

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of  
Investigation, *et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

Motion Set for March 19,  
2012

(Plaintiff requests oral  
argument.)

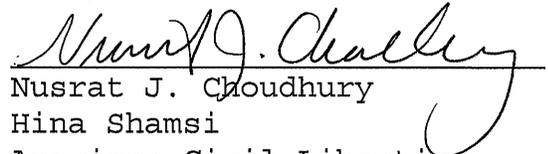
**PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff in the above-captioned action respectfully moves the Court to enter partial summary judgment in its favor on the claims discussed in the Memorandum in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment that accompanies this motion.

This lawsuit concerns a Freedom of Information Act ("FOIA") request Plaintiff submitted on July 27, 2010 to the Federal Bureau of Investigation's New Jersey offices. Plaintiff seeks the disclosure of information concerning the FBI's implementation of its authority under the 2008

Domestic Investigations and Operations Guide to collect, analyze, and map local communities' racial and ethnic information in investigations. This motion for partial summary judgment pertains to the FBI's failure to adequately search for responsive documents and withholding of certain information responsive to Plaintiff's FOIA request. There are no genuine issues of material fact in dispute. For the reasons stated in the accompanying Memorandum in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment, and supported by the accompanying Declaration of Nusrat J. Choudhury and attached exhibits, Plaintiff is entitled to judgment as a matter of law on these claims.

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January 20, 2012

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MEMORANDUM IN SUPPORT OF  
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IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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## INTRODUCTION

This Freedom of Information Act ("FOIA") case concerns the public's right to know whether the Federal Bureau of Investigation ("FBI") is unconstitutionally and illegally profiling New Jersey communities on the basis of race, ethnicity, religion, and national origin. Plaintiff, the American Civil Liberties Union of New Jersey, seeks the disclosure of documents concerning the FBI's implementation of its authority under the 2008 Domestic Investigations and Operations Guide ("DIOG") to collect and map local communities' racial and ethnic information in investigations. Although the public needs this information to engage in informed debate about the civil rights and civil liberties impact of the FBI's DIOG authority, Defendants have sought to withhold almost all responsive information. Yet, even the limited information the FBI released in response to Plaintiff's FOIA request and nearly identical requests in other states demonstrates that the FBI is profiling communities without evidence of wrongdoing and on the basis of crude stereotypes, underscoring the need for disclosure of precisely the information Plaintiff seeks.

Plaintiff opposes Defendants' motion to dismiss the FBI as a defendant from the case and cross-moves for partial summary judgment on claims challenging Defendants' failure to adequately

search for responsive records and their improper withholding of information.

Defendants' motion to dismiss the FBI as a defendant fails because the plain language of the FOIA permits the FBI to be sued for violating the statute. Defendants also fail to meet their burden of demonstrating that they conducted an adequate search for records for two reasons. First, they fail to present sufficiently detailed affidavits to allow Plaintiff to properly challenge the adequacy of their search procedures, and second, evidence in the record raises significant doubt as to the adequacy of the searches. Nor have Defendants carried their burden to show that they have disclosed all non-exempt and segregable information describing the FBI's use and reliance on New Jersey communities' racial and ethnic information, including publicly available data, contained in seventeen specific documents. According to Defendants, that information may be withheld under FOIA Exemptions 1 and 7, which apply to classified information and law enforcement records, respectively. But those exemptions cannot be used to keep from the public segregable portions of the documents showing the FBI's use of census data and other public source information. Finally, Defendants also fail to describe the five maps and information withheld from the DIOG training material in

sufficient detail so as to permit judicial review of these withholdings.

Accordingly, Plaintiff respectfully requests that the Court: 1) deny Defendants' motion to dismiss the FBI from this action; 2) order Defendants to conduct a thorough search for all responsive records and to provide an affidavit describing in detail the steps taken to search for responsive records; 3) order Defendants to inform the Court *in camera* whether they have refrained from identifying responsive documents pursuant to FOIA provisions permitting the exclusion of certain records; 4) order Defendants to disclose segregable non-exempt material from the documents withheld in full, or in the alternative, review *in camera* unexpurgated versions of these records to determine what segregable, non-exempt material exists; and 5) order Defendants to produce more detailed descriptions of the five withheld maps and information withheld from the DIOG training materials.

#### **STATEMENT OF FACTS**

In December 2008, the Department of Justice issued revised Attorney General Guidelines, which govern the FBI's conduct in criminal, national security, and counterintelligence investigations.<sup>1</sup> That same month, the FBI issued its Domestic Investigations and Operations Guide, an internal guide to

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<sup>1</sup> Dep't of Justice, The Attorney General's Guidelines for Domestic FBI Operations (2008), <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

implementing the Attorney General Guidelines.<sup>2</sup> As part of an intelligence program called "Domain Management," the DIOG authorizes FBI agents to collect, map, and analyze racial and ethnic demographic information, and to identify "concentrated ethnic communities" and the location of "ethnic-oriented businesses" and other facilities "if these locations will reasonably aid in the analysis of potential threats and vulnerabilities" and assist in "intelligence analysis."

Declaration of Nusrat J. Choudhury ("Choudhury Decl.") Ex. A. at 32-33 (Federal Bureau of Investigation, Domestic Investigations and Operations Guide § 4.3(C)(2) (Dec. 16, 2008)). The DIOG also allows the FBI to collect and track "[s]pecific and relevant ethnic behavior," "behavioral characteristics . . . reasonably associated with a particular criminal or terrorist element of an ethnic community," and "behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities in order to engage in illicit activities undetected," including "cultural tradition[s]." *Id.* at 33-34.

The FBI's implementation of its DIOG authority to collect and use racial and ethnic information raises grave civil

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<sup>2</sup> Federal Bureau of Investigation, Domestic Investigations and Operations Guide, (2008), available at <http://www.muslimadvocates.org/cgi-bin/mt/mt-search.cgi?IncludeBlogs=1&search=investigative,> ("DIOG").

liberties concerns because it could be based on, or lead to, the illegal and unconstitutional profiling of communities for investigation and intelligence gathering. Choudhury Decl. Ex. C (Compl. ¶ 13). According to census data, more than one in three New Jersey residents could be considered "ethnic". See Choudhury Decl. Ex. B at 12 (2010 Census Redistricting Data (Public Law 94-171) Summary File: Race, U.S. Census Bureau (2010) (New Jersey data)).<sup>3</sup> The DIOG permits the FBI to map their "behaviors," "cultural traditions," and "life style characteristics."

In 2009, the FBI's then General Counsel, Valerie Caproni, acknowledged to Congress that the DIOG raises civil liberties issues. S. Rep. No. 111-6, at 34 (2009) ("[W]e understand that the expansion of techniques available . . . has raised privacy and civil liberties concerns."). Ms. Caproni told the Senate Select Committee on Intelligence that the FBI would reassess its racial and ethnic mapping authority after a year based on its implementation and "comments and suggestions" from Congress and others. *Id.* Yet, until Plaintiff commenced this action, there

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<sup>3</sup> "Mapping" programs by local law enforcement agencies have been terminated due to these same concerns. For example, when the Los Angeles Police Department revealed a plan to map Muslim communities by race and religion, the public outcry was so great that the plan was abandoned. See Richard Winton & Teresa Watanabe, *LAPD's Muslim Mapping Plan Killed*, L.A. Times, Nov. 15, 2007, available at <http://articles.latimes.com/print/2007/nov/15/local/memuslim15>.

have been virtually no publicly available facts about the FBI's implementation in New Jersey of its DIOG authority. Without that information, the public is unable to provide the comments invited by the FBI or to engage in informed debate.

Plaintiff served the FBI with a FOIA request ("Request") on July 27, 2010. Decl. of David M. Hardy in Support of Defs.' Mot. for Summ. J. ("Hardy Decl.") Ex. A.<sup>4</sup> The Request seeks records concerning the FBI's collection, mapping, and use of New Jersey communities' racial or ethnic information, and the maps themselves. *Id.* at 2-4. Plaintiff sent the Request to six FBI offices in Hamilton, Newark, Northfield, Redbank, Somerset, and Woodland Park. Hardy Decl. Ex. A.

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<sup>4</sup> In July and August 2010, state affiliates of the American Civil Liberties Union served nearly identical FOIA requests for records upon local FBI offices in thirty-one states and the District of Columbia. Choudhury Decl. ¶ 3. FBI records released in response to these requests make clear that the FBI has exercised its DIOG authority unconstitutionally and illegally. See, e.g., American Civil Liberties Union, *Eye on the FBI: The FBI is Engaged in Unconstitutional Racial Profiling and Racial "Mapping"* (Oct. 20, 2011), [http://www.aclu.org/files/assets/aclu\\_eye\\_on\\_the\\_fbi\\_alert\\_-\\_fbi\\_engaged\\_in\\_unconstitutional\\_racial\\_profiling\\_and\\_racial\\_mapping\\_0.pdf](http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_fbi_engaged_in_unconstitutional_racial_profiling_and_racial_mapping_0.pdf); American Civil Liberties Union, *Eye on the FBI: The FBI is Using the Guise of "Community Outreach" to Collect and Illegally Store Intelligence Information on Americans' Political and Religious Beliefs* (Dec. 1, 2011), [http://www.aclu.org/files/assets/aclu\\_eye\\_on\\_the\\_fbi\\_alert\\_-\\_community\\_outreach\\_as\\_intelligence\\_gathering\\_0.pdf](http://www.aclu.org/files/assets/aclu_eye_on_the_fbi_alert_-_community_outreach_as_intelligence_gathering_0.pdf); Jerry Markon, *FBI Illegally Using Community Outreach to Gather Intelligence ACLU Alleges*, Wash. Post, Dec. 1, 2011, [http://www.washingtonpost.com/politics/fbi-illegally-using-community-outreach-to-gather-intelligence-aclu-alleges/2011/11/30/gIQAlqxyGO\\_story.html](http://www.washingtonpost.com/politics/fbi-illegally-using-community-outreach-to-gather-intelligence-aclu-alleges/2011/11/30/gIQAlqxyGO_story.html).

By September 13, 2010, David Hardy, the Section Chief of the Record/Information Dissemination Section of the FBI Records Management Division, acknowledged receipt of the Request by each of the FBI offices. Hardy Decl. Ex. B. On December 22, 2010, the FBI issued a "first interim release" consisting of 298 pages of training materials concerning the FBI's DIOG authorities. Hardy Decl. Ex. D at 1; Hardy Decl. Ex. I at DIOG PPD 1-298. The FBI withheld information from 48 of these pages under FOIA Exemptions 2, 6, 7C, and 7E. Hardy Decl. Ex. D at 1. Plaintiffs timely appealed the withholding by letter dated February 16, 2011. Hardy Decl. Ex. E.

After almost eight months passed without any further disclosures, Plaintiff filed this action to enforce the Request on May 4, 2011, seeking an injunction requiring the Defendants to immediately process the Request, to conduct a thorough search for responsive records, and to release information unlawfully withheld. Choudhury Decl. Ex. C (Complaint for Injunctive Relief at 12-13 ("Request for Relief")).<sup>5</sup> The FBI then issued a final release on July 20, 2011, consisting of one fourteen-page

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<sup>5</sup> Plaintiff also challenged Defendants' failure to timely respond to the Request and failure to grant Plaintiff's request for a public interest fee waiver and a limitation of fees. Choudhury Decl. Ex. C (Compl. ¶¶ 38, 41-42). The first claim is now mooted by Defendants' issuance of the final release after the litigation commenced, and the second claim is mooted by the FBI's representation that "[n]o fee will be assessed against the materials released" in response to the Request. Hardy Decl. ¶ 12 & Ex. H at 2; Defs.' Brief at 4 n.1.

document, partially redacted to withhold information under Exemptions 1, 6, 7A, 7C, 7D, 7E. Hardy Decl. Ex. H; *id.* at Ex. I at NK GEOMAP 743-756. The FBI also stated that it was withholding 470 additional pages in full under FOIA Exemptions 1, 6, 7C, 7D, and 7E. Hardy Decl. Ex. H at 1.

On July 25, 2011, Defendants answered the Complaint, and the parties subsequently agreed to proceed to summary judgment practice.

## ARGUMENT

### I. Legal Standards

As the Third Circuit recognizes, FOIA was enacted "to create an expedient tool for disseminating information and holding the government accountable." *Davin v. U.S. Dep't of Justice*, 60 F.3d 1043, 1049 (3d Cir. 1995); *see also U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989) (purpose of FOIA is "broad disclosure" of government records); *Halpern v. Fed. Bureau of Investigation*, 181 F.3d 279, 286 (2d Cir. 1999) (FOIA "adopts as its most basic premise a policy strongly favoring public disclosure."). FOIA thus "ensure[s] an informed citizenry, vital to the functioning of a democratic society." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

To accomplish FOIA's purpose, in response to a request, agencies must conduct a search that is "adequate," demonstrates a "good faith effort," and "us[es] methods which can be

reasonably expected to produce the information requested.”  
*Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998). “To demonstrate the adequacy of its search, the agency should provide a reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials . . . were searched.” *Abdelfattah v. U.S. Dep’t of Homeland Sec.*, 488 F.3d 178, 182 (3d Cir. 2007) (internal quotation marks omitted). Summary judgment may not be granted to an agency on a search claim if the “record leaves substantial doubt as to the sufficiency of the search.” *Campbell*, 164 F.3d at 27.

FOIA also “mandates disclosure of records . . . unless the documents fall within [FOIA’s] exemptions.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7 (2001). Exemptions are “narrowly construed” and all doubts “are to be resolved in favor of disclosure.” *Am. Civil Liberties Union v. Dep’t of Def.*, 543 F.3d 59, 66 (2d Cir. 2008).

The agency bears the burden of proving that information is properly withheld under a FOIA exemption. See *Klamath Water Users Protective Ass’n*, 532 U.S. at 7-8; *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151-52 (1989). FOIA specifically states that any reasonably segregable non-exempt portion of a record must be released. See 5 U.S.C. § 552(b).

In order to meet its burden of proving that the documents at issue have been properly withheld, the government must submit a declaration and index setting forth the bases for its claimed exemptions under the FOIA. See *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973). In light of the tendency of federal agencies to "claim the broadest possible grounds for exemption for the greatest amount of information," defendant agencies are required to produce "a relatively detailed analysis" of the withheld material "in manageable segments" without resort to "conclusory and generalized allegations of exemptions." See *id.* at 826-27. The affidavits must "describe the withheld information and the justification for withholding with reasonable specificity, demonstrating a logical connection between the information and the claimed exemption." *Am. Friends Serv. Comm. v. Dep't of Def.*, 831 F.2d 441, 444 (3d Cir. 1987) (citing *Abbotts v. Nuclear Regulatory Comm'n*, 766 F.2d 604, 606 (D.C. Cir. 1985)).

Courts review exemption claims *de novo*, and may examine documents *in camera*. 5 U.S.C. § 552 (a)(4)(B). When an agency invokes a national security exemption its affidavits are typically afforded "substantial weight," but only if they are not "controverted by contrary evidence." *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2d Cir. 2009). Summary judgment is warranted only where agency "affidavits describe the

justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by . . . contrary evidence in the record." *Id.* at 73.

**II) The FBI is a Proper Party and Should Not Be Dismissed**

Defendants contend that the Department of Justice ("DOJ") is the only proper defendant in this case because "[t]he FBI is a component of the DOJ and not an 'agency' as defined by the FOIA," and because dismissing the FBI as a defendant "would have no legal effect" on this case. Defs.' Br. at 7-8. Their argument fails on both grounds.

Contrary to the government's assertion, the FBI is an "agency" for FOIA purposes. The FOIA incorporates the definition of "agency" set forth in the Administrative Procedure Act ("APA"). 5 U.S.C. § 552(f) (citing 5 U.S.C. § 551(1)). The APA definition includes "each authority of the Government of the United States, *whether or not it is within or subject to review by another agency.*" 5 U.S.C. § 551(1) (emphasis supplied). None of the decisions Defendants cite in support of their position address FOIA's incorporation of the APA definition of "agency." Defs.' Br. at 8. Other courts, applying the full FOIA definition, have held that the FBI and other DOJ components are properly named defendants in FOIA actions. *See Cloonan v. Holder*, 768 F. Supp. 2d 154, 162 (D.D.C. 2011) ("naming

components as defendants . . . is appropriate since the statute's plain language is clear"); *Sussman v. U.S. Marshals Serv.*, Civ. No. 03-610 (HHK), 2011 WL 3891820, at \*7 (D.D.C. Sept. 6, 2011) (finding the FBI "to fall within the 'agency' definition of the APA, and thus the FOIA.").<sup>6</sup> Indeed, "[n]o court has found that FOIA does not apply to the FBI." *Brown v. Fed. Bureau of Investigation*, 793 F. Supp. 2d. 368, 384-85 (D.D.C. 2011) (emphasis supplied). And the FBI has litigated numerous FOIA cases in its own name before the Supreme Court, the Third Circuit, and other circuit courts. *See, e.g., Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615 (1982); *Patterson v. Fed. Bureau of Investigation*, 893 F.2d 595 (3d Cir. 1990); *Williams v. Fed. Bureau of Investigation*, 69 F.3d 1155 (D.C. Cir. 1995); *Ferguson v. Fed. Bureau of Investigation*, 83 F.3d 41 (2d Cir 1996); *Jones v. Fed. Bureau of Investigation*, 41 F.3d 238 (6th Cir. 1994).

In a decision that provides persuasive authority to this Court, Chief Judge Lamberth of the U.S. District Court for the District of Columbia recently denied a similar motion to dismiss the FBI. *Brown*, 793 F. Supp. 2d at 385. As Judge Lamberth rightly held, in light of "the plain meaning" of the FOIA and

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<sup>6</sup> *See also Lair v. Dep't of Treasury*, No. 03-cv-827, 2005 WL 645228, at \*3 (D.D.C. Mar. 21, 2005) ("naming components [as defendants] is proper"); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 22 (D.D.C. 2006) (finding the Bureau of Prisons a proper defendant to a FOIA action).

"the number of cases in this circuit which have held that the FBI may be a defendant for the purposes of FOIA," dismissal of the FBI was "not required by statutory language or binding precedent." *Id.* at 384-85. Judge Lamberth also addressed and rejected the Defendants' second argument in this case—that dismissing the FBI would have no "legal effect" —holding that substitution of DOJ for the FBI could "impede the purposes of the FOIA by preventing persons from receiving information in the most direct and efficient manner." *Id.* at 384; *cf. Davin*, 60 F.3d at 1049 (FOIA was enacted not only to "disseminat[e] information and [to] hold[] government accountable," but also to serve as "an expedient tool" for doing so). For the same reasons, this court should deny Defendants' motion to dismiss the FBI.

**III) Defendants Failed to Adequately Search for Responsive Records.**

Defendants have failed to meet their search obligations under FOIA for two independent reasons. First, they have failed to present sufficiently detailed affidavits to allow Plaintiff to properly challenge, and the Court to assess, the adequacy of their searches. See *Ethyl Corp. v. U.S. Envtl. Prot. Agency*, 25 F.3d 1241, 1250 (4th Cir. 1994) (agencies have the burden of showing the adequacy of a search); *Weisberg v. U.S. Dep't of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980) (agency affidavits

failing to provide specific enough information to permit challenge to search procedures are insufficient for summary judgment). Second, their claim that they conducted adequate searches is belied by contrary evidence in the record.

*Campbell*, 164 F.3d at 27 (agency does not merit summary judgment on search claim if the "record leaves substantial doubt as to the sufficiency of the search."); *CareToLive v. Food & Drug Admin.*, 631 F.3d 336, 341-42 (6th Cir. 2011) (identification of "specific deficiencies" will defeat summary judgment). This Court should deny the FBI's motion for summary judgment on its search claim and grant summary judgment to Plaintiff on this claim.<sup>7</sup>

The Hardy Declaration's description of the FBI's search, Defs.' Br. at 9-10, is inadequate and does not show that the FBI's search was "reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344,

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<sup>7</sup> Plaintiff's Complaint does not contain a separate cause of action challenging the adequacy of Defendants' search, but it sufficiently placed Defendants on notice of that claim by challenging the FBI's "improper[] withhold[ing] and/or delay [of] the processing of agency records in violation of the FOIA," seeking "an injunction requiring Defendants immediately to process Plaintiff's Request," and requesting a court order directing "Defendants to conduct a thorough search for all responsive records." Choudhury Decl. Ex. C. (Complaint for Injunctive Relief ¶¶ 5, 36 & at 12 ("Request for Relief")). See *Skinner v. Switzer*, 131 S.Ct. 1289, 1296 (2011) ("Rule 8(a)(2) of the Federal Rules of Civil Procedure generally requires only a plausible short and plain statement of the plaintiff's claim, not an exposition of his legal argument.") (internal quotation marks omitted).

1350-51 (D.C. Cir. 1983). According to the Declaration, the FBI determined that four FBI offices—the FBI’s Director’s Office, the Directorate of Intelligence, the Office of the General Counsel, and the Newark Field Office—were most likely to have responsive records. Hardy Decl. ¶ 19. But the Declaration does not explain *how* the FBI determined which offices to search for responsive documents. *Cf. CareToLive*, 631 F.3d at 341 (finding search description adequate when agency described how it determined which offices and departments to search).

The Hardy Declaration’s description of the search conducted by those four offices is also inadequate because it provides no explanation of the type of search these offices conducted, what search terms were used in any electronic searches, or what databases or files were searched. For example, although the Hardy Declaration states that the Newark field office and sub-offices that report to it were requested to conduct searches, it provides no detail about the search procedures. The Declaration’s lack of description of the four offices’ searches, which were the only source of responsive documents, contrasts with its detailed description of the (ultimately futile) search of the indices of the FBI’s electronic Central Records System (“CRS”).<sup>8</sup> Without similarly detailed information about the

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<sup>8</sup> As the FBI itself admits, the CRS search was all-but-guaranteed from its inception not to yield responsive records: the

searches conducted by the four offices, it is not possible for Plaintiff or the Court to determine whether Defendants' search was "adequate and reasonably calculated to uncover all relevant documents." *Abdelfattah*, 488 F.3d at 182.

In addition, based on the FBI's own disclosures, Plaintiff has identified two likely additional records repositories that may contain responsive materials. The Hardy Declaration fails to address these repositories, demonstrating that either the Declaration or the search itself is inadequate. *See Raulerson v. Ashcroft*, 271 F. Supp. 2d 17, 22 (D.D.C. 2002) ("[I]f [the agency] discovers that relevant information might exist in another set of files or a separate record system, the agency must look at those sources as well."); *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (same).

An FBI DIOG training slide indicates that "[a]ll information collected for Domain Management must be documented in [redacted]." Hardy Decl. Ex. I at DIOG PPD 256. Although the specific name or description of the location or system is redacted, it is likely to contain responsive information: the Domain Management program referred to in this document involves so-called "domain awareness" and "intelligence

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Declaration states that the CRS search used specific terms, but acknowledges that the system is not set up for searches based on terms and is instead searchable only by the names of victims, suspects and common investigative subjects—not the type of information sought by Plaintiff. Hardy Decl. ¶ 18-19.

analysis”—information that Plaintiff specifically sought in its Request. Hardy Decl. Ex. A at 1 (seeking racial and ethnic information used by the FBI in its “domain awareness and “intelligence analysis activities”); see also Hardy Decl. Ex. I at DIOG at 32-34. In addition, DIOG training materials identify the FBI’s Geospatial Intelligence program (“GEOINT”) as one involving the analysis of “demographics” data to conduct threat and intelligence analysis activities. Hardy Decl. Ex. I at DIOG PPD 148.<sup>9</sup> Because this program may involve the collection or use of racial and ethnic information—particularly demographics—a “search reasonably calculated to uncover all relevant documents” responsive to the Request would include searches of any GEOINT databases. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). The Hardy Declaration provides no indication that Defendants searched either the redacted Domain Management repository or the GEOINT records system. See *Nation Magazine*, 71 F.3d at 892 (“The agency . . . cannot limit its search to only one record system if there are others that are likely to turn up the information requested.”).

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<sup>9</sup> GEOINT provides access to, and analyzes, data concerning “national threats and vulnerabilities,” uses “internal and external data sets” to permit visual analysis of “[t]hreats, vulnerabilities and gaps”, and is used to understand “threats and vulnerabilities to inform investigations, analysis and resource allocations.” Hardy Decl. Ex. I at DIOG PPD 143-44, 146-47.

Finally, Defendants' search was inadequate because they have failed to release or identify in their submissions electronic communications that were likely created by the FBI's Newark Field Office, or received by it. In response to nearly identical FOIA requests to FBI field offices in Northern California, Georgia, and Michigan, the FBI released numerous two-to-three page electronic communications from each office authorizing the opening of Domain Management investigations involving the collection and use of racial or ethnic demographic information or mapping. See, e.g., Choudhury Decl. Ex. K (seeking authority to open Domain Management investigation into Michigan's Middle-Eastern and Muslim population); Choudhury Decl. Ex. D (opening Domain Management investigation into San Francisco's Chinese and Russian populations); Choudhury Decl. Ex. E (evaluating Domain Management investigation concerning "Asian and Eurasian Criminal Enterprises" in San Francisco); Choudhury Decl. Ex. H (initiating Domain Management investigation into African American groups and organizations in Atlanta). The Newark Field Office, like its counterparts in other parts of the country, likely created similar, short, electronic communications that are responsive to Plaintiff's Request. Yet, not a single document of this type was released or described in Defendants' submissions.<sup>10</sup>

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<sup>10</sup> These electronic communications show the investigation of

These deficiencies defeat the Defendants' motion for summary judgment. *Inturralde v. Comptroller of Currency*, 315 F.3d 311, 314 (D.C. Cir. 2003) (denying summary judgment in agency's favor when there was "countervailing evidence" that raised a "substantial doubt" about the adequacy of the search). The Court should instead grant summary judgment to Plaintiff and order Defendants to conduct a thorough and expeditious search for responsive records and to submit a detailed affidavit describing that search.<sup>11</sup>

**IV) Defendants Must Submit *In Camera* Declarations Establishing Any Entitlement to Withhold Records Under Section 552(c).**

Plaintiff believes that the FBI may be withholding information from disclosure under FOIA Section 552(c), which provides that in certain, limited circumstances, the FBI may treat otherwise responsive records "as not subject to the [FOIA] requirements" without informing the FOIA requester. 5 U.S.C. § 552(c)(1)-(c)(3). When other FOIA plaintiffs have raised

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racial, ethnic, religious, and national origin communities without evidence of wrongdoing, underscoring the need for disclosure of the information Plaintiff seeks. For example, two San Francisco FBI memoranda observe that the "San Francisco domain is home to one of the oldest Chinatowns in North America and one of the largest ethnic Chinese populations outside mainland China," and justify the opening of an investigation involving racial and national origin mapping because "[w]ithin this community there has been organized crime for generations." Choudhury Decl. Ex. C-D.

<sup>11</sup> Plaintiff does not seek discovery on the nature and scope of Defendants' search at this time, but reserves the right to do so if Defendants' search continues to be inadequate.

similar concerns, courts have required the FBI to submit an *ex parte*, *in camera* declaration, which courts review to determine whether reliance on Section 552(c) was justified. *See, e.g., Islamic Shura Council v. Fed. Bureau of Investigation*, 779 F. Supp. 2d 1114, 1126 (C.D. Cal. 2011) (reviewing agency's reliance on Section 552(c) *in camera* and concluding that "Plaintiffs are not entitled to any further information"); Harry A. Hammit, *et al.*, *Litigation Under the Federal Open Government Laws* 2008 336 (2008) ("[J]udicial review may occur . . . when the recipient suspects that the agency has resorted to the exclusion mechanism . . . ."). Plaintiff requests that this Court order a similar procedure here.

FOIA Section 552(c)(3) permits the FBI to exclude records from disclosure if they are properly withholdable under Exemption 1 (permitting withholding of classified national defense or foreign policy information), pertain to a foreign intelligence, counterintelligence, or international terrorism investigation, and if the very existence of the records is properly classified information. *Id.* § 552(c)(3). In the "rare circumstance" in which an agency properly relies on Section 552(c)(3), it may "withhold information from a requester without disclosing its basis for doing so." *Islamic Shura Council*, 779 F. Supp. 2d at 1123.

When the FBI may be relying upon Section 552(c), plaintiffs are entitled to request that the court determine whether or not that section is at issue. See *Hammit, supra*. If it is, the Court must review *in camera* the FBI's reliance on Section 552(c) to ensure that it complies with statutory requirements. See, e.g., *Benavides v. Drug Enforcement Admin.*, 968 F.2d 1243, 1246, 1249, *modified on rehearing by* 976 F.2d 751 (D.C. Cir. 1992) (holding that district court erred by refusing to review applicability of 5 U.S.C. § 552(c)(2) where plaintiff challenged its application).<sup>12</sup>

Although Plaintiff need not make a showing to support its concern that Defendants may be relying on Section 552(c)(3), it has two strong bases for that concern. First, Defendants' search for documents, and its result, are clearly inadequate for the reasons set forth above. Second, Defendants identified withheld documents concerning categories of information that may fall within Section 552(c)(3): documents concerning "intelligence gathering efforts of a foreign country within the U.S.," Hardy Decl. Ex. J at 3, 5, 7, 8; documents that if disclosed would harm foreign relations or foreign activities of the United States, Hardy Decl. ¶¶ 35-36; and documents

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<sup>12</sup> See also U.S. Dep't of Justice, Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act § G.5 (1987), available at <http://www.justice.gov/oip/86agmemo.htm> (providing detailed procedure for *in camera* judicial review of agency reliance on Section 552(c)).

pertaining to foreign or international extremist groups and terrorist organizations, Hardy Decl. Ex. J at 2, 4, 6, 9.<sup>13</sup> The FBI's identification of these documents suggests that related, responsive documents concerning foreign intelligence, counterintelligence, or international terrorism investigations may exist, but Defendants relied on Section 552(c)(3) to exclude them.

Plaintiff therefore requests the Court to follow the procedure used by other courts in similar circumstances. Hammit, *supra*, at 336 (citing *Beauman v. Fed. Bureau of Investigation*, No. 92-7603 (C.D. Cal. Apr. 28, 1993) (court conducted *in camera* review concerning agency reliance on Section 552(c) and publicly stated that "without confirming or denying that any such exclusion was actually invoked by defendant, the Court finds and concludes that if an exclusion was in fact employed, it was, and remains, amply justified"). Specifically, Plaintiff asks the Court to (1) order the Defendants to submit an *ex parte, in camera* declaration informing the Court whether they relied on Section 552(c) in processing any part of

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<sup>13</sup> DINS 1, 3, 5, and 8 appear to concern foreign or international extremist groups and terrorist organizations. In contrast to DINS 10 and 11, which Defendants describe as addressing "Domestic Terrorist Group[s]/Organization[s]," Defendants describe DINS 1, 3, 5, and 8 as concerning "Extremist Group[s]/Terrorist Organization[s]." Compare Hardy Decl. Ex. J at 2, 4, 6, 9, with *id.* at 11-12.

Plaintiff's Request and, if so, justifying their reliance; (2) determine whether Defendants' reliance on Section 552(c) is proper; (3) issue a sealed decision regarding its determination; and (4) issue a public opinion that does not confirm or deny whether any exclusion under Section 552(c) was actually invoked by Defendants, but communicates that the Court completed its review and made its determination.

**V) Defendants Have Not Demonstrated That They Have Segregated and Disclosed Non-Exempt Material From Documents Withheld in Full**

Defendants' withholdings of seventeen documents in their entirety cannot be sustained because they fail to show that they "disclose[d] segregable portions of otherwise nondisclosable material." *Am. Friends Serv. Comm.*, 831 F.2d at 445.<sup>14</sup> These seventeen documents are: ten Domain Intelligence Notes ("DINs"), which analyze threats in the FBI's Newark Division's area of responsibility; a 2009 Newark Annual Baseline Assessment, which provides a comprehensive threat analysis for the Newark

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<sup>14</sup> Defendants invoke Exemptions 1, 6, 7C, 7A, 7D and 7E to withhold these documents in full. In their summary judgment motion, however, Defendants brief only Exemptions 1 and 7A, and ask to provide the Court with arguments *in camera* concerning Exemptions 6, 7C, 7D, and 7E in the event that they do not prevail on their Exemption 7A claim. See Defs.' Br. 24 n.6. In this cross-motion, Plaintiff responds only to Defendants' Exemption 1 and 7A arguments. Plaintiff objects to Defendants' submission of *in camera* arguments on the other claimed exemptions and will present additional briefing on this issue and in response to Defendants' withholding of these documents under those exemptions.

