

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

M. AKIFUR RAHMAN, on behalf of)
himself and all similarly situated persons;)
MASOODA RAHMAN, on her own behalf;)
and ZAKAREEYA RAHMAN and)
NURAH RAHMAN, on their own behalves,)
by their parents and next friends M.)
AKIFUR RAHMAN and MASOODA)
RAHMAN,)

Plaintiffs,)

v.)

MICHAEL CHERTOFF, Secretary of the)
U.S. Department of Homeland Security, in)
his official and individual capacities; TOM)
RIDGE, former Secretary of the U.S.)
Department of Homeland Security, in his)
individual capacity; ROBERT C. BONNER,)
Commissioner of the U.S. Customs and)
Border Protection, in his official and)
individual capacities; MICHAEL J.)
GARCIA, Assistant Secretary of the U.S.)
Immigration and Customs Enforcement, in)
his official and individual capacities; U.S.)
Customs and Border Protection employees)
BARNES, JAMES E. BROWN, DOMON,)
FERGUSON, HODGES, KELLY,)
MARQUIS, JOE PHILLIPS,)
QUATROCCI, RENEE, GERALD)
REARDON, REYNOLDS,)
THORNBLOOM, and JOHN DOES ONE)
through SEVEN, in their individual)
capacities; and PAUL BURKHOLDER,)
Special Agent of the U.S. Immigration and)
Customs Enforcement, in his individual)
capacity,)

Defendants.)

Case Number: _____

Judge: _____

JURY DEMAND

CLASS ACTION COMPLAINT

Plaintiffs M. Akifur Rahman (“Mr. Rahman”), Masooda Rahman (“Ms. Rahman”), and their children Zakareeya Rahman (“Zakareeya”) and Nurah Rahman (“Nurah”) (together, “the Rahman family”), by their attorneys, make their complaint against the above-listed defendants as follows:

I. INTRODUCTION

1. The Rahmans bring this civil rights lawsuit pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Constitution of the United States, and 28 U.S.C. § 2201 et seq. The Rahmans seek redress for violations of their right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution; their right to travel guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution; and their right to be free from unreasonable conditions of confinement guaranteed by the Due Process Clause of the Fifth Amendment. Specifically, each member of the Rahman family seeks declaratory relief and damages. Moreover, Mr. Rahman seeks declaratory and injunctive relief for himself and for a class of similarly situated United States citizens.

2. Mr. Rahman is a United States born citizen, a Muslim, and a person of South Asian ethnicity. He regularly travels internationally for lawful purposes, including business trips and family visits. Also, he regularly travels internationally with his wife and children. The Rahman family has no connection whatsoever to terrorism or any other unlawful conduct.

3. On four occasions in the last 15 months, upon his reentry to the United States, agents of the United States Department of Homeland Security have unjustifiably

detained Mr. Rahman and sometimes members of his family for inordinate and unnecessary periods of time of two to six hours, and subjected him and his family to unreasonable and humiliating conditions of restraint, confinement, and treatment. On one of these occasions, Mr. Rahman was subjected to the use of excessive force.

4. On the third of these occasions, the unwarranted detention caused Mr. Rahman to miss his scheduled flight, and as a result to miss a business meeting.

5. After the third of these detentions, Mr. Rahman sent letters to numerous federal law enforcement agencies seeking information regarding these detentions. Nearly six months later, on April 27, 2005, the federal Immigration and Customs Enforcement office of the Department of Homeland Security responded in writing, and stated: “your clearance difficulties are the direct result of an unfortunate misidentification scenario.” This letter further explained that the detentions were caused by the “near match” between Mr. Rahman’s name and another name in a government law enforcement database. Yet Mr. Rahman’s name is as universally common as “John Smith.”

6. The federal government’s April 27 letter also advised that the government was attempting to resolve this “unfortunate misidentification scenario” by making “certain adjustments and modifications” to some of the relevant government databases. The April 27 letter also advised Mr. Rahman “to carry several forms of personal identifying documentation in order to help minimize any delays that may occur.” Mr. Rahman had always carried such documents in the past and continued to do so thereafter. Nonetheless, just eleven days after the federal government sent this letter, Mr. Rahman’s reentry problems grew far worse.

