No. _____

IN THE

Supreme Court of the United States

William Henry Starrett, JR.
Petitioner,

v.

Lockheed Martin Corporation et al.,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

William Henry Starrett, JR.
Petitioner Plaintiff-Appellant

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QUESTIONS PRESENTED

1. Did the Fifth Circuit err in affirming a district court's conclusion that service of process by Certified Mail — a summons with a copy of the complaint as delivered by an employee or agent of the United States Postal Service — is insufficient under Federal Rules of Civil Procedure?

2. Did the Fifth Circuit err in affirming a district court's conclusion that claims arising out of intentional inflictions of emotional distress, invasions of privacy, forced involvement, thefts, appropriations, and conversions comprising civil statutory causes of action, civil tort causes of action, civil liability and negligence causes of action, and deprivations of rights as guaranteed by the Constitution and laws of the United States and the state of Texas were too "patently frivolous" for a federal court to assert subject matter jurisdiction?

PARTIES TO THE PETITION

Petitioner in this Court, plaintiff-appellant William Henry Starrett, Jr., was Plaintiff in the district court and an appellant before the Fifth Circuit. Below, he will be referred to as "STARRETT" or "Plaintiff."

Respondents, defendants-appellees, having appearance made in the district court and Fifth Circuit proceedings, are:

Defendants United States Department of Defense and United States Department of Energy with their units including Defendants United States Army, United States Army Special Operations Command, United States Army Civil Affairs and Psychological Operations Command, United States Army Reserve Command, United States Special Operations Command, National Nuclear Security Administration, and Defense Advanced Research Projects Agency with these nine collectively referred to as "Federal Defendants."

Defendant Texas Military Department may be referred to as "TXMIL."

Lockheed Martin Corporation may be referred to as "Lockheed Martin." Lawrence Livermore National Security, LLC. as "LLNL," and Sandia Corporation as "SANDIA."

Defendant named in the district court and not having an appearance made in the district court proceedings or in the Fifth Circuit, Microsoft Corporation, may be referred to as "MICROSOFT."

The thirteen Defendant parties having appearance made in the district court and Fifth Circuit proceedings may collectively be referred to as "Defendants" where none specified.

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PETITION FOR A WRIT OF CERTIORARI

William Henry Starrett, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Fifth Circuit is reported at *Starrett v. Lockheed Martin Corporation et al.* (5th Cir. 2018) and is reproduced in Petitioner's Appendix (Pet. App. 1a). The Fifth Circuit's order denying rehearing en banc (Pet. App. 33a) is unreported.

The district court's 2017 through 2018 orders are reported from Starrett v. Lockheed Martin Corporation et al., No. 3:17-CV-00988-D (N.D. Texas).

Additional relevant orders and conclusions have been reproduced below in Petitioner's Appendix chronologically into the past (Pet. App. 6a-32a).

JURISDICTION

The judgment of the court of appeals was issued on August 23, 2018. (Pet. App. 4a). The order denying a timely petition for rehearing en banc was entered on September 20, 2018. (Pet. App. 33a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RULES OF CIVIL PROCEDURE INVOLVED

Federal Rules of Civil Procedure Rule 4(c) prescribes:

> (1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.
>
> (2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

Federal Rules of Civil Procedure Rule 8 provides:

> (a) Claim for Relief. A pleading that states a claim for relief must contain:
>
> > (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
> >
> > (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
> >
> > (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Federal Rules of Civil Procedure Rule 83 provides: "Procedure When There Is No Controlling Law. A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement."

Each of the foregoing rules were effective Dec 1, 2016.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution guarantees: "Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances."

The Fifth Amendment to the United States Constitution provides: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment to the United States Constitution imparts: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ..."

The Fourteenth Amendment to the United States Constitution provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This civil action involves emerging technologies that combine satellite-based or satellite-relayed tracking, surveillance, communications, and weapons systems that, in major part, remotely analyze biological systems data to offer capability for interacting with or maintaining communications with a human subject who may not also be equipped in their proximity with instance-related technology for receiving and transmitting audio and visual information.

The unprecedented nature of use employing these combined systems relies upon the remote collection and mass retention of various categories of data related to one's person and their proximity — remotely sampled then measured, correlated, and modeled using artificial intelligence machine learning tasks in real time.

