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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IBRAHIM TURKMEN, AKHIL SACHDEVA, :
AHMER IQBAL ABBASI, ANSER MEHMOOD, :
BENAMAR BENATTA, AHMED KHALIFA, :
SAEED HAMMOUDA, and PURNA RAJ :
BAJRACHARYA on behalf of themselves :
and all others similarly situated, : 02 CV 2307 (JG)(SMG)

Plaintiffs, :

- against - :

: **FOURTH AMENDED**
: **COMPLAINT AND**
: **DEMAND FOR JURY TRIAL**

JOHN ASHCROFT, former Attorney General of :
United States, ROBERT MUELLER, Director of :
the Federal Bureau of Investigation, JAMES W. :
ZIGLAR, former Commissioner of the Immigration :
And Naturalization Service, DENNIS HASTY, :
former Warden of the Metropolitan Detention :
Center (MDC); MICHAEL ZENK, former Warden :
MDC, JAMES SHERMAN, former MDC Associate :
Warden for Custody, SALVATORE LOPRESTI :
former MDC Captain, and JOSEPH CUCITI, :
former MDC Lieutenant, :

Defendants. :

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Plaintiffs Ibrahim Turkmen, Akhil Sachdeva, Ahmer Iqbal Abbasi, Anser Mehmood,
Benamar Benatta, Ahmed Khalifa, Saeed Hammouda, and Purna Raj Bajracharya (collectively
“Plaintiffs”) by and through their attorneys, allege the following:

NATURE OF ACTION

1. Plaintiffs bring this class action on behalf of themselves and a class of male non-citizens from the Middle East, South Asia, and elsewhere who are Arab, South Asian or Muslim or were perceived by Defendants to be Arab, South Asian or Muslim, and were arrested on minor immigration violations following the September 11, 2001 terrorist attacks on the United States (“9/11 detainees”). Each Plaintiff was subjected to a policy whereby any Muslim or Arab man encountered during the investigation of a tip received in the 9/11 terrorism investigation (called “PENTTBOM”), and discovered to be a non-citizen who had violated the terms of his visa, was arrested and treated as “of interest” to the government’s terrorism investigation. This of interest treatment did not depend on any law enforcement evaluation; it was automatic and based solely on the race, national origin, and religion or perceived race, national origin, and religion of the Plaintiffs and class members. It did not matter whether the tip was wholly implausible, or even whether the non-citizen was the subject of the tip or just encountered incidentally. In fact, there was no reason to suppose Plaintiffs or class members had any connection to terrorism.

2. Nevertheless, each of interest Plaintiff was subjected to a blanket “hold-until-cleared” policy. Although they could have been removed promptly from the United States because of their immigration violations, pursuant to this policy they were instead retained by the agency then known as the Immigration and Naturalization Service (“INS”) in immigration custody until the Federal Bureau of Investigation (“FBI”) affirmatively cleared them of terrorist ties. Eventually, all Plaintiffs and class members were in fact cleared of any connection to terrorism.

3. Plaintiffs and class members were detained without regard to whether they posed a danger or flight risk and were denied a timely hearing before a neutral judicial officer on whether probable cause existed to justify detaining them beyond the time necessary to secure their

removal or voluntary departure from the United States. Instead of being presumed innocent until proven guilty, the 9/11 detainees were presumed guilty of terrorism until proven innocent to the satisfaction of law enforcement authorities.¹

4. Some class members, like Turkmen and Sachdeva (“Passaic Plaintiffs”) were detained in Passaic County Jail in New Jersey; others, like Abbasi, Mehmood, Benatta, Khalifa, Hammouda, and Bajracharya (“MDC Plaintiffs”) were sent to the Metropolitan Detention Center (“MDC”), a federal facility in Brooklyn, New York. Some of these MDC Plaintiffs, like Hammouda and Benatta, were classified by the FBI as being “high interest” and placed in the most highly restrictive prison setting possible—the MDC’s Administrative Maximum Special Housing Unit (“ADMAX SHU”)—without any standards or procedures for making such a determination, or any information that they were dangerous or involved in terrorism. Others, like Abbasi, Bajracharya, Mehmood, and Khalifa, were placed in the ADMAX SHU even though they had not been classified “high interest” and despite the absence of any information indicating they were dangerous or involved in terrorism, or any other legitimate reason for such treatment. Although there are specific federal regulations for determining when to subject detainees to administrative or punitive detention, Defendants did not comply with these regulations in subjecting Plaintiffs and class members to this treatment.

5. At Passaic, the 9/11 detainees were kept from practicing their religion. While in the ADMAX SHU, the MDC Plaintiffs and class members were subjected to unreasonable and

¹ The hold-until-cleared policy was well-documented in a report released by the Office of the Inspector General (“OIG”) 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 except where contradicted by the allegations of this Fourth Amended Complaint. It is also available at <http://www.usdoj.gov/oig/special/0306/full.pdf>.

excessively harsh conditions. They were placed in tiny cells for over 23 hours a day and strip-searched, manacled, and shackled when taken out of their cells. They were physically and verbally abused by their guards. Many were badly beaten. The MDC Plaintiffs and class members were subjected to a communications blackout and other actions that interfered with their ability to communicate with the outside world, their access to counsel and their ability to seek redress in the courts. They were denied recreation and adequate hygiene supplies, and prevented from practicing their faith during their detention.²

6. By creating and implementing the policy to place MDC Plaintiffs and class members in unduly restrictive and punitive conditions of confinement, Defendants Ashcroft, Mueller and Ziglar violated Plaintiffs' and class members' rights under the First, Fourth and Fifth Amendments to the United States Constitution. By detaining Plaintiffs and class members in these conditions and ordering or condoning their abuse, Defendants Hasty, Zenk, Sherman, Lopresti, and Cuciti also violated Plaintiffs' and class members' rights under the First, Fourth and Fifth Amendments to the United States Constitution.

7. By arresting Plaintiffs and class members, detaining them under unreasonable and excessively harsh conditions Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk, Lopresti, and Cuciti also engaged in racial, religious, ethnic, and national origin profiling. Plaintiffs' and class members' race, religion, ethnicity, and national origin played a decisive role in Defendants' decision to detain them initially and to subject them to punitive and dangerous conditions of

² This abuse was documented in a second OIG report, issued in December of 2003, entitled "Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York." The Supplemental Report was attached without appendices as Exhibit 1 to the Third Amended Complaint, and is incorporated by reference except where contradicted by the allegations of this Fourth Amended Complaint. It is also available at <http://www.usdoj.gov/oig/special/0312/final.pdf>.

confinement in violation of the rights guaranteed to them by the Fifth Amendment to the United States Constitution.

8. Plaintiffs seek compensatory and punitive damages for themselves and all class members, and an award of costs and reasonable attorneys' fees.

JURISDICTION AND VENUE

9. This action is brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), under the First, Fourth, and Fifth Amendments to the Constitution and 42 U.S.C. § 1985(3).

10. This Court has jurisdiction under 28 U.S.C. § 1331.

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

JURY DEMAND

12. Plaintiffs demand trial by jury in this action on each and every one of their claims.

PARTIES

The MDC Plaintiffs

13. Plaintiff AHMER IQBAL ABBASI is a South Asian Muslim, and a native and citizen of Pakistan. He currently lives in Pakistan with his wife and three children and works as a supervisor at a construction company. Abbasi has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

14. Plaintiff ANSER MEHMOOD is also a South Asian Muslim, and a native and citizen of Pakistan. He is Abbasi's brother-in-law. He currently lives in Pakistan with his father, wife, and four children. He has had difficulty finding work in Pakistan, and has had to rely on his father's

financial support. Mehmood has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

15. Plaintiff BENAMAR BENATTA is an Arab Muslim, a native of Algeria, and has protected refugee status in Canada. Benatta has not been able to find steady work since his detention in the United States. He currently lives in Canada and is pursuing a graduate degree in Aeronautics at the University of Toronto. Benatta has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

16. Plaintiff AHMED KHALIFA is an Arab Muslim, and a native and citizen of Egypt. He currently lives in Egypt with his parents. Khalifa is a doctor and works as a general practitioner. Khalifa has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

17. Plaintiff SAEED HAMMOUDA is an Arab Muslim, and a native and citizen of Egypt. He currently lives in Egypt with his mother. He is the owner and manager of a medical supplies company called ADVAMED. Hammouda has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

18. Plaintiff PURNA RAJ BAJRACHARYA is a South Asian Buddhist, and a native and citizen of Nepal. He currently lives in Katmandu with his wife, sons, and daughters-in-law, and is retired. Bajracharya has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

The Passaic Plaintiffs

19. Plaintiff IBRAHIM TURKMEN is Muslim, and a native and citizen of Turkey, where he lives with his wife and four daughters. Turkmen has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

20. Plaintiff AKHIL SACHDEVA is a South Asian Hindu, and a native and citizen of India. He currently lives in Canada. Mr. Sachdeva has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

Defendants

21. At all times relevant to this complaint Defendant JOHN ASHCROFT was the Attorney General of the United States. As Attorney General, Ashcroft had ultimate responsibility for the implementation and enforcement of the immigration laws. He is the principal architect of the policies and practices challenged here, and he directed his subordinates to implement them. Along with a small group of high-level government employees, Ashcroft created the hold-until-cleared policy and directed the application of that policy to persons in the circumstances of Plaintiffs and the other class members. With that same group, he also created many of the unreasonable and excessively harsh conditions under which Plaintiffs and other class members were detained, and authorized others of those conditions. Ashcroft ordered the targeting of Muslims and Arabs based on his discriminatory belief that individuals with those characteristics who are unlawfully present in the United States are likely to be dangerous, or terrorists, or have information about terrorism. Ashcroft is sued in his individual capacity.

22. Defendant ROBERT MUELLER is the Director of the Federal Bureau of Investigation. Mueller was part of the small group of government employees who, under Ashcroft's direction, created the hold-until-cleared policy, directed the application of that policy to persons in the circumstances of Plaintiffs and the other class members, and decided Plaintiffs would be held in unreasonable and excessively harsh conditions of confinement. Mueller condoned the targeting of Muslims and Arabs based on his discriminatory belief that individuals with those

characteristics who are unlawfully present in the United States are likely to be dangerous, or terrorists, or have information about terrorism. Mueller is sued in his individual capacity.

23. At all times relevant to the complaint Defendant JAMES W. ZIGLAR was the Commissioner of the INS. As INS Commissioner, Ziglar had immediate responsibility for the implementation and enforcement of the immigration laws. He was the INS' chief executive officer. Ziglar was part of the small group of government employees who, under Ashcroft's direction, created the hold-until-cleared policy, directed the application of that policy to persons in the circumstances of Plaintiffs and the other class members, and decided Plaintiffs would be held in unreasonable and excessively harsh conditions of confinement. Ziglar condoned the targeting of Muslims and Arabs based on his discriminatory belief that individuals with those characteristics who are unlawfully present in the United States are likely to be dangerous, or terrorists, or have information about terrorism. Ziglar is sued in his individual capacity.

The MDC Defendants

24. Defendant DENNIS HASTY was the Warden of the MDC until the spring of 2002. While Warden, Hasty had immediate responsibility for the conditions under which MDC Plaintiffs and other class members were confined at the MDC. He ordered the creation of the ADMAX SHU at the MDC for the purpose of confining Plaintiffs and other class members under unreasonable and excessively harsh conditions in violation of the Constitution. He allowed his subordinates to abuse MDC Plaintiffs and class members with impunity by ignoring some evidence of this abuse and avoiding other evidence—for example, by neglecting to make rounds on the ADMAX unit as required by BOP policy. Despite his attempt to remain blind to the conditions experienced by MDC Plaintiffs and class members, Hasty was made aware of the abuse that occurred through inmate complaints, staff complaints, hunger strikes, and suicide

attempts, and did not take any actions to rectify or address the situation. Hasty is sued in his individual capacity.

25. Defendant MICHAEL ZENK was the Warden of the MDC in the Spring of 2002 and after. As Warden, Zenk had immediate responsibility for the conditions under which MDC Plaintiffs and other class members were confined at the MDC. He ordered that MDC Plaintiffs and other class members be confined in the ADMAX SHU of the MDC under unreasonable and excessively harsh conditions in violation of the Constitution. He also allowed his subordinates to abuse MDC Plaintiffs and class members with impunity. He made rounds on the ADMAX and was aware of conditions there. Zenk is sued in his individual capacity.

26. At all times relevant to this complaint, Defendant JAMES SHERMAN was the MDC Associate Warden for Custody. Sherman assisted the other defendants in creating the unreasonable and excessively harsh conditions in the ADMAX SHU and allowed his subordinates to abuse MDC Plaintiffs and class members with impunity. Sherman made rounds on the ADMAX SHU and was aware of conditions there. Sherman is sued in his individual capacity.

27. At all times relevant to this complaint, Defendant SALVATORE LOPRESTI was the Captain of the MDC, and thus had responsibility for supervising all MDC correctional officers, including those who worked on the ADMAX. Lopresti was also responsible for overseeing the ADMAX unit. Lopresti took part in creating the unreasonable and punitive conditions on the ADMAX unit at the request of Hasty. Lopresti was frequently present on the ADMAX Unit, regularly reviewed documentation of some of the abuses, and received numerous complaints from 9/11 detainees about abuse and mistreatment. Despite this information, he did not take any actions to rectify or address the situation. Lopresti is sued in his individual capacity

28. At all times relevant to this complaint, Defendant JOSEPH CUCITI was First Lieutenant at the MDC, and was the institution's coordinator with law enforcement officers who sought to interrogate the 9/11 detainees. In that capacity he was responsible for escorts, processing, attorney/client and social visits, and other aspects of the 9/11 detentions. Cuciti drafted MDC's policies regarding conditions in the ADMAX SHU and developed the policy for strip-searches on the ADMAX Unit. Cuciti made rounds on the ADMAX SHU and reviewed logs created by that unit; in those and other ways he heard complaints from MDC Plaintiffs and class members regarding the conditions and abuse described below, yet failed to take any steps to rectify that abuse. Cuciti is sued in his individual capacity

CLASS ACTION ALLEGATIONS

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

- 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 evidence of dangerousness or flight risk, until cleared of terrorist ties by the FBI; and
- c. detained at MDC or Passaic County Jail.

