

1 attended OCIF a number of times to conduct surveillance, including during Sheikh  
2 Fazaga's sermons.

3 174. Agent Armstrong and Allen also equipped Monteilh with a video  
4 camera hidden in a shirt button that he used to take video of the interior of OCIF.  
5 Agents Armstrong and Allen instructed Monteilh to get a sense of the schematics  
6 of the place — entrances, exits, rooms, bathrooms, locked doors, storage rooms, as  
7 well as security measures and whether any security guards were armed. Agent  
8 Armstrong later told Monteilh that they had used the information he gathered to  
9 enter the mosque.

10 175. On the instructions of Agents Armstrong and Allen, Monteilh made  
11 video recordings of an area in the back of OCIF where there were religious books  
12 available for congregants to use, so that they could determine if any of the  
13 literature there was extremist.

14 176. Agents Armstrong and Allen also instructed Monteilh to make  
15 contacts within Sheikh Fazaga's Mission Viejo congregation. To comply,  
16 Monteilh worked out on various different occasions with about 40 of their  
17 congregants, usually in groups, obtaining the email address and cell phone number  
18 of anyone he worked out with and passing that information on to his handlers.

19 177. Agents Armstrong and Allen instructed Monteilh to gather additional  
20 information on a few individuals within the congregation who seemed to have the  
21 most direct access to Fazaga — to gather their email addresses, cell phone  
22 numbers, and addresses, as well as basic background information such as their  
23 occupation, whether they were married or had children, and what prayers they  
24 attended. Monteilh gathered this information and passed it on to Armstrong and  
25 Allen.

26 178. Agents Armstrong and Allen instructed Monteilh to monitor Fazaga at  
27 the prayers he conducted, to record and report on what he said, to talk with him  
28 afterwards and see who else talked to him afterwards, and to note individuals who

1 appeared to be close to him. Monteilh also monitored what was said by a member  
2 of the congregation who substituted for Fazaga during one of the prayers.

3 179. In about April 2007, a member of the community introduced Monteilh  
4 to Fazaga while he was recording with a hidden video camera. Monteilh also  
5 obtained Fazaga's cell phone number and email address (not through Fazaga, but  
6 through others) and passed those on to Agents Armstrong and Allen, who told him  
7 they used the email addresses and telephone numbers gathered to monitor  
8 communications and conduct further surveillance.

9 180. Monteilh also gave Agents Armstrong and Allen the license plate  
10 numbers of cars Fazaga traveled in and the people with whom Monteilh saw him  
11 associate.

12 181. Agents Armstrong and Allen instructed Monteilh that whenever he  
13 saw Fazaga at another mosque or anywhere outside OCIF, he should call them and  
14 let them know immediately. Monteilh did this at least once when he saw Fazaga at  
15 another mosque.

16 182. On one occasion, during Friday afternoon prayer at OCIF, the mosque  
17 had a booth set up to collect donations for some kind of relief for Muslims abroad.  
18 Pursuant to Agents Armstrong and Allen's orders to monitor donations, Monteilh  
19 stood near the booth and used the hidden video camera to make video recordings  
20 of people who went up to the booth to contribute money.

21 183. After Monteilh's role as an FBI informant became publicly known in  
22 February 2009, many members of the OCIF congregation were horrified to learn  
23 that the man who spent so much time in their mosque was an informant. This  
24 revelation significantly undermined the trust within that community, which in turn  
25 deterred members from worshipping as a congregation.

26 184. Since he had contact with Monteilh, Fazaga has also been subjected to  
27 secondary screening and searches upon return to the U.S. from various  
28 international trips, being held between 45 minutes and three hours most times he

1 travels.

2 185. Since discovering the FBI surveilled him and the mosque where he  
3 serves as imam, Sheikh Fazaga believes that any of his communications in the  
4 mosque and over telephones may be monitored, and indeed that he may be under  
5 surveillance at any time. As an intern therapist as well as an imam, Fazaga  
6 provided counseling to congregants and Muslims at the mosque as part of his  
7 service to the Muslim community. Since learning of the FBI's surveillance, he no  
8 longer counsels congregants at the mosque for fear that their conversations are  
9 monitored and therefore the personal information shared is not confidential, which  
10 has limited his capacity to provide such counseling. The constant fear of being  
11 under surveillance, the scrutiny during travel, the effect on the sense of community  
12 at his mosque and others, and the additional difficult in providing counseling to  
13 clients have all caused Sheikh Fazaga severe and ongoing anxiety and emotional  
14 distress.

15 **Monteilh's Interaction with Plaintiff Ali Uddin Malik**

16 186. In their early meetings with Monteilh, Agents Armstrong and Allen  
17 showed Monteilh a picture of a young man who they identified as Plaintiff Ali  
18 Malik. They told him Malik had been a surfer kid in Newport Beach who wore  
19 dyed hair, but had travelled to Yemen to attend a religious school, and had returned  
20 to the U.S. wearing traditional Muslim dress and a full beard.

21 187. Agents Armstrong and Allen told Monteilh that Malik's change in  
22 behavior in embracing religion and traditional dress was highly suspicious and for  
23 that reason they needed to investigate him. They also told him they were  
24 suspicious of Malik because he was involved with people from the "MSU."  
25 ("MSU" stands for "Muslim Student Union," which is the name of Muslim student  
26 groups at many colleges and universities, including U.C. Irvine.) Agent Armstrong  
27 told Monteilh that before he was assigned to be his handler, he had been assigned  
28 to investigate the MSUs and young Muslims, including Ali Malik.

