

U.S. DISTRICT COURT  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IBRAHIM TURKMEN; ASIF-UR-REHMAN :  
SAFI; SYED AMJAD ALI JAFFRI; :  
YASSER EBRAHIM; HANY IBRAHIM; :  
SHAKIR BALOCH; and AKIL SACHVEDA, :  
on behalf of themselves and all others :  
similarly situated, :

Plaintiffs, :

- against - :

JOHN ASHCROFT, Attorney General of the :  
United States; ROBERT MUELLER, Director of :  
the Federal Bureau of Investigation; JAMES W. :  
ZIGLAR, Commissioner of the Immigration and :  
Naturalization Service; DENNIS HASTY, :  
former Warden of the Metropolitan Detention :  
Center; MICHAEL ZENK, Warden of the :  
Metropolitan Detention Center; JOHN DOES 1-20, :  
Metropolitan Detention Center, Corrections :  
Officers, and JOHN ROES 1-20, Federal Bureau :  
of Investigation and/or Immigration and :  
Naturalization Service Agents, :

Defendants. :

02 CV 2307 (JG)

**FIRST AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR  
JURY TRIAL**

-----X  
Plaintiffs Ibrahim Turkmen, Asif-ur-Rehman Safi, Syed Amjad Ali Jaffri, Yasser  
Ebrahim, Hany Ibrahim, Shakir Baloch, and Akil Sachveda, by and through their attorneys, the

Center for Constitutional Rights, allege the following:

**NATURE OF ACTION**

1. Plaintiffs bring this class action on behalf of themselves and the class of male non-citizens from the Middle East, South Asia, and elsewhere who are Arab or Muslim or have been perceived by Defendants to be Arab or Muslim, were arrested and detained on minor immigration violations following the September 11, 2001 terrorist attacks on the United States, and, after receiving final removal orders or grants of voluntary departure, have been held in immigration custody far beyond the period necessary to secure their removal or voluntary departure from the United States.

2. As a matter of policy and practice, Defendants have kept Plaintiffs and other class members in custody long after they have received final removal or voluntary departure orders, not for any legitimate immigration law enforcement purpose, but to incarcerate them – without probable cause – while law enforcement authorities sought to determine whether they had any ties to terrorism. Instead of being presumed innocent until proven guilty, these post-9/11 detainees have been presumed guilty of terrorism until proven innocent to the satisfaction of law enforcement authorities. By adopting, promulgating, and implementing this policy and practice, Defendants John Ashcroft, Robert Mueller, James Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fourth and Fifth Amendments to the United States Constitution, customary international law, and treaty law.

3. While in detention, the Plaintiffs and class members have been subjected to unreasonable and excessively harsh conditions. Like Plaintiffs Turkmen and Sachveda, some class members have been held in overcrowded and unsanitary county jail facilities and housed with potentially

dangerous criminal pretrial detainees, even though they themselves have never been charged with a crime. Like Plaintiffs Safi, Jaffri, Ebrahim, Ibrahim, and Baloch, other class members have been kept in federal facilities, such as the Metropolitan Detention Center ("MDC") in Brooklyn, New York, where they have been placed in tiny cells for over 23 hours a day and strip-searched, manacled, and shackled when taken out of their cells. Like Plaintiffs Safi, Jaffri, Ebrahim, Ibrahim, Baloch, some class members have suffered physical and verbal abuse by their guards. Some, including Plaintiffs Safi, Jaffri, Ebrahim, and Ibrahim, have been badly beaten. Like the Plaintiffs, many class members have been denied the ability to practice their faith during their detention. By subjecting Plaintiffs and class members to unreasonable and excessively harsh conditions and penalizing them for the practice of their faith, Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk, John Does 1-20, and John Roes 1-20 have intentionally and/or recklessly violated rights guaranteed to Plaintiffs and class members under the First, Fourth, and Fifth Amendments to the United States Constitution, and under customary international law and treaty law.

4. Even though Defendants have kept Plaintiffs and other class members in detention for the sole purpose of criminal investigation, Defendants have not provided them with the rights to which those suspected of crimes are entitled under the Constitution. Defendants have failed to provide them with a hearing before a neutral judicial officer to determine whether Defendants had probable cause to believe that the Plaintiffs and other class members were engaged in criminal activity. In addition, Defendants have failed to provide Plaintiffs and other class members with a criminal indictment or information citing criminal charges on which the detention was based, much less with counsel or a speedy trial. Instead of being afforded these

fundamental protections, Plaintiffs and other class members were detained indefinitely pending the outcome of Federal Bureau of Investigation (FBI) and Immigration and Naturalization Service (INS) "clearances." In adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fourth and Sixth Amendments to the Constitution.

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

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

7. In detaining Plaintiffs and class members far beyond the time necessary to effectuate their removal, Defendants Ashcroft, Mueller, Ziglar, and others have also engaged in racial, religious, ethnic, and/or national origin profiling. Plaintiffs' and class members' race, religion, ethnicity, and/or national origin have played a determinative role in Defendants' decision to detain them initially, and then to keep them detained beyond the point at which removal or voluntary departure could have been effectuated, in violation of the rights guaranteed to them by the Fifth Amendment to the Constitution.

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

### **JURISDICTION AND VENUE**

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

10. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and 28

U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act), and 28 U.S.C. § 1350 (the Alien Tort Claims Act).

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) in that 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**

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

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

15. Plaintiff SYED AMJAD ALI JAFFRI is a native of Pakistan and a landed immigrant of Canada. Mr. Jaffri, a Muslim, has a wife and four children who reside in Lahore, Pakistan. Since May 1997, Mr. Jaffri has periodically visited family and friends in the United States,

entering this country from Canada or Pakistan on tourist visas. He has no criminal record in this country or in any other country. Mr. Jaffri has never been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, he abhors terrorism.

16. Plaintiffs YASSER EBRAHIM and HANY IBRAHIM, brothers whose surnames are spelled differently, are natives of Egypt and Muslims. Since 1992, Yasser has visited the United States on four occasions, each time on a tourist visa. In 1996, while in this country on a tourist visa, he married a United States citizen, with whom he lived in Queens, New York, until they separated in 1998. Shortly thereafter, Yasser returned to Egypt. In January 2001, however, Yasser came back to the United States on a tourist visa, with his younger brother Hany. Hany, who also had a tourist visa, was visiting this country for the first time. Neither Yasser nor Hany has a criminal record in this country or in any other country. Neither has ever been involved with terrorists, terrorist organizations, or terrorist activity. Indeed, both Yasser and Hany abhor terrorism.

17. Plaintiff SHAKIR BALOCH is a native of Pakistan. Mr. Baloch, a Muslim, comes from a prominent political family. He himself is a member of the Progressive Peoples Party, which is dedicated to the promotion of progressive secularism in Pakistan. Mr. Baloch holds a medical degree from Bolan Medical College in Quetta, Pakistan. He briefly worked as a family physician in government service in that country. Mr. Baloch became a landed immigrant in Canada in 1989 and a Canadian citizen in 1994. He has a wife and a 15 year old daughter, both of whom reside in Toronto. Unable to find work in Canada, Mr. Baloch has entered and stayed in the United States for several extended periods over the past decade, most recently in April 2001.

