

No. 20-828

In the Supreme Court of the United States

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
PETITIONERS

v.

YASSIR FAZAGA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: DEC. 17, 2020
CERTIORARI GRANTED: JUNE 7, 2021

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TABLE OF CONTENTS

	Page
Court of appeals docket entries (13-55017)	1
District court docket entries (8:11-cv-00301-CJC-VBK)	13
Declaration of Eric H. Holder, Attorney General of the United States.....	26
Public declaration of Mark F. Giuliano, Federal Bureau of Investigation.....	41
First amended class action complaint (Sept. 13, 2011)	61
Excerpt from Memorandum of points and authorities in support of motion to dismiss amended complaint and for summary judgment (Jan. 30, 2012)	157
Declarations of Craig Monteilh submitted by plaintiffs in support of their oppositions to motions to dismiss	165
Motion for leave to file superseding briefs (June 25, 2015).....	220
Letter from Craig Monteilh to U.S. Court of Appeals for the Ninth Circuit (June 20, 2019)	232

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 13-55017

YASSIR FAZAGA; ALI UDDIN MALIK; YASSER
ABDELRAHIM, PLAINTIFFS-APPELLANTS

v.

FEDERAL BUREAU OF INVESTIGATION, ROBERT
MUELLER, DIRECTOR OF THE FEDERAL BUREAU OF
INVESTIGATION, IN HIS OFFICIAL CAPACITY;
CHRISTOPHER A. WRAY, DIRECTOR OF THE FEDERAL
BUREAU OF INVESTIGATION, IN HIS OFFICIAL CAPACITY;
STEVEN M. MARTINEZ, ASSISTANT DIRECTOR IN
CHARGE, FEDERAL BUREAU OF INVESTIGATION'S
LOS ANGELES DIVISION, IN HIS OFFICIAL CAPACITY;
PAUL DELACOURT, ASSISTANT DIRECTOR IN CHARGE,
FEDERAL BUREAU OF INVESTIGATION'S LOS ANGELES
DIVISION, IN HIS OFFICIAL CAPACITY; J. STEPHEN
TIDWELL; BARBARA WALLS; PAT ROSE; KEVIN
ARMSTRONG; PAUL ALLEN; UNITED STATES OF
AMERICA, DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
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* * * * *

(1)

DATE	DOCKET NUMBER	PROCEEDINGS
11/17/14	<u>32</u>	Submitted (ECF) First Brief on Cross-Appeal brief for review and filed Motion to file oversized brief. Submitted by Appellants Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 13-55017, Appellees Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 12-56867, 12-56874. Date of service: 11/17/2014. [9316413] [13-55017, 12-56867, 12-56874] (Arulanantham, Ahilan) [Entered: 11/17/2014 08:46 PM] 11/17/2014 * * * * *
11/17/14	<u>33</u>	Submitted (ECF) excerpts of record. Submitted by Appellants Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 13-55017, Appellees Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 12-56867, 12-56874. Date of service: 11/17/2014. [9316414] [13-55017, 12-56867, 12-56874] (Arulanantham, Ahilan) [Entered: 11/17/2014 08:49 PM] * * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/17/15	<u>49</u>	Submitted (ECF) Answering Brief and supplemental excerpts of record for review. Submitted by Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017, —FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874. Date of service: 03/17/2015. [9461356] [13-55017, 12-56867, 12-56874] (Tenny, Daniel) [Entered: 03/17/2015 04:59 PM]
3/17/15	<u>50</u>	Filed (ECF) Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017, —FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874 Correspondence: Notice of Filing Classified Materials. Date of service: 03/17/2015 [9461362] [13-55017, 12-56867, 12-56874] (Tenny, Daniel) [Entered: 03/17/2015 05:02 PM]
		* * * * *
4/29/15	<u>63</u>	Submitted (ECF) Second Brief on Cross-Appeal and supplemental excerpts of record for review. Submitted by Appel-

DATE	DOCKET NUMBER	PROCEEDINGS
		lants Paul Allen, Kevin Armstrong and Pat Rose in 12-56874, Appellees Kevin Armstrong, Paul Allen and Pat Rose in 13-55017. Date of service: 04/29/2015. [9519711] [12-56874, 12-56867, 13-55017]—[COURT UPDATE: Attached corrected brief and excerpts of record. Updated docket text to reflect correct brief type. 04/30/2015 by TL] (Scheper, David) [Entered: 04/29/2015 05:34 PM]
4/29/15	<u>64</u>	Submitted (ECF) Second Brief on Cross-Appeal and supplemental excerpts of record for review. Submitted by Appellants J. Stephen Tidwell and Barbara Walls in 12-56867, —J. Stephen Tidwell and Barbara Walls in 12-56874, Appellees J. Stephen Tidwell and Barbara Walls in 13-55017. Date of service: 04/29/2015. [9519750] [12-56867, 12-56874, 13-55017]—[COURT UPDATE: Edited docket text to reflect correct brief type. 04/30/2015 by RY] (Moran, Katie) [Entered: 04/29/2015 08:58 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
6/25/15	<u>72</u>	Filed (ECF)—FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874, Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017 Motion to file substitute or corrected brief. Date of 13 pg, 225.33 KB service: 06/25/2015. [9587130] [12-56867, 12-56874, 13-55017]— [COURT UPDATE: Removed brief (refiled in entry [73]). 06/25/2015 by TL] (Tenny, Daniel) [Entered: 06/25/2015 06:36 AM]
6/25/15	<u>73</u>	Submitted (ECF) Answering Brief for review. Submitted by—FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874, Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017. Date of service: 06/25/2015. [9587934] [12-56867, 12-56874, 13-55017]— [COURT ENTERED FILING to correct entry [72].] (TYL) [Entered: 06/25/2015 11:54 AM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/14/15	<u>76</u>	Filed order (Appellate Commissioner): The federal appellees' opposed motion for leave to file superseding briefs is granted. The superseding briefs are due within 21 days after the date of this order. Plaintiffs' reply/cross-appellee brief is due within 14 days after service of the superseding briefs. The individual-capacity defendants' cross-appeal reply brief is due within 14 days after service of plaintiffs' reply/cross-appellee brief. (Pro Mo) [9609889] [12-56867, 12-56874, 13-55017] (IV) [Entered: 07/14/2015 02:40 PM]
7/24/15	<u>79</u>	Filed (ECF)—FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874, Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017 Correspondence: Notice of Filing Superseding Briefs. Date of service: 07/24/2015 [9621720] [12-56867, 12-56874, 13-55017] (Tenny, Daniel) [Entered: 07/24/2015 12:58 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
9/21/15	<u>85</u>	Submitted (ECF) Third Brief on Cross-Appeal brief and Further Excerpts of Record for review and filed Motion to file oversized brief. Submitted by Appellants Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 13-55017, Appellees Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 12-56867, 12-56874. Date of service: 09/21/2015. [9691085] [13-55017, 12-56867, 12-56874] (Bibring, Peter) [Entered: 09/21/2015 09:24 PM]
		* * * * *
11/13/15	<u>100</u>	Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellants Barbara Walls and J. Stephen Tidwell in 12-56867,—Barbara Walls and J. Stephen Tidwell in 12-56874, Appellees Barbara Walls and J. Stephen Tidwell in 13-55017. Date of service: 11/13/2015. [9755432] [12-56867, 12-56874, 13-55017] (Nichols, Carl) [Entered: 11/13/2015 03:42 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
11/13/15	<u>102</u>	Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by—Paul Allen, Kevin Armstrong and Pat Rose in 12-56867, Appellants Paul Allen, Kevin Armstrong and Pat Rose in 12-56874, Appellees Paul Allen, Kevin Armstrong and Pat Rose in 13-55017. Date of service: 11/13/2015. [9755594] [12-56867, 12-56874, 13-55017]—[COURT UPDATE: Updated docket text to reflect correct brief type. 11/13/2015 by TYL] (Cote, Alexander) [Entered: 11/13/2015 04:41 PM]
		* * * * *
11/23/15	<u>107</u>	Filed (ECF)—FBI, Steven M. Martinez and Robert Mueller in 12-56867, 12-56874, Appellees FBI, Steven M. Martinez, Robert Mueller and USA in 13-55017 Correspondence: Notice of Filing Classified Supplemental Excerpts of Record. Date of service: 11/23/2015 [9767083] [12-56867, 12-56874,

DATE	DOCKET NUMBER	PROCEEDINGS
		13-55017] (Tenny, Daniel) [Entered: 11/23/2015 01:30 PM]
		* * * * *
2/28/19	<u>126</u>	FILED OPINION (RONALD M. GOULD, MARSHA S. BERZON and GEORGE CARAM STEEH, III) AFFIRMED IN PART, REVERSED IN PART AND REMANDED. Judge: Judge: MSB Authoring. FILED AND ENTERED JUDGMENT. [11210750] [12-56867, 12-56874, 13-55017]— [Edited: Replaced PDF of Opinion (typos corrected). 03/07/2019 by RY] (RMM) [Entered: 02/28/2019 07:05 AM]
		* * * * *
6/14/19	<u>138</u>	Filed (ECF) Appellees J. Stephen Tidwell and Barbara Walls in 13-55017, Appellants J. Stephen Tidwell and Barbara Walls in 12-56867 petition for panel rehearing and petition for rehearing en banc (from 02/28/2019 opinion). Date of service: 06/14/2019. [11331118] [13-55017, 12-56867, 12-56874] (Shapiro, Howard)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 06/14/2019 07:41 AM]
6/14/19	<u>139</u>	Filed (ECF) Appellees Paul Delacourt, FBI, USA and Christopher A. Wray in 13-55017 petition for panel rehearing and petition for rehearing en banc (from 02/28/2019 opinion). Date of service: 06/14/2019. [11331754] [12-56867, 12-56874, 13-55017] (Busa, Joseph) [Entered: 06/14/2019 11:32 AM]
6/14/19	<u>140</u>	Filed (ECF) Appellants Paul Allen, Kevin Armstrong and Pat Rose in 12-56874, Appellees Paul Allen, Kevin Armstrong and Pat Rose in 13-55017 petition for panel rehearing and petition for rehearing en banc (from 02/28/2019 opinion). Date of service: 06/14/2019. [11331898] [12-56867, 12-56874, 13-55017] (Cote, Alexander) [Entered: 06/14/2019 12:34 PM]
		* * * * *
8/23/19	<u>151</u>	Filed (ECF) Appellants Yasser Abdelrahim, Yassir Fazaga and Ali Uddin Malik in 13-55017 response to Combo PFR Panel

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing). Date of service: 08/23/2019. [11409025]. [12-56867, 12-56874, 13-55017] (Tajsar, Mohammad) [Entered: 08/23/2019 04:18 PM]</p>
		* * * * *
7/20/20	<u>154</u>	<p>Filed order and amended opinion (RONALD M. GOULD, MARSHA S. BERZON and GEORGE CARAM STEEH, III). (Concurrence by Judges Gould and Berzon) (Statement by Judge Steeh) (Dissent by Judge Bumatay) The opinion filed on February 28, 2019, reported at 916 F.3d 1202, is hereby amended. An amended opinion is filed concurrently with this order. With these amendments, the panel has unanimously voted to deny appellees' petition for rehearing.</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Judges Berzon and Gould have voted to deny the petition for rehearing en banc and Judge Steeh so recommends. The full court has been advised of the petition for rehearing en banc. A judge of the court requested a vote on en banc rehearing. The matter failed to receive a majority of votes of non-recused active judges in favor of en banc consideration. Fed. R. App. P. 35. The petition for rehearing and the petition for rehearing en banc are DENIED. No further petitions for panel rehearing or rehearing en banc will be entertained. Judge Berzon's concurrence with and Judge Butmatay's dissent from denial of en banc rehearing are filed concurrently herewith. [11758009] [12-56867, 12-56874, 13-55017] (AKM) [Entered: 07/20/2020 07:53 AM]</p>

* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION—SANTA ANA)

Case No. 8:11-cv-00301-CJC-VBK

YASSIR FAZAGA; ALI UDDIN MALIK; YASSER
ABDELRAHIM, PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATION, ROBERT
MUELLER, DIRECTOR OF THE FEDERAL BUREAU OF
INVESTIGATION, IN HIS OFFICIAL CAPACITY;
STEVEN M. MARTINEZ, ASSISTANT DIRECTOR IN
CHARGE, FEDERAL BUREAU OF INVESTIGATION'S
LOS ANGELES DIVISION, IN HIS OFFICIAL CAPACITY;
J. STEPHEN TIDWELL; BARBARA WALLS; PAT ROSE;
KEVIN ARMSTRONG; PAUL ALLEN; DOES 1-20;
UNITED STATES OF AMERICA, DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
8/1/11	<u>32</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>and for Summary Judgment</i> filed by Defendants Federal Bureau of Investigation, Steven M Martinez, Robert Mueller. Motion set for hearing on 11/14/2011 at 01:30 PM before Judge Cormac J. Carney.

DATE	DOCKET NUMBER	PROCEEDINGS
8/1/11	<u>33</u>	(Attachments: # <u>1</u> Declaration Christopher N. Morin, FBI, # <u>2</u> Appendix Statement of Material Facts, # <u>3</u> Declaration Attorney General Eric H. Holder) (Coppolino, Anthony) (Entered: 08/01/2011) DECLARATION of Mark F. Giuliano, Federal Bureau of Investigation in Support of MOTION to Dismiss Case <i>and for Summary Judgment</i> <u>32</u> filed by Defendants Federal Bureau of Investigation, Steven M Martinez, Robert Mueller. (Coppolino, Anthony) (Entered: 08/01/2011)
8/1/11	<u>34</u>	EXHIBIT 1-3 to MOTION to Dismiss Case <i>and for Summary Judgment</i> <u>32</u> Exhibits to <i>Public Declaration of Mark F. Giuliano, Federal Bureau of Investigation</i> filed by Defendants Federal Bureau of Investigation, Steven M Martinez, Robert Mueller. (Coppolino, Anthony) (Entered: 08/01/2011)
8/1/11	<u>35</u>	NOTICE OF LODGING filed <i>Notice of Lodging of Classified</i>

DATE	DOCKET NUMBER	PROCEEDINGS
8/1/11	<u>36</u>	<p><i>In Camera, Ex Parte Declaration of Mark F. Giuliano, Federal Bureau of Investigation</i> re MOTION to Dismiss Case and for Summary Judgment <u>32</u> (Coppolino, Anthony) (Entered: 08/01/2011)</p> <p>NOTICE OF LODGING filed <i>Notice of Lodging of Classified In Camera, Ex Parte Supplemental Memorandum by Government Defendants</i> re MOTION to Dismiss Case and for Summary Judgment <u>32</u> (Coppolino, Anthony) (Entered: 08/01/2011)</p>
8/11/11	<u>45</u>	<p>* * * * *</p> <p>NOTICE OF ERRATA filed by Defendants Paul Allen, Kevin Armstrong, Pat Rose. correcting MOTION to Dismiss Plaintiffs' Class Action Complaint; <i>Notice of Joinder in Motions to Dismiss by (1) Defendants FBI, Robert Mueller, and Steven Martinez and (2) Defendants Stephen Tidwell and Barbara Walls</i> MOTION to Dismiss Plaintiffs' Class Action Complaint; <i>Notice of Joinder in Motions to Dismiss by</i></p>

DATE	DOCKET NUMBER	PROCEEDINGS
		(1) <i>Defendants FBI, Robert Mueller, and Steven Martinez</i> and (2) <i>Defendants Stephen Tidwell and Barbara Walls</i> <u>41</u> (Attachments: # 1 Exhibit <u>1</u> —CORRECTED Motion to Dismiss) (Machala, Angela) (Entered: 08/11/2011)
		* * * * *
9/13/11	<u>49</u>	FIRST AMENDED COMPLAINT against defendants Paul Allen, Kevin Armstrong, Federal Bureau of Investigation, Steven M Martinez, Robert Mueller, Pat Rose, J Stephen Tidwell, Barbara Walls, Does 1-10; amending Complaint —(Discovery) <u>1</u> ; filed by plaintiffs Ali Uddin Malik, Yasser Abdelrahim, Yassir Fazaga (Attachments: # <u>1</u> PART 2, # <u>2</u> PART 3) (rla) (Additional attachment(s) added on 9/15/2011: # <u>3</u> SUMMONS ISSUED) (rla). (Entered: 09/14/2011)
		* * * * *
11/4/11	<u>55</u>	NOTICE OF MOTION AND MOTION to Dismiss Case <i>Amended Complaint and for</i>

DATE	DOCKET NUMBER	PROCEEDINGS
11/4/11	<u>56</u>	<p><i>Summary Judgment</i> filed by Government Defendants Federal Bureau of Investigation, Steven M Martinez, Robert Mueller, United States of America. Motion set for hearing on 1/30/2012 at 01:30 PM before Judge Cormac J. Carney. (Attachments: # <u>1</u> Declaration Christopher N. Morin, Federal Bureau of Investigation, # <u>2</u> Appendix Statement of Undisputed Facts) (Coppolino, Anthony) (Entered: 11/04/2011)</p> <p>NOTICE OF LODGING filed of <i>Classified Supplemental Declaration of Mark F. Giuliano, Federal Bureau of Investigation for In Camera, Ex Parte Review re MOTION to Dismiss Case Amended Complaint and for Summary Judgment</i> <u>55</u> (Coppolino, Anthony) (Entered: 11/04/2011)</p>
11/11/11	<u>57</u>	<p>NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America,</i></p>

DATE	DOCKET NUMBER	PROCEEDINGS
11/11/11	<u>58</u>	<p><i>Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Barbara Walls</i> filed by Defendants Paul Allen, Kevin Armstrong, Pat Rose. Motion set for hearing on 1/30/2012 at 01:30 PM before Judge Cormac J. Carney. (Scheper, David) (Entered: 11/11/2011)</p> <p>NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint</i> filed by Defendants J Stephen Tidwell, Barbara Walls. Motion set for hearing on 1/30/2012 at 01:30 PM before Judge Cormac J. Carney. (Li, Peiyin) (Entered: 11/11/2011)</p>
12/23/11	<u>63</u>	<p>* * * * *</p> <p>In Opposition re: MOTION to Dismiss Case <i>First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba MOTION to Dismiss</i></p>

DATE	DOCKET NUMBER	PROCEEDINGS
12/23/11	<u>64</u>	<p><i>Case First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba 57, MOTION to Dismiss Case First Amended Complaint 58 filed by Plaintiffs Yasser Abdelrahim, Yassir Fazaga, Ali Uddin Malik. (Attachments: # 1 Attachment A—Claims Chart) (Bibring, Peter) (Entered: 12/23/2011)</i></p> <p>MEMORANDUM in Opposition to MOTION to Dismiss Case Amended Complaint and for Summary Judgment <u>55</u> filed by Plaintiffs Yasser Abdelrahim, Yassir Fazaga, Ali Uddin Malik. (Attachments: # 1 Statement of Genuine Issues) (Arulanantham, Ahilan) (Entered: 12/23/2011)</p>
12/23/11	<u>65</u>	<p>DECLARATION of Ahilan Arulanantham In Opposition to MOTION to Dismiss Case <i>First Amended Class Action</i></p>

DATE	DOCKET NUMBER	PROCEEDINGS
12/23/11	<u>66</u>	<p><i>Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba</i></p> <p><i>MOTION to Dismiss Case First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba</i></p> <p><i><u>57</u>, MOTION to Dismiss Case First Amended Complaint <u>58</u>, MOTION to Dismiss Case Amended Complaint and for Summary Judgment <u>55</u> filed by Plaintiffs Yasser Abdelrahim, Yassir Fazaga, Ali Uddin Malik. (Attachments: # <u>1</u> Exhibit # <u>1</u> - # <u>3</u>) (Arunantham, Ahilan) (Entered: 12/23/2011)</i></p> <p>DECLARATION of Craig Monteilh In Opposition to MOTION to Dismiss Case <i>First</i></p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p><i>Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba MOTION to Dismiss Case First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba <u>57</u>, MOTION to Dismiss Case First Amended Complaint <u>58</u>, MOTION to Dismiss Case Amended Complaint and for Summary Judgment <u>55</u> filed by Plaintiffs Yasser Abdelrahim, Yassir Fazaga, Ali Uddin Malik. (Arulanantham, Ahilan) (Entered: 12/23/2011)</i></p> <p>* * * * *</p>
1/20/12	<u>69</u>	REPLY support MOTION to Dismiss Case <i>Amended Com-</i>

DATE	DOCKET NUMBER	PROCEEDINGS
1/20/12	<u>70</u>	<p><i>plaint and for Summary Judgment 55 Government Defendants' Reply in Support of Motion to Dismiss Amended Complaint and for Summary Judgment</i> filed by Defendants Federal Bureau of Investigation, Steven M Martinez, Robert Mueller, United States of America. (Coppolino, Anthony) (Entered: 01/20/2012)</p> <p>REPLY In Support Of MOTION to Dismiss Case <i>First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba</i> MOTION to Dismiss Case <i>First Amended Class Action Complaint and Joinder in Motions to Dismiss by (1) Defendants United States of America, Federal Bureau of Investigation, Robert Mueller and Steven Martinez, and (2) Defendants Stephen Tidwell and Ba</i> <u>57</u></p>

DATE	DOCKET NUMBER	PROCEEDINGS
1/20/12	<u>71</u>	<p><i>filed by Defendants Paul Allen, Kevin Armstrong, Pat Rose. (Attachments: # <u>1</u> Attachment: 11/3/11 Opinion in Mirmehdi v. United States) (Scheper, David) (Entered: 01/20/2012)</i></p> <p>REPLY IN SUPPORT OF MOTION to Dismiss Case <i>First Amended Complaint 58</i> filed by Defendants J Stephen Tidwell, Barbara Walls. (Li, Peiyin) (Entered: 01/20/2012)</p>
8/14/12	<u>101</u>	<p style="text-align: center;">* * * * *</p> <p>ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS BASED ON THE STATE SECRETS PRIVILEGE by Judge Cormac J. Carney: (See document for details.) Accordingly, all of Plaintiffs causes of action against Defendants, aside from their FISA claim, are DISMISSED. (rla) (Entered: 08/14/2012)</p>
8/14/12	<u>102</u>	<p>ORDER by Judge Cormac J. Carney, GRANTING IN PART DEFENDANTS' MO-</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		TIONS TO DISMISS PLAINTIFFS' FISA CLAIM: (See document for details.) For the foregoing reasons, with respect to Plaintiffs' FISA Section 1810 claim, the Government's motion to dismiss is GRANTED and the Agent Defendants' motions to dismiss are DENIED. (rla) (Entered: 08/14/2012)
		* * * * *
10/12/12	<u>112</u>	NOTICE OF APPEAL to the 9th CCA filed by Individual-Capacity Defendants J Stephen Tidwell, Barbara Walls. Appeal of Order, <u>102</u> (Appeal fee FEE NOT PAID.) (Moran, Katie) (Entered: 10/12/2012)
		* * * * *
10/12/12	<u>115</u>	NOTICE OF APPEAL to the 9th CCA filed by Defendants Paul Allen, Kevin Armstrong, Pat Rose. Appeal of Order, <u>102</u> (Appeal fee of \$455 receipt number 0973-11094403 paid.) (Attachments: # <u>1</u> Supplement) (Machala, Angela) (Entered: 10/12/2012)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
1/3/13	<u>130</u>	NOTICE OF APPEAL to the 9th CCA filed by Plaintiff Yasser Abdelrahim, Yassir Fazaga, Ali Uddin Malik. Appeal of Judgment, <u>129</u> (Appeal fee of \$455 receipt number 0973-11463653 paid.) (Bibring, Peter) (Entered: 01/03/2013)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

Case No. SA11-CV-00301 CJC (VBKx)

YASSIR FAZAGA ET AL., PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATION ET AL.,
DEFENDANTS

Filed: Aug. 8, 2011

**DECLARATION OF ERIC H. HOLDER
ATTORNEY GENERAL OF THE UNITED STATES**

I, Eric H. Holder, hereby state and declare as follows:

1. I am the Attorney General of the United States and head of the United States Department of Justice ('DOJ'), an Executive Department of the United States. *See* 28 U.S.C. §§ 501, 503, 509. The purpose of this declaration is to assert, at the request of the Director of the Federal Bureau of Investigation ("FBI"), and in my capacity as Attorney General and head of DOJ, a formal claim of the state secrets privilege in order to protect the national security interests of the United States. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, and on my evaluation of that information.

2. In the course of my official duties, I have been informed that the plaintiffs in this action—three Muslim

residents of southern California—have filed a class action against the FBI, FBI Director Robert Mueller and Steven M. Martinez, Assistant Director in Charge of the FBI’s Los Angeles Field Office, in their official capacities, claiming alleged violations of the Free Exercise Clause and Establishment Clause of the First Amendment, the Religious Freedom Restoration Act, the equal protection principles of the Fifth Amendment, the Privacy Act, the Fourth Amendment, and the Foreign Intelligence Surveillance Act, and for conspiracy to violate the plaintiff’s civil rights pursuant to 42 U.S.C. § 1985(3). I understand that the plaintiffs allege that the defendants, through the use of a paid confidential informant, engaged in an impermissible investigation to collect personal information indiscriminately on the plaintiffs and others based solely on their religion in violation of their rights under the Constitution and statutory law.

3. I have read and carefully considered the public and classified declarations of Mark Giuliano (“Giuliano Declaration”), Assistant Director of the FBI’s Counterterrorism Division. After careful and actual personal consideration of the matter, I have concluded that disclosure of the three categories of information described below and in more detail in the classified Giuliano Declaration could reasonably be expected to cause significant harm to the national security, and I therefore formally assert the state secrets privilege over this information. The classified Giuliano Declaration, which is available for the Court’s *ex parte, in camera* review, describes in classified detail the information over which I am asserting the state secrets privilege. As Attorney General, I possess original classification authority un-

der § 1.3 of Executive Order (“E.O.”) 13526, dated December 29, 2009. *See* 75 Fed. Reg. 707. The classified Giuliano Declaration is properly classified under § 1.2 E.O. 13526 because public disclosure of the information contained in that declaration also could reasonably be expected to cause significant harm to national security.

4. In unclassified terms, my privilege assertion encompasses information in the following categories:

(i) Subject Identification: Information that could tend to confirm or deny whether a particular individual was or was not the subject of an FBI counterterrorism investigation, including in Operation Flex.

(ii) Reasons for Counterterrorism Investigations and Results: Information that could tend to reveal the initial reasons (*i.e.*, predicate) for an FBI counterterrorism investigation of a particular person (including in Operation Flex), any information obtained during the course of such an investigation, and the status and results of the investigation. This category includes any information obtained from the U.S. Intelligence Community related to the reasons for an investigation.

(iii) Sources and Methods: Information that could tend to reveal whether particular sources and methods were used in a counterterrorism investigation of a particular subject, including in Operation Flex. This category includes previously undisclosed information related to whether court-ordered searches or surveillance, confidential human sources, and other investigative sources and methods were used in a counterterrorism investigation of a particular person, the reasons such methods were used, the status of the use of such sources

and the methods, and any results derived from such methods.

5. As indicated above and explained further below, I have determined that disclosure of information falling into the foregoing categories could reasonably be expected to cause significant harm to national security.

6. First, I concur with the FBI's determination that the disclosure of the identities of subjects of counterterrorism investigations, including Operation Flex, reasonably could be expected to cause significant harm to national security. As the FBI has explained, such disclosures would alert those subjects to the FBI's interest in them and cause them to attempt to flee, destroy evidence, or alter their conduct so as to avoid detection of their future activities, which would seriously impede law enforcement and intelligence officers' ability to determine their whereabouts or gain further intelligence on their activities. In addition, as the FBI has explained, knowledge that they were under investigation could enable subjects to anticipate the actions of law enforcement and intelligence officers, possibly leading to counter-surveillance that could place federal agents at higher risk, and to ascertain the identities of confidential informants or other intelligence sources, placing those sources at risk. Such knowledge, as the FBI has further explained, could also alert associates of the subjects to the fact that the FBI is likely aware of their associations with the subjects and cause them to take similar steps to avoid scrutiny.

7. Second, I agree with the FBI that disclosure that an individual is not a subject of a national security investigation could likewise reasonably be expected to cause significant harm to national security. As the

FBI has explained, disclosure that some persons are not subject to investigation, while the status of others is left unconfirmed, would inherently reveal that FBI concerns remain as to particular persons. Allowing such disclosures, as the FBI indicates, would enable individuals and terrorist groups alike to manipulate the system to discover whether they or their members are subject to investigation. Further, as the FBI has pointed out, individuals who desire to commit terrorist acts could be motivated to do so upon discovering that they are not being monitored.

8. In addition, I agree with the FBI's judgement that where an investigation of a subject has been closed, disclosure that an individual was formerly the subject of a counterterrorism investigation could also reasonably be expected to cause significant harm to national security. Again, I agree with the FBI that, to the extent that an individual had terrorist intentions that were not previously detected, the knowledge that he or she is no longer the subject of investigative interest could embolden him or her to carry out those intentions. Moreover, as the FBI indicates, the fact that investigations are closed does not mean that the subjects have necessarily been cleared of wrongdoing, as closed cases are often reopened based on new information. As the FBI has also explained, even if the former subjects are law-abiding, the disclosure that they had been investigated could still provide valuable information to terrorists and terrorist organizations about the FBI's intelligence and concerns, particularly where the former subjects have associates whom the FBI may still be investigating based on the FBI's interest in the closed subject could alert such associates to the FBI's interest in them and

lead them to destroy evidence or alter their conduct so as to avoid detection of their future activities.

9. Third, I agree with the FBI's judgement that disclosure of the reasons for and substance of a counterterrorism investigation—whether the initial predicate for opening an investigation, information gained during the investigation, or the status or results of the investigation—could also reasonably be expected to cause significant harm to national security. As the FBI has determined, such disclosures would reveal to subjects who are involved in or planning to undertake terrorist activities what the FBI knows or does not know about their plans and the threat they pose to national security. Even if the subjects have no terrorist intentions, as the FBI has explained, disclosure of the reasons they came under investigation may reveal sensitive intelligence information about them, their associates, or particular threat that would harm other investigations. More generally, as the FBI has also explained, disclosure of the reasons for an investigation could provide insights to persons intent on committing terrorist attacks as to what type of information is sufficient to trigger an inquiry by the FBI, and what sources and methods the FBI employs to obtain information on a person.

10. Finally, I agree with the FBI that the disclosure of certain information that would tend to describe, reveal, confirm or deny the existence or use of FBI investigative sources and methods, or techniques used in the counterterrorism investigations at issue in this case could likewise be reasonably expected to cause significant harm to national security. This aspect of my privilege assertion would include information that would

tend to reveal whether court-ordered searches or surveillance, confidential human sources, and other investigative sources and methods were used in a counterterrorism investigation of a particular person, the reasons for and the status of the use of such sources and methods, and any results derived from such methods. The disclosure of such information, as the FBI has explained, could reveal not only the identities of particular subjects but also the steps taken by the FBI in counterterrorism matters. I agree with the FBI's assessment that such information would effectively provide a road map to adversaries on how the FBI goes about detecting and preventing terrorist attacks.

11. Any further elaboration concerning the foregoing matters on the public record would reveal information that could cause the very harms my assertion of the state secrets privilege is intended to prevent. The classified Giuliano Declaration, submitted for *ex parte*, *in camera*, provides a more detailed explanation of the information over which I am asserting the privilege and the harms to national security that would result from disclosure of that information.

12. On September 23, 2009, I announced a new Executive Branch policy governing the assertion and defense of the state secrets privilege in litigation. Under the policy, the Department of Justice will defend an assertion of the state secrets privilege in litigation, and seek dismissal of a claim on that basis, only when "necessary to protect against the risk of significant harm to national security." See Exhibit 1 (State Secrets Policy) ¶ 1(A). The policy provides further that an application of a privilege assertion must be narrowly tailored and

that dismissal be sought pursuant to the privilege assertion only when necessary to prevent significant harm to national security. *Id.* ¶ 1(B). Moreover, “[t]he Department will not defend an invocation of the privilege in order to: (i) conceal violations of the law, inefficiency, or administrative error; (ii) prevent embarrassment to a person, organization, or agency of the United States government; (iii) restrain competition; or (iv) prevent or delay the release of information the release of which would not reasonably be expected to cause significant harm to national security.” *Id.* ¶ 1(C). The policy also established detailed procedures for review of a proposed assertion of the state secrets privilege in a particular case. *Id.* ¶ 2. Those procedures require submissions by the relevant government departments or agencies specifying “(i) the nature of the information that must be protected from unauthorized disclosure; (ii) the significant harm to national security that disclosure can reasonably be expected to cause; [and] (iii) the reason why unauthorized disclosure is reasonably likely to cause such harm.” *Id.* ¶ 2(A). Based on my personal consideration of the matter, I have determined that the requirements for an assertion and defense of the state secrets privilege have been met in this case in accord with the September 2009 State Secrets Policy.

I declare under penalty of perjury that the foregoing is true and correct

Executed this 29th day of July, 2011, In Washington, D.C.

