

IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. USA

Case 14.543

Mostafa Seyed Mirmehdi, Mohammad- Reza Mirmehdi, Mohsen Seyed Mirmehdi,
and Mojtaba Seyed Mirmehdi

v.

United States of America

ADDITIONAL OBSERVATIONS ON THE MERITS

Presented on behalf of the Petitioners by:

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Dr. Tania Reneaum
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
Washington, D.C. 20006

Dear Dr. Tania Reneaum,

Petitioners, Mostafa Seyed Mirmehdi, Mohsen Seyed Mirmehdi, Mojtaba Seyed Mirmehdi, and Mohammad- Reza Mirmehdi (hereinafter “The Mirmehdis” or “The Petitioners”) hereby present to the Inter-American Commission on Human Rights (hereinafter “IACHR”) the additional observations on the merits in accordance with Article 37.1 of the Rules of Procedure.

Petitioners reaffirm as if fully set forth herein the allegations and submissions made with their earlier Petition¹ and submit the additional evidence as to the discriminatory approach to their case, the false evidence presented, the violation of their right to freedom of expression and to assembly, the revocation of their bond and their subsequent detention, and the lack of an effective remedy at the national level.

As will be discussed in this brief, Petitioners argue that the United States of America (hereinafter “the United States,” “the State” or “the U.S.”) has violated their international human rights obligations as set forth under the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”). In particular, Petitioners allege violations of Article I (Right to Liberty), Article II (Right to Equality Before the Law), Article IV (Right to Freedom of Expression), Article V (Right to Protection of Honor, Personal Reputation, and Private and Family Life), Article XVII (Right to Recognition of Juridical Personality), Article XVIII (Right to Fair Trial), Article XXI (Right of Assembly), Article XXII (Right of Association), Article XXV (Right of Protection from Arbitrary Arrest or Detention), and Article XXVI (Right to Due Process) (hereinafter “the Rights Violations”).

¹ However, insofar as there are any discrepancies found in the original petition, the instant observations should control.

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I. Preliminary Statement

Mostafa Seyed Mirmehdi, Mohammad-Reza Mirmehdi, Mohsen Seyed Mirmehdi, and Mojtaba Seyed Mirmehdi, asylum seekers from Iran, were arbitrarily held in U.S. immigration detention for three and a half years in total after a judge had already deemed them not to be dangerous and released them on bond. Their re-arrest and detention came weeks after the September 11, 2001 terrorist attacks, at a time when U.S. law enforcement agencies were engaged in a campaign of arbitrarily arresting noncitizens based on their race, religion, or national origin. While detained, the Mirmehdis (the Petitioners) were subject to cruel, inhuman and degrading treatment and endured physical harm at the hands of state agents. These actions, part of a larger pattern of abuse against Middle Eastern and Muslim immigrants, constitute grave violations of the Mirmehdis' human rights as protected by the American Declaration of the Rights and Duties of Man (American Declaration).

Even after the Mirmehdis were granted immigration status in the United States, State agents conspired to keep the Mirmehdis in detention, submitting fraudulent incriminating documents, intimidating a witness who had come to testify on the Mirmehdis' behalf, and committing perjury. The State agent's fraudulent evidence led the Mirmehdis to continue to be detained for three and a half years. After their release, the Mirmehdis were denied legal remedy for the harms they suffered at the hands of the State and State agents: a U.S. court ruled that they were statutorily barred from seeking civil damages for the harm they suffered, because of their status as noncitizens. Thus, the Mirmehdis have no legal recourse under U.S. law, despite losing nearly four years of their lives, suffering enduring psychological effects of being detained,

suffering reputational harm from their names being associated with terrorism, and suffering personal harm from being separated from their families.

The United States has not seriously contested the facts underlying the Mirmehdis' claims in this procedure, and we request the Commission deem them conceded. The Mirmehdis request that this Commission issue a merits report, finding that the United States violated: Article I (Right to Liberty), Article II (Right to Equality Before the Law), Article IV (Right to Freedom of Expression), Article V (Right to Protection of Honor, Personal Reputation, and Private and Family Life), Article XVII (Right to Recognition of Juridical Personality), Article XVIII (Right to Fair Trial), Article XXI (Right of Assembly), Article XXII (Right of Association), Article XXV (Right of Protection from Arbitrary Arrest or Detention), and Article XXVI (Right to Due Process) of the American Declaration, and recommend remedies for the human rights they have suffered, including financial compensation and an official apology.

II. Procedural History

The Petitioners submitted a petition to the Inter-American Commission on November 12, 2013. In the petition, they made the following claims: (i) that the Petitioners exhausted domestic remedies; and (ii) that the State, in unlawfully and arbitrarily detaining the Petitioners based on their peaceful political activity and their nationality, and falsifying evidence to keep them in detention, violated the Petitioners' rights to liberty, equality before the law, freedom of expression, recognition of juridical personality, civil rights, assembly, association, protection from arbitrary arrest or detention, and due process, enshrined in Articles I, II, IV, XVII, XVIII, XXI, XII, XXV, and XXVI of the American Declaration.

On May 24, 2017, the Petitioners were notified of the possible archiving of the petition. They responded on July 13, 2017.

On April 3, 2019, the United States responded to the petition. In its response, the State asserted that the Petitioners' claims were inadmissible on the following grounds: (i) that the Petitioners had failed to meet the requirement of exhaustion of domestic remedies; (ii) that the facts alleged in the petition did not constitute a violation of the American Declaration; and (iii) that the petition impermissibly asked the Commission to act as a fourth instance review mechanism. Petitioners received the U.S. response brief on October 4, 2019. On November 4, 2019, Petitioners delivered a reply to the State's response.

In a decision dated March 14, 2021, the Commission declared the Petitioners' petition admissible on all grounds. The Commission, by letter dated April 20, 2021, requested both the Petitioners and the United States to submit any additional observations they might have by August 20, 2021. The Petitioners requested additional time to submit observations and were granted until October 20, 2021 to do so. They now file their written observations on the merits.

III. Statement of Facts

- a. At The Time the Mirmehdis Were Detained, the U.S. Government was Profiling People from the Middle East.**
 - i. The United States Government Relied on Religious, Racial, National, and Gender-based Profiles in Identifying and Detaining Individuals as Part of Its Anti-Terrorism Investigations Following 9/11.**

After September 11, 2001 (9/11), the U.S. government embarked on a massive investigative campaign related to the attacks, which primarily targeted Middle Eastern and South

Asian Muslim noncitizen men.² In October 2001, the Mirmehdis were caught up in this indiscriminate sweep following 9/11, which used religious and racial profiling in lieu of genuine, individualized evidence of terrorist affiliation. Their bond was suddenly revoked based on a list of attendees to of a demonstration that they had previously attended, which forced them to fight to regain their freedom over the next four years.

The largest of the post-9/11 criminal investigations was the Federal Bureau of Investigation (FBI)'s investigation, codenamed PENTTBOM. Almost all of PENTTBOM's "special interest" detainees were from South Asia, the Middle East, and North Africa.³ Nationalities were conflated: the largest group of PENTTBOM detainees was from Pakistan, a country not at all represented in the nationalities of the 9/11 hijackers.⁴ Tellingly, after being held for months, almost all of the detainees were found to have no connection to terrorist activities or groups.⁵ Even the FBI conceded by mid-December 2001 that "only a handful of the hundreds of detainees were still suspected of terrorism, and only one [...] ha[d] actually been charged with conduct relating to September 11."⁶

² AMERICAN CIVIL LIBERTIES UNION (ACLU), *INSATIABLE APPETITE: THE GOVERNMENT'S DEMAND FOR NEW AND UNNECESSARY POWERS AFTER SEPTEMBER 11* (2002), <https://www.aclu.org/other/insatiable-appetite-governments-demand-new-and-unnecessary-powers-after-september-11>; HUMAN RIGHTS WATCH, *PRESUMPTION OF GUILT: HUMAN RIGHTS ABUSES OF POST-SEPTEMBER 11 DETAINEES 10* (2002), <https://www.hrw.org/reports/2002/us911/USA0802.pdf>; CENTER FOR CONSTITUTIONAL RIGHTS, *EROSION OF CIVIL LIBERTIES IN THE POST 9/11 ERA* (2005); AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA, *THE THREAT OF A BAD EXAMPLE: UNDERMINING INTERNATIONAL STANDARDS AS "WAR ON TERROR" DETENTIONS CONTINUE* (2003), <https://www.amnesty.org/en/documents/amr51/114/2003/en/>.

³ HUMAN RIGHTS WATCH at 10; OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, *THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS 21* (2003), <https://oig.justice.gov/sites/default/files/legacy/special/0306/full.pdf>.

⁴ HUMAN RIGHTS WATCH at 4; 10–14; OFFICE OF THE INSPECTOR GEN. at 21. Sharing the same nationality as of one of hijackers is not a legitimate indicator of terrorist affiliation, but even if it were, PENTTBOM did not so restrict its investigation.

⁵ HUMAN RIGHTS WATCH at 10.

⁶ ACLU at 6.

Absent individualized evidence of terrorism, immigration and citizenship status became grounds for suspicion, even when noncitizens were simply engaging in ordinary activities.⁷ For instance, Middle Eastern tourists were stopped as part of PENTTBOM investigative leads for photographing New York City monuments.⁸ Ultimately, around 1,200 Muslim noncitizens were questioned and arrested, predominantly by Immigration and Naturalization Service (INS) agents, for activities that often had nothing to do with terrorism.⁹ Many were even arrested for merely being in close proximity to intended arrestees and would then be treated as “of interest” to the PENTTBOM investigation as suspected “associate[s]” of the primary suspect.¹⁰ Additionally, the FBI, Department of Justice (DOJ), and federal, state, and local agencies questioned thousands of individuals, but none of those interrogations yielded charges as of July 2002.¹¹ The FBI also managed a hotline where the public could report “suspicious” individuals, who were then detained for questioning.¹² These leads were often extremely general and based on little more than stereotypes, such as landlords or neighbors reporting “suspicious activity” by Arab residents.¹³

In the year following 9/11, the DOJ also adopted multiple policies that explicitly engaged in national origin and religious profiling. The DOJ directed state and local law enforcement to interview 5,000 young men from designated Middle Eastern and South Asian countries who had entered the country within the past two years, eventually expanding that number to an additional

⁷ HUMAN RIGHTS WATCH at 14, 38–40.

⁸ OFFICE OF THE INSPECTOR GEN. at 16.

⁹ HUMAN RIGHTS WATCH at 9; OFFICE OF THE INSPECTOR GEN. at 1.

¹⁰ OFFICE OF THE INSPECTOR GEN. at 16. INS policy was to arrest any undocumented person encountered while investigating a lead. OFFICE OF THE INSPECTOR GEN. at 14

¹¹ HUMAN RIGHTS WATCH at 9.

¹² HUMAN RIGHTS WATCH at 12.

¹³ OFFICE OF THE INSPECTOR GEN. at 16.

3,000 immigrants who had entered the United States more recently.¹⁴ Then-Attorney General John Ashcroft admitted that the list of men to be interviewed had been compiled “without particularized suspicion of any of these men,” but rather on the sole basis of their country of origin.¹⁵ The DOJ also announced a new program to fingerprint over 100,000 Arab and Muslim noncitizens who were not suspected of any wrongdoing.¹⁶ On May 30, 2002, the DOJ rewrote its guidelines governing domestic surveillance, authorizing the FBI to surveil the activities of religious and political organizations without any prior evidence of wrongdoing.¹⁷ As a result, undercover agents and informants were sent to mosques and Muslim community organizations, without any evidence that those organizations had any ties to terrorist activities.¹⁸

As a result of these policies, nearly 1,200 noncitizens were detained for lengthy periods of time without criminal charges or any basis in immigration law.¹⁹ Following 9/11, the U.S. government consistently implemented policies that targeted Muslim and Middle Eastern men, or simply men who looked Middle Eastern, as terrorist suspects on the mere fact of their identity. By the time the Mirmehdis had their bond revoked in October 2001, the fear of terrorism and, consequently, of Muslim, Middle Eastern men had infected the U.S. government, which targeted noncitizens based on no evidence of terrorism, mere association, or in the case of the Mirmehdis, falsified evidence.