18. Plaintiff AKIL SACHVEDA is a native of India and a Hindi. He holds a bachelor of arts

degree in commerce from the University of Delhi. In December 1998, Mr. Sachveda was granted landed immigrant status in Canada. Since 1995, Mr. Sachveda has entered the United States for extended periods of time before returning to Canada. In 1998, while working as a travel agent in Canada, Mr. Sachveda married a green card holder who owned a gas station in Long Island, New York. For the next several years, Mr. Sachveda lived with his wife in the United States and worked at her gas station. During this period, Mr. Sachveda applied to the INS for resident status in the United States. In early 2001, however, Mr. Sachveda and his wife decided to get a divorce. He briefly returned to Canada. In late September or early October 2001, Mr. Sachveda re-entered the United States to finalize his divorce and pack his belongings for his move back to Canada.

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

20. Defendant ROBERT MUELLER is the Director of the Federal Bureau of Investigation. Defendant Mueller was instrumental in the adoption, promulgation and implementation of the policies and practices challenged here. Upon information and belief, he also authorized, condoned, and/or ratified the unreasonable and excessively harsh conditions under which Plaintiffs and other class members have been detained. Defendant Mueller is being sued in his individual capacity.



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

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

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

24. Defendants JOHN DOES 1-20 are federal employees who are employed as corrections officers at the MDC. Singly and collectively, Defendants John Does 1-20 have subjected Plaintiffs and other class members confined at the MDC to unreasonable and excessively harsh

conditions. Defendants John Does 1-20 are being sued in their individual capacities.

25. Defendants JOHN ROES 1-20 are federal law enforcement agents who are employed by the FBI or the INS. Singly and collectively, Defendants John Roes 1-20 have subjected Plaintiffs and other class members to coercive and involuntary custodial interrogation. Defendants John Roes 1-20 are being sued in their individual capacities.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiffs bring this action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class of all other persons similarly situated.

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

- (a) arrested on immigration violations by the INS or FBI after the September 11<sup>th</sup> terrorist attacks;
- (b) detained at the MDC or the Passaic County Jail;
- (c) issued a final removal or voluntary departure order from the INS;
- (d) held in custody longer than necessary to secure their removal or voluntary departure from the United States; and
- (e) never afforded, or else not afforded on a timely basis, a hearing before a neutral judicial officer for a determination as to whether probable cause existed to justify detaining them beyond the time necessary to secure their removal or voluntary departure from the United States.

28. The members of the class are too numerous to be joined in one action, and their joinder is impracticable in part because Defendants have kept their identities secret. While the exact number is presently unknown to Plaintiffs' counsel, the class likely exceeds 87 individuals. See

Though Not Linked to Terrorism, Many Detainees Cannot Go Home, N.Y. Times, Feb. 18, 2002, at A1 (reporting that the United States Department of Justice has blocked the departure of 87 mostly Arab or Muslim non-citizens who have received voluntary departure or removal orders, “while investigators comb through information pouring in from overseas to ensure that they have no ties to terrorism”).

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

- (a) whether Defendants adopted, promulgated, and implemented a policy and practice of depriving Plaintiffs and class members of their Fourth Amendment right to be free from unreasonable seizures by detaining them months longer than necessary to secure their removal or voluntary departure from the United States;
- (b) whether Defendants adopted, promulgated, and implemented a policy and practice depriving Plaintiffs and class members of their liberty without due process of law in violation of the Fifth Amendment and customary international law by detaining them months longer than necessary to secure their removal or voluntary departure from the United States;
- (c) whether Defendants adopted, promulgated, and implemented policies and practices depriving Plaintiffs and class members of their liberty without due process of law in violation of the Fifth Amendment and in violation of their rights under customary international law, by subjecting them to outrageous, excessive, cruel, inhuman, and degrading conditions of confinement;
- (d) whether Defendants adopted, promulgated and implemented a policy and practice depriving Plaintiffs and class members of their rights under the Fourth and Sixth Amendments, including the right to a probable cause determination made by a neutral judicial officer, the right to be provided on a timely basis with a criminal indictment or information citing the criminal charges on which the detention is based, and the right to a speedy trial;
- (e) whether Defendants adopted, promulgated, and implemented a policy and practice under which Plaintiffs and class members were subjected to coercive and to involuntary custodial interrogation designed to overcome their will and to

coerce involuntary and incriminating statements from them, depriving Plaintiffs and class members of their right to due process of law under the Fifth Amendment;

(f) whether Defendants adopted, promulgated, and implemented a policy depriving Plaintiffs and class members of equal protection of the law in violation of the Fifth Amendment by detaining them months longer than necessary to secure their removal or voluntary departure from the United States because of their race, religion, ethnicity, and/or national origin;

(g) whether Defendants adopted, promulgated, and implemented a policy confiscating the personal property of Plaintiffs and class members in violation of the Fifth Amendment;

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

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

30. Plaintiffs' claims are typical of those of the class. First, each Plaintiff is a male non-citizen of Middle Eastern or South Asian descent who is Arab or Muslim or has been perceived by Defendants to be Arab or Muslim. Second, each Plaintiff was arrested and detained subsequent to the September 11<sup>th</sup> terrorist attacks on minor (but deportable) immigration violations. Third, each Plaintiff subsequently received a removal or a voluntary departure order. Fourth, each Plaintiff was nonetheless held for months longer than necessary to secure his removal or voluntary departure from the United States. Fifth, each Plaintiff was held under unreasonable and excessively harsh conditions of confinement. Sixth, each Plaintiff was never afforded, or else not afforded on a timely basis, a hearing before a neutral judicial officer to determine whether there was probable cause to detain them beyond the time when all legitimate

immigration law enforcement purposes had been served. Finally, the race, religion, ethnicity and/or national origin of each plaintiff played a determinative role in Defendants' decision to detain them.

31. 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.

32. 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.

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

34. 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.

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

36. Common questions of law and fact also clearly predominate within the meaning of Rule 23(b)(3). Class action treatment provides a fair and efficient method for the adjudication of this controversy, affecting a large number of persons, joinder of whom is impracticable. The class

action provides an effective method whereby the enforcement of Plaintiffs' and class members' rights can be fairly managed without unnecessary expense and duplication.

## STATEMENT OF FACTS

### General Allegations

37. In the wake of the September 11<sup>th</sup> terrorist attacks, the INS arrested and detained well over 1,200 male, non-citizens from the Middle East, South Asia, and elsewhere, who appeared to be Arab or Muslim ("the post-9/11 detainees"), most of them on minor immigration violations -- such as overstaying visas, working illegally on tourist visas, or failing to meet matriculation and/or course work requirements for student visas. While the INS has sometimes in the past sought to remove non-citizens for these violations, it generally has not detained them during their removal proceedings.

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

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

40. Upon information and belief, after immigration hearings, many post-9/11 detainees have

received final removal orders or accepted voluntary departure orders. Even though the INS could have promptly secured the removal or voluntary departure of these individuals, it has kept them in custody for up to five months after the issuance of their final immigration orders -- far longer than necessary to secure their removal or voluntary departure from the United States, and well beyond the time that the INS is statutorily authorized to detain them. 8 U.S.C. § 1231(a)(1) (90-day removal period); 8 U.S.C. § 1229c(b)(2) (60-day period for voluntary departure granted at the conclusion of removal proceedings).

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

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

43. Upon information and belief, while in INS custody, most post-9/11 detainees have been repeatedly interrogated by both FBI and INS agents. Very few have been represented by counsel

during these interrogations. Many have not even been told of their right to counsel. Others have been coerced to waive that right, even though they could not read the printed English language on the waiver forms which they were instructed to sign and even though they did not fully understand the nature of the right being waived. When post-9/11 detainees have asked to adjourn interrogations so they can consult with an attorney, FBI and INS agents have generally refused to do so.

