

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ABDUL RAHIM ABDUL RAZAK AL
JANKO,
c/o Paul L. Hoffman
723 Ocean Front Walk
Venice, CA 90291

Plaintiff,

vs.

ROBERT M. GATES
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1400

DONALD RUMSFELD
Fmr. Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

PAUL WOLFOWITZ
Fmr. Deputy Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

GORDON ENGLAND
Fmr. Secretary of the Navy
United States Navy
Navy Pentagon
Washington, DC 20350-2000

REAR ADM. JAMES M. McGARRAH
Fmr. Director of the Office for the
Administrative Review
Of the Detention of Enemy Combatants c/o
United States Navy
Navy Pentagon
Washington, DC 20350-2000

RICHARD B. MYERS
Fmr. Chairman, Joint Chiefs of Staff
999 Joint Chiefs of Staff Pentagon
Washington, D.C. 20318

PETER PACE
Fmr. Chairman, Joint Chiefs of Staff
999 Joint Chiefs of Staff Pentagon

C.A. No: _____

COMPLAINT FOR DAMAGES; JURY
TRIAL DEMANDED

Case: 1:10-cv-01702
Assigned To : Huvelle, Ellen S.
Assign. Date : 10/5/2010
Description: Civil Rights-Non-Employ.

Washington, D.C. 20318
MICHAEL GLENN “MIKE” MULLEN
Chairman, Joint Chiefs of Staff
999 Joint Chiefs of Staff Pentagon
Washington, D.C. 20318

GARY SPEER
Fmr. Acting Commander-in-Chief, U.S.
Southern Command
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

JAMES T. HILL
Fmr. Commander, United States Southern
Command
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

BANTZ CRADDOCK
Fmr. Commander, United States Southern
Command
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

JAMES G. STAVRIDIS
Fmr. Commander, United States Southern
Command
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

MAJ. GEN. GEOFFREY D. MILLER
Fmr. Commander, Joint Task Force-
Guantánamo
Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

BRIG. GEN. JAY HOOD
Fmr. Commander, Joint Task Force-
Guantánamo
Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

REAR ADM. HARRY B. HARRIS, JR.
Fmr. Commander, Joint Task Force –
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Guantánamo Bay Naval Base, Cuba
c/o United States Navy
Navy Pentagon
Washington, DC 20350-2000

MARK H. BUZBY
Fmr. Commander, Joint Task Force –
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Guantánamo Bay Naval Base, Cuba
c/o United States Navy
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DAVID THOMAS
Fmr. Commander, Joint Task Force –
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Guantánamo Bay Naval Base, Cuba
c/o United States Navy
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THOMAS H. COPEMAN III
Fmr. Commander, Joint Task Force –
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Guantánamo Bay Naval Base, Cuba
c/o United States Navy
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ADOLPH MCQUEEN
Fmr. Commander, Joint Detention Operations
Group
Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

BRIG. GEN. NELSON J. CANNON
Fmr. Commander, Joint Detention Operations
Group
Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

COL. MICHAEL BUMGARNER
Fmr. Commander, Joint Detention Operations
Group

Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

COL. WADE DENNIS
Fmr. Commander, Joint Detention Operations
Group
Guantánamo Bay Naval Base, Cuba
c/o United States Army
Army Pentagon
Washington, D.C. 20310-0200

ESTEBAN RODRIGUEZ
Fmr. Director, Joint Intelligence Group
Guantánamo Bay Naval Base, Cuba
c/o Department of Defense
Defense Pentagon
Washington, D.C. 20301-1000

PAUL RESTER
Director, Joint Intelligence Group
Guantánamo Bay Naval Base, Cuba
c/o Department of Defense
Defense Pentagon
Washington, D.C. 20301-1000

DANIEL MCNEILL
Fmr. Commander, Coalition Forces –
Afghanistan
c/o Department of Defense
Defense Pentagon
Washington, D.C. 20301-1000

FRANK WIERCINSKI
Fmr. Commander – Kandahar Air Base
c/o Department of Defense
Defense Pentagon
Washington, D.C. 20301-1000

DOES 1-100

Defendants.

Plaintiff Abdul Rahim Abdul Razak Al Janko (“Mr. Janko” or “Plaintiff”), by and through his counsel, respectfully alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff is the victim of a decade-long Kafkaesque nightmare from which he is just awakening. In early 2000, long before the United States was at war with Taliban-controlled Afghanistan, Mr. Janko was imprisoned by the Taliban, falsely accused of being an American and Israeli spy, forced to confess to any number of false statements under torture and sentenced to 25 years imprisonment in medieval conditions. He was subjected to grotesque tortures and inhuman treatment by the Taliban during the nearly two years he was imprisoned at the notorious Sarpusa Prison in Kandahar.

2. Mr. Janko was liberated by U.S. forces in December 2001. He was one of five non-Afghan prisoners liberated who became known to journalists as the "Kandahar Five." He immediately offered his assistance to the United States as a material witness to human rights violations committed by the Taliban against U.S. citizens at the prison. Initially he was treated well by U.S. liberators and he cooperated fully with them.

3. In January 2002 former Attorney General John Ashcroft and FBI Director Mueller held a press conference. At the press conference they showed a photo of Mr. Janko taken from the videotape of his coerced confession at the hands of his Taliban captors. He was called an international terrorist even though there was no basis for this statement. This false accusation was broadcast to the world by Time Magazine and other media.

4. After this false accusation U.S. forces detained Mr. Janko and subjected him to torture and other forms of inhumane treatment apparently believing that he was connected with U.S. enemies. In May 2002 he was transported to Guantánamo Naval Base and he languished there for more than seven years in legal and psychological limbo. After the Supreme Court's decision in *Rasul v. Bush* (2004) allowed Janko to file a habeas corpus petition he did so. No action was taken on the petition until the Supreme Court's ruling in *Boumediene v. Bush* (2008). On June 22,

2009, District Judge Richard J. Leon found that Mr. Janko was not an "enemy combatant" and ordered his release from U.S. custody. He was released on October 7, 2009.

5. Mr. Janko now resides outside the United States. He is trying to rebuild a life after spending ten years in wrongful detention and undergoing unspeakable tortures and inhuman treatment first because he was thought to be an American spy and then because he was falsely called an American enemy. In fact, he is and has never been either an American spy or an enemy of this country. He has never taken up arms against any country or been the enemy of any country.

6. This case seeks justice and redress for Mr. Janko. The United States and its officials are responsible for the human rights violations he has suffered. Whether a country provides redress for the people it has wronged in violation of international and U.S. law is a true test of the character of a nation. The Alien Tort Statute ("ATS"), under which Mr. Janko brings some of his claims, was enacted to provide redress for aliens who had suffered torts committed in violation of the law of nations. This case tests whether the United States in the 21st century retains the commitment the Founders of our country enacted into law in the 18th century.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Plaintiff's claims under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1350 (Alien Tort Statute). As an alternative to federal question jurisdiction, because the claims for violation of the law of nations can also be brought as state common law claims, this Court also has jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction).

