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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ABDULLAH AL-KIDD,

Plaintiff,

v.

ALBERTO GONZALES, Attorney General of the United States; JOHN ASHCROFT, Former Attorney General of the United States; ROBERT MUELLER, Director of the Federal Bureau of Investigation; MICHAEL CHERTOFF, Secretary of the Department of Homeland Security; JAMES DUNNING, Sheriff for the City of Alexandria; DENNIS M. CALLAHAN, Former Warden, Oklahoma Federal Transfer Center; VAUGHN KILLEEN, Former Sheriff of Ada County;

CASE NO.
05-093-EJL

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

FBI Agents MICHAEL JAMES GNECKOW, SCOTT MACE; UNITED STATES DEPARTMENT OF JUSTICE; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; FEDERAL BUREAU OF INVESTIGATION; TERRORIST SCREENING CENTER; DONNA BUCELLA, Director of the Terrorist Screening Center; UNITED STATES; JOHN DOES 1-25,

Defendants.

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Plaintiff Abdullah al-Kidd, through counsel, hereby complains and alleges the following:

INTRODUCTION

1. This case involves a gross abuse of the government's power under the federal material witness statute. See 18 U.S.C. § 3144 (material witness statute).

2. The material witness statute gives the government the power to arrest a wholly innocent individual, without charges, solely for the purpose of securing his testimony in a criminal proceeding. Not surprisingly, however, the statute places strict limits on the use of this extraordinary power, limits likewise mandated by the United States Constitution.

3. Three safeguards are especially critical. First, and fundamentally, the statute may not be used as a pretext to arrest an individual whom the government lacks probable cause to charge with a crime but nonetheless wishes to detain preventively and/or to hold for further investigation. Second, even where an individual is genuinely sought as a witness, and not as a criminal suspect, the witness may not be arrested unless he has engaged in some action that provides a legitimate basis for reasonably believing that his testimony could not be secured voluntarily or by issuance of a subpoena. Finally, an individual arrested as a material witness must be detained under conditions consistent with his status as an innocent witness, and not under the conditions used to jail criminal suspects, much less those actually convicted of a crime.

4. In the aftermath of September 11, 2001, the government has blatantly and systematically ignored all three of these essential safeguards, as well as numerous others

mandated by statute and the Constitution. The facts of this case acutely illustrate the illegality of the government's post-9/11 material witness policies and practices.

5. In March 2003, plaintiff Abdullah al-Kidd was humiliatingly arrested at Dulles International Airport on a material witness warrant and led away in handcuffs in front of scores of onlookers by agents of the Federal Bureau of Investigation (FBI). After interrogating Mr. al-Kidd, the FBI had him jailed at the Alexandria Detention Center in Virginia.

6. Over the next fifteen days, Mr. al-Kidd was shuffled between three different detention facilities across the country. When transported between facilities, he was shackled with leg restraints, a "belly chain" and a set of handcuffs looped through the chain so that his hands could not move more than a few inches from his waist. At each facility, he was held under high-security conditions and rarely permitted to leave his cell, often spending twenty-three hours a day in lockdown.

7. On some occasions, Mr. al-Kidd was singled out for treatment worse than that afforded the other individuals housed in the high-security wing, many of whom had been charged or convicted of serious crimes. At one facility, for example, Mr. al-Kidd was required to remove his clothes and to sit naked in a cell in view of a female guard and the other detainees, all of whom were fully clothed.

8. On March 27, 2003, while Mr. al-Kidd remained in detention, the Director of the FBI, Robert Mueller, brought Mr. al-Kidd's case to the attention of the United States Congress. Testifying before a House subcommittee, Director Mueller stated that the government was making progress in the fight against terrorism and that there had been more than 200 "suspected terrorists . . . charged with crimes, 108 of whom have been convicted to date." The Director then

offered a number of examples of the government's recent successes in combating terrorism. The Director's first example was the capture of Khalid Shaikh Mohammed, who according to the government was the "mastermind" of the September 11 attacks and is supposedly being held in a secret location abroad. The next example Director Mueller gave was the arrest of Mr. al-Kidd. He then listed three additional examples, all of which involved individuals who had been criminally charged with terrorism-related offenses. The Director's testimony did not mention that Mr. al-Kidd had been arrested as a witness, and not on criminal charges.

9. Mr. al-Kidd was eventually released from detention on March 31, 2003, but ordered to live with his wife and in-laws in Nevada and restricted to traveling within Nevada and three other states. More than fourteen months later, the trial for which Mr. al-Kidd's testimony was supposedly needed ended without a conviction on a single count. Mr. al-Kidd was never called as a witness (and was never subsequently charged with a crime).

10. Even after the trial concluded, the government did not move to have Mr. al-Kidd dismissed as a material witness. Instead, Mr. al-Kidd filed a motion with the Court to lift the restrictions and to dismiss him as a material witness, which the Court granted in June 2004.

11. To this day, the government has never explained why the Director of the FBI would tell the United States Congress that the arrest of Mr. al-Kidd – supposedly a witness – represented one of the government's noteworthy recent successes in the war on terrorism. Nor has the government ever explained why Director Mueller's testimony failed to mention the fact that Mr. al-Kidd had been arrested only as a witness, and not on criminal charges.

12. The government has likewise never explained why a supposed witness would need to be routinely shackled when transported. Nor has the government explained why a witness would need to be detained under high-security conditions.

13. Most importantly, the government has never explained why Mr. al-Kidd had to be arrested and detained at all (even assuming that the government genuinely had believed it needed his testimony). Indeed, the government was able to secure a material witness warrant for Mr. al-Kidd's arrest only by providing the Court with a patently false and wholly misleading affidavit. That affidavit contained only three sentences directly addressing why the government believed it could not secure Mr. al-Kidd's testimony without arresting him:

> Kidd is scheduled to take a one-way, first class flight (costing approximately $5,000.00) to Saudi Arabia on Sunday, March 16, 2003, at approximately 6:00 EST. He is scheduled to fly from Dulles International Airport to JFK International Airport in New York and then to Saudi Arabia.
>
> * * *
>
> It is believed that if Al-Kidd travels to Saudi Arabia, the United States Government will be unable to secure his presence at trial via subpoena.

See Affidavit at ¶¶ 7, 8 (Attached as Exhibit A).

14. The government has since admitted, however, that through further investigation it learned that Mr. al-Kidd had a round-trip ticket, and not a one-way ticket (an admission made only after Mr. al-Kidd had spent more than two weeks in detention). Furthermore, Mr. al-Kidd did not have a first-class ticket costing approximately $5,000, as the affidavit alleged, but rather, a coach-class ticket costing less than $2,000.

15. In addition to the false statements, the affidavit was wholly misleading in what it omitted to tell the Court. Among other things, the affidavit failed to inform the Court:

- that Mr. al-Kidd was not a Saudi national returning to his home country, but rather a native-born United States citizen and a graduate of the University of Idaho;

- that Mr. al-Kidd had a wife, child, parents and siblings who were native-born United States citizens living in this country;

- that Mr. al-Kidd had talked with the FBI on several occasions prior to his arrest, either in-person or on the phone, and had voluntarily answered dozens of questions for hours on a wide range of topics;

- that each of these in-person conversations had taken place at his mother's home (where Mr. al-Kidd was living at the time) and that Mr. al-Kidd had never failed to show up to these pre-arranged meetings;

- that prior to his arrest, Mr. al-Kidd had not heard from the FBI for approximately six months;

- that the FBI had never told Mr. al-Kidd that he might be needed as a witness at some point, that he could not travel abroad, or that he must inform the FBI if he did intend to travel abroad; and finally,

- that Mr. al-Kidd was never asked if he would be willing to testify, to voluntarily relinquish his passport or to otherwise postpone his trip to Saudi Arabia (where he was scheduled to further his studies at a well-known university).

16. Instead, the government simply blind sided a cooperative United States citizen months after they had last contacted him, without ever giving him the opportunity to cooperate voluntarily – all under the pretense that his testimony was critically needed in a future trial (a trial in which Mr. al-Kidd was never even called to testify).

17. Mr. al-Kidd brings this action to vindicate his statutory and constitutional rights to be free from arbitrary and punitive arrest and detention. He seeks a declaration that his rights were violated and an order expunging his unlawful arrest record. He also seeks an appropriate amount of monetary damages for his harrowing and wholly unnecessary experience. The Defendants are the United States, the responsible federal agencies, and various federal and state officials.

JURISDICTION AND VENUE

18. This case is brought pursuant to, inter alia, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution; Bivens; the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.; 42 U.S.C. § 1983; and 18 U.S.C. §§ 3142, 3144. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). This Court has jurisdiction under 28 U.S.C. § 1331; 28 U.S.C. § 1343; 28 U.S.C. § 1346; 28 U.S.C. § 2201; and 28 U.S.C. § 2202.

