

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DENNIS JOSEPH RAIMONDO (a.k.a.
JUSTIN RAIMONDO), an individual, and
ERIC ANTHONY GARRIS, an individual,

Plaintiffs,

vs.

FEDERAL BUREAU OF INVESTIGATION

Defendant.

No. C-13-02295 JSC

FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF FOR VIOLATION OF THE
FREEDOM OF INFORMATION ACT,
5 U.S.C. § 552 *et seq.* AND THE
PRIVACY ACT, 5 U.S.C. § 552a *et seq.*

INTRODUCTION

1
2 1. This case concerns protracted surveillance and maintenance of records by
3 the Federal Bureau of Investigation (“FBI” or “Agency”) related to First Amendment
4 protected activity of Eric Anthony Garriss and Dennis Joseph Raimondo (collectively
5 “Plaintiffs”) in violation of the Privacy Act, the FBI’s maintenance of inaccurate records
6 pertaining to Plaintiff Garriss, and Plaintiffs’ continued efforts to access records requested
7 by each of them pursuant to the Freedom of Information Act (“FOIA”) and the Privacy Act.

8 2. This case arose following Plaintiffs’ discovery that in or around April 2004
9 the FBI conducted a “threat assessment” of Antiwar.com—an anti-interventionist website
10 that publishes news and opinion articles about U.S. foreign and military policy. The FBI’s
11 eventual yet still incomplete document production in response to Plaintiffs’ FOIA and
12 Privacy Act requests confirmed that as part of the threat assessment an FBI analyst from
13 Newark FBI advised the FBI to open a preliminary investigation into each of the Plaintiffs
14 and to conduct surveillance on Antiwar.com.

15 3. Upon information and belief, reckless disregard for factual errors and
16 descriptions of First Amendment protected speech activity comprised the sole bases for the
17 threat assessment memorialized in an FBI memorandum dated April 30, 2004 (the “April
18 30 Memo”) for the recommendation by Newark FBI contained therein to open a
19 preliminary investigation of Plaintiffs, and for the FBI’s unremitting surveillance of
20 Plaintiffs since at least 2004.

21 4. Plaintiffs seek disclosure of records maintained by the FBI that are related to
22 each of them as individuals and related to their online magazine Antiwar.com. Plaintiffs
23 seek expungement of all records compiled and maintained by the FBI that describe
24 Plaintiffs’ exercise of rights guaranteed by the First Amendment. Further, Plaintiff Garriss
25 seeks for the FBI to purge its system of grossly inaccurate records pertaining to him (which
26 the FBI now admits are false).

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), 5 U.S.C. § 552a(d); 5 U.S.C. §§ 552a(e)(1), (5), and (7), 5 U.S.C. §§ 552a(g)(1), and 28 U.S.C. § 1331.

VENUE

6. Venue is proper in the Northern District of California pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5), and 28 U.S.C. § 1391. Plaintiff Garris is a resident of San Francisco, California, and Plaintiff Raimondo is a resident of Sebastopol, California, both of which are within the Northern District of California.

INTRADISTRICT ASSIGNMENT

7. Assignment to the San Francisco Division of this Court is proper under Civil Local Rule 3-2(c), (d) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred, and continues to occur, in the City and County of San Francisco.

PARTIES

8. Plaintiff Eric Anthony Garris resides in the City and County of San Francisco. He is a citizen of the United States of America. Plaintiff Garris is the founder, managing editor, and webmaster of the online magazine Antiwar.com, whose principal place of business is in San Francisco, California. Plaintiff Garris founded Antiwar.com in 1995 as a means to express opposition to U.S. intervention in the Balkans and has since worked for Antiwar.com. Plaintiff Garris is a member of the news media.

9. Plaintiff Dennis Joseph Raimondo resides in the City of Sebastopol, which is within Sonoma County. He is a citizen of the United States of America. Plaintiff Raimondo is the editorial director for the online magazine Antiwar.com and has worked for Antiwar.com since 1995. Plaintiff Raimondo is a member of the news media.

10. Defendant FBI is an agency within the meaning of 5 U.S.C. § 552(f) of the FOIA and 5 U.S.C. § 552a(a)(1) of the Privacy Act, and is in possession and/or control of

1 records referring or relating to Plaintiffs and referring or relating to the online magazine
2 Antiwar.com.

3 LEGAL FRAMEWORK

4 11. The FOIA requires that federal agencies make reasonable efforts to maintain
5 their records in forms or formats that are reproducible and provide copies of agency records
6 that are reasonably described in requests by members of the public, subject to certain
7 objections. 5 U.S.C. § 552(a).

8 12. Under the Privacy Act, federal agencies that maintain a “system of records”
9 concerning individuals must do so “with such accuracy, relevance, timeliness, and
10 completeness as is reasonably necessary to assure fairness to the individual.” 5 U.S.C.
11 § 552a(e)(5). In addition, agencies are prohibited from maintaining any record “describing
12 how any individual exercises rights guaranteed by the First Amendment unless . . . pertinent
13 to and within the scope of an authorized law enforcement activity.” 5 U.S.C. § 552a(e)(7).
14 For enforcement of these record-keeping limitations, the Privacy Act provides individuals
15 with the right to access their records upon request and allows them to request amendment or
16 correction of their records. 5 U.S.C. §§ 552a(d)(1)-(3).

17 13. Following exhaustion of administrative remedies with respect to disclosure
18 and correction of records, the FOIA and Privacy Act authorize civil remedies in federal
19 district court. 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(1). The Privacy Act also
20 provides civil remedies without administrative exhaustion for maintenance of records
21 describing First Amendment activities without a legitimate law enforcement purpose.
22 5 U.S.C. §§ 552a(e)(7) and 552a(g)(1)(D).

23 FACTS

24 **Plaintiffs Discover They Are Subjects of FBI Surveillance; Impact on Freedom of** 25 **Speech and Press**

26 14. Plaintiffs are long-time peace activists and proponents of non-
27 interventionism. Antiwar.com, the online magazine for which Plaintiffs work, is an anti-
28

1 interventionist, pro-peace website with a purely journalistic mission: revealing the truth
2 about America's foreign policy.

3 15. In August 2011, Plaintiffs became aware that they and Antiwar.com had
4 become the subject of FBI surveillance when they discovered documents responsive to a
5 FOIA request filed by the author of the blog "Zionism Stinks" posted on the website
6 Scribd.com. The website post included ninety-four pages of redacted documents. Of the
7 ninety-four pages, twenty-three referred or related to Antiwar.com and its staff, including
8 Plaintiffs. The twenty-three pages of documents, which included a heavily redacted version
9 of the April 30 Memo and two articles by Plaintiff Raimondo, evidence the FBI's
10 surveillance of Plaintiffs and the online magazine Antiwar.com. (The version of the April
11 30 Memo posted on Scribd.com is referred to herein as the "Original April 30 Memo" in
12 order to distinguish it from the less redacted version of the April 30 Memo produced in
13 response to this litigation, which is referred to herein as the "Revised April 30 Memo." The
14 memorandum dated April 30, 2004 is referred to generally as the "April 30 Memo.")
15 Following publication of the Original April 30 Memo by Antiwar.com and others,
16 Antiwar.com lost significant financial support and communications from confidential news
17 sources.

18 ***FBI's Surveillance Chilled Plaintiffs' Speech***

19 16. After Plaintiffs' discovery of the FBI's surveillance of Antiwar.com and of
20 Plaintiffs themselves, Antiwar.com ran editorials about the FBI's surveillance, shedding
21 light on the Agency's monitoring of Antiwar.com and its staff.

22 17. In October 2011, one of Antiwar.com's major donors withdrew his financial
23 support from Antiwar.com out of concern that the FBI would monitor him if he continued
24 to provide, as he wished to do, financial support to Antiwar.com. Since then, three
25 significant donors have also withdrawn financial support, citing their fear that FBI interest
26 in Antiwar.com would lead to surveillance of the donors as a reason for withdrawing
27 financial support. As a result, Antiwar.com has lost approximately \$75,000 per year since
28 2011 in otherwise expected contributions.

1 18. Plaintiffs have also noticed a decrease in communications from confidential
2 news sources since the FBI's monitoring of Antiwar.com and of Plaintiffs came to light.

3 19. In 2010, Plaintiffs discovered that Antiwar.com was listed in a section of a
4 State and Local Anti-Terrorism Training disk, entitled "Special Interest Terrorism,"
5 produced by the United States Department of Justice ("DOJ") and provided to state and
6 local law enforcement representatives at a nation-wide anti-terrorism training conference in
7 New Orleans, Louisiana.

8 20. After Plaintiffs learned about the Original April 30 Memo, they considered
9 issuing editorials to publicize the federal government's misleading and inappropriate
10 inclusion of Antiwar.com in its counterterrorism training materials. However, based on
11 their concern that more donors and supporters would withdraw their support from
12 Antiwar.com from fear that they would also be subject to scrutiny by federal intelligence
13 agencies, Plaintiffs decided not to do so. Instead, they sought records related to
14 Antiwar.com and themselves through the FOIA and the Privacy Act requests that are the
15 subject of this Complaint.

16 **Plaintiffs File FOIA and Privacy Act Requests for Disclosure of Records and**
17 **Exhaust Administrative Appeals**

18 21. Troubled by their discovery that they and Antiwar.com had become the
19 subject of FBI surveillance, each of Plaintiffs filed requests under the FOIA and the Privacy
20 Act seeking disclosure of records pertaining to themselves in October 2011.

21 22. On October 4, 2011, the American Civil Liberties Union of Northern
22 California ("ACLU-NC"), on behalf of Plaintiff Garriss, submitted a FOIA and Privacy Act
23 request to the FBI at its Winchester, Virginia and San Francisco, California offices, along
24 with Plaintiff Garriss's Certification of Identity and Authorization to Release Information to
25 his counsel. Plaintiff Garriss identified himself therein as the founder, managing editor, and
26 webmaster of the online magazine Antiwar.com and provided a link to the Original April
27 30 Memo.
28

1 23. On October 4, 2011, the ACLU-NC, on behalf of Plaintiff Raimondo,
2 submitted a FOIA and Privacy Act request to the FBI at its Winchester, Virginia, San
3 Francisco, California, and Santa Rosa, California offices, along with Plaintiff Raimondo's
4 Certification of Identity and Authorization to Release Information to his counsel. Plaintiff
5 Raimondo identified himself therein as the editorial director of the online magazine
6 Antiwar.com and provided a link to the Original April 30 Memo.

7 24. Also on October 4, 2011, the ACLU-NC, on behalf of five other persons
8 then employed by Antiwar.com made requests like those described in paragraphs 22 and
9 23. Those requests are not at issue in this lawsuit.

10 25. On November 2, 2011, in separate, but identical form letters, the FBI
11 notified Plaintiffs that the FBI had conducted a search of the Central Records System, and
12 based on that search was unable to identify main file records responsive to Plaintiffs'
13 requests.

14 26. On December 22, 2011, through counsel, Plaintiff Garriss and Plaintiff
15 Raimondo each mailed a certified letter to the DOJ's Office of Information Policy ("OIP")
16 appealing the FBI's denial of their respective FOIA and Privacy Act requests. Plaintiffs
17 asserted that the FBI's blanket and identical form "no records" response to each of
18 Plaintiffs seemingly overlooked responsive records that each of Plaintiffs knows exist, such
19 as the Original April 30 Memo. Plaintiffs further stated that the FBI appeared to have
20 improperly invoked a national security exemption and that the FBI's search for records was
21 inadequate, as it seemingly failed to perform a "cross-reference" search for files that
22 mention each of Plaintiffs or Antiwar.com.

23 27. By letter dated January 4, 2012, OIP acknowledged receipt of Plaintiffs'
24 administrative appeals.

25 28. By letter dated March 29, 2012, OIP affirmed the FBI's action on Plaintiff
26 Raimondo's October 4 FOIA and Privacy Act request. The letter indicated that in order for
27 the FBI to determine whether any cross-references it locates are identifiable to the subject
28 of Plaintiff Raimondo's request, Plaintiff Raimondo would need to submit additional

1 information to the FBI. The letter also stated that the FBI had not improperly invoked a
2 FOIA exclusion.

