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John Doe #1, John Doe #2,
6 John Doe #3, and John Doe #4

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 JOHN DOE #1, an individual;
JOHN DOE #2, an individual;
13 JOHN DOE #3, an individual; and
JOHN DOE #4, an individual;

14
15 Plaintiffs,

16 vs.

17 JOHN KERRY, in his official capacity
as Secretary of State of the United
18 States; JEH JOHNSON, in his official
capacity as Secretary of Homeland
19 Security; LORETTA LYNCH, in her
official capacity as Attorney General of
20 the United States; SARAH SALDANA,
in her official capacity as Assistant
21 Secretary of Immigration and Customs
Enforcement; R. GIL KERLIKOWSKE,
22 in his official capacity as Commissioner
of U.S. Customs and Border Protection;
23 DAVID HARLOW, in his official
capacity as Acting Director of the
24 United States Marshals Service; and
DOES 1 to 20, inclusive,

25 Defendants.
26
27
28

Case No.:

**VERIFIED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**[Violation of First and Fifth
Amendments and the *Ex Post Facto*
Clause]**

INTRODUCTION

1
2 1. For the first time in the history of this nation, the United States Government
3 will publicly stigmatize a disfavored minority group using a document foundational to
4 citizenship: their United States passport.

5 2. Specifically, and as more fully alleged herein, the United States
6 Government will mandate that individuals required to register as sex offenders for an
7 offense involving a minor (hereinafter “Covered Individuals”) shall be issued passports
8 emblazoned with a “conspicuous” “unique identifier” advertising their status as “sex
9 offenders.” The United States has never before used passports to differentiate among
10 citizens or to otherwise mark or stigmatize a specific group of disfavored individuals.

11 3. This legislation applies in a blanket fashion to all Covered Individuals,
12 without regard to the circumstances of their conviction, the age of their conviction, or
13 whether the Covered Individuals pose a current risk to public safety. For example,
14 Covered Individuals whose passports will now publicly identify them as “sex offenders”
15 will include individuals convicted of minor misdemeanor offenses such as “sexting” or
16 public urination, individuals convicted of voluntary sexual contact with a girlfriend or
17 boyfriend while both were teenagers, individuals convicted decades ago and who have
18 never reoffended, and even individuals who are currently minors or who committed their
19 offense while a minor.

20 4. Notably, the United States Department of Justice confirms that more than
21 25 percent of the individuals on sex offender registries nationwide are juveniles.¹ Many
22 jurisdictions, including California – which has the nation’s largest State sex offender
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24
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27 ¹ David Finkelhor, *et al.*, *Juveniles Who Commit Sex Offenses Against Minors*, OFFICE OF JUVENILE
28 JUSTICE & DELINQUENCY PREVENTION, JUVENILE JUSTICE BULLETIN 1, 1 (Dec. 2009), *available at*
<https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf>.

1 registry² that treats all sex offenses with equal severity – place juveniles who commit a
2 sex offense on the State’s sex offender registry for life.

3 5. As numerous examples demonstrate, compelling Covered Individuals to
4 identify themselves as sex offenders will invite serious risk of physical harm and
5 harassment upon Covered Individuals, their families, their business associates, and
6 anyone with whom they are traveling, whether for personal or business reasons. This
7 legislation will also impose significant burdens on a Covered Individual’s constitutional
8 rights to the freedom of speech, due process, domestic and international travel, and the
9 right to earn a living, among other unconstitutional deprivations.

10 6. This civil rights action challenges the constitutionality of certain provisions
11 of the recently enacted International Megan’s Law to Prevent Demand for Child Sex
12 Trafficking, H.R. 515 (hereinafter the “IML”), which was signed into law³ by the
13 President on February 8, 2016, in that, on its face, the IML violates the First Amendment
14 and Fifth Amendment to the United States Constitution, as well as the *Ex Post Facto*
15 Clause of the United States Constitution.

16 7. Specifically, and as more fully alleged herein, the IML imposes a proverbial
17 Scarlet Letter and compels speech in violation of the First Amendment by forcing
18 Covered Individuals to identify themselves publicly as “sex offenders” on their United
19 States passport, which serves both as a primary form of identification within the United
20 States as well as an essential international travel document.

21 8. Additionally, and as more fully alleged herein, the IML also establishes an
22 international travel blacklist for Covered Individuals previously convicted, or mistakenly
23

24 ² According to the California Department of Justice, there are currently more than 108,000 individuals
25 required to register as a sex offender pursuant to California Penal Code section 290, *et seq.* See
26 <http://www.meganslaw.ca.gov/statistics.aspx?lang=ENGLISH>. The total number of individuals in the
27 nation who are required to register as a sex offender is over 840,000. See National Center for Missing and Exploited Children, *Registered Sex Offenders in the United States and its Territories per 100,000 Population*, available at http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf.

³ The Public Law number is not currently available, but will be provided to the court in a future filing.

1 believed by the government to be convicted, of a sex offense involving a minor in the
2 United States, including individuals whose conviction is not related to sex trafficking.
3 That is, the IML's blacklist includes individuals whose convictions involved no
4 domestic or international travel and involved no physical contact with victims, as well as
5 those who are no longer required to register as a sex offender in any jurisdiction.⁴ The
6 IML's blacklist also includes individuals whose convictions pose no risk of involvement
7 in sex trafficking such as those convicted of misdemeanors, those convicted of offenses
8 committed while they were minors, those who are still minors, and those whose
9 convictions have been expunged.