Division, drawing upon the DINs; a Domain Program Management Electronic Communication memorializing the 2009 Newark Annual Baseline Assessment ("Domain Program Management EC"); and five maps that are not tied to other responsive documents. Hardy Decl. ¶ 40 & Ex. J. Plaintiff believes that due to the FBI's exercise of its DIOG authority, each of these documents likely uses and relies on publicly-available racial or ethnic information about New Jersey communities that is not properly withholdable, and must be segregated and disclosed. *EPIC v. Dep't of Justice*, 584 F. Supp. 2d 65, 72 (D.D.C. 2008) ("[N]onexempt factual information contained in an otherwise protected record must be disclosed unless it is inextricably intertwined or otherwise cannot be segregated from any [exempt] material.") (internal quotation marks omitted); *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1116 (D.C. Cir. 2007) (segregability requirement applies to all FOIA exemptions).

To meet their segregability burden, the Defendants must provide detailed affidavits that describe how the FBI made its segregability determination, offer a "factual recitation" of why materials withheld in full are not reasonably segregable, and indicate "what proportion of the information in a document is non-exempt and how that material is dispersed throughout the document." *Abdelfattah*, 488 F.3d at 187. Defendants fail to meet these standards. Although the Hardy Declaration describes

the process by which the FBI made its segregability determination, Hardy Decl. ¶ 66, it does not address what proportion of each of the seventeen documents withheld in full contain non-exempt, segregable information, how such information is dispersed through each document, or why it cannot be segregated and disclosed. Without this required "factual recitation" regarding each document, Defendants fail to carry their segregability burden under Third Circuit law. See *Abdelfattah*, 488 F.3d at 187; *Davin*, 60 F.3d at 1052.

Defendants contend that segregation is not possible because the records contain "highly sensitive law enforcement and intelligence information that is covered by more than one FOIA exemption." Defs.' Br. at 39. But, they offer no authority for the extraordinary proposition that when information in a record is covered by more than one FOIA exemption, Defendants are freed from their burden of disclosing the reasonably segregable *non-exempt* information in the record. *Id.* Instead, Defendants provide impermissibly categorical and conclusory assertions that no non-exempt material may be segregated and disclosed from documents withheld in full. See Hardy Decl. ¶ 66 (asserting generally that disclosure would harm national security, investigations and prosecutions, and reveal confidential sources and methods); Hardy Decl. ¶ 36-39, 41-42, 44-45, 47-48 (contending without elaboration that segregation and disclosure

of non-exempt information from DINs 1-8 and 10-11 would reveal investigation targets).<sup>15</sup> As Plaintiff discusses more specifically below with respect to each document, these statements are precisely the sort of "blanket declaration that all facts are so intertwined [as] to prevent disclosure" that courts have held are insufficient to explain why an agency has not disclosed segregable information. *EPIC*, 584 F. Supp. 2d at 74.

**a. Domain Intelligence Notes 1-8, 10-11:** Although Defendants acknowledge that Domestic Intelligence Notes 1-8 and 10-11 contain public source information, they fail to adequately justify their refusal to segregate it. *See, e.g.*, Hardy Decl. ¶ 32 (referring to "public source information" in DINs); *id.* ¶ 40 (asserting that the "[b]ackground section" of DIN 2 "provides some discussion of population and locations").

By contrast, the FBI's release of DIN 9 and disclosures in response to nearly identical FOIA requests in other states make clear that Defendants can segregate and disclose this non-exempt information from domestic intelligence notes. For example, DIN 9 contains census figures concerning the number of Hispanics, African Americans, and individuals of Central American origin in

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<sup>15</sup> Defendants provide no additional explanation for why non-exempt information may not be segregated and disclosed from the 2009 Newark Annual Baseline Domain Assessment, the Domain Program Management EC, or the five maps.

New Jersey; a chart of "New Jersey's top five Hispanic populated counties," created through the use of census information; and a map labeled "[redacted] El Salvador, Honduras Guatemala." Hardy Decl. Ex. I at NK GEOMAP 743, 746-47, 753. Defendants similarly segregated and disclosed population statistics concerning Hispanic, Central American-born, and African American populations from domain intelligence notes released in response to FOIA requests for FBI records in Alabama and Georgia. Choudhury Decl. ¶¶ 5-6, Ex. H, J.<sup>16</sup> There is no reason why Defendants cannot segregate and disclose this information from the DINs and their appended maps. See *Abdelfattah*, 488 F.3d at 187.

Exemption 1: Defendants do not demonstrate that DINs 1-8 were properly withheld in their entirety under Exemption 1 and that these documents do not contain segregable information. Exemption 1 applies to information that is properly classified "in the interest of national defense or foreign policy" pursuant to Executive Order 13,526, 75 Fed. Reg. 707 (Dec. 29, 2009). 5 U.S.C. § 552(b)(1). Executive Order 13,526 in turn permits classification of information that "reasonably could be expected

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<sup>16</sup> These documents also substantiate Plaintiff's concern that the FBI is inappropriately tracking communities based on race, ethnicity, and national origin to examine threats. See, e.g., DIN 9, Hardy Decl. Ex. I at NK GEOMAP 743, 746 (tracking communities from Mexico, Cuba, the Dominican Republic, Colombia, and Puerto Rico).

to cause damage to national security," but makes clear that classification is not permissible in order to "conceal violations of [the] law," or to "prevent embarrassment." Executive Order 13,526 §§ 1.1(a), 1.7(a). A prerequisite for classification is that the information must fall within one of the authorized withholding categories, *id.* § 1.1(a), including "intelligence activities (including covert action), intelligence sources or methods" and "foreign relations or foreign activities of the United States, including confidential sources," *id.* § 1.4 (c)-(d). Although *in camera* review is proper, and often necessary, with regard to all the exemptions, Congress expressly intended the provision for *in camera* review to encompass Exemption 1 withholdings in particular. *Halpern*, 181 F.3d at 291; *see also Allen v. Cent. Intelligence Agency*, 636 F.2d 1287, 1295 (D.D.C. 1980).

DINs 1-8 and 10-11 contain publicly available demographic information that cannot constitute intelligence sources or methods, and Defendants' submissions do not address with the requisite specificity why disclosure of publicly available information would reveal any such sources or methods. *See Hardy Decl.* ¶ 34 . Defendants' categorical assertion that disclosure of information like population statistics would tip off investigation targets or permit them to "change their behaviors" is also unpersuasive and unjustified. *See Halpern*, 181 F.3d at

293 (rejecting agency's summary assertion that disclosure would "automatically reveal . . . intelligence-gathering capabilities"). Similarly, Defendants' bare, conclusory, and categorical assertions that entire documents are classified because they concern foreign activities or foreign relations are insufficient. See Defs.' Br. at 17. And, although the Defendants cite Section 1.4(c)-(d) of Executive Order 13,526 to support their withholding of DINs 1-8 under Exemption 1, Hardy Decl. ¶¶ 32, 35, they fail to explain "both why the material has been kept secret and why such secrecy is allowed by the terms of [the] executive order." *Am. Civil Liberties Union v. U.S. Dep't of Justice*, 265 F. Supp. 2d 20, 27 (D.D.C. 2003). Finally, to the extent that Defendants argue that non-exempt information is so intertwined with exempt information as not to be segregable, this argument is also unpersuasive for the reasons set forth above. See discussion *supra* at 19-20; *EPIC*, 584 F. Supp. 2d at 73-74.

Exemption 7A: Defendants also fail to carry their burden for withholding DINs 1-8 and 10-11 in full under Exemption 7A. Exemption 7A protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). The agency

must demonstrate that "a law enforcement proceeding is pending or prospective" and that "release of the information could reasonably be expected to cause some articulable harm." *Manna v. U.S. Dep't of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995). Moreover, "the government must show, by more than conclusory statement, how particular kinds of investigatory records would interfere with a pending enforcement proceeding." *Campbell v. Dep't of Health & Human Serv.*, 682 F.2d 256, 259 (D.C. Cir. 1982).

Defendants' conclusory justifications, see, e.g., Hardy Decl. ¶ 40, do not adequately demonstrate that the disclosure of public source information in DINs 1-8 and 10-11 about racial, ethnic, and national origin communities, including population statistics, would interfere with a pending enforcement proceeding. Defendants contend that they are simply relying on a recognized "categorical approach" to Exemption 7A. Defs.' Br. 21-22. But, even when an agency "group[s] documents into categories that are sufficiently distinct to allow a court to grasp how each category of documents, if disclosed, would interfere with the investigation," it still must explain to the Court with sufficient specificity "how the release of each category would interfere with enforcement proceedings." *Manna v. U.S. Dep't of Justice*, 815 F. Supp. 798, 806 (D.N.J. 1993) (internal alterations omitted); *North v. Walsh*, 881 F.2d 1088,

1097 (D.C. Cir. 1989) (agency must show that disclosure "would, in some particular, discernible way, disrupt, impede, or otherwise harm the enforcement proceeding"). Defendants fail to do so.

**b. 2009 Newark Annual Baseline Domain Assessment and Domain Program Management EC:** Defendants acknowledge that like DINs 1-8 and 10-11, the 2009 Newark Annual Baseline Domain Assessment and the Domain Program Management EC contain "public source information." Hardy Decl. ¶ 32. They offer no justification for not disclosing these non-exempt portions of the documents other than the conclusory, catch all statement provided for all documents withheld in full. See Hardy Decl. ¶ 66. Moreover, Defendants' release of similar documents in response to FOIA requests in other states suggests that Defendants have not met their burden on segregability. For example, the FBI released an electronic communication documenting the "2009 Division Domain Assessment" of the FBI's Sacramento Field Office, which, like the 2009 Newark Annual Baseline Domain Assessment, "identif[ies] and forecast[s] the top threats" for the FBI division and provides a "threat summary of several Domain Intelligence Notes (DINs)." Choudhury Decl. Ex. H; cf. Hardy Decl. Ex. J at 13-14 (Domain Program Management EC "memorialize[s] the Newark Domain Management Team's risk assessment and prioritization of threats in Newark's area of responsibility"). The Sacramento document

suggests that the Domain Program Management EC and the 2009 Newark Annual Baseline Domain Assessment also contain non-exempt information that may be segregated and disclosed to Plaintiff.

Exemption 1: Defendants fail to carry their burden of withholding these documents under Exemption 1 for the same reasons that they fail to carry this burden with respect to DINS 1-8: they do not demonstrate that the documents were properly withheld in their entirety, and their submissions do not address with any specificity why disclosure of the non-exempt, segregable information from them would reveal intelligence sources or methods, or result in harm to foreign relations. Hardy Decl. ¶ 34; Defs.' Br. 17; See *Halpern*, 181 F. 3d at 293 (requiring more than summary assertions of harm for Exemption 1 to apply). The Hardy Declaration offers the same arguments in support of withholding these documents under Exemption 1 as it did for DINS 2, 4, 5, and 7, over which it asserted classification pursuant to Section 1.4(c) and (d) of Executive Order 13,526. Hardy Decl. ¶¶ 32-36. As with the DINS, Defendants fail to explain "why the material has been kept secret and why such secrecy is allowed by the terms of [the] executive order." *Am. Civil Liberties Union*, 265 F. Supp. 2d at 27. Defendants also assert in a general and conclusory fashion that disclosure of the 2009 Newark Annual Baseline Domain Assessment and the Domain Program Management EC could cause

serious harm to national security, with no reference to specific portions of these documents, which are respectively 45 and 36 pages long. Hardy Decl. ¶ 33, 35-36.

Exemption 7A: Nor have Defendants met their burden of withholding these documents in their entirety under Exemption 7A. As with DINs 1-8 and 10-11, Defendants' submissions do not identify specific ongoing or likely enforcement proceedings that would be adversely impacted by disclosure of the segregable, non-exempt portions of the document, much less demonstrate how such proceedings would be impacted. See *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 485 n.5 (2d Cir. 1999); *Campbell*, 682 F.2d at 259.

**c. Maps:** Defendants fail to disclose non-exempt, segregable information from five maps that are not tied to other documents, Hardy Decl. Ex. J at 15-16, and to describe the maps with sufficient specificity to permit the Court to determine whether they are properly withheld under Exemptions 1 and 7A, see *infra* Section VI. These maps necessarily include at least some public source information concerning the geographic area of concern, population statistics, and the identities of towns and cities as did the map appended to DIN 9. See, e.g., Hardy Decl. Ex. I at NK GEOMAP 753 (demonstrating FBI mapping of populations from "El Salvador, Honduras, Guatemala" to "show[] areas in Newark's [Area of Responsibility] where MS-13 is likely to be

concentrated"). The map appended to DIN 9 provides vital information responsive to Plaintiff's request, identifying three New Jersey communities that are being tracked on the basis of national origin. See *id.* at NK GEOMAP 753. The disclosure of such basic information does not "tip off" targets; rather, it informs communities how their information is being used and collected by the FBI under the DIOG. Defendants fail to meet their burden because they offer nothing short of the broad and conclusory justification discussed above for refusing to segregate and release similar non-exempt information contained in the five maps, see Hardy Decl. ¶ 66. See also *Abdelfattah*, 488 F.3d at 187.

The Court should thus grant summary judgment to Plaintiffs on the issue of segregability and should order Defendants to disclose segregable non-exempt material from the documents withheld in full, or in the alternative, review *in camera* unexpurgated versions of these records to determine what segregable, non-exempt material exists.

**VI) Defendants' Submissions Do Not Sufficiently Detail Their Basis for Withholding the Maps and DIOG Training Materials Under Exemptions 1 and 7A.**

Defendants' submissions do not even provide the detail necessary for *de novo* review of their arguments for withholding the five maps and DIOG training materials under Exemptions 1, 7A and 7E. Summary judgment in favor of nondisclosure is proper

only if agency affidavits "describe the justifications . . . with reasonably specific detail [to] demonstrate that the information withheld logically falls within [a] claimed exemption." *Wilner*, 592 F.3d at 73. Defendants must describe withheld information with sufficient detail to permit the requester and Court to derive a "clear explanation" of why it is exempt from disclosure. *Davin*, 60 F.3d at 1050. "[G]eneric explanations" that are "not tied to the content of the specific redactions" are insufficient. *Id.* at 1051; *see also Larson v. Dep't of State*, 565 F.3d 857, 864 (D.C. Cir. 2009) (rejecting "conclusory" affidavits that merely recite statutory standards, or are overly vague or sweeping"). While Defendants describe certain withheld documents in adequate detail, *see, e.g., Hardy Decl.* at 3 (describing DIN 1), they fail to sufficiently describe the five maps and the information redacted from the DIOG training materials so as to permit *de novo* review. *See Halpern*, 181 F.3d at 295 (requiring sufficient information for *de novo* review of withholdings even where national security is involved).

**a. Four Maps:** Neither the *Vaughn* index nor the Hardy Declaration asserts that an ongoing, pending, or prospective law enforcement proceeding would be harmed by disclosure of any part of the maps, which is required for the invocation of Exemption 7A. *Grand Cent. P'ship, Inc.*, 166 F.3d at 485 n.5. The Hardy

Declaration indicates that the FBI reviewed the four maps, but does not indicate what determination was made. See Hardy Decl. ¶ 40.<sup>17</sup>

**b. One Map:** Defendants do not adequately explain whether the FBI adhered to mandated procedures in classifying this map because they fail to identify a provision of Executive Order 13,526 § 1.4 that supports classification. See Executive Order 13,526 § 1.1(a) (requiring properly classified information to fall within one or more of the categories of information listed in § 1.4 of the order). *Cf.* Hardy Decl. ¶¶ 32, 35 (describing classification justifications for other documents withheld in full). Defendants also fail to describe the harm that would result from describing the map's contents other than in the most conclusory and inadequate terms. See Hardy Decl. at 50-51 (asserting that description will disclose target or scope of investigation). Such "cryptic and indefinite possibilities" are insufficient to permit *de novo* review. *El Bardawi v. Dep't of Homeland Sec.*, 583 F. Supp. 2d 285, 319 (D. Conn. 2008).

**c. DIOG Training Materials:** The Hardy Declaration and *Vaughn* index also identified 48 pages of DIOG training materials

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<sup>17</sup> Although the Hardy Declaration states that "[t]he FBI carefully reviewed . . . the two maps," Hardy Decl. ¶ 40, Plaintiff interprets the reference to mean the two sets of maps identified in the *Vaughn* index: the one-page map withheld under Exemptions 1, 7A, and 7E, and the four maps withheld under Exemptions 7A and 7E. See Hardy Decl. Ex. I at NK GEOMAP 442-45, 450; *id.* Ex. J at 15-16.

withheld in part under Exemption 7E. Hardy Decl. ¶ 55; Hardy Decl. Ex. J at 1.<sup>18</sup> With respect to these pages, Plaintiff seeks summary judgment on the following specific information: the name of the repository where “[a]ll information about Domain Management must be documented,” Hardy Decl. Ex. I at DIOG PPD 256, and information redacted from the Investigative Methods/Approvals tables, *id.* at DIOG PPD 14-15, 78-79, 136-37, 223-24, 298.<sup>19</sup> Defendants fail to sufficiently describe their basis for these withholdings.

Exemption 7(E) provides for the withholding of two categories of law enforcement information: those that, if released, “would disclose techniques and procedures”; and those that would reasonably risk circumvention of the law if “guidelines for law enforcement investigations or prosecutions” are disclosed. 5 U.S.C. § 552(b)(7)(E); *see Allard K. Lowenstein Int’l Human Rights Project v. U.S. Dep’t of Homeland Sec.*, 626 F.3d 678, 681-82 (2d Cir. 2010) (discussing Exemption 7E). To demonstrate a “risk of circumvention of the law,” they

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<sup>18</sup> Defendants previously invoked Exemption 2 for some of this information, but no longer do so. Hardy Decl. ¶ 4 n.2.

<sup>19</sup> Several Investigative Methods/Approvals tables identified in the release appear to be identical. Compare Hardy Decl. Ex. I at DIOG PPD 14-15 with *id.* at DIOG PPD 78-79. Plaintiff does not oppose summary judgment with respect to information withheld from DIOG training materials at DIOG PPD 8-10, 12, 56, 65-66, 114, 123-24, 149, 151-56, 158, 174, 199, 209-211, 239-40, 252-53, 259, 263, 265-68, 287, and 291-92.

must show that the law enforcement rules they seek to withhold are not well known to the public. See *Rosenfeld v. Dep't of Justice*, 57 F.3d 803, 815 (9th Cir. 1995) (recognizing "routine-technique" exception to Exemption 7E); accord *Davin*, 60 F.3d at 1064 (same). The Defendants must provide sufficient information for the Court to determine whether Exemption 7E applies. *Boyd v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 2006 WL 2844912, at \*9 (D.D.C. Sept. 29, 2006).

Defendants make little attempt to describe with any specificity how disclosure of the name of the Domain Management records repository would permit circumvention of the law. Their generic explanation that *all* of the material redacted from the DIOG training materials "could enable subjects of FBI investigations" to circumvent law enforcement techniques and procedures is insufficiently tied to the content of this specific redaction. See Hardy Decl. ¶ 55. Even where Defendants attempt to justify the withholding as part of a generic category of file numbers and procedures, information in forms and non-public databases, symbols, terms and definitions, their explanation for redaction does not connect the specific information Plaintiff seeks—the name of a single database—to the harms they assert would flow from disclosure. See *id.* ¶ 65 (asserting that disclosure of information from this category would permit potential criminals to hide their tracks). Such

"categorical descriptions" of redacted material coupled with generalized assertions of anticipated harms from disclosure are "clearly inadequate." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 224 (D.C. Cir. 1987).

Defendants similarly "barely pretend[]" to address specifically how redacted information concerning the level of approval required for the use of investigatory techniques constitute law enforcement techniques and procedures. *Halpern*, 181 F.3d at 290, 293. Many of the approval levels in the Investigative Methods/Approvals tables are disclosed; without contextual description of the specific redactions from the table, Defendants' general assertion that disclosure of any of the redacted information would reveal law enforcement techniques, Hardy Decl. ¶ 57, is insufficiently "tied to the content of the specific redactions" to be "useful in evaluating the propriety of the decision to withhold." *Davin*, 60 F.3d at 1051.

Finally, Defendants' contention that disclosure of this information would permit circumvention of the law is equally opaque. Their broad assertion that disclosure of approval levels for investigatory techniques will permit current and potential criminals to evade detection, Hardy Decl. ¶ 61, is precisely the sort of "boilerplate language and . . . conclusion," *Bay Area Lawyers for Nuclear Arms Control v. Dep't*

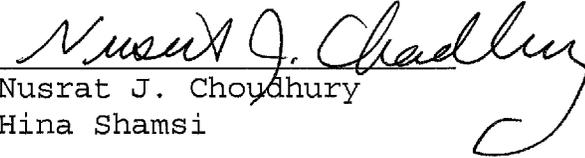
*of State*, 818 F. Supp. 1291, 1299 (N.D. Cal. 1992), lacking "contextual description . . . of the documents . . . or of the specific redactions" that courts reject. *Halpern*, 181 F.3d at 293; *see also Davin*, 60 F.3d at 1051 (rejecting as insufficiently specific claims that disclosure would cause "great harm to the source" and "could announce to the world that they were of investigative interest to the FBI") (internal citations omitted).

Defendants thus completely fail to provide the kind of fact-specific justification that would permit Plaintiff to contest in adversarial fashion Defendants' withholding of the five maps, the name of the Domain Management database, or the redacted information concerning approval levels for investigative techniques, or that would enable effective *de novo* review by this Court. The Court should order Defendants to provide more detailed affidavits supporting these withholdings.

#### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' motion for summary judgment and grant Plaintiff's cross-motion for summary judgment.

Respectfully Submitted,

  
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January 20, 2012

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of Investigation,  
*et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

DECLARATION OF NUSRAT J. CHOUDHURY

I, Nusrat J. Choudhury, hereby declare and state as follows:

1. I am co-counsel for the Plaintiff in the above-captioned case. I make this declaration in support of Plaintiff's Cross-Motion for Partial Summary Judgment and Opposition to Defendants' Motion for Summary Judgment.

2. Attached hereto are true and correct copies of the following:

<u>Document</u>	<u>Exhibit</u>
Federal Bureau of Investigation, Domestic Investigations and Operations Guide (Dec. 16, 2008).....	A
2010 Census Redistricting Data (Public Law 94 171) Summary File: Race, U.S. Census Bureau (2010).....	B
Complaint for Injunctive Relief .....	C

Federal Bureau of Investigation, San Francisco  
Electronic Communication: Domain Management -  
Criminal Asian-Eurasian Criminal Enterprise (June  
8, 2009)..... D

Federal Bureau of Investigation, San Francisco  
Electronic Communication: Domain Management -  
Criminal Asian-Eurasian Criminal Enterprise  
Assessment (Aug. 20, 2009)..... E

Federal Bureau of Investigation, Sacramento  
Electronic Communication: Domain Management-  
Document Completion of 2009 Division Domain  
Assessment (Aug. 18, 2009)..... F

Federal Bureau of Investigation, Atlanta  
Electronic Communication: Southwest Border (SWB)  
Threat Domain Assessment (Aug. 5, 2010)..... G

Federal Bureau of Investigation, Atlanta  
Intelligence Note from Domain Management:  
Intelligence Related to the Black Separatist  
Threat (Oct. 7, 2009)..... H

Federal Bureau of Investigation, Atlanta  
Intelligence Note from Domain Management:  
Intelligence Related to MS-13 Threat (Dec. 15,  
2008)..... I

Federal Bureau of Investigation, Mobile  
Intelligence Note from Domain Management:  
Intelligence Related to Mara Salvatrucha Threat  
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Federal Bureau of Investigation, Detroit  
Electronic Communication: Detroit Domain  
Management (July 6, 2009)..... K

3. In July and August 2010, state affiliates of the American Civil Liberties Union served records requests under the Freedom of Action Act ("FOIA"), 5 U.S.C. § 552, upon local Federal Bureau of Investigation ("FBI") offices in thirty-one states and the District of Columbia. Like Plaintiff's FOIA

request to FBI offices in New Jersey, which is the subject of this action and is annexed as Exhibit A to the Declaration of David M. Hardy, these requests seek records concerning the FBI's collection, mapping, and use of local communities' racial or ethnic information pursuant to the 2008 FBI Domestic Investigations and Operations Guide. These FOIA requests seek FBI records of the same type and time frame as Plaintiff's Request.

4. In response to an ACLU affiliate's FOIA request to FBI offices in Northern California, the FBI released in part two memoranda concerning FBI Domain Management investigations of "Asian-Eurasian Criminal Enterprise" in San Francisco and an electronic communication documenting the FBI's Sacramento Field Office's "2009 Division Domain Assessment." These documents are attached hereto as Exhibits D-F.

5. In response to an ACLU affiliate's FOIA request to FBI offices in Georgia, the FBI released an electronic communication concerning a Domain Assessment of the "Southwest Border (SWB) Threat," a domain intelligence note concerning "Intelligence Related to the Black Separatist Threat," and a domain intelligence note concerning "Intelligence Related to the MS-13 Threat." These documents are attached hereto as Exhibits G-I.

6. In response to an ACLU affiliate's FOIA request to FBI offices in Alabama, the FBI released a domain intelligence note

concerning "Intelligence Related to the MS-13 Threat." This document is attached hereto as Exhibit J.

7. In response to an ACLU affiliate's FOIA request to FBI offices in Michigan, the FBI released a memorandum seeking authority to open a Domain Management investigation. This document is attached hereto as Exhibit K.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20th day of January 2012.

  
Nusrat J. Choudhury

# Exhibit A

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## **Domestic Investigations and Operations Guide**



**Federal Bureau of Investigation (FBI)**

**December 16, 2008**

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**DIOG-1**

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**GENERAL INFORMATION:** Questions or comments pertaining to the DIOG can be directed to:

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or

**FBIHQ, Director's Office, Resource Planning Office (RPO), Division [00]**

**Corporate Policy Office (CPO)**

**Division Point of Contact:**

b6  
b7C

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**4. (U) Privacy and Civil Liberties, and Least Intrusive Methods**

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**4.1. (U) Civil Liberties and Privacy**

**A. (U) Overview**

(U) The FBI is responsible for protecting the American public, not only from crime and terrorism, but also from incursions into their constitutional rights. Accordingly, all AGG-Dom investigative activities must be carried out with full adherence to the Constitution, federal laws and the principles of civil liberty and privacy.

(U) The FBI has a long-established commitment to protecting the civil liberties of Americans as it investigates threats to national security and public safety. As discussed below, compliance with the FBI's comprehensive infrastructure of legal limitations, oversight and self-regulation effectively ensures that this commitment is honored. Because our ability to achieve our mission requires that we have the trust and confidence of the American public, and because that trust and confidence can be significantly shaken by our failure to respect the limits of our power, special care must be taken by all employees to comply with these limitations.

**B. (U) Purpose of Investigative Activity**

(U) One of the most important safeguards in the AGG-Dom—one that is intended to ensure that FBI employees respect the constitutional rights of Americans—is the threshold requirement that all investigative activity be conducted for an authorized purpose. Under the AGG-Dom that authorized purpose must be an authorized national security, criminal, or foreign intelligence collection purpose.

(U) Simply stating such a purpose is not sufficient, however, to ensure compliance with this safeguard. It is critical that the authorized purpose not be, or appear to be, arbitrary or contrived; that it be well-founded and well-documented; and that the information sought and the investigative method used to obtain it be focused in scope, time, and manner to achieve the underlying purpose. Furthermore, there are constitutional provisions that set limits on what that purpose may be. It may not be solely to monitor the exercise of rights that are protected by the Constitution, and, equally important, the authorized purpose may not be based solely on race, ethnicity, national origin or religion.

(U) It is important to understand how the "authorized purpose" requirement and these constitutional limitations relate to one another. For example, individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs—have a fundamental constitutional right to do so. No investigative activity may be conducted for the sole purpose of monitoring the exercise of these rights. If, however, there exists a well-founded basis to conduct investigative activity for one of the authorized purposes listed above—and that basis is not solely the race, ethnicity, national origin or religion of the participants—FBI employees may assess or investigate these activities, subject to other limitations in the AGG-Dom and the DIOG. In this situation, the investigative activity would not be based solely on Constitutionally-protected conduct or on race, ethnicity, nationality or religion. Finally, although investigative activity would be authorized in this situation, it is important that it be conducted in a manner

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that does not materially interfere with the ability of the individuals or groups to engage in the exercise of Constitutionally-protected rights.

**C. (U) Oversight and Self-Regulation**

(U) Provisions of the AGG-Dom, other AGG, and oversight from DOJ components are designed to ensure the activities of the FBI are lawful, appropriate and ethical as well as effective in protecting the civil liberties and privacy of individuals in the United States. DOJ and the FBI's Inspection Division, OIC, and OGC, along with every FBI employee, share responsibility for ensuring that the FBI meets these goals.

(U) In the criminal investigation arena, oversight of FBI activities has traditionally come from prosecutors and district courts. Because many national security investigations do not result in prosecutions, other oversight mechanisms are necessary. Various features of the AGG-Dom facilitate the DOJ NSD oversight functions in the national security and foreign intelligence collection areas. Relevant requirements and provisions include: (i) required notification by the FBI to the DOJ NSD concerning a full investigation that involves foreign intelligence collection, a full investigation of a United States person in relation to a threat to the national security; or a national security investigation involving a "sensitive investigative matter;" (ii) an annual report by the FBI to the DOJ NSD concerning the FBI's foreign intelligence collection program, including information reflecting the scope and nature of foreign intelligence collection activities in each FBI Field Office; (iii) access by the DOJ NSD to information obtained by the FBI through national security or foreign intelligence activities; and (iv) general authority for the Assistant Attorney General for National Security to obtain reports from the FBI concerning these activities. (AGG-Dom, Intro.4.C)

(U) The DOJ NSD's Oversight Section and the FBI's OGC are responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities. These reviews, conducted at FBI Field Offices and FBIHQ Divisions, broadly examine such activities for compliance with the AGG-Dom and other applicable requirements.

(U) Further examples of oversight mechanisms include the involvement of both FBI and prosecutorial personnel in the review of undercover operations involving sensitive circumstances; notice requirements for investigations involving sensitive investigative matters; and notice and oversight provisions for enterprise investigations, which involve a broad examination of groups implicated in criminal and national security threats. These requirements and procedures help to ensure that the rule of law is respected in the FBI's activities and that public confidence is maintained in these activities. (AGG-Dom, Intro.4.C)

(U) In addition to the above-mentioned oversight entities DOJ has in place, the FBI is subject to a regime of oversight, legal limitations, and self-regulation designed to ensure strict adherence to civil liberties. This regime is comprehensive and has many facets, including the following:

1. (U) The Foreign Intelligence Surveillance Act of 1978, as amended, and Title III of the Omnibus and Streets Act of 1968. These laws establish the processes for obtaining judicial approval of: electronic surveillance and physical searches for the purposes of collecting foreign intelligence and electronic surveillance for the purpose of collecting evidence of crimes.

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- 2. (U) The Whistleblower Protection Acts of 1989 and 1998: These laws protect whistleblowers from retaliation.
- 3. (U) The Freedom of Information Act of 1966: The law provides the public with access to FBI documents not covered by a specific statutory exemption.
- 4. (U) The Privacy Act of 1974: The purpose of the Privacy Act is to balance the government's need to maintain information about United States citizens and legal permanent resident aliens with the rights of those individuals to be protected against unwarranted invasions of their privacy stemming from the government's collection, use, maintenance, and dissemination of that information. The Privacy Act forbids the FBI and other federal agencies from collecting information about how individuals exercise their First Amendment rights, unless that collection is expressly authorized by statute or by the individual, or is pertinent to and within the scope of an authorized law enforcement activity (5 U.S.C. § 552a[e][7]). Except for collection of foreign intelligence, activities authorized by the AGG-Dom are authorized law enforcement activities or activities for which there is otherwise statutory authority for purposes of the Privacy Act. Foreign intelligence collection is not an authorized law enforcement activity.

(U) Congressional Oversight is conducted by various committees of the United States Congress, but primarily by the Judiciary and Intelligence Committees. These committees exercise regular, vigorous oversight into all aspects of the FBI's operations. To this end, the National Security Act of 1947 requires the FBI to keep the intelligence committees (for the Senate and House of Representatives) fully and currently informed of substantial intelligence activities. This oversight has significantly increased in breadth and intensity since the 1970's, and it provides important additional assurance that the FBI conducts its investigations according to the law and the Constitution.

(U) The FBI's counterintelligence and counterterrorism operations are subject to significant self-regulation and oversight beyond that conducted by Congress. The Intelligence Oversight Board (IOB), comprised of members from the President's Intelligence Advisory Board (PIAB), also conducts oversight of the FBI. Among its other responsibilities, the IOB reviews violations of The Constitution, national security law, E.O. or Presidential Decision Directive (PDD) by the FBI and the other intelligence agencies, and issues reports thereon to the President and the Attorney General.

