

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**YASIR AFIFI** <sup>5251 Cherry Gate Dr. Suite CA 25136</sup>  
~~453 New Jersey Ave SE WDC 20003~~  
Plaintiff

v.

**ERIC H. HOLDER, JR.**, in his official capacity as Attorney General of the United States;

**ROBERT S. MUELLER, III**, in his official capacity as Director of the Federal Bureau of Investigation; and

**UNKNOWN AGENTS**, in their individual capacities.

Defendants

Case: 1:11-cv-00460  
Assigned To : Howell, Beryl A.  
Assign. Date : 3/2/2011  
Description: Civil Rights-Non-Employ.

**COMPLAINT**

**JURY DEMAND**

**FOR INJUNCTIVE AND  
DECLARATORY RELIEF  
AND DAMAGES**

**(Violation of First, Fourth and  
Fifth Amendment Rights, the  
Privacy Act and the  
Administrative Procedure Act)**

**COMPLAINT SEEKING INJUNCTIVE AND DECLARATORY RELIEF AND DAMAGES  
FOR CONSTITUTIONAL AND STATUTORY VIOLATIONS**

COMES NOW, Plaintiff, Yasir Afifi, hereby alleges and complains against Defendants Attorney General Holder, Director Mueller, and Unknown Agents the following:

**INTRODUCTION**

1. On a date unknown to Mr. Afifi, Unknown Agents—who would later disclose their association with the Federal Bureau of Investigation (“FBI”)—surreptitiously attached an electronic tracking device to Mr. Afifi’s vehicle. This device monitored all of his activities 24 hours a day and provided a foundation of facts that those agents used to assemble a comprehensive mosaic of Mr. Afifi’s life. These actions were taken without obtaining a warrant.

2. On October 3, 2010, while at a car repair shop, Mr. Afifi discovered the device. Terrified and believing that the device might be a pipe bomb, Mr. Afifi had the device removed from his vehicle.

3. On October 5, 2010, Unknown Agents, using three unmarked vehicles, detained Mr. Afifi in front of his home in a bizarre mission to retrieve the device. These Unknown Agents then engaged in a hostile interrogation, demanded that Mr. Afifi immediately return the device, and promised to bring federal charges against Mr. Afifi if his cooperation was not immediately furnished. Unknown Agents extended the encounter beyond Mr. Afifi's consent, refusing to honor Mr. Afifi's request for the immediate presence of his counsel.

4. In response to a Freedom of Information Act request, on January 26, 2011, Mr. Afifi received a package sent by Defendants via overnight mail. The receipt of this package came on the same day that FBI agents contacted Mr. Afifi's counsel and disclosed their desire to further interrogate Mr. Afifi. The investigation of Mr. Afifi appears to be ongoing and the threat that Defendants will repeat their unlawful actions is objective and real.

### **JURISDICTION AND VENUE**

5. This is a complaint for injunctive and declaratory relief and damages based upon civil rights and constitutional violations committed by Unknown Agents, the Federal Bureau of Investigation ("FBI"), and U.S. Department of Justice in violation of the First, Fourth, and Fifth Amendments to the U.S. Constitution, the Privacy Act, and the Administrative Procedure Act.

6. This court has personal jurisdiction over Defendants Mueller and Holder as both are residents of the District of Columbia in their official capacity as Director of the FBI and Attorney General

of the United States. Regarding Defendants Unknown Agents, Plaintiff knows neither who they are nor where they reside.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 insofar as this complaint alleges violations of the First, Fourth, and Fifth Amendments to the U.S. Constitution, the Privacy Act, and the Administrative Procedure Act.

8. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants are officers of agencies of the United States sued in their official capacity. Furthermore, 28 U.S.C. § 552(g)(5) grants this Court venue and jurisdiction for any action brought under the Privacy Act.

## PARTIES

10. Plaintiff, Mr. Yasir Afifi, is a 20-year-old who resides in San Jose, California. He is an American citizen by birth. Currently, Mr. Affifi is a college student at Mission College in Santa Clara, California. His major is business marketing. In an FBI agent's assessment, Mr. Afifi is a "bright hardworking student, trying to support his family...[who] would be great to work for the FBI." (Exhibit A).<sup>1</sup>

11. Defendant Eric H. Holder, Jr. is the Attorney General of the United States and heads the Department of Justice ("DOJ"). Defendant Holder promulgates the Attorney General's Guidelines for Domestic FBI Operations. This document specifies the procedure that Defendant

---

<sup>1</sup> For privacy reasons, the entirety of Defendant Mueller's response to Plaintiff's FOIA request is not attached.

Holder has directed Defendants Mueller and Unknown Agents to follow when using an electronic tracking device. As Section V (a)(5) of the Guidelines establishes, the “use of...monitoring devices” by FBI agents to surreptitiously gather information on a person are “subject to legal review by the Chief Division Counsel or the FBI Office of General Counsel.” (Exhibit B). Thus, as Defendant Holder has ordered, prior to using an electronic tracking device, FBI agents must receive approval either directly from Defendant Mueller or from his subordinate, wholly controlled subdivision. Defendant Holder is named here in his official capacity.

12. Defendant Robert S. Mueller is Director of the Federal Bureau of Investigation. To implement Defendant Holder’s AG Guidelines, Defendant Mueller promulgates the FBI’s Domestic Investigative Operational Guidelines. These guidelines require FBI agents to document any use of electronic tracking devices in the “investigative ELSUR (electronic surveillance) file” that the FBI centrally maintains. (Exhibit C). These files are “available for compliance and monitoring review” by FBI headquarters. (Exhibit C).

13. Defendant Mueller maintains such records, along with innumerable others, within a centralized information technology infrastructure that retains records which individual agents collect, enter, and can subsequently access. This database is called the Central Records System and it maintains “common records” accessible nationally, that include “investigative files, personnel files, and criminal identification records.” (Exhibit D).

14. The FBI department which manages the Central Records System is the Records Management Division. Located in Washington, D.C., the Records Management Division operates at the

direction and under the supervision of Defendant Mueller. Defendant Mueller is sued in his official capacity.

15. Defendants Unknown Agents are the individuals who directed, facilitated, tolerated, allowed and physically placed the tracking device onto Mr. Afifi's vehicle. Defendants Unknown Agents are sued in their individual capacity. The names, home offices, and residences of the agents involved in establishing and maintaining the electronic surveillance of his vehicle are yet unknown. Plaintiff will amend this complaint to incorporate their true names and capacities when ascertained.

## **COMMON FACTUAL ALLEGATIONS**

### **A. The Tracking Device**

16. Upon information and belief, the device Defendants Unknown Agents affixed to Mr. Afifi's vehicle is a product manufactured by Cobham called the Guardian ST 820 (hereinafter "Tracking Device"). (Exhibit E). As a matter of policy, Cobham markets and sells its products exclusively to law enforcement agencies. Upon information and belief, members of the general public cannot purchase the Tracking Device for private use.

17. The Tracking Device incorporates a receiver capable of establishing the location, speed, and direction of Mr. Afifi's vehicle through the Global Positioning System (hereinafter "GPS").

18. GPS is a network of satellites developed by the United States Department of Defense for military purposes. Receivers that utilize this network of satellites can calculate the longitude, latitude, altitude, direction, and speed (hereinafter "locational information") of the object to which the receiver is affixed. These GPS receivers establish locational information by soliciting and processing transmissions from GPS's network of continuously orbiting satellites. By

analyzing the time elapsed between when a receiver sent a signal to a satellite and when a GPS satellite responded, such receivers are able to establish location information about the targeted subject continuously.

