

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____ )	
JEFFREY BARHAM, )	
et al., )	
)	
Plaintiffs, )	Civ. Action No. 02-CV-02283 (EGS)(JMF)
)	
v. )	
)	
CHARLES H. RAMSEY, )	
et al., )	
)	
Defendants. )	
_____ )	

**SETTLEMENT AGREEMENT BETWEEN DEFENDANTS DISTRICT OF COLUMBIA,  
FORMER CHIEF CHARLES H. RAMSEY, ASSISTANT CHIEF PETER J. NEWSHAM AND THE  
THE CLASS REPRESENTATIVES ON BEHALF OF THE PLAINTIFF CLASS**

Class representatives Mary Canales, William Durham, Noah Falk, Jorge Garcia-Spitz, Mark Allan Jackson, Casey Legler, Charlcie Legler, Sally A. Norton, John Passacantando, Joseph Phelan, Nicole Prichard, Morgan Ress, MacDonald Scott, Jeri Wohlberg, Lesley Wood, Samantha Young and Stephen Zimmerman have sued defendants District of Columbia, Charles H. Ramsey and Peter J. Newsham (collectively the "Defendants"), in this matter, Barham, et al. v. Ramsey, et al., 02-CV-02283 (EGS)(JMF), asserting claims of constitutional violations pursuant to 42 U.S.C. § 1983, common law tort and personal injury claims, and seeking damages, declaratory and injunctive relief and attorneys fees and costs.

In reliance upon the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good and valuable consideration, plaintiffs and defendants, through their undersigned counsel, agree and stipulate as follows:

**I. Definitions and General Provisions**

**A. Definitions**

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1. "Class" – All individuals who were arrested in Pershing Park in the District of Columbia on September 27, 2002. The class was certified by Judge Emmet G. Sullivan on September 24, 2003 (Dkt. No. 56).
2. "Class Administrator" or "Administrator" – A firm to be chosen by agreement of the Class Representatives on behalf of the Class and the District defendants, or appointment of the court if they cannot agree, to administer the claims process. Any firm so chosen must specialize in such work. The parties have jointly agreed upon the firm of Gilardi & Co., L.L.C. to serve as Class Administrator.
3. "Class Counsel" or "Plaintiffs' Counsel" – The counsel of record for the Plaintiffs and the Class. They are the Partnership for Civil Justice Fund, Carl Messineo and Mara Verheyden-Hilliard.
4. "Class Members" – All persons within or encompassed by the definition of the Class.
5. "Class Representatives" – Mary Canales, William Durham, Noah Falk, Jorge Garcia-Spitz, Mark Allan Jackson, Casey Legler, Charlcie Legler, Sally A. Norton, John Passacantando, Joseph Phelan, Nicole Prichard, Morgan Ress, MacDonald Scott, Jeri Wohlberg, Lesley Wood, Samantha Young and Stephen Zimmerman.
6. "Claimant(s)" – Class members who actually file claims pursuant to the procedures set forth in this Agreement.
7. "Class Settlement Fund" – Sum to be paid by the Defendant District of Columbia totaling **\$8,251,333**, subject to reversion, which will be funded and/or distributed as further described in this Agreement. The Class Settlement Fund is comprised of four components: Class Representatives' Funds, Claimants' Funds, Attorneys Fees and Costs Funds, and Notification and Administration Funds.

