insurance and health cards, which were confiscated at the time of his arrest and never returned, he has had difficulty securing the medical treatment he desperately needs to recover. He and his wife have recently separated, due to the strains on their marriage brought about by his prolonged detention. Baloch, although trained as a doctor, is unable to work in Canada since the Canadian Medical Board has found him unfit to practice until at least October 2004 due to depression.

Plaintiff Ashraf Ali Ibrahim

223. Ashraf Ibrahim, a citizen of Egypt, entered the United States on January 23, 1992 on a six month visa. A.Ibrahim lived in the United States continuously for ten years without petitioning for an adjustment of status. On or about August 27, 2001, A.Ibrahim started up a

bottled-water distribution business in Philadelphia. From September 7 to September 13, 2001, A.Ibrahim was in Philadelphia with his partner making the new business's first deliveries.

224. Early in the morning on September 23, 2001, FBI and INS agents came to the door of his home and asked him to sign a document consenting to a search of his home, which he signed without reading. The agents told him that he would not need an attorney. A.Ibrahim was then interrogated at his home for approximately two hours as to whether he had any involvement in the attacks of September 11, 2001, and as to his whereabouts on that date. A.Ibrahim answered the agents' questions and explained that he had no involvement with the terrorist attacks of September 11 or any other terrorist activity. A.Ibrahim requested the opportunity to make a phone call but was refused. These or other government agents confiscated all of the possessions in his home and over \$300 cash.

225. Later in the morning of September 23, 2001, A.Ibrahim was taken to the Varick Street INS facility in Manhattan where he was interrogated again, this time for approximately seven hours. A.Ibrahim was cooperative and made it clear that he had no involvement with terrorism. A.Ibrahim was not advised of his right to counsel and despite his repeated requests to make a phone call he was not permitted to do so. On information and belief, INS unreasonably delayed in providing a Notice to Appear advising A.Ibrahim of the charges against him. Following this interrogation A.Ibrahim was handcuffed, put in waist and ankle chains, and driven in a van to MDC.

226. A.Ibrahim arrived at the MDC in the evening of September 23, 2001. While A.Ibrahim was still in the transport van in the MDC sally port, a CO from MDC got into the van and told him, "open your fucking mouth." The CO pointed a flashlight into A.Ibrahim's mouth. Referring to A.Ibrahim, someone then said, "unfasten his seatbelt before you drag him down."

A.Ibrahim was then pulled out of the van by two MDC CO Defendants and dragged by his handcuffed arms to the entrance of the MDC's R&D Area. These MDC CO Defendants shoved A.Ibrahim hard against the wall of the building, stunning him and causing him great pain. On information and belief, the lieutenant in charge of the team of COs that received A.Ibrahim when he arrived at the MDC was Lt. Gussak. On information and belief, one or more member of the team forcefully pressed A.Ibrahim's body against the wall for several minutes. The lieutenant not only observed his COs physically and verbally abuse A.Ibrahim without making any effort to stop them, but he encouraged them to act on their aggression by belligerently accusing A.Ibrahim of complicity in the World Trade Center bombing and by telling him, "If you make any move, you will hit the floor and you will hit it hard."

227. When the CO team took A.Ibrahim for fingerprinting, they gripped him under his arms and forced him to run at a pace that he could not manage because of his ankle restraints. The COs standing behind A.Ibrahim kept stepping on his ankle chains, causing him to fall forward while the COs at his sides held tightly to his armpits. This coordinated physical abuse by Lt. Gussak's team was humiliating and painful. Although pain and bruising on his ankles and arms persisted for about three weeks, A.Ibrahim's injuries were never treated.

228. After A.Ibrahim was fingerprinted he was subjected to a strip search by, on information and belief, Lt. Gussak. After disrobing, A.Ibrahim was ordered to move his fingers through his pubic hair and lift his genitals. Next, despite lacking reasonable suspicion that A.Ibrahim might have contraband in his anus following ten hours of continuous supervision while handcuffed, the lieutenant then ordered A.Ibrahim to bend over and spread his buttocks for a visual inspection. On information and belief, A.Ibrahim was then transported to the 9th floor of MDC. In the elevator A.Ibrahim was slammed into the wall causing him considerable pain and

heightening his fear. When A.Ibrahim reached the 9th floor, he was received by a new team of guards and subjected to another strip search, conducted in the same manner previously described, despite the fact that it would have been impossible for him to gain access to any contraband much less store them in his body cavities while he was under continuous supervision and cuffed at the hands and legs. A.Ibrahim was then locked alone in a cell on the 9th floor.

229. Like most or all of the other MDC Plaintiffs, A.Ibrahim was placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to counsel and to his consulate, arbitrarily and abusively strip searched, and subjected to inhumane conditions of confinement including sleep deprivation, constructive denial of recreational activities and hygienic items, and deprivation of adequate food and medical attention. Like most or all of the other MDC Plaintiffs, A.Ibrahim was, at all times relevant to the acts complained of, and remains, a devout Muslim, and the MDC Defendants deliberately interfered with his religious practice. Like most or all of the other MDC Plaintiffs, A.Ibrahim was not provided with timely notice of MDC's complaint procedures and had his personal items confiscated by MDC Defendants.

230. A.Ibrahim was subject to a communications blackout for the first twenty-five days of his detention at the MDC. A.Ibrahim requested permission to make phone calls many times. He made these requests to all the guards, including CO Chase, Lt. Barrere, and another CO on Barrere's team. Nevertheless, he was not permitted to contact family members or a lawyer until October 17, 2001, despite having had two hearings scheduled before an immigration judge in that time period.

231. Even after calls were allowed, on information and belief, Counselor Raymond Cotton thwarted A.Ibrahim's attempts to make legal and social calls by purposely dialing wrong

numbers and by generally making legal calls available at 8:00am or 9:00am, before most attorneys began work. On other occasions Counselor Cotton would report to A.Ibrahim that the number he requested was busy and that he would therefore have to try again “next week” or “next month.”

232. For the first five months of A.Ibrahim’s detention, he was never allowed to leave his cell without first being strip-searched. Following the ubiquitous strip searches, A.Ibrahim was handcuffed, chained and shackled. On information and belief, Lt. Beck would routinely over-tighten A.Ibrahim’s handcuffs and ankle restraints causing them to dig into his flesh and inflict pain. During transport to other locations in MDC, A.Ibrahim was subjected to excessively rough handling. He was pushed or slammed against the wall for “pat-down” searches. On information and belief, whenever these pat-down searches were conducted by CO Chase, CO Chase would grasp A.Ibrahim’s genitals and squeeze them until it caused A.Ibrahim acute pain. This caused A.Ibrahim extreme pain and humiliation.

