

Case No. 14-1688

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*In the*  
**United States Court of Appeals**  
*for the*  
**Third Circuit**

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SYED FARHAJ HASSAN, *et al.*,

*Appellants,*

—against—

THE CITY OF NEW YORK

*Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY, NO. 2:12-cv-3401  
BEFORE THE HONORABLE WILLIAM J. MARTINI

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**BRIEF IN SUPPORT OF APPELLANTS BY *AMICI CURIAE*  
THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND  
AND SEVENTEEM OTHER NON-GOVERNMENTAL ORGANIZATIONS  
SUPPORTING CIVIL RIGHTS FOR AMERICAN MUSLIMS**

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**United States Court of Appeals for the Third Circuit**

**Corporate Disclosure Statement and  
Statement of Financial Interest**

No. \_\_\_\_\_

v.

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, \_\_\_\_\_  
makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

\_\_\_\_\_  
(Signature of Counsel or Party)

Dated: \_\_\_\_\_

**ATTACHMENT**

**List of Amici Curiae Represented**

Asian American Legal Defense and Education Fund (AALDEF)

American-Arab Anti-Discrimination Committee (ADC)

Arab American Association of New York (AAANY)

Asian Americans Advancing Justice — Asian Law Caucus (ALC)

Creating Law Enforcement Accountability & Responsibility (CLEAR)

DRUM — South Asian Organizing Center (formerly Desis Rising Up and Moving)

Muslim American Civil Liberties Coalition (MACLC)

Muslim Bar Association of New York (MuBANY)

Muslim Consultative Network (MCN)

Muslim Legal Fund of America (MLFA)

Muslim Public Affairs Council (MPAC)

National Lawyers Guild — New York City Chapter (NLG-NYC)

National Network for Arab American Communities (NNAAC)

New Jersey Muslim Lawyers Association (NJMLA)

Project SALAM (Support and Legal Advocacy for Muslims)

Shia Rights Watch (SRW)

South Asian Americans Leading Together (SAALT)

Universal Muslim Association of America Advocacy (UMAA Advocacy)

## TABLE OF CONTENTS

	<u>Page(s)</u>
STATEMENT OF INTEREST .....	1
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	5
I. American Muslims Enrich This Country Through Their Broad Diversity and Integral Contributions to All Facets of American Life.....	5
A. The American Muslim Population Mirrors That of the Country .....	6
B. The Multi-Faceted Contributions of American Muslims to the American Way of Life.....	9
II. American Muslims Suffer From Unfounded Negative Stereotypes and Discrimination .....	11
A. The Pervasive Bias Against, and Stereotyping of, American Muslims .....	11
B. The Stereotype of American Muslims is Demonstrably False .....	15
C. The Prejudice American Muslims Face Results in Discrimination .....	18
III. The Program Relies on Ugly Religious Stereotypes That Harm American Muslims.....	23
IV. Courts Should Neither Tolerate nor Ratify Religion-Based Law Enforcement.....	30
CONCLUSION.....	34

**TABLE OF AUTHORITIES**

	<u>Page(s)</u>
<b>CASES</b>	
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).....	32
<i>Doe v. Gonzales</i> , 500 F. Supp. 2d 379 (S.D.N.Y. 2007), <i>aff'd in part, rev'd in part sub</i> <i>nom. Doe, Inc. v. Mukasey</i> , 549 F.3d 861 (2d Cir. 2008) .....	32
<i>E.E.O.C. v. Sunbelt Rentals, Inc.</i> , 521 F.3d 306 (4th Cir. 2008) .....	20
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<i>Hassan v. City of New York</i> , No. 2:12-cv-03401-WJM, 2014 WL 654604 (D.N.J. Feb. 20, 2014) .....	30
<i>Heckler v. Mathews</i> , 465 U.S. 728 (1984).....	25, 26
<i>Melendres v. Arpaio</i> , No. PHX-CV-07-02513-GMS, 2013 WL 2297173 (D. Ariz. May 24, 2013) .....	32
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<i>Palmore v. Sidoti</i> , 466 U.S. 429 (1984).....	31, 32
<i>Romer v. Evans</i> , 517 U.S. 620 (1996).....	31
<i>United States v. Armstrong</i> , 517 U.S. 456 (1996).....	31
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## **STATEMENT OF INTEREST**

The Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans, which includes American Muslims. AALDEF is joined in this brief by 17 fellow non-governmental organizations supporting civil rights for American Muslims: The American-Arab Anti-Discrimination Committee (ADC); The Arab American Association of New York (AAANY); Asian Americans Advancing Justice – Asian Law Caucus (ALC); The Creating Law Enforcement Accountability & Responsibility (CLEAR); DRUM – South Asian Organizing Center; The Muslim American Civil Liberties Coalition (MACLC); The Muslim Bar Association of New York (MuBANY); The Muslim Consultative Network (MCN); The Muslim Legal Fund of America (MLFA); The Muslim Public Affairs Council (MPAC); The New Jersey Muslim Lawyers Association (NJMLA); The National Network for Arab American Communities (NNAAC); The New York City Chapter of the National Lawyers Guild (NLG-NYC); Project SALAM (Support and Legal Advocacy for Muslims); Shia Rights Watch (SRW); South Asian Americans Leading Together (SAALT); and, Universal Muslim Association of America Advocacy (UMAA Advocacy) (collectively “*amici*”). *Amici* combine litigation, advocacy, education, and organizing to work with

American Muslim communities across the country to secure human rights for all. See Appendix A for a full statement of interest from each *amicus*.