7. On May 8, 2005, Mr. Rahman suffered his fourth detention in 15 months. On this occasion, federal law enforcement officials seized and detained him for approximately six hours; shackled him to a chair for approximately three hours in an uncomfortable position; isolated him from Ms. Rahman and their two young children, with whom he was traveling; kicked his feet while subjecting him to a body search; seized his cellular telephone and barred him from communicating with others; and seized and searched his automobile. This course of conduct caused Mr. Rahman substantial physical, mental, and emotional pain and suffering.

8. On this same occasion, federal law enforcement officials also seized and detained Ms. Rahman and the two Rahman children (ages four and one) without any justification for approximately six hours. The conditions in the area in which they were confined were unreasonable and grossly inappropriate for a family with young children: they were denied reasonable access to nutritious and religiously acceptable food for a Muslim family with young children; they were held incommunicado and denied any use of any telephone, including Ms. Rahman's personal cell phone; they were forced to use unsanitary bathroom facilities not equipped for toddlers; and with no recreational area available, the children were forced to play without toys on a filthy floor.

9. Mr. Rahman and Ms. Rahman reasonably fear that the inevitable next detention will be even more severe, given this steady escalation of intrusiveness over the course of four recent detentions. For example, they worry that they will be detained and mistreated on July 4, 2005, when the Rahman family will fly together from Canada to O'Hare Airport, on their way home from a family visit to Canada.

10. Defendants Chertoff, Ridge, Bonner, and Garcia are high-level federal

policymakers who are directly responsible for these injuries to the Rahman family. First, they have adopted policies that fail to ensure a reasonable reentry process into the United States for United States citizens whose names are purportedly similar to those of other people who appear on government watch lists. Second, these policymakers have granted unfettered discretion to federal agents to improperly prolong detentions of United States citizens, to subject citizens to unreasonable searches, to subject such citizens to excessive force and physical restraints, and to subject their families to unlawful conditions of confinement. Third, these policymakers have failed to adequately train and supervise federal agents in the exercise of their discretion to detain and search United States citizens upon reentry into the United States. Fourth, these policymakers have failed to ensure reasonable conditions of treatment and confinement for family members who are traveling with United States citizens detained because their name might be on a government watch list.

11. Mr. Rahman, on behalf of himself and a class of similarly situated persons, seeks a declaratory judgment that the defendants' conduct, policies, practices, and customs violated the Fourth and Fifth Amendments; and also an injunction commanding the policymaker defendants to abandon their prior policies and practices, and to adopt adequate policies and procedures to ensure reasonably expeditious processing and constitutional conditions of detention when appropriate for United States citizens upon reentry into the country. Moreover, all members of the Rahman family seek declaratory relief, as well as compensatory and punitive damages.

II. JURISDICTION AND VENUE

12. The jurisdiction of the Court is founded on 28 U.S.C. § 1331.

13. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b) & (e).

III. PARTIES

A. Plaintiffs

14. Mr. Rahman is a United States born citizen. He owns a computer consulting company. He regularly travels internationally for lawful professional and personal purposes. He has never had any connection to terrorism or any other unlawful conduct.

15. Ms. Rahman is a Canada born citizen, and a permanent resident of the United States. She is married to Mr. Rahman. She has never had any connection to terrorism or any other unlawful conduct.

16. Zakareeya is a United States born citizen. His parents are Mr. Rahman and Ms. Rahman. He is four years old.

17. Nurah is a United States born citizen. Her parents are Mr. Rahman and Ms. Rahman. She is one year old.

18. The Rahman family now resides in Wheaton, Illinois.

B. Defendants

19. Michael Chertoff is the Secretary of the United States Department of Homeland Security (“DHS”). Chertoff has authority over all DHS policies, practices, and customs relating to the entry of United States citizens into the United States. He is sued in his official and individual capacities.

20. Tom Ridge is the former DHS Secretary. When he served as DHS Secretary, Ridge had authority over all DHS policies, practices, and customs relating to

the entry of United States citizens into the United States. He is sued in his individual capacity.

21. Robert C. Bonner is the Commissioner of the United States Customs and Border Protection (“CBP”). CBP is a component of DHS. CBP has primary responsibility for protecting our nation’s airports, seaports, and land border crossings. Bonner has authority over all CBP policies, practices, and customs relating to the entry of United States citizens into the United States. He is sued in his official and individual capacities.

