

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, <i>et al.</i>	§	CIVIL ACTION NO. W-96-CA-139
	§	JUDGE WALTER S. SMITH
Plaintiffs,	§	
v.	§	and consolidated actions:
	§	<i>Holub v. Reno</i> W-96-CA-140
	§	<i>Ferguson v. Reno</i> W-96-CA-141
PHILLIP J. CHOJNACKI, <i>et al.</i>	§	<i>Brown v. U.S.</i> W-96-CA-142
	§	<i>Riddle v. Reno</i> W-96-CA-143
Defendants.	§	<i>Gyarfas v. U.S.</i> W-96-CA-144
	§	<i>Martin v. U.S.</i> W-96-CA-145
	§	<i>Holub v. U.S.</i> W-96-CA-146
	§	<i>Brown v. U.S.</i> W-96-CA-147
	§	<i>Sylvia v. U.S.</i> W-96-CA-373

PLAINTIFFS' THIRD CONSOLIDATED COMPLAINT

The following claims are asserted pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*¹ ("*Bivens*"), 42 U.S.C. §§ 1983 and 1985(3) ("Sections 1983 and 1985(3)"); The Racketeer Influenced and Corrupt Organizations Act² (RICO) and the Federal Tort Claims Act³ ("FTCA") as supplemented by the laws of the State of Texas.

This Third Consolidated Complaint consolidates, without duplication, the Plaintiffs and their claims from the cases of *Andrade, et al. v. Chojnacki*, *Ferguson v. Reno*, *Riddle v. Reno*, *Gyarfas v. U.S.*, *Martin v. U.S.*, and *Sylvia v. U.S.* It does not add any new FTCA Plaintiffs or claims or *Bivens*, §§ 1983 and 1985(3), and RICO Plaintiffs or claims to those

¹ *Bivens*, 403 U.S. 388 (1971).

² 18 U.S.C. §§ 1961 et seq.

³ 28 U.S.C. § 1346(b) and §§ 2671 et. seq.

already stated in the Second Consolidated Complaint and the *Sylvia* First Amended Complaint.

I. INTRODUCTION

1. This lawsuit is on behalf of deceased Branch Davidians, surviving Branch Davidians and close relatives of the deceased Davidians who watched a needless, deadly tragedy, involving their relation, unfold.

2. On February 28, 1993, over 100 agents from the Bureau of Alcohol, Tobacco and Firearms ("ATF"), with flak jackets, semi-automatic weapons, concussion grenades and army helicopters, stormed the Mt. Carmel Church near Waco, Texas. This Church was a home and place for worship of over 100 Branch Davidians of the Seventh Day Adventists Association, including dozens of women and children. The ATF agents, who were attempting to serve an arrest warrant for David Koresh and a search warrant for the Church, chose this violent means to execute the warrants even though they could have arrested David Koresh during any one of his many trips into Waco, and then peacefully served the search warrant, and even though they knew that the Branch Davidians were expecting the assault and, thus, stood in mortal terror. Understandably, some of the Branch Davidians defended their home and sacred ground against this reckless assault. Many Branch Davidians and federal agents were killed or wounded.

3. After the assault failed, the ATF was joined by agents from the Federal Bureau of Investigation ("FBI") in surrounding and laying siege to the Church for 51 days. These agents, abandoning conciliatory negotiation tactics which had made considerable progress in peacefully resolving this situation and resulted in dozens of Branch Davidians surrendering to law enforcement, began assaulting the Branch Davidians by, among other

things, turning off their electricity when temperatures at night fell to 20° F; shining searchlights all night; blaring loud noises, including the screams of rabbits being slaughtered; and tightening the perimeter with an overwhelming, advancing armored force.

The Branch Davidians were reasonably terrified of surrendering to these agents.

4. Despite their fears, on or about April 14, 1993, David Koresh promised the federal agents that everyone in the Church would peacefully surrender after he interpreted the Seven Seals from the Christian Bible's Book of Revelation. He promised that the interpretation would take only two to three weeks. FBI Special Agent-in-Charge Jeffrey Jamar told Koresh's attorney that the FBI could wait as long as necessary to peacefully resolve the situation. On April 18, 1993, Koresh asked for, and the FBI provided him, typewriter paper and batteries for a portable computer to continue his work.

5. Nonetheless, on April 19, 1993, in a long-planned operation, federal agents used tanks to crush the Church's buildings and insert CS gas which disabled and injured the Branch Davidians. Subsequently, a fire began and rapidly consumed the Church. Most Branch Davidians were trapped because the tanks had crushed staircases and blocked exits and because the CS gas handicapped their escape. The federal agents had no firefighting equipment on the scene and delayed any equipment's subsequent arrival. Indeed, they had refused offers of armored firefighting vehicles from a private company. Many Branch Davidians died from the fire, smoke and CS gas inhalation, and falling debris.

6. Others died as a result of the fire and destruction of Mt. Carmel which were caused by explosive and/or incendiary devices used by U.S. agents against the Branch Davidians under the direction and supervision of U.S. Officials.

7. Still others were killed as a result of U.S. agents' gunfire directed into the Mt. Carmel Church, and at the Branch Davidians, on April 19, 1993.

8. Others, facing a certain, painful death by fire were possibly killed by other Branch Davidians in a mercy killing or may have committed suicide in mortal terror of surrendering to federal officials that had repeatedly attacked them. These suicides or killings, if they occurred, were choices made by people who were trapped by the debris and who were facing a painful death by fire.

9. At least 80 adults and children died.

II. PARTIES TO *BIVENS*, §§ 1983 AND 1985(3), RICO AND FTCA CLAIMS

A. ESTATE SURVIVAL CLAIMS

1. The following Plaintiff administrators and heirs bring survival claims on behalf of the following estates ("Decedents") for *Bivens*, §§ 1983 and 1985(3), RICO, and FTCA claims. The claims by the administrators are brought pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021, and the claims by the heirs are brought pursuant to Texas Probate Code § 38.

1. Estate of Chanel Andrade

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Chanel Andrade, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants⁴ and an FTCA survival claim⁵ (3/22/94).⁶

2. Estate of Jennifer Andrade

⁴ The Group One Defendants are listed on pp. 51-54.

⁵ All FTCA survival claims are filed against the Defendant U.S.

⁶ Date FTCA administrative claim was file pursuant to 29 U.S.C. § 2675 for the listed Plaintiff.

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Jennifer Andrade, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
3. Estate of Katherine Andrade
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Katherine Andrade, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
4. Estate of Crystal Jewel Barrios
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Crystal Jewel Barrios, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).
5. Estate of Isaiah Barrios
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Isaiah Barrios, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).
6. Estate of Alrick George Bennett
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Alrick George Bennett, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants⁷ and an FTCA survival claim.
7. Estate of Susan Marjorie Benta
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Susan Marjorie Benta, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
8. Estate of Winston Blake

⁷ The Group Two Defendants are listed on pp. 55-58.

- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Winston Blake, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
9. Estate of Mary Jean Estella Borst
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Mary Jean Estella Borst, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
10. Estate of Beverly Adore Elliott
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Beverly Adore Elliott, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
11. Estate of Doris Adina Fagan
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Doris Adina Fagan, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
12. Estate of Yvette Williams Fagan
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Yvette Williams Fagan, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
13. Estate of Peter Bruce Gent
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Peter Bruce Gent, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (8/26/94).
14. Estate of Sandra Elaine Hardial
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Sandra Elaine Hardial, files *Bivens*, §§ 1983 and 1985(3),

and RICO survival claims against the Group Two Defendants and an FTCA survival claim.

15. Estate of Diana Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Diana Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
16. Estate of Paulina Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Paulina Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
17. Estate of Phillip G. Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Phillip G. Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
18. Estate of Stephen G. Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Stephen G. Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
19. Estate of Vanessa Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Vanessa Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
20. Estate of Zilla Henry
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Zilla Henry, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
21. Estate of Peter Hipsman

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Peter Hipsman, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (8/4/94).
22. Estate of Sherry Lynn Gallegos Jewell
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Sherry Lynn Gallegos Jewell, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
 23. Estate of Dayland Lord Little
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Dayland Lord Little, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
 24. Estate of Kara Brittani (Pages) Little
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Kara Brittani (Pages) Little, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
 25. Estate of Jeffrey Curtis Little
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Jeffrey Curtis Little, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
 26. Estate of Nicole Elizabeth Gent Little
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Nicole Elizabeth Gent Little, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (8/26/94).
 27. Estate of Livingston A. "Mike" Malcolm
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Livingston A. "Mike" Malcolm, files *Bivens*, §§ 1983 and

1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.

28. Estate of Daisy Martin

- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Daisy Martin, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.

29. Estate of Abigail Martinez

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Abigail Martinez, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).

30. Estate of Audrey Martinez

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Audrey Martinez, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).

31. Estate of Joseph Martinez

- a. Tracey Conwell, Administratrix and legal representative of the Estate of Joseph Martinez, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).

32. Estate of John McBean

- a. Stephen E. Thompson, Administrator and legal representative of the Estate of John McBean, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.

33. Estate of Allison Bernadette Monbelly

- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Allison Bernadette Monbelly, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.

34. Estate of Rosemarie Morrison

- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Rosemarie Morrison, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
35. Estate of Melissa Morrison
- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Melissa Morrison, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
36. Estate of Beryl Theresa Nobrega
- a. Stephen E. Thompson, Administrator and legal representative of the Estate of Beryl Theresa Nobrega, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
37. Estate of James Loye Riddle, Jr.
- a. Tracey Conwell, Administratrix and legal representative of the Estate of James Loye Riddle, Jr., files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim (8/31/94).
38. Estate of Julie Santoya
- a. Tracey Conwell, Administratrix and legal representative of the Estate of Julie Santoya, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (4/18/94).
39. Estate of Judy Violet Peterson Schneider
- a. Tracey Conwell, Administratrix and legal representative of the Estate of Judy Violet Peterson Schneider, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
40. Estate of Mayanah Schneider
- a. Tracey Conwell, Administratrix and legal representative of the Estate of Mayanah Schneider, files *Bivens*, §§ 1983 and 1985(3), and RICO

survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).

41. Estate of Steven Schneider
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Steven Schneider, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
42. Estate of Michael Schroeder
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Michael Schroeder, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (8/4/94).
43. Estate of Clifford Gary Sellors
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Clifford Gary Sellors, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group Two Defendants and an FTCA survival claim.
44. Estate of Aisha Gyarfas Summers
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Aisha Gyarfas Summers, files an FTCA survival claim against the U.S.
45. Estate of Gregory Allen Summers
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Gregory Allen Summers, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).
46. Estate of Startle Summers
 - a. Stephen E. Thompson, Administrator and legal representative of the Estate of Startle Summers, files an FTCA survival claim against the U.S.

47. Estate of Hollywood Sylvia
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Hollywood Sylvia, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (2/27/95).

48. Estate of Lorraine Sylvia
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Lorraine Sylvia, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (2/27/95).

49. Estate of Rachel Ester Sylvia
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Rachel Ester Sylvia, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (2/27/95).

50. Estate of Jaydean Wendel
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Jaydean Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).

51. Estate of Mark Wendel
 - a. Tracey Conwell, Administratrix and legal representative of the Estate of Mark Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants and an FTCA survival claim (3/22/94).

52. Estate of Pablo Cohen
 - a. Shulamit Cohen (mother), Jorge Cohen (brother), and Raul Cohen (brother), legal representatives of the Estate of Pablo Cohen, file *Bivens*, §§ 1983 and 1985(3), and RICO survival claims against the Group One Defendants for the death of Pablo Cohen.
 - b. Shulamit Cohen (mother), Jorge Cohen (brother), and Raul Cohen (brother), legal representatives of the Estate of Pablo Cohen, file FTCA survival claims against the U.S. (4/19/94)

- c. Shulamit Cohen, Jorge Cohen and Raul Cohen are the sole heirs to Pablo Cohen's estate; no administration is pending for this estate; and none is necessary.

B. WRONGFUL DEATH, BYSTANDER AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AND OTHER PERSONAL INJURY CLAIMS

2. The following Plaintiffs file wrongful death, bystander, intentional infliction of emotional distress and/or other personal injury claims. Wrongful death claims are filed by "Relatives" of the listed Decedents. Relatives also file bystander claims for witnessing injuries inflicted on their close relatives who were at Mt. Carmel during the times relevant to the acts and omissions described herein. Relatives also file intentional and reckless infliction of emotional distress claims for the injuries inflicted on their close relatives who were at Mt. Carmel during the relevant time. "Survivors" (sometimes referred to as "Surviving Davidians") bring claims for "personal injuries" suffered by them as a result of being at Mt. Carmel during times relevant to the acts and omissions described herein.

3. The FTCA Plaintiffs' wrongful death claims are filed pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.004(c) and 71.021. The *Bivens*, §§ 1983 and 1985(3), and RICO Plaintiffs' wrongful death claims are filed pursuant to 42 U.S.C. § 1988, federal constitutional and common law, TEX. CIV. PRAC. & REM. CODE § 71.004 and Texas common law.

4. The Plaintiffs' bystander and intentional infliction of emotional distress claims are filed pursuant to Texas common law.

1. Joseph W. Allen

- a. Joseph W. Allen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his daughter, Lorraine Sylvia (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Joseph W. Allen files FTCA claims for the deaths of his grandchildren, Hollywood Sylvia and Rachel Ester Sylvia, and for injuries to his grandson, Joshua Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
 - c. Tracey Conwell, legal representative of Joseph W. Allen, files an FTCA claim for the death of his daughter, Lorraine Sylvia (wrongful death) (2/27/95).
 2. Norman Washington Allison
 - a. Norman Washington Allison files an FTCA claim for his personal injuries.
 3. Guillermo Andrade
 - a. Guillermo Andrade files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his daughters, Jennifer and Katherine Andrade (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Guillermo Andrade files an FTCA claim for the death of his granddaughter, Chanel Andrade (bystander and intentional infliction of emotional distress) (8/26/94).
 - c. Tracey Conwell, legal representative of Guillermo Andrade, files FTCA claims for the deaths of his daughters, Jennifer and Katherine Andrade (wrongful death) (3/22/94).
 4. Isabel Andrade
 - a. Isabel Andrade files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her daughters, Jennifer and Katherine Andrade (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Isabel Andrade files an FTCA claim for the death of her granddaughter, Chanel Andrade (bystander and intentional infliction of emotional distress) (8/26/94).
 - c. Tracey Conwell, legal representative of Isabel Andrade, files FTCA claims for the deaths of her daughters, Jennifer and Katherine Andrade (wrongful death) (3/22/94).
 5. Jacqueline Andrade

- a. Jacqueline Andrade files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her sisters, Jennifer and Katherine Andrade (bystander and intentional infliction of emotional distress).
 - b. Jacqueline Andrade files FTCA claims for the deaths of her sisters, Jennifer and Katherine Andrade (bystander and intentional infliction of emotional distress) (8/8/94).
6. Shelly Ausloos
- a. Shelly Ausloos files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Steven Schneider (bystander and intentional infliction of emotional distress).
 - b. Shelly Ausloos files an FTCA claim for the death of her brother, Steven Schneider (bystander and intentional infliction of emotional distress) (8/8/94).
7. Thomas Barrios
- a. Thomas Barrios files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his daughter and son, Crystal Jewel Barrios and Isaiah Barrios, respectively (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Thomas Barrios, files FTCA claims for the deaths of his daughter and son, Crystal Jewel Barrios and Isaiah Barrios respectively (wrongful death) (8/8/94).
8. Darren Bennett
- a. Darren Bennett files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his father, Alrick George Bennett (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Darren Bennett files an FTCA claim for the death of his father, Alrick George Bennett (wrongful death).

9. Nicole Bennett
 - a. Lucille Maynard, as next friend of Nicole Bennett, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her father, Alrick George Bennett (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Lucille Maynard, as next friend of Nicole Bennett, files an FTCA claim for the death of her father, Alrick George Bennett (wrongful death).
10. Rhyce Gordon Bennett
 - a. Lucille Maynard, as next friend of Rhyce Gordon Bennett, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his father, Alrick George Bennett (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Lucille Maynard, as next friend of Rhyce Gordon Bennett, files an FTCA claim for the death of his father, Alrick George Bennett (wrongful death).
11. Alfred LeRoy Benta
 - a. Alfred LeRoy Benta files an FTCA claim for the death of his sister, Susan Marjorie Benta (bystander and intentional infliction of emotional distress).
12. Arthur Heard Benta
 - a. Arthur Heard Benta files an FTCA claim for the death of his sister, Susan Marjorie Benta (bystander and intentional infliction of emotional distress).
13. Leyton Eustace Benta
 - a. Leyton Eustace Benta files an FTCA claim for the death of his sister, Susan Marjorie Benta (bystander and intentional infliction of emotional distress).
14. Marjorie E. Benta
 - a. Marjorie E. Benta files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter,

Susan Marjorie Benta (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Marjorie E. Benta files an FTCA claim for the death of her daughter, Susan Marjorie Benta (wrongful death).

15. Adeline Sylvia Black

- a. Adeline Sylvia Black files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the deaths of her daughters, Daisy Martin and Beryl Theresa Nogrega (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Adeline Sylvia Black files FTCA claims for the deaths of her daughters, Daisy Martin and Beryl Theresa Nogrega (wrongful death).

16. Lowess Esmerella Blake

- a. Lowess Esmerella Blake files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her son, Winston Blake (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Lowess Esmerella Blake files an FTCA claim for the death of her son, Winston Blake (wrongful death).

17. Robert Theophilus Blake

- a. Robert Theophilus Blake files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his son, Winston Blake (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Robert Theophilus Blake files an FTCA claim for the death of his son, Winston Blake (wrongful death).

18. Bradley Borst

- a. Bradley Borst files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his mother, Mary Jean Estella Borst (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Tracey Conwell, legal representative of Bradley Borst, files an FTCA claim for the death of his mother, Mary Jean Estella Borst (wrongful death) (3/22/94).

19. Darren Borst
 - a. Darren Borst files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his mother, Mary Jean Estella Borst (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Darren Borst, files an FTCA claim for the death of his mother, Mary Jean Estella Borst (wrongful death) (3/22/94).

20. Lance Borst
 - a. Lance Borst files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his mother, Mary Jean Estella Borst (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Lance Borst, files an FTCA claim for the death of his mother, Mary Jean Estella Borst (wrongful death) (3/22/94).

21. Debborah K. Brown
 - a. Debborah K. Brown files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter, Shari Elayna Doyle (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Debborah K. Brown files an FTCA claim for the death of her daughter, Shari Elayna Doyle (wrongful death).

22. Sherry Ann Burgo
 - a. Sherry Ann Burgo files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Sherry Ann Burgo files an FTCA claim for the death of her father, Floyd Houtman, Sr. (wrongful death).

23. Patricia Fagan Clarke
 - a. Patricia Fagan Clarke files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her mother,

Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Patricia Fagan Clarke files an FTCA claim for the death of her mother, Doris Adina Fagan (wrongful death).

24. Jorge Cohen

- a. Jorge Cohen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Pablo Cohen (bystander and intentional infliction of emotional distress).
- b. Jorge Cohen files an FTCA claim for the death of his brother, Pablo Cohen (bystander and intentional infliction of emotional distress) (6/3/94).

25. Raul Cohen

- a. Raul Cohen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Pablo Cohen (bystander and intentional infliction of emotional distress).
- b. Raul Cohen files an FTCA claim for the death of his brother Pablo Cohen (bystander and intentional infliction of emotional distress) (6/3/94).

26. Shulamit Cohen

- a. Shulamit Cohen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Pablo Cohen (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Shulamit Cohen, legal representative of Pablo Cohen, files an FTCA claim for the death of her son, Pablo Cohen (wrongful death) (6/3/94).

27. Sandra J. Connizzo

- a. Sandra J. Connizzo files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Michael Schroeder (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Tracey Conwell, legal representative of Sandra J. Connizzo, files an FTCA claim for the death of her son, Michael Schroeder (wrongful death) (8/4/94).

- c. Sandra J. Connizzo files an FTCA claim for injuries to her grandson, Bryan Schroeder (bystander and intentional infliction of emotional distress) (2/27/95).
- 28. Donell K. Cornwell
 - a. Donnell K. Cornwell files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Jaydean Wendel (bystander and intentional infliction of emotional distress).
 - b. Donnell K. Cornwell files an FTCA claim for the death of his sister, Jaydean Wendel (bystander and intentional infliction of emotional distress) (8/5/94).
- 29. Leanora Laura De Silva
 - a. Leanora Laura De Silva files FTCA claims for the deaths of her sisters, Daisy Martin and Beryl Theresa Nobrega, (bystander and intentional infliction of emotional distress).
- 30. Joaquin Dones
 - a. Joaquin Dones files an FTCA claim for the death of his grandson, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95).
- 31. Margie Douglas
 - a. Margie Douglas files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).
 - b. Margie Douglas files an FTCA claim for the death of her sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (4/18/94).
- 32. Olive Jeanie Dunn
 - a. Olive Jeanie Dunn files an FTCA claim for the death of his sister, Susan Marjorie Benta (bystander and intentional infliction of emotional distress).

33. Devon Nathaniel Elliott
 - a. Devon Nathaniel Elliott files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his sister, Beverly Adore Elliott (bystander and intentional infliction of emotional distress).
 - b. Devon Nathaniel Elliott files an FTCA claim for the death of his sister, Beverly Adore Elliott (bystander and intentional infliction of emotional distress).

34. Wendel Augustus Elliott
 - a. Wendel Augustus Elliott files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his daughter, Beverly Adore Elliott (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Wendel Augustus Elliott files an FTCA claim for the death of his daughter, Beverly Adore Elliott (wrongful death).

35. Sonia Elseth
 - a. Sonia Elseth files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).
 - b. Sonia Elseth files an FTCA claim for the death of her sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (4/18/94).