(U) Internal FBI safeguards include: (i) the OGC's Privacy and Civil Liberties Unit (PCLU), which reviews plans of any record system proposed within the FBI for compliance with the Privacy Act and related privacy protection requirements and policies; (ii) the criminal and national security undercover operations review committees, comprised of senior DOJ and FBI officials, which review all proposed undercover operations that involve sensitive circumstances; (iii) the Sensitive Operations Review Committee (SORC), comprised of

[Redacted]

[Redacted]; (iv) all FBI employees have an obligation to report violations of the DIOG to their supervisor, other management officials, or appropriate authorities; and (v) the FBI requirement for training of new FBI employees and periodic training for all FBI employees

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to maintain currency on the latest guidelines, changes to laws and regulations, and judicial decisions related to constitutional rights and liberties.

(U) The AGG-Dom and DIOG set forth the standards and requirements under which an investigative activity may be initiated and are designed to provide FBI employees with a framework that maintains the proper balance between the public's need for effective law enforcement and protection of the national security and the protection of civil liberties and privacy. Among the provisions that specifically serve to protect civil liberties and privacy are the following: (i) the prohibition against initiating investigations based solely on the exercise of First Amendment rights or other constitutionally protected activity; (ii) the requirement that FBI employees use the least intrusive method reasonable under the circumstances to achieve their investigative goals; and (iii) the prohibition against engaging in ethnic and racial profiling. Further, in the context of collecting foreign intelligence, the FBI is further required to operate openly and consensually with United States persons, to the extent practicable.

**4.2. (U) Protection of First Amendment Rights**

(U) A fundamental principle of the Attorney General's guidelines for FBI investigations and operations since the first guidelines were issued in 1976 has been that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment to the United States Constitution. This principle carries through to the present day in the AGG-Dom. There is a corollary to this principle in the Privacy Act of 1974, 5 U.S.C. § 552a, which prohibits the retention of information describing how a person exercises rights under the First Amendment, unless there is a valid law enforcement purpose.

(U) The First Amendment states:

*(U) Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for redress of grievances.*

(U) Although the amendment appears literally to apply only to Congress, the Supreme Court made it clear long ago that it also applies to activities of the Executive Branch, including law enforcement agencies. Therefore, for FBI purposes, it would be helpful to read the introduction to the first sentence as: "The FBI shall take no action respecting . . ." In addition, the word "abridging" must be understood. "Abridging," as used here, means "diminishing." Thus, it is not necessary for a law enforcement action to destroy or totally undermine the exercise of First Amendment rights for it to be unconstitutional; significantly diminishing or lessening the ability of individuals to exercise these rights without an authorized investigative purpose is sufficient.

(U) This is not to say that any diminishment of First Amendment rights is unconstitutional. The Supreme Court has never held that the exercise of these rights is absolute. In fact, the Court has set forth realistic interpretations of what level and kind of government activity actually violates a First Amendment right. For example, taken to an extreme, one could argue that the mere possibility of an FBI agent being present at an open forum (or an on-line presence) would diminish the right of free speech by, for example, an anti-war protestor because he/she would be afraid to speak freely. The Supreme Court, however, has never found an "abridgement" of First Amendment rights based on such a subjective fear. Rather, it requires an action that, from an

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objective perspective, truly diminishes the speaker's message or his/her ability to deliver it (e.g., pulling the plug on the sound system). For another example, requiring protestors to use a certain parade route may diminish, in a practical sense, delivery of their message. The Court has made it clear, however, that for legitimate reasons (e.g., public safety), the government may impose reasonable limitations in terms of time, place and manner to the exercise of such rights—as long as the ability to deliver the message remains.

(U) While the language of the First Amendment prohibits action that would abridge the enumerated rights, the implementation of that prohibition in the AGG-Dom reflects the Supreme Court's opinions on the constitutionality of law enforcement action that may impact the exercise of First Amendment rights. As stated above, the AGG-Dom prohibits investigative activity for the sole purpose of monitoring the exercise of First Amendment rights. The import of the distinction between this language and the actual text of the First Amendment language is two-fold: (i) the line drawn by the AGG-Dom prohibits even "monitoring" the exercise of First Amendment rights (far short of abridging those rights) as the sole purpose of FBI activity; and (ii) the requirement of an authorized purpose for all investigative activity provides additional protection for the exercise of Constitutionally protected rights.

(U) The AGG-Dom classifies investigative activity that involves a religious or political organization (or an individual prominent in such an organization) or a member of the news media as a "sensitive investigative matter." That designation recognizes the sensitivity of conduct that traditionally involves the exercise of First Amendment rights—i.e., groups who associate for political or religious purposes, and the press. The requirements for opening and pursuing a "sensitive investigative matter" are set forth in Section 10 of this policy document. It should be clear, however, from the discussion below just how pervasive the exercise of First Amendment rights is in American life and that not all protected First Amendment activity will fall within the definition of a "sensitive investigative matter." Therefore, it is essential that FBI employees recognize when investigative activity may have an impact on the exercise of these fundamental rights and be especially sure that any such investigative activity has a valid law enforcement or national security purpose, even if it is not a "sensitive investigative matter" as defined in the AGG-Dom and the DIOG.

(U) Finally, it is important to note that United States persons (and organizations comprised of United States persons) do not forfeit their First Amendment rights simply because they also engage in criminal activity or in conduct that threatens national security. For example, an organization suspected of engaging in acts of domestic terrorism may also pursue legitimate political goals and may also engage in lawful means to achieve those goals. The pursuit of these goals through constitutionally-protected conduct does not insulate them from legitimate investigative focus for unlawful activities—but the goals and the pursuit of their goals through lawful means remain protected from unconstitutional infringement.

(U) When allegations of First Amendment violations are brought to a court of law, it is usually in the form of a civil suit in which a plaintiff has to prove some actual or potential harm. Presbyterian Church v. United States, 870 F.2d 518 (9th Cir. 1989). In a criminal trial, a defendant may seek either or both of two remedies as part of a claim that his or her First Amendment rights were violated: suppression of evidence gathered in the alleged First Amendment violation, a claim typically analyzed under the "reasonableness" clause of the Fourth Amendment, and dismissal of the indictment on the basis of "outrageous government conduct" in violation of the Due Process Clause of the Fifth Amendment.

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(U) The scope of each of the primary First Amendment rights and their impact on FBI investigative activity are discussed below. The First Amendment’s “establishment clause,”—the prohibition against the government establishing or sponsoring a specific religion—has little application to the FBI and, therefore, is not discussed here.

**A. (U) Free Speech**

(U) The exercise of free speech includes far more than simply speaking on a controversial topic in the town square. It includes such activities as carrying placards in a parade, sending letters to a newspaper editor, posting a web site on the Internet, wearing a tee shirt with a political message, placing a bumper sticker critical of the President on one’s car, and publishing books or articles. The common thread in these examples is conveying a public message or an idea through words or deeds. Law enforcement activity that diminishes a person’s ability to communicate in any of these ways may interfere with his or her freedom of speech—and thus may not be undertaken by the FBI solely for that purpose.

(U) The line between constitutionally protected speech and advocacy of violence or of conduct that may lead to violence or other unlawful activity must be understood. In Brandenburg v. Ohio, 395 U.S. 444 (1969), the Supreme Court established a two-part test to determine whether such speech is constitutionally protected: the government may not prohibit advocacy of force or violence except when such advocacy (i) is intended to incite imminent lawless action, and (ii) is likely to do so. Therefore, even heated rhetoric or offensive provocation that could conceivably lead to a violent response in the future is usually protected. Suppose, for example, a politically active group advocates on its web site taking unspecified “action” against persons or entities it views as the enemy, who thereafter suffer property damage and/or personal injury. Under the Brandenburg two-part test, the missing specificity and imminence in the message may provide it constitutional protection. For that reason, law enforcement may take no action that, in effect, blocks the message or punishes its sponsors.

(U) Despite the high standard for prohibiting free speech or punishing those who engage in it, the law does not preclude FBI employees from observing and collecting any of the forms of protected speech and considering its content—as long as those activities are done for a valid law enforcement or national security purpose and conducted in a manner that does not unduly infringe upon the ability of the speaker to deliver his or her message. To be an authorized purpose, it must be one that is authorized by the AGG-Dom—i.e., to further an FBI assessment, predicated investigation, or other authorized function such as providing assistance to other agencies. Furthermore, by following the “Standards for Initiating or Approving an Assessment or Predicated Investigation” as contained in the DIOG, the FBI will ensure that there is a rational relationship between that authorized purpose and the protected speech such that a reasonable person with knowledge of the circumstances could understand why the information is being collected.

(U) Returning to the example posed above, because the group’s advocacy of action could be directly related by circumstance to property damage suffered by one of the group’s known targets, collecting the speech—although lawfully protected—can lawfully occur. Similarly, listening to the public talks by a religious leader, who is suspected of raising funds for a terrorist organization, may yield clues as to his motivation, plan of action, and/or hidden messages to his followers. FBI employees should not, therefore, avoid collecting First

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Amendment protected speech if it is relevant to an authorized AGG-Dom purpose—as long as they do so in a manner that does not inhibit the delivery of the message or the ability of the audience to hear it, and so long as the method of collection is the least intrusive means feasible to gather the relevant information.

(U) In summary, during the course of lawful investigative activities, the FBI may lawfully collect, retain, and consider the content of constitutionally protected speech, so long as: (i) the collection is logically related to an authorized investigative purpose; (ii) the collection does not actually infringe on the ability of the speaker to deliver his or her message; and (iii) the method of collection is the least intrusive alternative feasible.

**B. (U) Exercise of Religion**

(U) Like the other First Amendment freedoms, the “free exercise of religion” clause is broader than commonly believed. First, it covers any form of worship of a deity—even forms that are commonly understood to be cults or fringe sects, as well as the right not to worship any deity. Second, protected religious exercise also extends to dress or food that is required by religious edict, attendance at a facility used for religious practice (no matter how unlikely it appears to be intended for that purpose), observance of the Sabbath, raising money for evangelical or missionary purposes, and proselytizing. Even in controlled environments like prisons, religious exercise must be permitted—subject to reasonable restrictions as to time, place, and manner. Another feature of this First Amendment right is that it is a matter of heightened sensitivity to some Americans—especially to devout followers. For this reason, it is a matter that is more likely to provoke an adverse reaction if the right is violated—regardless of which religion is involved. Therefore, when essential investigative activity may impact this right, it must be conducted in a manner that avoids the actual—and the appearance of—interference with religious practice to the maximum extent possible.

(U) While there must be an authorized purpose for any investigative activity that could have an impact on religious practice, this does not mean religious practitioners or religious facilities are completely free from being examined as part of an assessment or predicated investigation. If such practitioners are involved in—or such facilities are used for—activities that are the proper subject of FBI-authorized investigative or intelligence collection activities, their religious affiliation does not “immunize” them to any degree from these efforts. It is paramount, however, that the authorized purpose of such efforts be properly documented. It is also important that investigative activity directed at religious leaders or at conduct occurring within religious facilities be focused in time and manner so as not to infringe on legitimate religious practice by any individual but especially by those who appear unconnected to the activities under investigation.

(U) Furthermore, FBI employees may take appropriate cognizance of the role religion may play in the membership or motivation of a criminal or terrorism enterprise. If, for example, affiliation with a certain religious institution or a specific religious sect is a known requirement for inclusion in a violent organization that is the subject of an investigation, then whether a person of interest is a member of that institution or sect is a rational and permissible consideration. Similarly, if investigative experience and reliable intelligence reveal that members of a terrorist or criminal organization are known to commonly possess or exhibit a combination of religion-based characteristics or practices (e.g., group leaders state that acts of terrorism are based in religious doctrine), it is rational and lawful to consider

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such a combination in gathering intelligence about the group—even if any one of these, by itself, would constitute an impermissible consideration. By contrast, solely because prior subjects of an investigation of a particular group were members of a certain religion and they claimed a religious motivation for their acts of crime or terrorism, other members' mere affiliation with that religion, by itself, is not a basis to assess or investigate—absent a known and direct connection to the threat under assessment or investigation. Finally, the absence of a particular religious affiliation can be used by analysts and investigators to eliminate certain individuals from further investigative consideration in those scenarios where religious affiliation is relevant.

**C. (U) Freedom of the Press**

(U) Contrary to what many believe, this well-known First Amendment right is not owned by the news media; it is a right of the American people. The drafters of the Constitution believed that a free press was essential to preserving democracy. Although the news media typically seeks to enforce this right, freedom of the press should not be viewed as a contest between law enforcement or national security, on the one hand, and the interests of news media, on the other.

(U) Freedom of the press includes such matters as reasonable access to news-making events, the making of documentaries, and the posting of “blogs.” The news gathering function is the aspect of freedom of the press most likely to intersect with law enforcement and national security investigative activities. Within that category, the interest of the news media in protecting confidential sources and the interest of agencies like the FBI in gaining access to these sources who may have evidence of a crime or national security intelligence often clash. The seminal case in this area is Branzburg v. Hayes, 408 U.S. 665 (1977), in which the Supreme Court held that freedom of the press does not entitle a news reporter to refuse to divulge the identity of his source to a federal grand jury. The Court reasoned that, as long as the purpose of law enforcement is not harassment or vindictiveness against the press, any harm to the news gathering function of the press (by revealing source identity) is outweighed by the need of the grand jury to gather evidence of crime.

(U) Partially in response to Branzburg, the Attorney General has issued regulations that govern the issuance of subpoenas for reporter's testimony and telephone toll records, the arrest of a reporter for a crime related to news gathering, and the interview of a reporter as a suspect in a crime arising from the news gathering process. In addition, an investigation of a member of the news media in his official capacity, the use of a reporter as a source, and posing as a member of the news media are all sensitive circumstances in the AGG-Dom and other applicable AG guidelines.

(U) These regulations are not intended to insulate reporters and other news media from FBI assessments or predicated investigations. They are intended to ensure that investigative activity that seeks information from or otherwise involves members of the news media: is appropriately authorized; is necessary for an important law enforcement or national security objective; is the least intrusive means to obtain the information or achieve the goals; and does not unduly infringe upon the news gathering aspect of the constitutional right to freedom of the press.

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**D. (U) Freedom of Peaceful Assembly and to Petition the Government for Redress of Grievances**

(U) Freedom of peaceful assembly, often called the right to freedom of association, present unique issues for law enforcement agencies, including the FBI. Individuals who gather with others to protest government action, or to rally or demonstrate in favor of, or in opposition to, a social cause sometimes present a threat to public safety either by their numbers, by their actions, by the anticipated response to their message, or by creating an opportunity for individuals or other groups with an unlawful purpose to infiltrate and compromise the legitimacy of the group for their own ends. The right to peaceful assembly includes more than just public demonstrations—it includes, as well, the posting of group web sites on the Internet, recruiting others to a cause, marketing a message, and fund raising. All are protected First Amendment activities if they are conducted in support of the organization or political, religious or social cause.

(U) The right to petition the government for redress of grievances is so linked to peaceful assembly and association that it is included in this discussion. A distinction between the two is that an individual may exercise the right to petition the government by himself whereas assembly necessarily involves others. The right to petition the government includes writing letters to Congress, carrying a placard outside city hall that delivers a political message, recruiting others to one's cause, and lobbying Congress or an executive agency for a particular result.

(U) For the FBI, covert presence or action within associations, also called “undisclosed participation,” has the greatest potential to impact this Constitutional right. The Supreme Court addressed this issue as a result of civil litigation arising from one of the many protests against the Vietnam War. In Laird v. Tatum, 408 U.S. 1 (1972), the Court found that the mere existence of an investigative program—consisting of covert physical surveillance in public areas, infiltration of public assemblies by government operatives or sources, and the collection of news articles and other publicly available information—for the purpose of determining the existence and scope of a domestic threat to national security does not, by itself, violate the First Amendment rights of the members of the assemblies. The subjective “chill” to the right to assembly, based on the suspected presence of government operatives, did not by itself give rise to legal “standing” to argue that their constitutional rights had been abridged. Instead, the Court required a showing that the complained-of government action would reasonably deter the exercise of that right.

(U) Since Laird v. Tatum was decided, the lower courts have examined government activity on many occasions to determine whether it gave rise to a “subjective chill” or an “objective deterrent.” The basic standing requirement established by Laird remains unchanged today. The lower courts, however, have often imposed a very low threshold of objective harm to survive dismissal of the case. For example, plaintiffs who have shown a loss of membership in an organization, loss of financial support, loss to reputation and status in the community, and loss of employment by members have been granted standing to sue.

(U) More significant for the FBI than the standing issue has been the lower courts' evaluation of investigative activity into First Amendment protected associations since Laird. The courts have held the following investigative activities to be constitutionally permissible under First Amendment analysis: undercover participation in group activities; physical and video

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surveillance in public areas; properly authorized electronic surveillance; recruitment and operation of sources; collection of information from government, public, and private sources (with consent); and the dissemination of information for a valid law enforcement purpose. However, these decisions were not reached in the abstract. In every case in which the courts have found government action to be proper, the government proved that it was conducted for an authorized law enforcement or national security purpose and that it was conducted in substantial compliance with controlling regulations. In addition, in approving these techniques, the courts have often considered whether a less intrusive technique was available to the agency, and the courts have balanced the degree of intrusion or impact against the importance of the law enforcement or national security objective.

(U) By contrast, since Laird, the courts have found these techniques to be legally objectionable: initiating an investigation solely on the basis of the groups' social or political agenda (even if the agenda made the group susceptible to subversive infiltration); sabotaging or neutralizing the group's legitimate social or political agenda; disparaging the group's reputation or standing; leading the group into criminal activity that otherwise probably would not have occurred; and undermining legitimate recruiting or funding efforts. In every such case, the court found the government's purpose either was not persuasive, was too remote, or was too speculative to justify the intrusion and the potential harm to the exercise of First Amendment rights.

(U) Once again, the message is clear that investigative activity that involves assemblies or associations of United States persons exercising their First Amendment rights must have an authorized purpose under the AGG-Dom—and one to which the information sought and the technique to be employed are rationally related. Less intrusive techniques should always be explored first and those authorizing such activity (which, as discussed above, will almost always constitute a sensitive investigative matter) should ensure that the investigative activity is focused as narrowly as feasible and that the purpose is thoroughly documented.

**4.3. (U) Equal Protection under the Law**

**A. (U) Introduction**

(U) The Equal Protection Clause of the United States Constitution provides in part that: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court and the lower courts have made it clear that it applies as well to the official acts of United States government law enforcement agents.<sup>1</sup> Specifically, government employees are prohibited from engaging in invidious discrimination against individuals on the basis of race, ethnicity, national origin, or religious affiliation. This principle is further reflected and implemented for federal law enforcement in the United States Department of Justice's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (hereinafter "DOJ Guidance").

(U) The DOJ Guidance states that investigative and intelligence collection activities must not be based solely on race, ethnicity, national origin, or religious affiliation. Any such activities that are based solely on such considerations are invidious by definition, therefore,

<sup>1</sup> See, e.g., Whren v. United States, 517 U.S. 806 (1996); see also Chavez v. Illinois State Police, 251 F.3d 612 (7th Cir. 2001).

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unconstitutional. This standard applies to all investigative and collection activity, including collecting and retaining information, opening cases, disseminating information, and indicting and prosecuting defendants. It is particularly applicable to the retention and dissemination of personally identifying information about an individual—as further illustrated in the examples enumerated below.

(U) The constitutional prohibition against invidious discrimination based on race, ethnicity, national origin or religion is relevant to both the national security and criminal investigative programs of the FBI. National security investigations often have ethnic aspects; members of a foreign terrorist organization may be primarily or exclusively from a particular country or area of the world. Similarly, ethnic heritage is frequently the common thread running through violent gangs or other criminal organizations. It should be noted that this is neither a new nor isolated phenomenon. Ethnic commonality among criminal and terrorist groups has been relatively constant and widespread across many ethnicities throughout the history of the FBI.

**B. (U) Policy Principles**

(U) To ensure that assessment and investigative activities and strategies consider racial, ethnic, national origin and religious factors properly and effectively and to help assure the American public that the FBI does not engage in invidious discrimination, the following policy principles are established.

1. (U) The prohibition against investigative activity based solely on race or ethnicity is not avoided by considering it in combination with other prohibited factors. For example, a person of a certain race engaging in lawful public speech about his religious convictions is not a proper subject of investigative activity based solely on any one of these factors—or by the combination of all three. Before collecting and using this information, a well-founded and authorized investigative purpose must exist as to which any or all of these otherwise prohibited factors is relevant.
2. (U) When race or ethnicity is a relevant factor to consider, it should not be the dominant or primary factor. Adherence to this standard will not only ensure that it is never the sole factor—it will also preclude undue and unsound reliance on race or ethnicity in investigative analysis. It reflects the recognition that there are thousands and, in some cases, millions of law abiding people in American society of the same race or ethnicity as those who are the subjects of FBI investigative activity, and it guards against the risk of sweeping some of them into the net of suspicion without a sound investigative basis.
3. (U) The FBI will not collect or use behavior or characteristics common to particular racial or ethnic community as investigative factors unless they bear clear and specific relevance to a matter under assessment or investigation. This policy is intended to prevent the potential that collecting ethnic characteristics or behavior will inadvertently lead to individual identification based solely on such matters, as well as to avoid the appearance that the FBI is engaged in ethnic or racial profiling.

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**C. (U) Guidance on the Use of Race and Ethnic Identity in Assessments and Predicated Investigations**

(U) Considering the reality of common ethnicity or race among many criminal and terrorist groups, some question how the prohibition against racial or ethnic profiling is to be effectively applied—and not violated—in FBI assessments and predicated investigations. The question arises generally in two contexts: (i) with respect to an individual or a group of individuals; and (ii) with respect to ethnic or racial communities as a whole.

**1. (U) Individual Race or Ethnicity as a Factor**

(U) The DOJ Guidance permits the consideration of ethnic and racial identity information based on specific reporting—such as from an eyewitness. As a general rule, race or ethnicity as an identifying feature of a suspected perpetrator, subject, and in some cases, a victim, is relevant if it is based on reliable evidence or information—not conjecture or stereotyped assumptions. In addition, the DOJ Guidance permits consideration of race or ethnicity in other investigative or collection scenarios if it is relevant. These examples illustrate:

- a. (U) The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected and retained when gathering information about or investigating the organization.
- b. (U) Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person. It is axiomatic that there are many members of the same ethnic group who are not members of the group; and for that reason, there must be other information beyond race or ethnicity that links the individual to the terrorist or criminal group or to the other members of the group. Otherwise, racial or ethnic identity would be the sole criterion, and that is impermissible.

**2. (U) Community Race or Ethnicity as a Factor**

- a. (U) **Collecting and analyzing demographics.** The DOJ guidance and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the Field Office's domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness for the purpose of performing intelligence analysis. If, for example, intelligence reporting reveals that members of certain terrorist organizations live and operate primarily within a certain concentrated community of the same ethnicity, the location of that community is clearly valuable—and properly collectible—data. Similarly, the locations of ethnic-oriented businesses and other facilities may be collected if their locations will reasonably contribute to an awareness of threats and vulnerabilities, and intelligence collection opportunities. Also, members of some communities may be potential victims of civil rights crimes and, for this reason, community location may aid

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enforcement of civil rights laws. Information about such communities should not be collected, however, unless the communities are sufficiently concentrated and established so as to provide a reasonable potential for intelligence collection that would support FBI mission programs (e.g., where identified terrorist subjects from certain countries may relocate to blend in and avoid detection).

- b. (U) **Geo-Mapping ethnic/racial demographics.** As a general rule, if information about community demographics may be collected, it may be “mapped.” Sophisticated computer geo-mapping technology visually depicts lawfully collected information and can assist in showing relationship among disparate data. By itself, mapping raises no separate concerns about racial or ethnic profiling, assuming the underlying information that is mapped was properly collected. It may be used broadly, e.g., for domain awareness of all relevant demographics in the SAC’s area of responsibility or to track crime trends or narrowly to identify specific communities or areas of interest to inform a specific assessment or investigation. In each case, the relevance of the ethnic or racial information mapped to the authorized purpose of the assessment or investigation must be clearly demonstrated and documented.
- c. (U) **General ethnic/racial behavior.** The authority to collect ethnic community location information does not extend to the collection of cultural and behavioral information about an ethnic community that bears no rational relationship to a valid investigative or analytical need. Every ethnic community in the Nation that has been associated with a criminal or national security threat has a dominant majority of law-abiding citizens, resident aliens, and visitors who may share common ethnic behavior but who have no connection to crime or terrorism (as either subjects or victims). For this reason, a broad-brush collection of racial or ethnic characteristics or behavior is not helpful to achieve any authorized FBI purpose and may create the appearance of improper racial or ethnic profiling.
- d. (U) **Specific and relevant ethnic behavior.** On the other hand, knowing the behavioral and life style characteristics of known individuals who are criminals or who pose a threat to national security may logically aid in the detection and prevention of crime and threats to the national security within the community and beyond. Focused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community (not with the community as a whole) may be collected and retained. For example, if it is known through intelligence analysis or otherwise that individuals associated with an ethnic-based terrorist or criminal group conduct their finances by certain methods, travel in a certain manner, work in certain jobs, or come from a certain part of their home country that has established links to terrorism, those are relevant factors to consider when investigating the group or assessing whether it may have a presence within a community. It is recognized that the “fit” between specific behavioral characteristics and a terrorist or criminal group is unlikely to be perfect—that is, there will be members of the group who do not exhibit the behavioral criteria as well as persons who exhibit the behaviors who are not members of the group. Nevertheless, in order to maximize FBI mission relevance and to minimize the appearance of racial or

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ethnic profiling, the criteria used to identify members of the group within the larger ethnic community to which they belong must be as focused and as narrow as intelligence reporting and other circumstances permit. If intelligence reporting is insufficiently exact so that it is reasonable to believe that the criteria will include an unreasonable number of people who are not involved, then it would be inappropriate to use the behaviors, standing alone, as the basis for FBI activity.

(U) **Exploitive ethnic behavior.** A related category of information that can be collected is behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities in order to engage in illicit activities undetected. For example, the existence of a cultural tradition of collecting funds from members within the community to fund charitable causes in their homeland at a certain time of the year (and how that is accomplished) would be relevant if intelligence reporting revealed that, unknown to many donors, the charitable causes were fronts for terrorist organizations or that terrorist supporters within the community intended to exploit the unwitting donors for their own purposes.

**4.4. (U) Least Intrusive Method**

**A. (U) Overview**

(U) The AGG-Dom requires that the "least intrusive" means or method be considered and—if operationally sound and effective—used to obtain intelligence or evidence in lieu of a more intrusive method. This principle is also reflected in Executive Order 12333, which governs the activities of the United States intelligence community. The concept of least intrusive method applies to the collection of all intelligence and evidence. Regarding the collection of foreign intelligence that is not collected as part of the FBI's traditional national security or criminal missions, the AGG-Dom provides that open and overt collection activity must be used with United States persons if feasible.

(U) By emphasizing the use of the least intrusive means to obtain intelligence and evidence, FBI employees can effectively execute their duties while mitigating potential negative impacts on the privacy and civil liberties of all people encompassed within the investigation, including targets, witnesses, and victims. This principle is not intended to discourage FBI employees from seeking relevant and necessary intelligence, information, or evidence, but rather is intended to encourage investigators to choose the least intrusive—but still effective—means from the available options to obtain the material.

(U) This principle is embodied in statutes and DOJ policies on a variety of topics including electronic surveillance, the use of tracking devices, the temporary detention of suspects, and forfeiture. In addition, the concept of least intrusive method can be found in case law as a factor to be considered in assessing the reasonableness of an investigative method in the face of a First Amendment or due process violation claim. See Clark v. Library of Congress, 750 F.2d 89, 94 (D.C. Cir 1984); Alliance to End Repression v. City of Chicago, 627 F. Supp. 1044, 1055 (N.D. Ill. 1985), citing Elrod v. Burns, 427 U.S. 347, 362-3 (1976).

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**B. (U) General Approach to Least Intrusive Method Concept**

(U) Applying the concept of least intrusive method to an investigative or intelligence collection scenario is both a logical process and an exercise in judgment. It is logical in the sense that the FBI employee must first determine the relative intrusiveness of the method that would provide information:

1. (U) Relevant to the assessment or predicated investigation;
2. (U) Within the time frame required by the assessment or predicated investigation;
3. (U) Consistent with operational security and the protection of sensitive sources and methods; and
4. (U) In a manner that provides confidence in the accuracy of the information.

(U) Determining the least intrusive method also requires sound judgment because it is clear that the factors discussed above are not fixed points on a checklist. They require careful consideration based on a thorough understanding of investigative objectives and circumstances.

**C. (U) Determining Intrusiveness**

(U) In determining intrusiveness, the primary factor should be the degree of procedural protection that established law and the AGG-Dom provide for the use of the method. Using this factor, search warrants, wiretaps, and undercover operations are very intrusive. By contrast, investigative methods with limited procedural requirements, such as checks of government and commercial data bases and communication with established sources, are less intrusive.

(U) The following guidance is designed to assist FBI personnel in judging the relative intrusiveness of different methods:

1. (U) **Nature of the information sought:** Investigative objectives generally dictate the type of information required and from whom it should be collected. This subpart is not intended to address the situation where the type of information needed and its location are clear so that consideration of alternatives would be pointless. When the option exists, however, to seek information from any of a variety of places, it is less intrusive to seek information from less sensitive and less protected places. Similarly, obtaining information that is protected by a statutory scheme (e.g., financial records) or an evidentiary privilege (e.g., attorney/client communications) is more intrusive than obtaining information that is not so protected. In addition, if there exists a reasonable expectation of privacy under the Fourth Amendment (i.e., private communications), obtaining that information is more intrusive than obtaining information that is knowingly exposed to public view as to which there is no reasonable expectation of privacy.
2. (U) **Scope of the information sought:** Collecting information regarding an isolated event—such as a certain phone number called on a specific date or a single financial transaction—is less intrusive or invasive of an individual's privacy than collecting a complete communications or financial "profile." Similarly, a complete credit history is a more intrusive view into an individual's life than a few isolated credit charges. In some cases, a complete financial and credit profile is exactly what the investigation

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requires (for example, investigations of terrorist financing or money laundering). If so, FBI employees should not hesitate to use appropriate legal process to obtain such information if the predicate requirements are satisfied. It is also recognized that operational security—such as source protection—may dictate seeking a wider scope of information than is absolutely necessary for the purpose of protecting a specific target or source. When doing so, however, the concept of least intrusive alternative still applies. The FBI may obtain more data than strictly needed, but it should obtain no more data than is needed to accomplish the operational security goal.

3. (U) **Scope of the use of the method:** Using a method in a manner that captures a greater picture of an individual's or a group's activities is more intrusive than using the same method or a different one that is focused in time and location to a specific objective. For example, it is less intrusive to use a tracking device to verify point-to-point travel than it is to use the same device to track an individual's movements over a sustained period of time. Sustained tracking on public highways would be just as lawful but more intrusive because it captures a greater portion of an individual's daily movements. Similarly, surveillance by closed circuit television that checks a discrete location within a discrete time frame is less intrusive than 24/7 coverage of a wider area. For another example, a computer intrusion device that captures only host computer identification information is far less intrusive than one that captures file content.
4. (U) **Source of the information sought:** It is less intrusive to obtain information from existing government sources (such as state, local, tribal, international, or federal partners) or from publicly-available data in commercial data bases, than to obtain the same information from a third party (usually through legal process) that has a confidential relationship with the subject—such as a financial or academic institution. Similarly, obtaining information from a reliable confidential source who is lawfully in possession of the information and lawfully entitled to disclose it (such as obtaining an address from an employee of a local utility company) is less intrusive than obtaining the information from an entity with a confidential relationship with the subject. It is recognized in this category that the accuracy and procedural reliability of the information sought is an important factor in choosing the source of the information. For example, even if the information is available from a confidential source, a grand jury subpoena, national security letter (NSL), ex parte order, or other process may be required in order to ensure informational integrity.
5. (U) **The risk of public exposure:** Seeking information about an individual or group under circumstances that create a risk that the contact itself and the information sought will be exposed to the individual's or group's detriment and/or embarrassment—particularly if the method used carries no legal obligation to maintain silence—is more intrusive than information gathering that does not carry that risk. Interviews with employers, neighbors, and associates, for example, or the issuance of grand jury subpoenas at a time when the investigation has not yet been publicly exposed are more intrusive than methods that gather information covertly. Similarly, interviews of a subject in a discrete location would be less intrusive than an interview at, for example, a place of employment or other location where the subject is known.

