

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DONALD VANCE and NATHAN ERTEL,	)	
	)	06 C 6964
Plaintiffs,	)	
	)	Judge Shadur
v.	)	
	)	Magistrate Judge Keys
DONALD RUMSFELD, UNITED STATES of	)	
AMERICA and UNIDENTIFIED AGENTS,	)	
	)	
Defendants.	)	JURY TRIAL DEMANDED

**AMENDED COMPLAINT**

NOW COME Plaintiffs, DONALD VANCE and NATHAN ERTEL, by their attorneys, LOEVY & LOEVY, and complaining of Defendants, DONALD RUMSFELD, the UNITED STATES OF AMERICA, and UNIDENTIFIED AGENTS, state as follows:

**Introduction**

1. Last year, Plaintiffs Donald Vance and Nathan Ertel were indefinitely detained without due process of law in a United States military compound located on foreign soil. They were not charged with any crime, nor had they committed any crime. None of Plaintiffs' loved ones could find out if they were even alive.

2. During this extended and unlawful detention, Mr. Vance and Mr. Ertel were interrogated repeatedly by United States military personnel. Their interrogators utilized the types of physically and mentally coercive tactics that are supposedly reserved for terrorists and so-called enemy combatants. Throughout the ordeal, they were denied an attorney or even access to a legitimate court to challenge their detentions.

3. Unlike the other prisoners incarcerated and interrogated in this military installation, Mr. Vance and Mr. Ertel are American citizens. Mr. Vance was born and raised in Illinois. He previously served the United States proudly and honorably as a member of the United States Navy. Mr. Ertel was born and raised in Virginia. He has worked as a government contract administrator for the past 13 years. Neither of them violated the laws of this country or any other law.

4. Plaintiffs are not now, and never have been, terrorists or enemies of the United States. To the best of their knowledge, Plaintiffs were never even legitimately accused of being the same. Rather, they were detained *incommunicado* purely so that officials could interrogate them for months on matters that had no relation to any legitimate grounds for holding them.

5. As Americans, Plaintiffs are entitled to all of the protections and liberties guaranteed by the United States Constitution, and the foregoing mistreatment blatantly violated their rights.

6. Nevertheless, officials at the highest levels of the United States government have endorsed precisely such violations through recently-enacted policies that purport to suspend the constitutional rights of Americans in a manner completely unprecedented in the history of the Bill of Rights.

7. Defendant Donald Rumsfeld devised these policies, and, in doing so, assumed a power that belongs to no public official. He, and every member of the United States government, must be subservient to the Constitution.

8. This lawsuit seeks accountability and justice for Defendants' violations. Mr. Vance and Mr. Ertel also bring this lawsuit at least in part so that other Americans will not have their civil rights suspended in a similar fashion in the future.

#### **Jurisdiction and Venue**

9. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331. This Court has personal jurisdiction over Defendant Rumsfeld because he is a citizen of Illinois, where he maintains his primary residence.

10. Venue is proper under 28 U.S.C. § 1391(b)(1).

#### **Background**

11. Sometime earlier this decade, government officials, including Defendant Donald Rumsfeld, enacted a series of measures applicable to persons whom officials, in their unilateral discretion, decide to designate as possible enemies of the United States.

12. These new measures, crafted in secret by unelected officials and without resort to the democratic process, effectively suspended certain very basic human and civil rights.

13. For example, once the federal officials decided to affix an "enemy" label to a given person, that person would lose the right to *habeas corpus* and could be held indefinitely (at least as far as the policies were concerned) without ever seeing a judge or even being charged with a crime.

14. Persons designated as an enemy or possible enemy could thus be held in secret prisons, cut off from the courts, without access to an attorney, and with no procedure even to challenge the "enemy" designation assigned them.

15. The rules acknowledged no limits on how long detainees could be held under these conditions and also permitted the use of other torturous tactics to interrogate these persons.

16. Furthermore, these secret rules abolished certain basic human rights. For example, the new rules contravened the protections embedded in the Geneva Conventions, *i.e.*, the global norms for the treatment of detainees that were adopted by the communities of the entire world in the wake of the horrors of World War II.

17. After enacting the new rules, members of the federal government endeavored to keep them secret, both from the public and from the people's elected representatives. However, in a still-free society, such secrets remain difficult to keep.

18. When the public eventually learned through the freedom of the press that the United States was renouncing in such a fundamental way its historical respect for the rule of law, there was a measure of public outcry. Indeed, this country was founded on an inherent distrust of placing too much power in any federal branch, a condition deemed too amenable to the very tyranny the founding fathers were attempting to leave behind.

19. In response to the public's misgivings, Defendant Rumsfeld and other federal officials defended the new rules as only applying to "terrorists," a relatively-indeterminate label

applicable to those who hate this country and the values for which it stands.

20. Though the rules were originally justified as applying only to terrorists, there is a very real potential for abuse and slippage. As with any concentration of extraordinary power in the executive branch, this risk is more than hypothetical, as Plaintiffs' experience demonstrates.

21. In particular, while working as civilians with privately-owned companies operating in Baghdad, Plaintiffs came into contact with political, financial, and operational information that they considered to be suspicious and potentially indicative of corruption. Fulfilling what they believed to be their patriotic duties as American citizens, Mr. Vance and Mr. Ertel reported these irregularities to employees of the Federal Bureau of Investigation ("FBI"), the State Department, and other federal government officials. Both Mr. Vance and Mr. Ertel undertook this reporting for their country, even though they knew full well that the disclosures could result in serious, if not deadly, retaliation by those on whom they were informing.

22. After they took these selfless actions, certain low-level bureaucrats in the federal government apparently came to believe, quite incorrectly, that Mr. Vance and Mr. Ertel might have even more information, and they set out to extract it from them. Because they hoped to discover information useful to their personal and professional agendas, and because Defendant Rumsfeld imbued them with unchecked authority to detain and interrogate even American citizens as they please, these officials decided to

have Plaintiffs arrested. They then held Mr. Vance *incommunicado* for three months and Mr. Ertel *incommunicado* for over one month to engage in torturous interrogations, which revealed only that Plaintiffs were innocent civilians who had already volunteered everything they knew to the federal government.

23. Throughout this time, Plaintiffs were imprisoned in a military camp in Iraq, surrounded by other prisoners with labels like "security internee" and "enemy combatant." Like them, Plaintiffs were deprived of all semblance of due process and held for months without ever seeing a legitimate judge.

24. Mr. Vance and Mr. Ertel were also interrogated repeatedly without access to a lawyer, and were subjected to conditions of confinement and interrogation tantamount to torture. This included psychologically-disruptive tactics designed to induce compliance with their interrogators' will, such as exposure to intolerable cold and continuous artificial light (no darkness day after day) for the duration of their imprisonment; extended solitary confinement in cells without any stimuli or reading material; blasting by loud heavy metal and country music pumped into their cells; being awoken by startling if they fell asleep; threats of excessive force; blindfolding and "hooding"; and selective deprivation of food and water.

25. All of the foregoing mistreatment was carried out by Americans. Some of the soldiers who were Plaintiffs' captors were surprised to learn that United States citizens were being detained in this fashion.

26. After nearly 35 days, Mr. Ertel was released and eventually returned to the United States. He was never formally charged with any crime, nor did he ever commit any.

27. More than 60 days later, after more than three months of detention, Mr. Vance was released, and made his way back to the United States. He too was never formally charged with any crime, nor did he ever commit any.

28. Secret imprisonment and torturous interrogation of American citizens by their own government is antithetical to this nation's longstanding commitment to liberty. The basic scheme of our constitutional democracy mandates that such infringements must be subject to meaningful challenge and review by the judicial branch.

#### **The Parties**

29. Plaintiff Donald Vance is a 29 year-old United States citizen who was born and raised in Chicago, Illinois, where he currently resides.

30. Before beginning his career as a security consultant, Plaintiff served his country in the United States Navy, spending two years on active duty and four years in the reserves. Following 9/11, in an act of patriotism, he voluntarily upgraded his reentry code to reactivate if needed.

31. Plaintiff Nathan Ertel is a 30 year-old United States citizen who was born and raised in Virginia.

32. For the past 13 years, Mr. Ertel has worked as a contract manager for numerous government contractors.

33. At all relevant times, Defendant Donald Rumsfeld was the Secretary of the United States Department of Defense ("DOD"). He has since resigned.

34. At all relevant times, Defendant Rumsfeld was personally responsible for developing, authorizing, supervising, implementing, auditing and/or reforming the policies, patterns or practices governing the arrest, detention, treatment, interrogation and adjudication of detainees in Iraq.

35. Under the command of Defendant Rumsfeld, the United States military exercised control and authority over the detention of persons in Iraq, including at Camp Prosperity and Camp Cropper.

#### **The Sandi Group**

36. In 2004, following the United States invasion of Iraq, Plaintiffs separately went to Iraq to try to help native Baghdad citizens rebuild and achieve democracy.

37. Both went to work for the Sandi Group. The Sandi Group, in a joint venture with DynCorp International, provides security services for the United States State Department, nongovernmental organizations ("NGOs"), and commercial and media firms operating in Iraq.

38. The Sandi Group was at one point the largest private employer of Iraqi citizens in Iraq, employing approximately 6,000 people.

39. Mr. Ertel began working for the Sandi Group in August 2004 as a security contract administrator. Mr. Vance joined Sandi Group in December 2004, when he was hired as a



supervisor of security personnel. Among their various duties, Plaintiffs were privileged to provide security escorts and to help secure polling facilities during Iraq's constitutional election period. Plaintiffs also provided security for employees of various NGOs who strived, under difficult conditions, to improve the quality of life for Iraqi citizens.

40. Frustrated with the Sandi Group's lack of concern for its employees, both Mr. Vance and Mr. Ertel eventually quit. Mr. Vance returned home to Chicago and Mr. Ertel returned to Virginia.

