

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

ABDISALAM WILWAL and SAGAL
ABDIGANI, individually and on behalf of their
minor children, M.O., N.W., A.W., and A.M.,

Plaintiffs,

v.

JOHN KELLY, in his official capacity as
Secretary of the Department of Homeland
Security; KEVIN McALEENAN, in his official
capacity as Acting Commissioner of U.S.
Customs and Border Protection; THOMAS
HOMAN, in his official capacity as Acting
Director of U.S. Immigration and Customs
Enforcement; PETER T. EDGE, in his official
capacity as Executive Associate Director of
Homeland Security Investigations, U.S.
Immigration and Customs Enforcement;
JEFFERSON B. SESSIONS, in his official
capacity as Attorney General of the United
States; ANDREW G. McCABE, in his official
capacity as Acting Director of the Federal
Bureau of Investigation; CHARLES H.
KABLE, IV, in his official capacity as Director
of the Terrorist Screening Center,

Defendants.

COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF
(Violation of Fourth and Fifth
Amendment rights and the
Administrative Procedure Act)

No. _____

INTRODUCTION

1. The Constitution prohibits U.S. officials from subjecting American citizens to abusive, unlawful searches and seizures at borders and ports of entry. Yet U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) have violated these prohibitions and failed to ensure that their officers abide by the Constitution. Plaintiffs in this matter are among the U.S. citizens—

particularly American Muslims and Americans of Arab, African, Middle Eastern, or South Asian descent—who have been subjected to arbitrary and unreasonable detention, searches, and questioning at the border in violation of their Fourth Amendment rights. This unlawful treatment can result, as it did for Plaintiff Abdisalam Wilwal, from wrongful placement on the government’s terrorism-related watchlist, but the government has refused to provide a fair and meaningful process to challenge placement on the watchlist—in violation of the Fifth Amendment guarantee of due process.

2. Plaintiffs are six members of the Wilwal-Abdigani family: Abdisalam Wilwal, Sagal Abdigani, and their four children aged five to 14 at the time of the events challenged here. All are U.S. citizens who traveled from their home near Minneapolis, Minnesota, to visit relatives in Regina, Saskatchewan in March 2015. When they sought to reenter the United States at a border crossing in North Dakota, CBP officers surrounded the family’s vehicle with weapons drawn, handcuffed Abdisalam Wilwal, and forcibly detained him and the rest of the family for nearly 11 hours.

3. The CBP officers treated the family this way not because they had probable cause to believe anyone in the family had committed a crime, but because Abdisalam Wilwal’s name appeared on the government’s terrorism-related watchlist. Mr. Wilwal should not have been placed on the watchlist. The government has refused to tell Mr. Wilwal why his name appeared on the watchlist, and it has not provided him with a meaningful opportunity to correct or challenge whatever error led to his placement on it. In any event, the government’s placement of Mr. Wilwal on the watchlist cannot justify the officers’ abuse of him and his family at the border.

4. Officials kept Mr. Wilwal isolated from his family and handcuffed for the duration of the detention. Hours into his detention, anxious about his family's safety and without access to food, Mr. Wilwal passed out, requiring emergency medical attention. Several hours later, Homeland Security Investigations (HSI) officers questioned Mr. Wilwal about his religion, his travels, and the purpose of the family's trip. The officers then released Mr. Wilwal.

5. Sagal Abdigani and the couple's four children endured nearly 11 hours of detention solely because they were traveling with Mr. Wilwal. During the detention, Ms. Abdigani used her son's mobile phone to call 911 to report that she and her family were being held against their will at the border post. When officers realized that Ms. Abdigani was using the phone, they confiscated it and directed the 911 dispatcher not to send assistance. The officers then took the Wilwal-Abdiganis' then 14-year-old son, M.O., to a separate room, patted him down, and asked him to remove his clothes, which he refused to do. The officers also searched the contents of M.O.'s phone. The officers refused to release Ms. Abdigani and the Wilwal children until they released Mr. Wilwal.

6. The Wilwal-Abdigani family would like to travel outside the United States again, but they fear that they will be abused by CBP or HSI officers when they seek to return home. They also fear that Defendants will disseminate or misuse information derived from their unlawful detention in North Dakota.

