

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

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

**DR. LEONID BER;**

**DR. TIMOTHY SHELLEY;**

**KAREN STEWART;**

**WINTER CALVERT;**

**ARMANDO DELATORRE,  
JASMIN DELATORRE,  
J.D.;**

**DEBORAH MAHANGER,  
L.M.;**

**LINDSAY J. PENN.;**

**MELODY ANN HOPSON;**

**ANA ROBERTSON MILLER;**

**YVONNE MENDEZ;**

**DEVIN DELAINEY FRALEY,  
H.F.;**

**SUSAN OLSEN;**

**JIN KANG;**

**JASON FOUST;**

Plaintiffs,

vs.

SECOND AMENDED COMPLAINT;  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF;  
MANDAMUS PETITION  
DAMAGES.

Case No. 6:23-cv-00003  
Jury Trial Demand

**MERRICK GARLAND**, in his official capacity as  
Attorney General of the United States,  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

**FEDERAL BUREAU OF INVESTIGATION**,  
935 Pennsylvania Avenue NW  
Washington, DC 20535

**CHRISTOPHER WRAY**, in his official capacity  
as Director of Federal Bureau of Investigations and  
in his individual capacity.

**CHARLES KABLE, JR.**, in his official capacity as  
Director of the Federal Bureau of Investigation's  
Terrorist Screening Center and in his individual  
capacity.

**DEPARTMENT OF HOMELAND SECURITY**  
245 Murray Lane, SW  
Washington, DC 20528-0075

**ALEJANDRO MAYORKAS**, in his official  
capacity as Secretary of the Department of  
Homeland Security and in his individual capacity.

**KENNETH L. WAINSTEIN**, in his official  
capacity as Department of Homeland Security's  
Under Secretary for Intelligence and Analysis and in  
his individual capacity.

Defendants.

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF, MANDAMUS AND DAMAGES**

TO THE HONORABLE COURT:

NOW COME the Plaintiffs, Targeted Justice, Inc., Leonid Ber, Timothy Shelley, Karen Stewart, Winter Calvert, Armando Delatorre, Berta Jasmin Delatorre, for themselves and on behalf of their minor daughter J. D., Deborah Mahanger, on her own behalf and on behalf of her minor

daughter L. M., Lindsay J. Penn, Ana Robertson Miller, Melody A. Hopson, Devin Delainey Fraley, on her own behalf and on behalf of her minor daughter H.F., Yvonne Mendez, Susan Olson, Jin Kang, and Jason Foust through their undersigned counsel, and respectfully allege and pray:

## I. INTRODUCTION

1. Under the guise of “national security”, agencies of the United States government for decades maintained hidden from the public cruel, illegal, covert human experimentation projects that they subsequently admitted to have carried out on unsuspecting American citizens.

2. From 1953 to 1966, the Central Intelligence Agency (CIA) sponsored the MK-ULTRA program to control human behavior. *CIA v. Sims*, 471 U.S. 159 (1985). The program’s stated purpose was that of developing brainwashing and interrogation techniques. *Orlikow v. United States*, 682 F. Supp. 77 (D.D.C. 1988). Unsuspecting subjects underwent long-lasting, cruel experimentation without their knowledge or consent.

3. During 1975-76, Congress carried out an investigation of the MK-ULTRA program. The “Church Committee” under the direction of the late Senator Frank Church held hearings that resulted in the apparent shut down of the program.

4. Upon concluding his investigation, Senator Church tried to rein in the corrupted intelligence agencies when he publicly warned everyone that:

***"The National Security Agency's capability at any time could be turned around on the American people, and no American would have any privacy left, such is the capability to monitor everything: telephone conversations, telegrams, it doesn't matter. There would be no place to hide. If a dictator ever took over, the N.S.A. could enable it to impose total tyranny, and there would be no way to fight back. "***

5. Likewise, Defendant Federal Bureau of Investigation (“FBI”) COINTELPRO program that started in the thirties was designed to crush political opposition using illegal surveillance and persecution tactics. In Puerto Rico, its effects were particularly devastating as the

program known as “Las Carpetas” (“the Dossiers”) was “...used to imprison people, ruin their careers, fire them from their jobs, terminate their education, and permanently discredit [over 74,000 of] them. It was used to control the politics and society of Puerto Rico: through fear, intimidation, and outright blackmail.”<sup>1</sup> See also *Noriega v. Gobernador*, 122 D.P.R. 650, 1988 WL 580739 (P.R.), 1988 P.R.-Eng. 580,739, 22 P.R. Offic. Trans. 613.

6. In the year 2000, speaking before Congress about the COINTELPRO and “Las Carpetas”, Defendant FBI then-Director Louis J. Freeh admitted in a House Appropriations subcommittee hearing that: “(T)he FBI did operate a program that did tremendous destruction to many people, to the country and certainly to the FBI.” Freeh then vowed to “**redress some of the egregious illegal action, maybe criminal action that occurred in the past.**” (Emphasis ours).

7. Assessing the destruction of so many lives that the FBI’s COINTELPRO program caused in Puerto Rico, the island’s highest court expressed:

When a person’s “...dignity and reputation be unlawfully touched by the Government simply because he exercised his fundamental rights, as guaranteed by the Constitution, his innermost being must have an avenue for redress to repair the damage done to his dignity and honor. In our democratic system of government, **it is incumbent upon the courts to address such claims and to design remedies to mitigate the irreparable harm caused to a citizen by reason of the Government’s outrages.**” *Noriega v. Gobernador, supra*. (Emphasis supplied).

8. No single individual at Defendant FBI or the CIA was ever criminally responsible for the obliteration of so many lives perpetrated under any of these two programs.

9. Today, Defendants FBI and DHS jointly collaborate with another illegal covert human experimentation and persecution program: a hybrid behemoth that combines MK ULTRA and COINTELPRO’s “Las Carpetas”. Labeled with the nondescript moniker of “The Program”, its global scope aims to control and destroy opposition. Hundreds of thousands of American

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<sup>1</sup> See The War Against Puerto Ricans, <https://waragaininstallpuertoricans.com/carpetas/> and *Noriega v. Hernandez Colon, supra*.

citizens and lawful U.S residents such as Plaintiffs and TJ Members have been subjected on a continuous and uninterrupted basis to this illegal “Program” funded with billions of American taxpayer money.

10. Plaintiffs request that this Court take judicial notice of the fact that the Committee on the Judiciary of the House of Representatives convened on January 10, 2023, led by Representative Jim Jordan currently leads the effort to investigate, *inter alia*, Defendant FBI’s abuses in the weaponization of the government against U.S. persons.

11. Defendants have announced they will engage in an effort to hide from Plaintiffs and this Court’s the evidence germane to the claims set forth in this case by alleging secrecy or national security concerns, while disrespectfully dismissing the merits of the complaint as “baseless allegations and conspiracy theories” just like their predecessors tried to sweep MKULTRA and COINTELPRO under the rug.

12. Defendants cannot hide evidence under its exclusive control germane to Plaintiffs’ claims under the guise of secrecy because of 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.” Ergo, Defendants cannot erect a wall of confidentiality to cover up their blatantly illegal, unconstitutional and/or criminal conduct.

13. On April 26, 2011, former FBI Senior Special Agent-in-Charge Ted Gunderson (RIP) stated in an affidavit under penalty of perjury that thousands of innocent victims have been targeted by an illegal government ongoing, active, nationwide rogue criminal enterprise that is active 24 hours a day within the U.S. whose increase in scope, intensity and sophistication was made possible by the new communications and surveillance technologies. See **Exhibit 1**. Plaintiffs

request that this court take judicial notice of this statement under penalty of perjury, filed within the case *Labella v. Fed. Bureau of Investigation*, 11-CV-0023 (NGG) (LB) (E.D.N.Y. Mar. 16, 2012).

14. Pursuant to Mr. Gunderson, individuals in this nefarious program are referred to as “Targets”. “They are subjected to illegal and unconstitutional phone taps, illegal re-routing of business and private phone calls for harassment purposes, surreptitious entry into home, office and vehicle, virtual surveillance in the home conducted by illegal placement of miniature remote, wireless cameras (often accessible through the internet), illegal internet spyware, illegal GPS tracking (often through their own mobile phones), regular fixed and mobile surveillance, mail misdirection, mail theft and tampering, financial and employment sabotage, slander campaigns, poisoning, assaults and murder, illegal set-ups on drug charges and other felony charges, amongst [sic] many other civil rights abuses.” *Id.*

15. Technological advances have been incorporated into the illegal organized stalking and surveillance, including the use of microwave weapons for inflicting physical and psychological torture that ends up causing them the conditions known as Havana Syndrome, Remote Neural Monitoring and Voice-to-Skull Auditory Symptoms, as well as microwave burns.

16. For decades, an impenetrable wall of "plausible deniability" camouflaged perpetrators' continuous crimes against Targets. The program's sophistication prevented victims from identifying with clarity the abuses and tortures perpetrated against them and from articulating the mechanisms by which these abuses and tortures were being deployed and executed. Any Target who identified or attempted to report the abuses and torture was accused of being mentally ill. Rather than commencing investigations into these serious crimes and prosecuting the perpetrators for their criminal conduct, federal, state, and tribal law enforcement agencies colluded to

institutionalize its victims and declare them mentally ill or incompetent.

17. Plaintiffs' and TJ Members' hundreds of substantially similar accounts counteract the program's cornerstone "plausible deniability" that allowed its unchecked continuous and uninterrupted operation for decades that persists today.

18. Defendants FBI, Wray, and Kable are the gatekeepers of the Targeted Individual program that obtains its experimental subject roster from two secret, unconstitutional subcategories embedded within the Terrorist Screening Database (TSDB).

19. The TSDB's only source of legal authority is Homeland Security Presidential Directive 6 ("HSPD-6"). (**Exhibit 7**). HSPD-6's unambiguous, stated purpose is to "*develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (Terrorist Information)*".

20. HSPD-6 expressly mandated strict compliance with the provisions of the Constitution and applicable laws, including those protecting the rights of all American citizens.

**Exhibit 7.**

21. HSPD-6 did not give authority to any official or agency of the United States to include in the TSDB the names of people that don't meet the terrorist criteria. Despite this, Defendants Wray and Kable, acting under color of law, included and/or maintain names within the TSDB names that belong to non-investigative subjects (NIS) such as Plaintiffs and TJ Members that do not meet the required terrorist criteria.

22. The stated purpose of the intra-agency operation under Defendant FBI's umbrella in charge of crafting the TSDB, the Terrorist Screening Center ("TSC"), was to "ensure that America's government screeners are working from the same unified set of anti-terrorist

information and will provide a comprehensive anti-terrorist list when a suspected terrorist is screened or stopped anywhere in the federal system.” **Exhibit 8** (Emphasis ours).

23. Despite the clear and limiting text of HSPD-6, Defendant FBI has admitted that the TSDB contains names of people with no ties to terrorism. In a statement given under penalty of perjury in *Elhady v. Kable*, 391 F.Supp.3d 562 (E.D.VA 2019), *rev’d* 993 F.3d 208 (2021), former TSC Deputy Director Timothy Groh expressed that the TSDB contains information of individuals who constitute “**an exception**” to the “**reasonable suspicion standard**” “**who are not considered ‘known or suspected terrorists’**” and “**are not screened as such**”. (**Exhibit 2** - Emphasis ours).

24. Groh’s specific words (**Exhibit 2**) were the following:

“Additionally, the TSDB includes identifying information of certain individuals **who are not categorized as known or suspected terrorists.**” (Emphasis ours).

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<sup>3</sup> Additionally, the TSDB includes identifying information of certain individuals who are not categorized as known or suspected terrorists. These limited exceptions are more fully described in FN 7.

“Limited exceptions to the reasonable suspicion standard exist for the sole purpose of supporting certain screening functions of DHS and State (such as determining eligibility for immigration to the U.S.). **Individuals included in the TSDB pursuant to such exceptions are not considered “known or suspected terrorists” and are not screened as such.** As a result, any U.S. person who is in the TSDB pursuant to an exception to the reasonable suspicion standard would not be required to undergo heightened aviation security screening at airports on that basis but could be selected for other unrelated reasons such as random selection.” (Emphasis ours).

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<sup>7</sup> Limited exceptions to the reasonable suspicion standard exist for the sole purpose of supporting certain special screening functions of DHS and State (such as determining eligibility for immigration to the U.S.). Individuals included in the TSDB pursuant to such exceptions are not considered “known or suspected terrorists” and are not screened as such. As a result, any U.S. person who is in the TSDB pursuant to an exception to the reasonable suspicion standard would not be required to undergo heightened aviation security screening at airports on that basis (but could be selected for other unrelated reasons, such as random selection).

Pursuant to Fed.R.Evid. 201(c)(2) and (d), Plaintiffs request that this Court take judicial notice of the adjudicative facts contained in **Exhibit 2**, and specifically the statements cited above.

25. The names of NIS who are not "known or suspected terrorists" (KST) appear in the

"Handling Codes 3 and 4" subcategories of the TSDB that constitutes 97% of the identities in the entire dataset. (Hereinafter: "TSDB NIS McCarthy blacklist"). Hence what Groh called "limited exceptions" to the KST listed in the database really constitutes the norm. See paragraph 156 below.

26. Even though seventeen of the eighteen individual Plaintiffs and TJ Members are American citizens and one is a legal resident, none meet the terrorist criteria. Only 1 – the legal resident—could be conceived as subject to "special screening functions of DHS and State". Defendants FBI, Wray, and Kable and their predecessors illegally and under color of law and/or in an abuse of discretion included and/or maintain Plaintiffs' names within the TSDB NIS McCarthy blacklist despite the lack of derogatory information linking them to acts of terrorism.

27. 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.

28. In the exercise of their official duties and acting under color of law, Defendants Wray and Kable abuse their discretion and violate their oath and the Constitution by illegally deciding upon the fate of unsuspecting individuals such as Plaintiffs and TJ Members and including them in the TSDB even when they do not meet the terrorist criteria.

29. By including Plaintiffs' and TJ Members' names in the secret non-terrorist McCarthy blacklist embedded within Handling Codes 3 and 4 of the TSDB, Defendants FBI, Wray and Kable, acting under color of law and under the guise of "national security", have secretly, unconstitutionally, and maliciously sentenced the former to undergo a lifetime of covert human experimentation that targets and tortures them in many instances to their death.

30. Without sufficient grounds to link an individual to terrorism, an unwitting person's placement on the TSDB's NIS/Handling Codes 3 / 4 lists is the equivalent of being indicted, tried, and sentenced to a lifetime of torture and physical and psychological abuse in violation of the United States' Eighth Amendment prohibition against cruel and unusual punishment, the Convention Against Torture and the Geneva Convention.<sup>2</sup>

31. Thus, acting under color of law, Defendants Wray, and Kable, become virtual jailers of an inescapable Gulag, placing and maintaining innocent civilians such as Plaintiffs and TJ Members in a lifetime torture program by secretly and arbitrarily adding their names in the illegal TSDB McCarthy blacklist.

32. 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 blacklist that serves as roster for an atrocious human experiment/torture program that ensued the corroborated and admitted CIA's MK ULTRA and FBI's COINTELPRO.

33. Stated another way: Wray and Kable, acting under color of law, have created two illegitimate categories within the TSDB to include the names of hundreds of innocent thousands of American citizens and legal residents that are not known or suspected terrorists for no purpose other than secretly enlisting them in an involuntary human experimentation program that targets unsuspecting victims, divesting them of their autonomy and destroying their lives, with no recourse.

34. After years of unrestricted abuse, an unprecedented number of people such as

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<sup>2</sup> The United Nations' Convention 1753 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States of America in 1994 ("Convention Against Torture"), and Article 32 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, ratified by the United States on 02.08.1955 ("Geneva Convention")

Plaintiffs and TJ Members have emerged to publicly expose their experiences enduring these criminal attacks that go unstopped and unpunished. The cloak of invisibility that for decades shielded the “Program” from scrutiny no longer exists due to the sheer numbers of Targeted Individuals, estimated in the hundreds of thousands within U.S. territory.

35. Plaintiffs and TJ Members are victims and survivors of Defendants FBI’s, Wray’s, Kable’s, Mayorkas’ and Wainstain’s deprivation of the former’s fundamental constitutional, civil and human rights while acting under color of law.

36. Plaintiffs come before this Court to petition for the redress of their grievances and protection from these shocking abuses; to request that this Court declare illegal and unconstitutional the NIS/Handling Codes 3 / 4 subcategories of the TSDB; to request that this Court issue an Injunction ordering the elimination of the McCarthy blacklist contained in the TSDB’s Handling Codes 3 and 4; in the alternative, to request that Plaintiffs’ and TJ Members’ names be removed from the TSDB’s Handling Codes 3 and 4; to order Defendants to comply with the duties that the laws, treaties and constitution of the United States their positions impose on them; and to hold Defendants jointly and severally liable under various theories and statutory authorities for the atrocious damages they’ve caused Plaintiffs as a result of their improper inclusion on the TSDB McCarthy blacklist and consequently submitting them to the outrageously vicious, and illegal tortures and constitutional violations they have endured as targeted individuals.

## **II. JURISDICTION AND VENUE**

37. The Court has federal-question jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution, laws and treatises of the United States of America; 28 USC 1346(a)(2) because it includes claims against agencies of the United States; Article III Section 2 of the United States Constitution because the rights sought to be protected herein are secured by

the United States Constitution; the Mandamus Act, 28 U.S.C § 1361; the Court's equitable jurisdiction to issue an Injunction to compel an officer or employee of the above-named federal agencies to perform his or her duty under F.R.Civ.Proc 65 and 28 U.S.C. § 1361; and the United Nations' Convention 1753 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States of America in 1994 ("Convention Against Torture"), and Article 32 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, ratified by the United States on 02.08.1955 ("Geneva Convention)" that is enforceable against the United States as per the uninterrupted state of war declared on October, 2001.

38. The Court has authority to grant Declaratory and Injunctive relief and award damages, costs, and attorneys' fees against Defendants pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; Rules 57 and 65 of the Federal Rules of Civil Procedure; the Administrative Procedure Act ("APA"), 5 U.S.C. § 706; the Privacy Act, 5 USC § 552(a)(4)(B); and 28 U.S.C. § 1361 and 28 U.S.C. § 2412 and 5 USC § 552(a)(4)(E)(i) since this action is brought against officials of the United States acting in their official and individual capacities as well as agencies of the United States.

39. This court also has jurisdiction to award damages and attorney's fees and costs pursuant to 28 U.S.C. § 1343(a)(4) and 28 U.S.C. § 1357 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), et seq. and Plaintiffs' civil rights claims arising from Defendants actions under color of law that have deprived them of constitutional rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, the Convention Against Torture and the Geneva Convention.

40. Prior to the filing of this complaint, Plaintiffs served on Defendants Wray, Kable,

Mayorkas and Garland a Mandamus demand letter with the intent of avoiding the filing of most of the claims included in the case at bar. See **Exhibit 3**. None of the Defendants replied to it.

41. Prior to the filing of this complaint and on the dates specified in paragraph 71 below, most of the named individual Plaintiffs sent Defendants FBI, DHS and/or US Department of Justice (USDOJ) Privacy Act requests under 5 U.S.C. § 552(a) requesting them to provide them with their TSDB records and to remove their names from it. Defendants FBI's, DHS' and/or USDOJ's failure to provide each individual Plaintiff an adequate reply under the Privacy Act compelled the filing of this complaint.

42. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred within the Southern District of Texas. Plaintiff Targeted Justice is a Texas corporation, and eleven of the eighteen individual plaintiffs are residents of the Southern District of Texas. Therefore, most of the events or omissions giving rise to the claims set forth herein occurred within this venue.

### **III. THE PARTIES**

#### **Plaintiffs**

43. Targeted Justice, Inc. ("TJ") is a 26 USC § 501(c)(3) non-profit, non-partisan Texas corporation, that represents the interests of Targeted Individuals (TIs). TJ's mission is to educate the public with information, news, and support for TIs to help them navigate through the trauma and destruction that this phenomenon produces in their lives. TJ's goal is that of stopping the illegal surveillance, organized stalking, and global use of Directed Energy Weapons and torture against civilians within and outside the United States. TJ appears on its own behalf and on behalf of its over 3,500 members ("TJ Members").

44. TJ maintains the website <http://www.targetedjustice.com> and publishes a newsletter <http://www.targetedjustice.substack.com> to disseminate news and information on matters of public

interest and practical advice relating to the targeting of individuals. Its web site averages 120,000 page views per month. It has a membership of over three thousand five hundred (3,500) individuals that have sustained and continue to suffer injury-in-fact because of Defendants' illegal and unconstitutional acts and omissions in the course of their official duties.

45. On February 12, 2019, Targeted Justice sent a cease-and-desist letter to Defendants FBI, Kable, USDOJ and DHS demanding that they immediately Cease and Desist their use of government personnel and any external groups, to commit organized stalking activities against Targets, attacking civilians with psychological torture techniques, including stalking, gang stalking, harassment, and intimidation. None replied.

46. For the Declaratory Judgment and Injunctive Relief portions for this complaint, TJ appears on its behalf and on behalf of hundreds of its members who submitted information demonstrating that they have sustained injury-in-fact as a result of being unjustly included in the TSDB.

#### Individual Plaintiffs

47. Plaintiff Dr. Leonid Ber, of legal age, single, U.S. citizen, medical doctor, resides in Bloomingdale, Illinois and is a member of Targeted Justice's Advisory Board. Plaintiff Ber became aware he was a TI on or around 2019. Plaintiff Ber came to the United States in 1993 on an H1-B visa and in 2003 became a naturalized citizen of the United States. Although his family migrated from Russia to Germany, he instead chose to come to America because of our nation's dedication to the western principles, its history, the Constitution, and the Declaration of Independence. An immigrant from a totalitarian regime, it never occurred to Plaintiff Ber that he would encounter governmental operatives acting in contravention of the Nuremberg Code and Article 32 of the Geneva Convention violating their civil rights and their presumption of

innocence. Plaintiff Ber suffers debilitating daily Directed Energy Weapons (“DEW”) attacks and has been diagnosed with Havana Syndrome.

48. Plaintiff Karen Stewart, of legal age is a United States citizen, married, retired National Security Agency (“NSA”) Intelligence Analyst residing in Columbia, Maryland. Ms. Stewart is a NSA whistleblower that believes became a TI around 2006.

