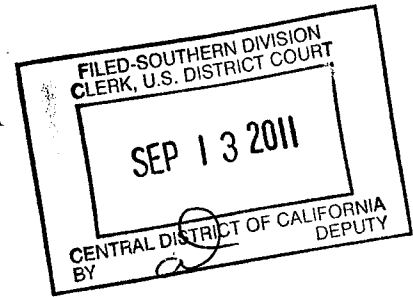


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18 UNITED STATES DISTRICT COURT
19
20 CENTRAL DISTRICT OF CALIFORNIA

21 YASSIR FAZAGA, ALI UDDIN
22 MALIK, YASSER ABDELRAHIM,

23 Plaintiffs,

24 v.

25 FEDERAL BUREAU OF
26 INVESTIGATION; UNITED STATES
27 OF AMERICA; ROBERT MUELLER,
28 DIRECTOR OF THE FEDERAL
BUREAU OF INVESTIGATION, in his
official capacity; STEVEN M.

CASE NO.: SA CV 11-00301 CJC (VBKx)

FIRST AMENDED COMPLAINT

CLASS ACTION

Judge: Honorable Cormac J. Carney

BY FAX

ORIGINAL

1 MARTINEZ, ASSISTANT DIRECTOR
2 IN CHARGE, FEDERAL BUREAU OF
3 INVESTIGATION'S LOS ANGELES
4 DIVISION, in his official capacity; J.
5 STEPHEN TIDWELL; BARBARA
6 WALLS; PAT ROSE; KEVIN
7 ARMSTRONG; PAUL ALLEN; Does
8 1-20

Defendants.

9 Additional Plaintiffs' Attorneys:

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PRELIMINARY STATEMENT

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

5 2. The FBI then used him to indiscriminately collect personal
6 information on hundreds and perhaps thousands of innocent Muslim Americans in
7 Southern California. Over the course of fourteen months, the agents supervising
8 this informant sent him into various Southern California mosques, and through his
9 surveillance gathered hundreds of phone numbers, thousands of email addresses,
10 hundreds of hours of video recordings that captured the interiors of mosques,
11 homes, businesses, and the associations of hundreds of Muslims, thousands of
12 hours of audio recording of conversations — both where he was and was not
13 present — as well as recordings of religious lectures, discussion groups, classes,
14 and other Muslim religious and cultural events occurring in mosques.

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

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

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

25
26 ¹ See, e.g., Jerry Markon, *Tension grows between Calif. Muslims, FBI after*
27 *informant infiltrates mosque*, WASH. POST (Dec. 5, 2010); Gillian Flaccus, *Calif.*
28 *case highlights use of mosque informants*, ASSOC. PRESS (Mar. 1, 2009); Matt
(cont'd)

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

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

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

19 **JURISDICTION AND VENUE**

20 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
21 § 1331. Because this lawsuit alleges violation of the United States Constitution
22 and federal statutes, it raises questions of federal law. Because those violations
23 include violations of 42 U.S.C. § 1985 and laws to protect civil rights, this Court
24 also has jurisdiction under 28 U.S.C. § 1343. Because those violations include

25
26 Coker, *A look at Craig Monteilh*, OC WEEKLY (Mar. 4, 2009); Teresa Watanabe
27 and Paloma Esquivel, *L.A. area Muslims say FBI Surveillance has a chilling effect*,
28 L.A. TIMES (Mar. 1, 2009).

1 violations of the Privacy Act, *see* 5 U.S.C. 552a(e)(7), this Court also has
2 jurisdiction under 5 U.S.C. 552a(g)(1)(D).

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

11 11. Venue is proper in the Central District of California under 28 U.S.C.
12 § 1391(b) because a substantial part of the events or omissions giving rise to the
13 claims herein occurred in this District.

14 **PARTIES**

15 12. Plaintiff Sheikh Yassir Fazaga is a thirty-eight year-old U.S. citizen
16 born in Eritrea, who moved to the United States at age fifteen and attended high
17 school in Orange County. From about 1998 to the present, Plaintiff Fazaga served
18 as an imam, or religious leader, of the Orange County Islamic Foundation, a
19 mosque in Mission Viejo, California. His duties there have included directing the
20 religious affairs of the mosque, leading prayer, and conducting educational,
21 spiritual, and recreational activities for the entire mosque community and its
22 youth.²

23 13. Plaintiff Ali Malik is a twenty-six year-old U.S. citizen born in
24 Southern California. Malik's parents came to the United States from Pakistan
25 before he was born. From the time of his birth through the events alleged herein,
26

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

1 Plaintiff Malik resided in and around Orange County, California. Plaintiff Malik is
2 a practicing Muslim who, from about 2004 through the events alleged herein,
3 regularly attended religious services at the Islamic Center of Irvine ("ICOI"), a
4 mosque in Irvine, California. ICOI is a mainstream mosque and one of the largest
5 mosques in Southern California, with a congregants at times numbering in the
6 thousands, including Muslims from a wide variety of national and ethnic
7 backgrounds.

