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12 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14

Jose Padilla and Estela Lebron,

) **CASE NO.:** 3:08-cv-00035-JSW \_\_\_\_

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Plaintiffs,

) **FIRST AMENDED COMPLAINT**

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v.

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John Yoo,

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Defendant.

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**INTRODUCTION**

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2 1. Plaintiff Jose Padilla is a United States citizen who was imprisoned in a military  
3 brig in Charleston, South Carolina, without charge, and without ability to defend himself or to  
4 challenge his conditions of confinement. During his military detention, which lasted three years  
5 and eight months, Mr. Padilla suffered gross physical and psychological abuse upon the orders of  
6 high-ranking government officials as part of a systematic program of abusive interrogation  
7 mirroring the abuses committed at Guantanamo Bay, including but not limited to: extreme  
8 isolation; interrogation under threat of torture, deportation, and even death; prolonged sleep  
9 adjustment and sensory deprivation; exposure to extreme temperatures and noxious odors; denial  
10 of access to necessary medical and psychiatric care; substantial interference with his ability to  
11 practice his religion; and almost two years without any access to family, counsel or the courts.

12 2. Plaintiff Estela Lebron, Mr. Padilla's mother, was deprived of virtually all contact  
13 with him, in violation of her constitutional rights to familial association and communication. Ms.  
14 Lebron was injured by the continued denial of her right to association with her son during his  
15 prolonged, unlawful military detention.

16 3. Defendant John Yoo, a resident of this district, is one of several current and former  
17 government officials who abused their high positions to cause the unlawful military detention and  
18 interrogation of Mr. Padilla. Defendant set in motion Mr. Padilla's illegal interrogation and  
19 detention, both by formulating unlawful policies for the designation, detention, and interrogation  
20 of suspected "enemy combatants" and by issuing legal memoranda designed to evade all legal  
21 constraints on those policies and to immunize those who implemented them. In so doing, he  
22 abdicated his ethical duties as a government attorney and abandoned his office's tradition of  
23 objectivity.

24 4. As a proximate and foreseeable result of Defendant's abuse of his authority, Mr.  
25 Padilla was labeled an "enemy combatant" and illegally detained for three years and eight months  
26 without criminal charge under conscience-shocking conditions at the Naval Brig at Charleston,  
27 South Carolina, where he endured physical and psychological abuse intended to break his spirit.  
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1 combatant” at the Naval Consolidated Brig at the Naval Weapons Station in Charleston, South  
2 Carolina (“Brig”). On January 5, 2006, Mr. Padilla was transferred from the Brig to a federal  
3 detention center in Miami, Florida, where he stood trial before Hon. Marcia G. Cooke of the U.S.  
4 District Court for the Southern District of Florida on criminal charges unrelated to the allegations  
5 that had been used to justify his military detention without charge. On August 16, 2007, the jury  
6 returned a verdict of guilty; the judgment is currently subject to appeal.

7 12. Ms. Lebron is an American citizen and the mother of Mr. Padilla. For the Relevant  
8 Period, Ms. Lebron was denied virtually all contact with her son, Mr. Padilla.

9 13. During part of the Relevant Period, from 2001 through May 2003, Defendant John  
10 Yoo was Deputy Assistant Attorney General in the Office of Legal Counsel. Upon information  
11 and belief, Defendant Yoo is a citizen of the United States and a resident of California, where he  
12 maintains his primary residence. He is sued in his individual capacity.

### 13 **FACTUAL ALLEGATIONS**

#### 14 **Defendant Devised Illegal Interrogation and Detention Policies and Issued Memoranda** 15 **Intended to Justify Those Policies and Immunize Those Who Implemented Them.**

16 14. From 2001 to 2003, Defendant was Deputy Assistant Attorney General in the  
17 Office of Legal Counsel (OLC) of the Department of Justice.

18 15. As he has publicly acknowledged in his book “War By Other Means,” Defendant  
19 stepped beyond his role as a lawyer to participate directly in developing policy in the war on  
20 terrorism. He shaped government policy in his role as key member of a small, secretive, and  
21 highly-influential group of senior administration officials known as the “War Council,” which met  
22 regularly “to develop policy in the war on terrorism.”

23 16. Defendant further acted outside the scope of his employment at OLC by taking  
24 instructions directly from White House Counsel Alberto Gonzales (“Gonzales”) and providing  
25 Gonzales with verbal and written advice without first consulting Attorney General Ashcroft.

26 17. The OLC assists the Attorney General in providing the President with legal  
27 guidance necessary to ensure that the Executive complies with our Constitution and laws. OLC  
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1 has a long and powerful tradition of providing the Executive with fair appraisals of applicable law,  
2 even when that appraisal may constrain the President's policy choices.