49. Plaintiff Dr. Timothy Shelley, of legal age, United States citizen, single, investigative journalist and attorney-at-law is a resident of Kennett Square, Pennsylvania. Plaintiff Shelley realized that he was a TI in 2016. However, he believes his targeting began decades before.

50. Plaintiff Winter Calvert, of legal age, single is a United States citizen, engineer and a resident of Houston, Texas. On information and belief, Mr. Calvert has been a TI since at least 2011. For over 25 years, and throughout his activism on behalf of Targeted Individuals that began in 2017, Plaintiff Calvert has been also known as Richard Lighthouse.

51. Plaintiffs Armando Delatorre and his wife Berta Jasmin Delatorre are married to each other, are TIs since 2019. Armando is a U.S. citizen and Berta Jasmin is a legal resident of the United States. They are residents of Alvin, Texas. They sue on their behalf and on behalf of and custodians of their minor daughter, J.D, born in 2019 and a United States citizen. Due to her tender age, it is impossible that J.D. could present a national security concern or be a TI. Like her parents, three-year-old J.D. is the victim of targeting since at least August 2022.

52. Plaintiff Deborah Joanne Mahanger of legal age, United States citizen, former FBI agent, mother, is a resident of New Hampshire. She became aware she was a TI on or about 2019. Plaintiff Mahanger also appears on behalf of and as custodian for her 8-year-old daughter L. M. who is also a TI.

53. Plaintiff Lindsay J. Penn, also known as Lindsay Mack and Lindsay Awalt, of legal

age, United States citizen, married, assistant real estate broker, mother and soccer coach is a United States citizen and resident of League City, Texas. Although her targeting began on or around 2014, she became aware of it in 2016.

54. Plaintiff Melody Hopson, of legal age, United States citizen, single, mother, resident of Deer Park, Texas, became aware she was a TI around 2020 although she believes her targeting began on or around 2014.

55. Plaintiff Ana Robertson Miller, of legal age, United States citizen, married, paralegal, mother, and resident of Cypress, Texas, became aware in 2016 that she was a TI but believes her targeting could have begun as far back as 2013. In 2019 Ms. Miller began enduring gruesome DEW attacks.

56. Plaintiff Yvonne Mendez, of legal age, United States citizen, single, mother, and resident of Houston, Texas believes she has been a TI for over 19 years.

57. Plaintiff Devin Delainey Fraley, of legal age, United States citizen, single, mother, resident of San Antonio, Texas, became aware she was TI in 2016 but that her targeting began years before. In 2019 she started enduring DEW attacks and experiencing V2K. She appears on her behalf as well as her 3-year-old daughter H.F. who began showing symptoms of DEW attacks immediately after the filing of the case at bar in January 2023.

58. Plaintiff Susan Olsen, of legal age, United States citizen, single, nurse, resident of Fort Myers, Florida, became aware she was a TI in 2015 but recognizes she may have been a TI for a longer time since she resided in New York.

59. Plaintiff Jin Kang, of legal age, United States citizen, single, attorney-at-law, resident of East Brunswick, New Jersey, became aware he was a TI in 2015, but recognizes he may have been a TI for a longer time.

60. Plaintiff Jason Foust, of legal age, United States citizen, single, anthropologist, resident of Houston, Texas, became aware in 2016 that he was a TI although he believes his targeting began at least in 2015.

#### Defendants

61. Defendant Federal Bureau of Investigation (“FBI”) is the agency under whose purview its intra-agency operation Terrorist Screening Center (“TSC”) operates. It is liable to Plaintiffs for: having incurred in arbitrary agency action in the context of its responsibility of preparing and maintaining the Terrorist Screening Database (“TSDB”), colloquially known as “the Watchlist”; failing to observe the executive orders, laws and Constitution of the United States; failing to adhere to and follow and its own regulations and procedures; failing to timely and thoroughly answer Plaintiffs’ Privacy Act Requests; and disseminating to persons outside of the agency false information on Plaintiffs within the agency’s control. It is brought as Defendant in this case for, *inter alia*, its violations to the Constitution and laws of the United States; violations to the Privacy Act; for obtaining and executing illegal FISA warrants against Plaintiffs; for carrying out illegal warrantless “Sneak and Peek” searches and seizures in Plaintiffs’ and TJ Members’ property devoid of legal grounds to do so; for carrying out illicit “assessments” on Plaintiffs; on information and belief, for paying third parties to carry out illegal surveillance, undercover persecution, and crimes against Plaintiffs and their property.

62. Defendant Department of Homeland Security (“DHS”) is the agency vested with the responsibility of funding, creating, and approving the standard operating procedures implemented in the Fusion Center Network carries out rogue, unconstitutional, and illegal practices against Plaintiffs and TJ Members as part of the human experimentation “Program”. Defendant DHS is also responsible of answering Plaintiffs’ Privacy Act Requests and protecting

from dissemination false information on Plaintiffs within the agency's control. DHS is made a defendant in this case for its failure to comply with the laws and Constitution of the United States; violations to the Privacy Act and for the continuous, uninterrupted, and considerable damages its policies, orders, and indirect funding through grants of the Regional Network of Fusion Centers have caused Plaintiffs as victims of the "Program".

63. Defendant Christopher Wray is Defendant FBI's director who under color of law has exercised oversight and control over the procedures within the FBI, the TSC and its product, the TSDB, as well as the citizen organization InfraGard that routinely, continuously and in common concert and conjunction with Defendants FBI and DHS terrorize and persecute NIS such as Plaintiffs and TJ Members as part of the "Program", in violation of their rights protected under the Fourth, Fifth, Sixth and Eighth Amendment of the United States Constitution. Acting under color of law, Defendant Wray has violated his ministerial duty to ensure all procedures within Defendant FBI adhere to the laws and Constitution of the United States, disregarding agency audit reports. He is personally liable to Plaintiffs for their nomination to and/or maintenance in the TSDB McCarthy list comprised of Handling Codes 3 and 4, causing and/or enabling the deprivation of their substantive and procedural Due Process rights contained in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and, further, by enabling Plaintiffs' targeting, unauthorized experimentation and torture in violation of their rights under the First, Fourth, and Eighth Amendments of the United States Constitution and their right to be free of torture under the Convention Against Torture by including their names in the TSDB despite the required derogatory information for doing so. He is sued both in his official and individual capacity.

64. Defendant Attorney General Merrick Garland has a ministerial duty of ensuring all procedures and regulations at Defendants FBI and DHS as well as at the Fusion Center Network

adhere to the laws and Constitution of the United States. His disregard of his ministerial duties in the oversight of the TSC and in the preparation, maintenance, and use of the TSDB, coupled with his own actions under color of law prompted his inclusion on this case. He is personally liable to Plaintiffs for failing to prevent Plaintiffs' and TJ Members' illicit inclusion in the TSDB McCarthy blacklist in deprivation of substantive and procedural Due Process rights contained in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. Furthermore, his disregard of the ministerial duties inherent to his position has enabled and perpetuated Plaintiffs' and TJ Members' targeting, unauthorized experimentation, and torture in violation of their rights under the Fourth and Eighth Amendments of the United States Constitution as well as their right to be free of torture under the Convention Against Torture, and Article 32 of the Geneva Convention. He is sued both in his official and individual capacity.

65. Defendant Charles Kable is the TSC's director who is responsible for the maintenance and dissemination of the federal government's TSDB. Under color of law, Defendant Kable illicitly accepts and promotes TSDB nominations and maintains names of NIS such as Plaintiffs, TJ Members and other similarly situated American citizens even though they don't meet the required derogatory criteria to be categorized as a terrorist, in violation of their substantive and procedural Due Process rights contained in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, the Convention Against Torture and Article 32 of the Geneva Convention. Under color of law, Defendant Kable also oversees along Defendant Wray the dissemination of the stigmatizing TSDB label imposed on Plaintiffs, TJ Members, and other similarly situated American citizens to state and local authorities, foreign governments, private corporations, private contractors, airlines, gun sellers, car dealerships, financial institutions, the captains of sea-faring vessels, among other official and private entities and individuals. Defendant

Kable is personally liable to Plaintiffs by placing and/or maintaining their names in the McCarthy blacklist within the TSDB, devoid of the required derogatory information and by enabling their targeting, unauthorized experimentation, and torture in violation of their rights under the Fourth and Eighth Amendments of the United States Constitution as well as their right to be free of torture under the Convention Against Torture and Article 32 of the Geneva Convention. He is sued both in his official and individual capacity.

66. Defendant Alejandro Mayorkas is Defendant DHS' Secretary, responsible for the oversight of his agency's collaboration with Defendant FBI and TSC for the nomination process of individuals to the TSDB and the sharing of Plaintiffs' and TJ members private information throughout the Fusion Center Network. Defendant Mayorkas is also sued in his individual capacity as the official responsible for the supervision and implementation of unconstitutional operating procedures at the National Network of Fusion Centers that implement the illegal organized and systemic surveillance, and stalking procedures carried out against Plaintiffs and TJ Members as part of the targeting program. He is personally liable to Plaintiffs for causing and/or enabling the deprivation of their substantive and procedural Due Process rights contained in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and by enabling their targeting, unauthorized experimentation, and torture in violation of their rights under the Fourth and Eighth Amendments of the United States Constitution as well as the Convention Against Torture. He is sued both in his official and individual capacity.

67. Defendant Kenneth L. Wainstein is Defendant DHS's Under Secretary for Intelligence and Analysis. He provides the Secretary, DHS senior leadership, DHS components, and state, local, tribal, territorial, and private sector partners the homeland security intelligence and information used in their operations. He is sued in his official as well as individual capacity

since under color of law he carries out the supervision and control of the organized stalking endeavors perpetrated against Plaintiffs and TJ Members to terrorize and torture them through the National Fusion Center Network, Citizens Corps and other community watch organizations financed through Defendant DHS in violation of the rights protected under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution, the Convention Against Torture and Article 32 of the Geneva Convention.

#### IV. LEGAL AND FACTUAL BACKGROUND

68. The foregoing allegations are realleged and incorporated herein.

69. Plaintiffs served on Defendants Garland, Wray, Kable, and Mayorkas a Notice of Writ of Mandamus/demand letter dated December 21, 2022, in an effort to carry out reasonable diligence to prevent the filing of this complaint. See **Exhibit 3**.

70. Plaintiffs have expended due diligence to unearth the "what" element and the "who" element surrounding the illegal human experimentation/Targeting program.

71. To initiate a non-existent redress procedure, the individual Plaintiffs served on Defendant FBI and Defendant DHS Privacy Act requests asking for information about their inclusion in the TSDB under their agency's control. Plaintiffs' requests were sent on the following dates:

- a. Plaintiff Leonid Ber: 11/29/22 (FBI); 11/30/22 (DHS).
- b. Karen Stewart: 11/26/22 (DHS); 1/4/23 (FBI).
- c. Dr. Timothy Shelley: 12/31/22 (USDOJ, FBI and DHS).
- d. Winter Calvert: 12/1/22 (FBI); 12/2/22 (DHS).
- e. Armando Delatorre: 11/22 (FBI)
- g. Deborah Mahanger: 12/2/22 (FBI); 12/2/2022 (DHS) 12/3/2022 (USDOJ).
- h. L M., a minor: 12/2/22 (FBI); 12/2/2022 (DHS) 12/3/2022 (USDOJ).
- i. Ana Robertson Miller: 12/4/22 (FBI, DOJ, and DHS).

j. Melody Ann Hopson: 12/12/22 (FBI); 12/30/22 (DHS and DOJ).

k. Devin Fraley: 12/12/22 (FBI); (12/31/22 (DHS).

l. Jason Foust: 12/3/22 (FBI, DOJ, and DHS).

m. Lindsay Penn 1/11/23 (FBI and DHS).

72. Defendant FBI and/or Defendant DHS refused to produce meaningful information in response to Plaintiffs' Privacy Act requests. On most occasions, Defendants either denied having any responsive documents and/or information or included a generic Glomar denial stating that the agency "cannot confirm or deny" any of the information requested.

73. As recent as March 3, 2023, Defendant DHS changed the language in its response to a Privacy Act Request, as it set forth in the reply sent to Plaintiff Lindsay Penn:

"As it relates to your request for information on the TSDB, please be aware that information incorporated from the TSDB and/or WLS is information that is categorized as Sensitive Security Information ("SSI") under 49 U.S.C. § 114(r), and the implementing regulation found at 49 C.F.R. part 1520. Records containing SSI are not available for public inspection or copying, nor can they be released to anyone who does not have an official need to know under 49 C.F.R. § 1520.9(a)(2) and 1520.15(a)."

74. After weeks of the regulatory period to acknowledge and process appeal, and in an effort to make her Privacy Act premature, on March 13<sup>th</sup>, 2023, Defendant DHS replied to Plaintiff Stewart that it was "acknowledging" her appeal submitted on \_\_\_\_\_, and that it would take an undetermined amount of time to adjudicate it.

75. Defendants' refusal to adequately reply to Plaintiffs' Privacy Act requests constitutes a concealment mechanism directed at preventing them from uncovering the full spectrum of illegalities, players and critical facts of the illegal secret human experiment made possible by their initiatives, policies, and collaboration.

76. Courts have held that "[t]he government has a general policy of not disclosing TSDB status, whether positive or negative, in response to inquiries...[because] [d]isclosure would

disrupt and potentially destroy counterterrorism investigations because terrorists could alter their behavior, avoid detection, and destroy evidence”, *Elhady v. Kable*, 993 F.3d 208 (2021).

77. Since Plaintiffs’ and TJ Members’ names are included as NIS under the TSDB’s Handling Codes 3 and 4 and not as KST, the grounds that justify “secrecy” of TSDB information as set forth above does not apply to them due to Defendant FBI’s own admission that “individuals included in those categories do not represent a terrorist threat”. Thus, Defendants’ refusal to provide Plaintiffs the requested personal information under their control is a violation of the Privacy Act.

78. Pursuant to Defendants “Redress Operating Procedures Manual”, the TSDB is a sensitive but unclassified database and does not contain any derogatory information.

79. Defendants’ FBI and DHS incomplete responses to Plaintiffs’ Privacy Act requests (or lack thereof) also violate Executive Order 13526 that prohibits the classification of information to conceal violations of law or prevent embarrassment to the agency.

80. Executive Order 13526’s Section 1.7 precludes Defendants FBI and Defendants Wray and Kable, acting under color of law, from shrouding under a cloak of secrecy the McCarthy blacklist embedded within the TSDB’s Handling Codes 3 and 4 and the Target experimentation program that feeds off it. This EO states, in pertinent part:

Sec. 1.7. Classification Prohibitions and Limitations.

(a) In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

- (1) Conceal violations of law, inefficiency, or administrative error.

81. Defendants’ failure to reply to the Demand Letter dated December 21<sup>st</sup>, 2022, sent on behalf of TJ and the Plaintiffs prompted the filing of this Second Amended Complaint.

Defendants’ Inter-Agency Scheme

82. HSPD-6 authorized the Attorney General to create the TSC to consolidate the federal government's approach to terrorism screening and to provide for the appropriate and lawful use of terrorist information in screening processes. **Exhibit 8.** The stated purpose of the TSC was to “ensure that America’s government screeners are working from the same unified set of anti-terrorist information and will provide a comprehensive anti-terrorist list when a suspected terrorist is screened or stopped anywhere in the federal system.” (*Id.*).

83. The TSC is an inter-agency operation under the control of Defendant FBI but also involves Defendant DHS and other agencies of the United States government. Under the purview of Defendants Wray and Kable, acting under color of law, the TSC is responsible for the creation and maintenance of the TSDB, a centralized collection of information to exclusively include and monitor KST, including biographic and biometric data about people listed therein.

84. By Defendant FBI’s own admission, the TSDB’S Handling Codes 3 and 4 categories contain the names of people such as Plaintiffs and TJ Members that do not meet the terrorist criteria **and are not screened as such.** **Exhibit 2.**

85. The ever-growing list of individuals the TSBD NIS list exceeds the legal authority delegated to Defendant FBI and its TSC in HSPD-6 by including non-terrorists in a terrorist screening database without Executive or Congressional approval.

86. By including names of non-terrorists in the TSDB authorized only for terrorist information, Defendant FBI and Defendants Wray and Kable, acting under color of law, weaponized the TSDB into a McCarthy blacklist replete with the names of innocent individuals such as Plaintiffs and TJ Members that have been illegally included under its Handling Codes 3 and/or 4, continuously targeted and unwittingly made part of an abysmal human experimentation program.

The TSDB Secret Ex Parte Nominating Process

87. Defendants Wray and Kable have a ministerial duty to adhere to the precepts of the United States Constitution and statutes upon drafting, maintaining, and disseminating the TSDB.

88. HSPD-6 mandated the implementation of a terrorist-screening process for the creation of the TSDB that had to be consistent with the provisions of the Constitution and applicable laws, including those protecting the rights of all American citizens. **Exhibit 7**.

89. To nominate a subject for entry into the TSDB, the regulation enacted pursuant to constitutional mandate requires that Defendant FBI have a reasonable suspicion to believe that the subject is a KST.

90. “[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights.” *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring).

91. When a NIS that is a citizen or resident of the United States is nominated to the TSDB, Defendants FBI, Wray and Kable do not notify the individual of the pending nomination nor afford him or her an opportunity to challenge it.

92. In June 2016, Kelli Ann Burriesci, Department of Homeland Security’s then-Deputy Assistant Secretary, testified under oath before Congress that “there’s not a process afforded a citizen prior to getting on the list”. Pursuant to Fed.R.Evid. 201(c)(2) and (d), Plaintiffs request that this Court take judicial notice of this adjudicative fact.

93. Defendant Wray’s, Kable’s, Mayorkas’ and Wainstain’s classification as “sensitive” of Handling Codes 3 and 4 categories of the TSBB is an illegal abuse of discretion while acting under color of law in violation of EO 13526, carried out to coverup Defendants’ joint violation of Plaintiffs’ and TJ Members’ constitutional rights by hiding the illegal inclusion of non-terrorists in

a terrorist database.

94. Defendant FBI acknowledges that although it is supposed only to nominate subjects of predicated investigations for inclusion in the TSDB, in certain circumstances they will add a person who is not the subject of a predicated investigation because that person allegedly “poses a threat”.

95. Although foreign governments, the State Department, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency and Defendant DHS, private entities and Defendant FBI nominate people for inclusion on the TSDB, Defendants Wray and Kable, acting under color of law, make the ultimate decision of whether a person meets the terrorist criteria and his or her name should thus be added and/or maintained on the TSDB.

#### The nomination process

96. Form FD-930, also known as “Standard Nomination Form” or “Standard Nomination Tool”, is used by private individuals, corporations, and the intelligence community (IC) to nominate people for the TSDB.

97. There are no restrictions as to who can fill out and submit Form FD-930 to Defendants regardless of whether the person is a suspected terrorist or not.

98. By submitting to Defendant FBI a Form FD-930, anyone can nominate a person to the TSDB.

99. An identical copy of the standard nomination form is published in the Department of State’s Viper program web page for the nomination of foreign nationals to the TSDB. Exhibit 5.

100. The Department of State classifies the Standard Nomination Form as an “unclassified/for official use only” document.

101. Form FD-930 is not an official U.S. Government form since it has not been approved by the United States Office of Documents pursuant to the requirements of the Paperwork Reduction Act of 1995.

102. Form FD-930 does not meet the requirements of the Department of Defense Forms Management Program since it does not meet the requirements of the General Services Administration, Standard and Optional Forms Management Program.

103. Form FD-930 is thus an illegal document that is used to nominate and place unsuspecting United States citizens and residents on the TSDB.

104. Pursuant to Fed.R.Evid. 201(c)(2) and (d), Plaintiffs request that this Court take judicial notice of the adjudicative fact that the use of Form FD-930 to nominate persons to the TSDB is contrary to law.

105. Form FD-930 does not provide for any due process safeguards to prevent the inclusion in the TSDB of innocent United States citizens without terrorist derogatory information such as Plaintiffs, TJ Members, and those equally situated to them.

106. On information and belief, 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. This practice is dangerous and repugnant to the principles contained in the United States Constitution, placing in private hands with potentially nefarious retaliatory or competitive motives the capacity to cancel, limit and/or obliterate someone's life.

107. 'Nominations' are not supposed to be solely based on race, ethnicity, national origin, religious affiliation, or First Amendment protected activities." 49 U.S.C. § 114(h)(3).

108. On information and belief, NIS are placed on the TSDB, *inter alia*, for engaging in

the legitimate exercise of First Amendment protected rights, such as whistleblower or journalist activity, as in the corroborated cases of Plaintiffs Karen Stewart, Timothy Shelley, and Winter Calvert.

109. On information and belief, other TIs as is the case of Plaintiffs Timothy Shelley, Susan Olsen, Yvonne Mendez, and Lindsay Penn, become targeted after undergoing a contentious divorce, a child custody battle, or the filing of charges against a stalking former spouse or employer.

110. Defendant FBI's, Wray and/or Kable's decision under color of law to include person in the TSDB must be based on their 'reasonable suspicion' that he or she is a KST based on the intelligence gathered on the nominated person by 'federal, state, local, territorial, tribal and international partners' establishing that "the individual engages in, has been engaged, or intends to engage, in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities."

111. A 2009 Audit Report of the TSC carried out by the United States Department of Justice's Inspector General's Office concluded that "many of the [TSDB] nominations...were processed with little or no information explaining why [or how] the subject may have a nexus to terrorism (also known as "derogatory information")."<sup>3</sup>

112. A 2007 General Accounting Office report on the TSC discovered that it rejects only approximately one percent (1%) of all nominations to the TSDB. Essentially, everyone nominated is inducted to the TSDB.

113. The 2013 Watchlisting guidance specifically provided as follows: "In determining whether a REASONABLE SUSPICION exists, due weight should be given to the specific

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<sup>3</sup> See "The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices, US Department of Justice Office of the Inspector General Audit Division, Audit Report 09-25, May 2009.

reasonable inferences that a NOMINATOR is entitled to draw from the facts in light of his/her experience and not on unfounded suspicions or hunches. Although irrefutable evidence or concrete facts are not necessary, to be reasonable, suspicion should be as clear and as fully developed as circumstances permit.” (Emphasis ours).

114. The Watchlisting Guidance document includes in its broad definition of terrorism as: “...any act that is “dangerous” to property and intended to influence government policy through intimidation.”

