

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Ali Saleh Kahlah Al-Marri,)	
)	
)	
Plaintiff,)	
)	C/A No. _____
v.)	
)	
Donald H. Rumsfeld,)	
Secretary of Defense of the United States,)	<u>COMPLAINT</u>
Commander C.T. Hanft,)	
U.S.N. Commander, Consolidated)	
Naval Brig,)	
)	
Defendants.)	
)	
)	
_____)	

Plaintiff Ali Saleh Kahlah al-Marri, by and for his Complaint in the above-captioned matter, states as follows:

PRELIMINARY STATEMENT

- 1) Plaintiff Ali Saleh Kahlah al-Marri is a civilian who has never been convicted of any crime.
- 2) This action challenges the unlawful and unconstitutional conditions of confinement to which Plaintiff has been subjected by Defendants at the Consolidated Naval Brig (“the Brig”) in North Charleston, South Carolina, since President Bush designated him an “enemy combatant” on June 23, 2003.
- 3) Plaintiff has suffered inhumane, degrading, and physically and psychologically abusive treatment at the Brig in violation of this Country’s most basic laws and fundamental norms.

4) For more than two years, Plaintiff's isolation from the outside world has been virtually complete. He has been confined in a small cell, denied all social contact, denied all books and news and access to the library at the Brig, denied all religious materials except for the Quran, and denied the opportunity to meet with a Muslim scholar or cleric to seek spiritual guidance and comfort. Plaintiff's observance of Islam has been severely restricted and degraded.

5) Plaintiff has also been denied such basic necessities as adequate bedding, clothing, and medical and psychological care. Moreover, Brig staff have tormented Plaintiff by subjecting him to other abusive and degrading treatment, including denying him hot meals for weeks or months at a time, lowering the air temperature in his cell and then refusing to give him extra clothes so that he shivers with cold day and night, and eliminating the supply of water in his sink and toilet.

6) These conditions of confinement have gravely jeopardized Plaintiff's physical and mental health.

JURISDICTION AND VENUE

7) This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1350, 5 U.S.C. § 702, and Article III of the Constitution of the United States.

8) Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by the Administrative Procedure Act, and by the general equitable powers of this Court.

9) This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412.

10) Venue in this district is proper under 28 U.S.C. § 1391(e)(1) & (2).

PARTIES

11) Plaintiff Ali Saleh Kahlah al-Marri, a citizen of Qatar, is presently being detained without charge at the Consolidated Naval Brig in North Charleston, South Carolina. He has been held in solitary confinement by the government of the United States since on or about December 12, 2001.

12) Defendant Donald H. Rumsfeld, the United States Secretary of Defense, directed Plaintiff's detention at the Brig, and Plaintiff remains detained at the Brig under his current conditions of confinement pursuant to Secretary Rumsfeld's authority and direction. Secretary Rumsfeld is sued in his official capacity.

13) Defendant C.T. Hanft is the Commander of the Consolidated Naval Brig in North Charleston, South Carolina, and is responsible for Plaintiff's day-to-day treatment and conditions of confinement at the Brig. Commander Hanft is sued in her official capacity. Upon information and belief, Defendant Hanft resides within the District of South Carolina.

FACTUAL ALLEGATIONS

Plaintiff's Confinement Without Charge

14) In September 2001, Plaintiff lawfully entered the United States, with his wife and five children, for the purpose of obtaining a master's degree from Bradley University in Peoria, Illinois, the same institution from which he had earned a bachelor's degree in 1991.

15) On December 12, 2001, Plaintiff was arrested by the Federal Bureau of Investigation ("FBI") in Peoria, Illinois, at the direction of the United States Attorney's Office for the Southern District of New York, as an alleged material witness in the government's investigation of the terrorist attacks of September 11, 2001. Plaintiff was initially detained at the Peoria County Jail, in solitary confinement.

16) Thereafter, the government transported Plaintiff from the Peoria County Jail to the Metropolitan Correctional Center in New York (“MCC-NY”). Plaintiff was detained at MCC-NY in solitary confinement.

17) At the MCC-NY, Plaintiff was allowed access to counsel, allowed to receive books and periodicals, and allowed religious books and other religious materials.

18) On February 6, 2002, the government charged Plaintiff in a one-count indictment with possession of 15 or more unauthorized or counterfeit credit card numbers, with intent to defraud, in violation of 18 U.S.C. § 1029(a)(3). On February 8, 2002, Plaintiff entered a plea of “not guilty” to this indictment and thereby asserted his innocence.

