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14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 DR. HENRY "HANK" MCCOY,
17 MS. KATHRINE "KITTY" PRYDE,
18 SOCIETY FOR AMERICAN
19 MUTANT EQUALITY, et al.,

20 Plaintiff,

21 v.

22 WILLIAM STRYKER, President of
23 the United States, U.S.
24 DEPARTMENT OF DEFENSE,
25 CHRIS CLAREMONT, Secretary of
26 DOD, U.S. DEPARTMENT OF
27 JUSTICE, JOHN BRYNE, Attorney
28 General.

Defendant.

Case No. Civ – DOFP138

Judge: Hon. Mitch Dembin

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 65(a)

Date: February 18, 2017

Time: 3:00 p.m.

Room: 616 Division

Complaint Filed: February 14, 2017

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1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE THAT** at 3 p.m. on February 18, 2017,
3 counsel will appear in the courtroom of the Honorable Mitch Dembin, located
4 at San Diego Comic Fest in the Four Points Sheraton at 8110 Aero Drive, San
5 Diego, California, 92123. Plaintiffs will move for a preliminary injunction
6 pursuant to Federal Rule of Civil Procedure 65.

7 Plaintiffs seek a preliminary injunction restraining and enjoining
8 Defendant, the United States Government and its officers, agents, servants,
9 employees, contractors, attorneys, and all those in active concert or in
10 participation with the United States, to prevent the United States from taking
11 any action towards executing Executive Order 09101963. Absent this motion,
12 immediate and irreparable injury will result to Plaintiffs and the American
13 people unless the Defendants are enjoined pending trial of this action.

14
15 **STATEMENT OF JURISDICTION AND VENUE**

16 Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1361.
17 This court has further remedial authority pursuant to the Declaratory
18 Judgment Act, 28 U.S.C. § 2201 *et seq.*

19 Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and
20 1391(e)(1). Defendants are United States agencies or officers sued in their official
21 capacities, and a substantial part of the events or omissions giving rise to this claim
22 occurred in San Diego County, within the Southern District of California.

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I.

INTRODUCTION

On January 22, 2017, the Government deployed several humanoid drones controlled and operated solely by artificial intelligence (“Sentinels”) acting under Executive Order 09101963 (“Order”) in New York City. The Government’s Sentinels illegally detained Dr. Henry “Hank” McCoy and Ms. Katherine “Kitty” Pryde just outside Manhattan, New York. Dr. McCoy and Ms. Pryde refused to register under the Order, and have remained illegally detained ever since in violation of due process. Plaintiffs bring this Motion for Preliminary Injunction against the Government to free Dr. McCoy and Ms. Pryde, and to enjoin the Government from violating the civil and constitutional rights of countless other Mutants represented by the Society for American Mutant Equality throughout the United States.

The Government’s requirement for all Mutants to register under the Order is a form of racial discrimination that violates the equal protection clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Unless the Court enjoins the Government, the Government’s Sentinels will illegally capture all Mutants within its jurisdiction to unlisted, unidentified Federal Mutant Containment Facilities.¹

The Government’s choice to grant the Sentinels plenary authority to kill Mutants for failure to register pursuant to the Order is a violation of the search and seizure rights of the Fourth Amendment and of the due process clauses of the Fifth and Fourteenth Amendments. The Government, through the Sentinels, acts without giving the accused an opportunity to consult counsel in violation of the Sixth Amendment. Unless the Court enjoins the Government, all Mutants face the risk of illegal detention and summary execution as the Order authorizes Sentinels to kill Mutants on sight that resist the Order. Moreover, the Government’s use of

¹ Memorandum for Sec’y of Def. Chris Claremont, Application of Sentinel Use on Unregistered Mutants Per Executive Order 09101963.

1 Sentinels to kill Mutants is a violation of the prohibition against cruel and unusual
2 punishment listed in the Eighth and Fourteenth Amendments. Without the
3 injunction, all Mutants face the risk of the Government illegally killing them in
4 violation of due process.

5 This Court must grant this motion for preliminary injunction because the
6 Order cannot stand as a violation of constitutional law. Under no circumstances
7 should the Government deny Mutants, human beings and U.S. citizens, their
8 constitutional rights to be free from discrimination. Under no circumstances should
9 the Government hunt Mutants like animals and deprive them of their liberty and of
10 their lives in furtherance of an unconstitutional Order.

