

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11	WILEY GILL; JAMES PRIGOFF;TARIQ	)	No. 3:14-cv-03120-RS
12	RAZAK; KHALED IBRAHIM; and AARON	)	
13	CONKLIN,	)	
14	Plaintiffs,	)	<b>SUPPLEMENTAL JOINT CASE</b>
15	v.	)	<b>MANAGEMENT STATEMENT</b>
16	DEPARTMENT OF JUSTICE; LORETTA	)	
17	LYNCH, in her official capacity as the	)	
18	Attorney General of the United States;	)	
19	PROGRAM MANAGER - INFORMATION	)	
20	SHARING ENVIRONMENT;	)	
21	KSHEMENDRA PAUL, in his official	)	
22	capacity as the Program Manager of the	)	
	Information Sharing Environment,	)	
	Defendants.	)	

The Parties to the above-entitled action submit this SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT for the Case Management Conference scheduled for August 27, 2015. On August 14, 2015, the Court issued an order denying Plaintiffs' special motion for leave to take discovery as to Defendant DOJ. See ECF No. 60. The court invited the parties in that order to file a further Case Management Conference statement if they wished to

1 provide further information on discovery. This supplements the Joint Case Management  
2 Statement filed by the parties on August 12, 2015 (ECF No. 59).

3 8. Discovery

4 **Plaintiffs' Statement:** Plaintiffs' counsel recently learned and informed Defendants'  
5 counsel that the FBI has questioned two close family members of one of the plaintiffs in this  
6 action about, among other things, the plaintiff's religious views. Plaintiffs sought to meet and  
7 confer with Defendants about the appropriate follow-up to this incident, including a possible  
8 informal exchange of information about whether the incident was related to or generated by the  
9 suspicious activity report about the plaintiff or this lawsuit. Defendants state that they will not  
10 respond unless allegations about the incident are included in the Complaint.

11 While the Court denied Plaintiffs' motion for leave to take discovery with respect to  
12 Defendant DOJ's standard for suspicious activity reporting, it noted that if "the need for  
13 discovery on particular issues, generally consistent with APA proceedings, becomes manifest,  
14 the question of permitting discovery can be revisited." Defendants have acknowledged that "the  
15 Court may consider extra-record material in resolving Article III issues such as standing." Joint  
16 Case Management Statement (ECF No. 59) at ¶ 8. Plaintiffs contend that this incident is the type  
17 of information about which discovery is appropriate and may be necessary because it sheds light  
18 on standing and in particular the consequences for Plaintiffs of being the subject of a suspicious  
19 activity report. Plaintiffs further contend that this incident falls within the existing allegations of  
20 the Complaint and thus is an appropriate issue for discovery, at a minimum with regard to  
21 standing. *See, e.g.*, Complaint at ¶¶ 97, 114, 123, 134, 149 (because Plaintiffs are subject of a  
22 SAR, they have been automatically subjected to law enforcement scrutiny).

23 **Defendants' Statement:** Defendants were made aware of Plaintiffs' allegations on  
24 August 19, 2015. Discovery would not be appropriate at this juncture. To the extent Plaintiffs  
25 believe that the referenced questioning was undertaken for an impermissible reason or relates to  
26 this case, the proper and normal course would be for Plaintiffs to include the allegations in a  
27 proposed amended Complaint. If leave is granted to include these allegations, Defendants would  
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1 then respond to those allegations. Those are the appropriate next steps in this case with respect to  
2 the allegations, and should be followed in the normal course before permitting any discovery into  
3 FBI investigative actions. Moreover, whether or not Plaintiffs are required to amend their  
4 complaint, the Court should proceed as it previously ruled in denying Plaintiffs' recent discovery  
5 motion, *see* Dkt. 60 at 3-4, to consider discovery issues in the context of summary judgment  
6 briefing in this APA action. This approach is particularly appropriate here, where the discovery  
7 that Plaintiffs seek concerns the exercise of law enforcement activity, and risks discovery  
8 disputes that may not be necessary.

9 Dated: August 21, 2015

/s/ Linda Lye

Counsel for Plaintiffs<sup>1</sup>

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28 <sup>1</sup> I, Linda Lye, hereby attest, in accordance with Local Rule 5-1(i)(3), the concurrence in the  
filing of this document has been obtained from the other signatory listed here.

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Dated: August 21, 2015

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