*Amici* have an interest in this appeal, which presents a constitutional challenge to the extensive surveillance by the New York City Police Department (“NYPD”) of entire American Muslim communities, including their places of worship, schools and businesses, solely on the basis of religious affiliation and without any evidence of criminal activity (“surveillance program” or the “Program”). The surveillance not only violated the constitutional rights of the individual plaintiffs (“Plaintiffs”) but its abhorrent, unfounded stereotypical premise, that the religious beliefs of American Muslims lead them to commit terrorist acts, unfairly stigmatizes this community. Perhaps as dismaying as the surveillance program was its unquestioning acceptance by a federal district court, when such courts have historically safeguarded the rights of minorities by *rejecting* stereotypical assumptions used to justify discriminatory practices rather than allowing them to take root with the imprimatur of the federal judiciary.

The outcome of this appeal is, therefore, of paramount importance to the *amici* and the American Muslim communities.<sup>1</sup>

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<sup>1</sup> Appellants Syed Farhaj Hassan, *et. al.* and the Appellee City of New York have consented to the filing of this amicus brief. Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the undersigned counsel affirms that no party’s counsel authored this brief, in whole or in part, and no person, (continued...)

## SUMMARY OF ARGUMENT

As alleged in the First Amended Complaint, since 2002, the NYPD has conducted massive surveillance of American Muslim communities in both New York City and New Jersey. The surveillance began and was maintained solely on the basis of the religious beliefs and affiliations of the American Muslims in those communities. The surveillance program has uncovered no more evidence of terrorists or terrorist activities in these communities than the NYPD had in hand when the surveillance began, which is to say, none.

In fact, polling surveys establish that American Muslims *oppose* military and small-group attacks on civilians *even more* than other religious faiths. Statistics further confirm that the threat of domestic terrorism from Islamist extremists is *lower* than the threat posed by other extremist groups, for example far-right extremists (such as white supremacists).

Thus, while the religion-based surveillance conducted by the NYPD unsurprisingly found no evidence of terrorism, it did cause massive harm to the Plaintiffs, to the American Muslim communities that were the targets of the surveillance, and to the values of our society. As stated in the 2003 Department of Justice's Guidance Regarding The Use Of Race By Federal Law Enforcement

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party or party's counsel – other than the *amici*, their members, or their counsel – contributed money that was intended to fund the preparation or submission of the brief.

Agencies, race-based assumptions in law enforcement exact a “terrible cost” on the individuals who are discriminated against and “perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy and materially impair our efforts to maintain a fair and just society.”<sup>2</sup>

The same is indisputably the case with religion-based assumptions in law enforcement, including the kind used by the NYPD. In commencing the surveillance without any evidence of terrorist activity, the NYPD’s Program relies on a flawed theory underpinned by a negative religious stereotype that the practice of Islam, as a faith, leads to terrorism. Then, year after year, the NYPD infiltrated, *inter alia*, mosques in New Jersey and Muslim student associations, but found no evidence of terrorism, thus undermining the Program’s very premise. Nonetheless, the NYPD *continued* the surveillance, which unfairly stigmatizes and delegitimizes American Muslims as dangerous “others” who pose a threat to America.

In fact, as this brief demonstrates, American Muslims have made substantial contributions to America, reflect the diversity and richness of American life, and are even more opposed to violence than Americans from other faiths. But the negative religious, stigmatizing stereotypes of the kind used by the NYPD have harmed, and continue to harm, them. Thus, research has found that American

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<sup>2</sup> Civil Rights Div., U.S. Dep’t of Justice, *Guidance Regarding the Use of Race by Federal Enforcement Agencies* 1 (June 2003).

Muslims already are significantly more likely to suffer from psychological distress than other ethnic or racial minority groups because their religious affiliation is so often unfairly equated with terrorism, as witness the NYPD's fruitless surveillance.

Unfortunately, the district court below, in dismissing a well-pled complaint, unquestioningly accepted the NYPD's stereotypical religious premise for the surveillance. The district court thus impermissibly ratified the unfounded negative stereotypes rooted in the Program's premise, perpetuating, instead of curbing, its damaging, stigmatizing consequences.

*Amici* respectfully request that the district court's decision be reversed.