115. The standard to include anyone in the TSDB is unconstitutionally and impermissibly vague: “To meet the REASONABLE SUSPICION standard, the NOMINATOR, based on the totality of the circumstances, must rely upon articulable intelligence or information which, taken together with rational inferences from those facts, reasonably warrants a determination that an individual is known or suspected to be or has been knowingly engaged in conduct constituting, in preparation for, in aid of, or related to TERRORISM and/or TERRORIST ACTIVITIES.” (Emphasis ours).

116. The particularized derogatory information Defendants admit relying upon to confirm a nomination to the TSDB includes the following: an individual's race, ethnicity, religious affiliation, beliefs and activities protected by the First Amendment, such as freedom of speech, free exercise of religion, freedom of the press, freedom of peaceful assembly, and the freedom to petition the government for redress of stress of grievances, travel history, associates, business associations, international associations, financial transactions, and/or the study of Arabic.

117. The “particularized derogatory information standard” that Defendants FBI, Wray and Kable must abide by requires them to have 'articulable' intelligence or information which, based on the totality of the facts, and taken together with rational interference from those facts,

warrants a determination that “*the subject is known or suspected to be (or has been) knowingly engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or terrorist activities.*” 70 Federal Register 43716.

118. The availability of the nominations provided by Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable acting under color of law to private nominating persons and corporations `allowing for its abuse for personal or commercial revenge purposes violates individuals' constitutionally protected property, due process, and liberty rights.

119. Defendants Wray and Kable, acting under color of law, knowingly nominate and/or maintain Plaintiffs and TJ Members in the NIS McCarthy blacklist within the TSDB knowing that they do not meet the KST “particularized derogatory information” regulatory criteria that must be used to accept, reject, or modify the nomination of a KST into the TSDB based on an objective factual basis linking the individual to terrorism or terrorist activities, in open violation of their rights protected by the Fourth, Fifth, Sixth, and Fourteenth Amendment.

120. The TSDBs inclusion standards are so permissive and pliable that they violate Plaintiffs’ and TJ Members’ procedural and substantive due process rights protected under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

121. Courts have recognized that “the [mere] mention of an individual's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation.” *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C.Cir.1990).

122. Defendant’s FBI, Wray and Kable’s inclusion and maintenance of Plaintiffs’ and TJ Members’ names in the TSDB NIS McCarthy blacklist constitutes a violation of their Privacy rights.

123. The inclusion of NIS in the TSDB constitutes a violation to the Administrative

Procedure Act's prohibition on arbitrary government action contained in 5 U.S.C. § 706 because HSPD-6 only contemplates the listing of KSTs.

Vetting of Nominees

124. Defendant FBI doesn't carry out the investigation on the individual nominated to the TSDB.

125. Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable have no quality control procedure in place to specifically confirm that a person is a KST or NIS since they exclusively rely on the facts and investigation that the nominating agency or person provides to carry out their decision.

126. Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable acting under color of law improperly delegate to private contractors such as the Leidos Corporation known as "watchlisting cells" to obtain and corroborate the personal data on individuals to be included in the TSDB. These "watchlisting cells" cannot carry out the important law-enforcement task of ensuring that innocent people are not improperly listed in a terrorist database.

127. On information and belief, the only information Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable acting under color of law require from companies hired to do the vetting of nominees of NIS to the TSDB is limited to his or her first and last name, "ANY" date of birth, personal information such as names, residential address, contact information, and relatives.

128. The private contractors that check the information on individuals nominated to the TSDB do not and cannot confirm whether the nominee is a KST.

129. The TSDB vetting process of NIS nominations is an unconstitutional sham that infringes on Plaintiffs' and TJ Members' rights protected by the Fifth, Sixth, and Fourteenth

Amendments of the United States Constitution.

Unreliability of the TSDB NIS/Handling Code 3 /4 Data:  
TSDB records are not appropriately generated, updated, or removed as required  
by the Constitution.

130. Defendant FBI, its intra-agency operation TSC, and Defendants Wray and Kable acting under color of law do not provide a viable mechanism for a person to discover his or her inclusion on the TSDB's NIS/Handling Codes 3-4 categories, correct errors and/or remove his or her name after being included in it devoid of legal grounds or for improper or illegal purposes, in violation of substantive and procedural due process.

131. Substantive and procedural due process require a meaningful way to contest a person's illegal designation as a NIS excluded under HSPD-6 and ensure that Defendant FBI, and all other users of the information, remove or correct inaccurate records.

132. As implemented, Defendants FBI, Wray' and Kable's TSDB's NIS McCarthy blacklist amounts to an unchecked, illegal, and unconstitutional exercise of power over American citizens and residents such as Plaintiffs and TJ Members that constitutes an abuse of agency discretion and a violation of Separation of Powers.

133. Defendants Wray's and Kable's reckless, unconstitutional, and illicit approval of improper nominations to the TSDB under color of law in violation of their ministerial duties resulted in the illicit inclusion therein of an estimated 98.9% of innocent people unrelated to terrorism such as Plaintiffs' and TJ Members.

134. A 2007 United States Government Accountability Office Report to Congressional Requesters entitled "Terrorist TSDB Screening: Opportunities Exist to Enhance Management Oversight, Reduce Vulnerabilities in Agency Screening Processes, and Expand Use of the List",

found that Defendant FBI and/or its intra-agency operation TSC rejects only approximately one percent (1%) of all nominations to the TSDB. Defendants Wray and Kable, acting under color of law, have perpetuated this unconstitutional practice in deprivation of Plaintiffs' and TJ Members' due process rights.

135. Despite the dire findings of Defendant FBI's TSC irregularities contained in the 2005, 2007 and 2009 audit reports, defendant Garland has disregarded his ministerial duty to follow-up on the audits, ensure that individuals' constitutional and civil rights are not violated, revisit the audit procedures, and corroborate that the deficiencies previously denounced were corrected.

136. Defendant Garland has not carried out additional audits to ensure that the recommendations included in the prior ones were implanted.

137. Defendant Garland's disregard of his ministerial duties to ensure the TSC procedures adhere to the law and Constitution have caused Plaintiffs damages inasmuch as it has perpetuated the permanent lingering of NIS names on the TSDB McCarthy list despite an absence of derogatory information in support of their nominations.

#### The TSDB Subcategories

138. The TSDB contains a series of subsets of categories that differentiate individuals on the list pursuant to the degree of threat they pose and pursuant to the grounds for their inclusion on the list.

139. Official US Government, Defendant FBI and Defendant DHS official documents and/or statements under penalty of perjury establish that there are conflicting versions of what the categories within TSDB are.

140. Pursuant to Defendant DHS regulations published in 81 Federal Register 19989, the categories of individuals covered by the TSDB include:

- (a) Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (“known or suspected terrorists”).
- (b) Individuals who are foreign nationals or lawful permanent resident aliens and who are excludable from the United States based on their familial relationship, association, or connection with a known or suspected terrorist as described in sec. 212(a)(3)(B) of the Immigration and Nationality Act of 1952 (“INA exceptions”).
- (c) Individuals who were officially detained during military operations, but not as Enemy Prisoners of War, and who have been identified to pose an actual or possible threat to national security (“military detainees”); and
- (d) Individuals known or suspected to be or have been engaged in conduct constituting, in aid of, or related to transnational organized crime, thereby posing a possible threat to national security (“transnational organized crime actors”).

141. Of the four criteria listed in the previous paragraph, the only one that meets the legal parameters of HPDS-6 is the first one.

142. Conversely, Defendant FBI regulations published in 70 Federal Register 43716 list different categories of records within the TSDB as follows:

- a. Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (“known or suspected terrorists”).
- b. Individuals identified during a terrorist screening process as a possible identity match to a known or suspected terrorist.
- c. Individuals who are repeatedly misidentified as a possible identity match to a known or suspected terrorist (“misidentified persons”); and
- d. Individuals about whom a terrorist watchlist-related redress inquiry has been made.

143. Of the four criteria listed in the previous paragraph, the only one that meets the legal parameters of HPDS-6 is the first one.

144. Pursuant to instructions given to state and tribal governments when encountering

persons on the TSDB, there is yet another “official” version of the categories within the TSDB:

- Handling Code 1 - Outstanding Arrest Warrant
- Handling Code 2 - Under Active Investigation
- Handling Code 3 - Individual has Possible Ties to Terrorism
- Handling Code 4 - Identity Provided has Possible Ties to Terrorism. See **Exhibit 10**.

145. The first two categories are commonly referred to as KST and include the ‘Selectee’, and ‘No Fly Lists’. Inclusion on the first two subcategories of the TSDB, the No Fly or Selectee Lists requires additional substantive derogatory criteria.

146. Known terrorists for whom there is an outstanding arrest warrant are grouped under TSDB’s Handling Code 1 category, also referred to as the “No Fly” list.

147. A “known terrorist” is an individual who has been (a) arrested, charged by information, indicted for, or convicted of a crime related to terrorism and/or terrorist activities by U.S. Government or foreign government authorities; or (b) identified as a terrorist or a member of a terrorist organization pursuant to statute, Executive Order, or international legal obligation pursuant to a United Nations Security Council Resolution.

148. Any individual, regardless of citizenship, may be included on the No-Fly List when the TSC determines the individual meets additional criteria in at least one of the following criteria, where the individual poses:

- (a) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 233 1(1)) or domestic terrorism (as defined in 18 U.S.C. § 2331 (5)) with respect to an aircraft (including a threat of piracy, or a threat to airline, passenger, or civil aviation security).
- (b) a threat of committing an act of domestic terrorism (as defined in 18 U.S.C. § 233 1(5)) with respect to the homeland.
- (c) a threat of committing an act of international terrorism (as defined in 18 U.S.C. § 233 1(I)) against any US Government facility abroad and associated or supporting personnel, including US embassies, consulates and missions, military installations (as defined by 10 U.S.C. 280 1(c)(4)), US ships, US aircraft, or other auxiliary craft owned or leased by the US Government; or,

(d) a threat of engaging in or conducting a violent act of terrorism and who is operationally capable of doing so.

149. Although mere guesses or hunches are not enough to constitute a reasonable suspicion that an individual is a suspected KST, “concrete facts are not necessary” to include someone in the TSDB.<sup>4</sup>

150. The TSDB’s second category of individuals included in the TSDB is known as the Handling Code 2 or “Selectee List”. The Selectee List is supposed to contain the names of suspected terrorists under active investigation.

151. A "suspected terrorist" is "an individual who is reasonably suspected to be engaging in, has engaged in, or intends to engage in conduct constituting, in preparation for, in aid of, or related to terrorism and/or terrorist activities.”

152. On information and belief, the individuals in the No-Fly and Selectee List components of the TSDB encounter obstruction of travel at United States’ ports of entry and are the only ones that may consequently submit a redress request for removal from the list.

153. The ‘No-Fly’ and ‘Selectee’ lists are commonly known as the “Watchlist” comprised of KST.

154. There is another category of individuals included in the TSDB: that of persons who do not meet the “substantive derogatory criteria”. These people are referred to as NIS and are grouped into “Handling Codes 3 and 4”.

155. On information and belief, the “Expanded Selectee List” consists of individuals for whom the TSDB record contains a full name and a full date of birth but lacks sufficient derogatory

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<sup>4</sup> <http://archive.today/2015.10.15232102/https://theintercept.com/2014/07/23/blacklisted/>

information linking the person to terrorism to categorize him or her as a KST.

156. According to Defendant FBI, Handling Code 3 comprises Individuals with ‘Possible Ties to Terrorism’.

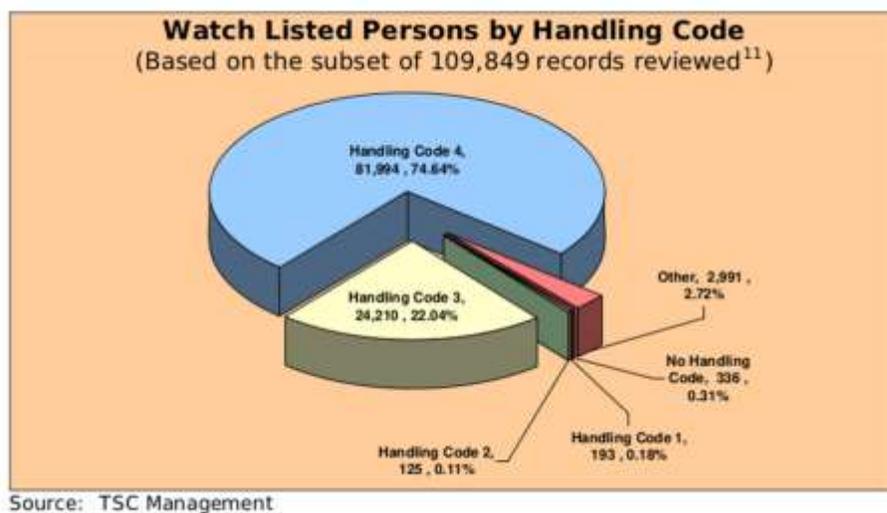
157. Pursuant to Defendant FBI Handling Code 4 comprises people whose “Identity Provided has Possible Ties to Terrorism”.

158. Defendant FBI, Defendants Wray and Kable know that people included in Handling Codes 3 and 4 do not meet the terrorist criteria yet under color of law continue to illegally maintain Plaintiffs hostage under those categories in open violation of their constitutional substantive and due process rights.

159. In so doing, Wray and Kable acting under color of law add non-terrorists to the TSDB with the purpose of secretly adding human experimentation subjects to “the Program” and submit them to a lifetime of illegal surveillance and torture.

160. On information and belief, the individuals included in the TSDB who Mr. Groh stated “are not considered KST and are not screened as such” are also referred to as NIS are grouped in the categories labeled as “Handling Code 3” or “Handling Code 4”.

161. On information and belief, for every KST listed in the TSDB, there are 334 NIS non-terrorists listed in the TSDB. United States Department of Justice (“USDOJ”) Audit reports of TSC operations carried out in 2005 and 2007 revealed that their sampling of the TSDB revealed that only point twenty-nine percent (.29%) of its records belong to KST.



162. Pursuant to Defendant FBI, NIS listed in the TSDB’s Handling Codes 3 and 4 do not meet the “reasonable suspicion” standard, are not considered “Known or suspected terrorists” and “are not screened as such.” **Exhibit 2.**

163. Handling Codes 3 and 4 constitute 97% of the TSDB and (a) include a pool of individuals that don’t meet the KST criteria and (b) are victims of an illegal McCarthy blacklist maintained for illegal purposes.

164. Former TSC Deputy Director Timothy Mr. Groh stated under Penalty of Perjury that “any US person who is in the TSDB pursuant to an exception to the reasonable suspicion standard would not be required to undergo heightened aviation security screening at airports on that basis.” See **Exhibit 2.**

165. Since NIS such as Plaintiffs do not represent a real terrorist threat, they do not face undue hardship or heightened scrutiny when traveling to alert them about their TSDB status.

166. NIS’ lack of travel obstacles is precisely the reason why only two Plaintiffs, Calvert, and Stewart, have become aware that their names had been included in the TSDB NIS McCarthy blacklist.

167. Defendants FBI, Wray and Kable failed their legal obligation to Plaintiffs and TJ

Members to inform them of their improper inclusion in the TSDB's Handling Codes 3 or 4 McCarthy blacklist so that they could seek redress and removal from it.

168. Even children's names such as Plaintiffs Delatorre's, Mahanger's and Fraley's girls are included in the TSDB's Handling Codes 3 or 4 even though they cannot represent a terrorist threat due to their tender age.

169. When encountering a person listed in the TSDB, Defendant FBI requires law enforcement officials to inform the encounter to the FBI but are forbidden from telling the individual they are on the list. **Exhibit 10**.

170. Defendant FBI has admitted in prior proceedings that their statistics on encounters with individuals in the McCarthy blacklist of NIS listed in the TSDB's Handling Codes 3 and 4 reveal that they are primarily law-abiding citizens as over 95% of them has never had an encounter with the police.

The proof that NIS should not be on the list

171. Defendant FBI makes available through the National Crime Information Center's (NCIC) database the "Watchlist" subset of the TSDB comprised of KST included in the "No Fly" and "Selectee" list.

172. The NCIC is a compilation of 14 person files or categories. To wit: 1) KST File, (the Known or Suspected Terrorist ("KST") File, which is populated with a subset of TSDB information; 2) Supervised Release; 3) National Sex Offender Registry; 4) Foreign Fugitive; 5) Immigration Violator; 6) Missing Person; 7) Protection Order; 8) Unidentified Person; 9) Protective Interest; 10) Gang; 11) Wanted Person; 12) Identity Theft; 13) Violent Person; and 14) NICS Denied Transaction.

173. However, on information and belief, Defendant FBI makes available through the

NCIC the TSDB Handling Codes 3 and 4 categories.

174. The NCIC also includes seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles, including those that belong to KST.

175. On information or belief, the NCIC makes available in real time TSDB's NIS/Handling Codes 3 / 4 lists even though the people listed in that McCarthy blacklist don't constitute a terrorist/national security threat.

Impact to United States citizens or legal residents upon being secretly listed.

176. On information and belief, Defendant FBI and Defendants Wray and Kable, acting under color of law, include individuals in the TSDB's NIS McCarthy blacklist to submit them as non-consenting participants in an experimentation and torture program where they are referred to as "Targets".

177. A Target in the TSDB's NIS McCarthy blacklist is also referred to as a Targeted Individual.

178. Once Defendant FBI, and Defendants Wray and/or Kable acting under color of law include and/or maintain an individual's name on the TSDB McCarthy blacklist, his or her name lingers there indefinitely and/or permanently.

179. Defendant FBI and Defendants Wray and/or Kable's decision under color of law to include and retain a person in the TSDB's NIS/Handling Codes 3 / 4 lists is the equivalent of an unconstitutionally perennial designation as a "person of interest" for life, depriving them of their presumption of innocence and right to procedural and substantive due process.

180. In a 2009 audit of the TSC, USDOJ found Defendant FBI failed to observe its own policies mandating removal of NIS from the list.

181. Defendants Wray and Kable, acting under color of law, deprive United States

citizens and legal residents such as Plaintiffs and TJ Members whose names appear under TSDB NIS McCarthy backlist of a mechanism or formal procedure to challenge their names' secret inclusion and retention on the TSDB McCarthy blacklist because they are prohibited from discovering their status in the first place.

182. Even after discovering their TSDB status, unlike KST, NIS such as Plaintiffs and TJ Members have no means of redress to remove their names from the TSDB's Handling Codes 3 /4 categories because there is no such mechanism, ensuring their illegally disgraceful categorization becomes permanent.

183. Defendant FBI's, Wray's and/or Kable's inclusion and retention of NIS' names in the TSDB under color of law constitutes the kind of government stigmatization that broadly precludes Plaintiffs and TJ Members from a chosen trade or business and deprives them of liberty in violation of the Due Process Clause. *Trifax Corp. v. District of Columbia*, 314 F.3d 641, 644 (D.C. Cir. 2003).

Defendants' Illegal and Harmful Disclosure of False Personal Information

184. By Defendant FBI's own admission, the TSDB does not contain classified national security information.

185. Defendant FBI labels TSDB information as "For Official Use Only//Law Enforcement Sensitive".

186. The label "For Official Use Only//Law Enforcement Sensitive" means that the information is protected from disclosure and is accessible only to persons who have an official 'need to know,' such as federal law enforcement officials for their screening and vetting activities.

187. Defendants Wray's, Kable's, Mayorkas' and Wainstain's unauthorized disclosure to third parties of Plaintiffs' and TJ Members' names improperly included and retained in the TSDB

McCarthy blacklist violates the Privacy Act.

188. Pursuant to Defendants Wray and Kable authority under color of law, Defendant FBI distributes the TSDB including Plaintiffs' and TJ Members names to at least 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.

189. The types of 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 performing criminal justice services. Pursuant to Defendant FBI, these 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.

190. Defendants FBI and DHS widely disseminate the TSDB among the Fusion Center Network, citizen policing organizations such as InfraGard and Citizen Corps with the intent to enable, authorize, perpetrate illegal/rogue vigilante conduct against NIS such as Plaintiffs and TJ Members under the false pretense that they are KSTs.

191. Once a NIS such as Plaintiffs and TJ Members is listed in the TSDB's NIS/Handling Codes 3 / 4 categories in violation of the First, Fourth, Fifth and Sixth and Eighth Amendments of

the United States Constitution, Defendants FBI and DHS order, enable, and/or facilitate through the Regional Fusion Center Network for state, tribal and federal agencies the former's constant tracking, physical and electronic surveillance and psychological torture.

192. Defendants Mayorkas and Wainstain, acting under color of law, are responsible for the enactment and implementation of highly unconstitutional policies and operating procedures carried out throughout the National Network of Fusion Centers responsible for the illegal surveillance, organized stalking and psychological torture of Plaintiffs and TJ Members.

Prior Legal Challenges to the TSDB.

193. Prior legal challenges to the TSDB have only involved people listed as KST in the TSDB's "Watchlist" whose right to travel has been impaired.

194. Disclosure of TSDB information inevitably occurs when a known terrorist included under its Handling Code 1 (No-Fly list) or a suspected terrorist included under its Handling Code 2 (Selectee List) encounter problems when attempting to board a plane or a ship.

195. The secrecy veil of watch-listing gets pierced at the airport or ports when any KST attempts to travel, and the Transportation and Safety Administration intervenes with the person during pre-boarding screening.

196. The myriad of travel obstacles that KST have encountered because of their inclusion in the 'Watchlist' component of the TSDB (No-Fly and Selectee lists) since its inception prompted legal challenges and Congressional mandates.

197. As a reaction to the disruptions to United States citizens' travels resulting from their inclusion in the TSDB, Congress enacted acts and regulations to incorporate due process guarantees to the individuals listed in the "No Fly" and the Selectees lists.

198. 49 U.S. Code § 44926 provides for the appeal and redress process for passengers

wrongly delayed or prohibited from boarding a commercial aircraft because they have been wrongly identified as a threat.

199. 49 U.S.C. § 44903(j)(2)(C)(iii)(I) gives the Transportation and Safety Administrator (TSA) the obligation to establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the advanced passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct the information contained in the system.

200. TSA implements this mandate through DHS TRIP, which serves as a single point of contact for a wide variety of complaints and inquiries regarding travel difficulties.

201. 49 U.S.C. §§ 44903(j)(2)(G)(i) provides that the Administrator shall establish a timely and fair process for individuals identified in the “No Fly” and “selectee” lists to appeal to the Transportation Security Administration the determination and to correct any erroneous information.