¹⁴ ACLU at 7.

¹⁵ ACLU at 7.

¹⁶ ACLU at 7.

¹⁷ ACLU at 1-2.

¹⁸ ACLU at 6.

¹⁹ CENTER FOR CONSTITUTIONAL RIGHTS at 3; ACLU at 5.

- ii. **The United States Government, Particularly the Immigration and Naturalization Service, Federal Bureau of Investigation, and Department of Justice, Changed Its Policies and Procedures for the People Being Racially and Religiously Profiled, Creating an Unpredictable and Exceptional System of Justice.**
 1. **The FBI changed INS bond policy post-9/11 in order to keep Middle Eastern noncitizens in custody while it investigated them for terrorism.**

The FBI altered INS bond policy as part of its antiterrorism investigation, using immigration detention to hold noncitizens while it tried to gather evidence of terrorist activity. The FBI directed INS to initially oppose bond for all 9/11 detainees,²⁰ even when INS had no evidence to support its opposition and the FBI did not provide it.²¹ INS often received no information about the 9/11 detainees and, as such, had to request multiple continuances in bond hearings.²² INS began to automatically request continuances to give the FBI more time to investigate the detainees.²³ For most of them, the FBI relied on the mere fact that a noncitizen was arrested in connection with a PENTTBOM lead to support its interest in the detainee.²⁴ If the FBI was interested in a detainee, INS was required to argue a “no bond” position in court.²⁵ By October 2001, INS became uncomfortable with requiring its attorneys to argue for detention without bond in the absence of any supporting evidence, and it sought to modify the FBI’s “no bond” policy.²⁶ Then-Deputy Attorney General Stuart Levey conceded that INS could argue for release on bond if the FBI headquarters declared that it had “no interest”²⁷ Because the FBI’s interest in the

²⁰ OFFICE OF THE INSPECTOR GEN. at 27.

²¹ *Id.* at 78.

²² *Id.* at 78, 81.

²³ *Id.* at 81.

²⁴ *Id.* at 78.

²⁵ *Id.* at 78.

²⁶ *Id.* at 81.

²⁷ *Id.* at 83.

detainee was generally based on the mere fact that the detainee was arrested as part of a PENTTBOM lead, this kind of situation was rare.²⁸ The Deputy Attorney General’s Office’s “hold until cleared” policy provided that INS attorneys had to oppose bond until the FBI headquarters signed off.²⁹ Thus, the policy for INS remained largely unchanged: INS still had to oppose bond for detainees without supporting evidence, except when the FBI headquarters declared “no interest.”³⁰

To make matters worse, on October 31, 2001, INS issued an interim regulation that authorized its agents to continue to detain noncitizens in jail irrespective of any immigration judge’s order that the detainee be released on bond.³¹ Not only did bond revocations become more common, but bail was no longer issued after arrest post-9/11.³² For instance, before 9/11, INS’s policy was to quickly release individuals arrested for immigration violations on bail while they awaited a decision on deportation.³³ After 9/11, this policy shifted, and immigration violations became grounds for protracted detention so that the DOJ could investigate individuals, thereby circumventing the U.S. prohibition on preventive detention for investigative purposes.³⁴

Even though many noncitizens had no connection to terrorism, the FBI continued to identify them as being of some interest.³⁵ In fact, in 2003, the Office of the Inspector General confirmed this practice when it found that the labeling of detainees as “high interest,” “of interest,”

²⁸ *Id.* at 83.

²⁹ *Id.* at 38, 83. Levey conceded he did not even know where this directive originated, believing it came from the Attorney General, but understood that it was “not up for debate.” *Id.* at 83.

³⁰ *Id.* at 89.

³¹ HUMAN RIGHTS WATCH at 4; CENTER FOR CONSTITUTIONAL RIGHTS at 5; ACLU at 6.

³² HUMAN RIGHTS WATCH at 9.

³³ *Id.*

³⁴ *Id.*

³⁵ OFFICE OF THE INSPECTOR GEN. at 70.

“of undetermined interest,” and “of no interest” was haphazard and inconsistent.³⁶ The Office of the Inspector General found that the FBI should have taken “more care to distinguish” between noncitizens actually suspected of terrorism and noncitizens simply encountered during investigation of a PENTTBOM lead.³⁷ However, there was no uniform process for a determination of “no interest.”³⁸ INS and the FBI often disagreed on which noncitizens should be considered “of interest,” and there was no standard criteria across cases.³⁹

2. At the Same Time, Federal Authority to Detain Noncitizens Indefinitely Was Expanded.

In addition to altering bond policy for 9/11 detainees, the U.S. government changed its procedures and legal processes to lengthen the detention of these detainees. These changes illustrate the pervasive discrimination in how noncitizens suspected of terrorism were treated under the security regime during this period.

For the first time, the DOJ closed immigration hearings to the public exclusively for hearings involving detainees who were encountered during an investigation by PENTTBOM.⁴⁰ In total, 611 individuals had one or more secret hearings.⁴¹ Moreover, the DOJ refused to release any information about the detainees, including names, which are typically public for arrestees.⁴² The DOJ also did not reveal the number of individuals in detention.⁴³ A New Jersey Superior Court judge ruled that the government’s refusal to release the names and basic information of those held

³⁶ *Id.*

³⁷ *Id.*

³⁸ HUMAN RIGHTS WATCH at 14.

³⁹ *Id.* at 14.

⁴⁰ HUMAN RIGHTS WATCH at 4, 5, 24.

⁴¹ *Id.* at 25.

⁴² *Id.* at 5, 17.

⁴³ *Id.* at 18.

in detention violated a state law and ordered that the names be made public.⁴⁴ In turn, the DOJ issued a new interim rule prohibiting state and local employees from disclosing information pertaining to immigration detainees, expressly superseding state and local law and directly overriding the court's holding.⁴⁵

The FBI also directed INS to keep detainees in indefinite detention, using the immigration system as a way to hold individuals in detention without charge for a criminal investigation. On September 20, 2001, the DOJ issued an interim regulation that allowed INS to detain noncitizens indefinitely without charge in the event of an "emergency or other extraordinary circumstance," which was not defined or limited in any way.⁴⁶ Despite Section 412 of the Patriot Act explicitly requiring that detainees not be held more than seven days without being put in deportation proceedings or being charged with a crime, the DOJ did not revise its regulation to reconcile it with the Patriot Act when it was passed on October 26, 2001.⁴⁷

Moreover, Section 412 of the Patriot Act requires that any noncitizen suspected of terrorist activity be detained until removal from the United States.⁴⁸ If a noncitizen is ordered removed but is not deported within the usual 90 day period, the Act authorizes continued detention of the noncitizen for six month increments if their release would threaten the national security of the United States.⁴⁹ Though the Patriot Act placed limitations on detention of noncitizens before their

⁴⁴ *Id.* at 22.

⁴⁵ *Id.*

⁴⁶ HUMAN RIGHTS WATCH at 4; CENTER FOR CONSTITUTIONAL RIGHTS at 4-5.

⁴⁷ CENTER FOR CONSTITUTIONAL RIGHTS at 4-5.

⁴⁸ *Id.* at 11.

⁴⁹ *Id.*

cases were decided, it allowed them to be held indefinitely after an order for removal had been issued.⁵⁰

Detainees were often questioned by both FBI and INS agents, further blurring the distinction between immigration and criminal procedure.⁵¹ This strategy was deliberate. Then-Attorney General Ashcroft expressly announced that the DOJ strategy would be to use immigration violations to keep suspected terrorists in custody “as long as possible.”⁵² However, the bar for an individual to be considered a “suspected terrorist” was quite low; as discussed above, this often meant merely fitting a general racial or religious profile.

Of those detained for immigration violations, most were held for minor immigration violations that would not have resulted in detention prior to 9/11.⁵³ Other detainees were held under the pretenses of being “material witnesses,” even though, generally, material witnesses are rarely incarcerated.⁵⁴ Instead, these individuals were being detained as material witnesses because there were no charges that the government could bring against them.⁵⁵ Standard procedures and guarantees of the U.S. immigration and criminal justice systems were upended post-9/11 for noncitizens matching a certain profile.

Detainees sought to challenge the constitutionality of their arrest and detention in the U.S. court system, with little success.⁵⁶ U.S. courts were quick to grant leeway to government officials investigating terrorism in the name of national security. Additionally, President George W. Bush

⁵⁰ *Id.*

⁵¹ HUMAN RIGHTS WATCH at 4, 33, 38–40.

⁵² OFFICE OF THE INSPECTOR GEN. at 12.

⁵³ ACLU at 5-6, CENTER FOR CONSTITUTIONAL RIGHTS at 12.

⁵⁴ ACLU at 5.

⁵⁵ ACLU at 5-6.

⁵⁶ Ashcroft v. Iqbal, 556 U.S. 662 (2009); Ziglar v. Abbasi, 137 S. Ct. 1843 (2017); Ashcroft v. al-Kidd, 563 U.S. 731 (2011).

issued an executive order establishing military tribunals, outside of the civilian court system, to try individuals suspected of terrorism.⁵⁷ Nevertheless, the order reserved for the President the power to continue to detain individuals even after a finding of not guilty.⁵⁸

Human rights organizations immediately responded to the changes in U.S. policy, raising concerns about how these new regulations, rules, and policies violated constitutional and human rights. In a report issued in April 2002, the American Civil Liberties Union (ACLU) stated that the United States' arbitrary and indefinite detention of noncitizens "violates the International Covenant on Civil and Political Rights [limiting the period of custody before detainee must be brought in front of judge to only a few days], which U.S. is a signatory."⁵⁹ Similarly, a report published by the Center for Constitutional Rights identified several constitutional violations in these post-9/11 immigration detention procedures, such as holding detainees without notification of the reason, holding detainees more than the mandated limit of 48 hours after arrest to see a judge, and subjecting detainees to coercive interrogations.⁶⁰

b. The Petitioners Were Seeking Asylum When They Were Caught Up in the Post-9/11 Dragnet.

i. The Petitioners Moved to the United States Fleeing Persecution in Iran.

The Petitioners have always opposed the Iranian government. Their family faced government persecution as a result of their pro-democracy political views.⁶¹ Mojtaba Seyed Mirmehdi (Mojtaba) was detained without trial for three years, after being arrested by

⁵⁷ CENTER FOR CONSTITUTIONAL RIGHTS at 6.

⁵⁸ ACLU at 7. This order even gave the president the power to control who would be tried under this alternative system, set the rules of the trial, appoint everyone involved in the trial, set penalties, and decide all appeals. CENTER FOR CONSTITUTIONAL RIGHTS at 6; ACLU at 7.

⁵⁹ ACLU at 6.

⁶⁰ CENTER FOR CONSTITUTIONAL RIGHTS at 12.

⁶¹ Exhibit 1.

revolutionary guards at a pro-democracy demonstration.⁶² During his detention in Iran, Mojtaba was tortured and threatened with execution.⁶³ Four of the Petitioners' cousins had previously been executed at the hands of the Iranian regime.⁶⁴ Mohsen Seyed Mirmehdi's (Mohsen) permission to attend university in Iran was withdrawn after he refused to fight for the new Islamic government against Iraq.⁶⁵ For almost two years thereafter, he hid in the family home in an attempt to avoid persecution from the regime for his refusal to serve.⁶⁶ In January 1989, Mohsen was unable to resist army recruitment any longer and briefly served in a low-ranking position.⁶⁷

Facing this persecution because of their pro-democracy beliefs, the Petitioners migrated to the United States to escape further abuse and threats to their lives, settling in Los Angeles, California.⁶⁸ After establishing themselves in the United States, they continued their dissent against the oppressive Iranian regime through peaceful political expression.⁶⁹ However, this dissent became the reason for the Petitioners' arbitrary detention, and once again transformed them into victims of persecution—this time from the U.S. government.

Mostafa Seyed Mirmehdi (Mostafa) was the first to migrate to the United States, arriving on a student visa in 1978 to study mechanical engineering.⁷⁰ He remained in the United States because he feared persecution in Iran.⁷¹ In 1992, Mojtaba and Mohsen fled Iran to join Mostafa

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Exhibit 4.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See* Exhibits 1–4.