## **ARGUMENT**

### **I.**

#### **American Muslims Enrich This Country Through Their Broad Diversity and Integral Contributions to All Facets of American Life**

Ordinarily it would go without saying that American Muslims have played an important, diverse role in all facets of American life; and, of course, this Constitutionally protected class is entitled to equal protection under the law irrespective of this fact. However, their vital contributions to the country do serve to underscore the ugly, unwarranted stereotyping of American Muslims that is the fundamental premise of the NYPD's Program. In that light, we begin this brief with a sampling of those contributions.

**A. The American Muslim Population Mirrors That of the Country**

“Like so many faiths, Islam has always been part of our American family . . . .” President Barack Obama, *Remarks by the President during Iftar Dinner* (August 10, 2011) (hereinafter “Iftar Dinner Remarks”).<sup>3</sup> Islam is the fourth largest religion in the United States. Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey* 10 (2008).<sup>4</sup> According to one estimate, as many as seven million Americans practice Islam. Ihsan Bagby, *The American Mosque 2011*, at 4 (2012);<sup>5</sup> accord, President Barack Obama, *Remarks by the President on a New Beginning* (June 4, 2009) (hereinafter “Cairo Univ. Remarks”).<sup>6</sup>

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<sup>3</sup> Available at <http://www.whitehouse.gov/the-press-office/2001/08/10/remarks-president-during-iftar-dinner>.

<sup>4</sup> Available at <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

<sup>5</sup> Pew Research Center estimates a lower number – at least 2.6 million adherents. Pew Forum on Religion & Public Life, *The Future of the Global Muslim Population: Projections for 2010-2030*, at 15 (2011). Available at <http://www.pewforum.org/files/2011/01/FutureGlobalMuslimPopulation-WebPDF-Feb10.pdf>. “The size of the Muslim-American population has proved difficult to measure because the U.S. Census does not track religious affiliation.” Bureau of Int’l Info. Programs, U.S. Dep’t of State, *Being Muslim in America* 48 (2009) (hereinafter *Being Muslim in America*). Available at [http://photos.state.gov/libraries/korea/49271/dwoa\\_122709/being-muslim-in-america.pdf](http://photos.state.gov/libraries/korea/49271/dwoa_122709/being-muslim-in-america.pdf).

<sup>6</sup> Available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-Cairo-University-6-04-09](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09)

American Muslim communities are well distributed throughout the country. The United States has 2,106 mosques, including in every state of the union. Bagby, *supra*, at 4. These mosques are located in the South (34%), Northeast (27%), Midwest (21%) and West (18%), and can be found in America's large cities (53%), suburbs (28%), and small towns (19%). *Id.* at 10.

American Muslims are “one of the most diverse religious groups in the United States, reflecting the economic, racial, and political diversity within America itself.” Gallup, *Muslim Americans: A National Portrait* 10 (2009)<sup>7</sup> (hereinafter *A National Portrait*). And they are “the most racially diverse religious group” in the United States. *Id.* For example, “African Americans (who are, for the most part, converts to Islam and children of converts) represent the largest racial group (35%) within the national U.S. Muslim population,” *id.* at 20, demonstrating that “[n]o single racial group constitutes a majority among the Muslim American population.” Pew Research Center, *Muslim Americans: Middle Class and Mostly Mainstream* 17 (2007)<sup>8</sup> (hereinafter *Middle Class and Mostly Mainstream*). This population originally hails from 80 different countries and comprises eleven different ethnicities. Howard Cincotta, *Diversity, Faith Define*

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<sup>7</sup> Available at <http://www.gallup.com/strategicconsulting/153572/report-muslim-americans-national-portrait.aspx>.

<sup>8</sup> Available at <http://www.pewresearch.org/files/old-assets/pdf/muslim-americans.pdf>.

*Evolving Identity of Muslim Americans* (2009);<sup>9</sup> Bagby, *supra*, at 13. American Muslims also “belong to diverse religious traditions within Islam.” *Middle Class and Mostly Mainstream*, *supra*, at 21. Half of American Muslims identify with Sunni Islam, 16% identify with Shia Islam, and 22% identify simply as “Muslim” (with the remaining 12% identifying as “other”). *Id.*

American Muslims “generally mirror the U.S. public in education and income” and are “integrated into the economic mainstream in America . . . .” *Id.* at 18-19. Household income among American Muslims is roughly comparable with that of the population as a whole in each income bracket. *Id.* *See also*, *A National Portrait*, *supra*, at 23. Meanwhile, American Muslims achieve higher educational levels than the American average (40% are college graduates or higher versus 29% of the general population) and have higher employment rates (70% are employed compared to 64% of the general population). *A National Portrait*, *supra*, at 22, 39. There is a “strong concentration of [American] Muslims in professional, managerial, and technical fields, especially in information technology, education, medicine, law and the corporate world.” *Being Muslim in America*, *supra*, at 51.

Finally, American Muslims are as politically diverse as the rest of the country. “Many Muslim Americans (38%) fall in the middle of the political

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<sup>9</sup> Available at <http://iipdigital.usembassy.gov/st/english/article/2009/08/20090818150449xjsnommis0.9106562.html#axzz35OATaOtP>.

ideological spectrum,” and the rest fall on either side of the middle in roughly equal percentages (29% say their views are liberal or very liberal; 25% say their views are conservative or very conservative). *A National Portrait, supra*, at 11.

