

MARCEL FONTAINE,

*Plaintiff,*

V.

ALEX E. JONES, INFOWARS, LLC,  
FREE SPEECH SYSTEMS, LLC and  
KIT DANIELS,

*Defendants.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, T E X A S

459th JUDICIAL DISTRICT

**DEFENDANTS' MOTION TO DISMISS**  
**UNDER THE TEXAS CITIZENS PARTICIPATION ACT**

Defendants Alex Jones (“Jones”), Infowars, LLC (“InfoWars”), Free Speech Systems, LLC (“Free Speech”) and Kit Daniels (“Daniels”) (collectively, the “Defendants”), hereby file this “Motion to Dismiss under the Texas Citizens Participation Act” (Chapter 27 of the Texas Civil Practice & Remedies Code), and show the Court the following in support:

**I. OVERVIEW**

1. This defamation action is predicated on Free Speech’s inadvertent publication of an image (allegedly of Plaintiff) (the “Challenged Image”) - and an accompanying caption - on its website at [www.infowars.com](http://www.infowars.com) (the “InfoWars Website”) on February 14, 2018, the day of the shooting at Douglas High School in Parkland, Florida. Defendant Kit Daniels, a reporter for Free Speech (“Daniels”), obtained the Challenged Image from a third-party online source that had identified the Challenged Image as the Parkland, Florida shooter.<sup>1</sup> Free Speech then republished the Challenged Image with accompanying text commenting that the image was “another alleged photo of the suspect” (collectively, the “Challenged Publication”) on the

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<sup>1</sup> The Challenged Image - and its identification of the individual in the photo as the Parkland, Florida shooter - had been trending on social media during the day of February 14, 2018 prior to Free Speech’s publication of the Challenged Image on the InfoWars Website.

InfoWars Website. As the news surrounding the shooting quickly developed during the hours immediately after publication of the Challenged Publication, Daniels realized that the original source (and trending social media) had misidentified the Challenged Image as the Parkland shooter. Upon this realization, the following morning (roughly thirteen hours after its original publication), Free Speech immediately removed the Challenged Publication from the InfoWars Website. It also later published a retraction and correction confirming that the original webpage had included a “photograph of a young man” that Free Speech had incorrectly stated was of the suspected Parkland shooter. At no time did Free Speech ever identify the Plaintiff by name or otherwise. Free Speech also never published the Challenged Image in any other format (on social media or otherwise) nor engaged in any other publication (or re-publication) of the Challenged Image.

2. Despite these prompt remedial efforts, the Plaintiff has filed this action asserting causes of action for defamation, intentional infliction of emotional distress, conspiracy and “respondeat superior” - each of which are predicated upon nothing more than Free Speech’s publication of the Challenged Image on the InfoWars Website for a matter of hours. In doing so, Plaintiff’s counsel has publicized to the world at large that the man in the image is Plaintiff Marcel Fontaine -- information that was never made public by the Defendants since Mr. Fontaine’s name was never used in the Challenged Publication. Moreover, Plaintiff’s counsel has injected numerous inflammatory, collateral, and irrelevant allegations concerning Mr. Jones and his affiliated entities supposedly dating back to 1999. None of these allegations has any bearing on the causes of action asserted by Mr. Fontaine in this matter, but instead underscore what this lawsuit is really about: an attack on Free Speech’s legitimate exercise of its constitutionally protected rights to comment about a matter of public concern.

3. Plaintiff's causes of action are subject to dismissal under Texas Citizens Participation Act (the "TCPA"). They are based upon, related to or in response to Defendants' exercise of the right of free speech and, more specifically, communications made in connection with a matter of public concern (within the meaning of the TCPA). As such, the Court must dismiss Plaintiff's causes of action and award Defendants their attorneys' fees and costs, along with sanctioning the Plaintiff for filing his legal action.

## **II. BACKGROUND ALLEGATIONS AND FACTS**

4. On February 14, 2018, a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida. In his Original Petition, Plaintiff alleges that on that date, InfoWars published an "article" concerning the identity of the individual who committed this attack, an event that Plaintiff acknowledges "garnered massive public attention." Pet. ¶ 23. An alleged archived copy of the article is attached to the Petition as Exhibit A. Plaintiff alleges that the article was authored by a reporter, Defendant Kit Daniels, and was published on the front page of the InfoWars website. *Id.* ¶¶ 24-25.

5. Plaintiff alleges that the article contained a photograph of the Plaintiff (the Challenged Image) and "conveyed the impression" that the photograph depicted the suspected Douglas High School shooter. *Id.* at ¶ 26. A cropped and incomplete version of the photograph is reproduced in paragraph 26 of the Original Petition. Plaintiff alleges that he was not involved in the Douglas High School shooting. *Id.* at ¶ 27. He further alleges that "[i]t appears" that he was "targeted by InfoWars" because of the t-shirt he was wearing in the photograph (which allegedly depicts members of the communist party in a state of merriment and intoxication). *Id.* at ¶ 28. Plaintiff also alleges that the photograph "spread across social media platforms resulting

in its distribution to millions of additional people,” although he does not allege, nor can he, that the photograph used in social media was copied from the one posted by Free Speech. *Id.* at ¶ 30.