30. Plaintiffs and the other members of the class were subjected to the policies and practices described in paragraphs 1 through 7 of this Fourth Amended Complaint, and more fully hereafter.

31. The members of the class are too numerous to be joined in one action, and their joinder is impracticable, in part because Defendants kept their identities secret until long after they were deported from the United States. While the exact number is presently unknown to Plaintiffs' counsel, the Department of Justice Office of Inspector General was able to identify approximately 475 9/11 detainees who were held at MDC and Passaic and were subjected to the policies challenged in this action.

32. 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:

- a. whether Defendants adopted, promulgated, and implemented policies and practices depriving MDC Plaintiffs and class members of their liberty without due process of law in violation of the Fifth Amendment by subjecting them to outrageous, excessive, cruel, inhumane, and degrading conditions of confinement;
- b. whether Defendants adopted, promulgated, and implemented a policy and practice of depriving Plaintiffs and class members of equal protection of the law in violation of the Fifth Amendment by placing them in restrictive conditions of confinement because of their race, religion, ethnicity, and/or national origin;
- c. whether Defendants adopted, promulgated, and implemented a policy and practice which violated Plaintiffs' and class members' rights under the First Amendment to practice their religion.

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

- a. each Plaintiff is a male non-citizen of Middle Eastern or South Asian descent who is Arab or Muslim, or was perceived by Defendants to be Arab or Muslim;

- b. each Plaintiff was arrested and detained subsequent to the September 11 terrorist attacks and charged with minor (but deportable) immigration violations;
- c. each Plaintiff was treated as “of interest” to the PENTTBOM 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;
- d. each Plaintiff housed in MDC was held under unreasonable and excessively harsh conditions of confinement, and subjected to a communications blackout;
- e. each Muslim Plaintiff was denied an opportunity to practice his religion; and
- f. the race, religion, ethnicity and/or national origin of each Plaintiff (real or perceived) played a determinative role in Defendants’ decision to detain him.

34. 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.

35. 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.

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

37. 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.

38. The Plaintiff class should be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure because common questions of law and fact predominate and a class action is a superior way to fairly and efficiently adjudicate the controversy.

STATEMENT OF FACTS

The Ashcroft Sweeps & the Hold-Until-Cleared Policy

39. Immediately after September 11, Ashcroft created and implemented a policy of rounding up and detaining Arab and South Asian Muslims to question about terrorism. Under Ashcroft's orders, the round-up and detentions were undertaken without a written policy, to avoid creating a paper trail.

40. The FBI set up a tip line after September 11, and tips poured in from civilians across the nation. Within a week, 96,000 tips had been received, most of them based upon terrified citizens' discriminatory notions about Arabs and Muslims. Contrary to prior FBI practice, Mueller ordered that every one of these tips be investigated, even if they were implausible on their face, or based solely on suspicion of an individual due to his religion, ethnicity, country of origin or race.

41. While every tip was to be investigated, Ashcroft told Mueller to vigorously question any male between 18 and 40 from a Middle Eastern country whom the FBI learned about, and to tell the INS to round up every immigration violator who fit that profile. FBI field offices were thus encouraged to focus their attention on Muslims of Arab or South Asian descent. Both men were aware that this would result in the arrest of many individuals about whom they had no information to connect to terrorism. Mueller expressed reservations about this result, but nevertheless knowingly joined Ashcroft in creating and implementing a policy that targeted innocent Muslims and Arabs.

42. The FBI field offices followed this guidance in investigating Plaintiffs and class

members. For example, the head of the New York FBI field office stated that an individual's Arab appearance and status as a Muslim were factors to consider in the investigation. Another supervisor in the New York FBI field office who oversaw the clearance process stated that a tip about Russian tourists filming the Midtown tunnel was "obviously" of no interest, but that the same tip about Egyptians was of interest.

43. The resulting investigation focused on men who were Muslim and South Asian or Arab, or who were perceived as such. With a few exceptions, the detainees were almost entirely Muslim and South Asian or Arab. The few swept up for immigration violations during the PENTTBOM investigation who did not fit this profile were treated differently than Plaintiffs and class members. For example, five Israelis detained for allegedly celebrating on September 11 ended up at MDC, but they received legal and consular visits in early October, before anyone else in the unit, and they were among the first detainees to be moved from the ADMAX SHU to general population and dropped from the INS custody list, all without clearance letters from the FBI. Another detainee, who happened to be the roommate of an acquaintance of several of the hijackers, was also cleared quickly – within six weeks of his arrest; the FBI summary noted only his lack of relevance to the PENTTBOM investigation and that he was either Austrian or Australian. One detainee with a Spanish surname was picked up while investigators were following a lead about a Yemeni store owner, but determined to be of "no PENTTBOM connection" without any clearance investigation, or even the assignment of an investigator. Thus the New York FBI field office was authorized to release him without any clearance letter from FBI headquarters in contradiction to the hold-until-cleared policy applied to Muslim, Arab and South Asian non-citizens.

44. In contrast, Muslim, Arab and South Asian non-citizens were treated as "of interest" to

the PENTTBOM investigation without a determination by any FBI or other law enforcement officer that the non-citizen had engaged in any suspicious behavior, or identification of any reason to believe the individual had information about terrorism or was involved in the 9/11 attacks.

45. In the words of one high-ranking Department of Justice official, there was “custody without triage”—that is, without any attempt to sift out detainees of actual interest to the investigation from those who were not. There was, said the same official, “no clear vetting” of detainees, and he was concerned early in the investigation that detainees were being held simply on the basis of their ethnicity. Similarly, Defendant Mueller told OIG investigators that he was not aware of any guidance or policy for determining whether a detainee was of special interest.

46. Several highly placed law enforcement officers, including the Assistant Director in Charge of the New York field office of the FBI, disagreed with this approach and challenged its implementation, arguing that law enforcement efforts must focus on individuals for whom the office had developed evidence were connected to terrorism. Their expertise was ignored.

47. Ashcroft, Mueller and Ziglar received detailed daily reports of the arrests and detentions and were aware that the FBI had no information tying Plaintiffs and class members to terrorism prior to treating them as “of interest” to the PENTTBOM investigation. Indeed, in October 2001 all three learned that the New York field office of the FBI was keeping a separate list of non-citizens, including many Plaintiffs and class members, for whom the FBI had not asserted any interest (or lack of interest). Against significant internal criticism from INS agents and other federal employees involved in the sweeps, Ashcroft ordered that, despite a complete lack of any information or a statement of FBI interest, all such Plaintiffs and class members be detained until cleared and otherwise treated as “of interest.” Mueller and Ziglar were fully informed of this

decision, and complied with it.

48. Ashcroft, Mueller, and Ziglar's decision to hold these hundreds of non-citizens for criminal investigation without evidence of any ties to terrorism was based on their discriminatory notion that all Arabs and Muslims were likely to have been involved in the terrorist attacks, or at least to have relevant information about them.

49. Pursuant to this policy, the FBI directed the INS to arrest and detain well over 1,200 male non-citizens from the Middle East, South Asia, and elsewhere who appeared to be Arab or Muslim, including Plaintiffs and class members, 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.

50. While the INS had previously sought to remove non-citizens for these violations, it generally did not detain them during their removal proceedings.

51. The Immigration and Nationality Act (“INA”) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” INA § 236(a); 8 U.S.C. § 1226(a). However, only non-citizens with certain criminal convictions fall within the INA's “mandatory detention” provision. INA § 236(c); 8 U.S.C. § 1226(c). Plaintiffs squarely fall within the discretionary detention statute, and therefore must be provided an individualized custody determination by the Service and, if requested, by an Immigration Judge. The INS took a different approach with Plaintiffs and class members, not because they violated the immigration laws—that alone does not justify de facto mandatory immigration detention—but rather because Ashcroft, Mueller and Ziglar categorized them as potential (although not actual or even probable) terrorists based on vague suspicions rooted in racial, religious, ethnic, and/or national origin stereotypes rather than in hard facts.

52. Many 9/11 detainees were held for weeks or months in INS facilities, federal detention centers, or county jails, without any charges being filed against them and without any hearing on the reasons for their detention. Eventually, the INS filed civil charges against most 9/11 detainees, alleging minor immigration violations. In the months to come, some detainees were also charged with minor criminal offenses related to their immigration violations, like possession of a fraudulent social security card.

53. Because the FBI lacked probable cause to hold Plaintiffs and class members on criminal charges, Ashcroft ordered Mueller and Ziglar to use the immigration law as a pretext to detain the 9/11 detainees while investigating them for potential ties to terrorism. Although Plaintiffs and class members were purportedly being held under the authority of the civil immigration law, Ashcroft placed Michael Chertoff, the Assistant Attorney General in charge of the Criminal Division, in charge of the round-ups.

54. After immigration hearings, Plaintiffs and class members 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 kept them in custody for up to five months or more after the issuance of their final immigration orders—far longer than necessary to secure their 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).

55. Plaintiffs and class members were kept in custody after the issuance of final removal or voluntary departure orders pursuant to Ashcroft's order that all non-citizens encountered during the PENTTBOM investigation be held in custody until they received a "clearance" from the FBI absolving them of any link to terrorists or terrorist activities. FBI clearances frequently took four

months or longer. Ziglar, although concerned that the detentions overstepped the INS's statutory authority, complied with this requirement. So did Mueller. Ashcroft, Mueller, and Ziglar implemented this policy because of the same race, religion, and national origin stereotypes that prompted them to detain Plaintiffs in the first place.

56. These policies were created at the highest levels of Government, and their implementation was closely overseen by Ashcroft, Mueller, and Ziglar. Initially, the PENTTBOM investigation, consistent with FBI policy, was run out of the FBI field offices. But shortly after September 11, Mueller changed that policy, and ordered that the investigation would be run out of FBI Headquarters, under his direct control. The nerve center of the 9/11 investigation was the Strategic Information and Operations Center, called SIOC, at FBI Headquarters.

57. Mueller personally directed the investigation out of SIOC for the FBI and was in daily contact with the FBI field offices regarding the status of individual clearances. Even after the New York field office of the FBI determined that a Plaintiff or class member had no connection to terrorism, Mueller would not authorize that person to be "cleared" until Headquarters reviewed and signed off on the details of the investigation and received a completed name trace from the Central Intelligence Agency ("CIA"). Many 9/11 detainees, including all of the MDC Plaintiffs, were cleared by the New York field office of any connection to terrorism and then detained for months in restrictive confinement while Headquarters considered their cases. Concerns expressed by FBI field office personnel about this delay were ignored by Headquarters. Mueller made this change because of the same race, religion, and national origin stereotypes that prompted him to detain Plaintiffs in the first place.

58. As a matter of policy and practice, and in keeping with its “hold-until-cleared” policy, the INS did not conduct post-order custody reviews for 9/11 detainees held more than 90 days after their final removal orders. 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 must complete the review 90 days after the issuance of a final removal order. Plaintiffs and class members were not given notice of such a review and no such review was conducted.

59. No one told Plaintiffs and class members why they had been singled out for prolonged investigation and denied custody reviews. Many were told they would be deported shortly after they received final orders, as required by the immigration law. Months passed and they remained in custody, leading them to believe they might be held forever.

60. Ashcroft, Mueller and Ziglar adopted, promulgated, and implemented these detention policies based on invidious animus against Arabs and Muslims, in violation of the First and Fifth Amendments to the Constitution. Evidence of this invidious animus includes:

- a. there was no non-discriminatory reason to hold Plaintiffs and class members for investigation, yet Ashcroft, Mueller, and Ziglar delayed their deportation and placed them in restrictive confinement anyway;
- b. these unconstitutional detention policies have not been applied to all non-citizens in the United States alleged to have violated the immigration laws;
- c. the few individuals arrested in the sweeps who did not fit this profile were cleared quickly, or moved into general population without clearance;
- d. Plaintiffs and class members were verbally abused and subjected to statements slandering the Muslim faith and their adherence to it by the Defendants, including Ashcroft, who expressed anti-Muslim sentiments,

including a statement identifying Christianity by its central theological tenet, but Islam, in contrast, by the views of a small group of extremists: “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.”;

- e. Plaintiffs and class members were targeted for disparate treatment by 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 remained available to non-Arab and non-Muslim individuals who were 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.” Although Ashcroft referred in this statement to “terrorists,” it describes the policy he applied to Arab and South Asian Muslims with no connection to terrorism.
- f. Consistent with Defendant Ashcroft, Mueller and Ziglar’s personal bias against Muslims, South Asians, and Arabs, the Defendants also directed the Department of Justice to engage in the following policies, not challenged by this lawsuit, but also based entirely on suspicion of individuals because they belonged to these particular groups: (1) The Absconder Apprehension Initiative, which was designed to “locate,

apprehend, interview, and deport” approximately “several thousand” individuals from predominantly Muslim countries. See Memorandum, the Deputy Attorney General, U.S. Dep’t of Justice, Guidance for Absconder Apprehension Initiative (Jan. 25, 2002); (2) Mandatory detention for asylum seekers from Arab and South Asian nations. See http://www.humanrightsfirst.org/asylum/torchlight/newsletter/newslet_12.htm; (3) Special registration, which requires aliens from Arab and South Asian countries, almost all of which are predominantly Muslim, to report to immigration authorities to be fingerprinted and photographed, and often interrogated and detained. See Registration of Certain Nonimmigrant Aliens From Designated Countries, 68 Fed. Reg. 8046 (Feb. 19, 2003); 68 Fed. Reg. 2363 (Jan. 16, 2003); 67 Fed. Reg. 77,642 (Dec. 18, 2002); 67 Fed. Reg. 77,136 (Dec. 16, 2002); 67 Fed. Reg. 70,526 (Nov. 22, 2002); 67 Fed. Reg. 67,766 (Nov. 6, 2002); 67 Fed. Reg. 57,032 (Sept. 6, 2002); (4) According to sources within the Department of Justice, Ashcroft also ordered the INS and FBI to investigate individuals with Muslim-sounding names from vast sources of data, including INS records of entering non-citizens, as well as the phonebook.

