

CENTER FOR CONSTITUTIONAL RIGHTS  
Barbara J. Olshansky (BO 3635)  
Nancy Chang (NC 5331)  
William Goodman (WG 1241)  
Jennifer Green (JG 3169)  
Robert T. Perry (RP 1199)  
666 Broadway, 7<sup>th</sup> Floor  
New York, New York 10012  
(212) 614-6439 or 614-6420

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IBRAHIM TURKMEN; ASIF-UR-REHMAN :  
SAFFI; and SYED AMJAD ALI JAFFRI, on :  
behalf of themselves and all others :  
similarly situated, : CV - 02 - \_\_\_\_ ( )  
:  
Plaintiffs, :  
:  
- against - : **CLASS**  
**ACTION COMPLAINT**  
: **AND DEMAND FOR JURY**  
**TRIAL**  
JOHN ASHCROFT, Attorney General of the :  
United States; ROBERT MUELLER, Director, :  
Federal Bureau of Investigations; JAMES W. :  
ZIGLAR, Commissioner, Immigration and :  
Naturalization Service; DENNIS HASTY, Warden, :  
Metropolitan Detention Center; and :  
JOHN DOES 1-10, MDC Corrections Officers, :  
:  
Defendants. :

-----X  
Plaintiffs Ibrahim Turkmen, Asif-ur-Rehman Saffi, and Syed Amjad Ali Jaffri, 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 other male,  
Muslim non-citizens from the Middle East, South Asia, and elsewhere arrested and  
detained after the September 11, 2001 terrorist attacks on the United States who, despite

receiving final deportation orders or grants of voluntary departure, have been held in immigration custody far beyond the period necessary to secure their removal 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 while law enforcement authorities sought to determine – without probable cause – whether they had any ties to terrorism. Instead of being presumed innocent until proven guilty, the post-9/11 detainees have been presumed guilty of terrorism until proven innocent to the satisfaction of law enforcement authorities. In adopting, promulgating, and implementing this policy, Defendants John Ashcroft, Robert Mueller, James Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members by the Fourth, Fifth, and Sixth Amendments to the United States Constitution, customary international and treaty law.

3. While in detention, Plaintiffs and class members have been subjected to unreasonable and excessively harsh conditions. Like Plaintiff Turkmen, many have been held in overcrowded county jail facilities and housed with potentially dangerous criminal pretrial detainees, even though they themselves have never been charged with a crime. Like Plaintiffs Saffi and Jaffri, others have been kept in federal facilities, such as the Metropolitan Detention Center (“MDC”) in Brooklyn, New York, where they have been placed in tiny, windowless cells for over 23 hours a day and body cavity strip-searched, manacled, and shackled whenever they have been taken out of their cells. Like Plaintiffs Saffi and Jaffri, many class members have suffered physical and verbal abuse by their guards. Some have been badly beaten. Like all three Plaintiffs, many class members have also 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, and John Does 1-10, MDC corrections officers, have intentionally 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 and treaty law.

4. Like Plaintiffs Turkmen and Saffi, during their detention many class members have been repeatedly interrogated by both the Immigration and Naturalization Service (“INS”) and the Federal Bureau of Investigation (“FBI”) agents in the absence of counsel. Indeed, large numbers have not been told – prior to or during their interrogations – of their statutory right to counsel in immigration proceedings or their constitutional right to counsel in criminal proceedings. Others have been coerced to waive that right, even though they cannot read the printed English language on the waiver forms which they are instructed to sign, and even though they do not fully understand the nature of the right being waived. By adopting, promulgating, and implementing this policy and practice, Defendants Ashcroft, Mueller, and Ziglar, and others have intentionally or recklessly violated rights guaranteed to Plaintiffs and class members under the First, Fifth, and Sixth Amendments to the United States Constitution.

5. 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, or national origin has played a determinative role in Defendants’ decision to detain them initially, and then to keep them detained beyond the point at which removal could have been effectuated.

6. Plaintiffs seek a class-wide judgment declaring the above-described policies and practices unlawful and unconstitutional. Plaintiffs further seek compensatory and punitive damages for themselves and all class members, and an award of costs and reasonable attorneys’ fees.

