

**IN THE UNITED STATES COURT OF APPEALS  
for the FIFTH CIRCUIT  
NEW ORLEANS, LOUISIANA.**

JESUS ALBERTO CABAL, )  
 )  
 ) Plaintiff-Appellant. )  
 )  
 vs. )  
 )  
 )  
 )  
 ) UNITED STATES DEPARTMENT OF JUSTICE; )  
 ) JOHN ASHCROFT, U.S. ATTORNEY GENERAL; )  
 ) ROBERT MUELLER, III, The Director of the Federal )  
 ) Bureau of Investigations; JANET RENO, Former U.S. )  
 ) Attorney General; LOUIS. J. FREEH, Former Director )  
 ) of the Federal Bureau of Investigations; FEDERAL )  
 ) BUREAU OF INVESTIGATIONS., )  
 ) Defendants-Appellees. )

Appeal No: 02-50781  
District Court No: SA-02-CV-103

**APPELLANT'S BRIEF**

**DATED: September 10, 2002**

**Jesus Alberto Cabal**  
Plaintiff-Appellant  
P.O. Box: 310742  
New Braunfels, Texas  
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**Phone: 210-887-3663**

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for the FIFTH CIRCUIT  
NEW ORLEANS, LOUISIANA.**

JESUS ALBERTO CABAL,  
Plaintiff-Appellant.

vs.

Appeal No: 02-50781

District Court No: SA-02-CV-0103-EP

The U. S. DEPARTMENT OF JUSTICE,  
*Et al.*  
Defendants-Appellees.

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned, Appellant-Plaintiff *pro se*, hereby certifies that the following persons have an interest in the outcome of this case:

- A. Mr. JESUS ALBERTO CABAL. Who is the Plaintiff-Appellant acting *pro se* in this matter.
- B. Mr. JOHN ASHCROFT. Who is the current United States Attorney General.
- C. Mr. ROBERT MUELLER III. Who is the current Director of the Federal Bureau of Investigations (F.B.I).
- D. Ms. JANET RENO. Who is the former United States Attorney General.
- E. Mr. LOUIS. J. FREEH. Who is the former Director of the F.B.I.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal in this matter now before the Fifth Circuit Court of Appeals .

*Jesus Alberto Cabal* .

Jesus Alberto Cabal  
Appellant-Plaintiff, *pro se*  
P.O. Box: 310742  
New Braunfels, Texas  
78131  
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## **REQUEST FOR ORAL ARGUMENT**

Plaintiff-Appellant, Jesus Alberto Cabal, respectfully requests herein that the Honorable Court of Appeals for the Fifth Circuit grant him oral argument under the provisions of **Fifth Circuit Local Rule# 34**. Mr. Cabal believes that due to the nature of the issues raised in the lower court, oral argument would be of great help in understanding the history behind this case, and to ensure thereafter the proper disposition of this law suit.

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Which Includes the following:

A. **Notice of Appeal** plus final judgment. (Appellant's Exhibit-1).

B. **Order Dismissing Suit** issued by District Judge Edward Prado on June 18, 2002, (Appellant's Exhibit-2).

C. **Administrative Claim** filed by the Plaintiff with the U.S. Department of Justice in San Antonio, Texas on November 24, 1998, pursuant to the Federal Tort Claims Act 28 U.S.C. 2672, and 28 U.S.C. 2675 (Appellant's Exhibit-3).

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v.

## **JURISDICTIONAL STATEMENT**

The jurisdiction of the Honorable Court of Appeals for the Fifth Circuit is invoked herein under the federal statute: **28 U.S.C. 1291**. This Appeal is taken from a final order entered on June 18, 2002 by District Judge Edward Prado from the United States District Court for the Western District of Texas at San Antonio, Texas. Photocopies of the judge's decision dismissing the law suit, and of the final judgment entered by the clerk of the court are attached to this pleading in compliance with the Fifth Circuit's rules.

(Please, do refer to the Exhibits attached to the **Addendum** to this brief).

## **PRELIMINARY STATEMENT**

In this law suit the Plaintiff-Appellant has brought a four-count complaint against the Defendants in their official and private capacities arguing civil rights violations and/or *a conspiracy* to obstruct justice, and to violate his civil rights under color of law; conspiracy which has been ongoing for close to twenty (20)<sup>1</sup> years mainly at the hands of U.S. Government officials in the Executive branch who have tried by all available means in confederacy with state officials in Missouri, New Jersey, Illinois, and Texas to suppress his rights in violation to several federal statutes, namely: **42 U.S.C.**

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<sup>1</sup> Since the year of 1982, when he filed his first law suit in federal court in the Eastern District of Missouri against a corporation known at the time as *Envirodyne Engineers, Inc.*, operating out of West Port, Missouri.

**1981, 42 U.S.C. 1983, and 42 U.S.C. 1985(a)(2).** Also, in violation of U.S. Constitutional **Amendments 1, 6, 8, and 14.** This conspiracy as well involves the slandering (defamation) of Mr. Cabal's good name since upon knowledge and belief the American public and the news media have been told by federal officials that Mr. Cabal has in the past engaged in homosexual activity with a "Homosexual Black man", and that to avoid racial instability his constitutional rights had been suspended, as well as his rights to recover moneys for his injuries. This deprivation and/or suppression of his constitutional rights was carried out by means of **highly classified Executive Orders**<sup>2</sup> which is Mr. Cabal's understanding also threatens *with prosecution for treason* any news organization or reporter who dares to make public any matter dealing with his law suits.

In this law suit filed with the U.S. District Court for the Western District of Texas on/about February the 4<sup>th</sup> of 2002 (**Appellant's Exhibit-5** of the Appendix); the Plaintiff-Appellant also has a claim, (Count-I) under the Freedom of Information and Privacy Act (F.O.I.P.A.) in which he requests from the U.S. District Court **to compel** the F.B.I., the D.O.J., and the officials mentioned in his complaint to release to him as soon as possible all surveillance records which have been unlawfully withheld from him throughout the years. Mr. Cabal uses the word *compel* due to the fact that the matter appears to have been classified **Top Secret** by government authorities in order to thwart Mr. Cabal's chances of obtaining such records via the normal channels of written requests to the agency in custody of the information at issue. Therefore, it is fair to say that it would be only through Court orders that these records can be obtained and/or released since the intervention of a

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<sup>2</sup> It is Mr. Cabal's understanding that a *top secret* classification has been assigned to the matter, making it unlawful to acknowledge even the existence of the Executive order and the classification itself.



federal judge is needed to conclude that the top secret classification *is nothing else than a “gimmick” to cover up wrong doing*. In particular, Mr. Cabal wants the District Court for the Western District of Texas or the Fifth Circuit to compel the production of *all wiretaps*, and *videotapes gathered during the evening of Saturday, April the 28<sup>th</sup>, 2001* since at that time and in his household the last overt act in furtherance of the conspiracy at issue took place. On such evening 2 females alleging to be 19 and 20 years old approached the Plaintiff-Appellant at a car wash in the town of Seguin, Texas, dressed up as hookers and using all kind of foul or profane language leading Mr. Cabal, a single man, to believe that indeed these 2 individuals were wild women who (as they claimed) just: *“Wanted to party and to have a good time with him”*. When Mr. Cabal arrived at his house with the two females, they repeated to him in his living room that they were *over 18 years of age*, and that all they wanted to do was to have sex with him. Once at his house, the females tried to persuade Mr. Cabal to buy them illicit drugs, however he refused to do such. Also, one of the females wanted to coerce Mr. Cabal to engage with her in anal sex something that he declined to do since as he told them he found the idea repulsive. Later that evening, and after spending just over an hour in his house, these 2 females stole Mr. Cabal’s automobile, an Acura Legend that had been transferred to his name the day before by his employer. After stealing the car the females replaced its license plates and drove back and forth to the Mexican border to a place known as Eagle Pass. The record does show that during their trip to the border they managed to fool those people who had contact with them, and who believed that they were adults. Such includes a police officer who stopped them along the interstate for purportedly driving erratically, and another driver who got involved with them in an auto accident. Several days later after the car was recovered, police officers from the city of Seguin, Texas, did advise Mr. Cabal that these females were just 13 ½ years old and

that one of them, a rather *deformed female dwarf*, was alleging to have been forced to have sex with him. Mr. Cabal denied to the police forcing anyone to engage in sexual activity with him.

Although the police officers did not mention such to the Plaintiff, later on through one of his attorneys he would find out that the female who was trying to coerce him to engage with her in anal sex was actually a homosexual young man who enjoys dressing as a woman. This individual, by the way, did offer testimony to the police who contradicted the accusations of rape given by the dwarf female.

Mr. Cabal *who upon knowledge and belief* has been and remains under electronic surveillance by federal agencies since the year of 1982<sup>3</sup>, as a direct result of the law suits he has filed against previous employers and U.S. Government officials alike (**Appellant's Exhibit-5** of the Appendix); submits to this Honorable Court of Appeals that he is entitled as a matter of law to have those records released for the simple fact that the surveillance tapes will clear him of the charges<sup>4</sup> that the state of Texas has filed in Guadalupe county against him. Such surveillance records will also show that this event was in furtherance of the conspiracy set forth within his complaint. Mr. Cabal submits herein that only government officials could benefit from attempting to have him to engage in homosexual activity with a minor. It appears that the main goal when having these 2 juveniles approach him and pretend to be adult hookers was an attempt to fool him into engaging in a homosexual act, and to charge him later on with a nasty crime. This was done most likely with the hope of telling the American people that he indeed had homosexual tendencies. This theory is further corroborated by the fact that immediately after he reported his car stolen on that Saturday

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<sup>3</sup> Including but not limited to the **F.B.I.**, and the **U.S. Secret Service**

<sup>4</sup> The charges filed by the state of Texas of "Aggravated sexual assault of a child".

night, the closest police officer to the scene of the crime refused to pursue these young criminals on the grounds that he (quote): “*Was keeping a suspect under surveillance inside a movie theater, and could not leave the scene*”. Thereafter, another 4 or 5 police officers who arrived a few minutes later were unusually interested in finding out whether Mr. Cabal had engaged in sexual activity with the two “females”, and did ask him on several occasions what type of sex had been performed. For some time the officers appeared to have forgotten that they had been summoned to the location **only** because a car had been stolen and nothing else. Those police officers who arrived in their patrol cars did refuse later on to take Mr. Cabal to his house in spite of the fact that he was visibly shaken by the incident, that they had to tell him to calm down several times, and also in spite of the fact that Mr. Cabal’s place of residence was no more than a 5 minutes drive from the place where the car was stolen. Mr. Cabal had to wait outside a movie theater for 1 and ½ hours until the officer *who purportedly had someone under surveillance was free to go home*. Mr. Cabal believes that the police officers did know these two “females”, and that it is highly likely that these 2 minors were either: **a)** Told by police officers or criminal associates to go and victimize Mr. Cabal, or **b)** Were placed in a position where they would commit a crime against Mr. Cabal since the two of them regardless of their age, had in the past been in and out of trouble with the law.

The behavior of state and federal officials in this case filed by the state of Texas against Mr. Cabal is consistent with the conspiracy that for almost 20 years he has been trying to expose unsuccessfully, given the fact that the Executive branch of government is deeply involved in the matter while using *national security statutes* to perpetuate the lies, the wrong doing, and thereafter the cover up. Even the news media in the United States remains helpless to expose such level of corruption since they have been threaten with “treason” by government officials who seem to have

taken advantage of the fact that Mr. Cabal is not a U.S. citizen to falsely argue that their actions had to be taken in an attempt to protect the national security of the United States. The evidence in support of Mr. Cabal's claims of a conspiracy to obstruct justice and to deprive him of his constitutional rights rooted at the presidential level is so strong that any person regardless of legal training who examines the record on each one of the law suits which he has filed in U.S. District Courts throughout the country will have to conclude that in fact *he was entitled as a matter of law* to the relief he was seeking in each individual law suit.