8. The Military Commissions Act (MCA) jurisdiction stripping provision, Section 7, which amends 28 U.S.C. § 2241, does not prevent this Court from exercising jurisdiction, for reasons including, but not limited to:

- a. The Supreme Court in *Boumediene v. Bush*, 553 U.S. 723 (2008), invalidated § 7 in its entirety;
- b. Even if 28 U.S.C. § 2241(e)(2) survived *Boumediene*, the provision is unconstitutional on other grounds;
- c. The provision is an unconstitutional bill of attainder;
- d. The provision is not applicable to Mr. Janko because, *inter alia*, he was not properly determined to be an enemy combatant. In fact, he was found not to be an enemy combatant after over seven years of detention.

9. This action is brought pursuant to violations of the law of nations under the Alien Tort Statute and also brought directly under the United States Constitution.

10. Venue is proper in the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1391(a)(3), 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 1391(e)(2), in that a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district.

PARTIES

11. Plaintiff Abdul Rahim Abdul Razak Al Janko, a 32-year-old native and citizen of Syria, is the fourth son of eleven children in his family. Mr. Janko brings this action on his own behalf. Mr. Janko was captured, imprisoned, and tortured by Taliban and al-Qaeda forces in Afghanistan and then incarcerated at Sarpusa Prison in Kandahar, Afghanistan, after being charged of being an American or Israeli spy. He was held captive by the Taliban for almost two years beginning in January 2000. He was liberated by U.S. troops in December 2001. Though U.S. forces first offered protection to Mr. Janko as a material witness that could provide testimony against Taliban and al-Qaeda leadership relating to human rights violations

committed against U.S. citizens in Sarpusa prison by the Taliban, Plaintiff was mistakenly accused of being an international terrorist, based on false and coerced evidence, and subsequently detained for over seven years under the exclusive control of the U.S. military. His Internment Serial Number is 489. His petition for a writ of habeas corpus was granted on June 22, 2009 by District Court Judge Richard J. Leon, but he was not released from Guantánamo until October 7, 2009. He currently resides outside of the United States.

12. Defendant Robert M. Gates is a United States citizen. Defendant Gates is currently the United States Secretary of Defense after taking office on December 18, 2006, including the period of time in which the events herein described occurred. At all relevant times, Defendant Gates possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Gates is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

13. Defendant Donald H. Rumsfeld is a United States citizen residing in Illinois. Defendant Rumsfeld was the United States Secretary of Defense from January 20, 2001 until December 18, 2006, including the period of time in which the events herein described began. At all relevant times, Defendant Rumsfeld possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Rumsfeld is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

14. Defendant Paul Wolfowitz is a United States citizen residing in

Maryland. Defendant Wolfowitz was Deputy Secretary of Defense from March 2, 2001 until March 17, 2005, including the period of time in which events herein described occurred. In particular, Mr. Wolfowitz was responsible for creating and overseeing the implementation of the flawed Combatant Status Review Tribunals (hereinafter CSRT), through memoranda which called for specific treatment of detainees. Defendant Wolfowitz is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

15. Defendant Gordon England is a United States citizen and was Secretary of the Navy from October 1, 2003 until December 28, 2005 and was simultaneously the Designated Civilian Official of detainees from June 28, 2003 until May 12, 2005. During this period and in this capacity, Mr. England had a strong role in determining whether a detainee should be released or not, based on the recommendations of CSRT or Administrative Review Boards (hereinafter ARB). Mr. England was also Deputy Secretary of Defense from May 13, 2005 until February 20, 2009, including the period of time in which events herein described occurred. During this period and in this capacity, Mr. England continued to oversee the flawed CSRT and ARB processes. Defendant England is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

16. Defendant Rear Adm. James M. McGarrah, of the United States Navy, is a United States citizen and was the Director of the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) and the CSRT from July 2004 to March 2006. In this capacity, he helped develop the flawed ARB process and approved the CSRT recommendation that Plaintiff be designated an enemy combatant and that the case be considered final in a determination signed October 27, 2004. Defendant McGarrah is sued in his individual capacity

for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

17. Defendant Air Force Gen. Richard B. Myers is a United States citizen.

Defendant Myers was the Chairman of the Joint Chiefs of Staff from October 1, 2001 until October 1, 2005. As the senior uniformed military officer in the chain of command during March 2003 until October 2005, Defendant Myers possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Myers is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

18. Defendant Marine Gen. Peter Pace is a United States citizen.

Defendant Pace was the Chairman of the Joint Chiefs of Staff from September 30, 2005 until October 1, 2007. As the senior military officer in the chain of command during his tenure as the Chairman of the Joint Chiefs of Staff, Defendant Pace possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Pace is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

19. Defendant Admiral Michael Glenn “Mike” Mullen is a United States citizen. Defendant Mullen has been the Chairman of the Joint Chiefs of Staff since October 1, 2007. As the senior military officer in the chain of command, Defendant Mullen possessed and exercised command and control over the United States military and the United States detention facility at Guantánamo. Defendant Mullen is sued in his individual capacity for ordering,

authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

20. Defendant Army Gen. Gary Speer is a United States citizen. Defendant Speer was the Acting Commander-in-Chief of the U.S. Southern Command from September 2001 to August 18, 2002. During his tenure as the senior commander with authority over the United States detention facility at Guantánamo, Defendant Speer possessed and exercised command and control over subordinates at Guantánamo. Defendant Speer is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

21. Defendant Army Gen. James T. Hill is a United States citizen. Defendant Hill was the Commander of the United States Southern Command from August 18, 2002 until November 9, 2004. During his tenure as the senior commander with authority over the United States detention facility at Guantánamo, Defendant Hill possessed and exercised command and control over subordinates at Guantánamo. Defendant Hill is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

22. Defendant Army Gen. Bantz Craddock is a United States citizen. Defendant Craddock was the Commander of the United States Southern Command from November 9, 2004 until October 19, 2006. During his tenure as the senior commander with authority over the United States detention facility at Guantánamo, Defendant Craddock possessed and exercised command and control over subordinates at Guantánamo. Defendant Craddock is sued in his individual capacity for ordering, authorizing, condoning, creating

methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

23. Defendant Adm. James G. Stavridis is a United States citizen.

Defendant Stavridis was the Commander of the United States Southern Command from October 19, 2006 to June 25, 2009. During his tenure as the senior commander with authority over the United States detention facility at Guantánamo, Defendant Stavridis possessed and exercised command and control over subordinates at Guantánamo. Defendant Stavridis is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

24. Defendant Army Maj. Gen. Geoffrey D. Miller is a United States

citizen. Defendant Miller was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from October 2002 until March 2004. During his tenure, Defendant Miller possessed and exercised command and control over subordinates at Guantánamo. Defendant Miller is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

25. Defendant Army Brig. Gen. Jay Hood is a United States citizen.

Defendant Hood was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from March 2004 until March 2006. During his tenure, Defendant Hood possessed and exercised command and control over subordinates at Guantánamo. Defendant Hood is sued in

his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

26. Defendant Navy Rear Adm. Harry B. Harris, Jr. is a United States citizen. Defendant Harris was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from March 2006 until May 2007. During his tenure, Defendant Harris possessed and exercised command and control over subordinates at Guantánamo. Defendant Harris is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

27. Defendant Rear Adm. Mark H. Buzby is a United States citizen. Defendant Buzby was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from May 2007 until January 11, 2008. During his tenure, Defendant Buzby possessed and exercised command and control over subordinates at Guantánamo. Defendant Buzby is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

28. Defendant Adm. David Thomas is a United States citizen. Defendant Thomas was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from May 27, 2008 to June 2009. During his tenure, Defendant Thomas possessed and exercised command

and control over subordinates at Guantánamo. Defendant Thomas is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

