

No. 20-10059

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GEORGE ANIBOWEI,
Plaintiff - Appellant

v.

MARK A. MORGAN, Acting Commissioner of U.S. Customs and Border Protection, in his official capacity; WILLIAM P. BARR, U.S. ATTORNEY GENERAL; CHAD F. WOLF, ACTING SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; MATTHEW T. ALBENCE, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration, in his official capacity; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES CUSTOMS AND BORDER PROTECTION; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; TRANSPORTATION SECURITY ADMINISTRATION,
Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

RECORD EXCERPTS

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TAB 1

APPEAL,CLOSED,RAMIREZ

**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:16-cv-03495-D**

Anibowei v. Lynch et al
Assigned to: Judge Sidney A Fitzwater
Case in other court: USCA5, 20-10059
Cause: 28:2201 Declaratory Judgment

Date Filed: 12/23/2016
Date Terminated: 03/05/2020
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other Civil Rights
Jurisdiction: U.S. Government Defendant

Plaintiff**George Anibowei**

represented by **George Anibowei**
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V.

Defendant

Loretta E Lynch

Attorney General of the United States

TERMINATED: 04/11/2017

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TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant

James B Comey
*Director of the Federal Bureau of
Investigation*
TERMINATED: 03/15/2019

represented by **Sarah Elizabeth Delaney-DOJ**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ
(See above for address)
TERMINATED: 08/29/2018
Bar Status: Admitted/In Good Standing

Defendant

Christopher M Piehota
Director of the Terrorist Screening Center
TERMINATED: 03/15/2019

represented by **Sarah Elizabeth Delaney-DOJ**
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Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ
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TERMINATED: 08/29/2018
Bar Status: Admitted/In Good Standing

Defendant

Nicholas Rasmussen
*Director of the National Counterterrorism
Center*
TERMINATED: 03/15/2019

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Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ
(See above for address)
TERMINATED: 08/29/2018
Bar Status: Admitted/In Good Standing

Defendant

Jeh C Johnson
*Director of the Department of Homeland
Security*
TERMINATED: 04/11/2017

represented by **Sarah Elizabeth Delaney-DOJ**
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LEAD ATTORNEY
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Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ
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TERMINATED: 08/29/2018
Bar Status: Admitted/In Good Standing

Defendant

R. Gil Kerlikowske

*Commissioner of the United States Customs
and Border Protection*

TERMINATED: 04/11/2017

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant**Peter Neffenger**

*Administrator of the United States
Transportation Security Administration*

TERMINATED: 04/11/2017

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant**Sarah R Saldana**

*Director of United States Immigration and
Customs Enforcement*

TERMINATED: 04/11/2017

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant**Jefferson B. Sessions**

Attorney General of the United States

TERMINATED: 02/14/2019

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant**John F Kelly**

Secretary of Homeland Security

TERMINATED: 03/15/2019

represented by **Sarah Elizabeth Delaney-DOJ**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant

Kevin K McAleenan

*Commissioner of US Customs and Border
Protection, in his official capacity*

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

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TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant

Huban Gowadia

*Acting Administrator of the United States
Transportation Security Administration
TERMINATED: 03/15/2019*

represented by **Sarah Elizabeth Delaney-DOJ**

(See above for address)

LEAD ATTORNEY

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Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant

Thomas D Homan

*Acting Director of United States
Immigration and Customs Enforcement
TERMINATED: 03/15/2019*

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

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Bar Status: Admitted/In Good Standing

Brian Walters Stoltz-DOJ

(See above for address)

TERMINATED: 08/29/2018

Bar Status: Admitted/In Good Standing

Defendant

William P Barr

*Attorney General of the United States, in his
official capacity*

represented by **Sarah Elizabeth Delaney-DOJ**

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LEAD ATTORNEY

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Bar Status: Admitted/In Good Standing

Defendant

Kirstjen M Nielsen
*US Secretary of Homeland Security, in her
official capacity*

represented by **Sarah Elizabeth Delaney-DOJ**
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ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Ronald D Vitiello
*Acting Director of US Immigration and
Customs Enforcement, in his official
capacity*

represented by **Sarah Elizabeth Delaney-DOJ**
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LEAD ATTORNEY
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Bar Status: Admitted/In Good Standing

Defendant

David P Pekoske
*Administrator of the Transportation
Security Administration, in his official
capacity*

represented by **Sarah Elizabeth Delaney-DOJ**
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ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

US Department of Homeland Security

represented by **Sarah Elizabeth Delaney-DOJ**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

US Customs and Border Protection

represented by **Sarah Elizabeth Delaney-DOJ**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

**US Immigration and Customs
Enforcement**

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ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Defendant

Transportation Security Administration

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Date Filed	#	Docket Text
12/23/2016	<u>1</u>	COMPLAINT against James Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher Piehota, Nicholas Rasmussen, Sarah R Saldana filed by GEORGE ANIBOWEI. (Filing fee \$400; Receipt number 0539-8093202) Clerk to issue summons(es) for federal defendant(s). In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the <u>Judges Copy Requirements</u> is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: <u>Attorney Information - Bar Membership</u> . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # <u>1</u> Cover Sheet, # <u>2</u> Exhibit(s) 1, # <u>3</u> Exhibit(s) 2, # <u>4</u> Exhibit(s) 3, # <u>5</u> Exhibit(s) 4, # <u>6</u> Exhibit(s) 5) (Anibowei, George) (Entered: 12/23/2016)
12/23/2016	<u>2</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by GEORGE ANIBOWEI. (Anibowei, George) (Entered: 12/23/2016)

Date Filed	#	Docket Text
12/23/2016	<u>3</u>	New Case Notes: A filing fee has been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (Judge Ramirez). Clerk to provide copy to plaintiff if not received electronically. (twd) (Entered: 12/23/2016)
12/23/2016	<u>4</u>	Summons issued as to All Defendants, U.S. Attorney, and U.S. Attorney General. (twd) (Entered: 12/23/2016)
03/06/2017	<u>5</u>	MOTION to Dismiss (<i>under Rule 12(b)(1) and Rule 12(b)(6)</i>) filed by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana with Brief/Memorandum in Support. (Stoltz-DOJ, Brian) (Entered: 03/06/2017)
03/06/2017	<u>6</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana. (Stoltz-DOJ, Brian) (Entered: 03/06/2017)
03/13/2017	<u>7</u>	Order for Scheduling Order Proposal: Proposed Scheduling Order due by 4/10/2017. (Ordered by Judge Sidney A Fitzwater on 3/13/2017) (axm) (Entered: 03/13/2017)
03/25/2017	<u>8</u>	AMENDED COMPLAINT against All Defendants filed by George Anibowei. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # <u>1</u> Exhibit(s) 1, # <u>2</u> Exhibit(s) 2, # <u>3</u> Exhibit(s) 3, # <u>4</u> Exhibit(s) 4, # <u>5</u> Exhibit(s) 5, # <u>6</u> Exhibit(s) 6) (Anibowei, George) (Entered: 03/25/2017)
03/27/2017	<u>9</u>	REPLY filed by George Anibowei re: <u>5</u> MOTION to Dismiss (<i>under Rule 12(b)(1) and Rule 12(b)(6)</i>) (Anibowei, George) (Entered: 03/27/2017)
03/31/2017	<u>10</u>	NOTICE of <i>Mootness of Motion to Dismiss Original Complaint, Due to Filing of a First Amended Complaint</i> re: <u>5</u> MOTION to Dismiss (<i>under Rule 12(b)(1) and Rule 12(b)(6)</i>) filed by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana (Stoltz-DOJ, Brian) (Entered: 03/31/2017)
03/31/2017	11	

Date Filed	#	Docket Text
		ELECTRONIC ORDER terminating as moot <u>5</u> MOTION to Dismiss (under Rule 12(b)(1) and Rule 12(b)(6)) filed by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana. (Ordered by Judge Sidney A Fitzwater on 3/31/2017) (Judge Sidney A Fitzwater) (Entered: 03/31/2017)
04/10/2017	<u>12</u>	Joint STATUS REPORT (<i>Scheduling Proposal</i>) filed by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana. (Stoltz-DOJ, Brian) (Entered: 04/10/2017)
04/10/2017	<u>13</u>	MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> filed by James B Comey, Jeh Johnson, R. Gil Kerlikowske, Loretta Lynch, Peter Neffenger, Christopher M Piehota, Nicholas Rasmussen, Sarah R Saldana with Brief/Memorandum in Support. (Stoltz-DOJ, Brian) (Entered: 04/10/2017)
04/11/2017	<u>14</u>	ORDER OF REFERENCE: Defendants' 4/10/2017 <u>13</u> motion to dismiss plaintiff's firstamended complaint is REFERRED to United States Magistrate Judge Irma Carrillo Ramirez for recommendation. She may conduct a hearing if she determines that a hearing is necessary. (Ordered by Judge Sidney A Fitzwater on 4/11/2017) (sss) (Entered: 04/11/2017)
04/11/2017	<u>15</u>	ORDER re: <u>13</u> Defendants' Motion to Dismiss Plaintiff's First Amended Complaint. Respondent may file a response by 5/1/2017. Movant may file a reply by 5/15/2017. (Ordered by Magistrate Judge Irma Carrillo Ramirez on 4/11/2017) (mcrd) (Entered: 04/11/2017)
04/24/2017	<u>16</u>	SCHEDULING ORDER: Amended Pleadings due by 7/17/2017. Discovery due by 3/23/2018. Joinder of Parties due by 7/17/2017. Motions due by 3/23/2018. Status Report due by 3/23/2018. (Ordered by Judge Sidney A Fitzwater on 4/24/2017) (rekc) (Entered: 04/24/2017)
05/01/2017	<u>17</u>	RESPONSE filed by George Anibowei re: <u>13</u> MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> (Anibowei, George) (Entered: 05/01/2017)
05/15/2017	<u>18</u>	REPLY filed by James B Comey, Huban Gowadia, Thomas D Homan, John F Kelly, Kevin K McAleenan, Christopher M Piehota, Nicholas Rasmussen, Jefferson B. Sessions re: <u>13</u> MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> (Stoltz-DOJ, Brian) (Entered: 05/15/2017)
12/15/2017	<u>19</u>	Findings, Conclusions, and Recommendation re: <u>13</u> Defendants' Motion to Dismiss Plaintiff's First Amended

Date Filed	#	Docket Text
		Complaint. Defendants' Rule 12(b)(1) motion to dismiss should be DENIED, and their Rule 12(b)(6) motion to dismiss should be GRANTED in part. Plaintiff's Bivens claims should be DISMISSED with prejudice for failure to state a claim, and his APA claims should sua sponte be DISMISSED without prejudice for lack of subject-matter jurisdiction. (Ordered by Magistrate Judge Irma Carrillo Ramirez on 12/15/2017) (mcrd) (Entered: 12/15/2017)
12/29/2017	<u>20</u>	OBJECTION to <u>19</u> Findings and Recommendations <i>on Defendants' Motion to Dismiss</i> . (Stoltz-DOJ, Brian) (Entered: 12/29/2017)
01/10/2018	<u>21</u>	OBJECTION to <u>19</u> Findings and Recommendations <i>Response</i> . (Anibowei, George) (Entered: 01/10/2018)
01/24/2018	<u>22</u>	REPLY filed by James B Comey, Huban Gowadia, Thomas D Homan, John F Kelly, Kevin K McAleenan, Christopher M Piehota, Nicholas Rasmussen, Jefferson B. Sessions re: <u>20</u> Objection to Findings and Recommendations (Stoltz-DOJ, Brian) (Entered: 01/24/2018)
03/22/2018	<u>23</u>	Joint MOTION to Stay <i>Deadlines</i> filed by James B Comey, Huban Gowadia, Thomas D Homan, John F Kelly, Kevin K McAleenan, Christopher M Piehota, Nicholas Rasmussen, Jefferson B. Sessions with Brief/Memorandum in Support. Attorney Brian Walters Stoltz-DOJ added to party Huban Gowadia(pty:dft), Attorney Brian Walters Stoltz-DOJ added to party Thomas D Homan(pty:dft), Attorney Brian Walters Stoltz-DOJ added to party John F Kelly(pty:dft), Attorney Brian Walters Stoltz-DOJ added to party Kevin K McAleenan(pty:dft), Attorney Brian Walters Stoltz-DOJ added to party Jefferson B. Sessions(pty:dft) (Stoltz-DOJ, Brian) (Entered: 03/22/2018)
03/22/2018	<u>24</u>	Joint STATUS REPORT filed by James B Comey, Huban Gowadia, Thomas D Homan, John F Kelly, Kevin K McAleenan, Christopher M Piehota, Nicholas Rasmussen, Jefferson B. Sessions. (Stoltz-DOJ, Brian) (Entered: 03/22/2018)
03/22/2018	<u>25</u>	ORDER granting <u>23</u> Joint Motion to Stay Deadlines. (Ordered by Judge Sidney A Fitzwater on 3/22/2018) (ran) (Entered: 03/22/2018)
03/27/2018	<u>26</u>	MEMORANDUM OPINION AND ORDER adopting in part and re-referring in part <u>19</u> Findings and Recommendations on Motion re: <u>13</u> Motion to Dismiss filed by Peter Neffenger, Loretta E Lynch, Jeh C Johnson, Nicholas Rasmussen, R. Gil Kerlikowske, Sarah R Saldana, Christopher M Piehota, James B Comey. The <u>13</u>