**B. The Multi-Faceted Contributions of American Muslims to the American Way of Life**

American Muslims make vital contributions to all facets of the American way of life. As President Obama put it in his historic speech at Cairo University:

And since our founding, American Muslims have enriched the United States. They have fought in our wars, they have served in our government, they have stood for civil rights, they have started businesses, they have taught at our universities, they’ve excelled at our sports arenas, they’ve won Nobel Prizes, built our tallest building, and lit the Olympic Torch.

Cairo Univ. Remarks, *supra*.

American Muslims were both innocent victims of, and emerged as heroes from, the 9/11 attacks. Approximately 60 American Muslims died from the attacks. Rick Hampson, *For Families of Muslim 9/11 Victims, A New Pain*, USA TODAY, Sept. 9, 2010.<sup>10</sup> “They included an assistant bank vice president and a cook, a commodities trader and a waiter, an insurance executive, a security guard and an IT guy.” *Id.* American Muslims were among the first responders — the police, firefighters, EMTs, and nurses — including Salman Hamdani, a 23-year-

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<sup>10</sup> Available at [http://usatoday30.usatoday.com/news/nation/2010-09-03-1Amuslims911\\_CV\\_N.htm](http://usatoday30.usatoday.com/news/nation/2010-09-03-1Amuslims911_CV_N.htm).

old police cadet who abandoned his commute to work and rushed to the World Trade Center as a volunteer responder, losing his life in the effort. *See* Iftar Dinner Remarks, *supra*; Hampson, *supra*.

American Muslims have served in the United States armed forces since the American Revolution. Craig Considine, *Honoring Muslim American Veterans on Memorial Day*, The Huffington Post, May 26, 2013.<sup>11</sup> More than 3,500 American Muslim soldiers have been deployed to Iraq and Afghanistan since 9/11, and as of 2006, more than 200 of these soldiers have been awarded Combat Action Ribbons for their service. Andrea Elliott, *Complications Grow for Muslims Serving in the U.S. Army*, N.Y. Times, Nov. 8, 2009.<sup>12</sup> At least seven American Muslims have been killed in action in service of our nation, several of whom are buried at Arlington National Cemetery. *Id.*; Considine, *supra*.

Prominent American Muslims have helped shape our nation in diverse ways. Their contributions can be seen, for example, in politics (Zalmay Khalizad, Ambassador to the United Nations under President George W. Bush; Congressmen Keith Ellison (MN) and André Carson (IN)); in science and medicine (Ahmed Zewail, Nobel Prize winner in Chemistry; Mehmet Oz, cardiothoracic surgeon and

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<sup>11</sup> Available at [http://www.huffingtonpost.com/craig-considine/lets-honor-muslim-america\\_b\\_3339838.html](http://www.huffingtonpost.com/craig-considine/lets-honor-muslim-america_b_3339838.html).

<sup>12</sup> Available at [http://www.nytimes.com/2009/11/09/us/09muslim.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/11/09/us/09muslim.html?pagewanted=all&_r=0).

popular television host); in education (the late Fouad Ajami, MacArthur Fellowship winning professor and senior fellow at Stanford University's Hoover Institution); in business (Muhtar Kent, Chairman and CEO of The Coca-Cola Company; Mohamed A. El-Erian, recent CEO of PIMCO); professional sports (boxer Muhammad Ali; basketball player Shaquille O'Neal; football player Ahmad Rashad); and arts, media and entertainment (comedian David Chappelle; CNN journalist Fareed Zakaria; 2010 Miss USA Rima Fakih).

The Plaintiffs in this litigation exemplify the rich diversity that can be found in just a single American Muslim community. They include a decorated member of the U.S. military (Syed Farhaj Hassan); university students (Moiz Mohammed, Soofia Tahir and the Muslim Students Association of the U.S. & Canada); educators (Zaimah Abdur-Rahim); small business owners (All Body Shop Inside & Outside; Unity Beef Sausage Company); and religious leaders (The Council of Imams in New Jersey). First Amended Complaint ("Compl.") at ¶¶ 11-34.