1           188. Agents Armstrong and Allen told Monteilh that the way that Malik  
2 groomed his beard indicated that he was a radical.

3           189. Agents Armstrong and Allen already had information on Malik and  
4 his family before they assigned Monteilh to do anything, but they told Monteilh to  
5 get more information on one of his brothers; on another individual who Malik was  
6 close to; on Malik's associations from the Irvine mosque, and on anyone with  
7 whom Malik hung out at the gym.

8           190. Agents Armstrong and Allen said that they knew Malik had been to an  
9 Islamic religious school in Yemen, and that he had been blocked from entering  
10 Saudi Arabia after he had traveled to Yemen. They tasked Monteilh with finding  
11 out what school he had been to and why he had been denied entry into Saudi  
12 Arabia. Upon information and belief, Armstrong and Allen already had knowledge  
13 of this information. When re-entering the country in 2006, Malik had been  
14 interviewed at length by U.S. officials and had fully disclosed the nature of his  
15 travels, including his study at Dar al-Mustafa. Malik also disclosed that while  
16 abroad, he had traveled to Abu Dhabi in hopes of getting a visa to Saudi Arabia for  
17 Umrah (the minor pilgrimage in Islam). However, Malik was informed by  
18 individuals both at Dar al-Mustafa and in Abu Dhabi that he needed to apply for a  
19 visa with the Saudi embassy in the United States, which was logistically  
20 impossible to do during his trip, so that Malik did not attempt to enter Saudi Arabia  
21 or even apply for a visa during his 2006 trip.

22           191. In about April 2007, Agents Armstrong and Allen began discussing  
23 the possibility of sending Monteilh abroad to study Islam and Arabic. When  
24 Monteilh started asking about a school to go to, Malik told him that he had  
25 attended Dar al-Mustafa in Tarim, in Yemen. Monteilh reported this information  
26 to Agents Armstrong and Allen.

27           192. On several occasions, Monteilh used the key fob or cell phone  
28 recording devices provided by Agents Armstrong and Allen to record groups of

1 young Muslims talking in the prayer hall, particularly after *ishaa* prayer. On these  
2 occasions, Monteilh greeted people, left his things — including the recording  
3 device — near where they were talking, and then went to another part of the  
4 mosque (or a different part of the prayer hall) to pray so that the recording device  
5 would capture their conversation when he was gone. On several of these  
6 occasions, Ali Malik was one of the people in the group Monteilh recorded.  
7 Monteilh recorded these conversations when he was not present, then gave notes  
8 that detailed the people he saw there to Agents Armstrong and Allen, so they  
9 would be able to identify the voices. Agents Armstrong and Allen received notes  
10 in which Monteilh said that he had recorded these conversations without being  
11 physically present, and never told him not to do this.

12 193. The prayer hall of a mosque is sacred space where particular rules and  
13 expectations apply. Shoes are prohibited, one must be in a state of ablution,  
14 discussing worldly matters is discouraged, and the moral standards and codes of  
15 conduct are at their strongest. Gossiping, eavesdropping, or talebearing (*namima* -  
16 revealing anything where disclosure is resented) is forbidden. *Halaqas*, or small  
17 group meetings, are understood by attendees of the mosque to be safe  
18 environments in which to discuss theology or matters related to the practice of  
19 Islam, and that correspondingly ensure some measure of confidentiality among  
20 participants. In addition, audio and video recording without permission were  
21 barred at ICOI, and on rare occasions where an outside entity recorded an event or  
22 speaker, signs notified congregants of the recording.

23 194. Malik more than once told Monteilh that he heard Monteilh was going  
24 regularly to *fajr*, or early morning prayer. Malik commended Monteilh on his  
25 commitment — he said that he had gotten into the routine of attending *fajr* prayers  
26 daily when he had been studying abroad, but that, regrettably, it was easy to fall  
27 into attending prayers only when it was convenient. He stated that he wanted to  
28 get back to that kind of regimen. Agents Armstrong and Allen told Monteilh this

1 was significant information that indicated Malik was returning to extremist beliefs,  
2 which justified further surveillance.

3 195. Agents Armstrong and Allen received significant information on  
4 Malik. In addition to the surveillance described above, including recordings of all  
5 Monteilh's conversations with Malik, they several times showed Monteilh photos  
6 with people they said had seen with Malik and asked him to identify them. The  
7 pictures sometimes had Malik in them.

8 196. Since his contact with Monteilh, Malik has repeatedly been subjected  
9 to extended interviews with FBI and Customs upon re-entering the country,  
10 including one interview that lasted for several hours, resulted in him missing a  
11 connecting flight, and consequently missing a summer school class that made him  
12 lose credit for the class and required that he push his college graduation back by  
13 several months at considerable financial expense.

14 197. Also as a result of the FBI's surveillance, Malik altered his religious  
15 practices. Because he understood he was targeted because of his outwardly  
16 religious appearance, adherence to Islamic ritual practice, and involvement with  
17 the mosque and Muslim Student Union at UCI, Malik trimmed his beard, does not  
18 regularly wear a skull cap any longer, and stopped attending the mosque regularly  
19 for an extended period of time. To this day, he attends mosque less frequently than  
20 he did before having contact with Monteilh because of his fear of being monitored  
21 at mosque and the effect that this fear has on his sense of the mosque as a place of  
22 peace and spiritual refuge. This interference with his religious practice results  
23 from Defendants' actions and has caused Malik severe and ongoing anxiety and  
24 emotional distress.

