10-1241

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APRIL GALLOP, for herself and as Mother and Next Friend of ELISHA GALLOP, a Minor

Plaintiffs-Appellants

– vs. –

DICK CHENEY, Vice President of the U.S.A., DONALD RUMSFELD, former U.S. Secretary of Defense, General RICHARD MYERS, U.S.A.F. (Ret.), in their individual capacities

Defendants-Appellees

– and –

JOHN DOES Nos. 1-X, all in their individual capacities

Defendants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY-BRIEF FOR PLAINTIFFS-APPELLANTS

MUSTAPHA NDANUSA
26 COURT St., Suite603
Brooklyn, New York 11242
(718) 825-7719

DENNIS CUNNINGHAM
115-A Bartlett St.
San Francisco, CA 94110

WILLIAM W. VEALE
2033 North Main Street, # 1060
Walnut Creek, CA 94596

Attorneys for Plaintiffs-Appellants

ALICIA SIMMONS
Assistant United States Attorney
86 Chambers St, 3rd Floor
New York, New York 10007

Attorney for Defendant-Appellees

The Government, our Government, finds that the sweeping, know-nothing determination by the District Court against the plaintiffs in this case relieves them of any need to discuss the facts alleged in the Complaint; so they are happy to simply write the Clerk a letter about their hopes for this Court's response to plaintiff's appeal. Rather than address the particulars of the awful conspiracy plaintiffs allege, they adopt the highly offended sensibility of the district judge, scorning the very idea of such a great betrayal of the country by its highest officials. Their chosen form of address leaves no doubt that they have no doubt—or feel they need have no doubt—that this Court will peremptorily follow suit.

In taking this position, however, defendants have ignored not only the facts alleged but the legal issues plaintiff has raised on appeal, clearly in hopes that a similar, emotion-based reaction will sweep all before it in this Court—including any niceties required by fair application of the Supreme Court's decision in *Ashcroft v. Iqbal*, 129 S.Ct 1937 (2009), in which the court below found his authority for dismissal. In point of fact, the court below misappropriated the authority of *Iqbal*, as cover for its arbitrary, emotion-based Judgment dismissing the plaintiff's well-founded, exceedingly fact-intensive complaint, which this Court is now asked to overturn.

I. DEFENDANTS HAVE NOT MET THE ARGUMENT THAT THE PROCEDURAL TEST PRESCRIBED IN *ASHCROFT V IQBAL* WAS NOT FAIRLY AND PROPERLY APPLIED BY THE DISTRICT COURT.

Iqbal prescribes an assessment of the allegations in the complaint in which the court determines which of them are "disentitled to be taken as true" for purposes of Rule 8, because they are "conclusory", and not "concrete". The Court is then to measure the adequacy of the remainder to support the plaintiff's claims.

Manifestly, the District Court did not complete this process; indeed he barely began—taking up just two of the dozens of specific factual assertions, one quite undeniable (the interceptors didn't intercept), the other crucially misrepresented by the Court (saying the many warnings of the imminent attack were "missed", where they were in fact quite clearly received, and then studiously ignored, by defendants and their cohorts in the government's highest circle)—and then threw up his hands. Instead, he made a classic autocratic decision: '*I don't care what the facts are*! The very idea is cynical and delusional fantasy, and I find it absolutely frivolous, and therefore "implausible" under *Iqbal*, *regardless of what facts might be established and/or are entitled to be taken as true*. I won't hear of it.' That is the essence of what the Court said, and did. See Mem Decision, pg.11, **JA. 172**.

But this was a perversion of the holding in *Iqbal*, which clearly required the Court to consider all the allegations put forth, winnow them with explicit findings of "conlusory-ness" *vel non*; and then take up those which survive to weigh the legitimate basis on which plaintiffs will or will not be allowed to proceed (or amend). Instead, the court below reacted with exasperation, to say the least, and little else.

Temporizing now, defendants again echo the District Judge in parsing the plaintiff's ability to register the crashing of a large airliner into the building around her (assuming she had somehow miraculously not been killed by it), despite having been briefly unconscious from the explosion that did occur. They call her statement that there was no sign of a plane crash "the only actual facts (*sic)* Gallop alleges", and then, like the Judge, proceed to dismiss it. (Letter, p.4) In fact Gallop alleged further that a number of other people in the area also said they saw no sign of a plane crash; that the façade of the building while still intact showed no sign of a crash, as confirmed by the photographs; that the "black box" data recorder and much other concrete information showed the plane had flown over the building not into it; that the Air Force "doomsday plane" was aloft in the area; and that the Government is withholding videotapes that would show what really happened. (See Complaint, ¶ 4, pg 3, **JA.11**; ¶ 6, pg 4, **JA.12**; ¶ 43, pg 19-

20, **JA.27-28**). Like the District Court, defendants simply dismiss this huge balance of plain facts as "speculation and conjecture", rather than accounting for them (which of course they cannot do).[1] The rule of *Iqbal*, its legitimate purpose, and the procedure it specifies, require much more than that.