Conditions of Confinement & Abuse

61. In the first few months after 9/11, Ashcroft and Mueller met regularly with a small group of government officials in Washington and mapped out ways to exert maximum pressure on the individuals arrested in connection with the terrorism investigation, including Plaintiffs and class members. The group discussed and decided upon a strategy to restrict the 9/11 detainees’ ability to contact the outside world and delay their immigration hearings. The group also decided to

spread the word among law enforcement personnel that the 9/11 detainees were suspected terrorists, or people who knew who the terrorists were, and that they needed to be encouraged in any way possible to cooperate.

62. Commissioner Ziglar was at many of these meetings, and he discussed the entire process of interviewing and incarcerating out-of-status individuals with Ashcroft and others.

63. Ashcroft insisted on regular, detailed reporting on arrests. He wanted precise numbers, and received a daily Attorney General's Report on persons arrested and other developments of interest. He used this report for daily briefings of the President and the National Security Council on the progress of the investigation.

64. Ziglar was ultimately responsible for providing much of this information to Ashcroft, and had twice daily briefings with his staff regarding the 9/11 detentions.

65. The punitive conditions in which MDC Plaintiffs and class members were placed were the direct result of the strategy mapped out by Ashcroft and Mueller's small working group. These conditions were formulated in consultation with the FBI, and designed to aid interrogation. Indeed, sleep deprivation, extremes of temperature, religious interference, physical and verbal abuse, strip-searches, and isolation are consistent with techniques developed by the C.I.A. to be utilized for interrogation of "high value detainees."

66. There were not enough secure beds in federal jails like MDC to hold all the 9/11 detainees, so Ashcroft, Mueller and Ziglar's orders to encourage the 9/11 detainees to cooperate were implemented differently for the Passaic Plaintiffs and class members. Passaic Plaintiffs were denied the ability to practice their religion, were held in overcrowded general population units with convicted felons, and were subjected to physical and verbal abuse, including being

menaced by dogs. However, they were not held in isolation or otherwise placed in restrictive confinement.

67. Ashcroft, Mueller and Ziglar knew that the FBI had not developed any reliable evidence tying Plaintiffs and class members to terrorism, yet authorized their prolonged detention in restrictive conditions nonetheless. Indeed, Mueller ordered that MDC Plaintiffs and class members be kept on the INS Custody list (and thus in the ADMAX SHU) even after local FBI offices reported that there was no reason to suspect them of terrorism. For Mueller, the absence of suspicion was not enough; the CIA, which had no role in arresting class members or designating them “of interest,” had to be asked if it could find some basis for suspicion.

68. To implement Ashcroft, Mueller and Ziglar’s policy, Wardens Hasty and Zenk ordered their subordinates to ignore BOP regulations regarding detention conditions. BOP regulations limit the circumstances in which detainees may be placed in the SHU and require an employee known as the Segregation Review Official to conduct a weekly review of the status of each inmate housed in the SHU after he has spent seven days in administrative detention or disciplinary segregation. The Segregation Review Official is also required to conduct a formal hearing every 30 days assessing the inmate’s status. These review processes were not conducted for the 9/11 detainees. Instead, Wardens Hasty and Zenk ordered prolonged placement of MDC plaintiffs and class members in the ADMAX SHU without following the processes they knew the law required for such deprivation. Reports for 9/11 detainees in MDC’s ADMAX SHU were automatically annotated with the phrase “continue high security,” and no hearing took place. Plaintiffs and class members were thus denied a fair review process in which to challenge their conditions of confinement.

69. MDC Defendants were aware that the FBI had not developed any information to tie the MDC Plaintiffs and class members they placed in the ADMAX SHU to terrorism. On a regular basis, an MDC intelligence officer received print-outs of the FBI and INS's 9/11 detainee lists and databases so that he could update Hasty, Sherman, and Lopresti about the investigations. These regular written updates included summaries of the reason each detainee was arrested, and all evidence relevant to the danger he might pose to the institution. Hasty, Sherman and Lopresti shared the information with Cuciti and other MDC staff.

70. The updates demonstrated the dearth of information connecting MDC Plaintiffs and class members to terrorism or raising a concern that they might pose a danger to the facility. For example, with respect to Khalifa, MDC Defendants were informed only that he was arrested because he was "encountered by INS" while following an FBI lead and charged with a violation of the INA. They were further informed that Khalifa had no INS applications, petitions or extensions pending, and that the "FBI may have an interest" in him. No other information was provided. As the briefing was designed to alert MDC staff to all information relevant to the question of whether Khalifa posed a security threat to the institution, the lack of any specific or incriminating information put MDC Defendants on notice of the inappropriateness of holding all 9/11 detainees in restrictive confinement without individualized assessments.

71. Similarly, MDC Defendants were informed that Mehmood was arrested because he was "encountered" by federal agents while executing a search warrant pursuant to an FBI lead; that his residence contained documents related to fraudulent Pakistan passports, credit card fraud, and "other criminal violations;" that he was charged with a "B1 [visa] overstay," and that he was in possession of fraudulent Social Security cards. The update included no statement of FBI interest in Mehmood.

72. MDC Defendants were informed that Abbasi was “encountered” by INS pursuant to an FBI lead; that he used a fraudulent passport to enter the U.S. to seek asylum, and later destroyed that passport; that he requested and was denied various forms of immigration relief; that he obtained and used a fraudulent advance parole letter to enter the country, and that he was thus inadmissible. The update included no statement of FBI interest in Abbasi.

73. The exact language of these updates was repeated weekly, indicating the continued lack of any information tying Khalifa, Mehmood, or Abbasi to terrorism, or tending to show that any of them might pose a danger. Despite this clear demonstration that the FBI had no information to connect the 9/11 detainees to terrorism or suspect them of dangerousness, Hasty, Sherman, and Lopresti continued to hold all the MDC Plaintiffs and class members in restrictive and punitive confinement, without undertaking the required individualized assessment of whether each individual posed a danger to the facility or otherwise required close supervision.

74. Hasty, Sherman, Lopresti, and Cuciti were aware that placing the 9/11 detainees in the ADMAX SHU unit without an individualized determination of dangerousness or risk was unlawful; thus, Lopresti signed a document that was prepared by Cuciti, and approved by Hasty and Sherman, which untruthfully stated that the executive staff at MDC had classified the “suspected terrorists” as “High Security” based on an individualized assessment of their “precipitating offense, past terrorist behavior, and inability to adapt to incarceration.” In reality, none of the MDC Defendants saw or considered information in any of these categories in deciding to place the 9/11 detainees in the ADMAX SHU. Indeed, after a few months of interacting with MDC Plaintiffs and class members, the MDC Defendants realized that they were not terrorists, but merely immigration detainees. Nevertheless, the restrictive conditions and harsh treatment continued.

75. To carry out Ashcroft, Mueller and Ziglar's unwritten policy to subject the 9/11 detainees to harsh treatment designed to obtain their cooperation, Hasty ordered Lopresti and Cuciti to design extremely restrictive conditions of confinement. These conditions were then approved and implemented by Hasty and Sherman, and, later, by Zenk.

76. As a result, detention in the ADMAX SHU entailed severe deprivations of liberty beyond those authorized by the BOP for administrative or disciplinary segregation. An ADMAX SHU is a particularly restrictive type of SHU not found in most BOP facilities because the normal SHU is usually sufficient for correcting inmate misbehavior and addressing security concerns. Indeed, the only other ADMAX SHU in existence at the time of Plaintiffs' detentions was the BOP's high security unit in Florence, Colorado, where the most dangerous convicted criminals are held. The ADMAX SHU at MDC was established after September 11, 2001 to make available more restrictive confinement. Unlike the regular SHU, in the ADMAX SHU detainees were handcuffed, shackled, chained, and accompanied by four guards whenever they left their cell, which was only permitted for extremely limited purposes. Two cameras were placed in each cell to monitor each inmate 24 hours a day, hand-held cameras recorded their movements whenever they left their cells, and the lights were left on 24 hours a day. Unlike detainees in the general population at MDC, detainees in the ADMAX SHU were detained in their cell for at least 23 hours a day, and were not allowed to move around the unit, use the telephone freely, or keep any property, even toilet paper, in their cell. MDC Plaintiffs and class members were subjected to these restrictive conditions in the ADMAX SHU for between three and eight months pursuant to a written policy drafted by Cuciti, signed by Lopresti, and approved by Sherman and Hasty, and subsequently by Zenk.

77. Further, Hasty facilitated his subordinates' multifaceted abuse of MDC Plaintiffs and class members by referring to the detainees as "terrorists," purposely avoiding the ADMAX unit, and isolating them from any avenue of complaint or assistance. All the MDC Defendants allowed Plaintiffs and class members to be beaten and harassed by ignoring direct evidence of such abuse, including logs and other official documents, videotapes, and detainee complaints. MDC Defendants used the harsh detention conditions as an intentional means of punishing, harassing, and "breaking" the MDC Plaintiffs and class members.

78. When a few MDC staff members brought allegations of abuse to the attention of Hasty and other senior MDC officials, they were called snitches, threatened, and subjected to harassment by many other staff members at the facility. The campaign of harassment was so pervasive that one MDC employee estimated that half of the staff at MDC stopped speaking to him after he wrote a confidential memo to the Warden detailing detainees' complaints that was then distributed to the staff members on the ADMAX unit. The harassment went unpunished.

COMMUNICATIONS BLACKOUT AT MDC

Policy to Hold Detainees Incommunicado

79. Hasty implemented Ashcroft, Mueller, and Ziglar's explicit policy to limit MDC Plaintiffs' and class members' access to the outside world in several different ways. First, the 9/11 detainees were subjected to a communications blackout. MDC written policy (created by Lopresti and Cuciti, and approved by Hasty and Sherman) stated that the 9/11 detainees were not to be provided any social or legal visits or telephone calls. This blackout lasted until mid-October.

80. At the same time, individuals who sought to contact MDC plaintiffs and class members were rebuffed. The arrest, processing, and detention of the 9/11 detainees were shrouded in

secrecy. Family members, friends, and attorneys of men who had suddenly disappeared had great difficulty finding out whether they had been arrested and detained, and if so, where they were being held. Once they were classified as “special interest cases,” 9/11 detainees’ immigration hearings were closed, not only to the general public, but also to family members, and their case records were sealed.

81. MDC Plaintiffs and class members were classified within the BOP as “WITSEC” (Witness Security). The WITSEC designation is intended to protect cooperating witnesses from reprisal, and operates to prohibit BOP staff from disclosing to any individual, even a family member or lawyer, the designee’s location. Based on the WITSEC designation, MDC staff repeatedly turned away any relative or lawyer who came to the MDC in search of a detainee by falsely stating that the detainee was not there.

82. For example, after Mehmood was arrested, his wife Uzma tried to find out what was going on by visiting the local police department, and calling the FBI. The FBI told her that Mehmood was in INS custody and gave her a phone number to call to ascertain Mehmood’s location. When she called the INS, however, they would not tell her where her husband was being held. Eventually, she hired a lawyer who learned that Mehmood was being held at MDC. But even with the help of counsel, she was unable to communicate with her husband for three months.

Post-Blackout Restriction on Communication and Access to Counsel

83. Beginning around the middle of October 2001, MDC Plaintiffs and class members were theoretically permitted non-contact visits and telephone calls. By MDC policy, they were allowed one call per week to an attorney and one social call per month. In practice, they were frequently denied even these limited calls.

84. In many instances, the unit counselor inquired whether 9/11 detainees in the ADMAX SHU wanted their weekly legal call by asking, “Are you okay?” Many detainees did not realize that an affirmative response to this casual question meant they opted to forgo their legal call for that week.

85. When MDC Plaintiffs and class members were actually offered calls, an MDC employee would bring a phone 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 his cell. Often, the officers would 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 of calls for the week or month. Legal calls that resulted in a wrong number, busy signal or calls answered by voicemail counted as their one legal call for that week. According to MDC documents, Hammouda, for example, was not able to make a legal call until November 7, and it appears the call was unsuccessful, as the records indicate it lasted only two minutes. His next opportunity was November 19, and when that call was incomplete, he was not given another opportunity until November 27. His call on that day lasted only five minutes. Similarly, Abbasi attempted a legal call on December 17, but it was incomplete. MDC records show that he did not try again until February 12, when he made a call that lasted three minutes. Khalifa made a legal call on October 15, but did not receive another opportunity until November 7. Bajracharya was not aware that he could make a legal call until December 3, 2001. On December 17, 2001 he again attempted to make a legal call, but MDC records show the call was incomplete. He did not get another opportunity until January 4, 2002, at which point MDC records show that he made a phone call lasting two minutes.

