**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| JEFFREY BARHAM, *et al.* | : | |
| Plaintiffs, | : | |
| v. | : | Civ. Action No. 02-02283 (EGS) (AK) |
| CHARLES H. RAMSEY, *et al.* | : | |
| Defendants. | : | |

**PLAINTIFFS' OPPOSITION TO DISTRICT OF COLUMBIA'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs respectfully partially[1] oppose the District of Columbia's Motion for Partial Summary Judgment with respect to the unconstitutional wrist-to-ankle restraint system whereby

[1] The plaintiffs do not oppose the dismissal of, and shall endeavor to voluntarily withdraw by stipulation, the claims of an independent constitutional violation arising out of a policy of affording protestors charged with minor offenses more limited and restrictive options for release than that allowed others. This reflects the preference on the part of plaintiffs to not burden the Court unnecessarily with the adjudication of issues. As reflected in the statement of issues, plaintiffs do not retreat from their factual assertion that because of misinformation circulated to the arrestees at the time they were processed, large numbers were frustrated - either deliberately or unintentionally - in their efforts to secure procedural due process with respect to the forfeitures of collateral. As reflected in the statement of issues, plaintiffs were herded into the "post and forfeit" process and were told they had to pay $50 to "pay out" and be released. Many plaintiffs were not allowed to challenge the legality of their arrests or were told that, in order to do so, they would have to languish in police custody for an indefinite period of time, possibly until the following Wednesday, and possibly longer. However, the District of Columbia Council has since enacted legislation that requires a written statement of release options be provided to arrestees in mass protest arrest situations. The MPD has denied that it had a deliberate policy of restricting release options and, more important to plaintiffs' considerations, has not voiced an opposition to the requirement of providing a clear written statement of release options to arrestees. Consequently, plaintiffs no longer require the Court to issue the injunctive relief originally sought.

the District of Columbia held non-violent arrestees in a painful stress and duress position that does not allow for full extension of the back for periods of time, admittedly, of up to eighteen hours with no maximum period established under MPD practice.

This restraint system, which binds wrist to ankle with only 6 to 8 inches of available movement, was apparently devised by the MPD for use against protestors in connection with the April, 2000 International Monetary Fund / World Bank ("IMF/WB") protests and mass arrests.[2]

The District of Columbia is unable to identify any precedent for the use of wrist-to-ankle restraints by *any* authority prior to the adoption of this manner of restraint by the District of Columbia for use against protestors.

Commander Cathy Lanier, in charge of prisoner processing for the September, 2002 mass arrests at issue in this case, testified that in her fifteen years of experience she has attended over one hundred specialized law enforcement trainings that encompassed prisoner control including handcuffing techniques. Not one of those courses utilized or recommended a wrist-to-ankle restraint system.

Assistant Chief Alfred Broadbent admits that this "is not a normal manner of restraint in handcuffing."

Commander Jose Acosta, to whom is ascribed responsibility for initiating this restraint

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[2] Undersigned counsel represents the plaintiffs in Alliance for Global Justice, et al. v. District of Columbia, Civil Action No. 01-00811 (PLF)(JMF), which is a class action complaint challenging, among other things, the April 15, 2000 mass false arrests of lawfully assembled protestors who were surrounded, trapped and arrested by the MPD without warning or notice. As undersigned counsel has endeavored to not engage in redundant discovery, certain of the issues related to the use in this case of the wrist-to-ankle restraint system have been disclosed in depositions related to the initial use of the wrist-to-ankle restraint system in April, 2000. Where depositions testimony cited herein is from the Alliance for Global Justice case, it is so indicated in the citation or reference.

system, has testified that it was not to be used against prisoners who were cooperative and not disruptive. To his belief, when he authorized this restraint system to be used in April, 2000, "very few" persons were so restrained. Chief Broadbent testified that this is not an appropriate manner of restraint where it prevents an arrestee from being able to fully extend her back.

Yet, the plaintiffs in this case - - none of whom were arrested for an offense more serious than violation of a traffic regulation and all of whom were deemed by police to be non-violent - - were uniformly subjected to this painful restraint system while held in the Blue Plains facility. As a consequence, arrestees suffered pain that some described as "agonizing" and "severe" throughout their lengthy period of detention. A number of the class representatives suffered long term recurrent pain or injury from this unnecessarily harsh and painful manner of restraint.

The District of Columbia *admitted* that it maintained prisoners in a position where they could not fully extend their backs for a period of time "somewhere in the neighborhood of twelve to eighteen hours."

This imposition of pain, constriction and contortion is simply not necessary nor reasonably related to any legitimate law enforcement purpose, including prevention of escape or assault. In deposition, the District of Columbia designee admitted that there would not be a substantial increase in the risk of either escape or assault were the District to increase range of motion by adding a link to the restraint system. The Chief of Police himself, forced by public outrage at this painful binding tactic, has represented that the police would be able in the future to add additional links of flexcuffs to ensure comfort and avoidance of pain. Clearly, avoidance of such severe pain was feasible in connection with the September 27, 2002 mass arrests.

Police chose to not follow a humane course on September 27, 2002 because they sought

to send a threatening message: This pain and physical contortion will be the cost of your free speech.

For the reasons stated herein, under the facts and circumstances alleged and evidenced by affidavit herein, the District of Columbia is unable to establish as a matter of law the constitutionality of this oppressive and unique tactic for "restraint."

