

No. 18-1232

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

Al Zeiny,

Petitioner,

v.

United States of America, Central Intelligence

Agency

Respondents.

**On Petition for Writ of Certiorari
to the United States Court of appeals
for the Ninth District**

**PETITION
FOR WRIT OF
CERTIORARI**

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QUESTION PRESENTED

This case represents a challenge to the liberty and justice values of our nation. Petitioner and plaintiff, "Zeiny", is under represented, pro se, immigrant, Muslim and nobody, and suffers from schizophrenia. His opponent in the case is the mighty Central Intelligence Agency ("CIA") with its well-known powers and unlimited resources. The challenge is whether *Zeiny*'s rights would prevail over the CIA's power.

The case is about the numerous tormenting and harassing acts that rogue individuals from the CIA (hereafter, "CIAA") did to *Zeiny* after he complained about their misconduct to the Congressman Michael Honda in July 2010. Following his complaints, the CIAA started tormenting him and ruining his life. Among others, the CIAA sabotaged two of his employments, career and mental health, and subjected him to a significant number of harassing and tormenting acts (hereafter, "ACTS"¹). The ACTS included a criminal attempt to poison *Zeiny* during his hospital stay by the CIAA's manager. This criminal incident was investigated by the Federal Bureau of Investigations ("FBI") and the manager was arrested, convicted, sent to prison and his wealth was taken.

The CIAA have been under investigation by the FBI for what they have been doing to *Zeiny*. The court of appeals ruled that *Zeiny*'s allegations are not substantial. *Zeiny* contends that most of his

¹ The ACTS are listed in details later in this document. They include a "deal" given to *Zeiny* to relieve himself from the ACTS.

allegations were verified by the FBI.

This case was brought under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§1346(b), 2671-2680. for the infliction of emotional distress on *Zeiny*.

The presented questions are:

1. Was the Court of appeals correct in ignoring the findings by the FBI and deny the substantiality of *Zeiny*'s allegations?
2. Whether *Zeiny*'s complaint satisfied the essential factual elements that would establish substantiality and cross the threshold of the Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) ?
3. Was the court of appeals correct in denying *Zeiny*'s motion to resubmit the petition after adding missing facts? *Zeiny* believes that these missing facts would have affected the outcome of the rehearing petition. *Zeiny* is pro se and suffers from schizoaffective disorder, bipolar type², and is expected to overlook important facts.

² See Appendix D for the latest medical report from *Zeiny*'s psychiatrist.

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(October 22, 2018)

Appendix B: Order on the Appeal.
(June 26, 2018)

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(March 16, 2018)

Appendix D: Medical Report from *Zeiny*'s Current Psychiatrist.
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PETITION FOR A WRIT OF CERTIORARI

Petitioner and plaintiff *Zeiny* respectfully submit this petition for a writ of certiorari.

OPINIONS BELOW

The Court of appeals did not provide any opinion in both ruling on the appeal (Appendix B), and ruling on the petition for rehearing en banc (Appendix A). The opinion and order of the district court is shown in Appendix C.

JURISDICTION

On December 8, 2017, *Zeiny* filed his complaint in the United States district court, the northern district of California, against the CIA and the United States of America (hereafter, “*FDS*”). On February 6, 2018, *FDS* moved the district court to dismiss themselves pursuant to federal rule of civil procedures 12(b)(1), and 12(b)(6), arguing the substantiality doctrine. On March 16, 2018, the district court granted the motion with prejudice and with no leave to amend, which is the subject of the present appeal.

On April 11, 2018, *Zeiny* filed a timely appeal to the ninth circuit court of appeals. On April 16, 2018, *Zeiny* received an order for the consideration of summary disposition and order to show cause. On May 5, 2018, *Zeiny* filed his response to the order to show cause. On June 26, 2018, the court of appeals summarily affirm the district court’s judgement. On August 8, 2018, *Zeiny* submitted a petition for rehearing en banc. The court of appeals changed the rehearing en banc to rehearing without en banc. So, on August 9, 2018, *Zeiny* submitted a petition for the following:

- (1) Change the rehearing petition back into rehearing en banc petition.
- (2) To resubmit the rehearing petition to add missed facts.
- (3) Reconsideration.

On October 22, 2018, the court of appeals ruled to grant the petition to change the rehearing petition into en banc petition, deny the petition to resubmit the rehearing petition after adding missing facts and at the same time deny the reconsideration petition. All were in the same order, see Appendix A.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

I. INTRODUCTION AND BRIEF STATEMENT OF THE CASE

Plaintiff and petitioner *Zeiny* complaint, relevant to this appeal, arises from his allegations that, following a complaint to the Congressman Michael Honda on July 2010, about the misconduct of the *CIAA*, he became a target of nefarious tormenting and harassing acts by them. The *ACTS* included a criminal attempt to poison him in the Santa Clara Valley Medical Center on August 13, 2012.