3 18. According to former Assistant Attorney General and OLC head Jack Goldsmith  
4 ("Goldsmith"), after September 11, 2001, Goldsmith's predecessor as head of OLC, then-Assistant  
5 Attorney General Jay Bybee ("Bybee"), "largely delegated OLC's war-on-terrorism  
6 responsibilities to Yoo."

7 19. In his role as the *de facto* head of war-on-terrorism legal issues, Defendant wrote  
8 and promulgated a series of memoranda (the "Memos"). The Memos included but were not  
9 limited to:

10 a. A memorandum dated October 23, 2001 from Defendant to Gonzales and  
11 Department of Defense General Counsel Haynes ("Haynes") regarding *Authority for Use of*  
12 *Military Force to Combat Terrorist Activities Within the United States*, which concluded, *inter*  
13 *alia*, that "the Fourth Amendment had no application to domestic military operations," and  
14 "restrictions outlined in the Fifth Amendment simply do not address actions the Executive takes in  
15 conducting a military campaign against the nation's enemies." Though the memorandum involves  
16 the use of military force within the United States, the Executive has so far refused to release the  
17 memorandum to the American public;

18 b. A memorandum dated December 21, 2001 from Defendant to Haynes regarding  
19 *Possible Criminal Charges Against American Citizen Who Was a Member of the Al Qaeda*  
20 *Terrorist Organization or the Taliban Militia*. The Executive has so far refused to release the  
21 memorandum to the public;

22 c. A draft memorandum dated January 9, 2002 from Defendant to Haynes on the  
23 *Application of Treaties and Laws to al Qaeda and Taliban Detainees* (attached as Exhibit A);

24 d. A memorandum dated January 22, 2002 to Gonzales on the *Application of Treaties*  
25 *and Laws to al Qaeda and Taliban Detainees*, signed by Bybee but drafted by Defendant Yoo  
26 (attached as Exhibit B);

1 e. A memorandum dated February 26, 2002 to Haynes on *Potential Legal Constraints*  
2 *Applicable to Interrogations of Persons Captured by U.S. Armed Forces in Afghanistan*, signed by  
3 Bybee but, upon information and belief, created by Defendant (attached as Exhibit C);

4 f. Upon information and belief, an OLC memorandum drafted in or about May 2002  
5 regarding access to counsel and legal mail by detainees held at the naval brig in Norfolk and  
6 Charleston;

7 g. A memorandum dated June 27, 2002 from Defendant to Assistant Attorney General  
8 Bryant of the Office of Legislative Affairs regarding *The Applicability of 18 U.S.C. Sec. 4001(a)*  
9 *to Military Detention of United States Citizens*. The Executive has so far refused to release the  
10 memorandum to the public;

11 h. A memorandum dated August 1, 2002 to Gonzales on *Standards of Conduct for*  
12 *Interrogation under 18 U.S.C. §§ 2340-2340A*, signed by Bybee but created by Defendant, and  
13 concluding, *inter alia*, that an interrogation technique must cause damage that rises "to the level of  
14 death, organ failure, or the permanent impairment of a significant body function," in order to be  
15 considered torture (attached as Exhibit D);

16 i. Upon information and belief, a second memorandum produced during August 2002  
17 addressing the legality of particular interrogation techniques that the CIA wished to employ. The  
18 Executive has so far refused to release the memorandum to the public;

19 j. An opinion dated March 14, 2003, from Defendant to Haynes, on *Military*  
20 *Interrogation of Alien Unlawful Combatants Held Outside the United States*, extending authority  
21 to use harsh interrogation techniques against high-level prisoners held at Guantanamo Bay  
22 ("Guantanamo") and other facilities under DOD control, and approving the use of mind-altering  
23 drugs during interrogations (attached as Exhibit E).

24 20. Upon information and belief, Defendant also reviewed and approved a November  
25 27, 2002 memorandum by Haynes, attached as Exhibit F ("Haynes Memo"), which recommended  
26 that Secretary of Defense Rumsfeld ("Rumsfeld") approve for use by the military a range of  
27 aggressive interrogation techniques not permitted by the military interrogation field manual.  
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1           21. The Memos advised *inter alia* that there were no legal constraints — either  
2 domestic or international — on the Executive’s policies with respect to the detention and  
3 interrogation of suspected terrorists. According to Defendant, neither the Fourth nor Fifth  
4 Amendments placed any limitations on the President’s power to capture, interrogate or detain  
5 terrorism suspects, inside the United States or outside it. Likewise, the memoranda instructed that  
6 the Geneva Conventions were inapplicable to detention and interrogation of terrorism suspects.