19) On January 22, 2003, Plaintiff was charged in a second, six-count indictment with two counts of making a false statement to the FBI, in violation of 18 U.S.C. § 1001; three counts of making a false statement in a bank application, in violation of 18 U.S.C. § 1014; and one count of using a means of identification of another person for the purpose of influencing the action of a federally insured financial institution, in violation of 18 U.S.C. § 1028(a)(7). On January 24, 2003, Plaintiff entered a plea of “not guilty” to this second indictment and thereby asserted his innocence to those charges as well.

20) On May 12, 2003, the United States District Court for the Southern District of New York granted Plaintiff’s motion to dismiss the indictments then pending on the ground that venue was improper in the Southern District of New York.

21) On or about May 20, 2003, Plaintiff was returned from MCC-NY to the Peoria County Jail. Plaintiff was detained at the Peoria County Jail in solitary confinement, without any of his personal possessions, including his prayer rug and religious books.

22) On May 22, 2003, a federal grand jury sitting in the Central District of Illinois returned a new indictment against Plaintiff alleging the same seven counts as had been charged in the dismissed Southern District of New York indictments. On May 29, 2003, Plaintiff entered a plea of “not guilty” to this indictment and thereby asserted his innocence to the charges. The court set a July 21, 2003 trial date.

23) After May 29, 2003, Plaintiff’s counsel was not permitted to meet with Plaintiff, pending entry of Special Administrative Measures (“SAMs”) severely restricting all contact with Plaintiff, measures to which Counsel had objected.

24) On Friday, June 20, 2003, the United States District Court for the Central District of Illinois directed the parties to be prepared to proceed with a suppression hearing on July 2, 2003, in connection with pretrial motions that Counsel had filed on Plaintiff’s behalf. That same day, Counsel advised the Assistant U.S. Attorney prosecuting the case that the SAMs impasse had to be resolved so that Counsel could meet with Plaintiff to prepare for the hearing.

25) On Monday morning, June 23, 2003, the government moved *ex parte* to dismiss the indictment based upon a redacted declaration signed by President Bush designating Plaintiff an “enemy combatant,” directing the Attorney General to surrender Plaintiff to the custody of Defendant Rumsfeld; and requiring Defendant Rumsfeld to detain Plaintiff. The Court granted the government’s motion, ultimately, entering an order dismissing the indictment with prejudice.

26) Plaintiff was then transferred by the United States Marshal’s Service to the custody of the Department of Defense at the Consolidated Naval Brig in Charleston, South Carolina, where he remains incarcerated in solitary confinement.

27) From on or around May 29, 2003, until October 14, 2004, Plaintiff was denied access to counsel, despite repeated requests by Counsel to meet with him, all of which were completely ignored by the government.

28) On July 8, 2003, Plaintiff's counsel filed a habeas corpus on his behalf in the United States District Court for the Central District of Illinois, challenging the lawfulness of his detention as an "enemy combatant."

29) On August 1, 2003, the District Court granted the government's motion to dismiss the petition on the ground that venue was improper in the Central District of Illinois and that Plaintiff must instead file his habeas petition in federal district court in South Carolina, where he was confined. *See Al-Marri v. Bush*, 274 F. Supp. 2d 1003 (C.D. Ill. 2003).

30) Plaintiff appealed to the United States Court of Appeals for the Seventh Circuit, and, on March 8, 2004, the Court of Appeals affirmed the dismissal of Plaintiff's habeas petition. *See Al-Marri v. Rumsfeld*, 360 F.3d 707 (7th Cir. 2004). Plaintiff's petition for writ of certiorari was denied by the United States Supreme Court. *See Al-Marri v. Rumsfeld*, 125 S. Ct. 34 (2004).

31) On July 7, 2004, Plaintiff's counsel filed a Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina in Plaintiff's behalf, again challenging the lawfulness of his detention.

32) On March 3, 2005, Plaintiff moved for summary judgment on his habeas petition, arguing that, even assuming the allegations against him to be true, the President lacked authority to hold him as an "enemy combatant." On July 8, 2005, the District Court denied that motion.

33) Plaintiff has been detained since June 23, 2003, without charge and without a hearing.

Plaintiff's Inhumane Treatment and Conditions of Confinement

Prolonged Isolation

34) Plaintiff has been held in solitary confinement from the time he was arrested on December 12, 2001, through the present.

35) Since Plaintiff was designated an "enemy combatant" over two years ago, he has been detained in complete isolation in a cell that is approximately 9 feet by 6 feet in size.

36) Plaintiff is confined to his cell, alone, 24 hours a day, 7 days a week, except for the brief period he is allowed outside for so-called "recreation," which he has been granted approximately three days per week when deemed to be "compliant."

37) Plaintiff's recreation has often been suspended, and is inflexibly scheduled at times that prevent him from praying or in the middle of the day when it is too hot to go outside. When he cannot go outside, Plaintiff must remain inside the Brig in hand and leg irons during his "recreation."