19. Using GPS, the Tracking Device collected, stored, and delivered locational information to Defendants regarding the whereabouts of Mr. Afifi's vehicle in either one of two ways. First, the Tracking Device transmitted in real-time or at frequent intervals the locational information pertaining to Mr. Afifi's vehicle that Defendants then stored and analyzed. Or in the alternative, the Tracking Device collected and saved locational information in real-time or at frequent intervals within the Tracking Device's hardware itself. Defendants periodically uploaded this stored locational information by physically retrieving the Tracking Device or otherwise electronically soliciting the stored data.

20. The Tracking Device's technology allowed Defendants to continuously monitor Mr. Afifi's vehicle—and thus, Mr. Afifi himself—accurately within meters. This monitoring continued even when Mr. Afifi drove his vehicle into enclosed garages and other private spaces.

21. Based on the operation of devices similar or identical to the Tracking Device, the Tracking Device likely produced over 100 printed pages of data explicating locational information pertaining to Mr. Afifi's vehicle for each day Defendants operated the Tracking Device.

#### **B. Capacities of the Tracking Device**

22. The Tracking Device permits Defendants to discover and retain an individual's complete and uninterrupted pattern of movement for an unlimited duration, in an unlimited space, encompassing both public and private spaces, and thus compiling a digital history not simply of a

driver's whereabouts, but also his associations, affiliations, practices, and preferences, ranging from the intimately personal to the political. The comprehensive sum of information discovered and retained by use of the Tracking Device allows Defendants to make inferences that reveal private information regarding the subject surveilled.

23. This private information—obtained by analyzing the comprehensive sum of information discovered and retained by the Tracking Device—would not otherwise be made public by a person observing a vehicle in the normal course of a day. Even a phalanx of law enforcement agents physically monitoring a vehicle could not collect the same quantity and quality of information that a Tracking Device is able to gather due to the logistical difficulties and inherent limitations of maintaining uninterrupted 24-hour visual surveillance.

24. The Tracking Device also directly reveals private information, aside from the private information the Tracking Device reveals through an analysis of the comprehensive sum of information it gathers. The Tracking Device identifies a person's location—while operating a vehicle—as well as what a person does with a vehicle in private space.

25. On an expanse of private property, the Tracking Device discloses the location of one's vehicle that could be determined only by an unlawful trespasser. Likewise, in a garage, the Tracking Device would disclose private information regarding the position of the vehicle within an enclosed space that could be determined only by an unlawful trespasser. In locations that entities properly consider private and protected—such as a corporation's parking garage or the non-public space of a mechanic's shop—the Tracking Device would disclose on what level a corporation's employees park as well as when a mechanic places a car on hydraulic lifts. Such information is not available but through the technology deployed by the Tracking Device.

### **C. Defendant Mueller's Policies**

26. Defendant Mueller maintains a policy that authorizes its agents to use, without a warrant, devices similar or identical to the Tracking Device in order to collect and retain locational information pertaining to vehicles and their individual operators. This information is then used by Defendant Mueller and its agents to establish the associations a person maintains and otherwise reveals protected information.

27. The existence of such a policy is made clear by the "Attorney General's Guidelines for Domestic FBI Operations." This document specifies the procedure that Defendant Holder has directed Defendants Mueller and Unknown Agents to follow when using an electronic tracking device. As Section V (a)(5) of the Guidelines establishes, the "use of...monitoring devices" by FBI agents to surreptitiously gather information on a person are "subject to legal review by the Chief Division Counsel or the FBI Office of General Counsel." (Exhibit B). Thus, prior to using an electronic tracking device, FBI agents receive approval from a department located within FBI headquarters in Washington, D.C.

28. In accordance with the FBI's Domestic Investigative Operational Guidelines, which implement the AG Guidelines, FBI agents must document any use of electronic tracking devices in the "investigative ELSUR (electronic surveillance) file" that the FBI centrally maintains. (Exhibit C). These files are "available for compliance and monitoring review" by Defendant Mueller. (Exhibit C).

### **D. The Warrantless Search**

29. On a date unknown to Mr. Afifi but prior to October 3, 2010, Defendants Unknown Agents requested Defendant Mueller's approval to attach the Tracking Device to Mr. Afifi's vehicle



without a warrant or did so in accordance with Defendant Mueller's existing policy. (Exhibit B). Upon information and belief, Defendant Mueller either provided Defendants Unknown Agents the approval requested or furnished the policy that generally authorized such actions.

30. On October 3, 2010, Mr. Afifi took his vehicle to a local mechanic's shop for an oil change. When the mechanic elevated his vehicle on hydraulic lifts, Mr. Afifi noticed a wire sticking out between the right rear wheel and exhaust. Upon closer inspection, the wire ran between a long, black rectangular object and a smaller black rectangular object that had an antenna. (Exhibit F)

31. The mechanic asked Mr. Afifi if he wanted the device removed. Mr. Afifi said yes, and the mechanic pulled the wire and two rectangular objects off of the underside of Mr. Afifi's vehicle. The objects were attached to the vehicle by circular magnets embedded on the surface of the two rectangular objects. (G).

32. Mr. Afifi took the objects he found under his car home with him and stored them in his apartment. Mr. Afifi was concerned that the object was a pipe bomb.

33. Later on October 3, 2010, Mr. Afifi, not knowing what was attached to his vehicle nor who attached it, uploaded pictures of the device onto the internet. A reader suggested that the two rectangular objects were a single device: a GPS receiver sold exclusively to law enforcement agencies.

34. On October 5, 2010, Defendants Unknown Agents arrived at Mr. Afifi's apartment complex to retrieve the Tracking Device they had previously attached to Mr. Afifi's vehicle. While in his apartment, Mr. Afifi observed a man and a woman looking into his vehicle which was parked in front of his apartment. Regardless, Mr. Afifi left his apartment, got into his vehicle, and began driving.

35. Immediately upon leaving the parking lot, two dark unmarked SUV's behind Mr. Afifi turned on their police lights. A third car trailed slightly behind the two SUV's. Mr. Afifi pulled his vehicle over to the shoulder of the road.

36. Four individuals, all wearing bullet proof vests, approached his vehicle and one came to Mr. Afifi's window. This person said that he was with "the police" and asked Mr. Afifi about his license plate being expired.

37. Immediately thereafter, another agent approached Mr. Afifi's vehicle. This agent identified himself as Vincent, though he refused to give Mr. Afifi his last name or a business card. The person said he was an FBI agent and directed Mr. Afifi to exit his vehicle.

38. On the side of the road in front of the entrance to Mr. Afifi's apartment complex, in full view of his neighbors and friends, Vincent began interrogating Mr. Afifi. Vincent asked Mr. Afifi if he had recently taken his car to a mechanic, if he had found a device on his car, and if he was in possession of the Tracking Device. Mr. Afifi cooperated with the questioning and answered affirmatively to the inquiries. Mr. Afifi, however, specified that he was not going to give the FBI agents his consent to search or enter his apartment to retrieve the Tracking Device.

39. Vincent began threatening Mr. Afifi. Vincent said that if Mr. Afifi did not consent to the demands, and since the device in Mr. Afifi's possession was federal property, he would make sure Mr. Afifi faced federal charges if he did not respond to the demands immediately. Vincent said that he had a warrant to retrieve the device but refused to show it to Mr. Afifi when requested to do so.

40. Mr. Afifi, feeling threatened by the FBI agents and eager to end the encounter, asked again for the agent's business card and told him that his attorney would contact him and make

appropriate arrangements. Vincent began yelling at Mr. Afifi and emphatically refused Mr. Afifi's request. Mr. Afifi repeatedly requested that the encounter be brought to an end and that it resume only when Mr. Afifi's lawyer was present.