#### **JURISDICTION AND VENUE**

7. This action is brought pursuant to the First, Fourth, Fifth, and Sixth Amendments to the United States Constitution and customary international human rights law and treaty law as incorporated into federal common law.

8. 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).

9. 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**

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

### **PARTIES**

11. 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, which expired on April 4, 2001. He decided to remain in this country after the expiration of his visa to provide for his family, his wife and four young daughters. On October 13, 2001, Mr. Turkmen was arrested and detained by the INS without being charged with any immigration or criminal law violation. A week or so later, he was formally charged with overstaying his visa. No other charge was ever filed against Mr. Turkmen by federal, state or local authorities. He has no criminal record either in this country or in any other country.

12. On October 31, 2001, 18 days after his arrest, Mr. Turkmen accepted a voluntary departure order, after an Immigration Judge assured him that he could shortly return to Turkey. Even though the INS could have secured his removal from the United States within a matter of days and even though there was no probable cause to believe

that he had any involvement in the September 11<sup>th</sup> terrorist attacks, Mr. Turkmen was detained for another four months, until February 25, 2002, solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. Defendants made no effort to justify this detention by establishing probable cause of criminal activity. Mr. Turkmen has never been involved with terrorists, terrorist organizations or terrorist activities. Indeed, he abhors terrorism.

13. While detained by the INS, Mr. Turkmen was incarcerated in the Passaic County Jail in Paterson, New Jersey (“Passaic”), where he was: (a) placed in a severely overcrowded dormitory; (b) housed with potentially dangerous criminal pretrial detainees; (c) periodically exposed to fierce and menacing K-9 unit dogs; (d) routinely denied Hallal food required by his religion; and (e) deliberately prevented from observing certain mandatory religious practices.

14. Plaintiff ASIF-UR-REHMAN SAFFI is a native of Pakistan and a citizen of France, where he currently lives with his wife and three children. An employee of Pakistan International Airlines for the past 19 years, Mr. Saffi came to the United States on July 6, 2001 on a three-month tourist visa. After visiting family and friends in Los Angeles, he flew to New York City to see other friends. While in New York City, Mr. Saffi earned a modest sum of money doing computer work and data processing. Mr. Saffi was arrested and detained by the INS on September 30, 2001, shortly before his visa expired. He was subsequently charged with working in the United States without authorization. No other charges were ever filed against Mr. Saffi by federal, state or local authorities. He has no criminal record in this country or in any other country.

15. On October 17, 2001, 17 days after his arrest, Mr. Saffi was issued a deportation order, effective immediately. Even though the INS could have secured Mr. Saffi’s removal from the United States within a matter of days, and even though there was no probable cause to believe that he had any involvement in the September 11<sup>th</sup> terrorist attacks or other terrorist activity, the INS kept Mr. Saffi in custody for another

four and one-half months, until March 5, 2002, solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. Defendants have never demonstrated to a neutral judicial officer that they had probable cause to believe that Mr. Saffi has ever engaged in terrorist activities. Nor could they make any such demonstration. Mr. Saffi has never been involved with terrorists, terrorist organizations or terrorist activities. Indeed, he abhors terrorism.

16. While in INS custody, Mr. Saffi was kept in MDC, where he was housed in the Special Housing Unit, commonly known as the “Hole,” where criminal pretrial detainees who present special disciplinary problems are kept. During his nearly five months of incarceration at MDC, Mr. Saffi, like other class members sent to MDC, was subjected to unreasonable and excessively harsh conditions and practices, including the following: (a) severe beatings to the point of unconsciousness; (b) persistent verbal abuse regarding his race, religion, and ethnicity; (c) denial of medical, dental, and psychological care; (d) confinement in a cell for more than 23 hours a day; (e) shackling, manacling, and physical abuse during cell removals; (f) complete body cavity searches prior to all cell removals; (g) routine denial of Hallal food required by his religion; and (h) deliberately prevented from observing certain mandatory religious practices.

