

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IBRAHIM TURKMEN; ASIF-UR-REHMAN
SAFI; SYED AMJAD ALI JAFFRI;
YASSER EBRAHIM; HANY IBRAHIM;
SHAKIR BALOCH; and AKIL SACHVEDA
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

No. 02 CV 2307 (JG)

JOHN ASHCROFT, Attorney General of the
United States; ROBERT MUELLER, Director
Federal Bureau of Investigation; JAMES W.
ZIGLAR, Commissioner, Immigration and
Naturalization Service; DENNIS HASTY,
former Warden, Metropolitan Detention
Center; MICHAEL ZENK, Warden of the
Metropolitan Detention Center; JOHN DOES
1-20, Metropolitan Detention Center
Corrections Officers, and JOHN DOES 1-20,
Federal Bureau of Investigation and/or
Immigration and Naturalization Service
Agents,

Defendants.

**DEFENDANT HASTY'S REPLY TO PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT**

Plaintiffs have failed to provide this Court with any basis on which to hold Defendant Dennis Hasty personally liable for the conduct they allege. Not only is their Second Amended Complaint void of any violations by Hasty of a clearly

established right,¹ Plaintiffs do not—and cannot—point to specific factual allegations that implicate Hasty’s personal involvement sufficiently to form the basis of a claim against him. Accordingly, Hasty is entitled to qualified immunity and all claims against him should be dismissed with prejudice.

PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN TO ESTABLISH PERSONAL INVOLVEMENT OF *EACH* DEFENDANT, INCLUDING HASTY.

Although Plaintiffs articulate standards by which supervisory employees might be held liable in a *Bivens* action (Plfs.’ Br. at 38), they simply ignore the fact that their Second Amended Complaint falls far short of propounding allegations sufficient to satisfy those standards. No where do Plaintiffs allege adequate facts to establish that Hasty (1) “participated directly in the alleged constitutional violation”; (2) “failed to remedy the wrong” after “being informed of the violation”; (3) “created a policy or custom under which the unconstitutional practices occurred”; (4) “was grossly negligent in supervising subordinates who committed the wrongful acts”; or (5) “exhibited deliberate indifference to the rights of others by failing to act on information indicating that unconstitutional acts were occurring.” (Plfs.’ Br. at 38, quoting *Vazquez v. Parks*, No. 02 Civ. 1735, 2003 U.S. Dist. LEXIS 3957, at *24 (S.D.N.Y. Jan. 27, 2003)).

Instead, they cite to all of four paragraphs in their prolix 277-paragraph Amended Complaint for the proposition that Hasty personally violated Plaintiffs’

¹ Plaintiffs offer nothing in their opposition to overcome this fatal deficiency. Defendant Hasty expressly incorporates herein the Reply submitted on behalf of Defendants in their official capacities.

constitutional rights (Plfs' Br. at 42 citing ¶¶ 5, 265, 270, 275). Yet those paragraphs allege nothing more than the most conclusory and generalized of accusations against each of the individual defendants as a group. As such, these paragraphs can hardly be said to assert specific factual allegations against any of the defendants, let alone Hasty. This effort to rely on generic catch-all allegations like "all Defendants played significant supervisory and/or operational roles in the challenged policies" (Plfs. Br. at 39), is simply insufficient to maintain this action against Hasty in light of Hasty's qualified immunity claim. The firmly established case law elaborated on in Defendants' previous submissions requires more. Rather than addressing those cases, Plaintiffs ask this Court to permit claims against officials in their individual capacities based on nothing more than conclusory and circumspect allegations. Well-grounded notions of qualified immunity dictate that their request must be denied.

Recognizing their pleading shortcomings, Plaintiffs seek also to rely on the Office of Inspector General Report ("OIG Report") that they attached to their Second Amended Complaint. (Plfs.' Br. at 39). That Report, however, does nothing to save their claims against Hasty because the OIG Report does not attribute any conduct specifically to Hasty that would be sufficient to sustain a claim against him.

In a last-ditch effort to save their claims against Hasty, Plaintiffs posit that "[t]here can be no doubt that Defendant Hasty communicated and enforced the assignment to the ADMAX SHU the hold-until-cleared, and the communications blackout policies," and that "MDC officials, supervised by Hasty, did not follow the

BOP's inmate security risk assessment procedures." (Plfs.' Br. at 42). Of course, Plaintiffs' pleading does not allege any facts to support these suppositions, nor does the OIG Report on which they rely. Plaintiffs' post-hoc inferences based on "facts" the reader is apparently supposed to divine from thin air cannot overcome the Second Amended Complaint's pleading deficiencies. *See, e.g., Gill v. Mooney*, 824 F.2d 192, 196 (2d Cir. 1987) (finding reliance on fact that defendant "was in charge of the prison" insufficient to state a claim absent specific allegations of personal involvement).

The Supreme Court has emphasized that in order for Plaintiffs to withstand a qualified immunity motion they must "put forward *specific non-conclusory factual allegations*." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (emphasis supplied). Plaintiffs have plainly failed in that effort. Because qualified immunity must be resolved at the "earliest possible stage" of a case to, among other things, "avoid excessive disruption of government," *Saucier v. Katz*, 533 U.S. 194, 200-02 (2001) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) and *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)), we urge the Court to grant Hasty qualified immunity and dismiss all claims against him with prejudice.

CONCLUSION

For all of the reasons stated in Defendants' previous submissions and all of the foregoing reasons, Defendant Hasty respectfully requests that all claims against him be dismissed in their entirety with prejudice.

Respectfully submitted,



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July 23, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2003, I caused a true and correct copy of the foregoing Defendant Hasty's Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss Second Amended Complaint to be served via overnight delivery, prepaid, on the following:

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