19. By letter dated September 15, 2005, Mr. al-Kidd was informed by the FBI that his administrative claims under the Federal Tort Claims Act (FTCA) had been denied (Attached as Exhibit B). Mr. al-Kidd has thus exhausted his administrative remedies for purposes of his claims under the FTCA. See 28 U.S.C. §§ 2675, 1346.

20. Venue is proper in the District of Idaho because a substantial part of the events complained of and giving rise to Plaintiff's claims occurred in this District. See 28 U.S.C. §§ 1391(b), 1391(e), 1402(b).

PARTIES

21. Plaintiff ABDULLAH AL-KIDD is a United States citizen currently living in Las Vegas, Nevada.

22. Defendant ALBERTO GONZALES is the Attorney General of the United States of America. As Attorney General, he has ultimate responsibility for the United States Department of Justice and the Federal Bureau of Investigation, the Bureau of Prisons and the United States Marshals Service. In this capacity, Defendant Gonzales has responsibility for administering the material witness statute, and also has oversight of various databases that contain and disseminate arrest and detention records. Defendant Gonzales is the successor to John Ashcroft, who served as Attorney General of the United States until February 2005. Defendant Gonzales is sued in his official capacity.

23. Defendant JOHN ASHCROFT was the Attorney General of the United States of America from 2001-2005, and at the time Mr. al-Kidd was arrested and detained. As Attorney General, he had ultimate responsibility for the United States Department of Justice, the Federal Bureau of Investigation, the Bureau of Prisons and the United States Marshals Service. In this capacity, Defendant Ashcroft had responsibility for administering the material witness statute, and also had responsibility for the maintenance and operation of various databases that contain and disseminate arrest and detention records. Defendant Ashcroft is sued in his individual capacity for damages.

24. Defendant ROBERT MUELLER is the Director of the Federal Bureau of Investigation. As Director, he has responsibility for administering the material witness statute

and also has responsibility for the maintenance and operation of various databases that contain and disseminate arrest and detention records. Defendant Mueller is sued in his official capacity.

25. MICHAEL CHERTOFF is the Secretary of the Department of Homeland Security. As Secretary of Homeland Security, he has responsibility for the maintenance and operation of various databases that contain and disseminate arrest and detention records. Defendant Chertoff is sued in his official capacity.

26. Defendant SCOTT MACE is the FBI agent who prepared and signed the affidavit submitted in support of the application to arrest Mr. al-Kidd as a material witness. Defendant Mace is sued in his individual capacity for damages.

27. Defendant MICHAEL JAMES GNECKOW was an FBI agent referenced in the affidavit submitted in support of the material witness application in Mr. al-Kidd's case. According to the affidavit, Defendant Gneckow provided Defendant Mace with information for the factual assertions in the affidavit. Defendant Gneckow is sued in his individual capacity for damages.

28. Defendant JAMES DUNNING is, and was at all relevant times to this complaint, the Sheriff for the City of Alexandria, Virginia. As Sheriff, Defendant Dunning had responsibility for the conditions under which Mr. al-Kidd was confined at the Alexandria Detention Center. As Sheriff, Defendant Dunning was responsible for subjecting Mr. al-Kidd to punitive, unreasonable and excessively harsh conditions in violation of the Constitution and federal statutes. Defendant Dunning is sued in his individual capacity for damages.

29. Defendant DENNIS M. CALLAHAN, at all relevant times to this complaint, was the Warden for the Oklahoma Federal Transfer Center. While Warden, Defendant Callahan had

responsibility for the conditions under which Mr. al-Kidd was confined. While Warden, Defendant Callahan was responsible for subjecting Mr. al-Kidd to punitive, unreasonable and excessively harsh conditions in violation of the Constitution and federal statutes. Upon information and belief, Defendant Callahan is no longer the Warden of the Oklahoma Federal Transfer Center. Defendant Callahan is sued in his individual capacity for damages.

30. Defendant VAUGHN KILLEEN, at all relevant times to this complaint, was the Sheriff of Ada County, Idaho. While Sheriff, Defendant Killeen had responsibility for the conditions under which Mr. al-Kidd was confined at the Ada County Jail. While Sheriff, Defendant Killeen was responsible for subjecting Mr. al-Kidd to punitive, unreasonable and excessively harsh conditions in violation of the Constitution and federal statutes. Upon information and belief, Defendant Killeen is no longer Sheriff of Ada County. Defendant Killeen is sued in his individual capacity for damages.

31. Defendant UNITED STATES DEPARTMENT OF JUSTICE ("DOJ") is a federal agency authorized by statute to arrest material witnesses, impose conditions of confinement on material witnesses, and to administer and maintain various databases that contain and are used to disseminate arrest, detention and other records.

32. Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY ("DHS") is a federal agency that operates and maintains federal databases that contain and are used to disseminate arrest, detention and homeland-security related records.

33. Defendant FEDERAL BUREAU OF INVESTIGATION ("FBI") is the agency within DOJ responsible for gathering intelligence for material witness and criminal proceedings,

seeking warrants, executing arrests, and administering certain databases that contain and are used to disseminate arrest, detention and other records.

34. Defendant TERRORIST SCREENING CENTER ("TSC") is a multi-agency program established by Homeland Security Presidential Directive 6. Upon information and belief, it is housed within the FBI to centralize foreign and domestic intelligence, criminal information, and homeland security data for dissemination to law enforcement officials and others.

35. Defendant DONNA BUCELLA is the Director of the Terrorist Screening Center and has ultimate responsibility for the Center's actions, including the maintenance and dissemination of arrest, detention and records relating to terrorism investigations. Defendant Bucella is sued in her official capacity.

36. Defendant UNITED STATES is sued under the Federal Tort Claims Act, 28 U.S.C. § 1346, for the tortious acts of its employees.

37. Plaintiff is unaware of the true names and capacities, whether individual or otherwise, of Defendant DOES 1 through 25, inclusive, and therefore sues those Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that these DOE Defendants, and each of them, are in some manner responsible and liable for the acts and/or damages alleged in this Complaint, and that among these DOE Defendants are supervisory employees and federal and state agents who acted under color of law. Plaintiff will amend this Complaint to allege the DOE Defendants' true names and capacities when they have been ascertained.

JURY DEMAND

38. Plaintiff demands a trial by jury in this action on each of his claims triable by jury.

FACTS

39. Mr. al-Kidd is a 33-year-old African-American man born in Wichita, Kansas in 1972 and raised near Seattle, Washington. His mother, father and siblings are all native-born United States citizens. Mr. al-Kidd has two native-born United States children. All of these individuals have always resided in the United States.

40. Mr. al-Kidd graduated from the University of Idaho, where he was a standout running back on the football team. Before graduating, Mr. al-Kidd converted to Islam and changed his name from Lavoni T. Kidd to Abdullah al-Kidd.

41. After graduation, Mr. al-Kidd worked for various social and charitable organizations.

42. While at the University of Idaho, and after graduation, Mr. al-Kidd traveled abroad to further his religious studies. He returned to the United States on each occasion. At the time of his arrest, Mr. al-Kidd was traveling to Saudi Arabia for the purpose of further language and religious study at a well-known university to which he had received a scholarship.

The Material Witness Application

43. Following September 11, 2001, the government began a broad anti-terrorism investigation in Idaho focusing in particular on Muslim and/or Arab men.

44. During the spring and summer of 2002, FBI agents conducted surveillance of Mr. al-Kidd and his then-wife (also a native-born United States citizen) as part of their broad terrorism investigation. The FBI surveillance logs do not report any illegal activity.

45. On February 13, 2003, an Indictment was filed in the United States District Court for the District of Idaho in the case of Sami Omar Al-Hussayen, a graduate student at the University of Idaho. The Indictment alleged that Mr. Al-Hussayen had committed visa fraud and had made false statements to United States officials.

46. Approximately one month later, on March 14, 2003, the United States Attorney's Office submitted an application in the United States District Court for the District of Idaho for the arrest of Mr. al-Kidd as a material witness pursuant to 18 U.S.C. § 3144. According to the government, Mr. al-Kidd had "crucial" information germane to Mr. Al-Hussayen's criminal trial.

47. United States Magistrate Judge Williams approved the application and issued the material witness arrest warrant for Mr. al-Kidd on March 14, 2003, the same day as the government's request.

48. The material witness application submitted for Mr. al-Kidd's arrest was based on a 3-page affidavit executed by FBI Agent Mace. The affidavit stated that Agent Mace relied on facts acquired and supplied by FBI Agent Gneckow and other law enforcement officials. Agents Mace and Gneckow are Defendants in this action.

