

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMIR MESHAL,
c/o ACLU, 125 Broad St., 18th floor,
New York, NY 10004,

Plaintiff,

v.

CHRIS HIGGENBOTHAM, FBI Supervising Special
Agent, in his individual capacity;

STEVE HERSEM, FBI Supervising Special Agent, in
his individual capacity;

JOHN DOES 1 AND 2, in their individual capacities;

JOHN and JANE DOES 3-10,

Defendants.

No. 09-cv-2178-EGS

JURY TRIAL DEMANDED

**AMENDED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF
(Violation of Fourth and Fifth Amendment Rights, Illegal Interrogation,
Illegal Proxy Detention, Illegal Rendition, Torture)**

INTRODUCTION

1. Amir Meshal is a United States citizen who was born and raised in New Jersey. Mr. Meshal is also a Muslim. In 2006, he decided to visit Mogadishu, the capital of Somalia, to broaden his understanding of Islam after the country's volatile political situation had largely stabilized.

2. On or about January 24, 2007, while fleeing Somalia with other civilians after violence had erupted, Mr. Meshal was apprehended in a joint U.S.-Kenyan-Ethiopian operation along the Somalia-Kenya border. During the next four months and three days, he was detained in three different countries without ever being charged, without ever

being granted access to counsel, and without ever being presented before a judicial officer. Upon information and belief, Plaintiff's detention without due process was at the direction or behest of U.S. officials, was carried out with their active and substantial participation, and/or was the result of a conspiracy between the Defendants and foreign officials.

3. While detained, Mr. Meshal was interrogated more than thirty times by U.S. officials who failed to adhere to the most elementary requirements of the Fourth and Fifth Amendments and the Torture Victim Protection Act of 1991 ("TVPA"), 28 U.S.C. § 1350 note. During these interrogations, U.S. officials repeatedly threatened Mr. Meshal with torture, forced disappearance, and other serious harm in order to coerce him to confess to wrongdoing in which he had not engaged and to associations that he did not have.

4. Mr. Meshal was finally returned home on May 27, 2007, after more than four months of detention. He was never charged with a crime.

5. Mr. Meshal is innocent of all wrongdoing and was illegally detained during the entire period of his detention in Kenya, Somalia, and Ethiopia.

6. Mr. Meshal brings this action against two Supervising Special Agents of the Federal Bureau of Investigation ("FBI")—Chris Higgenbotham and Steve Hersem—two other employees, officers, or agents of the United States government (John Does 1 and 2), whose names have been filed under seal, and John or Jane Does 3 to 10, who are employees, officers, or agents of the United States government whose names are as yet unknown, for their role in the violation of Mr. Meshal's rights under the United States Constitution, including his right to be free from arbitrary detention, illegal rendition, and

coercive interrogation methods such as threats of torture, forced disappearance, and other serious harm.

7. Mr. Meshal brings this action against the Defendants for their role in the violation of his rights under the Constitution of the United States. The Constitution does not permit U.S. officials to threaten American citizens with forced disappearance, torture, and other serious harm, or otherwise to interrogate them coercively. Nor does the Constitution permit U.S. officials to evade the elementary commands of due process simply by directing, conspiring, and/or actively and substantially participating with foreign officials to detain, interrogate, or render U.S. citizens in a manner that would be patently unlawful if carried out by those U.S. officials themselves.

8. Mr. Meshal also brings this action against the Defendants for their role in the violation of his rights under the TVPA, 28 U.S.C. § 1350 note. Defendants Higgenbotham and Hersem tortured Mr. Meshal by threatening him with forced disappearance and the infliction of severe physical and mental pain and suffering in the course of interrogations that took place when Mr. Meshal was detained in Kenya in order to coerce him into confessing to things that he had not done and to associations with al Qaeda and individuals connected to al Qaeda that he did not have. The TVPA prohibits U.S. officials from torturing a U.S. citizen during interrogations that are carried out under the actual or apparent authority of a foreign government, through a conspiracy between U.S. officials and foreign officials, and/or through the willful participation of U.S. officials in joint activity with foreign officials.

JURISDICTION AND VENUE

9. This complaint is for compensatory damages based upon civil rights violations committed by officers of the U.S. government, some or all of whom are believed to be officers of the Federal Bureau of Investigation, in violation of the Fourth and Fifth Amendments to the U.S. Constitution and the TVPA.

10. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331. This action is authorized and instituted pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the TVPA, 28 U.S.C. § 1350 note.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(2).

PARTIES

12. Plaintiff Amir Meshal is a United States citizen who resides in Tinton Falls, New Jersey. Mr. Meshal was born in Long Branch, New Jersey, on November 18, 1982, and has lived in New Jersey most of his life.

13. At the time of the events giving rise to this action, Defendant Chris Higgenbotham was a Supervising Special Agent of the FBI and was involved in investigating non-Somalis apprehended along the Somali-Kenyan border in a joint U.S.-Kenyan-Ethiopian operation in and around December 2006. Defendant Higgenbotham deprived Mr. Meshal of his constitutional and statutory rights by knowingly directing, authorizing, conspiring to effect, and/or actively and substantially participating in Mr. Meshal's detention and interrogation in Kenya and his rendition to, and detention in, Somalia and Ethiopia. Defendant Higgenbotham tortured Mr. Meshal by threatening Mr. Meshal with disappearance and severe pain and suffering; coercively and repeatedly

interrogated Mr. Meshal; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's detention without due process; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's illegal rendition; and otherwise engaged in conduct that created and/or increased known danger, which resulted in serious harm to Mr. Meshal. Upon information and belief, Defendant Higgenbotham continues to be employed by the FBI and, in that capacity, works closely with the FBI in the District of Columbia during the course of conducting law enforcement investigations abroad. Defendant Higgenbotham is sued in his individual capacity. The residence of Defendant Higgenbotham is currently unknown to Plaintiff.

14. At the time of the events giving rise to this action, Defendant Steve Hersem was a Supervising Special Agent of the FBI and was involved in investigating non-Somalis apprehended along the Somali-Kenyan border in a joint U.S.-Kenyan-Ethiopian operation in and around December 2006. Defendant Hersem deprived Mr. Meshal of his constitutional and statutory rights by knowingly directing, authorizing, conspiring to effect, and/or actively and substantially participating in his detention and interrogation in Kenya and his rendition to, and detention in, Somalia and Ethiopia. Defendant Hersem tortured Mr. Meshal by threatening him with disappearance and severe pain and suffering; coercively and repeatedly interrogated Mr. Meshal; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's detention without due process; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's illegal rendition; and otherwise engaged in conduct that created and/or increased known danger, which resulted in serious harm to

Mr. Meshal. Upon information and belief, Defendant Hersem continues to be employed by the FBI and, in that capacity, works closely with the FBI in the District of Columbia during the course of conducting law enforcement investigations abroad. Defendant Hersem is sued in his individual capacity. The residence of Defendant Hersem is currently unknown to Plaintiff.

15. The true, full and accurate name of Defendant John Doe 1 (“Doe Defendant 1”) has been filed with the Court under seal. His current residence is unknown to Plaintiff. At the time of the events giving rise to this action, Doe Defendant 1 was an employee of the FBI who deprived Mr. Meshal of his constitutional rights by knowingly directing, authorizing, conspiring to effect, and/or actively and substantially participating in his detention, interrogation, and rendition in Kenya, Somalia, and Ethiopia. During an approximately four-month period, Doe Defendant 1 coercively and repeatedly interrogated Mr. Meshal; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal’s detention without due process; directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal’s illegal rendition; and otherwise engaged in conduct that created and/or increased known danger to Mr. Meshal, which resulted in serious harm to him. Upon information and belief, Doe Defendant 1 was, and may continue to be, employed by the FBI, and in that capacity work closely with the FBI in the District of Columbia during the course of conducting law enforcement investigations abroad. Doe Defendant 1 is sued in his individual capacity.

16. The name of Defendant John Doe 2 (“Doe Defendant 2”) has been filed with the Court under seal. His current residence is unknown to Plaintiff. Upon information

and belief, at the time of the events giving rise to this action, Doe Defendant 2 was an employee of the FBI who deprived Mr. Meshal of his constitutional rights by knowingly directing, authorizing, conspiring to effect, and/or actively and substantially participating in his detention and interrogation in Ethiopia and his rendition from Kenya to Somalia and Ethiopia. During a period of over three months, Doe Defendant 2 coercively and repeatedly interrogated Mr. Meshal in Ethiopia and directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's detention without due process. Upon information and belief, Doe Defendant 2 directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's illegal rendition and otherwise engaged in conduct that created and/or increased known danger to Mr. Meshal, which resulted in serious harm to him. Upon information and belief, Doe Defendant 2 was, and may continue to be, employed by the FBI, and in that capacity works closely with the FBI in the District of Columbia during the course of conducting law enforcement investigations abroad. Doe Defendant 2 is sued in his individual capacity.

17. Defendants John and Jane Does 3-10 are individuals currently unknown to Plaintiff who worked for federal governmental entities and were involved in initiating, ordering, directing, authorizing, conspiring to effect, and/or actively and substantially participating in Mr. Meshal's torture, illegal detention, interrogation, and rendition in Kenya, Somalia, and Ethiopia, and otherwise engaged in conduct that created and/or increased known danger, which resulted in serious harm to Mr. Meshal. Upon information and belief, some or all of John and Jane Does 3-10 are or were stationed in the District of Columbia.

FACTUAL ALLEGATIONS

Amir Meshal's Travel to Somalia

18. Mr. Meshal is a Muslim, born in the United States to parents of Egyptian descent who are naturalized U.S. citizens.

19. As a young adult, Mr. Meshal had an increasing desire to develop his knowledge about, and interest in, Islam—a desire that ultimately led him to travel to Mogadishu, the capital city of Somalia, which for a time was governed by Islamic law.

20. In 2005, Mr. Meshal traveled to Cairo to live among some members of his extended family. In Cairo, Mr. Meshal worked in sales for a translation company, handling accounts for American and other English-speaking clients. Mr. Meshal briefly considered traveling to Saudi Arabia in order to broaden his understanding of Islam and to live in a country governed by Islamic law. He decided not to do so, however, after learning that it would be difficult to obtain a visa for travel to Saudi Arabia.

21. In June 2006, Mogadishu and its surrounding areas came under the control of the Supreme Council of Islamic Courts (“SCIC”)—a governing body whose former head, Sheikh Sharif Sheikh Ahmed, is now the president of Somalia and has received the open support of U.S. Secretary of State Hillary Clinton. Between June and December 2006, the SCIC secured control of most of southern Somalia, gained widespread local support, and brought governance and “a degree of peace and security unknown to the south for more than fifteen years.” *Somalia: The Tough Part is Ahead*, Africa Briefing No. 45, (Int’l Crisis Group, Nairobi/Brussels), Jan. 26, 2007, at 1, http://www.crisisgroup.org/library/documents/africa/horn_of_africa/b45_somalia_the_tough_part_is Ahead.pdf.

22. In June 2006, Mr. Meshal read an Internet article explaining that the SCIC had gained control of Mogadishu, had established peace, and had instituted Islamic law. Mr. Meshal began thinking about going to Somalia. Over the course of the next few months, he continued to read Internet articles about the implementation of Islamic law in parts of Somalia, including Mogadishu and its surrounding areas.