## I. The Wrist-to-Ankle Restraint System Unreasonably Places the Arrestee in Physical and Psychological Stress and Duress

The wrist-to-ankle restraint system as generally used in connection with the September 27, 2002 mass false arrests consists of a plastic flexcuff that is placed on the wrist of the arrestee, one that is placed on the ankle, and one flexcuff that is tied into a loop and connects the two others. The one connecting looped flexcuff provides only approximately six to eight inches of movement. See Exhibit 1, Dep. of District of Columbia (Barham) at 119.

The MPD refers to this as a "three loop system," counting the one flex cuff around the ankle, the one flex cuff around the wrist, and the one flex cuff connecting the two. This is more aptly referred to as a "one loop system" because there is only one loop that allows any movement whatsoever of the ankle and wrist.

The one loop system does not allow the arrestee to fully extend her back, and causes her to be restrained in a contorted and painful physical position for extended periods of time.[3]

This is a stress and duress position, physically and mentally.

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[3] Plaintiffs do not contend that every person so restrained suffers identically or with the same severity or nature of pain or injury. What is clear is that this is an unnecessarily painful and punitive measure that when applied to hundreds of non-violent arrestees will necessarily result in unreasonable pain and discomfort to all, severe or excruciating pain to many or most, and recurring or longer term injury to a significant portion.

### A. Plaintiffs Were Contorted Into Positions That Prevented Full Extension of the Back and Which Inflicted Unreasonable Pain for Extended Durations

Plaintiff Nicole Djeddaoui was so restrained for 20 hours. See Exhibit 12, Djeddaoui Affidavit at 1. John Passacantando was like this for twelve hours. See Exhibit 11, Dep. of Passacantando at 51; See also Exhibit 13, Casey Legler Affidavit at 1 (14 hours); Exhibit 14, Norton Affidavit at 1 (11 to 12 hours); Exhibit 15, Wood Affidavit at 1 (10 to 11 hours); Exhibit 16, Canales Affidavit at 1 (8 to 9 hours); Exhibit 17, Swanson Affidavit at 1 (8 - 9 hours); Exhibit 18, Phelan Affidavit at 1 ( 5 to 10 hours); Exhibit 19, Durham Affidavit at 1 (7 to 8 hours); Exhibit 20, Young Affidavit at 1 (6 - 7 hours). These periods represent only the periods of arrest while restrained wrist to ankle and do not reflect the total time of arrest, or the total period of cuffing, as arrestees were rear cuffed for additional hours.[4]

### B. These Painful Conditions Imposed on Arrestees Were Punitive

Plaintiff John Passacantando, who was arrested after stopping his bike in the park to view the assembly as he was proceeding to work, was asked in his deposition whether the MPD imposed conditions of confinement were unduly harsh or punitive. He responded as follows:

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[4] The defendants in this matter have made much of "technical failures" that they suggest unduly extended processing for the arrestees. Setting aside that this is the same excuse they made for holding the April, 2000 mass arrestees for as long or longer, it does not justify the failure to promptly release the arrestees.

One of the reasons processing took so long was because law enforcement insisted on collecting everyone's full set of fingerprints and sending them to the Federal Bureau of Investigation. Under MPD General Order 502.1.A, there is only a limited subset of charges prosecuted by the Office of Corporation Counsel (now, the D.C. Office of the Attorney General) which result in fingerprinting and photographing. This list does not include "failure to obey," a violation of the traffic regulations as violation of the traffic regulations are generally and expressly excluded from full fingerprinting. See Exhibit 10, MPD General Order 502.1.A(E). According to the Prisoner Processing Manual for these demonstrations, arrestees released who post collateral or take Citation Release were not to have a full set of fingerprints taken. See Exhibit 21, Prisoner Control Plan at 8.

> "I mean unduly harsh, yes sir. Cuffed right wrist to my left ankle. I only later realized, you know, an hour into it, two hours into it, three hours into it, up to 12 hours with some bathroom breaks, how incredibly painful that becomes for your joints even though you might think, and I'm gesturing now, holding my right wrist to my left ankle - - there's only about three positions you can actually be in on the floor. Your joints start to ache. They need to move more than that.
>
> It's humiliating. It's painful, and for me in that position, that went on for 12 hours. For others, it went on longer.
>
> And if I could just add, there were officers who were walking through there and saying to various people cuffed like this on these mats, including to me, 'Was it worth it?' Which is an absurd question. Was what worth it? Was riding my bike to a park worth it?
>
> 'Was it worth it?' It was said several times. 'Was it worth it?' 'Will you do it again?' As though I was in come kind of crazy conditioning experiment. So, yes sir, I don't mean to raise my voice, but I do view that as unduly harsh."

Exhibit 11, Dep. of Passacantando at 51 - 52.

As above, officers several times demanded of John Passacatando, "Was it worth it?" "Will you do it again?" It is clear from these inquiries that officers were intent on imposing a cost to protest or, as Mr. Passacantando was not even protesting, on those who were in proximity to protest. Unnecessarily harsh and long conditions of confinement were imposed by a police force that intended to send a message to IMF/WB and anti-war protestors that their exercise of free speech rights just isn't worth it.

Some arrestees who committed the "offense" of trying to hop to a different mat, having been confined to a particular mat for hours and seeking new communication with others, were punished by being hog-tied with all four limbs together.