11 **II.**
12 **FACTUAL BACKGROUND**

13 Humankind is at the dawn of a new age, where through a quirk of their
14 genetics, average, unsuspecting citizens manifest mutations of their DNA,
15 permanently altering them. Society has taken to calling these humans “Mutants.”
16 So-called Mutants get their name from the “Mutant X-Gene” (“X-Gene”) that they
17 carry inside their DNA. When the X-Gene activates, usually at puberty, the X-
18 Gene allows Mutants to enhance their physical characteristics and augmenting their
19 personal abilities. The activated X-Gene can even create entirely characteristics
20 and abilities, both mental and physical. These characteristics and abilities, often
21 called powers, vary as broadly as other human characteristics, ranging from benign
22 augmentation to new, fantastical abilities previously unseen in human beings.
23 Pursuant to the Order, the Government has illegally detained two such Mutants for
24 their failure to register as Mutants.

25 **A. The Affected Parties**

26 Dr. Henry “Hank” McCoy has blue skin, matted fur, and enhanced strength
27 and agility. However, Dr. McCoy was born as a normal child in Dundee, Illinois, to
28 Edna and Norton McCoy. Dr. McCoy’s parents are American citizens and human

1 beings without any sign of mutation. Dr. McCoy was a gifted child, intelligent far
2 beyond his years, and as an adult, his brilliance remains renowned. Because of his
3 mutation, Dr. McCoy can now lift many times what an average male can, while
4 being able to leap 15 to 25 feet in the air and run up to 40 miles per hour.

5 Ms. Katherine “Kitty” Pryde, was born in Deerfield, Illinois, to Carmen and
6 Theresa Pryde. Ms. Pryde’s parents are also American citizens and human beings
7 without any sign of mutation. Ms. Pryde demonstrates no outward signs of
8 mutation and is indistinguishable from any other, non-mutated, Caucasian woman.
9 However, because of her mutation, Ms. Pryde has the ability to physically pass
10 through solid objects, similarly to the way non-Mutants can pass through water or
11 other liquids. Ms. Pryde can use her ability without causing harm to her own
12 person or anything that she is “phasing” through.

13 **B. Executive Order No. 09101963**

14 Despicable, anti-Mutant hysteria has been growing nationwide because of
15 the alleged acts of a small network of radical Mutant groups. As a response to an
16 alleged terrorist attack in New York, President Stryker issued Executive Order
17 09101963 that states:

18 *All individuals with the Mutant X-Gene are to be registered to ensure*
19 *national security in compliance with [the Order].*

20 *All unregistered Mutants are to be captured by Sentinels for*
21 *registration at a Federal Mutant Containment Facility.*

22 *Lethal force is authorized against any Mutants who resist capture.*²

23 All humans carrying the X-Gene must register pursuant to the Order. If they do
24 not, the Sentinels will search for them by identifying the X-Gene within their
25 DNA, and then cross-reference that person’s identity to the national database to
26 determine whether that Mutant has registered pursuant to the Order. When

27 _____
28 ² Memorandum for Sec’y of Def. Chris Claremont, Application of Sentinel Use on Unregistered Mutants Per
Executive Order 09101963.

1 Sentinels detect unregistered Mutants, the Order permits Sentinels to seize, and
2 even, kill Mutants, in violation of due process.

3 The Government alleges that the Order was necessary to respond to the
4 event now known as “The Inferno.” During the Inferno, unknown parties caused
5 many Mutants and non-Mutants to be injured and killed. Unknown parties
6 damaged the Empire State Building, and unknown parties disseminated a
7 hallucinogenic nerve agent on the New York subway system. The Government
8 claims that a Mutant Terrorist Network, identified as the Brotherhood of Evil
9 Mutants, was responsible for the Inferno. The Government also claims that other
10 mutant organizations, the New Mutants, the X-Men, and Excalibur are culpable
11 terrorist organizations simply because they were allegedly present and allegedly
12 using their Mutant powers in New York City during the Inferno. *See* Excerpts from
13 Memorandum for the Attorney General, U.S. Dept. of Justice.

14 The Government makes no allegation as to Dr. McCoy or Ms. Pryde’s
15 affiliation of any of the above listed groups. Further, the Government makes no
16 allegation as to Dr. McCoy or Ms. Pryde as to any specific act linked with the
17 Inferno. Moreover, while the Government observed many Mutants in the area
18 during the Inferno, the Government concedes that they cannot identify which
19 Mutants are specifically responsible for the damage to persons or property incurred
20 in New York during the Inferno. Moreover, most survivors of The Inferno are
21 convinced the entire affair was a shared hallucination as city functions and services
22 continued throughout the Inferno. *See* Excerpts from Memorandum for the
23 Attorney General, U.S. Dept. of Justice.