#### **Shield Group Security**

41. Shield Group Security ("SGS") is an Iraqi security services company owned by Mustafa Al-Khudairi, a dual Iraqi-British citizen. He is also known as Mustafa Kamel. SGS is an Iraqi corporation. Its formal Iraqi name is the Al-Dera' Al-Watani Company for Security Services & General Guards Ltd.

42. SGS contracts with the Iraqi government, Iraqi companies, NGOs, United States contractors, and the Multinational Forces - Iraq ("MNF-I"). To the best of Plaintiffs' knowledge, SGS is still operating, providing services, *inter alia*, for the Iraqi government and United States-aligned NGOs.

43. In the Fall of 2005, Mr. Vance was contacted in Chicago by Dan Johnson, a former colleague who also had left the Sandi Group and now worked for SGS.

44. At that time, Mr. Johnson asked Mr. Vance to return to Iraq to work for SGS. Mr. Vance agreed and was hired pursuant to a one-year contract to provide security services and supervise security personnel.

45. A short time later, in November 2005, Mr. Ertel too was recruited to work for SGS by another former Sandi Group employee, Josef Trimpert. Mr. Ertel was recruited by Mr. Trimpert to work for SGS as a contract manager tasked with ensuring contract compliance and developing business for SGS. In that position, Mr. Ertel reported directly to Mustafa Al-Khudairi.

46. Plaintiffs were paid monthly by SGS in United States dollars.

47. At all relevant times, SGS maintained its offices in a gated community in the Red Zone in Baghdad, Iraq (the "compound"). Mr. Vance, Mr. Ertel, and Mr. Trimpert all lived in dormitory-type housing on the compound. Mustafa Al-Khudairi also maintained his residence on the compound. The two gates into the compound were controlled by armed guards.

48. The compound was essentially a neighborhood, populated by both native Iraqis and expatriates working for other companies. As was true for everyone living in Baghdad, there were frequent disruptions in electricity and the water was not potable.

### **Plaintiffs Begin Whistleblowing**

49. Most of Plaintiffs' work took place in SGS's main offices where, from time-to-time, they would observe payments being made by SGS agents to certain Iraqi sheikhs.

50. Based on these observations, Plaintiffs came to believe that these payments were being made to obtain influence. Plaintiffs did not know whether these payments were legal or corrupt, but suspected the latter.

51. In October 2005, Mr. Vance returned to Chicago to attend his father's funeral. Acting out of a sense of patriotism and moral obligation, Mr. Vance took this opportunity to telephone the FBI to report what he had been observing at SGS.

52. Mr. Vance was eventually connected to Travis Carlisle, an FBI agent. Mr. Carlisle asked Mr. Vance to report to him any strange activity that he witnessed at SGS. Mr. Vance agreed, and pledged his cooperation.

53. Upon returning to Iraq, Mr. Vance regularly emailed and called Mr. Carlisle in Chicago, sometimes as often as twice per day, to report his observations.

54. Approximately two and a half weeks after this in-person meeting, Mr. Carlisle telephoned Mr. Vance and asked him to meet with Maya Dietz, a government official who was working in Iraq.

55. Mr. Vance met with Ms. Dietz. She asked him to capture SGS's computer documents on memory sticks and forward them to her. Mr. Vance complied with this request.

56. Mr. Ertel was aware of and contributed information for Mr. Vance's communications with the FBI.

57. In addition, both Mr. Vance and Mr. Ertel were in contact with Deborah Nagel and Douglas Treadwell, who were working for the United States in Iraq, about their concerns regarding SGS.

58. Plaintiffs' whistleblowing ultimately expanded to cover a number of topics related to SGS, its dealings with the Iraqi government, other companies and contractors, and the sheikhs. Plaintiffs also reported on others closely associated with SGS, as well as on high-level officials in the new Iraqi government.

59. Much of Plaintiffs' whistleblowing was directed towards Agent Carlisle in the United States rather than to United States officials on the ground in Iraq. Unlike Carlisle, the local United States officials were often unreceptive to Plaintiffs' whistleblowing, even going so far as to discourage Plaintiffs by telling them that there was nothing the local officials could do.

60. As is explained in the following paragraphs, Plaintiffs' whistleblowing eventually triggered retaliation by their own government. Upon learning the magnitude of information Plaintiffs had been reporting to intelligence agents at home, United States officials in Iraq abused their authority and arrested Plaintiffs so that they could interrogate them and learn about the topics on which Plaintiffs had been whistleblowing.

61. In other words, United States officials in Iraq were concerned and wanted to find out about what intelligence agents in the United States knew about their territory and their operations. The unconstitutional policies that Rumsfeld and other Unidentified Agents had implemented for "enemies" provided ample cover to detain Plaintiffs and interrogate them toward that end.

62. These United States officials claimed that Plaintiffs could possibly be enemies because they were affiliated with SGS and that "certain [unnamed] members" of SGS were supposedly suspected of aiding insurgents. Under the applicable policies, no further explanation or evidence was required of them for their actions.

63. This supposed justification was a complete pretext as the following facts show.

**Plaintiffs' Whistleblowing About  
SGS's Vice President and Weapons Dealer, Jeff Smith,  
Who Defendants Decided Not to Arrest**

64. As part of their whistleblowing, Plaintiffs reported to Mr. Carlisle and other United States officials on Jeff Smith.

65. Mr. Smith was high-up in the chain of command at SGS. At one point, he was the Vice President of SGS.

66. In addition, Mr. Smith also operated several of his own companies in Iraq, with whom SGS would subcontract.

67. Mr. Smith was known in Iraq as a weapons merchant. He was capable of obtaining and routinely sold arms and ammunition, night vision technology, and infrared targeting

systems (amongst other items), throughout Iraq, including to SGS. On information and belief, Mr. Smith also sold large quantities of weapons to the Iraqi Ministry of Interior, which desired to obtain caches of arms other than through the United States military. At various times, SGS also sold weapons to Mr. Smith.

68. Given his line of business, Mr. Smith was also very well-connected, including having direct relationships with both General George Casey and Iraq President Jalal Talabani.

69. Indeed, Mr. Smith's activities and affiliations were a frequent subject of the interrogations Plaintiffs were subjected to during their unlawful detentions.

70. Although Defendants supposedly justify their actions against Plaintiffs on grounds that they suspected SGS of weapons dealing and that Plaintiffs were affiliated with SGS, Mr. Smith was also a person affiliated with SGS but he was not arrested (much less detained *incommunicado*, interrogated, or tortured). Moreover, unlike with Plaintiffs, there was actual evidence that Smith was a weapons merchant.

71. There was no legitimate impediment to arresting Mr. Smith. First, he was well known in the Green Zone and was often present in Baghdad.

72. Second, based on several photographs Mr. Smith recently emailed of himself posing with General Casey and President Talabani, Smith was present with the aforementioned gentlemen at a party Smith hosted on July 4, 2006 (while Plaintiff Vance was being held in solitary confinement,

interrogated, and tortured). It would have been easy for the United States military to have arrested Mr. Smith at this party.

73. If the Defendants' supposed basis for arresting and detaining Plaintiffs were legitimate and true, then Mr. Smith also would have been arrested.

74. Plaintiffs are informed and believe that the reason Smith was never arrested was because the supposed justification of affiliation with SGS was a pretext for Plaintiffs' detention and that the Defendants were not in fact concerned about SGS or its associates. Rather, they were concerned about what Plaintiffs told intelligence agents back home about Smith and others.

**Plaintiffs' Whistleblowing About Laith Al-Khudairi,  
an SGS-Connected State Department Employee,  
Whom Defendants Decided not to Arrest**

75. Plaintiffs also reported to United States officials on other persons with clear connections to SGS, most of whom were family of Mustafa Al-Khudairi.

76. One of those persons whom Mr. Vance reported to Mr. Carlisle and Ms. Nagel was Laith Al-Khudairi, Mustafa Al-Khudairi's uncle.

77. To the best of Plaintiffs' knowledge, Laith Al-Khudairi is a citizen of the United States and a resident of Texas who was employed by the United States State Department in detainee operations.

78. Because of his position in the United States government, Laith Al-Khudairi could not easily move between the Green and Red Zones. Mustafa would often task Mr. Vance with transporting Laith from the State Department to the SGS compound.

79. On numerous instances, Laith would come to the SGS compound and meet with large groups of sheikhs. During those meetings, SGS would shut down the entire floor on which the meeting was being held. Neither Mr. Vance nor Mr. Ertel were allowed in and they do not know what transpired during them. Nevertheless, they considered these meetings suspicious and dutifully passed on the information to Mr. Carlisle.

80. Defendants obviously considered these activities suspicious given that Mr. Laith Al-Khudairi was a subject of the Plaintiffs' interrogations.

81. Although Defendants supposedly justify their actions against Plaintiffs on grounds that they suspected SGS of weapons dealing and that Plaintiffs were affiliated with SGS, Mr. Laith Al-Khudairi was also a person affiliated with SGS but he was not arrested (much less detained *incommunicado*, interrogated, or tortured).

82. It would have been easy for the Defendants to have arrested Laith Al-Khudairi. He lived in the Green Zone at the United States Embassy.

83. If the Defendants' supposed basis for arresting and detaining Plaintiffs were legitimate and true, then Laith Al-Khudairi also would have been arrested. Far from arresting him, however, to the best of Plaintiffs' knowledge, the United States



government continues to employ Laith Al-Khudairi at the State Department.

**Plaintiffs' Whistleblowing About SGS Manager  
Mukdam Hassany, Whom Defendants Decided Not to Arrest**

84. Plaintiffs were also providing information to their contacts within the United States government on Mustafa's second-in-command, Mukdam Hassany.

85. Mr. Hassany was heavily involved in all of SGS's contracting, including the selling and procuring of weapons.

86. For example, Mr. Hassany brokered a deal with a Lieutenant Colonel in the South Korean Army, under which SGS sold the South Korean government a large quantity of weapons including AK-47s. There were no end-user certificates issued for those weapons nor was any formal paperwork ever created to memorialize the sale.

