

23-738

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

MUHAMMAD TANVIR, JAMEEL ALGIBHAH, NAVEED SHINWARI,

Plaintiffs-Appellants,

AWAIS SAJJAD,

Plaintiff,

(Caption Continued on the Reverse)

*On Appeal from the United States District Court
for the Southern District of New York*

JOINT APPENDIX

Benjamin H. Torrance
Jennifer E. Blain
Sarah S. Norman
Assistant United States Attorneys
UNITED STATES ATTORNEY'S
OFFICE FOR THE SOUTHERN
DISTRICT OF NEW YORK
86 Chambers Street
New York, New York 10007
212-637-2800
Attorneys for Defendants-Appellees

Naz Ahmad
CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.
CITY UNIVERSITY OF
NEW YORK SCHOOL OF LAW
2 Court Square
Long Island City, New York 11101
718-340-4630
Baher Azmy
Shayana D. Kadidal
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
212-614-6438
Jennifer R. Cowan
Erol N. Gulay
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard
New York, New York 10001
212-909-6000
Attorneys for Plaintiffs-Appellants

“JOHN” TANZIN, SPECIAL AGENT, FBI, SANYA GARCIA, SPECIAL AGENT FBI, FRANCISCO ARTOUSA, JOHN LNU, SPECIAL AGENT, FBI, STEVEN LNU, JOHN C. HARLEY, III, MICHAEL LNU, GREGG GROSSOEHMIG, WEYSAN DUN, JAMES C. LANGENBERG, JOHN DOES, 1-6, SPECIAL AGENT FBI,

Defendants-Appellees,

JAMES COMEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, RAND BEERS, ACTING SECRETARY, DEPARTMENT OF HOMELAND SECURITY, JOHN S. PISTOLE, ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, CHRISTOPHER M. PIEHOTA, DIRECTOR, TERRORIST SCREENING CENTER, JEH CHARLES JOHNSON, MICHAEL RUTKOWSKI, WILLIAM GALE, LORETTA E. LYNCH, JEFFERSON B. SESSIONS III, JOHN DOE, 7-13, SPECIAL AGENT FBI, JOHN DOE, SPECIAL AGENT, FBI,

Defendants.

Table of Contents

| | <u>Page</u> |
|--|-------------|
| District Court Docket Entries | JA-1 |
| First Amended Complaint, dated April 22, 2014 | JA-28 |
| Stipulation and Order of the Honorable Ronnie Abrams regarding John Doe Defendants, dated July 23, 2014 | JA-86 |
| Letter from Sarah S. Normand to the Honorable Ronnie Abrams, dated July 16, 2021 | JA-92 |
| Notice of Motion by Defendants to Dismiss, dated October 15, 2021 | JA-94 |
| Transcript of Oral Argument held before the Honorable Ronnie Abrams on June 14, 2022 | JA-96 |
| Opinion and Order of the Honorable Ronnie Abrams, dated February 24, 2023 | JA-135 |
| Notice of Appeal, dated April 25, 2023 | JA-161 |

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

CLOSED,APPEAL,ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:13-cv-06951-RA**

Tanvir v. Comey et al
Assigned to: Judge Ronnie Abrams
Cause: 28:1331cv Fed. Question: Other Civil Rights

Date Filed: 10/01/2013
Date Terminated: 02/01/2016
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Muhammad Tanvir

represented by **Ramzi Kassem**
Main Street Legal Services, Inc.
2 Court Square West
Ste 5th Floor
Long Island City, NY 11101
718-340-4558
Fax: 718-340-4478
Email: ramzi.kassem@law.cuny.edu
TERMINATED: 06/27/2022
LEAD ATTORNEY

Baher Azmy
Seton Hall Law School Center For Social
Justice
833 Mccarter Highway
Newark, NJ 07102
(973)-642-8700
Fax: (973)-642-8295
Email: bazmy@ccrjustice.org
ATTORNEY TO BE NOTICED

Christopher Sean Ford
Debevoise & Plimpton, LLP (NYC)
919 Third Avenue,31st Floor
New York, NY 10022
(212)-909-6161
Email: csford@debevoise.com
TERMINATED: 08/18/2015

Diala Shamas
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
212-614-6426
Email: dshamas@ccrjustice.org
ATTORNEY TO BE NOTICED

Erol Nazim Gulay

Debevoise & Plimpton LLP(919 Third Ave)
919 Third Avenue
New York, NY 10022
(212)-909-6549
Email: egulay@debevoise.com
ATTORNEY TO BE NOTICED

Jennifer R. Cowan

Debevoise & Plimpton, LLP (NYC)
919 Third Avenue,31st Floor
New York, NY 10022
2129097445
Fax: 2129096836
Email: jrcowan@debevoise.com
ATTORNEY TO BE NOTICED

Naz Ahmad

Main Street Legal Services, Inc
Cuny School of Law 2 Court Square
Long Island City, NY 10026
(718)-340-4630
Email: naz.ahmad@law.cuny.edu
ATTORNEY TO BE NOTICED

Rebecca Sue Hekman

Debevoise & Plimpton, LLP (NYC)
919 Third Avenue,31st Floor
New York, NY 10022
(212)-909-6219
Fax: (212)-521-7417
Email: rshekman@debevoise.com
TERMINATED: 07/31/2015

Robert N. Shwartz

Debevoise & Plimpton, LLP (NYC)
919 Third Avenue,31st Floor
New York, NY 10022
(212) 909 6000
Fax: (212) 909-6836
Email: rnshwartz@debevoise.com
ATTORNEY TO BE NOTICED

Rushmi Bhaskaran

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
(212) 909-6905
Fax: (212) 521-7116
Email: rbhaskaran@debevoise.com
TERMINATED: 01/17/2019

Shayana Devendra Kadidal

Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
(212)614-6438
Fax: (212)614-6499
Email: kadidal@ccrjustice.org
ATTORNEY TO BE NOTICED

Susan Shanke Hu
Dontzin Nagy & Fleissig LLP
980 Madison Avenue
New York, NY 10075
212-717-2900
Email: shu@dnflp.com
TERMINATED: 09/05/2014

William Mattessich
Debevoise & Plimpton, LLP (NYC)
919 Third Avenue, 3rd Floor
New York, NY 10022
(212)-909-6431
Email: william.mattessich@usdoj.gov
TERMINATED: 06/14/2022

Plaintiff

Jameel Algibhah

represented by **Baher Azmy**
(See above for address)
ATTORNEY TO BE NOTICED

Christopher Sean Ford
(See above for address)
TERMINATED: 08/18/2015

Erol Nazim Gulay
(See above for address)
ATTORNEY TO BE NOTICED

Jennifer R. Cowan
(See above for address)
ATTORNEY TO BE NOTICED

Naz Ahmad
(See above for address)
ATTORNEY TO BE NOTICED

Ramzi Kassem
Main Street Legal Services, Inc.
City University of New York School of Law
2 Court Square West
Ste 5th Floor
Long Island City, NY 11101
718-340-4558
Fax: 718-340-4478
Email: ramzi.kassem@law.cuny.edu

TERMINATED: 06/27/2022

Rebecca Sue Hekman
(See above for address)
TERMINATED: 07/31/2015

Robert N. Shwartz
(See above for address)
ATTORNEY TO BE NOTICED

Rushmi Bhaskaran
(See above for address)
TERMINATED: 01/17/2019

William Mattessich
(See above for address)
TERMINATED: 06/14/2022

Plaintiff

Awais Sajjad

represented by **Baher Azmy**
(See above for address)
ATTORNEY TO BE NOTICED

Christopher Sean Ford
(See above for address)
TERMINATED: 08/18/2015

Erol Nazim Gulay
(See above for address)
ATTORNEY TO BE NOTICED

Jennifer R. Cowan
(See above for address)
ATTORNEY TO BE NOTICED

Naz Ahmad
(See above for address)
ATTORNEY TO BE NOTICED

Rebecca Sue Hekman
(See above for address)
TERMINATED: 07/31/2015

Robert N. Shwartz
(See above for address)
ATTORNEY TO BE NOTICED

Rushmi Bhaskaran
(See above for address)
TERMINATED: 01/17/2019

Plaintiff

Naveed Shinwari

represented by **Baher Azmy**
(See above for address)

ATTORNEY TO BE NOTICED

Christopher Sean Ford

(See above for address)

TERMINATED: 08/18/2015

Erol Nazim Gulay

(See above for address)

ATTORNEY TO BE NOTICED

Jennifer R. Cowan

(See above for address)

ATTORNEY TO BE NOTICED

Naz Ahmad

(See above for address)

ATTORNEY TO BE NOTICED

Ramzi Kassem

(See above for address)

TERMINATED: 06/27/2022

Rebecca Sue Hekman

(See above for address)

TERMINATED: 07/31/2015

Robert N. Shwartz

(See above for address)

ATTORNEY TO BE NOTICED

Rushmi Bhaskaran

(See above for address)

TERMINATED: 01/17/2019

William Mattessich

(See above for address)

TERMINATED: 06/14/2022

V.

Defendant

James Comey

Director, Federal Bureau of Investigation

represented by **Sarah Sheive Normand**

U.S. Attorney's Office, SDNY (86
Chambers St.)

86 Chambers Street

New York, NY 10007

(212) 637-2200

Fax: (212) 637-2686

Email: sarah.normand@usdoj.gov

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Jennifer Ellen Blain

United States Attorney Office, SDNY
One Saint Andrew's Plaza
New York, NY 10007
(212)637-2743
Fax: (212) 637-2730
Email: Ellen.Blain@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

Christopher M. Piehota
Director, Terrorist Screening Center

represented by **Sarah Sheive Normand**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer Ellen Blain
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Rand Beers
Acting Secretary, Department of Homeland Security
TERMINATED: 06/10/2015

represented by **Sarah Sheive Normand**
(See above for address)
LEAD ATTORNEY

Jennifer Ellen Blain
(See above for address)

Defendant

John S. Pistole
Administrator, Transportation Security Administration
TERMINATED: 04/22/2014

represented by **Sarah Sheive Normand**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer Ellen Blain
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

"John" Tanzin
Special Agent, FBI

represented by **Sarah Sheive Normand**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer Ellen Blain
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sanya Garcia
Special Agent FBI

represented by **Sarah Sheive Normand**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer Ellen Blain

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

John LNU
Special Agent, FBI

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

John Doe
Special Agent, FBI

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Eric H. Holder
TERMINATED: 06/10/2015

represented by **Jennifer Ellen Blain**
(See above for address)

Sarah Sheive Normand
(See above for address)

Defendant

Jeh C. Johnson

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Francisco Artousa

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Michael Rutkowski

represented by **Jennifer Ellen Blain**
(See above for address)

ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

William Gale

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

John C. Harley III

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Steven LNU

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michael LNU

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Gregg Grossoehmig

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand

JA-9

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Weysan Dun

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

James C. Langenberg

represented by **Jennifer Ellen Blain**
(See above for address)
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

John Does 1-9, 11-13

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

John Doe 10

represented by **Jennifer Ellen Blain**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sarah Sheive Normand
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Loretta E. Lynch

| Date Filed | # | Docket Text |
|------------|-------------------|---|
| 10/01/2013 | 1 | COMPLAINT against Rand Beers, James Comey, John Doe, Sanya Garcia, John LNU, Christopher M. Piehota, John S. Pistole, "John" Tanzin. (Filing Fee \$ 350.00, Receipt Number 465401078011)Document filed by Muhammad Tanvir.(cde) (Entered: 10/02/2013) |

JA-10

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|--|
| 10/01/2013 | | SUMMONS ISSUED as to Rand Beers, James Comey, John Doe, Sanya Garcia, John LNU, Christopher M. Piehota, John S. Pistole, "John" Tanzin. (cde) (Entered: 10/02/2013) |
| 10/01/2013 | | Magistrate Judge Ronald L. Ellis is so designated. (cde) (Entered: 10/02/2013) |
| 10/01/2013 | | Case Designated ECF. (cde) (Entered: 10/02/2013) |
| 10/03/2013 | 2 | ORDER AND NOTICE OF INITIAL CONFERENCE: Initial Conference set for 12/13/2013 at 03:45 PM in Courtroom 1506, 40 Centre Street, New York, NY 10007 before Judge Ronnie Abrams. By December 6, 2013, the parties are ordered to submit a joint letter, not to exceed 5 pages, providing the information further set forth in this Order. By December 6, 2013, the parties are ordered to jointly submit to the Court a proposed case management plan and scheduling order. Plaintiff is ordered to serve Defendants with a copy of this order and to file an affidavit on ECF certifying that such service has been effectuated. (Signed by Judge Ronnie Abrams on 10/3/2013) (tn) (Entered: 10/04/2013) |
| 10/05/2013 | 3 | NOTICE OF APPEARANCE by Ramzi Kassem on behalf of Muhammad Tanvir. (Kassem, Ramzi) (Entered: 10/05/2013) |
| 10/17/2013 | 4 | NOTICE OF APPEARANCE by Susan Shanke Hu on behalf of Muhammad Tanvir. (Hu, Susan) (Entered: 10/17/2013) |
| 12/03/2013 | 5 | NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of Rand Beers, James Comey, John Doe, Sanya Garcia, John LNU, Christopher M. Piehota, John S. Pistole, "John" Tanzin. (Normand, Sarah) (Entered: 12/03/2013) |
| 12/03/2013 | 6 | LETTER MOTION to Adjourn Conference addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 12/03/2013., LETTER MOTION for Extension of Time to File Answer addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 12/03/2013. Document filed by Rand Beers, James Comey, John Doe, Sanya Garcia, John LNU, Christopher M. Piehota, John S. Pistole, "John" Tanzin.(Normand, Sarah) (Entered: 12/03/2013) |
| 12/05/2013 | 7 | ORDER granting 6 Letter Motion to Adjourn Conference; granting 6 Letter Motion for Extension of Time to Answer re 1 Complaint. Application granted. The conference scheduled for December 13, 2013, is adjourned. After Plaintiff files his amended complaint, the parties shall submit a proposed Revised Scheduling Order as described above. Rand Beers answer due 3/31/2014; James Comey answer due 3/31/2014; Christopher M. Piehota answer due 3/31/2014. (Signed by Judge Ronnie Abrams on 12/5/2013) (cd) (Entered: 12/05/2013) |
| 12/05/2013 | 8 | NOTICE OF APPEARANCE by Diala Shamas on behalf of Muhammad Tanvir. (Shamas, Diala) (Entered: 12/05/2013) |
| 03/07/2014 | 9 | ORDER. The parties shall submit a joint status letter by March 21, 2014. That letter shall state a date by which Plaintiff seeks to file an amended complaint. (Signed by Judge Ronnie Abrams on 3/7/2014) (rjm) (Entered: 03/10/2014) |
| 03/21/2014 | 10 | STATUS REPORT. <i>Joint</i> Document filed by Rand Beers, James Comey, John Doe, Sanya Garcia, John LNU, Christopher M. Piehota, John S. Pistole, Muhammad Tanvir, "John" Tanzin.(Kassem, Ramzi) (Entered: 03/21/2014) |
| 03/24/2014 | 11 | MEMO ENDORSEMENT on re: 10 Status Report filed by James Comey, John LNU, Rand Beers, John Doe, Sanya Garcia, John S. Pistole, "John" Tanzin, Muhammad Tanvir, Christopher M. Piehota. ENDORSEMENT: Plaintiff shall file an amended complaint by April 22, 2014, and Defendants will have sixty days from the filing of any amended |

JA-11

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|--|
| | | complaint to respond. An initial pretrial conference is scheduled for 10:15 a.m. on June 27, 2014. By June 20, 2014, the parties shall file their pre conference submissions, which are described in the Court's October 3, 2013 Order. So ordered. (Amended Pleadings due by 4/22/2014.), (Initial Conference set for 6/27/2014 at 10:15 AM before Judge Ronnie Abrams.) (Signed by Judge Ronnie Abrams on 3/24/2014) (rjm) (Entered: 03/25/2014) |
| 04/22/2014 | 12 | NOTICE OF APPEARANCE by Robert N. Shwartz on behalf of Muhammad Tanvir, Jameel Algibhah, Naveed Shiwnari, Awais Sajjad. (Shwartz, Robert) (Entered: 04/22/2014) |
| 04/22/2014 | 13 | NOTICE OF APPEARANCE by Jennifer R. Cowan on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Cowan, Jennifer) (Entered: 04/22/2014) |
| 04/22/2014 | 14 | NOTICE OF APPEARANCE by Rushmi Bhaskaran on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Bhaskaran, Rushmi) (Entered: 04/22/2014) |
| 04/22/2014 | 15 | FIRST AMENDED COMPLAINT amending 1 Complaint against James Comey, Sanya Garcia, John LNU, Christopher M. Piehota, "John" Tanzin, Eric H. Holder, Jeh C. Johnson, Francisco Artousa, Michael Rutkowski, William Gale, John C. Harley III, Steven LNU, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, John Does 1-9, 11-13, John Doe 10. Document filed by Naveed Shiwnari, Jameel Algibhah, Muhammad Tanvir, Awais Sajjad. Related document: 1 Complaint filed by Muhammad Tanvir.(Shwartz, Robert) (Entered: 04/22/2014) |
| 04/23/2014 | 16 | ORDER. Plaintiff filed his Amended Complaint in this action on April 22, 2014, and by stipulation of the parties, Defendants have until June 23, 2014, to answer or otherwise respond. It is hereby: ORDERED that an initial pretrial conference is scheduled for 4:00 p.m. on July 11, 2014, in Courtroom 1506 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York. The parties' joint preconference submissions, described in the Court's October 3, 2013 Order, shall be due by July 3, 2014. Francisco Artousa answer due 6/23/2014; Rand Beers answer due 6/23/2014; James Comey answer due 6/23/2014; John Doe answer due 6/23/2014; John Doe 10 answer due 6/23/2014; John Does 1-9, 11-13 answer due 6/23/2014; Weysan Dun answer due 6/23/2014; William Gale answer due 6/23/2014; Sanya Garcia answer due 6/23/2014; Gregg Grossoehmig answer due 6/23/2014; John C. Harley III answer due 6/23/2014; Eric H. Holder answer due 6/23/2014; Jeh C. Johnson answer due 6/23/2014; John LNU answer due 6/23/2014; Michael LNU answer due 6/23/2014; Steven LNU answer due 6/23/2014; James C. Langenberg answer due 6/23/2014; Christopher M. Piehota answer due 6/23/2014; John S. Pistole answer due 6/23/2014; Michael Rutkowski answer due 6/23/2014; "John" Tanzin answer due 6/23/2014. (Initial Conference set for 7/11/2014 at 04:00 PM in Courtroom 1506, U.S. Courthouse, 40 Centre Street, New York, NY 10007 before Judge Ronnie Abrams.) (Signed by Judge Ronnie Abrams on 4/23/2014) (rjm) (Entered: 04/23/2014) |
| 06/02/2014 | 17 | REQUEST FOR ISSUANCE OF SUMMONS as to The United States of America; Eric H. Holder, Attorney General of the United States; Jeh C. Johnson, Secretary, Department of Homeland Security; Francisco Artousa, Special Agent, FBI; Michael Rutkowski, Special Agent, FBI; William Gale, Supervisory Special Agent, FBI; Gregg Grossoehmig, Special Agent, FBI; Weysan Dun, Special Agent In Charge, FBI; James C. Langenberg, Assistant Special Agent In Charge, FBI, re: 15 Amended Complaint,,. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Shwartz, Robert) (Entered: 06/02/2014) |
| 06/02/2014 | 18 | ELECTRONIC SUMMONS ISSUED as to Francisco Artousa, Weysan Dun, William Gale, Gregg Grossoehmig, Eric H. Holder, Jeh C. Johnson, James C. Langenberg, |

JA-12

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|---|
| | | Michael Rutkowski, U.S. Attorney and U.S. Attorney General. (jom) (Entered: 06/03/2014) |
| 06/11/2014 | 19 | REQUEST FOR ISSUANCE OF SUMMONS as to John C. Harley III, c/o Sarah S. Normand, re: 15 Amended Complaint,, Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Shwartz, Robert) (Entered: 06/11/2014) |
| 06/12/2014 | 20 | ELECTRONIC SUMMONS ISSUED as to John C. Harley III. (lcu) (Entered: 06/12/2014) |
| 06/19/2014 | 21 | LETTER MOTION for Extension of Time addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 06/19/14. Document filed by Francisco Artousa, Rand Beers, James Comey, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin.(Normand, Sarah) (Entered: 06/19/2014) |
| 06/20/2014 | 22 | NOTICE OF APPEARANCE by Erol Nazim Gulay on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Gulay, Erol) (Entered: 06/20/2014) |
| 06/20/2014 | 23 | LETTER MOTION to Adjourn Conference <i>Regarding Initial Pretrial Conference and in Response to Sarah S. Normand's Letter of June 19, 2014</i> addressed to Judge Ronnie Abrams from Robert N. Shwartz dated June 20, 2014. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 06/20/2014) |
| 06/20/2014 | 24 | ORDER granting 21 Letter Motion for Extension of Time: Application granted. The proposed briefing schedule is approved, and the pretrial conference scheduled for July 11, 2014 is adjourned to August 6, 2014 at 1:00 p.m. The parties' joint preconference submissions described in the Court's October 3, 2013 Order, shall be due by July 30, 2014. (Signed by Judge Ronnie Abrams on 6/20/2014) (tn) (Entered: 06/23/2014) |
| 06/20/2014 | | Set/Reset Deadlines: Motions due by 7/28/2014. Responses due by 9/29/2014. Replies due by 10/27/2014. (tn) (Entered: 06/23/2014) |
| 06/20/2014 | | Set/Reset Hearings: Initial Conference set for 8/6/2014 at 01:00 PM before Judge Ronnie Abrams. (tn) (Entered: 06/23/2014) |
| 07/03/2014 | 25 | FIRST LETTER MOTION to Adjourn Conference / <i>Initial Pretrial Conference to July 31, 2014 or such other date convenient to the Court /</i> addressed to Judge Ronnie Abrams from Rushmi Bhaskaran, et al. dated July 3, 2014. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. Return Date set for 8/6/2014 at 01:00 PM.(Bhaskaran, Rushmi) (Entered: 07/03/2014) |
| 07/08/2014 | 26 | ORDER granting 25 Letter Motion to Adjourn Conference. The conference is rescheduled to 5:15 p.m. on July 31, 2014. Submissions are due by 5 p.m. on July 30, 2014. Initial Conference set for 7/31/2014 at 05:15 PM before Judge Ronnie Abrams. (Signed by Judge Ronnie Abrams on 7/8/2014) (lmb) (Entered: 07/08/2014) |
| 07/23/2014 | 27 | NOTICE OF APPEARANCE by Baher Azmy on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Azmy, Baher) (Entered: 07/23/2014) |
| 07/23/2014 | 28 | LETTER MOTION for Leave to File Excess Pages <i>and Providing Status Update</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated July 23, 2014. Document filed by Francisco Artousa, Rand Beers, James Comey, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin.(Blain, Jennifer) (Entered: 07/23/2014) |

JA-13

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|--|
| 07/24/2014 | 29 | ORDER granting 28 Letter Motion for Leave to File Excess Pages. Application granted. So ordered. (Signed by Judge Ronnie Abrams on 7/24/2014) (rjm) (Entered: 07/25/2014) |
| 07/24/2014 | 30 | STIPULATION AND ORDER REGARDING JOHN DOE DEFENDANTS. Plaintiffs and Defendants, by their undersigned counsel, stipulate and agree as follows: The U.S. Attorney's Office shall accept service of process and file a Notice of Appearance as counsel for each of the following Defendants: a. "FNU" (first name unknown) Tanzin; b. John "LNU" (last name unknown); c. Steven "LNU" (last name unknown); d. Michael "LNU" (last name unknown); e. John Doe 1; f. John Doe 2 (who shall proceed for the next phase of this litigation as "John Doe 2/3"); g. John Doe 4; h. John Doe 5; i. John Doe 6; j. John Doe 9; k. John Doe 10; l. John Doe 11; m. John Doe 12; and n. John Doe 13, and as further set forth in this Stipulation and Order. (Signed by Judge Ronnie Abrams on 7/24/2014) (rjm) (Entered: 07/25/2014) |
| 07/25/2014 | 31 | REQUEST FOR ISSUANCE OF SUMMONS as to "FNU" Tanzin; John "LNU"; Steven "LNU"; Michael "LNU"; John Doe 1; John Doe 2/3; John Doe 4; John Doe 5; John Doe 6; John Doe 9; John Doe 10; John Doe 11; John Doe 12; John Doe 13, re: 15 Amended Complaint,,. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Shwartz, Robert) (Entered: 07/25/2014) |
| 07/28/2014 | 32 | ELECTRONIC SUMMONS ISSUED as to John Doe, John Doe 10, John Does 1-9, 11-13, John LNU, Michael LNU, Steven LNU, "John" Tanzin. (laq) (Entered: 07/28/2014) |
| 07/28/2014 | 33 | NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 07/28/2014) |
| 07/28/2014 | 34 | MOTION to Dismiss for Lack of Jurisdiction . Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. Responses due by 9/29/2014(Normand, Sarah) (Entered: 07/28/2014) |
| 07/28/2014 | 35 | NOTICE OF APPEARANCE by Jennifer Ellen Blain on behalf of Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 36 | DECLARATION of Deborah Moore in Support re: 34 MOTION to Dismiss for Lack of Jurisdiction .. Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Normand, Sarah) (Entered: 07/28/2014) |
| 07/28/2014 | 37 | MEMORANDUM OF LAW in Support re: 34 MOTION to Dismiss for Lack of Jurisdiction . . Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, |

JA-14

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|---|
| | | Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 07/28/2014) |
| 07/28/2014 | 38 | MOTION to Dismiss . Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin.(Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 39 | MEMORANDUM OF LAW in Support re: 38 MOTION to Dismiss . . Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 40 | DECLARATION of Deborah Moore in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 41 | DECLARATION of Sarah S. Normand in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 42 | DECLARATION of John Doe 1 in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 43 | DECLARATION of John Doe 6 in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 44 | DECLARATION of Weysan Dun in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 45 | DECLARATION of Gregg Grossoehmig in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 46 | DECLARATION of John C. Harley, III in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |

JA-15

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|---|
| 07/28/2014 | 47 | DECLARATION of James Langenberg in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 48 | DECLARATION of Michael LNU in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 49 | DECLARATION of Steven LNU in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/28/2014 | 50 | DECLARATION of John Doe 12 in Support re: 38 MOTION to Dismiss .. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 07/28/2014) |
| 07/30/2014 | 51 | LETTER addressed to Judge Ronnie Abrams from Robert N. Shwartz and Sarah S. Normand dated July 30, 2014 re: Joint Status Letter. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 07/30/2014) |
| 07/30/2014 | 52 | AFFIDAVIT OF SERVICE of Summons and Amended Complaint,, John Doe 10 served on 7/28/2014, answer due 6/23/2014; John Does 1-9, 11-13 served on 7/28/2014, answer due 6/23/2014; John LNU served on 7/28/2014, answer due 6/23/2014; Michael LNU served on 7/28/2014, answer due 6/23/2014; Steven LNU served on 7/28/2014, answer due 6/23/2014; "John" Tanzin served on 7/28/2014, answer due 6/23/2014. Service was accepted by Lisa Ahearn, Civil Clerk at the U.S. Attorney's Office. Document filed by Naveed Shiwnari; Muhammad Tanvir; Awais Sajjad; Jameel Algibbah. (Shwartz, Robert) (Entered: 07/30/2014) |
| 07/31/2014 | | Minute Entry for proceedings held before Judge Ronnie Abrams: Initial Pretrial Conference held on 7/31/2014. (arc) (Entered: 08/01/2014) |
| 08/11/2014 | 53 | LETTER addressed to Judge Ronnie Abrams from Rushmi Bhaskaran dated 08/11/2014 re: Plaintiffs write to inform the Court that they will not, at this time, seek leave to amend the First Amended Complaint. Document filed by Muhammad Tanvir.(Bhaskaran, Rushmi) (Entered: 08/11/2014) |
| 08/19/2014 | 54 | LETTER MOTION for Extension of Time to <i>Serve Defendants John Doe 7 and John Doe 8</i> addressed to Judge Ronnie Abrams from Robert N. Shwartz dated August 19th, 2014. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 08/19/2014) |
| 08/20/2014 | 55 | ORDER granting 54 Letter Motion for Extension of Time: APPLICATION GRANTED. (Signed by Judge Ronnie Abrams on 8/20/2014) (tn) (Entered: 08/20/2014) |
| 08/25/2014 | 56 | LETTER MOTION for Local Rule 37.2 Conference <i>and Order permitting Plaintiffs to take limited jurisdictional discovery from eight Defendants</i> addressed to Judge Ronnie Abrams from Robert N. Shwartz dated August 25, 2014. Document filed by Jameel |