24 Nevertheless, the Government seeks to execute the Order against “every
25 Mutant” involved, “whether they are domestic or foreign born,” regardless of
26 culpability. *See* Excerpts from Memorandum for the Attorney General, U.S. Dept.
27 of Justice. This Order cannot stand as constitutional, because it permits untenable
28 and inhumane treatment of all Mutants, based wholly on their DNA in violation of

1 the Constitution. In addition, the scope of the Order is overbroad, as the
2 Government should seek out and prosecute those that used their powers to harm
3 others during the Inferno, not arbitrarily punish innocent civilians. Therefore, the
4 Government has not met the required heavy burden to support such a sweeping ban
5 and the Plaintiffs seek this preliminary injunction against the parties of the
6 Government, enjoining the execution of Executive Order 09101963.³

7 III.

8 LEGAL STANDARD

9 A preliminary injunction must be granted where the plaintiffs shows: (1)
10 they are likely to suffer immediate and irreparable harm absent injunctive relief;
11 (2) they are “likely to succeed on the merits” of their case; (3) that “the balance of
12 equities tips their favor;” and (4) it is in the public’s interest. *Winter v. Nat. Res.*
13 *Def. Council*, 555 U.S. 7, 20 (2008); *Am. Trucking Assn. v. City of Los Angeles*,
14 559 F.3d 1046, 1952 (9th Cir. 2009).

15 IV.

16 ARGUMENT

17 A. In the Absence of Injunctive Relief, Plaintiffs will Suffer Irreparable 18 and Immediate Injury

19 The Fourth Amendment restricts the Government from unreasonable
20 searches and seizures. *See* U.S. Const. amend. IV. The Fifth Amendment prohibits
21 the Government from taking one’s “life, liberty, or property, without due process
22 of law.” U.S. Const. amend. V. The Government may not deprive a person of one
23 of these protected interests without providing “notice and an opportunity to
24 respond.” *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014).
25 Moreover, in criminal cases when one risks losing life, liberty or property because
26 of a criminal allegation, that person has the right to counsel. *See* U.S. Const.
27 amend. VI. Furthermore, the language of the Fourteenth Amendment selectively

28 ³ Exec. Order No. 09101963, 3 C.F.R. ____ (2017).

1 incorporates the protections of the original Bill of Rights to the laws of the States
2 while granting everyone born in the United States the rights of American
3 citizenship. *See* U.S. Const. amend. XIV. As such, all American citizens have all of
4 the rights previously described.

5 The Government has not shown that the Order provides what due process
6 requires, including but not limited to: notice, a hearing prior to detention, access to
7 counsel and a trial before detention and summary execution. The persons affected
8 by the Order by birthright are American citizens and there has been neither law nor
9 precedent stripping Mutants' constitutional rights prospectively or retroactively. As
10 such, the Order unconstitutionally bypasses the numerous fundamental protections
11 described above to illegally search, detain and execute Mutants. Without the Court
12 enjoining the Government, these listed harms are very likely to occur.

13 **B. Plaintiffs are Likely to Succeed on the Merits**

14 **1. *Mutants have Standing under Article III***

15 Article III of the U.S. Constitution empowers the federal courts to hear
16 certain cases and controversies. *See* U.S. Const. art. III. To bring a claim that the
17 Government has violated a constitutional right, the Plaintiff must prove, among
18 other things, “‘injury in fact’ that is (a) concrete and particularized and (b) actual or
19 imminent, not conjectural or hypothetical. . . .” *Tilkum, et al., v. Sea World Parks*
20 *& Entertainment, Inc.*, 842 F. Supp. 2d 1259, 1262 (S.D. Cal. 2012), *quoting*,
21 *Catacean Community v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). The
22 Government has illegally detained Dr. McCoy and Ms. Pryde since January 22,
23 2017, in violation of the Constitution.

24 The Order operates on the assumption that Mutants are not *homo sapiens*,
25 and therefore have no constitutional rights to injure. However, this assumption
26 overlooks that both Mutants and *homo sapiens* are human beings, and that either
27 may fairly be considered a “person” within the meaning of the Constitution.