22. Michael J. Garcia is the Assistant Secretary of the United States Immigration and Customs Enforcement (“ICE”). ICE is a component of DHS. ICE has primary responsibility for investigating violations of our nation’s customs and immigration laws. Garcia has authority over all ICE policies, practices, and customs relating to the entry of United States citizens into the United States. He is sued in his official and individual capacities.

23. John Doe One worked as a duly appointed CBP officer at Los Angeles Airport on or about March 31, 2004. At the time of the filing of this complaint, the Rahman family did not know the identity of this defendant. She is sued in her individual capacity.

24. Barnes worked as a duly appointed CBP supervisor at Chicago O’Hare Airport on August 28, 2004. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. She is sued in her individual capacity.

25. Kelly worked as a duly appointed CBP officer at Chicago O'Hare Airport on August 28, 2004. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. She is sued in her individual capacity.

26. John Doe Two worked as a duly appointed CBP officer at Chicago O'Hare Airport on August 28, 2004, and on January 11, 2005. At the time of the filing of this complaint, the Rahman family did not know the identity of this defendant. He is sued in his individual capacity.

27. Domon worked as a duly appointed CBP officer at Montreal Airport on September 26, 2004. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

28. Marquis worked as a duly appointed CBP officer at Montreal Airport on September 26, 2004. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

29. Thornbloom worked as a duly appointed CBP supervisor at Montreal Airport on September 26, 2004. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. She is sued in her individual capacity.

30. James E. Brown worked as a duly appointed CBP supervisor at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. He is sued in his individual capacity.

31. Paul Burkholder worked as a duly appointed ICE Special Agent at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. He is sued in his individual capacity.

32. Ferguson worked as a duly appointed CBP officer at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

33. Hodges worked as a duly appointed CBP supervisor at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

34. Joe Phillips worked as a duly appointed CBP officer at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. He is sued in his individual capacity.

35. Quatrocci worked as a duly appointed CBP officer at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

36. Gerald Reardon worked as a duly appointed CBP supervisor at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. He is sued in his individual capacity.

37. Renee worked as a duly appointed CBP officer at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. She is sued in her individual capacity.

38. Reynolds worked as a duly appointed CBP officer at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the full name of this defendant. He is sued in his individual capacity.

39. John Does Three, Four, Five, Six, and Seven worked as duly appointed CBP officers at the United States border crossing at the Detroit-Windsor Tunnel on May 8, 2005. At the time of the filing of this complaint, the Rahman family did not know the identity of these defendants. They are sued in their individual capacities.

40. At all times pertinent hereto, all defendants were acting under color of federal law and their conduct constituted governmental action.

IV. PLAINTIFF CLASS ACTION ALLEGATIONS

41. Mr. Rahman brings this action on his own behalf and on behalf of a class of all persons similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The plaintiff class consists of all United States citizens who now are and/or in the future will be subjected upon reentry to the United States to defendants' policies, practices, and customs concerning the processing of citizens who have a name that is similar or identical to a name on a government list of apparently dangerous persons.

42. The plaintiff class satisfies all of the prerequisites stated in Rule 23(a):

(a) Many United States citizens have been unreasonably detained upon reentry to the United States because they have a name that is similar or identical to a name on a government list of apparently dangerous persons, and many more will be so detained in the future.

(b) There are questions of law and fact common to the class, including whether the challenged policies, practices, and customs violate the Fourth and Fifth Amendments to the United States Constitution.

(c) The claims of Mr. Rahman are typical of the claims of the class. On four occasions in the last 15 months, he has been unreasonably detained upon reentry to the United States from abroad because he has a name that is similar or identical to a name on a government list of apparently dangerous persons

(d) Mr. Rahman will fairly and adequately represent the interests of the class. He has no interests antagonistic to the class. He seeks declaratory and injunctive relief on behalf of the entire class and such relief will benefit all members of the class. Finally, he is represented by counsel who are competent and experienced in civil rights and class action litigation.

43. The class satisfies Rule 23(b)(2) because the defendants have engaged in a course of conduct common to all members of the class, and final declaratory and injunctive relief in favor of the class is therefore appropriate.

V. FACTS

A. March 2004: The detention or Mr. Rahman at Los Angeles Airport

44. On or about March 31, 2004, Mr. Rahman took an international flight from Hong Kong to Los Angeles. He was on his way home from a business trip in Pakistan.