> "[I]f you want to understand the tenor of the place, there was some of the officers were getting upset with some of the people on these mats who were talking too loud, where one person hopped from one mat to another mat. Several people did this. Whenever this one officer saw this, he would stand up, charge over to that person and then flexcuff the person so that instead of just the right wrist being cuffed to the left

> ankle, the right wrist, the left wrist, the left ankle, the right [ankle] were all cuffed together like a hog at a rodeo so that they wouldn't be able to move from one mat to another."

Exhibit 11, Dep. of Passacantando at 58-59.

That police were engaged in punitive measures was also reflected in other conduct reported by class representatives.

Officers warned William Durham, and others, that they would be rearrested and subject to the same harsh conditions were they to protest again during the weekend. Durham describes the officers as telling arrestees, "You're not gonna go back [to the protest] tomorrow, are you? You're just gonna end up here like this again." Exhibit 19, Durham Affidavit at 2.

Officers laughed at and took photographs of Miles Swanson as he suffered the humiliation of having to bend over and hop to the restroom when officers would not clip his cuffs to enable him to walk:

> "I was not uncuffed by an officer when I want to the bathroomn and drink water, so I had to hop. It was obvious to any observer that I was in, at the very least, some sort of discomfort. Nonetheless, some of the police officers in the gymnasium laughed at me and took pictures,. This exemplifies how humiliating and infuriating it was to be handcuffed wrist to ankle for many hours."

Exhibit 17, Swanson Affidavit at 2.

Casey Legler described:

> "Being cuffed wrist to ankle essentially made me powerless, and the police officers abused this situation. For example, I was assigned to sit on a mat that was five feet from a huge industrial fan. Having it blow on me constantly for several hours chapped my lips and wind-burned my face. I would have asked to be moved to a mat further away from a fan, but my friend had made the same request earlier and an officer screamed at her. I sat behind some of the other arrestees on my mat in an attempt to decrease the amount of wind blowing on me. When the other arrestees were released, I asked an officer to turn it off. The officer walked over to the fan, turned it so that it was blowing directly on me. The officer left it like this for an hour before turning the fan off."

Exhibit 13, Legler Affidavit at 2.

The officers clearly associated the extended period of confinement as a form of preventive detention, to keep those arrested from protesting that weekend.

> "It was clear to me that cuffing arrestees wrist to ankle for an extended period of time was a punitive measure. It was meant to censor and deter protest, and terrify the arrestees from protesting again. When arrestees asked the officers how long we would be detained, some of the officers stated, 'We're gonna keep you until Sunday. We're gonna keep you here until it's all over.'"

Exhibit 13, Legler Affidavit at 2.

Nurse Mary Canales, who was not a protestor, understood the message:

> "It is clear to me that the manner of cuffing arrestees wrist to ankle for an extended period of time was intended to be punishment. The police officers clearly wanted to send a message that, "This is what happens if you protest so don't do it again."

Exhibit 16, Canales Affidavit at 3.

This type of painful confinement was not only punitive, but effective, dissuading some from protest for fear that they would be swept upon again and again cuffed overnight in contorted and painful positions.

> "Cuffing arrestees wrist to ankle was intended to be humiliating and made me feel subhuman. In one instance, I was escorted to the bathroom by a female officer. I was not uncuffed so I had to hop to the bathroom with my wrist down by my foot. I pleased with the officer to cut the cuffs, to which she casually said, "I don't have any clippers."
>
> "The officers wanted the arrestees to feel grateful for being allowed to use the bathroom at all. Such behavior by the officers was intended to send a message that 'we can do whatever we want and you can't do anything about it.'
>
> "They wanted to prevent people from protesting, and it worked on me. I did not go to the protest day after I was released for fear of being unlawfully detained again with my wrist cuffed to my ankle."

Exhibit 20, Young Affidavit at 3.

### C. The Position Was Unreasonably Painful

Plaintiff Casey Legler, a protestor in the group bike ride that was forced into the Park by

police and then suddenly trapped and arrested, explained, "I have severe scoliosis and the contorted position of having my right shoulder hunched toward my left leg caused severe, sharp and excruciating pain in my neck, shoulders, and right upper back." Exhibit 13, Legler Affidavit at 1.

Nurse Sally Norton, in town for a medical convention and arrested in the Park without warning or notice, attested as follows:

> "During the time I was in the gymnasium, being cuffed wrist to ankle for an extended period of time caused pain and discomfort in my back. I had previously sustained injury to my back, colloquially called 'nurse's back,' which is caused by activities associated with patient care, such as lifting and assisting patients.
>
> "Having my right wrist cuffed to my left ankle forced my body to be twisted with no leverage to stretch. This triggered the pain that is associated with 'nurse's back': I experienced pain in my high thoracic vertebra which is located in the mid to high back area, and in my lumbar sacral area which is located in the lower back area."

Exhibit 14, Norton Affidavit at 2.

Plaintiff Mary Canales, a nurse who was arrested after leaving her hotel to check out the demonstration that was across the street, described:

> "During the time I was in the gymnasium, being cuffed wrist to ankle for an extended period time caused agonizing pain and constant throbbing throughout my entire back. The pain in my right shoulder was radiating throughout my back. Being cuffed wrist to ankle forced me to be in the fetal position on a mat with little cushioning which worsened the pain in my back."