At issue in Plaintiff's Complaint, in addition to outcomes including harm and Plaintiff's initial effort to finally end his unconsented involvement and recover from actual and potential injury and loss, are how said systems and software programs, and components of thereto, are being issued, received, operated, and maintained in the absence of prudent and lawful guidance.

Since at least November 8, 2015, the involvement of Plaintiff's person and property has been remotely required, against his protests and denial of consent, in trainings, operations, research, and development led by groups of

individuals identifying themselves as Defendant U.S. Department of Defense units including Defendant U.S. Army Psychological Operations staff, Defendant U.S. Special Operations Command personnel, and employees of at least one contractor including Defendant Lockheed Martin Corporation for efforts employing and furthering these U.S. Department of Energy (also through and in coordination with other Defendants) provided research and technologies as categorically available under statute[1] and known to U.S. Department of Justice units and their agents.

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[1] Any raw data collected during military trainings and any derivative product from such as obtained through remote monitoring using relevant systems, including but not limited to representations of a human subject's intellectual property, behavioral and location data, and private information, are private property also modernly having intrinsic commercial value but may be available to civilian law enforcement officials under 10 U.S.C. § 271 once taken for public use. All military equipment, including components to these tracking, surveillance, communications, and weapons systems may be made available to local, state, and federal civilian law enforcement under 10 U.S.C. § 272. While next-era tracking for systems components used in the testing, training, operations, research, and development involving Plaintiff is enabled by artificial satellites in geocentric orbit without the attachment of a device to a target, the placement of a Global Positioning System tracking device on a suspect's car and using that device for monitoring the vehicle's movements has been determined by this Court to constitute a search under the Fourth Amendment. See *United States v. Jones*, 565 U.S. 400 (2012).

On April 7, 2017, Plaintiff brought forth a civil action against the foregoing Defendants to obtain relief from intentional inflictions of emotional distress, invasions of privacy, forced involvement, and conversions requiring Plaintiff to advise, consult, supply intellectual property without license, endure expense, injury, and loss, and go without opportunity or compensation.

Plaintiff's April 2017 Complaint of one hundred and forty-nine (149) pages stated seventy-three (73) Claims comprising civil statutory causes of action, civil tort causes of action, civil liability and negligence causes of action, and violations of Amendments One, Three, Four, Five, Six, Eight, Thirteen, and Fourteen to The United States Constitution; 42 U.S.C. § 1983; 42 U.S.C. § 1985; and 42 U.S.C. § 14141, under law of agency or the Doctrines of Respondeat Superior or Command Responsibility each where so applicable, seeking declaratory and injunctive relief and award for damages and deprivation of rights, actual and imminent, as guaranteed by the Constitution and laws of the United States and the state of Texas.

Each of the successfully stated seventy-three (73) claims upon which relief can and should be granted – each conforming to FED. R. CIV. P. 8(a) and then with detail sufficient to create reasonable expectation that discovery would surface additional evidence of wrongdoing – were all fully supported by a total of seven hundred and thirty-one (731) paragraphs, including factual allegations apart from legal theory, prior to its requests for relief.

Service of process upon each Defendant party was made, according to record provided by the United States Postal Service, by an authorized postal carrier or other non-party who was either retrieving, delivering, or presenting Certified Mail.

Defendants, with Defendants Microsoft Corporation and Texas Military Department in absentia, all eventually filed motions to dismiss under FED. R. CIV. P. 12(b)(1), 12(b)(4), 12(b)(5), and 12(b)(6) by June 12, 2017.

On July 17, 2017, the district court ordered that Plaintiff demonstrate good cause for "failing to effect service on defendants Texas Military Department and Microsoft Corporation." On July 18, 2017, Plaintiff's reply showed that, for both Defendants, process was delivered to an agent by a non-party who was either retrieving, delivering, or presenting Certified Mail in accordance with FED. R. CIV. P. 4. On August 1, 2017, the district court ordered, while also seemingly blending meanings between the effectuation of and the making of service, that "Plaintiff must therefore deliver the summons and complaint to someone else — a person who is at least 18 years old and not a party to this lawsuit — who can then effect service by mail on the defendant in question and make proof of service." See Pet. App. 30a. Plaintiff motioned for reconsideration or clarification and guidance on August 7, 2017 as he had followed the instructions set forth in the district court's "Pro Se Handbook." The district court denied his motion but provided that the *Pro Se Handbook for Civil Suits* (the publication of the Clerk's Office that had been

last revised on September 13, 2010 and was being referred to by Plaintiff in his motion) was being clarified "concerning who can effect service" with both the 2010 and 2017 revisions of instructions describing means and method, in compliance with FED. R. CIV. P. 4, that had been initially employed by Plaintiff in April.