/s/ ERIC H. HOLDER
ERIC H. HOLDER
Attorney General of the United States

**EXHIBIT 1 TO DECLARATION OF
ATTORNEY GENERAL ERIC H. HOLDER**



**Office of the Attorney General
Washington, D.C. 20530**

Sept. 23, 2009

MEMORANDUM FOR HEADS OF EXECUTIVE
DEPARTMENTS AND AGENCIES

MEMORANDUM FOR THE HEADS OF DEPART-
MENT COMPONENTS

FROM: [EH] THE ATTORNEY GENERAL

SUBJECT: Policies and Procedures Governing
Invocation of the State Secrets Privilege

I am issuing today new Department of Justice policies and administrative procedures that will provide greater accountability and reliability in the invocation of the state secrets privilege in litigation. The Department is adopting these policies and procedures to strengthen public confidence that the U.S. Government will invoke privilege in court only when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests. The policies and procedures set forth in this Memorandum are effective as of October 1, 2009, and the Department shall apply them in all cases in which a government department or agency thereafter seeks to invoke the state secrets privilege in litigation.

1. **Standards for Determination**

A. Legal Standard. The Department will defend an assertion of the state secrets privilege (“privilege”) in litigation when a government department or agency seeking to assert the privilege makes a sufficient showing that assertion of the privilege is necessary to protect information the unauthorized disclosure of which reasonably could be expected to cause significant harm to the national defense or foreign relations (“national security”) of the United States. With respect to classified information, the Department will defend invocation of the privilege to protect information properly classified pursuant to Executive Order 12958, as amended, or any successor order, at any level of classification, so long as the unauthorized disclosure of such information reasonably could be expected to cause significant harm to the national security of the United States. With respect to information that is nonpublic but not classified, the Department will also defend invocation of the privilege so long as the disclosure of such information reasonably could be expected to cause significant harm to the national security of the United States.

B. Narrow Tailoring. The Department’s policy is that the privilege should be invoked only to the extent necessary to protect against the risk of significant harm to national security. The Department will seek to dismiss a litigant’s claim or case on the basis of the state secrets privilege only when doing so is necessary to protect against the risk of significant harm to national security.

C. Limitations. The Department will not defend an invocation of the privilege in order to: (i) conceal

violations of the law, inefficiency, or administrative error; (ii) prevent embarrassment to a person, organization, or agency of the United States government; (iii) restrain competition; or (iv) prevent or delay the release of information the release of which would not reasonably be expected to cause significant harm to national security.

2. Initial Procedures for Invocation of the Privilege

A. Evidentiary Support. A government department or agency seeking invocation of the privilege in litigation must submit to the Division in the Department with responsibility for the litigation in question¹ a detailed declaration based on personal knowledge that specifies in detail: (i) the nature of the information that must be protected from unauthorized disclosure; (ii) the significant harm to national security that disclosure can reasonably be expected to cause; (iii) the reason why unauthorized disclosure is reasonably likely to cause such harm; and (iv) any other information relevant to the decision whether the privilege should be invoked in litigation.

¹ The question whether to invoke the privilege typically arises in civil litigation. Requests for invocation of the privilege in those cases shall be addressed to the Civil Division. The question whether to invoke the privilege also may arise in cases handled by the Environment and Natural Resources Division (ENRD), and requests for invocation of the privilege shall be addressed to ENRD in those instances. It is also possible that a court may require the Government to satisfy the standards for invoking the privilege in criminal proceedings. *See United States v. Araf*, 533 F.3d 72, 78-80 (2d Cir. 2008); *but see United States v. Rosen*, 557 F.3d 192, 198 (4th Cir. 2009). In such instances, requests to submit filings to satisfy the standard shall be directed to the National Security Division.

B. Recommendation from the Assistant Attorney General. The Assistant Attorney General for the Division responsible for the matter shall formally recommend in writing whether or not the Department should defend the assertion of the privilege in litigation. In order to make a formal recommendation to defend the assertion of the privilege, the Assistant Attorney General must conclude, based on a personal evaluation of the evidence submitted by the department or agency seeking invocation of the privilege, that the standards set forth in Section 1(a) of this Memorandum are satisfied. The recommendation of the Assistant Attorney General shall be made in a timely manner to ensure that the State Secrets Review Committee has adequate time to give meaningful consideration to the recommendation.

3. **State Secrets Review Committee**

A. Review Committee. A State Secrets Review Committee consisting of senior Department of Justice officials designated by the Attorney General will evaluate the Assistant Attorney General's recommendation to determine whether invocation of the privilege in litigation is warranted.

B. Consultation. The Review Committee will consult as necessary and appropriate with the department or agency seeking invocation of the privilege in litigation and with the Office of the Director of National Intelligence. The Review Committee must engage in such consultation prior to making any recommendation against defending the invocation of the privilege in litigation.

C. Recommendation by the Review Committee. The Review Committee shall make a recommendation to the Deputy Attorney General, who shall in turn make a recommendation to the Attorney General.² The recommendations shall be made in a timely manner to ensure that the Attorney General has adequate time to give meaningful consideration to such recommendations.

4. Attorney General Approval

A. Attorney General Approval. The Department will not defend an assertion of the privilege in litigation without the personal approval of the Attorney General (or, in the absence or recusal of the Attorney General, the Deputy Attorney General or the Acting Attorney General).

B. Notification to the Agency or Department Head. In the event that the Attorney General does not approve invocation of the privilege in litigation with respect to some or all of the information a requesting department or agency seeks to protect, the Department will provide prompt notice to the head of the requesting department or agency.

C. Referral to Agency or Department Inspector General. If the Attorney General concludes that it would be proper to defend invocation of the privilege in a case, and that invocation of the privilege would preclude adjudication of particular claims, but that the

² In civil cases, the review committee's recommendation should be made through the Associate Attorney General to the Deputy Attorney General, who shall in turn make a recommendation to the Attorney General.

case raises credible allegations of government wrongdoing, the Department will refer those allegations to the Inspector General of the appropriate department or agency for further investigation, and will provide prompt notice of the referral to the head of the appropriate department or agency.

5. Reporting to Congress

The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege.

6. Classification Authority

The department or agency with classification authority over information potentially subject to an invocation of the privilege at all times retains its classification authority under Executive Order 12958, as amended, or any successor order.

7. No Substantive or Procedural Rights Created

This policy statement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

Case No. SACV11-00301 CJC (VBKx)

YASSER FAZAGA, ET AL., PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATIONS, ET AL.,
DEFENDANTS

Filed: Aug. 1, 2011

**PUBLIC DECLARATION OF MARK F. GIULIANO
FEDERAL BUREAU OF INVESTIGATION**

I, Mark F. Giuliano, hereby declare the following:

1. I am the Assistant Director, Counterterrorism Division, Federal Bureau of Investigation (the FBI), United States Department of Justice. I am responsible for, among other things, directing the conduct of FBI counterterrorism investigations. As Assistant Director, I have official supervision and control over the files and records of the Counterterrorism Division, FBI Headquarters, Washington, D.C. In addition, I have been delegated original classification authority by the Director of the FBI. *See* Executive Order 13,526, Section 1.3(c).v As a result, and pursuant to all applicable Executive Orders, I am responsible for the protection of classified national security information within the Counterterrorism Division of the FBI, including the sources and methods used by the FBI in the collection

of national security information. I have been authorized by the Director of the FBI to execute declarations and affidavits in order to protect such information. The matters stated herein are based on my personal knowledge and on information furnished to me in the course of my official duties.

2. I submit this declaration in support of the Attorney General's assertion of the state secrets privilege in this case. I describe below, as best I am able to do in unclassified terms, certain information related to FBI counterterrorism investigations that is implicated by the allegations of this lawsuit and which in my judgment should be protected from disclosure to avoid significant harm to national security.¹ As an original FBI classification authority and the official charged with general supervisory responsibilities for the FBI's counterterrorism investigations, I have concluded that the unauthorized disclosure of the privileged information described herein reasonably could be expected to cause significant harm to the national security.

SUMMARY

3. I have reviewed the Complaint in this matter and I am aware of the allegations it contains that the FBI, through Craig Monteilh acting as an informant for the FBI in an investigation known as Operation Flex, infiltrated mosques in Southern California and indiscriminately collected personal information on hundreds and

¹ I am also separately providing a declaration solely for the Court's *ex parte, in camera* review, that discusses these matters in more detail with reference to information that cannot be disclosed on the public record.

perhaps thousands of innocent Muslim Americans, including the three named plaintiffs, Yassir Fazaga, Ali Uddin Malik and Yasser AbdelRahim, due solely to their religion. See Complaint, ¶¶ 1-3, 6, 84. The plaintiffs specifically allege that, after attacks of September 11, 2001, the FBI has improperly focused its counterterrorism efforts on the Muslim community in the United States. See *id.* ¶¶ 24-27. The plaintiffs also cite guidelines issued by the Attorney General for counterterrorism investigations and assert that “the combined effect” of these guidelines was to authorize the FBI to engage in intrusive investigation of First Amendment protected activity, and specifically religious practices, without any factual basis to believe any criminal violations or threat to national security existed. See Compl. ¶¶ 28-35. Plaintiffs also allege that guidelines issued by the Attorney General in 2008, as well as the FBI’s *Domestic Intelligence and Operations Guides* (“DIOG”) published in December 2008, permit investigative activity “based on extremely limited information, including information about the First Amendment expression of subjects.” See Compl. ¶¶ 36-37. Accordingly, this lawsuit puts at issue whether the FBI has undertaken counterterrorism investigative activity of Muslim Americans and mosques in Southern California, and of the three plaintiffs in particular, through the use of Monteilh as an informant, which was impermissibly based solely on religion or First Amendment-protected activities.

4. The Attorney General Guidelines and FBI policies cited by the plaintiffs in the Complaint include a prohibition on the FBI’s undertaking investigative activity based solely on First Amendment activities. For example, *The Attorney General’s Guidelines for FBI*

National Security Investigations and Foreign Intelligence Collection, effective October 31, 2003 (Excerpts at Tab 1) (“AG 2003”), and the Guidelines which superseded them, *The Attorney General’s Guidelines for Domestic FBI Operations* issued by the Attorney General on September 29, 2008 (Excerpts at Tab 2) (“AG 2008”), state: “These guidelines do not authorize investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.” See Tab 2, AG 2008 at 13; see also Tab 1, AG 2003 at 7-8.

5. Likewise, the FBI’s DIOG contains an extensive discussion of the FBI’s policy to undertake its investigations with full adherence to the Constitutional protections and civil liberties of the American people. See Tab 3 (DIOG Excerpts). In particular, the DIOG prohibits investigative activity conducted for the sole purpose of monitoring the exercise of Constitutional rights or on the basis of race, ethnicity, national origin, or religion. See DIOG at 21-38. Under the DIOG, there must be an authorized purpose for investigative activity that could have an impact on religious practice. *Id.* at 21. The DIOG provides that an authorized purpose of FBI investigative activity must avoid actual—and the appearance of—interference with religious practice to the maximum extent possible. *Id.* at 27. The DIOG also explains, however, that this policy does not mean that religious practitioners or religious facilities are completely free from being examined as part of FBI investigative activity. 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, religious affiliation does not immunize them to any degree from FBI investigative action. *Id.* Nonetheless, FBI policy states that the authorized purpose of an investigation must be properly documented and that investigative activity directed at religious leaders or occurring at religious facilities must 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. *Id.*

6. Addressing plaintiffs' allegations in this case will risk or require the disclosure of certain sensitive information concerning counterterrorism investigative activity in Southern California, including in particular the nature and scope of Operation Flex. As indicated below, the FBI previously has acknowledged that it utilized Mr. Monteilh as a confidential human source and has disclosed some limited information concerning his actions. However, certain specific information pertinent to the allegations about Operation Flex and Monteilh's activities remains highly sensitive information concerning counterterrorism matters that if disclosed reasonably could be expected to cause significant harm to national security. As described below, this includes:

- (i) the identities of individuals who have or have not been the subject of counterterrorism investigations, including in Operation Flex, and the status and results of any such investigations;
- (ii) information concerning why particular individuals were subject to investigation, including in Operation Flex; and

(iii) particular sources and methods used in obtaining information for counterterrorism investigations, including in Operation Flex.

BACKGROUND

A. The Continuing Terrorist Threat Since September 11, 2001

7. Before describing the information that the FBI seeks to protect in this case through the Attorney General's privilege assertion, I set forth some background on the FBI's counterterrorism actions since the 9/11 attacks. FBI Director Robert Mueller has made clear that the FBI's number one priority continues to be the prevention of terrorist attacks against the United States.² As Director Mueller explained in Congressional testimony, since the 2001 terrorist attacks, al Qaeda's intent to conduct high-profile attacks inside the United States has been unwavering. Recent investigations reveal that the group has adapted its strategy for conducting such attacks. In the immediate aftermath of 9/11, al Qaeda's plots and plans primarily focused on using individuals from the Middle East or South Asia for such attacks. More recent plots—beginning in August 2006 with the attempted plan to commit attacks against U.S.-bound aircraft using improvised explosive devices—suggest al Qaeda is also putting more emphasis on finding recruits or trainees from the West to play key roles for these homeland specific operations.

² See Testimony of Director Mueller before the Senate Committee on Homeland Security and Governmental Affairs (Sept. 22, 2010) (available at <http://www.fbi.gov/news/testimony/nine-years-after-9-11-confronting-the-terrorist-threat-to-the-u.s> (last visited on July 20, 2011)).

8. Al Qaeda's effort to recruit, train, and deploy operatives to attack worldwide, but specifically in the United States, was demonstrated with the arrest of Najibullah Zazi, who was plotting to attack the New York City subway system. The fact that Zazi and his associates had access to the United States and were familiar with the environment here from an operational security and targeting perspective demonstrates how al Qaeda can leverage Americans. The potential exists for al Qaeda to use and train other Americans for additional homeland attacks. Identifying these individuals is among the FBI's highest counterterrorism priorities.

9. A similar example may be seen in the May 2010 failed attempt of Faisal Shazad to detonate a car bomb in Times Square, an attack for which Tehrik-e-Taliban in Pakistan (TTP) claimed responsibility. Like al Qaeda's use of Zazi, TTP's use of Shazad—a naturalized U.S. citizen who had lived for years in the United States—to attempt to attack the homeland underscores the operational role people in the United States can play for al Qaeda and its affiliates. Similarly, al Qaeda of the Arabian Peninsula (AQAP) demonstrated its intent to target the U.S. homeland in the failed attempt by Umar Farouk Abdulmutallab to bomb Northwest Flight 253 to Chicago on December 25, 2009. Much like the other attacks, AQAP was able to identify a willing recruit who was committed to attacking the United States and whose background did not raise traditional security scrutiny.

10. The threat of homegrown violent extremists—those who have lived primarily inside the United States and may commit acts of violence in furtherance of the objectives of a foreign terrorist organization—also remains a particular concern. Such individuals may be

inspired by the global jihadist movement to commit violent acts inside the United States but do not necessarily receive direct guidance from terrorist groups overseas. A good example of this type of homegrown threat occurred in the Los Angeles area. On September 11, 2005, a group of armed men planned to enter a military recruiting center on a busy street in Santa Monica and kill everyone inside. Their plan was to then go underground for a month and re-emerge on Yom Kippur. They plotted to open fire on families gathered outside a temple in West Los Angeles, preparing to celebrate the holy day. The members of this homegrown cell planned these attacks in a jail cell in Folsom Prison. They had no official connection to al Qaeda, but they had adopted its cause. They had raised the money, recruited the participants, chosen the targets, obtained the weapons, and set the date. These terrorists were poised to strike, but they made a key mistake by first committing a series of gas station robberies to raise money to finance their attacks. Police in Torrance, California, arrested two of the men for robbery and, when their apartment was searched, documents were discovered that listed the addresses of military recruiting stations and local synagogues. The Torrance police then contacted the Los Angeles Joint Terrorism Task Force (JTTF). From that point, hundreds of investigators worked at an FBI command post to identify other members of the cell. Ultimately, the FBI, working through the JTTF, was able to disrupt this particular home grown attack. But the threat of such attacks persists, and the FBI continues to devote extensive effort to detecting and preventing other such attacks.

B. The FBI's Use of Monteilh as Confidential Source

11. In 2009, the FBI acknowledged that it utilized Monteilh as a confidential human source during a criminal proceeding in this district involving Ahmadullah Niazi.³ From 2006-2007, Monteilh reported on a group of counterterrorism investigations that was given the name Operation Flex. Operation Flex focused on fewer than 25 individuals and was directed at detecting and preventing possible terrorist attacks. The goal of Operation Flex was to determine whether particular individuals were involved in the recruitment and training of individuals in the United States or overseas for possible terrorist activity.

12. The FBI has previously disclosed some of the actions Mr. Monteilh undertook as a confidential informant for the FBI and some of the information he collected for the FBI. Specifically, during the *Niazi* criminal case noted above, the FBI disclosed to the defendant in that case the content of some of the audio and video recordings containing conversations between Mr. Monteilh and the defendant and others. The FBI also acknowledged in the *Niazi* case that Mr. Monteilh provided handwritten notes to the FBI, and it produced cer-

³ In the criminal case *United States v. Ahmadullah Niazi*, U.S.D.C., C.D. Cal., No. SACR 09-28-AN, FBI Special Agent Thomas Ropel testified at a detention hearing in that case that an FBI informant who had provided information concerning Mr. Niazi was the same person Mr. Niazi had reported to the FBI as a possible terrorist. Although SA Ropel did not identify Mr. Monteilh by name, Mr. Niazi knew that Monteilh was the person he had reported to the FBI as a possible terrorist. (The *Niazi* indictment in that criminal case was later dismissed by the United States without prejudice.)

tain notes provided by Mr. Monteilh concerning Mr. Ni-azi. The FBI is presently assessing whether additional audio, video, or notes can be disclosed without risking disclosure of the privileged information described below and significant harm to national security interests in protecting counterterrorism investigations.

13. However, as set forth below, the FBI must protect certain specific information concerning counterterrorism investigative matters related to the allegations of this case, including Operation Flex in which Monteilh was involved. In particular, the FBI cannot publicly disclose the identities of specific subjects of counterterrorism investigations (some of which remain open), the identities of those who have not been subject to investigation, the precise number of Operation Flex subjects, the reasons particular individuals were subject to investigation, or particular sources and methods of investigation used in counterterrorism cases.

14. Monteilh has provided numerous statements to the media discussing his purported activities on behalf of the FBI. He has also filed his own lawsuit against the FBI and agents in their personal capacity in which he makes allegations related to his work as an FBI source. *See Monteilh v. FBI, et al.*, U.S.D.C., C.D. Cal., Civil Action No. 10-102. The FBI has not confirmed or denied any of Monteilh's public allegations concerning his work for the FBI, and his allegations do not constitute a disclosure or confirmation by the FBI of any information concerning his activities as an informant.

**INFORMATION SUBJECT TO STATE SECRETS
PRIVILEGE AND HARM TO NATIONAL SECURITY
FROM DISCLOSURE**

15. The categories of information that the FBI seeks to protect in this case through the Attorney General's privilege assertion are described below. Upon my personal consideration, I have determined that disclosure of information in these categories reasonably could be expected to cause significant harm to national security:

(1) ***Subject Identification:*** Information that could tend to confirm or deny whether a particular individual was or was not the subject of an FBI counterterrorism investigation, including in Operation Flex.

(2) ***Reasons for Counterterrorism Investigations and Results:*** Information that could tend to reveal the initial reasons (i.e. predicate) for an FBI counterterrorism investigation of a particular person (including in Operation Flex), any information obtained during the course of such an investigation, and the status and results of the investigation. This category includes information obtained from the U.S. Intelligence Community related to the reasons for an investigation.

(3) ***Sources and Methods:*** Information that could tend to reveal whether particular sources and methods were used in a counterterrorism investigation of a particular subject, including in Operation Flex. This category includes previously undisclosed information related to whether court-ordered searches or surveillance, confidential human sources, and other investigative sources and methods, were used in a

counterterrorism investigation of a particular person, the reasons such methods were used, the status of the use of such sources and methods, and any results derived from such methods.⁴

I. Subject Identification and Reasons for Investigation

16. The FBI seeks to protect through the Attorney General's privilege assertion information that would confirm or deny whether particular individuals were the subjects of FBI counterterrorism investigations, and the predicate for, information obtained in, and the status and results of any counterterrorism investigations action of particular persons. I describe below in unclassified terms why the disclosure of such information reasonably could be expected to cause significant harm to national security. I address first the process for approval and oversight of FBI counterterrorism investigations under then-applicable Attorney General Guidelines.

A. Counterterrorism Guidelines Applicable to Operation Flex

17. At the time the investigations at issue in this case were opened, the October 31, 2003 Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSIG) were

⁴ This description of the broad categories of information subject to the Attorney General's claim of privilege is not meant to foreclose the possibility that other information related to FBI counterterrorism investigations including Operation Flex may be identified in later proceedings as subject to privilege.

in effect. The NSIG authorized three levels of investigative activity: threat assessments, preliminary investigations and full investigations.

18. The 2003 AG Guidelines authorized the FBI to undertake threat assessments to proactively draw on available sources of information to identify terrorist threats and activities through non-intrusive investigative techniques, including obtaining publicly available information, accessing information available within the FBI and Department of Justice, requesting information from other government entities, using online resources, interviewing previously established assets, and conducting non-pretextual interviews of members of the public and private entities. The authority to undertake threat assessments could be used in cases in which information or an allegation concerning possible terrorist activity or other national security threats by an individual, group, or organization were received by the FBI and the matter could be checked promptly through the relatively non-intrusive means described above.

19. A Preliminary Investigation could be initiated under the 2003 guidelines to determine whether a full investigation was appropriate based upon “information or an allegation” indicating a threat to the national security, for example, that an individual is or may be an international terrorist or an agent of a foreign power; an individual, group or organization is or may be engaging, or has or may have engaged, in activities constituting a threat to the national security (or related preparatory or support activities) for or on behalf of a foreign power; or an individual, group or organization is, or may be, the target of a recruitment or infiltration effort by an international terrorist, foreign power, or agent of a foreign

power under circumstances related to a threat to the national security. Most Preliminary Investigations could be approved by either the Special Agent in Charge (SAC) of the field office or, as authorized by the Special Agent in Charge, by an Assistant Special Agent in Charge (ASAC) or squad supervisor with responsibility for national security investigations. A field office was required under the 2003 guidelines to notify FBI Headquarters of the initiation of the investigation and to identify the grounds for the investigation. FBI Headquarters, in turn, was required to provide notice of the initiation of the investigation to the Department of Justice's Office of Intelligence Policy and Review (OIPR).⁵ All lawful investigative techniques could be used in a Preliminary Investigation except for mail opening, physical search, or electronic surveillance requiring judicial order or warrant.

20. A Preliminary Investigation was to be completed within six months of the date of initiation, but if warranted by facts or information obtained in the course of the investigation, senior field office managers could authorize a six-month extension. An extension of a Preliminary Investigation beyond the initial one-year period required FBI Headquarters approval and could be granted in six-month increments. FBI Headquarters was required to notify OIPR of any extensions by FBI Headquarters beyond the initial one-year period.

⁵ The Office of Intelligence Policy and Review became part of the National Security Division (NSD) in the Department of Justice and has been renamed the Office of Intelligence.

21. A Full Investigation was authorized under the same circumstances as a Preliminary Investigation except that instead of “information or an allegation” of a threat to the national security the SIG required that “specific and articulable facts” gave reason to believe that a threat to the national security may exist. Most Full Investigations could be approved by either the SAC of the field office or, as authorized by the SAC, by an ASAC. The notice requirements for the initiation of a Full Investigation were the same as for the initiation of a Preliminary Investigation. All lawful investigative techniques could be used in a Full Investigation. The FBI was required under the 2003 guidelines to notify OIPR and the Criminal Division at the end of each year a full investigation continued and to provide OIPR and the Criminal Division with a summary of the investigation.

22. All of the investigations of Operation Flex subjects were opened with supervisory authority and subject to internal FBI and DOJ oversight.

B. Harm to National Security from Disclosure of Counterterrorism Investigation Subjects and Reasons for Investigation

23. Disclosure of the identity of subjects of counterterrorism investigations could reasonably be expected to result in significant harm to national security. First, disclosure of the subjects of open counterterrorism investigations would obviously alert those subjects to the fact of the FBI’s current interest in them. Such knowledge would cause significant harm to FBI counterterrorism investigations, as subjects could attempt to flee, destroy evidence or take steps to alter their conduct so

as to avoid detection of their future activities by law enforcement. In these circumstances, law enforcement and intelligence officers would be significantly hindered in gathering further intelligence on their activities or determine their whereabouts. In addition, knowledge that they were under investigation might enable subjects to anticipate the activities of law enforcement and intelligence officers, perhaps conducting counter-surveillance activities that could place Federal agents at greater risk. Such knowledge would also alert associates of the subjects to the fact that the FBI is likely aware of their associations with the subject, causing them to take similar steps to avoid scrutiny. Disclosing the identities of counterterrorism subjects also could enable subjects to ascertain the identities of confidential informants or other sources of intelligence, putting those sources at risk.

24. Disclosure that an individual is not a subject of a national security investigation also reasonably could be expected to cause significant harm to national security. Individuals or terrorist groups could manipulate the system to discover whether they or their members are subject to investigation. Disclosure that some persons are not subject to investigation, while the status of others is not confirmed, would inherently reveal that concerns remains as to particular persons. Also, if individuals desire to commit terrorist acts, notification that they are not under investigation would inform them that they can move without detection. Indeed, confirmation that an individual is not under investigation could provide an incentive to those so inclined to commit a terrorist act before becoming subject to investigative interest.

25. Similarly, even where an investigation has been closed, disclosing that an individual formerly was the

subject of a counterterrorism investigation reasonably could be expected to cause significant harm to national security. Disclosure that an individual had been, but is no longer, under investigation might induce that subject to evaluate previous conduct and interactions to determine what information the Government may have obtained about them. As noted, to the extent that the individual's terrorism-related intentions were not previously detected and the individual later decided to undertake terrorist activity, knowing one was no longer the subject of investigative interest might embolden that person to operate confident that there is not a threat of detection. In addition, the fact that investigations are closed typically does not indicate that the subjects have been "cleared" of wrongdoing. Closed cases are often reopened based on new information.

26. Even if individuals are entirely law-abiding, disclosure that they were once, but no longer are, the subjects of counterterrorism investigations would provide valuable intelligence to suspected terrorists and terrorist organizations regarding the intelligence and suspicions the FBI has regarding them. Indeed, even if the FBI has closed an investigation on one subject, it may have open investigations on the associates of that subject who are engaged in or still suspected of ties to terrorist activity. Disclosing that investigations on certain persons are closed where the FBI has not found a current nexus to terrorism could still alert their associates of the FBI interests in them, which could lead these associates to destroy evidence or alter their conduct so as to avoid detection of their future activities by law enforcement.

27. In addition, disclosure that a person had been a subject of a closed counterterrorism investigation would

also provide an important insight into the FBI's investigative sources and methods. The FBI may open a counterterrorism investigation based on an individual's association with a subject of another open counterterrorism investigation, when the association is close enough to indicate a threat to the national security. If the subjects of FBI investigations were disclosed, individuals closely associated with that subject would be on notice that they may be subjects of investigations, and thus take steps to avoid detection.

28. Even if a person believes that he or she might have been under investigation based on unconfirmed public speculation or other information, confirmation of that fact by the Government in litigation would remove all doubt and would not only confirm who was or was not subject to investigation, but would tend to reveal why the Government had a particular interest or concern with certain individuals. This would inherently reveal the focus (or lack thereof) of investigative action.

29. Similarly, disclosure of the substance of a counterterrorism investigation—whether the initial predicate, information gained during the investigation, status, and results—would reveal a range of sensitive counterterrorism investigative information, even if the investigation does not identify any nexus to terrorism. There is, first, the obvious harm of revealing to subjects who may in fact be bent on terrorist activity what the FBI knows or does not know about their plans and the threat they pose to national security. Even if a person is not intent on committing terrorist acts, the reasons they came under suspicion may involve sensitive intelligence information about them, their associates, or a particular threat, the disclosure of which could harm other

pending or future investigations. More generally, disclosure of the reasons for an investigation could indicate what kind of information is sufficient to trigger an inquiry by the FBI, thus providing insights to those intent on terrorism on how to avoid detection. Finally, as discussed further below, disclosure of the reasons for an investigation may reveal sensitive sources and methods related to how the FBI may obtain information on a person.

II. FBI Investigative Sources, Methods, Techniques in Operation Flex

30. The FBI also seeks to protect through the Attorney General's privilege assertion information that would tend to describe, reveal, confirm or deny the existence or use of FBI investigative sources, methods, or techniques of counterterrorism investigations that were utilized in Operation Flex against particular subjects. This category includes previously undisclosed information related to whether court-ordered searches or surveillance, confidential human sources, and other investigative sources and methods, were used in a counterterrorism investigation of a particular person, the reasons such methods were used, the status of the use of such sources and methods, and any results derived from such methods

31. The disclosure of the information in this category reasonably could be expected to cause significant harm to the national security. The disclosure of sources and methods used in a particular investigation would reveal not only the identities of particular subjects but the steps taken by the FBI in counterterrorism investigations. FBI sources and methods for investigating potential terrorist threats are of the utmost significance, because the FBI's top priority is to detect and prevent

terrorist attacks. The disclosure of sources and methods, such as confidential human sources, the existence of surveillance, and the use of other techniques, would provide a roadmap to adversaries as to how the FBI goes about this vital task. For these reasons, disclosure of the sources and methods used by the FBI in a particular counterterrorism investigation, including in Operation Flex, reasonably could be expected to cause significant harm to national security.

CONCLUSION

32. For the reasons set forth above, based on my personal consideration of the matter, I have determined that disclosure of the information in the three categories described above reasonably could be expected to cause significant harm to national security. I refer the Court to my classified declaration, submitted solely for *in camera, ex parte* review, for further details concerning the information subject to the Attorney General's privilege assertion.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: [7/25/11]

/s/ MARK F. GIULIANO
MARK F. GIULIANO
Assistant Director
Counterterrorism Division
Federal Bureau of Investigation
United States Department of Justice

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No.: SA CV 11-00301 CJC (VBKx)

YASSIR FAZAGA, ALI UDDIN MALIK, YASSER
ABDELRAHIM, PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATION; UNITED STATES
OF AMERICA; ROBERT MUELLER, DIRECTOR OF THE
FEDERAL BUREAU INVESTIGATION, IN HIS OFFICIAL
CAPACITY; STEVEN MARTINEZ, ASSISTANT DIRECTOR
IN CHARGE, FEDERAL BUREAU OF INVESTIGATION'S
LOS ANGELES DIVISION, IN HIS OFFICIAL CAPACITY;
J. STEPHEN TIDWELL; BARBARA WALLS; PAT ROSE;
KEVIN ARMSTRONG; PAUL ALLEN; DOES 1-20,
DEFENDANTS

Filed: [Sep. 13, 2011]

**FIRST AMENDED COMPLAINT
CLASS ACTION**

Before: HONORABLE CORMAC J. CARNEY.

PRELIMINARY STATEMENT

1. This case concerns an FBI-paid agent provocateur who, by misrepresenting his identity, infiltrated several mainstream mosques in Southern California, based on the FBI's instructions that he gather information on Muslims.

2. The FBI then used him to indiscriminately collect personal information on hundreds and perhaps

thousands of innocent Muslim Americans in Southern California. Over the course of fourteen months, the agents supervising this informant sent him into various Southern California mosques, and through his surveillance gathered hundreds of phone numbers, thousands of email addresses, hundreds of hours of video recordings that captured the interiors of mosques, homes, businesses, and the associations of hundreds of Muslims, thousands of hours of audio recording of conversations—both where he was and was not present—as well as recordings of religious lectures, discussion groups, classes, and other Muslim religious and cultural events occurring in mosques.

3. This dragnet investigation did not result in even a single conviction related to counterterrorism. This is unsurprising, because the FBI did not gather the information based on suspicion of criminal activity, but instead gathered the information simply because the targets were Muslim.

4. Ironically, the operation ended when members of the Muslim communities of Southern California reported the informant to the police because of his violent rhetoric, and ultimately obtained a restraining order against him.

5. After this, the informant's identity was revealed, first in court documents where the FBI and local law enforcement revealed his role, and then through his own statements which were reported widely in the press.¹

¹ See, e.g., Jerry Markon, *Tension grows between Calif. Muslims, FBI after informant infiltrates mosque*, WASH. POST (Dec. 5, 2010); Gillian Flaccus, *Calif. case highlights use of mosque informants*, ASSOC. PRESS (Mar. 1, 2009); Matt Coker, *A look at Craig*

6. By targeting Muslims in the Orange County and Los Angeles areas for surveillance because of their religion and religious practice, the FBI's operation not only undermined the trust between law enforcement and the Southern California Muslim communities, it also violated the Constitution's fundamental guarantee of government neutrality toward all religions.