36. Bloston N. Fagan
 - a. Bloston N. Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Bloston N. Fagan files an FTCA claim for the death of his mother, Doris Adina Fagan (wrongful death).

37. Delroy Fagan

- a. Delroy Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Delroy Fagan files an FTCA claim for the death of his mother, Doris Adina Fagan (wrongful death).
38. Fitz Ernest Fagan
- a. Fitz Ernest Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his wife, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Fitz Ernest Fagan files an FTCA claim for the death of his wife, Doris Adina Fagan (wrongful death).
39. Livingston Fagan
- a. Livingston Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Livingston Fagan files FTCA claims for the death of his mother, Doris Adina Fagan (wrongful death), his wife, Yvette Williams Fagan (wrongful death), and for his personal injuries.
40. Nehara Fagan
- a. Gladys Williams, as next friend of Nehara Fagan, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Yvette Williams Fagan (wrongful death, bystander, and intentional infliction of emotional distress), and for his personal injuries.
 - b. Gladys Williams, as next friend of Nehara Fagan, files FTCA claims for the death of his mother, Yvette Williams Fagan (wrongful death), and for his personal injuries.
41. Patrick Nathaneal Fagan
- a. Patrick Nathaneal Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his

mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Patrick Nathaneal Fagan files an FTCA claim for the death of his mother, Doris Adina Fagan (wrongful death).

42. Renae Fagan

- a. Gladys Williams, as next friend of Renae Fagan, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her mother, Yvette Williams Fagan (wrongful death, bystander, and intentional infliction of emotional distress), and for her personal injuries.
- b. Gladys Williams, as next friend of Renae Fagan, files FTCA claims for the death of her mother, Yvette Williams Fagan (wrongful death), and for her personal injuries.

43. Robert Fagan

- a. Robert Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Robert Fagan files an FTCA claim for the death of his mother, Doris Adina Fagan (wrongful death).

44. Roslyn Fagan

- a. Roslyn Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Roslyn Fagan files an FTCA claim for the death of her mother, Doris Adina Fagan (wrongful death).

45. Renford Fagan

- a. Renford Fagan files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Doris Adina Fagan (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Renford Fagan files an FTCA claim for the death of his mother, Doris Adina Fagan (wrongful death).
- 46. Misty Dawn Ferguson
 - a. Misty Dawn Ferguson files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for her personal injuries.
 - b. Misty Dawn Ferguson files an FTCA claim for her personal injuries.
- 47. Paulette Brenda Gdaniec
 - a. Paulette Brenda Gdaniec files an FTCA claim for the death of her sister, Susan Marjorie Benta (bystander and intentional infliction of emotional distress).
- 48. Elizabeth Gyarfas
 - a. Elizabeth Gyarfas files an FTCA claim for the death of her daughter, Aisha Gyarfas Summers (wrongful death).
 - b. Elizabeth Gyarfas files an FTCA claim for the death of her granddaughter, Startle Summers (bystander and intentional infliction of emotional distress).
- 49. Oliver Gyarfas, Sr.
 - a. Oliver Gyarfas, Sr. files an FTCA claim for the death of his daughter, Aisha Gyarfas Summers (wrongful death).
 - b. Oliver Gyarfas, Sr. files an FTCA claim for the death of his granddaughter, Startle Summers (bystander and intentional infliction of emotional distress).
- 50. Joshua Hardial
 - a. Joshua Hardial files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his daughter, Sandra Elaine Hardial (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Joshua Hardial files an FTCA claim for the death of his daughter, Sandra Elaine Hardial (wrongful death).
- 51. Una Hardial

- a. Una Hardial files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter, Sandra Elaine Hardial (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Una Hardial files an FTCA claim for the death of her daughter, Sandra Elaine Hardial (wrongful death).
52. Donaire Harty
- a. Donaire Harty files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her mother, Daisy Martin (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Donaire Harty files an FTCA claim for the death of her mother, Daisy Martin (wrongful death).
53. Noel Harty
- a. Noel Harty files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his daughter, Daisy Martin (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Noel Harty files an FTCA claim for the death of his daughter, Daisy Martin (wrongful death).
54. Berry Haugen
- a. Berry Haugen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).
 - b. Berry Haugen files an FTCA claim for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (4/18/94).
55. Clifford "Gordie" Haugen
- a. Clifford "Gordie" Haugen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).

- b. Clifford "Gordie" Haugen files an FTCA claim for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (4/18/94).
- 56. Curtis Haugen
 - a. Curtis Haugen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).
 - b. Curtis Haugen files an FTCA claim for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (4/18/94).
- 57. Doris Haugen
 - a. Doris Haugen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her daughter, Mary Jean Estella Borst (wrongful death, bystander and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Doris Haugen, files an FTCA claim for the death of her daughter, Mary Jean Estella Borst (wrongful death) (4/18/94).
- 58. Glen Haugen
 - a. Glen Haugen files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress).
 - b. Glen Haugen files an FTCA claim for the death of his sister, Mary Jean Estella Borst (bystander and intentional infliction of emotional distress) (8/8/94).
- 59. Samuel Oresta Henry
 - a. Samuel Oresta Henry files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the deaths of his daughters, Diana, Paulina and Vanessa Henry; his sons, Phillip Graham and Stephen George Henry; and his wife, Zilla Henry (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Samuel Oresta Henry files FTCA claims for the deaths of his daughters, Diana, Paulina and Vanessa Henry; his sons, Phillip Graham and Stephen George Henry; and his wife, Zilla Henry (wrongful death).

- 60. Catherine Hipsman
 - a. Catherine Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. Catherine Hipsman files an FTCA claim for the death of her brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).

- 61. Eugene Hipsman, Jr.
 - a. Eugene Hipsman, Jr. files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. Eugene Hipsman, Jr. files an FTCA claim for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).

- 62. Eugene Hipsman
 - a. Eugene Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Peter Hipsman (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Eugene Hipsman, files an FTCA claim for the death of his son, Peter Hipsman (wrongful death) (8/4/94).

- 63. Filomena Hipsman
 - a. Filomena Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Peter Hipsman (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Tracey Conwell, legal representative of Filomena Hipsman, files an FTCA claim for the death of her son, Peter Hipsman (wrongful death) (8/4/94).

- 64. John Charles Hipsman
 - a. John Charles Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. John Charles Hipsman files an FTCA claim for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).

- 65. Michael Ralph Hipsman
 - a. Michael Ralph Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. Michael Hipsman files an FTCA claim for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).

- 66. Mildred Hipsman
 - a. Mildred Hipsman files an FTCA claim for the death of her grandson, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95).

- 67. Paul John Hipsman
 - a. Paul John Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. Paul John Hipsman files an FTCA claim for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).

- 68. Stephan M. Hipsman

- a. Stephan M. Hipsman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress).
 - b. Stephan Hipsman files an FTCA claim for the death of his brother, Peter Hipsman (bystander and intentional infliction of emotional distress) (8/4/94).
69. Pearl Horsfield
- a. Pearl Horsfield files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her sister, Lorraine Sylvia (bystander and intentional infliction of emotional distress).
 - b. Pearl Horsfield files an FTCA claim for the death of her sister, Lorraine Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
70. Lucilda McBean Hosten
- a. Lucilda McBean Hosten files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her son, John McBean (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Lucilda McBean Hosten files an FTCA claim for the death of her son, John McBean (wrongful death).
71. Dana Houtman
- a. Dana Houtman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Dana Houtman files an FTCA claim for the death of her father, Floyd Houtman, Sr. (wrongful death).
72. Floyd Houtman, Jr.
- a. Floyd Houtman, Jr. files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Floyd Houtman, Jr. files an FTCA claim for the death of his father, Floyd Houtman, Sr. (wrongful death).
73. Gabriella Marie Houtman
- a. Gabriella Marie Houtman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Gabriella Marie Houtman files an FTCA claim for the death of her father, Floyd Houtman, Sr. (wrongful death).
74. Joel Matthew Houtman
- a. Joel Matthew Houtman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Joel Matthew Houtman files an FTCA claim for the death of his father, Floyd Houtman, Sr. (wrongful death).
75. Judith Marie Houtman
- a. Judith Marie Houtman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her husband, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Judith Marie Houtman files an FTCA claim for the death of her husband, Floyd Houtman, Sr. (wrongful death).
76. Tobias Hosea Houtman
- a. Tobias Hosea Houtman files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his father, Floyd Houtman, Sr. (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tobias Hosea Houtman files an FTCA claim for the death of his father, Floyd Houtman, Sr. (wrongful death).
77. Marie Cornwell Hutchison

- a. Marie Cornwell Hutchison files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her daughter, Jaydean Wendel (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Marie Cornwell Hutchison, files an FTCA claim for the death of her daughter, Jaydean Wendel (wrongful death claims) (3/22/94).
 - c. Marie Cornwell Hutchison files FTCA claims for the injuries to her grandchildren, Jaunessa, Landon, Patron, and Tamarae Wendel (bystander and intentional infliction of emotional distress) (2/27/95).
78. Sue Johnson
- a. Sue Johnson files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Steve Schneider (bystander and intentional infliction of emotional distress).
 - b. Sue Johnson files an FTCA claim for the death of her brother, Steve Schneider (bystander and intentional infliction of emotional distress) (3/22/94).
79. Samuel N. Jones
- a. Samuel N. Jones files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his father, Perry Jones (wrongful death, bystander, and intentional infliction of emotional distress), and for the deaths of his brother, David Jones, and his sisters, Michelle Jones and Rachel Jones Howell Koresh (bystander and intentional infliction of emotional distress).
 - b. Samuel N. Jones files FTCA claims for the death of his father, Perry Jones (wrongful death) (8/5/94), and for the deaths of his brother, David Jones, and his sisters, Michelle Jones and Rachel Jones Howell Koresh (bystander and intentional infliction of emotional distress) (8/8/94).
80. Aaron Jay Little
- a. Aaron Jay Little files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Jeffrey Curtis Little (bystander and intentional infliction of emotional distress).

- b. Aaron Jay Little files an FTCA claim for the death of his brother, Jeffrey Curtis Little (bystander and intentional infliction of emotional distress) (3/22/94).

81. Lonnie C. Little

- a. Lonnie C. Little files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Jeffrey Curtis Little (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Lonnie C. Little files FTCA claims for the deaths of his grandson, Dayland Lord Little, and his granddaughter, Kara Brittani Little (bystander and intentional infliction of emotion distress) (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Lonnie C. Little, files an FTCA claim for the death of his son, Jeffrey Curtis Little (wrongful death) (3/22/94).

82. Patricia May Little

- a. Patricia May Little files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Jeffrey Curtis Little (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Patricia May Little files FTCA claims for the deaths of her grandson, Dayland Lord Little, and granddaughter, Kara Brittani Little (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Patricia May Little, files an FTCA claim for the death of her son, Jeffrey Curtis Little (wrongful death) (3/22/94).

83. Stuart A. Little

- a. Stuart A. Little files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Jeffrey Curtis Little (bystander and intentional infliction of emotional distress).
- b. Stuart A. Little files an FTCA claim for the death of his brother, Jeffrey Curtis Little (bystander and intentional infliction of emotional distress) (3/22/94).

84. Derek Lovelock
- a. Derek Lovelock files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for his personal injuries.
 - b. Derek Lovelock files FTCA claims for his personal injuries.
85. Christyn Mabb
- a. Staff Sergeant William Mabb, as next friend of Christyn Mabb, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for her personal injuries.
 - b. Staff Sergeant William Mabb, as next friend of Christyn Mabb, files FTCA claims for her personal injuries (2/27/95), and for injuries to her mother, Kathryn Schroeder, and her brothers, Jacob and Scott Mabb and Bryan Schroeder (bystander and intentional infliction of emotional distress) (2/27/95).
86. Jacob Mabb
- a. Staff Sergeant William Mabb, as next friend of Jacob Mabb, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for his personal injuries.
 - b. Staff Sergeant William Mabb, as next friend of Jacob Mabb, files FTCA claims for his personal injuries (2/27/95), and for injuries to his mother, Kathryn Schroeder, his brothers Scott Mabb and Bryan Schroeder, and his sister, Christyn Mabb (bystander and intentional infliction of emotional distress) (2/27/95).
87. Scott Mabb
- a. Staff Sergeant William Mabb, as next friend of Scott Mabb, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for his personal injuries.
 - b. Staff Sergeant William Mabb, as next friend of Scott Mabb, files FTCA claims for his personal injuries (2/27/95), and for injuries to his mother, Kathryn Schroeder, his brothers Jacob Mabb and Bryan Schroeder, and his sister, Christyn Mabb (bystander and intentional infliction of emotional distress) (2/27/95).

88. William Mabb
- a. William Mabb files FTCA claims for injuries to his children Christyn, Jacob and Scott Mabb (bystander and intentional infliction of emotional distress) (2/27/95).
89. Gail Magee
- a. Gail Magee files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her sister, Lorraine Sylvia (bystander and intentional infliction of emotional distress).
 - b. Gail Magee files an FTCA claim for the death of her sister, Lorraine Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
90. Soloman Malcolm, Jr.
- a. Soloman Malcolm, Jr. files an FTCA claim for the death of his brother, Livingston Alexander Malcolm (bystander and intentional infliction of emotional distress).
91. Soloman Malcolm, Sr.
- a. Soloman Malcolm, Jr., as heir to the Estate of Soloman Malcolm, Sr., files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of Soloman Malcolm, Sr.'s son, Livingston Alexander Malcolm (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Soloman Malcolm, Jr., as heir to the Estate of Soloman Malcolm, Sr., files an FTCA claim for the death of Soloman Malcolm, Sr.'s son, Livingston Alexander Malcolm (wrongful death).
92. Helen Martin
- a. Helen Martin files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Douglas Wayne Martin (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Helen Martin files FTCA claims for the death of her son, Douglas Wayne Martin (wrongful death) (3/22/94), and for the deaths of her grandchildren, Anita Marie, Lisa Marie, Sheila Renee, and Wayne

Joseph Martin (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).

93. Joseph W. Martin

- a. Joseph W. Martin files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Douglas Wayne Martin (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Joseph W. Martin files FTCA claims for the death of his son, Douglas Wayne Martin (wrongful death) (3/22/94), and for the deaths of his grandchildren, Anita Marie, Lisa Marie, Sheila Renee, and Wayne Joseph Martin (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).

94. JoAnn Martin

- a. JoAnn Martin files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Douglas Wayne Martin (bystander and intentional infliction of emotional distress).
- b. JoAnn Martin files an FTCA claim for the death of her brother, Douglas Wayne Martin (bystander and intentional infliction of emotional distress) (4/18/94).

95. Dr. Norman J. Martin

- a. Dr. Norman J. Martin files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Douglas Wayne Martin (bystander and intentional infliction of emotional distress).
- b. Dr. Norman J. Martin files an FTCA claim for the death of his brother, Douglas Wayne Martin (bystander and intentional infliction of emotional distress) (4/18/94).

96. Daniel Martinez, Sr.

- a. Daniel Martinez, Sr. files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his daughters, Abigail and Audrey Martinez, and his son, Joseph Martinez (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Tracey Conwell, legal representative of Daniel Martinez, Sr., files FTCA claims for the deaths of his daughters, Abigail and Audrey Martinez, and his son, Joseph Martinez (wrongful death) (8/26/94).
97. Daniel Martinez, Jr.
- a. Daniel Martinez, Sr., as next friend of Daniel Martinez, Jr., files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his mother, Julie Santoya (wrongful death, bystander, and intentional infliction of emotional distress), and for the deaths of his sisters, Crystal Jewel Barrios and Abigail and Audrey Martinez; and his brothers, Isaiah Barrios and Joseph Martinez (bystander and intentional infliction of emotional distress).
 - b. Daniel Martinez, Sr., as next friend of Daniel Martinez, Jr., files FTCA claims for the deaths of his sisters, Crystal Jewel Barrios and Abigail and Audrey Martinez, and his brothers, Isaiah Barrios and Joseph Martinez (bystander and intentional infliction of emotional distress) (8/26/94).
 - c. Tracey Conwell, legal representative of Daniel Martinez, Jr., files an FTCA claim for the death of his mother, Julie Santoya (wrongful death) (8/26/94).
98. Lucille Maynard
- a. Lucille Maynard files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her son, Alrick George Bennett (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Lucille Maynard files an FTCA claim for the death of her son, Alrick George Bennett (wrongful death).
99. Ransford McBean
- a. Ransford McBean files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his son, John McBean (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Ransford McBean files an FTCA claim for the death of his son, John McBean (wrongful death).
100. Gail Monbelly

- a. Gail Monbelly files an FTCA claim for the death of her sister, Allison Bernadette Monbelly (wrongful death).
101. Josephart Monbelly
- a. Josephart Monbelly files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his daughter, Allison Bernadette Monbelly (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Josephart Monbelly files an FTCA claim for the death of his daughter, Allison Bernadette Monbelly (wrongful death).
102. Mary Anna Monbelly
- a. Mary Anna Monbelly files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter, Allison Bernadette Monbelly (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Mary Anna Monbelly files an FTCA claim for the death of her daughter, Allison Bernadette Monbelly (wrongful death).
103. J. P. Morrison
- a. J. P. Morrison files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his daughter, Rosemarie Morrison (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. J. P. Morrison files FTCA claims for the deaths of his daughter, Rosemarie Morrison (wrongful death), and his granddaughter, Melissa Morrison (bystander and intentional infliction of emotional distress).
104. Michael Morrison
- a. Michael Morrison files an FTCA claim for the death of his sister, Rosemarie Morrison (bystander and intentional infliction of emotional distress).
105. N. A. Morrison
- a. N. A. Morrison files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter, Rosemarie Morrison (wrongful death, bystander, and intentional infliction of emotional distress).

- b. N. A. Morrison files FTCA claims for the deaths of her daughter, Rosemarie Morrison (wrongful death), and her granddaughter, Melissa Morrison (bystander and intentional infliction of emotional distress).
106. Ruth Mosher
- a. Ruth Mosher files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her daughter, Sherry Lynn Gallegos (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Ruth Mosher, files an FTCA claim for the death of her daughter, Sherry Lynn Gallegos (wrongful death) (3/22/94).
107. Andrew Vincent Nobrega
- a. Andrew Vincent Nobrega files *Bivens*, §§ 1983 and 1985(a), and RICO claims against the Group Two Defendants for the death of his mother, Beryl Theresa Nobrega (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Andrew Vincent Nobrega files an FTCA claim for the death of his mother, Beryl Theresa Nobrega (wrongful death).
108. Natalie Priscilla Nobrega
- a. Vincent W. Nobrega, as next friend of Natalie Priscilla Nobrega, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her mother, Beryl Theresa Nobrega (wrongful death, bystander, and intentional infliction of emotional distress), and for her personal injuries.
 - b. Vincent W. Nobrega, as next friend of Natalie Priscilla Nobrega, files FTCA claims for the death of her mother, Beryl Theresa Nobrega (wrongful death), and for her personal injuries.
109. Vincent Nobrega
- a. Vincent Nobrega files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his wife, Beryl Theresa Nobrega (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Vincent Nobrega files an FTCA claim for the death of his wife, Beryl Theresa Nobrega (wrongful death).
- 110. Wayne C. Nobrega
 - a. Wayne C. Nobrega files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his mother, Beryl Theresa Nobrega (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Wayne C. Nobrega files an FTCA claim for the death of his mother, Beryl Theresa Nobrega (wrongful death).
- 111. Christian Andrew Olsen
 - a. Kimberly Lambert, as next friend of Christian Andrew Olsen, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his father, Gregory Allen Summers (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Christian Andrew Olsen, files an FTCA claim for the death of his father, Gregory Allen Summers (wrongful death) (8/8/94).
- 112. Margaret Parker
 - a. Margaret Parker files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her daughter, Lorraine Sylvia (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Tracey Conwell, legal representative of Margaret Parker, files an FTCA claim for the death of her daughter, Lorraine Sylvia (wrongful death) (2/27/95).
 - c. Margaret Parker files FTCA claims for the deaths of her grandchildren, Hollywood Sylvia and Rachel Ester Sylvia, and for injuries to her grandson, Joshua Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
- 113. David Pearce, Jr.
 - a. David Pearce, Jr. files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his sisters, Hollywood Sylvia and Rachel Ester Sylvia (bystander and intentional

infliction of emotional distress), and for the death of his mother, Lorraine Sylvia (wrongful death, bystander, and intentional infliction of emotional distress).

- b. David Pearce, Jr. files FTCA claims for the deaths of his sisters, Hollywood Sylvia and Rachel Ester Sylvia, and for injuries to his brother, Joshua Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
- c. Tracey Conwell, legal representative of David Pearce, Jr., files an FTCA claim for the death of his mother, Lorraine Sylvia (wrongful death) (2/27/95).

114. Julie Pearce

- a. Julie Pearce files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her sisters, Hollywood Sylvia and Rachel Ester Sylvia (bystander and intentional infliction of emotional distress), and for the death of her mother, Lorraine Sylvia (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Julie Pearce files FTCA claims for the deaths of her sisters, Hollywood Sylvia and Rachel Ester Sylvia, and for injuries to her brother, Joshua Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
- c. Tracey Conwell, legal representative of Julie Pearce, files an FTCA claim for the death of her mother, Lorraine Sylvia (wrongful death) (2/27/95).

115. Earl Peterson

- a. Earl Peterson files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his daughter, Judy Violet Peterson Schneider (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Earl Peterson files an FTCA claim for the death of his granddaughter, Mayanah Schneider (bystander and intentional infliction of emotional distress) (8/26/94).
- c. Tracey Conwell, legal representative of Earl Peterson, files an FTCA claim for the death of his daughter, Judy Violet Peterson Schneider (wrongful death) (3/22/94).