7. CBP and HSI officers violated the Wilwal-Abdigani family members' Fourth Amendment right to be free from unreasonable seizures and searches. On information and belief, Defendants have adopted or authorized policies that permit, or failed to prevent, such violations of U.S. citizens' rights. Defendants who are responsible

for the watchlist and its unconstitutionally inadequate redress process also violated Mr. Wilwal's right to due process under the Fifth Amendment. Plaintiffs bring this lawsuit to vindicate their constitutional rights.

PARTIES

8. Plaintiff Abdisalam Wilwal is a U.S. citizen and resident of Eagan, Minnesota. He is married to Plaintiff Sagal Abdigani.

9. Plaintiff Sagal Abdigani is a U.S. citizen and resident of Eagan, Minnesota. She is married to Plaintiff Abdisalam Wilwal.

10. Plaintiff M.O., son of Plaintiff Sagal Abdigani and stepson of Plaintiff Abdisalam Wilwal, is a U.S. citizen and resident of Eagan, Minnesota. He was 14 years old at the time of the events described in this complaint.

11. Plaintiff N.W., daughter of Plaintiffs Abdisalam Wilwal and Sagal Abdigani, is a U.S. citizen and resident of Eagan, Minnesota. She was eight years old at the time of the events described in this complaint.

12. Plaintiff A.W., son of Plaintiffs Abdisalam Wilwal and Sagal Abdigani, is a U.S. citizen and resident of Eagan, Minnesota. He was six years old at the time of the events described in this complaint.

13. Plaintiff A.M., son of Plaintiffs Abdisalam Wilwal and Sagal Abdigani, is a U.S. citizen and resident of Eagan, Minnesota. He was five years old at the time of the events described in this complaint.

14. Defendant John Kelly is the Secretary of the U.S. Department of Homeland Security (DHS) and has authority over all DHS personnel, policies, and

procedures related to the treatment of American citizens entering the United States at border crossings and ports of entry. Defendant Kelly is sued in his official capacity.

15. Defendant Kevin McAleenan is the Acting Commissioner of U.S. Customs and Border Protection, a component of the Department of Homeland Security. Defendant McAleenan has authority over CBP policies, procedures, and practices related to the treatment of American citizens entering the United States at border crossings and ports of entry. Defendant McAleenan is sued in his official capacity.

16. Defendant Thomas Homan is the Director of U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security. Defendant Homan has responsibility for and oversight over ICE policies, procedures, and practices related to the detention and questioning of American citizens entering the United States at border crossings and ports of entry, including the conduct of Homeland Security Investigations officers. Defendant Homan is sued in his official capacity.

17. Defendant Peter Edge is the Executive Associate Director of Homeland Security Investigations within U.S. Immigration and Customs Enforcement. Defendant Edge has responsibility for and oversight over HSI policies, procedures, and practices related to the detention and questioning of American citizens entering the United States at border crossings and ports of entry. Defendant Edge is sued in his official capacity.

18. Defendant Jefferson Sessions is the Attorney General of the United States and heads the Department of Justice, which oversees the Federal Bureau of Investigation (FBI). The FBI, in turn, administers the Terrorist Screening Center (TSC), which was established to consolidate the government's counterterrorism-related watchlisting operations. Defendant Sessions is sued in his official capacity.

19. Defendant Andrew McCabe is the Acting Director of the FBI, which administers the TSC. Defendant McCabe is sued in his official capacity.

20. Defendant Charles Kable, IV, is the Director of the TSC and is sued in his official capacity.

JURISDICTION AND VENUE

21. This court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C. §§ 1331 and 1343(a) because this action arises under the Fourth and Fifth Amendments to the United States Constitution.

22. The Court may grant injunctive and declaratory relief for the constitutional violations alleged here pursuant to 5 U.S.C. § 702, which waives the sovereign immunity of the United States with respect to any action for injunctive relief under 28 U.S.C. § 1331; 28 U.S.C. § 2201, which confers jurisdiction to issue declaratory judgments; and/or Federal Rules of Civil Procedure 57 and 65.

23. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because Plaintiffs reside in this district.

FACTS

24. On March 27, 2015, Plaintiffs Abdisalam Wilwal and Sagal Abdigani took their four young children on a family trip from their home in Eagan, Minnesota, to visit Ms. Abdigani's sister in Regina, Saskatchewan. The family drove from Eagan to the U.S.-Canada border crossing at Portal, North Dakota, where they sought to enter Canada.