7           22. The Memos did not provide the fair and impartial evaluation of the law required by  
8 OLC tradition and the ethical obligation of an attorney to provide the client with an exposition of  
9 the law adequate to make an informed decision. Rather, as former CIA director James Woolsey,  
10 Defense Policy Board member Professor Ruth Wedgwood, and former Assistant Attorney General  
11 Goldsmith have variously observed, the Memos are “deeply flawed: sloppily reasoned, overbroad,  
12 and incautious,” “rest on cursory and one-sided legal arguments,” “lack the tenor of detachment  
13 and caution that usually characterizes OLC work,” and patently “bend and twist to avoid any legal  
14 restrictions.” Goldsmith has further observed that “[i]n their redundant and one-sided effort to  
15 eliminate any hurdles posed by the torture law, and in their analysis of defenses and other ways to  
16 avoid prosecution for Executive violation of federal laws, the opinions could be interpreted as if  
17 they were designed to confer immunity for bad acts.” According to Alberto Mora, then-General  
18 Counsel to the Navy, Yoo’s memo on interrogation techniques was “fundamentally in error.”  
19 Mora went on explain that “[b]ecause [the memo] identifies no boundaries to action – more it  
20 alleges there are none – it is virtually useless as guidance as now drafted and dangerous in that it  
21 might give a false sense of comfort.” See Alberto J. Mora, *Memorandum for Inspector General,*  
22 *Department of the Navy*, July 7, 2004 (“Mora Memo”), attached hereto as Exhibit G.

25           23. Upon information and belief, Defendant did not in the Memos attempt to provide  
26 fair legal analysis to guide the Executive’s decision-making, but instead intentionally used the  
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1 Memos to evade well-established legal constraints and to justify illegal policy choices that he  
2 knew had already been made – sometimes by virtue of his own participation in the War Council.

3 24. Alternatively, upon information and belief, Defendant was deliberately indifferent  
4 to the fact that the policies outlined in the Memos were plainly illegal and carried a substantial risk  
5 of serious harm to Mr. Padilla and other detainees who would be subjected to those policies.

6 25. The Memos intentionally were not circulated to other government agencies with  
7 relevant expertise, such as the State Department but, as Goldsmith concluded, “were deliberately  
8 withheld from other agencies in order to control the outcome and minimize resistance.”

9 26. Defendant’s determination to provide legal justification for pre-formulated policies  
10 was so extreme that then-Attorney General Ashcroft (Ashcroft) nicknamed Defendant “Dr. Yes,”  
11 and OLC chief Goldsmith was warned that his opinion on a legal question related to Iraqi  
12 insurgents would be unwelcome in the White House because “[t]hey’ve never been told ‘no.’”

13 27. Upon information and belief, Defendant’s January 2002 memo, stating that  
14 suspected members of the Taliban and al-Qaeda were not eligible for the most basic Geneva  
15 Convention protections against inhuman and degrading treatment, was designed to justify the  
16 Executive’s already concluded policy decision to employ unlawfully harsh interrogation tactics.

17 28. Following a July 2002 War Council session in which Defendant and fellow War  
18 Council members “discussed in great detail how to legally justify” “pressure techniques proposed  
19 by the CIA,” including waterboarding, mock burial, and open-handed slapping of suspects,  
20 Defendant wrote his August 1, 2002 memo, which stated that acts of interrogation would not  
21 constitute torture unless they caused pain “equivalent in intensity to the pain accompanying  
22 serious physical injury, such as organ failure, impairment of bodily function, or even death.”

23 29. Upon information and belief, the August 1, 2002 memo was designed to remove  
24 legal restraints on interrogators so as to justify the Executive’s already concluded policy decision.

25 30. By issuing legal memoranda intended to justify policy choices, or acting in  
26 deliberate indifference to the illegality of those policies and the substantial risk of serious harm  
27 caused by them, Defendant violated OLC practice and well-established OLC precedent prohibiting  
28 the Department of Justice from issuing a legal opinion where a conclusion has been ‘already



1 reached and about which the official presenting the question merely desires [a] confirmatory  
2 opinion.” *Jurisdiction of the Attorney General-Certain Cases in which the Attorney General will*  
3 *not Render an Opinion*, 38 Op. Atty. Gen. 149 (1933); *see also Opinion of the Hon. Charles H.*  
4 *Aldrich*, 20 Op. Atty. Gen. 440 (1898) (refusing to issue an opinion where a decision had been  
5 made).

6 31. Upon information and belief, Defendant also crafted the August 1, 2002 and March  
7 14, 2003 memoranda with the specific intent of immunizing government officials from criminal  
8 liability for participating in practices that Defendant Yoo knew to be unlawful.