Zeiny's first complaint to the Congressman included a threat that he received from *CIAA* that if he would complain about their misconduct, then when he travels to visit his family in Egypt, the Egyptian police would capture and torture him and/or members from his family. Following the complaints, the *CIAA* started to conspire with *Zeiny*'s former employer, Areva, to sabotage his employment and career. The plan was to get Areva to terminate him and then the *CIAA* would obstruct his efforts to obtain any other employment. In this way, he would bankrupt and

would have no choice but to return to his national origin (Egypt), or find a job elsewhere outside of the United States. Due to this conspiracy, and for the first time, *Zeiny* was hospitalized in October 2011 for six days due to serious panic attacks.

Upon dismissal from the mental hospital, One member from the *CIAA*, Allauddin Albakri, had a recorded conversation with *Zeiny* and told him that in order to be relieved from *ACTS*, he must withdraw the complaints he made to the office of the congressman Michael Honda and do not make any future complaints to the congressman or elsewhere, shut down his web sites speaking against the *CIAA*'s misconduct, must avoid having a network of friends but can have no more than four friends³, withdraw from all volunteering activities in the Islamic Centers and organizations, and avoid seeking any management or board positions in them. Regretfully, *Zeiny* rejected the deal (hereafter, "*DEAL*"), resumed sending complaints to the FBI and filed legal actions against the *CIAA*. As a result, the *CIAA* subjected *Zeiny* to a significant number of *ACTS* and attempted to poison him. This caused further severe deterioration of his health. The intents were to push him to accept the *DEAL*, or leave the United States. They also wanted to make him an example of what would happen to anyone else in the Muslim community who would dare to stand up against the *CIAA*, and opposes their misconduct and harmful policies.

Due to these nefarious tormenting acts, *Zeiny*'s

³ Later, in the same conversation, Albakri changed the number from four friends to two friends.

mental health deteriorated farther and he developed schizoaffective disorder, bipolar type and anxiety disorder (see Appendix D), and was hospitalized due to serious panic attacks again in August 2012 for three days and in October 2014 for seven days.

Now, after what has been happening to him for the past nine years, *Zeiny* regrets rejecting the *DEAL* and is willing to do anything to relieve himself from *ACTS*, but the new CIA management⁴ does not want to leave him alone. To the date of this document, *Zeiny* is still suffering from *ACTS*, and does not expect any relief whether he continues this legal action or end it. The message he got from the new CIA management, through the *CIAA*, was an arrogant message. It was that “we will get your case thrown out of the court, we will not relieve you from *ACTS* and we will be after you until we send you either to jail for terror charges or underground”.

II. FACTS RELATED TO THE MISSING INFORMATION AND ZEINY'S FAILURE TO CATEGORIZE HIS ALLEGATIONS

A. ZEINY'S MISSING INFORMATION

The district court main argument was that *Zeiny*'s complaint is subject to dismissal under Rule 12(b)(6) because *Zeiny* fails to allege “enough facts to state a claim for relief that is plausible on its face.”, see Appendix C-6. The basis of the argument stated by the district court were:

⁴ After the *CIAA*'s manager was arrested for attempting to poison *Zeiny*, a new management was put in place.

1. *Zeiny* does not offer any particulars as to who the rogue agents are..., see Appendix C-6.
2. *Zeiny*'s claim that he "was told" of CIA involvement but cannot reveal his sources – for fear of blowing their cover – is similarly inadequate. A plaintiff must put forward factual allegations sufficient to "raise a right to relief above the speculative level" such that the claim is "plausible on its face."..., see Appendix C-7.

Indeed, *Zeiny* failed to mention the names of the *CIAA* and the sources of his information. Furthermore, *Zeiny* failed to mention the recorded conversation between him and one of the *CIAA*, Allauddin Albakri, about the *DEAL*. To fix this error, *Zeiny* is including this missing information here. Furthermore, *Zeiny* is including an affidavit from his wife regarding how the *CIAA* affected their life, see Appendix E-2 to E-7.

B. ZEINY'S FAILURE TO CATEGORIZE HIS ALLEGATIONS

Furthermore, in his complaint, *Zeiny* failed to categorize his allegations into allegations based on information and allegations based on *Zeiny*'s inferences, observations, judgments and beliefs. This led to that the district court considered all allegations to be the same in terms of source, and "purely speculative" (see Appendix C-7). To fix this error, *Zeiny* categorized his allegations here.

C. PARTIAL LIST OF THE INDIVIDUALS RESPONSIBLE OF THE NAFARIOUS AND TORMENTING ACTS

Due to *Zeiny*'s complaints about *CIAA* to the FBI, many of them lost their employment and one of them was sent to jail for five years. The listed *CIAA* below is not a complete list. Other *CIAA* individuals cooperated with *CIAA* listed here to torment *Zeiny*. The known *CIAA* who are responsible of *ACTS* and known to *Zeiny* are: Naif Ifeshat, Husam Hammad, Zaki Mousli, Rajai Darwazeh, Amjad Al-Hait, Allauddin Albakri, Salahuddin Albakri, Karen Cornwell, Yacoub El-Ziq, Tarek Jabali, Khalid Elnoaishy, Zahra Billoo, Rachel Roberts, Najam Hai, Monzer Aldimassi, Merriam Kathaleen and the manager of the *CIAA*. Following a federal investigation due to *Zeiny*'s complaints, Rajai Darwazeh went to jail for five years.