38) Plaintiff remains in isolation even during those brief periods when he is permitted to go outside for "recreation," and he has no contact with anyone during that time besides his guards.

Conditions in Plaintiff's Cell

39) Plaintiff's cell contains nothing except a "suicide blanket" and a thin mattress on a flat metal surface which Plaintiff must use as a bed.

40) Plaintiff's blanket and mattress are often removed from Plaintiff's cell during the day.

41) Every surface in Plaintiff's cell is metal, concrete, or some other similarly hard material. Plaintiff's cell does not contain any soft surface on which he can sit or lie down, and his body therefore is never allowed to relax.

42) Plaintiff has been denied socks or any footwear for months at a time, including during the winter months, thus forcing him to spend as long as over 20 days in his bed because the floor in his cell was so cold and he did not have socks or shoes.

43) As a result of the conditions in Plaintiff's cell, Plaintiff has suffered tingling pain in his leg and other injuries, and, on information and belief, long-term nerve damage.

44) Plaintiff has been denied a cushion even though a doctor recommended it for the pain.

45) Plaintiff's cell contains a small opaque window, covered with plastic, which prevents him from seeing anything outside his cell, including the sun or the sky, and which prevents any rays of light from entering his cell.

46) The door to Plaintiff's cell has a small window which is blacked out so he cannot see into the Brig.

47) Despite an operating HV/AC system in the Brig, Plaintiff is forced to endure the grating sound of a portable industrial fan that has been intentionally placed near the door of his cell, and that is operated 24 hours a day, 7 days a week. The speed of the fan is adjusted depending on whether Plaintiff is deemed to be "compliant": it is left on low speed when Plaintiff is deemed to be "compliant"; and it is left on high speed when he is deemed to be "non-compliant." On information and belief, the fan is used deliberately to harass and torment Plaintiff.

48) On information and belief, Plaintiff is constantly under video surveillance in his cell, including when he takes a shower and goes to the bathroom.

49) On information and belief, the conditions in Plaintiff's cell have been intentionally devised to punish, degrade, and humiliate him.

Denial of Social Contact and Communication with the Outside World

50) Plaintiff has not been permitted any social contact with anyone since he was designated an “enemy combatant.”

51) Plaintiff has had no contact with any non-government personnel except for visits with his attorneys and three visits from representatives of the International Committee of the Red Cross (“ICRC”).

52) Military personnel at the Brig have never engaged in any social conversation with Plaintiff, and the only time they speak to him is to issue him orders.

53) Plaintiff has been denied the opportunity to engage in intellectual and educational activity.

54) Plaintiff has been denied access to the library at the Brig.

55) Plaintiff has been denied access to books and news and to religious materials except for the Quran.

56) Plaintiff has been denied access to television and radio.

57) Plaintiff has not been permitted to speak to or see his family or close relatives, including his wife and children.

58) Plaintiff has been prohibited from sending a picture of himself to his wife and children.

59) Defendants have unreasonably delayed Plaintiff’s receipt of letters from his family members in Qatar.

60) Defendants have unreasonably censored letters from Plaintiff’s family members. For example, the government blocked out almost an entire letter from Plaintiff’s third-grade nephew

in Qatar, leaving little more than the salutation and closing. On information and belief, there was nothing in that letter which justified its being redacted.

61) Defendants have unreasonably limited the frequency of Plaintiff's correspondence with his family members and with the ICRC.

62) Plaintiff has been told he is permitted to send only six pieces of correspondence per month, including letters to his family members and the ICRC and complaints to Brig staff regarding his conditions of confinement.

63) This limitation on correspondence has restricted Plaintiff's ability to communicate with his family and the ICRC and to object to his mistreatment at the Brig.

64) Plaintiff has been denied virtually all physical and social reference points and contact with the outside world. There is almost nothing to distract him from his torment, and he therefore becomes preoccupied with his pain and with the degradation he suffers.

Interference with Access to Counsel

65) On multiple occasions, Brig staff have intentionally confiscated privileged notes from Plaintiff's cell which Plaintiff intended to provide to Counsel, and have refused to return said notes.

66) Defendants have unreasonably delayed Plaintiff's access to an English-Arabic/Arabic-English dictionary. As a result, Plaintiff has had difficulty understanding his legal proceedings and addressing issues relevant to those proceedings with Counsel.

67) Plaintiff's request to keep a diary to record his treatment at the Brig has been denied.

Abusive and Coercive Interrogations

68) For over the first year of his confinement at the Brig, Plaintiff was interrogated repeatedly.

69) During those interrogations, government officials threatened and lied to Plaintiff.

70) Interrogators, for example, threatened to send Plaintiff to Egypt or to Saudi Arabia where, they told him, he would be tortured and sodomized and where his wife would be raped in front of him.