- a) "Class Representatives' Funds" – That portion of the Class Settlement Fund awarded and distributed to each of the 17 Class Representatives on an equal basis. The total amount of these funds shall be \$850,000.
  - b) "Claimants' Funds" – That portion of the Class Settlement Fund to be awarded and distributed to Class Members. The total amount of these funds shall be \$4,788,000 subject to allocation, distribution and potential reversion as described further below.
  - c) "Attorneys Fees and Costs Funds" – That portion of the Class Settlement Fund awarded as attorneys' fees and costs to Class Counsel. The total amount of these funds shall be \$2,463,333.
  - d) "Notification and Administration Funds" – That portion of the Class Settlement Fund to be used to compensate the Class Administrator and any third parties who may provide related services, to provide Class Members notification of the Settlement, to advertise or communicate notice, and to administer the Settlement Agreement and distribution of funds. The amount of these funds is allocated at \$150,000, as detailed further in Section II(A)(4) herein.
8. "District Defendants" – The District of Columbia, Charles H. Ramsey in both official and individual capacities, and Peter J. Newsham in both official and individual capacities.
9. "Non-District of Columbia Defendants" – Any remaining defendants who are not District Defendants.
10. "Department" or "MPD" – The District of Columbia Metropolitan Police Department.

11. "Fairness Hearing" – The final hearing on the fairness of this Settlement Agreement, at which the Court will determine whether to grant Final District Court Approval.
12. "Final District Court Approval" – The Order, following submission of this Settlement Agreement to the Court, by which the District Court grants final approval of the Settlement Agreement.
13. "Parties" or "the Parties" – All parties to this Settlement Agreement, to include all Plaintiffs and all District of Columbia Defendants.
14. "Plaintiffs" – Where the term "Plaintiffs" is used it refers to all Class Representatives, and all class members who have not opted-out.
15. "Preliminary District Court Approval" – The Order, following submission of this Settlement Agreement to the Court, by which the District Court grants initial and preliminary approval of the Settlement Agreement.
16. Settlement and Judgment Fund – The Settlement and Judgments (S&J) Fund is a funding source within the District of Columbia municipal budget that provides fiscal resources to settle claims and lawsuits and pay judgments in most types of civil cases filed against the District of Columbia. It is an uncapped fund, and therefore this element of relief will not affect the availability of funds for settlements or judgments regarding other lawsuits against the District.

## II. Monetary Relief

### A. Monetary Settlement for the Class, Class Representatives, Attorney's fees and Administration of the Class Fund

The class-wide monetary settlement is a total of \$8,251,333, subject to reversion, which includes, the Class Representative Funds, the Claimants' Funds, the Attorney Fees and Costs Funds and the Notification and Administration Funds. The fund is broken down as follows:

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1. The 17 Class Representatives shall collectively receive a total of \$850,000 (\$50,000 per named Class Representative).
2. Each member of the class (355 class members) shall receive compensation from the Claimants' Fund of \$4,788,000 (subject to allocation, distribution and possible reversion of funds to the District), if a timely notice of claim and submission of proof of entitlement is submitted to and approved by the fund administrator in the following manner.
  - i. Should the participation rate be higher than 75% of eligible claimants (266 participating claimants), each claimant shall be allocated and awarded a pro-rata share of Claimants' Funds. This will result in a payment to each of some measure less than \$18,000.
  - ii. Should the participation rate be equal to or lower than 75% of eligible claimants (266 participating claimants), each claimant shall be allocated and awarded a pro rata share of Claimants' Fund, subject to a maximum of \$18,000. Under nearly all circumstances, this will result in a payment to each of \$18,000. The District shall receive reversion of unallocated Claimant Funds.
3. The Claimants' Fund of \$4,788,000 is the ceiling on the District's payments to the class claimants.
4. The cost of administrating the funds and determining or adjudicating submitted claims is allocated to be \$150,000. In the event that actual costs for Notification and Administration, including costs associated with determining class eligibility of any claimants whose identities and arrests are not reflected in law enforcement or government records, exceed the \$150,000 allocation, the excess costs will be shared and paid for by

the Claimants and the District of Columbia equally, on a 50-50% basis. The payments for such excess expenditures, if any, on behalf of Claimants shall be paid from within Claimants' Funds. Such payments on behalf of the District may be paid from reversion funds, or from the Settlement and Judgment fund, as may be determined by the District.

