

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. 23-cv-01013

**PLAINTIFFS' MOTION TO COMPEL LIMITED DISCOVERY ORDER AGAINST  
DEFENDANT FBI AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

TO THE HONORABLE COURT:

NOW COME the Plaintiffs, through their undersigned counsel, and respectfully request that this Court permit the Plaintiffs to obtain limited discovery for the reasons set forth below:

1. The official capacity Defendants have anticipated that they will get the Court to dismiss the instant case "*at the pleading stage*" due to the "*highly speculative and unfounded claims*" it claims it to be grounded upon. [Dkt 16].

2. Disregarding victims' rights, official capacity Defendants have also averred that the complaint is riddled with "fantastical allegations" and "conspiracy theories", [Dkt 25]

3. Official capacity Defendant's posture is untenable. The United States government has recognized (and apologized for) the existence, duration, and abuses of illegal law enforcement agency programs such as CIA's MK-ULTRA and FBI's COINTELPRO that gave way to the current human experimentation "Program" set forth in the case at bar. See Second Amended Complaint

(SAC), ¶ 7) See also *Orlikow v. United States*, 682 F.Supp. 77 (D.D.C. 1988).

4. Likewise, the atrocities that organizations such as the Stasi perpetrated in East Germany from 1950 through 1990 are a historic fact. Just like today’s “Program”, secrecy and “plausible deniability” were the bedrock of the Stasi’s operation until the communist system that sustained it collapsed.

5. However inappropriate official capacity Defendants’ pronouncements on the nature of the claims are, Plaintiffs have a right and a duty to controvert them in order to obtain their day in court.

**ORDER TO COMPEL**

6. In this context, Plaintiffs request that this Court ORDER Defendant FBI to produce each Plaintiff’s information as it appears in the Terrorist Screening Data Base (TSDB) including status and the date of inclusion.

7. Prior to the filing of this motion, and in anticipation of official capacity Defendants’ arguments for dismissal, on at least six occasions Plaintiffs requested to Defendant FBI’s counsel each one’s status in the TSDB as follows:

Date	Plaintiffs’ Request	Sent to	Exhibit #
Jan. 30, 2023	Including Jan 26th letter asking to confirm that “ <i>each individual plaintiff’s name as it appears on the TSDB, the category under which it appears and the date of their inclusion on the list...</i> ”	Myra Siddiqui, AUSA for the SDTX	1 and 2

Feb. 1, 2023	“Did you get an opportunity to get the information on each plaintiff’s TSDB status?”	Myra Siddiqui, AUSA for the SDTX	3
March 1, 2023	“I ask that you please confirm ...the TSDB status if each of the plaintiffs – specifying each one’s handling code and date of nomination and inclusion on the list.	Madeline McMahon, attorney of official capacity Defendants	4
March 9, 2023	“I still have not received a reply to the request that the FBI confirm Plaintiffs’ TSDB status...”	Madeline McMahon, attorney of official capacity Defendants	5
March 15, 2023	“Request to carry out early discovery from Defendant FBI regarding plaintiffs’ TSDB status and complete TSC dossier on each one...”	Madeline McMahon, attorney of official capacity Defendants	6
March 16, 2023	<b>“I await your client FBI’s posture in granting Plaintiffs access to their TSDB information.”</b> (Emphasis supplied)	Madeline McMahon, attorney of official capacity Defendants	7

8. The information sought on eighteen Plaintiffs can easily be extracted in less than fifteen minutes from the TSDB and is available every day to hundreds of thousands of persons working in law enforcement agencies within the US and 60 foreign countries.<sup>1</sup>

<sup>1</sup> (Complaint, ¶¶ 188-190) Pursuant to testimony/sworn statements provided in *Elhady v. Kable*, 391 F.Supp.3d 562 (E.D. VA 2019) The list is “distributed to 18,000 state, local, county, city, university and college, tribal, and federal law enforcement agencies, 60 foreign governments and the 1441 non-government entities including private employment, background check, and credit agencies and approximately 533 private entities through its National Crime Information Center (“NCIC”) system” and non-governmental entities with NCIC access under 28 C.F.R. § 20.33(a)(7) include: “private correctional facilities; private security services for governmental facilities and hospitals; entities providing criminal justice dispatching services or data processing/information services to governmental criminal justice agencies; private probation and pretrial services entities; private city attorneys; and other entities similarly

### GOOD FAITH CERTIFICATE OF CONFERENCE PRIOR TO FILING

9. Official capacity Defendants completely ignored the seven specific requests set forth above, as if none had ever been sent. **None of them were acknowledged or replied to.**

10. Plaintiffs' request that this Court deem the prior conference requirement complied with, in light of the seven unanswered and ignored requests set forth above. The March 15<sup>th</sup>, 2023, email (Exhibit 7) specifically requested from the official capacity Defendants' counsel to provide their position on the early discovery request of Plaintiffs' TSDB status prior to filing a request with the Court. See **Exhibit 6**.

