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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
)
)
Defendant.)
_____)

COMPLAINT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from Plaintiff American Civil Liberties Union of Washington (“ACLU”) by Defendant U.S. Department of Justice (“DOJ”).

2. The ACLU seeks to compel the release of records describing the operation and maintenance of the National Crime Information Center (“NCIC”) Violent Gang and Terrorist Organization File (“VGTOF”) maintained by the Federal Bureau of Investigation (“FBI”), a component of Defendant, DOJ. The NCIC is a computerized system that makes criminal history

1 information instantly and widely available to police officers and tens of thousands law
2 enforcement agencies across the United States. The object of this action is to obtain information
3 about how the NCIC VGTOF database is maintained and used by the FBI.

4 3. Inclusion in the NCIC VGTOF database can have significant impact upon even routine
5 interactions with the police and may affect an individual's employment opportunities and
6 financial standing. The NCIC database has been exempted from the Privacy Act since 2003
7 because the Justice Department has argued that "it is impossible to determine in advance what
8 information is accurate, relevant, timely and complete." Thus, despite the serious potential harms
9 resulting from misinformation in the NCIC system, traditional governmental mechanisms for
10 ensuring accuracy and accountability do not apply to that database. No process exists for
11 individuals to contest or ensure the accuracy of their designation, or even to ascertain how, why,
12 or whether they are included.
13

14 4. Despite the ACLU's compliance with all statutory requirements in requesting records
15 regarding the NCIC, Defendant has been entirely unresponsive to the ACLU's request.
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17 JURISDICTION AND VENUE

18 5. This Court has both subject matter jurisdiction over the ACLU's claims and personal
19 jurisdiction over Defendant agency pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has
20 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346.

21 6. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e),
22 as Plaintiff resides in Seattle, Washington.
23

24 PARTIES

25 7. Plaintiff ACLU is a Seattle, Washington based civil liberties organization. The ACLU
26 seeks access to these records in order to understand how the FBI is using the NCIC VGTOF as a
27 law enforcement tool and whether it is doing so in a manner consistent with civil liberties.
28

1 8. Defendant DOJ is the federal agency responsible for the legal business of the United
2 States, including the investigation and prosecution of criminal activity within the United States.
3 The FBI, a component entity of DOJ, is responsible for investigating violations of the criminal
4 laws of the United States. The FBI maintains the NCIC database and regularly employs it in
5 carrying out investigations. DOJ is an agency within the meaning of 5 U.S.C. § 552(f).
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8 **STATEMENT OF FACTS**

9 **The NCIC Violent Gang and Terrorist Organization File**

10 9. The National Crime Information Center (“NCIC”) is a nationwide clearinghouse of
11 records operated by the FBI. The NCIC provides direct on-line access to its computerized index
12 of criminal justice information for local, state, federal, and tribal law enforcement officers,
13 government agencies, financial institutions, prospective employers, and others nationwide.

14 10. The NCIC database includes a Violent Gang and Terrorist Organizations File
15 (“VGTOF”), which contains entries on suspected terrorist organizations and individuals.
16

17 11. Upon information and belief, as of 2003, there were over 7000 individuals listed in
18 VGTOF as “terrorists,” many of whom have no criminal records. Entry into the terrorist member
19 portion of the VGTOF does not require prior arrest or conviction for a terrorism offense.

20 12. An incorrect entry into the VGTOF carries potentially grave ramifications. For
21 instance, a simple traffic stop can become a prolonged search, result in harsher treatment of
22 individuals, and lead to direct contact between the patrol officer and the FBI. VGTOF entries
23 often advise a responding officer: “WARNING: APPROACH WITH CAUTION.” Once an
24 officer receives an NCIC “hit,” the officers are likely to treat the encounter as potentially
25 dangerous, as the “hit” sharply raises the perceived risk of harm to the officer, the subject, and
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1 bystanders. Actions officers may take include unlocking the safety control on the officer's
2 handgun, flattening the individual against the police car, or calling for back-up.

3 13. The NCIC VGTOF screen also frequently instructs the officer to call the Terrorist
4 Screening Center immediately at a number provided on the officer's screen. The Terrorist
5 Screening Center sends back one of four responses to the officer: "arrest, detain, investigate, or
6 query." There is no "allow to proceed" option among these responses.