25. Canadian border officers reviewed the family's travel documents and questioned Mr. Wilwal about the family's destination and the purpose of their trip. The officers cleared the family to enter Canada but told Mr. Wilwal that their records

included a notation from U.S. authorities that might result in U.S. authorities questioning him more than usual when he sought to reenter the United States.

26. On their return, the family left Regina at approximately 4:00 a.m. on March 30, 2015, and drove to the same border crossing at Portal, North Dakota, arriving at approximately 6:00 a.m. Mr. Wilwal pulled the minivan up to a booth at the border crossing and handed a CBP officer his U.S. passport, Ms. Abdigani's and M.O.'s U.S. passports, and U.S. birth certificates for N.W., A.M, and A.W.

27. The family's identification documents were valid, and the family members were not carrying any illegal items when they arrived at the Portal border station. There was no reason to doubt that each member of the family was a U.S. citizen and was therefore admissible to the United States, and no reason to suspect that any member of the family was carrying illegal items on their persons or in their vehicle.

28. On information and belief, the CBP officers entered Plaintiffs' names into the TECS System, a database that CBP uses for border screening and determinations regarding the admissibility of persons seeking to enter the United States.

29. Minutes after the family arrived at the CBP booth, CBP officers emerged from the border station with their handguns drawn and pointed at the van. One of the officers pointed his gun at Mr. Wilwal and yelled at him, "Don't use weapons!" Mr. Wilwal quickly thrust his arms out of the van window to indicate that he had no weapons. As the officers surrounded the van, the officer in the booth yelled to the other officers that there were children inside the vehicle. The Wilwal-Abdigani family members were terrified, and the children began screaming and crying.

30. One of the officers ordered Mr. Wilwal out of the van at gunpoint. Mr. Wilwal was alarmed by and afraid of the officers' display of force. He exited the van with his hands in the air and told the officers that the family had nothing illegal in the van. One of the officers handcuffed Mr. Wilwal's hands behind his back. At no point did Mr. Wilwal resist the officers.

31. While walking him into the station, one officer asked, "Are you Pakistani?" Mr. Wilwal replied that he is not. The officer then asked, "Where are you from?" Mr. Wilwal responded that he is an American citizen. The agent asked where Mr. Wilwal was originally from, to which Mr. Wilwal responded that he is originally from Somalia.

32. The CBP officer asked Mr. Wilwal if he is Muslim and accused him of being involved with terrorism. The accusation made Mr. Wilwal even more worried about his safety. He asked why the officer had made that accusation, and the officer responded, "We have information."

33. The officers took Mr. Wilwal into a room in the border station and seated him in a chair while he was still handcuffed. Mr. Wilwal was worried about his family's well-being. He asked the officers where his wife and children were and why the family was being detained. The officers refused to answer.

34. The CBP officers asked Mr. Wilwal no further questions. They left him, still handcuffed, alone in the room.

35. On information and belief, the CBP officers displayed and used force to handcuff and detain Mr. Wilwal because the TECS System indicated that Mr. Wilwal's name appeared on a federal terrorism-related watchlist.

The Government's Watchlisting System
and Inadequacy of the Watchlisting Redress Process

36. The government maintains a watchlisting system to identify and track purported known or suspected terrorists. The Terrorist Identities Datamart Environment (TIDE) is the government's central repository of names and information that feeds into the government's consolidated master watchlist, called the Terrorist Screening Database. The TSC maintains the master watchlist, which includes names and limited biometric information. Unlike TIDE, it does not include any substantive information related to the reasons for individuals' placement on the watchlist.

37. The TSC sends records from the watchlist to other government agencies, such as CBP and the Transportation Security Administration, that perform screening functions. The TSC also shares the watchlist with numerous foreign governments, including the Canadian government. CBP obtains access to the watchlist through its TECS System. On information and belief, searches by CBP officers for identities in the TECS System automatically include searches of the watchlist. Although CBP, HSI, and other agencies may use the records provided by the TSC, it is the TSC that exercises control over individuals' placement on, or removal from, the master watchlist.

38. Placement of an individual on the master watchlist typically causes the individual to be referred for secondary inspection at border crossings and ports of entry.

39. According to the TSC, an individual's placement on the watchlist must be based on a "reasonable suspicion" that the individual is a known or suspected terrorist. The TSC definition of a known terrorist encompasses individuals who have been indicted, arrested, charged, and/or convicted of a terrorism-related crime. The TSC's definition of a suspected terrorist is far broader: "an individual who is reasonably

suspected to be, or have been, engaged in conduct constituting, in preparation for, in aid of, or related to terrorism and/or terrorist activities based on an articulable and reasonable suspicion.”