JA-16

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|--|
| | | Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 08/25/2014) |
| 08/26/2014 | 57 | LETTER MOTION for Extension of Time to File Response/Reply to <i>Plaintiff's August 25, 2014, Letter-Motion</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated August 26, 2014. Document filed by John Does 1-9, 11-13, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Michael LNU, Steven LNU, James C. Langenberg. (Blain, Jennifer) (Entered: 08/26/2014) |
| 08/26/2014 | 58 | ORDER granting 57 Letter Motion for Extension of Time to File Response/Reply re 57 LETTER MOTION for Extension of Time to File Response/Reply to <i>Plaintiff's August 25, 2014, Letter-Motion</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated August 26, 2014. Application Granted. SO ORDERED. Responses due by 9/2/2014. (Signed by Judge Ronnie Abrams on 8/26/2014) (ama) (Entered: 08/26/2014) |
| 08/29/2014 | 59 | NOTICE OF APPEARANCE by Christopher Sean Ford on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Ford, Christopher) (Entered: 08/29/2014) |
| 08/29/2014 | 60 | NOTICE OF APPEARANCE by Rebecca Sue Hekman on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Hekman, Rebecca) (Entered: 08/29/2014) |
| 08/29/2014 | 61 | NOTICE of Withdrawal of Representation. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Hu, Susan) (Entered: 08/29/2014) |
| 09/02/2014 | 62 | LETTER addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated September 2, 2014 re: Plaintiffs' August 25, 2014, Letter-motion. Document filed by John Does 1-9, 11-13, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Michael LNU, Steven LNU, James C. Langenberg.(Blain, Jennifer) (Entered: 09/02/2014) |
| 09/04/2014 | 63 | LETTER addressed to Judge Ronnie Abrams from Robert N. Shwartz of Debevoise & Plimpton LLP dated 9/4/14 re: jurisdictional discovery. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 09/04/2014) |
| 09/05/2014 | 64 | MEMO ENDORSEMENT on re: 61 Notice (Other) filed by Awais Sajjad, Muhammad Tanvir, Naveed Shiwnari, Jameel Algibhah. ENDORSEMENT: The Clerk of Court is respectfully requested to remove Ms. Hu as counsel of record in this case. SO ORDERED. Attorney Susan Shanke Hu terminated. (Signed by Judge Ronnie Abrams on 9/5/2014) (ajs) (Entered: 09/05/2014) |
| 09/05/2014 | 65 | LETTER RESPONSE in Opposition to Motion addressed to Judge Ronnie Abrams from AUSAs Sarah S. Normand and Ellen Blain dated 09/05/14 re: 56 LETTER MOTION for Local Rule 37.2 Conference <i>and Order permitting Plaintiffs to take limited jurisdictional discovery from eight Defendants</i> addressed to Judge Ronnie Abrams from Robert N. Shwartz dated August 25, 2014. . Document filed by John Does 1-9, 11-13, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Michael LNU, Steven LNU, James C. Langenberg. (Normand, Sarah) (Entered: 09/05/2014) |
| 09/09/2014 | 66 | ORDER granting 56 Letter Motion for Local Rule 37.2 Conference. As set forth within, it is hereby ORDERED that a conference is scheduled for 11 a.m. on September 16, 2014 in Courtroom 1506 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. SO ORDERED. Status Conference set for 9/16/2014 at 11:00 AM in Courtroom 1506, 40 Centre Street, New York, NY 10007 before Judge Ronnie Abrams. (Signed by Judge Ronnie Abrams on 9/9/2014) (ajs) (Entered: 09/10/2014) |

| | | |
|------------|--------------------|---|
| 09/16/2014 | | Minute Entry for proceedings held before Judge Ronnie Abrams: Status Conference held on 9/16/2014. (Court Reporter Sam Mauro) (arc) (Entered: 09/16/2014) |
| 09/22/2014 | 67 | LETTER MOTION for Extension of Time <i>re Defendants' Motion to Dismiss</i> addressed to Judge Ronnie Abrams from Robert N. Shwartz dated September 22, 2014. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 09/22/2014) |
| 09/23/2014 | 68 | MEMO ENDORSED ORDER granting 67 Letter Motion for Extension of Time. ENDORSEMENT: SO ORDERED. (Signed by Judge Ronnie Abrams on 9/23/2014) (ajs) (Entered: 09/23/2014) |
| 09/23/2014 | | Set/Reset Deadlines: Responses due by 11/13/2014. Replies due by 12/18/2014. (ajs) (Entered: 09/23/2014) |
| 09/24/2014 | 69 | TRANSCRIPT of Proceedings re: ARGUMENT held on 9/16/2014 before Judge Ronnie Abrams. Court Reporter/Transcriber: Samuel Mauro, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/20/2014. Redacted Transcript Deadline set for 10/30/2014. Release of Transcript Restriction set for 12/29/2014. (McGuirk, Kelly) (Entered: 09/24/2014) |
| 09/24/2014 | 70 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a ARGUMENT proceeding held on 9/16/2014 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 09/24/2014) |
| 11/12/2014 | 71 | LETTER MOTION for Leave to File Excess Pages <i>re Plaintiffs' opposition to Defendants' two motions to dismiss</i> addressed to Judge Ronnie Abrams from Rushmi Bhaskaran dated November 12, 2014. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Bhaskaran, Rushmi) (Entered: 11/12/2014) |
| 11/13/2014 | 72 | ORDER granting 71 Letter Motion for Leave to File Excess Pages. APPLICATION GRANTED. SO ORDERED. (Signed by Judge Ronnie Abrams on 11/13/2014) (ajs) (Entered: 11/13/2014) |
| 11/13/2014 | 73 | MEMORANDUM OF LAW in Opposition re: 34 MOTION to Dismiss for Lack of Jurisdiction ., 38 MOTION to Dismiss . <i>Plaintiffs' Memorandum of Law In Opposition to Defendants' Motions to Dismiss</i> . Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Shwartz, Robert) (Entered: 11/13/2014) |
| 11/13/2014 | 74 | DECLARATION of Rushmi Bhaskaran in Opposition re: 34 MOTION to Dismiss for Lack of Jurisdiction ., 38 MOTION to Dismiss .. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Attachments: # 1 Exhibit A, # 2 Exhibit B (Part 1 of 5), # 3 Exhibit B (Part 2 of 5), # 4 Exhibit B (Part 3 of 5), # 5 Exhibit B (Part 4 of 5), # 6 Exhibit B (Part 5 of 5), # 7 Exhibit C, # 8 Exhibit D (Part 1 of 6), # 9 Exhibit D (Part 2 of 6), # 10 Exhibit D (Part 3 of 6), # 11 Exhibit D (Part 4 of 6), # 12 Exhibit D (Part 5 of 6), # 13 Exhibit D (Part 6 of 6), # 14 Exhibit E, # 15 Exhibit F, # 16 Exhibit G, # 17 Exhibit H, # 18 Exhibit I (Part 1 of 4), # 19 Exhibit I (Part 2 of 4), # 20 Exhibit I (Part 3 of 4), # 21 Exhibit I (Part 4 of 4), # 22 Exhibit J, # 23 Exhibit K, # 24 Exhibit L, # 25 Exhibit M)(Bhaskaran, Rushmi) (Entered: 11/13/2014) |
| 12/03/2014 | 75 | LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 12/03/2014. Document filed by |

JA-18

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|--------------------|---|
| | | Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 12/03/2014) |
| 12/03/2014 | 76 | ORDER granting 75 Letter Motion for Extension of Time to File Response/Reply. APPLICATION GRANTED. SO ORDERED. Replies due by 1/22/2015. (Signed by Judge Ronnie Abrams on 12/3/2014) (ajs) (Entered: 12/03/2014) |
| 12/17/2014 | 77 | LETTER MOTION for Extension of Time <i>to serve Defendants John Doe 7 and John Doe 8</i> addressed to Judge Ronnie Abrams from Erol N. Gulay dated December 17, 2014. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir. (Gulay, Erol) (Entered: 12/17/2014) |
| 12/18/2014 | 78 | ORDER granting 77 Letter Motion for Extension of Time. The deadline to serve John Does 7 and 8 is extended through 30 days after the pending motions to dismiss. SO ORDERED. (Signed by Judge Ronnie Abrams on 12/18/2014) (ajs) (Entered: 12/19/2014) |
| 01/21/2015 | 79 | LETTER MOTION for Leave to File Excess Pages <i>in Support of Motions to Dismiss</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated January 21, 2015. Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin.(Blain, Jennifer) (Entered: 01/21/2015) |
| 01/21/2015 | 80 | ORDER granting 79 Letter Motion for Leave to File Excess Pages for Defendants' respective reply memoranda of law in further support of their coordinated motions to dismiss the amended complaint. APPLICATION GRANTED. (Signed by Judge Ronnie Abrams on 1/21/2015) (spo) (Entered: 01/21/2015) |
| 01/22/2015 | 81 | REPLY MEMORANDUM OF LAW in Support re: 34 MOTION to Dismiss for Lack of Jurisdiction . . Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 01/22/2015) |
| 01/22/2015 | 82 | REPLY MEMORANDUM OF LAW in Support re: 38 MOTION to Dismiss . . Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Blain, Jennifer) (Entered: 01/22/2015) |
| 01/29/2015 | 83 | LETTER MOTION for Conference re: 34 MOTION to Dismiss for Lack of Jurisdiction ., 38 MOTION to Dismiss . //Letter from Robert N. Shwartz of Debevoise & Plimpton LLP to the Honorable Judge Abrams requesting that the Court schedule oral argument on the Defendants' motions to dismiss addressed to Judge Ronnie Abrams from Robert N. Shwartz dated 1/29/15. Document filed by Jameel Algibhah, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 01/29/2015) |
| 04/08/2015 | 84 | ORDER granting 83 Letter Motion for Conference. Application granted. Oral argument is scheduled for May 14, 2015 at 10:30 a.m. SO ORDERED. Oral Argument set for 5/14/2015 at 10:30 AM before Judge Ronnie Abrams. (Signed by Judge Ronnie Abrams on 4/8/2015) (ajs) (Entered: 04/09/2015) |

| | | |
|------------|--------------------|--|
| 04/13/2015 | 85 | NOTICE of Revised Redress Procedures. Document filed by James Comey, Eric H. Holder, Jeh C. Johnson, Christopher M. Piehota. (Normand, Sarah) (Entered: 04/13/2015) |
| 04/16/2015 | 86 | LETTER MOTION to Adjourn Conference / <i>Oral Argument</i> addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 04/16/15. Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 04/16/2015) |
| 04/16/2015 | 87 | ORDER granting 86 LETTER MOTION to Adjourn Conference/Oral Argument addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 04/16/15. Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. Application granted. Oral argument is adjourned until June 12, 2015 at 2:00 p.m. So ordered. (Oral Argument set for 6/12/2015 at 02:00 PM before Judge Ronnie Abrams). (Signed by Judge Ronnie Abrams on 4/16/2015) (rjm) (Entered: 04/17/2015) |
| 05/04/2015 | 88 | LETTER addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated May 4, 2015 re: Status Update. Document filed by James Comey, Eric H. Holder, Jeh C. Johnson, Christopher M. Piehota, John S. Pistole. (Attachments: # 1 Supplement Courtesy Copy) (Blain, Jennifer) (Entered: 05/04/2015) |
| 06/01/2015 | 89 | MOTION to Stay <i>Official Capacity Claims</i> . Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin.(Normand, Sarah) (Entered: 06/01/2015) |
| 06/01/2015 | 90 | MEMORANDUM OF LAW in Support re: 89 MOTION to Stay <i>Official Capacity Claims</i> . . Document filed by Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Christopher M. Piehota, John S. Pistole, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 06/01/2015) |
| 06/03/2015 | 91 | LETTER addressed to Judge Ronnie Abrams from Rushmi Bhaskaran dated June 3, 2015 re: Response to the Government's June 1, 2015 Motion for a Limited Stay of Proceedings with Regard to Plaintiffs' Official Capacity Claims. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Bhaskaran, Rushmi) (Entered: 06/03/2015) |
| 06/10/2015 | 92 | LETTER addressed to Judge Ronnie Abrams from Robert N. Shwartz dated June 10, 2015 re: withdrawing Plaintiffs' opposition to the Government's Motion for a Limited Stay of Proceedings, and consenting to a stay. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 06/10/2015) |
| 06/10/2015 | 93 | ORDER deferring ruling on 34 Motion to Dismiss for Lack of Jurisdiction; granting 89 Motion to Stay. In view of the foregoing, Defendant's motion for a stay of the Official Capacity Claims is GRANTED. The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 89 and stay the motion pending at Dkt. 34. Oral argument on Defendants' motion to dismiss the claims made against them in their personal capacities, |

| | | |
|------------|---------------------|--|
| | | see Dkt. 39, will proceed as scheduled on June 12, 2015 at 2 p.m. in Courtroom 1506, 40 Foley Square. SO ORDERED. (Signed by Judge Ronnie Abrams on 6/10/2015) (ajs) (Entered: 06/10/2015) |
| 06/12/2015 | | Minute Entry for proceedings held before Judge Ronnie Abrams: Oral Argument held on 6/12/2015 re: 38 MOTION to Dismiss . filed by John LNU, John Doe, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, John Doe 10, Sanya Garcia, "John" Tanzin, William Gale, Francisco Artousa, Steven LNU, Michael LNU, Michael Rutkowski. (Court Reporter Sabrina Demidio) (arc) (Entered: 06/12/2015) |
| 06/29/2015 | 94 | TRANSCRIPT of Proceedings re: hearing held on 6/12/2015 before Judge Ronnie Abrams. Court Reporter/Transcriber: Sabrina D'Emidio, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/23/2015. Redacted Transcript Deadline set for 8/3/2015. Release of Transcript Restriction set for 10/1/2015. (McGuirk, Kelly) (Entered: 06/29/2015) |
| 06/29/2015 | 95 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a HEARING proceeding held on 6/12/2015 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days...(McGuirk, Kelly) (Entered: 06/29/2015) |
| 07/06/2015 | 96 | LETTER addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated 07/06/15 re: Second Circuit's Decision in Turkmen v. Hasty. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin. (Normand, Sarah) (Entered: 07/06/2015) |
| 07/14/2015 | 97 | LETTER addressed to Judge Ronnie Abrams from Diala Shamas dated July 14, 2015 re: Second Circuit's Decision in Turkmen v. Hasty. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shamas, Diala) (Entered: 07/14/2015) |
| 07/14/2015 | 98 | LETTER addressed to Judge Ronnie Abrams from Robert N. Shwartz dated 7/14/15 re: Post Argument Letter. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 07/14/2015) |
| 07/31/2015 | 99 | LETTER addressed to Judge Ronnie Abrams from Rebecca S. Hekman dated July 31, 2015 re: Withdrawal of RS Hekman from case. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Hekman, Rebecca) (Entered: 07/31/2015) |
| 07/31/2015 | 100 | LETTER addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated July 31, 2015 re: Plaintiffs' July 14, 2015, Letters. Document filed by Francisco Artousa, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Michael Rutkowski, "John" Tanzin.(Blain, Jennifer) (Entered: 07/31/2015) |
| 07/31/2015 | 101 | MEMO ENDORSEMENT on re: 99 Letter filed by Awais Sajjad, Muhammad Tanvir, Naveed Shiwnari, Jameel Algibhah, re: Withdrawal of RS Hekman from case. |

| | | |
|------------|---------------------|---|
| | | ENDORSEMENT: SO ORDERED. Attorney Rebecca Sue Hekman terminated. (Signed by Judge Ronnie Abrams on 7/31/2015) (ajs) (Entered: 07/31/2015) |
| 08/14/2015 | 102 | LETTER addressed to Judge Ronnie Abrams from Christopher S. Ford dated August 14, 2015 re: Withdrawal of Christopher S. Ford. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shiwnari, Muhammad Tanvir.(Ford, Christopher) (Entered: 08/14/2015) |
| 08/18/2015 | 103 | MEMO ENDORSEMENT on re: 102 Letter filed by Awais Sajjad, Muhammad Tanvir, Naveed Shiwnari, Jameel Algibbah, re: Withdrawal of Christopher S. Ford. ENDORSEMENT: SO ORDERED. Attorney Christopher Sean Ford terminated. (Signed by Judge Ronnie Abrams on 8/18/2015) (ajs) (Entered: 08/18/2015) |
| 09/03/2015 | 104 | OPINION & ORDER #105808 re: 38 MOTION to Dismiss filed by John LNU, John Doe, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, John Doe 10, Sanya Garcia, "John" Tanzin, William Gale, Francisco Artousa, Steven LNU, Michael LNU, Michael Rutkowski. Although federal law imposes limits on the investigative tactics federal officials may employ in seeking to keep this nation safe, it also establishes limits on the manner in which an individual may vindicate his rights should those tactics cross the line. For the reasons stated, the law does not permit Plaintiffs to seek damages against the Agents in their personal capacities either under Bivens or RFRA. Accordingly, the Agents' motion to dismiss is GRANTED and the claims against FNU Tanzin, Sanya Garcia, Francisco Artusa, John LNU, Michael Rutowski, William Gale, John C. Harley III, Steven LNU, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, John Does 1-6 and 9-13 in their personal capacities are dismissed. The Court on its own motion also dismisses all personal capacity claims against John Does 7 and 8. See Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 26 n.6 (2d Cir. 1990). As previously noted, this opinion does not address the viability of Plaintiffs' official capacity claims and thus expresses no opinion on the merits of their arguments concerning the manner in which individuals are added to the No Fly List or the mechanisms for challenging such inclusion. The parties are directed to submit a joint letter to the Court within 30 days advising how they wish to proceed with respect to those claims. (As further set forth in this Order.) (Signed by Judge Ronnie Abrams on 9/3/2015) (kko) Modified on 9/3/2015 (soh). (Entered: 09/03/2015) |
| 10/05/2015 | 105 | LETTER addressed to Judge Ronnie Abrams from Robert N. Shwartz dated October 5, 2015 re: official capacity claims. Document filed by Jameel Algibbah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir.(Shwartz, Robert) (Entered: 10/05/2015) |
| 12/14/2015 | 106 | MEMO ENDORSEMENT on re: 105 Letter re: Official capacity claims, filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibbah. ENDORSEMENT: On December 11, 2015, the Second Circuit Court of Appeals denied a petition to rehear en bane the panel decision in Turkmen v. Hasty, on which this Court relied in its September 3, 2015 Opinion & Order. In light of this development, the parties shall submit a joint letter no later than December 18, 2015 indicating whether they still plan to submit a proposed order and judgment to the Court and, if so, when they expect to make such a submission. So ordered. (Signed by Judge Ronnie Abrams on 12/14/2015) (spo) (Entered: 12/15/2015) |
| 12/18/2015 | 107 | NOTICE OF APPEARANCE by Naz Ahmad on behalf of Jameel Algibbah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir. (Ahmad, Naz) (Entered: 12/18/2015) |
| 12/18/2015 | 108 | LETTER addressed to Judge Ronnie Abrams from Shayana Kadidal dated 12/18/2015 re: Joint letter submitting competing proposed orders and judgments from Plaintiffs and Defendants. Document filed by Jameel Algibbah, Francisco Artousa, Rand Beers, James Comey, John Doe, John Doe 10, John Does 1-9, 11-13, Weysan Dun, William Gale, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, Eric H. Holder, Jeh C. Johnson, John LNU, Michael LNU, Steven LNU, James C. Langenberg, Loretta E. Lynch, |

| | | |
|------------|---------------------|---|
| | | Christopher M. Piehota, John S. Pistole, Michael Rutkowski, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir, "John" Tanzin. (Attachments: # 1 Plaintiffs' proposed order, # 2 Government's proposed order)(Kadidal, Shayana) (Entered: 12/18/2015) |
| 12/28/2015 | 109 | ORDER: The Court agrees with Defendants that Plaintiffs' proposed order is unnecessarily overinclusive. To the extent members of the public seek information regarding why Plaintiffs agreed to voluntarily dismiss their official capacity claims without prejudice, they may review the December 18 letter and other filings made in this lawsuit. The Court currently takes no position regarding the viability of Plaintiffs' possible motion for attorneys' fees and costs. Because the parties agree that Plaintiffs' official capacity claims against Defendants may be dismissed without prejudice, the Court so dismisses them. The Clerk of Court is respectfully directed to enter final judgment in favor of Defendants. Plaintiffs may have until January 29, 2016 to move for attorneys' fees and costs. If no motion is filed by that date, this action will be terminated on the docket. (As further set forth in this Order.) (Signed by Judge Ronnie Abrams on 12/28/2015) (spo) (Entered: 12/28/2015) |
| 01/29/2016 | 110 | NOTICE of (letter responding to Dec. 28, 2015 order of Court setting deadline for Plaintiffs to move for attorneys' fees and costs). Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir. (Kadidal, Shayana) (Entered: 01/29/2016) |
| 02/01/2016 | 111 | ORDER: On September 3, 2015, the Court dismissed Plaintiffs' individual capacity claims against Defendants FNU Tanzin, Sanya Garcia, Francisco Artusa, John LNU, Michael Rutkowski, William Gale, John C. Harley III, Steven LNU, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, and John Does 1-13. See Dkt. 104. On December 28, 2015, the Court-on consent of the parties-dismissed without prejudice Plaintiffs' remaining official capacity claims. See Dkt. 109. The December 28 Order noted that unless Plaintiffs moved for attorneys' fees and costs by January 29, 2016, "this action will be terminated on the docket." Id. at 3. On January 29, 2016, Plaintiffs informed the Court that they "will not seek an award of fees and costs at this stage of the litigation." Dkt. 110. The Clerk of Court is accordingly respectfully directed to enter final judgment in favor of Defendants and to terminate this action. (Signed by Judge Ronnie Abrams on 2/1/2016) (cf) (Entered: 02/01/2016) |
| 02/01/2016 | | Terminate Transcript Deadlines (cf) (Entered: 02/01/2016) |
| 02/01/2016 | | Transmission to Judgments and Orders Clerk. Transmitted re: 111 Order to the Judgments and Orders Clerk. (cf) (Entered: 02/16/2016) |
| 02/17/2016 | 112 | CLERK'S JUDGMENT: That for the reasons stated in the Court's Order dated February 1, 2016, final judgment is hereby entered in favor of Defendants and the action is terminated. (Signed by Clerk of Court Ruby Krajick on 2/17/2016) (Attachments: # 1 Notice of Right to Appeal, # 2 Notice of Right to Appeal)(dt) (Entered: 02/17/2016) |
| 04/18/2016 | 113 | NOTICE OF APPEAL from 112 Clerk's Judgment,. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir. Filing fee \$ 505.00, receipt number 0208-12196892. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # 1 Exhibit A - 2-17-16 Judgment)(Cowan, Jennifer) (Entered: 04/18/2016) |
| 04/18/2016 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 113 Notice of Appeal,. (nd) (Entered: 04/18/2016) |
| 04/18/2016 | | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 113 Notice of Appeal, filed by Awais Sajjad, Muhammad Tanvir, |

| | | |
|------------|---------------------|--|
| | | Naveed Shinwari, Jameel Algibhah were transmitted to the U.S. Court of Appeals. (nd) (Entered: 04/18/2016) |
| 05/02/2018 | 114 | OPINION of USCA (Certified) as to 113 Notice of Appeal, filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. USCA Case Number 16-1176. For the reasons stated in the attached opinion, we reverse the judgment of the District Court and remand for further proceedings. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 05/02/2018. (nd) (Entered: 05/02/2018) |
| 05/02/2018 | | Transmission of USCA Opinion to the District Judge re: 114 USCA Opinion. (nd) (Entered: 05/02/2018) |
| 06/25/2018 | 115 | AMENDED OPINION of USCA (Certified) as to 113 Notice of Appeal, filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. USCA Case Number 16-1176. PlaintiffsAppellants Muhammad Tanvir, Jameel Algibah, and Naveed Shinwari ("Plaintiffs") appeal from a February 17, 2016 final judgment of the United States District Court for the Southern District of New York (Abrams, J.), dismissing their complaint against senior federal law enforcement officials and 25 named and unnamed federal law enforcement officers. The complaint alleged, inter alia, that in retaliation for Plaintiffs' refusal to serve as informants, federal officers improperly placed or retained Plaintiffs' names on the "No Fly List," in violation of Plaintiffs' rights under the First Amendment and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq. ("RFRA"). The complaint sought (1) injunctive and declaratory relief against all defendants in their official capacities for various constitutional and statutory violations, and (2) compensatory and punitive damages from federal law enforcement officers in their individual capacities for violations of their rights under the First Amendment and RFRA. After the parties agreed to stay the official capacity claims, the district court dismissed Plaintiffs' individual capacity claims. As relevant here, the district court held that RFRA does not permit the recovery of money damages against federal officers sued in their individual capacities. Plaintiffs appeal that RFRA determination only. Because we disagree with the district court, and hold that RFRA permits a plaintiff to recover money damages against federal officers sued in their individual capacities for violations of RFRA's substantive protections, we reverse the district court's judgment and remand for further proceedings. REVERSED and REMANDED.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Certified: 06/25/2018. (nd) (Entered: 06/25/2018) |
| 01/16/2019 | 116 | LETTER addressed to Judge Ronnie Abrams from Rushmi Bhaskaran dated January 16, 2019 re: withdrawal as counsel for Plaintiffs. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir.(Bhaskaran, Rushmi) (Entered: 01/16/2019) |
| 01/17/2019 | 117 | MEMO ENDORSEMENT on re: 116 Letter filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. ENDORSEMENT: SO ORDERED. (Attorney Rushmi Bhaskaran terminated.) (Signed by Judge Ronnie Abrams on 1/17/2019) (rro) (Entered: 01/17/2019) |
| 02/19/2020 | 118 | Supreme Court Record Request as to 113 Notice of Appeal, filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. USCA Case Number 16-1176; SCUS Case Number 19-0071. (tp) (Entered: 02/20/2020) |
| 02/20/2020 | | Appeal Record Sent to SCUS (Electronic File). Certified Indexed record on Appeal Electronic Files for 118 Appeal Remark USCA Case Number 16-1176; SCUS Case Number 19-0071, were transmitted to the Supreme Court of the United States. (tp) Modified on 2/20/2020 (tp). (Entered: 02/20/2020) |
| 06/16/2021 | 119 | MANDATE of USCA (Certified Copy) as to 113 Notice of Appeal, filed by Awais Sajjad, Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. USCA Case Number 16-1176. IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the |

JA-24

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|---------------------|---|
| | | district court is REVERSED. The case is REMANDED for further proceedings consistent with this Courts opinion.. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate: 06/16/2021. (Attachments: # 1 Opinion).(nd) (Entered: 06/16/2021) |
| 06/16/2021 | | Transmission of USCA Mandate to the District Judge re: 119 USCA Mandate,..(nd) (Entered: 06/16/2021) |
| 06/17/2021 | 120 | ORDER: Yesterday, the Second Circuit mandate issued in this action, remanding and reinvesting this Court with jurisdiction over this matter. No later than July 16, 2021, the parties shall meet and confer, and submit to the Court a joint letter proposing next steps for this litigation. SO ORDERED. (Signed by Judge Ronnie Abrams on 6/17/2021) (vfr) (Entered: 06/17/2021) |
| 07/16/2021 | 121 | LETTER addressed to Judge Ronnie Abrams from AUSAs Sarah S. Normand and Ellen Blain dated July 16, 2021 re: Joint Proposal for Next Steps and Proposed Briefing Schedule. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 07/16/2021) |
| 07/19/2021 | 122 | MEMO ENDORSEMENT on re: 121 Letter, filed by John LNU, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Sanya Garcia, "John" Tanzin, Francisco Artousa, Michael LNU, Steven LNU. ENDORSEMENT: Application GRANTED. SO ORDERED. (Motions due by 10/8/2021., Responses due by 12/17/2021, Replies due by 1/28/2022.) (Signed by Judge Ronnie Abrams on 7/19/2021) (rro) (Entered: 07/19/2021) |
| 10/05/2021 | 123 | LETTER MOTION for Leave to File Excess Pages <i>On Consent</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated October 5, 2021. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Blain, Jennifer) (Entered: 10/05/2021) |
| 10/07/2021 | 124 | LETTER MOTION for Extension of Time <i>On Consent</i> addressed to Judge Ronnie Abrams from AUSA Ellen Blain dated October 7, 2021. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Blain, Jennifer) (Entered: 10/07/2021) |
| 10/07/2021 | 125 | ORDER granting 124 Letter Motion for Extension of Time. Application granted. SO ORDERED. (Signed by Judge Ronnie Abrams on 10/7/2021) (ks) (Entered: 10/07/2021) |
| 10/07/2021 | | Set/Reset Deadlines: Responses due by 12/24/2021 Replies due by 2/4/2022. (ks) (Entered: 10/07/2021) |
| 10/07/2021 | 126 | ORDER granting 123 Letter Motion for Leave to File Excess Pages. Application granted. SO ORDER. (Signed by Judge Ronnie Abrams on 10/7/2021) (ate) (Entered: 10/07/2021) |
| 10/15/2021 | 127 | SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 10/15/2021) |
| 10/15/2021 | 128 | MEMORANDUM OF LAW in Support re: 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . . Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 10/15/2021) |

| | | |
|------------|---------------------|---|
| 11/11/2021 | 129 | LETTER MOTION for Extension of Time to File Response/Reply as to 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . addressed to Judge Ronnie Abrams from Jennifer R. Cowan dated November 11, 2021. Document filed by Jameel Algibhah, Naveed Shinwari, Muhammad Tanvir..(Cowan, Jennifer) (Entered: 11/11/2021) |
| 11/12/2021 | 130 | ORDER granting 129 Letter Motion for Extension of Time to File Response/Reply re 129 LETTER MOTION for Extension of Time to File Response/Reply as to 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . addressed to Judge Ronnie Abrams from Jennife. Application granted. SO ORDERED. (Signed by Judge Ronnie Abrams on 11/12/2021) Responses due by 2/11/2022 Replies due by 3/31/2022. (ks) (Entered: 11/12/2021) |
| 02/02/2022 | 131 | SECOND LETTER MOTION for Extension of Time to File <i>Opposition to Mtn Dismiss</i> addressed to Judge Ronnie Abrams from Baher Azmy dated 02/02.2022. Document filed by Jameel Algibhah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir..(Azmy, Baher) (Entered: 02/02/2022) |
| 02/03/2022 | 132 | ORDER granting 131 Letter Motion for Extension of Time. Application granted. SO ORDERED. (Signed by Judge Ronnie Abrams on 2/3/2022) (ate) (Entered: 02/03/2022) |
| 02/03/2022 | | Set/Reset Deadlines: Responses due by 2/25/2022. Replies due by 4/29/2022. (ate) (Entered: 02/03/2022) |
| 02/25/2022 | 133 | MEMORANDUM OF LAW in Opposition re: 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint. / Plaintiffs' Memorandum of Law in Opposition to Defendants' Renewed Motion to Dismiss</i> . Document filed by Jameel Algibhah, Naveed Shinwari, Muhammad Tanvir.. (Cowan, Jennifer) (Entered: 02/25/2022) |
| 04/27/2022 | 134 | LETTER MOTION for Leave to File Excess Pages <i>for reply memorandum of law in further support of Agents' motion to dismiss</i> addressed to Judge Ronnie Abrams from AUSAs Sarah S. Normand and Ellen Blain dated April 27, 2022. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 04/27/2022) |
| 04/28/2022 | 135 | ORDER granting 134 Letter Motion for Leave to File Excess Pages. Application granted. SO ORDERED. (Signed by Judge Ronnie Abrams on 4/28/2022) (ate) (Entered: 04/28/2022) |
| 04/29/2022 | 136 | REPLY MEMORANDUM OF LAW in Support re: 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . . Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Blain, Jennifer) (Entered: 04/29/2022) |
| 05/18/2022 | 137 | ORDER: The Court intends to hold oral argument on the Individual Defendants' motion to dismiss the First Amended Complaint. By May 23, 2022, the parties shall submit a letter to the Court indicating their availability for argument the weeks of May 30, June 6, and June 13. Unless a request is made to hold argument remotely, the Court will hear argument in person. SO ORDERED. (Signed by Judge Ronnie Abrams on 5/18/2022) (vfr) (Entered: 05/18/2022) |
| 05/21/2022 | 138 | LETTER addressed to Judge Ronnie Abrams from AUSA Sarah S. Normand dated May 21, 2022 re: Counsel's Availability for Oral Argument on the Individual Defendants' Motion to Dismiss the First Amended Complaint. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley |

JA-26

7/24/23, 3:03 PM

SDNY CM/ECF NextGen Version 1.7

| | | |
|------------|---------------------|--|
| | | III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin.. (Normand, Sarah) (Entered: 05/21/2022) |
| 05/23/2022 | 139 | MEMO ENDORSEMENT on re: 138 Letter, filed by John LNU, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Sanya Garcia, "John" Tanzin, Francisco Artousa, Michael LNU, Steven LNU. ENDORSEMENT: The Court will hear oral argument on June 14, 2022 at 10:00 a.m. Argument will be held in Courtroom 1506 of the Thurgood Marshall United States Courthouse. SO ORDERED. (Oral Argument set for 6/14/2022 at 10:00 AM in Courtroom 1506, 40 Centre Street, New York, NY 10007 before Judge Ronnie Abrams.) (Signed by Judge Ronnie Abrams on 5/23/2022) (kv) (Entered: 05/23/2022) |
| 06/10/2022 | 140 | MOTION for William Mattessich to Withdraw as Attorney . Document filed by Jameel Algebhah, Naveed Shinwari, Muhammad Tanvir..(Mattessich, William) (Entered: 06/10/2022) |
| 06/14/2022 | | Minute Entry for proceedings held before Judge Ronnie Abrams: Oral Argument held on 6/14/2022 re: 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . filed by John LNU, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Sanya Garcia, "John" Tanzin, Francisco Artousa, Michael LNU, Steven LNU. (Court Reporter Steven Greenblum) (arc) (Entered: 06/14/2022) |
| 06/14/2022 | 141 | ORDER granting 140 Motion to Withdraw as Attorney. Application granted. The Clerk of Court is respectfully directed to terminate Mr. Mattessich from the docket. SO ORDERED.. (Signed by Judge Ronnie Abrams on 6/14/2022) Attorney William Mattessich terminated (ks) (Entered: 06/14/2022) |
| 06/26/2022 | 142 | MOTION for Ramzi Kassem to Withdraw as Attorney <i>for Plaintiffs</i> . Document filed by Jameel Algebhah, Naveed Shinwari, Muhammad Tanvir..(Kassem, Ramzi) (Entered: 06/26/2022) |
| 06/27/2022 | 143 | MEMO ENDORSEMENT granting 142 Motion to Withdraw as Attorney. ENDORSEMENT: Application granted. The Clerk of Court is respectfully directed to remove Mr. Kassem from the docket. Attorney Ramzi Kassem terminated. (Signed by Judge Ronnie Abrams on 6/27/2022) (ate) (Entered: 06/27/2022) |
| 06/28/2022 | 144 | LETTER addressed to Judge Ronnie Abrams from AUSA Sarah Normand dated June 28, 2022 re: Decision of the Second Circuit Court of Appeals in Sabir v. Williams. Document filed by Francisco Artousa, John Doe, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 06/28/2022) |
| 07/05/2022 | 145 | TRANSCRIPT of Proceedings re: CONFERENCE held on 6/14/2022 before Judge Ronnie Abrams. Court Reporter/Transcriber: Steven Greenblum, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/26/2022. Redacted Transcript Deadline set for 8/5/2022. Release of Transcript Restriction set for 10/3/2022.. (McGuirk, Kelly) (Entered: 07/05/2022) |
| 07/05/2022 | 146 | NOTICE OF FILING OF OFFICIAL TRANSCRIPT Notice is hereby given that an official transcript of a CONFERENCE proceeding held on 6/14/2022 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically |

| | | |
|------------|---------------------|--|
| | | available to the public without redaction after 90 calendar days....(McGuirk, Kelly) (Entered: 07/05/2022) |
| 07/06/2022 | 147 | LETTER addressed to Judge Ronnie Abrams from Naz Ahmad dated July 6, 2022 re: Decision of the Second Circuit in Sabir v. Williams. Document filed by Jameel Algibhah, Naveed Shinwari, Muhammad Tanvir..(Ahmad, Naz) (Entered: 07/06/2022) |
| 07/08/2022 | 148 | LETTER addressed to Judge Ronnie Abrams from AUSAs Sarah S. Normand and Ellen Blain dated July 8, 2022 re: reply to plaintiffs' letter of July 6, 2022, re Sabir v. Williams. Document filed by Francisco Artousa, John Does 1-9, 11-13, Weysan Dun, Sanya Garcia, Gregg Grossoehmig, John C. Harley III, John LNU, Michael LNU, Steven LNU, James C. Langenberg, "John" Tanzin..(Normand, Sarah) (Entered: 07/08/2022) |
| 02/24/2023 | 149 | OPINION AND ORDER re: 127 SECOND MOTION to Dismiss <i>the Remaining Claims Against the Individual Defendants in the First Amended Complaint</i> . filed by John LNU, John Does 1-9, 11-13, James C. Langenberg, Weysan Dun, Gregg Grossoehmig, John C. Harley III, Sanya Garcia, "John" Tanzin, Francisco Artousa, Michael LNU, Steven LNU. For the foregoing reasons, Defendants' motion to dismiss is granted. The Clerk of Court is respectfully directed to terminate the motions pending at docket entry 127, and to close this action. SO ORDERED. (Signed by Judge Ronnie Abrams on 2/24/2023) (tg) (Entered: 02/24/2023) |
| 04/25/2023 | 150 | NOTICE OF CHANGE OF ADDRESS by Erol Nazim Gulay on behalf of Jameel Algibhah, Awais Sajjad, Naveed Shinwari, Muhammad Tanvir. New Address: Debevoise & Plimpton LLP, 66 Hudson Boulevard, New York, New York, USA 10001, (212) 909-6000..(Gulay, Erol) (Entered: 04/25/2023) |
| 04/25/2023 | 151 | NOTICE OF APPEAL from 149 Memorandum & Opinion,.. Document filed by Jameel Algibhah, Naveed Shinwari, Muhammad Tanvir. Form C and Form D are due within 14 days to the Court of Appeals, Second Circuit. (Attachments: # 1 Exhibit February 24, 2023 Opinion and Order).(Ahmad, Naz) (Entered: 04/25/2023) |
| 04/25/2023 | | Appeal Fee Due: for 151 Notice of Appeal,.\$505.00 Appeal fee due by 5/9/2023..(nd) (Entered: 04/25/2023) |
| 04/25/2023 | | Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 151 Notice of Appeal,..(nd) (Entered: 04/25/2023) |
| 04/25/2023 | | Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 151 Notice of Appeal, filed by Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah were transmitted to the U.S. Court of Appeals..(nd) (Entered: 04/25/2023) |
| 04/26/2023 | | USCA Appeal Fees received \$ 505.00 receipt number 15483 on 4/26/2023 re: 151 Notice of Appeal, filed by Muhammad Tanvir, Naveed Shinwari, Jameel Algibhah. (tp) (Entered: 04/26/2023) |

| | | | |
|-----------------------------|------------------|-------------------------|------------------|
| PACER Service Center | | | |
| Transaction Receipt | | | |
| 07/24/2023 15:03:22 | | | |
| PACER Login: | phpappeals10east | Client Code: | |
| Description: | Docket Report | Search Criteria: | 1:13-cv-06951-RA |
| Billable Pages: | 26 | Cost: | 2.60 |

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUHAMMAD TANVIR; JAMEEL
ALGIBHAH; NAVEED SHINWARI;
AWAIS SAJJAD,

Plaintiffs,

v.