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

14 15. Defendant the Federal Bureau of Investigations (FBI) is an agency of
15 the United States government within the meaning of the Privacy Act and the
16 Federal Tort Claims Act. It maintains records on individual whom its agents have
17 investigated, including Plaintiffs and the putative class they seek to represent. The
18 FBI is sued for injunctive relief only.

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

23 17. Defendant Steven M. Martinez is the Assistant Director In Charge of
24 the FBI's Los Angeles Field office.³ In that capacity, he is responsible for the
25

26 ³ In addition to its national headquarters and various specialized facilities
27 operations, the FBI maintains 56 field offices in major cities, nearly 400 smaller
28 offices called resident agencies in cities and towns across the nation, and more than
(cont'd)

1 direction and oversight of all operations of the FBI in Los Angeles and Orange
2 Counties, including the retention of records arising out of the investigations of FBI
3 agents in his jurisdiction. He is sued in his official capacity for injunctive relief
4 only.

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

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

21 20. Defendant J. Stephen Tidwell, at all times relevant to this action, was
22 an employee of the FBI and acting within the scope of his employment. Defendant
23 Tidwell served as the Assistant Director in Charge of the FBI's Los Angeles Field
24 Office from August 2005 to December 2007, in which capacity he supervised
25 operations in the Central District of California. Upon information and belief,
26

27 60 international offices in U.S. embassies worldwide.
28

1 Defendant Tidwell authorized the search for an informant to go into mosques in
2 Orange County to collect information on Muslims, authorized the selection of
3 Craig Monteilh as that informant, authorized the nature and scope of the operation
4 and its targeting of Muslims, read Monteilh's notes of his activities, and authorized
5 and actively directed the actions of Agents Armstrong, Allen, Rose, Walls and
6 other agents in the handling of Monteilh at all times relevant in this action, for the
7 purpose of surveilling Plaintiffs and other putative class members because they
8 were Muslim.

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

22 22. Upon information and belief, Defendant Pat Rose was, at all times
23 relevant to this action, employed by the FBI and acting in the scope of her
24 employment as a Special Agent. Upon information and belief, Agent Rose was
25 assigned to the FBI's Santa Ana branch office, where she supervised the FBI's
26 Orange County national security investigations and was one of the direct
27 supervisors of Agents Allen and Armstrong. Upon information and belief,
28 Defendant Rose was regularly apprised of the information Agents Armstrong and

1 Allen collected through Monteilh; directed the action of FBI agents on various
 2 occasions based on that information; and actively monitored, directed, and
 3 authorized the actions of Agents Armstrong and Allen and other agents at all times
 4 relevant in this action, for the purpose of surveilling Plaintiffs and other putative
 5 class members because they were Muslim. Agent Rose also sought additional
 6 authorization to expand the scope of the surveillance program described herein, in
 7 an effort to create a Muslim gym that the FBI would use to gather yet more
 8 information about the class.

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

14 **FACTUAL ALLEGATIONS**

15 **FBI Focus On Islam Since 2001**

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

24 25. In January 2003, the FBI ordered its field supervisors to count the
 25

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

1 number of mosques and Muslims in their jurisdictions to aid in counterterrorism
2 investigations.⁵

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

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

13 **Evolution of FBI Policies on Use of Religion in Investigation**

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

19 29. In 1976, the Church Committee wrote that “The Government has

20
21 ⁵ Eric Lichtblau, *F.B.I. Tells Offices to Count Local Muslims and Mosques*, N.Y.
TIMES (Jan. 28, 2003), available at

22 <http://www.nytimes.com/2003/01/28/politics/28MOSQ.html>.

