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Re: REQUEST UNDER FREEDOM OF INFORMATION ACT / Expedited Processing Requested

Attention:

This letter constitutes a request by the American Civil Liberties Union Foundation of Northern California (“ACLU-NC”) and the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (“LCCR”) under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). We request expedited processing of this request, pursuant to 28 C.F.R. § 16.5(d)(1)(ii), (iii), and (iv).

I. Background

The ACLU-NC is a branch of the ACLU, a national organization that works to protect the civil liberties of all people, including the safeguarding of immigrants’ rights. ACLU-NC is responsible for serving the population in Northern California. LCCR is an organization dedicated to protecting the civil rights of individuals in Northern California, particularly people of color, poor people, and immigrants and refugees.

On June 8, it was reported that the FBI had detained two individuals in Lodi, California on charges of providing false information to the FBI and detained three other individuals on immigration-related charges. Since then the FBI has sought to question a number of other individuals as well. While we recognize and support the right of law enforcement to conduct investigations of suspected criminal activity, such investigations must be done within the law in a way that respects the rights of all the individuals being questioned.

Recently, through news reports, discussions with community members, and personal observation, we have been made aware of several areas of concern. These include the following:

- Discouraging individuals from exercising their right to an attorney. At a recent meeting of community members and representatives from the Council on American-Islamic Relations (“CAIR”), the United States Attorney for the Eastern District of California, McGregor Scott, indicated that witnesses do not have a right to an attorney. While it is true that witnesses – as opposed to criminal defendants – are not entitled to a court-appointed attorney, anyone who chooses to talk with the FBI may exercise their right to an attorney. Such a statement is at best misleading and at worst false and intended to discourage individuals from exercising their rights to an attorney.
- Detention of an individual without providing Miranda warnings. We are aware of one instance where an individual was stopped, frisked, and searched and then instructed to go into a van with FBI agents. He was then questioned for nearly three hours and was never informed of his right to an attorney.

- Failure to allow access to an attorney. We are aware of one circumstance where an attorney had been retained for an individual who was being questioned by the FBI. The attorney tried to make contact with his client but the FBI did not tell the individual that his attorney was present. Instead, the FBI continued to question the individual for hours. He did not have a chance to talk with his attorney until the interview was over.
- Pressuring individuals to submit to questioning even after they expressed a desire for an attorney. We are aware of instances where the FBI has pressured individuals to submit to an FBI interview unrepresented even after they have clearly stated that they did not wish to speak without an attorney. FBI agents told one person that if he did not immediately submit to questioning, he would be bad-mouthed at work and arrested for the smallest offense, including jaywalking.
- Conducting surveillance of Know Your Rights' event in Stockton. There was a Know Your Rights event sponsored by CAIR on Saturday, June 11, 2005 in Stockton. This event was intended to inform individuals about their constitutional rights and there was an extreme level of FBI surveillance that was intimidating to the individuals in attendance.
- Surveillance and photographing of attorneys. Both Shirin Sinnar of LCCR and Mark Schlosberg of the ACLU-NC were followed and repeatedly photographed by federal agents during a fact-gathering trip to Lodi. Ms. Sinnar and Mr. Schlosberg called the FBI to lodge a complaint and asked for the name of the individual who accepted the complaint for future follow up. The FBI official indicated that she would not provide her name and we are uncertain if the complaint was recorded or forwarded for investigation.
- Administering polygraph examinations in English to people whose first language is not English. We are aware of one instance where an individual was asked to submit to a polygraph examination in English despite the fact that he is not a fluent English speaker.

II. Request

We are therefore seeking the disclosure of the agency records¹ reflecting or describing:

¹ The term "records" as used herein includes, but is not limited to, analyses, correspondence in email and written form, data, evaluations, faxes, guidance, guidelines, instructions, memoranda, notes, policy directives, policy statements, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals and materials, studies, and other written records or records by any other means, including but not limited to records kept on computers, electronic communications, photographs or video tapes. For all requests, we are seeking both general policy information and information specific to the FBI's policy and practice in Lodi over the past month in general and with regard to members of the Pakistani and Muslim community.