86. Once the MDC Plaintiffs and class members were permitted social calls at MDC, in or about the middle of October 2001, these, too, were severely restricted in the same ways. Mehmood, for example, was not able to get through to his wife for three months, because the MDC employee responsible for providing phone calls counted an attempted call, even one that did not go through for technical reasons, as the one monthly call. Hammouda received his first social call on December 18. Abbasi was offered a social call for the first time on October 19, but the number he wanted to call was not on his inmate list, and thus he lost his opportunity to make any call that month. His next opportunity to make a social call was on November 13, but the call was not accepted. He didn't get another chance until December 26. Khalifa tried unsuccessfully to make a call on October 19, and did not try again until December 10. That attempt was also unsuccessful. Bajracharya was first able to attempt a social call on December 18, but that attempt was unsuccessful. Indeed, MDC records indicate that he was only able to complete one social call in his entire time at MDC, and that call lasted 4 minutes. MDC records show that Khalifa did not have a single successful social call. Benatta was only ever able to get through to an answering machine.

87. MDC Plaintiffs and class members were so upset by their lack of access to the outside world that many went on hunger strike to protest the situation, and one class member attempted suicide by strangling himself with his bed sheet.

88. Legal and social visits were non-contact; a detainee was separated from his visitor by thick plexiglass. Despite the lack of contact, MDC Plaintiffs and class members were cuffed and shackled throughout the visit, and strip-searched both beforehand and afterwards. Social visits were restricted to immediate family. Thus, Abbasi, Benatta, Bajracharya and Khalifa never received a single social visit throughout their imprisonment on the ADMAX.

89. December 17, 2001 was Eid, the Muslim holiday that marks the end of the Ramadan fast. Mehmood's wife and children went to MDC to visit him, but were told he was not there. They left without being able to see Mehmood, or deliver to him the prayer rug and food they had brought. Mehmood's wife was finally granted a non-contact visit on January 11, 2002. Mehmood's children were not allowed to visit until he was moved to the general population at MDC in February 2002.

90. Hammouda's wife had a similar experience. Twice she was turned away and told her husband was not at MDC. On another occasion she arrived at MDC at the time she had been instructed she could visit, and was told visiting hours were over. These troubles continued throughout the spring of 2002.

91. Demonstrations protesting the treatment of 9/11 detainees were held weekly outside the MDC starting in November, but the ADMAX SHU cell windows were painted over to keep the detainees from seeing the protestors.

92. 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 provide free legal services, but the list given to 9/11 detainees was woefully inadequate, containing much inaccurate and outdated information. 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.

93. Abbasi tried to secure counsel by calling names on the list of pro bono counsel provided by the facility, but got no response. He finally managed to contact his sister, Uzma, after about three months in detention. She arranged to secure an attorney to represent him with respect to his criminal charges. Once he retained an attorney, he was able to call that attorney for two to

three minutes at a time, although MDC personal remained within hearing distance of his conversation at all times. He was not able to meet with an attorney until December 28, 2001. Khalifa's first legal visit was on November 1, 2001. The attorney he met with told him she would be at his immigration hearing, but when the time came, she was not present. He was unable to reach her after that. He tried calling some of the numbers on the pro bono counsel list, but was unable to reach anyone.

94. Some MDC Plaintiffs found their access to counsel blocked even during immigration hearings. Mehmood had a hearing before an immigration judge at MDC on October 16. When he explained to the judge that he had been unable to contact a lawyer, the judge postponed the hearing until October 25, 2001.

95. Benatta also had to attend an immigration hearing without a lawyer. In fact, he didn't even know he was going to have a hearing until he was ordered out of his cell by MDC guards and taken before an immigration judge. During that hearing, Benatta complained to the immigration judge about how tightly he was restrained, so the judge asked the corrections officers to check him during a break. The guards pulled Benatta's chains even tighter, and asked him if he wanted to complain again. Benatta also told the immigration judge that he was being denied phone calls. Word of his complaint got back to MDC staff, and resulted in even more restricted access.

96. While civil liberties, civil rights, and immigrant advocacy organizations sought to provide free legal services to 9/11 detainees, the MDC substantially limited such organizations' access to 9/11 detainees by order from DOJ headquarters, in keeping with Ashcroft, Mueller and Ziglar's policy to isolate the detainees. MDC employees as well as others within the BOP and INS 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 BOP facilities or county jails to screen 9/11 detainees in need of legal assistance. These requests were considered and rejected at Main Justice.

97. These unnecessary restrictions led to repeated complaints by 9/11 detainees, some of which were brought to the attention of Hasty, Zenk, Sherman, Lopresti, and Cuciti. The interference was also documented in legal call and social call logs prepared by MDC staff for review by Hasty, Zenk, Sherman, and Lopresti.

Video and Audio Taping Attorney/Client Conversations

98. In deliberate violation of the law, Hasty ordered his subordinates, including the other MDC Defendants, to audiotape detainees' visits with their attorneys. Such recording of inmates' meetings with attorneys (which was done by using a videotape camera that also recorded sound) is specifically prohibited by 28 C.F.R. § 543.13(e), which provides, "Staff may not subject visits between an attorney and an inmate to auditory supervision."

99. Recording the detainees' attorney visits was not necessary for the MDC's security purposes. It violated the law and interfered with the detainees' access to effective assistance of counsel. Through April 2002 or later, attorney visits were recorded with sound. Repeatedly throughout November and December, MDC staff brought to Hasty's attention the fact that "silent witness" cameras might be substituted for audio-ready cameras, but this advice was not heeded.

Policy to Deny Detainees Access to Consuls

100. The WITSEC designation and communications restrictions also made it difficult for consulates to contact detainees who were citizens of their countries.

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, many Plaintiffs and class members were not advised of this right. Others were coerced into signing forms they did not understand, waiving that right. When the MDC Plaintiffs and class members sought to contact their consulates, their requests were repeatedly denied by the MDC Defendants.

102. For example, Hammouda was not informed that he had the right to have his consulate told about his detention until June 2002. At one point, he tried to call his consulate, but the number provided to him by MDC staff was incorrect. Abbasi was never informed of his right to call his consulate. While at the INS's Varick Street detention facility, he asked to speak to a lawyer or his consulate, but was not allowed to do so.

INHUMANE CONDITIONS OF CONFINEMENT AT MDC

103. Confinement in the ADMAX SHU subjected the MDC Plaintiffs and class members to a system of conditions designed to make their lives difficult and painful, not for any legitimate penological reason but in the belief that they were probably terrorists who therefore ought to suffer, and in the hopes that this suffering would lead to their cooperation with law enforcement. These conditions included confinement to bare cells virtually 24 hours a day; denial of recreation; deprivation of sleep; arbitrary strip-searches; chains, handcuffs and leg cuffs, coupled with twisting their hands and arms and stepping on their leg chains, whenever they left their cells; constant insult; denial of a chance to practice their religion; and lack of access to the prison handbooks that explained how to file complaints about such mistreatment.

Restraints and Abuse

104. During transport between the MDC Receiving and Discharge Area (“R&D Area”) and the ADMAX SHU on the ninth floor of the MDC, 9/11 detainees at the MDC were fully restrained in metal handcuffs attached to a waist chain that was connected to another chain linked to ankle cuffs. Similarly, during routine escorts on the ADMAX SHU, the detainees were handcuffed behind their backs and their ankles were shackled. 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. The MDC Defendants subjected all MDC Plaintiffs and class members to such restraints routinely, 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 housed in the ADMAX SHU.

105. Physical abuse of the MDC Plaintiffs and class members during transport was routine. Abuse was more flagrant before the MDC began videotaping detainee escorts in early October 2001, but continued even after that time, and included:

- a. Slamming detainees against walls during escorts, including when they first arrived and on the way to attorney and doctor visits and recreation. Upon arrival to the MDC, staff slammed 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.
- b. Bending or twisting detainees’ arms, hands, wrists, and fingers.
- c. Lifting detainees off the ground by their arms, and pulling on their arms and handcuffs.

- d. Stepping on detainees' leg restraint chains, both while stationary and while walking.
- e. Using physical restraints as a form of punishment by leaving them in a cell in restraints for no proper penological purpose.
- f. Handling detainees in various other rough and inappropriate manners.

106. Plaintiffs and class members were always fully compliant, making any use of force unnecessary and against BOP policy. Incidents of detainee misconduct were rare, and included only peeling paint off walls, injuring themselves, hiding from cameras, or refusing to come to the cell door to be handcuffed.

107. Numerous complaints about abuse of 9/11 detainees at MDC led the BOP to institute a policy of videotaping all 9/11 detainee movements and resulted in two OIG investigations, as well as investigations by the BOP Office of Internal Affairs and the FBI. Despite his awareness of these complaints and investigations, Hasty failed to investigate the abuse, punish the abusers, train his staff, or implement any process at MDC to review the tapes for abuse. Many of these tapes were destroyed, disappeared, or were taped over, and others were withheld from the OIG for years before they were "found" by MDC staff.

108. Typically, medical staff failed to examine or even comment on injuries the 9/11 detainees received from staff, or to ask how they occurred. MDC Plaintiffs and class members were never given an opportunity to speak to medical personnel outside the hearing of the correctional officers who abused them; these officers sat in on medical consults, and on occasion even assisted the doctors. It was the practice of the medical staff not to report abuse by correctional officers, and the MDC Plaintiffs and the class members often did not ask for doctors when they were abused for fear of retaliation by those officers.

109. MDC staff verbally abused Plaintiffs and class members by referring to them as “terrorists,” and other offensive names; threatening them with violence; cursing at them; insulting their religion; and making humiliating sexual comments during strip-searches. These instances of abuse were themselves the result of Hasty labeling the detainees as “terrorists” in MDC memoranda despite the lack of any connection between class members and terrorist activity.

110. Some MDC Plaintiffs and class members complained about this abuse. For example, on February 11, 2002, Hammouda and several other class members complained to the MDC counselor that MDC staff called them “camel,” gave them the finger, and assaulted them. No action was taken on these complaints. The counselor who reported the complaint to the Warden was ostracized and harassed.

Arbitrary and Abusive Strip-Searches

111. While Defendant Cuciti was given responsibility for developing the strip-search policy on the ADMAX, that policy was never put in writing, and the searches were conducted inconsistently.

112. 9/11 detainees were strip-searched upon arrival to MDC at the R&D Area and again after they had been escorted, in handcuffs and shackles and under continuous guard, to the ninth floor ADMAX SHU. 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. Detainees were strip-searched every time they were removed from or returned to their cell, including before and after meeting with a lawyer, receiving medical care, attending a court hearing within the MDC, 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 handcuffed and shackled and under continuous four-man guard, and before and after being transferred directly from one cell to another. For example, on October 25, 2001, Mehmood had an immigration hearing and a non-contact legal visit at MDC. Thus, he was strip-searched four times that day. Similarly, Benatta was strip-searched both before and after an FBI interview, even though he was transported in full restraints by five MDC staff members from his locked cell to the bare FBI interview room and back without the opportunity to receive contraband. The strip-searches had no rational relation to any legitimate penological objective.

113. At other times 9/11 detainees were subjected to random strip-searches, despite remaining within their locked cells without opportunity to receive contraband. For example, MDC records indicate that Benatta was strip-searched on September 23, 24, and 26 of 2001, although he was not transported out of his cell on any of those days.

114. Many, though not all, of these illegal strip-searches were documented in a “visual search log” created by MDC staff for review by MDC management, including Hasty. Other illegal searches were captured on videotape.

115. Strip-searches were employed by MDC staff as punishment and used to 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 within view of other prisoners and staff, and making jokes and humiliating comments during strip-searches. On one occasion, a guard arrived in the middle of one of Benatta’s strip-searches, and joked with the other guards about how they should have let him know Benatta was being searched, so he could have been there for all of it. Another time, a female officer watched Benatta’s search. For Hammouda, the searches were so traumatizing and humiliating that they

ruined the few visits he was able to have with his wife. He was searched before and after seeing her, and officers made derogatory statements about his body and otherwise harassed him. Some of these searches were videotaped. The process made him feel damaged before talking to his wife, and rendered him anxious and depressed both before and after the visits. It was so bad that Hammouda considered telling his wife not to visit.

116. Many strip-searches conducted on the ADMAX SHU were filmed in their entirety and frequently showed the detainees naked, contrary to BOP regulations that required strip-searches to “be made in a manner designed to assure as much privacy to the inmate as practicable.” One MDC videotape shows four officers escorting a 9/11 detainee into a recreation cell and ordering him to strip while the officers berate him for talking too much with other detainees and for encouraging them to go on a hunger strike. The detainee had just been taken from his cell, pat-searched, and then escorted into the recreation cell by the four officers. There was no correctional purpose or justification for this strip-search.

117. On another occasion, MDC staff were ordered to strip-search all 9/11 detainees without suspicion or any opportunity to receive contraband in order to check to see if they had shaven genitalia, based on the mistaken belief that Muslims shave their genitals prior to performing jihad. In fact, Muslims commonly shave their bodies for religious and hygienic reasons.