23 ⁶ Kevin Bohn and Jeanne Meserve, *Officials: Muslim sites subject to secret*
monitoring for radiation, C.N.N. (Dec. 24, 2005), available at

24 [http://articles.cnn.com/2005-12-23/us/nuke.monitoring_1_radiation-levels-](http://articles.cnn.com/2005-12-23/us/nuke.monitoring_1_radiation-levels-radioactive-material-fbi-program)
25 [radioactive-material-fbi-program](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).

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

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

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

19 31. The Levi Guidelines restricted the FBI’s domestic intelligence
20 collection authorities to investigations of potential violations of federal law, and
21 limited the use of specific investigative techniques, including informants. The
22 Guidelines allowed the FBI to conduct full domestic security investigations only
23 on the basis of “specific and articulable facts giving reason to believe that an
24

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

1 individual or group is or may be engaged in activities which involve the use of
2 force or violence and which involve or will involve the violation of federal law...”⁹
3 More limited Preliminary Investigations could be authorized for 90 days based on
4 receipt of “allegations or other information that an individual or group is or may
5 be engaged in activities which involve the use of force or violence and which
6 involve or will involve the violation of federal law,” but only to determine whether
7 there is a sufficient factual basis for opening a full investigation.¹⁰

8 32. In 2002, Attorney General John Ashcroft revised the Guidelines for
9 General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations,
10 respectively, significantly reducing or eliminating the requirement of a factual
11 basis to believe federal crimes would be committed before the FBI could initiate
12 investigations.¹¹ Significant changes to the General Crimes guidelines included
13 expanding the duration and type of investigative techniques that could be utilized
14 in preliminary investigations and creating new authorities for the FBI to
15 proactively conduct internet and commercial database searches and attend public
16 places and events for the purpose of detecting or preventing terrorist activities, all
17 without any factual basis or allegation indicating a possible violation of federal
18 law. Attorney General Ashcroft said terrorism prevention was the key objective of
19 these new Guidelines, arguing that “Our philosophy today is not to wait and sift
20 through the rubble following a terrorist attack. Rather, the FBI must intervene early

21
22 ⁹ FBI Statutory Charter: Hearings Before the Senate Committee on the Judiciary,
23 95th Cong. pt. 1, p. 22 (1978).

24 ¹⁰ *Id.*, at 21.

25 ¹¹ Attorney General’s Guidelines for General Crimes, Racketeering Enterprise and
26 Terrorism Enterprise Investigations, (May 2002), available at:
27 <http://www.fas.org/irp/agency/doj/fbi/generalcrimes2.pdf> and, Attorney General’s
28 Guidelines for National Security Investigations and Foreign Intelligence
Collection, (Oct. 2003), available at:
<http://www.fas.org/irp/agency/doj/fbi/nsiguilines.pdf>

1 and investigate aggressively where information exists suggesting the possibility of
 2 terrorism, so as to prevent acts of terrorism. The new guidelines advance this
 3 strategy of prevention by strengthening investigative authority at the early stage of
 4 preliminary inquiries. Also, even absent specific investigative predicates, FBI
 5 agents under the new guidelines are empowered to scour public sources for
 6 information on future terrorist threats.”¹²

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

13 34. In October 2003 Attorney General Ashcroft revised the Guidelines
 14 for FBI National Security Investigations and Foreign Intelligence Collection, to
 15 authorize the “proactive collection of information concerning threats to the
 16 national security, including information on individuals, groups and organizations
 17 of possible investigative interest, and information on possible targets of
 18 international terrorist activities or other national security threats.”¹⁵ These
 19 Guidelines authorized the FBI to conduct “threat assessments” without opening
 20

21 ¹² Remarks of Attorney General John Ashcroft, Attorney General Guidelines
 22 May 30, 2002, at:

23 <http://www.justice.gov/archive/ag/speeches/2002/53002agpreparedremarks.htm>

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

28 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>

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

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

7 36. In 2008, Attorney General Mukasey revised the guidelines further,
8 explicitly eliminating the need for any factual predicate before FBI agents are
9 allowed to conduct a new category of investigation called “assessments.” The
10 2008 revisions allow FBI agents to use an array of intrusive investigative
11 techniques during assessments, including physical surveillance, recruiting and
12 tasking informants, and pre-textual interviews by FBI agents acting in ruse. In
13 response, the FBI revised its internal policy, publishing the FBI’s *Domestic*
14 *Intelligence and Operations Guides* (“DIOG”) in December 2008.¹⁷ The DIOG
15 only requires an “authorized purpose” to conduct an assessment, which is defined
16 broadly as “a national security, criminal or foreign intelligence collection
17 purpose.”¹⁸ Requiring only an authorized purpose rather than a factual predicate
18 means that the authority to conduct investigations in this category is based on the
19 subjective intent of the agent, rather than any factual information regarding the
20 potential subjects of the assessment establishing suspicion of wrongdoing.
21 Moreover, the DIOG authorizes FBI headquarters and field offices to conduct
22 “Domain Management” assessments to “identify locations of concentrated ethnic
23 communities in the Field Office’s domain” and to collect, analyze and map racial
24