5. The attorney's fees and cost allocation is \$2,463,333.
6. With respect to monetary relief, the notice and claim process shall provide individual class members with an opportunity to request exclusion, or to "opt out," from the monetary portion of the Settlement Agreement. Opts outs on the monetary relief are allowed as may be approved by the court.

**B. Timing of Deposits by the District**

1. D.C. Deposits Monies for Class-Wide Monetary Remedies (Class Representatives' Funds, Claimants' Funds, Notification and Administration Funds) and for All Attorney's Fees and Costs

The District of Columbia shall deposit funds into an escrow account to be administered by the Class Administrator in accordance with the timing and schedule set forth herein. The deposit of funds into the escrow account is distinct from the actual disbursement of funds from the escrow account to recipients.

1st Deposit: Within 45 days of the Preliminary District Court Approval, the District of Columbia will deposit the \$150,000 constituting the Notification and Administration Funds.

2nd Deposit: Within 45 days of Final District Court Approval, or by September 30, 2010 if there is no final approval of the settlement, which-ever comes first, the District will deposit the Class Representatives' Funds (\$850,000), and 60% of the remaining Class Settlement Funds (including 60% of the amount allocated for attorney's fees and costs).

3rd Deposit. After Final District Court Approval, the District will deposit the remainder of the Claimant Fund and Attorneys Fees and Costs Funds (the balance left after the 1st and 2nd payments minus any reversion of Claimant Funds to the District) by September 1, 2011.

**C. Timing of Distribution of Funds to Class Representatives, Fund Administrator, Claimants and Payment of Fees and Costs**

1. Upon Preliminary District Court Approval of the settlement, and upon deposit by the District, the \$150,000 for Notification and Administration Funds shall be made available to the Class Administrator.
2. Plaintiffs and the Class Administrator shall petition the Court for authority to release funds to the Class Representatives, Claimants and Class Counsel.
3. However, no funds may be distributed to the Class Representatives, Class Members/Claimants or Class Counsel (attorney's fees and costs) without both Final District Court Approval of the settlement and the exhaustion of all appeals and any period of time in which an objector or challenger may seek review by way of a Writ of Certiorari to the U.S. Supreme Court.
4. In the event the settlement is not upheld on appeal or is reversed upon review by the U.S. Supreme Court, all funds (with interest) minus the spent administrative costs shall be returned to the District

**III. Class-Wide Prospective Relief**

**A. Expungement and Annulment of Arrests**

1. Expungement and annulment relief was granted by Court Order dated January 28, 2008 (Dkt. No. 405). Among other relief set forth in that Order, the Court did declare that "The arrests of the *Barham* Plaintiffs and the absent class members are hereby declared null and void. Each of the *Barham* plaintiffs and the individual absent class members is

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authorized to deny the occurrence of his or her arrest that day, without being subject to any penalty of perjury, fraud or other offense premised upon misrepresentation or deception in response to any inquiry, whether posed orally or in writing. These rights accrue to the full benefit of any absent class member regardless of whether an individualized entry of a nullification order [see below] is entered.”

- 2. The January 28, 2008 Order also provided for the creation of individualized orders of annulment, that for each class member, the Clerk of Court would receive and the Court would issue an order that states as follows:

**ORDER**

The arrest of [insert name, date of birth, and social security number] on September 27, 2002, in the District of Columbia is hereby declared null and void.

[Mr. or Ms. insert last name] is authorized to deny the occurrence of his or her arrest that day, without being subject to any penalty of perjury, fraud, or other offense premised upon misrepresentation or deception in response to any query, whether posed orally or in writing.