In response to Mr. Cabal's current law suit the U.S. Attorney for the Western District of Texas did file a Motion to dismiss his complaint in early June of 2002 arguing that: **A)** Mr. Cabal's complaint did not state a claim entitled to relief pursuant to F.R.C.P. # 8 (a)(2)(e)(1); and **B)** That there was a lack of jurisdiction by the court over the subject matter since the pleading purportedly failed to state legitimate claims under F.R.C.P. #12 (b)(1) and (6).

On June 18, 2002 judge Edward Prado of the Western District of Texas entered his order siding with the Defendants, and thereafter dismissing Mr. Cabal's law suit. (**Appellant-Plaintiff's Exhibit-2** of the Appendix).

Within the next pages, and particularly within the section entitled Legal Arguments the Plaintiff submits to the U.S. Court of Appeals for the Fifth Circuit documentary evidence, facts of law, and numerous authorities (law case) to prove that the District Court judge was clearly mistaken when dismissing the complaint on the grounds set forth in his judgment-order.

## **ISSUES PRESENTED FOR REVIEW**

Plaintiff-Appellant respectfully requests that the Honorable Court of Appeals for the Fifth Circuit after reviewing the facts of this case, and the authorities set forth within the brief, does rule on the following issues:

**I. Whether** Judge Edward Prado of the United States District Court for the Western District of Texas **erred when dismissing Count-I of the law suit Jesus Alberto Cabal vs. The D.O.J., et al, *arguing* that Plaintiff's *claim under the Freedom of Information Act (Section 5 U.S.C. 552 (a)(4)(b))* is not actionable for purportedly failing to exhaust his administrative remedies *regardless* of the fact that he did receive a final denial of his Administrative Claim. (Please, do refer to **Appellant's Exhibit-6,7 of the Appendix**).**

**II. Whether** Judge Edward Prado of the United States District Court for the Western District of Texas **erred when dismissing the law suit Jesus Alberto Cabal vs. The D.O.J., et al** in its entirety before giving Plaintiff a chance to respond<sup>5</sup> to defendant's Motion to dismiss under Rule #12 (b)(1)(6) which Motion should have been disposed of as provided in **Rule #56 of the F.R.C.P.** Thereafter, rendering the judge's decision in conflict with the guidelines set forth by the United

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The judge dismissed the case on June the 18<sup>th</sup>, 2002, *just 6 days* after Mr. Cabal had received the Motion to dismiss from the U.S.D.A. by certified mail. The judge further refused to provide an extension of time for Mr. Cabal to respond to such Motion. **Ironically, the government was granted 120 days to file a response to Mr. Cabal's complaint.**

States Supreme Court in Conley v. Gibson, 78 S.Ct. 99, 102 (1957). (In this regard, please, do refer as well to Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

**III. Whether** the District Judge's argument that Plaintiff can not prove any claims to support his conspiracy under F.R.C.P. Rule # 8 (a)(2) or (e)(1) is totally contradicted by the evidence which Mr. Cabal has presented within his Brief and Appendix filed with the Fifth Circuit Court on this appeal.

**IV. Whether** the *constitutional violations* by the Defendants against Mr. Cabal, plus the facts of law set forth in his complaint and brief on appeal, do entitle Mr. Cabal's claims to proceed to a trial before a jury against co-Defendants: Mr. Ashcroft, Mr. Mueller III, Ms. Reno, and Mr. Freeh, under the guidelines set forth by the United States Supreme Court in Bivens v. Six Unknown Federal Narcotic Agents, 409 F.2d 718, 1971 (U.S. Supreme Court), and 28 U.S.C. 1331.

**V. Whether** the fact that in this law suit Mr. Cabal has complied with *all the statutory requirements* of the Federal Torts Act (28 U.S.C. 2672, and 2675) which waives "Sovereign Immunity" for personal injury torts filed against federal agencies, do entitle Mr. Cabal to proceed to a trial before a jury in his claims against the F.B.I., the D.O.J., and thereafter against the other four (4) co-Defendants, both, in their official and individual capacities.

## FACTS OF THE CASE

On February the 4<sup>th</sup> of 2002, the Plaintiff-Appellant Jesus Alberto Cabal, did file in the United States District Court for the Western District of Texas in the city of San Antonio a 59-page complaint seeking declaratory and injunctive relief against several high ranking employees<sup>6</sup> of the United States Government, and from the agencies which they lead and/or represent; namely, the Department of Justice (D.O.J.) and the Federal Bureau of Investigations (F.B.I.). (**Appellant's Exhibit-5** of the Appendix).

The complaint which consisted of four (4) counts does describe in excruciating detail the terror and abuse of power to which Mr. Cabal has been subjected to since the year of 1982 at the hands of United States officials just for the simple fact that he is an alien of Colombian national origin, and therefore a Hispanic minority according with the Civil Rights Act of 1964.

A.) The First Count of such complaint (Count-I), (Please, do refer to pages 1 through 9 of **Appellant's Exhibit-5** of the Appendix) is a petition under the F.O.I.P.A and the statute 5 U.S.C. 552(a)(4)(b) which requests from the District Court to compel all the defendants including, but not limited to the D.O.J.. and the F.B.I. to produce, and thereafter to allow duplication of all records in the possession of these defendants dealing with Mr. Cabal and gathered since the year of 1982 throughout the present. In particular, Mr. Cabal has stated in his pleadings that he is in immediate need of all audio and videotapes obtained from surveillance carried out at his place of residence in Seguin, Texas, during Saturday April the 28<sup>th</sup> of the year 2001 when the last overt act of the

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The law suit against present and former U.S. Attorney Generals, and F.B.I. directors seeks relief on behalf of Mr. Cabal, in both, their official and private capacities.

conspiracy at issue did take place. (Please, refer to pages 6-9 of **Appellant's Exhibit-5** of the Appendix). It is essential that the court enter its order compelling government agencies, and officials to comply for the simple fact that the matter has been classified as "Top Secret" under the *false pretense of protecting the national security of the United States*. This is the reason why for the past twenty (20) years Mr. Cabal has met a wall of denials from all federal agencies that he has been in contact with since the nature of the classification given to this matter by Executive Orders does allow these agencies to deny even the existence of "*any Executive Order tampering with Mr. Cabal's rights*". The tremendous censorship imposed on the news media in this matter, plus the "gutsy acts" of a few journalists and private citizens who either directly or by innuendo have allowed Mr. Cabal to become aware of the existence of these Executive Orders aimed at suppressing his rights within the United States is the only way that he has been able to determine that such actions have in fact been taken at the presidential level against him.

**B.)** The second count of Mr. Cabal's complaint (Count-II) sets forth a conspiracy to obstruct justice under the federal statutes: 42 U.S.C. 1985 (a)(2)(3) and 42 U.S.C. 1981. This court must be made aware that on December the 10<sup>th</sup>, 1998, Mr. Cabal did file an Administrative Claim simultaneously with the Justice Department offices in San Antonio, Texas, and Washington, D.C., in compliance with the federal statutes 28 U.S.C. 2672, and 28 U.S.C. 2675; these statutes do require that prior to initiating a law suit against federal agencies or officials for monetary damages, such parties must be given a chance to examine the claims against them, and thereafter to respond or settle the matter out of court if they wish to do so. (**Appellant's Exhibit-3** of the Appendix). Within Count II of his complaint Mr. Cabal does relate to the court *facts of law* which overwhelmingly demonstrate that the actions taken by the Eastern District Court of Missouri in the city of Saint Louis could only be



explained as being taken in furtherance of a conspiracy. For instance: on page 11, paragraph 10 of such complaint Mr. Cabal describes how the district court of Missouri in a case of employment discrimination filed by Mr. Cabal against a former employer known as “Envirodyne Engineers” ***did appoint an all white jury***, in spite of his objections, for the trial of a law suit in which all the allegations of harassment and abuse made by Mr. Cabal, a minority himself, were directed against his white co-workers. (**Appellant’s Exhibit-8** of the Appendix). On page 13, paragraph 13A, of the complaint Mr. Cabal describes how his own supervisor at “Envirodyne”, an individual with the name of Paul Myers stated under oath during his deposition that the second person in the line of command in the laboratory where Mr. Cabal used to work at the time, a Mr. Paul Humburg, had stated to him that (quote): **“He (Mr. Humburg) did not like people of Hispanic origin because in the past he had some bad experiences with Mexicans”**. (Appellant’s **Exhibits-9,10** of the Appendix). This individual who had expressed such prejudice against Hispanics was also part of the management team at “Envirodyne”, and was in a position to prejudice his co-workers against Mr. Cabal, as was indeed the case in those days. In fact, further proof of prejudice against Hispanics at “Envirodyne Engineers” was discovered in a form known as **EE0-1** and filed by such corporation with the E.E.O.C. in the early eighties in which its work force description by racial composition does show that among the dozens of workers at Envirodyne Engineers there were no employees of Hispanic heritage (male or female). (**Appellant’s Exhibit-11** of the Appendix). Mr. Cabal who was a graduated chemist and who had been hired as a temporary worker by “Envirodyne” had also applied for permanent positions with this company as they became available, either as Chemist or as Q.A. Technician. (**Appellant’s Exhibits-12, and 13** of the Appendix). He was denied either one in spite of the fact that his own supervisor had stated during his deposition, and later on during the trial

of the law suit that Mr. Cabal had done a good job while employed by “Envirodyne” (**Appellant’s Exhibits-14,15** of the Appendix).

Furthermore, and to show that Mr. Cabal was not only a good and responsible employee at “Envirodyne” who was denied full time permanent employment in an act of discrimination, and who was railroaded in the district court pursuant to a conspiracy by U.S. officials altogether with management at “Envirodyne”; an attorney for this corporation in a letter sent to Mr. Cabal’s attorney on August 18, 1982 clearly implies that *Mr. Cabal had been a good worker whom “Envirodyne” would be willing to re-hire at a latter time should the economic situation in the St. Louis area were to show some improvement.* (quote). (Appellant’s **Exhibit-16 of the Appendix**).

Notwithstanding all of this massive evidence of employment discrimination, the “all white jury” chosen in this case returned a verdict against Mr. Cabal in all three counts, under a stiff censorship of the law suit in the Saint Louis metropolitan area during the year of 1986. Later on, when Mr. Cabal confronted a newsman in the city of St. Louis with the name of Tim Bryant about the stiff censorship surrounding his law suit and the fact that he had clearly been “railroaded” during the trial of his discrimination law suit, his reply was that he couldn’t help Mr. Cabal because (quote): ***“All seems to indicate that very powerful people in the federal government do not want this matter to become of public knowledge.”*** (Page 14 paragraph **E** of **Appellant’s Exhibit-5** of the Appendix).

The truth of the matter is that the evidence presented by the Plaintiff at the trial of the law suit *Jesus Alberto Cabal vs. Envirodyne Engineers, Inc.*, during the year of 1986 was in simple words overwhelming to show that he had been the victim of employment discrimination and slander by his co-workers at “Envirodyne”. The court’s decision at the time not to allow the jury to rule on the

defamation count, and the appointment thereafter of an “*all white jury*” to decide a case of employment discrimination in which all of Mr. Cabal’s complaints were directed against his white co-workers was the judge’s way to let Mr. Cabal know that the court did not intend to play by the rules in his case. This fact is undisputable if one takes into account that at the time the population of the city of Saint Louis itself was over 80% African American; thus, the appointment of an all white jury under these conditions, plus the fact that the jury did rule contrary to the facts of the case can only be explained *as an act in furtherance of a conspiracy*.