202. The only redress procedure that exists is contained in the TSC’s “Redress Standard Operating Procedures” dated December 8, 2015, applicable exclusively to people in Handling codes 1 and 2. Accordingly, “[r]edress is the process whereby an individual may seek the help of the screening agency in addressing the cause of an adverse screening experience or outcome related to the use of the TSDB data by filing an inquiry with the screening agency or DHS Traveler Redress Inquiry in cooperation with the TSC and the nominating/originating agency, provides assistance by determining the cause of the adverse experience, verifying that all relevant information relied upon in the screening process is current, accurate and thorough, and making any warranted corrections to pertinent records. The redress process as defined in this paragraph does not apply to inquiries related to government processes unrelated to the mission of the TSC.”

203. On information and belief, when the TSC receives a redress petition under this procedure channeled through the TSA or the FBI's Congressional Office, Defendant FBI relays the investigation on whether it is current, relevant, trustworthy, and valid of the derogatory information on the individual to the same 'federal, state, local, territorial, tribal and international partner' that nominated the person in the first place.

204. Pursuant to the TSC Redress Program SOP, no one at Defendant FBI, TSC or TREX intervenes in the 'independent processes' undertaken by Defendant FBI's intra-agency operation TSC's federal, state, local, territorial, tribal, and international partners' in response to a redress inquiry.

205. In other words: during the existing redress proceedings (that does not cover NIS blacklisted under NIS/Handling Code 3 / 4), the TSC delegates to and does not interfere with the nominating agencies' or entity's investigation on the validity and accuracy of its own criteria regarding the person petitioning for removal from the TSDB.

206. Thus, the only currently available redress to remove a name from the TSDB is for KSTs and involves little more than returning the nomination to the original nominating agency – who routinely re-affirms it. There is no meaningful, independent review of the redress procedure filed by KST under handling codes 1 and 2 categories as the same people that nominated them are the ones to get to review the correctness of their own actions.

207. A 2007 GAO Report on Defendant FBI's intra-agency operation TSC revealed that 45% of the TSDB records related to redress complaints reflected that the information on the individuals used to include them on the list was inaccurate, incomplete, outdated, and/or that they had been incorrectly included.

208. Defendants FBI and DHS and Defendants Wray, Kable, Mayorkas and Wainstein,

acting under color of law, have denied NIS a mechanism to have their names removed from the McCarthy blacklist that Handling Codes 3 and 4 comprise.

209. A December 8, 2005, Washington Times article reported that the Transportation Safety Administration admitted to Congress that out of the 30,000 airline passengers that had requested so far from the Department of Homeland Security Department to remove their names from TSDBs, only 60 or less than .02% had been successful.

210. On information and belief, no court has had to adjudicate a case or controversy involving the legality or constitutionality of the NIS and/or Handling Code 3 / 4 categories of the TSDB as the instant case does.

The TSDB as an Unconstitutional Blacklisting Mechanism of Individuals

211. The stated purpose of the TSC was to “ensure that America’s government screeners are working from the same unified set of anti-terrorist information and will provide a comprehensive anti-terrorist list when a suspected terrorist is screened or stopped anywhere in the federal system.” (Exhibit 8).

212. However, what evolved was a McCarthy blacklist where 97% of the names belong to NIS in the Handling Codes 3 and 4 categories and only .29% are actual KST. (See ¶ 156 above).

213. The resulting TSDB’s NIS McCarty blacklist is a retaliation mechanism designed to avenge enemies, crush opposition, and deter government whistleblowers from speaking out.

214. Defendants Wray’s and Kable’s supervision and maintenance of such a list under color of law exceeds the legal authority that delegated in HSPD-6 to Defendant FBI and its intra-agency operation TSC by permanently incorporating the names of innocent, unsuspecting American citizens and legal residents, all of them non-terrorists, in a terrorist screening database.

215. Defendants FBI, its intra-agency operation TSC, and Defendants Wray, Kable, and

their predecessors acting under color of law illicitly added and/or maintain the individual Plaintiffs' and TJ Members' names in the TSDB without giving them prior notice and in absence of the required derogatory criteria, depriving them of their Sixth Amendment right to confront the information submitted in support of their nomination.

216. Defendants have deliberately concealed from Plaintiffs and TJ Members their inclusion in the TSDB NIS McCarthy blacklist, in violation of their rights under the Privacy Act and fundamental due process rights that require notice to confront the nomination and petition for redress.

217. Defendants' FBI and DHS lack of notice to Plaintiffs and TJ Members of their inclusion in the TSDB prevented them from discovering that they had sustained an injury susceptible to redress.

218. Defendants' FBI and DHS refusal to inform Plaintiffs of their TSDB status is yet another illegal deprivation of due process since it deprives them of the ability to challenge their inclusion on the list by filing a judicial redress procedure.

219. The legal provisions available to individuals in the Watchlist to seek redress from their inclusion in the TSDB are not available to those in improperly included in the TSDB NIS McCarthy blacklist.

220. The secret inclusion of non-terrorists such as Plaintiffs and TJ Members who constitute "an exception" to the "reasonable suspicion standard" "who are not considered 'known or suspected terrorists'" and "are not screened as such" on this McCarthy blacklist, for an indefinite period, for unauthorized purposes, infringes on their fundamental due process, property, and liberty rights.

TSDB's Unconstitutional Bloating:  
The Numbers Do Not Add Up

221. Defendant FBI and NSA's statistics regarding the number of records in the TSDB that relate to actual KSTs demonstrate that in the United States there are hundreds of thousands of individuals that: a) are not KST; b) were nonetheless secretly and perpetually included in the TSDB; and c) have no legal recourse for their name's removal therefrom.

222. The contradictions between official government sources regarding the TSDB's records are obvious. And the numbers do not add up.

223. In 2019, the New York Times published an article confirming that in only two years, the TSDB had increased to 5.5 million records of which 200,000 or 3.6% of them are United States citizens classified as "targets" while the NSA acknowledged that during that same year it was spying on 200,000 'targets' on US Soil<sup>5</sup>.

224. The Department of Justice's Office of The Inspector General's May 2009 Audit Report 09-25 "The Federal Bureau of Investigation's Terrorist TSDB Nomination Practices" found that 35% of the nominations to the lists were outdated, many people were not removed in a timely manner, and tens of thousands of names were placed on the list without an adequate factual basis.

225. In 2008, Rick Kopel, principal deputy director of Defendant FBI Terrorist Screening Center, appeared before the House Homeland Security Sub Committee on Transportation Security and testified that the TSDB contained approximately one million records relating to 400,000 individuals of whom 3% (12,000) were U.S. persons. (U.S. Persons, as defined in Executive Order 12333, are U.S. citizens and legal permanent residents.)

226. Conversely, eight years later, the Vice-Chairwoman of the Senate Intelligence Committee, Sen. Diane Feinstein, ascertained in 2016 that there were over one million records in

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<sup>5</sup> <https://archive.ph/Mobhb>

the TSDB but only 5,000 (0.5 percent or one two-hundredth) of them were Americans.<sup>6</sup>

227. On September 2014, Transportation Safety Administration's Christopher Piehota testified before the House of Representatives' Subcommittee on Transportation Security that by 2013 the TSDB had 500,000 records and in 2014 the list contained 800,000 identities.

228. Mr. Piehota's testimony confirmed that an estimated 300,000 additional records were included in the first 9 months of 2014 for an average of 33,333 new individuals added to the TSDB per month.

229. In 2014, Mr. Piehota testified that the 8% of the 800,000 identities in the TSDB -- or 64,000-- were in the "No Fly List" or Handling Code 01.

230. Conversely, a 2005 USDOJ audit of FBI's intra-agency operation TSC stated that .29% of the identities in the TSDB belong to KSTs.

231. Thereafter, former Defendant FBI TSC Deputy Director Timothy P. Groh stated under penalty of perjury in *Elhady v. Piehota*, 303 F.Supp.3d 453 (2017) that there were approximately 1.16 million persons in the TSDB and that only approximately 0.5% (fewer than 5,000) of those were US persons.

232. On March 11, 2019, Defendant FBI former Deputy Director Groh declared under Penalty of Perjury that US persons (citizens and lawful permanent residents) make up less than .5 percent (i.e., one two-hundredth) of the identities in the TSDB. (Exhibit 3, page 5, ¶ 14).

233. The vertiginous increase in the number of people included in the TSDB reflects Defendant Wray's and Defendant Kable's and their predecessors' failure to protect "the freedoms, privacy and civil rights of U.S. persons and other individuals with rights under US law." Exhibit

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<sup>6</sup> <http://archive.today/2023.01.07-071544/https://lawandcrime.com/video/details-of-fbi-watch-lists-revealed-including-number-of-americans-included/>

2, page 4, ¶ 7.

234. During the discovery under penalty of perjury produced in the *Elhady* case, Defendant FBI submitted the table below including the data regarding nominations, acceptances, and rejections. When subtracting the ‘additions’ and ‘rejections’ to the number of nominations, there is a large number that remains unaccounted for.

Calendar Year	Total Nominations	Total Adds	Rejections
2008	248,234	66,862	916
2009	229,369	54,999	424
2010	262,411	64,197	1,346
2011	285,681	77,925	1,203
2012	344,258	106,468	1,153
2013	482,114	159,829	1,820
2014	431,086	115,627	1,218
2015	454,173	148,730	1,021
2016	518,352	176,014	2,671
2017	480,984	166,603	5,215

#### Plaintiffs’ Targeting Resulting from Their Inclusion on the McCarthy Blacklist

235. Defendant FBI has stated that the McCarthy blacklist list is maintained “...for the sole purpose of supporting certain special screening functions of DHS and State (such as determining eligibility for immigration to the U.S.)” (Exhibit. 2, p. 7 fn. 7).

236. On information and belief, individual Plaintiffs and TJ Members were included in the McCarthy blacklist within the TSDB in retaliation for exercising their First Amendment rights to practice their religion, exercising their freedom of speech, their right to peaceably assemble, and/or to petition the Government for redress of grievances.

237. Defendants' actions constitute a violation to Plaintiffs' and TJ Members' due process and equal protection rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution inasmuch as they: a) deprived them of their right to receive notice about their nomination to the TSDB; b) deprived them of a formal, open explanation of charges and c) deprived them of a meaningful opportunity to challenge and disprove them prior to their inclusion on the list.

238. Prior to including the named individual Plaintiffs' and TJ Members', Defendant FBI did not carry out a constitutionally mandated investigation observing its own procedures, nor did they oblige the minimum due process requirements and adhere to the standard of proof required for their inclusion. Hence, Plaintiffs' and TJ Members' names were included as NIS under TSDB's handling Codes 3 and 4, despite the lack of the required "derogatory information" to support their inclusion in the list.

239. On information and belief, Defendant FBI included the named individual Plaintiffs' and TJ Members' names to the TSDB without any of the required "actual basis linking an individual to terrorism or terrorist activities, also known as particularized derogatory information."

240. Defendants Wray and Kable know that Plaintiffs are not KST and do not meet the derogatory information criteria and acting under color of law have chosen to maintain them in the TSDB.

241. Defendants have failed to provide the named individual Plaintiffs and TJ Members included under the TSDB NIS McCarthy backlist a legally meaningful procedure that adheres to the minimum constitutional due process requirements to challenge their inclusion on the TSDB.

242. The only mechanism available to United States citizens and residents to challenge

their inclusion in the TSDB contained in the Redress Standard Operating Procedure Manual is not available to NIS because it is only available to KSTs whose travel plans are impaired because of their inclusion in the TSDB. Since NIS don't encounter problems when traveling because "they do not represent a terrorist threat", this mechanism has never been available to them.

243. Defendant FBI's intra-agency operation TSC does not accept redress inquiries from the public, nor does it directly provide final disposition letters to individuals who submit redress inquiries through Defendant DHS or Congress.

244. The TSDB regulations prohibit "notice, access and amendment" under the Privacy Act. 70 Federal Register 43717 provides, in pertinent part: "Because this system contains classified and law enforcement information related to the government's counter-terrorism, law enforcement and intelligence programs, records in this system have been exempted from notification, access, and amendment to the extent permitted by subsections (j) and (k) of the Privacy Act."

245. The foretasted TSDB regulations violate Plaintiffs' and TJ Members' due process rights as they deprive innocent NIS from challenging their illicit and permanent inclusion in the TSDB despite the required lack of terrorist derogatory information on them.

246. By denying Plaintiffs and TJ Members an adequate process or mechanism to remove their names from the TSDB NIS McCarthy backlist, Defendants Wray, Kable, Mayorkas, and Wainstein are personally liable to each individual Plaintiff violating their constitutional rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments.

247. On information and belief, by denying TJ Members residing in the United States and around the world a process or mechanism to remove their names from the TSDB's NIS/Handling Codes 3 / 4 categories despite the absence of "particularized derogatory

information” and/or a “reasonable suspicion” that they are KSTs, Defendants Wray and Kable, have facilitated and enabled physical and psychological torture to Plaintiffs’ in violation of the “United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.

“The Program”

248. The moment that Defendant FBI, and/or Defendants Wray, Kable, and their predecessors, acting under color of law included and/or decided to maintain Plaintiffs’ and TJ Members’ names in that McCarthy blacklist, they converted or maintained them as “Targeted Individuals” that are involuntarily subjected to a human experimentation and torture “Program”.

249. Defendant FBI’s unfounded and unconstitutional inclusion of Plaintiffs and TJ Members in the TSDB McCarthy blacklist is part of a largely secret, covert program where they suffer stigmatic government action.

250. On information and belief, a Targeted Individual (TI) is someone who has been selected by Defendants FBI, DHS and/or other intelligence agencies of the federal government to unwillingly participate in a human experimental torture program.

251. The Convention Against Torture defines torture as follows: “The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful

sanctions.”

252. On information and belief, this program was developed following the Central Intelligence Agency’s MK-ULTRA project and is designed to break down the individual and "neutralize the person," using psychological, physical, and emotional stress.

253. On information and belief, following Defendant FBI COINTELPRO model, this program imposes unconstitutional restrictions and limitations on NIS through intimidation, fear, and threats. Political activists, labor union leaders, scientists, and whistle-blowers are a sampling of the main targets of the program in violation of their First Amendment rights.

254. On information and belief, the “Program” feeds off the TSDB’s McCarty blacklist is a retaliation mechanism designed to crush opposition and serves a Damocles’ Sword to deter government whistleblowers from denouncing illegal maneuverings within agencies.

255. On information and belief, once an individual such as Plaintiffs and TJ Members are placed on the TSDB McCarthy blacklist, Defendants FBI and DHS, and Defendants Wray, Kable, Mayorkas and Wainstein, acting under color of law, unconstitutionally authorize, enable and/or carry out physical and electronic surveillance and organized stalking on targets on their own behalf as well as through various instrumentalities, organizations, and entities such as the National Network of Fusion Centers, US Postal Service, InfraGard, citizen watch groups such as Citizen Corps, Sheriffs, and Police Departments.

#### The Stasi role of the Fusion Center National Network

256. The National Network of Fusion Centers (“Fusion Centers”) is a rogue law-enforcement operation devoid of required legal authority for the nature of the work it carries out virtually unsupervised and without limits or controls. The Fusion Centers Network under the direct funding, purview, and control of Defendants Mayorkas and Wainstain have become the Stasi arm

of Defendant DHS. They conduct surveillance, stalking, cyberstalking, and other clandestine and illegal operations against everyone listed in the TSDB: from KST to NIS, including Plaintiffs in an alleged effort to counteract domestic terrorism.

257. Although the Fusion Centers are deemed “state-owned and operated”, Defendant FBI’s and Defendant DHS’ employees are assigned to work in them.

258. As a result of being illicitly and unconstitutionally included in the TSDB’s NIS/Handling Codes 3 / 4 McCarthy blacklist, Plaintiffs and TJ Members experience constant harassment known as gang stalking, organized stalking, or overt harassment (OH) that includes the use of organized stalkers to carry out the vandalizing of personal property; surreptitious entries into domicile; tampering with postal mail, computer, telephone and electronic communications; spreading false and defamatory rumors about the individual in the neighborhood and work place to attain their virtual ostracizing from society. This illegal harassment is carried out under Defendants Mayorkas’ and Weinstein’s authority, purview, supervision, and actions under color of law, in open violation of the laws and Constitution of the United States.

259. Defendant FBI employees under the supervision and control of Defendant Wray and/or Kable acting under color of law directly work at the Regional Fusion Centers to implement and witness the unconstitutional, rogue, and illegal organized stalking carried out Plaintiffs and TJ Members pursuant to the policies created and adopted by Defendants DHS, Wainstein and Mayorkas in violation of the Fourth, Fifth and Sixth Amendment of the United States Constitution.

260. Defendant FBI’s and Defendant DHS’ personnel, agents and contractors have carried out illegal surveillance, search and seizures and organized stalking of Plaintiffs and TJ Members, in violation of their Fourth Amendment rights due to their inclusion on the TSDB’s NIS

McCarthy blacklist.

261. DHS' Fusion Centers' personnel and contractors have inflicted psychological torture on Plaintiffs and TJ Members in violation of their constitutional right to be secure in their persons, houses, papers, and effects and against unreasonable searches and seizures enshrined in the Fourth Amendment of the United States Constitution.

262. These psychological operations follow the FBI manual crafted for the Program's predecessor, COINTELPRO. The guiding policy of the program is that the [illegal] actions they carry out against the "target" be "plausibly deniable".

263. When complaining to law enforcement agencies or physicians about the events and symptoms resulting their status as a TI, some of the individual Plaintiffs and most of TJ Members have been illegally detained for "mental health observation" in deprivation of their liberty without due process, in violation of their rights protected under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

264. On information and belief, Defendant FBI has in place a script to reject complaints associated to the Target program such as DEW, organized or gang stalking, RMN and Havana Syndrome.

265. On or around 2022, Plaintiff Hopson called Defendant FBI's Houston office to denounce the gang-stalking and DEW attacks she was suffering from. The first dispatcher hung up on her when she reported the crimes of gang stalking and DEW attacks. Upon calling a second time, a different dispatcher also dismissed her, told her she needed to "take her medication" while expressing "You people are all crazy". At this juncture, Plaintiff Hopson asked the dispatcher if she received any such calls frequently, she replied: "All the time".

266. Prior to being included as NIS in the TSDB, none of the Plaintiffs or TJ Members experienced any of the events described above.

267. On information and belief, over 200,000 individuals in the United States such as Plaintiffs and TJ Members whose names Defendants Wray and Kable acting under color of law included and/or maintain in the TSDB's Handling Codes 3 / 4 categories undergo daily various forms of torture including DEW attacks, V2K and organized stalking in violation of the Eighth, Fourteenth Amendments of the United States Constitution and the "Convention Against Torture ratified by the United States of America in 1994. All of it paid for with taxpayer's money.

268. The Brennan Center for Justice recently denounced the blatantly illegal operation of the Fusion Centers that carry out the bulk of organized stalking and torture against Plaintiffs, TJ Members, and others similarly situated, in the publication "Ending Fusion Center Abuses" when stating: "[n]o single piece of legislation established the National Network of Fusion Centers, defined its mission, or authorized it to operate as a decentralized domestic intelligence collection mechanism feeding the federal intelligence community with information gathered from every American neighborhood. The network operates in secret, without a clear charter, and under ambiguous lines of authority. It includes not only federal, state, and local law enforcement, but also other public and private entities that have no authority to collect or disseminate intelligence about Americans. The public has little access to information regarding what their local fusion centers do in their communities or even who works there. No federal entity accepts responsibility for overseeing them, leaving the network essentially ungoverned." **Exhibit 10.**

269. An October 3, 2012, the Senate's Permanent Subcommittee on Investigations issued a report after a two-year investigation that led the Commission to conclude that Fusion Centers

“have too often wasted money and stepped on Americans’ civil liberties.”<sup>7</sup>

270. The report went on to conclude that Defendant DHS intelligence officers assigned to state and local fusion centers produced intelligence of “uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and often unrelated to terrorism.

271. The Report went on to state that: "The panel includes several examples of costly and time-consuming investigations undertaken by Fusion Centers employees, all which emphasize what appear to be the DHS’ relentless attempts to enter anyone and everyone into a system of suspicious persons. " (Emphasis ours).

TI’s Unconstitutional Sentencing to a Life of Psychological and Physical Harm

272. Defendants Mayorkas and Wainstein under color of law create and mandate the policies and standard operating procedures implemented in the National Fusion Center Network that carry out the unconstitutional organized stalking and torture against Plaintiffs, TJ Members and others equally situated to them under the guise that they are “domestic terrorists” that need to be neutralized through extrajudicial cruel and unusual punishment in violation of their rights protected under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

273. Defendant DHS and Defendants Mayorkas and Wainstain acting under color of law have failed to guard against the misuse of the resources, systems, and personnel Defendant DHS provides to the Fusion Centers, and have failed to ensure that Americans’ constitutional rights are not infringed upon by the improper collection, retention, and dissemination of personally identifiable information of persons not reasonably suspected of criminal activity.

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<sup>7</sup> <https://www.hsgac.senate.gov/imo/media/doc/10-32012%20PSI%20STAFF%20REPORT%20re%20FUSION%20CENTERS.2.pdf>

274. Defendants Mayorkas and Wainstain, acting under color of law, have caused Plaintiffs' damages by endorsing Fusion Centers' violation of their civil rights through the implementation of policies and procedures that disregarded Plaintiffs' and TJ Members' rights protected under the Fourth Amendment (protection against unreasonable searches and seizures), Fifth and Sixth Amendments (deprivation of property and liberty without due process of law), and Eighth Amendment (protection from cruel and unusual punishment).

275. "Organized Stalking" or "gang-stalking" entails the administration of terror tactics on United States citizens and lawful residents in violation of their rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. On information and belief, this practice is carried out against Plaintiffs and TJ Members through Fusion Centers under the direction and control of Defendants DHS and FBI.

276. The Fusion Centers are the mechanism by means of which the organized stalking and illegal surveillance of TSDB NIS such as Plaintiffs and TJ Members is carried out in violation of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

277. Defendants Mayorkas and Wainstain have failed to ensure that Defendant DHS resources are not used in violation of Plaintiffs' and TJ Members constitutional rights.

278. On information and belief, the inclusion of Individual Plaintiffs' names and that of TJ Members on the TSDB McCarthy blacklist causes them to suffer everything from cumulative inconveniences to serious reputational damage, threats to their lives or substantial limitations on privacy and freedom of action as will be set forth below.