40. The “reasonable suspicion” standard and related watchlist criteria establish a vague, overbroad, and very low threshold for inclusion on the watchlist. Under the government’s Watchlisting Guidance, “concrete facts are not necessary” to satisfy the “reasonable suspicion” standard, and uncorroborated information of questionable or even doubtful reliability can serve as the basis for watchlisting an individual. Under the Guidance, a single social media post or anonymous letter can satisfy the “reasonable suspicion” standard. These loose criteria give officers discretion to rely on rumor, innuendo, or false statements in placing people on the watchlist, and the criteria significantly increase the likelihood that the watchlist includes people who are neither known nor appropriately suspected terrorists.

41. The TSC has also failed to ensure that individuals who do not meet these loose criteria are not placed on the watchlist or are promptly removed from it. In 2013 alone, agencies nominated 468,749 individuals to the watchlist, and the TSC rejected only approximately one percent of those nominations. Government documents show that as of 2014, nearly half the people on the watchlist had no recognized terrorist-group affiliation. The Inspector General of the Department of Justice has criticized the Terrorist Screening Center for employing weak quality assurance mechanisms and for failing to remove people from the watchlist when information did not support their placement on it. Public reports also confirm that the government has placed or retained people on government watchlists as a result of human error.

42. As of June 2016, TIDE included approximately 1.5 million people, and the master watchlist included approximately one million people.

43. The government entities involved in maintaining and implementing the watchlisting system, including Defendants, have not provided watchlisted people with a fair and effective mechanism through which to challenge their placement on the master watchlist and obtain redress for its consequences.

44. An individual who seeks to challenge placement and the consequences of placement on a watchlist may submit a standard form to the DHS Traveler Redress Inquiry Program (DHS TRIP). DHS TRIP transmits the redress petition to the TSC, which determines whether any action should be taken regarding the individual's watchlisting status. The TSC is the final arbiter of whether the petitioning individual is retained on or removed from the master watchlist.

45. Once the TSC makes a final determination regarding an individual's status on the watchlist, it advises DHS TRIP that it has completed its process. DHS TRIP then responds to the individual with a letter that does not confirm or deny whether the person is in fact watchlisted, or whether any watchlist records relating to the person exist. The letter does not provide any notice of the basis for placement on a terrorist watchlist. It does not state how the government has resolved the redress petition, or specify whether the person will experience similar problems related to placement on the watchlist in the future. At no point in the process can an individual appear in person before a neutral decision maker to challenge placement on the watchlist or its consequences.

46. The government's official policy is to refuse to confirm or deny any given individual's placement on the master watchlist. Nevertheless, individuals can become

aware of their placement on the watchlist during the course of their travel experiences. Aspects of Mr. Wilwal's experience before and after his attempt to cross the border on March 30, 2015 reliably indicate that he has been placed on the watchlist. Those indications include: (1) Canadian border officers informed him that U.S. authorities had included a notation that would result in additional questioning; (2) CBP officers forcefully detained him after searching the TECS system for his name and biometric information; (3) a CBP officer told Mr. Wilwal during the detention that CBP had "information" indicating that Mr. Wilwal was involved with terrorism; (4) a DHS employee later told Mr. Wilwal that his name appeared on a watchlist; and (5) an ICE "Report of Investigation" obtained through a Privacy Act request and attached hereto as Exhibit A states that the March 30, 2015 detention of Mr. Wilwal was "due to a confirmed subject record hit." Exhibit A at 1.

47. Mr. Wilwal is not a known or an appropriately suspected terrorist. He has never engaged in conduct that would satisfy the government's loose criteria for placement on the watchlist, and he does not know why his name and/or biometric information appeared on the watchlist. No government agency has provided him with any notice of the reasons for his placement on the watchlist or offered him any meaningful opportunity to contest his placement on the watchlist.

48. The CBP officers who detained and questioned Mr. Wilwal at the Portal border station had no information about why Mr. Wilwal's name appeared on a terrorism-related watchlist. On information and belief, the officers knew at most that Mr. Wilwal's name and identifying information matched that of a person on the watchlist.

