

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 15-80388-Civ-Middlebrooks/Brannon

LARRY KLAYMAN

Plaintiff,

v.

HILLARY RODHAM CLINTON,

and

WILLIAM JEFFERSON CLINTON,

and

THE CLINTON FOUNDATION

Defendants.

ORAL ARGUMENT REQUESTED

**PLAINTIFF'S OPPOSITION TO DEFENDANT CLINTON FOUNDATION'S
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AND
INCORPORATED MEMORANDUM OF LAW AND PLAINTIFF'S
OPPOSITION TO INDIVIDUAL DEFENDANTS' MOTION TO DISMISS THE
AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW**

I. INTRODUCTION

There should be no mistake: this is not a Freedom of Information Act ("FOIA") lawsuit. This case is about a Plaintiff seeking redress against Defendants who schemed to steal property and money and defrauded, subverted, and violated American law in order to reap millions of dollars from their criminal activities. Defendants would have this court believe that all Plaintiff is seeking are missing or destroyed documents and email servers previously requested by him

under the FOIA law, 5 U.S.C. § 552 *et seq.* This clever but disingenuous strategy fails for a number of reasons.

The production of documents at issue is relevant because they evidence a criminal enterprise under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*, created and furthered by each of the Defendants, Hillary Clinton, Bill Clinton, and The Clinton Foundation, acting in concert as part of a conspiracy, to extort hundreds of millions of dollars of money – that is, bribes – from individuals, entities, and persons upon which the Defendants have bestowed favors and gratuities, principally in the form of granting waivers to do business with Iran, as well as releases of classified information concerning American-Israeli war plans to preemptively strike Iranian nuclear facilities. The Defendants effected this RICO enterprise through wire and mail fraud, obstruction of justice, bribery, and other criminal conduct, causing property and other economic damage to Plaintiff. This is a classic RICO lawsuit for which the statute was designed to remedy. Indeed, as pleaded, few people – if any – can even attempt to refute the hard evidence that Bill and Hillary Clinton and their Foundation have over a ten-year history of actually selling government access and influence in exchange for hard cash to fill their coffers and the coffers of their Foundation, which not coincidentally, as pled, does not operate as a 501(c)3 nonprofit organization but instead operates as Defendants Bill and Hillary Clinton’s own alter-ego in furthering their criminal enterprise.

The Court finds itself having to decide Federal Rules of Civil Procedure (“FRCP”) 12(b)(6) and 12(b)(1) motions. At this stage, the allegations of the Complaint, the Amended Complaint, and the Second Amended Complaint, which is being filed herewith with a Motion for Leave to File, sets forth all of the operative facts to plead a valid RICO claim. In addition, Plaintiff has validly pleaded common law causes of action.

In short, this case must proceed expeditiously as the discovery cut off date is September 28, 2015 and trial is set to begin on January 25, 2016. Defendants' attempts to delay discovery are as transparent as their non-meritorious motions to dismiss. Needless to say, the Court should not accept Defendants' lack of reasoned analysis of the factual content of both the Amended Complaint and Second Amended Complaint. As these motions to dismiss occur before the start of any discovery, it is simply too early to dismiss any portion of Plaintiff's claims where so much information is alleged to provide both notice and a likelihood that more material and predicate acts will be learned through discovery. Ultimately, summary judgment "is the ultimate screen to weed out truly insubstantial lawsuits prior to trial." *Crawford-El v. Britton*, 522 U.S. 574, 600 (2002). The RICO claim, and the other claims, must proceed to discovery, and Defendants' motions to dismiss must respectfully be denied.

II. STANDARD OF REVIEW

When a party attempts to dismiss a case based on purported facial inadequacies of the complaint, a motion under Rule 12(b)(1) is treated as a Rule 12(b)(6) motion. *See McElmurray v. Consol. Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). Rule 12(b)(6) of the FRCP governs a motion for "failure to state a claim upon which relief can be granted." In considering a motion to dismiss under Rule 12(b)(6), a court must take all well pleaded facts in the complaint as true and view them in the light most favorable to Plaintiff. *See Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). On a motion to dismiss under FRCP Rule 12(b)(6), "[w]e are required to accept the facts as set forth in the plaintiff's complaint as true, and our consideration is limited to those facts contained in the pleadings and attached exhibits." *Thaeter v. Palm Beach County Sheriff's Office*, 449 F.3d 1342, 1352 (11th Cir. 2006)) (quoting *Griffin Industries, Inc. v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007)). A federal court must also

“construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the acts alleged’ and upon such facts determine jurisdictional questions.” *Am. Nat’l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005) (quoting *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C. Cir. 2004))).

A complaint should only be dismissed if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Defendants’ motions readily concede that the Amended Complaint is to be taken as true. As a result, the allegations of the Amended Complaint and Second Amended Complaint must be taken as true for present purposes, along with all reasonable inferences in favor of the Plaintiff’s allegations, while rejecting any inferences that might be drawn against the Plaintiff’s claims.

III. ARGUMENT

A. PLAINTIFF STATES VALID CLAIMS UNDER RICO

1. Plaintiff Has Standing Under 18 U.S.C. § 1962(c).

Section 1962(c) prohibits persons “employed by or associated with any enterprise” from “conduct[ing] or participat[ing], directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). To prove a violation of Section 1962(c), a plaintiff must show “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1277, 1282 (11th Cir. 2006) (per curiam) (quotation marks omitted).

The Enterprise: RICO defines “enterprise” as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact

although not a legal entity.” *Id.* § 1961(4); *see also Boyle v. United States*, 556 U.S. 938, 946 (2009) (defining an “association-in-fact” enterprise).

In *Boyle v. United States*, 556 U.S. 938, 946 (2009), the U.S. Supreme Court visited and definitively ruled on the definition of "enterprise" in RICO. The alleged enterprise consisted of a "core group, along with others who were recruited from time to time" to commit a series of bank thefts. *Id.* The group would meet beforehand and plan its criminal acts, gathering the needed tools and assigning roles to the participants. Significantly, the "group was loosely and informally organized. It does not appear to have had a leader or hierarchy; nor does it appear that the participants ever formulated any long-term master plan or agreement." *Id.* The defendants in *Boyle* appealed their conviction, arguing that there was no enterprise. The U.S. Supreme Court affirmed the conviction and held that an enterprise must have some structure, but declined to require "an ascertainable structure beyond that inherent in the pattern of racketeering activity." *Id.* To require the jury in a criminal case to find that an enterprise had an ascertainable structure, the Supreme Court concluded, would be "redundant and potentially misleading." *Id.* at 939.

Pattern of Racketeering: A “pattern” is defined as "at least two acts of racketeering activity, one of which occurred after the effective date of [RICO’s passage and the last of which occurred within 10 years ... after commission of a prior act of racketeering activity." 18 U.S. Code § 1961(5).

In *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), the U.S. Supreme Court defined a "pattern" as two or more predicate acts which must (1) be related to each other or to "some external organizing principle," and (2) amount to continuing criminal activity or pose a threat of continued criminal activity. Multiple predicate acts committed to further a single illegal scheme may be sufficient to form a "pattern of racketeering activity." *Id.*, 109 S.Ct. at 2902.

The Plaintiff pled these elements and pled that Defendants Bill and Hillary Clinton along with the foundation's Board of Directors' members Cheryl Mills and Bruce Lindsey, and others, have been engaging in the same criminal activity for many years.

Plaintiff pled in the Amended Complaint and Second Amended Complaint that Defendants engaged in mail and/or wire fraud by “utiliz[ing] false or fraudulent pretenses, representations, and/or promises in order to defraud and/or obtain money from illicit payments disguised as donations.” Am. Compl. ¶ 258, 264; 2nd Am. Compl. ¶¶ 261, 301. The extent of their actions will be uncovered during the course of discovery.

The Amended Complaint and Second Amended Complaint plead many acts involving bribery which are chargeable under state law and punishable by imprisonment for more than one year. It alleges bribery, solicitation of bribery, receiving bribes, and attempted bribery. Am. Compl. ¶¶ 13, 14, 76, 84, 86, 89,90, 91, 99-100, 115-120, 126, 127, 129, 132-147, 148-155, 171-175, 176-185, 203, 208; 2nd Am. Compl. ¶¶ 11, 32, 131, 171, 178. 185, 208, 214, 248, 277, 301. As just one of many examples, Plaintiff pleads “Defendants . . . at all material times acted in concert . . . to set up, own, operate and further the criminal enterprise as alleged herein by the fraudulent use of the mails and wires, bribery and obstruction of justice, among other crimes in furtherance of the criminal enterprise.” 2nd. Am. Compl. ¶ 32.

The Amended Complaint and Second Amended Complaint further plead multiple acts of racketeering activity by travel in interstate or international travel for the purpose of bribery, money laundering, and obstruction of justice. Am. Compl. ¶¶ 109, 112, 117, 122-123, 124, 125, 127, 155 under 18 U.S.C. § 1961(1). These actions were done with the specific purpose of defrauding Plaintiff and others out of hundreds of millions of dollars in donations. 2nd Am. Compl. ¶¶ 14, 19, 83, 131, 155; *id.* at ¶ 303 (“Defendants, in furtherance of their criminal RICO

conspiracy and their overt acts, agree to effect and implement this conspiracy transmitted or caused to be transmitted by means of wire, radio, or television communication interstate or foreign commerce, writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice when they transmitted telephone and cellular telephone calls, documents, facsimiles, emails, instant messages, and any other form of communication.”).