Exhibit 16, Canales Affidavit at 2.

Plaintiff Samantha Young, who was arrested after being forced into Pershing Park by police officers after she had engaged in a group bike ride to demonstrate in favor of non-fossil fuel usage, testified:

> "[B]eing cuffed wrist to able caused such severe pain and discomfort in my body that I could not comfort and calm myself mentally. The physical pain and discomfort could have been lessened if I was given extra cuffs to expand the distance between

> my wrist and ankle. Such a modification would not have endangered the police officers or other arrestees. I made this request at least twice and was denied every time."

Exhibit 20, Young Affidavit at 2.

According to Casey Legler, a former Olympic athlete for France was arrested after her bike was forced by police into Pershing Park.

> "Being cuffed wrist to ankle for an extended period of time caused pain and discomfort in my left hip ranging from aching discomfort to sharp pain particularly where my hip had to rotate in order to accommodate being in a stressful position."

Exhibit 13, Legler Affidavit at 2.

According to Joseph Phelan, who was arrested as he lawfully and peacefully protested in the public Pershing Park, the pain affected his entire body.

> "During this time, being cuffed wrist to ankle for an extended period of time caused my whole body to be sore. I had muscular pain in my right shoulder, right upper back, and lower back throughout the duration that I was left in this position."

Exhibit 18, Phelan Affidavit at 1.

For William Durham, a law student who was protesting in Pershing Park, the contorted position triggered recurrence of pain in his upper to mid-level of his back a condition for which he had been in long term chiropractic treatment. See Exhibit 19, Durham Affidavit at 1-2.

**D. Arrestees Were Contorted and Could Not Extend Their Backs**

The hundreds of arrestees were, plainly, in contorted physical positions that did not allow for full extension of the back. The gymnasium was filled with arrestees who were folded up into a fetal position, with very few alternatives.

Plaintiff Samantha Young described:

> "Being cuffed wrist to ankle, there were only a couple of positions that were feasible. I could sit cross-legged with my left leg on top of my right leg with my right wrist on top of my left ankle, but I had to really arch my back to maintain this position which caused severe pain and discomfort in my back. I could lie on my side in the fetal

> position with my right arm tucked in between my legs, but this caused too much strain on my right wrist causing it to become red and numb**.** I could also lie on my back with my right leg bent and my left leg crossed over. However, this required me to be holding my left ankle with my right hand the entire time I was in this position in order to avoid pain in my right wrist from the cuffs digging into my skin. The wrist to ankle cuffing affected my ability to balance when sitting up, so I could not sit up with my legs tucked into my chest."

Exhibit 20, Young Affidavit at 1.

Sally Norton described, similarly,

> "When I was cuffed wrist to ankle, there were only a few positions that my body could be in. I could lie on my side in the fetal position, sit up in the fetal position, or sit cross-legged. I actively changed positions to alleviate and avoid pain and discomfort but, being restricted to such few position for an extended period time, I still felt pain and discomfort."

Exhibit 14, Norton Affidavit at 2.

William Durham's body bruised from being unable to move from a single position on his side.

> "Having been cuffed wrist to ankle, I had spent the majority of the time in the gymnasium in the fetal position on my right side. Three to four days after my release, dense black bruises formed on my right shoulder, elbow and thigh. The bruises on my shoulder and elbow looked as if I had been punched there. The bruise on my thigh was one to two inches in width and extended down the length of my thigh." Exhibit 19, Durham Affidavit at 2; See also Exhibit 15, Wood Affidavit at 1 (had to lie on side in the fetal position with one leg bent and with her knee up).

**E The Physical Contortion Caused Numbness, Cramping and Loss of Circulation**

It was not unusual, due to the extended period of time spent in a constricted position, for arrestees to suffer muscular or limb numbness or cramping or loss of circulation.

Leslie Wood explained "I had to lie on my side in the fetal position with one leg bent with my knee up. This position caused me to lose circulation in that leg." Exhibit 15, Wood Affidavit at 1.

Plaintiff Miles Swanson, a National Lawyers Guild Legal Observer who was arrested,

described, "...being left in this unnatural position caused cramping in my left leg and right arm which increased in severity and frequency the longer I was left in this position. I also lost circulation in my right arm and left leg, but because they were cuffed together, I could not readjust their position to alleviate the discomfort." Exhibit 17, Swanson Affidavit at 1 -2.

Loss of circulation and numbness was not uncommon among arrestees. See also Exhibit 13, Legler Affidavit at 2 ("Being cuffed wrist to ankle for an extended period of time caused my left leg to cramp up from lack of circulation."); Exhibit 20, Young Affidavit at 1 (numb wrists and "severe and persistent dull aching pain in my lower back and numbness in my buttocks").

**F. The Painfully Contorted Positioning Caused Sleep Deprivation**

The persistent pain of being contorted without the ability to extend one's back prevented arrestees from being able to sleep, despite the length of their arrest.

Casey Legler described:

> "Being cuffed wrist to ankle, I was unable to sleep. The only way I could lie down was roll on my side in the fetal position and place my right arm between my legs. This position caused excruciating pain in my back and shoulders. I would doze off for a maximum of five minutes before I was awoken by the severe pain or an officer telling me to wake up."

Exhibit 13, Legler Affidavit at 2.