49. The affidavit consisted of only three sentences directly pertaining to whether Mr. al-Kidd's testimony could be secured voluntarily or by subpoena, without the need for arrest:

> Kidd is scheduled to take a one-way, first class flight (costing approximately $5,000.00) to Saudi Arabia on Sunday, March 16, 2003, at approximately 6:00 EST. He is scheduled to fly from Dulles International Airport to JFK International Airport in New York and then to Saudi Arabia.
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> * * *
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> It is believed that if Al-Kidd travels to Saudi Arabia, the United States Government will be unable to secure his presence at trial via subpoena.

See Affidavit at ¶¶ 7, 8 (Attached as Addendum A).

50. The affidavit, on its face, wholly failed to establish probable cause that Mr. al-Kidd's testimony could not be secured voluntarily or by subpoena, without the need for arrest.

51. Defendants Mace and Gneckow knew or reasonably should have known that the affidavit wholly failed to establish probable cause that Mr. al-Kidd would decline to testify voluntarily, or pursuant to a subpoena, without the need for arrest. Defendants Mace and Gneckow acted intentionally and/or with reckless disregard in submitting this legally deficient affidavit.

52. Defendants Mace and Gneckow also knew or reasonably should have known that the affidavit contained false, material information. Defendants Mace and Gneckow acted intentionally and/or with reckless disregard in including this false, material information.

53. Among these false, material statements was that Mr. al-Kidd had a one-way, first-class ticket to Saudi Arabia costing approximately $5,000. In fact, Mr. al-Kidd's ticket was a coach-class ticket costing approximately $1,700. Furthermore, the government later conceded that additional investigation revealed that Mr. al-Kidd's ticket was not a one-way ticket, but a round-trip ticket.

54. Further, Defendants Mace and Gneckow knew or reasonably should have known that the affidavit omitted material information, and they acted intentionally and/or with reckless disregard in failing to include this information. Among other things, Defendants Mace and Gneckow did not inform the Court of the following material information about which they knew or reasonably should have known:

(a) Mr. al-Kidd was a native-born United States citizen and a graduate of the University of Idaho;

(b) Mr. al-Kidd had a wife, child, parents and siblings who were native-born United States citizens living in this country;

(c) Mr. al-Kidd had talked with the FBI on several occasions prior to his arrest, either in-person or on the phone, and had answered dozens of questions for hours on a wide range of topics, that each of the in-person conversations had taken place at his mother's home (where Mr. al-Kidd was living at the time), and that Mr. al-Kidd had never failed to show up to these pre-arranged meetings;

(d) Prior to his arrest, Mr. al-Kidd had not heard from the FBI for approximately six months;

(e) At no time prior to his arrest did Defendants Mace or Gneckow, or any other government official, tell Mr. al-Kidd that he could not travel abroad or that he must consult with the government before he scheduled a trip abroad;

(f) At no time prior to his arrest did Defendants Mace, Gneckow, or any government official, tell Mr. al-Kidd that he would be needed as a witness in the Al-Hussayen trial (or any other proceeding) or ask him if he would agree to testify.

55. Mr. al-Kidd would have complied with a subpoena had he been issued one or agreed to a deposition, and Defendants Mace and Gneckow had no reasonable basis for believing otherwise. Similarly, Mr. al-Kidd would have voluntarily postponed his trip to Saudi Arabia and/or relinquished his passport had he been asked to do so, and Defendants Mace and Gneckow had no reasonable basis for believing otherwise. Mr. al-Kidd would also have agreed to return from his trip when needed had he been asked to do so, and Defendants Mace and Gneckow had no reasonable basis for believing otherwise.

56. Defendants Mace and Gneckow sought a material witness warrant for Mr. al-Kidd for the purpose of detaining him preventively and/or for the purpose of further investigating him for possible criminal wrongdoing. Defendants Mace and Gneckow viewed Mr. al-Kidd as a criminal suspect, and not as a witness.

57. Upon information and belief, another material witness in the Al-Hussayen trial who was scheduled to travel to Saudi Arabia was not arrested and detained as a material witness, but only had his passport temporarily confiscated and was later permitted to travel to Saudi Arabia on the condition that he return for the trial. Unlike Mr. al-Kidd, this individual was not a United States citizen, but a Saudi national. Upon information and belief, there was no legitimate basis for treating Mr. al-Kidd differently than this individual; Mr. al-Kidd was treated differently, and arrested and detained because he was viewed as a potential criminal suspect.

58. In addition, the affidavit submitted in support of the material arrest warrant was facially unlawful on the separate and independent ground that it wholly failed to establish probable cause to believe that Mr. al-Kidd had testimony that was germane to Al-Hussayen's criminal proceeding. The affidavit stated that Mr. al-Kidd's testimony was "crucial" to the government's case (testimony which he was never called to provide). The affidavit, however, never precisely explained what information Mr. al-Kidd possessed that was germane to the charges then pending against Al-Hussayen (visa fraud and making false statements to the government). Instead, the affidavit contained largely irrelevant information or statements attempting to cast Mr. al-Kidd in a suspicious light.

59. Defendants Mace and Gneckow knew or reasonably should have known that the affidavit wholly failed to establish probable cause to believe Mr. al-Kidd had germane testimony.

Further, the affidavit was materially misleading and omitted material information. Defendants Mace and Gneckow acted intentionally and/or with reckless disregard to the omissions and the materially misleading nature of the affidavit, and also in submitting a facially invalid affidavit.

60. Among other things, the affidavit stated that Mr. al-Kidd had material information because he or his wife received payments from Al-Hussayen and Al-Hussayen's "associates in excess of $20,000.00." In fact, Defendants Mace and Gneckow knew or reasonably should have known that Mr. al-Kidd worked for the same charitable Islamic organization as Mr. Al-Hussayen for a considerable period of time and received a salary for his work. Defendants Mace and Gneckow acted intentionally and/or with reckless disregard in omitting this material information.

61. Defendants Mace and Gneckow acted under color of law in preparing and executing the affidavit in support of the material witness application in Mr. al-Kidd's case.

62. Defendants Mace and Gneckow acted intentionally, knowingly, and/or with reckless disregard to the constitutional and legal rights of Mr. al-Kidd to be free from unlawful arrest and detention.

63. Defendants Mace and Gneckow knew or reasonably should have known that the reasonably foreseeable consequences of their actions would result in the unlawful arrest of Mr. al-Kidd, and, especially in the aftermath of September 11, 2001, would also subject Mr. al-Kidd to prolonged, punitive and excessive unlawful, and unconstitutional conditions of confinement, and to punishment without due process. In particular, Defendants Mace and Gneckow knew or reasonably should have known the way in which Muslim men, arrested on material witness warrants after September 11, 2001, were treated upon arrest and detention. See infra §§ 108-36. Defendants Mace and Gneckow further knew or reasonably should have known that their actions

in securing Mr. al-Kidd's arrest would set into motion a series of events, the reasonably foreseeable outcome of which was the prolonged, excessive, punitive and unlawful detention of Mr. al-Kidd.

64. Defendants Mace and Gneckow bear legal responsibility for Mr. al-Kidd's unlawful and punitive arrest; Mr. al-Kidd's prolonged, excessive and unlawful detention; and the punitive, excessive and unlawful conditions of his detention and post-release restrictions, in violation of statutory and constitutional law.

Mr. al-Kidd's Arrest

65. On March 16, 2003, two days after the warrant was issued, FBI agents arrested Mr. al-Kidd as a material witness at Dulles International Airport in Virginia while he was at the ticket counter checking in for his flight.

66. Mr. al-Kidd was handcuffed. The agents did not provide him with Miranda warnings. The agents also did not provide him with a copy of the arrest warrant at that time.

67. After his arrest at the ticket counter, the FBI agents walked Mr. al-Kidd in handcuffs through the airport, as onlookers stared at him. Mr. al-Kidd was wearing religious clothing, making it clear that he was a Muslim man whom the government was arresting, adding to the already extensive and unnecessary humiliation. Mr. al-Kidd was then driven, in handcuffs, to a police substation at the airport, where he was placed in a holding cell.

68. Upon information and belief, Mr. al-Kidd spent approximately 1-2 hours in the holding cell. He was then brought to an interrogation room, where he was informed that he did not have to talk, but that if he cooperated the matter might be resolved quickly and he could continue on his flight. Mr. al-Kidd agreed to talk and was interrogated at length. The agents

questioned Mr. al-Kidd about a variety of topics, including his beliefs, conversion to Islam, and his travels.

69. After the interrogation, Mr. al-Kidd was again handcuffed and taken to the Alexandria Detention Center in Virginia.

Detention Conditions

70. Mr. al-Kidd was ultimately detained for 16 days, until his release in Boise on March 31, 2003. During this time, he was held in three different facilities: the Alexandria Detention Center in Virginia, the Federal Transfer Center in Oklahoma, and the Ada County Jail in Boise, Idaho. In each facility, he was treated as if he were a terrorist suspect, rather than a witness, and subjected to humiliating, punitive and excessively harsh conditions and restrictions of his liberty.