7. The First Amendment guarantees that no person should be singled out for different treatment by government because of his or her religion. "The First Amendment mandates governmental neutrality between religion and religion. The State may not adopt programs or practices which aid or oppose any religion. This prohibition is absolute." *Larson v. Valente*, 456 U.S. 228, 246 (1982) (quotations and citations omitted).

8. By this class action, Plaintiffs seek injunctive relief for themselves and the class of individuals whom Defendants subjected to surveillance and gathered identifiable information about because they are Muslim. Specifically, they seek an order requiring the federal government to destroy the information about them which it collected through this unlawful operation. The named Plaintiffs also seek damages for themselves as individuals based on the claims set forth below.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Because this lawsuit alleges violation of the United States Constitution and federal statutes, it raises questions of federal law. Because

Monteilh, OC WEEKLY (Mar. 4, 2009); Teresa Watanabe and Paloma Esquivel, *L.A. area Muslims say FBI Surveillance has a chilling effect* L.A. TIMES (Mar. 1, 2009).

those violations include violations of 42 U.S.C. § 1985 and laws to protect civil rights, this Court also has jurisdiction under 28 U.S.C. § 1343. Because those violations include violations of the Privacy Act, *see* 5 U.S.C. 552a(e)(7), this Court also has jurisdiction under 5 U.S.C. 552a(g)(1)(D).

10. This Court has the authority to grant damages, declaratory and injunctive relief, and any other appropriate relief pursuant to *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971); 28 U.S.C. 1331; 28 U.S.C. § 1343; 42 U.S.C. § 1985; 42 U.S.C. § 2000bb; 5 U.S.C. 552a; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. A substantial, actual, and continuing controversy exists between the parties, with respect to both the class's claim for injunctive relief in the form of file destruction and the individual claims for damages.

11. Venue is proper in the Central District of California under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

PARTIES

12. Plaintiff Sheikh Yassir Fazaga is a thirty-eight year-old U.S. citizen born in Eritrea, who moved to the United States at age fifteen and attended high school in Orange County. From about 1998 to the present, Plaintiff Fazaga served as an imam, or religious leader, of the Orange County Islamic Foundation, a mosque in Mission Viejo, California. His duties there have included directing the religious affairs of the mosque, leading

prayer, and conducting educational, spiritual, and recreational activities for the entire mosque community and its youth.²

13. Plaintiff Ali Malik is a twenty-six year-old U.S. citizen born in Southern California. Malik's parents came to the United States from Pakistan before he was born. From the time of his birth through the events alleged herein, Plaintiff Malik resided in and around Orange County, California. Plaintiff Malik is a practicing Muslim who, from about 2004 through the events alleged herein, regularly attended religious services at the Islamic Center of Irvine ("ICOI"), a mosque in Irvine, California. ICOI is a mainstream mosque and one of the largest mosques in Southern California, with a congregants at times numbering in the thousands, including Muslims from a wide variety of national and ethnic backgrounds.

14. Plaintiff Yasser AbdelRahim, is a thirty-four year-old lawful permanent resident of the United States, who emigrated from Egypt when he was twenty-one years old. Plaintiff AbdelRahim first attended business school in Arizona, then moved to Southern California after he obtained his degree in 1999 to work in business consulting. AbdelRahim is a practicing Muslim and has attended religious services regularly at ICOI since about 2005.

15. Defendant the Federal Bureau of Investigations (FBI) is an agency of the United States government within the meaning of the Privacy Act and the Federal Tort Claims Act. It maintains records on individual

² Plaintiff Fazaga's legal name is Yassir Mohammed; but he uses the name "Fazaga" in all his personal and professional dealings.

whom its agents have investigated, including Plaintiffs and the putative class they seek to represent. The FBI is sued for injunctive relief only.

16. Defendant Robert Mueller is the Director of the FBI. In that capacity he is responsible for the direction and oversight of all operations of the FBI, including the retention of records arising out of the investigations of FBI agents. He is sued in his official capacity for injunctive relief only.

17. Defendant Steven M. Martinez is the Assistant Director In Charge of the FBI's Los Angeles Field office.³ In that capacity, he is responsible for the direction and oversight of all operations of the FBI in Los Angeles and Orange Counties, including the retention of records arising out of the investigations of FBI agents in his jurisdiction. He is sued in his official capacity for injunctive relief only.

18. Upon information and belief, Defendant Kevin Armstrong was, at all times relevant to this action, employed by the FBI, and acting within the scope of his employment, as a Special Agent assigned to the Orange County area, and a handler for Craig Monteilh. Agent Armstrong met with Monteilh repeatedly and on a regular basis during the time period at issue in this lawsuit. He directed Craig Monteilh to indiscriminately gather information on the Muslim community in Orange County,

³ In addition to its national headquarters and various specialized facilities operations, the FBI maintains 56 field offices in major cities, nearly 400 smaller offices called resident agencies in cities and towns across the nation, and more than 60 international offices in U.S. embassies worldwide.

and personally supervised and directed Monteilh's surveillance activities as described herein.

19. Upon information and belief, Defendant Paul Allen was, at all times relevant to this action, employed by the FBI, and acting within the scope of his employment, as a Special Agent assigned to the Orange County area, and a handler for Craig Monteilh. Agent Allen met with Monteilh repeatedly and on a regular basis during the time period at issue in this lawsuit. He directed Craig Monteilh to indiscriminately gather information on the Muslim community in Orange County, and personally supervised and directed Monteilh's surveillance activities as described herein.

20. Defendant J. Stephen Tidwell, at all times relevant to this action, was an employee of the FBI and acting within the scope of his employment. Defendant Tidwell served as the Assistant Director in Charge of the FBI's Los Angeles Field Office from August 2005 to December 2007, in which capacity he supervised operations in the Central District of California. Upon information and belief, Defendant Tidwell authorized the search for an informant to go into mosques in Orange County to collect information on Muslims, authorized the selection of Craig Monteilh as that informant, authorized the nature and scope of the operation and its targeting of Muslims, read Monteilh's notes of his activities, and authorized and actively directed the actions of Agents Armstrong, Allen, Rose, Walls and other agents in the handling of Monteilh at all times relevant in this action, for the purpose of surveilling Plaintiffs and other putative class members because they were Muslim.

21. Upon information and belief, Defendant Barbara Walls was, at all times relevant to this action, employed by the FBI, and acting within the scope of her employment as Special Agent in Charge of the Santa Ana branch office, one of ten satellite offices of the FBI's Los Angeles field office, where she was one of the direct supervisors of Agents Allen, Armstrong, and Rose. Upon information and belief, Defendant Walls was regularly apprised of the information Agents Armstrong and Allen collected through Monteilh; directed the action of FBI agents on various instances based on that information; and actively monitored, directed, and authorized the actions of Agents Armstrong and Allen and other agents at all times relevant in this action, for the purpose of surveilling Plaintiffs and other putative class members because they were Muslim. Eventually, she ordered that Agents Armstrong and Allen cease using Monteilh as an informant because she no longer trusted him.

22. Upon information and belief, Defendant Pat Rose was, at all times relevant to this action, employed by the FBI and acting in the scope of her employment as a Special Agent. Upon information and belief, Agent Rose was assigned to the FBI's Santa Ana branch office, where she supervised the FBI's Orange County national security investigations and was one of the direct supervisors of Agents Allen and Armstrong. Upon information and belief, Defendant Rose was regularly apprised of the information Agents Armstrong and Allen collected through Monteilh; directed the action of FBI agents on various occasions based on that information; and actively monitored, directed, and authorized the actions of Agents Armstrong and Allen and other agents at all times relevant in this action, for the purpose of

surveilling Plaintiffs and other putative class members because they were Muslim. Agent Rose also sought additional authorization to expand the scope of the surveillance program described herein, in an effort to create a Muslim gym that the FBI would use to gather yet more information about the class.

23. Defendant Does 1-20 are agents of the Federal Bureau of Investigation and United States Department of Justice, whose identities are not yet known to Plaintiffs, who authorized, directed, and actively monitored the actions alleged herein in order to engage in surveillance of the Plaintiffs and putative class members because they were Muslim.

FACTUAL ALLEGATIONS

FBI Focus On Islam Since 2001

24. Since September 11, 2001, the FBI has focused much of its counterterrorism efforts on broad investigations in the Muslim communities of the United States. In the weeks and months following 9/11, the United States detained hundreds of “suspects” across the country, the vast majority of whom were Muslim. Over the next few years, the FBI engaged in a program to conduct interviews of thousands of individuals who had immigrated to the U.S. from countries in which intelligence allegedly indicated al-Qaeda operated, a burden that fell overwhelmingly on Muslims.⁴

⁴ *Homeland Security: Justice Department's Project to Interview Aliens after September 11, 2001*, U.S. Gen. Accounting Office, G.A.O. No. GAO-03-459 (April 2003) available at <http://www.gao.gov/new.items/d03459.pdf>.

25. In January 2003, the FBI ordered its field supervisors to count the number of mosques and Muslims in their jurisdictions to aid in counterterrorism investigations.⁵

26. Starting in 2002 and continuing through 2005, the FBI engaged in a program of monitoring radiation levels across the country, including at more than one hundred “Muslim sites,” though officials indicated that religion was not the “only criterion.” According to one official, Muslim sites were picked because, in the past, terrorists or people close to them had tended to live in Muslim areas or attend local mosques.⁶

27. In a 2006 briefing to reporters, the FBI official second-in-command over the National Security Branch displayed a map of the San Francisco area showing where Iranian immigrants were clustered—and where, he said, an F.B.I. squad was “hunting.”⁷

⁵ Eric Lichtblau, *F.B.I. Tells Offices to Count Local Muslims and Mosques*, N.Y. TIMES (Jan. 28, 2003), available at <http://www.nytimes.com/2003/01/28/politics/28MOSO.html>.

⁶ Kevin Bohn and Jeanne Meserve, *Officials: Muslim sites subject to secret monitoring for radiation*, C.N.N. (Dec. 24, 2005), available at http://articles.cnn.com/2005-12-23/us/nuke.monitoring_1.radiation-levels-radioactive-material-fbi-program; Mary Beth Sheridan, *Mosques Among Sites Monitored for Radiation*, WASH. POST (Dec. 29, 2005).

⁷ Scott Shane and Lowell Bergman, *F.B.I Struggling to Reinvent Itself to Fight Terror*, N.Y. TIMES (Oct. 9, 2006), available at <http://www.nytimes.com/2006/10/10/us/10fbi.html>.

Evolution of FBI Policies on Use of Religion in Investigation

28. The FBI has been accused of targeting people based on their First Amendment activity before. During the 1960s and 1970s, domestic intelligence-gathering activities by the FBI came under increasing scrutiny, culminating in the “Church Committee,” a Senate Select Committee that investigated the FBI’s COINTELPRO operation.

29. In 1976, the Church Committee wrote that “The Government has often undertaken the secret surveillance of citizens on the basis of their political beliefs, even when those beliefs posed no threat of violence or illegal acts on behalf of a hostile foreign power. The Government, operating primarily through secret Informants . . . has swept in vast amounts of information about the personal lives, views, and associations of American citizens. Investigations of groups deemed potentially dangerous—and even of groups suspected of associating with potentially dangerous organizations—have continued for decades, despite the fact that those groups did not engage in unlawful activity. Groups and individuals have been harassed and disrupted because of their political views and their lifestyles. Investigations have been based upon vague standards whose breadth made excessive collection inevitable.”⁸

⁸ *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, “Book II: Intelligence Activities and the Rights of Americans,” at 5, U.S. Senate, 94th Cong., 2nd Sess. (Apr. 26, 1976), available at http://www.aarc-library.org/publib/church/reports/book2/html/ChurchB2_0009a.htm.

30. After uncovering rampant abuses in the FBI's domestic intelligence programs, the Church Committee recommended a series of reforms that were ultimately adopted, including new laws to restrict domestic surveillance for national security purposes under the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.*, and guidelines issued by Attorney General Edward Levi (known as "Attorney General's Guidelines") to regulate domestic intelligence-gathering by the FBI.

31. The Levi Guidelines restricted the FBI's domestic intelligence collection authorities to investigations of potential violations of federal law, and limited the use of specific investigative techniques, including informants. The Guidelines allowed the FBI to conduct full domestic security investigations only on the basis of "specific and articulable facts giving reason to believe that an individual or group is or may be engaged in activities which involve the use of force or violence and which involve or will involve the violation of federal law . . ."⁹ More limited Preliminary Investigations could be authorized for 90 days based on receipt of "allegations or other information that an individual or group is or may be engaged in activities which involve the use of force or violence and which involve or will involve the violation of federal law," but only to determine whether there is a sufficient factual basis for opening a full investigation.¹⁰

32. In 2002, Attorney General John Ashcroft revised the Guidelines for General Crimes, Racketeering Enter-

⁹ FBI Statutory Charter: Hearings Before the Senate Committee on the Judiciary, 95th Cong. pt. 1, p. 22 (1978).

¹⁰ *Id.*, at 21.

prise and Terrorism Enterprise Investigations, respectively, significantly reducing or eliminating the requirement of a factual basis to believe federal crimes would be committed before the FBI could initiate investigations.¹¹ Significant changes to the General Crimes guidelines included expanding the duration and type of investigative techniques that could be utilized in preliminary investigations and creating new authorities for the FBI to proactively conduct internet and commercial database searches and attend public places and events for the purpose of detecting or preventing terrorist activities, all without any factual basis or allegation indicating a possible violation of federal law. Attorney General Ashcroft said terrorism prevention was the key objective of these new Guidelines, arguing that “Our philosophy today is not to wait and sift through the rubble following a terrorist attack. Rather, the FBI must intervene early and investigate aggressively where information exists suggesting the possibility of terrorism, so as to prevent acts of terrorism. The new guidelines advance this strategy of prevention by strengthening investigative authority at the early stage of preliminary inquiries. Also, even absent specific investigative predicates, FBI agents under the new guidelines are

¹¹ Attorney General’s Guidelines for General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations, (May 2002), available at: <http://www.fas.org/irp/agency/doj/fbi/general-crimes2.pdf> and, Attorney General’s Guidelines for National Security Investigations and Foreign Intelligence Collection, (Oct. 2003), available at: <http://www.fas.org/irp/agency/doj/fbi/nsiguilines.pdf>

empowered to scour public sources for information on future terrorist threats.”¹²

33. In June 2003 the Department of Justice issued “Guidance on the Use of Race by Federal Law Enforcement Agencies,” purporting to ban the use of racial or ethnic profiling.¹³ This Guidance explicitly failed to include religion as an attribute that could not be used by federal law enforcement officials in making law enforcement decisions. In addition, the Guidance contained broad exemptions for the use of racial profiling in national security and border integrity investigations.¹⁴

34. In October 2003 Attorney General Ashcroft revised the Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, to authorize the “proactive collection of information concerning threats to the national security, including information on individuals, groups and organizations of possible investigative interest, and information on possible targets of international terrorist activities or other national security threats.”¹⁵ These Guidelines authorized the FBI to conduct “threat assessments” without opening

¹² Remarks of Attorney General John Ashcroft, Attorney General Guidelines May 30, 2002, at: <http://www.justice.gov/archive/ag/speeches/2002/53002agpreparedremarks.htm>

¹³ Department of Justice Civil Rights Division, “Guidance Regarding the Use of Race by Federal Law Enforcement Authorities, (June 2003), available at: <http://www.scribd.com/doc/22092319/DOJ-Guidance-Regarding-the-Use-of-Race-by-Federal-Law-Enforcement-Agencies-June-2003>.

¹⁴ *Id.*

¹⁵ Attorney General Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (Oct. 2003), available at: <http://www.fas.org/irp/agency/doj/fbi/nsiguilines.pdf>

preliminary or full investigations—in other words without the required factual basis to justify such investigations.¹⁶

35. The combined effect of these Guidelines and Guidance was to authorize the FBI to engage in intrusive investigations of First Amendment protected activity, and specifically religious practices, without any factual basis to believe any criminal violations or threat to the national security existed.

36. In 2008, Attorney General Mukasey revised the guidelines further, explicitly eliminating the need for any factual predicate before FBI agents are allowed to conduct a new category of investigation called “assessments.” The 2008 revisions allow FBI agents to use an array of intrusive investigative techniques during assessments, including physical surveillance, recruiting and tasking informants, and pre-textual interviews by FBI agents acting in ruse. In response, the FBI revised its internal policy, publishing the FBI’s Domestic Intelligence and Operations Guides (“DIOG”) in December 2008.¹⁷ The DIOG only requires an “authorized purpose” to conduct an assessment, which is defined broadly as “a national security, criminal or foreign intelligence collection purpose.”¹⁸ Requiring only an authorized purpose rather than a factual predicate means that the authority to conduct investigations in this cate-

¹⁶ *Id.*, at 3.

¹⁷ Federal Bureau of Investigation Domestic Investigations and Operations Guide, (Dec. 2008), available at: http://www.muslimadvocates.org/DIOGs_ptl.pdf

¹⁸ DIOG p. 21.

gory is based on the subjective intent of the agent, rather than any factual information regarding the potential subjects of the assessment establishing suspicion of wrongdoing. Moreover, the DIOG authorizes FBI headquarters and field offices to conduct “Domain Management” assessments to “identify locations of concentrated ethnic communities in the Field Office’s domain” and to collect, analyze and map racial and ethnic “behaviors,” “cultural traditions,” and “life style characteristics” in local communities. FBI Director Robert Mueller issued a broad mandate for FBI offices to “know your domain,” which meant “understanding every inch of a given community—its geography, its populations, its economy, and its vulnerabilities.”¹⁹ Domain Management assessments appear to be mandated as a matter of course, and require no specific threat or criminal predicate to justify the collection of information regarding the makeup of American communities.

37. Upon information and belief, Defendants operated under the principles set forth in the revised Mukasey Guidelines and DIOGs even before the Attorney General formally issued them. For instance, a 2010 report by the Department of Justice Inspector General revealed that from 2002 to 2006 the FBI engaged in a number of investigations of domestic advocacy groups based on “factually weak” or “speculative” predication.²⁰ The Inspector General (IG) determined

¹⁹ Robert Mueller, Speech to the International Association of Chiefs of Police, San Diego, CA California, Nov. 10, 2008, at: <http://www.fbi.gov/news/speeches/using-intelligence-to-protect-our-communities> (last visited Sept. 13, 2011).

²⁰ Department of Justice Inspector General Review of FBI's Investigations of Certain Advocacy Groups (Sept 2010) (hereinafter

many of the investigations were opened based upon the FBI agents' mere speculation that the individuals or groups might commit some federal crime in the future. The IG determined that most of these investigations did not violate the 2002 Attorney General's Guidelines in effect at the time because all that was required to initiate a preliminary inquiry was "information indicating the possibility of a federal crime," which illustrated "the broad scope of the FBI's authority under the Attorney General's Guidelines to open preliminary inquiries based on extremely limited information, including information about the First Amendment expressions of subjects."²¹ Moreover, the IG noted that while the FBI's collection and retention of First Amendment material in these cases often violated the 2002 Guidelines, it would not have violated the revised 2008 Guidelines: "Therefore, some of the violations of policy we found in this review would not be violations if they occurred today."²² Additionally, a 2006 New York Times report indicated that FBI Associate Executive Assistant Director Phil Mudd was "pitching" a vague domestic intelligence program called "Domain Management," which vaguely implied "ethnic targeting."²³

38. Upon information and belief, trainings offered by the FBI have also reflected broad generalizations

"IG Report"): <http://www.justice.gov/oig/special/s1009r.pdf> (last visited Sept. 13, 2011).

²¹ IG Report at 87.

²² IG Report at 189.

²³ Scott Shane and Lowell Bergman, "FBI Struggling to Reinvent Itself to Fight Terror," NY Times (Oct. 10, 2006), available at <http://www.nytimes.com/2006/10/10/us/10fbi.html> (last visited Sept. 13, 2011).

about Muslims supporting the view that Islam and those who practice it inherently condone violence and should be regarded with suspicion. As recently as 2009, the FBI training for newly recruited agents included a power-point presentation that makes gross generalizations about Islam and Muslims. The presentation included slide entitled “Islam 101” that stated Islam “transforms country’s culture into 7th century Arabians ways” and claimed that “it is characteristic of the Arabic mind to be swayed more by words than ideas and more by ideas than by facts.” Of the eight books that the training listed as “recommended reading,” at least three of them have been widely criticized as setting forth stereotypes about Muslims and Islam. Two listed were by Robert Spencer, founder of the group “Stop the Islamization of America,” including his book, “The Politically Incorrect Guide to Islam,” which asserts on its cover (reproduced in the training’s slides) that “Islam teaches that Muslims must wage war to impose Islamic law on non-Muslim states” and “American Muslim groups are engaged in a huge cover-up of Islamic doctrine and history,” and has chapters titled “The Qur’an: Book of War,” “Islam: Religion of War” and “Islamic Law: Lie, Steal and Kill,” in which it argues that Islam condones violence, criminality, and terrorism.²⁴

39. Upon information and belief, William Gawthrop, an FBI senior intelligence analyst who has presented and continues to present trainings at conferences to local law enforcement, has offered trainings or training

²⁴ Spencer Ackerman, *FBI ‘Islam 101’ Guide Depicted Muslims as 7th-Century Simpletons*, WIRED (July 27, 2011), available at <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide> (last visited Sept. 13, 2011).

materials on the “Sources and Patterns of Terrorism in Islamic Law” in which he takes selected quotes from Quran and other Islamic texts out of context to teach that Islam inherently mandates violent action against non-Muslims.

FBI Investigation of Muslims in Orange County, California

40. Approximately 500,000 Muslims live in Southern California, more than 120,000 of them in Orange County, making the area home to the second-largest population of Muslims in the United States.

41. The FBI has surveilled Muslims in Southern California and Orange County for at least several years.

42. In about late 2001 or 2002, the FBI approached at least one Muslim leader asking who the Muslim leaders in the Southern California area are and for a list of mosques.

43. In May 2006, Defendant Rose, a supervisor of the FBI’s Orange County counterterrorism operations, spoke to the Pacific Club in Irvine about the FBI’s counterterrorism efforts. There, she stated that “[t]here are a lot of individuals of interest right here in Orange County.”²⁵ She described recent efforts the FBI had taken in the region: planting bugs and closed-circuit TV cameras, examining computer use and email, and establishing units on both foreigners and domestic suspects. She indicated that the FBI frequently received

²⁵ Frank Mickadeit, *Feds warn O.C. of terror lurking ‘down the street’*, THE ORANGE COUNTY REGISTER (May 25, 2005), available at <http://www.ocregister.com/news/fbi-194882-county-orange.html> (last visited Sept. 13, 2011).

calls from people who wanted to tell them about situations like a Muslim neighbor who is changing his license plates or someone who has an apartment with only a mattress and five computers, stating, “I can’t tell you how many” tips like that paid off. When asked whether citizens should be worried about activist Muslim students at University of California at Irvine, Rose characterized that as a “tough question,” but indicated the FBI was aware of large numbers of Muslim students at UCI and the University of Southern California. “We live in Irvine. I can’t tell you how many subjects’ names come up, and they live right down the street from me,” she stated. “I think we need to be concerned with everybody, including our next-door neighbor.”²⁶

44. In 2006 and 2007, authorities arrested reserve officers who worked at the Strategic Technical Operations Center, an intelligence unit at Camp Pendleton, for stealing classified intelligence documents and providing them to local law enforcement. According to reports, the theft ring had operated since 2001, and the documents seized from the participants included more than 100 FBI and Defense Department files, including documents establishing the existence of programs to surveil Muslim communities and mosques in Southern California.²⁷

45. Documents obtained by the ACLU of Southern California via the Freedom of Information Act show that

²⁶ *Id.*

²⁷ Rick Rogers, *Records detail security failure in base file theft*, SAN DIEGO UNION-TRIBUNE (May 22, 2008), available at http://www.signonsandiego.com/uniontrib/20080522/news_1n22theft.html (last visited Sept 13, 2011).

the FBI has collected information about the membership of the Shura Council (an association of mosques in the Southern California area), as well as information about activities or events organized at or by mosques or Muslim organizations—including individuals handing out flyers for fundraising, events on political issues such as the war in Iraq or immigration reform, and a wide variety of fundraising efforts.

46. The FBI has sought and continues to seek interviews of hundreds of people in the Southern California Muslim community, often by sending FBI agents to appear unannounced at the homes or workplaces of people to request an interview. During these interviews, FBI agents have often questioned interviewees about religious practices that have no discernible relationship to criminal activity, such as what mosque interviewees attend, how many times a day they pray, who the imam of their mosque is, or what they think of particular religious scholars.

Monteilh's Role in the FBI's Investigation of Muslims

47. In the face of substantial evidence of the FBI's particular focus on investigating Muslims, in June 2006, Los Angeles FBI Assistant Director Stephen Tidwell attended a forum for the Muslim community at the Islamic Center of Irvine ("ICOI"), where he assured an audience of about two hundred people that the FBI would enter mosques only openly to outreach to the community and would not send covert informants into mosques for the purpose of monitoring the Muslim community.²⁸

²⁸ At some point during the spring of 2007, Agents Armstrong and Allen told Monteilh that the Assistant Director in Charge of the FBI's Los Angeles Field Office had told the Muslim community that

48. At some time prior to July 2006, the FBI hired Craig Monteilh to become a paid informant for them to covertly gather information about Muslims in the Irvine area.

49. In about July 2006, Monteilh requested a meeting with the imam of the Islamic Center of Irvine (“ICOI”). Monteilh told the imam that he was of French and Syrian descent, and that he wanted to embrace his roots by formally converting to Islam. The following Friday, Monteilh attended the *jummah* prayer (the Friday afternoon prayer that is the most important service of the week), where he went before the congregation of hundreds and made a public declaration of his Muslim faith. This declaration, known as *shahadah*, is one of the five pillars of Islam. After this, Monteilh began going to ICOI on a daily basis, often attending multiple prayers a day. About a week later, he began using the Muslim name Farouk al-Aziz.

50. After taking *shahadah*, Monteilh attended prayers at ICOI on a daily basis. He attended prayers at mosque multiple times per day, and was often waiting for the mosque to open before dawn prayers at about 5 a.m. He also attended classes and special events. He primarily attended ICOI, but also went with some regularity to about five of the other largest mosques in Orange County.

there would be no undercover informants placed in mosques at a meeting held only about a month or so before Monteilh had publicly “converted,” on their instructions, at the ICOI mosque. They told him that at the time Tidwell made this statement, they had already been looking for someone to send into the mosques, and that Tidwell had approved recruitment of an informant.

51. Congregants at ICOI generally welcomed Monteilh. People introduced themselves, spoke with him about his conversion and their faith, and offered to help him learn about Islam and Muslims in America. Various congregants offered help by buying him books on Islam, talked with him about the tenets of the religion, and showed him the movements of prayers. Congregants invited him to have meals or tea outside of the mosque to help welcome him to the mosque's community and discuss questions he might have.

52. After several months, Monteilh began wearing traditional Muslim robes and skull caps both at mosque and in public, in place of his "western" clothes.

53. After Monteilh had attended ICOI for some time, Muslim community leaders began to hear concerns voiced by the congregants about Monteilh's behavior. Monteilh engaged people in conversations in which he aggressively probed their views on religion and American foreign policy. Soon leaders began hearing that he was asking people's opinions on *jihad* and its meaning in Islam, and that he was resisting their claims that Islam did not condone terrorism.

54. Among the many people Monteilh met during his time as an FBI informant were Plaintiffs Fazaga, Malik, and AbdelRahim.

Plaintiff Sheikh Yassir Fazaga

55. Plaintiff Sheikh Yassir Fazaga is a thirty-eight year-old U.S. citizen born in Eritrea, who has lived here since he was a teenager. He attended high school in Orange County. Sheikh Fazaga has an undergraduate degree in Islamic Studies from the Institute of Islamic and Arabic Sciences in Virginia and a masters degree in

marriage and family counseling from the California State University of Long Beach, and has taken coursework toward a masters degree in Christian Theology at Loyola Marymount University. From about 1998 to the present, Sheikh Fazaga has served as an imam of the Orange County Islamic Foundation (OCIF), a mosque in Mission Viejo, California. His duties there have included directing the religious affairs of the mosque, leading prayer, and conducting educational, spiritual, and recreational activities for the entire mosque community and its youth.

56. Sheikh Fazaga earned a national reputation for his contemporary American teaching of Islam. He has spoken at numerous conferences, colleges, and other fora both in the United States and abroad on the topics of Islam and the American Muslim. In 2007, he traveled to Romania at the invitation and expense of the U.S. State Department to speak on terrorism, radicalism and extremism. He has also been interviewed for print, television and radio media, including for NBC's Today show on spirituality in America and for a New York Times article on American imams in which he was featured.²⁹

57. Over the years, Sheikh Fazaga's mosque conducted a number of events in conjunction with various other mosques in the area, including ICOI. Sheikh Fazaga was, and still is, concerned about the erosion of civil rights for people in the Muslim community, and he often took actions to advocate on behalf of that issue.

²⁹ See Neil MacFarquhar, *A Growing Demand for the Rare American Imam*, N.Y. Times (June 1, 2007), available at <http://www.nytimes.com/2007/06/01/us/01imam.html> (last visited Sept. 13, 2011).

58. On one occasion in early 2006 he attended one such event, which Defendant Stephen Tidwell, Assistant Director in Charge of the Los Angeles FBI Field Office, also attended. At the event, Fazaga asked questions to Tidwell concerning the FBI's use of informants in mosques.

59. Shortly afterward, Sheikh Fazaga came into contact with Craig Monteilh, because Monteilh came to attend prayers and other events at his mosque, OCIF, starting in approximately 2006.

60. Some time after Monteilh began attending his mosque, Sheikh Fazaga hosted a famous Islamic speaker named Yusuf Estes at his mosque. Estes is a former National Muslim Chaplain for the United States Bureau of Prisons, and was a Delegate to the United Nations World Peace Conference for Religious Leaders several years before being invited to speak at the OCIF.

61. A number of Sheikh Fazaga's congregants, including Monteilh, attended the lecture.

62. Several months after Monteilh first began attending events at OCIF, another member of the OCIF community formally introduced Fazaga to Monteilh.

63. After Monteilh's role as an FBI informant became publicly known in February 2009, a number of Sheikh Fazaga's congregants expressed their dismay to him, because Monteilh had spent a considerable amount of time at the OCIF.

64. Sheikh Fazaga had to spend considerable time counseling his congregants who were afraid that they were being targeted for FBI surveillance because of their faith. He often conducted this counseling away

from the mosque and in person, rather than over the telephone, because of his congregants' fear of surveillance.

65. Sheikh Fazaga also observed the trust within and cohesion of his congregation, and of other Muslim communities in Southern California, to be significantly damaged, and that this damage directly undermined the Islamic practice of *jama'ah*, or worship in a congregation. In part because of this, he devoted two whole sermons to addressing the fears of the congregation about surveillance, rather than addressing religious subjects.

Plaintiff Ali Uddin Malik

66. Plaintiff Malik grew up in Orange County, California. When Malik was growing up, his family were strong supporters of the Republican Party. Malik started a young Republicans club at his high school. During high school, Malik aspired to work for the U.S. State Department or elsewhere in government.

67. Plaintiff Malik attended the University of California, Irvine ("UCI") from about 2007 to 2009. While at Irvine, Malik co-founded the Olive Tree Initiative, a peace-building program through which a culturally and religiously diverse group of UCI students take joint factfinding trips to Israel and Palestine to better understand the Israel-Palestine conflict and report on their findings to the UCI community. Malik and the other founders were recognized for their work with the University of California President's Award for Outstanding Student Leadership, UCI Chancellor's Living Our Values Award, and recognition by the Orange County Human Relations Commission and the U.S. State Department.

68. When Malik was about twenty years old, he developed an interest in religion. His family had always attended the mosque, but he started attending more regularly and trying to study Islam with more seriousness. Malik began wearing traditional robes and head covering when he went to the mosque to pray. He also grew a full, long beard in a traditional fashion. Because Islam encourages Muslims to follow the “Sunnah” or practices of the Prophet Muhammad, who had a beard and required his followers to grow beards, observant Muslim men commonly grow their beards as a part of their religious practice and as a form of modesty. Most observant Muslim men in Orange County wear beards of some sort, and many or most try to grow long beards at some point in their lives. Similarly, many Muslim men wear traditional clothes to pray as part of their religious practice, as a form of modesty. As such, an emulation of the practices of Muhammad is also “sunnah.” Malik also found that wearing his clothes and beard in this way helped serve as a reminder of his faith.

69. In about summer 2006, as part of his efforts to study Islam more seriously, Malik attended a six-week summer course on Islam at Dar al-Mustafa, a seminary in Yemen. Islam emphasizes the importance of gaining religious knowledge, and encourages its adherents to seek knowledge, so much so that for Muslims gaining religious knowledge is a faith practice in and of itself. Dar al-Mustafa is a mainstream religious school whose leaders are internationally known in the Muslim community for advocating justice, equality, and peaceful co-existence between religious groups, and have been active in interfaith efforts in these areas with religious leaders of other faiths. Upon information and belief, the school and its leaders enjoyed a similar reputation with the

United States government and the FBI. At the time Malik attended the summer course, both Yemen and Dar al-Mustafa were popular places for American Muslims who wanted to pursue Arabic language or religious studies abroad for a variety of reasons: Southern Yemen, where Dar al-Mustafa is located, was known for its spiritual Sufi religious scholarship, for having a clear and eloquent form of the Arabic language, and for being scenic and affordable, if slightly rustic. Plaintiff Malik attended ICOI and was present when Monteilh took *shahadah* in about July 2006. Plaintiff Malik, along with many other congregants, approached Monteilh after he took *shahadah*, offering his well-wishes and assistance.

