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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN C. KROACK,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, the United States of America, by and through its undersigned attorneys, brings this civil cause of action against Defendant, John C. Kroack under the Freedom of Access to Clinic Entrances Act (“FACE”), 18 U.S.C. § 248 (1994), and alleges as follows:

**I. NATURE OF ACTION**

1. On January 7, 2010, Defendant used force and physically obstructed the entrance to a reproductive health services facility with the intent to injure, intimidate and interfere with persons seeking and providing reproductive health services. Based upon these and other actions, in bringing this action, the United States has reasonable cause to believe: (1) Defendant has committed, and is likely to continue to commit, violations of FACE; and (2) various persons are being, have been, and will continue to be injured by Defendant’s conduct. Accordingly, the United States seeks, *inter alia*, a permanent injunction against Defendant from coming within 25 feet of the reproductive health services facility in question and a civil penalty.

1 **II. JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this action pursuant to FACE, 18 U.S.C.  
3 § 248(c)(2), and 28 U.S.C. §§ 1331, 1345, and 1355.

4 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and  
5 (b)(2), in that, upon information and belief, Defendant resides in this judicial district and all the events  
6 giving rise to this complaint occurred in this judicial district.

7 **III. PARTIES**

8 4. Plaintiff is the sovereign United States of America, which has standing to bring  
9 this action pursuant to FACE, 18 U.S.C. § 248(c)(2).

10 5. On information and belief, Defendant resides in Mountlake Terrace, Washington.

11 **IV. FACTUAL BACKGROUND**

12 6. The Lynnwood Health Center (“Health Center”) is a reproductive healthcare clinic  
13 located at 19505 76th Avenue in Lynnwood, Washington.

14 7. The employees of the Health Center provide, and the patients of the Health Center  
15 seek, reproductive health care services.

16 8. On January 5, 2010, Defendant entered the Health Center waiting room and  
17 engaged the Health Center manager in conversation about abortion services. The Defendant grew  
18 agitated and exited the Health Center without further incident.

19 9. Two days later, in the early morning hours of January 7, 2010, Defendant was  
20 witnessed walking along the wooded perimeter of the Health Center property.

21 10. At approximately 10:30 a.m. on January 7, 2010, Defendant entered the Health  
22 Center waiting room, and engaged the front desk employee in conversation about abortion services.

23 11. Defendant became agitated and attempted to open the door that separated the  
24 waiting room from the exam room hallway.

25 12. When Defendant could not open the door, he kicked the door several times, and  
26 threw his shoulder and body against the door several times.

27 13. As the Defendant struck the door, he yelled: “You baby killers! You are all going  
28 to hell for being murderers.”

1 14. Defendant's blows impacted a Health Center nurse, who had pressed his body  
2 against the reverse side of the door in an attempt to reinforce the door against the Defendant's strikes.

3 15. Defendant's actions caused the Health Center manager to call 911, and then to  
4 direct staff to take refuge in a "safe room" in the rear of the Health Center.

5 16. Defendant did not stop beating on the door until police arrived at the Health  
6 Center and apprehended Defendant, placing him in handcuffs.

7 17. Defendant told the police that they "need to watch this place."

8 18. Defendant's car, which he had parked in the Health Center parking lot, contained  
9 a machete and several "army-style" bags containing netting, rip cord, tools, and camouflage clothing.

10 **V. CAUSE OF ACTION UNDER 18 U.S.C. § 248**

11 19. The United States incorporates herein the averments of paragraphs 1 through 18  
12 hereof.

13 20. Defendant's conduct as described in paragraphs 9 through 18 hereof constitutes a  
14 physical obstruction that intimidated and/or interfered with reproductive health service providers in  
15 violation of FACE, 18 U.S.C. § 248(a)(1).

16 21. Defendant's conduct as described in paragraphs 9 through 18 hereof constitutes a  
17 use of force that intimidated and/or injured reproductive health service providers in violation of FACE,  
18 18 U.S.C. § 248(a)(1).