(U) There is a limit to the utility of this list of intrusiveness factors. Some factors may be inapplicable in a given investigation and, in many cases, the choice and scope of the

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method will be dictated wholly by investigative objectives and circumstances. The foregoing is not intended to provide a comprehensive checklist or even an overall continuum of intrusiveness. It is intended instead to identify the factors involved in a determination of intrusiveness and to attune FBI employees to select, within each applicable category, a less intrusive method if operational circumstances permit. In the end, selecting the least intrusive method that will accomplish the objective is a matter of sound judgment. In exercising such judgment, however, consideration of these factors should ensure that the decision to proceed is well founded.

**D. (U) Standard for Balancing Intrusion and Investigative Requirements**

(U) Once an appropriate method and its deployment have been determined, reviewing and approving authorities should balance the level of intrusion against investigative requirements. This balancing test is particularly important when the information sought involves clearly established constitutional, statutory, or evidentiary rights or sensitive circumstances (such as obtaining information from religious or academic institutions or public fora where First Amendment rights are being exercised), but should be applied in all circumstances to ensure that the least intrusive alternative feasible is being utilized.

(U) Balancing the factors discussed above with the considerations discussed below will help determine whether the method and the extent to which it intrudes into privacy or threatens civil liberties is proportionate to the significance of the case and the information sought.

(U) Considerations on the investigative side of the balancing scale include the:

1. (U) Seriousness of the crime or national security threat;
2. (U) Strength and significance of the intelligence/information to be gained;
3. (U) Amount of information already known about the subject or group under investigation; and
4. (U) Requirements of operational security, including protection of sources and methods.

(U) If, for example, the threat is remote, the individual's involvement is speculative, and the probability of obtaining probative information is low, intrusive methods may not be justified, i.e., they may do more harm than good. At the other end of the scale, if the threat is significant and possibly imminent (e.g., a bomb threat), aggressive measures would be appropriate regardless of intrusiveness.

(U) In addition, with respect to the investigation of a group, if the terrorist or criminal nature of the group and its membership is well established (e.g., al Qaeda, Ku Klux Klan, Colombo Family of La Cosa Nostra), there is less concern that pure First Amendment activity is at stake than there would be for a group whose true character is not yet known (e.g., an Islamic charity suspected of terrorist funding) or many of whose members appear to be solely exercising First Amendment rights (anti-war protestors suspected of being infiltrated by violent anarchists). This is not to suggest that investigators should be less aggressive in determining the true nature of an unknown group, which may be engaged in terrorism or other violent crime. Indeed, a more aggressive and timely approach may be in order to determine whether the group is violent or to eliminate it as a threat. Nevertheless, when First Amendment rights are at stake, the choice and use of investigative methods

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should be focused in a manner that minimizes potential infringement of those rights. Finally, as the investigation progresses and the subject's or group's involvement becomes clear, more intrusive methods may be justified. Conversely, if reliable information emerges refuting the individual's involvement or the group's criminal or terrorism connections, the use of any investigative methods must be carefully evaluated.

(U) Another consideration to be balanced is operational security. Is it likely that if a less intrusive but feasible method were selected, the subject would detect its use and alter his activities—including his means of communication—to thwart the success of the operation. Operational security—particularly in national security investigations—should not be undervalued and may, by itself, justify covert tactics which, under other circumstances, would not be the least intrusive.

**E. (U) Conclusion**

(U) The foregoing guidance is offered to assist FBI employees in navigating the often unclear course to select the least intrusive investigative method that effectively accomplishes the operational objective at hand. In the final analysis, the choice of method and balancing of the impact on privacy and civil liberties with operational needs is a matter of judgment, based on training and experience. Pursuant to the AGG-Dom, other applicable laws and policies, and this guidance, FBI employees may use any lawful method allowed, even if intrusive, where the intrusiveness is warranted by the threat to the national security or to potential victims of crime and/or the strength of the information indicating its existence.

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5. (U) Assessments

5.1. (U) Overview

(U//FOUO) The *Attorney General's Guidelines for Domestic FBI Operations* (AGG-Dom) combine "threat assessments" under the former *Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* and the "prompt and extremely limited checking out of initial leads" under the former *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* into a new investigative category entitled "assessments." All assessments must either be opened in an investigative classification as an assessment file (e.g., [redacted]), placed in a [redacted] [redacted] (e.g., [redacted] Guardian]), or placed in an [redacted] as discussed in greater detail below.

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(U//FOUO) Note: In the DIOG, the word "assessment" has two distinct meanings. The AGG-Dom authorizes as an investigative activity an "assessment" which requires an authorized purpose as discussed in this section of the DIOG. The USIC, however, also uses the word "assessment" to describe written intelligence products, as discussed in DIOG Section 15.7.B.

(U) Assessments authorized under the AGG-Dom do not require a particular factual predication but do require an authorized purpose. Assessments may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence. (AGG-Dom, Part II and Part II.A)

(U//FOUO) Although "no particular factual predication" is required, the basis of an assessment cannot be arbitrary or groundless speculation, nor can an assessment be based solely on the exercise of First Amendment protected activities or on the race, ethnicity, national origin or religion of the subject. Although difficult to define, "no particular factual predication" is less than "information or allegation" as required for the initiation of a preliminary investigation. For example, an assessment may be conducted when there is a basis to know: (i) whether more information or facts are required to determine if there is a criminal or national security threat; and (ii) there is a rational and articulable relationship between the stated authorized purpose of the assessment on the one hand and the information sought and the proposed means to obtain that information on the other. Regardless of whether specific approval or specific documentation is required, an FBI employee should be able to explain the purpose of an assessment and the reason for the methods used to conduct the assessment. Those FBI employees who conduct assessments are responsible for assuring that assessments are not pursued for frivolous or improper purposes and are not based solely on First Amendment activity or on the race, ethnicity, national origin, or religion of the subject of the assessment. (AGG-Dom, Part II)

(U//FOUO) An FBI employee can search historical information already contained within: (i) FBI data systems; (ii) United States Intelligence Community (USIC) systems to which an FBI employee has access (e.g., [redacted]); (iii) any other United States Government database to which an FBI employee has access; and (iv) the FBI employee can also conduct open-source Internet searches without initiating an assessment (open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint), as further discussed in Section 5.6.A.1 and Section 15. The use of such paid-for-service databases requires the initiation of an assessment or predicated investigation. This allows the FBI employee to possibly resolve a

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matter without the need to conduct new investigative activity and open an assessment. Additionally, through analysis of existing information, the FBI employee may produce products that include, but are not limited to, an Intelligence Assessment, Intelligence Bulletin and Geospatial Intelligence (mapping). If, while conducting analysis, the FBI employee finds a gap in intelligence that is relevant to an authorized FBI activity, the FBI employee can identify the gap for possible development of a "collection requirement." The applicable [redacted] [redacted] (or other [redacted]) as directed in the DI PG) must be used to document this analysis. See the Directorate of Intelligence (DI) PG for file classification guidance.

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**5.2. (U) Purpose and Scope**

(U//FOUO) The FBI cannot be content to wait for leads to come in through the actions of others; rather, we must be vigilant in detecting criminal or national security threats to the full extent permitted by law, with an eye towards early intervention and prevention of criminal or national security incidents before they occur. For example, to carry out its central mission of protecting the national security, the FBI must proactively collect information from available sources in order to identify threats and activities and to inform appropriate intelligence analysis. Collection required to inform such analysis will appear as FBI National Collection Requirements and FBI Field Office Collection Requirements. Likewise, in the exercise of its protective functions, the FBI is not constrained to wait until information is received indicating that a particular event, activity or facility has drawn the attention of would-be perpetrators of terrorism. The proactive authority conveyed to the FBI is designed for, and may be used by, the FBI in the discharge of these responsibilities. The FBI may also conduct assessments as part of its special events management responsibilities. (AGG-Dom, Part II)

(U) More broadly, detecting and interrupting criminal activities at their early stages, and preventing crimes from occurring in the first place, is preferable to allowing criminal plots to come to fruition. Hence, assessments may also be undertaken proactively with such objectives as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization in such activities; and identifying and assessing individuals who may have value as confidential human sources. (AGG-Dom, Part II).

(U//FOUO) As described in the below-scenarios, assessments may be used when an "allegation or information" or an "articulable factual basis" (the predicates for predicated investigations) concerning crimes or threats to the national security is obtained and the matter can be checked out or resolved through the relatively non-intrusive methods authorized in assessments (use of least intrusive means). The checking of investigative leads in this manner can avoid the need to proceed to more formal levels of investigative activity (predicated investigation), if the results of an assessment indicate that further investigation is not warranted. (AGG-Dom, Part II)  
Hypothetical fact patterns are discussed below:

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(U//FOUO) [redacted] The FBI employee can analyze historical information already contained within: (i) FBI data systems; (ii) USIC systems to which FBI employees have access (e.g. [redacted]); (iii) any other United States Government database to which an FBI employee has access; and (iv) can conduct open-source Internet searches without initiating an assessment. Open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint. [redacted]

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B. (U//FOUO) [redacted]

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C. (U//FOUO) [redacted]

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D. (U//FOUO) [redacted]

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**5.3. (U) Civil Liberties and Privacy**

(U) The pursuit of legitimate goals without infringing upon the exercise of constitutional freedoms is a challenge that the FBI meets through the application of sound judgment and discretion. In order to ensure that civil liberties are not undermined by the conduct of assessments, every assessment under this subsection must have an authorized purpose and an identified objective. The purpose and objective of the assessment must be documented and retained as described in this section and in DIOG Section 14.

(U) Even when an authorized purpose is present, an assessment could create the appearance that it is directed at or activated by constitutionally protected activity, race, ethnicity, national origin

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or religion—particularly under circumstances where the link to an authorized FBI mission is not readily apparent. In these situations, it is vitally important that the authorized purpose and the underlying reasons for conducting the assessment and engaging in the proposed methods are well documented.

(U) No investigative activity, including assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. If an assessment touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, it is particularly important to identify and document the basis for the assessment with clarity.

(U//FOUO) **Example:** Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an assessment would be appropriate.

(U) The AGG-Dom require that the "least intrusive" means or method be considered and—if operationally sound and effective—used in lieu of more intrusive methods to obtain intelligence and/or evidence. This principle is also reflected in Executive Order 12333, which governs the activities of theUSIC. Executive Order 12333 lays out the goals, directions, duties and responsibilities of theUSIC. The concept of least intrusive means applies to the collection of all intelligence and evidence, not just that collected by those aspects of the FBI that are part of the intelligence community.

(U) By emphasizing the use of the least intrusive means to obtain intelligence and/or evidence, FBI employees can effectively execute their duties while mitigating the potential negative impact on the privacy and civil liberties and the damage to the reputation of all people encompassed within the investigation or assessment, including targets, witnesses, and victims. This principle is not intended to discourage FBI employees from seeking relevant and necessary intelligence, information, or evidence, but rather is intended to encourage FBI employees to choose the least intrusive—but still effective—means from the available options to obtain the information. (AGG-Dom, Part I.C.2)

**5.4. (U) Authorized Purposes (AGG-Dom, Part II.A.2.—Authorized Activities)**

- A. (U) **Assessment Activities:** During an assessment, the FBI may:
1. (U) Seek information, proactively or in response to investigative leads, relating to activities constituting violations of federal criminal law or threats to the national security;
  2. (U) Seek information, proactively or in response to investigative leads, relating to the involvement or role of individuals, groups, or organizations relating to activities constituting violations of federal criminal law or threats to the national security;

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3. (U) Identify and obtain information about potential targets of or vulnerabilities to criminal activities in violation of federal law or threats to the national security;
4. (U) Obtain information to inform or facilitate intelligence analysis and planning (AGG-Dom, Part IV);
5. (U) Seek information to identify potential human sources, assess the suitability, credibility, or value of individuals as human sources, validate human sources, or maintain the cover or credibility of human sources, who may be able to provide or obtain information relating to criminal activities in violation of federal law, threats to the national security, or matters of foreign intelligence interest; and
6. (U) Seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements.

**5.5. (U//FOUO) Standards for Initiating or Approving an Assessment**

(U//FOUO) Before initiating or approving an assessment, an FBI employee or approving official must determine whether:

- A. (U//FOUO) An authorized purpose and objective exists for the conduct of the assessment;
- B. (U//FOUO) The assessment is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin or religion of the subject; and
- C. (U//FOUO) The assessment is an appropriate use of personnel and financial resources.

**5.6. (U) Duration, Approval, Notice, Documentation, File Review and Responsible Entity**

(U//FOUO) FBIHQ and FBI Field Offices have the authority to conduct all assessment activities as authorized in Section 5.4. Field Office personnel and approving officials, as specified in the DIOG Section 5.6.A.1-6, equate to the following FBIHQ personnel and approving officials when FBIHQ initiates, conducts, or closes an assessment:

- (U//FOUO) Field Office Analyst or Special Agent (SA) = FBIHQ Analyst, SA, or Supervisory Special Agent (SSA);
  - (U//FOUO) Field Office Supervisory Intelligence Analysts (SIA) = FBIHQ SIA;
  - (U//FOUO) Chief Division Counsel (CDC) = FBIHQ Office of the General Counsel (OGC);
  - (U//FOUO) Field Office SSA = FBIHQ Unit Chief (UC); and
  - (U//FOUO) Special Agent in Charge (SAC) = FBIHQ Section Chief (SC).
- A. (U//FOUO) **Duration, Approval, Notice, Documentation, File Review and Responsible Entity:** An FBI employee must document on the FD-71 or in Guardian the use of or the request and approval for the use of authorized investigative methods in type 1 and 2 assessments (see DIOG Section 5.6.A.1 and 2, below). By exception, certain assessment type 1 and 2 situations may require the use of an electronic communication (EC) to document the use and approval of particular investigative methods. All type 3, 4, and 6 (see DIOG Section 5.6.A.3.4. and 6, below) assessments and authorized investigative methods requiring

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supervisory approval must use an EC to document the approval of the assessment and the request and approval for the use of an applicable investigative method.

(U//FOUO) For type 5 assessment activities, an FBI employee must follow the duration, approval, and other requirements specified in the FBI's Confidential Human Source Policy Manual (CHSPM), Confidential Human Source Validation Standards Manual (CHSVSM), and The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (AGG-CHS), as implemented in [redacted]. All type 5 assessment activities under this provision must be documented in [redacted], unless otherwise directed in the DI PG or other FBIHQ Division PGs. If there is any inconsistency between the CHSPM or CHSVSM and the DIOG, the DIOG controls and OGC should be immediately notified of the conflict.

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(U//FOUO) Listed below are the applicable duration, documentation, justification/file review, approval level, and responsible entity for each type of assessment, described in DIOG Section 5.4 above.

1. (U//FOUO) **Seek information, proactively or in response to investigative leads, relating to activities constituting violations of federal criminal law or threats to the national security** (e.g., the prompt checking of leads on individuals or activity).

(U//FOUO) **Duration:** There is no time requirement for this type of assessment, but it is anticipated that such assessments will be relatively short. These assessments require recurring 30-day justification reviews by the SSA or SIA as discussed below.

(U//FOUO) **Documentation:** Guardian will be used for [redacted]

[redacted]  
[redacted] The electronic FD-71, as discussed below, must be used to [redacted]  
[redacted] FD-71 or  
Guardian [redacted]

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(U//FOUO) **Approval:** An FBI employee may initiate an assessment under this subsection without supervisory approval. [redacted]

[redacted] an FD-71 or Guardian  
[redacted]  
[redacted] FD-71

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or Guardian. The initiation date for this type of assessment is the date the SSA or SIA assigns an FBI employee to conduct the assessment.

(U//FOUO) As soon as practicable following the determination that this type of assessment involves a sensitive investigative matter, the matter must be brought to the CDC for review and to the SAC for approval to continue the assessment. The term "sensitive investigative matter" is defined in Section 5.7 and Section 10. [redacted]

[redacted] the FD-71 or Guardian [redacted]  
[redacted]

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[redacted] Higher supervisory approval, as described in Section 5.9, may be required before using one or more of the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division policy implementation guides (PG), there are agreements (e.g., Memoranda

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of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal, and foreign government information.

**(U//FOUO) Justification Review:** If this type of assessment is not concluded within 30 days, the SSA or SIA must conduct recurring 30-day justification reviews in accordance with Section 3.4. This justification review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Ensure activities that occurred during the prior 30 days were appropriate;
- c. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 30-days;
- d. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- e. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) The FBI employee must ensure that [redacted] in the FD-71 or Guardian. The completed FD-71 or Guardian requires supervisory approval before being uploaded. The FD-71 or Guardian must also document supervisory approval for the use of any investigative method that requires approval, such as: physical surveillance; certain interviews; or tasking of confidential human sources (see DIOG Section 5.9). In addition, as specified in the Division PG, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information. [redacted]

[redacted] within the appropriate classification as described in Section 5.14.

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**(U//FOUO) Responsible Entity:** This type of assessment is conducted by the appropriate substantive Field Office Squad.

(U//FOUO) [redacted]

(U//FOUO) [redacted]

(U//FOUO) [redacted]

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access, he/she can also review already existing data contained in any United States Government data system and search open source information on the Internet [redacted]  
[redacted] Open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint [redacted]  
[redacted] If these database checks or open source Internet searches do not reveal any derogatory information, the FBI employee may terminate this activity without opening an assessment or documenting these activities on an FD-71.

(U//FOUO) [redacted]  
[redacted]  
[redacted]  
[redacted] and complete an FD-71.

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2. (U//FOUO) **Seek information, proactively or in response to investigative leads, relating to the involvement or role of individuals, groups, or organizations in activities constituting violations of federal criminal law or threats to the national security** (e.g., the prompt checking of leads on groups or organizations).

(U//FOUO) **Duration:** There is no time requirement for this type of assessment, but it is anticipated that such assessments will be relatively short. These assessments require recurring 30-day justification reviews by the SSA or SIA as discussed below.

(U//FOUO) **Documentation:** Guardian [redacted]  
[redacted]  
[redacted] The electronic FD-71, [redacted]  
[redacted] FD-71 or  
Guardian [redacted]

b2  
b7E

(U//FOUO) **Approval:** An FBI employee may initiate an assessment under this subsection without supervisory approval [redacted]  
[redacted] an FD-71 or Guardian  
[redacted] the FD-71

or Guardian. The initiation date for this type of assessment is the date the SSA or SIA assigns an FBI employee to conduct the assessment

(U//FOUO) As soon as practicable following the determination that this type of assessment involves a sensitive investigative matter, the matter must be brought to the CDC for review and to the SAC for approval to continue the assessment. The term "sensitive investigative matter" is defined in Section 5.7 and Section 10. When completing the FD-71 or Guardian lead for an assessment involving a sensitive

# Exhibit B

## U.S. Census Bureau

AMERICAN  
FactFinder

P1

RACE

Universe: Total population

2010 Census Redistricting Data (Public Law 94-171) Summary File

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/pl94-171.pdf>

NOTE: Change to the California, Connecticut, Mississippi, New Hampshire, Virginia, and Washington P. L. 94-171 Summary Files as delivered.

	Alabama	Alaska	Arizona	Arkansas	California	Colorado
Total:	4,779,736	710,231	6,392,017	2,915,918	37,253,956	5,029,196
Population of one race:	4,708,485	658,356	6,173,717	2,858,908	35,438,572	4,856,740
White alone	3,275,394	473,576	4,667,121	2,245,229	21,453,934	4,089,202
Black or African American alone	1,251,311	23,263	259,008	449,895	2,299,072	201,737
American Indian and Alaska Native alone	28,218	104,871	296,529	22,248	362,801	56,010
Asian alone	53,595	38,135	176,695	36,102	4,861,007	139,028
Native Hawaiian and Other Pacific Islander alone	3,057	7,409	12,648	5,863	144,386	6,623
Some Other Race alone	96,910	11,102	761,716	99,571	6,317,372	364,140
Two or More Races:	71,251	51,875	218,300	57,010	1,815,384	172,456
Population of two races:	67,039	47,286	203,062	54,253	1,673,501	158,973
White; Black or African American	19,666	4,685	35,442	13,519	180,920	28,904
White; American Indian and Alaska Native	21,953	26,127	34,584	21,060	208,833	34,995
White; Asian	8,835	6,915	35,647	5,968	446,563	32,789
White; Native Hawaiian and Other Pacific Islander	864	1,095	4,173	657	39,258	2,859
White; Some Other Race	6,524	2,211	61,934	7,659	494,321	38,859
Black or African American; American Indian and Alaska Native	3,353	1,777	5,891	1,610	31,146	3,780
Black or African American; Asian	1,632	530	2,986	668	41,249	2,693
Black or African American; Native Hawaiian and Other Pacific Islander	431	213	602	179	7,548	445
Black or African American; Some Other Race	1,591	409	5,921	970	49,487	4,053
American Indian and Alaska Native; Asian	273	1,200	1,435	194	15,072	840
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	82	431	580	90	2,321	171
American Indian and Alaska Native; Some Other Race	398	429	5,979	449	29,519	3,809
Asian; Native Hawaiian and Other Pacific Islander	349	782	2,187	332	39,339	1,496
Asian; Some Other Race	738	368	4,534	666	72,836	2,540
Native Hawaiian and Other Pacific Islander; Some Other Race	350	114	1,167	232	15,089	740
Population of three races:	3,868	4,181	13,948	2,527	128,122	12,175
White; Black or African American; American Indian and Alaska Native	1,850	1,415	4,194	1,143	31,949	4,061
White; Black or African American; Asian	348	252	1,408	162	13,623	1,421
White; Black or African American; Native Hawaiian and Other Pacific Islander	64	85	229	37	2,158	164
White; Black or African American; Some Other Race	281	68	1,189	185	8,281	864
White; American Indian and Alaska Native; Asian	322	1,103	1,098	256	13,195	1,042
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	38	177	203	46	2,109	177
White; American Indian and Alaska Native; Some Other Race	158	233	1,173	199	8,873	1,317
White; Asian; Native Hawaiian and Other Pacific Islander	294	529	2,048	196	20,149	1,465
White; Asian; Some Other Race	126	67	1,054	97	13,637	712
White; Native Hawaiian and Other Pacific Islander; Some Other Race	38	13	213	32	2,443	136

	Alabama	Alaska	Arizona	Arkansas	California	Colorado
Black or African American; American Indian and Alaska Native; Asian	84	50	184	40	2,129	176
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	22	17	34	8	427	35
Black or African American; American Indian and Alaska Native; Some Other Race	45	47	212	31	1,532	154
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	83	30	143	36	1,545	136
Black or African American; Asian; Some Other Race	43	5	168	24	1,653	70
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	22	3	42	6	481	25
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	10	60	79	8	739	64
American Indian and Alaska Native; Asian; Some Other Race	15	14	116	10	1,105	65
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	12	3	58	3	361	28
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	13	10	103	8	1,733	63
Population of four races:	274	361	1,091	163	12,080	1,097
White; Black or African American; American Indian and Alaska Native; Asian	104	153	366	49	4,341	388
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	24	21	48	9	616	72
White; Black or African American; American Indian and Alaska Native; Some Other Race	35	33	187	45	1,785	223
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	24	24	108	9	1,060	100
White; Black or African American; Asian; Some Other Race	8	13	56	9	648	60
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	6	1	14	0	128	6
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	36	79	153	24	1,567	129
White; American Indian and Alaska Native; Asian; Some Other Race	6	14	45	3	546	40
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	1	12	0	124	8
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	9	12	65	5	647	28
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	6	5	22	4	227	20
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	2	4	7	0	166	7
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	2	0	2	0	31	6
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	11	0	5	6	118	3
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	1	0	76	7
Population of five races:	67	47	187	51	1,558	200
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	61	39	141	34	1,135	173
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	4	8	32	8	216	17
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	5	0	59	4
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	5	8	46	3
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	2	1	87	2
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	2	0	15	1
Population of six races:	3	0	12	16	123	11

	Alabama	Alaska	Arizona	Arkansas	California	Colorado
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0	12	16	123	11

	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Total:	3,574,097	897,934	601,723	18,801,310	9,687,653	1,360,301
Population of one race:	3,481,421	874,080	584,407	18,328,733	9,480,164	1,039,672
White alone	2,772,410	618,617	231,471	14,109,162	5,787,440	336,599
Black or African American alone	362,296	191,814	305,125	2,999,862	2,950,435	21,424
American Indian and Alaska Native alone	11,256	4,181	2,079	71,458	32,151	4,164
Asian alone	135,565	28,549	21,056	454,821	314,467	525,078
Native Hawaiian and Other Pacific Islander alone	1,428	400	302	12,286	6,799	135,422
Some Other Race alone	198,466	30,519	24,374	681,144	388,872	16,985
Two or More Races:	92,676	23,854	17,316	472,577	207,489	320,629
Population of two races:	85,501	22,087	15,273	440,616	191,569	206,989
White; Black or African American	24,786	8,736	3,476	112,370	59,398	3,883
White; American Indian and Alaska Native	9,419	2,402	904	55,974	27,198	7,932
White; Asian	14,451	3,183	3,736	70,932	29,613	66,456
White; Native Hawaiian and Other Pacific Islander	809	202	121	5,036	1,962	37,904
White; Some Other Race	17,778	2,629	2,068	106,667	31,576	3,394
Black or African American; American Indian and Alaska Native	4,161	1,750	1,787	12,273	11,145	834
Black or African American; Asian	1,666	693	900	16,040	7,918	2,694
Black or African American; Native Hawaiian and Other Pacific Islander	814	171	226	9,613	1,979	1,809
Black or African American; Some Other Race	6,075	1,208	1,047	26,547	10,248	386
American Indian and Alaska Native; Asian	426	123	57	2,063	1,211	1,343
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	66	17	10	395	157	1,233
American Indian and Alaska Native; Some Other Race	1,012	211	145	4,209	1,802	215
Asian; Native Hawaiian and Other Pacific Islander	408	110	143	2,927	1,157	72,607
Asian; Some Other Race	2,610	531	333	11,758	5,114	4,500
Native Hawaiian and Other Pacific Islander; Some Other Race	1,020	121	320	3,812	1,091	1,799
Population of three races:	6,673	1,653	1,847	29,331	14,369	101,559
White; Black or African American; American Indian and Alaska Native	3,428	944	1,150	9,817	7,015	1,328
White; Black or African American; Asian	498	221	198	5,085	1,913	931
White; Black or African American; Native Hawaiian and Other Pacific Islander	81	39	22	482	235	733
White; Black or African American; Some Other Race	845	121	81	3,225	1,106	114
White; American Indian and Alaska Native; Asian	284	40	47	1,600	674	3,566
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	21	14	2	226	78	1,742
White; American Indian and Alaska Native; Some Other Race	261	33	59	1,108	464	197
White; Asian; Native Hawaiian and Other Pacific Islander	235	53	61	1,728	779	85,723
White; Asian; Some Other Race	305	38	54	1,761	489	1,353
White; Native Hawaiian and Other Pacific Islander; Some Other Race	101	13	13	754	142	711
Black or African American; American Indian and Alaska Native; Asian	106	36	59	470	329	225
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	22	6	9	164	90	110
Black or African American; American Indian and Alaska Native; Some Other Race	150	31	28	390	266	22
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	40	19	17	478	250	1,218
Black or African American; Asian; Some Other Race	85	22	30	929	232	65
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	92	5	8	615	130	32
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	15	3	1	78	28	1,623
American Indian and Alaska Native; Asian; Some Other Race	27	3	2	181	55	106
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	51	9	1	79	40	52
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	26	3	5	161	54	1,708

	Connecticut	Delaware	District of Columbia	Florida	Georgia	Hawaii
Population of four races:	419	107	154	2,181	1,272	11,167
White; Black or African American; American Indian and Alaska Native; Asian	151	43	91	855	575	444
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	18	10	4	105	63	196
White; Black or African American; American Indian and Alaska Native; Some Other Race	129	29	32	375	244	37
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	28	5	5	193	65	1,336
White; Black or African American; Asian; Some Other Race	17	7	7	184	65	50
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	9	0	0	52	13	10
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	28	4	3	162	81	6,762
White; American Indian and Alaska Native; Asian; Some Other Race	8	1	2	47	13	137
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	1	13	5	63
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	9	1	1	79	36	1,813
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	5	1	3	43	32	185
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	14	0	2	23	19	7
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	1	1	6	8	3
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	4	2	40	46	33
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	0	4	7	91
Population of five races:	76	7	41	401	256	883
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	53	3	37	294	218	598
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	15	3	3	66	29	16
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0	0	8	4	0
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	1	0	5	5	61
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	0	22	0	203
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	1	6	0	5
Population of six races:	7	0	1	48	23	31
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	7	0	1	48	23	31

	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
Total:	1,567,582	12,830,632	6,483,802	3,046,355	2,853,118	4,339,367
Population of one race:	1,528,647	12,540,650	6,355,901	2,993,022	2,767,185	4,264,159
White alone	1,396,487	9,177,877	5,467,906	2,781,561	2,391,044	3,809,537
Black or African American alone	9,810	1,866,414	591,397	89,148	167,864	337,520
American Indian and Alaska Native alone	21,441	43,963	18,462	11,084	28,150	10,120
Asian alone	19,069	586,934	102,474	53,094	67,762	48,930
Native Hawaiian and Other Pacific Islander alone	2,317	4,050	2,348	2,003	2,238	2,501
Some Other Race alone	79,523	861,412	173,314	56,132	110,127	55,551
Two or More Races:	38,935	289,982	127,901	53,333	85,933	75,208
Population of two races:	36,573	272,768	120,347	50,055	80,110	70,782
White; Black or African American	4,369	70,615	48,734	19,063	24,166	30,985
White; American Indian and Alaska Native	12,488	32,749	22,076	9,475	23,163	16,172
White; Asian	8,222	56,258	17,502	8,663	11,546	9,228
White; Native Hawaiian and Other Pacific Islander	1,343	2,682	1,514	860	950	979
White; Some Other Race	7,666	66,820	18,449	7,715	11,954	7,248
Black or African American; American Indian and Alaska Native	313	8,057	3,034	1,048	2,759	1,568
Black or African American; Asian	171	4,935	1,603	519	1,011	970
Black or African American; Native Hawaiian and Other Pacific Islander	30	898	375	77	226	307
Black or African American; Some Other Race	240	10,103	3,268	873	1,654	1,451
American Indian and Alaska Native; Asian	230	2,009	380	243	342	205
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	68	109	62	50	95	66
American Indian and Alaska Native; Some Other Race	476	3,435	648	417	639	283
Asian; Native Hawaiian and Other Pacific Islander	364	1,994	596	218	402	340
Asian; Some Other Race	391	10,524	1,722	670	955	766
Native Hawaiian and Other Pacific Islander; Some Other Race	202	1,580	384	164	248	214
Population of three races:	2,198	15,841	6,889	3,013	5,418	4,032
White; Black or African American; American Indian and Alaska Native	572	7,550	3,578	1,545	2,744	1,945
White; Black or African American; Asian	119	1,604	708	283	563	468
White; Black or African American; Native Hawaiian and Other Pacific Islander	22	128	129	38	88	102
White; Black or African American; Some Other Race	117	1,655	686	284	490	381
White; American Indian and Alaska Native; Asian	292	849	342	165	366	296
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	66	86	88	30	58	44
White; American Indian and Alaska Native; Some Other Race	239	816	283	151	300	162
White; Asian; Native Hawaiian and Other Pacific Islander	493	912	440	211	339	270
White; Asian; Some Other Race	136	905	224	127	168	120
White; Native Hawaiian and Other Pacific Islander; Some Other Race	44	223	59	23	31	28
Black or African American; American Indian and Alaska Native; Asian	10	254	108	23	66	59
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	2	38	17	5	9	25
Black or African American; American Indian and Alaska Native; Some Other Race	10	227	54	27	66	29
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	11	176	50	19	31	36
Black or African American; Asian; Some Other Race	10	167	49	41	40	24
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	1	74	26	7	17	8
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	15	44	15	5	19	10
American Indian and Alaska Native; Asian; Some Other Race	16	39	18	19	4	7
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	4	34	0	0	4	9
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	19	60	15	10	15	9
Population of four races:	125	1,145	537	207	341	334

	Idaho	Illinois	Indiana	Iowa	Kansas	Kentucky
White; Black or African American; American Indian and Alaska Native; Asian	34	497	234	74	139	140
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	12	36	32	15	25	24
White; Black or African American; American Indian and Alaska Native; Some Other Race	15	277	119	40	75	72
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	9	72	49	26	39	14
White; Black or African American; Asian; Some Other Race	9	54	17	6	8	5
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	2	7	4	2	3	3
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	19	67	44	21	26	33
White; American Indian and Alaska Native; Asian; Some Other Race	5	45	10	8	8	5
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	4	12	3	4	1	2
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	29	9	6	6	14
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	7	8	4	2	9	10
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	6	19	5	1	0	3
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1	7	0	0	0	2
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	15	7	1	1	2
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	0	1	1	5
Population of five races:	38	202	115	56	58	58
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	35	164	93	45	41	50
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	2	23	13	9	7	6
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	4	3	2	0	0
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	4	6	0	2	1
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	2	0	0	8	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	5	0	0	0	1
Population of six races:	1	26	13	2	6	2
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	26	13	2	6	2