70. In about August 2006, the imam at ICOI asked Plaintiff Malik to teach Monteilh how to pray and to guide him through the basics of Islam.

71. At the imam's request, Plaintiff Malik approached Monteilh. Malik talked with Monteilh about the basics of Islam, including the basic tenets, how to pray, and the development of faith. Monteilh asked for Malik's cell phone number and email address, which Malik provided. He tried to offer Monteilh support and welcome him in the community, and talked about inviting him over to his family's house for dinner.

72. To help Monteilh learn about Islam, Plaintiff Malik gave him a very basic book on the religion. The book is commonly used to teach Sunday school classes to children, and Malik knew that his father had taught Sunday school and had used the same book.

73. Monteilh talked frequently with Malik at the mosque. He also suggested that they talk at a nearby

gym, which they did in part because Monteilh worked out there. Shortly after their meeting, Monteilh began asking Malik things that made Malik uncomfortable. At one point Monteilh asked Plaintiff Malik what would happen if someone went up to the imam at ICOI and told him they wanted to blow themselves up. Plaintiff Malik replied that the imam would think this person was crazy. Monteilh persisted, and asked Plaintiff Malik if there were other imams in the area that would respond to someone who wanted to blow themselves up. Plaintiff Malik told Monteilh that there are no such imams or mosques in Southern California as far as he knew.

74. On another occasion, Monteilh asked Malik about *jihad*, citing specific pages in the children's book Malik had given him that mentioned jihad. When Malik answered that *jihad* meant a "struggle," and that the concept referred to the spiritual struggle to purify oneself, Monteilh pressed him about whether it meant physical violence, and resisted Malik's answer that it did not.

75. These conversations deeply concerned Malik and made him very uncomfortable around Monteilh. Malik thought that Monteilh had strange ideas about Islam from movies or media, and urged him to go talk to the imam so that the imam could guide him.

76. When Monteilh persisted in talking with Malik about his violent ideas, Malik began trying to avoid Monteilh. He would avoid answering or returning Monteilh's calls, although Monteilh called repeatedly. Malik also began trying to go to the gym at times Monteilh did not attend.

77. Malik also noticed that Monteilh spoke with many others at the mosque. For example, Malik occasionally saw Monteilh praying near meetings of a youth group Malik attended in the mosque's prayer hall. Malik noticed on several occasions that when Monteilh would pray near the group, he would leave his belongings in the prayer hall while he went elsewhere.

78. Finally, Malik stopped attending the mosque altogether because Monteilh was there so often. Malik also stopped attending the mosque in Tustin because he heard that Monteilh had also been seen at that mosque. Malik resumed attending ICOI only after Monteilh began approaching other people and speaking to him less often. Even since returning to the mosque, Malik attends less often than he had before he had contact with Monteilh.

79. In about spring 2007, Monteilh asked Malik about studying Islam abroad. Malik suggested that Monteilh look into the seminary where Malik had studied, Dar al-Mustafa, which Malik had enjoyed very much.

Plaintiff Vasser AbdelRahim

80. Plaintiff AbdelRahim was another victim of Monteilh's dragnet surveillance of Muslims in Irvine. AbdelRahim started attending ICOI in about 2005. Shortly afterwards, he rented a room in a large house where a friend he met through the mosque lived. Over the next few months, two other mutual friends from ICOI, and AbdelRahim's brother, moved into the house as other roommates left. All five of the housemates were, like AbdelRahim, of Egyptian origin.

81. In about July 2006, one of AbdelRahim's roommates told him about a guy who had taken *shahadah* at the mosque. The following Saturday, they saw Monteilh and introduced themselves, offering to help him learn about Islam if he had any questions. Monteilh said that he appreciated it and took their phone numbers.

82. Shortly afterward, Monteilh called AbdelRahim and began socializing with AbdelRahim and his roommates. They talked, went out to get coffee, and soon AbdelRahim invited Monteilh to their house for *iftar* (a meal eaten during Ramadan). Monteilh began to spend time with them at their house watching TV or playing X-box. AbdelRahim and his roommates also tried to help Monteilh feel welcome by introducing him to other people in the Muslim community.

83. Initially, Monteilh talked with AbdelRahim and his roommates about a variety of innocuous topics—not only about Islam, but about politics, world affairs, movies, and sports. At some point, however, Monteilh began asking questions about *jihad*, again with a focus on violence. AbdelRahim found this odd, and responded that Monteilh should not concern himself with that, but instead should concentrate on developing his faith, and should talk to the imam at ICOI if he had questions about the meaning of *jihad*. However, Monteilh persisted in raising the subject. AbdelRahim eventually became worried that Monteilh had asked him several times about *jihad*, particularly when he heard from several of his friends at the mosque that Monteilh had made similar inquiries with them. AbdelRahim also noticed that Monteilh guided conversations to political subjects

like the wars in Iraq and Afghanistan, and would say inflammatory things that seemed aimed at eliciting agreement or angry responses from others.

84. Shortly afterward, a friend of AbdelRahim reported to him that Monteilh had asked the friend to coffee to discuss a personal issue, but then started asking particularly pointed questions about *jihad*. Upon hearing this, AbdelRahim confronted Monteilh. AbdelRahim told Monteilh that if someone was teaching him this view of *jihad*, then he needed to find another teacher.

85. After this conversation, AbdelRahim stopped speaking with Monteilh or returning his calls. Over the next several months, AbdelRahim noticed that Monteilh was spending time with different people at the mosque, and AbdelRahim warned a few of them about his concerns regarding Monteilh.

The FBI's "Dragnet" Approach

86. The interactions between Monteilh and Plaintiffs Fazaga, Malik, and AbdelRahim were part of a broader pattern of dragnet surveillance that Monteilh engaged in at the behest of his FBI handlers. Two FBI Special Agents instructed Monteilh to gather information on Muslims in general, and instructed him to adopt strategies of information-gathering and surveillance that ensured that he would obtain that information in an indiscriminate manner, such that Plaintiffs and numerous other people were surveilled solely due to their religion. They also provided Monteilh with the tools needed to conduct this indiscriminate surveillance, including sophisticated audio and video recording devices.

Again, their instructions ensured that the surveillance tools would target people solely due to their religion.

87. Monteilh's handlers at the FBI were FBI Special Agent Kevin Armstrong and FBI Special Agent Paul Allen. Agents Armstrong and Allen supervised all of Monteilh's work with the FBI. The FBI paid Monteilh for the duration of his work for Agents Armstrong and Allen, in amounts ranging from about \$6,000 to over \$11,000 per month.

88. Agents Armstrong and Allen told Monteilh that the FBI used the name "Operation Flex" for the surveillance program that used him, and used that term repeatedly. Agents Armstrong and Allen told Monteilh that the name referenced him, since he operated under the cover of a fitness consultant. But they also told Monteilh that Operation Flex was a broader surveillance program that went beyond just his work.

89. The central feature of the FBI agents' instructions to Monteilh was their directive that he gather information on Muslims, without any further specification. Agents Armstrong and Allen did not limit Monteilh to specific targets on which they wanted information. On the contrary, they repeatedly made clear that they were interested simply in Muslims. To the extent they differentiated within that group, they held a heightened interest in Muslims who were particularly religious.

90. When Agents Armstrong and Allen first sent Monteilh to meet the imam at ICOI and began infiltrating the Muslim community, they gave him no specific targets, but instead told him to gather as much information on as many people in the Muslim community as possible. Agent Allen told Monteilh, "We want to get

as many files on this community as possible.” Agents Armstrong and Allen told Monteilh that the United States was five to ten years behind Europe in the extent of Islamic presence, and that they needed to build files on as many individuals as possible so that when things started to happen, they would know where to go. They said they were building files in areas with the biggest concentrations of Muslim Americans—New York; the Dearborn, Michigan area; and the Orange County/Los Angeles area.

91. In addition to information about the membership of each mosque, Agents Armstrong and Allen instructed Monteilh to get the names of all board members, imams, people who taught classes at the mosques, and other leadership figures within the mosques.

92. Over the course of the investigation, Agents Armstrong and Allen sent Monteith to about ten mosques to conduct surveillance and audio recording in each one. Monteith spent the most time at ICOI, which he attended daily, but spent significant time at other mosques, including the Orange County Islamic Foundation mosque in Mission Viejo, Durol Falah in Tustin, Omar al-Farouq mosque in Anaheim, Islamic Society of Orange County in Garden Grove, Al-Fatiha in the West Covina/Azusa area, the mosque in Lomita, and King Fahd mosque in Culver City. For about five or six months Monteilh went at least once a week to each of these mosques, and would go to as many as four different mosques in a day to meet with and talk to people, if not to pray.

93. Agents Armstrong and Allen initially told Monteilh he would make his first contact with the community by attending services at a mosque in Anaheim, but then

instructed him to attend ICOI instead because it was closer to where he lived, so he could spend more time there.

94. Agents Armstrong and Allen also informed Monteith that the surveillance program was itself spread indiscriminately across the area's mosques. Electronic surveillance equipment was installed in at least eight area mosques including ICOI, and mosques in Tustin, Mission Viejo, Culver City, Lomita, West Covina, and Upland. They told him at one point that they could get in a lot of trouble if people found out what surveillance they had in the mosques, which Monteith understood to mean that they did not have warrants. Nonetheless, Agent Armstrong told Monteith that the FBI had every mosque in the area under surveillance—including both the ones he went to and the ones he didn't.

95. Upon information and belief, Agents Allen and Armstrong caused such electronic surveillance equipment to be installed at the Mission Viejo mosque and used it to monitor conversations of Plaintiff Yassir Fazaga, including conversations held in parts of the mosque not open to the public, including Sheikh Fazaga's office.

96. Apart from the electronic surveillance program, Agents Armstrong and Allen also directed their surveillance at people on the basis of their religion by instructing Monteilh to look for and identify to them people with certain religious backgrounds or traits, such as anyone who studied *fiqh* (a strand of Islamic law concerning morals and etiquette), who was an imam or sheikh; who went on *Hajj*; who played a leadership role at a mosque or in the Muslim community; who expressed sympathies

to *mujahideen*; who was a “white” Muslim; or who went to an Islamic school overseas.

97. Even with respect to these categories of Muslims, Monteith’s handlers did not tell him to limit the information he collected to those people. Agents Armstrong and Allen would occasionally instruct Monteith to spend more time with or find out more about particular people he identified, but these were always people Monteith had identified to them during the course of the operation, not people who had been targeted from the outset.

98. Agents Armstrong and Allen also instructed Monteith to focus on Muslim youth by keeping an eye out for people who tended to attract young Muslims. They instructed him to identify and gather information on such people. For example, Monteith told them about a popular youth group on Tuesdays at ICOI run by the imam. Students from the Muslim Student Union at the University of California, Irvine (“UCI”) would attend. On many occasions, Monteith recorded the youth group meetings at ICOI by leaving his possessions, including the recording key fob, near where the group met in the prayer hall so that all of their discussions could be recorded. Monteith did this by going into the prayer hall during their meetings to pray, and then leaving behind his possessions as if he had forgotten them or just chosen to leave them there while he did other things. Monteith would go to another part of the mosque or the courtyard, and return sometime later to collect his things. Monteith told his handlers he did this in his written reports. His handlers never instructed him to stop this practice, and instead repeatedly discussed with

him the contents of the recordings obtained in this manner.

The FBI's Surveillance Strategies

99. The FBI agents instructed Monteilh to engage in a number of surveillance strategies, all of which served to gather information on Muslims in an indiscriminate manner.

100. After Monteilh agreed to work as a confidential informant and underwent some training under the supervision Agents Armstrong and Allen, Agents Armstrong and Allen instructed him to make the appointment to see the imam at the ICOI. Once Monteilh had taken *shahadah* and began attending both ICOI and other mosques, Agents Armstrong and Allen instructed him to gather information on the Muslims at the mosques.

101. Agents Armstrong and Allen instructed Monteilh to obtain information through various methods. They told him to take every opportunity to meet people, get their contact information, meet them privately to get to know them, find out their background, find out their religious and political views, and get any information about them that he could to pass on to the FBI.

102. As a result, over the time he spent at ICOI and other mosques Monteilh did not focus on any particular group of people, such as those who may have engaged in criminal activity or even those from a particular country, but instead socialized widely with different groups and individuals. ICOI is a multi-lingual, multi-ethnic mosque, with separate social groups that form around

common language or country of origin. Monteilh surveilled people from every social group regardless of their ethnic origin or dominant language.

103. Pursuant to his handlers' instructions, Monteilh went out of his way to engage all of these different groups, even when he had no natural connection to them. For example, he attended religion classes given in Arabic even when he did not speak Arabic, and questioned 17 and 18 year olds about religious doctrine and politics, when a stranger in his forties might be expected to ask such questions of adults, not youth. Similarly, Monteilh spent significant time with a group of Egyptians, a group of Pakistanis and Indians, a group from Syria and Lebanon, and with the younger, second-generation social groups (generally identified as "Muslim Students Union," or MSU, in reference to on-campus Muslim organizations). Within each group, he spoke to large numbers of people so as to probe their views on religion, politics and violence, and then report them back to his handlers at the FBI.

104. Within these groups, Monteilh tended to focus more heavily on people who were more religious; people who came to the mosque only to attend Friday prayers were less likely to be recipients of his attention.

105. Agents Armstrong and Allen also gave Monteilh a standing order to gather information on Muslims' charitable giving. They instructed him to collect any pamphlet or brochure at any mosque that concerned charitable donations, to inquire of Muslims about which charities and Islamic schools to give to, and to then pass on the names of the charities and Islamic schools to them.

106. Monteilh's handlers also instructed him to attend Muslim fundraising events, to interact with the community and gather information, to identify people who attended and who they came with, and, if there were any speakers, to record what those speakers said.

107. Agents Armstrong and Allen also asked Monteilh to collect information on the travel plans of Muslims in the community. They told him that they shared this information with the Department of Homeland Security so as to be able to monitor or search people during their travels.

108. Monteilh's handlers also instructed him to attend lectures by Muslim scholars and other guest speakers. Because Monteilh's handlers wanted to know both what the lecturers said and who attended these lectures, they equipped Monteilh with a video surveillance device that had a camera in a shirt button, so that he could both record lectures and film attendees socializing. Monteilh also collected license plate numbers from the parking lots to identify those who attended.

109. In keeping with his handlers' orders, Monteilh also attended classes at the mosque so as to obtain more information on Muslim community members. For example, he attended an Arabic language class at ICOI from about December 2006 to March 2007. On his handlers' instructions, he obtained and provided them with the lists of the individuals who attended the class. Monteilh also attended a course in *fiqh*, and obtained and provided the class list to his handlers, as per their instructions.

110. Agents Armstrong and Allen also instructed Monteilh to attend *fajr* (dawn) prayers, which are held

about 4 a.m., or *ishaa* (late) prayers, which are held about 9:30 p.m. Agents Armstrong and Allen told him that people who attended prayers very early in the morning or late at night, and especially both, were very devout and therefore more suspicious. They instructed him to obtain the names and the license plate numbers of individuals who attended these prayers. Agents Armstrong and Allen increased his pay when he agreed to go to *fajr* prayer four days a week.

111. Agents Armstrong and Allen also instructed Monteilh to memorize certain *ayas* and *surahs* (verses and chapters from the Quran) and to ask Muslims about them. They said they had picked these verses because they believed them to be susceptible to a “jihadist” interpretation, so that people’s reactions to them would help discern who was and was not a threat. They told Monteilh that discussions about these verses would elicit responses that could be used to justify additional surveillance measures.

112. Agents Armstrong and Allen also expressed interest in any Muslims who followed websites that the agents believed were “jihadist,” including *Mission Islam.com* and *CagePrisoners.com* (a site devoted to raising awareness about the detainees at Guantanamo Bay). Agent Allen told Monteilh to encourage people he spoke with to go to these websites because they could document people’s visits to the website and use that either to pressure them to become informants or to justify further surveillance on them.

113. Agents Armstrong and Allen also encouraged Monteith to bring up in conversation certain Muslim scholars and thinkers whom they believed were extremist, so as to elicit people’s views on them. The scholars

they instructed him to discuss included a number of Islamic scholars who, at the time, were both widely popular and moderate, such as Sheikh Suhaib Webb and Yusef Estes.

114. Monteith also used his cover as a fitness consultant to gather information on the Muslims with whom he interacted. During his time working on Operation Flex, Monteith told people in the Muslim community that he worked as a fitness consultant. In about November 2006, Agent Allen instructed Monteith to start going to the gym to work out with people he met from the Muslim community, in order to get close to them and obtain information about them. Again, Monteilh's handlers did not limit the scope of their instructions; the directive included anyone from any mosque without any specific target, for the purpose of collecting as much information as possible about Muslims in the community. Pursuant to these instructions, Monteith worked out with Muslims in various gyms around the Orange County area and elicited a wide variety of information, including travel plans, political and religious views.

115. The goal of these conversations was to obtain compromising information that his handlers could use to pressure the Muslims with whom Monteith interacted into providing information or becoming informants. Monteith recorded these conversations using the equipment on his key fob or cell phone. This surveillance was so fruitful that Monteilh's handlers eventually told him they were seeking approval to have him open a Muslim gym.

116. Agents Armstrong and Allen talked repeatedly with Monteilh about obtaining new informants within

the Muslim community, primarily by getting information on potential informants that could be used against them if they refused to inform—such as immigration issues, sexual activity, business problems, or crimes like drug use. Agents Armstrong and Allen instructed Monteilh to pay attention to people’s problems, to talk about and record them, including marital problems, business problems, and petty criminal issues. Agents Armstrong and Allen on several occasions talked about different individuals that they believed might be susceptible to rumors about their sexual orientation, so that they could be persuaded to become informants through the threat of such rumors being started.

117. Agents Armstrong and Allen also often spoke with Monteilh about a maxim that “everybody knows somebody.” They explained that if someone is from Afghanistan, that meant that they would likely have some distant member of their family or acquaintance who has some connection with the Taliban. If they are from Lebanon, it might be Hezbollah; if they are from Palestine, it might be Hamas. By finding out what connections they might have to these terrorist groups, no matter how distant, they could threaten the individuals and pressure them to provide information, or could justify additional surveillance.

118. Agents Armstrong and Allen also instructed Monteilh to engage in acts that would build his reputation as a devout Muslim who had access to black market items. On one occasion, Agents Armstrong and Allen instructed Monteilh to provide Vicodin to a person whose father was sick in a foreign country. On another occasion, Agent Allen instructed Monteilh to provide

prescription anabolic steroids to another two individuals to similarly further his credibility, which he did.

119. During their regular meetings with Monteilh, Agents Armstrong and Allen also showed him photographs of Muslims from the community, taken from many of the methods identified above (e.g. at the gym, at fajr prayer, etc.), asked him to identify the people in those photographs, and then directed him to provide as much information as possible about each person, including what mosque they attended, their ethnicity or country of origin, the languages they spoke, the people they associated with, what kind of car they drove, their occupation or whether they were a student, as well as any other information Monteilh could obtain.

120. One theme ran throughout all of these different surveillance gathering strategies: Agents Armstrong and Allen expressed interest in gathering information only on Muslims, and they set aside any non-Muslims who were identified through surveillance Monteilh performed. For example, on several occasions when Agents Armstrong and Allen asked Monteilh to identify individuals from photographs taken by surveillance cameras at the entrances to gyms, they presented him with photographs of individuals who were not Muslim—usually Latino—who Monteilh had spoken to or who had simply helped him lift weights. Each time Monteilh indicated to Armstrong and Allen that the individual identified was not a Muslim, they discarded the picture.

121. Indeed, both Agent Armstrong and Agent Allen, as well as other agents, explicitly told Monteilh that Islam was a threat to America's national security.

The FBI's Surveillance Tools

122. Agents Armstrong and Allen recorded information about virtually all of the people with whom Monteilh interacted in several different ways—through audio recording, video recording, extensive review of Monteilh's handwritten notes about all aspects of his daily interactions, and a dragnet program to obtain cellphone numbers, email addresses, and information about internet usage.

123. Upon information and belief, virtually all of Monteilh's interactions with Muslims in the mosques were recorded by audio, video, or both. The recordings were then transcribed and reviewed by officials within the FBI. Agent Allen told Monteilh that there was a team transcribing all of his recorded conversations.

124. Agents Armstrong and Allen instructed Monteilh that because of his criminal background, all information he collected would have to be recorded. After about September 2006, Armstrong and Allen gave Monteilh a cell phone and two key fobs (which resembled the remote controls for car locks) with audio recording devices in them, and which Monteilh used to record all day, every moment he worked undercover, regardless of whom he was meeting or what was discussed.

125. People at ICOI noticed that Monteilh would often forget his keys, so that they would be delivered to the imam's office. People joked about Monteilh frequently forgetting his keys, and for having his keys out during lectures and conversations, even if he had to get them out after he sat down.

126. In fact, Monteilh utilized the trick of leaving his keys around the mosque to allow audio recording of conversations to take place even when he was not present.

127. On several occasions, Monteilh also left the recording devices in locations in mosques in the area. For example, in a large mosque in Culver City, Monteilh several times attended with a friend who changed in the office from business clothes to more traditional dress before they went into the mosque to pray. Monteilh left his keys in the office so that the key fob would record staff and board members who came in and talked, then retrieved his keys from the office when they were finished in the mosque. Monteilh did this several times, and in several different mosques. Agents Armstrong and Allen received the notes where Monteilh said he did this but never instructed him to stop.

128. Monteilh's recording activity was not limited to audio. Beginning in about February 2007, on numerous occasions Agents Armstrong and Allen outfitted Monteilh with video surveillance equipment that recorded through a camera hidden in a button in the front of his shirt, while recording audio as well. Toward the end of his assignment, Agents Armstrong and Allen had equipped Monteilh to use this video surveillance as often as several days per week.

129. Agents Armstrong and Allen instructed Monteilh to use the video camera for various specific purposes, including to capture the internal layout of mosques, to film basketball or soccer games to see who associated with whom, to film guest lectures at mosques to see what was said and who attended, and to record the interiors of people's houses. Monteilh's handlers at

various times instructed him to open particular doors in homes or mosques and film the room behind.

130. Agents Armstrong and Allen also used Monteilh's activities to gather telephone and cell phone numbers, email addresses, and other electronic information for indiscriminate surveillance.

131. Agents Armstrong and Allen told Monteilh they wanted him to collect contact information, particularly email addresses and phone numbers. At times, they even gave Monteilh quotas to collect contact information for ten new Muslims per day. Agents Armstrong and Allen told Monteilh that they monitored his email and cell phones to obtain the telephone numbers and email addresses of people with whom he corresponded. Agent Allen instructed him to give out his cell phone number widely so that people would call him or give their cell numbers in return, so that the FBI could then collect those numbers. Armstrong and Allen also instructed him to email frequently with people, so that the FBI could collect their email addresses. Agents Armstrong and Allen told Monteilh that they used the cell phone numbers and email addresses of individuals who contacted him to obtain information from those individuals' phone and email accounts, including the list of people they contacted.

132. Agents Armstrong and Allen told Monteilh that they kept the numbers and emails he collected in a database that could be monitored for international calls, or cross-referenced against phone calls or emails to persons of interest who were believed to be linked to terrorism. Monteilh's handlers also told him that the emails could be used to determine if the person was vis-

iting certain websites, and with whom they were emailing. Monteilh joined email distribution lists for many of the mosques he surveilled, and would forward messages from the mosques to the FBI so they would be informed about events and bulletins, and so they would have the email addresses of anybody else who received the message.

133. Agents Armstrong and Allen also instructed Monteith to gather all available information, including literature, on events occurring at the mosques. Following these instructions, Monteilh would collect brochures on charities that were distributed in the mosques, visit the mosques' libraries or book areas, collect newsletters and bulletins to see what activities were going on in the mosque, and collect the names of individuals who attended, as well as their cell phone numbers and license plates when possible. He would record this information either electronically or through a system of notes.

134. Agents Armstrong and Allen instructed Monteilh to compose daily notes of his activities and the surveillance he had undertaken. These notes were extensive—Agents Armstrong and Allen instructed Monteilh to “empty [his] head” about what he had learned that day—so that Monteilh regularly spent an hour or two each evening writing notes. After a while, these notes became so voluminous that Armstrong and Allen instructed Monteilh to prepare separate “supplemental notes” containing any sensitive or particularly valuable information. These were all handwritten. Armstrong and Allen took these notes from Monteilh when they met him twice a week.

135. At times, Monteilh reported to Agents Armstrong and Allen that when he was left alone in a mosque office, he had looked in drawers for information. Armstrong and Allen never instructed him not to do this.

136. Agents Armstrong and Allen were well aware that many of the surveillance tools that they had given Monteilh were being used illegally. Agent Armstrong once told Monteilh that while warrants were needed to conduct most surveillance for criminal investigations, “National security is different. Kevin is God.” Agent Armstrong also told Monteilh more than once that they did not always need warrants, and that even if they could not use the information in court because they did not have a warrant, it was still useful to have the information. He said that they could attribute the information to a confidential source if they needed to.

137. Over the course of the fourteen months that Agents Armstrong and Allen supervised Monteilh’s work as an informant in the Los Angeles and Orange County Muslim communities, they gathered hundreds of phone numbers and thousands of email addresses of Muslims. They also obtained background information on hundreds of individuals, gathered hundreds of hours of video recordings that captured the interiors of mosques, homes, businesses, and the associations of hundreds of Muslims. They also obtained thousands of hours of audio recording of conversations—both where Monteilh was and was not present—as well as recordings of public discussion groups, classes, and lectures occurring in mosques and at other Muslim religious and cultural events.

The FBI's Oversight, Supervision, and Use of Monteilh

138. Upon information and belief, FBI Agents Armstrong and Allen, as well as their superiors Director Tidwell, and Agents Walls and Rose, maintained extremely close oversight and supervision of Monteilh. Moreover, because they made extensive use of the results of his surveillance, they knew in great detail the nature and scope of the operation, including the methods of surveillance Monteilh used and the criteria used to decide his targets, and continually authorized their ongoing use.

139. From about August 2006 to October 2007, Agents Armstrong and Allen met with Monteilh about twice per week for meetings to discuss their assignments for him, to give him instructions, to obtain his daily notes, and to either exchange his recording devices for fresh ones or upload the recordings to a computer. These meetings were held in public places, outside the areas where the Muslim community lived. About once per month, they met with Monteilh in a room at the Anaheim Hilton Hotel, where they discussed the information he had obtained and gave him instructions in greater detail.

140. Agents Armstrong and Allen monitored and supervised Monteilh's work as an undercover informant closely. Through the daily notes they collected from him and the twice-weekly meetings, Monteilh told them about virtually everything he did and all the information he had obtained. They gave Monteilh instructions, or "tasking orders," regularly. They gave him both standing instructions on kinds of information to gather whenever possible—for example, to meet and get contact information for a certain number of Muslims per

day—and also gave him specific instructions on information they wanted, often in response to information he provided—such as, for example, instructions to get inside a certain house within the week or to have lunch with a particular person two times. Agents Armstrong and Allen also gave Monteilh standing orders to call one of them every day, even on his days off, which Monteilh would do, apprising them on the call of his day’s activities.

141. Agents Armstrong and Allen at various times discussed with Monteilh what happened to these notes. They said that their supervisors read the notes, that the notes were seen in “the Beltway,” that they were seen by people with “a lot of authority,” and that the Assistant Director in Charge of the FBI’s Los Angeles field office, who at that time was Stephen Tidwell, read all of Monteilh’s daily notes.

142. During the course of the investigation, Agents Armstrong and Allen discussed with Monteilh how the information he collected was actually being used. They assured him that all the information he collected was retained, and that they discarded none of it. They also told him that the information was used to build files on individuals: that every person he contacted—whose phone number he got, who he emailed, who he identified through photographs—had an individual file in which the information he gathered was retained.

143. On about four different occasions, during the meetings between Agents Armstrong and Allen and Monteilh at the hotel room, they showed him a huge photo array on a large board consisting of the photos of around two hundred Muslims from the Orange County/Los Angeles area. Agents Armstrong and Allen used

different sets of photographs for each of these meetings, so that Monteilh saw hundreds of photographs over the four meetings. They instructed him to arrange the photos from the most dangerous to the least based on his knowledge and experience. The entire leadership of the Islamic community were in the photos—sheikhs, imams, board members; prayer leaders, leaders of civic organizations, and youth groups. The process took hours. Agents Armstrong and Allen also asked Monteilh to assist them in organizing the photos according to categories such as financial, operative, and leadership; to divide photos into possible cells according to mosques and ethnicity or nationality. The first of these meetings was in about 16 March 2007, and the last was in about September 2007.

144. Over the course of several conversations, Agents Armstrong and Allen told Monteilh that they considered the leaders in the Muslim community—board members and leadership at mosques and leaders of Muslim organizations—to be potential threats, and that they regularly surveilled them and maintained more detailed files of information on their background and activities.

145. In about early spring of 2007, Agents Armstrong and Allen told Monteilh that information he had provided was particularly valuable, and told him he was “gold” in Los Angeles and in Washington. Agent Allen said that information from the operation was followed by people “at the highest levels,” and that the operation was among the ten most important intelligence investigations going on in the country. In about March or April 2007, Agent Allen said that he had meetings with Ste-

phen Tidwell and one of his supervisors from Washington, D.C., Joseph Billy, Jr., about the operation.³⁰ Around the same time period, Agent Allen flew to Washington, D.C. with his supervisor, Pat Rose, in part to meet with high-level FBI officials to get approval to open a gym for Muslims that would function in part as a mosque with a prayer room. Agent Allen told Monteilh that approval to open the gym had been granted.

146. At around that time, Agents Armstrong and Allen told Monteilh that information from the operation would be shared with other agencies—that information obtained on people’s finances or foreign assets was shared with the Treasury Department, and that information about people’s immigration issues would be sent to immigration officials.

The End of the Monteilh Operation

147. Agents Allen and Armstrong had instructed Monteilh to ask general questions about *jihad* from the beginning of the operation. In early 2007, they instructed him to start asking more pointedly about *jihad* and armed conflict, then to more openly suggest his own willingness to engage in violence. Pursuant to these instructions, in one-on-one conversations, Monteilh began asking people about violent *jihad*, expressing frustration over the oppression of Muslims around the world, pressing them for their views, and implying that he might be willing or able to take action.

148. In about May 2007, on instructions from his handlers, Monteilh told a number of individuals that he

³⁰ Upon information and belief, Billy was at the time the FBI’s Assistant Director in Charge of the agency’s Counterterrorism Division.

believed it was his duty as a Muslim to take violent actions, and that he had access to weapons. Many members of the Muslim community at ICOI then reported these statements to community leaders, including Husam Ayloush. Ayloush both called the FBI to report the statements and instructed the individuals who had heard the statements to report them to the Irvine Police Department, which they did.

149. As a community, ICOI also brought an action for a restraining order against Monteilh to bar him from the mosque. A California Superior Court granted the restraining order in June 2007.

150. After the court granted the restraining order, Monteilh continued going to other mosques for a month or two, but then disappeared from the Muslim community.

151. At around the same time—during the summer of 2007—Agents Armstrong and Allen told Monteilh that Defendant Barbara Walls, then the Assistant Special Agent in Charge of the FBI's Santa Ana office, had come to distrust him and did not want him working any more. They told him there was significant conflict between Agent Walls and field agents over how to handle the operation, and that there had been an audit team sent from Washington, D.C., to examine Agent Walls' handling of one of the leads from the operation. Because of this conflict and complications surrounding the restraining order, Agents Armstrong and Allen told Monteilh in about September 2007 that he would be going on hiatus from undercover work in the Orange County Muslim community.

152. During one of their final meetings with Monteilh in about October 2007, Agent Allen told Monteilh that although his role was over, Operation Flex and the FBI's operations in Orange County and Los Angeles would continue. He said that the information Monteilh had provided was a valuable foundation for the FBI's continuing work.

153. During one of the final meetings between Agents Armstrong and Allen and Monteilh, Agent Walls was also present. She warned Monteilh to stay silent about the operation.

154. In August 2008, Monteilh returned to Irvine and contacted the Irvine Police Department to voice concerns about his safety because of his role as an informant. He spoke with a detective, as well as a sergeant that he recognized as someone who had once escorted him when he was undercover with his handlers. The sergeant knew very specific information about individuals Monteilh had surveilled who he had concerns about, and told Monteilh in this meeting that he worked for JTTF. He told Monteilh that several individuals he had asked him about were still under surveillance. He also specifically mentioned that surveillance was ongoing at gyms and at least two mosques.