9 32. In addition to redefining torture, Defendant’s August 2002 memo further  
10 encouraged aggressive interrogation by stating that even if extreme interrogation methods were  
11 eventually deemed to constitute war crimes or torture under federal criminal statutes, officials  
12 interrogating prisoners could nevertheless escape criminal liability by claiming the common law  
13 defenses of necessity or self-defense.

14 33. Similarly, Defendant’s March 2003 memo on interrogation of enemy combatants  
15 states that Defendant had received assurances from the Criminal Division of the Justice  
16 Department that prosecutions would not be brought against interrogators, reinforcing the point that  
17 even federal officials who committed war crimes or torture under federal criminal statutes would  
18 escape responsibility for their crimes.

19 34. Defendant persisted in justifying abusive interrogation techniques despite warnings  
20 from senior attorneys in the Pentagon, FBI, and Navy that those techniques were unlawful:

21 a. Upon information and belief, senior Pentagon legal counsel told Defendant that  
22 government agents could be criminally prosecuted if they used techniques that Defendant planned  
23 to approve;

24 b. On November 27, 2002, an FBI special agent sent a memorandum to FBI legal  
25 counsel, attached as Exhibit H, stating that the eighteen techniques recommended for  
26 implementation by Defendant and Haynes were unlawful under the U.S. Constitution and could  
27 violate the U.S. Torture Statute, exposing agents who used them to criminal liability;

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1 c. In December 2002, then-General Counsel to the Navy, Alberto Mora also told  
2 Haynes that the techniques recommended in the Haynes Memo, upon information and belief  
3 reviewed and approved by Defendant, were unlawful and that the authorization of those  
4 techniques was causing detainees at Guantanamo to be subjected to abusive, degrading, and illegal  
5 interrogations; and

6 d. In February 2003, Mora also met directly with Defendant and told him that the  
7 legal analysis in a draft of the March 2003 Memo on interrogation techniques was deeply flawed  
8 and dangerous.

9 **Defendant Personally Participated in Mr. Padilla's Unlawful Military Detention.**

10 35. On or about May 8, 2002, Mr. Padilla was arrested in Chicago O'Hare International  
11 Airport, pursuant to a material witness warrant issued by the U.S. District Court for the Southern  
12 District of New York. He was transported to New York where he was held in custody in a federal  
13 detention facility. He was assigned court-appointed counsel, and a motion to vacate the material  
14 witness warrant was filed.

15 36. As Defendant relates in his book "War By Other Means," Defendant and others  
16 developed an extra-judicial, *ex parte* assessment of enemy combatant status followed by indefinite  
17 military detention, without notice or opportunity for a hearing of any sort, and it completely  
18 precluded judicial review of the designation.

19 37. Defendant knew or was deliberately indifferent to the fact that this procedure for  
20 designating a U.S. citizen as an enemy combatant violated U.S. law.

21 38. According to Defendant's book, Defendant personally "reviewed the material on  
22 Padilla to determine whether he could qualify, legally, as an enemy combatant, and issued an  
23 opinion to that effect."

24 39. As described by Gonzales in a February 24, 2004 speech to the American Bar  
25 Association, attached as Exhibit I, and as stated in Defendant's book, Ashcroft relied on  
26 Defendant's opinion in recommending to the President that Mr. Padilla be taken into military  
27 custody.  
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1           40.     Based on Defendant's legal opinion and Ashcroft's recommendation, President  
2 George W. Bush issued an order dated June 9, 2002, attached as Exhibit J, declaring Mr. Padilla  
3 an "enemy combatant," directing Rumsfeld to take Mr. Padilla into military custody, and stating  
4 that these actions were "consistent with U.S. law and the laws of war."

5           41.     On June 27, 2002, Defendant prepared a memorandum for Assistant Attorney  
6 General Bryant of the Office of Legislative Affairs regarding *The Applicability of 18 U.S.C. Sec.*  
7 *4001(a) to Military Detention of United States Citizens*. Though the memorandum involves the  
8 military detention of U.S. citizens, the Executive has so far refused to release it to the public.

9           42.     In his book, Defendant states that he had the security clearance to, and in fact did,  
10 "read the intelligence reports" on Mr. Padilla before purporting to provide legal authority for Mr.  
11 Padilla's designation and detention as an enemy combatant. Accordingly, Defendant knew or was  
12 deliberately indifferent to the constitutional inadequacy of a significant portion of the evidence  
13 upon which he based his recommendation that Mr. Padilla be deprived of his liberty, namely the  
14 uncorroborated statements of two confidential sources detained and interrogated outside of the  
15 United States, at least one of whom had been questioned while under treatment with various kinds  
16 of medication. *See* Declaration of Michael J. Mobbs, Special Advisor to the Under Secretary of  
17 Defense for Policy, August 27, 2002, attached as Exhibit K.