25 198. Malik also believes his reputation in the community to have been  
26 damaged. He believes that because of his association with Monteilh, people have  
27 also assumed that he is a government informant and act as if they are suspicious of  
28 him. He believes that he does not have the full trust of the Muslim community.

1 This belief that others suspect him because of Defendants' actions has caused  
2 Malik severe and ongoing anxiety and emotional distress.

3 199. Since discovering the FBI surveilled him and the mosque he attended,  
4 Malik believes that any of his communications in the mosque and over telephones  
5 may be monitored, and indeed that he may be under surveillance at any time. He  
6 curtails phone and email conversations with his friends and family because of his  
7 belief that they may be monitored. He also suspects that any newcomer to a  
8 mosque may be an FBI informant, and has refused to be as welcoming to  
9 newcomers as he believes his religion requires. This constant fear of being under  
10 surveillance because of Defendants' acts has caused Malik severe and ongoing  
11 anxiety and emotional distress.

12 **Monteilh's Interaction with Yasser AbdelRahim**

13 200. A few weeks after Monteilh took *shahadah* at ICOI, a group of young  
14 men approached him at the mosque, said they were impressed that he attended  
15 mosque so regularly and invited him to socialize with them at their house. Agents  
16 Armstrong and Allen told Monteilh that the men's home was already under  
17 surveillance because it was shared by five young, unmarried Muslim Egyptian men  
18 with different skills and backgrounds — including a computer analyst, a  
19 pharmacist, an accountant, and one who handled logistics — and that for that  
20 reason they believed they might be a Muslim Brotherhood cell.

21 201. A few days after this invitation, Monteilh told Agents Armstrong and  
22 Allen that one of the young men who lived at the house, Plaintiff Yasser Abdel  
23 AbdelRahim, was a person who seemed to attract and have influence with young  
24 Muslims. Agents Armstrong and Allen told him they thought AbdelRahim was the  
25 leader of the cell, and that he should spend time at their house, and with  
26 AbdelRahim in particular, and gather as much information as he could. Monteilh  
27 did so, and gave recordings of all the conversations he had with AbdelRahim and  
28 the other members of the house to Agents Armstrong and Allen, along with notes

1 about his observations.

2 202. Agents Armstrong and Allen told Monteilh to get into every room in  
3 AbdelRahim's house to see what was in there, and include that information in his  
4 reports. Later, in about February or March of 2007, Armstrong and Allen  
5 equipped Monteilh with a video camera hidden in a shirt button and instructed him  
6 to conduct video surveillance of the layout and contents of the house, which he did.

7 203. Shortly after first meeting Monteilh, AbdelRahim and one of his  
8 roommates bought Monteilh some books on Islam, and later asked he what thought  
9 of them. Some time after that, AbdelRahim agreed to meet with Monteilh to teach  
10 him various prayers. Agents Armstrong and Allen expressed excitement at this,  
11 and asked for the first sheet of paper on which AbdelRahim had written a prayer  
12 for Monteilh to learn, telling him when they gave it back a few days later that they  
13 had lifted AbdelRahim's fingerprints from it.

14 204. When Monteilh reported that AbdelRahim always led prayer in the  
15 house, Agents Armstrong and Allen said that showed leadership, and confirmed  
16 that the surveillance should focus on him.

17 205. Pursuant to standing instructions from Agents Armstrong and Allen,  
18 Monteilh gathered and provided them information about AbdelRahim's travel  
19 plans, particularly when AbdelRahim was going to or from Egypt to see his family  
20 or his fiancé's family. After one of these trips to Egypt, AbdelRahim complained  
21 that he had questioned for a long time when he re-entered the country – that he  
22 expected some delay but this had been way too long. Agents Armstrong and Allen  
23 told Monteilh they had been responsible for that questioning.

24 206. During this time, AbdelRahim played pick-up soccer with other  
25 Muslim youth. Monteilh attended some of these games and took down the license  
26 plates of people who attended. On more than one occasion, he made a video  
27 recording with a hidden camera Agents Armstrong and Allen provided him, in  
28 order to document who was attending and socializing with one another.

1           207. After Monteilh learned through conversations that AbdelRahim  
2 traveled to a particular city for his job, Agents Armstrong and Allen had a  
3 particular group of Muslims in that city surveilled and believed he went there to  
4 report or get instructions from this group. As Agents Armstrong and Allen had  
5 told Monteilh to report all travel plans, he reported AbdelRahim's travel plans on  
6 several occasions. Agents Armstrong and Allen told Monteilh that they had  
7 AbdelRahim surveilled when he traveled, based on Monteilh's information.

8           208. Monteilh talked to AbdelRahim about his fiancée, who lived in  
9 Detroit, and her family, and transmitted what information he learned to Agents  
10 Armstrong and Allen — including her email address.

11           209. On different occasions, Agents Armstrong and Allen told Monteilh  
12 that the FBI had electronic listening devices in AbdelRahim's house, as well as in  
13 AbdelRahim's car and phone. For example, one day, one of Monteilh's handlers  
14 called to tell him that a friend had driven up to AbdelRahim's house quickly in an  
15 agitated state, and asked Monteilh to go down there to find out what was going on.  
16 When Monteilh asked how he knew this, he indicated they had video outside the  
17 house. Another time, Agents Armstrong and Allen asked him about something  
18 that happened inside the house that he hadn't yet put in his notes, then told him that  
19 they knew because they had audio surveillance in the home.

20           210. Agents Armstrong and Allen said that AbdelRahim was donating  
21 money to a charitable organization in Egypt and that these donations had been  
22 tracked by the Treasury Department. They said that these donations were not  
23 unlawful, but that they could make them seem suspicious in order to threaten him  
24 and pressure him to provide information and become an informant.