279. Familial and spousal relationships are usually destroyed, as part of the psychological torture inflicted under the "Program".

280. On information and belief, because of Defendant FBI's unfounded and unconstitutional inclusion in the TSDB of innocent United States citizens such as the named individual Plaintiffs and TJ Members, and under the direction of Defendants Mayorkas and Wainstain, the National Network of Fusion Centers carry out surveillance, property vandalism, theft and destruction, organized stalking, harassment and psychological torture against them violation of their Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments.

Directed Energy Weapons Attacks/Havana Syndrome

281. The Department of Defense's Joint Publication 3-13 Electronic Warfare, defines "Directed Energy" ("DE") as: "[A]n umbrella term covering technologies that produce a beam of concentrated electromagnetic energy or atomic or subatomic particles. Directed Energy Weapons ("DEW") is a system using DE primarily as a direct means to disable, damage or destroy adversary equipment, facilities, and personnel. DE warfare is military action involving the use of DE weapons, devices, and countermeasures to either cause direct damage or destruction of adversary equipment, facilities, and personnel, or to determine, exploit, reduce, or prevent hostile use of the electromagnetic spectrum (EMS) through damage, destruction, and disruption. "

282. DE weapons include high-energy lasers, high-power radio frequency or microwave devices, and charged or neutral particle beam weapons. Microwaves and lasers are both part of the electromagnetic spectrum, which includes light energy and radio waves. The distinction between them is the wavelengths/frequency of the energy. While they are both part of the electromagnetic spectrum, laser and microwave weapons operate very differently and have very different effects.

283. Cellular towers and satellites have the energy capacity to fire DEW-- approximately the same amount of energy required to run 3,000 homes.

284. DEW are used to perpetrate electronic harassment and electromagnetic assault and battery to Plaintiffs and TJ members who reported them years before the Havana Embassy events transpired.

285. On information and belief, because of Defendant FBI's unfounded and unconstitutional inclusion of Plaintiffs' and TJ Members' names in the TSDB McCarthy blacklist, and/or Defendants Wray and Mayorkas' improper inclusion and/or maintenance of Plaintiffs' and TJ Members' names in the TSDB McCarthy blacklist while acting under color of law, Plaintiffs and TJ Members suffer painful DEW attacks as well as attacks from other unidentified remote weaponry and instruments of harm that have destroyed and/or unlawfully taken their property, health, and life as part of the heinous human experimentation "Program".

#### Havana Syndrome

286. On information and belief, the constant DEW attacks that Plaintiffs and TJ Members suffer have caused them to develop or are in the way of developing the condition known as "Havana Syndrome".

287. In 2020, the National Academy of Sciences ("NAS"), Engineering and Medicine, which was commissioned by the U.S. State Department to investigate the matter, issued a report stating that the attack from "radio frequency waves" or DEW should be the most plausible explanation for the "Havana Syndrome" illness that US State Department employees at the Cuban Embassy began to experience.

288. The NAS found that for the Cuban Embassy employees, Havana Syndrome began with the sudden onset of a loud noise, perceived to have directional features, and accompanied by pain in one or both ears or across a broad region of the head, and in some cases, a sensation of

head pressure or vibration, dizziness, followed in some cases by tinnitus, visual problems, vertigo, and cognitive difficulties.

289. The committee was disturbed that the likely cause of the condition was due to directed, pulsed radiofrequency energy or microwaves. “The committee found these cases quite concerning, in part because of the plausible role of directed, pulsed radiofrequency energy as a mechanism, but also because of the significant suffering and debility that has occurred in some of these individuals.”<sup>8</sup>

290. Stated another way: no Havana Syndrome can exist without the existence of DEW attacks.

291. CIA Director William Burns admitted that it is "unlikely [that Havana Syndrome cases] have been caused by the use of a 'secret weapon' by a hostile state".

292. On January 20, 2022, the Central Intelligence Agency stated that the over 1,000 Havana Syndrome cases were caused by DEW attacks on United States citizens stationed in foreign nations could not be traced to a foreign adversary. It concluded that there was no sustained global campaign by a hostile power like Russia or China harassing United States with an untraceable weapon.

293. The DEW attacks on NIS, United States citizens who have been unconstitutionally included in TSDB’s NIS/Handling Codes 3 / 4 lists have caused them to develop symptoms like

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<sup>8</sup> Quote from committee chair David Relman, Thomas C. and Joan M. Merigan Professor in Medicine, professor of microbiology and immunology, and senior fellow at the Center for International Security and Cooperation at Stanford University. “We as a nation need to address these specific cases as well as the possibility of future cases with a concerted, coordinated, and comprehensive approach.” New Report Assesses Illnesses Among U.S. Government Personnel and Their Families at Overseas Embassies, December 5, 2020. <https://www.nationalacademies.org/news/2020/12/new-report-assesses-illnesses-among-us-government-personnel-and-their-families-at-overseas-embassies>

Havana Syndrome.

294. Plaintiffs, TJ Members and target program victims show Havana Syndrome and vestibular imbalance symptoms and impairment.

Burns

295. Plaintiffs' DEW attacks resulting from Defendant Wray's and Kable's unconstitutional inclusion and/or retention in TSDB's NIS/Handling Codes 3 / 4 lists produce painful physical assaults and burns that take weeks to heal and look like these:



Voice-to-Skull Auditory Harassment

296. As a result of Defendant FBI, and Defendants Wray and Kable inclusion and/or retention of Plaintiffs and TJ Members in the TSDB's NIS/Handling Codes 3 / 4 McCarthy blacklists, about two thirds of them suffer from another kind of remote/directed energy attack known as "Pulse-Modulated Voice Signature" or "Microwave Auditory Effect", commonly known

as Voice-to-Skull.

297. This torture tactic is documented under United States patent number 4,877,027 for Hearing System dated June 6, 1988. No civilian has the equipment required to produce a microwave beam that carries a voice signal and produce Voice-to-Skull effect.

298. This microwave auditory effect is produced through DEW.

299. This patent consists of a hearing system for human beings in which high- frequency electromagnetic energy is projected through the air in a microwave beam of an intensity less than 3.3 kilowatts per square centimeter to the head of a human being and the electromagnetic energy is modulated to create signals that can be discerned by the human being regardless of the hearing ability of the person.

300. This microwave auditory effect a torture known as “voice-to-skull” that mimics the hearing of voices or “microwave auditory effect”.

301. V2K auditory harassment is voice-modulated signals composed of abusive messages, hate speech, and threats, which are beamed at victims for extended periods of time. It is an extremely debilitating condition as it operates twenty-four hours a day in a continuous flow of computer-generated derogatory verbiage to obliterate the person’s psyche such as: “You’re stupid”; “You’re fat”; “Why don’t you kill yourself?”

302. Ten of eighteen Plaintiffs suffer from V2K. TJ statistics reflect that 66.6% of TJ Members suffer of V2K.

#### Other Symptoms

303. On information and belief, because of being included in the TSDB NIS McCarthy

backlist, Plaintiffs and TJ Members suffer from sleep deprivation and the anxiety it produces caused by remote DEW attacks.

304. On information and belief, because of Defendants FBI's, Wray's and Kable's unfounded and unconstitutional inclusion of Plaintiffs and TJ Members in the TSDB NIS McCarthy backlist, the latter suffer from artificial tinnitus triggered by the constant location tracking inherent to the Targeting program.

305. No private organization has the capacity to inflict widespread V2K, DEW or artificial tinnitus on the civilian population of the United States as those technologies require technologies not available to civilians.

Unconstitutional Interference with Electronic Communications

306. The NSA and CIA have admitted to performing warrantless electronic surveillance on behalf of FBI. **Exhibit 9.**

307. As a result of Defendant FBI's, Wray's and Kable's unfounded and unconstitutional inclusion and/or maintenance of Plaintiffs and TJ Members in the TSDB NIS McCarthy backlist while acting under color of law, the latter experience constant hacking of and interference with computers, phones, emails, accounts and interference with all types of electronic communications constituting suspicionless seizure and searching of internet traffic on U.S. soil in violation of the Fourth and Fourteenth Amendment of the United States Constitution.

308. Traditional Article III Court search warrants that are granted in *ex-parte* hearings but can potentially be subject to later court challenge, whereas FISA orders generally do not undergo scrutiny through subsequent adversarial proceedings.

309. During this illegal surveillance of Plaintiffs and TJ Members devoid of Article III

grounds to obtain a warrant, Defendant FBI illegally intercepts, searches and/or seizes the former's communications, in violation of Article III and the First, Fourth and Fourteenth Amendments of the Constitution of the United States.

310. Under the purview and authority of Defendants Wray and Kable acting under color of law, Defendant FBI obtains FISA warrants for the covert collection of innocent American citizens and legal residents such as Plaintiffs and TJ Members devoid of probable cause of "espionage or terrorism", to surveil their constitutionally protected activities in violation of their Due Process rights.<sup>9</sup>

311. Since the filing of the complaint, Defendants FBI and DHS have increased or have asked, enabled and/or caused third parties to increase warrantless interference and surveillance of Plaintiffs' attorney-client privileged communications and the once-sacrosanct attorney-client privilege, in violation of the Fourth and Fourteenth Amendments of the United States Constitution as described by Plaintiff Calvert above.

312. The basic structure of FISA Section 702, 50 U.S.C. § 1881a(b), is supposed to focus on targeting non-U.S. persons reasonably believed to be located abroad. Section 702, does not permit indiscriminate mass surveillance of Americans or their communications.

313. Recent news articles have revealed Defendant FBI has been collecting information on US persons in open violation of the law. Specifically:

- a) On October 21, 2021, the USDOJ Office of Inspector General released an Audit Report denouncing that Defendant FBI's "widespread non-compliance" with the factual accuracy review procedures ("Woods Procedures") required for applications under Section 702 of the Foreign Intelligence Surveillance Act ("FISA"), Section 702 (50 USC 1804(a)(4)) and 50 USC § 1801(h), to carry out

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<sup>9</sup> <https://oig.justice.gov/sites/default/files/reports/21-129.pdf>

electronic surveillance of U.S. Persons. Plaintiffs request that this court take judicial notice of this Audit.

- b) On November 2021, the presiding judge of the FISA Court, James Boasberg, issued a ruling concluding that Defendant FBI “has been seriously and systematically abusing its warrantless electronic surveillance authority.”
- c) A prior 2019 audit report had revealed that Defendant FBI had engaged in a “pattern of "abuses and deficiencies in the FBI's FISA process." **Exhibit 9.**

314. On information and belief, Defendant FBI effortlessly obtains wiretap/surveillance warrants through the FISA Court since the procedure does not require the “probable cause” standard that Article III Courts demand in 18 USC 2518(3)(a) applications.

315. On information and belief, Defendant FBI’s violations to its own procedures regarding the noncompliance in the procurement of FISA warrants against Plaintiffs in violation of Article III, the Fourth, Fifth and Sixth Amendments of the United States Constitution have caused them damages susceptible of compensation.

316. Unlike warrants granted under 18 USC 2518(8)(d) where the government must inform the person object of the warrant that his or her communications were collected, FISA Court. Just as the illegal actions denounced in the Wikimedia case, on information and belief Defendant FBI has relied on the Foreign Intelligence Surveillance Act (“FISA”), 50 U.S.C. § 1801, et seq., to carry out illegal surveillance on Plaintiffs, TJ Members and other equally-situated NIS’ electronic communications warrants don’t require Defendant FBI to ever notify the subject that his or her communications were collected unless government proceeding is brought against the person.

317. Despite all the above, FISA Court acknowledges it approves 99% of all wiretap applications.<sup>10</sup>

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<sup>10</sup> <https://www.npr.org/sections/thetwo-way/2013/10/15/234840282/fisa-court-we-approve-99-percent-of-wiretap-applications>

318. As part of the 97% of individuals on the TSDB's grouped under the NIS/Handling Codes 3 / 4 categories who have no ties to terrorism, Plaintiffs have a right to know how many FISA warrants has the FBI obtained to listen in to their conversations and communications. Conversely, Plaintiffs have a right to sustain communications with their attorney free of interference or surveillance by Defendants FBI and DHS.

319. On information and belief, any FISA warrant for the surveillance, search and/or seizure of Plaintiffs' communications and/or property that Defendant FBI obtained was done so in violation of law since Defendants FBI, Wray and Kable know that Plaintiffs have no ties to terrorism or criminal activity.

320. On information and belief, under Defendants Wray's and Kable's discretion and purview under the color of law, Defendant FBI and its intra agency operation TSC has abused its authority and carried out against Plaintiffs and TJ Members "Assessments" as defined in section 20.2 of the 2021 FBI rule book, "Domestic Investigations and Operations Guide", as reported in the January 10, 2023, Washington Times Article. "Assessments" include illegally intercepted, recorded, listened in, stolen electronic communications and files in collaboration with the Central Intelligence Agency (CIA) and National Security Agency (NSA) for FBI probes that may involve surveillance without court orders against people not accused of any crimes. **Exhibit 10.**

321. "The FBI assessments are investigations of people and groups that do not require accusations of wrongdoing and need only an "authorized purpose" and a clear objective, according to the 2021 rule book. The investigations are intended to prevent federal crimes, protect against threats to national security or collect foreign intelligence." *Id.*

322. Defendant DHS and specifically Defendant Wainstain acting under color of law have abused their power carrying out illegal spying on innocent U.S. Persons including Plaintiffs and TJ Members devoid of “probable cause” and under the guise of investigating “domestic terror attacks”. **Exhibit 11.**

323. On information and belief, under Wray’s, Kable’s, Mayorkas’ and Wainstain’s commands issued under color of law, Defendants FBI, DHS and/or their agents, intra-agency units or external contractors have carried out repetitive “Sneak and Peek” searches and seizures on Plaintiffs’ and TJ Members’ property without a warrant under Section 213 of the Patriot Act.

324. These reiterated “Sneak and Peek” searches are illegal because a) they are meant to be used only once and they are constantly being carried out; and b) they use Section 213 mechanism to circumvent their lack probable cause necessary to obtain a legitimate Article III-Court issued warrant since they lack sufficient probable cause to obtain a legitimate Article-III Court warrant against Plaintiffs and TJ Members.

325. On information and belief, Defendant FBI’s, Wray’s, Kable’s and their predecessors’ illegal, secret, unconstitutional inclusion and/or maintenance of Plaintiffs’ and TJ Members’ names in the TSDB NIS McCarthy backlist, the former have applied for and obtained warrants for the interception and upstream surveillance of the latter’s electronic communications without the need for any court to review or approve the individual targets of the surveillance under Section 702 of FISA, 50 U.S.C. § 1881a even though they are US persons.

326. On information and belief, all warrants obtained and carried out against Plaintiffs’ and TJ Members’ to carry out surveillance of electronic communications and/or secret searches and seizures are contrary to law and in open violation of their Fourth Amendment and privacy

rights because they were obtained without probable cause as required by Article III courts. Defendants FBI and DHS are jointly liable for the damages the execution of any such illicit warrant caused Plaintiffs.

An Illegal Targeting Program Based on Sex Discrimination and a Hate Crime

327. Title VI of the Civil Rights Act provides that “a law enforcement agency must make sure that its policies and practices do not have the effect of discriminating against people because of their race, color, or national origin”. This provision is extensive to federal officials such as Defendants Wray, Kable, Mayorkas and Wainstein who violated Plaintiffs’ constitutionally protected rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution under the Bivens action mechanism.

328. The TSDB's NIS McCarthy blacklist demonstrates Defendants Wray’s and Kable’s sex discrimination carried out under color of law upon nominating and including mostly women in to Handling Codes 3 and 4.

329. The Department of Justice’s most recent available national crime statistics (2020) reflect that an average of 73.48% of crimes are committed by men and 26.52% by women.

<b>Gender</b>	<b>% of all Offenses</b>	<b>All ages</b>	<b>0 to 25</b>	<b>25 &amp; older</b>
Males	73.48%	5,608,600	1,383,460	4,225,140
Females	26.52%	2,023,870	527,810	1,496,050

330. Even though national crime statistics reflect that an average of 82% of crimes are carried out by men, TJ statistics demonstrate that an average of 66.6% of TIs are single women.

331. On information and belief, there is an inverse correlation in terms of gender between the actual crime perpetrators (mostly male) and the people listed as NIS in the TSDB McCarthy

blacklist (mostly women).

332. On information and belief, this inverse correlation demonstrates that Defendants Wray and Kable disproportionately discriminate against women when making nominations and additions to the TSDB devoid of derogatory terrorist information.

333. These actions under color of law by Defendants Wray and Kable constitute large-scale sex discrimination, as well as hate crimes against women in violation of 18 U.S.C. § 241 (the Conspiracy Against Rights) and 18 U.S.C. § 249 (the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009).

334. Aside from creating, enabling and/or maintaining an unconstitutional, illegal and criminal torture program, Defendants Wray, Kable, Mayorkas and Wainstein are personally liable under Bivens for acting under color of law while taking affirmative steps to include and maintain Plaintiffs and TJ Members in the TSDB NIS McCarthy blacklist; implementing regulations and policies in the agencies under their purview and authority that have resulted in the violation of Plaintiffs' First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

Discrimination in Violation of the First Amendment as an Unconstitutional Motive

335. Acting under color of law and in an unconstitutional discrimination for political beliefs and affiliation, Defendants Wray and Kable, include NIS such as Plaintiffs and TJ Members in the TSDB McCarthy blacklist as a retaliation and suppression of opposition mechanism against individuals that exert their First Amendment rights. From an innocuous complaint against a noisy neighbor to blowing the whistle on environmental crimes, Defendants Wray and Kable acting under color of law transformed Defendant FBI into an oppression and persecution mechanism used

against Plaintiffs, TJ Members and others equally situated for denouncing violations of law.

336. On information and belief, victims of the illegal torture under the Targeted Individual program such as Plaintiffs and TJ Members are chosen in violation of the First Amendment rights. TJ's surveys reflect that its membership disproportionately identifies with conservative/republican beliefs as follows:

- a) TJ Members are 5.8 times more likely to be Republican than Democrat.
- b) 52% of TJ Members vote Republican.
- c) 9% of TJ Members vote Democrat.
- d) 17% will not vote/are fed up with the system.
- e) 22% are undecided/independent voters.

Fusion Center-Directed Destruction of Property

337. Inclusion on the TSDB's McCarthy blacklist comprised in the NIS/Handling Codes 3/4 subcategories, on information and belief, promotes the economic disparity that is destabilizing to the country.

338. On information and belief, the Fusion Center Network under the purview, funding, and authority of Defendants Mayorkas and Wainstain acting under color of law carry out illegal searches, theft and vandalism in Plaintiffs' and TJ Members' property as part of the "Program", depriving them of scarce belongings they have been left with.

339. Defendants Wray's, Kable's, Mayorkas' and Wainstain's actions under color of law as set forth above force Plaintiffs, TJ Members, and others situated like them constantly having to spend their savings or limited income in fixing or purchasing basic necessary items and objects to replace stolen or broken ones. From cars to printers and microwave ovens, the Program operatives

damage anything that operates digitally.

340. On information and belief, Fusion Center Network employees, contractors and grantees act as counterterrorism vigilantes, implementing against Plaintiffs and TJ Members the policies and practices that constitute organized stalking, psychological torture, break-ins, theft and vandalism perpetrated against Targeted Individuals under the “Program”.

An Illegal Targeting Program that Preys on the Disenfranchised

341. On information and belief, most TIs are mostly low income and disadvantaged because the program/apparatus is designed to push them into a downward economic spiral by interfering with their employment opportunities and depriving them of their property rights without just compensation or due process of law.

342. As a result of Defendants Wray’s and Kable’s inclusion and maintenance of Plaintiffs’ and TJ Members’ names on the TSDB’s McCarthy blacklist under color of law, the latter find it more difficult or even impossible to find a job as they find themselves blacklisted from employment, their professions, and communities.

343. Recent TJ statistics obtained within its membership reflect the following:

- a) 14% are homeless (National average is 0.5%)
- b) 35% living with a relative or friend because they can’t afford to pay rent.
- c) 67% are unemployed (National average is 3.7%)
- d) 40% were indigent - had less than \$100.00 to their name. Substantially below the poverty line

344. On information and belief, when exposing the abuses and deprivations delineated in this complaint, Plaintiffs and TJ Members have been deprived of their freedom, property, and constitutional rights without due process of law or assistance of counsel as many have been

involuntarily committed to a mental hospital.

345. Under the direction and authority of Defendants Mayorkas, Wainstein and their predecessors, the Fusion Network Center and their state, tribal, and federal law enforcement partners have enabled and facilitated the incarceration and/or forced hospitalization of some Plaintiffs, TJ Members and other individuals equally situated to them.

Individual Plaintiffs' Claims  
Plaintiff Leonid Ber

346. The foregoing allegations are realleged and incorporated herein.

347. Plaintiff Leonid Ber came to the United States in 2003 from the former Soviet Union. He's a naturalized citizen of the United States.

348. On or around 2019, Plaintiff Ber realized he was a TI when he began having symptoms of V2K and DEW attacks.

349. Defendant FBI, Wray, Kable and/or their predecessors acting under color of law nominated, included, and retain Plaintiff Ber's name in the TSDB NIS McCarthy backlist devoid of supporting 'particularized derogatory information' linking him to terrorism. None of the Defendants or their predecessors gave Plaintiff Ber any notice or opportunity to rebut his nomination, in open violation to his Due Process rights.

350. Defendants FBI, Wray, and Kable, acting under color of law and in open violation of their legal duty to adhere to the laws and Constitution of the United States, failed to corroborate that Plaintiff Ber was not associated to terrorist activity prior to including him in the TSDB NIS McCarthy backlist.

351. Defendant FBI does not possess and has never corroborated having any

particularized derogatory information linking Plaintiff Ber to any act of terrorism.

352. Defendant FBI and Defendant DHS replied to Plaintiff Ber's Privacy Act requests but rendered no information on his inclusion in the TSDB's McCarthy blacklist. The only document produced was a copy of a complaint Plaintiff Ber had himself electronically filed to denounce the DEW attacks that he sustained.