23. In November 2006, Mr. Meshal decided to go to the parts of Somalia that were governed by Islamic law to experience living in such areas and to deepen his knowledge and understanding of Islam. At that time, Mogadishu and southern Somalia were enjoying a revival under the SCIC. The SCIC had brought stability and peace to these areas by, among other things, tearing down militia checkpoints, removing weapons from the streets, and reopening the international port and airport for business. *Somalia: The Tough Part is Ahead, supra*, at 1.

Direct U.S. Involvement in the Horn of Africa

24. After the 1998 bombings of the U.S. Embassies in Kenya and Tanzania, the U.S. government deployed civilian and military personnel to the Horn of Africa region. The objectives of this deployment included identifying, arresting, and detaining individuals suspected of ties to terrorist organizations or activity in order to stem the rise of militant Islam in the region.

25. As part of this strategy, following the 1998 embassy bombings, the FBI Office of International Operations (“OIO”), located at FBI Headquarters in the District of Columbia, and the FBI Legal Attaché office, located in Nairobi, Kenya, coordinated the deployment of FBI personnel to the Horn of Africa region. Federal Bureau of

Investigation, Major Investigative and Operational Accomplishments,

<http://www.fbi.gov/contact/legat/accomplishments.htm> (last visited October 27, 2009).

26. In 2002, U.S. Department of Defense officials publicly expressed the United States government's belief that Somalia was a "potential haven" for members of al Qaeda fleeing Afghanistan and that such terrorists were located in Somalia. U.S. Dep't of Defense, News Transcript, Background Briefing on the Horn of Africa, Mar. 8, 2002, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3066>.

27. Beginning in October 2002, the U.S. Central Command of the Department of Defense initiated joint counterterrorism operations with nations in the Horn of Africa region. United States Central Command, US CENTCOM History, <http://www.centcom.mil/en/about-centcom/our-history/> (last visited Apr. 30, 2010).

28. As part of the strategy of deploying U.S. military and civilian personnel to the Horn of Africa, the U.S. government established the Combined Joint Task Force-Horn of Africa ("CJTF-HOA") in October 2002. Combined Joint Task Force Horn of Africa, CJTF-HOA Factsheet, <http://www.hoa.africom.mil/AboutCJTF-HOA.asp> (last visited April 30, 2010). CJTF-HOA operates in Yemen, Eritrea, Ethiopia, Sudan, Kenya, and Uganda, and is comprised of service members from each military branch of the U.S. Armed Forces, civilian employees, and representatives of coalition countries. *Id.*

29. Since at least 2004, CJTF-HOA and the FBI have been directly involved in training certain foreign armies and police units, including Kenya's, in counter-terror and counterinsurgency tactics. The FBI also has conducted criminal investigations in Kenya and the Horn of Africa region and, as part of those investigations, has participated in the

apprehension, detention, and interrogation of individuals alleged to have ties to foreign terrorists or foreign terrorist organizations operating there.

30. According to the procedures governing the FBI Legal Attaché program, because FBI officers “have no law enforcement authority in foreign countries,” FBI investigations in the Horn of Africa region must be conducted “in accordance with local laws and policies and procedures established by the host country.” Office of the Inspector General, U.S. Dep’t of Justice, Audit Report 04-18, Federal Bureau of Investigation Legal Attaché Program 8 (2004) (Redacted and Unclassified); *see also* Memorandum from Robert S. Mueller III to All Special Agents in Charge, Re: Conducting FBI Investigations Overseas 2 (July 11, 2002) (Unclassified) (“FBI Agents abroad do not have the law enforcement authority they possess in the United States. FBI Agents do not have arrest powers, subpoena powers, or the authority to conduct investigations in other countries without the approval of the host government.”).

31. Foreign governments, inter-governmental entities, human rights organizations, and media have reported that, since the events of September 11, 2001, the U.S. government has increasingly engaged in “proxy detention,” a practice in which individuals alleged or suspected to have ties to foreign terrorists or foreign terrorist organizations are detained by foreign authorities at the behest of, the direction of, and/or with the active and substantial participation of the United States. *See* Center for Human Rights and Global Justice, *On the Record: U.S. Disclosures on Rendition, Secret Detention, and Coercive Interrogation* 17-18 (New York: NYU School of Law, 2008).

Mr. Meshal's Travel to, and Flight from, Somalia

32. At the end of November 2006, Mr. Meshal sought to travel by plane from Cairo to Mogadishu. Because there were no direct flights from Cairo to Mogadishu, Mr. Meshal first flew from Cairo to Dubai. In Dubai, Mr. Meshal purchased a ticket to travel by Jubba Airways to Mogadishu. Several days later, he boarded the Jubba Airways flight, which took him to Mogadishu. Mr. Meshal's journey from Cairo to Mogadishu was uneventful.

33. When Mr. Meshal arrived in Mogadishu on or around November 27, 2006, the city was under the control of the SCIC and was enjoying peace, stability, and a revival after years of unrest and instability.

34. Mr. Meshal's first few weeks in Somalia were uneventful. Approximately a month after his arrival, however, fighting erupted between the SCIC and the U.S.-Ethiopia-backed Transitional Federal Government of Somalia ("TFG"), which had been created in 2004 as a government of national unity. The TFG, however, never controlled most of the country, including Mogadishu, and was largely a government in name only.

35. After fighting broke out, Mr. Meshal feared for his personal safety and sought to flee the country.

36. On December 24, 2006, the Ethiopian air force bombed the Mogadishu airport, causing extensive damage. Unable to get on a flight out of the country, Mr. Meshal evacuated Mogadishu with a group of Somalis in pick-up trucks that were headed south towards the Somali town of Kismayo. The trip to Kismayo took approximately five days as the trucks caravanned across rough terrain. The group was a small subset of the many thousands of civilians fleeing the violence in Mogadishu.

37. Once in Kismayo, Mr. Meshal noticed that there were many other non-Somalis in the town. An armed Somali man, whom Mr. Meshal did not recognize, approached him and said that Ethiopian soldiers were advancing on Kismayo and that the Americans had offered the Ethiopian and Somali forces money in return for any foreigners they captured and handed over to the Americans for detention and interrogation. He advised Mr. Meshal that all foreigners should leave for Kenya by boat.

38. On or about January 3, 2007, Mr. Meshal and approximately forty other foreign civilians—including men and women from Sweden, France, England, Jordan, and Morocco—loaded onto two large boats with small motors and simple rudders for navigation. They set off south toward Ras Kamboni, which borders Kenya at Somalia's southernmost tip and which offered the hope of access to Kenya and safety.

39. When Mr. Meshal reached Ras Kamboni, armed Somalis ordered him and the other civilians fleeing towards the border onto a truck, which was driven to a forest. The armed Somalis then ordered them to get out of the truck. Mr. Meshal and the other civilians then fled through the dense brush.

40. Citing security concerns, on Wednesday, January 3, 2007, the Kenyan government closed its 682-kilometer border with Somalia and refused entrance to thousands of civilians fleeing the political violence. On that same day, U.S. State Department spokesperson Sean McCormack announced that the United States was working closely with governments in the region to ensure that individuals suspected of terrorist activities would not be able to escape from Somalia.

41. Based on the belief that al Qaeda operatives had fled Mogadishu and were traveling south towards the Kenyan border, on January 6, American Special Operations

troops, working with the Kenyan military, set up positions along the border of Somalia and Kenya to capture those fleeing Somalia on the belief that they were al Qaeda members or fighters. Michael Gordon and Mark Mazzetti, *U.S. Used Base in Ethiopia to Hunt Al Qaeda*, N.Y. Times, Feb. 22, 2007.

42. On January 9, 2007, Mr. McCormack stated that the U.S. State Department was in close contact with the Ethiopian and Kenyan governments to prevent suspected terrorist operatives from fleeing Somalia and eluding capture. He also told the PBS NewsHour, “We have a concern that those terrorist operatives that were in Somalia, operating in Somalia, [sic] not be able to escape and flee and to try to establish safe haven elsewhere.” PBS NewsHour, Transcript, New Summary for January 9, 2007, http://www.pbs.org/newshour/news_summaries/2007/01/summary_09.html.

43. On or before January 22, 2007, the FBI sent a special “jump team” (or “fly team”) to Kenya. Partial Tr. Prelim./Detention Hr’g, *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1, 34-35 (S.D. Tex. 2007) (dkt. no. 17). The jump team was one of the “special teams that the FBI formed after the 9/11 attacks” and consisted of “specially trained people that could travel around the world to conduct” law enforcement investigations. *Id.* at 35.

44. At the time Mr. Meshal was fleeing Somalia for Kenya, the U.S. government was offering financial rewards to Kenyan authorities who captured persons of interest to the United States, and in particular to the FBI. BBC News reported that U.S. government officials offered \$5 million for the capture of one suspected al Qaeda member and that the wives of two individuals wanted by the FBI were arrested fleeing Ras Kamboni. *Somalia Raids Miss Terror Suspects*, BBC News, Jan. 11, 2007.

45. Non-governmental organizations estimate that approximately 140 to 150 people were arbitrarily detained in Kenya between late December 2006 and February 2007, the period immediately following the outbreak of fighting between the SCIC and TFG in Somalia. *See* Redress and Reprieve, Kenya and Counter-terrorism: A Time for Change, Redress and Reprieve 4 (2009); *see also* Amnesty Int'l, AFR 25/006/2007, Horn of Africa: Unlawful Transfers in the 'War on Terror' (2007), *available at* http://amnesty.ca/index_images/resources/horn_of_africa_unlawful_transfers.pdf; Human Rights Watch, "Why Am I Still Here?": The 2007 Horn of Africa Renditions and the Fate of Those Still Missing 10 (2008), *available at* <http://www.hrw.org/en/reports/2008/09/30/why-am-i-still-here> (last visited Apr. 2, 2010).

Arrest and Detention in Kenya

46. On or about January 24, 2007, having wandered in the forest for nearly three weeks with four other men in an effort to seek safety in Kenya and find a way home, Mr. Meshal's group was surrounded by approximately thirty heavily armed Kenyan soldiers. The soldiers physically apprehended Mr. Meshal, stripped him to his underwear, and tightly bound Mr. Meshal's hands behind his back with rope.

47. One soldier asked Mr. Meshal where he was from. Mr. Meshal replied that he was an American citizen. The soldier then seized Mr. Meshal's U.S. passport, social security card, and approximately \$800 in cash.

48. The soldiers took Mr. Meshal and the four others to a nearby village and then transported them by helicopter and truck to a town that Mr. Meshal later learned was the town of Kiunga.

49. Once in Kiunga, Mr. Meshal was taken to a local jail and placed in a small cell. Approximately thirty minutes later, seven or eight Kenyan men dressed in civilian clothing came to the jail, removed Mr. Meshal from the cell, escorted him outside, photographed him, and then interrogated him for approximately forty-five minutes. One of the men asked Mr. Meshal a series of simple questions in English while the others took notes. The interrogator asked Mr. Meshal his name, where he was born, what school he attended, when he had arrived in Somalia, and what he was doing there. The interrogators subsequently returned Mr. Meshal to the cell, where he was held overnight.