17. Plaintiff SYED AMJAD ALI JAFFRI is a native of Pakistan and a landed immigrant of Canada. He 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.

18. On September 27, 2001, while temporarily living in the Bronx, Mr. Jaffri was arrested and detained by the INS. He was subsequently charged with working in the United States without authorization. No other charges were ever filed against him by federal, state or local authorities. Mr. Jaffri has no criminal record in this country or in his home country.

19. On December 20, 2001, Mr. Jaffri received a final deportation order. Even though the INS could have secured Mr. Jaffri's removal from the United States within a matter of days thereafter, and even though there was no probable cause to believe that he had any involvement in the September 11<sup>th</sup> terrorist attacks, the INS kept Mr. Jaffri in custody for another three and one-half months, until April, 2002, solely on the remote possibility that law enforcement authorities might someday connect him to terrorist activity. Defendants have never demonstrated to a neutral judicial officer that they had probable cause to believe that Mr. Jaffri has ever engaged in terrorist activities. Nor could they make any such demonstration. Mr. Jaffri has never been involved with terrorists, terrorist organizations or terrorist activities. Indeed, he abhors terrorism.

20. While in INS custody, Mr. Jaffri was incarcerated in MDC, where he was housed in the Special Housing Unit. During his more than seven months of incarceration at MDC, Mr. Jaffri, like other class members sent to MDC, was subjected to various unreasonable and excessively harsh conditions and practices, including the following: (a) severe beatings; (b) persistent verbal abuse regarding his race, religion, and ethnicity; (c) denial of medical, dental, and psychological care; (d) confinement in his cell for more than 23 hours a day; (e) shackling, manacling, and physical abuse during cell removals; (f) complete body cavity searches prior to all cell removals; (g) routine denial of Hallal food required by his religion; and (h) the deliberate denial of the ability to observe mandatory religious \_\_actices.

21. 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.

22. 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.

23. 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, 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.

24. Defendant DENNIS HASTY has, until very recently, been the Warden of MDC in Brooklyn, New York. Defendant Hasty had immediate responsibility for the conditions under which Plaintiffs and class members have been confined at MDC. Defendant Hasty has subjected Plaintiffs and class members confined at MDC to unreasonable and excessively harsh conditions in violation of the Constitution. Defendant Hasty is being sued in his individual capacity. Defendant Hasty will be replaced as MDC Warden by Michael Zenk.

25. Defendants JOHN DOES 1-10 are federal employees who are employed as corrections officers at MDC in Brooklyn, New York. Singly and collectively, Defendants John Does 1-10 have subjected Mr. Saffi and other class members confined at MDC to unreasonable and excessively harsh conditions. Defendants John Does 1-10 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, Muslim non-citizens from the Middle East, South Asia and elsewhere, who have been: (a) arrested by the INS or FBI after the September 11<sup>th</sup> terrorist attacks; (b) detained at the MDC facility or the Passaic County Jail; (c) issued final removal or voluntary departure orders from the INS; (d) held in custody longer than necessary to secure their removal or voluntary departure from the United States based on their final orders; and (e) not afforded a hearing before a neutral judicial officer to determine whether probable cause existed to justify detaining them beyond the time necessary to secure their removal 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 are keeping 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 United States Department of Justice has blocked 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 dominate those questions that affect only the individual members. These include, but are not limited to:

1. whether Defendants adopted, promulgated, and implemented a policy and practice 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 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 by detaining them months longer than necessary to secure their removal 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 violating their rights under customary international law; by subjecting them to outrageous, excessive, cruel, inhuman, and degrading conditions of confinement;
- (c) whether Defendants adopted, promulgated, and implemented policies and practices depriving Plaintiffs and class members of their right to counsel in violation of the Sixth Amendment;
- (d) 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 from the United States because of their race, religion, ethnicity and/or national origin; and
- (e) whether Defendants adopted, promulgated, and implemented policies which violated Plaintiffs' and class members' rights to practice their religion, to be free from unreasonable seizures, to due process of law, to equal protection of the laws, to be free from unreasonable and excessively harsh conditions, and to counsel under the First, Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, respectively.

