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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION  
18

19 THE AMERICAN CIVIL LIBERTIES UNION  
OF NORTHERN CALIFORNIA, ASIAN LAW  
20 CAUCUS, SAN FRANCISCO BAY  
GUARDIAN

21 Plaintiffs,

22 v.

23  
24 FEDERAL BUREAU OF INVESTIGATION,  
DEPARTMENT OF JUSTICE

25 Defendants.  
26

Case No. 3:10-cv-03759-RS

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF; VIOLATION OF THE  
FREEDOM OF INFORMATION ACT**

1 **I. INTRODUCTION**

2 1. The American Civil Liberties Union of Northern California, Asian Law Caucus,  
3 and the *San Francisco Bay Guardian* (collectively, “the plaintiffs”), file this action against the  
4 Federal Bureau of Investigation, including its field offices in San Francisco and Sacramento  
5 (“FBI”) to enforce the public’s right to information under the Freedom of Information Act  
6 (“FOIA”), 5 U.S.C. § 552. The plaintiffs allege as follows:

7 2. Approximately eleven months ago, on March 9, 2010, the plaintiffs sought the  
8 expedited processing and release of records concerning the investigation and surveillance of  
9 Muslim communities in northern California from the FBI offices located in Winchester, Virginia;  
10 San Francisco, California; and Sacramento, California. A copy of the March 9, 2010 FOIA  
11 request is attached hereto as Exhibit A. Although the FBI granted the plaintiffs’ request for  
12 expedited processing, the FBI had failed to release any documents in response to the plaintiffs’  
13 FOIA requests before this action was filed and has still failed to fully comply.

14 3. Approximately seven month ago, on July 27, 2010, the plaintiffs sought the release  
15 of records concerning the collection and use of racial and ethnic data in northern California from  
16 the FBI offices located in San Francisco, California and Sacramento, California. A copy of the  
17 July 27, 2010 FOIA request is attached hereto as Exhibit B. Plaintiffs are entitled to the records  
18 they seek. Although the FBI provided a first interim release of documents responsive to this  
19 FOIA request in December 2010, the FBI has delayed their production and the rate of production  
20 is woefully inadequate.

21 4. By this action, the plaintiffs seek information from the FBI responsive to their  
22 FOIA requests and other appropriate relief.

23 **II. PARTIES**

24 5. The plaintiff American Civil Liberties Union of Northern California (“ACLU-  
25 NC”) is a regional affiliate of the American Civil Liberties Union, which is a national, non-profit,  
26 and non-partisan organization dedicated to protecting the civil liberties of all people and  
27 safeguarding of the basic constitutional rights to privacy, free expression, and due process. The  
28 ACLU-NC is established under the laws of the State of California, and has its headquarters in

1 San Francisco, California. The ACLU-NC has a membership of approximately 50,000. In  
2 support of its mission, ACLU-NC uses its communications department to disseminate  
3 information to the public about issues of concern to the ACLU-NC and the general public.

4 6. The plaintiff Asian Law Caucus (“ALC”) is a non-profit public interest  
5 organization that is incorporated under the laws of the State of California and has its headquarters  
6 in San Francisco, California. The ALC works to promote, advance, and represent the legal and  
7 civil rights of the Asian and Pacific Islander communities. A main component of ALC’s work is  
8 to disseminate information of public interest to both the Asian Pacific American communities and  
9 the general public.

10 7. The plaintiff *San Francisco Bay Guardian* (“*The Bay Guardian*”) is a corporation  
11 organized in the State of California with its headquarters in San Francisco, California. It is a  
12 newspaper of general circulation and has the largest circulation of a newsweekly in northern  
13 California, with an audited weekly distribution of 100,000. *The Bay Guardian* is locally owned,  
14 independent, and has been published continuously since 1966. *The Bay Guardian*’s primary  
15 activity is publishing or otherwise disseminating information to the public, and it is prepared to  
16 publish appropriate articles concerning the FBI’s surveillance based on information sought by the  
17 FOIA requests at issue here.

18 8. The defendant Federal Bureau of Investigation is a component of the United States  
19 Department of Justice. The FBI is an agency within the meaning of 5 U.S.C. § 552(f). The FBI  
20 has its headquarters in Washington, D.C., and field offices all over the country, including  
21 San Francisco and Sacramento, California.