Nicole Djeddaoui described a similar painful and sleepless night tied up in in police custody:

> "The pain in my wrist and ankle persisted when I tried to sleep. The only way to sleep was to roll onto my side, put my right wrist in between my knees, and curl up into a ball. Even in this position, there was not enough distance between my wrist and ankle, and my wrist and ankle would naturally try to pull away from thereby causing persistent pain. The pain prevented me from sleeping more than 10 to 15 minutes before being awoken."

Exhibit 12, Djeddaoui Affidavit at 2.

This manner of overnight shackling was too painful and contorted for anyone to secure rest,

and perhaps secure brief relief from the pain during slumber. See Exhibit 15, Wood Affidavit at 2 ("Whenever I tried, I would doze off for a maximum of twenty minutes before being awoken by the discomfort of the position of my body"); See Exhibit 19, Durham Affidavit at 2 ("I was unable to sleep. Whenever I tried, I would doze off for a maximum of fifteen minutes before being awoken by the discomfort and pain of the position of my body."); See Exhibit 20, Young Affidavit at 2 ("I could not sleep. The contorted positions that the manner of cuffing forced me to be in caused too much physical discomfort."); See Exhibit 14, Norton Affidavit at 2 ("Being cuffed caused pain and discomfort to the point where I did not sleep at all during the 11 to 12 hours I was in the gymnasium"); See Exhibit 16, Canales Affidavit at 3 ("I was unable to sleep during the several hours I was cuffed wrist to ankle in the gymnasium.")

**G. The Constricted Range of Movement Aggravated the Pain of Tight Cuffing**

The shackling of wrist to ankle, and the severe constrictions of movement, together meant that arrestees were unable to avoid chafing. scratching, and repetitive pain where the flex cuffs were attached. Perversely, when arrestees either voluntarily or unconsciously moved their limbs to lessen the pain and discomfort, they would actually cause additional pain because their cuffs would dig into their skin as soon as they reached the very short limit of their range of movement.

Samantha Young explained, "Moving positions to lessen pain and discomfort pulled on the cuffs and caused them to dig into my skin." Exhibit 20, Young Affidavit at 2.

Miles Swanson described:

> "Having my wrist and ankle cuffed together aggravated the cuts I had sustained from being handcuffed behind my back for 2 to 3 hours earlier in the day. Whenever I tried to move, the cuffs would dig into my wrist, making the existing wounds deeper, more severe, and more painful."

Exhibit 17, Swanson Affidavit at 2.

Nurse Mary Canales affirmed that:

> "Being cuffed right wrist to left ankle caused pain in my right wrist which was already bruised from being rear cuffed earlier in the day. When I tried to move to find a less painful position, the cuff dug into my wrist thereby agitating the bruise."

Exhibit 16, Canales Affidavit at 2.

According to Joseph Phelan,

> "The cuffs cut into my skin causing sharp pain in my right wrist. The cuffs repeatedly dug into my skin because being restrained wrist to ankle is not a natural position, so when my body tried to relax, it would pull on the cuffs."

Exhibit 18, Phelan Affidavit at 1. See also Exhibit 2, Djeddaoui Affidavit at 2 (changing positions caused cuffs to dig into skin and chafe); Exhibit 13, Legler Affidavit at 2 (soreness caused by constant tugging of her right cuff); Exhibit 14, Norton Affidavit at 2 ("The cuff on my right wrist constantly pulled on my wrist, causing it to be sore and tender.").

### H. This Manner of Cuffing Caused Pain and Injury That For Some Persisted Long After Release

Some arrestees suffered ongoing physical pain for months, or even years, after release from the police due to the physically oppressive conditions of confinement.

For Nurse Mary Canales, the combination of rear cuffing followed by the wrist-to-ankle cuffing caused her to have to attend physical therapy and treatment from an orthopaedic sports medicine physician for several months. See Exhibit 16, Canales Affidavit at 2.

Casey Legler, former Olympian, testified that her body has never fully recovered from the experience.

> "Before my arrest, I was a retired professional athlete in excellent physical condition. Having been cuffed wrist to ankle for an extended period of time, after I was released, my body felt as though many parts were out of place, and today my body does not feel the way it did before September 27, 2002."

Exhibit 13, Legler Affidavit at 2.

Joseph Phelan has suffered persistent back problems since his arrest and contortion.

> "Since the arrest, I have experienced chronic back pain characterized by a general

> tightness and soreness. I had never thrown my back out prior to September 27, 2002, but I have thrown my back out repeatedly afterwards. I believe that the position I was forced to be in for such an extended period time is a contributing factor to the multiple back injuries I have endured subsequent to my arrest given that I had not had back problems prior to my arrest."

Exhibit 18, Phelan Affidavit at 2.

For a year after the false arrest, due to the painful constriction of his body during arrest, John Passacantando suffered inflammation or soreness to a rotary cuff that was so severe as to interfere with sleeping on one side of his body. See Exhibit 11, Dep. of Passacantando at 64-65.

Most arrestees suffered pain, stiffness, soreness and/or inability to sleep for a number of days and nights after the cuffs were removed.

William Durham experienced pain, stiffness and tenderness in his upper back and neck for a period of 3 to 4 days after release. A law student, Durham was unable even to sit without pain at a table for purposes of study during this period. See Exhibit 19, Durham Affidavit at 2.