116. Wayne F. Peterson
- a. Wayne F. Peterson files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Judy Violet Peterson Schneider (bystander and intentional infliction of emotional distress).
 - b. Wayne F. Peterson files an FTCA claim for the death of his sister, Judy Violet Peterson Schneider (bystander and intentional infliction of emotional distress) (3/22/94).
117. Shirley Puttkammer
- a. Shirley Puttkammer files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her daughter, Judy Violet Peterson Schneider (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Shirley Puttkammer files an FTCA claim for the death of her granddaughter, Mayanah Schneider (bystander and intentional infliction of emotional distress) (8/26/94).
 - c. Tracey Conwell, legal representative of Shirley Puttkammer, files an FTCA claim for the death of her daughter, Judy Violet Peterson Schneider (wrongful death) (3/22/94).
118. Sidnee Reamer
- a. Sidnee Reamer files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Steven Schneider (bystander and intentional infliction of emotional distress).
 - b. Sidnee Reamer files an FTCA claim for the death of her brother, Steven Schneider (bystander and intentional infliction of emotional distress) (8/8/94).
119. Anetta Robinson Richards
- a. Anetta Robinson Richards files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for her personal injuries.
 - b. Anetta Robinson Richards files an FTCA claim for her personal injuries.
120. James Loye Riddle, Sr.

- a. James Loye Riddle, Sr. files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his son, James Loye Riddle, Jr. (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Tracey Conwell, legal representative of James Loye Riddle, Sr., files an FTCA claim for the death of his son, James Loye Riddle, Jr. (wrongful death) (8/31/94).

121. Myrtle Ann Riddle

- a. Myrtle Ann Riddle files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her son, James Loye Riddle, Jr. (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Tracey Conwell, legal representative of Myrtle Ann Riddle, files an FTCA claim for the death of her son, James Loye Riddle, Jr. (wrongful death) (8/31/94).

122. Rita Faye Riddle

- a. Rita Faye Riddle files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her brother, James Loye Riddle, Jr. (bystander and intentional infliction of emotional distress), and for her personal injuries.
- b. Rita Faye Riddle files FTCA claims for the death of her brother, James Loye Riddle, Jr. (bystander and intentional infliction of emotional distress) (8/31/94), and for her personal injuries (08/31/94).

123. Ruth Ottmann Riddle

- a. Ruth Ottmann Riddle files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her husband, James Loye Riddle, Jr. (wrongful death, bystander and intentional infliction of emotional distress), and for her personal injuries.
- b. Ruth Ottmann Riddle files an FTCA claim for her personal injuries (8/31/94).
- c. Tracey Conwell, legal representative of Ruth Ottmann Riddle, files an FTCA claim for the death of her husband, James Loye Riddle, Jr. (wrongful death) (8/31/94).

124. Joe Santoya

- a. Joe Santoya files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his sister, Julie Santoya (bystander and intentional infliction of emotional distress).
- b. Joe Santoya files an FTCA claim for the death of his sister, Julie Santoya (bystander and intentional infliction of emotional distress) (6/3/94).

125. Emil Schneider

- a. Emil Schneider files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Steven Schneider (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Emil Schneider files an FTCA claim for the death of his granddaughter, Mayanah Schneider (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Emil Schneider, files an FTCA claim for the death of his son, Steven Schneider (wrongful death) (3/22/94).

126. Patricia Schneider

- a. Patricia Schneider files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Steven Schneider (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Patricia Schneider files an FTCA claim for the death of her granddaughter, Mayanah Schneider (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Patricia Schneider, files an FTCA claim for the death of her son, Steven Schneider (wrongful death) (3/22/94).

127. Bryan Schroeder

- a. Sandra J. Connizzo, as next friend of Bryan Schroeder, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his father, Michael Schroeder (wrongful

death, bystander, and intentional infliction of emotional distress), and for his personal injuries.

- b. Sandra J. Connizzo, as next friend of Bryan Schroeder, files FTCA claims for injuries to his mother, Kathryn Schroeder; his sister, Christyn Mabb; and his brothers, Jacob and Scott Mabb (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for his personal injuries (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Bryan Schroeder, files an FTCA claim for the death of his father, Michael Schroeder (wrongful death) (8/4/94).

128. James Schroeder

- a. James Schroeder files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress).
- b. James Schroeder files an FTCA claim for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress) (8/4/94).

129. Kathryn Schroeder

- a. Kathryn Schroeder files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her husband, Michael Schroeder (wrongful death, bystander and intentional infliction of emotional distress), and for her personal injuries.
- b. Kathryn Schroeder files FTCA claims for the injuries to her children, Bryan Schroeder, Christyn, Jacob, and Scott Mabb (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for her personal injuries (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Kathryn Schroeder, files an FTCA claim for the death of her husband, Michael Schroeder (wrongful death) (8/4/94).

130. Robert A. Schroeder

- a. Robert A. Schroeder files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress).
 - b. Robert A. Schroeder files an FTCA claim for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress) (8/4/94).
131. Scott Schroeder
- a. Linda Schroeder, as next friend of Scott Schroeder, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress).
 - b. Linda Schroeder, as next friend of Scott Schroeder, files an FTCA claim for the death of his brother, Michael Schroeder (bystander and intentional infliction of emotional distress) (8/4/94).
132. Geoffrey N. Sellors
- a. Geoffrey N. Sellors files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of his son, Clifford Gary Sellors (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Geoffrey N. Sellors files an FTCA claim for the death of his son, Clifford Gary Sellors (wrongful death).
133. Marjorie Sellors
- a. Marjorie Sellors files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her son, Clifford Gary Sellors (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Marjorie Sellors Sellers files an FTCA claim for the death of her son, Clifford Gary Sellors (wrongful death).
134. Karen Shigeta
- a. Karen Shigeta files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her brother, Mark Wendel (bystander and intentional infliction of emotional distress).

- b. Karen Shigeta files an FTCA claim for the death of her brother, Mark Wendel (bystander and intentional infliction of emotional distress) (4/18/94).

135. Edna Summers

- a. Edna Summers files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Gregory Allen Summers (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Edna Summers files an FTCA claim for the death of her granddaughter, Startle Summers (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Edna Summers, files an FTCA claim for the death of her son, Gregory Allen Summers (wrongful death) (3/22/94).

136. Jeffrey Summers

- a. Jeffrey Summers files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress).
- b. Jeffrey Summers files an FTCA claim for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress) (3/22/94).

137. Michael L. Summers

- a. Michael L. Summers files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Gregory Allen Summers (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Michael L. Summers files an FTCA claim for the death of his granddaughter, Startle Summers (bystander and intentional infliction of emotional distress) (9/26/94, supplemented 2/27/95).
- c. Tracey Conwell, legal representative of Michael L. Summers, files an FTCA claim for the death of his son, Gregory Allen Summers (wrongful death) (3/22/94).

138. Randall Kevin Summers

- a. Randall Kevin Summers files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress).
 - b. Randall Kevin Summers files an FTCA claim for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress) (4/18/94).
139. Terry Dean Summers
- a. Terry Dean Summers files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress).
 - b. Terry Dean Summers files an FTCA claim for the death of his brother, Gregory Allen Summers (bystander and intentional infliction of emotional distress) (4/18/94).
140. Joshua Sylvia
- a. Stanley Sylvia, as next friend of Joshua Sylvia, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his mother, Lorraine Sylvia (wrongful death, bystander, and intentional infliction of emotional distress), and for the deaths of his sisters, Hollywood Sylvia and Rachel Ester Sylvia (bystander and intentional infliction of emotional distress), and for his personal injuries.
 - b. Stanley Sylvia, as next friend of Joshua Sylvia, files FTCA claims for the deaths of his sisters, Hollywood Sylvia and Rachel Ester Sylvia (bystander and intentional infliction of emotional distress) (2/27/95), and for his personal injuries (2/27/95).
 - c. Tracey Conwell, legal representative of Joshua Sylvia, files an FTCA claim for the death of his mother, Lorraine Sylvia (wrongful death) (2/27/95).
141. Stanley Sylvia
- a. Stanley Sylvia files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his wife, Lorraine Sylvia, and his daughters, Hollywood Sylvia and Rachel Ester Sylvia (wrongful death, bystander, and intentional infliction of emotional distress).

- b. Stanley Sylvia files an FTCA claim for injuries to his son, Joshua Sylvia (bystander and intentional infliction of emotional distress) (2/27/95).
 - c. Tracey Conwell, legal representative of Stanley Sylvia, files FTCA claims for the deaths of his wife, Lorraine Sylvia, and his daughters, Hollywood Sylvia and Rachel Ester Sylvia (wrongful death) (2/27/95).
- 142. Marjorie Venetia Thomas
 - a. Marjorie Venetia Thomas files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for her personal injuries.
 - b. Marjorie Venetia Thomas files an FTCA claim for her personal injuries.
- 143. Marlene Ann Thompson
 - a. Marlene Ann Thompson files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her son, Peter Bruce Gent, and her daughter, Nicole Elizabeth Gent Little (wrongful death, bystander, and intentional infliction of emotional distress).
 - b. Marlene Ann Thompson files FTCA claims for the deaths of her grandson, Dayland Lord Little, and her granddaughter, Kara Brittani Little (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95).
 - c. Tracey Conwell, legal representative of Marlene Ann Thompson, files FTCA claims for the deaths of her son, Peter Bruce Gent, and her daughter, Nicole Elizabeth Gent Little (wrongful death) (8/26/94).
- 144. Peggy Puttkammer Weishoff
 - a. Peggy Puttkammer Weishoff files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her sister, Judy Violet Peterson Schneider (bystander and intentional infliction of emotional distress).
 - b. Peggy Puttkammer Weishoff files an FTCA claim for the death of her sister, Judy Violet Peterson Schneider (bystander and intentional infliction of emotional distress) (6/3/94).

145. Alma K. Wendel

- a. Alma K. Wendel files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of her son, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Alma K. Wendel files FTCA claims for injuries to her grandchildren, Jaunessa, Landon, Patron and Tamarae Wendel (bystander and intentional infliction of emotional distress) (2/7/95).
- c. Tracey Conwell, legal representative of Alma K. Wendel, files an FTCA claim for the death of her son, Mark Wendel (wrongful death) (3/22/94).

146. Jaunessa Wendel

- a. James Cooney, as next friend of Jaunessa Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her mother, Jaydean Wendel, and her father, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress), and for her personal injuries.
- b. James Cooney, as next friend of Jaunessa Wendel, files FTCA claims for injuries to her brothers, Landon and Patron Wendel and her sister, Tamarae Wendel (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for her personal injuries (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, as legal representative of Jaunessa Wendel, files FTCA claims for the deaths of her mother, Jaydean Wendel, and her father, Mark Wendel (wrongful death) (3/22/94).

147. Kurt Wendel

- a. Kurt Wendel files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his brother, Mark Wendel (bystander and intentional infliction of emotional distress).
- b. Kurt Wendel files an FTCA claim for the death of his brother, Mark Wendel (bystander and intentional infliction of emotional distress) (4/18/94).

148. Landon Wendel

- a. James Cooney, as next friend of Landon Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One

Defendants for the deaths of his mother, Jaydean Wendel, and his father, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress), and for his personal injuries.

- b. James Cooney, as next friend of Landon Wendel, files FTCA claims for injuries to his brother, Patron Wendel, and his sisters, Tamarae and Jaunessa Wendel (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for his personal injuries (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, as legal representative of Landon Wendel, files FTCA claims for the deaths of his mother, Jaydean Wendel, and his father, Mark Wendel (wrongful death). (3/22/94)

149. Patron Wendel

- a. James Cooney, as next friend of Patron Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of his mother, Jaydean Wendel, and his father, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress), and for his personal injuries.
- b. James Cooney, as next friend of Patron Wendel, files FTCA claims for injuries to his brother, Landon Wendel, and his sisters, Tamarae and Jaunessa Wendel (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for his personal injuries (8/26/94, supplemented 2/27/95).
- c. Tracey Conwell, as legal representative of Patron Wendel, files FTCA claims for the deaths of his mother, Jaydean Wendel, and his father, Mark Wendel (wrongful death). (3/22/94)

150. Robert Wendel

- a. Robert Wendel files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the death of his son, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Robert Wendel files FTCA claims for injuries to his grandchildren, Jaunessa, Landon, Patron and Tamarae Wendel (bystander and intentional infliction of emotional distress) (2/27/95).
- c. Tracey Conwell, as legal representative of Robert Wendel, files an FTCA claim for the death of his son, Mark Wendel (wrongful death) (3/22/94).

151. Tamarae Wendel

- a. James Cooney, as next friend of Tamarae Wendel, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group One Defendants for the deaths of her mother, Jaydean Wendel, and her father, Mark Wendel (wrongful death, bystander, and intentional infliction of emotional distress), and for her personal injuries.
- b. James Cooney, as next friend of Tamarae Wendel, files FTCA claims for injuries to her brothers, Landon and Patron Wendel, and her sister, Jaunessa Wendel (bystander and intentional infliction of emotional distress) (8/26/94, supplemented 2/27/95), and for her personal injuries (8/26/94, supplemented by 2/27/95).
- c. Tracey Conwell, as legal representative of Tamarae Wendel, files FTCA claims for the deaths of her mother, Jaydean Wendel, and her father, Mark Wendel (wrongful death) (3/22/94).

152. Agatha Myrtle Williams

- a. Gladys Williams, as heir to the Estate of Agatha Myrtle Williams, files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her daughter, Yvette Williams Fagan (wrongful death, bystander, and intentional infliction of emotional distress).
- b. Gladys Williams, as heir to the Estate of Agatha Myrtle Williams, files an FTCA claim for the death of her daughter, Yvette Williams Fagan (wrongful death).

153. Gladys Williams

- a. Gladys Williams files *Bivens*, §§ 1983 and 1985(3), and RICO claims against the Group Two Defendants for the death of her sister, Yvette Williams Fagan (bystander and intentional infliction of emotional distress).
- b. Gladys Williams files an FTCA claim for the death of her sister, Yvette Williams Fagan (bystander and intentional infliction of emotional distress).

C. “GROUP ONE” *BIVENS*, §§ 1983 AND 1985(3), AND RICO DEFENDANTS

5. The “Group One” *Bivens*, §§ 1983 and 1985(3), and RICO Defendants are the following:

1. Davy Aguilera was, at all times relevant to the claims herein, a Special Agent of the Bureau of Alcohol, Tobacco & Firearms (“ATF”), assigned to the Austin, Texas Resident Office. He has been served with process or waived process.

2. William Buford was, at all times relevant to the claims herein, the ATF Resident Agent in Charge of the Little Rock, Arkansas Field Office and Co-Team Leader of the New Orleans, Louisiana Special Response Team. He has been served with process or waived process.

3. James Cavanaugh was, at all times relevant to the claims herein, the ATF Assistant Special Agent in Charge of the Dallas, Texas Law Enforcement Field Office and a Special Agent of the ATF. He has been served with process or waived process.

4. Phillip J. Chojnacki was, at all times relevant to the claims herein, the ATF Special Agent in Charge of the ATF Houston, Texas Law Enforcement Field Office and a Special Agent of the ATF. He has been served with process or waived process.

5. Daniel Edward Conroy was, at all times relevant to the claims herein, the ATF Deputy Associate Director for Law Enforcement and a Special Agent of the ATF. He has been served with process or waived process.

6. Edward S. G. Dennis, Jr. was, at all times relevant to the claims herein, a private individual on contract to the United States Department of Justice. He has been served with process and has waived service of process or waived process.

7. Earl Dunagan was, at all times relevant to the claims herein, the ATF Acting Resident Agent in Charge of the Austin, Texas Resident Office and a Special Agent of the ATF. He has been served with process or waived process.

8. Darrell Dyer was, at all times relevant to the claims herein, the ATF Assistant Special Agent in Charge of the Kansas City, Missouri Law Enforcement Field Office and a Special Agent of the ATF. He has been served with process or waived process.

9. Daniel M. Hartnett was, at all times relevant to the claims herein, the ATF Associate Director of Law Enforcement and a Special Agent of the ATF. He has been served with process or waived process.

10. Stephen E. Higgins was, at all times relevant to the claims herein, the Director of the ATF. He has been served with process or waived process.

11. Lon T. Horiuchi was, at all times relevant to the claims herein, employed by the Federal Bureau of Investigation ("FBI") as an Assistant Special Agent in Charge. He has been served with process or waived process.

12. Webster L. Hubbell was, at all times relevant to the claims herein, an Associate United States Attorney General. He has waived service of process.

13. Jeffrey J. Jamar was, at all times relevant to the claims herein, the FBI Special Agent in Charge of the San Antonio, Texas Field Office and a Special Agent of the FBI. He has been served with process or waived process.

14. William Johnston was, at all times relevant to the claims herein, the Assistant United States Attorney for the Western District of Texas. He has been served with process or waived process.

15. Peter B. Mastin was, at all times relevant to the claims herein, the ATF Special Agent in Charge of the New Orleans, Louisiana Law Enforcement Field Office and a Special Agent of the ATF. He has been served with process or waived process.

16. Lawrence A. Potts was, at all times relevant to the claims herein, the Assistant Director of the Criminal Investigative Division of the FBI. He has been served with process or waived process.

17. Janet Reno was, at all times relevant to the claims herein, the Attorney General of the United States. She has been served with process or waived process.

18. Oliver B. Revell was, at all times relevant to the claims herein, the FBI Special Agent in Charge of the Dallas, Texas Field Office and a FBI Special Agent. He has waived service of process.

19. Robert A. Ricks was, at all times relevant to the claims herein, the FBI Special Agent in Charge of the Oklahoma City, Oklahoma Field Office and a Special Agent of the FBI. He has been served with process or waived process.

20. Richard Rogers was, at all times relevant to the claims herein, the Commander of the FBI's Hostage Rescue Team and an Assistant FBI Special Agent in Charge. He has been served with process or waived process.

21. Ted Royster was, at all times relevant to the claims herein, the ATF Special Agent in Charge of the Dallas, Texas Law Enforcement Field Office and an ATF Special Agent. He has been served with process or waived process.

22. Byron Sage was, at all times relevant to the claims herein, the FBI Assistant Special Agent in Charge of the Austin, Texas Field Office and a FBI Special Agent. He has been served with process or waived process.

23. Charles Sarabyn was, at all times relevant to the claims herein, the ATF Assistant Special Agent in Charge of the Houston, Texas Law Enforcement Field Office and an ATF Special Agent. He has been served with process or waived process.

24. William S. Sessions was, at all times relevant to the claims herein, the Director of the FBI. He has been served with process or waived process.

25. David C. Troy was, at all times relevant to the claims herein, the ATF Chief of Intelligence, and an ATF Special Agent. He has been served with process or waived process.

6. These Defendants are sued only in their individual capacities.

7. The United States Government will be given notice of these claims by serving a copy of this Third Consolidated Complaint on R. Joseph Sher, Senior Trial Counsel, Torts Branch, Civil Division, Department of Justice, P.O. Box 7146, Benjamin Franklin Station, Washington, D.C. 20044.

D. "GROUP TWO" *BIVENS*, §§ 1983 AND 1985(3), AND RICO DEFENDANTS

8. The "Group Two" *Bivens*, §§ 1983 and 1985(3), and RICO Defendants are the following:

1. Defendant Janet Reno is the Attorney General of the United States and is sued as an individual and has been served with process or waived process.

2. Defendant Webster L. Hubbell was, at all times pursuant hereto, an Associate United States Attorney General and is sued as an individual and has been served with process or waived process.

3. Defendant William S. Sessions was, at all times pursuant hereto, the Director of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

4. Defendant Lawrence A. Potts was, at all times pursuant hereto, the Assistant Director, Criminal Investigative Division of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

5. Defendant Stephen E. Higgins was, at all times pursuant hereto, the Director of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

6. Defendant Daniel M. Hartnett is or was, at all time pursuant hereto, the Associated Director of Law Enforcement and a Special Agent of Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

7. Defendant Edward Daniel Conroy is or was, at all times pursuant hereto, the Deputy Associate Director for Law Enforcement and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

8. Defendant David C. Troy is or was, at all times pursuant hereto, the Chief of Intelligence and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

9. Defendant Phillip J. Chojnacki was, at all times pursuant hereto, the Special Agent in Charge of the Houston, Texas Law Enforcement Field Office and a Special Agent

of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

10. Defendant Charles (Chuck) Sarabyn was, at all times pursuant hereto, the Assistant Special Agent in Charge of the Houston, Texas Law Enforcement Field Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

11. Defendant Peter B. Mastin was, at all times pursuant hereto, the Special Agent in Charge of the New Orleans, Louisiana Law Enforcement Field Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

12. Defendant Ted Royster was, at all times pursuant hereto, the Special Agent in Charge of the Dallas, Texas Law Enforcement Field Office and a Special Agent of the ATF and has been served with process or waived process.

13. Defendant James Cavanaugh was, at all times pursuant hereto, the Assistant Special Agent in Charge of the Dallas, Texas Law Enforcement Filed Office and a Special Agent of of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

14. Defendant Earl K. Dunagan was, at all times pursuant hereto, the Acting Resident Agent in Charge of the Austin Resident Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

15. Defendant Darrell Dyer was, at all times pursuant hereto, the Assistant Special Agent in Charge of the Kansas City, Missouri Law Enforcement Field Office and a

Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

16. Defendant William Buford was, at all times pursuant hereto, the Resident Agent in Charge of the Little Rock, Arkansas Field Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

17. Defendant Davy Aguilera was, at all times pursuant hereto, a Special Agent assigned to the Austin, Texas Resident Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

18. Defendant Robert Rodriguez was, at all times pursuant hereto, a Special Agent assigned to the Austin, Texas Resident Office and a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and is sued as an individual and has been served with process or waived process.