This incident alone is sufficient as to contradict U.S. Attorney’s Craig Gargotta’s statements set forth within his Motion to Dismiss on behalf of the U.S. government defendants, and filed with the District Court of Texas on June of 2002. Within such Motion Mr. Gargotta does argue that Mr. Cabal had no one to blame, but himself for the dismissal of his law suits because (quote):“ *The law suits were factually or substantively defective*” (page 11, paragraph 3 of the government’s Motion to Dismiss). In this regard the Fifth Circuit Court of Appeals must be made aware that the lawyers who prepared and tried the law suit “*Cabal vs. Envirodyne*” on behalf of Mr. Cabal, belonged to the law firm of *Newman, Goldfarb, Freyman & Stevens* which was reputed at the time to be one of the best law firms in the Saint Louis metro area; particularly, in matters dealing with civil rights litigation. In fact, the original complaint, plus the pleadings which they filed throughout the litigation on behalf of Mr. Cabal were legally flawless, factual, and well reasoned documents<sup>7</sup> as was also their presentation during the trial of the case in which they refuted one by one each of *Envirodyne*’s arguments that there was not an attempt by this company to discriminate against Mr.

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As was told to Mr. Cabal by other civil rights attorneys in the St. Louis metro area who examined several of the pleadings just before he filed his appeal on that particular case.

Cabal.(**Appellant's Exhibit-14** of the Appendix) . It is fair to say that the only way that the lawyers acting on his behalf could have lost that particular case was through tampering with the proceedings; through cheating sponsored by U.S. officials as was definitely the case at the time. All of the evidence and exhibits that Mr. Cabal has set forth in the previous paragraphs did entitled him to relief as a matter of law, and could only have been suppressed or nullified via an Executive Order aimed at tampering with Mr. Cabal's legal rights to prevail on the merits of his claims. Not other logical explanation suffice or can be given to the actions taken by the court against him during the trial of the case Cabal vs. Envirodyne.

In the case of the law suit Cabal vs. Private Label Cosmetics, Inc., which was filed in the state of New Jersey, similar violations took place. For instance: A few days after his hiring, an employee from "Private Labels"with the name of Barbara Zakaev, did contact the office of Envirodyne Engineers, Inc. in Saint Louis, Missouri to inquire about Mr. Cabal's previous employment. Ms. Zakaev was told by Envirodyne's officials that Plaintiff had in fact filed charges with the E.E.E.O.C against "Envirodyne" for employment discrimination. Other telephone calls did follow up among higher level officials of these two companies, and as a direct result of "Envirodyne" releasing the above referenced information to "P. L. C." Plaintiff was subjected to tremendous harassment, to ostracism, and degradation at this employment. His co-workers openly used to tell him that they knew that he (Mr. Cabal) had filed charges of discrimination against "Envirodyne", and that they wanted him to leave.

Plaintiff was given "**unsigned paychecks**" on at least three occasions obviously in an attempt to intimidate him. (**Appellant's Exhibit-17 of the Appendix**). Also, on/or about October the 9<sup>th</sup>, 1982 the owners of "Private Label Cosmetics" did issue a pay raise to all of its employees including those

who got hired *after* Mr. Cabal, except for Mr. Cabal himself. Some of his co-workers and supervisors used to approach him several times a day to laugh at him stating: (Quote) “*Poor guy, he is the only one who did not get a pay raise, Ha! Ha! Ha!*”. The pay raise eventually was made retroactive to the Plaintiff. (**Appellant’s Exhibit-18 of the Appendix**)

After complaining on several occasions to the company’s vice-president, and president, about the intense harassment which Plaintiff was being subjected to by his co-workers and supervisors alike on November the 19<sup>th</sup>, 1982, a Mr. Michael Assante invited him to a meeting in an attempt to get Plaintiff to sign a statement purportedly acknowledging that: “*The harassment had stopped after Mr. Cabal had met with the company’s upper management to discuss the matter*”. ( See **Appellant’s Exhibit-19 of the Appendix**) Mr. Cabal refused to sign such since the harassment never stopped, and by then management had prejudiced the work force against him to the point that the situation was basically spinning out of control.

On/or about November 22, 1982 a Mr. Geoff Finkenauer on behalf of Private Label Cosmetics and the Plaintiff mutually agreed to sign a letter of dismissal after his supervisors acknowledged that Private Label Cosmetics had allowed the situation to deteriorate to the point that the *trust* between Plaintiff and most of his co-workers, and supervisors was basically non existent. The mutually signed statement of dismissal basically read that “*..Due to the unforeseen personnel difficulties and to the underlying tension there created we find it necessary to lay Alberto Cabal off*”. (**Appellant’s Exhibit-20 of the Appendix**).

After Mr. Cabal filed his law suit in the District Court of New Jersey against “*Private Label Cosmetics*” the harassment and intimidation of Mr. Cabal continued this time at the hands of federal officials. In fact, on January the 20<sup>th</sup>, 1983, a Magistrate from the U.S. District Court of New Jersey

with the name of Serena Perretti wrote a letter to the Plaintiff declining to appoint him legal representation on the grounds that (Quote):” *In a claim under Title VII for retaliatory dismissal the fact issues are not difficult and can be presented by a litigant without a lawyer. Therefore, I will exercise my discretion and decline to request counsel to represent you.*” (**Appellant’s Exhibit-21 of the Appendix**).

In other letters mailed to Mr. Cabal during the following months she does make other remarks which indicated to him that the Magistrate had been prejudiced against him, and/or told by higher officials of the Executive branch how to rule in the case of Cabal v. Private Labels Cosmetics, Inc. This claim is corroborated by the fact that the Magistrate in spite of asserting in her letter of January the 20<sup>th</sup>, 1983, that “*retaliation facts are easy to present*” went on thereafter to deny all of Plaintiff’s motions, including but not limited to his subpoena of documents from his employer in what appears to have been a clear attempt to prevent him from winning on the merits of the claim.

To further show the U.S. Court of Appeals for the Fifth Circuit that contrary to the argument of the U.S. Attorney for the Western District of Texas that the “*Plaintiff (Mr. Cabal) did not have a valid claim in any of the law suits he has filed since 1982 reason why the suits were dismissed*”, he also needs to discuss herein some of the evidence presented in the case of Cabal vs. Tetraplastics, Inc. et al, suit which was filed during the year of 1994 also with the Eastern District of Missouri.

In fact, the evidence was also quite compelling in Cabal vs. Tetraplastics, et al to show that Mr. Cabal was the victim of employment retaliation, defamation, and a conspiracy by the co-Defendants altogether with state officials in Missouri to violate his civil rights under color of law. Once again, the proceedings were carried out under a stiff censorship since neither one of the Defendants *could refute* such compelling evidence indicating that a “*meeting of the minds*” took place among the

parties which aim was to injure Mr. Cabal in his trade.

The following facts prove by the “preponderance of the evidence” that there was in fact a conspiracy involving employees of “Tetra” and “I T Corporation” with federal and Missouri state officials to deprive Jesus Cabal of his civil rights under the statutes 42 U.S.C 1983, and 42 U.S.C 1985(a)(2) and (3):

1. “Tetraplastics, Inc.” and “I T Corporation” were both located in the same industrial park at Earth City, Missouri, just a few blocks away from each other, at the time Mr. Cabal worked at “Tetra”. *(This is an uncontested fact, and very critical evidence to this law suit).*

2. Jesus Cabal was terminated from his employment with “Tetraplastics” on **July the 2<sup>nd</sup>, 1994**, which is just about a week after he filed a law suit against “I T Corporation” in St. Louis County Circuit Court on **June the 22<sup>nd</sup>, 1994**. (These two previously related facts are too much of a coincidence to be disregarded).

3. “I T Corporation” in its response to Plaintiff’s Interrogatory#19 clearly states that: “*Contact between employees of these two companies have indeed taken place in the past*”, although “IT” claims that it is not of the kind described by Plaintiff. (See **Appl. Exhibit-22 of the Appendix.**)

4. On Counts I through V of his Second Amended Complaint, Plaintiff sets forth statements made often by employees of “Tetraplastics” with the names of Mr. Tom Williams, Mr. Steve Hoff, and Mr. Craig McDonald, who stated on numerous occasions that Mr. James Hurley himself was a good friend of several officials of I T Corporation who released information to Mr. Hurley dealing with Mr. Cabal’s litigation against “I T”. In fact, one of Mr. Hurley’s relatives, a Dr. Andrew Hurley, is a professor at the University of Missouri (St. Louis), the same campus where the husband of Dr. Margaret Winter from “I T” is also an employee. (**Appl. Exhibit-23 of the Appendix.**)

5. Mr. Gene Reim, the director of personnel for “Tetraplastics”, admitting during his deposition that his own sister is an employee of the Missouri Division of Child Welfare in Saint Louis County, (**Appl. Exhibit-24 of the Appx.**) (page 55 of his deposition); fact which might explain why a state official with the name of Mr. Paul Fox, the legal counsel for the St. Louis County Circuit Court told Mr. Cabal during the year of 1994 (quote): “*I know who you are!*”.

6. Mr. Paul Fox himself, the county’s legal counsel, within the Affidavit he submitted to the attorneys for the Defendants and referred to in Defendants’ Reply Brief has admitted that (quote): “The copy of the order signed by Judge Campbell and shown to me by Mr. Cabal, in fact seems to have been altered as to show a number seven(7) instead of a number one(1)”. Mr. Fox is relating to the dates of November 1, 1994 and November 7, 1994.

7. The record also shows that the conspiracy at issue includes at least two employees of Plaintiff’s next employer after Tetraplastics, namely: “Stellar Manufacturing Company”. Within his deposition Mr. Bob Page, a “Tetra” employee acknowledged that: “*He and his family were friends with an employee of “Stellar” known as Ms. Velma Johnson*” (**Appl. Exhibit-25 of the Appendix**), and go as far as saying that: “Velma (Johnson) was visiting his house the same morning just before his deposition.” (**Appl. Exhibit-25 of the Appendix**). Ms. Johnson and Ms. Dwyer from “Stellar Manufacturing” appear to have been the recipients of a defamatory letter issued by Tetraplastics.

8. The director of human resources for “Stellar Manufacturing”, Ms. Dwyer, did let Mr. Cabal know that she was aware that he had been “railroaded” in previous litigation against former employers, and weeks later developed an incentives program at “Stellar” known as the “*Stellar Safety Express*”(See **Appl. Exhibits-27, 28 of the Appendix**), which as explained in the documentation attached thereto consisted of a train railroading throughout the Departments or



Divisions of this company with all the employees purportedly traveling aboard the train and earning vacation days and/or monetary incentives.

9. In fact, Ms. Dwyer did refuse to sign her own deposition and also refused to accept any of the certified letters mailed to her by Mr. Cabal, perhaps because she is aware that the conspiracy at issue had in fact been exposed. (See **Appl.'s Exhibits-29, 30 of the Appendix**).

10. A Mr. James Hurley from "Tetra" did file an affidavit with the district court stating that employees of "Tetra" were concerned about Jesus Cabal's performance and attendance; yet, the director of personnel for Tetra, a Mr. Gene Reim, *has flatly denied in his deposition that he has any knowledge at all that complains were ever made about Jesus Cabal* ( **See Appl's Exhibit-33 of the Appendix**). It just makes no sense that in any business, employees will complain all the way to the company's vice-president about a co-worker who was doing janitorial type of work, without ever bringing the matter to the director of personnel himself as to create a record of the particular incidents.