So Ordered on this \_\_\_\_ day of \_\_\_\_\_ [date to be inserted]

[signed]  
EMMET G. SULLIVAN  
United States District Judge

- 3. The Class Administrator shall assist with the preparation and mailing of the individualized annulment orders. Counsel for the Barham Plaintiffs will file with the Clerk of the Court, under seal, paper copies of draft orders, one for each Barham Class Representative or Claimant, bearing the case caption and stating as provided in paragraph 4 of the Court Order dated January 28, 2008 (Dkt. No. 405).
- 4. Among other things, the expungement relief in the January 28, 2008 Order requires that “The District of Columbia shall provide for the expungement of the *Barham* Plaintiffs’

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arrest records and for those of all absent class members (all persons arrested on September 27, 2002 [in the] mass arrest of persons that took place in Pershing Park) relating to the September 27, 2002 arrests that are maintained by the District of Columbia. . .” The Order also requires that “The District of Columbia is to use its best efforts to procure expungement of the September 27, 2002 arrest records of any Pershing Park case Plaintiff or absent class member in the possession of the United States Government (including, but not limited to, the Federal Bureau of Investigation), [or] any state or local government. . .”

5. A copy of the January 28, 2008 Order is attached herein as Exhibit 3.

**B. Changes to Policies and Practices**

1. **Document Management System and Protocol; Evidence Indexing and Logging**

**Requirements.** Commencing not later than 120 days following the Court’s final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the U.S. Supreme Court), the District of Columbia will develop, maintain and/or implement a document management protocol or system to ensure the preservation of records and documents arising from mass demonstrations and protests, and to be used also in other litigation brought against the District of Columbia as may be deemed appropriate by the Attorney General, encompassing the Office of the Attorney General and the MPD Office of General Counsel that provides for the following:

- i. Maintain an index and log of any documents, items, things, recorded or electronic/computer/digitized material (hereinafter “record(s)”) that are directly related to a complaint or litigation hold letter for matters arising from mass

demonstrations and protests or other cases as may be deemed appropriate by the Attorney General;

- ii. The index will assign a unique identifier to each record and, if possible, will be numbered or identified in a continuous or contiguous manner. One of the intents of the parties is to provide an internal "audit trail" that would alert the District to any missing records or evidence.
- iii. The indexing for matters arising from mass demonstrations and protests (or other cases as may be deemed appropriate by the Attorney General) is intended as an internal control over document management; use of the indexing system described in this section, (III)(B)(1), is mandatory for all records received or reviewed in connection with a case for matters arising from mass demonstrations and protests (or other cases as may be deemed appropriate by the Attorney General); in the event that, due to the physicality or medium of an item, a copy of the item cannot be maintained or stored within a computer-based document management system, the requirements of above-referenced sub-paragraph (ii) still requires such items to be indexed and logged in an effective manner, i.e. in a central hard copy log or a dedicated spreadsheet; and the fact that a record is indexed is not intended to establish that the record is discoverable, relevant or admissible;
- iv. Communications that are protected by attorney-client privilege or protected as work product are not required or intended to be subject to this particular indexing, unless so desired by the District of Columbia in its own discretion;
- v. Records shall be indexed in the indexing system described and required by section (III)(B)(1) as soon as possible upon collection or review.

2. **“Litigation Hold” Procedures and Practices to Prevent Loss or Destruction of Evidence.** Commencing not later than 120 days following the Court's final approval of settlement of this matter upon these terms, the OAG shall issue policy statements mandating that upon written notice of likely litigation and/or request to preserve documents and records pertaining to alleged police misconduct involving or relating to mass demonstrations or protests, the OAG shall affirmatively direct in writing and ensure that all documents, records, items, videos or computer files relating to the underlying incident be preserved and affirmatively protected from destruction for a period of no less than three (3) years. “Notice of likely litigation and/or request to preserve documents and records” is any notification in writing to the Chief of Police, or the Mayor; and/or service upon the Office of the Attorney General of a civil action complaint for matters alleging police misconduct involving or relating to mass demonstrations or protests. The contractual definition used herein of “notice of likely litigation and/or request to preserve documents and records” is not intended to alter the meaning of those terms of art as may be used by established reported case law precedent in the District of Columbia.