	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Total:	4,533,372	1,328,361	5,773,552	6,547,629	9,883,640	5,303,925
Population of one race:	4,460,489	1,307,420	5,608,844	6,375,626	9,653,321	5,178,780
White alone	2,836,192	1,264,971	3,359,284	5,265,236	7,803,120	4,524,062
Black or African American alone	1,452,396	15,707	1,700,298	434,398	1,400,362	274,412
American Indian and Alaska Native alone	30,579	8,568	20,420	18,850	62,007	60,916
Asian alone	70,132	13,571	318,853	349,768	238,199	214,234
Native Hawaiian and Other Pacific Islander alone	1,963	342	3,157	2,223	2,604	2,156
Some Other Race alone	69,227	4,261	206,832	305,151	147,029	103,000
Two or More Races:	72,883	20,941	164,708	172,003	230,319	125,145
Population of two races:	67,175	19,734	149,827	159,119	213,375	115,265
White; Black or African American	19,951	4,571	46,677	38,964	72,344	36,912
White; American Indian and Alaska Native	14,868	8,729	15,044	16,108	52,202	27,255
White; Asian	8,986	3,932	32,516	32,594	38,198	24,348
White; Native Hawaiian and Other Pacific Islander	885	294	1,394	1,850	2,853	1,264
White; Some Other Race	9,819	1,203	20,284	34,355	22,133	11,584
Black or African American; American Indian and Alaska Native	4,459	179	10,181	4,942	10,006	3,990
Black or African American; Asian	1,817	101	6,487	2,495	3,213	1,934
Black or African American; Native Hawaiian and Other Pacific Islander	459	42	1,433	1,076	628	389
Black or African American; Some Other Race	3,292	305	6,426	16,381	5,092	1,840
American Indian and Alaska Native; Asian	335	72	954	762	1,009	728
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	233	10	58	92	139	86
American Indian and Alaska Native; Some Other Race	568	70	1,730	2,385	915	1,584
Asian; Native Hawaiian and Other Pacific Islander	360	74	1,324	774	920	836
Asian; Some Other Race	891	131	4,486	4,221	3,340	2,154
Native Hawaiian and Other Pacific Islander; Some Other Race	252	21	833	2,120	383	361
Population of three races:	5,010	1,099	13,535	11,912	15,782	9,238
White; Black or African American; American Indian and Alaska Native	2,444	537	7,343	5,027	9,698	5,719
White; Black or African American; Asian	413	113	1,812	931	1,240	845
White; Black or African American; Native Hawaiian and Other Pacific Islander	53	24	163	146	153	90
White; Black or African American; Some Other Race	486	72	789	1,904	1,046	526
White; American Indian and Alaska Native; Asian	338	120	620	488	866	541
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	44	22	72	80	149	68
White; American Indian and Alaska Native; Some Other Race	248	56	375	467	563	218
White; Asian; Native Hawaiian and Other Pacific Islander	241	79	605	491	769	532
White; Asian; Some Other Race	190	31	524	584	429	268
White; Native Hawaiian and Other Pacific Islander; Some Other Race	45	16	79	311	76	55
Black or African American; American Indian and Alaska Native; Asian	84	10	355	114	222	89
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	14	0	49	44	38	20
Black or African American; American Indian and Alaska Native; Some Other Race	184	8	188	355	185	79
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	82	2	131	52	98	54
Black or African American; Asian; Some Other Race	60	2	216	188	103	37
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	32	3	87	529	45	20
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	15	2	27	14	28	11
American Indian and Alaska Native; Asian; Some Other Race	12	2	47	67	25	24
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	4	0	19	84	11	9
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	21	0	34	36	38	33

	Louisiana	Maine	Maryland	Massachusetts	Michigan	Minnesota
Population of four races:	594	72	1,155	820	960	539
White; Black or African American; American Indian and Alaska Native; Asian	167	33	644	281	491	248
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	19	7	50	37	50	48
White; Black or African American; American Indian and Alaska Native; Some Other Race	305	9	220	242	180	118
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	19	2	46	32	54	33
White; Black or African American; Asian; Some Other Race	12	5	69	48	33	24
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	5	0	10	32	6	7
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	17	10	35	40	76	32
White; American Indian and Alaska Native; Asian; Some Other Race	6	0	19	24	11	9
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	9	1	6	12	8	1
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	4	18	25	21	6
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	13	1	13	7	5	6
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	8	0	7	20	9	3
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	1	13	7	1
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	8	0	14	6	7	2
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	0	3	1	2	1
Population of five races:	98	35	173	137	187	101
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	69	26	124	102	150	71
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	24	4	26	22	22	18
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	2	0	6	4	1	3
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	14	3	9	7
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	5	1	3	3	1
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	2	3	2	1
Population of six races:	6	1	18	15	15	2
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	6	1	18	15	15	2

	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
Total:	2,967,297	5,988,927	989,415	1,826,341	2,700,551	1,316,470
Population of one race:	2,933,190	5,864,338	964,439	1,786,831	2,574,476	1,295,088
White alone	1,754,684	4,958,770	884,961	1,572,838	1,786,688	1,236,050
Black or African American alone	1,098,385	693,391	4,027	82,885	218,626	15,035
American Indian and Alaska Native alone	15,030	27,376	62,555	18,427	32,062	3,150
Asian alone	25,742	98,083	6,253	32,293	195,436	28,407
Native Hawaiian and Other Pacific Islander alone	1,187	6,261	668	1,279	16,871	384
Some Other Race alone	38,162	80,457	5,975	79,109	324,793	12,062
Two or More Races:	34,107	124,589	24,976	39,510	126,075	21,382
Population of two races:	31,850	116,456	23,672	36,860	113,875	20,046
White; Black or African American	11,088	39,037	2,578	11,225	19,611	5,021
White; American Indian and Alaska Native	6,714	33,738	14,228	7,587	14,235	6,104
White; Asian	4,205	18,604	3,233	6,108	27,142	4,949
White; Native Hawaiian and Other Pacific Islander	393	2,209	505	532	3,774	284
White; Some Other Race	3,715	10,728	1,864	6,937	27,399	2,250
Black or African American; American Indian and Alaska Native	2,209	4,594	415	1,317	2,476	227
Black or African American; Asian	1,037	1,662	81	442	3,569	152
Black or African American; Native Hawaiian and Other Pacific Islander	378	501	10	106	878	48
Black or African American; Some Other Race	976	2,201	75	1,033	3,370	302
American Indian and Alaska Native; Asian	170	392	168	157	700	78
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	27	85	77	37	210	38
American Indian and Alaska Native; Some Other Race	260	474	211	536	1,351	67
Asian; Native Hawaiian and Other Pacific Islander	162	717	131	245	4,869	107
Asian; Some Other Race	373	1,255	70	413	3,370	324
Native Hawaiian and Other Pacific Islander; Some Other Race	143	259	26	185	921	95
Population of three races:	2,020	7,467	1,204	2,429	11,034	1,255
White; Black or African American; American Indian and Alaska Native	932	3,855	523	1,151	2,303	587
White; Black or African American; Asian	182	703	62	253	1,177	109
White; Black or African American; Native Hawaiian and Other Pacific Islander	51	116	16	32	262	8
White; Black or African American; Some Other Race	146	527	34	213	673	142
White; American Indian and Alaska Native; Asian	149	625	191	122	716	115
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	37	106	46	24	147	10
White; American Indian and Alaska Native; Some Other Race	80	313	91	176	443	51
White; Asian; Native Hawaiian and Other Pacific Islander	127	553	164	193	3,509	128
White; Asian; Some Other Race	72	220	35	92	674	52
White; Native Hawaiian and Other Pacific Islander; Some Other Race	27	71	14	24	161	9
Black or African American; American Indian and Alaska Native; Asian	51	97	3	31	160	12
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	11	25	3	7	31	3
Black or African American; American Indian and Alaska Native; Some Other Race	34	93	1	39	94	7
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	65	50	7	26	226	4
Black or African American; Asian; Some Other Race	22	33	1	15	116	7
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	16	16	3	3	68	6
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	7	13	4	7	88	0
American Indian and Alaska Native; Asian; Some Other Race	2	14	2	5	48	5
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	7	2	3	10	8	0
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	2	35	1	6	130	0

	Mississippi	Missouri	Montana	Nebraska	Nevada	New Hampshire
Population of four races:	170	527	84	193	1,011	63
White; Black or African American; American Indian and Alaska Native; Asian	52	214	29	55	283	32
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	6	31	13	18	54	1
White; Black or African American; American Indian and Alaska Native; Some Other Race	38	111	10	43	99	6
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	18	34	5	23	139	3
White; Black or African American; Asian; Some Other Race	5	28	5	9	41	6
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	1	3	0	3	15	0
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	12	59	9	23	221	12
White; American Indian and Alaska Native; Asian; Some Other Race	3	16	2	7	29	1
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	1	3	5	1
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	16	10	3	91	1
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	11	3	0	2	22	0
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	0	1	0	0	4	0
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	2	0	0	1	0
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	20	8	0	0	5	0
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	0	4	2	0
Population of five races:	64	130	16	28	148	14
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	61	103	16	22	116	13
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	3	19	0	0	15	0
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	3	0	1	6	0
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	3	0	0	2	1
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	0	0	6	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	0	5	3	0
Population of six races:	3	9	0	0	7	4
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	9	0	0	7	4

	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Total:	8,791,894	2,059,179	19,378,102	9,535,483	672,591	11,536,504
Population of one race:	8,551,591	1,982,169	18,792,253	9,329,284	660,738	11,298,739
White alone	6,029,248	1,407,876	12,740,974	6,528,950	605,449	9,539,437
Black or African American alone	1,204,826	42,550	3,073,800	2,048,628	7,960	1,407,681
American Indian and Alaska Native alone	29,026	193,222	106,906	122,110	36,591	25,292
Asian alone	725,726	28,208	1,420,244	208,962	6,909	192,233
Native Hawaiian and Other Pacific Islander alone	3,043	1,810	8,766	6,604	320	4,066
Some Other Race alone	559,722	308,503	1,441,563	414,030	3,509	130,030
Two or More Races:	240,303	77,010	585,849	206,199	11,853	237,765
Population of two races:	223,761	72,362	542,905	189,844	11,251	219,767
White; Black or African American	49,511	7,413	123,455	61,973	2,127	99,741
White; American Indian and Alaska Native	14,965	16,705	41,342	33,642	5,455	40,911
White; Asian	40,703	7,647	83,642	27,778	1,738	33,031
White; Native Hawaiian and Other Pacific Islander	1,645	812	4,073	2,173	184	2,165
White; Some Other Race	60,186	28,241	125,731	27,790	823	19,087
Black or African American; American Indian and Alaska Native	9,312	1,970	25,036	13,558	314	9,021
Black or African American; Asian	5,814	544	20,896	4,929	99	3,666
Black or African American; Native Hawaiian and Other Pacific Islander	1,830	103	5,516	1,262	28	882
Black or African American; Some Other Race	15,777	2,082	51,132	7,789	134	5,405
American Indian and Alaska Native; Asian	2,963	530	7,854	996	98	627
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	130	177	586	193	44	112
American Indian and Alaska Native; Some Other Race	4,049	3,870	12,869	2,195	81	706
Asian; Native Hawaiian and Other Pacific Islander	1,874	404	3,370	1,143	52	869
Asian; Some Other Race	12,535	1,334	28,996	3,275	64	2,946
Native Hawaiian and Other Pacific Islander; Some Other Race	2,467	530	8,407	1,148	10	598
Population of three races:	15,153	4,236	39,250	14,827	541	16,618
White; Black or African American; American Indian and Alaska Native	7,051	1,203	17,200	8,128	250	10,464
White; Black or African American; Asian	1,619	259	3,883	1,534	58	1,555
White; Black or African American; Native Hawaiian and Other Pacific Islander	127	25	355	204	14	234
White; Black or African American; Some Other Race	1,890	351	4,813	1,107	31	1,185
White; American Indian and Alaska Native; Asian	466	323	1,079	760	50	756
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	66	55	149	100	20	94
White; American Indian and Alaska Native; Some Other Race	520	892	1,334	468	21	416
White; Asian; Native Hawaiian and Other Pacific Islander	442	395	1,031	852	58	673
White; Asian; Some Other Race	912	311	1,904	439	14	389
White; Native Hawaiian and Other Pacific Islander; Some Other Race	314	98	882	116	1	80
Black or African American; American Indian and Alaska Native; Asian	313	28	817	283	1	236
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	55	12	165	68	5	41
Black or African American; American Indian and Alaska Native; Some Other Race	244	85	1,166	216	5	158
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	95	23	386	174	0	88
Black or African American; Asian; Some Other Race	352	50	1,632	181	2	116
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	234	12	809	70	3	53
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	46	26	91	15	3	41
American Indian and Alaska Native; Asian; Some Other Race	163	53	756	56	3	9
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	133	14	540	22	2	11
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	111	21	258	34	0	19

	New Jersey	New Mexico	New York	North Carolina	North Dakota	Ohio
Population of four races:	1,149	332	3,172	1,303	44	1,147
White; Black or African American; American Indian and Alaska Native; Asian	575	103	1,423	533	11	569
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	39	20	112	76	8	69
White; Black or African American; American Indian and Alaska Native; Some Other Race	277	81	795	251	7	233
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	43	20	108	126	2	47
White; Black or African American; Asian; Some Other Race	64	11	254	68	4	35
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	21	6	51	9	2	17
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	19	29	64	89	5	67
White; American Indian and Alaska Native; Asian; Some Other Race	24	23	46	35	1	12
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	8	5	26	12	0	10
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	21	22	41	31	0	38
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	15	3	61	24	4	26
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	12	3	69	23	0	4
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	10	0	38	4	0	8
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	21	6	62	15	0	10
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	22	7	0	2
Population of five races:	201	71	446	202	17	215
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	136	57	330	165	17	171
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	50	10	68	22	0	28
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	5	0	17	2	0	5
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	5	0	10	7	0	4
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	4	3	6	2	0	6
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	1	15	4	0	1
Population of six races:	39	9	76	23	0	18
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	39	9	76	23	0	18

	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota
Total:	3,751,351	3,831,074	12,702,379	1,052,567	4,625,364	814,180
Population of one race:	3,530,030	3,686,315	12,464,544	1,017,780	4,545,429	796,897
White alone	2,706,845	3,204,614	10,406,288	856,869	3,060,000	699,392
Black or African American alone	277,644	69,206	1,377,689	60,189	1,290,684	10,207
American Indian and Alaska Native alone	321,687	53,203	26,843	6,058	19,524	71,817
Asian alone	65,076	141,263	349,088	30,457	59,051	7,610
Native Hawaiian and Other Pacific Islander alone	4,369	13,404	3,653	554	2,706	394
Some Other Race alone	154,409	204,625	300,983	63,653	113,464	7,477
Two or More Races:	221,321	144,759	237,835	34,787	79,935	17,283
Population of two races:	209,404	132,874	219,364	31,455	74,382	16,392
White; Black or African American	25,056	19,302	87,287	8,201	27,432	3,064
White; American Indian and Alaska Native	134,957	44,530	27,502	3,223	13,910	8,499
White; Asian	12,302	32,589	36,127	4,432	10,461	1,894
White; Native Hawaiian and Other Pacific Islander	1,232	4,665	2,279	400	935	194
White; Some Other Race	14,495	20,237	27,627	6,375	9,236	1,262
Black or African American; American Indian and Alaska Native	12,834	1,718	10,598	2,029	4,156	602
Black or African American; Asian	1,313	1,059	4,508	323	2,227	107
Black or African American; Native Hawaiian and Other Pacific Islander	294	280	1,491	115	481	25
Black or African American; Some Other Race	1,866	1,060	10,655	4,103	2,836	89
American Indian and Alaska Native; Asian	888	765	1,351	155	301	173
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	313	330	134	26	71	73
American Indian and Alaska Native; Some Other Race	2,127	1,530	1,796	758	473	219
Asian; Native Hawaiian and Other Pacific Islander	482	2,655	1,019	110	445	68
Asian; Some Other Race	922	1,563	5,230	601	1,137	94
Native Hawaiian and Other Pacific Islander; Some Other Race	323	591	1,760	604	281	29
Population of three races:	11,278	10,903	16,980	3,014	5,060	853
White; Black or African American; American Indian and Alaska Native	6,557	3,442	9,668	1,328	2,517	467
White; Black or African American; Asian	558	819	1,635	155	573	53
White; Black or African American; Native Hawaiian and Other Pacific Islander	116	149	258	36	88	14
White; Black or African American; Some Other Race	445	453	1,663	530	387	30
White; American Indian and Alaska Native; Asian	1,240	1,495	549	68	331	78
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	159	344	116	13	63	18
White; American Indian and Alaska Native; Some Other Race	1,024	694	406	132	159	76
White; Asian; Native Hawaiian and Other Pacific Islander	437	2,437	599	65	340	65
White; Asian; Some Other Race	197	471	574	86	134	20
White; Native Hawaiian and Other Pacific Islander; Some Other Race	44	110	169	71	49	4
Black or African American; American Indian and Alaska Native; Asian	140	99	303	22	118	8
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	44	30	98	13	20	1
Black or African American; American Indian and Alaska Native; Some Other Race	161	54	260	238	67	4
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	47	59	108	18	105	7
Black or African American; Asian; Some Other Race	29	33	224	51	44	3
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	11	10	134	125	25	0
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	29	79	19	6	14	3
American Indian and Alaska Native; Asian; Some Other Race	15	46	73	39	4	0
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	18	78	15	4	1
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	22	61	46	3	18	1

	Oklahoma	Oregon	Pennsylvania	Rhode Island	South Carolina	South Dakota
Population of four races:	552	831	1,250	281	393	31
White; Black or African American; American Indian and Alaska Native; Asian	204	265	625	65	159	8
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	46	92	72	7	31	3
White; Black or African American; American Indian and Alaska Native; Some Other Race	105	82	261	114	74	3
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	32	73	70	7	23	1
White; Black or African American; Asian; Some Other Race	8	23	68	19	8	2
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	8	8	10	14	6	0
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	85	192	38	21	49	10
White; American Indian and Alaska Native; Asian; Some Other Race	33	33	32	5	8	2
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	5	11	4	5	0	0
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	9	29	24	2	4	1
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	13	13	12	2	12	0
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	2	5	13	7	1	0
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	2	1	4	6	8	0
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	2	13	4	10	0
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	2	4	3	0	1
Population of five races:	72	136	220	35	93	7
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	64	114	169	8	73	7
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	6	11	29	22	8	0
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	6	0	3	0
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	8	1	3	0
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	9	3	4	4	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	1	5	0	2	0
Population of six races:	15	15	21	2	7	0
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	15	15	21	2	7	0

	Tennessee	Texas	Utah	Vermont	Virginia	Washington
Total:	6,346,105	25,145,561	2,763,885	625,741	8,001,024	6,724,540
Population of one race:	6,236,096	24,466,560	2,688,367	614,988	7,767,624	6,411,614
White alone	4,921,948	17,701,552	2,379,560	596,292	5,486,852	5,196,362
Black or African American alone	1,057,315	2,979,598	29,287	6,277	1,551,399	240,042
American Indian and Alaska Native alone	19,994	170,972	32,927	2,207	29,225	103,869
Asian alone	91,242	964,596	55,285	7,947	439,890	481,067
Native Hawaiian and Other Pacific Islander alone	3,642	21,656	24,554	160	5,980	40,475
Some Other Race alone	141,955	2,628,186	166,754	2,105	254,278	349,799
Two or More Races:	110,009	679,001	75,518	10,753	233,400	312,926
Population of two races:	103,173	642,522	70,121	10,143	214,276	282,352
White; Black or African American	36,370	109,713	9,598	2,353	62,204	51,624
White; American Indian and Alaska Native	25,649	92,305	12,638	4,535	25,771	66,769
White; Asian	15,145	91,963	15,902	2,112	59,051	83,994
White; Native Hawaiian and Other Pacific Islander	1,476	6,898	6,885	148	2,618	9,817
White; Some Other Race	12,638	240,679	17,835	549	27,658	34,488
Black or African American; American Indian and Alaska Native	3,492	13,834	608	116	9,746	5,458
Black or African American; Asian	1,971	11,132	466	53	7,056	6,290
Black or African American; Native Hawaiian and Other Pacific Islander	528	2,368	323	21	1,151	1,407
Black or African American; Some Other Race	2,381	28,414	975	63	7,226	3,251
American Indian and Alaska Native; Asian	384	3,690	290	24	1,115	2,773
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	73	468	292	7	99	734
American Indian and Alaska Native; Some Other Race	657	13,156	1,194	37	2,559	2,261
Asian; Native Hawaiian and Other Pacific Islander	533	4,945	1,402	33	1,943	7,209
Asian; Some Other Race	1,482	18,536	1,082	82	5,240	5,000
Native Hawaiian and Other Pacific Islander; Some Other Race	394	4,421	631	10	839	1,277
Population of three races:	6,177	33,084	4,988	559	17,461	27,664
White; Black or African American; American Indian and Alaska Native	3,000	11,065	779	324	8,466	8,131
White; Black or African American; Asian	686	3,371	324	55	2,406	3,637
White; Black or African American; Native Hawaiian and Other Pacific Islander	100	445	178	7	234	612
White; Black or African American; Some Other Race	445	3,544	324	25	1,084	1,086
White; American Indian and Alaska Native; Asian	465	2,129	335	55	1,161	3,740
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	88	328	161	8	99	679
White; American Indian and Alaska Native; Some Other Race	285	2,852	379	19	535	1,134
White; Asian; Native Hawaiian and Other Pacific Islander	419	2,703	1,843	47	1,276	5,555
White; Asian; Some Other Race	237	3,004	320	11	797	1,163
White; Native Hawaiian and Other Pacific Islander; Some Other Race	62	705	127	0	141	228
Black or African American; American Indian and Alaska Native; Asian	92	409	27	2	370	483
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	23	120	8	0	49	97
Black or African American; American Indian and Alaska Native; Some Other Race	76	462	15	3	196	155
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	84	426	18	1	209	310
Black or African American; Asian; Some Other Race	59	488	22	0	197	148
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	11	178	7	0	77	41
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	13	89	38	0	47	219
American Indian and Alaska Native; Asian; Some Other Race	12	343	18	1	39	77
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	2	179	14	0	28	27
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	18	244	51	1	50	142
Population of four races:	518	2,687	353	44	1,424	2,543

	Tennessee	Texas	Utah	Vermont	Virginia	Washington
White; Black or African American; American Indian and Alaska Native; Asian	220	994	83	18	704	991
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	23	104	19	1	56	191
White; Black or African American; American Indian and Alaska Native; Some Other Race	70	612	48	9	224	245
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	47	213	28	3	97	312
White; Black or African American; Asian; Some Other Race	21	134	13	1	88	77
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	2	29	0	1	10	10
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	69	251	91	5	105	480
White; American Indian and Alaska Native; Asian; Some Other Race	16	90	19	1	18	61
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	8	23	15	1	3	9
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	11	98	23	1	41	104
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	18	49	5	0	45	28
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	4	20	0	0	15	19
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	17	1	0	10	6
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	6	40	2	3	6	5
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	13	6	0	2	5
Population of five races:	137	611	54	7	209	349
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	116	485	45	6	165	289
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	9	72	1	0	32	24
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	12	1	0	8	5
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	18	2	1	2	10
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	7	18	5	0	1	19
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	2	6	0	0	1	2
Population of six races:	4	97	2	0	30	18
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	4	97	2	0	30	18

	West Virginia	Wisconsin	Wyoming	Puerto Rico
Total:	1,852,994	5,686,986	563,626	3,725,789
Population of one race:	1,825,852	5,582,669	551,265	3,603,543
White alone	1,739,988	4,902,067	511,279	2,825,100
Black or African American alone	63,124	359,148	4,748	461,498
American Indian and Alaska Native alone	3,787	54,526	13,336	19,839
Asian alone	12,406	129,234	4,426	6,831
Native Hawaiian and Other Pacific Islander alone	428	1,827	427	370
Some Other Race alone	6,119	135,867	17,049	289,905
Two or More Races:	27,142	104,317	12,361	122,246
Population of two races:	25,650	97,512	11,770	109,527
White; Black or African American	11,602	32,590	1,900	63,552
White; American Indian and Alaska Native	7,728	22,491	4,466	1,905
White; Asian	3,086	16,578	1,737	1,322
White; Native Hawaiian and Other Pacific Islander	432	1,157	298	324
White; Some Other Race	1,350	14,396	2,498	24,560
Black or African American; American Indian and Alaska Native	592	3,025	121	2,359
Black or African American; Asian	181	1,032	61	494
Black or African American; Native Hawaiian and Other Pacific Islander	52	249	11	125
Black or African American; Some Other Race	236	2,135	138	10,367
American Indian and Alaska Native; Asian	66	565	50	346
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	17	45	20	40
American Indian and Alaska Native; Some Other Race	36	721	232	2,385
Asian; Native Hawaiian and Other Pacific Islander	85	679	100	30
Asian; Some Other Race	163	1,500	96	639
Native Hawaiian and Other Pacific Islander; Some Other Race	24	349	42	1,079
Population of three races:	1,356	6,291	547	11,951
White; Black or African American; American Indian and Alaska Native	793	3,492	176	7,490
White; Black or African American; Asian	129	512	45	305
White; Black or African American; Native Hawaiian and Other Pacific Islander	25	67	7	33
White; Black or African American; Some Other Race	78	609	30	2,778
White; American Indian and Alaska Native; Asian	75	329	48	17
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	16	56	14	6
White; American Indian and Alaska Native; Some Other Race	62	346	80	230
White; Asian; Native Hawaiian and Other Pacific Islander	98	385	90	14
White; Asian; Some Other Race	39	201	19	108
White; Native Hawaiian and Other Pacific Islander; Some Other Race	6	60	9	324
Black or African American; American Indian and Alaska Native; Asian	12	60	1	22
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	0	7	1	11
Black or African American; American Indian and Alaska Native; Some Other Race	1	75	7	272
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	4	17	1	7
Black or African American; Asian; Some Other Race	3	29	2	99
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	2	8	1	97
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	3	4	10	2
American Indian and Alaska Native; Asian; Some Other Race	7	16	0	72
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	3	1	61
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	3	15	5	3
Population of four races:	116	429	33	713

	West Virginia	Wisconsin	Wyoming	Puerto Rico
White; Black or African American; American Indian and Alaska Native; Asian	60	191	10	30
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	9	31	0	15
White; Black or African American; American Indian and Alaska Native; Some Other Race	15	114	4	564
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	3	20	3	1
White; Black or African American; Asian; Some Other Race	0	10	4	40
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	4	8	2	18
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	11	29	7	2
White; American Indian and Alaska Native; Asian; Some Other Race	1	5	0	7
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	3	3	0	4
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	9	4	2	4
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	1	3	1	6
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	0	5	0	10
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	0	5
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	4	0	6
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	1	0	1
Population of five races:	20	77	8	52
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	17	76	8	25
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	1	0	0	15
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	0	9
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	1	0	3
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1	0	0	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	0	0	0
Population of six races:	0	8	3	3
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0	8	3	3

Source: U.S. Census Bureau, 2010 Census.



# Exhibit C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

AMERICAN CIVIL LIBERTIES UNION OF  
NEW JERSEY,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,  
DEPARTMENT OF JUSTICE,

Defendants.

**COMPLAINT FOR  
INJUNCTIVE RELIEF**

Case No. \_\_\_\_\_

**Preliminary Statement**

1. In this Freedom of Information Act (“FOIA”) case, the American Civil Liberties Union of New Jersey (“ACLU of New Jersey” or “Plaintiff”) challenges the government’s failure to promptly release documents pertaining to the use of race and ethnicity to conduct assessments and investigations by the Federal Bureau of Investigation (“FBI”) in New Jersey. Although the FBI’s use of race and ethnicity to collect information about and “map” racial and ethnic demographics, “behaviors,” and “life style characteristics” in local communities is the subject of widespread public attention, concern, and debate, the details have been shrouded in secrecy.

2. On July 27, 2010, Plaintiff filed a FOIA request (“Request”) seeking the release of records concerning the FBI’s implementation of its authority under the Domestic Intelligence Operations Guide to use race and ethnicity to map local communities.

3. The FBI has failed to fulfill its obligation to make promptly available the requested information. Although the FBI issued a first interim release in December 2010, it improperly redacted information from those documents. The FBI has also failed to provide any

information subsequent to the first interim release although more than nine months have passed since the Request was filed.

4. Plaintiff is entitled to the records it seeks. These records will significantly contribute to public understanding of the FBI's potential "mapping" of local communities and businesses based on race and ethnicity and targeting of ethnic communities for special information collection, which raise grave civil rights and civil liberties concerns. Plaintiff is also entitled to a waiver of processing fees because the release of the requested records is in the public interest, and to a limitation of process fees because Plaintiff is a "news media" requester.

5. Plaintiff seeks an injunction requiring Defendants immediately to process Plaintiff's Request, to release records that have been unlawfully withheld, and to release information that has been unlawfully redacted from released documents. Plaintiff also seeks an order enjoining Defendants from assessing fees for the processing of the Request.

### **Jurisdiction and Venue**

6. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(4)(A)(vii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

### **Parties**

7. Plaintiff the American Civil Liberties Union of New Jersey is a regional affiliate of the American Civil Liberties Union, which is a national, non-profit, and non-partisan organization dedicated to protecting the civil liberties of all people and safeguarding basic constitutional rights to privacy, free expression, and due process. The ACLU of New Jersey is established under the laws of the State of New Jersey and has its headquarters in Newark, New

Jersey. With a membership of approximately 15,000, the ACLU of New Jersey is involved in public education, advocacy, and litigation to advance the ACLU's goals of liberty and justice for all.

8. Defendant Federal Bureau of Investigation is a component of the U.S. Department of Justice ("DOJ"). It is headquartered in Washington, D.C. and has field offices throughout the country, including in Newark, New Jersey.

9. Defendant DOJ is a Department of the Executive Branch of the U.S. government and an agency within the meaning of 5 U.S.C. § 552(f)(1). The DOJ is headquartered in Washington, D.C.

### **Factual Allegations**

10. The public is increasingly concerned about the expansion of FBI surveillance powers and its conduct of assessments and investigations in ways that violate civil rights and civil liberties, particularly those of racial and ethnic minority communities.

11. In December 2008, the Department of Justice issued revised Attorney General Guidelines, which govern the FBI's conduct in criminal, national security, and counter-intelligence assessments and investigations. That same month, the FBI issued its "Domestic Intelligence Operations Guide" or "DIOG," an internal guide to implementing the Attorney General Guidelines. The DIOG was not made publicly available until September 2009, when the FBI released the guide in heavily-censored form. In January 2010, however, the FBI released through FOIA a less-censored version of the DIOG.

12. The DIOG contains troubling revelations about the FBI's authorized use of race and ethnicity information in conducting assessments and investigations. Under the DIOG, the FBI is permitted to "identify locations of concentrated ethnic communities in the Field Office's

domain”; to collect and analyze racial and ethnic community demographics, including data about “ethnic-oriented businesses and other facilities”; to collect and analyze racial and ethnic “behavior[s],” “cultural tradition[s],” and “life style characteristics” in local communities; and to map racial and ethnic demographics, “behavior[s],” “cultural tradition[s],” and “life style characteristics” in local communities. *See* Fed. Bureau of Investigation, Domestic Intelligence Operations Guide § 4.3(C)(2), *available at* <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29>. The DIOG details the FBI’s power to collect, use, and map racial and ethnic data in order to assist the agency’s “domain awareness” and “intelligence analysis.”

13. The FBI’s potential “mapping” of local communities and local businesses based on race and ethnicity, and its ability to target “ethnic communities” for special collection and mapping of information based on so-called racial and ethnic “behaviors” or “characteristics” raise grave civil rights and civil liberties concerns because they could be based on, or lead to, illegal and unconstitutional racial profiling.

14. According to census data, more than one in three New Jersey residents could be considered “ethnic,” and their “behaviors,” “cultural traditions,” and “life style characteristics” potentially could be mapped or otherwise analyzed by the FBI. *See 2010 Census Redistricting Data (Public Law 94-171) Summary File: Race*, U.S. Census Bureau (2010), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC\\_10\\_PL\\_P1&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_P1&prodType=table).

15. When the Los Angeles Police Department revealed a plan to map Muslim communities by race and religion, the public outcry was so great that the plan was abandoned immediately. *See* Richard Winton and Teresa Watanabe, *LAPD’s Muslim Mapping Plan Killed*,

L.A. Times, Nov. 15, 2007, *available at* <http://articles.latimes.com/print/2007/nov/15/local/muslim15>.