45. At Los Angeles Airport, CBP officer John Doe One detained Mr. Rahman. This detention lasted more than two hours. During this detention, John Doe One extensively questioned Mr. Rahman and thoroughly searched his bags.

46. As demonstrated by the government's subsequent letter to Mr. Rahman of April 27, 2005 (*see* paragraph 66, *infra*), John Doe One detained, searched, and questioned Mr. Rahman to ensure that Mr. Rahman was who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

47. Given the purpose of this detention, the duration of this detention was unreasonably long.

48. The unreasonable length of this detention is demonstrated, *inter alia*, by the following facts:

(a) Mr. Rahman presented his United States passport, Illinois driver's license, and United States Social Security card to the appropriate federal agents. These documents are *prima facie* evidence that Mr. Rahman is who he purports to be, and that he is a United States citizen. These documents more than adequately comprise the "several forms of personal identifying documentation" that the government by subsequent letter of April 27, 2005, advised Mr. Rahman to carry to minimize delays in reentry into the United States. (*See* paragraph 67, *infra*.)

(b) Mr. Rahman presented additional documents that corroborated the lawful purpose of his travel.

(c) On information and belief, Mr. Rahman bears no reasonable relationship to any person on a government watch list, in view of Mr. Rahman's date of birth, nationality, and ethnicity.

(d) Mr. Rahman's name is so universally common that it may be likened to "John Smith."

B. August 2004: The first detention of Mr. Rahman at Chicago O'Hare Airport

49. On August 28, 2004, Mr. Rahman took an international flight from Switzerland to Chicago. He was on his way home from a business trip in Pakistan.

50. At Chicago O'Hare Airport, Mr. Rahman was detained by CBP supervisor Barnes, CBP officer Kelly, and CBP officer John Doe Two. This detention lasted more than two hours. During this time, the agents extensively questioned Mr. Rahman and thoroughly searched his bags.

51. As demonstrated by the government's subsequent letter to Mr. Rahman of April 27, 2005 (*see* paragraph 66, *infra*), and also by contemporaneous statements made by one of those defendants, these three defendants detained, searched, and questioned Mr. Rahman to ensure that Mr. Rahman was who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

52. Given the purpose of this detention, the duration of this detention was unreasonably long.

53. The unreasonable length of this detention is demonstrated, *inter alia*, by the following facts:

(a) The facts set forth above in paragraph 48.

(b) On information and belief, Barnes, Kelly, and John Doe Two knew or should have known from an available computer database that just five months earlier, another federal agent at an international airport had concluded after investigation that Mr. Rahman is who he purports to be and not another person on a government list.

C. September 2004: The detention of Mr. Rahman at Montreal Airport

54. On September 26, 2004, Mr. Rahman took an international flight from Canada to Chicago. He was on his way home from a family trip in Canada.

55. At the United States screening area within the Montreal Airport, Mr. Rahman was detained by CBP officer Domon, CBP officer Marquis, and CBP supervisor Thornbloom. This detention lasted more than two and one-half hours. During this time, these agents extensively questioned Mr. Rahman.

56. As a direct and proximate result of this detention, Mr. Rahman missed his flight back to Chicago, and thus missed a business meeting in the Chicago area.

57. As demonstrated by the government's subsequent letter to Mr. Rahman of April 27, 2005 (*see* paragraph 66, *infra*), and also by contemporaneous statements made by one of those defendants, these three defendants detained and questioned Mr. Rahman to ensure that Mr. Rahman was who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

58. Given the purpose of this detention, the duration of this detention was unreasonably long.

59. The unreasonable length of this detention is demonstrated, *inter alia*, by the following facts:

(a) The facts set forth above in paragraph 48.

(b) On information and belief, these agents knew or should have known from an available computer database that twice during the previous six months,

other federal agents at two international airports had concluded after investigation that Mr. Rahman is who he purports to be and not another person on a government list.

D. January 2005: The second detention of Mr. Rahman at Chicago O’Hare Airport

60. On January 11, 2005, Mr. Rahman took an international flight from France to Chicago. He was on his way home from a business and family trip in India and Pakistan.

61. At Chicago O’Hare Airport, CBP officer John Doe Two again detained Mr. Rahman. Mr. Rahman reminded John Doe Two that he had previously detained Mr. Rahman at Chicago O’Hare Airport on August 28, 2004. This detention lasted approximately 20 minutes. During this time, John Doe Two thoroughly searched Mr. Rahman’s bags, but did not question Mr. Rahman in any depth.

