

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOELTL

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:
JESSE HANSON, ELENI ANGELOS HEALEY, :
KATHLEEN MICHELLE KNIGHT, HOPE :
REICHBACH, ABIGAIL DIMEN-TAYLOR, and :
KEVIN E. TOBAR, :

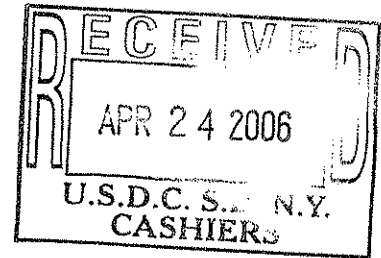
Plaintiffs, :

-versus- :

DONALD RUMSFELD, in his official capacity as :
United States Secretary of Defense, DAVID CHU, :
in his official capacity as Deputy Under-Secretary :
of Defense for Personnel and Readiness, and :
MATT BOEHMER, in his official capacity as :
program manager for the Department of Defense :
Joint Advertising, Market Research and Studies, :

Defendants. :
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COMPLAINT
06 Civ.



PRELIMINARY STATEMENT

1. Plaintiffs, all teenagers attending high schools in New York City, bring this action to halt a United States Department of Defense program that, in direct violation of a congressional statute, is collecting and disseminating private information about tens of millions of Americans, including millions of high school students. Two decades ago, Congress passed a law instructing DOD to collect only basic contact and educational information about students over 17 years old; to keep that information private; to use it solely for military recruitment purposes; and to store it for no more than three years. DOD has flouted that law and is collecting a wide variety of personal, private information, including gender, ethnicity, and social security numbers; is collecting information on students younger than 17; is not keeping that information secure and

private; is using it for purposes other than military recruitment; and is storing the information for longer than three years.

2. This unlawful database is part of an aggressive, billion-dollar DOD campaign to recruit high school students to fill the ranks of the armed services. Over the past several years, many educators, students and parents have complained that recruiters are using heavy-handed tactics to harass students, violate students' privacy rights, and target poor students and students of color. In May 2005, following a nationwide scandal over abusive and deceptive recruiting tactics, DOD declared a one-day recruiting moratorium to retrain and re-educate its recruitment personnel across the county.

3. Plaintiffs are sixteen and seventeen-year-old high school students who object to having their personal information inappropriately collected and maintained by the DOD. Many of them have taken affirmative efforts to remove their information from military recruitment lists, and none have consented to sharing their information with the DOD. They do not wish to be subjected to military recruitment efforts, do not want the government or its private contractors to possess information about them, and fear that their information is being shared with other agencies and companies without their knowledge or consent.

4. DOD's actions violate the Administrative Procedure Act, 5 U.S.C. § 702, *et seq.* and the Defense Act, 10 U.S.C. § 503. Plaintiffs seek a declaration that the database is unlawful, an injunction prohibiting DOD from collecting, maintaining and utilizing Plaintiffs' information in violation of the Defense Act, and expungement of unlawfully obtained information about Plaintiffs.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiffs' claims under the Administrative Procedure Act, 5 U.S.C. § 702, and under 28 U.S.C. §§ 1331, 1346. Jurisdiction to grant declaratory judgment is conferred by 28 U.S.C. §§ 2201, 2202. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

6. Venue is proper in this action pursuant to 28 U.S.C. § 1391(e) because at least one of the Plaintiffs resides in the Southern District of New York.

PARTIES

7. JESSE HANSON is a sixteen-year-old high school student at the High School for Environmental Studies in New York, New York, and resides in Queens, New York.

8. ELENI ANGELOS HEALEY is a seventeen-year-old high school student at Trinity High School in New York, New York and resides in New York, New York.

9. KATHLEEN MICHELLE KNIGHT is a seventeen-year-old high school student at Brearly School in New York, New York and resides in Ridgewood, New York.

10. HOPE REICHBACH is seventeen-year-old high school student at Hunter College High School in New York, New York and resides in Brooklyn, New York.

11. ABIGAIL DIMEN-TAYLOR is a sixteen-year-old high school student at Bard High School in New York, New York and resides in New York, New York.