49. The inclusion of Mr. Wilwal's name and/or limited biometric information on a terrorism-related watchlist did not constitute reasonable suspicion or probable cause to believe that Mr. Wilwal was engaged in any wrongdoing when he and his family sought to return to the United States on March 30, 2015.

Detention of Abdisalam Wilwal

50. At approximately 10:30 a.m., after more than four hours of detention with his hands restrained behind his back, Mr. Wilwal began to feel light-headed. He remained anxious about his family's safety and had been given nothing to eat or drink since the beginning of his detention. Still handcuffed, he tried to stand up but passed out on the floor.

51. When Mr. Wilwal regained consciousness, paramedics had arrived. They took Mr. Wilwal's blood pressure and asked him if he wanted to be taken to the hospital, but he declined because he did not want to leave his family at the border facility. The CBP officers changed the position of the handcuffs so that Mr. Wilwal's arms were restrained in front of his body. They gave him a small glass of water but no food.

52. Mr. Wilwal does not have a history of losing consciousness, nor did he have any medical condition at the time of the detention that could have caused him to lose consciousness.

53. The paramedics departed, and the CBP officers again left Mr. Wilwal alone and handcuffed in the room.

54. At about 3:00 p.m., approximately nine hours into Mr. Wilwal's detention, the CBP officers told Mr. Wilwal that two HSI officers had arrived at the Portal station. On information and belief, the CBP officers at the Portal station had notified the HSI

officers that they had detained the Wilwal family, and the CBP officers had continued to detain the entire Wilwal family at the HSI officers' request. On information and belief, the HSI officers came to the Portal station from Minot, North Dakota.

55. Shortly before 4:00 p.m., the HSI officers began questioning Mr. Wilwal. They asked him for his name, address, and how long he had lived in the United States. Mr. Wilwal, who speaks English as a second language, was concerned that he might misunderstand the officers' questions. He asked for an interpreter and for access to a lawyer. The HSI officers rejected both requests. One of the officers told Mr. Wilwal that if he wanted to leave, he would have to answer their questions.

56. At no point did the HSI or CBP officers advise Mr. Wilwal that he had the right to contact an attorney or that he had the right not to answer questions or to remain silent.

57. The HSI officers asked Mr. Wilwal if he is Muslim, whether he is Sunni or Shia, and whether he attends a mosque. Mr. Wilwal responded that he is Muslim but not observant, and that he does not regularly attend a mosque.

58. The officers also asked Mr. Wilwal generally about any travel within or outside the United States; the purpose of the family's trip to Canada; who owned the van that the family was driving on the trip; whether Mr. Wilwal was employed at the time; and where Mr. Wilwal obtained the money for the trip. Mr. Wilwal provided truthful answers to each of the questions.

59. The HSI officers questioned Mr. Wilwal for approximately 45 minutes.

60. At approximately 4:40 p.m., after Mr. Wilwal had been detained for over ten and a half hours, the HSI officers told the CBP officers that they could remove Mr.

Wilwal's handcuffs and that he could leave the border station. He and his family did so immediately.

61. At no time during the detention was there any basis to suspect that Mr. Wilwal was engaged in any criminal wrongdoing, and nothing about his detention and interrogation was reasonably likely to produce any information about whether he was engaged at the time in criminal wrongdoing. "After completing the interview, the HSI officers did not discover any derogatory information relating to" Mr. Wilwal. Exhibit A at 3.

62. The CBP officers' use of force to arrest and detain Mr. Wilwal, their detention of his family, their accusation that he was involved in terrorism, and the nearly 11-hour detention caused Mr. Wilwal extreme emotional distress. The officers' conduct, and their failure to provide Mr. Wilwal with food and water, also caused him physical harm during the course of the detention, prompting the CBP officers to contact medical personnel.

Detention of Sagal Abdigani and the Wilwal-Abdiganis' Minor Children

63. CBP officers detained Sagal Abdigani and the couple's young children against their will for the duration of Mr. Wilwal's detention.

64. Shortly after 6:00 a.m. on March 30, 2015, after CBP officers had handcuffed Mr. Wilwal outside the van and taken him into the border station, the remaining CBP officers—one in the booth and another who had come from the border station with his handgun drawn—asked Ms. Abdigani if she had a driver's license. She responded that she did. An officer directed her to drive the van to the border station,

which she did. Ms. Abdigani and the children were frightened and confused. N.W., A.W., and A.M. were screaming and crying.