10 9. The IML also imposes significant burdens on the rights and protected
11 liberty interests of Covered Individuals, including the right to international travel, the
12 right to associate with family, economic liberty, and equal protection. Further, the IML
13 stigmatizes Covered Individuals in a manner that substantially infringes on their
14 protected liberty interests by communicating that Covered Individuals pose a current risk
15 to public safety because they are engaged in, or at risk of engaging in, international child
16 sex trafficking.

17 **JURISDICTION AND VENUE**

18 10. This is a civil rights action seeking to enjoin the implementation of Sections
19 4(e), 5, 6 and 8 of the IML, as well as a declaration that Sections 4(e), 5, 6, and 8 of the
20 IML violate the First Amendment, the Fifth Amendment, and the *Ex Post Facto* Clause
21 of the United States Constitution.

22 11. This court has jurisdiction over this action under 28 U.S.C. sections 1331,
23 2201, and 2202; as well as 5 U.S.C. section 702, which waives the sovereign immunity
24
25

26 ⁴ On information and belief, the number of California residents who were previously required to
27 register as a sex offender but who are no longer required to register exceeds 750. On information and
28 belief, the number of Americans who were previously required to register but who are no longer
required to register exceeds 10,000.

1 of the United States with respect to any action for injunctive relief under 28 U.S.C.
2 Section 1331.

3 12. Under 28 U.S.C. Section 1391(e), venue is proper in this Federal district
4 because defendants are officers of agencies of the United States sued in their official
5 capacities, and because this judicial district is where Plaintiffs John Doe #1 and John
6 Doe #2 reside, and where a substantial part of the events giving rise to the claims have
7 occurred and will continue to occur.

8 **PARTIES**

9 13. Plaintiff John Doe #1 is an individual residing in San Francisco, California.
10 Plaintiff John Doe #1 was convicted of a felony sex offense involving a minor over
11 twenty-five years ago and has been required to register as a sex offender in California
12 since 1994. Plaintiff John Doe #1 serves as an officer of a corporation with facilities and
13 customers in Europe and Asia, and routinely travels to various countries within Europe
14 and Asia for business purposes.

15 14. Plaintiff John Doe #2 is an individual residing in San Francisco, California.
16 Plaintiff John Doe #2 was convicted by plea of a sex offense in 2007 due to chatting
17 online with someone found to be a minor and/or law enforcement, without ever having
18 direct personal contact, and has been required to register as a sex offender in California
19 since 2007. Plaintiff John Doe #2 has committed no other criminal or civil offenses, and
20 has served notably since 2009 in state and local civil rights and reentry efforts through
21 government councils, nonprofits, and public/private or faith-based community
22 organizations. Plaintiff John Doe #2, by invitation of public healthcare representatives,
23 is active in a joint patient/provider advisory program addressing ongoing services
24 improvements and offerings for individuals and families in San Francisco
25 public/community hospitals and health care clinics. Plaintiff John Doe #2 does not have
26 a passport, but desires to travel with his longtime partner to Mexico, Canada, Europe,
27 and other countries for business, recreational, cultural, and spiritual purposes. Plaintiff
28

1 John Doe #2 also desires to obtain a passport as a form of primary U.S. citizen
2 identification.

3 15. Plaintiff John Doe #3 is an individual residing in Orange County, California
4 and is a licensed attorney who was first admitted to the State Bar of California in 1991.
5 Plaintiff John Doe #3 pled guilty to felony sex offenses involving a teenaged minor in
6 July 1998, and was placed on probation and required to register as a sex offender.
7 Plaintiff John Doe #3 subsequently resigned from the State Bar of California. On
8 September 9, 2003, the Los Angeles Superior Court reduced his convictions from
9 felonies to misdemeanors. On January 7, 2004, the Los Angeles Superior Court set aside
10 Plaintiff John Doe #3's guilty verdict and dismissed his case. Under California law,
11 Plaintiff John Doe #3's convictions are now expunged. On October 10, 2008, the State
12 Bar of California reinstated Plaintiff John Doe #3 to the practice of law, and on
13 October 23, 2011, the California Department of Justice terminated Plaintiff John Doe
14 #3's requirement to register as a sex offender in California. Furthermore, on January 17,
15 2012, the Orange County Superior Court granted Plaintiff John Doe #3's petition for a
16 Certificate of Rehabilitation, declaring that he was rehabilitated and fit to exercise all
17 civil and political rights of citizenship. Therefore, under California law, Plaintiff John
18 Doe #3 is no longer convicted of a sex offense, and is also not required to register as a
19 sex offender in any jurisdiction. Plaintiff John Doe #3 routinely travels to countries in
20 Europe, Asia, and Latin America in connection with his legal representation of clients,
21 and for other business purposes.

22 16. Plaintiff John Doe #4 is an individual residing in the State of Hawaii.
23 Plaintiff John Doe #4 served in the United States Navy for nearly 30 years and retired as
24 a naval officer. In 2009, Plaintiff John Doe #4 pled guilty to one count of Violation of
25 Privacy in the First Degree in the State of Hawaii, a sex offense involving a minor, and
26 was sentenced to a five-year term of probation, but was not required to register as a sex
27 offender. However, about two years after his conviction, the State of Hawaii informed
28

1 Plaintiff John Doe #4 that he would face criminal prosecution if he did not immediately
2 register as a sex offender in that State. Despite this breach of his plea agreement,
3 Plaintiff John Doe #4 complied. In February 2013, Plaintiff John Doe #4 was granted an
4 early release from probation. Plaintiff John Doe #4 is married to a citizen of the
5 Philippines who currently resides in the Philippines and who is forbidden to travel to the
6 United States because of current visa restrictions for Filipinos. International travel to the
7 Philippines is therefore the only means by which Plaintiff John Doe #4 can visit his wife.