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

45. Upon information and belief, while civil liberties, civil rights, and immigrant advocacy organizations have been ready, willing, and able to provide free legal services to post-9/11 detainees, Defendants Ashcroft, Mueller, Ziglar, Hasty, Zenk and their employees, agents, and contractors have substantially limited such organizations' access to post-9/11 detainees. They have imposed a virtual "blackout" on information on post-9/11 detainees, refusing to disclose



their names, the facilities in which they are being held, or information about their cases. They have also denied requests by civil liberties, civil rights, and immigrant advocacy organizations to visit INS facilities or county jails to screen post-9/11 detainees in need of legal assistance.

46. Upon information and belief, even though non-citizen INS detainees must be advised of their right to seek assistance from their consulates under Article 36 of the Vienna Convention on Consular Relations, April 24, 1963, TIAS 6820, 21 U.S.T. 77 ("Vienna Convention"), many post-9/11 detainees have not been advised of this right. Others have been coerced to waive that right, even though they cannot read the printed English language on the waiver forms which they are asked to sign and do not understand the nature of the right being waived. When post-9/11 detainees have sought to contact their consulates, their requests have been denied.

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

- (a) nearly all of the detainees are Arab or Muslim men of Middle Eastern or South Asian origin;
- (b) nearly all have been arrested and detained for minor immigration violations and on scant evidence of dangerousness or flight risk;
- (c) nearly all have often been held for more than 48 hours without notice of

the charges against them;

- (d) nearly all have been denied bond; and
- (e) nearly all have been held in detention without cause for as long as six months after their final deportation or voluntary departure orders could have been carried out.

48. Even though Plaintiffs and other class members have been detained indefinitely for the purposes of a criminal investigation, Defendants have deliberately denied them the mandatory constitutional, statutory, and common law protections afforded criminal defendants, including access to the courts, by, among other things:

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

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

- (a) the above-mentioned unconstitutional policies have not been applied to all non-citizens in the United States alleged to have violated the immigration laws. Since the September 11<sup>th</sup> terrorist attacks, virtually all of these non-citizens

arrested and detained on minor immigration violations have been Arab or Muslim or perceived to have been Arab or Muslim;

(b) they have been detained in situations where similarly situated non-Arabs and non-Muslims have not been detained;

(c) they have been detained beyond the time necessary to secure their removal or voluntary departure from the United States, while similarly situated non-Arab and non-Muslim detainees have been removed or allowed to depart within a matter of days or weeks after final removal or voluntary departure orders have been issued;

(d) they have been verbally abused and subjected to statements slandering the Muslim faith and their adherence to it by the Doe Defendants and by Defendant Ashcroft, who has expressed anti-Muslim sentiments, including a statement reportedly proclaiming the inferiority, moral and otherwise, of the Muslim people, to wit: "Islam is a religion in which God requires you to send your son to die for him. Christianity is a faith in which God sends his son to die for you;" and

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

### **Allegations Concerning the Plaintiffs**

#### **Plaintiff Ibrahim Turkmen**

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

50. In late October 2000, Mr. 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. Mr. Turkmen worked at the latter

service station several days a week until mid-April 2001, when he began working part-time for a locally-based Turkish construction company.

51. From his arrival in the United States until he was taken into INS custody, Mr. 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, Mr. Turkmen sent most of his meager earnings home to his family.

52. Mr. 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, Mr. Turkmen understood very little spoken English, and he could not read English at all.

53. At about 2:30 p.m. on October 13, 2001, slightly more than a month after the September 11<sup>th</sup> terrorist attacks, two FBI agents visited Mr. 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 Mr. Turkmen whether he had any involvement in the September 11<sup>th</sup> terrorist attacks and whether he had any association with terrorists. They also inquired as to his immigration status, among other things.

54. Mr. 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, charged Mr. Turkmen with being an associate of Osama bin Laden, placed him under arrest, confiscated his personal items (passport, identification, credit cards, etc.) and money, and searched his home without his consent.

55. Mr. 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, Mr. Turkmen again had great difficulty understanding the questions. Still, he did his best to answer them truthfully. Mr. Turkmen again denied any involvement with terrorists, terrorist organizations, or terrorist activity. He was held at the Nassau County INS facility for five or six hours.

56. That evening, at approximately 11:30 p.m., Mr. 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, Mr. Turkmen again did his best to answer them truthfully. For the third time, he denied any involvement with terrorists, terrorist organizations, or terrorist activity.

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

58. Early the next morning, October 14, 2001, Mr. 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.

59. Shortly after arriving at the Passaic County Jail, Mr. 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.

60. On October 29, 2001, two FBI agents visited Mr. Turkmen at the Passaic County Jail. They asked him still more questions about his immigration status, his reasons for entering the United States, his work experience, his religious beliefs, and other personal matters. Another Turkish post-9/11 detainee fluent in English translated the questions for Mr. Turkmen, who answered them all truthfully. For the fourth time, he denied any involvement with terrorists, terrorist organizations, or terrorist activities. At no time during the interrogation did the agents ever advise Mr. Turkmen of his right to counsel, or, for that matter, any "Miranda rights."

61. Two days later, on October 31, 2001, Mr. 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 Mr. Turkmen this time was provided with an interpreter, that interpreter (who was not of Turkish descent) was fluent in neither Turkish nor English. After conceding that he had overstayed his tourist visa, Mr. Turkmen accepted a voluntary departure order requiring him to leave the United States by November 30, 2001. He declined to request bond solely because the Judge assured him that he would be allowed to return to Turkey within a matter of days. The INS never appealed the voluntary departure order issued to Mr. Turkmen.

62. When he returned to the Passaic County Jail later that day, Mr. Turkmen called a friend to ask him to purchase a plane ticket for Mr. Turkmen's return to Turkey. Two days later, on November 2, 2001, Mr. Turkmen's friend brought the ticket to the INS's offices in Newark, New Jersey. Mr. Turkmen remained, nonetheless, in the Passaic County Jail for nearly four more months, until February 25, 2002, even though the INS could have effectuated his voluntary departure within a matter of days.

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

64. While confined in the Passaic County Jail, Mr. 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, Mr. Turkmen was beside himself with worry. Unable even to call his seriously ailing wife, he suffered extreme emotional distress.

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

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

66. Upon his arrival at the Passaic County Jail, Mr. Turkmen was given a list of telephone numbers to call for free legal services. Most of the numbers, however, were incorrect or no

longer valid. For weeks, one of Mr. Turkmen's friends on the outside tried to call those numbers, with no success. On information and belief, other post-9/11 detainees in the Passaic County Jail given the same list of telephone numbers to call for free legal services encountered the very same problem.

67. While confined in the Passaic County Jail, Mr. Turkmen was never informed of his right under Article 36 of the Vienna Convention to consult with the Turkish Consulate. Had he known that he had such a right, he could have, and would have, sought immediate assistance from the Consulate.

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

69. One month later, on February 17, 2002, Mr. Turkmen was visited by another INS agent, who told Mr. 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 Mr. 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 Mr. 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.

70. As soon as Mr. 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, Mr. Turkmen denied any involvement with terrorists, terrorist organizations, or terrorist activity. After the interrogation concluded, he was allowed to leave for Konya, though he still had no money to buy the bus ticket. But for the kindness of a complete stranger who lent him the necessary funds, Mr. Turkmen might still be stranded in Istanbul.

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

72. The presumption of guilt thus follows Mr. 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, Mr. Turkmen is deemed a "security risk" and thus unable to return to his prior government position. After seeking employment for months, Mr. Turkmen recently found a job - as a service driver for a factory.