⁶⁹ *See id.*

⁷⁰ Exhibit 3.

⁷¹ *Id.*

in Los Angeles.⁷² Finally, Mohammad-Reza Mirmehdi (Mohammad) came to Los Angeles in October 1993.⁷³ Today, all of the Petitioners are successful real estate agents in Los Angeles.⁷⁴

After residing in the United States for several years, on June 20, 1997, two of the Mirmehdi brothers attended a demonstration in Denver, Colorado organized by the National Council of Resistance in Iran (NCRI), an international umbrella group that claims to be the Iranian democratic “government in exile.”⁷⁵ The NCRI was supported by a broad range of prominent Iranian exiles and exile groups of diverse political beliefs.⁷⁶ The purpose of the June 20 demonstration was to promote democracy in Iran and call attention to the abuses of the current regime.⁷⁷ The demonstration took place at the Colorado State Capitol building and along the perimeter of the secured Civic Center, where a the Summit of the Group of Eight industrialized nations was taking place.⁷⁸ There were more than 1,000 attendees, who traveled from all over the country to show their support.⁷⁹ The demonstration was peaceful and lawful, with several members of the United States Congress in attendance, at least one of whom appeared as a speaker.⁸⁰ This speaker was U.S. Representative Gary Ackerman, a Democrat from New York and a member of the Congressional International Relations Committee, who proclaimed during the event that “Tehran's

⁷² *Id.*

⁷³ Exhibit 2.

⁷⁴ See Exhibits 1–4.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Exhibit 15. For news footage of the demonstration, see *United States: Denver Summit of Eight Continues While Demonstrators Protest Over Economic Involvement With Iran*, Reuters (June 20, 1997), <https://reuters.screenocean.com/record/994212>.

⁷⁸ The Summit of the Eight was composed of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. At the end of the Summit, the G8 released a Communique in which they called upon “the Iranian Government to respect the human rights of all Iranian citizens and to renounce the use of terrorism, including against Iranian citizens living abroad.” See *Denver Summit of the Eight, Communique*, para. 86, June 22, 1997, <http://www.g7.utoronto.ca/summit/1997denver/g8final.htm>.

⁷⁹ Exhibit 15.

⁸⁰ *Id.*

record of terrorism is no secret. Let Denver's Summit of the Eight be united against Iran's tyranny of the wicked.”⁸¹

ii. The Petitioners Were Unlawfully Detained Based on False Evidence.

In 1998, the Petitioners applied individually for political asylum in the United States. Each of their asylum claims were denied. However, each brother was granted a stay of deportation to Iran under the United Nations Convention Against Torture and Section 241(b)(3) of the Immigration and Nationality Act.

Unbeknownst to the Petitioners, Bahram Tabatabai, the individual who prepared and submitted their asylum applications, falsified certain details. It was later revealed that Bahram Tabatabai, who was not an attorney, had prepared many asylum applications with false information, and he eventually received a criminal conviction for these acts. In March 1999, the Immigration and Naturalization Service arrested the Petitioners and charged them with immigration violations.⁸² INS and FBI agents arrived at the Petitioners’ home early in the morning, accused them of being terrorists, and held them at gunpoint while searching the home.⁸³ Later, the immigration judge determined that the Petitioners were not flight risks or threats to the community and did not pose a risk to national security. On August 24, 1999, Mostafa, Mojtaba, and Mohsen were released on bond. Mohammad was not released on bond until September 2000.⁸⁴

The Petitioners were never charged with any crime in the United States and have never been involved or even implicated in terrorism, terrorist organizations, or terrorist activity. Nonetheless, on October 2, 2001—three weeks after the 9/11 attacks—agents of the United States

⁸¹ *Id.*

⁸² Exhibit 12 at 1.

⁸³ Exhibit 1.

⁸⁴ Exhibit 12 at 1-2.

revoked the Petitioners' bonds and arrested them again. The Petitioners filed for re-hearing of their bond determinations and requested political asylum in the United States. On December 10, 2001, the Petitioners received their first immigration court hearing on their motions to be released.⁸⁵

One of the primary pieces of evidence offered to justify the bond revocation and arrest was a list of attendees from the June 20, 1997 NCRI demonstration, which the Agents of the State falsely presented as a list of supporters of a terrorist cell for the Mujahedin-e Khalq (MEK), referred to as the "L.A. Cell Form." Historically, the MEK came under the auspices of NCRI, and both groups have received political support from the United States of America.⁸⁶ However, on October 8, 1997, months after the demonstration, the MEK and NCRI (on the basis that it was an alias of the MEK) were designated as Foreign Terrorist Organizations by the United States Secretary of State, in a goodwill gesture to the new reformist government in Iran.⁸⁷ This decision

⁸⁵ The Mirmehdis' bond hearing was originally set for October 30, 2001. It was rescheduled so INS could seek certification from the U.S. Attorney General that the Petitioners were believed to be terrorists, which would have made them subject to mandatory detention. INS never obtained this certification.

⁸⁶ Former US government officials and representatives have frequently engaged in speaking appearances on behalf of the MEK including such officials as two former directors of the Central Intelligence Agency, a former Federal Bureau of Investigations director, and various elected representatives. Scott Shane, U.S. Supporters of Iranian Group Face Scrutiny, N.Y. Times (Mar. 13, 2012), <https://www.nytimes.com/2012/03/13/us/us-supporters-of-iranian-group-mek-face-scrutiny.html>.

⁸⁷ Aaron Merat, *Terrorists, Cultists - or Champions of Iranian Democracy? The Wild Story of the MEK*, Guardian (Nov. 9, 2018, 1:00 AM), <https://www.theguardian.com/news/2018/nov/09/mek-iran-revolution-regime-trump-rajavi>. In spite of this designation, the United States protected the MEK at their former base in Iraq, Camp Ashraf, beginning in 2004, assigning them protected persons status under the Geneva Conventions. *Iranian Exile Group Removed from U.S. Terror List*, CNN (Sept. 28, 2012, 5:17 PM), <https://www.cnn.com/2012/09/28/politics/mek-terror-delisting/>. US guards provided protection for Camp Ashraf, while the United States shielded them from removal by the Iraqi government and Iranian calls for their extradition for prosecution. Abigail Hauslohner, *Iranian Group a Source of Contention in Iraq*, Time (Jan. 5, 2009), <http://content.time.com/time/world/article/0,8599,1869532,00.html>.

was reversed by then-Secretary of State Hillary Rodham Clinton when she delisted the MEK as a Foreign Terrorist Organization on September 28, 2012.⁸⁸

The so-called L.A. Cell Form is one page of writing that U.S. FBI Agent Christopher Castillo removed from a collection of documents containing at least sixty pages of names and travel details of individuals who attended the June 20, 1997 pro-democracy demonstration.⁸⁹ Agent Castillo knew that the document contained only administrative details of attendees and that the demonstration was constitutionally protected, but he purposefully presented only one page of the document to hide its true nature. At the Mirmehdis' bond hearing, he claimed that "the list was far greater than we submitted, but it had lots of names on it and it showed the actual structure of the LA cell, in which it showed the sub unit leaders and then the units within the cell."⁹⁰ However, INS did not submit any additional pages, so the immigration judge had no basis on which to evaluate the truth of Castillo's assertions about the list. In fact, there were no "structures" or "units" and the document was a travel-log.⁹¹ Castillo also proposed implausible explanations for various details of the L.A. Cell Form.⁹² Together with U.S. Immigration and Naturalization Service Agent J.A. MacDowell, Agent Castillo falsely declared the out-of-context, mistranslated

⁸⁸ U.S. Department of State, Press Release, Delisting of the Mujahedin-e Khalq, (Sept. 28, 2012), <https://2009-2017.state.gov/r/pa/prs/ps/2012/09/198443.htm>.

⁸⁹ Exhibit 7.

⁹⁰ Exhibit 18 at 187, lines 3-6.

⁹¹ See Exhibits 6, 7, 8, and 9.

⁹² For example, the top of the document stated "Khordad 30th, 76," a reference to 30 Khordad 1376—the Iranian calendar equivalent of June 20, 1997, the date of the demonstration attended by Petitioners. Agent Castillo insisted, however, that the document was from a later date and that "Khordad 30th, 76" was merely a symbolic reference to an event that had happened more than ten years earlier. Later in the Petitioners' immigration proceedings, an expert witness testified that (1) the "L.A. Cell Form" was more likely a travel log than a membership list; (2) the word شبکه (shabakeh), which an FBI translator had translated as "cell," was more accurately translated as "network;" and (3) "30 Khordad 1376" referred to June 20, 1997. Exhibit 8; Exhibit 9 at 354-360. The immigration judges who decided the Petitioners' asylum cases agreed that this was a much more plausible explanation than that offered by the State.

document to be a list of members of a terrorist cell. Agents Castillo and MacDowell claimed that the L.A. Cell Form contained the names of MEK members, supporters, and associates. These State agents had no basis for this claim; in fact, they knew it to be false. Nonetheless, the State agents used their false allegations and the fabricated L.A. Cell Form to pressure Petitioners to provide information regarding the MEK to the FBI. Agent Castillo stated to the immigration judge that “it’s easier for us to negotiate if they’re held without bond.”⁹³ However, as the Petitioners were not associated with the MEK, they did not have any information or knowledge to offer.

In addition to the false evidence, Agents Castillo and MacDowell introduced recanted statements from Bahram Tabatabai, the individual who had prepared the Petitioners’ asylum applications, while preventing Tabatabai himself from testifying.

In March 1999, Tabatabai was charged with filing fraudulent asylum claims. As part of his plea agreement, Tabatabai agreed to assist Agents Castillo and MacDowell with their investigations of the Mirmehdis by suggesting that the Petitioners were associated with the MEK. However, on January 23, 2001 and again on June 19, 2001, Tabatabai recanted an earlier statement he had made about the Petitioners and asserted that Agent Castillo and Agent MacDowell coerced that statement from him as part of his plea agreement.⁹⁴ Despite being aware that Tabatabai had recanted his initial statement against the interest of the Petitioners, Agent Castillo relied on this statement in the Mirmehdis’ bond hearing on December 10, 2001.⁹⁵ Not only did Agent Castillo intentionally fail to inform the court of Tabatabai’s recantation, he actively prevented Tabatabai

⁹³ Exhibit 18 at 180, lines 4-5.

⁹⁴ These recantations occurred in depositions and testimony taken as part of the Petitioners’ removal proceedings in immigration court. Exhibit 16.

⁹⁵ Exhibit 18 at 185-87.

from testifying at one of the Petitioners' immigration court hearings by threatening to re-arrest and prosecute him if he testified.⁹⁶ Castillo also intentionally misled the court by alleging that Tabatabai informed him that the Oklahoma cell of the MEK was formed by the Mirmehdis, though he knew this information was false.

In direct contradiction to the original bond determination, the immigration judge found, based largely upon Agent Castillo's false testimony and the fabricated L.A. Cell Form, that the Petitioners were associated with a designated foreign terrorist organization and "pose[d] a danger to persons or property as a result of their MEK participation."⁹⁷ The immigration judge revoked the Mirmehdis' bond on that basis. The immigration judge issued a written decision to this effect on January 9, 2002, and the Petitioners appealed the decision to the Board of Immigration Appeals ("BIA"). While this appeal was pending, the Mirmehdis' hearings on their asylum applications moved forward.

In April and August of 2002, immigration judges denied the Mirmehdis' asylum applications but granted them withholding of removal under the United Nations Convention Against Torture and Section 241(b)(3) of the Immigration and Nationality Act, giving them legal right to remain in the United States.⁹⁸ This grant was based on evidence that the Mirmehdis were likely to be tortured if they returned to Iran. The immigration judge also determined that "there is no evidence [that they] engaged in terrorist activities" or that they were a danger to the United

⁹⁶ Exhibit 1.

⁹⁷ Exhibit 12 at 16.

