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10 Attorneys for Plaintiffs Rebecca Allison Gordon,
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11 Union Foundation of Northern California

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 REBECCA ALLISON GORDON, JANET) No.
AMELIA ADAMS and AMERICAN CIVIL)
16 LIBERTIES UNION FOUNDATION OF) **COMPLAINT FOR DECLARATORY**
NORTHERN CALIFORNIA,) **AND INJUNCTIVE RELIEF FOR**
17) **VIOLATION OF THE FREEDOM OF**
) **INFORMATION ACT, 5 U.S.C. § 552**
18 Plaintiffs,) **et seq. AND THE PRIVACY ACT, § 552a**
) **et seq.**
19 v.)
)
20 FEDERAL BUREAU OF INVESTIGATION,)
UNITED STATES DEPARTMENT OF)
21 JUSTICE and TRANSPORTATION)
SECURITY ADMINISTRATION,)
22)
Defendants.)
23 _____)

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INTRODUCTION

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2 1. Rebecca Allison Gordon, Janet Amelia Adams, and the American Civil Liberties
3 Union Foundation of Northern California (“ACLU-NC”) (collectively referred to as “Plaintiffs”),
4 bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as
5 amended, and the Privacy Act, 5 U.S.C. § 552a *et seq.*, to enjoin the Federal Bureau of
6 Investigation (“FBI”) and the Transportation Security Administration (“TSA”) (collectively
7 referred to as “Defendants”), from continuing to improperly withhold agency records regarding
8 the “no fly” list and other transportation watchlists, as well as agency records concerning Plaintiffs
9 Gordon and Adams. Defendant United States Department of Justice (“DOJ”) is sued in its
10 capacity as the parent agency of Defendant FBI.

11 2. Plaintiffs Gordon and Adams are long-time peace activists and co-publishers of
12 *War Times*, a newspaper critical of the Bush Administration’s domestic “war on terrorism.”
13 Numerous air passengers, including Plaintiffs Adams and Gordon, have been told by airline
14 officials or law enforcement that their names may appear on a secret “no fly” list or other
15 transportation watchlists. Recently-obtained San Francisco International Airport (“SFO”) records
16 reveal that, at SFO alone, hundreds of air travelers have been told that their names may appear on
17 the “no fly” list or other watchlists.

18 3. Recent press accounts and the limited information that is publicly available confirm
19 the existence of a “no fly” list. However, the government has released virtually no information
20 about the list or any other watchlist. The public does not know, for instance, how an air traveler
21 can request that her name be removed from the “no fly” list, or whether the government follows
22 procedures to ensure the accuracy of such lists. Without even basic information about the “no fly”
23 list or other watchlists, the public cannot evaluate the government’s decision to use such lists.
24 Plaintiffs seek agency records that are critical to the public’s ability to assess the use of the “no
25 fly” list and other watchlists.

JURISDICTION

26
27 4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B),
28 5 U.S.C. § 552a(g)(1), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

1 VENUE

2 5. Venue in the Northern District of California is proper under 5 U.S.C.
3 § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5) and 28 U.S.C. § 1391. Independently, venue is proper in
4 the Northern District of California in that Plaintiffs Gordon and Adams are residents of San
5 Francisco, California and Plaintiff ACLU-NC maintains its office in San Francisco, California.

6 PARTIES

7 6. Plaintiff Rebecca Allison Gordon is a U.S. citizen and a resident of San Francisco.
8 She is a long-time activist for peace and civil rights. Ms. Gordon is currently a graduate theology
9 student at the Starr King School for the Ministry in Berkeley, California. She is also a writer and a
10 co-publisher of *War Times*, a newspaper that first began publication after September 11, 2001.
11 From its inception, *War Times* has published articles and commentary critical of the Bush
12 Administration's restrictions on civil liberties as part of its domestic "war on terrorism." *War*
13 *Times* currently has a circulation of approximately 125,000 readers per month. A true and correct
14 copy of the current edition of *War Times* is attached as Exhibit 1, and is also available at the War
15 Times website, www.war-times.org.