D. ZEINY'S SOURCES OF INFORMATION

The district court argued that *Zeiny*'s factual allegations are not sufficient because he did not reveal the sources of his information (see Appendix C-6). *Zeiny* has been receiving information mainly from two individuals. The first one is *Zeiny*'s wife Manal Elgaish-ElZeiny. She joined the CIA clandestine unit in December 2011. The second one is Ahmed Dwidar who has been a covert agent in the same clandestine unit for much longer than *Zeiny*'s wife. Furthermore, *Zeiny* received information directly and indirectly from other members of the CIA clandestine unit during casual talks, conversations and group speeches, in particular from Allauddin Albakri. *Zeiny*'s wife testified to how the CIA tormented them, (see Appendix E-2 to E-4).

III. CATEGORIZED FACTUAL ALLEGATIONS

A. ALLEGATIONS BASED ON INFORMATION

1. The *CIAA*'s manager attempted to poison *Zeiny* during his hospital stay in August 2012. The manager brought an outside physician to prescribe 16 mg of Risperidone to him. Fortunately, it was Ramadan and *Zeiny* was fasting, and did not take this lethal dose. By the time of sunset where *Zeiny* broke his fast, the evening resident physician arrived and reduced the dose to 4 mg. This saved his life, but even this small dose has caused him to be rushed to the emergency room to save his life. This criminal incident was investigated by the FBI and the criminal intent was affirmed. The manager of the *CIAA* was arrested and indicted. He was sentenced to prison and his wealth was taken. Since then, *Zeiny* has been living in fear knowing that the mighty CIA is after his life.
2. The *CIAA* tampered with *Zeiny*'s medications. He received open bottles from different pharmacies that he used to fill his medications at. It happened many times. Usually, if the prescription dose and count of the bottle matches the prescription, then the bottle is given to the patient without opening it. *Zeiny* received containers opened by punching a finger through the bottle inner cover. In almost all of these incidents, the medications would have a chemical that, when interacting with medicine Venlafaxine (Effexor), it generates a drug called Phencyclidine (hereafter, "*PCP*"). *Zeiny* has been taking 300 mg of Venlafaxine daily. The *PCP* resulted into burning sensation in his brain, hands, arms, feet and legs, deprived him from sleep and changed his thoughts. He rushed to the hospital on October 7, 2014, after a panic attack

resulting from the change of his thoughts caused by a high dose of *PCP* that was given to him through food and medications. He stayed in the hospital until October 13, 2014. After that, he rushed to the emergency room about 10 to 12 times following sever *PCP* symptom. In many of these incidents, the drug screening test showed positive *PCP*. To confirm the results, the latest test done on March 16, 2018, was repeated three times, and in all of them, the *PCP* was positive. Furthermore, all results were showing positive Amphetamines, which is a strong stimulant. *Zeiny*'s wife told him that the *CIAA* were behind the *PCP* and the amphetamines because they did not want him to oversleep due to his medications, and if he cuts down the doses of medication and reduce the sleeping time, then the *PCP* and the amphetamines would stop. She also said that the first discovery of the *PCP* the first time was a mistake made by the *CIAA* and should have not happened. In other words, the *CIAA* should have changed the results to show no *PCP*. *Zeiny*'s medications made him sleep for 12-13 hours every day. This fact, among others, would show that he has suffered severe mental damages due to *ACTS* (see the medical report in Appendix D). The *CIAA* wanted to show that he suffered no damages, and he has been energetic and have been sleeping normally. This was the reason that they have resorted to the use of *PCP* and stimulants. *Zeiny* could not decrease the doses and thus, the *PCP* and the stimulants continued. The opened medication bottles that *Zeiny* has been receiving did not stop until he sent a complaint to the FBI. This was an indication that the FBI investigated the matter

and *Zeiny* did not receive any open containers since then. However, the *PCP* and the stimulants continued to be given to *Zeiny* through his food and medications.