11. Furthermore , at least two of the machine operators which Mr. Cabal was assigned to work with, *did acknowledge in their own depositions that Plaintiff, Jesus Cabal, was in fact a good worker, and a responsible individual who was respectful of his co-workers*. (Appellant's **Exhibits-31, and 32** of the Appendix).

The irony of Judge Perry's dismissal of Mr. Cabal's claims for conspiracy in "*Cabal v. Tetraplastics*", *et al.*, lays in the fact that she believed that there is enough evidence for a jury to hear his claims for employment retaliation, which by the way, are directly relate to his allegations of conspiracy. However, she chose to dismiss the conspiracy claims on the grounds that (quoting her): "Such were nothing but a bunch of coincidences". (**Appellant's Exhibit-34** of the Appendix).

Judge Perry undoubtedly created serious doubts about her impartiality not only by dismissing Plaintiff's counts for "libel" and "conspiracy" when there was very compelling evidence supporting Mr. Cabal's allegations, but for going as far as imposing upon him the *payment to the defendants of Court costs and attorneys' fees* in excess of \$30,000 dollars. This is very unfair because: **1<sup>st</sup>** The evidence in this law suit can not be refuted by the defendants, *nor* explained in any way other than in favor of Mr. Cabal's claims, and **2<sup>nd</sup>** The proceedings in the lower court were conducted under a tremendous censorship in which the news media was prohibited, once again, to report to the general public matters dealing with these proceedings. Such fact makes it perhaps criminal in nature to impose such outrageous fines upon a litigant who is being victimized simultaneously by the Defendants and *by government imposed censorship* which only goal was to cover up the truth. (**Appl's. Exhibit-35**).

Judge Perry of the District Court of Missouri should have taken into account when considering Defendants' Motion for Summary Judgment under Rule 56, that the responsibility of the district judge is merely to determine that there are issues to be tried, *rather than to try the issues herself via affidavits*. Such has always been the contention of the Eighth Circuit Court of Appeals as shown in: **U.S. v. Porter**, C. of App. 8th Circuit, 1978, 581 F.2d 698, also in **Ozark Milling Co. v. Allied Mills, Inc.**, C.A.. 8th Circuit, 1973, 480 F.2d 1014.

"Summary Judgment remedy is *extreme* and not to be used as a substitute for trial, and *any* doubt as to existence of triable issue of material fact must be resolved against movant". **Jacobson v. Maryland Cas. Co.**, C.A., 8th Circuit, Mo.336 F.2d 72, 1964.

Appellant needs to remind the Fifth Circuit Court of Appeals, that his assignment at "Tetraplastics" in the state of Missouri was of a "*janitorial nature*", in spite of the fact that he is a

graduated chemist who through the years has received excellent letters of recommendation from other employers. That is *before and after* his employment with “Tetra”. (See **Appl’s. Exhibits-36** through **44**). Furthermore, the Director of Personnel for Tetraplastics, and at least two of the machine operators which Mr. Cabal was assigned to work with, *did acknowledge in their depositions that Plaintiff was in fact a good worker, and a responsible individual who was respectful of his co-workers*. (Refer to **Appl’s. Exhibits-31** through **33** of the Appendix). The statements made by these employees of “Tetraplastics” in their depositions should have been enough grounds for Judge Perry to allow Mr. Cabal’s claims of defamation and conspiracy to be presented to a jury; particularly, because Mr. Cabal had already presented evidence indicating that copies of the Service Letter published by a Mr. Hurley from “Tetraplastics” had in fact being released to employees of Stellar Chemical Company, which was Mr. Cabal’s subsequent employer<sup>8</sup>.

The Fifth Circuit Court of Appeals must also be reminded that Defendants “Tetra” and “I T Corp.” did file a Motion to Dismiss under **Rule 56 of the F.R.C.P.** The provisions of **Rule-56 do not allow** a District Judge to dismiss any claims when a Defendant seeking Summary Judgment is unable to refute and/or to contradict the evidence set forth by the Plaintiff within his pleadings. ( **Mc Pherson v. Rankin**, 736 F.2d 175, 178 (5<sup>th</sup> Circuit, 1984), see also **Union Planters Nat. Leasing v. Woods**, 687 F.2d. 117 (5<sup>th</sup> Circuit 1982). In this particular law suit, it can be said that after being confronted

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The release of such derogatory service letter by Tetraplastics’ officials to personnel from “Stellar Chemical” was directly responsible for the fact that Mr. Cabal was kept as an hourly employee in spite of the fact that he had been promoted all the way to Plant Chemist, and eventually caused Mr. Cabal to lose his employment with “Stellar Chemical” of Hazelwood, Missouri.

with the compelling and unchallenged evidence in Mr. Cabal's possession, Judge Perry had no alternative but to allow Mr. Cabal's claims for "*defamation of character*" and "*conspiracy*" to proceed to trial before a jury altogether with Mr. Cabal's claims of employment retaliation. In summary, the fact that judge Perry from the U.S. District Court for the Eastern District of Missouri did not choose to rule on Mr. Cabal's favor on the three (3) critical counts of his complaint had nothing to do with Plaintiff lacking of evidence to support his allegations, nor with his pleadings being defective as Mr. Gargotta has argued in support of the U.S. defendants' claims to dismiss. The case against "*Tetraplastics, et al*" is one in which the judge chose to ignore the evidence, it is as simple as that, and she did choose to ignore the facts of the case **not** because she was incompetent, **nor** because Mr. Cabal's employers offered her a bribe. She did so because *she was compelled by means of an Executive Order falsely arguing damage to the national security of the United States* should Mr. Cabal had been granted an opportunity to prove his allegations before a jury as set forth in his complaint. The stiff censorship surrounding the law suit plus the fact that she fined Mr. Cabal in the amount of \$30,000 when the evidence overwhelmingly supported his claims was the *icing on the cake* that U.S. Government officials were out to deny him Due Process of Law and the Equal Protection of the Laws through sheer intimidation.

## STATEMENT OF THE CASE

On February the 4<sup>th</sup>, 2002, the Plaintiff-Appellant, Jesus Alberto Cabal, filed in federal court in San Antonio, Texas, his law suit against the Defendants: **A.)** Two (2) federal agencies, namely, the U.S. Department of Justice (D.O.J.), plus the Federal Bureau of Investigations (F.B.I.), and **B.)** Four (4) U.S. government employees, namely: the former U.S. Attorney General a Ms. Janet Reno; the former director of the F.B.I. a Mr. Louis Freeh; the present U.S. Attorney General a Mr. John Ashcroft; and the present director of the F.B.I. a Mr. Robert Mueller III.

Although Mr. Cabal within his complaint, and also within his Administrative Claim filed during the year of 1998 with the Department of Justice does make allegations against several lower ranking federal and state officials in Missouri, Illinois, New Jersey, New York, and Texas; he chose these four government officials as co-Defendants because they *do represent the highest level of responsibility and liability* in regard to the civil rights violations perpetrated against him since the year of 1982 (**Bivens v. Six Unknown Narcotics Agents**, 409 F.2d 718, (1971, 2<sup>nd</sup> Circuit). The Fifth Circuit must be made aware that either through Mr. Cabal's law suits and/or through his requests under the F.O.I.P.A. these Attorney Generals, and Directors of the F.B.I. were kept informed of the fact that government employees at the state and federal levels had engaged in a conspiracy against him for many years. The record does show, and *it is corroborated by the stiff censorship* surrounding this matter, that instead of correcting a wrong doing these 4 individuals have perpetuated the conspiracy at issue by encouraging presidents to issue or preserve Executive Orders tampering with his rights within the United States while been fully aware that Mr. Cabal had in fact been victimized, and continues to be victimized to this very moment; thereafter, engaging in fraudulent concealment. (**Dyniewicz v. United States**, 742 F.2d 484 (C.A. Hawaii), see also (**Small**

v. Signal LP Gas, Inc., 548 F. Supp. 46. D.C. of Missouri, 1982. These four(4) individuals have been the top law enforcement officials in the United States for the past twelve (12) years; therefore, they can not plead ignorance of the events which have been unfolding for more than a decade, and that Mr. Cabal refers to in his complaint. Furthermore, after so many years these 2 directors of the F.B.I., and 2 U.S. Attorney Generals had to know that Mr. Cabal who entered the United States when he was only 17 years old did not represent any threat to the national security of the United States as some radicals within the government seem to have been arguing behind close doors. As a matter of fact, Mr. Cabal has been living in the United States and without interruption since the year of 1974. In the case of Mr. Ashcroft, his knowledge about this matter goes even further back to the early eighties, first, when he was the Governor of Missouri, and then, as a U.S. Senator for the same state when Mr. Cabal contacted his office(s) in writing at least twice<sup>9</sup> asking for help in exposing the conspiracy which began to unfold with former Attorney General Ed Meese during the Ronald Reagan Administration. In other words, there has been full knowledge by these four (4) individuals for a long time that the conspiracy against Mr. Cabal was *ill conceived, vicious*, and undoubtedly *racially motivated*.

In response to Mr. Cabal's current law suit the U.S. Attorney for the Western District of Texas did file a Motion to dismiss his complaint in early June of 2002 arguing that: **A)** Mr. Cabal's complaint did not state a claim entitled to relief pursuant to F.R.C.P. Rule# 8, **B)** That there was a lack of

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During the nineteen eighties the Appellant-Plaintiff did contact several U.S. Senators, House Representatives and Governors of the states of Missouri, and Illinois; among others, since at least two (2) of his law suits were pending at the time in U.S. District Court in Saint Louis, Missouri.

jurisdiction by the court over the subject matter based on the doctrines of “Sovereign Immunity”/”Res Judicata”, and that the pleading failed to state legitimate claims under F.R.C.P. #12 (b)(1) and (6).

On June 18, 2002, Judge Edward Prado of the Western District of Texas entered an order siding with the Defendants, and thereafter dismissing Mr. Cabal’s law suit. (**Appellant’s Exhibit-2** of the Appendix).

Within his legal arguments in the next few pages, Mr. Cabal shows beyond a reasonable doubt to the Fifth Circuit Court of Appeals that the arguments used to dismiss his law suit in the Western District of Texas just do not apply in this case.

## SUMMARY OF THE ARGUMENT

Plaintiff-Appellant respectfully submits to the Fifth Circuit Court of Appeals that within his legal argument he proves beyond a reasonable doubt the following facts:

**I.** That his law suit does set forth **valid claims** under Federal Rules of Civil Procedure #8(a)(2),(e)(1); and #12 (b)(1)(6), contrary to the Defendants' allegations. Mr. Cabal's argument under Rule #8 does show compliance with the Supreme Court ruling issued in Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2L.Ed. 2d 80 (1957) (F.R.C.P.#8) since there is also fraudulent concealment in the present case.

In regard to Mr. Cabal's argument under Rule #:12, he proves his argument under: Abramson v. Grady (1967, Dist Col App), 234 A2d 174. [Ibid], since he has never received in Federal courts within the United States a full and fair opportunity to litigate his conspiracy claims "on the merits" as required by law before "res judicata" can be invoked against his law suit by the defendants.

