

FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ISABEL G. ANDRADE, <i>et al.</i>	§	CIVIL ACTION NO. W-96-CA-139
	§	JUDGE WALTER S. SMITH
Plaintiffs,	§	
	§	and consolidated actions:
V.	§	<i>Holub v. Reno</i> W-96-CA-140
	§	<i>Ferguson v. Reno</i> W-96-CA-141
PHILLIP J. CHOJNACKI, <i>et al.</i>	§	<i>Brown v. U.S.</i> W-96-CA-142
	§	<i>Riddle v. Reno</i> W-96-CA-143
Defendants.	§	<i>Gyarfas v. U.S.</i> W-96-CA-144
	§	<i>Martin v. U.S.</i> W-96-CA-145
	§	<i>Holub v. U.S.</i> W-96-CA-146
	§	<i>Brown v. U.S.</i> W-96-CA-147
	§	<i>Sylvia v. U.S.</i> W-96-CA-373

**ANDRADE PLAINTIFFS' SECOND SUPPLEMENTAL APPLICATION
TO RECONSIDER DISMISSAL OF *BIVENS* CLAIMS
AGAINST DEFENDANTS JEFFREY JAMAR
AND RICHARD ROGERS**

1. The *Andrade* Plaintiffs are continuing to review the tens of thousands of pages of documents produced by the Government **after** the document production deadline of January 15, 2000. Plaintiffs have now located another document directly relevant to Plaintiffs' application to reconsider dismissal of the *Bivens* claim against Defendants Jamar and Rogers.

2. In addition to the "Action Summaries" previously supplied to the Court,¹ Plaintiffs have also now located a global summary prepared by the HRT leadership to support their application for medals and "substantial cash incentive

¹ Attached as Exhibits to the *Andrade* Plaintiffs' Supplemental Application to Reconsider Dismissal of *Bivens* Claims Against Defendants Jeffrey Jamar and Richard Rogers.

awards” to themselves and all HRT members for their actions at Mt. Carmel. Page 10 of the global summary describes the actions of the crew of CEV-2, the modified Patton tank operating on the black side of Mt. Carmel on April 19:

At mid-morning, SA’s XXXXX and XXXXX were given the **mission** of slowly and methodically beginning the **dismantling** of the large facility to the rear of the compound commonly called the “**gymnasium.**” Utilizing their CEV in a very **deliberate** and surgical manner, they began the **dismantling of the gymnasium** which required them driving their CEV [into] the gymnasium which exposed them to great danger if flammable liquids had been dropped or thrown on to the vehicle by the Branch Davidians. They continued with their **mission until half of the gymnasium had been dismantled** and the **roof completely collapsed**, parts of it onto their CEV.

A copy of the entire proposed HRT citation is attached to this Second Supplemental Application at Tab 1.²

3. Again, there can be no doubt that this “**mission**” was an unauthorized departure from the plan of operation that had been approved by the Attorney General and the FBI leadership for April 19, 1993. Moreover, it is clear that a cover-up has been engineered by various HRT personnel, whose testimony under oath directly contradicts their own internal documents. The Plaintiffs refer the Court to exhibits 19 and 24, excerpts from the testimony taken in this proceeding from the driver and passenger of CEV-2, concerning their instructions on April 19, 1993, including the following:

² Pursuant to the provisions of the Amended Protective Order, this exhibit is being filed under seal, contemporaneously with a motion for same.

Q: You were systematically demolishing the gym bit by bit.
You were tearing it down weren't you?

Witness: No,³ we were not destroying the building. We were very

Both the driver and passenger of CEV-2 on April 19, 1993, testified that they were acting pursuant to instructions from Defendant Richard Rogers.⁴

3. Just as the April 19 FLIR is the "smoking gun" proving government gunfire on April 19, these internal HRT documents are the "smoking gun" with respect to the *Bivens* liability of Defendants Jamar and Rogers in ordering a radical departure from the approved plan of operation for April 19. At the same time the FBI continued to broadcast "This is not an assault. We are not coming in. You will not be harmed," the unauthorized destruction of Mt. Carmel by the tanks fed the Davidians worst fears.

Respectfully submitted,

Michael A. Caddell
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³ Tab 19, p. 45, l. 15-22.

⁴ Tab 19, p. 108, l. 8-25; Tab 24, p. 80, l. 18 - p. 81, l. 6.

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CERTIFICATE OF SERVICE

I certify that on February 4, 2000, I have served a true copy of the foregoing to the following by fax:

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