87. In addition, Mr. Hassany networked with the Iraqi police for the questionable purchase of government-issued handguns. Handguns were in high demand in Iraq, but there was little supply of the same. Therefore, Mr. Hassany used his contacts within the Iraqi police to procure handguns for SGS and its clients.

88. Mr. Hassany also bribed the same Iraqi police officers to ensure their presence near the compound and thereby adequate protection for SGS.

89. Although Defendants supposedly justify their actions against Plaintiffs on grounds that they suspected SGS of weapons dealing and that Plaintiffs were affiliated with SGS, Mr.

Hassany was also a person affiliated with SGS but he was not arrested (much less detained *incommunicado*, interrogated, or tortured). Moreover, unlike with Plaintiffs, there was actual evidence that Mr. Hassany had committed crimes.

90. There was no impediment to arresting Mr. Hassany. On the morning of April 15, 2006, Mr. Hassany was on the compound. To the best of Plaintiffs' knowledge Mr. Hassany has continued to live in Baghdad and to frequent the compound since that time.

91. To the best of Plaintiffs' knowledge, Mr. Hassany was never detained, interrogated, or even questioned by United States officials.

92. If the Defendants' supposed basis for arresting and detaining Plaintiffs were legitimate and true, then Mr. Hassany also would have been arrested.

**Plaintiffs' Whistleblowing About Yet More  
SGS-Affiliated Al-Khudairi Family Members,  
Whom Defendants Decided Not to Arrest**

93. In addition to reporting on Laith Al-Khudairi, Plaintiffs also provided Mr. Carlisle information about Mazin Al-Khudairi and Haydar Jaffar.

94. Mazin al-Khudairi is a Saudi Arabian citizen. He is Laith Al-Khudairi's brother. He lived at the SGS compound.

95. Mazin somehow obtained a United States Embassy badge. That badge enables freedom of movement among any United States-controlled property in Iraq.

96. Mazin was the main link between SGS and Iraqi politicians. For example, very early on in Plaintiffs' tenure at SGS, SGS sought to develop the capability to manufacture small arms. Once SGS developed that technical ability, Mazin held a meeting with the Iraqi police and officials from the Ministry of Interior and Ministry of Defense to solicit buyers as well as support for a manufacturing license. Shortly after this meeting, SGS was granted a certificate to manufacture M-16s.

97. Mr. Jaffar was Mazin Al-Khudairi's nephew by marriage and Mustafa Al-Khudairi's brother-in-law.

98. Mr. Jaffar was a co-founder of SGS and also ran a very large construction company called National Buildings General Contracting Company ("National Buildings").

99. National Buildings contracts with the United States Army Corp of Engineers and the Iraqi Ministry of Defense on multi-million dollar contracts. On information and belief, both SGS and National Buildings are still operating in Iraq and Mr. Jaffar remains involved in both entities.

100. During Plaintiffs' tenure at SGS, Mr. Jaffar had a close working relationship with SGS. Mr. Jaffar would frequently subcontract security work for his construction projects to SGS and provide SGS with tips about upcoming construction projects. He also worked extensively on developing SGS's security protocols.

101. Although Defendants supposedly justify their actions against Plaintiffs on grounds that they suspected SGS of weapons dealing and that Plaintiffs were affiliated with SGS, Mr.

Mazin Al-Khudairi and Mr. Jaffar were also persons affiliated with SGS but were not arrested (much less detained *incommunicado*, interrogated, or tortured).

102. Moreover, both Mazin Al-Khudairi and Haydar Jaffar were available for arrest. Both remained in Baghdad occupying conspicuous jobs and Mazin was a frequent visitor to the United States Embassy.

103. If the Defendants' supposed basis for arresting and detaining Plaintiffs were legitimate and true, then both Mr. Mazin Al-Khudairi and Haydar Jaffar also would have been arrested.

**Plaintiffs' Whistleblowing about Josef Trimpert  
and His "Beer for Bullets" Program Involving  
United States Military Equipment**

104. Plaintiffs were also providing Mr. Carlisle, Ms. Nagel, Mr. Treadwell and other United States officials information regarding their supervisor, Josef Trimpert.

105. Mr. Trimpert would often obtain large quantities of cash from Mustafa Al-Khudairi and use it to buy liquor. Mr. Trimpert would provide this liquor to United States soldiers in exchange for United States government property, primarily weapons and ammunition, which SGS then used or sold. Mr. Trimpert referred to this as the "Beer for Bullets" program and called himself the "Director". As with the other conduct they observed, Plaintiffs passed this information on to Carlisle and others in the United States government.

106. Plaintiffs also reported on Mr. Trimpert's disturbing trend towards violence. This problem was compounded by the fact that it was not uncommon for civilians in the Red Zone to carry weapons, and Mr. Trimpert was often armed.

107. Plaintiffs were becoming concerned that Mr. Trimpert was a genuine threat to their and other's safety. Mr. Trimpert would threaten and accost Plaintiffs, and brag to them about brutal acts of violence he claimed to be committing against Iraqi citizens.

108. Plaintiffs warned fellow workers at SGS about Mr. Trimpert, and they expressed their concerns directly to Mustafa.

109. Mr. Trimpert, however, had more superiority at SGS. He had also been at the company significantly longer than Plaintiffs, and he was very closely allied with Mustafa.

**Plaintiffs' Whistleblowing About SGS's Weapons**

110. In addition to providing information on certain persons, Plaintiffs duly reported information regarding SGS's suspicious activity -- most notably, its weapons sales and acquisitions -- to Mr. Carlisle, Ms. Nagel and Mr. Treadwell.

111. Plaintiffs came to learn that SGS, with Trimpert's assistance, was amassing and selling weapons for profit.

112. As a security contractor, SGS was in fact licensed and permitted to have and to sell weapons. However, SGS came to possess what Plaintiffs considered to be unnecessary and alarming quantities of weapons.

113. In addition to reporting the existence of these weapons to United States officials, Plaintiffs tried to block SGS's weapons transactions when they had the ability and when they could do so in a manner that protected their safety.

114. Plaintiffs also observed and reported on other suspicious activity relating to SGS's weapons acquisition. For example, on one occasion, SGS came to be in possession of a United States military rifle that appeared badly burned. Mustafa Al-Khudairi asked Mr. Trimpert to have the gun repaired, and Mr. Trimpert took the gun to Camp Victory, a United States military installation to do so.

115. After the gun was repaired and returned to Mr. Trimpert, Sergeant Daniel Boone of the United States military contacted Mr. Vance via email about the gun. Sergeant Boone said that he had been trying to reach Mr. Trimpert to no avail, and he asked Mr. Vance to let Mr. Trimpert know that there was a problem with the gun -- namely, the last time the weapon had been seen was in an attack with insurgents. Sergeant Boone indicated that he needed the weapon returned to him. Mr. Vance relayed the message to Mr. Trimpert immediately, and the weapon was returned.

#### **Operational Problems at SGS**

116. SGS was poorly run, and was generally non-compliant with its various contracts. Its poor performance was well-known, and this reputation made it difficult for Plaintiffs to fulfill the expectations placed on them in terms of obtaining new business.

117. Plaintiffs attempted to encourage upper management to improve performance and fulfill SGS's outstanding contractual obligations, indicating that until SGS demonstrated proper performance it would be virtually impossible for them to bring in new contracts. There was, however, little impetus at SGS to spend the money and resources needed to become compliant and improve its reputation.

118. Plaintiffs repeated entreaties to change SGS were misinterpreted as showing a lack of loyalty and enthusiasm.

119. Additionally, reports began filtering to Mustafa that Plaintiffs had a "negative" approach and were hurting SGS's business. This perception was communicated to Mustafa by the armed Iraqi SGS employees who accompanied Plaintiffs whenever they left the office to meet with present customers and to develop new leads. Mr. Trimpert would disparage Plaintiffs to Mustafa for the same reason.

120. Plaintiffs also ran into problems with the Iraqi sheikhs, mentioned above, who were among the stakeholders in SGS and who helped it obtain influence.

121. In the local power structure, sheikhs maintain influence by providing for the needs of the members of their tribes, including their employment needs. To maintain influence, the sheikhs needed to be able to deliver jobs, and they relied on SGS for that purpose. Thus, the sheikhs helped bring SGS contracts and demanded jobs for their tribes and, apparently, cash, in return.

122. From time to time, the sheikhs would attend SGS business development meetings at which Plaintiffs would be pressured to obtain more contracts. When Plaintiffs would explain that SGS needed to invest in and improve its present performance before it could acquire new business, the meetings would become heated and argumentative.

123. At one point, during the highly-publicized spate of abductions and beheadings in Iraq, Sheik Abu Bakir made a threat in front of Mustafa that he would have Plaintiffs kidnaped if they did not obtain more contracts.

#### **Plaintiffs are Taken Hostage**

124. As a result of the above-described suspicious activity at SGS, Mr. Ertel tendered his resignation to Mustafa Al-Khudairi on April 1, 2006, stating that he would cease working for the company.

125. Mustafa called a meeting two days later to speak with Mr. Ertel about why he wanted to leave SGS. That meeting was delayed because Mustafa had temporarily left the country.

126. Unable to formally resign and wanting to find a way out of the company, Mr. Ertel sent Mustafa an email on April 13 indicating that he was going on a brief vacation.

127. The next day, a high-ranking Iraqi employee of SGS came to Mr. Ertel's apartment and took Mr. Ertel's Common Access Card ("CAC card"). CAC cards are issued by the DOD to certain American civilian contractor personnel in Iraq in order to give them freedom of movement into the Green Zone and various United States installations.



128. After taking Mr. Ertel's CAC card, the very same SGS employee proceeded to Mr. Vance's apartment next door and took Mr. Vance's CAC card. When the two asked for an explanation, the SGS employee told them a dubious story about how Mustafa was supposedly opening up bank accounts for them in Dubai, where he was vacationing, and therefore needed their cards.

129. Mr. Vance called Mustafa on his cellular telephone to protest, but Mustafa would not answer any of Plaintiffs' questions.