Monteilh's Identity Revealed

155. On or about about February 20, 2009, a man named Ahmed Niazi was arrested in Orange County and charged in federal criminal court with immigration fraud for lying on his naturalization application.

156. Niazi had met Monteith at ICOI and had spent a significant amount of time with him. Niazi had heard Monteilh's most direct statements about *jihad* and had

reported those statements to Hussam Ayloush and to the Irvine Police Department.

157. At Niazi's bail hearing, which occurred on February 24, 2009 in federal district court in Santa Ana, California, FBI Special Agent Thomas Ropel testified that Niazi presented a threat to national security. Agent Ropel testified that he had heard numerous recordings of conversations between Niazi and a confidential informant. Agent Ropel stated that this confidential informant was the man Hussam Ayloush had reported to the FBI, and that Niazi and another individual had reported to the Irvine Police Department. Together, these statements confirmed that the informant was Craig Monteilh, and that he had recorded numerous conversations that he had while an informant.

158. Charges against Niazi were dismissed at the request of the United States Attorney's office on about September 30, 2010.

159. Agent Ropel's testimony on February 24, 2009 confirmed for the first time that Monteilh was a confidential informant for the FBI who had recorded numerous conversations.

160. Prior to that testimony, Plaintiffs did not know and could not reasonably have known that Monteilh was working for the FBI as an informant; that the FBI and Defendants, through Monteilh, had surveilled and gathered information about them from their interactions with Monteilh; and that the FBI had subjected them to this surveillance because of their religion. Upon information and belief, prior to February 2009, Monteilh never

told anyone outside of law enforcement and his immediate family that he was working as an informant for the FBI.

161. Subsequent to Ropel's testimony, a number of different sources have confirmed that Monteilh worked for the FBI, including Monteilh himself.

162. In news accounts of the investigation, Monteilh himself has stated to reporters that the FBI paid him more than \$170,000 over fifteen months to be an undercover informant in mosques in Orange County, that "he was instructed to infiltrate mosques throughout Orange [County] and two neighboring counties in Southern California," that he was "ordered to randomly surveil and spy on Muslims to ferret out potential terrorists," and that his handlers told him that "Islam is a threat to our national security."³¹

163. Upon information and belief, on August 20, 2007, the district attorney in a state criminal case against Monteilh from 2003 moved to terminate his probation early. In the proceeding, the district attorney explained the basis for the termination:

Apparently, [Monteilh] is working with F.B.I. Agent Kevin Armstrong. He has given Agent Armstrong very, very valuable information that has proven to be essential in an F.B.I. prosecution. It was Agent

³¹ See Jerry Markon, *Tension grows between Calif. Muslims, FBI after informant infiltrates mosque*, WASH. POST (Dec. 5, 2010).

Armstrong that contacted the head deputy and the head deputy instructed us to ask for termination.³²

A copy of the transcript is attached hereto as Attachment 1.

164. Further confirmation comes from court documents filed in a civil action that Monteilh brought against the FBI and the City of Irvine. In some of those documents, the City of Irvine acknowledged that while a pending criminal investigation of Monteilh was underway, members of the FBI's Orange County Joint Terrorism Task Force approached members of the Irvine police force and asked them to delay any action against Monteilh.³³

165. In discovery served by Monteilh in that same federal lawsuit, the City of Irvine admitted that it and its agents "were aware that [Monteilh] was an FBI informant," and that the City of Irvine "[was] informed by the FBI that [Monteilh] was an FBI informant."³⁴

166. Correspondence in connection with that lawsuit provides yet more evidence of Monteilh's work as an FBI informant. Upon information and belief, on June

³² Transcript of Proceedings held Aug. 20, 2007, Probation Termination, *People v. Monteilh*, L.A. Sup. Ct. No. KA059040, filed in support of Motion to Set Aside Conviction, Exh. I, *Monteilh v. Federal Bureau of Investigation*, Dkt. 89-9, Case No. 10-cv-00102 JVS (RNBx) (C.D. Cal.).

³³ See Answer to Complaint of City of Irvine and Ronald Carr, *Monteilh v. Federal Bureau of Investigation*, Dkt. 23, Case No. 10-cv-00102 JVS (RNBx) (C.D. Cal.).

³⁴ See Motion to Set Aside Conviction, Exh. G, *Monteilh v. Federal Bureau of Investigation*, Dkt. 89-7, Case No. 10-cv-00102 JVS (RNBx) (C.D. Cal.) (excerpts of City of Irvine's responses to requests for admissions).

16, 2010, Associate General Counsel for the FBI, Henry R. Felix, sent a letter to Adam Krolikowski, an attorney representing Monteilh in his civil action against the FBI, in reply to a letter Krolikowski had sent the previous day. Felix's June 16 letter indicated that Monteilh had signed a non-disclosure agreement with the FBI on October 5, 2007. Felix noted that Krolikowski had sent previous letters, but stated that his most recent letter mentioned "Operation Flex" and that this was "the first letter in which [Krolikowski] reference[d] a particular FBI operation or investigation." A copy of this letter is attached hereto as Attachment 2.³⁵

167. Monteilh himself confirms many of the above-described details of his work as an informant, including that he worked for the FBI to infiltrate the Muslim community of Southern California from about July 2006 until October 2007; that, during this time, he spent about six or seven days a week posing as a Muslim convert named Farouk al-Aziz; that he conducted surveillance and other information-gathering on a wide variety of individuals and organizations in the Muslim community, solely because they were Muslim; and that he conducted surveillance of Plaintiffs as alleged below.

Monteilh's Interactions with Sheikh Yassir Fazaga

168. Agents Armstrong and Allen instructed Monteilh to conduct surveillance of the Orange County Is-

³⁵ A copy of the letter was filed by Monteilh in his damages action against the FBI. See Motion to Set Aside Conviction, Exh. D, *Monteilh v. Federal Bureau of Investigation*, Dkt. 89-4, Case No. 10-cv-00102 JVS (RNBx) (C.D. Cal.).

lamic Foundation (OCIF) mosque in Mission Viejo, California. The imam of that mosque is Plaintiff Yassir Fazaga.

169. Agents Armstrong and Allen told Monteilh they believed that Plaintiff Fazaga, the imam of OCIF, was a radical, for several reasons: They said that Fazaga directed students on how to conduct demonstrations and encouraged them to speak out. They said that when the FBI Assistant Director in Charge of the Los Angeles Field Office, Stephen Tidwell, attended a meeting at an Orange County mosque in about spring 2006, Fazaga openly pressed Tidwell about FBI informants in mosques, and when Tidwell denied putting informants in mosques, Fazaga had openly said he did not believe Tidwell. They also said that Fazaga was a person of interest because he was a board member of “In Focus News,” a prominent Muslim newspaper that was vocal in speaking out against U.S. government actions that negatively affected Muslims and which Agents Armstrong and Allen believed was anti-American and linked to Muslim civil rights groups.³⁶

³⁶ Southern California *InFocus News* is the largest Muslim newspaper in California, with a circulation of about 25,000 and distribution at over 350 Muslim businesses and mosques throughout California, including every major mosque in Los Angeles and Orange County. According to its website, the paper’s objective is to provide honest, effective and professional reporting, with a focus on California Muslims that both brings forth issues of concern to the California Muslim communities and provides a window into the American Muslim experience for all Californians. The paper has not only covered stories on local Muslim events and leaders, but has examined taboo topics such as domestic violence in the Muslim community and written stories to bridge community divides, such as by profiling families of other religions. Like many other newspapers, *InFocus News* has

170. Agents Armstrong and Allen told Monteilh that OCIF was linked to ICOI, a mosque they were also interested in, because the two mosques held joint events and jointly organized foreign trips, including the hajj pilgrimage to Mecca. They referred to OCIF as a “definite hotspot.”

171. Agents Armstrong and Allen also told Monteilh that OCIF was radical because it had certain religious scholars as guest speakers whom they believed were radical—particularly Yusef Estes, Suhaib Webb, and a local imam, Ahmad Sakr. They said that a moderate mosque would not have chosen these guest speakers.

172. Agents Armstrong and Allen instructed Monteilh to attend the Yusef Estes lecture which Sheikh Fazaga’s mosque hosted. They equipped him with hidden video equipment that he used to video record the entire lecture, the literature Estes had set out, and the people who attended.

173. Pursuant to Agent Armstrong and Allen’s instructions, Monteilh attended OCIF a number of times to conduct surveillance, including during Sheikh Fazaga’s sermons.

174. Agent Armstrong and Allen also equipped Monteilh with a video camera hidden in a shirt button that he used to take video of the interior of OCIF. Agents Armstrong and Allen instructed Monteilh to get a sense of the schematics of the place—entrances, exits,

at times given news coverage or printed opinion pieces that supported or opposed various policies of the United States government. The paper has never advocated violence against the United States or its citizens or done anything else that would reasonably justify characterizing it as “anti-American.”

rooms, bathrooms, locked doors, storage rooms, as well as security measures and whether any security guards were armed. Agent Armstrong later told Monteilh that they had used the information he gathered to enter the mosque.

175. On the instructions of Agents Armstrong and Allen, Monteilh made video recordings of an area in the back of OCIF where there were religious books available for congregants to use, so that they could determine if any of the literature there was extremist.

176. Agents Armstrong and Allen also instructed Monteilh to make contacts within Sheikh Fazaga's Mission Viejo congregation. To comply, Monteilh worked out on various different occasions with about 40 of their congregants, usually in groups, obtaining the email address and cell phone number of anyone he worked out with and passing that information on to his handlers.

177. Agents Armstrong and Allen instructed Monteilh to gather additional information on a few individuals within the congregation who seemed to have the most direct access to Fazaga—to gather their email addresses, cell phone numbers, and addresses, as well as basic background information such as their occupation, whether they were married or had children, and what prayers they attended. Monteilh gathered this information and passed it on to Armstrong and Allen.

178. Agents Armstrong and Allen instructed Monteilh to monitor Fazaga at the prayers he conducted, to record and report on what he said, to talk with him afterwards and see who else talked to him afterwards, and to note individuals who appeared to be close to him. Monteilh also monitored what was said by a member of

the congregation who substituted for Fazaga during one of the prayers.

179. In about April 2007, a member of the community introduced Monteilh to Fazaga while he was recording with a hidden video camera. Monteilh also obtained Fazaga's cell phone number and email address (not through Fazaga, but through others) and passed those on to Agents Armstrong and Allen, who told him they used the email addresses and telephone numbers gathered to monitor communications and conduct further surveillance.

180. Monteilh also gave Agents Armstrong and Allen the license plate numbers of cars Fazaga traveled in and the people with whom Monteilh saw him associate.

181. Agents Armstrong and Allen instructed Monteilh that whenever he saw Fazaga at another mosque or anywhere outside OCIF, he should call them and let them know immediately. Monteilh did this at least once when he saw Fazaga at another mosque.

182. On one occasion, during Friday afternoon prayer at OCIF, the mosque had a booth set up to collect donations for some kind of relief for Muslims abroad. Pursuant to Agents Armstrong and Allen's orders to monitor donations, Monteilh stood near the booth and used the hidden video camera to make video recordings of people who went up to the booth to contribute money.

183. After Monteilh's role as an FBI informant became publicly known in 22 February 2009, many members of the OCIF congregation were horrified to learn that the man who spent so much time in their mosque

was an informant. This revelation significantly undermined the trust within that community, which in turn deterred members from worshipping as a congregation.

184. Since he had contact with Monteilh, Fazaga has also been subjected to secondary screening and searches upon return to the U.S. from various international trips, being held between 45 minutes and three hours most times he travels.

185. Since discovering the FBI surveilled him and the mosque where he serves as imam, Sheikh Fazaga believes that any of his communications in the mosque and over telephones may be monitored, and indeed that he may be under surveillance at any time. As an intern therapist as well as an imam, Fazaga provided counseling to congregants and Muslims at the mosque as part of his service to the Muslim community. Since learning of the FBI's surveillance, he no longer counsels congregants at the mosque for fear that their conversations are monitored and therefore the personal information shared is not confidential, which has limited his capacity to provide such counseling. The constant fear of being under surveillance, the scrutiny during travel, the effect on the sense of community at his mosque and others, and the additional difficulty in providing counseling to clients have all caused Sheikh Fazaga severe and ongoing anxiety and emotional distress.

Monteilh's Interaction with Plaintiff Ali Uddin Malik

186. In their early meetings with Monteilh, Agents Armstrong and Allen showed Monteilh a picture of a young man who they identified as Plaintiff Ali Malik. They told him Malik had been a surfer kid in Newport Beach who wore dyed hair, but had travelled to Yemen

to attend a religious school, and had returned to the U.S. wearing traditional Muslim dress and a full beard.

187. Agents Armstrong and Allen told Monteilh that Malik's change in behavior in embracing religion and traditional dress was highly suspicious and for that reason they needed to investigate him. They also told him they were suspicious of Malik because he was involved with people from the "MSU." ("MSU" stands for "Muslim Student Union," which is the name of Muslim student groups at many colleges and universities, including U.C. Irvine.) Agent Armstrong told Monteilh that before he was assigned to be his handler, he had been assigned to investigate the MSUs and young Muslims, including Ali Malik.

188. Agents Armstrong and Allen told Monteilh that the way that Malik groomed his beard indicated that he was a radical.

189. Agents Armstrong and Allen already had information on Malik and his family before they assigned Monteilh to do anything, but they told Monteilh to get more information on one of his brothers; on another individual who Malik was close to; on Malik's associations from the Irvine mosque, and on anyone with whom Malik hung out at the gym.

190. Agents Armstrong and Allen said that they knew Malik had been to an Islamic religious school in Yemen, and that he had been blocked from entering Saudi Arabia after he had traveled to Yemen. They tasked Monteilh with finding out what school he had been to and why he had been denied entry into Saudi Arabia. Upon information and belief, Armstrong and Allen already had knowledge of this information. When

re-entering the country in 2006, Malik had been interviewed at length by U.S. officials and had fully disclosed the nature of his travels, including his study at Dar al-Mustafa. Malik also disclosed that while abroad, he had traveled to Abu Dhabi in hopes of getting a visa to Saudi Arabia for Umrah (the minor pilgrimage in Islam). However, Malik was informed by individuals both at Dar al-Mustafa and in Abu Dhabi that he needed to apply for a visa with the Saudi embassy in the United States, which was logistically impossible to do during his trip, so that Malik did not attempt to enter Saudi Arabia or even apply for a visa during his 2006 trip.

191. In about April 2007, Agents Armstrong and Allen began discussing the possibility of sending Monteilh abroad to study Islam and Arabic. When Monteilh started asking about a school to go to, Malik told him that he had attended Dar al-Mustafa in Tarim, in Yemen. Monteilh reported this information to Agents Armstrong and Allen.

192. On several occasions, Monteilh used the key fob or cell phone recording devices provided by Agents Armstrong and Allen to record groups of young Muslims talking in the prayer hall, particularly after *ishaa* prayer. On these occasions, Monteilh greeted people, left his things—including the recording device—near where they were talking, and then went to another part of the mosque (or a different part of the prayer hall) to pray so that the recording device would capture their conversation when he was gone. On several of these occasions, Ali Malik was one of the people in the group Monteilh recorded. Monteilh recorded these conversations when he was not present, then gave notes that detailed the people he saw there to Agents Armstrong and Allen,

so they would be able to identify the voices. Agents Armstrong and Allen received notes in which Monteilh said that he had recorded these conversations without being physically present, and never told him not to do this.

193. The prayer hall of a mosque is sacred space where particular rules and expectations apply. Shoes are prohibited, one must be in a state of ablution, discussing worldly matters is discouraged, and the moral standards and codes of conduct are at their strongest. Gossiping, eavesdropping, or talebearing (*namima*—revealing anything where disclosure is resented) is forbidden. *Halaqas*, or small group meetings, are understood by attendees of the mosque to be safe environments in which to discuss theology or matters related to the practice of Islam, and that correspondingly ensure some measure of confidentiality among participants. In addition, audio and video recording without permission were barred at ICOI, and on rare occasions where an outside entity recorded an event or speaker, signs notified congregants of the recording.

194. Malik more than once told Monteilh that he heard Monteilh was going regularly to *fajr*, or early morning prayer. Malik commended Monteilh on his commitment—he said that he had gotten into the routine of attending *fajr* prayers daily when he had been studying abroad, but that, regrettably, it was easy to fall into attending prayers only when it was convenient. He stated that he wanted to get back to that kind of regimen. Agents Armstrong and Allen told Monteilh this was significant information that indicated Malik was returning to extremist beliefs, which justified further surveillance.

195. Agents Armstrong and Allen received significant information on Malik. In addition to the surveillance described above, including recordings of all Monteilh's conversations with Malik, they several times showed Monteilh photos with people they said had seen with Malik and asked him to identify them. The pictures sometimes had Malik in them.

196. Since his contact with Monteilh, Malik has repeatedly been subjected to extended interviews with FBI and Customs upon re-entering the country, including one interview that lasted for several hours, resulted in him missing a connecting flight, and consequently missing a summer school class that made him lose credit for the class and required that he push his college graduation back by several months at considerable financial expense.

197. Also as a result of the FBI's surveillance, Malik altered his religious practices. Because he understood he was targeted because of his outwardly religious appearance, adherence to Islamic ritual practice, and involvement with the mosque and Muslim Student Union at UCI, Malik trimmed his beard, does not regularly wear a skull cap any longer, and stopped attending the mosque regularly for an extended period of time. To this day, he attends mosque less frequently than he did before having contact with Monteilh because of his fear of being monitored at mosque and the effect that this fear has on his sense of the mosque as a place of peace and spiritual refuge. This interference with his religious practice results from Defendants' actions and has caused Malik severe and ongoing anxiety and emotional distress.

198. Malik also believes his reputation in the community to have been damaged. He believes that because of his association with Monteilh, people have also assumed that he is a government informant and act as if they are suspicious of him. He believes that he does not have the full trust of the Muslim community. This belief that others suspect him because of Defendants' actions has caused Malik severe and ongoing anxiety and emotional distress.

199. Since discovering the FBI surveilled him and the mosque he attended, Malik believes that any of his communications in the mosque and over telephones may be monitored, and indeed that he may be under surveillance at any time. He curtails phone and email conversations with his friends and family because of his belief that they may be monitored. He also suspects that any newcomer to a mosque may be an FBI informant, and has refused to be as welcoming to newcomers as he believes his religion requires. This constant fear of being under surveillance because of Defendants' acts has caused Malik severe and ongoing anxiety and emotional distress.

Monteilh's Interaction with Yasser AbdelRahim

200. A few weeks after Monteilh took *shahadah* at ICOI, a group of young men approached him at the mosque, said they were impressed that he attended mosque so regularly and invited him to socialize with them at their house. Agents Armstrong and Allen told Monteilh that the men's home was already under surveillance because it was shared by five young, unmarried Muslim Egyptian men with different skills and backgrounds—including a computer analyst, a pharmacist, an accountant, and one who handled logistics—and

that for that reason they believed they might be a Muslim Brotherhood cell.

201. A few days after this invitation, Monteilh told Agents Armstrong and Allen that one of the young men who lived at the house, Plaintiff Yasser Abdel AbdelRahim, was a person who seemed to attract and have influence with young Muslims. Agents Armstrong and Allen told him they thought AbdelRahim was the leader of the cell, and that he should spend time at their house, and with AbdelRahim in particular, and gather as much information as he could. Monteilh did so, and gave recordings of all the conversations he had with AbdelRahim and the other members of the house to Agents Armstrong and Allen, along with notes about his observations.

202. Agents Armstrong and Allen told Monteilh to get into every room in AbdelRahim's house to see what was in there, and include that information in his reports. Later, in about February or March of 2007, Armstrong and Allen equipped Monteilh with a video camera hidden in a shirt button and instructed him to conduct video surveillance of the layout and contents of the house, which he did.

203. Shortly after first meeting Monteilh, AbdelRahim and one of his roommates bought Monteilh some books on Islam, and later asked he what thought of them. Some time after that, AbdelRahim agreed to meet with Monteilh to teach him various prayers. Agents Armstrong and Allen expressed excitement at this, and asked for the first sheet of paper on which AbdelRahim had written a prayer for Monteilh to learn, telling him when they gave it back a few days later that they had lifted AbdelRahim's fingerprints from it.

204. When Monteilh reported that AbdelRahim always led prayer in the house, Agents Armstrong and Allen said that showed leadership, and confirmed that the surveillance should focus on him.

205. Pursuant to standing instructions from Agents Armstrong and Allen, Monteilh gathered and provided them information about AbdelRahim's travel plans, particularly when AbdelRahim was going to or from Egypt to see his family or his fiance's family. After one of these trips to Egypt, AbdelRahim complained that he had questioned for a long time when he re-entered the country—that he expected some delay but this had been way too long. Agents Armstrong and Allen told Monteilh they had been responsible for that questioning.

206. During this time, AbdelRahim played pick-up soccer with other Muslim youth. Monteilh attended some of these games and took down the license plates of people who attended. On more than one occasion, he made a video recording with a hidden camera Agents Armstrong and Allen provided him, in order to document who was attending and socializing with one another.

207. After Monteilh learned through conversations that AbdelRahim traveled to a particular city for his job, Agents Armstrong and Allen had a particular group of Muslims in that city surveilled and believed he went there to report or get instructions from this group. As Agents Armstrong and Allen had told Monteilh to report all travel plans, he reported AbdelRahim's travel plans on several occasions. Agents Armstrong and Allen told Monteilh that they had AbdelRahim surveilled when he traveled, based on Monteilh's information.

208. Monteilh talked to AbdelRahim about his fiancée, who lived in Detroit, and her family, and transmitted what information he learned to Agents Armstrong and Allen—including her email address.

209. On different occasions, Agents Armstrong and Allen told Monteilh that the FBI had electronic listening devices in AbdelRahim's house, as well as in AbdelRahim's car and phone. For example, one day, one of Monteilh's handlers called to tell him that a friend had driven up to AbdelRahim's house quickly in an agitated state, and asked Monteilh to go down there to find out what was going on. When Monteilh asked how he knew this, he indicated they had video outside the house. Another time, Agents Armstrong and Allen asked him about something that happened inside the house that he hadn't yet put in his notes, then told him that they knew because they had audio surveillance in the home.

210. Agents Armstrong and Allen said that AbdelRahim was donating money to a charitable organization in Egypt and that these donations had been tracked by the Treasury Department. They said that these donations were not unlawful, but that they could make them seem suspicious in order to threaten him and pressure him to provide information and become an informant.

211. On many Tuesday nights, an imam from the Garden Grove mosque gave Arabic language teachings at ICOI. AbdelRahim often attended. On several occasions, Monteilh used recording devices provided by his handlers to record these teachings and the discussions afterward by going into the prayer hall to pray near the group, then leaving his things—including the recording device (disguised as a key fob or cell phone)—

near to where the group was talking, and then go to another part of the mosque or a different part of the prayer hall to pray. The recording device would capture their conversation when Monteilh was not within earshot. AbdelRahim was part of the group when Monteilh recorded on several occasions.

212. On instructions from Agents Armstrong and Allen, Monteilh asked AbdelRahim questions about *jihad* and pressed him on his views about religious matters and certain religious scholars (particularly Egyptian ones) in order to get him to say something that might be incriminating or provide a way to pressure him to provide information to the FBI. AbdelRahim told Monteilh that there was more to Islam than *jihad*: that *jihad* is a personal struggle, and that to the extent that there is such thing as a fighting *jihad*, the Quran places very strict rules that prohibit harming plants or trees, infants, elderly or women, and that terrorists who say they are engaged in *jihad* are committing murder. When Monteilh brought up religious scholars Agents Armstrong and Allen had instructed him to mention, like Hassan al-Banna and Sayid Qutb, AbdelRahim said that he did not agree with them, but thought that the Egyptian government should not have executed them.

213. When Monteilh was reported to the FBI by Muslim community members, AbdelRahim was contacted by FBI agents and met with them to offer information about Monteilh and his extremist rhetoric. Upon information and belief, one of these agents was Defendant Paul Allen.

214. A few months later, AbdelRahim unexpectedly met the same FBI agents, who were waiting for him outside the office of his chiropractor. He was surprised to

see them there as he had scheduled an appointment with the chiropractor just an hour or so prior. They went to a coffee shop and showed him a search warrant and told him that his storage unit was being searched by the FBI. Two days later, they met again with AbdelRahim and asked him if he knew of any person engaged in any suspicious activity at the mosque or elsewhere. They asked AbdelRahim if he minded contacting the agents if he came across any information of anyone doing anything. AbdelRahim understood that they were asking him to be an informant, and he refused. The FBI agents asked not to mention the offer to anyone.

215. Since he had contact with Monteith, AbdelRahim has also been subjected to extensive secondary questioning and searches most of the times he has returned to the U.S. from trips abroad. These interrogations and the fear that he will be subjected to them when he travels have caused AbdelRahim severe anxiety and emotional distress.

216. Since discovering the FBI surveilled him and the mosque he attended, AbdelRahim believes that any of his communications in the mosque and over telephones or email may be monitored, and indeed that he may be under surveillance at any time. He also suspects that any newcomer to a mosque may be an FBI informant, and has refused to be as welcoming to newcomers as he believes his religion requires. This constant fear of being under surveillance because of Defendants' acts has caused AbdelRahim severe and ongoing anxiety and emotional distress.

217. Since these incidents, AbdelRahim's confidence in the mosque as a sanctuary has been ruined. He significantly decreased his attendance to mosque

services for fear of surveillance, and as such his donations to mosque institutions also decreased. This interference with his religious practice has caused AbdelRahim severe and ongoing anxiety and emotional distress.

CLASS ALLEGATIONS

218. Plaintiffs, as class representatives, bring claims for injunctive relief on behalf of themselves and all similarly situated persons pursuant to Rule 23(a) and 27(b)(2).

219. Plaintiffs, as class representatives, bring this action on their own behalf and on behalf of the following class:

All individuals targeted by Defendants for surveillance or information-gathering through Monteilh and Operation Flex, on account of their religion, and about whom the FBI thereby gathered personally identifiable information.

220. *Numerosity.* The size of the class makes a class action both necessary and efficient. Plaintiffs estimate that the class consist of hundreds if not thousands of current and former residents of Southern California. Members of the class are ascertainable through a review of Defendants' files on Operation Flex, but so numerous that joinder is impracticable.

221. *Typicality.* The claims of the Plaintiffs are typical of the claims of the class as a whole. Each of the Plaintiffs was subjected to surveillance by Defendants during the relevant period. As a result of Defendants' practices, Defendants have discriminated against each of Plaintiffs on the basis of their religion and reli-

gious practices, in violation of law. The unlawful policies and practices that have operated to discriminate against the Plaintiffs are typical of the unlawful practices that operated to discriminate against other class members so as to unlawfully target them for surveillance because of their religion and religious practices.

222. *Common Questions of Law and Fact.* This case poses common questions of law and fact affecting the rights of all members of the class, including, but not limited to:

- a. Whether Defendants engaged in a program of conducting surveillance of mosques in Orange County, and the Plaintiffs and class members who attended those mosques;
- b. Whether Defendants targeted Plaintiffs and class members for surveillance through Monteilh because they were Muslims or because of their practice of Islam;
- c. Whether Defendants' practice of targeting Plaintiffs and class members for surveillance because they were Muslim or because of their practice of Islam constitutes impermissible religious discrimination under the First Amendment;
- d. Whether Defendants' practice of targeting Plaintiffs and class members for surveillance because they were Muslim or because of their practice of Islam violates the guarantee of equal protection of the laws under the Fifth Amendment;
- e. Whether Defendants' practice of targeting Plaintiffs and class members for surveillance because they were Muslim or because of their practice of

Islam places a substantial burden on the religious exercise of Plaintiffs and class members under the First Amendment;

- f. Whether Defendant FBI maintains records on Plaintiffs and class members, arising out of the investigation at issue, describing how they exercise rights guaranteed by the First Amendment;
- g. Whether the maintenance by Defendant FBI of records on Plaintiffs and class members describing how they exercise rights guaranteed by the First Amendment is pertinent to and within the scope of lawful, authorized law enforcement activity;
- h. Whether information gathered by Defendants pursuant to unlawful surveillance should be disgorged and purged from their files;
- i. Whether Defendants conspired for the purpose of depriving Plaintiffs and other class members of their rights for purposes of 42 U.S.C. § 1985;
- j. Whether and what kinds of declaratory and injunctive relief are appropriate.

223. *Adequacy of Class Representation.* Plaintiffs can adequately and fairly represent the interests of the class as defined above, because their individual interests are consistent with, and not antagonistic to, the interests of the class.

224. *Adequacy of Counsel for the Class.* Counsel for Plaintiffs possess the requisite resources and ability to prosecute this case as a class action and are experienced civil rights attorneys who have successfully litigated other cases involving similar issues.

225. *Propriety of Class Action Mechanism.* Class certification is appropriate because the prosecution of separate actions against Defendants by individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants and because Defendants have acted or refused to act on grounds that apply generally to the class.

CLAIMS FOR RELIEF

First Cause of Action

Violation of the First Amendment Establishment Clause

Claim under *Bivens*; 28 U.S.C. § 1331

(Against All Defendants except the FBI and United States by all Plaintiffs.)³⁷

226. Plaintiffs incorporate Paragraphs 1-225 as if fully set forth herein.

227. As set forth above, Defendants engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam. This scheme discriminates against Muslims, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

³⁷ Plaintiffs' claims for damages under *Bivens* are made against those Defendants named in their individual capacities, while their claims for injunctive relief under Section 1331 are made against Defendants named in their official capacities.

Second Cause of Action

Violation of the First Amendment Establishment Clause

Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343

(Against Individual Capacity Defendants by all Plaintiffs.)

228. Plaintiffs incorporate Paragraphs 1-227 as if fully set forth herein.

229. As set forth above, Defendants engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam and for the purpose of discriminating against Plaintiffs, as Muslims, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

230. Through their scheme, Defendants conspired, and conspired to go in disguise on the premises of another, for the purpose of depriving Plaintiffs, directly or indirectly, of the equal protection of the laws, and of equal privileges and immunities under the laws, because of their adherence to and practice of Islam. Defendants performed these acts with discriminatory animus against Muslims.

Third Cause of Action

Violation of the First Amendment Free Exercise Clause

Claim under *Bivens*; 28 U.S.C. § 1331

(Against All Defendants except the FBI and United States by all Plaintiffs.)

231. Plaintiffs incorporate Paragraphs 1-230 as if fully set forth herein.

232. As set forth above, Defendants engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam. This scheme discriminates against Muslims, in violation of the Free Exercise Clause of the First Amendment to the United States Constitution.

233. As set forth above, Defendants' surveillance placed a substantial burden on Plaintiffs' religious exercise in their practice of Islam and is justified by no legitimate government interest.

Fourth Cause of Action

Violation of the First Amendment Free Exercise Clause

Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343

(Against Individual Capacity Defendants by all Plaintiffs.)

234. Plaintiffs incorporate Paragraphs 1-233 as if fully set forth herein.

235. As set forth above, Defendants engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam and for the purpose of discriminating against Plaintiffs, as Muslims in violation of the Free Exercise Clause of the First Amendment to the United States Constitution.

236. As set forth above, Defendants' surveillance placed a substantial burden on Plaintiffs' religious exercise in their practice of Islam and is justified by no legitimate government interest.

237. Defendants have conspired, and conspired to go in disguise on the premises of another, for the purpose of depriving Plaintiffs, directly or indirectly, of the equal protection of the laws, and of equal privileges and immunities under the laws, because of their adherence to and practice of Islam. Defendants performed these acts with discriminatory animus against Muslims.

Fifth Cause of Action

**Violation of Religious Freedom Restoration Act,
42 U.S.C. § 2000bb-1**

(Against All Defendants by all Plaintiffs.)

238. Plaintiffs incorporate Paragraphs 1-237 as if fully set forth herein.

239. The actions of Defendants substantially burdened Plaintiffs' exercise of religion, and are neither in furtherance of a compelling governmental interest nor the least restrictive means of furthering any compelling governmental interest.

Sixth Cause of Action

**Violation of Fifth Amendment Equal Protection Clause
Claim under *Bivens*; 28 U.S.C. § 1331**

**(Against All Defendants except the FBI and United
States by all Plaintiffs.)**

240. Plaintiffs incorporate Paragraphs 1-239 as if fully set forth herein.

241. As set forth above, Defendants have engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam. This scheme discriminates against Muslims, in

violation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

Seventh Cause of Action

Violation of the Equal Protection Clause

Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343

(Against Individual Capacity Defendants by all Plaintiffs.)

242. Plaintiffs incorporate Paragraphs 1-241 as if fully set forth herein.

243. As set forth above, Defendants have engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam. This scheme discriminates against Muslims, in violation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

244. Defendants have conspired, and conspired to go in disguise on the premises of another, for the purpose of depriving Plaintiffs, directly or indirectly, of the equal protection of the laws, and of equal privileges and immunities under the laws, because of their adherence to and practice of Islam. Defendants performed these acts with discriminatory animus against Muslims.

Eighth Cause of Action

Violation of the Privacy Act, 5 U.S.C. § 552a(a)-(1)

(Against Defendant FBI by all Plaintiffs.)