Date Filed	#	Docket Text
		MOTION to Dismiss filed by Peter Neffenger, Loretta E Lynch, Jeh C Johnson, Nicholas Rasmussen, R. Gil Kerlikowske, Sarah R Saldana, Christopher M Piehota, James B Comey is granted in part and re-referred in part to the United States Magistrate Judge. (Ordered by Judge Sidney A Fitzwater on 3/27/2018) (Judge Sidney A Fitzwater) (Entered: 03/27/2018)
08/16/2018	<u>27</u>	TRIAL SETTING ORDER: Trial set for Court's two-week docket beginning 7/8/2019 before Judge Sidney A Fitzwater. (Ordered by Judge Sidney A Fitzwater on 8/16/2018) (aaa) (Entered: 08/16/2018)
08/29/2018	<u>28</u>	Notice of Substitution of Counsel by AUSA. Sarah Elizabeth Delaney-DOJ added as AUSA. (Delaney-DOJ, Sarah) (Entered: 08/29/2018)
10/18/2018	<u>29</u>	SUPPLEMENTAL FINDINGS, CONCLUSIONS, AND RECOMMENDATION on Case re: <u>1</u> Complaint. Plaintiff's claims for injunctive relief against Defendants in their official capacities should be DISMISSED with prejudice (Ordered by Magistrate Judge Irma Carrillo Ramirez on 10/18/2018) (epm) (Entered: 10/19/2018)
11/02/2018	<u>30</u>	Unopposed MOTION to Extend Time TO FILE PLAINTIFF'S OBJECTION filed by George Anibowei with Brief/Memorandum in Support. (Attachments: # <u>1</u> Proposed Order) (Anibowei, George) (Entered: 11/02/2018)
11/02/2018	<u>31</u>	ORDER granting <u>30</u> Motion to Extend Time to file Objections. Objections to F&R due by 11/7/2018 (Ordered by Senior Judge Sidney A Fitzwater on 11/2/2018) (ndt) (Entered: 11/02/2018)
11/05/2018	<u>32</u>	OBJECTION filed by George Anibowei re: <u>29</u> Findings and Recommendations on Case re: <u>1</u> Complaint, filed by George Anibowei. (Anibowei, George) (Entered: 11/05/2018)
11/19/2018	<u>33</u>	RESPONSE filed by James B Comey, Huban Gowadia, Thomas D Homan, John F Kelly, Kevin K McAleenan, Christopher M Piehota, Nicholas Rasmussen, Jefferson B. Sessions re: <u>32</u> Response/Objection (Delaney-DOJ, Sarah) (Entered: 11/19/2018)
12/28/2018	<u>34</u>	Order Granting Government's Omnibus Motion for Stay of Cases in Light of Lapse of Appropriations (Ordered by Chief Judge Barbara M.G. Lynn on 12/28/2018) (Attachments: # <u>1</u> Government's Omnibus Motion for Stay) (lrl) (Entered: 12/28/2018)
01/28/2019	<u>35</u>	ORDER GRANTING GOVERNMENT'S OMNIBUS MOTION FOR LIFT OF STAY: Unless otherwise

Date Filed	#	Docket Text
		directed by the United States District Judge presiding in a particular case, all deadlines that had not expired on or before December 21, 2018 in a case covered by the stay order are extended for 34 days (i.e., the duration of the lapse in appropriations for the Department of Justice). (Ordered by Chief Judge Barbara M.G. Lynn on 1/26/2019) (Attachments: # <u>1</u> Additional Page(s) Omnibus Motion to Lift Stay) (ctf) (Entered: 01/28/2019)
02/14/2019	<u>36</u>	MEMORANDUM OPINION AND ORDER adopting in part <u>29</u> SUPPLEMENTAL FINDINGS, CONCLUSIONS, AND RECOMMENDATION on Case re: <u>1</u> Complaint. The court dismisses plaintiff's claims with leave to file a second amended complaint. (Ordered by Senior Judge Sidney A Fitzwater on 2/14/2019) (Senior Judge Sidney A Fitzwater) (Entered: 02/14/2019)
03/11/2019	<u>37</u>	NOTICE of Attorney Appearance by Hani Mirza on behalf of George Anibowei. (Filer confirms contact info in ECF is current.) (Mirza, Hani) (Entered: 03/11/2019)
03/12/2019	<u>38</u>	APPLICATION FOR ADMISSION PRO HAC VICE (NOTICE of Attorney Appearance) by Jayce Lane Born on behalf of George Anibowei. (Filer confirms contact info in ECF is current.) (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order) (Born, Jayce) Modified event and text to match document on 3/13/2019 (dsr). (Entered: 03/12/2019)
03/12/2019	<u>39</u>	NOTICE of Attorney Appearance by Jayce Lane Born on behalf of George Anibowei. (Born, Jayce) (Entered: 03/12/2019)
03/13/2019	<u>40</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844229) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order, # <u>3</u> Appearance of Counsel) Attorney Emily Rebecca Chertoff added to party George Anibowei(pty:pla) (Chertoff, Emily) (Entered: 03/13/2019)
03/13/2019		NOTICE of Attorney Appearance by Emily Rebecca Chertoff on behalf of George Anibowei. (See Doc [40-3] for image.) (dsr) (Entered: 03/13/2019)
03/13/2019	<u>41</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844356) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order, # <u>3</u> Appearance of Counsel) Attorney Stephen K Wirth added to party George Anibowei(pty:pla) (Wirth, Stephen) (Entered: 03/13/2019)
03/13/2019		

Date Filed	#	Docket Text
		NOTICE of Attorney Appearance by Stephen K Wirth on behalf of George Anibowei. (See Doc [41-3] for image.) (dsr) (Entered: 03/13/2019)
03/13/2019	<u>42</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844401) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order, # <u>3</u> Appearance of Counsel)Attorney Sam Callahan added to party George Anibowei(pty:pla) (Callahan, Sam) (Entered: 03/13/2019)
03/13/2019	<u>43</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844470) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order, # <u>3</u> Appearance of Counsel)Attorney Andrew Tutt added to party George Anibowei(pty:pla) (Tutt, Andrew) (Entered: 03/13/2019)
03/13/2019	<u>44</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844512) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order, # <u>3</u> Appearance of Counsel)Attorney Robert Stanton Jones added to party George Anibowei(pty:pla) (Jones, Robert) (Entered: 03/13/2019)
03/13/2019	45	ELECTRONIC ORDER granting <u>38</u> Application for Admission Pro Hac Vice of Jayce Lane Born. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	46	ADVISORY TO COUNSEL: The certificate of good standing attached to <u>40</u> the pro hac vice application of Emily Rebecca Chertoff is the certificate of good standing for Jayce Lane Born [40-1]. Please submit the correct certificate of good standing. (Senior Judge Sidney A. Fitzwater). (Entered: 03/13/2019)
03/13/2019	47	ELECTRONIC ORDER granting <u>41</u> Application for Admission Pro Hac Vice of Stephen K. Wirth. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	48	ELECTRONIC ORDER granting <u>42</u> Application for Admission Pro Hac Vice of Sam Callahan. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A

Date Filed	#	Docket Text
		Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	<u>49</u>	ELECTRONIC ORDER granting <u>43</u> Application for Admission Pro Hac Vice of Andrew Tutt. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	<u>50</u>	ELECTRONIC ORDER granting <u>44</u> Application for Admission Pro Hac Vice of Robert Stanton Jones. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	<u>51</u>	SUPPLEMENTAL DOCUMENT by George Anibowei. Supplement to <u>40</u> Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844229). (correct Certificate of Good Standing). (Chertoff, Emily) Modified on 3/13/2019 (dsr). (Entered: 03/13/2019)
03/13/2019	<u>52</u>	ELECTRONIC ORDER granting <u>40</u> Application for Admission Pro Hac Vice of Emily Rebecca Chertoff. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/13/2019	<u>53</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9845039) filed by George Anibowei (Attachments: # <u>1</u> Exhibit(s), # <u>2</u> Proposed Order, # <u>3</u> Exhibit(s))Attorney Peter Steffensen added to party George Anibowei(pty:pla) (Steffensen, Peter) (Entered: 03/13/2019)
03/13/2019	<u>54</u>	ELECTRONIC ORDER granting <u>53</u> Application for Admission Pro Hac Vice of Peter Steffensen. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/13/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/13/2019)
03/14/2019	<u>55</u>	AMENDED DOCUMENT by George Anibowei. Amendment to <u>44</u> Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9844512). (<i>Corrected Proposed Order</i>). (Jones, Robert) (Entered: 03/14/2019)
03/14/2019	<u>56</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number

Date Filed	#	Docket Text
		0539-9847971) filed by George Anibowei (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Proposed Order)Attorney Graham White added to party George Anibowei(pty:pla) (White, Graham) (Entered: 03/14/2019)
03/14/2019	<u>57</u>	NOTICE of Attorney Appearance by Graham White on behalf of George Anibowei. (Filer confirms contact info in ECF is current.) (White, Graham) (Entered: 03/14/2019)
03/14/2019	58	ELECTRONIC ORDER granting <u>56</u> Application for Admission Pro Hac Vice of Graham White. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 3/14/2019) (Senior Judge Sidney A Fitzwater) (Entered: 03/14/2019)
03/14/2019	<u>59</u>	<i>Verified Second</i> AMENDED COMPLAINT against William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, Ronald D Vitiello, David P Pekoske, US Department of Homeland Security, US Customs and Border Protection, US Immigration and Customs Enforcement, Transportation Security Administration filed by George Anibowei. (One or more defendant(s) is no longer named.) Clerk to issue summons(es) for new federal defendant(s). Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Callahan, Sam) (Entered: 03/14/2019)
03/15/2019	<u>60</u>	Summons issued as to Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello, US Attorney, and US Attorney General. (mla) (Entered: 03/15/2019)
03/26/2019	<u>61</u>	MOTION to Set Briefing Schedule for Defendants' Response to Plaintiff's Second Amended Complaint filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello with Brief/Memorandum in Support. Attorney Sarah Elizabeth Delaney-DOJ added to party Kirstjen M Nielsen(pty:dft), Attorney Sarah Elizabeth Delaney-DOJ added to party David P Pekoske(pty:dft), Attorney Sarah Elizabeth

Date Filed	#	Docket Text
		<p>Delaney-DOJ added to party Transportation Security Administration(pty:dft), Attorney Sarah Elizabeth Delaney-DOJ added to party US Customs and Border Protection(pty:dft), Attorney Sarah Elizabeth Delaney-DOJ added to party US Department of Homeland Security(pty:dft), Attorney Sarah Elizabeth Delaney-DOJ added to party US Immigration and Customs Enforcement(pty:dft), Attorney Sarah Elizabeth Delaney-DOJ added to party Ronald D Vitiello(pty:dft) (Delaney-DOJ, Sarah) (Entered: 03/26/2019)</p>
03/26/2019	<u>62</u>	<p>ORDER: <u>61</u> Motion to set briefing schedule for defendants' response to plaintiffs second amended complaint is granted. Answer due 5/14/2019 (Ordered by Senior Judge Sidney A Fitzwater on 3/26/2019) (svc) (Entered: 03/26/2019)</p>
03/26/2019		<p>Answer due from William P Barr on 5/14/2019; Kevin K McAleenan on 5/14/2019; Kirstjen M Nielsen on 5/14/2019; David P Pekoske on 5/14/2019; Transportation Security Administration on 5/14/2019; US Customs and Border Protection on 5/14/2019; US Department of Homeland Security on 5/14/2019; US Immigration and Customs Enforcement on 5/14/2019; Ronald D Vitiello on 5/14/2019 to <u>59</u> Amended Complaint filed 03/14/2019. (svc) (Entered: 03/26/2019)</p>
04/02/2019	<u>63</u>	<p>SUMMONS Returned Executed as to Kirstjen M Nielsen; served on 3/18/2019; David P Pekoske; served on 3/18/2019; Transportation Security Administration; served on 3/18/2019; US Customs and Border Protection; served on 3/18/2019; US Department of Homeland Security; served on 3/18/2019; US Immigration and Customs Enforcement; served on 3/18/2019; Ronald D Vitiello; served on 3/18/2019. (Attachments: # <u>1</u> Declaration(s) Andrew Tutt, # <u>2</u> Declaration(s) Darrell Reddix) (Tutt, Andrew) (Entered: 04/02/2019)</p>
04/02/2019	<u>64</u>	<p>MOTION to Withdraw as Attorney filed by George Anibowei (Chertoff, Emily) (Entered: 04/02/2019)</p>
04/04/2019	65	<p>ADVISORY TO COUNSEL: Please submit your proposed order for the following motion -- in modifiable Word or WordPerfect format -- to Fitzwater_Orders@txnd.uscourts.gov.: <u>64</u> MOTION to Withdraw as Attorney filed by George Anibowei (Senior Judge Sidney A. Fitzwater). (Entered: 04/04/2019)</p>
04/08/2019	<u>66</u>	<p>ORDER granting <u>64</u> Motion to Withdraw as Attorney. Attorney Emily Rebecca Chertoff terminated. (Ordered by Senior Judge Sidney A Fitzwater on 4/8/2019) (epm) (Entered: 04/08/2019)</p>