Samantha Young felt stiffness and soreness for 2 days after her release, of sufficient severity to render sleeping difficult. "After I was released, the restriction of motion I experienced while cuffed wrist to ankle caused me to feel as though my muscles had atrophied. My body felt weak and beat up." Exhibit 20, Young Affidavit at 2.

According to Nurse Sally Norton, "For several days after my release, I felt stiffness and soreness in my back, neck and left leg. I continued to take an anti-inflammatory drug to alleviate this discomfort." Exhibit 14, Norton Affidavit at 2.

Nicole Djeddaoui "experienced soreness in [her] back, shoulders, wrists, ankles and buttocks for 2 to 3 days." Exhibit 12, Djeddaoui Affidavit at 2.

## I. This Inhumane Manner of Restraint Is Degrading and Humiliating

William Durham described:

> "The situation was dehumanizing and disarmed my psychological ability to deal with the situation. I felt so humiliated, powerless and desperate that I could not calm myself, let alone comfort others. All I could think was, 'I have to get out of here. I have to get out of this position.'"

Exhibit 19, Durham Affidavit at 2.

Even to this day, Durham experiences a swell of psychological stress when he thinks about that experience. "Three years later, I am still shocked by the level of emotion and shock I feel when I think about the way the arrestees were cuffed wrist to ankle for hours." Id. at 2.

Nurse Canales described the conditions of confinement as psychologically degrading:

> "Being cuffed wrist to ankle for an extended period of time was a dehumanizing, degrading, and humiliating experience, and it was intended to be so. Imagine the irony: I was cuffed into a contorted position for several hours as if I was a criminal, and just hours after my release, I was in a business suit presenting at the State of the Science Nursing Congress which was why I was in Washington, D.C. in the first place."

Exhibit 16, Canales Affidavit at 2.

"Humiliating" is the term to which arrestees repeatedly return in the description of the conditions of their handcuffing and confinement.

> "Being cuffed wrist to ankle for an extended period of time was a humiliating and demoralizing experience. Binding the wrist to the ankle is what is done to pigs, and it made me feel subhuman and helpless."

Exhibit 13, Legler Affidavit at 2; See also Exhibit 15, Wood Affidavit at 2 ("degrading"); Exhibit 17, Swanson at 2 ("humiliating").

## II. There Is No Reasonable Law Enforcement Justification for This Painful and Contorting Manner of Restraining Non-Violent Arrestees for Extended Periods of Time

The wrist-to-ankle stress and duress position is a manner of restraint which ostensibly furthers the goals of avoidance of injury and escape. It is a unique position, apparently devised by the District of Columbia for use in connection with mass arrests of non-violent protestors. It was

first utilized in connection with the April 15, 2000 IMF/WB mass arrests, which is the predecessor event to the September 27, 2002 mass arrests at issue in this litigation. It has now been prohibited by action of the Council of the District of Columbia, over the objections of the Mayor and Chief of Police who apparently wish to reinstate it in some form. See Exhibit 1, Dep. of District of Columbia (Barham) at 121-122 (Mayor Williams publicly opposed the Council's restrictions placed on the use of the wrist-to-ankle restraint system).

**A. This is a Unique and Oppressive Restraint System**

Assistant Chief Alfred Broadbent, concedes the use of wrist-to-ankle restraints "is not a normal manner of restraint in handcuffing." See Exhibit 6, Dep. of Broadbent at 200. Broadbent also admits it is not an appropriate manner of restraint where it prevents an arrestee from being able to fully extend her back. See Exhibit 6, Dep. of Broadbent at 199.

The wrist-to-ankle restraint tactic was initiated by Commander Jose Acosta in connection with the April, 2000 IMF/WB mass arrests. According to the District of Columbia Rule 30(b)(6) deponent, Commander Cathy Lanier, in connection with the April 2000 protests, Jose Acosta "directed me to use that manner of restraint." See Exhibit 1, Dep. of District of Columbia (Barham) at 53; See also Exhibit 8, Dep. of Lanier (Alliance) at 130, 140; Exhibit 5, Dep. of District of Columbia (Alliance) at 254-255.

Jose Acosta testifies that he cannot remember whether he was the person who came up with the wrist-to-ankle restraint tactic, and adds that he doesn't think he was. See Exhibit 4, Dep. of Acosta at 174.

*According to Acosta, the wrist-to-ankle manner of restraint was to be used only for disruptive arrestees*. Acosta testified he holds the belief that "very few" of the arrestees in the

Blue Plains gymnasium were so restrained in connection with the April 2000 mass arrests when he first put this into effect.

> "Only if they were disruptive. There were some prisoners who didn't have any cuffs on in the gymnasium. There was a combination of a lot of those things. Very few were done with wrist to ankle, if that's what you are asking." See Exhibit 4, Dep. of Acosta at 174; See also id. at 170 (used for "[j]ust a handful of the ones that were disruptive. . . .").

Nevertheless, the wrist-to-ankle restraints were used uniformly for those held at the Blue Plains facility in both April, 2000 and September 27, 2002.

**B. The MPD Knows of No Prior Usage of This Oppressive Manner of Restraint**

The use of the wrist-to-ankle cuffing technique is either unprecedented or any prior uses of this technique are not known to the District of Columbia.