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

**Plaintiff Asif-ur-Rehman Safi**

74. Asif-ur-Rehman Safi entered the United States through Los Angeles on July 6, 2001, on a three-month tourist visa which was to expire in early October 2001. After briefly staying with family and friends in Los Angeles, he flew to New York City to see other friends. While in New York City, Mr. Safi, a Microsoft Certified Professional, earned a small sum fixing computers and inputting data for a small business.

75. On September 29, 2001, shortly before his tourist visa was to expire, Mr. Safi flew to Toronto to spend a few days. Canadian immigration officials, however, refused to allow him into the country. Consequently, Mr. Safi flew back to New York City the next day, September 30, 2001. He was arrested by two Port Authority police officers as soon as he stepped off the plane at LaGuardia Airport.

76. After being interrogated by Port Authority police officers, Mr. Safi was taken to an INS facility in Manhattan, where he was again questioned, this time by two FBI agents for approximately one to two hours. Mr. Safi, who is fluent in English, answered their questions truthfully. He denied any involvement with terrorists or terrorist activity. The two FBI agents, however, disputed Mr. Safi's veracity, accusing him of involvement in the September 11<sup>th</sup> terrorist attacks. Charging Mr. Safi with having a strong association with terrorists, the agents made threatening remarks to him such as "you will be rotting in jail if you don't give us names" and "Muslims are terrorists and we know you are one of them." Taking two telephone books that

Mr. Safi had on his person, they told him that they would check every contact in his books and if they found any of them to be suspicious, he would be in serious trouble. At an INS official's request, Mr. Safi signed a written statement that he had been working in the United States without authorization. While being interrogated, Mr. Safi asked to see the French Consulate. That request was never granted, even after Mr. Safi put that request in writing.

77. The next day, October 1, 2001, Mr. Safi was transported by van to the MDC in handcuffs with chains around his waist and shackles on his legs. At the MDC, INS agents dragged Mr. Safi from the van into the building, slamming his face into several walls on the way. Despite the pain, Mr. Safi offered no resistance, fearing that would only make matters worse. After being fingerprinted, Mr. Safi was strip-searched and given an orange jumpsuit. All of his personal belongings, including his personal identification, eyeglasses, and money, were confiscated.

78. Still in handcuffs, chains, and shackles, Mr. Safi was taken by the Doe Defendants to the Special Housing Unit on the Ninth Floor of the MDC. Once there, the Doe Defendants again strip-searched Mr. Safi and subjected him to physical and verbal abuse. Among other things, they bent back his thumbs, stepped on his bare feet with their shoes, and pushed him into a wall so hard that he fainted. After Mr. Safi fell to the floor, they kicked him in the face. The Doe Defendant in charge, a lieutenant, called Mr. Safi a "terrorist," boasting that Mr. Safi could expect continued harsh treatment because of his involvement in the September 11<sup>th</sup> terrorist attacks. The same Doe Defendant threatened to punish him if he even so much as smiled. Mr. Safi offered no resistance.

79. Mr. Safi was placed in a 10-foot-by-six-foot cell shared by another post-9/11 detainee. He was confined to his cell all day long, nearly every day, for the next five months. Though the

Doe Defendants occasionally offered to transport Mr. Safi, in handcuffs, chains and shackles to a very cold "recreation" cell, very early in the morning (at about 5 a.m.) for one hour, Mr. Safi declined these unreasonable offers. Mr. Safi's cell was cold and uncomfortable on most days (though considerably warmer than the "recreation" cell). At night, he found it difficult to sleep, because the lights stayed on 24 hours a day.

80. Mr. Safi was not even given a bar of soap or a towel with which to wash until his second week at the MDC. He was denied all reading material until mid-December 2001, when the Doe Defendants finally gave him a copy of the Qur'an. Mr. Safi was, however, unable to read that holy book for several days more, until the Doe Defendants returned the eyeglasses (confiscated from him on October 1, 2001).

81. While Mr. Safi was confined at the MDC, the Doe Defendants deliberately interfered with his ability to observe the mandatory practices of his religion. They denied him the Hallal food required by his faith. For the first month or so, they constantly interrupted him during his daily prayers. They further withheld from him the time of day making it impossible for Mr. Safi, caged in a windowless cell, to know when to say his mandatory prayers.

82. While confined at the MDC, Mr. Safi received constant verbal abuse. The Doe Defendants swore at him, belittled and insulted his religion, and degraded him. They called him a "religious fanatic" and a "terrorist." On one occasion, after a post-9/11 detainee in an adjacent cell commented that the food was surprisingly decent for a change, one Doe Defendant (a lieutenant) told Mr. Safi and his neighbor: "You are not supposed to have good food. I will report it."

83. On October 14, 2001, two weeks after his arrest, Mr. Safi was interrogated by six FBI and

INS agents, who asked him wide-ranging questions about his family back in France, his work for Pakistan International Airlines, his faith, and his political views – very few of which had anything to do with his immigration violation. Mr. Safi again denied any involvement with terrorists, terrorist organizations or terrorist activity.

84. Three days later, on October 17, 2001, at a closed hearing held in MDC, an Immigration Judge ordered Mr. Safi removed for working without authorization. When Mr. Safi asked whether he needed a lawyer, an INS official told him that counsel was unnecessary since the INS would soon put him on a plane back to France. Mr. Safi nonetheless remained in custody for another four and one-half months until he received “clearances” from the FBI and INS, even though the INS could have effectuated his removal within a matter of a day. Neither Mr. Safi nor the INS appealed the final removal order issued to Mr. Safi.

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

86. While confined in MDC’s Special Housing Unit, Mr. Safi was not allowed to make any telephone calls for nearly two months, until November 26, 2001, when the Doe Defendants finally permitted him to make one telephone call. He immediately called the French Consulate, which sent someone to meet him at the MDC on November 29, 2001. At that meeting, Mr. Safi was told that the INS had given Consulate officials (false) assurances that he would soon be

released. But for the fact that Mr. Safi's wife included the Consulate's telephone number in a letter to him, Mr. Safi would have been unable to contact the Consulate. The Doe Defendants had refused to give him the French Consulate's address or telephone number.

87. On December 18, 2001, two individuals – an INS agent and a New York City police detective – visited Mr. Safi at the MDC. They questioned him about his family back in France, his work for Pakistan International Airlines, his faith, and his political views, though without advising him of his right to counsel. Mr. Safi again denied any involvement with terrorists, terrorist organizations or terrorist activity. After the interrogation was over, Mr. Safi's two interrogators assured him that he would soon be released. Mr. Safi, however, remained detained at the MDC for nearly three more months.

88. On March 5, 2002, INS agents took Mr. Safi from the MDC to LaGuardia Airport and put on an airplane to France, without, however, returning his money or critical employment identification cards. The INS has yet to return the latter documents – documents that Mr. Safi must have to travel.

89. As a result of his prolonged detention in the United States, Mr. Safi's employer, Pakistani National Airlines, has begun proceedings to terminate his employment, evidently deeming him a security risk. If terminated, Mr. Safi will lose the benefits accrued to him from 18 years of service. A presumption of guilt thus continues to follow Mr. Safi even after his deportation from the United States, despite the fact that he has never been involved in terrorist activity and the complete absence of any evidence that he has been involved in such activity.

90. Mr. Safi continues to suffer the emotional and psychological effects of his four and one-half months detention in the United States. He has great difficulty, for example, sleeping at

night, thinking about what happened to him at MDC.