71) Interrogators also falsely told Plaintiff that four of his brothers and his fathers were in jail because of him, and promised that they would all be released if he cooperated with them.

72) This interrogation, along with the total isolation and other conditions of confinement, was extremely difficult for Plaintiff, and severely affected his physical and mental well-being.

73) Plaintiff has not been formally interrogated for almost one year.

Interference with Plaintiff's Observance of Islam

74) Plaintiff is a devout and religiously observant Muslim.

75) Plaintiff's observance and practice of Islam has been significantly restricted.

76) Plaintiff has been denied access to a clock and, therefore, has no way of knowing when he must pray, which Islam requires him to do five times each day.

77) Plaintiff has been denied use of a razor, which has prevented him from properly trimming his facial and other body hair, as Islam requires him to do.

78) Plaintiff has often been denied water in his cell, which he needs to purify himself before praying and has consequently been forced to face God in an impure state.

79) Plaintiff has been denied access to all books pertaining to his religion, except for the Quran, including the Tafsirs, the leading commentaries on the Quran, and the Saheeh Muslim and Saheeh Bukhar, the most important sayings of the prophet Mohammed.

80) Plaintiff's copy of the Quran has been mistreated and disrespectfully handled. For example, Brig staff have intentionally placed the Quran on the floor of Plaintiff's cell and thrown numerous items on top of it, despite Plaintiff's express requests that they not do so because it degrades his religion.

81) Plaintiff has been denied access to a pen to make notes while studying the Quran and to prepare religious questions.

82) Plaintiff has been denied a prayer rug and has been forced to kneel on his suicide blanket even though it is dirty and not clean as a prayer rug must be.

83) Plaintiff has been denied a head-cover, which Islam requires him to wear when he prays.

84) When Plaintiff has used his shirt to cover his head during prayer in lieu of a proper head-cover, Brig staff have deemed him "non-compliant" and punished him.

85) Plaintiff's requests to meet with a Muslim scholar or cleric to seek spiritual guidance and comfort have been denied or ignored.

86) Plaintiff's requests to correspond with appropriate Islamic organizations have been denied or ignored.

87) Brig staff have transferred Plaintiff to different cells on several occasions. Each time, Plaintiff has been denied a compass or other means of identifying the direction of Mecca, which he must face when he prays. On information and belief, these transfers were intended to disorient Plaintiff and to interfere with his observance of Islam.

Other Inhumane Treatment and Denial of Basic Necessities

88) For the first eight months of Plaintiff's confinement in the military brig, Plaintiff's diet was limited solely to cold MREs ("Meals Ready to Eat"). Plaintiff is still denied MREs for days or weeks at a time when deemed "non-compliant." On information and belief, Defendants have deliberately manipulated Plaintiff's diet to punish and degrade him.

89) Plaintiff has been denied opportunity for adequate recreation and physical exercise.

90) Plaintiff has been denied basic hygienic products, including a toothbrush, toothpaste, soap, and toilet paper.

91) When not provided with toilet paper, Plaintiff is compelled to use his hands to clean himself after he defecates. When Plaintiff requests soap to clean himself, it often takes over an hour before soap is brought to him.

92) Brig staff sometimes eliminate the water supply in Plaintiff's cell, which prevents him from flushing the toilet in the cell and which has required him to defecate on his food tray so that his feces would not have to remain in the same cell where he lives and prays.

93) The air temperature in Plaintiff's cell is often deliberately made exceedingly cold, and Plaintiff is denied any extra clothing to keep warm. As a result, Plaintiff shivers all day and night until the temperature is raised.

94) Plaintiff is often denied clean clothes to wear.

95) Plaintiff has been denied all personal belongings.

96) Plaintiff was denied a mirror for over two years.

97) Plaintiff's shackles are sometimes placed on his hands and ankles so tightly that they leave marks for days after they are removed.

98) Plaintiff is forced to wear leg irons and handcuffs when he leaves his cell to go to the shower.

99) Plaintiff is unable to control the lights in his cell, and he has trouble sleeping during the day because the white fluorescent lights in his room remain on from 5 a.m. to 10 p.m.

Denial of Adequate Medical and Psychological Care

100) On information and belief, Plaintiff has been provided inadequate medical and psychological care at the Brig.

101) On information and belief, Plaintiff has developed severe medical conditions as a result of his confinement in the Brig, including a sharp and debilitating tingling pain in his leg.

102) The doctor who treated Plaintiff told him that a special x-ray was needed to assess nerve damage, but that medical procedure was denied by Brig staff. The doctor also recommended that Plaintiff be seen by a nerve specialist, but that request too was denied.

103) The doctor who treated Plaintiff for this pain further recommended that Plaintiff be given a chair with a good cushion and a thicker mattress, but those requests were likewise denied.