ERIC H. HOLDER, ATTORNEY GENERAL
OF THE UNITED STATES; JAMES
COMEY, DIRECTOR, FEDERAL BUREAU
OF INVESTIGATION; CHRISTOPHER M.
PIEHOTA, DIRECTOR, TERRORIST
SCREENING CENTER; JEH C. JOHNSON,
SECRETARY, DEPARTMENT OF
HOMELAND SECURITY; "FNU" TANZIN,
SPECIAL AGENT, FBI; SANYA GARCIA,
SPECIAL AGENT, FBI; FRANCISCO
ARTOUSA, SPECIAL AGENT, FBI; JOHN
"LNU", SPECIAL AGENT, FBI; MICHAEL
RUTKOWSKI, SPECIAL AGENT, FBI;
WILLIAM GALE, SUPERVISORY SPECIAL
AGENT, FBI; JOHN C. HARLEY III,
SPECIAL AGENT, FBI; STEVEN "LNU",
SPECIAL AGENT, FBI; MICHAEL "LNU",
SPECIAL AGENT, FBI; GREGG
GROSSOEHMIG, SPECIAL AGENT, FBI;
WEYSAN DUN, SPECIAL AGENT IN
CHARGE, FBI; JAMES C. LANGENBERG,
ASSISTANT SPECIAL AGENT IN
CHARGE, FBI; "JOHN DOES 1-9, 11-13",
SPECIAL AGENTS, FBI; "JOHN DOE 10",
SPECIAL AGENT, DHS,

Defendants.

FIRST AMENDED COMPLAINT

Case No. 13-CV-6951

ECF Case

INTRODUCTION

1. In retaliation for the exercise of their constitutional rights, the United States government has deprived Plaintiffs Muhammad Tanvir, Jameel Algibhah, Naveed Shinwari and Awais Sajjad of their right to travel freely and wrongly stigmatized them without justification and without due process of law by placing them on the No Fly List.
2. The No Fly List is supposed to be limited to individuals who are determined to be such significant threats to aviation safety that it is too dangerous to allow them on any commercial flight to, from or over the United States regardless of the extent of pre-boarding searches.
3. Instead, shielded from public and, to a large extent, judicial scrutiny, and lacking effective controls and supervision, the No Fly List has swelled to approximately 21,000 names as of February 2012, including approximately 500 United States citizens and an unknown number of lawful permanent residents. On information and belief, the number of people on the No Fly List is even larger today.
4. Plaintiffs are among the many innocent people who find themselves swept up in the United States government's secretive watch list dragnet. Defendants have used the No Fly List to punish and retaliate against Plaintiffs for exercising their constitutional rights. Plaintiffs declined to act as informants for the Federal Bureau of Investigation ("FBI") and to spy on their own American Muslim communities and other innocent people.
5. Inclusion on the No Fly List severely burdens Plaintiffs and significantly interferes with their constitutional right to travel freely. Plaintiffs, like the thousands of other individuals on the No Fly List, lack any effective due process protections to challenge their

placement on the No Fly List and the deprivation of their constitutional rights that results from that placement.

6. The Attorney General of the United States, the Secretary of the Department of Homeland Security (“DHS”), and the directors of the FBI and Terrorist Screening Center (“TSC”), (collectively, the “Agency Defendants”) each play a part in creating, maintaining, implementing and supervising the No Fly List.
7. The Agency Defendants have not articulated or published any meaningful standards or criteria governing the placement of individuals on the No Fly List. Defendants have not informed any Plaintiff of the basis for his inclusion on the No Fly List. Defendants have even denied the Plaintiffs after-the-fact explanations for their inclusion on the List or an opportunity to contest their inclusion before an impartial decision-maker.
8. Certain FBI Special Agents and other government agents (collectively, the “Special Agent Defendants”), identified below, exploited the significant burdens imposed by the No Fly List, its opaque nature and ill-defined standards, and its lack of procedural safeguards, in an attempt to coerce Plaintiffs into serving as informants within their American Muslim communities and places of worship. The Special Agent Defendants retaliated against Plaintiffs by placing or retaining them on the No Fly List when they refused to serve as informants.
9. Because of institutional and supervisory pressure to increase the number of confidential informants in American Muslim communities, FBI agents, including the Special Agent Defendants, have used the No Fly List to retaliate against and coerce individuals in these communities who, like Plaintiffs, have refused to become informants but do not pose a threat to aviation safety.

10. The Agency Defendants tolerated and failed to remedy a pattern and practice among FBI and other United States government Special Agents, including the Special Agent Defendants, of unlawfully exploiting the lack of due process surrounding the No Fly List to retaliate against individuals, including Plaintiffs, who exercised their constitutional rights.
11. In order to vindicate their rights, Plaintiffs seek declaratory, injunctive and monetary relief under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702, 706; the Religious Freedom Restoration Act of 1993 (“RFRA”), 42 U.S.C. § 2000bb *et seq.*; and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiffs seek, *inter alia*, (i) to remove their names from the United States government’s “No Fly List,” (ii) declaratory and injunctive relief against the individuals who placed or kept them on the No Fly List without cause and in retaliation for their assertion of constitutional rights in refusing to serve as informants, (iii) declaratory and injunctive relief against the government officials responsible for maintaining a No Fly List that lacks due process and permits misuse, and (iv) monetary relief for damages they suffered as a result of their placement and maintenance on the No Fly List because they refused to act as informants for the FBI.

JURISDICTION AND VENUE

12. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; the RFRA, 42 U.S.C. § 2000bb-1(c); and the APA, 5 U.S.C. § 702. This Court has the authority to compel agency action that has been unlawfully withheld or unreasonably delayed, and to hold unlawful and set aside agency actions

under 5 U.S.C. § 706. Monetary damages are available pursuant to RFRA, 42 U.S.C. § 2000bb-1(c), and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

13. This Court is a proper venue for this action pursuant to 28 U.S.C. § 1391(e)(1) because Defendants are officers and employees of the United States or its agencies operating under color of law, and a substantial part of the events or omissions giving rise to the claims have occurred and are occurring in this judicial district.

PARTIES

14. Plaintiff Muhammad Tanvir is a lawful permanent resident of the United States whose most recent residence in the United States was in Corona, Queens, New York. Mr. Tanvir is Muslim. Mr. Tanvir was placed on the No Fly List after he declined multiple requests by FBI agents to serve as an informant in his Muslim community. He declined to do so because it would have violated his sincerely held religious beliefs. He also felt that he had no relevant information to share. After he learned that he had been placed on the No Fly List, he was told to contact the same FBI agents to clear up what he presumed was an error that led to his placement on the No Fly List. Instead, the FBI agents offered to help him get off the List—but only in exchange for relaying information about his community. Mr. Tanvir again refused. Mr. Tanvir does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.
15. Plaintiff Jameel Algibhah is a United States citizen who resides in the Bronx, New York. Mr. Algibhah is a Muslim. Mr. Algibhah was placed on the No Fly List after he declined a request from FBI agents to attend certain mosques, to act “extremist,” and to participate in online Islamic forums and report back to the FBI agents. After Mr. Algibhah learned

that he was on the No Fly List, the same FBI agents again visited him, telling him that only they could remove his name from the No Fly List if he agreed to act as an informant. Mr. Algibhah again exercised his constitutional right to refuse to become an informant and he remains on the No Fly List. Because of his placement on the No Fly List, Mr. Algibhah has been unable to visit his wife and three young daughters in Yemen since 2009. Mr. Algibhah does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.

16. Plaintiff Naveed Shinwari is a lawful permanent resident of the United States who resides in West Haven, Connecticut. Mr. Shinwari is a Muslim. Mr. Shinwari was placed or maintained on the No Fly List after he refused a request from FBI agents to be an informant on his Muslim community. Subsequently, he was prevented from boarding a flight to Orlando, Florida, where he had found work. Following his placement on the No Fly List, the same FBI agents approached Mr. Shinwari, told him they were aware of his inability to board his flight, and again asked him to work as an informant. Mr. Shinwari again refused. Because of his placement on the No Fly List, Mr. Shinwari's work has been disrupted and he has been unable to visit his wife and family in Afghanistan since 2012. Mr. Shinwari does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.
17. Plaintiff Awais Sajjad is a lawful permanent resident of the United States who resides in Jersey City, New Jersey. Mr. Sajjad is a Muslim. Mr. Sajjad was prevented from flying because he was on the No Fly List. After he sought to be removed from the List, he was approached by FBI agents and subjected to extensive interrogation, including a polygraph test, after which he was asked to work as an informant for the FBI. Mr. Sajjad had no

relevant information to share, so he refused. Because of his placement on the No Fly List, Mr. Sajjad has been unable to visit his family in Pakistan, including his ailing 93-year old grandmother, since February 2012. Mr. Sajjad does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.

18. Defendant Eric H. Holder, Jr. is the Attorney General of the United States and the head of the United States Department of Justice, which oversees the FBI. In turn, the FBI administers the TSC, which is tasked with maintaining the No Fly List. All of the Plaintiffs were pressured to become informants and placed on the No Fly List by FBI Special Agents. Defendant Holder is sued in his official capacity.
19. Defendant James B. Comey is the Director of the FBI. The FBI administers the TSC. The FBI is also one of the agencies empowered to “nominate” individuals for placement on the No Fly List. If an individual who has been placed on the No Fly List challenges his or her inclusion on the List, the FBI coordinates with the TSC to determine whether the individual should remain on the List. The FBI also has an ongoing responsibility to notify the TSC of any changes that could affect the validity or reliability of information used to “nominate” someone to the No Fly List. All of the Plaintiffs were pressured to become informants by FBI Special Agents. Defendant Comey is sued in his official capacity.
20. Defendant Christopher M. Piehota is the Director of the TSC. The TSC is responsible for coordinating the government’s approach to terrorism screening and the dissemination of information collected in the Terrorist Screening Database (“TSDB”), which is used in the terrorism screening process. The TSC is responsible for reviewing and accepting nominations to the No Fly List from agencies, including the FBI and for maintaining the

List. The TSC is responsible for making the final determination whether to add or remove an individual from the No Fly List. Defendant Piehota is sued in his official capacity.

21. Defendant Jeh C. Johnson is the Secretary of Homeland Security and serves as the head of the Department of Homeland Security (“DHS”). The DHS is responsible for developing and coordinating the implementation of a comprehensive strategy to protect the United States from threats and attacks. The DHS is additionally charged with establishing and implementing the Traveler Redress Inquiry Program (“TRIP”) redress procedures for individuals, which is the sole and wholly inadequate mechanism for, *inter alia*, filing a complaint about placement on the No Fly List. Defendant Johnson is sued in his official capacity.
22. Defendant “FNU” (first name unknown) Tanzin is a Special Agent with the FBI.¹ He is sued in his individual and official capacity.
23. Defendant Sanya Garcia is a Special Agent with the FBI.² She is sued in her individual and official capacity.
24. Defendant John “LNU” (last name unknown) is a Special Agent with the FBI. He is sued in his individual and official capacity.
25. Defendant Francisco Artousa is a Special Agent with the FBI. He is sued in his individual and official capacity.³

¹ Possible alternative spellings could include “Tanzen,” “Tenzin,” or “Tenzen.” Also, it is unclear whether Tanzin is the agent’s first or last name.

² Possible alternative spellings could include “Sania,” “Sonya,” or “Sonia.”

³ Possible alternative designations could be “Frankie” or “Frank,” and possible alternative spelling of his last name “Artusa.”

26. Defendant Michael Rutkowski is a Special Agent with the FBI.⁴ He is sued in his individual and official capacity.
27. Defendant William Gale is a Supervisory Special Agent with the FBI. He is being sued in his individual and official capacity.
28. Defendant John C. Harley III is a Special Agent with the FBI. He is sued in his individual and official capacity.
29. Defendant Steven LNU (last name unknown) is a Special Agent with the FBI. He is sued in his individual and official capacity.
30. Defendant Michael LNU (last name unknown) is a Special Agent with the FBI. He is sued in his individual and official capacity.
31. Defendant Gregg Grosseohmig is a Special Agent with the FBI. He is sued in his individual and official capacity.
32. Special Agent in Charge Weysan Dun is a Special Agent with the FBI. He is sued in his individual and official capacity.
33. Assistant Special Agent in Charge James C. Langenberg is a Special Agent with the FBI. He is sued in his individual and official capacity.
34. Defendants “John Doe” 1 through 9 and 11 through 13 are Special Agents with the FBI. They are sued in their individual and official capacities.
35. Defendant “John Doe” 10 is an Agent with DHS. He is sued in his individual and official capacity.

⁴ Possible alternative spellings could include “Rotkowski.”

FACTUAL ALLEGATIONS**The FBI's Use of Informants in American Muslim Communities**

36. In the past twelve years, the FBI has engaged in widespread targeting of American Muslim communities for surveillance and intelligence-gathering. These law enforcement policies and practices have included the aggressive recruitment and deployment of informants, known as “Confidential Human Sources,” in American Muslim communities, organizations, and houses of worship.
37. Since 2001, FBI recruitment of informants has significantly expanded. A November 2004 Presidential Directive required an increase in “human source development and management.” In 2007, then-Deputy Director of the FBI John Pistole testified before the United States Senate Select Committee on Intelligence that in response to this directive, the FBI “will encourage [Special Agents] to open and operate new Human Sources.” The FBI’s 2008 fiscal year budget authorization request included funding for a program to track and manage the growing number of such informants. Many of these informants are recruited from and deployed among American Muslim communities.
38. To recruit informants, FBI agents often resort to exploiting individual vulnerabilities. FBI agents have threatened American Muslims with interfering with their immigration status, or offered to assist with their immigration status – practices that are prohibited under the Attorney General’s Guidelines Regarding the Use of Confidential Human Sources, which states: “No promises can be made, except by the United States Department of Homeland Security, regarding the alien status of any person or the right of any person to enter or remain in the United States.” American Muslims have also been

threatened with prosecution, often on minor, non-violent charges, if they refuse to become informants.

39. However improper these practices may be, they differ in kind from the increasingly common abuse challenged in this lawsuit: retaliation against those who refuse to become informants by placing them on the No Fly List. Withholding immigration benefits or bringing criminal charges against American Muslims can be challenged and resolved under known legal standards through procedurally adequate administrative or judicial proceedings. Unlike those situations, the No Fly List operates under unknown standards and a vague set of criteria with a process that provides no opportunity to learn of the purported bases for placement on the List or to respond to such claims. This secretive process is conducted with no impartial determination on the merits, and without regard to the possibly retaliatory or unduly coercive motives of the field agents who place people on the No Fly List.

The No Fly List

40. The TSC, which is administered principally by the FBI, develops and maintains the TSDB, which includes the No Fly List. The TSDB is the federal government's centralized database that includes information about all individuals who are supposedly known to be or reasonably suspected of being involved in terrorist activity. The TSC maintains and controls the Database and shares the information in it (including the names of individuals on the No Fly List) with federal, state, and local law enforcement agencies. The TSC also provides the No Fly List to the Transportation Security Administration ("TSA") and to airline representatives, which screen individual passengers before boarding, as well as to cooperating foreign governments for use by their agencies.

41. The FBI is one of the primary agencies responsible for making “nominations” to the TSDB, though a number of other federal agencies may also “nominate” individuals. To be nominated for inclusion in the TSDB, there is supposed to be “reasonable suspicion” that the individual is a “known or suspected terrorist.” It is up to each nominating agency to interpret this definition and decide when a person meets the “reasonable suspicion” standard for being a known or suspected terrorist and should be nominated to the Database. The TSC makes the final decision on whether an individual should be placed on the No Fly List.
42. To be properly placed on the No Fly List, an individual must not only be a “known or suspected terrorist,” but there must be some additional “derogatory information” demonstrating that the person “pose[s] a threat of committing a terrorist act with respect to an aircraft.”
43. Beyond this, little information about the No Fly List has been made public, including its exact size. The government refuses to publish or otherwise disclose the standard or criteria for inclusion on the No Fly List or what additional “derogatory information” is sufficient to deprive someone of their ability to fly on commercial airlines.
44. Inclusion on the No Fly List imposes severe and onerous consequences on individuals. Individuals on the No Fly List are indefinitely barred from boarding an aircraft for flights that originate from, terminate in, or pass over the United States.
45. The TSDB also includes other watch lists, which identify people who are subject to less severe and intrusive restrictions. For example, individuals on the Selectee List are subject to extensive pre-boarding physical screening but are allowed to travel by air. The very existence of the Selectee List, which is not the subject of a challenge in this lawsuit,

implicitly reflects the government's recognition that the No Fly List, with its much more restrictive effect, is supposed to be limited to individuals who present so great a threat to aviation safety that no degree of pre-boarding examination and inspection is sufficient to obviate the perceived threat.

46. Absent a meaningful articulated standard for inclusion on the No Fly List and an adequate set of procedural safeguards, the government has broadened the grounds for inclusion on the No Fly List at least twice: in February 2008 and again in May 2010, according to an audit report published in March 2014 by the Office of the Inspector General of the United States Department of Justice (the "OIG Report").
47. Despite the narrow purpose intended for the No Fly List, it has grown significantly in recent years. Upon information and belief, in 2009, there were approximately 3,400 individuals on the No Fly List and by February 2012, over 21,000 people were on it. Moreover, on information and belief, the TSC rarely rejects any of the names proposed for the TSDB. The entire TSDB reportedly contained 875,000 names as of May 2013.
48. According to the OIG Report, the TSC itself has found that shortly after the attempted attack on a Northwest Airlines flight on December 25, 2009, many individuals were temporarily placed on the No Fly List who did not qualify for inclusion on it.
49. It is unknown how many of the approximately 21,000 individuals on the No Fly List have been added in error. In a recent case, a federal district court found that a professor was added to the No Fly List because an FBI agent checked the wrong boxes on the nominating form. *Ibrahim v. Dep't of Homeland Security*, No. 3:06-cv-0545 (WHA), *Notice of Compliance with Court's February 3, 2014 Order* (attaching *Findings of Fact, Conclusions of Law, and Order for Relief*), at 9 (N.D. Cal. Feb. 6, 2014). Despite this

admitted ministerial mistake, the government refused to confirm that the professor had been removed from the List until being ordered to do so by the court eight years later.

50. When the TSC provides the No Fly List to the TSA for use in pre-screening airline passengers on commercial flights, the TSA receives certain identifying information for individuals on the No Fly List, including name and date of birth, but not any of the information based upon which that person's name was included on the No Fly List.
51. The fact that an individual is on the No Fly List is provided to, or accessible by, airline personnel who process an individual's request for a boarding pass.
52. The TSA screens travelers by conducting a name-based search of a passenger prior to boarding. This search is conducted when an individual attempts to obtain a boarding pass, not when the individual purchases a ticket. If an individual is on the No Fly List, he or she will be allowed to purchase a ticket but then will be denied boarding.
53. Upon information and belief, airlines generally do not provide refunds or reimbursement for tickets when a purchaser is denied boarding because of their inclusion on the No Fly List.

Waivers and Redress Process

54. No one—not even United States citizens or lawful permanent or temporary alien residents—receives notice when they are added to the TSDB or the No Fly List. Individuals effectively learn of their placement on the No Fly List when they are denied a boarding pass at the airport by airline representatives who, after identifying an individual's name on the No Fly List, are frequently joined by TSA agents or other airport security or law enforcement personnel.

55. There is no formal process for seeking a waiver to allow an individual on the No Fly List to fly but, upon information and belief, occasionally after being denied the right to board a flight, United States citizens and lawful permanent residents stranded abroad have been granted permission to board a single flight to the United States. These waivers are typically obtained after the individual who is on the No Fly List reaches out to legal counsel, consular officers or other United States government officials for assistance after being prevented from boarding their flight back to the United States from a foreign country.
56. The OIG Report found that a host of challenges—including poor recordkeeping practices and the complex, multiparty nature of the No Fly List’s administration—makes ensuring the removal of individuals from the No Fly List extremely difficult.
57. Individuals added to the No Fly List have no procedurally adequate notice and opportunity to be heard or to challenge their placement. The only avenue available to individuals who have been barred from flying is the TRIP program. DHS is responsible for the TRIP procedures and the administrative appeals from such determinations.
58. If the name of the individual seeking redress is an exact or near match to a name on the No Fly List, DHS submits the TRIP inquiry to the TSC, which makes the final decision as to whether any action should be taken. The TSC’s process for making this determination is entirely secret. There is no hearing or other opportunity for the aggrieved individual to participate. The TSC has refused to provide any information about the standards it uses or how it makes such decisions, other than to state that during its review the TSC “coordinates with” the agency that originally nominated the individual to be included in

the TSDB. Once the TSC makes a final determination regarding a particular individual's status on the No Fly List, the TSC advises DHS of its decision.

59. DHS will neither confirm nor deny the existence of any No Fly List records relating to an individual. Instead, DHS sends a letter to the TRIP applicant stating whether or not any such records related to the individual have been "modified." The letter does not state how the government has resolved the complaint and does not state whether an individual remains on the No Fly List or will be permitted to fly in the future.
60. Appeal from the TRIP determination is a similarly secret process and, in the end, the appellant is still not told whether they remain on the No Fly List. Thus, the only "process" available to individuals who are prohibited from boarding commercial flights is to submit their names and other identifying information and hope that an unspecified government agency corrects an error or changes its mind. Because the TRIP process never clearly informs the individual of the outcome, they only learn if they are still on the No Fly List by purchasing another airline ticket and trying to travel again.
61. After the TRIP administrative appellate process is complete, there is no way to request a reassessment of the basis for inclusion on the No Fly List nor, upon information and belief, is there any automatic periodic review process to reassess whether any changed circumstances warrant removal of an individual from the No Fly List.
62. As a general matter of policy, the United States government will never voluntarily confirm in writing that a person is on or off the No Fly List, even if individual federal officers or airline employees have told an individual that they cannot board a flight because they are on the List.

Abuse of the No Fly List to Pressure Individuals to Become Informants

63. The processes related to the No Fly List promulgated and maintained by the Agency Defendants—from “nomination” to implementation to redress—are shrouded in secrecy and ripe for abuse.
64. The Special Agent Defendants have exploited these flaws and used the No Fly List to coerce Plaintiffs to become informants for the FBI, not for the stated purpose of keeping extremely dangerous individuals from flying on commercial airlines. This impermissible abuse of the No Fly List has forced Plaintiffs to choose between their constitutionally-protected right to travel, on the one hand, and their First Amendment rights on the other.
65. Many American Muslims, like many other Americans, and many followers of other religions, have sincerely held religious and other objections against becoming informants in their own communities, particularly when they are asked to inform on the communities as a whole rather than specific individuals reasonably suspected of wrongdoing. Acting as an informant would require them to lie and would interfere with their ability to associate with other members of their communities on their own terms. For these American Muslims, the exercise of Islamic tenets precludes spying on the private lives of others in their communities.
66. The FBI uses the No Fly List to coerce American Muslims into becoming informants and to retaliate against them when they exercise constitutionally protected rights.
67. Upon information and belief, the Agency Defendants promulgated, encouraged and tolerated a pattern and practice of aggressively recruiting and deploying informants in American Muslim communities, which the Special Agent Defendants implemented by

exploiting the unarticulated and vague standards and the lack of procedural safeguards pertaining to the No Fly List.

Plaintiff Muhammad Tanvir

68. Plaintiff Muhammad Tanvir is a lawful permanent resident of the United States whose most recent residence in the United States was in Corona, Queens, New York. He has been married since March 2, 2006. Mr. Tanvir's wife, son, and parents live in Pakistan. Mr. Tanvir has never been convicted of a crime or arrested. Mr. Tanvir does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.
69. In early February 2007, Mr. Tanvir was approached by the FBI at his workplace, a 99-cent store in the Bronx. FBI Special Agent Defendant FNU Tanzin and another FBI agent, Defendant "John Doe #1," questioned Mr. Tanvir there for approximately thirty minutes. They asked him about an old acquaintance whom the FBI agents believed had attempted to enter the United States illegally.
70. Two days later, Mr. Tanvir received a phone call from Agent Tanzin. He was asked what people in the Muslim community generally discussed, and whether there was anything that he knew about within the American Muslim community that he "could share" with the FBI. Mr. Tanvir said that he did not know of anything that would concern law enforcement.
71. In July 2008, Mr. Tanvir visited his wife and family in Pakistan. In late December 2008, Mr. Tanvir returned to New York. At the airport, Mr. Tanvir was escorted by United States government agents off the airplane. Mr. Tanvir's baggage was searched, and he was escorted by the agents to a waiting room where he waited for five hours before the agents confiscated his passport. Mr. Tanvir was eventually allowed to enter the United

States, but the government officials retained his passport and gave him a January 28, 2009 appointment with DHS to pick it up.

72. Shortly after this experience, FBI agents resumed their attempts to recruit Mr. Tanvir to work for them as an informant.
73. On January 26, 2009, a few days before Mr. Tanvir was scheduled to pick up his passport from DHS, Agent Tanzin and another FBI Special Agent, Defendant “John Doe #2,” came to see Mr. Tanvir at his new workplace, a different store in Queens. The FBI agents asked Mr. Tanvir to come with them to Manhattan.
74. Mr. Tanvir agreed to accompany the agents, and was driven by the agents from Queens to the FBI’s New York offices at 26 Federal Plaza in Manhattan.
75. At 26 Federal Plaza, Mr. Tanvir was brought into an interrogation room and questioned for approximately an hour. The FBI agents asked Mr. Tanvir about terrorist training camps near the village where he was raised, and whether he had any Taliban training. The agents also referred to the fact that at his previous job as a construction worker, Tanvir would rappel from higher floors while other workers would cheer him on. They asked him where he learned how to climb ropes. Mr. Tanvir responded that he never attended any training camps and did not know the whereabouts of any such camps. He also explained to the FBI agents that he grew up in a rural area, where he regularly climbed trees and developed rope-climbing skills.
76. Towards the end of the interrogation, the FBI agents told Mr. Tanvir they recognized that he was “special,” “honest,” and “a hardworking person.” They told him that they wanted him to work for them as an informant. In particular, the agents asked him to travel to Pakistan and work as an informant. The agents offered Mr. Tanvir incentives for his

compliance with their requests, such as facilitating his wife's and family's visits from Pakistan to the United States, financially assisting his aging parents in Pakistan to go on religious pilgrimage to Saudi Arabia, and providing him with money.

77. The incentives did not sway Mr. Tanvir, who reiterated—again—that he did not want to become an informant. In response, the FBI agents threatened Mr. Tanvir, warning him that if he declined to work as an informant, then he would not receive his passport and that if he tried to pick up his passport at the airport he would be deported to Pakistan.
78. Mr. Tanvir was terrified by the agents' threats. He cried and pleaded with the FBI agents not to deport him because his family depended on him financially. He also told them he had not done anything wrong and was afraid to work in Pakistan as a United States government informant as it seemed like it would be a very dangerous undertaking. The FBI agents replied that they were willing to send him to Afghanistan instead. Mr. Tanvir explained that he was similarly concerned about his safety if he were to become an informant in Afghanistan. The FBI agents instructed him to think about it and cautioned him not to repeat their discussion with anyone.
79. The next day, Agent Tanzin called Mr. Tanvir and asked him whether he had thought more about becoming an informant. Agent Tanzin then threatened Mr. Tanvir, telling him that he would authorize the release of Mr. Tanvir's passport if Mr. Tanvir agreed to become an informant, but if he did not, Mr. Tanvir would be deported if he went to the airport to pick up his passport. Mr. Tanvir told Agent Tanzin that nothing had changed since they last spoke, and again declined to work as an informant.
80. On January 28, 2009, Mr. Tanvir nevertheless headed to John F. Kennedy International Airport to pick up his passport, accompanied by his relatives. The DHS officials were

asked why they withheld his passport, and they replied that it was due to an investigation that had since been cleared.

