

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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XIAOXING XI, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 17-cv-2132
	:	
FBI SPECIAL AGENT ANDREW HAUGEN, <i>et al.</i>,	:	JURY TRIAL DEMANDED
	:	
	:	
Defendants.	:	
	:	

NOTICE OF SUPPLEMENTAL AUTHORITY

In further support of their Opposition to the Official Capacity Defendants’ Motion to Dismiss the Complaint (ECF No. 42), Plaintiffs respectfully submit the attached Memorandum Opinion and Order in *Alasaad v. Nielsen*, No. 17 Civ. 11730, 2018 WL 2170323 (D. Mass. May 9, 2018).

In *Alasaad*, the plaintiffs allege that the official-capacity defendants violated their First and Fourth Amendment rights by “searching Plaintiffs’ electronic devices at ports of entry to the United States and, in some instances, confiscating the electronic devices being searched.” 2018 WL 2170323, at *1. The *Alasaad* plaintiffs “seek expungement of all data or information ‘gathered from, or copies made of, the contents of Plaintiffs’ electronic devices.’” *Id.* at *11 (citation omitted). The defendants moved to dismiss on the basis that the plaintiffs lack standing to seek expungement and that they had failed to plausibly allege a Fourth Amendment claim. The court denied their motion.

The court's ruling in *Alasaad* is relevant to this matter for reasons. First, the court recognized that retention of information is a cognizable injury that is redressable through expungement. *Id.* (“Retention of data illegally obtained by law enforcement may constitute continued harm sufficient to establish standing to seek expungement.”); *id.* at *12 (“[T]o the extent Plaintiffs’ information was copied or obtained, subsequently retained and not destroyed by [defendants], the destruction of these copies or data could redress such injury.”).

Second, the court specifically rejected an argument that Defendants also make here: that expungement could not redress any injury because the government’s “use of ‘evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution.’” 2018 WL 2170323, at *12; *see Gov’t Officials’ MTD 15–16*, ECF No. 38. The court noted that the government’s argument “does not go to redressability, but rather to the merits of the constitutional claim and remedy sought.” 2018 WL 2170323, *12–13.

Third, the court concluded that the plaintiffs had plausibly alleged a Fourth Amendment claim, even while deferring significant Fourth Amendment questions until after the record is more fully developed. *Id.* at *19–20 (stating that “it is unclear—based on the record before the Court at this time—the extent to which” certain government interests would justify warrantless border searches); *see Pls.’ Opp. to Gov’t Officials’ MTD 24–25, 33–34*, ECF No. 42.

Alasaad thus supports Plaintiffs’ claim here that retention of Plaintiffs’ private information constitutes a continuing harm from an illegal search and that expungement will redress that harm. It also demonstrates the propriety of finding Plaintiffs have plausibly pled a Fourth Amendment claim and, to the extent necessary, deferring resolution of any outstanding Fourth Amendment issues, such as the reasonableness of the surveillance, until summary judgment.

Dated: May 18, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Patrick Toomey, hereby certify that on May 18, 2018, the foregoing Notice of Supplemental Authority was filed via the Court's ECF system and, as such, was served on the below counsel:

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