28 First, Mutants and *homo sapiens* are the same species under a “biological

1 species concept.” Regardless of similarity of appearance or ability, “[t]he
2 biological species concept defines a species as members of populations that
3 actually or potentially interbreed in nature.”⁴ Because Mutants and *homo sapiens*
4 can and do interbreed, by definition, they are one species. Therefore, Mutants are
5 entitled to equal Constitutional protections from a purely biological standpoint.

6 Second, Mutants have constitutional rights, as they are natural born citizens
7 as defined by the Fourteenth Amendment. Dr. McCoy and Ms. Pryde were born in
8 the United States to parents that were also natural born citizens as defined by the
9 Fourteenth Amendment. The fact that Dr. McCoy and Ms. Pryde have additional
10 abilities because of their respective mutations does not strip them of their
11 constitutional rights. Moreover, the Fifth and Fourteenth Amendment equal
12 protection clauses “are fundamental constitutional concepts subject to changing
13 conditions and evolving norms of our society.” *Tilkum, et al.*, at 1264. Therefore,
14 the Plaintiffs are even more likely to satisfy the requirements of standing under
15 these provisions.

16 **2. *Executive Order 09101963 Violates Mutants’ Rights to be Free from***
17 ***Racial Discrimination and to be Treated Equally under the Law***

18 The Fourteenth Amendment provides that no state shall deny to any person
19 within its jurisdiction, the equal protection of the laws. *See* U.S. Const. amend.
20 XIV. The Fifth Amendment restrains the Government from pursuing racial policies
21 and promulgating racist laws because equal protection is implied in the due process
22 clause. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995) (indicating
23 that “the equal protection obligations imposed by the Fifth and Fourteenth
24 Amendments are indistinguishable”).

25 The Government must meet the high burden of “strict scrutiny” when it
26 passes a law that discriminates against individuals based on race, by proving that

27
28 ⁴ *Biological Species Concept*, U.C. BERKELEY,
http://evolution.berkeley.edu/evolibrary/article/side_0_0/biospecies_01 (last visited Jan. 29, 2017).

1 the law justifies a sufficient purpose. *See, e.g., Loving v. Virginia*, 388 U.S. 1
2 (1967); *Brown v. Board of Education of Topeka Kansas*, 347 U.S. 483 (1954).
3 Strict scrutiny requires: (1) the Government be pursuing a compelling government
4 interest; (2) the law is necessary to achieve that interest; and, (3) the law is the least
5 restrictive means to achieve that interest. *Adarand*, 515 U.S. at 221–24. The
6 Government carries the heavy burden to satisfy the strict scrutiny test and they
7 have failed to do so in the Order. *See Fisher v. Univ. of Tex. At Austin*, ___ U.S. ___,
8 133 S. Ct. 2411, 2419–20 (2013). The Order targets only those people having an
9 X-Gene, effectively identifying them as another race: Mutants.

10 The Government does not have a compelling interest in its execution of the
11 Order. The Government will likely attempt to argue that its execution of the Order
12 is vital to promoting national defense in response to the Inferno. However, this
13 argument is without merit. There is no legal argument that the Government can
14 protect the national defense by systematically killing American citizens without a
15 trial in violation of due process of the Constitution. As previously stated, the
16 Government may not deprive a person of life or liberty without providing “notice
17 and an opportunity to respond.” *United States v. Raya-Vaca*, 771 F.3d at 1204. As
18 a result, the Government’s argument that the Order has a compelling government
19 interest is without merit.

20 Not only does the Order require only Mutants to register, but it also permits
21 the illegal execution of Mutants. This kind of racial discrimination is similar to the
22 kind of discrimination that the Government employed against Japanese-American
23 citizens in World War II. After the Japanese attacked Pearl Harbor, Hawaii, on
24 December 7, 1941, the President issued an Executive Order requiring registration,
25 curfew, and internment of Japanese-Americans. *See e.g., Korematsu v. United*
26 *States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943).
27 During this time, the Government imprisoned over 127,000 citizens because they
28

1 had Japanese ancestry.⁵ It was the Government's fear of the unknown, combined
2 with the Government's rhetoric of alleged safety and security that led to such a
3 shameful violation of the constitutional rights of innocent, American citizens. This
4 Court cannot allow that history to be repeated against the Mutants in this Order.