6. As set forth in the Declaration of Kit Daniels (the “Daniels Declaration”) submitted in connection herewith as **Exhibit A**, Daniels obtained the Challenged Image from a popular image and web board entitled 4Chan ([www.4chan.org](http://www.4chan.org)) (the “4Chan Website”). Daniels had also seen the Challenged Image trending on social media, including Twitter. The original poster of the “thread” on the 4Chan Website that contained the Challenged Image identified the image as the Parkland, Florida shooter. Around 5:00 pm Central Time on February 14, 2018, Daniels published the Challenged Image on the InfoWars Website as part of breaking news surrounding information concerning the alleged Parkland, Florida shooter. Daniels preceded the Challenge Image with the following text: “[a]nd another alleged photo of the suspect shows communist garb.” In doing so, Daniels accurately reported what the 4Chan original poster - and other social media outlets - had reported: that the Challenged Image was that of the Parkland shooter. At the time of publication, Daniels believed that the Challenged Image was of the Parkland, Florida shooting suspect and he had seen no information indicating otherwise.

7. By the next morning, various media outlets had identified Nikolas Cruz as the suspected Parkland shooter. Based upon those reports, Daniels realized that the Challenged Publication did not appear to be a photo of the alleged Parkland shooter. As such, Free Speech (without any prior demand and based upon the new information that Daniels had seen) immediately caused the Challenged Publication to be removed from the InfoWars Website. Later, Free Speech published a retraction, clarification and correction. That statement provided that:

*Retraction, clarification, and correction: On this webpage on February 14, 2018, we showed a photograph of a young man that we had received and stated incorrectly that it was an alleged photo of the suspected shooter at Douglas High School in Parkland, Florida. Infowars promptly removed the contents of this webpage within hours after posting on February 14, 2018. The young man whose picture was shown later contacted us and asked that we take the photo down, but we had already done so several days before. We regret that this error occurred.*

See Daniels Decl., Exh. 2 (emphasis in original). Neither Jones nor Infowars LLC had any involvement with the original reporting of the Challenged Publication.

8. Plaintiff's causes of action are each predicated upon the use of his image in the Challenged Publication -- "in connection with a grievous national tragedy" and the Defendants' alleged conspiracy to "accomplish their campaign of defamation." *Id.* at ¶¶ 44-66. Plaintiff does not allege, nor can he, that Defendants ever used his name or otherwise identified him in connection with the Challenged Publication. Plaintiff also fails to disclose that Free Speech voluntarily removed the Challenged Image from the InfoWars Website within hours of its initial publication and weeks before he and his lawyer elected to file this lawsuit and publicly disclose his name - and Free Speech also issued a timely retraction and correction.

### **III. ARGUMENTS AND AUTHORITIES**

#### **A. TCPA: LEGAL STANDARDS**

9. Under the TCPA, a party may file a motion to dismiss a "legal action" that is "based on, relates to, or is in response to a party's exercise of the right of free speech." Tex. Civ. Prac. & Rem. Code § 27.003(a); *Adams v. Starside Custom Builders, LLC*, 2018 Tex. LEXIS 327 at \*3 (Tex. April 20, 2018). A "legal action" can consist of an entire lawsuit or a single cause of action. Tex. Civ. Prac. & Rem. Code § 27.001(6). The TCPA provides its own definition of the "exercise of the right of free speech." *Adams*, 2018 Tex. LEXIS 327 at \*2. In the TCPA context, the "[e]xercise of the right of free speech" means a communication made in

connection with a matter of public concern." Tex. Civ. Prac. & Rem. Code § 27.001(3). A "'Communication' includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic." *Id.* § 27.001(1). A "matter of public concern" includes "an issue *related to* health or safety or . . . or community well-being." *Id.* § 27.001(7) (emphasis added). As the Texas Supreme Court has recently observed, "[t]he TCPA casts a wide net." *Adams*, 2018 Tex. LEXIS 327 at \*8.

10. The TCPA requires a court to consider the pleadings and supporting and opposing affidavits filed by the parties before ruling on a motion to dismiss. Tex. Civ. Prac. & Rem. Code §27.006(a); *Adams* 2018 Tex. LEXIS 327, at \*2. The statute directs the trial court to dismiss the action "if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of . . . the right of free speech." *Id.* § 27.005(b)(1). When it is clear from the plaintiff's pleadings that the "legal action" is covered by the TCPA, the defendant need show no more. *Hersh v. Tatum*, 526 S.W.3d 462, 467 (Tex. 2017).

11. To survive dismissal, the nonmoving party must establish by "clear and specific evidence a prima facie case for each essential element of the claim." Tex. Civ. Prac. & Rem. Code § 27.005(c). Nevertheless, the movant can still obtain dismissal by establishing "by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim." *Id.* § 27.005(d).

## **B. THE TCPA APPLIES TO PLAINTIFF'S LEGAL ACTION**

12. Courts have broadly interpreted the TCPA's application to "matters of public concern." *See e.g. Adams*, 2018 Tex. LEXIS 327 at \*10 (observing that communications by a resident that real estate developer had "chopped down trees, generally made life miserable for the residents, and engaged in unspecified other corrupt or criminal activity is of public

concern”); *David Martin Camp v. Patterson*, 2017 Tex. App. LEXIS 7258, at \*14 (Tex. App.-Austin Aug. 3, 2017, no pet.) (holding that private texts and emails of contractor related to goods or products in the marketplace were “matters of public concern”); *Warner Bros. Entm’t, Inc. v. Jones*, 538 S.W.3d 781, 798 (Tex. App.-Austin Dec. 21, 2017, pet. filed) (statements that former football player tried to hire a hit man to kill his agent were a “matter of public concern” because they concerned the safety of the agent).