19. Defendant Jeffrey J. Jamar was, at all times pursuant hereto, the Special Agent in Charge of the San Antonio, Texas Field Office and a Special Agent of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

20. Defendant Robert A. (Bob) Ricks was, at all times pursuant hereto, the Special Agent in Charge of the Oklahoma City, OK Field Office and a Special Agent of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

21. Defendant Oliver B. Revell was, at all times pursuant hereto, the Special Agent in Charge of the Dallas, Texas Field Office and a Special Agent of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

22. Defendant Richard (Dick) Rogers was, at all times pursuant hereto, the Commander of the Hostage Rescue Team and an Assistant Special Agent in Charge of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

23. Defendant Lon T. Horiuchi was, at all times pursuant hereto, a Special Agent of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

24. Defendant Byron Sage was, at all times pursuant hereto, the Assistant Special Agent in Charge of the Austin, Texas, Field Office and a Special Agent of the Federal Bureau of Investigation and is sued as an individual and has been served with process or waived process.

E. FTCA DEFENDANT

1. The FTCA Defendant, the United States of America, has been served with process for the original FTCA complaints, consolidated herein, by serving James H. De Atley, U.S. Attorney for the Western District of Texas, at 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216, and by sending a copy of the summons and complaints by certified mail, return receipt requested to Janet Reno, Attorney General, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Room B-324, Washington, D.C. 20530.

III. CONDITIONS PRECEDENT FOR CLAIMS

1. Plaintiffs have satisfied all conditions precedent for bringing the *Bivens*, §§ 1983 and 1985(3), and FTCA claims stated herein.

2. Before Plaintiffs filed their FTCA lawsuits in these cases, more than six months had elapsed since they filed their administrative claims with the United States government. Administrative claims were filed pursuant to 29 U.S.C. § 2675 for these claimants with the appropriate federal agency of the United States government. Accordingly, the Plaintiffs deemed these administrative claims denied by the United States as of the date Plaintiffs filed their FTCA lawsuits in these cases. Further, the U.S. denied all administrative claims on March 21, 1996.

IV. JURISDICTION

A. SUBJECT MATTER

1. This Court has jurisdiction over this *Bivens* action pursuant to 28 U.S.C. § 1331.

2. This Court has jurisdiction over these Sections 1983 and 1985(3) actions pursuant to 28 U.S.C. § 1331.

3. This Court has jurisdiction over this FTCA action pursuant to 28 U.S.C. § 1346(b).

B. PERSONAL

4. Personal jurisdiction exists over the individual Defendants because, as the facts alleged herein establish, these Defendants had minimum contact with the State of

Texas and it was foreseeable that they would be sued in Texas, satisfying both the Texas Long Arm Statute and the U.S. Constitution's Fifth Amendment due process requirements.

5. Additionally, these Defendants probably traveled repeatedly to Texas on personal matters such that they have sufficient general contacts to subject them to satisfying the Texas Long Arm Statute and the U.S. Constitution's Fifth Amendment due process requirements.

V. BACKGROUND

1. Plaintiffs were members of the religious group, the Branch Davidians of the Seventh Day Adventist Association (the "Davidians"). Many Davidians worked in Waco, Texas and all peacefully resided and worshiped at their nearby home and church, the Mt. Carmel Church (the "Church"). The Mt. Carmel Church was to the Davidians what a church is to Protestants, a synagogue to Jews, a cathedral to Catholics and a mosque to Muslims.

2. The Davidians had come to Mt. Carmel to study and live their lives in accordance with their interpretation of the Bible. They would spend long hours every day studying the Bible and sometimes stay up all night at a Bible study.

3. To earn money, some Davidians repaired and remodeled automobiles and others sold guns and ammunition at legal gun exhibitions. Some just studied the Bible or music.

4. The Davidians freely left and returned to Mt. Carmel, went into the local town, and visited family members who did not live at Mt. Carmel.

5. The Davidians had good and peaceful relations with local law enforcement. Indeed, Koresh and his followers had peacefully submitted to an arrest and surrender of

their weapons when they were investigated by the local sheriff's department in 1987. They were also investigated by the State of Texas for alleged child abuse and by the local sheriff's department for alleged illegal weapons. On all occasions, the Davidians cooperated, no officer or official was injured and there was no confrontation of any type.

6. Despite the Davidians' history of peaceful cooperation with law enforcement and the presence of dozens of children, on February 28, 1993, over 100 agents from the ATF, with flak jackets, semi-automatic weapons, concussion grenades and supporting army helicopters, stormed the Church, attempting to serve an arrest warrant for David Koresh and a search warrant for the Church (the "Warrants").

7. ATF Officials,⁸ U.S. Treasury Officials⁹ and William Johnston, Assistant U.S. Attorney for the Western District of Texas:

- (a) planned, organized and/or led this February 28th assault;
- (b) knew that the Warrants were obtained without probable cause and with defects that rendered them illegal;
- (c) went forward with this assault even though they knew that the Davidians were expecting an assault by law enforcement and, thus, were in a state of mortal terror; and

⁸ The "ATF Officials" include: Davy Aguilera, William Buford, James Cavanaugh, Phillip J. Chojnacki, Daniel Edward Conroy, Earl Dunagan, Darrell Dyer, Daniel M. Hartnett, Stephen E. Higgins, Peter B. Mastin, Ted Royster, Charles Sarabyn, David C. Troy and other U.S. employees, agents and principals.

⁹ The "U.S. Treasury Officials" include: Ronald Noble, Michael D. Langan, John P. Simpson, Stanley Morris, and other U.S. employees, agents and principals.

(d) were so reckless in their preparation for and planning of this assault, that they did not even have a written plan in place prior to conducting the attack.

8. The February 28th assault was scheduled shortly before Congress would decide the ATF's budget for the next fiscal year and, thus, the timing of the assault was deliberate. ATF agents videotaped the assault, alerted local news organizations to it and the ATF's go-signal was "Showtime." Clearly, the ATF Officials launched this assault merely to make a positive media splash, improve or salvage the ATF's budget and divert attention from recent revelations of sexual harassment and racial prejudice at the ATF.

9. Some of the Davidians reasonably defended their home and sacred ground against this reckless, military-style assault.

10. During this assault, several members of the Davidian Church and several ATF agents were killed or wounded.

11. During the February 28th assault, some ATF Officials planned, supervised and/or participated in killing Davidians Perry Jones, Peter Bruce Gent, Peter Hipsman Jaydean Wendel, and Winston Blake.

12. During the February 28th assault, some ATF Officials planned, supervised and/or participated in killing Davidian Michael Schroeder as he was trying to return to the Church to rejoin his wife and child who were trapped inside.¹⁰ ATF Officials and FBI Officials¹¹ left his body in the woods for four days and did not notify his mother or father of his death for nine days.

¹⁰ All references to "Decedents," when describing the post-February 28, 1993 siege of, and attack against, the Davidians, do not include Peter Bruce Gent, Peter Hipsman, Perry Jones, Michael Schroeder Jaydean Wendel, and Winston Blake.

¹¹ The "FBI Officials" include: Lon T. Horiuchi, Jeffrey J. Jamar, Lawrence A. Potts, Oliver B. Revell, Robert A. Ricks, Richard Rogers, Byron Sage, William Sessions and other U.S. employees, agents and principals.

13. During the February 28th assault, some ATF Officials planned, supervised and/or participated in an illegal assault on and illegal arrest of Norman Washington Allison as he was trying to return to the Church to rejoin his friends who were trapped inside.

14. After the ATF agents' February 28th assault on the Davidians, FBI Officials and U.S. Justice Officials,¹² joined the ATF Officials in surrounding and laying siege to the Church for 51 days, from February 28 through April 19, 1993 (the "Siege").

15. After the February 28th assault, and early in the Siege, U.S. Officials¹³ used conciliatory tactics and, consequently, made considerable progress in peacefully resolving the situation, with dozens of adults and children leaving the Church.

16. Then, the strategy of U.S. Officials changed as they began tactical pressures and other intimidation tactics against the Davidians, including the Decedents and Survivors. This included turning off the electricity, when temperatures at night fell to 20° F; shining searchlights all night; blaring loud noise, including the screams of rabbits being slaughtered; and tightening the perimeter.

17. On or about April 14, 1993, Davidian David Koresh promised U.S. Officials that everyone in the Church would peacefully surrender after he interpreted the Seven Seals from the Christian Bible's Book of Revelation.

¹² The "U.S. Justice Officials" include: Stuart Gerson; Webster Hubbell; after March 12, 1993, Janet Reno; and other U.S. employees, agents and principals.

¹³ The "U.S. Officials" include: "ATF Officials," "U.S. Treasury Officials," "FBI Officials," and "U.S. Justice Officials."

18. David Koresh's lawyer told U.S. Officials that this interpretation would take only two to three weeks.

19. FBI Special Agent-in-Charge Jeffrey Jamar told Koresh's lawyer the U.S. government could wait as long as needed to end the Siege peacefully.

20. David Koresh did begin interpreting the Seals and, on April 18, 1993, Koresh requested, and U.S. Officials gave him, typewriter paper and computer batteries to complete his interpretation.

21. Nonetheless, on April 19, 1993, in a long-planned operation, U.S. Officials used tanks to crush the Church's buildings where the Davidians, including the Decedents and Survivors, were located. They also inserted CS gas into the Church and shot at the Davidians.

22. These April 19th acts and omissions by U.S. Officials caused (1) various building structure failures which injured or killed the Plaintiff Decedents; (2) a fire which killed Decedents; (3) suffocation of Decedents; (4) other Davidians to mortally assault Decedents; and/or (5) Decedents' suicide or death by mercy killing.

23. Before using the CS gas in their April 19th final assault, U.S. Officials ignored:

(a that the gas produces the following severe physical disabilities even in healthy adult males: (1) inflammation of the eyes, nose and throat; (2) choking; (3) chest pains; (4) gagging; (5) nausea; (6) vomiting; (7) skin burns; (8) blistering rashes; (9) first degree burns; (10) severe respiratory distress; (11) cyanosis; (12) liver disease; (13) eye injuries; and (14) exacerbation of underlying heart and lung diseases;

(b) that the gas immobilizes children and adults, particularly those adults attempting to protect and escape with their children;

(c) that the gas could be lethal in the concentrated amounts which would exist inside the Church; and

(d) that, concentrated inside the Church, the gas could cause a fire.

24. On April 19, U.S. Officials also used and/or ordered and supervised the use of explosive and/or incendiary devices against the Branch Davidians which caused a fire, destruction of the Mt. Carmel building and injury and death to the Plaintiff Decedents who were at Mt. Carmel on April 19, 1993.

25. On April 19, U.S. Officials directed gunfire at the Plaintiffs who were present at Mt. Carmel on April 19, 1993, killing some Plaintiff Decedents.

26. Given that U.S. Officials crushed the Church on top of the Davidians; caused or contributed to the April 19th fire; and used CS gas on the Davidians, these U.S. Officials lied when they said that they launched the April 19th final assault to protect the children inside the Church.

27. U.S. Officials committed these acts and omissions in the course and scope of their employment with the United States.

28. At least 80 Davidian adults and children, including the Decedents, died during the April 19th final assault as a result of these acts and omissions.

VI. VENUE

1. Plaintiffs incorporate paragraphs 1.1 through 5.28
2. Venue for the FTCA claims was proper in the Southern District of Texas pursuant to 28 U.S.C. § 1402(b) because FTCA Plaintiff, Tracey Conwell resides in Houston, Texas and because a substantial part of the act[s] or omission[s] complained of occurred in Houston, Texas.
3. Venue for the *Bivens*, Section 1983 and Section 1985(3) claims was proper in the Southern District of Texas, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in Houston, Texas.
4. Venue for Plaintiffs' RICO claims are proper in the Southern District under 18 U.S.C. § 1965.
5. Pendent venue was proper in the Southern District for any claims not covered by the statute.
6. The following acts, omissions and events occurred in Houston, Texas:
 - (a) The federal government's planning and supervision of its investigation of the Davidians and the government's planning of the February 28, 1993 raid on the Mt. Carmel Church occurred in Houston. This planning, supervision, investigation and February 28th assault were the intentional initiation of the entire affair giving rise to Plaintiffs' claims.
 - (b) Decisions were made in Houston to, among other things, (1) target the Davidians, including the Decedents and Survivors, for an investigation and armed assault; (2) seize the Davidians, including the Decedents and

Survivors, in a February 28th raid; (3) seize the Davidians, including the Decedents and Survivors, without a warrant or probable cause; (4) arrest David Koresh using an armed assault on the Church rather than during one of his trips to Waco or Dallas, Texas; (5) arrest David Koresh on a day when the federal government knew that over 75 innocents, including the Decedents and Survivors, would be in the Church; and (6) execute the Warrants by a frontal assault rather than a siege.

(c But for the decisions in Houston to investigate and assault the Davidians and the decisions in Houston to attack the Davidians with a frontal assault, the 51-day siege and the April 19th final assault, bombardment, and fire would not have occurred.

7. Plaintiffs object to their claims being transferred to the Waco Division of the Western District for the reasons set out in Plaintiffs' Motion to Transfer to San Antonio Division or, Alternatively, to Recuse Judge Walter S. Smith, Jr.

8. Because Judge Nancy Atlas transferred Plaintiffs' claims from the Southern District to the Western District, Waco Division, Plaintiffs are filing this lawsuit subject to the aforementioned objections.

VII. CAUSES OF ACTION

A. FACTUAL ALLEGATIONS

1. Summary

1. The Plaintiffs incorporate paragraphs 1.1 through 6.8
2. On February 28, 1993, the ATF Officials and U.S. Treasury Officials supervised, ordered, and/or participated in:

- (a) assaulting the Decedents and Survivors using, among other things, semi-automatic weapons, concussion grenades and armed helicopters;
- (b) shooting at the Decedents and Survivors;
- (c) mortally wounding and killing Peter Gent;
- (d) mortally wounding and killing Peter Hipsman;
- (e) mortally wounding and killing Perry Jones;
- (f) mortally wounding and killing Jaydean Wendel;
- (g) mortally wounding and killing Winston Blake;
- (h) preventing Michael Schroeder from returning to the Church to join his wife and child and, in violation of the established cease-fire, shooting and killing Michael Schroeder; and
- (i) illegally assaulting, arresting and imprisoning Norman Washington Allison.

3. From February 28 through April 19, 1993, the U.S. Officials supervised, ordered, and/or participated in:

- (a) establishing and maintaining an armed perimeter around the Decedents and Survivors;
- (b) throwing and shooting “flashbangs” at any Decedents who attempted to leave the Church;
- (c) not allowing the Decedents and Survivors to leave the Church unless they first got permission from David Koresh and U.S. Officials;
- (d) terrorizing the Decedents and Survivors by, among other things (1) patrolling the area around the Church in armored personnel carriers (BIFV & MI Abrams

MBT's); (2) displaying weapons; (3) using abusive and threatening language and voice tone; (4) shining bright lights; (5) playing loud music; (6) broadcasting the sound of animals being slaughtered; and (7) crushing the Davidians' cars and the children's bicycles with armored personnel carriers; and

(e) using armored personnel carriers to crash into the Decedents' and Survivors' dwelling.

4. On April 19, 1993, the U.S. Officials supervised, ordered, and/or participated in:

(a) launching the final assault against the Decedents and Survivors with tanks and armored personnel carriers;

(b) spraying CS gas at the Decedents and Survivors;

(c) shooting gas canisters at the Decedents and Survivors at a velocity which could kill any person hit by the canister;

(d) using tanks and armored personnel carriers to crash into the Decedents' and Survivors' dwelling, causing their deaths when (1) the structure collapsed on them or (2) the Decedents and Survivors were prevented from escaping the ensuing fire, the CS gas or other Davidians who might injure them;

(e) causing a fire in the Church which trapped and killed the Decedents;

(f) shooting at the Decedents and Survivors; and

(g) launching an assault which caused Decedents' injuries and deaths from suicide or at the hands of other Davidians.

5. The U.S. Officials' February 28th assault, Siege and April 19th final assault were excessive force because:

(a) less forceful means to execute the Warrants and achieve the Davidians' surrender were available but ignored;

(b) the alleged firearm law violations underlying the Warrants did not justify the February 28th violent assault;

(c) the Decedents and Survivors were not even charged with a crime at the time of the February 28th assault;

(d) the risk of death or serious bodily harm to innocent persons, including the Decedents and Survivors, was significantly increased by the February 28th and April 19th assaults;

(e) these assaults were not done to prevent immediate death or serious bodily harm or to prevent an imminent crime which involved a substantial risk of death or serious bodily harm;

(f) David Koresh, the Decedents and Survivors, and the other Davidians were not fleeing from law enforcement;

(g) there was no warning given to the Decedents and Survivors that deadly force was about to be used against them on February 28th or April 19th;

(h) the deadly force in the assaults was not used with selectivity and precision against a specific threat justifying its use;

(i) the Davidians fired only in self-defense at ATF agents on February 28th and, thus, the U.S. Officials' subsequent use of deadly force during the Siege and on April 19th to arrest them was not justified;

(j) U.S. Officials unnecessarily escalated the situation into a more confrontational and violent conflict; and

(k) U.S. Officials refused to expend the financial resources, endure the public and media criticism, control their “gut instinct” for action, and properly rotate personnel to avoid fatigue and impatience so that the conflict could be resolved peacefully.

6. These acts and omissions committed by the U.S. Officials between February 28 and April 19, 1993, so frightened the Decedents and Survivors that they reasonably were afraid to leave the Church and surrender to law enforcement.

7. Reasonable persons in the Decedents' and Survivors' position would have believed that they were not free to leave the Church, the surrounding grounds or the perimeter established by U.S. Officials. The Decedents and Survivors had this belief because of these officials' violent, coercive and intimidating behavior.

8. The United States, as a matter of policy and practice, intentionally or recklessly failed to adequately discipline, train or otherwise direct their agents regarding citizens' rights under the U.S. Constitution, federal and state statutes and common law. This proximately caused the U.S. Officials to engage in the unlawful conduct described herein against the Decedents, the Survivors and the Relatives.

2. The February 28, 1993 Assault

9. The February 28, 1993, assault constituted excessive force. The ATF Officials, U.S. Treasury Officials and Johnston, intentionally or recklessly ignored peaceful alternatives which would have reduced the force needed to execute the Warrants; refused to seriously consider the danger to the Decedents and Survivors from a frontal assault; chose methods which increased the force used beyond that needed to execute the Warrants; and chose, ordered and led one of the most recklessly violent means possible to execute the Warrants.

(a) They ignored that they could arrest Koresh on one of his many trips to the surrounding community or to outside cities such as Dallas, including a trip outside the Church grounds shortly before the February 28th assault.

(b) They ignored warnings from Joyce Sparks, a social worker for the State of Texas, who had repeatedly visited Mt. Carmel and knew David Koresh well, that, if the ATF arrested Koresh outside of Mt. Carmel, the Davidians would not attack the ATF when it attempted to serve the search warrants because the Davidians' religious beliefs were that they could not go to heaven unless they died with Koresh and they were destined to die together in Jerusalem, Israel. These officials also failed to consult religious experts who could have explained this to them.

(c) They ignored that Koresh told ATF Agent Robert Rodriguez that he went to town, establishing that Koresh did sometimes leave the Church.

(d) They ignored that ATF agents at the undercover house observed Koresh leaving and returning to the Church, including shortly before the February 28th assault.

(e) They ignored using local law enforcement, with which Koresh had good and peaceful relations, to assist in this execution. Among other things, local law enforcement could have acted as a mediator in serving the Warrants or could have drawn Koresh out of the Church (e.g., by telling him that he had been subpoenaed and needed to appear at the local courthouse).

(f) They ignored the Davidians' history of peaceful and good relations with local law enforcement, including, in 1987, when Koresh and some of the Davidians peacefully surrendered to the McLennan County Sheriff's Department and gave up their

weapons. The sheriff's department was investigating a shooting but none of those arrested were ever convicted.

(g) They ignored setting up an interview with Koresh by the local newspaper outside the Church. Koresh had contacted the *Waco Tribune-Herald* approximately three days prior to the February 28th assault stating that he wanted to give an interview.

(h) They ignored Koresh's invitation to the ATF to examine the Davidians' weapons. Prior to the ATF's attempt to serve the Warrants, Koresh invited the ATF to the Church to peacefully examine any weapons he and the Davidians had. These officials ignored this invitation merely because it did not fit their plans for an assault.

10. The ATF Officials also:

(a) failed to fully inform their superiors in the ATF and the U.S. Treasury Department, including Secretary of Treasury Lloyd Bentson, about their plans for the February 28th assault and about the unnecessary deadly dangers to ATF agents and Davidians associated with this assault.

(b) acknowledged that the "element of surprise" was essential to an assault which minimized injury and loss of life. However, before they began the assault, they knew that the Davidians had learned of the impending raid. The ATF's undercover agent, Robert Rodriguez, who had been sent into the Church on the morning of the February 28th assault to determine if David Koresh was expecting the assault, told his superiors that Koresh returned from a phone call, peered out a window and nervously stated that the ATF and the National Guard were coming and that the time had come. Rodriguez was convinced that Koresh knew about the impending assault and he clearly

communicated this to his superiors. Indeed, one ATF Official in charge of the assault, Charles Sarabyn, told ATF agents at the staging area, "hurry up, they know we are coming." These officials knew that, having lost the "element of surprise," their assault would unnecessarily kill and injure many Davidians and so terrify the remaining ones that they would fear surrendering to law enforcement. Regardless, they still proceeded with the February 28th assault.

(c) violated the orders of their superiors by going forward with the February 28th assault even after they learned that the "element of surprise" had been lost and that the danger to ATF agents and the Davidians had increased.

(d) lied to their superiors when they promised that the February 28th assault would not go forward if the "element of surprise" was lost or there was any indication that the danger to ATF agents or the Branch Davidians had increased.

(e) failed to follow orders in retreating if they were fired upon by the Branch Davidians. This failure caused ATF officials to continue with their disastrous and violent assault even after it became obvious the assault would fail and would cause a major loss of life.