29. Defendant Rear Adm. Thomas H. Copeman III is a United States citizen. Defendant Copeman was the Commander of Joint Task Force-Guantánamo, responsible for all operations at the detention facility at Guantánamo including the conduct of all interrogations from June 2009 until Mr. Janko's release in Fall 2009. During his tenure, Defendant Copeman possessed and exercised command and control over subordinates at Guantánamo. Defendant Copeman is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

30. Defendant Army Col. Adolph McQueen is a United States citizen. Defendant McQueen was the Commander of Joint Detention Operations Group at the United States detention facility at Guantánamo, responsible for guarding the detainees and providing security from November 2002 until July 2003. During his tenure, Defendant McQueen possessed and exercised command and control over subordinates at Guantánamo. Defendant McQueen is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

31. Defendant Army Brig. Gen. Nelson Cannon is a United States citizen. Defendant Cannon was the Commander of Joint Detention Operations Group at the United States detention facility at Guantánamo, responsible for guarding the detainees and providing security from July 2003 until August 2004. During his tenure, Defendant Cannon possessed and

exercised command and control over subordinates at Guantánamo. Defendant Cannon is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

32. Defendant Army Col. Michael “Mike” Bumgarner is a United States citizen. Defendant Bumgarner was the Commander of Joint Detention Operations Group at the United States detention facility at Guantánamo, responsible for guarding the detainees and providing security from April 2005 until March 2006. During his tenure, Defendant Bumgarner possessed and exercised command and control over subordinates at Guantánamo. Defendant Bumgarner is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

33. Defendant Army Col. Wade Dennis is a United States citizen. Defendant Dennis was the Commander of Joint Detention Operations Group at the U.S. detention facility at Guantánamo, responsible for guarding the detainees and providing security from March 2006 until June 2007. During his tenure, Defendant Dennis possessed and exercised command and control over subordinates at Guantánamo. Defendant Dennis is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

34. Defendant Esteban (aka Steven, aka Stephen) Rodriguez is a United States citizen. Defendant Rodriguez was the civilian Director of the Joint Intelligence Group responsible for managing intelligence-gathering operations at Guantánamo and reporting to the

Commander of the Joint Task Force at Guantánamo from July 2003 to October 2005. During his tenure, Defendant Rodriguez possessed and exercised command and control over subordinates at Guantánamo. Defendant Rodriguez is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

35. Defendant Paul Rester is a United States citizen. Defendant Rester has been the Director of the Joint Intelligence Group responsible for managing intelligence-gathering operations at Guantánamo since 2005. During his tenure, Defendant Rester possessed and exercised command and control over subordinates at Guantánamo. Defendant Rester is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

36. Defendant Lt. General Daniel McNeill is a United States citizen. Defendant McNeill was Commander of the Coalition Forces in Afghanistan until March of 2003. He was responsible for all forces, intelligence activity, and treatment of prisoners in Afghanistan during his tenure. During his tenure, Defendant McNeill possessed and exercised command and control over subordinates in Afghanistan. Defendant McNeill is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

37. Defendant Col. Frank Wiercinski is a United States citizen. Defendant Wiercinski was Commander of the United States air base in Kandahar, Afghanistan during the time Mr. Janko was detained there from January 2002 to May 2002. Defendant Wiercinski exercised command responsibility over, conspired with, aided and abetted subordinates, and/or

otherwise directly or indirectly participated in Mr. Janko's prolonged arbitrary detention, cruel, inhuman, or degrading treatment, torture, forced disappearance (and due process violations) at Kandahar as hereinafter alleged.

38. Defendant John Doe 1, Colonel, United States Marine Corps, Tribunal President, is a United States citizen and presided over the flawed CSRT that recommended Mr. Janko be designated an enemy combatant. Doe 1 is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

39. Defendant John Doe 2, Captain, U.S. Navy, is a United States citizen and was Presiding Officer of the flawed ARBs. Defendant John Doe 2 is sued in his individual capacity for ordering, authorizing, condoning, creating methods and procedures for, exercising command responsibility over, conspiring with, aiding and abetting subordinates, and/or otherwise directly or indirectly participating in the abuses of Plaintiff as hereinafter alleged.

40. Plaintiff does not know the true names and capacities of Defendants sued herein as John Does 1-100, and therefore sues these Defendants by fictitious names. John Does 3-100 are sued in their individual capacity, and are the military, intelligence, and civilian personnel who exercised command responsibility over, conspired with, aided and abetted subordinates, and/or otherwise directly or indirectly participated in Mr. Janko's prolonged arbitrary detention, torture, cruel, inhuman, or degrading treatment, torture, Geneva Conventions and due process violations as hereinafter alleged. Plaintiff will seek leave to amend this Complaint to allege the true identities and capacities of these fictitiously named defendants when they are ascertained.

41. Plaintiff is informed and believe thereon allege that each defendant is, and at all times mentioned was, the agent, employee, representative, successor and/or assignee of each other defendant. Each defendant, in doing the acts, or in omitting to act as alleged in this

Complaint, was acting within the scope of his or her actual or apparent authority or the alleged acts and omissions of each defendant as agent subsequently were ratified and adopted by each other defendant as principal. All individual defendants acted or failed to act in the face of an obligations to do otherwise and did so maliciously and with reckless disregard for Plaintiff's rights and thus are liable for punitive damages. Plaintiff is informed and believe and thereon allege that all defendants, at all times relevant to the allegations herein, acted under the color of federal law.

42. Mr. Janko seeks compensation for prolonged arbitrary detention; cruel, inhuman, or degrading treatment; torture, violations of the Geneva Conventions; and due process violations that he suffered while under and relating to the custody of the United States and its agents at Kandahar Air Base and Guantánamo Bay Naval Base, and to hold responsible those officials charged with his unwarranted custody.

43. Mr. Janko brings this action for compensatory and punitive damages against Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace, Mullen, Speer, Hill, Craddock, Stavridis, Miller, Hood, Harris, Buzby, Thomas, Copeman, McQueen, Cannon, Bumgarner, Dennis, Rodriguez, Rester, and Does 1-100 for their roles in the harms committed against Mr. Janko in violation of domestic and international law. Defendants exercised command responsibility over, conspired with, aided and abetted subordinates, and/or otherwise directly or indirectly participated in the commission of abusive and illegal practices alleged herein, including torture, prolonged arbitrary detention, cruel, inhuman, or degrading treatment, Geneva Conventions violations, and due process violations of Mr. Janko at KAB and Guantánamo.

44. Mr. Janko also brings this action against Does 1-100, who exercised command responsibility over, conspired with, aided and abetted subordinates, and/or otherwise directly or indirectly participated in the harms against him. Accordingly, Defendants are liable under domestic and international law for the injuries, pain, and suffering of Mr. Janko in their

individual capacities.

STATEMENT OF FACTS

General Factual Background

45. Mr. Janko was detained in the exclusive custody, care and control of Defendants first at Kandahar Air Base from January 2002 to about late April 2002, and then at Guantánamo from May of 2002 until the date of his release on October 7, 2009. He was never charged for any crime.