22 9. The defendant U.S. Department of Justice is a government agency within the  
23 meaning of 5 U.S.C. § 552(f). It is located in Washington, D.C.

### 24 **III. JURISDICTION**

25 10. This Court has subject matter jurisdiction over this action and personal jurisdiction  
26 over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has  
27 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346.

1 **IV. VENUE AND INTRADISTRICT ASSIGNMENT**

2 11. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.  
3 § 1402. The plaintiffs have their principal places of business in this district.

4 12. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c)  
5 and (d) because a substantial portion of the events giving rise to this action occurred in this  
6 district and division. The plaintiffs ACLU-NC, ALC, and *The Bay Guardian* each have their  
7 headquarters in San Francisco, California.

8 **V. FACTUAL ALLEGATIONS**

9 **A. THE FBI'S SURVEILLANCE OF MUSLIM COMMUNITIES IS A**  
10 **MATTER OF SIGNIFICANT PUBLIC INTEREST**

11 13. The government's surveillance of individuals and groups in Muslim communities  
12 is a matter of significant public interest both to the members of Muslim communities and to the  
13 public at large. According to a 2007 survey by the Pew Research Center, there are approximately  
14 2.35 million Muslims living in the United States. Michael B. Farrell, "Fort Hood Shootings: US  
15 Muslims Feel New Heat," *Christian Science Monitor*, Nov. 17, 2009. The government's  
16 surveillance raises significant public issues, such as the following: (1) The impact of the  
17 surveillance on the civil liberties of individuals and groups targeted by the surveillance, including  
18 the impact on fundamental First Amendment rights to free exercise of religion, freedom of  
19 association, and freedom of expression; and (2) The impact of certain government surveillance  
20 tactics on U.S. national security, including potential harm to community relationships that are  
21 important to furthering safety and national security. The media has widely reported on these  
22 issues. For example:

23 14. On December 18, 2009, the *New York Times* reported that "Several high-profile  
24 cases in which informers have infiltrated mosques and helped promote plots . . . have sown a  
25 corrosive fear among [Muslim-Americans] that FBI informers are everywhere, listening." Paul  
26 Vitello and Kirk Semple, "Muslims Say FBI Tactics Sow Anger and Fear," *New York Times*,  
27 Dec. 18, 2009.

1           15.     A month later, the *New York Times* reported that President Barack Obama had  
2 ordered national security officials “to develop a plan ‘that addresses the unique challenges posed  
3 by lone recruits,’ a reference to Muslim individuals who become extremists but aren’t formal  
4 members of any group.” Free Press Staff Writer, “Calls for Surveillance Rise With Jump in U.S.  
5 Terrorism Cases,” *Detroit Free Press*, Jan. 17, 2010.

6           16.     The *Christian Science Monitor* recently reported, “Many Muslim[] Americans are  
7 concerned by news that paid FBI informants . . . have been targeting impressionable Muslim  
8 Americans to incite and then entrap them. The Muslim community is also concerned by reports  
9 that law enforcement agents are coercing Muslim Americans to serve as informants in exchange  
10 for immigration ease.” Further, the *Christian Science Monitor* warned, “[F]ear within  
11 communities can cut off the goodwill and sources of information needed to prevent another  
12 attack.” Alejandro J. Beutel, “Muslim Americans and US Law Enforcement: Not Enemies, But  
13 Vital Partners,” *Christian Science Monitor*, Dec. 30, 2009.

14           17.     In January 2010, the *Detroit Free Press* published an article about the “growing  
15 concern among Muslims and civil rights advocates about undercover surveillance in religious  
16 institutions,” and the concern that “using informants in mosques infringes on the constitutional  
17 right to free assembly and worship.” Niraj Warikoo, “Deadly FBI Raid of Detroit Mosque  
18 Prompts Concern Over Informants: Muslims, Civil Rights Advocates Decry Tactic,” *Detroit Free*  
19 *Press*, Jan 17, 2010; Niraj Warikoo, “Informants Amid the Faithful,” *Detroit Free Press*, Jan. 17,  
20 2010.