3 29. By letter dated September 17, 2012, OIP affirmed the FBI's action on
4 Plaintiff Garris's October 4 FOIA and Privacy Act request. The letter indicated that in
5 order for the FBI to determine whether any cross-references it locates are identifiable to the
6 subject of Plaintiff Garris's request, Plaintiff Garris would need to submit additional
7 information to the FBI. The letter also stated that the FBI had not improperly invoked a
8 FOIA exclusion.

9 30. On May 24, 2012, through counsel, and in a joint letter directed to the FBI's
10 Winchester field office and OIP, Plaintiffs provided additional personal and identifying
11 information to assist the FBI in locating responsive records ("May 24 FOI/PA Request").
12 Plaintiffs' May 24 FOI/PA Request referenced the Original April 30 Memo and its naming
13 of Antiwar.com and Plaintiffs Garris and Raimondo and recounting of Plaintiffs' long
14 history of activism. A true and correct copy of the May 24 FOI/PA Request is attached
15 hereto as Exhibit "A" and incorporated herein by this reference.

16 31. The May 24 FOI/PA Request, submitted by counsel on behalf of Plaintiffs
17 and the five other requesters, also asserted a clear request to the FBI under the FOIA for all
18 records referring or relating to Antiwar.com, whether or not filed, described, or otherwise
19 identified as pertaining to any of Plaintiffs, and without redaction of identifying information
20 that refers to any of the requesters.

21 32. The May 24 FOI/PA Request also reiterated Plaintiffs' requests under the
22 FOIA and the Privacy Act for records relating or referring to themselves.

23 33. By letters dated June 8, 2012, the FBI acknowledged receipt of Plaintiffs'
24 May 24 FOI/PA Request.

25 34. By separate but identical form letters dated August 31, 2012, the FBI
26 informed the five non-plaintiff requesters whose requests were also referenced in the
27 May 24 FOI/PA Request that based on its search of the indices to its Central Records
28

1 System, the FBI was unable to identify file records responsive to their requests under the
2 FOIA. Plaintiffs did not receive any such letter.

3 35. On November 9, 2012, in separate but identical form letters, the FBI notified
4 Plaintiffs that their individual FOIA and Privacy Act requests dated October 4, 2011 were
5 being administratively closed and that the material responsive to those requests would be
6 processed in conjunction with Plaintiffs' combined May 24 FOI/PA Request for records.
7 True and correct copies of these letters are attached hereto as Exhibits "B" and "C" and
8 incorporated herein by this reference.

9 36. By the terms of 5 U.S.C. § 552(a)(6)(A)(i), Defendant FBI's responses to
10 Plaintiffs' May 24 FOI/PA Request for disclosure of records under the FOIA were due
11 twenty (20) days after receipt of the request. Plaintiffs are deemed to have exhausted their
12 administrative remedies for their FOIA requests by reason of Defendant FBI's failure to
13 meet the statutory time limits. *See* 5 U.S.C. § 552(a)(6)(C)(i).

14 37. Plaintiffs have exhausted their administrative remedies as to Defendant FBI
15 with regard to their Privacy Act requests for access to records under the Privacy Act. *See*
16 5 U.S.C. § 552a(g)(1)(B).

17 **Plaintiffs File Instant Lawsuit and Administrative Requests Under Privacy Act to**
18 **Expunge Records of Plaintiffs' First Amendment Activity**

19 38. On May 21, 2013, having not received any disclosure in response to the
20 above-described FOIA and Privacy Act requests. Plaintiffs filed the instant action, seeking
21 disclosure of records under the FOIA and the Privacy Act.

22 39. The same day Plaintiffs filed the original Complaint, Plaintiffs each
23 submitted letter requests pursuant to 5 U.S.C. §§ 552a(e)(7) and (d)(2) of the Privacy Act
24 seeking expungement of all records maintained by the FBI that describe each of Plaintiffs'
25 exercise of First Amendment rights. True and correct copies of these letters are attached
26 hereto as Exhibits "D" and "E" and incorporated herein by this reference.

27 40. By letter dated August 19, 2013, the FBI denied each of Plaintiffs' requests
28 for expungement and amendment, claiming maintenance of the records was proper under

1 5 U.S.C. § 552a(j)(2) of the Privacy Act. A true and correct copy of this letter is attached
 2 hereto as Exhibit "F" incorporated herein by this reference.

3 41. On September 13, 2013, Plaintiffs submitted a letter to the Office of Privacy
 4 and Civil Liberties ("OPCL") appealing the FBI's denial of each of their requests for
 5 expungement and amendment pursuant to the Privacy Act. A true and correct copy of this
 6 letter is attached hereto as Exhibit "G" incorporated herein by this reference. The FBI
 7 acknowledged receipt of Plaintiffs' appeals by letter dated September 26, 2013.

8 42. Plaintiffs have made every effort to exhaust their administrative remedies
 9 even though the Privacy Act does not require administrative exhaustion of a request to
 10 expunge records collected and maintained in violation of 5 U.S.C. § 552a(e)(7). The FBI
 11 has failed to respond timely to Plaintiffs' appeal.

12 **FBI's Disclosure of Records in Response to Litigation Reveals Reckless Factual Error**
 13 **and Additional First Amendment-Related Content of Threat Assessment**

14 ***FBI Production in Response to Litigation***

15 43. In response to this litigation, the FBI has produced 155 pages of responsive
 16 documents in heavily redacted form and has withheld in their entirety 224 pages of
 17 documents responsive to Plaintiffs' FOIA and Privacy Act requests. The FBI made its
 18 productions on a rolling basis, with its first production on October 1, 2013 ("October 1
 19 Production"), second on November 18, 2013 (November 18 Production"), and the third on
 20 January 6, 2014. The FBI reproduced the Revised April 30 Memo and the two news
 21 articles authored by Plaintiff Raimondo on February 7, 2014.

22 44. The FBI's production confirms that the FBI has collected and maintained
 23 records that describe Plaintiffs' exercise of rights under the First Amendment and that it has
 24 also maintained inaccurate records pertaining to Plaintiff Garriss in violation of the Privacy
 25 Act.

26 45. Almost two years has passed since Plaintiffs submitted their May 24 FOI/PA
 27 Request for access to records to which they are entitled under the FOIA and the Privacy
 28 Act. The FBI continues to withhold records or portions of records responsive to Plaintiffs'

FOIA and Privacy Act requests. The FBI has failed to respond to Plaintiffs' request that it broaden its search for records responsive to their FOIA and Privacy Act requests to include known FBI databases. There is a strong public interest in the disclosure of the records sought. Defendant's failure to release all responsive documents that are believed to be within their custody and control violates the FOIA and the Privacy Act.

The April 30 Memo Revealed

46. The Original April 30 Memo that led Plaintiffs to submit FOIA and Privacy Act requests includes no mention of criminal activity on the part of Plaintiffs in its unredacted parts. It did, however, indicate that the FBI had conducted a threat assessment of Antiwar.com.

47. The Original April 30 Memo states that eleven enclosures are attached to it, including an untitled Excel spreadsheet dated October 3, 2001; a copy of a document written in Italian with an FBI Suspect List dated May 22, 2002; a copy of a Lexis Nexis business summary on Antiwar.com; five news articles downloaded from Lexis Nexis; and three Internet postings. Of the eleven enclosures only two are included in the document containing the Original April 30 Memo, both of which are news articles authored by Plaintiff Raimondo and which were also produced in the FBI's October 1 Production. The other nine enclosures do not appear to have been produced by the FBI to Plaintiffs in response to this litigation.

48. The Original April 30 Memo includes descriptions and recordation of Plaintiffs' exercise of their First Amendment rights, including, but not limited to:

- a. Documentation of the fact that, according to the April 30 Memo:
 "There are numerous websites that comment on the postings found on www.antiwar.com. Many individuals harshly criticize Eric Garriss and Justin Raimondo for their views. Three postings were selected to be included in this assessment."
- b. Identification by title of an article by Plaintiff Raimondo titled: "Did Al Qaeda shoot recently released footage of 9/11 WTC attack or was

1 it someone else?" According to the April 30 Memo, this article was
2 posted on the "Pravada website." This article concerns five Israeli
3 nationals who appear to be the subject of the FOIA request submitted
4 by the author of the blog "Zionism Stinks." The FBI produced this
5 article to Plaintiffs.

6 c. A description of the contents of an article by Plaintiff Raimondo
7 titled "Chronicles Intelligence Assessment—The Terror Enigma:
8 Israel and the September 11 Connection." This article also concerns
9 five Israeli nationals who appear to be the subject of the FOIA
10 request submitted by the author of the blog "Zionism Stinks." The
11 FBI produced this article to Plaintiffs.

12 49. The Original April 30 Memo also identifies certain individuals and groups
13 who have referred to Antiwar.com as part of their own expressive activities or have read
14 Antiwar.com, among other news sources. Specifically, the Original April 30 Memo
15 describes: (a) an article by an author, whose name has been redacted, on U.S. assistance to
16 Israel, which cited Antiwar.com as one of its sources; (b) an article passed out at a peaceful
17 protest in Fairford, Gloucestershire, England, on November 9, 2002, that referred to Israeli
18 spies being held by the United States and included Antiwar.com as a resource for additional
19 information; (c) a statement made at a Western Regional Conference of the National
20 Alliance Sacramento Unit ("NASU"), wherein a member of NASU discussed the
21 Antiwar.com website; and (d) an FBI special agent's review of computer hard drives seized
22 during an investigation of an unidentified subject in 2003 and statement that the hard drive
23 showed that between July 25, 2002 and June 15, 2003, the unidentified subject had visited
24 Antiwar.com, among many other websites.

25 50. The Original April 30 Memo also states that the FBI conducted a search of
26 the Universal Index, Electronic Case File, and Lexis Nexis for www.antiwar.com.

1 51. On October 1, 2013, after Plaintiffs filed the original Complaint, the FBI
2 produced to Plaintiffs a less redacted version of the Original April 30 (the "Revised
3 April 30 Memo").

4 52. The Revised April 30 Memo, which is a record maintained by the FBI,
5 revealed that the FBI conducted a threat assessment not only of Antiwar.com but also of
6 Plaintiffs.

7 53. In addition to the contents contained in the Original April 30 Memo (*see*
8 ¶¶ 46-50, *supra*), the Revised April 30 Memo shows that as part of the FBI's investigation
9 of Plaintiffs and Antiwar.com, the FBI conducted a search of the DMV, CCH, Dun and
10 Bradstreet, and Lexis-Nexis for each Plaintiff.

11 54. The Revised April 30 Memo also reveals documentation of an alleged threat
12 by Plaintiff Garris to hack the FBI website. The FBI has conceded in response to an
13 administrative request by Plaintiff Garris that Plaintiff Garris made no such threat. *See*
14 ¶¶ 67-68, *infra*. Other than this erroneous allegation, there is no information in the Revised
15 April 30 Memo that suggests that Plaintiffs or Antiwar.com have any nexus to criminal or
16 terrorist activity.

17 55. Further, the Revised April 30 Memo reveals additional information collected
18 and maintained by the FBI about how Plaintiffs exercise their rights guaranteed by the First
19 Amendment. The Revised April 30 Memo is replete with such descriptions and recordation
20 of Plaintiffs' exercise of their First Amendment rights, including, but not limited to the
21 following, each of which was redacted from the Original April 30 Memo:

22 a. A description of the contents of an article published by the Boston
23 Globe dated October 13, 2002, describing an article that the Revised
24 April 30 Memo states "Raimondo published . . . in Pravada." The
25 Revised April 30 Memo contains direct quotations from this article
26 and a description of the contents of the article.