16 7. Plaintiff Janet Amelia Adams is a U.S. citizen and a resident of San Francisco,
17 California. She works as a consultant assisting advocacy groups and progressive political
18 candidates with strategic planning. Like Ms. Gordon, Ms. Adams is a long-time activist for peace,
19 a community organizer and a co-publisher of *War Times*. She has also been an outspoken critic of
20 the Bush Administration's anti-civil liberties policies, and has authored articles opposing the
21 Administration's war against Iraq.

22 8. Plaintiff ACLU-NC is a nonprofit public interest organization working to increase
23 citizenship participation in governance issues. The ACLU-NC, an affiliate of the national
24 American Civil Liberties Union, was founded in 1934 and has over 32,000 members. The
25 ACLU-NC routinely publishes periodicals, news briefings, right-to-know documents, and other
26 materials that are disseminated widely to the public. The ACLU-NC also disseminates
27 information through its website (www.aclunc.org), which addresses civil liberties issues in depth,
28 provides features on civil liberties issues in the news, and contains numerous documents that relate

1 to the issues on which the ACLU-NC is focused. The ACLU-NC further disseminates information
2 through a newsletter that has been in operation since 1936, and that is distributed bi-monthly to
3 over 30,000 households in Northern California.

4 9. Defendant FBI is a federal agency within the meaning of 5 U.S.C. § 552(f) and
5 5 U.S.C. § 552a(a)(1); Defendant DOJ, as the parent agency of Defendant FBI, is also a federal
6 agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 552a(a)(1).

7 10. Defendant TSA is a federal agency within the meaning of 5 U.S.C. § 552(f) and
8 5 U.S.C. § 552a(a)(1).

9 FACTS

10 11. On August 7, 2002, Plaintiffs Gordon and Adams arrived at San Francisco
11 International Airport (“SFO”) for an American Trans Air (“ATA”) flight to Boston via Chicago.
12 When they checked in for their flight at the ATA counter, an ATA agent told them that their
13 names appeared on a “no fly” list. San Francisco Police Department (“SFPD”) officers arrived at
14 the scene and detained Plaintiffs Gordon and Adams. The officers informed them that the police
15 would have to check whether their names appeared on a “master list.” Although Plaintiffs Gordon
16 and Adams were permitted to fly, their boarding passes were marked with a red “S,” which
17 subjected them to additional searches at SFO. Plaintiff Adams was again subjected to additional
18 searches at Logan International Airport in Boston during her return flight to SFO.

19 SFO RECORDS CONFIRM EXISTENCE OF “NO FLY” LIST 20 AND INVESTIGATION OF PLAINTIFFS GORDON AND ADAMS

21 12. In response to the August 7th incident, Plaintiff ACLU-NC, on behalf of Plaintiffs
22 Gordon and Adams, sent a letter to SFO on November 14, 2002, requesting records about the
23 incident and the “no fly” list under the California Public Records Act. Attached as Exhibit 2 is a
24 true and correct copy of this letter. John L. Martin, SFO Airport Director, responded on
25 November 22, 2001 by providing documentation confirming the existence of a “no fly” list used
26 by the FBI. The documentation also confirmed that on August 7, 2002, law enforcement
27 authorities checked Plaintiffs Gordon and Adams’s names against a master “FBI list.” Attached as
28 Exhibit 3 is a true and correct copy of the letter response from Mr. Martin and its enclosures.

1 13. On November 14, 2002, Plaintiff ACLU-NC, on behalf of Plaintiffs Gordon and
2 Adams, sent a letter to SFPD requesting records under the California Public Records Act about the
3 August 7th incident. SFPD did not release any information in response to this request. Attached
4 as Exhibit 4 is a true and correct copy of the letter requesting records from SFPD.