(f) supervised, ordered, and/or participated in shooting at the Davidians, including at the Decedents and Survivors. They did this without provocation and before any Davidian shot at law enforcement. That the Davidians did not shoot first is established by, among other things, the bullet spray patterns; the ATF's plan to shoot the Davidians' dogs before the main assault began; the fact that the Davidians did not shoot at the ATF agents when they were most vulnerable during their approach in cattle trailers; the fact that photographs show ATF agents positioning themselves for the assault in vulnerable

positions in front of the Church but no Davidian was at the top story windows preparing to fire and no Davidian was firing on the ATF; and the 911 tape of Davidian Wayne Martin's call, during the assault, to the McLennan County Sheriff's Department, pleading that whoever was attacking them stop the assault.

(g) shot unarmed Davidians who were posing no threat to the ATF or anyone else.

(h) supervised, ordered, and/or participated in shooting at the Davidians from helicopters. This is a particularly deadly force because it allows for rapid and widespread gunfire at the Davidians. Further, these shootings occurred from the helicopters without acquiring proper targets. Indeed, the shooters could not acquire targets from the helicopters because the Davidians were inside and the helicopters would not have been able to see them. Consequently, any shooting from the helicopters is an unreasonable use of deadly force. The helicopters were being flown by uniform members of the Texas National Guard, whose participation in the ATF's assault was approved by the Governor of Texas and the Adjutant General of the Texas National Guard. These members of the National Guard were federalized and thus constituted state actors acting under the color of state law. Alternatively to Plaintiffs' allegations that the Texas National Guard were not federalized and acting under the color of state law, Plaintiffs allege that they were federalized and operated as members of the United States military actively participating in a civil law enforcement assault.

(i) supervised, ordered and/or participated in shooting the Davidians' dogs in preparation for the main assault on the Davidians inside the Church. These shots were the first fired and foreseeably misled other ATF agents or Davidians to believe that a

gun battle had broken out and caused them to begin firing. Thus, the shooting of the dogs foreseeably caused the deaths and woundings of ATF agents and Davidians, including Peter Bruce Gent, Peter Hipsman, Perry Jones, Jaydean Wendel, and Winston Blake, and, later, Michael Schroeder.

(j) supervised, ordered and/or participated in shooting at the Davidians without properly acquiring specific targets. Thus, they were shooting randomly into the building, even at Davidians who were not shooting at the ATF agents and, thus, were no threat to those agents.

(k) supervised, ordered, and/or participated in the intentional or reckless killing of Michael Schroeder without provocation. At the time they killed Michael Schroeder, he was not (1) placing or about to place anyone in danger of death or significant bodily harm; (2) he had not committed any crime and certainly had not committed a crime involving death or serious bodily harm; (3) he was not charged with any crime; and (4) he was not fleeing arrest.

11. The ATF Officials, U.S. Treasury Officials, and Johnston:

(a) ignored that, because of their unnecessarily aggressive assault, the Davidians' anxiety would be high and that an armed assault to execute the Warrants would cause an unnecessarily violent confrontation, lead to the loss of, and injury to, innocent life, and become an intractable siege where the Davidians would be too afraid of law enforcement to leave the Church.

(b) ignored the warnings of Joyce Sparks, a social worker with the State of Texas who had repeatedly visited Mt. Carmel, that a frontal armed assault against the

Davidians would cause an unnecessary violent confrontation and lead to the loss of, and injury to, innocent lives.

(c) failed to take adequate steps to prevent the media and public from learning about the planned February 28th assault. At least one newspaper journalist, who had learned about the impending assault because of the ATF Official's acts and omissions, alerted the Davidians. This alert increased the Davidians' anxiety and fear of any stranger approaching the Church.

(d) ignored that Koresh had told ATF agent Robert Rodriguez that he had observed Rodriguez near the ATF undercover house practicing with his weapon. This made clear to the ATF Officials that Koresh and other Davidians were observing both the undercover house and the approaches to the Church, that they suspected Rodriguez was a law officer, and that they were in mortal fear of an assault.

(e) chose to execute the Warrants violently by a frontal assault rather than peacefully by surrounding the Church and negotiating with the Davidians. They made this choice even though they knew that the federal government had recently and successfully executed search and arrest warrants against another separatist group, charged with arms violations, by peaceful means, including negotiations.

(f) failed to have a contingency "siege plan" if ATF agents learned that they had lost the element of surprise. This failure caused the ATF Officials to continue with their disastrous and violent assault even when it became obvious that the assault would fail and would cause a major loss of life.

(g) ignored that many Davidians worked in the Waco community and that, on a Sunday, the day of the assault, virtually all of the Davidians, including the Decedents

and Survivors, inevitably would be together. Thus, executing the Warrants on a weekday would have been much less likely to result in the loss of, or injury to, life than executing them on a Sunday.

(h) ignored that their strategy of an armed assault to execute the Warrants unnecessarily placed innocents, including the Decedents and Survivors, in the line of the ATF's fire.

12. Assistant U.S. Attorney William Johnston improperly pressured ATF Officials to abandon their initial plan for a siege, rather than a frontal assault, by threatening that he would not support the search warrants unless a frontal assault was used.

13. U.S. Officials also did the following:

(a) failed to inform Peter Hipsman's family of his death until after the April 19th fire, almost two months later;

(b) failed to promptly inform the family, and recover the body, of Peter Bruce Gent; and

(c) failed to recover Michael Schroeder's body and failed to inform his family of his death for several days after he was killed, even though there was no risk to law enforcement in recovering the body.

14. ATF Officials intentionally or recklessly used deadly force longer than was necessary during the February 28th assault.

(a) They failed to establish communications with local law officers prior to the February 28th assault. Because the Davidians had a history of peacefully cooperating with local law enforcement, such communications would have more quickly facilitated an end to the assault. The Davidians did call the local police during the assault but, because

these officials had not previously established a communication link, a cease-fire was delayed. However, ATF Officials had ensured that the ATF press agency had fax machines and telephones to contact the press and publicize their assault.

(b) During the February 28th assault, they ignored the Davidians' pleas for a cease-fire relayed through the McLennan County Sheriff's Department to the ATF.

(c) They failed to get the Church's telephone number so that on February 28th they could contact the Church to arrange a cease-fire, minimize the loss of life and avoid any further violence.

15. ATF Officials and U.S. Treasury Officials ignored evidence from the ATF's agents, who were observing the Church prior to the February 28th assault, that made clear that the Davidians' anxieties and fears were high and that an armed assault to execute the Warrants would cause an unnecessarily violent confrontation, lead to the loss of, and injury to, innocent life, and become an intractable siege during which the Davidians would be too afraid of law enforcement to leave the Church.

(a) They ignored evidence that the Davidians regularly watched the approach of people to the Church.

(b) They failed to properly inform the ATF undercover agents, who were observing the Church prior to the February 28th assault, that, for the assault not to cause a major loss of life, the male members of the Davidian Church must be away from the main buildings. The undercover agents had previously reported that virtually all the male members began work each day at approximately 10:00 a.m. in a construction pit far from the main buildings. These officials relied on this faulty information in developing their assault plan. However, they failed to convey to the undercover agents the significance of

the pit work. Consequently, the agents' observation of this work became increasingly vague and sporadic until surveillance officially ended on February 17, 1993. In fact, the pit work had stopped before the February 28th assault.

(c) They did not give the ATF agents, who were observing the Church prior to the February 28th assault, a clear list of the information that the ATF tactical planners needed to determine the most peaceful manner to effectively execute the Warrants.

(d) They instructed the ATF agents who were observing the Mt. Carmel Church that they could terminate their twenty-four hour surveillance of the Church several days before the February 28th assault.

(e) They chose not to develop hundreds of photographs of the Church, the Davidians and their activities taken by the ATF agents who were observing the Church prior to the February 28th assault. Furthermore, they did not review most of the few photographs which were developed.

(f) They failed to review the videotapes, logs and other material prepared by the ATF agents observing the Church prior to the February 28th assault.

(g) Their surveillance of Koresh and the Davidians was intentionally or recklessly organized improperly, with no clear chain of command or direction for the surveillance.

16. ATF Officials and U.S. Treasury Officials ignored that, because of the Davidians' religious and personal beliefs, a frontal assault would cause an unnecessary violent confrontation, lead to the loss of, and injury to, innocent life and become an

intractable siege where the Davidians would be too afraid of law enforcement to leave the Church:

(a) They ignored that the Davidians would defend their sacred ground and home against the February 28th assault, wounding or killing law enforcement officials, and, thereby, make it difficult to negotiate a resolution of the subsequent siege and make a violent end to any siege more likely.

(b) They ignored the Davidians' beliefs that the Mt. Carmel Church was sacred ground and that the world would end in a final confrontation between good and evil. Thus, they ignored that the Davidians would interpret an armed assault on the Church as an assault by these evil forces and that they would defend their Church and home accordingly.

(c) They ignored that the Mt. Carmel Church was the Davidians' home; that the Davidians would view the February 28th assault as an assault on their families' safety; and that the Davidians would defend their families accordingly.

17. ATF Officials and U.S. Treasury Officials failed to seriously consider and choose means which would have decreased the force needed to execute the Warrants.

(a) ATF agent Phillip J. Chojnacki, from Houston, who was in charge of the February 28th assault, placed himself in a helicopter during the critical phases of the operation. From there, he could not effectively communicate with the commanders on the ground and, thereby, minimize violence and prevent the loss of life. The other officials intentionally or recklessly did not correct this mistake.

(b) Charles Sarabyn, from Houston, who was an ATF Senior Commander of the February 28th assault, was unable to see the Church during his trip from the staging

area to the Church. Accordingly, he could not adequately receive and process information which would have alerted him that the assault was doomed to fail, kill and injure innocents and to create an intractable siege. Sarabyn ignored this problem and the other officials intentionally or recklessly did not correct this mistake.

(c) ATF agent Sarabyn also ignored that his ground position during the February 28th raid prevented him from adequately contacting team leaders to change the assault instructions. Had he been able to communicate with team leaders, he could have de-escalated the situation and, thereby, minimized the violence, prevented the loss of life and avoided an intractable siege. The other officials intentionally or recklessly did not correct this mistake.

(d) They failed to establish a pool of behavioral science experts with which to consult during the planning stages of the February 28th assault.

(e) They failed to consult with experts, within and outside federal and state governments, who had substantial academic, law enforcement or military experience regarding with an assault on a peaceful group of family members who, because of their religious beliefs, would view the raid as a prophesied assault by the “forces of evil.”

(f) They failed to place an individual in charge of the planning and execution of the February 28th assault who had behavioral science training.

(g) They allowed the February 28th assault to be planned and executed by ATF agents with no training or experience in planning and executing an assault of this magnitude.

(h) During the planning of the February 28th assault, they failed to consult with experts about the Davidians' religious beliefs. They also failed to adequately consult

with experts about complex barricade situations where dozens of innocents are in the same building as those that law enforcement intends to arrest.

(i) The search warrant issued by the United States District Court in Waco, Texas required that the ATF Officials, or persons under their direct supervision, “knock and announce” themselves as federal agents prior to serving the Warrants. However, due to alleged “exigent circumstances” intentionally or recklessly created by these officials, they treated the Warrants as if they were “no knock” warrants. Thus, they supervised, ordered, and/or participated in an armed assault on the Davidians, including the Decedents and Survivors, without proper entry. Had they used a proper entry and peacefully announced themselves, the Warrants could have been executed without the ensuing gun battle.

(j) They did not assign any ATF agent to knock at the front door to present the Warrant and no one did this. In fact, they never even rehearsed making a peaceful entry. Their intent was to go through the front door by force regardless of the Branch Davidians' willingness to cooperate.

(k) They did not instruct any ATF agent on the roof of the Church during the assault to call out "police," "search warrant" or "lie down" or anything similar to give the Davidians an opportunity to surrender and no agent on the roof made such an announcement.

(l) Their stated policy was that, even if David Koresh had welcomed the ATF's front door team, that would not have changed their mission tactics.

(m) They deceived the United States Army and Texas state officials in order to obtain military equipment and training for their assault. They deceived the Army

and Texas officials by claiming that there was evidence of illegal drugs and illegal drug manufacturing at Mt. Carmel. They knew there was no credible evidence supporting this claim. The 1993 Treasury report on the ATF's assault concluded that there was no credible evidence of drug manufacturing or use at Mt. Carmel. Autopsy toxicology reports revealed that no Branch Davidian had traces of illegal drugs in their bloodstreams. ATF Officials failed to get expert opinion from the U.S. Drug Enforcement Administration or any other agency on whether the evidence the ATF had collected indicated drug manufacturing at Mt. Carmel. The undercover ATF agent who was sent into Mt. Carmel on several occasions found no evidence of drugs. As a consequence of this deceit, the ATF received military training by the U.S. Army at Ft. Hood, Texas and helicopters from the Texas National Guard.

(n) ATF agents failed to announce who they were and what their purposes were in a manner so that all occupants of the church could hear them by failing to use portable megaphones or battery-operated microphones.

18. The search warrant for the Decedents' and Survivors' home, which the ATF Officials and U.S. Treasury Officials tried to execute on February 28, 1993, was secured by false statements knowingly made to the local Magistrate by ATF agent Davy Aguilera in conspiracy with the other ATF Officials, U.S. Treasury Officials and Johnston.

(a) The Decedents and Survivors (1) resided and worked at the Church; (2) controlled, were legitimately on, and had the right to exclude others from the premises; (3) had a possessory interest in the Church; and (4) took precautions to maintain their and the Church's privacy.

(b) Davy Aguilera, in conspiracy with other ATF Officials, U.S. Treasury Officials and Johnston:

(i) falsely stated in his affidavit supporting his application for the search warrant that: (a) Koresh possessed the upper and lower receivers of AK-47 firearms, when in fact the AK-47 has no lower receiver and (b) the Davidians received "clandestine publications," such as *Shotgun News*, when this publication is available by subscription on a national basis and one subscriber was Aguilera's office;

(ii) misleadingly stated in the aforementioned affidavit that he relied on information from former members of the Davidian Church in Waco without also stating, and with reckless or intentional disregard of, the unfair prejudice that these individuals had against Koresh and the Waco Davidians;

(iii) provided the Magistrate with unsubstantiated allegations from disgruntled Church members to vilify the Davidians and to exaggerate the purported danger to the public from the Davidians, including the Decedents and Survivors;

(iv) provided the Magistrate with allegations from Mark Breault about alleged illegal weapons but did not state that Breault had defected from the Branch Davidians; he was a self-described "cult buster;" he readily admitted a vendetta against Koresh; he was legally blind, being unable to see out of one eye and able to see only three inches in front of him with the other; and, despite his legal blindness, he incredulously claimed that, at Mt. Carmel, he participated in firearm shooting exercises and stood guard armed with loaded weapons;

(v) failed to tell the Magistrate that some of the key witnesses, which the ATF relied on for the warrant applications, stated that the Church had 24-hour

armed guards, when, according the 1993 Treasury Department report on the ATF's handling of this operation, the ATF raid planners concluded that neither armed guards nor sentries were posted at the Church at any time, meaning that the planners knew the unreliability of these witnesses; and

(vi) included in the aforementioned affidavit information that was irrelevant to violations of firearm laws (the ostensible purpose of the search), including information about Koresh's, and other Davidians', alleged marital and sexual relations, to unfairly inflame the Magistrate's passions and prejudice him against the Davidians, including the Decedents and Survivors.

(c) These defects in the Aguilera affidavit meant that there was no probable cause for the search warrant.

(d) Davy Aguilera, in conspiracy with the other ATF Officials and Johnston, knew or should have known that his affidavit did not establish probable cause to search the Decedents' and Survivors' home.

19. The ATF Officials' and U.S. Treasury Officials' seizure of the Decedents and Survivors on February 28, 1993, was an illegal, warrantless seizure (the federal government's arrest warrant was only for David Koresh) and without probable cause because the Decedents and Survivors were not reasonably suspected of doing anything illegal.

20. The Posse Comitatus Act prohibits anyone from willfully using any part of the Army as a posse comitatus to execute the laws.¹⁴ Plaintiffs have alleged that in the planning and other preparation for the February 28th assault it violated this act by illegally

¹⁴ 18 U.S.C. § 1385.

using the U.S. Army. Plaintiffs further allege that in the execution of the February 28th assault, U.S. officials violated the act by using federalized Texas National Guard personnel and equipment and that U.S. Army personnel were present on February 28th.

21. ATF Officials illegally assaulted and arrested Norman Washington Allison.

(a) Plaintiff Norman Washington Allison, along with Michael Schroeder and Woodrow Kendrick, learned of the February 28, 1993 assault by hearing helicopters, gunfire, and from radio news reports.

(b) Michael Schroeder and Woodrow Kendrick, both of whom had family members inside Mt. Carmel, were extremely concerned about the safety of their loved ones.

(c) Michael Schroeder and Woodrow Kendrick decided to go to the Mt. Carmel Church and determine what was happening and they asked Plaintiff Norman Washington Allison, who also lived at Mt. Carmel and who had many friends there, to come with them.

(d) Michael Schroeder, Woodrow Kendrick, and Plaintiff Norman Washington Allison left for the Mt. Carmel Church across several fields separating the Church from their present location, the Mag Bag.

(e) As they neared the back of Mt. Carmel Church, and after crossing over onto Mt. Carmel Church property, Plaintiff Norman Washington Allison, Michael Schroeder, and Woodrow Kendrick were ambushed by several members of the ATF force which had been assaulting Mt. Carmel on February 28, 1993.

(f) During this ambush by the ATF, Michael Schroeder was, without warning or justification, fatally wounded.

(g) After seeing ATF agents kill Michael Schroeder, Plaintiff Norman Washington Allison surrendered to the ATF.

(h) The ATF pointed automatic weapons at Plaintiff Norman Washington Allison and took him into custody.

(i) Agents and employees of the United States, including agents and employees of the U.S. Attorney's Office in the Western District of Texas, took Norman Washington Allison to the McLennan County Jail where he was charged with violations of 18 U.S.C. §§ 2, Aiding and Abetting; § 1111 (a), Murder; § 1114 Attempting to Kill Federal Officer; and § 924(c)(1), Use or Carrying Firearm During Commission of Violent Crime.

(j) These U.S. agents and employees, including agents and employees of the U.S. Attorney's Office in the Western District of Texas, knew or should have known that Plaintiff Norman Washington Allison had committed none of the acts for which he was arrested or charged.

(k) These U.S. agents and employees caused Plaintiff Norman Washington Allison to be subjected to scientific tests to determine if he had discharged a firearm at the ATF and that such tests indicated Norman Washington Allison had not discharged a firearm.

(l) These U.S. agents and employees deliberately and with malice withheld this and other exculpatory information from prosecutors and from a federal grand jury.

(m) These U.S. agents and employees gave false, misleading and perjured testimony to a federal grand jury sitting in Waco, Texas, which directly and

proximately resulted in Plaintiff Norman Washington Allison being charged with and indicted for the above crimes.

(n) After being held without bail for nearly one year, Plaintiff Norman Washington Allison was brought to trial on January 10, 1994, and was acquitted on all counts by a jury of his peers on February 26, 1993.

(o) At no time did Plaintiff Norman Washington Allison commit any offense against the laws of the State of Texas or the United States of America for which an arrest may lawfully be made.

(p) At no time did Plaintiff Norman Washington Allison harass, threaten, resist arrest, commit any illegal acts, or engage in any conduct which in any way may justify the acts of the U.S. agents and employees.

(q) Plaintiff Norman Washington Allison's wrongful arrest and imprisonment were committed by these U.S. agents and employees intentionally, maliciously, recklessly, egregiously and in bad faith because they knew that they did not have any cause or justification to arrest or imprison him.

(r) As a direct and proximate result of these actions, Plaintiff Norman Washington Allison was arrested and detained for over one year without just and probable cause.

(s) As a direct and proximate result of these actions, Plaintiff Norman Washington Allison suffered and continues to suffer serious mental anguish, psychological and emotional distress, and physical pain and suffering, some or all of which may be permanent.

3. The February 28 through April 19, 1993 Siege

22. U.S. Officials' tactics during the February 28 through April 19, 1993 Siege constituted excessive force. U.S. Officials intentionally or recklessly chose tactics which constituted excessive force because they were not necessary to end the Siege but would cause the Decedents' and Survivors' injury and death.

(a) During the Siege, these officials abandoned negotiations, which would have peacefully resolved the stand off, and unnecessarily began using psychological and physical intimidation tactics on the Davidians, including the Decedents and Survivors.

(b) These tactics included (1) crushing the Davidians' cars and the children's bicycles with armored personnel carriers; (2) patrolling the area around the Church in armored personnel carriers; (3) displaying weapons; (4) using abusive and threatening language and voice tone; (5) shining bright lights; (6) playing loud music; (7) broadcasting the sound of animals being slaughtered; and (8) hurling explosive devices at any Davidian who did leave the Church. They knew or recklessly ignored that such tactics would cause the Davidians, including the Decedents and Survivors, to fear law enforcement and, thus, refuse to surrender. Such tactics predictably destabilized the situation and made a peaceful resolution unlikely.

(c) These officials ignored that their unnecessary intimidation tactics would lead to sleep deprivation and psychological disorientation, causing the Davidians, including the Decedents and Survivors, to suffer mood disturbances, hallucinations, paranoia and a sense of victimization rather than to become cooperative with law enforcement. The pressures destroyed the Davidians', including the Decedents' and Survivors', ability to think rationally and to appropriately weigh the advantages and disadvantages of surrendering.

(d) On March 3, 1993, these officials began to intermittently cut off electricity to the Church. On March 12, 1993, they permanently cut off electricity to the Church. These tactics undercut the government negotiating team's credibility with the Davidians.

(e) They pressured agents and experts within the government, including FBI agent Pete Smerick, to stop opposing their decision to use intimidation tactics and to launch the April 19th final assault. These opposing agents and experts argued for continued negotiation and de-escalation. Because U.S. Officials suppressed this opposition, they were able to use force beyond that necessary to resolve the situation.