3. The *CIAA* made it known to *Zeiny* through his wife that they have no privacy at all in their home, including the bedroom during the times of intimacy. This had dramatic impact on his mental health. It was demeaning and caused him mental anguish and feeling of inferiority.
4. The *CIAA* conspired with *Zeiny*'s employer, Areva, to sabotage his employment. In addition, in April 2014, *Zeiny* attempted to get out of disability and got a job at Enercon, which was an engineering firm located in Parsippany, New Jersey. The *CIAA* conspired with *Zeiny*'s supervisor and senior lead to demean and insult him. The supervisor yelled at him in his first day of employment and sent him an email that had FFF in the subject area and nothing in the body. He was told by his senior leader that he has to beg for his payable hours. The supervisor deprived *Zeiny* from payable hours. Usually, in Enercon, new employees are given two weeks or more of preparation time. *Zeiny* was given seven hours, which is not even one day. He was not told that he has only seven hours of preparation time until the end of the second day, after he already has spent 16 hours of preparation time. In the third day of employment, *Zeiny* was given documents of over one thousand pages and was given only one hour to read them. One of *Zeiny*'s coworkers could not believe what has been happening to him. She couldn't believe that he was given seven hours of preparation time and one hour to complete the reading of these large

documents. This caused him severe suffering and humiliation. As a result, he left his employment after five days, which was the period between April 21-25, 2014. Later, *Zeiny* was told by his wife that the *CIAA* was behind what happened in New Jersey's employment.

5. During the first week of his employment at Enercon, *Zeiny* found a roommate to live with. He moved to her condominium on Sunday night, April 27, 2014, and left on Monday morning. He stayed less than 12 hours before deciding to leave Enercon and return to his home in Saratoga, California. He paid \$1,500 before moving in. The roommate promised to send him a refund. Later, the roommate called *Zeiny* and intentionally talked in a very bizarre manner and said bizarre things to give him clues that the *CIAA* have been behind her refusal to refund the \$1,500. Later, *Zeiny* was told by his wife that the *CIAA* was behind what happened in New Jersey.
6. The *CIAA* isolated *Zeiny* by frightening away his friends in the past and at the present time. Part of the *DEAL*, given to him was that he was allowed up to 2 friends. Since he rejected the deal, he ended up isolated with no friends at all. Friends would make statements to indicate that they are afraid of the *CIAA*, such as, "I have kids and I want to raise them. Who is going to raise them if the CIA caused me to lose my job", "the CIA could send me to prison for long time", "You will get me in trouble with the CIA" ...etc. Many friends avoided *Zeiny* and boycott him.
7. The *CIAA* infiltrated *Zeiny*'s inner peace by planning a stream of bizarre acts to happen every few days in his presence. This prevented *Zeiny*

from forgetting about them and relaxing. In many of these occasions, *Zeiny*'s wife and Mr. Dwidar would tell him that it is a *CIAA*'s act.

8. *Zeiny* is deeply concerned about the threats that he received from one member of the *CIAA*, Tarek Jabali, regarding harming him and his family abroad. The indigenous CIA's agents in Egypt are not controlled by laws. The threats made him afraid of traveling to Egypt to see his family that he has not seen for almost nine years. According to the threats, the *CIAA* would contact the Egyptian national security police to arrest and torture him or his family members mercilessly, and this might cause their death. The Egyptian police has been well known for its brutality. It has been arresting thousands of innocent citizens and torturing them mercilessly, in particular since the Tahrir square revolution in 2011, during the Arab's spring. Many died under torture. It wouldn't have any worries doing the same to *Zeiny* and his family in response to a request from the CIA's indigence agents.
9. To relieve himself from *ACTS*, On October 22, 2014, *Zeiny* withdrew the appeal of his previous case against the *CIAA* from the court of appeals. He was hoping that the *CIAA* would stop *ACTS*, in particular stop giving him the *PCP* and the stimulants. The *CIAA* didn't stop and mocked *Zeiny*. Thus, on November 17, 2014, *Zeiny* reinstated the appeal.

B. ALLEGATIONS BASED ON *ZEINY'S* INFERENCES, OBSERVATIONS, JUDGMENTS AND BELIEFS

1. The CIAA sabotaged *Zeiny*'s lawsuit against the Good Samaritan Hospital, filed in California Supreme Court, by arranging with the judge of the case to dismiss the case after *Zeiny* filed his appeal, and to withhold the hearing transcripts. *Zeiny* complained to the FBI about the situation. In the next day, when *Zeiny* went to the court in person to resolve the situation, he found an FBI agent in the office investigating the matter. Later, *Zeiny* was sent the transcripts and the judge withdrew his order to dismiss the case. The results of the appeal showed that the judge was conspiring with the CIAA. Although *Zeiny* was a self-represented, he still won the appeal because the judgement was so blatantly biased and defective. This was the reason the judge did not want the appeal and dismissed the case after the appeal was filed. He knew that *Zeiny* would win the appeal, which is exactly what happened.
2. The CIAA sabotaged another legal case for *Zeiny*, filed in California Supreme Court as well, against the Santa Clara Valley Medical Center by providing false information to the judge. In the ruling memorandum, the judge made a statement about the FBI that *Zeiny* did not mention in his briefs. In fact, *Zeiny* did not mention the FBI at all. The statement was that *Zeiny* has been accusing the FBI of harming him, which is not true. Actually, *Zeiny* has been very thankful to the FBI for its efforts to help and protect him from the CIAA. Such statements would be against his beliefs. According to the judge's opinion, the claim made in this statement about the FBI, was one of the reasons for dismissing the appeal. It gave the judge the impression that *Zeiny* thinks that

everyone is against him, which would discredit his allegations.