16. Although the DIOG has been in effect since December 2008, the public has little information regarding how the FBI has implemented its authority to collect, use, and map racial and ethnic data in New Jersey.

17. The public needs such information, however, to provide accurate comments to the FBI regarding the released DIOG, its implementation with respect to various racial and ethnic communities, and concerns regarding the adverse impact of such activities on civil rights and civil liberties. The FBI's General Counsel, Valerie Caproni, wrote in a December 15, 2008 letter to Senate Select Committee on Intelligence Chairman John D. Rockefeller IV that "we understand that the expansion of techniques available . . . has raised privacy and civil liberties concerns [but] we believe that our policies and procedures will mitigate those concerns." S. Rep. No. 111-6, at 34 (2009). Ms. Caproni stated that the FBI would reassess the policy judgments made in the DIOG, and that the reassessment would be "informed by our experience in the coming year, as well as by comments and suggestions received from Congress and interested parties." *Id.* The FBI's General Counsel reaffirmed this intention in an interview posted on the FBI website by stating, "[t]o the extent that the public has comments and concerns, they should let us know because nothing is written in stone and we hope we've gotten it right but if we haven't gotten it right, our goal is to make it right." *Inside the FBI: The New Attorney General Guidelines* (Jan. 16, 2009), <http://www.fbi.gov/news/podcasts/inside/the-new-attorney-general-guidelines.mp3/view>; *see also Investigative Guidelines Cement FBI Role as Domestic Intelligence Agency, Raising New Privacy Challenges*, Ctr. for Democracy & Tech. (Oct. 29, 2008), <http://www.cdt.org/policy/investigative-guidelines-cement-fbi-role-domestic-intelligence->

agency-raising-new-privacy-cha; Press Release, Am. Civil Liberties Union, ACLU Condemns New FBI Guidelines (Oct. 3, 2008), *available at* <http://www.aclu.org/national-security/aclu-condemns-new-fbi-guidelines>; *Fact Sheet—New Attorney General Guidelines*, Am. Civil Liberties Union (Oct. 8, 2008), <http://www.aclu.org/print/national-security/fact-sheet-new-attorney-general-guidelines>.

18. Public concern about, and media interest in, the FBI's racial and ethnic mapping program has intensified in recent months in New Jersey and other parts of the country, but publicly available facts remain sparse. *See FBI Defends Guidelines Before Senate Testimony*, CBS News, July 27, 2010, *available at* <http://www.cbsnews.com/stories/2010/07/27/national/main6719531.shtml> (“While some racial and ethnic data collection by some agencies might be helpful in lessening discrimination, the FBI's attempt to collect and map demographic data using race-based criteria invites unconstitutional racial profiling by law enforcement . . . .”); Joe Tyrrell, *Legal Group, ACLU Accuse FBI of Targeting Muslims*, N.J. Newsroom, July 28, 2010, *available at* <http://www.newjerseynewsroom.com/nation/legal-group-aclu-accuse-fbi-of-targeting-muslims>; *see also* Steve Carmody, *ACLU Wants Info on FBI Racial ‘Mapping’ Program*, Mich. Radio, July 28, 2010, *available at* <http://www.publicbroadcasting.net/michigan/news.newsmain/article/0/1/1681187/Michigan.New.s/ACLU.Wants.Info.On.FBI.Racial.%27Mapping%27.Program.>; Carol Cratty, *ACLU Seeking FBI Records on Race and Ethnicity Data*, CNN, July 27, 2010, *available at* [http://articles.cnn.com/2010-07-27/us/aclu.fbi\\_1\\_ethnic-groups-fbi-offices-ethnic-populations?\\_s=PM:US](http://articles.cnn.com/2010-07-27/us/aclu.fbi_1_ethnic-groups-fbi-offices-ethnic-populations?_s=PM:US); Brent Jones, *ACLU Seeks Information About FBI Racial, Ethnic Data Collection*, Baltimore Sun, July 28, 2010, *available at* [6](http://articles.baltimoresun.com/2010-07-</a></p>
</div>
<div data-bbox=)

28/news/bs-md-aclu-fbi-20100728\_1\_ethnic-data-profiling-aclu-representatives; Richard Locker, *Tennessee ACLU Asks FBI About Race Data in Localities*, *The Commercial Appeal*, July 30, 2010, available at <http://www.commercialappeal.com/news/2010/jul/30/tennessee-aclu-asks-fbi-about-race-data-in/>; Tim McGlone, *ACLU Requests Racial Data From FBI in Norfolk, Richmond*, *Virginian-Pilot*, July 28, 2010, available at <http://hamptonroads.com/2010/07/aclu-requests-racial-data-fbi-norfolk-richmond>; Jonathan Saltzman, *ACLU Affiliates Want FBI to Disclose Data*, *Boston Globe*, July 27, 2010, available at [http://articles.boston.com/2010-07-27/news/29327598\\_1\\_ethnic-groups-affiliates-fbi](http://articles.boston.com/2010-07-27/news/29327598_1_ethnic-groups-affiliates-fbi); Gene Warner, *Data Mining on Minorities by FBI Raises Profiling Issue*, *Buffalo News*, July 28, 2010, available at <http://www.buffalonews.com/city/article82973.ece>; Patrick Williams, *ACLU Wants to Know How the FBI Profiles Ethnic Communities*, *Dallas Observer*, Aug. 5, 2010, available at <http://www.dallasobserver.com/2010-08-05/news/aclu-wants-to-know-how-the-fbi-profiles-ethnic-communities/>; Karen Lee Ziner, *R.I. ACLU Seeks FBI Records Regarding Ethnic Profiles of Neighborhoods*, *Providence J.*, July 29, 2010, available at [http://www.projo.com/news/content/ACLU\\_FBI\\_07-29-10\\_FFJBB2M\\_v15.3cf5baf.html](http://www.projo.com/news/content/ACLU_FBI_07-29-10_FFJBB2M_v15.3cf5baf.html).

19. In short, there is significant and increasing public concern that the FBI is collecting, using, and mapping racial and ethnic data about local communities as revealed in the DIOG in ways that violate civil rights and civil liberties, but there is a dearth of publicly available facts.

### **The FOIA Request**

20. On July 27, 2010, the ACLU of New Jersey submitted a request pursuant to the FOIA, 5 U.S.C. § 552, and the DOJ implementing regulations, 28 C.F.R. § 16.1, to Defendant FBI requesting records pertaining to the FBI's use of race and ethnicity to conduct assessments

and investigations in local communities in New Jersey. Identical copies of the Request were sent to the following six FBI offices in New Jersey: Hamilton, Newark, Northfield, Redbank, Somerset, and Woodland Park.

21. The Request seeks legal memoranda, procedures, policies, directives, practices, guidance, and guidelines concerning the following types of information that the FBI may collect, map or otherwise use in the course of assessments and investigations pursuant to the authorities described in the DIOG: a) racial and ethnic information; b) “ethnic-oriented” businesses or other “ethnic-oriented” facilities; c) “[f]ocused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community”; and d) “behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities.” It also seeks records concerning the information that the FBI Field Office in New Jersey has collected or mapped pursuant to the authorities described in the DIOG. The Request additionally seeks information about the communities in New Jersey about which the FBI Field Office has collected or mapped racial or ethnic information, and the maps it has created based on the data collected. Finally, the Request seeks documents pertaining to how the FBI is authorized to use the racial and ethnic data it collects pursuant to the authorities described in the DIOG.

Request for a Public Interest Fee Waiver

22. Plaintiff sought a waiver of fees on the ground that disclosure of the requested records is in the public interest because “it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.11 (k)(1).

23. Disclosure of the requested records will contribute significantly to the public's understanding of the FBI's collection and mapping of racial and ethnic data in local communities.

24. Disclosure is not in the ACLU of New Jersey's commercial interest. The ACLU of New Jersey summarizes, analyzes, explains and disseminates the information it gathers through the FOIA at no cost to the public.

Request for a Limitation of Fees Based on News Media Requester Status

25. Plaintiff sought a limitation of fees on the ground that the ACLU of New Jersey qualifies as a "news media" requester. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 28 C.F.R. § 16.11(d).

26. The ACLU of New Jersey is a "news media" requester for the purposes of the FOIA because it is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The ACLU of New Jersey publishes electronic and paper newsletters, reports, books, "know your rights" publications, fact sheets, brochures, pamphlets, and other educational and informational materials. The ACLU of New Jersey also maintains an extensive website and a well trafficked Facebook page. Through these and other channels, the ACLU of New Jersey routinely summarizes, explains, and disseminates information obtained through the FOIA. The ACLU of New Jersey provides all of this information at no cost to the public.

### Agency Response

27. Defendants are improperly withholding the records sought by Plaintiff's Request.

28. By letter dated August 6, 2010, the FBI acknowledged receipt of Plaintiff's Requests sent to the FBI's Newark Field Office and Somerset Resident Agency, and assigned tracking number 1151935-000 to the requests. The FBI also stated that it was searching its Central Records System for the information Plaintiff requested and that the FBI would inform Plaintiff of the results "as soon as possible."

29. By letter dated August 19, 2010, the FBI acknowledged receipt of the Requests sent to the Hamilton, Northfield and Red Bank Resident Agencies of the FBI.

30. By letter dated August 31, 2010, the FBI legal office in Woodland Park indicated that it had received the Request and was forwarding it to the Newark Field Office "for their attention."

31. Nearly three months after the first letter indicating receipt of the Request, by letter dated November 4, 2010, the FBI indicated that it was still searching for documents and that once the search process was completed, the documents would be forwarded to the "perfected backlog" to await assignment to an analyst. As of November 3, 2010, the FBI already had exceeded the generally applicable twenty-day statutory deadline for processing standard, non-expedited FOIA requests. *See* 5 U.S.C. § 552(a)(6)(A)(i).

32. Finally, more than four months later, by letter dated December 22, 2010, David Hardy, Section Chief of the Record/Information Dissemination Section of the Records Management Division of the FBI, issued Plaintiff a "first interim release" consisting of 298 pages in response to the Request. Mr. Hardy stated that certain information was withheld from the documents pursuant to FOIA exemptions set forth in 5 U.S.C. § 552(b)(2), (6), (7)(C) and

(7)(E). Mr. Hardy also stated that Plaintiff's request for a fee waiver "remains under consideration," and will be decided "once all responsive material has been received and reviewed."

33. As of the date of this filing, the FBI has not produced any additional documents or informed Plaintiff of an anticipated date for the completion of the processing of the Request.

### **Exhaustion**

34. Plaintiff has exhausted all applicable administrative remedies with respect to the Request.

35. By letter dated February 16, 2011, Plaintiff timely appealed the FBI's withholding of information from the documents in the first interim release; its failure to timely respond to the FOIA Request, to make the requested information promptly available, and to refrain from improperly withholding documents; and its failure to decide and/or grant Plaintiff's requests for a fee waiver and for a limitation of processing fees.

### **Causes of Action**

36. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents under 5 U.S.C. § 552(a)(4)(B) because the FBI continues to improperly withhold and/or delay the processing of agency records in violation of the FOIA. Plaintiff will also suffer irreparable injury from, and have no adequate legal remedy for, the FBI's illegal withholding of and prolonged delay in production of government documents pertaining to the racial and ethnic mapping of individuals and communities in New Jersey.

37. Defendants' failure to release records responsive to Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a), and the corresponding agency regulations, 28 C.F.R. § 16.1.

38. Defendants' failure to timely respond to Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and the corresponding agency regulations, 28 C.F.R. § 16.6(b).

39. Defendants' failure to make promptly available the records sought by Plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations, 28 C.F.R. § 16.6(b).

40. Defendants' improper withholding of information, including information redacted from the first interim release, violates the FOIA, 5 U.S.C. § 552(a)(4)(B).

41. Defendants' failure to grant Plaintiff's request for a public interest fee waiver violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the corresponding agency regulations, 28 C.F.R. § 16.11(k)(1).

42. Defendants' failure to grant Plaintiff's request for a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the corresponding agency regulations, 28 C.F.R. § 16.11(d).

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendants to conduct a thorough search for all responsive records;
- B. Order Defendants to immediately process all requested records;
- C. Order Defendants to promptly disclose the requested records in their entirety and to make copies available to Plaintiff;
- D. Enjoin Defendants from charging Plaintiff fees for processing the Request;
- E. Enter a preliminary and permanent injunction against the Defendants ordering the relief requested herein;

F. Award Plaintiff its litigation costs and reasonable attorneys' fees incurred in this action; and

G. Grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

s/ Jeanne LoCicero  
EDWARD BAROCAS  
JEANNE LOCICERO  
ALEXANDER SHALOM  
American Civil Liberties Union  
of New Jersey Foundation  
89 Market Street, 7th Floor  
P.O. Box 32159  
Newark, NJ 07102  
Phone: 973-854-1717  
Email: ebarocas@aclu-nj.org,  
jlocicero@aclu-nj.org, ashalom@aclu-nj.org

NUSRAT CHOUDHURY  
*(To be admitted pro hac vice)*  
HINA SHAMSI  
*(To be admitted pro hac vice)*  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
Phone: 212-519-7876  
Email: nchoudhury@aclu.org,  
hshamsi@aclu.org

May 4, 2011

# Exhibit D

(Rev. 05-01-2008)

UNCLASSIFIED//FOR OFFICIAL USE ONLY

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 6/08/2009

To: San Francisco

DECLASSIFIED BY 65179 DMH/STW  
ON 06-01-2011

From: San Francisco

[Redacted] Oakland RA  
Contact: [Redacted]

Approved By:

[Redacted]  
[Redacted]  
[Redacted] NYT/SHA

b6  
b7C  
b7E

Drafted By:

[Redacted] meob

Case ID #: (U) 804/SF-143728-CE (Pending)

Handwritten notes in a circle: O/A Subfile to LA 7/1/2009 NYT

(U) Title: (S) DOMAIN MANAGEMENT - CRIMINAL  
ASIAN-EURASIAN CRIMINAL ENTERPRISE  
[Redacted]  
SENSITIVE INVESTIGATIVE MATTER

Synopsis: (U//FOUO) To open assessment file regarding Asian/Eurasian Criminal Enterprise.

b7E

Details: (U//FOUO) The mission of [Redacted] San Francisco Intelligence Branch, is to develop domain awareness through a systematic domain management process. To that effect, the IAs assigned to [Redacted]

[Redacted] To assist with [Redacted] seeks to open an assessment regarding the topic of Asian/Eurasian Criminal Enterprise and its threat to the San Francisco Domain.

(U//FOUO) San Francisco domain is home to one of the oldest Chinatowns in North America and one of the largest ethnic Chinese populations outside mainland China. Within this community there has been organized crime for generations. San Francisco investigations have revealed connections to drug trafficking as well as alien smuggling, extortion and violent crime. Despite information garnered through [Redacted]

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804/SF-143728-CE-1

UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: San Francisco From: San Francisco  
Re: 804C-SF-143728-CE, 6/8/2009

[redacted] for a full understanding of the extent of the threat to the San Francisco domain.

b7E

(U//FOUO) The San Francisco domain also has a sizeable Russian population and reporting garnered from investigative data over time to indicate the existence of Russian criminal enterprises operating within the San Francisco domain. These groups are known to [redacted]

[redacted] Despite the information already learned through investigations, [redacted] regarding this topic as well as other Asian/Eurasian criminal enterprises operating in the domain. San Francisco Domain Management believes [redacted]

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(U//FOUO) This assessment was classified as a Sensitive Investigative Matter because [redacted]

[redacted]

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UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: San Francisco From: San Francisco  
Re: 804C-SF-143728-CE, 6/8/2009

LEAD(s):

Set Lead 1: (Action)

SAN FRANCISCO

AT OAKLAND RA

Open and assign captioned case to IA



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# Exhibit E

(Rev. 05-01-2008)

UNCLASSIFIED//FOR OFFICIAL USE ONLY

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 08/20/2009

To: Intelligence Directorate  
San Francisco

Attn: [redacted]  
SSA [redacted]  
A/DMC [redacted]  
IA [redacted]

b6  
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From: San Francisco

[redacted] Oakland Resident Agency  
Contact: [redacted]

b6  
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b7E

Approved By: [redacted]

Drafted By: [redacted]

myt [signature]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 06-01-2011 BY 65179 DMH/STW

Case ID #: 804H-SF-143728-CE (Pending)

Title: DOMAIN MANAGEMENT - CRIMINAL  
ASIAN-EURASIAN CRIMINAL ENTERPRISE ASSESSMENT  
[redacted]  
SENSITIVE INVESTIGATIVE MATTER

b7E

Synopsis: Results of 90-day file review for the captioned  
[redacted]

Reference: 804H-SF-143728-CE Serial 1

b7E

Details: A file review was conducted on 08/20/2009 for the  
captioned matter. The purpose of the file review was to

[redacted]

Evaluate progress made towards authorized purpose. The purpose  
of this assessment is to seek information and to conduct  
Domain Management activities regarding Asian and Eurasian  
Criminal Enterprises. San Francisco domain is home to one of  
the largest ethnic Chinese populations outside of mainland  
China. Additionally, San Francisco domain has a sizeable  
Russian population and [redacted]

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operating within the domain. Since initiating this

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DRAFTS [redacted] 232m7105

804H-SF-143728-CE-2

UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: Intelligence Directorate From: San Francisco  
Re: 804H-SF-143728-CE, 08/20/2009

assessment [redacted]  
[redacted] The Domain Intelligence Note (DIN) is  
in its final stages of completion.

b7E

Determine likelihood that assessment will obtain sufficient  
relevant information to justify 90-day extension. During the  
next 90 days, it is expected that the DIN will be completed.  
Additionally, [redacted] has initiated conversations with the

[redacted]

b7E

Determine whether opening a predicated investigation is  
justified. During the past 90 days, no information was  
collected that justified opening a predicated investigation.

Determine whether assessment should be terminated. San  
Francisco continues to [redacted]  
[redacted]

b7E

All investigation undertaken during the course of  
this [redacted] was conducted in accordance with the  
provisions as detailed in the DIOG, [redacted] where  
applicable.

b7E

A file review will be conducted 90 days from the  
continuance of this assessment in order to review its progress  
and to determine whether or not it should be continued. An EC  
will be uploaded to the assessment file detailing the results  
of the file review for this [redacted]

b7E

UNCLASSIFIED//FOR OFFICIAL USE ONLY

UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: Intelligence Directorate From: San Francisco  
Re: 804H-SF-143728-CE, 08/20/2009

LEAD(s) :

Set Lead 1: (Action)

INTELLIGENCE DIRECTORATE

AT WASHINGTON, DC

(U)  SSA  Read and clear.

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# Exhibit F

FD-542 (Rev. 03-23-2009)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED EXCEPT  
WHERE SHOWN OTHERWISE

~~SECRET//NOFORN~~

**FEDERAL BUREAU OF INVESTIGATION**

Precedence: ROUTINE

Date: 08/18/2009

To: Sacramento

Attn: SAC Drew Parenti

Intelligence Directorate

DOMAIN PROGRAM MGMT UNIT  
SSA [redacted]

From: Sacramento

DATE: 06-08-2011  
CLASSIFIED BY 65179/DMH/BAW/STP/bls  
REASON: 1.4 (c)  
DECLASSIFY ON: 06-08-2036

Contact: [redacted]

b6  
b7C  
b7E

Approved By: [redacted] *PGP*

Drafted By: [redacted] *rb* 230rb01.542

Case ID #: (U) 800H-SC-C41452-23(Pending)

Title: (U) DOMAIN MANAGEMENT

Synopsis: (U) Document completion of 2009 Division Domain Assessment.

~~Derived From: Multiple Sources  
Declassify On: 20340818~~

Details: (U) In accordance with the Directorate of Intelligence, [redacted] Domain Management (DM) completed a Division Domain Assessment identifying and forecasting the top threats for the Sacramento Division. This baseline assessment is a threat summary of several Domain Intelligence Note (DINs) that provided a more in-depth analysis, with recommendations, regarding each threat. The attached assessment will be documented to file, provided electronically to all parties identified in the attention line, and loaded electronically [redacted]

b7E

[redacted] While the full text of the Assessment will not be included herein, a summary of the findings are included and additional information can be requested from the writer or SIA [redacted]. The executive summary is as follows:

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UPLOADED

800H-SC-C41452-23

~~SECRET//NOFORN~~

To: Sacramento From: Sacramento  
Re: (U) 800H-SC-C41452, 08/18/2009

(U) (U) This assessment provides a summary of the top ten priority threats identified for the Sacramento Division (SC), estimates threats that may require increased or targeted resources, and assesses areas that may require additional action from management or Executive Management (EM). Looking forward to 2010, the priority threats are shared by the national security and criminal programs. The majority of the threats are present throughout SC, with concentrations in more heavily populated areas such as the greater Sacramento Valley (HQ City), San Joaquin Valley (including the areas covered by the Stockton and Modesto Resident Agencies [RAs]), and Central Valley (including the areas covered by the Fresno and Bakersfield RAs).

(U//FOUO) The Domain Management (DM) process is designed to not only summarize what we know about area threats, but to more importantly identify that which we do not and elevate it to the forefront for additional collection and analysis. Two key findings emerged from the DM process this year. First, the majority of SC threats are adequately resourced and effectively worked. Second, a small number of threats will require additional management or EM attention or support to be more effective. DM's assessment of these threats is summarized below:

- (U//FOUO) Four of the top ten identified priority threats are under the

[Redacted]

b7E

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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b7E

(S)

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

To: Sacramento From: Sacramento  
Re: (U) 800H-SC-C41452, 08/18/2009

Accomplishment Information:

Number: 1  
Type: DI-DOMAIN/STRATEGIC-DOMAIN AWARENESS (DOMAIN ASSESS)  
ITU: INTEL PROGRAM  
Claimed By:  
SSN: [redacted]  
Name: [redacted]  
Squad: [redacted]

Number: [redacted]  
Type: DI-R&P-STRATEGIC ANALYSIS FBI [redacted]  
ITU: INTEL PROGRAM  
Claimed By:  
SSN: [redacted]  
Name: [redacted]  
Squad: [redacted]

Number: 4  
Type: DI-R&P-STRATEGIC ANALYSIS FBI (CRIM)  
ITU: INTEL PROGRAM  
Claimed By:  
SSN: [redacted]  
Name: [redacted]  
Squad: [redacted]

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Number: [redacted]  
Type: DI-R&P-STRATEGIC ANALYSIS FBI [redacted]  
ITU: INTEL PROGRAM  
Claimed By:  
SSN: [redacted]  
Name: [redacted]  
Squad: [redacted]

Number: 1  
Type: DI-R&P-STRATEGIC ANALYSIS FBI (CYD)  
ITU: INTEL PROGRAM  
Claimed By:  
SSN: [redacted]  
Name: [redacted]  
Squad: [redacted]

Number: 15  
Type: DI-INTELLGAP-FO LOCAL GAP IDENTIFIED (CRIM)  
ITU: INTEL PROGRAM  
Claimed By:

~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

To: Sacramento From: Sacramento  
Re: (U) 800H-SC-C41452, 08/18/2009

SSN:  
Name:  
Squad

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~~SECRET//NOFORN~~

~~SECRET//NOFORN~~

To: Sacramento From: Sacramento  
Re: (U) 800H-SC-C41452, 08/18/2009

LEAD(s):

Set Lead 1: (Info)

INTELLIGENCE DIRECTORATE

AT WASHINGTON, DC

[redacted] (U) Information provided to DPMU SSA [redacted]  
[redacted] for coordination.

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~~SECRET//NOFORN~~

# Exhibit G

UNCLASSIFIED//FOR OFFICIAL USE ONLY

**FEDERAL BUREAU OF INVESTIGATION**

Precedence: ROUTINE

Date: 08/05/2010

To: Intelligence Directorate  
Atlanta

Attn: SSA [redacted]  
Attn: A/CDC [redacted]  
A/SSA [redacted]  
A/SSA [redacted]  
SSA [redacted]  
A/SSA [redacted]  
SIA [redacted]  
CollMC [redacted]

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 02-10-2011 BY 65179/DHH/BAW/STP/bls

b6  
b7C

From: Atlanta  
FIG - I1  
Contact: [redacted]

Approved By: [redacted]

Drafted By: [redacted]

Case ID #: [redacted]

b7A

Title: Southwest Border (SWB) Threat  
Domain Assessment  
Assessment Initiated: 8/5/2010

Synopsis: (U//FOUO) Atlanta Division is initiating a Type 4 Assessment in an effort to assess the presence of a potential threat and any associated vulnerabilities relating to Southwest Border issues within the Atlanta Division's Area of Responsibility (AoR). The objective of the assessment will be to identify to what extent the threat exists and to initiate a strategic understanding of the threat to include identifying intelligence gaps and needs.

Reference: [redacted]

b7A

Details: (U//FOUO) [redacted]

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804H-AT-106100 Serial 1

UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: Intelligence Directorate From: Atlanta  
Re: [REDACTED] 08/05/2010

b7A

[REDACTED]

(U//FOUO) The objective of this assessment will be to identify to what extent the threat exists and to initiate a strategic understanding of the threat to include identifying intelligence gaps and needs. Any persons/groups/businesses identified during this assessment will be opened as separate assessments and/or predicated substantive investigations as appropriate.

(U) All investigation to be undertaken during the course of this Type 4 assessment will be in accordance with the provisions as detailed in the DIOG, Section 5, where applicable.

(U) A file review will be conducted 90 days from the commencement of this Type 4 Assessment in order to review its progress and to determine whether or not it should be continued in accordance with the DIOG, Section 5. An EC will be uploaded to the assessment file detailing the results of the file review for this Type 4 Assessment.

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UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: Intelligence Directorate From: Atlanta  
Re: [REDACTED] 08/05/2010

b7A

LEAD(s) :

Set Lead 1: (Info)

INTELLIGENCE DIRECTORATE

AT WASHINGTON, DC

(U) SSA [REDACTED] - Read and Clear.

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# Exhibit H



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DECLASSIFIED BY 65179/DMH/BAW/STP/bls  
ON 02-10-2011

**FBI Atlanta**  
**Intelligence Note from Domain Management**  
**Intelligence Related to the Black Separatist Threat**  
**October 07, 2009**

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**Approval:** SIA [redacted]  
Derived from: FBI NSIS XX 20080301  
Declassify on: 20340929

**Subject:** (U//FOUO) Black Separatist Threat within the Atlanta Division Area of Responsibility

**Summary:**

(U//FOUO) The Atlanta Domain Team assesses with moderate confidence the [redacted]

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**Scope:**

(U//FOUO) This domain intelligence note identifies and assesses the black separatist presence and threat to the Atlanta Division's area of responsibility (AOR). Information is current as of 25 September 2009.

(U) The following information was utilized for this domain note: FBI Atlanta information on black separatists, to include source reporting, assessments, and case files; interviews of FBI Atlanta agents and analysts; FBI reporting on black separatists; and open source data to include US Census Data, Southern Poverty Law Center information, and additional Internet searches.

(U//FOUO) This information addresses requirements contained in [redacted]. The Atlanta Domain Team submitted Intelligence Information Needs (IINs) identified in this domain note to the Collection Management Team for further review.

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801H-AT-C104290 Serial 13

**Key Judgments<sup>1</sup>**

- (U//FOUO) The Atlanta Domain Team assesses with moderate confidence the

[Redacted]

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- (U//FOUO) The Atlanta Domain Team assesses with moderate confidence the

[Redacted]

**Background:**

(U//FOUO) The Atlanta Division encompasses the State of Georgia and is home to over nine million diverse residents. The chart below depicts the population increases among the white and black/African American populations in Georgia from 2000 to 2005-2007, according to US Census data; it also includes estimated population percentages for 2015.<sup>1</sup> Historically, black separatist groups have maintained a presence within Atlanta's area of responsibility (AOR). From 1998 to 2001, Khalid Abdul Muhammad, a former leader within Nation of Islam, operated in Atlanta and was the national leader of the New Black Panther Party (NBPP), leading it in a more radical and potentially more violent direction.

[Redacted] Georgia NBPP members have been and continue to be active in the NBPP organization.<sup>2</sup>

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	2000 census data	% of total GA pop (2000 data)	2007 census data	% of total GA pop (2007 data)	2015 Estimate % of total pop
White	5,327,281	65.1	5,918,880	62.0	59
Black	2,349,542	28.7	2,855,189	29.9	28
Other	509,630	6.2	770,681	8.1	13
Total GA	8,186,453	100%	9,544,750	100%	100%

**Details:**

(U) The known black separatist extremist groups operating within Atlanta's AOR are the New Black Panther Party (NBPP) and the Nation of Islam (NoI). In addition to these

<sup>1</sup> (U) **High Confidence** generally indicates that judgments are based on high-quality information from multiple sources or from a single highly reliable source, and/or that the nature of the issue makes it possible to render a solid judgment.

(U) **Medium Confidence** generally means that the information is credibly sourced and plausible, but can be interpreted in various ways, or is not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence.

(U) **Low Confidence** generally means that the information's credibility and/or plausibility is questionable, the information is too fragmented or poorly corroborated to make solid analytic inferences, or that the FBI has significant concerns or problems with the sources.

\* This statement can be in a text box or in a footnote.

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groups, there is also the potential for an individual with similar ideology to conduct extremist activity within Atlanta's AOR.

(U) *New Black Panther Party (NBPP)*

(U) The Atlanta Domain Team assesses with moderate confidence the [redacted]  
[redacted]

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(U) Augusta: Although past reporting [redacted]  
[redacted] According to Augusta RA reporting, [redacted]  
[redacted]  
[redacted]. Most recently in December 2008, NBPP members conducted a protest against the police officers' killing of a black individual in the Cherry Tree housing projects area of Augusta. During the media reporting on this incident, [redacted]  
[redacted]<sup>3</sup>

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(U) Savannah: Past reporting identified [redacted]  
[redacted]<sup>4</sup> [redacted]  
[redacted] While past reporting indicates that [redacted]  
[redacted]

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(U) Atlanta: Within the Atlanta metropolitan area, the Atlanta Division has identified [redacted]  
[redacted]

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- (U) In [redacted] was involved in the [redacted] and in [redacted] legally purchased [redacted]  
[redacted]<sup>7</sup>
- (U) In July 2006, NBPP members were noted at former Congresswoman Cynthia McKinney's side during the elections. There were also reports from the news

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media that individuals dressed in NBPP uniforms assaulted reporters when they approached McKinney for comments.<sup>8</sup> In addition, in November 2006, NBPP initiated a protest and rally following the shooting death by Atlanta police officers of an elderly African American woman, which was covered by the media.<sup>9</sup>

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- [redacted] has attempted to [redacted] a [redacted] [redacted] in support of his work for the NBPP.<sup>10</sup>

- [redacted]

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(U) [redacted]

(U) *Recruitment*: Between 2005 – 2007, reporting from multiple offices indicated that

[redacted]

<sup>15</sup> Within Atlanta's AOR, [redacted]

[redacted]

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[redacted] Based on the above information, there are indicators that [redacted]

*Nation of Islam (NoI)/Fruit of Islam (FoI)*

(U) The Atlanta Domain Team assesses with low confidence the [redacted]

[redacted]

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• [Redacted]

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• (U) [Redacted] According to the Southern Poverty Law Center, the NOI does have a presence in Macon, GA.