8 17. Plaintiffs John Doe #1, John Doe #2, John Doe #3, and John Doe #4 will be
9 referred to collectively herein as “Plaintiffs.”

10 18. Defendant John Kerry is the Secretary of State of the United States and
11 heads the United States Department of State. Defendant Kerry and the Department of
12 State oversee the implementation of certain provisions of the IML, as set forth below.

13 19. Defendant Jeh Johnson is the Secretary of the United States Department of
14 Homeland Security and heads the Department of Homeland Security (“DHS”).
15 Defendant Johnson and the DHS oversee the implementation of certain provisions of the
16 IML, as set forth below.

17 20. Defendant Loretta Lynch is the Attorney General of the United States and
18 heads the United States Department of Justice (“DOJ”). Defendant Lynch and the DOJ
19 oversee the implementation of certain provisions of the IML, as set forth below.

20 21. Defendant Sarah Saldana is The Assistant Secretary for U.S. Immigration
21 and Customs Enforcement within the DHS and, pursuant to the IML, will head the
22 Center from which notifications regarding Covered Individuals are issued. IML § 4(c),
23 (d).

24 22. Defendant R. Gil Kerlikowske is the Commission of U.S. Customs and
25 Border Protection within the DHS and, pursuant to the IML, is a member of the Center
26 from which notifications regarding Covered Individuals are issued. IML § 4(d).

1 23. Defendant David Harlow is Acting Director of the United States Marshals
2 Service (the “Marshals Service”). Defendant Harlow and the Marshals Service are
3 responsible for implementing certain provisions of the IML, as set forth below.

4 24. The true names and capacities of Defendants sued as Does 1 through 20 are
5 unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Plaintiffs
6 will seek leave to amend this Complaint, if necessary, to reflect the true names once they
7 have been ascertained.

8 25. Defendants Kerry, Johnson, Lynch, Saldana, Kerlikowske, Harlow, and
9 Does 1 through 20 are collectively referred to herein as “Defendants.”

10 **FACTS**

11 **A. International Megan’s Law and International Sex Trafficking**

12 26. The purported purpose of the IML is “to protect children from exploitation,
13 especially from sex trafficking tourism, by providing advance notice of intended travel
14 by registered child-sex offenders outside the United States to the government of the
15 country of destination, . . . and for other purposes.” IML, Preamble and § 12.

16 27. Despite its stated purpose, the IML is not rationally tailored to serve its
17 stated interest, that is, to protect children from sex trafficking, and instead is inconsistent
18 with currently available empirical evidence, including Federal and State government
19 data regarding the low risk of re-offense posed by registered sex offenders for any sex
20 crime, particularly a crime related to sex trafficking.

21 28. According to Federal government data, sex trafficking and child sex
22 tourism is a rare crime. As stated in an earlier version of the IML introduced in 2010,
23 the Department of Justice “obtained 73 convictions of individuals from the United States
24 charged with committing sexual crimes against minors in other countries,” an average of
25 only 10 convictions per year during a seven-year period from 2003 through 2009.⁵

26 _____
27 ⁵ See H.R. 5138, 111th Cong., Report No. 111-568, Part 1, § 2(a)(12), *available at*
28 <https://www.gpo.gov/fdsys/pkg/BILLS-111hr5138rh/html/BILLS-111hr5138rh.htm>.

1 29. According to state government data, most new sex offenses, including sex
2 trafficking and child sex tourism, are not committed by people required to register as a
3 sex offender. The California Department of Corrections and Rehabilitation (“CDCR”)
4 cites research concluding that “first-time offenders” accounted for “95.9% of all arrests
5 for any [registrable sex offense], 95.9% of all arrests for rape, and 94.1% of all arrests
6 for child molestation.”⁶

7 30. Also according to state government data, and contrary to popular myth, the
8 re-offense rate for individuals on a sex offender registry is extremely low.⁷ For example,
9 the CDCR reports that the re-offense rate for California registrants on parole is 0.8
10 percent, the lowest re-offense rate for any crime except murder.⁸ In addition, research
11 by Karl Hanson, Ph.D., the world-renown expert on this topic, confirms that, at five
12 years post-offense, the re-offense rate for low-risk offenders is 2 percent, while the re-
13 offense rate for moderate-risk offenders is 7 percent, with the risk of re-offense for both
14 groups diminishing with each passing year.⁹

15 31. The California Sex Offender Management Board (“CASOMB”), the State’s
16 policy expert on sex offender issues, has adopted research by Dr. Hanson which
17 confirms that even high risk sex offenders who have not re-offended in 17 years are no
18 more likely to commit a new sex offense than someone who has never committed a sex
19

20 ⁶ CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, A BETTER PATH TO COMMUNITY
21 SAFETY 2 & n. 4 (2014) (emphasis added).

22 ⁷ While the rate at which individuals on sex offender registries recidivate by committing crimes *other*
23 than sex offenses may be higher, recent research demonstrates that this phenomenon is largely caused
24 by the numerous legal restrictions that destabilize the lives of registrants and impede their
25 reintegration into society, such as presence and residency restrictions, the stigma of public sex
26 offender registries, discrimination in employment and housing opportunities, and myriad other
27 burdens indiscriminately imposed by legislatures, such as the provisions of the IML challenged in this
28 action. See Generally CALIFORNIA SEX OFFENDER MANAGEMENT BOARD, HOMELESSNESS AMONG
CALIFORNIA’S REGISTERED SEX OFFENDERS: AN UPDATE (Aug. 2011).

