

Police State Spying and the Criminalization of Justice in America

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Another Day, Another Shameful Ruling on Police State Spying

Recently, federal district court Judge Cormac J. Carney of the Central District of California, dismissed a civil rights lawsuit filed against the Federal Bureau of Investigation (FBI) on grounds of bogus “state secrets privilege” claims made by the Obama administration.

That suit, [Fazaga v. FBI](#), was brought by the American Civil Liberties Union ([ACLU](#)) and the Council on American-Islamic Relations ([CAIR](#)). The plaintiffs forcefully argued that the Bureau illegally spied on Muslim residents in southern California, targeting them for “special handling” solely on the basis of their religious beliefs.

The atrocity played out in Carney’s court against a citizens’ right to due process under the Fourth and Fifth Amendments, constitutional guarantees that extend to *all* government actions and proceedings that can result in harm to an individual either civilly or criminally, is only the latest in a long line of capitulatory rulings by a diminished Judicial Branch.

Under Bush, and now Obama, the Justice Department demanded that *Fazaga* be thrown out on the most specious grounds: that presidential authority in all matters relating to national security cannot be challenged by those who are the victims of predatory actions, regardless of their egregious nature, by the secret state.

[Denouncing](#) Carney’s cave-in to the Justice Department, Ahilan Arulanantham, the deputy legal director for the ACLU of Southern California said: “Under today’s ruling dozens of law-abiding Muslim Americans in Southern California will never know if the government violated their constitutional rights. Every American should be deeply troubled when the government can win dismissal of a case involving the most basic constitutional rights by claiming that it is acting, in secret, in the interests of national security. The notion that our basic safety requires relinquishing our most cherished liberties is as inconsistent with the Constitution as it is frightening.”

But in a collapsing Empire, where the indefinite detention or even the liquidation of “terrorism” suspects, alongside illegal warrantless spying, the trampling of First Amendment rights to free speech and assembly, the persecution of government whistleblowers who bring high state crimes to light, are now deemed unreviewable by any court by a quasi-fascist “Unitary Executive.”

According to a [case summary](#) posted by the ACLU of Southern California, Peter Bibring informed us: “From the term ‘state secrets,’ you might think the case involved spies, hush-hush arrangements with foreign governments, or people detained at secret foreign

prisons—as some state secrets cases do. But this one involves the FBI’s investigation into law-abiding U.S. citizens and residents in Orange County, California, called ‘Operation Flex’.”

“In June 2006,” Bibring wrote, “FBI agents recruited Craig Monteilh, a man with a file full of felony convictions, to pose as a convert to Islam at one of the largest mosques in the area. The FBI paid Monteilh to spend the next fourteen months meeting as many members of the Muslim community as he could. He made audio recordings of every interaction, as he gathered names, telephone numbers, e-mails, political and religious views, travel plans, and other information on hundreds of individuals in the Muslim community. According to Monteilh’s own sworn statement, he was told to pay special attention to community leaders and those who seemed especially devout.”

FBI snitch Monteilh, a steroid-enhanced “fitness freak” and con man, who the [Orange County Weekly](#) reported had once told an unwitting dupe of one of his scams, “my body is my business card,” that is, before “liberating” her of tens of thousands of dollars even as he pocketed upwards of a quarter million more from the Bureau, was eventually sent back to state prison for grand-theft.

“When asked if the FBI had particular targets in the Muslim community that they wanted to have investigated, Monteilh said, ‘No. They said the targets would come to me.’ In other words,” Bibring averred, “Operation Flex was a fishing expedition that targeted people because of their religion. But in the end, after Monteilh began incessantly about jihad and violence, members of the community did exactly what you’re supposed to do: they reported him to the FBI. After hundreds of hours of Monteilh’s time and thousands of taxpayer dollars ‘Operation Flex’ resulted in zero criminal convictions. No one was ever even charged with a terrorism offense.”

Monteilh’s “cover” was blown when members of the Islamic Center of Irvine grew increasingly suspicious—and disturbed—by his provocative chatter about “jihad” and “terrorism.” Two members of the Orange County mosque contacted Hussam Ayloush, executive director of CAIR’s Southern California chapter, and told him that during a car ride Monteilh said he “wanted to blow up buildings.”

Ayloush contacted J. Stephen Tidwell, an FBI assistant director who mendaciously told a gathering at the Islamic Center of Irvine in 2006 that the FBI “would never spy on mosques.”