25 ¹⁶ *Id.*, at 3.

26 ¹⁷ Federal Bureau of Investigation Domestic Investigations and Operations Guide,
27 (Dec. 2008), available at: http://www.muslimadvocates.org/DIOGs_pt1.pdf

28 ¹⁸ DIOG p. 21.

1 and ethnic “behaviors,” “cultural traditions,” and “life style characteristics” in local
2 communities. FBI Director Robert Mueller issued a broad mandate for FBI
3 offices to “know your domain,” which meant “understanding every inch of a given
4 community—its geography, its populations, its economy, and its vulnerabilities.”¹⁹
5 Domain Management assessments appear to be mandated as a matter of course,
6 and require no specific threat or criminal predicate to justify the collection of
7 information regarding the makeup of American communities.

8 37. Upon information and belief, Defendants operated under the
9 principles set forth in the revised Mukasey Guidelines and DIOGs even before the
10 Attorney General formally issued them. For instance, a 2010 report by the
11 Department of Justice Inspector General revealed that from 2002 to 2006 the FBI
12 engaged in a number of investigations of domestic advocacy groups based on
13 “factually weak” or “speculative” predication.²⁰ The Inspector General (IG)
14 determined many of the investigations were opened based upon the FBI agents’
15 mere speculation that the individuals or groups might commit some federal crime
16 in the future. The IG determined that most of these investigations did not violate
17 the 2002 Attorney General’s Guidelines in effect at the time because all that was
18 required to initiate a preliminary inquiry was “information indicating the
19 possibility of a federal crime,” which illustrated “the broad scope of the FBI’s
20 authority under the Attorney General’s Guidelines to open preliminary inquiries
21 based on extremely limited information, including information about the First
22
23

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

27 ²⁰ Department of Justice Inspector General Review of FBI’s Investigations of
28 Certain Advocacy Groups (Sept 2010) (hereinafter “IG Report”):
<http://www.justice.gov/oig/special/s1009r.pdf> (last visited Sept. 13, 2011).

1 Amendment expressions of subjects.”²¹ Moreover, the IG noted that while the
2 FBI’s collection and retention of First Amendment material in these cases often
3 violated the 2002 Guidelines, it would not have violated the revised 2008
4 Guidelines: “Therefore, some of the violations of policy we found in this review
5 would not be violations if they occurred today.”²² Additionally, a 2006 New York
6 Times report indicated that FBI Associate Executive Assistant Director Phil Mudd
7 was “pitching” a vague domestic intelligence program called “Domain
8 Management,” which vaguely implied “ethnic targeting.”²³

9 38. Upon information and belief, trainings offered by the FBI have also
10 reflected broad generalizations about Muslims supporting the view that Islam and
11 those who practice it inherently condone violence and should be regarded with
12 suspicion. As recently as 2009, the FBI training for newly recruited agents
13 included a power-point presentation that makes gross generalizations about Islam
14 and Muslims. The presentation included slide entitled “Islam 101” that stated
15 Islam “transforms country’s culture into 7th century Arabians ways” and claimed
16 that “it is characteristic of the Arabic mind to be swayed more by words than ideas
17 and more by ideas than by facts.” Of the eight books that the training listed as
18 “recommended reading,” at least three of them have been widely criticized as
19 setting forth stereotypes about Muslims and Islam. Two listed were by Robert
20 Spencer, founder of the group “Stop the Islamization of America,” including his
21 book, “The Politically Incorrect Guide to Islam,” which asserts on its cover
22 (reproduced in the training’s slides) that “Islam teaches that Muslims must wage
23 war to impose Islamic law on non-Muslim states” and “American Muslim groups

24 ²¹ IG Report at 87.

25 ²² IG Report at 189.