⁸ CALIF. DEPT. OF CORRECTIONS AND REHABILITATION, 2014 OUTCOME EVALUATION REPORT 30 (July
2015), available at [http://www.cdcr.ca.gov/Adult_Research_Branch/Research_](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2014_Outcome_Evaluation_Report_7-6-2015.pdf)
Documents/2014_Outcome_Evaluation_Report_7-6-2015.pdf. The exact rate was 0.8%. Another 2%
of the cases involved a violation of the sex offender registry requirements, and the remaining 5.3% of
those who returned to prison committed a new offense that was not a sex crime.

⁹ R. Karl Hanson, *et al.*, *High-Risk Sex Offenders May Not Be High Risk Forever*, 29 (15) J. OF
INTERPERSONAL VIOLENCE 2792, 2802 (2014).

1 offense.¹⁰ Further, the United States Department of Justice reports that the overall re-
2 offense rate for all sex offenders nationwide is only 5.3 percent.¹¹

3 32. The IML applies to Covered Individuals regardless of the details of their
4 offense, their actual risk of re-offense, or the age of their conviction. Other than by
5 limiting its application to sex offenses against minors, the IML's designation of "covered
6 sex offender" is overbroad because it is not limited to individuals who have been
7 convicted of sex trafficking or sex tourism, or even to those crimes that would rationally
8 predict some risk of such an offense. IML § 3(3), (10). Rather, the IML applies to all
9 Covered Individuals whose offense involved a minor. IML § 3(3), (10). By definition,
10 therefore, the IML applies to individuals who are minors, or who were convicted of a
11 misdemeanor, as well as individuals whose offenses do not involve contact with a
12 victim, such as sexting, streaking, urinating in public, or viewing child pornography.
13 The IML also applies to individuals whose convictions have been expunged (e.g.,
14 Plaintiff John Doe #3), whose convictions were limited to sexual activity with another
15 teenager, and whose convictions are decades old and therefore pose no current threat to
16 public safety (e.g., Plaintiff John Doe #1).

17 33. The IML also applies to individuals, such as Plaintiff John Doe #3, who are
18 no longer required to register as a sex offender because they have been deemed by a
19 state judge to be rehabilitated and therefore no longer a risk or public safety.¹² IML §
20 2(3).

24 ¹⁰ R. Karl Hanson, *et al.*, *The Field Validity of Static-99/R Sex Offender Risk Assessment Tool in*
25 *California*, 1 J. OF THREAT ASSESSMENT AND MGMT. 102 & n. 12 (2014).

26 ¹¹ U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *RECIDIVISM OF SEX OFFENDERS RELEASED*
27 *FROM PRISON IN 1994*, at 7 (Nov. 2003).

28 ¹² On information and belief, the number of individuals in California determined to be rehabilitated by a
state judge exceeds 750. These determinations are based upon a lengthy process, including a
comprehensive evaluation of an individual by mental health professionals and state prosecutors
pursuant to California Penal Code Section 290.05.

1 34. Finally, the IML applies to individuals in states outside of California who
2 have automatically been removed from their state’s registry due to the passage of time
3 and absence of a subsequent offense.¹³ IML § 2(3).

4 35. The purported “findings” of the IML in support of its draconian measures
5 are predictably brief, conclusory, and (other than by exempting the government from
6 liability) reveal no studied consideration of either the impact of the IML on public safety
7 or the massively disruptive consequences of the IML for Covered Individuals and their
8 families. Specifically, the “findings” are limited to the following three observations:

9 a. “Law enforcement reports indicate that known child-sex
10 offenders are traveling internationally;”

11 b. “The International Labour Organization has estimated that
12 1,8000,000 [*sic*] children worldwide are victims of child sex
13 trafficking and pornography each year;” and

14 c. “Child sex tourism . . . is a form of child exploitation and,
15 where commercial, child sex trafficking.”

16 IML § 2(4)-(6). The IML provides no empirical evidence in any form, including facts,
17 statistics, reports, or analyses, to justify the significant punitive burden imposed on
18 Covered Individuals by this law, as summarized herein.

19 36. Among the publicly cited bases for the IML is a sensationalistic 2012 report
20 by the Government Accountability Office (“GAO”) entitled “Passport Issuance: Current
21 Situation Results in Thousands of Passports Issued to Registered Sex Offenders.” This
22 document reports “that of over 16 million U.S. passports issued in 2008, about 4,500 [or
23

24
25 ¹³ On information and belief, the number of individuals in the nation who have been automatically
26 removed from their state’s registry due to the passage of time exceeds 10,000. For example, the
27 registry maintained by the State of New York, the nation’s fourth-largest state registry, took effect in
28 1996 and imposes a 20-year registration requirement on Registrants who are assigned to either no
risk classification, or to a Tier I risk classification. See N.Y. Corrections Law § 168-h(a).
Accordingly, all New York Registrants who were assigned to either risk classification and whose
registration period commenced in 1996 are no longer required to register in 2016 and beyond.

1 less than 0.03%] were issued to registered sex offenders.”¹⁴ However, in commentary
 2 published along with the GAO report, the U.S. State Department labeled the entire report
 3 “very misleading” and stated the following:

4 a. “Starting with the title . . . we are concerned that it conveys more ‘shock
 5 value’ than factual accuracy. . . . [T]he title fails to convey that GAO
 6 found no lawful reasons for the Department to deny or revoke the
 7 passports of the case study sex offenders based on their status of sex
 8 offenders.”

9 b. “Congress has already provided the Department authority to deny
 10 passports to individuals convicted of the crime of sex tourism involving
 11 minors and who used their passports or passport card or otherwise
 12 crossed an international border in committing an offense.”