## **II.**

### **American Muslims Suffer From Unfounded Negative Stereotypes and Discrimination**

#### **A. The Pervasive Bias Against, and Stereotyping of, American Muslims**

Extensive polling since 9/11 shows that many Americans hold negative stereotypes against Muslims, despite the fact that (or, perhaps, because) a majority of Americans know little about Islam (63%) and do not know any Muslim people

personally (62%). Jonathan D. Salant, *Many Americans take dim view of Islam, poll shows*, Bloomberg News, Jan. 21, 2010;<sup>13</sup> Alex Altman, *TIME Poll: Majority Oppose Mosque, Many Distrust Muslims*, TIME, Aug. 19, 2010.<sup>14</sup> Notwithstanding the fact that, “in terms of the broad patterns of religiosity, American Islam resembles the mainstream of American religious life,” and the fact that “[t]he percentages of American Muslims who consider their religion very important to them, who pray every day, and who attend religious services weekly, all approximate those of American Christians,” *Middle Class and Mostly Mainstream, supra*, at 27, 65% of the American public considers Islam to be “very different” from their own religions. Pew Forum on Religion & Public Life, *Views of Religious Similarities and Differences: Muslims Widely Seen As Facing Discrimination* (2009) at 1 (hereinafter *Views of Religious Similarities and Differences*).<sup>15</sup>

Thus, a significant percentage of Americans believe that Islam is more likely than other religions to incite violence, despite there being no factual basis to

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<sup>13</sup> Available at [http://www.sltrib.com/faith/ci\\_14242651](http://www.sltrib.com/faith/ci_14242651).

<sup>14</sup> Available at <http://content.time.com/time/nation/article/0,8599,2011799,00.html>.

<sup>15</sup> Available at <http://www.people-press.org/2009/09/09muslims-widely-seen-as-facing-discrimination/http://www.people-press.org/files/legacy-pdf/542.pdf>.

support that belief (Point II B, *infra*). Bruce Drake, *Poll Finds Sharp Partisan Divide on Islam-Violence Connection*, The Huffington Post, March 11, 2013<sup>16</sup> (citing a Pew Research Center poll that puts the figure at 40%); *Views of Religious Similarities and Differences*, *supra*, at 2 (38%); Stephanie Condon, *Poll: 1 in 3 think Muslim Americans more sympathetic to terrorists than other Americans*, CBS News, Sept. 9, 2011<sup>17</sup> (citing a CBS News/New York Times poll putting the number at 33%). In total, approximately half of Americans hold an unfavorable view of Islam. Salant, *supra* (citing a Gallup Center for Muslim Studies survey putting the number at 53%); Jon Cohen & Kyle Dropp, *Most Americans object to planned Islamic center near Ground Zero, poll finds*, Washington Post, Sept. 9, 2010<sup>18</sup> (citing a Washington Post - ABC News poll that puts the number at 49%). *See also*, Altman, *supra* (finding that only 55% of respondents would support construction of an Islamic community center and mosque two blocks from their home).

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<sup>16</sup> Available at <http://www.politicsdaily.com/2011/03/09/poll-finds-sharp-partisan-divide-on-islam-violence-connection>.

<sup>17</sup> Available at <http://cbsnews.com/news/poll-1-in-3-think-muslim-americans-more-sympathetic-to-terrorists-than-other-americans/>.

<sup>18</sup> Available at <http://washingtonpost.com/wp-dyn/content/article/2010/09/08/AR2010090806231.html?sid=ST2010090806236>.

This view of Islam stands in stark contrast to Americans' very favorable view of other major religions, Christianity (91%), Judaism (71%) and Buddhism (58%). Salant, *supra*. Similarly, 43% of Americans admit to feeling at least "a little" prejudice toward Muslims, more than twice the number who admit to harboring similar prejudice towards Christians (18%), Jews (15%) and Buddhists (14%). Gallup, *Religious Perceptions in America: With an In-Depth Analysis of U.S. Attitudes Toward Muslims and Islam* 7 (2009).<sup>19</sup>

In the aftermath of 9/11, many Americans believed that their prejudices should be enshrined in the law. A December 2004 national poll indicated that 44% of Americans believed that "some curtailment of civil liberties is necessary for Muslim Americans." Blaine Friedlander, *Fear Factor: 44 percent of Americans queried in Cornell national poll favor curtailing some liberties for Muslim Americans*, Cornell Chronicle, Dec. 17, 2004.<sup>20</sup> As examples of the proposed curtailment, 27% of Americans believed "all Muslim Americans should be required to register their location with the federal government," *id.*, while 39% of Americans believed American Muslims should be required to carry special identification "as a means of preventing terrorist attacks in the United States."

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<sup>19</sup> Available at <http://www.gallup.com/poll/125312/Religious-Prejudice-Stronger-Against-Muslims.aspx><http://www.gallup.com/strategicconsulting/153434/ENGLISH-First-PDF-Test.aspx>.

<sup>20</sup> Available at <http://news.cornell.edu/print/13782>.

Marilyn Elias, *USA's Muslims under a cloud*, USA TODAY, Aug. 10, 2006<sup>21</sup> (citing a USA TODAY/Gallup Poll).

But notwithstanding the passage of time, these attitudes have persisted. Thus, according to more recent polls, nearly one-third of the American public believes that American Muslim candidates should be ineligible to run for President, and 28% believe that American Muslims should be barred from sitting on the Supreme Court of the United States. *See Altman, supra*. And between January 2002 and August 2010, the percentage of persons with an unfavorable view of Islam doubled from 24% to 49%. Joseph Margulies, *What Changed When Everything Changed: 9/11 and the Making of National Identity* (Yale University Press 2013) at 140.