104) Since he was confined to the Brig, Plaintiff has experienced vision problems, including seeing flickering lights and white spots. Plaintiff has not been treated or has not been given adequate treatment for these problems.

105) Plaintiff has developed a number of other medical conditions at the Brig which have been improperly treated or not treated at all, including numbness and a painful tingling sensation in his thumb and index finger, problems with his vision, constant headaches, back pain, dizziness, uncontrollable tremors, inexplicable aching in his body, and a ringing in his ears.

106) Plaintiff has also developed a condition in his buttocks area which is exacerbated when he is denied basic necessities like toilet paper and soap.

107) Defendants have ignored or denied Plaintiff's repeated requests for access to his medical records.

Harmful Effects of Plaintiff's Prolonged Isolation and other Inhumane and Degrading Conditions of Confinement

108) On information and belief, Plaintiff's continued prolonged isolation and other inhumane and degrading conditions of confinement have caused a marked and severe deterioration in, and irreversible harm to, his mental health, including his emotional state and cognitive functioning.

109) On information and belief, Plaintiff has experienced a number of symptoms that demonstrate severe damage to his mental and emotional well-being, including hypersensitivity to external stimuli, manic behavior, difficulty concentrating and thinking, obsessional thinking, difficulties with impulse control, difficulty sleeping, difficulty keeping track of time, and agitation.

110) On information and belief, Plaintiff has engaged in behavior at the Brig that he never engaged even when he was in solitary confinement at the MCC in New York, as a direct result of the prolonged isolation and other inhumane treatment he has had to endure.

111) On information and belief, Defendants have intentionally and directly exacerbated Plaintiff's prolonged isolation by, among other things, manipulating the supply of water in his cell (affecting Plaintiff's ability to perform such basic functions as washing and flushing the toilet), placing a grating industrial portable fan outside Plaintiff's cell and manipulating its speed to disturb Plaintiff, and waking Plaintiff when he is sleeping by shaking him and banging repeatedly on his cell door.

The “Rules” Governing Plaintiff’s Confinement

112) On information and belief, there are no regulations that been applied to Plaintiff’s living conditions and treatment at the Brig.

113) On information and belief, the only “rules” that have been applied to Plaintiff’s confinement are set forth on a single page entitled “Special Housing Unit Rules.” See Exhibit A, attached hereto.

114) On information and belief, the “Special Housing Unit Rules” were created especially for and apply only to Plaintiff and to Jose Padilla, the other individual detained as an “enemy combatant” at the Brig.

115) Plaintiff has not been given a copy of the Special Housing Unit Rules and, on information and belief, the only place in the Brig where the rules are posted is in the dayroom. Plaintiff has never been permitted to go to the dayroom.

116) The Special Housing Unit Rules state that Plaintiff “must comply with rules, regulations and orders,” which “are necessary for safety, good order, and discipline.”

117) In fact, a different set of “rules” is applied to Plaintiff by each shift team, and there are four different shift teams.

118) The Special Housing Unit Rules also state that Plaintiff “must immediately obey all orders of U.S. personnel” and that his failure to do so may “be dealt with by force.” Plaintiff is subject to “disciplinary or judicial punishment if [he] disobey[s] a rule, a regulation, or an order, or if [he] commit[s] an act, conduct, disorder, or neglect that is prejudicial to good order or discipline.”

119) The Special Housing Unit Rules further provide that Plaintiff “may receive disciplinary treatment that includes discontinuing privileges over and above the treatment

provided for by the Geneva Conventions.” Defendants have never treated Plaintiff in accordance with the Geneva Conventions.

120) The only conduct specifically prohibited by the Special Housing Unit Rules is: the possession of “knives, sticks, metal pieces, or articles that can be used as weapons;” “drilling or marching in military formation for any purpose except as authorized and directed by the facility commander;” meeting or issuing “propaganda for political purposes”; and the wearing or displaying of “national political items.” Plaintiff has never violated these prohibitions and, on information and belief, Defendants have never accused him of doing so.

121) The Special Housing Unit Rules provide that Plaintiff may “retain personal effects or property that are authorized by the facility commander.” On information and belief, there is no itemization or list of personal effects and property authorized by the facility commander, and Plaintiff has been denied his personal effects and property at the Brig without any legitimate basis.

122) On information and belief, there is no other provision that Defendants have applied to Plaintiff which grants him any right, privilege, guarantee, or standard of treatment at the Brig.

123) On information and belief, the Special Housing Unit Rules were designed and have been applied to Plaintiff for purposes of interrogation.

124) On information and belief, the Special Housing Unit Rules have been applied and used to punish, mistreat, and humiliate Plaintiff without justification.

125) Plaintiff is not a threat to internal security at the brig and has never been accused or charged by Defendants with being a threat to internal security.