27 b. A description of the contents of an article in U.S. Newswire dated
28 November 4, 2002, identified by title as, "It's Definitely Not Your

Father's Anti-War Movement: Antiwar.com Provides News and Commentary from All Parts of the Political Spectrum." The Revised April 30 Memo documents that this article focuses on the editorial comments of Plaintiff Garris.

c. Recordation of a guest speaking appearance by Plaintiff Raimondo, including a description of an MSNBC headline on January 3, 2003, identified by title as "Buchanan and Press For January 3, 2003, listed Justin Raimondo as one of the guest speakers."

d. A description of the content of Plaintiff Raimondo's speech as captured in a news article in Argus identified by title as "Watchlist resurrects '50s fears; critics say FBI information in many ways is worse than McCarthy's hunt for communists," dated February 18, 2003. The Revised April 30 Memo includes a direct quote by Plaintiff Raimondo, taken from the Argus article and also identifies three other news outlets that republished the Argus article containing the contents of Plaintiff Raimondo's speech.

e. Identification and description of an article published in San Francisco Weekly, dated December 10, 2003 that describes the opinions of Plaintiffs. The Revised April 30 Memo identifies the title of the article as, "Intrepid Antiwarriors of the Libertarian Right Stake Their Rightful Claim to Power: Looking into the endearing obsession known as antiwar.com,"

56. The section of the Revised April 30 Memo titled "Analyst Comments" reports on the "threat assessment." The report reads as follows (with the bolded and italicized text reflecting the text that was redacted from the Original April 30 Memo):

The rights of individuals to post information and to express personal views on the Internet should be honored and protected; however, some material that is circulated on the Internet can compromise current active FBI investigations. The discovery of two detailed Excel spreadsheets posted

on www.antiwar.com may not be significant by itself since distribution of the information on such lists are wide spread Still, it is unclear whether www.antiwar.com may only be posting research material compiled from multiple sources or if there is material posted that is singular in nature and not suitable for public release. There are several unanswered questions about www.antiwar.com. It describes itself as a non-profit group that survives on generous contributions from its readers. Who are these contributors and what are the funds utilized for? ***Due to the lack of background information available on Justin Raimondo, it is possible that this name is only a pseudonym used*** on www.antiwar.com. If this is so, then what is his true name? Two facts have been established by this assessment. Many individuals worldwide do view this website including individuals who are currently under investigation and ***Eric Garris has shown intent to disrupt FBI operations by hacking the FBI website.***

57. The FBI analyst concluded the threat assessment with two recommendations as set forth below (the bold and italicized part of which appeared in the Revised April 30 Memo but not in the Original April 30 Memo):

It is recommended that ECAU further monitor the postings on website www.antiwar.com It is recommended that a [preliminary investigation] be opened to determine if ***Eric Anthony Garris and/or Justin Raimondo*** are engaging in, or have engaged in, activities which constitute a threat to National Security on behalf of a foreign power.

58. The Revised April 30 Memo confirms that Plaintiffs and Antiwar.com were the subject of a threat assessment conducted by the FBI and that the FBI had been investigating and conducting surveillance on each of the Plaintiffs and Antiwar.com. It also confirms that the analyst conducting the threat assessment recommended that the FBI open a preliminary investigation of the Plaintiffs and continue monitoring Antiwar.com.

59. Since the April 2004 recommendation to open a preliminary investigation, there have been eighteen FBI memoranda of which Plaintiffs are aware that relate or refer to either of Plaintiffs or Antiwar.com. FBI offices in no fewer than sixteen cities have authored and/or received these memoranda.

The Alleged Threat by Plaintiff Garris

60. The FBI memorandum dated January 7, 2002, produced in redacted form by the FBI in response to this litigation, memorializes an FBI analyst's error in interpreting an

1 e-mail forwarded by Plaintiff Garris to the FBI to report a threat he received as "A threat by
2 Garris to Hack FBI website."

3 61. Appended to the memorandum dated January 7, 2002, and also produced by
4 the FBI in response to this litigation, is a copy of the alleged threat, which plainly shows
5 that "egarris@antiwar.com," Plaintiff Garris's work email address, *received* a threat from a
6 sender whose name and/or e-mail address were redacted by the FBI. The FBI also redacted
7 the content of the e-mail. The subject line of the e-mail remains; it reads, "YOUR SITE IS
8 GOING DOWN." The email shows that Plaintiff Garris forwarded this threat to the FBI.

9 62. Upon receiving the above-described threat by e-mail Plaintiff Garris
10 contacted the FBI because the threat deeply concerned him. Upon learning of this threat,
11 the FBI requested that Plaintiff Garris forward an e-mail copy of the threat directed to him.
12 Plaintiff Garris did so.

13 63. The April 30 Memo, which contains the threat assessment of Plaintiffs and
14 Antiwar.com, relied on the obviously inaccurate assessment of Plaintiff Garris's report to
15 the FBI of a threat he received as a threat to the FBI to justify itself and its recommendation
16 that a preliminary investigation be opened on Plaintiffs and that Antiwar.com be surveilled
17 further. First, the April 30 Memo carefully recounts the mistaken analysis without
18 confirming its accuracy or noting the mistake that is apparent on its face, stating that "a
19 written contact was received from Eric Garris . . . on 09/12/2001 at 8:48AM. The event
20 was documented as a threat by Garris to hack the FBI website."

21 64. Using this alleged threat to justify the threat assessment and proposed
22 preliminary investigation, the "Analyst Comments" section of the April 30 Memo states
23 "Eric Garris has shown intent to disrupt FBI operations by hacking the FBI website." This
24 alleged threat is the only criminal predicate for the threat assessment. *See ¶¶ 46-55, supra.*

25 65. Upon information and belief, the analyst who authored the April 30 Memo
26 recklessly disregarded the inaccuracies in the FBI's analysis of the hacking threat in using it
27 to justify a threat assessment and proposed preliminary investigation that was motivated
28

1 primarily by concerns about Plaintiffs' viewpoints and First Amendment protected
2 expression.

3 66. Upon information and belief, the repeated circulation of the April 30 Memo
4 caused the FBI to renew its investigation of Plaintiffs, subjecting Plaintiffs to continued
5 unjustified monitoring and investigation by the FBI and chilling their speech. Specifically,
6 an FBI memorandum dated September 12, 2005 and an FBI memorandum dated April 22,
7 2008, more than four years from the date of the April 30 Memo, referenced the April 30
8 Memo.

9 **Administrative Request Regarding Correction of Inaccurate Records**

10 67. By letter dated November 13, 2013, Plaintiff Garris submitted to the FBI a
11 request pursuant to 5 U.S.C. § 552a(d)(2) of the Privacy Act seeking amendment of,
12 meaning expungement of or at a minimum correction of, any and all records that pertain to
13 him, including those not yet disclosed, that contain information that is inaccurate,
14 irrelevant, untimely, or incomplete. By letter dated November 26, 2013, the FBI
15 acknowledged receipt of Plaintiffs Garris's letter request. A true and correct copy of the
16 November 13 letter is attached hereto as Exhibit "H" incorporated herein by this reference.

17 68. By letter dated February 10, 2014, the FBI granted in part and denied in part
18 Plaintiff Garris's request to amend inaccurate records. The FBI acknowledged that the
19 statements in the April 30 Memo and FBI memorandum dated January 7, 2002 that Plaintiff
20 Garris threatened to hack the FBI website on September 12, 2001 were incorrect. Further,
21 in the February 10 letter the FBI indicated that it had generated an electronic
22 communication ("EC") titled "Notification of Corrective Action," which states, "Garris in
23 no way threatened to hack the FBI's website on September 12, 2001; instead he reported a
24 threat made to his website, www.antiwar.com." According to the Notification of Corrective
25 Action, "the EC is being indexed in the CRS" and "will be searchable." A true and correct
26 copy of this letter and of the Notification of Corrective Action are attached hereto as
27 Exhibits "I" and "J," respectively, incorporated herein by this reference.
28

69. By letter dated February 27, 2014, Plaintiff timely appealed the FBI's denial in part of Plaintiff Garris's November 13 request on the grounds that the Agency failed to provide any basis for failing to grant Plaintiff Garris's request pursuant to 5 U.S.C. § 552a(d)(2) to expunge any and all inaccurate records maintained by the Agency that pertain to Plaintiff Garris. Further Plaintiff Garris appealed on the grounds that the Agency's "corrective action" is inadequate because the inaccurate records remain in the Agency's system of records unchanged. A true and correct copy of this letter is attached hereto as Exhibit "K" incorporated herein by this reference.

70. By letter dated March 5, 2014, OPCL advised Plaintiff Garris that it had received his appeal. Plaintiff Garris has received no further response to this appeal.

71. Plaintiff Garris has exhausted his administrative remedies with regard to his request to amend inaccurate records pursuant to 5 U.S.C. § 552a(d). *See* 5 U.S.C. § 552a(g)(1)(A).

72. Upon information and belief, the FBI's maintenance of grossly inaccurate records—borne of the FBI's reckless interpretation error—accusing Plaintiff Garris of threatening to hack the FBI website contributed to Plaintiff Garris becoming the subject of an unwarranted FBI investigation.

Additional Disclosures to Date

73. The October 1 Production included an FBI memorandum dated September 18, 1972, in redacted form, which describes Plaintiff Garris's participation in an anti-Vietnam war protest—also First Amendment activity.

74. The October 1 Production also included a memorandum dated July 29, 2004; the FBI produced a less redacted version of the July 29 memorandum in its November 18 Production ("Revised July 29 Memo"). The Revised July 29 Memo shows that San Francisco FBI advised Newark FBI that it had declined Newark FBI's recommendation in the April 30 Memo to open a preliminary investigation. The Revised July 29 Memo stated: "Furthermore, there does not appear to be any direct nexus to terrorism nor the threat of

1 compromising current FBI investigations. San Francisco opines that Eric Garris and Justin
2 Raimondo are exercising their constitutional right to free speech.”

3 FIRST CLAIM FOR RELIEF

4 Violation of the FOIA for Failure to Make Promptly Available

5 the Records Sought by Plaintiffs’ Requests (5 U.S.C. §§ 552(a)(3), (a)(6))

6 75. Plaintiffs Garris and Raimondo repeat and reallege the allegations contained
7 in paragraphs 1 through 74 above, inclusive.

8 76. Plaintiffs Garris and Raimondo have a legal right under the FOIA to obtain
9 the Agency records requested on and before May 24, 2012. Plaintiffs’ requests clearly
10 described the records sought and were in accordance with the published rules. There exists
11 no legal basis for Defendant FBI’s failure to make such records available.

12 77. Defendant FBI’s failure to make promptly available the records sought by
13 Plaintiffs Garris and Raimondo’s requests violates the FOIA, 5 U.S.C. §§ 552(a)(3) and
14 (a)(6).

15 78. Despite disclosure of some documents in response to this litigation,
16 Defendant FBI has continued to withhold and improperly redact records to which Plaintiffs
17 are entitled under the FOIA. *See* 5 U.S.C. §§ 552(a)(3) and (a)(6).

18 79. Plaintiffs are entitled to injunctive relief with respect to the release and
19 disclosure of the requested documents. *See* 5 U.S.C. § 552(a)(4)(B).

20 SECOND CLAIM FOR RELIEF

21 Violation of the Privacy Act for Failure to Allow Plaintiffs Garris and Raimondo

22 Access to Records (5 U.S.C. § 552a(d)(1); 5 U.S.C. § 552a(g)(1)(B);

23 5 U.S.C. § 552a(g)(3))

24 80. Plaintiffs Garris and Raimondo repeat and reallege the allegations contained
25 in paragraphs 1 through 79 above, inclusive.

26 81. Plaintiffs Garris and Raimondo have a legal right under the Privacy Act to
27 gain access to Agency records and any information pertaining to themselves maintained by
28 Defendant FBI.

82. Plaintiffs have each properly requested from Defendant FBI such information and records.

83. Defendant FBI's failure to make available to Plaintiffs the requested records or/and information violates the Privacy Act, 5 U.S.C. § 552a(d)(1).

84. Despite disclosure of some documents in response to this litigation, Defendant FBI has continued to withhold and improperly redact records to which Plaintiffs are entitled under the Privacy Act. *See* 5 U.S.C. § 552a(d)(1).

85. Plaintiffs are entitled to injunctive relief with respect to the Agency's failure to provide access to and disclose the requested documents. 5 U.S.C. § 552a(g)(3)(A).

THIRD CLAIM FOR RELIEF

Violation of the Privacy Act for Maintenance of Records Describing Plaintiffs'

Exercise of First Amendment Rights (5 U.S.C. § 552a(e)(7); 5 U.S.C. § 552a(d);

5 U.S.C. §§ 552a(g)(1)(A), (D); 5 U.S.C. §§ 552a(g)(2)(A))

86. Plaintiffs Garris and Raimondo repeat and reallege the allegations contained in paragraphs 1 through 85 above, inclusive.