5 Moreover, the Order is not the least restrictive means of achieving the
6 Government's purported aim of greater security. Even if some Mutants have used
7 their powers to harm others, the Government's Order arbitrarily permits invasive
8 action against all Mutants, regardless of fault for the Inferno. Most importantly, the
9 Government does not know exactly who is responsible for the harm caused during
10 the Inferno. Therefore, the Government's campaign to punish anyone possibly
11 responsible likely interferes with the rights of innocent Mutants just because they
12 were at the scene. The Government's actions are a violation of all norms of due
13 process. Moreover, there are better and constitutional options available to protect
14 everyone against any Mutant who would abuse their powers. These methods
15 include but are not limited to inhibitor cuffs that, when worn, eliminate Mutants'
16 powers, or a serum that, when injected, inhibits a Mutant's powers from
17 functioning. In both instances, Mutants would still have their lives, and in the
18 latter, Mutants would still have their freedom.

19 Because there are other solutions available to the Government beyond illegal
20 interment and summary execution, the Order is unconstitutional. Accordingly, with
21 further discovery and a chance to argue on the merits, Plaintiffs are likely to
22 succeed on the claim that the Order violates the equal protection clause of the
23 Constitution.

24 **3. *Executive Order 09191963 Violates Mutants' Rights to Due Process***
25 ***by granting the Sentinels plenary authority to use lethal force.***

26 The Sentinels are autonomous, giant, humanoid drones with artificial
27 intelligence that the Government has illegally tasked with enforcing aspects of the

28 ⁵ *Japanese-American Internment*, USHISTORY.ORG, <http://www.ushistory.org/us/51e.asp> (last visited Jan. 29, 2017).

1 Order. While it is accepted fact that law enforcement officials have plenary
2 authority to arrest with a showing of probable cause, there is neither statute nor any
3 case law to indicate that the Government may delegate this plenary authority to an
4 artificial intelligence. Indeed, this issue is one of first impression for this Court.
5 There is also another issue of first impression for this Court as there is neither
6 statute nor case law allowing the Government to use drones with lethal force on
7 American citizens within American territory. Moreover, both of these concepts in
8 the Order result in multiple violations of due process as there is no access to notice,
9 a hearing, an attorney and other protections required by the Constitution.

10 a. *Kyllo v. United States* and *Birchfield v. North Dakota* bar the
11 Government from using the Sentinels as described in the Order

12 As to the Order, the sole factor that the Sentinels use for targeting Mutants
13 is the presence of the X-Gene in their DNA. The Supreme Court has held that
14 where the Government uses a device that is not in general public use to explore
15 details of a constitutionally protected area to obtain evidence that is unknowable
16 without physical intrusion, it is a search under the Fourth Amendment. *See Kyllo v.*
17 *United States*, 533 U.S. 27, 40 (2001). Moreover, the Government’s search of such
18 an area is presumptively unreasonable and unconstitutional without a search
19 warrant. *Id.* One’s physical body is such a constitutionally protected area. *See U.S.*
20 *Const. amend. IV.*

21 Accordingly, the Government cannot determine the existence of the X-Gene
22 in the DNA of a human being by plain sight. For the Government to know about
23 the presence of the X-Gene would require a detailed test of a Mutant’s blood. More
24 importantly, Congress has not criminalized the X-Gene. The Fourth Amendment
25 bars the Government from analyzing the blood of a human being absent a showing
26 of probable cause to an actual crime and a validly issued search warrant. *See*
27 *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2184–85 (2016) (holding that the
28 privacy interest of the accused and the invasiveness of the blood test trumps the

1 government's interest without a validly issued search warrant). Using these
2 unconstitutional justifications, the Government is illegally deploying Sentinels with
3 the authority to search, detain and kill Mutants with previously unknown
4 technology in violation of their constitutional rights as American citizens.

5 B. The Eighth Amendment Bars the Government from using the
6 Sentinels as described in the Order

7 The Constitution prohibits cruel and unusual punishment. U.S. Const.
8 amend. VIII. In the 31 jurisdictions that allow capital punishment, the primary
9 method of execution used is lethal injection.⁶ While alternate methods are available
10 in other jurisdictions in limited circumstances, such as hanging, firing squad, or
11 electrocution, pursuant to the Order, the Sentinels kill by unsanctioned methods.
12 The Sentinels kill by a combination of inflicting blunt force trauma or discharging
13 previously unseen energy beam weapons at Mutants. The judiciary and the
14 legislative branches have not approved these techniques in the judicial process. As
15 a result, the arbitrary, haphazard use of Sentinels and their weaponry on any
16 Mutant will inflict injuries well within the definition of cruel and unusual
17 punishment in violation of the Constitution.