**B. The Stereotype of American Muslims is Demonstrably False**

The stereotype that American Muslims are sympathetic to terrorism has no basis in fact. To the contrary, “Muslims in the United States are widely concerned about Islamic extremism, and express strong disapproval of terrorists and their tactics.” *Middle Class and Mostly Mainstream, supra*, at 49. *See also, Little Support for Terrorism Among Muslim Americans*, Pew Research Religion & Public

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<sup>21</sup> Available at [http://www.usatoday.com/news/nation/2006-08-09-muslim-american-cover\\_x.htm](http://www.usatoday.com/news/nation/2006-08-09-muslim-american-cover_x.htm).

Life Project (Dec. 17, 2009)<sup>22</sup> (“Violent jihad is discordant with the values, outlook and attitudes of the vast majority of Muslim Americans, most of whom reject extremism.”). As President George W. Bush stated in his “Islam is peace” speech in the days following 9/11, “[t]hese acts of violence against innocents violate the fundamental tenets of the Islamic faith.” President George W. Bush, *Remarks by the President at Islamic Center of Washington, D.C.* (Sept. 17, 2001).<sup>23</sup> Indeed, polling confirms that “Muslim Americans are the staunchest opponents of military attacks on civilians [(78%)], compared with members of other major religious groups Gallup has studied in the United States [(33%-56%)],” and that “[t]here is wider agreement that attacks on civilians by individuals or small groups are never justified [89% agreement among Muslims compared to 71%-76% agreement among those with other religious affiliations or no religion].” Nicole Naurath, *Most Muslim Americans See No Justification for Violence*, Gallup, Aug. 2, 2011.<sup>24</sup>

Further, data compiled by the FBI and independent experts in terrorism demonstrate that the threat of domestic terrorism from American Muslim

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<sup>22</sup> Available at <http://www.pewforum.org/2009/12/17/little-support-for-terrorism-among-muslim-americans/>.

<sup>23</sup> Available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010917-11.html>.

<sup>24</sup> Available at <http://www.gallup.com/poll/148763/muslim-ameriacns-no-justification-violence.aspx>.

extremists is much lower than the American public believes, and is, in fact, a much lower threat than from other extremist groups. According to the FBI's criteria, in the 25 years spanning 1980-2005, the FBI tabulated that about 6% of 318 "terrorist incidents" in the United States were initiated by Muslim extremists (a statistic that includes non-American Muslims). Federal Bureau of Investigation, U.S. Dep't of Justice, *Terrorism 2002-2005*, at 57-66.<sup>25</sup> The groups that were responsible for the vast majority of terrorist incidents in that time period represent a wide spectrum of ideologies, including, *inter alia*, white supremacists and various political separatist movements. *Id.*

These statistics have held true up to present day. According to a 2014 study conducted by a terrorism expert at the Triangle Center on Terrorism and Homeland Security, of the more than 300 American deaths from political violence and mass shootings since 9/11, only 37 were caused by American Muslims. *See* Charles Kurzman, *Muslim-American Terrorism in 2013*, Feb. 5, 2014, at 4;<sup>26</sup> Seth Cline, *The 1993 World Trade Center Bombing: A New Threat Emerges*, U.S. News &

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<sup>25</sup> Available at [http://www.fbi.gov/stats-services/publications/terrorism-2002-2005/terror02\\_05.pdf](http://www.fbi.gov/stats-services/publications/terrorism-2002-2005/terror02_05.pdf). The FBI's criterion for a "terrorist incident" is "a violent act or an act dangerous to human life, in violation of the criminal laws of the United States, or of any state, to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives." *Id.* at v.

<sup>26</sup> Available at [http://sites.duke.edu/tcths/files/2013/06/Kurzman\\_Muslim-American\\_Terrorism\\_in\\_2013.pdf](http://sites.duke.edu/tcths/files/2013/06/Kurzman_Muslim-American_Terrorism_in_2013.pdf).

World Report, Feb. 26, 2013.<sup>27</sup> The expert concluded that “[t]he Boston Marathon bombing, like the handful of other terrorist attacks in the U.S. by American Muslims in the dozen years since 9/11, remained an isolated, rare incident — deadly and frightening, but not a trigger for an upsurge in violent radicalization.” Kurzman, *supra*, at 6.

Indeed, a recent study published by the Combating Terrorism Center at West Point, NY, demonstrates that political violence from far-right extremists, such as white supremacists, constitutes a far greater threat of domestic terrorism. Compared to the 37 domestic fatalities since 9/11 caused by American Muslim extremists tabulated by Kurzman in the Triangle Center study, the Combating Terrorism Center study found that more than 200 domestic fatalities have been attributed in that same period to political violence by far-right extremists. Arie Perliger, *Challengers from the Sidelines: Understanding America’s Violent Far-Right* 100 (2012).<sup>28</sup>

### **C. The Prejudice American Muslims Face Results in Discrimination**

Attorney General Eric Holder, the nation’s top law enforcement official, has declared anti-Muslim bigotry “the civil rights issue of our time.” Attorney General

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<sup>27</sup> Available at <http://www.usnews.com/news/blogs/press-past/2013/02/26/the-1993-world-trade-center-bombing-a-new-threat-emerges>.