87. Defendant FBI collected and maintained records describing how Plaintiffs exercise their rights guaranteed by the First Amendment in violation of 5 U.S.C. § 552a(e)(7).

88. The collection and maintenance of records describing how Plaintiffs Raimondo and Garris exercise their rights guaranteed by the First Amendment is neither pertinent to nor within the scope of any legitimate, authorized law enforcement activity. The collection and maintenance of records describing how Plaintiffs Raimondo and Garris exercise their rights guaranteed by the First Amendment is not expressly authorized by statute. Neither Plaintiffs Raimondo nor Garris have authorized the collection or maintenance of records by Defendant FBI describing how Plaintiffs exercise their rights guaranteed by the First Amendment.

89. The collection and maintenance of these records has had an adverse effect on Plaintiffs, including but not limited to continued law enforcement attention, loss of financial

1 support for their journalistic endeavors, and a chilling effect on Plaintiffs' news sources and
2 writing.

3 **FOURTH CLAIM FOR RELIEF**

4 **Violation of the Privacy Act for Maintenance of Inaccurate, Irrelevant, Untimely,** 5 **and Incomplete Records (5 U.S.C. § 552a(d); 5 U.S.C. §§ 552a(e)(1) and (5),** 6 **5 U.S.C. §§ 552a(g)(1)(A), (D); 5 U.S.C. § 552a(g)(2)(A))**

7 90. Plaintiff repeats and realleges the allegations contained in paragraphs 1
8 through 89 above, inclusive.

9 91. Defendant FBI maintains records that pertain to Plaintiff Garris that are
10 inaccurate, irrelevant, untimely, and incomplete.

11 92. The FBI has refused Plaintiff Garris's request to expunge and correct records
12 it maintains that pertain to Plaintiff Garris that are inaccurate, irrelevant, untimely, and
13 incomplete.

14 93. Compliance with 5 U.S.C. § 552a(d)(2) with regard to the records Plaintiff
15 Garris seeks to amend would not interfere with or adversely affect the overall law
16 enforcement process of the FBI.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs request the Court award them the following relief:

- 19 a. Declare that Defendant FBI violated the FOIA and the Privacy Act;
- 20 b. Order Defendant FBI immediately to disclose the requested records in their
21 entireties and make copies available to Plaintiffs Garris and Raimondo;
- 22 c. Order Defendant FBI immediately to grant Plaintiffs Garris and Raimondo
23 access to any records or information pertaining to themselves maintained by
24 Defendant FBI;
- 25 d. Order Defendant FBI immediately to destroy or return any records
26 maintained by the FBI that describe Plaintiff Garris or Raimondo's exercise
27 of their rights guaranteed by the First Amendment, and any information or
28

records derived from or generated because of such unlawfully maintained records;

- e. Order Defendant FBI immediately to destroy or return any records maintained by the FBI that pertain to Plaintiff Garris that are inaccurate, irrelevant, untimely, or incomplete and any information or records derived from or generated because of such inaccurate, irrelevant, untimely, or incomplete records;
- f. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E), 5 U.S.C. § 552a(g)(2)(B), 5 U.S.C. § 552a(g)(3)(B), and any other applicable statutory provisions;
- g. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- h. Grant such other relief as the Court may deem just and proper.

Dated: May 1, 2014.

JULIA HARUMI MASS
LINDA LYE
ACLU CIVIL LIBERTIES UNION FOUNDATION
OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, California 94111

PILLSBURY WINTHROP SHAW PITTMAN LLP
THOMAS V. LORAN III
ANDREW BLUTH
MARLEY DEGNER
LAURA C. HURTADO
Four Embarcadero Center, 22nd Floor
San Francisco, California 94111

By: Laura C. Hurtado

Laura C. Hurtado
Attorneys for Plaintiffs

EXHIBIT A



May 24, 2012

Via Facsimile

Federal Bureau of Investigation
Attn: FOI/PA Request, David M. Hardy
Record/Information Dissemination section
170 Marcel Drive
Winchester, VA 22602-4843
Fax Number: (540) 868-4391

Office of Information Policy (OIP)
U.S. Department of Justice
Attn: Anne D. Work
1425 New York Ave., NW, Suite 11050
Washington, D.C. 20530-0001
Fax Number: (202) 514-1009

Re: Additional information and clarification regarding:
FOIPA Request No. 1175603, AP-2012-00971, Subject: [REDACTED]
FOIPA Request No. 1175592, AP-2012-00972, Subject: Justin Raimondo
FOIPA Request No. 1175594, AP-2012-00978, Subject: [REDACTED]
FOIPA Request No. 1175598, AP-2012-00979, Subject: [REDACTED]
FOIPA Request No. 1175595, AP-2012-00977, Subject: Eric Garris
FOIPA Request No. 1175601, AP-2012-00980, Subject: [REDACTED]
FOIPA Request No. 1175604, AP-2012-00970, Subject: [REDACTED]

Dear Mr. Hardy and Ms. Work:

We write to provide additional information and to clarify the scope of the above-referenced requests and appeals. Thus far, the seven individuals who have sought information related to themselves and the online magazine Antiwar.com have received no records. However, we already *know* that the FBI has maintained records related to Antiwar.com that name at least two of the requestors. We referenced these records in our original request. They are available online beginning at page 62 of this link: <http://www.emptywheel.net/wp-content/uploads/2011/08/110821-Antiwar-documents.pdf>. One of the documents, an FBI memo dated April 30, 2004 ("2004 Memo"), references searches, documents, and continued

MICHELLE A. WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, FARAH BRELYI, ALLEN ASCH, VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA DELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

*Federal Bureau of Investigation, Attn: FOI/PA Request
Director, Office of Information Policy, Department of Justice, Attn: Anne D. Work
May 24, 2012
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recommended surveillance that suggest additional records related to Antiwar.com and/or some of the requestors exists. For these reasons, we believe the FBI has misunderstood the requests, failed to read them thoroughly, or has purposefully withheld documents that should be produced in accordance with the FBI's obligations under FOIA and the Privacy Act. We have also identified additional information that may be useful to the FBI's search of its records. In order to facilitate the agency's full and prompt compliance with its FOIPA requirements, and to attempt to dispel any remaining confusion about what the requestors seek, we detail the following additional information about the requests.

1. Records related to Antiwar.com.

Each of the original requests sought files about each requestor and specified the requestor's connection to the online magazine Antiwar.com. In the appeals from the initial "no records" responses, we clarified that the agency needed to search for records related to Antiwar.com in order to determine whether there were responsive records for the requestors. Because no records have been produced, each of the requestors referenced hereby asserts a clear request for *all records referring or relating to Antiwar.com*, whether or not filed, described, or otherwise identified as pertaining to any of the individual requestors as individuals. Redaction of identifying information that refers to any of the requestors is unnecessary because the requests are being made under both FOIA and the Privacy Act and the requestors are specifically seeking documents that may name them.¹

Based on the 2004 Memo, we expect there should be many records related to Antiwar.com. The requestors seek not only records that name them individually, but *all* records related or referring to Antiwar.com, without redactions for requestors names or other identifying information. Thus, at the very least, the 2004 Memo should be produced, with any identifying information regarding any of the requestors unredacted. In addition, the 2004 Memo ends with a recommendation that a preliminary investigation be opened. If that preliminary investigation was to be directed at Antiwar.com or any persons affiliated with Antiwar.com, the requestors seek records related to that recommendation, including records related to any preliminary investigation that was opened or records indicating that the recommendation was not followed.

2. Additional information about Justin Raimondo.

We have received a letter dated March 29, 2012, from the Office of Information Policy affirming the FBI's original "no records" response. Given the existence of the 2004 Memo and other documents that were previously produced---as well as the content of that memo that

¹ Requestors do not seek seven duplicate copies of the same documents. One set of all responsive documents without redactions of names and other identifying information for the requestors is sufficient for the requestors' purposes. We understand that agency rules may require you to produce differently redacted versions of each document to each requestor and would be happy to complete additional Privacy Act waivers as necessary to avoid duplication, particularly if production of differently redacted but otherwise duplicate copies is burdensome to the agency.

*Federal Bureau of Investigation, Attn: FOI/PA Request
Director, Office of Information Policy, Department of Justice, Attn: Anne D. Work
May 24, 2012
Page 3*

suggests additional agency knowledge about Justin Raimondo, we find this response inadequate. Nonetheless, we provide this additional information with the hope that it will aid your search:

- Mr. Raimondo's legal name is Dennis Joseph Raimondo.
- Mr. Raimondo never legally changed his first name to Justin, but has been known as "Justin Raimondo" since he was fourteen years old, and he is referenced in the 2004 Memo as "Justin Raimondo." In his original request, we identified him as "Justin Raimondo (aka Dennis Raimondo)."
- Mr. Raimondo's address has changed since we filed his FOIPA request on October 4, 2011. It is now [REDACTED] Sebastapol, CA [REDACTED].
- Mr. Raimondo and co-requestor Eric Garris ran a bookstore in San Francisco called Libertarian Books and Periodicals. That bookstore was raided in 1981 by the San Francisco Police Department. Msrs. Raimondo and Garris were arrested in the raid and eventually prevailed in a civil lawsuit challenging the legality of the raid.
- Mr. Raimondo worked for an organization called Students for a Libertarian Society in San Francisco, California from 1978 to 1980.
- Mr. Raimondo has run for office as a Libertarian candidate several times.
- As noted in the 2004 EC memo, Mr. Raimondo is the subject of a Wikipedia page which can be found here: http://en.wikipedia.org/wiki/Justin_Raimondo. Information contained in this page may also help the FBI identify responsive records.

3. Additional information about Eric Garris.

We have not yet received a response to our appeal of the FBI's "no records" response to Mr. Garris's request and we take this opportunity to share additional information to facilitate the agency's search for records we believe are maintained by the FBI.

- Mr. Garris's middle name is "Anthony." His full name is "Eric Anthony Garris."
- There may be records related to Mr. Garris with a last name spelled "Garriss."
- Mr. Garris was arrested in 1981 during a San Francisco Police Department raid of the bookstore that he ran with co-requestor Justin Raimondo, Libertarian Books and Periodicals. Mr. Garris later participated in a successful lawsuit against the San Francisco Police Department, challenging the raid and arrest.
- Mr. Garris is a well known political activist and thinker. There is a Wikipedia page about him, http://en.wikipedia.org/wiki/Eric_Garris.
- Mr. Garris worked for an organization called Students for a Libertarian Society in San Francisco, California from 1978 to 1980.
- Mr. Garris has run for office several times, as a member of the Peace and Freedom Party, the Libertarian Party, and the Republican Party.
- Mr. Garris participated in an interview with the Secret Service in 1992 regarding a threat to a presidential candidate that Mr. Garriss had reported.

*Federal Bureau of Investigation, Attn: FOI/PA Request
Director, Office of Information Policy, Department of Justice, Attn: Anne D. Work
May 24, 2012
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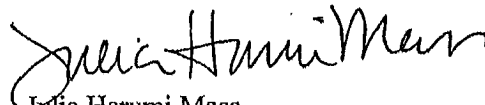
- Mr. Garris was questioned at length by the Department of Homeland Security in 2005 when he entered the United States after travel to Malaysia for a peace conference.

4. Clarification regarding [REDACTED].

The original FOIA/Privacy Act request submitted for [REDACTED] contained a typographical error, identifying him as "[REDACTED]." The Certification of Identity submitted with that request properly identified him as "[REDACTED]," but all subsequent correspondence repeated the initial error, and refer to the requestor as "[REDACTED]." We are sorry for any inconvenience caused by this error and request that you please ensure that the FOIPA request was properly processed for [REDACTED].

Thank you for your attention to this additional information and please do not hesitate to contact us if you have any questions. We look forward to your prompt response.

Sincerely,


Julia Harumi Mass
Staff Attorney

cc: Eric Garris
Justin Raimondo

[REDACTED]

EXHIBIT B

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

November 9, 2012

Ms. Julia Harumi Mass
ACLU
Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

FOIPA Request No.: 1175595-001
Subject: Garris, Eric

Dear Ms. Mass:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request.