The Second Amended Complaint also alleges, with even greater specificity, the predicate acts and in addition further specifies the additional acts which constitute a pattern of criminal conduct, such as acts of bribery and obstruction of justice. *See* 2nd Am. Compl. ¶¶ 11, 12, 32, 42, 54, 70, 131, 171, 204, 262-269; *id* at ¶ 171 (“This pattern and practice of criminal conduct is also shown by revelations that the “Bill, Hillary & Chelsea Clinton Foundation” received millions of dollars from foreign governments including Qatar, a prominent backer and financier of Hamas and ISIS. It was also recently revealed on March 16, 2015 that a Chinese conglomerate owned by a delegate to the Chinese parliament pledged millions to Defendant The Clinton Foundation, which shows that Defendants have again used their previously revealed bribery from communist China to enrich their foundation and themselves.”).

Racketeering Activity: Plaintiff has properly pled racketeering activities in the Amended Complaint and Second Amended Complaint. 18 U.S.C. § 1961(1) defines 35 offenses as constituting racketeering, including gambling, murder, kidnapping, arson, drug dealing, and bribery. Significantly, mail and wire fraud are included on the list.

Plaintiff alleged that Defendants “utilized false or fraudulent pretenses, representations, and/or promises in order to defraud and/or obtain money from illicit payments disguised as donations.” Am. Compl. ¶¶ 258, 264. Defendants even concede that Plaintiff has plead mail and wire fraud in the Amended Complaint. Motion to Dismiss of Bill and Hillary Clinton Page 13.

Plaintiff additionally pled bribery and obstruction of justice. 2nd Am. Compl. ¶¶ 11, 32, 171, 178, 187, 208, 248, 277, 301; *see* specifically, Section III(A)(2) of this Opposition.

2. Specifically, Plaintiff Alleged a RICO Enterprise.

Defendants concede that to state a claim under Section 1962(c), a plaintiff must allege that a defendant conducted or participated in the conduct of an “enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). Plaintiff has alleged the enterprise’s affairs resolutely. RICO defines enterprise as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.” *Id.* at § 1961(4). In light of RICO’s broad rule statement of what an enterprise includes, and the requirement that RICO be “liberally construed to effectuate its remedial purposes,” note following 1961, *see also, e.g., National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 257 (1994) (“RICO broadly defines ‘enterprise’”), *United States v. Turkette*, 452 U.S. 576 (1981) explained that “enterprise” reaches even “a group of persons associated together for a common purpose of engaging in a course of conduct . . .” *Id.* at 583. This type of association can be “proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.” *Boyle v. United States*, 556 U.S. 938, 938 (2009).

In *Boyle*, the Supreme Court decided whether an association enterprise must have “ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages.” *Id.* The Court held that while the enterprise must have a “structure,” the “association-in-fact enterprise is simply a continuing unit that functions with a common purpose.” The Court continued, “[m]embers of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues,

established rules and regulations, disciplinary procedures, or induction or initiation ceremonies.” *Id.* at 948. “Nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence. Nor is the statute limited to groups whose crimes are sophisticated, diverse, complex, or unique; for example, a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the statute’s reach.” *Id.* As such, a RICO enterprise is not a recognized entity with any public name or status, but is a *de facto* association. Am. Compl. ¶ 243. The RICO enterprise is a *de facto* association of the individual actors distinct from any formal or official organization or recognized entity.

Here, Plaintiff has not only alleged an agreement and overt acts to enter into and implement a RICO conspiracy and that a criminal enterprise exists, 2nd Am. Compl. ¶¶ 12, 14, 15, 23, 27, 32, *et seq.*, but Plaintiff also alleges dates and circumstances of who is involved, directly and indirectly, in implementing and furthering the conspiracy and criminal enterprise. The Amended Complaint and especially the Second Amended Complaint allege that the enterprise includes but is not limited to Defendant Hillary Clinton, Defendant Bill Clinton, Defendant The Clinton Foundation, and Chelsea Clinton (“[Chelsea Clinton] was employed knowingly by the Defendants herein, acting in concert, to effect and further the criminal enterprise as alleged herein with specificity,” 2nd Am. Compl. ¶ 27).

For instance, Bruce Lindsey, Cheryl Mills (“Lindsey and Mills at all material times acted in concert with the Defendants to set up, own, operate and further the criminal enterprise as alleged herein by the fraudulent use of the mails and wires,” 2nd Am. Compl. ¶ 32), Victor Pinchuk (“ . . . acting in concert and as part of this criminal RICO enterprise and conspiracy . . . [Defendant Hillary Clinton] granted a waiver to Victor Pinchuk and his company Interpipe

Group as an exemption from U.S. Congressional sanctions against doing business with Iran as a *quid pro quo* for bribes disguised as donations made to The Clinton Foundation, 2nd Am. Compl. ¶ 95), ” Interpipe Group, Uranian One, Ian Telfer, (“[t]he Chairman of Uranium One, Ian Telfer, as a result of the Defendants criminal RICO enterprise, then, using the wires and mails and other illegal means fraudulently, donated \$2.35 million to The Clinton Foundation . . .” 2nd Am. Compl. ¶ 110), Robert Disbrow, Paul Reynolds (“Robert Disbrow and Paul Reynolds, also gave multimillion dollar donations to The Clinton Foundation in facilitating this criminal RICO enterprise, which so-called donations benefitted all the Defendants illegally and criminally,” 2nd Am. Compl. ¶ 111), Salida Capital, Frank Giustra, UrAsia Energy, Frank Holmes, Robert Cross, GMP Securities, and Sergei Kurzin, all of whom participated in conduct of racketeering activity; that is, gaining waivers, bribes, monies, and favors in exchange for donations to Defendant The Clinton Foundation and donations to Defendants Bill and Hillary Clinton personally. *See also* 2nd Am. Compl. ¶¶ 147.

A simple reading of the Second Amended Complaint in particular will show that Plaintiff has pled with great specificity all of the operative factual elements and predicates of RICO claims.

These individuals and companies easily satisfy the meaning of an enterprise. The individual Defendants, as Directors of Defendant The Clinton Foundation, are employed and deeply associated with the enterprise and agreed to and acted in concert to implement and further their conspiracy and criminal RICO enterprise.

3. Plaintiff Alleged Predicate Acts Under RICO

Throughout the Amended Complaint, and especially the Second Amended Complaint, Plaintiff alleges a “pattern of racketeering activity.” 18 U.S.C. § 1962(c). As Defendants

concede, a pattern of racketeering activity “requires at least two acts of racketeering activity,” commonly referred to as “predicate acts.” *Williams v. Mohawk Indus., Inc.*, 465 F.3d 1282, 1283 (11th Cir. 2006); *see also* 18 U.S.C. § 1961(5). There are several predicate criminal acts that Defendants have committed including mail fraud, wire fraud, obstruction of justice, obstruction of criminal investigations, tampering with a witness, and retaliating against a witness and are included in RICO’s list of “racketeering activity,” *See* 18 U.S.C. § 1961(1)(B), and violations of these statutes support RICO claims.

Mail fraud and wire fraud are essentially identical except for the method of execution. *United States v. Bradley*, 644 F.3d 1213, 1238 (11th Cir. 2011); *see* 18 U.S.C. §§ 1341, 1343. Both statutes have a two-part showing test: (1) that the defendant “intentionally participate[d] in a scheme or artifice to defraud another of money or property,” and (2) that the defendant “use[d] or cause[d] the use of the mails or wires for the purpose of executing the scheme or artifice.” *Bradley*, 644 F.3d at 1283. To demonstrate a scheme or artifice to defraud, a plaintiff can offer “proof of a material representation, or the omission or concealment of a material fact calculated to deceive another out of money or property.” *Id.* Moreover, the fraudulent statements or omissions themselves need not be transmitted by mail or wire; it is only required that the scheme to defraud be advanced, concealed or furthered by the use of the U.S. mail or wires. *See* U.S.C. §§ 1341, 1343. As the Supreme Court held, “[u]sing the mail to execute or attempt to execute a scheme to defraud is indictable as mail fraud, and hence a predicate of racketeering under RICO, even if no one relied on any misrepresentation. And one can conduct the affairs of a qualifying enterprise through a pattern of such acts without anyone relying on a fraudulent misrepresentation.” *Bridge v Phoenix Bond & Indemnity Co.*, No. 07-210, Slip Op. at 8-9 (U.S. June 9, 2008). Indeed, RICO does not impose any additional reliance requirement on private

plaintiffs. The broad language of it allows recovery by “[a]ny person” injured by a violation, and “a person can be injured ‘by reason of’ a pattern of mail fraud even if he has not relief on any misrepresentations.” *Id.* at 9.

Here, Plaintiff alleges and pleads that Defendants participated in a scheme to defraud Plaintiff and others out of property or money and that the Defendants used mail and wires, and committed bribery and obstruction of justice, for the purpose of executing their criminal RICO conspiracy and enterprise. In the Amended Complaint, Plaintiff pleads “Defendants utilized false or fraudulent pretenses, representations, and/or promises in order to defraud and/or obtain money from illicit payments disguised as donations and other forms of gratuities.” Am. Compl. ¶ 264. Further, Plaintiff pleads specifically that Defendants agreed to, devised, and materialized a conspiratorial scheme to defraud Plaintiff and the American people and cause the mail and wires to be used in furtherance of this scheme, by intending to commit this fraud by utilizing the mail and wires. 2nd Am. Compl. ¶ 262. Plaintiff pleads that the Defendants knew that the use of the mail and wire systems would follow in the ordinary course of business in order to further their scheme to defraud Plaintiff and the American people. *Id.* at ¶ 263.