13 c. “The title also fails to convey that GAO found no evidence that the
 14 offenders used their passports to commit sex offenses abroad. . . . The
 15 report appears to suggest, without any foundation, that the Department’s
 16 issuance of passports to certain Americans facilitated their commission
 17 of sex offenses abroad.”¹⁵

18 **B. The IML’s “Unique Passport Identifier”**

19 37. The IML mandates that Covered Individuals who are required to register as
 20 a sex offender in any jurisdiction (“Registrants”) will be forced to identify themselves
 21 publicly as registered sex offenders by means of a “unique identifier” on their passports.
 22 The IML defines “unique identifier” as “any visual designation affixed to a conspicuous
 23 location on the passport indicating that the individual is a covered sex offender.” IML
 24 §§ 8(a) and (b)(1), (c)(B)(2) (hereinafter, the “Passport Identifier Provision”).
 25

26 ¹⁴ United States Government Accountability Office: Passport Issuance – Current Situation Results in
 27 Thousands of Passports Issued to Registered Sex Offenders (June 2012), *available at*
<http://www.gao.gov/products/GAO-10-643>.

28 ¹⁵ *Id.* Appendix II: Comments from the Department of State, at 17-20 (emphasis added).

1 38. Thus, for the first time in our nation’s history, the Federal government will
2 require American citizens to carry and communicate a “conspicuous” public mark – akin
3 to the proverbial Scarlet Letter – on an object intimately associated with their person.
4 This mark will force the individual to communicate any number of negative messages to
5 the public about himself or herself, including that he or she poses a current threat to
6 public safety because he or she engages in, or is at risk of engaging in, child sex
7 trafficking. In most cases, these messages are false and effectively force such
8 individuals to invite significant risk of harm to themselves, their families, and others
9 with whom they may be traveling.

10 39. Subsequent to the establishment of publicly disclosed sex offender
11 registries in or about 2006, there have been dozens of reports of vigilante reprisals,
12 physical attacks, and even murders of individuals on sex offender registries that occurred
13 solely because the victim was required to register as a sex offender. For example:

- 14 a. In January 1995, only a few months after their State instituted its public
15 registry, Kenneth Kerkes of Phillipsburg, NJ, and his son, Kenneth Jr.,
16 found a neighbor, Michael Groff, on that registry. They broke into the
17 home at Mr. Groff’s address at 3 a.m. intending to beat up Mr. Groff but
18 instead mistakenly beat up another man who was staying there.
- 19 b. In April 2003, Lawrence Trant downloaded a list of addresses in
20 Concord, MA, from the public registry and proceeded to set fire to each
21 home on the list. Later that month, he was arrested when he confronted
22 one of the men on his list, Lawrence Sheridan, with a baseball bat and a
23 knife and stabbed him.
- 24 c. In February 2004, police in Bakersfield, CA, distributed a flyer with
25 information from the public registry about Vincent Verdile. About two
26 weeks later, Gabriel Garcia went to the front door of Mr. Verdile’s home
27
28

1 and threatened to kill him while kicking in the door until police shot and
2 killed Mr. Garcia to prevent his entry into Mr. Verdile's home.

3 d. In August 2005, Michael Mullen went to an address in Bellingham, WA,
4 that he found listed on the public registry. He impersonated an FBI
5 agent in order to gain entry to the residence, where he then shot and
6 killed two Registrants, Hank Eisses and Victor Vasquez.

7 e. In April 2006, Stephen Marshall took the addresses of William Elliott
8 and Joseph Gray of Corinth, ME, from the public registry. He first went
9 to Mr. Elliott's home where he shot and killed him. Then he went to Mr.
10 Gray's home and did the same to him. He intended to continue killing
11 people on the public registry until he shot and killed himself when
12 approached by police about the murders. Mr. Elliott was on the public
13 registry because, at age 19, he had sexual contact with his girlfriend
14 three weeks before her 16th birthday.

15 f. In September 2006, Donald Keegan was charged with attempted murder
16 for plotting to set fire to the Long Island, NY, residence of four men
17 listed on the public registry.

18 g. In November 2007, Ivan Oliver of Lakeport, CA, misinterpreted
19 information on the public registry about his new neighbor, Michael
20 Dodele, to mean that Mr. Dodele's offense involved a minor, which it
21 had not. Worried for his four-year-old son's safety, he went to Mr.
22 Dodele's home and killed him by stabbing him 65 times.

23 h. In August 2009, Steven Banister chose the Palm Springs, CA, address
24 of Edward Keeley from the public registry. He and Travis Cody went
25 to the 75-year-old man's home, where they robbed and killed him.

26 i. In June 2012, Patrick Drum shot and killed Gary Blanton, who was a
27 registered sex offender because he had sexual contact with his girlfriend
28

1 when he was a senior in high school and she was a freshman. He then
2 drove to the home of registrant Jerry Ray in nearby Agnew and fatally
3 shot him as well. Mr. Drum said he killed both men “because they were
4 sex offenders” and that he had planned on killing more of them until he
5 was caught. In a court hearing, Mr. Blanton’s widow reported that
6 people who considered Drum a hero had stalked her home, spat on her
7 family, and thrown things at her car.

8 j. In December 2012, in San Juan Capistrano, CA, Robert Vasquez
9 murdered Bobby Ray Rainwater after he learned that Rainwater was a
10 registrant. Both men lived in the same trailer park. Mr. Rainwater was
11 attacked from behind and was stabbed so many times he was practically
12 decapitated.

13 k. In July 22 2013, in Lockhart, SC, Jeremy Moody murdered registrant
14 Charles Parker and his wife, Gretchen Parker, inside their home. Mr.
15 Moody pretended to have car problems outside the home and asked to
16 use the couple’s home phone to call a tow truck. After his arrest, Mr.
17 Moody told police that he killed Mr. and Mrs. Parker because Mr. Parker
18 was a registered sex offender.