25           211. On many Tuesday nights, an imam from the Garden Grove mosque  
26 gave Arabic language teachings at ICOI. AbdelRahim often attended. On several  
27 occasions, Monteilh used recording devices provided by his handlers to record  
28 these teachings and the discussions afterward by going into the prayer hall to pray

1 near the group, then leaving his things — including the recording device (disguised  
2 as a key fob or cell phone) — near to where the group was talking, and then go to  
3 another part of the mosque or a different part of the prayer hall to pray. The  
4 recording device would capture their conversation when Monteilh was not within  
5 earshot. AbdelRahim was part of the group when Monteilh recorded on several  
6 occasions.

7 212. On instructions from Agents Armstrong and Allen, Monteilh asked  
8 AbdelRahim questions about *jihad* and pressed him on his views about religious  
9 matters and certain religious scholars (particularly Egyptian ones) in order to get  
10 him to say something that might be incriminating or provide a way to pressure him  
11 to provide information to the FBI. AbdelRahim told Monteilh that there was more  
12 to Islam than *jihad*: that *jihad* is a personal struggle, and that to the extent that  
13 there is such thing as a fighting *jihad*, the Quran places very strict rules that  
14 prohibit harming plants or trees, infants, elderly or women, and that terrorists who  
15 say they are engaged in *jihad* are committing murder. When Monteilh brought up  
16 religious scholars Agents Armstrong and Allen had instructed him to mention, like  
17 Hassan al-Banna and Sayid Qutb, AbdelRahim said that he did not agree with  
18 them, but thought that the Egyptian government should not have executed them.

19 213. When Monteilh was reported to the FBI by Muslim community  
20 members, AbdelRahim was contacted by FBI agents and met with them to offer  
21 information about Monteilh and his extremist rhetoric. Upon information and  
22 belief, one of these agents was Defendant Paul Allen.

23 214. A few months later, AbdelRahim unexpectedly met the same FBI  
24 agents, who were waiting for him outside the office of his chiropractor. He was  
25 surprised to see them there as he had scheduled an appointment with the  
26 chiropractor just an hour or so prior. They went to a coffee shop and showed him a  
27 search warrant and told him that his storage unit was being searched by the FBI.  
28 Two days later, they met again with AbdelRahim and asked him if he knew of any

1 person engaged in any suspicious activity at the mosque or elsewhere. They asked  
2 AbdelRahim if he minded contacting the agents if he came across any information  
3 of anyone doing anything. AbdelRahim understood that they were asking him to  
4 be an informant, and he refused. The FBI agents asked not to mention the offer to  
5 anyone.

6 215. Since he had contact with Monteilh, AbdelRahim has also been  
7 subjected to extensive secondary questioning and searches most of the times he has  
8 returned to the U.S. from trips abroad. These interrogations and the fear that he  
9 will be subjected to them when he travels have caused AbdelRahim severe anxiety  
10 and emotional distress.

11 216. Since discovering the FBI surveilled him and the mosque he attended,  
12 AbdelRahim believes that any of his communications in the mosque and over  
13 telephones or email may be monitored, and indeed that he may be under  
14 surveillance at any time. He also suspects that any newcomer to a mosque may be  
15 an FBI informant, and has refused to be as welcoming to newcomers as he believes  
16 his religion requires. This constant fear of being under surveillance because of  
17 Defendants' acts has caused AbdelRahim severe and ongoing anxiety and  
18 emotional distress.

19 217. Since these incidents, AbdelRahim's confidence in the mosque as a  
20 sanctuary has been ruined. He significantly decreased his attendance to mosque  
21 services for fear of surveillance, and as such his donations to mosque institutions  
22 also decreased. This interference with his religious practice has caused  
23 AbdelRahim severe and ongoing anxiety and emotional distress.

24 **CLASS ALLEGATIONS**

25 218. Plaintiffs, as class representatives, bring claims for injunctive relief on  
26 behalf of themselves and all similarly situated persons pursuant to Rule 23(a) and  
27 (b)(2).

28 219. Plaintiffs, as class representatives, bring this action on their own

1 behalf and on behalf of the following class:

2 All individuals targeted by Defendants for surveillance or  
3 information-gathering through Monteilh and Operation Flex, on  
4 account of their religion, and about whom the FBI thereby gathered  
5 personally identifiable information.

6 220. *Numerosity.* The size of the class makes a class action both necessary  
7 and efficient. Plaintiffs estimate that the class consist of hundreds if not  
8 thousands of current and former residents of Southern California. Members of the  
9 class are ascertainable through a review of Defendants' files on Operation Flex, but  
10 so numerous that joinder is impracticable.

11 221. *Typicality.* The claims of the Plaintiffs are typical of the claims of the  
12 class as a whole. Each of the Plaintiffs was subjected to surveillance by  
13 Defendants during the relevant period. As a result of Defendants' practices,  
14 Defendants have discriminated against each of Plaintiffs on the basis of their  
15 religion and religious practices, in violation of law. The unlawful policies and  
16 practices that have operated to discriminate against the Plaintiffs are typical of the  
17 unlawful practices that operated to discriminate against other class members so as  
18 to unlawfully target them for surveillance because of their religion and religious  
19 practices.