**Plaintiff Syed Amjad Ali Jaffri**

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

92. Several days later, on September 27, 2001, approximately 10 INS and FBI agents, accompanied by a United States Department of Labor official and several police officers, came to Mr. Curzado's apartment to see Mr. Jaffri. They searched Mr. Jaffri's room, without a search warrant and without his consent, finding in a closet several stun guns that belonged not to Mr. Jaffri but rather to Mr. Curzado's children. Mr. Jaffri was arrested and charged with criminal possession of a weapon, a charge which was dismissed two days later because the stun guns did not belong to Mr. Jaffri.

93. Mr. Jaffri was taken to an INS facility in Manhattan, where FBI and INS agents interrogated him about possible involvement in the September 11<sup>th</sup> terrorist attacks and other terrorist activity, without advising him of his right to counsel, or, for that matter, any of his "Miranda rights." One FBI agent asked Mr. Jaffri to sign a form retroactively consenting to the search of his room. Mr. Jaffri, however, refused to do so, prompting the agent to angrily say: "Now you will learn the hard way." When Mr. Jaffri asked to speak with the Canadian Consulate, the agent instructed him to sign another form -- possibly a form waiver of his right to speak with his consulate, though Mr. Jaffri was never given a copy to keep. Mr. Jaffri reluctantly signed the form, hoping that it would expedite his release. He was never allowed to see the

Canadian Consulate.

94. Two days after his arrest, on September 29, 2001, Mr. Jaffri was taken to the MDC, where he was strip searched, fingerprinted and given an orange jumpsuit. All of his personal belongings, including his personal identification, were confiscated. He was placed in a tiny solitary (windowless) cell in the Special Housing Unit. Mr. Jaffri was confined to that cell nearly all day, nearly every day, for the next six months, until April 1, 2002. Though the Doe Defendants occasionally offered to transport him in handcuffs, chains and shackles to a very cold "recreation" cell very early in the morning (at about 5 a.m.) for one hour, Mr. Jaffri declined the unreasonable offer.

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

96. On most days, Mr. Jaffri's cell was cold and uncomfortable. He had great difficulty sleeping at night, because the lights stayed on 24 hours a day. For the first two months, Mr. Jaffri was denied a bar of soap. He received only two squares (pieces) of toilet paper per day. His meals were served without eating utensils. For months, he was not allowed to have any reading material, not even the Qur'an. While there were other post-9/11 detainees held in adjoining cells, Mr. Jaffri was forbidden to talk with them, and vice-versa. The Doe Defendants threatened to cut off visits from his attorney if he broke the rule.

97. While Mr. Jaffri was confined in the MDC's Special Housing Unit, the Doe Defendants



deliberately interfered with his ability to observe the mandatory practices of his religion. They denied him the Hallal food required by his faith. For the first month or so, they constantly interrupted him during his daily prayers. Finally, they withheld from him the time of day making it impossible for Mr. Jaffri, caged in a windowless cell, to know when to say his mandatory prayers.

98. While Mr. Jaffri was confined in the MDC, he was subjected to repeated physical and verbal abuse by the Doe Defendants. When he was first brought to the MDC's Special Housing Unit, for example, one Doe Defendant, in the presence of other Doe Defendants, told him: "Whether you [participated in the September 11<sup>th</sup> terrorist attacks] or not, if the FBI arrested you, that's good enough for me. I'm going to do to you what you did." Several Doe Defendants then slammed Mr. Jaffri's head into a wall, severely loosening his lower front teeth and causing him extreme pain. Despite the pain, Mr. Jaffri offered no resistance, again fearing that resistance would only make matters worse. Throughout his stay at the MDC, Mr. Jaffri felt pain and discomfort in the vicinity of his lower front teeth. He was never, however, allowed to see a dentist.

99. On December 20, 2001, during a closed immigration hearing held at MDC, an Immigration Judge ordered Mr. Jaffri removal. Neither Mr. Jaffri nor the INS contested that order. Mr. Jaffri, nonetheless, remained in custody for nearly three months and months more, until he received "clearances" from the FBI and INS, even though the INS could have effectuated his removal within a matter of days.

100. Mr. Jaffri was detained for nearly three and one-half months longer than necessary to effectuate his removal from the United States solely on the remote possibility that law

enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that Mr. Jaffri engaged in terrorist activity. Nor was an indictment or information against Mr. Jaffri ever filed with a court citing criminal charges on which his continued detention was based.

101. On April 1, 2002, INS agents took Mr. Jaffri to LaGuardia Airport, putting him on a plane to Canada, without any identification or money.

**Plaintiffs Yasser Ebrahim and Hany Ibrahim**

102. Plaintiffs Yasser Ebrahim and Hany Ibrahim entered the United States on tourist visas in January 2001. For the next nine months, they shared an apartment in Brooklyn, New York with several friends from Egypt and Morocco. During that time, Yasser began a website design business, while Hany occasionally worked in a local delicatessen.

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

104. Once inside the apartment, the FBI and INS agents interrogated Yasser, Hany, and their roommates separately, asking them questions about their immigration status and terrorist activity in the United States, without advising them of their right to counsel, or, for that matter, of any of his “Miranda rights.” Yasser, Hany, and their roommates all denied any involvement in the September 11<sup>th</sup> terrorist attacks or any other terrorist activity. When the interrogation was over, the FBI and INS agents told Yasser, Hany, and one Egyptian roommate that “we have to

take you with us.” They arrested and handcuffed all three, denying Yasser’s and Hany’s request to call an attorney. Without Yasser’s, Hany’s, or their roommates’ consent, the FBI and INS agents conducted a search of the apartment, seizing all of Yasser’s religious and other books in the process.

105. Yasser and Hany, as well as their Egyptian roommate, were taken to the INS’s Varick Street facility in Manhattan. There, FBI and INS agents again interrogated Yasser and Hany about their immigration status and terrorist activity in the United States, once again failing to advise them of their rights to counsel. Yasser and Hany again asked to call an attorney but their request again was denied. The FBI and INS agents who interrogated Yasser and Hany, however, asked them if they would consent to waive their right under Article 36 of the Vienna Convention to consult with their consulate. Yasser and Hany reluctantly agreed to do so, fearing that a refusal would only further antagonize their hostile custodians.

106. Yasser and Hany were held for approximately 24 hours at the INS’s Varick Street facility in Manhattan. They were denied access to bathroom facilities and forced to sleep at night on the floor. All of their personal belongings, including their personal identification and money, were confiscated.

107. The next day, October 1, 2001, Yasser and Hany were taken in handcuffs, chains, and shackles to MDC. Upon their arrival, they were fingerprinted, strip searched, and given orange jumpsuits to wear. The Doe Defendants then escorted Yasser and Hany upstairs to the Special Housing Unit on the ninth floor, repeatedly slamming their heads into the wall and calling them “Fucking Muslims” and “terrorists” along the way. When Hany tried to explain that he and his brother were only there on immigration charges, one Doe Defendant told him to shut

up, stating “If you open your mouth, I will crush you under the elevator, just like at the World Trade Center.”

108. Yasser and Hany each suffered serious injuries as a result of the beatings received upon their arrival at MDC. Their arms and noses remained black and swollen for several days thereafter. Even though Yasser and Hany were in considerable pain and had great difficulty breathing, they were not treated for their injuries.

109. Yasser and Hany were placed in separate cells and were not allowed to see or speak with each other for 35 days. On November 5, 2001, however, they were moved into the same cell. While Hany was eventually transferred out of the Special Housing Unit into MDC’s general prison population (on January 17, 2002), Yasser remained confined in the Special Housing Unit for the entire duration of his confinement at MDC. (Although the paragraphs below primarily describe Yasser’s experience in the Special Housing Unit, Hany experienced many of the same conditions during his confinement there.)