On July 24, 2017, Plaintiff filed his first Emergency Motion for Temporary Restraining Order and Preliminary Injunction. Among updates to matters and other evidence, Plaintiff demonstrated that twice since August 2016, upon notification, Defendant U.S. Department of Defense's Office of the Inspector General: a) admitted having knowledge and awareness of its units' conduct involving Plaintiff and use of these systems; b) indicated confirmed acknowledgment of the past and ongoing conduct and use of these systems; and c) affirmed its breach of duty and its not exercising due care also by not investigating (if not also affirming their specific intent to materially contribute, facilitate, or directly infringe upon or deprive Plaintiff of his rights in their sponsoring, continuing, or allowing these communicated harms against Plaintiff) because it internally determined that the activities do not concern a violation of federal law or regulation within the Department of Defense's investigative purview. The same afternoon, the district court denied Plaintiff's motion for a temporary restraining order and scheduled application for a preliminary injunction provided that Plaintiff file more documents. With Plaintiff's Motion to Compel Discovery Response from Defendants approximately three weeks

outstanding, a later November 22, 2017 order reported the district court's "removing preliminary injunction application from internal calendar."

On August 16, 2017, Plaintiff entered requests for Clerk to issue Entry of Default for Defendants Texas Military Department and Microsoft Corporation pursuant to FED. R. CIV. P. 55(a). Docket entry 54 was made within minutes: "The Clerk declines to enter default at this time. (ran) (Entered 08/16/2017)."

On August 16, 2017, United States Magistrate Judge Stickney filed the first findings, conclusions, and recommendations but exclusive to the May 2017 motions to dismiss filed by Defendants SANDIA and LLNL and without regard to outstanding motions to dismiss as filed by remaining Defendants. See Pet. App. 24a.

On August 23, 2017, exactly one hundred and thirty-four (134) days after its Office of the General Counsel or its agent had been served (by a non-party either retrieving, delivering, or presenting Certified Mail), Defendant TXMIL eventually appeared with the Texas Attorney General's office filing its motion to dismiss under FED. R. CIV. P. 12(b)(1), 12(b)(5), and 12(b)(6) on its behalf. The motion was addressed directly to the foregoing first magistrate judge to whom order of reference requesting recommendation on outstanding motions to dismiss had been made.

On September 5, 2017, Defendant Microsoft Corporation, instead of being entered into default, was ordered by the district judge to be

terminated from this action with Plaintiff being accused, by the district court, of failing to comply with Federal Rules of Civil Procedure and the foregoing August 1, 2017 Order for additional service of process upon said Defendant. See Pet. App. 22a.

On August 1, 2017, the district court provided the Scheduling Order with May 18, 2018 designated as the deadline for completing discovery. On September 5, 2017, Plaintiff's First Combined Discovery was submitted to all Defendants that had appeared.

On September 19, 2017, the initial April 2017 proper and valid service of process upon Defendants SANDIA and LLNL had been quashed based on Magistrate Judge Stickney's August 16, 2017 recommendation. See Pet. App. 20a. Pursuant to the district court's September 19, 2017 Order and its prior guidance relative to a surrogate being required for its dispatchment, Plaintiff's second service of process upon each Defendant SANDIA and LLNL was properly and sufficiently effectuated on or before October 10, 2017 with effort to coordinate such with said Defendant's shared attorney of record.

By November 1, 2017, through corresponding attorneys of record, all Defendants had either not fully cooperated in discovery, had not responded, or had indicated their unwavering objection to each of Plaintiff's every discovery request.