### JUDICIAL ECONOMY WARRANTS THE PRODUCTION REQUESTED

11. The lawsuit's foundational claim -- that no innocent American without ties to terrorism should be placed in a terrorist data set -- requires Defendants' cooperation in the fact-finding process and demands that they do not delay in certifying Plaintiffs' TSDB status and date of inclusion.

12. As argued below, Plaintiffs' simple request for information is crucial to this Court's fact-finding process consistent with the Court's role as factfinder and gatekeeper of frivolous arguments, facilitating its administration of justice.

13. Production of the information at this stage requested will promote the economic and speedy disposition of the controversy between the parties, saving this Court precious time and effort in the execution of its judicial responsibility to assess the merits of each party's postures.

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performing criminal justice services." Other entities that get NCIC include a "private police department for an airport; a private police department for a transportation authority; private police departments for two private incorporated communities; law enforcement divisions of certain Societies for the Prevention of Cruelty to Animals ("SPCAs"); an inmate transport service; an entity that provides forensic services to detect and identify criminals; and court constable services" as well as citizen policing organizations such as InfraGard and Citizen Corps



14. The brief information sought will allow the Court to dispense of the “fantastical allegations” and “conspiracy theories” arguments unsupported by the facts.

#### **PARTY DUTY’S OF CANDOR TO THE COURT WARRANTS SHORT DISCOVERY**

15. Defendant FBI’s and its attorneys’ duty of candor towards the court mandates the immediate production of the entirely relevant information regarding Plaintiffs’ TSDB status that is under its absolute control. Particularly when it tends to disprove the arguments official capacity defendants have foreshadowed, will be the at the crux of their arguments for dismissal.

16. The uncontroverted material facts set forth in the SAC far exceed F.R.Civ.Proc.(a)(2)’s requirement “that a complaint must include only “a short and plain statement of the claim showing that the pleader is entitled to relief.’ Such a statement must simply ‘give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.’ *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002) citing *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

17. Prior to knocking on the doors of this Court, Plaintiffs exerted an unprecedented amount of due diligence and research to ensure most of the facts contained in their pleadings constituted uncontroverted material facts.<sup>2</sup>

18. Plaintiffs’ constitutional right to petition for redress of grievances entails their right to obtain from official capacity Defendants the information about the former’s nomination, inclusion, and status in the Terrorist Screening Data Base to thoroughly respond to the fantastical

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<sup>2</sup> Over 80% of the pleadings stem from sworn statements, deposition testimonies, audit reports, news articles, investigative reports and judicial records surrounding the TSDB and the official capacity Defendants.

allegations arguments that have been announced.

19. Defendants FBI and DHS refused to send Plaintiffs their TSDB information through the Privacy Act requests sent to each agency. (Complaint ¶ 71)

20. Discovery is warranted where Plaintiff alleges “enough fact[s] to raise a reasonable expectation that discovery will reveal evidence” that supports Plaintiff’s claims. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

21. “The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court.” *Swierkiewicz v. Sorema N. A.*, supra, 534 U.S. at 512-513 citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1202, p. 76 (2d ed. 1990).

22. Consistent with this effort, prior to the filing of this case, Plaintiffs diligently inquired with Defendants FBI and DHS about their TSDB Status through Privacy Act requests. (Complaint, ¶ 71).

23. It is improper for official capacity Defendants to deny making available the information Plaintiffs requested because it can be construed as an intent at preventing material facts from emerging in this case.

24. Plaintiffs have a right to obtain the information under Defendants’ exclusive control because it is inherent to their right to petition for redress, oppose any attempt to discard their legally vested rights and prove their case. Defendant FBI has absolute control of the evidence that proves the falsity of the “fantastical allegations” and “conspiracy theories” arguments they foreshadowed

they would construe.

25. The information on Plaintiffs' inclusion and status in the Terrorist Screening Data Base (TSDB), despite the lack of reasonable suspicion or derogatory terrorist activity information, disproves any notion of irrationality official capacity Defendants intend to construe.

26. Unlike non-investigative subjects such as Plaintiffs, actual known and suspected terrorists (KST) learn of their inclusion on the list when encountering obstacles to travel. Ergo the redress procedure that Congress made available to them to challenge their inclusion on the list. (Complaint, ¶ 176) See also *Elhady v. Kable*, 993 F3d 208 (4<sup>th</sup> Cir. 2020).

