

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

BAKHODIR MADJITOV,)	
)	
Plaintiff)	
v.)	
)	Civ. No. _____
UNITED STATES OF AMERICA,)	JURY TRIAL REQUESTED
)	
FNU AGUILERA,)	
)	
AMMAR SYED, and)	
)	
FNU GORIAH,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Bakhodir Madjitov, by and through his counsel, alleges the following:

INTRODUCTION

1. This is a civil rights action for damages seeking redress for serious injuries caused by the tortious and unconstitutional conduct of United States Government officials. This Complaint arises out of the intentional, violent, and unlawful attempted removal of Mr. Madjitov by Immigration and Custom Enforcement (“ICE”) agents late in the evening of June 10, 2019 and into the morning hours of June 11, 2019—in contravention of a Third Circuit stay of removal that was then in effect. This attempted removal was in contravention of the rights guaranteed to Mr. Madjitov by the Constitution of the United States, and in contravention of common law protections against unwarranted violence and abuse.

2. On June 10, 2019, hours after the Third Circuit issued Mr. Madjitov a stay of removal, ICE agents illegally attempted to force him onto a flight to Uzbekistan, where he fears torture and death. Mr. Madjitov informed the named Defendants of his constitutional right to remain in the United States. Defendants responded by cursing at him and threatening to tase him should he not comply with their unlawful demands. As Defendants shoved him toward the airplane gate, Mr. Madjitov pleaded for them to honor the stay granted by the Third Circuit. Instead, Defendants ruthlessly beat him, injuring his neck, and twice subjected him to painful tasings that burned his body. After Mr. Madjitov's screams for help drew a large crowd of bystanders, Defendants dragged Mr. Madjitov away. It was local police officers, not Defendants, who first inquired about Mr. Madjitov's well-being. Eventually, Mr. Madjitov was taken to a local hospital. though Defendants later interfered with both Mr. Madjitov's communication with medical professionals and his ability to secure effective care and accurate records.

3. Mr. Madjitov continues to suffer long-term physical and psychological repercussions from his unlawful attempted removal. Defendants' tortious and unconstitutional acts inflicted on Mr. Madjitov lasting head and spine trauma, as well as devastating mental and emotional anguish.

4. Since December 22, 2017, Mr. Madjitov has been in ICE custody. For the vast majority of that time, he has been held at the Etowah County Detention Center ("Etowah"), in Gadsden, Alabama, over 1,000 miles from his wife and three sons--the youngest of whom he has seen only once, through the glass of a detention-center partition, and whom he has never held in his arms. ICE has rejected urgent humanitarian requests to release Mr. Madjitov in light of COVID-19 for no reason other than Mr. Madjitov's refusal to comply with ICE's unlawful attempt to remove him. Mr. Madjitov is now battling the coronavirus on top of depression and

anxiety. His faith in and reverence for the United States legal system and the rule of law is shaken. He now lives in constant fear and anxiety that ICE will again break the law to harm him or further distance him from his family. Mr. Madjitov, a devoted husband and father with no criminal record, has suffered lasting and irreparable harm.

5. Plaintiff brings this lawsuit pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346 (“FTCA”) and *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (“*Bivens*”). Under the FTCA, Plaintiff brings claims against Defendant United States of America for assault and battery, false imprisonment, intentional infliction of emotional distress, negligence, negligent supervision, and abuse of process. Under *Bivens*, Plaintiff brings claims against Defendants FNU Aguilera, Ammar Syed, and FNU Goriah, agents of United States Immigration and Customs Enforcement (“ICE”), for violations of Plaintiff’s Fifth Amendment rights, and for the harm perpetrated by Defendants.

6. Mr. Madjitov is filing this lawsuit expeditiously, together with a Motion for a Temporary Restraining Order and a Preliminary Injunction, in light of ICE’s precipitous transfer of Mr. Madjitov, on the morning of September 17, 2020, from the Etowah County Detention Center in Gadsden, Alabama to the LaSalle ICE Processing Center in Jena, Louisiana. ICE has twice before transferred Mr. Madjitov from Etowah to LaSalle, and both times, they did so in the process of attempting to remove him. One of those attempted removals—in contravention of a stay of removal in effect at the time—is the basis of this action.

JURISDICTION AND VENUE

7. Under U.S. Const. Art. III §2, this Court has jurisdiction because the rights sought to be protected herein are secured by the United States Constitution.

8. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1346(b), *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the United States Constitution and federal common law.

9. On February 28, 2020, Mr. Madjitov filed an administrative claim under the Federal Tort Claims Act, based on the unlawful acts committed by ICE late in the evening of June 10, 2019 and in the early morning hours of June 11, 2019. See Exhibits G-H. More than six months have passed, and ICE has not made a final disposition of the administrative claim, or in any way acknowledged it. This Court, therefore, has jurisdiction over the FTCA claim asserted in this action. 28 U.S.C. § 2675(a).

10. Venue is proper under 28 U.S.C. § 1402(b) and 28 U.S.C. §§ 1391(e)(1) because a substantial part of the unlawful acts alleged herein were committed within the judicial district of the United States District Court for the Eastern District of New York.

PARTIES

Plaintiff

11. Plaintiff **Bakhodir Madjitov** is a 39-year-old Muslim immigrant from Uzbekistan who is married to Madina Mamadjonova, a United States citizen residing in Broadbrook, Connecticut. Together they have three native-born United States citizen sons between the ages of two and nine. Until the morning of September 17, 2020, Mr. Madjitov was detained at the Etowah County Detention Center in Gadsden, Alabama. Upon information and belief, on the morning of September 17, 2020, Mr. Madjitov was transferred to the LaSalle ICE Processing Center in Jena, Louisiana.

Defendants

12. Defendant **United States of America** is sued under the Federal Tort Claims Act for the tortious actions of its employees, Defendants FNU Aguilera¹, Ammar Syed, and FNU Goriah.

13. Defendants FNU Aguilera, Ammar Syed, and FNU Goriah are officers or agents employed by ICE, and are the ICE agents responsible for: (1) the unlawful attempted removal of Plaintiff Madjitov, described below, (2) the unnecessary and unlawful force used against Plaintiff Madjitov during his attempted removal, described below, and (3) the interference of Plaintiff Madjitov's medical treatment and the proper documentation of that medical treatment, described below. All ICE agent defendants are being sued under *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) in their individual capacities only.

14. Defendant Supervisor **FNU Aguilera** was at all relevant times an ICE employee working at John F. Kennedy International Airport ("JFK") in Queens, New York, on the evening of June 10, 2019 into the morning of June 11, 2019, during the unlawful attempted removal of Plaintiff Madjitov. Defendant Aguilera was responsible for supervising Plaintiff Madjitov's removal. Defendant Aguilera is being sued in his individual capacity.