Eventually, on November 3, 2017, Plaintiff filed his Motion to Compel Discovery Response From Defendants with argument relating, in part, how each of the foregoing remaining

Defendants have duty pertaining to items (and any data contained therein) having any association relative to Plaintiff to be specified accordingly under constitutional and statutory law.

In Plaintiff's November 3, 2017 Motion to Compel, Plaintiff maintained that, pursuant to FED. R. CIV. P. 26 and lawful governance, in regard to each of the one or more discoverable items (and any contents or data contained therein) being withheld from disclosure or production under claim of privilege or of being subject to protection, Defendants, under oath, must describe: a) the nature of; b) its origin; c) the history of custody; d) how custody was obtained; e) what statutes these one or more items (or any data contained therein) are allegedly protected by (where applicable); and f) how these one or more items (and any contents or data contained therein) were allegedly brought under such protection.

Plaintiff also offered that, in and with the foregoing descriptions of nature, origin, history, and custody as should be provided under oath pursuant to Federal Rules of Civil Procedure and lawful governance, the discoverable items for which protection is sought by Defendants (and any contents or data contained therein) where having any associations relative to Plaintiff or his Claims in this action (or most apparently including any associations relative to him, his person, his contribution, or his tangible or intangible property and any derivatives — all here as "Plaintiff"), may each be most properly designated under one or more of the following

primary categories:

a) Origin of: Plaintiff being the direct or proximate origin of or Plaintiff having had influence upon item (or any contents or data contained therein) — from Defendants' allegedly lawful, unlawful, warranted, unwarranted, legal, illegal, authorized, or unauthorized access, use, consumptions, takings, appropriations, or other factors requiring Plaintiff's contribution (nonconsenting or otherwise);

b) Exposure to: Plaintiff having had direct or proximate exposure to — through Defendants' allegedly lawful, unlawful, warranted, unwarranted, legal, or illegal engagement, involvement, participation, or any factors requiring Plaintiff's contribution (nonconsenting or otherwise);

c) Depicted: Plaintiff being depicted — by representation, relationship, or through any association of graphically, textually, numerically, symbolically, sequentially, or conceptually formatted data; and

d) Referenced: Plaintiff being related to or with — by any reference with zero, one, or more other units or models similarly associated or otherwise depicted electronically, visually, graphically, programmatically, computationally, or as data.

Plaintiff's foregoing November Motion to Compel remained outstanding until March 2018, eventually denied as detailed below, with conduct

and conditions as complained of still continuing.

On February 6, 2018, in his second Motion for a Temporary Restraining Order and Preliminary Injunction, Plaintiff again supported how Defendant United States Department of Defense's Office of the Inspector General acknowledged past and ongoing conduct and affirmed its breach of duty upon two of the prior notifications provided to its office by Plaintiff.

Plaintiff also included his police report that reviewed the disconcerting November 7, 2017 direct and proximate conduct demonstrated by a pair of individuals who identified themselves as members of U.S. Department of Justice investigative units in relation to their unscheduled visit to his home.

It was demanded by that day's visitors that Plaintiff agree to never again attempt contact with an individual, a police officer in a nearby community and a career Army Psychological Operations leader, who was named in court documents and is a potential witness to the still ongoing trainings, operations, research, and development requiring Plaintiff's involvement.

As Plaintiff argued in the foregoing February 2018 motion for injunctive relief that was denied that afternoon: the U.S. Department of Justice investigations units responsible as federal civil authority for investigating these wrongs on behalf of their U.S. Department of Justice legal practitioner counterparts — both together responsible for eventually prosecuting against and currently defending federal government agents in this action — benefit from these

military tracking and electronic surveillance systems under statute, in part or in whole, and hold interest in the unchallenged use and continued development of supporting technologies involving Plaintiff. These inherently practicable conflicts of interest also hold the potential to generate additional conditions and conduct, harmful against Plaintiff and possibly others, if continued to be left unnoted by the Court.

The district court dismissed Defendants SANDIA and LLNL on March 2, 2018 on stated grounds related to the effectuation of the second service of process. See Pet. App. 19a.

On March 9, 2018, Plaintiff's November 3, 2017 Motion to Compel Discovery Response from Defendants was denied by United States Magistrate Judge Rutherford who, on that date, also filed the second findings, conclusions, and recommendation related to Defendants' 2017 remaining motions to dismiss.