18           43.     Mr. Padilla is not an "enemy combatant" and the factual basis for his designation as  
19 such has never been reviewed by any court.

20           44.     Nevertheless, as a proximate and foreseeable result of Defendant's actions, Mr.  
21 Padilla was declared an "enemy combatant" and held in military custody at the Brig for over three  
22 and a half years (from June 9, 2002, until January 5, 2006).

23           **Defendant's Actions Proximately and Foreseeably Caused Mr. Padilla to Suffer Abusive and**  
24           **Unlawful Interrogations and Conditions of Confinement.**

25           45.     During his detention in the Brig, Mr. Padilla was subjected to a systematic program  
26 of unlawful interrogation methods and conditions of confinement, which proximately and  
27 foreseeably caused Mr. Padilla to suffer extreme isolation, sensory deprivation, severe physical  
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1 pain, sleep deprivation, and profound disruption of his senses and personality, all well beyond the  
2 physical and mental discomfort that normally accompanies incarceration.

3 46. Upon information and belief, the policies that Defendant participated in  
4 developing, including through his participation on the War Council, proximately and foreseeably  
5 led to the abuses suffered by Mr. Padilla.

6 47. Upon information and belief, the Memos – and the Haynes Memo that Defendant  
7 approved – proximately and foreseeably gave interrogators and custodians a green light for  
8 abusive interrogation and detention, thereby setting in motion the abuses suffered by Mr. Padilla.

9 48. On December 2, 2002, upon information and belief having been assured that the  
10 Department of Justice, through Defendant, had approved the Haynes Memo, Secretary Rumsfeld  
11 accepted the Haynes Memo and authorized the use of the following interrogation techniques:

- 12 a) Yelling;
- 13 b) Deception;
- 14 c) Stress positions for up to four hours;
- 15 d) Falsified documents and reports;
- 16 e) Use of isolation facilities for renewable periods of up to 30 days;
- 17 f) Interrogation in an environment other than the standard interrogation room;
- 18 g) Deprivation of light and auditory stimuli;
- 19 h) Hooding;
- 20 i) 20-hour interrogations;
- 21 j) Removal of all comfort items, including religious items;
- 22 k) Removal of clothing;
- 23 l) Forced grooming;
- 24 m) Using individual phobias to induce stress;
- 25 n) Dietary manipulation;
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- 1 o) Environmental manipulation, including by adjusting the temperature or introducing  
2 an unpleasant smell;
- 3 p) Sleep adjustment, including by reversing sleep cycles from night to day; and
- 4 q) Grabbing, poking in the chest, and pushing.

5  
6 49. Upon information and belief, Rumsfeld rescinded this authorization when Haynes  
7 was informed that the techniques violated U.S. and international law and military tradition.

8 50. After rescinding the December 2, 2002, authorization, Rumsfeld convened a  
9 Working Group on Detainee Interrogations in the Global War on Terrorism (Working Group),  
10 which on April 1, 2003 produced a report, attached as Exhibit L, recommending that all techniques  
11 previously approved be re-approved for use on detainees outside of the United States. On April 16,  
12 2003, Rumsfeld issued a memorandum to the Commander of the U.S. Southern Command,  
13 attached as Exhibit M, authorizing for use at Guantanamo the techniques recommended by the  
14 Working Group.

15 51. The Working Group relied heavily upon the Memos, and sections of the March 6,  
16 2003 draft of the Working Group Report, attached as Exhibit N, pertaining to the interpretation of  
17 the Torture Statute and the availability of the defenses of necessity and self-defense, were copied  
18 verbatim from Defendant's August 1, 2002 OLC Memo on *Standards of Conduct for*  
19 *Interrogation under 18 U.S.C. §§ 2340-2340A.*

20 52. The December 2002 and April 2003 authorizations proximately and foreseeably  
21 caused aggressive interrogation techniques to spread to detainee operations in other areas, as  
22 numerous government reports have documented.

23 53. Defendant, on information and belief, intended or was deliberately indifferent to  
24 the fact that Mr. Padilla would be subjected to the illegal policies Defendant set in motion and to  
25 the substantial risk that Mr. Padilla would suffer severe harm as a result. Defendant personally  
26 recommended Mr. Padilla's unlawful military detention as a suspected enemy combatant and then  
27 wrote opinions to justify the use of unlawful interrogation methods against persons suspected of  
28 being enemy combatants. It was foreseeable that the illegal interrogation policies would be

1 applied to Mr. Padilla, who was under the effective control of the U.S. Southern Command — the  
2 same military authority that controlled Guantanamo — and was one of only two suspected enemy  
3 combatants held at the Brig.

4 54. In fact, Brig officials were ordered to treat suspected enemy combatants detained at  
5 the Brig — including Mr. Padilla — in the exact same manner that suspected enemy combatants  
6 were treated at Guantanamo.