110. During his incarceration at MDC, Yasser was locked in his cell for nearly 24 hours a day almost every day. While corrections officers periodically offered to escort Yasser to a “recreation” cell in the early morning hours, he rarely took them up on the offer because the “recreation” cell was freezing cold, especially during the fall and winter months, and because the Doe Defendants, for example, would verbally and physically abuse him on the trip to and from the recreation cell.

111. Whenever Yasser was removed from his cell, he was first strip searched and placed in handcuffs, chains, and shackles. The Doe Defendants frequently inflicted unnecessary pain, while escorting Yasser outside of his cell, by deliberately kicking the manacles and

shackles into his lower body.

112. The lights remained on in Yasser's cell 24 hours a day, making it difficult, if not impossible, for him to sleep at night. To ensure that Yasser remained sleep-deprived, the Doe Defendant banged on his door every 15 minutes, at all hours of the day and night. When Yasser complained that he could not sleep, a psychiatrist was sent to speak with Yasser through the tiny slot in his cell door -- in the presence of several corrections officers. After briefly listening to Yasser's complaint, the psychiatrist told him to stop drinking coffee and play lots of basketball during his early morning "recreation" hour.

113. On October 10, 2001, one FBI agent and one INS agent visited Yasser at MDC to interrogate him again about his knowledge of terrorist activity. Neither agent advised Yasser of his right to counsel. One did, however, ask Yasser whether he would answer questions without an attorney. Yasser agreed to do so, because he had nothing to hide and because he naively believed that his truthful answers to the agents' questions would expedite his release. Yasser again denied any involvement in the September 11<sup>th</sup> terrorist attacks or any other terrorist activity. During the interrogation, the agents conceded to Yasser that he was not arrested solely because he had violated the immigration laws. They also told him that he would receive help with his immigration problems if he had information to help their investigation into terrorist activity.

114. The same two FBI and INS agents interrogated Hany the same day at MDC, though without advising him of his right to counsel. Hany, too, again denied any involvement in the September 11<sup>th</sup> terrorist attacks or any other terrorist activity. Several days later, the two agents returned to MDC to ask for Hany's consent to seize the computer in Yasser's and Hany's

apartment. Hany gave his consent, naively believing that would further establish his and his brother's innocence and expedite their release.

115. On October 14, 2001, they were each given a list of telephone numbers to call for free legal services. They were also allowed to make a few collect calls. Try as they might, however, Yasser and Hany were unable to contact any of the organizations on the list over the next several weeks because the listed telephone numbers were largely incorrect. In late October, 2001, Yasser and Hany each received a new list of telephone numbers to replace what the Doe Defendants conceded to Yasser and Hani was a the admittedly defective list. Shortly thereafter, Hany contacted a Legal Aid attorney, Marianne Yang, who agreed to represent both Yasser and Hany at their immigration hearings.

116. On November 6, 2001, Yasser and Hany were taken downstairs separately in handcuffs, chains, and shackles to see an Immigration Judge who was holding closed immigration hearings for post-9/11 detainees at MDC. On the way, the Doe Defendant in charge twice whispered to Yasser, "The camera is your best friend. If not for the camera, I would have smashed your faces, you mother fuckers." When Yasser complained about this verbal abuse at his immigration hearing, the Judge abruptly cut Yasser off, stating "I don't care. This is not my job."

117. Yasser's and Hany's immigration cases were heard together. Ms. Yang appeared on their behalf, while an INS trial attorney appeared on behalf of the government. A female FBI or INS agent was also present, though she neither entered an appearance nor spoke on the record. Ms. Yang asked that Yasser and Hany be granted voluntary departure and bond. The Immigration Judge, however, denied the request, after the agent handed him a note off the record.

The hearing was adjourned.

118. Two weeks later, on November 20, 2001, Yasser and Hany were again brought before an Immigration Judge at MDC. This time they were represented by new pro bono counsel Matthew Guadagno. The Judge denied Yasser's and Hany's request for bond, stating that they were "disappearance risks." Desperate to expedite their release and return home to their ailing mother in Egypt, Yasser and Hany reluctantly accepted final deportation orders, effective immediately, upon being assured that they would be removed from the country within 45 days. The INS did not appeal those orders. Even though the INS could have secured Yasser's and Hany's removal within a matter of days, the agency kept Yasser and Hany in custody for another six months.

119. Yasser and Hany were detained for six months longer than necessary to effectuate their removal from the United States solely on the remote possibility that law enforcement authorities might someday connect them to terrorist activity. They were never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that they engaged in terrorist activity. Nor was an indictment or information against Yasser or Hany ever filed with a court citing criminal charges on which their continued detention was based.

120. While confined at MDC, Yasser and Hany were denied necessary medical care, not only for the beatings they received upon their arrival at MDC but also for subsequent ailments. Although Hany tested positive for tuberculosis, the medical staff at MDC refused to treat him for this condition. The staff also refused to treat Yasser's kidney stones, other than to give him painkillers to partially alleviate his severe pain.

121. While confined in MDC's Special Housing Unit, Yasser and Hany received barely

edible food -- food having little or no nutritional value. To make matters worse, the food served to them was slopped together on a single paper plate. On information and belief, MDC prisoners other than post-9/11 detainees received their food on slotted trays, with fruit, vegetables, meats, and other food items segregated in different slots.

122. While confined in MDC's Special Housing Unit, Yasser and Hany were deliberately denied the ability to practice their Muslim religion. Because their cell windows had been painted over, Yasser and Hany were totally dependent on the Doe Defendants for the time of day to know when to say their daily prayers. The Doe Defendants, however, withheld that basic information from Yasser and Hany. The Doe Defendants also refused to disclose the dates to Yasser, making it impossible for him to know when Ramadan began. (Hany was transferred to MDC's general population prior to Ramadan.)

123. During their first month of confinement in MDC's Special Housing Unit, Yasser and Hany were denied soap, towels, and toothpaste, among other necessary daily toiletry items, as well as a cup from which they could drink water.

124. Hany was released and deported on May 29, 2002. Yasser was released and deported on June 6, 2002. On the dates that they were deported, each was given old clothes, taken to the airport in handcuffs, chains, and shackles, and placed on a plane to Cairo without any money. Both Yasser and Hany have made attempts to have personal belongings and money confiscated from them during and following their arrests returned to them. To date, none of these items have been returned to them.

125. Upon their arrivals in Cairo, Yasser and Hany each was summoned to State Security Investigations, where each was extensively interrogated for several hours on his



detention in the United States. On information and belief, State Security Investigations continues to maintain dossiers on both Yasser and Hany. The presumption of guilt thus follows them even after their deportation from the United States, despite the fact that they have never been involved in terrorist activity and the complete absence of any evidence of their involvement in such activity. Because they are now deemed “security risks,” Yasser’s and Hany’s job prospects in Egypt are exceedingly dim.

126. Yasser and Hany continue to suffer extreme emotional and psychological distress as a result of their eight months of detention in the United States. They each have sleepless nights thinking about the recent past. Hani is seeking treatment for the tuberculosis that he contracted while detained.