**II.** That he has fulfilled all the statutory requirements needed to proceed to trial with his claim under the Freedom of Information and Privacy Act (F.O.I.P.A) since twice he has been denied his appeals for records by the board of review in what appears to be "classified" grounds. (TITLE 5 U.S.C. 552 (a)(4)(b)).Also, please do refer to: Cooper vs. Department of the Navy, 558, F.2d 274, 279 (modified), 594 F.2d 484 (5<sup>Th</sup> Circuit, 1979).

**III.** That his claims against officials of the Executive Branch of the U.S. Government **are not barred** or precluded by the Doctrines of "res judicata" or "collateral estoppel", since four (4) of the Defendants have never been sued before by Mr. Cabal, plus there has never been a true determination of his claims on the merits given the fact that the dismissal of his previous law suits have been characterized by "fraudulent concealment" of the facts, and thereafter by *obstruction of*



*justice* without a single hearing having ever been held regarding his conspiracy claims. **Dyniewicz v. United States**, C.A. Hawaii, 742 F.2d 484; **Nielsen v. City of Moss Point**, 701 F.2d 556 (5<sup>th</sup> Circuit, 1983) *en banc*; and **Luben Indus. v. United States**, 707 F.2d 1037, 40 (9<sup>th</sup> Circuit, 1983).

IV. That Mr. Cabal has fulfilled all the statutory requirements imposed by the Federal Tort Claims Act as a prerequisite to overcome “Sovereign Immunity” and to be allowed thereafter to file a law suit in Federal Court against U.S. Government Agencies; namely, the F.B.I. and the D.O.J. (Title 28 U.S.C. 2672, and 2675). **Furthermore**, that Mr. Cabal has also met all the jurisdictional requirements set forth by the United States Supreme Court in: **Bivens v. Six Unknown Federal Narcotics Agents**, 409 F.2d 718 (2<sup>nd</sup> Circuit, 1971), and (28 U.S.C. 1331) to proceed with his claims for civil rights violations against: Mr. John Ashcroft, Mr. Robert Mueller III, Ms. Janet Reno, and Mr. Louis. J. Freeh, in both, their individual and official capacities.

## LEGAL ARGUMENTS

Within this segment the Plaintiff-Appellant, Mr. Cabal, respectfully submits to the U.S. Court of Appeals for the Fifth Circuit the legal authorities to support his argument that the District Court judge did abuse his discretion when dismissing the complaint at issue for the reasons given in his ruling. (**Appellant's Exhibit-2** of the Addendum to this brief).

**A.) ANSWER TO DEFENDANT'S ARGUMENT THAT THE COMPLAINT DOES NOT FULFILL THE REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE No: 8(a)(2), and 8(e)(1).**

FEDERAL RULE OF CIVIL PROCEDURE No: 8(a)(2), and 8(e)(1) states as follows:

-GENERAL RULES OF PLEADING.

**(a) Claims for Relief.**

A pleading which sets forth a claim for relief, whether an original claim, cross-claim, or third-party claim, shall contain, (2) A short and plain statement of the claim showing that the pleader is entitled to relief.

**(e) Pleading to be Concise and Direct; Consistency.**

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

Plaintiff respectfully submits to the U.S. Court of Appeals for the Fifth Circuit that the complaint at issue filed with the U.S. District Court of Texas at San Antonio in no way violates the provisions set forth in Rule (a)(2), nor 8(e)(1) of the Federal Rules of Civil Procedure. If anything can be said about Mr. Cabal's complaint, it is that such elaborates in clear detail the transgressions he has suffered *since the year of 1982* at the hands of employers and government officials alike, thereafter, fulfilling the mandate of the law. Granted, the complaint is 59-page long, but the Fifth Circuit must also take into account that when F.R.C.P. # 8 was enacted, the legislators never expected the federal court system to be dealing with *twenty (20) year old conspiracies* on a regular basis which events

obviously couldn't possibly be detailed in a short complaint as the defendants wish. Any conspiracy which lasts for this length of time particularly when there is *fraudulent concealment* by high ranking officials in the Government about its existence, undoubtedly will have a considerable amount of events in furtherance of their unlawful activities, and couldn't possibly be stated in a short concise statement given the nature of the transgression. In summary, Rule # 8 of the F.R.C.P. was not enacted to protect a "phony defense" by the defendants as it is the case herein where the concealment of the conspiracy, and the fraud thereafter is so massive and widespread. McCloskey v. McCartney, 324 Ill. App. 498, 58 N.Ed. 2d. 630; Jones v. McMillan, Inc. D.C. Ark., 84 F.R.D. 640; Tyler vs. Cisneros, 136 F.3d 603, 607 (9<sup>th</sup> Circuit, 1998.); and also please do refer to Dyniewicz v. United States, C.A. Hawaii, 742 F.2d 484.

Mr. Cabal submits to the Fifth Circuit that his complaint meets the requirements of the "notice pleading" policy behind Rule # 8(a)(2) of the Federal Rule of Civil Procedure as defined by the United States Supreme Court in Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2L.Ed. 2d 80 (1957).

In such decision the Justices stated:

"We said in effect that the rule meant what it said: The Federal Rules of Civil Procedure *do not require* a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the rules require is a short and plain statement of the claim that will give the defendants fair notice of what the plaintiff's claim is and the grounds upon which it rests."

In this regard, please do refer as well to: Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5<sup>th</sup> Circuit. 1993), and Leatherman v. Tarrant County, 507 U.S. 163, 168 (1993) (emphasis added). What all of this means is that Mr. Cabal's detailed oriented complaint setting forth as many as possible of the civil rights violations against him which have taken place through the years, do fulfill beyond expectation the requirements of Rule# 8, and the guidelines set forth by the U.S.

Supreme Court in Conley v. Gibson.

**B). ANSWER TO DEFENDANT’S ARGUMENT THAT Mr. CABAL’S COMPLAINT DOES NOT COMPLY WITH THE PROVISIONS OF F.R.C.P. Rule# 12(b)(1) and (6).**

**RULE 12. Defenses and Objections—When and How Presented-By Pleading or Motion- Motion for Judgment on the Pleadings.**

**(b)HOW PRESENTED.**

“Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, and..(6) Failure to state a claim upon which relief can be granted”.

It appears that the defendants are relying on these 2 subsections of Rule-12 based on : A). The doctrine of *Res Judicata* , and B). The doctrine of “Sovereign Immunity”.

Defendants are mistaken in both cases, and their defense under subsections: (b)(1), and (6) of Rule #12 is flawed. For instance, in the case of the doctrine of “*Res Judicata*”-“*Collateral Estoppel*”, the doctrine only applies when an issue or issues have been disposed of by a court of law **and** “as long as a full and fair opportunity to litigate has been given to the Plaintiff” (**Id. At 101**). This means that only a final judgment that is “sufficiently firm” in legal terms can be considered to be preclusive. **Luben Indus. v. United States**, 707 F.2d 1037, 40 (9<sup>th</sup> Circuit, 1983). For a defendant to successfully invoke “*Res judicata*” the judgment(s) must be on the merits; that is, a jury must have been given an opportunity to hear the evidence of the case. (Friedenthal, Kane, and Miller at 616). It is firmly established by courts all throughout the United States that the *res judicata* doctrine can only be enforced “when the claim has been fully and **fairly** litigated in an adversary hearing, and thus conclusively established. (**Pelletier v. Alameda Yacht Harbor**, (1986), 188 Cal. App. 3d 1551. In Mr. Cabal’s case he has never been given a chance to present his claims of conspiracy to a jury by

any of the U.S. District Courts where he has filed his conspiracy law suits. In fact, in all cases the judges dismissed the claims for conspiracy without a single evidentiary hearing on the matter, and in other cases, without even given Mr. Cabal an opportunity to respond to the defendant's Motions to Dismiss. Such was the case in the Western District of Texas in which judge Edward Prado dismissed not only the conspiracy charges, but the entire law suit just six (6) days after Mr. Cabal received in the mail defendants' Motion to Dismiss<sup>10</sup>. Judge Prado lack of judicial discretion in this regard raises questions not only about his impartiality for not giving him an opportunity to respond to such Motion as provided in Rule #56 (regardless of the fact that the Motion was filed under Rule #12), but also raises once again the spectrum *or* possibility that members of the Executive branch of the federal government have compelled this judge to tamper with Mr. Cabal's rights as other judges in other jurisdictions have done following Executive Orders.

It must be observed that Defendants' Motion To Dismiss does not contain any evidentiary matters used by the other district courts as a basis for dismissal of prior similar complaints. *Given these circumstances, dismissal of Plaintiff's complaint on "res judicata" grounds is not proper at all.*

**Miller v. Shell Oil Co.** (1965, C.A. 10<sup>th</sup> Circuit, N.M.), 345 F2d 891 [FRCP 56, n 347]; also, please do refer to **Colonial Bank & Trust Co. v. American Bankshares Corp.** (1977, ED Wis), 442 F.

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This Motion, which was mailed to Mr. Cabal via certified mail with return receipt requested, was not in his possession until June the 12<sup>th</sup>, 2002. On June the 18<sup>th</sup>, 2002, judge Prado dismissed the law suit in its entirety. Judge Prado also *declined to issue an extension of time* to allow Mr. Cabal to respond to Defendants Motion to dismiss under Rule 12, which should have been treated as a Motion under Rule 56 for Summary Judgment.

Supp. 234. In summary, Mr. Cabal submits to the Fifth Circuit that the lower court's short, unrationalized order dismissing his law suit *does* not determine what issues were actually litigated (if any) and necessarily decided. Therefore, it is fair to say that the dismissal of Mr. Cabal's complaint against government officials and agencies on *res judicata* grounds (per Rule-12) was clearly erroneous. *Abramson v. Grady* (1967, Dist Col App), 234 A2d 174. [Ibid].

**C.) *COUNT-I* OF MR. CABAL'S COMPLAINT UNDER THE "F.O.I.P.A" IS NOT PRECLUDED UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY , AND THE DOCTRINE OF "RES JUDICATA" DOES NOT APPLY EITHER BECAUSE UNTIL NOW HE HAD NEVER SUED ANY GOVERNMENT INSTITUTION UNDER TITLE 5 U.S.C. 552(a)(4)(b).**

**TITLE 5 U.S.C. 552 (a)(4)(b)**, states as follows:

“ On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action...”.