21           18.     The media has also reported a chilling effect that government surveillance has had  
22 on members of Muslim communities with regard to religious practices and to cooperation with  
23 the FBI in counterintelligence. The *Christian Science Monitor* reported:

24                   Many Muslim groups accuse the FBI and other counterterrorism  
25 agents of using overly aggressive tactics to strong-arm mosque  
26 attendees into becoming informants. Others say Muslims are often  
victims of racial profiling.

27                   The scrutiny has created a **siege mentality** in some Muslim  
28 communities. **Many are afraid to talk** to newcomers for fear of  
being entrapped by FBI informants. Some are afraid to express  
political views, and **others have stopped attending mosque**

1 altogether.

2  
3 Michael B. Farrell, "Fort Hood Shootings: US Muslims Feel New Heat," *Christian Science*  
4 *Monitor*, Nov. 17, 2009 (emphasis added). The media is replete with similar reports. See Paul  
5 Vitello and Kirk Semple, "Muslims Say FBI Tactics Sow Anger and Fear," *New York Times*,  
6 Dec. 18, 2009 ("[A] national coalition of Islamic organizations warned that it would cease  
7 cooperating with the FBI unless the agency stopped infiltrating mosques and using 'agents  
8 provocateurs to trap unsuspecting Muslim youth.'"); Nick Meyer, "US Attorney General Eric  
9 Holder Addresses Detroit Community," Arabs, Muslims," *New America Media*," Nov. 24, 2009  
10 (commenting that recent events "have combined to increase tensions between law enforcement  
11 agencies like the FBI and both Arabs and Muslims over issues of discrimination and profiling.");  
12 Charlie Savage, "Loosening of FBI Rules Stirs Privacy Concerns," *New York Times*, Oct. 29,  
13 2009 (FBI's Domestic Investigations and Operations Guidelines authorize agents to take into  
14 account ethnicity or religion, "specific and relevant ethnic behavior" and to "identify locations of  
15 concentrated ethnic communities" when determining whether to "open an 'assessment' to  
16 'proactively' seek information about whether people or organizations are involved in national  
17 security threats."); Alejandro J. Beutel, "Muslim Americans and U.S. Law Enforcement: Not  
18 Enemies, But Vital Partners," *Christian Science Monitor*, Dec. 30, 2009; Editorial, "FBI Works  
19 With Arab Community," *Detroit News*, Oct. 8, 2009; Teresa Watanabe and Paloma Esquivel,  
20 "L.A. Area Muslims Say FBI Surveillance Has A Chilling Effect On Their Free Speech And  
21 Religious Practices," *Los Angeles Times*, Mar. 1, 2009; Jacqueline L. Salmon, "Muslim  
22 Americans At Odds Over FBI Contact," *Washington Post*, Mar. 28, 2009. Along these lines,  
23 Attorney General Eric Holder reportedly stated in an address to members of the Arab American  
24 community in Detroit, "This is simply intolerable, and the tension that arises [between the  
25 Muslim American community and the FBI] is unacceptable." Nick Meyer, "US Attorney General  
26 Eric Holder Addresses Detroit Community, Arabs, Muslims," *New American Media*, Nov. 24,  
27 2009.  
28

1           19.     The media has also reported on the FBI's practices of recruiting Muslim and Arab-  
2 American children, as well as others, through the FBI's Junior Agent program. Michelle Toy,  
3 "FBI's Newest Recruits: Arabic-Speaking Kids," *NBC Bay Area*, Jan. 8, 2010; Candice Williams,  
4 "Green Elementary Kids Train to Be FBI Junior Agents," *Detroit News*, Jan. 20, 2010.