3. **Preservation and Indexing of Command Center and Communications Systems Records and Data.** Commencing not later than 120 days following the Court’s final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court), the MPD shall issue policy statements or general orders mandating that whenever a system is activated to assist in the management of mass demonstrations and protests or other cases as may be deemed appropriate by the Attorney General, all computer files,

communications recordings / radio runs and documents reasonably related to the event shall be preserved and indexed for a period of no less than three (3) years.

**4. Procedures and Practices to Index and Log Photographic or Video or other**

**Recorded Evidence.** Commencing not later than 120 days following the Court's final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court), whenever any MPD officer is assigned to (or with the capability to) engage in photographic or video recording or surveillance of mass demonstration activity or protests; documentation shall be maintained reflecting the officer's name, assignment, the equipment and recording media issued; and indexing and logging the return of all media. Upon the return of any media, the officer shall document the dates, times, locations and events recorded and affix such information to the media itself or secure to the container that contains the media. This provision is intended solely to focus on indexing and record-keeping; it does not authorize under what circumstances such surveillance or recordings may occur. This provision is not intended to supplant or supercede orders or rules pertaining to the use of closed circuit television and cataloging requirements set forth in such applicable orders or rules.

- 5. Communications with Class Counsel to Ensure Compliance.** The District of Columbia, through the Office of Attorney General, shall engage in communications with and respond to reasonable inquiries from class counsel, as to the status and/or completion of the obligations set forth in the section, "Changes to Policies and Practices."
- 6. Mandatory Reporting Obligations.** At six month intervals during the three year period of required implementation, the District of Columbia shall issue a report regarding measures

taken to perform the requirements of section (III)(B), "Changes to Policies and Practices." Class Counsel shall be provided an advance copy of the report and provided opportunity to comment. The District shall consider the comments by Class Counsel. The comments or response of Class Counsel, if any, shall be incorporated as an included attachment or exhibit and published in the final report. The reports shall be transmitted to Judge Emmet G. Sullivan, as well as made publicly available. Additionally, the District shall consult and communicate with Class Counsel during the system acquisition or procurement process.

7. **Funding for Development and Operation of Document Management System.** The District of Columbia shall use either the class/claimant funds that revert back to the District of Columbia under the settlement, if any, or the Settlement and Judgment Fund to pay the costs of the development and operation of the document management system.

C. No opt outs for the equitable relief are allowed.

#### IV. Notice to Class Members and Potential Claimants

- A. Notice shall be sent as soon as practical after Preliminary District Court Approval.
- B. The Class Administrator shall send a copy of the Notice (Exhibit 1) and the Proof of Claim Form (Exhibit 2) to all Class Members who can be identified through reasonable effort.
- C. The Class Administrator shall send a copy of the Notice (Exhibit 1) and the Proof of Claim Form (Exhibit 2) by first class mail to the last known address of each class member.
- D. The Class Administrator shall undertake reasonable efforts, including through public records searches and use of the United States Postal Service address forwarding database, to determine the current address of Class Members who fail to respond to initial notice or whose initial notice by first class mail is returned to sender by the U.S. Postal Service. Under such circumstances, and where such Class Member's current address is discernable, the Class

Administrator shall additionally send a copy of the Notice (Exhibit 1) and the Proof of Claim Form (Exhibit 2) by first class mail to the current address of such Class Member.