126) Plaintiff was never provided with notice of any charges or afforded any type of hearing before being subjected to these inhumane, abusive, degrading, and dangerous conditions of confinement at the Brig.

CLAIMS FOR RELIEF

First Claim -- Unlawful Conditions of Confinement -- Violation of the Fifth and Eighth Amendments to the Constitution of the United States

127) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

128) Plaintiff has been detained in the United States without charges and without a hearing for almost two years and, as such, he is entitled under the Due Process Clause of the Fifth Amendment and under the Eighth Amendment to the Constitution of the United States to *at least* the same protections guaranteed to pretrial detainees and/or to individuals who have been civilly committed.

129) Defendants, by subjecting Plaintiff to prolonged solitary confinement, social isolation, and other inhumane and degrading treatment which is intended as punishment, not reasonably related to a legitimate governmental purpose, and/or excessive in relation to that purpose, have violated Plaintiff's rights under the Fifth and Eighth Amendments.

130) Defendants, by confining Plaintiff under physically and mentally unsafe conditions, depriving him of basic life necessities, and/or by subjecting him to treatment that substantially departs from any recognized standard of care or treatment, have violated Plaintiff's rights under the Fifth and Eighth Amendments.

Second Claim -- Inhumane and Substandard Living Conditions -- Violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States, the Geneva Conventions, and Army Regulation 190-8

131) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

132) Plaintiff is detained by Defendants solely upon the President's declaration that he is an "enemy combatant." Plaintiff maintains that he is a civilian and must be charged criminally or released, and that the military has no authority to detain him.

133) Assuming *arguendo* that the military has authority to detain Plaintiff, Plaintiff is still entitled, at a minimum, to living conditions that meet contemporary standards of decency and afford the minimal civilized measures of life's necessities.

134) By subjecting Plaintiff to inhumane living conditions that do not meet contemporary standards of decency or afford the minimal civilized measures of life's necessities, Defendants have violated Plaintiff's rights under the Due Process Clause of the Fifth Amendment to the Constitution of the United States, the Third and Fourth Geneva Conventions, customary international law, and Army Regulation 190-8.

Third Claim -- Denial of Access to Books and News, Denial of Access to the Library at the Brig, Denial of All Religious Texts Except the Quran, and Unreasonable Restrictions on Correspondence -- Violation of the First Amendment to the Constitution of the United States

135) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

136) The First Amendment to the Constitution guarantees individuals the right to receive information, the right of access to books, newspapers, and magazines, and the right to engage in the intellectual activity that is made possible through such access. The First Amendment also guarantees individuals the right to engage in correspondence and communication with others.

137) Even assuming *arguendo* that Plaintiff has no greater rights than a convicted prisoner, the Constitution still requires that there be a valid, rational connection between a restriction and the legitimate governmental interest put forward to justify it and that an alternative means of exercising the First Amendment right remains open to the individual.

138) Defendants, by unreasonably and impermissibly denying Plaintiff access to books and news, to the library at the Brig, and to all religious texts except for the Quran, and by severely restricting Plaintiff's communication with the outside world, have violated the rights guaranteed to Plaintiff by the First Amendment.

Fourth Claim -- Denial of Contact with Family and Close Relatives -- Violation of Plaintiff's Right to Freedom of Association under the First Amendment and Due Process under the Fifth Amendment to the Constitution of the United States

139) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

140) The guarantee of freedom of association under the First Amendment to the Constitution of the United States protects Plaintiff's right to enter into and maintain certain intimate human relationships against undue intrusion by the government because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme.

141) The Due Process Clause of the Fifth Amendment to the Constitution of the United States guarantees Plaintiff the right to develop and maintain a close personal relationship with intimate family members, including his wife and children.

142) Defendants, by unreasonably denying Plaintiff all contact with his wife and children and other close relatives, except for written communication that is unreasonably restricted and censored, have violated his rights under the First and Fifth Amendments.

Fifth Claim -- Restrictions on and Interference with Plaintiff's Observance and Practice of His Religion -- Violation of the Free Exercise Clause of the First Amendment to the Constitution of the United States

143) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

144) The Free Exercise Clause of the First Amendment to the Constitution of the United States prohibits the government from impermissibly restricting an individual's free exercise of his religion.

145) Defendants have directly and intentionally restricted Plaintiff's free exercise of Islam by, *inter alia*, denying him water to purify himself before he prays; denying him a head-cover when he prays and punishing him for using his shirt to cover his head as a replacement; denying his requests to meet with a Muslim scholar or cleric to seek spiritual advice and guidance; denying him access to all religious materials except the Quran, and denigrating his copy of the Quran.

146) These restrictions have not been imposed pursuant to a neutral law of general applicability and also implicate other fundamental constitutional rights, including Plaintiff's rights under the First and Fifth Amendments. As a result, these restrictions are subject to strict scrutiny.