20 222. *Common Questions of Law and Fact.* This case poses common  
21 questions of law and fact affecting the rights of all members of the class, including,  
22 but not limited to:

- 23 a. Whether Defendants engaged in a program of conducting  
24 surveillance of mosques in Orange County, and the Plaintiffs  
25 and class members who attended those mosques;
- 26 b. Whether Defendants targeted Plaintiffs and class members for  
27 surveillance through Monteilh because they were Muslims or  
28 because of their practice of Islam;
- c. Whether Defendants' practice of targeting Plaintiffs and class

1 members for surveillance because they were Muslim or because  
2 of their practice of Islam constitutes impermissible religious  
3 discrimination under the First Amendment;

4 d. Whether Defendants' practice of targeting Plaintiffs and class  
5 members for surveillance because they were Muslim or because  
6 of their practice of Islam violates the guarantee of equal  
7 protection of the laws under the Fifth Amendment;

8 e. Whether Defendants' practice of targeting Plaintiffs and class  
9 members for surveillance because they were Muslim or because  
10 of their practice of Islam places a substantial burden on the  
11 religious exercise of Plaintiffs and class members under the  
12 First Amendment;

13 f. Whether Defendant FBI maintains records on Plaintiffs and  
14 class members, arising out of the investigation at issue,  
15 describing how they exercise rights guaranteed by the First  
16 Amendment;

17 g. Whether the maintenance by Defendant FBI of records on  
18 Plaintiffs and class members describing how they exercise  
19 rights guaranteed by the First Amendment is pertinent to and  
20 within the scope of lawful, authorized law enforcement activity;

21 h. Whether information gathered by Defendants pursuant to  
22 unlawful surveillance should be disgorged and purged from  
23 their files;

24 i. Whether Defendants conspired for the purpose of depriving  
25 Plaintiffs and other class members of their rights for purposes  
26 of 42 U.S.C. § 1985;

27 j. Whether and what kinds of declaratory and injunctive relief are  
28 appropriate.

223. *Adequacy of Class Representation.* Plaintiffs can adequately and  
fairly represent the interests of the class as defined above, because their individual  
interests are consistent with, and not antagonistic to, the interests of the class.

224. *Adequacy of Counsel for the Class.* Counsel for Plaintiffs possess the  
requisite resources and ability to prosecute this case as a class action and are

1 experienced civil rights attorneys who have successfully litigated other cases  
2 involving similar issues.

3 225. *Propriety of Class Action Mechanism.* Class certification is  
4 appropriate because the prosecution of separate actions against Defendants by  
5 individual class members would create a risk of inconsistent or varying  
6 adjudications that would establish incompatible standards of conduct for  
7 Defendants and because Defendants have acted or refused to act on grounds that  
8 apply generally to the class.

9 **CLAIMS FOR RELIEF**

10 **First Cause of Action**

11 **Violation of the First Amendment Establishment Clause**

12 **Claim under *Bivens*; 28 U.S.C. § 1331**

13 **(Against All Defendants except the FBI and United States by all Plaintiffs.)<sup>37</sup>**

14 226. Plaintiffs incorporate Paragraphs 1- 225 as if fully set forth herein.

15 227. As set forth above, Defendants engaged in a scheme to target  
16 Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the  
17 religion of Islam. This scheme discriminates against Muslims, in violation of the  
18 Establishment Clause of the First Amendment to the United States Constitution.

19 **Second Cause of Action**

20 **Violation of the First Amendment Establishment Clause**

21 **Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343**

22 **(Against Individual Capacity Defendants by all Plaintiffs.)**

23 228. Plaintiffs incorporate Paragraphs 1- 227 as if fully set forth herein.

24 229. As set forth above, Defendants engaged in a scheme to target

25  
26 <sup>37</sup> Plaintiffs' claims for damages under *Bivens* are made against those Defendants  
27 named in their individual capacities, while their claims for injunctive relief under  
28 Section 1331 are made against Defendants named in their official capacities.

1 Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the  
2 religion of Islam and for the purpose of discriminating against Plaintiffs, as  
3 Muslims, in violation of the Establishment Clause of the First Amendment to the  
4 United States Constitution.

5 230. Through their scheme, Defendants conspired, and conspired to go in  
6 disguise on the premises of another, for the purpose of depriving Plaintiffs, directly  
7 or indirectly, of the equal protection of the laws, and of equal privileges and  
8 immunities under the laws, because of their adherence to and practice of Islam.  
9 Defendants performed these acts with discriminatory animus against Muslims.

10 **Third Cause of Action**

11 **Violation of the First Amendment Free Exercise Clause**

12 **Claim under *Bivens*; 28 U.S.C. § 1331**

13 **(Against All Defendants except the FBI and United States by all Plaintiffs.)**

14 231. Plaintiffs incorporate Paragraphs 1-230 as if fully set forth herein.

15 232. As set forth above, Defendants engaged in a scheme to target  
16 Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the  
17 religion of Islam. This scheme discriminates against Muslims, in violation of the  
18 Free Exercise Clause of the First Amendment to the United States Constitution.

19 233. As set forth above, Defendants' surveillance placed a substantial  
20 burden on Plaintiffs' religious exercise in their practice of Islam and is justified by  
21 no legitimate government interest.

22 **Fourth Cause of Action**

23 **Violation of the First Amendment Free Exercise Clause**

24 **Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343**

25 **(Against Individual Capacity Defendants by all Plaintiffs.)**

26 234. Plaintiffs incorporate Paragraphs 1-233 as if fully set forth herein.

27 235. As set forth above, Defendants engaged in a scheme to target  
28 Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the

1 religion of Islam and for the purpose of discriminating against Plaintiffs, as  
2 Muslims in violation of the Free Exercise Clause of the First Amendment to the  
3 United States Constitution.

