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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TURKMEN, et al.,	:	02 CV 2307 (JG) (SMG)
	:	
Plaintiffs,	:	Notice of Motion
-v-	:	For Voluntary Dismissal
	:	
ASHCROFT, et al.	:	
Defendants.	:	
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PLEASE TAKE NOTICE that Plaintiff SYED AMJAD ALI JAFFRI, through his undersigned counsel, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, respectfully moves this Court for voluntary dismissal of his claims against Defendants STEVEN BARRERE, WILLIAM BECK, LINDSAY BLEDSOE, SIDNEY CHASE, RAYMOND COTTON, JOSEPH CUCITI, JAMES CUFFEE, MICHAEL DEFRANCISCO, HOWARD GUSSAK, DENNIS HASTY, KEVIN LOPEZ, SALVATORE LOPRESTI, RAYMOND MICKENS, MICHAEL MCCABE, MARCIAL MUNDO, JOHN OSTEEEN, STUART PRAY, BRIAN RODRIGUEZ, SCOTT ROSEBERRY, CLEMMET SHACKS, JAMES SHERMAN, ELIZABETH TORRES, CHRISTOPHER WITSCHHEL and MICHAEL ZENK without prejudice to Plaintiff Jaffri's right to relief as a member of the class alleged in the complaint. Plaintiff Jaffri moves for dismissal solely as to his own claims, without prejudice to the rights of any other plaintiffs or putative class members, for the reasons set forth in the Declaration of

Rachel Meeropol, and the accompanying Memorandum in Support of Mr. Jaffri's Motion for Voluntary Dismissal, attached to this motion.

PLEASE TAKE FURTHER NOTICE that papers in opposition to this motion, if any, must be served and filed within ten business days of service of this motion.

Dated: June 15, 2006
New York, New York

Respectfully Submitted,

/s

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TURKMEN, et al.,	:	02 CV 2307 (JG) (SMG)
	:	
Plaintiffs,	:	Declaration of Rachel Meeropol in
-v-	:	Support of Motion for Voluntary
	:	Dismissal
ASHCROFT, et al.	:	
Defendants.	:	X

I, Rachel Meeropol, declare under penalty of perjury that the following is true and correct:

1. I am an attorney at law and I have appeared as counsel on behalf of Plaintiff SYED AMJAD ALI JAFFRI. I submit this declaration in support of Plaintiff Jaffri's motion for voluntary dismissal of his claims against Defendants STEVEN BARRERE, WILLIAM BECK, LINDSAY BLEDSOE, SIDNEY CHASE, RAYMOND COTTON, JOSEPH CUCITI, JAMES CUFFEE, MICHAEL DEFRANCISCO, HOWARD GUSSAK, DENNIS HASTY, KEVIN LOPEZ, SALVATORE LOPRESTI, RAYMOND MICKENS, MICHAEL MCCABE, MARCIAL MUNDO, JOHN OSTEEEN, STUART PRAY, BRIAN RODRIGUEZ, SCOTT ROSEBERRY, CLEMMET SHACKS, JAMES SHERMAN, ELIZABETH TORRES, CHRISTOPHER WITSCHHEL and MICHAEL ZENK without prejudice to Mr. Jaffri's right to relief as a member of the class alleged in the complaint. I submit this declaration in support of dismissal of Mr. Jaffri's claims only.

2. When the Third Amended Complaint in this action was filed on September 13, 2004, Mr. Jaffri believed, and presently believes, that the allegations contained in the complaint are true.

3. Plaintiff Jaffri moves for voluntary dismissal under Rule 41(a)(2) because he is no longer willing to take the steps necessary to prosecute his individual claims, or seek class representative status.

4. On May 18, 2006 the Honorable Magistrate Judge Steven M. Gold denied Plaintiff Jaffri's application to adjourn his deposition and independent medical examination, previously scheduled for June 12-14, 2006 in Toronto, Canada, or in the alternative to have his deposition held by telephone.

5. On May 29, 2006 Mr. Jaffri informed my office that he does not wish to proceed with the strenuous and emotionally taxing business of litigating his case, and that he would not travel to Toronto Canada, from his home in Pakistan, for his deposition and medical examination. On May 30, 2006, my office informed counsel for the United States of Mr. Jaffri's decision.

6. On June 5, 2006, I informed all defense counsel of Mr. Jaffri's decision, and indicated Mr. Jaffri's plans to dismiss his case by notice against those Defendants who have not yet answered, including the Defendants United States, John Ashcroft, Robert Mueller, James Zigler, Philip Barnes, and Daniel Ortiz. Notations of Default have been entered against Defendants Barnes and Ortiz (See Docket Entries # 344, 349) and the Motion to Dismiss on behalf of the Defendants United States, Ashcroft, Mueller and Zigler was granted in part and denied in part by this Court on June 14, 2006 (See Docket

Entry # 507). Plaintiff Jaffri's Notice of Dismissal against these Defendants was filed on June 15, 2006.

7. On June 5, 2006 I also indicated Mr. Jaffri's intention to seek Voluntary Dismissal of his claims against those defendants who have filed answers in the case. Toward that end, I asked all defense counsel if they would stipulate to dismissal of Plaintiff Jaffri's case. I have received responses from most but not all defense counsel, indicating generally that they would stipulate to dismissal, but on terms varying somewhat from counsel to counsel.