Please be advised that your FOIPA request number 1175595-001 for the above listed subject is being closed administratively. The material responsive to this request will be processed in conjunction with your request for records in FOIA number 1192179-000, subject Antiwar.com, as they share the same information.

When making inquiries or mailing any correspondence concerning this request please reference FOIPA number 1192179-000.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

EXHIBIT C

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

November 9, 2012

Ms. Julia Harumi Mass
ACLU
Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

FOIPA Request No.: 1175592-001
Subject: Raimondo, Justin

Dear Ms. Mass:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request.

Please be advised that your FOIPA request number 1175592-001 for the above listed subject is being closed administratively. The material responsive to this request will be processed in conjunction with your request for records in FOIA number 1192179-000, subject Antiwar.com, as they share the same information.

When making inquiries or mailing any correspondence concerning this request please reference FOIPA number 1192179-000.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the typed name.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

EXHIBIT D



May 21, 2013

Via Certified Mail, Return Receipt Requested

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22601-4843

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Information Dissemination Section
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102-9523

Re: Privacy Act Request to Correct Violation of 5 U.S.C. § 552a(e)(7); Eric Garriss

Dear Sir/Madam:

This letter constitutes a request for expungement of records made pursuant to the Privacy Act, 5 U.S.C. § 552a *et seq.* on behalf of Eric Anthony Garriss. Mr. Garriss is being represented in this matter by attorneys at the American Civil Liberties Union of Northern California ("ACLU-NC") and Pillsbury Winthrop Shaw Pittman LLP. Please find his Certification of Identity and Authorization to Release Information to Julia Harumi Mass, Esq., of the ACLU-NC enclosed herewith.¹

On behalf of Mr. Garriss, we request, pursuant to 5 U.S.C. §§ 552a(e)(7) and (d)(2) of the Privacy Act, the expungement of any and all records maintained by the Federal Bureau of Investigation (the "Agency") that describe Mr. Garriss's exercise of rights guaranteed by the First Amendment. To be clear, this includes, but is not limited to: (i) any such records maintained by the Agency, whether or not they are in the Agency's system of records, as the term is defined in 5 U.S.C. § 552a(a)(5), and whether or not they are traceable by Mr. Garriss's name or some other identifying characteristic and (ii) any such records maintained by the Agency from which records describing how Mr. Garriss exercises rights guaranteed by the First Amendment are retrievable through a "cross reference" search for files that mention Mr. Garriss or the online magazine Antiwar.com. *See MacPherson v. IRS*, 803 F.2d 479, 481 (9th Cir. 1986) ("Section (e)(7)

¹ Mr. Garriss also has pending FOIA and Privacy Act requests for records, under FOIA Request No. 1192179-000.

Federal Bureau of Investigation
Attn: Privacy Act Request
May 21, 2013
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requires only that the record be maintained by an agency that *keeps* a system of records, not that the record be a *part* of that system”) (emphasis in original).

Mr. Garriss was born on [REDACTED] in [REDACTED]. His social security number is [REDACTED]. His current address is [REDACTED], San Francisco, California [REDACTED]. Mr. Garriss is the founder, managing editor, and webmaster of the online magazine Antiwar.com, which is devoted to the cause of non-interventionism. Mr. Garriss founded Antiwar.com in 1995. Both Mr. Garriss and Antiwar.com were the subject of an apparent FBI threat assessment dated April 30, 2004 (the “April 30 Memo”), a copy of which is accessible on the website Scribd.com at <http://www.scribd.com/doc/62394765/Related-article-at-http-tinyurl-com-FBI-Dancing-Israelis-Dancing-Israelis-FBI-document-Section-6-1138796-001-303A-NK-105536-Section-6>. For ease of reference, please find a print copy of the April 30 Memo enclosed.

The full posting on Scribd.com contains ninety-four pages, twenty-three of which refer or relate to Mr. Garriss and/or Antiwar.com. Included in the twenty-three pages are the April 30 Memo and two news articles by Justin Raimondo, editorial director of Antiwar.com. The April 30 Memo indicates that it has eleven enclosures, including five news articles, but only two of the news articles are included in the above-described document on Scribd.com. The April 30 Memo mentions Mr. Garriss by name and describes information obtained from the FBI’s investigation and surveillance of Antiwar.com and Mr. Garriss. The FBI analyst who authored the April 30 Memo concluded it with a recommendation for the Agency to continue to monitor Antiwar.com and to open a private investigation of an entity or person whose names are redacted.

Based on this record, we know the Agency maintains at least one record describing Mr. Garriss’s First Amendment activities, namely the April 30 Memo, possibly including information contained within the redacted portions of the April 30 Memo. We also suspect that the Agency maintains other records describing Mr. Garriss’s First Amendment activities, such as additional records related to Antiwar.com and describing his political activities generally. We request that all such records be expunged pursuant to sections 552a(e)(7) and (d)(2) of the Privacy Act.

To further facilitate Mr. Garriss’ request for expungement, we provide you with the following additional information to assist in your search:

- Mr. Garriss ran a bookstore in San Francisco called Libertarian Bookstore and Periodicals, with Justin Raimondo. That bookstore was raided in 1981 by the San Francisco Police Department. Messrs. Garriss and Raimondo were arrested in the raid and eventually prevailed in a civil lawsuit challenging the legality of the raid.
- There may be records related to Mr. Garriss with a last name spelled “Garriss.”
- Mr. Garriss is a well-known political activist and thinker. There is a Wikipedia page about him: http://en.wikipedia.org/wiki/Eric_Garriss.
- Mr. Garriss worked for an organization called Students for Libertarian Society in San Francisco, California from 1978 to 1980.

Federal Bureau of Investigation

Attn: Privacy Act Request

May 21, 2013

Page 3

- Mr. Garris has run for office several times, as a member of the Peace and Freedom Party.
- Mr. Garris participated in an interview with the Secret Service in 1992 regarding a threat to a presidential candidate that Mr. Garris had reported.
- Mr. Garris was questioned at length by the Department of Homeland Security in 2005 when he entered the United States after travel to Malaysia for a peace conference.

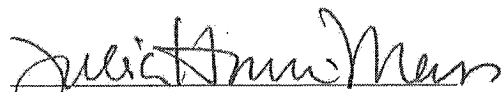
If this request is denied in whole or in part, we request that you justify the Agency's denial by reference to specific sections under the Privacy Act. We reserve the right to appeal a decision to deny Mr. Garris's request.

Please direct all correspondence regarding this request to:

Julia Harumi Mass
Linda Lye
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

If you have any questions, we can be reached by phone at (415) 621-2493.

Sincerely,



Julia Harumi Mass, Esq.
Linda Lye, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111



Marley Degner, Esq.
Laura Hurtado, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

Enclosures

EXHIBIT E



May 21, 2013

Via Certified Mail, Return Receipt Requested

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22601-4843

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Information Dissemination Section
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102-9523

Re: Privacy Act Request to Correct Violation of 5 U.S.C. 552a(e)(7); Justin Raimondo

Dear Sir/Madam:

This letter constitutes a request for expungement of records made pursuant to the Privacy Act, 5 U.S.C. § 552a *et seq.* on behalf of Justin Raimondo (legal name: Dennis Justin Raimondo). Mr. Raimondo is being represented in this matter by attorneys at the American Civil Liberties Union of Northern California ("ACLU-NC") and Pillsbury Winthrop Shaw Pittman LLP. Please find his Certification of Identity and Authorization to Release Information to Julia Harumi Mass, Esq., of the ACLU-NC enclosed herewith.¹

On behalf of Mr. Raimondo, we request, pursuant to 5 U.S.C. §§ 552a(e)(7) and (d)(2) of the Privacy Act, the expungement of any and all records maintained by the Federal Bureau of Investigation (the "Agency") that describe Mr. Raimondo's exercise of rights guaranteed by the First Amendment. To be clear, this includes but is not limited to: (i) any such records maintained by the Agency, whether or not they are in the Agency's system of records, as the term is defined in 5 U.S.C. § 552a(a)(5), and whether or not they are traceable by Mr. Raimondo's name or some other identifying characteristic and (ii) any such records maintained by the Agency from which records describing how Mr. Raimondo exercises rights guaranteed by the First Amendment are retrievable through a "cross reference" search for files that mention Mr. Raimondo or the online magazine Antiwar.com. *See MacPherson v. IRS*, 803 F.2d 479, 481 (9th

¹ Mr. Raimondo also has pending FOIA and Privacy Act Requests for records under FOIA Request No. 1192179-000.

Federal Bureau of Investigation
Attn: Privacy Act Request
May 21, 2013
Page 2

Cir. 1986) ("Section (e)(7) requires only that the record be maintained by an agency that *keeps* a system of records, not that the record be a *part* of that system") (emphasis in original).

Mr. Raimondo was born on [REDACTED] in [REDACTED]. His social security number is [REDACTED]. His current address is [REDACTED], Sebastopol, California [REDACTED]. Mr. Raimondo is the editorial director of the online magazine Antiwar.com, which is devoted to the cause of non-interventionism. Both Mr. Raimondo and Antiwar.com were the subject of an apparent FBI threat assessment dated April 30, 2004 (the "April 30 Memo"), a copy of which is accessible on the website Scribd.com at <http://www.scribd.com/doc/62394765/Related-article-at-http-tinyurl-com-FBI-Dancing-Israelis-Dancing-Israelis-FBI-document-Section-6-1138796-001-303A-NK-105536-Section-6>. For ease of reference, please find a print copy of the April 30 Memo enclosed.

The full posting on Scribd.com contains ninety-four pages, twenty-three of which refer or relate to Mr. Raimondo and/or Antiwar.com. Included in the twenty-three pages are the April 30 Memo and two news articles by Mr. Raimondo. The April 30 Memo indicates that it has eleven enclosures, including five news articles, but only two of the news articles are included in the above-described document on Scribd.com. The April 30 Memo mentions Mr. Raimondo by name and describes information obtained from the FBI's investigation and surveillance of Antiwar.com and Mr. Raimondo. The FBI analyst who authored the April 30 Memo concluded it with a recommendation for the Agency to continue to monitor Antiwar.com and to open a private investigation of an entity or person whose names are redacted.

Based on this record, we know the Agency maintains records describing Mr. Raimondo's First Amendment activities, namely the April 30 Memo and two of its attachments, which are both news articles authored by Mr. Raimondo. These documents should all be expunged pursuant to the Privacy Act. We also have good reasons to believe that the Agency maintains other records describing Mr. Raimondo's First Amendment activities, such as the other attachments to the April 30 Memo and records describing his political activities and writing. In addition, because Mr. Raimondo has had an active public life and has been shown to be the subject of FBI surveillance, we suspect the FBI maintains other records that describe his First Amendment protected activities. We request that all such records be expunged pursuant to sections 552a(e)(7) and (d)(2) of the Privacy Act.

To further facilitate Mr. Raimondo's request for expungement, we provide you with the following additional information to assist in your search for records that describe his First Amendment protected activities:

- Mr. Raimondo's legal name is Dennis Joseph Raimondo.
- Mr. Raimondo never legally changed his first name to Justin, but has been known as "Justin Raimondo" since he was fourteen years old, and he is referenced in the April 30 Memo as "Justin Raimondo."

Federal Bureau of Investigation

Attn: Privacy Act Request

May 21, 2013

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- Mr. Raimondo ran a bookstore in San Francisco called Libertarian Bookstore and Periodicals with Eric Garris. That bookstore was raided in 1981 by the San Francisco Police Department. Mssrs. Raimondo and Garris were arrested in the raid and eventually prevailed in a civil lawsuit challenging the legality of the raid.
- Mr. Raimondo worked for an organization called Students for a Libertarian Society in San Francisco, California from 1978 to 1980.
- Mr. Raimondo has run for office as a Libertarian candidate several times.
- Mr. Raimondo is the subject of a Wikipedia page which can be found at: http://en.wikipedia.org/wiki/Justin_Raimondo.

