

**Issued by the  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

American Civil Liberties Union, et al.

**SUBPOENA IN A CIVIL CASE**

V.

Alberto R. Gonzales

Case Number:<sup>1</sup> 98-5591 (E.D. Pa.)

**TO:** Google, Inc., c/o CSC - Lawyers Incorporating Service  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 98533

**YOU ARE COMMANDED** to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

**YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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**YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

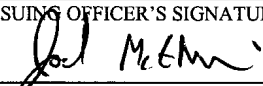
See attachment

PLACE 20 Massachusetts Avenue, NW, Washington DC 20530	DATE AND TIME 30 days from date signed
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**YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Defendant	DATE Aug. 25, 2005
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ISSUING OFFICER'S NAME, ADDRESS AND PHONENUMBER  
Joel McElvain, 20 Massachusetts Ave., NW, Washington DC 20530, (202) 514-2988

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

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**PROOF OF SERVICE**

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DATE

PLACE

**SERVED**

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SERVED ON (PRINT NAME)

MANNER OF SERVICE

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SERVED BY (PRINT NAME)

TITLE

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**DECLARATION OF SERVER**

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I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

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Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**SUBPOENA DUCES TECUM**

**ATTACHMENT**

**INSTRUCTIONS**

1. You are requested to respond to these requests for production of documents within 30 days of the date of service in accordance with Rule 45 of the Federal Rules of Civil Procedure.

Your responses should be sent to the offices of defendant's counsel, addressed as follows:

**(If Hand Delivered or Sent by First Class Mail)**

Raphael O. Gomez  
Senior Trial Counsel  
Federal Programs Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 883  
Washington, D.C. 20044

**(If Sent by Overnight Delivery)**

Raphael O. Gomez  
Senior Trial Counsel  
Federal Programs Branch, Civil Division  
U.S. Department of Justice  
Room 6144  
20 Massachusetts Avenue, NW  
Washington, D.C. 20530-0001

2. You are required to respond to these requests for production of documents in writing after making relevant inquiries of all individuals who may have the knowledge required, to respond fully to each request for production of documents. You must divulge or produce all information that is in your possession, custody or control or that is in the possession, custody or control of your attorneys, investigators, agents, employees, boards, supervisors, overseers, consultants, contractors, or other representatives of yourself or your attorneys.

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3. You are requested to produce the information that is sought through these requests for production by providing to us an ASCII file on electronic media, such as a CD-ROM disk or a CD/DVD disk, containing that information.

4. If you are unable to respond to any part of the following requests for production in full, please respond to the extent possible and specify your reasons for not responding completely. If you lack information necessary to respond fully to any request for production, please describe the specific efforts made by you or by anyone on your behalf to ascertain the information and state as definitively as possible when you anticipate obtaining the information sought and supplementing your response. If any requested document cannot be produced in full, produce it to the extent possible, specifying your reasons for your inability to produce the remainder and stating whatever information, knowledge, or belief you have concerning the unproduced portion.

5. In the event that any document called for by these requests for production is withheld on the basis of any claim of privilege or any other objection, please identify the document by providing the following information: (1) name, position and title of the author; (2) name, position and title of the addressee; (3) date, subject matter, and number of pages, attachments or appendices; (4) all persons to whom distributed, shown or explained; (5) present custodian; and (6) the nature of the privilege or objection asserted.

6. In the event that any document called for by these requests for production is withheld on the basis of disclosure of any trade secret or other confidential research, development, or commercial information, please identify the document by providing the following information: (1) name, position and title of the author; (2) name, position and title of the addressee; (3) date, subject matter, and number of pages, attachments or appendices; (4) all persons to whom

distributed, shown or explained; (5) present custodian; and (6) the nature of the trade secret or other confidential research, development, or commercial information. The United States District Court for the Eastern District of Pennsylvania has entered a Protective Order with regard to confidential information that is produced in response to these requests for production. A copy of that Protective Order is attached to these requests for production.

7. Please organize and label the documents to correspond with the categories of these requests.

8. These requests for production of documents are continuing in nature and require prompt supplementary responses if you obtain additional or different information after serving the responses required herein.

**DEFINITIONS**

For the purposes of these Requests for Production of Documents, the following definitions apply:

A. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

B. "Document" means the original and any non-identical copy (whether different from the original because of notes made thereon or attached to such copy, or otherwise) of any writing, drawing, graph, chart, paper, photograph, film, video recording, audio recording, or other data compilation or communication of any sort from which information can be obtained, however produced, reproduced, or maintained (and in whatever medium, including, but not limited to, in electronic form).

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C. "Person" means any natural person, or any business, legal or governmental association, organization, or entity.

D. "Query" or "queries" means a text string, such as a word, collection of words or other symbols, that is entered into your company's search engine for the purpose of retrieving URL's or lists of URL's, but does not mean any additional information that may be associated with such a text string that would identify the person who entered the text string into the search engine, or the computer from which the text string was entered.

E. "Search engine" means a program offered by, or operated by, your company for the purpose of retrieving URL's, or lists of URL's, in response to queries.

F. "URL" means a "uniform resource locator," or an Internet address identifying a particular site contained in the World Wide Web.

G. "You" and "your" refers to your company.

H. The singular of any word includes the plural and vice versa.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 45, defendant, by and through his undersigned counsel, propound the following requests for production of documents upon your company.

**REQUEST FOR PRODUCTION NO. 1:**

1. All URL's that are available to be located through a query on your company's search engine as of July 31, 2005.

**REQUEST FOR PRODUCTION NO. 2:**

2. All queries that have been entered on your company's search engine between June 1, 2005, and July 31, 2005, inclusive.