71. When Mr. al-Kidd was transferred between detention centers, he was likewise treated as if he were a terrorist suspect, rather than a witness, and subjected to humiliating, punitive and excessively harsh conditions and restrictions of his liberty.

Alexandria Detention Center

72. At the Alexandria Detention Center in Virginia, Mr. al-Kidd was initially detained in a holding cell for approximately three days with a cell mate. The small cell contained only one bed, with a toilet beside the bed. Consequently, Mr. al-Kidd slept on the floor, near the toilet. He was forced to curl up or move to the corner of the cell whenever his cell mate used the toilet. For a significant period of time, the toilet was clogged, creating a strong stench in the small cell. Mr. al-Kidd ate all his meals in the cell and was not given an opportunity to shower. Upon information and belief, Mr. al-Kidd's cell mate was not a witness, but a criminal defendant.

73. After approximately three days in the holding cell, Mr. al-Kidd was strip-searched and transferred to a high-security unit of the jail. Mr. al-Kidd was told that he was being held in the same cell where John Walker Lindh and Zacarias Moussaoui, two individuals who have been charged with terrorist offenses by the United States, had been detained.

74. Mr. al-Kidd spent the next five days in a small cell in the high-security unit of the Alexandria Detention Center. The cell had only a food slot, whereas the other cells had a small glass-covered window allowing prisoners to see out of their cells. Mr. al-Kidd was allowed out of his cell for approximately 1-2 hours per day.

75. Upon information and belief, many, if not most, of the other inmates in this high-security unit had been charged with or convicted of serious crimes.

76. Upon information and belief, Mr. al-Kidd's brother-in-law attempted to visit him twice at the Alexandria facility and on both occasions detention guards refused to allow him to see Mr. al-Kidd. There was no legitimate reason for refusing both of these requests.

77. During the time Mr. al-Kidd was held at the Alexandria facility, he received a hearing in the United States District Court for the Eastern District of Virginia but was not provided with counsel for that initial hearing. At the hearing, held on March 17, the government moved to continue his detention without bond until he could be transferred to Idaho. United States Magistrate Judge Liam O'Grady asked whether Mr. al-Kidd wanted to have his detention hearing in the Eastern District of Virginia within the next three days or instead be transferred to Boise, Idaho for the hearing. The Magistrate Judge further advised Mr. al-Kidd that it might be in his interest to be transferred to Boise where people were more familiar with his case. Mr. al-Kidd expressed concern about how long it would take to have his hearing in Idaho, but was told

by the government attorney that he would be transferred as quickly as possible. Without the aid of an attorney and feeling overwhelmed, Mr. al-Kidd agreed to be transferred to Boise on the assumption that the transfer would occur quickly. Mr. al-Kidd was not transferred to Idaho until March 25, 9 days after his arrest and more than one week after the hearing.

78. Without undue burden, Mr. al-Kidd could have been transferred to Idaho more expeditiously than he was. There was no legitimate reason for the long delay in transferring Mr. al-Kidd to Idaho.

79. Defendant Dunning, while Sheriff and acting under color of law, had ultimate responsibility and oversight for the unlawful, excessive, and punitive manner in which Mr. al-Kidd was held in the Alexandria facility.

80. Defendant Dunning, while Sheriff, knew or should have reasonably known that Mr. al-Kidd was being subjected to unlawful, excessive, and punitive detention conditions.

81. Defendant Dunning, while Sheriff, acted intentionally, knowingly, and/or with reckless disregard and deliberate indifference to the constitutional and legal rights of Mr. al-Kidd to be free from unlawful, excessive, and punitive detention conditions.

82. There was no legitimate reason for the excessive and punitive conditions under which Mr. al-Kidd was detained. Defendant Dunning, without undue burden, could have detained Mr. al-Kidd under less restrictive conditions.

Oklahoma Federal Transfer Center

83. On March 24, 2003, eight days after his arrest, Mr. al-Kidd was transported to Oklahoma. Federal agents handcuffed his hands and legs, chained his waist, and then linked his waist chain to his ankles and a box on his hands, which was padlocked.

84. Federal agents then escorted Mr. al-Kidd in shackles to an airfield and onto a special "Con Air" plane with approximately 100 other detainees. He remained shackled for the entire trip to the Federal Transfer Center in Oklahoma.

85. Upon information and belief, many of the other detainees on the plane had been charged with or convicted of serious offenses.

86. At the Oklahoma Federal Transfer Center, Mr. al-Kidd and the other detainees from the plane were brought to a large room. After a considerable wait, Mr. al-Kidd was singled out and brought to wait in a dark room by himself, while the other detainees were brought to another part of the facility for processing. Mr. al-Kidd was then transferred to a cell, made to remove his clothes and forced to sit completely naked for a considerable period of time, where he could be seen by guards, including at least one female guard, and other detainees, who were clothed and being processed. Mr. al-Kidd remained naked in his holding cell until other detainees had been processed. Eventually he was given clothes and processed.

87. After he was processed, Mr. al-Kidd was placed in a high-security Special Housing Unit of the facility. He was told he was being placed there because of his situation.

88. Defendant Callahan, while Warden and acting under color of law, had responsibility and oversight for the unlawful, excessive, and punitive manner in which Mr. al-Kidd was held in his facility.

89. Defendant Callahan, while Warden, knew or should have reasonably known that Mr. al-Kidd was being subjected to unlawful, excessive, and punitive detention conditions.

90. Defendant Callahan, while Warden, acted intentionally, knowingly, and/or with reckless disregard and deliberate indifference to the constitutional and legal rights of Mr. al-Kidd to be free from unlawful, excessive, and punitive detention conditions.

91. There was no legitimate reason for the excessive and punitive conditions under which Mr. al-Kidd was detained. Defendant Callahan, without undue burden, could have detained Mr. al-Kidd under less restrictive conditions.

Ada County Jail

92. On March 25, 2003, Mr. al-Kidd was again shackled and transferred to Boise, Idaho. During the flight, Mr. al-Kidd asked to have his handcuffs loosened slightly. His request was denied, even though others on the plane were allowed to have their handcuffs loosened. When Mr. al-Kidd tried to go to the bathroom, he was unable to do so because his handcuffs were too tight and the officer on the plane would not loosen them. According to the officer on the flight, Mr. al-Kidd could not have his handcuffs loosened because his case was special.

93. When Mr. al-Kidd arrived in Boise on March 25, he remained handcuffed and shackled while he was transferred to a holding cell in the United States District Court. Mr. al-Kidd then met with a lawyer from the Federal Public Defender's office in Idaho for a brief period before he was scheduled to appear in court.

94. At the hearing, the government requested a three-day continuance. The government also asked that Mr. al-Kidd's detention be continued without bail, asserting that he posed a danger and that there was a risk he would flee. Mr. al-Kidd's assigned public defender also sought some additional time to review the case with his client. The Court ultimately granted a

two-day continuance and scheduled a hearing for March 27. Mr. al-Kidd was then transported to the Ada County Jail.

95. Mr. al-Kidd was placed in a high-security unit of the prison, where he was housed in a cell with a glass wall that was infested with ants. Unlike the other cells in his wing, Mr. al-Kidd's cell remained light 24 hours a day. Mr. al-Kidd was only allowed out of his cell for approximately one hour per day. Mr. al-Kidd spent approximately five days in this cell.

96. Defendant Killeen, while Sheriff, and acting under color of law, had ultimate legal responsibility and oversight for the unlawful, excessive, and punitive manner in which Mr. al-Kidd was held in his facility.

97. Defendant Killeen, while Sheriff, knew or should have reasonably known that Mr. al-Kidd was being subjected to unlawful, excessive, and punitive detention conditions.

98. Defendant Killeen, while Sheriff, acted intentionally, knowingly, with reckless disregard and/or deliberate indifference to the constitutional and legal rights of Mr. al-Kidd to be free from unlawful, excessive, and punitive detention conditions.

99. There was no legitimate reason for the excessive and punitive conditions under which Mr. al-Kidd was detained. Defendant Killeen, without undue burden, could have detained Mr. al-Kidd under less restrictive conditions.

100. During the time Mr. al-Kidd was detained in Idaho, FBI Director Mueller told a House Subcommittee that the government was making progress in the fight against terrorism and that there had been more than 200 "suspected terrorists . . . charged with crimes, 108 of whom have been convicted to date." The Director then offered a number of examples of the government's recent successes. The Director's first example was the capture of Khalid Shaikh

Mohammed, the supposed mastermind of the September 11 attacks. His second example was the arrest of Mr. al-Kidd, after which he listed individuals who had been criminally charged with terrorism-related offenses. The Director's testimony never mentioned that Mr. al-Kidd had been arrested as a witness, and not on criminal charges, leaving little doubt that the government viewed Mr. al-Kidd as a suspect whom it wished to investigate and detain preventively. See Hearing of the House Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies, March 27, 2003. In April 2003, the Director repeated this testimony about Mr. al-Kidd before a Senate Subcommittee. See Hearing of the Senate Subcommittee on Commerce, Justice, State and the Judiciary, April 10, 2003.