In similar attempted misdirection, they again parrot the court below in asserting that the purpose of the conspiracy to bomb the Pentagon, as alleged by plaintiff, was to destroy records of missing funds—where in actuality we clearly merely noted the fact of Rumsfeld's announcement of the $2.3 trillion dollar defalcation, in passing, as possibly furnishing a possible basis for some possible additional, collateral motive of defendants (or some of them). See Complaint, ¶ 42, pg 19, **JA. 27**. As can readily be seen, the point is not in any way crucial to the case made out, yet they rely on it as a fatal 'implausibility.' Again, the myriad concrete facts actually alleged by plaintiff are ignored, as is—most conspicuously in light of the Mineta testimony (and the fable defendant Cheney recounted at the American

[1] It is noteworthy that, in describing the plaintiff's allegations the writers of the letter eschew use of the term "defendants", or "appellees", in favor of "the Government", at several points. Thus they write: the plaintiff alleges "the Government missed warnings"; "the Government did not deploy" the fighter jets; "the Government conspired to enable a terrorist attack", etc, etc. Plaintiff very much rejects the insinuation. Plaintiff charges that an outlaw cabal of government officials and undoubtedly others, misappropriating government authority in nefarious ways, is who did this; not "the Government" of our country—though that Government is indeed defending the culprits now, writing the briefs, withholding key evidence, and otherwise aiding the ongoing cover-up in still-unknown ways…

Enterprise Institute in May, 2009, a new fact), showing timely awareness of the approaching plane—the fact that no warning was given, and no alarm sounded, when there was ample time to save and protect the plaintiff and her child, and many others; and while the defendants themselves were protected.

Besides this the Court lists a number of other evidentiary points from the Complaint at the outset of the Decision, apparently as objects of his scorn, but never returns to them. See, Mem Decis p.4-5, **JA 165-166.**

We say again, that is not how the rule for determining 'entitlement to be taken as true' works, under *Iqbal*, or is said to work, or can work. Rather, it requires an accounting for <u>all</u> the facts alleged, not random selections marshaled into an untethered, subjective determination—and we say again, an emotional one—that the underlying claim is in effect legally implausible and must be dismissed because it outrages the Court. This wrongful response clearly entitles plaintiff to relief in this Court by Remand (if the Court will not simply and honestly, if regretfully, affirm the undoubted factual sufficiency of the Complaint as it stands), directing that a proper and complete assessment of the Complaint and the supporting allegations and evidence be made, according to *Iqbal*, so that any decision to dismiss it can itself be fairly assessed.

II. THE PLAINTIFF WAS ENTITLED TO AN OBJECTIVE DETERMINATION OF FRIVOLOUSNESS, IN THE CIRCUMSTANCES, AND HAD THE RIGHT TO PRESENT EXTRINSIC PROOF TO REFUTE THAT CLAIM BY DEFENDANTS

Plaintiff is entitled to reversal and remand under *Iqbal*, as argued above, unless it can be said by this honorable Court that, in law, the district judge enjoyed unfettered discretion to make the fatal determination of frivolousness, with explicit disregard for the facts, and to dismiss the complaint *sine die* based completely on his own personal revulsion at the very idea of such impudent claims even being made; without any legal standard being applied, per *Iqbal* or otherwise.[2]

Defendants also ignore and clearly hope this Court will ignore this second issue, namely, whether there is—or ought to be, in a given case, or in this case—some objective measure of supposed frivolousness, and a right of the plaintiff to bring extrinsic evidence before the court to refute it. This implicates the Appendix plaintiff filed in opposition to the motion to dismiss, and particularly the extensive roster therein contained of respectable mainstream people who have endorsed all or part of the conspiracy and

[2] This is not to say complaints can never be adjudged frivolous on their face (apparently including the 9-11 cases the District Court cited), but—again implicating *Iqbal*, to say nothing of *Conley v. Gibson*—the merits of a claim of frivolousness must be tested by Law, not emotion. Suffice to say fair analysis shows the instant complaint qualifies itself, categorically, by positing a coherent, cogent scheme of 'non-conclusory' facts showing a fair basis for liability, where the others did not.

cover-up theories now alleged—along with dozens of eye- and ear-witness testimonies about explosions inside the towers before they fell, the expert affidavits about aerodynamics, flight data recording, FAA flight control procedures, and the comprehensive description of the totality of evidence showing that '9-11 was an inside job', by Professor David Ray Griffin.