As clearly shown, the statute was enacted by the legislation to create jurisdiction in federal courts allowing petitioners who have been denied access to records to seek relief through direct litigation. Therefore, the concept of “sovereign immunity” has no relevance in this count for the simple fact that the United States, its agencies, and officials have waived the right to be immune against law suits filed under this statute. The concept of “*res judicata*” does not apply either since the doctrine requires that a similar claim must have been filed in the past in a court of competent jurisdiction, and a final judgment *on the merits* must have been rendered. Such is not the case with this *Count-I* under

the Freedom of Information and Privacy Act (F.O.I.P.A). As a matter of fact, defendants don't even present any evidence or *law case* within their Motion To Dismiss dealing with these issues. Defendants however, do argue regarding Count-I that Mr. Cabal's request to compel the production of records from the Department of Justice and the F.B.I. is barred because, (quoting from Defendants' Motion to Dismiss at pg.18, paragraph.1): " He has not exhausted any of his Administrative remedies before filing suit for alleged documents regarding his state criminal indictment". In this regard the Fifth Circuit Court of Appeals must be made aware that: **a) On page 19 of Defendants' Motion to Dismiss last paragraph**, the Defendants do *acknowledge* that Mr. Cabal has appealed all the denials of requests for records issued by the D.O.J. and the F.B.I. since the year of 1982. (Also, please do refer to **Appellant's Exhibit-6 and 7** of the Appendix). Therefore, he was entitled to seek relief via a law suit in federal court not only because he has received no cooperation in the past, but also *because it was reasonable for him to assume that records dealing with his criminal indictment would be as well withheld from him, if requested through normal channels.* The best evidence that Mr. Cabal could not have expected the release of surveillance records dealing with the act in furtherance of the conspiracy and perpetrated against him on 4/28/2001 at his home, is given by the fact that U.S. Government officials allowed Mr. Cabal to be charged by the state of Texas with a nasty crime **knowing** that he was totally innocent of those charges. Federal officials *who have kept him under surveillance* 24 hours a day, 7 days a week for the past 20 years<sup>11</sup> knew

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Anyone who understand how the *Secret Service*, and the *F.B.I.* operate will agree in that a Plaintiff who for twenty (20) years have been accusing U.S. presidents, judges, and U.S. attorney generals of tampering with his civil rights in court has to be under surveillance by the above referenced federal agencies. Let alone the fact that Mr. Cabal has been told by employers, and friends on several states that the surveillance of his daily activities at home and at work by the F.B.I. **was indeed very real.**

very well that Mr. Cabal did not rape, nor sexually attacked the dwarf female who stole his vehicle on that Saturday evening of April the 28<sup>th</sup>, 2002. They also knew that the dwarf female and her partner in crime did lie to Mr. Cabal about their age when they told him that they were adults over 18 years of age. Lastly, the feds also knew that these two individuals stated to Mr. Cabal on that evening that they were “hookers” who just wanted to have a good time with him, and the feds knew that they had tried to coerce him to buy them illicit drugs, and to engage in sodomy, *something that Mr. Cabal refused to do*. Yet, federal officials did nothing to warn Texas prosecutors that to charge Mr. Cabal with the “*aggravated sexual assault of a child*” would be far from the truth. Mr. Cabal believes that based on this behavior by U.S. Government officials, plus his knowledge that the government intervention with his previous law suits is a matter classified “**Top Secret**”(in spite of the denials) he had no other choice, but to seek those records through direct litigation since given the nature of the criminal charges filed against him in Texas he is entitled to such evidence as a matter of law. The Fifth Circuit must be made aware that the charge at issue under Texas law is a class-I felony which could potentially send a innocent man to jail for a period of time ranging from 5 to 99 years according with the judge presiding in that case. The Fifth Circuit must also be aware that some of the responses that Mr. Cabal has received through the years from agencies such as the F.B.I., and the D.O.J. are very misleading, and have been drafted to create confusion instead of shedding light into the issue. For instance, Appellant’s Exhibit -45 of the Appendix which is a final response issued by the Office of Information and Privacy of the D.O.J., and dated December 9, 1997, clearly implies that evidence is being withheld from him because (quote): “*It pertains to records or information compiled for law enforcement purposes*”. In other words, these agencies (F.B.I. and the D.O.J.) are indeed acknowledging in such letter that criminal investigations of Mr.



Cabal have in fact been undertaken. Moreover, contrary to the government's allegation that those records are properly withheld from him the courts have ruled in this regard that the F.O.I.A. does not permit withholding of records on the grounds that such have been obtained through an ongoing investigation of the requester. **Hayden vs. National Security Agency**, 608 F.2d 1381, 1390 (D.C. Cir. 1979); **NLRB vs. Sears Roebuck & Co.**, 421 U.S. 132, 143 n.10 (1975). In fact the Fifth Circuit Court of Appeals itself has ruled that when an agency seeks to withhold portions of a predominantly factual report, the normal course will be for a U.S. District Court to conduct an in camera review. **Cooper vs. Department of the Navy**, 558, F.2d 274, 279 (modified), 594 F.2d 484 (5<sup>th</sup> Circuit, 1979). Defendants in an attempt to give the impression that the D.O.J., and the F.B.I. have been cooperating with Mr. Cabal in his quest to obtain records do assert on page 19, paragraph 3 of their Motion to Dismiss that because they have already released 411 pages of records to Mr. Cabal, these agencies have therefore complied with his requests for records. What Defendants did not tell the court is that the so called 411 pages of records released to Mr. Cabal *are nothing else that photocopies of all the complaints, motions, memorandum of law, requests for production, appeals, and other legal pleadings that Mr. Cabal himself had filed through the years in U.S. Courts throughout the United States*. Not even a single document was produced that fulfill Mr. Cabal's requests dealing with records of surveillance of purported criminal investigations such as: Executive Orders, wiretaps, testimonies of potential witnesses or informants, summary of investigations, court orders, etc. In other words, given the fact that his surveillance is a matter of public knowledge, and that no records have been released to him it is fair to say that these two agencies have been "toying" with Mr. Cabal. The truth of the matter is that it is only through direct litigation in federal court that he will ever get the relief that he has been seeking for so many years. As stated in previous

paragraphs, there is no doubt that the D.O.J, and the F.B.I. are withholding relevant evidence from Mr. Cabal, and that such is being done through “*Glomar responses*” just for one reason; that is, to conceal violations of law, errors committed by high ranking officials of the U.S. Government, and to prevent embarrassment to those individuals who have classified as “ Top Secret” the tampering with Mr. Cabal’s rights while falsely arguing protection of the national security of the United States. Appellant-Plaintiff respectfully submits to the Fifth Circuit that denial of records through manipulation to avoid exposing wrong doing by government officials *is not* a protected activity either. See,  **Foote, Tort Remedies for Police Violations of Individuals Rights**, 39 Minn. L. Rev. 493 (1955); [403 U.S. 409];  **Katz, the Jurisprudence of Remedies: Constitutional Legality and the Law of Torts**.

Lastly, In a desperate attempt to avoid a court order compelling them to release surveillance records, Defendants are now claiming that the Western District of Texas does not have jurisdiction because (quote): “The C.I.A. has no record of any appeal of the C.I.A’s determination filed by Plaintiff.”(Page 19 of Defendants’ Motion to Dismiss, end of 2<sup>nd</sup> paragraph). This statement is not accurate since Mr. Cabal *indeed filed* an appeal from the C.I.A’s denial similar to his appeal filed with the D.O.J and the F.B.I. main offices. However, to this day he has received no reply from such agency. Mr. Cabal wants the Fifth Circuit Court of Appeals to be aware that he has not mentioned the C.I.A. as a co-Defendant in this law suit. The reason being that just before filing his law suit with the district court he found out that said agency does not have congressional authority (jurisdiction) to operate within the United States; thus, it would be unlikely that the C.I.A. will waste resources investigating an alien who has been within the United States for almost 30 years when the F.B.I., the D.O.J, the I.N.S, and the Secret Service could do the job just fine and report back to them if the

occasion arises.

Moreover, within their Motion to Dismiss defendants filed with the district court several statements and/or affidavits purportedly issued by employees of the Department of Justice which are not even notarized, and in some cases the letters were not even signed. (**Appellant's Exhibits-46, 47 of the Appendix**).

Contrary to the Defendants' arguments, and given the long history of this case, Mr. Cabal is entitled as a matter of law to have U.S. Government officials in the Department of Justice, the F.B.I., and the Secret Service **to testify under oath in a court of law** whether they are withholding records from him which have been classified in any way; whether he has been maintained under surveillance since the year of 1982 through the present; also, whether Executive Orders have been issued by U.S. presidents tampering with his rights to obtain relief in federal courts throughout the Union, and finally, Mr. Cabal is also entitled to have access to records of surveillance that will clear him of the criminal charges brought up against him by the state of Texas during the year of 2001.

**D. COUNTS II AND III OF MR. CABAL'S COMPLAINT UNDER THE STATUTES 42 U.S.C. 1983, AND 42 U.S.C. 1985 (CONSPIRACY) ARE NOT PRECLUDED UNDER THE DOCTRINE OF "RES JUDICATA".**

At the outset, Mr. Cabal wants to advise the Fifth Circuit Court of Appeals that he has never before filed any law suits against co-Defendants: Mr. John Ashcroft, Mr. Robert Mueller III, Ms. Janet Reno, and Mr. Louis. J. Freeh.

As previously stated in this brief, the doctrines of *Res Judicata* and *Collateral Estoppel* do preclude re-litigation of claims and issues as long as those claims have been fairly adjudicated on the merits; meaning, that a jury has been given an opportunity to hear all parties in the dispute, and thereafter to examine the record or exhibits presented in evidence. This is not the case in this law suit in which

judge Edward Prado from the Western District of Texas *did not* give Mr. Cabal a chance to respond to Defendants Motion to Dismiss since his law suit was dismissed in its entirety just six (6) days after Mr. Cabal received his copy of such Motion in the mail. In fact, the previous federal judges in the state of Missouri had also dismissed Mr. Cabal's conspiracy claims *without a hearing on the merits* just after he filed his response in opposition to Defendants' Motions to Dismiss . *The judges at issue completely ignored the documentary evidence, and all the depositions and sworn statements given by true witnesses to the events on behalf of Mr. Cabal.* In other words, there was a clear attempt by the judges to ensure that his law suits did not proceed to trial before a jury, perpetuating thereafter Mr. Cabal's claims of fraudulent concealment of the conspiracy. **Dyniewicz v. United States**, C.A. Hawaii, 742 F.2d 484. If one takes into account that all of these federal judges who ran the proceedings under a stiff censorship couldn't possibly be mentally impaired, nor incompetent; then, the only reasonable explanation left for their bizarre actions is that they were compelled by a higher authority in the government, most likely within the Executive Branch of the U.S. Government to deny him his constitutional right to Due Process of law, and the Equal Protection of the Laws<sup>12</sup>. Therefore, if those Executive Orders were issued as the evidence indeed shows to be the case; then, the tampering with his legal rights are clues of a conspiracy as he has maintained all along. This is something that entitles Mr. Cabal as a matter of law to have his claims decided by a jury of his peers, and by no one else. Contrary to the lower court's opinion, the Defendants have failed to show within their Motion to Dismiss that Mr. Cabal is precluded by the doctrine of *Res Judicata* to proceed with discovery in each and every count of his law suit, and

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These are rights which are inalienable and guaranteed by the 6<sup>th</sup> and the 14<sup>th</sup> Amendments to the United States Constitution.

thereafter to present his case to an impartial jury for final determination on the merits of the case.  
**Nielsen v. City of Moss Point**, 701 F.2d 556 (5<sup>th</sup> Circuit, 1983) *en banc*; **Matter of Baudoin**, 981 F.2d, 736 (5<sup>th</sup> Circuit, 1993); **Luben Indus. v. United States**, 707 F.2d 1037, 40 (9<sup>th</sup> Circuit, 1983).

**C. COUNTS II AND III OF MR. CABAL'S COMPLAINT UNDER THE STATUTES 42 U.S.C. 1983, AND 42 U.S.C. 1985 (CONSPIRACY) ARE NOT PRECLUDED UNDER THE DOCTRINE OF "SOVEREIGN IMMUNITY", CONTRARY TO DEFENDANTS ALLEGATIONS.**

On November 24, 1998, the Plaintiff-Appellant in this law suit, Jesus Alberto Cabal, did file an Administrative Claim with the offices of the United States Department of Justice (DOJ) in San Antonio, Texas, and Washington, D.C. This claim was filed simultaneously, and also included the San Antonio office of the Federal Bureau of Investigations (FBI), and the Bureau's Headquarters in Washington, D.C. (**Appellant's Exhibit-3 of the Appendix**). On/or about December 10, 1998, Mr. Cabal received a letter in this regard from an employee of the Department of Justice with the name of Aleta Bodolay in which she acknowledged that his claim had been received by the Department, that such claim will be evaluated, and a final response would follow thereafter. (**Appellant's Exhibit-48**

**of the Appendix**). Mr. Cabal never received a final determination of his claim and on February the 4<sup>th</sup>, 2002 he chose to file a law suit following the last overt act in furtherance of the conspiracy at issue.