81. The next day, Agent Tanzin called Mr. Tanvir and told him that he had facilitated the release of Mr. Tanvir's passport, having told "them" to release his passport because Mr. Tanvir was "cooperative" with the FBI.
82. Mr. Tanvir's repeated and consistent refusal to work as an FBI informant did not stop the agents from continuing to try to pressure him into becoming an informant. Over the course of the next three to four weeks, Mr. Tanvir received multiple phone calls and visits from Agent Tanzin and Agent John Doe #1 at his workplace. At times, the agents would call from their car outside Mr. Tanvir's workplace and ask him to meet them in the car.
83. Mr. Tanvir left work and entered the agents' car the first three times he received their calls. The FBI agents repeatedly asked whether he had decided to work for them as an informant, or whether he had obtained any information for them. The agents told Mr. Tanvir that they wanted him to gather information, and that they were specifically interested in people from the "Desi" (South Asian) communities.
84. Mr. Tanvir repeatedly told the FBI agents that if he knew of any criminal activity he would tell them, but that he would not become an informant or seek out such information proactively. Mr. Tanvir did not wish to work as an informant, in part, because he had sincerely held religious and personal objections to spying on innocent members of his community. Mr. Tanvir believed that if he agreed to become an informant, he would be expected to engage with people within his community in a deceptive manner, monitor, and potentially entrap innocent people, and that those actions would interfere with the relationships he had developed with those community members. Through their repeated

visits and calls, the FBI agents harassed and intimidated Mr. Tanvir due to his refusal to become an informant. The FBI agents placed significant pressure on Mr. Tanvir to violate his sincerely held religious beliefs, substantially burdening his exercise of religion.

85. Mr. Tanvir eventually reached out to a relative for advice, and was told that, in the United States, he was under no obligation to speak to the government. Relieved to learn that he was not required to speak with the FBI agents every time that they contacted him, Mr. Tanvir stopped answering the agents' phone calls.
86. Eventually, Agent Tanzin and Agent John Doe #2 again visited Mr. Tanvir at his workplace and asked him why he was no longer answering their phone calls. Mr. Tanvir explained that he had answered all of their questions on multiple occasions, that he no longer had anything to tell them, and that he was busy with work and did not wish to speak with them.
87. Despite Mr. Tanvir's clear refusal to speak to them, the FBI agents then asked Mr. Tanvir to take a polygraph test. Mr. Tanvir declined to submit to the test, prompting the FBI agents to threaten to arrest him. Mr. Tanvir responded that if they arrested him, he would obtain an attorney. The agents left without arresting Mr. Tanvir.
88. In July 2009, Mr. Tanvir traveled to Pakistan to visit his wife and parents. While Mr. Tanvir was abroad, Special Agents Tanzin and Defendant "John Doe #3" visited his sister at her workplace in Queens and questioned her about Mr. Tanvir's travel. The FBI agents wanted to know why Mr. Tanvir had flown on Kuwait Airways instead of Pakistan International Airlines. Mr. Tanvir's sister replied that Kuwait Airways was less expensive, and told the FBI agents that she was uncomfortable speaking with them.

89. Mr. Tanvir subsequently returned to the United States in January 2010 and took a job as a truck driver. Even though it required significant travel, this work paid better than Mr. Tanvir's previous jobs. Mr. Tanvir's new job required him to drive trucks for long distances across the United States and take flights back to New York after completing the deliveries.
90. Upon information and belief, Mr. Tanvir was placed on the No Fly List by Agents Tanzin and/or Defendants John Does #1-3 at some time during or before October 2010 because he refused to become an informant against his community and refused to speak or associate further with the agents.
91. In October 2010, while Mr. Tanvir was in Atlanta for work, he received word that his mother was visiting New York from Pakistan. Mr. Tanvir made plans to fly from Atlanta to New York City. When he arrived at the check-in counter at the Atlanta airport, airline officials told him that he was not allowed to fly. Two unknown FBI agents then approached Mr. Tanvir at the airport and told him that he should contact the FBI agents in New York with whom Mr. Tanvir had originally spoken. The two unknown FBI agents then drove Mr. Tanvir to a nearby bus station where he boarded a bus bound for New York City.
92. While waiting in Atlanta for the bus, Mr. Tanvir called Agent Tanzin, who told Mr. Tanvir that he was no longer assigned to Mr. Tanvir. Agent Tanzin told Mr. Tanvir to "cooperate" with the FBI agent who would be contacting him soon.
93. Mr. Tanvir traveled by bus from Atlanta to his home in New York. This trip took him approximately 24 hours.

94. Two days after Mr. Tanvir returned to New York City by bus, FBI Special Agent Sanya Garcia called Mr. Tanvir and told him that she wanted to speak with him. Agent Garcia stated that she could help him get off the No Fly List if he met with her and answered her questions. Mr. Tanvir told Agent Garcia that he had answered the FBI's questions on multiple occasions and that he would not answer additional questions or meet with her.
95. Mr. Tanvir subsequently quit his job as a truck driver, in part because he was unable to fly back to New York after completing long-distance, one-way deliveries, as the job required.
96. Upon information and belief, Agent Garcia knew about the prior failed attempts by her colleagues, Special Agents Tanzin and Defendants John Doe #1-3, to recruit Mr. Tanvir as an informant, and their subsequent placement of Mr. Tanvir on the No Fly List in retaliation for his decision not to become an informant.
97. Mr. Tanvir filed a TRIP complaint on September 27, 2011.
98. In October 2011, Mr. Tanvir purchased plane tickets to Pakistan for himself and his wife for travel on November 3, 2011.
99. On November 2, 2011, the day before Mr. Tanvir and his wife were scheduled to fly, Agent Garcia called Mr. Tanvir. She told him that he would not be allowed to fly the next day. When Mr. Tanvir asked why, Agent Garcia told him that it was because he hung up on her the last time she had tried to question him by phone, and she told him that she still wanted to meet with him.
100. Agent Garcia told Mr. Tanvir that she would only allow him to fly to Pakistan if he met with her and answered her questions. Because Mr. Tanvir wanted to fly to Pakistan to visit his ailing mother, he agreed to meet her and another FBI Special Agent, Defendant John LNU, at a restaurant in Corona, Queens.

101. At the restaurant, Special Agents Garcia and Defendant John LNU asked Mr. Tanvir the same questions that Agents Tanzin, Defendants John Doe #1, John Doe #2 and John Doe #3 had already asked him on multiple occasions. These included questions about his family and about his religious and political beliefs. Mr. Tanvir answered the agents' questions because he believed that he was required to do so in order to be allowed to fly to Pakistan to see his mother.
102. After the meeting, Special Agents Garcia and John LNU advised Mr. Tanvir that they would try to permit him to fly again by obtaining a one-time waiver that would enable him to visit his ailing mother, but that it would take some weeks for them to process the waiver. Agent Garcia told Mr. Tanvir that he would only be allowed to fly on Delta Airlines. When Mr. Tanvir asked if he could keep his ticket on Pakistan International Airlines, Agent Garcia told him that would take her more time to process. Agent Garcia also told Mr. Tanvir that he would only be allowed to fly to Pakistan if he agreed to meet with and speak to her upon his return to the United States.
103. Mr. Tanvir begged Agents Garcia and John LNU to let him fly the next day with his wife. Agent Garcia stated that he might be allowed to take the flight, but that an FBI agent would have to accompany him.
104. The next day, however, Agent Garcia called Mr. Tanvir and told him that he would not be permitted to fly. She further stated that Mr. Tanvir would not be allowed to fly in the future until he agreed to come to FBI headquarters and submit to a polygraph test. As a result, Mr. Tanvir had to cancel his flight, obtaining only partial credit from the airline for the ticket's price, and his wife traveled alone to Pakistan.

105. At that point, Mr. Tanvir decided to retain counsel to represent him in his interactions with the FBI.
106. Mr. Tanvir's counsel reached out to Agents Garcia and John LNU in the hope of facilitating the removal of Mr. Tanvir's name from the No Fly List, but the agents refused to speak with counsel.
107. The agents directed Mr. Tanvir's counsel to legal counsel at the FBI's New York office. Mr. Tanvir's counsel spoke to counsel from that office, who pointed them to the TRIP process. Mr. Tanvir had already submitted a TRIP complaint, and it had not led to any redress.
108. Mr. Tanvir was not and is not a "known or suspected terrorist" or a potential or actual threat to civil aviation. The Special Agent Defendants who dealt with Mr. Tanvir, including Agent Tanzin and Agent Garcia, had no basis to believe that Mr. Tanvir was a "known or suspected terrorist" or potential or actual threat to civil aviation. Had Mr. Tanvir actually presented a threat to aviation safety, Agent Garcia would not, and could not, have offered to remove Mr. Tanvir from the List merely in exchange for his willingness to become an informant. Yet, knowing that Mr. Tanvir was wrongfully placed on the No Fly List for his prior refusals to become an informant, Agent Garcia kept him on the No Fly List to retaliate against Mr. Tanvir's exercise of his constitutionally protected rights and to coerce him into serving as an informant.
109. Mr. Tanvir again purchased a ticket to fly to Pakistan on December 10, 2011 in the hope of visiting his mother, whose health continued to deteriorate, but was again denied boarding at the airport and was told that he was on the No Fly List.

110. On April 16, 2012, Mr. Tanvir received a response to his TRIP complaint. The letter did not confirm that Mr. Tanvir was on the No Fly List, nor did it offer any justification for Mr. Tanvir's placement on the No Fly List. The letter simply noted, in part, that "no changes or corrections are warranted at this time."
111. On May 17, 2012, Mr. Tanvir's counsel wrote to FBI counsel again. The letter described Mr. Tanvir's predicament and the FBI's retaliatory actions. It also stated that Mr. Tanvir was prepared to take legal action. To date, neither Mr. Tanvir nor his counsel have received a response to that letter from the FBI.
112. On May 23, 2012, Mr. Tanvir appealed his TRIP determination. Mr. Tanvir also requested the releasable materials upon which his TRIP determination was based.
113. In November 2012, Mr. Tanvir purchased another ticket from Saudi Arabian Airlines to visit his sick mother in Pakistan. He was again denied boarding at JFK airport on the day of his flight. FBI Special Agent Janet Ambrisco approached Mr. Tanvir and his counsel at the check-in area and informed them that Mr. Tanvir would not be removed from the No Fly List until he met with Agent Garcia. Agent Ambrisco directed Tanvir to call Agent Garcia, telling him that she was waiting for his call.
114. On March 28, 2013, Mr. Tanvir received a letter from DHS which noted that it superseded the April 16, 2012 TRIP response. The letter stated, in part, that Mr. Tanvir's experience "was most likely caused by a misidentification against a government record or by random selection," and that the United States government had "made updates" to its records. As a result, the letter stated, Mr. Tanvir's request for releasable materials was moot and would not be processed by DHS. The DHS letter did not state whether Mr. Tanvir had been removed from the No Fly List or whether he would now be permitted to

board flights. DHS's letter offered no clarification on whether he had been granted a temporary waiver permitting his travel on only a single occasion. Mr. Tanvir decided to try to attempt to travel once more and purchased another ticket.

115. On June 27, 2013, Mr. Tanvir boarded a flight and flew to Pakistan on Pakistan International Airlines. Mr. Tanvir does not know whether he was able to fly to Pakistan due to a one-time waiver by the agents or whether they have finally removed him from the No Fly List. Absent confirmation that he has been removed from the No Fly List, Mr. Tanvir believes that his name remains on it.
116. Mr. Tanvir's placement on the No Fly List caused him to quit his job as a truck driver and prevented him from visiting his sick mother in Pakistan. He continues to fear harassment by FBI agents in the United States, which causes him and his family great distress.
117. Mr. Tanvir also suffered economic loss because of his placement on the No Fly List, including but not limited to loss of income and expenses and fees related to the purchase of airline tickets.

Plaintiff Jameel Algibhah

118. Plaintiff Jameel Algibhah is a United States citizen who resides in the Bronx, New York. He has lived in the United States since 1996, when he was fourteen years old. He has been married since 2001. His wife and three daughters, ages eleven, eight, and six, live in Yemen. Prior to being placed on the No Fly List in approximately 2010, Mr. Algibhah visited them at least once every year for several months. Mr. Algibhah does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.

119. On or around December 17, 2009, FBI Special Agents Francisco “Frank” Artouza and Defendant “John Doe #4” came to Mr. Algibhah’s uncle’s store, where Mr. Algibhah used to work, and asked for Mr. Algibhah.
120. Mr. Algibhah came to the store to meet the agents, and at their request he accompanied them to their van, where they proceeded to ask him questions about his friends, his acquaintances, other Muslim students who attended his college, and the names of Muslim friends with whom he worked at a hospital library, one of several jobs he held as a college student. The agents also asked Mr. Algibhah where he worships on Fridays, and asked for additional personal information. Despite being deeply uncomfortable with the FBI agents’ questions, Mr. Algibhah answered them to the best of his ability.
121. The agents then asked Mr. Algibhah if he would work for them as an informant. The agents first asked Mr. Algibhah if he would become an informant for the FBI, and infiltrate a mosque in Queens. When Mr. Algibhah declined to do so, the agents then asked Mr. Algibhah to participate in certain online Islamic forums and “act like an extremist.” When Mr. Algibhah again declined, the agents asked Mr. Algibhah to inform on his community in his neighborhood. The FBI agents offered Mr. Algibhah money and told him that they could bring his family from Yemen to the United States very quickly if he became an informant. Mr. Algibhah again told the FBI agents that he would not become an informant.
122. Mr. Algibhah declined to work as an informant because he believed that it was dangerous, and because it violated his sincerely held personal and religious beliefs. Mr. Algibhah was morally and religiously opposed to conducting surveillance and reporting to the authorities on the innocent activities of people in his American Muslim community. Mr.

Algibhah believed that if he agreed to become an informant, he would be expected to engage with his community members in a deceptive manner, monitor, and entrap innocent people, and that those actions would interfere with the relationships he had developed with those community members. The FBI agents placed significant pressure on Mr. Algibhah to violate his sincerely held religious beliefs, substantially burdening his exercise of religion.

123. Despite Mr. Algibhah's refusal, Agent Artousa gave Mr. Algibhah his card, and told him to "think about it some more."
124. Upon information and belief, Mr. Algibhah was placed on the No Fly List by Agents Artousa and Defendant John Doe #4 at some time after he was first contacted by these FBI agents, because he declined to become an informant against his community and declined to speak or associate further with the agents.
125. The first time Mr. Algibhah tried to travel by air after he refused the FBI's efforts to recruit him as an informant, he was denied boarding. On May 4, 2010, Mr. Algibhah learned that he had been placed on the No Fly List when he went to John F. Kennedy International Airport to check in with a travel companion for a flight to Yemen on Emirates Airlines. Mr. Algibhah intended to visit his wife and three daughters in Yemen. At the Emirates Airlines check-in counter, he was denied boarding by airline personnel. Shortly thereafter, numerous government officials came to the check-in area and surrounded him. The officials questioned Mr. Algibhah about his travels to Yemen. Despite Mr. Algibhah's cooperation, and without informing him of any basis for his interrogation, the officials told Mr. Algibhah that he would not be able to board, and directed him to the TRIP complaint process. The person with whom Mr. Algibhah was

traveling has since distanced himself from Mr. Algibhah as a direct result of the incident at the airport.

126. Shortly after the incident at the airport, Mr. Algibhah filed a TRIP complaint.
127. Mr. Algibhah repeatedly followed up with the DHS, calling the designated TRIP hotline several times over the next months. After receiving no response for several months, missing his wife and children, Mr. Algibhah purchased another ticket for a flight to Yemen on Emirates Airlines on September 19, 2010. Again, he was prevented from boarding the flight when he arrived at the airport, and was not provided with any reason.
128. DHS responded to Mr. Algibhah's TRIP complaint in a letter dated October 28, 2010. The letter stated that a review has been performed and that "it has been determined that no changes or corrections are warranted at this time." The letter did not provide Mr. Algibhah with any information about whether or not he was on the No Fly List, or what basis existed for such a restriction on his constitutional right to travel.
129. On November 12, 2010, Mr. Algibhah submitted a request for the releasable materials upon which his TRIP determination was made in order to enable him to file an appeal.
130. After submitting this request, Mr. Algibhah did not hear back from DHS. Mr. Algibhah sent several letters to officials at DHS, but did not receive a response. In January 2012, frustrated by the lack of response from the authorities through the TRIP process and by his continued inability to fly, Mr. Algibhah sought help from his elected representatives. The offices of United States Congressman Jose E. Serrano and Senator Charles Schumer each reached out to the TSA on Mr. Algibhah's behalf. As of the date of this Amended Complaint, Mr. Algibhah has not yet received a response from TRIP regarding his request.

131. In June 2012, Agent Artousa and a new FBI agent, Defendant “John Doe #5,” stopped Mr. Algibhah while he was driving his car told him they wanted to speak with him. Mr. Algibhah told Agent Artousa that after the last time that Agent Artousa questioned him, Mr. Algibhah had been placed on the No Fly List. Agent Artousa denied placing Mr. Algibhah on the No Fly List, but informed Mr. Algibhah that he would take Mr. Algibhah off of the No Fly List in one week’s time should their present conversation “go well” and should Mr. Algibhah work for them. John Doe #5 told Mr. Algibhah that “the Congressmen can’t do shit for you; we’re the only ones who can take you off the list.”
132. Mr. Algibhah answered the agents’ questions because he believed he was required to do so in order to have his name removed from the No Fly List. Agents Artousa and John Doe #5 asked Mr. Algibhah questions about his religious practices, his community, his family, his political beliefs, and the names of websites he visited. They asked him where he went to mosque and asked him about the types of people who go to his mosque. They also asked him specific information, such as whether he knew people from the region of Hadhramut in Yemen.
133. After this interrogation, the FBI agents again told Mr. Algibhah that they wanted him to access some Islamic websites for them. They asked for his e-mail address and told him that they would provide him with the names of websites, and that he would need to access them and “act extremist.” Mr. Algibhah understood these requests to be conditions that he needed to satisfy to have his name removed from the No Fly List.
134. In order to end the lengthy and intimidating interaction with the FBI agents, Mr. Algibhah told the agents that he needed time to consider their request that he work as an informant. Mr. Algibhah did not want to become an informant, but in the hope of being removed

from the No Fly List, he assured the agents that he would work for them as soon as they took him off the No Fly List. Agent Artousa responded that he “didn’t need to worry,” removing his name would only take one week. Approximately ten days later, Agent Artousa called Mr. Algibhah and told him that he was working on removing Mr. Algibhah’s name from the No Fly List, but that it would take a month or more to do so and that he would have to meet with Mr. Algibhah one more time. Agent Artousa reiterated that it would be very helpful if Mr. Algibhah decided to become an informant. Agent Artousa also told Mr. Algibhah that only the FBI could remove his name from the No Fly List. Mr. Algibhah told Agent Artousa to call before he came, but Agent Artousa neither called nor ever came.

135. Mr. Algibhah was not and is not a “known or suspected terrorist” or a potential or actual threat to civil aviation. The Special Agent Defendants who dealt with Mr. Algibhah, including Artousa and John Doe #5, had no basis to believe that Mr. Algibhah was a “known or suspected terrorist” or potential or actual threat to civil aviation. Had Mr. Algibhah actually presented a threat to aviation safety, Agents Artousa and John Doe #5 would not, and could not, have offered to remove Mr. Algibhah from the List merely in exchange for his willingness to become an informant. Yet, knowing that Mr. Algibhah was wrongfully placed on the No Fly List, Agents Artousa and Defendant John Doe #5, kept him on the No Fly List to retaliate against Mr. Algibhah’s exercise of his constitutionally protected rights and to coerce him into becoming an informant.
136. After this third attempt by the FBI agents to use the No Fly List to coerce him into becoming an informant, Mr. Algibhah retained legal counsel in late June 2012. His counsel spoke to Agent Artousa that month, who confirmed that the FBI could be “of

assistance” in removing Mr. Algibhah from the No Fly List, and mentioned again that he wanted Mr. Algibhah to go on Islamic websites, looking for “radical, extremist types of discussions,” and “perhaps more aggressive information gathering.”

137. On or about August 28, 2012, Mr. Algibhah’s neighbor was visited by the FBI and asked about Mr. Algibhah. FBI agents also went to two stores in his neighborhood asking about Mr. Algibhah.
138. In November 2012, Mr. Algibhah, through his counsel, informed Agent Artousa that he would only speak with the FBI on the condition that he be removed from the No Fly List and allowed to travel to Yemen. In response, Agent Artousa said that he would speak with his supervisors to look into this possibility and would inform Mr. Algibhah’s counsel of their response.
139. FBI Agent Artousa did not immediately respond to Mr. Algibhah’s request via his counsel. Mr. Algibhah did not hear from the FBI for approximately six to seven months. On or about May 29, 2013, Agent Artousa again reached out to Mr. Algibhah, telling him that Agent Artousa was still interested in helping Mr. Algibhah get off the No Fly List and that he wanted to meet with him. Mr. Algibhah told Agent Artousa that he should contact Mr. Algibhah’s counsel about the matter.
140. That same day, Mr. Algibhah’s counsel reached out to Agent Artousa, who informed counsel that he was simply reaching out to Mr. Algibhah to “touch base” regarding the matters he had previously discussed with him. Agent Artousa stated he was still interested in speaking with Mr. Algibhah. Counsel asked Agent Artousa whether there were any developments on Mr. Algibhah’s case that triggered this renewed attempt at

questioning. The agent replied that there was none, reiterating that Mr. Algibhah was not in any trouble, and that he was trying to bring the matter to a conclusion.

141. Mr. Algibhah has not heard from Agent Artousa since. Mr. Algibhah believes that he remains on the No Fly List.
142. On multiple occasions over the course of the past few years, Mr. Algibhah's American Muslim relatives and acquaintances have reported to him that they have been approached by government agents, including FBI agents, at their places of work or at the airport, and extensively questioned about Mr. Algibhah. This has caused Mr. Algibhah to be viewed in his community as someone targeted by law enforcement, resulting in his alienation, stigmatization, and loss of employment. Since the FBI's attempts to recruit Mr. Algibhah as an informant, members of Mr. Algibhah's community have taken to distancing themselves from him. In turn, Mr. Algibhah has also distanced himself from Muslim organizations, from his mosque and from many in his community. He no longer speaks with people in his mosque or his community because he is worried that they will report what he says to the FBI.
143. Mr. Algibhah, who is very close to his daughters and wife, typically visited them in Yemen at least once every year. Mr. Algibhah has not seen his family since April or May 2009, the last time he was able to travel to Yemen successfully. He has attempted to fly to Yemen two times since then, and has been denied boarding each time. Upon information and belief, Mr. Algibhah remains on the No Fly List.
144. Mr. Algibhah's placement on the No Fly List has caused him severe emotional distress. Mr. Algibhah has also suffered economic loss because of his placement on the No Fly

List, including but not limited to loss of income and expenses and fees related to the purchase of airline tickets.

Plaintiff Naveed Shinwari

145. Plaintiff Naveed Shinwari is a lawful permanent resident of the United States and has lived in the United States since 1998, when he was 14 years old. He currently lives in West Haven, Connecticut. Mr. Shinwari has been married since January 2012. His wife resides in Afghanistan. Mr. Shinwari earned a Bachelor of Science degree from Southern Connecticut State University in Public Health in May 2008. He has worked for a temp agency, placed on assignment in North Haven, Connecticut, since April 2013. Mr. Shinwari has never been convicted of a crime or arrested. Mr. Shinwari does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.
146. On February 26, 2012, after getting married in Afghanistan, Mr. Shinwari was traveling with his mother, who is a United States citizen, back home to the United States. They flew from Kabul, Afghanistan to Dubai, United Arab Emirates en route to Omaha, Nebraska, where they were residing at the time. They flew from Kabul to Dubai but were then prevented from boarding their connecting Emirates Airlines flight to Houston, Texas. Airport security officials confiscated Mr. Shinwari's Afghan passport and instructed him to wait in the terminal. After several hours of waiting, airport security officials returned the passport and told Mr. Shinwari that he needed to visit the United States embassy before he would be allowed to fly.
147. That night, after Mr. Shinwari and his mother obtained temporary visas to stay in the United Arab Emirates and checked into a Dubai hotel, Mr. Shinwari received a phone call

from FBI Special Agent Steven LNU. Agent Steven LNU told Mr. Shinwari to meet him the next day at the United States consulate in Dubai.

148. The next day, February 27, 2012, Mr. Shinwari went to the consulate. When he arrived, Agent Steven LNU and FBI Special Agent John C. Harley III took Mr. Shinwari into an interrogation room, and instructed Mr. Shinwari to “tell [them] everything.” Mr. Shinwari replied he had no idea why he had been prevented from flying. Agents Harley and Steven LNU proceeded to interrogate Mr. Shinwari for three to four hours. Agents Harley and Steven LNU asked Mr. Shinwari whether he had associated with any “bad guys” while in Afghanistan, whether he had visited any training camps, where he had stayed during his trip, and whether he had traveled to Pakistan. The agents also asked Mr. Shinwari about his religious activities, including which mosque he attends, and more general questions about his origin and background. During the interrogation, the agents sometimes used language that Mr. Shinwari found threatening, and at times Mr. Shinwari felt coerced to speak. Believing that he had to provide the agents information in order to return to the United States, Mr. Shinwari answered all of the agents’ questions. Mr. Shinwari provided documents to Agents Harley and Steven LNU, including his driver’s license and other identification papers, which the agents photocopied.
149. At several points during the interrogation, Agents Harley and Steven LNU asked Mr. Shinwari to take a lie detector test. They said that if he took the test, it would help him to be able to return home to the United States. Mr. Shinwari declined to take the test, believing he had already been truthful in his answers.
150. At the end of the interrogation, Agents Harley and Steven LNU said they needed to confer with “higher-ups in [Washington] D.C.” before allowing Mr. Shinwari to fly back

to the United States. Mr. Shinwari returned to his hotel, where he faxed and e-mailed the agents several more documents that they had requested, including his marriage certificate, information about the group of people with whom he had traveled, and the locations where he stayed during his trip to Afghanistan.

151. Mr. Shinwari and his mother waited in Dubai for two more days, not knowing if they would be permitted to return home. Finally, on February 29, 2012, Agent Harley e-mailed Mr. Shinwari to inform him that they had received the “go-ahead” for him to fly home to the United States, but only if he flew on a United States-based airline. That day, Mr. Shinwari was able to purchase a ticket and, on March 1, 2012, he boarded an American Airlines flight from Dubai to the United States with his mother.
152. When Mr. Shinwari and his mother arrived at Dulles International Airport, in Virginia, United States Customs and Border Protection agents thoroughly searched his bags and belongings. Following this additional screening, two FBI special agents from the FBI’s Omaha field office—Michael LNU and Gregg Grossoehmig—approached Mr. Shinwari at Dulles International Airport and escorted him to an interrogation room.
153. Mr. Shinwari was then subjected to additional interrogation. Agents Michael LNU and Grossoehmig interrogated Mr. Shinwari for two hours at Dulles. The FBI agents asked Mr. Shinwari substantially the same questions that he was asked in Dubai by Agents Harley and Steven LNU. Specifically, Agents Michael LNU and Grossoehmig said that they wanted to “verify” everything that he told Agents Harley and Steven LNU in Dubai. The agents told Mr. Shinwari that FBI agents would visit him when he returned to Omaha.

154. As a result of these interrogations by Agents Harley, Steven LNU, Michael LNU and Gregg Grossoehmig, Mr. Shinwari and his mother arrived in Omaha on March 2, 2012, six days later than expected, having missed the flights for which they had paid. Mr. Shinwari has not been reimbursed for the cost of booking these additional flights.
155. Approximately one week after he returned home to Omaha, Agent Michael LNU, the same agent who interrogated Mr. Shinwari at Dulles International Airport, and FBI Special Agent John Doe #6, appeared at Mr. Shinwari's home. Over the course of an hour, they subjected him to questions similar to the ones posed in his prior interrogations. Mr. Shinwari truthfully answered these questions again.
156. In addition to questioning Mr. Shinwari, Agents Michael LNU and John Doe #6 said that they knew Mr. Shinwari was unemployed and would pay him if he became an informant for the FBI. Mr. Shinwari understood from the context of the questioning that the agents wanted him to inform on the American Muslim community in Omaha, American Muslim communities in other parts of the United States, and Muslims in other countries. Mr. Shinwari told the agents that he would not act as an informant.
157. Mr. Shinwari declined to work as an informant because he believed that it was dangerous, and because it violated his sincerely held personal and religious beliefs. Mr. Shinwari was morally and religiously opposed to conducting surveillance and reporting to the authorities on the innocent activities of people in his American Muslim community. Mr. Shinwari believed that if he agreed to become an informant, he would be expected to engage with his community members in a deceptive manner, monitor, and entrap innocent people, and that those actions would interfere with the relationships he had developed with those community members. The FBI agents placed significant pressure

on Mr. Shinwari to violate his sincerely held religious beliefs, substantially burdening his exercise of religion.

158. On March 11, 2012, Mr. Shinwari attempted to obtain a boarding pass at Eppley Airfield for a flight from Omaha to Orlando, where he had obtained a temporary job, but was told by an airline agent that his ticket could not be processed. Police officers then approached Mr. Shinwari while he was standing at the ticket counter and told him that he was on the No Fly List. The officers then escorted Mr. Shinwari out of the airport.
159. Upon information and belief, Mr. Shinwari was placed and/or maintained on the No Fly List because he refused the FBI's requests to work as an informant for them against members of his community.
160. Mr. Shinwari's placement on the No Fly List greatly distressed him and upended his life. Mr. Shinwari was unable to take the job in Orlando, and consequently was unable to pay his bills. In addition, Mr. Shinwari's placement on the No Fly List meant that he could no longer visit his wife and extended family—grandparents, seven uncles, six aunts, cousins, and in-laws—in Afghanistan, nor his father, who suffers from heart disease, in Virginia.
161. On March 12, 2012, Mr. Shinwari sent an e-mail to Agent Harley seeking help in getting removed from the No Fly List. Agent Harley did not respond. The following day, March 13, 2012, Agents Michael LNU and John Doe #6 again visited Mr. Shinwari at his home in Omaha. Mr. Shinwari again understood the FBI agents to be asking him to become a confidential FBI informant, and again offering him financial compensation. Agents Michael LNU and John Doe #6 also offered to “help” Mr. Shinwari if he agreed to become an informant, stating in words or substance: “The more you help us, the more we can help you.” Mr. Shinwari understood the agents were suggesting that, in exchange for

agreeing to become an informant, they would remove him from the No Fly List. Despite being mired in financial difficulties and wanting to be removed from the No Fly List, Mr. Shinwari would not agree to become an informant. He told the agents that he believed becoming an informant would put his family in danger. Mr. Shinwari also told the agents that if he had any knowledge about dangerous individuals, he would report that to the FBI and did not need any financial incentives to do so.

162. Following this encounter, Mr. Shinwari contacted counsel in Omaha for help in getting off of the No Fly List. On or about March 21, 2012, Mr. Shinwari and his counsel met with Special Agent in Charge Weysan Dun and Assistant Special Agent in Charge James C. Langenberg at the FBI's Omaha Division.
163. Agents Dun and Langenberg began the meeting by asking Mr. Shinwari to think about the reasons why he may have been placed on a watch list. Mr. Shinwari said that he did not know. The agents then asked Mr. Shinwari about videos of religious sermons that he had watched on the internet. Mr. Shinwari responded that he watched the videos to educate himself about his faith.
164. Following this line of questioning, Agents Dun and Langenberg refused to confirm or deny his No Fly List status but told him that he could potentially get a one-time waiver to travel in an emergency. Mr. Shinwari believed the agents offered him the waiver in exchange for all of the information he had provided them about himself. Mr. Shinwari believed the offer of a waiver was provided as a "reward" for his agreement to submit to questioning and to encourage him to provide more information.
165. On March 18, 2013, Mr. Shinwari sent Agent Langenberg an e-mail asking about whether he could obtain a waiver to fly to Afghanistan. Agent Langenberg never replied.