Here, even though Plaintiff pleads with specificity the fraudulent misrepresentations made and the time, place, and persons responsible for the RICO conspiracy as a criminal enterprise, dismissal is still not appropriate where discovery will provide an opportunity to obtain facts supportive of a RICO claim. *See e.g., Swistock v. Jones*, 884 F.2d 755, 758 (3d Cir. 1989) (reversing a dismissal as the plaintiff would “have the opportunity to have their pattern allegations threshed out in discovery”); *Seville Indus. Machinery Corp. v. Southmost Machinery Corp.*, 742 F.2d 786, 790 (3d Cir. 1984) (“[I]t is the function of discovery to fill in the details, and of trial to establish fully each element of the cause of action.”). Rule 9(b) does not require

Plaintiff to specify each and every element of the claim. *See SEC v. Platt*, 565 F. Supp. 1244 (W.D. Okla. 1983) (“The court notes at the outset that the rule only requires the complainant to set out the *circumstances* constituting fraud with particularity; the rule does not require the complainant to state the evidentiary facts constituting fraud with particularity.” (emphasis in original)).

The Amended Complaint and especially the Second Amended Complaint contain copious and detailed allegations regarding the content of the misrepresentations, omissions, and concealment, as well as the time period for the communications. Despite Defendants’ misleading and contentious statements otherwise, mere allegations of the contents of the omissions, and that the wires and mails were used in transmission of those communications, as well as allegations of obstruction of justice and bribery, are sufficient to state a claim under mail and wire fraud and the other criminal predicate acts of RICO, and thus survive a motion to dismiss.

In *Durham v. Bus. Mgmt. Assoc.*, 847 F.2d 1505 (11th Cir. 1988), the appellees sought to recover damages from appellants for alleged violations of federal securities laws and state common law. The appellants there argued that the case must be dismissed because the Amended Complaint “contain[ed] only conclusory allegations of the venture’s use of the mails [and wires].” *Id.* at 1511. The appellants maintained, as Defendants do here, that Rule 9(b) required fraud to be pleaded with particularity and that their amended complaint failed to plead mail fraud with the required particularity. The Eleventh Circuit ruled that “the application of [Rule 9(b)] . . . must not abrogate the concept of the notice pleading . . . Allegations of date, time or place satisfy the Rule 9(b) requirement that the circumstances of the alleged fraud must be pleaded with particularity, but alternative means are also available to satisfy the rule.” *Id.* at 1511-12. *See Friedlander v. Nims*, 755 F.2d 810, 813 n. 3 (11th Cir. 1985).

In a similar fact pattern, the Eighth Circuit stated:

[a]s to these uses of the mails and wires, the plaintiffs are surely correct that a court cannot reasonably expect highly specific allegations before allowing at least a brief discovery period. The facts that would have to be alleged are known to the defendants, but the plaintiffs have not yet had a chance to find them out. (This is especially true of telephone calls, which may leave little or no paper trail.) Where a plaintiff is not a party to a communication, particularity in a pleading may become impracticable. For that reason, several of our sister circuits have declined to require, before discovery, the pleading of dates and times of communications in furtherance of a scheme to defraud, where the complain alleges facts supporting the inference that mails or wires were used.”

Abels v. Farmers Commodities Corp., 259 F.3d 910, 921 (8th Cir. 2001).

Here, Plaintiff easily satisfies this standard. Not only did he plead with specificity the dates of the fraudulent activities Defendants engaged in by the use of mail, wire fraud and the other predicate acts, but Plaintiff also specifically alleges, in several circumstances, who, what, where, when and how much Defendants acted with, conspired with, and bribed others in furtherance of a criminal enterprise. *See* 2nd Am. Compl. ¶¶ 95, 155, 116, 117, 118, 119, 120, 121, 122, 126, 127, 128, 129, 155, 171, 180, 182, 183, 184, 185, 188, 189, 237, 239, 243, 244, 248, 277, 288, 289, 301, 306.

Contrary to Defendants’ assertion that “only Sections 1341 (mail fraud) and 1343 (wire fraud) are included in RICO’s exhaustive list of ‘racketeering activity,’” Plaintiff also pled violations of 18 U.S.C. § 1503 (obstruction of justice), *see* Am. Compl. ¶ 220, and 18 U.S.C. § 201 (bribery), *see* Am. Compl. ¶¶ 13, 14, 76, 84, 86, 89, 90, 91, 99-100, 115-120, 126, 127, 129, 132-147, 148-155, 171-175, 176-185, 203, 208 (indeed, the Amended Complaint alleges bribery, solicitation of bribery, receiving bribes and attempted bribery), and is pleading violations of 18 U.S.C. § 1956 (relating to the laundering of monetary instruments) and 18 U.S.C. § 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity) 2nd Am. Compl. ¶ 249, 254-350.

The Amended Complaint and especially the Second Amended Complaint allege multiple acts involving obstruction of justice, all of which are indictable under 18 U.S.C. § 1956 relating to money laundering. The Amended Complaint alleges “bribes disguised as donations [were] made to The Clinton Foundation.” Am. Compl. ¶ 91. These disguises are the gravamen of money laundering, including under 18 U.S.C. § 1956, in that the illegal source of money obtained by criminal activity (here, bribery) is laundered or disguised to make the money as the fruits of illegal activity appear to be legitimate income (here donations and fees). The entire Amended Complaint and Second Amended Complaint allege that the Defendants engaged in money laundering by disguising the illegal source of funds as being something other than the true nature of payments. *See* Am. Compl. ¶ 1, 86, 121, 162, 257, 263; *see also* 2nd Am. Compl. ¶ 182, 184, 260, 261, 268, 283, 296, 301, 325.

4. Plaintiff Stated a Valid Claim Under 18 USC 1962(b)

The Defendants also concede concerning RICO that “Section 1962(b) provides in relevant part that “[i]t shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.” 18 U.S.C. § 1962(b). Motion to Dismiss of Bill and Hillary Clinton Page 14.

The Plaintiff of course does allege that the Defendants actually agreed upon, invented and created the enterprise and maintained and furthered (operated) it through numerous overt acts for years. The Plaintiff alleges all of these facts clearly and undeniably. Moreover, in his Second Amended Complaint, the Plaintiff alleges these facts even more directly and clearly so that the Defendants cannot fail to recognize the allegations.

The Plaintiff has clearly pled that the Defendants acquired and maintained an interest in and/or control of the RICO criminal enterprise under 18 U.S.C. § 1962(b) and violated 18 U.S.C. § 1962(c).

However, the Defendants cleverly and unfairly cite to only those paragraphs of the Amended Complaint in which the Plaintiff summarizes or introduces an entire category of factual allegations. The Defendants then intentionally ignore the detailed factual allegations which follow and which expand upon and support those general themes with very specific allegations of fact in great detail. As a result of the Defendants' apparent desire to disingenuously misstate the detailed allegations of fact as relating to the overall legal causes of action, Plaintiff resolves this non-issue by offering his Second Amended Complaint to render Defendants' non-meritorious arguments categorically moot.

For example, the Amended Complaint alleges in the following paragraphs:

20. Defendant Hillary Clinton is acting in all events relevant herein as an individual operating a criminal enterprise, but also served as U.S. Secretary of State from January 21, 2009 – February 1, 2013. President Barack Obama appointed Defendant Hillary Clinton to this position. She is a citizen of New York.

And:

25. Defendant Bill Clinton is acting in all events relevant herein as an individual operating a criminal enterprise, but also was President of the United States from January 20, 1993 to January 20, 2001. He is a citizen of New York.

The Amended Complaint also alleges in the following paragraphs that the Defendants control the RICO criminal enterprise as it involves the criminal conduct of The Clinton

Foundation:

190. From the self-described history and self-description posted by Defendant The Clinton Foundation about itself that the spending of its funds *are driven by personal decisions made by Defendant Bill Clinton, Defendant Hillary Clinton, and their daughter, Chelsea.*

(Emphasis added) The Amended Complaint also similarly alleges in the following paragraphs:

87. Hillary Clinton used the private email server maintained at the Clintons' home in Chappaqua, New York and the emails processed through that server *to negotiate, orchestrate, and/or arrange many of the speaking fees paid to her husband Bill Clinton and donations to The Clinton Foundation.*

(Emphasis added) *See also* Am. Complaint ¶¶ 47, 78, 89, 126, 127, 198, 211, 234, 244.

These allegations are followed by many paragraphs alleging supporting facts in detail, such that the meaning and significance of these allegations is made clear in the subsequent paragraphs and is further supported by specific, concrete, and detailed factual allegations. The Second Amended Complaint similarly alleges these criminal acts with even greater specificity. *See* 2nd Am. Compl. ¶ 88, 91, 92, 125, 127, 131, 154, 165, 202, 207, 249, 265, 266, 268, 269, 278, 289, 290, 292, 293, 302.

As a result, Plaintiff has clearly pled that that Defendants acquired and maintained an interest in and/or control of the RICO criminal enterprise in violation of 18 U.S.C. § 1962(b). Plaintiff clearly pled that the Defendants are the originators of and creators of that RICO enterprise and that along with co-conspirators Cheryl Mills, Bruce Lindsey and Chelsea Clinton the Defendants are the sole operators of that RICO enterprise. Moreover, Plaintiff clearly pled that Defendants “(1) conduct[ed] (2) [] an enterprise (3) through a pattern (4) of racketeering activity” in violation of 18 U.S.C. § 1962(c). The Second Amended Complaint goes into further detail, and puts the proverbial “nail in the coffin” of Defendants’ strategic and non-meritorious concerns.

5. Plaintiff Stated a Valid Claim Under 18 U.S.C. § 1962(d)

Plaintiff pled a valid cause of action under RICO pursuant to 18 U.S.C. § 1962(d). Each and every one of the Plaintiff’s allegations must be taken as true for the purposes of the present

motion, along with all inferences reasonably drawn in support of Plaintiff's allegations, as set forth in the "Standard of Review" section, *infra*.