65. Ms. Abdigani parked the van outside the station. The CBP officer then took the keys to the van from Ms. Abdigani, told her to leave her mobile phone in the van, and ordered her and the children out of the van and into the station.

66. CBP officers detained Ms. Abdigani and the children in the station, in an area that was cold, distressing the children further.

67. Early in CBP's detention of Ms. Abdigani and the children, a CBP officer asked them whether they could speak or write Arabic. Ms. Abdigani asked the officer not to question her children, but the officer said that he could separate them and question M.O., her 14-year-old son, if he wanted to. Ms. Abdigani told the officer that she can speak and write Somali but not Arabic. The officer then asked her to write something in Somali, which she declined to do.

68. The CBP officers never questioned Ms. Abdigani or the children further. The officers never provided a reason for detaining Ms. Abdigani and the children.

69. After approximately an hour of detention, Ms. Abdigani asked a CBP officer if she could retrieve her mobile phone from the van and contact her sister in Canada or friends in Minnesota who were expecting the family to arrive that day, and who would become alarmed if they were unable to reach the family by phone. The officer denied the request and told Ms. Abdigani that she would not be permitted to use her phone.

70. Ms. Abdigani requested that she be allowed to drive the children to Eagan and then return for her husband because the children had school the next day. One of the

officers said, “you’re all the same” and that no one in the family could leave the station. Ms. Abdigani asked if she could call her sister’s husband in Regina and have him pick the children up and take them back to Regina. The officer denied that request as well, again saying, “You’re all the same. You’re all detainees, including the children.” Ms. Abdigani asked the officers if they would call the children’s school or her family. They refused.

71. After several hours of detention, the children became very hungry, and Ms. Abdigani requested food for herself and the children. The CBP officers offered the children some candy. Ms. Abdigani found this troubling, as the candy was not only unhealthy but also insufficient to meet the children’s need for food. She asked the CBP officers if she could retrieve food from the family’s car, but they denied her request. After the family had been detained for approximately six hours, and after multiple requests for food, the CBP officers gave the children hamburgers but provided no food to Ms. Abdigani.

72. At about 11:00 a.m., after about five hours of detention, Ms. Abdigani realized that M.O. had his mobile phone with him in the border station. The officers had never directed M.O. to leave his phone in the car or turn it over to the officers.

73. Ms. Abdigani used the phone to call 911. On information and belief, because the phone lacked a SIM card, the call was routed to a dispatcher in the St. Paul area. Ms. Abdigani told the dispatcher that she and her family were being held against their will at the border station, and that they were afraid for their safety. The dispatcher tried to transfer the call to a dispatcher in North Dakota. However, one of the CBP officers then grabbed the phone away from Ms. Abdigani. The officer spoke with the

dispatcher for about ten minutes and, on information and belief, convinced the dispatcher not to send assistance.

74. Shortly after the 911 call, a female CBP officer conducted a pat-down search of Ms. Abdigani.

75. Two male CBP officers took 14-year-old M.O. into a separate room and conducted a pat-down search of M.O. One of the officers demanded that M.O. take off his clothes, which M.O. refused to do.

76. M.O. did not consent to the search that the CBP officer conducted. Ms. Abdigani did not consent to any search of M.O. outside her presence.

77. M.O. was humiliated, frightened, and embarrassed by the officers' demand that he remove his clothes.

78. At no time during the detention of M.O. did any CBP officer at the Portal station have a reasonable basis for suspecting that M.O. was carrying contraband or any illegal item.

79. At no time during the detention was there any basis to suspect that Ms. Abdigani or any of the children were seeking to bring illegal items into the country or that they were engaged in any criminal wrongdoing, and nothing about their detention and search was intended or reasonably likely to produce any information about whether they were engaged in criminal wrongdoing or seeking to bring illegal items into the country.

80. On information and belief, the CBP officers detained Ms. Abdigani and her children solely because of their association with Mr. Wilwal. The association of Ms.

Abdigani and the children with Mr. Wilwal did not constitute reasonable suspicion or probable cause to believe that they were or had been engaged in any wrongdoing.