Detention Hearing and Release Conditions

101. On March 28, 2003, Defendant Gneckow, FBI agent Joseph Cleary, and a United States Attorney interviewed Mr. al-Kidd at the Ada County Detention Center in the presence of Mr. al-Kidd's attorney from the Public Defender Service. Mr. al-Kidd was again questioned about his conversion to Islam, his beliefs about Islam, his activities, his travels and his associations with Al-Hussayen.

102. During the meeting, Mr. al-Kidd repeated once again his willingness to cooperate and assured the government that he would make himself available for subpoena and appear at any time that he was requested to do so. The government ultimately proposed that he be released only under strict conditions.

103. Fifteen days after his arrest, on March 31, 2003, the Court ordered Mr. al-Kidd released on conditions. Among other things, the Court ordered that Mr. al-Kidd be released into the custody of his wife (who was living at her parents' home in Nevada). The Court confiscated

his passport, barred him from applying for a new one, and limited his travel to Nevada and three other states. He was required to report to a probation officer in Idaho and Nevada, and subjected to home visits throughout his period of supervision.

104. For the next thirteen and one-half months, Mr. al-Kidd lived under conditions imposed by the Court.

105. After almost a year of living in these restrictive conditions, Mr. al-Kidd's marriage began to fall apart. In March 2004, Mr. al-Kidd moved to modify his release conditions because his living conditions had become unbearable and he and his wife were separating. The Court granted the motion and allowed him to secure his own residence in Las Vegas, Nevada.

106. On June 10, 2004, a jury acquitted Sami Omar Al-Hussayen on the most serious charges (added in superceding indictments) and failed to reach a verdict on the remaining lesser charges. The government never called Mr. al-Kidd to testify at the trial and never re-tried Al-Hussayen.

107. At the conclusion of the trial, the government did not move to have Mr. al-Kidd's release conditions lifted. Accordingly, Mr. al-Kidd filed a motion to do so, which the Court granted, dismissing him as a material witness.

Defendant Ashcroft and the Post-9/11 Material Witness Policies and Practices

108. Defendant Ashcroft bears legal responsibility for Mr. al-Kidd's unlawful and punitive arrest; Mr. al-Kidd's prolonged, excessive, and unlawful detention; and the punitive, excessive and unlawful conditions of his detention and post-release restrictions.

109. The harm and legal wrong suffered by Mr. al-Kidd was a product of, and caused by, the Justice Department and Defendant Ashcroft's post-9/11 material witness policies and practices.

110. Prior to September 11, 2001, the Justice Department used the material witness statute sparingly and under narrow circumstances with United States citizens.

111. After September 11, 2001, the Justice Department and Defendant Ashcroft routinely used the material witness statute in numerous new, unlawful ways, especially against Muslim and/or Arab men. First, and foremost, the government used the statute as a pretext to arrest and hold individuals whom the government lacked probable cause to charge with a crime but nonetheless wished to detain preventively and/or to investigate for possible criminal wrongdoing (i.e., to arrest "suspects").

112. Pursuant to this new, unlawful use of the Justice Department's material witness powers, Defendants' purpose in arresting and detaining Mr. al-Kidd was not to secure his testimony, but to preventively hold and investigate him for possible criminal wrongdoing, as evidenced by various actions, including Director Mueller's House and Senate testimony; the fact that Mr. al-Kidd was not given the opportunity to cooperate voluntarily before being arrested; the manner in which Mr. al-Kidd was detained; the fact that he was routinely shackled when transported; the fact that the government opposed his release from detention on the ground that he was a danger to the community; the fact that he was under surveillance prior to his arrest; the types of questions he was routinely asked during FBI interrogations; statements by the FBI and other government agents in the media; the nature of his release conditions; and the fact that he was never called to testify.

113. The post-9/11 material witness policies and practices adopted and implemented by Defendant Ashcroft were part of a broader set of policies and practices concerning individuals whom the government lacked probable cause to arrest on criminal charges but wished to hold preventively and/or to investigate for criminal wrongdoing.

114. According to an internal report issued by the Justice Department's Office of Inspector General, Defendant Ashcroft issued a memorandum shortly after September 11, 2001, directing federal law enforcement personnel to use "every available law enforcement tool" to arrest persons who "participate in, or lend support to, terrorist activities." See "The September 11th Detainees," April 2003 ("OIG Report") at 1. On October 25, 2001, Defendant Ashcroft delivered a speech to the United States Conference of Mayors in which he said, "It has been and will be the policy of this Department of Justice to use . . . aggressive arrest and detention tactics in the war on terror." See OIG Report at 12.

115. After September 11, 2001, the government's aggressive arrest and detention policies and practices led to numerous non-citizens being preventively detained on immigration charges and U.S. citizens and non-citizens being preventively detained on garden-variety criminal charges. See OIG Report at 12-13.

116. As a fundamental component of this broader detention policy, Defendant Ashcroft also developed, implemented and set into motion a policy and/or practice under which the FBI and DOJ would use the material witness statute to arrest and detain terrorism suspects about whom they did not have sufficient evidence to arrest on criminal charges but wished to hold preventively or to investigate further.

117. Defendant Ashcroft stated at an October 31, 2001 press briefing, "Today, I am announcing several steps that we are taking to enhance our ability to protect the United States from the threat of terrorist aliens. These measures form one part of the department's concentrated strategy to prevent terrorist attacks by taking suspected terrorists off the street . . . Aggressive detention of lawbreakers and material witnesses is vital to preventing, disrupting or delaying new attacks" (emphasis added).

118. An internal DOJ document, discussed in the OIG Report, echoes the theme of using the material witness statute to arrest and hold suspects, rather than to secure testimony. The document, entitled "Maintaining Custody of Terrorism Suspects," includes the following statement: "If a person is legally present in this country, the person may be held only if federal or local law enforcement is pursuing criminal charges against him or pursuant to a material witness warrant." See OIG Report at 38-39 (emphasis added).

119. The OIG Report also refers to a statement by a Senior Counsel in the Deputy Attorney General's Office noting that the "Criminal Division is examining each of the cases [of terrorist suspects in INS custody] to determine whether the person can be detained on criminal charges or on a material witness warrant if the person is ordered released from INS custody." See OIG Report at 75 (emphasis added).

120. Public statements by other top officials who worked closely with the Justice Department in the development of post-9/11 policies confirm the new material witness policies and practices. For example, Mary Jo White, the U.S. Attorney for the Southern District of New York in the years immediately preceding and following September 11, 2001, stated that "[s]ome of the criticism that has been leveled at [DOJ for its post-9/11 use of the material witness statute]

is not wholly unjustified . . . . Does it really sort out to being in one sense preventative detention? Yes, it does, but with safeguards." See Adam Liptak, "Threats and Responses: The Detainees; For Post-9/11 Material Witness, It Is a Terror of a Different Kind," New York Times, August 19, 2004.

121. Michael Chertoff, the head of the DOJ's Criminal Division in the years immediately following September 11, 2001, was a major proponent of the aggressive detention policy and publicly highlighted the DOJ's use of the material witness statute, saying, "It's an important investigative tool in the war on terrorism . . . . Bear in mind that you get not only testimony – you get fingerprints, you get hair samples – so there's all kinds of evidence you can get from a witness." See Steve Fainaru and Margot Williams, "Material Witness Law Has Many In Limbo," Washington Post, November 24, 2002 (emphasis added).

122. In an April 19, 2002 speech to the Commonwealth Club of California, FBI Director Robert Mueller stated, "[A] number of suspects were detained on federal, state, or local charges; on immigration violations; or on material witness warrants" (emphasis added).

123. On February 24, 2004, in a statement to the ABA Committee on Law and National Security, then White House Counsel Alberto Gonzales described standard DOJ procedure for handling a terrorism suspect: "In any case where it appears that a U.S. citizen captured within the United States may be an al Qaeda operative and thus may qualify as an enemy combatant, information on the individual is developed and numerous options are considered by the various relevant agencies (the Department of Defense, CIA and DOJ), including the potential for a criminal prosecution, detention as a material witness, and detention as an enemy combatant" (emphasis added).

124. On June 25, 2003, David Nahmias, Counsel to the Assistant Attorney General, Criminal Division, offered the Senate Judiciary Committee an example of how the DOJ tracked down an alleged terrorist: "[W]e developed . . . clear evidence that he had contact with an AL Qaida terrorist operative connected to 9/11. And so in December he was approached again . . . and [when] we weren't able to clear things at that point, he was actually made a material witness." Nahmias stated that "we got enough information to at least make him a material witness and then to charge him criminally."