The court below dismissed the point implicitly in his footnote declining to consider these materials (Mem, Decis, fn.1, pg. 8, **JA. 169**), despite their clear relevance in showing the substantial and serious foundation of the claims under attack, the broad support they have among qualified professionals in relevant fields, occurrence witnesses, and the Public, and the overwhelming refutation they make of the assertion that the case is frivolous. He dismissed everything else explicitly, because he absolutely will not consider the possibility of this alleged high treason: "Even assuming the factual allegations of the complaint are true, Gallop's claims are not plausible," so he says.

But it doesn't wash, legally, in the face of the detailed narrative presented. Thus, it is absolutely true that there was 'real time' civilian and military knowledge of the approaching rogue plane, that all concerned knew at the time that 'the nation was under attack', and that no defense of the building was made, by fighter planes or otherwise, and no warning of the

impending danger was given. And certainly it is not "disentitled to be taken as true", per Rule 8 and *Iqbal*, that a standdown order for the aerial defenses was affirmed by Cheney in the bunker, at "Ten miles out", as testified to by Secretary Mineta; there is nothing "conclusory" about that, or any of it. How then is the cause of action for conspiracy—let alone not being warned and moved to safety—at all deficient?

Further, is it disputable that no inquiry was made by these command defendants afterwards, urgently or otherwise, to learn how the defenses had failed, and fix responsibility. Instead, they started a war on the other side of the globe, then another, in defiance of fundamental International Law; and since then, U.S. forces have dug in deeper and deeper in the oil region, building massive military fortifications in five or six countries. This was precisely the geo-political objective which required "a new Pearl Harbor", as envisioned in "Rebuilding America's Defenses", the conspirators' manifesto, in 1998…[3]

[3] …and please notice here that we haven't yet reached the issue of whether the plane actually hit the Pentagon—where no picture shows it (fact), pictures show it didn't (fact), plaintiff (and others) saw in person that it didn't happen, and the black box and much other concrete evidence confirms it. These are also facts entitled to the presumption of truth, and obviously of fundamental importance in getting at the true nature and extent of the conspiracy which led to the plaintiffs' injuries and loss of rights. To ignore them, or call them "conclusory", and thus "disentitled" to the presumption per Rule 8, is simply dishonest.

Not to get away from the point: the District Court condemned the Complaint as frivolous based on a gut reaction, plain as a pikestaff and no bones about it in his Decision. The plain error, the prejudice, and the untoward submergence of legal judgment in emotional (and political) high dudgeon infecting the decision, throughout—and specifically here, in the refusal to allow evidence showing the claims were legitimate, and could be expanded—is patent. The plaintiff's resulting entitlement to reversal by this Court, and—if not outright affirmation of the validity of the Complaint as it stands—a remand also directing consideration of the evidence showing non-frivolity, is patent also.

III. THE COMPLAINT WAS FACTUALLY SUFFICIENT TO BEGIN WITH, BUT ALSO WAS, AND REMAINS, FULLY AMENABLE AND OPEN TO AMENDMENT, TO ACCOMMODATE THE CONTINUING FLOW OF ADDITIONAL PUBLIC, EXPERT, AND TESTIMONIAL EVIDENCE SUPPORTING PLAINTIFF'S THEORIES OF CONSPIRACY AND COVER-UP.

We also appealed from the District Court's entry of judgment with prejudice, where, in the view he took, there obviously was no room for the possibility of any amendment that could make the claims of conspiracy and treason against the Vice-president and the Secretary of Defense stand up. We have said, nevertheless, that the materials collected in the Appendix—and by now a good deal of still later-added information and reference,

discussed in the Opening Brief—can, if more is thought needed, materially supplement the breadth and depth and strength of the *prima facie* case we have asserted against these exalted personages (also including Gen. Myers and no doubt several of the Johns Doe); and we have shown it.[4] Plaintiff is entitled to relief in this aspect also.

CONCLUSION

Of course there are various aspects of the story in various versions that various people have gathered and held in their minds over these ten years, which readily focus a skeptical response; e.g, 'Well, if Flight 77 didn't hit the Pentagon, what happened to it?' or, 'What about the phone calls from the planes?' Well, Flight 77 was crashed somewhere, because they (apparently) retrieved the bodies (even though they say the plane "vaporized" when it hit the Pentagon, so that is why there was no sign of it afterwards), so that remains to be investigated. Likewise, cell phone calls

[4] Indeed a most striking addition to the plaintiffs' ever-growing showing, as advertised in our Opening Brief, has just emerged in the form of the "Building What?" television advertising campaign in New York City—in which a number of surviving family members of persons killed on 9-11 are publicly demanding a new investigation—and a striking recent broadcast by the Fox News TV reporter Geraldo Rivera, formerly a strong de-bunker of 9-11 conspiracy theories, where he invites a registered engineer to tell him, on camera, that WTC Building 7 ("Building *what*?!?!")—which he shows repeatedly melting to the ground in free fall, a phenomenon entirely ignored by the 9-11 Commission—could only have been destroyed as you see it was by "some form of demolition device" which put it in free fall. Whereupon Geraldo tells us, "Well, I certainly am much more open-minded about it than I was…."). And open mind, that's all we ask. See Geraldo (and Bldg 7) at http://buildingwhat.org/buildingwhat-appears-on-geraldo-at-large-on-fox-news .