130. Without their CAC cards, Plaintiffs could not leave the Red Zone and the SGS compound. They could not get to the Green Zone to procure the proper documentation necessary to leave the country. They were trapped.

131. Plaintiffs contacted Ms. Nagel and Mr. Treadwell, to report their situation. They were told that they should interpret SGS's actions as taking them hostage. Plaintiffs were advised to stay together and to stay armed at all times.

132. The next morning, when the two arrived for work, the SGS employee who had earlier taken Plaintiffs' CAC cards returned the card to Mr. Vance. The same SGS employee told Mr. Ertel that he could not have his CAC card back on direct orders from Mustafa Al-Khudairi.

133. This SGS employee then told Mr. Vance that Mr. Vance and Mr. Trimpert would be escorting Mustafa's brother-in-law to Camp Victory so that Mustafa's brother-in-law could obtain a CAC card.

134. Knowing that it would be impossible to procure a CAC card for Mustafa's brother-in-law because he was not a United States citizen, and knowing that Mr. Trimpert had been threatening him with violence, Mr. Vance suspected that the assignment was a set-up calculated to lure him off of the compound where he would be injured or killed. Mr. Vance also feared for what would happen to Mr. Ertel if the two of them were separated.

135. Accordingly, Mr. Vance called Ms. Nagel and Mr. Treadwell for help. They advised Plaintiffs to barricade themselves inside a room in the SGS compound until United States forces could come rescue them. Plaintiffs gave Ms. Nagel and Mr. Treadwell specific instructions for their rescue.

136. After Plaintiffs did as they were told and barricaded themselves in a room, United States military forces came to the SGS compound to rescue them.

137. Mr. Trimpert attempted to dissuade the forces from removing them, representing that he was an American citizen and that there were no problems at the compound. Mr. Trimpert's efforts to keep Plaintiffs on the SGS compound failed, and they were successfully removed.

138. The military personnel seized all of Plaintiffs' personal property, including but not limited to their personal laptop computers, Mr. Ertel's cell phone and Mr. Vance's digital and video cameras, as well as the associated data contained in these items.

139. Plaintiffs were then put into humvees and taken to the United States Embassy.

**Plaintiffs' Debriefing at the Embassy**

140. When they arrived at the Embassy, Plaintiffs were separately debriefed. Both were questioned by an FBI Special Agent who identified himself as "Doug" and by two persons who stated they were from United States Air Force Intelligence.

141. Plaintiffs related their experiences at SGS, and explained that they had been reporting these problems regularly to another FBI agent in the United States, Travis Carlisle, as well as to Deborah Nagel, Douglas Treadwell and other officials. They told the questioners that many of the communications were documented on their laptops via emails with these parties, and they encouraged the questioners to review them.

142. After the interviews, Plaintiffs were escorted to a trailer on the Embassy grounds to sleep. They slept for approximately two to three hours.

**Retaliation and Disparate Treatment  
from the Whistleblowing**

143. While Plaintiffs slept, the officials with whom they debriefed and/or other officials to whom the debriefing was reported digested the information and came to understand that Plaintiffs possessed a great deal of potentially "high-value" information. On information and belief, they also came to the realization that intelligence personnel in the United States had been privy to this high-value information via Plaintiffs' whistleblowing to Agent Carlisle and therefore knew more about

the goings on in these officials' own territory than they knew themselves.

144. These officials, who are among the Unidentified Agents, determined that they would authorize interrogation of the Plaintiffs to learn what they knew and what they had reported to Mr. Carlisle. Moreover, based on the policies enacted by Defendant Rumsfeld and others, they also knew that they could detain Plaintiffs indefinitely, without any legitimate review for as long as they desired to extract this information.

145. Therefore, they labeled Plaintiffs as possible "security internees" which, under the applicable policies, would allow them to detain Plaintiffs indefinitely without due process or access to an attorney.

146. Their supposed justification for labeling Plaintiffs as such was that Plaintiffs were affiliated with SGS and that "certain [unnamed] members" of SGS were suspected of supplying weapons to insurgents. This statement alone was sufficient to permit Plaintiffs' *incommunicado* detentions. Under applicable policies, no further explanation or evidence was required.

147. The justification used to detain Plaintiffs was pure pretext, designed to keep Plaintiffs in custody so that they could be interrogated at length about any and all topics of information known to them. The detentions were also at least in part to retaliate against Plaintiffs and to punish them for reporting potentially embarrassing information to Agent Carlisle.

148. Among the numerous facts proving this pretext, is the fact that United States officials did not arrest other persons within their grasp who were also affiliated with SGS. For example Jeff Smith, Laith Al-Khudairi, Mazin Al-Khudairi, Mukdam Hassany, and others, were all affiliated with SGS, were all in Baghdad, and were all available for arrest. They did not arrest or interrogate any of these persons even though for some of them, like Jeff Smith, there was serious and disturbing evidence of weapons dealings.

**Plaintiffs Are Arrested and Detained**

149. After their debriefing at the Embassy, Plaintiffs were awoken by a knock on the door, whereupon armed guards instructed them to exit the trailer. These same guards walked Plaintiffs to the gate of the Embassy, where Plaintiffs were both placed under arrest.

150. They were handcuffed and blindfolded and pushed into separate humvees. They were not given any protective equipment for the drive through Baghdad, notwithstanding the dangers.

151. Plaintiffs believe that they were driven to Camp Prosperity, a military installation in Iraq controlled by the United States military.

152. Upon their arrival, guards at Camp Prosperity placed them in a cage, strip searched and fingerprinted them, and issued them jumpsuits.

153. Plaintiffs were told to keep their chins to their chests and not to speak; if they did either, the guards told them that they would "use excessive force" on them, or words to that effect.

154. Plaintiffs were taken to separate cells. For the entire duration of their short detention at Camp Prosperity, they were held in solitary confinement 24 hours per day. The lights in their cells were kept on the entire time. There was no toilet in their cells, and they were allowed to go to the bathroom only twice per day. They also were fed only twice per day. The only surface for sleeping was a thin mat on concrete.

155. Plaintiffs believe that they were at Camp Prosperity for approximately two days. Thereafter, Plaintiffs were shackled, blindfolded, and taken in separate humvees to Camp Cropper.

156. As before, Plaintiffs were not given any protective gear or bulletproof vests for the dangerous drive, which involved traveling along Highway Irish, a notorious sniper trap. At one point, the vehicle in which Mr. Vance was traveling was stopped and Mr. Vance heard gunfire. Mr. Vance feared for his life.

#### **Unconstitutional Conditions of Confinement at Cropper**

157. Camp Cropper is a military facility near the Baghdad International Airport, which the United States military uses to house persons considered to be "high-value" detainees.

158. Plaintiffs arrived at Camp Cropper, and, while still blindfolded, were strip searched and given a jumpsuit.

159. They were each then taken to a military jail occupied by foreign prisoners. They spent the remainder of their respective detentions in solitary confinement, housed in tiny and unclean cells, mostly deprived of stimuli and reading materials. There were bugs and feces on the cell walls.

160. The cells were kept extremely cold, and the lights were always turned on, except when the electric generators for the Camp would fail.

161. Each cell contained a concrete slab for sleeping. Plaintiffs were furnished only very thin plastic mats.

162. Under these conditions, it was difficult to obtain meaningful rest. Often, the prison would play heavy metal or country music at intolerably-loud volumes. Guards would pound on the cell doors when they observed Plaintiffs to be sleeping.

163. The cells had no sinks nor any potable running water. Plaintiffs had to rely on guards for their drinking water, which was often withheld.

164. Plaintiffs also often were denied food and water completely, sometimes for an entire day. When it did arrive, food and water were delivered through a slit in one of the walls.

165. During the entire length of their detention, Plaintiffs each received only one shirt and one pair of overalls to wear. They were never given adequate shoes to protect their feet.

166. Furthermore, Plaintiffs were repeatedly denied necessary medical care. Mr. Vance, for example, requested and was denied basic dental hygiene equipment and treatment for

severe tooth pain that he was experiencing. Mr. Vance's requests in that regard were ignored until he eventually had to have his tooth pulled, an extreme procedure that could and should have been avoided.

167. When it was finally administered, this dental procedure was performed hurriedly and covertly, late at night. While the dentist had provided Mr. Vance with pain killers and antibiotics, the guards took them all and refused to provide any to Mr. Vance. As a result, Mr. Vance experienced severe pain and the hole where the tooth had been became infected and filled with puss. No necessary follow-up care was provided.

168. Similarly, Mr. Ertel had been suffering from an esophageal ulcer which required regular doses of antacids. That medication, too, was often withheld from him.

169. The guards would also torment Plaintiffs, apparently trying to keep them off-balance mentally. For example, the guards would often "shake down" their cells, sometimes claiming falsely to have discovered contraband, a nonsensical accusation given their obvious lack of access to anything prohibited.

170. The guards also physically threatened and assaulted Plaintiffs. For example, when Plaintiffs were transported within the Camp, they would be blindfolded and a towel would be placed over their heads. Plaintiffs had to rely on the guards to direct their movements such as when to walk forward or which way to turn. The guards would often purposefully steer them into walls.



171. Plaintiffs were constantly threatened that guards would use "excessive force" against them if they did not immediately and correctly comply with every instruction given them.

172. Plaintiffs were not allowed to go outdoors at any time for approximately one week after their arrival. Thereafter, the two were occasionally allowed a brief period outdoors for recreation, but otherwise remained in complete solitary confinement.

173. These infrequent yard privileges were only permitted at midnight. Plaintiffs were told that this was so because no one was supposed to know that Americans were being imprisoned at Camp Cropper.

174. In fact, from what Plaintiffs could ascertain, they were the only American citizens held there.

#### **Plaintiffs' Isolation**

175. For the first several weeks of their detentions, Plaintiffs were not permitted to make any phone calls to the outside world. During that entire time, their families did not know where they were, or whether they were alive or dead.