Kandahar Air Base

46. The United States military has maintained continuous control and jurisdiction over KAB since December 2001, following the invasion of Afghanistan after the September 11, 2001 attacks. Since 2006, NATO International Security Assistance Force has increased its presence on the base. KAB is the largest base in South Afghanistan and serves as a major hub in the region. It has served as a primary staging center for the military during Operation: Enduring Freedom. It also served as a detention center, interrogation point, and transfer center for detainees arrested in the region. Accounts of detainees being severely beaten during interrogations at KAB during the months after the U.S.-led invasion have been widely documented and made public by human rights organizations. *See* Human Rights Watch, “Enduring Freedom”: Abuses by U.S. Forces in Afghanistan 37-40 (March 2004), *available at* <http://www.hrw.org/en/node/12163/section/1>.

Guantánamo Bay Naval Base

47. The United States has maintained exclusive and continuous control and jurisdiction over Guantánamo Bay Naval Base pursuant to a 1903 Lease Agreement with Cuba, which explicitly provides “complete jurisdiction and control” to the United States over the territory. As Justice Kennedy expressed in *Rasul*, “Guantánamo Bay is in every practical respect a United

States territory” over which the United States exercises “unchallenged and indefinite control.”

48. The United States began to transfer detainees seized throughout the world to Guantánamo on January 11, 2002. At times, the prison has held more than 780 men, ranging from the ages of 10 and 80 and from over 40 countries.

49. Numerous media reports and human rights organizations have documented harsh conditions and treatment administered to detainees at Guantánamo. The International Committee of the Red Cross (“ICRC”) has stated that the detention and interrogation system at Guantánamo, “. . . whose stated purpose is the production of intelligence, cannot be considered other than an intentional system of cruel, unusual and degrading treatment and form of torture.” See Neil A. Lewis, *Red Cross Finds Detainee Abuse in Guantánamo*, N.Y. Times, Nov. 30, 2004, available at http://www.nytimes.com/2004/11/30/politics/30gitmo.htm?_r=1.

50. The first detainees that were transferred to Guantánamo were held in temporary holding cells in Camp X-Ray, while permanent prison facilities were being constructed. In Camp X-Ray, detainees were held in six-by-six foot wire-mesh cages, with a cement slab floor and roof made of metal sheets, where prisoners were not protected from the heat, humidity or other natural elements.

51. In April 2002, detainees were transferred to Camp Delta, a large prison complex consisting of several separate detention camps, including Camp Echo where Plaintiff was held when he arrived in early May of 2002.

52. In June 2004, the U.S. Supreme Court ruled in *Rasul* that detainees have the right to access U.S. federal courts through petitions for the writ of habeas corpus. Though hundreds of habeas petitions were filed in the aftermath of the decision, the government’s refusal to expedite detainees’ access to information or counsel resulted in prolonged habeas proceedings that often took years to be heard after filing. In July 2004, Defendant Wolfowitz, pursuant to authority

delegated to him by Defendant Rumsfeld, issued procedures for administrative review of detainees' "enemy combatant" status. The Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) was created in 2004 to establish military tribunals to determine the status of the individuals detained at Guantánamo. The two procedures established by OARDEC were the Combatant Status Review Tribunals (CSRT) and Administrative Review Boards (ARB).

53. These procedures presumed detainees to be "enemy combatants" and limited the tribunals to review prior enemy combatant determinations by the executive and either confirming or reversing those determinations. The procedural flaws of the tribunal were many: the CSRT's failed to establish any institutional safeguards for independence; detainees had no right under the rules to view or rebut classified information; detainees had no effective right to call witnesses or present documentary evidence; and no right to counsel. Moreover, the rules of the tribunals allowed evidence obtained through torture to be used in the determination of a detainee's status. Following an enemy combatant determination by a CSRT, a detainee's status would be reviewed annually by an ARB. The ARB is to recommend, based on current evidence at the time, whether the detainee should be released, transferred, or continue to be detained. At its core, the ARB was designed to "ensure no one is detained any longer than is warranted . . ." In reality, however, the tribunals largely only functioned to rubber stamp the "enemy combatant" determination already made by the executive. Consequently, many detainees refused to participate in these inherently unfair proceedings, which proceeded in their absence.

54. Even several high-level officials in the United States government have acknowledged that many of the detainees being held at Guantánamo did not belong there. Mr. Janko was one of these men. Defendant Hood has stated that "[t]here are significant numbers of men here, who once their cases are heard will probably be given over to their government or released." Col. Lawrence B. Wilkerson (Ret.), a former high-level official with the United States

government has also publicly alleged that he has personal knowledge that certain United States officials, including Defendant Rumsfeld, knew that they had seized and were holding innocent men at Guantánamo, and that they simply refused to release them out of fear of political repercussions.

55. To date, out of the more than 780 prisoners to ever be detained at Guantánamo, close to 550 have been released and only 23 ever charged.

Plaintiff's Specific Factual Allegations

56. Plaintiff was raised in Syria until the age of 13. At that time, his family moved to the United Arab Emirates (“UAE”) where his father took a government job as a teacher of Islamic education. While his family was religious and his father traditional, neither Mr. Janko nor any other family member ever espoused radical views. Mr. Janko’s childhood and schooling in the UAE exposed him to a wide variety of people from many religious, political, and ethnic traditions. He embraced this multicultural environment and had friends of many backgrounds, including Americans. Plaintiff never harbored any ill-will towards the United States.

57. In 1999 when he was a 21 year old student in the UAE Mr. Janko decided to leave the UAE because of a family dispute. He had been told that if he could get to Afghanistan he would be able to enlist the aid of humanitarian agencies to emigrate to Europe. He had tried to do this directly but because his father controlled his passport he was unable to accomplish this from the UAE. He traveled to Afghanistan without a passport in order to do this.

In Afghanistan at the Mercy of Taliban and al-Qaeda Forces

58. In January 2000, Plaintiff traveled to the Hindu Kush in Afghanistan. Alone, out of money, and without adequate clothing for an Afghan mountain winter, Mr. Janko was at the mercy

of the people he met in the area. They wanted to take him to the Ghulam Batsha Guesthouse in Kabul so he could fight for the Taliban. For unknown reasons these officials seemed to immediately suspect that Plaintiff was a spy. Mr. Janko insisted that he did not want to go to the guesthouse or fight for the Taliban, but the officials threatened him. Fearing for his life, Mr. Janko agreed to be taken to the guesthouse.

59. For about the next five days, Plaintiff stayed in the guesthouse where he was tasked with domestic chores. At no point did he ever become a member or trainee of the Taliban forces. From the guesthouse, he was again forcibly transferred to the al-Farouq training camp near Kandahar. During January and February of 2000, Plaintiff spent approximately seventeen days at the camp. He was given menial duties such as hauling water, cutting wood, and cleaning small arms. He complied with the officials at the camp because he feared the camp leaders would kill him.

60. On the eighteenth day, Mr. Janko learned that people at the camp were given tactical training and then sent to fight for the Taliban. He had seen other captives like him returning from battle with severe wounds and missing limbs. Mr. Janko requested permission from the leaders to leave.

61. He was immediately denounced as an American and Israeli spy and sentenced to 25 years in prison. He was charged and sentenced without even a semblance of due process. During nearly 18 months as a Taliban prisoner at the notorious Sarpusa prison in Kandahar he was subjected to medieval tortures and inhuman treatment.