Date Filed	#	Docket Text
04/16/2019	<u>67</u>	MOTION for Summary Judgment (<i>Partial</i>), MOTION for Injunction (<i>Preliminary</i>) () filed by George Anibowei (Attachments: # <u>1</u> Proposed Order Granting Plaintiff's Motion for Partial Summary Judgment, # <u>2</u> Proposed Order Granting Plaintiff's Motion for a Preliminary Injunction) (Callahan, Sam) (Entered: 04/16/2019)
04/16/2019	<u>68</u>	Brief/Memorandum in Support filed by George Anibowei re <u>67</u> MOTION for Summary Judgment (<i>Partial</i>) MOTION for Injunction (<i>Preliminary</i>) (Callahan, Sam) (Entered: 04/16/2019)
04/29/2019	<u>69</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9952336) filed by The R Street Institute. Party The R Street Institute added. Attorney William Francis Cole added to party The R Street Institute(pty:am) (Cole, William) (Entered: 04/29/2019)
04/29/2019	<u>70</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Daniel R. Adler (Filing fee \$25; Receipt number 0539-9952342) filed by The R Street Institute (Cole, William) (Entered: 04/29/2019)
04/29/2019	<u>71</u>	Unopposed MOTION for Leave to File Brief of the R Street Institute as Amicus Curiae in Support of Plaintiff George Anibowei's motion for Partial Summary Judgment, or, in the Alternative, a Preliminary Injunction filed by The R Street Institute with Brief/Memorandum in Support. (Attachments: # <u>1</u> Exhibit(s) Brief of the R Street Institute as Amicus Curiae in Support of Plaintiff George Anibowei's motion for Partial Summary Judgment, or, in the Alternative, a Preliminary Injunction) (Cole, William) (Entered: 04/29/2019)
05/01/2019	72	ELECTRONIC ORDER granting <u>71</u> Unopposed MOTION for Leave to File Brief of the R Street Institute as Amicus Curiae in Support of Plaintiff George Anibowei's motion for Partial Summary Judgment, or, in the Alternative, a Preliminary Injunction filed by The R Street Institute with Brief/Memorandum in Support. (Unless the document has already been filed, clerk to enter the document as of the date of this order.) (Ordered by Senior Judge Sidney A Fitzwater on 5/1/2019) (Senior Judge Sidney A Fitzwater) (Entered: 05/01/2019)
05/01/2019	<u>73</u>	Brief/Memorandum in Support filed by The R Street Institute re <u>67</u> (<i>Partial</i>) MOTION for Injunction (<i>Preliminary</i>). (epm) (Entered: 05/01/2019)
05/01/2019	74	ELECTRONIC ORDER granting <u>69</u> Application for Admission Pro Hac Vice of William F. Cole. If not already done, Applicant must register as an ECF User

Date Filed	#	Docket Text
		within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 5/1/2019) (Senior Judge Sidney A Fitzwater) (Entered: 05/01/2019)
05/01/2019	75	ELECTRONIC ORDER granting <u>70</u> Application for Admission Pro Hac Vice of Daniel R. Adler. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 5/1/2019) (Senior Judge Sidney A Fitzwater) (Entered: 05/01/2019)
05/06/2019	<u>76</u>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$25; Receipt number 0539-9966170) filed by George Anibowei (Attachments: # <u>1</u> WDTX Certificate of Good Standing, # <u>2</u> Proposed Order)Attorney Mimi Marziani added to party George Anibowei(pty:pla) (Marziani, Mimi) (Entered: 05/06/2019)
05/07/2019	77	ADVISORY TO COUNSEL: Your application for admission pro hac vice <u>76</u> is deficient. As the court's application for admission form indicates at § IV, you must attach to your application an original certificate of good standing issued within the past 90 days from the attorney licensing authority in a state in which you are admitted to practice (e.g., State Bar of Texas). A certificate of good standing from another federal court, such as a United States district court, is insufficient. Please make a separate electronic filing that contains the required certificate of good standing (you do not have to resubmit the remainder of the application). Once you make this filing, your application for admission pro hac vice will be acted on. (Senior Judge Sidney A. Fitzwater). (Entered: 05/07/2019)
05/07/2019	<u>78</u>	RESPONSE filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello re: <u>67</u> MOTION for Summary Judgment (<i>Partial</i>) MOTION for Injunction (<i>Preliminary</i>) (Delaney-DOJ, Sarah) (Entered: 05/07/2019)
05/07/2019	<u>79</u>	Brief/Memorandum in Support filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello re <u>78</u> Response/Objection, to <u>67</u> Motion for Summary Judgment (<i>Partial</i>) Motion for Injunction (<i>Preliminary</i>) (Delaney-DOJ, Sarah) (Entered: 05/07/2019)

Date Filed	#	Docket Text
05/07/2019	<u>80</u>	Unopposed MOTION to Stay <i>Response Deadline to Plaintiff's Second Amended Complaint</i> filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello with Brief/Memorandum in Support. (Delaney-DOJ, Sarah) (Entered: 05/07/2019)
05/08/2019	<u>81</u>	ADDITIONAL ATTACHMENTS to <u>76</u> Application for Admission Pro Hac Vice, by Plaintiff George Anibowei. (Marziani, Mimi) (Entered: 05/08/2019)
05/09/2019	82	ELECTRONIC ORDER granting <u>76</u> Application for Admission Pro Hac Vice of Mimi Marziani. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Senior Judge Sidney A Fitzwater on 5/9/2019) (Senior Judge Sidney A Fitzwater) (Entered: 05/09/2019)
05/09/2019	<u>83</u>	ORDER granting <u>80</u> Unopposed MOTION to Stay Response Deadline to Plaintiff's Second Amended Complaint filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello. (Ordered by Senior Judge Sidney A Fitzwater on 5/9/2019) (Senior Judge Sidney A Fitzwater) (Entered: 05/09/2019)
05/21/2019	<u>84</u>	REPLY filed by George Anibowei re: <u>67</u> MOTION for Summary Judgment (<i>Partial</i>) MOTION for Injunction (<i>Preliminary</i>) (Tutt, Andrew) (Entered: 05/21/2019)
07/03/2019	<u>85</u>	ORDER: The court on its own initiative resets the trial of this case to the two-week docket of 2/3/2020. (Ordered by Senior Judge Sidney A Fitzwater on 7/3/2019) (zkc) (Entered: 07/03/2019)
10/10/2019	<u>86</u>	Joint MOTION to Stay <i>Deadlines</i> filed by William P Barr, Kevin K McAleenan, David P Pekoske, Transportation Security Administration, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement with Brief/Memorandum in Support. (Delaney-DOJ, Sarah) (Entered: 10/10/2019)
10/11/2019	<u>87</u>	ORDER granting <u>86</u> Motion to Stay Deadlines. The unexpired deadlines in this case are stayed, and the trial setting of the two-week docket of February 3, 2020 is vacated. (Ordered by Senior Judge Sidney A Fitzwater on 10/11/2019) (ndt) (Entered: 10/11/2019)

Date Filed	#	Docket Text
11/18/2019	88	ADVISORY TO COUNSEL: The court intends to hear oral argument on <u>67</u> plaintiff's motion for partial summary judgment, or, in the alternative, a preliminary injunction. The court directs the parties to confer and advise the court by letter (which should be submitted electronically) of their availability for oral argument on the following dates: January 8, 9 (afternoon only), 13, 15, 16 (afternoon only), 22, 23 (afternoon only), 27, and 29, 2020. The court intends to issue an order specifying the argument procedures at least 14 days before the date argument is heard. (Senior Judge Sidney A. Fitzwater) (Entered: 11/18/2019)
11/22/2019	<u>89</u>	NOTICE of <i>Dates of Availability for Oral Argument</i> re: 88 Remark filed by George Anibowei (Tutt, Andrew) (Entered: 11/22/2019)
11/25/2019	90	ELECTRONIC ORDER: Motion Hearing set for 1/13/2020 10:00 AM in US Courthouse, Courtroom 1351, 1100 Commerce St., Dallas, TX 75242-1310 before Senior Judge Sidney A Fitzwater. re: <u>67</u> MOTION for Summary Judgment (Partial), MOTION for Injunction (Preliminary) filed by George Anibowei. (Ordered by Senior Judge Sidney A Fitzwater on 11/25/2019) (Senior Judge Sidney A Fitzwater) (Entered: 11/25/2019)
12/30/2019	<u>91</u>	ORDER re procedure for ORAL ARGUMENT. (Ordered by Senior Judge Sidney A Fitzwater on 12/30/2019) (Senior Judge Sidney A Fitzwater) (Entered: 12/30/2019)
01/10/2020	<u>92</u>	NOTICE of <i>ADDITIONAL AUTHORITY</i> filed by George Anibowei (Attachments: # <u>1</u> United States v. Cano, # <u>2</u> United States v. Aigbekaen, # <u>3</u> Alassad v. Nielsen) (Callahan, Sam) (Entered: 01/10/2020)
01/13/2020	93	ELECTRONIC Minute Entry for proceedings held before Senior Judge Sidney A Fitzwater: Motion Hearing held on 1/13/2020 re <u>67</u> Motion for Summary Judgment,, Motion for Injunction, filed by George Anibowei. Oral argument heard. Taken under advisement. Written order to follow. Attorney Appearances: Plaintiff - Andrew Tutt with Stephen Wirth, Stanton Jones and Peter Steffensen; Defense - Sarah Delaney. (Court Reporter: Pamela Wilson) (No exhibits) Time in Court - :57. (chmb) (Entered: 01/13/2020)
01/14/2020	<u>94</u>	MEMORANDUM OPINION AND ORDER denying <u>67</u> MOTION for Summary Judgment (Partial), or, in the alternative, for Preliminary Injunction, filed by plaintiff George Anibowei. (Ordered by Senior Judge Sidney A Fitzwater on 1/14/2020) (Senior Judge Sidney A Fitzwater) (Entered: 01/14/2020)

Date Filed	#	Docket Text
01/15/2020	<u>95</u>	NOTICE OF INTERLOCUTORY APPEAL as to <u>94</u> Memorandum Opinion and Order, to the Fifth Circuit by George Anibowei. Filing fee \$505, receipt number 0539-10546366. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here . (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Tutt, Andrew) (Entered: 01/15/2020)
01/27/2020		USCA Case Number 20-10059 in USCA5 for <u>95</u> Notice of Appeal filed by George Anibowei. (svc) (Entered: 01/27/2020)
01/28/2020	<u>96</u>	Transcript Order Form: re <u>95</u> Notice of Appeal,,, transcript requested by George Anibowei for Summary judgment and preliminary injunction hearing held 1/13/20 (Court Reporter: Pamela Wilson.) Payment method: Private Funds - Requester has paid or will pay as directed by the reporter. Reminder to appellant: this document must also be filed with the appeals court.. (Callahan, Sam) (Entered: 01/28/2020)
01/28/2020	<u>97</u>	MOTION to Dismiss filed by David P Pekoske, Transportation Security Administration with Brief/Memorandum in Support. (Delaney-DOJ, Sarah) (Entered: 01/28/2020)
01/28/2020	<u>98</u>	ANSWER to <u>59</u> Amended Complaint,,, filed by William P Barr, Kevin K McAleenan, Kirstjen M Nielsen, US Customs and Border Protection, US Department of Homeland Security, US Immigration and Customs Enforcement, Ronald D Vitiello. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Delaney-DOJ, Sarah) (Entered: 01/28/2020)
02/10/2020	<u>99</u>	

Date Filed	#	Docket Text
		ORDER: Proposed Scheduling Order due by 3/2/2020. (Ordered by Senior Judge Sidney A Fitzwater on 2/10/2020) (Senior Judge Sidney A Fitzwater) (Entered: 02/10/2020)
02/13/2020	<u>100</u>	Notice of Filing of Official Electronic Transcript of Oral Argument Proceedings held on 1/13/2020 before Judge Sidney Fitzwater. Court Reporter/Transcriber Pamela Wilson, Telephone number 214.662.1557. Parties are notified of their <u>duty to review</u> the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If the transcript contains personal identifiers that must be redacted under MO 61, Fed.R.Civ.P. 5.2 or Fed.R.Crim.P. 49.1, or if the transcript contains the name of a minor child victim or a minor child witness that must be redacted under 18 U.S.C. § 3509, file a <u>Redaction Request - Transcript</u> within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (63 pages) Redaction Request due 3/5/2020. Redacted Transcript Deadline set for 3/16/2020. Release of Transcript Restriction set for 5/13/2020. (pjw) (Entered: 02/13/2020)
02/14/2020	<u>101</u>	MOTION for Extension of Time to File Response/Reply to <u>97</u> MOTION to Dismiss filed by George Anibowei (Attachments: # <u>1</u> Proposed Order) (White, Graham) (Entered: 02/14/2020)
02/14/2020	102	ELECTRONIC ORDER granting <u>101</u> Unopposed MOTION for Extension of Time to File Response to <u>97</u> MOTION to Dismiss filed by George Anibowei. Response due by 3/18/2020. (Ordered by Senior Judge Sidney A Fitzwater on 2/14/2020) (Senior Judge Sidney A Fitzwater) (Entered: 02/14/2020)
03/02/2020	<u>103 (p.1062)</u>	RESPONSE filed by George Anibowei re: <u>99</u> Order Setting Deadline/Hearing (Tutt, Andrew) (Entered: 03/02/2020)
03/05/2020	<u>105 (p.1071)</u>	ORDER Administratively Closing Case. This case is stayed until the United States Court of Appeals for the Fifth Circuit issues its mandate in Appeal No. 20-10059. The clerk of court is directed to close this case for statistical purposes. Defendants' January 28, 2020 motion to dismiss plaintiff's second amended complaint is statistically closed, subject to being reopened and decided after the stay is lifted. (Ordered by Senior Judge Sidney A Fitzwater on 3/5/2020) (Senior Judge Sidney A Fitzwater) (Entered: 03/05/2020)
03/06/2020		

Date Filed	#	Docket Text
		<p>Record on Appeal for USCA5 20-10059 (related to <u>95</u> appeal): Record consisting of: 3 ECF electronic record on appeal (eROA) is certified, 1 Volume(s) electronic transcript.</p> <p>PLEASE NOTE THE FOLLOWING: Licensed attorneys must have filed an appearance in the USCA5 case and be registered for electronic filing in the USCA5 to access the paginated eROA in the USCA5 ECF system. (Take these steps immediately if you have not already done so. Once you have filed the notice of appearance and/or USCA5 ECF registration, it may take up to 3 business days for the circuit to notify the district clerk that we may grant you access to the eROA in the USCA5 ECF system.) To access the paginated record, log in to the USCA5 ECF system, and under the Utilities menu, select Electronic Record on Appeal. Pro se litigants may request a copy of the record by <u>contacting the appeals deputy</u> in advance to arrange delivery. (svc) (Entered: 03/06/2020)</p>

TAB 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GEORGE ANIBOWEI,

Plaintiff,

v.

