

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

Dear Friend of TCP,

In the last several weeks, America has seen the deaths of at least two more unarmed young black men killed by law enforcement officials, adding to an ever-growing list, as well as the deaths of eight police officers in Dallas and Baton Rouge in apparent retaliation. In the aftermath of the Dallas shootings, several law enforcement organizations urged President Obama to lift restrictions on transfer of military equipment to state and local police that he imposed after the riots in Ferguson, Missouri two years ago. A new report from TCP's [Committee on Policing Reforms](#) suggests that this is precisely the wrong prescription to ease tensions between law enforcement and communities of color.



The report, which will be released in the next several weeks, examines the constitutional implications of overmilitarization of American law enforcement and the adverse impact it has on police/community relations. Our committee - comprising former law enforcement officials, former military officers, legal practitioners and academics - offers a number of specific recommendations for policymakers at the federal, state and local levels.

Check our website for this new report in the next week or two. We are planning several public discussions of its findings and recommendations throughout the fall. We look forward to having you join in the conversation.

Sincerely,

A handwritten signature in black ink that reads "Virginia Sloan".

Virginia Sloan

In This Issue

- [Supreme Court Should Allow American to Sue FBI Over Abuse Claims, TCP Argues](#)
- [Alabama Death Sentence the Result of Systemic Problems with Indigent Defense, TCP Tells 11th Circuit](#)
- [Senate Should Hold Hearings on Expanded Use of National Security Letters by FBI](#)
- [Second Circuit Rules Warrant for Email Data Does Not Extend Overseas](#)
- [Former Prosecutors Urge Supreme Court to Consider Criminal Discovery Case](#)
- [Groups Want Quick Action on Privacy Board Chair](#)

Supreme Court Should Allow American to Sue FBI Over Abuse Claims, TCP Argues

Counter-terrorism Policies & Practices

The U.S. Supreme Court must consider the case of a New Jersey man, Amir Meshal, who says the FBI violated his constitutional rights during his arrest and detention overseas, The Constitution Project argued in a [friend-of-the-court brief](#) filed on July 6.

Meshal, an American citizen, was a student in Somalia when hostilities forced him to flee to Kenya in December 2006. After he was arrested in January 2007, Meshal was imprisoned in secret, first in Somalia and then in Ethiopia, where he was held without an attorney and interrogated by FBI agents more than 30 times. He was released four months later without any charges.

Without consideration of the case by the Supreme Court, "American citizens abroad will have no effective remedy against unconstitutional mistreatment by their own government where 'national security' is broadly invoked," TCP argued in its brief. The brief was prepared with the generous pro bono assistance of attorneys at Wilmer Cutler Pickering Hale and Dorr LLP and at

[Back to top](#)

Alabama Death Sentence the Result of Systemic Problems with Indigent Defense, TCP Tells 11th Circuit

Right to Effective Counsel

The Constitution Project has asked the 11th Circuit Court of Appeals to consider whether the death sentence imposed on an Alabama man was the result of a systemic deprivation of the right to counsel in capital cases. In a [friend-of-the-court brief](#) filed July 7, TCP argues that Cory Maples' court-appointed lawyers lacked the necessary training and experience to try a capital case, and were not compensated enough by the state to mount an effective defense. The brief was prepared with the generous pro bono assistance of Venable LLP.

Maples' attorneys acknowledged their inexperience during his trial, telling the jury that they "may appear to be stumbling around in the dark." They did not try to convince the jury that their client was not responsible for his actions because of excessive drug and alcohol use for ten hours preceding the shooting. Nor did they present any other mitigating evidence, normally the centerpiece of a defense in the sentencing phase of a capital case.

[Back to top](#)

Senate Should Hold Hearings on Expanded Use of National Security Letters by FBI

Government Surveillance & Searches

Thirty civil society organizations and trade associations joined TCP in calling on Senate leaders to hold public hearings on a legislative proposal to expand the FBI's power to collect sensitive online communications without a court order. The proposal would allow the FBI to use a National Security Letter, which can be issued by agents in field offices without review by a judge, to require a service provider to turn over information on Americans' web browsing history; logs of who individuals communicate with online via email, chat, video, and text; what services they subscribe to; what times they sign into and out of their accounts; IP addresses; and much more.

"This proposal, if enacted, would remove necessary judicial oversight of the FBI's access to these personal records and would threaten individuals' privacy," the group wrote in [July 11 letter](#) to Senator Charles Grassley (R-Ind.) and Senator Richard Burr (R-N.C.).

[Back to top](#)

Second Circuit Rules Warrant for Email Data Does Not Extend Overseas

Government Surveillance & Searches

On July 14, the Second Circuit Court of Appeals ruled that a warrant for a suspect's data doesn't extend to information stored in computers overseas. Last year, TCP joined several other civil liberties groups in filing a [friend-of-the-court brief](#) in the Microsoft Ireland case. The issue at the heart of the case is whether domestic search warrants can compel disclosure of emails kept in overseas data centers operated by American companies.

"We view the ruling as a big win for privacy rights," TCP's Jake Laperruque [told CNN Money](#). Laperruque said the decision closely tracks with TCP's friend-of-the-court brief that argued that the warrant provisions of the Stored Communications Act are not akin to a subpoena and cannot be enforced beyond U.S. borders. Many privacy advocates expect the Department of Justice to appeal the decision.

[Back to top](#)

Former Prosecutors Urge Supreme Court to Consider Criminal Discovery Case

Criminal Discovery Reform

In a [friend-of-the-court brief](#) organized by TCP, a group of former federal prosecutors has asked the U.S. Supreme Court to consider a case involving a clear violation of a prosecutor's duty to turn over exculpatory evidence to a defendant. In its seminal 1963 case of *Brady v. Maryland*, the U.S. Supreme Court ruled that the Constitution requires prosecutors to disclose information to criminal defendants that could be helpful to them in their defense.

The case, *Turner v. United States* (No. 15-1503), involves the failure of the prosecution in a Washington, DC murder case to disclose a plethora of favorable evidence to the defense, including at least six eyewitness accounts suggesting that one or two alternative perpetrators had committed the crime. "This case presents precisely the type of evidence withholding that this Court has consistently recognized in its Brady jurisprudence as a violation of an accused's right to a fair trial mandated by the Due Process Clause," the brief from the former prosecutors argued. The brief was written with pro bono help from Sullivan & Cromwell LLP.

[Back to top](#)

Groups Want Quick Action on Privacy Board Chair

Transparency & Accountability

A broad coalition of civil society organizations joined TCP in urging President Obama to swiftly nominate someone with "a deep understanding and significant practical experience" as the new chairperson of the Privacy and Civil Liberties Oversight Board. In a [July 6 letter](#), the groups told the president that the board is "too important to allow it to slip back into dormancy, even for a few months." The previous PCLOB chair, David Medine, resigned July 1 to return to the private sector.

[Back to top](#)

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