233. On or about September 24, 2001, A.Ibrahim was taken from his cell to be photographed. Before leaving his cell, and at all times that he was taken to any location for the duration of his confinement, A.Ibrahim was handcuffed behind his back and chained at the ankles. On information and belief CO Richard Diaz, CO Machado, another lieutenant and two other guards made up the team that transported A.Ibrahim to be photographed. Despite his complete cooperation, CO Richard Diaz and, CO Machado, along with a lieutenant and two other MDC guards, slammed A.Ibrahim’s back into the wall, and held him there tightly while his photograph was taken.

234. On or about October 3, 2001, on information and belief, Lt. Barrere and four officers informed A.Ibrahim that he would be going to court and then strip searched him in his

cell, despite the fact that he had had no opportunity to obtain any contraband. A.Ibrahim was then cuffed, chained and shackled. Outside the cell he was roughly slammed into the wall and had to undergo a pat-down search.

235. The lieutenant and his team then took A.Ibrahim to the elevator. Inside the elevator A.Ibrahim was pushed up against the wall. On information and belief, CO Rosebery told A.Ibrahim to “spread your fucking legs.” Then, on information and belief, CO Rosebery stepped on the chain in between his ankles while two other officers held him up, causing him great pain.

236. A.Ibrahim informed the Immigration Judge Allan Vomacka that he had been treated violently in the elevator. He also informed Judge Vomacka that he had not been permitted to make a phone call. On information and belief, Judge Vomacka told one of the jail staff that A.Ibrahim should be permitted to use the phone.

237. On information and belief, A.Ibrahim was pushed into the corner of the elevator on the way back from the immigration court, October 3, 2001. An officer, on information and belief CO Rosebery, told A.Ibrahim to spread his legs wide and then stepped on his ankle chain, causing him great pain. A.Ibrahim’s ankles were bruised as a result of the officer standing on his ankle chain during the elevator rides to and from the immigration court room.

238. Similar incidents of abuse, where, on information and belief, CO Rosebery or another officer ordered A.Ibrahim to spread his chained legs and then stepped on the ankle chain, were perpetrated against A.Ibrahim in the elevator on the way to and from his immigration hearings of October 11, 2001, October 16, 2001, and October 25, 2001. A.Ibrahim’s ankles were badly bruised as a result of these incidents.

239. On or about October 11, 2001, A.Ibrahim had a scheduled hearing in immigration court. After he was strip-searched in his cell by Lt. Beck and his team, cuffed, chained and shackled, an additional pat-down search was conducted during which, on information and belief, CO Chase intentionally squeezed A.Ibrahim's genitals, causing A.Ibrahim considerable pain and humiliation.

240. The October 11 hearing was scheduled to be a bond hearing for A.Ibrahim, but the judge was absent. No substitute immigration judge was provided and therefore no determination about whether A.Ibrahim should be able to post bond could be made.

241. On or about mid-October, 2001, a CO, on information and belief CO Phillip Barnes, began a practice of twisting A.Ibrahim's fingers for no apparent reason while he was being held face to the wall, and continued to twist A.Ibrahim's fingers at every opportunity, causing A.Ibrahim severe pain. Even when there was a video camera running, the officer would block the camera's view with A.Ibrahim's body and then twist A.Ibrahim's fingers.

242. Despite A.Ibrahim's desire not to make any trouble and willingness to comply with orders by MDC personnel, he was physically abused and verbally harassed by both Lieutenants and COs in the ADMAX-SHU, especially during the first five months or so of his detention, causing A.Ibrahim to constantly fear for his safety. On information and belief, Lt. Beck observed members of his team – over whom he had direct supervision – hurting, insulting or harassing A.Ibrahim but never stopped them from doing so. The lieutenant himself inappropriately insulted A.Ibrahim on occasion. On information and belief, Lt. Barrere observed members of his team – over whom he had direct supervision – hurting, insulting or harassing A.Ibrahim but never stopped them from doing so. The lieutenant himself made a point of intimidating and scaring A.Ibrahim while he was confined at MDC. On information and belief,

CO Michael McCabe was frequently violent and aggressive towards A.Ibrahim. On information and belief, CO McCabe also shoved A.Ibrahim's back or pushed A.Ibrahim into walls on some of the days he was taken to the Immigration Court on the second floor. Despite A.Ibrahim's cooperativeness, McCabe shouted at him "Don't move! Don't talk!" When assigned to escort A.Ibrahim, CO McCabe would frequently push A.Ibrahim into walls on the 9th floor.

243. On or about October 16, 2001, A.Ibrahim had a hearing in immigration court. Because he had not yet been permitted to make a legal phone call, A.Ibrahim had no attorney present at the hearing.

244. On or about October 19, 2001, A.Ibrahim was permitted to make his first social call. He called a friend and asked him for money and help in retaining an attorney.

245. On or about October 22, 2001, A.Ibrahim was taken to the interrogation room, where he was aggressively interrogated by a large male agent from INS and two FBI agents who said their names were Bob and Tony. On information and belief, these agents told him that if he could not provide any information about September 11 he would stay in jail forever. On information and belief, the INS agent told A.Ibrahim that his "chance to get out of this jail is very slim." A.Ibrahim was interrogated in this manner for about two hours.

246. On or about October 25, 2001, an attorney (Mr. Al-Shawi) retained for A.Ibrahim by a friend came to the MDC to represent him at his immigration hearing, which was scheduled for that day. On information and belief, the officers at the front desk that day told Mr. Al-Shawi and A.Ibrahim's friend that there was no one in the MDC named Ashraf Ibrahim. Mr. Al-Shawi had to leave the MDC without the opportunity to represent A.Ibrahim. Because his attorney was not present, the Immigration Judge Allan Vomacka rescheduled the hearing for November 6, 2001.

247. On or about October 30, 2001, after being strip searched, handcuffed, shackled and chained, A.Ibrahim was escorted to a visiting room within the SHU range on the 9th floor of the MDC where he was permitted to meet with Mr. Al-Shawi. They spoke to each other through a thick glass wall. When A.Ibrahim arrived at the visiting room he noticed a video camera on a tripod about five feet away, outside the room. A.Ibrahim believed that the video camera was on, but he was not positive that it would record his conversation with Mr. Al-Shawi.

248. On or about November 6, 2001, A.Ibrahim had a hearing before the Immigration Judge with his attorney Mr. Al-Shawi present. At the hearing A.Ibrahim requested bond in order to collect his belongings, which had been acquired over the ten years that A.Ibrahim had lived in New York City. On information and belief, Judge Allan Vomacka refused this request and issued a final order of removal. A.Ibrahim then told the judge that he would pay his own ticket back to Egypt if it meant he could avoid further detention at the MDC. On information and belief, in response, Judge Vomacka explained that A.Ibrahim would be deported shortly because there was a limit to the time he could be detained after a final deportation order.