41. During the encounter, the FBI agents acknowledged that the device belonged to them and that they attached it to Mr. Afifi's vehicle. Even after requesting counsel, the FBI agents continued to make demands of Mr. Afifi and interrogate him. They asked him whether he was a national security threat, whether he was excited about an upcoming (but undisclosed) trip abroad, whether he was having financial difficulties, whether he had been to Yemen, why he traveled overseas, and many other questions

42. Mr. Afifi eventually relented and agreed to return the device to the FBI agents. Mr. Afifi returned to his apartment on foot with the FBI agents, requested that the agents remain outside, and retrieved the Tracking Device. After returning the device back to the FBI agents, a female agent that identified herself as Ms. Jennifer Kanaan made clear that she knew intimate, private details of Mr. Afifi's life. Ms. Kanaan congratulated Mr. Afifi on his new job and commended Mr. Afifi on his taste in restaurants. Ms. Kanaan went on to suggest that Mr. Afifi himself might work for the FBI.

43. On October 12, 2010, after Mr. Afifi had disclosed the behavior of FBI agents to local and national media, Unknown Agents wrote an internal report describing their retrieval of the Tracking Device from Mr. Afifi. That report included at least three articles that quoted Mr. Afifi. (Exhibit A).

44. This file, compiled by Defendants Unknown Agents but maintained by Defendant Mueller, indicates that at least three articles quoting Mr. Afifi were incorporated into his file, because it

was believed that Mr. Afifi's comments to the media manifested "gross inaccuracies." (Exhibit A). The newspaper articles were compiled by Defendants Unknown Agents and retained by Defendant Mueller in order to note "[s]everal of the more significant issues" Defendants had with Mr. Afifi's comments to the press. (Exhibit A). The substance of the quotes from Mr. Afifi explicate his opinion on Defendants' law enforcement practices as well as Defendants' specific conduct in regards to him.

45. Defendant Mueller also maintains a record of Defendants Unknown Agents' use of the tracking device against Mr. Afifi. In accordance with the FBI's Domestic Investigative Operational Guidelines, which implement the AG Guidelines, Defendant Unknown Agents have documented their use of the Tracking Device against Mr. Afifi in the "investigative ELSUR (electronic surveillance) file" Defendant Mueller maintains. (Exhibit C). As those guidelines make clear, records documenting the use of the Tracking Device against Mr. Afifi, as other records documenting the use of similar or identical devices against others, is "available for compliance and monitoring review." (Exhibit C).

46. Defendants Unknown Agents compiled and Defendant Mueller retains a file on Mr. Afifi containing records that describe the associations Mr. Afifi maintains and the activities in which he engages. These records include the locational information collected directly from the Tracking Device itself. The locational information detailed in records identifies the persons with whom Mr. Afifi associated, the hospitals he attended, the organizations of which he was a member, the religious services he frequents, the restaurants he went to with friends and families, among other activities and associations.

**COUNT I**  
**BIVENS' ACTION: UNLAWFUL SEARCH**  
**FOURTH AMENDMENT**

47. Defendants' actions described above and incorporated herein as if fully restated violated the rights of Plaintiff under the Fourth Amendment to the Constitution.

48. The actions, orders, authorizations, and other conduct of Defendants subjected Mr. Afifi to a warrantless search forbidden by the Fourth Amendment. Defendants' actions, orders, and authorizations, which deprived Plaintiff of his right to be free from unreasonable warrantless searches, give rise to a cause of action for damages directly under the Fourth Amendment, pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

49. Defendants are liable for violating Mr. Afifi's Fourth Amendment rights, because they directed, authorized, conspired to effect, and actively and substantially participated in subjecting Plaintiff to a warrantless search.

50. Each Defendant had actual or constructive knowledge that the use of the tracking device against Mr. Afifi violated his Fourth Amendment rights, and each had actual or constructive knowledge that her actions, orders, policies, practices, and/or omissions would lead to such violations.

51. Specifically, Defendants Holder and Mueller know, or should know, about the warrantless use of devices like the Tracking Device used against Mr. Afifi. Thus, Defendant Holder and Mueller have engaged in a pattern and practice of conduct—either willful, reckless, or negligent—that has authorized, encouraged, facilitated, or tolerated the use, without a warrant, of

devices similar or identical to the Tracking Device. Defendants acted under color of official authority in violating Plaintiff's Fourth Amendment rights and may continue to do so if Plaintiff is not afforded the relief demanded below.

53. Defendants' violations of Mr. Afifi's Fourth Amendment rights caused him to suffer damages, including mental and emotional pain and suffering, in an amount to be determined at trial. Mr. Afifi has altered his behavior based on Defendants' past actions and possible imminent resumption of those same actions. Employers have denied Mr. Afifi employment—and will likely do so again in the future—based upon discovering Defendants' unlawful search.

54. Mr. Afifi ascertains a future danger of Defendants again attaching a tracking device to his vehicle. This belief has an objective basis insofar as an FBI agent recently contacted Mr. Afifi through counsel to ask for an interview.

55. Defendants' violations of Plaintiff's Fourth Amendment rights were deliberate, willful, intentional, wanton, malicious, and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial

## **COUNT II**

### **MAINTAINING RECORDS OF MR. AFIFI'S FIRST AMENDMENT ACTIVITIES**

#### **5 U.S.C. § 552a**

56. Defendants' actions described above are incorporated herein as if fully restated

57. Upon information and belief, Defendant Mueller retains a file on Mr. Afifi containing records that describe how Mr. Afifi exercises rights guaranteed to him by the First Amendment. These records include information collected directly from the Tracking Device itself. The locational information detailed in records identifies the persons with whom Mr. Afifi associated,

the hospitals he attended, the organizations of which he was a member, the religious services he frequented, the restaurants he went to, among other First Amendment activities. This information is not pertinent to an investigation. Furthermore, Defendants lacked the authority to authorize the law enforcement activity that revealed this information as Defendants' warrantless use of the Tracking Device was unconstitutional.

58. Additionally, the file—of which Plaintiff has obtained a part—Defendant Mueller maintains on Mr. Afifi includes at least three articles in which Mr. Afifi spoke to media outlets about Defendant Unknown Agents' surveillance of him. The file indicates that the articles quoting Mr. Afifi were incorporated into his file, because it was believed that Mr. Afifi's comments manifested "gross inaccuracies." (Exhibit A). The newspaper articles were retained by Defendant Mueller in order to note "[s]everal of the more significant issues." (Exhibit A). The quotes from Mr. Afifi reflect his opinion on Defendants' law enforcement practices as well as Defendants' specific conduct in regards to him.

59. Defendants' violations of Mr. Afifi's rights under the Privacy Act caused him to suffer actual damages, including mental and emotional pain and suffering, in an amount to be determined at trial. Mr. Afifi's injury includes but is not limited to the real anxiety produced by now knowing that Defendants compile information regarding his First Amendment activities. Employers have denied Mr. Afifi employment—and will likely do so again in the future—based upon discovering Defendants' unlawful maintenance of records.

### COUNT III

#### UNLAWFUL AGENCY ACTION

5 U.S.C. §§ 702, 706

60. Defendants' actions described above and incorporated herein as if fully restated are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional right and should be set aside as unlawful pursuant to 5 U.S.C. § 706. Defendants' violations of Plaintiffs' constitutional and statutory rights constitute agency actions that are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity in violation of 5 U.S.C. § 706.

61. Defendants Mueller and Holder have authorized and maintained a policy that allowed Defendant Unknown Agents to execute a warrantless search of Mr. Afifi that violated the Fourth and First Amendment. Defendants have maintained a file detailing Mr. Afifi's First Amendment activities in violation of 5 U.S.C. § 552a.

62. As a result of Defendants' unlawful agency actions, Mr. Afifi has suffered damages, including mental and emotional pain and suffering, in an amount to be determined at trial. Mr. Afifi has altered his behavior based on Defendants' past actions and possible imminent resumption of those same actions. Employers have denied Mr. Afifi employment—and will likely do so again in the future—based upon discovering Defendants' unlawful agency actions.