4 236. As set forth above, Defendants' surveillance placed a substantial  
5 burden on Plaintiffs' religious exercise in their practice of Islam and is justified by  
6 no legitimate government interest.

7 237. Defendants have conspired, and conspired to go in disguise on the  
8 premises of another, for the purpose of depriving Plaintiffs, directly or indirectly,  
9 of the equal protection of the laws, and of equal privileges and immunities under  
10 the laws, because of their adherence to and practice of Islam. Defendants  
11 performed these acts with discriminatory animus against Muslims.

12 **Fifth Cause of Action**

13 **Violation of Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1**

14 **(Against All Defendants by all Plaintiffs.)**

15 238. Plaintiffs incorporate Paragraphs 1-237 as if fully set forth herein.

16 239. The actions of Defendants substantially burdened Plaintiffs' exercise  
17 of religion, and are neither in furtherance of a compelling governmental interest  
18 nor the least restrictive means of furthering any compelling governmental interest.

19 **Sixth Cause of Action**

20 **Violation of Fifth Amendment Equal Protection Clause**

21 **Claim under *Bivens*; 28 U.S.C. § 1331**

22 **(Against All Defendants except the FBI and United States by all Plaintiffs.)**

23 240. Plaintiffs incorporate Paragraphs 1-239 as if fully set forth herein.

24 241. As set forth above, Defendants have engaged in a scheme to target  
25 Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the  
26 religion of Islam. This scheme discriminates against Muslims, in violation of the  
27 Equal Protection Clause of the Fifth Amendment to the United States Constitution.

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**Seventh Cause of Action**

**Violation of the Equal Protection Clause**

**Claim under 42 U.S.C. § 1985(3); 28 U.S.C. § 1343**

**(Against Individual Capacity Defendants by all Plaintiffs.)**

242. Plaintiffs incorporate Paragraphs 1-241 as if fully set forth herein.

243. As set forth above, Defendants have engaged in a scheme to target Plaintiffs for surveillance because of Plaintiffs' adherence to and practice of the religion of Islam. This scheme discriminates against Muslims, in violation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

244. Defendants have conspired, and conspired to go in disguise on the premises of another, for the purpose of depriving Plaintiffs, directly or indirectly, of the equal protection of the laws, and of equal privileges and immunities under the laws, because of their adherence to and practice of Islam. Defendants performed these acts with discriminatory animus against Muslims.

**Eighth Cause of Action**

**Violation of the Privacy Act, 5 U.S.C. § 552a(a)-(I)**

**(Against Defendant FBI by all Plaintiffs.)**

245. Plaintiffs incorporate Paragraphs 1-244 as if fully set forth herein.

246. Defendant FBI, through Monteilh, collected and maintained records describing how Plaintiffs exercised their First Amendment rights, in violation of 5 U.S.C. §552a(e)(7). Collection and maintenance of these records is not expressly authorized by statute, not authorized by Plaintiffs, and is neither pertinent to nor within the scope of an authorized law enforcement activity.

247. Defendant FBI's collection and maintenance of records of Plaintiffs' First Amendment activities was intentional and willful, insofar as Defendants gathered the information for the purpose of collecting and maintaining records of Plaintiffs' First Amendment activities.

248. On or about September 6 and 12, 2011, Plaintiffs submitted letters to

1 the FBI requesting that the FBI disclose all records in the possession of the FBI,  
2 associated with each Plaintiff, that were “gathered through the surveillance of  
3 former FBI informant Craig Monteilh and/or Operation Flex, as well as any  
4 information derived from that information.” The letters also requested that the FBI  
5 “expunge all records associated with [Plaintiffs] that describe the exercise of [their]  
6 rights under the First Amendment of the United States Constitution that were  
7 gathered through the surveillance of former FBI informant Craig Monteilh and/or  
8 Operation Flex, as well as any records derived from that information.” The FBI  
9 has to date failed to provide Plaintiffs with those records or otherwise to respond to  
10 their requests.

11 249. Defendant FBI has failed to disclose records as required by Section  
12 552a(d)(1). The records requested are not exempt from disclosure pursuant to  
13 Section 552a(j-k) or any other applicable law.

14 **Ninth Cause of Action**

15 **Violation of the Fourth Amendment**

16 **Claim under *Bivens*; 28 U.S.C. § 1331.**

17 **(Against All Defendants except the FBI and United States by all Plaintiffs.)**

18 250. Plaintiffs incorporate Paragraphs 1- 249 as if fully set forth herein.

19 251. Defendants’ actions as set forth above constitute unreasonable  
20 searches in violation of the Fourth Amendment to the United States Constitution,  
21 including but not limited to Defendants’ actions in audio recording Plaintiffs’  
22 communications without a warrant and where no party to the communication  
23 consented to the recording; video recording in homes and other places where  
24 Plaintiffs had a reasonable expectation of privacy against video recording; and  
25 entering and planting electronic listening devices in mosques without a warrant.

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**Tenth Cause of Action**

**Violation of the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1810**

**(Against All Defendants by all Plaintiffs.)**

252. Plaintiffs incorporate Paragraphs 1-251 as if fully set forth herein.

253. Defendants, under color of law, acting through Monteilh, used electronic, mechanical, and/or other surveillance devices, without a warrant, to monitor Plaintiffs and their communications and/or activities, and to acquire information under circumstances in which Plaintiffs had a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

**Eleventh Cause of Action**

**Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.***

**(Against Defendant United States by all Plaintiffs.)**

254. Plaintiffs incorporate Paragraphs 1-253 as if fully set forth herein.

255. At all times relevant to the complaint, Defendants Armstrong, Allen, Rose, Tidwell and Walls, were employees of the United States, acting in the scope of their employment through their own actions and their directions to employees and agents, under circumstances that would render the United States, if a private person, liable for damages that their actions caused Plaintiffs under California law. The United States is therefore liable to Plaintiffs, as follows, pursuant to 28 U.S.C. §§ 1346(b) and 2674.