5 **FOIA AND PRIVACY ACT LETTER REQUESTS TO FBI AND TSA**

6 14. On December 12, 2002, Plaintiff ACLU-NC, on behalf of Plaintiffs Gordon and
7 Adams and the ACLU-NC, sent letters to the FBI (to its San Francisco office and Washington,
8 D.C. headquarters) and to TSA (in Washington, D.C.). Attached as Exhibits 5, 6, 7, 8, 9 and 10
9 are true and correct copies of this correspondence. Through this correspondence, Plaintiffs sought
10 the disclosure of the following records:

- 11 a. All records prepared, collected, or maintained by the FBI, TSA,
12 and/or Department of Transportation (“DOT”) in connection with
13 the placement of Ms. Gordon’s or Ms. Adams’ name or other
14 identifying information on any lists of individuals considered
15 potential threats to transportation or national security, including lists
16 maintained pursuant to the Aviation Transportation Security Act of
17 2001 (hereinafter “watchlists”).
- 18 b. All records prepared, collected, and/or maintained by FBI, DOT
19 and/or TSA about the placement of Ms. Gordon’s or Ms. Adams’
20 name or identifying information on the list commonly referred to as
21 the “no fly” list.
- 22 c. All records, including memoranda of understanding and
23 correspondence, transmitted between DOT, TSA, and/or the FBI and
24 any airport or local police department, including SFO and SFPD,
25 regarding sharing or gathering information related to a “no fly” list
26 or any watchlist.
- 27 d. All records, including memoranda, policy directives, and guidances,
28 issued by FBI, DOT, and/or TSA and distributed to any airport or
 local police department, including SFO or SFPD, regarding the “no
 fly” list or any watchlist.
- e. All records, including policy directives, procedures, and guidances,
 regarding access to the “no fly” list and any watchlists by any
 individual or agency, including airline or airport employees.
- f. All records, including policy directives, procedures, and guidances,
 concerning how individuals are placed on and removed from the “no
 fly” list or any watchlist.
- g. All records, including, policy directives, procedures, and guidances,
 regarding whether political beliefs, membership in groups, or any
 other First Amendment activity is a factor in placing individuals on
 the “no fly” list or any watchlist.

- 1 h. All records, including policies, procedures, guidances, and
2 evaluations, regarding the use and accuracy of the “no fly” list or
3 any watchlist and any procedures to correct errors or remove names
4 from those lists.
- 5 i. All files and records maintained by the FBI, DOT and/or TSA
6 indexed or maintained under the name or identifying information of
7 Plaintiff Adams.
- 8 j. All files and records maintained by the FBI, DOT and/or TSA
9 indexed or maintained under the name or identifying information of
10 Plaintiff Gordon.
- 11 k. Agency records containing information about the number of names
12 on the “no fly” list and all watchlists as of the date of this request.
- 13 l. Agency records containing information about the number of times
14 since the creation of the “no fly” list and effective date of the
15 Aviation Transportation Security Act (ATSA) that the DOT, TSA,
16 FBI, or local or state law enforcement, including SFPD, has stopped
17 or questioned individuals at airports, including SFO, because those
18 individuals were believed to be on the “no fly” list or any watchlist.
- 19 m. Agency records containing information about the number of times
20 since the creation of the “no fly” list or the ATSA’s effective date
21 that an individual was incorrectly identified (even briefly) as being
22 on the “no fly” list or any watchlist.
- 23 n. Agency records containing information about the name(s) of the
24 agency or agencies that maintain(s) the “no fly” list or any watchlist.

25 **“NO RECORDS” DENIALS BY FBI AND NO RESPONSE FROM TSA**

26 15. On December 19, 2002, in letters signed by John A. Lohse, Chief Division Counsel
27 of the FBI’s San Francisco office, the FBI notified Plaintiffs that the FBI had located “no records”
28 regarding Plaintiffs Gordon and Adams individually, or otherwise responsive to Plaintiffs’
December 12 requests. Mr. Lohse referred Plaintiffs’ request for records concerning the
“maintenance of ‘no fly lists’ and ‘watchlists’” to the FBI’s Washington, D.C. office. Attached as
Exhibits 11 and 12 are true and correct copies of the FBI’s letter responses.

16. On January 2, 2003, Defendant TSA acknowledged receipt of Plaintiffs’ records
requests and assigned identification numbers to them. Attached as Exhibits 13 and 14 are true and
correct copies of the TSA’s letter responses.