### COUNT IV

#### CHILLING OF FIRST AMENDMENT ACTIVITIES

FIRST AMENDMENT

63. Defendants' actions described above are incorporated herein as if fully restated



64. The manner and breadth of Defendants' 24-hour warrantless electronic surveillance of Mr. Afifi is such that no reasonable interpretation of Defendants' powers to investigate violations of law justifies it. Defendants' plans were designed and executed to collect revealing personal information on Mr. Afifi and establish his lawful associations.

65. Defendants' actions have created in Mr. Afifi a fear of disclosure of personal information that Defendants have collected and now maintain. This fear is multiplied by Defendants' recent implicit indications that Mr. Afifi is still under investigation insofar as Mr. Afifi lives his life objectively restrained by Defendants' outstanding threat to further collect and disclose information.

66. Defendants' unlawful intrusions into Mr. Afifi's life—initiated as a result of his heritage, lawful associations, and disclosed political views—create an objective chill on Mr. Afifi's First Amendment activities. In addition to the fear Mr. Afifi now feels when expressing his political views and maintaining certain lawful associations, Defendants' actions have deterred others from associating with him, prospective employers most notably. The existence—even if now in the past—of an intensive surveillance operation by Defendants of Mr. Afifi communicate to persons and organizations that Mr. Afifi is at least suspect if not a threat to the physical security of those in my proximity.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

a. An injunction that:

- i. orders Defendants to refrain from once again attaching a tracking device to Mr. Afifi's vehicle without a search warrant

ii. directs Defendants to abandon its policy of authorizing, directing, tolerating, or otherwise allowing tracking devices to be used without a search warrant.

iii. orders Defendants to expunge all records collected via the warrantless search as well as all analysis of those records.

c. A Declaratory judgment holding:

i. Defendants' actions and policies approving, directing, tolerating, allowing, or otherwise participating in the warrantless surveillance of Mr. Afifi violates the First, Fourth, and Fifth Amendments of the United Constitution

ii. Defendants' collection and maintenance of records about Mr. Afifi's First Amendment activities is a violation of the Privacy Act of 1974

d. Damages in an amount to be determined at trial for:

i. the emotional pain, suffering, reputational harm, economic injury, and anxiety caused by Defendants' unlawful actions

ii. the emotional pain, suffering, reputational harm, economic injury, and anxiety caused by Defendant Mueller's maintenance of records of Mr. Afifi's First Amendment activities.

c. Awards attorneys' fees, costs, and expenses of all litigation.

d. Grants such other relief as the Court may deem just and appropriate

Respectfully submitted,

By: 

**Nadhira F. Al-Khalili (VSB #997827)**  
**THE COUNCIL ON AMERICAN-  
ISLAMIC RELATIONS**  
**453 New Jersey Avenue, South East**  
**Washington, D.C. 20003**  
**Telephone: (202) 646-6034**  
**Facsimile: (202) 488-3305**  
**Email: nalkhalili@cair.com**  
*Attorney for Plaintiff Yasir Afifi*

By: 

**Gadeir Abbas (VSB #81161) (*pro hac  
vice motion pending*)**  
**THE COUNCIL ON AMERICAN-  
ISLAMIC RELATIONS**  
**453 New Jersey Avenue, South East**  
**Washington, D.C. 20003**  
**Telephone: (202) 742-6410**  
**Facsimile: (202) 488-0833**  
**Email: gabbas@cair.com**  
*Attorney for Plaintiff Yasir Afifi*

By: 

**Zahra Billoo (SBC #267634) (*pro hac  
vice motion pending*)**  
**THE COUNCIL ON AMERICAN-  
ISLAMIC RELATIONS California**  
**3000 Scott Blvd., Suite 101**  
**Santa Clara, CA 95054**  
**Telephone: (408) 986-9874**  
**Facsimile: (408) 9869875**  
**Email: zbillo@cair.com**  
*Attorney for Plaintiff Yasir Afifi*

# **EXHIBIT A**



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

January 25, 2011

MS. ZAHRA BILLOO
CAIR-SFBA
SUITE 101
3000 SCOTT BOULEVARD
SANTA CLARA, CA 95054

Subject: AFIFI, YASIR

FOIPA No. 1158982- 000

Dear Ms. Billoo:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- Exemption grid with checkboxes for Section 552 (b)(1)-(6) and Section 552a (d)(5), (j)(2), (k)(1)-(7).

21 pages were reviewed and 21 pages are being released.

Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:

- referred to the OGA for review and direct response to you.
referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP 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 Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,



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

Enclosure(s)

There is additional material you requested that is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

In applying this exemption, I have determined that the records responsive to your request are law enforcement records; that there is a pending or prospective law enforcement proceeding relevant to these responsive records; and that release of the information contained in these responsive records could reasonably be expected to interfere with the enforcement proceedings. For a further explanation of this exemption, see enclosed Explanation of Exemptions Form.

**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 be 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 be reasonably 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.

DECLASSIFIED BY UC60322LP/PLJ/CC  
ON 12-21-2010

(Rev. 05-01-2008)

~~SECRET~~

**FEDERAL BUREAU OF INVESTIGATION**

**Precedence:** ROUTINE

**Date:** 10/12/2010

**To:** San Francisco

**From:** San Francisco

Squad CT-6/San Jose RA

**Contact:** SA [redacted]

**Approved By:** [redacted]

**Drafted By:** [redacted]

vjt

**Case ID #:** (U) [redacted]

(Pending)

b2  
b6  
b7A  
b7C

(U) ~~(S)~~ **Title:** [redacted]

YASIR ALAADIN AFIFI  
[redacted]

**Synopsis:** (U) To document contact with Captioned Subject.

**Derived From :** FBI NSISCG-20090615

**Declassify On:** 10/12/2035

[redacted]

**Reference:** (U) [redacted]  
(U) [redacted]

**Administrative:** (U//FOUO) On 10/04/2010, it was determined that the tracker placed on AFIFI's car by San Francisco Technically Trained Special Agents (TTAs) had been compromised; as pictures of the tracker were located on the blog website [www.reddit.com/user/khaledthegypsy](http://www.reddit.com/user/khaledthegypsy), blog titled, "Does this mean the FBI is after us?" [Investigator's Note: "Khaledthegypsy" is the blog for [redacted] AFIFI's twenty year old best friend.] According to the postings, the tracker had been located when the subject had taken his car to the mechanic on Sunday, 10/03/2010. Three pictures of the device were posted on the blog: one picture of someone holding the device, one picture of the device on a table, and one picture of the transmitter with serial number. Subject and his friend were "pretty sure it was a tracking device by the FBI" but also thought it might be a bomb. A comment by [redacted] identified the tracker as a Guardian ST820: "It's a GPS tracking unit made by the company Comham, the product line is Orion..."