81. During and after the detention, Ms. Abdigani and the children were scared, anxious, and confused. The CBP officers' aggressive use of force to arrest and detain Mr. Wilwal, their detention of Ms. Abdigani and the children against their will for nearly 11 hours, their refusal to provide Ms. Abdigani and the children with adequate food, and their attempted strip search of M.O. caused Ms. Abdigani and the children significant emotional pain and distress. Having last seen Mr. Wilwal as he was handcuffed at gunpoint and taken into custody, they were extremely worried about his safety, and Ms. Abdigani became convinced that the officers had killed Mr. Wilwal. Ms. Abdigani and the children felt personally threatened by the CBP officers. Their fear grew as the time passed, and in the afternoon N.W. said to Ms. Abdigani, "maybe they'll kill us after sunset."

82. The CBP officers detained Ms. Abdigani and the children until approximately 4:40 p.m., when the officers released Mr. Wilwal. The family immediately drove to Eagan and arrived at their home at approximately 2:00 a.m. on March 31, 2015.

Aftermath of the Wilwal-Abdiganis' Detention

83. On March 31, 2015, the same day that they arrived back in the Minneapolis area, Mr. Wilwal and Ms. Abdigani went to the FBI field office in Minneapolis to report what had happened to them at the Portal border station. An FBI employee suggested that they go to the DHS office in Minneapolis and make further inquiries there.

84. Mr. Wilwal and Ms. Abdigani went to an office housing DHS components in the Minneapolis area that same day. An employee there told them that she would try to find out why the incident had occurred and would get back to them with more information if possible. Mr. Wilwal called the office multiple times over the following days for further information. Two to three weeks after their initial visit, Mr. Wilwal received a voicemail from an administrative staff member at the DHS office. The staff member stated that the incident at the Portal border station likely occurred because Mr. Wilwal's name appeared on a terrorist watchlist.

85. Mr. Wilwal and Ms. Abdigani each submitted DHS TRIP petitions regarding the events of March 30, 2015. Over two years later, neither has received a final response from DHS TRIP as described in paragraph 42 above.

86. The Defendants have adopted or implemented policies or practices that permit, or failed to prevent, the CBP and HSI officers' treatment of Plaintiffs on March 30, 2015.

87. Plaintiffs continue to experience stress and anxiety about the prospect that they will be subjected to lengthy and abusive detentions at border stations, airports, or ports of entry in the future. They also remain frightened of law enforcement officers. They have not attempted to travel outside the United States since March 30, 2015. All four children want to travel to Canada to see their cousins but the family is afraid to do so. All four children have had frequent nightmares about the events of March 30, 2015.

88. Defendants created and continue to maintain records in CBP, HSI, and other databases regarding Plaintiffs' border crossing on March 30, 2015. The ICE Report of Investigation reflects information maintained in the TECS system regarding the

detention, including records obtained from a search of M.O.'s mobile phone. Exhibit A at 1. The Report also states that the HSI officers' interrogation of Mr. Wilwal "was digitally recorded and will be maintained as government generated evidence," and that Mr. Wilwal's responses to the officers' questions "were documented and will be maintained in the case file." *Id.* at 3.

89. Plaintiffs are deeply concerned about the government's use of the information it obtained during the detention. They are concerned that CBP and/or HSI will use the information collected during the border detention to expand the duration or scope of inspections or stops of the Plaintiffs at border stations, airports, or ports of entry in the future. They also worry that Defendants shared the information they collected on the Plaintiffs with other government agencies, such as the FBI, and that the Plaintiffs will be singled out again by government agencies on the basis of that information.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

Unconstitutional Seizure – Fourth Amendment to the U.S. Constitution (Abdisalam Wilwal)

90. The arrest, detention, unnecessary and extended restraint, incarceration, and interrogation of Abdisalam Wilwal constituted an unreasonable seizure in violation of the Fourth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF:

Excessive Use of Force – Fourth Amendment to the U.S. Constitution (Abdisalam Wilwal)

91. The arrest, detention, unnecessary and extended restraint, and incarceration of Abdisalam Wilwal constituted an excessive use of force that was

unreasonable under the circumstances and a violation of the Fourth Amendment to the U.S. Constitution.

92. The CBP officers' use of excessive force against Abdisalam Wilwal caused him pain and physical injury that necessitated medical attention.

**THIRD CLAIM FOR RELIEF:
Unconstitutional Seizure – Fourth Amendment to the U.S. Constitution
(Sagal Abdigani, M.O., N.W., A.W., A.M.)**

93. The detention and unnecessary and extended restraint of Sagal Abdigani, and each of the four children, M.O., N.W., A.W., and A.M., constituted an unreasonable seizure in violation of the Fourth Amendment to the U.S. Constitution.