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• [Redacted]

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• [Redacted]

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*Cross-Program*

[Redacted]

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[Redacted] <sup>iii 26</sup> Within Atlanta's AOR, there are indications that black separatist extremist group members are [Redacted]

• (U) In December 2001, [Redacted] indicated there is a strong alliance between the Crips and NBPP in Atlanta.<sup>27</sup>

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• [Redacted]  
[Redacted]<sup>28</sup>

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<sup>ii</sup> NoI's website is [www.noI.org](http://www.noI.org)

[Redacted]

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[Redacted]

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[Redacted]

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**Outlook:**

(U) [Redacted]

[Redacted] Despite this, the Atlanta Domain Team assesses with moderate confidence that the known black separatist groups operating within Atlanta's AOR, NBPP and NoI/FoI, [Redacted]

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[Redacted]

[Redacted] The Atlanta Domain team assesses with high confidence that [Redacted]

[Redacted]

**Source Coverage:**

(U) The Atlanta Division has identified [Redacted]

[Redacted]

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**Intelligence Gaps:**

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**Recommendations:**

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**Appendix A: Threat Justification Matrix**

**(U) Black Separatist Threat Assessment Table**

		Threat Level	Confidence Level	Description
Capability	Physical Means/Tools			
	Knowledge			
	Sophistication			
	Association			
Intent	Activity			
	Risk			
Criticality *potential for *	Violence			
	Economic Impact			
	National Security			
	Public Trust			
Vulnerability	Target Richness			
	Defense			
	Access			

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(U) Domain Management Threat Assessment Methodology

Capability	Low	Medium	High
Physical Means/Tools	Has identified tools and/or needs	Has the ability to readily obtain materials or already has some materials	Possesses requisite materials and tools
Knowledge	Actors rarely exhibit a specialized skill set and do not seek training	Actors occasionally exhibit a specialized skill set but are actively seeking training related to that skill set	Actors routinely exhibit a specialized skill set and actively seek training related to skill set
Sophistication	Actors have little or no organizational structure, exhibit a limited if not absent ability to adapt and/or modify their techniques	Actors occasionally employ highly structured, long term plans, rarely exhibit an ability to adapt and/or modify their techniques as appropriate	Actors routinely employ highly structured, long-term plans, regularly exhibiting an ability to adapt, modify their techniques as appropriate and avoid detection
Associations	Actors have no connections to persons of concern to the FBI or Intelligence Community	Actors have connections to persons of concern to the FBI or Intelligence Community within Domain	Actors have multiple connections to persons of concern to the FBI or Intelligence Community within and outside domain

Intent	Low	Medium	High
Activity	Actors have vocalized desires but has taken little or no action to achieve goal	Actors have occasionally taken some action to achieve goal	Actors have made continuous and dedicated actions to achieve goal
Acceptance of Risk	Avoids Risk	Willingness to accept minimal risk	Willing to accept substantial risk

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Criticality	Low	Medium	High
Violence	Aggression and violent actions rarely result in death or psychological trauma	Aggression and violent actions typically result in moderate loss of life or bodily harm or is expected to result in severe psychological trauma	Aggression and violent actions typically result in substantial loss of life or severe bodily harm and often include collateral damage
Economic Impact	Actor(s) poses to exact thousands of dollars in losses to US entities	Actor(s) poses to exact millions to tens of millions of dollars in losses to US entities	Actor(s) poses to exact hundreds of millions to billions of dollars in losses to US entities
National Security	Actor(s) specifically targets US entities, potentially resulting in damage to US national security, regional infrastructure or the nation's critical infrastructure	Actor(s) specifically targets US entities, potentially resulting in serious damage to US national security or the nation's critical infrastructure	Actor(s) specifically targets US entities, potentially resulting in grave damage to US national security or the nation's critical infrastructure
Public Trust	Actions affect local levels of public trust only	Actions affect regional levels of public trust only	Actions affect national levels of public trust

Vulnerability	Low	Medium	High
Target Richness	Traditional singular targets	Traditional type pf target but many them in domain	Non-traditional targets, many potential targets in domain
Defenses	Well-protected and difficult to exploit	Simple security that requires threat to have a plan and basic level of skill to overcome	No defenses, target easily attacked or compromised
Access	Actor(s) do not have access to target	Actor(s) have indirect access or the potential to obtain direct access to target	Actor(s) have direct access to target

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**Appendix B: Common Operational Pictures (COPs)**

(U//FOUO) The Atlanta Domain Team produced a COP comparing the [redacted]  
 [redacted]  
 [redacted] As demonstrated by the COP, [redacted]  
 [redacted]

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**End Notes:**

<sup>1</sup> Office of Planning and Budget: Policy, Planning, and Technical Support, "Georgia 2015 Population Projections," dated 2005

<sup>2</sup> FBI documents, 100A-WF-232405, serial 215, dated 04 January 2006, and 100A-AT-94658, serial 269, dated 23 November 2004.

<sup>3</sup> FBI Augusta RA reporting and The Augusta Chronicle, "200 March After Elmore's Funeral," by Johnny Edwards, December 23, 2008 ([http://chronicle.augusta.com/stories/2008/12/23/met\\_505057.shtml](http://chronicle.augusta.com/stories/2008/12/23/met_505057.shtml)).

<sup>4</sup> Refer to 266A-AT-96326 for additional information, closed November 2004.

<sup>5</sup> FBI EC, 100A-AT-94658, serial 229, dated 31 March 2004.

<sup>6</sup> FBI documents, [redacted] multiple serials.

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<sup>7</sup> FBI Letterhead Memorandum (LHM), 100A-WF-232405, serial 215, dated 04 January 2006.

<sup>8</sup> FBI EC, 801F-AT-101762, serial 75, dated 26 March 2007.

<sup>9</sup> FBI EC, 100A-WF-232405, serial 202, dated 13 December 2006.

<sup>10</sup> FBI LHM, 100A-WF-232405, serial 215, dated 04 January 2006.

<sup>11</sup> FBI EC, [redacted] dated 02 August 2007.

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<sup>12</sup> FBI 302, [redacted] dated 09 May 2007.

<sup>13</sup> FBI Situational Intelligence Report, "(U//LES) [redacted] dated 19 March 2009.

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<sup>14</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 14 May 2009.

<sup>15</sup> FBI documents, 100A-AT-232405, multiple serials, dated 2005 - 2007.

<sup>16</sup> FBI LHM, 100A-AT-94658, serial 1, dated 27 September 2002.

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<sup>17</sup> FBI Situational Intelligence Report "(U//FOUO) [redacted]

[redacted] dated 19 February 2009.

<sup>18</sup> FBI documents, [redacted] 11/2006, [redacted]

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<sup>19</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 14 May 2009.

<sup>20</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 06 May 2009.

<sup>21</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 18 May 2009.

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<sup>22</sup> [redacted]

<sup>23</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 06 May 2009.

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<sup>24</sup> FBI documents, 801F-AT-101762, serial 75, dated 26 March 2007, and 801E-AT-101760, serial 89, dated 14 May 2009.

<sup>25</sup> FBI EC, [redacted] dated 26 January 2007.

<sup>26</sup> FBI LHM, 100A-WF-232405, serial 215, dated 04 January 2006.

<sup>27</sup> FBI LHM, 100A-AT-94658, serial 1, dated 27 September 2002.

<sup>28</sup> FBI EC, [redacted] dated 05 June 2009.

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<sup>29</sup> FBI 302, 266A-AT-96326, serial 45, dated 01 October 2004.

<sup>30</sup> FBI LHM, 100K-DE-103300, serial 3, dated 08 October 2008.

<sup>31</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 09 February 2009.

<sup>32</sup> FBI LHM, 100K-DE-103300, serial 3, dated 08 October 2008.

<sup>33</sup> FBI EC, [redacted] dated 18 June 2009.

# Exhibit I



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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 02-03-2011 BY 65179/DMH/BAW/STP/bls

**FBI Atlanta**  
**Intelligence Note from Domain Management**  
**Intelligence Related to MS-13 Threat**  
**December 15, 2008**

**Approval:** SIA [Redacted]

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**Subject:** Mara Salvatrucha (MS-13) presence and activity in the Atlanta Division

**Summary:** (U//FOUO) MS-13 has an active presence in the Atlanta Division's Area of Responsibility (AOR). Furthermore, MS-13 is assessed to be increasing in numbers throughout the state, though much of the gang's reported activity is centered in the Atlanta metro area.

**Scope:**

(U//FOUO) To identify the presence, activities, and overall threat posed by MS-13 to the Atlanta AOR.

(U//FOUO) To identify populations of immigrants within the Atlanta AOR that may be at a high risk for MS-13 recruitment.

(U//FOUO) The following data sets and products were reviewed in preparation of this report:

- 2000 US Census data regarding foreign born populations reporting El Salvador, Guatemala, and Honduras as their places of birth
- [Redacted]
- Atlanta Division's MS-13 Threat Assessment (November 19, 2007)
- National Threat Assessment Initiate: Mara Salvatrucha (MS-13) Threat to the United States (May 17, 2007)
- Open source research regarding MS-13 activity in the US
- Atlanta FBI source reporting, open investigations, and agent interviews

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**(U) Key Judgments:**<sup>1</sup>

<sup>1</sup> (U) High Confidence generally indicates that our judgments are based on high quality information and/or that the nature of the issue makes it possible to render a solid judgment. A "high confidence" judgment is not a fact or a certainty, however, and such judgments still carry a risk of being wrong.

(U) Medium Confidence generally means that the info is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence.

(U) Low Confidence generally means that the information's credibility and/or plausibility is questionable, or that the information is too fragmented or poorly corroborated to make solid analytic inferences, or that we have significant concerns or problems with the source.

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804H-AT-C104293 Serial 3

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(U//FOUO) The Atlanta Domain Team assesses that [redacted]  
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(U//FOUO) MS-13 is assessed to be [redacted]  
[redacted] [High Confidence]

(U//FOUO) MS-13 has [redacted]  
[redacted] [Medium Confidence]

**(U) Background:**

(U//FOUO) According to open source reporting, the Mara Salvatrucha (aka MS-13) originated in the U.S. in Los Angeles, CA in the 1980s. The gang's initial membership consisted of Salvadoran refugees who had fled during the civil war in El Salvador. Since that time MS-13 has expanded its membership to include Guatemalan and Honduran nationals with current reports indicating some cliques accept members from other Latin American regions. MS-13 spread throughout Central America when Los Angeles gang members were deported back to El Salvador. While incarcerated they gained strength in the El Salvadoran prison system and proceeded to multiply all the while increasing their acts of violence. MS-13 has expanded its reach as far north as Canada and as far east as Spain with numbers continuing to grow. MS-13 is considered to be one of the most violent and rapidly growing transnational street gangs in the U.S.

**(U) Details:**

(U//FOUO) The members of MS-13 are primarily composed of persons with Salvadoran, Guatemalan, and Honduran decent. According to the 2000 Census data, the total population in the State of Georgia for the aforementioned countries was 30,451. The counties with the highest concentration of stated immigrants include: DeKalb, Gwinnett, Cobb, Fulton, Hall, Floyd, and Clayton.<sup>1</sup>

Counties	Foreign-born Population: Place of Birth: El Salvador	Foreign-born Population: Place of Birth: Guatemala	Foreign-born Population: Place of Birth: Honduras	Total Foreign-born Population for El Salvador, Guatemala, Honduras
DeKalb	1931	2925	2217	7073
Gwinnett	2753	2185	1020	5958
Cobb	1518	765	438	2721
Fulton	792	472	723	1987
Hall	935	193	192	1320
Floyd	134	1059	49	1242
Clayton	350	315	428	1093

*(U) It should be noted that data does not reflect population for illegal aliens.*

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**Presence**

(U//FOUO) Confidential Human Source (CHS) reporting indicates the [redacted]

[redacted]

[redacted] Currently it does not appear that the [redacted]

[redacted]

[redacted]

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**Criminal Activity**

(U) One aspect of MS-13 is its flexibility regarding criminal activity. While some gangs are only into drugs, MS-13 will do any crime at any time.<sup>2</sup>

(U//FOUO) The MS-13 cliques within the Atlanta Division's AOR have engaged in a number of criminal activities to include: ten or more murders, numerous armed robberies, shootings, and weapons/drug offenses.

(U//FOUO) According to Atlanta FBI/ICE agents, [redacted]

[redacted]

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(U//FOUO) Although reporting indicates that MS-13 members in the Atlanta AOR are

[redacted]

- (U//FOUO) Source reporting indicates that MS-13 members are [redacted]  
[redacted]  
[redacted]<sup>3</sup> **Analyst Comment:** This may be an indication that MS-13 is [redacted]  
[redacted] **End comment.**

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- (U//FOUO) Source reporting in [redacted]  
[redacted]  
[redacted]<sup>4</sup>

- (U//FOUO) Source reporting indicates that [redacted]  
[redacted]  
[redacted]<sup>5</sup>

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- (U//FOUO) Atlanta FBI/ICE agents indicate that [redacted]  
[redacted]

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(U) According to the Department of Homeland Security, deportation is a useful tool when there isn't enough evidence to prosecute a criminal case.<sup>6</sup> However, many deportees are returning to the U.S.

- (U//FOUO) Source reporting indicates that [redacted]  
[redacted]<sup>7</sup>

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- (U//FOUO) Several MS-13 members identified in the Atlanta AOR have [redacted]  
[redacted]<sup>8</sup>

**Recruitment**

(U//FOUO) Georgia currently has [redacted]  
[redacted]  
[redacted] within the Atlanta AOR. **Analyst Comment:** Based on the MS-13 history of recruitment in [redacted]  
[redacted] within the Atlanta AOR. **End comment.**

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- (U//FOUO) Source reporting indicates that MS-13 members [redacted]  
[redacted]  
[redacted]<sup>9</sup>

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(U//FOUO) Although traditional MS-13 recruitment is selective to persons of Salvadoran, Guatemalan, and Honduran decent, Atlanta has [redacted]  
[redacted]

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(U//FOUO) Source reporting indicates that [redacted]  
[redacted]<sup>10</sup>

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(U//FOUO) Unlike the [redacted] Atlanta metro has observed [redacted]  
[redacted]

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**Expansion and Emerging Threat**

(U//FOUO) National reporting indicates that [redacted]  
[redacted]

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[Redacted]

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- (U//FOUO) Source reporting indicates an [Redacted]  
 [Redacted]  
 [Redacted] <sup>11</sup> **Analyst Comment:** This indicates  
 [Redacted]. **End comment.**

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- (U//FOUO) Atlanta received information from the Charlotte Division regarding  
 [Redacted]  
 [Redacted] <sup>12</sup>

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- (U//FOUO) [Redacted]  
 [Redacted] source reporting from [Redacted] indicate [Redacted]  
 [Redacted] <sup>13</sup> **Analyst Comment:** [Redacted]  
 [Redacted] **End comment.**

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- (U//FOUO) Further FBI reporting indicates that [Redacted]  
 [Redacted]  
 [Redacted] <sup>14</sup> **Analyst Comment:** [Redacted]  
 [Redacted] **End comment.**

**(U) Recommendations:**

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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**(U) Intelligence Gaps:**

- [Redacted]

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This intelligence summary was prepared by the Domain Team of the Atlanta Division. Comments or questions may be addressed to SIA [Redacted] at [Redacted]

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[Redacted]

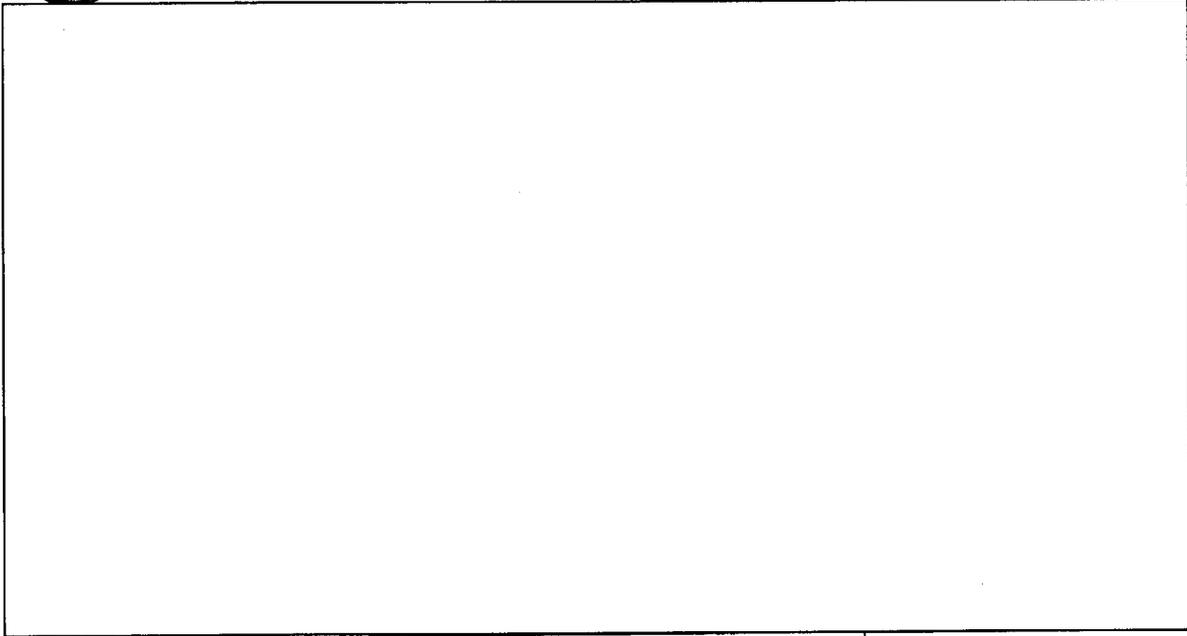
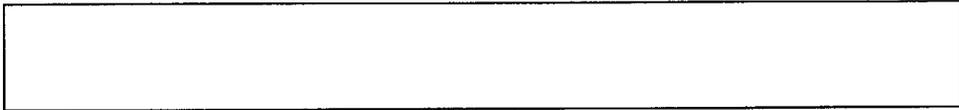
**(U) Endnotes**

- <sup>1</sup> (U) U.S. Census Bureau at <http://www.census.gov>
- <sup>2</sup> Police Magazine, America's Most Dangerous Gang, available at <http://www.policemag.com>
- <sup>3</sup> (U) FBI [Redacted]
- <sup>4</sup> (U) FBI [Redacted]
- <sup>5</sup> (U) FBI [Redacted]
- <sup>6</sup> CBS News, The fight Against MS-13, available at <http://www.cbsnews.com/stories/2005/12/01/60minutes>
- <sup>7</sup> (U) FBI [Redacted]
- <sup>8</sup> (U) FBI [Redacted]
- <sup>9</sup> (U) FBI [Redacted]
- <sup>10</sup> (U) FBI [Redacted]
- <sup>11</sup> (U) FBI [Redacted]
- <sup>12</sup> (U) FBI [Redacted]
- <sup>13</sup> (U) FBI [Redacted]
- <sup>14</sup> (U) FBI [Redacted]

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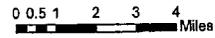
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GEO: 33555N/8410000W  
15 December 2008

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Author: IA [redacted]  
Source Comment: [redacted]

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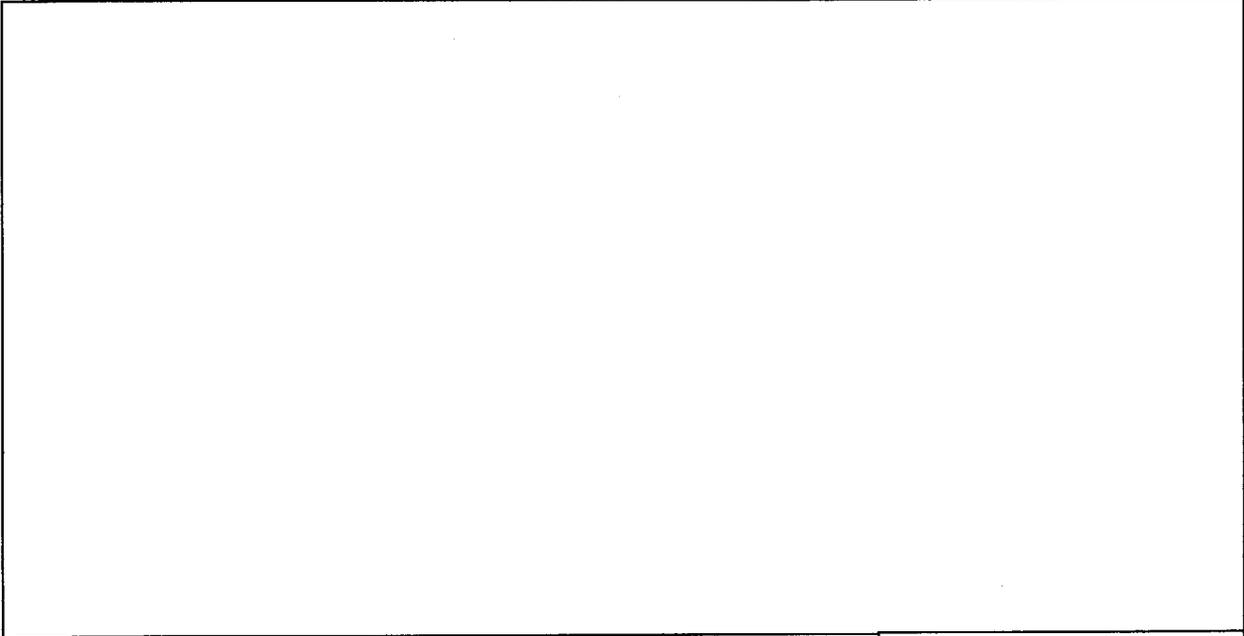


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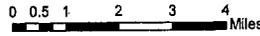


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GEO: 333634N/8423503W  
15 December 2008  
Author: IA [redacted]  
Source Comment: [redacted]

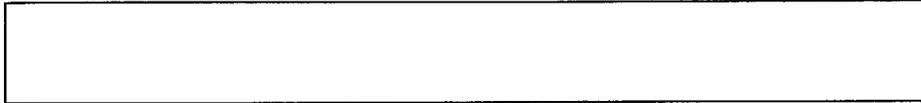
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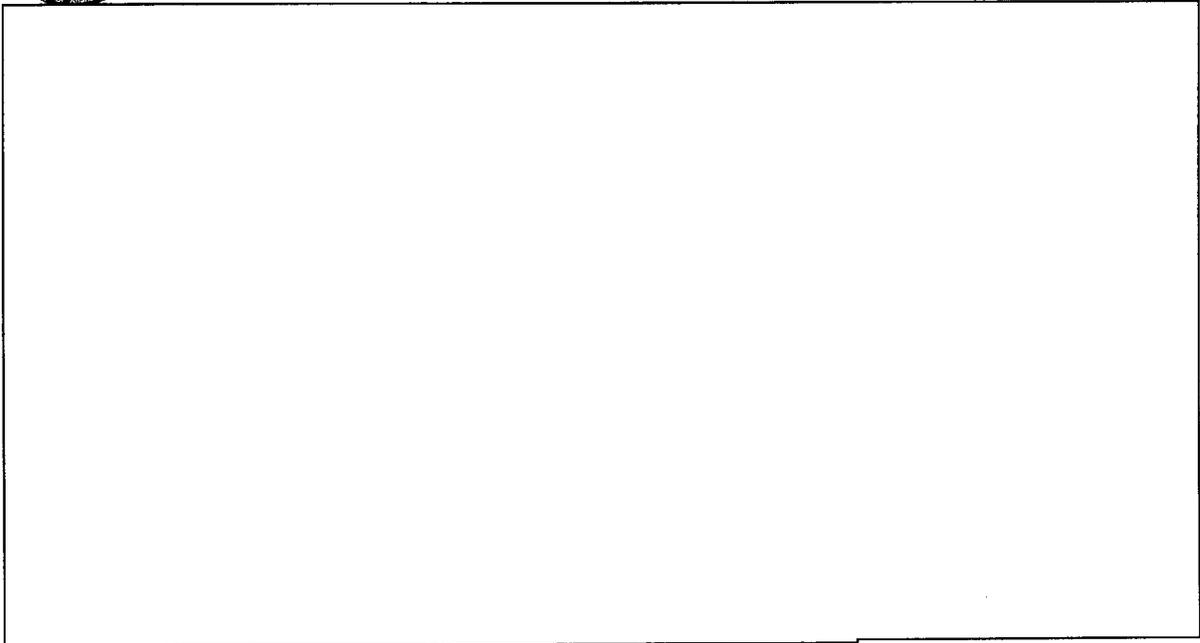
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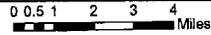


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GEO: 335153N/8432000W  
15 December 2008

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Author: IA [redacted]  
Source Comment: [redacted]

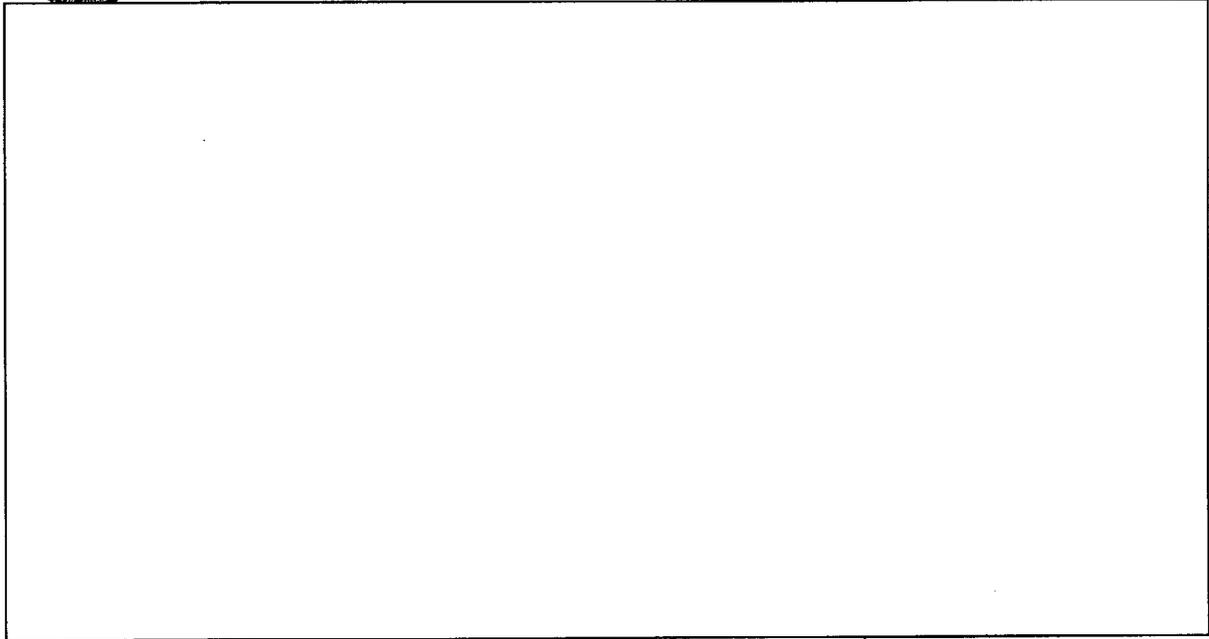
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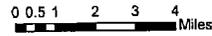


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GEO: 322995N/8455518W  
15 December 2008

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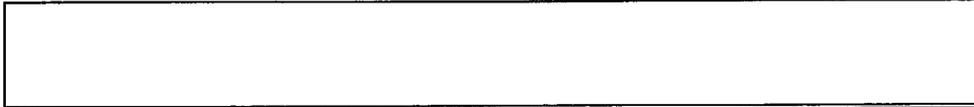
Author: IA  
Source Comment



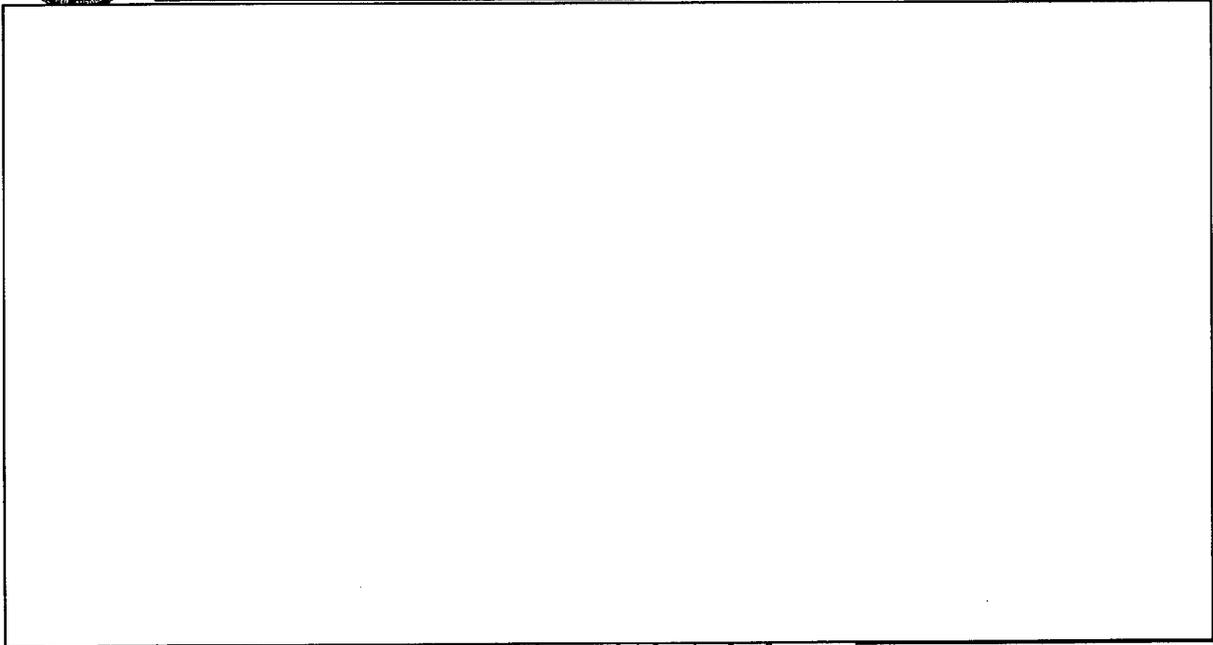
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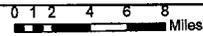
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GEO: IVO 344656N/8455135W  
15 December 2008



Author: IA [redacted]  
Source Comment: 194 data not fully geocoded.