3. The *CIAA* have been altering the results of *Zeiny*'s medical lab reports in a manner that would fit their agenda. They would hide results that might show that they have been giving *Zeiny* stimulants and *PCP*. He received conflicting results and this has hindered the ability of his medical providers from assessing his medical condition. The *CIAA* would write bizarre words in the lab reports to leave clues they were behind these conflicting results.
4. Despite the fact that *Zeiny* sent numerous emails to the FBI complaining about *ACTS*, he didn't see any impact. Later, when he delivered the emails to the FBI in person, he started seeing the ending of some of the *ACTS*. This made *Zeiny* believe that some of the earlier emails might have been blocked from reaching the FBI.
5. The *CIAA* drugged *Zeiny* during his sleep and installed voice transmitters in his ears behind the eardrum without his knowledge. The CIA operatives lifted the eardrum, installed the transmitters and put back the eardrum in its original position. *Zeiny*'s hearing was impacted. It fluctuated from time to time. It fluctuated up to 30-40% of hearing loss. Sometimes, *Zeiny* felt as if he is under water. Air started flowing from his ears when he blows his nose. Frequently, *Zeiny* would here buzzes in his ears resulting from these voice transmitters. These transmitters use what is called biological batteries. It takes advantage of the difference of voltage between two points in the human body to get its needed energy.
6. The *CIAA* gave death threats to *Zeiny* by throwing

headless tortured animals at the entrance of the street where he lives. This happened two times. *Zeiny* lives in a prestigious area in the golden triangle of Saratoga and these things did not happen in the past at all. He believes that it was a death threat from the *CIAA*.

7. The *CIAA* have been behind the destruction of *Zeiny*'s MRI film that showed injuries in the second desk of the neck. Such an injury would demonstrate that he might have tried to hang himself. he believes that he did not try to hang himself, but the *CIAA* destroyed the film anyway.
8. The amount and the dose of medications that *Zeiny* has been taking are so excessive to the level that if they would suddenly stop, his body wouldn't be able to adjust itself to stay alive. If he loses access to his medications for three days, he might die. He is afraid that the Egyptian police or the Egyptian CIA's indigence agents in Egypt might lock him up without access to his medications, and his would end his life in few days without any physical torture.
9. The *CIAA* sabotaged the termite treatment of *Zeiny*'s house. The termite technician behaved in a bizarre manner to give him a clue that the *CIAA* were behind his failure to do the job. *Zeiny* did not watch the termite technician do the treatment. He claimed they did but they did not. Termite showed up right after the treatment, as if no treatment happened at all.
10. The *CIAA* engaged in acts that resulted into identity theft of *Zeiny*. He received phony bills, and unauthorized credit card and bank transactions, and orders that he did not make. After each one of these incidents happen, he closes the credit card

used to make the order and open a new one but the same happened to the new cards.

11. The *CIAA* deleted and tampered with files in *Zeiny*'s personal computer and iPhone, as well as emails. Many files disappeared, emails were deleted, folders were moved, and strange files and emails were added. He is concerned about the *CIAA* adding files and emails that would show that he is a person who harmed or would harm the U.S.

C. ZEINY'S CURRENT MEDICAL CONDITION TESTIFIES TO THE SEVERITY OF THE CIAA'S ACTS

The current medical condition of *Zeiny* would testify to the severity of the *ACTS*. They caused him to develop schizoaffective disorder, bipolar type. He has been in the state of disability since October 2011. He attempted to get back to work once on April 2014 and he could not last more than one week. He had three incidents of suicide ideations due to severe anxiety and panic attacks directly resulting from the *ACTS*. He was hospitalized after each attempt, in October 2011, in August 2012 and in October 2014. *Zeiny* has been taking 600 mg of Lamictal (Lamotrigine), 800 mg of Seroquel (Quetiapine) and 300 mg of Effexor (Venlafaxine) daily. Recently, his psychiatrist increased the dose of the Seroquel to 800 mg, see Appendix D.

The doses of all of these medications are above the maximum safe dose. In addition, he has been taking Vyvanse 40 mg occasionally to be able to function. These heavy doses of medications have significant sedation effects. They have been causing him to sleep about 11-13 hours every day. Recently,

Zeiny tried to UBER and end up having two car accidents. He did not have any car accident before for the last 15 years.

D. MANY OF ZEINY'S ALLEGATIONS WERE INVESTIGATED BY THE FBI

Zeiny received information from his sources mentioned above that the FBI has investigated his allegations, including the *CIAA*-Areva's conspiracy, and affirmed them. Many of the *CIAA* were fired and one of them was sent to jail for five years. The court may contact the FBI for further information. The court should reverse the dismissal of the case and allow *Zeiny* the opportunity of discovering further admissible evidence or at least grant him a leave to amend.