12. KEVIN E. TOBAR is a seventeen-year-old high school student at Townsend Harris High School in Queens, New York and resides in College Point, New York.

13. DONALD RUMSFELD is the Secretary of the United States Department of Defense ("DOD"), an agency of the federal government, and has authority over all DOD

policies, procedures, and practices relating to military recruitment, including but not limited to data collection.

14. DAVID CHU is the Deputy Under-Secretary of Defense for Personnel and Readiness and has authority over DOD policies and procedures relating to military recruitment, including but not limited to data collection.

15. MATT BOEHMER is the Program Director of the Department of Defense's Joint Advertising, Market Research and Studies program ("JAMRS").

FACTUAL ALLEGATIONS

DOD's Past Practices Regarding Military Recruitment Data Collection and Maintenance

16. In 1982, Congress enacted a law governing military recruitment known as the Department of Defense Authorization Act, 10 U.S.C. § 503 ("Defense Act"). The Defense Act authorizes DOD to collect and compile only limited information about high school students 17 years old or older. This "directory information," as defined by the statute, expressly does not include race, ethnicity, gender, or social security number. The Defense Act requires that directory information remain confidential, be used for the sole purpose of military recruitment, and be destroyed after three years. The Defense Act also mandates that DOD promulgate regulations and submit them to the Committees of Armed Services of the Senate and House of Representatives. These provisions remain in effect, codified at 10 U.S.C. § 503(b)(1)-(b)(7).

17. Pursuant to this congressional mandate, DOD created a national recruitment database known as "Directory Information on Secondary School Students for Military Recruitment Purposes" ("Secondary School Directory"). On August 4, 1984, the DOD

promulgated a final regulation, published in the Code of Federal Regulations at 32 C.F.R. § 83 and in the Federal Register at 49 FR 31864, regarding the collection and retention of student directory information in the Secondary School Directory.

18. In accordance with both the Defense Act and DOD's regulation, the Secondary School Directory was limited to students ages 17 and 18 or students enrolled in the eleventh grade or higher. According to the regulatory scheme, DOD collected and maintained only the limited directory information authorized by Congress, including students' names, addresses, telephone numbers, dates and places of birth, levels of education, degrees received, and schools attended. This information was not maintained for a period longer than three years.

19. Information in the Secondary School Directory was collected and maintained by the Secretary of Defense. By regulation, the Directory was protected from disclosures by anyone for any purpose other than military recruitment.

20. On September 1, 1989, DOD rescinded its regulation creating and governing the Secondary School Directory and removed it from the Code of Federal Regulations. Since that time, up to and including the present, DOD has not promulgated any regulations pursuant to the Defense Act regarding military recruitment databases or data collection.

The Announcement of DOD's New JAMRS Database

21. On May 23, 2005, DOD published a Notice of Action in the Federal Register, entitled "Notice to add a system of records; DHRA 04—Joint Advertising and Market Research Recruiting Database," 70 Fed. Reg. 29486 (May 23, 2005) ("Notice"). The Notice stated DOD's intention to create a new national database for military recruitment,

entitled the Joint Advertising and Market Research Recruiting Database (“JAMRS database”) beginning on June 22, 2005.

22. The purpose of the JAMRS database, as stated in DOD’s notice, is “to provide a single, central facility within the Department of Defense to compile, process and distribute files of individuals who meet age and minimum school requirements for military service.”

23. According to the Notice, the JAMRS database contains students’ names, addresses, telephone numbers, e-mail addresses, dates and places of birth, Social Security numbers, genders, ethnicities, grade point averages, courses of study, education levels, schools attended, college intentions and military interests.

24. At the time DOD filed this Notice, the Department had already been building the JAMRS database for three years.

25. DOD’s failure to file a notice in the Federal Register until three years after embarking on its JAMRS database project was in violation of the Privacy Act of 1974, which requires federal agencies to file notice and allow for a public comment period before creating a new system of records containing individuals’ personal information.