<sup>28</sup> Available at <https://www.ctc.usma.edu/wp-content/uploads/2013/01/ChallengersFromtheSidelines.pdf>.

Eric Holder, *Remarks During Meeting with Muslim Advocates and Faith Leaders* (Sept. 7, 2010).<sup>29</sup> Fifty-three percent of American Muslims find it more difficult to be a Muslim in the United States since 9/11. *Middle Class and Mostly Mainstream, supra*, at 4. Fifty-eight percent of Americans believe Muslims face significant discrimination. *Views of Religious Similarities and Differences, supra*, at 1. Sixty percent of American Muslims believe that Muslims are discriminated against in America, and 25% say that they personally have been the victim of discrimination. *Islamophobia: Understanding Anti-Muslim Sentiment in the West*, Gallup (2014)<sup>30</sup> (hereinafter *Islamophobia*); *Middle Class and Mostly Mainstream, supra*, at 4. In fact, Muslims “are more likely than Americans of other major religious groups to say they, personally, have experienced racial or religious discrimination in the past year.” *Islamophobia, supra*, at 8.

Professor Sahar Aziz, former Senior Policy Advisor at the Office for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, has noted that notwithstanding the passage of years, “‘post 9/11 discrimination’ persists, most profoundly in the workplace.” Sahar F. Aziz, *Sticks and Stones, the Words that*

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<sup>29</sup> As recounted by Sen. Dick Durbin in his opening statement at a March 29, 2011 hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights. Available at [http://www.durbin.senate.gov/public/index.cfm/files/serve?File\\_id=591c5033-478a-4a2a-89f6-f4ae0947921e](http://www.durbin.senate.gov/public/index.cfm/files/serve?File_id=591c5033-478a-4a2a-89f6-f4ae0947921e).

<sup>30</sup> Available at <http://www.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx?version=print>.

*Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. City L. Rev. 33, 34 (2009). “Although Muslims make up less than 2% of the United States population, they accounted for about one-quarter of the 3,386 religious discrimination claims filed with the EEOC [in 2011].” Steven Greenhouse, *Muslims Report Rising Discrimination at Work*, N.Y. Times, Sept. 23, 2010<sup>31</sup> (noting that the EEOC “has found enough merit in some of the complaints that it has filed several prominent lawsuits on behalf of Muslim workers.”). See *E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 318 (4th Cir. 2008) (in denying motion to dismiss a complaint filed by an American Muslim employee alleging a hostile work environment claim under Title VII of the Civil Rights Act of 1964, the district court noted that he had been subject to “constant and repetitive abuse founded upon misperceptions that all Muslims possess hostile designs against the United States, that all Muslims support jihad, that all Muslims were sympathetic to the 9/11 attack, and that all Muslims are proponents of radical Islam.”).

Research suggests that Muslims are targets of workplace discrimination in the United States. See Eden B. King & Afra S. Ahmad, *An Experimental Field Study of Interpersonal Discrimination Toward Muslim Job Applicants*, 63 *Personnel Psychology* 881, 886 (2010) (citing surveys). In two studies, King and

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<sup>31</sup> Available at [http://www.nytimes.com/2010/09/24/business/24muslim.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/09/24/business/24muslim.html?pagewanted=all&_r=0).

Ahmad examined how religious discrimination towards American Muslims may manifest itself in the job application process, via in-person applications at a retail store, and in hypothetical paper-based applications. *Id.* at 888-902. In the first study, they compared the experiences of female job applicants of different ethnicities, some of whom dressed in traditional Muslim attire. *Id.* They found that applicants dressed in Muslim attire experienced interpersonal discrimination (i.e. less helpfulness, less eye contact, more attempts to end interactions, rudeness, and hostility) and concluded that “women in Muslim attire, particularly those who do not provide information to counteract stereotypes about their religious identity, face obstacles to employment.” *Id.* at 895. In the second study, they concluded that “the effect of stereotypes toward Muslim applicants can be extended to men.” *Id.* at 901. *See also* Alessandro Acquisti & Christina M. Fong, *An Experiment in Hiring Discrimination Via Online Social Networks* 35 (November 21, 2013) (unpublished manuscript)<sup>32</sup> (finding statistically significant evidence that, based on online profiles, Muslim job candidates were less likely than Christian candidates (2% versus 17%) to receive interview invitations from U.S. employers in more politically conservative states).

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<sup>32</sup> Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2031979##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2031979##).

American Muslim students also face discrimination in our nation's schools:

Ever since 9/11, there have been increasing reports of discrimination, bullying, and exclusion of Muslim students in schools. Based on the results of several studies, they are reporting pervasive misperceptions and negative stereotypes about Islam in their schools and feelings of isolation and separation from their peers and the larger school community.