“‘I am calling to report a possible terrorist’,” Ayloush told the assistant director, the Weekly disclosed. “‘He is a white convert in Irvine.’ As soon as Ayloush uttered those words, he says Tidwell cut him off. ‘Okay,’ he reportedly replied. ‘Thanks for letting us know’.”

“Ayloush offered to provide the FBI with the man’s name and address, but, he says, Tidwell told him to give the information to the Irvine P.D., which he promptly did. ‘Neither the FBI nor the Irvine P.D. ever bothered to talk to the guy after he was reported,’ Ayloush says.”

Instead of “preventing terrorism” however, Operation Flex like a score of other filthy entrapment exercises run by the FBI worked precisely as intended: as a means to *terrorize* the Muslim community and let the “hajjis” know who’s boss.

As Pulitzer Prize winning [Associated Press](#) investigative journalists Adam Goldman and Matt

Apuzzo reported last week, the New York City Police Department's sinister Demographics Unit, tasked with "spying on Muslim neighborhoods, eavesdropping on conversations and cataloguing mosques ... never generated a lead or triggered a terrorism investigation."

"The Demographics Unit is at the heart of a police spying program," Goldman and Apuzzo wrote, and was "built with help from the CIA." With millions of taxpayer-provided "homeland security" handouts, the unit "assembled databases on where Muslims lived, shopped, worked and prayed. Police infiltrated Muslim student groups, put informants in mosques, monitored sermons and catalogued every Muslim in New York who adopted new, Americanized surnames."

"But in a June 28 deposition as part of a longstanding federal civil rights case," AP reported, "Assistant Chief Thomas Galati said none of the conversations the officers overheard ever led to a case."

"'Related to Demographics,' Galati testified that information that has come in 'has not commenced an investigation'."

But when it comes to evidence of widespread FBI abuse uncovered in *Fazaga*, we're supposed to believe that none of this can be discussed, let alone litigated in open court, since to do so would let the "terrorists" win!

The court, caving-in to arguments made by Hope and Change™ fraudster Barack Obama's Justice Department, tossed the case on the basis of assertions made by government attorneys that to allow the plaintiffs their day in court "would require or unjustifiably risk disclosure of secret and classified information regarding the nature and scope of the FBI's counterterrorism investigations, the specific individuals under investigation and their associates, and the tactics and sources of information used in combating possible terrorist attacks on the United States and its allies."

In [ruling](#) against victims of the Bureau's anti-Muslim witchhunt, Judge Carney averred that "the state secrets privilege is specifically designed to protect against disclosure of such information that is so vital to our country's national security."

"The state secrets privilege strives to achieve a difficult compromise between the principles of national security and constitutional freedoms," Carney wrote.

But as Shahid Buttar, the executive director of the Bill of Rights Defense Committee ([BORDC](#)), [wrote](#): "First, by invoking the state secrets privilege, the decision extends the judiciary's capitulation to executive lawlessness across the Bush & Obama administrations. Since initially emerging as a narrow evidentiary doctrine (in a 1953 case that ultimately proved to be part of a Pentagon coverup), federal courts have recently accepted the privilege as a wholesale immunity doctrine, a 'get out of jail free' card for executive abuses of various kinds."

If we were inclined to believe the good judge (we're not), with logic worthy of a Monty Python skit, Carney claimed that "The state secrets privilege can only be invoked and applied with restraint, in narrow circumstances, and infused with judicial skepticism. Yet, when properly invoked, it is absolute—the interest of protecting state secrets cannot give way to any other need or interest."

Accordingly, Carney, appointed to the federal bench by that champion of civil liberties and human rights, George W. Bush, asserted that “the proper application of the state secrets privilege may unfortunately mean the sacrifice of individual liberties for the sake of national security.”

Seeking to immunize himself from charges that he is little more than a toady for Executive Branch mandarins, Carney went to great lengths to cover his juridical ass-ets: “Plaintiffs raise the specter of *Korematsu v. United States*... and protest that dismissing their claims based upon the state secrets privilege would permit a ‘remarkable assertion of power’ by the Executive, and that any practice, no matter how abusive, may be immunized from legal challenge by being labeled as ‘counterterrorism’ and ‘state secrets.’ But such a claim assumes that courts simply rubber stamp the Executive’s assertion of the state secrets privilege. That is not the case here.”