⁹⁸ Mohammad's case was heard by a different immigration judge than his brothers' cases. His decision was issued on April 30, 2002. See Exhibit 19. Mohsen, Mojtaba, and Mostafa's decisions were issued on August 20, 2002. See Exhibits 20, 21, 22. All four asylum petitions were denied because the Petitioners had missed the filing deadline.

States.⁹⁹ Both the State and Mirmehdis appealed to the BIA: the State appealed the grants of withholding of removal, and the Mirmehdis appealed the denials of asylum.

In June 2002, the BIA affirmed the January 2002 decision revoking the Petitioners' bond. It found "sufficient evidence in the record that the [Mirmehdis are] associated with a terrorist organization, and therefore [they] pose[] a danger to persons or property."¹⁰⁰ Mohammad's BIA decision mentioned that Mohammad had been granted withholding of removal two months before, but it did not acknowledge the immigration judge's findings in Mohammad's removal proceedings that the State's evidence linking the Petitioners to the MEK was unconvincing.

The BIA affirmed the immigration judges' decisions on the merits of the Petitioners' cases—the denial of asylum and the granting of withholding of removal—on August 20, 2004.¹⁰¹ The BIA agreed with the immigration judges' determination that the respondents had not "engaged in terrorist activity," so they were not barred from receiving withholding of removal.¹⁰² This decision addressed the tension between the denial of bond and granting of withholding only in a footnote, stating that the BIA "cannot address bond and custody issues in the context of these removal proceedings as these issues are separate and apart from removal proceedings."¹⁰³

Both parties again appealed the BIA determinations to the Ninth Circuit Court of Appeals. In October 2004, the Ninth Circuit remanded to the lower court because of the conflicting rulings in the asylum and bond decisions. The court stated that the government owed the Petitioners a duty of consistent dealing, and thus the bond decisions should be reviewed for "sufficiency of the

⁹⁹ Exhibit 22 at 14. This finding was necessary to determine the Petitioners' eligibility for withholding of removal.

¹⁰⁰ Exhibit 13 at 5.

¹⁰¹ Exhibit 23. BIA appeals are heard and decided by a panel of three Board members. The appeals of the bond decision and the asylum decision were heard by different panels, but two Board members appeared on both panels.

¹⁰² *Id.* at 6.

¹⁰³ *Id.* at 2, footnote 4.

evidence in light of the BIA's finding no evidence connecting the Mirmehdis to terrorist activities."¹⁰⁴ No decision was ever made on remand because the Mirmehdis were released from detention beforehand. This release was not based on any official legal determination, and the Petitioners received no remedy for their years during which their liberty and freedom was deprived.

iii. The Petitioners Were Detained in Cruel, Inhuman, and Punitive Conditions

The conditions of the Petitioners' detention were cruel, inhuman, and punitive. The false allegations were used to justify detaining the Petitioners in prisons alongside dangerous and violent convicted felons. Prison guards told the Petitioners that this was an intentional decision to punish them.

Throughout their detention, the Petitioners were frequently subjected to periods of solitary confinement in cells measuring less than six by ten feet. Each of the Petitioners experienced segregation for periods of one week or more, and solitary confinement or physical abuse was threatened whenever they complained about detention conditions.

The United States prison guards physically assaulted the Petitioners, subjected them to extreme cold and frequent unjustified body cavity searches, and threatened them with pepper spray. Prison guards verbally abused and viciously insulted the Mirmehdis on account of their ethnicity, culture, religion, and nationality.

The prison guards further prevented the Mirmehdis from accessing basic medical treatment for acute injuries inflicted on them individually such as chronic back pain, eye and skin irritations

¹⁰⁴ Exhibit 24 at 741.

or infections, as well as psychological problems. The Petitioners' access to basic hygiene, appropriate clothing, and food was severely compromised.¹⁰⁵

Over the course of their detention, agents of the United States systematically prevented the Petitioners from communicating with their families in Iran, speaking freely with their legal counsel, or talking to the media. Furthermore, U.S. agents frequently withheld legal documents from the Petitioners' attorneys, and the State transferred the Petitioners between detention centers for the purpose of government "forum shopping."

iv. The Petitioners' Release from Detention Was Repeatedly Delayed

On February 3, 2005, the Petitioners were scheduled to be interviewed on ABC's popular news program, Nightline.¹⁰⁶ However, on February 2, 2005, United States agents unexpectedly offered to release the Petitioners from detention.¹⁰⁷ The Petitioners prepared for their release only to be confronted at the last moment by several conditions attached to their release.¹⁰⁸ The conditions to be imposed by the State included not traveling more than thirty miles from their homes, not travelling by airplane, and not attending political rallies.¹⁰⁹ The Petitioners declined the offer of a conditional release.¹¹⁰ State agents deemed them "uncooperative" and insisted on continuing the unlawful detention.¹¹¹

¹⁰⁵ Petitioners received a settlement for the allegations in this paragraph. However, Petitioners include the conditions of detention here to emphasize the seriousness of the arbitrary detention that they suffered.

¹⁰⁶ Exhibit 2 at ¶ 14; Exhibit 3 at ¶ 20; Exhibit 4 at ¶ 16.

¹⁰⁷ Exhibit 2 at ¶ 14.

¹⁰⁸ Exhibit 2 at ¶ 14; Exhibit 3 at ¶ 20; Exhibit 4 at ¶ 16.

¹⁰⁹ Exhibit 2 at ¶ 20; Exhibit 3 at ¶ 20.

¹¹⁰ Exhibit 2 at ¶ 20; Exhibit 3 at ¶ 20; Exhibit 4 at ¶ 16.

¹¹¹ Exhibit 3 at ¶ 20.

On March 5, 2005, Mohammad was severely beaten by Officer M. Lopez at San Pedro Detention Center.¹¹² Mohammad sustained injuries to his shoulder, back, neck, and face that resulted in a permanent facial disfigurement and continued pain and suffering.¹¹³ After the assault, several reporters and attorneys visited Mohammad in detention and noted the extent of his injuries.¹¹⁴ Mohammad was thereafter advised that the Attorney General would investigate Officer Lopez's assault.¹¹⁵ An employee from the Attorney General's office was scheduled to interview Mohammad in detention on March 17, 2005.¹¹⁶ On the day before this interview was scheduled to take place, the State again offered to the Petitioners a conditional release from prison.¹¹⁷ The State dropped the restriction on attending political rallies, but many of the other conditions remained, including requirements to check in regularly with immigration agents and a prohibition on travelling outside three Southern California counties.¹¹⁸ The Petitioners accepted this modified list of restrictions, and they were finally granted their liberty.¹¹⁹

v. The Petitioners Continue to Suffer Because of What They Experienced in Detention

On March 16, 2005, after forty-one months of detention, the Petitioners were released from prison.¹²⁰ The Petitioners have resided in Los Angeles, California since their release from detention in 2005.¹²¹ They are all hard-working real estate agents working in the San Fernando

¹¹² Exhibit 2 at ¶ 15.

¹¹³ *Id.* at ¶ 16.

¹¹⁴ *Id.* at ¶ 19.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at ¶ 20.

¹¹⁸ Exhibit 3 at ¶ 20; Exhibit 4 at ¶ 16.

¹¹⁹ *Id.* The State has relaxed some of the restrictions on Petitioners in the years since. For example, they now only have to report to immigration officials once a year, instead of the weekly phone check-ins and twice-monthly in-person check-ins that were required at the beginning. Exhibit 2 at ¶ 25; Exhibit 4 at ¶ 19.

¹²⁰ Exhibit 2 at ¶ 21; Exhibit 3 at ¶ 20; Exhibit 4 at ¶ 16.

¹²¹ Exhibit 2 at ¶ 2.

Valley area of California.¹²² However, as of October 2021, the Petitioners have not yet recovered from their traumatic experiences in detention.¹²³

After being released, the Petitioners sought mental health treatment.¹²⁴ While this helped them somewhat, they are still haunted by what they have been through.¹²⁵ All of them experience frequent nightmares about being detained, even though over fifteen years have passed since their release.¹²⁶

Mostafa finds it hard to forget the things he experienced in detention, and he believes the experience will stay with him the rest of his life.¹²⁷ When he wakes up from one of his nightmares, his day is already ruined because the traumatic memories stay with him all day.¹²⁸

Mohammad experiences extreme anxiety when he sees everyday items that remind him of detention.¹²⁹ For example, the white vans that construction workers and plumbers often drive remind him of the vans that were used to transport him between jails, and plastic silverware reminds him of eating in detention.¹³⁰ These flashbacks are very disturbing for him.¹³¹ He vividly remembers how he felt when he was first arrested—he feared he would be sent back to Iran and tortured or killed before anyone even knew what had happened to him.¹³² He also gets scared

¹²² Exhibit 2 at ¶ 2; Exhibit 3 at ¶ 23; Exhibit 4 at ¶ 20.

¹²³ Exhibit 1 at ¶¶ 13-17; Exhibit 2 at ¶¶ 24-27; Exhibit 3 at ¶¶ 23-24; Exhibit 4 at ¶¶ 17-23.

¹²⁴ Exhibit 2 at ¶ 26; Exhibit 3 at ¶ 24.

¹²⁵ Exhibit 1 at ¶¶ 13-17; Exhibit 2 at ¶¶ 24-27; Exhibit 3 at ¶¶ 23-24; Exhibit 4 at ¶¶ 17-23.

¹²⁶ Exhibit 1 at ¶ 14; Exhibit 2 at ¶ 24; Exhibit 3 at ¶ 24; Exhibit 4 at ¶ 17.

¹²⁷ Exhibit 3 at ¶ 24.

¹²⁸ *Id.*

¹²⁹ Exhibit 2 at ¶ 24.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at ¶ 7.

when he sees unfamiliar vehicles parked near his apartment building because it makes him worry that FBI agents are watching him.¹³³

Mojtaba has sudden flashbacks to his experience in detention.¹³⁴ He also experiences anxiety and depression.¹³⁵ He immigrated to be free of the physical torture he experienced in Iran, but the experience of being falsely accused and detained was mental torture.¹³⁶ He wishes he had gone to a different country where the government would not have treated him this way.¹³⁷

Like Mohammad, Mohsen becomes afraid when he sees certain cars that remind him of what happened, particularly white cars and Fords, because the FBI used to follow him in a Ford.¹³⁸ For years after being released, he was scared of strangers approaching him.¹³⁹ An especially painful trigger for him is his yearly check-in with immigration officials.¹⁴⁰ This happens at the same building where he and his brothers were held in the basement when they were arrested.¹⁴¹ He remembers it feeling like a gas chamber because it was crowded, it was hard to breathe, and there was no privacy.¹⁴²

In addition to these psychological injuries, the Petitioners also have physical reminders of their detention. Mohammad has neck and back pain from falling off a top bunk while in jail. He had told officials that he moved around in his sleep and would probably fall off the top bunk, but

¹³³ *Id.* at ¶ 24.

¹³⁴ Exhibit 1 at ¶ 14.

¹³⁵ *Id.*

¹³⁶ *Id.* at ¶ 2.

¹³⁷ *Id.* at ¶ 13.

¹³⁸ Exhibit 4 at ¶ 17.

¹³⁹ *Id.* at ¶ 18.

¹⁴⁰ *Id.* at ¶ 19.

¹⁴¹ *Id.*

¹⁴² *Id.* at ¶ 15.

they did not move him to a lower bunk until he had fallen two times. He also has injuries from an assault in prison from Officer Lopez. Mojtaba was also assaulted while in prison.

Being falsely accused of terrorism and detained hurt the Petitioners' reputations both in Los Angeles and in their family's community in Iran.¹⁴³ Their arrests and the accusations made against them were widely publicized in the media.¹⁴⁴ They lost most of their real estate clients, who did not want to be associated with someone who had been accused of supporting terrorism.¹⁴⁵ They also lost some friends who were too scared to talk to them.¹⁴⁶ Even today, the false accusations follow the Petitioners. When their clients search their names on the internet, the first results that appear are still stories about how they were accused of terrorism, arrested, and detained.¹⁴⁷

Their story appeared in Iranian media sources, too, so their family, friends, and acquaintances in Iran all knew about the accusations.¹⁴⁸ For a while, the Mirmehdis had tried to keep their arrests and detention a secret from their parents because they did not want to worry them.¹⁴⁹ However, their parents ended up finding out from a neighbor who had read about it in a newspaper.¹⁵⁰

The Mirmehdis have also suffered financially because of what the State did to them.¹⁵¹ They were unable to work for the three and a half years they were detained. Then, once they were

¹⁴³ Exhibit 1 at ¶ 13; Exhibit 2 at ¶ 22; Exhibit 3 at ¶ 23; Exhibit 4 at ¶ 20.