Notwithstanding this assurance, A.Ibrahim was detained another 143 days in the ADMAX SHU at MDC.

249. On or about March 28, 2002 A.Ibrahim was fingerprinted by INS agents and escorted in handcuffs to JFK airport where he was deported to Egypt. Upon arrival in Egypt, A.Ibrahim, along with other deported passengers was taken to the Egyptian State Security Investigation Office, where he was interrogated and detained overnight. The next morning he was taken to a Cairo jail along with others, where he was detained for another three days. Finally, A.Ibrahim arrived in Alexandria, but his identification and other papers were confiscated.

250. A.Ibrahim's experiences severe depression and anxiety resulting from during his detention which caused him to see a psychiatrist after returning to Egypt.

PASSAIC PLAINTIFFS

251. Plaintiffs Ibrahim Turkmen and Akhil Sachdeva are collectively referred to herein as the "Passaic Plaintiffs."

Plaintiff Ibrahim Turkmen

252. Ibrahim Turkmen entered the United States through New York City on a tourist visa in early October, 2000 to visit an old friend from Turkey who lived in Long Island.

253. In late October 2000, Turkmen, at his friend's suggestion, found work at a service station in Bellport, Long Island. He worked there several days a week until mid-January 2001, when he took a job at another service station in the same town. Turkmen worked at the latter service station several days a week until mid-April 2001, when he began working part-time for a locally-based Turkish construction company.

254. From his arrival in the United States until he was taken into INS custody, Turkmen frequently called his wife and four daughters back in Turkey. While dearly missing them, he decided to remain in the United States to provide for their support. Each week, Turkmen sent most of his meager earnings home to his family.

255. Turkmen spoke almost no English when he came to the United States. While here, he learned barely enough English words to conduct his limited daily business. At the time that he was taken into custody, Turkmen understood very little spoken English, and he could not read English at all.

256. At about 2:30 p.m. on October 13, 2001, slightly more than a month after the September 11 terrorist attacks, two FBI agents visited Turkmen at the apartment where he was

staying with several Turkish friends in West Babylon, New York. Without advising him of his right to counsel, they asked Turkmen whether he had any involvement in the September 11 terrorist attacks and whether he had any association with terrorists. They also inquired as to his immigration status, among other things.

257. Turkmen had great difficulty understanding the FBI agents' questions given his limited knowledge of English and the lack of an interpreter. All the same, he did his best to answer truthfully. He denied any involvement with terrorists, terrorist organizations, or terrorist activity. The FBI agents, nonetheless, accused Turkmen with being an associate of Osama bin Laden, placed him under arrest, confiscated his personal items (passport, identification, credit cards, etc.) and money, and searched his home without his consent. On information and belief, Turkmen was fully interviewed on October 13, 2001 and no information was uncovered to connect him to the terrorism investigation.

258. Turkmen was taken to an INS facility in Nassau County, fingerprinted, and further interrogated, this time by an INS official. Once again, he was not advised of his right to counsel. Due to his limited knowledge of English and the lack of an interpreter, Turkmen again had great difficulty understanding the questions. Still, he did his best to answer them truthfully. Turkmen again denied any involvement with terrorists, terrorist organizations, or terrorist activity, and requested a hearing before an immigration judge to determine whether he could remain in the United States. He was held at the Nassau County INS facility for five or six hours.

259. That evening, at approximately 11:30 p.m., Turkmen was brought to another INS facility in Manhattan, where INS officials asked him still more questions in English. Despite great difficulty understanding the questions, and without the aid of an interpreter, Turkmen again

did his best to answer them truthfully. For the third time, he denied any involvement with terrorists, terrorist organizations, or terrorist activity.

260. Turkmen's interrogators then instructed him to sign certain papers, possibly waiving his right under Article 36 of the Vienna Convention to speak with his consulate -- papers which he could not read because they were in English. Afraid that he would only make matters worse for himself if he refused to comply, Turkmen reluctantly signed the papers.

261. Early the next morning, October 14, 2001, Turkmen was taken to the Passaic County Jail in Paterson, New Jersey, where he remained confined, except for a single trip to Immigration Court in Newark, New Jersey, until February 25, 2002, a period of nearly four and one-half months.

262. Shortly after arriving at the Passaic County Jail, Turkmen received a Notice to Appear from the INS, charging him with overstaying his visa and scheduling a hearing at Immigration Court in Newark, New Jersey on October 31, 2001. On the same date, he received a Notice of Custody Determination and requested a re-determination of the custody decision by an immigration judge.

263. On October 29, 2001, two FBI agents visited Turkmen at the Passaic County Jail. They asked him still more questions about his immigration status, his reasons for entering the United States, his work experience, his religious beliefs, and other personal matters. Another Turkish post-9/11 detainee fluent in English translated the questions for Turkmen, who answered them all truthfully. For the fourth time, he denied any involvement with terrorists, terrorist organizations, or terrorist activities.

264. Two days later, on October 31, 2001, Turkmen was taken to Immigration Court in Newark, New Jersey, where he appeared pro se before an immigration judge. Once again, he

was not advised of his right to counsel. While Turkmen this time was provided with an interpreter, that interpreter (who was not of Turkish descent) was fluent in neither Turkish nor English. After conceding that he had overstayed his tourist visa, Turkmen accepted a voluntary departure order requiring him to leave the United States by November 30, 2001. He declined to request bond solely because the Judge assured him that he would be allowed to return to Turkey within a matter of days. The INS never appealed the voluntary departure order issued to Turkmen.

265. When he returned to the Passaic County Jail later that day, Turkmen called a friend to ask him to purchase a plane ticket for Turkmen's return to Turkey. Two days later, on November 2, 2001, Turkmen's friend brought the ticket to the INS's offices in Newark, New Jersey. Turkmen remained, nonetheless, in the Passaic County Jail for nearly four more months, until February 25, 2002, even though the INS could have effectuated his voluntary departure within a matter of days. On information and belief, the INS prevented his compliance with the Immigration Judge's voluntary departure order and thereby caused an automatic entry of an order of removal with a future bar on reentry for 10 years.

266. Turkmen was detained for nearly four more months longer than necessary to effectuate his voluntary departure from the United States solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that Turkmen engaged in terrorist activity. Nor was an indictment or information against Turkmen ever filed with a court citing criminal charges on which his continued detention was based.