KIRSTJEN M. NIELSEN, U.S. Secretary of Homeland Security, in her official capacity; KEVIN K. MCALEENAN, Commissioner of U.S. Customs and Border Protection, in his official capacity; RONALD D. VITIELLO, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration, in his official capacity; WILLIAM P. BARR, Attorney General of the United States, in his official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CUSTOMS AND BORDER PROTECTION; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TRANSPORTATION SECURITY ADMINISTRATION,

Defendants.

Case No. 3:16-cv-03495-D

NOTICE OF APPEAL

Notice is hereby given that Plaintiff George Anibowei hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Memorandum Opinion and Order entered in this action on January 14, 2019 denying his motion for a preliminary injunction. (Docket No. 94).

Respectfully submitted,

Dated: January 15, 2020

**ARNOLD & PORTER
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the date of electronic filing.

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TAB 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GEORGE ANIBOWEI,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Civil Action No. 3:16-CV-3495-D
	§	
CHAD WOLF, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION
AND ORDER

This is an action by plaintiff George Anibowei (“Anibowei”), a United States citizen and licensed attorney who maintains an office in Dallas, challenging three agency directives related to border searches and seizures of his cell phones. Anibowei moves for partial summary judgment, or, alternatively, for a preliminary injunction. The court has considered the briefing, including an *amicus* brief, and has heard oral argument. Concluding that Anibowei has in part failed to establish that he is entitled to partial summary judgment and that the record otherwise is not yet sufficiently developed for Anibowei to demonstrate that he is entitled to alternative relief in the form of a preliminary injunction, the court denies the motion.

I

Anibowei brings this action for vacatur of unlawful agency policies and declaratory and injunctive relief against various federal departments and agencies and individual

department and agency heads.¹ He alleges violations of the First and Fourth Amendments and of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A) and (B), stemming from searches and seizures of his cell phones conducted at Dallas-Fort Worth International Airport (“DFW Airport”) when he entered the United States from foreign countries.² Anibowei challenges one directive of defendant U.S. Immigration and Customs Enforcement (“ICE”) and two directives of defendant U.S. Customs and Border Protection (“CBP”) that he complains are unconstitutional and violate the APA because they authorize such searches and seizures without probable cause and a search warrant.

These three directives (collectively, “Directives”) are at issue: The first is ICE Directive No. 7-6.1, Border Searches of Electronic Devices (2009) (“2009 ICE Directive”), promulgated in 2009, which “provides legal guidance and establishes policy and procedures . . . with regard to border search authority to search, detain, seize, retain, and share information contained in electronic devices possessed by individuals at the border.” 2009 ICE Directive at ¶ 1.1. The 2009 ICE directive provides, in pertinent part, that “ICE Special Agents acting under border search authority may search, detain, seize, retain, and share electronic devices, or information contained therein, *with or without individualized suspicion*, consistent with the guidelines and applicable laws[.]” *Id.* at ¶ 6.1 (emphasis added).

¹Under Fed R. Civ. P. 25(d), various individual defendants have been replaced during the course of this litigation and their successors “automatically substituted” as parties.

²Considering the limited scope of this memorandum opinion and order, the court can succinctly recount the pertinent background facts and procedural history.

The second is CBP Directive No. 3340-049, Border Search of Electronic Devices Containing Information (2009) (“2009 CBP Directive”), also adopted in 2009. The 2009 CBP Directive authorizes CBP officers, in the course of a border search, to examine electronic devices and review and analyze the information encountered at the border “with or without individualized suspicion.” *See id.* at ¶ 5.1.2 (“In the course of a border search, *with or without individualized suspicion*, an Officer may examine electronic devices and may review and analyze the information encountered at the border, subject to the requirements and limitations provided herein and applicable law.” (emphasis added)).

The third is CBP Directive No. 3340-049A, Border Search of Electronic Devices (2018) (“2018 CBP Directive”), adopted in 2018. The 2018 CBP Directive supersedes CBP Directive No. 3340-049 and authorizes two categories of searches. For the first category, “[w]ith or without suspicion,” an officer may conduct a “basic search,” during which the officer may examine an electronic device—including searching the information stored on the device—and may review and analyze information encountered at the border. *Id.* ¶¶ 5.1.2, 5.1.3. For the second category, an officer may conduct an “advanced search” “[i]n instances in which there is reasonable suspicion of activity in violation of the laws enforced or administered by CBP, or in which there is a national security concern, and with supervisory approval at the Grade 14 level or higher.” *Id.* ¶ 5.1.4. An “advanced search” is “any search in which an Officer connects external equipment, through a wired or wireless connection, to an electronic device not merely to gain access to the device, but to review, copy, and/or analyze its contents.” *Id.*

According to Anibowei's second amended complaint, Anibowei is a naturalized U.S. citizen and licensed attorney who maintains an office in Dallas. Before immigrating to the United States, he lived and practiced law in Nigeria.

Anibowei is a frequent traveler. He typically travels to Nigeria several times each year to visit family and friends, and is a frequent tourist in Europe, the Caribbean, and other African countries. From 2012 until 2015, Anibowei was a member of the Global Entry Trusted Traveler Program ("Global Entry") administered by CBP. In 2015, however, CBP revoked Anibowei's membership in the program for the stated reason that he "d[id] not meet the eligibility requirements for the [Global Entry] program." 2d Am. Compl. ¶ 95. Both before and after Anibowei's Global Entry membership was revoked, he was subjected to extensive secondary screening nearly every time he traveled.

On October 10, 2016 border agents at the DFW Airport seized Anibowei's cell phone as he was returning to the Dallas area after a short vacation to Canada. Acting without a warrant, and pursuant to the 2009 CBP Directive, the agents searched Anibowei's cell phone and copied the data on it. Anibowei believes that the agents are still in possession of the data they copied from his cell phone. As a result of that search, Anibowei stopped carrying his work phone with him on international trips.

Anibowei alleges that in the years since the October 2016 search, his personal cell phone has been searched without a warrant at least four more times by officers of the Department of Homeland Security. For example, on February 12, 2017, upon arrival at the DFW Airport following a trip to Nigeria, Anibowei was put into secondary inspection where,

inter alia, border agents performed a search of his cell phone in his presence. Anibowei believes that officers viewed his text messages and encrypted messages he sent and received through WhatsApp, and possibly viewed his email.

Anibowei seeks vacatur of the Directives and declaratory and injunctive relief based on alleged violations of the First and Fourth Amendments and the APA.

After Anibowei filed the instant motion for partial summary judgment, defendants filed an unopposed motion to stay deadline to respond to Anibowei's second amended complaint. The court granted the motion, and ordered that defendants' response to the second amended complaint is not due until 14 days after the court issues its order deciding Anibowei's motion for partial summary judgment.

II

Because Anibowei seeks partial summary judgment on claims on which he will bear the burden of proof at trial, he "must establish 'beyond peradventure all of the essential elements of the claim[s].'" *Bank One, Tex., N.A. v. Prudential Ins. Co. of Am.*, 878 F. Supp. 943, 962 (N.D. Tex. 1995) (Fitzwater, J.) (quoting *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986)). This means that Anibowei must demonstrate that there are no genuine and material fact disputes and that he is entitled to summary judgment as a matter of law. See *Martin v. Alamo Cmty. Coll. Dist.*, 353 F.3d 409, 412 (5th Cir. 2003). "The court has noted that the 'beyond peradventure' standard is 'heavy.'" *Carolina Cas. Ins. Co. v. Sowell*, 603 F.Supp.2d 914, 923-24 (N.D. Tex. 2009) (Fitzwater, C.J.) (quoting *Cont'l Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, 2007 WL 2403656, at *10 (N.D. Tex. Aug. 23, 2007))

(Fitzwater, J.)).

To obtain a preliminary injunction, Anibowei must establish each of the following: (1) a substantial likelihood that he will prevail on the merits; (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to Anibowei outweighs the threatened harm the injunction may do to defendants; and (4) that granting the preliminary injunction will not disserve the public interest. *E.g.*, *Jones v. Bush*, 122 F.Supp.2d 713, 718 (N.D. Tex. 2000) (Fitzwater, J.), *aff'd*, 244 F.3d 134 (5th Cir. 2000) (per curiam) (unpublished table decision). “The decision whether to grant a preliminary injunction is within the discretion of the court, but it is an extraordinary remedy that should only be granted if the movant has clearly carried its burden.” *John Crane Prod. Solutions, Inc. v. R2R & D, LLC*, 861 F.Supp.2d 792, 794 (N.D. Tex. 2012) (Fitzwater, C.J.) (citation omitted). “A preliminary injunction ‘is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries the burden of persuasion.’” *Jones*, 122 F.Supp.2d at 718 (quoting *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989); *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). “The decision to grant a preliminary injunction is to be treated as the exception rather than the rule.” *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985) (citation omitted).

III

A

Anibowei’s principal—if not exclusive—argument is that the Directives should be invalidated because they empower searches and seizures of cell phone data at the border without probable cause and a search warrant. But no decision of the Supreme Court or of the Fifth Circuit imposes such requirements in the context of border searches. In particular, no court has extended the Supreme Court’s decision in *Riley v. California*, 573 U.S. 373 (2014), to a border search. And as the Fifth Circuit has recognized, “not a single court addressing border searches of computers since *Riley* has read it to require a warrant.” *United States v. Molina-Isidoro*, 884 F.3d 287, 292 (5th Cir. 2018). Absent such authority, Anibowei has failed to demonstrate under the “heavy” beyond peradventure standard that he is entitled to partial summary judgment as a matter of law. Because at oral argument Anibowei’s counsel eschewed reliance on a reasonable suspicion-based argument, the court declines to reach the question whether the Directives are unconstitutional or violate the APA on the ground that they permit the search and seizure of cell phone data at the border without reasonable suspicion.

B

Nor has Anibowei shown that he is entitled to a preliminary injunction, which is relief that he seeks in the alternative. The pertinent evidentiary record, which at this point consists only of Anibowei’s second amended complaint, is insufficient for the court to conclude that Anibowei has satisfied each of the four essential elements for obtaining such relief.

At oral argument, Anibowei's counsel relied on the fact that the second amended complaint is verified to contend that it is competent evidence, not merely allegations. But because the parties agreed that defendants' obligation to file a responsive pleading would be deferred pending a ruling on the instant motion, defendants have had no obligation (or opportunity) to deny the allegations of the second amended complaint. And even if the court overlooks this procedural imbalance and accepts the allegations of the second amended complaint as evidence, the evidence is insufficient to satisfy all four of the essential elements for obtaining a preliminary injunction. And the failure to meet even one of the four requirements results in the denial of a motion for a preliminary injunction. *E.g., Medlin v. Palmer*, 874 F.2d 1085, 1091 (5th Cir. 1989) ("The failure of a movant to establish one of the above four elements will result in the denial of a motion for temporary injunction."); *Anderson v. Douglas & Lomason Co.*, 835 F.2d 128, 133 (5th Cir. 1988) ("if the movant does not succeed in carrying its burden on any one of the four prerequisites, a preliminary injunction may not issue").

Accordingly, the court denies Anibowei's motion for a partial summary judgment and his alternative request for a preliminary injunction.

IV

This case is before the court in a somewhat unusual procedural posture. In a typical case of this type, assuming that at least some of the plaintiff's claims survived a Fed. R. Civ. P. 12(b)(6) motion, a plaintiff like Anibowei would pursue development of the record (through his own evidence and/or discovery from defendants), move for a preliminary

injunction, and perhaps later seek partial summary judgment on a more developed record. In this case, however, only a thin record (i.e., the second amended complaint) has been developed, defendants by agreement have not been obligated (or able) to deny Anibowei's allegations, and Anibowei has moved for a preliminary injunction only as an alternative form of relief, which was insufficient to trigger entry of a scheduling and procedural order.³ The court anticipates that this case will pivot hereafter to a more typical course.