353. Plaintiff Ber's name inclusion and maintenance in the TSDB by Defendants FBI, Wray and Kable has subjected him to illegal physical and electronic surveillance and organized stalking in violation of his rights under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

354. Plaintiff Ber sought the assistance of his Congressional District representative, Senator Tammy Duckworth, to investigate the DEW attacks perpetrated against him. In reply to the inquiry Sen. Duckworth made to the FBI regarding the DEW attacks that Plaintiff Ber is a victim of, Defendant FBI on January 21, 2021, responded that the agency could not investigate without "specific facts" that "indicate that a violation of federal law within our investigative jurisdiction has occurred." See Exhibit 6.

355. Defendant FBI did not comply with its statutory obligation to investigate Plaintiff Ber's claims that tend to demonstrate *prima facie* violations to the Convention Against Torture and Article 32 of the Geneva Convention occurring within U.S. soil. Defendant FBI's dereliction of duty by refusing to investigate and prosecute the perpetrators of DEW attacks occurring on American soil increases Plaintiff Ber's damages as the attacks on him remain unrestricted.

356. Since 2019, Plaintiff Ber has experienced constant and disabling V2K symptoms attacks that have severely interfered with his daily life, personal interactions, capacity to work and

live in peace. He estimates the damages he has suffered because of V2K in an amount exceeding FIFTY MILLION DOLLARS (\$50,000,000.00).

357. As a result of Defendants FBI's, Wray's and Kable's inclusion and retention of Plaintiff Ber's in the TSDB McCarthy blacklist under color of law, he has undergone painful and disabling daily DEW attacks to various parts of his body, inflicting on him severe and debilitating sleep deprivation, anxiety, permanent damage, and physical and mental pain and suffering. During the five years that Plaintiff Ber has suffered constant DEW attacks perpetrated from satellites and cell towers, he estimates having suffered physical and mental pain and suffering valued in FIFTEEN MILLION DOLLARS (\$15,000,000).

358. As a direct consequence of the DEW attacks Plaintiff Ber has sustained and continues to undergo daily, he has been diagnosed with permanent brain injuries and Havana Syndrome. The permanent physical damages and mental pain and suffering that the Havana Syndrome condition causes him are estimated in an amount no less than FIFTY MILLION DOLLARS (\$50,000,000.00).

359. Plaintiff Ber's inclusion in the TSDB has subjected him to Defendants' physical and electronic surveillance and organized stalking in violation of his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and the Convention Against Torture, resulting in egregious mental anguish, anxiety, and suffering estimated in an amount no less than TEN MILLION DOLLARS (\$10,000,000).

360. Plaintiff Ber asks that this Court hold Defendants Wray, Kable Jr, Mayorkas and Wainstein jointly liable for the damages that their actions under color of law caused him, estimated in an amount no less than ONE HUNDRED TWENTY-FIVE MILLION DOLLARS

(\$125,000,000) and considering their intentional, wanton and willful misconduct in the deprivation of Plaintiffs' civil rights while acting under color of law, impose on them the payment of punitive damages calculated at THREE HUNDRED SEVENTY-FIVE MILLION DOLLARS (\$375,000,000).

361. Plaintiff Ber requests that Defendant FBI and Defendant DHS be held jointly liable for the negative social, professional, and personal repercussions he sustained because of their illegal disclosure of his inclusion in the TSDB's McCarthy in violation of the Privacy Act and the suffering, anxiety, and loss this has caused him. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agencies and the prejudice they caused.

362. Plaintiff Ber specifically requests that this Court order Defendants Wray and Kable to remove his name from the TSDB's McCarthy list, recall all lists containing his name, and instruct them to abstain from including his name in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

363. Plaintiff Ber requests that the Court hold all Defendants to be jointly liable for the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4) (E)(i) and Bivens.

Plaintiff Timothy Shelley

364. The foregoing allegations are realleged and incorporated herein.

365. Plaintiff Shelley is a lawyer in good standing in the State of Delaware and the District of Columbia.

366. On or around 2016, Plaintiff Shelley realized he had become a targeted individual.

In hindsight, he believes he has been a Target for decades.

367. Defendants FBI, Wray and Kable acting under color of law and in open violation of their legal duty to adhere to the laws and Constitution of the United States, nominated, included and/or maintain Plaintiff Shelley in the TSDB NIS McCarthy blacklist devoid of supporting ‘particularized derogatory information’ linking him to terrorist activity; without giving him any notice or opportunity to rebut; and based on his First Amendment-protected activities. Defendants Wray and Kable and/or their predecessors refused to give Plaintiff Shelley any notice or opportunity to rebut his nomination, in open violation to his Due Process rights.

368. Defendant FBI’s and Defendant DHS’ reply to Plaintiff Shelley’s Privacy Act requests provided no information about his inclusion in the TSDB McCarthy blacklist.

369. Defendants FBI’s, Wray’s, Kable’s and/or their predecessors actions under color of law of including and maintaining Plaintiff Shelley in the TSDB’s McCarthy blacklist have resulted in illegal break-ins to his home, physical and electronic surveillance, and organized stalking. For over two decades, he has undergone a plethora of abuses that include drugging, kidnapping, sexual battery, false imprisonment, job-blocking, petty theft, and minor cyber-attacks. in violation of his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and the Convention Against Torture. The damages he has suffered because of the organized stalking exceed FIFTY-FOUR MILLION DOLLARS (\$54,000,000).

370. On or around September 2016, Plaintiff Shelley began hearing constant Voice-to-Skull (V2K), and showed symptoms of forced speech, severely impairing his daily activities, and producing significant mental pain and suffering. He estimates these damages in SEVENTY MILLION DOLLARS (\$70,000,000).

371. On or around September 2016, Plaintiff Shelley began suffering from painful and disabling daily DEW attacks to various parts of his body, including the microwaving of genitals and lower digestive tract. These physical torture and damages are estimated in an amount no less than TWENTY-ONE MILLION DOLLARS (\$21,000,000.00).

372. The constant DEW attacks perpetrated against him since 2016 have caused Plaintiff Shelley permanent brain and physical injuries estimated at TWENTY MILLION DOLLARS (\$20,000,000.00).

373. Plaintiff Shelley requests that this Court hold Defendants Wray, Kable, Mayorkas and Wainstein jointly liable for his damages exceeding ONE HUNDRED SIXTY-FIVE MILLION DOLLARS (\$165,000,000). Given the malicious intent behind his targeting, experimentation, torture and suffering, Plaintiff Shelley also demands that the court hold Defendants Wray, Kable Jr, Mayorkas and Wainstein jointly liable in the payment of punitive damages in an amount no less than FOUR HUNDRED NINETY-FIVE MILLION DOLLARS (\$495,000,000).

374. Plaintiff Shelley requests that FBI and DHS be ordered to pay him damages for the illegal disclosure of his inclusion in the TSDB in violation of the Privacy Act, with the social, professional, and personal repercussions, suffering, anxiety, and loss that this has caused him. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

375. Plaintiff Shelley requests that the Court impose on all Defendants joint liability in the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

376. Plaintiff Shelley specifically requests that this Court order Defendants Wray and Kable to remove his name from the TSDB's McCarthy blacklist, recall all lists containing his name, and instruct them to abstain from including his name in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Plaintiff Karen Stewart

377. The foregoing allegations are realleged and incorporated herein.

378. Defendants FBI, Wray, Kable, and their predecessors acting under color of law nominated and included Plaintiff Stewart to the TSDB NIS McCarthy backlist in revenge for being a whistleblower at the National Security Agency. Her nomination was entirely devoid of supporting 'particularized derogatory information' linking her to terrorist activity. None of the Defendants or their predecessors gave her any notice or opportunity to rebut her nomination, in open violation to her Due Process rights.

379. Defendant FBI and Defendant DHS replied to the Privacy Act requests that Plaintiff Stewart sent each agency in December 2022 and January 2023. The agencies' replies did not provide any of the information requested regarding her inclusion in the TSDB McCarthy blacklist.

380. Since around 2005, Plaintiff Stewart began to experience threats, defamation, stalking and harassment. An acquaintance of Plaintiff Stewart working for law enforcement personally confirmed to her that since her name appeared on the TSDB, he could not associate with her.

381. Upon visiting the Leon County Sheriff's Department in or around mid-2016 to plead in person for help with the daily crimes being committed against her, her elderly parents, and pets, by FBI Fusion Center led neighborhood operatives and others, a daily duty officer

listened carefully, motioned and told her to follow him to his private car in the parking lot. He removed about 12-20 folders from the trunk, asked her name again, flipped through them until he found hers, indicated it was hers then told her since she was on the (Fusion Center) list they had just been discussing, he was not allowed to help her.

382. In 2006 Plaintiff Stewart started experiencing break-ins, thefts, wiretap of home and phones. When she moved to Florida in 2014, she continued to be heavily stalked and harassed by neighbors. Since its inception, the organized stalking perpetrated against Plaintiff Stewart has not stopped.

383. Part of the organized stalking carried out through the Fusion Center Network under Defendants DHS', Mayorkas', Wainstain's and their predecessors' purview, control and supervision and actions under color of law, Plaintiff Stewart has had to undergo is the forced hospitalization for mental evaluation and attempts at criminal entrapment.

384. Plaintiff Stewart's inclusion in the TSDB's McCarthy blacklist prompted illegal break-ins to her home, vandalizing of her property, physical and electronic surveillance, and organized stalking for over two decades in violation of her rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

385. Plaintiff Stewart estimates her damages from organized stalking since 2005 in an amount no less than EIGHTEEN MILLION DOLLARS (\$18,000,000).

386. On or around 2016, Plaintiff Stewart began suffering from constant, painful and disabling Directed Energy Weapons (DEW) daily attacks to various parts of her body that caused her severe pain and burns. The physical torture and damages she has suffered as a result of DEW

attacks are estimated in an amount no less than TWENTY-ONE MILLION DOLLARS (\$21,000,000).

387. The constant DEW attacks perpetrated against Plaintiff Stewart since 2016 have caused her permanent brain and physical injuries as she has developed symptoms like those associated to Havana Syndrome. She estimates these debilitating and permanent damages exceeding TWENTY MILLION DOLLARS (\$20,000,000).

388. Plaintiff Stewart requests that this Court hold Defendants Wray, Kable, Mayorkas and Wainstein jointly and severally liable to her for damages estimated in FIFTY-NINE MILLION DOLLARS (\$59,000,000) resulting from their actions under color of law.

389. Plaintiff Stewart requests that considering the malicious intent behind her targeting, experimentation, torture and suffering, the Court hold Defendants Wray, Kable Jr, Mayorkas and Wainstein jointly liable to her for punitive damages in an amount in excess of ONE HUNDRED SEVENTY-SEVEN MILLION DOLLARS (\$177,000,000).

390. Plaintiff Stewart also requests that Defendant FBI and Defendant DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety, and loss that this has caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information about Plaintiff Stewart shared outside of the agency, to be calculated when Defendants provide the evidence of the extent of the disclosure.

391. Plaintiff Stewart requests that the Court hold Defendants jointly liable for the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4) (E)(i)

and Bivens.

392. Plaintiff Stewart further requests that this Court order Defendants Wray and Kable to immediately remove her name from the TSDB McCarthy blacklist and instruct them to abstain from including her name in any other secret database used to carry out human torture and experimentation or any other improper purpose.

Winter Calvert

393. The foregoing allegations are realleged and incorporated herein.

394. Plaintiff Calvert was nominated and included in the TSDB NIS McCarthy blacklist devoid of supporting ‘particularized derogatory information’ linking him to acts of terrorism; without having been given any notice or opportunity to rebut; and based on his First Amendment-protected activities.

395. Defendant FBI does not possess and has never corroborated particularized derogatory information linking Plaintiff Calvert to any act of terrorism.

396. Plaintiff Calvert has never been convicted of any crime.

397. On or around December 2016, Mr. Calvert sustained a medical emergency while at his mother's house. While lying on the floor suffering from what he later learned were severe blood clots, two deputy sheriffs of the Brazoria County didn't allow the ambulance to drive up right away to the driveway to take him to a hospital.

398. While Plaintiff Mr. Calvert laid on the floor of his mother’s house, in severe pain and on the brink of death, two Brazoria County Deputy Sheriffs entered the premises. Both deputy sheriffs asserted that they could not allow anyone into the premises until they inspected them

thoroughly since they had to “secure the area” because they had been told that a “suspected terrorist” lived there.

399. As a result of the sheriffs' directives, it took more than an hour for Plaintiff Calvert to receive emergency medical attention, almost costing him his life. The only persons that lived in that property were Plaintiff Calvert and his 87-year-old mother who is a retired attorney licensed in the state of Texas.

400. Plaintiff Calvert's inclusion in the TSDB McCarthy blacklist subjected him to Defendants' illegal break-ins to his home, physical and electronic surveillance, and organized stalking since at least 2011 in violation of his rights under the First, Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture and causing him egregious mental anguish, anxiety, and suffering.

401. As a result of Plaintiff Calvert's illicit inclusion in the TSDB McCarthy blacklist, since at least 2016, he has undergone constant, painful and disabling DEW on a daily basis to various parts of his body, microwave burns, blood clots, inflicting on him severe and debilitating sleep deprivation, anxiety and physical and mental pain and suffering.

402. Despite his impeccable professional qualifications, Mr. Calvert's inclusion in the TSDB McCarthy list and the organized stalking that ensued forced him to be unemployed for two years and eight months beginning in 2013.

403. Plaintiff Calvert's inclusion in the TSDB's McCarthy blacklist subjected him since 2011 to illegal break-ins to his home, vandalizing of his property, physical and electronic surveillance, and organized stalking, electronic interferences, and hacking, in violation of his rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Convention

Against Torture resulting in damages estimated in an amount no less than TWELVE MILLION DOLLARS (\$12,000,000).

404. Since 2016, Plaintiff Calvert's has suffered constant DEW attacks perpetrated from satellites and cell towers valued in TWENTY-ONE MILLION DOLLARS (\$21,000,000).

405. Plaintiff Calvert has sustained permanent brain injuries and developed a permanent physical condition similar to Havana Syndrome. The permanent physical damages and mental pain and suffering this condition causes him are estimated in an amount no less than TWENTY MILLION DOLLARS (\$20,000,000).

406. Aside from the payment of the damages amounting to FIFTY-THREE MILLION DOLLARS (\$53,000,000) Plaintiff Calvert requests that considering the malicious intent behind his targeting, experimentation, torture and suffering, the Court hold Defendants Wray, Kable Jr, Mayorkas and Wainstein jointly liable to him for punitive damages for ONE HUNDRED FIFTY-NINE MILLION DOLLARS (\$159,000,000).

407. In violation of the right protected under the Fourth Amendment of the Constitution of the United States, Plaintiff Calvert has suffered inordinate amounts of electronic surveillance, interference, and hacking since he became targeted. However, immediately after the instant complaint was filed, his electronic surveillance substantially increased as reflected in the following few examples:

- a) Emails sent to his attorneys are blocked.
- b) Send button in emails "disappears" when email is about to be sent.
- c) Phone doesn't ring when certain persons call, such as TI Teresa Finister, whose calls are not registered in the call log, but she is allowed to leave voice messages.

- d) Phone doesn't ring when his attorney Robert Brown from Arizona calls.
- e) When trying to make an online donation to Rep. Matt Gaetz, the "continue" button to proceed to payment would be disabled on various browsers.
- f) Between March 13 and 14, 2023, Mr. Calvert tried to send a text message to Plaintiff Len Ber, on four occasions they were blocked stating "message not delivered."
- g) When trying to listen to voicemail messages, the system replies that he cannot access it because "someone has already entered that password". It takes various minutes of attempting to access the voicemail to successfully do so.
- h) When typing anything on any browser, there is a three to four second delay between typing a character and it is reflection on the screen.

408. Plaintiff Calvert also requests that FBI and DHS be ordered to pay him damages for the illegal disclosure of his inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety, and loss that it caused him. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

409. Plaintiff Calvert requests that the court hold Defendants jointly liable in the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E) (i) and Bivens.

410. Plaintiff Calvert specifically requests that this Court order Defendants to remove his name from the TSDB's McCarthy blacklist comprised within NIS/Handling Codes 3 / 4 categories, recall all lists containing his name, and instruct them to abstain from including his name in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Plaintiff Armando Delatorre, Berta Jasmin Delatorre and daughter J.D.

411. The foregoing allegations are realleged and incorporated herein.

412. As a result of Defendants' Wray's, Kable's and their predecessors' actions under color of law of including and/or maintaining Plaintiffs Armando's Jasmin Delatorre's and their minor daughter J.D.'s in the TSDB NIS McCarthy blacklist since at least 2019, they have sustained substantial damages resulting from the unconstitutional deprivations of their rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

413. As a result of Wray's, Kable's and their predecessors' inclusion and/or maintenance of, Plaintiffs Armando's and Berta Jasmin Delatorre's names in the TSDB McCarthy blacklist, they have suffered illegal break-ins to their home, physical and electronic surveillance, and organized stalking since 2018. Rogue stalkers follow Mr. Delatorre in packs at any given time, seven days a week.

414. The damages Plaintiff Armando Delatorre and Berta Jasmin have sustained because of Defendants' joint liability stemming from the unconstitutional and illegal organized stalking part of their targeting is estimated in an amount no less than FIVE MILLION DOLLARS (\$5,000,000) each, for a total of TEN MILLION DOLLARS (\$10,000,000).

415. As a result of being targeted since 2018, Plaintiff Berta Jasmin suffers from intolerable V2K that almost cost her life. As a result of the V2K, she has sustained damages amounting to FIFTY MILLION DOLLARS (\$50,000,000).

416. The physical pain and suffering that Plaintiffs Armando and Berta Jasmin Delatorre have sustained because of Defendants' joint liability stemming from the DEW attacks they have

suffered since 2018 because of their targeting is estimated in an amount no less than FIFTEEN MILLION DOLLARS (\$15,000,000) each, for a total of THIRTY MILLION DOLLARS (\$30,000,000).

417. Both Plaintiffs Armando and Berta Jasmin Delatorre have sustained permanent brain damage that has caused them the condition known as Havana Syndrome because of Defendants' joint liability stemming from the DEW attacks they have suffered since 2018 because of their targeting. The permanent physical damages for each of them is estimated in TWENTY MILLION DOLLARS (\$20,000,000) for a total of FORTY MILLION DOLLARS (\$40,000,000).

418. Armando and Berta Jasmin's daughter, J.D., suffers from V2K since at least August 2022. The permanent damages this torture has caused and will continue to cause her developing brain is unknown at this time. The suffering, fear and anguish the V2K has caused her is estimated in an amount no less than TEN MILLION DOLLARS (\$10,000,000).

419. Aside from the payment of the damages alleged above, Plaintiffs Delatorre request that in light of the malicious intent behind their targeting, experimentation, torture and suffering, the Court hold Defendants Wray, Kable, Mayorkas and Wainstein jointly liable to them for a reasonable amount in punitive damages in an amount estimated at FOUR HUNDRED EIGHTY MILLION DOLLARS (\$480,000,000).

420. Plaintiffs Armando and Berta Jasmin Delatorre also request that Defendant FBI and Defendant DHS be held jointly liable for the payment of the damages they have sustained for the illegal disclosure of their inclusion in the TSDB that has them caused considerable and irreparable social, professional, and personal repercussions, suffering, anxiety, and loss. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) each per year,

depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

421. Plaintiffs Armando, Berta Jasmin Delatorre and J.D. request that the court hold Defendants jointly liable in the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

422. Plaintiffs Delatorre specifically request that this Court order Defendants to remove their names as well as that of their daughter J.D. from the TSDB and instruct Defendants to abstain from including them in any other illegal database used to carry out human torture and experimentation or any other improper purpose.

Deborah Mahanger and Daughter L. M.

423. The foregoing allegations are realleged and incorporated herein.

424. On or around 2009, Plaintiff Mahanger realized she had become a targeted individual.

425. Plaintiff Mahanger's nomination to and inclusion in the TSDB NIS McCarthy blacklist was entirely devoid of supporting 'particularized derogatory information' linking her to terrorist activity. She was not given any notice or opportunity to rebut her nomination.

426. As a result of Defendants' illegally including Plaintiff Mahanger in the TSDB's McCarthy blacklist since at least 2009, and her daughter L.M. added to the TSDB sometime after birth, have sustained substantial damages deriving from the unconstitutional deprivations of their rights protected under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

427. Defendants FBI's and DHS' replies to Plaintiff Mahanger Privacy Act requests sent on her behalf as well as that of her daughter L.M. provided no information about their inclusion in the TSDB.

428. Plaintiff Mahanger's inclusion in the TSDB subjected her since 2009 to illegal break-ins to her home, vandalizing of her property, physical and electronic surveillance, and organized stalking for over two decades consisting of a plethora of abuses including job- blocking, petty theft, electronic interferences, and hacking. Both Plaintiff Mahanger and her daughter L. M. have each suffered damages resulting from organized torture estimated in an amount no less than THIRTEEN MILLION DOLLARS (\$13,000,000) and FIVE MILLION DOLLARS (\$5,000,000), respectively.

429. Plaintiff Mahanger and her daughter L. M. suffer from painful and disabling Directed Energy Weapons (DEW) attacks. These physical torture and damages are estimated in an amount no less than THIRTY-SIX MILLION DOLLARS (\$36,000,000) and FIFTEEN MILLION DOLLARS (\$15,000,000), respectively.

430. The constant DEW attacks perpetrated against Plaintiff Mahanger and her daughter L.M. also include remote neural monitoring and subliminal messaging have caused them permanent brain and physical injuries estimated at TEN MILLION DOLLARS (\$10,000,000) each.

431. Aside from the payment of the damages amounting set forth above, Plaintiffs Deborah Mahanger and L.M. request that considering the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to them for a reasonable amount in punitive damages estimated at TWO

HUNDRED SIXTY-SEVEN MILLION DOLLARS (\$267,000,000).

432. Plaintiff Mahanger also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety, and loss that it caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

433. Plaintiffs Mahanger and L.M. request that the court impose on Defendants reasonable attorney's fees and costs under 28 U.S.C. § 2412 and 5 USC § 552(a)(4)(E)(i).

434. Plaintiff Mahanger further requests that this Court order Defendants to remove her name as well as that of her daughter L. M. from the TSDB and instruct them to abstain from including them in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Lindsay J. Penn

435. The foregoing allegations are realleged and incorporated herein.

436. On information and/or belief, in 2014 Plaintiff Penn's name was added to the TSDB.

437. Plaintiff Penn's nomination was devoid of supporting 'particularized derogatory information' linking her to terrorist activity. Ms. Penn is an assistant real estate broker and soccer coach.