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

1 are engaged in a huge cover-up of Islamic doctrine and history,” and has chapters
 2 titled “The Qur’an: Book of War,” “Islam: Religion of War” and “Islamic Law:
 3 Lie, Steal and Kill,” in which it argues that Islam condones violence, criminality,
 4 and terrorism.²⁴

5 39. Upon information and belief, William Gawthrop, an FBI senior
 6 intelligence analyst who has presented and continues to present trainings at
 7 conferences to local law enforcement, has offered trainings or training materials on
 8 the “Sources and Patterns of Terrorism in Islamic Law” in which he takes selected
 9 quotes from Quran and other Islamic texts out of context to teach that Islam
 10 inherently mandates violent action against non-Muslims.

11 **FBI Investigation of Muslims in Orange County, California**

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

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

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

20 43. In May 2006, Defendant Rose, a supervisor of the FBI’s Orange
 21 County counterterrorism operations, spoke to the Pacific Club in Irvine about the
 22 FBI’s counterterrorism efforts. There, she stated that “[t]here are a lot of
 23
 24

25 ²⁴ Spencer Ackerman, *FBI ‘Islam 101’ Guide Depicted Muslims as 7th-Century*
 26 *Simpletons*, WIRED (July 27, 2011), available at
 27 <http://www.wired.com/dangerroom/2011/07/fbi-islam-101-guide> (last visited Sept.
 28 13, 2011).

1 individuals of interest right here in Orange County.”²⁵ She described recent efforts
 2 the FBI had taken in the region: planting bugs and closed-circuit TV cameras,
 3 examining computer use and email, and establishing units on both foreigners and
 4 domestic suspects. She indicated that the FBI frequently received calls from
 5 people who wanted to tell them about situations like a Muslim neighbor who is
 6 changing his license plates or someone who has an apartment with only a mattress
 7 and five computers, stating, “I can’t tell you how many” tips like that paid off.
 8 When asked whether citizens should be worried about activist Muslim students at
 9 University of California at Irvine, Rose characterized that as a “tough question,”
 10 but indicated the FBI was aware of large numbers of Muslim students at UCI and
 11 the University of Southern California. “We live in Irvine. I can’t tell you how
 12 many subjects’ names come up, and they live right down the street from me,” she
 13 stated. “I think we need to be concerned with everybody, including our next-door
 14 neighbor.”²⁶

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

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

26 ²⁶ *Id.*

27 ²⁷ Rick Rogers, *Records detail security failure in base file theft*, SAN DIEGO UNION-
 28 TRIBUNE (May 22, 2008), available at <http://www.signonsandiego.com/>
 (cont’d)

1 45. Documents obtained by the ACLU of Southern California via the
 2 Freedom of Information Act show that the FBI has collected information about the
 3 membership of the Shura Council (an association of mosques in the Southern
 4 California area), as well as information about activities or events organized at or by
 5 mosques or Muslim organizations — including individuals handing out flyers for
 6 fundraising, events on political issues such as the war in Iraq or immigration
 7 reform, and a wide variety of fundraising efforts.

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

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

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

23
 24 uniontrib/20080522/news_1n22theft.html (last visited Sept 13, 2011).

25 ²⁸ At some point during the spring of 2007, Agents Armstrong and Allen told
 26 Monteilh that the Assistant Director in Charge of the FBI's Los Angeles Field
 27 Office had told the Muslim community that there would be no undercover
 28 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.
 (cont'd)

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

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

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

19 51. Congregants at ICOI generally welcomed Monteilh. People
20 introduced themselves, spoke with him about his conversion and their faith, and
21 offered to help him learn about Islam and Muslims in America. Various
22 congregants offered help by buying him books on Islam, talked with him about the
23 tenets of the religion, and showed him the movements of prayers. Congregants
24 invited him to have meals or tea outside of the mosque to help welcome him to the

25
26 They told him that at the time Tidwell made this statement, they had already been
27 looking for someone to send into the mosques, and that Tidwell had approved
28 recruitment of an informant.

1 mosque's community and discuss questions he might have.