On March 9, 2018, Plaintiff's November 3, 2017 Motion to Compel Discovery Response from Defendants was denied.

The district court dismissed Plaintiff's Claims as to Defendants Lockheed Martin, TXMIL, and Federal Defendants after adopting the second magistrate's March 9, 2018 findings, conclusions, and recommendation related to Defendants' 2017 motions to dismiss on March 19, 2018. See Pet. App. 6a.

In the March 9, 2018 entry of conclusions, the second magistrate judge filed recommendation: 1)

Plaintiff's April 2017 initial service of process upon Defendants Lockheed Martin and TXMIL should be quashed and both Defendants should be dismissed; and, 2) "Plaintiff's claims are patently frivolous and should be dismissed for lack of subject matter jurisdiction," with the alternative, "the Court concludes that the facts set forth in the Complaint are clearly baseless because they are fanciful, fantastic, or delusional. Plaintiff has therefore failed to state a claim for relief against any of the defendants, and his claims should be dismissed pursuant to FED. R. CIV. P. 12(b)(6)." See Pet. App. 8a.

On August 23, 2018, the Fifth Circuit provided: "We agree with the district court's characterizations of plaintiff's claims and determinations that service on some of the defendants was improperly made. We affirm for essentially the reasons stated by that court. AFFIRMED." See Pet. App. 1a.

On September 4, 2018, Plaintiff filed his Petition for Rehearing En Banc citing how the August 23, 2018 opinion of the Fifth Circuit conflicted with its and this Court's precedent relating to 1) subject matter jurisdiction, 2) pleading standard, 3) service of process, and 4) clearly established law analysis.

On September 20, 2018, the Fifth Circuit provided its denial of an en banc hearing when a member of the first Fifth Circuit panel filed with the following paragraph indicated as being chosen with a check mark: "Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is

DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5th CIR. R. 35), the Petition for Rehearing En Banc is DENIED." See Pet. App. 33a.

The Fifth Circuit had jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The district court had jurisdiction to hear Plaintiff's claims arising out of intentional inflictions of emotional distress, invasions of privacy, forced involvement, thefts, appropriations, and conversions under 28 U.S.C. § 1331 (Federal question); 28 U.S.C. § 1332 (amount of controversy); 28 U.S.C. § 1338 (copyright); 28 U.S.C. § 1343(a); and 28 U.S.C. § 1361 (agency performance of duty). The district court had subject matter jurisdiction over negligence related claims and concerns under U.S.C. Title 18. The district court had supplemental jurisdiction over Texas state law claims and concerns under 28 U.S.C. § 1367.

Petitioner in this Court, plaintiff-appellant William Henry Starrett, Jr., timely filed this petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' OPINION IS INCONSISTENT WITH FEDERAL RULES OF CIVIL PROCEDURE AND ITS DECISION CONFLICTS WITH ITS PRIOR DECISIONS, THE DECISIONS OF OTHER CIRCUITS, AND

SUPREME COURT PRECEDENT AS TO SUFFICIENT SERVICE OF PROCESS.

A. Service of process using Certified Mail is sufficient under Federal Rules of Civil Procedure.

Generally, any person who is a nonparty may serve a summons and complaint under Federal Rules of Civil Procedure Rule 4.

Accepted by the district court and as the Fifth Circuit panel broadly also indicated as correct in lieu of this action's April 2017 service as made, the March 9, 2018 recommendation of the magistrate judge that was filed in the district court provided how "[a]lthough mail service is not directly authorized by the Federal Rules of Civil Procedure, Rule 4(e)(1) authorizes service under the laws of the state in which the district court sits or where service is made."

Only two parties in the list of Defendants published known addresses in the state of Texas and the remaining Defendants were to receive process in six other states and Washington, D.C.

Later in the same March 2018 filing, the district court also included: "Federal district courts in Texas interpreting Texas Rule 103 have found that the clerk of the court or one of the three authorized persons in Rule 103 can serve process by certified mail" and "[t]he rule further states that service by certified mail must be effected by the clerk of the court, if requested."