8. Mr. Jaffri has never previously dismissed any action based upon or including these claims against any of these Defendants or any other individuals. He brings this motion in good faith, without intending to cause Defendants any harm or prejudice.

Dated: June 15, 2006
New York, New York

Respectfully Submitted,

/s

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TURKMEN, et al.,	:	02 CV 2307 (JG) (SMG)
	:	
Plaintiffs,	:	Memorandum in Support of
-v-	:	Motion For Voluntary Dismissal
	:	
ASHCROFT, et al.	:	
Defendants.	:	
-----X		

Plaintiff SYED AMJAD ALI JAFFRI moves under Rule 41(a)(2) of the Federal Rules of Civil Procedure for an order dismissing of his claims against Defendants STEVEN BARRERE, WILLIAM BECK, LINDSAY BLEDSOE, SIDNEY CHASE, RAYMOND COTTON, JOSEPH CUCITI, JAMES CUFFEE, MICHAEL DEFRANCISCO, HOWARD GUSSAK, DENNIS HASTY, KEVIN LOPEZ, SALVATORE LOPRESTI, RAYMOND MICKENS, MICHAEL MCCABE, MARCIAL MUNDO, JOHN OSTEEEN, STUART PRAY, BRIAN RODRIGUEZ, SCOTT ROSEBERRY, CLEMMET SHACKS, JAMES SHERMAN, ELIZABETH TORRES, CHRISTOPHER WITSCHHEL and MICHAEL ZENK without prejudice to his right to relief as a member of the class alleged in the complaint.

A motion for voluntary dismissal under Rule 41(a)(2) is within the discretion of the District Court; but generally will be allowed unless the Defendant will suffer prejudice as a result. Hinfin Realty Corp. v. The Pittston Company, 206 F.R.D. 350, 355

(E.D.N.Y. 2002). In considering prejudice to the Defendant, the Court considers several factors, including: (1) the plaintiff's diligence in bringing the motion; (2) any "undue vexatiousness" on the plaintiff's part; (3) the extent to which the suit has progressed, including the defendant's efforts and expense in preparation for trial; (4) the duplicative expense of relitigation; and (5) the adequacy of the plaintiff's explanation for a need to dismiss. Hinfin, 206 F.R.D. at 355.

Each of these factors weighs in favor of Plaintiff Jaffri's motion. Mr. Jaffri was diligent in bringing this motion; counsel for Plaintiffs informed opposing counsel of Mr. Jaffri's decision to seek dismissal immediately after learning of the decision, and several weeks before the scheduled deposition. See Meeropol Decl. at ¶ 5 – 6. There is no evidence that Plaintiff Jaffri has acted in an unduly vexatious manner, or sought to harass defendants. Moreover, because Plaintiff Jaffri is only one of eight named Plaintiffs in the case, the remainder of whom continue the action, there is little expense or effort expended by Defendants that will not be of use in defending the case going forward. Furthermore, although this case has been pending for over four years, discovery was only initiated in the last two years. (See Docket Entry # 134.) Depositions of defendants and third party witness have yet to begin, and a trial date is far-off.

Defendants face no burden from the duplicative costs of future litigation, as Mr. Jaffri is barred from filing a second action challenging his detention and treatment over three years ago. Tapia-Ortiz v. Doe, 171 F.3d 150, 151 (2d Cir. 1999) (The statute of limitations for Bivens actions arising in New York is three years). Mr. Jaffri's request – that dismissal be granted without prejudice to his ability to remain a putative class member – presents no additional burden to Defendants.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TURKMEN, et al.,	:	02 CV 2307 (JG) (SMG)
	:	
Plaintiffs,	:	[Proposed] Order
-v-	:	
	:	
ASHCROFT, et al.	:	
Defendants.	:	X

Upon Consideration of the Motion for Voluntary Dismissal by Plaintiff Jaffri and for good cause shown, it is hereby ORDERED that Plaintiff Jaffri's claims against Defendants STEVEN BARRERE, WILLIAM BECK, LINDSAY BLEDSOE, SIDNEY CHASE, RAYMOND COTTON, JOSEPH CUCITI, JAMES CUFFEE, MICHAEL DEFRANCISCO, HOWARD GUSSAK, DENNIS HASTY, KEVIN LOPEZ, SALVATORE LOPRESTI, RAYMOND MICKENS, MICHAEL MCCABE, MARCIAL MUNDO, JOHN OSTEEEN, STUART PRAY, BRIAN RODRIGUEZ, SCOTT ROSEBERRY, CLEMMET SHACKS, JAMES SHERMAN, ELIZABETH TORRES, CHRISTOPHER WITSCHHEL and MICHAEL ZENK are dismissed without prejudice to Mr. Jaffri's right to relief as a member of the class alleged in the complaint.

United States District Court Judge

Certificate of Service

I, Rachel Meeropol, certify that on June 15, 2006 I caused the foregoing Notice of Dismissal to be served on the counsel for defendants and pro se defendants listed below.

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June 15, 2006

_____/s_____
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