118. The strip-searches caused all of the MDC Plaintiffs and class members embarrassment and humiliation.

Sleep Deprivation

119. Until March 2002, bright lights were kept on in the cells of MDC Plaintiffs and class members 24 hours a day, depriving them of sleep. Prison rules forbade detainees to cover their heads while lying in bed at night, so there was no escape from the constant light. In addition,

officers banged loudly on their cell doors to wake them up, interrupt their prayers, or generally harass them; sometimes this noise-making took place during required inmate counts at midnight, three and five a.m., but on other occasions it was without this excuse.

120. MDC staff have defended much of the noise as a necessary byproduct of “bar taps,” a safety procedure in which correctional personnel use a mallet to tap on each bar in the facility weekly to produce a noise and check for stress or damage. MDC documents show that contrary to past MDC practice, bar taps on the ADMAX unit were conducted twice a night, in the middle of the night. On some occasions, correctional officers walked by every 20 minutes throughout the night, kicked the doors to wake up the detainees, and yelled things such as, “Motherfuckers,” “Assholes,” and “Welcome to America.” Officers would also watch the in-cell cameras and kick on the doors as soon as they thought a detainee was asleep.

121. All the MDC Plaintiffs and class members experienced sleep deprivation, causing substantial physical and emotional distress. They complained repeatedly to officers, MDC management, and medical personnel, yet received no relief. On one occasion, Hammouda complained that he couldn’t sleep at night, and was given a sheet of paper advising him to avoid coffee.

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

122. Until October 30, 2001 MDC Plaintiffs and class members were denied all recreation. After October 30, Plaintiffs and class members were offered “recreation” in empty cages on the ADMAX range. The cages were devoid of any exercise equipment and open to the sky. Thus they were exposed to the elements, including rain and, in the winter, snow and freezing cold. The MDC Plaintiffs and class members were often offered transport to these recreation cells at the early hour of six or seven a.m., but denied any extra clothing besides their light cotton prison

garb, and, during the dead of winter, a light jacket. Detainees who accepted these offers were often physically abused along the way by MDC officers who escorted them and were sometimes left for hours in the cold recreation cell, over their protests, as a form of punishment.

123. 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. For example, MDC records show that on November 8, 2001, only 13 of the 46 9/11 detainees who were offered recreation accepted recreation. Two days later, on November 10, 2001, 11 9/11 detainees initially requested recreation, but all but two of them changed their minds when the time came, based on the cold wind that was blowing through the unit. MDC records indicate that the entire range was so cold that day, the officers wore jackets inside. Recreation was offered again on November 13, but again, only two detainees accepted due to the cold.

124. Bajracharya, for example, almost always refused recreation. MDC records show that one of the few times he chose to visit the recreation cages was December 28, 2001 at 8:45 in morning. He was left out in the elements with only a thin coat until 11am, despite the fact that it was below freezing that day.

125. Khalifa was one of the few 9/11 detainees who frequently accepted recreation, despite the cold, because getting to breathe fresh air was the closest he could get to feeling free. His acceptance of recreation did not please the MDC guards, so they chose a cold day, and left him outside in the recreation cage in the freezing cold for four hours, with only a thin jacket. He knocked repeatedly at the door and asked the guards to get him, but they merely laughed at him. When he was finally brought back to his cell, he was shaking and could not feel his feet.

126. MDC staff documented Plaintiffs' and class members' consistent rejection of the opportunity for "recreation" in ADMAX SHU Reports created for review by MDC management, including Lopresti and Sherman. Despite receiving many complaints about the cold, Hasty decided not to issue warmer clothing to the 9/11 detainees, and decided that recreation would continue to be offered only in the chilly early morning.

127. Throughout the fall and winter, even the cells of the MDC Plaintiffs and class members were extremely cold. The MDC Plaintiffs were denied sweaters, jackets, other warm clothing, or bedding adequate to keep them warm. Throughout this period, MDC staff on the ADMAX unit frequently wore jackets while inside to keep warm.

Lack of Hygiene Items and Provision of Inadequate and Unhealthy Food

128. The MDC Plaintiffs and class members were deliberately denied adequate, healthy, and religiously appropriate food. Meals in the ADMAX SHU were meager and barely edible, leaving the MDC Plaintiffs hungry.

129. Contrary to the usual policy for inmates in administrative segregation, MDC Plaintiffs and class members were denied all access to the commissary, pursuant to a written MDC policy created by Cuciti and Lopresti, and approved by Sherman and Hasty. Nor were they allowed to retain anything, even an extra apple, in their cells.

130. MDC Plaintiffs and class members were also denied access to basic hygiene items like toilet paper, soap, towels, toothpaste, eating utensils, personal reading glasses, and a cup for drinking water, pursuant to a written MDC policy created by Cuciti and Lopresti, and approved by Sherman and Hasty. Under the policy, hygiene items were passed out and then retrieved daily. Thus for the first several months of their detention, the MDC Plaintiffs and class members were not allowed to keep toilet paper, a towel, soap, a toothbrush, a cup, or other personal

hygiene items in their cells, making it difficult to maintain proper health and hygiene, contrary to religious dictates and personal dignity. This policy was created for the 9/11 detainees, and had never been imposed on inmates in administrative or disciplinary segregation at MDC before.

Deliberate Interference with Religious Rights

131. MDC and Passaic Plaintiffs and class members were consistently burdened in their attempts to practice and observe their Muslim faith.

132. Soon after their arrival at MDC, Plaintiffs requested copies of the Koran, but did not receive them until weeks or even months later, pursuant to a written MDC policy (created by Cuciti and Lopresti, and approved by Hasty and Sherman) that prohibited the 9/11 detainees from keeping anything, including a Koran, in their cell. Abbasi recalls that it was weeks before he received a Koran, and Hammouda and Mehmood did not receive one until a month after they were each detained. Benatta requested a Koran during the first several weeks of his detention, and never received one.

133. While detained in the ADMAX SHU, MDC Plaintiffs and class members were all denied the Halal food required by their Muslim faith, despite many requests for a Halal diet. 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 their confinement at MDC. Mehmood brought his religion to the attention of MDC staff as early as November 30, 2001, yet he was not cleared for a Halal diet until February 26, 2002. Abbasi never received Halal food in the ADMAX.

134. There was no clock visible to the 9/11 detainees, and MDC staff refused to provide them the time of day so that they could pray at the proper times. The staff also refused to tell 9/11 detainees the date, making it difficult for them to know when Ramadan began.

135. MDC Plaintiffs and class members were sometimes disciplined for not responding to a prison count because they were in the midst of their prayers. Hammouda, for example, received an incident report for refusing to stand up for count. He filed a grievance over this report, explaining that he needed to finish his prayer, and stood up as soon as he was done. As a result of the incident, he was prohibited from social visits for sixty days.

136. MDC staff frequently interrupted MDC Plaintiffs' and class members' prayers by banging on cell doors, screaming derogatory anti-Muslim comments, videotaping, and telling them to "shut the fuck up" while they were trying to pray. Staff also mocked the detainees' prayer by attempting to repeat the Arabic phrases of the Azan (the call to prayer) loudly. One MDC guard frequently yelled "Jesus" whenever he heard the opening phrases of the Azan.

137. Evidence and complaints about these practices were brought to the attention of MDC management, including Hasty.

138. At Passaic, the policy to deny detainees the ability to practice their religion was implemented similarly. There too, guards disrupted prayer time by yelling and making noise. For example, guards would purposely wait until the detainees were praying to hand out razors and other hygiene supplies.

139. Detainees at Passaic were denied Halal food as well. For example, when Turkmen requested Halal food, the guard replied "This is not a hotel, this is a prison." The request was otherwise ignored.

Failure to Provide Handbooks

140. The usual channels for filing complaints of mistreatment were cut off at MDC. MDC handbooks which explained how to file complaints about mistreatment were not given to the MDC Plaintiffs and class members on a timely basis, if at all. Abbasi, for example, did not receive the MDC handbook until May of 2002. Some MDC Plaintiffs and class members, including Abbasi, received a short two-page explanation of policies at the ADMAX SHU, but that document did not include any information about making complaints, and was confiscated by MDC staff shortly after it was provided. By putting them in the extremely isolated ADMAX SHU, imposing a communications blackout, and shutting down their ability to file complaints, MDC Defendants blocked MDC Plaintiffs' and class members' access to normal channels for lodging complaints of abuse and mistreatment.

ALLEGATIONS CONCERNING INDIVIDUAL PLAINTIFFS

Ahmer Iqbal Abbasi

141. Abbasi entered the United States in 1993 with a visitor visa, and subsequently sought political asylum from his native country of Pakistan. He remained in the United States unlawfully after that application was denied, only traveling one time in 1998 for a short trip to Pakistan. He drove a cab in Manhattan and saved up to purchase a small grocery store, which he sold prior to 2001.

142. Abbasi was arrested by the FBI on September 25, 2001. At the police station, he was interviewed at length by FBI, INS and NYPD officers. The officers asked Abbasi about his religious beliefs and practices.

143. Abbasi was not told why he was being arrested. He later learned that he came to the attention of the FBI because a house guest had presented a false social security card at the New Jersey Department of Motor Vehicles. The FBI became interested in Abbasi based only on the

report that the card, and a passport, had been left by “a male possibly Arab” using Abbasi’s address. Based on this information, and nothing more, Abbasi was held as “of interest” to the PENTTBOM investigation, and detained in maximum security confinement until cleared of any connection to terrorism.

144. On September 26, Abbasi was taken to the INS Varick Street detention center. He acknowledged that he had entered into a fraudulent marriage for the purpose of obtaining a green card, and stated that he would like to be deported. Abbasi was previously ordered removed and thus did not receive any immigration hearings. Abbasi could have been removed by the INS within weeks; instead, he was detained in harsh conditions at MDC to facilitate the FBI’s investigation into whether he might have any ties to terrorism.

145. On the afternoon of September 27, 2001 Abbasi was transported to MDC by the INS “Special Response Team” in a convoy of INS and NYPD vehicles. The Special Response Team members wore full body armor with helmets and goggles. The convoy used sirens, and the streets were shut down. Once at MDC, Abbasi was placed in the ADMAX SHU.

146. The conditions of Abbasi’s confinement were harsh. Like the other MDC Plaintiffs and class members, Abbasi was placed in the ADMAX SHU arbitrarily and without justification, subjected to a communications blackout, denied access to the outside world, 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. Abbasi was and remains a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Abbasi was not provided with timely notice of MDC’s complaint procedures.

147. Whenever Abbasi was removed from his cell, he was placed in handcuffs, chains, and shackles. Four or more MDC staff members typically escorted him to his destination, frequently inflicting unnecessary pain along the way, for example, by tightening his handcuffs and shackles so much that he periodically lost feeling in his fingers and thumb. He was beaten upon arrival at MDC, and systematically shoved into the wall upon later transports. Despite the pain, Abbasi offered no resistance, fearing that resistance would only make matters worse. In early October, MDC staff began video-recording his transports, and the physical abuse lessened then to some degree. The guards were also verbally abusive, and referred to Abbasi and the other detainees as “fucking Muslims” and “terrorists.”

148. These conditions were completely without penological justification, as no one at the FBI or the BOP had any reason to suspect that Abbasi was dangerous or connected to terrorism. The FBI never developed any evidence to tie Abbasi to any terrorist activity, or indicate that he might be dangerous. Indeed, the only reason Abbasi was ever suspected of a connection to terrorism was his identity as a Muslim from Pakistan.

149. On October 2, 2001, SIOC at FBI Headquarters sent an electronic communication to the New York field office requesting information about Abbasi and other detainees. SIOC instructed the New York office to state whether the FBI had an investigative interest in Abbasi, describe the basis for the initial interest, supply specific information justifying continued interest or non-interest, and provide supporting documentation. It does not appear that the New York field office provided any information in response to this request.

150. On October 15, 2001, Abbasi was interviewed at MDC by a team of INS, FBI, and NYPD officers. He was asked if he could provide information regarding September 11, and questioned about his immigration status and his marriage. This was the last time Abbasi was

questioned by the FBI. In January, he was interviewed again by the INS regarding his marriage. None of these interviews developed any information tying Abbasi to terrorism or indicating that he might be dangerous.

151. By November 1, 2001, Abbasi had been cleared by the New York field office of any connection to terrorism. On that day, SIOC requested CIA name traces on over one hundred detainees, including Abbasi, for whom the FBI had found no link to the September 11 terrorist attacks or any other terrorist activity, organization, or plans. FBI Headquarters indicated that these detainees would probably be released within seven days. Agents at the New York field office sent electronic communications to SIOC repeatedly over the next month, reminding them that Abbasi, along with dozens of others, had been cleared through their investigation, yet remained detained as “of interest” pending Headquarters’ final decision.

152. Over three months later, on February 7, 2002, Stephen Jennings, Acting Chief of the International Terrorism Operations section of the FBI’s Counterterrorism Division, told Michael Pearson, Executive Associate Commissioner of the INS, that, after consultation with FBI Headquarters, the FBI had no investigative interest in Abbasi in connection to the PENTTBOM investigation. Mr. Jennings said that Abbasi could thus be removed from the INS’s custody list. Abbasi was moved from the ADMAX SHU to the general population at MDC on February 14, 2002.

153. On February 26, 2002, Abassi was charged with three criminal offenses, including fraudulent marriage, falsification of a social security card, and credit card fraud. He pled guilty to these offenses in June of 2002, and was sentenced to time served. He was deported on August 20, 2002.