In Plaintiff's March 13, 2018 objections to the foregoing entry of recommendation as filed in the district court, Plaintiff showed how, responsive to a January 2018 request of service of process upon a Defendant to be made or at least further effectuated by the district court's clerk, instead of the clerk fulfilling the request for service of process upon the Defendant, effectuating service of process on Plaintiff's behalf using the copies of documents as he provided, or referring Plaintiff to other individuals as this action's arguments (and the magistrate's recommendation) had portended as would be what would occur, Plaintiff was explicitly instructed by the district court's clerk's office to instead review Federal Rules of Civil Procedure and apparently furnish copies to anyone else but them (once again pursuant to Rule 4).

The foregoing recommendation related to Texas Rules of Civil Procedure was filed and then adopted by the district court approximately eleven months after each Defendant had been recorded by the United States Postal Service to have sufficiently received process under FED. R. CIV. P. 4 et al.

FED. R. CIV. P. 83 governs against imposing disadvantage from such requirements not in federal law, federal rules, or the local rules and should have been applied.

B. Service of Process using Certified Mail is sufficient under precedent.

Fifth Circuit precedent related to notice and service of process provides that "the presumption of effective service ... applies when the notice is sent by certified mail through the United States Postal Service and there is proof of attempted delivery and notification of certified mail." See *Maknojiya v. Gonzales*, 432 F. 3d 588, 589 (5th Cir. 2005).

This Court's precedent related to notice and service of process provides that certified mail is "a method our cases have recognized as adequate for known addressees when we have found notice by publication insufficient" and "[w]e have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." See *Dusenbery v. United States*, 534 US 161, 169 (2002); *Tulsa Professional Collection Services, Inc. v. Pope*, 485 US 478, 489 (1988).

II. AS TO SUBJECT MATTER JURISDICTION, THE COURT OF APPEALS' DECISION IS INCONSISTENT WITH THE UNITED STATES CONSTITUTION AND FEDERAL RULES OF CIVIL PROCEDURE — THE OPINION CONFLICTS WITH THE FIFTH CIRCUIT'S PRIOR DECISIONS, THE DECISIONS OF OTHER CIRCUITS, AND SUPREME COURT PRECEDENT.

According to the Opinion, the Fifth Circuit panel agreed with the district court's characterizations of Plaintiff's claims — with the district court, adopting from the second magistrate's March 9, 2018 recommendation entry, its "little difficulty concluding that Plaintiff's claims" were "patently frivolous and should be dismissed for lack of subject matter jurisdiction," with the alternative, "the Court concludes that the facts set forth in the Complaint are clearly baseless because they are fanciful, fantastic, or delusional."

A. The Fifth Circuit's Opinion indicated its basis as being rooted upon pleading standard in respect to the district court's interpretation of Plaintiff's Complaint's factual allegations and Claims.

The Opinion provided in Plaintiff's appeal differs greatly from opinions recorded for earlier Fifth Circuit cases: "We review de novo a district court's dismissal for failure to state a claim under Rule 12(b)(6)." See *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007). Motions to dismiss under Rule 12(b)(6) "are viewed with disfavor and are rarely granted." See *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 570 (5th Cir.2005). When faced with a Rule 12(b)(6) motion to dismiss, "courts must, as with any motion to dismiss for failure to plead a claim on which relief can be granted, accept all factual allegations in the complaint as true." See

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 127 S.Ct. 2499, 2509, 168 L.Ed.2d 179 (2007) (citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993)). "We must also draw all reasonable inferences in the plaintiff's favor. See *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); *Lovick v. Ritemoney, Ltd.*, 378 F.3d 433, 437 (5th Cir.2004). '[A] complaint "does not need detailed factual allegations," but must provide the plaintiff's grounds for entitlement to relief — including factual allegations that when assumed to be true "raise a right to relief above the speculative level."' *Cuvillier*, 503 F.3d at 401 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007))." See *Lormand v. US Unwired, Inc.*, 565 F. 3d 228, 232 (5th Cir. 2009).