17. By letters dated January 6, 16, and 28, 2003, signed by David M. Hardy, Section
Chief, Records Information and Dissemination Section of the Records Management of the FBI in
its Washington, D.C. office, Plaintiffs were notified that the FBI had located “no records”

1 responsive to their December 12th requests. Attached as Exhibits 15, 16, and 17 are true and
2 correct copies of the FBI's letter responses.

3 18. On February 14, 2003, through counsel, Plaintiffs sent a certified letter to the FBI
4 appealing the FBI San Francisco office's denial of their FOIA and Privacy Act requests. In this
5 correspondence, Plaintiffs observed that the FBI's blanket "no record" response seemingly ignored
6 "the full scope" of the FOIA requests which expressly sought agency records "regarding the
7 existence of any 'no fly' list or 'any watchlist' as well as 'policy directives, procedures and
8 guidances' concerning how individuals who are placed may be removed from the 'no fly' list or
9 any watchlist' among other documents." Attached as Exhibits 18 and 19 are true and correct
10 copies of this correspondence.

11 19. On March 5, 2003, through counsel, Plaintiffs sent certified letters to the FBI
12 appealing the FBI Washington, D.C. headquarters' denial of their FOIA and Privacy Act requests.
13 Again in this correspondence, Plaintiffs observed that the FBI's blanket "no record" response
14 seemingly ignored "the full scope" of the FOIA requests which expressly sought agency records
15 "regarding the existence of any 'no fly' list or 'any watchlist' as well as 'policy directives,
16 procedures and guidances' concerning how individuals who are placed may be removed from the
17 'no fly' list or 'any watchlist' among other documents." Attached as Exhibits 20 and 21 are true
18 and correct copies of this correspondence.

19 20. On March 21, 2003, through counsel, Plaintiff ACLU-NC sent letters to Defendant
20 TSA responding to TSA's earlier letter of February 21, 2003, in which Defendant TSA denied
21 Plaintiff ACLU-NC's request to be granted status as a representative of the news media for
22 purposes of waiving search and review fees. Attached as Exhibit 22 is a true and correct copy of
23 Defendant TSA's February 21, 2003 letter. Through a letter sent via facsimile and U.S. mail on
24 March 21, 2003, Plaintiff ACLU-NC appealed TSA's determination that Plaintiff ACLU-NC
25 should not be placed in the category of news media requester. In its appeal letter, Plaintiff ACLU-
26 NC clarified that it "qualifies as a news media representative because it disseminates information
27 to the public through its periodic newsletter, published reports, web site, news conferences and
28 interviews," and provided detailed support for this contention. Attached as Exhibit 23 is a true

1 and correct copy of Plaintiff ACLU-NC's March 21, 2003 appeal letter. By a separate letter, also
2 sent via facsimile and U.S. mail on March 21, 2003, Plaintiff ACLU-NC also provided
3 clarification, per Defendant TSA's request, as to why Plaintiff ACLU-NC qualifies for a waiver of
4 duplication costs because disclosure of the information sought by Plaintiffs' requests is in the
5 public interest. Attached as Exhibit 24 is a true and correct copy of Plaintiff ACLU-s March 21,
6 2003 clarification letter.

7 21. On March 28, 2003, Defendant FBI acknowledged receipt of Plaintiffs' appeal
8 letters regarding the FBI San Francisco office's denial of their FOIA requests. Attached as
9 Exhibits 25 and 26 are true and correct copies of this correspondence.

10 22. On April 3, 2003, Defendant FBI acknowledged receipt of Plaintiffs' appeal letters
11 regarding the FBI Washington, D.C. headquarters' denial of their FOIA requests. Attached as
12 Exhibits 27, 28, 29, and 30 are true and correct copies of this correspondence.