176. Over the entire duration of their detention, Plaintiffs were allowed only a few calls, the majority of which occurred toward the very end and related to making financial arrangements for their eventual departures from Iraq.

177. Mr. Vance was allowed to meet with a clergyman only one time. All of his other requests for clergy visits were denied. Mr. Ertel was never permitted such visits.

### **Unlawful Interrogations**

178. Throughout their detention at Camp Cropper, Plaintiffs were continuously interrogated by United States officials. These interrogations took place either in an interrogation room or in their cells.

179. Before each interrogation, both Mr. Vance and Mr. Ertel would always ask for an attorney, but each such request was invariably denied. Mr. Ertel wrote a letter to the Judge Advocate General requesting counsel and asked his captors to send it, though he has no knowledge of whether it was in fact sent. The request was never granted.

180. Without the assistance and advice of counsel, Plaintiffs were each subjected to a series of interrogations (always separate) conducted by FBI agents and Navy Criminal Investigative Service officers, as well as possibly Central Intelligence Agency and Defense Intelligence Agency agents.

181. At both Mr. Vance's and Mr. Ertel's sessions, the interrogators would not identify themselves by name, and none would honor their requests for an attorney.

182. At the initial interrogation sessions, both Mr. Vance and Mr. Ertel separately communicated to the FBI agent present that they had been talking to Special Agent Carlisle, and that Mr. Carlisle would confirm their identities and their stories.

183. The initial interrogators confirmed that they knew Travis Carlisle, and were aware that Mr. Vance had been speaking to him. Several sessions later, however, a different set of

interrogators denied to both Mr. Vance and Mr. Ertel that a Travis Carlisle even existed.

184. The numerous interrogations to which Plaintiffs were subjected shared no consistent focus. The sessions were usually conducted by different interrogators, often inquiring into different sets of topics, and demonstrating differences in their apparent knowledge bases.

185. Some interrogators were interested in learning more about the Sandi Group, its operations and employees. Others focused on SGS, its political contacts in the Iraqi government, its structure and hierarchy, its relationships with the sheikhs described above and the persons at its helm. Other of Plaintiffs' interrogators were interested in Mustafa, Laith and Mazin Al-Khudairi, as well as Mr. Jaffar, Mr. Smith, and others.

186. Still other interrogators questioned Plaintiffs about their communications with Carlisle and their relationships with Deborah Nagel and Douglas Treadwell.

187. Some of the interrogators also focused on Mr. Trimpert's relationship with United States soldiers, and how Mr. Trimpert obtained United States weapons and ammunition. Plaintiffs were told that Mr. Trimpert had admitted to forging federal documents to procure CAC cards, bribing government officials, and trading alcohol for weapons with military employees.

188. At least one interrogator focused solely on how Mr. Vance had been treated at the camp, and what Mr. Vance would do if he were released. Mr. Vance was asked questions such as whether he intended to write a book or obtain an attorney.

189. The main constant throughout all of the sessions was the interrogators' aggressive techniques and their repeated threats that if Plaintiffs did not "do the right thing," they would be detained indefinitely.

**The "Detainee Status Board"**

190. On or about April 20, 2006, Plaintiffs each received letters from Colonel Bradley J. Huestis, President of a body he called the Detainee Status Board, indicating that a proceeding would be convened no earlier than April 23 to determine their legal status as "enemy combatants," "security internees," or "innocent civilians." A true and correct copy of those letters are attached as Exhibit A hereto.

191. The letters informed Plaintiffs that they did not have a right to legal counsel. They were further told that they would only be permitted to call witnesses for their defense and present evidence if the evidence and witnesses were "reasonably available" to them at Camp Cropper.

192. On or about April 22, 2006, Plaintiffs each received a "Notice of Status and Appellate Rights" stating that each had now been determined to be "security internee" and that the basis for their detention was:

You work for a business entity that possessed one or more large weapons caches on its premises and may be

involved in possible distribution of these weapons to insurgent/terrorist groups.

The letters indicated that Plaintiffs had the right to appeal their "internment" by submitting a written statement to camp officials. The Notice gave precious little other guidance as to what the appeal entailed, how it would be adjudicated, or any other salient aspects of the process. A true and correct copy of the April 22nd Notice to Mr. Ertel is attached as Exhibit B hereto.

193. Despite the lack of guidance, on the very day that they received these April 22 letters, Plaintiffs prepared their appeals and requested evidence for the Board. Each requested to have the other be present as a witness, among other witnesses.

194. Each also requested, among other evidence, their previously-seized laptops and cellular telephone records, all of which would prove their numerous conversations with Travis Carlisle, Maya Dietz, Deborah Nagel, and Douglas Treadwell.

195. Despite the representations in the previously-mentioned letter from Colonel Huestis, neither Mr. Vance nor Mr. Ertel were ever provided with any of the evidence they had requested for their defense.

196. On or about April 26, 2006, Plaintiffs were both transported within Camp Cropper to appear before a group calling themselves the Detainee Status Board. This "Board" consisted of two men and one woman, all of whom were in "sterilized" military garb, meaning that they wore no insignia of name or rank. There

was also an additional person present in a sterilized uniform who directed the line of questioning. He appeared to be the prosecutor.

197. Mr. Ertel's Board proceeding convened first. Neither Mr. Ertel's request for evidence nor his request for witnesses at his proceeding were honored, including his specific request that Mr. Vance (who was certainly "reasonably available" at Camp Cropper) be present.

198. At the outset, one of the three panel members stated to Mr. Ertel that he had the right to an attorney at no cost to MNF-I. Mr. Ertel told them that he had been provided the letter attached hereto as Exhibit A, stating that he had no such right, and, as a practical matter, he had been provided no opportunity to arrange for the presence of counsel.

199. When Mr. Ertel stated that he would like an attorney to be present, he was told that no one on the panel knew how to obtain an attorney for him. The panel told Mr. Ertel that they had to move forward with the proceedings and that he would simply have to do without an attorney.

200. Once the proceeding began, Mr. Ertel was not allowed to see most of the purported evidence concerning him. In particular, Mr. Ertel was told that a stack of documents, which was visible in front of the panel, was evidence in his case but that he would not be allowed to review it. At least some of these documents would have been presumptively exculpatory, given his innocence. He was told that he was only allowed to see "unclassified" portions of the materials.

201. Mr. Ertel was also denied the opportunity to hear the testimony of, much less cross-examine, whatever adverse witnesses the panel may have been relying upon in reaching its determination(s).

202. Mr. Vance's proceeding before the "Detainee Status Board" followed the same format as Mr. Ertel's. Both were denied: (1) their evidentiary requests; (2) the right to counsel; (3) the right to call one another and others as witnesses; (4) the right to see all of the evidence presented against them and to have exculpatory evidence provided to them; (5) the right to remain silent (although they had nothing to hide); and, (6) the right to confront adverse witnesses.

203. At the end of this proceeding, Mr. Vance asked the tribunal if his family knew where he was, or whether or not he was even alive. Mr. Vance was told that they did not know what, if anything, his family had been told.

204. In fact, neither Mr. Vance's nor Mr. Ertel's family or friends knew of their detention despite vigorous efforts to contact United States officials to determine the Plaintiffs' whereabouts.

205. Mr. Vance also asked when he would get an answer about his status. He was told that he would find out the results in three to four weeks. In the interim, he would remain in solitary confinement.

206. No legitimate investigation was ever undertaken. No one even contacted Mr. Carlisle for at least three weeks after Plaintiffs were detained.

**Release From Camp Cropper**

207. After their Detainee Status Board proceedings, Plaintiffs received little additional information regarding their detention until shortly before their respective releases, when travel arrangements had to be made.

208. About one month after the Detainee Status Board convened, on May 17, 2006, Major General John D. Gardner, the Commanding General of Task Force 134 (Detainee Operations) for the MNF-I, signed a letter authorizing the release of Mr. Ertel.

209. Mr. Ertel was released some 18 days after the board officially acknowledged that he was an innocent civilian. Instead of securing his safety and transporting him on a military aircraft as Mr. Ertel requested, he was placed on a bus headed to Baghdad International Airport. Mr. Ertel was forced to sign a form agreeing to this manner of his release. Mr. Ertel was not provided with an exit visa nor other documentation necessary to permit him to leave the county. Mr. Ertel was able to get out of Iraq only after he ran into a friend at the Airport. Mr. Ertel's friend called someone in the United States Air Force Special Operations Unit who was able to help Mr. Ertel leave Iraq.

210. For no legitimate reason, Mr. Vance's detention was continued for more than two additional months after Mr. Ertel's release and, presumably, after the Detainee Status Board had exonerated him. This extended over-detention was used to continue Mr. Vance's interrogations on topics apparently of interest to the persons who detained him.



211. Finally, on July 20, 2006, several days after Major General Gardner authorized his release, Mr. Vance was dropped at the Baghdad Airport to fend for himself without the documentation needed to return to the United States.

212. Fortunately, without too much delay, Mr. Vance was able to secure a flight out of Iraq to Amman, Jordan; he subsequently flew home to Chicago.

213. All told, Mr. Ertel was held *incommunicado* for nearly 40 days and Mr. Vance was held *incommunicado* just short of 100 days until their anonymous interrogators determined that there were apparently no more questions that they wanted answered. Both were ultimately released without ever being charged with any wrongdoing.

214. Though both Mr. Vance and Mr. Ertel were eventually allowed to return home, the cumulative effect of the foregoing ordeal has been devastating for both. For months, Plaintiffs were deprived of their most basic human rights, to say nothing of those guaranteed them by the United States Constitution. As a result, Plaintiffs have suffered serious emotional and physical distress.

215. Plaintiffs are not terrorists. They are United States citizens, who love this country, and everything for which it stands, as much as any other American. They have never committed, much less been charged with, any crime.