5           20.     The information the plaintiffs seek is also relevant to the public's opportunity to  
6 provide accurate analyses and comments to the FBI regarding the released Domestic Investigative  
7 Operational Guidelines ("DIOG") and its implementation vis-à-vis Muslim communities. The  
8 General Counsel for the FBI, Ms. Valerie Caproni, wrote in a letter to Senate Select Committee  
9 on Intelligence Chairman John D. Rockefeller IV, on December 15, 2008, that "we understand  
10 that the expansion of techniques available . . . has raised privacy and civil liberties concerns [but]  
11 we believe that our policies and procedures will mitigate those concerns." Senate Report of the  
12 Select Committee on Intelligence 34 (Mar. 9, 2009), *available at*  
13 [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_reports&docid=f:sr](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr006.111.pdf)  
14 [006.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:sr006.111.pdf). She stated that the FBI would reassess the policy judgments made in the DIOG, and  
15 that the reassessment will be "informed by our experience in the coming year, as well as by  
16 comments and suggest[ions] received from Congress and interested parties." The FBI's General  
17 Counsel reaffirmed this intention in an interview posted on the FBI website by stating, "to the  
18 extent that the public has comments and concerns, they should let us know because nothing is  
19 written in stone and we hope we've gotten it right but if we haven't gotten it right, our goal is to  
20 make it right." Federal Bureau of Investigation, *The New Attorney General Guidelines*, PRESS  
21 ROOM: INSIDE THE FBI PODCAST (Jan. 16, 2009),  
22 <http://www.fbi.gov/inside/archive/inside011609.htm>. See "Investigative Guidelines Cement FBI  
23 Role as Domestic Intelligence Agency, Raising New Privacy Challenges," Center for Democracy  
24 & Technology, Oct. 29, 2008; Press Release, American Civil Liberties Union, "ACLU Condemns  
25 New FBI Guidelines," Oct. 3, 2008; American Civil Liberties Union, "Fact Sheet - New Attorney  
26 General Guidelines," Oct. 8, 2008, [http://www.aclu.org/print/national-security/fact-sheet-new-](http://www.aclu.org/print/national-security/fact-sheet-new-attorney-general-guidelines)  
27 [attorney-general-guidelines](http://www.aclu.org/print/national-security/fact-sheet-new-attorney-general-guidelines).  
28

1           21.     Given the impact of the surveillance on national security and the exercise of core  
2 civil liberties, it is imperative that the public gain a better understanding of the methods and scope  
3 of the FBI's surveillance of Muslim communities in the United States and the use of racial and  
4 ethnic "mapping" for law enforcement purposes.

5           22.     Expedited processing of the plaintiffs' March 9, 2010 FOIA request is appropriate  
6 for several reasons: (a) to further the public's interest in providing comments to the FBI in light  
7 of the FBI's General Counsel's December 2008 suggestion that any review and changes to the  
8 DIOG would be based on experience in implementation "in the coming year"; (b) the wide-spread  
9 media attention focused on the subject of the requests; and (c) the urgency to inform the public  
10 about government actions that potentially intrude upon constitutional protections, including equal  
11 protection, privacy rights, freedom of association, freedom of expression, and the free exercise of  
12 religion.

13           23.     The DIOG also details the FBI's power to collect, use, and map racial and ethnic  
14 data in order to assist the agency's "domain awareness" and "intelligence analysis." Despite the  
15 fact that the DIOG has been in effect since December 2008, the public has little information  
16 regarding how the FBI has implemented this authority.

17           24.     The December 2008 DIOG permits the FBI to (1) collect and analyze racial and  
18 ethnic community demographics, including data about "ethnic-oriented businesses or other  
19 facilities;" (2) collect and analyze racial and ethnic "behaviors," "cultural traditions," and "life  
20 style characteristics" in local communities; and (3) map racial and ethnic demographics,  
21 "behaviors," "cultural traditions," and "life style characteristics" in local communities.

22           25.     When the Los Angeles Police Department revealed a plan to map Muslim  
23 communities by race and religion in an effort to identify potential hotbeds of extremism, the  
24 resultant outcry led the police department to shut down its mapping activities. *See* Richard  
25 Winton and Teresa Watanabe, *LAPD's Muslim Mapping Plan Killed*, L.A. Times, Nov. 15, 2007,  
26 available at <http://articles.latimes.com/2007/nov/15/local/me-muslim15> (last viewed Feb. 7,  
27 2011).  
28



1           26.     According to census data, nearly half of all Bay Area residents could be  
2 considered “ethnic” and their “behaviors,” “cultural traditions,” and “life style characteristics”  
3 potentially could be mapped or otherwise analyzed by the FBI. It is unclear how the FBI has  
4 implemented this authority in northern California.

5           **B.     THE FBI HAS FAILED TO ADEQUATELY RESPOND TO THE**  
6           **PLAINTIFFS’ FOIA REQUESTS IN A TIMELY MANNER**

7           27.     The FBI has failed to adequately respond to the plaintiffs’ FOIA requests.