19 l. In September 2015, in Redding, CA, registrant Roy Matagora was shot
20 three times and significantly injured by Timothy Gould when Mr.
21 Matagora opened the front door of his home. After his arrest, Mr. Gould
22 told police that he shot Mr. Matagora solely because he is a sex offender.

23 40. Prior to the IML, obtaining information regarding registered sex offenders
24 required an individual seeking that information to access the Internet. However, the
25 Passport Identifier Provision of the IML would, for the first time, compel Registrants to
26 communicate affirmatively their status as a registered sex offender, along with numerous
27 other false and stigmatizing messages implied by that status, to the public on an object
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1 that they carry with them and that they are legally required to use for identification and
2 other purposes. As evidenced by the reports summarized above, this communication
3 could result in serious risks of harm to Registrants, their families, their business
4 associates, and any individuals with whom they are traveling.

5 41. Tellingly, the IML exempts the relevant government officials and
6 departments from liability arising from any harm that the Passport Identifier Provision
7 causes to Registrants. IML § 8(a) and (d).

8 **C. The IML’s “Notification Provision”**

9 42. In addition to the Passport Identifier Provision, the IML provides that DHS
10 shall establish a Center known as the “Angel Watch Center” within the Child
11 Exploitation Investigations Unit of the DHS’s United States Immigration and Customs
12 Department (the “Center”). IML § 4(a). The mission of the Center is to communicate
13 with foreign countries regarding a Covered Individual’s international travel. The IML
14 further provides that the Center shall be headed by the Assistant Secretary for U.S.
15 Immigration and Customs Enforcement, shall include as its additional “members” the
16 Commissioner of U.S. Customs and Border Protection, and certain “analysts” and
17 “program managers” designated by the U.S. Customs and Border Protection Department
18 or the U.S. Immigration and Customs Enforcement Department. ILM § 4(c)-4(d).

19 43. The IML operates as follows:

- 20 a. Self-reporting. Pursuant to the Adam Walsh Child Protection and Safety
21 Act of 2006, certain Covered Registrants are required to inform law
22 enforcement of their international travel plans “in conformity with any
23 time and manner requirements prescribed by the Attorney General,”
24 including “any anticipated dates and places of departure, arrival, or
25 return, carrier and flight numbers for air travel, destination country and
26 address or other contact information therein, means and purpose of
27 travel, and any other itinerary or other travel-related information
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1 required by the Attorney General.” IML § 6. A Covered Registrant who
2 fails to inform law enforcement of his or her travel plans faces a fine or
3 imprisonment for a term up to ten (10) years. IML § 8.

4 b. Reporting by the Center. Independent of an individual’s self-reporting
5 obligation, the Center shall also determine if individuals traveling
6 abroad are Covered Individuals at least “48 hours before scheduled
7 departure, or as soon as practicable before scheduled departure.” IML §
8 4(e)(1). The Center may “transmit relevant information to the
9 destination country about a sex offender,” and share such information
10 with other agencies within the United States Government. IML §
11 4(e)(3). The IML neither defines the term “relevant information . . .
12 about a sex offender” nor provides any guidelines about the information
13 to be provided to the destination country about the Covered Individual.
14 Further, the IML does not provide any guidelines by which the Center is
15 to determine whether to provide information to a destination country in
16 the first place.¹⁶

17 c. Reporting by the Marshals Service. Independent of the Center, the
18 United States Marshals Service may also provide information to
19 destination countries regarding Covered Individuals intending to travel
20 there, and shall also provide information regarding Covered Registrants
21 to the Center and to other government agencies, “within twenty-four
22 hours before the intended travel, and not later than 72 hours after.” IML
23 §§ 4(e)(2), 5. The IML fails to identify the information to be provided
24 by the Marshals Service regarding Covered Individuals, and fails to
25 establish guidelines for the information to be provided. Further, the IML

26
27 ¹⁶ The Center is also to receive incoming notifications from foreign countries regarding individuals
28 with sex offenses who seek to enter the United States pursuant to provisions that are not challenged
in this action. IML § 4(b).

1 fails to prescribe guidelines regarding whether such information should
2 be provided in the first place.

3 d. Provision of Information to the State Department. The Center shall also
4 provide the United States Department of State with information
5 regarding the status of Covered Individuals in connection with the
6 Passport Identifier Provision discussed above. IML § 4(e)(5).

7 **D. Inadequacy of the IML's Notice and Redress Procedures**

8 44. Critically, the IML contains no mechanism by which Covered Individuals
9 are to receive notice that the Center or the Marshals Service has compiled information
10 regarding them and/or their international travel plans. In addition, the IML contains no
11 mechanism whereby Covered Individuals are notified that information regarding them
12 has been communicated to one or more destination countries.

13 45. Further, the IML also contains no mechanism by which a Covered
14 Individual is to be notified regarding the nature of the information compiled by the
15 Center or the Marshals Service. Finally, the IML contains no mechanism whereby the
16 Covered Individual may identify and correct errors or omissions in the information
17 compiled by the Center or the Marshals Service before that information is communicated
18 to a destination country or countries.

19 46. By its terms, the time frame for transmission of information by the Center
20 or the Marshals Service to a Covered Individual's destination country or countries
21 effectively ensures that a Covered Individual will receive notice of the communication
22 only after he or she has made travel plans, incurred significant expense, and has actually
23 traveled to the destination country or countries. Specifically, the IML provides no
24 mechanism whereby a Covered Individual is notified of the nature of the information
25 communicated to the destination country even after he or she has been detained and
26 deported from the destination country.