- E. A modified and shortened form of Class Notice shall be published by the Class Counsel and/or the Class Administrator in the *Washington Post* and in the *Washington City Paper*. The notice shall be published in the *Washington Post* once a week for two consecutive weeks, including at least once in a Sunday edition. The notice shall be published for two consecutive weekly editions of the *Washington City Paper*. The notice shall be published twice each in no less than three regional or national periodicals/media outlets to be selected by Class Counsel based on an expectation that the subject matter is either of general interest or corresponds to subject matter interests of the protestor or protest groups who, or whose constituents, participated in the demonstration that was subject to the September 27, 2002 mass arrest.
- F. The Class Administrator shall publish the full Notice on the Internet.
- G. During the Notice and Claim period, the Class Administrator shall provide periodic reports to Class Counsel as to the status and progress of the claim submission and administration process.
- H. The Class Counsel and/or Class Representatives shall also endeavor to publish or circulate announcements or shortened notices on web sites or e-mail lists of their selection, in efforts to reach Class Members.
- I. During the Notice and Claim period, the District of Columbia shall publish a link to the Notice to Class Members and Proof of Claim Form on the front page of the Metropolitan Police Department's web site ([www.mpdc.dc.gov](http://www.mpdc.dc.gov)) and on the front page of the D.C. Office of the Attorney General's web site ([www.oag.dc.gov](http://www.oag.dc.gov)). The links shall be posted during the

period between the date that initial notice forms are mailed out through the date/deadline for the mailing of objections.

V. Deadlines for Submitting Claim Forms and to Request Exclusion or to Opt Out

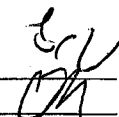
- A. The Class Notice shall advise Class Members that they must file a claim form or request exclusion by a date certain, which date will be at approximately 90 days from the date the initial notices are sent out.
- B. The Class Notice shall advise that the court will exclude from the class, or allow to "opt out" from the class, any Class Member who so requests. Any Class Member wishing to "opt out" or be excluded must so request in writing, by letter postmarked or received in hand by the "opt out" or exclusion deadline.
- C. Any Class Member wishing to pursue a claim must file a Proof of Claim Form (Exhibit 2) by the claims submission deadline in order to participate in the distribution of Claimants' Funds. Proof of Claim Forms must be postmarked or received in hand by the claims submission deadline.

VI. Class Member Objections

- A. Any Class Member who wishes to object to the terms of this Settlement Agreement shall be required, not less than 30 days prior to the Fairness Hearing, to submit a written statement to the Court, with copies to counsel, setting forth his or her objections. The statement shall contain the Class member's name, signature, address and telephone number, along with a written statement of his or her objection(s) to the settlement Agreement and the reason(s) for the objection(s). Class Counsel and defense counsel shall each file a response to such objections at least 15 days prior to the Fairness Hearing.

VII. Other General Provisions

1. **General Release:** Plaintiffs shall fully release, forgive and discharge the District of Columbia, its officers, agents and employees for all claims arising from or that could have been asserted by plaintiffs and/or accepting class members as a result of the allegations in the complaint under any theory of liability (including any request for attorney's fees and costs in prosecuting this case including any discovery disputes), including any such claims or lawsuits in any other proceeding or forum.  
  
In entering into this settlement, there is no admission of liability by the District defendants or admission of any factual contentions that have been asserted by plaintiffs in this litigation. The plaintiffs do not suggest or concede a lack of merit to their claims or to any factual contention that has been asserted by plaintiffs in this litigation.
2. **No Third Party Beneficiary Rights:** No third party who is not an Individual Plaintiff or Class Member shall have any rights under the Settlement Agreement.
3. **Non-Severability:** The Parties do not intend this Agreement to be severable absent express written agreement by the Parties.
4. **Duty to Defend the Agreement:** The Parties and their counsel agree to defend the Settlement Agreement. Counsel for Plaintiffs may not undertake the representation of individuals opting out of the settlement or persons who wish to object to the settlement whether on monetary or equitable relief. Counsel for the District of Columbia Defendants shall take no positions contrary to, or inconsistent with, the terms of the Settlement Agreement.
5. **Notice and Cure Provision:** In the event of any alleged or actual systemic violation of the Settlement Agreement, the Plaintiffs through counsel shall provide written notice of such to the District of Columbia through counsel. The District of Columbia shall have 60 days





to remedy any systemic violation prior to plaintiffs seeking enforcement through a breach of contract claim.

