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23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN FRANCISCO DIVISION

26 WILEY GILL; JAMES PRIGOFF; TARIQ  
27 RAZAK; KHALID IBRAHIM; and AARON  
28 CONKLIN,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE; LORETTA  
LYNCH, in her official capacity as the  
Attorney General of the United States;  
PROGRAM MANAGER – INFORMATION  
SHARING ENVIRONMENT;  
KSHEMENDRA PAUL, in his official  
capacity as the Program Manager of the  
Information Sharing Environment,

Defendants.

Case No. 3:14-cv-03120-RS-KAW

**DECLARATION OF AARON  
CONKLIN IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
SUMMARY JUDGMENT AND  
PLAINTIFFS’ OPPOSITION TO  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: December 8, 2016  
Time: 1:30 pm  
Judge: Hon. Richard Seeborg  
Courtroom: 3, 17th Floor  
Date of Filing: July 10, 2014  
Trial Date: None Set

1 I, Aaron Conklin, declare as follows:

2 1. I am one of the Plaintiffs in the above-titled action. I submit this declaration in  
3 support of Plaintiffs' Motion for Summary Judgment and Plaintiffs' Opposition to Defendants'  
4 Motion for Summary Judgment. I have personal knowledge of each fact stated in this  
5 declaration and, if called as a witness, I could and would competently and truthfully testify  
6 hereto.

7 2. I reside in Vallejo, California. I am student at Diablo Valley College, studying  
8 graphic design. I am also an amateur photographer, and maintain a website where I post a  
9 selection of my works. I have a particular interest in photographing industrial architecture.

10 3. In either 2011 or 2012, I traveled to Benicia, California, for the purpose of  
11 photographing the Valero oil refinery located there. For aesthetic reasons, I decided to visit  
12 Benicia in the evening, so as to capture images of the refinery illuminated against the night sky.

13 4. I arrived at approximately 10:00pm, and set up my camera in an empty lot outside  
14 the refinery's fenced perimeter. This empty lot was close to a publicly accessible sidewalk and a  
15 bus stop. I knew that this lot was accessible to the general public, because during the day a taco  
16 truck used to park there and sell food.

17 5. Shortly after I began taking photos, a private security guard approached from the  
18 refinery, and informed me that I was not allowed to be there. He told me that I should leave, and  
19 warned me that "bad things" would happen if I did not comply. I believe that the lot I was  
20 standing in was a public space, and that I was within my rights to take photos from there.  
21 However, because I felt threatened and was fearful of what would happen to me if I remained, I  
22 stopped taking photos and left the location.

23 6. I would like to return to Benicia and take more photos of the Valero refinery to  
24 add to my portfolio, but I am afraid to do so. I fear that I would be subjected to further  
25 harassment. I have since discovered that photographs of the Valero refinery, taken from roughly  
26 the same location as where I was standing, are publicly available online via Google Maps.

27 7. On or around November 30, 2013, I again attempted to take photos of an oil  
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1 refinery. This time, I traveled to the Shell refinery in Martinez, California. I arrived in Martinez  
2 at approximately 9:30pm or 10:00 pm, and began setting up my camera in the parking lot of a  
3 strip mall across the street from the refinery's fenced perimeter.

4 8. A few minutes after I arrived, and before I had the opportunity to take any photos,  
5 a private security guard left the fenced perimeter of the refinery and approached me. He informed  
6 me that I could not take photos of the refinery, and asked me to show him some form of  
7 identification. I complied with the security guard's instructions.

8 9. A few minutes later, another private security guard arrived. The guards told me  
9 that it was a bad idea for me to be taking photos of an oil refinery, and claimed that this was  
10 illegal. They also implied that my actions might somehow be connected to terrorism. They made  
11 repeated references to the September 11th terrorist attacks, and said that what I was doing was  
12 "endangering our country."

13 10. Despite the fact that I had complied with all of the guards' requests, they called the  
14 Contra Costa County Sheriff's Office. Shortly thereafter, at least two Sheriff's deputies arrived  
15 on the scene. By this point, approximately twenty minutes had passed since the beginning of the  
16 encounter, and there were between five and six people present. I cannot recall exactly how many  
17 of those individuals were private security guards, but I do recall that at least two Sheriff's  
18 deputies were present.

19 11. The deputies asked me for personal information, such as my name and address,  
20 which I provided. They wrote this information down, and then took my camera from me and  
21 looked through the photographs stored on it. They then searched my vehicle. After searching my  
22 vehicle they took photos of me, my camera equipment, and my vehicle. At no point during this  
23 encounter did I feel that I was free to leave or that I could prevent them from searching my  
24 camera and vehicle.

25 12. Approximately forty-five minutes to an hour after the encounter began, the  
26 Sheriff's deputies told me that I was free to go, but that I was going to be placed on an "NSA  
27 watch list." From context, I believe the deputy who used the term "NSA watch list" was saying  
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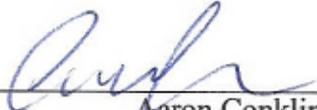
1 he was going to submit a Suspicious Activity Report about me.

2 13. The concern that a Suspicious Activity Report has been created about me, which  
3 may include my name and other identifying information, has caused me a great deal of anxiety  
4 and distress. Both that concern and the experiences described above have discouraged me from  
5 continuing to pursue my interest in photography. Although I have a passion for taking photos of  
6 industrial sites, I am worried that my presence on a Suspicious Activity Report would place me at  
7 greater risk of being detained, searched, investigated, or even arrested. I am also concerned that  
8 if I continue to pursue my interest in photography, I will be detained and searched again, as has  
9 happened to me twice before.

10 14. I believe that the defendants in this case would have benefited from input from the  
11 public on the standard for suspicious activity reporting. I would have wanted the defendants to  
12 know when they adopted their standard for suspicious activity reporting that a standard that does  
13 not require reasonable suspicion of criminal activity harms innocent people, like me, who have  
14 not engaged in any wrongdoing: It makes us the targets of law enforcement scrutiny, puts our  
15 information in government databases, and adversely affects our reputations by identifying us as  
16 individuals who have engaged in conduct with a potential nexus to terrorism. I would also have  
17 wanted defendants to know the specific facts of my case so that they could understand the factual  
18 basis for my concerns. I was not aware that defendants sought input on the standard for  
19 suspicious activity reporting. As a result, I did not have an opportunity to share my perspective or  
20 the factual basis for my concerns.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 9 day of September, 2016 in Vallejo, California.

By:   
Aaron Conklin

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**FILER’S ATTESTATION**

I, Phillip J. Wiese, am the ECF user whose identification and password are being used to file this DECLARATION OF AARON CONKLIN IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT. Pursuant to L.R. 5-1(i)(3), I hereby attest that concurrence in the electronic filing of this document has been obtained from each of the other signatories.

Dated: September 22, 2016 By           /s/ Phillip J. Wiese            
Phillip J. Wiese