¹⁴⁴ Exhibit 1 at ¶ 16; Exhibit 2 at ¶ 22; Exhibit 3 at ¶ 23; Exhibit 4 at ¶ 20.

¹⁴⁵ *Id.*

¹⁴⁶ Exhibit 2 at ¶ 22; Exhibit 4 at ¶ 20.

¹⁴⁷ Exhibit 4 at ¶ 20.

¹⁴⁸ Exhibit 2 at ¶ 22; Exhibit 3 at ¶ 23.

¹⁴⁹ Exhibit 2 at ¶ 22; Exhibit 3 at ¶ 21.

¹⁵⁰ *Id.*

¹⁵¹ Exhibit 1 at ¶ 16; Exhibit 2 at ¶ 22; Exhibit 3 at ¶ 23; Exhibit 4 at ¶ 20.

released, they had to rebuild their real estate practices because so many of their clients had left them.¹⁵² Mojtaba used to own four condos, but he sold them because he thought he was going to get deported.¹⁵³ He now regrets doing so because the condos have increased in value.¹⁵⁴

Moreover, the Mirmehdis still feel like their immigration status is in limbo.¹⁵⁵ They are legally allowed to stay and work in the United States for now, but the State could still remove them if conditions changed in Iran and the State decided it was safe for them to return or if a third country agreed to accept them. They are unable to travel outside the United States, meaning they have been unable to see their family for several decades.¹⁵⁶ This was particularly hard for the Mirmehdi brothers when their brother died in 2014 and their parents died in 2018.¹⁵⁷

Since his release, Mohammad has repeatedly requested access to the internal investigations regarding the assault he sustained from Officer Lopez.¹⁵⁸ These requests have been denied.¹⁵⁹ He has also requested copies of the security camera footage from when Officer Lopez assaulted him, but the State claims that the videotapes were all lost.¹⁶⁰

IV. Domestic Procedural Background

Following the Mirmehdis' initial arrest in 1999 and during their detention between October 2001 and March 2005, the Mirmehdis fiercely opposed the deprivation of their liberty through

¹⁵² *Id.*

¹⁵³ Exhibit 1 at ¶ 16.

¹⁵⁴ *Id.*

¹⁵⁵ Exhibit 4 at ¶ 19.

¹⁵⁶ Exhibit 2 at ¶ 23; Exhibit 4 at ¶ 21.

¹⁵⁷ *Id.*

¹⁵⁸ Exhibit 2 at ¶ 17.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

three legal mechanisms: (1) an application for asylum and immigration bond proceedings,¹⁶¹ (2) a habeas corpus petition, (3) and a civil tort claim.

In November 2002, the Mirmehdis filed habeas corpus petitions in federal district court, seeking release from their detention. On May 23, 2003, their petitions were denied. On appeal, the Ninth Circuit Court of Appeals remanded Mohammad's and Mohsen's petitions to the district court due to the inconsistency of the BIA bond and removal determinations.¹⁶² However, because the Mirmehdis were finally released in March 2005, the Court held that there was no further ground to rule on the habeas corpus petitions. Thus, as with the immigration and asylum proceedings, no final determination was ever made on these claims.

On August 14, 2006, the Mirmehdis filed a civil complaint in the U.S. District Court for the Central District of California against the United States government and other defendants for actions that "betrayed basic American values and trampled on [the Petitioners'] constitutional rights."¹⁶³ The complaint alleged false imprisonment, unlawful detention, witness intimidation, and conspiracy to violate civil rights.¹⁶⁴ The court dismissed the claim against the United States for false imprisonment, the claim against State Agent Castillo for intimidation of a witness, and the claims against State Agents Castillo and MacDowell for unlawful detention and conspiracy to violate their civil rights.¹⁶⁵ On June 4, 2009, the Mirmehdis appealed these claims to the Ninth

¹⁶¹ See summary at III.B.b.

¹⁶² Because Mostafa and Mojtaba failed to appeal their removal orders, the circuit affirmed the denials of their petitions.

¹⁶³ Petitioners' First Amended Complaint (FAC) at ¶ 1.

¹⁶⁴ They also brought claims for denial of medical care; excessive and unreasonable searches; inhumane detention conditions; interference with right to counsel; violation of the prohibition against cruel, inhuman, and degrading treatment or punishment; excessive force; negligence; assault and battery; and intentional infliction of emotional distress, but those claims were settled with the State.

¹⁶⁵ See *Mirmehdi v. United States*, 689 F.3d 975, 980 (9th Cir. 2012).

Circuit Court of Appeals, which then issued an opinion on August 30, 2011, affirming the dismissal of all of the Mirmehdis' claims.

The Ninth Circuit Court of Appeals affirmed the dismissal of the Mirmehdis' claims on the grounds that "immigrants' remedies for vindicating the rights which they possess under the Constitution are not coextensive with those offered to citizens."¹⁶⁶ The court explained that to succeed in an action for wrongful detention against federal agents, there must not be "any alternative, existing process for protecting the plaintiffs' interests."¹⁶⁷ They said that because the Mirmehdis could seek release through the immigration proceedings and their habeas corpus petitions, they were not entitled to any compensation. This was despite the fact that neither of those systems allowed for an award of monetary compensation.¹⁶⁸ The court affirmed denial of the Mirmehdis' claim of witness intimidation on grounds that the Mirmehdis had successfully avoided deportation despite the witness failing to testify, so they could not show any injury resulting from the alleged intimidation.¹⁶⁹ Finally, denial of the Mirmehdis' claim of false imprisonment against the United States was affirmed on grounds that the United States government is immune from tort claims unless it waives that immunity, and the government has not done so for "discretionary functions" such as the decision to detain a noncitizen pending resolution of immigration proceedings.¹⁷⁰

The Mirmehdis filed for a rehearing within the Ninth Circuit, and an opinion was issued on June 7, 2012, affirming dismissal and slightly amending the initial order with the clarification

¹⁶⁶ *Mirmehdi v. United States*, 662 F.3d 1073, 1079 (9th Cir. 2011).

¹⁶⁷ *Id.* at 1079.

¹⁶⁸ *Id.* at 1079-80.

¹⁶⁹ *Id.* at 1081.

¹⁷⁰ *Id.* at 1082.

that the United States was immune from the false imprisonment claim under California state law, which provides for “absolute immunity for almost any statement made ‘in any ... official proceeding authorized by law.’”¹⁷¹

On October 22, 2012, the Mirmehdis filed their final appeal to the United States Supreme Court. On May 13, 2013, the Supreme Court denied this petition, thereby declining to consider any of the outstanding issues and exhausting the Mirmehdis’ final domestic forum for remedies.¹⁷²

V. Legal Arguments

As discussed below, the acts committed above violated the Mirmehdis’ rights under the American Declaration, including their rights to liberty, equality before the law, freedom of expression, recognition of juridical personality, civil rights, assembly, association, protection from arbitrary arrest or detention, and due process, enshrined in Articles I, II, IV, XVII, XVIII, XXI, XII, XXV, and XXVI of the American Declaration.

This Commission has recognized that the American Declaration “is a source of legal obligation that may be applied by the Inter-American Commission to the U.S. on the basis of the State’s commitment to uphold respect for human rights as provided for and defined in the Charter of the Organization of American States (OAS)”.¹⁷³ According to the Inter-American System’s jurisprudence, the provisions of the American Declaration must be considered “in the broader context of both the inter-American and international human rights systems, in light of developments in international human rights law since the Declaration was adopted and having

¹⁷¹ *Mirmehdi*, 689 F.3d at 985-86.

¹⁷² *Mirmehdi v. United States*, 133 S. Ct. 2336, 185 L. Ed. 2d 1063 (2013).

¹⁷³ *Isamu Carlos Shibayama et al. v. United States*, Case 12.545, Inter-Am. Comm’n H.R., Report No. 26/20, ¶ 47 (2020); *See also* *Roach and Pinkerton v. United States*, Case 9647, Inter-Am Comm’n H.R., Report No. 3/87 ¶¶ 48-49. (1987); Inter-Am. Ct. H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 (July 14, 1989).

regard to the relevant rules of international law applicable to member states against which complaints of violations are properly lodged.”¹⁷⁴ The sources of law that are used to interpret the Declaration may include such cases which interpret the American Convention on Human Rights.¹⁷⁵ This Commission has, in many instances, recognized that the Convention “may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration.”¹⁷⁶

a. The United States Government’s Discriminatory Post-9/11 Anti-Terrorism Policies in General and the United States Government’s Profiling, Arrest, and Detention of the Mirmehdis Specifically Violate the Right to Equality Under the Law Under Article II, Right to Enjoy Civil Rights Under Article XVII, the Right to Liberty Under Article I, and the Right to Be Free from Arbitrary Arrest Under Article XXV

Article II of the American Declaration ensures that “[a]ll persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.” This Commission has held that the Article II “principle of non-discrimination is the backbone of the universal and regional systems for the protection of human rights”¹⁷⁷ which “permeates the guarantee of all other rights and freedoms under domestic and international law.”¹⁷⁸ Similarly, Article XVII provides that “[e]very person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.”

¹⁷⁴ *Id.*; *See also* *Undocumented Workers v. United States*, Case 12.834, Inter-Am. Comm’n H.R., Report No. 50/16, ¶ 68 (2016). *See* Inter-Am. Ct. H.R., *Interpretation of the American Declaration*. Advisory Opinion OC-10/89 ¶ 37 (July 14, 1989). *See also* ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, ¶ 53 (“an international instrument has to be interpreted and applied within the overall framework of the entire legal system prevailing at the time of the interpretation”).

¹⁷⁵ *Isamu Carlos Shibayama et al. v. United States*, Case 12.545, Inter-Am. Comm’n H.R., Report No. 26/20, ¶ 47 (2020).

¹⁷⁶ *Vladimiro Roca Antunez and others v. Cuba*, Case 12.127, Inter-Am. Comm’n H.R., Report No. 27/18 ¶ 71 (2018).

¹⁷⁷ *Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 ¶ 107 (2011).

¹⁷⁸ *Maya Indigenous Communities v. Belize*, Case 12.053, Inter-Am. Comm’n H.R., Report No. 40/04 ¶ 163 (2004).

i. The Caselaw Holds that the Declaration Clearly Prohibits Discrimination and Guarantees Civil Rights Even With Regards to Non-Citizens and With Regards to Protected Political Activity.

Immigration detention is not an exception to these fundamental principles. The Commission has previously found that while the State can control the entry and residence of noncitizens within their territory, those distinctions must be shown to be “reasonable and proportionate to the objective sought” and must still ensure the equal protection of the law to noncitizens, including the rights set forth in the Declaration.¹⁷⁹ The Commission affirmed that the “principle of equal protection is fundamental.”¹⁸⁰ The United States has obligations under the American Declaration to anyone within its borders, irrespective of nationality , and the United States must prove a permissible reason to explicitly exclude the application of the Declaration to a class of individuals.¹⁸¹ Thus, citizenship status does not in and of itself provide a reason to deny someone the protections of the law.

In *Ferrer-Mazorra*, the Commission found that “[p]etitioners have, like other excludable aliens present in the United States, been subjected to a legal and procedural regime in relation to their deprivations of liberty that is fundamentally distinct from that applicable to other individuals falling within the State’s authority and control: it has denied the Petitioners any recognition of a right to liberty and, as concluded above, has denied them effective protection from arbitrary deprivations of their liberty.”¹⁸² The Commission concluded that this distinction in treatment for Cuban nationals was not reasonable or proportionate to the goals of national security and

¹⁷⁹ *Ferrer- Mazorra v. United States*, Case 9903, Inter-Am. Comm’n H.R., Report No. 51/01 ¶ 239.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*; *see also* *Teleguz v. United States*, Case 12.864, Inter-Am. Comm’n H.R., Report No. 53/13 ¶ 99 (2013).