15. Defendant Officer **Ammar Syed** was at all relevant times an ICE employee assigned to the matter of unlawfully attempting to remove Plaintiff Madjitov on the evening of June 10, 2019 into the morning of June 11, 2019. Defendant Syed was responsible for carrying out the unlawful forcible attempt to remove Plaintiff Madjitov at JFK in Queens, New York, and

¹ Plaintiff Madjitov has noted that he identified ICE Supervisor "Aguilera" based on having read that name or a similar name on the supervisor's badge, but that the name may have in fact been "Aguilar". Because he expressed believing that the name was actually Aguilera, the ICE supervisor involved in this incident is referred to throughout this Complaint by this name—subject to amendment, upon carrying out discovery in the course of this litigation.

later overseeing Plaintiff Madjitov's emergency medical treatment at Jamaica Hospital Medical Center in Queens, New York. Defendant Syed is being sued in his individual capacity.

16. Defendant Officer **FNU Goriah** was at all relevant times an ICE employee assigned to the matter of unlawfully attempting to remove Plaintiff Madjitov on the evening of June 10, 2019 into the morning of June 11, 2019. Defendant Goriah was responsible for carrying out the unlawful attempt to remove Plaintiff Madjitov at JFK in Queens, New York, and later overseeing Plaintiff Madjitov's emergency medical treatment at Jamaica Hospital Medical Center in Queens, New York. Defendant Goriah is being sued in his individual capacity.

STATEMENT OF FACTS

Plaintiff entered the United States lawfully, timely applied for asylum, and has diligently pursued legal avenues that would allow him to remain with his family in the United States.

Immigration Court Proceedings

17. Mr. Madjitov entered the United States on March 12, 2006 on a P-3 Visa for Artists or Entertainers to participate in the South by Southwest music festival. Affidavit of Bakhodir Madjitov, Exhibit A. He remained in the United States after his visa expired on or around July 20, 2006 and timely applied for asylum on December 12, 2006.

18. On August 3, 2011, an immigration judge denied his asylum application and ordered him removed, but the Board of Immigration Appeals (BIA) remanded with instructions to supplement the record. Following a set of appeals, the BIA ultimately dismissed Mr. Madjitov's application on July 24, 2014. Mr. Madjitov did not petition for review of that denial and has been subject to a final order of removal since then.

Eleventh Circuit Petition for Review of Motion to Reopen

19. On March 2, 2018, Mr. Madjitov filed before the BIA an amended Motion to Reopen his asylum action and an associated Convention Against Torture claim on the grounds that changed circumstances put him in danger of being persecuted and tortured in his native country of Uzbekistan. After his initial asylum claim was denied, a family member of Mr. Madjitov's was alleged to have been connected with al-Nusra, a Salafi jihadist organization fighting against Syrian government forces in the Syrian Civil War. That family member has since passed away, but their alleged affiliation prompted governmental authorities in both the United States and Uzbekistan to monitor Mr. Madjitov and his family for signs of any potential jihadist affiliation or affinity. Neither the United States nor Uzbekistan has ever leveled any criminal charges against Mr. Madjitov. But in Uzbekistan, local police forces have threatened Mr. Madjitov's family and demanded he return to the country for apprehension. In recent years, the Uzbekistani government has increased surveillance of Muslims and developed a pattern and practice of detaining and torturing relatives of suspected terrorists because of imputed guilt even when, as here, such imputations are simply untrue. Because the Uzbekistani government almost certainly has knowledge of Mr. Madjitov's family member's alleged affiliations, his return would very likely result in state-sponsored persecution and torture.

20. On September 13, 2019, the BIA denied Mr. Madjitov's amended Motion to Reopen. Mr. Madjitov timely filed a Petition for Review of that denial on September 30, 2019. On September 14, 2020, the Eleventh Circuit denied in part and dismissed in part Mr. Madjitov's Petition for Review. The Court denied Mr. Madjitov's claim on the grounds that conditions in Uzbekistan had not substantially changed since the time his asylum and Convention Against Torture claims were denied. In reaching that conclusion, the court fully acknowledged the

government of Uzbekistan's well-documented practice of torturing relatives of alleged terrorists, as well as the possibility that Mr. Madjitov may well be tortured on these grounds if returned to Uzbekistan. *Madjitov v. U.S. Attorney General*, Docket No. 19-13865 (11th Cir. Sept. 14, 2020).² The dissent in that court's earlier denial of Mr. Madjitov's motion for a stay of removal similarly emphasized the high likelihood that Mr. Madjitov will be tortured if removed to Uzbekistan. Eleventh Circuit Denial of Stay and Dissent, Exhibit F.

Plaintiff's immigration proceedings are pending in the Second Circuit, where Plaintiff asks only that DHS honor the provisional waiver program established in its own regulations.

21. Mr. Madjitov has another avenue of immigration relief currently pending in a federal appellate court: an appeal before the United States Court of Appeals for the Second Circuit of the denial of his habeas corpus action. *Mamadjonova and Madjitov v. Barr*, Docket No. 19-3971. That action asserts that Mr. Madjitov must be allowed to avail himself of the provisional waiver process held out by the Department of Homeland Security ("DHS") specifically to immigrants in Mr. Madjitov's position--that is, to immigrants with final orders of removal who have an approved I-130 Petition for Alien Relative, and whose departure from the country would incur lengthy bars on reentry and perpetuate family separation.

22. On September 15, 2012, Mr. Madjitov's wife, Madina Mamadjonova, filed an I-130 Petition for Alien Relative on behalf of Mr. Madjitov. Affidavit of Madina Mamadjonova, Exhibit E. The petition was granted on September 16, 2013, but because Ms. Mamadjonova was not yet a U.S. citizen, Mr. Madjitov had to wait for a visa to become available in order to apply for an adjustment of status. On April 10, 2015, Ms. Mamadjonova became a U.S. Citizen.

² The court also dismissed an additional claim Mr. Madjitov had brought before that court under the Suspension Clause. *Id.*

23. On August 26, 2019, Mr. Madjitov and Ms. Mamadjonova filed an action in the United States District Court for the District of Connecticut seeking to enjoin the Department of Homeland Security from removing Mr. Madjitov before allowing him to avail himself of a waiver process held out to individuals in Mr. Madjitov's position: individuals who have an approved I-130 Petition for Alien Relative, and whose departure from the country would incur lengthy bars on reentry. The court denied their claim on November 20, 2019. Mr. Madjitov and Ms. Mamadjonova timely appealed that denial on November 27, 2019. That appeal remains pending before the United States Court of Appeals for the Second Circuit.

ICE denied Mr. Madjitov's COVID-19 humanitarian release requests, citing Mr. Madjitov's refusal to board a plane to Uzbekistan – even though it was ICE's attempt to force him to board that plane, rather than his refusal to board it, that was unlawful.