438. Defendant FBI did not give her any notice or opportunity to rebut her nomination.

439. As a result of Defendants' illegally including Plaintiff Penn in the TSDB NIS

McCarthy blacklist since at least 2014, she has sustained substantial damages deriving from the unconstitutional deprivations of her rights protected under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

440. On December 1st, 2014, the day of her son's birthday, Plaintiff Penn began suffering the effects of VTK. She thought she had developed a mental illness.

441. However, it wasn't until 2016 that Plaintiff Penn realized she was a TI and the voices she heard twenty-four hours a day were the result of V2K.

442. As a result of her illicit inclusion in the TSDB's McCarthy blacklist, Plaintiff Penn has suffered illegal break-ins to her home, physical and electronic surveillance, and organized stalking. Defendants' operatives carry out their stalking/intimidation tactics even when she goes on vacation.

443. The damages Plaintiff Penn has sustained because of Defendants' joint liability stemming from the unconstitutional and illegal organized stalking part of her targeting is estimated in an amount no less than SEVEN MILLION DOLLARS (\$7,000,000).

444. As a result of being targeted since 2014, Plaintiff Penn suffers from intolerable V2K that substantially interferes with every aspect of her life. As a result of the V2K, she has sustained damages amounting to EIGHTY MILLION DOLLARS (\$80,000,000).

445. The damages Plaintiff Penn has sustained because of Defendants' joint liability stemming from the DEW attacks she has suffered since 2016 as a result of her targeting is estimated in an amount no less than TWENTY-ONE MILLION DOLLARS (\$21,000,000).

446. The constant DEW attacks perpetrated against Plaintiff Penn have caused her a condition known as Havana Syndrome consisting of permanent brain and physical injuries

estimated at TWENTY MILLION DOLLARS (\$20,000,000).

447. Aside from the payment of the damages amounts set forth above, Plaintiff Penn requests that considering the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated at THREE HUNDRED FIFTY-FOUR MILLION DOLLARS (\$354,000,000).

448. Plaintiff Penn also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety and loss that it caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

449. Plaintiff Penn requests that the court impose on Defendants reasonable attorney's fees and costs under 28 U.S.C. § 2412 and Bivens.

450. Plaintiff Penn further requests that this Court order Defendants to remove her name from the TSDB and instruct Defendants to abstain from including it in any other illegal database used to carry out human torture and experimentation or any other improper purpose.

Melody Ann Hopson

451. The foregoing allegations are realleged and incorporated herein.

452. Around 2014, Plaintiff Melody Hopson began to be followed around her hometown in Pasadena, Texas.

453. As a result of Defendants' illegally including Plaintiff Hopson as a non-investigative subject under TSDB NIS McCarthy blacklist since at least 2014, she has sustained substantial damages to her property and person deriving from the unconstitutional deprivations of her rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

454. Plaintiff Melody Hopson became aware in 2016 that she was a TI. She was nominated and included in the TSDB's McCarthy blacklist devoid of supporting 'particularized derogatory information', without having been given any notice or opportunity to rebut her nomination.

455. Defendants FBI's and DHS' reply to Plaintiff Hopson Privacy Act requests provided no information about her inclusion in the TSDB. Specifically, because of being targeted, Plaintiff Hopson has suffered physical and electronic surveillance and organized stalking. As a result of this, she has become socially ostracized, lost friends, and became distanced from her family.

456. In 2016, Plaintiff Hopson started hearing V2K without knowing it was a form of torture. Doctors opined she had schizophrenia. Even though by 2019 the doctors concluded she was not schizophrenic, they have refused to acknowledge that she is a victim of V2K attacks.

457. Also, since 2016 she has been the victim of DEW attacks that cause her burns throughout her body and in particular her feet and genital area.

458. The damages Plaintiff Hopson has sustained as a result of Defendants' joint liability stemming from the unconstitutional and illegal organized stalking part of her targeting is estimated in an amount no less than NINE MILLION DOLLARS (\$9,000,000).

459. Since 2016, Plaintiff Hopson suffers from intolerable V2K that substantially

interferes with every aspect of her life. As a result of the V2K, she has sustained damages amounting to SEVENTY MILLION DOLLARS (\$70,000,000).

460. The damages Plaintiff Hopson has sustained because of Defendants' joint liability stemming from the DEW attacks she has suffered since 2016 because of her targeting is estimated in an amount no less than TWENTY-ONE MILLION DOLLARS (\$21,000,000).

461. The constant DEW attacks perpetrated against Plaintiff Hopson have caused her a condition known as Havana Syndrome consisting of permanent brain and physical injuries estimated at TWENTY MILLION DOLLARS (\$20,000,000).

462. Aside from the payment of the damages amounts set forth above, Plaintiff Hopson requests that in light of the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated at ONE HUNDRED TWENTY MILLION DOLLARS (\$120,000,000).

463. Plaintiff Hopson also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety and loss that it caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

464. Plaintiff Hopson requests that the court impose on Defendants reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

465. Plaintiff Hopson further requests that this Court order Defendants to remove her

name from the TSDB and instruct them to abstain from including it in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Ana Robertson Miller

466. The foregoing allegations are realleged and incorporated herein.

467. Plaintiff Ana Robertson Miller became aware in 2016 that she was a TI.

468. Defendant FBI does not have and has never had nor corroborated particularized derogatory information linking Plaintiff Ana Robertson Miller to any act of terrorism. Defendants Wray and Kable Jr, acting under color of law, maintain her name in the TSDB NIS McCarthy backlist despite the legal grounds to justify it.

469. Defendant FBI nominated and included her in the TSDB devoid of supporting ‘particularized derogatory information’. She was not given any notice or opportunity to rebut her nomination.

470. Plaintiff Miller specifically demands that Defendants Wray and Kable act pursuant to their oaths and obligation to uphold the laws and Constitution of the United States and remove her name from the TSDB since it is illegal for them acting under color of law to continue maintaining her name in a terrorist database devoid of specific derogatory information in support of it.

471. Plaintiff Miller has been the victim of organized stalking in public places, motor vehicle noise campaigns such as honking and loud accelerating around her or in front of her house. She has undergone break-ins to her home, physical and electronic surveillance, and organized stalking in violation of her rights under the First, Fourth, Fifth, Sixth and Fourteenth Amendments of the Convention Against Torture.

472. Plaintiff Miller believes her targeting could have begun as early as 2013 as she continuously got rejected from all jobs she has applied for albeit her preparation and experience. She estimates her damages resulting from the organized stalking in SEVEN MILLION DOLLARS (\$7,000,000).

473. In 2019 Plaintiff Miller started having painful, disabling DEW attacks to various parts of her body and sleep deprivation. Prior to the filing of this complaint, her attacks have substantially increased in intensity and duration. She estimates her physical and mental pain and suffering resulting from the DEW attacks in TWELVE MILLION DOLLARS (\$12,000,000).

474. As a result of Plaintiff Miller's inclusion in the TSDB since at least 2016 and the constant DEW attacks perpetrated against her since then, she has sustained permanent brain injuries and developed a permanent physical condition known as Havana Syndrome. The permanent physical damages and mental pain and suffering this condition causes her are estimated in an amount no less than TWENTY MILLION DOLLARS (\$20,000,000).

475. Aside from the payment of the damages amounts set forth above, Plaintiff Miller requests that in light of the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated at ONE HUNDRED SEVENTEEN MILLION DOLLARS (\$117,000,000).

476. Plaintiff Miller also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional and personal repercussions, suffering, anxiety, depression and loss that it caused her. These damages are estimated in a minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending

on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

477. Plaintiff Miller requests that the court impose on Defendants joint liability for the payment of reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E) (i) and Bivens.

478. Ms. Miller specifically requests that this Court order Defendant FBI to remove her name from the TSDB and instruct Defendants to abstain from including it in any other illegal database used to carry out human torture, experimentation and/or any other illicit purpose.

Devin Delaine Fraley

479. The foregoing allegations are realleged and incorporated herein.

480. Plaintiff Fraley was nominated and included in the TSDB NIS McCarthy backlist devoid of supporting 'particularized derogatory information', without having been given any notice or opportunity to rebut her nomination. Defendants Wray and Kable Jr, acting under color of law, maintain her name in the TSDB despite the legal grounds to justify it.

481. Defendants Wray and Kable Jr, acting under color of law, maintain her daughter's identity in the TSDB despite the legal grounds to justify it and specially because she's a toddler incapable of representing any kind of domestic terrorist threat to the United States.

482. Defendant FBI and Defendant DHS replied to Plaintiff Fraley's Privacy Act requests without providing any about her inclusion in the TSDB as she requested.

483. As a result of Defendant FBI illegally including Plaintiff Fraley as a non-investigative subject under the TSDB NIS McCarthy backlist since at least 2012, she has sustained

substantial damages to her property and person deriving from the unconstitutional deprivation of her rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention against Torture.

484. Specifically, because of being targeted, Plaintiff Fraley has suffered physical and electronic surveillance and organized stalking.

485. Towards 2016, Plaintiff Fraley's targeting increased in intensity. During that year, she started hearing artificial tinnitus and V2K, torturing her 24 hours a day and severely interfering with her life. As a result of the V2K, she has sustained damages amounting to at least SEVENTY MILLION DOLLARS (\$70,000,000).

486. Also, since 2016 Plaintiff Fraley has been the victim of DEW attacks that cause her burns to her feet, genital area, suffering damages estimated in TWENTY-ONE MILLION DOLLARS (\$21,000,000).

487. The damages Plaintiff Fraley has sustained because of Defendants' joint liability stemming from the unconstitutional and illegal organized stalking part of her targeting is estimated in an amount no less than ELEVEN MILLION DOLLARS (\$11,000,000).

488. The constant DEW attacks perpetrated against Plaintiff Fraley have caused her symptoms indicative of Havana Syndrome consisting of permanent brain and physical injuries estimated at TWENTY MILLION DOLLARS (\$20,000,000).

489. Since the filing of the instant complaint, Plaintiff H.F., Devin Fraley's 3-year-old daughters began to show signs of DEW attacks and VTK. Even though she is incapable of verbalizing the symptoms, her mother recognized them due to her behavioral changes, irritability, slamming of her head against the floor, extremely high body temperature upon waking up, among

others.

490. Defendants Wray and Kable acting under color of law illegally added Plaintiff H.F. to the TSDB in retaliation for her mother appearing as a Plaintiff in this case, despite her being a toddler incapable of representing a terrorist threat and the absolute lack of derogatory information that justified including her name in the TSDB.

491. The damages perpetrated upon H.F.'s developing brain resulting from the DEW attacks against her that began immediately after the filing of the instant complaint are unknown at this time. However, the irritability, anguish, sweating, pain and suffering that plaintiff H.F. undergoes every day are hereby alleged, with the prayer that the Court order an immediate halt to her torture and eventually assess and adjudicate their value.

492. Defendants Kable and Wray are jointly liable to toddler plaintiff H.F. for the damages she has sustained for adding her name to the TSDB McCarthy blacklist while acting under color of law since the DEW attacks and V2K began for her immediately after the filing of the instant complaint in January, 2023.

493. Aside from the payment of the damages amounts set forth above, Plaintiff Fraley requests that considering the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated at THREE HUNDRED SIXTY-SIX MILLION DOLLARS (\$366,000,000).

494. Plaintiff Fraley also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety, and loss that it caused her. These damages are estimated in

minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

495. Plaintiff Fraley requests that the court impose on Defendants reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

496. Plaintiff Fraley further requests that this Court order Defendant FBI to remove her name from the TSDB and instruct Defendants to abstain from including it in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Susan Olsen

497. The foregoing allegations are realleged and incorporated herein.

498. Defendant FBI does not have and has never had nor corroborated particularized derogatory information linking Plaintiff Susan Olsen to any act of terrorism. Despite that, her name appears in the TSDB NIS McCarthy backlist. She specifically demands her name be removed from the TSDB.

499. Plaintiff Susan Olsen became aware in 2015 that she was a TI. She was nominated and included in the TSDB devoid of supporting 'particularized derogatory information', without receiving any notice or opportunity to rebut her nomination. Defendants Wray and Kable Jr, acting under color of law, maintain her name in the TSDB despite the legal grounds to justify it.

500. Since at least 2015, Plaintiff Olsen has been the victim of organized stalking in public places, motor vehicle noise campaigns such as honking and loud accelerating around her or in front of her house. She has undergone break-ins to her home, car, bank safety deposit box, interception and theft of postal mail, physical and electronic surveillance and organized stalking

in violation of her under the First, Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture. She has suffered her severe anguish, mental pain and suffering and damages as a direct consequence of Defendants' organized stalking estimated in an amount exceeding EIGHT MILLION DOLLARS (\$8,000,000).

501. In 2016 Plaintiff Olsen started having painful, disabling DEW attacks to various parts of her body that also cause sleep deprivation. Prior to the filing of this complaint, her attacks have substantially increased in intensity and duration. She estimates her physical and mental pain and suffering resulting from the DEW attacks in TWENTY-ONE MILLION DOLLARS (\$21,000,000).

502. As a result of Plaintiff Olsen's inclusion in the TSDB since at least 2016 and the constant DEW attacks perpetrated against her since then, she has sustained permanent brain injuries and symptoms indicative that she has developed the permanent physical condition known as Havana Syndrome. The permanent physical damages and mental pain and suffering this condition causes her are estimated in an amount no less than TWENTY MILLION DOLLARS (\$20,000,000).

503. Aside from the payment of the damages amounts set forth above, Plaintiff Olsen requests that in light of the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated at ONE HUNDRED FORTY- SEVEN MILLION DOLLARS (\$147,000,000).

504. Plaintiff Olsen also requests that Defendant FBI and Defendant DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social,

professional, and personal repercussions, suffering, anxiety and loss that it caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

505. Plaintiff Olsen requests that the court impose joint liability on Defendants for the payment of the damages alleged herein and reasonable attorney's fees and costs under 28 U.S.C. § 2412 and Bivens.

506. Ms. Olsen specifically requests that this Court order Defendant FBI to remove her name from the TSDB and instruct Defendants to abstain from including it in any other illegal database used to carry out human torture, experimentation and/or any other illicit purpose.

Yvonne Mendez

507. The foregoing allegations are realleged and incorporated herein.

508. Plaintiff Yvonne Mendez believes she has been a TI for over 21 years. She was nominated and included in the TSDB devoid of supporting 'particularized derogatory information', without having been given any notice or opportunity to rebut her nomination. Defendants Wray and Kable Jr, acting under color of law, maintain her name in the TSDB despite the legal grounds to justify it.

509. Defendant FBI and Defendant DHS haven't replied to Plaintiff Mendez's Privacy Act requests regarding her inclusion in the TSDB as she requested.

510. Plaintiff Mendez specifically demands that Defendants Wray and Kable act pursuant to their oaths and uphold the laws and Constitution of the United States and remove her name from the TSDB since it is illegal for them acting under color of law to continue maintaining

her name in a terrorist database devoid of specific derogatory information in support of it.

511. As a result of Defendants FBI, Wray and/or Kable acting under color of law illegally including and/or maintaining Plaintiff Mendez as a NIS in the TSDB McCarthy blacklist since at least 2003, she has sustained substantial damages to her property and person deriving from the unconstitutional deprivation of her rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention against Torture.

512. Since November 4, 2002, to the present, Plaintiff Mendez began being the victim of severe organized stalking, house and truck break-ins, atrocious sexual and physical aggressions, vandalism of property, mail tampering, induced illnesses, electronic tampering, electronic harassment.

513. Since January 2003, Plaintiff began hearing V2K. On or around 2012, her V2K became considerably more offensive and debilitating and was being perpetrated on a 24/7 basis.

514. On two occasions since July 20th, 2014, Plaintiff Mendez was forcibly hospitalized for 72 hours a “mental health assessment”. During that time, she suffered theft, break-ins and vandalism to her vehicle, house, and storage.

515. Towards February 2012, Plaintiff Mendez’s targeting increased in intensity as she began to experience DEW attacks. The attacks have been directed at her spine, arms, head, teeth, intestines, stomach, forcing her into hospitalizations that have led to surgeries on various occasions.

516. On or around July-August 2021, Plaintiff Mendez underwent a surgery to remove a foreign tracking device that had been secretly placed in the back part of her neck. The doctor that extracted the artifact told Plaintiff Mendez that it looked like be a pet medical device used for

tracking GPS location.

517. As a result of the V2K since at least 2002, she has sustained damages amounting to TWO HUNDRED TEN MILLION DOLLARS (\$210,000,000).

518. Specifically, because of being included and maintained by Defendants FBI, Wray and/or Kable as a NIS within the TSDB McCarthy blacklist, Plaintiff Mendez has suffered for almost two decades physical and DEW attacks causing damages estimated in an amount no less than THIRTY-THREE MILLION DOLLARS (\$33,000,000).

519. The damages Plaintiff Mendez has sustained because of Defendants' joint liability stemming from the unconstitutional and illegal organized stalking part of her targeting that inflicted on her electronic surveillance, theft and vandalism, illnesses, organized stalking, and physical aggressions, is estimated in an amount no less than TWENTY MILLION DOLLARS (\$20,000,000).

520. The constant painful DEW attacks perpetrated against Plaintiff Mendez' head and body have also caused her symptoms indicative of Havana Syndrome consisting of permanent brain and physical injuries estimated at TWENTY MILLION DOLLARS (\$20,000,000).

521. Aside from the payment of the damages amounts set forth above, Plaintiff Mendez requests that considering the malicious intent behind their targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to her for a reasonable amount in punitive damages estimated EIGHT HUNDRED FORTY MILLION DOLLARS (\$840,000,000).

522. Plaintiff Mendez also requests that FBI and DHS be ordered to pay her damages for the illegal disclosure of her inclusion in the TSDB, with the social, professional, and personal

repercussions, suffering, anxiety, and loss that it caused her. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency and to be calculated when Defendants provide the evidence of the extent of the disclosure.

523. Plaintiff Mendez requests that the court impose on all Defendants reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

524. Plaintiff Mendez further requests that this Court order Defendants FBI, Wray and Kable to remove her name from the TSDB and instruct Defendants to abstain from including it in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Jin Kang

525. The foregoing allegations are realleged and incorporated herein.

526. Plaintiff Jin Kang, of legal age, United States citizen, single, attorney-at-law, resident of East Brunswick, New Jersey, became aware he was a TI in 2015, but recognizes he may have been a TI for a longer time.

527. Plaintiff Kang was nominated and included in the TSDB devoid of supporting 'particularized derogatory information', without receiving any notice or opportunity to rebut his nomination. Although he believes his targeting began prior to 2015, it didn't become evident until 2015.

528. As a result of Defendants' illegally including Plaintiff Kang as in TSDB NIS McCarthy backlist since at least 2015, he has sustained substantial damages to his property and person deriving from the unconstitutional deprivations of his rights protected under the Fourth,

Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

529. As a result of being targeted, Plaintiff Kang has suffered physical and electronic surveillance and organized stalking in multiple areas of his life causing him severe anguish, mental pain and suffering and damages exceeding EIGHT MILLION DOLLARS (\$8,000,000).

530. Since Plaintiff Kang was admitted to the New Jersey Bar, the organized stalking attacks have decreased although they have not stopped altogether.

531. Upon the conclusion of discovery, Plaintiff Kang reserves his right to claim damages resulting from DEW attacks directed at him and the permanent damages they may have caused him since his name was included in the TSDB since he developed artificial tinnitus, an indicative of satellite tracking and DEW attacks.

532. Aside from the payment of the damages amounts set forth above, Plaintiff Kang requests that in light of the malicious intent behind his targeting, experimentation, torture and suffering, Defendants Wray, Kable, Mayorkas and Wainstein are held to be jointly liable for the payment of a reasonable amount in punitive damages estimated at TWENTY-FOUR MILLION DOLLARS (\$24,000,000).

533. Plaintiff Kang also requests that the Court hold Defendant FBI and Defendant DHS jointly liable in the payment of his for their disclosure of his inclusion in the TSDB, with the social, professional and personal repercussions, suffering, anxiety and loss that it caused him. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency, to be calculated when Defendants provide the evidence of the extent of the disclosure.

534. Plaintiff Kang requests that the hold Defendants jointly liable for the reasonable attorney's fees and costs under 28 U.S.C. § 2412 and Bivens.

535. Plaintiff Kang specifically requests that this Court order Defendants to remove his name from the TSDB's NIS/Handling Codes 3 / 4 categories, recall all lists containing his name, and instruct them to abstain from including his name in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

Plaintiff Jason Foust

536. The foregoing allegations are realleged and incorporated herein.

537. Plaintiff Jason Foust was nominated and included in the TSDB devoid of supporting 'particularized derogatory information', without receiving any notice or opportunity to rebut his nomination. Although he believes his targeting began prior to 2015, it didn't become evident until 2016.

538. Defendant FBI and Defendant DHS replied to his Privacy Act requests refusing to provide any information about his inclusion in the TSDB.

539. As a result of Defendants' illegally including Plaintiff Foust in the TSDB NIS McCarthy backlist since at least 2015, he has sustained substantial damages to his property and person deriving from the unconstitutional deprivations of his rights protected under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the Convention Against Torture.

540. As a result of being targeted, Plaintiff Foust has suffered physical and electronic surveillance and organized stalking. He gets dangerously stalked and chased while driving his vehicle. The organized stalking that he has sustained as a result of being part of the nefarious

experiment has caused him severe anguish, mental pain and suffering and damages exceeding EIGHT MILLION DOLLARS (\$8,000,000).

541. Since 2016, Plaintiff Foust has been the victim of DEW attacks that cause severe tinnitus, burns, bruises throughout his body perpetrating damages estimated in TWENTY-ONE MILLION DOLLARS (\$21,000,000).

542. The constant DEW attacks perpetrated against Plaintiff Foust displays symptoms associated to a condition known as Havana Syndrome consisting of permanent brain and physical injuries estimated at TWENTY MILLION DOLLARS (\$20,000,000).

543. Aside from the payment of the damages amounts set forth above, Plaintiff Foust requests that in light of the malicious intent behind his targeting, experimentation, torture and suffering, Defendants Wray, Kable Jr, Mayorkas and Wainstein are held to be jointly liable to him for a reasonable amount in punitive damages estimated at ONE HUNDRED FORTY- SEVEN MILLION DOLLARS (\$147,000,000).