### **Widespread Practices and Policies**

216. The unlawful detention and torment of Plaintiffs were not merely the random acts of individuals, nor the result of some officials' innocent misunderstanding of the restrictions that the United States Constitution and international law place upon the treatment of fellow human beings and United States citizens. Rather, their treatment was the direct result of recently-documented policies and practices implemented by Defendant Rumsfeld and high-level military commanders acting at his direction.

217. For example, on March 6, 2006, Amnesty International published a report criticizing United States-led MNF-I detentions in Iraq. The Amnesty Report references the arbitrary nature of the security internment system, and the ways in which MNF-I consistently denies detainees their rights to counsel and to challenge the lawfulness of their detentions, as well as access to their families and the outside world.

218. The Amnesty Report also documents a repeated pattern of violations of Section IV of the Fourth Geneva Convention. This includes instances of torture and ill-treatment of detainees by United States troops, such as exposing detainees to extremes of heat and cold and unlawfully restraining and physically assaulting detainees.

219. A March/April 2006 Human Rights Report by the United Nations Assistance Mission for Iraq ("UNAMI") made similar findings, concluding that "[t]he general conditions of detention in Iraqi facilities are not consistent with human rights

standards." The Report documents numerous instances in which detainees were deprived of sufficient food, hygiene and medical care.

220. Likewise, the May/June 2006 UNAMI Human Rights Report documents still more examples of detainee abuse in Iraq. That Report includes an accounting by DOD of its own wrongdoing, and references DOD admissions that United States soldiers have withheld food from and physically threatened detainees.

221. Similarly, the International Committee of the Red Cross has published a Report criticizing the United States military detention system in Iraq as appallingly defective. According to the Red Cross Report, military officials routinely deny detainees the opportunity to contact their families to notify them of their whereabouts. The Report further documents other forms of mistreatment, including solitary confinement, hooding, physical threats, confiscation of property, exposure to loud noise or music and deprivation of food and water.

222. Most disturbingly, the Red Cross noted that military intelligence officers of the Coalition Forces in Iraq have admitted that, like Plaintiffs, "between 70% and 90% of the persons deprived of their liberty in Iraq had been arrested by mistake."

#### **Defendant Rumsfeld's Role**

223. These and numerous other examples of abuse all demonstrate a widespread and systematic pattern of the same violations that Plaintiffs suffered. These violations have been directed, encouraged and condoned by Defendant Rumsfeld, and are

consistent with, and inflicted pursuant to, the policies and requirements he implemented for United States operations in Iraq.

224. For many of these policies, Defendant Rumsfeld left a well-documented paper trail.

225. For example, on December 2, 2002, Defendant Rumsfeld personally approved a list of illegal interrogation techniques for use on detainees at Guantanamo. Contrary to established rules and military standards, as set forth in then-governing Army Field Manual 34-52, those techniques included the use of 20-hour interrogations, isolation for up to 30 days, and sensory deprivation.

226. On January 15, 2003, Defendant Rumsfeld officially rescinded his authorization for those techniques, but took no measures to end the practices which had by then become ingrained, nor to confirm that the practices were in fact being terminated. Defendant Rumsfeld also took no action to prevent, investigate or punish the use of these methods. To the contrary, he authorized the Commander of the United States Southern Command to use them if warranted and approved by Rumsfeld in individual cases.

227. At the same time, Defendant Rumsfeld convened a "Working Group" to evaluate his interrogation policies. Following that Working Group, in April 2003, Rumsfeld approved a set of new interrogation techniques, which included isolation for up to thirty days, dietary manipulation and "sleep adjustment."

228. Just as before, Rumsfeld provided that harsher techniques could be used with his prior approval. At the time Rumsfeld approved these April policies, he was well-aware of the

torture and other abuses of detainees that occurred in Guantanamo Bay, Afghanistan, and Iraq.

229. Instead of trying to stop and prevent such abuse, Defendant Rumsfeld took measures to increase the pressure on interrogators in a manner he knew was highly likely to result in further torture or cruel, inhumane, and degrading punishment, particularly in Iraq.

230. For instance, Defendant Rumsfeld sent Major Geoffrey Miller to Iraq in August 2003 to review the United States military prison system in Iraq and make suggestions on how prisons could be used to more effectively obtain actionable intelligence from detainees -- or, in more colloquial terms, to "gitmo-ize" Camp Cropper.

231. In so doing, Defendant Rumsfeld knew and tacitly authorized Major Miller to apply in Iraq the techniques that Rumsfeld had approved for use at Guantanamo and others. At Rumsfeld's direction, Major Miller did just that.

232. On September 14, 2003, in response to Major Miller's call for the use of more aggressive interrogation policies in Iraq, and as directed, approved and sanctioned by Defendant Rumsfeld, Lieutenant General Ricardo Sanchez, Commander of the United States-led military coalition in Iraq (the "Coalition Joint Task Force-7") signed a memorandum authorizing the use of 29 interrogation techniques.

233. The approved-techniques included yelling, loud music, light control and sensory deprivation, some of which were used against Plaintiffs.

234. A month later, Commander Sanchez modified the previous authorization, but continued to allow interrogators to control the lighting, heating, food, shelter and clothing given to detainees.

235. At this point, Defendant Rumsfeld was well aware of the torture and other cruel, inhumane and degrading treatment occurring at United States detention centers in Iraq, but nonetheless consciously chose to ignore it.

236. Starting in May 2003, the Red Cross began sending reports detailing abuses of detainees in United States custody in Iraq to the United States Central Command in Qatar. Colin Powell, then the Secretary of Defense, confirmed that Defendant Rumsfeld knew of the various reports by the Red Cross, stating that he and Defendant Rumsfeld kept President Bush regularly apprised of their contents throughout 2003.

237. Indeed, Defendant Rumsfeld was not only aware of the 2003 Red Cross reports, but also of its February 2004 Report, discussed above, as well as a series of other investigative reports into detainee abuse in Iraq, including those of former Secretary of Defense James Schlesinger, Army Major General Antonio Taguba, and Army Lieutenant General Anthony Jones.

238. Despite the mounting evidence of widespread and systemic abuse, Rumsfeld did nothing to investigate his subordinates' misconduct, meaningfully punish wrongdoers, properly train his subordinates in detention and interrogation policy, or alter the policies and practices implemented in United States detention facilities.

239. Rumsfeld was aware that his policies were directing and causing this pattern of widespread abuse that injured Plaintiffs, but he condoned and encouraged them. Rumsfeld was the official responsible for terminating this pattern of abuse and reforming the policies causing it. But, he nonetheless chose to condone, encourage, and turn a blind eye to this conduct.

240. As recently as December 30, 2005, Rumsfeld modified the Army Field Manual to continue the use of illegal and improper interrogation and detention tactics even in the face of congressional rebuke and condemnation by the American general public.

241. The December Field Manual included ten pages of classified interrogation techniques that apparently authorized, condoned, and directed the very sort of violations that Plaintiffs suffered. To the best of Plaintiffs' knowledge, the December Field Manual was in operation during their detention. It was not replaced until September 2006.

242. Numerous instances of abuse occurring since December 2005, including those documented by UNAMI, make clear that Rumsfeld has breached his duty to make United States policies and practices comply with constitutional requirements. Instead, he has continued his unlawful policies and practices, turned a blind eye to any misconduct, abandoned his responsibility to reform unlawful conduct, and failed to meaningfully discipline any wrongdoers.

243. Defendant Rumsfeld's policies and directives are completely inconsistent with fundamental constitutional and human rights. No reasonable official could believe that the law allows him to assume powers and authorize treatment so blatantly contrary to applicable rights and norms. Accordingly, Defendant Rumsfeld is not entitled to any form of official immunity for his knowing decisions to break with the laws protecting American citizens and international treaties on human rights.

**The Role of the Unidentified Agents**

244. The Unidentified Agents are employees of the United States and/or contractors working for the United States who, at least in part, exercise government authority. The Unidentified Agents made the decisions and took the actions to arrest, detain, and mistreat Plaintiffs, and to violate their rights as described throughout this complaint. These Defendants also include all of those persons who had knowledge that the violations would occur or were occurring and failed to intervene to prevent them. Further, the Unidentified Agents include persons who are presently conspiring to unlawfully cover-up from Plaintiffs the identities of those who are liable to them in order to prevent them from exercising their rights in this lawsuit.

245. For example, Plaintiffs were interrogated by persons identifying themselves as members of various United States intelligence agencies. Other of their interrogators did not identify any agency and may very well be for profit contractors employed to engage in interrogation tactics that are



(at least in black letter law) illegal for United States agents to use. All of their interrogators violated Plaintiffs rights.

246. Similarly the person or persons who made the decision to arrest and detain Plaintiffs, to deprive them of counsel, and of their due process rights are currently unidentified. Nevertheless, all of the individuals involved were exercising government authority. Moreover, all of the officials present for those decisions certainly had an opportunity to insist that Plaintiffs' rights be respected and they failed to do so.

247. These Unidentified Agents are personally liable to Plaintiffs regardless of whether they were merely "following order" when they violated the Constitution and basic standards of decency. In other words, even though these actors may have been merely implementing an unconstitutional and unconscionable set of policies and widespread practices they cannot "blame the system." Any reasonable official should and does know that Americans cannot be treated in the way Plaintiffs have alleged.

**Count I - United States Constitution,  
False Arrest**

248. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

249. As described more fully above, Plaintiffs were arrested and detained without legal justification.

250. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to these violations of Plaintiffs' constitutional rights.

251. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

252. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

253. The misconduct described in this Count was undertaken under color of federal law.

254. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

255. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, physical pain and suffering, serious emotional distress, and anguish.

**Count II - United States Constitution,  
Unlawful Detention**

256. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

257. As described more fully above, Plaintiffs were detained for an unreasonable length of time without being charged with a crime and without access to an attorney or legitimate court.

258. Plaintiffs' detentions also violated their constitutional rights because there was no judicial approval of their arrest/detention within a reasonable amount of time.

259. Plaintiffs' detentions were further unreasonable because their detentions were unjustifiedly extended even after the time the Detainee Status Board determined that there were no grounds to continue detaining them.

260. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

261. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

262. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

263. The misconduct described in this Count was undertaken under color of federal law.

264. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

265. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, physical pain and suffering, serious emotional distress, and anguish.

**Count III - United States Constitution,  
Unlawful Search and Seizure**

266. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

267. As described more fully above, Plaintiffs were subjected to numerous searches of their persons, including strip searches, for which there was no justification.

268. Plaintiffs' property was also searched and seized without justification and is still being held today without justification.

269. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

270. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving,

condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

271. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

272. The misconduct described in this Count was undertaken under color of federal law.

273. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

274. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of property, serious emotional distress, and anguish.

**Count IV - United States Constitution,  
Unlawful Interrogations**

275. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

276. As described more fully above, Plaintiffs were repeatedly interrogated without counsel despite requests for the same and were never warned of their rights to counsel or to remain silent. In fact they were not permitted to remain silent, but, rather threatened that their detentions would be continued unless they cooperated with the questioning.

277. The statements obtained from Plaintiffs in this manner were used to initiate and continue criminal and/or quasi-criminal cases against them, were used to detain them, and were used against them in other proceedings including the Detainee Status Board, all in violation of the Fifth Amendment.

278. Additionally, there was no procedure afforded Plaintiffs to challenge the use of these statements against them in violation of the Fifth and Fourteenth Amendment rights to Due Process.

279. Moreover, Plaintiffs' treatment by the prison guards and interrogators, and the prolonged and repeated interrogations themselves over the course of months "shocks the conscience" in violation of Due Process.

280. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

281. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

282. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

283. The misconduct described in this Count was undertaken under color of federal law.

284. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

285. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count V - United States Constitution,  
Denial of the Right to Counsel**

286. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

287. As described more fully above, Plaintiffs were not furnished with counsel and/or denied the opportunity to procure counsel during critical stages of the cases against them, all in violation the Sixth Amendment.

288. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

289. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving,

condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

290. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

291. The misconduct described in this Count was undertaken under color of federal law.

292. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

293. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count VI - United States Constitution,  
Denial of the Right to Confront Adverse Witnesses/Evidence**

294. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

295. As described more fully above, Plaintiffs were denied the right to confront, or even know the existence or identity of, the adverse witnesses against them. Plaintiffs were also denied the right to know all or even most of the evidence that was being used against them, to rebut it, to prepare to meaningfully dispute it, or to respond to it in any way.



296. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

297. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

298. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

299. The misconduct described in this Count was undertaken under color of federal law.

300. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

301. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count VII - United States Constitution,  
Denial of the Right to Present Witnesses and Evidence, and to  
have Exculpatory Evidence Disclosed**

302. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

303. As described more fully above, Plaintiffs were denied the right to present witnesses and evidence at the Detainee Status Board and to have exculpatory evidence disclosed in violation of the Sixth Amendment.

304. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

305. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

306. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

307. The misconduct described in this Count was undertaken under color of federal law.

308. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

309. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count VIII - United States Constitution,  
Conditions of Detention**

310. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

311. As described more fully above, the conditions in which Plaintiffs were transported and confined were unreasonable and shock the conscience. These conditions were inflicted by persons, including Defendant Rumsfeld and the Unidentified Agents, who were deliberately indifferent to the risks to Plaintiffs and to their suffering.

312. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

313. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

314. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

315. The misconduct described in this Count was undertaken under color of federal law.

316. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

317. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count IX - United States Constitution,  
Denial of Necessary Medical Care**

318. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

319. As described more fully above, Plaintiffs repeatedly requested medical attention. Despite having actual knowledge of Plaintiffs' objectively serious medical conditions, the Unidentified Agents failed to provide Plaintiffs with necessary medical care.

320. In this manner, the conduct of the Unidentified Agents was objectively unreasonable and deliberately indifferent to Plaintiffs' serious medical needs.

321. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

322. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate

indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

323. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

324. The misconduct described in this Count was undertaken under color of federal law.

325. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

326. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count X - United States Constitution,  
Denial of Property without Due Process**

327. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

328. As described more fully above, Plaintiffs were deprived of their property without due process of law.

329. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to these violations of Plaintiff's constitutional rights.

330. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this

knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

331. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

332. The misconduct described in this Count was undertaken under color of federal law.

333. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

334. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of property, serious emotional distress, and anguish.

**Count XI- Equal Protection: "Class of One"**

335. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

336. The Defendants arrested, detained, interrogated, and otherwise abused Plaintiffs, but did not treat Jeff Smith, Laith Al-Khudairi, Mazin Al-Khudairi, Haydar Jaffar, and/or Mukdam Hussany in a similar fashion.

337. Defendants had no legitimate basis for so treating Plaintiffs and for treating Plaintiffs differently than these other individuals, all of whom were (in the best light to

Defendants) similarly situated to Plaintiffs with regard to the purported justification for arresting, detaining, and abusing Plaintiffs as alleged herein.

338. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to these violations of Plaintiff's constitutional rights.

339. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

340. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

341. The misconduct described in this Count was undertaken under color of federal law.

342. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

343. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of property, serious emotional distress, and anguish.

**Count XII - United States Constitution, Denial of Access to the Courts and to Petition for Redress of Grievances**

344. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

345. As described more fully above, Plaintiffs were denied access to the courts to challenge their unlawful detention, the conditions of their confinement and the taking of their property in violation of the constitutional right to Due Process and the First Amendment.

346. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' constitutional rights.

347. Defendant Rumsfeld had actual and constructive knowledge that these very types of constitutional violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

348. The Unidentified Agents also caused these violations of Plaintiffs' constitutional rights by their decisions, actions, and failures to act or intervene.

349. The misconduct described in this Count was undertaken under color of federal law.

350. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.



351. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count XIII - Retaliation**

352. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

353. As described more fully above, Plaintiffs were retaliated against for speaking out on matters of public concern including, *inter alia*, by being arrested and detained.

354. Defendant Rumsfeld's policies and practices, as well his condoning of such conduct, authorized and/or foreseeably led to this violation of Plaintiffs' rights.

355. Defendant Rumsfeld had actual and constructive knowledge that these very types of violations would occur and were occurring routinely. Despite this knowledge, Defendant Rumsfeld acted with reckless and deliberate indifference to these violations -- facilitating, approving, condoning and turning a blind eye to them, and failing to discipline violators in any meaningful way.

356. The Unidentified Agents also caused these violations of Plaintiffs' rights by their decisions, actions, and failures to act or intervene.

357. The misconduct described in this Count was undertaken under color of federal law.

358. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

359. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of liberty, serious emotional distress, and anguish.

**Count XIV - Conspiracy Among Unidentified Agents**

360. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

361. The Unidentified Agents, or some of them, reached an agreement, or agreements, amongst themselves and/or with others, to mistreat Plaintiffs in the unlawful manner alleged herein.

362. As a result of the Unidentified Agents' conspiracies, Plaintiffs had their rights violated and were injured.

363. Additionally, the Unidentified Agents, or some of them, reached an agreement, or agreements, amongst themselves and/or with others, to unlawfully cover-up from Plaintiffs the identities of those who are liable to them for the violation of their rights as well as the evidence needed to prove those violations, all in order to prevent Plaintiffs from exercising their rights to challenge in this lawsuit the constitutionality of what happened to them during their arrests and detentions. In the event that Plaintiffs lose any rights or causes of action

relating to their arrests and detentions, it is due to this conspiracy to cover-up.

364. The misconduct described in this Count was undertaken under color of federal law.

365. The misconduct described in this Count was undertaken with malice, willfulness and reckless indifference to the rights of others.

366. As a result of the above-described wrongful infringement of Plaintiffs' rights, Plaintiffs suffered damages, including but not limited to loss of property, serious emotional distress, and anguish.

#### **Count XV - Return of Seized Property**

367. Each of the Paragraphs in this Complaint is incorporated as if restated fully herein.

368. As described more fully above, Plaintiffs' property, including their laptop computers, as well as Mr. Ertel's cell phone, Mr. Vance's digital and video cameras, and all data stored therein, were taken by United States officials in violation of the United States Constitution.

369. Plaintiffs have tried to secure the return of their property by petitioning to the United States Army, but the Army has refused to produce the same. An official in the United States Army denied that they have Mr. Ertel's property and outright refused to return Mr. Vance's property.

370. In so doing, the Army official was acting in his official capacity under color of law.

371. The Army's ruling on this matter constituted a final agency action under the Administrative Procedure Act, 5 U.S.C. §702.

372. The Army's ruling refusing Plaintiffs their property was arbitrary, capricious and an abuse of discretion.

373. As a result of the Army's ruling, Plaintiffs have not been able to access their personal property, including the information stored on their laptop computers, which has critical import for this suit.

374. This is the only claim that Plaintiffs bring directly against the United States.

WHEREFORE, Plaintiffs, DONALD VANCE and NATHAN ERTEL, respectfully request that this Honorable Court enter judgment in their favor and against Defendant DONALD RUMSFELD and the UNIDENTIFIED AGENTS, awarding compensatory and punitive damages, as well as costs and attorneys fees and any other relief this Court deems just and appropriate. Plaintiffs also request that this Court review the Army's final agency action and enter judgment in Plaintiffs' favor and against Defendant UNITED STATES OF AMERICA ordering the return of all of Plaintiffs' personal property including computers, other electronics, and the data included therein.

**JURY DEMAND**

Plaintiffs, DONALD VANCE and NATHAN ERTEL, hereby demand a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

RESPECTFULLY SUBMITTED,

/s/ Michael Kanovitz  
Attorneys for Plaintiff

Arthur Loevy  
Mike Kanovitz  
Jon Loevy  
Gayle Horn  
LOEVY & LOEVY  
312 North May St  
Suite 100  
Chicago, IL 60607  
(312) 243-5900



**MULTI-NATIONAL FORCE - IRAQ**  
CAMP VICTORY, BAGHDAD  
APO AE 09342-1400

REPLY TO  
ATTENTION OF:

8 0 APR 2006

Office of the Staff Judge Advocate

Name: Donald Vance  
ISN: 200343  
SSN: 351-66-1844

Subject: Detainee Status Board

Dear Mr. Donald Vance:

A Detainee Status Board has been convened to determine your legal status as a U.S. citizen detained in the conflict in Iraq. The board has been scheduled to begin no earlier than 23 April, 2006. This Board will determine your status as one of the following:

(1) **Enemy Combatant:** An individual who is a member agent of Al Qaeda, the Taliban, or another international terrorist organization against which the United States is engaged in an Armed Conflict.