24. On March 27, 2020, Mr. Madjitov filed a release request on humanitarian grounds, in light of: 1) high risk factors that heightened his vulnerability to suffering grave consequences from infection by COVID-19; and 2) the high probability that he would contract COVID-19 in ICE detention. ICE denied the request on April 6, 2020, citing only Mr. Madjitov's resistance to ICE's unlawful attempt to remove him on June 10 and June 11, 2019. First COVID Release Request and Denial, Exhibit M.

25. On April 20, 2020, the United States District Court for the Central District of California certified a nationwide class of detained people at high risk of severe illness or death if infected by COVID-19. *Frailhat v. U.S. Immigration and Customs Enforcement*, Docket No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020). In the course of litigation arising from a habeas corpus action brought in the Northern District of Alabama, *Archilla et al v. Witte et al.*, Docket No. 4:20-cv-00596-RDP-JHE (N.D. Ala. 2020), ICE conceded Mr. Madjitov's membership in the *Frailhat* class of detained people on the basis of his high risk factors, but once

again cited his refusal to board a plane to Uzbekistan as an ostensibly countervailing factor. Pitman Declaration, Exhibit L. On June 15, 2020, pursuant to ICE's acknowledgement of Mr. Madjitov's membership in a *Frailhat* subclass, Mr. Madjitov submitted another request for release on urgent humanitarian grounds related to his *Frailhat* class membership. Mr. Madjitov's 18-page second release request was denied by ICE that same day, a mere 37 minutes after its submission. Second COVID Release Request and Denial, Exhibit N. Mr. Madjitov subsequently contracted the COVID-19 virus and has been suffering from symptoms of the virus for months. Etowah County Detention Center Medical Records, Exhibit D.

26. Upon confirming his COVID-19 positive status, rather than releasing Mr. Madjitov, ICE instead held Mr. Madjitov for seventy days in solitary confinement, where he was locked inside a cell for 23 hours each day and where his communication with lawyers and family was severely restricted. Needlessly, and with disregard for Mr. Madjitov's membership in the *Frailhat* class, ICE has relegated Mr. Madjitov to pursuing these avenues for relief even while suffering from COVID-19.

27. On September 16, 2020, Mr. Madjitov informed counsel that his inmate commissary account had been closed. Based on two prior occasions when his account had been closed—including prior to events of June 10-11, 2020 on which this action is based—Mr. Madjitov informed counsel that he understood ICE would imminently be moving him out of Etowah, with the intention of removing him to Uzbekistan. On the morning of September 17, 2020, officials at Etowah informed counsel that Mr. Madjitov was en route to the LaSalle ICE Processing Center in Jena, Louisiana. Mr. Madjitov's legal team checked the ICE Online Detainee Locator System at around 4:15 on September 17, 2020 and confirmed that Mr. Madjitov is now listed as detained at the LaSalle facility. This morning, September 18, 2020, Mr.

Madjitov's wife communicated to counsel that her husband had called her from the LaSalle facility at around 9:30 a.m. that morning, and that she understood him to say he was not given a bed in a dormitory at the facility, because he would not be staying there. At 1:53 today, September 18, 2020, counsel spoke with Mr. Madjitov by phone and learned that he had been moved to the ICE Staging Facility in Alexandria, Louisiana.

On June 10, 2019, ICE violently and unlawfully attempted to deport Plaintiff while Plaintiff's order of removal was stayed—even though Plaintiff repeatedly notified ICE agents of the stay.

28. Mr. Madjitov has been in ICE custody since he was arrested in the early morning hours of December 22, 2017, exactly one week before the birth of his third child. ICE charged Mr. Madjitov only with noncompliance with his three-year-old removal order.

29. Mr. Madjitov was initially held by ICE at the Bristol County House of Correction in Massachusetts, but in February 2018, ICE moved him over 1,000 miles away from his family to the Etowah County Detention Center.

30. On January 17, 2018—less than a month after having been taken into detention—Mr. Madjitov filed a motion asking the BIA to reopen his removal proceedings *sua sponte*. On March 2, 2018, he amended that motion to reopen, urging the BIA to recognize that the combination of significantly increased surveillance by the Uzbekistani government, in conjunction with the publicly available information about his family member's alleged association with terrorists, placed him in danger of persecution and torture, and constituted the requisite changed circumstances in support of reopening his case.

31. Together with his amended motion to reopen, Mr. Madjitov filed a motion for a stay of removal. His motion for a stay remained pending before the BIA until June 4, 2019, when the BIA denied his motion.

32. Sometime around that time, in late May or early June of 2019, Mr. Madjitov was suddenly moved from Etowah to the LaSalle ICE Processing Center in Jena, Louisiana. On or around June 7, 2019, he was moved again, to the Hudson County Correctional Center in Kearny, New Jersey. Mr. Madjitov came to understand that ICE was planning to remove him, despite the fact his motion to reopen remained pending before the BIA.

33. Mr. Madjitov filed a *pro se* Petition for Review in the United States Court of Appeals for the Third Circuit on June 7, 2019, seeking review of the BIA's refusal to grant him a stay while his case was pending before that tribunal. *Madjitov v. U.S. Attorney General*, Docket No.: 19-2327 (3d Cir. June 7, 2019).

34. The Third Circuit issued a temporary stay of removal on the afternoon of June 10, 2019. Mr. Madjitov learned of the stay of removal at around noon on June 10, 2019, when he called his wife from the detention center and she informed him that she had spoken to the clerk at the Third Circuit, who had informed her that the court had granted his motion. The stay of removal was officially entered into the docket at 5:08 p.m. on that date, approximately five hours before ICE initiated transport of Mr. Madjitov to JFK. *Id.* (3d Cir. June 10, 2019); Exhibit B. The stay would remain effective until July 30, 2019, when the court issued an order vacating it. *Id.* (July 30, 2019).

35. Plainly defying the Third Circuit's order, ICE attempted to remove Mr. Madjitov at around 10:00 p.m. the night of June 10, 2019. Security guards from the Hudson County Correctional Center first bound Mr. Madjitov in shackles at his hands, feet, and waist, before transporting him in a white van from Hudson County, where he had been held by ICE, to JFK International Airport.

36. Mr. Madjitov was released from his shackles when he exited the van, but the two ICE officers who met him at the airport proceeded to handcuff Mr. Madjitov before bringing him inside the airport. One of these officers has still not been identified, and he played no part in the subsequent violent attempts to force Mr. Madjitov onto the plane. The other officer has since been identified as Defendant Goriah, although Mr. Madjitov did not know his name at the time, as he was not wearing his badge.³

37. Once inside the airport, Mr. Madjitov informed Defendant Goriah and the unknown officer that they had no right to force him to board a plane in violation of the stay of removal ordered by the Third Circuit.

38. One of the ICE officers laughed at Mr. Madjitov and responded that Mr. Madjitov did not have a stay of removal in place. Mr. Madjitov again told the ICE officers that he did indeed have a stay of removal. Mr. Madjitov, who filed his Petition for Review *pro se*, was capable of and did clearly articulate his legal right to remain in the country while the stay of removal remained in effect.