Defendants concede that in order to state a RICO conspiracy claim under § 1962(d), a plaintiff must allege an illegal agreement to violate a substantive provision of the RICO statute. *Super Vision Int'l Inc. v. Mega Int'l Commercial Bank Co.*, 534 F. Supp. 2d 1326, 1342 (S.D. Fla. 2008) (quotation marks omitted), *aff'd*, No. 08-15031, 2009 WL 1028034 (11th Cir. Apr. 17, 2009)." Motion to Dismiss of Bill and Hillary Clinton Page 17.

The elements of a § 1962(d) conspiracy need only be alleged about those Defendants named. The Plaintiff has alleged all the elements of a conspiracy prohibited by 18 U.S.C. § 1962(d) by and among Defendants Hillary Clinton, Bill Clinton, and The Clinton Foundation. Naturally, the Defendants' disingenuous obfuscation concerning any parties who are not actually named as defendants should be rejected. Plaintiff need only allege a RICO conspiracy by those named as defendants.

The Defendants concede that the Plaintiff did actually allege that Defendants "operated a covert enterprise of trading political favors and government acts in exchange for donations, which are in 3 effect bribes." Am. Compl. ¶ 13." Motion to Dismiss of The Clinton Foundation, Pages 2-3.

The Defendants also concede that the Plaintiff alleges that "Plaintiff accuses Defendants of 'intend[ing] to operate a covert enterprise of trading political favors and governmental acts in exchange for donations to the Clinton Foundation. Am. Compl. ¶ 13." Motion to Dismiss of The Clinton Foundation, Page 13.

Consistent with the requirements of notice pleading, Plaintiff clearly alleged, including with inferences drawn in support of the allegations, that Defendants entered into a conspiracy

prohibited by 18 U.S.C. § 1962(d) by consciously and knowingly agreeing to engage in the illegal acts, agreeing to further the illegal purposes of the conspiracy, and agreeing to act in concert to implement the conspiracy.

Plaintiff also alleges that the Defendants committed overt acts in furtherance of the conspiracy by paying bribes, of money laundering to conceal the criminal RICO conspiracy of bribery in return for official acts, and obstruction of justice by destroying and concealing records to hide their criminal enterprise of bribery in return for official acts.

For example, Plaintiff alleged that Defendants “systematically and continuously” “conducted a corrupt enterprise” for at least ten years:

The Defendants have systematically and continuously, over the last ten (10) years and more, conducted a corrupt enterprise in violation of the Racketeer Influenced and Corrupt Organization (“RICO”) Act, all of which acts are continuing in nature.

Am. Compl. at Introduction, Page 1; *see also* 2nd Am. Compl. ¶ 215 (“As support and factual grounds to substantiate Plaintiff’s allegations, Defendants Hillary and Bill Clinton and the other actors have agreed to and continue an ongoing conspiracy to systematically, methodically, continuously, and persistently, conceal, misfile and mishandle, withhold, and destroy official governmental records and information to further their own private interests, often financial interests involving extremely large sums of money, and often despite the records being under subpoena, or other legal processes . . .”).

And Plaintiff also alleged that Defendants – each and every one of them, jointly and severally – “*conspired*” through their ongoing criminal enterprise and that each Defendant aided and abetted the ongoing criminal enterprise, which “conspiring” includes the concept of all the Defendants entering into an agreement to engage in the conspiracy.

Plaintiff alleged in the Amended Complaint:

245. By the acts alleged herein, Defendants, each and every one of them, jointly and severally, have aided and abetted and conspired to violate FOIA and other laws, through their ongoing criminal enterprise as set forth below.

By way of many examples, Plaintiff now alleges with even greater specificity in the Second Amended Complaint:

248. By the acts alleged herein, Defendants, each and every one of them, jointly and severally, agreed to and have entered into a RICO conspiracy and have undertaken a number of overt acts to aid and abet and conspire to actually violate mail and wire fraud and bribery laws, obstruction of justice and FOIA and other laws, through their ongoing criminal enterprise as set forth below.

Plaintiff also alleged that “all” the Defendants conspired to acquire and maintain an interest in a RICO enterprise which is engaged in a pattern of racketeering activity, which allegation that Defendants “conspired” necessarily includes the allegation of the Defendants entering into an agreement to enter into the conspiracy of the criminal enterprise

Plaintiff alleged in the Amended Complaint:

299. All Defendants did conspire to acquire and maintain an interest in a RICO enterprise engaged in a pattern of racketeering activity, in violation of 18 U.S.C. §§ 1962(b) and (d).

By way of one of many examples, Plaintiff alleges in the Second Amended Complaint:

339. All Defendants did, acting in concert, conspire to acquire and maintain an interest in a RICO enterprise engaged in a pattern of racketeering activity, in violation of 18 U.S.C. §§ 1962(b) and (d).

Plaintiff also alleged that “all” the Defendants cooperated jointly and severally in the commission of two or more predicate acts, which includes the allegations of the Defendants entering into an agreement to enter into the conspiracy of the criminal enterprise:

Plaintiff alleged in the Amended Complaint:

300. During the ten (10) calendar years preceding August 20, 2014, all Defendants did cooperate jointly and severally in the commission of two (2) or more of the predicate acts that are itemized at 18 U.S.C. §§ 1961(1)(A) and (B), in violation of 18 U.S.C. § 1962(d).

By way of one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

322. During the ten (10) calendar years preceding August 20, 2014, all Defendants did cooperate jointly and severally in the commission of two (2) or more of the RICO predicate acts that are itemized in the RICO laws at 18 U.S.C. §§ 1961(1)(A) and (B), and did so in violation of the RICO law at 18 U.S.C. § 1962(b) (prohibited activities).

The Plaintiff alleged in the Amended Complaint:

301. Plaintiffs further allege that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, i.e. a continuing threat of their respective racketeering activities, also in violation of 18 U.S.C. § 1962(d) (prohibited activities).

By way of one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

328. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, i.e. a continuing threat of their respective racketeering activities, also in violation of the RICO law at 18 U.S.C. § 1962(b) *supra*.

Plaintiff also alleged that the Defendants entered into the current conspiracy in January 2001, when Defendant Bill Clinton left office as President:

The Plaintiff alleged in the Amended Complaint:

78. The very purpose of communicating through a private computer email server and “off the books” private email address and account was to conceal the contents of those communications from Plaintiff, from public discovery and from official scrutiny.

By way of one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

82. The very purpose of communicating through a private computer email server and “off the books” private email address and account was to conceal and deny the contents of those communications from Plaintiff, and others.

The Plaintiff alleged in the Amended Complaint:

79. Since leaving The White House in 2001, the Bill and Hillary Clinton household has amassed a personal fortune (outside of The Clinton Foundation) of over \$105 Million USD, consisting mainly of speaking fees paid to Bill Clinton from many nations, organizations, leaders, and business interests who are hostile to the United States and U.S. foreign policy and especially hostile to Israel, but flush with cash from oil revenue or from sources doing business with oil-rich, Middle Eastern and Arab countries.

By way of one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

83. Since leaving The White House in 2001, Bill and Hillary Clinton and their Clinton Foundation have amassed a personal fortune (outside of The Clinton Foundation) of over \$105 million USD, consisting mainly of speaking fees paid to Bill and Hillary Clinton and so called donations to The Clinton Foundation from many nations, organizations, leaders, and business interests who are hostile to the United States and U.S. foreign policy and especially hostile to Israel, but flush with cash from oil revenue or from sources doing business with oil-rich, Middle Eastern and Arab countries.

And Plaintiff also alleged in the Amended Complaint that the details alleged are part of a continuing conspiracy:

198. However, the continuing conspiracy and on-going crimes are demonstrated by the past revelations of similar schemes orchestrated by Defendant Hillary Clinton

And now alleges in the Second Amended Complaint with even great specificity:

202. However, the continuing conspiracy and ongoing crimes are demonstrated by the pattern of similar conspiratorial schemes orchestrated by Defendant Hillary Clinton and the other Defendants, acting in concert.

Plaintiff further alleged in the Amended Complaint that the Defendants are engaged in an “on-going conspiracy” to “systematically, methodically, continuously, and persistently” obstruct justice by concealing and destroying government records:

211. As support and strong factual grounds to substantiate Plaintiff's allegations, Defendants Hillary Clinton and Bill Clinton and the other actors have continued an on-going conspiracy to systematically, methodically, continuously, and persistently conceal, misfile and mishandle, withhold, and destroy official governmental records and information to further their own private interests, often financial interests involving extremely large sums of money, and often despite the records being under subpoena.

By way of one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

215. As support and strong factual grounds to substantiate Plaintiff's allegations, Defendants Hillary Clinton and Bill Clinton and the other actors have agreed to and continue an ongoing conspiracy to systematically, methodically, continuously, and persistently conceal, misfile and mishandle, withhold, and destroy official governmental records and information to further their own private interests, often financial interests involving extremely large sums of money, and often despite the records being under subpoena, or other legal processes, such as FOIA.

Plaintiff further alleged in the Amended Complaint that the Defendants engaged in overt acts in furtherance of their conspiracy. As an overt act, in January 2009, the Defendants set up a private email server in order to obstruct justice by concealing the communications, instrumentalities, and records of the illegal conspiracy and its campaign of bribery and in order to engage in money laundering:

57. Meanwhile, Defendant Hillary Clinton (together with Defendant Bill Clinton and The Clinton Foundation) set up a private, off-the-books, email system approximately nine (9) days before she was sworn in as U.S. Secretary of State as uncovered, revealed, and reported by The New York Times.

By way of just one of many examples, Plaintiff alleges with even greater specificity in the Second Amended Complaint:

59. Meanwhile, Defendant Hillary Clinton (together with Defendant Bill Clinton and The Clinton Foundation) set up a private, off-the-books, email system approximately nine (9) days before she was sworn in as U.S. Secretary of State as uncovered, revealed, and reported by The New York Times.