¹⁸² *Ferrer-Mazorra*, *supra*, at ¶ 240.

immigration regulation. Moreover, the Commission determined that the State offered no reason why the petitioners could not be accommodated within the rights of the Declaration but “rather must be deprived of their right to liberty under law in its entirety and subjected to the largely unfettered discretion of the Executive respecting the duration of their detention.”¹⁸³ Thus, the Commission held that the treatment of Cuban nationals as excludable aliens disproportionate and inconsistent with Article II.¹⁸⁴ In *Ferrer-Mazorra*, the Commission concluded that the U.S.’s manner of deprivation of liberty amounted to an Article II violation also amounted to Article XVII, citing “analogous reasons.”¹⁸⁵ The nature of the discrimination--to deny equal protection under the law to a specific group of nationals-- amounted to failure of the U.S. to recognize and protect fundamental civil and constitutional rights. There, the Commission held that “none of the executive, legislative or judicial branches of the State’s government have recognized the petitioners’ right to liberty, nor have they afforded the petitioners with adequate or effective protection from deprivations of that right.”¹⁸⁶

Similarly, in *Biscet*, the Commission held that “Article II of the American Declaration establishes that every State has the obligation not to introduce discriminatory regulations into its legal framework.”¹⁸⁷ There, the Commission found that parts of the Cuban Criminal Code were inherently discriminatory because of the way they criminalized political opinion and because the facts clearly showed the petitioners were only tried and convicted because of their political opinions, which meant that “discrimination was present when the criminal law was enforced

¹⁸³ *Id.* at ¶ 242.

¹⁸⁴ *Id.* at ¶ 241.

¹⁸⁵ *Id.* at ¶ 243.

¹⁸⁶ *Id.* at ¶ 244.

¹⁸⁷ *Biscet v. Cuba*, Case No. 12.476, Inter-Am. Comm’n H.R., Report No. 67/06 ¶ 230.

against the alleged victims.”¹⁸⁸ The anti-discrimination provisions extend to activities like participation in pro-democracy rallies.

The United States flagrantly violated the rights of all subjected to the discriminatory post-9/11 policies through their systemic profiling of nationality and religion. Moreover, they violated the Mirmehdi’s Article II rights in particular by discriminating against the Mirmehdis based on their Iranian nationality and presumed political views. By denying the Mirmehdis equal protection and due process, the U.S. similarly violated their Article XVII rights.

ii. The United States’ Immigration and Naturalization Service, Federal Bureau of Investigation, and Department of Justice’s Post-9/11 Anti-Terrorism Policies and Practices Violate Article II’s Prohibition on Religious, Racialized, National, and Gendered Discrimination and Article XVII’s Guarantee of Civil Rights to All Persons.

The practices discussed in Section III.a, *supra*, constitute violations of the right to be free from discrimination and the right to be guaranteed civil rights. These practices were systematic and applied beyond just Petitioners here. Both the U.S. government and independent NGOs have found that the U.S.’s post-9/11 immigration and antiterrorism policies were based on religious and racial profiling. U.S. terrorism investigations, including but not limited to PENTTBOM, targeted Middle Eastern and South Asian Muslim noncitizen men because of their identities, using immigration violations as grounds to detain and investigate hundreds of individuals. Very rarely did the FBI have legitimate, individualized evidence of terrorist activity to substantiate arrests, denial of bond, or prolonged detention. However, the DOJ still adopted a “hold-until-cleared” policy for these 9/11 detainees, and the FBI and INS collaborated to keep these detainees in custody as long as possible so the FBI could investigate. The INS’s systematic no-bond policy as

¹⁸⁸ *Id.*

directed by the FBI expressly discriminated against these detainees and deliberately used the immigration system to detain certain foreign nationals for criminal investigation. Other elements of immigration policy were expressly changed for these Middle Eastern and South Asian Muslim noncitizen men, including closing hearings to the public, ending bail, and withholding information about the detainees. Moreover, post-9/11, the DOJ prioritized the deportation of immigrants based on their nationality alone. Executive agencies changed longstanding policies for these detainees to allow the DOJ and FBI almost limitless discretion in their antiterrorism investigations.

As discussed above, the Commission recognized in *Biscet* a duty of States not to introduce discriminatory regulations. Here, rules, regulations, and policies were written and rewritten specifically for individuals with a certain nationality. And as in *Ferrer-Mazorra*, the U.S. explicitly changed the protection of the standard principles of law for Middle Eastern nationals, such as in the Mirmehdis' case. Though the Declaration does not promise absolute right to liberty and permits certain deprivations, these deprivations must be shown not arbitrary and subject to regular review (242). Using nationality, religion, and gender as evidence of terrorist affiliation is so overly inclusive as to be unduly arbitrary. The U.S. antiterrorism policies and practices after 9/11 denied immigrant Middle Eastern and Muslim men equal protection of the law in violation of Article II of the American Declaration.

iii. The United States' Imprisonment And Mistreatment Of The Mirmehdis Based On Their Nationality And Political Views Violated Their Right Of Equality Before The Law Under Article II and Civil Rights Under Article XVII.

The United States consistently denied the Mirmehdis equal treatment under the law based on their Iranian nationality and political opinions in direct violation of Article II. Specifically, the

United States's decisions to arrest the Mirmehdis, deny the Mirmehdis' bond, and deny the Mirmehdis timely trials were all based on the Mirmehdis' Iranian nationality and political opinions. The United States' discriminatory treatment of the Mirmehdis also resulted in a violation of the Mirmehdis' civil rights under Article XVII.

The United States revoked the Mirmehdis' bond and arrested them because of their Iranian nationality. On October 2, 2001, just three weeks after the September 11 attacks, at a time when the United States was targeting Middle Eastern and Muslim immigrants as part of the investigation into 9/11, the court revoked the Mirmehdis' bond and arrested them. The sole justification for the arrest and subsequent denial of bond in January 2002 was that Mirmehdis' names appeared on a list of attendees from a legitimate political demonstration from 1997. Several United States Congressmembers and many United States citizens attended the same demonstration but were not arrested for their participation. This demonstrates that the Mirmehdis' participation at the demonstration would have been treated as innocuous if not for the Mirmehdis' Iranian nationality. However, because of the Mirmehdis' Iranian nationality, the United States instead treated the Mirmehdis' attendance as evidence that the Mirmehdis were terrorists. It is particularly apparent that the Mirmehdis' arrest was due to nationality discrimination when it is viewed in the context of a pattern of thousands of other Middle Eastern nationals being questioned for the combination of their nationality and similarly facially innocent actions immediately following the 9/11 attacks. When the Mirmehdis were initially granted bond in 1999, the United States was already aware that the Mirmehdis attended this demonstration. The judge nonetheless determined that the Mirmehdis did not pose flight risk or threats to the community or national security. From the time of their release from detention in 1999 until their arrest in 2001, there was no change in the Mirmehdis'

immigration case or actions within the community that would have warranted a revocation of bond. The timing of the Mirmehdis' arrests indicates that the United States used the list as a pretext for arresting the Mirmehdis when they were actually arrested because of their nationality as part of a systematic profiling of Middle Eastern immigrants after 9/11.

Since the United States had no reason besides suspicion based on nationality to hold the Mirmehdis, they knowingly presented fabricated evidence and intimidated a witness to justify holding the Mirmehdis in detention. The United States presented a travel list containing the Mirmehdis' names as a "L.A. Cell Form," knowing that it was actually a list of attendees at a political demonstration. The agents of the United States also intimidated a witness into not testifying that the Mirmehdis had no association with the MEK. The Mirmehdis' treatment was consistent with an FBI directive requiring the INS to oppose bond for detainees, even without supporting evidence. The government's knowing fabrication of evidence and intimidation of a witness shows that the supposed "L.A. Cell Form" was a pretextual justification for what was actually a detention based on the Mirmehdis' Iranian nationality.

This differential treatment continued throughout the Mirmehdis' imprisonment, as they were repeatedly denied bond despite also being granted withholding from removal based on a finding that they were not involved in terrorism. After the Mirmehdis' denial of bond in January 2002, they were held in detention for an additional 38 months. Indeed, the Mirmehdis were only released on March 16, 2005 because of tremendous pressure from the national media attention that the Mirmehdis' case was garnering. While the Mirmehdis were in detention, federal agents approached the Mirmehdis on no less than five occasions to demand they provide information on

the MEK in exchange for freedom, regardless of the fact that there was no evidence connecting the Mirmehdis to the MEK.

The United States also denied the Mirmehdis equality before the law due to their perceived political beliefs. The Mirmehdis were arrested and held without bond for 41 months based solely on evidence of their participation in a pro-democracy demonstration in opposition to the Iranian regime. The United States did not establish that the Mirmehdis posed a threat to national security and did not convict them of any crime. In fact, The United States unjustifiably detained the Mirmehdis based solely on their political activity, violating their rights under Article II.

As exemplified above, the United States government denied the Mirmehdis various rights due to their discriminatory treatment of the Mirmehdis based on their Iranian nationality. Therefore, the United States also violated the Mirmehdis' civil rights under Article XVII of the American Declaration.

b. Violation of Articles I (Right to Liberty), XXVI (Right to Due Process), XVIII (Right to Fair Trial) and XXV (Arbitrary Arrest or Detention) of the American Declaration of the Rights and Duties of Man

Below, we discuss the Mirmehdi's right to an Impartial Hearing under Article XXVI; their right to be free from arbitrary arrest and detention and their right to liberty under Articles II and XXV; and their right to due process. The Mirmehdis were subjected to the use of false evidence and testimony against them and were held against their will for over three years after that false evidence was used to revoke their bond. Together, these actions constitute an egregious violation of a Governments' responsibilities to all people within its borders.

i. The Inter-American Commission and Court Have Previously Established that All People Have a Right to An Impartial Hearing, Including in Immigration Proceedings.

This Commission has previously recognized that “[...]to deny an alleged victim the protection afforded by Article XXVI simply by virtue of the nature of immigration proceedings would contradict the very object of this provision and its purpose to scrutinize the proceedings under which the rights, freedoms and well-being of the individuals under the State’s jurisdiction are established.”¹⁸⁹ According to Article XVIII, “[e]very person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”¹⁹⁰ Moreover, Article XXVI of the same instrument provides that “[e]very accused person is presumed to be innocent until proved guilty.”¹⁹¹ Nothing in the nature of immigration proceedings vitiates these rights.

The Inter- American Court has noted that “[...] the right of access to justice must ensure, within a reasonable time, the right of alleged victims or their next of kin to have everything necessary done to determine the truth of what happened and to investigate, prosecute and, if appropriate, punish those eventually found responsible.”¹⁹² For its part, the Commission has recognized that “[i]t is a basic principle of inter-American human rights law that in order to find

¹⁸⁹ Andrea Mortlock v. United States, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08. ¶ 83 (2008).

¹⁹⁰ American Declaration, Article XVIII.

¹⁹¹ *Id.* Article XXVI.

¹⁹² Inter-Am. Ct. H.R., Olivares Muñoz et al. v. Venezuela, Series C No. 415, Judgment ¶ 119 (Nov. 10, 2020).; *See also* Bulacio v. Argentina, Series C No. 100, Judgment ¶ 114 (Sept. 18, 2003); Guzmán Albarracín et al. v. Ecuador, Series C No. 405, Judgment ¶ 176 (June 24, 2020).

that an effective remedy for a human rights violation exists, the remedy must also be sufficient to obtain reparation for the harm caused.”¹⁹³

Moreover, the Court has established in its jurisprudence that “[...]the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victim or his family or upon their offer of proof.”¹⁹⁴ Additionally, the Court has found that “[...]a prolonged delay in the process may constitute, per se, a violation of judicial guarantees.”¹⁹⁵

The Mirmehdis had a right to a hearing by an impartial tribunal. The use of the L.A. Cell Form as a basis to detain the Mirmehdis when the Government agents knew it was being misrepresented and mistranslated constituted the use of false evidence and meant that the bond revocation hearing was not an effective or impartial hearing.