13. In such cases, the Courts have broadly construed the phrase “an issue related to” with respect to the statute’s identified matters of public concern. That is, as explained by the Third Court of Appeals:

[T]he TCPA does not require that the statements specifically 'mention' health, safety, environmental, or economic concerns, nor does it require more than a 'tangential relationship' to the same; rather, TCPA applicability requires only that the defendant's statements are 'in connection with' 'issue[s] related to' health, safety, environmental, economic, and other identified matters of public concern chosen by the Legislature.

*Cavin v. Abbott*, 2017 Tex. App. LEXIS 6511, at \*28 (Tex. App.- Austin July 14, 2017, no pet.) (citing *Exxon v. Coleman*, 512 S.W.3d 895 (Tex. 2017)). Moreover, the Texas Supreme Court has observed that the Court’s determination about whether communications are “matters of public concern” is a legal question (typically determined by the pleadings). *Adams*, 2019 Tex. LEXIS 327 at \*15-16.

14. Here, the allegations of Plaintiff’s Original Petition demonstrate that the TCPA applies. Each of Plaintiff’s causes of action constitute a "legal action" that is based on, related to, or is in response to Free Speech’s and Daniels’ exercise of the right of free speech. The Challenged Publication is a “communication made in connection with a matter of public concern” within the meaning of the TCPA. The Challenged Publication is a “communication” within the meaning of the TCPA because it consists of a statement and document in a visual and

written form. Free Speech made these “communications” in connection with a "matter of public concern.” In particular, the content of the Challenged Publication - and the article in which it was embedded - centered on the identity, activities and possible motivations of the suspected shooter of the February 14, 2018 shooting at Douglas High School. These topics are related to health or safety or community well-being and thus “matters of public concern” within the meaning of the TCPA. Further, Plaintiff’s own petition acknowledges as much by alleging that the Parkland shooting “garnered massive public attention” and was a “national tragedy.”

**C. PLAINTIFF CANNOT ESTABLISH BY CLEAR AND SPECIFIC EVIDENCE A PRIMA FACIE CASE AND HIS CAUSES OF ACTION ARE STATUTORILY BARRED**

15. Plaintiff is not able to submit sufficient evidence of the essential elements of his causes of action for “Defamation and Defamation *Per Se*,” Intentional Infliction of Emotional Distress, Conspiracy, and “Respondeat Superior.” This burden falls squarely on the Plaintiff under the TCPA to establish each claim as to each Defendant individually and Plaintiff cannot meet this burden.

16. First, the elements of defamation are (1) publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages. *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 579 (Tex. 2017); *WFAA-TV, Inc v. McLemore*, 978 S.W.2d 568571 (Tex. 1998). Plaintiff cannot provide “clear and specific” evidence of a prima facie case of each of these elements of his defamation claim.

17. Second, to prove an intentional infliction of emotional distress, a plaintiff must establish that (1) the defendant acted intentionally and recklessly, (2) the defendant’s conduct was extreme and outrageous, (3) the defendant’s actions caused the plaintiff emotional distress, and (4) the emotional distress was severe.. *Kroger Tex. Ltd. P'ship v. Suberu*, 216 S.W.3d 788,



796 (Tex. 2006). Plaintiff cannot provide “clear and specific” evidence of a prima facie case of each of these elements of his intentional infliction of emotional distress claim.

18. Third, an action for civil conspiracy has five elements: (1) a combination of two or more persons; (2) the persons seek to accomplish an object or course of action; (3) the persons reach a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts are taken in pursuance of the object or course of action; and (5) damages occur as a proximate result. *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005). Plaintiff cannot provide “clear and specific” evidence of a prima facie case of each of these essential elements of his conspiracy claim.

19. Fourth, to hold a defendant vicariously liable under a respondeat superior theory, the plaintiff must prove (1) he was injured as a result of an independent tort, (2) the tortfeasor was an employee of the defendant and (3) the tort was committed while the employee was acting within the scope of his employment. *G&H Towing Co. v. Magee*, 437 S.W.3d 293, 296 (Tex. 2011). Plaintiff cannot provide “clear and specific” evidence to establish these elements of its respondeat superior theory.

20. Defendants are also entitled to dismissal of Plaintiff’s legal action based upon a valid affirmative defense. The evidence demonstrates that Plaintiff’s causes of action are barred under Texas Civil Practice and Remedies Code § 73.005. Section 73.005 provides, in relevant part, as follows:

(a) The truth of the statement in the publication on which an action for libel is based is a defense to the action.

(b) In an action brought against a newspaper or other periodical or broadcaster, the defense described by Subsection (a) applies to an accurate reporting of allegations made by a third party regarding a matter of public concern.

See Tex. Civ. Prac. & Rem. Code §§ 73.005(a), (b).

21. Free Speech is entitled to this statutory defense of truth because it accurately reported the allegations of the original poster on 4Chan (i.e. that the Challenged Image was that of the Parkland, Florida shooter) and other social media outlets (like Twitter). Daniels' use of the term "alleged" in the text preceding the Challenged Image was intended to reflect that the original 4Chan poster and Twitter had identified the Challenged Image as the alleged shooter. Further, as explained above, the Challenged Publication clearly was about a "matter of public concern." In light of this evidence, Plaintiff cannot prove that the Challenged Publication was false within the meaning of the statute, and thus his causes of action cannot survive dismissal.