(f) U.S. Officials supervised, ordered and/or participated in throwing and firing "flashbangs" at any Branch Davidian who came out of the Church during the Siege. These flashbangs are pyrotechnic devices that produce a disorienting and frightening loud noise and bright light. Thus, they were intimidating any Davidian who attempted to leave the Church and preventing their surrender to law enforcement. Flashbangs are "weapons of mass destruction," as that phrase is legally defined.

(g) They failed to de-escalate the Siege by pulling back the armored personnel carriers and stopping the aforementioned intimidation tactics. These failures made it more likely that they would not gain the trust and cooperation of the Davidians.

(h) They ignored the Davidians' reaction to the ATF's February 28th assault on the Church. Though some Davidians fired upon the ATF agents, it was obvious, because of the low number of ATF agents killed or wounded, that the Davidians' firepower was restrained, thereby establishing a defensive, not offensive, mind-set. Only by intentionally or recklessly ignoring this fact, could they treat the Davidians as

cold-blooded killers, abandon negotiations, use the aforementioned counter-productive intimidation tactics and launch the April 19th final assault. Indeed, Koresh told negotiators "My friends we're sorry about the ATF agents - that wasn't necessary - you don't know us and we don't know you." Thus, they recklessly or intentionally ignored facts which would have allowed them to resolve the Siege without further loss of, or injury to, life.

(i) They ignored warnings by their own and other experts that the Davidians, including the Decedents and Survivors, had interpreted the ATF's February 28th assault as proving Christian biblical prophecy of an apocalyptic ending and that their aforementioned tactical pressures were strengthening this belief.

(j) They ignored the warnings from their own and other experts that (1) the effect of the ATF's February 28th assault on the Davidians caused the Davidians, including the Decedents and Survivors, to fear and mistrust law enforcement and (2) this fear and mistrust was being exacerbated by these officials' intimidation tactics.

(k) They ignored warnings from their own and other experts that the Davidians considered the Mt. Carmel Church sacred ground and that the invasion of this ground, by such measures as moving armored vehicles close to the Church and destroying the Davidians' property, would make the Davidians, including the Decedents and Survivors, fear and resist cooperating with law enforcement.

(l) They ignored warnings from their own and other experts that their intimidation tactics on the Davidians, including on the Decedents and Survivors, would likely lead to the death of the Decedents and Survivors by suicide or at the hands of other Davidians.

(m) U.S. Officials ignored that they controlled the environmental context through which David Koresh determined whether this assault was the final battle between good and evil. Their intimidating, confrontational tactics made it more likely that Koresh would conclude that this was the final battle and made a peaceful resolution of the Siege unlikely.

(n) They failed to adequately ask the Davidians, including the Decedents and Survivors, about the Davidians' potential response to their intimidation tactics and to the insertion of tear gas. Had they properly asked, they would have learned that these tactics made it more likely that the Davidians, including the Decedents and Survivors, would not surrender but would die by alleged suicide or at the hands of other Davidians.

(o) U.S. Officials ignored signals from the Davidians, including the Decedents and Survivors, about their potential response to the intimidation tactics and the insertion of tear gas. Had they not ignored these signals, they would have learned that these tactics made it more likely that the Davidians, including the Decedents and Survivors, would not surrender.

(p) They allowed media and public pressure to override the warnings from their own and other experts, and to override reasonable inferences from observable facts in Waco, that their intimidation tactics were counter-productive to a peaceful resolution.

(q) They failed to allow the Davidians, including the Decedents and Survivors, to surrender to a neutral party of their choosing, accompanied by appropriate law enforcement personnel.

(r) They failed to use third-party intermediaries to negotiate a peaceful resolution of the Siege. They should have more fully used family members, fellow members of the Davidian religion, and religious experts familiar with Davidians' beliefs.

(s) U.S. Officials rejected offers by the Texas Rangers to act as neutral intermediaries in brokering a surrender by the Davidians. U.S. Officials rejected this offer even though the Davidians asked to talk to a Ranger. This failure made a peaceful resolution of the Siege unlikely.

(t) They rejected the assistance of religious experts such as Dr. Phillip Arnold and Dr. James Tabor, who understood David Koresh's philosophy and intentions and whom David Koresh respected. Steve Schneider, David Koresh's assistant during the negotiations, made a formal request to discuss the Bible with Dr. Arnold on March 16, 1993. U.S. Officials refused the request.

(u) U.S. Officials were completely unwilling to discuss the scripture with David Koresh, crippling negotiations. They made no effort to comprehend the Davidians' belief or Koresh's teachings. These failures made a peaceful resolution of the Siege unlikely.

(v) They failed to rotate command leaders during the Siege. This failure predictably resulted in fatigue, frustration and impatience which foreseeably corrupted the decision-making and prevented a peaceful resolution of the Siege. Accordingly, they created a psychological state which they knew would cause their use of excessive force out of anger and frustration. This psychological state did cause the use of excessive force.

(w) They failed to place responsibility for the Siege in a special agent who had the training and experience to orchestrate rescue and negotiation efforts in light of social science knowledge.

(x) They failed to assign agents to Waco who were trained for a prolonged siege rather than for rapid intervention.

(y) When two elderly female Davidians left the Church on March 2, 1993, they ordered or permitted the women to be arrested and charged with murder. Because these charges were baseless, they were later dropped. This treatment of these two women foreseeably reduced the incentive of any Davidian, including the Decedents and Survivors, to surrender to U.S. Officials. This also caused the government's negotiators to lose credibility with the Davidians and made a peaceful resolution of the Siege unlikely.

(z) They denied David Koresh's repeated requests to speak with ATF Agent Robert Rodriguez whom he knew and with whom he felt comfortable.

(aa) They stated to the press that David Koresh was a liar, a coward, and hiding behind his children. They knew that the Davidians could hear this on radio and television. They knew or recklessly disregarded that these statements would cause the Davidians, including the Decedents and Survivors, to mistrust and fear surrendering to law enforcement.

(bb) They failed to fully coordinate negotiating and tactical units to avoid sending a mixed message to the Davidians, including the Decedents and Survivors. The message sent was an inconsistent one of brute force and conciliatory words. For example, after negotiators' efforts had produced the release of several Davidians, the tactical team bulldozed Davidian cars outside of the Church and broadcast loud music into the night.

Another instance occurred when the negotiators secured the release of two people and that night the tactics squad turned off the electricity. U.S. Officials ignored the complaints of negotiators that the trust they were building was being undermined by the tactical squad. This prevented the Davidians, including the Decedents and Survivors, from trusting U.S. Officials.

(cc) They ignored that their tactical pressures would drive the Davidians closer together in their faith of Koresh and demonstrate that government agents were the enemy, thereby making a peaceful resolution of the Siege unlikely.

(dd) They failed to adequately establish information management procedures to ensure the full consideration of the factors stated in this Complaint. Had all of the factors stated herein been properly considered, these officials would have known that the appropriate procedure for peacefully resolving this Siege was de-escalation and conciliatory negotiations.

(ee) Branch Davidians released prior to the April 19 assault, including Kevin Whitecliff told the FBI that if religious expert Dr. Phillip Arnold were given a day or two to speak with David Koresh there could be significant results and a good chance to resolve the matter peacefully. The FBI never sought and refused Dr. Arnold's consultation and advice and refused to allow him to act as a mediator.

(ff) U.S. Officials' tactics also included unnecessarily increasing the tension between the government and the FBI and made the use of deadly force more likely. These Officials ordered, supervised and/or participated in such harassment as destroying the Davidians' personal property, surrounding Mt. Carmel without cause and mooning and making other obscene gestures to the Davidians. Davidians who were

released have stated that these activities inhibited their willingness to trust the government.

(gg) Branch Davidians who survived the April 19 fire have stated that there was no plan to commit suicide; that David Koresh did not preach suicide; that Koresh preached that God did not believe in suicide.

(hh) Branch Davidians who survived the April 19 fire have stated that they were going to come out once Koresh finished interpreting the Seven Seals.

23. U.S. Officials' aforementioned unnecessary tactical pressures psychologically and physically harmed the Davidians, including the Decedents and Survivors. This was foreseeable.

24. Plaintiff Rita Riddle was falsely imprisoned after leaving Mt. Carmel on March 21, 1993, being willfully detained by the Defendants, without authority of law and her consent, so as to substantially interfere with her liberty by confining her through force and intimidation.

(a) These U.S. agents and employees, including agents and employees of the U.S. Attorney's Office in the Western District of Texas, knew or should have known that Plaintiff Rita Riddle had committed none of the acts for which she was arrested or charged.

(b) At no time did Plaintiff Rita Riddle commit any offense against the laws of the State of Texas or the United States of America for which an arrest may lawfully be made.

(c) At no time did Plaintiff Rita Riddle harass, threaten, resist arrest, commit any illegal acts, or engage in any conduct which in any way may justify these acts of the U.S. employees and agents.

(d) The false criminal charges against Plaintiff Rita Riddle and her wrongful arrest and imprisonment were committed by these U.S. agents and employees intentionally, maliciously, recklessly, egregiously and in bad faith because they knew that they did not have any cause or justification to arrest or imprison her.

(e) As a direct and proximate result of these actions, Plaintiff Rita Riddle suffered and continues to suffer serious mental anguish, psychological and emotional distress, and physical pain and suffering, some or all of which may be permanent.

4. The April 19, 1993 Final Assault

25. U.S. Officials' April 19, 1993, final assault was excessive force. They chose tactics which constituted excessive force, which were not necessary to end the Siege, and which did cause the Decedents and Survivors serious injury and death.

(a) On April 19, 1993, the Davidians, including the Decedents and Survivors, could not escape from law enforcement and were not harming or about to harm anyone. U.S. Officials had placed razor-sharp concertina wire around the Church to secure the perimeter. Nonetheless, these officials ordered, supervised, and/or participated in a deadly armored assault against the Davidians. This assault included spraying CS gas inside the Church and shooting gas canisters with deadly velocity at anything that moved.

(b) They abandoned negotiations which would have peacefully resolved the stand off and instead launched the aforementioned armored assault, even though their negotiators and other experts told them that more people would leave the Church through negotiations.

(c) They launched their April 19th final assault even though they knew that, on or about April 14, 1993, David Koresh had promised peaceful surrender after he

interpreted the Seven Seals from the Christian Bible's Book of Revelation. Koresh said that this would take approximately 14 days. Koresh was diligently interpreting the Seals, as he had promised, and had completed the interpretation of one Seal which a surviving Davidian brought out on computer disk after the April 19th fire. Theological experts have subsequently said that Koresh's analysis of this first Seal was a serious work.

(d) They launched their April 19th final assault even though on April 16, 1993, consistent with his April 14th promise, Koresh stated "I'm coming out" and "I never intended to die in here."

(e) They launched their April 19th final assault without thoroughly analyzing all available data collected by electronic surveillance, including the transcription of conversations by the Davidians inside the Church, which would have told them that Koresh was working on the Seven Seals and had completed the interpretation of one Seal.

(f) These officials launched their April 19th final assault against the Decedents and Survivors even though they knew that Koresh had been working with his lawyers on the legal protection of the Davidians' property after he surrendered and the creation of a trust for his children which would be funded by the books he would write after he surrendered; had entered into a fee agreement with his attorneys; and looked forward to finishing his manuscript and auctioning his book rights, all of which made clear that he would surrender upon completing interpreting the Seven Seals.

(g) They launched their April 19th final assault even though they knew that, on April 18, 1993, Koresh requested typewriter ribbon and paper to continue working on his interpretations of the Seven Seals (without electricity, the Davidians had limited power for their word processors) and the FBI gave Koresh these materials.

(h) They launched their April 19th final assault even though they knew that religious experts studying the Davidian religion and Koresh's teachings were convinced that Koresh had concluded that this was not yet the final phase of the apocalypse and that time remained for him to continue what he considered to be his prophetic mission. U.S. Officials ignored that, given this expert analysis, and Koresh's promise to surrender as conveyed through his lawyer and confirmed by Koresh in a letter, Koresh was likely to surrender at the completion of the interpretation of the Seven Seals, sometime near late April or early May 1993.

(i) They launched their April 19th final assault, ignoring that the Davidian religion preached that the Davidians were all to die, together, in Jerusalem, Israel and, thus, that they were predisposed to believe that this was not the final phase of the apocalypse and that time remained for them to continue their studies and for Koresh to continue his prophetic mission on Earth. Thus, U.S. Officials ignored that Koresh was likely to surrender, as he had promised, at the completion of his interpretation of the Seven Seals in late April or early May 1993.

(j) U.S. Officials, particularly FBI Special Agent-in-Charge Jeffrey Jamar, failed to tell Koresh, his attorney Dick DeGuerin, Steve Schneider, his attorney Jack Zimmermann, or any Davidian that he would accept Koresh's terms of surrender only if Koresh provided evidence that he was diligently working on the Seals. If Jamar had told them of this secret requirement, Koresh could have provided proof (indeed, he had completed one Seal), the April 19th final assault would have been delayed, the Davidians would have surrendered and the Decedents and Survivors would have survived.

(k) FBI Officials, particularly FBI Special Agent-in-Charge Jeffrey Jamar and FBI Agent and negotiator Byron Sage, failed to tell their superiors, particularly Attorney General Reno, the full extent of the negotiations, and terms of surrender brokered, by Koresh's attorney, Dick DeGuerin, and Steve Schneider's attorney, Jack Zimmermann. These officials failed to tell their superiors, among other things, that DeGuerin and Zimmermann were convinced that Koresh and the other Davidians would surrender as soon as Koresh finished interpreting the Seven Seals in late April or early May. They failed to communicate to their superiors the detailed preparations Koresh was making for the surrender of the Davidian property, the establishment of a trust for his children and the plans for auctioning his book. Most importantly, they failed to tell their superiors that Mr. Jamar had secretly conditioned his acceptance of the terms of the Davidians' surrender on Koresh providing proof that he was working diligently on the Seals and that he had not told DeGuerin, Zimmermann, Koresh or any Davidian that this was a condition. Accordingly, Jamar misrepresented to his superiors the probability of the Davidians surrendering. Reno approved the April 19th final assault based on that misrepresentation.

(l) U.S. Officials launched their April 19th final assault against the Decedents and Survivors even though they knew that there was no evidence that anyone inside Mt. Carmel, including the children, was in danger of death or serious bodily injury. They knew about a multi-week investigation by the State of Texas into allegations of child abuse which concluded that the children were healthy, well adjusted and not traumatized. They knew of at least one videotape sent out by David Koresh during the Siege which showed the children healthy and unapprehensive. They knew that the children, who had

been released earlier in the Siege, were not malnourished or suffering from any illness. They knew that David Koresh had been shot in the pelvis and was bedridden, severely limiting his ability to sexually molest children.

(m) Some of these officials intentionally or recklessly misinformed Attorney General Reno that there was ongoing child abuse or sexual molestation during the Siege. Attorney General Reno based her decision to launch the April 19th final assault on that misrepresentation.

(n) Some of these officials were aware that Attorney General Reno was a major advocate of children's rights as Dade County, Florida Prosecutor. Accordingly, after she had repeatedly rejected the FBI's gas/assault plan to end the Siege, they intentionally misrepresented to her that there was ongoing child abuse or sexual molestation at Mt. Carmel to trigger an irrational response and trick her into approving the final assault.

(o) U.S. Treasury Officials, including Secretary of Treasury Lloyd Bentson, failed to pass on to other U.S. Officials, including Attorney General Reno, a letter from U.S. Treasury Department official Roger Altman stating that the plan to use gas against the Davidians would be very dangerous to innocents inside Mt. Carmel and should not be done.

(p) On April 19th, U.S. Officials ordered, supervised, and/or participated in using tanks to punch holes in the Church's buildings. They ignored that ramming the structure with the tanks would crush the staircases and cause the buildings to collapse, killing the Decedents and Survivors with falling debris or trapping them in the Church and preventing their escape from a fire or other Davidians who would harm them. They knew the staircases' locations and the condition of the buildings prior to their April 19th assault.

(q) On April 19th, they ordered, supervised, and/or participated in using tanks to punch holes in the Church buildings and to inject gas, knowing or recklessly ignoring that such unwieldy vehicles would crash into the buildings and cause them to collapse. They ignored that this would kill the Decedents and Survivors with falling debris or trap them in an ensuing fire and with other Davidians who would harm them. They could have injected the gas through windows.

(r) They ignored the location of the Davidians, including Decedents and Survivors, within the Church when they ordered, supervised, and/or participated in using tanks to punch holes in the buildings and inject the CS gas. They could have punched holes and injected gas in areas where no people or the fewest people were located. They were using sophisticated electronic surveillance and were able to determine where people, including the children, were located inside the Church.

(s) U.S. Officials used and/or ordered and supervised the use of explosive and/or incendiary devices against the Branch Davidians on April 19, 1993, which caused the fire, destruction of the Mt. Carmel building, and injury and death to some Plaintiffs who were present at Mt. Carmel on April 19, 1993 (i.e., deadly force). On April 19, 1993, U.S. Officials also ordered, supervised and/or directed gunfire at the Plaintiffs who were present at Mt. Carmel on April 19, 1993 (i.e., deadly force), killing some of the Plaintiff Decedents. These U.S. Officials took these actions without adequate provocation. At the time these U.S. Officials took these actions, those Plaintiffs and the other Branch Davidians were not threatening the Defendants, other U.S. employees, or any other person with death or serious bodily injury. Thus, these U.S. Officials' actions constituted excessive force and, at least, reckless indifference to the safety of these Plaintiffs.

(t) U.S. Officials' decision to escalate the assault on April 19, 1993, by increasing the speed and severity of the tanks penetrating the Church and the gas insertion, constituted excessive force and, at least, reckless indifference to the safety of the Plaintiffs who were at Mt. Carmel on April 19, 1993. The alleged basis for this increased speed and severity was that one or more of the Branch Davidians were firing at the tanks and/or at U.S. law enforcement agents on April 19. However, even if that were true, the Branch Davidians were firing only in self-defense because, on April 19, 1993, U.S. agents previously and without adequate provocation supervised, directed and/or did the following: (1) directed gunfire at the Branch Davidians, (2) inserted deadly gas in deadly amounts into Mt. Carmel, (3) began a tank assault which included destroying Mt. Carmel, (4) fired ferret rounds into Mt. Carmel at deadly velocity and (5) used other explosive and/or incendiary devices against the Branch Davidians on April 19, 1993, which caused injury or death to Plaintiffs who were present at Mt. Carmel on April 19, 1993 (i.e., deadly force). These U.S. Officials committed these assaults on the Branch Davidians even though the Branch Davidians were not threatening the Defendants, other U.S. employees or anyone else with death or serious bodily injury. Thus, any shooting by the Branch Davidians on April 19 was in self-defense and did not justify the escalation of the assault as described herein. The escalation of the assault proximately caused injuries and/or death to Plaintiffs who were at Mt. Carmel on April 19, 1993.

(u) U.S. Officials ordered and/or supervised the Bradley armored personnel carriers' insertion of "ferret" rounds containing CS, and possibly other, gases into the storm shelter outside of the main structure of Mt. Carmel. The Bradley's gassing began at or about 6:02 a.m. on April 19, 1993, at the same time as the Combat

Engineering Vehicles' ("CEV") began their penetration and gassing of the main structure of Mt. Carmel. The Bradley's gassing of the storm shelter, beginning at or about 6:02 a.m., was contrary to the operation plan, as approved by the U.S. Attorney General. That plan required the CEV's to finish their gassing of the main structure before the Bradley's began gassing the unfinished, unoccupied areas near the main structure, such as the storm shelter. Thus, the Bradley's gassing, at that time, was outside of the discretion of U.S. agents, officials, and other employees who conducted and approved the gassing.

(v) U.S. Officials failed to consult with, or have on the scene, fire marshals or other fire fighting/safety experts to provide information about maintaining egress and lighting during the April 19th final assault so that the Decedents and Survivors could escape. This led to the tanks cutting off the Decedents' and Survivors' exits and routes to safety, including the route to a shelter which would have protected the Decedents and Survivors from the clearly foreseeable fire, falling debris, and/or other Davidians who would harm them.

(w) The U.S. Officials knew that the Davidians were using kerosene lamps and candles for light and heat because they had cut off electricity to the premises. They also knew that the Davidians were using hay for warmth. They knew that temperatures dropped to 20°F at night. During the April 19th armored assault, they ignored these facts and they ignored that the tanks would knock over everything they ran into, that the tanks' movements caused the ground to shake, and that the tanks would panic the Davidians causing them to run wildly through the Church, all of which caused a deadly fire by knocking over lamps and candles.

(x) During the April 19th final assault, they ordered, supervised, and/or participated in the firing of canisters containing CS gas into the Church. They ignored that these canisters generated heat and, alone or in combination with other elements created by, introduced by, or known to exist by them, would cause a fire. Had the canisters not been shot into the Church, the April 19th fire would not have occurred, or would not have been as extensive, and the Decedents and Survivors would have survived.

(y) One of these flammable chemicals is methylene chloride, which was mixed with the CS gas in the canisters. The government shot as many as four hundred of these canisters into Mt. Carmel and at the Davidians on April 19th. Had the methylene chloride not been put inside the Church, the April 19th fire would not have occurred, or would not have been as extensive, and the Decedents and Survivors would have survived.

(z) U.S. Officials ignored operation manuals for CS gas which state that it should not be used indoors because an open flame or spark could cause an explosion.

(aa) They ignored warnings by the manufacturers, World Health Organization, and others that methylene chloride forms a flammable vapor-air mixture.

(bb) They ignored operation manuals which state that use of CS gas in concentrated forms in enclosed areas could cause a dust explosion.