39. Mr. Madjitov was then taken to a holding room for approximately ten minutes before an ICE agent wearing a badge identifying himself as Ammar Syed arrived and wrongfully told Mr. Madjitov that he had checked the status of all of Mr. Madjitov's pending immigration cases and determined that he did not have a stay of removal: "All your stays are done, you don't have anything." Mr. Madjitov responded by informing Defendant Syed that he did have a stay of

³ Mr. Madjitov has consistently identified Officer Goriah as the "aggressive officer" who threatened him and applied the taser to his body later in the evening, and who was subsequently present at the hospital, along with Defendant Ammar Syed. He later learned Defendant Goriah's name through his counsel, once counsel obtained the medical records documenting his visit to the emergency room, where he was brought after he was tased by that officer. Those medical records document the two officers present at the hospital as: "ICE.USA government officer-SYED #8467, officer -Goriah #7685." Mr. Madjitov knew Defendant Ammar Syed's name, because Defendant told him his name, and also because he was wearing a badge with his name on it. He has consistently referred to him by that name.

removal issued to him by the Third Circuit Court of Appeals and requested that Defendant Syed carefully check with the Third Circuit Court of Appeals: “Please can you check carefully? The Third Circuit has granted me a stay of removal.”

40. Defendant Syed left the holding room and returned approximately fifteen minutes later. Defendant Syed alleged to Mr. Madjitov that he had just called the Third Circuit Court of Appeals (although it was shortly before midnight), and that the Third Circuit had denied that Mr. Madjitov had a stay of removal.

41. Defendant Aguilera, a third ICE officer who wore a badge and identified himself as an ICE supervisor, then approached Mr. Madjitov. Mr. Madjitov told Defendant Aguilera that he had a stay of removal. Without leaving the holding room to check whether Mr. Madjitov was correct, Aguilera wrongfully said, “You don’t have anything, all your immigration cases were denied.” Defendant Aguilera subsequently asked Mr. Madjitov: “You’re going to cooperate with us, you’re not going to cause any problems?” Mr. Madjitov did not answer his question.

42. Defendants Syed and Goriah then escorted an unshackled Mr. Madjitov through the airport, then in a white van to another terminal, through the security checkpoint, and towards a terminal gate for a flight scheduled to depart for Uzbekistan. As they walked him through the airport and then to the departure area, Defendants Syed and Goriah restrained Mr. Madjitov by flanking him on either side and tightly gripping each of his arms.

43. As they approached the boarding area, Mr. Madjitov refused to board: “I’m not going to go because I have a stay of removal.” Mr. Madjitov again informed the Defendants that forcing him onto the plane would illegally violate a federal court order.

44. Defendants Goriah and Syed responded to Mr. Madjitov's assertion of his rights by mocking him, grabbing his hands, and forcibly pushing him toward the plane. Mr. Madjitov responded resolutely and nonviolently by standing in place with his arms at his sides.

45. At this point, Defendant Aguilera arrived, approached Mr. Madjitov, and in a whisper, threatened him, ordering him to comply with the unlawful deportation: "If you don't get on this airplane by your own will, I'm going to put you in handcuffs and take you inside the airplane." Mr. Madjitov again said he would not get on the plane.

46. Defendant Goriah then similarly whispered a threat to Mr. Madjitov: "If you don't get on the plane, I'm going to tase you, shock you – we're going to bring you on the plane." Mr. Madjitov, for a third time, asserted his legal right to remain in the United States by calmly but firmly refusing to board.

47. Defendants Goriah, Syed, and Aguilera then again unlawfully attempted to defy the stay of removal by physically pushing and pulling Mr. Madjitov towards the plane, applying pressure to both the right and left sides of his body, as well as his back.

48. Mr. Madjitov continued to refuse to board the plane by physically standing in place and verbally reasserting his legal right to remain in the country. Defendants retaliated by attempting to physically intimidate, threaten, and coerce Mr. Madjitov into boarding the plane. The agents applied increasingly violent force, beating Mr. Madjitov with their bare hands and pushing him against a wall. When the Defendants pushed Mr. Madjitov against the wall, his head hit the wall first with such force that it recoiled backwards, straining and twisting his neck.

49. Defendant Goriah then reached for his electric taser and proceeded to tase Mr. Madjitov on his back, behind his right rib cage, for approximately fifteen seconds. Mr. Madjitov screamed for help, and Defendant Goriah tased Mr. Madjitov a second time, again in the same

location, for approximately fifteen seconds. The tasing was severely painful, producing immediate, hot and intense sores. Mr. Madjitov felt as if he was going to “lose [his] mind.” Mr. Madjitov once again yelled for help, and Defendants responded by pushing him to the ground and handcuffing him.

50. By this time, a large group of people had gathered in the area of the airport where Defendants were assaulting Mr. Madjitov.

51. Using obscene and abusive language, Defendant Goriah then demanded that Mr. Madjitov--who had just been beaten, tased twice, and handcuffed--stand up on his own: “Get up, you fuck, let’s get up.” Mr. Madjitov was unable to muster the energy to stand up because of the intense pain he was experiencing from being tased. When Mr. Madjitov expressed difficulty in standing, Defendants dragged him up off the ground and forced him to walk outside, despite the great and paralyzing pain that Mr. Madjitov was experiencing. Defendants did not offer Mr. Madjitov medical attention. Instead, Defendant Goriah again accosted Mr. Madjitov: “Let’s walk, you fuck, let’s walk, you’re not gonna fly today, you fuck.”

Defendants Used Excessive Force in Violation of DHS and ICE Use of Force Policies

52. 2018 DHS Policy Statement 044-05, “Department Policy on the Use of Force,” sets forth DHS guidelines on the use of force generally, as well as specific prohibitions on the use of force. Exhibit I. The DHS Policy Statement limits the use of force in general: “Unless further restricted by DHS Component policy, DHS LEOs [law enforcement officers] are permitted to use force to control subjects in the course of their official duties as authorized by law, and in defense of themselves and others. In doing so, *a LEO shall use only the force that is objectively reasonable in light of the facts and circumstances confronting him or her at the time force is applied.*” (Section II.B). It was not objectively reasonable for Defendants to use any

amount of force against Mr. Madjitov at JFK International Airport because the very circumstances under which the Defendants attempted to deport Mr. Madjitov were plainly illegal, contravening a federal appellate court's order to stay his removal. Moreover, Mr. Madjitov had no pattern of criminal or violent behavior, was not a flight risk, and exhibited no violent behavior at JFK: he simply stood still and refused to move, and Defendants responded by abusing him physically and verbally. At no point did Defendants attempt to handcuff Mr. Madjitov prior to beating and tasing him.

53. Further, "DHS LEOs have a duty to intervene to prevent or stop a perceived use of excessive force by another LEO—except when doing so would place the observing/responding LEO in articulable, reasonable fear of death or serious bodily injury." (Section III.H.2). Given that none of the three individual Defendants was in fear of death or bodily injury at any point while escorting Mr. Madjitov, each one had a duty to intervene to prevent and then stop the use of excessive force by his colleagues.