**D. DEFENDANTS ARE ENTITLED TO A MANDATORY AWARD OF FEES AND SANCTIONS**

22. The TCPA requires the trial court to award court costs, reasonable attorney's fees, and other expenses to the movant upon dismissal of a "legal action" under the TCPA. § 27.009(a)(1); *Hawxhurst v. Austin's Boat Tours*, 2018 Tex. App. LEXIS 2081, \*22-23 (Tex. App.-Austin Mar. 22, 2018). The Texas Supreme Court has determined that upon dismissal under the TCPA, an award of attorneys' fees to the successful movant is mandatory. *Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016) (interpreting Tex. Civ. Prac. & Rem. Code 27.009(a)). Similarly, the TCPA requires the Court to award sanctions against the nonmovant for the dismissal of a legal action. Tex. Civ. Prac. & Rem. Code § 27.009(a)(2). As noted above, the TCPA defines a "legal action" as, among other things, a single cause of action. *Id.* at § 27.001(6).

23. Here, movants seek and are entitled to recover their reasonable attorneys' fees, and they request the imposition of sanctions on Plaintiff as required under the TCPA in an

amount to be determined by the Court. Attached hereto as **Exhibit B** is the Declaration of Kevin Brown in support of Defendants' fee award.

#### **IV. PRAYER FOR RELIEF**

WHEREFORE, Defendants respectfully requests that the Motion be granted, that they be awarded their attorneys' fees and a sanction against Plaintiff (pursuant to the TCPA), and the Court grant them such other and further relief as the Court deems equitable, just and proper.

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By: /s/ Eric J. Taube

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ATTORNEYS FOR DEFENDANTS

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the parties listed below via email and the Court's e-filing system on June 5, 2018:

Mark Bankston  
[mark@fbtrial.com](mailto:mark@fbtrial.com)  
Kaster, Lynch, Farrar & Ball, LLP.  
1010 Lamar, Suite 1600  
Houston, Texas 77002

/s/ Eric J. Taube

Eric J. Taube

# **Exhibit A**

MARCEL FONTAINE,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	TRAVIS COUNTY, T E X A S
	§	
ALEX E. JONES, INFOWARS, LLC,	§	
FREE SPEECH SYSTEMS, LLC and	§	
KIT DANIELS,	§	
<i>Defendants.</i>	§	459th JUDICIAL DISTRICT

**DECLARATION OF KIT DANIELS**

I, Kit Daniels, do hereby declare under penalty of perjury that the following is true and correct.

1. My name is Kit Daniels. My date of birth is July 27, 1984, and my business address is c/o Free Speech Systems, LLC, P.O. Box 19549, Austin, Texas 78760. I am a named defendant in this lawsuit. I am fully competent and capable in all respects to make this Declaration. I have personal knowledge of all of the facts stated in this Declaration, and they are true and correct. This declaration is submitted in connection with Defendants' Motion to Dismiss (the "Motion") filed in the above-styled litigation.

2. I am an editor, video journalist and social commentator for Free Speech Systems, LLC ("Free Speech"). Free Speech operates a website located at [www.infowars.com](http://www.infowars.com) (the "InfoWars Website"). As part of my duties, I regularly contribute editorial content to the InfoWars Website, including material concerning breaking news. On February 14, 2018, I created a posting concerning the breaking news surrounding the shooting at Douglas High School in Parkland, Florida (which occurred that day).

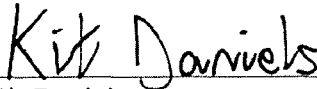
3. As part of that posting, I published an image (the “Challenged Image”) of a man that I had obtained from the popular image and web board entitled 4Chan (www.4chan.org) (the “4Chan Website”). I went to the 4Chan Website after I had seen the Challenged Image trending on social media, including Twitter. Attached as **Exhibit 4** is a true and correct copy of an example of a Twitter post by “Laguna Beach Antifa” that features the Challenged Image and identifies the man pictured in the photo as Nicholas Cruz. That “tweet” is dated February 14, 2018 at 2:37 pm (hours before I posted the Challenged Image on the InfoWars Website). The original poster of the “thread” on the 4Chan Website that contained the Challenged Image also identified the image as the Parkland, Florida shooter. Based upon that information, and the fact that the Challenged Image was trending on social media, I believed that the Challenged Image was of the Parkland, Florida shooting suspect. Attached as **Exhibit 1** is a true and correct copy of a webpage from the 4Chan Website where one of several iterations of the Challenged Image appeared. As such, as part of my posting, I added the following text that immediately preceded the Challenged Image: “[a]nd another alleged photo of the suspect shows communist garb,” (together with the Challenged Image, the “Challenged Publication”). In doing so, I accurately reported on the InfoWars Website what the 4Chan original poster had reported: that the Challenged Image was that of the Parkland, Florida shooter. I did not use or publish the Plaintiff’s name as part of the Challenged Publication, nor was I aware of any information at the time of publication that indicated that the Challenged Image was not an alleged photo of the Parkland shooting suspect. In fact, the publication of the Challenged Image on 4Chan confirmed the reports that I had

seen on social media, including Twitter. Attached as **Exhibit 2** is a copy of webpages from the InfoWars Website that contained the Challenged Publication. Neither Alex Jones nor InfoWars LLC had any involvement with, or approval of, the content or publication of the Challenged Publication (i.e. the allegedly defamatory content). I had no discussions with Alex Jones regarding the Challenged Image prior to the time that I posted it on the InfoWars Website.