166. Mr. Shinwari was not and is not a “known or suspected terrorist” or a potential or actual threat to civil aviation. The Special Agents who dealt with Mr. Shinwari had no basis to believe that Mr. Shinwari was a “known or suspected terrorist” or potential or actual threat to civil aviation. Had Mr. Shinwari actually presented a threat to aviation safety, Agents Michael LNU and John Doe #6 would not, and could not, have offered to remove Mr. Shinwari from the List merely in exchange for his willingness to become an informant. Yet, knowing that Mr. Shinwari was wrongfully placed on the No Fly List, the Special Agents who interacted with Mr. Shinwari kept him on the No Fly List in order to retaliate against Mr. Shinwari’s exercise of his constitutionally protected rights and to coerce him into becoming an informant.
167. Mr. Shinwari filed a TRIP complaint on February 26, 2012. DHS responded to Mr. Shinwari’s TRIP complaint almost fifteen months later in a letter dated June 4, 2013. The letter did not confirm that Mr. Shinwari was on the No Fly List, nor did it offer any justification for Mr. Shinwari’s placement on the No Fly List. The letter stated, in part, that “no changes or corrections are warranted at this time.”
168. Mr. Shinwari filed a second TRIP complaint on December 9, 2013. DHS responded to Mr. Shinwari’s TRIP complaint in a letter dated December 24, 2013. The letter stated, in part, that Mr. Shinwari’s experience “was most likely caused by a misidentification against a government record or by random selection,” and that the United States government had “made updates” to its records. The DHS letter did not state whether Mr. Shinwari had been removed from the No Fly List or whether he would now be permitted to board flights. DHS’s letter offered no clarification on whether he had been granted a temporary waiver permitting his travel on only a single occasion.

169. On March 19, 2014, for the first time since returning to the United States from Kabul, Afghanistan in March 2012, Mr. Shinwari was able to board a flight, and he flew from Hartford, Connecticut to Omaha, Nebraska and returned on March 31. This is the first time Mr. Shinwari had attempted to fly since being denied a boarding pass on March 11, 2012. Mr. Shinwari does not know whether he remains on the No Fly List and he fears further harassment and retaliation by government agents. Absent confirmation that he has been removed from the No Fly List, Mr. Shinwari believes that his name remains on it.
170. Mr. Shinwari's placement on the No Fly List prevented him from visiting his wife, grandparents, uncle and extended family in Afghanistan since February 2012, causing him great personal distress and emotional trauma. Mr. Shinwari's placement on the List also made it difficult for him to travel to Virginia to visit his father, who suffers from heart disease. Finally, his placement on the No Fly List prevented Mr. Shinwari from obtaining employment in Orlando.
171. Mr. Shinwari suffered economic loss because of his placement on the No Fly List, including but not limited to the loss of expected employment income from his job in Orlando, and approximately \$4,000 in expenses and fees related to the purchase of airline tickets and booking of hotel rooms. In addition, because of the harassment and retaliation he has suffered at the hands of government agents, Mr. Shinwari is reluctant to attend religious services, attending his local mosque less frequently, and to share his religious and political views with others.

Plaintiff Awais Sajjad

172. Plaintiff Awais Sajjad is a lawful permanent resident of the United States, and has resided in the United States in Brooklyn, New York since May 2009 and sometimes stays at his sister's home in New Jersey to be closer to work. Upon arriving in the United States, Mr. Sajjad obtained a certificate in medical assistance. He now works twelve-hour shifts at a convenience store while also caring for his brother-in law, a cancer patient. Mr. Sajjad has never been convicted of a crime or arrested. He does not pose, has never posed, and has never been accused of posing, a threat to aviation safety.
173. On September 14, 2012, Mr. Sajjad attempted to board a Pakistan International Airlines flight from John F. Kennedy International Airport in order to visit his ailing father and his 91-year old grandmother in Pakistan. At the check-in counter, the airline official spoke with someone on the phone and provided Mr. Sajjad's passport information and description. Shortly thereafter, two FBI agents, John Doe #7 and John Doe #8 approached Mr. Sajjad at the counter.
174. Mr. Sajjad felt embarrassed and ashamed because the other passengers could see that he was the subject of law enforcement attention. He felt that they were staring at him.
175. Agents Doe #7 and Doe #8 asked Mr. Sajjad to accompany them to a small, windowless interrogation room. They told him that if he spoke with their supervisor, he might allow Mr. Sajjad to board his flight as there was still some time before the flight's departure. The agents assured Mr. Sajjad that they would try to help him if he went with them.
176. In the back room, Mr. Sajjad was introduced to a plainclothes FBI supervisory special agent, John Doe #9, and a uniformed DHS special agent, John Doe #10. Agent John Doe #9 informed Mr. Sajjad that he would not be allowed to travel because he was on the No-

Fly List. The FBI supervisory special agent, John Doe #9, questioned Mr. Sajjad extensively about his background, friends, and family. They asked Mr. Sajjad who accompanied him to the airport that day, and asked for their phone numbers. They asked him for his best friends' names, and whether he had any girlfriends. He was asked whether he had any military training or ever sought to enlist for terrorism training. Mr. Sajjad answered all of their questions truthfully. He told them he had never had any kind of training and had never been in trouble with the law. Mr. Sajjad was then told that if he wished to have his name removed from the No Fly List, he would have to file a TRIP complaint.

177. During the interrogation, Agents John Doe #7-10 repeatedly reassured Mr. Sajjad that they would be willing to help him get off the No Fly List and gave him the impression that such assistance would be provided if he agreed to their requests.
178. On September 14, 2012, the same day that he was denied boarding, Mr. Sajjad filed a TRIP complaint.
179. On approximately October 24, 2012, Defendant FBI Agent Michael Rutkowski, accompanied by Agent "John Doe #11" and an interpreter, visited Mr. Sajjad's sister's house in New Jersey, when Mr. Sajjad returned from work. The FBI agents said that they were following up on Mr. Sajjad's TRIP complaint. Mr. Sajjad was relieved, believing that he would be removed from the No Fly List. Mr. Sajjad allowed the agents to enter his home. Once inside Mr. Sajjad's home, the agents asked Mr. Sajjad many questions, including questions about his last trip to Pakistan in 2011, why he went and which cities he visited on that trip. Mr. Sajjad replied that he went to Pakistan to attend his brother's wedding.

180. While still at Mr. Sajjad's house, Agents Rutkowski and John Doe #11 told Mr. Sajjad that because he was a good man from a good family, they wanted him to work for them, in exchange for which they could provide him with United States citizenship and a salary. Mr. Sajjad declined their offer to work for the FBI, replying that he did not need any assistance from the FBI—he had a job that paid him enough and would soon be eligible for citizenship.
181. Mr. Sajjad understood that Agents Rutkowski and John Doe #11 were asking him to work as an informant for the FBI, and declined to do so because he believed it was dangerous and because he was opposed to conducting surveillance on the innocent activities of people in his American Muslim community and reporting that information to the authorities. Mr. Sajjad believed that if he agreed to work for the FBI, he would be expected to act as an informant in his community and engage with others in a deceptive manner to monitor and entrap them and that those actions would interfere with the relationships that he had developed with those community members.
182. Agents Rutkowski and John Doe #11 then asked Mr. Sajjad to go with them to the FBI headquarters in Newark, New Jersey to undergo a polygraph test. The agents assured Mr. Sajjad that taking the polygraph test would help remove his name from the No Fly List. Although he did not know what a polygraph test was, Mr. Sajjad agreed to accompany the agents because he believed that the polygraph test was part of their investigation into his TRIP complaint and completing it was necessary to have his name removed from the No Fly List.
183. Agents Rutkowski and John Doe #11 drove Mr. Sajjad to the FBI headquarters in Newark. On the way, they asked Sajjad whether he had watched bomb-making videos on

YouTube, to which he replied that he had not, that he only watches movies and music videos. The agents also asked Mr. Sajjad questions about his job and salary, and whether Mr. Sajjad believed he made enough money.

184. At the FBI headquarters, another FBI agent, "John Doe #12," conducted the polygraph examination on Mr. Sajjad through a translator. Mr. Sajjad was very frightened. He did not know what a polygraph test was. They attached multiple wires to different parts of his body. He was told to remain very still and not even move his eyes, and to answer their questions. They then asked him many questions, including whether he loved the United States of America, whether he loved Pakistan and whether he would ever do anything that might bring shame to his family. They also asked whether he had signed up for or taken military training in Pakistan and whether he had ever used any guns. Mr. Sajjad replied, truthfully, that he had never done so.
185. After an hour of questions, Agent John Doe #12 stepped out of the room and returned with Agents Rutkowski and John Doe #11. They told Mr. Sajjad that the machine detected that he was lying. Mr. Sajjad replied that he was not lying. Agent John Doe #11 responded that if Mr. Sajjad did not provide answers, they would be forced to "use alternative methods." Mr. Sajjad replied that his answers were truthful and would not change no matter what methods the agents used.
186. Agent Rutkowski and Agent John Doe #11 proceeded to interrogate Mr. Sajjad for approximately three more hours.
187. The agents then drove Mr. Sajjad to his sister's home in New Jersey. In the car, Agent Rutkowski apologized for taking Mr. Sajjad's time and engaged him in conversation, but also continued to question him, including inquiries about his religious practices, what

mosque he attends, and whether the United States or Pakistan would win if the two countries competed in cricket or soccer.

188. At some time over the next several weeks, Agent Rutkowski and an unidentified FBI agent went to Mr. Sajjad's sister's home in Jersey City and questioned her about Mr. Sajjad. In addition, unknown agents from the United States Embassy in Islamabad contacted Mr. Sajjad's father in Pakistan and asked that he come to the embassy to answer questions about Mr. Sajjad. Mr. Sajjad's father declined. Mr. Sajjad's father was told that he would be questioned once he arrived in the United States. Mr. Sajjad's father arrived at John F. Kennedy airport on November 2, 2013. Approximately 15 days later, Agent Rutkowski and an unidentified FBI agent came to Mr. Sajjad's sister's house to question Mr. Sajjad's father.
189. On December 5, 2012, Mr. Sajjad received a response to his TRIP complaint. The response stated that after consulting with other federal agencies "no changes or corrections [in his status] are warranted at this time."
190. In January 2013, Mr. Sajjad retained counsel to represent him in his interactions with the FBI and to assist him in clearing his name from the No Fly List. On February 8, 2013, through counsel, Mr. Sajjad filed a TRIP appeal.
191. On March 13, 2013, Mr. Sajjad's counsel called Agent Rutkowski. Agent Rutkowski said that if Mr. Sajjad wanted the FBI to help him get off the No Fly List, he would have to answer the FBI's questions, including the ones Mr. Sajjad allegedly failed on the polygraph exam, but he would not specify which questions those were. Mr. Sajjad declined to submit to additional questioning. On May 6, 2013, Mr. Sajjad's counsel spoke to FBI Agent Rutkowski's supervisor, William Gale, over the phone. When asked

if the agency was contacting Mr. Sajjad because they wanted to recruit him as an informant, Agent Gale responded that he “would not get into it over the phone,” and that should not be construed as a “yes” or a “no.”

192. On April 4, 2014, FBI Agent Rutkowski and an unknown agent “John Doe #13” approached Mr. Sajjad while he was standing outside his sister’s home in New Jersey, and asked Mr. Sajjad to accompany them to a nearby diner in their car. The agents told Mr. Sajjad that they were here to help him and talk about his situation. Taken by surprise, Mr. Sajjad felt pressured to comply. At the diner, the agents told Mr. Sajjad that they wanted to help him travel to Pakistan, but that unless he helped them, they could not do anything for him. They asked him hypothetical questions regarding what he would do if he were to find out that any of his relatives or friends were involved in a terrorist attack. When Mr. Sajjad responded that he would inform the police, they accused him of only telling them what he thought they wanted to hear. Agent John Doe #13 told Mr. Sajjad to “shut up” and said he did not believe what Mr. Sajjad was saying. The agents also questioned Mr. Sajjad about his religious practices, asking him where he prays, whether his father is religious, whether his deceased mother was religious, and whether Mr. Sajjad considered himself to be a Wahhabi Muslim.
193. The agents repeatedly insisted that the only way Mr. Sajjad would get off the No Fly List and be able to travel to Pakistan was if he answered all of the agents’ questions, and they reminded him that they had the power to decide if he was on the No Fly List. Mr. Sajjad said that he was trying to be helpful by coming with the agents. Agent John Doe #13 told Mr. Sajjad that he had no choice but to come with the agents when they asked. Finally, the agents told Mr. Sajjad that they would return on the following Monday to subject him

to another polygraph examination, and that in the meantime, they expected him to ask his friends and relatives if any of them had an affiliation with a Pakistani organization that the United States had designated as a foreign terrorist group. During the conversation, Agent John Doe #13 told Mr. Sajjad that he had been watching Mr. Sajjad for the last two years and knew that Mr. Sajjad did not do anything wrong and was not a “terrorist” or a threat to America.

194. During this lengthy encounter, Mr. Sajjad answered the agents’ questions because he felt obligated to do so. Mr. Sajjad was frightened by the agents, and told them so.
195. Mr. Sajjad was not and is not a “known or suspected terrorist” or a potential or actual threat to civil aviation. Agents Rutkowski and John Does #7-13 had no basis to believe that Mr. Sajjad was a “known or suspected terrorist” or a potential or actual threat to civil aviation. Had Mr. Sajjad actually presented a grave threat to aviation safety, Agents Rutkowski and John Does #7-13 would not, and could not, have offered to remove him from the List merely in exchange for his taking and passing a polygraph test and working as an FBI informant. Yet, knowing that Mr. Sajjad was wrongfully placed on the No Fly List, Agents Rutkowski and John Does #7-13 kept him on the No Fly List in order to pressure and coerce Mr. Sajjad to become an FBI informant and, when he refused, used the No Fly List to retaliate against Mr. Sajjad’s exercise of his constitutionally protected rights. Upon information and belief, Mr. Sajjad remains on the No Fly List.
196. Since Mr. Sajjad’s placement on the No Fly List, he has been unable to visit his family, including his 93-year old grandmother who raised him after his mother passed away, and with whom he is very close. Because of his brother-in-law’s serious illness, Mr. Sajjad needs to be able to travel to assist with the family’s affairs. The FBI agents’ ongoing

attempts to question Mr. Sajjad, combined with his continued placement on the No Fly List have caused Mr. Sajjad significant and ongoing anxiety and distress.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Retaliation in Violation of Plaintiffs' First Amendment Rights

(Against Agency Defendants in their official capacities and Special Agent Defendants in their individual capacities and official capacities)

197. Plaintiffs Muhammad Tanvir, Jameel Algibhah, Naveed Shinwari, and Awais Sajjad incorporate by reference each and every allegation contained in the paragraphs above.
198. Plaintiffs are present or have the legal right to be present in the United States.
199. Plaintiffs each met with Special Agent Defendants in the hope of being removed from the No Fly List and Special Agent Defendants used the No Fly List to attempt to pressure Plaintiffs to sacrifice their First Amendment rights. When Special Agent Defendants asked Plaintiffs to become informants, Plaintiffs refused.
200. By declining to act as informants within their communities, Plaintiffs repeatedly and validly exercised their First Amendment rights to freedom of speech and association. By declining to become informants on the basis of deeply held religious beliefs, Plaintiffs Tanvir, Algibhah, and Shinwari repeatedly and validly exercised their First Amendment right to freedom of religion.
201. Rather than using the No Fly List as they were authorized to do—to restrict the travel of individuals who are a genuine threat to aviation safety—Special Agent Defendants knowingly, intentionally, and unlawfully placed Plaintiffs on the No Fly List, or maintained Plaintiffs on the No Fly List, because Plaintiffs refused to act as informants. In doing that, Defendants forced Plaintiffs to choose between their First Amendment

rights and their liberty interest in travel. Special Agent Defendants knowingly, intentionally, and unlawfully retaliated against Plaintiffs, and continue to retaliate against Plaintiffs for their exercise of their constitutional rights to freedom of speech, association, and religion, in violation of Plaintiffs' First Amendment rights under the United States Constitution.

202. Agency Defendants, acting in their official capacity and under color of authority, were and remain responsible for promulgating, implementing, maintaining, administering, supervising, compiling, or correcting the No Fly List. Agency Defendants are tolerating and failing to remedy a pattern and practice among Special Agent Defendants of using the No Fly List to unlawfully retaliate against Plaintiffs for the exercise of their constitutionally protected rights, in violation of the First Amendment to the United States Constitution.
203. Upon information and belief, Plaintiffs remain on the No Fly List. Plaintiffs' continued presence on the No Fly List is a result of their exercise of their First Amendment rights. By maintaining each Plaintiff's name on the No Fly List, Defendants continue to retaliate against Plaintiffs for the exercise of their First Amendment rights. Absent injunctive relief, upon information and belief, Plaintiffs will continue to suffer from this retaliatory placement on the No Fly List, and Agency Defendants will continue to maintain a pattern and practice that permits Special Agent Defendants' use of the No Fly List to retaliate against Plaintiffs' exercise of their First Amendment rights.
204. Defendants' unlawful actions are imposing an immediate and ongoing harm on Plaintiffs and have caused Plaintiffs deprivation of their constitutional rights, emotional distress, damage to their reputation, and material and economic loss.

SECOND CLAIM FOR RELIEF

Violation of the Religious Freedom Restoration Act (RFRA)

(Against Defendants FNU Tanzin, Sanya Garcia, John LNU, Francisco Artousa, John C. Harley III, Steven LNU, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, John Does #1-6 in their official and individual capacities)

205. Plaintiffs Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari incorporate by reference each and every allegation contained in the paragraphs above.
206. Plaintiffs are present or have the legal right to be present in the United States.
207. Plaintiffs sincerely believe that informing to the government on innocent people violates their core religious beliefs, including the proscription on bearing false witness against one's neighbor by engaging in relationships and religious practices under false pretenses, and by betraying the trust and confidence of one's religious community.
208. These are fundamental and important tenets of Plaintiffs' religious beliefs because of the central roles that trust, honesty, and good faith play in their religious communities.
209. Defendants instructed and pressured Plaintiffs to infiltrate their religious communities as government informants, to spy and eavesdrop on other Muslims' words and deeds—regardless of whether these people were suspected of wrongdoing—and to report their observations to the FBI.
210. Defendants forced Plaintiffs into an impermissible choice between, on the one hand, obeying their sincerely held religious beliefs and being subjected to the punishment of placement or retention on the No Fly List, or, on the other hand, violating their sincerely held religious beliefs in order to avoid being placed on the No Fly List or to secure removal from the No Fly List.

211. By forcing Plaintiffs into this impermissible choice between their sincerely held religious beliefs and the threat of retaliation and punishment, Defendants placed a substantial burden on Plaintiffs' exercise of their sincerely held religious beliefs in violation of RFRA, 42 U.S.C. § 2000bb-1(a).
212. The United States government has no compelling interest in requiring Plaintiffs to inform on their religious communities.
213. Requiring Plaintiffs to inform on their religious communities is not the least restrictive means of furthering any compelling governmental interest.
214. By attempting to recruit Plaintiffs as confidential government informants by resorting to the retaliatory or coercive use of the No Fly List, the Special Agent Defendants substantially burdened Plaintiffs' sincerely held religious beliefs in violation of RFRA.
215. Defendants' unlawful actions are imposing an immediate and ongoing harm on Plaintiffs and have caused Plaintiffs emotional distress, deprivation of their constitutional and statutory rights, damage to their reputation, and material and economic loss.

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment: Procedural Due Process

(Against Agency Defendants in their official capacities)

216. Plaintiffs Muhammad Tanvir, Jameel Algibhah, Naveed Shinwari, and Awais Sajjad incorporate by reference each and every allegation contained in the paragraphs above.
217. Plaintiffs are present or have the legal right to be present in the United States.
218. Plaintiffs have a liberty interest in travel free from unreasonable burdens within, to, and from the United States.

219. Plaintiffs have a right to be free from being falsely stigmatized as individuals associated with “terrorist” activity and from having these associational falsehoods disseminated widely to government agencies, airline carriers, and foreign governments.
220. Plaintiffs’ placement or continued listing on the No Fly List has adversely affected their liberty interest in travel and their right to be free from false stigmatization by the government.
221. Defendants, acting in their official capacity and under color of authority, were and remain responsible for promulgating, implementing, maintaining, administering, supervising, compiling, or correcting the No Fly List.
222. By failing to articulate and publish a clear standard and criteria for inclusion on the No Fly List, to inform Plaintiffs of their placement on the No Fly List and the bases for being on the No Fly List, and to provide Plaintiffs with a meaningful opportunity to challenge their placement on the No Fly List, Agency Defendants facilitated the Special Agent Defendants’ abuse of the No Fly List and deprived Plaintiffs of protected liberty interests without affording them due process of law in violation of the Fifth Amendment to the United States Constitution.
223. Defendants will continue to violate Plaintiffs’ rights to due process if Plaintiffs are not afforded the relief demanded below.
224. Defendants’ unlawful actions are imposing an immediate and ongoing harm on Plaintiffs and have caused Plaintiffs emotional distress, deprivation of their constitutional rights, damage to their reputation, and material and economic loss.

FOURTH CLAIM FOR RELIEF

Unlawful Agency Action in Violation of the Administrative Procedure Act,
5 U.S.C. §§ 702, 706

(Against Agency Defendants in their official capacities)

225. Plaintiffs Muhammad Tanvir, Jameel Algibhah, Naveed Shinwari, and Awais Sajjad incorporate by reference each and every allegation contained in the paragraphs above.
226. Plaintiffs are present or have the legal right to be present in the United States.
227. Defendants' failure to provide Plaintiffs with constitutionally adequate notice of the bases for their placement on the No Fly List and a meaningful opportunity to challenge their continued inclusion on the No Fly List is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.
228. Because Plaintiffs do not present, and have never presented, a threat to aviation safety, Defendants' placement and continued inclusion of Plaintiffs on the No Fly List is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity, and should be set aside as unlawful pursuant to 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendants as follows:

1. Declaring that the policies, practices, acts, and omissions of Defendants described here are unlawful and violate Plaintiffs' rights under the Constitution of the United States, the Religious Freedom Restoration Act, and the Administrative Procedure Act;
2. Ordering Defendants to remove Plaintiffs' names from the No Fly List, and to provide Plaintiffs with notice that their names have been removed;
3. Enjoining Defendants and their agents, employees, successors, and all others acting in concert with them, from subjecting Plaintiffs to the unconstitutional and unlawful practices described in this complaint;
4. Ordering Defendants sued in their official capacity to provide a constitutionally adequate mechanism affording Plaintiffs with meaningful notice of the standards for inclusion on the No Fly List; meaningful notice of their placement on the No Fly List and of the grounds for their inclusion on the No Fly List, and a meaningful opportunity to contest their placement on the No Fly List before a neutral decision-maker;
5. Requiring the promulgation of guidelines prohibiting the abuse of the No Fly List for purposes other than the promotion of aviation safety, including for the unlawful purpose of retaliating against or coercively pressuring individuals to become informants;
6. Awarding Plaintiffs compensatory and punitive damages;

7. Awarding Plaintiffs' counsel reasonable attorneys' fees and litigation costs, including but not limited to fees, costs, and disbursements pursuant to 28 U.S.C. § 2412; and
8. Granting such other and further relief as the Court deems just and proper.

Dated: April 22, 2014

Respectfully submitted,

/s/ Ramzi Kassem
Ramzi Kassem
Supervising Attorney
Diala Shamas
Staff Attorney
Nasrin Moznu
Versely Rosales
Law Student Interns
CLEAR project
Main Street Legal Services, Inc.
City University of New York School of Law
2 Court Square
Long Island City, NY 11101
(718) 340-4558
ramzi.kassem@law.cuny.edu

/s/ Shayana Kadidal
Shayana Kadidal
Susan Hu
Baher Azmy
Omar A. Farah
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6491
kadidal@ccrjustice.org
shu@ccrjustice.org
bazmy@ccrjustice.org
ofarah@ccrjustice.org

/s/ Robert N. Shwartz
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Robert N. Shwartz
Jennifer R. Cowan
rnshwartz@debevoise.com
jrcowan@debevoise.com

Attorneys for Plaintiffs

Abramo, R.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/24/14

MUHAMMAD TANVIR; JAMEEL
ALGIBHAH; NAVEED SHINWARI;
AWAIS SAJJAD,

Plaintiffs,

v.

ERIC H. HOLDER, ATTORNEY GENERAL
OF THE UNITED STATES; JAMES
COMEY, DIRECTOR, FEDERAL BUREAU
OF INVESTIGATION; CHRISTOPHER M.
PIEHOTA, DIRECTOR, TERRORIST
SCREENING CENTER; JEH C. JOHNSON,
SECRETARY, DEPARTMENT OF
HOMELAND SECURITY; "FNU" TANZIN,
SPECIAL AGENT, FBI; SANYA GARCIA,
SPECIAL AGENT, FBI; FRANCISCO
ARTOUSA, SPECIAL AGENT, FBI; JOHN
"LNU", SPECIAL AGENT, FBI; MICHAEL
RUTKOWSKI, SPECIAL AGENT, FBI;
WILLIAM GALE, SUPERVISORY SPECIAL
AGENT, FBI; JOHN C. HARLEY III,
SPECIAL AGENT, FBI; STEVEN "LNU",
SPECIAL AGENT, FBI; MICHAEL "LNU",
SPECIAL AGENT, FBI; GREGG
GROSSOEHMIG, SPECIAL AGENT, FBI;
WEYSAN DUN, SPECIAL AGENT IN
CHARGE, FBI; JAMES C. LANGENBERG,
ASSISTANT SPECIAL AGENT IN
CHARGE, FBI; "JOHN DOES 1-9, 11-13",
SPECIAL AGENTS, FBI; "JOHN DOE 10",
SPECIAL AGENT, DHS,

Defendants.

STIPULATION AND ~~(PROPOSED)~~
ORDER REGARDING JOHN DOE
DEFENDANTS

Case No. 13-CV-6951

ECF Case

WHEREAS, the Plaintiffs in the above-captioned matter filed the First Amended Complaint (“the Amended Complaint”) on April 22, 2014;

WHEREAS the Amended Complaint asserts claims against the Attorney General of the United States, the Director of the Federal Bureau of Investigation, the Director of the Terrorist Screening Center, and the Secretary of Homeland Security, in their official capacities (the “Agency Defendants”);

WHEREAS, the Amended Complaint also asserts claims against 25 individual Defendants, in their official and individual capacities. Seventeen of the 25 individual Defendants are identified in the Amended Complaint with a first name unknown (“FNU”) or a last name unknown (“LNU”) or by a “John Doe” pseudonym (collectively all 17 such Defendants are referred to herein as the “John Doe Defendants”);

WHEREAS, Plaintiffs seek disclosure of the identities of the John Doe Defendants;

WHEREAS, Defendants object to disclosure of the identities of the John Doe Defendants at this stage of the action;

WHEREAS, the Agency Defendants have identified 14 of the 17 John Doe Defendants, as described in paragraph 1 below, and each of those 14 individuals has sought and been granted representation in this case by the U.S. Department of Justice pursuant to 28 C.F.R. § 50.15;

WHEREAS, the United States Attorney’s Office for the Southern District of New York represents the 14 John Doe Defendants described in paragraph 1 below, and is authorized to enter into this Stipulation on behalf of those 14 Defendants;

ACCORDINGLY, Plaintiffs and Defendants, by their undersigned counsel, stipulate and agree as follows:

1. The U.S. Attorney's Office shall accept service of process and file a Notice of Appearance as counsel for each of the following Defendants:

- a. "FNU" (first name unknown) Tanzin;
- b. John "LNU" (last name unknown);
- c. Steven "LNU" (last name unknown);
- d. Michael "LNU" (last name unknown);
- e. John Doe 1;
- f. John Doe 2 (who shall proceed for the next phase of this litigation as "John Doe 2/3");
- g. John Doe 4;
- h. John Doe 5;
- i. John Doe 6;
- j. John Doe 9;
- k. John Doe 10;
- l. John Doe 11;
- m. John Doe 12; and
- n. John Doe 13.

2. Each Defendant identified in paragraph 1 above may proceed in this litigation under the pseudonyms specified in the Amended Complaint through the earlier of: (a) the serving of an answer, or (b) the resolution of a motion to dismiss filed by each such Defendant, including any interlocutory appellate proceedings, as set forth more fully

below.¹ Thereafter, Plaintiffs reserve the right to seek discovery of the identities of the John Doe Defendants, and all Defendants reserve the right to assert any and all objections to such discovery.

3. Until such time described in the first sentence of paragraph 2 above, Defendants shall not be required to disclose the identity of any John Doe Defendant identified in paragraph 1, and Plaintiffs shall not seek the identity of any such John Doe Defendant. This Stipulation shall not otherwise affect the scope or the timing of discovery, if any, in this action.

4. This Stipulation is not intended to suggest in any way that the John Doe Defendants engaged in the conduct alleged in the Amended Complaint. Likewise, this Stipulation is not intended to suggest in any way that the Plaintiffs pose a threat to the John Doe Defendants or to aviation safety.

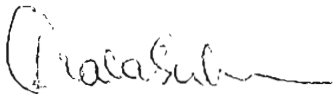
5. By entering into this Stipulation, and by accepting service of process and filing a notice of appearance as provided in paragraph 1, the John Doe Defendants identified in paragraph 1 do not waive, and hereby expressly preserve, any and all applicable defenses, including but not limited to personal jurisdictional defenses, to the claims asserted against them in the Amended Complaint. However, should service be made by mailing a copy of the summons and Amended Complaint to the U.S. Attorney's Office for the Southern District of New York, attention Sarah S. Normand and Ellen

¹ This Stipulation is not intended to express any view as to the existence or nonexistence of appellate jurisdiction or the appropriateness of any interlocutory appeal.

Blain, the John Doe Defendants identified in paragraph 1 will not assert insufficient process or insufficient service of process as a defense.

6. Likewise, Plaintiffs do not waive and hereby expressly preserve any and all arguments in support of their claims against the John Doe Defendants, and any and all counterarguments to the John Doe Defendants' defenses.

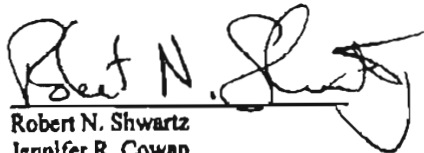
Dated: New York, New York
July 23, 2014



Ramzi Kassem
Diala Shamas
CLEAR project
Main Street Legal Services, Inc.
City University of New York School of Law
2 Court Square
Long Island City, NY 11101
(718) 340-4558
ramzi.kassem@law.cuny.edu
diala.shamas@law.cuny.edu



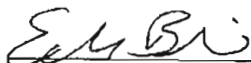
Shayana Kadidal
Susan Hu
Baher Azmy
Omar A. Farah
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6491
kadidal@ccrjustice.org
shu@ccrjustice.org
bazmy@ccrjustice.org
ofarah@ccrjustice.org



Robert N. Shwartz
Jennifer R. Cowan
Rushmi Bhaskaran
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
rshwartz@debevoise.com
jrcowan@debevoise.com
rbhaskar@debevoise.com

Attorneys for Plaintiffs

PREET BHARARA
United States Attorney for the
Southern District of New York



By: Sarah S. Normand
Ellen Blain
Assistant United States Attorneys
U.S. Attorney's Office, SDNY
86 Chambers Street
New York, NY 10007
(212) 637-2709/2743
sarah.normand@usdoj.gov
ellen.blain@usdoj.gov

Attorney for Defendants

IT IS SO ORDERED.



RONNIE ABRAMS
United States District Judge

7/24/14



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

July 16, 2021

BY ECF

Hon. Ronnie Abrams
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2203
New York, NY 10007

Re: *Tanvir v. Comey et al.*, 13 Civ. 6951(RA)

Dear Judge Abrams:

We write respectfully on behalf of both parties in response to the Court's Order, dated June 17, 2021, directing the parties to "meet and confer, and . . . submit to the Court a joint letter proposing next steps for this litigation," the mandate having issued on June 16, 2021. ECF No. 120.

The only remaining claims in this matter are individual capacity claims brought by plaintiffs Tanvir, Algibhah and Shinwari against fifteen federal agents under the Religious Freedom Restoration Act. The parties have met and conferred, and agree that the appropriate next step is for defendants to submit a renewed motion to dismiss these claims based on qualified immunity and other grounds, which this Court did not address in its previous order granting defendants' motion to dismiss (ECF No. 104). *See Taznin v. Tanvir*, 141 S. Ct. 486, 492 n.* (2020). The parties jointly and respectfully request the following briefing schedule for the motion to dismiss: defendants' motion to dismiss due by October 8, 2021; plaintiffs' opposition due by December 17, 2021; and defendants' reply due by January 28, 2022.

We thank the Court for its consideration of this submission.