Perish the thought! After all, only anti-patriotic, terrorist-loving, constitutional “extremists” would countenance otherwise! Never mind that the Bush and Obama regimes have raised the specter of “state secrets” to dismiss a score of cases relating to kidnapping and forced disappearance (“extraordinary rendition”), indefinite detention, torture, illegal wiretapping and state murder.

Last year, U.S. Attorney General Eric Holder, filed a [declaration](#) on the case which claimed that various aspects of the case would be “too sensitive” to be aired in open court. Indeed, according to Holder several categories of information that would be presented by plaintiffs’ attorneys “could reasonably be expected to cause significant harm to the national security.”

This is the same Eric Holder who as Deputy Attorney General under President Clinton, pimped himself out to secure the last-minute pardon of fugitive financier and Democratic Party moneymen Marc Rich before the Great Triangulator left office.

Commenting on Holder’s role in securing Rich’s pardon, investigative journalist Jim Hougan [wrote](#): “Other than Richard Nixon, I can think of no other felon, or quasi-felon, who has been pardoned for his crimes without having first been convicted of them. Perhaps the explanation is that Rich and [Pinky] Green have been helping their countries—the United States and Israel—behind the scenes. Like Hollywood tycoon Arnan Milchan, who is widely alleged to have long used his businesses to help finance the operations of the Mossad, former 20th Century Fox honcho Rich may well have done the same...if not for the Mossad, then perhaps for the CIA.”

But wait, there’s more!

Proving once again that crime pays, if you’re well-connected, upon leaving office Holder, a shrewd operator who knows which side his bread is buttered, joined the white shoe law firm of Covington & Burling. From his D.C. perch, Holder helped negotiate an agreement with the Justice Department over charges that Chiquita Brands International had ponied-up “protection money” to the drug-dealing Colombian death squad, the *Autodefensas Unidas de Colombia*, or AUC.

Close allies of former Colombian President Álvaro Uribe, three of whose relatives were recently extradited to the United States where they face cocaine trafficking charges, only after American taxpayers had doled out billions of dollars to “fight drugs” under Plan Colombia that is, Chiquita hired far-right AUC killers to murder trade unionists, peasant

activists and human rights' campaigners to protect their blood-soaked "investments."

According to case files, Chiquita arranged payments totaling millions of dollars during a 1997 meeting between late AUC, [Israeli-trained](#) *führer* Carlos Castaño and officials from Chiquita subsidiary Banadex.

At the time, Colombia's attorney general, Mario Iguarán, charged that Chiquita had used one of its ships to smuggle some 3,400 AK-47 assault rifles and 4 million rounds of ammunition to AUC drug lords. Although Iguarán had sought the extradition of Chiquita executives over these charges, none were. It is unknown whether or not cocaine was transported into the United States by that ship on its return voyage. In the wake of the \$25 million "settlement" with the Justice Department, Holder then represented Chiquita in a civil action that followed the criminal case.

More recently, as financial journalist Matt Taibbi pointed out in [Rolling Stone](#), Holder's "predictable decision" not to criminally pursue Goldman Sachs for massive fraud is "not just because Holder has repeatedly proven himself to be a spineless bureaucrat and obsequious political creature masquerading as a cop, and not just because rumors continue to circulate that the Obama administration—supposedly in the interests of staving off market panic—made a conscious decision sometime in early 2009 to give all of Wall Street a pass on pre-crisis offenses."

"No," Taibbi wrote, "the real reason this wasn't surprising is that Holder's decision followed a general pattern that has been coming into focus for years in American law enforcement. Our prosecutors and regulators have basically admitted now that they only go after the most obvious and easily prosecutable cases."

Like the persecution of Muslims, antiwar activists, national security whistleblowers or anyone else who's rocked the boat: easy prey for an FBI stitch-up.

Tom Burghardt is a researcher and activist based in the San Francisco Bay Area. In addition to publishing in *Covert Action Quarterly* and [Global Research](#), he is a Contributing Editor with [Cyrano's Journal Today](#). His articles can be read on [Dissident Voice](#), [Pacific Free Press](#), [Uncommon Thought Journal](#), and the whistleblowing website [WikiLeaks](#). He is the editor of *Police State America: U.S. Military "Civil Disturbance" Planning*, distributed by [AK Press](#) and has contributed to the new book from [Global Research](#), *The Global Economic Crisis: The Great Depression of the XXI Century*.

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