13 **RECORDS ABOUT THE "NO FLY" LIST AND OTHER WATCHLISTS EXIST**

14 23. The government's repeated use of the "no fly" list and watchlists as well as the
15 public's concern about such lists has been chronicled in a variety of publications. *See, e.g.*, Ira
16 Berkow, "Rower with Muslim Name Is an All-American Suspect," *New York Times* (Feb. 21,
17 2003); Alan Gathright, "U.S. Evolving into Big Brother Society, ACLU Says," *San Francisco*
18 *Chronicle* (Jan. 16, 2003); Dave Lindorff, "The No-Fly List; Is a Federal Agency Systematically
19 Harassing Travelers for Their Political Beliefs?" *In These Times* (Dec. 23, 2002); Robyn Blumner,
20 "If Your Name Gets on the Wrong List, You're in Trouble," *St. Petersburg Times* (Dec. 22, 2002);
21 Robyn Blumner, "So You Want to Get Your Name Off That List . . .?" *The Milwaukee Journal*
22 *Sentinel* (Dec. 23, 2002); Alan Gathright, "ACLU Seeks Answers to 'No-Fly' Lists," *San*
23 *Francisco Chronicle* (Dec. 13, 2002); Ann Davis, "Lists That Bar Air Passengers Draw Scrutiny,"
24 *Wall Street Journal* (Dec. 12, 2002); Ann Davis, "Post-Sept. 11 Watch List Acquires Life of Its
25 Own," *Wall Street Journal* (Nov. 19, 2002); Dave Lindorff, "Grounded: A Federal Agency
26 Confirms That it Maintains an Air Travel Blacklist of 1,000 People," *salon.com* (Nov. 15, 2002);
27 Jack Chang, "Liberties Tested After September 11," *Contra Costa Times* (Nov. 14, 2002); Bob
28 Egelko, "ACLU's TV Ads Make Issue of Bush Security Measures," *San Francisco Chronicle*

1 (Oct. 17, 2002); Steve Jacob, "Vacation Interrupted," *Forth Worth Star-Telegram* (Oct. 11, 2002);
2 Editorial, "Common Sense Checks In," *Baltimore Sun* (Oct. 8, 2002); Charles Osgood, "Some
3 Activists Names Appear on FBI No-Fly List," *CBS News* (Oct. 7, 2002); Bill Whitaker, "Peace
4 Activists Claim the Government Is Treading on Their Civil Rights," *CBS News* (Oct. 6, 2002);
5 Editorial, "A 'No-Fly Zone' in Our Country?" *San Francisco Chronicle* (Sept. 30, 2002); Alan
6 Gathright, "No-Fly Blacklist Snares Political Activists," *San Francisco Chronicle* (Sept. 27,
7 2002); "Retired Coast Guard Commander Finds Himself on FBI List," *Associated Press* (Sept. 11,
8 2002); Sean Holstege, "Some Travelers a Threat to Country in Name Only," *Oakland Tribune*
9 (Sept. 5, 2002); Matthew Rothchild, "The No Fly List; People in the U.S. Who Are Considered
10 Security Risks Are Not Allowed Normal Access to Air Travel," *The Progressive* (Jun. 1, 2002);
11 Ralph R. Ortega, "He's Told Name Just Won't Fly," *New York Daily News* (May 21, 2002); Ryan
12 O'Rourke, "Activists Detained; Government Afraid of Those Who Disagree," *Milwaukee Journal*
13 *Sentinel* (Apr. 26, 2002). True and correct copies of these articles are attached as Exhibit 31.

14 24. In letters written to their Senators and Representatives, dozens of air passengers
15 across the country have complained about their experiences with the "no fly" list. See
16 www.epic.org/privacy/airtravel/foia/watchlist_foia_analysis.html (providing links to letters of air
17 travelers).