125. Pursuant to its post-9/11 policies and practices, the Justice Department has in fact used the material witness statute for the unlawful purpose of arresting, holding, and interrogating numerous individuals about whom it did not have sufficient evidence to arrest on criminal charges but wished to investigate further and/or detain preventively.

126. Under the post-9/11 policies and practices, some individuals were designated as material witnesses only after already being arrested on another ground, further indicating that the government was using material witness warrants as a means of prolonging a suspect's detention. See Steve Fainaru and Margot Williams, "Material Witness Law Has Many In Limbo," Washington Post, November 24, 2002 (describing a material witness who was first arrested on trespassing charges after a motel clerk reported to the authorities that he looked suspicious).

127. Under the post-9/11 policies and practices, individuals have also been impermissibly arrested and detained as material witnesses even though there was no reason to believe it would have been impracticable to secure their testimony voluntarily or by subpoena. Some individuals have been arrested as material witnesses despite the fact that they had voluntarily approached the FBI to discuss information they might have, or willingly agreed to

talk to the government when asked. See Naftali Bendavid, "Material Witness Arrests Under Fire; Dozens Detained In War On Terror," Chicago Tribune, December 24, 2001 (describing a material witness arrested and detained for three days in solitary confinement after willingly and voluntarily allowing the FBI to search his business records and computers).

128. Under the post-9/11 policies and practices, numerous material witnesses who have been detained to secure their supposedly important testimony were never in fact called to testify. By one account, nearly fifty percent of those detained in connection with post-9/11 terrorism investigations were not called to testify. See Steve Fainaru and Margot Williams, "Material Witness Law Has Many In Limbo," Washington Post, November 24, 2002. The former Chief of the Criminal Division in the U.S. Attorney's office in Miami has commented that the fact that so many post-9/11 material witnesses were never called to testify "would tend to indicate that the use of the material witness statute was more of a ruse than an honest desire to record the testimony of that person." Id. Further confirming their actual status as suspects, rather than witnesses, the government refused to grant many post-9/11 material witnesses immunity for their testimony, although this traditionally has been a standard procedure for eliciting testimony from a witness.

129. Once arrested, material witnesses have been routinely held in high security detention conditions, further highlighting their status as terrorism suspects, rather than true witnesses. At the San Diego Metropolitan Correctional Center, for example, there was an order in place that "material witnesses would not be allowed to make phone calls." United States v. Awadallah, 202 F. Supp. 2d 55, 60 (S.D.N.Y. 2002) (quoting hearing transcript), rev'd on other grounds, 349 F.3d 42 (2d Cir. 2003) (not reaching issues related to detention conditions). At the

New York City Metropolitan Correctional Center (MCC), material witnesses were deemed guilty until proven innocent: "'[T]he warden determined that until [the MCC] had any concrete evidence from the FBI or other folks, that there was not a terrorist association or anything of that nature, that [the MCC] would have to keep [the material witnesses] separate[]' and special precautions would apply." Id. at 60-61 (quoting hearing transcript).

130. Further, all material witnesses at the New York City MCC detained in relation to September 11, 2001, had their movements recorded with a hand-held camera. Id. at 61 (quoting hearing transcript: "It was also decided 'early on' that '[w]ith respect to all of the folks who were being brought in as material witnesses and under investigation for the World Trade Center attacks . . . that [the MCC] would record their movements with a hand-held camera,' a policy that the prison had previously used with the 'African Embassy bombers'"). U.S. Deputy Marshal Scott Shepard stated that "[M]y understanding is that our office treats anyone who is brought in as a material witness regarding the September 11 or any of the other embassy bombing trial[s], or anything like that, is treated as a security risk.'" Id. at 60 n.7 (quoting hearing transcript).

131. According to the OIG Report, a federal official noted that after September 11, 2001, the DOJ's Bureau of Prisons often "did not distinguish between detainees who . . . posed a security risk and those detained aliens who were uninvolved witnesses." See OIG Report at 20.

132. There was a general policy that all inmates, including material witnesses, "who were at the New York MCC in connection with the investigation into the September 11th terrorist attacks were designated high-security inmates and handled in accordance with the procedures for such inmates." United States v. Awadallah, 202 F. Supp. at 60 (quoting Government Memorandum). See also Steve Fainaru, "Suspect Held Eight Months Without

Seeing Judge," Washington Post, June 12, 2002 (noting that one material witness was held in the Special Housing Unit of the Brooklyn MDC, only allowed out of his cell for a half-hour per day and shackled with leg irons and his hands bound to his waist when he was transported).

133. The Justice Department has also unreasonably prolonged the period of detention for material witnesses – by the DOJ's own estimates about half of the witnesses it arrested in terrorism investigations were detained for more than thirty days. See DOJ letter to Congressmembers Sensenbrenner and Conyers of the House Committee on the Judiciary, May 13, 2003.

134. Even after being released from detention, many material witnesses have been subjected to impermissibly restrictive release conditions – and yet were still never called to testify. See, e.g., William Kates, "Man Held As Witness In Probe of Charity," Albany Times Union, March 5, 2003 (reporting that a material witness released on $20,000 bail was subjected to restrictive conditions that required him to remain confined to his home, wear an electronic monitoring bracelet, and surrender his passport).

135. DOJ has also acted under a cloak of secrecy, routinely requesting that records of material witness proceedings be sealed and refusing to make public the most basic information about the material witnesses it has detained, including names or other identifying information, or the exact number of witnesses, even in the face of direct congressional inquiry. In a response to inquiries from members of the House Judiciary Committee, the Acting Assistant Attorney General refused to reveal specific information, making only vague statements such as that "fewer than 50" individuals had been detained as material witnesses in the September 11 investigations as of January 2003, about half of whom were detained for more than 30 days. See DOJ letter to

Congressmembers Sensenbrenner and Conyers of the House Committee on the Judiciary, May 13, 2003.

136. The abuses occurring under the material witness statute after September 11, 2001, were highly publicized in the media, congressional testimony and correspondence, and in various reports by governmental and non-governmental entities. Defendant Ashcroft (and the other Defendants) knew or reasonably should have known about these abuses. Upon information and belief, the Justice Department has issued apologies to 10-12 individuals who were improperly arrested as material witnesses.

137. Defendant Ashcroft bears legal responsibility for the harm caused Mr. al-Kidd. While he was the Attorney General, Defendant Ashcroft, acting under color of law, was legally responsible for the Justice Department's post-9/11 material witness policies and practices. Defendant Ashcroft was a principal architect of, authorized and set into motion, these policies and practices regarding the material witness statute, and had responsibility for their implementation and administration. Defendant Ashcroft was also legally responsible for taking any necessary corrective action in light of the mounting evidence of abuse.

138. Defendant Ashcroft knew or reasonably should have known of the unlawful, excessive, and punitive manner in which the federal material witness statute was being used in the aftermath of September 11, 2001. Defendant Ashcroft knew or reasonably should have known that the manner in which the material witness statute was being used would foreseeably result in the unlawful arrest and detention of material witnesses (such as Mr. al-Kidd), and would also foreseeably subject such individuals (such as Mr. al-Kidd) to unreasonable and unlawful use of force, to unconstitutional conditions of confinement, and to punishment without due process.

139. Defendant Ashcroft knew or should have known that corrective action was necessary to prevent the material witness policies and practices, once adopted and implemented, from causing additional and ongoing legal harm and constitutional violations.

140. Defendant Ashcroft's actions were a proximate cause of the reasonably foreseeable legal wrongs suffered by Mr. al-Kidd, including Mr. al-Kidd's unlawful arrest, and the length and conditions of his detention.

141. Defendant Ashcroft, in creating, overseeing, and implementing these unlawful, excessive, and punitive policies and/or practices, acted intentionally, knowingly, and/or with reckless disregard and deliberate indifference, towards the constitutional and legal rights of individuals arrested and detained under the policies and/or practices (including Mr. al-Kidd). Further, Defendant Ashcroft acted intentionally, knowingly, and/or with reckless disregard and deliberate indifference, towards the constitutional and legal rights of material witnesses arrested and detained under the Justice Department's post-9/11 policies and/or practices in failing to take corrective action.

Irreparable Harm Suffered by Mr. al-Kidd

142. There is a real and actual controversy between Plaintiff and Defendants, and Defendants' actions are the proximate cause of Plaintiff's injuries.

143. Mr. al-Kidd has suffered and continues to suffer harm, including irreparable harm, as a direct result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

144. Mr. al-Kidd's marriage slowly unraveled and he ultimately separated from his wife. He was unable to find steady employment after his life had been disrupted by the arrest. He was

also deprived of the opportunity to study Islamic law and Arabic in Saudi Arabia on a scholarship.