As overt acts from January 2009 until Defendant Hillary Clinton left office in February 2011, the Defendants continuously acted to conceal the records, communications, and instrumentalities of the conspiracy and to further the conspiracies agreements and acts of money laundering:

87. Hillary Clinton used the private email server maintained at the Clintons' home in Chappaqua, New York and the emails processed through that server to negotiate, orchestrate, and/or arrange many of the speaking fees paid to her husband Bill Clinton and donations to The Clinton Foundation.

By way of just one example, Plaintiff alleges in the Second Amended Complaint:

91. Hillary Clinton and the other Defendants used the private email server maintained at the Clintons' home in Chappaqua, New York and the emails processed through that server to solicit, negotiate, orchestrate, arrange and collect, through the wires by fraud, many of the speaking fees paid to herself, her husband Bill Clinton and so-called "donations" to The Clinton Foundation.

As an overt act in furtherance of the conspiracy, the Defendants destroyed or attempted to destroy the records, communications, and instrumentalities of the conspiracy as obstruction of justice:

88. Hillary Clinton deleted 32,000 email messages from her email server that included her communications arranging, negotiating, and agreeing upon speaking engagements by Bill Clinton in return for large speaking fees and donations to The Clinton Foundation.

By way of just one example, Plaintiff alleges in the Second Amended Complaint with even greater specificity:

92. Defendant Hillary Clinton, acting in concert with the other Defendants as part of a RICO criminal enterprise and conspiracy, deleted 32,000 email messages from her email server that included her communications arranging, negotiating, agreeing and collecting upon speaking engagements for her and Bill Clinton which resulted in large speaking fees, as well as the solicitation and receipt of inflated "donations" to The Clinton Foundation.

Nevertheless, since the Defendants are tactically unwilling to recognize the allegations of a conspiracy by an agreement among the Defendants, the Plaintiff has made this explicitly clear by further amending and filing his Second Amended Complaint.

In the Plaintiff's Second Amended Complaint, he has even more explicitly alleged the existence of an 18 U.S.C. § 1962(d) conspiracy:

246. For any RICO case, it is important to distinguish between legitimate organizations, businesses, and even government offices and the abuse of those entities for illegal purposes by the unofficial, corrupt "enterprise." The RICO criminal enterprise includes Defendant Hillary Clinton, Defendant Bill Clinton, Defendant The Clinton Foundation, Foundation Board member Cheryl Mills though not named as a Defendant, Sidney Blumenthal though not named as a Defendant, Foundation Board member Chelsea Victoria Clinton though not named as a Defendant, Foundation Board member Bruce Lindsey though not named as a Defendant, and Foundation Board member Frank Giustra though not named as a Defendant, and others mentioned in this Complaint.

247. This pattern of illegal activities committed by the Defendants, the "Predicate Acts," discussed herein and below, were done with the purpose of financial gain and were done within the past ten (10) years and continuing. Starting in January 2001, when Bill Clinton left office as President and set up what is now known as The Clinton Foundation and Hillary Clinton was sworn in as a U.S. Senator, Defendants Bill Clinton, Hillary Clinton, and The Clinton Foundation entered into an agreement and conspired with one another to create what the law calls a criminal enterprise within the meaning of RICO.

248. By the acts alleged herein, Defendants, each and every one of them, jointly and severally, agreed to and have entered into, and taken overt acts in furtherance of a RICO conspiracy, and have undertaken a number of overt acts to aid and abet and conspire to actually violate mail and wire fraud and bribery laws, obstruction of justice and FOIA and other laws, through their ongoing criminal enterprise as set forth below. The Defendants Bill Clinton, Hillary Clinton, and The Clinton Foundation further entered into an agreement and conspired with one another to solicit, take and receive bribes as payment quid pro quo to sell official actions, influence over, and insider access to the U.S. Government and/or its officials, procure changes in U.S. Government policy, procure government endorsements and statements, and/or influence foreign governments, for the benefit of those paying them bribes.

249. The law presumes generally that a person intends the obvious results of their actions. The Defendants Bill Clinton, Hillary Clinton, and The Clinton Foundation further entered into an agreement and conspired with one another as a

further part of said conspiracy to engage in money laundering to disguise the true nature and source of the bribes paid to them – those payments being the fruit of criminal activity – and falsely and fraudulently misrepresent those payments as being speaking fees for speeches by Defendant Bill Clinton and at times Defendant Hillary Clinton and/or donations to The Clinton Foundation. The Defendants Bill Clinton, Hillary Clinton, and The Clinton Foundation further entered into an agreement and conspired with one another as a further part of said conspiracy to commit obstruction of justice and anticipatory obstruction of justice by concealing, hiding, and destroying the evidence of their conspiracy including among official government records. Between 2001 and 2006, additional members of the conspiracy also joined in all of these agreements and conspiracy, specifically being Cheryl Mills, Bruce Lindsey, Sidney Blumenthal, Chelsea Victoria Clinton, Frank Giustra, and others.

In Plaintiff's Second Amended Complaint, he has even more explicitly alleged the elements of a § 1962(d) conspiracy,¹ with the following additional paragraphs:

13. Defendants concealed and destroyed documents evidencing the RICO criminal enterprise such that they were neither available nor produced to the Plaintiff under FOIA, which documents Plaintiff had a proprietary interest under the law. Defendants agreed to operate a covert enterprise, through the use of mail and wire fraud, of trading political favors and governmental acts in exchange for donations, which are bribes, to Defendant The Clinton Foundation and/or speaking fees to Defendants Bill and/or Hillary Clinton.

60. The Clinton Foundation was founded, at all material times operated, and managed by Defendants Bill and Hillary Clinton and is under their supervision, direction and control. Accordingly, there is an identity of interests between Defendants Bill and Hillary Clinton and their Foundation and they are alter egos of each other, particularly since it has been disclosed publicly in the last few months that the Foundation has failed to follow corporate formalities and acted outside of the law. Thus, Defendant Clinton Foundation, along with Defendants Bill and Hillary Clinton, has control of, ownership and interest in the subject email server and documents contained thereon.

61. Defendant Hillary Clinton and the other Defendants conducted and furthered their criminal enterprise through said private, unofficial email account secretly housed and maintained on a computer file server operating email addresses (accounts) such as at "@clintonemail.com," situated in Defendant Bill and Hillary Clinton's private mansion in Chappaqua, New York.

¹ Indeed, a simple reading of Plaintiff's Second Amended Complaint will completely put to rest all of Defendants' disingenuous arguments. See also Plaintiff's Motion to Amend, filed herewith.

92. Defendant Hillary Clinton, acting in concert with the other Defendants as part of a RICO criminal enterprise and conspiracy, deleted 32,000 email messages from her email server that included her communications arranging, negotiating, agreeing and collecting upon speaking engagements for her and Bill Clinton which resulted in large speaking fees, as well as the solicitation and receipt of inflated “donations” to The Clinton Foundation.

131. In sum, the Defendants, acting by agreement and in concert, to form a conspiracy to violate the RICO laws, have for many years perfected their wire and mail fraud, obstruction of justice, bribery and other criminal acts such that they have reaped millions of dollars in illegally acquired funds.

136. Moreover, in or about 2006 to 2009, Defendants Bill and Hillary Clinton, acting in concert with the Defendant Clinton Foundation agreed to conspire and conspired as part of their RICO criminal enterprise, procured and furthered through the fraudulent use of the wires and mails, to solicit, take and receive bribes to procure the help and influence of the U.S. Government and the Government of Kazakhstan to benefit Canadian businessman Frank Giustra and his company UrAsia Energy (later merged with Uranium One) and the company’s investors.

151. Bill and Hillary Clinton, agreeing to and acting in concert with The Clinton Foundation to further the criminal RICO enterprise conspiracy, as alleged throughout herein, fraudulently used the wires and mails to pressure the government of Kazakhstan to approve the merger of UrAsia Energy and Uranium One for the benefit of Giustra and his colleagues.

162. With the encouragement of then U.S. Senator Hillary Clinton, agreeing to as part of their criminal RICO enterprise and conspiracy and acting in concert with the other Defendants in furtherance of the criminal RICO enterprise, effectuated through the fraudulent use of the wires and mails, and other means as pled herein throughout, the sanctions on India related to its nuclear weapons development were lifted.

196. The absence of any organized process for considering the validity, relative importance, and priority of projects, instead vesting decisions in the whim and personal desire of the Clinton family, transforms the projects into personal benefits to the Clintons agreed to and derived illegally pursuant to the ongoing RICO criminal conspiracy enterprise.

205. The same Cheryl Mills now serves on the Board of Directors of Defendant The Clinton Foundation after being Chief of Staff at the U.S. Department of State and, along with the Defendants, agreed to and did create and further their criminal RICO enterprise.

215. As support and strong factual grounds to substantiate Plaintiff's allegations, Defendants Hillary Clinton and Bill Clinton and the other actors have agreed to and continue an ongoing conspiracy to systematically, methodically, continuously, and persistently conceal, misfile and mishandle, withhold, and destroy official governmental records and information to further their own private interests, often financial interests involving extremely large sums of money, and often despite the records being under subpoena, or other legal processes, such as FOIA.

248. By the acts alleged herein, Defendants, each and every one of them, jointly and severally, agreed to and have entered into a RICO conspiracy and have undertaken a number of overt acts to aid and abet and conspire to actually violate mail and wire fraud and bribery laws, obstruction of justice and FOIA and other laws, through their ongoing criminal enterprise as set forth below

265. In or about 2011, interested parties bribed U.S. Secretary of State Hillary Clinton and the other Defendants, acting in concert in furtherance of the RICO criminal enterprise, to influence her official actions in office by arranging or orchestrating large speaking fees paid to Bill Clinton and large "donations" to The Clinton Foundation and the other Defendants acting in concert.