* * *

For the reasons stated, Anibowei's motion for partial summary judgment or, in the alternative, for a preliminary injunction is denied.

SO ORDERED.

January 14, 2020.



SIDNEY A. FITZWATER
SENIOR JUDGE

³In the typical case, when a plaintiff applies for a preliminary injunction, the court issues a scheduling and procedural order that enables it to decide the motion under Rule 43(c), i.e., on the papers, without an evidentiary hearing unless a controlling credibility question is presented. *See, e.g., Wireless Agents, L.L.C. v. Sony Ericsson Mobile Commc'ns AB*, 390 F.Supp.2d 532, 533 n.1 (N.D. Tex. 2005) (Fitzwater, J.) (addressing former Rule 43(e)), *aff'd*, 189 Fed. Appx. 965 (Fed. Cir. 2006). Here, however, the court did not implement this procedure or schedule because Anibowei seeks a preliminary injunction only in the alternative.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GEORGE ANIBOWEI,

Plaintiff,

v.

KIRSTJEN M. NIELSEN, U.S. Secretary of Homeland Security, in her official capacity; KEVIN K. MCALEENAN, Commissioner of U.S. Customs and Border Protection, in his official capacity; RONALD D. VITIELLO, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration, in his official capacity; WILLIAM P. BARR, Attorney General of the United States, in his official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CUSTOMS AND BORDER PROTECTION; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TRANSPORTATION SECURITY ADMINISTRATION,

Defendants.

Case No. 3:16-cv-03495-D

NOTICE OF APPEAL

Notice is hereby given that Plaintiff George Anibowei hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Memorandum Opinion and Order entered in this action on January 14, 2019 denying his motion for a preliminary injunction. (Docket No. 94).

Respectfully submitted,

Dated: January 15, 2020

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TAB 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

GEORGE ANIBOWEI,

Plaintiff,

v.

KIRSTJEN M. NIELSEN, U.S. Secretary of Homeland Security, in her official capacity; KEVIN K. MCALEENAN, Commissioner of U.S. Customs and Border Protection, in his official capacity; RONALD D. VI-TIELLO, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; DAVID P. PEKOSKE, Administrator of the Transportation Security Administration, in his official capacity; WILLIAM P. BARR, Attorney General of the United States, in his official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CUSTOMS AND BORDER PROTECTION; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; TRANSPORTATION SECURITY ADMINISTRATION,

Defendants.

Case No. 3:16-cv-03495-D

**VERIFIED SECOND AMENDED COMPLAINT
FOR VACATUR OF UNLAWFUL AGENCY POLICIES
AND DECLARATORY AND INJUNCTIVE RELIEF**

1. In *Riley v. California*, 573 U.S. 373 (2014), the Supreme Court unanimously held that law enforcement must not search digital information on a cell phone without first obtaining a warrant, except in narrow exigent circumstances. The Justices based this holding on the unique character of cell phones. *Id.* at 375. Nearly every person carries one, and nearly every cell phone has a “digital record of nearly every aspect” of a person’s life stored on it. The Supreme Court thus held that warrants are required to search them, even in circumstances when government agents have long been allowed to search a person’s other effects for some other function (such as a search incident to arrest) without a warrant or even suspicion.

2. This case is *Riley* at the border. *Riley* says that only a warrant supported by probable cause can justify the search of a cell phone except in exigent circumstances. But policies promulgated by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), invoking the “border search exception,” permit border agents to search cell phones without warrants, probable cause, or reasonable suspicion for no other reason than that an individual is seeking to cross an international border. Those same policies allow border agents to download (*i.e.*, seize) and store the information on a seized cell phone forever without a warrant or probable cause. Again, all for no other reason but that an individual has crossed an international border.

3. In other words, according to CBP and ICE regulations, the government may require a person to turn over a “digital record of nearly every aspect” of that person’s life to government agents, and the government may store it forever, for no other reason than because that person took a flight from Toronto to Dallas. The government could not search a person’s house just because that person crossed the border. But “a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house.” *Riley*, 573 U.S. at 376.

4. CBP and ICE follow their policies. They perform tens of thousands of cell phone searches each year under their policies. CBP agents, relying on CBP and ICE directives and authority, have searched plaintiff George Anibowei’s cell phone on at least five occasions. On one of those occasions, they downloaded all of the data off the phone and kept it. To the best of Mr. Anibowei’s knowledge, they keep it to this day.

5. The need to apply *Riley*’s warrant requirement at the border only grows. Lawyers use electronic devices to store interview notes and briefs for their clients. Journalists do the same with their records of conversations with whistleblowers and confidential sources. And everyday

people use these devices to catalog their most sensitive and personal thoughts, conversations, and life events in extensive detail—from data about their health, to condolences on the loss of a loved one, to political rants emailed to friends, to gossip about other parents in the PTA, to intimate messages from a romantic partner.¹

6. A person does not give up the right to privacy and invite scrutiny of “nearly every aspect” of their lives simply by crossing the U.S. border. The average person reasonably believes that the communications and photographs sent, received, and stored on a phone are protected from arbitrary and suspicionless searches by the government—not just some of the time, not just in the Nation’s interior, but all of the time. But every time a person enters or exits the United States with a phone or laptop, that person’s devices come within the scope of CBP and ICE policies that give agents unilateral authority to search every piece of stored information—without a warrant, probable cause, or even a reasonable suspicion of any wrongdoing.

7. CBP and ICE’s arbitrary and suspicionless search policies violate the time-honored presumption of privacy in sensitive communications, intimate relationships, and confidential information. And they violate the First and Fourth Amendments to the Constitution.

¹ A recent survey suggests that half of all adults had not just received a sext or explicit photo, but had actually *stored* sexts and explicit images that they receive. *Sext Much? If So, You’re Not Alone*, Sci. Am., <https://www.scientificamerican.com/article/sext-much-if-so-youre-not-alone>; see also Emily C. Stasko & Pamela A. Geller, *Reframing Sexting as a Positive Relationship Behavior*, Am. Psych. Ass’n (Aug. 2015), <https://www.apa.org/news/press/releases/2015/08/reframing-sexting.pdf>.

INTRODUCTION

8. By early 2018, 95% of Americans owned a cell phone, and 77% of Americans owned a smartphone.² Approximately two-thirds of all people alive in the world today, counting every age group and country, also own a cell phone.³

9. As the Supreme Court recognized in 2014, cell phones, and in particular today's smartphones, "place vast quantities of personal information literally in the hands of individuals." *Riley v. California*, 573 U.S. 373, 386 (2014). The nature of cell phones makes the search of a cell phone by law enforcement extraordinarily invasive and potentially humiliating. Thus, "[a]llowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case." *Id.* at 395.

10. For this reason, when the Supreme Court has been called to weigh in on law enforcement searches and seizures of cell phones, it has uniformly held that the collection of data from cell phones requires the safeguard of a particularized warrant supported by probable cause. *See Riley*, 573 U.S. 373; *Carpenter v. United States*, 138 S. Ct. 2206, 2209 (2018) .

11. Nonetheless, some relics of policy persist from the era before the Supreme Court decided its first cell-phone-search cases.

12. In August 2009, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) issued a pair of directives that permitted officials of the two agencies to search "electronic devices"—defined as devices that "contain information, such as computers, disks, drives, tapes, mobile phones and other communication devices"—"[i]n the

² *Mobile Fact Sheet*, Pew Research Center: Internet & Technology (Feb. 5, 2018), <http://www.pewinternet.org/fact-sheet/mobile/>.

³ Paul Sawers, *5 Billion People Now Have a Mobile Phone Connection, According to GSMA Data*, Venture Beat (June 13, 2017), <https://venturebeat.com/2017/06/13/5-billion-people-now-have-a-mobile-phone-connection-according-to-gsma-data/>.

course of a border search, with or without individualized suspicion.”⁴ The directives specifically authorize CBP and ICE officials to conduct warrantless and suspicionless searches, including of privileged and sensitive information like “[l]egal materials,” “medical records,” and “work-related information carried by journalists.”⁵

13. CBP updated its policy in 2018 to add nominal safeguards, none of which cures the structural constitutional defects of the 2009 policy. CBP’s 2018 directive continues to authorize searches of electronic devices with zero individualized suspicion and without any protections for privileged and sensitive information.

14. CBP and ICE’s extraordinarily broad policies expose one million travelers a day to the threat of having their most sensitive information searched and seized without any sort of individualized suspicion.

15. Among the untold number of people whose sensitive personal information has been swept up in this policy is plaintiff George Anibowei. Mr. Anibowei is a naturalized U.S. citizen born in Nigeria, and is the sole proprietor of his own law firm in Texas. Several times a year, he travels for work and personal reasons, including to see friends and relatives in Nigeria and other countries. Mr. Anibowei passed numerous and extensive security checks in the course of his journey from Nigerian immigrant to naturalized U.S. citizen. He also passed the additional

⁴ U.S. Customs and Border Protection, Border Search of Electronic Devices Containing Information, CBP Directive No. 3340-49 (Aug. 20, 2009), <https://www.eff.org/document/customs-and-border-protection-directive-no-3340-049-border-search-electronic-devices>; see also U.S. Immigration and Customs Enforcement, Border Searches of Electronic Devices, ICE Directive 7-6.1 (Aug. 18, 2009), https://www.dhs.gov/xlibrary/assets/ice_border_search_electronic_devices.pdf (containing nearly identical language).

⁵ CBP Directive No. 3340-049 (Aug. 20, 2009).

security checks required for participation in CBP's Global Entry Trusted Traveler Program, and was issued membership in the program on November 1, 2012.

16. Nonetheless, for reasons unknown to Mr. Anibowei and that the government will not share, on October 10, 2016, CBP officers at the Dallas-Fort Worth Airport seized Mr. Anibowei's cell phone, saying that they were going to "copy the hard drive." The officers did not ask Mr. Anibowei for his consent or present him with a search warrant.

17. Mr. Anibowei has had his cell phone searched a total of at least five times by CBP agents, beginning with this first search and seizure in 2016. In four of these instances, Mr. Anibowei saw the agent search his text messages and other communications. Each of these searches was authorized by the 2009 ICE and CBP policies. Each of these searches would similarly be authorized by the 2018 CBP policy.

18. As an attorney, Mr. Anibowei regularly uses his smartphone to engage in sensitive and confidential communications with his immigration clients. During these searches, it is virtually certain that CBP viewed and copied privileged communications between Mr. Anibowei and his clients. CBP's searches and seizures of Mr. Anibowei's privileged client communications, as well as other sensitive and private information on his phone, violate both his and his clients' expectations of privacy in their privileged communications.

19. CBP's repeated searches and seizures of Mr. Anibowei's cell phone also have the potential to harm Mr. Anibowei's business. Given that some of Mr. Anibowei's clients are adverse to the U.S. Department of Homeland Security (DHS) in immigration proceedings, Mr. Anibowei's inability to safeguard their information from an agency of DHS threatens to damage the trust and confidence of his clients.

20. These warrantless and suspicionless searches of Mr. Anibowei’s cell phone are “unreasonable searches and seizures” prohibited by the Fourth Amendment. The CBP and ICE policies authorizing warrantless and suspicionless searches of electronic devices facially violate the Fourth Amendment.

21. Moreover, these warrantless and suspicionless searches violate the First Amendment rights of individuals entering and exiting the United States. The CBP and ICE policies expose individuals’ sensitive, expressive, and associational information to arbitrary search by government agents. The ever-present possibility of warrantless and suspicionless search chills protected expression. This specter encourages individuals to leave their devices at home so that they cannot communicate at all, or to censor their speech if they do carry them.

22. Every day that government agents keep Mr. Anibowei’s data, the government holds in its possession the fruits of an unconstitutional search and seizure. The injury to Mr. Anibowei’s constitutional rights wrought by the continued retention of this data continues to this day.

23. Mr. Anibowei seeks a declaration that CBP’s searches of his cell phone were unlawful, and an injunction requiring that the government destroy his data. He also seeks vacatur of CBP and ICE’s unlawful policies.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. § 1331 because he challenges federal law and final agency action under the laws and Constitution of the United States.

25. This Court has authority to issue declaratory and injunctive relief under 28 U.S.C. § 2201 and § 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and its inherent equitable powers.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

PARTIES

27. Plaintiff George Anibowei is a U.S. citizen licensed to practice law in the State of Texas since 2002. He resides at 934 Colorado Drive in Allen, TX.

28. Defendant Kirstjen M. Nielsen is the Secretary of the U.S. Department of Homeland Security. She oversees DHS and its sub-agencies. She is sued in her official capacity.

29. Defendant Kevin K. McAleenan is the Commissioner of U.S. Customs and Border Protection. He oversees CBP. He is sued in his official capacity.

30. Defendant Ronald D. Vitiello is the Acting Director of U.S. Immigration and Customs Enforcement. He administers ICE. He is sued in his official capacity.

31. Defendant David P. Pekoske is Administrator of the Transportation Security Administration (TSA). He administers TSA. He is sued in his official capacity.

32. Defendant William P. Barr is Attorney General of the United States. He oversees the Department of Justice and its sub-agencies. He is sued in his official capacity.