6. Enforcement:

- i. Enforcement of Right of Expungement and for Monetary Payments. The United States District Court retains jurisdiction to ensure compliance with the expungement and monetary payment terms for a period of three years from the Court's final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court).
- ii. Enforcement of Document Management and Retention Requirements.
  - a. The Document Management and Retention Requirements are those provisions in section (III)(B) ("Changes to Policies and Practices") of this Settlement Agreement.
  - b. The District agrees to perform the requirements of the Document Management and Retention Requirements for a period of no less than three years from the Court's final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court).
  - c. The Document Management and Retention Requirements may be extended for no more than two one year periods upon motion by the District of Columbia if the District of Columbia believes that such an extension is required to bring the defendants into compliance with the requirements of the settlement. The parties' intent is to fully fund, through this agreement, the acquisition, development and

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training costs for the Document Management System, which would be expected to be greater in the initial years of implementation than in subsequent periods, and to establish funding for three years, or as may be extended, a period of time believed to be amply sufficient for the use and benefits of the system to be well established.

- d. The United States District Court shall retain jurisdiction for the purpose of enforcing the requirements of the Document Management and Retention Requirements for three years from the Court's final approval of the settlement of this matter and exhaustion of any appeals (including any Petition for Writ of Certiorari to the U.S. Supreme Court).
  - e. The Plaintiffs do not have a right of enforcement more than three years from the date of Final District Court Approval and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court).
- iii. Except as provided above, the remedy for enforcement is by way of a breach of contract claim subject to the notice and cure provision.

7. Expiration of Agreement

- i. Unless extended by the Court upon motion of the District of Columbia, this Settlement Agreement shall expire automatically within three years of the last of the following events: Final District Court Approval; disposition of all appeals; denial of any appeal or petitions for writ of certiorari to the Supreme Court of the United States.

- ii. Should there be an extension of the Document Management and Retention Requirements, the Settlement Agreement shall expire upon termination of the extension period.
  - iii. However, the only requirement that remains in place during any extension period is the obligation to maintain the document management system described in the agreement. During the extension period, if any, there is no further obligation to confer with plaintiffs or submit reports to Judge Sullivan.
8. Suspension of discovery: Upon signing of this agreement Plaintiffs (and Plaintiffs' Counsel) and the District of Columbia Defendants (and their counsel) shall jointly suspend all pending discovery against each other in Barham v. Ramsey.
9. Joint Motion for Preliminary Approval: Within two weeks of the signing of this Settlement Agreement, the Parties will file a joint motion for preliminary approval of the Settlement Agreement.
10. Class Eligibility and Qualification: It is the shared intent and objective that eligibility criteria and processes be effective to include all persons who fall within the class definition and to exclude from qualification any persons who were not arrested in Pershing Park in the District of Columbia on September 27, 2002.

The Class Representative on behalf of the Class and the District defendants acknowledge the possibility that persons genuinely subject to the underlying arrest at Pershing Park will not be properly identified or documented in law enforcement records; and consequently seek to provide sufficient guidance to enable the Class Administrator to qualify individuals, in the potential presence of inaccurate or incomplete records, where

such individuals were in fact subject to the underlying arrest.

The Class Administrator, in consultation with Class Counsel, shall develop processes for achieving these objectives, within and consistent with the following guidelines:

- a. The Class Administrator or its designee shall be the determinator of the class eligibility of Claimants, consistent with the class definition approved by the Court in the settlement of this action.
- b. A Claimant shall be deemed eligible if his or her identity is reflected in a government or law enforcement or court record(s) as having been arrested in connection with the underlying class arrest.
  - (i) A government or law enforcement record is any record created or issued or maintained by a law enforcement agency, a government agency or court.
  - (ii) The record need not have been maintained in the exclusive custody of government, and can be constituted by a law enforcement or government or court receipt or record issued to the claimant in relation to the arrest or release.
  - (iii) The record/form/item need not be strictly denominated as an "arrest record" in order to establish class qualification. For example, any of the following records would be acceptable if they evidence identity and class membership: bus/van transport log; record of judicial release or processing; a property receipt or bag; citation release or post-and-forfeit form or record, etc.
  - (iv) If circumstances arise where an individual is identified as being arrested on the relevant day, but records are ambiguous or contradictory as to the location

or circumstances of arrest as being consistent with the qualifying mass arrest, the Class Administrator is to provide Class Counsel and Defense Counsel the identity and any other pertinent information pertaining to the claimant and request in writing that counsels, upon independent review of their and law enforcement records, advise whether they possess any information related to the claimant's class membership.