245. Plaintiffs incorporate Paragraphs 1-244 as if fully set forth herein.

246. Defendant FBI, through Monteith, collected and maintained records describing how Plaintiffs exercised their First Amendment rights, in violation of 5 U.S.C. § 552a(e)(7). Collection and maintenance of these records is not expressly authorized by statute, not authorized by Plaintiffs, and is neither pertinent to nor within the scope of an authorized law enforcement activity.

247. Defendant FBI's collection and maintenance of records of Plaintiffs' First Amendment activities was intentional and willful, insofar as Defendants gathered the information for the purpose of collecting and maintaining records of Plaintiffs' First Amendment activities.

248. On or about September 6 and 12, 2011, Plaintiffs submitted letters to the FBI requesting that the FBI disclose all records in the possession of the FBI, associated with each Plaintiff, that were "gathered through the surveillance of former FBI informant Craig Monteilh and/or Operation Flex, as well as any information derived from that information." The letters also requested that the FBI "expunge all records associated with [Plaintiffs] that describe the exercise of [their] rights under the First Amendment of the United States Constitution that were gathered through the surveillance of former FBI informant Craig Monteilh and/or Operation Flex, as well as any records derived from that information." The FBI has to date failed to provide Plaintiffs with those records or otherwise to respond to their requests.

249. Defendant FBI has failed to disclose records as required by Section 552a(d)(1). The records requested are not exempt from disclosure pursuant to Section 552a(j-k) or any other applicable law.

Ninth Cause of Action
Violation of the Fourth Amendment
Claim under *Bivens*; 28 U.S.C. § 1331.

(Against All Defendants except the FBI and United States by all Plaintiffs.)

250. Plaintiffs incorporate Paragraphs 1-249 as if fully set forth herein.

251. Defendants' actions as set forth above constitute unreasonable searches in violation of the Fourth Amendment to the United States Constitution, including but not limited to Defendants' actions in audio recording Plaintiffs' communications without a warrant and where no party to the communication consented to the recording; video recording in homes and other places where Plaintiffs had a reasonable expectation of privacy against video recording; and entering and planting electronic listening devices in mosques without a warrant.

Tenth Cause of Action
Violation of the Foreign Intelligence Surveillance Act,
50 U.S.C. § 1810

(Against All Defendants by all Plaintiffs.)

252. Plaintiffs incorporate Paragraphs 1-251 as if fully set forth herein.

253. Defendants, under color of law, acting through Monteilh, used electronic, mechanical, and/or other surveillance devices, without a warrant, to monitor Plaintiffs and their communications and/or activities, and to

acquire information under circumstances in which Plaintiffs had a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

Eleventh Cause of Action

Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.*

(Against Defendant United States by all Plaintiffs.)

254. Plaintiffs incorporate Paragraphs 1-253 as if fully set forth herein.

255. At all times relevant to the complaint, Defendants Armstrong, Allen, Rose, Tidwell and Walls, were employees of the United States, acting in the scope of their employment through their own actions and their directions to employees and agents, under circumstances that would render the United States, if a private person, liable for damages that their actions caused Plaintiffs under California law. The United States is therefore liable to Plaintiffs, as follows, pursuant to 28 U.S.C. §§ 1346(b) and 2674.

256. The United States, if a private person, would be liable to Plaintiffs for invasion of privacy under California law. Defendants' acts in conducting audio and video surveillance of Plaintiffs, through Monteilh and Operation Flex, in situations in which Plaintiffs' had a reasonable expectation of privacy, constitute intrusions into a private place or matter in a manner highly offensive to a reasonable person.

257. The United States, if a private person, would be liable to Plaintiffs for violations of the California constitutional right of privacy set forth in Article 1, section 1 of the California constitution. Defendants' conduct in conducting audio and video surveillance of Plaintiffs,

both through Monteilh and Operation Flex, in situations in which Plaintiffs' had a reasonable expectation of privacy, and in compiling and maintaining information on Plaintiffs based solely on their religion and religious practice, amounts to a serious invasion of their rights to privacy.

258. The United States, if a private person, would be liable to Plaintiffs for violations of California Civil Code section 52.1. By subjecting Plaintiffs to constant surveillance because of their religion, then publicly revealing that surveillance, Defendants have interfered, or attempted to interfere, by threats, intimidation, or coercion with the exercise or enjoyment by Plaintiffs of their rights to practice their religion and to be free from religious discrimination under the California Constitution, in violation of California Civil Code § 52.1.

259. The United States, if a private person, would be liable to Plaintiffs for the intentional infliction of emotional distress under California law. Defendants' acts constitute extreme and outrageous conduct, in which they engaged with the intention of causing, or a reckless disregard for the probability of causing, emotional distress in plaintiffs; which was the actual or proximate cause of severe or extreme emotional distress that Plaintiffs have suffered.

260. Plaintiffs presented the FBI with notification of the above-alleged incidents and claims for monetary damages in claims sent to the FBI using Standard Form 95 on or about February 21, 2011. The FBI failed to make any response to Plaintiffs' claims within six months after they were filed.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

- a. Certify a Class under Rule 23(b)(2), as described above;
- b. Injunctive relief on behalf of Plaintiffs and all other putative class members ordering Defendants to destroy or return any information gathered through the unlawful surveillance program by Monteilh and/or Operation Flex described above, and any information derived from that unlawfully obtained information, as well as to comply with their obligations under the Privacy Act, 5 U.S.C. § 552a;
- c. Compensatory and punitive damages for violations of the laws of the United States and California, in an amount to be proven at trial;
- d. Liquidated damages in an amount to be proven at trial pursuant to 50 U.S.C. §§ 1810(a), 1828(a), and California Civil Code §§ 52(a), 52.1(b);
- e. Reasonable attorneys' fees and costs;
- f. Any other relief as this Court deems proper and just.

Dated: Sept. 13, 2011

Respectfully Submitted,

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, CALIFORNIA

HADSELL STORMER KEENY
RICHARDSON & RENNICK LLP

By: /s/ PETER BIBRING
PETER BIBRING

Attorneys for Plaintiffs

ATTACHMENT

1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES—WEST COVINA BRANCH

No. KA059040

THE PEOPLE OF THE STATE OF CALIFORNIA

v.

CRAIG F. MONTEILH, DEFENDANT

West Covina, California; Aug. 20, 2008
2:40 P.M.

PROBATION TERMINATION

[1]

UPON THE ABOVE DATE, THE DEFENDANT NOT BEING PRESENT IN COURT AND NOT REPRESENTED BY COUNSEL; THE PEOPLE BEING REPRESENTED BY LINDA CHILSTROM, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, THE FOLLOWING PROCEEDINGS WERE HELD:

[2]

CASE NUMBER:	KA059040
CASE NAME:	PEOPLE OF THE STAE OF CALIFORNIA VS. CRAIG MONTEILH
WEST COVINA, CALIFORNIA	AUG. 20, 2007

DEPARTMENT NO. 8 HON. ABRAHAM KHAN,
JUDGE

REPORTER: DIANA WHITESEL, CSR
NO. 6287

TIME: 2:40 P.M.

APPEARANCES:

(LINDA CHILSTROM, DEPUTY DISTRICT AT-
TORNEY OF LOS ANGELES COUNTY.)

-oOo-

THE CLERK: PEOPLE ARE GOING TO MOV-
ETO MAKE A MOTION TO TERMINATE PROBA-
TION.

THE COURT: CRAIG F. MONTEILH. KA059040.

MS. CHILSTROM: YOUR HONOR, I HAVE
BEEN INFORMED BY MR. SATO OF MY OFFICE
THAT HEAD DEPUTY SCOTT CARBAUGH HAS
REQUESTED THAT THIS CASE—THAT THE PRO-
BATION IN THIS MATTER BE TERMINATED.

THE COURT: CAN YOU GIVE ME A REASON?

MS. CHILSTROM: I DON'T KNOW A REASON.
I WAS JUST TOLD IT WAS UPON THE REQUEST
OF THE HEAD DEPUTY.

THE COURT: I'M GOING TO CONTINUE THIS
UNTIL TOMORROW UNTIL YOU CAN GIVE ME A
REASON. I USUALLY DON'T TERMINATE PRO-
BATION UNLESS THERE IS SOMETHING I CAN
RELY ON.

MS. CHILSTROM: NOT A PROBLEM.

I TAKE IT, WE'RE WAITING FOR MR. LINDARS.

MAY I MAKE A QUICK CALL?

[3]

(PAUSE IN PROCEEDINGS)

MS. CHILSTROM: YOUR HONOR, COULD THE COURT RECALL THE LAST CASE?

THE COURT: OKAY. WE'RE STILL ON THE RECORD IN CRAIG F. MONTEILH.

MS. CHILSTROM: YOUR HONOR, I JUST SPOKE WITH MR. SATO. INITIALLY I WAS JUST TOLD THAT THE HEAD DEPUTY WANTED THE PROBATION TERMINATED.

APPARENTLY THE DEFENDANT IS WORKING WITH F.B.I. AGENT KEVIN ARMSTRONG. HE HAS GIVEN AGENT ARMSTRONG VERY, VERY VALUABLE INFORMATION THAT HAS PROVEN TO BE ESSENTIAL IN AN F.B.I. PROSECUTION. IT WAS AGENT ARMSTRONG THAT CONTACTED THE HEAD DEPUTY AND THE HEAD DEPUTY INSTRUCTED US TO ASK FOR TERMINATION.

THE COURT: WELL, OKAY. I KNOW THE DEFENDANT HIMSELF WAS HERE IN APRIL AND HAD REQUESTED EARLY TERMINATION. AND I BELIEVE ON RECOMMENDATION OF THE DISTRICT ATTORNEY, I DENIED HIS REQUEST. AND THAT WAS BACK IN APRIL. THAT'S WHY I WANTED TO FIND OUT WHAT

THE REASONS WHY WERE AT THIS TIME BECAUSE IT'S ONLY BEEN FOUR MONTHS AFTER.

BUT OTHERWISE HE'S PAID HIS FINANCIAL OBLIGATION AND HE'S OTHERWISE BEEN ON PROBATION—HOW LONG HAS HE BEEN ON? IT'S KA059040. IS THAT '03?

MS. CHILSTROM: IT IS '03, YOUR HONOR.

THE CLERK: YES, YOUR HONOR, SINCE MAY 5, '03.

THE COURT: ALL RIGHT. APPARENTLY HE'S HAD PROBATION EXTENDED. IT MAY HAVE BEEN BECAUSE OF A WARRANT THAT HAD BEEN ISSUED WHICH IT WOULD OTHERWISE TOLL THE RUNNING OF HIS PERIOD.

[3]

I'LL GRANT THE REQUEST FOR THE REAONS STATED.

MS. CHILSTROM: THANK YOU

(THE PROCEEDINGS IN THE ABOVE ENTITLED MATTER WERE ADJOURNED.)

-oOo-

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—
WEST COVINA BRANCH

No. KA059040

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF

v.

CRAIG F. MONTEILH, DEFENDANT

DATED: Dec. 2, 2009

REPORTER'S CERTIFICATE

DEPARTMENT 8 HON. ABRAHAM KHAN, JUDGE

I, DIANA WHITESEL, CSR NO. 6287, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF ALL OF THE ADMONITIONS TAKEN AT THE TIME OF THE TAKING OF THE PLEA AND PRONOUNCEMENT OF SENTENCE IN THE ABOVE-ENTITLED CAUSE; AND FURTHER THAT THE VIEWS AND RECOMMENDATIONS OF THE COURT, IF ANY, ARE CONTAINED THEREIN PURSUANT TO SECTION 1203.01 OF THE PENAL CODE THE ABOVE-ENTITLED MATTER.

/s/ DIANA WHITESEL, CSR NO. 6287
DIANA WHITESEL, OFFICIAL REPORTER

ATTACHMENT

2



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D.C. 20535-0001

June 16, 2010

Adam J. Krolikowski, Esq.
Woods & Krolikowski
1200 Main Street, Suite H
Irvine, CA 92614

RE: Craig Monteilh [Confidential Communication]
Compliance with NDA Notice Requirement

Dear Mr. Krolikowski:

This office is in receipt of your letter to Steven Kramer dated June 15, 2010. In your letter you state that Mr. Monteilh has “been asked to review and sign declarations prepared by the ACLU for a lawsuit they will be filing concerning civil rights violations by the FBI within the Islamic Community during the time period of Operation Flex.” I am aware that you have sent previous letters to the FBI concerning the Non-Disclosure Agreement that Mr. Monteilh signed on October 5, 2007, however; this is the first letter in which you reference a particular FBI operation or investigation. In advance of June 17, 2010, please provide us with any information that you intend to include in these declarations that is/or may be covered by the Non-Disclosure Agreement. The FBI maintains that all the obligations created under the Non-Disclosure Agreement remain in effect.

Notification by Mr. Monteilh that he intends to disclose information covered by this agreement does not limit or nullify the obligations that he accepted by signing this agreement.

Sincerely,

/s/ HENRY R. FELIX
HENRY R. FELIX
Associate General Counsel
Civil Litigation Unit II
Office of the General Counsel
Federal Bureau of Investigation
PA 400
935 Pennsylvania Ave., NW
Washington, D.C, 20535
Phone: 202-220-9328
Fax: 202-220-9355

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

Case: SA11-CV-00301 CJC (VBKx)

YASSIR FAZAGA, ET AL., PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
DEFENDANTS

Date: Jan. 30, 2012

Time: 1:30 p.m.

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS AMENDED
COMPLAINT AND FOR SUMMARY JUDGMENT**

* * * * *

INTRODUCTION

On September 13, 2011, plaintiffs filed a First Amended Complaint (FAC) in this action. *See* Dkt. 49. Defendants Federal Bureau of Investigation (FBI), Robert Mueller, Director of the FBI, and Steven Martinez, Assistant Director of the FBI's Los Angeles Field Office, sued in their official capacities, renew their motion to dismiss and for summary judgment, joined by Defendant United States with respect to new claims raised in the FAC under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, *et seq.*

This action puts at issue whether the FBI engaged in impermissible counterterrorism investigative activity in Southern California. Plaintiffs are three residents of Southern California who allege that, through an investigation dubbed “Operation Flex,” the FBI utilized a paid informant (Craig Monteilh) to “indiscriminately collect personal information on hundreds and perhaps thousands of innocent Muslim Americans in Southern California . . . simply because the targets were Muslim.” *See* FAC ¶¶ 1-3, 86, 89. Plaintiffs also assert that Operation Flex was part of the FBI’s effort, after the terrorist attacks of September 11, 2001, to focus counterterrorism investigations on Muslim communities in the United States under applicable policies issued after 9/11. *See id.* ¶¶ 24, 32-37.

Plaintiffs seek damages against several current and former FBI agents and officials in their individual capacities, *see id.* ¶¶ 18-22; Claims 1-7, 9-10; injunctive relief against the FBI and official capacity defendants in the form of the disclosure or destruction of the investigative information, *see id.* ¶¶ 15-17, Prayer for Relief ¶ b; and damages against the United States of America pursuant to the FTCA, *see* FAC ¶¶ 254-260, Prayer for Relief ¶¶ c-d. Plaintiffs also seek certification of a class of “[a]ll individuals targeted by Defendants for surveillance or information-gathering through Monteilh and Operation Flex, on account of their religion, and about whom the FBI thereby gathered personally identifiable information.” *Id.* ¶ 219; *see also id.* ¶¶ 220-225.

The FBI has made clear that counterterrorism investigations may not be based solely on religion or First Amendment protected activities; indeed, the very policies plaintiffs again cite in their Amended Complaint set

forth these FBI policies. It should be apparent, however, that moving beyond these important general principles to the details of a specific investigation in order to rebut plaintiffs' claims would risk or require the disclosure of sensitive investigative information.

While the FBI has previously acknowledged that Monteilh was a confidential source, a range of details concerning Operation Flex, for which Monteilh provided information, remains properly protected counterterrorism investigative information. This includes, principally, evidence detailing the nature and scope of Operation Flex—precisely what that investigation entailed and why it was undertaken, the identity of particular subjects, and the reasons they were investigated. This evidence is by no means at the margins of this lawsuit. The purpose of the plaintiffs' claims is to ascertain what Operation Flex entailed and to litigate its alleged unlawfulness. Accordingly, as set forth in more detail below, the Government renews its response to these allegations by seeking to protect certain evidence that cannot be disclosed in the interests of national security but without seeking dismissal of all claims on that basis.

First, the Attorney General's state secrets privilege assertion of August 1, 2011, identifies and seeks to protect certain investigative information implicated by the allegations in this case—(i) the identities of particular subjects of counterterrorism investigations, including in Operation Flex; (ii) the reasons those investigations occurred; and (iii) particular sources and methods utilized by the FBI in the investigations—because the privilege is “necessary to protect against the risk of significant harm to national security.” *See* Declaration of Eric H.

Holder (“Holder Decl.”) ¶¶ 3-4, 12 (Dkt. 32-3, filed August 1, 2011). The basis for the Attorney General’s privilege assertion is set forth to the extent possible on the public record in the Attorney General’s unclassified declaration, as well as in an unclassified declaration of Mark Giuliano, Assistant Director of the FBI’s Counterterrorism Division (Dkt. 33, filed August 1, 2011). Details concerning why this information is properly protected from disclosure are set forth in the classified declaration of Mr. Giuliano submitted on August 1, 2011, for the Court’s *ex parte, in camera* review. See Notice of Lodging at Dkt. 35.¹ In accord with a policy announced on September 23, 2009, the Attorney General’s privilege assertion in this case is “necessary to protect against the risk of significant harm to national security.” See Holder Decl. ¶ 12 and Exhibit 1 thereto (State Secrets Policy).

Importantly, however, the Attorney General’s privilege assertion is limited in nature, and the Government’s request for dismissal is narrowly tailored. The Government does not seek dismissal of all claims at the outset based on the privilege assertion, nor to bar disclosure of all information concerning Operation Flex or Monteilh’s activities. The Government’s motion relies

¹ Mr. Giuliano has executed a supplemental classified declaration that updates the status of certain investigations discussed in his prior classified declaration. See Notice of Filing Supplemental Classified Declaration filed herewith. Through these classified *ex parte, in camera* submissions, the Government seeks to inform the Court at the outset of this case as to the sensitive, privileged facts that the Government believes must be protected from disclosure and excluded from the case. The Government does not consent to the disclosure of the information described in the classified Giuliano declarations to plaintiffs or their counsel.

first on considerations apart from state secrets that require dismissal of plaintiffs' claims. The Government's motion then seeks to distinguish between claims for which privileged evidence would be required and claims that may not require such evidence. Where litigation of a claim would risk or require the disclosure of privileged information, and the claim is not otherwise dismissed on non-privilege grounds, the need to protect properly privileged information would require dismissal of that claim.

With respect to non-privilege grounds for dismissal, the United States seeks dismissal of the newly raised FTCA claims for failure to state a claim upon which relief can be granted, for the reasons detailed below. In addition, the FBI and official capacity defendants first seek dismissal or, in the alternative, summary judgment on the grounds that the relief sought by plaintiffs against these defendants—the disclosure and expungement of alleged records—is not authorized or available under the Privacy Act or other law. Because this is the only relief plaintiffs seek for all of their claims against these defendants, the Court should dismiss the entire Amended Complaint as to the FBI and Defendants Mueller and Martinez on this ground. In addition, plaintiffs' claims against the FBI, official capacity defendants, and the United States brought pursuant to Section 1810 of the Foreign Intelligence Surveillance Act ("FISA"), 50 U.S.C. § 1810, should be dismissed because sovereign immunity bars this cause of action as to the United States and Government officials sued in their official capacities.

Absent dismissal on the non-privilege grounds advanced herein, the FBI and official capacity defendants

do not seek to dismiss plaintiffs' Fourth Amendment and FISA claims based on the state secrets privilege. At least at this stage of the proceedings, sufficient non-privileged evidence may be available to litigate these claims should they otherwise survive motions to dismiss on non-privilege grounds. The FBI has previously disclosed in a separate criminal proceeding that Monteilh collected audio and video information for the FBI, and some of that audio and video information was produced in that prior case. *See* Public Declaration of Mark F. Giuliano ("Pub. Giuliano Decl.") ¶ 12 (Dkt. 33). The FBI has been reviewing additional audio and video collected by Monteilh for possible disclosure in connection with further proceedings on the issue of whether the FBI instructed or permitted Monteilh to leave recording devices unattended in order to collect non-consenting communications. *See id.* The FBI expects that the majority of the audio and video will be available in connection with further proceedings. Thus, while it remains possible that the need to protect properly privileged national security information might still foreclose litigation of these claims, at present the FBI and official capacity defendants do not seek to dismiss these claims based on the privilege assertion.

In contrast, however, litigating plaintiffs' allegations of an indiscriminate investigation based solely on religion would risk or require the disclosure of properly privileged information and, unless these claims are dismissed on nonprivileged grounds, the Government seeks their dismissal as to all defendants at the outset based on the state secrets privilege. While presented under various statutory and constitutional theories, plaintiffs' discrimination claims raise one issue: whether the FBI, through its agents, impermissibly investigated

and collected information on plaintiffs (and other putative class members) based solely on their religion. *See* FAC, Causes of Action 1 to 7, at 62-65; *see also id.* Cause of Action 11 at 67-68 (FTCA). These claims put at issue core privileged information concerning the scope and purpose of Operation Flex. Because plaintiffs allege that the FBI indiscriminately collected information based solely on religion, any rebuttal of this claim would risk or require disclosure of whom and what the FBI was investigating under Operation Flex and why. This is precisely the kind of sensitive investigative information that cannot be disclosed without risking significant harm to national security.

The Court should first consider the impact of the state secrets privilege assertion on claims brought against the individual capacity defendants. These individuals have threshold legal defenses under the *Bivens* and qualified immunity doctrines. Moreover, because litigation of plaintiffs' religious discrimination claims against the individual capacity defendants will inherently put at issue and risk the disclosure of privileged information, these claims should be dismissed at the outset as to the individual capacity defendants. *Mohammed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1080-81 (9th Cir. 2010) (state secrets privilege may be asserted at the pleading stage rather than waiting for an evidentiary dispute). Similarly, because privileged information will also be inherently at risk of disclosure in any litigation of the religious discrimination claims against the FBI, official capacity defendants, and the United States, dismissal of these claims as to these defendants based on the privilege assertion would also be appropriate at this stage. To the extent the Court wishes to evaluate further the impact of the privilege assertion on claims against the

Government, it should at least dismiss plaintiffs' religious discrimination claims against the individual capacity defendants, in light of their unique threshold legal defenses, and require plaintiffs to demonstrate in proceedings under Fed. R. Civ. P. 16 and 26 what discovery it intends to seek against the Government Defendants concerning these claims.

Proceeding in the foregoing manner, the Government seeks to advise the Court at the outset of the underlying national security information that lies at the heart of this case and must be protected, while narrowly tailoring its request for dismissal by presenting non-privilege defenses first, seeking dismissal of some but not all claims on privilege grounds, and focusing on the impact of the privilege on the threshold defenses of the individual capacity defendants, before addressing whether any remaining claims against the Government Defendants should also be dismissed on privilege grounds.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No.: SA CV 11-00301 CJC (VBKx)

YASSIR FAZAGA, ET AL., PLAINTIFFS

v.

FEDERAL BUREAU OF INVESTIGATION, ET AL.,
DEFENDANTS

**DECLARATIONS OF CRAIG MONTEILH
SUBMITTED BY PLAINTIFFS IN SUPPORT OF
THEIR OPPOSITIONS TO MOTIONS TO DISMISS**

INDEX OF DECLARATIONS

1. Declaration of Craig Monteilh (April 23, 2010).....	99
2. Declaration of Craig Monteilh re Fazaga (October 11, 2011)	134
3. Declaration of Craig Monteilh re Malik (October 11, 2011).....	139
4. Declaration of Craig Monteilh re AbdelRahim (August 11, 2011)	146

DECLARATION OF CRAIG F. MONTEILH

I, Craig F. Monteilh, make this declaration of my own personal knowledge and if called to testify, I could and would do so as follows:

1. From about July 2006 until October 2007, I worked for the United States Federal Bureau of Investigation (“FBI”) as an undercover informant assigned to infiltrate the Muslim community in Southern California. During this time, I spent about six or seven days a week posing as a Muslim convert named Farouk al-Aziz, conducting surveillance and gathering information on a wide variety of individuals and organizations in the Muslim community.

Background, Training, and Placement as an Undercover Informant

2. In around early 2004, I met some police officers in Orange County who were working on a FBI narcotics task force, and discovered that I knew information from time I had spent in prison that was relevant to some of their investigations. I began working for the task force as a confidential informant, under the supervision of an FBI agent assigned to the task force, Special Agent Christopher Gicking, and his supervisor, Special Agent Tracy Hanlon, who worked in the FBI’s criminal division in Santa Ana. Over the next two years, I continued to work for the FBI, supervised by Agents Gicking and Hanlon, on a series of assignments as an undercover informant on different criminal enterprises.

3. In about May 2006, Agents Hanlon and Gicking asked if I wanted to work in a new type of assignment for the national security division of the FBI, investigating potential terrorists and infiltrating mosques. I

said I was interested and they arranged a meeting in or around June 2006 with FBI Special Agent Kevin Armstrong and another FBI agent, also named Kevin. They told me they worked for the FBI's counterterrorism division in Santa Ana, California, and were assigned to the Orange County Joint Terrorism Task Force ("JTTF"). Agent Armstrong told me that the head of their team, FBI Special Agent Paul Allen, was in Washington, D.C., but wanted to meet with me the following week. Agent Armstrong told me I would no longer be working with criminal division, but would work for counterterrorism from then on and that he and Agent Allen would be assigned to supervise and direct my work, or to be my "handlers." (References to "my handlers" here mean Agents Armstrong and Allen.)

4. The next week I met with Agent Armstrong and Agent Allen, who showed me FBI credentials and identified himself as the head of a counterterrorism team at the JTTF. During this meeting, we discussed my physical appearance and skin tone, and Agents Allen and Armstrong suggested that I could pass as Syrian or Algerian. I had another meeting with Agents Armstrong and Allen, just a few days later, where Agent Allen asked me various questions about my background and knowledge of politics and world affairs, which I understood was to gauge my suitability to work as an informant.

5. When Agents Armstrong and Allen hired me to work for the counterterrorism division, the FBI increased my pay from the \$3,000 to \$4,000 per month I made working for the criminal division to about \$6,000 per month. Over the course of the next fourteen months,

the FBI, through my handlers, increased my compensation as I became more accepted by the Muslim community and more useful as an informant, so that my compensation topped out at about \$11,200 per month.

6. Eventually, my handlers told me that the FBI used the name “Operation Flex” for the surveillance program that used me. My handlers told me this repeatedly, and I heard other agents refer to it as well. My handlers told me that this was a reference to me, since I conducted informant work in gyms under the cover of working as a fitness consultant, both when I worked for the criminal division and for counterterrorism. But my handlers told me that Operation Flex was a broader surveillance program that went beyond just my work.

7. In about July 2006, my FBI handlers put me through a training program in which they had me learn the basics of the Arabic language and the religion of Islam. They explained that the purpose of this training was to make the account of my background more credible. Agent Armstrong also trained me in the martial art of Krav Maga. My handlers also talked to me extensively about how, once I began my assignment, I should progress in exhibiting the culture and customs of Islam. This training lasted approximately two weeks of twelve to fourteen hour days, with little time off, and took place in a large warehouse that my handlers drove me to while I was blindfolded. Agents Armstrong and Allen supervised the training.

8. In about late July 2006, my handlers told me to make an appointment to see Sheikh Sadullah Khan, an imam at the Islamic Center of Irvine (“ICOI”), a mosque in Irvine, California. My handlers told me to tell Khan

that I was of Syrian and French descent and that I wanted to embrace my Islamic roots and formally convert to Islam. My handlers gave me no background on Khan, but just told me to stick to this story. I made the appointment and then met with Khan a few days later in his office at ICOI, in the presence of two imams from mosques in Garden Grove and Anaheim. After a conversation with Khan, he told me I could take *shahaddah* (make a public declaration of my faith) the next day at the *jummah* prayer (the Friday prayer that is the most important service of the week). I reported this to Agent Allen and he instructed me to do so, so I came back to ICOI the next day and took *shahaddah* before a congregation of hundreds of Muslims. I immediately began to attend the mosque on a daily basis.

9. About a week after I took *shahaddah*, I took the Muslim name Farouk al-Aziz. I attended prayers daily, often multiple times a day. At first I attended prayers only at ICOI, but as time went on, my handlers encouraged me to go to other mosques around the area as well. Muslims who met me in the mosque generally embraced me as a new convert. On my handlers' instructions, I took every opportunity to meet people, get their contact information, meet them privately to get to know them, find out their background, find out their religious and political views, and get any information on them I could for the FBI.

10. My handlers told me that because of my criminal background, any information I collected would have to be recorded. My handlers told me, "If it isn't recorded, it didn't happen." My handlers initially gave me a small audio recording device called an "f-bird," but in about September 2006 replaced that with a cell phone

and two key fobs (which looked like remote controls for car locks) with audio recording devices in them that could be used to record conversations that went on around me. I used these recording devices to record all day, every moment I worked undercover, regardless who I was meeting or what was discussed. I would turn on one of the devices in the car before I left my house, and not turn it off until I arrived home. My handlers instructed me to record everything, without any limitations. Agent Allen told me later on that there was a team transcribing all the conversations I recorded, and although I frequently discussed recordings with my handlers, they never stated or even suggested that they attempted to minimize intrusions by listening only to snippets of conversations to see if they were relevant.

11. Beginning in about February 2007, on various occasions, my handlers outfitted me with video surveillance equipment that recorded through a camera hidden in a button in the front of my shirt. They told me that the video surveillance equipment also recorded audio. In the beginning, the video equipment was somewhat difficult to set up, and required my handlers' assistance, so I did not use it regularly. By about April 2007, my handlers had improved the design of the video equipment and I would use video surveillance several days per week. My handlers instructed me to use the video camera for various specific purposes to capture the internal layout of mosques, to film basketball or soccer games to see who associated with whom, to film guest lectures to see what was said and who attended, or when I went into people's houses. My handlers would also instruct me to go open particular doors in homes or mosques and film the room behind.

12. On my handlers' instructions, I also composed daily notes of my activities and the surveillance I had undertaken. These notes were extensive—my handlers instructed me to “empty my head” about what I had learned that day—so that I regularly spent an hour or two each evening writing my notes. After a while, these notes became voluminous, and my handlers instructed me to prepare separate “supplemental notes” containing any sensitive or particularly valuable information. These were all handwritten. I gave them to my handlers when I met them twice a week.

13. Over the course of my work for the FBI, my handlers at various times discussed with me what happened to these notes. Agent Armstrong once told me that these notes were used as part of packages to obtain warrants for further surveillance on the individuals or organizations about whom I wrote. Both handlers talked to me at various times about federal judges reading my notes. My handlers also told me that their supervisors were reading the notes: Agent Allen once told me that my notes were seen in “the Beltway,” that they were seen by people with “a lot of authority,” and that the Assistant Director in Charge in the FBI's Los Angeles field office, who at that time was Stephen Tidwell, read all my notes.

14. From about August 2006 to October 2007, I met with Agents Allen and Armstrong about twice per week for meetings to discuss my assignments, for me to read through my notes with them so they could ask further questions, for them to give me instructions based on the information I provided, so I could give them my daily notes, and so they could either exchange my recording

devices for fresh ones or upload the recordings to a computer while we spoke. These meetings were held in public places, outside the areas where the Muslim community lived. About once per month, I met with my handlers in a room at the Anaheim Hilton Hotel, where they questioned me on the information I provided and gave me instructions in greater detail. I would also receive my payment at these monthly meetings. I would sign off on these payments under my code name, Oracle. At the meetings in the hotel, other agents were sometimes present.

15. My handlers also gave me an email address under an alias to use to send time-sensitive information that could not wait until our next meeting, such as a Muslim's imminent travel plans.

16. Agents Allen and Armstrong monitored and supervised my work as an undercover informant quite closely. Through my notes and our twice weekly meetings, I told them everything I was doing and every piece of information I could recall. They gave me instructions, or "tasking orders," regularly. They gave me both standing instructions on kinds of information to gather whenever I could—for example, to meet and get contact information for a certain number of Muslims per day—and also gave me specific instructions either in response to information I provided or based on information they wanted—such as, for example, instructions to get inside a certain house within the week or to have lunch with a particular person two times. My handlers also gave me standing orders to call one of them every day, even on my days off. I did this, and I would call one or both of them each day to apprise them of my day's activities.

17. Agents Allen and Armstrong did not, however, limit me to specific targets on which they wanted information. When I first met with Sadullah Khan at ICOI and began infiltrating the community, my handlers did not give me any specific targets, but instead told me to gather as much information on as many people in the Muslim community as possible. For example, my handlers at first told me I would make my initial contact with the community by attending services at a mosque in Anaheim, but eventually advised me to attend ICOI instead because it was closer to where I lived, so I could spend more time there.

