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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14

15 AMERICAN CIVIL LIBERTIES)
UNION OF NORTHERN)
16 CALIFORNIA,)

17 Plaintiff,)

18 vs.)

19 DEPARTMENT OF JUSTICE;)
FEDERAL BUREAU OF)
20 INVESTIGATION,)

21 Defendants.)
22 _____)

No.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

[Freedom of Information Act,
5 U.S.C. § 552 et seq.]

23 INTRODUCTION
24

25 1. This is an action under the Freedom of Information Act (“FOIA”),
26 Title 5 U.S.C. § 552, for injunctive and declaratory relief, seeking expedited
27 processing and release of agency records requested by Plaintiff American Civil
28 Liberties Union of Northern California (“ACLU-NC”) from Defendants United

1 States Department of Justice (“DOJ”) and DOJ’s component, the Federal Bureau
2 of Investigation (“FBI”).

3 2. During the summer of 2004, the ACLU-NC learned that individuals
4 living throughout Northern California were being interviewed or interrogated by
5 agents of the Federal Bureau of Investigation (FBI) for no apparent reason other
6 than being Muslims or persons of Middle Eastern descent. Prior to the summer of
7 2004 and since September 11, 2001, there have been widespread reports of similar
8 rounds of targeted questioning and interrogation affecting thousands of
9 individuals, including hundreds in Northern California. The reports have noted
10 that the subjects are questioned, among other things, about their associations with
11 other people and groups, about their political views on the war in Iraq and other
12 Middle East issues, and about what mosques other people attend. These
13 interviews or interrogations raise the concern that the FBI and local Joint
14 Terrorism Task Forces (teams of state and local law enforcement officers, FBI
15 Agents, and other federal agents and personnel) operating in Northern California
16 may be infringing on the civil rights and civil liberties of immigrants, U.S.
17 citizens, and organizations by violating their First Amendment rights to freedom
18 of expression, freedom of religion, freedom of association, their right to travel, and
19 their right to privacy. Further, the monitoring, interrogations, and investigations
20 have a chilling effect on the exercise of their constitutional rights.

21 3. Pursuant to Title 5 U.S.C. § 552(a), Plaintiff requested in writing that
22 the Department of Justice make available for inspection and copying documents
23 that relate to (1) questioning and monitoring of recent immigrants and U.S.
24 citizens of Arab and Muslim descent, and (2) surveillance of political and religious
25 activity, carried out by the FBI and local Joint Terrorism Task Forces. Pursuant to
26 5 U.S.C. § 552(a)(6)(E), Plaintiff sought expedited processing of the request to
27 meet the urgent need for informing the public about these activities and how they
28 might impact the exercise of constitutional rights. It further sought expedited

1 processing due to the widespread and exceptional media interest in the monitoring
2 and surveillance of Arab and Muslim communities in the United States by the FBI
3 and local police.

4 4. Although the Executive Office for United States Attorneys of the
5 Department of Justice granted the request for expedited processing concerning the
6 United States Attorneys' offices, the FBI refused to do so.

7 5. Plaintiff seeks an injunction requiring the Department of Justice and
8 FBI to process its request immediately and to comply with the Freedom of
9 Information Act by timely releasing the requested information.

10 11 JURISDICTION AND VENUE

12 6. This Court has jurisdiction over this action and personal jurisdiction
13 over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), § 552(a)(6)(E)(iii), 5 U.S.C.
14 §§ 701-706 and 28 U.S.C. § 1331. Venue lies in this district pursuant to 5 U.S.C.
15 § 552(a)(4)(B). Venue in San Francisco is proper under Civil Local Rule 3-2,
16 because a substantial part of the events which give rise to this claim occurred in
17 San Francisco County, where Plaintiff is headquartered.

18 19 PARTIES

20 7. Plaintiff American Civil Liberties Union of Northern California
21 ("ACLU-NC") is an affiliate of the American Civil Liberties Union, a national
22 organization that works to protect the civil liberties of all people, including
23 immigrants to the United States. ACLU-NC primarily serves the population of
24 Northern California. Because civil liberties have no boundaries, its work affects
25 persons throughout the United States.