4. The Challenged Publication was published on the InfoWars Website around 5:00 p.m. Central Time on February 14, 2018. By the morning of February 15, 2018, various media outlets had identified Nikolas Cruz as the suspected Parkland, Florida shooter (based, at least in part, on high-definition images of Nikolas Cruz that were not available as the news broke the afternoon of February 14, 2018). Based upon those reports, I realized that the Challenged Image was not a photo of Cruz. I then arranged to promptly remove the Challenged Publication from the InfoWars Website. I did so voluntarily and without any notice or demand from Plaintiff or his lawyers.

5. Free Speech later published a “retraction, clarification and correction” statement (the “Retraction”) concerning the Challenged Publication in its original posting on the InfoWars Website. A true and correct copy of the webpage featuring the Retraction - which is also available via a “Corrections” link on the InfoWars Website - is attached hereto as **Exhibit 3**.

Executed in Travis County, State of Texas.



Kit Daniels

Dated: June 5, 2018

# **Exhibit 1**



Archives: [ [adv](#) / [f](#) / [hr](#) / [o](#) / [pol](#) / [s4s](#) / [sp](#) / [tg](#) / [trv](#) / [tv](#) / [x](#) ] Boards: [ [plebs](#) ]

[/pol/ - Politically Incorrect](#) ▾ [4chan](#) ↗ [Index](#) ▾ [NSFW](#) [Ghost](#) [Gallery](#) [Stats](#)

Search or insert post number



112KiB, 720x960, ded\_red.jpg

[View Same](#) [Google](#) [iqdb](#) [SauceNAO](#) [↓](#)

**Florida Shooter Was A Commie! Anonymous** [1 / 1 / ?]

ID: PmMVrZ3k Wed 14 Feb 2018 17:50:12

No.160491781 [View](#) [Reply](#) [Original](#) [Report](#)

FLORIDA SHOOTER WAS A CONFIRMED LIBERAL  
COMMIE!!!

-----  
What r we going to do to help the country defend itself against  
the red scare /pol?

-----  
A million bucks says he supports ANTIFA too!  
-----

Subject
Name
E-mail
Password
>>160491781
<input type="submit" value="Submit"/> <input type="reset" value="Reset"/>

FoolFuuka Imageboard 2.2.0 - Asagi Fetcher

[Change Language](#)

[Change Theme](#)

[Transparency](#) - [FAQ](#) - [Credits & Links](#) - [Twitter](#)

## **Exhibit 2**

infowars.com/report-florida-shooter-inspired-by-isis-allahu-akbar

Go

JAN FEB APR

15

2017 2018 2019



14 captures

15 Feb 2018 - 13 Apr 2018

About this capture

THE  
THE ALEX JONES SHOW

LISTEN NOW

RADIO SHOW NEWS VIDEOS STORE TOP STORIES

BREAKING NEWS CONTACT

WATCH LIVE

BREAKING

STORE

MSM already covering it up

Kit Daniels | Infowars.com - FEBRUARY 14, 2018 Comments



Alleged photos of the suspected Florida high school shooter make reference to various ideologies including communism and perhaps ISIS, and voter records suggest 19-year-old Nicolas Cruz was a Democratic voter.

AT&T LTE

4:41 PM



cruz\_nikolas



9 posts

103 followers

218 following

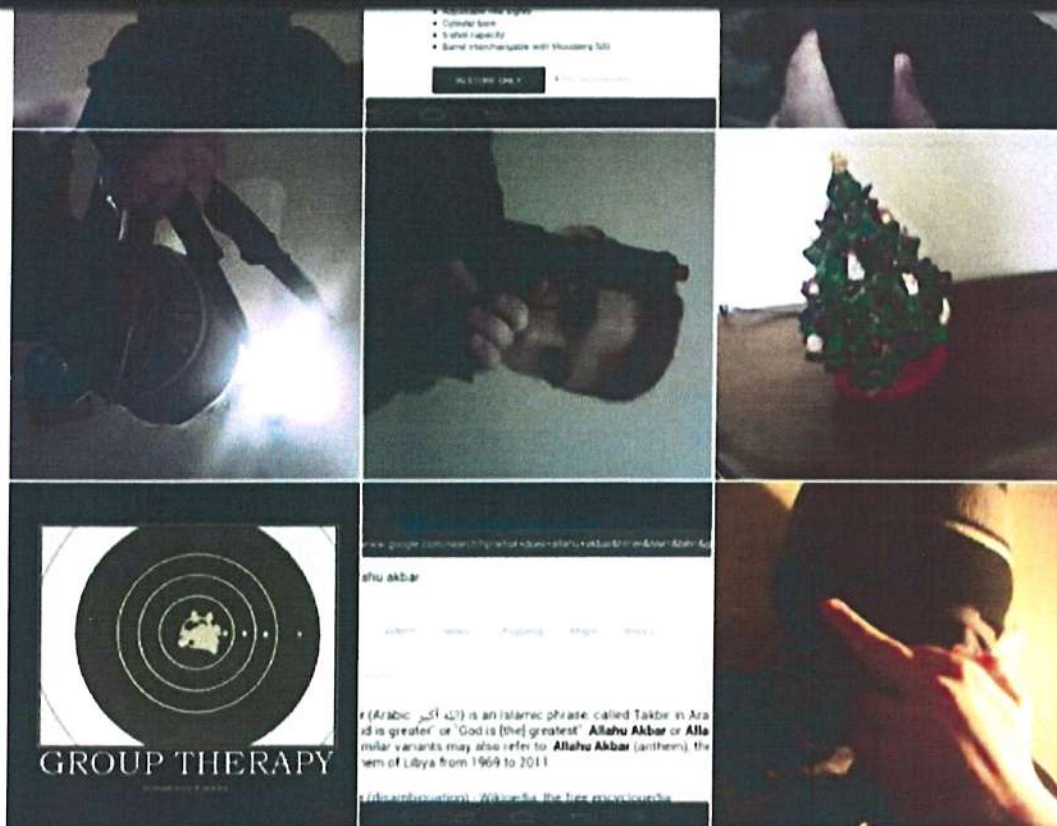
Follow

nikolas cruz

1/18/16 🤔 😊 😊 😊







Additionally, the shooter's garb is very similar to the style worn by ISIS fighters in Syria.