62. The torture that Mr. Janko endured for the next 18 months included severe beatings, starvation, electric shock with a magneto (a portable generator) with wires attached to toes and ears, near drowning, hanging from the ceiling, the Falaka or beatings of the feet, sleep deprivation, extinguishing cigarettes on his body, threats of death, loud noises, untreated sickness, and generally filthy and unsafe detention conditions. Plaintiff lost at least fifty pounds of weight, some

of his fingers, and the use of his right hand. To keep from starving to death, Plaintiff at times would resort to eating the grass growing on the ground.

63. During this period, Plaintiff was forced to make confessions on videotape to being an American spy and Israeli spy, engaging in sexually deviant behavior and being a drug addict. None of these statements were true. A transcript of this forced confessions was printed in a Taliban propaganda publication in July 2000. The confessions were also broadcast on UAE national television and was seen by his family and friends. With this widespread broadcast, Plaintiff's life was placed in great danger. Moreover, because of the statements Mr. Janko made, his father disowned him, and the family's honor and reputation was seriously maligned in the family's community.

64. It is obvious from the videotape, especially to his friends and family, that Mr. Janko's "confession" was coerced and that he was being forced to make these statements. He was underweight, pale and expressed tremendous fear on video.

65. Plaintiff was in Sarpusa prison during the attacks of September 11, 2001. The Taliban fled Kandahar on or about December 18, 2001, following which the new Afghan government took over Sarpusa and released the Taliban's prisoners. A number of foreign prisoners, including Plaintiff, remained in the prison because they did not have the resources to leave the country. Under the advice of the new warden and guards who feared that these foreign prisoners might be mistaken as enemies and turned in, they remained at the prison.

66. In addition to Mr. Janko, four other foreigners remained at the prison. They came to be known to journalists as the Kandahar Five. Jamal Al Harith was a British citizen who had been captured by the Taliban in Pakistan. Ayrat Vakhitov was a Russian Tatar who had been taken to Afghanistan by Uzbek rebels. Abdul Hakim Bukhary was a Saudi who traveled to Afghanistan after September 11, 2001. Saddiq Turkistani was an ethnic Uighur from Saudi Arabia.

67. Mr. Janko remained in Sarpusa through December 2001 and January 2002. During this time, many foreign journalists visited the prison. These included photographer Thorne Anderson, Time Magazine reporter Michael Ware, Agence France Presse reporter Pierre Lhuillery, and London Times reporter Tim Reid.

68. These journalists – Mr. Ware in particular – helped Plaintiff and the others to seek the assistance of international humanitarian organizations, foreign embassies, and U.S. agencies to be able to leave Afghanistan. Mr. Janko was able to call his family in UAE on the satellite phone of one journalist. Many of the reporters filed declarations in support of Mr. Janko’s habeas corpus petition, corroborating his story and testifying to their observations of the physical and psychological signs of torture from his captivity. Mr. Ware described that Mr. Janko and the other freed prisoners exhibited physical and emotional signs of having endured harsh treatment, including apparent signs of Post Traumatic Stress Disorder.

Unlawful Detention Under U.S. Forces

69. On or about January 22, 2002, U.S. officials visited the prison to interview and photograph the foreigners. Plaintiff was elated at his release and immediately offered to provide information to U.S. officials about atrocities committed against U.S. citizens at the prison. His initial contacts with U.S. officials were friendly and he was at all times willing to assist the U.S. with any information he possessed. Two days later, he was taken to KAB for debriefing and treated well. He also sought U.S. help in getting back home. The U.S. forces promised to send him home within a short time.

70. Around that same time, U.S. forces destroyed the home of Mohammed Atef, al-Qaeda's intelligence chief in a military raid. U.S. forces found Plaintiff's “confession” tape in the wreckage of Atef's home. Although this tape was a “confession” to being an American spy, somehow U.S. officials used the tape to conclude that plaintiff was a jihadist. In fact, Attorney General John Ashcroft wrongly accused plaintiff of being a terrorist at a highly publicized press

conference on January 17, 2002. Time Magazine published this false claim and plaintiff's photograph from the tape and set in motion the brutal treatment plaintiff suffered over the next nearly eight years in Afghanistan and then at Guantánamo.

71. Immediately after the press conference and Time Magazine story Plaintiff was detained by U.S. forces in a humiliating and degrading fashion. He was detained at KAB and subjected to harsh interrogation methods. Plaintiff was interrogated by U.S. officials on at least fourteen different occasions for approximately the next one hundred days. His treatment at KAB included a combination of abusive techniques such as striking his forehead, threatening to remove his fingernails, sleep deprivation, exposure to very cold temperatures, exercise to exhaustion through sit-ups, push-ups, and running in chains, stress positions for hours at a time, use of police dogs, and rough treatment prior to interrogation sessions.

72. Under stress of this harsh treatment at KAB, Plaintiff falsely confessed that he was a member of al-Qaeda and had knowledge of al-Qaeda plans and personnel. He fabricated information such as the connections between Saddam Hussein and al-Qaeda. The statements were false and coerced by U.S. forces. Officials in the U.S. government knew or should have known that Plaintiff's confessions were a product of torture and thus, constituted unreliable evidence that could not be used against him in subsequent proceedings. Indeed, U.S. interrogators knew that Mr. Janko had been tortured by the Taliban and was in a precarious emotional state. Any experienced interrogator would have known that Plaintiff was prepared to tell his interrogators anything they wanted to know to end the abusive treatment.

73. In May of 2002, Mr. Janko was transferred to Guantánamo. Upon his arrival, Plaintiff informed Guantánamo officials that his confessions made both to the Taliban and to U.S. forces at KAB were false and coerced. However, U.S. officials still proceeded to detain him and treat him with brutal force. While in U.S. custody Mr. Janko was generally cooperative. Nevertheless, he lived under harsh conditions, suffering from severe mental health disorders and

physical injuries, until Judge Richard J. Leon granted Plaintiff's habeas corpus petition in June 2009.

74. On information and belief, standard operating procedures governing detainees' security procedures, treatment and care are issued and updated by commanders of the Joint Task Force and Joint Detention Operations Group at Guantanamo, which during the period of Mr. Janko's detention included Defendants Miller, Hood, Harris, McQueen, Cannon, Bumgarner, and Dennis.

75. On information and belief, when Plaintiff first arrived at Guantánamo after a more than twenty hour plane ride, he and the other detainees were urinated upon by U.S. officials before being escorted to Camp Echo. Upon arrival, Plaintiff was given a medical examination and transferred to an interrogation room where he was subjected to psychological torture for seven hours. At that point and throughout his detention, medical personnel should have detected Mr. Janko's psychological damage due to torture under the Taliban.

76. While at Guantánamo, Mr. Janko was held in isolated conditions and spent most of every day confined alone in his cell, completely cut off from the outside world. Plaintiff was kept from seeing the ICRC on numerous occasions during the organization's visits to the base.

77. Mr. Janko was subjected to techniques that were, on information and belief, designed and intended to break him down both physically and psychologically, and caused him severe suffering throughout his detention. These techniques included solitary confinement for years; sleep deprivation for days, weeks and months; exposure to extreme temperatures for prolonged periods of time; severe beatings; threats against Plaintiff and his family; sexually explicit slurs against female family members; deprivation of adequate medical and psychological care; and continuous humiliation and harassment. To protest his illegal detention, Mr. Janko attempted to commit suicide seventeen times, with the last of which causing him to fracture a vertebra and lose control of his bodily functions.