544. Plaintiff Foust also requests that the Court hold Defendant FBI and Defendant DHS jointly liable in the payment of his for their disclosure of his inclusion in the TSDB, with the social, professional, and personal repercussions, suffering, anxiety, and loss that it caused him. These damages are estimated in minimum amount of ONE MILLION DOLLARS (\$1,000,000) per year, depending on the quality and quantity of the derogatory information shared outside of the agency, to be calculated when Defendants provide the evidence of the extent of the disclosure.

545. Plaintiff Foust requests that the hold Defendants jointly liable for the reasonable attorney's fees and costs under 28 U.S.C. § 2412, 5 USC § 552(a)(4)(E)(i) and Bivens.

546. Plaintiff Foust specifically requests that this Court order Defendants to remove his

name from the TSDB's NIS/Handling Codes 3 / 4 categories, recall all lists containing his name, and instruct them to abstain from including his name in any other illegal database used to carry out human torture, experimentation and/or any other improper purpose.

## **V. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION:**

#### Declaratory Judgment: Unconstitutionality of the TSDB's Handling Codes 3 and 4

547. The foregoing allegations are realleged and incorporated herein.

548. Pursuant to the Declaratory Judgment Act, 28 USC §§ 2201-2202, F.R.Civ.Proc. 57, and 5 USC § 706, Plaintiffs request that this Court enter Declaratory Judgment and declare that:

- a) “[T]he FBI’s policies regarding watchlist nominations for individuals who are not subjects of current FBI investigations do not fully address the FBI’s responsibilities for maintaining the resulting watchlist records.”
- b) It is illegal and unconstitutional to include NIS individuals who constitute “an exception” to the “reasonable suspicion standard” “who are not considered KST” in the TSDB.
- c) NIS are listed under Handling Codes 3 and 4 of the TSDB.
- d) TSDB Handling Codes 3 and 4 an unconstitutional exercise of power, agency abuse of discretion and a violation of separation of powers because they exceed the legal authority granted in HSPD-6 in violation of both the constitutional precept of Separation of Powers and the arbitrary and capricious standard that regulates agency action in violation of Sections 702 and 706 of the APA, 5 U.S.C. §§ 702, 706, by creating, promulgating, implementing, and relying upon the TSDB in open violation of

Plaintiffs' and TJ Members' Fifth and Sixth Amendment rights to Due Process of Law to not be permanently included in a terrorist database in violation of the applicable legal standards for such inclusion.

- e) HSPD-6 authorized a terrorist screening tool that only authorized the listing of KSTs.
- f) HSPD-6 did not give authorization to any agency to include individuals in the terrorist screening tool for any other purpose and thus the TSDB's Handling Codes 3 and 4 constitute an illicit exercise of a limited power delegated to an agency without Congress' consensus.
- g) As a result of Defendants FBI' and DHS' violation of Plaintiffs' constitutional rights, and the illicit actions under color of law by Defendants Wray, Kable, Mayorkas, Wainstain and Garland, Plaintiffs are entitled to the payment of damages alleged above.
- h) Order Defendants FBI, Wray, and Kable to immediately eliminate the entire contents of Handling Codes 3 and 4 lists and all of Plaintiffs' and TJ Members private information and carry out a thorough recall throughout the agencies, governments, entities, corporations, and persons that it is disseminated to.
- i) Order Defendants FBI, Wray, and Kable to grant Plaintiffs complete access to all versions of TSDB's Handling Codes 3 and 4, their nominating documents and complete TSC file.
- j) Abstain from creating or concocting another secret list to circumvent this Court's order to transfer the names of the NIS included in the Handling Codes 3 and 4.
- k) Upon granting this claim, Plaintiffs request that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, the Court order Defendants FBI, Wray, and Kable to jointly pay for reasonable attorney's fees and costs.

**SECOND CAUSE OF ACTION:**

Declaratory Judgment on the TSDB as the Roster for “The Program”

549. The foregoing allegations are realleged and incorporated herein.

550. Pursuant to the Declaratory Judgment Act, 28 USC §§ 2201-2202, F.R.Civ.Proc. 57, and 5 USC § 706, Plaintiffs request that this Court enter Declaratory Judgment and declare that:

- a) Plaintiffs and TJ Members have been adversely impacted and aggrieved by Defendant FBI’s agency action of including them in the TSDB NIS McCarthy blacklist that resulted in atrocious detrimental social, psychological, and physical consequences resulting therefrom.
- b) Defendant Wray’s and Kable’s actions under color of law in the inclusion and/or retention of Plaintiffs’ and TJ Members’ identities in the TSDB McCarthy blacklist subjected them to a cruel human experimentation program and a sentencing to a life of torture in violation of the accepted values of human dignity, a civilized society, and human decency embodied in the Eighth Amendment prohibition against cruel and unusual punishment, the Geneva Convention and the Convention Against Torture.
- c) Defendant Wray’s and Kable’s actions under color of law of including and/or retaining Plaintiffs’ and TJ Members’ identities in the TSDB McCarthy violate the latter’s First Amendment rights as they constitute retaliation for the expression of protected speech.
- d) Defendant Wray’s and Kable’s actions under color of law including and/or retaining Plaintiffs’ and TJ Members’ identities in the TSDB McCarthy blacklist prompted and/or enabled the violation of Plaintiff’s Fourth Amendment right against illegal searches and

seizures. Defendants' inclusion and retention of Plaintiffs' names within the NIS roster of the TSDB prompted and/or enabled repeated break-ins, "sneak and peek" searches, abuse of FISA warrants and electronic surveillance in open violation of Plaintiffs' and TJ Members' constitutionally protected rights.

- e) Defendant Wray's and Kable's actions under color of law of including and/or retaining Plaintiffs' and TJ Members' identities in the TSDB McCarthy blacklist violated their substantive and procedural due process rights contained in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution as they were not given notice, an opportunity to rebut the nomination or a mechanism to remove their names from the list.
- f) Defendant Wray's and Kable's actions under color of law in the inclusion and/or retention of Plaintiffs' and TJ Members' identities in the TSDB McCarthy blacklist subjected them to illegal break-ins, searches and seizures, theft, vandalism, fraud, and financial loss in violation of their Fifth Amendment right to not be deprived of their property without just compensation or due process of law.
- g) Defendant Wray's and Kable's actions under color of law in the inclusion and/or retention of Plaintiffs' and TJ Members' identities in the TSDB McCarthy blacklist enabled the interference with the latter's attorney-client privileges in violation of the rights to privacy embodied in the Fourth and Fourteenth Amendment.
- h) Defendants Wray, Kable, Wainstain and Mayorkas are jointly liable for the enabling and implementing of an ongoing crime against humanity known as the "Program" that is a highly illegal secret human experiment that preys on, tortures and prompts the death

of innocent civilians throughout the world listed on the TSDB NIS McCarthy blacklist, in violation of the United Nations' Convention 1753 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States of America in 1994 and Article 32 of the Geneva Convention.

**THIRD CAUSE OF ACTION**  
Mandamus

551. The foregoing allegations are realleged and incorporated herein.

552. Defendants' Wray's, Kable's, Mayorkas', Wainstain's and Garland's actions under color of law violate the President's constitutional duty that his cabinet members are compelled to follow. To wit: that of "tak[ing] Care that the Laws be faithfully executed." U.S. Const. Art. II, § 3.

553. Plaintiffs request that this Court enter judgment as follows:

- a. ORDER defendants to adhere to the strictest observance of the law and Constitution, looking out for individual's civil rights, and consequently abstain from continuing to violate Plaintiffs' and TJ liberty and property interests without due process of law in violation of the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution.
- b. Order Defendants Wray and Kable to adhere to constitutional and human rights precepts inherent to their position and which they vowed to adhere to and bring to an end the unconstitutional enabling and implementation of the TSDB McCarthy blacklist and the illegal targeting program.
- c. Order Defendants Wray and Kable to adhere to constitutional and human rights

precepts inherent to their position and which they vowed to adhere to and abstain from enabling of hate crimes against women through a Targeting Program that mostly preys on middle-aged women.

- d. Order Defendants to jointly pay Plaintiffs reasonable attorney's fees and costs pursuant to the All Writs and Declaratory Judgment Act.

**FOURTH CAUSE OF ACTION:**

Declaratory Judgment under the Administrative Procedures Act,  
the Privacy Act and the Constitution of the United States

554. The foregoing allegations are realleged and incorporated herein.

555. Pursuant to the Declaratory Judgment Act, 28 USC §§ 2201-2202, F.R.Civ.Proc. 57, and 5 USC § 706, Plaintiffs request that this Court enter Declaratory Judgment and declare that:

- a) Defendants FBI and DHS violated the APA by promulgating, implementing, relying upon and circulating the TSDB NIS McCarthy backlist containing false information about Plaintiffs and TJ Members to government and non-government entities and persons in violation of the Privacy Act, 5 USC § 502(a), causing substantial and irreparable damages to the named Plaintiffs and TJ's members.
- b) Defendants FBI and DHS violated the Freedom of Information/Privacy Acts, for failing to timely and thoroughly respond to Plaintiffs' requests. 5 U.S.C. § 552(a)(6)(A)(i).
- c) Section 702 of the APA constitutes a waiver of sovereign immunity in the context of this case, giving this Court the authority to adjudicate the claims brought forth by those suffering legal wrong because of illegal agency action, or adversely

affected or aggrieved by agency action within the meaning of a relevant statute, entitled to judicial review thereof.

- d) Handling Codes 3 / 4 of the TSDB constitute Defendant FBI's unconstitutional blacklisting of American citizens and residents by including people who are not KST such as Plaintiffs and TJ Members, negatively and indefinitely impacting their lives and causing them permanent, irreparable damages.
- e) Defendants FBI's, Wray's, and Kable's actions under color of law constitute a deprivation of a) notice prior to inclusion and/or b) a viable mechanism to discover a person's inclusion on the TSDB, correct errors and obtain removal after being included on it for improper or illegal purposes violates the APA as well as Plaintiffs' rights to substantive and procedural due process protected under the Fifth and Sixth Amendments.
- f) ORDER Defendants FBI and DHS to reply to thoroughly answer Plaintiffs' Privacy Act requests and provide them with an entire copy of their FBI, TSC and DHS file.
- g) Order Defendant FBI to immediately produce to Plaintiffs for their examination all the paper versions of the entire TSDB including the NIS/Handling Code 3/ 4 categories since their inception in 2003.
- h) ORDER defendants to jointly pay Plaintiffs the damages they sustained as a result of the Privacy Act violations.
- i) ORDER Defendants FBI and DHS to pay Plaintiffs for counsel fees and costs incurred in the filing of this claim pursuant to 5 USC § 552(a)(4)(E)(i).

**FIFTH CAUSE OF ACTION**  
Permanent National Injunction

556. The foregoing allegations are realleged and incorporated herein.

557. On February 5<sup>th</sup>, 2023, Plaintiffs filed a “Motion for Preliminary Injunction” [Dkt. 14] whose entire contents are hereby incorporated by reference as if they were reproduced herein.

558. Plaintiffs, TJ Members and the individuals similarly situated to them are in immediate danger of sustaining direct and serious injuries as the result of the official conduct denounced in this complaint.

559. Plaintiffs request that pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure; this Court issue a Permanent National Injunction Ordering Defendants to:

- a) Immediately eliminate Plaintiffs’ and TJ Members’ names from the TSDB’s NIS/Handling Codes 3-4 McCarthy blacklist.
- b) Eliminate from the TSDB the blacklisting Handling Codes 3 and 4 categories.
- c) Abstain from circumventing any Court Order by including Plaintiffs and TJ Members in any other secret catalog, list or index created to avoid compliance.
- d) Recall and recover the over 18,000 disseminations of these Handling Code 3 and 4 lists, catalogs, lists, or indexes to federal, state, and tribal law enforcement agencies, 60 foreign governments and the 1441 non-government entities including private employment, background check, and credit agencies that contained Plaintiffs’ names and personal identifiers.
- e) Order Defendant FBI to produce for each Plaintiff and TJ Member each one’s original nomination form and complete dossier under the former’s control.

560. Compel Defendants to jointly fund the creation of a Court monitoring system to ensure full compliance with the Court's orders regarding the elimination of any McCarthy list within the TSDB that contains individuals not meeting the "reasonable suspicion" standard.

561. Grant Plaintiffs attorney's fees and costs incurred to obtain the remedy requested.

**SIXTH CAUSE OF ACTION**  
Civil Rights Violations Acting under Color of Law

562. The foregoing allegations are realleged and incorporated herein.

563. Defendants Wray's, Kable's, Mayorkas' and Wainstein's actions under color of law have deprived plaintiffs of their civil rights, causing them damages set forth in this complaint resulting from their reckless deprivation of Plaintiffs' civil and human rights and are punishable pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

564. Defendants are federal public officials acting under color of federal authority that have disregarded their duty to adhere to the laws and Constitution, depriving the individual Plaintiffs of their civil rights. As such, they are liable to Plaintiffs under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and Plaintiffs' civil rights for violating their rights under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution as well as the Convention Against Torture and Article 32 of the Geneva Convention.

565. Defendants Wray, Kable, Mayorkas and Wainstein, acting under color of law while enabling the illegal targeting and experimentation of individuals, are jointly and severally liable in their individual capacities for the entire amount of damages alleged herein, regardless of whether the conduct of one directly caused more or less injury compared to that of another, because they

a) have acted together under color of law with a common purpose resulting in responsibility for the common injury by including Plaintiffs' names in the TSDB's NIS/Handling Codes 3 / 4 blacklisting categories; b) acting under color of law, they have intentionally disregarded Plaintiffs' constitutional, civil and human rights; and c) acting under color of law they have perpetrated in an uninterrupted manner the conduct and illicit acts of their predecessors, failing to mitigate damages.

566. Acting under color of law, and knowing that Plaintiffs and TJ Members lack of particularized derogatory information tying them to acts of terrorism and/or a reasonable suspicion that they are KST, defendants Wray and Kable illegally and permanently retained their names on the TSDB's NIS/Handling Codes 3 / 4 McCarthy blacklists in an unconstitutional deprivation of their civil rights protected under the Fourth, Fifth, Sixth and Eighth Amendments of the United States Constitution, destroying their lives.

567. Defendants FBI and Defendants Wray and/or Kable acting under color of law have consistently violated the laws, agency procedures and Constitution that they are compelled to observe by obtaining illegal FISA warrants against Plaintiffs and TJ Members to carry out illegal physical and electronic searches and seizures of Plaintiffs' and TJ Members' property and communications devoid of sufficient legal grounds for it.

568. Defendants FBI, DHS, and Defendants Wray, Kable Mayorkas and Wainstain, acting under color of law, intentionally disregard their duty to apply for search warrants against Plaintiffs and TJ Members in Article III courts because they cannot meet the legal requirements under the more rigorous probable cause requirements these court impose.

569. Defendants FBI, DHS, Wray, and Kable acknowledged to have violated the laws, agency procedures and Constitution that they are compelled to observe by paying third parties to

carry out crimes against unsuspecting victims such as Plaintiffs and TJ Members and carrying out “assessments” in conjunction with the CIA and NSA.

570. Plaintiffs’ damages have increased since the filing of the complaint not only because all of them are continuous and uninterrupted in nature, but because the duration and intensity of the DEW attacks, electronic surveillance and organized stalking have substantially intensified.

571. The injury or threat of injury to Plaintiffs is actual, concrete, extraordinary and particularized. Inasmuch as the continuous and uninterrupted damages directly correlate with Defendant FBI’s, Wray’s and Kable’s decision under color of law to keep Plaintiffs listed in the TSDB’s NIS/Handling Codes 3 / 4 McCarthy blacklist.

572. Defendants Wray and Kable acting under color of law have acted as Plaintiffs’ and TJ Members’ jailers, sentencing them to a life of torture. As such, Defendants Wray and Kable are also jointly and individually liable for the real and immediate damages resulting from DEW attacks that Plaintiffs sustain as part of the “Program”.

573. Plaintiffs request that Defendants Wray, Kable, Mayorkas and Wainstain are held individually responsible from the damages that Plaintiffs have sustained as a result of being illegally included and maintained within the TSDB NIS McCarthy blacklist because their actions have been egregiously illegal and intentional.

574. Plaintiffs request that the Court hold Defendants Wray, Kable, Mayorkas and Wainstain jointly liable for the payment of reasonable attorney’s fees and costs incurred in this litigation.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court exercise its jurisdiction and

issue the following relief:

- A. Enter a Declaratory Judgment concluding that the McCarthy blacklist comprising Handling Codes 3 and 4 within the TSDB is illegal, unconstitutional, an abuse of agency action and a violation of the Separation of Powers exceeding Defendant FBI's delegated HSPD-6 authority and order the payment of damages and attorney's fees accordingly.
- B. Issue an Injunction and ORDER the recall and elimination of all Handling Codes 3 and 4 categories of all existing TSDB lists.
- C. Issue an Order preventing Defendants from circumventing the elimination of the illegal Handling Code 3 and 4 categories of the TSB by creating another secret roster.
- D. Issue a Writ of Mandamus to Defendants Wray, Kable Jr., Mayorkas, Wainstein and Garland to comply with their executive ministerial duties to uphold the United States Constitution, observe Plaintiffs' and TJ Members' civil rights and consequently implement the necessary safeguards to prevent such illegal actions from ever happening again.
- E. Enter a Declaratory Judgment declaring that Handling Codes 3 and 4 constitute the roster of human experimentation known as the "Program", order its complete elimination and impose a Court-designated monitor to ensure that Defendants do not circumvent its mandate and reconfigure the "Program" through other secret and illicit means.
- F. Enter Judgment declaring that Defendant DHS, Defendant FBI and its inter-agency operation TSC violated the Privacy Act by illicitly collecting Plaintiffs' and TJ Members' information in a terrorist database and by disseminating it throughout the

nation and the world, and ordering Defendants to jointly pay the damages it caused Plaintiffs.

- G. Enter Declaratory Judgment declaring that Defendant DHS, Defendant FBI and USDOJ violated the Privacy Act by refusing to provide Plaintiffs with the information on them they requested each agency, ORDER them to produce to each Plaintiff and TJ Member their complete TSC file and ORDER each Defendant to pay Plaintiffs damages that such violations caused them.
- H. Enter Declaratory Judgment and ORDER Defendants to jointly pay Plaintiffs damages and reasonable attorney's fees stemming from the deprivation of their constitutional rights and torture resulting from the inclusion and retention of their names within the TSDB Handling codes 3 and 4 McCarthy blacklist and subsequent submission to the human experimentation "Program".
- I. Enter Judgment declaring that upon including and maintaining Plaintiffs' and TJ Members' names in the TSDB acting under color of law, Defendants Wray and Kable knowingly violated and/or encouraged the violation of Plaintiffs' rights protected under the First, Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States, causing Plaintiffs the damages alleged above.
- J. Enter judgment ORDERING Defendants FBI, Wray and/or Kable to carry out the immediate removal of Plaintiffs' and TJ Members' names from the TSDB NIS/Handling Code 3 and 4 McCarthy blacklist with the specific order that they abstain from including them in any other illegal and unauthorized blacklist to continue with the human experimentation secretly and illegally perpetrated against them.
- K. Enter Declaratory Judgment holding that the purpose behind the TSDB/Handling Code

3 and 4 categories is the roster of human experimentation subjects for “the Program”, an illegal project repugnant to basic human rights and the United States Constitution that violates the following:

- i. The First, Fourth, Fifth, and Sixth Amendments of the Constitution of the United States by punishing its victims for the exercise of Free Speech, conducting illegal search and seizures of their person and things, and depriving them of property and liberty without due process.
- ii. The Eighth Amendment as it constitutes totalitarian cruel and unusual punishment without the conviction of a crime.
- iii. The Fourteenth Amendment as the experimentation program disproportionately targets against women and conservatives; and
- iv. The United Nations’ Convention 1753 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States of America in 1994.

J. Issue a Permanent Injunction ordering Defendants to:

- i. Immediately eliminate Plaintiffs’ and TJ Members’ names from the TSDB and
- ii. Ban Defendants from including them in any other secret, catalogs, lists, compendium, or indexes as described herein to continue the targeting of them.
- iii. Recall and recover all catalogs, lists, compendiums, or indexes disseminated to law enforcement, private companies, individuals, and entities that contain Plaintiff’s names and personal identifiers.

- iv. Abstain from devising, perpetrating, and enabling the surveillance, organized stalking and psychological torture against Plaintiffs and TJ Members through Defendant DHS' Fusion Centers Network, contractors such as Infragard. Citizen Corps and/or any other person or entity Defendants concoct, collude with, or hire for those purposes.
- v. Permanently enjoin Defendants from creating another experimentation program or list to include Plaintiffs or TJ Members.

K. Enter judgment holding Defendants jointly liable for Plaintiffs' damages and order them to pay them the amounts alleged for each one as specified in the paragraphs above incorporated herein.

L. Award damages and attorney's fees and costs pursuant to under 28 U.S.C. § 2412, 28 USC § § 2201-2201; 5 USC § 552(a)(4)(E)(i), 5 USC § 706 and *Bivens*.

M. Grant such other and further relief as the Court deems just and proper and

PLAINTIFFS DEMAND TRIAL BY JURY.

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.

**ANA LUISA TOLEDO**

/s/Ana Luisa Toledo  
Southern District of Texas No. 3825092  
Attorney for Plaintiffs  
PO Box 15990  
Houston, TX 77220-1590  
Tel. 832-247-3046; 340-626-4381  
analuda@proton.me

**DATED** this 14<sup>th</sup> day of March, 2023.

**SECOND AMENDED COMPLAINT LIST OF EXHIBITS**

<b>Exhibit #</b>	<b>Title of Document</b>
1	Ted Gunderson Affidavit in <i>Labella v. Fed. Bureau of Investigation</i> , 11-CV-0023 (NGG) (LB) (E.D.N.Y. Mar. 16, 2012)
2	Timothy Groh Affidavit in <i>Elhady v. Kable</i> , 993 F.3d 208 (2021)
3	Notice/Demand letter Dated December 21, 2022
4	FBI TSDB Data form
5	State Department Viper Nomination Form
6	January 21, 2021, FBI letter to Leonid Ber
7	Homeland Security Presidential Directive 6
8	FBI Press release dated September 16, 2003
9	NY Times Article
10	Baltimore City TSDB encounters instructions
11	Brennan Center's "Ending Fusion Center Abuses"
12	"FBI reveals it uses CIA and NSA to spy on Americans"
13	"Immoral" Spy Program: DHS Collecting Domestic Intelligence in "Shady" Operation