Transfer to Nairobi

50. The following morning, on or about January 25, 2007, eight to ten Kenyans dressed in civilian clothes came to the Kiunga jail. They placed a black hood over Mr. Meshal's head and tightly bound his wrists with a plastic zip-tie. They then escorted Mr. Meshal onto a helicopter for a short flight. He overheard that he was being flown to Mombasa. From Mombasa, Mr. Meshal was escorted onto a plane, which flew to Nairobi.

51. Once in Nairobi, Mr. Meshal was placed in the back of a truck with four other men and taken to the Ruai Police Station on the outskirts of Nairobi. A group of Kenyan officials wearing civilian clothing were waiting for Mr. Meshal at the police station's jail. One of the Kenyan officials identified himself as an officer of Kenya's Criminal Investigation Department ("CID"). He asked Mr. Meshal only a few basic questions, such as where he was born, what citizenship he held, and why he was in Somalia.

52. Mr. Meshal explained to the CID officer that he was an American citizen and that he had gone to Somalia to further his religious education. The CID officer did not

ask any follow-up questions. Mr. Meshal asked the CID officer why he was being held. The officer replied that his main purpose was to get Mr. Meshal out of Kenya and back to the United States as soon as possible. The CID officer also told Mr. Meshal that he had to find out what the United States wanted to do with him before he could send Mr. Meshal back to the United States.

53. On January 26, 2007, U.S. State Department spokesperson Sean McCormack acknowledged that the State Department was aware of news reports claiming that at least one American citizen had been apprehended in Kenya and indicated that the State Department was working to verify these reports.

54. Mr. Meshal was detained at the Ruai Police Station for approximately one week in a tiny cell without any further interrogation and without any access to an attorney. During the first four days of his detention, Mr. Meshal wore only his underwear. At that point, a prisoner whom Mr. Meshal had met in the jail and who was being released gave Mr. Meshal a pair of pants and a shirt. At its most crowded, the small cell held twenty-nine individuals. Mr. Meshal often slept standing up because he had nowhere to sit, let alone lay down. The food and bathroom facilities were woefully inadequate, exacerbating an intestinal infection from which Mr. Meshal was suffering.

55. During Mr. Meshal's detention in the Ruai Police Station, he was not allowed to use the telephone.

56. On information and belief, sometime between January 27 and February 3, 2007, U.S. government officials learned about Mr. Meshal's presence and detention in Kenya and ordered, directed, authorized, or approved Mr. Meshal's interrogation by Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 by, among

other things, following the procedures set forth in The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, which were in force at the time and provided, *inter alia*, that "[t]he FBI may conduct investigations abroad, participate with foreign officials in investigations abroad, or otherwise conduct activities outside the United States with the written request or approval of the Director of Central Intelligence and the Attorney General or their designees." The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection 17 (Oct. 31, 2003) (declassified Aug. 2, 2007). Although these guidelines indicate that the Attorney General and the Director of Central Intelligence may have directly issued such orders, upon information and belief, in this case, orders were issued by lower-level government officials who were granted the authority to do so by the Attorney General and the Director of Central Intelligence.

57. Upon information and belief, the U.S. government officials who issued such orders or otherwise directed, authorized, and/or approved Mr. Meshal's interrogation by Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 were either located in the District of Columbia or received communications from U.S. government officials located in the District of Columbia regarding their approval, authorization, and/or direction of the interrogation of Mr. Meshal.

U.S. Interrogations in Kenya

58. On or about February 3, 2007, the Kenyan CID officer who had questioned Mr. Meshal on his first day of detention at the Ruai Police Station returned to the station and told Mr. Meshal that a gentleman from the U.S. Embassy had come to see him. The CID officer escorted Mr. Meshal outside the police station where Mr. Meshal saw three

Americans standing next to two dark blue vehicles. The three Americans later identified themselves to Mr. Meshal as “Steve,” “Chris,” and “Tim,” but refused to provide their true full names or titles to Mr. Meshal.

59. Upon information and belief, and based on the transcripts of the preliminary detention hearing in *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1 (S.D. Tex. 2007) (dkt. nos. 16 & 17), and as further described below, “Steve” is Defendant FBI Supervising Agent Steve Hersem, who interrogated Daniel Maldonado in Kenya. Defendant Hersem was a member of the FBI “jump team” or “fly team” that was sent to Nairobi in the beginning of January 2007 to conduct law enforcement investigations. *See* Partial Tr. Prelim./Detention Hr’g, *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1, 35 (S.D. Tex. 2007) (dkt. no. 17) (referring to date of arrival of jump team FBI supervising special agents in Nairobi).

60. Defendant Hersem was a clean-shaven white man who appeared to be in his late forties and very fit. He stood about 6’ 3” tall and had short blond hair and blue eyes. Each time Defendant Hersem came to interrogate Mr. Meshal, he was dressed in a dark suit and tie and wore reflective sunglasses, which he periodically removed. Defendant Hersem spoke with an American accent, although Mr. Meshal could not discern any specific regional accent.

61. Upon information and belief, and based on the transcripts of the preliminary detention hearing in *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1 (S.D. Tex. 2007) (dkt. nos. 16 & 17), and as further described below, “Chris” is Defendant FBI Supervising Agent Chris Higgenbotham, who interrogated Daniel Maldonado in Kenya. Defendant Higgenbotham also was a member of the FBI “jump

team” or “fly team” that was sent to Nairobi in the beginning of January 2007 to conduct law enforcement investigations. Partial Tr. Prelim./Detention Hr’g, *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1, 35 (S.D. Tex. 2007) (dkt. no. 17) (referring to date of arrival of jump team FBI supervising special agents in Nairobi).

62. Defendant Higgenbotham was a white man who appeared to be in his mid-to-late forties. He had brown hair, brown eyes, and a chinstrap beard (*i.e.*, facial hair extending from the hair line of one side of the face to the other, following the jawline). He stood approximately 6’ tall and was much heavier than Defendant Hersem. Defendant Higgenbotham wore prescription glasses, jeans, a button-up shirt, and a khaki vest with pockets. On one occasion, Defendant Higgenbotham told Mr. Meshal that he was from Georgia and that he worked in an FBI office somewhere in Europe. Defendant Higgenbotham also spoke with an American accent, although Mr. Meshal could not discern any specific regional accent.

63. The individual who introduced himself to Mr. Meshal as “Tim” is Doe Defendant 1. The true, full, and accurate name of Doe Defendant 1 has been filed with the Court under seal. Doe Defendant 1 was a white man and appeared to be in his late thirties or early forties. He stood approximately 6’ tall and had grayish-black hair and a full, low-cut beard. Doe Defendant 1 wore jeans, short-sleeve polo-style shirts, and sneakers. On one occasion, Doe Defendant 1 told Mr. Meshal that he was from New Jersey. Doe Defendant 1 also spoke with an American accent, although Mr. Meshal could not discern any specific regional accent. Doe Defendant 1 was also an FBI Supervising Agent.

64. After the Kenyan CID officer escorted Mr. Meshal outside of the police station, Defendant Hersem immediately asked him to get into the back seat of one of the vehicles—a dark blue Chevrolet Suburban. The CID officer got in the front passenger side and Defendant Higgenbotham sat in the back with Mr. Meshal. Because the Kenyan CID officer had informed Mr. Meshal that U.S. Embassy personnel had come to speak with him, Mr. Meshal believed that he was going to be taken to the U.S. Embassy.

65. Defendant Hersem asked Mr. Meshal how he was doing. Mr. Meshal replied that he was all right, but that the conditions in the prison had been horrible. Mr. Meshal then asked Defendant Hersem whether he would be able to take a shower and get some new clothing before going home. Defendant Hersem laughed and told Mr. Meshal that it was not going to be that easy for him to go home. He told Mr. Meshal that they had been talking to his buddy “Beantown,” and that “Beantown” had a lot to say about Mr. Meshal.

66. Mr. Meshal thought that Defendant Hersem was referring to Daniel Maldonado, an American citizen from Boston whom Mr. Meshal met in Kismayo when Mr. Meshal was fleeing the violence in Mogadishu. When Mr. Meshal had met Mr. Maldonado, Mr. Maldonado said that he was from Boston; Mr. Meshal began to call him “Beantown” as a result. Defendant Hersem told Mr. Meshal that his story would have to match up with “Beantown’s” story or else he would know that one of them was lying. If Mr. Meshal was lying, Defendant Hersem said, he would not allow Mr. Meshal to go home.

67. Daniel Maldonado had been seized by Kenyan soldiers on or about January 21, 2007. The FBI jump team in Nairobi responsible for conducting law enforcement investigations in the region was sent to interrogate Mr. Maldonado and coordinated its

activities with the Houston Division of the FBI. Partial Tr. Prelim./Detention Hr'g, *United States v. Daniel Joseph Maldonado*, No. 4:07-mj-00125-1, 34-35 (S.D. Tex. 2007) (dkt. no. 17). Mr. Maldonado was interviewed by FBI agents on several occasions while detained in Kenya, including on January 28 and January 30, 2007, and admitted to receiving military training in Somalia during December 2007.

68. Members of the Houston Joint Terrorism Task Force subsequently transported Mr. Maldonado back to the United States between February 9 and 12, 2007, after Mr. Maldonado agreed to cooperate with the FBI agents who interrogated him in Kenya. Mr. Maldonado's three minor children, who had been detained in Kenya after fleeing Somalia, were also returned to the United States.

69. Between around February 3 and February 10, 2007, U.S. agents interrogated Mr. Meshal on at least four occasions. Each of these interrogation sessions lasted a full day and was carried out on the top floor of the Salonika Villas, a five-story beige building located on Muthangari Road in Nairobi. The suite in which the interrogations occurred had a sitting room, a bedroom, a bathroom, and an efficiency kitchen equipped with a small counter, sink, and dish cabinets.

70. The FBI jump team, which included Defendants Higgenbotham and Hersem, paid for and arranged for the use of the Salonika Villas as an FBI interrogation site for persons of interest to the United States. The Salonika Villas shared the same characteristics as the safe house at which Mr. Maldonado was interrogated by Defendants Hersem and Higgenbotham and other FBI agents, to which Mr. Maldonado was driven in a U.S. vehicle by FBI officials, and which the FBI paid for and arranged to be used as an FBI interrogation site. *See* Partial Tr. Prelim./Detention Hr'g, *United States v. Daniel*

Joseph Maldonado, No. 4:07-mj-00125-1, 4 (S.D. Tex. Feb. 20, 2007) (dkt. no. 16); Partial Tr. Prelim./Detention Hr'g, *supra* (dkt. no. 17), at 44-45, 58 (testimony of FBI Agent Loretta Eglan-Anderson).

71. On the first day of Mr. Meshal's interrogation at the Salonika Villas, Doe Defendant 1 presented Mr. Meshal with a document and asked him to sign it, telling Mr. Meshal that the document notified him that he could refuse to answer any questions without a lawyer present. When Mr. Meshal asked for an attorney, however, Doe Defendant 1 told him that he was not permitted to make any phone calls. Mr. Meshal then asked if he had a choice not to sign the document because he had no way of contacting an attorney. Defendant Higgenbotham responded: "If you want to go home, this will help you get there. If you don't cooperate with us, you'll be in the hands of the Kenyans, and they don't want you." Defendant Higgenbotham also told Mr. Meshal that he was being held in "a lawless country" and did not have any right to legal representation. Believing that he had no other choice, and hoping that it would expedite his safe return to the United States, Mr. Meshal signed the document. Upon information and belief, the document was a "waiver of rights" (or "advice of rights") form of the type commonly used by FBI agents prior to conducting an interrogation in the absence of counsel.