256. The United States, if a private person, would be liable to Plaintiffs for invasion of privacy under California law. Defendants' acts in conducting audio and video surveillance of Plaintiffs, through Monteilh and Operation Flex, in situations in which Plaintiffs' had a reasonable expectation of privacy, constitute intrusions into a private place or matter in a manner highly offensive to a reasonable person.

257. The United States, if a private person, would be liable to Plaintiffs for violations of the California constitutional right of privacy set forth in Article 1,

1 section 1 of the California constitution. Defendants' conduct in conducting audio  
2 and video surveillance of Plaintiffs, both through Monteilh and Operation Flex, in  
3 situations in which Plaintiffs' had a reasonable expectation of privacy, and in  
4 compiling and maintaining information on Plaintiffs based solely on their religion  
5 and religious practice, amounts to a serious invasion of their rights to privacy.

6 258. The United States, if a private person, would be liable to Plaintiffs for  
7 violations of California Civil Code section 52.1. By subjecting Plaintiffs to  
8 constant surveillance because of their religion, then publicly revealing that  
9 surveillance, Defendants have interfered, or attempted to interfere, by threats,  
10 intimidation, or coercion with the exercise or enjoyment by Plaintiffs of their rights  
11 to practice their religion and to be free from religious discrimination under the  
12 California Constitution, in violation of California Civil Code § 52.1.

13 259. The United States, if a private person, would be liable to Plaintiffs for  
14 the intentional infliction of emotional distress under California law. Defendants'  
15 acts constitute extreme and outrageous conduct, in which they engaged with the  
16 intention of causing, or a reckless disregard for the probability of causing,  
17 emotional distress in plaintiffs; which was the actual or proximate cause of severe  
18 or extreme emotional distress that Plaintiffs have suffered.

19 260. Plaintiffs presented the FBI with notification of the above-alleged  
20 incidents and claims for monetary damages in claims sent to the FBI using  
21 Standard Form 95 on or about February 21, 2011. The FBI failed to make any  
22 response to Plaintiffs' claims within six months after they were filed.

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiffs respectfully request that the Court grant the following  
25 relief:

- 26 a. Certify a Class under Rule 23(b)(2), as described above;  
27 b. Injunctive relief on behalf of Plaintiffs and all other putative class  
28 members ordering Defendants to destroy or return any information

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- gathered through the unlawful surveillance program by Monteilh and/or Operation Flex described above, and any information derived from that unlawfully obtained information, as well as to comply with their obligations under the Privacy Act, 5 U.S.C. § 552a;
- c. Compensatory and punitive damages for violations of the laws of the United States and California, in an amount to be proven at trial;
  - d. Liquidated damages in an amount to be proven at trial pursuant to 50 U.S.C. §§ 1810(a), 1828(a), and California Civil Code §§ 52(a), 52.1(b);
  - e. Reasonable attorneys' fees and costs;
  - f. Any other relief as this Court deems proper and just.

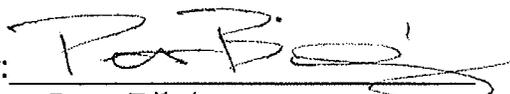
Dated: September 13, 2011

Respectfully Submitted,

ACLU FOUNDATION OF SOUTHERN CALIFORNIA

COUNCIL ON AMERICAN-ISLAMIC RELATIONS, CALIFORNIA

HADSELL STORMER KEENY RICHARDSON & RENICK LLP

By: 

Peter Bibring  
Attorneys for Plaintiffs

# ATTACHMENT

1



1 CASE NUMBER: KA059040  
2 CASE NAME: PEOPLE OF THE STATE OF CALIFORNIA  
3 VS. CRAIG MONTEILH  
4 WEST COVINA, CALIFORNIA AUGUST 20, 2007  
5 DEPARTMENT NO. 8 HON. ABRAHAM KHAN, JUDGE  
6 REPORTER: DIANA WHITESEL, CSR NO. 6287  
7 TIME: 2:40 P.M.

8 APPEARANCES:  
9 (LINDA CHILSTROM, DEPUTY DISTRICT ATTORNEY  
10 OF LOS ANGELES COUNTY.)

11 -000-

12  
13 THE CLERK: PEOPLE ARE GOING TO MOVE TO MAKE A MOTION TO  
14 TERMINATE PROBATION.

15 THE COURT: CRAIG F. MONTEILH. KA059040.

16 MS. CHILSTROM: YOUR HONOR, I HAVE BEEN INFORMED BY  
17 MR. SATO OF MY OFFICE THAT HEAD DEPUTY SCOTT CARBAUGH HAS  
18 REQUESTED THAT THIS CASE -- THAT THE PROBATION IN THIS MATTER BE  
19 TERMINATED.

20 THE COURT: CAN YOU GIVE ME A REASON?

21 MS. CHILSTROM: I DON'T KNOW A REASON. I WAS JUST TOLD IT  
22 WAS UPON THE REQUEST OF THE HEAD DEPUTY.

23 THE COURT: I'M GOING TO CONTINUE THIS UNTIL TOMORROW  
24 UNTIL YOU CAN GIVE ME A REASON. I USUALLY DON'T TERMINATE  
25 PROBATION UNLESS THERE IS SOMETHING I CAN RELY ON.