1. The circumstances under which individuals questioned or approached by the FBI are entitled or allowed access to an attorney and those when they are not.
2. The circumstances under which FBI agents may discourage or dissuade individuals from seeking an attorney, whether agents should discourage or dissuade individuals from seeking an attorney, and the techniques for discouraging or dissuading individuals from seeking an attorney.
3. The circumstances under which FBI agents should and/or must inform individuals of their right to an attorney.
4. The circumstances under which FBI agents should seek a polygraph examination, required or suggested admonitions prior to administering a polygraph examination, and when translators should or must be provided.
5. The circumstances under which FBI agents should, may, or must take photographs of individuals as part of their surveillance efforts and procedures for storage, dissemination, and destruction of the photographs.
6. Photographs, notes, surveillance logs, and other documents pertaining to ACLU attorney Mark Schlosberg and LCCR attorney Shirin Sinnar.
7. The circumstances under which FBI agents should allow or provide medical treatment to individuals who experience health problems during the course of an FBI home search or other FBI action and the circumstances under which paramedics may be prevented from contacting an individual.
8. Procedures for questioning children and youth under the age of 18, including the circumstances under which a parent and/or attorney may or should be contacted or present for the interview.

III. Waiver of Processing Fees Under The Freedom of Information Act

The ACLU-NC is a “representative of the news media,” and fees associated with the processing of this request should therefore be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU-NC publishes newsletters, news briefings, right-to-know documents, and other materials that are disseminated to the public. Its material is widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU-NC also disseminates information through its Web site,

<http://www.aclunc.org/>. The Web site addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains numerous documents that relate to the issues on which the ACLU-NC is focused. Finally, the ACLU-NC disseminates information through a newsletter, which is distributed to subscribers by mail (for more information, see Appendix "A").

The LCCR is likewise a "representative of the news media." The LCCR publishes newsletters, news alerts, "Know Your Rights" material, and other materials that are distributed to the public. It makes these materials available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. The LCCR also hosts a website at <http://www.lccr.com/> that contains information, including news articles and other resources, about important cases and issues involving civil liberties. In addition, the LCCR publishes information through a newsletter, which is distributed to members by mail.

The records requested are not sought for commercial use, and the ACLU-NC and LCCR plan to disseminate the information disclosed as a result of this FOIA request through the channels described above.

IV. Waiver of Duplication Costs Under The Freedom of Information Act

The ACLU-NC and LCCR request a fee waiver for duplication costs pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) & (iii). Disclosure of the requested information concerning the operations and activities of the Federal government procedures for providing and/or discouraging access to attorneys as well as surveillance procedures is in the public interest as such information is highly relevant to the protection of the civil rights and civil liberties of individuals residing in the Lodi community. See articles referenced below. As nonprofit 501(c)(3) organizations and "representatives of the news media", the ACLU-NC and LCCR are well-situated to disseminate information they gains from this request to the public, immigrant communities, and groups that protect immigrants rights via, as previously described, their websites, pamphlets, and "Know Your Rights" documents (for more information regarding ACLU-NC, see Appendix "A").

If our request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

V. Expedited Processing Requested

First, a requester is entitled to expedited processing when the information sought relates to "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv). The situation in Lodi has been the focus of intense local, national, and international media attention. *See e.g.*

1. *FBI: Al Qaeda plot possibly uncovered*, CNN.com, June 9, 2005

2. Dean E. Murphy and David Johnston, *California Father and son Face Charges in Terrorism Case*, nytimes.com, June 9, 2005
3. Don Thompson, *FBI Probing Terror in Calif. for Years*, chicagotribune.com, June 10, 2005
4. Rone Tempest and Lee Romney, *American, father held in probe of possible links to al-Qaida*, baltimoresun.com, June 9, 2005
5. Dan Eggen, *Man, father held in Al Qaeda probe*, boston.com (Boston Globe website), June 9, 2005
6. Don Thompson, *Pair accused of denying al-Qaida ties*, HoustonChronicle.com, June 9, 2005
7. Dan Eggen, *Father and son are arrested, said to have al-Qaida links*, sltrib.com (Salt Lake Tribune website), June 9, 2005
8. Rone Tempest, Greg Krikorian and Lee Romney, *Terror allegations vanish in affidavit*, seattletimes.nwsourc.com, June 10, 2005
9. Don Thompson, *Terror Probe in Calif. town isn't over yet*, miami.com (Miami Herald website), June 10, 2005.

