

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

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Clerk, U.S. District Court
By [Signature] Deputy

ISABEL G. ANDRADE, *et al.*

Plaintiffs,

V.

PHILLIP J. CHOJNACKI, *et al.*

Defendants.

§ CIVIL ACTION NO. W-96-CA-139
§ JUDGE WALTER S. SMITH, JR.

§ and consolidated actions:
§ *Holub v. Reno* W-96-CA-140
§ *Ferguson v. Reno* W-96-CA-141
§ *Brown v. U.S.* W-96-CA-142
§ *Riddle v. Reno* W-96-CA-143
§ *Gyarfas v. U.S.* W-96-CA-144
§ *Martin v. U.S.* W-96-CA-145
§ *Holub v. U.S.* W-96-CA-146
§ *Brown v. U.S.* W-96-CA-147
§ *Sylvia v. U.S.* W-96-CA-373

THIRD CONSOLIDATED COMPLAINT

OF COUNSEL:
David E. Warden
SBT No. 20856750
Fed. I.D. No. 1042
Joe Phillips
SBT No. 15933200
Caddell & Warden
1331 Lamar, Suite 1070
Houston, Texas 77010-3027

Michael A. Caddell
SBT No. 03576700
Fed. I.D. No. 7426
Caddell & Warden
1331 Lamar, Suite 1070
Houston, TX 77010-3027
Telephone: (713) 751-0400
Facsimile: (713) 751-0906

ATTORNEY-IN-CHARGE FOR PLAINTIFFS IN
ANDRADE V. CHOJNACKI; RIDDLE V. RENO;
FERGUSON V. RENO; GYARFAS V. U.S.;
MARTIN V. U.S.; SYLVIA V. U.S.

Date: March 13, 1997

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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

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.

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.

1.4 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.

1.5 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.

- 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).

- 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).

- 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).

to 20° F; shining searchlights all night; blaring loud noise, including the screams of rabbits being slaughtered; and tightening the perimeter.

5.17 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.

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

5.19 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.

5.20 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.

5.21 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.

5.22 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.

5.23 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.

5.24 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.

5.25 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.

5.26 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.

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

5.28 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.

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.

7.10 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

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.

7.12 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.

7.13 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.

7.14 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.

7.15 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.

7.16 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.

7.17 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. 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

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

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.

I. 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

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

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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

(1) 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;

(2) 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.