72. Defendant Higgenbotham, Defendant Hersem, and Doe Defendant 1 deliberately misrepresented Mr. Meshal's right to counsel under Kenyan law.

73. After Mr. Meshal signed the form, Defendant Higgenbotham took out a laptop computer and told Mr. Meshal that he needed to take a digital image of his fingerprint. While taking Mr. Meshal's fingerprint, Defendant Higgenbotham explained to Doe

Defendant 1 how to use the computer to capture the image. Mr. Meshal believed that Doe Defendant 1 was not familiar with the technology. Once Defendant Higgenbotham took the image, he removed a swab kit and explained to Mr. Meshal that he also needed to take a DNA sample. Mr. Meshal asked why they needed a DNA sample. Defendant Higgenbotham replied that they were taking the DNA sample so that if they found pieces of Mr. Meshal's body blown up, they would be able to identify "who did it." Mr. Meshal believed that Defendant Higgenbotham was insinuating that Mr. Meshal intended to blow himself up in an act of terrorism. At no time did Defendant Higgenbotham or the other U.S. agents offer any basis for this suspicion that Mr. Meshal might be a suicide bomber.

74. Mr. Meshal was later told by other detainees that the American agents were classifying people seized by the Kenyans at the Kenya-Somalia boarder as "East African al Qaeda." Throughout his detention and interrogation Mr. Meshal repeatedly explained to the U.S. agents that he had never been part of, had never supported, and had never received any training from al Qaeda.

75. During this first day of interrogation, Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 took turns questioning Mr. Meshal over approximately six hours.

76. The Kenyan CID officer who had accompanied the Americans to the Salonika Villas remained in the bedroom for the first part of Mr. Meshal's interrogation. He did not demonstrate any interest whatsoever in the interrogation, and did not ask a single question or take any notes. After approximately two hours, the Kenyan CID officer left the room while the interrogation continued and did not return for several hours.

77. At some point after the Kenyan CID officer had left the room, Doe Defendant 1 gave Mr. Meshal a lined legal pad and asked him to write everything he had said down on paper. Mr. Meshal wrote approximately four pages. When he was finished, Defendant Higgenbotham took the statement from Mr. Meshal.

78. At approximately 4:00 p.m., the Kenyan CID officer returned to the suite. Doe Defendant 1 asked the officer if he wanted to ask any questions. The Kenyan CID officer replied that he did not, revealing again the Kenyan government's lack of interest in Mr. Meshal.

79. On information and belief, Defendants Hersem, Higgenbotham, and/or Doe Defendant 1 requested that Kenyan authorities move Mr. Meshal from the Ruai Police Station to a different location closer to the Salonika Villas to facilitate further interrogations.

80. At the end of Mr. Meshal's first day of interrogation, Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 took Mr. Meshal to a new prison, accompanied by the Kenyan CID agent. As they approached the building, Mr. Meshal noticed a sign identifying it as the Kileleshwa Police Station.

81. At the Kileleshwa Police Station, the Kenyan CID official signed Mr. Meshal into the jail area and escorted him to a cell. There were two cells at the Kileleshwa Police Station separated by a hallway that contained an indoor bathroom. The cells were approximately 15-20 square feet and contained mats and blankets for the detainees. Mr. Meshal shared a cell with a British man named Mohammed Ezzoueck and approximately twenty Kenyans, who appeared to have been arrested for petty crimes.

82. U.S. agents interrogated Mr. Meshal at the Salonika Villas on at least three subsequent occasions during the period of his detention at the Kileleshwa Police Station. On each of these occasions, a Kenyan officer took Mr. Meshal from his jail cell and brought him to the U.S. agents, who were waiting at the prison, and who drove him to the interrogation site.

83. During each of these subsequent interrogations, each of which lasted an entire day (from approximately 9 a.m. to 5 p.m.), Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 presented Mr. Meshal with a document notifying him that he could refuse to answer any questions without a lawyer present and asked him to sign it. Each time, however, these officials made Mr. Meshal believe that he had no choice other than to sign the document given to him, and therefore Mr. Meshal signed the document. Upon information and belief, the document was the “waiver of rights” (or “advice of rights”) form of the type commonly used by FBI agents prior to conducting an interrogation in the absence of counsel. Each time Mr. Meshal asked for an attorney, the U.S. officials told him that he could not make any phone calls.

84. During these day-long interrogations, Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 continually accused Mr. Meshal of having received weapons training and special training to withstand interrogation in an al Qaeda training camp. Each time Mr. Meshal denied the accusations, Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 became enraged.

85. In each of their multiple interrogations of Mr. Meshal in Kenya, Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1 sought to elicit statements from Mr. Meshal for use in a potential future criminal prosecution.

86. On one occasion, while Defendant Higgenbotham and Doe Defendant 1 were interrogating Mr. Meshal, Defendant Higgenbotham grabbed Mr. Meshal and forced him to the window of the hotel room. Defendant Higgenbotham told him that “Allah is up in the clouds,” and that “the U.S. is almost as powerful as Allah.” He also told Mr. Meshal that the agents knew he was hiding something, but that they “had ways of getting the information they want.” Defendant Higgenbotham threatened to send Mr. Meshal to Israel, where he said the Israelis would “make him disappear.” Mr. Meshal was extremely distraught and feared for his life. His cellmate, Mr. Ezzoueck, observed that Mr. Meshal was extremely distressed and crying when he was returned to his cell at the Kileleshwa Police Station following this interrogation. Mr. Ezzoueck reported his observations to a member of a Kenyan human rights organization, the Muslim Human Rights Forum, who visited him in his cell.

87. On another occasion, Defendant Hersem approached Mr. Meshal, removed his (Defendant Hersem’s) sunglasses, and proceeded to yell at Mr. Meshal merely inches from his face while vigorously poking him in the chest. He accused Mr. Meshal of having connections to individuals in Dubai who recruit for al Qaeda. Defendant Hersem yelled at Mr. Meshal to confess his connection to al Qaeda. He promised that in return for such a confession that Mr. Meshal would be returned to the United States and would face civilian courts there. When Mr. Meshal asked what would happen if he refused to answer any more questions, Defendant Hersem told him that he would be sent back to Somalia. Defendant Higgenbotham and Doe Defendant 1 made similar threats to Mr. Meshal on numerous occasions during their interrogations of Mr. Meshal in Kenya.

Approximately two weeks before this interrogation, FBI officials had already participated in the rendition of detainees to Somalia and Ethiopia.

88. On another occasion, while Defendant Hersem was driving Mr. Meshal back to the Kileleshwa Police Station following a day-long interrogation, he told Mr. Meshal that he had spoken with the Egyptians and that they were very interested in speaking with Mr. Meshal. Defendant Hersem warned Mr. Meshal that the Egyptians “had ways of making [him] talk.” Defendant Hersem asked Mr. Meshal whether he had ever seen the movie “Midnight Express,” in which a man who is caught smuggling drugs out of Turkey is thrown into prison and tortured. Defendant Hersem told Mr. Meshal that he could make those same things happen to him if Mr. Meshal did not cooperate and admit his connection with al Qaeda. Defendant Hersem also told Mr. Meshal, “You made it so that even your grandkids are going to be affected by what you did.”

89. The FBI’s own legal analysis of permissible interrogation methods from as early as November 2002 recognized that the “[u]se of scenarios designed to convince [a] detainee that death or severe pain is imminent for him or his family” are prohibited by the Constitution and may violate the United States Torture Statute, 18 U.S.C. § 2340. FBI Behavioral Analysis Unit, Legal Analysis of Interrogation Techniques, 1020-21 (Nov. 27, 2002) (Unclassified). The FBI’s own legal analysis further concluded that it is a *per se* violation of said Torture Statute when an interrogator threatens to send a detainee “either temporarily or permanently to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information,” with the intent “to utilize, outside the U.S., interrogation techniques which would violate [the Torture Statute].” *Id.* at 1021.

90. When Mr. Meshal was not being interrogated by the U.S. officials, he remained in his cell at the jail of the Kileleshwa Police Station. He was never interrogated or questioned by the Kenyan authorities during this time. Nor did Kenyan authorities ever present any charges against him or provide him with any basis for his detention.

91. Mr. Meshal was detained in Kenyan jail without charge contrary to Kenyan law because Mr. Meshal was a person of interest to the FBI and because Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 wanted to interrogate him.

Contact with the Muslim Human Rights Forum

92. On or around February 5, 2007, when Mr. Meshal was returned to the Kileleshwa Police Station from his interrogation by Defendant Hersem, Defendant Higgenbotham, and Doe Defendant 1, members of the Muslim Human Rights Forum (“MHRF”), a Kenyan human rights organization, were at the jail seeking information about foreigners and Kenyans who had been picked up near the Somali border and whom the MHRF believed were being detained in contravention of Kenyan law.

93. Members of the MHRF visited Mr. Meshal and other detainees being held without charge at the Kileleshwa Police Station several times between February 5 and February 9, 2007. The MHRF’s last visit with Mr. Meshal occurred at approximately 9:00 p.m. on February 9.

94. MHRF members did not identify themselves when entering the jail because they feared that they would not be permitted to enter if Kenyan and United States officials knew they were members of a human rights group and were speaking to

detainees and informing them of their rights under Kenyan and international law. At times, MHRF members were unable to access the detainees.

95. Mr. Meshal spoke briefly with a member of the MHRF. Mr. Meshal explained that he was being interrogated by three American agents, at least some of whom he believed worked for the FBI. Mr. Meshal further explained that these agents had threatened him with torture and disappearance and denied him access to a lawyer. The MHRF member informed Mr. Meshal that the MHRF was monitoring his case and would press his case before the Kenyan courts.

96. Kenyan police officers told MHRF members that the FBI was in charge of the detention of Mr. Meshal and other detainees who had been seized fleeing Somalia. Al-Amin Kimathi, the head of MHRF, stated, "Some very frustrated senior Kenyan police officers just told us point blank, 'It's not our operation. Go and ask the Americans. Just call the American Embassy.'" Audio Report: Africa's Guantanamo, BBC World Service, (Oct. 2008),

http://www.bbc.co.uk/worldservice/specials/1658_assignment_2008/page6.shtml; see also Steve Bloomfield, *Anger at US 'Rendition' of Refugees Who Fled Somalia*, The Indep., Mar. 23, 2007, <http://www.independent.co.uk/news/world/africa/anger-at-us-rendition-of-refugees-who-fled-somalia-441495.html>.

97. On a number of occasions, MHRF members also saw U.S. government officials remove detainees from their prison cells and drive them in U.S. vehicles to and from the stations in which they were detained. Muslim Human Rights Forum, *Horn of Terror: Revised Edition*, 28 (Al-Amin Kimathi & Altan Butt eds. 2008); Audio Report: Africa's Guantanamo, *supra*. On February 5, 2007, an MHRF member saw U.S. officials

drive Mr. Meshal back to the Kileleshwa Police Station in a U.S. Embassy vehicle marked with registration number 29CD389K. Muslim Human Rights Forum, *supra* at 28.