7 55. During Mr. Padilla’s detention, government officials subjected him to many of the  
8 interrogation techniques and conditions of confinement employed against detainees at  
9 Guantanamo, including:

- 10 a. Extreme and prolonged isolation;
- 11 b. Deprivation of light;
- 12 c. Exposure to prolonged periods of artificial light;
- 13 d. Extreme variations in temperature;
- 14 e. Sleep adjustment;
- 15 f. Threats to subject him to physical abuse resulting in severe physical pain and  
16 suffering, or death, including threats to cut him with a knife and pour alcohol into  
17 the wounds;
- 18 g. Threats to kill him immediately;
- 19 h. Threats to transfer him to a location outside the United States, to a foreign country  
20 or Guantanamo, where he was told he would be subjected to far worse treatment,  
21 including severe physical and mental pain and suffering; and
- 22 i. Against his will, administering to him or making him believe that he was being  
23 administered psychotropic drugs;
- 24 j. Shackling and manacled for hours at a time;
- 25 k. Forcing him into markedly uncomfortable and painful (or “stress”) positions;
- 26 l. Requiring him to wear earphones and black-out goggles during movement to, from,  
27 and within the Brig;
- 28 m. Introduction into his cell of noxious fumes that caused pain to eyes and nose;

- 1 n. Lying to him about his location and the identity of his interrogators;
- 2 o. Loud noises at all hours of the night, caused by government agents banging on the
- 3 walls and bars of his cell or opening and shutting the doors to nearby empty cells;
- 4 p. Withholding of any mattress, pillow, sheet or blanket, leaving him with nothing to
- 5 sleep or rest on except a cold steel slab;
- 6 q. Extreme and deliberate variations in the temperature of his cell;
- 7 r. Forced grooming;
- 8 s. Sudden and unexplained suspension of showers;
- 9 t. Sudden and unexplained removal of religious items; and
- 10 u. Constant surveillance, including during use of toilet facilities and shower.

11 56. From June 9, 2002 until March 4, 2004, government officials also denied Mr.  
12 Padilla all contact with persons outside the military brig, including his family and legal counsel.

13 57. For the first nearly two years of confinement, Mr. Padilla's only human contact was  
14 with interrogators during interrogation sessions, or with guards when they delivered his meals  
15 through a slot in his cell door or escorted him to the shower or the concrete cage in which he was  
16 intermittently permitted to exercise.

17 58. For ten months after Mr. Padilla's transfer to military detention military, the  
18 government also denied Ms. Lebron any information about her son. After almost a year of  
19 agonizing uncertainty, a Pentagon official finally brought Ms. Lebron a very brief greeting card  
20 that her son had been permitted to write to let her know that he was alive.

21 59. Beginning on March 4, 2004, while a habeas petition filed on his behalf was  
22 pending in the U.S. Supreme Court, Mr. Padilla was finally permitted contact with his attorneys.  
23 However, that contact was sporadic, subjected to severe restrictions including recording of  
24 conversations and review by government officials of all legal correspondence.

25 60. Upon information and belief, the restrictions imposed on Mr. Padilla's access to  
26 counsel were authorized by an OLC memorandum written by Defendant in or about May 2002.  
27  
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1           61. Mr. Padilla's extreme isolation and harsh conditions of confinement remained  
2 largely unchanged by the limited access to counsel granted in March 2004.

3           62. In the nearly two-year period between March 4, 2004, and January 5, 2006, Mr.  
4 Padilla was permitted to receive only three twenty-minute telephone calls and one visit from his  
5 mother; during these interactions, Mr. Padilla was forbidden to discuss the interrogations to which  
6 he was being subjected.

7           63. In tandem with severe isolation, government officials subjected Mr. Padilla to  
8 sensory deprivation far exceeding the ordinary levels attendant upon incarceration, causing him to  
9 suffer profound disorientation and psychological distress.

10           64. Mr. Padilla was periodically subjected to absolute light or darkness for periods in  
11 excess of twenty-four hours.

12           65. For most of his detention, the interior and exterior windows of Mr. Padilla's cell  
13 were intentionally blacked out. On the rare occasions when Mr. Padilla was removed from his cell  
14 -- once to visit the dentist, for example -- his eyes and ears were covered, deepening the sensory  
15 deprivation, as illustrated in the photographs attached as Exhibit O.

16           66. Deepening his disorientation, Mr. Padilla was further denied access to any form of  
17 information about the outside world, including radio, television, and newspapers from the time of  
18 his imprisonment without charge in the military brig until summer 2004, at which time he was  
19 permitted very limited access to such materials.