Respectfully,

AUDREY STRAUSS
United States Attorney

by: /s/ Sarah Normand
SARAH S. NORMAND
ELLEN BLAIN
Assistant United States Attorneys
Tel.: (212) 637-2709/2743
Email: sarah.normand@usdoj.gov
ellen.blain@usdoj.gov

cc: Jennifer Cowan, Esq.
Debevoise & Plimpton
Counsel for Plaintiff
By ECF and Electronic Mail

Baher Azmy, Esq.
Shayana Kadidal, Esq.
Diala Shamas, Esq.
Center for Constitutional Rights
Counsel for Plaintiff
By ECF and Electronic Mail

Ramzi Kassem, Esq.
Naz Ahmad, Esq..
CLEAR Project, CUNY School of Law
Counsel for Plaintiff
By ECF and Electronic Mail

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
By: SARAH S. NORMAND
ELLEN BLAIN
Assistant U.S. Attorneys
86 Chambers Street, Third Floor
New York, NY 10007
Telephone: 212.637.2709/2743
Fax: 212.637.2730
E-mail:sarah.normand@usdoj.gov
ellen.blain@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUHAMMAD TANVIR *et al.*,

Plaintiffs,

v.

FNU TANZIN *et al.*,

Defendants.

13 Civ. 6951 (RA)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon (1) the accompanying Memorandum of Law in Support of the Individual Defendants' Motion to Dismiss the Remaining Claims in the First Amended Complaint, and (2) the Declaration of John Doe 1 previously filed at ECF No. 42, defendants FNU Tanzin, Sanya Garcia, Francisco Artousa, John LNU, John C. Harley III, Steven LNU, Michael LNU, Gregg Grosseohmig, Weysan Dun, James C. Langenberg, and John Does 1-6, by their attorney, Damian Williams, United States Attorney for the Southern District of New York, hereby move this Court for an order dismissing the remaining claims against them in the First Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and the doctrine of qualified immunity; and

PLEASE TAKE FURTHER NOTICE that, upon (1) the accompanying Memorandum of Law in Support of the Individual Capacity Defendants' Motion to Dismiss the Remaining Claims in the First Amended Complaint, (2) the Memorandum of Law previously filed at ECF No. 39, at 61-66, and (3) the Declarations of Agents John Doe 6, Dun, Grossoehmig, Harley, Langenberg, Michael LNU, and Steven LNU previously filed at ECF Nos. 43-49, respectively, defendants Steven LNU, Harley, Grossoehmig, Michael LNU, John Doe 6, Dun, and Langenberg also move this Court for an order dismissing the remaining claims against them in the First Amended Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2); and

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's memo-endorsed Order dated October 7, 2021, responsive papers, if any, shall be served no later than December 24, 2021, and reply papers, if any, shall be served no later than February 2, 2022.

Dated: New York, New York
October 15, 2015

Respectfully submitted,

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

By: /s/ Sarah Normand
SARAH S. NORMAND
ELLEN BLAIN
Assistant United States Attorneys
86 Chambers Street, Third Floor
New York, New York 10007
Telephone: 212.637.2709/2743
Fax: 212.637.2730
E-mail: sarah.normand@usdoj.gov
ellen.blain@usdoj.gov

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 MUHAMMAD TANVIR, *et al.*,
4 Plaintiffs,

5 v. 13 CV 6951 (RA)

6 JAMES COMEY, *et al.*,
7 Defendants.

-----x
8 Oral Argument
9 New York, N.Y.
June 14, 2022
10:00 a.m.

10 Before:

11 HON. RONNIE ABRAMS,
12 District Judge

13 APPEARANCES

14 NAZ AHMAD
15 DIALA SHAMAS
16 BAHER AZMY
Attorneys for Plaintiffs

17 -and-
DEBEVOISE & PLIMPTON, LLC
BY: JENNIFER R. COWAN

18 DAMIAN WILLIAMS
19 United States Attorney for the
Southern District of New York
20 SARAH NORMAND
JENNIFER ELLEN BLAIN
21 Assistant United States Attorneys

22
23
24
25

1 (Case called)

2 MS. AHMAD: Naz Ahmad, Clear Project, for the
3 plaintiffs.

4 MS. NORMAND: Sarah Normand on behalf of the
5 individual agent defendants, your Honor. Good morning.

6 MS. BLAIN: Ellen Blain, also on behalf of the
7 individual agent defendants. Good morning.

8 THE COURT: Good morning.

9 Would any other counsel on behalf of plaintiffs like
10 to state their appearances.

11 MS. SHAMAS: Diala Shamas from the Center for
12 Constitutional Rights.

13 MR. AZMY: Baher Azmy from the Center for
14 Constitutional Rights.

15 MS. COWAN: Jennifer Cowan from Debevoise & Plimpton.

16 THE COURT: Good morning, to all of you.

17 We are here on oral on defendants' motion, so I will
18 hear from the government first.

19 MS. NORMAND: Thank you, your Honor. May I use the
20 podium?

21 THE COURT: Yes. When you're speaking, you can take
22 off your mask if you're fully vaccinated.

23 MS. NORMAND: Thank you, your Honor.

24 With the Court's permission, I will address the
25 qualified immunity aspects of the motion and my colleague,

1 Ms. Blain, will address personal jurisdiction.

2 THE COURT: Very well. Thank you.

3 MS. NORMAND: Good morning, may it please the Court,
4 this motion presents a pure question of law that can and should
5 be decided narrowly. Whether the amended complaint alleges
6 facts that if taken as true would alert every reasonable agent
7 acting in the position of these agents, that what he was doing
8 was imposing a substantial burden on the plaintiff's religious
9 exercise in violation of RFRA.

10 THE COURT: If this was just a matter of law, why
11 didn't the circuit decide it? So the circuit declined to
12 address the qualified immunity issue, given, and I'm just
13 quoting here, the absence of a more developed record,
14 notwithstanding the fact that it had received the supplemental
15 briefing from the parties. Do you want to address what you
16 think they intended?

17 MS. NORMAND: Certainly, your Honor.

18 The circuit actually, I think, in the paragraph before
19 that made clear that it should be decided as early as possible
20 and is available on a motion to dismiss. The lack of a
21 developed record in that opinion was referring to the fact that
22 the parties hadn't briefed the issue before the Court or argued
23 it.

24 There was a request or an order for supplemental
25 briefing after the argument, and there was a limited number of

1 pages. There were letter briefs that were permitted. And the
2 Court found -- our reading of that is that the Court was in
3 fact encouraging this Court to look at qualified immunity based
4 on the pleadings. That's really the import of what the Court
5 was saying. The Court was saying, first, it should be decided
6 as quickly as possible and is available on a motion to dismiss.
7 But here the parties didn't brief it and only addressed it in
8 letter briefs after the circuit, in a postargument order,
9 directed the parties to address it. Obviously, as the briefs
10 in this case suggest, it requires more development than just
11 however many pages of letter briefing that the circuit
12 permitted the parties after argument.

13 THE COURT: You may proceed. Thank you.

14 MS. NORMAND: Thank you.

15 I should add, the Court also, I think, noted that this
16 is a matter that the Court of Appeals wanted the district court
17 to address in the first instance and not to address for the
18 first time on appeal.

19 The standard for qualified immunity is well settled.
20 The agents are entitled to qualified immunity on the pleadings
21 if a reasonable agent in their position might not have known
22 for certain that what they were doing violated RFRA. That's
23 the standard from *Abassi* and it's well settled.

24 It's a demanding standard, as the Supreme Court in the
25 *District of Columbia v. Wesby* case noted. The alleged

1 violation must be so clear that every reasonable official would
2 appreciate at the time that what he was doing violated the
3 statute.

4 There are two reasons why that standard is not met
5 here. One is legal and one is a factual defect in the amended
6 complaint.

7 The legal problem here is that there is no clearly
8 established law. In fact, there is no precedent at all that
9 would have put the agents on clear notice that attempting to
10 recruit someone to be an informant, using the no-fly list or
11 any other incentive, would impose a substantial burden on their
12 religious exercise.

13 The plaintiffs, whose burden it is to identify the
14 clearly established law, point to two things. First, they
15 point to the statutory standard in RFRA, and then they draw
16 from general statements from case law that arises in admittedly
17 very different circumstances.

18 But the Supreme Court has said in many cases that
19 qualified immunity and clearly established law cannot be
20 defined at such a high level of generality.

21 Just to give some examples, in the *White* case, and the
22 *Mullenix* case and the *Plumhoff* case, the Supreme Court said
23 that the Court of Appeals and the lower courts had improperly
24 defined the right as the right to be free from excessive force.

25 In the *Reichle* case, the Supreme Court that said that

1 the lower court had improperly defined the right as the right
2 to be free from actions in retaliation for political speech.
3 In *Al-Kidd*, the Court said the right could not be defined as
4 broadly as being free from an unreasonable seizure. Those
5 broad articulations of the right are exactly what the
6 plaintiffs are urging here is the right.

7 Instead, as the Supreme Court has repeatedly said, the
8 right at issue must be defined by reference to the specific
9 context and the question is whether the particular conduct
10 alleged in the amended complaint, accepted as true, violated
11 that right. It's not enough that there is case law or
12 precedent that suggests the right that the plaintiff is urging
13 on the Court. That's what the Supreme Court said in *Wesby*.
14 The existing precedent must have placed the question beyond
15 doubts.

16 Here, the plaintiffs have pointed to no case in even
17 remotely similar circumstances. And the only cases that are
18 even close were, first of all, decided much later. And they
19 suggest that in fact there would not be a RFRA violation in
20 similar circumstances.

21 That brings me to the second reason why the plaintiffs
22 have failed to articulate in the amended complaint, failed to
23 allege a violation of clearly established law.

24 THE COURT: I just want to stop there for a second.
25 Does that mean, in your view, that an official will always get

1 qualified immunity on a RFRA claim unless the Supreme Court or
2 Second Circuit has previously discussed the exact same
3 religious belief or practice?

4 MS. NORMAND: No, your Honor.

5 THE COURT: For the exact same conduct by the
6 officers.

7 MS. NORMAND: No, your Honor. The Court has been
8 clear that you don't need a case directly on point, but you
9 need a case that's sufficiently on point to make it clear to
10 the reasonable -- to the officers on the ground that what they
11 were doing necessarily would violate someone's religious
12 beliefs.

13 There are also factual statements that could have been
14 made at the time that would have potentially put the agents on
15 notice. So there is both a legal problem here and a factual
16 problem. One could imagine a circumstance where there would be
17 a violation where it was clear from the facts that what the
18 agents were doing was imposing a substantial burden on the
19 plaintiff's religious beliefs. So we are not saying
20 necessarily that you would have to have the exact belief or the
21 exact conduct, but you do need a combination of law and facts
22 alleged in the complaint and presumed to be true that would
23 have put the agents on clear notice, such clear notice that no
24 reasonable officer could have been in question about whether he
25 was violating the statute.

1 THE COURT: What do you think could have been alleged
2 here? What could have been alleged here?

3 MS. NORMAND: Well, at a minimum, what could have been
4 alleged is that these plaintiffs put these agents on notice
5 that their request would violate their religious beliefs.
6 That's a fundamental flaw in the allegations of this complaint.
7 There was no statement -- we are not saying you need magic
8 words, but there was no statement, no suggestion that what the
9 agents were asking -- some agents, not all agents -- were
10 asking them to do would impose any burden on their religious
11 exercise. In fact, two of the plaintiffs, Mr. Tanvir and
12 Mr. Shinwari gave nonreligious reasons for objecting to the
13 request to provide information about others in their community.
14 And the third, Mr. Algibhah, actually said, first of all, he
15 would consider it and then assured the agents that he would in
16 fact serve as an informant if he was taken off the no-fly list.

17 Under these factors, we think it's quite clear, even
18 if you were to say that the precedent existing -- that even a
19 general principle of law was enough, which it's not under the
20 Supreme Court's repeated admonition, the facts here wouldn't
21 have put these officers or, rather, reasonable officers in
22 these agents' position on clear notice such that no reasonable
23 official could have thought that he wasn't violating the
24 statute.

25 THE COURT: You may proceed. Thank you.

1 MS. NORMAND: That's the second reason why this
2 complaint, just at the threshold and based on the allegations
3 in the complaint, must be dismissed for qualified immunity.

4 The plaintiffs offer essentially two arguments in
5 response. One is the argument that knowledge is not a required
6 element of a RFRA violation, citing cases that arise in other
7 contexts, not involving personal liability of individual
8 officials.

9 We think that that can't be right in order to obtain
10 relief against agents personally. The agents have to have
11 known what they were doing was a violation, and in fact, under
12 the Second Circuit's decision in *Provost*, which is cited in the
13 plaintiff's papers, the Second Circuit made clear that to state
14 even personal involvement in a violation, the officer not only
15 had to take steps to effectuate the violation, but also had to
16 know the facts that would have put him on notice that the
17 violation was unlawful. So knowledge is effectively of
18 personal involvement.

19 But the Court couldn't even need to reach that
20 pleading question because there is no question that, for
21 qualified immunity purposes, the agents must have knowledge
22 that their actions were unlawful under the statute that the
23 plaintiffs are suing under. That's just clear from *Abassi* and
24 all of these cases. The whole inquiry is whether a reasonable
25 agent in the agent's position would have known for certain. So

1 it's not just knowledge, but certain knowledge that what they
2 were doing was violative of the statute.

3 Here, I would add that the plaintiffs, when they were
4 before the Supreme Court in this case, made that point to
5 Justice Kavanaugh. Justice Kavanaugh asked the plaintiffs'
6 counsel, he expressed a concern -- his word -- concern about
7 applying RFRA, which doesn't have a *mens rea* requirement, to
8 subject "career FBI agents to life-altering damages remedies in
9 the absence of a *mens rea* requirement." Plaintiff's counsel's
10 response was that the law already accounts for this because it
11 provides "a well-established and robust doctrine of qualified
12 immunity". That answer assuaged Justice Kavanaugh's concern.
13 He even responded, that's a good answer about qualified
14 immunity.

15 Then the Supreme Court went out of its way to note in
16 a footnote that the parties agree that qualified immunity is
17 available here or it's a defense that's available here and that
18 in fact the plaintiffs had emphasized that that was the case.
19 So there is really no question, no serious question that
20 knowledge is required.

21 Then the question is, is knowledge alleged in this
22 complaint? The plaintiffs argue that it's alleged because it's
23 clear from the allegations in the complaint that the agents
24 knew that these plaintiffs were Muslim. That doesn't suggest a
25 knowledge of any particular religious tenets, nor does the fact

1 that these plaintiffs were allegedly asked questions about
2 where they attended mosque or their religious activities. That
3 doesn't say anything about whether they would have known or not
4 known that a tenet of the Muslim faith is not to spy or not to
5 act deceptively, and it certainly wouldn't suggest that any of
6 these plaintiffs held that religious faith.

7 It can't be the case that the rule is that any Muslim
8 individual would necessarily experience a religious burden or
9 burden on religious exercise if he or she provided information
10 about others in his or her community.

11 In fact, there was a fourth plaintiff here who was
12 asked very similar questions about the Muslim community and
13 asked to serve as an informant. And that individual did not
14 allege a RFRA claim and did not allege that he had a sincerely
15 held religious belief against doing that.

16 So simply knowing that someone is a particular faith
17 or knowing about their religious activities certainly wouldn't
18 be enough to allege that the agents knew that serving as an
19 informant would impose a religious burden, let alone a
20 substantial religious burden, let alone have that knowledge for
21 certainty, as required by *Abassi*.

22 So the Court can decide this case narrowly. Knowledge
23 of the substantial burden is a required element for qualified
24 immunity. There are no facts showing that knowledge. In fact,
25 the facts allege in the amended complaint suggest there wasn't

1 knowledge on the part of a reasonable agent in the agent's
2 position, and there is no case law at all that would have put
3 the agents on notice that RFRA would be violated in these
4 circumstances. That analysis disposes of the claims against
5 all of the defendants, and the Court can and should stop there.

6 THE COURT: Let me stop you there. Why is it that a
7 reasonable agent wouldn't know that asking an individual to
8 infiltrate their religious community would be a RFRA violation?

9 MS. NORMAND: A reasonable agent wouldn't necessarily
10 know that.

11 I do want to say at the threshold, that allegation is
12 only made with regard to the individuals who interacted with
13 Mr. Algibhah. The agents who interacted with Mr. Tanvir and
14 Mr. Shinwari are not alleged to have made any such requests or
15 referred specifically to informing on -- in any particular
16 location. They simply asked those individuals to serve as
17 informants, or at least some of them did. Even as to
18 Mr. Algibhah.

19 THE COURT: Mr. Algibhah, in the complaint at
20 paragraph 112, was requested to infiltrate a mosque in Queens.

21 MS. NORMAND: Right.

22 THE COURT: I am just looking at the other
23 allegations, but I can turn to plaintiff, that were kind of
24 similar in kind.

25 Mr. Shinwari understood, and this is in paragraph 156,

1 from questioning that agents wanted him to inform on the
2 American Muslim community in Omaha, American Muslim communities
3 in other parts of the United States, and Muslims in other
4 countries. We can go through other allegations, but I want to
5 give you the opportunity to respond. Thank you.

6 MS. NORMAND: Thank you, your Honor.

7 I think there is quite a material difference between
8 the quoted language that is attributed to an agent who spoke
9 with Mr. Algibhah and what Mr. Shinwari understood, not based
10 on what any quoted language or specific allegations about what
11 agents told him. He understood that being asked to provide
12 information about others in one's community, whether that be a
13 Muslim community or some other community, is a different sort
14 of allegation.

15 But I do want to address your Honor's question as to
16 Mr. Algibhah. Because it certainly could be the case that
17 asking someone to do that, that a reasonable agent could think,
18 oh, this may impose a religious burden. But that's not enough
19 to ask someone to, quote, infiltrate a mosque. That means
20 informing on individuals who are acting within that religious
21 space. That could potentially impose a religious burden, but
22 that doesn't -- it wouldn't necessarily impose a religious
23 burden. That's why qualified immunity -- that's where the
24 demanding nature of the test is so important, because the
25 question is not whether a reasonable agent could have thought

1 that that might impose a religious burden. The question is
2 whether every reasonable agent would have thought that would
3 impose a religious burden. And that would really depend -- you
4 can't say that.

5 Certainly, there is no case law that would suggest
6 that. It's certainly not the case, given the allegations here,
7 where Mr. Algibhah himself said, I will do that. Not only did
8 he not ever say that would violate my sincerely held religious
9 beliefs or give any suggestion that that would violate my
10 religion or anything. There are no facts alleged to suggest
11 that.

12 In fact, the facts are he said he would do it. He
13 essentially made a counterproposal and said, I will serve. He
14 assured the agents he would serve as an informant if they took
15 him off the no-fly list.

16 Under those facts, you can't say -- it would be
17 impossible to reach the conclusion that every reasonable agent
18 would assume, would know that he's imposing a substantial
19 religious burden on this individual who has said, in fact, he
20 would do it if the agents took him off the no-fly list.

21 Certainly if the Court were to find that that was
22 enough to put any reasonable agent on notice or every
23 reasonable agent on notice, that would be the first time that
24 any court has ever made such a judgment, and in that
25 circumstance qualified immunity is appropriate.

1 Many of the defendants also have other defenses based
2 on the specific factors pled in the amended complaint. I'll
3 just go through those briefly and answer any questions your
4 Honor may have.

5 For eight of the agents, and those are John Doe 1,
6 Garcia, John LNU, Steven LNU, Harley, Grossoehmig, Dun, and
7 Langenberg, for these eight agents, the allegations in the
8 amended complaint do not establish personal involvement in the
9 allegedly impermissible choice that the plaintiffs claim
10 violated their rights under RFRA. These agents are not alleged
11 to have made any request that any plaintiff serve as an
12 informant, and they were not present when anyone else made such
13 a request.

14 And under the well-established line of cases that
15 require personal involvement in the conduct that is alleged to
16 have been violated, *Iqbal*, *Tangreti*, the *Provost* case that I
17 mentioned earlier, the plaintiffs failed to allege sufficient
18 personal involvement for those individuals.

19 For two additional agents, Agents Tanzin and JD2/3,
20 these agents lack personal involvement or the allegations,
21 rather, in the amended complaint fail to plausibly allege their
22 personal involvement. Because although they are alleged to
23 have asked him Tanvir to serve as an informant in January and
24 February of 2009, that request -- first of all, they never
25 mentioned the no-fly list in any of those conversations, and

1 the request itself was far remote in time from Mr. Tanvir's
2 first denial of boarding, which didn't take place until October
3 of 2010, and Mr. Tanvir was able to fly twice in the interim.
4 So during that 20 months, after this request was made,
5 Mr. Tanvir was able to fly twice.

6 Under these circumstances, Mr. Tanvir has not
7 plausibly alleged that these agents were personally involved in
8 the allegedly impermissible choice that they claim violated
9 RFRA. Of course, there are another seven agents, the agents
10 who interacted with Mr. Shinwari who also assert a defense of
11 personal jurisdiction that my colleague Ms. Blain will address.

12 Again, the Court need not reach these individual
13 specific factual allegations to decide the case because, under
14 the second prong of the qualified immunity analysis, there is
15 no precedence, and plaintiffs have not pled sufficient facts to
16 plausibly establish that every reasonable officer in the
17 agent's position would have known for certain that asking or
18 even pressuring the plaintiffs to serve as informants would
19 impose a substantial burden on their religious exercise.

20 Thank you.

21 THE COURT: Thank you.

22 MS. NORMAND: Would the Court like to hear from
23 Ms. Blain on personal jurisdiction first?

24 THE COURT: Sure. Why don't we do that.

25 MS. BLAIN: May it please the Court, Ellen Blain on

1 behalf of the individual defendants. I'll address officially
2 just personal jurisdiction.

3 Your Honor, plaintiffs fail to state a *prima facie*
4 case of personal jurisdiction against the seven agents who
5 allegedly interacted with Mr. Shinwari. Those interactions
6 took place entirely outside New York. They took place in
7 Dubai, in Dulles, and in Omaha. Shinwari doesn't live in New
8 York. He didn't travel through New York. He wasn't denied
9 boarding in New York. And indeed the phrase New York doesn't
10 appear at all in the section of the complaint addressing
11 Mr. Shinwari's allegations. Shinwari has thus failed to meet
12 his burden demonstrating that personal jurisdiction, under New
13 York's long-arm statute, applies to these agents, much less
14 that the due process standard would be satisfied, and the Court
15 can deny plaintiff's request for jurisdictional discovery on
16 that basis alone.

17 Where a plaintiff has failed to plead legally
18 sufficient allegations of jurisdiction, including affirmative
19 acts that if credited would suffice to establish jurisdiction
20 over defendant, that's the *Penguin* case from the Second
21 Circuit, the Court can deny jurisdictional discovery. And here
22 there is no dispute that plaintiffs have failed to state a
23 *prima facie* case. The complaint does not contain any
24 allegations whatsoever that personal jurisdiction is
25 appropriate against these agents, but they posit that

1 jurisdictional discovery may reveal additional contacts with
2 New York sufficient to establish personal jurisdiction in this
3 courtroom.

4 But that is pure speculation. The plaintiffs bear the
5 burden of identifying additional discoverable facts that could
6 subject these agents to personal jurisdiction. Here they have
7 offered no more than theories, none of which, even if the Court
8 were to credit those theories, would establish personal
9 jurisdiction over these agents working in Dubai, in Omaha, and
10 in Virginia.

11 Plaintiffs, furthermore, are not entitled to test the
12 veracity of the agents' declarations merely because the agents
13 submitted a declaration. Instead, the agents or, rather, the
14 plaintiffs must identify facts that would call those
15 declarations into question. Here, of course, they can allege
16 no facts. They pointed to no facts and they pointed to no
17 theories that would call any of these declarations into
18 question.

19 What did they speculate? They speculate, as far as we
20 can tell, three things. One, that there is a nationwide
21 program to recruit Muslim informants. That's at paragraph 87
22 of the amended complaint. But while that may be true, your
23 Honor, that says nothing about whether or not these agents were
24 connected to New York in connection with a nationwide program.
25 So they say, well, maybe, maybe there is coordination between

1 the agents.

2 And taking every inference in the complaint in
3 plaintiff's favor, there may be allegations that the agents who
4 interacted with Mr. Shinwari were coordinating with each other,
5 but there is zero allegations that the agents were coordinating
6 with anybody in New York.

7 So then they go to the third argument. Well, there
8 must be some coordination with New York because New York's JTTF
9 field office is the, quote, the granddaddy of them all, but
10 that says nothing about whether or not the agents in Omaha, in
11 Dulles, and in Dubai were coordinating with anybody in New
12 York. The fact that the New York office is the oldest says
13 nothing about the fact or doesn't necessarily indicate that
14 every single counterterrorism investigation around the country
15 goes through New York.

16 And, in fact, in the article that the plaintiffs cite,
17 the article itself says, at least as of 2015, seven years ago,
18 there were 104 JTTF offices around the country interacting with
19 more than 500 state and local entities, with more than 4,000
20 employees. So to allege that just because JTTF was started in
21 New York, all of those 4,000 employees in 104 offices around
22 the country are automatically subject to jurisdictional
23 discovery just because of conducting counterterrorism
24 investigations somewhere in the country, would be
25 inappropriate.

1 Finally, your Honor, two more points, and then I will
2 stop.

3 Point number 1. Every case identified by plaintiffs
4 where jurisdictional discovery was ordered, the plaintiffs
5 there did far more. They alleged some facts or some facts that
6 they hoped to find in discovery that would be sufficient to
7 confer jurisdiction in that courtroom. And here, as I have
8 just gone through, the three speculations they posit are just
9 that, mere speculations, and no facts and wouldn't even confer
10 personal jurisdiction.

11 Then, finally, in the event the Court is inclined to
12 order a jurisdictional discovery on this point, the agents
13 respectfully request that, as the Court previously did, the
14 Court delay decision on that motion until deciding the
15 threshold issues of qualified immunity. Thank you.

16 THE COURT: Thank you.

17 Who would like to be heard on behalf of plaintiffs?

18 MS. AHMAD: Naz Ahmad.

19 Good morning, your Honor, Naz Ahmad, Clear Project at
20 CUNY School of Law for the plaintiffs.

21 Although this matter involves multiple plaintiffs and
22 defendants and a series of events occurring over a period of
23 several years, the through line is clear. Defendant agents
24 pressured my clients to serve as informants in their religious
25 communities.

1 When my clients refused, because, one, to do so would
2 violate a clear tenet of their religion and, two, because
3 working as informants would require them to engage in their
4 coreligionist in a deceptive manner, defendants placed or kept
5 them on the no-fly list and made clear to them that they would
6 only be taken off if they acquiesced.

7 As a result, my clients were separated from their
8 loved ones for years, lost valuable employment opportunities,
9 all the while not knowing if they would ever be able to fly
10 again.

11 Seeking to impose on plaintiffs the time, place, and
12 manner of their engagement with their own-faith communities and
13 then punishing them for refusing to comply is the very
14 definition of a substantial burden under RFRA. The ability to
15 freely exercise one's religion is a fundamental value in this
16 country.

17 Defendants now ask the Court to hold that no
18 reasonable federal officer would believe that it was unlawful
19 to punish someone for refusing to attend a house of worship
20 with deceptive intent. That simply cannot be. The Supreme
21 Court has made clear that plaintiffs can make out an allegation
22 of a violation of a clearly established right even in novel
23 factual circumstances, even where there is no circuit or
24 Supreme Court precedent matching the fact pattern at hand.

25 THE COURT: What facts are alleged in the complaint

1 would have put these officers on notice?

2 MS. AHMAD: The defendant -- we allege that the
3 defendants asked the plaintiffs to serve as informants in their
4 religious communities.

5 As you noted earlier, they asked Mr. Algibhah to
6 infiltrate a mosque in Queens. They asked him to go on Islamic
7 websites and act extremist. Also, as you noted earlier, they
8 asked Mr. Shinwari to -- it was -- Mr. Shinwari understood that
9 they wanted him to spy on American Muslim communities in Omaha
10 in America, and around the world. The agents asked Mr. Tanvir
11 if he would be an informant in Pakistan and Afghanistan, and
12 they also asked him what he knew about these South Asian
13 communities.

14 It's also important to take a step back and understand
15 the context that the agents were also asking the plaintiffs
16 about their religious practices and were approaching them
17 because they knew they were Muslim. The plaintiffs understood
18 that they were being asked to spy specifically on their
19 coreligionists because there were their coreligionists, not
20 because they happened to be engaged in criminal activity or
21 because the defendant agents posed to them, oh, we have this
22 ongoing investigation into a drug trafficking ring and that's
23 what we need you for.

24 That is what would have put the defendant agents on
25 notice, that they were asking the plaintiffs to engage their

1 coreligionists in a deceptive manner and punishing them for
2 refusing to do so. I want to be very clear that that is a
3 substantial burden. It is not just a matter of asking them.
4 It's imposing a punishment on them when they refuse to do so.

5 THE COURT: Let's just go back to the particular tenet
6 aspect of the argument. Why is it not speculative for me to
7 infer that the individual defendants knew about this particular
8 tenet at the Muslim faith against informing on one's community
9 members?

10 MS. AHMAD: As we have argued in our brief, these
11 are -- all of them, most likely, are counterterrorism agents
12 who would have received training in counterterrorism
13 investigations. That would have included trainings on Islam.
14 So it is reasonable to infer that they would have obtained this
15 kind of training.

16 But also, again, just to go back to my earlier point,
17 yes, there is this clear tenet of the religion that would have
18 been violated, but it's not just that. Because asking a
19 Catholic to spy on a confessional would raise the same issue or
20 asking an observant Jew to spy or to attend Shabbat services
21 with a deceptive intent would clearly -- any agent would
22 clearly understand that they were asking somebody to do
23 something that might place a burden on their exercise of
24 religion.

25 THE COURT: Let's talk about that. Let's talk about

1 the specific allegations as to what the individual plaintiffs
2 were asked to do. So we already talked about the language
3 about -- I want to make sure I'm pronouncing it correctly --
4 Algibhah. Am I pronouncing that correctly?

5 MS. AHMAD: Mr. Algibhah.

6 THE COURT: Thank you.

7 When you say infiltrate, what does that mean? Does
8 that mean gathering information? Was it a reference to his
9 particular mosque? This was a different mosque in Queens.
10 This was not his individual mosque.

11 MS. AHMAD: This was not his individual mosque.
12 Mr. Algibhah resided in the Bronx. They were asking him to
13 attend a different mosque in Queens. I don't believe that we
14 have alleged very specifically what they wanted him to do
15 there, but it's reasonable to assume that they were asking him
16 to attend services to report on what other people were saying,
17 to report on any lectures given at the mosque, that sort of
18 thing.

19 THE COURT: And with respect to Mr. Tanvir.

20 MS. AHMAD: Yes. So Mr. Tanvir, I believe -- sorry.

21 THE COURT: I see, at paragraph 70, he was asked what
22 people in the Muslim community generally discussed. So that's
23 a question.

24 MS. AHMAD: Correct.

25 THE COURT: And agents told Tanvir they wanted him to

1 gather information about the South Asian communities. That
2 wasn't a specific reference to religion. And then --

3 MS. AHMAD: Yes, your Honor. There are no specific
4 reference to religion there, but they weren't approaching Mr.
5 Tanvir, and they weren't asking him questions about Hindu
6 friends or Sikh friends or Jain friends that he had. They were
7 asking him about Muslim communities. It would be ridiculous to
8 assume that they were asking him about non-Muslim Desi
9 communities.

10 THE COURT: In your view, asking someone Catholic
11 about Catholic communities, is that in and of itself?

12 MS. AHMAD: Again, just to go back, it's the
13 combination of the two, of punishing them for refusal to do so.

14 But to your question, it is that they were asking him
15 to specifically engage his coreligionist because they were his
16 coreligionist in a deceptive manner. You can see a scenario
17 where an agent asks somebody incidentally, you are connected to
18 this potential money laundering ring, or something like that,
19 and these people who we are asking you to spy on happen to be
20 Catholic, and you are Catholic as well.

21 Now, that may raise a problem if they are asking the
22 person to spy on this person at church services or other church
23 organized events. That could raise a substantial burden.

