

JUDGE SULLIVAN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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Rami N.I. Tawfik, Ali M.A.K. Hadad, Tarek :
T.A.N. Youssef, Nour E.D.A.N.E.Mahmoud, :
Mohammed B.A. Elsnahoury, Atef S.M. Faragallah, :
Mohammed F.M. Farghaly, Tamer F.M. Farghaly, :
Ahmed A.A. Sobhi, Khalefa A.H.A.H. Mohammed, :
Mosaad H.A. Elfatayri, Mohammed G.F. Ibrahim, :
Walid N.A.A. Hasan, Mostafa S.K. Hariz, Ahmed :
A.A.E. Diab, Ahmed M.M. Mahmoud, :
Mohammed A.F. Farag, Ali S.A. Mohammed, :
Mohammed N.M. Ghanem, Fahd Abbas Reda Abd :
Alaal, and Romany Shehata Malek Faragallah :
: :
Plaintiffs, :
: :
-against- :
: :
Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, :
Sheikh Nasser Sabah Al-Ahmed Al-Jaber Al-Sabah, :
Sheikh Jaber Khalid Al-Jaber Al-Sabah, Abdallah :
Ali Al-Kandery, and Ahmed Mokhalaf Al-Anzy, :
: :
Defendants. :
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Case No.:
COMPLAINT
JURY TRIAL DEMANDED

Introduction

1. Pursuant to the Torture Victim Protection Act and the Alien Tort Claims Act, plaintiff Egyptian citizens seek compensation for injuries resulting from their arbitrary incarceration and torture in Kuwait, in violation of the Law of Nations.

Parties, Jurisdiction and Venue

2. Each named plaintiff is a natural person and Egyptian citizen.

3. Defendant, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, is a natural person, Kuwaiti citizen, and the Emir of the State of Kuwait. Defendant Sheikh Nasser Sabah Al-Ahmed Al-Jaber Al-Sabah, is a natural person, Kuwaiti citizen, and Kuwaiti Minister of Al-Diwan Al-Amiri Affairs (Head of the Royal Council). Defendant, Sheikh Jaber Khalid Al-Jaber Al-Sabah, is a natural person, Kuwaiti citizen, and Kuwaiti Minister of Interior. These three defendants are hereafter referenced collectively as the “Sheikh Defendants.” The Sheikh Defendants conduct governmental and personal business within this judicial district. The Emir defendant maintains a residence in the district.

4. Defendants Abdallah Ali Al-Kandery and Ahmed Mokhalaf Al-Anzy are both natural persons and Kuwaiti citizens, and officers in the Kuwaiti Ministry of Interior. As of April of 2010, they each held the rank of Captain. These two defendants are hereafter referenced collectively as the “Captain Defendants.” All actions taken by the Captain Defendants, hereafter described in this Complaint, were taken at the behest and direction of the Sheikh Defendants. Following their actions set forth in this complaint, both of the Captain Defendants were promoted to the rank of Major.

5. Plaintiffs invoke this Court’s federal question jurisdiction pursuant to 28 U.S.C. § 1331, and its Alien Tort Claims jurisdiction pursuant to 28 U.S.C. § 1350.

6. Venue is properly laid in the Southern District of New York pursuant to 28 U.S.C. § 1391 subd. (d).

Facts Common to All Causes of Action

7. The Egyptian Association for Change is a political organization dedicated to the democratization of the political process in Egypt through peaceful means. As of early

2010, the Egyptian Association for Change had branches in several countries including Egypt, the United States and Kuwait. At that time, each of the plaintiffs herein was an Egyptian citizen residing in Kuwait, and a supporter of the Egyptian Association for Change.

8. In April of 2010, all of the plaintiffs were arrested by the Kuwaiti secret police pursuant to orders of the Sheikh Defendants. Plaintiffs are informed and believe that the Sheikh Defendants ordered that plaintiffs be arrested for two reasons: a) Hosni Mubarak, then President of Egypt, requested their arrest, and b) the Sheikh Defendants viewed the democratic ideals of the Egyptian Association for Change as a possible threat to their continuation in power.

9. Upon being arrested, each plaintiff was held in solitary confinement in a filthy, cockroach infested, windowless cell. The lights were kept on in each cell 24 hours a day, preventing plaintiffs from sleeping. The plaintiffs were reduced to defecating into a hole in the floor while being observed via closed-circuit camera. Each day, each plaintiff was provided with a single cup of drinking water.

10. The plaintiffs were held entirely *incommunicado*. Their cell phones were confiscated, and as far as friends and family were concerned, they had simply disappeared. The plaintiffs requested legal counsel and consular services, but were refused. They were never charged with any crimes. They were never brought before any judge or magistrate.

11. Several times each day, each plaintiff was removed from his cell, blindfolded, handcuffed behind his back, and interrogated and tortured by the Captain Defendants. Acting at the direction of the Sheikh Defendants, the Captain Defendants interrogated the plaintiffs concerning their political associations, while bludgeoning their

heads, kicking them, caning them, and lashing them. These violent interrogations were prolonged. Plaintiff Mohammed Elsnahoury, for example, was forced to stand for four hours while being beaten continuously.

12. The beatings inflicted by the Captain Defendants were so vicious that several plaintiffs suffered permanent physical injuries. Plaintiff Nour Mahmoud was severely beaten about the head and back, and suffered a spinal injury for which he required surgery when he was eventually deported to Egypt. He is still partially disabled and will require further spinal surgeries. The right arm of Plaintiff Khalefa Mohammed was damaged so badly that he cannot raise it; his back is permanently scarred from caning and lashing. Plaintiff Ali Hadad was also severely beaten about the head, and suffered wounds sufficiently severe to require hospital treatment.