20           67. For most of his confinement, Government officials denied Mr. Padilla sufficient  
21 exercise and recreation. Mr. Padilla was permitted to exercise only intermittently and then only in  
22 a concrete "cage" and often at night.

23           68. Despite the fact that officials knew that Mr. Padilla was a practicing Muslim, for  
24 the bulk of his captivity, Mr. Padilla was denied either a clock or a watch and, deprived of any  
25 natural light, he could not tell day from night, and did not know the day of the week or the season,  
26 or the direction of Mecca. Upon information and belief, the express request of a representative of  
27 the International Committee of the Red Cross that Mr. Padilla be given access to a time-piece with  
28



1 which he could ascertain the time for prayer was denied by Brig officials and/or other government  
2 agents.

3           69. When Mr. Padilla was first detained, he was permitted access to a Koran. Shortly  
4 thereafter, however, Mr. Padilla's access to religious texts was revoked until March 2004, when  
5 Mr. Padilla's counsel provided him with a new copy of the Koran.

6           70. By depriving Mr. Padilla of any method of ascertaining the time of day, the season  
7 of the year, or the direction of Mecca, and by removing his copy of the Koran, Defendants  
8 substantially burdened Mr. Padilla's ability to pray, keep holidays, study religious texts, and  
9 otherwise observe the strictures of his faith.

10           71. Mr. Padilla made repeated requests for access to medical care for serious and  
11 potentially life-threatening ailments, including chest pain and difficulty breathing, as well as for  
12 treatment of the chronic, extreme pain caused by being forced to endure stress positions. These  
13 requests were either denied or met with grossly inadequate responses.

14           72. Mr. Padilla's conditions of confinement and interrogation techniques described  
15 above were calculated to, and did, subject Mr. Padilla to extreme psychiatric stress which a  
16 reasonable person would understand to necessitate the provision of psychiatric care. Counsel and  
17 Brig staff reported signs of psychological distress in Mr. Padilla up the chain of command and  
18 requested remedial measures. These requests were either denied or met with grossly inadequate  
19 responses.

20           73. In May 2004, on orders from Secretary Rumsfeld, Vice Admiral Church conducted  
21 a review of detainee conditions at the Brig and reported his findings in a slideshow attached as  
22 Exhibit P (Church Slides). The Church Slides confirm the use at the Brig of interrogation  
23 techniques including removal of Koran, mattress, pillow, and warm meals, noting, *inter alia*, that:  
24 "[One] detainee has Koran removed from cell as part of JFCOM-approved interrogation plan.  
25 Muslim chaplain not available"; "One detainee . . . has mattress removed as part of JFCOM-

1 approved interrogation plan”; “One detainee . . . not authorized ICRC visits due to interrogation  
2 plans in progress”; and “One detainee in Charleston has Koran, mattress, and pillow removed and  
3 is fed cold MREs as part of interrogation plan approved by JFCOM. (SECDEF Memo of 16 Apr  
4 03 addresses GTMO only)”.

5 74. The Church Slides also noted “potential issues” with “unauthorized interrogation  
6 techniques” at the Brig, and provided “amplification” on this issue. The Executive has not yet  
7 released to the public the part of the Church Slides providing this “amplification.”

8 75. The application to Mr. Padilla of the methods of interrogation and conditions of  
9 confinement detailed above was a foreseeable result of Defendant’s intentional or deliberately  
10 indifferent conduct and proximately and foreseeably caused Mr. Padilla severe mental and  
11 physical pain.

12 76. In addition to the harm caused to Mr. Padilla by his detention and interrogation,  
13 Mr. Padilla continues to suffer deprivation of liberty, public stigmatization, serious ongoing  
14 psychological harm, and other collateral effects from the unlawful “enemy combatant”  
15 designation, including the threat that he will once again be militarily detained in the Brig and  
16 subjected there to unconstitutional interrogations and conditions of confinement.

17 77. The threat of re-detention is not a figment of Mr. Padilla’s imagination. On or  
18 about November 23, 2005 – shortly after the criminal indictment against Mr. Padilla was made  
19 public – Deputy Solicitor General Gregory Garre informed Mr. Padilla’s counsel, Jonathan  
20 Freiman, that it was the government’s position that the “enemy combatant” designation had not  
21 been rescinded and that the government could therefore militarily detain Mr. Padilla at any time  
22 based on his alleged past acts.

23 78. Plaintiffs seek to vindicate their constitutional rights and to ensure that neither Mr.  
24 Padilla nor any other person is treated this way in the future.

25 79. Plaintiffs seek monetary and declaratory relief.

26 80. Plaintiffs have no administrative remedies or other effective means of enforcing  
27 their rights other than seeking relief from the Court.  
28

1 **CLAIMS**

2 81. Mr. Padilla incorporates by reference each and every allegation contained in the  
3 preceding paragraphs as if set forth fully herein.