145. As a result of his arrest, detention, and treatment during detention, Mr. al-Kidd has experienced severe and lasting emotional and mental distress including but not limited to fear, anxiety, nervousness, stress, depression, loss of reputation and humiliation.

146. Upon information and belief, Mr. al-Kidd has also faced, and will continue to face, adverse employment consequences because the government maintains and disseminates information and records about his arrest and detention as a material witness.

147. In July 2004, Mr. al-Kidd was fired from his job with a contractor who did work on a United States Air Force base in Nevada. Upon information and belief, Mr. al-Kidd was denied a required security clearance because of his arrest and related records maintained by Defendants DOJ, FBI, DHS, and TSC in various databases and disseminated to Mr. al-Kidd's employers and others.

148. Upon information and belief, information and records concerning Mr. al-Kidd's material witness arrest and detention appear in several federal databases, including Defendant FBI's National Crime Information Center ("NCIC") database and the database operated by the Terrorist Screening Center ("TSC").

149. Upon information and belief, Mr. al-Kidd could be arrested and detained again as a material witness under the government's post-9/11 policies and practices.

COUNT ONE

VIOLATION OF THE MATERIAL WITNESS STATUTE AND BAIL REFORM ACT

(18 U.S.C. §§ 3142, 3144)

150. The foregoing allegations are re-alleged and incorporated herein by reference.

151. Mr. al-Kidd's arrest, detention and post-detention release conditions violated the material witness statute because, inter alia, (a) he was arrested for the unlawful purpose of detaining him preventively and/or for further investigation, and not because his testimony was needed; (b) because there was no probable cause to believe his testimony could not be secured without arrest; (c) because there was no probable cause to believe Mr. al-Kidd had testimony germane to a criminal proceeding; and (d) because of the prolonged, excessive, and punitive conditions of Mr. al-Kidd's detention and post-release terms.

152. This count is against all Defendants.

COUNT TWO

VIOLATION OF THE FOURTH AMENDMENT

153. The foregoing allegations are re-alleged and incorporated herein by reference.

154. Mr. al-Kidd's arrest, detention and post-release conditions violated the Fourth Amendment to the United States Constitution because, inter alia, (a) he was arrested for the unlawful purpose of detaining him preventively and/or for further investigation, and not because his testimony was needed; (b) because there was no probable cause to believe his testimony could not be secured without arrest; (c) because there was no probable cause to believe Mr. al-Kidd had testimony germane to a criminal proceeding; (d) because of the prolonged, excessive,

and punitive conditions of Mr. al-Kidd's detention and post-release terms; and (e) because of Defendants' unreasonable and unlawful searches, including strip searches.

155. This count is against all Defendants.

COUNT THREE

VIOLATION OF THE FIFTH AMENDMENT

156. The foregoing allegations are re-alleged and incorporated herein by reference.

157. The arrest and conditions under which Mr. al-Kidd was detained violated both the substantive and procedural components of the Fifth Amendment to the United States Constitution, as did the conditions governing his post-detention release, because, inter alia, (a) he was arrested for the unlawful purpose of detaining him preventively and/or for further investigation, and not because his testimony was needed; (b) because there was no probable cause to believe his testimony could not be secured without arrest; (c) because there was no probable cause to believe Mr. al-Kidd had testimony germane to a criminal proceeding; (d) because of the prolonged, excessive, and punitive conditions of Mr. al-Kidd's detention and post-release restrictions; and (e) because there was no individualized assessment, hearing, or proper process before Mr. al-Kidd was detained under high-security, excessive and punitive conditions.

158. This count is against all Defendants.

COUNT FOUR

UNLAWFUL ARREST AND DETENTION

(42 U.S.C. § 1983)

159. The foregoing allegations are re-alleged and incorporated herein by reference.

160. Defendants' actions violated Mr. al-Kidd's constitutional and legal rights to be free from unlawful arrest and post-release conditions, and punitive and unconstitutional conditions of confinement and detention in violation of 42 U.S.C. § 1983 and the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

161. This claim is against all non-federal Defendants acting under color of law.

COUNT FIVE

UNLAWFUL MAINTENANCE OF RECORDS

(Expungement Action at Common Law)

162. The foregoing allegations are re-alleged and incorporated herein by reference.

163. Upon information and belief, Defendants Gonzales, FBI, Mueller, TSC, and Bucella have entered and presently maintain records related to Mr. al-Kidd's arrest and detention in the NCIC and TSC databases, respectively.

164. Upon information and belief, Defendants have entered and presently maintain records related to Mr. al-Kidd's arrest and detention in other databases and record systems.

165. The government may not retain records of arrests or detentions where the maintenance of such records would be fundamentally unfair, such as where the arrest or detention was illegal and unconstitutional.

166. Mr. al-Kidd's arrest and detention violated the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, 18 U.S.C. §§ 3142, 3144, and the FTCA.

167. Maintenance and dissemination of records of his arrest and detention is fundamentally unfair and unlawful.

COUNT SIX

UNLAWFUL MAINTENANCE OF RECORDS

(Expungement Action Under NCIC Statute, 28 U.S.C. § 534)

168. Upon information and belief, Defendants FBI, Mueller and Gonzales have entered and presently maintain records of Mr. al-Kidd's arrest and detention in the NCIC database.

169. Congress has authorized Defendant FBI to enter specified records into the NCIC database and disseminate them to prospective employers, law enforcement officials, and other public and private agencies.

170. Congress has not authorized the FBI to enter records of the arrest and detention of persons subject to material witness warrants into the NCIC database.

171. Defendant FBI's entry into the NCIC of records relating to the arrest and detention of Mr. al-Kidd pursuant to a material witness warrant is arbitrary, capricious, and not authorized by the NCIC statute, 28 U.S.C. § 534.

172. Mr. al-Kidd is entitled to declaratory and injunctive relief ordering that records related to his unlawful arrest and detention be expunged from the NCIC.

COUNT SEVEN

FEDERAL TORT CLAIMS ACT

(28 U.S.C. §§ 2671, 1346)

173. The foregoing allegations are re-alleged and incorporated herein by reference.

174. Defendants Ashcroft, Mace, and Gneckow violated the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, 1346, by falsely and tortiously arresting and imprisoning Mr. al-Kidd without legal justification. These Defendants acted with malice and/or criminal intent and wrongfully, unlawfully and/or wantonly and maliciously arrested and imprisoned Mr. al-Kidd. These Defendants further acted without just or probable cause.

175. Defendant Ashcroft further violated the FTCA by intentionally, recklessly and/or negligently establishing, promulgating and enforcing the unlawful policies and practices which caused Mr. al-Kidd to be unlawfully and tortiously arrested and punitively detained. Defendant Ashcroft further acted wantonly and maliciously and with malice and/or criminal intent in establishing, promulgating and enforcing the unlawful policies and practices which caused Mr. al-Kidd to be unlawfully arrested and detained. Defendant Ashcroft further acted without just or probable cause in establishing, promulgating and enforcing these unlawful policies and practices.

176. Defendants Callahan and Ashcroft further violated the FTCA by intentionally, recklessly and/or negligently establishing, promulgating and enforcing the unlawful policies and practices which caused Mr. al-Kidd to be subjected to prolonged, excessive, punitive, harsh and unreasonable detention and post-release conditions. Defendants Callahan and Ashcroft further acted wantonly, maliciously and/or with criminal intent in establishing, promulgating and enforcing the unlawful policies and practices. Defendants Callahan and Ashcroft further acted without just or probable cause in establishing, promulgating and enforcing the unlawful policies and practices.

177. Defendants Ashcroft (as Attorney General), Mace (as an FBI agent), Gnecknow (as an FBI agent), and Callahan (as a federal warden) were acting within the course and scope of their employment as agents of the United States, and on behalf of the United States, when they committed the tortious and unlawful acts complained of here.

RELIEF

WHEREFORE, Plaintiff respectfully requests relief as follows:

178. A declaration that Defendants' actions violated the Constitution; 42 U.S.C. § 1983; the material witness and Bail Reform Act statutes, 18 U.S.C. §§ 3142, 3144; the common law; and the FTCA.

179. A declaration that Defendants' actions, practices, customs, and policies, regarding the arrest and detention and release conditions of material witnesses, alleged herein were unjustified, illegal and violated the constitutional and legal rights of Abdullah al-Kidd.

180. Expungement of all records, fingerprints and notations relating to the unlawful arrest and detention of Mr. al-Kidd as a material witness.

181. Expungement of all FBI records or files in the NCIC, TSC and any other databases, that are unconstitutional, unlawful, or inaccurate.