267. While confined in the Passaic County Jail, Turkmen was not allowed to call his wife and four daughters back home in Turkey. He learned through a friend, however, that his wife had been hospitalized for a month with an undisclosed ailment so serious that she lost most of her hair and teeth. Upon learning this, Turkmen was beside himself with worry. Unable even to call his seriously ailing wife, he suffered extreme emotional distress.

268. While confined in the Passaic County Jail, Turkmen, like other class members was:

- (a) placed in the general prison population, forced to eat meals at the same tables, sleep in the same dormitories, and otherwise commingle with individuals charged with and/or convicted of violent crimes;
- (b) deliberately denied the ability to observe the mandatory practices of his religion (for example, by regularly interrupting his daily prayers and refusing to serve him the Halal food);
- (c) housed under severely overcrowded conditions (with individuals charged with and/or convicted of crimes); and
- (d) threatened by guards with menacing dogs.

269. Upon his arrival at the Passaic County Jail, Turkmen was given a list of telephone numbers to call for free legal services. Most of the numbers, however, were incorrect or no longer valid. For weeks, one of Turkmen's friends on the outside tried to call those numbers, with no success. On information and belief, other post-9/11 detainees in the Passaic County Jail given the same list of telephone numbers to call for free legal services encountered the very same problem.

270. While confined in the Passaic County Jail, Turkmen was unaware of his right under Article 36 of the Vienna Convention to consult with the Turkish Consulate. Had he known that he had such a right, he could have, and would have, sought immediate assistance from the Consulate.

271. On January 17, 2002, more than three months after he was taken into custody and more than two and one-half months after he received a voluntary departure order, Turkmen was visited by an INS agent. The agent informed Turkmen that he had been “cleared” by the FBI but still needed to be “cleared” by the INS. When Turkmen asked how long the latter “clearance” might take, the agent replied that he did not know.

272. One month later, on February 17, 2002, Turkmen was visited by another INS agent, who told Turkmen that he had received INS “clearance” and would be allowed to depart the United States within the next two weeks. Eight days later, on February 25, 2002, INS agents took Turkmen in handcuffs from the Passaic County Jail to Newark Airport, where they put him on a plane to Istanbul, Turkey -- without a single penny or lira in his pocket. Although Turkmen requested the return of \$52 confiscated from him at the time of his arrest -- money that he needed to pay for, among other things, the eight-hour bus trip from Istanbul Airport to his home in the City of Konya -- that request was denied.

273. As soon as Turkmen debarked from the plane at Istanbul Airport, he was met by a Turkish police officer, who escorted him to a nearby police station, where he was interrogated for about an hour concerning his four-and-one-half month detention in the United States. Once again, Turkmen denied any involvement with terrorists, terrorist organizations, or terrorist activity. After the interrogation concluded, he was allowed to leave for Konya, though he still had no money to buy the bus ticket. But for the kindness of a complete stranger who lent him the necessary funds, Turkmen might still be stranded in Istanbul.

274. Turkmen was again interrogated at length concerning his detention in the United States, this time by Konya’s Security Intelligence Division, following the filing of this lawsuit on April 17, 2002. At the close of the interrogation, the Division’s Superintendent told him to “be

careful.” Approximately 10 days later, Turkmen’s father was contacted by the Head of Gendarmerie in Konya’s Karapinar District, Turkmen’s birthplace, to ascertain Turkmen’s current address, ostensibly to “give to the human rights organizations that are trying to reach Turkmen.” Several days later, the Head of Gendarmerie in Konya’s Cumra District asked Turkmen’s former employer for Turkmen’s personnel file. After reviewing the file, that gendarme took with him all the documents relating to Turkmen’s 16 years of public service.

275. The presumption of guilt thus follows Turkmen even after his deportation from the United States, despite the fact that he has never been involved in terrorist activity and the complete absence of any evidence of his involvement in such activity. Because of this presumption, Turkmen is deemed a “security risk” and thus unable to return to his prior government position. After seeking employment for months, Turkmen had to settle for a low-paying job as a service driver for a factory.

276. Turkmen continues to suffer the emotional and psychological effects of his four and one-half months detention in the United States. He regularly experiences nightmares about his detention, making it difficult for him to sleep.

Plaintiff Akhil Sachdeva

277. In late September or early October 2001, plaintiff Akhil Sachdeva returned to the United States from Canada to finalize his divorce from his wife and collect his personal belongings for his move back to Canada. Sometime in late November 2001, an FBI agent visited the gas station owned by Sachdeva’s ex-wife in Port Washington, New York, looking for a Muslim employee. Not finding that individual, the agent left a message for Sachdeva’s ex-wife to contact the agent. She, in turn, asked Sachdeva to do so.

278. In early December 2001, Sachdeva called the FBI agent, who asked Sachdeva to come to the agent's offices for an interview. Sachdeva agreed to do so. On December 9, 2001, Sachdeva met with two FBI agents at 26 Federal Plaza in Manhattan. They proceeded to question him at length about the September 11 terrorist attacks and his religious beliefs, among other things, though without advising him of his right to counsel or his right to remain silent. At the close of the interrogation, the agents examined Sachdeva's personal identification before allowing him to leave.

279. Sachdeva continued to close out his affairs in the United States in anticipation of his move back to Canada. In the early morning of December 20, 2001, while at his uncle's apartment, Sachdeva was arrested by INS agents. He was taken to the INS offices at 26 Federal Plaza, where he was interrogated for five hours about his ties to the September 11 terrorist attacks. At the close of the interrogation, INS agents confiscated all of Sachdeva's personal identification. He was then taken to Passaic County Jail. On information and belief, on December 20, 2001 the FBI concluded that it had no further interest in Sachdeva related to the PENTTBOM investigation.

280. On December 27, 2001, while confined in Passaic County Jail, Sachdeva received a Notice to Appear, charging him with illegal re-entry. (He had overstayed a prior voluntary departure order.) Sachdeva had a hearing on December 31, 2001, in Immigration Court in Newark, New Jersey. He was not given any extra clothing for the trip, despite the extreme cold. The Immigration Judge told Sachdeva that he would be deported to Canada or India "within 30 days." The INS did not appeal that final deportation order. Even though the INS could have effectuated Sachdeva's removal from the United States within a matter of days, Sachdeva was detained for another three and one-half months, until April 17, 2002.

281. Sachdeva was detained for nearly three and one-half months longer than necessary to effectuate his removal from the United States solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that Sachdeva engaged in terrorist activity. Nor was an indictment or information against Sachdeva ever filed with a court citing criminal charges on which his continued detention was based.