(cc) They ordered, supervised and/or participated in crushing propane tanks which surrounded the Church by running over them with heavy military vehicles. This caused a release of propane fuel which created a fire hazard and caused or contributed to the subsequent fire and the Decedents' deaths.

(dd) During the April 19th final assault, they ordered, supervised, and/or participated in hurling "flashbangs" into the Church. "Flashbangs" are pyrotechnic devices.

They ignored that the “flashbangs,” alone or in combination with other elements created by, introduced by, or known to exist by these officials, would start a fire in the Church. Had the “flashbangs” not been thrown into the Church, the April 19th fire would not have occurred, or would not have been as extensive, and the Decedents would have survived.

(ee) During the April 19th final assault, they ordered, supervised, and/or participated in hurling pyrotechnic tear gas devices into the Church. They ignored that such pyrotechnic devices, alone or in combination with other elements created by, introduced by, or known to exist by these officials, would cause a fire inside the Church. Had the pyrotechnic devices not been thrown into the Church, the April 19th fire would not have occurred, or would not have been as extensive, and Decedents would have survived.

(ff) Alternative to Plaintiffs' allegations that the Defendants caused the April 19th fire, Plaintiffs allege that, in ordering the April 19th armored assault against the Davidians, U.S. Officials ignored that some of the Davidians would fight back using home-made pyrotechnic devices, which, alone or in combination with other elements created by, introduced by, or known to exist by these officials, would cause a fire.

(gg) They ignored the health effects of CS gas on the Decedents and Survivors. When they decided to, and did, use CS gas, they had information which established that on healthy adult males (meaning that the effects would be the same or worse for women and children) these gases cause (1) inflammation of the eyes, nose and throat; (2) choking; (3) chest pains; (4) gagging; (5) nausea; (6) vomiting; (7) skin burns; (8) blistering rashes; (9) first degree burns; (10) severe respiratory distress; (11) cyanosis; (12) liver disease; (13) eye injuries; and (14) the worsening of underlying heart and lung diseases.

(hh) They ignored that CS gas, concentrated inside the Church, would be lethal to the Decedents and Survivors.

(ii) Because there had been no deliberate experimentation of CS gas on infants, they ordered, supervised and participated in the use of a chemical without knowing the full consequences on the children inside the Church, and they knew no effective gas masks were available for the use of the children.

(jj) They ignored that CS gas would immobilize the Decedents and Survivors and prevent their escape from the clearly foreseeable fire, falling debris and/or other Davidians who would harm them.

(kk) They ignored that CS gas would suffocate the Decedents and Survivors.

(ll) They ignored that operation manuals for the use of CS gas states that it is not designed for direct introduction into barricaded buildings, in confined areas or against target areas with restricted avenues of escape.

(mm) Some of these officials ignored, and failed to tell Attorney General Reno, about studies and other information linking CS gas to harmful health affects and deaths.

(nn) Some of these officials misrepresented to Attorney General Reno that the CS gas was safe when used in an enclosed area and in highly concentrated amounts. They misrepresented to Reno that the CS gas would not likely hurt the children inside the Church and that there was no medical evidence which indicated that children or adults would be injured by the gas. Reno would not have ordered the use of the gas without these misrepresentations.

(oo) Some of these officials ignored, and failed to tell Attorney General Reno, that an international treaty, to which the U.S. was a signatory, banned the use of CS gas during war.

(pp) U.S. Officials ignored that they were using an unprecedented amount of CS gas given their time frame and the structural space inside the Church. This excessive use of CS gas created an unreasonably dangerous situation in that, whatever the scientific or other studies on which these officials based their conclusion that CS gas was safe, those studies did not consider such a massive use of the gas.

(qq) They ordered, supervised, and/or participated in the shooting of CS gas into the Church's underground shelter, thereby preventing the Decedents and Survivors from using the shelter as a refuge from the fire, falling debris and/or other Davidians who would harm them. If the gases had not been shot into the shelter, the Decedents would have survived.

(rr) Some of these officials, particularly FBI Special Agent-in-Charge Jamar, failed to tell Attorney General Reno that they considered it a virtual certainty that once they began the gassing operation, the Davidians would view it as an attack and at least some Davidians would shoot at the tanks, triggering the government's escalation of the assault. Reno approved the gassing plan because these officials misrepresented that it would be a gradual insertion of gas over a 48-hour period, which these U.S. Officials knew was never going to happen. In fact, approximately five minutes into the gassing plan, U.S. Officials escalated the gassing and began to crush the building.

(ss) Given that the federal agents inserting the CS gas were safe inside their armored personnel carriers and tanks, it was an excessive use of force for U.S.

Officials to escalate the insertion of gas and to begin crushing the Church once some Davidians allegedly fired at the federal agents who were in protected armored vehicles.

(tt) U.S. Officials continued and escalated the April 19th final assault on the Church, and continued and escalated the use of CS gas, even after they knew that the assault was not inducing any Davidian, including any Decedents, to surrender.

(uu) They continued and escalated the assault on the Church with armored vehicles, and continued and escalated the use of CS, even after they knew that the assault was causing life-threatening structural failures in the buildings where the Davidians, including Decedents and Survivors, were located.

(vv) Some of these officials misrepresented to Attorney General Reno that the FBI's hostage rescue team could not be relieved by other federal, state, county or city law enforcement teams. Reno would not have ordered the assault without these misrepresentations.

(ww) U.S. Officials failed to adequately consider, or to consider at all, effective, but more peaceful, alternatives to the April 19th final assault such as shooting high-pressure water into the Church which would have driven the Davidians, including the Decedents and Survivors, outside or into an isolated area of the building and which would have combated any attempts by any Davidian to start a fire.

(xx) When they began their April 19th final assault on the Church, a final assault which they knew or reasonably foresaw would trigger an accidental or intentional fire, they ignored the current wind velocity and direction. They ignored that the wind's high velocity and its direction on this date would cause any fire to spread rapidly and in the direction where most of the Davidians, including Decedents and Survivors, were located.

(yy) They did not have adequate and appropriate firefighting equipment at the Church on April 19th. If they had, they could have limited the spread of the fire and saved the Decedents' lives.

(zz) They did not have arrangements with local firefighting departments so that they would know which departments could and would respond to a fire at the Church on April 19th. If they had, they could have limited the spread of the fire and saved the Decedents' lives.

(aaa) They did not have arrangements with local firefighting departments so that they would know which departments had the technical ability to draw water from the nearby lake, pond and water towers to effectively fight a fire at the Church. If they had, they could have limited the spread of the fire and saved Decedents' lives.

(bbb) They rejected an offer by a company which manufactured remote controlled, armored fire trucks to let the government use these fire trucks to deal with any fire at Mt. Carmel. If the government had not rejected this offer, the Decedents would have survived.

(ccc) They ignored that the Washington, D.C. fire department has an armored fire fighting vehicle which, if it had been used, would have saved the Decedents' lives.

(ddd) They failed to use military vehicles which were available for fighting a fire. The U.S. had outfitted army combat vehicles with special equipment to spray CS gas against the Davidians and similar modifications would have allowed tank cannons to shoot water. If these officials had done this, the Decedents would have survived.

(eee) They did not provide prior clearance at law enforcement checkpoints around the Church so that firefighters could quickly respond when a fire occurred on April 19th. If they had, they could have limited the spread of the fire and saved Decedents' lives.

(fff) They ignored the phenomena, well established in research literature, that, in a fire, people become disoriented and frozen in shock. Thus, these officials ignored that the holes they were punching in the Church were almost useless as exits, but were causing the building to collapse, trapping people.

(ggg) They met with the attorneys for David Koresh and Steve Schneider and agreed that Koresh could surrender after he wrote a religious treatise. At the time they made such representations, they were already planning to assault the Church with excessive force and did not intend to allow the Davidians to surrender peacefully. They intentionally or recklessly ignored that this deceit would, among other things, cause the Davidians, including Decedents and Survivors, to reasonably believe that (1) the government had double-crossed them and (2) their April 19th final assault was a sneak-attack to kill them. This foreseeably made it unlikely the Davidians would flee the burning, collapsing Church and more likely they would stay and die.

(hhh) They failed to use tanks and other military vehicles at their disposal to shield Branch Davidians trying to escape the fire. If they had done so, the Decedents would have survived.

(iii) They knew that CS gas would create cyanide compounds when burned and, if water was then introduced, a deadly cyanide steam cloud would result.

Thus, by using the CS gas, these officials prevented effective fire fighting and caused the Decedents' deaths.

(jjj) They did not use water slurries dropped from the air, robotic water hoses, tank-mounted water jets or other reasonably available devices which would have effectively fought the fire and protected the firefighters. If they had, they could have limited the spread of the April 19th fire and saved the Decedents' lives.

(kkk) They did not apply a fire retardant to the Mt. Carmel Church prior to the April 19th final assault. If they had, they could have limited the spread of the fire and saved the Decedents' lives.

(lll) They ignored that, in reaction to the April 19th assault and fire:

(i) if trapped without any hope for escape, as most Davidians were, some of the Davidians might choose to kill themselves, their families and their friends, including the Decedents and Survivors, to spare them from a painful death by fire;

(ii) if trapped without any hope for escape, as most Davidians were, the Davidians might kill themselves, their family members and their friends, including the Decedents and Survivors, to spare them from the painful physical effects of CS gas;

(mmm) Alternative to Plaintiffs' allegations that the Defendants caused the April 19th fire, Plaintiffs allege that the Davidians started the fire and this was foreseeable by Defendants. Thus, U.S. Officials launched their April 19th final assault without thoroughly analyzing all available data collected with their electronic surveillance, including the transcription of conversations by the Davidians inside the Church, which would have told them that some Davidians may start one or more fires if the FBI assaulted the Church. These officials failed to timely enhance tapes of conversations by some

Davidians or even to listen closely to these conversations, either of which would have revealed the possibility of a fire, caused the cancellation of the April 19th assault and saved the Decedents' lives. This failure to listen to and analyze available electronically gathered data was particularly egregious given that it included conversations occurring on April 18th and 19th when officials knew they were about to launch the final assault.

(nnn) They did not have an emergency rescue plan to follow if, once they began inserting the CS gas, suicide or the killing of Davidians by other Davidians was indicated. If they had, Decedents could have been saved.

(ooo) They refused to continue to spend financial resources on the Siege even though there was a reasonable hope, as their negotiators and experts advised them, that more lives, including the Decedents' lives, could be saved through negotiations and non-confrontational tactics.

(ppp) On April 19th, they abandoned the plan as approved by Attorney General Reno and, without any cause or without sufficient cause, ordered, supervised, and/or participated in an escalation which included spraying CS gas throughout the Church, firing hundreds of canisters of CS gas at the Decedents and Survivors and crushing the Church on top of them.

(qqq) On April 19th, they did not have a means to communicate with the Davidians other than by telephone lines, which were cut by the armored personnel vehicles and tanks that these officials were using. This prevented the Davidians from (1) establishing contact, as they attempted to do, and (2) attempting to end the deadly assault on the Church.

(rrr) They improperly based their decision to mount the final assault on the Church on April 19th on public and media criticism, public and personal embarrassment, impatience and financial limitations. These considerations do not justify the deadly force used on April 19th.

(sss) Attorney General Reno failed to read, or at least to carefully read, the report and supporting documentation prepared for her by officials allegedly supporting the April 19th final assault.

(ttt) Agents of the U.S. violated the rules of engagement which prohibited gassing the children. They violated the rules of engagement which prohibited gassing any area where they expected children to be. They violated the rules of engagement which prohibited them from continuing the assault if there was any indication of danger to the children. They violated the rules of engagement by proceeding and continuing with the plan even though they reasonably feared that the Davidians would commit suicide because of the assault. The April 19 assault proceeded even though the individuals had been told that David Koresh had drafted at least 25 pages of the First Seal.

(uuu) The April 19 assault went forward even though David Koresh had promised on April 18 to provide evidence that he was working on the Seals and the Defendants did not give him a deadline by which he had to provide the proof. Koresh and his assistants stayed up most or all of the night of April 18 to type the First Seal to deliver to the FBI.

(vvv) The FBI overhearers on the morning of April 19 were able to hear, through the surveillance tapes, Steve Schneider stating that he had Koresh's First Seal completed and Schneider was expressing shock and dismay that the Defendants were

proceeding with the assault without allowing Koresh the opportunity to finish the Seals and present evidence that he was working on the Seals. Despite this knowledge, the Defendants continued with the assault.

(www) The FBI Officials never informed their superiors in Washington, including Attorney General Reno, about Steve Schneider's statement that he had seen 25 pages of a draft of the First Seal; that Koresh had promised to provide proof of the First Seal but that the FBI Officials had not given him a deadline; or that on the morning of April 19, they had evidence that David Koresh had completed one seal and had intended to turn it over to the FBI as part of their agreement.

(xxx) The Defendants refused to reestablish negotiations on the morning of April 19, even though the Davidians wished this and even though this would have provided an opportunity for David Koresh to state that he had completed the First Seal, as promised, as was ready to deliver it.

(yyy) Officials violated Attorney General Reno's orders that they would not use pyrotechnic devices on April 19.

(zzz) U.S. officials violated Janet Reno's order that sufficient resources be provided to ensure that there was an adequate emergency response available if needed.

(aaaa) U.S. officials violated Attorney General Reno's order by increasing the tank penetration into Mt. Carmel beyond that approved by the Attorney General.

(bbbb) The Defendants failed to ensure the safety of the children when the gassing began by inserting the gas without knowing the location of the children and also by gassing first the hallway leading into the underground bus, so that no one could escape outside through the bus.

5. Post April 19, 1993 Actions

26. U.S. Officials covered up and otherwise hindered the discovery of facts establishing the liability of the U.S. for the causes of action asserted herein.

27. The U.S. razed the Mt. Carmel property within 23 days after the April 19, 1993 fire before any independent investigation could be conducted and before parties in any civil litigation could investigate.

28. Some ATF Officials, particularly agents Phillip Chojnacki and Charles Sarabyn, covered up information and lied to federal and Texas authorities investigating the February 28th assault.

29. Reno has failed to prosecute ATF employees, particularly Philip Chojnacki and Charles Sarabyn, who lied during federal and Texas investigations of the February 28th assault and this failure to prosecute has further hampered the collection of information and perpetuated the coverup.

30. Before, during and after the April 19, 1993 final assault and fire, the U.S. Officials intentionally or recklessly destroyed evidence located at the Church prior to investigations by independent law enforcement agencies and by non-government investigators. These acts and omissions have hindered or prevented proving the Defendants' civil claims against the U.S. Officials.

31. After the April 19th final assault and fire at the Church, Edward S.G. Dennis, Jr. intentionally or recklessly failed to conduct an adequate and competent investigation regarding the incidents from February 28 through April 19, 1993. His actions and omissions caused material evidence to go undiscovered and weakened and otherwise

interfered with the Plaintiffs' prosecution of civil suits against federal officials and the U.S. government.

32. U.S. Officials destroyed or lost Davidian Michael Schroeder's navy blue toboggan which he was wearing when he was shot by the ATF as he tried to enter the Church to rejoin his wife and children on February 28th. Mr. Schroeder's autopsy shows two bullet wounds to the head which probably caused his death. If these bullet wounds were made from a close head shot, it would establish that the ATF was not acting in self defense when they shot him and their attack on him would be excessive force. However, without the cap, it is impossible to tell whether the wounds were from close or distant gunshots because the cap would absorb traces of gun powder made by a close up shot.

33. U.S. Officials interfered in the investigation of Michael Schroeder's death by not allowing the Texas Department of Public Safety to do a thorough crime scene analysis as Texas Rangers requested, such as casting foot prints, for several days. By that time, rain and other weather conditions had eroded the foot prints and eliminated other important evidence.

34. U.S. Officials destroyed, erased or lost official videotapes of the February 28th assault.

35. U.S. Officials destroyed or lost one of the two front doors to the Church. This door would have revealed whether the Davidians or the ATF shot first on February 28, 1993.

36. U.S. Officials, against the recommendations of U.S. Assistant Attorney Johnston and the Texas Rangers, destroyed the Davidians' vehicles during the Siege. These vehicles would have shown whether the Davidians or the ATF shot first on February

28th and the number of shots fired by the Davidians by showing bullet trajectories and spray patterns.

37. U.S. Officials failed to conduct a proper investigation into the cause of the April 19th fire by, among other things, following widely accepted principles in industry and government for fire investigation. Such failures include not following National Fire Protection Association investigation guidelines and not properly mapping burn patterns. This failure to conduct a proper investigation immediately after the fire and the prevention of any independent investigation at that time, prevents the Plaintiffs or anyone else from now conducting a thorough and accurate investigation of the fire's causation.

38. U.S. Justice Officials interfered with investigations into what happened at Waco by, among other things, ordering that interviews not be conducted, notes not be taken if interviews were conducted, and information which exculpates the Davidians not be gathered. These orders prevented or circumscribed interviews with relevant individuals while information was fresh in their minds, thus ensuring that any subsequent interviews would not produce a complete picture of the decision-making process and the events surrounding the government's assaults and Siege against the Davidians.

39. During the summer 1995 congressional hearings into the assaults against the Davidians, the current presidential administration contacted at least one member of the joint subcommittees, Representative Bill Brewster of Oklahoma, and requested that he not ask any questions that might embarrass the administration. The Treasury Department flew to Washington two Texas Rangers scheduled to testify before the subcommittee to help them prepare their testimony. The Justice Department, in concert with the subcommittee

Democrats, brought firearms recovered from the charred Branch Davidian center to Washington to be used as props.

40. During the Plaintiffs' litigation, the U.S. has fought any opportunity for discovery prior to the Court ruling on whether Plaintiffs' case should be transferred to Waco or Plaintiffs' case should be dismissed.

41. The U.S. has "expunge[d] the records" of ATF agents Phil Chojnacki and Charles Sarabyn to remove any "reference to disciplinary actions" against them because of their actions leading up to, during and after the February 28, 1993 ATF assault on the Branch Davidians. This included their failure to properly supervise the assault and deciding to proceed with the assault even after they knew that the element of surprise had been lost.

42. U.S. Officials' actions resulting in the April 19th fire caused the destruction of critical evidence on whether the Davidians or ATF shot first on February 28th; whether the Davidian children were living in unsanitary conditions (one of the alleged reasons for the April 19th assault); and the cause of the fire.

43. U.S. Officials would not provide full information to the Texas Rangers, who were conducting an official investigation into the events from February 28th through April 19, 1993.

44. U.S. Officials ordered the destruction of documents connected with their investigation into the actions of ATF agents Charles Sarabyn and Philip Chojnacki relating to the February 28th assault against the Davidians.

45. U.S. Officials have withheld documents from the public which are relevant to the investigation into the U.S.' assault against the Davidians on February 28th, the Siege of February 28th through April 19th, and the final assault on April 19, 1993.

B. THE *BIVENS*/SECTIONS 1983 AND 1985(3) AND RICO CAUSES OF ACTION

46. The *Bivens*/Sections 1983 and 1985(3) Defendants' acts and omissions described herein constitute the following violations.

47. The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Fourth Amendment to the United States Constitution.

(a) The *Bivens*/Sections 1983 and 1985(3) Defendants used excessive force to search and seize the Decedents and Survivors.

(i) Defendants' acts and omissions constituted a seizure of the Decedents and Survivors

(ii) Defendants acts and omissions constituted excessive force against the Decedents and Survivors in attempting a search and arrest.

(iii) The February 28, 1993, assault constituted excessive force.

(iv) The February 28 through April 19, 1993, siege constituted excessive force.

(v) The April 19, 1993, final assault was excessive force.

(b) The *Bivens*/Sections 1983 and 1985(3) Defendants violated Decedents' and Survivors' Fourth Amendment rights against search and seizure without probable cause.

(i) The search warrant for the Mt. Carmel Church was illegal.

(ii) Arrests of the Decedents and Survivors were illegal.

48. The *Bivens*/Sections 1983 and 1985(3) Defendants violated Fifth Amendment rights.

(a) The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Plaintiffs' due process rights prohibiting the deprivation of life, liberty and property.

(i) The *Bivens*/Sections 1983 and 1985(3) Defendants showed deliberate indifference to the Decedents' and Survivors' physical safety, liberty and property.

(ii) The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Decedents' and Survivors' Fifth Amendment due process rights by placing them in a dangerous situation and then failing to rescue them from it.

(iii) The *Bivens*/Sections 1983 and 1985(3) Defendants violated Decedents' and Survivors' Fifth Amendment due process rights by developing a "special relationship" with the Decedents and Survivors and then failing to fulfill the duty of care, which is part of this relationship.

(b) The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Plaintiffs' Fifth Amendment by interfering with the due process right to court access.

(c) The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Decedents' and Survivors' Fifth Amendment equal protection rights by discriminating against them because of their religious beliefs and association in furtherance of those beliefs.

49. The *Bivens*/Sections 1983 and 1985(3) Defendants violated the Plaintiffs' First Amendment rights.

(a) The *Bivens*/Sections 1983 and 1985(3) Defendants violated Decedents' and Survivors' right to associate and practice religion.

(b) The *Bivens*/Sections 1983 and 1985(3) Defendants violated Plaintiffs' First Amendment right to court access.

50. The *Bivens*/Sections 1983 and 1985(3) and RICO Defendants conspired to violate these constitutional rights.

(a) As alleged in the preceding paragraphs of this complaint, the Defendants unlawfully, willingly, knowingly and intentionally combined, conspired, confederated and agreed with each other, and with others unknown to the Plaintiffs, to commit each act and omission described in this complaint.¹⁵

(b) The ATF Defendants remained intimately involved in the decisions to commit each act and omission described in this complaint, including those regarding the Siege and April 19th final assault.

(c) The Defendants' acts and omissions were unconstitutional and/or committed by unconstitutional means.

(d) The Defendants combined, conspired, confederated and agreed to inflict these unconstitutional acts and omissions against, and thereby injure, the Decedents, Surviving Davidians and Relatives.