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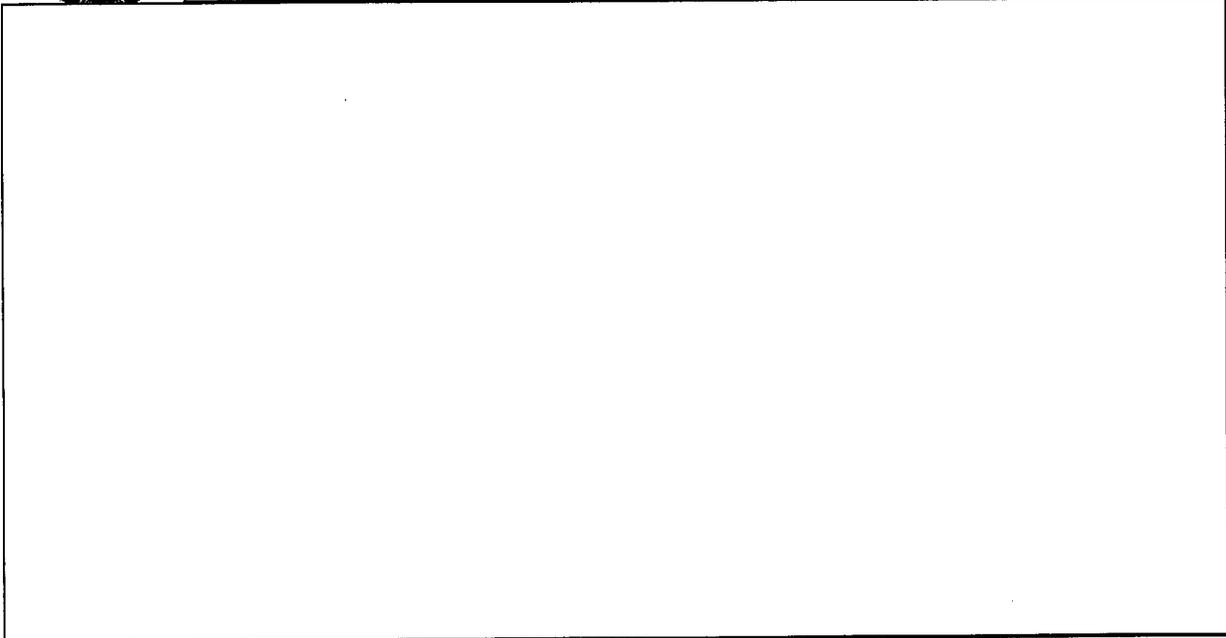
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15 December 2008



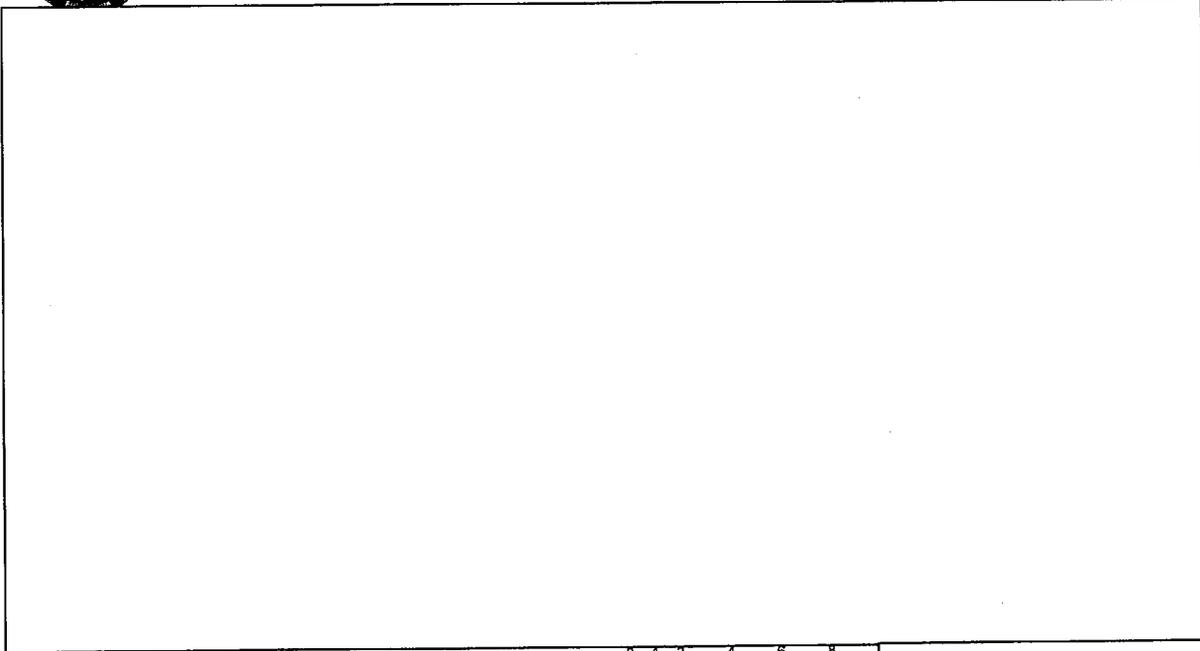
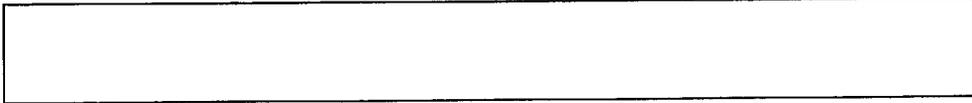
Author: IA [redacted]  
Source Comment [redacted]

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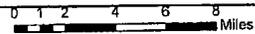
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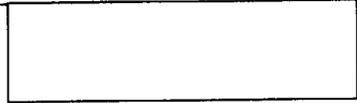
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15 December 2008

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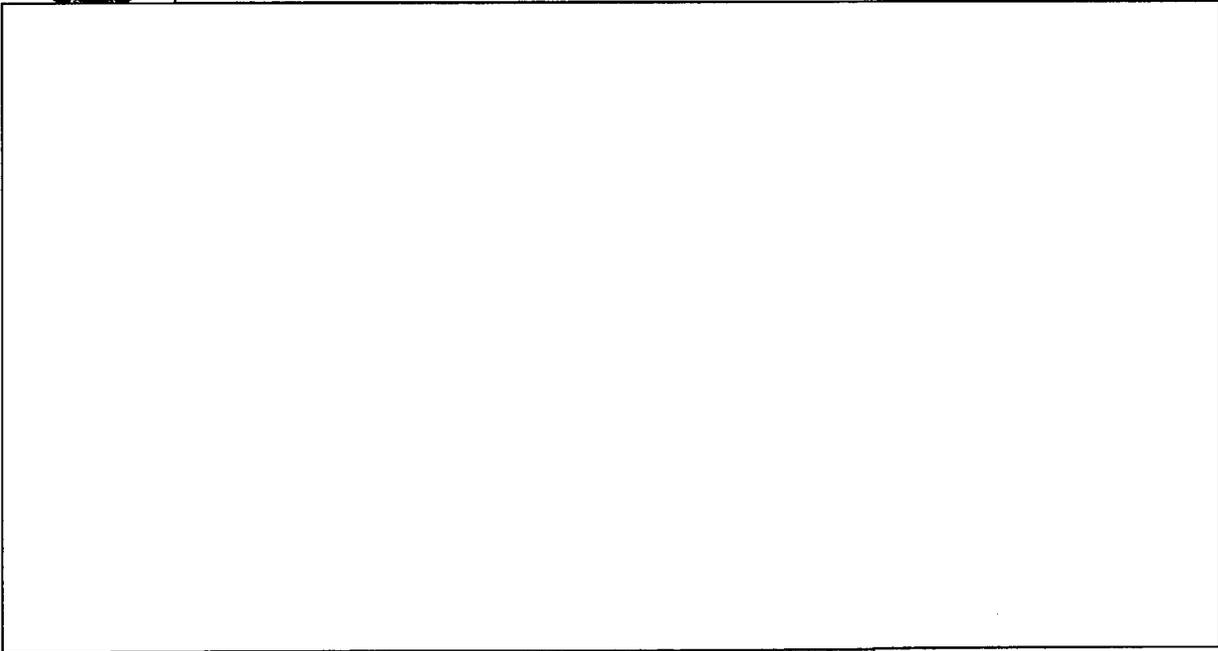


Author: [Redacted]  
Source Comment: [Redacted]

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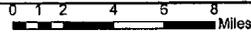


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GEO: IVO 320255N/8106177W  
15 December 2008

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Author: IA [redacted]  
Source Comment: [redacted]



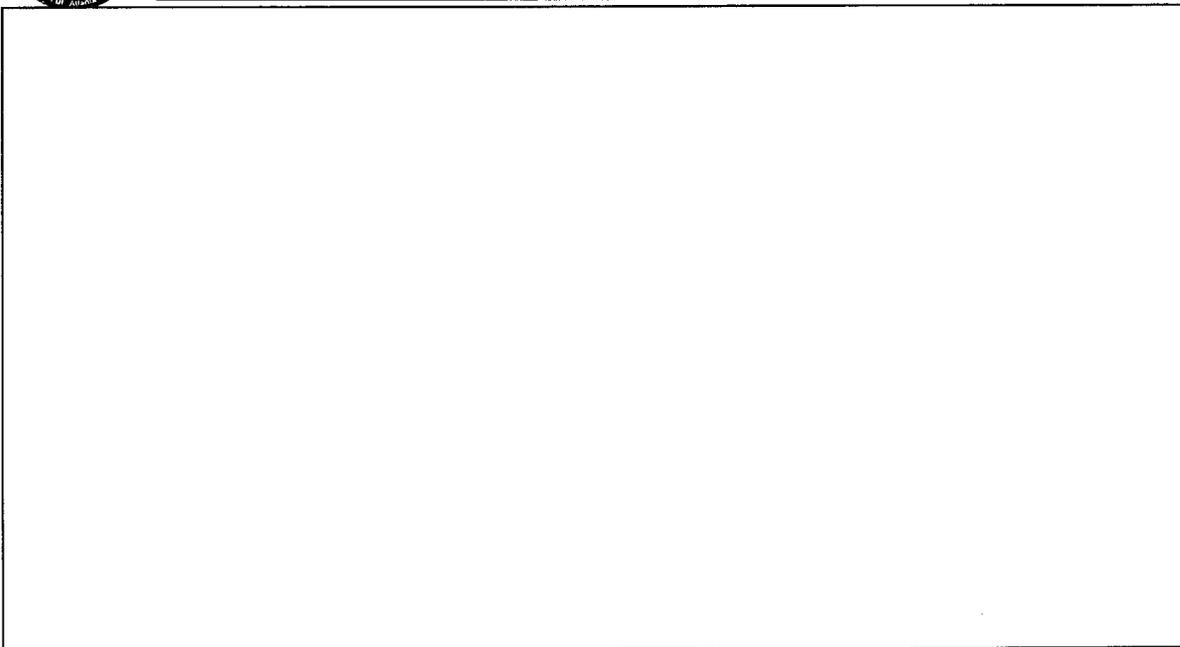
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GEO: 304833N/8311308W  
15 December 2008

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00.51 2 3 4 Miles

Author: [Redacted]  
Source Comment: [Redacted]

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# Exhibit J



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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 03-03-2011 BY 65179/DMH/BAW/STP/bls

**FBI Mobile**  
**Intelligence Note from Domain Management**  
**Intelligence Related to Mara Salvatrucha Threat**  
**January 21, 2009**

Approval: SSA [redacted]

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Subject: Mara Salvatrucha (MS-13)

**Summary**

The Mobile Division Domain Team assesses that MS-13 [redacted] [redacted] in the Mobile Area of Responsibility (AOR). The primary criminal activity associated with MS-13 within the Mobile Division Domain is graffiti.

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**Scope**

Identify the current and potential presence of MS-13 within the Mobile Division domain and assess MS-13 activities and the effectiveness of these operations within the Mobile Division domain, to include possible recruitment areas. The following data sets and intelligence products were reviewed in order to accomplish this goal:<sup>1</sup>

- o 2000 Census data regarding foreign born populations reporting Salvador, Honduras, Nicaragua, and Guatemala as their place of birth
- o [redacted] Salvador, Honduras, Nicaragua, and Guatemala [redacted]
- o National Threat Assessment Initiative, Mara Salvatrucha (MS-13) Threat to the United States (May 2007)
- o Mobile Division's 2008 Criminal Gangs Program Baseline Assessment
- o Source reporting derived from pending Mobile Division [redacted]
- o Open source information

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This Intelligence Note [redacted]

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**Key Findings**

- Although there have been numerous reports [redacted] [redacted] the Mobile Division Domain.
- Mobile Field Intelligence Group assesses MS-13 [redacted] to the Mobile Domain.

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<sup>1</sup> The information contained in this intelligence product is current as of 21 January 2009.

\* (U) The 2008 *Attorney General Guidelines for Domestic FBI Operations* authorizes the FBI to engage in planning and intelligence analysis to facilitate investigative activities. Activities the FBI may carry out as part of this process include collecting information to improve or facilitate "domain awareness" and engage in "domain management."

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- MS-13 members/cliques from outside the domain could be utilizing Mobile's ground transportation system, the I-10/I-65 corridor, to traverse through the Mobile territory.

### Background

Mara Salvatrucha (MS-13) originated in Los Angeles during the 1980s and has quickly become one of the fastest growing and most violent street gangs in the world. MS-13 members are typically Salvadorans, Guatemalans, and Honduran nationals or first-generation descendants; however, MS-13 has been known to admit Mexicans, Dominicans, and non-Hispanic individuals. It is estimated that MS-13 currently has 8,000 – 10,000 members throughout the United States, with a known presence in forty-two states. In the southeast region, [REDACTED]

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[REDACTED] A recent influx of MS-13 members into this region, however, is thought to be creating an increase in violent crimes.<sup>2</sup>

MS-13 members engage in a wide variety of criminal activity, including drug distribution, murder, rape, prostitution, robbery, home invasions, immigration offenses, kidnapping, carjacking/auto thefts, and vandalism. In order to supplement their income, MS-13 members often obtain employment with legitimate businesses. The construction, restaurant, delivery service, and landscaping industries are primarily targeted by MS-13 members seeking employment due to immigration documentation leniency.<sup>3</sup>

MS-13 is known to actively recruit new members by glorifying the gang lifestyle. Gang members typically use the Internet for recruitment purposes and have been known to post videos on web sites such as [YouTube.com](http://YouTube.com) and [myspace.com](http://myspace.com).<sup>4</sup> Recruitment efforts have also been noted in middle and high schools at various locations throughout the United States.

One of the reasons for MS-13's success is their flexibility. Members will often use tattoos, hand signs, and clothing to identify themselves as MS-13 gang elements. When entering a new area where they are not known, MS-13 members will wear their colors (blue, white, or black) in a flashy display in order to promote intimidation. In order to avoid detection by law enforcement, members will change their colors, carry bandanas in their pockets, and change their markings to show either 76 or 67 (both total 13).<sup>5</sup>

### Details

According to the 2000 Census Data, the thirty-six counties which comprise Mobile Division domain had an approximate population of 1,844,501 individuals, with 1.3% depicting Hispanic origins. Only 118 individuals were identified as being born in Salvador, 292 individuals were identified as being born in Guatemala, 271 individuals were identified as being born in Honduras, and 125 individuals were identified as being born in Nicaragua.<sup>6</sup> [REDACTED]

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<sup>2</sup> National Threat Assessment Initiative (NTAI): Mara Salvatrucha (MS-13) Threat to the United States (17 May 2007)

<sup>3</sup> National Threat Assessment Initiative (NTAI): Mara Salvatrucha (MS-13) Threat to the United States (17 May 2007)

<sup>4</sup> National Threat Assessment Initiative (NTAI): Mara Salvatrucha (MS-13) Threat to the United States (17 May 2007)

<sup>5</sup> <http://www.altereddimensions.net/crime/MS13Gang.aspx>

<sup>6</sup> U.S. Census Bureau, <http://www.census.gov>

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[Redacted]

[Redacted] These populations/immigrants have been identified to have the highest potential for MS-13 recruitment, support, and structure, and do not include migrant workers or illegal aliens for which the numbers are unknown.

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▪ [Redacted]

**Recommendations**

- Liaise with [Redacted] to identify any emerging MS-13 threat to the Mobile Division.
- Coordinate with FBI Birmingham, Jackson, Jacksonville, and Atlanta to monitor movement of potential MS-13 members and/or supporters into the Mobile Division Domain.
- Develop sources capable of reporting on local and national gang matters.

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**Intelligence Gaps**

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

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**Common Operational Pictures (COPs)**

1. Map #1 FBI Mobile Honduran Population, [Redacted]
2. Map #2 FBI Mobile Guatemalan Population, [Redacted]
3. Map #3 FBI Mobile Nicaraguan Population, [Redacted]
4. Map #4 FBI Mobile Salvadoran Population, [Redacted]

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This intelligence summary was prepared by the Field Intelligence Group of the Mobile Division. Comments or questions may be addressed to IA [Redacted]

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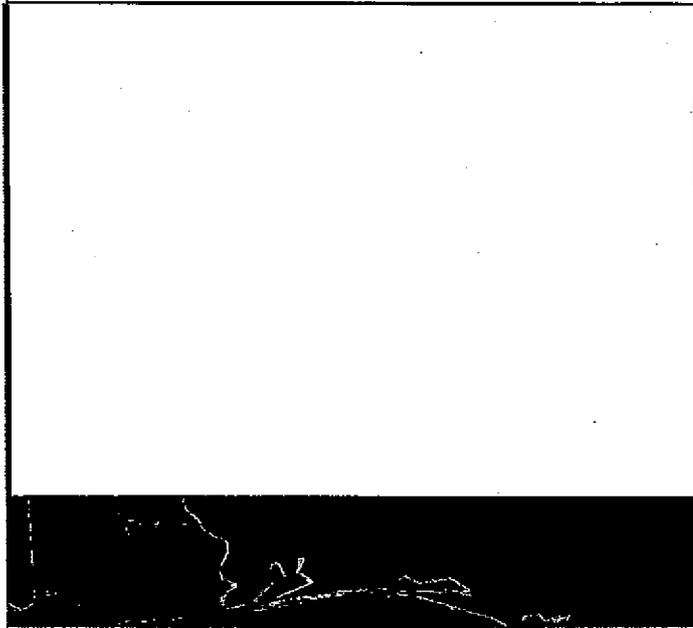
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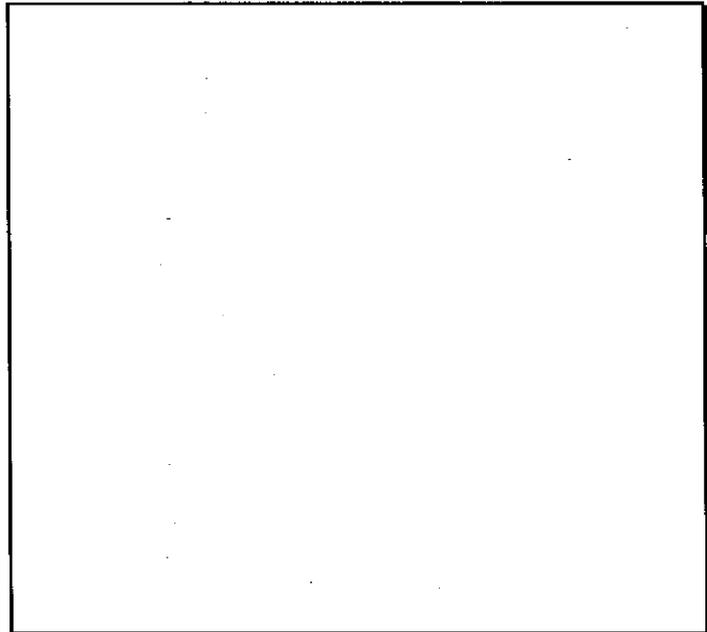
**Mobile Division Foreign Born Honduras Population**



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Total Honduras Foreign Born Population: 271

**Mobile Division Foreign Born Guatemala Population**



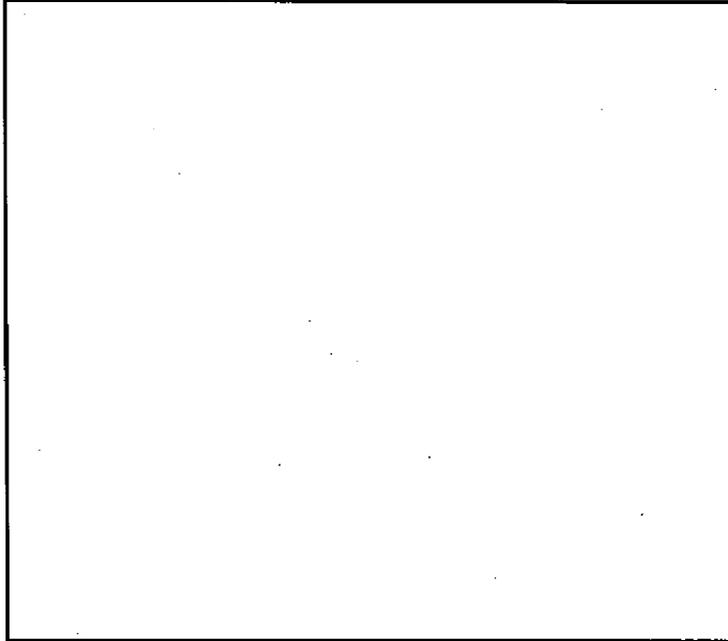
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Total Guatemala Foreign Born Population: 292

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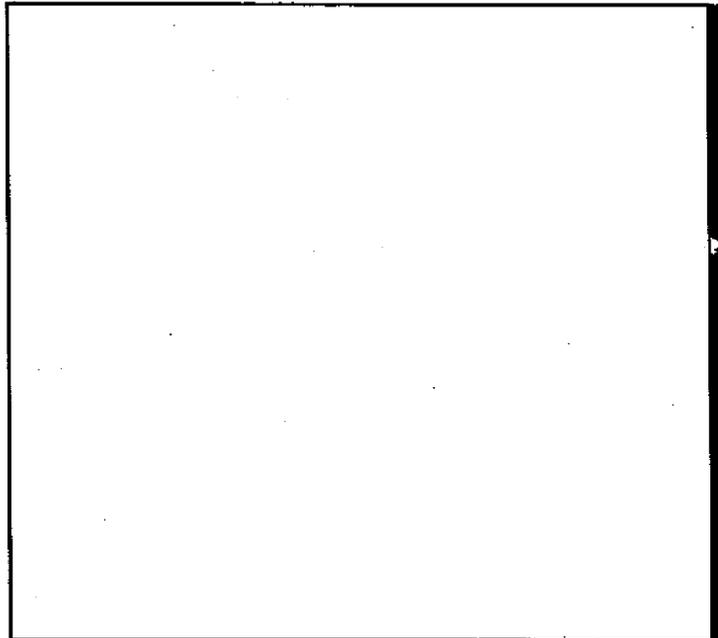
**Mobile Division Foreign Born Nicaragua Population**



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Total Nicaragua Foreign Born Population: 125

**Mobile Division Foreign Born El Salvador Population**



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Total El Salvador Foreign Born Population: 118

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# Exhibit K

(Rev. 01-31-2003)

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DECLASSIFIED BY 65179/DMH/BAW/STP/bls  
ON 07-06-2011

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/06/2009.

To: Detroit

From: Detroit

b7E -17

Contact: [Redacted]

Approved By: [Redacted]

b6 -1  
b7C -1

Drafted By: [Redacted]

Case ID #: 806H-DE-104073

~~(S)~~ DETROIT DOMAIN MANAGEMENT,  
Domain Management - CT  
International Terrorism Assessment  
Assessment Begin: 7/6/2009

~~(S)~~ Synopsis: Open a Type IV Assessment for the purpose of planning and intelligence analysis to facilitate investigative activities to detect, obtain information about, prevent, or protect against federal crimes or threats to the national security posed by the international terrorism threat in Michigan. Activities that may be carried out as part of this process include collecting information to improve or facilitate "domain awareness" and engage in "domain management."

~~(S)~~ Derived From : Multiple Sources  
Declassify On: 20340706

Details: (U) The 2008 Attorney General Guidelines for Domestic FBI Operations authorizes the FBI to "engage in planning and intelligence analysis to facilitate investigative activities to detect, obtain information about, prevent, or protect against federal crimes or threats to the national security." Activities the FBI may carry out as part of this process include collecting information to improve or facilitate "domain awareness" and engage in "domain management."

~~SECRET//20340706~~

803H-DE-104073

Serial 1

~~SECRET//20340706~~

(U//FOUO) Domain Management is the systematic process by which the FBI develops cross-programmatic domain awareness and leverages its knowledge to enhance its ability to (i) proactively identify threats, vulnerabilities, and intelligence gaps; (ii) discover new opportunities for needed intelligence collection and prosecution; and (iii)  to provide advance warning of national security and criminal threats.

b7E -1, -22

(U) There are more than forty groups designated as terrorist organizations by the US State Department. Many of these groups originate in the Middle-East and Southeast Asia. Many of these groups also use an extreme and violent interpretation of the Muslim faith as justification for their activities. Because Michigan has large Middle-Eastern and Muslim population, it is prime territory for attempted radicalization and recruitment by these terrorist groups. Additionally, Sunni terrorist groups always pose a threat of attack on U.S. soil since it is the stated purpose of many of these groups. The Detroit Division Domain Team seeks to open a Type IV Domain Assessment for the purpose of collecting information and evaluating the threat posed by international terrorist groups conducting recruitment, radicalization, fund-raising, or even violent terrorist acts within the state of Michigan.

(U) The objective of this assessment is to utilize the Domain Management process to determine the scope of the international terrorism threat in Michigan.

LEAD(s) :

~~SECRET//20340706~~

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Set Lead 1: (Info)

DETROIT

AT DETROIT, MI

Read and clear.

◆◆

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of  
Investigation, *et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

**PLAINTIFF'S STATEMENT OF MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1 of the Rules of the United States District Court for the District of New Jersey, Plaintiff American Civil Liberties Union of New Jersey hereby submits the following Statement of Material Facts as to which Plaintiff contends there is no genuine issue in connection with its Cross-Motion for Partial Summary Judgment under Rule 56(b) of the Federal Rules of Civil Procedure.

1. The Federal Bureau of Investigation's ("FBI") 2008 Domestic Investigations and Operations Guide ("DIOG"), authorizes FBI agents to collect, map and analyze racial and ethnic demographic information, and to identify "concentrated ethnic communities" and the location of "ethnic-oriented businesses" and other facilities "if these locations will reasonably aid in the analysis of potential threats and

vulnerabilities" and assist in "intelligence analysis." Choudhury Decl. Ex. A. at 32-33 (Federal Bureau of Investigation, Domestic Investigations and Operations Guide § 4.3(C)(2), Dec. 16, 2008). It also allows the FBI to collect and track "[s]pecific and relevant ethnic behavior," "behavioral characteristics . . . reasonably associated with a particular criminal or terrorist element of an ethnic community," and "behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities in order to engage in illicit activities undetected," including "cultural tradition[s]." *Id.* at 33-34.

2. Plaintiff served the FBI with a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on July 27, 2010. Hardy Decl. Ex. A ("Request"). The Request was sent to six FBI offices in Hamilton, Newark, Northfield, Redbank, Somerset, and Woodland Park. *Id.*

3. The Request seeks legal memoranda, procedures, policies, directives, practices, guidance, and guidelines concerning the following types of information that the FBI may collect or map under its DIOG authority: a) racial and ethnic information; b) information about "ethnic-oriented" businesses or other "ethnic-oriented" facilities; c) information about "[f]ocused behavioral characteristics reasonably believed to be

associated with a particular criminal or terrorist element of an ethnic community"; and d) "behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities." Hardy Decl. Ex. A. at 2-4. The Request also seeks records concerning the FBI's collection, mapping, and use of New Jersey communities' racial or ethnic information, and the maps themselves. *Id.*

4. In July and August 2010, state affiliates of the American Civil Liberties Union served FOIA requests upon local FBI offices in thirty-one states and the District of Columbia. Choudhury Decl. ¶ 3. Like Plaintiff's Request to FBI offices in New Jersey, these requests seek records concerning the FBI's collection, mapping, and use of local communities' racial or ethnic information pursuant to the DIOG. *Id.* These FOIA requests seek FBI records of the same type and time frame as Plaintiff's Request. *Id.*

5. On December 22, 2010, the FBI issued a "first interim release" consisting of 298 pages in response to the Request. Hardy Decl. Ex. D at 1; Hardy Decl. Ex. I. The cover letter to the release indicated that the FBI withheld information from certain pages pursuant to FOIA exemptions, 5 U.S.C. § 552(b). Hardy Decl. Ex. D at 1.

6. Plaintiff timely appealed the first interim release on February 16, 2011. Hardy Decl. Ex. E.

7. Plaintiff filed this action to enforce the Request on May 4, 2011. Choudhury Decl. Ex. C (Complaint for Injunctive Relief).

8. The FBI issued a final release on July 20, 2011, consisting of one fourteen-page document that was partially redacted to withhold information pursuant to FOIA exemptions. Hardy Decl. Ex. H; Ex. I at NK GEOMAP 743-756. In the cover letter to the release, the FBI stated that it is withholding 470 additional pages in full under exemptions to the FOIA. Hardy Decl. Ex. H at 1.

9. Defendants have identified 782 pages of responsive records. See Hardy Decl. Ex. D at 1 & Ex. H at 1. They have released 250 pages in full. Hardy Decl. Ex. J at 1. Defendants invoke statutory exemptions to withhold information from 62 partially released pages and to withhold in full 283 pages. See Hardy Decl. Ex. J. Defendants withhold 187 pages as duplicates. See Hardy Decl. ¶ 12 & Exh. H.

10. The FBI conducted an electronic search of its Central Records System for documents responsive to the Request by searching the indices of the Automated Case Support System ("ACS") using terms such as "racial and ethnic community demographics," "racial and ethnic behaviors," "racial and ethnic

characteristics," "behaviors," and "cultural traditions." Hardy Decl. ¶ 19. These terms do not correspond to the types of information captured in the ACS indices. *Id.* ¶ 19.

11. ACS indices reflect names of suspects, victims, and common investigation subjects. Hardy Decl. ¶ 18. These indices are used to search the CRS. *Id.* ¶ 14.

12. The FBI's search of the CRS yielded no documents. Hardy Decl. ¶ 19.

13. The FBI determined that four offices were most likely to have records responsive to the Request: the FBI's Director's Office, the Directorate of Intelligence, the Office of the General Counsel, and the Newark Field Office. Hardy Decl. ¶ 19. The FBI issued memoranda to these offices requesting that they "conduct a thorough search in accordance with the request." Hardy Decl. ¶ 19-21. The FBI sent the Director's Office, the Directorate of Intelligence, and the Office of the General Counsel memoranda on August 20, 2010. *Id.* ¶ 21. The FBI sent the Newark Field Office memoranda on November 16, 2010 and December 6, 2010, requesting that the field office and its resident agencies search for responsive documents in their possession. *Id.* ¶ 21.

14. Searches by the FBI's Director's Office, the Directorate of Intelligence, the Office of the General Counsel,

and the Newark Field Office identified 782 pages of responsive documents. Hardy Decl. ¶ 22.

15. An FBI DIOG training slide released by the Defendants indicates that “[a]ll information collected for Domain Management must be documented in [redacted].” Hardy Decl. Ex. I at DIOG PPD 256.

16. Domain Management is an FBI “methodolog[y]” used to identify and analyze “threats to and vulnerabilities of the United States.” Hardy Decl. Ex. I at DIOG PPD 255.

17. The DIOG authorizes the FBI to collect and map racial and ethnic information about “locations of concentrated ethnic communities in the Field Office’s domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness for the purpose of performing intelligence analysis.” See Choudhury Decl. Ex. A at 32 (referencing DIOG § 4.C.2(a))

18. The FBI’s Geospatial Intelligence program (“GEOINT”) involves the analysis of “demographics” data to conduct threat and intelligence analysis activities. Hardy Decl. Ex. I at DIOG PPD 148. GEOINT provides access to and analyzes data concerning “national threats and vulnerabilities,” uses “internal and external data sets” to permit visual analysis of “[t]hreats, vulnerabilities and gaps,” and is used to understand “threats and vulnerabilities to inform investigations, analysis and

resource allocations." Hardy Decl. Ex. I at DIOG PPD 143-44, 146-47.

19. In response to nearly identical FOIA requests to FBI field offices in Northern California, Georgia and Michigan, the FBI released two-to-three page electronic communications from each office authorizing the opening of Domain Management investigations involving the collection and use of racial or ethnic demographic information or mapping. Choudhury Decl. ¶ 4 & Ex. D-E (San Francisco); *id.* ¶ 5 & Ex.G (Georgia); *id.* ¶ 7 & Ex. K (Michigan).

20. In response to nearly identical FOIA requests to FBI field offices in Georgia and Alabama, the FBI released in part domain intelligence notes featuring the use of population statistics concerning Hispanic, Central American foreign-born, and African American populations. Choudhury Decl. ¶ 5 & Ex. G-H (Georgia); *id.* ¶ 6 & Ex. J (Alabama).

Respectfully Submitted,



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*Attorneys for Plaintiff*

January 20, 2012

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of  
Investigation, *et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

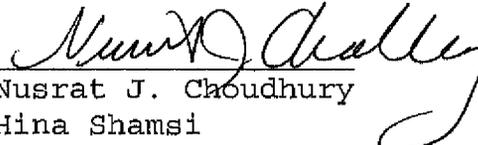
**PLAINTIFF'S RESPONSE TO  
DEFENDANTS' STATEMENT OF MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1 of the Rules of the United States District Court for the District of New Jersey, Plaintiff American Civil Liberties Union of New Jersey hereby submits the following response to Defendants' Statement of Material Facts, which sets forth the facts to which Defendants contend there is no genuine issue in connection with their Motion for Summary Judgment under Rule 56(b) of the Federal Rules of Civil Procedure.

1. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 1.
2. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 2.
3. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 3.

4. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 4.
5. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 5.
6. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 6.
7. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 7.
8. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 8.
9. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 9.
10. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 10.
11. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 11.
12. Plaintiff does not dispute Defs.' Statement of Material Facts ¶ 12.

Respectfully Submitted,



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*Attorneys for Plaintiff*

January 20, 2012

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of  
Investigation, *et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

**[PROPOSED] ORDER**

Upon consideration of Defendants' Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, it is hereby ORDERED that Plaintiff's Cross-Motion is GRANTED;

It is further ORDERED that Defendants' motion to dismiss the Federal Bureau of Investigation from this action is DENIED;

It is further ORDERED that Defendants' motion for summary judgment on Plaintiff's claims is DENIED;

It is further ORDERED that Defendants must conduct a thorough search for all records responsive to Plaintiff's request for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552;

It is further ORDERED that Defendants must provide an affidavit describing that search in detail the steps taken to search for responsive records;

It is further ORDERED that Defendants must inform the Court *in camera* whether they have refrained from identifying responsive documents pursuant to FOIA provisions permitting the exclusion of certain records, 5 U.S.C. §552(c);

It is further ORDERED that Defendants must disclose segregable non-exempt material from the seventeen documents withheld in full from Plaintiff;

It is further ORDERED that Defendants must produce more detailed descriptions of the five withheld maps, Hardy Decl. Ex. J. 15-16, and information redacted from the DIOG training materials, Hardy Decl. Ex. I at DIOG PPD 14-15, 78-79, 136-37, 223-34, 256, and 298.

Dated:

\_\_\_\_\_

Esther Salas  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

American Civil Liberties Union  
of New Jersey,

Plaintiff,

v.

Federal Bureau of  
Investigation, *et al.*

Defendants.

Case No. 11-CV-2553 (ES)  
(CLW)

**CERTIFICATE OF SERVICE**

I hereby certify that on January 23, 2012, a true and correct copy of Plaintiff's Cross Motion for Partial Summary Judgment and Opposition to Defendants' Motion for Summary Judgment, Memorandum in Support of Plaintiff's Cross Motion for Partial Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment, the Declaration of Nusrat J. Choudhury and attached exhibits, Plaintiff's Response to Defendants' Statement of Material Facts, and Plaintiff's Statement of Material Facts as to which Plaintiff contends there is no genuine issue with its Cross Motion for Partial Summary Judgment were electronically filed with the Clerk of Court for the District of New Jersey using the CM/ECF system, in accordance with Local Rule 5.1 and 5.4. Notice of this filing will be sent to counsel for the Defendants by operation of the Court's electronic filing

system. Parties may access this filing through the Court's  
CM/ECF system.

s/ Jeanne Locicero  
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