282. While confined in Passaic County Jail, Sachdeva was subjected to many of the same unreasonable and excessively harsh conditions as Turkmen. He was housed under extremely crowded conditions and forced to eat and sleep with individuals charged with and/or convicted of violent crimes. In mid-February, 2002, a well-built accused felon (being held on shooting and drug charges) punched Sachdeva several times in the face when Sachdeva did not hand over a newspaper as quickly as the assailant wanted. The assault loosened his teeth and caused permanent dental damage. Only approximately a quarter of the detainees Sachdeva was held with were immigration detainees; the rest were pretrial detainees, many with criminal histories. He was also threatened by menacing dogs.

283. While confined in Passaic County Jail, Sachdeva, on four occasions, made written requests to consult with the Canadian Consulate. All four requests were denied. Sachdeva made frequent efforts during this time to contact the Canadian Consulate by phone. However, guards had to place the calls because the Consulate did not accept collect calls, and the guards would claim that the lines were busy or that there was no answer. He finally managed to get through to the consulate in mid-March, 2002.

284. On April 17, 2002, INS agents took Sachdeva, in old clothes, from Passaic County Jail to Newark Airport, putting him on a plane to Canada, though without his personal identification or any money. Prior to his deportation, Sachdeva requested the return of these items. His requests were, however, denied.

285. Sachdeva continues to suffer the effects of his detention in the United States long after his deportation. Upon his return to Canada, Canadian immigration officials suspended his landed immigrant status, taking away Sachdeva's work papers. The presumption of guilt thus continued to attach to Sachdeva after his deportation from the United States, despite the fact that he has never been engaged in terrorist activity and the complete absence of any evidence that he has been engaged in such activity.

286. Although Sachdeva's Canadian identification card was returned to him, Defendants have refused to return most of his personal belongings, including two motor vehicles and furniture confiscated from Sachdeva at the time of his arrest. Sachdeva has repeatedly requested return of these items.

FIRST CLAIM FOR RELIEF
(Fourth Amendment: Seizure)

287. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

288. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

289. In detaining Plaintiffs and class members months longer than necessary to secure their removal or voluntary departure from the United States without charging them with any crime and without affording them a hearing before a neutral judicial officer to determine whether there was probable cause to justify their continued detention, Defendants, acting under color of

law and their authority as federal officers, have intentionally or recklessly seized Plaintiffs and class members in violation of the Fourth Amendment to the United States Constitution.

290. Plaintiffs and class members have no effective means of enforcing their Fourth Amendment rights other than by seeking declaratory and other relief from the Court.

291. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

SECOND CLAIM FOR RELIEF
(Fifth Amendment: Due Process)

292. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

293. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

294. In detaining Plaintiffs and class members longer than necessary to secure their removal or voluntary departure from the United States without any legitimate immigration law enforcement purpose, and without evidence that they posed a danger or flight risk, Defendants, acting under color of law and their authority as federal officers, intentionally or recklessly subjected Plaintiffs and class members to arbitrary and capricious detention, taking their liberty without due process of law in violation of the Fifth Amendment to the United States Constitution.

295. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment due process rights other than by seeking declaratory and other relief from the Court.

296. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

THIRD CLAIM FOR RELIEF
(Fifth Amendment: Due Process)

297. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

298. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

299. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs and class members were unreasonably detained and subjected to outrageous, excessive, cruel, inhumane, and degrading conditions of confinement, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly deprived Plaintiffs and class members of their liberty interests without due process of law in violation of the Fifth Amendment to the United States Constitution.

300. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment due process rights other than by seeking declaratory and other relief from the Court.

301. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

FOURTH CLAIM FOR RELIEF
(Fifth Amendment: Self-Incrimination Clause)

302. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

303. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

304. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs and class members were subjected to coercive and involuntary custodial

interrogation designed to overcome their will and to coerce involuntary and incriminating statements from them, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly violated the rights of Plaintiffs and the class to due process of law under the Fifth Amendment to the United States Constitution.

305. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment due process rights other than by seeking declaratory and other relief from the Court.

306. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

FIFTH CLAIM FOR RELIEF
(Fifth Amendment: Equal Protection)

307. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

308. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

309. In detaining Plaintiffs and class members longer than necessary to secure their removal from the United States and subjecting them to harsh treatment not accorded similarly-situated non-citizens, Defendants, acting under color of law and their authority as federal officers, have singled out Plaintiffs and class members based on their race, religion, and/or ethnic or national origin, and intentionally violated their rights under the Fifth Amendment to the United States Constitution to equal protection of the law.

310. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment equal protection rights other than by seeking declaratory and other relief from the Court.

311. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

SIXTH CLAIM FOR RELIEF
(Sixth Amendment: Right to a Speedy Trial)

312. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

313. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

314. Defendants adopted, promulgated, and implemented policies under which plaintiffs and class members were arrested and held for extensive periods of time in what is tantamount to criminal detention without the filing of any indictment, information, or other formal criminal charge, and were not brought to trial within a reasonable period of time, resulting in oppressive and lengthy pretrial incarcerations. In doing so, Defendants have intentionally or recklessly deprived Plaintiffs and class members of their right under the Sixth Amendment to a speedy trial.

315. Plaintiffs and class members have no effective means of enforcing their right to a speedy trial that is guaranteed to them by the Sixth Amendment other than by seeking declaratory and other relief from the Court.

316. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

SEVENTH CLAIM FOR RELIEF
(First Amendment: Free Exercise of Religion)

317. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

318. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

319. Defendants have adopted, promulgated, and implemented policies and practices intended to deny Plaintiffs and class members the ability to practice and observe their religion. These policies and practices have included, among other things, the visitation of verbal and physical abuse upon Plaintiffs and class members, and the deliberate denial of all means by which they could maintain their religious practices, including their observance of Halal food and daily prayer requirements. By such mistreatment, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly violated Plaintiffs' and class members' right to free exercise of religion guaranteed to them under the First Amendment to the United States Constitution.

320. Plaintiffs and class members have no effective means of enforcing their First Amendment rights other than by seeking declaratory and other relief from the Court.

321. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

EIGHTH CLAIM FOR RELIEF
(Fifth Amendment: Confiscation of Personal Property)

322. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

323. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

324. Defendants have adopted, promulgated, and implemented a policy and practice of deliberately depriving Plaintiffs and class members of their personal property without providing them with a remedy to recover that property. Defendants have refused to return to Plaintiffs and

class members, at the time of their removal or voluntary departure from the United States, the personal identification, money, and other valuable personal items that Defendants confiscated from Plaintiffs and class members upon arrest. In doing so, Defendants, acting under color of law and their authority as federal officers, have intentionally violated Plaintiffs' and class members' right to due process of law under the Fifth Amendment to the United States Constitution.

325. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

326. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

NINTH CLAIM FOR RELIEF
(Customary International Law: Arbitrary Detention)

327. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

328. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

329. The acts described herein constitute arbitrary detention of Plaintiffs and class members in violation of the law of nations under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

330. Defendants are liable for said conduct in that they, acting under color of law and their authority as federal officers, have directed, ordered, confirmed, ratified, and/or conspired in bringing about the arbitrary detention of Plaintiffs and class members.

331. As a result of Defendants' unlawful conduct, Plaintiffs and class members were deprived of their freedom, separated from their families and forced to suffer severe physical and mental abuse, and are entitled to monetary damages.

TENTH CLAIM FOR RELIEF
(Customary International Law: Cruel, Inhuman, or Degrading Treatment)

332. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

333. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

334. The acts described herein had the intent and the effect of grossly humiliating and debasing the Plaintiffs and class members, forcing them to act against their will and conscience, inciting fear and anguish, and breaking their physical and/or moral resistance.

335. The acts described herein constitute cruel, inhuman or degrading treatment in violation of the law of nations under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting cruel, inhuman, or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

336. Defendants are liable for said conduct in that Defendants, acting under color of law and their authority as federal officers, directed, ordered, confirmed, ratified, and/or conspired to cause the cruel, inhuman or degrading treatment of Plaintiffs and class members.

337. All Plaintiffs and class members were forced to suffer severe physical and psychological abuse and agony and are entitled to monetary damages.

ELEVENTH CLAIM FOR RELIEF
(Vienna Convention on Consular Relations: Consular Notification)

338. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

339. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

340. Plaintiffs and class members were not notified by arresting authorities of their right to communicate with consular officials as required by the Vienna Convention on Consular Relations, April 24, 1963, TIAS 6820, 21 U.S.T. 77, Art. 36.

341. When Plaintiffs Saffi and Sachdeva requested to speak with officials from their respective consulates, Defendants further violated their Vienna Convention rights by failing to respond to their requests without delay and notify the consular posts of their detention. Vienna Convention, Art. 36(1).

342. Violations of the right to consular access are direct treaty violations, as specified above, and are also violations of customary international law.

343. As result of Defendants' unlawful conduct, Plaintiffs and class members are entitled to monetary damages.

TWELFTH CLAIM FOR RELIEF
(Excessive Force - SAFFI)

344. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

345. Plaintiff Saffi brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants.

346. The intentional beatings of Plaintiff Saffi by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

347. The intentional beatings of Plaintiff Saffi by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

348. As a proximate result of the beatings by said Defendants, Plaintiff Saffi has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

349. As a result of the unlawful conduct of said Defendants, Plaintiff Saffi is entitled to monetary damages.

THIRTEENTH CLAIM FOR RELIEF
(Excessive Force - JAFFRI)

350. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

351. Plaintiff Jaffri brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants. .

352. The intentional beatings of Plaintiff Jaffri by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was

without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

353. The intentional beatings of Plaintiff Jaffri by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

354. As a proximate result of the beatings by said Defendants, Plaintiff Jaffri has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

355. As a result of the unlawful conduct of said Defendants, Plaintiff Jaffri is entitled to monetary damages.

FOURTEENTH CLAIM FOR RELIEF
(Excessive Force -EBRAHIM)

356. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

357. Plaintiff Ebrahim brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants.

358. The intentional beatings of Plaintiff Ebrahim by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

359. The intentional beatings of Plaintiff Ebrahim by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

360. As a proximate result of the beatings by said Defendants, Plaintiff Ebrahim has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

361. As a result of the unlawful conduct of said Defendants, Plaintiff Ebrihim is entitled to monetary damages.

FIFTEENTH CLAIM FOR RELIEF
(Excessive Force – HANY IBRAHIM)

362. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

363. Plaintiff Hany Ibrahim brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants.

364. The intentional beatings of Plaintiff H. Ibrahim by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

365. The intentional beatings of Plaintiff H. Ibrahim by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

366. As a proximate result of the beatings by said Defendants, Plaintiff H. Ibrahim has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

367. As a result of the unlawful conduct of said Defendants, Plaintiff H. Ibrahim is entitled to monetary damages.

SIXTEENTH CLAIM FOR RELIEF
(Excessive Force – BALOCH)

368. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

369. Plaintiff Baloch brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants.

370. The intentional beatings of Plaintiff Baloch by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

371. The intentional beatings of Plaintiff Baloch by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

372. As a proximate result of the beatings by said Defendants, Plaintiff Baloch has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

373. As a result of the unlawful conduct of said Defendants, Plaintiff Baloch is entitled to monetary damages.

SEVENTEENTH CLAIM FOR RELIEF
(Delays in Serving Charging Documents - Fifth Amendment: Due Process)

374. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

375. Plaintiffs Ebrahim, H. Ibrahim, Sachdeva, Jaffri, and A. Ibrahim bring this claim on their own behalf and on behalf of the class against all Defendants.

376. In delaying the issuance and service of charging documents (known as Notices to Appear) on the post-9/11 detainees, Defendants have impaired the ability of the detainees to know the charges on which they are being held, obtain legal counsel, and seek release on bond. Further, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly deprived Plaintiffs and class members of their due process rights under the Fifth Amendment to the United States Constitution.

377. Plaintiffs Ebrahim, H. Ibrahim, Sachdeva, Jaffri, and A. Ibrahim and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

378. As a result of Defendants' unlawful conduct, Plaintiffs Ebrahim, H. Ibrahim, Sachdeva, Jaffri, and A. Ibrahim and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

EIGHTEENTH CLAIM FOR RELIEF
(Blanket No Bond Policy – Fifth Amendment: Due Process)

379. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

380. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

381. Defendants applied a blanket no bond policy to all post-9/11 detainees without regard to whether the detainee posed a flight risk or a danger and thereby deprived Plaintiffs and other class members of their right under the Fifth Amendment's Due Process Clause not to be detained arbitrarily in the absence of any finding or evidence that they posed a danger or flight risk.

382. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

383. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

NINETEENTH CLAIM FOR RELIEF
(Blanket No Bond Policy – Fifth Amendment: Equal Protection)

384. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

385. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

386. Defendants applied a blanket no bond policy to all post-9/11 detainees without regard to whether the detainee posed a flight risk or a danger. Defendants arrested and denied bond to "of high interest" detainees on little or no evidence of terrorist connections but instead due to their ethnic or religious identity in violation of their right to equal protection of the laws under the Fifth Amendment's Due Process Clause. Thus, Defendants intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fifth Amendment to the United States Constitution.

387. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

388. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

TWENTIETH CLAIM FOR RELIEF
(Assignment to SHU – Fifth Amendment: Due Process)

389. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

390. Plaintiffs Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim bring this claim on their own behalf and on behalf of the class against all Defendants.

391. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim and class members were classified as “of high interest,” “Witness Security,” and/or “Management Interest Group 155” detainees in an arbitrary and unreasonable manner, without any defined criteria, individualized assessment of dangerousness or risk of flight, contemporaneous review, or process of any sort, and by which classifications Plaintiffs experienced unnecessary and unreasonable restrictions on their liberty, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly violated the rights of Plaintiffs and the class to procedural due process of law under the Fifth Amendment to the United States Constitution.

392. Plaintiffs Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

393. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

TWENTY-FIRST CLAIM FOR RELIEF
(Communications Blackout and Interference with Counsel
– First Amendment)

394. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

395. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

396. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs and class members were subjected to a “communications blackout” and other measures while in detention that interfered with their access to lawyers and the courts, Defendants intentionally or recklessly violated Plaintiffs’ rights to obtain access to legal counsel and to petition the courts for redress of their grievances, in violation of their rights under the First Amendment of the United States Constitution.

397. Plaintiffs and class members have no effective means of enforcing their First Amendment rights other than by seeking declaratory and other relief from the Court.

398. As a result of Defendants' unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

TWENTY-SECOND CLAIM FOR RELIEF
(Communications Blackout and Interference with Counsel
– Fifth Amendment: Due Process)

399. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

400. Plaintiffs bring this claim on their own behalf and on behalf of the class against all Defendants.

401. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs and class members were subjected to a “communications blackout” and other measures while in INS detention that interfered with their access to lawyers and the courts, Defendants intentionally or recklessly violated Plaintiffs’ rights to obtain access to legal counsel and to petition the courts for redress of their grievances, in violation of their rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

402. Plaintiffs and class members have no effective means of enforcing their Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

403. As a result of Defendants’ unlawful conduct, Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

TWENTY-THIRD CLAIM FOR RELIEF
(Excessive, Unreasonable, and Deliberately Humiliating and Punitive Strip Searches –
Fourth and Fifth Amendments)

404. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

405. The MDC Plaintiffs bring this claim on their own behalf and on behalf of the MDC class against all Policy and Implementation Defendants, MDC Correctional Officer Defendants and MDC Supervisor Defendants.

406. By subjecting MDC Plaintiffs and class members to excessive and unreasonable strip searches with no rational relation to a legitimate penological purpose when Defendants had no reasonable suspicion or rational reason to justify a strip search, and conducting the searches in a deliberately humiliating manner that was not reasonably related to any legitimate penological

purpose, MDC Correctional Officer Defendants and MDC Supervisor Defendants intentionally or recklessly violated MDC Plaintiffs' and class members' rights to privacy and to be free from unreasonable searches, in violation of their rights under the Fourth Amendment to the United States Constitution

407. MDC Supervisor Defendants were grossly negligent and/or deliberately indifferent in their supervision of MDC Correctional Officer Defendants and MDC Supervisor Defendants who subjected MDC Plaintiffs and class members to these excessive and unreasonable strip searches and thereby violated MDC Plaintiffs' and the plaintiff class's rights under the Fourth Amendment to the United States Constitution.

408. By adopting, promulgating, and implementing the policy and practice under which MDC Plaintiffs and class members were subjected to these excessive and unreasonable strip searches the MDC Policy and Implementation Defendants intentionally or recklessly violated MDC Plaintiffs' and class members' rights to privacy and to be free from unreasonable searches, in violation of their rights under the Fourth Amendment to the United States Constitution.

409. By subjecting MDC Plaintiffs and class members to strip searches so devoid of rational relation to any legitimate penological purpose that the searches' only possible purpose was punitive, abusive MDC Correctional Officer Defendants and MDC Supervisor Defendants intentionally or recklessly violated MDC Plaintiffs' and class members' rights to be free from punishment under the Due Process Clause of the Fifth Amendment to the United States Constitution

410. MDC Supervisor Defendants were grossly negligent and/or deliberately indifferent in their supervision of abusive MDC Correctional Officer Defendants and MDC

Supervisor Defendants who subjected MDC Plaintiffs and class members to these punitive strip searches and thereby violated MDC Plaintiffs' and the plaintiff class's right to be free from punishment under the Due Process Clause of the Fifth Amendment to the United States Constitution.

411. By adopting, promulgating, and implementing the policy and practice under which MDC Plaintiffs and class members were subjected to these punitive strip searches Policy and Implementation Defendants intentionally or recklessly violated MDC Plaintiffs' and class members' right to be free from punishment under the Due Process Clause of the Fifth Amendment to the United States Constitution

412. MDC Plaintiffs and class members have no effective means of enforcing their Fourth and Fifth Amendment rights other than by seeking declaratory and other relief from the Court.

413. As a result of Defendants' unlawful conduct, MDC Plaintiffs and class members have suffered emotional distress, humiliation, embarrassment, and monetary damages.

TWENTY-FOURTH CLAIM FOR RELIEF
(FTCA: False Imprisonment of the Named MDC Plaintiffs)

414. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

415. In detaining the Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, and A. Ibrahim months longer than necessary to secure their removal or voluntary departure from the United States without probable cause to suspect them of any crime, the MDC Defendants, acting within the scope of their employment as federal law enforcement officers, have intentionally, without consent or privilege, completely confined said Plaintiffs so as to constitute false imprisonment under the laws of the states where the relevant acts took place.

416. Pursuant to the Federal Torts Claims Act, 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

417. As a result of the MDC Defendants' unlawful conduct, said Plaintiffs have suffered loss of liberty, emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

TWENTY-FIFTH CLAIM FOR RELIEF
(FTCA: Negligence – Delay of Clearance of the Named Plaintiffs)

418. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

419. In allowing the clearance investigations to linger for months rather than the mandated days due to failure to timely act and follow up on leads, misplaced files, poor communication, disorganization, and other forms of negligence, Defendants, acting under color of law and their authority as federal officers, have breached their duty of swift dispatch toward Plaintiffs Turkmen, Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, Sachdeva, and A. Ibrahim who, though they had committed no crime, depended for their liberty on the efficiency and diligence of the government officers investigating their cases. Defendants' acts and omissions constitute negligence under the laws of the states where the relevant acts took place.

420. Pursuant to the Federal Torts Claims Act, 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

421. As a result of the Defendants' unlawful conduct, said Plaintiffs have suffered loss of liberty, emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

TWENTY-SIXTH CLAIM FOR RELIEF
(FTCA: Negligence – Denial of Medical Services to Named MDC Plaintiffs)

422. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

423. In refusing to provide Plaintiffs Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim with medical services necessary for their health and well-being, the MDC Defendants, acting under color of law and their authority as federal officers, have breached their duty under 18 U.S.C. § 4042(a)(2) to take ordinary diligence or reasonable care to keep said Plaintiffs safe and free from harm, so as to constitute negligence under the laws of the states where the relevant acts took place.