268. Defendants agreed to and concealed and destroyed official government documents to cover up their criminal RICO conspiracy enterprise, such that they were not available to be searched and produced to the Plaintiff. Defendants agreed to and did intend to operate an ongoing covert enterprise of trading political favors and governmental acts in exchange for "donations," which are bribes, to Defendant The Clinton Foundation and/or speaking fees to Defendants Bill and/or Hillary Clinton. All of these Defendants at all material times acted in concert in furtherance of their criminal RICO conspiracy enterprise, soliciting, and accepting bribes through the fraudulent and illegal use of the wires and mails, and other illicit means.

272. Defendant Hillary Clinton, in concert with the other Defendants, agreed to and furthered the criminal RICO conspiracy enterprise, through said private, unofficial email account secretly housed and maintained on a computer file server operating email addresses (accounts) such as at "@clintonemail.com," situated in Defendants Bill and Hillary Clinton's private mansion in Chappaqua, New York.

293. Using concealed communications on the private email server, the Defendants devised, negotiated, arranged and implemented the sale of influence and access to U.S. Government officials and decision-makers and official acts by State and other instrumentalities of the U.S. Government in return for bribes, pursuant to 18 U.S.C. § 201, disguised as donations to Defendant The Clinton Foundation and extraordinarily high speaking fees paid to Defendant Bill Clinton and Defendant Hillary Clinton.

295. In responding to the Plaintiff's subject FOIA request State, its Defendant Hillary Clinton's then Chief of Staff Cheryl Mills, and at Defendant Hillary Clinton's and the other Defendants' direction, fraudulently used the wires and mails to lie to Plaintiff and to the lower court, as they claimed that there were no responsive documents. This was one of many overt acts in furtherance of Defendants' conspiracy to engage in and reap the financial benefit of their criminal RICO enterprise, and to damage the property and other economic interests of the Plaintiff, who as a public advocate earns an income by obtaining documents uncovering scandal and promoting ethics in government.

325. By virtue of the overt predicate acts pled in this Complaint, including without limitations: laundering of monetary instruments, engaging in monetary transactions improperly derived from unlawful activity, Defendants transferred, received, furthered and supplied financing and income that was derived, both directly and indirectly, from a pattern of racketeering activity in which each of them participated as a principal and used and invested, both directly and indirectly, such income and the proceeds of such income, in establishing, operating and furthering terrorist and other illegal enterprises in violation of 18 U.S.C. § 1962(a).

As a result of the even greater specificity of the Second Amended Complaint, it is clear that the Plaintiff has pled a conspiracy under RICO 18 U.S.C. § 1962(d).

B. PLAINTIFF ALLEGES VALID, JUSTICIABLE CONTROVERSIES UNDER ARTICLE III AND THEREFORE THIS COURT MAINTAINS SUBJECT MATTER JURISDICTION OVER THIS CASE

1. Plaintiff Has Suffered a Cognizable Injury in Fact

Plaintiff has suffered a cognizable injury in fact as a result of Defendants' actions in carrying out their criminal enterprise. First, as described below, Plaintiff has been harmed in his business or property which is what is required for standing under RICO.

Second, Defendants are liable to Plaintiff for theft in taking and refusing to turn over property belonging to Plaintiff. Plaintiff has a property interest into all documents he requested from State Department. A right created by statute, such as FOIA, constitutes a property interest. *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) (gift of financial assistance constitutes a vested property right); *Crook v. Baker*, 813 F.2d 88 (C.A.6 (Mich.),

1987) (graduate has a property right in a master's degree revoked by University of Michigan, although University's revocation satisfied due process). Plaintiff has a vested property interest in the documents to which he is entitled under FOIA. FOIA commands that an agency "shall" provide the records requested. The requirement to make a reasonable search is a separate provision:

5 U.S. Code § 552 (a)(3)

(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, ***upon any request for records*** which

(i) reasonably describes such records and

(ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, ***shall make the records promptly available to any person.***

(B) In making any record available to a person under this paragraph, ***an agency shall provide the record in any form or format requested by the person*** if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In ***responding under this paragraph to a request for records***, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(Emphases added.) Thus, it is simply false that the FOIA requires only a reasonable search and production of what exists and nothing more. The reasonable search provision is a procedure, not the only substantive right.

FOIA's command that the relevant agency "***shall***" deliver responsive documents is in fact enforceable by litigation. 5 U.S. Code § 552 (a)(4)(B) provides:

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.

5 U.S.C. § 552 (a)(4)(B). As a result, the Plaintiff has a property interest created by statute in receiving a copy of the documents requested, which FOIA requires the agency to provide to the Plaintiff.

The Court recognized that ... ***a property interest may be created by statute as well as by contract.*** *Id.*, at 571, 92 S.Ct., at 2706.

Arnett v. Kennedy, 416 U.S. 134, 165, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974) (*emphasis added*) (citing to *Cf. Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701 2709, 33 L.Ed.2d 548).

The case law clearly establishes that a property interest can be created through a statutory entitlement, the operation of institutional common law, or through principles of contract law. In addition to *Sindermann* the Supreme Court has stated explicitly: "A property interest in employment can, of course, be created by ordinance or by an implied contract." *Bishop v. Wood*, 426 U.S. 341, 344, 96 S.Ct. 2074 2077, 48 L.Ed.2d 684 (1976). *Accord, Jago v. Van Curen*, 454 U.S. 14, 18-19, 102 S.Ct. 31, 34-35, 70 L.Ed.2d 13 (1981) (per curiam); *Leis v. Flynt*, 439 U.S. 438, 442, 99 S.Ct. 698, 700, 58 L.Ed.2d 717 (1979) (per curiam).

Vail v. Bd. of Educ. of Paris Union School Dist. No. 95, 706 F.2d 1435, 1438 (C.A.7 (Ill.), 1983)

... ***Rather "property" denotes a broad range of interests that are secured by "existing rules or understandings." A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.***

Id.

The Fourteenth Amendment's protection of 'property,' however, has never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read broadly to extend protection to 'any significant property interest,' *Boddie v. Connecticut*, 401 U.S., at 379, 91 S.Ct., at 786, including statutory entitlements. See *Bell v. Burson*, 402 U.S., at 539, 91 S.Ct., at 1589; *Goldberg v. Kelly*, 397 U.S., at 262, 90 S.Ct., at 1017.

Fuentes v. Shevin Parham v. Cortese, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)

The Defendants further concede that the Plaintiff alleges "According to Plaintiff, Defendants' alleged criminal racketeering caused him to suffer 'loss of valuable property, financial services and support, and . . . other business and pecuniary damages.'" *Id.* ¶

288. Motion to Dismiss of Bill and Hillary Clinton Page 5-6.

The Plaintiff has been deprived of a property right created by statute because the Defendants stole from the custody of the Department documents to which the Plaintiff is unequivocally entitled to under FOIA law.

Thus, under both RICO and the common law causes of action, the Plaintiff has suffered a cognizable injury in fact which establishes standing in this lawsuit.

2. Plaintiff Alleged Injury to his Business and Property

The Defendants concede that “. . . to have standing to pursue a civil RICO claim, a plaintiff need only show (1) injury to business or property and (2) that such injury was by reason of the substantive RICO violation.” Motion to Dismiss of Bill and Hillary Clinton Pages 8-9.

Plaintiff is a public advocate. Part of Plaintiff’s profession is to uncover government corruption through the release of government documents such as those sought with regard to Defendants and the Islamic Republic of Iran, as pled in the Amended Complaint and the Second Amended Complaint. The Plaintiff disseminates government information as his trade and profession, routinely releasing and uncovering scandals and other wrongful activities by government officials and agencies. The release of these documents is how Plaintiff carries out his function as a public advocate and is directly tied with his livelihood. This has been the Plaintiff’s professional employment for most of 21 years.

As indicated on his website:

Larry Klayman, founder of Judicial Watch and Freedom Watch, is known for his strong public interest advocacy in furtherance of ethics in government and individual freedoms and liberties. During his tenure at Judicial Watch, he obtained a court ruling that Bill Clinton committed a crime, the first lawyer ever to have done so against an American president.

See 2nd Am. Comp. ¶ 15, 131, 209, 213, 217, 222. Further, the Amended Complaint alleges in the following paragraphs:

78. The very purpose of communicating through a private computer email server and “off the books” private email address and account *was to conceal the contents of those communications from Plaintiff, from public discovery and from official scrutiny.*

See Amended Compl. ¶ 78; See 2nd Am. Compl. ¶ 67 (Emphasis added). This allegation is followed by many paragraphs alleging supporting facts in detail, such that the meaning and significance of the subsequent paragraphs is clear and it is further supported by specific, concrete, detailed factual allegations.

49. As a result, the concealment of approximately 62,490 emails to and from the U.S. Secretary of State *directly harmed the Plaintiff in the availability of the most relevant and the most important records of State,* given that the U.S. Secretary would be informed about or giving orders concerning the high-level issues and policies addressed by Plaintiff’s FOIA requests and the similar FOIA requests of other requesters.

(Emphases added.) See also Am. Complaint ¶¶ 47, 48. The Second Amended Complaint alleges that “the concealment and/or destruction of approximately 62,490 emails to and from the U.S. Secretary of State, through the fraudulent use of the wires and mail . . . directly harmed Plaintiff in obtaining records to which he was entitled to and has a proprietary interest, of the most relevant and the most important records, given that the U.S. Secretary would be informed about or give orders concerning the high-level issues and policies addressed by Plaintiff’s record requests.” 2nd Am. Compl. ¶ 50.