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

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

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

13 **Plaintiff Sheikh Yassir Fazaga**

14 55. Plaintiff Sheikh Yassir Fazaga is a thirty-eight year-old U.S. citizen
15 born in Eritrea, who has lived here since he was a teenager. He attended high
16 school in Orange County. Sheikh Fazaga has an undergraduate degree in Islamic
17 Studies from the Institute of Islamic and Arabic Sciences in Virginia and a masters
18 degree in marriage and family counseling from the California State University of
19 Long Beach, and has taken coursework toward a masters degree in Christian
20 Theology at Loyola Marymount University. From about 1998 to the present,
21 Sheikh Fazaga has served as an imam of the Orange County Islamic Foundation
22 (OCIF), a mosque in Mission Viejo, California. His duties there have included
23 directing the religious affairs of the mosque, leading prayer, and conducting
24 educational, spiritual, and recreational activities for the entire mosque community
25 and its youth.

26 56. Sheikh Fazaga earned a national reputation for his contemporary
27 American teaching of Islam. He has spoken at numerous conferences, colleges,
28 and other fora both in the United States and abroad on the topics of Islam and the

1 American Muslim. In 2007, he traveled to Romania at the invitation and expense
2 of the U.S. State Department to speak on terrorism, radicalism and extremism.
3 He has also been interviewed for print, television and radio media, including for
4 NBC's Today show on spirituality in America and for a New York Times article
5 on American imams in which he was featured.²⁹

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

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

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

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

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

25
26 ²⁹ See Neil MacFarquhar, *A Growing Demand for the Rare American Imam*, N.Y.
27 Times (June 1, 2007), available at
28 <http://www.nytimes.com/2007/06/01/us/01imam.html> (last visited Sept. 13, 2011).

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

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

6 64. Sheikh Fazaga had to spend considerable time counseling his
7 congregants who were afraid that they were being targeted for FBI surveillance
8 because of their faith. He often conducted this counseling away from the mosque
9 and in person, rather than over the telephone, because of his congregants' fear of
10 surveillance.

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

17 **Plaintiff Ali Uddin Malik**

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

22 67. Plaintiff Malik attended the University of California, Irvine ("UCI")
23 from about 2007 to 2009. While at Irvine, Malik co-founded the Olive Tree
24 Initiative, a peace-building program through which a culturally and religiously
25 diverse group of UCI students take joint factfinding trips to Israel and Palestine to
26 better understand the Israel-Palestine conflict and report on their findings to the
27 UCI community. Malik and the other founders were recognized for their work
28 with the University of California President's Award for Outstanding Student

1 Leadership, UCI Chancellor's Living Our Values Award, and recognition by the
2 Orange County Human Relations Commission and the U.S. State Department.

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

17 69. In about summer 2006, as part of his efforts to study Islam more
18 seriously, Malik attended a six-week summer course on Islam at Dar al-Mustafa, a
19 seminary in Yemen. Islam emphasizes the importance of gaining religious
20 knowledge, and encourages its adherents to seek knowledge, so much so that for
21 Muslims gaining religious knowledge is a faith practice in and of itself. Dar al-
22 Mustafa is a mainstream religious school whose leaders are internationally known
23 in the Muslim community for advocating justice, equality, and peaceful co-
24 existence between religious groups, and have been active in interfaith efforts in
25 these areas with religious leaders of other faiths. Upon information and belief, the
26 school and its leaders enjoyed a similar reputation with the United States
27 government and the FBI. At the time Malik attended the summer course, both
28 Yemen and Dar al-Mustafa were popular places for American Muslims who

1 wanted to pursue Arabic language or religious studies abroad for a variety of
2 reasons: Southern Yemen, where Dar al-Mustafa is located, was known for its
3 spiritual Sufi religious scholarship, for having a clear and eloquent form of the
4 Arabic language, and for being scenic and affordable, if slightly rustic. Plaintiff
5 Malik attended ICOI and was present when Monteilh took *shahadah* in about July
6 2006. Plaintiff Malik, along with many other congregants, approached Monteilh
7 after he took *shahadah*, offering his well-wishes and assistance.

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

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

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

20 73. Monteilh talked frequently with Malik at the mosque. He also
21 suggested that they talk at a nearby gym, which they did in part because Monteilh
22 worked out there. Shortly after their meeting, Monteilh began asking Malik things
23 that made Malik uncomfortable. At one point Monteilh asked Plaintiff Malik what
24 would happen if someone went up to the imam at ICOI and told him they wanted
25 to blow themselves up. Plaintiff Malik replied that the imam would think this
26 person was crazy. Monteilh persisted, and asked Plaintiff Malik if there were other
27 imams in the area that would respond to someone who wanted to blow themselves
28 up. Plaintiff Malik told Monteilh that there are no such imams or mosques in