62. John Doe Two detained and searched Mr. Rahman to ensure that Mr. Rahman was who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

63. This episode demonstrates that when Mr. Rahman seeks reentry to the United States, it should take DHS agents no longer than 20 minutes to ensure that Mr. Rahman is who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

E. April 2005: The government’s explanation of these detentions

64. On November 6, 2004, Mr. Rahman sent a Freedom of Information Act (“FOIA”) request to the U.S. Customs Service (and numerous other FOIA requests to other federal agencies) seeking information regarding his recent detentions by DHS agents at international airports.

65. Nearly six months later, on April 27, 2005, Gloria L. Marshall sent Mr. Rahman a written response to this inquiry. Marshall is the Chief of the Information Disclosure Unit of ICE.

66. The Marshall letter provides the following explanation to Mr. Rahman of his recent detentions: “*your clearance difficulties are the direct result of an unfortunate misidentification scenario.*” (Emphasis added.) The Marshall letter further explains:

[T]he Aviation and Transportation Safety Act mandates that every airline provide CBP with personal identifying data on all individuals arriving in the United States from a foreign country prior to the actual arrival of an incoming flight. This is accomplished by entering that information (name, date of birth, etc.) into the Advanced Passenger Information System (APIS), which is linked to the Interagency Border Inspection System (IBIS) and the Treasury Enforcement Communications System (TECS). These systems are utilized by federal law enforcement agencies to focus their limited resources on potential noncompliant travelers.

Both the IBIS and TECS are also electronically connected to the National Crime Information Center (NCIC), a nationwide law enforcement database managed and administered by the Federal Bureau of Investigation (FBI). Since all three systems operate on an extremely sensitive “soundex” basis, information on other individuals having the same or similar name and/or date of birth as the traveler in question can often be flagged in these systems as “near matches” or “tentative hits,” and cause the innocent traveler to be stopped and questioned. CBP officers must then assure themselves that the traveler is not the actual subject of these matches or hits and therefore take steps to confirm his or her real identity.

The troubles you are experiencing are the result of this type of near match with information in the NCIC and TECS on another person who has the same or similar name and date-of-birth as yours.

67. The Marshall letter then states: “[W]e have been able to make certain adjustments and modifications to some of these records – but not all of them. Therefore, we strongly urge you to carry several forms of personal identifying documentation in order to help minimize any delays that may occur.”

68. At all relevant times, including before and after receiving the Marshall letter, Mr. Rahman (as recommended by Marshall) carried three forms of “personal identifying documentation,” including but not limited to his United States passport, his Illinois driver’s license, and his United States Social Security card.

F. May 2005: The detention of the entire Rahman family at the Detroit-Windsor Tunnel

69. On May 8, 2005, the entire Rahman family traveled in a car through the Detroit-Windsor Tunnel between the United States and Canada. They were on their way home from a family trip in Canada. Mr. Rahman was driving.

70. All four members of the Rahman family were seized and detained at the United States border crossing at the end of the Detroit-Windsor Tunnel.

71. The DHS employees who participated in the detention of the Rahman family include CBP supervisor Brown, CBP officer Ferguson, CBP supervisor Hodges, CBP officer Joe Phillips, CBP officer Quatrocci, CPB supervisor Reardon, CBP officer Renee, CBP officer Reynolds, CBP officers John Does Three through Seven, and ICE Special Agent Paul Burkholder.

(1) The duration of detention of the Rahman family

72. This detention of the Rahman family lasted for approximately six hours.

73. During this detention, DHS agents repeatedly questioned Mr. Rahman:

(a) Philips twice extensively questioned Mr. Rahman regarding his identity, travel, relatives, and work.

(b) Burkholder extensively questioned Mr. Rahman from a four-page list of questions regarding Mr. Rahman’s identity, education, work, travel, knowledge of terrorism, and other issues.

74. As demonstrated by the government's letter to Mr. Rahman of April 27, 2005 (*see* paragraph 66, *supra*), Phillips and Burkholder questioned Mr. Rahman, and the DHS agents identified above in paragraph 71 detained Mr. Rahman, to ensure that Mr. Rahman was who he purports to be, and not a different person with a similar or identical name who appears on a government list of apparently dangerous persons.