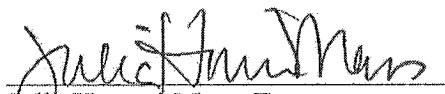
If this request is denied in whole or in part, we request that you justify the Agency's denial by reference to specific sections under the Privacy Act. We reserve the right to appeal a decision to deny Mr. Raimondo's request.

Please direct all correspondence regarding this request to:

Julia Harumi Mass
Linda Lye
Staff Attorney
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111.

If you have any questions, we can be reached by phone at (415) 621-2493.

Sincerely,



Julia Harumi Mass, Esq.
Linda Lye, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

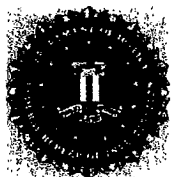


Marley Degner, Esq.
Laura Hurtado, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

Enclosures

EXHIBIT F

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

August 19, 2013

Julia Harumi Mass, Esquire
American Civil Liberties Union
Foundation of Northern California
39 Drum Street
San Francisco, CA 94111

FOIPA Request No.: 1192179-000 (Consolidated)
Subject(s): Antiwar.com, Justin Raimondo
and Eric Garriis

Dear Ms. Mass:

This is in response to your letters dated May 21, 2013, pertaining to your clients, Justin Raimondo and Eric Garriis' requests for amendment/expunction of records concerning themselves.

As requested, certain information currently being processed in response to their Freedom of Information and Privacy Acts requests has been reviewed for amendment purposes. It has been determined that the maintenance of these records satisfy the Privacy Act's requirement pursuant to 5 U.S.C. § 552a (j)(2); therefore, they are not subject to the amendment provisions.

You may file an appeal by writing to the Office of Privacy and Civil Liberties (OPCL), U.S. Department of Justice, 1331 Pennsylvania Avenue, NW Suite 1000, Washington, D.C. 20530. Your appeal must be received by OPCL within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name of the sender.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

EXHIBIT G



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Marley Degner
tel 415.983.1186
marley.degner@pillsburylaw.com

September 13, 2013

Via Certified Mail, Return Receipt Requested

Office of Privacy and Civil Liberties (OPCL)
U.S. Department of Justice
1331 Pennsylvania Avenue, NW Suite 1000
Washington, DC 20530

Re: Freedom of Information Appeal; FOIPA Request No.: 1192179-000
(consolidated); Justin Raimondo and Eric Garriss

Dear Sir/Madam:

We write to appeal the denial by the Federal Bureau of Investigation (the "Agency") of Messrs. Raimondo's and Garriss's requests for expungement, pursuant to the Privacy Act, 5 U.S.C. §§ 552a(e)(7) and (d)(2), dated May 21, 2013 (the "Privacy Act Requests" or "Requests") of any and all records maintained by the Agency that describe Messrs. Raimondo's and Garriss's exercise of their respective rights guaranteed by the First Amendment.

According to the letter dated August 19, 2013 denying Messrs. Raimondo's and Garriss's requests for expungement (the "Denial Letter"), any appeal of the Agency's denial of the Privacy Act Requests "must be received by OPCL within sixty (60) days from the date of [the Denial Letter] in order to be considered timely." We submit this appeal within the sixty-day time period.

However, to be clear, it is our clients' position that a request for expungement made pursuant to the Privacy Act, 5 U.S.C. § 552a(e)(7), does not need to be administratively exhausted in order for a United States federal district court to have jurisdiction over such a claim brought by a plaintiff in federal district court. Indeed, the Privacy Act contains no administrative exhaustion requirement for a claim brought under 5 U.S.C. § 552a(e)(7). Nonetheless, we submit this appeal to make every effort to afford OPCL an opportunity to review the Agency's denial of our

Office of Privacy and Civil Liberties
Attn: Freedom of Information Appeal
September 13, 2013
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clients' Privacy Act Requests. In so doing, we do not concede that such an appeal is required.

The Agency's reliance on 5 U.S.C. § 552a(j)(2) as the basis for its denial of our clients' Requests to expunge pursuant to 5 U.S.C. § 552a(e)(7) is misplaced. In relevant part, 5 U.S.C. § 552a(j) (emphasis added) states:

General exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section *except* subsections (b), (c)(1) and (2), (e)(4)(A) through (F), ~~(e)(6), (7),~~ (9), (10), and (11), and (i) if the system of records is

Although 5 U.S.C. § 552a(j) provides that “any agency may promulgate rules . . . to exempt any system of records within the agency from any part of this section,” it also requires that the would-be exempt system of records falls within the narrow criteria set forth in 5 U.S.C. §§ 552a(j)(1)-(2). But by the explicit terms of 5 U.S.C. § 552a(j), an agency may promulgate rules to exempt any system of records within the agency from any part of 5 U.S.C. § 552a, *except subsection (e)(7)*, among other subsections expressly set forth in the text of 5 U.S.C. § 552a(j). Thus, 5 U.S.C. § 552a(j)(2) does not properly support a denial of the Requests for expungement pursuant to 5 U.S.C. § 552a(e)(7).

To the extent that the Agency believes that the Requests depend on the viability of a claim for expungement under 5 U.S.C. § 552a(d)(2)—it is our clients' position that they do not because 5 U.S.C. § 552a(e)(7) is independently enforceable—the Agency has failed to point to any rules promulgated by the Agency to exempt any system of records that is applicable to the Requests.

Thus, 5 U.S.C. § 552a(j)(2) is not a permissible basis for denying Messrs. Raimondo's and Garris's Requests to expunge made pursuant to 5 U.S.C. § 552a(e)(7) of the Privacy Act. Based on what we assume to be the Agency's careful review of the Privacy Act Requests, the Agency, having claimed *no other basis* for denying the Requests to expunge any and all records maintained by the Agency that describe Messrs. Raimondo's or Garris's exercise of rights guaranteed by the First Amendment, is relying exclusively on an erroneous reading of the Privacy Act.

As stated in the Requests, pursuant to 5 U.S.C. § 552a(e)(7), our clients seek expungement of *any and all* records maintained by the Agency that describe Messrs. Raimondo's or Garris's exercise of rights guaranteed by the First Amendment. We

Office of Privacy and Civil Liberties
Attn: Freedom of Information Appeal
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Page 3

are aware of two news articles authored by Mr. Raimondo that were appended to an FBI memorandum dated April 30, 2004 ("the April 30 Memo"), a copy of which is accessible on the website Scribd.com at <http://www.scribd.com/doc/62394765/Related-article-at-http-tinyurl-com-FBI-Dancing-Israelis-Dancing-Israelis-FBI-document-Section-6-1138796-001-303A-NK-105536-Section-6>, which are subject to expungement pursuant to 5 U.S.C. §§ 552a(e)(7) and (d)(2). For ease of reference, please find a copy of the April 30 Memo enclosed.

In addition, the April 30 Memo, itself, is subject to expungement pursuant to 5 U.S.C. §§ 552a(e)(7) and (d)(2), as it describes Messrs. Raimondo's and Garris's First Amendment activities. At a bare minimum, the April 30 Memo and two news articles appended thereto must be expunged. We expect there are other documents maintained by the Agency subject to expungement.

Thank you for your attention to this appeal. Please direct all correspondence regarding this request to:

Julia Harumi Mass, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

If you have any questions, Ms. Mass can be reached by phone at (415) 621-2493. We look forward to your prompt response.

Sincerely,


Marley Degner, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

and

Julia Harumi Mass, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Office of Privacy and Civil Liberties
Attn: Freedom of Information Appeal
September 13, 2013
Page 4

cc: Jennifer S. Wang, Esq.
Thomas V. Loran III, Esq.
Andrew D. Bluth, Esq.
Laura C. Hurtado, Esq.

EXHIBIT H



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P. O. Box 2824 | San Francisco, CA 94126-2824

Laura C. Hurtado
tel 415.983.1082
laura.hurtado@pillsburylaw.com

November 13, 2013

Via Certified Mail, Return Receipt Requested

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Dissemination Section
170 Marcel Drive
Winchester, VA 22601-4843

Federal Bureau of Investigation
Attn: Privacy Act Request
Record/Dissemination Section
450 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102-8523

Re: Privacy Act Request to Amend Records—Eric Garriss

Dear Sir/Madam:

This letter constitutes a request to the Federal Bureau of Investigation (the “Agency” or the “FBI”) to amend records maintained by the Agency that pertain to Mr. Eric Anthony Garriss. Mr. Garriss is being represented in this matter by attorneys at the American Civil Liberties Union of Northern California (“ACLU-NC”) and Pillsbury Winthrop Shaw Pittman LLP. Please find his Certification of Identity and Authorization to Release Information to Julia Harumi Mass, Esq. of the ACLU-NC enclosed herewith.¹

¹ Mr. Garriss also has a pending FOIA and Privacy Act request for disclosure of records (FOIA Request No. 1192179-000) and a pending Privacy Act request for expungement of records describing Mr. Garriss’s First Amendment activity (No. 13-791).

Federal Bureau of Investigation

Attn: Privacy Act Request

November 13, 2013

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On behalf of Mr. Garris, we request, pursuant to 5 U.S.C. § 552a(d)(2) of the Privacy Act, that the Agency amend any and all records maintained by it, whether produced to date or not yet produced, that pertain to Mr. Garris and that are inaccurate, irrelevant, untimely, or incomplete. This includes, but is not limited to (i) any such records maintained by the Agency, whether or not they are in the Agency's system of records, as the term is defined in 5 U.S.C. § 552a(a)(5), and whether or not they are traceable by Mr. Garris's name or some other identifying characteristic and (ii) any such records maintained by the Agency that are retrievable through a "cross-reference" search for files that mention Mr. Garris or the online magazine Antiwar.com. *See MacPherson v. IRS*, 803 F.2d 479, 481 (9th Cir. 1986), citing *Clarkson v. IRS*, 678 F.2d 1368 (11th Cir. 1982) (stating "paragraph (d)(2) refers only to 'a record'" and does not limit its applicability to "records contained within a system of records").

Mr. Garris was born on [REDACTED] in [REDACTED]. His social security number is [REDACTED]. His current address is [REDACTED] San Francisco, California [REDACTED]. Mr. Garris is the founder, managing editor, and webmaster of the online magazine Antiwar.com, which is devoted to the cause of non-interventionism. Mr. Garris founded Antiwar.com in 1995. Both Mr. Garris and Antiwar.com were the subject of an apparent FBI threat assessment dated April 30, 2004 (the "April 30 Memo").

On May 21, 2013, having waited nearly a year to receive an Agency response to Mr. Garris's FOIA and Privacy Act request for disclosure of records pertaining to himself or Antiwar.com, Mr. Garris filed suit against the Agency in federal district court in the Northern District of California. That lawsuit is currently pending. *See Ratmondo v. FBI*, C-13-02295 JSC (N.D. Cal). On October 1, 2013, the Agency produced 47 pages of documents responsive to Mr. Garris's FOIA and Privacy Act request for disclosure of documents pertaining to Mr. Garris or the online web magazine Antiwar.com. The Agency improperly withheld and redacted numerous documents responsive to Mr. Garris's FOIA and Privacy Act request.

Nevertheless, based on the 47 pages of records produced by the Agency on October 1, 2013, Mr. Garris discovered that the Agency maintains at least two records that pertain to him and are inaccurate. Each of these records contains the same inaccuracy: that Mr. Garris made a threat on September 12, 2001 to hack the FBI website. This is incorrect. Mr. Garris did not make a threat to hack the FBI website on September 12, 2001 or any other date. As the Agency's own records show, Mr. Garris was the *recipient* of a threat to hack *his* website. Mr. Garris received this threat by email on September 12, 2001 from a person whose name has been redacted from the relevant FBI record. Scared by receiving this threat, Mr. Garris immediately contacted the Agency for assistance. The Agency requested that Mr. Garris forward to it an electronic copy of the threat. Mr. Garris did so. Upon reviewing Mr. Garris's

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email forwarding the threat he received, an Agency analyst carelessly interpreted the email *to* Mr. Garris to hack his website as an email *from* Mr. Garris to hack the FBI website. Mr. Garris believes the Agency's stated allegation that he threatened to hack the FBI website—based on an apparent misunderstanding of facts contained within FBI records—contributed to the Agency's monitoring of Mr. Garris and maintenance of records describing Mr. Garris's First Amendment activities in violation of 5 U.S.C. § 552a(e)(7) of the Privacy Act.