(2) **Security Internee:** An individual detained because there exists reasonable grounds to believe you pose a threat to security or stability in Iraq. Reasonable grounds consist of sufficient indicators to lead a reasonable person to believe that detention is necessary for imperative reasons of security, e.g. that you pose a threat to MNF-I or Iraqi security forces, or to the safety of civilians in Iraq, or otherwise pose a threat to security and stability in Iraq.

(3) **Innocent Civilian:** An individual who should be immediately released because there are no reasonable grounds to believe that you pose a threat to security or stability in Iraq. Detention is not necessary for imperative reasons of security, e.g. you do not pose a threat to MNF-I or Iraqi security forces, or to the safety of civilians in Iraq, or are otherwise not a threat to security and stability in Iraq.

The unclassified factual basis that will be used by the Board to determine your status is as follows:

On or about April 15, 2006 you were detained by members of the Coalition Forces for being a suspect in supplying weapons and explosives to insurgent/criminal groups through your affiliation with the Shield Group Security Company (SGS) operating in Iraq. Credible evidence suggests that certain members of SGS are supplying weapons to insurgent groups in Iraq. Further, you are suspected of illegal receipt of stolen weapons and arms in Iraq from Coalition Forces.

EXHIBIT

A

You have the following rights at the Board:

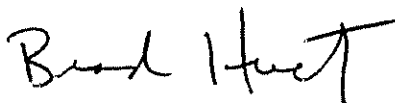
- (1) You have the right to be present at all open sessions of the Board.
- (2) You have the right to testify or not to testify.
- (3) You do not have the right to legal counsel, but you may have a personal representative assist you at the hearing if the personal representative is reasonably available.
- (4) You have the right to present evidence, including the testimony of witnesses who are reasonably available.
- (5) You have the right to examine and cross-examine witnesses.

The following procedures apply at Board hearings:

- (1) All relevant evidence, including hearsay evidence, is admissible. The Board hearing is not adversarial. A recorder may present evidence to the Board. Witnesses will testify under an oath or affirmation to tell the truth.
- (2) The Board's decisions are determined by a majority of voting members.


If you wish to have evidence, witnesses or a personal representative at the Board, you must deliver a written request to the Camp Commander of your detention facility before the Board convenes. The Board will attempt to accommodate reasonable requests for persons who it finds are immediately available. If you have any questions concerning this Board, please contact the Camp Commander with your inquiry and it will be forwarded to The Multi-National Force - Iraq Office of the Staff Judge Advocate for clarification.

Sincerely,



Bradley J. Huestis  
LTC, U.S. Army  
President of the Board

ACKNOWLEDGEMENT OF RECEIPT:

  
\_\_\_\_\_  
Donald Vance (Signature)

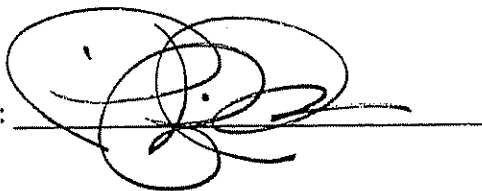
Date: 4-20-06

Time: 21:42

CERTIFICATE OF SERVICE

On ~~20 April~~ 2006, I, Philip Reiman, personally served a copy of "Detainee Status Board" dated ~~20 April 06~~, on Donald Vance, ISN: 200343. This document notifies him of his rights and procedures at his Detainee Status Board.

Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "Philip Reiman", written over a horizontal line. The signature is highly stylized and cursive.





**MULTI-NATIONAL FORCE - IRAQ**  
CAMP VICTORY, BAGHDAD  
APO AE 09342-1400

REPLY TO  
ATTENTION OF:

8 0 APR 2006

Office of the Staff Judge Advocate

Name: Nathan Adam Erpel  
ISN: 200342  
SSN: 231-08-1975

Subject: Detainee Status Board

Dear Mr. Nathan Adam Erpel:

A Detainee Status Board has been convened to determine your legal status as a U.S. citizen detained in the conflict in Iraq. The board has been scheduled to begin no earlier than 23 April, 2006. This Board will determine your status as one of the following:

(1) **Enemy Combatant:** An individual who is a member agent of Al Qaeda, the Taliban, or another international terrorist organization against which the United States is engaged in an Armed Conflict.

(2) **Security Internee:** An individual detained because there exists reasonable grounds to believe you pose a threat to security or stability in Iraq. Reasonable grounds consist of sufficient indicators to lead a reasonable person to believe that detention is necessary for imperative reasons of security, e.g. that you pose a threat to MNF-I or Iraqi security forces, or to the safety of civilians in Iraq, or otherwise pose a threat to security and stability in Iraq.

(3) **Innocent Civilian:** An individual who should be immediately released because there are no reasonable grounds to believe that you pose a threat to security or stability in Iraq. Detention is not necessary for imperative reasons of security, e.g. you do not pose a threat to MNF-I or Iraqi security forces, or to the safety of civilians in Iraq, or are otherwise not a threat to security and stability in Iraq.

The unclassified factual basis that will be used by the Board to determine your status is as follows:

On or about April 15, 2006 you were detained by members of the Coalition Forces for being a suspect in supplying weapons and explosives to insurgent/criminal groups through your affiliation with the Shield Group Security Company (SGS) operating in Iraq. Credible evidence suggests that certain members of SGS are supplying weapons to insurgent groups in Iraq. Further, you are suspected of illegal receipt of stolen weapons and arms in Iraq from Coalition Forces.

You have the following rights at the Board:

- (1) You have the right to be present at all open sessions of the Board.
- (2) You have the right to testify or not to testify.
- (3) You do not have the right to legal counsel, but you may have a personal representative assist you at the hearing if the personal representative is reasonably available.
- (4) You have the right to present evidence, including the testimony of witnesses who are reasonably available.
- (5) You have the right to examine and cross-examine witnesses.

The following procedures apply at Board hearings:

- (1) All relevant evidence, including hearsay evidence, is admissible. The Board hearing is not adversarial. A recorder may present evidence to the Board. Witnesses will testify under an oath or affirmation to tell the truth.
- (2) The Board's decisions are determined by a majority of voting members.

If you wish to have evidence, witnesses or a personal representative at the Board, you must deliver a written request to the Camp Commander of your detention facility before the Board convenes. The Board will attempt to accommodate reasonable requests for persons who it finds are immediately available. If you have any questions concerning this Board, please contact the Camp Commander with your inquiry and it will be forwarded to The Multi-National Force – Iraq Office of the Staff Judge Advocate for clarification.

Sincerely,



Bradley J. Huestis  
LTC, U.S. Army  
President of the Board

ACKNOWLEDGEMENT OF RECEIPT:

  
\_\_\_\_\_  
Nathan Adam Erpel (Signature)

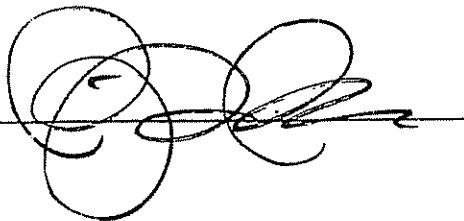
Date: 20 April 06

Time: 21:45

CERTIFICATE OF SERVICE

On 20 April 2006, I, Phillip Reiman, personally served a copy of "Detainee Status Board" dated 20 April 06, on **Nathan Adam Erpel**, ISN: 200342. This document notifies him of his rights and procedures at his Detainee Status Board.

Signed: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "Phillip Reiman", written over a horizontal line. The signature is highly stylized with large loops and a long horizontal stroke at the end.



**DEPARTMENT OF DEFENSE**

LEGAL OFFICE – TASK FORCE 134  
MULTI-NATIONAL FORCE – IRAQ  
APO AE 09342

REPLY TO  
ATTENTION OF:  
Magistrate Office

Date: 22 April 2006

Detainee Name: **NATHAN ADAM ERTEL**  
ISN: **200342**  
Internment Facility: **CROPPER**

Subject: Notice of Status and Appellate Rights

1. Status. This is to notify you of your status and the basis for your detention. You are being detained as a Security Internee pursuant to United Nations Security Council Resolution (UNSCR) 1546, 1637, and Coalition Provisional Authority (CPA) Memorandum 3 (Revised). You have been detained for the following reasons.

You work for a business entity that possessed one or more large weapons caches on its premises and may be involved in the possible distribution of these weapons to insurgent/terrorist groups.

2. Appellate Rights. You have the right to appeal your internment in accordance with Article 78 of the Geneva Convention. You may use the appeal form provided, or any writing containing your full name and ISN. If you provide a written statement of appeal, the statement will be translated into English and included in your case file for consideration by subsequent competent review authorities. **To be considered, written material must be submitted to any guard, military police, or camp official for delivery to the Magistrate.**

3. You may also have another person submit additional written material on your behalf. If another person is submitting written material, ensure they put your full name and ISN number on the document so it can be properly placed in your file. Written materials may be submitted to any military police or camp official at any visitation site at Abu Ghraib, Bucca, Cropper or Suse to be forwarded to the reviewing authority.

4. Written material you wish to submit for consideration from any source must be received by the reviewing authority in a timely manner. It is imperative that you gather and submit your written appeal and any other written submissions **AS SOON AS POSSIBLE**. Untimely written submissions could result in the reviewing authority not having the all the information available when making a decision on your case. Written matters will be translated into English and included in your case file.

<b>Proof of Service</b>
Date of Service:
Served By:
_____
(Name / Rank)