~~SECRET~~



FBI Tracking Bay Area Student / Support Civil Rights on Nov. 7th

Page 1 of 3

### FBI Tracking Bay Area Student / Support Civil Rights on Nov. 7th

CAIR-SFBA [cair-sfba@cair-california.ccsend.com] on behalf of CAIR-SFBA [nocal@cair.com]

Sent: Monday, October 11, 2010 5:51 PM

To: [Redacted]

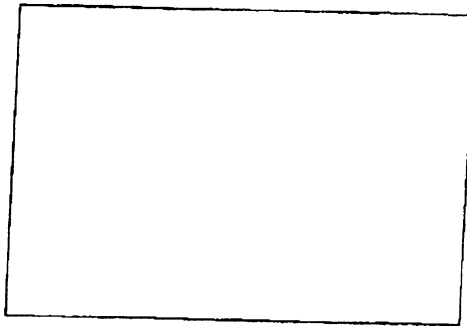
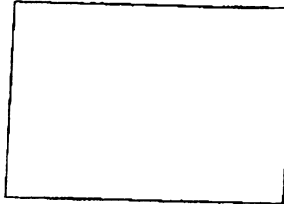
Having trouble viewing this email? [Click here](#)

San Francisco Bay Area

### Support CAIR's Critical Civil Rights Work on Nov. 7th

Attend the CAIR-SFBA 16th Annual Banquet

Featuring a civil rights legacy. Ambassador Attallah Shabazz, daughter of Malcolm X Shabazz



Purchase tickets and tables online today at <http://ca.cair.com/sfba> or call 408.986.9874  
Sponsor CAIR's civil rights by emailing [info@sfba.cair.com](mailto:info@sfba.cair.com)

### FBI Tracking of Santa Clara Muslim Student 'Outrageous'

20-year-old college student finds FBI tracking device on car

(SAN FRANCISCO, CA, 10/11/10) - The San Francisco Bay Area chapter of the Council on American-Islamic Relations (CAIR-SFBA) today called the FBI's attempts to track Yasir Afifi, a 20-year-old college student "outrageous" and is now seeking answers as to why Afifi was targeted in the absence of any indication that he was engaged in criminal activity.

Afifi discovered the GPS tracking device on his car last Sunday during a routine oil change. After posting pictures of the device online, he was visited by two San Jose-based FBI agents who allegedly admitted to placing the device on his car and asked for it to be returned.

SF E: [Caught Spying on Student, FBI Demands GPS Tracker Back](#)

CAIR-CA Video: [FBI Tracking of Muslim Student a Violation of Constitutional Rights](#)

FBI agents further questioned the young man, the son of a Bay Area community leader, about his travels to the Middle East and his friends. The agents utilized problematic tactics to coerce cooperation, despite the lack of any evidence of wrongdoing on the part of Afifi. Toward the end of the questioning, the FBI agents allegedly told the man he was "boring."

06  
070

October 11, 2010

#### In This Issue

- CAIR 16th Annual Banquet
- FBI Tracking Santa Clara Muslim Student
- Attallah Shabazz
- Media Watch

#### CAIR-SFBA Team

- Executive Committee**
- Saleem Ibrahim, President
- Attallah Shabazz, Vice President
- Donna Shaikh, Secretary
- Armed Shah
- Aliyah Abdo
- Iso Shaw
- Jamal Haider
- Malika Khan
- Usman Afandi
- Shahab Syed

**Staff**  
Zahra Bilal  
Program & Outreach Director

Sanaa Rydwan  
Event Manager

Naima Al-Bayati  
Public Affairs

It is outrageous that these Muslim community members continue to be targeted by FBI agents without any allegations or evidence of wrongdoing," said CAIR-SFBA Programs and Outreach Director Zahra Billoo, who is also Afifi's attorney. "My client's encounter raises concerns that the FBI's precious investigative resources are being squandered on domestic intelligence escapades that target innocent Americans."

SEE: [Investigative Guidelines Cement FBI Role as Domestic Intelligence Agency, Raising New Privacy Challenges](#)

SEE ALSO: [Feds to Drop Charges Against Muslim Man Unfairly Targeted by the FBI](#)

CAIR-SFBA is reminding community members that it is extremely critical to know and assert their rights when visited by FBI agents.

SEE: [CAIR Alert - Know Your Rights When Visited by FBI/JITF Agents](#)

In the past several years, Muslim community members have complained of FBI harassment, harsh interrogation and coercive tactics and informant recruitment through FBI intimidation. CAIR-SFBA has been receiving an average of one such complaint each week in 2010.

CAIR is America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

END -

CONTACT: CAIR SFBA Programs and Outreach Director Zahra Billoo, 626.252.0885, E-Mail: [zbilloo@cair.com](mailto:zbilloo@cair.com); CAIR National Communications Director Ibrahim Hooper, 202-488-8787 or 202-744-7726, E-Mail: [ihooper@cair.com](mailto:ihooper@cair.com)

### Upcoming Know Your Rights Presentation

What should you do if approached by the FBI?

Friday, October 15th  
After Isha, 8:30PM

Muslim Community Center (MCC)  
1249 Quarry Ln  
Pleasanton, CA 94566

For additional information, contact CAIR-SFBA:  
408.986.9874 or [info@sfba.cair.com](mailto:info@sfba.cair.com)

### Media Watch

Recent coverage of FBI tracking device discovery

[Who Needs a Warrant ... He's Muslim!](#) - SF Muslim Examiner

[Santa Clara Student Finds FBI Tracking Device on His Car](#) - NBC Bay Area

[Santa Clara Resident Says FBI Planted Tracking Device on His Car](#) - San Jose Mercury News

[College Student Finds FBI Tracking Device Under His Car](#) - KTVU Video

[FBI Busted Tracking Student, Demands GPS Spy Gear Return](#) - MSNBC

[Caught Spying on Student, FBI Demands GPS Tracker Back](#) - Wired

[American-born College Student Tracked by FBI](#) - CBS5 Video

[Forward email](#)

This email was sent to david.harley@ic.fbi.gov by nocel@cair.com.  
[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Email Marketing by

CAIR - California | 3000 Scott Blvd | Ste 101 | Santa Clara | CA | 95054

# The Mercury News

MercuryNews.com

## Santa Clara resident says doesn't know why FBI planted tracking device on his car

By Linda Goldston  
lgoldston@mercurynews.com

Posted: 10/09/2010 08:02:47 AM PDT

Updated: 10/09/2010 08:21:14 AM PDT

Yasir Afifi said he's pretty sure he meets the profile of a Muslim on the FBI watch list: He found a GPS tracking device attached to his car last Sunday.

Two days later, on Tuesday, he said the FBI came calling and asked for the device back.

"I'm half-Arab, a young Muslim, my dad was a religious role model in the community," the 20-year-old Santa Clara resident said Friday. "I travel overseas for work and to visit my brothers in Egypt. It's their ticket to bother me forever."

Afifi says the FBI has no reason to watch him. He said he's done nothing wrong.

The FBI did not return numerous phone calls from the Mercury News.

However, according to Afifi and his attorney, Zahra Billoo, what happened is an example of federal authorities going on what Billoo called "fishing expeditions. It's very common in this community," she said.

Afifi said the strange series of events began Sunday,

when he took his car in for an oil change to a garage not far from his Santa Clara home. As the car was raised, Afifi said he noticed "a wire hanging out." Then he noticed "a black, glimmering device."

Mazher Khan, owner of Ali's Auto Care, had no idea what it was but he agreed to yank it out. Afifi left with the device and drove home.

On Tuesday, Afifi said he had just gotten home from work when one of his roommates came in and said, "There are two suspicious people standing right by your car in the complex."

Afifi said he walked

down to his car and backed out onto the road, but two SUVs pull up. One of the officers said, "did you know your tags are expired?" Afifi said. "I said, 'Yeah, I know, I'm going to buy them this week. Is that why you pulled me over?'"

The man showed him his FBI badge, Afifi said, and asked if he knew why the officers were there. Two FBI agents and four Santa Clara police officers were in the SUVs.

Afifi said he told the agent he had a pretty good idea when he was asked more questions.

Were you at a mechanic's shop last Sunday?

"Yes."


"All right, where's the device you found under your hood," the agent said, according to Afifi. "He goes, 'Yeah, we put it there.'"