33. Defendant U.S. Department of Homeland Security (DHS) is a Department of the Executive Branch of the United States and is an "agency" within the meaning of 5 U.S.C. § 552(f)(1).

34. Defendant U.S. Customs and Border Protection (CBP) is a sub-agency of DHS. It is responsible for administering security checks at airports and other ports of entry.

35. Defendant U.S. Immigration and Customs Enforcement (ICE) is a sub-agency of DHS. It plays a supporting role in administering security checks at airports and other ports of entry.

36. Defendant Transportation Security Authority (TSA) is a sub-agency of DHS, housed within CBP. It has particular responsibility for administering security checks at airports.

BACKGROUND

A. Searches and Seizures of Electronic Data

37. Ninety-five percent of Americans and approximately two-thirds of all people in the world own a cell phone. These numbers are only projected to grow. By 2020, an estimated 80% of all adults in the world will own not just a cell phone but a smartphone, with all the enhanced storage capability this implies.

38. These devices are capable of containing extraordinary amounts of information, far beyond any other object a traveler could possibly carry. Today's iPhones, for instance, are capable of storing up to 256 gigabytes of data⁶—enough to hold hundreds of thousands of emails, documents, or images. A typical laptop computer can store double that.⁷

39. These devices not only store massive amounts of information, but also the most sensitive and personal information in a user's life. Electronic devices may store virtually all of an individual's communications—texts, voice mails, emails, and social-media posts—as well as detailed information on his location; his financial, legal, and medical history; his contacts; and his browsing and social-media history. Applications on the market today allow cell phone, tablet, and laptop users to store and analyze detailed information about such deeply personal topics as disease and pregnancy status, weight loss and physical fitness, income and credit history, and

⁶ *About Storage on Your Device and in iCloud*, Apple.com, <https://support.apple.com/en-us/HT206504> (last visited Mar. 12, 2019).

⁷ *15-inch MacBook Pro*, Apple.com, <https://www.apple.com/macbook-pro/specs/> (last visited Mar. 12, 2019).

relationship status. Other applications could be used to build a detailed record of a person's sexual orientation and sexual history, political beliefs, and religious affiliation.

40. The data on some electronic devices, in the aggregate, can be used to reconstruct virtually every aspect of a person's career, personal life, habits, beliefs, associations, and daily routines. Indeed, the explosive implications of these devices for personal privacy have become so alarming that they have spurred a national debate over technology, privacy, and the power of businesses—like Facebook and Google—that hold or can access personal data generated or stored on electronic devices.⁸ The intensity of users' fears clearly demonstrates an emerging societal consensus that an expectation of privacy in these devices is “one that society is prepared to recognize as reasonable”—indeed, as essential. *See Smith v. Maryland*, 442 U.S. 735, 740 (1979).

41. As the Supreme Court has noted, “a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house”—historically the piece of property that the Constitution has protected most. *See Riley*, 573 U.S. at 397. The Supreme Court has duly recognized that electronic devices are in a category apart for Fourth Amendment purposes given their extraordinary privacy implications.

42. Electronic devices not only hold our deepest secrets; they are practically extensions of our bodies, traveling with us everywhere we go. Many people would not be able to retain a job, receive help in an emergency, or maintain their personal relationships without the help

⁸ *See, e.g.*, Steve Shillingford, *Facebook, Twitter, and Google Have Too Much Power—We Can't Just Legislate Ourselves Out of This Mess*, Fox News (Sept. 5, 2018), <https://www.foxnews.com/opinion/facebook-twitter-and-google-have-too-much-power-we-cant-just-legislate-ourselves-out-of-this-mess>; John Herrman, *Have the Tech Giants Grown Too Powerful? That's an Easy One*, N.Y. Times (July 11, 2018), <https://www.nytimes.com/2018/07/11/magazine/facebook-google-uber-tech-giants-power.html>.

of a cell phone, laptop, tablet, or in many cases all three. Many workers use their electronic devices daily to receive and respond to sensitive and pressing business communications. For most people, it is not an option to leave their electronic devices at home, including when they travel.

43. Every day, many of the 95% of Americans who own a cell phone enter and leave the United States, as do many thousands of foreign nationals. In 2017, CBP processed an average of over 1.1 million people per day coming into and leaving the United States by land, air, and sea.⁹ Approximately half of these people are U.S. citizens.

44. Extrapolating from these figures, we can conservatively estimate that in a 24-hour period, approximately 885,000 cell phones enter or leave the United States at a port of entry. 522,500 of these cell phones belong to U.S. citizens.¹⁰

45. These travelers also carry thousands of other electronic devices across the border daily.

46. In great part due to the extraordinary capabilities of these devices, the Supreme Court affords far greater protection to cell phones and other electronic devices than to other objects subject to search, as explained in detail below. CBP and ICE nevertheless subject these most sensitive implements to extensive warrantless and suspicionless searches.

B. CBP and ICE Policies

47. On August 18, 2009, ICE issued an extraordinarily broad policy functionally permitting its border agents to conduct searches of all “electronic devices” in the possession of travelers into and out of the United States. *See* ICE Directive 7-6.1 (Aug. 18, 2009).

⁹ *On a Typical Day in Fiscal Year 2018, CBP...*, U.S. Customs and Border Protection (March 7, 2019), <https://www.cbp.gov/newsroom/stats/typical-day-fy2018>.

¹⁰ This estimate is conservative because people who travel internationally may be more likely than the general population to own a cell phone.

48. Two days later, on August 20, 2009, CBP issued a nearly identical directive. *See* CBP Directive No. 3340-049 (Aug. 20, 2009).

49. The majority of agents at ports of entry work for CBP, while ICE agents provide supplemental help in some cases.

50. The 2009 policies permitted CBP and ICE agents conducting border searches, “without individualized suspicion,” to “examine electronic devices”; to “review and analyze the information” encountered during the course of the search; and to retain devices and data indefinitely. CBP Directive No. 3340-049, §§ 5.1.2, 5.3.1.

51. Under the agencies’ 2009 policies, agents may confiscate devices from travelers for a “thorough” search, either on-site or off-site, without individualized suspicion. *See id.* § 5.3.1; ICE Directive 7-6.1, §§ 6.1, 8.1.4. While CBP confiscations presumptively last no more than five days, CBP supervisors may extend this period based on undefined “extenuating circumstances.” CBP Directive No. 3340-049, §§ 5.3.1, 5.3.1.1. Confiscations by ICE can last up to 30 days without supervisor approval, and can be extended under “circumstances ... that warrant more time.” ICE Directive 7-6.1, § 8.3.1.

52. The 2009 policies instruct the agencies to delete data only “if, after reviewing information ... there is not probable cause to seize it.” CBP Directive No. 3340-049, § 5.3.1.2. As a result, agents may permanently detain an electronic device and its data without a warrant. And the probable cause necessary to permanently detain devices or information can be generated through the initial searches and seizures performed without any individualized suspicion.

53. On January 4, 2018, CBP issued a directive superseding its 2009 directive. *See* CBP Directive No. 3340-049A (Jan. 4, 2018) (the “2018 Policy”).

54. While CBP's 2018 Policy supersedes its 2009 Policy, ICE has not issued a comparable new policy. Under ICE's 2009 Directive, ICE agents are currently authorized to search electronic devices and to review, analyze, and copy their contents without any individualized suspicion.

55. CBP's 2018 Policy covers "[a]ny device that may contain information in an electronic or digital form, such as computers, tablets, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players." § 3.2.

56. The 2018 Policy opens up this entire category to two types of searches—"basic" and "advanced"—neither of which must be supported by a particularized warrant or even by probable cause. §§ 5.1.3, 5.1.4.

57. A "basic search" is by no means "basic"; it is highly intrusive and allows officers to access all content and communications stored on the device. An agent conducting a basic search "may examine an electronic device and may review and analyze information encountered at the border." § 5.1.3. The 2018 Policy authorizes an agent to perform a "basic search" without any individualized suspicion. *Id.*

58. An "advanced search" allows for the connection of "external equipment, through a wired or wireless connection, to an electronic device not merely to gain access to the device, but to review, copy, and/or analyze its contents." § 5.1.4. The 2018 Policy authorizes an agent to perform an "advanced search" if he has either "reasonable suspicion of activity in violation of the laws enforced or administered by CBP" or where "there is a national security concern." § 5.1.4.

59. The 2018 Policy makes no effort to cabin its vague and capacious terms "reasonable suspicion" or "national security concern." The Policy explains that "[m]any factors may

create reasonable suspicion or constitute a national security concern; examples include the existence of a relevant national-security-related lookout in combination with other articulable factors as appropriate, or the presence of an individual on a government-operated and government-vetted terrorist watch list.” § 5.1.4.

60. Moreover, the 2018 Policy does not require that “reasonable suspicion” be in any way related to the electronic device or its data. Rather, the 2018 Policy authorizes agents to review, copy, and analyze the content of an electronic device based only on suspicion that the owner of the device is violating CBP-administered laws, regardless of whether the agents reasonably suspect that the device or its data contain evidence of such a violation.

61. The 2018 Policy adds insult to injury by demanding that individuals facilitate these unlawful searches and seizures. Individuals must “present electronic devices and the information contained therein in a condition that allows inspection.” This means that officers may require individuals to unlock or decrypt their devices or information and can “request[] and retain” “[p]asscodes or other means of access ... as needed to facilitate the examination of an electronic device or [its] information.” § 5.3.1.

62. While the 2018 Policy recommends that agents obtain supervisor approval before conducting a search, officers need only obtain such approval if it is “practicable.” § 5.1.5. Similarly, while the 2018 Policy advises that “[s]earches of electronic devices should be conducted in the presence of the individual whose information is being examined,” it permits agents to search devices outside their owners’ presence if there are “national security, law enforcement, officer safety, or other operational considerations that make [owner presence] inappropriate.” § 5.1.6.

63. Perhaps the most extraordinary part of the 2018 Policy relates to the detention of electronic devices and copying of their information. The policy gives officers power, absent any

individualized suspicion, to detain electronic devices and information copied from them “for a brief, reasonable period of time to perform a thorough border search.” This period “ordinarily should not exceed five (5) days” but can be extended for undefined “extenuating circumstances.”

§ 5.4.1. Detention can continue even after the individual has departed from the port of entry.

§ 5.4.1.1.

64. The 2018 Policy provides that electronic devices will be returned and data will be deleted only “if, after reviewing information, there exists no probable cause to seize the device or information.” § 5.4.1.2. As a result, agents may permanently detain an electronic device and its data without a warrant. And the probable cause necessary to permanently detain devices or information can be generated through the initial searches and seizures performed without any individualized suspicion, absent any review from a neutral magistrate.

65. Agents are authorized to retain “information relating to immigration, customs, and other enforcement matters if such retention is consistent with the applicable system of record notice,” even absent any individualized suspicion. § 5.5.1.2.

66. Without individualized suspicion, the officer is authorized to transfer electronic devices and information thereon to other government agencies for a variety of purposes.

67. For example, without individualized suspicion, “[o]fficers may convey electronic devices or copies of information contained therein to seek technical assistance” so as to allow access to the device or its information. § 5.4.2.1. Officers may also convey devices or information to “subject matter experts” in other federal agencies “when there is a national security concern or ... reasonable suspicion.” § 5.4.2.2.

68. Individuals need not be notified when their devices or information are transmitted to other agencies. § 5.4.2.5.

69. The 2018 Policy also provides inadequate guidance on how officers should handle privileged and sensitive material. It contemplates that officers may “encounter[] information they identify as, or that is asserted to be, protected by attorney-client privilege or attorney work product doctrine.” § 5.2.1. But the Policy provides no meaningful direction on how officers should handle that information. Rather, the Policy vaguely instructs officers to “ensure the segregation of any privileged material” so that it is “handled appropriately while also ensuring that CBP accomplishes its critical border security mission.” § 5.2.1.2.

70. The 2018 Policy’s guidance on “[o]ther possibly sensitive information” is even vaguer. “[M]edical records and work-related information carried by journalists ... shall be handled in accordance with any applicable federal law and CBP policy.” § 5.2.2. Business or commercial information shall be “protect[ed] from unauthorized disclosure.” § 5.2.3.

71. The 2018 Policy contemplates that privileged or sensitive information may be shared with other federal agencies so long as those agencies “have mechanisms in place to protect appropriately such information.” § 5.2.4.

72. The 2018 CBP Policy and 2009 ICE Policy essentially make the 885,000 cell phones that transit into and out of the United States every single day fair game for a warrantless and suspicionless search and seizure, alongside untold numbers of other devices containing sensitive information, like laptops.

73. These agency policies also promise to cause extraordinary inconvenience to travelers by authorizing detention of an electronic device for multiple days. For the many international travelers who do not intend to remain near their port of entry following admission to the United States, the policies constitute an extraordinary burden. And the burden is even greater for travelers whose electronics are detained as they are leaving the United States. These travelers are

given a choice of evils: abandoning their devices, with all of their personal information, to ICE and CBP; or losing up to thousands of dollars and many days of their time in order to reschedule their travel until their electronics clear inspection. Even burdening a million travelers a day with the *possibility* that they will be forced to endure these inconveniences to permit a warrantless and suspicionless search is an extraordinary intrusion on the liberty of citizens and visitors alike.