18 **RECORDS ABOUT THE "NO FLY" LIST AND OTHER WATCHLISTS EXIST OR**
19 **REASONABLY SHOULD EXIST**

20 25. On March 12, 2003, through counsel, Plaintiffs made a second records request to
21 SFO under the San Francisco Sunshine Ordinance and the California Public Records Act and
22 sought access to "documents referring or relating to the questioning, stopping, handling,
23 investigation, or detention of individuals believe to be on a federal 'no fly' list or other watchlist at
24 SFO." Mr. Martin, on behalf of SFO, responded on March 21 and requested an additional 14 days
25 in which to respond to this request ("March 21 Martin letter"). Accompanying the letter that was
26 faxed by Mr. Martin to counsel was a two-page document that appears to identify individuals
27 detained at one terminal at SFO on selected days in September of 2001 because their names
28 appeared on a "no fly" list. On information and belief, Plaintiffs allege that Defendants FBI and

1 TSA currently maintain records of the type inadvertently released by SFO officials regarding “no
2 fly” lists or watchlists in use at SFO and in airports throughout the nation. In an abundance of
3 caution, Plaintiffs have not attached a copy of the two-page document as the Court has not yet
4 decided whether to require the government to release the records requested by Plaintiffs. A true
5 and correct copy of the letter response alone is attached as Exhibit 32.

6 26. On April 8, 2003, SFO released nearly 400 pages of incident reports documenting
7 instances in which air passengers were stopped or questioned at SFO in connection with the “no
8 fly” list and other watchlists. In the overwhelming majority of these instances, passengers were
9 erroneously stopped and their names were found not to match the “no fly” or other watchlist. The
10 incident reports were different in form and content than the documents accompanying the March
11 21 Martin letter. Attached as Exhibit 33 is a chart summarizing the incident report documents
12 released by SFO. Upon information and belief, Plaintiffs allege that Defendants FBI and TSA
13 currently maintain records similar to the incident reports already released by SFO officials
14 regarding “no fly” lists or watchlists in use at SFO and in airports throughout the nation.

15 27. In addition, in a January 17, 2003 letter sent by Michael D. Robinson, Associate
16 Under Secretary for Aviation Security Operations of the TSA in Washington, D.C. to Mr. and
17 Mrs. Dennis Musante of Alamo, California, the TSA conceded that it “does require each airline to
18 use a ‘Watchlist’ comprised of names provide by Federal law enforcement agencies. When an
19 airline has a reservation with a passenger name that matches or is similar to one on the ‘Watchlist’
20 the airline must follow certain established procedures to clear the individual.” A true and correct
21 copy of this letter, which, on information and belief, was provided to the ACLU-NC, is attached as
22 Exhibit 34.

23 28. The existence of the “no fly” list is also confirmed by the very limited information
24 that is available to the public. According to this information, the TSA maintains at least two
25 watchlists: the “no fly” list and a “selectee” list that establishes which air passengers are singled
26 out for additional security measures. The government provides the names on these two lists to air
27 carriers like ATA, and air carriers subsequently store the list information in their own computer
28 systems. *See* www.epic.org/privacy/airtravel/foia/watchlist_foia_analysis.html.

1 29. Upon information and belief, Plaintiffs allege that Defendants FBI and TSA have
2 procedures and protocols regarding, *inter alia*, which individuals are on watchlists prepared by
3 their government, how individuals' names may be removed from such lists, and restrictions on the
4 government's and air carriers' use of such watchlists.

5 **PLAINTIFFS HAVE EXHAUSTED THEIR ADMINISTRATIVE REMEDIES**

6 30. By the terms of 5 U.S.C. § 522(a)(6)(A)(i), the time in which Defendant TSA was
7 required to respond to Plaintiffs' November 14th records requests has expired. Further, by the
8 terms of 5 U.S.C. § 522(a)(6)(A)(ii), the time in which Defendant TSA was required to have made
9 a determination as to Plaintiff ACLU-NC's appeal of TSA's determination that Plaintiff ACLU-
10 NC does not qualify as a representative of the news media for purposes of waiving TSA's search
11 and review fees has also expired.

12 31. By the terms of 5 U.S.C. § 552(a)(6)(C), with respect to Defendant TSA, Plaintiffs
13 are deemed to have exhausted their administrative remedies by reason of Defendant TSA's failure
14 to meet the statutory time limits.

15 32. By the terms of 5 U.S.C. § 552(a)(6)(C), with respect to Defendant FBI (San
16 Francisco office and Washington, D.C. headquarters), the agency responses to Plaintiffs' appeals
17 were due 20 days from receipt of those appeals. Although this time has elapsed, Plaintiffs have
18 yet to receive responses. Plaintiffs are deemed to have exhausted their administrative remedies by
19 reason of Defendant FBI's failure to meet the statutory time limits.