24 THE COURT: Does it matter, in your view, if it's your
25 own church service or service in a mosque, such that it's

1 interfering with your religious practice, or if you were to go
2 into a different church or synagogue or mosque, is that the
3 same to you? Is that different in any way? Is it affecting
4 someone's ability to practice their religion if they are going
5 into a different house of worship to obtain information about
6 people of the same religion? But it's not affecting
7 necessarily how you practice when you go to worship. Is there
8 a distinction, in your view, at all?

9 MS. AHMAD: That's a good question, your Honor. I
10 wouldn't say that there is, because you are still -- for anyone
11 who is religiously observant or adherent, any house of worship
12 is sacred. So it's not a matter of, oh, this is my mosque
13 where I know the Imam, or this is my church where I know the
14 priest and the other people know me.

15 Any time, for example, a Catholic enters a church,
16 they are supposed to, I believe, do the benediction, or I don't
17 know what they are called. They treat those places as sacred.
18 For them, any place, any church, whether it's the church they
19 attend every Sunday or the church that the FBI agent has chosen
20 for them, would still pose the same problem.

21 THE COURT: In terms of the allegations with respect
22 to questions about the community or gathering information about
23 the community or informing about the community, why is that a
24 burden on religion?

25 MS. AHMAD: It was made clear to the plaintiffs that

1 they were being asked these questions about other people
2 because they were Muslim. So I would say that that is part of
3 the issue here.

4 But also, again, just to go back, it's the punishment
5 for the refusal to do so. So it's not just that asking
6 somebody to be an informant would necessarily place a
7 substantial burden on their exercise of religion. I could see
8 a scenario where someone is asked, they refuse, they don't even
9 provide a religious reason for their refusal but they say to
10 the agent, I am not going to do that, and it would maybe affect
11 their willingness to attend services because they now perceive
12 that law enforcement is spying on those services. But it's the
13 combination of the two. It's asking and then punishing them
14 for their refusal to do so.

15 THE COURT: We were going through the allegations with
16 respect to the different plaintiffs. I think we left it off,
17 you were going to address Mr. Tanvir.

18 MS. AHMAD: Right. So they asked -- at 76, the
19 agents, Agent Tanzin and Agent John Doe 2, asked Mr. Tanvir to
20 go to Pakistan and work as an informant. Then, at paragraph
21 78, they asked him to go to Afghanistan. At paragraph 83, the
22 agents told Mr. Tanvir that they wanted him to gather
23 information and that they were specifically interested in
24 people from the Desi South Asian communities.

25 THE COURT: I want to talk a little bit more about

1 this alternative argument for how defendants violated RFRA,
2 separate from the specific tenet about informing on one's
3 community.

4 Based on what was written in your motion, you argued
5 that defendants' actions chilled plaintiffs' religious exercise
6 by using the list as a stick and, as you just noted, sort of a
7 punishment to influence how plaintiffs participated in
8 religious spaces. I would like you to elaborate on that and
9 point me to allegations in your amended complaint that assert
10 the defendants' changed how plaintiffs participated in their
11 religious spaces, how their actions affected plaintiffs, and
12 how they participated in their religious worship.

13 MS. AHMAD: Right.

14 At paragraph 142, since the FBI's attempts to recruit
15 Mr. Aligibhah as an informant, members of Mr. Aligibhah's
16 community have taken to distancing themselves from him. In
17 turn, Mr. Aligibhah has also distanced himself from Muslim
18 organizations, from his mosque, and from many in his community.
19 He no longer speaks with people in his mosque or community
20 because he is worried that they will report what he says to the
21 FBI.

22 Then Mr. Shinwari, paragraph 171. In addition,
23 because of the harassment and retaliation he has suffered at
24 the hands of government agents, Mr. Shinwari is reluctant to
25 attend religious services, attending his local mosque less

1 frequently, and to share his religious and political views with
2 others.

3 THE COURT: In support of this alternative theory of
4 chilling in your brief you cite the *Lee* and *DeStefano* cases.
5 Those are both establishment-clause cases, not free-exercise
6 cases. Can I use that to find that the law is clearly
7 established for RFRA purposes?

8 MS. AHMAD: Sorry. Which other case besides
9 *DeStefano*?

10 THE COURT: The *Lee* case. But they were both
11 establishment clause cases and not free exercise.

12 MS. AHMAD: Right.

13 I don't think that you need to use those cases. I
14 think that you can rely on the Supreme Court precedent of
15 *Thomas* and the Second Circuit precedent of *Jolly*, which clearly
16 lay out that an officer or a government employee imposes a
17 substantial burden when they direct somebody to modify their
18 religious behavior and punish them if they refuse to do so.

19 THE COURT: If I do rely on *Jolly* and that instruction
20 that substantial pressure to modify behavior and violate
21 beliefs, which I think is the language you're pointing to,
22 violates RFRA, how is a reasonable officer supposed to know the
23 line between acceptable pressure and substantial pressure?

24 MS. AHMAD: The allegations here involve the no-fly
25 list. Someone on the no-fly list is barred from flying over

1 U.S. air space and can be barred indefinitely, possibly for the
2 rest of their lives. Not in the situation of our plaintiffs,
3 but possibly for the rest of their lives.

4 I'm not entirely sure where we would draw the line,
5 but, obviously, placement on the no-fly list constitutes a
6 civil punishment. Because, for example, it prevented our
7 plaintiffs from seeing their loved ones for several years.

8 A ruling on these specific facts wouldn't, I think,
9 run the risk of sending the wrong message to agents that any
10 little pressure they could put on somebody would get them in
11 trouble with the law or subject them to damages.

12 THE COURT: You may proceed. Thank you.

13 MS. AHMAD: There are a few things that the defendants
14 brought up that I wanted to respond to.

15 One, that the plaintiffs didn't tell the defendants
16 why they were refusing to serve as informants. Again, I want
17 to bring us back to the context of the questioning and the
18 approach. It was very clear to the plaintiffs that they were
19 being approached because they were Muslim and that they were
20 being targeted because they were practicing Muslims. Why on
21 earth would they share with defendants their religious views,
22 to the extent they think this might subject them to further
23 targeting, or they may not even believe that the agents would
24 respect their religious practice reviews.

25 I also want to say, going back to what I said before,

1 is that any reasonable officer would have known the natural and
2 foreseeable consequences of asking somebody to attend a mosque
3 or provide information about their coreligionist, to engage
4 with their coreligionist in a deceptive manner and then, when
5 someone refuses to do so, punishing them for refusing to
6 comply. It's the punishment that creates the substantial
7 burden. It's not just the ask. I want to emphasize that.

8 I also want to point out --

9 THE COURT: Did you say to infiltrate their own
10 mosque? We don't have those allegations.

11 MS. AHMAD: Sorry. I apologize if I misspoke. Not
12 infiltrate their own mosque, because to infiltrate a mosque, a
13 house of worship, or to provide information on their
14 coreligionist.

15 THE COURT: Please proceed. Thank you.

16 MS. AHMAD: I also want to point out that even though
17 some of the defendants were not involved in the direct request
18 to ask the plaintiffs to serve as informants, all of them had
19 some kind of obligation with regards to updating and
20 maintaining the no-fly list.

21 According to official documents from the FBI itself,
22 each nominating agency that can nominate someone to the no-fly
23 list is responsible for maintaining processes, to update and
24 review their records, and they are responsible for creating
25 policies so that as soon as new information becomes available,

1 the nominating agency is required to submit a modification or
2 deletion request to the terror-screening center, at the time
3 the TSDB, relevant to our plaintiffs.

4 Each of the defendants questioned our clients. Each
5 of the defendants sometimes asked the same questions of our
6 plaintiffs. But previous agents had asked, and they would have
7 been able to determine that our clients did not satisfy the
8 criteria for placement on the no-fly list. Yet they didn't
9 take steps to have them removed. That is where I would say
10 personal involvement still comes in.

11 I would just add, at this motion-to-dismiss stage,
12 where the Court assumes plaintiff's allegations are true and
13 resolves all factual inferences in plaintiff's favor --

14 THE COURT: Take your time.

15 MS. AHMAD: It is clear that the allegations plausibly
16 state a claim for relief. In other words, the allegations
17 support a reasonable inference that defendants place a
18 substantial burden on plaintiff's religious exercise.
19 Resolution of those factual inferences, including the question
20 of qualified immunity, should await discovery in summary
21 judgment.

22 THE COURT: Can you address the jurisdictional point
23 that was raised.

24 MS. AHMAD: Yes.

25 Your Honor, we have pled that there was coordination

1 across the field offices with respect to Mr. Shinwari, and the
2 only thing I will add on this is, we are confident that
3 jurisdictional discovery would reveal some contacts with New
4 York.

5 We hadn't brought it to the Court's attention before,
6 but we have FOIA records from the FBI concerning Mr. Shinwari
7 in which someone from the Omaha field office requests that the
8 New York division review the case file or review something with
9 respect to the case file. We'd be happy to share that with the
10 Court, if the Court would find it helpful, but that's our
11 position on that.

12 THE COURT: Anything else you would like to say today?

13 MS. AHMAD: No, your Honor. Thank you.

14 THE COURT: Ms. Normand, any response?

15 MS. NORMAND: Just briefly, your Honor.

16 My colleague suggested that the defendants are asking
17 the Court to hold that no reasonable officer would know that
18 asking someone to serve as an informant would violate their
19 substantial -- would violate their religious beliefs or impose
20 a substantial burden on their religious exercise. That's not
21 what we are asking the Court to hold.

22 Our point is that the standard for qualified immunity
23 is far higher. It's not enough to say that a reasonable
24 officer might have suspected that the request could impose a
25 religious burden. Every reasonable officer in the agent's

1 position would have had to have known that it would impose a
2 religious burden, and they would have to know that based on the
3 existing case law that exists, as well as the facts that are
4 alleged.

5 Your Honor helpfully went through the specific
6 allegations with my colleague. With regard to Mr. Tanvir, the
7 allegations are very vague, that he was asked to be an
8 informant in Pakistan, that he was asked to be an informant in
9 Afghanistan, that he was asked to gather information about his
10 Desi community, which is not necessarily a religious community.

11 THE COURT: They also asked him what people in the
12 Muslim community generally discuss. So in the context of
13 asking him about his religion and then asking, saying they
14 wanted him to gather information in these communities, isn't it
15 clear that they wanted him to gain information about
16 individuals who are Muslim specifically?

17 MS. NORMAND: Not necessarily. But even if that were
18 the inference that the Court were to draw, that wouldn't be
19 enough to suggest that doing so would impose a burden on Mr.
20 Tanvir's religious exercise. That's the problem.

21 There is no allegation. Or if there is an allegation
22 that asking an individual about information about other Muslims
23 or other Catholics or others within the same religious
24 community, that alone would impose a religious burden, let
25 alone a substantial religious burden. There is not a single

1 case that that suggests that. And certainly not a case that
2 would -- that was in place at the time that would have put
3 these agents on clear notice that that's the case in the
4 absence of any factual allegations, and it's conceded there was
5 no statement made in words or substance that this would violate
6 their religious beliefs.

7 THE COURT: Do they have to tell the agents that, that
8 this is going to violate my firmly held religious beliefs?

9 MS. NORMAND: Again, we are not saying you need to
10 have magic words, but you'd have to have facts that would make
11 that clear to the agents. So saying it is the easiest way to
12 do that.

13 I would add that each of these individuals at one time
14 or another had counsel. And, in fact, for Mr. Algibhah, the
15 one that has the allegation about infiltrating a mosque, which
16 it turns out it's not his mosque, it's a different mosque
17 entirely, Mr. Algibhah had counsel who interacted with certain
18 of the agents, and the request to serve as an informant was
19 allegedly conveyed to counsel. Even counsel then didn't make
20 any, according to the allegation, any indication that this
21 would impose a religious burden.

22 THE COURT: Do you think it would have mattered if it
23 was their own mosque? If the agents had said, go into your own
24 mosque, and essentially, without using these words,
25 essentially, instead of praying, you should be spying, should

1 they have known that had they said that, would that have been
2 sufficient to have been this burden on the exercise of their
3 free religion, this substantial burden, rather?

4 MS. NORMAND: Your Honor, it could impose a
5 substantial burden. I'm not suggesting otherwise. But it
6 wouldn't necessarily impose a religious burden. To go into
7 whether it's a mosque or a church or some other religious space
8 and report back about lectures that are being given, homilies
9 that are being given, sermons that are being given and what
10 people are saying in the mosque, certainly that could burden
11 religion, but it wouldn't necessarily.

12 I mean, not every Muslim would necessarily hold a
13 religious belief that would preclude that. In fact, as I
14 mentioned before, one of the four plaintiffs here was an
15 attendee of his mosque, according to the allegations of the
16 complaint, and didn't raise a RFRA claim, didn't allege that he
17 had a substantial religious belief or sincerely held religious
18 belief that would preclude him from dealing with the others.

19 THE COURT: Just because you don't raise a claim or
20 don't say that doesn't mean that your religion wasn't
21 substantially burdened.

22 MS. NORMAND: It doesn't. And we are not actually --
23 we are not disputing that these three plaintiffs had sincerely
24 held religious beliefs. We are not disputing that. We are
25 accepting that as true. What we are saying is that the agents

1 wouldn't have necessarily known that, and that's the key for
2 qualified immunity.

3 The rhetorical point is being made that a Catholic
4 couldn't be asked to provide information about what happens
5 within her church or an observant Jew couldn't be asked about
6 information that happens at a Shabbat dinner. There is no law
7 that suggests that and there is no case, not a single case that
8 has held an officer liable or that has made clear that that
9 would necessarily violate the First Amendment or RFRA.

10 And, in the absence of a case like that, we are
11 telling law enforcement agents that essentially they are not
12 allowed to ask individuals to provide information in religious
13 spaces. That may be a good policy, it may not be a good
14 policy, but it's certainly not something that should be imposed
15 as a matter of damages relief on individual federal agents when
16 there is no clearly established law that would prohibit it.

17 This case would be the very first case where that kind
18 of conduct was held to violate RFRA or the First Amendment
19 free-exercise clause. And that's not to happen under the
20 qualified-immunity doctrine. Where there is not a clearly
21 established precedent that would have put every reasonable
22 officer on notice, the defendants are entitled to qualified
23 immunity as a matter of law, even assuming all the facts that
24 are well pleaded in the amended complaint are true.

25 One point on personal jurisdiction, your Honor.

1 THE COURT: Thank you so much.

2 MS. BLAIN: May I make one point briefly, your Honor?

3 THE COURT: Yes.

4 MS. BLAIN: Just to respond to the FOIA point, even if
5 it's true that a 302 was sent from Nebraska to New York, that
6 still would not be sufficient to confer personal jurisdiction
7 over that agent in Nebraska. That's for several reasons.

8 First, the Second Circuit has said that New York
9 courts consistently refuse to sustain (a)(1) under the long-arm
10 jurisdiction statute, (a)(1) jurisdiction solely on the basis
11 of defendants' communication from another locale with a party
12 in New York. That's the *Fiedler* case. That was affirmed again
13 in the *Robinson v. Overseas* case, a Second Circuit 1994. In
14 both those cases the circuit said, sending mail or having
15 telephone calls from a place in either Korea or Texas in those
16 cases, with individuals in New York, was insufficient to
17 establish personal jurisdiction over those people in Texas or
18 Korea or Virginia.

19 Number 2, even if there were more contacts, more 302-s
20 sent between New York and Omaha, you still have to allege a
21 substantial connection to the claims in this case. That's the
22 *Thomas v. Ashcroft* case from the circuit in 2006. There, I
23 think it's important to note, there were five DEA agents
24 working in California, and they did substantial activity here.
25 They got a wiretap authorization in New York. They swore out a

1 criminal complaint in New York. They took investigative
2 actions in New York. But they arrested the plaintiff in
3 California.

4 And the Court found that even though they had those
5 contacts with New York, the claim arose in California because
6 the claim was, when the arrest happened, the agents took away
7 his glaucoma medication.

8 Here, the claim that the plaintiffs are bringing at
9 this stage in this case is that they were asked for an
10 informant, and they were denied boarding.

11 Where did they allege that it happened? They alleged
12 that he was asked to be an informant in the Nebraska. That's
13 not New York. They alleged that he was delayed boarding in
14 Dubai, not New York. They alleged that he was delayed boarding
15 in Virginia, not New York. And they alleged that he was denied
16 boarding in Nebraska, again, not New York.

17 Even if these things would confer jurisdiction under
18 (a)(1), you still have the due-process analysis, and there, of
19 course, that agent could not be shown to have purposely availed
20 himself of a New York connection. Thank you.

21 THE COURT: Thank you, all. I thought the advocacy
22 was excellent on all sides. I will reserve decision. Have a
23 good day.

24 (Adjourned)

25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUHAMMAD TANVIR, JAMEEL
ALGIBHAH, and NAVEED SHINWARI,

Plaintiffs,

v.

FNU TANZIN, *et al.*,

Defendants.

13-CV-6951 (RA)

OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiffs Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari brought this action to remedy alleged violations of their constitutional and federal statutory rights. Specifically, they allege that, in an effort to bolster intelligence gathering in the aftermath of the terrorist attacks on September 11, 2001, agents of the Federal Bureau of Investigation (“FBI”) placed or kept them on the Terrorist Screening Center’s No Fly List in retaliation for their refusal to act as informants by spying on members of Muslim communities, and in order to pressure them to reconsider. Plaintiffs claim that they refused to gather information about their fellow Muslims because doing so would have contravened their sincerely held religious beliefs, and that the FBI agents’ efforts thus substantially burdened their religious exercise in violation of federal law.

The suit initially named agents of the federal government in their official capacities, and sought Plaintiffs’ removal from the No Fly List. Plaintiffs have since been removed from the No Fly List, and the sole remaining claims are against Defendant FBI agents in their individual capacities for money damages available under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.* (“RFRA”). Namely, Plaintiffs seek damages from Defendants FNU (“First Name Unknown”) Tanzin, Sanya Garcia, Francisco Artousa, John LNU (“Last Name Unknown”), Steven

LNU, John C. Harley III, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, and John Does 1–6.¹ Now before the Court is Defendants’ renewed motion to dismiss the remaining claims in the Amended Complaint for failure to state a claim and under the doctrine of qualified immunity.

The Court is sympathetic to Plaintiffs, who claim that, despite never posing a threat to aviation security, they were, for years, unable to visit ailing loved ones outside of the United States, burdened financially with the loss of job opportunities which required them to travel, and repeatedly forced to endure the basic indignity of being denied boarding passes for flights to which they had legitimately purchased tickets. Accepting their allegations as true, Plaintiffs were subjected to this treatment by way of the FBI’s misuse of the No Fly List simply because they were Muslim, and because they refused to spy on other members of their faith.

Nevertheless—and notwithstanding varied criticisms of the doctrine of qualified immunity, *see, e.g., Baxter v. Bracey*, 140 S. Ct. 1862 (2020) (Thomas, J., dissenting from denial of certiorari); *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J., dissenting)—the Court is required to apply the law faithfully to the issues before it. Accordingly, for the reasons that follow, Defendants are entitled to qualified immunity and the motion to dismiss is granted.

BACKGROUND

The allegations of the tactics undertaken by the FBI giving rise to this action are by now familiar to counsel and the parties. In the main, Plaintiffs allege that they were “among the many innocent people” who were “swept up” in the years since 9/11 by the federal government’s

¹ Pursuant to the Stipulation and Order filed July 24, 2014, Defendants FNU Tanzin, John LNU, Steven LNU, Michael LNU, and John Does 1–6 are currently proceeding under the pseudonyms specified in the Amended Complaint. *See* Dkt. 30 ¶¶ 1–2. John Doe 2 is proceeding as John Doe 2/3. *See id.* ¶ 1(f). A fourth Plaintiff, Awais Sajjad, did not assert claims under RFRA, *see* Dkt. 15, and thus is no longer party to the remaining claims in this action. Accordingly, there are no longer pending claims against Defendants John Does 9–13, Michael Rutowski, or William Gale. Finally, John Does 7 and 8 were previously dismissed from this action. *See* Dkt. 104 at 36.

“secretive watch list dragnet.” Compl. ¶ 4. Plaintiffs claim that the process for placing individuals on the No Fly List, which is maintained by the Terrorist Screening Center (“TSC”), *id.* ¶ 40–41, is “shrouded in secrecy and ripe for abuse,” *id.* ¶ 63. “To be properly placed on the No Fly List, an individual must be a ‘known or suspected terrorist’” and “there must be some additional ‘derogatory information’ demonstrating that the person ‘poses a threat of committing a terrorist act with respect to an aircraft.’” *Id.* ¶ 42. Despite never posing a threat—or even being accused of posing a threat—to aviation safety, Plaintiffs allege that they were each either placed or kept on the List merely for refusing to become informants for the FBI against fellow Muslims. *Id.* ¶¶ 8–9, 65–67, 68, 118, 145. They urge that their inclusion on the No Fly List was thus the product of abusive investigative practices by the FBI which violated their clearly established constitutional and statutory rights, including under RFRA. *Id.* ¶¶ 205–15.

I. Plaintiff Muhammad Tanvir

Muhammad Tanvir is a lawful permanent resident of the United States who last resided in Queens, has family in Pakistan, and is Muslim. *Id.* ¶¶ 14, 68. Tanvir interacted with Defendants FNU Tanzin, John Doe 1, John Doe 2/3, Garcia, and John LNU. *Id.* ¶¶ 68–113. He was first approached by Defendants Tanzin and John Doe 2/3 in February 2007 at his workplace in the Bronx, and was asked about a former acquaintance who they claimed had attempted to enter the country illegally. *Id.* ¶ 69. Two days later, Tanvir was contacted by Tanzin who asked him “what people in the Muslim community generally discussed, and whether there was anything that he knew about within the American Muslim community that he ‘could share’ with the FBI.” *Id.* ¶ 70. Tanvir told Tanzin that “he did not know of anything that would concern law enforcement.” *Id.*

Initially, Tanvir’s life continued unaltered following these early interactions with the FBI. He was able to fly to Pakistan in July 2008, for instance, and to return in December 2008. *Id.* ¶ 71.

But after returning from Pakistan, Tanvir alleges that his passport was confiscated by government officials, he was detained for five hours at the airport, and was given an appointment with the Department of Homeland Security (“DHS”) to retrieve his passport. *Id.* Before the date of that meeting, however, Tanzin and John Doe 2/3 came to his new workplace in Queens and asked him to accompany them to the Manhattan office of the FBI. *Id.* ¶¶ 73–74.

There, he was brought to an interrogation room and subjected to questioning about terrorist training camps near the village where he grew up, whether he had trained with the Taliban, and whether he would work as a government informant in Pakistan or Afghanistan. *Id.* ¶¶ 75–78. To incentivize Tanvir to work as an informant, the agents offered him financial assistance, including for his parents in Pakistan so that they could go on religious pilgrimage to Saudi Arabia; nevertheless, Tanvir refused, telling them that he was “afraid” and that working as a “United States government informant” in Pakistan would be “very dangerous.” *Id.* ¶¶ 76–78.

The next day, Tanvir alleges that Tanzin called and “threatened” him, saying he would “authorize the release of [Tanvir’s] passport if [he] agreed to become an informant,” but that, if he declined, he “would be deported if he went to the airport to pick up his passport.” *Id.* ¶ 79. Tanvir again refused, and was able to retrieve his passport notwithstanding the threats of deportation. *Id.* ¶¶ 79–80. In the weeks that followed, Tanvir was repeatedly called by agents who urged him to become an FBI informant. *Id.* ¶¶ 82–84. Time and again, Tanvir refused. *Id.* Tanzin and John Doe 2/3 eventually asked him to take a polygraph test and threatened to arrest him if he declined. *Id.* ¶¶ 86–87. He declined, and the agents left without placing him under arrest. *Id.*

In key part, Tanvir alleges that he repeatedly refused to serve as an FBI informant because he had “sincerely held religious and personal objections to spying on innocent members of his community,” and that the agents had placed “significant pressure on [him] to violate his sincerely

held religious beliefs.” *Id.* ¶ 84. Speaking to Tanvir’s religious objections more generally, as well as those of the other Plaintiffs, the Amended Complaint alleges that:

Many American Muslims, like many other Americans, and many followers of other religions, have sincerely held religious and other objections against becoming informants in their own communities, particularly when they are asked to inform on the communities as a whole rather than specific individuals reasonably suspected of wrongdoing. Acting as an informant would require them to lie and would interfere with their ability to associate with other members of their communities on their own terms. For these American Muslims, the exercise of Islamic tenets precludes spying on the private lives of others in their communities.

Id. ¶ 65.

After his interactions with Defendants Tanzin and Doe 2/3, Tanvir discovered that he had been placed on the No Fly List. “Upon information and belief,” he alleges that he was “placed on the No Fly List . . . because he refused to become an informant against his community and refused to speak or associate further with the agents.” *Id.* ¶ 90. In October 2010, while traveling for work, he made plans to fly from Atlanta to New York City but was told by an airline employee that he was unable to fly when he tried to check in for the flight. *Id.* ¶ 91. FBI agents then approached him at the airport, told him that he should contact the agents in New York with whom he had previously spoken, and escorted him to a bus station in Atlanta, where Tanvir was forced to take a 24-hour bus ride to return home to New York. *Id.* ¶ 93. Two days later, Tanvir was contacted by Defendant Garcia, who told him that his name could be removed from the No Fly List if he would agree to speak with her and answer her questions. *Id.* ¶ 94. Tanvir insisted that he had repeatedly answered the FBI’s questions and that he did not wish to speak with agents of the FBI again. *Id.*

Tanvir next purchased airline tickets when he was trying to visit his sick mother in Pakistan in November 2011. *Id.* ¶¶ 98–100. The day before his scheduled departure, however, Garcia contacted him again, informing him that he would not be permitted to fly the next day because he had “hung up on her” in October 2010. *Id.* She again insisted that he would not be able to fly

without answering her questions. *Id.* Tanvir reluctantly agreed to meet Garcia and John LNU at a restaurant in Queens, where he was again questioned about his family, religion, and politics; Tanvir answered their inquiries, believing that he needed to do so in order to be able to fly to Pakistan. *Id.* ¶ 101. Although Garcia initially told Tanvir that she would obtain a one-time waiver to allow him to travel because he had answered the FBI's questions, she called the next day to inform him that he would not be able to travel after all. *Id.* ¶ 102. Instead, Garcia now insisted that her offer of a one-time waiver was contingent on Tanvir going to FBI headquarters to take a polygraph test. *Id.* ¶ 104. He cancelled his flight to Pakistan thereafter. *Id.*

Tanvir again bought a ticket to see his mother in Pakistan in December 2011, after engaging counsel to file a Traveler Redress Inquiry Program ("TRIP") complaint, but was again denied boarding because he was on the No Fly List. *Id.* ¶ 109. Tanvir learned that, despite his TRIP complaint, no changes or corrections would be made to the List, and appealed that determination. *Id.* ¶¶ 110, 112. In November 2012, he again purchased a ticket to travel to Pakistan, and once again was denied boarding. *Id.* ¶ 113. This time, Tanvir was approached by an FBI agent and told that he would need to meet once again with Garcia in order to be removed from the List. *Id.*

On March 28, 2013, Tanvir finally received a response to his TRIP appeal indicating that the government had "made updates" to its records based on his complaint. *Id.* ¶ 114. Tanvir then successfully flew to Pakistan from New York on June 27, 2013. *Id.* ¶ 115. He did not receive official confirmation of his removal from the No Fly List, however, until June 2015, after filing the present action. Dkt. 92.

II. Plaintiff Jameel Algibhah

Jameel Algibhah is a United States citizen, resides in the Bronx, has a wife and three daughters in Yemen, and is Muslim. Compl. ¶¶ 15, 118. He alleges that he interacted with

Defendants Artousa, John Doe 4, and John Doe 5 between 2009 and 2013. *Id.* ¶¶ 119–40. Artousa and John Doe 4 first tried to recruit Algibhah to serve as an informant in Muslim communities, including in his own neighborhood, by approaching him at his workplace and asking him to accompany them to an FBI van. *Id.* ¶¶ 119–20. After Algibhah answered their initial questions, they specifically asked that he infiltrate a mosque in Queens, and that he act like an “extremist” in online Islamic forums. *Id.* ¶ 121. Algibhah claims he refused because doing so violated his sincerely held religious and personal beliefs and would have required him to act in a deceptive manner in his community. *Id.* ¶ 122; *see also id.* ¶ 65 (alleging there are “Islamic tenets preclud[ing] spying on” fellow Muslims). Upon information and belief, he alleges that, in retaliation for his refusal to act as an informant for the FBI, and in order to pressure him to reconsider his decision, he was placed on the No Fly List shortly after this encounter. *Id.* ¶ 124.

Algibhah attempted to visit his wife and daughters in Yemen in May 2010, but was denied a boarding pass at JFK International Airport and told that he was not permitted to fly. *Id.* ¶ 125. Algibhah filed a TRIP complaint, and attempted again to fly to Yemen in September of the same year, but was again denied a boarding pass. *Id.* ¶¶ 126–27.

In June 2012, after seeking assistance from his elected representatives, Algibhah was stopped by Artousa and John Doe 5 who allegedly said: “Congressmen can’t do shit for you; we’re the only ones who can take you off the list.” *Id.* ¶ 131. Artousa told Algibhah that he would need to answer more questions from the FBI, and that if he chose to cooperate, he would be removed from the No Fly List. *Id.* After answering their questions, however, Algibhah was told that in order to be removed from the List, he would need to work as an informant, including by going on Islamic websites and “act[ing] extremist.” *Id.* ¶ 133. Algibhah retained counsel, to whom Artousa reiterated the same offer: Algibhah’s name could be removed from the List, but only if he would

agree to go onto Islamic websites to seek out “extremist” discussions and undertake “aggressive information gathering.” *Id.* ¶ 136. When Artusa called Algibhah directly once again in May 2013, Algibhah directed him to his counsel. *Id.* ¶ 139–40.

Like Tanvir, Algibhah did not receive confirmation that he had been removed from the No Fly List until June 2015, after filing this action. Dkt. 92.

III. Plaintiff Naveed Shinwari

Naveed Shinwari is a lawful permanent resident living in Connecticut, has family in Afghanistan, and is Muslim. *Id.* ¶¶ 16, 145. He alleges that he interacted with Defendants Steven LNU, Harley, Grossoehmig, Michael LNU, John Doe 6, Dun, and Langenberg in 2012. *Id.* ¶¶ 146–64. In February 2012, Shinwari was traveling with his mother from Kabul, Afghanistan to Omaha, Nebraska, where he was living at the time, when he was denied boarding on his connecting flight departing from Dubai and told that he needed to contact the U.S. embassy before he would be permitted to fly. *Id.* ¶ 146.

The next day, Shinwari met with Defendants Steven LNU and Harley at the U.S. consulate in Dubai, where he was taken to an interrogation room and questioned for several hours about whether he had visited any “training camps” while in Afghanistan and whether he was associated with “bad guys.” *Id.* ¶ 148. He was also questioned about his mosque and religious activities, asked to take a polygraph test, and told that doing so would allow him to return home to Nebraska. *Id.* ¶ 149. Several days later, Shinwari was permitted to fly after purchasing new tickets on a U.S.-based airline. *Id.* ¶¶ 150–51. After landing at Dulles International Airport in Virginia, Shinwari was interrogated for two hours by Defendants Michael LNU and Grossoehmig, who said that they needed to “verify” what he had told the other agents in Dubai. *Id.* ¶¶ 152–53. After he answered their questions, Shinwari was released and flew home to Omaha. *Id.* ¶ 154.

The next month, in March 2012, Defendants Michael LNU and John Doe 6 appeared at Shinwari's home, and again questioned him about his religion and personal background. *Id.* ¶ 155. This time, the agents said that they knew Shinwari was then unemployed, and offered to pay him to work as an informant with the FBI. *Id.* ¶ 156. Based on his sincerely held religious and personal beliefs, Shinwari alleges, he declined the invitation to work as an informant. *Id.* ¶¶ 156–57; *see also id.* ¶ 65 (asserting that many Muslims “have sincerely held religious and other objections against becoming informants in their own communities”).