After pressure from the agent, Afifi said he felt intimidated, even though "I was answering all of their questions." He became concerned when the agent said, "We're going to arrest you for

Advertisement



We find a solution in any Marriott Hotels' global award process. So they don't have to.  
Learn more at [RealBusiness.com](http://RealBusiness.com)

Ready For Real Business 

Print Powered By  Dynamics

# The Mercury News

MercuryNews.com

obstruction of justice if you don't cooperate."

Affi said he told officers the device was in his living room and agreed to walk with them the short distance back to his house. He asked the two FBI agents, a man and a woman, to wait outside while he retrieved the device.

"I gave it back to them and said, 'Is this what you needed?' " Afffi said. "He goes, 'Yeah, this is it.' "

According to Afffi, "that's when the weird stuff starts happening. They asked 'Have you ever been overseas, had any type of training in Yemen or Iran? Any kind of abnormal activity? "

"My answer was 'no, no, I have no idea how I can help you.' "

Except for contacting Billoo, director of the Bay Area chapter of Council on American-Islamic Relations, a Muslim-American civil rights advocacy group, and giving a few interviews on Friday, Afffi said the rest of his week was pretty uneventful.

But Billoo said she worries about the ongoing focus on "regular people" who happen to be Muslim.


"I think this might have been a situation where they made a mistake," she said. "It's so egregious."

Contact Linda Goldston at 408-920-5862.

Advertisement



We focus on automating Marriott® Hotels' global invoice process. So they don't have to.  
Learn more at [RealBusiness.com](http://RealBusiness.com)

Real Business solutions 

Print Powered By  Dynamics



# FBI allegedly caught using GPS to spy on student

By Kim Zetter | Wired  
October 8, 2010 12:09 p.m. EDT | Filed under: Gaming & Gadgets



An FBI spokesman wouldn't acknowledge that the GPS tracking device belonged to the agency

**(Wired)** – A California student got a visit from the FBI last week after he found a secret GPS tracking device on his car, and a friend posted photos of it online.

The post prompted wide speculation about whether the device was real, whether the young Arab-American was being targeted in a terrorism investigation and what the authorities would do.

It took just 48 hours to find out: The device was real, the student was being secretly

tracked and the FBI wanted their expensive device back, the student told Wired.com in an interview Wednesday.

The answer came when half-a-dozen FBI agents and police officers appeared at Yasir Afifi's apartment complex in Santa Clara, California, on Tuesday demanding he return the device.

Afifi, a 20-year-old U.S.-born citizen, cooperated willingly and said he'd done nothing to merit attention from authorities. Comments the agents made during their visit suggested he'd been under FBI surveillance for three to six months.

An FBI spokesman wouldn't acknowledge that the device belonged to the agency or that agents appeared at Afifi's house.

"I can't really tell you much about it, because it's still an ongoing investigation," said spokesman Pete Lee, who works in the agency's San Francisco headquarters.

Afifi, the son of an Islamic-American community leader who died a year ago in Egypt, is one of only a few people known to have found a government-tracking device on their vehicle.

His discovery comes in the wake of a recent ruling by the 9th U.S. Circuit Court of Appeals



Print Powered By Dynamics



**CNN.com**

saying it's legal for law enforcement to secretly place a tracking device on a suspect's car without getting a warrant, even if the car is parked in a private driveway.

Brian Alseth from the American Civil Liberties Union in Washington state contacted Afifi after seeing pictures of the tracking device posted online and told him the ACLU had been waiting for a case like this to challenge the ruling.

"This is the kind of thing we like to throw lawyers at," Afifi said Alseth told him.

"It seems very frightening that the FBI have placed a surveillance-tracking device on the car of a 20-year-old American citizen who has done nothing more than being half-Egyptian," Alseth told Wired.com

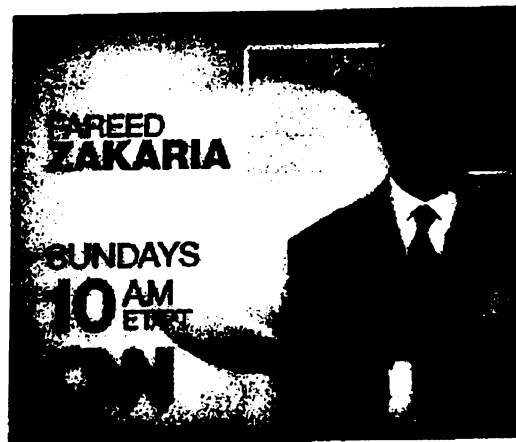
Afifi, a business marketing student at Mission College in Santa Clara, discovered the device last Sunday when he took his car to a local garage for an oil change. When a mechanic at Ali's Auto Care raised his Ford Lincoln LS on hydraulic lifts, Afifi saw a wire sticking out near the right rear wheel and exhaust.

Garage owner Mazher Khan confirmed for Wired.com that he also saw it. A closer inspection showed it connected to a battery pack and transmitter, which were attached to the car with a magnet. Khan asked Afifi if he wanted the device removed and when Afifi said yes, Khan pulled it easily from the car's chassis.

"I wouldn't have noticed it if there wasn't a wire sticking out," Afifi said.

Later that day, a friend of Afifi's named Khaled posted pictures of the device at Reddit asking if anyone knew what it was and if it mean the FBI "is after us." (Reddit is owned by CondeNast Digital, which also owns Wired.com).

"My plan was to just put the device on another car or in a lake," Khaled wrote, "but when you come home to 2 stoned off their asses people who are hearing things in the device and convinced its a bomb you just gotta be sure."



Print Powered By iPrint Dynamics

First allegedly caught using GPS to spy on student - CNN.com

Page 3 of 10



**CNN.com**

A reader quickly identified it as an Orion Guardian ST820 tracking device made by an electronics company called Cobham, which sells the device only to law enforcement.

No one was available at Cobham to answer Wired.com's questions, but a former FBI agent who looked at the pictures confirmed it was a tracking device.

The former agent, who asked not to be named, said the device was an older model of tracking equipment that had long ago been replaced by devices that don't require batteries. Batteries die and need to be replaced if surveillance is ongoing so newer devices are placed in the engine compartment and hardwired to the car's battery so they don't run out of juice. He was surprised this one was so easily found.

"It has to be able to be removed but also stay in place and not be seen," he said. "There's always the possibility that the car will end up at a body shop or auto mechanic, so it has to be hidden well. It's very rare when the guys find them."

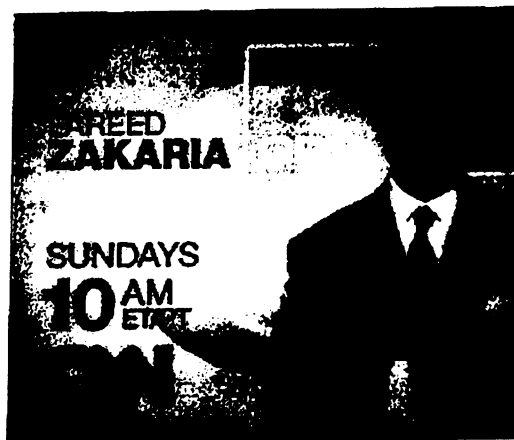
He said he was certain that agents who installed it would have obtained a 30-day warrant for its use.

Afifi considered selling the device on Craigslist before the FBI showed up. He was in his apartment Tuesday afternoon when a roommate told him "two sneaky-looking people" were near his car.

Afifi, already heading out for an appointment, encountered a man and woman looking his vehicle outside. The man asked if Afifi knew his registration tag was expired. When Afifi asked if it bothered him, the man just smiled.

Afifi got into his car and headed for the parking lot exit when two SUVs pulled up with flashing lights carrying four police officers in bullet-proof vests.

The agent who initially spoke with Afifi identified himself then as Vincent and told Afifi, "We're here to recover the device you found on your vehicle. It's federal property. It's an expensive piece, and



Print Powered By  Dynamics





CNN.com

we need it right now."