20 33. Plaintiffs Adams and Gordon have also exhausted their administrative remedies as
21 to Defendants TSA and FBI as regards their Privacy Act requests. *See* 5 U.S.C. § 552a(g)(1)(B).

22 34. Defendants have wrongfully withheld the records sought by Plaintiffs. Further,
23 Defendants have asserted no statutory basis for withholding any of the records sought by
24 Plaintiffs. There is a strong public interest in the disclosure of those records sought. Defendants'
25 refusal to release responsive documents that are believed to be within their custody and control
26 constitutes an abuse of these federal agencies' discretion.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of FOIA for Failure to Make Promptly Available**

3 **the Records Sought by Plaintiffs' Requests**

4 35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34
5 above, inclusive.

6 36. Plaintiffs have a legal right under FOIA to obtain the agency records they requested
7 on November 12, 2002 and there exists no legal basis for Defendants FBI and TSA's failure to
8 make available such records.

9 37. Defendants FBI and TSA's failure to make promptly available the records sought
10 by Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable
11 regulations promulgated thereunder.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Privacy Act for Failure to Allow Access to Records**

14 38. Plaintiffs Gordon and Adams repeat and reallege the allegations contained in
15 paragraphs 1 through 37 above, inclusive.

16 39. Plaintiffs Gordon and Adams have a legal right under the Privacy Act to gain
17 access to agency records that are indexed or maintained under their names in the "no fly" list or
18 any other system of records by Defendants FBI and TSA.

19 40. Defendants FBI and TSA's failure to timely make available to Plaintiffs Adams
20 and Gordon access to records indexed or maintained under their names or identifying information
21 violates the Privacy Act, 5 U.S.C. 552a(d)(1), and applicable regulations promulgated thereunder.

22 **THIRD CAUSE OF ACTION**

23 **Violation of FOIA for Defendant TSA's Failure to Classify Plaintiff ACLU-NC as a**

24 **Representative of the News Media for Purposes of Assessing Processing Fees**

25 41. Plaintiff ACLU-NC repeats and realleges the allegations contained in paragraphs 1
26 through 40 above, inclusive.

27 42. Plaintiff ACLU-NC has a legal right to be classified as a "representative of the
28 news media" for purposes of assessing processing fees associated with Plaintiffs' FOIA requests.

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43. Defendant TSA’s failure to classify Plaintiff ACLU-NC as a “representative of the news medial” for purposes of assessing processing fees associated with Plaintiffs’ FOIA requests is in violation of 5 U.S.C. 552(a)(4)(A)(ii)(II) and applicable regulations promulgated thereunder.

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

- 1. Declare that Defendants FBI and TSA violated FOIA and the Privacy Act;
- 2. Declare that Plaintiff ACLU-NC qualifies as a “representative of the news media” for purposes of assessing processing fees associated with Plaintiffs’ FOIA requests to Defendant TSA;
- 3. Order Defendants FBI and TSA to immediately disclose the requested records in their entireties and make copies available to Plaintiffs;
- 4. Order Defendants FBI and TSA immediately to grant Plaintiffs Adams and Gordon access to records indexed or maintained under their names or identifying information in the “no fly” list or any other system of records maintained by Defendants FBI and TSA;
- 5. Order Defendant TSA to classify Plaintiff ACLU-NC as a “representative of the news media” for purposes of assessing processing fees associated with Plaintiffs’ FOIA requests to Defendant TSA;

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- 6. Award Plaintiffs their reasonable costs and attorneys' fees;
- 7. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- 8. Grant such other relief as the Court may deem just and proper.

DATED this _____ day of April, 2003.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: _____
THOMAS R. BURKE
SUSAN E. SEAGER

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

By: _____
JAYASHRI SRIKANTIAH

Attorneys for Plaintiffs
Rebecca Allison Gordon,
Janet Amelia Adams and
American Civil Liberties Union Foundation of
Northern California