13. Plaintiffs were unable to sleep while in captivity, not only because the lights of the windowless cells were kept on 24 hours a day, but also because they were disturbed by the screams of their fellow plaintiffs being tortured.

14. Defendants inflicted physical injury upon plaintiffs not only by assaulting them, but also by deliberately depriving them of necessary prescription medications and medical attention. Mosaad Elfatayri, one of the older plaintiffs, was under treatment for arterial disease. He requested access to his medication but was refused. The absence of medication, together with the extreme heat in the cells, and absence of adequate drinking water, caused Elfatayri to repeatedly lose consciousness. He asked for a doctor but was refused. Plaintiff Tamer Farghaly was under treatment for a cardiac condition; he too requested his medication, but was refused. Plaintiff Khalefa Mohammed, a diabetic, was denied both insulin and any food whatsoever. Plaintiff Tarek Youssef was denied his medication for Mediterranean Fever, a disease causing fever, abdominal and chest pain,

and sometimes renal failure. Plaintiff Mohammed Farghaly was deprived of prescription painkillers for a pre-existing dental condition. Plaintiff Atef Faragallah was denied his sinus medication.

15. In addition to inflicting physical harm upon the plaintiffs, defendants also deliberately inflicted severe psychological harm. During interrogation, defendants threatened plaintiffs with electrocution and anal rape. Defendant Al-Anzy prodded plaintiff Walid Hasan's genitals with a bamboo cane while threatening to castrate him. He also threatened to hang Hasan upside down and to harm his relatives in Kuwait. Plaintiff Mohammed Farghaly was (falsely) informed that his wife had been arrested and would be raped.

16. The plaintiffs suffer on-going psychological harm from the torture inflicted at the hands of the defendants. Most of them are still undergoing treatment for psychiatric harm. In the wake of the torture described above, Plaintiff Ali Hadad suffered from deep depression and spent three months as an in-patient at a psychiatric hospital. Plaintiff Ahmed Diab is still unable to leave his house and unable to sleep. Plaintiff Khalefa Mohammed is likewise unable to leave his house and is being treated with anti-depressants. Plaintiff Ali Mohammed, an accountant, is too psychologically damaged to work. One plaintiff experiences sexual dysfunction as a result of the abuse inflicted by defendants.

17. In addition to suffering physical and psychological harm as described above, the plaintiffs also suffered economic damages caused by the defendants. When the Kuwaiti secret police eventually relinquished custody of plaintiffs, they did not release them, but rather deported them directly to Egypt. As a consequence, plaintiffs lost all of their property in Kuwait, including automobiles, cash, bank deposits, furniture,

electronics, clothing, etc. Plaintiffs are informed and believe that some of their valuables were converted to defendants' use.

18. All plaintiffs were lawfully residing and working in Kuwait. One plaintiff had been in Kuwait for two decades; three others had been there for more than 10 years. Deportation deprived plaintiffs of the value derived from their employment in Kuwait, including wages, commissions, and value of future contracts. Plaintiff Tarek Youssef's family business in Kuwait was severely damaged. The value of the plaintiffs' economic losses was not trivial because the plaintiffs were established professionals.

First Cause of Action – Torture Victim's Protection Act of 1991

19. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 - 18 herein.

20. Pursuant to the Torture Victim's Protection Act of 1991 (106 Stat. 73, note following 28 U.S.C. § 1350) (hereafter "TVPA"), defendants are liable to plaintiffs in damages for the harms described above, because they deliberately subjected plaintiffs to torture as that term is defined by the TVPA.

21. Plaintiffs have exhausted all adequate and available local remedies in Kuwait. They retained the services of Kuwaiti attorney, Mohammed Monowar Al-Mutairi, who pursued their claims to the full extent permitted by the law, courts, and government of Kuwait.

Second Cause of Action – Violation of Law of Nations – Alien Tort Claims Act

22. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 - 21 herein.

23. Defendants' actions described above, which include arbitrary arrest, detention, and torture, violate the present-day Law of Nations as defined by norms of international character accepted by the civilized world. Documents evidencing that defendants' conduct violates such norms of customary international law include, but are not limited to, the following:

a) International Covenant on Civil and Political Rights, G.A. Res. 2220A (xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

b) Declaration on the Protection of All Person From Being Subjected to Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976);

c) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 1100, U.N. Doc. A/39/51 (1984);

d) International Convention for the Protection of All Persons from Enforced Disappearance, UN G.A. Res. 61/177, UN Doc. No. A/RES/61/177 (2007); and

e) Vienna Convention on Consular Relations, 596 UNTS 261, TIAS 6820, 21 UST 77 (1963).

24. In addition to violating the Law of Nations, defendants' acts, described above, also violate federal common law and the common law of New York State. Such acts constitute the torts of false imprisonment, assault, battery, intentional infliction of emotional distress, interference with beneficial business relations, interference with contractual relations, invasion of privacy, and conversion.

25. Plaintiffs therefore invoke the jurisdiction of this court pursuant to the Alien Tort Claims Act, 28 U.S.C. § 1350, to obtain redress in this court.

**WHEREFORE, PLAINTIFFS, HAVING DEMANDED TRIAL BY JURY,
PRAY FOR JUDGMENT AS FOLLOWS:**

1) Entering judgment for compensatory damages, in favor of each plaintiff, jointly and severally against each defendant, according to proof at trial, in an amount not less than \$5,000,000 per plaintiff;

2) Entering judgment for punitive damages, in favor of each plaintiff, jointly and severally against each defendant, according to proof at trial, in an amount not less than \$15,000,000 per plaintiff;

3) Awarding plaintiff attorney's fees and costs if and as allowed by law;

4) Awarding such other and further relief as this Court may deem just and proper.

Dated: September 11, 2011

Respectfully submitted,



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