30. The named Plaintiffs' claims are typical of those of the class. First, each Plaintiff is a male, Muslim non-citizen of Turkish or Pakistani descent. Second, each Plaintiff was arrested and detained subsequent to the September 11th terrorist attacks on minor (but deportable) immigration violations. Third, each Plaintiff subsequently received a deportation or a voluntary departure order. Fourth, each Plaintiff was nonetheless held for months longer than necessary to secure his removal from the United States. Fifth, each Plaintiff was denied a hearing to determine whether there was probable cause to detain them beyond the time when all legitimate immigration law enforcement purposes had been served. Sixth, each Plaintiff was held under

unreasonable and excessively harsh conditions of confinement. Seventh, each Plaintiff was detained in part because of his race, religion, national origin and/or ethnicity.

31. The legal theories on which the named 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 has arrested and detained well over 1,200 male, Muslim, non-citizens from the Middle East, South Asia, and elsewhere (“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 deportation orders or accepted voluntary departure orders. Even though the INS could have promptly secured the deportation 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 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. § 1229(a)(2) (120-day period for voluntary departures).

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 has 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 immigration 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 MDC were allowed to make only one call per month to their attorneys and only one call per month to their families. At both 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, and Hasty 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, 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

established policies within the INS and the FBI to detain 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. The circumstances of most of these detentions deviated from standard INS practice in the following respects:

2.nearly all of the detainees are Muslim men of Middle Eastern or South Asian origin;

3.they have been arrested and detained for minor immigration violations and on scant evidence of dangerousness or flight risk;

4.they have often been held for more than 48 hours without notice of the charges against them;

5.they have been denied bond; and

6.have been held in detention without cause for as long as five months after their final deportation or voluntary departure orders could have been carried out.

48. Furthermore, while the detentions were all carried as part of a criminal investigation, the mandatory constitutional, statutory, and common law protections of the criminal justice system, including access to the courts, were denied Plaintiffs and class members in ways which include, but are not limited to, the following:

1.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;

2.precluding them from obtaining legal representation by holding them incommunicado and refusing accessing to legal services and civil rights organizations that would have provided legal assistance;

3.subjecting them to coercive interrogations despite repeated requests for adjournment to contact counsel;

4.subjecting them to outrageous, excessive, cruel, inhuman, and degrading conditions of confinement, and excessive force;

5.coercing them to waive their right to consular access; and

6.searching their homes without warrants and without their consent.

49. The policies referred to above were based on invidious animus against Muslims, in violation of the First, Fifth, and Thirteenth Amendments to the Constitution. Evidence of the aforementioned invidious animus toward Plaintiffs and class members includes but is not limited to, the following:

7.the above-referenced 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 Muslim;

8.they have been detained in situations where similarly situated non-Muslims have not been detained;

9.they have been detained beyond the time necessary to secure their deportation or voluntary departure from the United States, while similarly situated non-Muslim detainees have been deported or allowed to depart within a matter of days or weeks after final orders have been issued;

10.they have been subjected to unreasonable and excessively harsh conditions of confinement, including arbitrary assignment to the Special Housing Unit at MDC – conditions not imposed on similarly situated non-Muslim detainees;

11.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

12.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-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 Named Plaintiffs

#### **Plaintiff Ibrahim Turkmen**

50. Ibrahim Turkmen entered the United States through New York City on a tourist visa in early October, 2000, coming here to visit an old friend from Turkey who lived on Long Island. When he arrived in the United States, Mr. Turkmen fully expected to return to Turkey after his visa expired in early April 2001.

51. In late October 2000, however, 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 Turkish construction company.

52. From his arrival in the United States until he was taken into INS custody, Mr. Turkmen called his wife and four daughters back in Turkey every other day. 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.

53. 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.