**The law:**

The United States Tort Claims Act, and particularly the statutes 28 U.S.C. 2672, and 28 U.S.C. 2675 do state as follows:

**Title 28 U.S.C. 2675**, reads in part as follows:  
Disposition of federal agency as prerequisite.

(a) "An action shall not be instituted upon a claim against the United States for money damages for

injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant *shall have first presented the claim to the appropriate Federal agency* and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section...”

**Title 28 U.S.C. 2672, reads in part as follows:**

**Administrative adjustments of claims.**

“The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States *for injury* or loss of property or *personal injury* or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.....Such delegations may not exceed the authority delegated by the Attorney General to the United States Attorneys to settle claims for money damages against the United States.....Each federal agency may use arbitration, or other alternative means of dispute resolution.....To settle *any tort claim* against the United States, to the extent of the agency’s authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his designee..”

Mr. Cabal submits to the Fifth Circuit Court of Appeals that the provisions set forth in these 2 statutes of the **United States Tort Claims Act** are very plain and clear, 2672 does waive sovereign immunity in tort actions against the United States and/or its agencies for injury and/or personal injuries, or loss of property (income) providing that an Administrative claim is first filed ( 2675) with the federal agency(s) alleged to have committed the wrong doing, and thereafter that a period of at least six (6) months must have elapsed before a law suit can be filed in United States District Court of Petitioner’s choice. All of these requirements mentioned above have been complied with by Mr. Cabal before bringing a legal action against the D.O.J., the F.B.I., and against some of their present and former employees. This fact of law is without a doubt undisputable in these proceedings. Therefore, the Defendants can not claim that there is a lack of “subject matter” or “personal

jurisdiction” by the United States District Court for the Western District of Texas precluding the court from asserting full jurisdiction on this matter.

Mr. Cabal submits to the Fifth Circuit that it is a very well settled principle of law that the doctrine of Sovereign Immunity *does not bar* a Plaintiff from obtaining specific relief in an official capacity from U.S. Government officials when the feds *have violated the Constitution* or have acted outside of their statutory authority. **Bell v. Hood**, 327 at 684; See **Larson v. Domestic & Foreign Commerce Corp.**, 337 U.S. 628, 689-90 (1949); also, please refer to **Clark v. Library of Congress**, 750 F.2d 89, 102 (D.C. Circuit. 1984).

Mr. Cabal’s complaint with the lower court *is full of allegations* describing constitutional violations against him by the Defendants acting in their official and individual capacities and in total violation to the **1<sup>st</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup>** Amendments to the United States Constitution, and the Civil rights statutes **42 U.S.C. 1981; 42 U.S.C. 1983; and 42 U.S.C. 1985(a)(2)(3).**

**For instance, the following events took place during the 1980's:**

On pages 11 and 12, (paragraph **7** through **12**)of his complaint Mr. Cabal sets fort the following violations to his protected constitutional rights to Due Process, to The Equal Protection of the Laws, and Fair Trial, among many others: **7.** That on/or about June 1, 1983 his employer Envirodyne Engineers defaulted in submitting a timely answer to Plaintiff’s complaint and that officials of the Department of Justice following orders from former Attorney General **Ed Meese** did coerce Plaintiff’s attorney to withdraw a Motion for Default Judgment which he had filed on behalf of the Plaintiff. This action meant financial losses to Mr. Cabal given the fact that the default by his employer automatically would have entitled him to the relief sought in his complaint.

**8.** That upon knowledge and belief, Plaintiff’s employer "Envirodyne Engineers", did attempt

during the year of 1983 *to settle* the law suit out of court with Plaintiff's attorneys; however, once again under directives of the Reagan administration by and through its Attorney General **Mr. Ed Meese**, the U.S.D.O.J. intervened to ensure that no settlement took place and that Mr. Cabal was not compensated thereafter for his injuries.

**9.** That as a direct result of U. S Government officials tampering with Mr. Cabal's rights and with his law suit, at least two (2) attorneys of record withdrew from representing him **in Cabal vs. Envirodyne Engineers, Inc.**, namely: A Ms. Ruth Reeg, and later on a Mr. Eric Rothenberg.

**10.** That in this law suit officials of the U.S. Department of Justice and the F.B.I. including but not limited to Mr. William Smith, Mr. Ed Meese, and Mr. William Webster persuaded federal judge Ed Philippine, and U.S. Magistrate David Noce to tamper with Mr. Cabal's constitutional rights to a Fair Trial; to Due Process of Law and to the Equal Protection of the Laws by appointing "*an all white jury*" to hear and decide a discrimination case in which all of Mr. Cabal's allegations of discrimination were directed toward his white co-workers and supervisors.

**11.** That upon Plaintiff's knowledge and belief the federal judges (and/or magistrates) referred to in paragraph #10 above were confronted with an Executive order signed by former president Ronald Reagan authorizing the deprivation of Mr. Cabal's legal rights in Cabal vs. Envirodyne Engineers on the grounds of protecting the national security of the United States. It is Plaintiff's understanding that by this time U.S. Government officials were telling federal judges in New Jersey and Missouri (where Mr. Cabal had pending law suits), that: "*There was a homosexual Black male who was claiming to have engaged with the Plaintiff in homosexual activity, and that to avoid racial unrest in the cities of Saint Louis (Missouri) and Newark( New Jersey), his constitutional rights would have to be tampered with, and that the news media would have to be censored thereafter.*"



**The following violations against Mr. Cabal took place during the 1990's quoting again from his complaint with the District Court:**

Pages 28 through 31 of his law suit:

**33.** Judge Perry also ignored the fact that Defendants “Tetra” and “I T Corp.” filed a Motion to Dismiss under Rule 56 of the F.R.C.P., and the provisions of Rule-56 do not allow any Federal judge to dismiss any claims when a defendant seeking summary judgment is unable to refute and/or to contradict the evidence set forth by the Plaintiff within his pleadings. In this particular law suit, it can be said that after being confronted with the compelling and unchallenged evidence in Mr. Cabal’s possession, Judge Perry had no alternative but to allow Mr. Cabal’s claims for “*libel*” and “*conspiracy*” to proceed to trial before a jury.

**34.** The erratic and unlawful behavior of Judge Perry is consistent with statements made to Mr. Cabal by several individuals in and out of the work place during 1994 and 1995 pointing out, once again, to a presidential intervention aimed at suppressing Mr. Cabal’s rights in such law suit; as had been done in the previous law suits. For instance: On/or about May of 1994, a Mr. Craig Mc Donald, and a Mr. Mark Brauss, both of them supervisors at Tetraplastics, Inc., from St. Louis, Missouri stated in Plaintiff’s presence at the company’s cafeteria: (Mr. Mc Donald speaking): “This guy (referring to the Plaintiff), is suing I.T. Corporation the company down the street, and *he doesn’t even know that he can’t win because the feds and President Clinton himself said no to any relief..Ha!....Ha...Ha!* To which Mr. Brauss replied: “*No kidding! I’ve heard that before. They say that he is not even an American, yet, he is suing his employers...*”. Plaintiff left the cafeteria thereafter very disturbed since it was evident that they were trying to intimidate him, and he was alone in the cafeteria with these 2 supervisors.

35. That on/or about May the 6<sup>th</sup>, 1998 Plaintiff and his former landlord, a Mr. Clarence W. Bohm. Were having a conversation dealing with Mr. Cabal's law suit against "Tetraplastics" and "I.T Corporation". Mr. Bohm stated: *"Jesus don't you think that you might be wasting a lot of financial resources by pursuing these law suits even if you are right?"* I asked: *"Why do you say that, Mr. Bohm:?"* His reply was: *"Let me tell you something Jesus, and I hope that this matter stays here between us because I can't help you with this. Everybody in town is talking about it, and the rumor is that President Clinton has signed an Executive Order restricting the judges from granting you any relief, and I also know that in the past, when you sued your previous employer President Bush had done the same thing.....Have you noticed that each time after you filed a law suit a few days later the President was visiting the city of St. Louis? He could have come over, either, to sign an Executive Order suppressing your rights, or to notarize some sort of "liability waiver" on behalf of the judges in charge of the proceedings..Don't you think that's possible?. Why do you think that not even the news media wants to get involved in making public your claims? Presidents in this country have too much power they can literally dispose of a person's life and all they have to do is tell the American people **" That you are not an American, and that you represent a threat to the security of this country"**, and believe me no one can stop his actions no matter how unfair those actions can be, unless, of course, there is a congressional investigation.*

36. That similar statements had been made to the Plaintiff during the year of 1985 by a former house mate with the name of Dennis Snell in the town of Edwardsville, Illinois. Mr. Snell had told the Plaintiff. Bluntly : (quote) ***" You have no rights in this country! Has no one told you yet that President Reagan took your rights away by Executive Order? He did it 'cause you are not a citizen! That's the reason why you can't prevail on your law suits, and the reason why the news***

*media reports nothing about your law suits. Let me tell you buddy, this is the "secret" that everyone is talking about".*

**37.** Moreover, that Plaintiff has been subjected to numerous incidents of discrimination, harassment and abuse of power by law enforcement officials of the states of Illinois, Missouri and Texas in furtherance of the conspiracy. Among some of the incidents in addition to those incidents previously referred to are:

**A.** On/or about June 16, 1991, a police vehicle from the city of Wood River, Illinois with license plates number M-66-105 did follow the Plaintiff bumper to bumper between the hours of 6:04 PM through 6:31 PM. Such harassment was done no matter how many turns Plaintiff made on that city's streets. The police officer was a white male with dark hair (either black or brown) and sporting a moustache. When returning to his home in Edwardsville, Illinois, another police vehicle also from the Wood River police department followed Plaintiff all the way to his home in Edwardsville. The officer also a white male wearing dark glasses drove parallel to the Plaintiff for several miles on several instances while looking straight in Plaintiff's direction in what appeared to be an attempt to intimidate him. Mr. Cabal was unable to see the license plates of this vehicle.

**B.** On /or about June 18, 1991, a vehicle from the Illinois State Police with license plates number 11-29, followed the Plaintiff from his home in Edwardsville, Illinois through the town of Caseyville via Illinois highway 157. Approximate time 12:30 PM. On three occasions the police officer drove parallel to Plaintiff's car and exposed to him an automatic pistol successfully intimidating the Plaintiff who was almost forced to drive off the road. The officer was a white male with dark or brown hair and wearing dark glasses

**C.** On/or about June 19, 1991, a vehicle from the Illinois' State Police with license plate numbers

11-93 did follow Plaintiff between the hours of 1:45 PM and 2:17 PM from the Motor Gas Station on highway 157 (Collinsville), all the way to the Mississippi bridge connecting the states of Missouri and Illinois on Interstate 70. The officer a white male wearing dark glasses drove parallel to Plaintiff's car on three occasions making aggressive gestures to the Plaintiff with his right fist. Intimidated, Plaintiff stopped twice on the side of the highway assuming that he would get a ticket; instead, the officer parked his patrol car approximately 200 feet ahead of Mr. Cabal's vehicle and waited. After 2 or 3 minutes Plaintiff continued traveling through the interstate just to find himself followed once more by such officer and harassed in a similar manner as already referred to above.