1. The United States Violated the Mirmehdis’ Rights to Fair Trial by Utilizing False Testimony and Evidence to Uphold the Mirmehdis’ Detention in Bad Faith

In *Teleguz v. United States*, the Commission found that presenting “false and unreliable” testimony against a criminal defendant violated the defendant’s right to a fair trial under Article XVIII of the American Declaration.¹⁹⁶ Here, at the Mirmehdis’ December 10, 2001, bond hearing,

¹⁹³ Djamel Ameziane v. United States, Case 12.865, Inter-Am. Comm’n H.R., Report No. 29/20, ¶ 225 (2020).

¹⁹⁴ Inter-Am. Ct. H.R., Olivares Muñoz et al. v. Venezuela, Series C No. 415, Judgment ¶ 120 (November 10, 2020).; *See also* Inter-Am. Ct. H.R., Velásquez Rodríguez v. Honduras, Series C No. 4, Judgment ¶ 177 (July 29, 1988); Inter-Am. Ct. H.R., Noguera et al. v. Paraguay, Series C No. 401, Judgment ¶ 81 (March 9, 2020).

¹⁹⁵ Inter-Am. Ct. H.R., Olivares Muñoz et al. v. Venezuela, Series C No. 415, Judgment ¶ 123 (November 10, 2020); *See also* Inter-Am. Ct. H.R., Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Series C No. 94, Judgment ¶ 145 (June 21, 2002); *Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil*, Series C No. 427, Judgment ¶ 222 (June 21, 2021).

¹⁹⁶ *Teleguz v. United States*, Case 12.864, Inter-Am. Comm’n H.R., Report No. 53/13 ¶¶ 96–99 (2013).

the United States utilized blatantly false and unreliable evidence to justify the Mirmehdis' continued incarceration.

Troublingly, Agent Castillo misrepresented evidence throughout his testimony, flagrantly violating the Mirmehdis' right to a fair trial. Agent Castillo, on behalf of the United States, focused his testimony largely on what he called an "L.A. Cell Form," which he touted as evidence that the Mirmehdis were associated with the MEK. He distorted and falsified several aspects of this document.

First, Agent Castillo testified that the date on the document was a "symbolic" homage to the date of a 1981 protest in Iran.¹⁹⁷ In actuality, the date on the document translates to June 20, 1997, the date of the lawful political protest outside of the Denver Summit discussed *supra*.¹⁹⁸ This misrepresentation utterly mischaracterizes the document, claiming that it is "in memory of" a contentious and deadly 1981 event overseas to which the Mirmehdis had absolutely no connection.¹⁹⁹ In actuality, the date on the document translates to June 20, 1997, the date of the lawful political protest outside of the Denver Summit discussed *supra*.²⁰⁰ This misrepresentation utterly mischaracterizes the document, claiming that it is "in memory of" a contentious and deadly 1981 event overseas to which the Mirmehdis had absolutely no connection.

Second, Agent Castillo testified that, because the MEK is a "very closed" organization, the Mirmehdis must have been well-trusted members in order to be included on the document.²⁰¹

¹⁹⁹ Exhibit 18 at 161.

²⁰⁰ See Exhibit 8 at 3.

²⁰¹ Exhibit 18 at 167.

However, Agent Castillo admitted that the document he was describing was only a portion of a collection of hundreds of pages of forms.²⁰² In reality, the document was merely a travel log of participants of the 1997 Denver demonstration, complete with departure times, arrival times, and ticket prices.²⁰³ Thus, Agent Castillo lied when he testified that the excerpted document was a “cell form” that indicated Mirmehdis must have had “some level of access to the organization involvement” and that the MEK “trusted” the Mirmehdis.²⁰⁴

The United States’ reliance on Agent Castillo’s false and misleading statements, including the misrepresentation of physical evidence, went beyond presenting “false and unreliable” testimony.²⁰⁵ Agent Castillo also suppressed the recantation of a key witness by intimidating him and keeping him from testifying.

Basing their case against the Mirmehdis on someone who exhibited callous disregard for the truth and sanctity of the tribunal, the United States violated the Mirmehdis’ right to due process and a fair trial under Articles 8 and 25 of the American Convention.

2. The United States Violated the Mirmehdis’ Right to be Free from Arbitrary Arrest and Their Right to Liberty.

As discussed above and in the petition, the United States revoked the Mirmehdis’ Bond based on the false evidence presented in court by State agents. When the Mirmehdis were redetained after having been determined by a court to be neither a danger or a flight risk, and their bond was revoked solely based on false evidence, that violated their right to be free from arbitrary arrest and their right to liberty.

²⁰² See Exhibit 7; see also Exhibit 18 at 157, in which Agent Castillo admitted that there were “many other names or other sheets of paper that were attached to this piece of paper.”

²⁰³ See Exhibit 8 at 2.

²⁰⁴ See Exhibit 18 at 167.

²⁰⁵ See *Teleguz, supra*.

The Mirmehdis' right of protection from arbitrary arrest or detention under Article XXV of the American Declaration was violated here when false evidence was used against them. The Article requires that the proceedings "at a minimum comply with the rules of procedural fairness."²⁰⁶

Moreover, it was unfair for the Petitioners to continue to be detained on grounds of danger to national security when the 2002 asylum decisions and the BIA decision found "no evidence connecting the Mirmehdis to terrorist activities."²⁰⁷ As detailed below, the detention was based on the freedom of expression and right to peaceful assembly that the Mirmehdis exercised by attending a pro-democracy rally. When an arrest is based on protected political activity or free speech, it is arbitrary.²⁰⁸

For the same reasons, the Mirmehdis' right to liberty was also violated. They were all detained from October 2001 to March 2005 after the bond revocation. As their right to protection against arbitrary detention was violated, that "constitute[s] as well a violation of Article I of the Declaration in detriment of every one of the victims."²⁰⁹

ii. The United States Violated the Mirmehdis' Right to Effective Civil Remedies and, More Fundamentally, Their Right to Truth

As in the petition, after their release, the Petitioners brought several claims against the United States and its agents, for violating their constitutional rights. (The relevant cases and the legal complaint can be found in the annexes to the petition.) Their claims for false imprisonment, unlawful detention, and witness intimidation were dismissed by the Ninth Circuit Court of Appeals

²⁰⁶ *Biscet v. Cuba*, Case 12.476, Inter-Am. Comm'n H.R., Report No. 67/06 ¶ 131 (2006).

²⁰⁷ *Mirmehdi v. I.N.S.*, 113 F. App'x 739, 741 (9th Cir. 2004).

²⁰⁸ *Biscet v. Cuba*, ¶ 137.

²⁰⁹ *Biscet*, ¶ 160; *see also Teleguz v. United States*, Case 12.864, Inter-Am. Comm'n H.R., Report No. 53/13 ¶ 130 (2013).

on the grounds that “immigrants’ remedies for vindicating the rights which they possess under the Constitution are not coextensive with those offered to citizens.” For that reason, the Petitioners were not entitled to bring an action for damages. The court affirmed denial of the Petitioners’ claim of witness intimidation on grounds that the Petitioners were not deported, concluding that there was no injury resulting from the alleged intimidation. Finally, denial of the Petitioners’ claim of false imprisonment against the United States was affirmed on grounds that the United States government is immune from tort claims. The Petitioners appealed the decision of the Ninth Circuit to the United States Supreme Court. The Supreme Court refused to hear the Petitioners’ case, meaning that there was no remedy for the injuries the Petitioners suffered or for the simple fact that they were detained for more than three years after their bond was revoked based on the false evidence.

This court has previously held that the denial of a remedy is an independent violation of due process rights. In Merits Report No. 29/20, Djamel Ameziane v. United States of America, the Interamerican Commission on Human Rights noted that the United States had “created obstacles to the vindication of [Mr. Ameziane’s right to an effective judicial remedy] so extreme that Mr. Ameziane was ultimately prevented from ever receiving a judicial decision on the merits as to the legality of his detention.” Directly connected to Mr. Ameziane’s right to due process, the Commission held, was Mr. Ameziane’s “the unalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent recurrence of such acts in the future.” The Commission reviewed the circumstances of Mr. Ameziane’s detention 16 years after Mr. Ameziane’s initial arrest. Because Mr. Ameziane was “unable to access any [effective civil remedy]” for 16 years, the Commission reasoned that

“every indication of domestic law is that no such remedy is meant to exist.” Accordingly, the Commission found the United States responsible for violating Mr. Ameziane’s due process rights established in articles XXVI and XXVII of the American Declaration.

Likewise here, the United States has systematically deprived the Mirmehdis of any effective judicial remedy for their unfounded detention. Over 20 years after their original detention, the Mirmehdis have received no reparations for the violations of their human rights. More fundamentally, the Mirmehdis have had no chance to expose the “truth... motives, and circumstances” behind their unfounded incarceration. Since the Mirmehdis filed civil complaint in the United States District Court in 2006, the United States federal court system has categorically deprived them of legal remedy. When the Mirmehdis first brought their civil suit against the United States in federal court, the district court found that the Mirmehdis had no legal right to be free from detention and dismissed their suit. When the Mirmehdis appealed this decision to the Ninth Circuit Court of Appeals, the judicial panel refused to rule on the legitimacy of the Mirmehdis’ detention. Instead, the Ninth Circuit held that the Mirmehdis had no claim in federal court. The court dismissed the Mirmehdis’ appeal, reasoning that, even if wrongful, the United States’ decision to detain the Mirmehdis fell within a “discretionary function” statutory exemption particular to immigration proceedings. The Ninth Circuit similarly precluded the Mirmehdis’ alternate basis for civil remedy, finding that *Bivens* did not provide remedy for undocumented immigrants. By dismissing the Mirmehdis on the basis of their immigration status, the United States deprived the Mirmehdis of any civil remedy whatsoever. The denial of the right to remedy violated the Mirmehdi’s right to be treated equally as other residents of the United States.

Moreover, the United States violated the Mirmehdis' due-process right to uncover the "truth...motives, and circumstances" behind their wrongful detention. Because they were denied their day in court, they never were able to obtain a judicial declaration that the state had violated their civil rights or that false evidence had been presented against them. As discussed below, this harmed their reputation.

c. Violation of Article V (Right to Protection of Honor, Personal Reputation, and Private and Family Life) of the American Declaration of the Rights and Duties of Man to the detriment of the victims.

Pursuant to Article V, "[e]very person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life."²¹⁰ Article V finds its equivalent on Article 11 of the American Convention on Human Rights which states that "[e]veryone has the right to have his honor respected and his dignity recognized."²¹¹ Additionally, the American Convention declares that "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."²¹² Lastly, "Article 11(3) of the Convention specifically imposes on States the duty to provide the protection of the law against such interference."²¹³

In its jurisprudence, the Inter-American Court of Human Rights has expressed that "[...]the right to honor is related to self-esteem and self-worth, while reputation refers to the opinion that others have of a person."²¹⁴ The Court has recognized that this right entails positive obligations

²¹⁰ American Declaration, Article V.

²¹¹ *Id.*, Article XI(1).

²¹² *Id.*, Article XI(2).

²¹³ Inter-Am. Ct. H.R., *Mémoli v. Argentina*, Series C No. 265, Judgment ¶ 15 (August 22, 2013). *See also* American Convention, Article XI(3).