54. ICE use of force policies are outlined in ICE 2019 National Detention Standards for Non-Dedicated Facilities and in ICE 2011 Performance-Based National Detention Standards (Revised 2016). Exhibits J-K. The National Detention Standards for Non-Dedicated Facilities apply to ICE agent conduct in non-ICE facilities that hold ICE detainees, while the Performance-Based National Detention Standards apply to ICE agent conduct in ICE facilities. Defendants should have followed all use of force policies at all times while responsible for Mr. Madjitov on June 10 and June 11, 2019.

55. ICE National Detention Standards mandate strict limitations on any use of force: "The use of force is authorized only after all reasonable efforts to resolve a situation have failed." (2.8-I). ICE officers may use "*only the force necessary* to gain control of the detainee; to

protect and ensure the safety of detainees, staff, and others; to prevent serious property damage; and to ensure the security and orderly operation of the facility.” (2.8-I). At no point did the Defendants lose control of Mr. Madjitov, who calmly and repeatedly stated his right to remain in the United States pursuant to the Third Circuit stay of removal. Mr. Madjitov posed no risk to others or to property. He did nothing to disrupt the security of a detention facility or JFK Airport. Mr. Madjitov did not and could not have interfered with any orderly operation to deport him from the United States because the operation itself was unlawful: Defendants were attempting to unlawfully violate a stay of removal. All he did was simply assert his right to remain in the United States as mandated by a federal court order. The use of force he endured was both shocking and excessive under the circumstances.

56. The National Detention Standards limit the use of physical restraints, which should only be used “to gain control of an apparently dangerous detainee.” (2.8-I). Mr. Madjitov was placed in handcuffs immediately after he was beaten and tased by the three Defendants, and while they were pinning him to the ground. He was not apparently dangerous; physical restraints were unnecessary to gain control of Mr. Madjitov. The beating and tasing of Mr. Madjitov by Defendants violate the categorical prohibition on retributive uses of force: “Under no circumstances shall force be used to punish a detainee.” (2.8-II.A.1). Given that Mr. Madjitov was not dangerous and posed no risk to Defendants or others and Defendants threatened to tase Plaintiff unless he got on the plane, Defendants’ violent actions were intended to punish Mr. Madjitov for asserting his constitutional rights by refusing to board the plane when a federal court order had stayed his removal.

Plaintiff required emergency hospital care as a result of ICE officers' assault on him.

57. As Defendants Goriah, Syed, and Aguilera and Mr. Madjitov were exiting the airport terminal, Mr. Madjitov could barely walk and was crying from the intense pain. Defendant Goriah was visibly angry. Upon exiting the airport terminal, the three ICE Defendants put Mr. Madjitov in the back of a cargo van and closed the doors. At this point, a group of local police officers saw what was happening and approached the Defendants and Mr. Madjitov. The police officers and Defendants conversed outside of Mr. Madjitov's earshot. Suddenly, Defendants Aguilera and Goriah opened the cargo van's doors. The Defendants dramatically changed their tone and demeanor towards Mr. Madjitov after encountering the local police officers. Only then did Defendants ask about Mr. Madjitov's well-being and offered to call an ambulance. Mr. Madjitov was in terrible pain and accepted the offer to go to the hospital.

58. In the ambulance, still monitored by Defendant Syed, Mr. Madjitov told the paramedic about the assault, described his pain, and noted the areas on his body where the tasing wounded him. The ambulance paramedic remarked that those tased areas were red, hot, and burned. The ambulance then transported Mr. Madjitov to the nearby Jamaica Hospital Medical Center. Defendant Goriah followed the ambulance in the cargo van in which Mr. Madjitov was initially confined upon exiting the airport.

59. Defendant Syed recorded the ambulance paramedic's identifying information by taking a photograph of her badge with his cellphone.

60. Records from the Emergency Department at Jamaica Hospital Medical Center indicate that Mr. Madjitov arrived at the hospital at 1:06 a.m. on June 11, 2019 while under arrest by ICE and, specifically, in the custody of Officer Syed, #8467, and Officer Goriah, #7685. Jamaica Hospital Medical Records, Exhibit C.

ICE officers interfered with the accurate documentation of Plaintiff's medical records and prevented Plaintiff from using the restroom or performing ritual ablutions.

61. At the hospital, Mr. Madjitov was brought into a “warm” room and placed in a bed. There, he told a nurse that ICE agents had assaulted him with physical force and an electric taser at JFK airport, and that now he was experiencing very strong pain in different parts of his body. Because Defendants Syed and Goriah were present, however, Mr. Madjitov deliberately refrained from identifying Syed and Goriah as the ICE officers who had assaulted him. Nevertheless, Defendants Syed and Goriah frequently interrupted Mr. Madjitov's conversation with the nurse to justify their assault on him—untruthfully saying that Mr. Madjitov had to be subdued after resisting ICE's efforts to handcuff him. In fact, Defendants Syed, Goriah, and Aguilera did not handcuff or attempt to handcuff Mr. Madjitov during their walk through the airport. Defendants only handcuffed and tasered Mr. Madjitov after having assaulted him for asserting his lawful right to refuse to board the plane.

62. Defendants then handcuffed Mr. Madjitov to his bed. Soon afterward, the medical staff transferred Mr. Madjitov to a second room at the hospital where he was again handcuffed to the bed.

63. In this second room, Mr. Madjitov again explained his assault at the airport and the pain he was feeling to a doctor and group of nurses.

64. The presence and frequent interjections of Defendants Syed and Goriah who had just assaulted Mr. Madjitov left Mr. Madjitov feeling too scared to share with the medical staff all of the relevant details about his assault at the airport. For example, while he did say he was tasered twice, he did not share that it was Defendant Goriah who tasered him.

65. The doctor then gave Mr. Madjitov 800 mg of ibuprofen to help alleviate the pain from his injuries.

ICE Interfered with the Proper Documentation of Mr. Madjitov's Medical History

66. At the end of Mr. Madjitov's hospital visit, a nurse handed Mr. Madjitov his discharge papers, but one of the ICE officers forcibly and abruptly snatched the papers away from Mr. Madjitov before Mr. Madjitov could read what the papers said. Defendant Goriah then privately conversed with Defendant Syed outside of Mr. Madjitov's earshot. After their conversation, Defendant Syed talked to and returned the discharge papers to the nurse. The nurse took the returned papers and talked to the doctor who had treated Mr. Madjitov. The doctor then typed on her computer—located about ten feet from Mr. Madjitov's bed—before printing a new set of discharge papers.

67. The nurse then returned with the new discharge papers and handed them first to the ICE officers for their review and approval before eventually giving the papers to Mr. Madjitov. Mr. Madjitov's hospital records note: "Discharge documents given to [ICE officers]".