78. Under the command of Defendants Defendants Miller, Hood, Harris, McQueen, Cannon, Bumgarner, Mr. Janko was transferred to different camps on occasion, on information and belief, to be subject to mistreatment and provocation by other detainees. In 2005, Plaintiff was taken to be interrogated at Camp 5, a facility modeled on super-maximum prisons in the United States and more restrictive than other facilities at Guantanamo. Camp 5 is a 100 bed maximum security facility where detainees are kept in sealed, concrete cells, which only have opaque slits for windows. On information and belief, Mr. Janko was taken to Camp 5 with the knowledge that he would be provoked by the other detainees. He was kept in the interrogation room at Camp 5 for over an hour. Mr. Janko had to repeatedly bang his head against the wall to finally be transferred back to his cell in Camp Delta. In 2006, Plaintiff was transferred to Camp 3 where he was held for 17 days. Other detainees there spit and threw urine and feces at Mr. Janko.

79. Under the command of Defendants Defendants Miller, Hood, Harris, McQueen, Cannon, Bumgarner, and Dennis, Plaintiff was routinely subject to abuse from the Immediate Reaction Force (IRF) (also known as the “Emergency Reaction Force.”) IRF squads, which are made up of military police and serve as a disciplinary force within camps, carry riot gear, carry Plexiglas shields often use tear gas or pepper spray on detainees. The most common action taken by the squad are Forced Cell Extractions (FCE) when a detainee is purportedly combative or resistant. Frequently, as was the case in Mr. Janko’s situation, detainees would be subject to FCE for refusing certain procedures, such as interrogation, transfer or even recreation and a shower.

80. In 2007 under the command of Defendant Dennis, an IRF squad beat Plaintiff and broke his knee. He had knee surgery in the naval hospital on the base and was immediately transferred to the hospital on the detention facility. Under orders from head of the Joint Medical Group, military police attempted to shackle Mr. Janko to his bed. When he resisted, they beat him and twisted his injured knee. Thereafter, Mr. Janko was released back to his cell without adequate care, medication or physical therapy to rehabilitate his knee. Plaintiff continues to suffer from this

knee injury.

81. In 2009, Mr. Janko suffered two kidney stones, for which he received inadequate medical attention at Guantánamo. Guantánamo medical personnel refused to provide medical treatment to Plaintiff despite his severe pain and passing tissue material in his urine. He was never taken to the hospital and was forced to pass the kidney stones on his own. He suffered kidney damage as a result.

82. Other health conditions Plaintiff developed while at Guantánamo include asthma, allergies, high blood pressure and high cholesterol.

83. The harsh treatment to which Mr. Janko was subjected rises to the level of cruel, inhuman, or degrading treatment and torture. All of these acts were done at the direction of, or by, U.S. citizens affiliated with the United States government or military.

Combatant Status Determinations

84. On October 27, 2004, the first Combatant Status Review Tribunal (“CSRT”) to consider Plaintiff’s status found that Mr. Janko was an enemy combatant based on evidence the government knew or should have known were the products of torture. The tribunal continually questioned Mr. Janko about the coerced videotaped confession and then relied primarily upon this coerced confession by Mr. Janko to make its determination.

85. The sole basis for this CSRT to classify and continuously detain Mr. Janko was evidence that was the unequivocal result of torture. Both U.S. and international law prohibit the use of coerced testimony. The reliance of such evidence in Mr. Janko’s case constitutes a violation of detainees’ basic due process rights.

86. On October 24, 2005, OARDEC undertook to review Mr. Janko’s classification as an enemy combatant by an Administrative Review Board (ARB). Relying mostly on the same evidence as the CSRT, the ARB confirmed Plaintiff’s classification and continued detention. The

ARB found that the videotape evidence, Mr. Janko's time at the Kabul guesthouse and al-Farouq al-Qaeda training camp, and an unnamed witness's testimony of Taliban and al-Qaeda training supported this decision. The ARB acknowledged Mr. Janko's claims of Taliban and al-Qaeda torture but apparently did not credit Mr. Janko's testimony. A second ARB conducted on June 26, 2006 similarly validated his classification and detention.

87. On April 11, 2006, Federal Defender Stephen Sady was assigned to Mr. Janko's case. Mr. Janko then filed a petition alleging that the first CSRT proceeding lacked basic protections, as evidenced by its consideration of coerced evidence. Accordingly, the military decided to conduct a new CSRT. In 2008, the second CSRT panel found once again that Mr. Janko was properly detained as an enemy combatant. It relied on the same flawed evidence and reasoning as had the first CSRT and subsequent ARB panels. However, it is notable that the second CSRT panel specifically found that the Taliban guesthouse allegation did not support detaining Mr. Janko.

88. Setting aside Plaintiff's false confessions, Dr. Gary D. Solis, an expert in international humanitarian law, provided a declaration in support Mr. Janko's habeas petition explaining that no other activities of Mr. Janko are sufficient under the international laws of war for a determination of enemy combatant status. His five days at a Taliban guesthouse and seventeen days at an al-Qaeda training camp where he was kept against his will and forced to undertake small tasks is not sufficient support of terrorist activities to warrant being an enemy combatant. More importantly, the arrest, interrogation, and torture of Mr. Janko by his Taliban and al-Qaeda captors controverts any claim that he was supporting those organizations. As Judge Leon stated in granting Mr. Janko's habeas petition, the government's position simply "defies common sense."

89. Though the government's position throughout Mr. Janko's combatant status determinations was that he was an enemy combatant, the government knew that his confession

was made under torture. As Judge Leon said in his order: “The Government effectively concedes, however, that petitioner Janko was not only imprisoned, but tortured by al Qaeda into making a false “confession” that he was a U.S. spy, and imprisoned thereafter by the Taliban for over eighteen months . . .”

Medical Treatment at Guantánamo

90. Plaintiff’s past mistreatment by Taliban and al-Qaeda officials not surprisingly had adverse psychological effects on him. His mental instability, which was obvious to the journalists that met him at Sarpusa, should have been apparent to Guantánamo authorities during the initial medical check upon his arrival on the island. However, Mr. Sady found during his visit of December 11, 2006, that the medical staff at Guantánamo did not consider Mr. Janko to be a Taliban torture victim.

91. After Mr. Sady was assigned to Mr. Janko’s case in April 2006, he met with Plaintiff in May, September, and December of that year. Following his visits, Mr. Janko’s fragile psychological state and medical misdiagnosis became increasingly apparent. Rather than diagnosing and treating Mr. Janko for Post-Traumatic Stress Disorder (“PTSD”), Guantánamo medical personnel diagnosed and treated Mr. Janko for Borderline Personality Disorder (“BPD”). According to psychiatric expert Dr. J. David Kinzie who provided a declaration in support of Plaintiff’s habeas petition, BPD is a disorder that generally arises in early adolescence and is diagnosed when there is not another major psychiatric disorder previously diagnosed. PTSD, on the other hand, usually results from a traumatic or life-altering event and is commonly associated with the following symptoms: re-experiencing the trauma, avoidance of people or places associated with the trauma, and increased emotional arousal. It is also often associated with major depression. These are all symptoms Mr. Janko exhibited each time Mr. Sady visited him at Guantánamo.