1 47. Instead, the IML provides that the Center and the United States Marshals
2 Service shall establish procedures by which “complaints” regarding the Notification
3 Provision shall be received and reviewed. IML § 4(e)(7), 5(d). However, the IML does
4 not provide that corrective procedures shall be available or effective before any
5 information regarding the individual is provided to the destination country or countries,
6 or before the covered individual arrives in the destination country or countries after
7 making travel plans, and incurring significant travel time and expenses.

8 48. The corrective mechanisms of the IML Notification Provision are therefore
9 ineffective to prevent, respond to, or otherwise remedy deprivations of the liberty
10 interests of a Covered Individual, or the stigma or risk of harm imposed upon Covered
11 Individuals by the information communicated about them to the destination country or
12 countries.

13 **E. The IML’s Secretive Legislative History**

14 49. Despite the IML’s historic, controversial, and extraordinarily punitive
15 nature, the legislation was never even once the subject of substantive debate or
16 discussion in either the House of Representatives (“House”) or the Senate. Instead, the
17 IML, designated as H.R. 515, was passed by a voice vote in the Senate on December 17,
18 2015, under a “suspension of the rules” with no discussion or debate about its historic
19 significance. Because there was a voice vote only, there is no permanent record of
20 which Senators voted for or against the bill.

21 50. H.R. 515 was subsequently considered in the House, again under a
22 “suspension of the rules,” which permitted the bill to be considered and passed without
23 substantive discussion or debate regarding its historic significance. Suspension of the
24 rules in the House is reserved solely for noncontroversial legislation and is not to be
25 applied to controversial legislation such as H.R. 515. Indeed, the House vote on H.R.
26 515 was one in a series of eight votes taken on other bills that were truly
27 noncontroversial, such as funding for a Veterans’ memorial. Because the IML was
28

1 considered under a suspension of the rules, a voice vote was also taken in the House and
2 there is no record of which House members voted for or against it.

3 51. The process by which the IML became law, and in particular the lack of
4 substantive consideration or debate regarding its historic significance, bespeaks a wanton
5 indifference toward the constitutional rights of Covered Individuals, their family
6 members, friends, and business associates, as well as the deprivations of liberty wrought
7 by this ill-considered legislation, which constitute multiple violations of the U.S.
8 Constitution.

9 **FIRST CLAIM**

10 **(First Amendment – Compelled Speech)**

11 52. Plaintiffs re-allege paragraphs 1 through 51 of this Complaint as though
12 fully set forth herein.

13 53. By requiring Covered Individuals to communicate their status publicly as
14 registered sex offenders on their United States Passports, Defendants unconstitutionally
15 compel the speech of Plaintiffs in violation of the First Amendment. The Passport
16 Identifier Provision of the IML forces Plaintiffs and other affected Registrants to invite
17 significant harm to themselves, including physical harm, harassment, and property
18 damage. The Passport Identifier Provision of the IML also forces Plaintiffs and all
19 affected Registrants to communicate messages that they do not wish to communicate,
20 that may be false, and with which they disagree, such as that they pose a current risk for
21 engagement in international child sex trafficking or are otherwise a current danger to
22 public safety. The Passport Identifier Provision of the IML also forces Plaintiffs and
23 other affected Registrants to stigmatize themselves publicly on their personal passports,
24 which are objects intimately associated with their persons.

25 54. The injuries that Plaintiffs and other affected Registrants will suffer as a
26 result of the Passport Identifier Provision of the IML are severe, irreparable, and
27 ongoing, and there is no plain, adequate, complete, or speedy alternative remedies
28

1 available to redress the violations of law committed by Defendants in this action, nor are
2 there any available and non-futile administrative remedies available to redress the
3 violations of law committed by Defendants.

4 **SECOND CLAIM**

5 **(Fifth Amendment – Substantive Due Process)**

6 55. Plaintiffs re-allege paragraphs 1 through 54 of this Complaint as though
7 fully set forth herein.

8 56. By enforcing the Notification and Passport Identifier Provisions of the IML
9 against all individuals convicted of sex offenses involving a minor without regard to the
10 details of those offenses or the current threat posed by each individual to public safety,
11 Defendants deprive Plaintiffs and other affected Registrants of rights guaranteed by the
12 Fifth Amendment, including the Due Process right to be free from arbitrary,
13 unreasonable, and oppressive state action that bears no rational relationship to the State's
14 goal of protecting the public.

15 57. Plaintiffs and other affected Registrants also have a right to be free from
16 governmental stigmatization that falsely implies that they are individuals who pose a
17 current risk to public safety, including but not limited to a current risk for engaging in
18 international child sex trafficking, without any reasonable basis for such stigmatization.

19 58. The injuries that Plaintiffs and other affected Registrants will suffer as a
20 result of the Notification Provision of the IML are severe, irreparable, and ongoing, and
21 there is no plain, adequate, complete, or speedy alternative remedies available to redress
22 the violations of law committed by Defendants in this action, nor are there any available
23 and non-futile administrative remedies available to redress the violations of law
24 committed by Defendants.

THIRD CLAIM

(Deprivation of Liberty without Due Process of Law – Right to Travel)

59. Plaintiffs re-allege paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. Plaintiffs and other affected Registrants have a liberty interest in traveling free from unreasonable burdens within, as well as to and from, the United States.

61. The Notification Provision of the IML operates as an international travel blacklist list for Covered Individuals and contains no means by which Covered Individuals are notified of their designation as Covered Individuals, or the basis for the same. In addition, the IML provides no meaningful opportunity to redress the errors and omissions communicated by Defendants regarding each Covered Individual before or after such deprivations are suffered.