98. At no point did Kenyan authorities charge Mr. Meshal with a crime.

99. Mr. Meshal was denied access to counsel the entire time he was detained in the Kileleshwa Police Station. Mr. Kimathi of MHRF reported that for detainees “[t]here was no access to any lawyers. They were flatly refused entry.” Audio Report: Africa’s Guantanamo, *supra*.

100. While Mr. Meshal was being held at the Kileleshwa Police Station, the MHRF filed habeas corpus petitions in Kenyan court on behalf of prisoners who had been seized fleeing the violence in Somalia and who were being detained in Kenya without charge. The petitions asserted that the detainees’ confinement was illegal under Kenyan law and demanded immediate relief. The Kenyan Constitution requires a detainee to be brought before a court within twenty-four hours of arrest or the commencement of his detention if he is reasonably suspected of having committed, or being about to commit, a crime that is not a capital offense. Constitution, Art. 72(3) (2001) (Kenya); The Criminal Procedure Code, (2007) Cap. 75 § 36. If this requirement is not met, Kenyan law requires his release. Constitution, Art. 72(5) (Kenya); The Criminal Procedure Code, Cap. 75 § 36. The time limit for detention without charge under Kenyan law extends to fourteen days for detainees who are reasonably suspected of having committed, or being about to commit, a capital offense. Constitution, Art. 72(3) (Kenya).

101. On or around February 7, 2007, Kenyan courts began hearing the detainees' habeas petitions. It was presumed that if the detainees were brought before court and no lawful cause for the detention was shown, the detainees would be released.

FBI and State Department Contact with Mr. Meshal and His Father

102. On February 6, 2007, while Defendant Higgenbotham, Defendant Hersem and Doe Defendant 1 continued to interrogate Mr. Meshal in Kenya, two FBI agents, Special Agent Charles Stern and Special Agent Robert Reilly, visited Mr. Meshal's home in Tinton Falls, New Jersey, and asked Mr. Meshal's father, Mohammed Meshal, if he knew where Mr. Meshal was. Mohammed explained that he had not spoken to his son since December. The agents informed Mohammed that Mr. Meshal had been seized in Kenya near the Somali border and was being detained in Kenya. The agents told Mohammed that they could arrange a phone call between him and his son.

103. On February 7, 2007, Scott Niederman (spelling based on phonetic "Neederman"), a consular affairs officer from the U.S. Embassy in Nairobi, visited Mr. Meshal in jail for about fifteen minutes. He was accompanied by a Kenyan man dressed in plain clothes. Mr. Niederman told Mr. Meshal that he was trying to get him home, and that someone would be in touch with his family. Mr. Meshal explained to Mr. Niederman that U.S. officials had been interrogating him at a hotel in Nairobi. Mr. Niederman appeared shocked. Mr. Niederman asked Mr. Meshal how he knew that they were Americans. Mr. Meshal replied that they had American accents and identified themselves as U.S. agents. Mr. Niederman asked if they had disclosed which agency they were from. Mr. Meshal replied that he was told by the Kenyans that they were from the U.S. Embassy and that at least one agent had identified himself as FBI. Looking

confused and concerned, Mr. Niederman asked how they had been treating him. Mr. Meshal explained that they had threatened him with torture, forced disappearance, and other serious harm, and warned him that they would send him to Somalia, or to Israel, or Egypt to extract information.

104. Mr. Niederman gave Mr. Meshal his business card and said that he didn't know what was going on, but that if Mr. Meshal was moved from the jail, he should contact him immediately. Mr. Niederman's tone and facial expressions concerned Mr. Meshal.

105. That same day, Agents Stern and Reilly returned to Mohammed Meshal's house in New Jersey and told him that they would not be able to arrange a call between Mohammed and his son. On information and belief, Defendant Higgenbotham, Defendant Hersem, and Doe Defendant 1 prevented, conspired to prevent, and/or actively and substantially participated in preventing Agents Stern and Reilly from arranging a call between Mohammed Meshal and Mr. Meshal. On information and belief, Defendant Higgenbotham, Defendant Hersem, and Doe Defendant 1 acted at the direction, with the approval, and/or with the knowledge of U.S. government officials located in the District of Columbia, including officials at FBI headquarters.

106. Shortly thereafter Mr. Niederman called Mohammed Meshal and confirmed that Amir Meshal was being detained in Kenya. Mr. Niederman asked Mohammed Meshal to wire money so that a ticket from Nairobi to New York could be purchased for Amir Meshal's return to the United States.

107. The next day (February 8, 2007), Mr. Niederman, who remained uninformed about the efforts of Defendant Higgenbotham, Defendant Hersem, and Doe Defendant 1

to have Mr. Meshal rendered to Somalia rather than being sent home, told Mr. Meshal that he had spoken with his family in New Jersey and was working on getting him home.

Amir Meshal's Rendition to Somalia and Ethiopia

108. On February 9, just days after Kenyan courts began hearing the habeas petitions filed by MHRF on behalf of detainees who contested the legality of their confinement, and as at least one court was prepared to grant those petitions, Kenyan officials dressed in dark clothes, wearing goggles, and carrying guns, arrived at the Kileleshwa Police Station in the middle of the night and removed Mr. Meshal and one other prisoner from the jail cell. The Kenyan officials tightly zip-tied Mr. Meshal's hands behind his back and then forced Mr. Meshal into a white Peugeot station wagon.

109. Mr. Meshal was transported from the jail to the Jomo Kenyatta International Airport and placed on a privately chartered aircraft from Bluebird Aviation along with twelve other individuals identified on the passenger manifest.¹ A black hood was placed over Mr. Meshal's head. He could barely sit in his seat because his hands were still awkwardly handcuffed behind his back.

110. Mr. Meshal heard one of the Kenyans on the flight mention Somalia. Mr. Meshal was terrified of being returned to Somalia and believed that he would be seriously injured or killed if taken there because of the violence and other abuses that were occurring.

111. After the plane landed, men speaking a language Mr. Meshal believed to be Somali entered the plane and removed the prisoners. Mr. Meshal believed (and later learned) that he had been sent back to Somalia, just as Defendant Hersem had threatened

¹ A copy of the manifest has been published at http://www.reprive.org.uk/static/downloads/2007_03_21_Rendition_Report.pdf.

would happen. The men escorted Mr. Meshal and the other prisoners onto trucks and drove them to a place the prisoners later called “the cave.” At the cave, the soldiers removed Mr. Meshal’s hood and directed him to descend steps to an underground room that was almost completely dark. Armed men snipped the zip-ties that had held Mr. Meshal’s hands behind his back and chained his wrists in front of him.

112. Mr. Meshal remained handcuffed in the cave for two days. He was terrified and thought that he was going to be executed. The cave was approximately twenty-five square feet in size and did not contain any windows or toilets. The cave was excruciatingly hot and Mr. Meshal had difficulty breathing. Only a little light filtered through from small holes pierced into the door that led to the outside. When guards opened this door, Mr. Meshal noticed that enormous cockroaches were clustered in the corners of the cell and large black millipedes were all over the walls.

113. On or about February 10, 2007, Mr. Niederman again spoke with Mr. Meshal’s father, Mohammed. Mr. Niederman explained to Mohammed that he had lost contact with Mr. Meshal, that he did not know where Mr. Meshal was, and that he could not help him further.

114. At the court hearing for consideration of the habeas petitions filed by MHRF on behalf of Mr. Meshal and other detainees being held without charge, which took place following Mr. Meshal’s rendition, Kenyan government authorities presented a February 10, 2007 flight manifest indicating that Mr. Meshal and other prisoners rendered with him were passengers on a Blue Bird Aviation flight from Kenya to Baidoa, Somalia, and thus were no longer located within the jurisdiction of the court. The habeas cases were accordingly dismissed.

115. On or about February 12, 2007, men who appeared to be members of the Somali military came to the cave and ordered all thirteen of the prisoners who had been rendered from Kenya, except four British detainees—Mohammed Ezzoueck, Reza Afsharzadagen, Hamza Chentouf, and Shahajan Janjua—to leave the cell. The four British detainees were handed over to British officials in Somalia and were immediately returned to England, where they were released.

116. The Somalis handed Mr. Meshal and the eight others who remained over to individuals wearing Ethiopian military uniforms. The uniformed men blindfolded Mr. Meshal and brought him to an airport.

117. At the airport, the Ethiopians escorted Mr. Meshal and the others to what appeared to be a storage tent that was patrolled by armed guards.

118. Mr. Meshal remained in this tent with his hands shackled from approximately February 12 to February 16, 2007. Guards brought the prisoners dry biscuits, marmalade, and water once a day. Mr. Meshal was without adequate food or water and was hungry and thirsty all of the time.

119. On or about February 16, 2007, the Ethiopian soldiers took Mr. Meshal and the other prisoners to a plane. The prisoners were all blindfolded. After the plane took off, one of the Ethiopians informed Mr. Meshal that they were being taken to Ethiopia.

Daniel Maldonado's Return to the United States and the Defendants' Roles in Mr. Meshal's Rendition

120. On or about February 9, 2007, the same day Mr. Meshal was rendered to Somalia, U.S. officials transported Daniel Maldonado and his three children back to the United States from Kenya. U.S. officials transported Mr. Maldonado to the United States, rather than directing, ordering, authorizing, approving, or otherwise acquiescing to

his rendition to Somalia and/or Ethiopia because Mr. Maldonado admitted facts that the U.S. officials believed would support a federal charge against him for receiving military-type training from a foreign terrorist organization. Mr. Maldonado subsequently pled guilty and agreed to cooperate with the government in exchange for a reduced sentence.

121. According to statements made at the time by two U.S. officials familiar with Mr. Meshal's case, Daniel Maldonado was returned to the United States because he quickly confessed to involvement with al Qaeda, but Mr. Meshal was not brought back to the United States because he did not admit to such involvement. One U.S. official indicated that Mr. Meshal was not brought home because there was insufficient evidence to charge and jail Mr. Meshal in the United States. Jonathan S. Landay and Shashank Bengali, *U.S. Citizen Stuck in Ethiopian Jail: Case Raises Questions About U.S. Policies in Pursuing Terror Suspects*, [Albany] Times Union, Mar. 17, 2007, at A4.

122. In addressing the rendition of detainees from Kenya to Somalia and Ethiopia, a senior Western government official based in Kenya stated publicly, "They've concealed their role, but you can assume the Americans were behind all these renditions. By sending prisoners to Ethiopia, they had a convenient place to interrogate people." *U.S. Interrogates Terror Suspects in Ethiopian Jails*, Spiegel Online, Jun. 11, 2007, <http://www.spiegel.de/international/world/0,1518,487893,00.html>. A U.S. human rights group that extensively investigated the events found that the United States, at minimum, was "complicit" in the rendition of detainees from Kenya to Somalia and Ethiopia. Steve Bloomfield, *Testimony: Kenyan Men Recently Released From an Ethiopian Jail Say U.S. Intelligence Officials Interrogated Them*, Newsweek, Nov. 19, 2008.