54. At about 2:30 p.m. on October 13, 2001, slightly more than a month after the terrorist attacks on the United States, two FBI agents visited Mr. Turkmen at the apartment where he was staying with several Turkish friends in West Babylon, New York. The FBI agents asked Mr. Turkmen a series of questions about his immigration status, his reasons for coming to the United States, his work experience here, his religion,

and other personal matters -- questions which Mr. Turkmen had great difficulty understanding due to his limited knowledge of English, but which he did his best to answer truthfully. Accusing Mr. Turkmen of being an associate of Osama Bin Laden -- a baseless charge which Mr. Turkmen vehemently denies -- the FBI agents placed Mr. Turkmen under arrest, confiscated his personal items (passport, identification, credit cards, etc.), and searched his home without his consent.

55. Mr. Turkmen was taken to an INS facility in Nassau County, where he was fingerprinted and asked more questions in English, this time by an INS official. Despite great difficulty understanding the questions, Mr. Turkmen did his best to answer them truthfully. He again denied any involvement with terrorists or terrorist activities. Mr. Turkmen was held at the Nassau County INS facility for five or six hours.

56. That evening, at about 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, Mr. Turkmen again did his best to answer them truthfully. For the third time, he denied any involvement with terrorists or terrorist activities. Mr. Turkmen's interrogators then instructed him to sign certain papers -- papers which he could not read because they were in English. Afraid that he would only make matters worse for himself by refusing to sign the papers, Mr. Turkmen reluctantly signed the papers.

57. 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.

58. Several days later, while in 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.

59. On October 29, 2001, two FBI agents visited Mr. Turkmen at the Passaic County Jail, and 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 detainee fluent in English translated the questions for Mr. Turkmen, who answered them all truthfully. Mr. Turkmen again denied any involvement with terrorists or terrorist activities.

60. 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. While Mr. Turkmen was provided with an interpreter this time, that individual (who was of Middle Eastern or South Asian 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. Mr. Turkmen declined to request bond solely because the judge assured him that he would be allowed to return to Turkey within a matter of days.

61. Upon his return to the Passaic County Jail later that day, Mr. Turkmen called a friend and asked him to purchase a plane ticket back to Turkey. Two days later, on November 2, 2001, the friend brought the ticket to the INS's offices in Newark, New Jersey. Despite having provided the INS with his plane ticket back to Turkey, Mr. Turkmen remained in the Passaic County Jail for nearly four months.

62. While in the Passaic County Jail, Mr. Turkmen was not allowed to call his wife Karer and four daughters back home in Turkey. He learned, however, through a friend that Karer was seriously ill. She had been hospitalized for one month with an undisclosed ailment that had caused her to lose most of her hair and teeth. Unable even to call his wife, Mr. Turkmen suffered extreme emotional distress.

63. While in the Passaic County Jail, Mr. Turkmen and other class members were:

1.denied any classification process whereby potentially violent and non-violent prisoners would be housed separately. Rather, they were placed in the general prison population, eating at the same tables and sleeping in the same dormitories as individuals charged and/or convicted of violent crimes;

2.denied food which conforms with the religious practices of the Muslim faith;

3.severely overcrowded; and

4.patrolled in their living quarters by menacing dogs, an experience which they found to be extremely terrifying.

64. When he first arrived at the Passaic County Jail, Mr. Turkmen was given a 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 the telephone numbers on the list, with no success. Other detainees in the Passaic County Jail encountered the same problem.

65. While in the Passaic County Jail, Mr. Turkmen was never told 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.

66. On January 17, 2002, more than three months after Mr. Turkmen was taken into custody and more than two and one-half months after he received a voluntary departure order, an INS agent visited Mr. Turkmen in the Passaic County Jail to inform him that he had been "cleared" by the FBI but still needed INS "clearance." When Mr. Turkmen asked how long that might take, the INS agent said that he did not know.

67. About three weeks later, on February 17, 2002, Mr. Turkmen was visited by another INS agent, who told him 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 Turkey. After nearly four and

one-half months in the Passaic County Jail, Mr. Turkmen finally was permitted to return home to his seriously-ill wife and his four daughters.