68. Mr. Madjitov's hospital records diagnose him with acute bilateral thoracic back pain. This diagnosis references physical injuries inflicted upon Mr. Madjitov by Defendants when they tased him twice: "pt c/o back pain secondary to being tazed by pd."

69. Mr. Madjitov's hospital records are not fully consistent with the information he provided to each of the medical providers at the hospital. First, the records indicate that Mr. Madjitov denied having a head or neck injury, even though he told the providers he did suffer such injuries. His head and neck injuries were also reflected in his daily provision of ibuprofen at the New Jersey correctional facility where he was taken after the hospital and in the long-term aches he experiences to this day in the neck area. Second, the records note Mr. Madjitov's pain

was “mild,” did not “radiate,” and did not include headaches, weakness, or numbness; all of these claims fail to reflect how Mr. Madjitov described his injuries to the nurse and doctor, and are at odds with his subsequent documentation of such pains following the assault. Lastly, the records state Mr. Madjitov had no signs of overt trauma or injury, a recorded finding which conflicts with the ambulance paramedic’s comment that the area on Mr. Madjitov’s back where he was tased was both red and burned.

Defendants Prevented Mr. Madjitov from Using the Restroom and Performing Ablutions

70. While handcuffed to the hospital bed, Mr. Madjitov asked to use the restroom as his bladder began to hurt badly. Defendant Goriah refused, saying Mr. Madjitov would have to wait until he was on the way out of the hospital. About an hour later, as Mr. Madjitov was discharged from the hospital, Defendant Goriah finally allowed him to use the restroom.

71. As he walked out of the hospital, ICE officers again cuffed Mr. Madjitov’s waist, arms, and legs. In the restroom, Mr. Madjitov asked Defendant Goriah to remove at least one of his handcuffs so that he could wash his hands and face in preparation for mandatory religious prayer. Defendant Goriah refused to allow for this spiritually significant religious accommodation. Mr. Madjitov still attempted to perform his mandatory ablutions in accordance with his religious beliefs but was unable to reach his face while handcuffed.

Plaintiff Continues to Suffer Long-Term Effects of ICE Abuse

72. In the days after the assault, Mr. Madjitov was aware of several hardening scabs in the area of his back where he suffered taser burns. The first time Mr. Madjitov had an opportunity to look at his back was when he was transferred from Hudson Correctional Facility to Etowah County Detention Center. Even though at least a week had passed since the assault, he

still saw more than ten discolorations—small black points—on the area of his back where he was tased.

73. Since ICE agents abused him at JFK, Mr. Madjitov has experienced recurring back pain; bouts of spinal pain which radiate from his back to his right shoulder and chest and then to his neck and head; and numbness on the left side of his body. Mr. Madjitov did not have these forms of pain and injury prior to ICE's assault.

74. Additionally, Mr. Madjitov struggles with anxiety and depression. The latter condition has been diagnosed by doctors at the Etowah County Detention Center in Alabama, where Mr. Madjitov was detained up to September 17, 2020. Mr. Madjitov's wife has declared that after he was abused at JFK he became hopeless and silent—a dramatic change from his demeanor before the assault.

ICE continues to punish Plaintiff for asserting his constitutional rights on June 10 and 11, 2019.

75. ICE continues to punish Mr. Madjitov for asserting his constitutional right to not be forcibly and unlawfully removed from the United States on the night of June 10 and early morning of June 11, 2019. ICE has cited Mr. Madjitov's refusal to comply with Defendants' unlawful removal attempt as the sole basis for rejecting Mr. Madjitov's urgent COVID-19 Humanitarian Release Requests. ICE conceded Mr. Madjitov's membership in the *Fraihat* subclass of detained individuals at high risk of suffering grave consequences from infection by COVID-19 and at high risk of contracting COVID-19 in detention. Nevertheless, ICE denied both of Mr. Madjitov's humanitarian release requests, and Mr. Madjitov subsequently contracted the COVID-19 virus. He has been symptomatic for months. Mr. Madjitov's inability to secure the relief to which he should have been entitled as a *Fraihat* subclass member is a direct and

disastrous consequence of the Defendants' unlawful attempted removal and of Mr. Madjitov's legal assertion of his constitutional right.

CLAIMS

First Claim Federal Tort Claims Act – 28 U.S.C. § 1346(b) Assault

76. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

77. Under New York law, the elements of an assault include (1) an unjustifiable threat of force, (2) made with the intention to arouse apprehension of immediate physical harm, (3) that creates a reasonable apprehension of immediate physical harm, and (4) is carried out with the apparent present ability to effectuate the threat.

78. In contravention of a court order staying Plaintiff's removal from the United States, Defendants Aguilera, Syed, and Goriah acted intentionally to arouse apprehension of force and immediate physical harm to compel Plaintiff to board a plane to Uzbekistan.

79. Defendants' repeated threats of force were unjustifiable because they were issued in an attempt to unlawfully deport Plaintiff, in violation of Plaintiff's valid stay of removal. Additionally, their threats violated Department of Homeland Security policy, which provides that detainees "shall be escorted in a manner that is safe, secure, humane, and professional," and ICE Detention Standards, which explicitly prohibit striking a detainee for failing to obey an order or when the use of less violent measures would achieve the desired result.

80. After Plaintiff informed Defendants Aguilera, Syed, and Goriah of his stay of removal, Defendants Aguilera, Syed, and Goriah knowingly and intentionally created a reasonable apprehension of immediate physical harm by: 1) pushing and pulling Plaintiff towards the plane; 2) threatening to handcuff and drag him on board if he did not board

voluntarily; and 3) threatening to strike him with an electric taser if he continued to refuse to board. These actions were intended to, and succeeded in, causing Plaintiff to fear imminent physical harm.

81. Defendants Aguilera, Syed, and Goriah had the apparent ability to effectuate their threats as they had Plaintiff physically restrained between the three of them. Plaintiff had been restrained in Defendants' handcuffs earlier in the evening, and Defendant Goriah noticeably had a taser hanging from his belt.

82. The actions of Defendants Aguilera, Syed, and Goriah constitute assault under New York law.

83. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Second Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
Battery

84. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 53.

85. Under New York law, the elements of a battery claim are: (1) intent to make bodily contact, (2) which is harmful or offensive in nature.

86. After Plaintiff asserted that putting him on the plane would violate a federal court order, Defendants Aguilera, Syed, and Goriah knowingly and intentionally made harmful and offensive contact with Plaintiff's body by beating Plaintiff, pushing him into a wall where his neck and head were twisted, and twice striking Plaintiff with an electric taser.

87. While Plaintiff was screaming and pleading for help, Defendants Aguilera, Syed, and Goriah knowingly and intentionally made additional harmful and offensive contact with Plaintiff's body in order to push him into the ground and handcuff him.