#### **COURT HAS BROAD DISCRETION REGARDING DISCOVERY**

27. "District courts exercise broad discretion to manage discovery matters," and "to tailor discovery narrowly," *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). When exercising this discretion, courts are mindful of the proportionality considerations articulated in Rule 26(b)(1). Fed. R. Civ. P. 26(b)(1).

28. Plaintiffs ask that in the exercise of this discretion, the Court order Defendant FBI to produce the brief information sought on plaintiffs by ordering the production of the information under penalty of perjury. **In the alternative, Plaintiffs request that the Court order Defendant FBI to allow the undersigned counsel to inspect the paper versions of the TSDB to personally corroborate each Plaintiff's TSDB status.**

29. None of the Defendants complied with their duty under the Privacy Act to produce Plaintiffs' requested information.

30. After the filing of this case, Plaintiffs insisted on the production of this information. See Exhibits 1 through 7.

31. Defendant FBI has ignored the requests for material information listed above, essential to the adjudication of the principal controversy of the case at bar.

32. Official Capacity Defendants' deliberate concealment and/or refusal to produce at an early-stage uncontroverted material facts germane to the controversy places Plaintiffs at a disadvantage and calls for the Court's intervention.

33. Official Capacity Defendants' insistence on concealing from Plaintiffs their TSDB information creates a presumption that the information sought contradicts the arguments they intend to invoke to convince the Court to proceed with the case's dismissal.

34. In light of the above, Plaintiffs request that the Court ORDER Defendant FBI that within 5 days of presenting its reply to the SAC, it produces the following discovery:<sup>3</sup>

- a. Each Plaintiff's current status in the TSDB.
- b. Current Handling Code category under which each Plaintiff 's name appears.
- c. Date each one was added to the TSDB.

**35. Defendant FBI's refusal to produce this limited discovery demonstrates an effort to conceal the true, relevant, and material facts to the controversy.**

36. The limited discovery requested is not onerous and does not represent an undue burden to Defendant FBI.

#### **NO LEGITIMATE GROUNDS EXIST TO OBJECT TO DISCOVERY**

37. Plaintiffs' central claim of the SAC is that their inclusion in the TSDB violates the

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<sup>3</sup> The limited discovery requested is only for the purposes of adequately responding to the dispositive motions that the official Capacity Defendants have anticipated would be filing. By no means this limited discovery request should be construed as the only information that Plaintiffs will request from Defendants during discovery. Plaintiffs thus reserve their right to discover their complete TSDB dossier including, but not limited to: nomination documents, vetting process, decision of inclusion in the TSDB, investigation carried out, changes within handling codes, supporting documentation and all the derogatory and exculpatory evidence generated from the moment of their nomination to the TSDB to the present.



Constitution as no reasonable grounds tying them to terrorism exists. As such, their inclusion in the TSDB is outright illegal, violates their fundamental constitutional rights, and cannot be subject to non-disclosure protection under any alleged privilege or confidentiality designation.

38. Executive Order 13526 provides that “*...in no case shall information be classified, continue to be maintained as classified, or fail to be declassified, in order to conceal violations of law, inefficiency, or administrative error.*”

39. Official capacity Defendants cannot object to the production of Plaintiffs’ TSDB information on any privilege, confidential or classified grounds. Plaintiffs’ inclusion in the TSDB devoid of reasonable suspicion constituted an illegal act *per se*, not susceptible to any confidentiality or protection from disclosure.

#### **ADDITIONAL CONSIDERATIONS**

40. The case at bar was transferred to this Court on March 20, 2023.

41. Nineteen days later, the Court has yet to issue a F.R.Civ.Proc. 16 Order establishing the schedule for Rule 26’s initial disclosures and the discovery in the case.

42. The urgency of the instant request results from the state of uncertainty that the absence of the Rule scheduling order creates for Plaintiffs. The more Plaintiffs wait for the scheduling of discovery, the least opportunity they will have to controvert Defendants arguments benefiting from the complete control of information necessary to defeat them.

WHEREFORE, Plaintiffs request that this Court GRANT this motion and consequently ORDER Defendant FBI to produce under penalty of perjury, and within 5 days of filing its response to the SAC, the following information:

- a. Each Plaintiff's current status in the TSDB.
- b. Current Handling Code category under which each Plaintiff 's name appears.
- c. Date each one was added to the TSDB.

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 and that I sent via email a copy thereof to: jonathan.meyer@hq.dhs.gov and Jacob.A.Bennett@usdoj.gov.

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43. **DATED** this 7<sup>th</sup> day of April, 2023.