Mr. Garris is aware of the following records maintained by the Agency that are inaccurate, containing the erroneous allegation that Mr. Garris threatened to hack the FBI website:

(i) April 30 Memo (*See* Antiwar-59, 65 from the FBI's October 1, 2013 production) states "that a written contact was received from Eric Garris [and] was documented as a threat by Garris to Hack the FBI website," and "Eric Garris has shown intent to disrupt FBI operations by hacking the FBI website," and

(ii) FBI memorandum dated January 7, 2002 (*See* Antiwar 169-70) characterizes an email forwarded by Mr. Garris to the FBI to report a threat he received as "A threat by Garris to hack FBI website." The page bates numbered Antiwar-170 contains an FBI internal email, which includes as part of its email chain the email threat *to* Mr. Garris by the individual whose name is redacted, which is the email Mr. Garris forwarded to the Agency.

We request amendment of, meaning expungement of or at a minimum correction of, any and all records maintained by the Agency, whether produced to date or not yet produced, that pertain to Mr. Garris that are inaccurate, irrelevant, untimely, or incomplete. This request includes a request to amend, meaning expunge or at a minimum correct, the records described and identified herein that contain any statement, reference to, or suggestion that Mr. Garris threatened to hack the FBI website in September 2001. Mr. Garris has already submitted a request under the Privacy Act to expunge the April 30 Memo on the basis that it is maintained by the Agency in violation of 5 U.S.C. § 552a(e)(7).

According to 5 U.S.C. §§ 552a(d)(2)(A), (B) "not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt" of a request made pursuant to 5 U.S.C. § 552a(d)(2), the Agency must "acknowledge in writing such receipt; and . . . promptly, either (i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or (ii) inform the individual of its refusal to amend the record . . ." among other statutory

Federal Bureau of Investigation

Attn: Privacy Act Request

November 13, 2013

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requirements. The Office of Management and Budget ("OMB") Guidelines advise that

agencies should wherever practicable, complete the review and advise the individual of the results within 10 days of the receipt of the request. Prompt action is necessary both to assure that records are as accurate as possible and to reduce the administrative effort which would otherwise be involved in issuing a separate acknowledgement of the receipt of the request and subsequently informing the individual of the action taken.

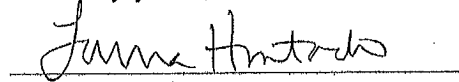
OMB Guidelines, OMB Circular A-108, 40 Fed. Reg. 28958 (July 9, 1975). If the nature of the request precludes review in 10 days, the OMB Guidelines advise that "review should be completed as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays." *Ibid*.

We request that the Agency adhere to the OMB guidance in promptly responding to Mr. Garris's request for amendment. Should the Agency deny Mr. Garris's request, he will file an administrative appeal. If Mr. Garris is not able to obtain administrative relief, he will then move to amend the complaint in *Raimondo v. FBI*, 13-02295, and add a Privacy Act claim for amendment of records.

Please direct all correspondence regarding this request to:

Julia Harumi Mass
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Sincerely yours,



Laura Hurtado, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

and

Federal Bureau of Investigation

Attn: Privacy Act Request

November 13, 2013

Page 5

Julia Harumi Mass, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111
Enclosures

cc: Jennifer S. Wang, Esq.
Thomas V. Loran III, Esq.
Andrew D. Bluth, Esq.

EXHIBIT I



Federal Bureau of Investigation

Washington, D.C. 20535

February 10, 2014

JULIA HARUMI MASS, ESQUIRE
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 DRUMM STREET
SAN FRANCISCO, CA 94111

FOIPA Request No.: 1238633-000
Subject: GARRIS, ERIC ANTHONY
AMENDMENT/EXPUNGEMENT REQUEST

Dear Ms. Mass:

In response to your client's request dated November 13, 2013, the requests for amendment of records under the Privacy Act, 5 U.S.C. § 552a(d) and/or 5 U.S.C. § 552a(e)(7) are denied in part, and granted in part, as provided below.

Request to amend any and all agency records pertaining to Mr. Garriss. Citing, 5 U.S.C. § 552a(d), you request that the FBI engage in a broad search of unspecified records systems to locate unspecified records "traceable by Mr. Garriss' name" to determine whether any such record is "inaccurate, irrelevant, untimely, or incomplete." This request is denied in part, as a deficient request for amendment under the Privacy Act. First, the request is overbroad and identifies no specific record within a system of records that is alleged to be inaccurate. As prescribed by 5 U.S.C. § 552a(d)(2), an individual may request "amendment of a record;" there is no provision to request a FOIA-like search for all records pertaining to an individual on the premise that inaccurate material may exist. Second, this vague request cites no specific material that Mr. Garriss' "believes is not accurate, relevant, timely, or complete;" therefore there is no alleged record inaccuracy to address. 5 U.S.C. § 552a(d)(2)(B)(i). Finally, as we've previously advised in *Dennis Joseph Raimondo, aka Justin Raimondo and Eric Anthony Garriss v. Federal Bureau of Investigation*, there are no main records in the FBI's vast, Central Records System (CRS) where Mr. Garriss is indexed by name or other personal identifier; thus, there is no underlying Privacy Act right of access under 5 U.S.C. § 552a(d).

Request to amend FBI Memorandum dated April 30, 2004 and FBI Memorandum dated January 7, 2002. Citing 5 U.S.C. § 552a(e)(7), you request to "expunge" this record in which Mr. Garriss is not the subject, but is referenced within, alleging two inaccuracies. Your request to take corrective action has been granted, as it relates to the following inaccuracies identified in your request:

- (i) April 30 memo (*See* Antiwar-59, 65 from the FBI's October 1, 2013 production) states "that a written contact was received from Eric Garriss [and] was documented as a threat by Garriss to Hack the FBI website," and "Eric Garriss has shown intent to disrupt FBI operations by hacking the FBI website," and

- (ii) FBI memorandum dated January 7, 2002 (See Antiwar 169-70) characterizes an email forwarded by Mr. Garris to the FBI to report a threat he received as "A threat by Garris to hack FBI website." The page bates numbered Antiwar-170 contains an FBI internal email, which includes as part of its email chain the email threat to Mr. Garris by the individual whose name is redacted, which is the email Mr. Garris forwarded to the Agency.

The FBI has generated an EC dated February 4, 2014 to correct the inaccurate information reported in the two aforementioned FBI Memorandums, to reflect that **"Garris in no way threatened to hack the FBI's website on September 12, 2001; instead he reported a threat made to his website, www.antiwar.com."**

A courtesy copy of the processed and redacted EC dated February 4, 2014 is attached hereto for your records.

You may file an appeal by writing to the Office of Privacy and Civil Liberties (OPCL), U.S. Department of Justice, 1331 Pennsylvania Avenue, NW Suite 1000, Washington, D.C. 20530. Your appeal must be received by OPCL within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

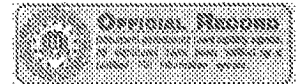
- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

EXHIBIT J

UNCLASSIFIED



FEDERAL BUREAU OF INVESTIGATION

Electronic Communication

Title: (U) Notification of Corrective Action

Date: 02/04/2014

CC:

[Redacted]

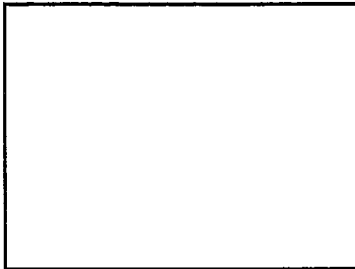
DK-FOI1

DK-FOI2

DK-FOI3

DK-FOI4

DK-FOI6



From: SAN FRANCISCO

SF-A2

Contact:

[Redacted]

415-553-7629

Approved By: SAC JOHNSON DAVID J

Drafted By:

[Redacted]

Case ID #: 333-SF-A2819912-FOIPA (U) Freedom of Information/Privacy Act

Synopsis: (U) This electronic communication (EC) serves as corrective notification to all FBI personnel concerning [Redacted] and 315N-NK-C98832, Serial 486 which inaccurately report that ERIC GARRIS (hereinafter referred to as "Garris") made a threat to hack the FBI's website. As detailed herein, Garris did not threaten to hack the FBI's website on September 12, 2001. Instead, he contacted the FBI San Francisco Field Office (SFFO) to report a threat made against his own website, www.antiwar.com.

Reference:

[Redacted]

315N-NK-C98832 Serial 486

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Title: (U) Notification of Corrective Action
Re: 333-SF-A2819912-FOIPA, 02/04/2014

Details:

(U) Background:

(U) On October 1, 2013 the FBI released to Garriss¹ and Dennis Joseph Raimondo, aka Justin Raimondo, through counsel, material responsive to each of their individual Freedom of Information Act (FOIA)/Privacy Act (PA) requests concerning themselves and their online magazine, www.antiwar.com. These requests are also the subject of litigation in the U.S. District Court for the Northern District of California; Civil Action No. 3:13-cv-02295, Dennis Joseph Raimondo, aka Justin Raimondo and Eric Anthony Garriss v. Federal Bureau of Investigation. Within the released records were redacted versions of many serials, including, [REDACTED] 315N-NK-C98832, Serial 486; and 288-SF-C115338-Email, Serial 1512.

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(U) On November 20, 2013 the FBI Records Management Division (RMD) received a PA amendment request dated November 13, 2013 from Garriss' counsel. The request, citing 5 U.S.C. § 552a(d)(2), sought amendment of any and all records maintained by it, whether produced to date or not yet produced in the FOIA litigation, that pertain to Garriss and that are inaccurate, irrelevant, untimely, or incomplete. Further, the amendment request letter indicated that the Agency maintains at least two inaccurate records pertaining to Garriss. Each of the records contain the same inaccuracy: that Garriss made a threat on September 12, 2001 to hack the FBI website. The letter describes the two documents as follows:

(i) (U) April 30 memo (See Antiwar-59, 65 from the FBI's October 1, 2013 production) states that written contact was received from Eric Garriss [and] was documented as a threat by Garriss to Hack the FBI website." And "Eric Garriss has shown intent to disrupt FBI operations by hacking the FBI website," and

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Title: (U) Notification of Corrective Action
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(ii) (U) FBI memorandum dated January 7, 2002 (See Antiwar 169-170) characterizes an email forwarded by Mr. Garris to the FBI to report a threat he received as "A threat by Garris to hack FBI website." The page bates numbered Antiwar-170 contains an FBI internal email, which includes as part of its email chain the email threat to Mr. Garris by the individual whose name is redacted, which is the email Mr. Garris forwarded to the Agency.

(U) Upon receipt of Garris' amendment request, a review of the records described as inaccurate by Garris was conducted, along with a review of the FBI's record containing a copy of the actual email threat to antiwar.com received by Garris. As a result of this review, it is evident that the information contained in the originating threatening email to Garris, which he forwarded to the FBI, SFFO in the aftermath of 9/11, was inadvertently recorded by SFFO Command Post personnel as a threat by Garris to hack the FBI's website. Specifically, the two (2) records inaccurately report that Garris made a threat to hack the FBI's website, to wit:

(U) [REDACTED] is an EC dated 01/07/2002 contained within a third-party investigative file concerning the subject: [REDACTED]

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[REDACTED] The content of the serial relates to San Francisco ICF# [REDACTED] which indicates that a written contact was received from Eric Garris (EGARRIS@ANTIWAR.COM) on 09/12/2001 at 8:48 a.m. The FBI Event is documented as "A THREAT BY GARRIS TO HACK FBI WEBSITE." [2]

(U) 315N-NK-C98832, Serial 486 - Serial 486 is an EC dated April 30, 2004 contained within a third-party investigative file concerning the subject: "IT-Pakistan and IT UBL/AL Qaeda." The content of the serial relates to a Threat Assessment conducted of Justin Raimondo, DOB: 11/18/1951, SSAN: Unknown and Eric Anthony Garris, DOB: 12/24/1953, [REDACTED] www.antiwar.com. On pages 3 and 8 of this EC it states as follows:

(U) "File [REDACTED] dated 01/07/2002, San

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 Re: 333-SF-A2819912-FOIPA, 02/04/2014

Francisco ICF # [REDACTED] indicated that a written contact was received from Eric Garris (EGARRIS@ANTIWAR.COM) on 09/12/2001 at 8:48 A.M. The event was documented as a threat by Garris to hack the FBI website."