**PolitiDiva™**  
@realPolitiDiva

Parkland Killer, Nicolas Cruz, was a known security threat & was not allowed to carry a backpack to school last year. Also belonged to Middle East Resistance groups on social media. A) How did he get in being a known-threat? B) Was this terror-related?

5:52 PM - Feb 14, 2018

626 523 people are talking about this

The Instagram account was taken down soon after the suspect was arrested.

The shooter was also suspected of having planted bombs, according to the police scanner.

listed as a Democratic voter in Oakland Park, Florida, which may be the suspect (address blurred out to protect the innocent otherwise):



22 likes

cruz\_nikolas Well at least we now know what it means when a sand durka says "allahu Akbar" 😂😂😂

[View all 12 comments](#)

DECEMBER 23, 2015



cruz\_nikolas



### Full Name

Nombre completo : **NICOLAS CRUZ**

### Street Address

Dirección : [blurred address]

### City

Ciudad : **OAKLAND PARK**

### Zip Code

Código postal : **33311**

### County Name

Condado : **BROWARD**

### Voter Gender

Género del votante : **Male**

Fecha de inscripción .

Party  
Partido : **Florida Democratic Party**

Voter Status  
Calificación como votante : **Active\***

And another alleged photo of the suspect shows communist garb:



**R: 0**  
**Shooter is a commie:**  
**REEEEEEEEEEEEEEEE**

This screenshot, found on a Japanese cartoon image board, was apparently taken right after the suspect was apprehended – and right before Instagram nixed the account:



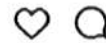
 cruz\_nikolas • Follow

many times you end up hanging your self





fxxkev FUCK YOU  
 moverhecker BORN TO DIE WORLD IS A  
 FUCK Kill Em All 1989 I am trash man  
 410.757.864.530 DEAD COPS.  
 21.jake.21 Have fun in hell asshole  
 angelmazerati\_ Fuck you pussy  
 lilcocknail FUCK U U UGLY ASSHOLE  
 grvyson hope u rot  
 paytontorbeck Fucking Disgusting.  
 traceyyb You're a stupid piece of shit and I  
 hope you get fucked up the ass in jail until  
 your butthole bleeds. Once that is over I  
 hope you die a slow painful death :) happy



105 likes

1450 APR 7, 2018

Log in to like or comment



It's possible the suspect is simply mentally disturbed and latched onto various ideologies to fill a sense of emptiness.

**Facebook:** <https://www.facebook.com/RealKitDaniels>

**Twitter:** Follow @KitDaniels1776

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**FEINSTEIN FLASHBACK: 'DAY WHEN AMERICA COULD BE THE WELFARE STATE FOR MEXICO IS GONE'**

**U.S. NEWS**  Comments

## COMMENTS



**SPIKE'S TACTICAL**

USE CODE:

**ALEX**

AND SAVE 5% OFF SITEWIDE

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WAR ROOM WITH OWEN SHROYER & ROGER STONE. DEEP STATE PREPARING FOR THE FALL OF HILLARY CLINTON