88. Defendants' actions caused Plaintiff immediate physical harm because, as a direct result of those actions, Plaintiff experienced pain, had difficulty standing, and required emergency medical care for his injuries. Defendants' actions also inflicted long-term physical and psychological injuries on Plaintiff: He continues to suffer from intense spinal pain, numbness, frequent headaches, general body aches, memory loss issues, and a stammering disorder. All of these medical problems began the night Defendants beat and abused him. He also regularly suffers from nightmares about being abused and beaten by law enforcement, as well as similar anxious apprehensions of harm when he is awake.

89. The actions of Defendants constitute battery under New York law.

90. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Second Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
False Imprisonment

91. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

92. Under New York tort law, false imprisonment requires: (1) intent to confine, (2) complete confinement, (3) that the plaintiff is conscious of the confinement, (4) that he does not consent to the confinement, and (5) that the confinement is not otherwise privileged or justified.

93. Plaintiff's confinement on the way to and at the airport was distinct from Plaintiff's confinement in ICE's detention facilities. Pursuant to the Third Circuit court order

staying Plaintiff's removal from the United States, Defendants lacked the discretionary authority to remove Plaintiff from the country, so their actions restraining Plaintiff for the purposes of forcing him to board the plane were unjustified.

94. Plaintiff was intentionally and unlawfully confined when ICE transported him to JFK for the purpose of deporting him. Defendants Aguilera, Syed, and Goriah intentionally and unlawfully confined Plaintiff at the JFK holding room and throughout their journey through the airport and to the boarding gate.

95. Plaintiff's confinement was complete at all times. From Plaintiff's arrival at the airport until he was locked in the holding room, his hands, waist, and feet were secured with cuffs. From the holding room to the boarding gate, he was guarded by Defendants Syed and Goriah, whose presence and physical restraint of Plaintiff's arms rendered him confined. After Plaintiff refused to board the plane, Defendants Aguilera, Syed, and Goriah used bodily force and a taser to disable him from moving his body, to the point that he could barely muster the strength to walk out of the airport on his own. Until the ambulance arrived, Plaintiff was confined in a cargo van whose doors were shut by Defendants. In the ambulance, Defendant Syed accompanied Plaintiff at all times, and Plaintiff was cuffed to the inside of the ambulance. In the hospital, Defendants Syed and Goriah guarded Plaintiff at all times and cuffed him to both beds that he laid in. Defendant Goriah escorted Plaintiff to the bathroom at the end of the hospital visit and refused to release even one of Plaintiff's handcuffs.

96. Plaintiff was conscious that he was confined. He repeatedly told Defendants Aguilera, Syed, and Goriah that he had a stay of removal in place, which meant that he should not be removed and should not be confined at JFK. Nonetheless, he was aware that he could not leave the immediate physical custody of the ICE agents and did not attempt to do so.

97. Knowing that Defendants' actions were unlawful, Plaintiff did not consent to his confinement. Twice, he asked ICE agents to check on the existence of a stay of removal order in his case. When Defendants Aguilera, Syed, and Goriah attempted to force him onto a plane, Plaintiff verbally refused to enter the plane and stood in place to show that he would not board.

98. Plaintiff's confinement was not privileged or justified. Plaintiff had a valid stay of removal in effect and he repeatedly informed Defendants Aguilera, Syed, and Goriah about this court order. His confinement during his transport to and at JFK was confinement in service of an illegal attempt to remove him from the country.

99. The actions of Defendants Aguilera, Syed, and Goriah in confining the Plaintiff as they attempted to unlawfully remove him from the country constitute false imprisonment under New York law.

100. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Third Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
Intentional Infliction of Emotional Distress

101. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

102. Under New York law, intentional infliction of emotional distress exists where: (1) extreme and outrageous conduct, (2) performed with intent to cause, or in disregard of a substantial probability of causing, severe emotional distress, (3) causes severe emotional distress.

103. Defendants Aguilera, Syed, and Goriah knowingly and intentionally caused Plaintiff severe emotional distress by mocking, threatening, beating, and tasing Plaintiff; twisting Plaintiff's head and neck; yelling abusive and profane language at Plaintiff; and forcefully

pushing Plaintiff towards the ground and handcuffing him while Plaintiff screamed in pain and pleaded for help.

104. Furthermore, Defendants Aguilera, Syed, and Goriah knowingly and intentionally caused Plaintiff severe emotional distress by forcing Plaintiff to walk when Plaintiff was in pain and had difficulty standing; denying Plaintiff use of the restroom when he needed it; and refusing to allow Plaintiff to wash his hands and face in preparation for mandatory religious prayers.

105. Defendants Aguilera, Syed, and Goriah behaviors were extreme and outrageous under the circumstances, particularly in light of the fact that Defendants Aguilera, Syed, and Goriah engaged in those behaviors while attempting to violate a federal court order.

106. The conduct of Defendants Aguilera, Syed, and Goriah in fact caused Plaintiff to suffer severe emotional distress. Plaintiff felt shame and humiliation from being beaten and abused in front of a large crowd. He saw several people, plausibly from his country, film his ordeal with their cell phones. Plaintiff was deeply shocked at Defendants' willful and hateful violation of his basic human dignity.

107. Plaintiff continues to suffer long-term, severe emotional harm because of Defendants' outrageous actions. He has frequent nightmares about being beaten by law enforcement, and his days in detention are filled with terror that ICE will suddenly and unjustifiably abuse him once again. These lasting emotional effects have turned him into a depressed and pessimistic man.

108. The actions of Defendants Aguilera, Syed, and Goriah constitute intentional infliction of emotional distress under New York law.

109. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Fourth Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
Negligence

110. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

111. New York law establishes that negligence involves (1) a duty of care owed to the plaintiff, (2) negligent conduct or breach of the duty of care of a reasonably prudent person or professional, (3) which causes, (4) plaintiff's legally cognizable injury or damages.

112. Defendants owed a legal duty of care to plaintiff as an individual held in ICE custody.

113. ICE officers are obliged to conduct only lawful removals and have various means of checking whether a removal has been stayed by the court. Defendants Aguilera, Syed, and Goriah negligently failed to ensure that Plaintiff's removal was lawful, and thereby failed to meet the standards of a professional in their field.

114. Defendants Aguilera, Syed, and Goriah negligently failed to confirm Plaintiff's stay of removal with the Third Circuit, a task that plaintiff's wife, a reasonably prudent person with more limited resources than ICE, managed to accomplish.

115. Due to their negligence, Defendants attempted to unlawfully remove Plaintiff from the United States by forcing him to board a plane to Uzbekistan. Defendants' negligent actions caused Plaintiff legally cognizable injury and damages. As a direct result of Defendants' actions, Plaintiff suffered lasting physical injuries and emotional harm.

116. Moreover, Plaintiff's refusal to board this plane was subsequently cited as the only reason Plaintiff was not released from detention despite being identified by ICE as a member of the *Fraihat* class of immigrant detainees who were at an elevated risk of contracting COVID-19, and were acknowledged as candidates for preliminary injunctive relief in the form of release from ICE detention.