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(U) "Two facts have been established by this assessment. Many individuals worldwide do view this website including individuals who are currently under investigation and Eric Garris has shown intent to disrupt FBI operations by hacking the FBI website."

(U) These inaccurate serials are found when conducting text searches using the Electronic Case File (ECF) application for the terms, "Eric Garris" and "Garris near Eric." These serials are not indexed under the terms "Eric Anthony Garris," "Eric Garris," "egarris@antiwar.com," "antiwar.com" or www.antiwar.com.

(U) Corrective Action:

(U) Garris in no way threatened to hack the FBI's website on September 12, 2001; instead, he reported a threat made to his website, www.antiwar.com. As detailed herein, the FBI records containing inaccurate information are [REDACTED] and 315N-NK-C 98832, Serial 486. To ensure the inaccurate information in these records are not used by or incorporated into future FBI reports, this EC is being indexed in the CRS under the terms "Eric Garris," "Eric Anthony Garris," "egarris@antiwar.com," "antiwar.com" and "www.antiwar.com." Since the text of this EC will be searchable, this EC will also be located utilizing ECF text search feature on any of the names found herein.

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[1] (U) The Eric Garris referred to in both of these serials is Eric Anthony Garris, DOB: 12/24/195 [REDACTED] [REDACTED] [REDACTED]

[2] (U) The information in this serial, with the exception of the event description, was acquired from FBI File 288-SF-C115338-Email,

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Title: (U) Notification of Corrective Action
Re: 333-SF-A2819912-FOIPA, 02/04/2014

Serial 1512. The contents of this serial reflects that FBI
<san.francisco@fbi.gov> forwarded to nccs-sf@fbi.gov a copy of a
threatening email Eric Garris had received and reported to their
office. Within this serial is a copy of the threatening email To:
egarris@antiwar.com, [REDACTED] bearing Date:
Wed, 12 Sep 2001 14:54:14 +000, Subject: YOUR SITE IS GOING DOWN.

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EXHIBIT K



Pillsbury Winthrop Shaw Pittman LLP

Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200

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Laura Hurtado

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laura.hurtado@pillsburylaw.com

February 27, 2014

Via Federal Express

Office of Privacy and Civil Liberties (OPCL)
U.S. Department of Justice
1331 Pennsylvania Avenue, NW Suite 1000
Washington, DC 20530

Re: Freedom of Information Appeal; FOIPA Request No.: 1238633-000
Eric Anthony Garriss

Dear Sir/Madam:

We write to appeal the partial denial by the Federal Bureau of Investigation (the "FBI" or the "Agency") of Mr. Garriss's request dated November 13, 2013, for amendment of any and all records maintained by the Agency that pertain to Mr. Garriss that are inaccurate, irrelevant, untimely, or incomplete, pursuant to the Privacy Act, 5 U.S.C. § 552a(d)(2), (the "Amendment Request" or "Request").

According to the letter from the Agency dated February 10, 2014, denying in part Mr. Garriss's request for amendment (the "Response Letter"), any appeal of the Agency's denial of the Amendment Request "must be received by OPCL within sixty (60) days from the date of [the Response Letter] in order to be considered timely." We submit this appeal within the sixty-day time period.

In response to the Request, which sought amendment of, meaning expungement of or at a minimum correction of, any and all records maintained by the Agency, whether produced to date or not yet produced, that pertain to Mr. Garriss that are inaccurate, irrelevant, untimely, or incomplete, the Agency "took corrective action" on two records identified in the Request as grossly inaccurate. Both records, as set forth in the Request and immediately below, contain the erroneous allegation that Mr. Garriss threatened to hack the FBI website:

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(i) April 30 Memo (*See* Antiwar-59, 65 from the FBI's October 1, 2013 production) states "that a written contact was received from Eric Garris [and] was documented as a threat by Garris to Hack the FBI website," and "Eric Garris has shown intent to disrupt FBI operations by hacking the FBI website," and

(ii) FBI memorandum dated January 7, 2002 (*See* Antiwar-169-70) characterizes an email forwarded by Mr. Garris to the FBI to report a threat he received as "A threat by Garris to hack FBI website." The page bates numbered Antiwar-170 contains an FBI internal email, which includes as part of its email chain the email threat to Mr. Garris by the individual whose name is redacted, which is the email Mr. Garris forwarded to the Agency.

The Agency's so-called "corrective action" is inadequate. It appears that the only action the Agency has taken with regard to the Amendment Request is to generate a document titled Notification of Corrective Action (the "Notification"), which states that "Garris in no way threatened to hack the FBI's website on September 12, 2001; instead he reported a threat made to his website, www.antiwar.com." According to the Notification, the Notification itself has been made text searchable and has been indexed in the Central Record System ("CRS") under the terms "Eric Anthony Garris," "Eric Garris," "egarris@antiwar.com," "antiwar.com," and "www.antiwar.com." The inaccurate records remain in the Agency's CRS unchanged.

While Mr. Garris is pleased that the Agency has acknowledged the grave inaccuracies contained in the above-two identified records, Mr. Garris appeals the Agency's denial of his Amendment Request to the extent that the Agency has failed to take any action that actually corrects the inaccurate records themselves and to the extent that the Agency has failed to expunge any and all records maintained by the Agency, whether produced to date or not yet produced, that pertain to Mr. Garris that are inaccurate, irrelevant, untimely, or incomplete, including the two records containing the erroneous allegation that Mr. Garris threatened to hack the FBI website and any subsequent records that relied on the original inaccuracies.

The Agency's "corrective action," falls far short of correcting the erroneous allegations about Mr. Garris that still remain in the Agency's system of records. The Agency notes that "[t]o ensure the inaccurate information in these records are not used by or incorporated into future FBI reports," the Notification is itself text searchable and has been indexed in the CRS under Mr. Garris's name and the name of the website for Antiwar.com. But the Agency does not explain how the generation of the Notification—a new record that has not itself been made a part of the inaccurate records but is apparently recallable along with certain searches that recall the

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inaccurate records—ensures that the information contained in the inaccurate records will not be used by or incorporated into future FBI reports. Certainly it is possible for an Agency employee to conduct a search for records and not actually review every record recalled based on their search. Given that it does not appear that the Agency has modified the inaccurate records in any way, a person reading only the inaccurate records on a computer screen or paper print out would have no way of knowing that the records contained inaccurate information.

Moreover, the nature of the inaccurate information contained in the two records for which the Agency has taken “corrective action,” is not trivial. Both records assert that Mr. Garris threatened to engage in cybercrime against a federal Agency—no doubt a serious criminal allegation. Mr. Garris should not be made to bear the burden of enduring the consequences that result from the mistaken use of and/or reliance on the erroneous information contained in the two above-identified inaccurate records. *See R.R. v. Dep’t of Army*, 482 F. Supp. 770, 773 & nn. 13-14 (D. D.C. 1980) (ordering deletions and revisions of inaccurate records and stating “Accuracy of government-recorded personnel information is particularly important in our complex and bureaucratically-interrelated society, where an individual’s rights and benefits may well be influenced or determined by what some government agency has to say about him. The prejudice resulting from inaccuracy may affect determinations reached by third parties, public or private, as well as those made by the recordkeeping agency.”) The Agency is now fully aware of the grave inaccuracies. It should expunge these inaccurate records from its system of records.

There is no longer any dispute that the allegations contained in the two inaccurate records for which the Agency took “corrective action” are false: Mr. Garris in no way threatened to hack the FBI’s website on September 12, 2001. The Agency has admitted this much. Unfortunately, the erroneous allegations contained in these two inaccurate records have already seeped into other Agency records and have been relied on as the basis for the Agency’s continued interest in Mr. Garris. Indeed, the FBI analyst who drafted the memorandum dated April 30, 2004 (“April 30 Memo”) relied on the erroneous allegation that Mr. Garris threatened to hack the FBI’s website on September 12, 2001 as the basis for the threat assessment contained in the April 30 Memo. The April 30 Memo should not have been written—the factual basis for the threat assessment contained in it was erroneous.¹ Since the April 30 Memo, the FBI

¹ Mr. Garris also has a pending FOIA and Privacy Act request for expungement of records describing Mr. Garris’s First Amendment activity (13-791), which seeks expungement of the April 30 Memo, among other records that are maintained by the Agency and that describe Mr. Garris’s exercise of
(... continued)

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has generated at least three other memoranda that reference or rely on the April 30 Memo and the factual inaccuracies contained therein: Memorandum dated July 29, 2004 (Revised Antiwar-143); Memorandum dated September 12, 2005 (Antiwar-149), and Memorandum dated April 22, 2008 (Antiwar-153). Pursuant to our Amendment Request, these records and any and all other records maintained by the Agency, whether produced to date or not yet produced, that pertain to Mr. Garris that are inaccurate or are based upon previous inaccuracies should be amended, meaning expunged or at a minimum actually corrected.

For the reasons stated herein and set forth in the Amendment Request, the Agency should be ordered to expunge any and all inaccurate records that pertain to Mr. Garris, including but not limited to the two inaccurate records identified herein. As explained above, since Mr. Garris's alleged threat and First Amendment-protected activity are the supporting basis for the April 30 Memo, that Memo and any other records that reference the April 30 Memo should be destroyed, expunged, or altered to indicate that the original basis for the April 30 recommendation was based on Agency error. However, the Agency offered no basis in its Response Letter for failing to grant Mr. Garris's request pursuant to 5 U.S.C. § 552a(d)(2) to expunge the inaccurate records.

Mr. Garris maintains a claim for relief against the Federal Bureau of Investigation for violation of the Freedom of Information Act and Privacy Act's access provisions. *See Raimondo v. FBI*, 13-02295 (N.D. Cal. 2013) (alleging claims under 5 U.S.C. § 552a(d)(1) and 5 U.S.C. §§ 552(a)(3), (a)(6)). Thus, due to the Agency's improper withholding of records in whole or in part, Mr. Garris is not yet fully aware of any further inaccuracies contained in the Agency's records that pertain to Mr. Garris; the Agency, alone, is the holder of that information. In addition to seeking a full remedy of the inaccurate characterization of Mr. Garris's report as a threat and the creation of records based on that inaccurate characterization, to the extent records requested by Mr. Garris but not yet disclosed to him contain inaccuracies, Mr. Garris appeals the Agency's denial of his request to amend, meaning expunge or at a minimum actually correct, said records. This includes, but is not limited to (i) any such records maintained by the Agency, whether or not they are in the Agency's system of records, as the term is defined in 5 U.S.C. § 552a(a)(5), and whether or not they are traceable

(... continued)

his First Amendment rights in violation of 5 U.S.C. § 552a(e)(7). In its Response Letter, the Agency states that Mr. Garris's Amendment Request sought expungement under 5 U.S.C. § 552a(e)(7). To clarify, Mr. Garris made the Amendment Request pursuant to 5 U.S.C. § 552a(d)(2).

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by Mr. Garris's name or some other identifying characteristic and (ii) any such records maintained by the Agency that are retrievable through a "cross-reference" search for files that mention Mr. Garris or the online magazine Antiwar.com. *See MacPherson v. IRS*, 803 F.2d 479, 481 (9th Cir. 1986), citing *Clarkson v. IRS*, 678 F.2d 1368 (11th Cir. 1982) (stating "paragraph (d)(2) refers only to 'a record'" and does not limit its applicability to "records contained within a system of records").

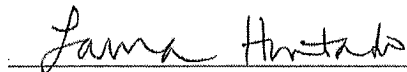
Thank you for your attention to this appeal. Please direct all correspondence regarding this request to:

Julia Harumi Mass, Esq.
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Laura C. Hurtado, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

If you have any questions, Ms. Mass can be reached by phone at (415) 621-2493. We look forward to your prompt response.

Sincerely,



Laura C. Hurtado, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111

and

Julia Harumi Mass, Esq.
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cc: Jennifer S. Wang, Esq.
Thomas V. Loran III, Esq.
Andrew D. Bluth, Esq.
Marley Degner, Esq.