THE ALEX JONES SHOW. AI SUPER COMPUTERS WILL DECIDE WHO LIVES AND WHO DIES



REAL NEWS WITH DAVID KNIGHT. REVEALED: THE "DEEP THROAT" OF RUSSIAGATE

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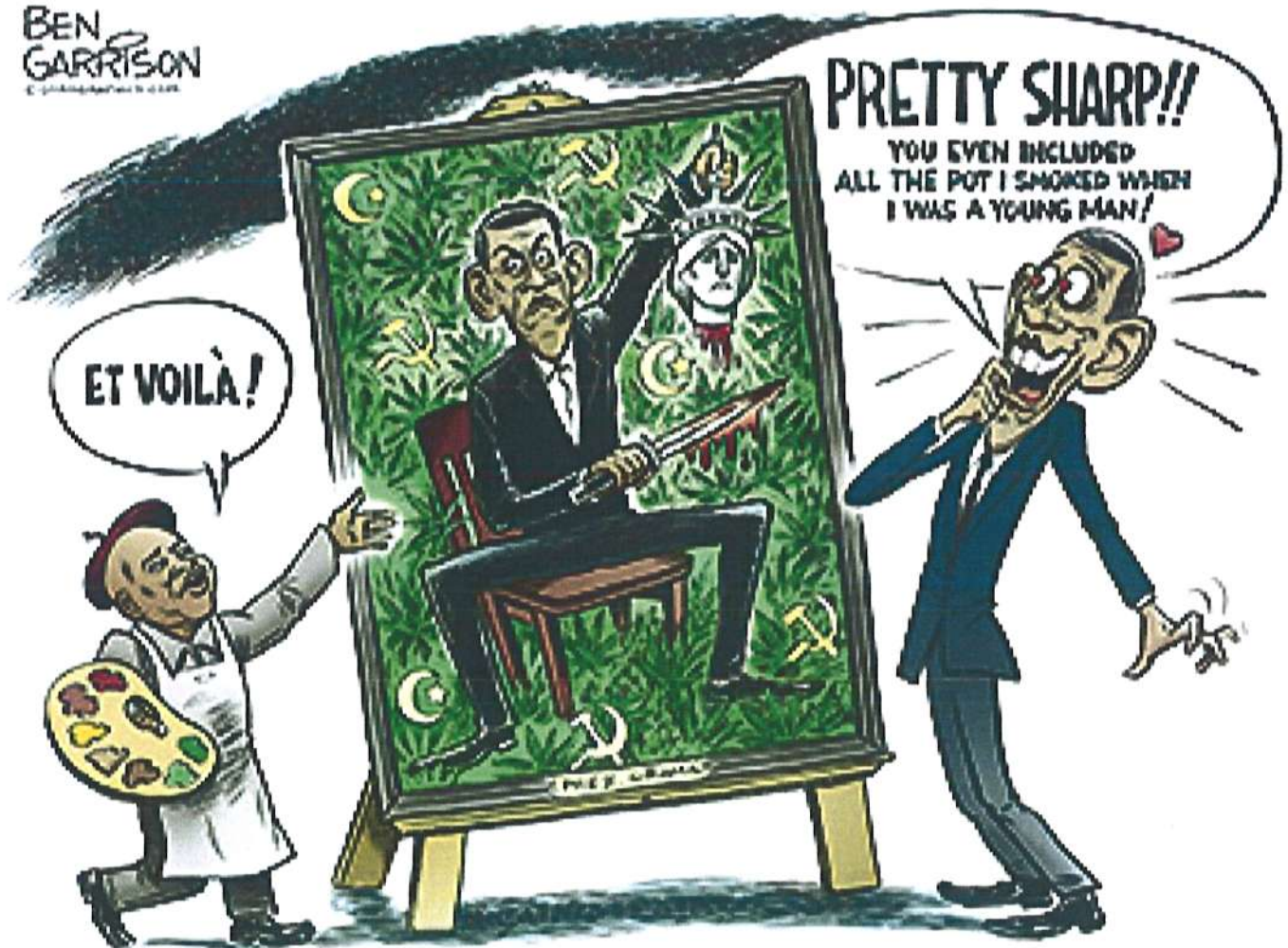
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Does Tucker Carlson Despise Alex Jones? - See the rest on the [Alex Jones YouTube channel](#).

## ILLUSTRATION

BEN GARRISON  
© 2018



## POLLS

How much money would CNN need to pay you to watch?

- \$1000
- \$10,000



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## **Exhibit 3**

# Reported Florida Shooter Discussed "Allahu Akbar" on Instagram Profile

Gunman described as nihilist loser

[Kit Daniels](#) | Infowars.com - February 14, 2018 [3306 Comments](#)



**Retraction, clarification, and correction:** On this webpage on February 14, 2018, we showed a photograph of a young man that we had received and stated incorrectly that it was an alleged photo of the suspected shooter at Douglas High School in Parkland, Florida. Infowars promptly removed the contents of this webpage within hours after posting on February 14, 2018. The young man whose picture was shown later contacted us and asked that we take the photo down, but we had already done so several days before. We regret that this error occurred.

**UPDATE: Video: Second Shooter Reported in Florida Massacre**

**Alleged photos of the suspected Florida high school shooter make reference to various ideologies, suggesting the gunman was an isolated nihilist with no political motive.**

Infowars talked to a survivor of the shooting who said his brother knew the gunman, Nikolas Cruz, and had worked on school projects with him. Cruz was described as being a "disgruntled nihilist" who was obsessed with hunting and wanted to join the military.