C. The Law of Electronic-Device Searches

74. CBP and ICE’s electronic search policies are not only breathtakingly broad. They fly directly in the face of Supreme Court jurisprudence on protection for cell phones and other electronic devices and digital records and communications.

75. In *Riley v. California*, 573 U.S. 373 (2014), the Supreme Court recognized that the extraordinary powers and capabilities of cell phones place them in a class apart from other objects, requiring particularly robust Fourth Amendment protection. The *Riley* court unanimously held that law enforcement must not search digital information on a cell phone without first obtaining a warrant, except in a very narrow set of exigent circumstances.

76. Tellingly, all of the Justices based this holding on the unique characteristics of cell phones. Cell phones, the Court noted, are “now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.” *Id.* at 385. Applying a traditional balancing assessment for warrant requirements, the Court concluded that the intrusion on privacy interests in a warrantless cell phone search far outweighs the government interest supporting it. *Id.* at 385-86. The Court noted that the only legitimate interest in a warrantless search—avoiding the remote deletion of evidence—was a relatively unlikely and weak one in most cases. *Id.* at 388-90. On the other hand, the Court recognized that allowing warrantless cell phone searches implicated stark and troubling privacy concerns. Noting the “immense storage capacity” of cell phones, the Court enumerated four distinct

ways that cell phones, among all objects law enforcement might search, have unique privacy implications: they collect “many distinct types of information ... that reveal much more in combination than any isolated record”; they collect more of each individual type of information than previously possible; they collect this information over massive amounts of time, months or even years; and they are so pervasive in society that they function as a “digital record of nearly every aspect” of most Americans’ lives, including their most personal information. *Id.* at 393-95. Taking these unique capacities together, the Supreme Court held that the balance of equities clearly favored requiring a warrant.

77. Similarly, courts have again and again found that people have a reasonable expectation of privacy in their computers and in folders and documents on their computers. *See United States v. Zavala*, 541 F.3d 562, 577 (5th Cir. 2008) (finding reasonable expectation of privacy in the contents of a person’s cell phone and noting that “a cell phone is similar to a personal computer that is carried on one’s person”); *see also, e.g., United States v. Heckenkamp*, 482 F.3d 1142, 1146 (9th Cir. 2007); *United States v. Buckner*, 473 F.3d 551, 554 n.2 (4th Cir. 2007).

78. And, expectations of privacy aside, the Supreme Court has zealously guarded against “government trespass upon the areas (‘persons, houses, papers, and effects’)” that the Fourth Amendment enumerates. *United States v. Jones*, 565 U.S. 400, 406-07 (2012); *see also United States v. Ackerman*, 831 F.3d 1292, 1307 (10th Cir. 2016) (Gorsuch, J.).

79. Even some of the individual *functions* of cell phones and smartphones receive heightened constitutional protection. The Supreme Court recently held that law enforcement must secure a warrant to view data generated by the location-tracking functions of phones and other electronic devices. *Carpenter*, 138 S. Ct. at 2232-33. Several circuits have held that law enforcement officials may not access an individual’s emails without a warrant; email is an essen-

tial function of virtually every smartphone. *See, e.g., United States v. Warshak*, 631 F.3d 266, 288-89 (6th Cir. 2010). In other words, courts have overwhelmingly found that searches of phones, laptops, similar devices, and even some of their component functions require a warrant.

80. Nor are the courts particularly burdening law enforcement by requiring warrants. If technology has opened up vast troves of sensitive information to inspection by government agencies, it has also made it exceptionally easy for these agencies to secure a warrant with minimal effort and delay. As the Supreme Court noted in *Riley*, in one jurisdiction, “police officers can e-mail warrant requests’ to judges’ iPads [and] judges have signed such warrants and emailed them back to officers in less than 15 minutes.” 573 U.S. at 401. Such a practice is not rare: the Supreme Court has previously noted that the Federal Rules of Criminal Procedure have permitted telephonic warrants since 1977. *Missouri v. McNeely*, 569 U.S. 141, 154 (2013). Law enforcement officials can secure a warrant quickly by a variety of means, including “telephonic or radio communication, electronic communication such as e-mail, and video conferencing.” *Id.* The hurdle of securing a warrant is not high.

FACTUAL ALLEGATIONS

A. Mr. Anibowei Begins Receiving Intense Scrutiny at the Airport, and Is Removed Without Notice from CBP’s Global Entry Trusted Traveler Program

81. Plaintiff George Anibowei was born in Port Harcourt, Rivers State, Nigeria and is originally from Agbere, Bayelsa State, in the Niger Delta region of Nigeria. Mr. Anibowei fled Nigeria in 1997 after his work as a pro-democracy activist put him in danger of retaliation by Nigeria’s military dictatorship, then led by General Sani Abacha.

82. Seeking a life with more freedoms and civil liberties, Mr. Anibowei applied for and received asylum in the United States in 1998. He became a naturalized U.S. citizen in 2007.

83. A lawyer by profession in Nigeria, Mr. Anibowei completed a master's degree and Juris Doctor degree at Southern Methodist University Law School in Dallas. He is admitted to practice law before all courts in the State of Texas, the U.S. District Court for the Northern District of Texas, the U.S. Court of Appeals for the Fifth Circuit, and the U.S. Supreme Court. Originally drawn to Texas because one of his brothers lived there, he has settled in the Dallas suburbs and operates his own small legal practice, primarily representing immigrants.

84. To become a naturalized U.S. citizen in the years following the September 11th attacks, Mr. Anibowei had to pass an extensive security check.¹¹ The requirements for this background check are rigorous. All applicants must undergo fingerprinting, which the FBI then uses to run a full criminal background check. The FBI also conducts a "name check," which includes a search against a database that contains not only criminal files but also personnel, administrative, and applicant files. In addition to these FBI background checks, most applicants also go through additional inter-agency background checks coordinated by U.S. Citizenship and Immigration Services.

85. Mr. Anibowei is a frequent traveler. He typically travels to Nigeria several times a year to visit his brothers and sisters who still live there, as well as his extended family and friends. He is also a frequent tourist in Europe, the Caribbean, and other African countries.

86. In order to facilitate his travel, Mr. Anibowei applied for and eventually received membership in CBP's Global Entry Trusted Traveler Program, beginning on November 1, 2012. The Trusted Traveler Program requires applicants to pass another layer of extremely thorough security checks in order to receive membership. Successful applicants must pass a background

¹¹ See *USCIS Policy Manual: Chapter 2—Background and Security Checks*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartB-Chapter2.html> (Feb. 12, 2019).

check against criminal, law enforcement, customs, immigration, agriculture, and terrorist indices, a process that includes fingerprinting.¹² Successful applicants also pass an in-person interview with a security officer.

87. In 2014, Mr. Anibowei took a leave of absence from his law practice to return to Nigeria in order to participate in a national constitutional conference called by the country's now democratically elected government. The convention, known as the 2014 Nigerian National Conference, brought together 492 distinguished delegates from Nigeria and the Nigerian Diaspora to debate structural problems with the country's constitution and propose reforms directly to the immediate past President, Goodluck Jonathan. Attendees at the conference included retired governors and ministers in the Nigerian Government and prominent Nigerian politicians and lawyers. Concerns at the conference included power-sharing among different states and the federal government and states' ability to profit off their own natural resources—a particular concern of states in the oil-rich Niger Delta, where Mr. Anibowei is from.

88. Mr. Anibowei spent much of his five months in Nigeria as one of the National Assembly's 492 delegates, while a colleague shouldered the matters pending at his solo practice. On breaks in the Assembly, he returned to Texas to check on his law office.

89. To the best of Mr. Anibowei's recollection, it was around the time of the Nigerian National Conference that TSA began to subject Mr. Anibowei to additional screening virtually every time he entered or left the United States, even as a member of the Trusted Traveler Program. Initially, this mainly consisted of putting Mr. Anibowei into secondary screening on his way to and from Nigeria to ask him about the purpose and length of his trip.

¹² *Is Criminal History a Disqualifier for Global Entry?* U.S. Customs and Border Protection (Aug. 2, 2017), https://help.cbp.gov/app/answers/detail/a_id/1309/~/is-criminal-history-a-disqualifier-for-global-entry%3F.

90. Mr. Anibowei believes he was initially flagged for routine additional screening because he was spending a long period of time in Nigeria and frequently traveling back to the United States.

91. TSA and CBP continued to question and detain Mr. Anibowei virtually every time he traveled internationally, and the screening of Mr. Anibowei gradually grew more intense. In spring of 2014, Mr. Anibowei was traveling with his son, who shares his name, from Houston, Texas to Lagos, Nigeria, when Mr. Anibowei's then-teenage son was taken aside by seven uniformed officers. The officers soon realized they were looking for Mr. Anibowei rather than his son. Subsequently, five officers took Mr. Anibowei into a small room for interrogation, inviting his son in too against the wishes of Mr. Anibowei. As a result, Mr. Anibowei's son witnessed his father's interrogation, a situation his father found humiliating.

92. The officers detained and questioned Mr. Anibowei for approximately two hours, resulting in his flight being delayed for that period. Mr. Anibowei did not realize that he was the reason for the flight delay until a manager from United Airlines walked into the interrogation room and asked one of the officers whether they could begin boarding the flight. The officer responded that the manager could proceed because they were almost done questioning Mr. Anibowei.

93. This treatment continued after the Nigerian National Conference had ended. In another incident from that period, Mr. Anibowei was stranded in Toronto for two days after the Canadian Border Services Agency subjected him to a five-hour interrogation at the request of CBP, causing him to miss his flight.

94. On May 12, 2015, when returning from another international trip, Mr. Anibowei learned that, for reasons unknown to him, his membership in the Global Entry Trusted Traveler

Program had been revoked on March 7, 2015. Mr. Anibowei received no notice of this development until he attempted to reenter the United States using a Global Entry kiosk at the airport only to be pulled once again into secondary inspection. In secondary inspection, the CBP agent told Mr. Anibowei that his Global Entry status had been revoked. CBP never sent Mr. Anibowei a letter notifying him of the change. Mr. Anibowei ultimately was able to download the revocation letter from his account on the Global Online Enrollment System, a website managed by CBP.

95. Mr. Anibowei has since made numerous and apparently unavailing efforts to appeal this decision. Mr. Anibowei first requested reconsideration of his application for the Trusted Traveler Program from CBP. In a response from the CBP Ombudsman dated March 11, 2016, the Ombudsman acknowledged receipt of Mr. Anibowei's request but reiterated, using the same language as the revocation letter, that Mr. Anibowei "d[id] not meet the eligibility requirements for the Trusted Traveler program."

96. Mr. Anibowei also filed a Redress Request (#2232471) with CBP on DHS's Traveler Redress Inquiry Program (TRIP) Website. In response to this Redress Request, Mr. Anibowei received a letter dated June 30, 2016 from Deborah O. Moore, the Director of TRIP. The letter stated:

DHS has researched and completed our review of your case. Security Procedures and legal concerns mandate that we can neither confirm nor deny any information about you which may be within federal watch lists or reveal any law enforcement sensitive information. However, we have made any corrections to records that our inquiries determined were necessary, including, as appropriate, notations that may assist in avoiding incidents of misidentification.

B. Mr. Anibowei's Cell Phone Is Copied by CBP, and Subjected to a Search on No Fewer Than Five Occasions

97. At this point, Mr. Anibowei had simply accepted that he would be stopped and screened, sometimes for hours, any time he tried to leave or enter the United States. Trying to

adjust to this new reality, he mentally prepared (and still does) to be pulled into secondary interrogation on every trip. On occasions when another person intends to pick Mr. Anibowei up at the Dallas-Fort Worth Airport, he tells them to come two or three hours after his scheduled flight arrival time because he knows he will be put into inspection.

98. On October 10, 2016, Mr. Anibowei was returning to the Dallas area after a weekend spent visiting his best friend in Toronto. Upon landing in Dallas, the pilot announced that the passengers—who had begun to collect their luggage in preparation to exit the plane—should return to their assigned seats, because security had arrived at the gate to escort a passenger off.

99. Mr. Anibowei, who had slept through the flight, assumed that the announcement had to do with an unruly passenger. He was consequently surprised when a pair of agents boarded the flight, asked to see his identification, and told him to take his luggage and follow them. The officers subsequently escorted Mr. Anibowei off the plane and through three terminals at the airport, to his great humiliation and distress.

100. The officers eventually brought Mr. Anibowei to a small interrogation room, where they asked him for his phone. When Mr. Anibowei asked them why they wanted to see it, the agents told him that they planned to “copy the hard drive,” taking his phone out of the room.

101. When Mr. Anibowei vigorously protested this action, the officers handed him a flyer explaining their legal authority, under the 2009 CBP Directive, to undertake the search and seizure.

102. The officers returned Mr. Anibowei’s phone to him about thirty minutes after they seized it.

103. The phone the officers seized was Mr. Anibowei's work cell phone. As an attorney, Mr. Anibowei takes his work phone with him virtually everywhere, in order to be accessible for time-sensitive matters or in a client emergency, and he estimates that approximately 80 percent of his clients prefer to call him on his cell phone. Mr. Anibowei's phone contains extremely sensitive information about his clients and their cases, including call logs, voice mails, text message threads with clients, and perhaps worst of all an archive of Mr. Anibowei's work emails, which in turn contains drafts of confidential filings among other information.