147) Because the restrictions impose a substantial burden on Plaintiff's observance of Islam that is not justified by a compelling state interest and/or is not the least restrictive means of furthering that interest, Defendants have violated Plaintiff's rights under the Free Exercise Clause.

Sixth Claim -- Impermissible Burden on the Exercise of Religion -- Violation of the Religious Freedom Restoration Act

148) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

149) The Religious Freedom Restoration Act prohibits the government from substantially burdening an individual's exercise of his religion unless it demonstrates that the application of this burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. See 42 U.S.C. § 2000bb *et seq.*

150) Defendants have directly and intentionally restricted Plaintiff's free exercise of Islam by, *inter alia*, denying him water to purify himself before he prays; denying him a head-cover when he prays and punishing him for using his shirt to cover his head as a replacement; denying his requests to meet with a Muslim scholar or cleric to seek spiritual advice and guidance; denying him access to all religious materials except the Quran, and denigrating his copy of the Quran.

151) Because this substantial burden is not justified by a compelling state interest and/or is not the least restrictive means of furthering that interest, Defendants have violated the Religious Freedom Restoration Act.

Seventh Claim – Denial of Standards Guaranteed by Military Regulations -- Violation of the Administrative Procedures Act

152) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

153) Assuming *arguendo* Plaintiff's detention by the military is authorized, Plaintiff is still entitled to be treated in accordance with the standards contained in Army Regulation 190-8 which applies to persons seized and detained by the United States military. These standards

establish an expansive list of regulations guaranteeing the humane treatment of prisoners of war, civilian internees, and other detainees.

154) Defendants, by subjecting Plaintiff to his current conditions of confinement, have failed to apply Army Regulation 190-8 in violation of the Administrative Procedures Act.

Eighth Claim – Denial of Prisoner of War Status – Violation of Third Geneva Convention

155) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

156) Assuming *arguendo* Plaintiff's detention by the military is authorized, Plaintiff is guaranteed the right to be treated as a prisoner of war under Article 5 of the Third Geneva Convention until a competent tribunal determines his status.

157) Defendants, by failing to treat Plaintiff as a prisoner of war without first determining his status by a competent tribunal, have violated Plaintiff's rights under the Third Geneva Convention.

Ninth Claim – Denial of Humane Treatment and Conditions of Confinement – Violation of Multilateral Treaties and Customary International Law

158) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

159) Assuming *arguendo* Plaintiff's detention by the military is authorized, Plaintiff is still entitled to humane treatment and to be free from humiliating and degrading treatment under Third and Fourth Geneva Conventions and the Protocol Additional I to the Geneva Conventions, and under customary international law.

160) Defendants, by subjecting Plaintiff to prolonged solitary confinement and other inhumane, degrading, and abusive conditions of confinement, have violated Plaintiff's rights under multilateral treaties and other international instruments, and customary international law.

Tenth Claim -- Torture or Cruel, Inhuman or Degrading Treatment -- Violation of the Alien Tort Statute

161) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein

162) By subjecting Plaintiff to the treatment and living conditions described herein, Defendants have had the intent and effect of grossly humiliating and debasing Plaintiff, forcing him to act against his will and conscience, inciting fear and anguish, and breaking his physical or moral resistance.

163) These actions constitute torture or cruel, inhuman or degrading treatment in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that they violate customary international law prohibiting torture or cruel, inhuman or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

Eleventh Claim -- Unreasonable Invasion of Plaintiff's Privacy and Personal Integrity -- Violation of the Fourth Amendment to the Constitution of the United States

164) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

165) The Fourth Amendment to the Constitution of the United States guarantees all individuals the right to privacy and personal integrity against unreasonable intrusion and invasion by the government. Under the conditions of confinement established by Defendants, Plaintiff is under constant video surveillance by Brig staff, including when he takes a shower or

uses the toilet. There is no legitimate government interest in observing Plaintiff during these moments, and this invasion of his privacy and personal integrity violates his rights under the Fourth Amendment.

**Twelfth Claim -- Vague and Overbroad Rules Governing Plaintiff's Confinement --
Violation of the Due Process Clause of the Fifth Amendment to the Constitution of the
United States**

166) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

167) The Due Process Clause of the Fifth Amendment to the Constitution of the United States forbids the government from establishing laws, regulations, or rules which fail to provide adequate notice of what constitutes objectionable behavior. The average person must be able to tell whether his conduct is forbidden by a given rule and the government must establish minimal guidelines for enforcement of those rules to ensure that such enforcement is not arbitrary or discriminatory. The Special Housing Unit Rules, on their face and as applied, violate the Due Process Clause because they fail to provide adequate notice of what conduct is forbidden and provide inadequate guidelines to prevent their arbitrary and discriminatory enforcement.