**Plaintiff Shakir Baloch**

127. Plaintiff Shakir Baloch was taken into custody by FBI agents while attending a driving school class in Queens, New York on September 20, 2001, less than 10 days after the September 11<sup>th</sup> terrorist attacks. The agents drove Mr. Baloch back to his apartment, where they were joined by six to eight other FBI and INS agents and New York City police officers. There, Mr. Baloch was interrogated for nearly four hours, primarily about the events on September 11, 2001. He was never advised of his rights to counsel, or, for that matter, of his other “Miranda rights.” Mr. Baloch denied any involvement with terrorists, terrorist organizations, or terrorist activity. He was arrested at the close of the interrogation. Without Mr. Baloch’s consent, FBI and INS agents conducted a search of Mr. Baloch’s apartment, seizing his laptop computer.

128. Mr. Baloch was taken in handcuffs the same day to the INS’s Varick Street facility in Manhattan, where he was held overnight. While there, all of his personal belongings,

including personal identification and money, were confiscated.

129. The next day, September 21, 2001, Mr. Baloch was taken to MDC. While Mr. Baloch was being processed, the Doe Defendants cursed him out, adding that “You did this to us. We’re going to kill you.” After escorting Mr. Baloch to a six-and-one-half-foot-by-seven-foot cell in MDC’s Special Housing Unit, they proceeded to pick him up and throw him from corner to corner in his cell, accusing him of being a “terrorist” as they did so.

130. The next day, September 22, 2001, Mr. Baloch learned that the INS had reinstated a prior deportation order against him. Even though the INS could have effectuated Mr. Baloch’s removal from the United States within a matter of days, Mr. Baloch was detained for almost seven months, until April 16, 2002, solely on the remote possibility that he might later be connected to terrorist activity, despite the complete absence of any evidence of such connection.

131. Mr. Baloch was detained for nearly seven months longer than necessary to effectuate his removal from the United States solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. He was never, however, brought before a neutral judicial officer to determine whether there was probable cause to believe that he engaged in terrorist activity.

132. Shortly after being taken into custody on September 20, 2001, Mr. Baloch asked to see an attorney. That request was denied. Mr. Baloch also asked to speak with the Canadian Consulate. That request too was denied. When the Canadian Consulate subsequently inquired about Mr. Baloch on its own initiative, the INS refused to disclose his whereabouts. It was not until early November, 2001 that Mr. Baloch was permitted to speak with an attorney from the Legal Aid Society.

133. While in INS custody, Mr. Baloch was given extremely limited access to the telephone – one telephone call a month. He was denied all telephone access from the date of his arrest until early November 2001. On one occasion, Mr. Baloch attempted to call an attorney but was unable to complete the connection. A Doe Defendant, however, refused to allow Mr. Baloch to attempt another call to the same attorney, telling him that he had exhausted his monthly call quota.

134. While confined at MDC, Mr. Baloch was interrogated an additional four times by FBI agents. During these interrogations, the agents threatened him by telling him things such as “If you don’t cooperate with us, we will revoke your Canadian citizenship” and “If you’re not cooperative, we’ll put you in jail for 10 years or deport you back to Pakistan instead of Canada, where they’ll put you in jail longer than 10 years.”

135. The conditions under which Mr. Baloch was held during his prolonged detention were very similar, if not identical to, the conditions under which Plaintiffs Safi, Jaffri, Ebrahim, and Ibrahim were held in MDC’s Special Housing Unit.

136. On about December 21, 2001, having been detained for more than three months without any prospect for release, Mr. Baloch filed a habeas corpus petition through pro bono counsel in the United States District Court for the Southern District of New York. Less than two weeks later, on January 3, 2002, Mr. Baloch was indicted for illegal re-entry – a charge to which he pled guilty on April 2, 2002. Mr. Baloch was sentenced to time served. Shortly thereafter, he was transferred from MDC to the Passaic County Jail.

137. On information and belief, Defendants Ashcroft, Mueller, and Ziglar rarely seek indictment of minor immigration violators for the offenses for which Mr. Baloch was indicted.

On information and belief, Defendants Ashcroft, Mueller, and Ziglar caused Mr. Baloch to be indicted solely to prolong his detention for the purpose of their investigation into terrorist activity.

138. On April 16, 2002, the INS took Mr. Baloch from Passaic County Jail to Newark Airport, where they put him on a plane to Toronto, without any personal identification or money. Since his deportation, Mr. Baloch has repeatedly requested return of the personal belongings confiscated from him during and after his arrest, including his personal identification. Defendants have, however, refused to comply with these requests, maintaining -- without any basis in fact -- that Mr. Baloch's personal belongings are relevant to their terrorist investigation.

139. Mr. Baloch continues to suffer the effects of his detention in the United States. He recently tested positive for tuberculosis for the first time -- a disease that he doubtless contracted during his incarceration. He is also being treated for severe depression. Because of nightmares and anxiety, he cannot sleep at night. His physician has recommended that he not work for the next six months. Without the social insurance and health cards confiscated from him at the time of his arrest, he has had difficulty securing the medical treatment he desperately needs to recover. He and his wife have recently separated, due to the strains on their marriage brought about by his prolonged detention.

**Plaintiff Akil Sachveda**

140. In late September or early October 2001, plaintiff Akil Sachveda 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 Mr. Sachveda's ex-wife in Port Washington, New York, looking for a

Muslim employee. Not finding that individual, the agent left a message for Mr. Sachveda's ex-wife to contact the agent. She, in turn, asked Mr. Sachveda to do so.

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

142. Mr. Sachveda continued to close out his affairs in the United States in anticipation of his move back to Canada. On or about December 20, 2001, while at uncle's apartment, Mr. Sachveda was arrested by INS agents. He was taken to the INS's offices at 26 Federal Plaza, where he was interrogated for five hours about his ties to the September 11<sup>th</sup> terrorist attacks, without being advised of his right to counsel or his "Miranda rights." Mr. Sachveda asked to speak with the Canadian Consulate but that request was denied. At the close of the interrogation, INS agents confiscated all of Mr. Sachveda's personal identification. He was then taken to Passaic County Jail.

143. On December 27, 2001, while confined in Passaic County Jail, Mr. Sachveda received a Notice to Appear, charging him with illegal re-entry. (He had overstayed a prior voluntary departure order.) At a hearing on December 31, 2001, in Immigration Court in Newark, New Jersey, an Immigration Judge ordered Mr. Sachveda deported to Canada or India "within 30 days." The INS did not appeal that final deportation order. Even though the INS

could have effectuated Mr. Sachveda's removal from the United States within a matter of days, Mr. Sachveda was detained for another three and one-half months, until April 17, 2002.

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

145. While confined in Passaic County Jail, Mr. Sachveda was subjected to many of the same unreasonable and excessively harsh conditions as Mr. Turkmen. He was housed under extremely crowded conditions, forced to eat and sleep with individuals charged with and/or convicted of violent crimes. He was also threatened by menacing dogs.

146. While confined in Passaic County Jail, Mr. Sachveda, on four occasions, made written requests to consult with the Canadian Consulate. All four requests were denied.

147. On April 17, 2002, INS agents took Mr. Sachveda, 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, Mr. Sachveda requested the return of these items. His requests were, however, denied.

148. Mr. Sachveda 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 Mr. Sachveda's work papers. A hearing on the matter

is delayed until September or October 2002. The presumption of guilt thus continues to attach to Mr. Sachveda 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.

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

**FIRST CLAIM FOR RELIEF**  
**(Fourth Amendment: Seizure)**

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

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

152. In detaining Plaintiffs and class members months longer than necessary to secure their removal or voluntary departure from the United States without charging them with any crime and without affording them a hearing before a neutral judicial officer to determine whether there was probable cause to justify their continued detention, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly seized Plaintiffs and class members in violation of the Fourth Amendment to the Constitution.