26 8. Plaintiff ACLU-NC is a non-profit, non-partisan membership
27 organization. It publishes newsletters, provides news briefings, publishes and
28 disseminates right-to-know documents, and other materials that are distributed to

1 the public. Its material is widely available to everyone, including tax-exempt
2 organizations, not-for-profit groups, law students and faculty, for no cost or for a
3 nominal fee through its public education department. The ACLU-NC also
4 disseminates information through its public website, <http://www.aclunc.org/>. The
5 website addresses civil liberties issues in depth, provides features on civil liberties
6 issues in the news, and contains numerous documents that relate to civil liberties
7 issues and concerns. The ACLU-NC has previously received documents pursuant
8 to the FOIA, and has immediately made these documents available to the public by
9 posting them on its website. The ACLU-NC also disseminates information
10 through a newsletter, which is distributed monthly to subscribers by mail and is
11 available to the general public.

12 9. Defendant Department of Justice is a Department of the Executive
13 Branch of the United States. DOJ is an agency within the meaning of 5 U.S.C.
14 § 552 (f)(1).

15 10. Defendant Federal Bureau of Investigation is an agency within the
16 Department of Justice. The FBI is an agency within the meaning of 5 U.S.C.
17 § 552 (f)(1).

18 FACTS

19
20 11. As government surveillance and investigation activities expand in
21 response to fears of terrorism, questions about why and how targets of
22 investigation, interviews and questioning are selected and monitored, and what the
23 government does with the information it gathers, are of increasing public concern.

24 12. ACLU-NC has received reports that the FBI, in its far-reaching
25 efforts to monitor terrorism, has interrogated numerous individuals throughout
26 California solely because they are Muslims or of Middle Eastern descent.

27 13. Much of this questioning and interrogation has been carried out by
28 members of Joint Terrorism Task Forces (JTTF). The JTTF's are made up of state

1 and local officers working with agents of the FBI and Department of Homeland
2 Security and officers of the Bureau of Immigration and Customs Enforcement.
3 The national FBI website reports that “there are 66 JTTF’s, including one in each
4 of the FBI’s 56 main field offices and ten in smaller offices. More than 2,300
5 personnel work on these task forces nationwide.” There are at least two JTTFs in
6 Northern California, one based in San Francisco and one based in Sacramento.

7 14. Many Muslims, members of immigrant communities, and persons
8 with ties to the Middle East and South Asia believe that they are at risk of
9 harassment and unlawful or unwarranted monitoring, surveillance, and
10 interrogation.

11 15. FBI and JTTF agents have made unannounced appearances at homes,
12 workplaces and mosques in Northern California to conduct questioning, including
13 questions about religious views, political views, and associations and personal
14 activities.

15 16. The FBI’s monitoring, surveillance, and interrogations, through its
16 use of Joint Terrorism Task Forces, and the growing resources devoted to them
17 (twenty five additional FBI agents have been assigned to work in the JTTF in the
18 San Francisco Bay Area alone, for example) have led to growing public concern
19 about whether the government is violating First, Fourth, Fifth, and Fourteenth
20 Amendment Rights with overly aggressive, racially discriminatory, religion-based,
21 or politically motivated questioning.

22 17. Uncovering and disseminating information about the government
23 surveillance efforts and operations is a matter of urgent public interest and
24 concern. It is crucial to reduce fear and anxiety in immigrant communities. It is
25 crucial to providing the public with information about FBI and JTTF methods,
26 their efficacy, the scope of their role in the “war on terror,” and whether civil
27 liberties are being sacrificed to wage that war.

28 18. Media interest serves as one barometer of the urgency to inform the

1 public of FBI and JTTF activities. As of August, 2004, news outlets across the
2 country were reporting on the FBI's terrorism-related monitoring and surveillance
3 – from the Los Angeles Times, see Richard Schmitt and Donna Horowitz, "FBI
4 Starts to Question Muslims in U.S. About Possible Attacks,"
5 <http://www.latimes.com>, July 18, 2004, to the Washington Post. See Mary Beth
6 Sheridan, "Interviews of Muslims to Broaden," <http://washingtonpost.com>, July
7 17, 2004.

8 19. As of August, 2004, widespread reports from respected sources raised
9 concerns about the political nature of the investigations. See, e.g., Eric Lichtblau,
10 "Inquiry into F.B.I. Question Is Sought," <http://www.nytimes.com>, August 18,
11 2004; Larry Abramson, "FBI Questioning Political Demonstrators,"
12 <http://www.npr.org>, August 17, 2004; Eric Lichtblau, "F.B.I. Goes Knocking for
13 Political Troublemakers," <http://www.nytimes.com>, August 16, 2004.