E. ZEINY STATED ENOUGH FACTUAL ALLEGATIONS TO SUPPORT THE CLAIM OF THE INFLECTION OF EMOTIONAL DISTRESS AGAINST THE CIAA

Zeiny has asserted claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, against the CIA. The "United States [is] liable . . . in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674(b). This means that any cause of action asserted against the United States must be a valid cause of action in California. See Conrad v. United States, 447 F.3d 760, 767 (9th Cir. 2006). *Zeiny*'s allegations constituted the elements of inflection of emotional distress, which is actionable in California. Although evidence is not required at this stage of

pleading, yet he submitted a considerable number of emails, letters, affidavits and a recorded conversation about the *DEAL* to prove his allegations.

F. THE CIAA HAS BEEN ATTEMPTING TO GET AWAY WITH ITS ACTS BY SHIFTING THE ATTENTION TO ITS ALLEGATION THAT ZEINY IS A TERROR SUSPECT.

In order to shift the attention away from their crimes and deprive *Zeiny* from his legal rights and getting a restraining order against them, the *CIAA* have been accusing him that he is a person who harmed or would harm the U.S. To build a case against him, the *CIAA* has been dissecting his life fishing for negatives. Then, the *CIAA* would add one plus one and make 200 out of them. In other words, they have been trying to add crumbs together and make a bite out of them. The *CIAA* focused on what could appear to be negatives and ignore the rest of his life. They ignore the overwhelming media, facts and the evidence that show how moderate he has been in all of his life.

Although the *CIAA* has been accusing *Zeiny* that he is a person who would harm the U.S., he is proud to say that he is among the ones who benefited the U.S. the most⁵. He has four grown up children that were born and raised in the U.S., and hundreds of students that he taught in universities and in Sunday schools around the nation. All of his students and his children came out to be moderate Muslims. The *Zeiny* family has been committed to the prosperity of the

⁵ See *Zeiny*'s detailed resume at <http://Zeiny.net>

U.S.

Zeiny came to the United States in 1991 as a graduate student to get his Ph.D. in Civil Engineering. Upon finishing his graduate degree, he worked in the academia for about nine years to teach civil engineering to young Americans, and worked in the civil engineering industry to design building and non-building structures. Since his arrival to the San Francisco bay area in 2009, He has been teaching Islam to the young American Muslim students in the weekend Islamic school on Sunday. He taught Arabic, Quran and Islamic studies. His classes are posted online⁶. The site also includes audio recordings of the classes he thought as well.

Zeiny has been a peace activist between the years of 1999 to 2005. He has been speaking truth to power. He has been vocal in criticizing wars and violence. As a result, he made harsh speeches as part of his efforts to speak truth to power. He received information that the CIAA has been trying to take speeches out of context and use them against him. His intention was to speak truth to power. He believed that in the U.S., he should be able to speak his mind without the fear of getting punished for what he says. He also believed that the ones who love their country more should be the ones who speak truth to power because their speeches may back fire on them and they may get in trouble, like what happen to him. At the end, he has been exercising his first amendment right of freedom of speech.

Zeiny has four grown up children⁷ that were

⁶ See <http://wischool.net>

⁷ Zeiny published YouTube videos about memories for him and

born and raised in the U.S. They are moderate in their views and loyal to their country. They are two computer science boys, one girl doing data science in the University of California, Berkeley, and the youngest one is a senior girl in Saratoga high school. *Zeiny*'s children provided affidavits about their father. His wife also provided an affidavit about him (see Appendix E). His wife mentions the effect of the *CIAA* in their lives in her affidavit.

The *CIAA* started targeting *Zeiny* since 2010 after he filed the complaints to the office of Congressman Michael Honda and they got caught sabotaging his employment and tormenting him by the FBI. One wonders how come all the issues brought up by the *CIAA* against *Zeiny* did not show up until after he started complaining about them.

IV. REASONS THAT NECESSITATE GRANTING OF THE PETITION FOR WRIT OF CERTIORARI

A. A CHANCE FOR *ZEINY* TO CORRECT HIS ERRORS

The district court basis for its judgment was that *Zeiny* failed to mention the names of the *CIAA* and the sources of his information, see Appendix C-6, C-7. In his complaint, *Zeiny* did not provide this information. Furthermore, *Zeiny* overlooked facts crucial to the case, such as the *DEAL*. *Zeiny* is a pro se and schizophrenic, and failures would be expected. To fix his failures, *Zeiny* petitioned the court of

appeals to allow him to resubmit his petition requesting the reconsideration of the court decision to grant the summary disposition of the appeal but the petition was denied and the reconsideration was also denied.