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

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

**SECOND CLAIM FOR RELIEF**  
**(Fifth Amendment: Due Process)**

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

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

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

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

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

**THIRD CLAIM FOR RELIEF**  
**(Fifth Amendment: Due Process)**

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

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



Defendants.

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

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

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

**FOURTH CLAIM FOR RELIEF**  
**(Fifth Amendment: Due Process)**

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

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

167. By adopting, promulgating, and implementing the policy and practice under which Plaintiffs and class members were subjected to coercive and involuntary custodial interrogation designed to overcome their will and coerce involuntary and incriminating statements from them, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly violated the rights of Plaintiffs and the class to due process of law under the Fifth

Amendment to the Constitution.

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

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

**FIFTH CLAIM FOR RELIEF**  
**(Fifth Amendment: Equal Protection)**

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

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

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

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

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

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

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

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

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

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

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

**SEVENTH CLAIM FOR RELIEF**  
**(Sixth Amendment: Right to Counsel)**

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

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

defendants.

182. By adopting, promulgating and implementing policies under which Plaintiffs and class members were held in what is tantamount to criminal detention and interrogated while they were deprived of the opportunity to obtain counsel, Defendants, acting under color of law and their authority as federal officers, have intentionally or recklessly deprived Plaintiffs and class members of their right to counsel in violation of the Sixth Amendment to the United States Constitution.

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

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

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

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

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

187. Defendants have adopted, promulgated, and implemented policies and practices intended to deny Plaintiffs and class members the ability to practice and observe their religion. These policies and practices have included, among other things, the visitation of verbal and physical abuse upon Plaintiffs and class members, and the deliberate denial of all means by which they could maintain their religious practices, including their observance of Hallal 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 Constitution.

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

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

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

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

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

192. Defendants have adopted, promulgated, and implemented a policy and practice of deliberately depriving Plaintiffs and class members of their personal property without providing them with a remedy to recover that property. Defendants have refused to return to Plaintiffs and class members, at the time of their removal or voluntary departure from the United States, the personal identification, money, and other valuable personal items that Defendants confiscated from Plaintiffs and class members upon arrest. In doing so, Defendants, acting under color of law and their authority as federal officers, have intentionally violated Plaintiffs' and class members' right to due process of law under the Fifth Amendment to the United States

Constitution.

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

194. 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.

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

**TENTH CLAIM FOR RELIEF**  
**(Customary International Law: Arbitrary Detention)**

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

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

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

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

200. As a result of Defendants' unlawful conduct, Plaintiffs and class members were

deprived of their freedom, separated from their families and forced to suffer severe physical and mental abuse, and are entitled to monetary damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**THIRTEENTH CLAIM FOR RELIEF**  
**(Excessive Force - SAFI)**

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

214. Plaintiff Safi brings this claim on his own behalf against Defendants John Does 1-20.

215. The intentional beatings of Plaintiff Safi by Defendants John Does 1-20 when



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

216. The intentional beatings of Plaintiff Safi by Defendants John Does 1-20 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the Constitution, for which such officers are individually liable.

217. As a proximate result of the beatings by Defendants John Does 1-20, Plaintiff Safi has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

218. As a result of the unlawful conduct of Defendant John Does 1-20, Plaintiff Safi is entitled to monetary damages.

**FOURTEENTH CLAIM FOR RELIEF**  
**(Excessive Force - JAFFRI)**

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

220. Plaintiff Jaffri brings this claim on his own behalf against Defendants John Does 1-20.

221. The intentional beatings of Plaintiff Jaffri by Defendants John Does 1-20 when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against

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

222. The intentional beatings of Plaintiff Jaffri by Defendants John Does 1-20 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the Constitution, for which such officers are individually liable.

223. As a proximate result of the beatings by Defendants John Does 1-20, Plaintiff Jaffri has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

224. As a result of the unlawful conduct of Defendant John Does 1-20, Plaintiff Jaffri is entitled to monetary damages.

**FIFTEENTH CLAIM FOR RELIEF**  
**(Excessive Force -EBRAHIM)**

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

226. Plaintiff Ebrahim brings this claim on his own behalf against Defendants John Does 1-20.

227. The intentional beatings of Plaintiff Ebrahim by Defendants John Does 1-20 when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice

toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the constitutional rights of Plaintiff.

228. The intentional beatings of Plaintiff Ebrahim by Defendants John Does 1-20 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the Constitution, for which such officers are individually liable.

229. As a proximate result of the beatings by Defendants John Does 1-20, Plaintiff Ebrahim has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

230. As a result of the unlawful conduct of Defendant John Does 1-20, Plaintiff Ebrihim is entitled to monetary damages.

**SIXTEENTH CLAIM FOR RELIEF**  
**(Excessive Force - IBRAHIM)**

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

232. Plaintiff Ibrahim brings this claim on his own behalf against Defendants John Does 1-20.

233. The intentional beatings of Plaintiff Ibrahim by Defendants John Does 1-20 when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to Defendants or others, and when Defendants had no lawful authority to use deadly or non-deadly force against him, was without justification or provocation, was excessive, and was done with actual malice toward Plaintiff and with willful and wanton indifference to and deliberate disregard for the

240. The intentional beatings of Plaintiff Baloch by Defendants John Does 1-20 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the Constitution, for which such officers are individually liable.

241. As a proximate result of the beatings by Defendants John Does 1-20, Plaintiff Baloch has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

242. As a result of the unlawful conduct of Defendant John Does 1-20, Plaintiff Baloch is entitled to monetary damages.

#### **PRAYER FOR RELIEF**

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

1. Certifying this suit as a class action;
2. Declaring that Defendants' actions, practices, customs, and policies, and those of all persons acting on their behalf and/or their agents and/or employees, alleged herein, are illegal and violate the constitutional rights of Plaintiffs and class members as to each applicable count;
3. Declaring that each individual Plaintiff's detention was unjustified, unconstitutional, unlawful and without probable cause to believe that he had any involvement in the September 11<sup>th</sup> terrorist attacks or other terrorist activity;
4. Enjoining Defendants to return immediately to Plaintiffs and class members all personal identification, money and valuable personal items confiscated from them;
5. Awarding compensatory and punitive damages to Plaintiffs and class members for the

constitutional and customary international law violations they suffered in an amount that is fair, just, reasonable, and in conformity with the evidence;

6. Appointing a neutral Special Master to assist in fashioning remedies and to monitor the implementation of those remedies;

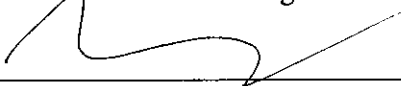
7. Ordering such further relief as necessary to ensure that Defendants operate the MDC and Passaic facilities in compliance with the United States Constitution and customary international law; and

8. Ordering such further relief as the Court considers just and proper.

Dated: New York, New York  
July 26, 2002

Respectfully submitted,

Center for Constitutional Rights

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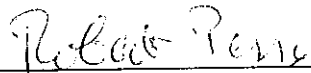
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*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I, Robert Perry, hereby certify under penalty of perjury, that on July 26, 2002, I served the attached First Amended Class Action Complaint in *Turkmen v. Ashcroft*, CV 02-2307 (E.D.N.Y.) (Gleeson, J.), on Timothy Garren, attorney for defendants herein, by faxing a true copy to him at (202) 616-4314) and by mailing another true copy to him, via FedEx, to the following address:

Timothy Garren, Senior Trial Counsel  
U.S. Department of Justice  
Ben Franklin Station, P.O. Box 7146  
Washington, D.C. 20044

  
\_\_\_\_\_

Robert Perry