26 MS. CHILSTROM: NOT A PROBLEM.

27 I TAKE IT, WE'RE WAITING FOR MR. LINDARS.

28 MAY I MAKE A QUICK CALL?

1 (PAUSE TN PROCEEDINGS.)

2  
3 MS. CHILSTROM: YOUR HONOR, COULD THE COURT RECALL THE  
4 LAST CASE?

5 THE COURT: OKAY. WE'RE STILL ON THE RECORD IN CRAIG F.  
6 MONTEILH.

7 MS. CHILSTROM: YOUR HONOR, I JUST SPOKE WITH MR. SATO.  
8 INITIALLY I WAS JUST TOLD THAT THE HEAD DEPUTY WANTED THE  
9 PROBATION TERMINATED.

10 APPARENTLY THE DEFENDANT IS WORKING WITH F.B.I. AGENT  
11 KEVIN ARMSTRONG. HE HAS GIVEN AGENT ARMSTRONG VERY, VERY  
12 VALUABLE INFORMATION THAT HAS PROVEN TO BE ESSENTIAL IN AN F.B.I.  
13 PROSECUTION. IT WAS AGENT ARMSTRONG THAT CONTACTED THE HEAD  
14 DEPUTY AND THE HEAD DEPUTY INSTRUCTED US TO ASK FOR TERMINATION.

15 THE COURT: WELL, OKAY. I KNOW THE DEFENDANT HIMSELF WAS  
16 HERE IN APRIL AND HAD REQUESTED EARLY TERMINATION. AND I BELIEVE  
17 ON RECOMMENDATION OF THE DISTRICT ATTORNEY, I DENIED HIS REQUEST.  
18 AND THAT WAS BACK IN APRIL. THAT'S WHY I WANTED TO FIND OUT WHAT  
19 THE REASONS WHY WERE AT THIS TIME BECAUSE IT'S ONLY BEEN FOUR  
20 MONTHS AFTER.

21 BUT OTHERWISE HE'S PAID HIS FINANCIAL OBLIGATION AND  
22 HE'S OTHERWISE BEEN ON PROBATION -- HOW LONG HAS HE BEEN ON?  
23 IT'S KA059040. IS THAT '03?

24 MS. CHILSTROM: IT IS '03, YOUR HONOR.

25 THE CLERK: YES, YOUR HONOR, SINCE MAY 5, '03.

26 THE COURT: ALL RIGHT. APPARENTLY HE'S HAD PROBATION  
27 EXTENDED. IT MAY HAVE BEEN BECAUSE OF A WARRANT THAT HAD BEEN  
28 ISSUED WHICH IT WOULD OTHERWISE TOLL THE RUNNING OF HIS PERIOD.

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I'LL GRANT THE REQUEST FOR THE REASONS STATED.

MS. CHILSTROM: THANK YOU.

(THE PROCEEDINGS IN THE ABOVE-ENTITLED  
MATTER WERE ADJOURNED.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - WEST COVINA BRANCH

DEPARTMENT 8

HON. ABRAHAM KHAN, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

CRAIG F. MONTEILH,

DEFENDANT.

) NO. KA059040

) REPORTER'S  
) CERTIFICATE

I, DIANA WHITESEL, CSR NO. 6287, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF ALL OF THE ADMONITIONS TAKEN AT THE TIME OF THE TAKING OF THE PLEA AND PRONOUNCEMENT OF SENTENCE IN THE ABOVE-ENTITLED CAUSE; AND FURTHER THAT THE VIEWS AND RECOMMENDATIONS OF THE COURT, IF ANY, ARE CONTAINED THEREIN PURSUANT TO SECTION 1203.01 OF THE PENAL CODE THE ABOVE-ENTITLED MATTER.

DATED THE DECEMBER 2, 2009

*Diana Whitesel*, CSR NO. 6287  
DIANA WHITESEL, OFFICIAL REPORTER

# ATTACHMENT

2



U.S. Department of Justice  
Federal Bureau of Investigation

Washington, D. C. 20535-0001

June 16, 2010

Adam J. Krolikowski, Esq.  
Woods & Krolikowski  
1200 Main Street, Suite H  
Irvine, CA 92614

RE: Craig Monteilh [Confidential Communication]  
Compliance with NDA Notice Requirement

Dear Mr. Krolikowski:

This office is in receipt of your letter to Steven Kramer dated June 15, 2010. In your letter you state that Mr. Montielh has "been asked to review and sign declarations prepared by the ACLU for a lawsuit they will be filing concerning civil rights violations by the FBI within the Islamic Community during the time period of Operation Flex." I am aware that you have sent previous letters to the FBI concerning the Non-Disclosure Agreement that Mr. Monteilh signed on October 5, 2007; however, this is the first letter in which you reference a particular FBI operation or investigation. In advance of June 17, 2010, please provide us with any information that you intend to include in these declarations that is/or may be covered by the Non-Disclosure Agreement. The FBI maintains that all the obligations created under the Non-Disclosure Agreement remain in effect. Notification by Mr. Monteilh that he intends to disclose information covered by this agreement does not limit or nullify the obligations that he accepted by signing this agreement.

Sincerely,

Henry R. Felix  
Associate General Counsel  
Civil Litigation Unit II  
Office of the General Counsel  
Federal Bureau of Investigation  
PA 400  
935 Pennsylvania Ave., NW  
Washington, D.C. 20535  
Phone: 202-220-9328  
Fax: 202-220-9355