Pleading standard under Supreme Court precedent prescribes that dismissal is inappropriate unless a complaint, construed with all well-pleaded facts accepted as true and viewed in the light most favorable to the plaintiff, fails "to state a claim to relief that is plausible on its face," See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see, e.g., *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009), *petition for cert. filed*, 78 U.S.L.W. 3295 (U.S. Oct. 9, 2009) (No. 09-542). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). "Asking for plausible grounds to infer ... does not

impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" and "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable and 'that a recovery is very remote and unlikely.'" See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 1965-1966 (2007) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)).

Accordingly, the Fifth Circuit Opinion conflicts with precedent related to pleading standard because it affirms the district court's dismissal of all seventy-three (73) Claims supported by Plaintiff's Complaint's more than two hundred (200) paragraphs of well-pleaded facts.

B. Plaintiff's Claims are supported under the United States Constitution.

Plaintiff's March 13, 2018 objections filing in the district court initiated his appeals argument with how constitutional standard begins at most certainly guaranteeing Plaintiff's right to petition in Amendment One to the Constitution of the United States of America and continues unabridged support for citizens who bring forth Claims comparable to Plaintiff's in Amendments Five, Six, Seven, Eight, and Fourteen.

All support guaranteed to Plaintiff's right to claim as set forth in factual depiction in his Complaint is provided without clause pertaining

to the Court's antecedent technological familiarity or any flawed reinterpretation of any allegations prior to discovery and the thorough examination of evidence.

C. Support is found for Plaintiff's Claims under Federal Rules of Civil Procedure.

Under the claim requirements of Federal Rules of Civil Procedure 8(a), no biases as to novelty of the conditions or means giving rise to an action are listed for being construed.

FED. R. CIV. P. Title V, Plaintiff's constitutional rights are more fully supported specific to documents and information relating to the Claims of misconduct, willful and wanton or otherwise, acts, omissions, mistakes, and any conditions and means brought unto him. Again, with no clause as to the Court's or Defendants' attorneys' proclaimed disbelief.

An opinion here under FED. R. CIV. P. 12(b)(1) mistakenly insists that the Court lacks subject-matter jurisdiction when, absolutely, a Federal District Court has jurisdiction over claims that arise out of intentional inflictions of emotional distress, invasions of privacy, forced involvement, thefts, appropriations, and conversions including claims involving civil rights, federal question, copyright, negligence related claims and concerns under U.S.C. Title 18, and agency performance of duty.

An opinion under FED. R. CIV. P. 12(b)(6)

wrongly declares that Plaintiff's Complaint failed to state a Claim upon which relief can be granted, when, in fact, 73 causes of action had been duly asserted.

D. Subject matter jurisdiction for Plaintiff's Claims is also directly supported under Fifth Circuit and Supreme Court precedent.

The Opinion of the Fifth Circuit conflicts with its cited precedent related to subject matter jurisdiction, overlooking its requirement for test of substantiality, and its decision incongruently affirms the dismissal of all of Plaintiff's seventy-three (73) Claims comprising civil federal and state statutory causes of action, civil tort causes of action, civil liability and negligence causes of action, and violations of Amendments One, Three, Four, Five, Six, Eight, Thirteen, and Fourteen to The United States Constitution; 42 U.S.C. § 1983; 42 U.S.C. § 1985; and 42 U.S. Code § 14141, under law of agency or the Doctrines of Respondeat Superior or Command Responsibility each where so applicable.

Subject matter jurisdiction under Fifth Circuit precedent provides that "[a] claim is substantial if it supports federal question jurisdiction, and the "common nucleus of operative facts" element must satisfy the test established in *United Mine Workers v. Gibbs* for pendent jurisdiction." See *Southwestern Bell Telephone Co. v. City of El Paso*, 346 F. 3d 541, 551 (5th Cir. 2003); *see also United Mine Workers*

v. Gibbs, 383 US 715, 725 (1966) ("But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.")

Under Supreme Court precedent, "[j]urisdiction over federal claims, constitutional or otherwise, is vested, exclusively or concurrently, in the federal district courts" and when state and federal claims derive from a common nucleus of operative fact, "there is power in federal courts to hear the whole." See *Rosado v. Wyman*, 397 US 397, 402 (1970); *Hagans v. Lavine*, 415 US 528, 557 (1974).

The district court should have asserted subject matter jurisdiction and the Fifth Circuit should have required such as to do justice.

This Court should not allow such a troubling decision to stand unreviewed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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