

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TARGETED JUSTICE, INC.;
a 501(c)(3) Texas Corporation, et al.

Plaintiffs,

vs.

MERRICK GARLAND et al.

Defendants.

Case No. H-23-cv-1013

**MOTION REQUESTING JUDICIAL NOTICE IN ADDITIONAL SUPPORT OF
OPPOSITION TO OFFICIAL CAPACITY DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE COURT:

COMES NOW the Plaintiffs, through their undersigned counsel and respectfully allege and pray:

1. Federal Rule of Evidence 201 allows a district court to take judicial notice of a “fact that is not subject to reasonable dispute because it (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). *Basic Capital Management, Incorporated v. Dynex Capital,...*, 976 F.3d 585,589 (5th Cir. 2020).

2. Upon ruling on a motion to dismiss, Courts “...must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and **matters of which a court may take judicial notice**.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (Emphasis ours).

3. This Court's precedents provide that "[w]hen reviewing a motion to dismiss, a district court 'must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *Basic Capital Management, supra*, 976 F.3d at 589, quoting *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011).

4. When a person is classified as a 'domestic terrorist', his or her name is placed on the Terrorist Screening Data Base ("TSDB").

5. Plaintiffs' pleadings include, *inter alia*, that "Defendants FBI, Wray, and Kable, acting under color of law, have disregarded their oath and obligation to adhere to the limited scope of HSPD-6 and to uphold the laws and Constitution of the United States. Instead, they have secretly included in the roster of the TSDB hundreds of thousands of innocent NIS or US Persons such as Plaintiffs and TJ Members that do not meet the terrorist criteria." (SAC, ¶ 26).

6. Plaintiffs have further alleged that "Defendants' unrestricted inclusion of individuals such as Plaintiffs and TJ Members in the TSDB NIS McCarthy blacklist has resulted in huge swaths of the population that have nothing to do with terrorist activity to be permanently included without notice or consent to the McCarthy secret blacklist." (SAC, ¶ 32).

7. Plaintiffs also asserted that "Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable, acting under color of law, accept TSDB nominations from private individuals, corporations, and foreign governments." SAC, ¶ 106). This practice is dangerous and repugnant to the United States Constitution as it places in the hands of private individuals with nefarious retaliatory or competitive motives the capacity to cancel, limit and/or affect someone's life.

8. For the past week, Congress has received testimony from three whistleblowers that were special agents at Defendant FBI. Those brave men have narrated under oath a series of irregularities and abuses by Defendant FBI culminating in the labeling of average Americans as “domestic terrorists”.

9. Plaintiffs request that this Court take judicial notice of the Weaponization Committee’s conclusions as well as whistleblower testimony under oath provided during the hearings, attached hereto as **Exhibit 1**. Plaintiffs ask this Court to take judicial notice of the following facts:

- A. The FBI’s Cash Bonus System Creates Perverse Incentives to Use Law Enforcement Tools for Leadership’s Financial Benefit and Not Legitimate Law Enforcement Needs. (Exhibit 1, pages 2, 5) (A system in the FBI where “the executive management does get cash bonuses if they get gold checkmarks in certain criteria”.)
- B. Professional metrics for promotions drove agents’ motivation to investigate and obtain unwarranted Article III probable cause sworn statements. (Exhibit 1, pages 6 and 7).
- C. The unreasonable growth of the TSDB can also be attributed to: “FBI leadership pressured agents to reclassify cases as domestic violent extremism (DVE), and even manufactured DVE cases where they may not otherwise exist, while manipulating its case categorization system to create the perception that DVE is organically rising around the country.” (Exhibit 1, page 2).
- D. It is a dangerous practice to allow private individuals to designate someone as a domestic terrorist. (“When citizens in this country get to a point where they can call the most powerful law enforcement agency in the world on their neighbor just because they disagree with them, that is chilling to the First Amendment rights of the people who are getting the FBI called on them.”) (O’Boyle Testimony, May 18th, 2023.)
- E. The FBI Is Reclassifying and Manufacturing Domestic Violent Extremism Cases to Advance a Political Narrative that These Cases Are on the Rise. (“Whistleblowers assert that the FBI pressured agents to reclassify cases as domestic violent extremism (DVE), and even manufactured DVE cases where they may not otherwise exist, while manipulating its case categorization system to feign a national problem.”) (Exhibit 1, page 10).