182. Trial by jury.

183. Compensatory damages in an amount to be proven at trial.

184. Punitive damages in an amount to be proven at trial.

185. Costs and reasonable attorney fees.

186. Such other relief as the Court deems just and equitable.

DATED: November 18, 2005.

Respectfully submitted,
THE ROARK LAW FIRM, LLP
HAMPTON & ELLIOTT
WOOLLEY & POGUE, PLLC

CYNTHIA WOOLLEY
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of November 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA vs. SAMI OMAR AL-HUSSAYEN, Defendant.	CR No. 03-048-C-EJL APPLICATION FOR ARREST WARRANT OF MATERIAL WITNESS

The United States of America and Thomas E. Moss, United States Attorney for the District of Idaho, by and through Kim R. Lindquist, Assistant United States Attorney, with this Application for Arrest Warrant of Material Witness, and move the Court that an arrest warrant be issued for the following material witness: Abdullah Al-Kidd, a/k/a Lavoni T. Kidd.

On February 13, 2003, an Indictment was filed in United States District Court for the District of Idaho alleging violations of 18

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EXHIBIT A

U.S.C. §§ 1001(a)(1) and (2), and 3238 - False Statement to the United States; and 18 U.S.C. §§ 1546(a), 3237 and 3238 - Visa Fraud. As a result of said Indictment, a warrant of arrest for the defendant was issued.

The testimony of the aforementioned material witness is material to both the prosecution and the defendant herein.

There is a risk that unless the Court detains or imposes restrictions on the travel of said material witness, he will be unavailable at future proceedings in this case.

This application is further based upon the Affidavit of Scott Mace, Special Agent, Federal Bureau of Investigation, the Indictment filed herein, and the warrant of arrest against the defendant herein.

DATED this 14th day of March, 2002.

THOMAS E. MOSS
United States Attorney
By

for
Kim R. Lindquist
Assistant United States Attorney

STATE AND DISTRICT OF IDAHO

BOISE, IDAHO

UNITED STATES OF AMERICA)
)
v.) Case No. 03-048-C-EJL
)
SAMI OMAR AL-HUSSAYEN)
)
)
)

AFFIDAVIT

I, SCOTT MACE, the undersigned, being duly sworn, depose and state as follows:

I am a Special Agent of the FBI currently assigned to the Boise, Idaho, Resident Agency of the Salt Lake City Division. I have been a Special Agent of the FBI for six years and have been involved in multiple investigations involving crimes under Title 18 of the United States Code. This Affidavit is based upon facts acquired by fellow FBI Special Agent Michael James Gneckow and other law enforcement officials pertaining to the investigation. On March 14, 2003, Special Agent Michael James Gneckow advised your affiant of the following:

1) Gneckow is a Special Agent with the Federal Bureau of Investigation (FBI), currently assigned to the Coeur d'Alene, Idaho Resident Agency, within the FBI's Salt Lake City Division. He has been a Special Agent with the FBI for six (6) years and has ten (10) additional years of Federal law enforcement experience as a Special Agent with the U.S. Naval Criminal Investigative Service (NCIS). He has a Masters Degree in National Security Affairs and has spent the majority of his career investigating matters relating to the national security of the United States.

2) Based upon his own observation and those of other law enforcement officers involved in the subject investigation, this affidavit is made in support of an application for arrest warrant of a material witness, namely: Abdullah Al-Kidd, a/k/a Lavoni T. Kidd.

3) During the past 16 years Gneckow has been involved in dozens of investigations involving illegal activities such as terrorism and money laundering, including the Olympic Park Bombing in Atlanta and numerous investigations overseas. During the period of 1986 to 1996, he was assigned as a foreign counterintelligence/international terrorism investigator with the United States Naval Criminal Investigative Service. For the past six years, as a Special Agent with the FBI, he has been assigned numerous terrorism investigations and has been involved in several search warrants, many of which were related to terrorism or terrorism-related matters. During his career with NCIS and the FBI, he has worked closely with agents and officers of many other agencies, including the CIA, DEA, ATF, Customs Service, IRS, FBI, INS and the various investigative/intelligence components of the United States Armed Forces, concerning matters relating to the national security of the United States.

4) In addition to his personal experience as above-referenced, he has received specialized training in the area of terrorism and counter-terrorism, as well as economic-based crime, by attending numerous seminars offered by the Department of Justice, FBI, and other agencies. He has also participated as an instructor in some of these seminars.

5) Gneckow is currently a member of the Inland Northwest Joint Terrorism Task Force and as such, works alongside other Federal, state and local law enforcement officers, including agents of the U.S. Immigration and Naturalization Service (INS) and other personnel who investigative document fraud by foreign nationals.

6) On February 13, 2003, an Indictment was filed in United States District Court for the District of Idaho alleging violations of 18 U.S.C. §§ 1001(a)(1) and (2), and 3238 - False Statement to the United States; and 18 U.S.C. §§ 1546(a), 3237 and 3238 - Visa Fraud. During the course of that investigation, information was developed regarding the involvement of Abdullah Al-Kidd with the defendant. That information includes that from March 2000 to November 2001, an individual identified as Abdullah Al-Kidd, a/k/a Lavoni T. Kidd, and/or his spouse, Nadine Zegura, received payments from Sami Omar Al-Hussayen and his associates in excess of $20,000.00. Al-Kidd traveled to Sana'a, Yemen, in August 2001 and remained there until April 2002, when he returned to the United States. Upon his return to the

United States, Al-Kidd traveled to Moscow, Idaho, and met with Al-Hussayen's associates. While in Moscow, Al-Kidd emptied a storage facility which contained personal items belonging to him. Among those personal items were documents Al-Kidd left behind, which included a conference program for the second annual IANA conference in Dearborn, Michigan, in December 1994; a hotel receipt from Sacramento, California, dated 4/26/2001, in the name of Abdullah Al-Kidd, listing his company name as "Al-Multaqa;" and telephone numbers for IANA (734-528-0006) and Basem Khafagi (734-481-1930). Khafagi is a former Director of IANA and former University of Idaho student (graduated in 1988) who was recently arrested in New York.

7) Kidd is scheduled to take a one-way, first class flight (costing approximately $5,000.00) to Saudi Arabia on Sunday, March 16, 2003, at approximately 6:00 EST. He is scheduled to fly from Dulles International Airport to JFK International Airport in New York and then to Saudi Arabia.

8) Due to Al-Kidd's demonstrated involvement with the defendant, Sami Omar Al-Hussayen, he is believed to be in possession of information germane to this matter which will be crucial to the prosecution. It is believed that if Al-Kidd travels to Saudi Arabia, the United States Government will be unable to secure his presence at trial via subpoena.

Respectfully submitted,

SCOTT MACE
Special Agent
Federal Bureau of Investigation
Boise, Idaho

Subscribed and sworn to before me this 14 day of March, 2003.

Mikel H. Williams
United States Magistrate Judge

U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

September 15, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ARTICLE NO. 7000 0600 0028 2232 0420

Abdullah Al-Kidd
2851 Decateur Blvd. #85
Las Vegas, NV 89102

RE: Administrative Claim (SF 95) of Abdullah Al-Kidd, March 14, 2005

Dear Mr. Al-Kidd:

The above referenced tort claim, dated March 14, 2005, was presented to the Federal Bureau of Investigation (FBI) on March 15, 2005, pursuant to the Federal Tort Claims Act (FTCA). A copy of your administrative claim is enclosed. In your Standard Form 95, you submit a claim for the sum certain of $3.5 million as a result of damages allegedly sustained on March 16, 2003 and thereafter. Please be advised that we have reviewed all information concerning this matter. On behalf of the FBI, as well as the Federal Bureau of Prisons (FBOP) and the United States Marshals Service (USMS), we deny your administrative claim as not compensable.

Upon careful review of this matter, we find there is no evidence of negligence or a wrongful act or omission on the part of any employee of the FBI, FBOP, or the USMS. Additionally, we find no evidence to support your claim that a law enforcement officer of the United States committed an intentional tort. For these reasons, the claim that you presented is denied.

To the extent your claim may be construed as alleging a violation of Constitutional rights, the FTCA does not provide relief for claims of this nature. 28 U.S.C. § 1346(b).

Title 28 of the Code of Federal Regulations Section 14.9(a) requires us to inform you that if you are dissatisfied with our determination, suit may be filed against the United States in an appropriate United States District Court not later than six (6) months after the date of this letter.

Sincerely,

Nancy H. Wiegand
Associate General Counsel

Enclosure

EXHIBIT B

cc: (w/o encl.)

Teresa Hampton
Hampton & Elliott
912 North 8th Street
Boise, ID 83302

Cynthia Woolley
Woolley & Pogue, PLLC
P.O. Box 6999
180 First Street West, Suite 107
Ketchum, ID 83340

J. D. Crook
Federal Bureau of Prisons

John Patterson
United States Marshals Service