c. The Class Administrator may develop processes or standards to qualify persons who are believed or determined by the Class Administrator to have, in fact, been subject to the underlying mass arrest but whose arrest is not properly or completely documented in law enforcement records, subject to and within the following guidelines:

(i) Where a Claimant attests to class membership, but the fact of his or her arrest is not documented in law enforcement records, the Class Administrator shall provide to Class Counsel and Defense Counsel the identity and any other pertinent information pertaining to the claimant and request in writing that counsels, upon independent review of their and law enforcement records, advise whether they possess any information related to the claimant's class membership.

(ii) Class qualification may be established where such individual can provide to the Class Administrator's satisfaction that he or she was, in fact, subject to the underlying class arrest through presentation of information and/or evidence. Such information or evidence is not intended to be strictly limited to any particular form or format, and may for example include photographic

evidence of the claimant under arrest, but must be deemed sufficiently reliable and relevant for the Class Administrator to make a determination, which shall rest in the Class Administrator or designee's sole judgment.

(iii) In such circumstances, in addition to whatever other presentation he or she may make to the satisfaction of the Class Administrator, such Claimant shall be required to secure and submit sworn and notarized affidavits from two qualified Class Members attesting that each possesses personal knowledge, subject to penalty of perjury, that claimant was subject to the underlying mass arrest in Pershing Park specifically. For the purposes of this subsection, each of the two qualified Class Members shall be required to have been qualified based on their arrest being documented and manifest in law enforcement, government or court records.

- d. The Class Administrator, working in conjunction with Class Counsel, may develop and implement additional criteria or standards for determining the eligibility of persons who were juveniles at the time of arrest.
- e. The Class Administrator shall be required to maintain Claimant information and records in strict confidentiality, to be used solely for the purposes of class administration.
- f. The Class Representatives on behalf of the Class and the District defendants recognize that class identification data is reflected to certain partial extent in records from multiple sources, primarily in hard copy format, and that such data may need to be scanned, parsed, aggregated, de-duplicated, and organized in a meaningful manner or database to facilitate class member determinations. The

Class Administrator is authorized to take whatever steps are necessary to undertake such efforts itself or through a third-party contractor. If a third-party information technologies contractor or firm is utilized, that contractor or firm will be required to agree in writing to maintaining all information in confidence and to return/destroy such data upon task completion.

- 11. Return of Documents: Plaintiffs shall return to the District of Columbia all documents and any copies thereof produced by the District of Columbia that are subject to a protective order, within 30 days of the termination of the case and the expiration of the period for any appeals or objections.
- 12. Amendments: With the consent of the Parties, additional provisions may be added to the Settlement Agreement to assure appropriate implementation and court approval.
- 13. Multiple Originals Acceptable: The Parties agree that multiple originals of this Settlement Agreement may be executed. The Parties' or counsel's signatures need not appear on the same signature page.
- 14. Non-District of Columbia Defendant Claims: This Settlement Agreement does not encompass nor encumber Plaintiffs' advance of claims against non-District of Columbia Defendants.


Signed and Agreed to by:

DATE: 2/18/2010

*George C. Valentine (for Peter Nickles)*  
 Peter J. Nickles  
 Attorney General for the District of Columbia  
 1350 Pennsylvania Ave. N.W.  
 Washington, D.C. 20001

initials, on behalf of District Defendants gcv  
 on behalf of plaintiffs EM

DATE: 2/18/2010

  
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