Due to his role as a public advocate, the Plaintiff depends on the support of the public in order to make a livelihood. As a result, Plaintiff is directly harmed because he cannot disseminate information that legally belonged to him if he is not provided the documents to which he has a legal right. If Plaintiff can no longer disseminate information to the public, Plaintiff will no longer receive the support of the public and earn a living doing his chosen profession as a public advocate who uncovers and prosecutes government corruption and abuse.

It is through the support of the public, through their financial support, that Plaintiff is able to earn a living. Thus, Defendants' engagement in the criminal enterprise substantially affects Plaintiff in his business and causes damage to his property interests and economic wellbeing. As a result, the Plaintiff has been directly harmed by the RICO criminal enterprise. As alleged in the "[t]he Defendants have misappropriated and thus converted the personal property (chattel) of Plaintiff . . . based on the intrinsic worth of the documents themselves and their use to Plaintiff's furtherance of his livelihood as a public advocate who investigates and prosecutes government corruption and abuse, with the intent to permanently deprive the Plaintiff and other information requestors access to [] documents . . ." 2nd Am. Compl. ¶ 320.

In addition, injuries to "business or property" may include lost wages. In *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005), the plaintiff alleged that corrupt police officers had fabricated evidence against him and falsely imprisoned him, which caused various forms of economic loss, including lost employment, lost business opportunities, and lost wages. The *Diaz* court distinguished loss of value from the right to earn wages and held that the latter form of economic harm was actionable under 18 U.S.C. § 1964(c). *Id.* at 900 n. 1.

3. Plaintiff Alleged that the Injury was Proximately Caused by a Pattern of Racketeering Activity

Defendants concede that "proximate cause . . . requires 'some direct relation between the injury asserted and the injurious conduct alleged.'" *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (quoting *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992)). To have standing to assert a claim under Section 1962(c), the plaintiff's injury must have a direct relationship to the conduct prohibited by that section—*i.e.*, the pattern of racketeering activity. *See Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 457 (2006) ("[T]he compensable injury flowing from a violation of [section 1962(c)] necessarily is the harm caused by predicate acts

sufficiently related to constitute a pattern” (quotation marks omitted)); *see also Simpson*, 744 F.3d at 713.

Plaintiff has more than established that his injury is proximately and directly caused by Defendants Hillary Clinton, Bill Clinton, and The Clinton Foundation, acting in concert to agree on, implement and further their conspiracy to violate RICO through their criminal enterprise. As alleged in the Amended Complaint and the Second Amended Complaint, Defendants have engaged in a criminal enterprise which has been the direct and proximate cause of the harm caused to Plaintiff. *See* Am. Compl. ¶ 288, 307, 313; *see also* 2nd Am. Compl. ¶ 16.

4. Plaintiff’s Injury is Redressable

In order for a case to be redressable, it need only be likely that a favorable court decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). RICO provides the Plaintiff with a means of recovery, in the form of proprietary and monetary damages, in order for Plaintiff to recover from the harm that was caused to him as a result of the illegal actions of the criminal enterprise.

Further, because the Defendants have custody or possession of the documents in question, having withheld and concealed them from Plaintiff and the Department since 2009, and continuing to this day, an order of this Court can provide complete redress to the Plaintiff. The predicate acts furthering a criminal RICO conspiracy and criminal enterprise, which illegally reaped millions of dollars for the Defendants. The documents, which constitute evidence of the RICO claims, are in the custody and possession of the Defendants and have never been in the possession of the State Department, thus not allowing for Plaintiff to receive this material evidence. This lawsuit against the private Defendants is the only means for the Plaintiff to obtain redress.

C. **PLAINTIFF STATES A VALID *BIVENS* CLAIM AGAINST ALL DEFENDANTS**

1. ***Bivens* Applies to the Extent Hillary Clinton May Have Acted in Her Official Capacity, but is not Applicable to The Clinton Foundation, Bill Clinton, or Hillary Clinton while Acting Outside of Her Official Capacity.**

Defendants concede that a *Bivens* claim does not apply to Defendant Bill Clinton or Defendant The Clinton Foundation because they are not government officials.

A *Bivens* claim does not apply to Defendant Hillary Clinton because she was not acting in her role as a government official. Engaging in a criminal RICO conspiracy is outside of the Secretary of State's authority and outside the scope of her official duties as a government official.

To the extent that the Court may determine that some or any of the actions by Defendant Hillary Clinton and the other Defendants were undertaken under color of federal authority and/or in her official capacity as a government official, the Plaintiff brings a *Bivens* claim.

A "Bivens Action" exists whenever constitutional rights have been violated and no other remedy for relief is available. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) (holding that individuals have an implied cause of action against federal government officials who have violated their constitutional rights). In addition to injunctive and other equitable relief, Plaintiff's prayer for relief also requests "other such relief as this court may deem just," which necessarily includes any monetary damages which would be appropriate to compensate Plaintiff for the harm done to him under this, a "*Bivens* Action."

A plaintiff bringing a claim under *Bivens* must simply allege that he has been deprived of a constitutional right by a federal agent acting under color of federal authority. *See Bivens*, 403 U.S. at 389. Further, a plaintiff in a *Bivens* action need only allege facts indicating that the defendants were personally involved in the claimed constitutional violation. *Arar v. Ashcroft*,

585 F.3d 559, 569 (2d Cir. N.Y. 2009) citing *Ellis v. Blum*, 643 F.2d 68, 85 (2d Cir. 1981).

Bivens serves to deter future constitutional violations by holding federal officers accountable for unlawful actions and provides victims with the only viable compensation for the injuries they suffered. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 70 (2001).

Plaintiff has alleged more facts than necessary for a *Bivens* cause of action for their unconstitutional actions of depriving Plaintiff of his due process rights under the First Amendment to the U.S. Constitution. Defendant Hillary Clinton was the U.S. Secretary of State. Am. Complaint ¶ 8; 2nd Am. Complaint ¶ 20.

Plaintiff has alleged that Defendant Hillary Clinton violated the constitutional rights of the Plaintiff. Am Complaint ¶ 306; 2nd Am. Complaint ¶¶ 3, 344, 346, 350, 352.

Defendant Hillary Clinton, to the extent acting in her official capacity, abridged and violated Plaintiff's First Amendment right of freedom of speech and association by significantly disallowing Plaintiff and his constituent supporters discord to discuss and disseminate to the public and citizenry in the public interest what the Defendants have done and will do with regard to Iran and their criminal enterprises by not providing the misappropriated records and documents which Plaintiff is entitled to under FOIA law. Am. Complaint ¶ 310; 2nd Am. Complaint ¶¶ 344-348, 350-353.

By reason of the wrongful conduct of the Defendants, each and every one of them, jointly and severally, Plaintiff has suffered harm in the form of having his rights violated. Specifically, his property rights and economic interests have been violated, his loss of his property and rights and economic damage under the due process clause of the U.S. Constitution. Am. Compl. ¶¶ 307, 312; 2nd Am. Compl. ¶¶ 344-348, 350-353.

Specifically, the Second Amended Complaint alleges in detail:

16. The Plaintiff's injuries, including the deprivation of his legal rights and legally protected vested property rights, are proximately related to the illegal conduct of Defendants, each and every one of them, jointly and severally as pled herein with specificity.

33. Defendants have misappropriated – that is, stolen – the documents which are rightfully Plaintiff's property under relevant records management and archive laws.

34. Defendants have misappropriated – that is, stolen – the documents which Plaintiff is entitled to as a vested property right and property pursuant to FOIA law.

96. The Plaintiff specifically requested under the Freedom of Information Act all of these documents and records to which he is entitled under law about such waivers from the U.S. Department of State, but was denied access to these documents because they were misappropriated, concealed and/destroyed by Defendants. Those documents, which are by law the property of the Plaintiff as the lawful requestor of those documents, were admittedly contained on the Defendants' private email server. But Defendants, acting in concert as overt acts in furtherance of their criminal RICO conspiracy, through the fraudulent use of the wires and mails, and other criminal means, then deleted and destroyed 32,000 of them illegally.

292. Defendants agreed to and took a number of pled overt acts to conceal and destroy official government documents such that they were not available to be searched and produced to the Plaintiff. Under FOIA, Plaintiff had a vested property interest in these documents. Defendants intended to did agree to devise and operate a covert conspiracy and criminal RICO enterprise of trading political favors and governmental acts in exchange for donations, which are bribes, pursuant to 18 U.S.C. § 201, to Defendant The Clinton Foundation and/or speaking fees to Defendants Bill and/or Hillary Clinton, which benefited all of the Defendants.

295. In responding to the Plaintiff's subject FOIA request State, its Defendant Hillary Clinton's then Chief of Staff Cheryl Mills, and at Defendant Hillary Clinton's and the other Defendants' direction, fraudulently used the wires and mails to lie to Plaintiff and to the lower court, as they claimed that there were no responsive documents. This was one of many overt acts in furtherance of Defendants' conspiracy to engage in and reap the financial benefit of their criminal RICO enterprise, and to damage the property and other economic interests of the Plaintiff, who as a public advocate earns an income by obtaining documents uncovering scandal and promoting ethics in government.

346. Defendants, each and every one of them, acting in their personal and official capacities, violated the constitutional rights of the Plaintiff and those similarly situated by intentionally violating the rights of all those within the United States.

347. By reason of the wrongful conduct of the Defendants, each and every one of them, jointly and severally, Plaintiff has suffered harm in the form of having his rights violated under FOIA, his business and property rights have been violated, and his loss of his rights and property under the due process clause of the U.S. Constitution.

352. By reason of the wrongful conduct of the Defendants, each and every one of them, jointly and severally, Plaintiff has suffered harm in the form of having his First Amendment rights violated, his business and property rights have been violated, and his and his freedom of speech and association have been severely comprised, guaranteed to Plaintiff under the U.S. Constitution.