**D.** On/or about June 20, 1991, a vehicle from the Illinois' State Police with license plates number 11-43, did follow Plaintiff at times bumper to bumper on highway 159 from Maryville to Fairview Heights in Illinois, between the hours of 3:20 PM to 3:57 PM. Plaintiff stopped at least twice to allow the police officer to pass him; however, the officer parked the patrol car on the side of the highway approximately 100 feet in from of Plaintiff's vehicle. The officer continued his harassment after Mr. Cabal resumed his driving on the highway. The police officer was a white male wearing dark glasses, and he came very close to hitting Mr. Cabal's automobile with his patrol at least on three occasions.

**E.** On June 23, 1991, a vehicle from the Madison County sheriff's department with license plates number M-70-637, did follow Plaintiff everywhere he went within the city of Edwardsville, Illinois, and regardless of the many turns that Plaintiff made on the city streets. The officer was a white male with dark or brown hair wearing dark glasses.

**F.** On June 25, 1991 a vehicle from the Illinois' State police with license plates number 11-43, followed the Plaintiff from Glen Carbon (on highway 157) all the way to the Mississippi river

bridge on interstate 70. Such took place between the hours of 10:55 AM and 11:19 AM. The officer was a white male wearing dark glasses, who four times drove parallel to Plaintiff's vehicle while staring at him for as long as two minutes, and clearly let Plaintiff know that he was being watched.

**On page 49 paragraph "T", Mr. Cabal describes the following incident:**

"On August the seventh 1991, an Illinois' State trooper driving a vehicle with brown and yellow stripes and with license plates number 11-30, followed the Plaintiff between the hours of 12:31 PM and 1:07 PM from highway 157 in Collinsville through Interstate I-70 all the way to the Mississippi River bridge separating Missouri and Illinois. In the process, the officer a white male wearing dark glasses, drove his vehicle parallel to the Plaintiff and revealed to him an automatic weapon (a pistol) in no less than three occasions. Plaintiff kept on driving confused and in state of shock unable to believe what he had just witnessed.

The same officer followed the Plaintiff from the bridge on the Mississippi River when Plaintiff re-entered the State of Illinois. Said officer exposed his automatic weapon once again to the Plaintiff, when following him all the way to Glen Carbon between the hours of 1:49 PM and 2:27 PM".

**Furthermore, within pages 51 through 54 of such complaint** Mr. Cabal goes on to describe the reasons why he believes that the two "females" who stole his car on the evening of Saturday, April the 28<sup>th</sup>, 2001 were somehow connected to some of the police officers who were called on that evening after Mr. Cabal reported his automobile as stolen in the town of Seguin, Texas. In his complaint he states as follows:

*"When the vehicle was recovered by the police about 5 days later, two detectives informed Mr. Cabal that the females at issue were just under 14 years of age, and that one of them was alleging to have been forced to have sexual relations with him. Something which Mr. Cabal told police was*

*totally untrue. Although Plaintiff was not told at the time by the detectives, he would later on find out that one of the females who had unsuccessfully tried to coerce him to engage with her in anal sex was actually a homosexual young man who enjoys dressing as a woman. It is also Plaintiff's understanding that these two individuals have been in and out of trouble with the law in spite of their age. Plaintiff has copies of their confessions to police in which they state that in such night their intent all along was to steal a car. Moreover, it seems that the parents of these two juveniles also have lived lives plagued by drug abuse, and legal problems facts which strengthen even more Plaintiff's argument of a conspiracy using or manipulating people with criminal background to hurt him. The relevance of this finding is that they are consistent with the corrupt conspiracy at issue already related by Mr. Cabal in previous paragraphs, and once again it appears to have been an attempt by government officials at the Federal and State levels to **get Plaintiff to engage in anal sex (sodomy) with a minor most likely to be able to charge him with a nasty crime, and to tell the American people that Mr. Cabal had in fact homosexual tendencies.***

*More evidence that the above referred to acts were committed in furtherance of the conspiracy at issue is given by the fact that immediately after Plaintiff reported the vehicle stolen, all the police officers who approached him (four or five officers) were very interested in finding out whether Mr. Cabal had engaged in any type of sexual activity with the two females who took his vehicle. In fact, they did not seem to care at all about the stolen car because not a single officer volunteered to follow the route of escape as Mr. Cabal suggested, nor to take Mr. Cabal home immediately after the incident. Moreover, as hard to believe as it seems, some of the officers drove away in the opposite direction after talking to the Plaintiff. Mr. Cabal had to wait **one and a half hours** sitting in the parking lot of the "King Ranger" theater to get a ride to his house since the only officer who*

*volunteered to take him home, a man with the name of “J. Olivera”, claimed to be a narcotics’ agent who was keeping a suspect under surveillance inside the theater. He drove Mr. Cabal to his house around 11:30 PM.*

*Plaintiff believes that police officers of the city of Seguin may have conspired with federal officials to entrap and/or to fabricate a case against him since they appeared to know the identities of the females who stole the car. Mr. Cabal has also found out that the parents of the two juveniles who stole the vehicle do have criminal records and are known drug users. He believes that the original intent or goal was to get Mr. Cabal to engage in anal sex with the “tall female” who during the entire time spent with Mr. Cabal tried to persuade him to sodomize her. This tall female who had claimed to be 20 years old turned out to be a 14 year old homosexual male. Plaintiff’s theory is further advanced by the fact that government officials who were armed with the knowledge that Mr. Cabal is legally blind on his left eye, and that the images he perceives through such eye are totally deformed (wrinkled) making it impossible for him to determine the true age of a person at night; particularly, if that person is **wearing heavy make up as was the case on this incident.**”*

Mr. Cabal submits herein that not only is he entitled to relief from the Defendants as previously shown based on the waiver of “Sovereign Immunity” by the United States under the Federal Tort Claims Act (28 U.S.C. 2672, and 2675), but also because he has also established a valid claim against Defendants *in the their individual capacities* under the statute **28 U.S.C. 1331**. This liability is something that has been recognized by the United States Supreme Court in **Bivens v. Six Unknown Federal Narcotics Agents** 409 F.2d 718 (2<sup>nd</sup> Circuit, 1971). In such decision Supreme Court Justice Brennan wrote when delivering the decision of the Court: “Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust

their remedies so as to grant the necessary relief. It is very well settled that, where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." [28 U.S.C. 1331]. (The Justice quoting from **Bell v. Hood**, 327 U.S. at 684).

Therefore, Plaintiff-Appellant is entitled to a reversal of the lower court's judgment in regard to co-Defendants: Mr. John Ashcroft, Mr. Robert Mueller III, Ms. Janet Reno, and Mr. Louis. J. Freeh since these four (4) individuals are in fact liable to Mr. Cabal for their official acts in their individual capacities as has been shown above in a *Biven's type of claim*. Given these facts of law, Mr. Cabal is entitled to have the law suit in its entirety remanded to the U.S. District Court for the Western District of Texas to be tried in all four (4) counts as stated therein.



## CONCLUSIONS

Mr. Cabal respectfully submits to the United States Court of Appeals for the Fifth Circuit that the record in this law suit **does show** that high ranking officials of the Executive Branch of the U.S. Government including, but not limited to the Department of Justice, and the F.B.I. have in the past compelled members of the judiciary to systematically subject his *pro se* complaints, and thereafter his claims to extremely high standards of review that not even law suits drafted by professional attorneys are subjected to. They have done this through fraud, and knowing that the complaints filed by Mr. Cabal **were indeed legally sufficient** and entitled him to relief, to proceed with discovery and thereafter to a trial before a jury. From the facts presented within this brief on appeal it is clear that U.S. Government officials for the past twenty (20) years have been more interested in thwarting his chances of prevailing on the merits, than they were in granting justice to the Plaintiff. This is a very disturbing precedent that the U.S. Court of Appeals for the Fifth Circuit must not allow to continue.

**Mr. Cabal submits that very thoroughly he has proved within this brief on appeal the following facts:**

- I.** That his law suit does set forth **valid claims** under Federal Rules of Civil Procedure #8, and #12, contrary to the Defendants' allegations. **Conley v. Gibson**, 355 U.S. 41, 78 S.Ct. 99, 2L.Ed. 2d 80 (1957) (F.R.C.P.#8), and **Abramson v. Grady** (1967, Dist Col App), 234 A2d 174.[Ibid] (Rule #12).
- II.** That he has fulfilled all the statutory requirements needed to proceed to trial with his claim under the Freedom of Information and Privacy Act (F.O.I.P.A). (**TITLE 5 U.S.C. 552 (a)(4)(b)**).
- III.** That his claims against officials of the Executive Branch of the U.S. Government **are not barred** or precluded by the Doctrines of “*res judicata*” or “*collateral estoppel*”, since four (4) of the Defendants have never been sued before by Mr. Cabal, plus there has never been a true

determination of his claims on the merits given the fact that the dismissal of his previous law suits have been characterized by “fraudulent concealment” of the facts, and thereafter by *obstruction of justice* without a single hearing having ever been held regarding his conspiracy claims. **Dyniewicz v. United States**, C.A. Hawaii, 742 F.2d 484; **Nielsen v. City of Moss Point**, 701 F.2d 556 (5<sup>th</sup> Circuit, 1983) *en banc*; and **Luben Indus. v. United States**, 707 F.2d 1037, 40 (9<sup>th</sup> Circuit, 1983).

IV. That Mr. Cabal has fulfilled all the statutory requirements imposed by the Federal Tort Claims Act as a prerequisite to overcome “Sovereign Immunity” and to be allowed thereafter to file a law suit in Federal Court against U.S. Government Agencies; namely, the F.B.I. and the D.O.J. (Title 28 U.S.C. 2672, and 2675). **Furthermore**, that Mr. Cabal has also met all the jurisdictional requirements set forth by the United States Supreme Court in: **Bivens v. Six Unknown Federal Narcotics Agents**, 409 F.2d 718 (2<sup>nd</sup> Circuit, 1971), and (28 U.S.C. 1331) to proceed with his claims for civil rights violations against: Mr. John Ashcroft, Mr. Robert Mueller III, Ms. Janet Reno, and Mr. Louis. J. Freeh, in both, their individual and official capacities.

**WHEREFORE**, Plaintiff-Appellant, Jesus Alberto Cabal, respectfully prays herein that the Fifth Circuit Court of Appeals do remand his law suit to the lower court for further proceedings in all four (4) counts, since he has demonstrated herein that he is entitled as a matter of law to both, “*declaratory and injunctive relief*” in the matters at issue.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this **Brief on Appeal** has been re-mailed to the Defendants, after several corrections were made to the brief as ordered by the Fifth Circuit Court of Appeals. The re-service was done on October , 2002, via U.S. certified mail with returned receipt requested, and upon Defendants' attorney of record at his last known address as shown below:

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*Jesús Alberto Cabal* .

Jesus Alberto Cabal  
Plaintiff-Appellant, *pro se*

## CERTIFICATE OF COMPLIANCE

Pursuant to 5<sup>th</sup> Circuit Rule #: 32.2.7(c) undersigned Appellant *pro se* certifies that to the best of his knowledge this brief complies with the type-volume limitations of 5<sup>th</sup> Cir. R. 32.2.7(B).

1. Exclusive of the portions exempted by 5<sup>th</sup> Cir. R. 32.2.7(b)(3), this brief contains 1,246 lines of text printed in a proportionally spaced typeface.
2. This brief is printed in a proportionally spaced, serif typeface using Times New Roman 12 point font in text, and Times New Roman 11 point font in footnotes produced by Corel WordPerfect 8.0 software.
3. Upon request by the court, undersigned litigant will provide an electronic version of this brief in a 3 ½" diskette.
4. Undersigned, Plaintiff-Appellant, understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5<sup>th</sup> Cir. R. 32.2.7, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

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