Commander Cathy Lanier has extensive training and experience in prisoner control, including specifically handcuffing techniques. In fifteen years, Lanier has "probably attended a hundred outside courses put on by different agencies," as well as "[n]umerous courses and instruction at the Academy, not only as a recruit officer, but during inservice training and during civil disturbance training." Lanier has also undergone the specialized MCATI training program, which focuses specifically on police response to protests. See Exhibit 8, Dep. of Lanier (Alliance) at 123-125.

According to Lanier, she has been trained in no less than fifteen to twenty different techniques for handcuffing, applicable to a wide range of circumstances. See Exhibit 8, Dep. of Lanier (Alliance) at 123-125.

*In fifteen years of experience, and after over a hundred training courses including specialized training, not one of the handcuffing techniques in which Lanier had been trained was*

*wrist-to-ankle.* Id. at 125.

Prior to April, 2000, Lanier had never observed that manner of restraint be used nor had she ever even been aware or heard, through any source, of that handcuffing method being used. See Exhibit 8, Dep. of Lanier (Alliance) at 122-123. Similarly, Jeffrey Herold had never seen anybody handcuffed in that manner in his career. See Exhibit 2, Dep. of Herrold (Chang) at 249-250.

### C. The MPD Knows of No Documentation of the Safety of this Manner of Restraint

Lanier has never seen any document evaluating the safety to the arrestee of this manner of restraint. See Exhibit 8, Dep. of Lanier (Alliance) at 153-154. The District did not consult with any outside consultants, nor rely on the recommendation of any law enforcement association or federal agency in adopting this technique. See Exhibit 1, Dep. of District of Columbia (Barham) at 60-63.

### D. Even Within the MPD, The Wrist-To-Ankle Restraint System is "Off the Books" and Does Not Appear in Written Policy Documentation

The wrist-to-ankle tactic is off the books, even for the MPD. The general MPD written policy materials do not contain reference to this. See Exhibit 7, Dep. of Herrold (Alliance) at 47 ("There's no policy one way or the other in regard to that type of restraint").

There was a written prisoner processing plan for the September 27, 2002 demonstrations that are the subject of this litigation, and that plan did not reference that arrestees were to be cuffed wrist-to-ankle using flex cuffs. See Exhibit 1, Dep. of District of Columbia (Barham) at 21.

It is, however, a practice which has the approval of the MPD. See Exhibit 9, Dep. of

Chief Ramsey (Alliance) at 234 (use of flexcuffs linking wrist to ankle is, within MPD policy, an approved method of restraint); See Exhibit 7, Dep. of Herrold (Alliance) at 54-55 (general approval existed for this manner of restraint).

### E. The District Knows That This Restraint System Painfully Prevents Full Extension of the Arrestee's Back

The wrist-to-ankle technique prevents full extension of the arrestee's back. See Exhibit 1, Dep. of District of Columbia (Barham) at 43 (majority of arrestees would "probably not" be able to fully extend their back while so restrained); Id. at 123 (D.C. designee Lanier could not extend her back without pulling her leg into her chest when she tried on the wrist-to-ankle restraints).

### F. There Were No Limitations in Practice or Policy Regarding How Long This Restraint System Can be Used on an Arrestee and Concedes its Use for as Many as 18 Hours in Connection with the September 27, 2002 Arrests

As above, there is no formal policy guidelines approving this technique. There are no limitations on the time period that an arrestee can be so restrained. See Exhibit 8, Dep. of Lanier (Alliance) at 140 (no maximum duration discussed).

According to the District of Columbia, in connection with the September 27, 2002 arrests, the longest period of time that arrestees were restrained such that they could not fully extend their backs is "somewhere in the neighborhood of 12 to 18 hours." See Exhibit 1, Dep. of District of Columbia (Barham) at 43-44.

### G. The District Concedes There Would *Not* Be a Substantial Increase in the Risk Either of Escape or Assault Were the District to Increase Range of Movement

In deposition, the District has also conceded that there would *not* be a substantial increase in the risks either of escape or assault were the District to add a link to the cuffs. See Exhibit 1,

Dep. of District of Columbia (Barham) at 118-119.

The additional pain of denying arrestees the ability to extend their back, for upwards of 18 hours, is not reasonably warranted by the District's interests in preventing injury and escape.

It was feasible, in connection with the September 27, 2002 mass arrests, for the District to meet its asserted needs while not contorting arrestees into this stressing and duressing position for these long periods of time.

Responding to public outrage at the conditions of confinement as well as the arrests themselves, Chief Ramsey has since stated that he would, in the future, direct the MPD to use additional links when using this technique. See Exhibit 9, Dep. of Chief Ramsey at 235-236. This establishes the feasibility of having used sufficient connecting cuffs to avoid pain in September 27, 2002.

Clearly, the District of Columbia's interests could feasibly have been satisfied without using this painful method of restraint, imposed as it was on hundreds of persons (falsely) arrested for a minor and non-violent offense (which did not even happen).

## III. The District of Columbia Cannot Establish That, Under the Circumstances of the Arrests at Issue in Barham, With All Reasonable Inferences Drawn in Favor of Plaintiffs, That the Imposition of This Painful Wrist-to-Ankle Restraint System Was Constitutional as a Matter of Law

The burden of proof rests upon the District of Columbia as the proponent of its motion for summary judgment. Summary judgment should be granted only where there are no genuine issues of material fact. All inferences must be drawn in the light most favorable to the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 255 (1986). If material facts are at issue or, though undisputed, are susceptible to divergent inferences, summary judgment is

not available. Alyeska Pipeline Serv. Co. v.United States Environmental Prot. Agency, 856 F.2d 309, 314 (D.C. Cir. 1988).