4 82. By the allegations incorporated above, Defendant proximately and foreseeably  
5 injured Mr. Padilla by violating numerous clearly established constitutional and statutory rights  
6 including, but not limited to, the following:

7 a. **Denial of Access to Counsel.** Acting under color of law and his authority as a  
8 federal officer, Defendant caused Mr. Padilla to be deprived of his right of access to legal counsel  
9 protected by the First, Fifth, and Sixth Amendments to the U.S. Constitution.

10 b. **Denial of Access to Court.** Acting under color of law and his authority as a  
11 federal officer, Defendant caused Mr. Padilla to be deprived of his right of access to court  
12 protected by the First and Fifth Amendments to the U.S. Constitution, Article III of the U.S.  
13 Constitution, and the Habeas Suspension Clause of the U.S. Constitution.

14 c. **Unconstitutional Conditions of Confinement.** Acting under color of law and his  
15 authority as a federal officer, Defendant caused Mr. Padilla to be subjected to illegal conditions of  
16 confinement and treatment that shocks the conscience in violation of Mr. Padilla's Fifth  
17 Amendment rights to procedural and substantive due process, as well as his Eighth Amendment  
18 right to be free of cruel and unusual punishment, including torture, outrages on personal dignity,  
19 and humiliating and degrading treatment.

20 d. **Unconstitutional Interrogations.** Acting under color of law and his authority as a  
21 federal officer, Defendant caused Mr. Padilla to be subjected to coercive and involuntary illegal  
22 interrogations, both directly and through unlawful conditions of confinement designed to aid the  
23 interrogations, all in violation of Mr. Padilla's Fifth Amendment rights to procedural due process,  
24 freedom from treatment that shocks the conscience, and freedom from self-incrimination, as well  
25 as his Eighth Amendment right to be free from cruel and unusual punishment, including torture,  
26 outrages on personal dignity, and humiliating and degrading treatment.

27 e. **Denial of Freedom of Religion.** Acting under color of law and his authority as a  
28 federal officer, Defendant caused Mr. Padilla to be deprived of his right to the free exercise of

1 religion guaranteed under the First Amendment to the U.S. Constitution, as well as the Religious  
2 Freedom Restoration Act, 42 U.S.C. § 2000bb.

3 f. **Denial of the Right to Information.** Acting under color of law and his authority  
4 as federal officer, Defendant caused Mr. Padilla to be deprived of his right to information  
5 guaranteed under the First Amendment to the U.S. Constitution.

6 g. **Denial of the Right to Association.** Acting under color of law and his authority as  
7 a federal officer, Defendant caused Mr. Padilla to be deprived of his right to association with  
8 family and others guaranteed under the First Amendment to the U.S. Constitution.

9 h. **Unconstitutional Military Detention.** Acting under color of law and his authority  
10 as a federal officer, Defendant violated Mr. Padilla's right to be free from military detention  
11 guaranteed by the Fourth Amendment to the U.S. Constitution, the Due Process Clause of the  
12 Fifth Amendment to the U.S. Constitution, the Habeas Suspension and Treason Clauses of the  
13 U.S. Constitution, and Article III of the U.S. Constitution.

14 i. **Denial of the Right to Be Free from Unreasonable Seizures.** Acting under color  
15 of law and his authority as a federal officer, Defendant violated Mr. Padilla's right to be free from  
16 unreasonable seizures guaranteed by the Fourth Amendment to the U.S. Constitution.

17 j. **Denial of Due Process.** Acting under color of law and his authority as a federal  
18 officer, Defendant violated Mr. Padilla's Fifth Amendment right not to be detained or subjected to  
19 the collateral effects of designation as an "enemy combatant" without due process of law.

20 83. By the allegations incorporated above, Defendant, acting under color of law and his  
21 authority as a federal officer, also proximately and foreseeably injured Ms. Lebron by causing her  
22 to be denied of virtually all contact with her son in violation of her clearly established rights to  
23 association and communication under the First and Fifth Amendments of the U.S. Constitution.

24 **PRAYER FOR RELIEF**

25 84. Plaintiffs therefore respectfully request that the Court enter a judgment for all relief  
26 to which they are legally entitled under the facts of this case, including but not limited to the  
27 following:  
28

- 1 a. A judgment declaring that the acts alleged herein are unlawful and violate the  
2 Constitution and laws of the United States;  
3 b. Damages in the amount of one dollar;  
4 c. Attorneys' fees and costs; and  
5 d. All other appropriate relief as the Court may determine to be just and proper.  
6

7 Respectfully submitted,

8 /s/ Jonathan Freiman

9  
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18 Attorneys for Plaintiffs

19 Dated: June 2, 2008  
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