92. Mr. Sady attempted on several occasions to inform Guantánamo staff

about Mr. Janko's severe psychological and emotional distress. When Mr. Sady went to visit Mr. Janko on the morning of December 11, 2006, Guantánamo officials told Mr. Sady that Mr. Janko would be in restraints, wearing a green smock designed to prevent self-injury. Plaintiff also exhibited a self-inflicted abrasion on his head. Ultimately, Mr. Janko was not given medical clearance to meet with Mr. Sady on that day. Then, another meeting was arranged on December 13, 2006, during which Mr. Janko exhibited a severely agitated state. Mr. Sady discussed his client's deteriorating mental health with Guantánamo medical staff following his meeting with Plaintiff.

93. Mr. Sady followed up this meeting with an emergency motion to expedite his habeas proceedings, filed on January 29, 2007, stating that Mr. Janko's psychological state was precarious at that time. This filing was supplemented on February 5, 2007, after Mr. Sady received a letter from Mr. Janko dated January 1, 2007, that described his loss of hope and suicidal feelings. Plaintiff also told his attorney that he fractured a vertebra in a suicide attempt. Guantánamo personnel's failure to protect Mr. Janko from harm resulted in his self-injury which caused loss of some bodily functions and severe pain. About his suicidal state, Mr. Janko wrote to Mr. Sady: "Let it be known to you that I am crying while writing this letter because of hopelessness and distress. I don't know what to do. You and my family members are free and I am imprisoned and captive moving from one prison to another. I ask you to forgive me about whatever I do, but I have no other way to express my hopelessness."

94. Even more concerned for his client's well-being, Mr. Sady contacted Terry Henry of the Federal Programs Branch in the Civil Division of the Department of Justice and Defendant Harris head of the Joint Task Force – Guantánamo, on February 2, 2007, to inform them of Mr. Janko's psychological condition. Accordingly, while Guantánamo officials had at least constructive knowledge of Mr. Janko's history of torture from the earliest days of his arrival there, they had actual knowledge of his mental condition and likely PTSD by December 11, 2006, (when Mr. Sady discussed Mr. Janko's condition with medical staff) or at the latest February 2,

2007 (when Mr. Sady discussed Mr. Janko's condition with Mr. Henry and Rear Adm. Harris). Nevertheless, Guantánamo personnel failed to provide proper medical treatment during the entire period of Plaintiff's detention.

95. On information and belief, Defendants failed to improve Plaintiff's detention conditions and treatment despite their knowledge of his past torture under the Taliban, his continued deteriorating mental state and his numerous suicide attempts.

Grant of Habeas Corpus and Release

96. Mr. Janko filed his initial request for habeas relief on June 30, 2005. Not until four years later, on June 22, 2009, did a District of Columbia District Court judge find that the government had insufficient evidence to prove that Mr. Janko was an enemy combatant. The Court granted Mr. Janko's habeas petition. The Court further ordered the government to secure Mr. Janko's timely release from detention. A final judgment reflecting that order was entered on July 17, 2009. Following this order and judgment, the U.S. government did not release Mr. Janko from his present place of detention into a different camp for released detainees. Indeed, he was not treated like other released detainees awaiting departure from Guantanamo. The government, rather, kept Mr. Janko in the same detention conditions for almost three months in violation of the District Court's order and in contravention of Mr. Janko's constitutional due process rights.

97. On October 7, 2009, Mr. Janko was finally released from Guantánamo and now lives outside of the United States.

INJURIES

98. As a result of his wrongful treatment by the defendants Mr. Janko has suffered intense emotional and physical pain. He suffered the severe physical pain of the torture and inhumane treatment described above. He still has scars and other evidence of this physical torture and ill-treatment such as loss of control of bodily functions and inability to sleep. In some ways, the intense psychological and emotional pain caused by torture and prolonged arbitrary detention

has been much worse than the physical pain. Mr. Janko was frequently placed in special custody and attempted suicide on at least seventeen occasions. He has permanent psychological injuries as a result of what he has endured at defendants' hands. He will have substantial medical expenses and he is in need of intensive assistance for his physical and emotional distress. He has also lost a decade of his life and this has had a disastrous impact on his financial condition and his earning capacity. He has become an exile in a strange land where he is not fluent in the language and may be condemned to a permanent second class citizenship despite his efforts to overcome these problems. He is separated from his family and was separated from them for many years. He has also lost his reputation and good name because of defendants' actions.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Unlawful Detention: Fourth and Fifth Amendments)

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

100. This claim is brought by Plaintiff against Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace, Mullen, Speer, Hill, Craddock, Stavridis, Miller, Hood, Harris, Buzby, Thomas, Copeman, McQueen, Cannon, Bumgarner, Dennis, Rodriguez, Rester, and Does 1 and 2.

101. Defendants violated Plaintiff's Fourth and Fifth Amendment rights by causing his detention for over seven years despite the fact that they knew or should have known there was no reliable evidence to find that Plaintiff was an enemy combatant.

102. Defendants are liable for said conduct in that they, acting under color of law and authority as a United States official or federal officer committed, directed, ordered, confirmed,

ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly participated in the bringing about the unlawful detention of Mr. Janko.

103. Defendants intended and/or knew or should have known, that unlawful detention was being enforced by his or her subordinates and failed to prevent those abuses or punish those responsible.

104. Defendants practiced, encouraged, and/or condoned the unlawful detention of Mr. Janko for over seven years until he was finally released.

105. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of Defendants were done with inhumane and callous disregard of Plaintiff's rights, thereby justifying the awarding of punitive and exemplary damages against those Defendants.

106. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff was deprived of his rights under the Fourth and Fifth Amendments United States Constitution and has suffered emotional distress, humiliation, embarrassment, pain and suffering, and present and future monetary damages. Plaintiff is entitled to compensatory and punitive damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

(Inhumane Detention Conditions: Fifth Amendment)

107. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as set forth fully herein.

108. This claim is brought by all Plaintiffs against Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace, Mullen, Speer, Hill, Craddock, Stavridis, Miller, Hood, Harris, Buzby, Thomas, Copeman, McQueen, Cannon, Bumgarner, Dennis, Rodriguez, Rester, and Does 1 and 2.

109. Defendants, acting under color of law, have intentionally and with deliberate disregard for any injury Plaintiff would suffer, subjected Plaintiffs to inhumane and degrading detention conditions in Guantánamo for over seven years without due process of law in violation of the Fifth Amendment to the United States Constitution. Defendants subjected Plaintiff to such conditions without charge and based on coerced evidence.

110. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff was deprived of his rights under the Fifth Amendment of the United States Constitution and of the laws of the United States and have suffered emotional distress, humiliation, embarrassment, and present and future monetary damages.

111. Plaintiffs is informed and believes and thereon alleges that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in willful and conscious disregard of his rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants (other than the government entity Defendants).

112. Defendants' unconstitutional policies and acts were a direct and legal cause of Plaintiff's damages, pain and suffering.

THIRD CLAIM FOR RELIEF

(Violation of Due Process: Fifth Amendment)

113. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

114. This claim is brought by all Plaintiffs against Defendants Gates, Rumsfeld, Wolfowitz, England, McGarrah, Myers, Pace, Mullen, Speer, Hill, Craddock, Stavridis, Miller, Hood, Harris, Buzby, Thomas, Copeman, McQueen, Cannon, Bumgarner, Dennis, Rodriguez,

Rester, and Does 1 and 2 are liable for said conduct in that they, acting under color of law and authority as an United States official or federal officer committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly participated in the bringing about of due process violations of Mr. Janko.