The District of Columbia has failed to meet this burden of proof and consequently summary judgment should be denied.

The District cannot establish that, as a matter of law, the wrist-to-ankle handcuffing tactic was not unconstitutional under the particular facts and circumstances present in the instant case.

The appropriate analysis is a Fourth Amendment reasonableness framework. As the Graham Court stated:

> "Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, Bell v. Wolfish, 441 U.S. 520, 559, . . . its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham v. Connor, 490 U.S. 386, 396 (1989).

The District urges the Court use a substantive due process analysis, arguing that the Graham Court affirmed that standard's use in the context of pre-trial detainees. See Graham v, Connor, 490 U.S. 386, 395 n10 (1989), citing, Bell v. Wolfish, 441 U.S. at 535-539.

Plaintiffs do not dispute that the substantive due process analysis does apply to pre-trial detentions. However, the plaintiffs were not in pre-trial detention as there had been no judicial determination of probable cause.

The Bell Court was clear: A person committed to pretrial detention is a person who must have a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." Bell v. Wolfish, 441 U.S. at 536, citing, Gerstein v. Pugh, 420 U.S. 103, 114 (1975). The Gerstein case is consistent with this definition, mandating "the

detached judgment of a neutral magistrate" prior to the imposition of the greater curtailments associated with pre-trial detention. Gerstein, 420 U.S. at 114.

The plaintiffs were still under police arrest, and the Fourth Amendment reasonableness analysis applies.

Upon consideration of the facts and circumstances of the instant case, it cannot be said that no reasonable juror could find there to have been excessive force or police abuse in the manner of the wrist-to-ankle cuffing. The Graham considerations weigh in favor of such a finding.

The plaintiffs were charged with failure to obey a police order that was never, in fact, given. The arrests were a sham.

Even assuming, *arguendo*, that the arrests were not a sham, the offense for which the plaintiffs were arrested is not a severe offense. It is an alleged violation of a traffic regulation.

Those arrested in connection with the Pershing Park mass false arrests "were charged with Failure to Obey, a violation of the traffic regulation that gives police officers the authority to direct motorists and pedestrians in order to ensure traffic safety. D.C. MUN. REGS. tit. 18, §2000.2 (1997)." Barham v. Ramsey, Case No. 04-5388, slip op. (D.C. Cir., January 13, 2006).

Those plaintiffs arrested in the vicinity of Vermont & K were charged with "parading without a permit," a violation of the traffic regulations which is so lacking in severity that arrest is not authorized.

There is no dispute that all persons held in the Blue Plains facility were non-violent. See Exhibit 3, Dep. of Lanier (Chang) at 84. Were any individual to have distinguished his or herself in terms of violent or threatening conduct, there were alternatives available for their

detention other than the gymnasium. Id.

There is no evidence of attempts to escape. Given that the arrestees were arrested while merely peacefully milling about, and did not resist that absurd and outrageous mass false arrest, there is no reason to believe there was any likelihood of escape or assault beyond the theoretical risk present wherever human beings gather.

The police possessed and exercised unflinching control over their facilities. Arrestees who, having been confined for hours or perhaps over a day, tried to hobble or wriggle over to a different mat on the gymnasium floor to be able to communicate with others, were identified and punished by hog-tying their four limbs all together. Deposition of Passacantando at 58-59.

There is not a shred of record evidence connecting any individual with acts constituting an offense. For the purposes of this analysis, however, the fact that these were nominally minor, non-violent alleged offenses is sufficient for purposes of the Graham analysis.

The Courts grant leeway to officers who may be faced with the making of split-second decisions. This, however, was not such a circumstance. It was a static situation that was executed *with advance deliberation* and discussion. Nothing was unfolding quickly. Everyone was shackled and in police custody.

The Court has recognized in its September 24, 2004 memorandum opinion[5] that the District has legitimate law enforcement interests in restraining arrestees such that they do not

[5] We disagree with the District of Columbia that the September 24, 2004 qualified immunity ruling disposed of the issue as to whether there was an underlying constitutional violation. That ruling turned most significantly on the finding that there was no clearly established law with respect to this handcuffing claim, and that qualified immunity was appropriate. That earlier motion, of course, did not have the benefit of the greater range of discovery that has now been had.

pose a threat to the safety of others or escape. The interest in restraint, however, is distinct from the interest in the *manner* of restraint.

It was not related to any legitimate interest to force arrestees to be shackled wrist-to-ankle such that they could not extend their backs for upwards of eighteen hours. *There is no and can be no showing that forcing hundreds into this painful position furthered any interest greater than restraining them with sufficient links to provide minimal comfort without pain.*

Even under the substantive due process framework, which applies to pretrial detention, and which affords a greater range of restraint to be imposed upon a prisoner, there cannot be restraint imposed for the sake of punishment. No additional interests were served by twisting arrestees into this position for hours on end when they could have been restrained in a manner without pain.

**Conclusion**

For the reasons stated herein, the District of Columbia is unable to demonstrate that under the particular facts and circumstances of this arrest and in light of the Graham v. Connor analysis that, as a matter of law, this painful and severe manner of restraint was not unconstitutional.

Respectfully submitted,

January 18, 2006

_/s/_____
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