were not possible from high altitude at the time—as the FBI demonstrated in the "20th hijacker" (Moussaoui) trial in 2006; whereas it was possible to closely simulate individual speech, in the call that did go through ("Hello, Mom. This is Todd Beamer"), by "voice-morphing" technology which has existed for years and is highly perfected. These are just examples of apparent contradictions the unwilling mind will seize on, in the effort to ward off the horrible truth. But the horror must be faced.

In which regard we also reminded this Court of previous "false flag" plans hatched by U.S. authorities in our time, such as 'Operation Northwoods" in the early 1960s, whereby elements in the military planned false attacks, approved up to the highest level and only vetoed by the President himself, to foment an invasion of Cuba; or the plot hatched in defendant Cheney's office as recently as 2007-08, whereby disguised U.S. Navy SEALS would attack American warships in the Persian Gulf, to provide U.S. forces with an excuse to unleash defendants' longed-for bombing assault on Iran.

And certainly, the bogus incident in the Gulf of Tonkin in 1964, used as the pretext to initiate full-scale, disastrous, lunatic, shock and awe warfare against Vietnam, a tiny country that had done us no wrong, was an absolute evil, organized and enacted on a scale easily equivalent to the betrayal

suggested by the evidence in this case, which provides ample precedent for belief in monstrous conduct by U.S. officials at the highest level—as if the vast, ghastly panoply of criminal invasion, occupation, slaughter, torture and chaos perpetrated in Afghanistan and Iraq by these defendants et al, on the wave of anger and outrage arising from "the new Pearl Harbor" they brought about on 9-11, wasn't proof enough of the absolute plausibility of the plot alleged.

Withal, we are well aware of the strong negative feelings the claims in this case are likely to raise in the breast of this High Court and its members, as they did in the Court below and the Justice Department, and the difficulties this involves; and more so of the pressures which could be anticipated, were either Court to authorize any form of evidentiary inquiry into the truth about 9-11 as called into question by plaintiff's conspiracy theories. We are not unsympathetic, having passed that way ourselves, as noted, but those are not considerations which can legitimately override the pure and clear procedural rights which the plaintiff asserts at this pleading stage, under Rule 8 as expounded in *Ashcroft v Iqbal*, and to full and fair, unbiased consideration of her claims. She is entitled to that at the very least, and to amend her complaint if the true need arises.

This complaint is anything but frivolous, as so many have recognized (38% of the Public in 2005, 1350-plus engineers and architects—go to AE911Truth.org—etc.) and as so much incontrovertible evidence clearly shows; indeed it is momentous, and horrendous, and undoubtedly its essential accusations are offensive and outrageous to many people. That does not give license to the Court to suppress it, contrary to law. The decision below must be reversed.

Respectfully submitted,

DATED: November 29, 2010
Brooklyn, New York

/S/ [Signature]
On the Brief:

Dennis Cunningham, Esq
115-A Bartlett Street
San Francisco, CA 94110
(415)-285-8091

William Veale, Esq
2033 North Main Street, #1060
Walnut Creek, CA 94596
(925)-935-3987

Mustapha Ndanusa, Esq
26 Court Street, Ste 603
Brooklyn, NY 11242
(718) 825-7719

Attorneys for Plaintiff-Appellants

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This reply-brief complies with the type-volume limitation of *Fed. R. App. P. 32(a)(7)(B)* because:

   X this brief contains 3110 words, according to 'statistics' registered by MSWord, excluding the parts of the brief exempted by *Fed. R. App. P. 32(a)(7)(B)(iii), or*

2. This brief complies with the typeface requirements of *Fed. R. App. P. 32(a)(5*) and the type style requirements of *Fed. R. App. P.* 32(a)(6) because:

   X this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman font size 14 point (footnotes in 12 point)

Dated: November 29, 2010
Brooklyn, New York

/s/ [Signature]
Mustapha Ndanusa, Esq.
Attorneys for Plaintiff-Appellant APRIL GALLOP and ELISHA GALLOP, a minor

CERTIFICATE OF COMPLIANCE WITH SECOND CIRCUIT RULE OF APPELLATE PROCEDURE 32(A)(1)(F)

1. The PDF version of this brief has been scanned for viruses using Norton 360

AntiVirus and no virus has been detected.

Dated: November 29, 2010
Brooklyn, New York

/s/ [Signature]
Mustapha Ndanusa, Esq.
Attorneys for Plaintiff-Appellants APRIL GALLOP and ELISHA GALLOP, a minor