**Plaintiff Asif-ur-Rehman Saffi**

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

69. On September 29, 2001, while his tourist visa was still valid, Mr. Saffi flew to Toronto to spend a few days. Canadian immigration officials, however, refused to allow him into the country, and because of that refusal, Mr. Saffi flew back to New York City the next day, September 30, 2001. As soon as he stepped off the plane at LaGuardia Airport, he was arrested by two Port Authority police officers.

70. After interrogating him at a Port Authority police station, the officers took Mr. Saffi to an INS facility in Manhattan, where he was interrogated again, this time by two FBI agents. Mr. Saffi, who is fluent in English, answered their questions truthfully. He denied any involvement with terrorists, terrorist organizations or terrorist activities. The FBI agents, however, disputed Mr. Saffi's veracity, accusing him of involvement in the September 11<sup>th</sup> terrorist attacks. At an INS official's request, Mr. Saffi signed a written statement that he had been working in the United States without authorization. While being interrogated, Mr. Saffi asked to see the French Consul. His request was never granted.

71. The next day, October 1, 2001, Mr. Saffi was transported by van to the Metropolitan Detention Center in Brooklyn, New York, in handcuffs with chains around his waist and shackles on his legs. At MDC, Mr. Saffi was dragged roughly from the van into the building. On the way, his face was slammed into several walls. After being

fingerprinted, Mr. Saffi was strip-searched and given an orange jumpsuit. All of his personal belongings, including his eyeglasses, were confiscated. Still in handcuffs, chains, and shackles, Mr. Saffi was taken to the Special Housing Unit on the Ninth Floor of MDC.

72. Upon his arrival in the Special Housing Unit, Mr. Saffi again was strip searched. He was also subjected to physical and verbal abuse. The Doe Defendants 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. Saffi fell to the floor, they kicked him in the face. The lieutenant in charge, one of the Doe Defendants, called Mr. Saffi a terrorist, boasting that Mr. Saffi would be treated harshly because of his involvement in the September 11<sup>th</sup> terrorist attacks and threatening to punish him if he ever smiled.

73. Mr. Saffi was placed in a 10-foot-by-six-foot cell shared by another detainee. That cell remained Mr. Saffi's home for the next five months. During that period, Mr. Saffi was confined to his cell all day long, nearly every day, with the exception of the offer on several days of being transported to a "recreation" cell, very early in the morning (5 a.m.) for one hour. Mr. Saffi's cell was cold and uncomfortable on most days. At night, he found it difficult to sleep, because the lights were on continuously 24 hours a day. For the first week, Mr. Saffi was not even given a bar of soap or a towel with which to wash. He was denied all reading material until mid-December 2001, when he was given a copy of the Qu'ran, which Mr. Saffi could not read because the Doe Defendants did not return his eyeglasses until December 18, 2001.

74. While Mr. Saffi was confined at MDC, the Doe Defendants deliberately interfered with the practice and observance of his religion. They denied him the Hallal food required by his faith. They refused to tell him the date, leaving Mr. Saffi unaware when the holy month of Ramadan began. For the first month or so, the Doe Defendants constantly interrupted Mr. Saffi almost every time that he began his daily prayers. Finally, they prevented him from engaging in prayer by deliberately withholding from

him the time of day, information essential if Muslims are to know when to engage in prayer.

75. While Mr. Saffi was confined at MDC, he 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 an individual in an adjacent cell remarked that the food was surprisingly decent for a change, one of the Doe Defendants (a Lieutenant) who overheard the remark, told Mr. Saffi and his neighbor: “You are not supposed to have good food. I will report it.”

76. On October 14, 2001, two weeks after his arrest, Mr. Saffi 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. Saffi again denied any involvement with terrorists, terrorist organizations or terrorist activities.

77. Three days later, on October 17, 2001, Mr. Saffi was transported to Immigration Court in Manhattan. During a closed hearing, an immigration judge ordered Mr. Saffi deported for working without authorization. When Mr. Saffi asked whether he needed a lawyer, an INS official told him that counsel was unnecessary since the INS soon would deport him.