115. Defendants intended and/or knew or should have known that due process violations were being enforced by his/her subordinates and failed to prevent those abuses or punish those responsible.

116. Defendants encouraged and/or condoned due process violations of Mr. Janko for over seven years until he was finally released.

117. Defendants subjected Plaintiff to flawed CSRT proceedings that deprived Mr. Janko his due process. The CSRT procedure is inherently flawed because detainees are presumed guilty of being enemy combatants, detainees are not permitted to review evidence that is used to justify an enemy combatant determination, detainees frequently are not afforded access to counsel, and detainees are not permitted to present their own witnesses or evidence

118. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff was deprived of his rights under the Fifth Amendment of the United States Constitution and of the laws of the United States and have suffered damages, including but not limited to emotional distress, humiliation, embarrassment, and monetary damages.

119. Defendants' unconstitutional policies and acts were a direct and legal cause of Plaintiff's damages, pain and suffering.

120. Plaintiff is informed and believes and thereon allege that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants.

FOURTH CLAIM FOR RELIEF

(Violation of Prohibition Against Prolonged Arbitrary Detention: Alien Tort Statute 28

U.S.C. § 1350)

121. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

122. This claim is brought by Plaintiff against all Defendants.

123. The acts described herein constitute prolonged arbitrary detention of Mr. Janko in violation of the laws of nations and are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting prolonged arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international treaties, domestic and international judicial decisions, and other authorities.

124. Defendants are liable for said conduct in that they, acting under color of law and authority as an United States official or federal officer committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly participated in bringing about the prolonged arbitrary detention of Mr. Janko for over seven years. Defendants intended and/or knew or should have known, that the prolonged arbitrary detention was being enforced by his/her subordinates and failed to prevent those abuses or punish those responsible.

125. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has sustained permanent physical and psychological injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

126. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in

willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants.

127. Plaintiffs was forced to suffer severe physical and psychological abuse and agony and are entitled to monetary damages.

128. The acts described herein constitute prolonged arbitrary detention of Mr. Janko in violation of the law of nations and are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting prolonged arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international treaties, domestic and international judicial decisions, and other authorities.

129. All Defendants are liable for said conduct in that they, acting under color of law committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly participated in bringing about the prolonged arbitrary detention of Mr. Janko. Defendants intended and/or knew or should have known, that prolonged arbitrary detention was being enforced by his/her subordinates and failed to prevent those abuses or punish those responsible.

130. All Defendants practiced, encouraged, and/or condoned prolonged arbitrary detention of Mr. Janko for over seven years until he was released.

131. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered physical harm, emotional harm, and financial loss.

FIFTH CLAIM FOR RELIEF

(Violation of the Prohibition Against Torture: Alien Tort Statute, 28 U.S.C. § 1350)

132. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

133. This claim is brought by Plaintiff against all Defendants.

134. The acts described herein had the intent and the effect of inflicting severe pain and suffering on Plaintiff, both mental and physical, for the purposes of obtaining information or a confession from Plaintiff, punishing him for acts he was unjustifiably suspected of committing, and intimidating and coercing him.

135. The acts described herein constitute torture in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting torture as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

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

137. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has sustained permanent physical and psychological injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

138. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants.

139. Plaintiff was forced to suffer severe physical and psychological abuse and agony and is entitled to monetary damages.

SIXTH CLAIM FOR RELIEF

(Violation of Prohibition Against Cruel, Inhuman, or Degrading Treatment: Alien Tort

Statute 28 U.S.C. § 1350

140. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

141. This claim is brought by Plaintiff against Defendants Gates, Rumsfeld, Myers, Pace, Mullen, Speer, Hill, Craddock, Stavridis, Miller, Hood, Harris, Buzby, Thomas, Copeman, McQueen, Cannon, Bumgarner, Dennis, Rodriguez, Rester, McNeill, Wiercinski, and Does 1-100. The acts described herein constitute cruel, inhuman, or degrading treatment of Mr. Janko in violation of the law of nations and are actionable under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting cruel, inhuman, or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international treaties, domestic and international judicial decisions, and other authorities.

142. Defendants are liable for said conduct in that they, acting under color of law and authority as an United States official or federal officer, committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly participated in bringing about the cruel, inhuman, or degrading treatment of Mr. Janko for over seven years. Defendants intended and/or knew or should have known, that cruel, inhuman, or degrading treatment was being enforced by his/her subordinates and failed to prevent those abuses or punish those responsible.

143. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff has sustained permanent physical and psychological injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

144. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in

willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants.

145. Plaintiff was forced to suffer severe physical and psychological abuse and agony and is entitled to monetary damages.

SEVENTH CLAIM FOR RELIEF

(Violation of Geneva Conventions: Alien Tort Statute 28 U.S.C. § 1350)

146. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

147. Plaintiff brings this claim against all Defendants.

148. The acts described herein constitute torture, cruel, humiliating and degrading treatment, and prolonged arbitrary detention in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting torture, cruel, inhuman, or degrading treatment, and prolonged arbitrary detention as reflected, expressed, and defined in the Geneva Conventions, in particular Common Article 3 of Third and Fourth Geneva Conventions.

149. All Defendants are liable for said conduct in that they, acting under color of law and authority as an United States official or federal officer committed, directed, ordered, confirmed, ratified, had command responsibility for, aided and abetted, conspired to, and/or otherwise directly or indirectly committed violations of the Geneva Conventions and customary international law.

150. All Defendants intended and/or knew or should have known, that these abuses were being committed and enforced by his/her subordinates and failed to prevent those abuses or punish those responsible.

151. All Defendants practiced, encouraged, and/or condoned war crimes against Mr. Janko for over seven years until he was finally released, by committing abuses against a detainee who Defendants knew or should known was never actively engaged in combat or directly supported hostilities.

152. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff was deprived of his rights under the law of nations and has sustained permanent physical and psychological injuries and incurred medical bills and other expenses. These injuries have caused and will continue to cause him great pain and suffering, both mental and physical.

153. Plaintiff is informed and believes and thereon alleges that the aforementioned acts of Defendants were willful, malicious, intentional, oppressive and despicable and/or were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the awarding of punitive and exemplary damages against all Defendants.

154. As a proximate result of Defendants' unlawful conduct, Plaintiff has suffered physical harm, emotional harm, and financial loss.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court grant the following relief:

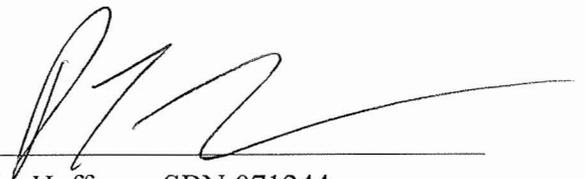
- A. Compensatory damages including, but not limited to, Plaintiff's medical expenses, lost earnings, and damages for pain and suffering, in an amount to be determined at trial;
- B. Punitive and exemplary damages in an amount to be determined at trial;
- C. Reasonable attorneys' fees and costs of suit; and
- D. Such other relief as the Court deems just and proper.

DEMAND FOR JURY

Respectfully Submitted this 5th day of October, 2010,



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