123. In light of the role of Defendant Higgenbotham, Defendant Hersem, and Doe Defendant 1 in the Kenya jump team, their intensive involvement in the investigation and interrogation of Mr. Meshal in Kenya, the operations of the FBI in the CJTF-HOA counter-terrorism effort in Kenya at the time, including the close partnership between the FBI jump team members and Kenyan authorities in conducting these law enforcement operations, on or about February 9, 2007, one or more of Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 directed, authorized, conspired to effect, actively and substantially participated in, and/or took affirmative action(s) demonstrating consent and acquiescence to Mr. Meshal's rendition to Somalia and Ethiopia. One or more of Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 took such action, despite the manifest danger and risk of harm to Mr. Meshal, because Mr. Meshal had steadfastly maintained his innocence of any terrorist activity and because U.S. officials wished to interrogate him further without affording him the guarantees to U.S. citizens mandated under the Fourth and Fifth Amendments to the U.S. Constitution.

124. On information and belief, Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2, acted with the approval or knowledge of U.S. government officials located in the District of Columbia, including officials at FBI headquarters, and U.S. government officials located at the FBI Legal Attaché office in Nairobi.

125. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2, who were very familiar with the situation in the region, knew, or reasonably should have known, that Mr. Meshal would face grave danger and risk of harm if he were rendered to Somalia at that time. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2, for example, knew, or reasonably should have known, that following the

December 27, 2006 attack by the U.S.-Ethiopia-backed TFG on the SCIC and the SCIC's subsequent and abrupt collapse, widespread human rights violations were occurring in Somalia because of the lack of effective governance institutions, the widespread availability of small arms, and conflicts between armed political factions and warlords over control of territory. Bureau of Democracy, Human Rights, & Labor, U.S. Dep't of State, Country Reports on Human Rights Practices—2006: Somalia (March 6, 2007); *Somalia: The Tough Part is Ahead*, Africa Briefing No. 45, (Int'l Crisis Group, Nairobi/Brussels), Jan. 26, 2007, at 1.

126. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2, also knew, or reasonably should have known, that the widespread human rights violations taking place in Somalia at the time included kidnapping, torture, beatings, harsh and life-threatening prison conditions, and arbitrary arrest and detention. Country Reports on Human Rights Practices—2006: Somalia, *supra*.

127. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 also knew, or reasonably should have known, that Mr. Meshal would face grave danger and risk of serious harm if rendered to Ethiopia because at that time human rights violations were similarly widespread and included, among other things, widespread mistreatment of detainees, poor prison conditions, arbitrary arrest and detention, the detention of thousands of individuals without charge, and lengthy pretrial detention. Bureau of Democracy, Human Rights, & Labor, U.S. Dep't of State, Country Reports on Human Rights Practices—2006: Ethiopia (March 6, 2007).

128. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 also knew, or reasonably shown have known, that Ethiopia was more permissive of

detention without charge than Kenya and that the detention of Mr. Meshal and others there would not face the judicial pressure it had faced from the Kenyan courts. They knew, or reasonably should have known, that if Mr. Meshal was rendered to Ethiopia, FBI agents could ensure Mr. Meshal's continued detention, and could continue to interrogate him without confronting the prospect that a court would order his release, or that Mr. Meshal would be afforded access to counsel.

129. On information and belief, on February 16, 2007, the FBI Legal Attaché office in Nairobi informed the FBI Office of International Operations in the District of Columbia and the FBI Legal Attaché office in Sanaa, Yemen, which is responsible for FBI activity in Ethiopia, that Mr. Meshal was, or would soon be, in Ethiopia. On information and belief, this information was conveyed to initiate and facilitate the further interrogation of Mr. Meshal by U.S. officials, including Doe Defendant 1, who had interrogated Mr. Meshal in Kenya.

Mr. Meshal's Detention in Ethiopia and Continued Interrogation by the FBI

130. When the flight from Somalia landed in Addis Ababa, Ethiopian soldiers escorted Mr. Meshal and the other prisoners off the plane, placed them in the back of a pick-up truck, and drove them approximately thirty minutes to a facility. Soldiers removed Mr. Meshal's blindfold. Mr. Meshal saw the facility, which appeared to be a military barracks.

131. Mr. Meshal immediately recognized some of the prisoners as people whom he had encountered in the jungle between Somalia and Kenya after fleeing the violence in Mogadishu. There were approximately fifty prisoners being held at the facility, including approximately eleven women and thirteen children who had been rendered from Kenya to

Ethiopia. Paul Salopek, *Renditions Fuel Anger Against U.S.*, Chicago Tribune, Dec. 4, 2008, available at http://www.chicagotribune.com/news/nationworld/ch-shadow_war3dec04,0,84409,full.story; *U.S. Interrogates Terror Suspects in Ethiopian Jails*, Spiegel Online, Jun. 11, 2007, <http://www.spiegel.de/international/world/0,1518,487893,00.html>.

132. On arrival at the facility, Mr. Meshal was briefly questioned by five or six Ethiopians dressed in civilian clothing. The questioning lasted approximately ten minutes. As in Kenya, the questioning sought only the most basic details from Mr. Meshal.

133. Mr. Meshal tried to ask why he was being held and demanded that he be able to see an attorney. His questions were not answered and his demand to see an attorney was ignored. After this first meeting, Mr. Meshal was never questioned by Ethiopian intelligence, police, or military officers for the remaining three-and-one-half months that he was detained in Ethiopia.

134. The location of the prison facility where Mr. Meshal and the other detainees were held remained secret. Mr. Meshal was placed in a cell with five other prisoners. There were four or five other cells in the facility. Mr. Meshal was prohibited from leaving the cell and had extremely limited access to bathroom facilities.

135. Each day, prisoners were taken out of the prison facility and moved to a different location for interrogation. While most prisoners were returned to the facility at the end of the day, on a few occasions certain prisoners did not return for days and sometimes for weeks. When prisoners returned, all said that they had been interrogated by American officials.

136. The Ethiopian government served as the detaining authority for persons of interest to the United States. Human Rights Watch, “Why Am I Still Here?": The 2007 Horn of Africa Renditions and the Fate of Those Still Missing” 16 (2008).

137. During the three-plus months that Mr. Meshal was imprisoned in Ethiopia, U.S. officials, including FBI agents, actively and substantially participated in the detention and interrogation of individuals in Ethiopia who had fled the violence in Somalia. According to media accounts, one hotel in Addis Ababa “swarmed with U.S. intelligence officers during the processing of detainees” in early 2007 and “many ex-prisoners have described being interrogated by American agents using names such as ‘Dennis’ or ‘Tom.’” Paul Salopek, *Renditions Fuel Anger Against U.S.*, Chicago Tribune, Dec. 4, 2008, *available at* http://www.chicagotribune.com/news/nationworld/ch-shadow_war3dec04,0,84409,full.story. FBI agents interrogated detainees who were believed by the U.S. government to be involved in “terrorist attacks and current threats of terrorism.” Anthony Mitchell, *U.S. Agents Visit Ethiopian Secret Jails*, Assoc. Press, Apr. 3, 2007. One Western diplomat who was working in the region at the time stated the he saw “the United States as playing a guiding role” in the detentions. *Id.*

138. When, for example, U.S. officials conducting interrogations lost interest in a particular detainee, the detainee was released from custody. Human Rights Watch, *supra* at 16.

139. On information and belief, U.S. government officials, including officials designated by the Attorney General and the Director of Central Intelligence, ordered, directed, or authorized Doe Defendants 1 and 2, as well as other U.S. agents, to

interrogate Mr. Meshal in Ethiopia. On information and belief, these actions were taken pursuant to the procedures set forth on page 17 of The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, which were in force at the time and provided that "[t]he FBI may conduct investigations abroad, participate with foreign officials in investigations abroad, or otherwise conduct activities outside the United States with the written request for approval of the Director of Central Intelligence and the Attorney General or their designees." The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection 17 (Oct. 31, 2003) (declassified Aug. 2, 2007).

140. After approximately one week of incommunicado detention, on or about February 23, 2007, Mr. Meshal was taken from the prison facility by an Ethiopian guard and driven approximately forty-five minutes to a gated villa where he was subjected to intense interrogation by U.S. agents.

141. Over the next three months, Mr. Meshal was interrogated by U.S. agents at the same gated villa on a regular basis. On each occasion, an Ethiopian named Asafah arrived at the prison at approximately 5:00 a.m. and called out Mr. Meshal's name. Asafah removed Mr. Meshal from the prison, placed him in a Toyota Land Cruiser, drove him to the villa, and escorted him inside. Asafah was not present during Mr. Meshal's interrogations and never asked Mr. Meshal any questions.

142. On the day of his first interrogation by U.S. officials in Ethiopia, Mr. Meshal was blindfolded before exiting the prison. Once at the villa, Mr. Meshal was guarded by an Ethiopian wearing civilian clothing and carrying a handgun until American

interrogators requested him by name. Mr. Meshal's blindfold was not removed until he was brought into a room with the American interrogators.

143. On later occasions, Mr. Meshal was not blindfolded when taken from the prison to the villa for interrogation and arrived at the villa before the American interrogators. On these occasions, Mr. Meshal waited by the garage or driveway of the villa under close watch of an armed Ethiopian guard and saw Asafah drive to the villa in a vehicle carrying American agents. Sometimes Asafah drove a microbus that carried approximately ten American agents. Other times, Asafah drove a Land Cruiser that carried fewer than ten American agents. The windows of the microbus and Land Cruiser were clear, so Mr. Meshal could see the individuals sitting inside. Mr. Meshal knew that the agents driven by Asafah to the villa were American because, after their arrival at the villa, he heard them speaking English with American accents. Upon arrival at the villa, the agents entered a large room where they waited before separating into smaller groups to interrogate detainees in different rooms in the villa.

144. Only American officials interrogated Mr. Meshal, including Doe Defendant 1, who had participated in Mr. Meshal's interrogations in Kenya, an American official who introduced himself to Mr. Meshal as "Dennis" and an American official who was bald, who did not provide his name, and who participated only in Mr. Meshal's last interrogation in Ethiopia. No Ethiopian official ever interrogated Mr. Meshal.

145. The individual who introduced himself to Mr. Meshal as "Dennis" is Doe Defendant 2. The true, full, and accurate name of Doe Defendant 2 has been filed with the Court under seal. Doe Defendant 2 was a clean-shaven African-American man, who appeared to be in his late forties and was stocky. He stood about 5' 10" tall and had short

black hair. Doe Defendant 2 usually wore slacks or casual pants, a button-down shirt or polo shirt, and black sneakers or boots when he interrogated Mr. Meshal. On one occasion, Doe Defendant 2 wore a Boys & Girls Club of New York t-shirt. During Doe Defendant 2's last interrogation of Mr. Meshal, he wore a suit. Doe Defendant 2 told Mr. Meshal that he was from Brooklyn. Doe Defendant 2 spoke with an American accent, although Mr. Meshal could not discern any specific regional accent. Doe Defendant 2 refused to provide his true full name or title to Mr. Meshal. Doe Defendant 2 was a FBI officer and a member of the Joint Terrorism Task Force.

146. Doe Defendant 1 led each of the interrogations of Mr. Meshal in Ethiopia, except for the final interrogation, and was joined at times by Doe Defendant 2. Doe Defendant 2 led the final interrogation of Mr. Meshal in Ethiopia and was joined by the above-mentioned bald American official during the interrogation.