7
8 14. In a 2005 test carried out by the Terrorist Screening Center, the VGTOF was found to
9 contain a 40% error rate, with most errors in the "handling codes," the portion of the database that
10 instructs officers on how to approach and interact with individuals who have entries in the
11 VGTOF. *See also* Audit Division, Office of the Inspector General, U.S. Dep't of Justice, The
12 Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices, Audit Rep't 09-25
13 (May 2009), <http://www.usdoj.gov/oig/reports/FBI/a0925/final.pdf> (finding numerous delays and
14 failures to remove individuals from the terrorist watchlist).

15
16 15. The VGTOF manuals have been previously released by the government without
17 protective order, and the VGTOF portion of the NCIC Operating Manual, updated in 2008, is
18 publicly available at <http://cjis.ci.lincoln.ne.us/~lso/adminsup/NCIChtm/VGTOF.htm>.

19 **Plaintiff's FOIA Request to the Federal Bureau of Investigation**

20 16. By letter to the FBI dated December 19, 2008, Plaintiff submitted a FOIA request for
21 "any record held by the U.S. Federal Bureau of Investigation describing the operation and
22 maintenance of the National Crime Information Center ("NCIC") Violent Gang and Terrorist
23 Organization File ("VGTOF")." A copy of that letter is attached to this complaint as Exhibit A.

24
25 17. The FBI received the letter on December 20, 2008.

26 18. On January 8, 2009, Plaintiff received a letter dated January 5 acknowledging this
27 request.

1 19. Plaintiff has received no further notice of FBI action since that time.

2 20. To date, the FBI has not provided the records requested by Plaintiff in this FOIA
3 request, notwithstanding FOIA's requirement of an agency response within twenty (20) working
4 days.

5 21. Defendant's failure to comply with 5 U.S.C. § 552(a)(6)(A)(i) amounts to a
6 constructive denial of Plaintiff's acknowledged request.

7 22. The FBI has wrongfully withheld the requested records from Plaintiff.
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10 **CAUSE OF ACTION**

11 **Defendant DOJ Failed to Disclose and Release Records**
12 **Responsive to Plaintiff's Request**

13 23. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1
14 through 22 as if repeated and reincorporated herein.

15 24. The FBI, a component of DOJ, has violated Plaintiff's right to DOJ records under 5
16 U.S.C. § 552.

17 **REQUEST FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests that this Court:

- 19 1) Assume jurisdiction over this matter;
20 2) Order Defendant to disclose the requested records in their entirety and to make copies
21 available to Plaintiff;
22 3) Provide for expeditious proceedings in this action;
23 4) Award Plaintiff costs and reasonable attorneys' fees in this action as provided by 5 U.S.C.
24 § 552(a)(4)(E); and
25 5) Grant any other relief the Court deems appropriate.
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Respectfully submitted,

/s/ Harry Williams IV
Sarah Dunne, WSBA # 34869
Harry Williams IV, WSBA # 41020
ACLU OF WASHINGTON FOUNDATION
705 Second Ave, Suite 300
Seattle, WA 98104
Tel. (206) 624-2184
dunne@aclu-wa.org
hwilliams@aclu-wa.org

Lee Gelernt*, State Bar No. NY-8511
Eunice Lee*, State Bar No. NY-4607859
Farrin Anello*, State Bar No. NY-4403952
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
IMMIGRANTS' RIGHTS PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Tel. (212) 549-2676
lgelernt@aclu.org
elee@aclu.org
fanello@aclu.org

Michael Wishnie, Supervising Attorney*
State Bar No. CT27221
Zac Hudson, Law Student Intern
ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS CLINIC
NATIONAL LITIGATION PROJECT
127 Wall Street
New Haven, Connecticut 06511
Tel. (203) 432-4800
michael.wishnie@yale.edu

Counsel for Plaintiff.

Dated May 8, 2009
Seattle, Washington

* Pro hac vice motion forthcoming.