75. Given the purpose of this detention, the duration of this detention was unreasonably long.

76. The unreasonable length of this detention is demonstrated, *inter alia*, by the following facts:

(a) The facts set forth above in paragraph 48.

(b) On information and belief, all of the DHS agents identified above in paragraph 71 knew or should have known from an available computer database that:

(i) Four times during the previous fourteen months, other federal agents at three international airports had concluded after investigation that Mr. Rahman is who he purports to be and not another person on a government list.

(ii) DHS personnel had made "certain adjustments and modifications" to government computer records in order to address Mr. Rahman's concerns regarding these prior detentions, as reported in Marshall's letter of April 27, 2005. (*See* paragraph 67, *supra*.)

(c) Phillips and Burkholder unnecessarily prolonged the detention further by asking Mr. Rahman questions which were not relevant to ascertaining whether or not he is who he purports to be. To the extent these defendants had any legitimate law enforcement justification for asking such non-identifying questions, they could not

lawfully detain Mr. Rahman for this purpose. Rather, as a United States citizen, Mr. Rahman could only be requested to answer such questions voluntarily in a non-custodial setting.

(2) The handcuffing of Mr. Rahman

77. During this detention, Mr. Rahman was shackled to a chair with handcuffs for approximately three hours. This handcuffing caused physical pain to Mr. Rahman.

78. Ferguson, Phillips, and other of the DHS employees identified above in paragraph 71 directly participated in this handcuffing.

79. There was no legitimate law enforcement basis to handcuff Mr. Rahman to a chair for approximately three hours.

80. Phillips and one of the CBP supervisors identified above in paragraph 71 each advised Mr. Rahman that the handcuffing that Mr. Rahman experienced is standard federal government procedure.

(3) The search of Mr. Rahman and the use of excessive force

81. Phillips searched Mr. Rahman, including a frisk of the outside of his clothes and an examination of the inside of his pockets.

82. During this search, Phillips repeatedly yelled at Mr. Rahman and without any lawful justification kicked Mr. Rahman's feet. These kicks caused pain to Mr. Rahman.

83. At no time during this search did Phillips or any other defendant have consent, reasonable suspicion that Mr. Rahman possessed a weapon, or any other lawful basis to search Mr. Rahman.

(4) Other aspects of the detention of Mr. Rahman

84. One or more of the DHS agents identified above in paragraph 71 kept Mr. Rahman isolated from Ms. Rahman and his two children, even after Mr. Rahman asked to rejoin them.

85. One or more of the DHS agents identified above in paragraph 71 seized Mr. Rahman's cellular telephone.

86. One or more of the DHS agents identified above in paragraph 71 seized and searched Mr. Rahman's car.

87. Throughout this detention, Mr. Rahman felt great fear that the behavior of the DHS agents identified above in paragraph 71 would escalate from needless and painful handcuffing and kicks to more painful and injurious forms of unprovoked physical violence.

(5) The absence of any basis to detain Ms. Rahman and the children

88. The DHS employees identified above in paragraph 71 never had any basis at all to suspect Ms. Rahman, Zakareeya, or Nurah of any wrongdoing of any kind.

89. When the DHS employees identified above in paragraph 71 detained Mr. Rahman, they should not have also detained Ms. Rahman, Zakareeya, or Nurah.

(6) The conditions of detention of Ms. Rahman and the children

90. The totality of conditions under which Ms. Rahman and her two young children were detained were unlawful, including but not limited to the following:

(a) Ms. Rahman and her two young children were denied reasonable access to decent food that was in conformity with Muslim dietary laws.

(b) The Rahman children for six hours were denied access to reasonable recreation.

(c) Ms. Rahman and her two young children were confined in a filthy room.

(d) Ms. Rahman and her two young children were denied access to sanitary bathroom facilities. Instead, the bathroom to which they had access had a filthy floor and fixtures, and no clean surface on which to change Nurah's diaper.

(e) Ms. Rahman was held incommunicado. She was forbidden from using her cellular telephone to make a telephone call to notify her family about the detention.

G. The policies, practices, and customs of Chertoff, Ridge, Bonner, and Garcia

91. Chertoff has authority over all DHS policies, procedures, and practices relating to the entry of United States citizens into the United States. When he served as DHS Secretary, Ridge had authority over all DHS policies, procedures, and practices relating to the entry of United States citizens into the United States. Bonner has authority over all CBP policies, procedures, and practices relating to the entry of United States citizens into the United States. Garcia has authority over all ICE policies, procedures, and practices relating to the entry of United States citizens into the United States.

