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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 CAITLIN KELLY HENRY and JESSE )  
13 STOUT, )  
14 Plaintiffs, )  
15 v. )  
16 DEPARTMENT OF JUSTICE, )  
17 Defendant. )

Case No. C13-05924 DMR

) **DEFENDANT’S MEMORANDUM OF LAW IN**  
) **SUPPORT OF REQUEST FOR IN CAMERA**  
) **REVIEW OF SUPPLEMENTAL**  
) **DECLARATIONS REGARDING DIVS**

1 On February 26, 2015, the Court ordered defendant to submit a supplemental declaration about the  
2 FBI's Data Integration Visualization System ("DIVS"). See ECF No. 43. To supply the information  
3 requested by the Court, defendant hereby provides two declarations: an Operational Declaration and the  
4 Third Declaration of David M. Hardy ("Third Hardy Declaration"). The information requested by the  
5 Court includes material classified pursuant to Executive Order 13526 and sensitive law enforcement  
6 material protected from public disclosure by the law enforcement privilege. Thus, to comply with the  
7 Court's order without violating Executive Order 13526 or waiving the law enforcement privilege,  
8 defendant is required to submit the requested facts about DIVS for in camera review. Pursuant to the  
9 Court's February 26, 2015 order, defendant hereby submits this memorandum of law to support its  
10 request that the Court view the full Operational Declaration and Third Hardy Declaration in camera.<sup>1</sup>  
11 Redacted public versions of the declarations are submitted with this memorandum of law.

## 12 I. CLASSIFIED INFORMATION

13 The Operational Declaration and the Third Hardy Declaration contain classified information. Under  
14 Executive Order ("E.O.") 13526 Section 1.4, information shall be considered classified if the  
15 unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the  
16 national security, and the information pertains to certain subjects, including (but not limited to)  
17 intelligence activities, intelligence sources or methods, or cryptology. See E.O. 13526, § 1.4(c). DIVS  
18 is itself an intelligence source and method, deployed with the purpose of facilitating the FBI in carrying  
19 out its national security mission. See, e.g., Third Hardy Decl. ¶¶ 20, 23. Pursuant to E.O. 13526, FBI  
20 has designated certain information about DIVS and its content as classified. E.O. 13526 restricts access  
21 to classified information to those with appropriate clearance and provides sanctions for disclosure to  
22 unauthorized persons. See E.O. 13526 §§ 4.1, 5.5.

## 23 II. INFORMATION PROTECTED BY LAW ENFORCEMENT PRIVILEGE

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25  
26 <sup>1</sup> The documents containing material submitted for in camera review are: (1) the unredacted,  
27 classified Third Hardy Declaration; (2) the unredacted, classified Operational Declaration; and (3) the  
28 redacted, unclassified Operational Declaration. Two versions of the Operational Declaration are  
submitted for in camera review. The redacted, unclassified Operational Declaration contains non-  
public, unclassified information subject to the law enforcement privilege. However, material that is both  
classified and subject to the law enforcement privilege has been redacted on this version of the  
Operational Declaration.

1 Defendant has redacted from the publicly filed Operational Declaration and Third Hardy Declaration  
2 sensitive law enforcement material, the disclosure of which would impede or impair the effectiveness of  
3 an investigative technique, method, and procedure of the FBI. This material includes the classified  
4 information discussed in Section I, and identifying information about FBI personnel in the Operational  
5 Declaration. The purposes of the law enforcement privilege are “to prevent disclosure of law  
6 enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and  
7 law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and  
8 otherwise to prevent interference with an investigation.” *In re Dep’t of Investig. of City of New York*,  
9 856 F.2d 481, 484 (2d Cir. 1988); *G-69 v. Degnan*, 130 F.R.D. 326, 332 (D.N.J. 1990) (claim of law  
10 enforcement privilege is “stronger with respect to . . . protecting confidential law enforcement methods  
11 and tactics”). The law enforcement privilege is incorporated into the FOIA. *See Dep’t of Investig. v.*  
12 *Myerson*, 856 F.2d 481, 484 (2d Cir. 1998); 5 U.S.C. § 552(b)(7) (FOIA Exemption). DIVS is itself  
13 both an intelligence source and method, and a sensitive investigative technique used by the FBI. *See*  
14 *Third Hardy Decl.* ¶¶ 26-28, 33. Certain information about DIVS is classified, and thus, not known to  
15 the public. *See supra*, Section I. Public disclosure of details about DIVS would render it ineffective.  
16 *See, e.g.*, *Third Hardy Decl.* ¶¶ 26-28, 33. Disclosure of identifying information of FBI personnel, such  
17 as the individual’s name, duties, or assignment, would reveal information that could impede or impair  
18 the effectiveness of DIVS. Defendant also redacted identifying information of FBI personnel from the  
19 Operational Declaration for the protection of the individual’s privacy and safety. FBI personnel handle  
20 a variety of tasks relating to investigations and intelligence gathering activities into third-parties. If their  
21 personal information, including their names and duties, were released, FBI personnel could become  
22 targets of coercive or harassing inquiries for unauthorized access to information about FBI’s activities.  
23 *See, e.g.*, *Hunt v. FBI*, 972 F.2d 286, 288 (9th Cir. 1992); *Cf. Jimenez v. FBI*, 938 F. Supp. 21, 31  
24 (D.D.C. 1996) (“It is in the public interest not to disclose the identity of special agents so that they may  
25 continue to effectively pursue their undercover and investigative assignments.”).

26 DATED: April 13, 2014

Respectfully submitted,  
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/s/  
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