104. This seizure was particularly distressing to Mr. Anibowei because a significant number of his clients are immigrants in removal proceedings adverse to DHS. The seizure and copying of Mr. Anibowei's phone by an agency of DHS was a gross violation of these clients' expectation of privacy in their privileged legal communications with their attorney, committed by the adverse party in those clients' cases.

105. This was the last time Mr. Anibowei carried his work phone with him on an international trip. But the damage was already done. To this day, Mr. Anibowei has no idea why the agency copied data from his cell phone and for what purpose, if any, it has used the data. He believes that, to this day, the agency never destroyed the data and continues to retain them.

106. Furthermore, Mr. Anibowei's decision to stop carrying his work phone was not a complete solution. Mr. Anibowei's work emails are also accessible on his personal phone. However, to stop carrying his personal phone would render Mr. Anibowei completely inaccessible in either a personal or work emergency.

107. Since the October 16, 2016 incident, Mr. Anibowei's phone has been searched a minimum of four additional times by officers of DHS.

108. An incident on February 12, 2017 was typical. Mr. Anibowei was returning from a visit to his friends and relatives in Nigeria, and was put into secondary inspection on returning to the Dallas-Fort Worth Airport. In secondary inspection, TSA agents performed an extremely thorough search of all of Mr. Anibowei's luggage and asked to see his phone. A TSA agent then performed an extensive search of Mr. Anibowei's phone in front of him. Mr. Anibowei believes that the officer viewed his text messages, as well as encrypted messages he sent and received through WhatsApp (a texting application very popular globally). Because Mr. Anibowei's email is not password protected on his phone, it is possible the officer viewed Mr. Anibowei's email, too.

109. There is an extraordinary irony to Mr. Anibowei's case. Mr. Anibowei came to the United States seeking freedom. He makes a living helping other people who wish to enjoy this country's freedoms. While Mr. Anibowei is not certain, he believes that the catalyst for CBP's increased interest in him was his frequent travel overseas. And, since 2016, that travel has resulted in scrutiny of every aspect of his personal and professional life, via CBP's free and uninhibited access to all of the data on his phone.

110. Mr. Anibowei fears grave injury to his reputation and his business as a result of CBP and ICE's search and copying of his phone. Mr. Anibowei fears that if his clients knew or believed that CBP had copied their data from Mr. Anibowei's phone, it would diminish their trust and confidence in him as an attorney.

111. CBP and ICE's illegal electronics search and seizure policies have worked a grave injury to Mr. Anibowei's First and Fourth Amendment rights.

112. Mr. Anibowei intends to continue traveling internationally to visit his family in Nigeria and for pleasure.

113. Based on his experiences recounted above, Mr. Anibowei reasonably believes that Defendants will continue to violate his First and Fourth Amendment rights when he travels internationally in the future.

FACTS RELEVANT TO ALL CLAIMS FOR RELIEF

114. Defendants adopted the policies and practices discussed above related to searching and seizing electronic devices at the border.

115. The frequency with which border officials enforce these policies and practices against travelers is rapidly growing.

116. Mr. Anibowei has traveled across the U.S. border with his cell phone multiple times.

117. Mr. Anibowei has a credible fear that his cell phone will be searched again.

118. Mr. Anibowei is suffering the ongoing harm of the confiscation of the information on his cell phone.

119. Mr. Anibowei's phone is private personal property that agents have taken without his consent.

120. Mr. Anibowei has a reasonable expectation of privacy in the content on his cell phone, in the content he stores in the cloud that is accessible through his cell phone, in his device passwords, and in the information he holds as an information fiduciary on behalf of other people.

121. Mr. Anibowei uses his cell phone to communicate, associate, and gather and receive information privately and anonymously.

122. Mr. Anibowei uses his cell phone to store sensitive attorney work product and confidential information on behalf of his clients, some of whom are immigrants adverse to Defendants.

123. Mr. Anibowei, and the many other travelers who cross the United States border every year with electronic devices, are chilled from exercising their First Amendment rights of free speech and association, in knowing that their personal, confidential, and anonymous communications, and their expressive material, may be viewed and retained by government agents without any wrongdoing on their part.

124. Mr. Anibowei feels confused, embarrassed, upset, violated, and anxious about the search and copying of his cell phone. He worries that government agents have viewed personal information taken from his phone, including photos and messages, and shared it with other government agencies. He worries about his own personal information, and also personal information from and about other people, including friends, family, clients, and professional associates.

125. Defendants have directly performed, or aided, abetted, commanded, encouraged, willfully caused, participated in, enabled, contributed to, or conspired in the device searches, device confiscations, policies, and practices alleged above, by promulgating or causing to be promulgated the ICE and CBP policies permitting the search of Mr. Anibowei's phone, and by directing agents to enforce those policies.

126. By the acts alleged above, Defendants have proximately caused harm to Mr. Anibowei.

127. Defendants' conduct was done intentionally, with deliberate indifference, or with reckless disregard of Mr. Anibowei's constitutional rights.

128. Defendants will continue to violate Mr. Anibowei's constitutional rights unless enjoined from doing so by this Court.

CLAIMS FOR RELIEF

**COUNT I
FIRST AMENDMENT**

129. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

130. Defendants violate the First Amendment by searching and seizing individuals' devices and communications containing expressive content, associational information, and privileged information, *absent a warrant supported by probable cause* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

131. Defendants violate the First Amendment by searching and seizing individuals' devices and communications containing expressive content, associational information, and privileged information, *absent probable cause* to believe that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

132. Defendants violate the First Amendment by searching and seizing individuals' devices and communications containing expressive content, associational information, and privileged information, *absent reasonable suspicion* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

133. Defendants have violated and will continue to violate Mr. Anibowei's First Amendment rights by searching and seizing his devices and communications containing expressive content, associational information, and privileged information, absent a warrant, probable cause, or a reasonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

COUNT II
FOURTH AMENDMENT
(Unlawful Search of Electronic Devices)

134. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

135. Defendants violate the Fourth Amendment by searching travelers' electronic devices, *absent a warrant supported by probable cause* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

136. Defendants violate the Fourth Amendment by searching individuals' devices and communications containing expressive content, associational information, and privileged information, *absent probable cause* to believe that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

137. Defendants violate the Fourth Amendment by searching individuals' devices and communications containing expressive content, associational information, and privileged information, *absent reasonable suspicion* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

138. Defendants' searches are unreasonable at their inception, and in their scope, duration, and intrusiveness.

139. Defendants have violated and will continue to violate the Fourth Amendment by searching Mr. Anibowei's electronic devices, absent a warrant, probable cause, or a reasonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

140. Defendants' searches of Mr. Anibowei's electronic devices are unreasonable at their inception, and in their scope, duration, and intrusiveness.

COUNT III
FOURTH AMENDMENT
(Unlawful Search of Communications)

141. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

142. Defendants violate the Fourth Amendment by searching individuals' emails, text messages, and other private communications, *absent a warrant supported by probable cause* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

143. Defendants violate the Fourth Amendment by searching individuals' devices and communications containing expressive content, associational information, and privileged information, *absent probable cause* to believe that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

144. Defendants violate the Fourth Amendment by searching individuals' devices and communications containing expressive content, associational information, and privileged information, *absent reasonable suspicion* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

145. Defendants' searches are unreasonable at their inception, and in scope, duration, and intrusiveness.

146. Defendants have violated and will continue to violate the Fourth Amendment by searching Mr. Anibowei's electronic devices, absent a warrant, probable cause, or a reasonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

147. Defendants' searches of Mr. Anibowei's electronic devices are unreasonable at their inception, and in their scope, duration, and intrusiveness.

COUNT IV
FOURTH AMENDMENT
(Unlawful Seizure of Devices)

148. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

149. Defendants violate the Fourth Amendment by seizing individuals' electronic devices for the purpose of effectuating searches of those devices after individuals leave the border, *absent a warrant, probable cause, or reasonable suspicion* that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

150. These seizures are unreasonable at their inception, and in scope, duration, and intrusiveness.

151. Defendants have violated and will continue to violate the Fourth Amendment by seizing Mr. Anibowei's electronic devices for the purpose of effectuating searches of those devices after he leaves the border, absent a warrant, probable cause, or reasonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

152. Defendants' seizures of Mr. Anibowei's electronic devices are unreasonable at their inception, and in their scope, duration, and intrusiveness.

COUNT V
FOURTH AMENDMENT
(Unlawful Seizure of Data)

153. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

154. Defendants violate the Fourth Amendment by seizing individuals' data and retaining that data, often after individuals leave the border, *absent a warrant, probable cause, or rea-*

sonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

155. These seizures are unreasonable at their inception, and in their scope, duration, and intrusiveness.

156. Defendants have violated and will continue to violate the Fourth Amendment by seizing Mr. Anibowei's data and retaining that data, after he leaves the border, absent a warrant, probable cause, or reasonable suspicion that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws.

COUNT VI
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706
(Agency Policies)

157. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

158. Each of the 2018 CBP Directive, the 2009 CBP Directive, and the 2009 ICE Directive (collectively, the "Agency Policies") is a "final agency action" subject to judicial review under the Administrative Procedure Act, 5 U.S.C. § 704.

159. The Agency Policies permit agents to conduct searches that violate the First and Fourth Amendments. The Agency Policies therefore violate the Administrative Procedure Act because they are "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(B).

160. The Agency Policies further violate the Administrative Procedure Act because they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

COUNT VII
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706
(Global Entry)

161. Plaintiff re-alleges each and every allegation in paragraphs 1-128 above as if fully set forth herein.

162. Defendants' removal of Plaintiff from the Global Entry Trusted Traveler Program is a "final agency action" subject to judicial review under the Administrative Procedure Act, 5 U.S.C. § 704.

163. Plaintiff has exhausted all of his administrative remedies and any further pursuit of administrative relief would be futile.

164. Defendants' removal of Plaintiff from the Global Entry Trusted Traveler Program violated the Administrative Procedure Act because it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks for the following relief as to all counts:

a. Declare that Defendants' policies and practices violate the First and Fourth Amendments by authorizing searches of travelers' electronic devices and communications absent a warrant supported by probable cause that the devices contain contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

b. Declare that Defendants violated Plaintiff's First and Fourth Amendment rights by searching his electronic devices absent a warrant supported by probable cause that the devices contained contraband or evidence of a violation of criminal, immigration, or customs laws, and without particularly describing the information to be searched.

c. Enjoin Defendants to expunge all information gathered from, or copies made of, the contents of Plaintiff's electronic devices.

d. Enjoin enforcement of the Agency Policies against Plaintiff.

e. Enjoin enforcement of the Agency Policies.

f. Vacate the Agency Policies.

g. Award Plaintiff reasonable attorneys' fees and costs.

h. Grant such other or further relief as the Court deems proper.

Dated: March 14, 2019

Respectfully submitted,

**ARNOLD & PORTER
KAYE SCHOLER LLP**

By: /s/ Andrew Tutt

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* Motion for pro hac vice admission forthcoming

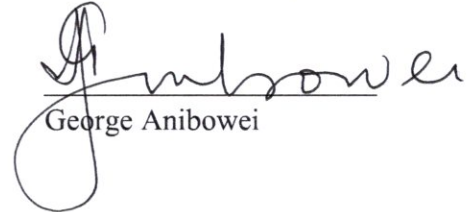
Counsel for Plaintiff

VERIFICATION

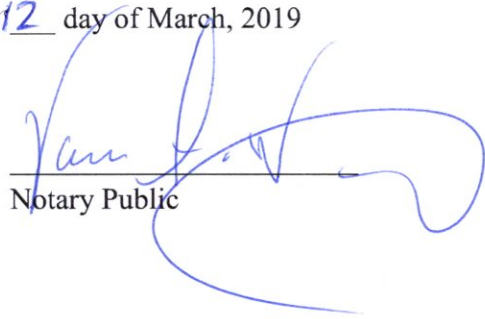
STATE OF TEXAS)
) SS:
DALLAS COUNTY)

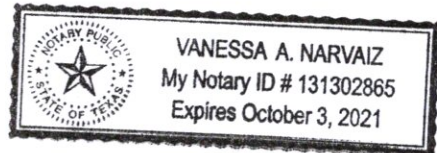
George Anibowei, being duly sworn, deposes and says:

I am George Anibowei, the plaintiff in this action; I have read the foregoing Verified Second Amended Complaint and know the contents thereof; except as to matters therein alleged on information and belief, I have learned of the facts alleged therein, either through my own personal knowledge or through information reported to me in the ordinary course of business; as to those matters as to which I do not have personal knowledge, I believe them to be true.


George Anibowei

Sworn to and subscribed this
12 day of March, 2019


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that this document will be served on the Defendants in accordance with
Fed. R. Civ. P. 4.

/s/ Andrew Tutt

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(202) 942-5000
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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the Northern District of Texas

Anibowei

Plaintiff

v.

Lynch et al

Defendant

Civil Action No. 3:16-cv-03495-D

Summons in a Civil Action

TO: Kirstjen M Nielsen, US Secretary of Homeland Security, in her official capacity

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

George Anibowei
6060 North Central Expwy, Suite 560
Dallas, TX 75206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

[Handwritten signature]

Signature of Clerk or Deputy Clerk



DATE: 03/15/2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Record Excerpts was filed electronically on June 1, 2020 and will, therefore, be served electronically upon all counsel.

s/ Andrew Tutt

Andrew T. Tutt