424. Pursuant to the Federal Torts Claims Act, 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

425. As a result of the MDC Defendants' unlawful conduct, said Plaintiffs have suffered loss of liberty, emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

TWENTY-SEVENTH CLAIM FOR RELIEF
(FTCA: Assault and Battery – Physical Abuse of the Named MDC Plaintiffs)

426. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

427. In striking, shoving, or holding Plaintiffs Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim without consent, at a time when they were not resistant, disruptive, or recalcitrant, and without a history of such conduct by them, MDC Defendants intentionally caused harmful and offensive contact with said Plaintiffs and did so without justification or service to a legitimate penological goal, so as to constitute battery under the laws of the states where the relevant acts took place.

428. In committing the abovementioned batteries upon said Plaintiffs in such a manner that they were aware of the impending batteries, MDC Defendants put said Plaintiffs into a state of fear and apprehension of imminent harmful or offensive contact, and did so without justification or service to a legitimate penological goal, so as to constitute assault under the laws of the places where Plaintiffs were detained and confined.

429. Pursuant to 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

430. As a result of the MDC Defendants' unlawful conduct, said Plaintiffs have suffered loss of liberty, emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

TWENTY-EIGHTH CLAIM FOR RELIEF
(FTCA: Battery – Sleep Deprivation - Named MDC Plaintiffs)

431. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

432. In subjecting the Plaintiffs Jaffri, Ebrahim, H. Ibrahim, Baloch, Saffi, and A. Ibrahim to bright lights and loud noises for the purpose of interrupting their sleep, MDC

Defendants intentionally caused light and noise to harmfully contact them, causing sleep deprivation without justification or service to a legitimate penological goal, so as to constitute battery under the laws of the states where the relevant acts took place.

433. Pursuant to 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

434. As a result of the MDC Defendants' unlawful conduct, said Plaintiffs have suffered emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

TWENTY-NINTH CLAIM FOR RELIEF
(FTCA: Intentional Infliction of Emotional Distress on the Named Plaintiffs)

435. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

436. From the time of their arrest to the time of their release from detention, the MDC Defendants intentionally engaged in a sustained and relentless campaign to inflict emotional distress on Plaintiffs Turkmen, Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, Sachdeva, and A. Ibrahim that included, but was not limited to, outrageous and unfounded accusations of being terrorists and mass murderers, gratuitous and humiliating insults to the named Plaintiffs' ethnicity, religion, and physical anatomy, threats of prolonged and permanent detention, torture, and death, inhumane conditions of confinement, and interference with religious practice.

437. Defendants, without legitimate penological purpose, caused the Plaintiffs to suffer severe, substantial, and lasting emotional distress so as to constitute the tort of intentional infliction of emotional distress under the laws of the states where the relevant acts took place.

438. Defendants' conduct was all the more outrageous in that it abused correctional officers' position of power over the Plaintiffs and their interests and took advantage of what Defendants knew to be the Plaintiffs' vulnerable emotional state caused by the violence and disorientation of detention.

439. Pursuant to 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

440. As a result of the Defendants' unlawful conduct, said Plaintiffs have suffered emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

THIRTIETH CLAIM FOR RELIEF
(FTCA: Conversion - Named Plaintiffs)

441. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

442. In refusing to return the possessions of Plaintiffs Turkmen, Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, Sachdeva, and A. Ibrahim after they were released from jail, Defendants intentionally deprived them completely and forever of all rights and use of those possessions so as to constitute the tort of conversion under the laws of the states where the relevant acts took place.

443. Pursuant to 28 U.S.C. § 2675(a), the claims set forth herein were timely presented by said Plaintiffs to the Department of Homeland Security, the Federal Bureau of Investigation, and the Federal Bureau of Prisons in September 2003 and should be deemed denied by virtue of agency inaction.

444. As a result of the Defendants' unlawful conduct, said Plaintiffs have suffered property loss, emotional distress, humiliation, and embarrassment, and are entitled to monetary damages.

THIRTY-FIRST CLAIM FOR RELIEF
(Excessive Force –ASHRAF IBRAHIM)

445. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

446. Plaintiff A. Ibrahim brings this claim on his own behalf against the MDC Correctional Officer Defendants and MDC Supervisor Defendants.

447. The intentional beatings of Plaintiff A. Ibrahim by said Defendants when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

448. The intentional beatings of Plaintiff A. Ibrahim by said Defendants violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution, for which such officers are individually liable.

449. As a proximate result of the beatings by said Defendants, Plaintiff A. Ibrahim has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

450. As a result of the unlawful conduct of said Defendants, Plaintiff A. Ibrahim is entitled to monetary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and class members respectfully request that the Court enter a class-wide judgment:

1. Certifying this suit as a class action;
2. Declaring that Defendants' actions, practices, customs, and policies, and those of all persons acting on their behalf and/or their agents and/or employees, alleged herein, were illegal and violate the constitutional rights of Plaintiffs and class members as to each applicable count;
3. Declaring that each individual Plaintiff's detention was unjustified, unconstitutional, unlawful, and without probable cause to believe that he had any involvement in the September 11 terrorist attacks or other terrorist activity;
4. Enjoining Defendants to return immediately to Plaintiffs and class members all personal identification, money and valuable personal items confiscated from them;
5. Awarding compensatory and punitive damages to Plaintiffs and class members for the constitutional and customary international law violations they suffered in an amount that is fair, just, reasonable, and in conformity with the evidence;
6. Appointing a neutral Special Master to assist in fashioning remedies and to monitor the implementation of those remedies;
7. Ordering such further relief as necessary to ensure that Defendants operate the MDC and Passaic facilities in compliance with the United States Constitution and customary international law;
8. Awarding compensatory and other damages to Plaintiffs Turkmen, Saffi, Jaffri, Ebrahim, H. Ibrahim, Baloch, Sachdeva, A. Ibrahim based on their claims under the FTCA; and
9. Ordering such further relief as the Court considers just and proper.

Dated: New York, New York
September 13, 2004

Respectfully submitted,

Center for Constitutional Rights

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Certificate of Service

I, Nancy Chang, certify that on September 13, 2004, I caused the foregoing Third Amended Complaint in Turkmen v. Ashcroft, 02 CV 2307 (JG) (E.D.N.Y.) to be electronically filed on ECS, emailed in pdf format to all opposing counsel, and served by mail on the following counsel who are not registered for electronic service in this suit:

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Dated: September 13, 2004

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