Exhibit A



Allard K. Lowenstein
International Human Rights Clinic

December 19, 2008

Federal Bureau of Investigation
Record Information/Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Freedom of Information Act Request

Dear FOIA Officer:

This letter is filed on behalf of the Allard K. Lowenstein International Human Rights Clinic at Yale Law School, the Immigrants' Rights Project of the American Civil Liberties Union, and the American Civil Liberties Union of Washington. Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552 we request access to and copies of any record held by the U.S. Federal Bureau of Investigation describing the operation and maintenance of the National Crime Information Center ("NCIC") Violent Gang and Terrorist Organization File ("VGTOF"), including but not limited to:

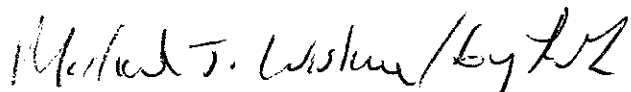
- Any and all portions of the NCIC 2000 Operating Manual (Dec. 1999 ed.), any subsequent editions of the NCIC 2000 Operating Manual, and any updates, revisions, or supplements to the Manual, relating to the VGTOF.
- Any records containing information illuminating or describing the organization, structure, operation, maintenance, or use of the VGTOF.
- Any and all manuals, policy memoranda, or other guidance describing the criteria for entry into and removal from the VGTOF, or describing the criteria for any updates, changes, revisions, or supplements to an entry or record in the VGTOF.
- Any and all manuals, policy memoranda, or other guidance describing the criteria for entry into and removal from any sub-portion or sub-part of the VGTOF, or describing the criteria for any updates, changes, revisions, or supplements to an entry or record in a sub-portion or sub-part of the VGTOF.
- Any and all manuals, memoranda or other guidance describing any statuses, designations, abbreviations, numeric or alpha-numeric codes, or terms of art used in the entries or records contained or referenced in the VGTOF, or describing the criteria for assignment or use of such statuses, designations, abbreviations, numeric or alpha-numeric codes, or terms of art.
- Any and all manuals, memoranda, or other guidance detailing the consequences of being listed in the VGTOF.

- Any records from the FBI Criminal Justice Information Services Division, Advisory Policy Board (“APB”), relating to the VGTOF, including but not limited to agenda for APB meetings, minutes of APB meetings, or hand-outs or other records prepared for or distributed at APB meetings.
- Any records containing information on aggregate numbers pertaining to entries or records in the VGTOF, including but not limited to: the total number of entries or records in the VGTOF; the total number of individuals who are the subject of entries or records in the VGTOF; the number of entries or records (or number of individuals who are the subject of entries or records) in sub-parts or sub-portions of the VGTOF; the number of entries or records (or number of individuals who are the subject of entries or records) in the VGTOF assigned a particular status, designation, abbreviation, numeric or alpha-numeric code; the number of terrorism-related entries or records (or number of individuals who are the subject of terrorism-related entries or records) in the VGTOF or in any sub-parts or sub-portions of the VGTOF; and the number of gang-related entries or records (or number of individuals who are the subject of gang-related entries or records) in the VGTOF or in any sub-parts or sub-portions of the VGTOF.
- Any records containing information on the numbers or percentages of individuals of any given race, gender, age, national origin or religious background who are the subject of entries or records in the VGTOF or in sub-parts or sub-portions of the VGTOF.
- Any records containing information about the aggregate numbers reflecting the length of time entries or records are maintained in the VGTOF or any sub-part or sub-portion of the VGTOF, including but not limited to: the average length of time an entry or record is maintained; the maximum length of time an entry or record is or can be maintained; the minimum length of time an entry or record is or can be maintained; and whether there have been any trends or variations (since the creation of VGTOF) with regard to the average length of time an entry or record is maintained.

If this information is not available in succinct format, we request the opportunity to view the records in your offices. We agree to pay search, duplication, and review fees up to \$100.00. If the fees amount to more than \$100.00, we request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii), as the information is not sought for commercial uses and its disclosure is in the public interest, because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. If the request is denied in whole or in part, please justify all deletions by reference to the specific exemptions of the Act. In addition, please release all segregable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response within the twenty (20) day statutory time limit. If you have any questions in processing this request, we can be contacted by mail at the address above or by telephone at (203) 436-4780. Thank you for your assistance in this matter.

Sincerely,



Michael J. Wishnie, Supervising Attorney
Zac Hudson, Law Student Intern
National Litigation Project of the
Lowenstein International Human Rights Clinic
The Yale Law School
127 Wall St.
New Haven, CT 06520

Lee Gelernt, Deputy Director
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

Sarah Dunne, Legal Director
ACLU of Washington Foundation
705 Second Ave, Suite 300
Seattle, WA 98104