26. DOD has not promulgated any regulations with regard to the JAMRS database and has never submitted any such regulations to either the Committee on Armed Services of the Senate or the Committee on Armed Services of the House of Representatives, in violation of the Defense Act.

The Scope and Content of DOD's JAMRS Database

27. The JAMRS database includes students at least as young as 16 years, as well as college students and Selective Service registrants, not just students aged 17 or 18 or enrolled in eleventh grade or higher in a secondary school, as required by Congress.

28. The JAMRS database includes private, personal information about students, including social security number, ethnicity, and gender, all of which exceed the limited definition of "directory information" that Congress has authorized DOD to collect.

29. According to a DOD spokesperson, the JAMRS database currently includes information about approximately 30 million people, including high school students, college students, selective service registrants, and individuals who have asked to be removed from military recruitment lists.

30. According to the JAMRS Web site, the JAMRS database is "the largest repository of 16-to-25-year-old data in the country." The website reports that the High School Master File portion of the JAMRS database contains information on four million high school students in each class year, covering about 90% of the high school age population in the United States.

31. According to DOD, the JAMRS database gathers information about students from private commercial information vendors, state department of motor vehicle offices, the selective service registration system, the Defense Manpower Data Center, and requests made by individuals who are asking to be removed from local and national military recruitment lists. According to DOD, the agency spends about \$500,000 annually to purchase data for the JAMRS database from private companies.

32. Further, DOD's contract with Mullen Advertising, a private marketing company hired to assist DOD's recruitment efforts, directs Mullen to compile additional database information from private commercial information vendors, state agencies and the list of all students who have taken the ASVAB Test, a career development test created by the Department of Defense and administered in many high schools around the country.

Plaintiffs' Information in the JAMRS Database

33. Plaintiff Jesse Hanson is a sixteen-year-old tenth grader at the High School for Environmental Studies in Manhattan. He does not want his personal information to be collected by the Department of Defense and believes that the DOD should not be allowed to break the law by collecting information about kids like him when Congress has told them they may not do so.

34. Upon information and belief, Plaintiff Jesse Hanson's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Mr. Hanson has taken several standardized tests and engaged in other activity that would place his name in commercial databases purchased by the DOD and/or its contractors.

35. Plaintiff Eleni Angelos Healey is a seventeen-year-old eleventh grader at Trinity High School in Manhattan. She does not want her personal information to be collected by the DOD and believes it is wrong for DOD to recruit high school students using information that was not obtained without the consent of those students. She also

believes that the tactics DOD uses to recruit high school students are unfair and invasive, and objects to the DOD using information about gender and ethnicity to target certain groups of students for military recruitment.

36. Upon information and belief, Plaintiff Eleni Angelos Healey's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Ms. Healey has received recruiting mailings and e-mails from various branches of the United States military has taken several standardized tests and engaged in other activity that would place her name in commercial databases purchased by the DOD and/or its contractors.

37. Plaintiff Kathleen Michelle Knight is a seventeen-year-old twelfth grader at Brearly School in New York, New York. Ms. Knight does not want her personal information to be collected by the DOD and objects to the military not respecting her privacy as they would the privacy of an adult, even though they expect her to make adult decisions about joining the military. She believes that the DOD is trying to take advantage of young people because they think young people will not stand up for their rights.

38. Upon information and belief, Plaintiff Kathleen Michelle Knight's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Ms. Knight has received recruiting mailings and e-

mails from various branches of the United States military has taken several standardized tests and engaged in other activity that would place her name in commercial databases purchased by the DOD and/or its contractors.

39. Plaintiff Hope Reichbach is seventeen-year-old twelfth grader at Hunter College High School in Manhattan. She does not want her personal information to be collected by the DOD and is outraged that she has attempted to opt out from military recruitment for several years but still receives recruitment letters the military on a regular basis. She fears that the military's recruitment tactics will cause other high school students to risk and lose their lives in war and thinks that the military should have to follow the law that exists to protect students from abusive and false recruitment practices.

40. Upon information and belief, Plaintiff Hope Reichbach's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Ms. Reichbach receives frequent recruiting mailings from various branches of the United States military and has taken several standardized tests and engaged in other activity that would place her name in commercial databases purchased by the DOD and/or its contractors.