Further, the media attention has focused particularly on the impact of the investigation on the local Muslim community and has shaken public confidence in the FBI. The news media has reported on a number of the stories referenced in the introduction and numerous reports have been issued regarding the civil rights implications of the Lodi investigation. The allegations contained in the news articles raise concerns about violations of individuals First, Fourth, Fifth, and Fourteenth Amendment rights. *See e.g.*

10. Layla Bohm, *Some not happy with how the FBI handling inquiry*, lodinews.com (Lodi News-Sentinel website), June 15, 2005
11. *Lodi Leaders Meet With Muslim Community*, TheKCRACHannel.com, June 9, 2005
12. *Lodi Muslims Allege 'Harassment' By FBI*, biz.yahoo.com, June 14, 2005 (also reported at prnewswire.com, June 14, 2005)
13. Venessa Hua, *Muslims in Lodi shaken, fearful of backlash as after 9/11*, knoxnews.com, June 8, 2005 (also reported at sfgate.com (San Francisco Chronicle Website), June 9, 2005)
14. M.S. Enkoji and Denny Walsh, *Lodi-case lawyer blames 'grilling,'* sacbee.com (Sacramento Bee website), June 14, 2005
15. *US: Pakistani Community 'Under Siege,'* adnki.com, June 15, 2005; Cameron Jahn, *Amid probe, Muslims advised on civil rights*, sacbee.com (Sacramento Bee website), June 15, 2005
16. *Some Muslims Fear Backlash After Terror Arrests*, cbs5.com, June 10, 2005
17. Lee Romney, *Terrorism Probe Shakes Lodi and Its Pakistani Community*, latimes.com, June 11, 2005
18. Jeff Hood, *Arrests raise rights concerns*, Stockton Record, June 14, 2005

19. Rone Tempest and Greg Krikorian, *Affidavit Changed in Terrorism Accusation*, latimes.com, June 10, 2005 (also reported at ktla.trb.com, June 10, 2005)
20. *Lodi Muslims Allege 'Harassment by FBI*, officialwire.com, June 14, 2005
21. Bobby Caina Calvan, *An outpost of Islam sees a federal intrusion*, boston.com (Boston Globe website), June 12, 2005
22. *Lodi Mayor balancing Terrorism, Civil Rights Concerns*, TheKCRACHannel.com, June 10, 2005
23. John Simerman and Jessica Guynn, *Agents, Muslims clash over probe*, contrcostatimes.com, June 10, 2005
24. Bud Stevenson, *Is racial profiling justified?*, dailyrepublic.com, June 14, 2005
25. *Patriot Act Revisited*, dailynews.com (Los Angeles Daily News website), June 12, 2005
26. L.A. Chung, *It's high time to debate the Patriot Act*, mercurynews.com, June 10, 2005
27. *Terror Probe Shakes Small Calif. Town*, freep.com (Detroit Free Press Website), June 10, 2005
28. *Bush pushes Patriot Act*, washtimes.com, June 9, 2005
29. Herbert A. Sample, *ACLU calls expansion of Patriot Act harmful*, sacbee.com (Sacramento Bee website), June 10, 2005
30. Josh Richman, *ACLU chief blasts PATRIOT Act*, insidebayarea.com, June 10, 2005 (also reported on websites for Tri-Valley Herald, Oakland Tribune, Daily Review Online, Alameda Times-Star, San Mateo County Times)
31. Don Thompson, *Feds criticized in Lodi terror probes*, insidebayarea.com, June 15, 2005
32. Sara Cardine, *Lodi teen shares thoughts on arrests of 5 local men*, lodinews.com (Lodi News-Sentinel website), June 10, 2005
33. Ross Farrow, *Breakthrough project calls emergency meeting, hears about FBI probe in Lodi*, lodinews.com (Lodi News-Sentinel website), June 14, 2005
34. Don Thompson, *Pakistanis a target for years*, dailynews.com (Los Angeles Daily News website), June 10, 2005
35. Andrew Adams, *Muslims meet with mayor*, lodinews.com (Lodi News-Sentinel website), June 10, 2005
36. Herbert A. Sample, *Lodi adds to debate on Patriot Act's fate*, sacbee.com (Sacramento Bee website), June 12, 2005
37. *Suspects' Attorney Criticizing Agencies*, ABC30.com, June 14, 2005; Tom Regan, *Terror allegations disappear from court filing*, csmonitor.com (Christian Science Monitor website), June 10, 2005
38. Lesli A. Maxwell, *Lodi's diverse culture tested*, sacbee.com (Sacramento Bee website), June 13, 2005
39. M.S. Enkoji, *5th Lodi Pakistani in custody*, modbee.com (Modesto Bee website), June 10, 2005
40. Rone Tempest, Greg Krikorian and Lee Romney, *Probe of Possible Lodi Terrorist Links Widens*, ktla.trb.com, June 9, 2005