18 **C. The Balance of Equities Tips in Favor of Plaintiff's Requested Relief**

19 The balance of equities tips in favor of the Plaintiff's requested relief
20 because enjoining the Government from enforcing the Order merely preserves the
21 status quo of the enshrined constitutional rights of American citizens. Considering
22 the severity and the irreparability of harm the Plaintiffs are likely to endure with
23 the Order's enforcement, it is in the interest of justice that the Court grants the
24 Plaintiffs requested injunctive relief.

25 Significantly, if the Court declines to grant this injunction, the Plaintiff will
26 be wholly disadvantaged via the lack of equity. Millions of Mutants will be at the

27 _____
28 ⁶ DEATH PENALTY INFORMATION CENTER, <http://www.deathpenaltyinfo.org/lethal-injection> (last visited Feb. 7, 2017).

1 risk of the Government illegally and imminently imprisonment them. Moreover,
2 the millions of Mutants that do choose to exercise their constitutional rights will be
3 at the risk of the Government illegally detaining and executing them absent the
4 protections of due process. Furthermore, the Government has provided neither
5 argument nor sound reasoning as to why the Order targets all Mutants beyond a
6 vague assertion of national security. The Government's argument falls far short of
7 the standard required to meet its burden.

8 Additionally, the normal requirement of an injunctive bond is not required as
9 the requested relief is adherence of well-established constitutional rights and the
10 Defendants are government entities, making an injunctive bond moot.

11 **D. The Granting of an Injunction is in the Public Interest**

12 The language of the Order is overly broad. This fact results in punishing
13 innocent Mutants and American society in general against good of the public
14 interest. The Government did not narrowly tailor the Order to combat an alleged
15 ideology or preserve national security. Rather, the Order illegally targets all
16 Mutants, ostracizing them from lawful American society and leading to a
17 counterproductive result. The Order illegally persecutes American citizens because
18 of their genetics by stripping them of their rights of citizenship and imposing the
19 described draconian measures in violation of the Constitution.

20 Certainly, Mutants are now a part of American life. If the Constitution is to
21 have any meaning, the fundamental rights enshrined in the Constitution require
22 cooperation and empathy for a peaceful, orderly society. The Government's
23 alternative is the creation of an inferior class, whose demonization and persecution
24 run counter to ideals of the Constitution. Accordingly, the Government would
25 persecute those who would aid in defending the American homeland and her
26 people against enemies foreign and domestic who would abuse their powers and
27 harm the country.

28 Moreover, American jurisprudence is marked with decisions that American

1 society considers shameful because of flawed, shortsighted judicial reasoning and a
2 lack of understanding of constitutional rights. The judiciary's past failures have led
3 to holdings that run contrary to the basic principles of what American justice stands
4 for: the rule of law and adherence to constitutional values. *Dred Scott v. Sanford*,
5 60 U.S. 393 (1857) (holding that African-American slaves had no standing to sue
6 in federal court); *Buck v. Bell*, 274 U.S. 200, 208 (1927) (holding that the state can
7 perform forced sexual sterilization on grounds that those affected are limited in
8 number because they are incarcerated); *Korematsu*, 323 U.S. at 219–20 (holding
9 that internment of Japanese-American citizens was constitutional because of the
10 necessities of national security). Granting the injunction will prevent this case from
11 joining this ignominious pantheon of tragically incorrect and unjust jurisprudence.

12 **V.**

13 **CONCLUSION AND PRAYER FOR RELIEF**

14 For the reasoning described above, the Plaintiffs submit that they have met
15 the requirements for a preliminary injunction. Moreover, the Plaintiffs pray for the
16 following relief, that the Court:

17
18 (1) **ISSUE** a preliminary injunction that lasts until a verdict in the coming trial
19 that:

20 (a) **ENJOINS** the Government from registering Mutants pursuant to the
21 Order;

22 (b) **ENJOINS** the Government not to detain any individual based on the
23 Order as a violation of constitutional rights;

24 (c) **ENJOINS** the Government from deploying the Sentinels within the
25 United States for any purpose described in the Order;

26 (2) **AWARDS** Plaintiffs reasonable costs and attorneys' fees; and

27 (3) **GRANTS** any other and further relief that this Court deems appropriate.
28

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2 San Diego, California

Respectfully submitted,
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/s/ Michael J. Elizondo

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