14 20. Opinion articles in local newspapers in the area served by the ACLU-
15 NC have questioned and criticized the FBI's interrogation and monitoring
16 methods. See, e.g., Jayashri Srikantiah, "Few Benefits to Questioning Targeted
17 Groups," San Francisco Chronicle, August 6, 2004; Camille T. Taiara, "New
18 F.B.I. Witch-Hunt," San Francisco Bay Guardian, August 4-10, 2004.

19 21. The media interest in the FBI's investigation methods highlights the
20 impact on public confidence in government integrity, particularly in the Arab and
21 Muslim community. See Kelly Thornton, "F.B.I.'s Home Visits Have Some
22 Muslims Feeling Harassed, Alienated," <http://www.signsonsandiego.com>, August
23 4, 2004.

24 22. On August 20, 2004, Plaintiff ACLU-NC filed a request pursuant to 5
25 U.S.C. § 552(a) for records with various branches of the Department of Justice,
26 relating to the FBI's monitoring, surveillance, and interrogation activities:

- 27 • the Executive Office of the United States Attorney;
- 28 • the United States Attorneys for the Northern and Eastern Districts of

1 California;

- 2 • the resident agencies and field offices for the San Francisco and
3 Sacramento Divisions of the FBI;
4 • the FOIA/PA section of the FBI; and
5 • the Director of Public Affairs for the Department of Justice.

6 23. Plaintiff's FOIA Request sought, among other things,

- 7 • agency records relating to agreements between the FBI or Department of
8 Homeland Security and local and state agencies in Northern
9 California;
10 • records relating to monitoring, interrogation, and investigation of
11 individuals and organizations in Northern California on the basis of
12 national original, religious affiliation, political views, or participation
13 in protests or demonstrations;
14 • policies and procedures relating to the collection, storage, and
15 dissemination of information about the targeted individuals and
16 organizations;
17 • records about whether and how the privacy of those targeted is protected;
18 • records about how information about individuals who have a connection
19 to the Middle East or South Asia is collected and analyzed; and
20 • records relating to the funding and operations of the Joint Terrorism Task
21 Forces in Northern California.

22 24. Title 5 U.S.C. § 552(a)(6)(E) requires each government agency
23 subject to the FOIA to "promulgate regulations..., providing for expedited
24 processing for requests for records - (I) in cases in which the person requesting the
25 records demonstrates a compelling need; and (II) in other cases determined by the
26 agency.

27 25. Title 28 C.F.R. § 16.5(d), a regulation of the Department of Justice,
28 provides in relevant part:

Expedited Processing. (1) Requests and appeals will be taken out of
order and given expedited treatment whenever it is determined that
they involve:

(I) Circumstances in which the lack of expedited treatment could
reasonably be expected to pose an imminent threat to the life or
physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged

1 government activity, if made by a person engaged in disseminating
information;

2 (iii) The loss of substantial due process rights; or

3 (iv) A matter of widespread and exceptional media interest in which
4 there exist possible questions about the government's integrity which
affect public confidence.

5 26. Plaintiff sought expedited processing of the request, pursuant to 5
6 U.S.C. § 552(a)(6)(E) and 28 U.S.C. §§ 16.5(d)(1)(ii), (iii), and (iv).

7 27. Specifically, Plaintiff sought expedited processing on the grounds
8 pursuant to 28 C.F.R. § 16.5(d)(1)(ii) that ACLU-NC is an organization "primarily
9 engaged in disseminating information," which has "an urgency to inform the
10 public about an actual or alleged federal government activity," because the
11 government's activities may bear on the public's exercise of their constitutional
12 rights.

13 28. Plaintiff requested expedited processing pursuant to 28 C.F.R.
14 § 16.5(d)(1)(iii) because the records relate to possible inappropriate questioning,
15 surveillance, and retention of information on individuals and organizations based
16 on race, ethnicity, and religious or political persuasion and therefore concern the
17 possible loss of substantial due process and other constitutional rights.

18 29. Plaintiff sought expedited processing pursuant to 28 C.F.R.
19 § 16.5(d)(1)(iv) because the records sought pertain to "[a] matter of widespread
20 and exceptional media interest in which there exist possible questions about the
21 government's integrity which affect public confidence." Plaintiff cited the articles
22 listed in paragraphs 18-21 above as examples of the substantial media attention
23 devoted to the issue

24 30. Responding to the requests directed to the United States Attorneys for
25 the Northern and Eastern Districts of California, the Freedom of
26 Information/Privacy Act Unit of the Executive Office for United States Attorneys
27 notified Plaintiff that its FOIA request merited expedited treatment. The FOIA/PA
28 Unit promised the request would be "pulled out of chronological order," and that

1 the DOJ would respond to the request “as soon as possible.”