18. My handlers told me to look for and identify to them people with certain backgrounds or traits, such as anyone who studied *fiqh*, who openly criticized U.S. foreign policy, including the U.S. military's presence in Muslim countries; who had any kind of military training; who was an imam or sheikh; who went on *Hajj*; who played a leadership role at a mosque or in the Muslim community; who expressed sympathies to *mujahideen*; who was a quiet loner; who was a "white" Muslim; or who went to a *madrassa* overseas. But my handlers did not tell me to limit the information I collected to those people. They would occasionally take people I identified and tell me to spend more time with them or find out more about them, but these were always people I identified to them during the course of the operation, not people who had been targeted from the outset. I had no specific targets at the outset. To the contrary, my handlers tasked me with immersing myself in the Muslim community and gathering as much information on as many people and institutions as possible.

My Assignments and Activities as an Undercover Informant

19. My handlers gave me a standing tasking order that applied throughout the duration of my undercover work to get as much information as possible on any Muslim I came into contact with at the mosques or in the Muslim community. Agent Allen told me, “We want to get as many files on this community as possible.” My handlers explained to me that the United States was five to ten years behind Europe in the extent of Islamic presence, and that they needed to build files on as many individuals as possible so that when things started to happen, they would know where to go. They said they were building files in areas with the biggest concentrations of Muslim Americans—New York; the Dearborn, Michigan area; and the Orange County/Los Angeles area.

20. One thing my handlers wanted me to collect was contact information, particularly email addresses and phone numbers. At times, my handlers even gave me a quota to collect contact information for ten new Muslims per day. I reported this information in my daily notes. My handlers also told me that they monitored my email and cell phones to obtain the telephone numbers and email addresses of people with whom I corresponded. Agent Allen instructed me to give out my cell phone number widely so that people would call me or give me their cell numbers in return, so that the FBI could collect those numbers. My handlers also instructed me to email frequently with people, so that the FBI could collect their email addresses. My handlers told me that they used the cell phone numbers and email

addresses of individuals who contacted me to obtain information from those individuals' phone and email accounts, including the list of people they contacted. My handlers gave me a particular email address under an alias to which they instructed me to forward these emails.

21. Agents Allen and Armstrong told me that they kept the numbers and emails I collected in a database that could be monitored for international calls, or cross-referenced against phone calls or emails to persons of interest who were believed to be linked to terrorism. They also told me that the emails could be used to determine if the person was visiting certain websites, and with whom they were emailing. I also joined email distribution lists for many of the mosques I surveilled so that I could obtain the mosque membership lists and all of the email addresses. I would forward messages from the mosques to the FBI so they would be informed about events and bulletins, and so they would have the email addresses of anybody else who received the message.

22. During the course of my work, I had discussions with my handlers about whether what I was doing was productive, and whether the information I collected was actually being used. They assured me that all the information I collected was retained, and that they didn't discard any of the information. My handlers also told me that this information was used to build files on individuals. My handlers told me that every person who I contacted—whose phone number I got, who I emailed, who I identified through photographs—had an individual file in which the information I gathered was retained.

23. My handlers also tasked me with gathering information on mosques in the Orange County and Los Angeles areas. They instructed me, among other things, to map the mosques by locating entrances, exits, rooms, bathrooms, locked doors, storage rooms, as well as security measures and whether any security guards were armed. In some mosques, I used hidden video equipment attached to a camera in my shirt button to take images of the layout of the mosque. My handlers informed me that this information would be used by the FBI to enter the mosques in case they needed to raid it or if they needed to enter and place electronic surveillance equipment in them. My handlers also instructed me to try to get the security codes for the alarm systems at several mosques. I managed to obtain the codes for one mosque by arriving early for dawn prayer and watching the person who opened the mosque punch the code in. I gave this information to my handlers. My handlers told me that they had the security codes to at least one other mosque, as well. They told me that they used the security codes to send agents into these two mosques at night.

24. My handlers also tasked me with getting brochures on charities that were distributed in the mosques, visiting the mosques' libraries or book areas to look for extremist books, collecting newsletters and bulletins to see what activities were going on in the mosque, and collecting names of individuals who attended, as well as their cell phone numbers and license plates.

25. In addition to information about the membership of each mosque, my handlers also wanted the names of all board members, imams, people who taught classes at the mosques, and other leadership within the mosques.

26. Over the course of my work, I went to about ten mosques and conducted surveillance and audio recording in each one. I spent the most time at ICOI, which I attended daily, but I spent significant time at other mosques, including the Orange County Islamic Foundation mosque in Mission Viejo, Durul Falah in Tustin, Omar al-Farouq mosque in Anaheim, Islamic Society of Orange County in Garden Grove, Al-Fatiha in the West Covina/Azusa area, the mosque in Lomita, and King Fahd mosque in Culver City. For about five or six months I went at least once a week to each of these mosques. I would go to as many as four different mosques in a day. Even if I didn't pray at each mosque, I would go to the mosque and talk to people, or meet people at the mosque and go to the gym with them. I also went a few times to West Coast Islamic Center in Anaheim and a mosque in Upland.

27. Agent Armstrong told me that the FBI had every mosque—the ones I went to and the ones I didn't go to—under surveillance.

28. My handlers informed me that electronic surveillance equipment was installed in at least eight area mosques including ICOI, and the mosques in Tustin, Mission Viejo, Culver City, Lomita, West Covina, and Upland. He told me at one point that they could get in a lot of trouble if people found out what surveillance they had in the mosques, which I understood to mean that they did not have warrants.

29. At times, if I was left alone in a mosque office, I would look in drawers, which I understood to be consistent with my instructions to gather as much information as possible. I wrote these incidents up in my supplemental reports, and was never told not to do this.

30. My handlers instructed me to keep an eye out for people who tended to attract young Muslims and to identify and gather information on such people. They told me that they wanted to investigate anyone who had the attention of the youth or influence over young people to see if they were radicalizing them. For example, there was a popular youth group on Tuesdays at ICOI run by the imam, Sadullah Khan. Students from the Muslim Student Union at the University of California, Irvine (“UCI”) would attend. To implement my handlers’ instructions, on many occasions I recorded the youth group meetings at ICOI by leaving my possessions, including my key fob, near where the group met in the prayer hall so that all of their discussions could be recorded. I did this by going into the prayer hall during their meetings to pray, and then leaving behind my possessions, as if I had forgotten them or just chosen to leave them there while I did other things. I would go to another part of the mosque or the courtyard, and return sometime later to collect my things. I told my handlers I did this in my written reports. My handlers never instructed me to stop this practice, and in fact discussed with me the contents of the recordings obtained in this manner.

31. Beginning in about September 2006, my handlers gave me a standing task to gather information on Muslims’ charitable giving. My handlers instructed me to collect any pamphlet or brochure at any mosque that concerned charitable donations. They also told me to inquire of Muslims about which charities and *madrassas* to give to. I did this, and gave the names of the charities and *madrassas* to my handlers. My handlers specifically told me to ask people about *madrassas* or charities sympathetic to the *mujahideen* or *jihad*; to

inquire about charities providing money to Somalia, Yemen, Pakistan and Afghanistan; and to inquire about money going to Lebanon and Palestine. They also instructed me to ask people how to avoid having my donations traced by the U.S. government. My handlers said that if a worshipper paid by check, the FBI could trace that check from the person's bank account to the organization. My handlers, in several conversations, told me that the FBI would open a file on any person who wrote a check to any Islamic charity they were interested in, not just those officially designated as terrorist organizations.

32. My handlers also instructed me to attend Muslim fundraising events, to interact with the community and gather information, to identify people who attended and who they came with, and, if there were any speakers, to record what those speakers said. On my handlers' instruction, I attended a benefit for ICOI at a hotel in Irvine, where on their orders I purchased a vase for about \$900 to bolster my credibility among the community.

33. My handlers also instructed me to attend lectures by Muslim scholars and other guest speakers. I attended lectures of Yusuf Estes, a white Muslim scholar from Texas, and Hamza Yusuf, another white Muslim scholar from Oakland. My handlers wanted to know both what the lecturers said and who attended these lectures, so they set me up with a video surveillance device that had a camera in a shirt button. I went early and got a seat in the front row where I could clearly record the lecture. Afterwards, when people were socializing, I walked around filming attendees with my

camera. I also collected license plate numbers from the parking lots to identify those who attended.

34. During my time working on Operation Flex, I told people in the Muslim community that I worked as a fitness consultant. In about November 2006, Agent Allen instructed me to start going to the gym to work out with people I met from the Muslim community in order to get close to them and obtain information about them. They did not limit the scope of their instructions; the directive included anyone from any mosque without any specific target, for the purpose of collecting as much information as possible about Muslim men in the community. I went to various 24-Hour Fitness and L.A. Fitness gyms around the Orange County area. These workouts provided an easy opportunity to talk with people and to elicit a wide variety of information pursuant to my handlers' instructions. For example, I would talk to people about their lives and get information about their problems that my handlers could use to pressure them to provide information or become informants. I also learned people's travel plans and their political or religious views, and could elicit responses that the FBI might use to justify further surveillance by asking pointed questions about Islam or politics. I recorded these conversations using the equipment on my key fob or cell phone. This surveillance was so fruitful that my handlers eventually told me they were seeking approval to have me open a Muslim gym.

35. During my regular meetings with my handlers, they showed me photographs of Muslims from the community and asked me to identify the people in them. Frequently, these were photographs of people I worked

out with taken at the entrance to the gym. My handlers told me that they had an arrangement with the gyms to obtain photographs from the security cameras. Other photographs came from parking lots, parks, restaurants, or other public places. When I asked how they got the other photographs, they told me they had “assets in place.” They asked me to provide as much information as possible about each person—they told me to “empty my head” on the individuals. They wanted to know, among other things, what mosque they attended, their ethnicity or country of origin, the languages they spoke, the people they associated with, what kind of car they drove, their occupation or whether they were a student, as well as any other information I could obtain.

36. Agent Allen told me that Islamic restaurants in Anaheim and Irvine were under video surveillance, so they could see who associated with whom. Agent Allen also said they surveilled soccer and basketball games for the same reason. I frequently met people in restaurants and cafés and recorded conversations there.

37. I also had standing orders to enter and observe Muslim schools whenever possible. When I first reported entering a Muslim school, my handlers questioned me intently on whether I had witnessed children chanting from the Quran. When I said I hadn’t, they asked me again and told me that if I had, that would take the case to a “new level.” My handlers more than once told me to look for Quranic reciters at the schools. My handlers also instructed me to look for photos of extremists, books by extremists, and whether the children were learning subjects besides Islam, like math, English or history. My handlers said that they did not want an Islamic school to be an “American *madrassa*.”

38. I attended an Arabic language class at ICOI from about December 2006 to March 2007. My handlers instructed me to obtain the lists of the individuals who attended the class, which I provided to my handlers. My handlers told me that they retained the information about who took the class.

39. I also attended a course in *fiqh*, or Islamic law which pertains to morals and etiquette. My handlers were interested in *fiqh* because parts of *fiqh* address military training. At my handlers' request, I got a copy of the list of people who attended the class. Because this list included the languages that class members spoke, it provided a clear indication of their ethnicity or country of origin as well.

40. My handlers were only interested in Muslims, and set aside any non-Muslims who were identified through surveillance I performed. For example, on several occasions when my handlers asked me to identify individuals from photographs taken by surveillance cameras at the entrances to the gyms, they would present me photographs of individuals who were not Muslim—usually Latino—whom I might have spoken to or who had simply helped me lift weights. When I indicated to my handlers that the individual was not a Muslim, the picture was discarded.

41. My handlers were interested in websites that they believed were jihadist, including *MissionIslam.com* and *CagePrisoners.com* (a site devoted to raising awareness about the detainees at Guantanamo Bay). Agent Allen told me to encourage people I spoke with to go to these websites because they could document people's visits to the website and use that either to pressure them

to become informants or to justify further surveillance on them.

42. My handlers encouraged me to bring up Muslim scholars and thinkers who they believed were extremist in my conversations with individuals in the community. This included Hassan al-Banna, Sayyid Qutb, Sheikh Suhaib Webb, Yusuf al-Qaradawi, Yusef Estes, Ayman al-Zawahiri, Anwar al-Awlaki, and others.

Increasing Infiltration of the Muslim Community

43. The people I met at the mosques helped me learn how to pray, learn how to dress, and learn Islamic culture and etiquette. My handlers told me to allow Muslims I met to “radicalize” me gradually, and saw the help the community was giving me as the first steps toward such radicalization. I felt the people who helped me were sincere in wanting me to develop in my Muslim faith and wanting to have me as part of the community and part of the mosque. My handlers instructed me not to talk too openly about *jihad* at first, but to go to prayers at the mosque and be seen. My handlers were very pleased that I developed a rapport with the community so quickly.

44. As months went on and I was increasingly accepted by the Muslim community and the leadership at mosques, and I continued to work generally six or seven days a week, my handlers seemed to place increasing trust in me. While at first they told me as little as possible about what else they knew about the community and what other intelligence efforts were ongoing, after several months they began to tell me more about what other kinds of surveillance they were undertaking, how they knew certain things, and how the intelligence I

gathered was being used, so that I could understand how to work effectively.

45. In about October 2006, on the instruction of Agent Allen, I began to try to appear more Muslim. I went to the mosque early and prayed loudly, and wore traditional clothes that people at the mosque had given me. My handlers told me that nobody in the community leadership, people of interest, or youth suspected that I was an informant. I asked how he knew, and he eventually told me that they listened to a number of conversations in which people were discussing me outside. I realized that these were conversations that I could not have recorded, which meant that my handlers were getting this information from other electronic surveillance.

46. My handlers also instructed me to start attending *fajr* (dawn) prayers, which are held about 4 a.m., or *ishaa* (late) prayers, which are held about 9:30 p.m. My handlers told me that people who attended prayers very early in the morning or late at night, and especially both, were very devout and therefore more suspicious. They instructed me to obtain the names and the license plate numbers of individuals who attended these prayers. When I agreed to go to *fajr* prayer four days a week, my pay increased substantially.

47. My handlers instructed me to memorize certain *ayas* and *surahs* (verses and chapters from the Quran) and to ask Muslims about them. My handlers told me that they had picked these verses because they believed them to be susceptible to a jihadist interpretation, so that people's reactions to them would help discern who was and was not a threat. They told me that discussions about these verses would elicit responses that could be used to justify additional surveillance

measures. A true and correct copy of a tasking order in Agent Allen's handwriting specifying certain verses is attached hereto as Exhibit A.

48. My handlers also instructed me to elicit reactions from people by talking provocatively about U.S. foreign policy—for example, by raising the issue of civilian Muslim men, women, and children killed in conflicts in Iraq, Afghanistan, Palestine, and Lebanon. By stirring people to speak out of anger, they told me, I could again elicit responses that could be used to justify additional surveillance measures against those people.

49. Beginning in about January 2007, an individual who called himself George began coming roughly every month to meetings with my handlers. George said he was "from Langley," which I understood to mean that he worked for the Central Intelligence Agency headquartered in Langley, Virginia. When I once mentioned him as working for the CIA, Agent Allen said something to the effect, "We don't say that. Say he is 'from Langley.'" No one ever told me George's last name. George spoke Arabic very well and knew a great deal about Islam—he would speak Arabic with me and comment on my improved fluency, as well as ask me questions about Islam and the Quran to monitor my progress in acquiring the appearance of being a devout Muslim. George also instructed me on my grooming and physical appearance to make it seem that I was increasingly devout. For example, at one point he instructed me to develop a sore on my forehead from bending my head to the carpet in prayer, to make clear that I was praying all the time.

50. On about four different occasions, during the meetings with my handlers at the hotel room, they showed

me a huge photo array on a large board consisting of the photos of around two hundred Muslims from the Orange County/Los Angeles area. My handlers used different sets of photographs for each of these meetings, so showed me many hundreds of photographs over the four meetings. They instructed me to arrange the photos from the most dangerous to the least based on my knowledge and experience. The entire leadership of the Islamic community were in the photos—sheikhs, imams, board members, prayer leaders, leaders of civic organizations, and youth groups. It took hours. They also asked me to assist them in organizing the photos according to categories such as financial, operative, and leadership. We also divided photos into possible cells according to mosques and ethnicity or nationality. I did not know all of the people in the photographs, but my handlers had information on people I did not know enough to place them in the various arrangements. The first of these meetings was in about March 2007, and the last was in about September 2007.

51. Over the course of several conversations, my handlers told me that they considered the leaders in the Muslim community—board members and leadership at mosques and leaders of Muslim organizations—to be potential threats and that they regularly surveilled them and maintained more detailed files of information on their background and activities. They told me that the leadership of the community could give orders or *fatwas* that someone in the community would carry out.

52. Because I was single in my undercover identity, people in the community considered me an eligible Muslim and various individuals wanted to introduce me to Muslim women. Agents Allen and Armstrong, and

George from Langley, wanted me to date as a way to get information. When I asked how I should go about dating, and what happened if things began to get intimate, my handlers told me that if I was getting good information, I should let things “take their natural course,” and then they said “just have sex.” I had sexual relationships with women in the Muslim community for the purposes of information gathering pursuant to these instructions.

53. My handlers were always interested in obtaining new informants within the Muslim community. They spoke to me about “MICE,” an acronym for Money Ideology Compromise Ego, or the various ways people can be convinced to be informants. They often focused on the element “compromise,” which consisted of obtaining information on potential informants that could be used against them if they refused to inform. Subjects that would potentially lead to compromise included immigration issues, sexual activity, business problems, or crimes like drug use. My handlers instructed me to pay attention to people’s problems, to talk about and record them. I reported problems that several individuals told me about, including marital problems, business problems, and petty criminal issues. My handlers on several occasions talked to me about different individuals that they believed might be susceptible to rumors about their sexual orientation, so that they could be persuaded to become informants through the threat of such rumors being started, even though my handlers had no evidence that such rumors would be true.

54. My handlers also often referred to the principle that “everybody knows somebody.” They explained that if someone is from Afghanistan, that meant that

they would likely have some distant member of their family or acquaintance who has some connection with the Taliban. If they are from Lebanon, it might be Hezbollah; if they are from Palestine, it would be Hamas. By finding out what connections they might have to these terrorist groups, no matter how distant, they could threaten the individuals and pressure them to provide information, or could justify additional surveillance.

55. On one occasion, my handlers instructed me to develop my relationship with a person who told me that his father was sick in a foreign country and in a lot of pain. I had a significant amount of Vicodin, a prescription pain reliever, left over from a surgery I had previously undergone. I discussed with Agent Allen that providing this person some Vicodin would help build the relationship and build my reputation as a devout Muslim who had access to black market items. Agent Allen instructed me to provide the person with 60 tablets of my leftover Vicodin, which I did. On another occasion, Agent Allen instructed me to provide prescription anabolic steroids to another two individuals to similarly further my credibility, which I did.

56. In about early spring of 2007, after I provided some information my handlers believed was very valuable, my handlers told me, "You're gold in L.A. You're gold in Washington." They said that higher ranking officials wanted to use me in other places as well. Agent Allen told me several times that information I provided had been used in presidential daily briefings. They told me that my work was followed by people "at the highest levels." They told me that the operation I was working on was among the ten most important intelligence investigations going on in the country. Agent

Allen told me in about March or April 2007 that he had meetings with Stephen Tidwell and one of his supervisors from Washington, D.C., Joseph Billy, Jr., about the operation. Around the same time period, Agent Allen told me that he had to fly to D.C. with his supervisor, Pat Rose, in part to meet with high-level FBI officials to get approval to open a gym for Muslims that would function in part as a mosque with a prayer room, and that I would run. He called me from D.C. to tell me that the gym had been approved.

57. During about spring 2007, Agent Allen told me that I needed to be careful how I wrote my notes, and that I needed to be very precise and detailed, because people in Washington were reading and summarizing the reports to make things “sexier” than I had intended so as to accomplish their own goals. He told me that I needed to be careful always to use precise and detailed language so that more could not be read into the reports than I intended.

58. During the course of the operation, I learned there were a large number of FBI informants in the Orange County Muslim community. My handlers told me at various times that the Muslim community was “saturated” or “infested” with informants, and said it was like the societies of cold war East Germany and Cuba, where everyone was informing on one another. During the meetings in the hotel room when my handlers and I arranged photographs of people in the Muslim community, many of the photographs had asterisks by the names. Several of the people marked were people my handlers had already told me were informants, so I asked my handlers if the asterisks indicated informants, and they eventually confirmed that they did. At each of the four

meetings, there were dozens of people labeled as informants, and I believe over the four meetings I saw well over one hundred people marked as informants. I personally interacted with more than forty people my handlers told me were informants. My handlers told me that the other informants had been recruited from the community because the FBI had pressured them in some fashion, and they told me that they did not trust the informants they had recruited from within the Muslim community.

59. As I continued as a constant presence at ICOI and the community became more comfortable with me, I began to participate in the prayers to a greater degree. I gave the *adhan*, or call to prayer as well as the *al-Fatiha*, or opening to the evening prayer. On a few occasions, when prayer leaders went out of town, I led the *dhuhr*, or midday prayers, and the *fajr*, or dawn prayers. My handlers were extraordinarily happy that I had been given the responsibility to lead prayers, as they believed it showed an acceptance of me by the community.

60. After several months of working, my handlers told me more about how some aspects of their investigation worked. Agent Armstrong told me that although the terrorist watchlist was maintained by the Department of Homeland Security, the information in that list was based on information collected by the FBI. He told me that information I collected would get shared with Homeland Security and other agencies. For example, my handlers were interested in travel plans of Muslims—after a while I asked why they wanted to know. They eventually indicated that the reason they

wanted to know this was to share it with Homeland Security to monitor or search people during their travels.

61. My handlers also told me that information I obtained would be shared with other agencies. They told me that information I obtained on finances or foreign assets was shared with the Treasury Department. Several times when I had information about people's immigration issues, my handlers told me that they would send the information to immigration officials. My handlers told me that they were "in the business of sharing information" about terrorism with other agencies.

62. I also learned about the voluntary interviews the FBI would ask of people from the Muslim community. My handlers told me that they would usually bring people in to an FBI interview only after I had obtained some useful background on the person—usually by recording some embarrassing personal information or a statement of political beliefs that they would not want to admit to the FBI. They could then use that information to pressure the person to provide information, or could ask about that information in order to get the person to deny it, which would set up the allegation that they had lied to the FBI during the interview, which would in turn provide leverage to get the person to provide information. They told me that they tried to put interviewees at ease by saying that they were investigating someone else.

63. It became clear to me that there was audio surveillance either on the telephones or in offices of a large number of leaders in the Muslim community. For example, on one occasion around when ICOI was attempting to get a restraining order against me, some people were saying I was an informant. At that time, Agent

Allen called me and said words to the effect, “You need to call [Person A] right now. He’s on the fence about you and talking to [Person B] on the phone right now. Call him and break in and take him to dinner.” I could hear the voices of the people he was talking about in the background. Agent Allen made similar calls to me several times about different people.

64. During many conversations with my handlers over the course of my work, my handlers told me that not everything our operation was doing was legal. My handlers told me that because the U.S. was fighting an enemy that was not sovereign, they had to carry out policies that were contrary to the Constitution.

65. On several occasions in restaurants, I left my recording devices (a key fob or my cell phone) in a place where it could record a conversation while I went elsewhere. Sometimes I did this with groups that met in the mosques: if there was a youth group or a group that met with a particular scholar, I went over to put down my things, including the recording device, and greet people, then went to a different part of the room to pray. In restaurants or cafés, too, on more than one occasion when I was speaking to one group and saw another group come in, I moved to the new group while leaving my cell phone at the first so as to record both conversations at once. I stated that I did this in my notes to my handlers and was never instructed to stop.

66. On several occasions, I left my recording devices in locations in mosques in the area. For example, in King Fahd Mosque in Culver City, several times I came in with a friend who changed in the office from business clothes to more traditional dress before we went into the mosque to pray. While he did so I left my keys in the

office so that the key fob would record staff and board members who came in and talked. I retrieved my keys from the office when we were finished in the mosque. I did this several times, and in several different mosques. I stated that I did this in my notes to my handlers and was never instructed to stop.

67. I once asked Kevin Armstrong about covert video recording surveillance he had told me was being conducted at a local bookstore. He said that while you needed warrants for criminal investigations, "National security is different. Kevin is God." I understood him to mean that he did not have warrants for the surveillance at the bookstore. Agent Armstrong also told me on more than one occasion that they did not always need warrants, that if they did not have a warrant they could not use the information in court, but that it was still useful to have the information. He mentioned that they could attribute the information to a confidential source if they needed to.

68. In about June 2007, my handlers told me the FBI was planning an action to make a number of arrests based on intelligence that I had gathered. My handlers took me to the Anaheim Hilton hotel where I stayed out of contact for several days at the FBI's expense. My handlers told me that the operation would soon be over. My handlers told me that more than seventy agents had amassed in the Santa Ana office to conduct pre-dawn arrests of twenty-seven people, but that the office of FBI Director Mueller had called from Washington, D.C., and ordered the agents to stand down and not go through with the arrests. My handlers were very upset about this. After the aborted arrests, I returned to my role

as an undercover informant, doing exactly the same work as before.

69. Both my handlers and other agents explicitly told me that Islam was a threat to America's national security.

70. One individual I made contact with had a pending federal criminal case. Agent Armstrong, who was a former Assistant U.S. Attorney, initially told me to be careful not to discuss his case because there would be problems because he was represented by counsel. But he was overruled by others, including Agent Allen, and I was then instructed to talk with him about his case. I understand that the information I gleaned was used in his criminal case.

71. Over the course of fourteen months of working as an informant in the Los Angeles and Orange County Muslim community, I estimate that, on my handlers' instructions, I passed hundreds of phone numbers and thousands of email addresses of Muslims to the FBI. I provided background information on hundreds of individuals. I made hundreds of hours of video recordings that captured the interiors of mosques, homes, businesses, and the associations of hundreds of people. I made thousands of hours of audio recording of conversations I participated in and where I was not present, as well as recordings of public discussion groups, classes, and lectures.

Termination of My Assignment

72. In about March 2007, Agent Allen provided me a written letter from an Assistant U.S. Attorney named Deirdre Eliot to engage in jihadist rhetoric and to en-

gage in other criminal activity with immunity. I understand that this letter gave me blanket immunity for all my conduct as an undercover informant. I signed the letter, but Agent Allen took the letter back and did not allow me to keep a copy.

73. My handlers had instructed me to ask general questions about *jihad* from the beginning of my assignment. In early 2007, my handlers instructed me to start asking more pointedly about *jihad* and armed conflict, then to more openly suggest my own willingness to engage in violence. In one-on-one conversations, I began asking people about violent *jihad*, expressing frustration over the oppression of Muslims around the world, pressing them for their views and suggesting that I might be willing or able to take action. In about late spring of 2007, people at ICOI began to get concerned about me. After one incident where I said some extreme things in order to test the reaction of others, several individuals reported me to local police and to the FBI. When the authorities did not respond with any urgency, people became suspicious that I might be working for the FBI. Congregants at ICOI brought an action for a restraining order to bar me from the mosque. On June 19, 2007, I understand that there was a hearing in which testimony was presented and the restraining order issued barring me from entering the mosque. I continued my undercover work at other mosques in the area, but the restraining order and the fact that various members of the community had become suspicious about me made it much more difficult to get close to people and to gather information.

74. During the time ICOI was attempting to obtain a restraining order against me, Agent Allen instructed

me to go back into the mosque. I feared for my safety since I knew some people suspected I was an informant. I told Agent Allen I would only go in if I was armed with a knife, and that I would defend myself if someone gave me reason to. My handlers acknowledged what I said, but did nothing to stop me from doing so. I went into ICOI on two subsequent occasions with a knife strapped to my leg.

75. At some point during the spring of 2007, my handlers mentioned to me that the Assistant Director in Charge of the FBI's Los Angeles Field Office had told the Muslim community that there would be no undercover informants placed in mosques at a meeting held only about a month or so before I had taken *shahaddah*. The Assistant Director in Charge at that time was Stephen Tidwell. I was surprised, and my handlers said that, at that time, they had already been looking for someone to send into the mosques and Tidwell had approved recruitment of an informant.

76. During the summer of 2007, around the time ICOI was seeking the restraining order and afterwards, I was repeatedly approached for an interview by a reporter from the Los Angeles Times named H.G. Reza. My handlers disliked this reporter—they told me that he was an enemy of the United States and that he was under surveillance. On one occasion, my handler called me to tell me not to go to a particular gym because Reza was waiting for me in the parking lot. When I asked him how he knew that, he said “We’re the fucking FBI. We know everything.” In October 2007, FBI counsel Stephen Kramer paid me \$25,000 cash to assure that I would not disrupt the rest of the case, and explicitly told

me that the payment was in part so I would not speak with Reza.

77. In about June 2007, when some people in the community were beginning to suspect I was an informant, I had discussions with my handlers about being paid substantial additional sums of money to go to jail or prison to help bolster my credibility in the community and convince people that I was not a confidential informant. We discussed having me very publicly arrested in the parking lot of a mosque, and the details of the pay and arrangements to make life tolerable in prison. My handlers eventually told me that this plan failed because a federal judge had refused to go along with it.

78. During about the summer of 2007, my handlers told me that the Assistant Special Agent in Charge in Santa Ana, Barbara Walls, did not trust me and did not want me working any more. They told me there was significant conflict between Agent Walls and field agents over how to handle the operation, and that there had been an audit team sent from Washington, D.C., to examine Agent Walls' handling of one potentially valuable piece of information I provided. Because of this conflict and complications surrounding the restraining order, my handlers told me in about September 2007 that I would be going on "hiatus" from my undercover work in the Orange County Muslim community.

79. During one of my final meetings with my handlers, at which Agent Walls was also present, she warned me to stay silent about my participation in the operation. She said that if word got out that the FBI had sent an informant into mosques and the community, that it would destroy the relationship between the Islamic community and the FBI. She said that "we assured them"

that the FBI would not send undercover informants into mosques.

80. In October 2007, I had a last meeting, where my handlers had instructed me to bring back the laptop computer and surveillance equipment they had issued me. I said to them that I guessed the operation was over. Agent Allen said emphatically no, the operation had just begun. He said that my role was over, but that Operation Flex and the FBI's operations in Orange County and Los Angeles would continue. He also said that the information I had provided was an invaluable foundation for the FBI's continuing work. He also said that after some down time, I would have the option of working in New York or other places.

81. Prior to February 2009, I never confirmed to anyone outside of law enforcement and my immediate family that I was working as an informant for the FBI. That month, FBI Agent Thomas Ropel III testified in a bail hearing in a federal criminal case about information used in that prosecution that he said had been provided by an undercover informant, and described the undercover informant such that many people in the Muslim community could clearly identify the informant as me. Several days later, an article appeared in the Los Angeles Times containing statements I made to a reporter about being an FBI informant. I am not aware of any information either publicly released by the FBI or otherwise available to any member of the Orange County Muslim community prior to February 2009 that would allow them to do anything more than speculate that I might have been an FBI informant.

Ongoing Surveillance

82. Between about December 2007 and August 2008, I was incarcerated for reasons that are currently the subject of a federal civil action against the Irvine Police Department, the FBI, and others. Concerning that matter, my handlers told me that their supervisors in the FBI office did not want me to be publicly identified as an FBI informant, so I ended up pleading guilty on their instructions, and spent eight months in jail as a result.

83. After I got out of prison in about August 2008, I contacted the Irvine Police Department to voice concerns about my safety from members of the Muslim community that might suspect me of being an informant. I was visited by a detective, as well as a sergeant that I recognized as someone who had once escorted me when I was undercover with my handlers. The sergeant knew very specific information about individuals I had surveilled who I had concerns about, and told me in this meeting that he worked for JTTF. He told me that several individuals I asked him about were still under surveillance. He also specifically mentioned that surveillance was ongoing at gyms and at least two mosques.

84. In recent months, I have begun returning to local gyms where Muslims work out. In one gym in Irvine, on two different occasions since about September 2009, I saw a Muslim who I knew to be an informant, who looked at me and quickly looked away guiltily. Both times I saw the informant, when I went out to the parking lot, I saw a white SUV with people inside who I recognized as members of the JTTF that I saw when I worked undercover. On one of these occasions, I saw one of the individuals holding a camera in both hands as

if he were using it. They saw me, looked surprised, and also looked away. I believe that they were actively engaged in surveillance of the gym, perhaps through the informant.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this 23rd day of April, 2010 in Orange, California.

/s/ CRAIG F. MONTEILH
CRAIG F. MONTEILH

DECLARATION OF CRAIG F. MONTEILH

I, Craig F. Monteilh, make this declaration of my own personal knowledge and if called to testify, I could and would do so as follows:

1. From about July 2006 until about October 2007, I worked for the United States Federal Bureau of Investigation (“FBI”) as an undercover informant assigned to infiltrate the Muslim community in Southern California. During this time, I generally spent about six or seven days a week posing as a Muslim convert named Farouk al-Aziz, conducting surveillance and gathering information on a wide variety of individuals and organizations in the Muslim community. My “handlers,” or the FBI agents who directed my operations, during this time were FBI Special Agent Paul Allen and FBI Special Agent Kevin Armstrong.