cruz\_nikolas



9 posts

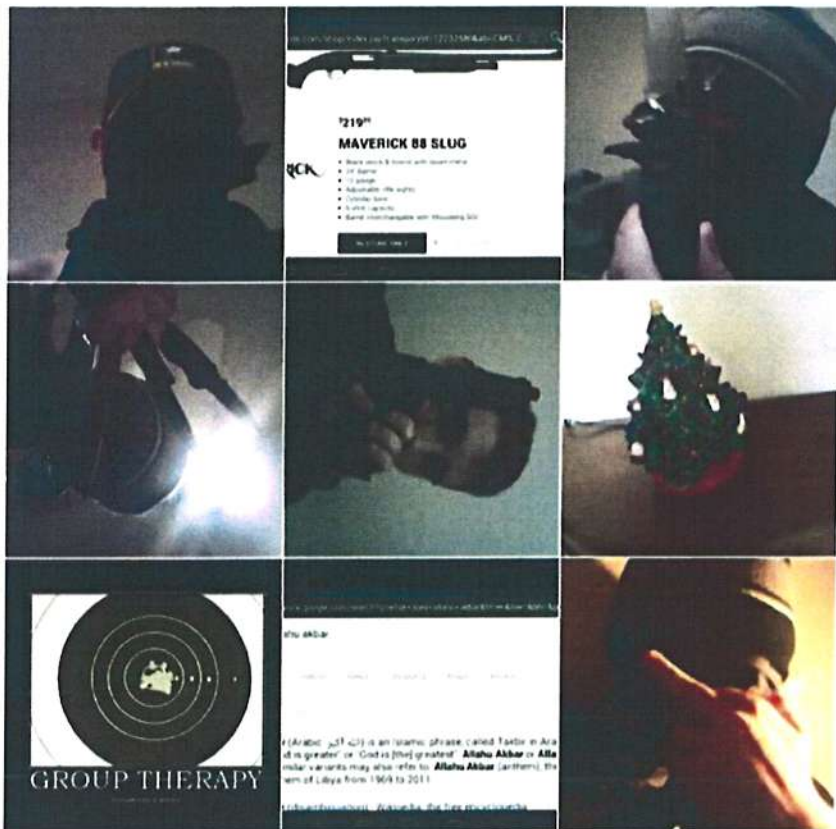
103 followers

218 following

Follow button

nikolas cruz

1/18/16 with 4 smiley face emojis



Additionally, the shooter's garb is very similar to the style worn by ISIS fighters in Syria.

The Instagram account was taken down soon after the suspect was arrested.

The shooter was also suspected of having planted bombs, according to the police scanner.

Internet sleuths have suggested the following screenshot reveal Cruz may have had an anti-Islam slant back in 2015, but interestingly, there's also a 19-year-old Nicolas Cruz who's listed as a Democratic voter in Oakland Park, Florida, which may be the suspect (address blurred out to protect the innocent otherwise):





cruz\_nikolas • Follow

many times you end up nanging your seif with your sheets. faggot ass doesn't deserve to breathe our oxygen

kurtlandry7 Screw you burn in hell piece of shit

fxkkev FUCK YOU

moverhecker BORN TO DIE WORLD IS A FUCK Kill Em All 1989 I am trash man 410,757,864,530 DEAD COPS.

21,jake.21 Have fun in hell asshole

angelmazerati\_ Fuck you pussy

lilcocknail FUCK U U UGLY ASSHOLE

grvysn hope u rot

paytonorbeck Fucking Disgusting.

traceyyb You re a stupid piece of shit and I hope you get fucked up the ass in jail until your butthole bleeds. Once that is over I hope you die a slow painful death :) happy



105 likes

JANUARY 7, 2016

Log in to like or comment.

It's possible the suspect is simply mentally disturbed and latched onto various ideologies to fill a sense of emptiness.

**Facebook:** <https://www.facebook.com/RealKitDaniels>

**Twitter:** Follow @KitDaniels1776

# **Exhibit 4**



**Laguna Beach Antifa**  
@LagBeachAntifa7

Please dont RT this picture of #NicholasCruz wearing an Antifa shirt. We dont need anymore bad press. #BrowardCounty #floridaschoolshooting



2:37 PM - 14 Feb 2018

3,071 Retweets 1,512 Likes

Beverly Hills Antifa, S T A R , The bob waits and 4 others



lllpintobean @blamitchel19 · 5h

Replying to @LagBeachAntifa7 @BevHillsAntifa2 and 6 others

# **Exhibit B**

MARCEL FONTAINE,

*Plaintiff,*

V.

ALEX E. JONES, INFOWARS, LLC,  
FREE SPEECH SYSTEMS, LLC and  
KIT DANIELS,

*Defendants.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

459th JUDICIAL DISTRICT

**DECLARATION OF KEVIN BROWN**

I, Kevin Brown, do hereby declare under penalty of perjury that the following is true and correct.

1. My name is Kevin Brown. My date of birth is April 27, 1973, and my business address is Waller Lansden Dortch & Davis, LLP, 100 Congress, Suite 1800, Austin, Texas 78701. I am fully competent and capable in all respects to make this Declaration. I have personal knowledge of all of the facts stated in this Declaration, and they are true and correct. This declaration is submitted in connection with Defendants’ Motion to Dismiss filed in the above-styled litigation.

2. I am an attorney duly licensed to practice law in the State of Texas and have been continuously since 2004. I have been licensed to practice law in New York since 1999. I am a partner with the law firm of Waller Lansden Dortch & Davis, which represents the Defendants in the above-styled litigation. A large portion of my practice has been devoted to litigation such as this in state and federal court.

3. The billing rate for this matter is \$420 for me (a partner), \$520 for Robb Harvey (a partner), \$590 for Eric Taube (a partner), \$150 for Ann Marie Jezisek (a paralegal), and \$180



for Brenda Jones (a paralegal). I am familiar with rates charges by attorneys in Texas for litigation matters and these rates are reasonable when compared to customary rates in Texas for lawsuits such as this one. The total fees incurred by our firm through May 31, 2018 in connection with this matter is \$29,037.50. These amounts include fees associated with, among other things, reviewing the lawsuit, investigating the allegations, drafting a response to the lawsuit, researching the Motion to Dismiss, drafting, editing and revising the Motion to Dismiss, and reviewing and responding to communications with counsel regarding the retraction. This amount does not include any amounts for future work in connection with the Motion to Dismiss or work by other lawyers outside of our firm who may have assisted with this matter, and we reserve the right to supplement this declaration or otherwise prove up the reasonableness or necessity of any additional fees.

4. Based upon my experience, I believe that the above amounts are reasonable and necessary for the services rendered based upon, among other things, the novelty and difficulty of the issues involved and the skill required to provide the legal services properly, the time and labor involved to perform the legal services properly, the fee customarily charged in the community for similar services, and the amounts involved and the results obtained.

Executed in Travis County, State of Texas.



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Kevin Brown

Dated: June 5, 2018