41. Jaxon Van Derbeken, Michael Taylor and Demian Bulwa, *FBI terror probe moves to Peninsula: Official of Lodi Islamic center questioned in East Palo Alto, denies militant ties*, sfgate.com (San Francisco Chronicle website), June 10, 2005
42. Laura Krutzman and Lisa Fernandez, *Terror arrests surprise Lodi*, mercurynews.com (San Jose Mercury News website), June 9, 2005 (also reported at Charlotte.com (Charlotte Observer website), HeraldToday.com, DuluthNewsTribune.com, MontereyHerald.com, Tallahassee.com (Tallahassee Democrat website), SanLuisObispo.com (San Luis Obispo Tribune website), Ledger-Enquirer.com, MyrtleBeachOnline.com, MaconTelegraph.com, CentreDaily.com and FortWayne.com (Fort Wayne News-Sentinel website)).

Second, expedited processing is warranted where the records sought relate to “the loss of substantial due process rights.” 28 C.F.R. § 16.5(d)(1)(iii). Here, the records sought relate directly to alleged violations of individuals’ due process rights – specifically in the areas of access to attorneys, translators, medical attention and the right to be free from and seek redress for inappropriate government surveillance.

Third, expedited processing is warranted where there is “an urgency to inform the public about an actual or alleged federal government activity” by organizations “primarily engaged in disseminating information” 28 C.F.R. § 16.5(d)(1)(ii). The ACLU of Northern California is “primarily engaged in disseminating information” and the records in question involve the FBI’s actual and alleged activities in Northern California. There is an urgency to inform the public about such activities because it bears directly on the public’s exercise of their constitutional rights. (Please see attached Appendix “A” for a description of the ACLU of Northern California’s media and publication activities).

Finally, pursuant to applicable regulations and statutes, the ACLU-NC expects your determination of our request for expedited processing within 10 calendar days and your determination of our request for documents within 20 days. *See* 28 C.F.R. 16.5(d)(4); 5 U.S.C. § 552(a)(6)(A)(i).

Thank you for your prompt attention to this matter. Please furnish all applicable records to Mark Schlosberg and Shirin Sinnar c/o American Civil Liberties Union of Northern California, 1663 Mission Street, Suite 460, San Francisco, California 94103, telephone (415) 621-2493.

We affirm that the information provided supporting the request for expedited processing is true and correct to the best of our knowledge and belief.

Sincerely,



Mark Schlosberg
Staff Attorney
ACLU-NC



Shirin Sinnar
Attorney
LCCR

Enclosures
Appendix A
News articles

APPENDIX A

Description of the ACLU of Northern California's Media and Publication Activities

The ACLU Foundation of Northern California engages in several significant media and publication activities. These include the following:

1. Regularly maintaining and updating a website (www.aclunc.org) which includes information about ACLU cases and various subject areas related to civil liberties.
2. Publishing a bi-monthly newsletter that is sent to the over 40,000 ACLU members in Northern California.
3. Producing reports on various civil liberties issues. Several published in the past three years include: *Caught in the Backlash: Stories from Northern California*, 2002; *Driving While Black or Brown: The California DWB Report*, 2002; *Sex Education in California Schools*, 2003; *Roadmap to Reform: Strengthening Accountability of the San Francisco Police Department*, 2003; among others.

In addition to reports on substantive civil liberties issues, the ACLU of Northern California also produces numerous pamphlets, informational flyers, and brochures on various topics related to civil liberties. The ACLU also produces an annual report outlining organizational activities and accomplishments.

4. Engaging the media including issuing press releases, and organizing press conferences related to significant civil liberties issues.
5. Public speaking and outreach including regularly attending and speaking at community meetings and other public forums to inform people about various civil liberties issues.