92. Chertoff, Bonner, Ridge, and Garcia have adopted policies, practices, or customs of:

(a) failing to ensure the expeditious reentry into the United States of United States citizens whose names are similar or identical to those of other people who appear on government watch lists;

(b) granting undue or excessive discretion to CBP and ICE agents concerning detention and search (for example, concerning duration and conditions of confinement) of United States citizens who are entering the United States from abroad, and whose names are similar or identical to those of other people who appear on government watch lists;

(c) failing to adequately train, supervise, and discipline CBP and ICE agents in the exercise of their discretion to detain and search United States citizens who are entering the United States from abroad, and whose names are similar or identical to those of other people who appear on government watch lists; and

(d) failing to ensure that if a United States citizen is detained upon reentry to the United States because their name is similar or identical to another person who appears on a government list, and if family members of that United States citizen who are traveling with that United States citizen are also detained, then those family members are provided reasonable care and conditions of confinement.

93. The policies, practices, or customs of Chertoff, Ridge, Bonner, and Garcia complained of herein directly and proximately caused the unlawful seizures, prolonged detentions, excessive force, searches, unlawful conditions of confinement, and burdens on the right to travel of all members of the Rahman family complained of herein.

94. Chertoff, Ridge, Bonner, and Garcia acted intentionally and with deliberate indifference to the rights of all members of the Rahman family in maintaining the policies, practices, or customs complained of herein.

95. The policies, practices, or customs complained of herein are widespread and well-settled, and therefore were known or should have been known to Chertoff, Ridge, Bonner, and Garcia.

H. Defendants' liability

96. Each defendant acted willfully, wantonly, maliciously, oppressively, and with conscious disregard and deliberate indifference for the rights of one or more members of the Rahman family.

97. Each defendant personally participated in the unlawful conduct, acted jointly and in concert with the other defendants who participated or acquiesced in the unlawful conduct, failed to intervene to stop other law enforcement officers from engaging in the unlawful conduct, or knew of and condoned the unlawful conduct.

I. Plaintiffs' injuries

98. As a direct and proximate result of defendants' unlawful conduct as stated herein, each member of the Rahman family was subjected to substantial physical, mental, and emotional suffering.

J. Necessity of equitable relief

99. Chertoff, Bonner, and Garcia have adopted the policies, practices, or customs described above in paragraph 92.

100. Mr. Rahman will continue in the future to regularly travel internationally for lawful business and family reasons, and then return home to the United States. Moreover, Ms. Rahman, Zakareeya, and Nurah will continue in the future to travel internationally with Mr. Rahman for lawful family reasons, and then return home with Mr. Rahman to the United States. For example, on July 4, 2005, the Rahman family will

fly together from Canada to O'Hare Airport, on their way home from a family visit to Canada.

101. When Mr. Rahman reenters the United States, he will be subjected to the defendants' policies, practices, or customs described above in paragraph 92. Moreover, when Ms. Rahman, Zakareeya, and Nurah reenter the United States in the company of Mr. Rahman, they will be subjected to the defendants' policies, practices, or customs described above in paragraph 92

102. Unless enjoined by this Court, the defendants will continue to subject all of the members of the Rahman family to the policies, practices, or customs described above in paragraph 92.

103. All of the members of the Rahman family will suffer irreparable harm as a result of defendants' foregoing policies, practices, or customs.

104. All of the members of the Rahman family have no adequate remedy at law.

105. As a result of the defendants' foregoing policies, practices, or customs, the members of the plaintiff class also will suffer irreparable harm for which they have no adequate remedy at law.

VI. CLAIMS FOR RELIEF

A. COUNT ONE: Freedom from unreasonable seizures

106. The allegations of paragraphs 1 to 105 are realleged and incorporated by reference as if fully set forth herein.

107. During the following detentions, the following defendants deprived Mr. Rahman of his freedom from unreasonable seizures in violation of the Fourth Amendment to the United States Constitution:

(a) On or about March 31, 2004, at Los Angeles Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, and John Doe One;

(b) On August 28, 2004, at Chicago O'Hare Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, Barnes, Kelly, and John Doe Two;

(c) On September 26, 2004, at Montreal Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, Domon, Marquis, and Thornbloom; and

(d) On May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, Rahman's rights were violated by Chertoff, Bonner, Garcia, Brown, Burkholder, Ferguson, Phillips, Quatrocci, Reardon, Renee, Reynolds, John Doe Three, John Doe Four, and John Doe Five.