Afifi asked, "Are you the guys that put it there?" and the agent replied, "Yeah, I put it there." He told Afifi, "We're going to make this much more difficult for you if you don't cooperate."

Afifi retrieved the device from his apartment and handed it over, at which point the agents asked a series of questions -- did he know anyone who traveled to Yemen or was affiliated with overseas training? One of the agents produced a printout of a blog post that Afifi's friend Khaled allegedly wrote a couple of months ago. It had "something to do with a mall or a bomb," Afifi said. He hadn't seen it before and doesn't know the details of what it said. He found it hard to believe Khaled meant anything threatening by the post.

"He's a smart kid and is not affiliated with anything extreme and never says anything stupid like that," Afifi said. "I've known that guy my whole life."

The agents told Afifi they had other agents outside Khaled's house.

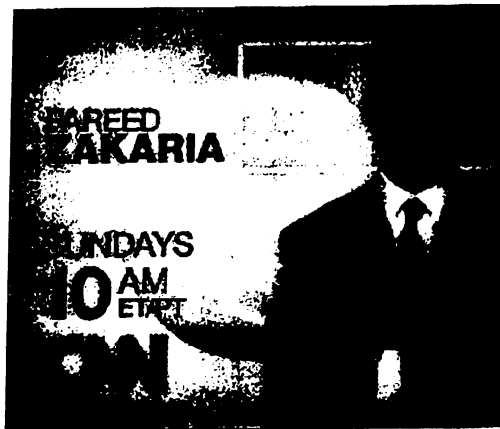
"If you want us to call them off and not talk to him we can do that," Afifi said they told him. "That was weird. ... I didn't really believe anything they were saying."

When he later asked Khaled about the post, his friend recalled "writing something stupid," but said he wasn't involved in any wrongdoing. Khaled declined to discuss the issue with

Wired.com.

The female agent, who handed Afifi a card, identified herself as Jennifer Kanaan and said she was Lebanese. She spoke some Arabic to Afifi and through the course of her comments indicated she knew what restaurants he and his girlfriend frequented. She also congratulated him on his new job. Afifi got laid off from his job a couple of days ago, but on the same day was hired as an international sales manager of laptops and computers for Cal Micro in San Jose.

The agents also knew he was planning a short business trip to Dubai in a few weeks. Afifi said



Print Powered By Dynamics



**CNN.com**

he often travels for business and has two teenage brothers in Egypt whom he supports financially. They live with an aunt. His U.S.-born mother, who divorced his father five years ago, lives in Arizona.

Afifi's father, Aladdin Afifi, was a U.S. citizen and former president of the Muslim Community Association here, before his family moved to Egypt in 2003. Yasir Afifi returned to the U.S. alone in 2008, while his father and brothers stayed in Egypt, to further his education he said. He knows he's on a federal watchlist and is regularly taken aside at airports for secondary screening.

Six months ago, a former roommate of his was visited by FBI agents who said they wanted to speak with Afifi. Afifi contacted one agent and was told the agency received an anonymous tip from someone saying he might be a threat to national security. Afifi told the agent he was willing to answer questions if his lawyer approved. But after Afifi's lawyer contacted the agency, he never heard from the feds again until he found their tracking device.

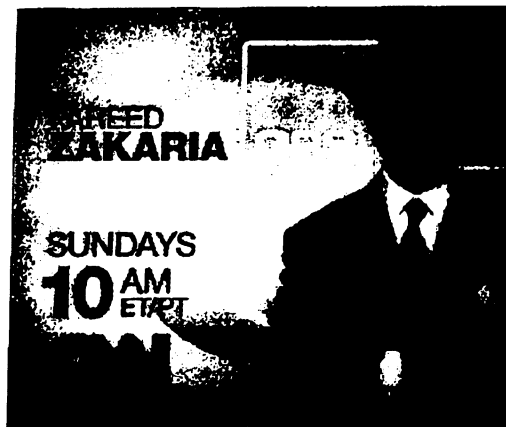
"I don't think they were surprised that I found it," he told Threat Level. "I'm sure they knew when I found it. ... One of the first questions they asked me was if I was at a mechanics shop last Sunday. I said yes, that's where I found this stupid device under my car."

Afifi's attorney, who works for the civil liberties-focused Council on American Islamic Relations, said this kind of tracking is more egregious than the kind her office usually sees.

"The idea that it escalates to this level is unusual," said Zahra Billoo. "We take about one new case each week relating to FBI or law enforcement visits [to clients]. Generally they come to the individual's house or workplace, and there are issues that arise from that."

However, she said that after learning about Afifi's experience, other lawyers in her organization told her they knew of two people in Ohio who also recently discovered tracking devices on their vehicles.

Afifi's encounter with the FBI ended with the agents telling him not to worry.



Print Powered By Format Dynamics

FBI allegedly caught using GPS to spy on student - CNN.com

page 0 of 0



**CNN.com**

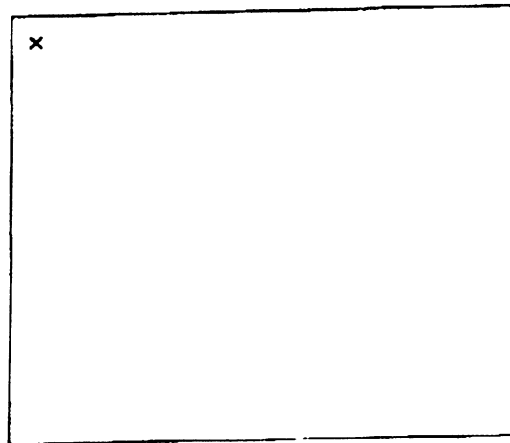
"We have all the information we needed," they told him. "You don't need to call your lawyer. Don't worry, you're boring."

They shook his hand and left.

Subscribe to WIRED magazine for less than \$1 an issue and get a FREE GIFT! [Click here!](#)

Copyright 2010 Wired.com

[Log in](#) or [sign up](#) to comment



Print Powered By  Dynamics

# **EXHIBIT B**

## **V. AUTHORIZED METHODS**

### **A. PARTICULAR METHODS**

All lawful investigative methods may be used in activities under these Guidelines as authorized by these Guidelines. Authorized methods include, but are not limited to, those identified in the following list. The methods identified in the list are in some instances subject to special restrictions or review or approval requirements as noted:

1. The methods described in Part II.A.4 of these Guidelines.
2. Mail covers.
3. Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers).
4. Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. Where a sensitive monitoring circumstance is involved, the monitoring must be approved by the Criminal Division or, if the investigation concerns a threat to the national security or foreign intelligence, by the National Security Division.
5. Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the Chief Division Counsel or the FBI Office of the General Counsel. (The methods described in this paragraph usually do not require court orders or warrants unless they involve physical trespass or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.)
6. Polygraph examinations.
7. Undercover operations. In investigations relating to activities in violation of federal criminal law that do not concern threats to the national security or foreign intelligence, undercover operations must be carried out in conformity with the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. In investigations that are not subject to the preceding sentence because they concern threats to the national security or foreign intelligence, undercover operations involving religious or political organizations must be reviewed and approved by FBI Headquarters, with participation by the National Security Division in the review process.
8. Compulsory process as authorized by law, including grand jury subpoenas and

# **EXHIBIT C**

**UNCLASSIFIED - FOR OFFICIAL USE ONLY**  
**Domestic Investigations and Operations Guide**

**11.6. (U) Investigative Method: Use of closed-circuit television, direction finders, and other monitoring devices (Not needing a Court Order)**

(U) **Note:** Use of this method is subject to legal review by the CDC or OGC.