154. Abbasi continues to suffer the emotional and psychological effects of his detention in the United States.

Anser Mehmood

155. Anser Mehmood was born in Lahore, Pakistan on January 12, 1960. He moved from Pakistan to the United States with his wife, Uzma, and three children in 1989. Uzma is Abbasi's sister. Mehmood entered the United States on a business visa and stayed after that visa expired. The family lived in Bayonne, New Jersey, and Mehmood's fourth child was born there in 2000. In May of 2001, Uzma's brother—a United States citizen—submitted an immigration petition for the entire family.

156. Mehmood used the money he made selling his successful business in Pakistan to start a trucking business which he operated on contract with a freight moving company based in Ohio. He was successful and saved enough money to purchase a house in New Jersey and send money home to his family in Pakistan. His children attended public school and adjusted well to life in the United States.

157. On the morning of October 3, 2001, Mehmood was asleep with his wife and year-old son. A team of FBI and INS agents knocked on his door. The agents searched their home and questioned Mehmood and his wife about their immigration status and their relatives, and showed them pictures of individuals who they did not recognize. The agents also asked him whether he was involved with a jihad. Mehmood acknowledged that he had overstayed his visa, and showed the agents the social security number he was using to work.

158. Mehmood's arrest was a still more remote result of the FBI investigation of the lead that led to Abbasi's arrest—that "a male possibly Arab" left a fake social security card and

passport at the New Jersey DMV. While investigating Abbasi, the FBI found the name of his sister Uzma. They came to the house to speak to her, not Mehmood.

159. The FBI told Mehmood they had no interest in him, but that they had to arrest Uzma, as they were interested in learning information from her about another brother, still living in Pakistan. Mehmood convinced the FBI to arrest him instead of Uzma, who was still breastfeeding their infant. The agent told Mehmood that they had no choice but to arrest one of the parents, but that Mehmood faced a minor immigration violation only, and he would be out on bail within days.

160. Mehmood was handcuffed and placed in a car with several INS officers, who transported him to the INS Varick Street detention center, where he was placed in a cell with several other Pakistani and Arab men who had also overstayed their visas. Later that day, he was placed in handcuffs and shackles and put in a van with three other men, flanked on either side by FBI vehicles, which blocked off the side roads as they drove to the Metropolitan Detention Center.

161. Mehmood was charged with overstaying his visa. On October 25, 2001 he was denied bond and political asylum. On December 5, 2001 he was ordered removed. He appealed, but this appeal was subsequently withdrawn. Throughout this period, he was detained in harsh conditions at MDC to facilitate the FBI's investigation into whether he might have any ties to terrorism.

162. Mehmood's time in the ADMAX SHU at MDC was harsh. His abuse began the moment he entered MDC on October 4, 2001. He was dragged from the van by several large corrections officers, who threw him into several walls on his way into the facility. His left hand was broken during this incident and remained swollen for some time afterward. He later learned

that he sustained neurological damage in his hand and hearing loss. Mehmood was photographed, and then re-photographed after MDC guards cleaned the blood from his mouth. The guards threatened to kill him if he asked any questions. One asked if he knew why he was at MDC. He responded that he was there for overstaying his visa. The guard disagreed, and said he was there for the attack on the World Trade Center.

163. Mehmood was then transported in handcuffs and shackles to the ADMAX SHU, and placed in a cell with a man named Ashraf.

164. The family's neighbors learned that Mehmood had been arrested through media reports, and began harassing the family. Mehmood's children were isolated and taunted at school. Uzma could not support the family without his financial contribution, and eventually, in February of 2002, Uzma and the children were forced to return to Pakistan.

165. The conditions of Mehmood's confinement were harsh. Like most if not all of the other MDC Plaintiffs and class members, Mehmood 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. Mehmood was and remains a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Mehmood was not provided with timely notice of MDC's complaint procedures.

166. Whenever Mehmood was removed from his cell, he was placed in handcuffs, chains, and shackles. Four or more MDC staff members typically escorted him to his destination, frequently inflicting unnecessary pain along the way, for example, by banging him into the wall,

dragging him, carrying him, and stepping on his shackles and pushing his face into the wall. They were also verbally abusive, and stated that Mehmood was responsible for 9/11, so they would do to him what he did on that day. He also witnessed correctional officers make ethnic and religious slurs to other 9/11 detainees.

167. These conditions were without any penological justification, as no one at the FBI or the BOP had any reason to suspect Mehmood of connection to terrorism or posing a danger. The FBI never developed any evidence to tie Mehmood to any terrorist activity or indicate that he might be dangerous. Indeed, the only reason Mehmood was ever suspected of a connection to terrorism was his identity as a Muslim from Pakistan.

168. Mehmood was never interviewed by the INS or the FBI after his arrest. According to FBI documents, Mehmood was of interest because he refused to accept a “lucrative transportation assignment” on September 11, 2001. However, by November or December of 2001, the FBI agent investigating Mehmood had determined that his refusal was ordered by the trucking company he did contract work for, due to the turmoil following September 11, and that Mehmood should be deported. On November 1, 2001, Mueller requested CIA name traces on dozens of detainees, including Mehmood, for whom the FBI had found no link to the September 11 terrorist attacks or any other terrorist activity, organization, or plans. Mueller indicated that the detainees would probably be released within seven days.

169. Despite these indications, a December 17, 2001 list of FBI interest detainees maintained at FBI headquarters stated that Mehmood was “of interest” to the FBI. Mehmood’s clearance at FBI Headquarters was “pending” by January 16, and finalized by January 30, 2002.

170. On February 6, 2002 Mehmood was moved to the general population in MDC. He was told that he would be deported shortly. It appears from FBI documents that this action was not

based on Mehmood's clearance, but rather on a motion by his attorney to have him moved out of segregation. On March 29, 2002 he was charged with working with an unauthorized social security number. He pled guilty and was sentenced to eight months in prison. On April 4, 2002 he was transferred to Passaic County Jail, in New Jersey. He was deported to Pakistan on May 10, 2002.

171. Mehmood continues to suffer the emotional and psychological effects of his detention in the United States. Mehmood lost his home and business due to his detention, and has had trouble finding work in Pakistan.

Benamar Benatta

172. Benamar Benatta, a citizen of Algeria, initially entered the United States on a non-immigrant visitor visa on December 31, 2000. Benatta was then a member of the Algerian Air Force, and came to the United States to receive aviation training at a Northrop Grumman training facility. Benatta completed that training program, but remained in the United States past the expiration of his visa with the goal of seeking political asylum and gaining employment in this country. On September 5, 2001 he crossed the Canadian border with false documentation and applied for refugee status.

173. Benatta was detained by Canadian authorities for investigation. The day after the September 11 attacks, Canadian authorities alerted authorities in the United States to Benatta's profile and presence in Canada and transported him, against his will, back to the United States, where he was taken into custody by the INS. Benatta was detained for several days at the Rainbow Bridge port of entry in Niagara Falls, New York, where he was interrogated by the FBI regarding his false identification. A detailed summary of this interview was sent by electronic

communication to SIOC, along with copies of investigatory notes by Canadian and US immigration officials and photocopies of the documents taken off Benatta.

174. The INS immediately commenced removal proceedings against Benatta based on his visa overstay and transferred him to Batavia Federal Detention Facility (BFDF). At BFDF, Benatta was served with a Notice to Appear at the Immigration Court in Batavia, New York on September 25, 2001. However, on September 16, 2001, before Benatta could retain or confer with counsel, he was transported to MDC in Brooklyn.

175. Benatta was transferred to MDC on a private jet, without explanation. He was one of the first detainees in the brand new ADMAX SHU, and thus there were no others to explain to him what was happening. He was placed in the ADMAX SHU with nothing—no toilet paper, toothpaste, a toothbrush, or shoes. To protest his conditions he went on a seven day hunger strike. He began eating again after MDC staff told him he would be force fed, and described how they would stick a tube down his throat.

176. The conditions of Benatta's confinement were harsh. Like most or all of the other MDC Plaintiffs and class members, Benatta 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. Benatta was and remains a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Benatta was not provided with timely notice of MDC's complaint procedures.

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

178. Benatta's only consistent access to the outside world was the view from one small window. Even that was taken away when MDC officials painted over the window, to further punish Benatta and the other detainees. On April 6, 2002, Benatta received an incident report for attempting to scrape the frosting of his cell window so he could see the outside world. After that incident report, MDC guards ordered Benatta to apologize to them, and retaliated against him by taken his blanket at night. The guards did this several times, and also once punished Benatta by taking his dinner.

179. Benatta's detention in harsh conditions had a profoundly deleterious impact on his health. Twice, Benatta attempted to injure himself due to his distress over the inexplicable, prolonged, and arbitrary confinement.

180. On October 6, 2001, Benatta's cellmate was removed for a medical emergency. Benatta was transferred to a recreation cage and was observed there banging his head into the concrete wall. MDC staff did nothing to stop him, nor did they seek psychological treatment for Benatta after this incident.

181. The lights were left on in his cell for 24 hours a day and guards banged on the walls and made loud noises in the night to keep him from sleeping. When Benatta tried to cover his face with a blanket to sleep, the guards ordered him to remove it. Benatta was unable to sleep for days at a time due to this abuse. On November 27, 2001 Benatta was left out in a recreation cage

for two hours. The temperature that morning was in the 40s, and it was cloudy. When he was brought back inside, he requested a visit from the staff psychologist for sleep deprivation. After speaking to Benatta for five minutes through the door of his cell, the psychologist stated that Benatta was fine, and left.

182. The next day, November 28, 2001, Benatta asked to speak to the psychologist again. One hour later, one of the guards observed Benatta looking out his cell door window and refusing to respond to the guard's statements. Twenty minutes after that Benatta's cellmate, Khalifa, sounded his distress alarm to alert the guards that Benatta was attempting to hurt himself by banging his head against the bars of his cell. Benatta does not remember what he was thinking, or whether he was trying to kill himself. He just snapped. The next thing he knew, several MDC guards entered his cell, jumped him, threw him to the floor and began beating and kicking him. Benatta believes that it was during this incident that he chipped his tooth. He was forcibly extracted from his cell by MDC guards and carried to a solitary strip cell, where he was tied tightly to a metal bed, without a mattress, and left for over four hours on suicide watch. He was subsequently released from four-point restraints and placed in ambulatory restraints for another two hours. At no point on that day nor afterwards was he removed from the unit for psychological treatment or a physical examination. From that day forward, Benatta was kept in a cell alone.

183. Benatta had several immigration hearings at MDC. On December 12, 2001, an INS attorney gave the immigration judge a document from the FBI's Counterterrorism Unit in Washington, which stated that Benatta was "of interest" to the FBI. The judge ordered him removed to Canada or, in the alternative, to Algeria. Although Benatta would have accepted removal to Canada, he appealed his removal order because the FBI officers who interrogated him

threatened to have him put on a military jet and sent to Algeria, where Benatta feared execution. Benatta did not have the assistance of counsel in writing his appeal, or access to any assistance or law books. He did not even have use of a pen for longer than ten minutes. That appeal was dismissed on April 8, 2002.

184. Benatta's conditions of confinement were without any penological justification, as no one at the FBI or the BOP had any reason to suspect Benatta of connection to terrorism or posing a danger. The FBI never developed any evidence to tie Benatta to any terrorist activity or indicate that he might be dangerous. Indeed, the only reason Benatta was ever suspected of a connection to terrorism was his identity as a Muslim from Algeria.

185. Benatta was interrogated by the FBI several times during his detention at MDC. He was questioned about his religious practices and beliefs, his citizenship, and his Algerian Air Force employment. On September 29, 2001, information about Benatta, gleaned from an FBI interview at MDC on September 23, 2001, along with other interviews and investigation, was sent to SIOC from the New York FBI field office.

186. On October 1 and 2, 2001 SIOC sent electronic communications to the New York field office requesting information about Benatta and other detainees. As with Abbasi, SIOC instructed the New York field office to state whether the FBI had an investigative interest in Benatta, describe the basis for the initial interest, supply specific information justifying continued interest or non-interest, and provide supporting documentation.

187. The New York field office did not respond with any affirmative statement of interest or any information regarding Benatta's potential ties to terrorism. Despite this, at some point in late 2001 Benatta was identified as "of special interest" by the Joint Terrorism Task Force, and one summary of the FBI's investigation into Benatta includes information from an MDC intelligence

memo indicating that Benatta is suspected of ties to terrorist organizations. There is no indication of what this alleged suspicion was based upon, nor any supporting details. As early as November 2, 2001, the FBI agent assigned to Benatta's case determined that he was of no interest to the PENTTBOM investigation.

188. On November 5, 2001 the New York Field office indicated their investigation was complete by submitting Benatta's name to SIOC for FBI Headquarters to request a CIA name trace and officially clear him. Benatta was officially cleared of any connection to terrorism at FBI Headquarters on November 14, 2001. Both the FBI's New York field office and SIOC were aware that Benatta was not of interest to the PENTTBOM investigation, and information about Benatta's clearance was also available to officials in the Bureau of Prisons, and at the MDC. Despite this, until April 30, 2002 when he was transferred to general population, he remained in extremely restrictive conditions in the ADMAX SHU.

189. On May 3, 2002 SIOC sent another electronic communication to the New York field office again requesting information about whether the FBI had an interest in Benatta. The New York Field office responded on May 15, 2002 that they had no investigative interest in Benatta.

190. On December 12, 2001 Benatta was indicted in the Western District of New York for possession of a false social security card and a false alien registration receipt card. Despite a magistrate judge's order to "arrest Mr. Benatta, and bring him forthwith to the nearest Magistrate Judge" to answer the indictment, Benatta was not arraigned, nor brought before any magistrate, until April 30, 2002.