147. The interrogations of Mr. Meshal that took place during the first two months of his detention in Ethiopia generally lasted a full day or close to a full day. On many of these occasions, Mr. Meshal was taken from the prison to the interrogation site early in the morning and returned to the prison after dark. Interrogations that took place during the last month of Mr. Meshal's detention in Ethiopia generally were shorter, typically lasting a few hours or less.

148. On the first day that Mr. Meshal was interrogated by U.S. officials in Ethiopia, Doe Defendant 1 asked Mr. Meshal if he was surprised to see him. Doe Defendant 1 told Mr. Meshal that he and his fellow FBI agents thought Mr. Meshal wasn't "being truthful" with them in Kenya, which is why Mr. Meshal was now in Ethiopia. Doe Defendant 1 also told Mr. Meshal that his truthfulness now would

determine whether he could ever go home. Doe Defendant 2 remained in the background while Doe Defendant 1 conducted the interrogation.

149. Doe Defendant 1 appeared to lead and control all of the interrogations of Mr. Meshal, except the last interrogation. At the beginning of each interrogation that he led, Doe Defendant 1 presented Mr. Meshal with a document to sign, which notified him that he could refuse to answer any questions without a lawyer present. Upon information and belief, the document was a “waiver of rights” (or “advice of rights”) form of the type commonly used by FBI agents prior to conducting an interrogation in the absence of counsel. Each time, Doe Defendant 1 made Mr. Meshal believe that he had no choice except to sign the document if he ever wanted to go home and that he and other FBI agents would determine whether and when Mr. Meshal could go home. Each time, Mr. Meshal signed the document.

150. During the interrogations, Doe Defendant 1 constantly suggested that Mr. Meshal was a terrorist or had connections to terrorists, had received weapons training and special training to withstand interrogations in an al Qaeda training camp, and had served as a translator for al Qaeda leadership in Somalia. He also asked Mr. Meshal about particular people from the United States and people whom he had encountered while fleeing Somalia. Doe Defendant 1 frequently accused Mr. Meshal of lying. Doe Defendant 2 participated in several of the interrogations led by Doe Defendant 1; at other times, Doe Defendant 2 remained silent and stood or sat in the background.

151. During the period in which Mr. Meshal was detained in Ethiopia, other prisoners were also transported to the villa for interrogations. Typically, four or five other prisoners were taken with Mr. Meshal in the Land Cruiser to the villa, where they

too were interrogated, each in different rooms. The other prisoners told Mr. Meshal that their interrogations were conducted by non-Ethiopian officials, including the FBI in numerous instances.

152. Mr. Meshal repeatedly asked to speak with a lawyer. Despite these requests, Doe Defendants 1 and 2 directly prohibited and/or actively and substantially participated with Ethiopian officials in prohibiting Mr. Meshal from contacting, or otherwise communicating with, any attorney during the entire time he was detained in Ethiopia.

153. Mr. Meshal was also denied all access to the International Committee for the Red Cross or any other international humanitarian or human rights organization during the entire time he was detained in Ethiopia.

154. While he was not being interrogated, Mr. Meshal remained in his prison cell and handcuffed. Often his hands were cuffed tightly behind his back, making it difficult to sit or lie down. On several occasions, Mr. Meshal was moved to a solitary confinement cell in a nearby courtyard, which was barely large enough to fit Mr. Meshal if he lay down. Mr. Meshal was twice forced to remain in solitary confinement for several days.

155. On three occasions, Mr. Meshal was taken along with a group of other prisoners for closed proceedings before an Ethiopian military tribunal. The first appearance occurred on or around March 16, 2007. At the tribunal, there were three military judges, a prosecutor, and Arabic, Swahili, Somali, and English translators. The three-member tribunal asked Mr. Meshal a few basic questions: his name and nationality; where he was arrested; whether he had carried a weapon; and whether he had been in military uniform. When Mr. Meshal asked for a lawyer, one of the judges told him that

he had no rights until his status had been determined by the tribunal. The judge also said that he would be classified as “innocent,” as an “enemy combatant,” or as an “unlawful enemy combatant.” No formal charges were ever filed against Mr. Meshal, nor was Mr. Meshal ever provided any documentation in connection with the proceeding.

156. A few days after Mr. Meshal’s first appearance before the military tribunal, Mr. Meshal was interrogated. During this interrogation, Doe Defendant 1 immediately asked Mr. Meshal about the military tribunal proceeding. After Mr. Meshal described to him what had happened, Doe Defendant 1 said that Mr. Meshal would be permitted to go back to the United States if Mr. Meshal told him what he wanted to know. Mr. Meshal asked Doe Defendant 1 what more he wanted to know and said that he had told Doe Defendant 1 everything. Doe Defendant 1 replied that he wanted to know the truth. Doe Defendant 1 then interrogated Mr. Meshal again, asking whether he had received explosives training and counter-intelligence training. He also pressed Mr. Meshal to admit that he was connected to al Qaeda. Doe Defendant 1 told Mr. Meshal that he would not be allowed to go home unless Mr. Meshal told him what he wanted to hear.

157. Although FBI agents had been regularly interrogating Mr. Meshal in Ethiopia for almost one month, U.S. consular officials did not gain access to Mr. Meshal until on or around March 21, 2007. This consular access did not occur until after McClatchey Newspapers first reported that Mr. Meshal, an American citizen, was being held at a secret location in Ethiopia, and after the fact of Mr. Meshal’s detention in Ethiopia became public. *See American’s Rendition to an Ethiopian Prison Raises New Questions*, McClatchey Newspapers, Mar. 16, 2007. On information and belief, Doe Defendant 1 and the other FBI agents who were interrogating Mr. Meshal in Ethiopia deliberately

failed to notify U.S. consular officials that Mr. Meshal was being detained in the country. The consular visit occurred at the Ethiopian security headquarters in the presence of one Ethiopian officer and an officer of the FBI Legal Attaché. Mr. Meshal explained to the consular official the circumstances of his detention.

158. Following increasing media attention surrounding Mr. Meshal's detention, Mr. Meshal's Congressman, Representative Rush Holt (D-NJ), began to make inquiries about Mr. Meshal's status and fate to the FBI and State Department and began to call attention to Mr. Meshal's plight in Congress.

159. On or about March 29 and April 3, 2007, Mr. Meshal was taken to the Ethiopian National Intelligence and Security Service Headquarters in Addis Ababa for his second and third consular visits. Each visit lasted approximately thirty minutes and occurred in the presence of an Ethiopian officer.

160. On or about April 13, 2007, Mr. Meshal was brought before the Ethiopian military tribunal a second time. He appeared along with approximately eleven other prisoners and was again denied access to counsel. The three-member tribunal told Mr. Meshal that it was continuing to assess his status. Again, no formal charges were filed against Mr. Meshal.

161. On or around April 16, 2007, Plaintiff's father, Mohammed Meshal, contacted the U.S. Ambassador to Ethiopia, Donald Yamamoto, to discuss the proceedings before the Ethiopian military tribunal. Ambassador Yamamoto told him that the outcome of the April 13, 2007 military tribunal proceedings "did not matter" in terms of when Mr. Meshal was to be returned home.

162. On or around May 12, 2007, Mr. Meshal was brought before the Ethiopian military tribunal a third time. He was not individually questioned by the tribunal. Mr. Meshal never received any decision or determination in his case by the military tribunal and no charges were ever filed against him.

163. Prior to, and following, each of the proceedings before the military tribunal, Doe Defendants 1 and 2 continued to interrogate Mr. Meshal at the villa.

164. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 intentionally prolonged Mr. Meshal's detention in Ethiopia in order to conduct further interrogations of Mr. Meshal without affording him the rights due to American citizens under the Fourth and Fifth Amendments to the Constitution. Upon information and belief, Doe Defendants 1 and 2 were speaking to Defendants Higgenbotham and Hersem about Mr. Meshal during this time.

165. Upon information and belief, Defendant Higgenbotham, Defendant Hersem and Doe Defendants 1 and 2 communicated repeatedly with U.S. government officials in the FBI, the U.S. Department of Justice, and the U.S. Department of State to report on the progress of their interrogations of Mr. Meshal in Kenya and Ethiopia and to discuss whether sufficient evidence existed for federal authorities to transfer Mr. Meshal to the United States for criminal prosecution. Upon information and belief, the FBI officials with whom Defendants Higgenbotham and Hersem and Doe Defendants 1 and 2 communicated about Mr. Meshal included officials in the FBI Office of International Operations in the District of Columbia, other FBI officials located at FBI Headquarters in the District of Columbia, and officials of the FBI Legal Attaché offices in Nairobi, Kenya, and Sanaa, Yemen, both of which are managed by the FBI OIO.

Mr. Meshal's Return to the United States

166. On or about May 24, 2007, an Ethiopian guard came to Mr. Meshal's cell and informed Mr. Meshal that he would be released. No further explanation was provided. Mr. Meshal was then taken to the U.S. Embassy in Addis Ababa. That night, Mr. Meshal was flown back to the United States via Frankfurt. He arrived at John F. Kennedy International Airport on May 26, 2007. During the four months and three days that Mr. Meshal was detained abroad, he had lost approximately eighty pounds.

167. On the flight between Frankfurt and New York, Mr. Meshal noticed two men who seemed to be watching him very closely. Upon arrival in the United States, these men followed Mr. Meshal off the flight and, joined by two other men from the flight, immediately escorted Mr. Meshal to a customs office where he was detained for approximately an hour and a half. The customs agents made Mr. Meshal empty his pockets and bag. They questioned him about his travels and his plans upon his return to the United States. At one point, Mr. Meshal heard one of the customs officials yelling into a telephone, asking, "What am I supposed to do with this guy?" Eventually, the customs officials told Mr. Meshal that he was free to leave. Mr. Meshal then met his mother and father at the airport and returned with them to their home in New Jersey.

168. Mr. Meshal was and remains deeply traumatized by his treatment. U.S. officials threatened Mr. Meshal with serious physical and mental abuse, told him that he would be made to "disappear," and denied him access to counsel and other due process protections. U.S. officials also caused Mr. Meshal to be held, or actively and substantially participated with foreign authorities who caused him to be held, in stark and inhuman conditions without charge or legal basis. As the result of actions by these U.S.

officials, Mr. Meshal suffered physical injuries, pain and suffering, and severe mental anguish, as well as the loss of income and livelihood.

Partial Identification of Doe Defendant 1

169. On or around April 20, 2009, Mr. Meshal was watching a television news report about an alleged Somali pirate being brought to New York to face federal charges. The report aired video footage of federal law enforcement officers escorting the defendant out of a federal courthouse in New York and identified the officers as FBI agents. Mr. Meshal immediately recognized the agent standing to the right of the defendant as Doe Defendant 1, the U.S. official who had repeatedly interrogated Mr. Meshal in both Kenya and Ethiopia. Mr. Meshal had a clear memory of Doe Defendant 1's face and hairline, which permitted Mr. Meshal to recognize Doe Defendant 1 on television despite the fact that Doe Defendant 1 no longer wore the beard he had maintained in Kenya and Ethiopia. Astounded to see one of his interrogators on American television, Mr. Meshal watched the entire show and then found other channels showing similar video footage of Doe Defendant 1 escorting the defendant out of federal court. Each channel identified the agents escorting the defendant as FBI or federal law enforcement officers.