108. During the detention on May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, the following defendants deprived Ms. Rahman, Zakareeya, and Nurah of their freedom from unreasonable seizures in violation of the Fourth Amendment to the United States Constitution: Chertoff, Bonner, Hodges, John Doe Six, and John Doe Seven.

B. COUNT TWO: Freedom from unreasonable searches

109. The allegations of paragraphs 1 to 108 are realleged and incorporated by reference as if fully set forth herein.

110. During the detention on May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, the following defendants deprived Mr. Rahman of his

freedom from unreasonable searches in violation of the Fourth Amendment to the United States Constitution: Chertoff, Bonner, and Phillips.

C. COUNT THREE: Right to travel

111. The allegations of paragraphs 1 to 110 are realleged and incorporated by reference as if fully set forth herein.

112. During the following detentions, the following defendants deprived Mr. Rahman of his right to travel guaranteed by the Fifth Amendment to the United States Constitution:

(a) On or about March 31, 2004, at Los Angeles Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, and John Doe One;

(b) On August 28, 2004, at Chicago O'Hare Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, Barnes, Kelly, and John Doe Two;

(c) On September 26, 2004, at Montreal Airport, Rahman's rights were violated by Ridge, Bonner, Garcia, Domon, Marquis, and Thornbloom; and

(d) On May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, Rahman's rights were violated by Chertoff, Bonner, Garcia, Brown, Burkholder, Ferguson, Phillips, Quatrocci, Reardon, Renee, Reynolds, John Doe Three, John Doe Four, and John Doe Five.

113. During the detention on May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, the following defendants deprived Ms. Rahman, Zakareeya, and Nurah of their right to travel guaranteed by the Fifth Amendment to the United States Constitution: Chertoff, Bonner, Hodges, John Doe Six, and John Doe Seven.

D. COUNT FOUR: Freedom from unreasonable conditions of confinement

114. The allegations of paragraphs 1 to 113 are realleged and incorporated by reference as if fully set forth herein.

115. During the detention on May 8, 2005, at the United States border crossing at the Detroit-Windsor Tunnel, the following defendants deprived Ms. Rahman, Zakareeya, and Nurah of their right to be free from unreasonable conditions of confinement guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution: Chertoff, Bonner, Hodges, John Doe Six, and John Doe Seven.

VII. PRAYER FOR RELIEF

WHEREFORE, the members of the Rahman family respectfully request the following relief:

- A. Compensatory and punitive damages for themselves only.
- B. A declaratory judgment:
 - (1) on behalf of each member of the Rahman family that the defendants' respective conduct towards them violated the Fourth and Fifth Amendments; and
 - (2) on behalf of Mr. Rahman and the plaintiff class that the policies, practices, and customs of Chertoff, Ridge, Bonner, and Garcia violate the Fourth and Fifth Amendments.
- C. An injunction against Chertoff, Bonner, and Garcia on behalf of Mr. Rahman and the plaintiff class:
 - (1) enjoining the grant of undue or excessive discretion to CBP and ICE agents concerning detention and search (for example, concerning duration and

conditions of confinement) of United States citizens who are entering the United States from abroad, and whose names are similar or identical to those of other people who appear on government watch lists;

(2) ordering the adoption of adequate policies to ensure the reasonably expeditious reentry into the United States of United States citizens whose names are similar or identical to those of other people who appear on government watch lists;

(3) ordering adequate training, supervision, and discipline of CBP and ICE agents in the exercise of their discretion to detain and search United States citizens upon reentry into the United States, when those citizens have names that are similar or identical to those of other people who appear on government watch lists; and

(4) ordering the adoption of adequate policies to ensure that if a United States citizen is detained upon reentry to the United States because their name is similar or identical to another person who appears on a government list, and if family members of that United States citizen who are traveling with that United States citizen are also detained, then those family members are provided reasonable care and conditions of confinement.

D. Attorney fees, costs, and expenses.

E. Such other and further relief as this Court may deem just and proper.

VIII. JURY DEMAND

The Rahman family requests a trial by jury for all of their damages claims.

DATED: June 28, 2005

Respectfully submitted:

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