8                           **1.     The FBI Failed to Provide a Timely and Adequate Response to**  
9                           **the Plaintiffs’ March 9 FOIA Request**

10          28.     On March 9, 2010, the plaintiffs under 5 U.S.C. § 552 and other applicable  
11 regulations requested the disclosure of various FBI records pertaining to the surveillance of  
12 Muslim Americans. The plaintiffs’ FOIA requests included exhibits of 40 media reports relating  
13 to the FBI’s surveillance of Muslim communities. *See* Exhibit A.

14          29.     The plaintiffs requested FBI agency records regarding the FBI’s policies and  
15 practices regarding:

- 16                   (a) the use of informants by the FBI;  
17                   (b) opening or carrying out “assessments;”  
18                   (c) materials setting forth the legal reasoning or authority relied  
19                         upon by the FBI in conducting investigations and assessments;  
20                   (d) training for FBI agents regarding Islam, Muslim culture, and/or  
21                         Muslim, Arab, South Asian, or Middle Eastern communities in  
22                         the United States;  
23                   (e) the FBI’s use of race, religion, ethnicity, language, or national  
24                         origin for law enforcement purposes, including the contexts of  
25                         geo-mapping and domain management;  
26                   (f) the FBI Citizenship Academy;  
27                   (g) the FBI Junior Agent Program; and  
28                   (h) domain management.

1           30.     The plaintiffs also requested records concerning FBI activities in northern  
2 California from January 2005 to the present regarding the following: (a) investigations of  
3 mosques, Islamic centers, Muslim community centers, members of mosques, Muslim leaders, and  
4 imams; (b) the FBI Citizenship Academy and its alumni, and the FBI Junior Agent Program; and  
5 (c) domain management and other records related to “community race and ethnicity” analyses or  
6 assessments in the FBI domains of northern California.

7           31.     The plaintiffs further requested data regarding the targets and outcomes of law  
8 enforcement activity in northern California in relation to the rest of the country, including the  
9 following types of information: (i) FBI assessments and investigations of Islamic centers,  
10 mosques, churches and synagogues; (ii) FBI assessments and investigations of religious leaders;  
11 (iii) FBI contacts with imams; (iv) criminal prosecutions and immigration proceedings arising  
12 from terrorism-related investigations and assessments with regard to the use of informants and  
13 terrorism-related charges, and litigation results; and (v) the FBI’s Special Citizenship Academy  
14 and Junior Agent programs.

15           32.     The plaintiffs asked that their FOIA requests be processed on an expedited basis  
16 because they pertain to information about which there is an “urgency to inform the public about  
17 an actual or alleged federal government activity” and the FOIA requests were “made by [persons]  
18 primarily engaged in disseminating information.” *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R.  
19 §§ 16.5(d)(1)(iv) and (ii). The FOIA statute provides for expedited processing of requests where  
20 there is a compelling need. 5 U.S.C. § 552(a)(6)(E). Under the statute, the urgency to inform the  
21 public of actual or alleged federal government activity constitutes a “compelling need” where the  
22 request is made by persons primarily engaged in disseminating information. 5 U.S.C.  
23 § 552(a)(6)(E)(v)(II).

24           33.     Department of Justice regulations state that a FOIA request is entitled to expedited  
25 processing when the information requested involves “[a] matter of widespread and exceptional  
26 media interest in which there exist possible questions about the government’s integrity which  
27 affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv).

28

1           34.     The FBI conceded that expedited processing is appropriate here. In granting the  
2 plaintiffs' request for expedition, the FBI agreed, by letter dated March 19, 2010, that the  
3 plaintiffs had "provided sufficient information concerning the statutory requirements permitting  
4 expedition" under federal regulations that provide for expedited processing of "matter[s] of  
5 widespread and exceptional media interest in which there exist possible questions about the  
6 government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). A copy of  
7 the FBI's March 19, 2010 letter is appended hereto as Exhibit C and incorporated herein by  
8 reference.

9           35.     Also on March 19, 2010, the FBI issued a letter to the plaintiffs acknowledging  
10 receipt of the plaintiffs' FOIA requests and assigning tracking number 1144839-000 to those  
11 requests. A copy of the FBI's March 19, 2010 letter is appended hereto as Exhibit D. In this  
12 letter, the FBI stated that it was searching its Central Records System for the information the  
13 plaintiffs requested and that the FBI would inform the plaintiffs of the results "as soon as  
14 possible."