41. Plaintiff Abigail Dimen-Taylor is a sixteen-year-old tenth-grader at Bard High School in Manhattan. She does not want her personal information to be collected by the DOD and believes the DOD should not be collecting information about students that the law does not authorize, especially when that information may be used to target students based on race or ethnicity.

42. Upon information and belief, Plaintiff Abigail Dimen-Taylor's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Ms. Dimen-Taylor has taken several standardized tests and engaged in other activity that would place her name in commercial databases purchased by the DOD and/or its contractors. In 2005, Ms. Dimen-Taylor and her family sent letters to the Pentagon's JAMRS division and her school superintendent attempting to opt out of all military recruitment efforts.

43. Plaintiff Kevin E. Tobar is a seventeen-year-old twelfth grader at Townsend Harris High School in Queens, New York. He does not want his personal information to be collected by the DOD and is upset that the DOD has been violating his rights and ignoring the rules set by Congress by keeping a secretive, illegal database about students.

44. Upon information and belief, Plaintiff Kevin E. Tobar's personal information – including but not limited to name, date of birth, gender, address, social security number, e-mail address, ethnicity, telephone number, grade point average, education level, college intent, military interest and field of study – has been collected and included in the JAMRS database. Mr. Tobar receives frequent recruiting mailings from various branches of the United States military and has taken several standardized tests and engaged in other activity that would place him name in commercial databases purchased by the DOD and/or its contractors.

DOD's Data Management Practices for the JAMRS Database

45. Information about individual students is kept in the JAMRS database for five years, rather than three years as required by Congress.

46. Upon information and belief, Defendants will keep Plaintiffs' personal information for five years, instead of purging the information after three years.

47. DOD has authorized information kept in the JAMRS database to be disclosed outside DOD without notifying students or their families, and has authorized its use for purposes other than military recruitment, including but not limited to disclosure to local, state, federal and foreign law enforcement agencies, state and local taxing authorities, and any party for the purposes of national security and intelligence gathering.

48. DOD has contracted with a private company, Mullen Advertising, to manage its JAMRS recruiting project and gather data for the JAMRS database. Pursuant to that contract, a sub-contractor, BeNow, Inc., is charged with managing and maintaining the information in the JAMRS database.

49. BeNow, Inc., is a commercial direct marketing company. According to the Washington Post, BeNow is "a firm that specializes in gathering and analyzing personal information for target marketing."

50. Upon information and belief, DOD and its private contractors are not protecting the confidentiality of information in the JAMRS database, thus causing disclosure of and/or exposing that information to third parties.

51. Defendants' actions in creating and maintaining the JAMRS military recruitment database constitute final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 551.

52. Defendants' unlawful practices, set forth above, have adversely affected or aggrieved plaintiffs and have caused them to suffer or placed them at imminent risk of suffering a legal wrong.

CAUSE OF ACTION

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT AND DEFENSE ACT

53. By creating, authorizing, utilizing and maintaining a military recruitment database in a manner contrary to terms proscribed by Congress, Defendants have acted and continues to act contrary to federal law, the Defense Act, 10 U.S.C. § 503 and the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.*

54. By failing to promulgate regulations and failing to submit regulations to the Armed Forces Committees of the United States Congress, the Defendants have acted and continue to act contrary to federal law, the Defense Act, 10 U.S.C. § 503 and the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.*

WHEREFORE the Plaintiffs respectfully request that the Court:

- 1) Assume jurisdiction over this matter;
- 2) Declare that JAMRS database created by Defendants violates the Defense Act and the Administrative Procedure Act;
- 3) Enjoin Defendants from maintaining information about Plaintiffs in any manner contrary to or not in accordance with the terms of the Defense Act and the Administrative Procedure Act;
- 4) Award attorneys' fees to plaintiffs;

- 5) Grant any other relief the Court deems appropriate.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION
FOUNDATION, by



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Dated: New York, N.Y.
April 24, 2006

On the Complaint: Cassandra Stubbs, Staff Attorney, American
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Project