168) The Due Process Clause of the Fifth Amendment to the Constitution of the United States prohibits the government from establishing laws, regulations, or rules that prohibit the doing of an act in terms so vague that individuals of common intelligence must necessarily guess at their meaning and differ as to their application. The Special Housing Unit Rules, on their face and as applied, violate the Fifth Amendment because they prohibit and punish conduct in terms so vague that an individual of common intelligence must guess at their meaning and application.

Thirteenth Claim -- Overbroad Rules Governing Plaintiff's Confinement -- Violation of the First and Fifth Amendments to the Constitution of the United States

169) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

170) The First Amendment to the Constitution of the United States and the Due Process Clause of the Fifth Amendment forbid the government from controlling or preventing activities constitutionally subject to regulation through means which sweep unnecessarily broadly and thereby invade the area of protected freedoms, including those freedoms protected by the First Amendment.

171) The Special Housing Unit Rules, on their face and as applied, violate the First and Fifth Amendments because they sweep unnecessarily broadly and invade constitutionally protected freedoms, including Plaintiff's freedom of speech and free exercise of religion.

Fourteenth Claim -- Failure to Follow Rules that Govern Plaintiff's Confinement -- Violation of the Fifth Amendment to the Constitution of the United States

172) Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

173) The Due Process Clause of the Fifth Amendment to the Constitution of the United States prohibits the government from failing to follow its own rules or regulations where, *inter alia*, it leads to arbitrary and discriminatory enforcement; the rules or regulations are required by Constitution or by law; and/or where an individual has reasonably relied on rules or regulations which were promulgated for his guidance or benefit and has suffered substantially because of their violation by the government.

174) Defendants, by failing to follow the Special Housing Unit Rules which the government says apply to Plaintiff, have violated Plaintiff's rights under the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court:

1. Declare that Plaintiff's treatment and conditions of confinement at the Consolidated Naval Brig violate the First, Fourth, Fifth, and Eighth Amendments to the Constitution of the United States.
2. Declare that Plaintiff's treatment and conditions of confinement at the Consolidated Naval Brig violate the Third and Fourth Geneva Conventions, other international instruments, customary international humanitarian and human rights law, and Army Regulation 190-8.
3. Declare that Plaintiff's treatment and conditions of confinement at the Consolidated Naval Brig violate the Religious Freedom Restoration Act.
4. Declare the Plaintiff's treatment and conditions of confinement at the Consolidated Naval Brig constitute torture or cruel, inhuman and/or degrading treatment in violation of the law of nations under the Alien Tort Statute.
5. Preliminarily and permanently enjoin Defendants from refusing to provide Plaintiff with treatment and living conditions that meet the standards imposed by the First, Fifth, and Eighth Amendments to the Constitution of the United States, the Geneva Conventions and other international treaties, agreements, and provisions, and Army Regulation 190-8.
6. Preliminarily and permanently enjoin Defendants from continuing to subject Plaintiff to prolonged solitary confinement and social isolation.
7. Preliminarily and permanently enjoin Defendants from refusing to provide Plaintiff with adequate medical care.

8. Preliminarily and permanently enjoin Defendants from refusing to provide Plaintiff with adequate psychological care.
9. Preliminarily and permanently enjoin Defendants from prohibiting all contact between Plaintiff and his immediate family and close relatives.
10. Preliminarily and permanently enjoin Defendants from restricting, interfering with, and denigrating Plaintiff's observance of Islam.
11. Preliminarily and permanently enjoin Defendants from denying Plaintiff access to the library at the Brig.
12. Preliminarily and permanently enjoin Defendants from denying Plaintiff access to all news and books and to all reading materials except the Quran.
13. Preliminarily and permanently enjoin Defendants from denying Plaintiff access to his medical records.
14. Preliminarily and permanently enjoin Defendants from denying Plaintiff access to his psychological and other mental health records.
15. Preliminarily and permanently enjoin Defendants from refusing Plaintiff access to a medical examination by a doctor of Plaintiff's counsel's choice and with appropriate security clearance.
16. Preliminarily and permanently enjoin Defendants from refusing Plaintiff access to a medical examination by a doctor of Plaintiff's counsel's choice and with appropriate security clearance.
17. Preliminarily and permanently enjoin Defendants from subjecting Plaintiff to torture or to cruel, inhuman and/or degrading treatment.

18. Declare that the Special Housing Unit Rules violate the First and Fifth Amendments to the Constitution of the United States
19. Enjoin Defendants from enforcing the Special Housing Unit Rules against Plaintiff.
20. Award reasonable attorneys' fees and the costs of this action, and such other and further relief as is warranted from Plaintiff's pursuit of discovery against Defendants and as this Court may deem necessary or appropriate.