19 22. On information and belief, unless Defendant is restrained by this Court, Defendant  
20 will again engage in the illegal conduct averred herein, or other similar illegal conduct targeted against  
21 the Health Center.

22 **VI. PRAYER FOR RELIEF**

23 23. The United States is authorized under 18 U.S.C. § 248(c)(2)(B) to seek and  
24 obtain temporary, preliminary, and/or permanent injunctive relief from this Court for Defendant's  
25 violation of FACE.

26 24. The United States is further authorized under 18 U.S.C. § 248(c)(2)(B)(i) to assess  
27 a civil penalty against a respondent no greater than \$10,000.00 for a nonviolent physical obstruction.  
28

1 WHEREFORE, the United States respectfully requests judgment in its favor and against  
2 Defendant, John C. Kroack, in the form of:

3 A. An Order prohibiting Defendant, John C. Kroack, from coming within 25 feet of  
4 the Health Center property;

5 B. An Order prohibiting Defendant, John C. Kroack, and his representatives, agents,  
6 employees and any others acting in concert or participation with him, from violating the Freedom of  
7 Access to Clinic Entrances Act; and

8 C. A civil penalty assessment in the amount of \$10,000.00.

9 Dated this 11th day of March, 2011.

10 Respectfully submitted,

11  
12 THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

13  
14 JONATHAN SMITH, Chief  
JULIE ABBATE, Deputy Chief  
Special Litigation Section

15  
16 /s/ William E. Nolan  
WILLIAM E. NOLAN \*  
Senior Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
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Phone: (202) 352-4637; Fax: (202) 514-6273  
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21 JENNY A. DURKAN  
UNITED STATES ATTORNEY

22  
23 /s/ J. Michael Diaz  
J. MICHAEL DIAZ, WSBA # 38100  
Assistant United States Attorney  
United States Attorney's Office  
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Seattle, Washington 98101-1271  
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24  
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27 Attorneys for Plaintiff United States of America

28 \* Conditional Admission Pending

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
United States of America
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
J. Michael Diaz, WSBA #38100, Assistant United States Attorney
700 Stewart Street, Suite 5220, Seattle, WA 98101-1271
206-553-7970

DEFENDANTS
John C. Kroack
County of Residence of First Listed Defendant Snohomish
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
PERSONAL INJURY
362 Personal Injury - Med. Malpractice
365 Personal Injury - Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
PRISONER PETITIONS
510 Motions to Vacate Sentence
Habeas Corpus:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
FORFEITURE/PENALTY
610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 R.R. & Truck
650 Airline Regs.
660 Occupational Safety/Health
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
730 Labor/Mgmt. Reporting & Disclosure Act
740 Railway Labor Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
IMMIGRATION
462 Naturalization Application
463 Habeas Corpus - Alien Detainee
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
810 Selective Service
850 Securities/Commodities/Exchange
875 Customer Challenge 12 USC 3410
890 Other Statutory Actions
891 Agricultural Acts
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
895 Freedom of Information Act
900 Appeal of Fee Determination Under Equal Access to Justice
950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. 248
Brief description of cause:
Freedom of Access to Clinic Entrances (FACE)

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/11/2011 SIGNATURE OF ATTORNEY OF RECORD /s/ J. Michael Diaz, WSBA # 38100

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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UNITED STATES DISTRICT COURT

WESTERN

District of

WASHINGTON

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United States of America,

**SUMMONS IN A CIVIL ACTION**

V.

John C. Kroack

CASE NUMBER:

TO: (Name and address of Defendant)

John C. Kroack  
4710 212th Street SW, Apt. 204  
Mountlake Terrace, WA 98043

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

J. Michael Diaz  
United States Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, WA 98101

an answer to the complaint which is served on you with this summons, within 21 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

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CLERK

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DATE

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(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served:  <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left:  <input type="checkbox"/> Returned unexecuted:  <input type="checkbox"/> Other (specify):		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____  <span style="margin-left: 100px;">Date</span> <span style="margin-left: 150px;">Signature of Server</span></p> <p style="text-align: center;">_____  <i>Address of Server</i></p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.