170. Mr. Meshal then conducted an Internet search for "Somali pirate in New York." Through the search, Mr. Meshal located a photo of Doe Defendant 1 standing to the right side of the alleged Somali pirate and escorting him, which matched the video footage he had seen on television. The caption to the photo indicated that the law enforcement agents were FBI officers.

CAUSES OF ACTION

I: FIFTH AMENDMENT (Violation of Substantive Due Process)

171. Defendants' actions described herein violate the Due Process Clause of the Fifth Amendment to the Constitution, which prohibits any person acting under color of U.S. law from subjecting or conspiring to subject any individual in U.S. custody or control to conduct that "shocks the conscience."

172. Defendants' violations of Plaintiff's Due Process rights give rise to a cause of action for damages directly under the Fifth Amendment, pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

173. Defendant Higgenbotham and Defendant Hersem are liable for violating Plaintiff's substantive due process rights because they personally subjected Plaintiff to threats of torture, serious injury, disappearance, and other serious harms during custodial interrogations in Kenya.

174. Doe Defendant 1 is also liable for violating Plaintiff's substantive due process rights because he actively and substantially participated in the coercive interrogations of the Plaintiff in Kenya, during which he was threatened with torture, serious injury, disappearance, and other serious harms.

175. Defendant Higgenbotham, Defendant Hersem and Doe Defendant 1 are also liable for the violation of Plaintiff's substantive due process rights because they directed, authorized, approved, conspired to effect, and/or actively and substantially participated in Mr. Meshal's detention in Kenya without due process and his illegal rendition from Kenya to Somalia and Ethiopia. As a result of these decisions, Plaintiff was subjected to treatment that shocks the conscience.

176. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 are also liable for the violation of Plaintiff's substantive due process rights in Somalia and Ethiopia because they were aware of the danger and risk of serious harm that Plaintiff faced if rendered to these countries from Kenya, including prolonged arbitrary detention and physical and mental abuse in detention, and because the Defendants took affirmative steps that created and/or increased this danger and risk, which did, in fact, result in serious to harm to Plaintiff.

177. Doe Defendants 1 and 2 are liable for the violation of Plaintiff's substantive due process rights because they directed, authorized, approved, conspired to effect, and/or actively and substantially participated in Mr. Meshal's custodial interrogation in Ethiopia and further detention of over three months in that country. As a result of these decisions, Plaintiff was subjected to treatment that shocks the conscience.

178. Each defendant had actual or constructive knowledge that his conduct toward Plaintiff violated his due process rights, and each had actual or constructive knowledge that his actions, orders, or omissions would lead to such violations.

179. Defendants acted under color of official authority in violating Plaintiff's due process rights.

180. Defendants' actions were a proximate cause of the violation of Plaintiff's due process rights. Plaintiff was a foreseeable victim of these acts.

181. Defendants' violations of Plaintiff's due process rights caused Plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

182. Defendants' violations of Plaintiff's substantive due process rights were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

**II: FIFTH AMENDMENT
(Violation of Procedural Due Process)**

183. Defendants' actions described herein violated the rights of Plaintiff under the Due Process Clause of the Fifth Amendment to the United States Constitution by depriving him of liberty without due process of law.

184. Defendants' orders, authorizations, and other actions violated Plaintiff's due process rights by: (a) subjecting him to prolonged, arbitrary, and indefinite detention without charges of any kind; (b) denying him access to a court or other meaningful process to challenge the legality of his detention; and (c) denying him access to counsel.

185. Defendants' actions, authorizations, and other actions depriving Plaintiff of his procedural due process rights give rise to a cause of action for damages directly under the Fifth Amendment, pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

186. Defendant Higgenbotham and Defendant Hersem are liable for violating Plaintiff's due process rights because they directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's illegal detention and custodial interrogation in Kenya and his illegal rendition to Somalia and Ethiopia, without due process of law.

187. Defendant Higgenbotham and Defendant Hersem are also liable for the violation Plaintiff's Fifth Amendment rights because Plaintiff's arbitrary, prolonged, and

illegal detention in Somalia and Ethiopia without due process of law was the foreseeable result of Mr. Meshal's illegal rendition from Kenya to Somalia and Ethiopia.

188. Doe Defendant 1 is liable for violating Plaintiff's Fifth Amendment rights because he directed, authorized, conspired to effect, and/or actively and substantially participated in Plaintiff's detention and custodial interrogation in Kenya, his illegal rendition to Somalia and Ethiopia, his continued detention in Somalia and Ethiopia for over three months, and his custodial interrogation in Ethiopia, all of which occurred without due process of law.

189. Doe Defendant 2 is liable for violating Plaintiff's Fifth Amendment rights because he directed, authorized, conspired to effect, and/or actively and substantially participated in Mr. Meshal's rendition to Somalia and Ethiopia, his continued detention in Somalia and Ethiopia for over three months, and his custodial interrogation in Ethiopia, all of which occurred without due process of law.

190. Each defendant had actual or constructive knowledge that the detention, rendition, and custodial interrogation of Plaintiff violated Plaintiff's due process rights, and each had actual or constructive knowledge that his actions, orders, practices, and/or omissions would lead to such violations.

191. Defendants acted under color of official authority in violating Plaintiff's due process rights.

192. Defendants' actions were a proximate cause of the violation of Plaintiff's due process rights. Plaintiff was a foreseeable victim of these acts.

193. Defendants' violations of Plaintiff's due process rights caused Plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

194. Defendants' violations of Plaintiff's due process rights were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

**III: FOURTH AMENDMENT
(Detention without Prompt Judicial Hearing)**

195. Defendants' actions described herein violated the rights of Plaintiff under the Fourth Amendment to the Constitution.

196. The actions, orders, authorizations, and other conduct of Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 violated Plaintiff's Fourth Amendment rights by subjecting him to prolonged, arbitrary, and indefinite detention without probable cause, without charge, and without any other prompt and effective process to challenge the legality of his detention.

197. Defendants' actions, orders, and authorizations, which deprived Plaintiff of his rights, give rise to a cause of action for damages directly under the Fourth Amendment, pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

198. Defendant Higgenbotham, Defendant Hersem, and Doe Defendants 1 and 2 are liable for violating Plaintiff's Fourth Amendment rights because they directed, authorized, conspired to effect, or actively and substantially participated in Plaintiff's prolonged detention without probable cause, and because they failed to provide him with

access to a court or prompt, effective legal process to challenge the legality of his detention.

199. Each defendant had actual or constructive knowledge that his detention of Plaintiff violated Plaintiff's Fourth Amendment rights, and each had actual or constructive knowledge that his actions, orders, policies, practices, and/or omissions would lead to such violations.

200. Defendants acted under color of official authority in violating Plaintiff's Fourth Amendment rights.

201. Defendants' actions were a proximate cause of the violation of Plaintiff's Fourth Amendment rights. Plaintiff was a foreseeable victim of these acts.

202. Defendants' violations of Plaintiff's Fourth Amendment rights caused Plaintiff to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial.

203. Defendants' violations of Plaintiff's Fourth Amendment rights were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

IV: TORTURE VICTIM PROTECTION ACT OF 1991

28 U.S.C. § 1350, note

204. Defendant Higgenbotham's and Defendant Hersem's actions described herein violated the rights of Plaintiff under the Torture Victim Protection Act of 1991, 28 U.S.C. § 1350, note.

205. Defendants Higgenbotham and Hersem are liable for violating the TVPA because they personally and intentionally subjected Plaintiff to severe mental pain and

suffering through extreme, outrageous, deliberate, and unusually cruel practices during their custodial interrogations of Plaintiff in Kenya. Such practices include threatening to send Mr. Meshal to Israel where he would be made to “disappear”; threatening to send Mr. Meshal to Egypt or another place where he would be tortured in a manner similar to the torture exacted upon the protagonist of the film, “Midnight Express”; threatening to send Mr. Meshal to Somalia, where law and order had broken down and where Mr. Meshal feared he would be killed (and where Mr. Meshal was subsequently rendered); warning Mr. Meshal that they “had ways of getting the information they want” by making him afraid for his life and safety; and threatening Mr. Meshal that “even [his] grandkids” would be negatively affected unless Mr. Meshal admitted to the connections that Defendant Higgenbotham and Defendant Hersem accused him of having.

206. Defendants Higgenbotham and Hersem intentionally subjected Mr. Meshal to torture in an effort to coerce him into confessing that he was connected to and/or had supported al Qaeda, even though Mr. Meshal had never supported, and was not connected to, al Qaeda and had repeatedly denied any such support or connection.

207. Defendant Higgenbotham’s and Defendant Hersem’s actions, orders, and authorizations that deprived Plaintiff of his rights give rise to a cause of action for damages directly under the TVPA, 28 U.S.C. § 1350, note.

208. Defendants Higgenbotham and Hersem each had actual or constructive knowledge that his torture of Plaintiff violated Plaintiff’s rights under the TVPA ,and each had actual or constructive knowledge that his actions, orders, policies, and/or practices would lead to such violations.

209. Defendants Higgenbotham and Hersem acted under actual or apparent authority of the Kenyan government and/or under the color of Kenyan law in conducting their interrogations of Plaintiff.

210. While Mr. Meshal was in nominal or apparent Kenyan custody (but was being detained at the direction, behest, and/or with the active and substantial participation of U.S. officials), Defendants Higgenbotham and Hersem subjected Mr. Meshal to interrogations during which they tortured Mr. Meshal. In order to conduct these interrogations, Defendants Higgenbotham and Hersem conspired with Kenyan officials, acted as willful participants in joint activity with Kenyan officials, and/or engaged in actions entwined with Kenyan authorities' detention of Mr. Meshal.

211. Alternatively, even if Mr. Meshal was under actual Kenyan custody (and was not detained at the direction, behest, and/or with the active and substantial participation of U.S. officials), Defendants Higgenbotham and Hersem subjected Mr. Meshal to interrogations during which they tortured Mr. Meshal. In order to conduct these interrogations, Defendants Higgenbotham and Hersem conspired with Kenyan officials, acted as willful participants in joint activity with Kenyan officials, and/or engaged in actions entwined with Kenyan authorities' detention of Mr. Meshal.

212. Defendants' actions were a proximate cause of the violation of Plaintiff's rights under the TVPA. Plaintiff was a foreseeable victim of these acts.

213. Defendants' violations of Plaintiff's rights under the TVPA caused Plaintiff to suffer damages, including severe mental and emotional pain and suffering, in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment including:

- A. Compensatory damages in an amount to be proven at trial;
- B. Punitive 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.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

/s/ Jonathan Hafetz_____

Jonathan Hafetz
Nusrat J. Choudhury
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Phone: 212-549-2500, Fax: 212-549-2583
jhafetz@aclu.org
nchoudhury@aclu.org

Arthur B. Spitzer (D.C. Bar No. 235960)
American Civil Liberties Union
of the Nation's Capital Area
1400 20th Street, N.W., Suite 119
Washington, D.C. 20036
Phone: (202) 457-0800, Fax: (202) 452-1868
artspitzer@aol.com

Hope R. Metcalf
National Litigation Project of the Allard K.
Lowenstein International Human Rights Clinic
Yale Law School
P.O. Box 209090
New Haven, CT 0650-9090
Phone: (203) 432-9404, Fax: (203) 432-9128
hope.metcalf@yale.edu

Counsel for Plaintiff Amir Meshal

May 9, 2010