B. INSUBSTANTIALITY DISMISSALS SHOULD BE APPLIED ONLY IN EXTRAORDINARY CIRCUMSTANCES

“The Rule 12(b)(1) ‘substantiality’ doctrine is, as a general matter, reserved for complaints resting on truly fanciful factual allegations. (citation)”. Best v. Kelly, 39 F.3d 328, 331 (D.C. Cir. 1994). “[T]he Court has made clear that only the most extreme cases will fail the jurisdictional test of substantiality LaSalle Nat. Trust, N.A. v. ECM Motor Co., 76 F.3d 140, 143 (7th Cir. 1996).

In Ord v. D.C., 587 F.3d 1136, 1144 (D.C. Cir. 2009), the court held that

To warrant dismissal for insubstantiality, “claims [must] be flimsier than ‘doubtful or questionable’—they must be ‘essentially fictitious.’” Citation (quoting citation) (finding claim sufficiently substantial where plaintiffs had not “suggested any bizarre conspiracy theories, any fantastic government manipulations of their will or mind, any sort of supernatural intervention”)

Zeiny’s complaint did not suggest any bizarre conspiracy theories, any fantastic government manipulations of *Zeiny*’s will or mind, or any sort of supernatural intervention. In addition, doubtful or

questionable merits does not render *Zeiny*'s claims insubstantial. In Ricketts v. Midwest Nat. Bank, 874 F.2d 1177, 1182 (7th Cir. 1989), the court held that

By its own terms, the standard for dismissal is a rigorous one. (citations). The Supreme Court has repeatedly employed exacting adjectives to define the degree of insubstantiality required before a case is to be dismissed on these grounds—a claim must be “wholly,” “obviously,” or “plainly” insubstantial or frivolous; it must be “absolutely devoid of merit” or “no longer open to discussion.” (citations) As these adjectives imply, insubstantiality dismissals should be applied only in extraordinary circumstances. “[I]f there is any foundation of plausibility to the federal claim federal jurisdiction exists ... Jurisdiction is not lost because the court ultimately concludes that the federal claim is without merit.”(citation)

C. THE NEED FOR NATIONAL UNIFORMITY REGARDING THE THRESHOLD OF DISMISSAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1) AND 12(B)(6), AND THE DENIAL OF A LEAVE TO AMEND

Zeiny submitted a considerable number of factual allegations backed up with a considerable amount of evidence that span many years. The court of appeals should have been able to find at least few plausible factual allegations among them. It can't be that all *Zeiny*'s allegations are unbelievable.

Furthermore, how could *Zeiny*'s allegations be implausible if many of them have been verified by the FBI.

D. CONFLICT WITH RULINGS OF OTHER SIMILAR CASES

Zeiny contends that the ruling in this case is in direct conflict with the decision made by Seventh Circuit Court of appeals in Loubser v. Thacker, 440 F.3d 439 (2006), the decision made in Glickman v United States (1985, SD NY) 626 F Supp 171, and the standards set by Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) (hereafter, "*Twombly*"). In addition, although *Iqbal* came after to heighten the pleading standards, yet *Zeiny*'s pleadings far exceeded the threshold set by *Iqbal*.

E. COFLICT WITH *TWOMBLY*'S BOTH TYPES OF IMPLAUSIBILITY

In *Twombly*, Justice Souter introduced a new, two-step method to determine Plausibility. District courts should first carefully examine the complaint to smoke out any "merely legal conclusions resting on the prior [factual] allegations." Id at 564. Once that step is complete, district courts should weigh the remaining facts and determine if they are sufficient o "nudge [the] claims across the line from conceivable to plausible. Id at 570. So long as plaintiffs cross that threshold, their suits may proceed. Id. The term plausibility refers to two kinds: factual plausibility and legal plausibility. Under a factual plausibility test, courts would simply ask whether the conduct alleged was likely to have occurred at all. For

example, a court testing *Twombly*'s complaint for factual plausibility would ask whether an antitrust conspiracy actually existed. By contrast, courts reviewing for legal plausibility would inquire whether the facts alleged in the complaint describe illegal conduct. Thus, a court reviewing *Twombly*'s complaint would determine if the alleged conduct amounted to an illegal agreement.

The Court made clear that *Twombly* did not unsettle the well-established practice of taking all facts in the complaint as true, however "doubtful in fact." *Id.* at 555 Skepticism about whether the alleged conduct had actually occurred could therefore not justify dismissal of a complaint. Instead, the court instructed lower courts to ask whether the facts alleged in the complaint actually constitute illegal conduct (*emphasis added.*) *Id.* at 564-70.

F. CONFLICT WITH *IQBAL*

In *Iqbal*, the court panel unanimously agreed that the factual, "it didn't happen" type of implausibility could not support 12(b)(6) relief, and would not in *Iqbal*. Justice Kennedy made clear that the Court did not reject any of *Iqbal*'s claims on the ground that they were "extravagantly fanciful," *Iqbal*, 129 S. Ct. at 1951. or "unrealistic or nonsensical." *Id.* Justice Souter put it more firmly: "no matter how skeptical the court may be, . . . 'Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations. (*emphasis added*)'" *Id.* at 1959. Justice Souter noted, the "exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it:

claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel. (*emphasis added*)" *Id.* at 1959. The court panel unanimously agreed on how a complaint should be read and evaluated after *Twombly*: courts should discount any purely conclusory allegations and then weigh the remaining facts for "plausibility." *Id.* at 1950.