**11.6.1. (U) Summary**

(U//FOUO) [Redacted]

b2  
b7E

(U//FOUO) **Application:** [Redacted] not otherwise prohibited by AGG-Dom, Part III.B.2-3.

b2  
b7E

**11.6.2. (U) Legal Authority**

- A. (U) AGG-Dom, Part V
- B. (U) Tracking devices use (18 U.S.C. § 2510[12] [C])
- C. (U) Rule 41 Federal Rules of Criminal Procedure
- D. (U) Fourth Amendment to the United States Constitution

**11.6.3. (U//FOUO) Definition of Investigative Method**

A. (U//FOUO) **Closed Circuit Television (CCTV):** a fixed-location video camera that is typically concealed from view or that is placed on or operated by a consenting party.

B. (U//FOUO) **Electronic Tracking Devices:** [Redacted]

b2  
b7E

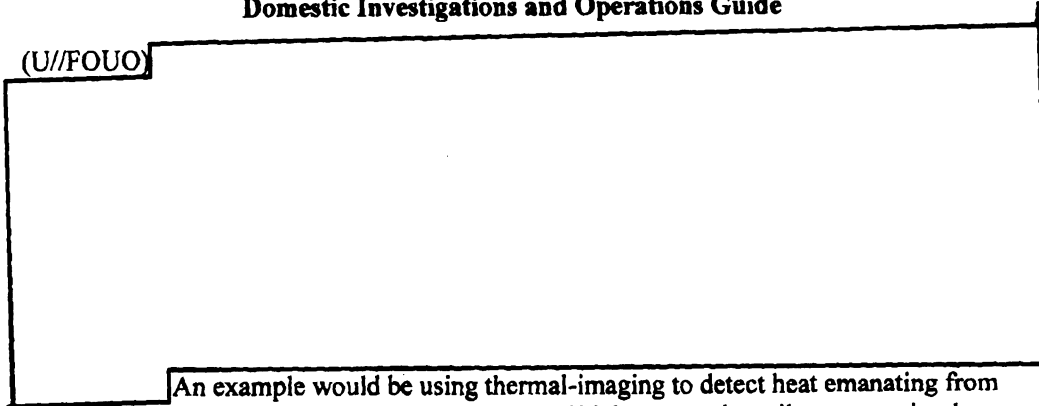
Electronic tracking devices are specifically excluded from Title III requirements (18 U.S.C. § 2510[12] [C]). In circumstances where a court order is required (pursuant to FRCP Rule 41[e][2][B]), a judge or magistrate may authorize the use of an electronic tracking device within the jurisdiction of the court and outside that jurisdiction, if the device is installed in that jurisdiction. (FRCP Rule 41 b[4]; 18 U.S.C. § 3117.)

C. (U//FOUO) [Redacted]

b2  
b7E

**UNCLASSIFIED - FOR OFFICIAL USE ONLY**  
**Domestic Investigations and Operations Guide**

(U//FOUO)



b2  
b7E

An example would be using thermal-imaging to detect heat emanating from within a home to make inferences about the use of high-powered marijuana-growing lamps inside the home (Kyllo v. United States, 533 U.S. 27 (2001)).

(U) Whether an area is curtilage is determined by reference to four factors: (i) proximity of the area in question to the home; (ii) whether the area is within an enclosure surrounding the home; (iii) nature of the use to which the area is put; and (iv) steps taken to protect the area from observation by passers-by.

**11.6.4. (U//FOUO) Standards for Use and Approval Requirements for Investigative Method**

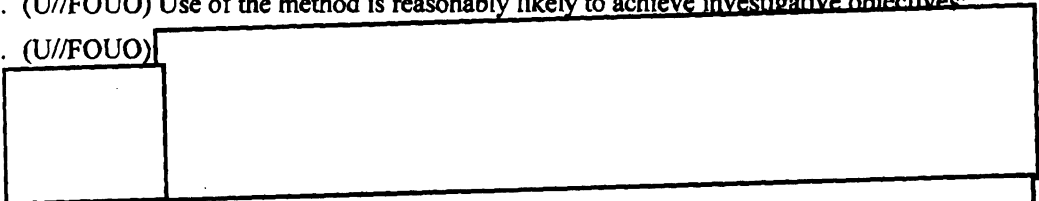
(U//FOUO) When a video camera is physically operated as a hand-held video and is being used in an area in which no one has a reasonable expectation of privacy, its use is equivalent to using a still camera and does not require supervisory approval.

(U//FOUO) For those situations that require SSA approval for the use of CCTV, tracking devices, and other monitoring devices, SSA approval, which should be documented using the FD-759, may be granted if the following criteria have been met:

A. (U//FOUO) Legal review and concurrence from the CDC or OGC that a court order is not required for installation or use of the device because there has been lawful consent, no reasonable expectation of privacy exists, or no physical trespass necessary to install the device. **Note:** Whenever circumstances change in either installation or monitoring, a new legal review should be obtained to determine whether a separate authorization is necessary.

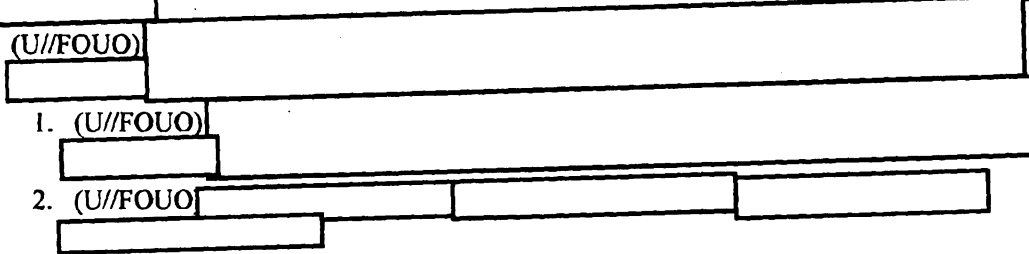
B. (U//FOUO) Use of the method is reasonably likely to achieve investigative objectives:

C. (U//FOUO)



b2  
b7E

D. (U//FOUO)



b2  
b7E

b2  
b7E

b2  
b7E



**UNCLASSIFIED - FOR OFFICIAL USE ONLY**  
**Domestic Investigations and Operations Guide**

- 3. (U//FOUO) [redacted] b2  
[redacted] b7E
- 4. (U//FOUO) [redacted] b2  
[redacted] b7E

**11.6.5. (U) Duration of Approval**

(U//FOUO) [redacted] b2  
[redacted] b7E

**11.6.6. (U//FOUO) Specific Procedures**

(U//FOUO) To use the method, the case agent must:

- A. (U//FOUO) [redacted] b2  
[redacted] b7E
- B. (U//FOUO) [redacted] b2
- C. (U//FOUO) [redacted] b7E  
[redacted] b2  
[redacted] b7E
- D. (U//FOUO) [redacted] b2  
[redacted] b7E  
[redacted] b2  
[redacted] b7E
- E. (U//FOUO) [redacted] b2  
[redacted] b7E  
[redacted] b2  
[redacted] b7E
- 1. (U//FOUO) [redacted] b2  
[redacted] b7E
- 2. (U//FOUO) [redacted] b2  
[redacted] b7E
- 3. (U//FOUO) [redacted] b2  
[redacted] b7E

**UNCLASSIFIED - FOR OFFICIAL USE ONLY**  
**Domestic Investigations and Operations Guide**

(U//FOUO) [Redacted]

b2  
b7E

**11.6.7. (U//FOUO) Compliance and Monitoring**

(U//FOUO) Authorization documents regarding the use of the CCTV, electronic tracking devices [Redacted] must be documented in the substantive investigative ELSUR file and will be available for compliance and monitoring review.

b2  
b7E

# **EXHIBIT E**

Model No: ST  
Serial No: C80011

# **EXHIBIT F**



# **EXHIBIT G**