When Shinwari tried to board a flight from Omaha to Orlando for temporary work later that month, he was denied a boarding pass and approached by police officers who told him that he was on the No Fly List. *Id.* ¶ 158. His placement on the List caused Shinwari significant financial hardship, as he was unable to take the temporary job, and was also prevented from visiting his family in Afghanistan. *Id.* ¶160. After Shinwari emailed Harley for help in getting removed from the No Fly List, Michael LNU and Doe 6 returned to his home and again asked that he become an informant, telling him that if he helped the FBI, the FBI would “help” him. *Id.* ¶ 161. Shinwari declined to serve as an informant, although he understood the agents to be offering to remove him from the No Fly List. *Id.*

Thereafter, Shinwari retained counsel and submitted two TRIP complaints about his inclusion on the List. *Id.* ¶¶ 165–68. He did not receive confirmation that he had been removed from the List until June 2015, after filing this action. Dkt. 92.

PROCEDURAL HISTORY

As relevant to the present motion, this Court previously dismissed Plaintiffs' RFRA claims, holding that the relief afforded by the statute—which provides that, where a person's “religious exercise has been burdened,” that person “may assert that violation as a claim” and “obtain

appropriate relief against a government,” 42 U.S.C. § 2000bb-1(c)—did not include money damages against officials in their personal capacities. *Tanvir v. Lynch*, 128 F. Supp. 3d 756, 780–81 (S.D.N.Y. 2015). Because the Court found that “appropriate relief” under RFRA did not provide for money damages, it did not address whether Defendants were entitled to qualified immunity.²

Plaintiffs appealed, and the Second Circuit reversed in part, determining RFRA “permits a plaintiff to recover money damages against federal officers sued in their individual capacities.” *Tanvir v. Tanzin*, 894 F.3d 449, 453 (2d Cir. 2018). The Circuit remanded for this Court to determine in the first instance whether Defendants are entitled to qualified immunity, expressly noting that it was “sensitive to the notion that qualified immunity should be resolved at the earliest possible stage in the litigation,” including “in a Rule 12(b)(6) motion.” *Id.* at 472 (cleaned up).

Prior to remand, however, the Supreme Court granted certiorari. *Tanzin v. Tanvir*, 140 S. Ct. 550 (2019). It ultimately affirmed the Second Circuit’s statutory construction, holding that “appropriate relief” within the meaning of RFRA includes claims for money damages for officials sued in their individual capacities. *Tanzin v. Tanvir*, 141 S. Ct. 486, 489 (2020). Like the Court of Appeals before it, however, the Supreme Court expressly cautioned that Defendants may be entitled to qualified immunity—and indeed that Plaintiffs had themselves repeatedly argued as much on appeal—stating:

Both the Government and respondents agree that government officials are entitled to assert a qualified immunity defense when sued in their individual capacities for money damages under RFRA. Indeed, respondents emphasize that the “qualified immunity defense was created for precisely these circumstances,” Brief for

² The claims against Defendants in their official capacities were previously stayed on consent of all parties after Plaintiffs were apprised that they were no longer on the No Fly List. *See* Dkt. 92, 93. The Court also previously dismissed Plaintiffs’ First Amendment claims brought against Defendants in their individual capacities, reasoning that the Supreme Court had “declined to extend *Bivens* to a claim sounding in the First Amendment.” *Tanvir*, 128 F. Supp. 3d at 769. That determination was not appealed, and thus is not at issue on remand. *See Tanvir v. Tanzin*, 894 F.3d 449, 457 (2d Cir. 2018).

Respondents 22, and is a “powerful shield” that “protects all but the plainly incompetent or those who flout clearly established law,” Tr. of Oral Arg. 42, *see District of Columbia v. Wesby*, 138 S. Ct. 577, 589–91 (2018).

Id. at 492 n.2.³

On remand, Defendants have thus filed a renewed motion to dismiss the remaining claims in the Amended Complaint for failure to state a claim and under the doctrine of qualified immunity.⁴ Plaintiffs timely opposed the motion, after which the Court heard oral argument.

LEGAL STANDARDS

On a Rule 12(b)(6) motion, the Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *See Cnty. of Erie v. Colgan Air, Inc.*, 711 F.3d 147, 149 (2d Cir. 2013). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 533, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The Court need not accept “legal conclusions” or “threadbare recitals of the elements of the cause of action,” *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and a plaintiff must provide “more than labels and conclusions” to make out a claim upon which relief can be granted, *Twombly*, 550 U.S.

³ *See also Tanzin v. Tanvir*, Tr. of Oral Arg. at 35–36 (Oct. 6, 2020) (Justice Thomas asking counsel for Plaintiffs how an officer is to know whether the “burden they’re imposing is the least restrictive means of furthering a governmental interest,” and counsel answering, “that is, of course, an argument . . . that [Defendants] could have presented in . . . the qualified immunity defense that they made”); *id.* at 52–54 (counsel for Plaintiffs further explaining that “the law accounts for [this concern] . . . due to well-established and robust doctrine of qualified immunity,” and Justice Kavanaugh responding “that’s a good answer about qualified immunity”).

⁴ Defendants Steven LNU, Harley, Grosseohmig, Michael LNU, John Doe 6, Dun, and Langenberg also renewed their Rule 12(b)(2) motion to dismiss the claims against them for lack of personal jurisdiction. Because the Court concludes that, accepting all allegations in the Amended Complaint as true, none of the Defendants violated clearly established law, and thus are all entitled to dismissal under the doctrine of qualified immunity, it does not reach the jurisdictional question raised by this subset of Defendants.

at 555.

“RFRA prohibits the government from ‘substantially burden[ing] a person’s exercise of religion’ unless ‘application of the burden . . . (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.’” *Sabir v. Williams*, 52 F.4th 51, 59 (2d Cir. 2022) (quoting 42 U.S.C. § 2000bb-1(a)–(b)). To establish a “prima facie RFRA violation, the plaintiffs must demonstrate that they sought to engage in the exercise of religion and that the defendant-officials substantially burdened that exercise.” *Id.* The government then faces an “exceptionally demanding” burden to show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

In assessing whether officials are entitled to qualified immunity, a court conducts a two-step analysis, considering (1) whether the facts presented “make out a violation of a constitutional [or statutory] right, and (2) whether the right at issue was ‘clearly established’ when it was allegedly violated.” *Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 367 (2d Cir. 2021) (cleaned up). Although the Supreme Court previously required courts to consider the two prongs sequentially in all circumstances, *see Saucier v. Katz*, 533 U.S. 194 (2001), courts are now free to use “sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand,” *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Thus, where “prior case law has not clearly settled the right, and so given officials fair notice of it, the court can simply dismiss the claim for money damages.” *Camreta v. Greene*, 563 U.S. 692, 705 (2011).

While often invoked as a defense to constitutional claims, qualified immunity may also be invoked against statutory claims. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). More

specifically, qualified immunity may apply to actions brought under RFRA. *See Sabir*, 52 F.4th at 58–60; *Fazaga v. FBI*, 965 F.3d 1015, 1061 (9th Cir. 2020), *rev'd on other grounds*, 141 S. Ct. 2720 (2021); *Lebron v. Rumsfeld*, 670 F.3d 540, 557 (4th Cir. 2012); *Walden v. Centers for Disease Control & Prevention*, 669 F.3d 1277, 1285 (11th Cir. 2012); *Rasul v. Myers*, 563 F.3d 527, 533 n.6 (D.C. Cir. 2009) (*per curiam*). Indeed, as the Supreme Court noted in this very action, Plaintiffs have themselves conceded that “government officials are entitled to assert a qualified immunity defense” under RFRA. *Tanzin*, 141 S. Ct. at 492 n.2.

DISCUSSION

In their effort to allege that Defendants here violated clearly established law, such that they are not entitled to qualified immunity, Plaintiffs make two main arguments. First, they assert that caselaw existing at the time of their interactions with the FBI articulated a general “right to be free from government pressure that forces an individual to violate sincerely held religious beliefs,” and that such precedent provided clear notice that Defendants’ alleged conduct violated RFRA. *Opp.* at 36. Second, they argue that, in any event, “the RFRA statute itself”—given its general prohibition against imposing a “substantial burden” on religious exercise—is sufficient to have put Defendants on notice of the purported illegality of their alleged conduct. *See Opp.* at 36–37.

For the reasons articulated below, the Court disagrees. Accepting each of the factual allegations in the Amended Complaint as true, a reasonable officer in Defendants’ position would not have known—much less “known for certain,” *Ziglar v. Abassi*, 137 S. Ct. 1843, 1867 (2017)—that their conduct would impose a substantial burden on Plaintiffs’ religious exercise and thus violate RFRA. Defendants are accordingly entitled to qualified immunity, and the renewed motion to dismiss the Amended Complaint is granted.

I. Clearly Established Law Analysis

To be clearly established, the contours of the right at issue must be “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). The Supreme Court has “repeatedly told courts . . . not to define clearly established law at a high level of generality.” *Mullenix*, 577 U.S. at 11 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)). Instead, “the dispositive question is whether the violative nature of *particular* conduct is clearly established.” *Ziglar*, 137 S. Ct. at 1866 (emphasis in original) (quoting *Mullenix*, 577 U.S. at 12); *see also Wesby*, 138 S. Ct. at 590 (“The ‘clearly established’ standard . . . requires that the legal principle clearly prohibit the officer’s conduct in the particular circumstances before him.”).

The inquiry regarding whether a right was clearly established must therefore be “undertaken in light of the specific context of the case, not as a broad general proposition.” *Mullenix*, 577 U.S. at 12. While there need not be “a case directly on point,” “existing precedent must have placed the statutory or constitutional question beyond debate.” *Id.* “It is not enough that the rule is suggested by then-existing precedent.” *Wesby*, 138 S. Ct. at 590. In other words, “[t]he precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.*; *see also Garcia v. Does*, 779 F.3d 84, 92 (2d Cir. 2015) (to determine whether a right is clearly established, courts look to prior Supreme Court and circuit precedent “directly addressing the right at issue” or “clearly foreshadow[ing] a particular ruling on the issue”). An officer is immune from liability if “a reasonable officer might not have known for certain that the conduct was unlawful.” *Ziglar*, 137 S. Ct. at 1867. “Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate

the law,” *Mullenix*, 577 U.S. at 12 (cleaned up), and affords “breathing room to make reasonable but mistaken judgments about open legal questions,” *al-Kidd*, 563 U.S. at 743; *accord Wesby*, 138 S. Ct. at 589 (2018).

As a threshold matter, the Court must evaluate the parties’ competing definitions of the particular right at issue. Defendants define the right as the right not to be “recruit[ed] as [a] confidential government informant[] through the retaliatory or coercive use of the No Fly List.” Mot. at 22. Plaintiffs, meanwhile, articulate it as the “right to be free from government pressure that forces an individual to violate sincerely held religious beliefs.” Opp. at 36. By characterizing the right in such a generalized and vague fashion, however, Plaintiffs render their definition legally meaningless. The Supreme Court has held that “clearly established law must be particularized to the facts of the case.” *White v. Pauly*, 580 U.S. 73, 79 (2017). “Otherwise, plaintiffs would be able to convert the rule of qualified immunity into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.” *Id.* (quoting *Anderson v. Creighton*, 438 U.S. 635, 639 (1987)); *see also Mullenix*, 577 U.S. at 12.

Unsurprisingly, then, courts considering qualified immunity defenses against claims brought under RFRA regularly delineate the right at issue with a considerable degree of particularity—and much more narrowly than Plaintiffs propose. *See, e.g., Smadi v. Michaelis*, 2020 WL 7491296, at *4–6 (S.D. Ill. Dec. 21, 2020) (the “right to accommodation for an inmate’s idiosyncratic dietary restrictions associated with his religion”); *Fernandez-Torres v. Watts*, 2017 WL 9485591, at *3 (S.D. Ga. Jan. 30, 2017), *report and recommendation adopted* by 2017 WL 1173923 (S.D. Ga. Mar. 29, 2017) (the right for prisoners to receive “religious property from outside sources when the religious items available through authorized means are not sufficient to meet the prisoner’s religious needs”). Indeed, considering—and ultimately rejecting—claims

similar to those presented here, the district court in *El Ali v. Barr* construed the complaint to concern the right not to be subjected to “persistent inquiry into [one’s] religious beliefs and practices” with “pressure . . . to modify or violate those beliefs or risk being subjected to the pattern of detentions and interrogations in connection with their travel.” 473 F. Supp. 3d 479, 526 (D. Md. 2020).

The Court therefore construes the right presented by Plaintiffs’ claims here as the right not to be pressured by law enforcement to inform on members of their religious communities through the coercive or retaliatory use of the No Fly List. So understood, for the reasons set forth below, the Court concludes that such a right was not clearly established at the time of the alleged violations. Even if the right were defined more broadly, such as the right not to be pressured to inform on members of one’s religious community through the coercive or retaliatory use of *any* governmental tool, the Court nevertheless concludes that such a right was still not clearly established at the time of the events giving rise to the Complaint.

A. Precedent at the Time Did Not Clearly Establish that Defendants Violated RFRA

At the time of Defendants’ alleged activity, no federal court had addressed claims—let alone actually held—that law enforcement pressuring individuals to inform on members of their religious communities through retaliatory or coercive means substantially burdened their religious exercise in violation of RFRA. Plaintiffs point to four cases in an attempt to make out their claim of clearly established law at the time of the alleged violations, but each of those cases are plainly distinguishable.

First, *Lee v. Weisman*, 505 U.S. 577 (1992), involved Establishment Clause challenges to prayer held during a public school graduation ceremony. Observing that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary

and secondary public schools,” *id.* at 592, the Supreme Court in *Weisman* found an Establishment Clause violation because “young graduates who object [to the prayer] [we]re induced to conform,” *id.* at 599; *see also id.* (“No holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise.”). It was the specific context of the “prayer exercises in public schools” which the Court found carried a “particular risk of indirect coercion.” *Id.* at 592. While acknowledging that the “heightened concern” of such coercion “may not be limited to the context of schools,” the Court observed that “it is most pronounced there.” *Id.*

None of the allegations in the Complaint here, of course, concern the purported coercion of school-age children to engage in religious exercise, nor do Plaintiffs contend that they were coerced to engage in prayer to which they objected. Rather, their particular complaint is that they were “placed or kept on the [No Fly] List when [they] refused to become [i]nformant[s] for the FBI against fellow American Muslims” because informing on their fellow Muslims would have violated their sincerely held religious beliefs. *Opp.* at 2. Plaintiffs’ attempt to stretch *Weisman*’s holding to fit the facts alleged in the Complaint is unavailing, as the Supreme Court has plainly instructed that the clearly established inquiry must be “undertaken in light of the specific context of the case, not as a broad general proposition.” *Mullenix*, 577 U.S. at 12 (cleaned up). *Weisman*, put simply, does not place the statutory question of whether Defendants were violating RFRA “beyond debate.” *Id.*

The Second Circuit’s decision in *DeStefano v. Emergency Housing Group, Inc.*, 247 F.3d 397 (2d Cir. 2001), is also inapposite, as it concerned state funding of a treatment facility that hosted Alcoholics Anonymous sessions which were religious in nature. In that case, the Circuit found that the mere inclusion of A.A. programs in services offered by the state-funded facility did not violate the Establishment Clause, nor, moreover, did the facility employees’ “strong[]

urg[ing]” and “actively encourage[ment]” of client participation in the programs. *Id.* at 408–10. The Court found that, to the extent there were facts sufficient to establish that employees were involved in the “inculcation of religious beliefs,” such facts could constitute governmental indoctrination in violation of the Establishment Clause, but that factual questions remained about whether the staff’s behavior rose to the level of “inculcation.” *Id.* at 420.⁵

Here, there is no suggestion that Defendants’ actions were in any way “designed to inculcate the views of a particular religious faith” or to “indoctrinate.” *Id.* at 411, 414. Rather, Defendants were engaged in the discrete task of seeking intelligence about Muslim adherents in the interest of national security, by, among other things, encouraging Plaintiffs to attend services or engage in conversation in online Islamic chatrooms. And, as *DeStefano* itself held, “[u]rging people to attend [religious] meetings or explaining to them why, in the view of the speaker, it is in their best interests to attend [such meetings] is not, without more, indoctrination.” *Id.* at 415. Such encouragement “does not imbue clients with [a religious] point of view, nor does it inculcate or impress [] beliefs upon the mind of the listener by frequent instruction or repetition.” *Id.* (cleaned up).

Third, the seminal case of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), involved the wholly unrelated application of state compulsory education laws to Amish students whose religious beliefs prevented them from attending school beyond the eighth grade. In fact, the Supreme Court’s holding in *Yoder* was as much grounded in the so-called *Meyer-Pierce* line of cases establishing parents’ due process rights to control their children’s upbringing as it was a case about religious

⁵ Contrary to Plaintiffs’ claim that *DeStefano* held that “[p]ressure from government officials rises to the level of a substantial burden when it prevents an individual from participating in religious activity as a matter of a genuine personal choice,” *Opp.* at 36, the Second Circuit expressly declined to “decide the issue of coercion,” finding that it “ha[d] not been squarely presented,” 247 F.3d at 411. Any discussion of “coercion” was therefore dicta, and cannot be construed as clearly established law. *See, e.g., Jones v. Treubig*, 963 F.3d 214, 226 n.7 (2d Cir. 2020) (“[W]e do not rely on any dicta . . . for the purpose of determining clearly established law.”).

liberty. *See Yoder*, 406 U.S. at 232–33 (“Under the doctrine of *Meyer v. Nebraska*, 262 U.S. 390 [(1923)], we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”); *see also id.* at 233 (“However read, the Court’s holding *Pierce [v. Society of Sisters]*, 268 U.S. 510 (1925) stands as a charter of the rights of parents to direct the religious upbringing of their children.”). To the extent that the case established any broad right of religious exercise, it was, at most, limited to the “power of the State to promulgate reasonable” educational standards which did not “impair[] the free exercise of religion” for schoolchildren. *Id.* at 236.⁶ It had nothing to do with law enforcement officers pressuring religious adherents to inform on co-religionists. *Yoder* thus did not “directly address[] the right at issue,” and did not “clearly foreshadow[] a particular ruling” on Plaintiffs’ RFRA claims. *Garcia*, 779 F.3d at 92.

It is thus unsurprising that the Ninth Circuit, considering claims analogous to those at issue here, determined that “it was not clearly established in 2006 or 2007 that covert surveillance conducted on the basis of religion would meet the RFRA standards for constituting a substantial burden on individual congregants.” *Fazaga*, 965 F.3d at 1061. Considering the state of the law at a time long after *Weisman* and *Yoder* were decided, it held that “[t]here simply was no case law in 2006 or 2007 that would have put the Agent Defendants on notice that covert surveillance on the basis of religion could violate RFRA.” *Id.*

Finally, Plaintiffs insist that the general definition of a religious “burden” used by the

⁶ Given the emphasis *Yoder* placed on the unique position of Amish children in American life, it is unclear what, if any, applicability the case has in the context of other religious communities. *See, e.g., id.* at 235 (observing that, given a unique “history of three centuries as an identified religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, [and] the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization”). The Court need not address that question here.

Supreme Court in *Thomas v. Review Bd. of the Indiana Emp. Sec. Div.*, 450 U.S. 707, 718 (1981) (and restated by the Second Circuit in *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996)) was alone sufficient to put Defendants on notice of the purported illegality of their requests. *See* Oral Arg. Tr. at 29 (counsel seemingly changing their argument and stating “I don’t think you need to use” the three cases relied upon in Plaintiffs’ brief and discussed above, and arguing, instead, “you can rely on the Supreme Court precedent of *Thomas* and the Second Circuit precedent of *Jolly*”). The Court is unpersuaded.

To start, *Thomas* stated simply that “[w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior or violate his beliefs, a burden upon religion exists.” 450 U.S. at 717–18. This broad proposition, however, says nothing about when such a “burden” becomes a “substantial burden”—let alone when such a substantial burden, within the meaning of RFRA (a statute not yet enacted when *Thomas* was decided), is no longer justified in “furtherance of a compelling governmental interest.” 42 U.S.C. § 2000bb-1(a)–(b). Moreover, *Thomas* did not address factual circumstances even remotely akin to those presented here. Instead, it concerned whether a State’s denial of unemployment benefits to an employee allegedly terminated because of his religious convictions violated his free exercise rights. *See* 450 U.S. 707–20.

Although *Jolly* reiterated *Thomas*’s language in weighing a claimed RFRA violation some fifteen years later, the case’s procedural posture limits its reach. There, the Second Circuit held only that an inmate had demonstrated a substantial likelihood of success on the merits of his RFRA claim, such that a district court’s issuance of a preliminary injunction was not an abuse of discretion. *See* 76 F.3d at 471–73. But even if *Jolly* did constitute a decision on the merits of the

RFRA claim, it too is distinguishable, as it involved a plaintiff-inmate who argued that his confinement to a “medical keeplock” for three-and-a-half years for refusing to submit to a test for tuberculosis based upon religious objections violated RFRA. *Id.* at 470–72. The clearly established law analysis must be “undertaken in light of the specific context of the case” in which qualified immunity has been asserted, and, at bottom, neither *Thomas* nor *Jolly* would have placed the statutory [] question” presented by Plaintiffs here “beyond debate.” *Mullenix*, 577 U.S. at 12.

Each of the two additional cases which Plaintiffs cite to make out their claim of clearly established law were decided after Defendants’ last alleged interactions with Plaintiffs in November 2011 (Tanvir), March 2012 (Shinwari), and May 2013 (Algibhah). *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Washington v. Gonyea*, 538 F. App’x 23 (2d Cir. Sept. 10, 2013). Thus, even to the extent those cases squarely addressed the claimed violation of RFRA—and they do not—they could not possibly have provided any relevant notice to Defendants because they did not “exist[] at the time of the alleged violation.” *Okin*, 577 F.3d at 433. (Never mind, moreover, that the Second Circuit’s unpublished summary order in *Washington* could not constitute “precedent” for purposes of establishing clearly established law. *See Cerrone v. Brown*, 246 F.3d 194, 202 (2d Cir. 2001) (observing an unpublished decision “does not determine whether a right was clearly established”).

Even if given the benefit of all available precedent today, a decade after the last alleged violations in the Amended Complaint, Plaintiffs’ argument that Defendants’ actions violated clearly established law would likely still fail. For one, *Burwell* and *Washington* involved factual circumstances plainly distinguishable from the alleged violations in the Complaint. *See Burwell*, 573 U.S. at 688–91 (holding that RFRA prohibited the Department of Health and Human Services from enforcing regulations requiring employers to provide health-insurance coverage for

contraception against closely-held corporations whose owners had religious objections to contraception); *Washington*, 538 F. App'x at 26–27 (construing a *pro se* complaint to state a First Amendment retaliation claim where prison officials had allegedly denied religious services to the plaintiff for providing a Quran to another inmate); *see also id.* (observing that “the contours of the burden standard are not precisely drawn” for RFRA claims).

Indeed, the only federal court to have directly addressed the claims at issue here rejected the argument that they stated a RFRA violation. *See El Ali v. Barr*, 473 F. Supp. 3d 479, 527 (D. Md. 2020). In that case, as here, the plaintiffs claimed that “offers to act as informants for the FBI in exchange for resolution of their travel woes substantially burden[ed] their free exercise of religion,” because “their religious beliefs restrict[ed] bearing false witness and betraying the trust of their religious community,” and thus prohibited them from agreeing to serve as informants. *Id.* The district court held that law enforcement’s efforts to persuade the plaintiffs to serve as informants on their religious community members—even if accompanied by an offer of assistance to remove them from a watchlist—did not impose a substantial burden on religious exercise. *See id.* A “mere ‘ask’ for assistance in exchange for favorable treatment,” it reasoned, “does not constitute a substantial burden on free exercise.” *Id.* The court continued:

As with all potential law enforcement informants, the relationship begins with an “ask,” and possible favorable treatment in exchange for helpful information. Also, as with many “asks,” they too begin with the potential informant having something to gain, and often something to lose, from saying yes. Suspects are sometimes paid for their testimony or “work off charges” in exchange for turning on their friends, coworkers, family, and community leaders. This Hobson’s choice is the same faced by scores of suspects who enter into cooperation agreements with the government on a daily basis. Plaintiffs’ choice is a variation on this theme.

Id. Finding the requests from law enforcement analogous to any number of standard requests for information, the court in *El Ali* “discern[ed] no principled reason to find the mere offer of a chance to cooperate as placing a substantial burden on the exercise of religion sufficient to support a RFRA

violation.” *Id.*; *cf. Fikre v. FBI*, 2019 WL 2030724, at *8–9 (D. Or. May 8, 2019) (expressing similar “concerns regarding the pleading adequacy of Plaintiff’s RFRA claim” where the complaint alleged that the defendants “attempted to use Plaintiff’s presence on the No-Fly List as leverage to coerce [him] into becoming an informant regarding activities in [his] mosque,” but ultimately rejecting claim on timeliness grounds).

Accordingly, the Court concludes that precedent did not clearly establish at the time of the alleged violations that pressuring an individual to inform on members of their religious community, in violation of their sincerely held beliefs, substantially burdened religious exercise in violation of RFRA.

B. The Statute Itself Does Not Clearly Establish that Defendants Violated RFRA

Plaintiffs alternatively insist, relying on the Second Circuit’s recent decision in *Sabir v. Williams*, 52 F.4th 51 (2d Cir. 2022), that the language of RFRA, itself, should have provided clear notice to the agents, such that their activity which is the subject of this action violated clearly established law. “Based on RFRA’s requirements” alone, they quote from *Sabir*, “it is not difficult for an official to know whether an unjustified substantial burden on religious exercise will be deemed reasonable.” *Id.* at 65 (cleaned up).

By selectively quoting *Sabir*, Plaintiffs cite the case for a proposition broader than the one articulated by the Second Circuit. As an initial matter, *Sabir* concerned textbook violations of law clearly establishing that “preventing a prisoner from engaging in congregational prayer constitutes a substantial burden on the prisoner’s religious exercise.” 52 F.4th at 65 n.9; *see also id.* (“[W]e have consistently recognized that policies restricting access to group prayer impose a burden on prisoners’ free exercise rights.”) (citing *Salahuddin v. Coughlin*, 993 F.2d 306, 308 (2d Cir. 1993)). Moreover, in *Sabir*, unlike here, the plaintiffs specifically and repeatedly raised their religious

objections to the defendant wardens' conduct preventing them from participating in group prayer. *See, e.g.*, 52 F.4th at 55–56.

But even accepting Plaintiffs' premise that *Sabir* also stands for the proposition that RFRA itself may, in some contexts, provide clear notice to would-be offenders, their reliance on the case remains unavailing. To be sure, statutory provisions in existence at the time of an individual's conduct can create "fair warning" for the officer that their conduct would violate a plaintiff's rights. *Okin v. Village of Cornwall-on-Hudson Police Department*, 577 F.3d 415, 433–34 (2d Cir. 2009). Accordingly, *Sabir* reasoned that there are "some contexts in which a higher degree of specificity is required to establish the law for purposes of qualified immunity than in others." 52 F.4th at 65. "For example, the Fourth Amendment's prohibition of 'unreasonable searches and seizures' is an 'abstract right[]' because 'it may be difficult for an officer to know whether a search or seizure will be deemed reasonable given the precise situation encountered.'" *Id.* (quoting *Ziglar*, 137 S. Ct. at 1866). But the Circuit emphasized that "[n]o such concerns [were] present" in *Sabir*, because, "[b]ased on RFRA's requirements, it is not difficult for an official to know whether an unjustified substantial burden on religious exercise will be deemed reasonable." *Id.* at 65 (cleaned up). "As the text of the statute itself explains: 'Government may substantially burden a person's exercise of religion *only if it demonstrates* that application of the burden . . . is *in furtherance* of a compelling governmental interest.'" *Id.* (emphasis in original). Because the prison wardens in *Sabir* denied the plaintiffs' requests for group prayer "with no justification" whatsoever, RFRA itself provided clear warning that doing so—without justification—violated the law. *Id.* at 66. "Put another way, if an official substantially burdens a sincere religious exercise but cannot point to evidence that the application of the burden was in service of any interest—let alone a compelling one—the official has violated RFRA." *Id.*

Accepting further that Defendants could have known from RFRA's text, let alone "known for certain," *Ziglar*, 137 S. Ct. at 1867, that their attempts to pressure Plaintiffs to inform on fellow Muslims "substantially burdened" their religious exercise, it cannot be said Defendants made the requests "with no justification," *Sabir*, 52 F.4th at 66. Defendants, like the FBI and DHS more broadly, were actively engaged in an effort to gather intelligence related to national security in the aftermath of the 9/11 terrorist attacks. The Complaint itself acknowledges that the No Fly List existed to reduce "significant threats to aviation safety," and was maintained by the TSC with the goal of "coordinating the government's approach to terrorism screening." Compl. ¶¶ 2, 20. Put differently, even to the extent that the Complaint plausibly alleges that Defendants improperly burdened religious exercise, it does not allege that they did so with no justification whatsoever. *Contra Sabir*, 52 F.4th at 66 (where the wardens could not point to evidence "that the application of the burden was in service of any interest").

The text of RFRA itself is thus not dispositive to the question of whether clearly established law would have put Defendants on notice that their requests to Plaintiffs violated RFRA, and the Court must look to the state of Supreme Court and Second Circuit precedent in existence at the time. *See supra*, pp. 16–21.

II. Leave to Amend

Finally, whether to grant leave to further amend a complaint is committed to the "sound discretion of the district court," and may be denied when amendment would prove futile. *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 200 (2d Cir. 2007). For instance, "[g]ranting leave to amend is futile if it appears that plaintiff cannot address the deficiencies identified by the court and allege facts sufficient to support the claim." *Panther Partners Inc. v. Ikanos Commc'ns, Inc.*, 347 F. App'x 617, 622 (2d Cir. 2009). Here, Plaintiffs do not specifically seek leave for

further amendment. The Court has concluded, given the state of the law at the time of the interactions at issue, that it was not clearly established that Defendants' pressuring of Plaintiffs to inform on their fellow Muslims would have violated RFRA. Further amendment would thus be futile, as no amendment to the pleadings could change the state of the law then in existence. Accordingly, the Court thus finds dismissal with prejudice to be warranted.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is granted. The Clerk of Court is respectfully directed to terminate the motions pending at docket entry 127, and to close this action.

SO ORDERED.

Dated: February 24, 2023
New York, New York



Hon. Ronnie Abrams
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MUHAMMAD TANVIR, JAMEEL
ALGIBHAH, and NAVEED SHINWARI,

Plaintiffs,

v.

FNU (“FIRST NAME UNKNOWN”)
TANZIN, SANYA GARCIA, FRANCISCO
ARTOUSA, JOHN LNU (“LAST NAME
UNKNOWN”), STEVEN LNU, JOHN C.
HARLEY III, MICHAEL LNU, GREGG
GROSSOEHMIG, WEYSAN DUN, JAMES
C. LANGENBERG, and JOHN DOES 1–6,

Defendants.

Case No. 1:13-CV-6951 (RA)

NOTICE OF APPEAL

NOTICE is hereby given that Muhammad Tanvir, Jameel Algibhah, and Naveed Shinwari, Plaintiffs in the above-titled action, hereby appeal to the United States Court of Appeals for the Second Circuit from the Opinion and Order of the Honorable Ronnie Abrams, entered on February 24, 2023 (ECF No. 149, annexed as Exhibit A), dismissing Plaintiffs’ individual capacity claims against Defendants FNU (“First Name Unknown”) Tanzin, Sanya Garcia, Francisco Artousa, John LNU (“Last Name Unknown”), Steven LNU, John C. Harley III, Michael LNU, Gregg Grossoehmig, Weysan Dun, James C. Langenberg, and John Does 1–6.

Respectfully submitted,

/s/ Naz Ahmad

Naz Ahmad

Mudassar Toppa

Shezza Abboushi Dallal
CLEAR Clinic
Main Street Legal Services, Inc.
CUNY School of Law
2 Court Square
Long Island City, NY 11101
(718)-340-4630
naz.ahmad@law.cuny.edu

Baher Azmy
Shayana Kadidal
Diala Shamas
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Jennifer R. Cowan
Erol N. Gulay
Christopher S. Ford
Ryan Mullally
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, NY 10001

Dated: April 25, 2023