Similarly, *Zeiny*'s allegations should not be dismissed based on the court's disbelief of the complaint's factual allegations. In addition, he did not make conclusory allegations and his allegations are way far more realistic from the "little green men or recent trips to Pluto" allegations. Furthermore, most of his allegations were verified by the FBI.

G. CONFLICT WITH *LOUBSER V. THACKER*

The Seventh Circuit Court of appeals case, *Loubser v. Thacker et al.*, decided March 8, 2006, involved a civil rights suit under 42 U.S.C. § 1983 against more than forty individuals who she alleged conspired to defraud her by corrupting her divorce (judicial) proceedings, which included various attorneys and the judge and resulting in the deprivation of her civil rights. The Appellate Court found that the District Court dismissal of her lawsuit with prejudice after amending her Complaint twice, constituted prejudicial error and reversed. Plaintiff *Loubser* represented herself in a 71-page complaint divided into 115 paragraphs, somewhat disorganized and repetitious, having a paranoid quality, with some of the allegations bordering on, perhaps crossing over into, the fantastic, on a conspiracy theory spanning over three years, involving a couple of judges, and

couple of attorneys, and a court reporter. The Court stated, "It is highly improbable that the suit has any merit, but the allegations are not so fantastic that the suit can be dismissed out of hand, as being obviously frivolous."

H. CONFLICT WITH *GLICKMAN V. UNITED STATES*

In Glickman v United States (1985, SD NY) 626 F Supp 171, the court denied a motion to dismiss for allegations that the CIA had a program, called first "Bluebird" and later "MKULTRA," to test experimental drugs on citizens without their knowledge. The recipient, pursuing a promising art career in Paris, met some federal governmental agents who insisted on buying him a drink, in spite of his repeated refusals; he agreed to have a cordial; they put LSD into it; he experienced distortions of his mind, including a sense of unusual powers, a warping of distance, a melding of colors, and difficulty in speech. Unknown agents from the CIA were named among defendants.

I. FUTILITY STANDARD

The United States Court of appeals for the Fifth Circuit has interpreted "futility" in the context of Rule 15 to mean that "the amended complaint would fail to state a claim upon which relief could be granted." Stripling v. Jordan Prod. Co., 234 F.3d 863, 873 (5th Cir. 2000). To determine futility, the Court must apply the same standard as applies under FRCP 12(b)(6). See id. And, while the general rule is that the Court should not dismiss a complaint for failure to state a

claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend, the Court “need not permit futile amendments.” LaCroix v. Marshall Cnty., Miss., 409 F.App’x 794, 802 (5th Cir. 2011).

The Court of appeals affirmed the dismissal of *Zeiny*’s case without a leave to amend and indicated that amendment would have been futile. The contiguous wrong would at least make him entitled for a leave to amend to include other evidence and facts that were discovered after he filed his complaint in March 2013, as well as include the names of the *CIAA* elements among the list of defendants. To the date of this document, the *CIAA*’s *ACTS* did not stop.

J. ZEINY'S ALLEGATIONS ARE DETAILED, FAR MORE REALISTIC, VERIFIED BY THE FBI AND BACKED UP WITH A CONSIDERABLE AMOUNT OF EVIDENCE

1. *Zeiny*’s allegations were verified by the FBI.
2. *Zeiny*’s allegations are far more realistic than the conspiracy alleged in Lobser v. Thacker et al., and the MKULTRA allegations in Glickman v United States.
3. *Zeiny*’s allegations are rich of facts and are not “bare assertions” or purely conclusory allegations either.
4. *Zeiny*’s allegations are not thread are recitals of the elements of a cause of action, supported by mere conclusory statements.
5. The tormenting acts by the CIA are still happening. *Zeiny* presented the factual allegations up to December of 2017. If he is granted a leave to amend, he will be able to add the factual allegations since then.

K. THE PRINCIPLE WELL ESTABLISHED BY JUSTICE BRANDEIS

The words of Justice Louis Brandeis "Decency, security and liberty alike demand that government officials shall be subjected to the rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law, it invites every man to come a law unto himself. It invites anarchy". (United States v. Olmstead, 277 U.S. 438 (1928)).

The CIA has power and *Zeiny* has rights. If *Zeiny*'s claims are dismissed then power has prevailed over rights, and this would conflict with the well-established standard that U.S. is the land of "one Nation under God, Indivisible, with Liberty and Justice for All".

V. CONCLUSION

The petition for writ of certiorari should be granted to allow *Zeiny* to proceed to discovery, or at least grant him a leave to amend to correct his errors.

Dated 14th day of January 2017.

//s/ Al *Zeiny*
Al *Zeiny*, Ph.D