**FOURTH CLAIM FOR RELIEF:
Violation of Procedural Due Process – Fifth Amendment to the U.S. Constitution
(Abdisalam Wilwal)**

94. Mr. Wilwal was arrested, detained, incarcerated, and interrogated as a result of his placement on the master watchlist, and he is entitled to a constitutionally adequate redress process that affords him notice of the reasons for his placement on the watchlist and a meaningful opportunity to contest his continued placement on it.

95. Defendants' actions in refusing to provide Abdisalam Wilwal with any notice of the reasons or basis for his placement on the master watchlist, and in refusing to provide him with a meaningful opportunity to challenge his placement on the watchlist and its consequences, violated Mr. Wilwal's right to procedural due process under the Fifth Amendment to the U.S. Constitution.

96. By failing to provide Mr. Wilwal with a constitutionally adequate redress process, Defendants infringed or deprived him of protected liberty interests, including but not limited to his liberty interest in travel, entry into the United States, and freedom from

unconstitutional seizure. Defendants have violated Mr. Wilwal's constitutional rights without due process of law and placed him at imminent risk of suffering further harm absent the relief requested below.

**FIFTH CLAIM FOR RELIEF:
Violation of Substantive Due Process – Fifth Amendment to the U.S. Constitution
(Abdisalam Wilwal)**

97. Because Abdisalam Wilwal is neither a known nor appropriately suspected terrorist, Defendants' conduct in placing and retaining him on the master watchlist, and in arresting, detaining, incarcerating, and interrogating him on that basis, violated his right to substantive due process under the Fifth Amendment to the U.S. Constitution.

98. Defendants violated Mr. Wilwal's constitutional rights, subjected him to injury that is unjustifiable by any government interest without due process of law, and placed him at imminent risk of suffering further harm absent the relief requested below.

**SIXTH CLAIM FOR RELIEF:
Violation of the Administrative Procedure Act
(All Plaintiffs)**

99. Defendants' actions in adopting or implementing policies or practices that permit, or failed to prevent, Defendants' abuse of Plaintiffs, constituted final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*

100. Defendants' unlawful seizure, unnecessary and extended restraint, and search of the Plaintiffs, as set forth above, was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, contrary to constitutional rights, and outside the Defendants' statutory authority. Defendants' unlawful conduct has adversely

affected Plaintiffs and placed them at imminent risk of suffering further harm absent the relief requested below.

**SEVENTH CLAIM FOR RELIEF:
Violation of the Administrative Procedure Act
(Abdisalam Wilwal)**

101. Defendants' actions in refusing to provide Abdisalam Wilwal with a constitutionally adequate process for obtaining redress for his placement on the master watchlist, and in refusing to remove him from the watchlist, constituted final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*

102. Defendants' failure to provide Mr. Wilwal with notice of the reasons for his placement on the watchlist, and a meaningful opportunity to contest his continued retention on it and the consequences thereof, is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, and contrary to constitutional rights, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

103. Because Abdisalam Wilwal is neither a known nor appropriately suspected terrorist, Defendants' conduct in placing and retaining him on the master watchlist, and in arresting, detaining, incarcerating, and interrogating him on that basis, is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, and contrary to constitutional rights, and should be set aside as unlawful pursuant to 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) Declare that Defendants have violated Plaintiffs' rights under the Fourth and Fifth Amendments to the United States Constitution and the Administrative Procedure Act;

(b) Enter an injunction:

- a. enjoining Defendants from arresting, seizing, searching, or interrogating Abdisalam Wilwal because of his placement on a terrorism-related watchlist;
- b. enjoining Defendants from arresting, seizing, detaining, searching, or interrogating Sagal Abdigani, M.O., N.W., A.W., or A.M. because of their association with Abdisalam Wilwal;
- c. requiring Defendants to provide Abdisalam Wilwal with notice of the reasons for his placement on the master watchlist and a meaningful opportunity to contest his continued retention on it;
- d. requiring Defendants to remedy the constitutional and statutory violations identified above, including the removal of Abdisalam Wilwal from the master watchlist;
- e. requiring Defendants to expunge from government databases or otherwise destroy all information unlawfully obtained from Plaintiffs;

(c) Award Plaintiffs reasonable attorneys' fees and costs; and

(d) Grant all other relief the Court deems appropriate.

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