2 31. The FBI, however, denied the request for expedited processing. By
3 letter dated September 1, 2004, David Hardy, the Section Chief of the Records
4 Management Division of the FBI, notified Plaintiff that processing of the FBI
5 request would not be expedited.

6 32. The letter stated that there was “no particular urgency” to inform the
7 public about the activities being scrutinized and that the ACLU-NC is not
8 primarily engaged in disseminating information. The FBI also stated that any
9 “loss of due process rights is for [the ACLU-NC’s] own personal gain.”

10 33. By supplemental letter dated September 7, 2004, Hardy added that the
11 FBI was denying the request to expedite because the Director of Public Affairs did
12 not “detect” widespread and exceptional media interest in the activities of the Joint
13 Terrorism Task Forces.

14 34. Plaintiff’s FOIA request was placed in the FBI’s regular processing
15 queue.

16 35. Plaintiff filed an administrative appeal of the DOJ’s refusal to
17 expedite the processing of the FOIA request.

18 36. By letter dated September 22, 2004, the DOJ’s Office of Information
19 and Privacy denied the appeal. The DOJ once again stated that the subject of the
20 FOIA request “is not such a matter of current exigency to the American public that
21 processing it on a first-in-first-out basis would compromise a significant
22 recognized interest.” It said that the records sought do not relate to a matter of
23 wide-spread and exceptional media interest or raise questions about the
24 government’s integrity. Finally, it stated that “whatever due process rights may be
25 at issue” will not be compromised by processing the request “in the normal
26 course.”

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REQUISITES FOR RELIEF

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2 37. Plaintiff has exhausted its administrative remedies.

3 38. An actual controversy exists: Plaintiff submits that Defendants'
4 failure to expedite processing of the requests directed to FBI resident agencies and
5 field offices violates federal law. Plaintiff is informed and believes that
6 Defendants contend that their failure to do so is consistent with federal law.

7 39. Plaintiff and the public are suffering irreparable harm. Absent relief
8 from this court, it is likely that the FBI will not make documents about its
9 operations available in time for Plaintiff to make meaningful use of the
10 information in the current public debate about how investigation of terrorism
11 affects civil liberties.

12 40. Plaintiff is informed and believes, and therefore alleges on
13 information and belief, that unless the request is expedited, the records will not be
14 made available for inspection for many months, if not years. The Department of
15 Justice's Freedom of Information Act (FOIA) Report for Fiscal Year 2003 shows
16 that in 2003, the median time for the FBI to respond to requests concerning
17 501-2,500 pages was 370 days. The median time for requests involving over 2,500
18 pages was 558 days.

19 41. In the meantime, the FBI's surveillance and interrogation is taking
20 place with renewed vigor. Subsequent to the August 20, 2004 FOIA request, the
21 national news media revealed plans by the FBI and other federal agencies to
22 engage in an intensified operation of interrogations, surveillance and possible
23 detentions. This operation will be conducted through the January 2005
24 presidential inauguration. Since those news reports -- which included comments
25 from FBI officials -- the ACLU-NC and other legal, community, and religious
26 organizations in Northern California have received multiple reports that JTTF
27 agents have been showing up unannounced at the homes, workplaces, and
28 mosques of local Muslims. The reports have detailed pressure on subjects

1 immediately to answer questions about religious beliefs and practices,
2 associations, and political views. Individuals requesting that their interview be
3 scheduled so they could be accompanied by an attorney faced pressure to comply
4 immediately with the FBI/JTTF's requests.

5 42. Plaintiff presently has no adequate remedy at law to redress its rights.

6
7 FIRST CLAIM FOR RELIEF

8 43. Defendant's failure to grant Plaintiff's request for expedited
9 processing directed to FBI resident agencies and field offices violates the FOIA, 5
10 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(d).

11
12 PRAYER FOR RELIEF

13 WHEREFOR, Plaintiff prays:

- 14 1. For preliminary and permanent injunctive relief requiring defendants
- 15 to expedite the consideration of the requested records;
- 16 2. For permanent injunctive relief requiring the defendants, upon
- 17 completion of such expedited processing, to disclose the requested
- 18 records and make copies available to Plaintiff;
- 19 3. For a declaratory judgment.
- 20 4. For expeditious proceedings in this action;
- 21 5. That the Court reserve jurisdiction to ensure that the defendants
- 22 timely comply with its orders;

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- 6. That the Court award Plaintiff its costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
- 7. For such other relief that is proper.

Dated: October 21, 2004

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

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