78. Mr. Saffi was not allowed to make his first telephone call until November 26, 2001, nearly two months after his arrest. On that date, he called the French Consulate, which sent someone to meet Mr. Saffi at MDC on November 29, 2001. At that meeting, Mr. Saffi was told that the INS had given Consulate officials assurances that he would soon be released. But for the fact that Mr. Saffi’s wife included the Consulate’s telephone number in a letter to him, Mr. Saffi would have been unable to contact the Consulate. The Doe Defendants had refused to give him the French Consulate’s address or telephone number.

79. On December 18, 2001, two individuals – an INS agent and a New York City police detective – visited Mr. Saffi at MDC. They questioned him about his family back in France, his work for Pakistan International Airlines, his faith, and his political views. Mr. Saffi again denied any involvement with terrorists, terrorist organizations or terrorist activities. After the interrogation was over, Mr. Saffi's two interrogators assured him that he would soon be released. That, however, did not happen for nearly three months.

80. On March 5, 2002, INS agents took Mr. Saffi from MDC to LaGuardia Airport and put on an airplane to France. After more than five months of arbitrary detention, Mr. Saffi is now back home with his wife and three children. The INS, however, has refused to return Mr. Saffi's personal identification, including his airline and airport security cards.

**Plaintiff Amjed Jaffri**

81. In September 2001, Plaintiff Amjed Jaffri was living and working in the Bronx, New York, albeit without a valid visa. At the time, Mr. Jaffri 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.

82. Several days later, on September 27, 2001, approximately 10 INS and FBI agents, accompanied by a United States Department of Labor official and several New York City police officers, came to Mr. Jaffri's home. They searched Mr. Jaffri's room, without a search warrant and without his consent, finding several stun guns belonging to Mr. Curzado's children in the closet. Mr. Jaffri was arrested and charged with possession of a weapon. The charge was, however, dismissed two days later because there was no evidence that the stun guns belonged to Mr. Jaffri.

83. Following his arrest, Mr. Jaffri was taken to an INS facility in Manhattan, where he was asked to sign a form retroactively consenting to the search of his room.

When Mr. Jaffri refused, he was told: “Now you will learn the hard way.” When Mr. Jaffri asked to speak with the Canadian Consulate, an FBI agent asked him to sign another form, possibly waiving his right to speak with his consulate, though Mr. Jaffri was never given a copy of the form to keep. Mr. Jaffri reluctantly signed the form, hoping that it would expedite his release.

84. On September 29, 2001, Mr. Jaffri was taken to MDC, where he was placed in a tiny solitary (windowless) cell in the Special Housing Unit. That cell was Mr. Jaffri’s home for the next six months, until April 1, 2002. Over that period, Mr. Jaffri was kept in his cell all day long, nearly every day, with the exception of an offer to be transported to a “recreation” cell for one hour at 5 a.m. in the morning.

85. Whenever Mr. Jaffri was taken from his cell, he was strip-searched, manacled, and shackled. Corrections officers often inflicted unnecessary pain in these settings, even going so far as to kick Mr. Jaffri’s manacles and shackles into him.

86. On most days, Mr. Jaffri’s cell was cold and uncomfortable. During the nights, he had great difficulty sleeping, 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 Qu’ran. While other post-9/11 detainees were being held in adjoining cells, Mr. Jaffri was forbidden to talk with them, and vice-versa. Corrections officers threatened to cut off visits from his attorney if he broke the rule.

87. While Mr. Jaffri was confined in MDC, the Doe Defendants deliberately interfered with his ability to practice and observe the dictates of his religion. They denied him a copy of the Qu’ran and the Hallal food required by his faith. The Doe Defendants also refused to tell Mr. Jaffri the time of day, making it impossible for him to know when to say his prayers.

88. While Mr. Jaffri was confined in MDC, he was subjected to physical and verbal abuse. When he was first brought to MDC's Special Housing Unit, for example, one Doe Defendant, in the presence of 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." The Doe Defendant then slammed Mr. Jaffri's head into a wall, severely loosening his lower front teeth and causing him extreme pain. Mr. Jaffri felt pain and discomfort from that injury throughout his stay at MDC. He was never, however, allowed to see a dentist.