- F. The FBI's Washington Field Office Pressured the Boston Field Office to Investigate Americans Solely for Traveling to Washington, D.C. on January 6. (Exhibit 1, page 23).
- G. The FBI Gathered Conservatives' Financial Records from Bank of America Without Any Legal Process Following January 6. (Exhibit 1, page 30).
- H. Line Agents Opposed Attorney General Garland's Memorandum Directing Federal Law Enforcement Resources Against Parents "speaking out at school board meetings against critical race theory, unscientific mask mandates, transgender ideology in the classroom and bathroom, and anti-America curricula." (Exhibit 1, page 34.)

10. The whistleblower's testimony attached hereto as Exhibit 1 is consistent with some of the pleadings of this complaint including abuse of agency discretion, use of the 'terrorist' classification on innocent people and ruthless retaliation by "the most powerful law enforcement agency in the world"¹.

11. Moreover, this information tends to buttress Plaintiffs' allegations about Defendant FBI's abuse of discretion of nominating non-terrorists to a terrorist database and individual capacity Defendants Wray's, Kable's and Garland significant civil rights violations.

12. The financial stimulus to classify innocent Americans as domestic terrorists follows a carrot-and-donkey scenario that tends to corroborate that the TSDB is artificially inflated with innocent civilians that have no ties to terrorism.

13. Mr. O'Boyle's testimony underscores the importance of processes like the instant case. Regarding the institutionalized weaponization of the Defendant FBI against average Americans he testified: "The FBI is set up in a way where line agents like me or line supervisors, even they are not going to be able to accomplish fixing such a vast problem from the inside of the FBI."

¹ May 18, 2023 testimony by Gared O'Boyle before the US House of Representatives Committee.

14. In light of the whistleblowers' testimony, Representative Mike Johnson stated for the Congressional record:

“Activists in the FBI and the Department of Justice have weaponized the full weight of their agencies against everyday Americans...

It's alarming.

The examples that have been highlighted by this committee are shocking to the sensibilities of all the people that we represent.

The FBI sought to label concerned parents at school board meetings as domestic terrorists.

They sought to recruit spies and informants inside the congregations of traditional Catholic churches.

We know that they worked with the social media platforms...to censor and silence conservatives online that they disagreed with.”

15. Plaintiffs request that this Court take judicial notice of the facts set forth above as they part of the Congressional Record and constitute matters that the Court can take judicial notice of under Federal Rule of Evidence 201.

16. The unprecedented testimony and evidence collected during last week's hearings culminated in proposed Articles of Impeachment against official capacity Defendants Wray and Garland, attached hereto as **Exhibits 2 and 3**.

17. Plaintiffs request that the Court take judicial notice of House of Representatives Resolution 406 and 410 (Exhibits 2 and 3) that constitute the Articles of Impeachments prepared against official capacity Defendants Wray and Garland.

18. House Resolution 406 petitions for the impeachment of Defendant Wray for, *inter alia*, “**facilitating the development of a federal police force to intimidate, harass, and entrap American citizens.**” (Emphasis ours).

19. House Resolution 410 constitutes the Articles of Impeachment of Defendant Garland as he has, *inter alia*, “willingly refused to ensure that the laws passed by Congress and signed by the President are faithfully executed. Attorney General Garland has disgracefully permitted the Department of Justice to target people of faith and those seeking to protect the sanctity of life.” The articles of impeachment go on to state:

“Attorney General Garland issued an October 2021 memorandum directing the targeting of parents by the Federal Bureau of Investigation... That letter drew comparisons between parents protesting actions by their local school boards to domestic terrorism. Attorney General Garland has declared war on American parents and the constitutional right of free speech.”

20. The congressional testimony tends to prove that both Defendants Wray and Garland have intentionally participated in the designation of innocent civilians as “Domestic Terrorists” in violation of the laws and Constitution of the United States.

21. This, in spite of the Fact that Defendant Garland is supposed to ensure that procedures at Defendant FBI adhere to the strict observance of the laws and Constitution of the United States.

22. Plaintiffs also request this Court take judicial notice that this is the first time in the history of the United States that a director of Defendant FBI and/or an Attorney General have faced Articles of Impeachment.

23. Inasmuch as the information set forth above is relevant to the adjudication of the Opposition to the Motion to Dismiss as it tends to corroborate Plaintiffs’ claims, they request the Court take judicial notice of the facts set forth above and Exhibits attached hereto.

WHEREFORE, Plaintiffs respectfully request that the Court take judicial notice of the facts set forth above and the exhibits attached hereto as additional support of the facts and arguments contained in Plaintiffs’ Opposition to Official Capacity Defendants’ Motion to Dismiss.

Respectfully submitted,

I CERTIFY: That I have filed this motion by means of the Court's CM/ECF platform that notifies all attorneys of record.

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DATED this 22nd day of May, 2023