¹⁵ The Plaintiffs do not allege that the FBI Defendants or Defendants Reno and Hubbell conspired with the ATF Defendants to commit the acts and omissions committed by the ATF during the February 28th attack because, to the Plaintiffs' knowledge, the FBI, Reno and Hubbell were not involved in the planning or execution of this raid.

(e) Each of these acts and omissions damaged the Decedents, Surviving Davidians and Relatives.

(f) Each of these acts and omissions alleged in this complaint was an overt act in furtherance of this conspiracy.

(g) Each Defendant shared the general conspiratorial objective to commit these acts and omissions.

51. The *Bivens*/Sections 1983 and 1985(3) and RICO Defendants are jointly liable for each other's acts and omissions violating these constitutional rights and violations of RICO.

(a) These Defendants are jointly liable for the unconstitutional or other illegal acts or omissions committed against the Decedents, Surviving Davidians and Relatives, as described in this Complaint, because they were present at the scene of these acts and omissions and did not take reasonable steps to stop these violations.¹⁶

52. These Defendants acted under the color of Texas state law and with assistance from Texas officials, thereby violating 42 U.S.C. § 1983.

(a) These Defendants deprived the Decedents, Surviving Davidians and Relatives of United States Constitutional rights while acting under the color of Texas state law.

(b) These Defendants conspired with state authorities, including officers of the Texas National Guard and engaged the services of state agencies and law

¹⁶ The Plaintiffs do not allege that the FBI Defendants or Defendants Reno and Hubbell are liable for the acts and omissions committed by the ATF Defendants during the February 28th attack and, to the Plaintiffs' knowledge, the FBI, Reno and Hubbell were not involved in the planning or execution of this raid.

enforcement agents to execute the raids on a Mt. Carmel Church. These services include, but are not limited to, the McLennan County Sheriff's Department taking aerial photographs for these Defendants; using a Texas National Guard helicopter to conduct the February 28, 1993, raid; using a Texas National Guard helicopter to undertake aerial surveillance of the Mt. Carmel Church; using a Texas National Guard Drug Support Program and instrumentality of the State of Texas which operates under the color of Texas state law, to take and interpret aerial reconnaissance photographs of the Mt. Carmel Church; and using Texas National Guard tanks, armored personnel carriers, helicopters and personnel during the Siege of, and assaults on, the Mt. Carmel Church. Use of this Texas National Guard equipment was authorized by state officers, including the Texas Adjunct General and Governor.

(c) The ATF Defendants were additionally acting under the color of state law because the affidavit supporting the warrants, which the ATF were attempting to serve on February 28, 1993, contained allegations of crimes under Texas state law and, thus, these Defendants were acting under the color of that Texas law.

53. These Defendants violated RICO.

(a) At all times relevant to Plaintiffs' case, there has been an association-in-fact of officials and employees of the Department of Justice, the Federal Bureau of Investigation, the Bureau of Alcohol Tobacco and Firearms, and officials and employees of other federal and state law enforcement agencies, as well as the agencies themselves, which has had and continues to have as its purposes and goals, among other things, (1) the immobilization, repression and elimination of organizations, groups and individuals whose religious, political and other beliefs, practices and activities they oppose, including

survivalist, as in the shooting by federal agents at Ruby Ridge, and groups they characterize in derogatory terms as cults, including the General Association of the Branch Davidians 7th Day Adventist Church and its members and practitioners, and (2) vindictive and extralegal apprehension, mistreatment, retaliation and punishment in violation of the Constitution and laws of the United States, of organizations, groups and individuals they deem responsible for deaths or injuries to law enforcement officers and employees. The membership of this association-in-fact has changed from time to time and has included the Director of the FBI, high and low level agents, the Attorney General of the United States, members of units such as the Hostage Rescue Team of the FBI, among others. The course of conduct of the association-in-fact has been continuous.

(b) The course of conduct of the association-in-fact described in the foregoing paragraph constitutes a pattern of racketeering within the meaning of Title IX of the Organized Crime Control Act of 1970, Racketeer Influenced and Corrupt Organizations ("RICO"). The association-in-fact described in the foregoing paragraph is an enterprise within the meaning of 18 U.S.C. § 1961(4), affecting interstate and foreign commerce.

(c) The actions of the Defendants described in this complaint are part of the pattern of racketeering activities engaged in by the foregoing enterprise. The Defendants have committed at least two acts of racketeering activity enumerated in 18 U.S.C. § 1961(1)(A) and (B) in the course of the concentrated action and conspiracy against the Branch Davidians of the Seventh Day Adventist Association in Waco, Texas and their church, the Mt. Carmel Church and their members including Plaintiffs, and the cover-up and denial of such illegal and criminal activity, as described herein.

(d) Each of the Defendants committed at least two such racketeering acts, or aided or abetted in their commission or conspired to commit such acts or is otherwise vicariously responsible for their commission.

(e) The Defendants as persons employed by and associated with the aforesaid enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity and conspired to do so in violation of 18 U.S.C. § 1962(c) and (d). Each of the Defendants has manifested by words or actions or both an agreement to participate in the affairs of the enterprise and knowingly participated in the conspiracy and acts made in furtherance of the conspiracy as alleged in this complaint. Defendants agreed to act together and commit the predicate acts alleged, including without limitation the criminal use of deadly force and criminal acts of concealment, destruction of evidence and denial of responsibility as alleged in this complaint, knowing of the conspiracy and knowingly agreeing to participate in violation of 18 U.S.C. § 1962(d).

(f) The Defendants' violations of 18 U.S.C. § 1962(c) and (d) proximately caused deaths, injuries, and damages to the property of Plaintiffs and the Decedents for which Plaintiffs are entitled to recover compensatory and punitive damages.

54. The Relatives have a right to recover against the *Bivens*/Sections 1983 and 1985(3) Defendants.

(a) Pursuant to 42 U.S.C. § 1988, federal constitutional and common law and Texas common and statutory law, the Relatives seek damages for the injuries they have suffered because of the Defendants' acts and omissions against their Decedent relations.

(b) These claims are based in part on federal common law which recognizes that the Relatives have a constitutional right to the preservation of their respective parent/child, spousal and sibling relations and that unconstitutional acts and omissions, such as those committed by the Defendants, destroyed these relations by causing the Decedents' deaths.

(c) These claims are based in part on Texas Civil Practice and Remedies Code § 71.004 and the Texas common law for bystander claims.

C. FTCA CLAIMS

55. The Plaintiffs bring the following claims pursuant to Texas law. The United States is liable for the following claims in the same manner and to the same extent as a private individual under like circumstances. U.S. Officials committed the acts described in this Complaint while engaged in the business, and to further the interests, of the United States government. It was not within the official discretion of these officials to commit these acts because they violated, among other things, the U.S. Constitution, 42 U.S.C. § 1983, 42 U.S.C. § 1985(3), RICO, 18 U.S.C. §§ 4, 241, 242, 1112, 1385, Tex. Penal Code Ann. §§ 19.04 (a), 20.01, 22.01 (Vernon's 1994), ATF and FBI internal rules and policies for the use of force, including deadly force, and statutes.

1. The United States Negligently Carried Out Its Duties to the Decedents, Relatives, and Survivors

56. The United States failed to exercise reasonable care to avoid a foreseeable injury to each Decedent, Relative, and Survivor by committing, among other things, the acts and omissions described in this Complaint.

2. The United States was Grossly Negligent, Deliberately Indifferent and Malicious in Carrying Out Its Duties to the Decedents, Survivors and Relatives

57. The United States grossly negligently, maliciously, knowingly and with deliberate indifference committed the acts and omissions described in this Complaint.

3. The United States Was Negligent Per Se in Carrying Out Its Duties to the Decedents, Survivors and Relatives

58. The United States violated criminal and other statutes, including the Posse Comitatus Act, designed to protect the Decedents, Relatives, and Survivors by committing the acts and omissions described in this Complaint.

59. The Decedents, Relatives, and Survivors were members of a class of persons whom the statutes were designed to protect and violation of the statutes proximately caused their damages.

4. The United States Intentionally Inflicted Emotional Distress on the Decedents, Survivors and Relatives

60. The United States intentionally or recklessly inflicted emotional distress on the Decedents, Relatives, and Survivors by committing the acts and omissions described in this Complaint.

61. The United States' conduct was extreme and outrageous.

62. Each of the United States' acts and omission caused the Decedents, each of the Relatives, and the Survivors severe emotional distress.

5. The United States Violated its Duty Not to Worsen the Situation

63. The United States had a duty not to worsen the situation of the Decedents and Survivors.

64. However, by committing the acts and omissions described in this Complaint, the United States increased the danger for the Decedents and Survivors by creating

dangers of, among other things, fire, falling debris, CS gas and suffocation. The United States created dangers that Decedents and Survivors would be killed by other Davidians or would commit suicide. The U.S. increased the Decedents' and Survivors' vulnerability to private violence beyond the level that vulnerability would have been without the U.S.' acts and omissions. Despite having created and increased the Decedents' and Survivors' danger, the U.S. failed to rescue them from it or even take reasonable steps to rescue them.

6. The United States Created a Special Relationship with the Decedents and Survivors and then Failed to Carry Out Its Duties Under that Relationship

65. The United States created and assumed a special legal relationship with Decedents and Survivors by committing the acts and omissions described in this Complaint which damaged the Decedents' ability to care for themselves.

66. Having damaged the Decedents' and Survivors' ability to care for themselves, the U.S. then subjected them to, among other things, fire, falling debris, CS gas, suffocation, attacks by other Davidians and suicide.

7. The United States Committed Assault and Battery Against the Decedents and Survivors

67. The United States committed assault and battery against the Decedents and Survivors by committing the acts and omissions described in this Complaint.

68. Each of these acts and omissions bodily injured the Decedents and Survivors, threatened these Decedents and Survivors with imminent bodily injury and/or caused physical contact with these Decedents. The U.S. Officials assaulting the

Decedents knew or should have reasonably believed that these Decedents would regard the contact as offensive or provocative.

69. Each of these acts and omissions was committed by U.S. Officials intentionally, knowingly or recklessly.

70. Each of these acts and omissions was committed by U.S. Official with conscious indifference to the consequences of the actions or the rights of others, including the Decedents and Survivors.

71. Each of these acts and omissions constituted negligence *per se* because they violated Texas criminal law designed to protect the Decedents and Survivors.

8. The United States' False Imprisonment of the Decedents and Survivors, including Norman Washington Allison and Rita Riddle

72. The United States falsely imprisoned the Decedents and each Survivor, including Norman Washington Allison and Rita Riddle, by committing the acts and omissions described in this Complaint.

73. Each act and omission was a willful intent by U.S. Officials to confine these Decedents and Survivors without the authority of law and of consent by the party detained.

74. Each act and omission restricted these Decedents and Survivors, so as to substantially interfere with their liberty by confining them through force and intimidation.

75. Each act and omission was wrongful, oppressive and illegal.

76. Each act and omission was by U.S. Officials without an arrest warrant for the Decedents and Survivors.

77. Each act and omission was done by U.S. Officials without proper grounds for a warrantless arrest.

78. Assuming, without admitting, that a valid warrant existed for the detainment of the Decedents and Survivors, the U.S. Officials executed that warrant in an unlawful manner.

79. Assuming, without admitting, that authority existed for a warrantless detainment of the Decedents and Survivors, U.S. Officials executed this authority in an unlawful manner.

80. Each of the acts and omissions constituted negligence *per se* because they violated Texas criminal law designed to protect the Decedents and Survivors.

9. The United States Negligently Caused Injuries to the Decedents, Survivors and Relatives Because They Were Bystanders to the Injuries Inflicted by the United States on Their Close Relations

81. The United States injured the Decedents, Survivors and Relatives, who were bystanders to the U.S.' infliction of injuries on their close relations, by committing the acts and omissions described in this complaint.

82. The Decedents, Survivors and Relatives were near the scene of the injury to their relation, either geographically or visually by television.

83. The Decedents, Survivors and Relatives suffered a shock resulting from a direct emotional impact upon them because of the sensory and contemporaneous observation of the injury to their relation.

84. The Decedents, Survivors and Relatives were close kin to the respective relation.

10. Malicious Prosecution of Norman Washington Allison

85. As alleged in the preceding paragraphs of this Complaint, U.S. Officials interfered with Norman Washington Allison's person by arresting, imprisoning him and then prosecuting him.

86. Norman Washington Allison was subsequently acquitted of the charges for which he was arrested and imprisoned by a jury verdict and a final judgment in *United States of America v. Branch, et al.*, Civil Action No. W-93-CR-046, in the United States District Court for the Western District of Texas, Waco Division.

87. Norman Washington Allison was found innocent of the charges brought against him.

88. The U.S. agents and employees, including employees and agents of the U.S. Attorney's Office for the Western District of Texas, did not honestly and reasonably believe that there were grounds for prosecuting Norman Washington Allison.

89. This prosecution caused scandal, humiliation, vexation, and expense to Norman Washington Allison.

90. The U.S. Officials' actions in prosecuting Norman Washington Allison were done intentionally or with reckless disregard of his rights and in a spirit of conscious indifference as to whether he was injured. Further, these officials were wrongfully motivated in their prosecution of Norman Washington Allison in that they prosecuted him, not because they reasonably believed he was guilty, but because they sought to humiliate and vex him and to punish him simply because he was a member of the Branch Davidian Church.

91. At the time that the prosecution of Norman Washington Allison began, these U.S. Officials did not have probable cause in the existence of facts and circumstances as

would cause a reasonable mind to believe that Norman Washington Allison was guilty for the crime for which he was prosecuted.

92. U.S. Officials also furnished information to law enforcement and prosecution officers which they actually believed was false.

11. Abuse of Process Against Norman Washington Allison

93. As alleged in the preceding paragraphs of this complaint, U.S. Officials prosecuted Norman Washington Allison for an improper purpose, namely, to punish him merely because he was a member of the Branch Davidian Church.

94. As a direct and proximate result of these acts and omissions, the person of Norman Washington Allison was wrongfully interfered with.

12. U.S. Officials Acted in Concert and in the Course and Scope of Their Employment

95. Each U.S. Official who committed the acts and omissions described in this Complaint directed, commanded, advised, procured, instigated, controlled, assisted, encouraged, ratified, authorized and participated in each act and omission.

96. Each U.S. Official who committed these acts and omissions acted within the general scope of his or her employment authority.

13. U.S. Officials Conspired to Commit These Acts and Omissions

97. As alleged in the preceding paragraphs of this Complaint, the U.S. Officials unlawfully, willingly, knowingly and intentionally combined, conspired, confederated and agreed with each other, and with others unknown to the Plaintiffs, to commit each act and omission described in this Complaint.¹⁷

¹⁷ The Plaintiffs do not allege that the FBI Officials or Justice Officials conspired with the ATF Officials or U.S. Treasury Officials to commit the acts and omissions relating to the February 28th assault because, to the Plaintiffs' knowledge, these former officials were not involved in the planning or execution of that assault.

98. The U.S. Officials' acts and omissions were illegal and/or committed by illegal means.

99. The U.S. Officials combined, conspired, confederated and agreed to inflict these unconstitutional acts and omissions against, and thereby injure, the Decedents, Survivors and Relatives.

100. Each of these acts and omissions damaged the Decedents, Survivors and Relatives.

101. Each of these acts and omissions alleged in this Complaint was an overt act in furtherance of this conspiracy.

102. Each Official shared the general conspiratorial objective to commit these acts and omissions.

VIII. DAMAGES

A. PLAINTIFFS WITH CLAIMS AGAINST *BIVENS*, SECTION 1983 AND 1985(3), AND RICO DEFENDANTS

1. Compensatory Damages

a. Compensatory Survival Damages for the Decedents' Estates

1. The Defendants' acts and omissions described herein, terrorized the Decedents from February 28, 1993 until April 19, 1993 and caused the painful deaths of Decedents **Peter Bruce Gent, Peter Hipsman, Perry Jones, Michael Schroeder** and **Jaydean Wendel** on February 28, 1993 and caused the painful deaths of the remaining Decedents on April 19, 1993. These acts and omissions directly and proximately caused the Decedents: (1) loss of the pleasures of living (hedonic damages), (2) physical pain and

suffering, (3) emotional distress and mental anguish, including paralyzing fear and the awareness of their approaching death, and (4) humiliation.

2. The acts and omissions directly and proximately caused the loss of the Decedents' property.

3. Decedents' Estates also have incurred or will incur funeral expenses.

4. Each Estate seeks in compensatory damages for these injuries.

b. Compensatory Personal Injury Damages for Surviving Davidians

5. The acts and omissions, described herein, terrorized and otherwise injured the Surviving Davidians. These acts and omissions directly and proximately caused and/or will cause the Surviving Davidians: (1) physical pain and suffering, (2) emotional distress and mental anguish, including fear of impending death, (3) lost earning capacity, (4) related medical expenses, (5) humiliation, and (6) loss of consortium.

6. These acts and omissions directly and proximately caused the loss of the Surviving Davidians' property.

7. Each Surviving Davidian seeks compensatory damages for these injuries.

c. Compensatory Damages for the Relatives

8. The Defendants' acts and omissions described herein directly and proximately caused and/or will cause the Relatives to suffer (1) physical pain and suffering, (2) mental anguish and emotional distress, (3) loss of society, (4) loss of companionship, (5) loss of financial support they would otherwise have received from their respective Decedent relation, (6) loss of the amount that each Decedent in reasonable probability would have added to his or her estate and left at a natural death to his or her

Relative, (7) lost earning capacity, (8) related medical expenses, and (9) loss of consortium.

9. These Relatives also seek reasonable funeral expenses paid by them.

10. Each Relative seeks compensatory damages for these injuries.

d. Amount of Damages Sought by *Bivens*, §§ 1983 and 1985(3), and RICO Plaintiffs

11. Each Plaintiff seeks compensatory damages of \$5,000,000 except for the following:

(a) Anetta Robinson Richards - \$2,000,000

e. Attorneys' Fees

12. Pursuant to 42 U.S.C. § 1988, the Section 1983 Plaintiffs seek reasonable and necessary attorneys' fees incurred in prosecuting their Section 1983 claims against the Section 1983 Defendants.

2. Exemplary and Punitive Damages

13. The Defendants' violations of the Decedents', Surviving Davidians' and Relatives' U.S. constitutional rights were grossly negligent and reckless and involved an entire want of care. They resulted from conscious indifference to the rights, welfare and safety of the Decedents, Surviving Davidians and Relatives. Alternatively, the Defendants' violations of the Decedents', Surviving Davidians' and Relatives' U.S. constitutional rights were malicious and intentional.

14. The Defendants' attacks on and siege of the Mt. Carmel Church were part of their pattern of abusing the U.S. constitutional rights of religious separatist groups.

15. The Plaintiffs seek total punitive damages of \$500,000,000.

B. FTCA PLAINTIFFS

1. Compensatory Damages

a. Compensatory Damages for the Decedents' Estates', Survivors' and Relatives' Damages

16. The acts and omissions of the Defendant United States, as described herein, terrorized the Decedents from February 28, 1993 until April 19, 1993 and caused the painful deaths of Decedents **Peter Bruce Gent, Peter Hipsman, Michael Schroeder, and Jaydean Wendel** on February 28, 1993 and caused the painful deaths of the remaining Decedents on April 19, 1993. These acts and omissions directly and proximately caused the Decedents: (1) loss of the pleasures of living (hedonic damages), (2) physical pain and suffering, (3) emotional distress and mental anguish, including paralyzing fear and the awareness of their approaching death, and (4) humiliation.

17. The acts and omissions directly and proximately caused the loss of the Decedents' property.

18. Decedents' Estates also have incurred or will incur funeral expenses.

19. Each Estate seeks compensatory damages for these injuries.

20. The United States' acts and omissions described herein directly and proximately caused and/or will cause the Relatives to suffer (1) physical pain and suffering, (2) mental anguish and emotional distress, (3) loss of society, (4) loss of companionship, (5) loss of financial support they would otherwise have received from their respective Decedent relation, (6) loss of the amount that each Decedent in reasonable probability would have added to his or her estate and left at a natural death to his or her Relative, (7) lost earning capacity, and (8) related medical expenses.

21. Each Relative seeks compensatory damages for these injuries.

b. Compensatory Personal Injury Damages for Surviving Davidians

22. The acts and omissions, described herein, terrorized and otherwise injured the Surviving Davidians. These acts and omissions directly and proximately caused and/or will cause the Surviving Davidians: (1) physical pain and suffering, (2) emotional distress and mental anguish, including fear of impending death, (3) lost earning capacity, (4) related medical expenses, (5) humiliation, and (6) loss of consortium.

23. Each Surviving Davidian seeks compensatory damages for these injuries.

c. Amount of Damages Sought by FTCA Plaintiffs

24. Each Plaintiff seeks compensatory damages of \$5,000,000 except for the following:

- (a) Michael Morrison - \$3,000,000
- (b) Norman Allison - \$2,000,000
- (c) Anetta Robinson Richards - \$2,000,000

d. Attorneys' Fees

25. Pursuant to 28 U.S.C. § 2412 (Equal Access to Justice Act), the FTCA Plaintiffs seek reasonable and necessary attorneys' fees for their Texas constitutional tort claims against the United States. Pursuant to the FTCA, this claim for attorneys' fees is limited to 25% of the recovery on these constitutional tort claims.

**IX.
PRAYER FOR RELIEF**

1. The Plaintiffs seek the following relief:

- (1) Compensatory damages as alleged herein;
- (2) Punitive damages as alleged herein;

- (3) Reasonable and necessary attorneys' fees as alleged herein;
- (4) Interest on all damages if and as allowed by federal law and any Texas law which supplements federal law;
- (5) Court costs; and
- (6) Further relief, at law or in equity, to which the Plaintiffs are entitled.

Respectfully submitted,

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