62. Further, Plaintiffs and other affected Registrants have a right to be free from governmental stigmatization that falsely implies that they are individuals who pose a current risk to public safety, including but not limited to a risk of engagement in international child sex trafficking, when such harm arises in conjunction with the deprivation of their right to travel on the same terms as other travelers, and/or the deprivation of their liberty interests under the Fifth Amendment to travel without unreasonable burdens imposed by the government.

63. 59. The injuries that Plaintiffs and other affected Registrants will suffer as a result of the Notification Provision of the IML are severe, irreparable, and ongoing, and there are no plain, adequate, complete, or speedy alternative remedies available to redress the violations of law committed by Defendants in this action, nor are there any available and non-futile administrative remedies available to redress the violations of law committed by Defendants.

1 **FOURTH CLAIM**

2 **(Deprivation of Liberty without Due Process of Law – Economic Liberty)**

3 64. Plaintiffs re-allege paragraphs 1 through 63 of this Complaint as though
4 fully set forth herein.

5 65. Plaintiffs and other affected Registrants have a constitutionally protected
6 economic liberty interest, including the right to travel freely for the purpose of earning
7 an income. Plaintiffs John Doe #1 and John Doe #3 are required to travel internationally
8 for business purposes, and a significant portion of their respective incomes depends upon
9 the freedom to travel internationally.

10 66. The Notification and Passport Identifier Provisions of the IML will
11 unconstitutionally interfere with the economic liberties of Plaintiffs and other affected
12 Registrants by operating as an international travel blacklist that unreasonably interferes
13 with the exercise of such economic liberties.

14 67. 59. The injuries that Plaintiffs and other affected Registrants will suffer
15 as a result of the Notification and Passport Identifier Provisions of the IML are severe,
16 irreparable, and ongoing, and there is no plain, adequate, complete, or speedy alternative
17 remedies available to redress the violations of law committed by Defendants in this
18 action, nor are there any available and non-futile administrative remedies available to
19 redress the violations of law committed by Defendants.

20 **FIFTH CLAIM**

21 **(Due Process – Right to Associate with the Family)**

22 68. Plaintiffs re-allege paragraphs 1 through 67 of this Complaint as though
23 fully set forth herein.

24 69. Plaintiffs and other affected Registrants have a constitutionally protected
25 liberty interest in associating and being physically present with their spouses, children,
26 and other family members.

1 capricious, that bears no rational relationship to any legitimate government purpose, and
2 that is not sufficiently tailored to serve a legitimate government purpose.

3 75. Legislation that targets individuals convicted of sex offenses involving
4 minors therefore deserves heightened scrutiny to ensure that the purpose and effect of
5 such legislation is constitutionally permissible.

6 76. Alternatively, any legislation that specifically targets any class of
7 individuals cannot survive constitutional scrutiny unless it is rationally related to a
8 legitimate government purpose.

9 77. The Notification and Passport Identifier provisions of the IML cannot
10 survive any level of scrutiny because they are not rationally related to any legitimate
11 government purpose, and are not sufficiently tailored to serve any legitimate government
12 purpose. Therefore, these provisions violate the Equal Protection guarantee of the Fifth
13 Amendment.

14 78. Additionally, as they apply broadly to all individuals convicted of a sex
15 offense involving a minor without regard to the individual circumstances of those
16 offenses or the legitimate needs of public safety, the Notification and Passport Identifier
17 Provisions of the IML constitute arbitrary, capricious, and unreasonable government
18 action in violation of the Equal Protection guarantee of the Fifth Amendment.

19 79. The injuries that Plaintiffs and all affected Registrants will suffer as a result
20 of the Notification and Passport Identifier Provisions of the IML are severe, irreparable,
21 and ongoing, and there are no plain, adequate, complete, or speedy alternative remedies
22 available to redress the violations of law committed by Defendants in this action, nor are
23 there any available and non-futile administrative remedies available to redress the
24 violations of law committed by Defendants.

1 **SEVENTH CLAIM**

2 **(*Ex Post Facto* Clause)**

3 80. Plaintiffs re-allege paragraphs 1 through 79 of this Complaint as though
4 fully set forth herein.

5 81. By applying the Notification and Passport Identifier Provisions of the IML
6 to Covered Individuals, Defendants are imposing retroactive punishment in violation of
7 the *Ex Post Facto* Clause of the United States Constitution.

8 82. By applying the Notification and Passport Identifier Provisions of the IML
9 to Covered Individuals, including to individuals whose convictions for sex offenses have
10 been overturned, expunged, or otherwise vacated, Defendants are imposing retroactive
11 punishment in violation of the *Ex Post Facto* Clause of the United States Constitution.

12 83. By applying the Notification Provision of the IML to Covered Individuals
13 who are no longer required to register as sex offenders in any jurisdiction, Defendants
14 are imposing retroactive punishment in violation of the *Ex Post Facto* Clause of the
15 United States Constitution.

16 84. The injuries that Plaintiffs and all affected Registrants will suffer as a result
17 of the Notification and Passport Identifier Provisions of the IML are severe, irreparable,
18 and ongoing, and there are no plain, adequate, complete, or speedy alternative remedies
19 available to redress the violations of law committed by Defendants in this action, nor are
20 there any available and non-futile administrative remedies available to redress the
21 violations of law committed by Defendants.

22 **EIGHTH CLAIM**

23 **(Declaratory Relief)**

24 85. Plaintiffs re-allege paragraphs 1 through 84 of this Complaint as though
25 fully set forth herein.