117. The actions of Defendants Aguilera, Syed, and Goriah constitute negligence under New York law.

118. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Fifth Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
Negligent Supervision

119. Plaintiffs incorporate and re-allege all the allegations in ¶¶ 1 – 75.

120. Under New York law, to prove negligent supervision a plaintiff must show the standard elements of negligence and, additionally, (1) that the tort-feasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and (3) that the tort was committed on the employer's premises or with the employer's chattels.

121. Defendant Aguilera is in an employee-employer relationship with Defendant Syed and Defendant Goriah. Plaintiff was abused by two agents, Defendants Syed and Goriah, while they were supervised by Defendant Aguilera, who had identified himself as an ICE supervising officer.

122. Defendants Syed and Goriah unlawfully attempted to remove Plaintiff in contravention of a Third Circuit stay of removal while under Defendant Aguilera's supervision.

123. Defendant Goriah threatened Plaintiff with violence while under Defendant Aguilera's supervision and Defendant Syed and Goriah – Defendant Syed in particular – beat and tased Plaintiff while under Defendant Aguilera's supervision.

124. Supervisor Defendant Aguilera directly observed this abuse over a period of hours during Plaintiff's unlawful confinement at JFK and at Jamaica Hospital Medical Center, Defendant Aguilera had reason to know that the agents under his supervision were conducting themselves in a way that could cause injury. Defendant Goriah specifically threatened violence and subsequently fulfilled his threats by beating and tasing Plaintiff along with Defendant Syed.

125. Nevertheless, Supervisor Defendant Aguilera did not intercede as Defendants Syed and Goriah attempted to defy a Third Circuit stay of removal and threatened and assaulted Plaintiff. Indeed, Defendant Aguilera also used force against Plaintiff, pulling him toward the airplane and participating in beating Plaintiff.

126. Nor did Defendant Aguilera exercise his supervisory duties over the agents prior or subsequent to the assault.

127. At JFK, Defendant Aguilera failed to discover that Plaintiff's case was subject to a stay of removal, and therefore failed to prevent Plaintiff's false imprisonment. Despite Plaintiff repeatedly asserting his legal right to remain in the United States and his urgent requests that Defendants acknowledge the federal court order, Defendant Aguilera was negligent in failing to assure that his subordinates discovered the existence of the stay preventing Plaintiff's removal. Defendant Aguilera was aware of Plaintiff's claims and knew or should have known that Plaintiff had a valid Third Circuit stay of removal in effect.

128. At the hospital, Supervisor Defendant Aguilera allowed Defendants Syed and Goriah to read and intervene in the issuance of Plaintiff's discharge papers and also allowed Defendants Syed and Goriah to prevent plaintiff from using the restroom and fulfilling his religious obligations while in the hospital.

129. Defendant Aguilera failed to prevent the assault against Plaintiff and to discipline agents under his supervision while they were perpetrating the assault: he was deliberately indifferent to the illegal conduct directed against Plaintiff.

130. Defendants Aguilera, Syed, and Goriah assaulted Plaintiff using employer's chattels, in particular the taser issued to them by ICE. Defendants Aguilera, Syed, and Goriah also falsely imprisoned Plaintiff using handcuffs issued to them by ICE, the van used to transport Plaintiff to JFK, and the holding rooms at the airport.

131. The actions of Defendant Aguilera in his role as an ICE supervising officer constitute negligent supervision under New York law.

132. Defendant Aguilera was at all relevant times an ICE agent employed by Defendant United States of America and acting within the scope of his employment.

Sixth Claim
Federal Tort Claims Act – 28 U.S.C. § 1346(b)
Abuse of Process

133. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

134. Under New York law, the elements of an abuse of process claim include (1) use of regularly issued process compelling performance of or forbearance of some act, (2) intent to do harm without excuse or justification, social or economic and (3) use of process in a perverted manner to obtain a collateral objective or detriment which is outside the legitimate ends of the process.

135. Defendants Aguilera, Syed, and Goriah intentionally and knowingly abused legal process by exercising their authority for the illegitimate purpose of removing Plaintiff from the United States despite a federal court order staying his removal.

136. Defendants Aguilera, Syed, and Goriah further intentionally and knowingly abused process by exercising their authority to seize Plaintiffs' discharge papers and request that they be altered for the illegitimate purpose of interfering with the accurate documenting of Plaintiff's medical records.

137. Plaintiff suffered physical injury and mental anguish as a result of Defendants' abuse of their legal authority.

138. The actions of Defendants Aguilera, Syed, and Goriah constitute abuse of process under New York law.

139. Defendants Aguilera, Syed, and Goriah were at all relevant times ICE agents employed by Defendant United States of America and acting within the scope of their employment.

Seventh Claim
Use of Excessive Force in Violation of the Fifth Amendment to the United States
Constitution (*Bivens* Action)

140. Plaintiff incorporates and re-alleges all the allegations in ¶¶ 1 – 75.

141. Under the Fifth Amendment to the United States Constitution, which prohibits punishment of civil detainees and others detained prior to a criminal conviction, immigration detainees are protected from the use of excessive force or punishment. Indeed, the question is not whether a detainee has suffered cruel and unusual punishment, as is the case with criminal detainees, but whether the detainee has been punished at all. Accordingly, to prove that his Fifth

Amendment rights were violated, a detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.

142. Under the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishment, use of force is excessive when the defendant objectively violated contemporary standards of decency and acted with a sufficiently culpable state of mind.

143. Defendants' use of force was objectively serious and violated contemporary standards of decency as the Defendants' violent and unlawful actions caused Plaintiff pain, made walking difficult and required emergency medical care. He continues to suffer lasting physical pain and psychological distress stemming directly from Defendants' abuse.

144. Defendants Aguilera, Syed, and Goriah acted with a sufficiently culpable state of mind, as they used force against Plaintiff not in a good faith effort to maintain or restore discipline, but maliciously for the very purpose of causing harm. Plaintiff was not at risk of harm to himself or others and Defendants explicitly threatened, then proceeded, to use force against Plaintiff as punishment for exercising his right to remain in the United States, pursuant to the Third Circuit's stay of his removal order, by refusing to board a plane bound for Uzbekistan.

145. Plaintiff's constitutional rights were violated under both Fifth and Eighth Amendment standards for what constitutes excessive use of force.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Award Plaintiff compensatory damages from the United States in an amount to be proven at trial;
- ii. Award Plaintiff compensatory and punitive damages from each individual Defendant jointly and severally;

- iii. Award Plaintiff attorneys' fees, costs, and expenses of all litigation, pursuant to 28 U.S.C. § 2678; § 28 U.S.C. § 2412(d); and 5 U.S.C. § 504 et seq.; and,
- iv. Grant such other relief as the Court deems just and equitable.

Dated: September 18, 2020

Respectfully submitted,

/s/ Ahmed Mohamed

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**Motion for law student appearance forthcoming

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