15           36.     Under 32 C.F.R. § 1700.12(b), a request that is granted expedited processing—  
16 such as the plaintiffs' FOIA requests—"shall be given priority and shall be processed *as soon as*  
17 *practicable*." 32 C.F.R. § 1700.12(b) (emphasis added); *see* 5 U.S.C. § 552(a)(6)(E)(iii).  
18 Expedited processing entitles the requester to move immediately to the front of an agency  
19 processing queue. Under 5 U.S.C. § 552(a)(7)(B)(ii), the FBI is also required to provide "an  
20 estimated date on which the agency will complete action on the request."

21           37.     On June 15, 2010—over three months after plaintiffs' FOIA requests—the FBI  
22 wrote to inform the plaintiffs that it was searching for responsive documents. A copy of the  
23 FBI's June 15, 2010 letter is appended hereto as Exhibit E. The FBI, however, has failed to  
24 provide an estimated date on which it would complete action of the request and produce  
25 responsive documents.

26           38.     Notwithstanding the FBI's grant of expedited processing, the FBI has exceeded the  
27 generally applicable 20-day statutory deadline for processing standard, non-expedited FOIA  
28 requests.



1           44.     On August 6, 2010, the FBI issued a letter to plaintiffs acknowledging receipt the  
2 plaintiffs' July 27 FOIA request and assigning the tracking numbers 1151949-000 and 1151951-  
3 000 to it. A copy of this letter is appended hereto as Exhibit F and incorporated by reference.  
4 Nonetheless, no documents were produced after receipt of this letter. In this letter, the FBI stated  
5 that it was searching it Central Records System for the information that plaintiffs requested and  
6 that the FBI would inform the plaintiffs of the results "as soon as possible."

7           45.     Nearly three months later, on November 4, 2010, the FBI indicated that it was still  
8 searching for documents and once that process was completed, the documents would be  
9 forwarded to the "perfected backlog" and awaited assignment to an analysis. A copy of the FBI's  
10 November 4th letter is appended hereto as Exhibit G and incorporated by reference. At this time,  
11 the FBI had greatly exceeded the generally applicable 20-day statutory deadline for processing  
12 standard, non-expedited FOIA requests.

13           46.     Finally, over four months later, on December 22, 2010, FBI headquarters issued a  
14 first-interim release consisting of 298 pages to the plaintiffs.

15           47.     As of the date of this filing, the FBI has not produced any additional documents or  
16 informed the plaintiffs of an anticipated date for the completion of the processing of their  
17 requests.

18           48.     The FBI has agreed to waive the requirement that the plaintiffs must exhaust all  
19 administrative remedies before initiating litigation regarding the July 27 FOIA request.

20           49.     The FBI has wrongfully withheld and delayed production the requested records  
21 from the plaintiffs.

**FIRST CLAIM FOR RELIEF**

**Violation of FOIA Regarding Plaintiffs' March 9 FOIA Request**

50. The plaintiffs repeat and reallege paragraphs 1-49.

51. The plaintiffs properly requested the records described in the March 9 FOIA request from the FBI in compliance with the requirements of 5 U.S.C. § 552 and the applicable internal regulations, 28 C.F.R. § 16.3.

52. The records requested by plaintiffs are under the custody and/or control of the FBI and/or the Department of Justice.

53. The plaintiffs have exhausted the applicable administrative remedies with respect to FBI's wrongful withholding of the records requested in the plaintiffs' March 9 FOIA request.

54. Pursuant to 5 U.S.C. § 552(a)(6)(E)(iii) and 28 C.F.R. § 16.5(d), defendants have wrongfully withheld agency records request by the plaintiffs and have failed to comply with the statutory time limits for the expedited processing of the plaintiffs' March 9 FOIA request.

55. Pursuant to 5 U.S.C. § 552(a)(7)(B)(ii), the FBI has inadequately responded to the plaintiffs' expedited March 9 FOIA request for records by failing to provide an estimated date on which the agency will complete action on the request.

56. Pursuant to 5 U.S.C. § 552(a)(6)(A) and 28 C.F.R. § 16.5(a)-(c), defendants have wrongfully withheld agency records request by the plaintiffs and have failed to comply with the statutory time limits for the processing of the plaintiffs' March 9 FOIA requests.