2. On my handlers’ instructions, I made audio recordings of everything I did while working as an informant, including all the conversations I had, using recording devices they had given me. I recorded all day, every day. My handlers told me that if something was not recorded, it was as if it didn’t happen.

3. My handlers were interested in the mosque at Mission Viejo, the Orange County Islamic Foundation (“OCIF”). They considered the imam of the mosque, Yassir Fazaga, to be a radical for several reasons: My handlers told me Fazaga directed students on how to conduct demonstrations and encouraged them to speak out. They told me that when the FBI Assistant Director in Charge of the Los Angeles Field Office, Stephen Tidwell, attended a meeting at an Orange County mosque in about spring 2006, Fazaga openly pressed

Tidwell about FBI informants in mosques, and when Tidwell denied putting informants in mosques, Fazaga had openly said he did not believe Tidwell. My handlers also told me Fazaga was a person of interest because he was a board member of “In Focus News,” a prominent Muslim newspaper that was vocal in speaking out against U.S. government actions that negatively affected Muslims and which my handlers believed was anti-American and linked to Muslim civil rights groups.

4. My handlers also believed that OCIF was linked to another mosque they were interested in, the Islamic Center of Irvine, because the two mosques held joint events and jointly organized foreign trips, including the *hajj* pilgrimage to Mecca. They referred to OCIF as a “definite hotspot.”

5. My handlers also believed that the mosque was radical because it had certain religious scholars as guest speakers who my handlers believed were radical—particularly Yusef Estes, Suhaib Webb, and a local imam, Ahmad Sakr. My handlers told me that a moderate mosque would not have chosen these guest speakers. On my handlers’ instructions, I attended the Yusef Estes lecture and video recorded the event using a camera hidden in a shirt button that my handlers provided. On my handlers’ instructions, I video recorded the entire lecture, the literature Estes had set out, and the people who attended.

6. I attended OCIF a number of times to conduct surveillance.

7. On my handlers’ instructions, I used a video camera hidden in a shirt button that my handlers provided me to take video of the interior of OCIF. My

handlers instructed me to get a sense of the schematics of the place—entrances, exits, rooms, bathrooms, locked doors, storage rooms, as well as security measures and whether any security guards were armed. I understood that this information would be used to place surveillance equipment inside the mosque. I later asked Agent Armstrong if they had used the information I had gathered to enter the mosque, and he said that they had.

8. On my handlers' instructions, I also made video recordings of an area in the back of the mosque where there were religious books available for congregants to use, so that my handlers could determine if any of the literature there was extremist.

9. My handlers instructed me to make contacts within the Mission Viejo congregation. I worked out on various different occasions with about 40 of their congregants, usually in groups. For anyone I worked out with, I got their email address and cell phone number and passed that information on to my handlers. I understood from my handlers that the FBI used this contact information to further track these individuals' communications and conduct surveillance of them.

10. My handlers instructed me to gather additional information on a few individuals within the congregation who seemed to have the most direct access to Fazaga. I talked to these individuals and obtained their email addresses, cell phone numbers, and addresses, as well as basic background information such as their occupation, whether they were married or had children, and what prayers they attended. I passed the information on to my handlers.

11. My handlers instructed me to monitor Fazaga at the prayers he conducted: to record and report on what he said, to talk with him afterwards and see who else talked to him afterwards, and to note individuals who appeared to be close to him. They wanted me to get into a circle of people close enough to Fazaga that he would talk freely in front of me. I also monitored what was said by a member of the congregation who substituted for Fazaga during one of the prayers I attended.

12. It was significant to my handlers when a prominent member of the community introduced me to Fazaga while I was recording with a hidden video camera, in about April 2007. At that meeting, I asked Fazaga to work out with me and he agreed. My handlers were excited by this prospect, but I never actually worked out with him. I obtained Fazaga's cell phone number and email address (not through Fazaga, but through others) and passed these on to my handlers. My handlers told me they used the email addresses and telephone numbers I gathered to monitor communications and conduct further surveillance.

13. I also passed to my handlers the license plate numbers of cars Fazaga traveled in and the people I saw him associate with.

14. My handlers told me that there was another informant within the mosque with access to Fazaga, but that they did not fully trust him, so I was tasked with getting close to him to establish his reliability. My handlers also told me there were a number of other informants at the mosque, but that they did not have access to the imam.

15. My handlers instructed me that whenever I saw Fazaga at another mosque or anywhere outside OCIF, I should call them and let them know immediately. I did this at least once when I saw him at another mosque.

16. On one occasion, during Friday afternoon prayer at OCIF, the mosque had booth set up to collect donations for a cause—I believe for some kind of relief for Muslims abroad. Pursuant to my handlers' standing orders that I monitor donations, I stood near the booth and used the hidden video camera I was wearing to make video recordings of people who went up to the booth to contribute money.

17. I never observed anything that gave me any reason to believe that Fazaga or any of the congregants or leadership of OCIF were involved in violence or terrorism in any way.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this 11th day of October, 2010 in Los Angeles, California.

/s/ CRAIG F. MONTEILH
CRAIG F. MONTEILH

DECLARATION OF CRAIG F. MONTEILH

I, Craig F. Monteilh, make this declaration of my own personal knowledge and if called to testify, I could and would do so as follows:

1. From about July 2006 until about October 2007, I worked for the United States Federal Bureau of Investigation (“FBI”) as an undercover informant assigned to infiltrate the Muslim community in Southern California. During this time, I generally spent about six or seven days a week posing as a Muslim convert named Farouk al-Aziz, conducting surveillance and gathering information on a wide variety of individuals and organizations in the Muslim community. My “handlers,” or the FBI agents who directed my operations, during this time were FBI Special Agent Paul Allen and FBI Special Agent Kevin Armstrong.

2. On my handlers’ instructions, I made audio recordings of everything I did while working as an informant, including all the conversations I had, using recording devices they had given me. I recorded all day, every day. My handlers told me that if something was not recorded, it was as if it didn’t happen.

3. In some of my earliest meetings with my handlers, they showed me a picture of a young man named Ali Malik. They told me he had been a surfer kid in Newport Beach who wore dyed hair, but had travelled to Yemen to attend a madrassa, and had returned to the U.S. wearing traditional Muslim dress and a full beard.

4. My handlers told me Malik’s change in behavior in embracing religion and traditional dress was highly suspicious and for that reason they needed to investigate him. They also told me they were suspicious of

Malik because he was involved with people from the “MSU.” “MSLJ” stands for “Muslim Student Union,” which is the name of Muslim student groups at many colleges and universities, including U.C. Irvine. My handlers told me that they were investigating several individuals who were part of the MSLJ at U.C. Irvine, because they thought these individuals had ties to extremists, they thought that an imam who helped found the MSUs was radical, and they did not like the MSU’s activities because it organized demonstrations and was vocal in its criticisms of I.J.S. foreign policy. They mentioned several times a mock wall at U.C. Irvine that the MSU had created that was supposed to represent the wall between Palestine and Israel. They said that the MSU was under surveillance and had its own separate task force dedicated to that surveillance. But they also used the term “MSIJ” more broadly to include not just particular student groups on particular campuses, but young Muslims who were active in the Muslim religious community and who associated with other young Muslims who were MSU members. Malik was lumped in with the MSU because he associated with other people from the MSU at Irvine and other young Muslims, even though he did not go to U.C. Irvine.

5. My handlers also told me Malik’s father was a hero who had fought against the Soviets in Afghanistan. This background was another reason they were suspicious of Malik.

6. Agent Armstrong told me that before he was assigned to be my handler, he had been assigned to investigate the MSUs and young Muslims, including Ali Malik.

7. My handlers told me that the way that Malik groomed his beard indicated that he was a radical.

8. My handlers already had a significant amount of information on Malik and his family before I was assigned to do anything. They wanted me to get more information on one of his brothers; on another individual who Malik was close to; on Malik's associations from the Irvine mosque, and on who Malik hung out with at the gym.

9. My handlers said that they knew Malik had been to a madrassa (an Islamic religious school) in Yemen, but did not know the name of the school. They also told me that they knew he had been blocked from entering Saudi Arabia after he had traveled to Yemen, but they did not know why. They tasked me with finding out what school he had been to and why he had been denied entry into Saudi Arabia.

10. Very soon after I formally converted to Islam, I met Malik at the gym and began talking to him. I also spoke with him at the mosque. Sheikh Sadullah Khan saw me talking to him at the mosque and asked Malik to show me how to pray. Malik willingly helped me. He also bought me a very basic book on Islam. On the instructions of my handlers, I later used this book to ask Malik about the sections of the book that mentioned jihad, in hopes of eliciting some response that might incriminate Malik or justify further surveillance. I recall that Malik told me that the best interpretation of jihad was as "spiritual" jihad, or the personal struggle to improve one's life. On my handlers instructions, I also asked him about certain imams and religious scholars in order to discern his religious views, and pressed him on questions of U.S. foreign policy, in an attempt to record

him saying something that could be construed as extremist that would justify further surveillance, or possibly be used to pressure Malik to give information to the FBI. Malik seemed surprised by my questions during these conversations and repeatedly urged me to concentrate on learning the basics of Islam.

11. I saw Malik frequently during Ramadan in the fall of 2006, but after that only about once a week, at mosque or at the gym, and often in passing. My handlers urged me to have a meal or tea with Malik, and I tried to make plans several times, but he had a busy schedule and we never did. I would sometimes time my visits to a local gym to coincide with the time I knew he went there after his classes, and would try to talk to him at the gym, on my handlers' instructions.

12. Sometime in early 2001, Ali Malik suggested to me in some conversations that he was having problems with his wife, who lived in Chicago. When I reported this to my handlers, they told me that I should try to work out with Malik at the gym and act as a comforting friend in order to have him open up and offer information. On my handlers' instructions, I did this and recorded Malik talking about his marital problems. I provided these recordings to my handlers. My handlers told me the recordings would be useful in pressuring Malik to provide information, because they thought the recordings contained embarrassing facts he would not want revealed.

13. In about April 2007, my handlers started discussing the possibility of sending me abroad to a madrassa to study Islam and Arabic, in hopes that I would get sent from there to a terrorist training camp. I started asking about a school to go to, saying I wanted

to go to Pakistan. Malik told me that he had attended Dar al-Mustafa in Tarim, outside Sana, in Yemen. I reported this to my handlers, who were very excited about the information. Agent Allen moved quickly to investigate and told me it was a radical school and that he believed that Malik did not get into Saudi Arabia after his trip to Yemen because he had been studying at a radical school. My handlers also told me they thought people at the school could refer students to terrorist training camps, so that if I went, they might refer me to a camp.

14. I found out from the Dar al-Mustafa brochure online that I needed an imam's signature to apply. I approached Sadullah Khan, in about early May 2007, about going to the school in that summer. Khan said he would provide a letter for me, but I ended up not applying because people in the mosque got a restraining order against me.

15. My handlers thought Malik had ties to an organization, the "Islamic Society of North America" ("ISNA"), because it was headquartered in Chicago, where Malik's wife lived. My handlers instructed me to ask Malik about ISNA, which I did. Malik said they were doing good things, but did not indicate he was a part of it. I recorded these conversations and reported them to my handlers.

16. My handlers told me they thought Malik might be selling prescription drugs, because he did not have a job and had money to go out with friends, and to travel to see wife in Illinois. My handlers told me they thought this might be true of several young people at the Irvine mosque. I never discovered anything in any of my time undercover about Malik or any of the other

young people selling prescription drugs or engaging in other illegal activity to make money.

17. On several occasions, I used the recording devices provided to me by my handlers (disguised as a key fob or cell phone) to record groups of young Muslims talking in the prayer hall after *ishaa* prayer. On these occasions, I greeted people, left my things—including the recording device—near to where they were talking, then went to another part of the mosque or a different part of the prayer hall to pray so that my recording device would capture their conversation when they did not think I could hear. Several times Ali Malik was one of the people in the group I recorded. I recorded his conversations when I was not present, then gave my handlers notes that detailed the people I saw there so they would be able to identify the voices. I put in my notes to my handlers that I did this to record conversations where I was not physically present, and they never told me not to do this.

18. Malik told me more than once that he heard I was going regularly to *fajr*, or early morning prayer. He commended me on my commitment—he said that he had gotten into the routine of attending *fajr* prayers daily when he had been studying abroad, but that it was easy to fall back in attending prayers only when it was convenient and that he needed to get back to that kind of regimen. My handlers thought this was significant information that indicated Malik was returning to extremist beliefs, which justified further surveillance.

19. I gave significant information on Malik to my handlers. In addition to the surveillance described above, including giving my handlers recordings of all my conversations, my handlers several times showed me

photos with people they said had been seen with Malik and asked me to identify them. The pictures sometimes had Malik in them.

20. Malik was one of the individuals who my handlers told me were to be arrested in raids in about June 2007 that were ultimately aborted.

21. I never observed anything that gave me any reason to believe that Malik was involved in violence or terrorism in any way. I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this [11]th day of October, 2010 in Los Angeles, California.

/s/ CRAIG F. MONTEILH
CRAIG F. MONTEILH

DECLARATION OF CRAIG F. MONTEILH

I, Craig F. Monteilh, make this declaration of my own personal knowledge and if called to testify, I could and would do so as follows:

1. From about July 2006 until about October 2007, I worked for the United States Federal Bureau of Investigation (“FBI”) as an undercover informant assigned to infiltrate the Muslim community in Southern California. During this time, I generally spent about six or seven days a week posing as a Muslim convert named Farouk al-Aziz, conducting surveillance and gathering information on a wide variety of individuals and organizations in the Muslim community. My “handlers,” or the FBI agents who directed my operations, during this time were FBI Special Agent Paul Allen and FBI Special Agent Kevin Armstrong.

2. On my handlers’ instructions, I made audio recordings of everything I did while working as an informant, including all the conversations I had, using recording devices they had given me. I recorded all day, every day. My handlers told me that if something was not recorded, it was as if it didn’t happen.

3. A few weeks after I publicly made a declaration of faith and started attending mosque, a group of young men approached me at mosque and, impressed that I was still attending mosque so regularly, told me that most of the group lived together and invited me to socialize with them at their house. My handlers were excited by this invitation. They told me that the home on Carver Street where the young men lived was already under surveillance because it was shared by five young, unmarried Muslim Egyptian men with different skills

and backgrounds—including a computer analyst, a pharmacist, an accountant, and one who handled logistics—and my handlers believed they might be a Muslim Brotherhood cell.

4. A few days after this invitation, I identified to my handlers that one of the young men who lived at the Carver street house, Yasser Abdel Rahim, was a person who seemed to attract and have influence with young Muslims. My handlers told me they thought Rahim was the leader of the cell, and that I should spend time at the Carver street house and with Rahim in particular, and gather as much information as I could. I did so, and recorded all the conversations I had with Rahim and the other members of the house. I gave these recordings to my handlers, along with notes about my observations.

5. My handlers instructed me to get into every room in the Carver street house to see what was in there, and include that information in my reports, which I did. Later, in about February or March of 2007, my handlers set me up with a video camera hidden in a shirt button and instructed me to conduct video surveillance of the layout and contents of the house, which I did.

6. On my handlers' instructions, I spent a lot of time at the Carver street house and with Rahim and his roommates. I never observed anything that gave me any reason to believe that Rahim or his roommates were involved in violence or terrorism in any way. They spent most of their time watching TV news (mostly Al-Jazeera), sports (football—bowl season, basketball, and soccer), talking politics, eating food, and playing X-box.

7. Shortly after I first met them, Rahim and one of his roommates bought me some books on Islam, and later asked me what I thought of them. Some time after that, Rahim agreed to meet with me weekly to teach me various prayers. My handlers were excited by this because they thought Rahim was radicalizing me and would want me to be part of the Muslim Brotherhood. My handlers asked for the first sheet of paper on which Rahim had written a prayer for me to learn. When they gave it back to me a few days later, they told me they had lifted Rahim's fingerprints from it.

8. I informed my handlers that Rahim always led prayer in the house. This point interested them, because they said it showed leadership, and confirmed that I should focus surveillance on him.

9. My handlers said that Rahim had a criminal record, and they suspected he might be dealing drugs, but never suggested any particular evidence or investigation of narcotics activity, and I never observed any indication that any members of the house engaged in criminal activity.

10. I gathered and passed to my handlers information about Rahim's travel plans, particularly when Rahim was going to or from Egypt to see his family or his fiancé's family. After one of these trips to Egypt, Rahim complained that he had questioned for a long time when he re-entered the country—that he expected some delay but this had been way too long. I told one of my handlers this and he said, "We're onto him," and indicated that they had been responsible for that questioning.

11. Rahim was very athletic. He played pick-up soccer with other Muslim youth. I attended some of these games and took down the license plates of people who attended, and once made a video recording with the hidden camera my handlers provided me, in order to document who was attending and socializing with one another.

12. From my conversations with Yasser, I discovered that he traveled a lot to Portland for his job. I reported this information to my handlers, who were interested. They had a particular group of Muslims in Portland surveilled and believed he went there to report or get instructions from this group. I had a standing order to report all travel plans, and would find out Rahim's travel plans and tell my handlers. My handlers several times told me that they had Rahim surveilled in Portland after I had informed them he would be traveling there.

13. Rahim offered to introduce me to Sheikh Suhaib Webb, a white American religious scholar who studies in Cario. My handlers knew Webb and told me that although he portrayed himself as a moderate, he was an extremist, so they were very interested and instructed me to pursue this. Rahim gave me Webb's telephone number and email address, and my handlers told me to call or email Webb to make contact and establish a relationship, in hopes that Webb might give me some instructions. I called his cell phone and talked to a family member and emailed with him, but my operation ended before I met him.

14. Rahim's fiancée lived in Detroit. I talked to Rahim about her and her family, and transmitted what information I learned to my handlers. I also got her

email address from emails he had forwarded that came from her, and passed that on to my handlers. My handlers were suspicious of his fiancé's family because they were prominent people who traveled to Egypt often. They later told me his fiancé's family in Detroit was under surveillance as well.

15. On different occasions, my handlers told me that the FBI had electronic listening devices in the house, as well as in Rahim's car and phone. For example, one day, one of my handlers called to tell me that a friend had driven up to the house quickly in an agitated state and asked me to go down there to find out what was going on. When I asked how he knew this, he indicated they had video outside the house. Another time, my handlers asked me about something that happened inside the house that I hadn't yet put in my notes. I asked how they knew, and they told me that they had audio surveillance in the home.

16. My handlers told me that Rahim was donating money to a charitable organization in Egypt. They told me that these donations had been tracked by the Treasury Department. They told me that these donations were not unlawful, but that they could make them seem suspicious in order to threaten him and pressure him to provide information and become an informant.

17. On many Tuesday nights, the imam from the Garden Grove mosque, Mustafa Kamil, would give Arabic language teachings at the Islamic Center of Irvine. Rahim often attended. On several occasions, I used recording devices provided to me by my handlers to record these teachings and the discussions after. On these occasions, I went into the prayer hall and listened to some

of the teaching. Since I did not want to arouse suspicion by staying when I was just starting to learn Arabic, I would leave my things—including the recording device (disguised as a key fob or cell phone)—near to where the group was talking, and then go to another part of the mosque or a different part of the prayer hall to pray. My recording device would capture their conversation when they did not think I could hear. Rahim was part of the group I recorded on several occasions.

18. On my handlers instructions, I asked Rahim questions about jihad and pressed him on his views about religious matters and certain religious scholars, particularly Egyptian ones, in order to get him to say something that might be incriminating or provide a way to pressure him to provide information to the FBI. Rahim told me that there was more to Islam than jihad: that jihad is a personal struggle, and that to the extent that there is such thing as a fighting jihad, the Quran places very strict rules that prohibit harming plants or trees, infants, elderly or women, and that terrorists who say they are engaged in jihad are not, they are just committing murder. When I asked about religious scholars like Hassan al-Banna and Sayid Qutb, who my handlers told me to ask about because they are considered extremist, he said that he did not agree with them, but thought that the Egyptian government should not have executed them.

19. Rahim was one of the individuals who my handlers told me was to be arrested in the aborted raids of June 2007.

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct. Executed this [11]th day of August, 2010 in Orange, California.

/s/ CRAIG F. MONTEILH
CRAIG F. MONTEILH

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 12-56867, 12-56874, 13-55017

YASSER FAZAGA, ET AL., PLAINTIFFS-APPELLANTS

v.

FEDERAL BUREAU OF INVESTIGATIONS, ET AL.,
DEFENDANTS-APPELLEES

Filed: June 25, 2015

**MOTION FOR LEAVE TO FILE
SUPERSEDING BRIEFS**

The federal defendants-appellees (the Federal Bureau of Investigation and two FBI employees in their official capacities) hereby move for leave to file superseding unclassified and classified briefs, to account for the declassification of information that was previously included in the government's classified brief. As explained below in this motion, the simple clerical course we propose is designed to avoid any confusion by the Court and the parties as to which information is currently classified and which is not. It will thus make matters simple for the panel of judges eventually assigned to this case because they will not have to deal with excessive multiple filings. More important, our proposal will substantially reduce the chances of inadvertent disclosures of classified information as this case is considered by the Court.

Counsel for the individual-capacity defendants have authorized us to represent that they do not oppose this motion. Counsel for the plaintiffs have informed us that they oppose this motion and intend to file a written response.

1. Plaintiffs initiated this action against the United States, the FBI, FBI officials in their official capacities, and five current and former FBI agents in their individual capacities. The Department of Justice represents only the United States, the FBI, and the official-capacity defendants; the individual-capacity defendants are represented by private counsel. Plaintiffs' claims relate to the alleged activities of a former confidential informant for the FBI in a group of counterterrorism investigations.

The district court dismissed all claims against the government and the official capacity defendants, and dismissed all claims against the individual defendants except for a claim premised on the Foreign Intelligence Surveillance Act (FISA). The district court entered final judgment under Rule 54(b) on all claims that had been dismissed. Plaintiffs appeal from that final judgment, and the individual defendants appeal from the denial of qualified immunity on the FISA claim.

Plaintiffs' appeal concerns the district court's determination that certain of plaintiffs' claims must be dismissed under the state secrets privilege. That privilege may be invoked by the head of an agency (here, the Attorney General of the United States) to protect information whose disclosure could reasonably be expected to cause significant harm to national security. *See generally United States v. Reynolds*, 345 U.S. 1 (1953); *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1079

(9th Cir. 2010) (en banc). The Attorney General filed a public declaration in district court invoking the privilege. The government also filed three documents classified at the “Secret” level: a declaration from the Assistant Director of the FBI’s Counterterrorism Division, Mark Giuliano (Dkt. 35); a legal memorandum (Dkt. 36); and a supplemental declaration from Mr. Giuliano (Dkt. 56). The district court reviewed those materials *in camera*, see Minute Order (Dkt. 46), and they were not reviewed by plaintiffs’ counsel or counsel for the individual-capacity defendants.

2. Plaintiffs filed their opening brief on November 17, 2014. On March 17, 2015, the government filed a public brief as appellee containing the information and legal argument that could be filed on the public record. On the same date, the government filed, *ex parte*, a classified brief and classified excerpts of record, each of which contains classified information that was filed in the district court. Plaintiffs sought reconsideration of this Court’s order granting leave to file a classified brief, and this Court referred plaintiffs’ motion to the merits panel, but directed that the classified brief be provisionally maintained on an *ex parte* basis pending resolution of the motion. Order, May 12, 2015.

On April 29, 2015, the individual defendants filed their briefs as appellees/cross-appellants. Plaintiffs’ response/reply brief is currently due July 23, 2015.

3. Several months after the government’s brief was filed, the FBI declassified a single paragraph of the Classified Declaration of Mark Giuliano, which had previously been classified at the Secret level. The declassified information relates to the agreement entered into between the FBI and Craig Monteilh, the confidential

informant whose conduct is at issue in this case, regarding the use of recording equipment. The declassified paragraph is attached to this motion, along with an exhibit that is referenced in the declassified paragraph.

The declassified paragraph does not contain information as to which the government has ever asserted the state secrets privilege in this case, as it does not “tend to confirm or deny whether a particular individual was or was not the subject of an FBI counterterrorism investigation,” does not “tend to reveal the initial reasons . . . for an FBI counterterrorism investigation of a particular person . . . , any information obtained during the course of such an investigation, and the status and results of the investigation”; and does not “tend to reveal whether particular sources and methods were used in a counterterrorism investigation of a particular subject.” Holder Decl. ¶ 4 [ER 285]. To the contrary, the now-declassified paragraph of Mr. Giuliani’s declaration expressly contemplated that this information would be subject to declassification review. *See* Classified Giuliano Decl. ¶ 22 (attached) (“[W]ith respect to plaintiffs’ specific assertion that the FBI acquiesced in Monteilh’s leaving recording devices unattended inside mosques, the FBI is assessing whether specific instructions to Monteilh concerning this particular ‘unattended device’ issue can be disclosed without harm to national security.”).

Because we filed our appellate brief at a time when the now-declassified paragraph was classified at the Secret level, the information in that paragraph was omitted from our public filing, and instead discussed in two sentences of our classified filing. To clarify the record for the parties and the Court, and to provide the Court

with a current and accurate representation of which information is classified and which has been publicly disclosed, we respectfully request leave to file superseding briefs. The only changes are the insertion of the declassified information into the public brief, and the removal of that information from the classified brief (along with conforming changes to the tables and certificates).

We have attached to this filing a redline version of the single page of the public brief that has been changed. We are also attaching to this filing a complete version of the superseding public brief that we seek leave to file. If the Court grants this motion, we will file a superseding classified brief under appropriate procedures. The classified brief will be modified only by deleting the two sentences containing the information that is now included in the superseding public brief.

4. The filing of superseding briefs at this stage will provide the judges eventually assigned to this case with the simplest and cleanest format for the briefing, which will contain classified information. As the same time, it will not prejudice the other parties. The individual-capacity defendants, who have already filed briefs after the government filed its brief, have all indicated that they consent to this motion. Plaintiffs have not yet filed any briefs in response to the government's brief, and their response/reply brief is not due until July 23, four weeks from the filing of this motion. Those four weeks should provide adequate time for plaintiffs to carry out the simple and mechanical task of adjusting any citations to the government's brief that appear in their response/reply brief to adjust for the modest change in pagination that results from inserting a few

sentences into the government's public brief. (The declassified information itself was provided to plaintiffs last week.)

Plaintiffs have indicated to government counsel that plaintiffs would prefer that the government file a separate document, apart from its public brief and its classified brief, to reveal the declassified information. If we took this approach, the Court would have to juggle public briefs, classified briefs, and a separate filing indicating which part of the classified brief has now been declassified. It will plainly be easier for the judges eventually assigned to this case to have to deal only with a single brief from the government that contains only unclassified information, and a separate, single, short classified brief that contains the classified information, with up-to-date classification markings. The ease of reference and the reduced risk of confusion, particularly with regard to which information is classified and which may be revealed to the public, obviously far outweighs the modest burden on plaintiffs of changing a few page citations to the government's brief in the next four weeks. Moreover, by having a single brief that is unclassified and a single brief that is classified, we can reduce the likelihood of an unfortunate inadvertent disclosure of classified information as the case proceeds.

5. This motion may be publicly filed.

For the foregoing reasons, we respectfully request that this Court grant leave to file superseding public and classified briefs.

Respectfully submitted,

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JUNE 2015

ATTACHMENT 1

DECLASSIFIED MATERIALS

Declassified Paragraph of Giuliano Declaration

22. In addition, with respect to plaintiffs' specific assertion that the FBI acquiesced in Monteilh's leaving recording devices unattended inside mosques, the FBI is assessing whether specific instructions to Monteilh concerning this particular "unattended device" issue can be disclosed without harm to national security. The FBI can advise the Court at this stage that Monteilh agreed in writing to keep FBI issued recording devices with him at all times while they were turned on. He executed the attached FBI form FD-473 on November 17, 2006 (attached at Tab 6) which states in pertinent part:

I, Craig Monteilh, hereby authorize members of SARA 6 and Special Agents of the Federal Bureau of Investigation, United States Department of Justice, to place a Body Recorder on my person for the purpose of recording any conversations with various CT [subjects] and others yet unknown which I may have on or about 11/17/06 and continuing thereafter until such time as either I revoke my permission or the FBI terminates the investigation.

I have given this permission to the above-named Special Agents voluntarily and without threats or promises of any kind. I understand that I must be a party to any conversation in order to record that conversation. I therefore agree not to leave the recording equipment unattended or take any other action which is likely to result in the recording of conversations to which I am not a party.

11/17/06
(Date)

Santa Ana, CA
(Location)

CRAIG MONTEILHA
(Name)

(Address)

hereby authorize members of SARA L and _____, Special Agents

of the Federal Bureau of Investigation, United States Department of Justice, to place a

Body Recorder on my person for the purpose of recording any conversations

Transmitter

with various CT
(Name of Subject(s))

and others as yet unknown which I may have on or about 11/17/06 and
(Date)

continuing thereafter until such time as either I revoke my permission or the FBI terminates the investigation.

I have given this written permission to the above-named Special Agents voluntarily and without threats or promises of any kind. I understand that I must be a party to any conversation in order to record that conversation. I therefore agree not to leave the recording equipment unattended or take any other action which is likely to result in the recording of conversations to which I am not a party.

[Signature]
(Signature)

Witness:
[Signature]

ATTACHMENT 2

BRIEF REDLINE

* * * * *

* * * methods were used in a counterterrorism investigation of a particular subject.” *Id.* ¶ 4 [ER 285].

The Attorney General’s declaration was accompanied by, and specifically cross-referenced, a more detailed classified declaration from the Assistant Director of the FBI’s Counterterrorism Division, Mark Giuliano, which was filed *ex parte* and under seal. Holder Decl. ¶ 3 [ER 284]. That One paragraph of that declaration is has been declassified since the district court’s decision. That paragraph reveals that Monteilh specifically agreed in writing with the FBI not to leave the recording device unattended while it was turned on. Classified Giuliano Decl. ¶ 22 [Classified ER 23-24]. On November 17, 2006, Monteilh signed a statement that he “must be a party to any conversation in order to record that conversation.” *Id.* ¶ 22 [Classified ER 24]. Other aspects of the classified declaration, which remain classified, are described in the government’s classified brief in this Court, which is being separately filed *ex parte* and under seal.

Assistant Director Giuliano also submitted a public, unclassified declaration. The declaration explained that terrorist groups are “putting more emphasis on finding recruits or trainees from the West.” Public Giuliano Decl. ¶ 7 [ER 228]. In addition, as evidenced by several incidents * * *

CRAIG F. MONTEILH
FORMER FBI INFORMANT

20 REMINGTON IRVINE, CALIFORNIA,
TELEPHONE (949) 395-1124

June 20, 2019

Molly Dwyer
Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: *Yassir Fazaga et., al., v FBI*
Case Nos. 12-56867, 12-568745, & 13-55017

Dear Ms. Dwyer:

Craig F. Monteilh responding to the government's *in camera* filing and declassification of a document on June 25, 2015.

I am aware that the Attorney General and FBI's classified *in camera* filings were not viewed by counsel for the Plaintiffs nor counsel for the individual capacity Defendants.

I am the FBI's confidential informant whose conduct is at issue in this case. When the government files *in camera* classified documents and materials that information submitted to Judges are subjected to the government's interpretation and context.

When the government declassified a specific document that I signed it no longer remained subjected to

the government's interpretation and context. I am asserting that the government misled the Court and misused classified materials and I'm able to corroborate my assertion.

In the government's filing they address the "plaintiffs' specific assertion that the FBI acquiesced in Monteilh's leaving recording devices unattended inside mosques."

They address this assertion by adding, "The FBI can advise the Court at this stage that Monteilh agreed in writing to keep FBI issued recording devices with him at all times while they were turned on. He executed the attached FBI form FD-473 on November 17, 2006. . . . "

Government attorneys also argued this point in front of the panel on December 7, 2015. I did sign that FBI form, however, it had nothing to do with the surveillance devices I left unattended inside mosques.

The document I signed is specific. It states that I authorized the FBI to "*place a Body Recorder on my person for the purpose of recording any conversations with various CT and others as yet unknown. . . .*"

A body recorder and key fobs are entirely different recording devices and require separate FBI forms to sign. I left vehicle remote control devices with recording equipment fitted inside unattended inside mosques.

The body recorder was a prototype video recorder in its early stages that would later be condensed and fitted in a shirt button. The body recorder was a bulky device fitted under my armpit which was impossible for me to remove. That's why it had to be "*placed on*" me.

The document I signed regarding key fob recording devices does not have any language instructing me to keep devices with me at all times. The government knows this and that's why they sought to mislead the Court.

Now with respect to corroborating my assertion of government misconduct, my handwritten notes and supplemental attached notes will demonstrate to the Court the actual use of this body recorder. I know where to look. After all, they're my notes. I wrote them.

Thank you for the Court's consideration.

Respectfully submitted,

By: /s/ CRAIG F. MONTEILH
CRAIG F. MONTEILH
20 Remington
Irvine, CA 92620
(949) 395-1124

*Former FBI Confidential Informant
Principal Witness*