191. On September 12, 2003 United States Magistrate Judge Schroeder recommended dismissal of both of the counts against Benatta, holding that Benatta's detention in MDC was criminal in nature, and violated his Sixth Amendment right to a speedy trial. *See United States v.*

Benatta, No. 01-CR-247E, 2003 U.S. Dist. LEXIS 16514 (W.D.N.Y. Sept. 12, 2003). Judge Schroeder determined Benatta was in criminal detention because of his transfer from INS custody, against INS procedures, and without immigration justification, as well as his assignment of a United States Marshall Service number, his extremely restrictive conditions of confinement, and his repeated interrogations by the FBI. Judge Schroeder described Benatta's detention as a "subterfuge" and "sham," created to hide the reality that, because Benatta was an "Algerian citizen and a member of the Algerian Air Force, [he] was spirited off to the MDC Brooklyn ... and held in the SH[U] as 'high security' for the purposes of providing an expeditious means of having [him] interrogated by special agents of the FBI" *Id.* at 25. The judge held that Benatta was "primarily under the control and custody of the FBI" from September 16, 2001 until April 2002, and that accepting the United State's claim that Benatta "was being detained by the INS during that period of time, for the purpose of conducting removal proceedings would be to join in the charade that has been perpetrated." *Id.* at 30.

192. Benatta remained in the United States in immigration detention while he continued to seek political asylum. He was transferred to Canadian custody in 2006 and sought refuge status there. He was granted refugee status from Canada in 2007, and his application for permanent resident status is currently pending.

193. Benatta continues to suffer the emotional and psychological effects of his seven and a half month detention in the ADMAX SHU. He has been diagnosed with post-traumatic stress disorder and has seen a therapist and tried different medications periodically since his release. He has trouble concentrating and writing, and is pessimistic about his chances in school or in a career. He is isolated from family and friends and has trouble communicating and trusting

others. He has been unable to get a job, in part because no one will hire him after learning about his time in detention.

Ahmed Khalifa

194. Ahmed Khalifa entered the United States on July 16, 2001 on a student visa. Khalifa had completed five years of a six year program toward a medical degree at the University of Alexandria in Egypt. He planned to return to Egypt to complete the degree, and had a return ticket to Egypt for October 15, 2001. While in the United States, he worked for approximately six weeks at a clothing store. After that, he started working at a deli. He worked at both places without authorization.

195. Khalifa came to the attention of the FBI after the husband of a postal service worker reported a tip to the FBI hotline stating that several Arabs who lived at Khalifa's address were renting a post-office box, and possibly sending out large quantities of money.

196. On September 30, 2001, Khalifa was home at the apartment he shared in Brooklyn with several Egyptian friends when there was a knock on the door. He opened the door to find over ten FBI, INS and NYPD officers. One FBI agent asked Khalifa for identification, and Khalifa showed him his international travelers / student ID. The officers searched his wallet, and appeared to be very interested in a list of phone numbers of friends in Egypt.

197. The officers searched the apartment without consent. One FBI agent asked Khalifa about his roommates by name. They asked for his passport, and asked if he had anything to do with September 11. One of the FBI agents told Khalifa that they were only interested in three of the roommates, but another agent interrupted, and said they also needed Khalifa. An FBI agent asked an INS agent to arrest Khalifa for working without authorization. He was then

handcuffed, and placed in a vehicle. They drove to the work places of Khalifa's other two roommates, who were not at home during the sweep, and arrested them as well.

198. Khalifa and the others were taken to the INS Varick Street detention facility, where they filled out some paperwork and were told they would be released after 24 hours. They were told not to contact their embassy otherwise it would mean trouble for them.

199. Khalifa was charged with working without authorization. On November 13, 2001, he was ordered removed from the United States. On that day, he waived his right to appeal the removal order because he thought accepting deportation would be the fastest way to get out of MDC. Khalifa could have been removed within days; instead he was detained in harsh conditions at MDC to facilitate the FBI's investigation into whether he might have any ties to terrorism.

200. Khalifa was transported to MDC on October 1, 2001. The five roommates were all chained together by officers in combat gear and escorted in armored convoy to MDC. When the convoy passed by Ground Zero, one officer stated, "See what you've done."

201. Khalifa was processed at the ground floor of MDC. One employee took his glasses. He did not receive another pair for 90 days. He was slammed into the wall, pushed and kicked by MDC officers and placed into a wet cell, with a mattress on the floor. Khalifa's wrists were cut and bruised from his handcuffs, and he was worried about other detainees, whom he heard gasping and moaning through the walls of his cell.

202. Khalifa was interviewed by the FBI and the INS on October 7, 2001 at MDC. One of the FBI officers noticed the bruises on Khalifa's wrists and apologized. When Mr. Khalifa told them he was being abused by MDC guards, they stated it was because he was Muslim. The agents questioned him about whether he knew Sheikh Omar Abdel-Rahman, and whether

Khalifa was religious. They asked him how frequently he prayed and what mosques he visited in Egypt. This was his only interview with the FBI. In their notes of the interview, the FBI agents did not express any doubt as to Kahlifa's credibility, any suspicion of ties to terrorism, nor any interest in him in connection to the PENTBBOM investigation.

203. After the interview, Khalifa was strip-searched by MDC guards, who recorded the search with a video camera and laughed when they made him bend over and spread his buttocks.

204. The conditions of Khalifa's confinement were harsh. Like most or all of the other MDC Plaintiffs and class members, Khalifa 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. Khalifa was and remains a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Khalifa was not provided with timely notice of MDC's complaint procedures.

205. Whenever Khalifa was removed from his cell, he was placed in handcuffs, chains, and shackles. Four or more MDC staff members typically escorted him to his destination, frequently inflicting unnecessary pain along the way, for example, by deliberately over-tightening his cuffs and twisting his fingers and wrists. They tried to conceal this abuse from the cameras. Despite the pain, Khalifa offered no resistance, fearing that resistance would only make matters worse. Guards on the nightshift smoked on the range and blew smoke into Khalifa's cell.

206. Toward the end of November, Khalifa was placed into a cell with Benamar Benatta. Benatta had a lot of trouble sleeping because of the cell lights and the guards making noises

throughout the night. At one point, Benatta had not slept for four nights straight and tried to complain to the guards about it. Khalifa heard Benatta ask for them to turn off the lights, or for sleeping pills or even just something to read. No one responded. One night, Khalifa awoke in the middle of the night to find that Benatta had taken a plastic spoon and cut himself on his hand. The next morning, Benatta began slamming his head into the wall. Khalifa tried to stop him, but Benatta pushed him away, so Khalifa pushed the distress button in his cell to call the guards.

207. The guards burst into the cell and removed Khalifa, who was crying over worry about Benatta. They lifted Benatta up and slammed him into the wall as they removed him from the cell. Khalifa did not see Benatta again.

208. Benatta's breakdown coincided with the fourth day of Khalifa's hunger strike. He was refusing to eat until the MDC guards allowed him to call the Egyptian consulate. After Benatta was removed from his cell, one MDC guard told Khalifa that Benatta was refusing to eat until Khalifa began to eat too. To help Benatta, Khalifa started eating again, despite his continued lack of consular access.

209. Khalifa made many requests of the guards: for shoes, books, and medical care, and for clothing to cover himself because female guards were present, and therefore saw him naked, during clothing exchange. None of these requests was granted.

210. Khalifa's conditions of confinement were completely without penological justification, as the FBI never developed any evidence to connect Khalifa to terrorism, and no one at the FBI or the BOP had any reason to suspect Khalifa of posing a danger. The only reason Khalifa was ever suspected of a connection to terrorism was his identity as a Muslim from Egypt.

211. By November 5, 2001, the New York office of the FBI had completed its clearance investigation of Khalifa, and sent his name to SIOC, at FBI headquarters, to be sent out for a

CIA name trace. Agents at the New York field office sent electronic communications to SIOC repeatedly over the next month, reminding them that Khalifa, along with dozens of others, had been cleared through their investigation, yet remained detained as “of interest” pending Headquarters’ final decision. Khalifa’s clearance was “pending” at FBI headquarters as early as November 14, 2001, yet Khalifa was held in limbo for months longer. A list of “of interest” detainees maintained at FBI headquarters dated December 17, 2001 states that the FBI had no interest in Khalifa, and that a clearance letter by Maxwell had been signed, but not sent. Khalifa was not officially cleared until December 19, 2001. He was not deported nor released from the ADMAX SHU until mid-January.

212. Khalifa was deported on January 13, 2002. It was the middle of the winter, but the MDC guards brought him to JFK airport wearing only pants and a t-shirt. Khalifa asked for a coat, and they refused.

213. Khalifa was seriously affected by his detention and abuse. He sought treatment for depression upon return to Egypt, and continues to suffer to this day. Among other symptoms, he has trouble concentrating, and has found his medical study difficult. These issues have negatively affected his career in medicine and his ability to enjoy life.

Saeed Hammouda

214. Saeed Hammouda lawfully entered the United States on August 31, 1999 on a business visa. He subsequently changed his status to a student visa and began studying to receive an MBA in marketing. He married a United States citizen with whom he had a prior relationship in March 7, 2001, and she petitioned for him to change his status to a lawful permanent resident.

215. On October 7, 2001, Hammouda was temporarily staying at the Manhattan apartment of a friend, Nabil Abdullah, when five or six FBI and INS agents arrived at his door. Hammouda

allowed the agents to search the apartment. The FBI treated his friend's things as if they were Hammouda's and seized several items that belonged to Hammouda's friend including a computer, flight manuals, and an ice making machine.

216. The agents told Hammouda they were interested in him because he was not in the United States lawfully. The agents asked him if he was religious, what mosques he attended, and whether he prayed every Friday. Hammouda gave them his social security card and identification card. He was sick and preparing to take medicine, which they would not allow him to do. The INS agents asked him questions about his wife and his marriage. This lasted for several hours.

217. A week later, on October 14, 2001, FBI and INS agents returned to the apartment. One INS officer told Hammouda he was present in the country illegally and arrested him. Hammouda was transported to the INS Varick Street detention center and charged with violating his visa by working without authorization. When he was eventually brought before an immigration judge ("IJ"), an INS officer opposed his bond and the IJ denied bond. He was also brought for immigration hearings on November 14, 2001 and December 5, 2001. On February 15, 2002 he received a final removal order, which he did not appeal. The INS could have removed Hammouda within weeks, instead his deportation was delayed while he was detained in harsh conditions at MDC to facilitate the FBI's investigation into whether he might have any ties to terrorism.

218. After processing at the Varick Street detention center, Hammouda was placed in a convoy of vehicles and transported to the MDC. He was processed on the ground floor of the MDC and his glasses were taken from him. During his transport and processing, Hammouda was verbally and physically abused and called derogatory names. He was pressed against the

wall several times, and sometimes his face hit the wall. He was strip-searched three times, and called names such as “terrorist” and “Arabic asshole.” He was then transported to the ADMAX SHU, where he was detained for eight months.

219. In January 2002, Hammouda was interrogated for four or five hours by two FBI agents and an INS officer. He was interrogated several times, and was administered a polygraph test. These interrogations and the polygraph test caused distress and anxiety.

220. The conditions of Hammouda’s confinement were harsh. Like most or all of the other MDC Plaintiffs and class members, Hammouda 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. Hammouda was and remains a devout Muslim, and the MDC Defendants deliberately and substantially interfered with his religious practice. Hammouda was not provided with timely notice of MDC’s complaint procedures.

221. Whenever Hammouda was removed from his cell, he was placed in handcuffs, chains, and shackles. Four or more MDC staff members typically escorted him to his destination, frequently inflicting unnecessary pain along the way, for example, by deliberately over-tightening his cuffs and twisting his fingers and wrists. They tried to conceal this abuse from the cameras. Despite the pain, Hammouda offered no resistance, fearing that resistance would only make matters worse.

222. Officers routinely used profanity and called Hammouda derogatory names. One officer threw hygiene supplies at the detainees during the materials’ distribution. Other officers made

sexual comments about Hammouda's wife. Hammouda complained to various MDC supervisors about this abuse.

223. In the winter months the SHU was very cold at night. Mr. Hammouda could not sleep because of the lights and the temperature. On some nights, Mr. Hammouda paced his small cell to become fatigued and induce sleep.

224. Hammouda's conditions of confinement were without any penological justification, as no one at the FBI or the BOP had any reason to suspect Hammouda of connection to terrorism or posing a danger. The FBI never developed any evidence to connect Hammouda to terrorism, or to cause concern that he might be dangerous. The only reason Hammouda was ever suspected of a connection to terrorism was his identity as a Muslim from Egypt.

225. As early as October, Hammouda's INS file indicated that he was not of interest. And on November 5, 2001 the New York Field office indicated their investigation was complete by submitting Hammouda's name to SIOC so that FBI Headquarters could request a CIA name trace and officially clear him. Headquarters had apparently already received this clearance through another source, because on November 1, 2001, SIOC requested CIA name traces on over one hundred detainees, including Hammouda, for whom the FBI had found no link to the September 11 terrorist attacks or any other terrorist activity, organization, or plans. Headquarters indicated that the detainees would probably be released within seven days.

226. Agents at the New York field office sent electronic communications to SIOC repeatedly over the next month, reminding them that Hammouda, along with dozens of others, had been cleared through their investigation, yet remained detained as "of interest" pending Headquarters' final decision. However, as of December 17, 2001, FBI Headquarters listed Hammouda as "of interest." Hammouda was officially cleared by FBI Headquarters on January

17, 2002, yet he was not removed from the ADMAX. Inexplicably, on May 3, 2002 SIOC sent an electronic communication to the New York field office again requesting information about whether the FBI had an interest in Hammouda. The New York field office responded on May 15, 2002 that now they did have an investigative interest in Hammouda.