2. Even if *Bivens* Applies, Plaintiff Has a Constitutional Right to the Records Unlawfully Withheld

By depriving the Plaintiff of the documents, which are also not coincidentally material evidence in this case, the Defendants have deprived the Plaintiff of his constitutional right to property under the Fifth Amendment to the U.S. Constitution and his political rights of free speech and freedom of association under the First Amendment in distributing the information as part of his professional activities as a public interest advocate. Indeed, preventing public knowledge of the Defendants' activities – preventing public and political discussion of their actions which is Plaintiff's trade and profession and from which he earns his livelihood as a public advocate who investigates and prosecute government corruption and abuse – is precisely the *gravamen* of the Defendants' conspiracy of obstruction of justice and the theft and apparent destruction of documents.

Congress has granted the right by statute to a FOIA requester to receive the documents requested. Therefore, the Plaintiff has a property right to receive copies of the records legitimately requested under FOIA.

The deprivation of the Plaintiff's property right, interfering with his free speech rights to uncover, expose, and publicize government activity, is a violation of his constitutional rights.

Even under general common law, the U.S. Supreme Court already recognized a limited First Amendment right of access to information from court proceedings. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). However, the passage of FOIA modified prior common law and now gives an express statutory right to the documents. As a result, there is a constitutional right to obtain the documents requested if they fall within the scope of the statute:

Not only is it uncontested that the requested information meets the general category of information for which FOIA mandates disclosure, but for the reasons set forth above, we have concluded that it falls within an express statutory exemption as well. It would make no sense for Congress to have enacted the balanced scheme of disclosure and exemption, and for the court to carefully apply that statutory scheme, and then to turn and determine that the statute had no effect on a preexisting common law right of access.

Center for Nat. Sec. Studies v. Dept. of Justice, 331 F.3d 918, 937 (D.C. Cir., 2003).

3. This Case Does Not and Cannot Preclude a *Bivens* Action as It is Not a FOIA Case

A *Bivens* action is precluded where another remedy is available. It is the essence of *Bivens* that it provides a remedy when there is no other relief available.

Here, however, neither FOIA nor any other legal remedy is available because the Defendants concealed and stole 62,490 documents from the Department, and returned only 30,490 of the documents. The Defendants are still in possession of approximately 32,000 documents that the Department does not have. The Department still does not have – and has never had – possession of those 32,000 other documents.

The FOIA litigation by Freedom Watch cannot obtain any legal relief with regard to the 32,000 documents that the Department does not have access to because the Defendants stole

them. The court hearing Freedom Watch's FOIA litigation has no jurisdiction over the Defendants here. Those FOIA cases cannot reach these Defendants at all.

As the Plaintiff alleged in the Amended Complaint: [Now set forth at ¶ 44 in Second Amended Complaint.]

43. Departmental personnel could not locate responsive documents that were intentionally and knowingly kept hidden within Defendant Hillary Clinton's personal email system for the very purpose of Defendant Hillary Clinton preventing their discovery, and especially those emails already deleted from her private server.

And: [Now set forth at ¶ 49 in Second Amended Complaint.]

48. State's search for records responsive to the Plaintiff's FOIA requests was inadequate because the Defendants knowingly and intentionally concealed approximately 62,490 records from official State record-keeping until around two years after Hillary Clinton left office and admitted destroyed over 32,000 of those records.

And: [Now set forth at ¶ 50 in Second Amended Complaint.]

49. As a result, the concealment of approximately 62,490 emails to and from the U.S. Secretary of State directly harmed the Plaintiff in the availability of the most relevant and the most important records of State, given that the U.S. Secretary would be informed about or giving orders concerning the high-level issues and policies addressed by Plaintiff's FOIA requests and the similar FOIA requests of other requesters.

And the Plaintiff alleged in the Amended Complaint:

92. The Plaintiff specifically requested under the Freedom of Information Act all of these documents and records about such waivers from the U.S. Department of State, but was denied access to these documents under FOIA from the U.S. Department of State in part because the Defendants here concealed those documents on the Defendants' private email server and then deleted 32,000 of them illegally.

But the Plaintiff has further specified this allegation in the Second Amended Complaint as follows:

96. The Plaintiff specifically requested under the Freedom of Information Act all of these documents and records to which he is entitled under law about such

waivers from the U.S. Department of State, but was denied access to these documents because they were misappropriated, concealed and/destroyed by Defendants. Those documents, which are by law the property of the Plaintiff as the lawful requestor of those documents, were admittedly contained on the Defendants' private email server. But Defendants, acting in concert as overt acts in furtherance of their criminal RICO conspiracy, through the fraudulent use of the wires and mails, and other criminal means, then deleted and destroyed 32,000 of them illegally.

As the U.S. Court of Appeals for the District of Columbia Circuit made clear, a *Bivens* claim becomes unavailable in light of a FOIA claim only to the extent that the plaintiff can obtain relief under FOIA:

Johnson's complaint attempted to state a constitutional claim for damages against Gay, alleging that her mishandling of the FOIA request violated his constitutional right to due process under the Fifth Amendment. Johnson argues that this violation demands the implementation of a *Bivens*-type remedy. See *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). It is clear that courts are precluded from granting such relief if the statute at issue provides a "comprehensive system to administer public rights." *Spagnola v. Mathis*, 859 F.2d 223, 228 (D.C.Cir.1988) (en banc). The district court refused to fashion such a remedy for Johnson because it found that FOIA represents just such a comprehensive scheme, which provides requesters with the potential for injunctive relief only, either to enjoin the withholding of documents or to compel production of agency records. See 5 U.S.C. § 552 (a)(4)(B); *Johnson v. EOUSA*, No. 98-729, slip op. at 5-6 (D.D.C. May 4, 2000).

Johnson v. Executive Office for U.S. Attorneys, 310 F.3d 771 (D.C. Cir., 2002). Here, however, the Plaintiff cannot obtain any relief under FOIA because the court hearing the FOIA litigation has no jurisdiction or reach over these Defendants pursuant to FOIA.

In sum, while Defendants concede *Bivens* is not necessary to adjudicate Plaintiff's claims against Defendants Bill Clinton and The Clinton Foundation as they acted as private citizens and not government officials, and Defendant Hillary Clinton also acted in her personal capacity, as pled in the Amended Complaint and Second Amended Complaint, in furtherance of the criminal RICO conspiracy, if Defendant Hillary Clinton is found to also be acting in her official capacity, *Bivens* was properly pled as to the claims against her.

D. PLAINTIFF STATES A VALID CLAIM FOR CONVERSION OF PLAINTIFF'S PROPERTY

To prevail on a claim for civil theft or conversion under Florida law, “a plaintiff must show ownership of the subject property and . . . that the other party wrongfully asserted dominion over that property.” *Prou v. Giarla*, No. 13-24266-CIV, --- F. Supp. 3d ----, 2014 WL 6725213, at *10 (S.D. Fla. Nov. 26, 2014) (alteration in original) (quotation marks omitted).

Defendants destroyed emails and material evidence which Plaintiff was entitled to by law, concerning her sale of waivers as Secretary of State to do business with the Islamic Republic of Iran and her participation in the criminal release of classified government information involving American and Israeli cyber-warfare and other military operations to destroy or severely cripple Iranian atomic centrifuges and of classified Israeli war plans for a preemptive air attack on Iranian nuclear facilities. *See* Am. Compl. ¶¶ 2, 34-37, 38-41, 91-99, 111-121; 2nd Am. Compl. ¶¶ 6, 12, 13, 14, 35, 36, 37, 38, 39, 40, 41, 65, 83, 95, 96, 99, 100, 101, 102, 103, 106, 108, 165, 167, 168, 208, 268, 294. As shown in this brief, under law, Plaintiff had a property ownership of the documents requested from the time that he made the request. Defendants wrongfully kept and in-effect stole the documents from Plaintiff after the documents were requested, hiding them in their own private email servers, and keep them from Plaintiff. In doing so, Defendants wrongfully asserted dominion over Plaintiff's property and committed the tort of conversion.

IV. CONCLUSION

As set forth above, Plaintiff has pled with great specificity in his Amended Complaint and now in even greater specificity in his Second Amended Complaint all of the operative facts evidencing an agreement by the Defendants to conceive of, enter into, and further – through numerous overt acts – a criminal, RICO conspiracy through their criminal enterprise. The

documents which Plaintiff is entitled to and the illegal means as pled to deprive Plaintiff of these documents, are material evidence of this conspiracy and criminal enterprise, which was conceived of, implemented and furthered to obtain – through the fraudulent use of the mails and wires, obstruction of justice and through bribery – millions of dollars for the Defendants and their co-conspirators.

Accordingly, this is not a FOIA case; it is a textbook RICO case. Defendants, Bill and Hillary Clinton and their Foundation, have for many years evaded the long reach of the law, but few, if any, can now try to refute, even their most ardent supporters, that they have broken the law and must be held accountable. They are not “above the law.” We are reminded this July 4, 2015 holiday that our Founding Fathers conceived of, fought for and died to create a nation of laws and not men. The Defendants are no exception.

This case must therefore proceed to discovery. If Defendants wish to challenge the developed facts, they are free to move for summary judgment, but at this stage of the case, this Court must respectfully deny Defendants’ motions and allow the case to proceed based on the well-pleaded RICO and common law facts in the Complaint, Amended Complaint and Second Amended Complaint.

Trial has been scheduled for January 25, 2016 and a jury of Defendants’ peers must ultimately render judgment.

Oral argument is respectfully requested.

Dated: July 2, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2015, a true and correct copy of the foregoing (Case No. 9:15-cv-80388) was filed via CM/ECF and served upon the following:

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