57. Defendants' wrongful withholding of the records sought by plaintiffs' request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations 28 C.F.R. § 16.5.

58. The plaintiffs are entitled to injunctive relief with respect to the release and disclosure of the requested documents under 5 U.S.C. § 552(a)(4)(B) because the defendants continue to improperly withhold and/or delay agency records in violation of FOIA. The plaintiffs will suffer irreparable injury from, and have no adequate legal remedy for, the defendants' illegal

1 withholding of government documents pertaining to the FBI's surveillance and investigation of  
2 Muslim communities in northern California.

3 **SECOND CLAIM FOR RELIEF**

4 **Violation of FOIA for Plaintiffs' July 27 FOIA Request**

5 59. The plaintiffs repeat and reallege paragraphs 1-58.

6 60. The plaintiffs properly requested the records described in the July 27 FOIA request  
7 from the FBI in compliance with the requirements of 5 U.S.C. § 552 and the applicable internal  
8 regulations, 28 C.F.R. § 16.3.

9 61. The records requested by plaintiffs are under the custody and/or control of the FBI  
10 and/or the Department of Justice.

11 62. The defendants have agreed to waive the exhaustion requirement for the plaintiffs'  
12 July 27 FOIA request.

13 63. Pursuant to 5 U.S.C. § 552(a)(6)(A) and 28 C.F.R. § 16.5(a)-(c), defendants have  
14 wrongfully withheld agency records request by the plaintiffs and have failed to comply with the  
15 statutory time limits for the processing of the plaintiffs' March 9 FOIA requests.

16 64. Defendants' wrongful withholding of the records sought by plaintiffs' request  
17 violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and the corresponding agency regulations 28 C.F.R.  
18 § 16.5.

19 65. Defendants' failure to grant plaintiffs' request for a waiver of processing fees for  
20 the March 9 FOIA requests violates the FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)-(iii), and the  
21 corresponding agency regulations, 28 C.F.R. § 16.11(k).

22 66. The plaintiffs are entitled to injunctive relief with respect to the release and  
23 disclosure of the requested documents under 5 U.S.C. § 552(a)(4)(B) because the defendants  
24 continue to improperly withhold and/or delay agency records in violation of FOIA. The plaintiffs  
25 will suffer irreparable injury from, and have no adequate legal remedy for, the defendants' illegal  
26 withholding of government documents pertaining to the FBI's racial and ethnic mapping of  
27 individuals and communities in northern California.

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**REQUESTED RELIEF**

WHEREFORE, the plaintiffs pray that this Court:

- A. Declare that the defendants’ failure to disclose the records requested by the plaintiffs is unlawful;
- B. Order the defendants to immediately conduct a thorough search for the requested information;
- C. Order the defendants to process expeditiously the requested records in their entirety;
- D. Order the defendants, upon completion of such processing, to disclose the requested records in their entirety and make them available to the plaintiffs;
- E. Provide for expeditious proceedings in this action;
- F. Enjoin defendants from charging plaintiffs fees for the processing of their requests;
- G. Enter a preliminary and permanent injunction against the defendants ordering the relief requested herein;
- H. Award to the plaintiffs their litigation costs and reasonable attorneys’ fees incurred in this action; and
- I. Grant such other relief as the Court may deem just and proper.

Dated: February 11, 2011

SOMNATH RAJ CHATTERJEE  
KATHERINE NOLAN-STEVAUX  
MORRISON & FOERSTER LLP

By: /s/ Somnath Raj Chatterjee  
SOMNATH RAJ CHATTERJEE

Attorneys for Plaintiffs  
THE AMERICAN CIVIL LIBERTIES  
UNION OF NORTHERN  
CALIFORNIA, ASIAN LAW  
CAUCUS, AND THE SAN  
FRANCISCO BAY GUARDIAN



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**ATTESTATION OF E-FILED SIGNATURE**

I, Katherine Nolan-Stevaux, am the ECF User whose ID and Password are being used to file this Amended Complaint for Violation of the Freedom of Information Act; Injunctive Relief. In compliance with General Order 45, X.B., I hereby attest that Somnath Raj Chatterjee has concurred in this filing.

Dated: February 11, 2011

By: /s/ Katherine Nolan-Stevaux