227. Despite having been cleared of any connection to terrorism in January, Hammouda was detained in the ADMAX until he was deported on June 14, 2002.

228. Hammouda continues to suffer the emotional and psychological effects of his detention in the United States. He felt like a stranger to his own family when he was released from custody. For almost eight months after his release, he did not work and remained at home. Even today, he has problems in open areas and prefers to be in little or no light. He is fearful of any travel outside Egypt.

Purna Raj Bajracharya

229. Bajracharya entered the United States in 1996 on a three-month B1 business visa. He overstayed that visa to remain in Queens, New York for five years. He worked at various odd jobs, including at a Queens Pizzeria and a flower Shop in Manhattan, and sent money home to his wife and sons in his native Nepal.

230. Bajracharya planned to return to his home, Katmandu, in fall or winter 2001. In anticipation of that return, he used his video-camera to record the New York streets he had grown to know, so that he could show them to his wife and children. Bajracharya came to the attention of the FBI on October 25, 2001, when a Queens County District Attorney's Office employee observed an "arab male" videotaping outside a Queens' office building that contained the Queens County District Attorney Office and a New York FBI office. Investigators from the Queens D.A. office approached Bajracharya, and asked him why he was taking pictures.

Bajracharya, who speaks little English, tried to explain that he was a tourist. He was taken inside the building, searched, and interrogated. At some during the five hour long interview, FBI and INS agents arrived and took part.

231. Upon the agents' request, Bajracharya brought the FBI and INS to his apartment in Woodside and provided them with his passport and various identification documents. He acknowledged that he had overstayed his visa and was in the United States unlawfully.

232. Bajracharya was then placed under arrest by the INS. FBI Agent Wynne, who was assigned to investigate Bajracharya further, indicated to the INS that he would follow up with a telephone call the next day regarding whether or not the FBI had interest in Bajracharya.

233. An INS form I-213 dated October 26, 2001 indicates that FBI interest in Bajracharya was "undetermined" and the case was assigned to FBI Agent Wynne. That day, however, the FBI special agent in charge of the New York Joint Terrorism Task Force told the INS that Bajracharya was "of active investigative interest to the FBI" based on the videotaping. Thus, the INS district director recommended that Bajracharya be detained in MDC. A second I-213 was issued, indicating that the FBI had "special interest" in Bajracharya. The following day, October 27, the Custody Review Unit at INS headquarters in DC approved Bajracharya's transfer to MDC.

234. Bajracharya was transported to MDC on October 27, 2001. He recalls being pushed forcibly when he was brought out of the van and seeing a T-shirt on the wall with a picture of an American flag on it. He was taken to the ADMAX SHU and placed in a cell alone. He remained alone for the next two months.

235. Bajracharya was interviewed at MDC, this time with the assistance of an interpreter, by FBI Agent Wynne and other law enforcement personnel on October 30, 2001. Bajracharya

provided the agents with information about his time in the United States, his employment history and his finances, and explained that he was videotaping the building in question as a tourist.

Bajracharya was asked whether he was Muslim or knew any Muslims. A Buddhist, Bajracharya explained that he was not Muslim, knew no Muslims, and loved the United States but was planning to return to Nepal to be with his family. In his notes regarding the interview, Wynne did not did not express any doubt as to Bajracharya's credibility, any suspicion of ties to terrorism, nor any interest in him in connection to the PENTTBOM investigation.

236. Two days later, after corroborating various aspects of Bajracharya's statements, FBI Agent Wynne issued an FBI report clearing Bajracharya of any connection to terrorism and informed him that he could expect the matter to be resolved within a week or so. That weekend, Wynne received pleading phone calls from Bajracharya's sons, who had learned of their father's arrest from his roommate in Queens.

237. By November 5, 2001, the New York office of the FBI had completed its clearance investigation of Bajracharya and sent his name to SIOC, at FBI headquarters, to be sent out for a CIA name trace. Agents at the New York field office sent electronic communications to SIOC repeatedly over the next month, reminding them that Bajracharya, along with dozens of others, had been cleared through their investigation, yet remained detained as "of interest" pending Headquarters' final decision. Other FBI documents, including a list of interest detainees maintained in FBI headquarters, indicate that the FBI had closed its investigation and concluded they had no interest in Bajracharya by mid-November 2001. Despite all these clearances, Bajracharya was held at MDC in the ADMAX SHU until he was deported on January 13, 2001.

238. Throughout Bajrachareya's confinement, Agent Wynne spoke to counterterrorism officials in the United States Attorney's Office and within the INS, seeking to understand why

the detainee he had affirmatively cleared of any connection to terrorism was still in the ADMAX SHU at MDC. After becoming frustrated with his inability to achieve official clearance for Bajracharya, Wynne called The Legal Aid Society, and advised an attorney there, Olivia Cassin, that Bajracharya needed representation.

239. The conditions of Bajracharya's confinement were harsh. Like most or all of the other MDC Plaintiffs and class members, Bajracharya 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. Bajracharya was not provided with timely notice of MDC's complaint procedures.

240. Bajracharya is a small man—approximately 5'3", and, at the time of his arrest, about 130 pounds. Whenever Bajracharya was removed from his cell, he was placed in handcuffs, chains, and shackles. Four or more MDC staff members typically escorted him to his destination. Bajracharya offered no resistance, fearing that resistance would only make matters worse.

241. Bajracharya could not sleep due to the light in his cell. He was so traumatized by his experience at MDC that he began weeping constantly. He thought he was going crazy, and several times indicated to MDC personnel that he was feeling suicidal. He recalls screaming to guards that he was going to die. Indeed, Cassin asked an MDC doctor to transfer Bajracharya to general population, and the doctor responded that Bajracharya was crying too much, and would cause a riot. Guards on the ADMAX scolded Bajracharya for crying, and called him and the other detainees foul names.

242. Bajracharya's conditions of confinement were completely without penological justification, as the FBI never developed any evidence to connect Bajracharya to terrorism, and the FBI officer in charge of investigating Bajracharya affirmatively found that he posed no danger as early as November 1, 2001. No one at the FBI or the BOP had any reason to suspect Bajracharya of posing a danger. The only reason Bajracharya was ever suspected of a connection to terrorism was his "Arab" appearance.

243. Bajracharya was charged with a section 237(a)(1)(B) overstay. He attended an immigration hearing at MDC on November 1, 2001 and another on November 19, 2001, during which the immigration attorney assigned to his case sought and received a continuance, as FBI clearance to release Bajracharya had not yet been received from Washington DC. Bajracharya did not have counsel present at that hearing. Ms. Cassin was first able to meet with Bajracharya at MDC for his next immigration hearing on December 6, at which the government acknowledged that Bajracharya had been cleared by the FBI and agreed to voluntary departure. Based on the immigration judge's instructions, Cassin bought Bajracharya an airplane ticket to Katmandu through a deportation officer, but that departure date was cancelled without explanation.

244. Bajracharya was deported to Nepal on January 13, 2002. Cassin and Wynne brought a suit to MDC and provided it to an assistant warden there so that Bajracharya would, at least, have clothing to fly home in. Instead, he was taken to a plane in an orange jumpsuit and shackles. Bajracharya's treatment at the ADMAX SHU profoundly affected him, and continues to affect him. Since his release, he has felt introverted, is quicker to anger, and is less inclined to leave his home and visit with friends. He has trouble sleeping, and feels as though he has lost himself.

Ibrahim Turkmen

245. 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 on Long Island.

246. 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. In mid-April 2001, he began working part-time for a locally-based Turkish construction company.

247. 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.

248. 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.

249. 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.

250. 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 of 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. Turkmen was fully interviewed on October 13, 2001 and no information was uncovered to connect him to the terrorism investigation.

251. Turkmen came to the attention of the FBI when his landlord called the FBI hotline to report that she rented an apartment in her home to several Middle Eastern men, and she “would feel awful if her tenants were involved in terrorism and she didn’t call.” The FBI knew that her only basis for suspecting these men was that they were Middle Eastern; indeed, she reported that they were good tenants, and paid their rent on time.

252. 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.

253. 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.

254. Turkmen's interrogators then instructed him to sign various immigration 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.

255. 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.

256. 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.

257. 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 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.

258. 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 an interpreter was present, the interpreter was not of Turkish descent and 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 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.

259. 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 offices in Newark, New Jersey. Turkmen remained, nonetheless, in the Passaic County Jail for nearly four more months, until February 25, 2002. 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.

260. 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.

261. While confined in the Passaic County Jail, Turkmen was 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 Halal food.

262. On November 1, 2001, Mueller sent an electronic communication requesting CIA name traces on dozens of detainees, including Turkmen, for whom the FBI had found no link to the September 11 terrorist attacks or any other terrorist activity, organization, or plans. Mueller indicated that the detainees would probably be released within seven days. Turkmen was

detained for months longer. A November 16, 2001 memo from the regional director of the INS indicated that the FBI's interest in Turkmen was "unknown."

263. On January 14, 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, the Assistant Special Agent in Charge of the New York FBI indicated to the INS that Turkmen had been cleared on any connection to terrorism. A few days later, on January 17, 2002, 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. On January 31, the INS acknowledged that Turkmen was not of interest to the FBI and thus removed him from the INS custody list, thereby clearing him to be deported.

264. 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.

265. 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. Only the kindness of a complete stranger who lent the necessary funds permitted Turkmen to return home.

266. 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.

267. 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 is thus unable to return to his prior government position.

268. 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.

Akhil Sachdeva

269. Plaintiff Akhil Sachdeva is a native of India and a landed resident in Canada. In late September or early October 2001, 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.

270. Sachdeva came to the attention of the FBI when a New York City fireman called the FBI hotline and reported that he had overheard two gas station employees "of Arab descent" having a conversation in Arabic and English, and the English included some discussion of flight simulators and flying.

271. 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.

272. 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. A memorandum from the interview of Sachdeva on December 20, 2001, the day of his arrest, indicates that the FBI had no further

interest in Sachdeva related to the PENTTBOM investigation. Because no one asserted an investigative interest in Sachdeva, the New York INS office indicated to INS headquarters that FBI interest in Sachdeva was “undetermined.” The FBI did not officially clear Sachdeva until January 30, 2002, over a month later.

273. 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. A February 14, 2002 INS document lists Sachdeva as “ready to remove.” 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.

274. 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 denied.

275. 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..

FIRST CLAIM FOR RELIEF

Fifth Amendment: Due Process – Conditions of Confinement

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

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

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

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

SECOND CLAIM FOR RELIEF

Fifth Amendment: Equal Protection – Conditions of Confinement

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

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

282. In subjecting Plaintiffs and class members to harsh treatment not accorded similarly-situated non-citizens, Defendants, acting under color of law and their authority as federal officers, singled out Plaintiffs and class members based on their race, religion, and/or ethnic or

national origin, and intentionally violated their rights to equal protection of the law under the Fifth Amendment to the United States Constitution.

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

THIRD CLAIM FOR RELIEF
First Amendment: Free Exercise of Religion

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

285. Plaintiffs Ibrahim Turkmen, Ahmer Iqbal Abbasi, Anser Mehmood, Benamar Benatta, Ahmed Khalifa, and Saeed Hammouda bring this claim on their own behalf and on behalf of the class against all Defendants.

286. Defendants 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 access to 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.

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

FOURTH CLAIM FOR RELIEF

First Amendment: Communications Blackout and Interference with Counsel

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

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

290. By adopting, promulgating, and implementing the policy and practice under which MDC Plaintiffs and class members were subjected to a “communications blackout” and other measures while in detention that interfered with their access to family, lawyers and the courts, Defendants intentionally or recklessly violated MDC 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.

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

FIFTH CLAIM FOR RELIEF

Fifth Amendment: Due Process – Blackout and Interference with Counsel

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

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

294. 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 family, lawyers and the courts, Defendants intentionally or recklessly violated MDC 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.

295. MDC 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.

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

SIXTH CLAIM FOR RELIEF
Fourth and Fifth Amendments: Excessive, Unreasonable, and Deliberately Humiliating and Punitive Strip-searches

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

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

299. 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 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

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

301. By creating and approving the policy and practice under which MDC Plaintiffs and class members were subjected to these punitive strip-searches MDC 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

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

SEVENTH CLAIM FOR RELIEF
(42 U.S.C. § 1985: Conspiracy to Violate Civil Rights)

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

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

305. Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk, Sherman, Lopresti and Cuciti, by agreeing to implement a policy and practice whereby Plaintiffs were harassed, physically and verbally abused, subjected to harsh and punitive conditions of confinement, subjected to routine and unreasonable strip-searches, burdened in their exercise of their religious beliefs, denied adequate recreation, nutrition, access to counsel and communication with the outside world because of their race, religion, ethnicity and national origin, conspired to deprive Plaintiffs of the equal protection of the law and of equal privileges and immunities of the laws of the United States, resulting in injury to Plaintiffs' person and property, in violation of 42 U.S.C. § 1985(3).

306. As a result of Defendants' unlawful conduct Plaintiffs suffered physical injury and emotional distress and are accordingly entitled to compensatory damages against all Defendants.

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. Awarding compensatory and punitive damages to Plaintiffs and class members for the constitutional violations they suffered in an amount that is fair, just, reasonable, and in conformity with the evidence;
3. Awarding Plaintiffs attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
4. Ordering such further relief as the Court considers just and proper.

Dated: New York, New York
September 13, 2010

Respectfully submitted,

/s/Rachel Meeropol

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