89. On December 20, 2001, an INS judge entered a final order of deportation against Mr. Jaffri. The INS did not appeal. Nonetheless, Mr. Jaffri remained in custody another \_\_\_ months, until he received "clearances" from the FBI and INS. On April 1, 2002, INS agents took Mr. Jaffri to LaGuardia Airport and put him on a plane to France. The INS, however, has refused to return Mr. Jaffri's personal identification, money, and valuable personal items confiscated from him when he was arrested.

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

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

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

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

93. 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.

94. 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)**

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

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

97. In detaining Plaintiffs and class members longer than necessary to secure their removal 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 United States Constitution.

98. 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.

99. 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)**

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

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

102. By adopting, promulgating, and implementing policies 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 United States Constitution.

103. 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.

104. 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: Equal Protection)**

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

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

107. 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 knowingly violated their rights under the Fifth Amendment to the United States Constitution to equal protection of the law.

108. 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.

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

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

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

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

112. By adopting, promulgating, and implementing policies under which Plaintiffs and class members were interrogated by FBI and other federal agents and 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.

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

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

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

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

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

117. 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 United States Constitution.

118. 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.

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

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

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

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

122. 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.

123. 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.

124. As 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.

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

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

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

127. 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.

128. 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.

129. 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.

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

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

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

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

133. 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.

134. When Plaintiff Saffi requested to speak with officials from the French consulate, Defendants further violated his Vienna Convention rights when they failed to respond to his request without delay and notify the consular post of his detention. Vienna Convention, Art. 36(1).

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

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

**TENTH CLAIM FOR RELIEF**  
**(Excessive Force - SAFFI)**

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

138. Plaintiff Saffi brings this claim on his own behalf against Defendants John Does 1-10.

139. The intentional beatings of Plaintiff Saffi by Defendants John Does 1-10 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.

140. The intentional beatings of Plaintiff Saffi by Defendants John Does 1-10 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the U.S. Constitution, for which such officers are individually liable.

141. As a proximate result of the beatings by Defendants John Does 1-10, Plaintiff Saffi has sustained permanent injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

142. As a result of the unlawful conduct of Defendant John Does 1-10, Plaintiff Saffi is entitled to monetary damages.

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

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

144. Plaintiff Jaffri brings this claim on his own behalf against Defendants John Does 1-10.

145. The intentional beatings of Plaintiff Jaffri by Defendants John Does 1-10 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.

146. The intentional beatings of Plaintiff Jaffri by Defendants John Does 1-10 violated Plaintiff's rights as guaranteed by the Fourth and Fifth Amendments to the U.S. Constitution, for which such officers are individually liable.

147. As a proximate result of the beatings by Defendants John Does 1-10, 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.

148. As a result of the unlawful conduct of Defendant John Does 1-10, Plaintiff Jaffri 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 case as a class action;
  2. Declaring that the 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. Awarding compensatory and punitive damages for the constitutional and customary international law violations in an amount that is fair, just, reasonable, and in conformity with the evidence;
  4. Appointing a neutral Special Master to assist in fashioning remedies and to monitor the implementation of those remedies;
  5. 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
  6. Ordering such further relief as the Court considers just and proper.
- Dated: New York, New York

April 17, 2002

Respectfully submitted,

Center for Constitutional Rights

By: \_\_\_\_\_  
Barbara J. Olshansky (BO 3635)

Nancy Chang (NC 5331)  
William H. Goodman (WG 1241)  
Jennifer Green (JG 3169)  
Robert T. Perry (RP 1199)  
666 Broadway, 7<sup>th</sup> Floor  
New York, New York 10012  
Tel.: (212) 614-6439 or 614-6420  
Fax: (212) 614-6499

CCR Cooperating Counsel

David Cole  
c/o Georgetown University Law Center  
600 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
Tel.: (202) 662-9078

Paul Hoffman  
Schonbrun, De Simone, Seplow, Harris  
& Hoffman, LLP  
723 Ocean Front Walk  
Venice, California 90201  
Tel.: (310) 396-0731

*Attorneys for Plaintiffs*