²¹⁴ Inter-Am. Ct. H.R., *Mémoli v. Argentina*, Series C No. 265, Judgment ¶ 124 (August 22, 2013); *See also* Inter-Am. Ct. H.R., *Tristán Donoso v. Panama*, Series C No. 193, Judgment ¶ 57 (January 27, 2009); Inter-Am. Ct. H.R., *Santo Domingo Massacre v. Colombia*, Series C No. 259, Judgment ¶ 286 (Nov. 20, 2012).

such as “[...]the adoption of measures designed to ensure this right, protecting it from the interference of public authorities, as well as of private individuals or institutions, including the media.”²¹⁵

The reputation of the Mirmehdi brothers—Mohsen, Mojtaba, Mohammed, and Mostafa—has been severely affected as a result of their unlawful and arbitrary detention based on false evidence. The Mirmehdi brothers have been victims of defamation by the government as they were labelled as “terrorists” based on false evidence which was known to the government. William Odencrantz, former Director of Field Legal Operations for U.S. Immigration and Customs Enforcement, for instance, stated that “[t]he Mirmehdis are associated with a terrorist organization, and President Bush has made it quite clear that the United States will not be a haven or platform for terrorists whose aim is to commit acts of terrorism”.²¹⁶

It is important to note that the Mirmehdi brothers are realtors in the Los Angeles and rely on their reputation to conduct their business. Clients often google their names prior to retaining them. However, due to the amount of press that the victim’s case garnered, court documents and several articles can be easily found through a google search which mention their name in connection with terrorist charges.²¹⁷ As a result, the Mirmehdi brothers have lost several friends and clients through the years.²¹⁸

²¹⁵ ²¹⁵ Inter-Am. Ct. H.R., *Mémoli v. Argentina*, Series C No. 265, Judgment ¶ 125 (August 22, 2013).

²¹⁶ SF Gate, *Exonerated in terror case, 4 brothers still locked up / Supporters say Iranians pawns in post-9/11 chess game* (January 25, 2005), <https://www.sfgate.com/news/article/Exonerated-in-terror-case-4-brothers-still-2735762.php>.

²¹⁷ See *Id.*; LA Times, *4 Iranians Challenge Detention* (June 7, 2004), <https://www.latimes.com/archives/la-xpm-2004-jun-07-me-detain7-story.html>; LA Times, *Freed After Terror Case, 4 Sue Officials* (August 15, 2006), <https://www.latimes.com/archives/la-xpm-2006-aug-15-me-mirmehdi15-story.html>; NBC, *Stalemate lengthens brothers’ detention* (March 5, 2005), <https://www.nbcnews.com/id/wbna7096095>.

²¹⁸ Exhibit 1 at ¶ 17; Exhibit 4 at ¶ 20; Exhibit 2 at ¶ 24; Exhibit 3 at ¶ 20.

In this case, the State has not only failed to protect the victims against unlawful attacks against their reputation, but has instigated such attacks. As such, the United States has violated Article V of the American Declaration to the detriment of Mostafa Seyed Mirmehdi, Mohammad-Reza Mirmehdi, Mohsen Seyed Mirmehdi, and Mojtaba Seyed Mirmehdi.

d. The United States' Arbitrary Detention of the Petitioners Based on Their Attendance at a Demonstration Violated Their Right to Freedom of Expression, Their Right of Assembly, and Their Right of Association Under Article IV, Article XXI, and Article XXII of the American Declaration of the Rights and Duties of Man.

The United States detained the Petitioners based on their participation in a lawful and peaceful demonstration. Their detention was based on distorted evidence, namely a subset of a long list of attendees, which was subsequently used to justify the Petitioners' arrest and prolonged detention. As detailed below, the use of this evidence violated their rights to freedom of expression, freedom of assembly, and freedom of association under the American Declaration. Whereas Article IV provides that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever," Article XXI provides that "[e]very person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature." Finally, Article XXII states that "[e]very person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

In this context, the IACHR has demonstrated a commitment to protecting these very rights. In 2000, the Commission adopted a Declaration of Principles on Freedom of Expression, recognizing in Principle 1 that "[f]reedom of expression in all its forms and manifestations is a

fundamental and inalienable right of all individuals.” Not only did the Commission endorse Article IV in its Principle 1, but it also adopted the Inter-American Court of Human Rights’s determination that the right of freedom of expression encompasses the “right and freedom to seek, receive and disseminate information and ideas of all types.” As such, Article IV affords the Petitioners the rights to freedom of expression, freedom of opinion and the right to disseminate and seek information by any means. Consequently, the Petitioners’ attendance at the 1997 demonstration constituted a form of expression and, thus, was protected by Article IV.

In jurisprudence by the Commission and the Court, the Court has elaborated on the impact that State responses have on individuals’ rights to freedom of expression, association and assembly. In *Canese v. Paraguay*, the Commission examined Paraguay’s decision to hold a journalist liable and restrict his ability to leave the country in response to his reporting on governmental corruption.²¹⁹ The Commission argued that “punitive measures resulting from certain statements could, in some cases, be considered an indirect means of restricting freedom of expression.”²²⁰ Reviewing the Commission’s findings, the Court ultimately held that Paraguay’s punitive actions constituted a violation of the petitioner’s right to freedom of expression.²²¹ Similarly, in the Petitioners’ current case, the United States’ decision to detain the Petitioners on the basis of their expression, namely their attendance at a pro-democracy demonstration, would likewise constitute an indirect means of restricting the Petitioners’ freedom of expression.

Beyond *Canese*, the Commission has reviewed other cases involving restrictions on the right to freedom of expression. In *Biscet v. Cuba*, it determined that the petitioners were punished

²¹⁹ Inter-Am. Ct. H.R., *Canese v. Paraguay*, Series C No. 111 (August 31, 2004).

²²⁰ *Id.* at 46.

²²¹ *Id.* at 95.

for political activism protected under Article IV, when the Cuban government criminally convicted them for publishing political articles and participating in political groups that the Cuban government had deemed “counterrevolutionary.”²²² As in *Biscet*, the Petitioners were punished for political activism that the United States government disapproved of when they were arrested and detained based on evidence of their attendance at a demonstration. However, unlike *Biscet*, the opinions and ideas expressed by the Petitioners were not even directed at the State taking punitive measures, but rather at the political situation in Iran. Further, the Petitioners’ punishment for their attendance at a demonstration is particularly egregious given that the event was explicitly lawful and was even attended by over 200 U.S. congresspeople. In this light, the State’s action constituted punishment for the Petitioners’ lawful exercise of their right to freedom of expression under Article IV.

Aside from violating the Petitioners’ right to freedom of expression, the United States also violated the Petitioners’ right to freely assemble and associate with others that share their views and opinions. The Commission has stated that the right to assemble for political purposes and the right to affiliate with similarly motivated people are rights that are “interlinked.”²²³ This is because those seeking to exercise their freedom of association will often exercise that right in partnership with others, where individuals can exchange opinions, express views on different issues and decide on action plans.²²⁴ The Commission has emphasized that this right is “essential for the expression of political and social criticism of the State’s activities” and because of that, activities such as

²²² *Biscet v. Cuba*, Case No. 12.476, Inter-Am. Comm’n H.R., Report No. 67/06.

²²³ *Id.* at ¶ 218.

²²⁴ IACHR, Report about the Situation of Human Rights Defenders in the Americas, OAS/Ser.L/V/II.124. Doc 5 rev. 1, March 7, 2006, ¶ 52.

human rights defense “can hardly be done in contexts where the right to peaceful assembly is restricted.”²²⁵ As such, a restriction on the rights to freely assemble and to freely associate can severely limit democracy and violate other essential rights like freedom of expression.

The importance of the interrelated freedoms of association and assembly has also been recognized in the jurisprudence. In *Huilca-Tecse v. Peru*, the Court determined that the execution of a trade union leader violated the right to freedom of association of the leader herself and of the other members of the union.²²⁶ The Court elaborated on Article 16 of the Convention, which substantially mirrors Article XXII of the American Declaration, arguing that the Article’s “words establish [...] not only [...] the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right [...] but also [...] the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose.”²²⁷ In a similar vein, the Petitioners’ attendance at the demonstration was a means for the Petitioners to associate with Iranians and other individuals who similarly opposed the Iranian regime and supported a transition to a democratic government. As such, the Petitioners’ actions in attending the demonstration were protected by Articles XXI and XXII. Their subsequent detention based on this attendance at a demonstration similarly restricted the Petitioners’ rights to freedom of assembly and of association, thereby violating Articles XXI and XXII.

²²⁵ *Id.*

²²⁶ Inter-Am. Ct. H.R., *Huilca Tecse v. Peru*, Series C No. 121 (March 3, 2005).

²²⁷ *Id.* at ¶ 69; *see also* Inter-Am. Ct. H.R., *Baena Ricardo et al.*, Series C No. 72, Judgement ¶¶ 156, 159 (February 2, 2001).

VI. Conclusion and Request

For the above stated reasons, we request this Inter-American Commission on Human Rights to declare that the United States violated the following human rights to the detriment of the victims: Article I (Right to Liberty), Article II (Right to Equality Before the Law), Article IV (Right to Freedom of Expression), Article V (Right to Protection of Honor, Personal Reputation, and Private and Family Life), Article XVII (Right to Recognition of Juridical Personality), Article XVIII (Right to Fair Trial), Article XXI (Right of Assembly), Article XXII (Right of Association), Article XXV (Right of Protection from Arbitrary Arrest or Detention), and Article XXVI (Right to Due Process).

Additionally, we urge this Illustrious Commission to provide recommendations to the State to ensure that the victims receive comprehensive reparations for all the human rights violations that they have suffered. Such reparations must include the adoption of concrete measures aimed at clarifying the facts surrounding the unlawful and arbitrary detention of the victims based on false evidence; the recognition by the State of the wrongdoing, including the arbitrary arrest, unlawful detention, lack of access to justice and defamation of the victims, through an official apology by a high level official and by the state officials who were involved in the immigration cases of the victims. Such should be published in prominent local or national paper to help repair the reputation of the victims.

Moreover, the reparations should include a path to the legalization of the status of the victims in the United States. It should also include a significant monetary compensation to reimburse the victims for all the pain and suffering that they have endured since 1999 at the hands

of state officials, as well as the financial hardship incurred due to their combined loss of income, clients, business, and property.

For all the foregoing, the petitioners respectfully request this Commission: (1) to consider presented the Additional Presentations on the Merits and incorporate them into the file for the corresponding effects; (2) to forward this brief to the United States and request them to present their corresponding observations in accordance with your Rules of Procedure; (3) grant a hearing on the case of Mostafa Seyed Mirmehdi, Mohammad- Reza Mirmehdi, Mohsen Seyed Mirmehdi, and Mojtaba Seyed Mirmehdi, and lastly (4) issue a merits report and corresponding recommendations promptly.

VII. Exhibits

The exhibits are attached below, as follows.

Exhibit 1: Declaration of Mojtaba Mirmehdi

Exhibit 2: Declaration of Mohammed Mirmehdi

Exhibit 3: Declaration of Mostafa Mirmehdi

Exhibit 4: Declaration of Mohsen Mirmehdi

Exhibit 5: 2003 Affidavit of the Mirmehdi Brothers

Exhibit 6: The Alleged “LA Cell Form”

Exhibit 7: Affidavit of K. Thomas Li

Exhibit 8: Declaration of Mehran Kamrava

Exhibit 9: Testimony of Mehran Kamrava.

Exhibit 10: Motion for Reconsideration of Bond

Exhibit 11: Letter from Mostafa Mirmehdi to Dianne Feinstein

Exhibit 12: Bond Revocation Decision

Exhibit 13: Determination of BIA on Appeal of Bond Revocation

Exhibit 14: 2012 Ninth Circuit Court of Appeals Decision

Exhibit 15: Denver Post Article on June 20, 1997 Demonstration

Exhibit 16: Deposition of Tabatabai

Exhibit 17: Excerpts of June 19, 2001 Hearing Transcript

Exhibit 18: Excerpts of December 10, 2001 Hearing Transcript

Exhibit 19: Asylum Decision re: Mohammad Mirmehdi

Exhibit 20: Asylum Decision re: Mohsen Mirmehdi

Exhibit 21: Asylum Decision re: Mojtaba Mirmehdi

Exhibit 22: Asylum Decision re: Mostafa Mirmehdi

Exhibit 23: 2004 BIA Decision on the Merits

Exhibit 24: 2004 Ninth Circuit Court of Appeals Decision

Exhibit 25: Human Rights Watch Report

Exhibit 26: Center for Constitutional Rights Report

Exhibit 27: American Civil Liberties Union Report

Exhibit 28: Office of the Inspector General Report

Mostafa Seyed Mirmehdi, Mohammad- Reza Mirmehdi,
Mohsen Seyed Mirmehdi, and Mojtaba Seyed Mirmehdi
v.

United States of America

Dated: October 20, 2021

*Respectfully submitted on behalf of
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