Pia Rebello Britto, Ph.D., *Global Battleground or School Playground: The Bullying of America's Muslim Children* (September 2011)<sup>33</sup> (citing studies). See also, Council on American-Islamic Relations - California, *Growing in Faith: California Muslim Youth Experiences with Bullying, Harassment & Religious Accommodation in Schools 2-3* (2012) (finding that "50% of American Muslim students reported being subjected to mean comments and rumors about them because of their religion").<sup>34</sup>

American Muslims also suffer from hate crimes. "[T]he percentage of hate crimes motivated by an anti-Islamic bias . . . spiked to 27.2% right after 9/11 [and] has continued at high rates since then." Eric Lane, *On Madison, Muslims, and the New York City Police Department*, 40 Hofstra L. Rev. 689, 710 (2012) (citing FBI hate crime statistics showing that the percentage of hate crimes motivated by anti-Islamic bias remained as high as 13.2% in 2010). Further, since more than half of

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<sup>33</sup> Available at [http://www.ispu.org/pdfs/ISPU\\_Policy%20Brief\\_Britto\\_WEB.pdf](http://www.ispu.org/pdfs/ISPU_Policy%20Brief_Britto_WEB.pdf).

<sup>34</sup> Available at <http://ca.cair.com/downloads/GrowingInFaith.pdf>.

all hate crimes are never reported to the police and many others are incorrectly categorized, the real level of hate crimes may be 20 to 30 times higher than the FBI's official statistics. Southern Poverty Law Center, *FBI: Bias Crimes Against Muslims Remains at High Levels*, Intelligence Report, Spring 2013.<sup>35</sup> That would put the actual number of anti-Muslim hate crimes for 2011 alone at between 3,000-5,000. *Id.*

### **III.**

#### **The Program Relies on Ugly Religious Stereotypes That Harm American Muslims**

As the Department of Justice explained in its Guidance Regarding the Use of Race by Federal Law Enforcement Agencies:

Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society. The use of race as the basis for law enforcement decision-making clearly has a terrible cost, both to the individuals who suffer invidious discrimination and to the Nation, whose goal of "liberty and justice for all" recedes with every act of such discrimination.

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<sup>35</sup> Available at: <http://www.splcenter.org/home/2012/spring/fbi-bias-crimes-against-muslims-remain-at-high-levels>.

Civil Rights Div., U.S. Dep't of Justice, *Guidance Regarding the Use of Race by Federal Enforcement Agencies* 1 (June 2003).<sup>36</sup> The same “terrible cost” results when religion-based assumptions are employed by law enforcement.

That is the case here. The NYPD's Program is based on the premise that the religious identity of American Muslims is *alone* a legitimate justification for subjecting Plaintiffs and religious communities to twelve years of pervasive, community-wide surveillance – without evidence of predicate illegal activity. *See* Compl. at ¶¶ 6, 36. Indeed, in all its years of operation, the Program never generated a single lead. *Id.* at ¶ 2. *See also*, Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases*, Associated Press, Aug. 21, 2012 (citing deposition testimony of Thomas Galati, the commanding officer of the NYPD Intelligence Unit).<sup>37</sup>

For example, the Program surveilled at least 20 mosques, Compl. at ¶ 3, sought to place an informant inside every mosque within a 250-mile radius of New York City, and prepared an analytical report on every mosque within 100 miles, essentially treating mosques as incubators of violence without *any* supporting evidence. *Id.* at ¶ 47. The Program also deemed more than 40 mosques,

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<sup>36</sup> Available at [http://www.justice.gov/crt/about/spl/documents/guidance\\_on\\_race.pdf](http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf).

<sup>37</sup> Available at <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases>.

restaurants, retail establishments and a grade school as “Locations of Concern” – meaning susceptible to “co-conspirators for illegal actions,” or “demonstrat[ing] a significant pattern of illegal activities” – without any evidence that would justify such “concerns.” *Id.* at ¶ 58. *See also*, Goldman & Apuzzo, *supra* (“As a rule, Galati said, a business can be labeled a ‘location of concern’ whenever police can expect to find groups of Middle Easterners there.”). Mayor Bloomberg and Police Commissioner Kelly repeatedly and publically defended blanket surveillance of American Muslim communities as necessary to protect Americans’ safety, despite the Program having generated no leads. *Id.* at ¶ 65.

Thus, the Program was conceived, implemented and defended under the premise that American Muslims’ religious beliefs, practices and community are particularly prone to violent anti-American extremism. As we have demonstrated, this supposition has no basis in fact (*see* Point II B, *supra*), which is corroborated by the Program’s failure to find any evidence of terrorism despite the exhaustive surveillance. Instead, the Program has only served to vindicate the Supreme Court’s warning in *Heckler v. Mathews* that “discrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the political community can cause serious noneconomic injuries to those persons who are

personally denied equal treatment solely because of their membership in a disfavored group.” 465 U.S. 728, 739-40 (1984) (footnote and citations omitted).

Here, the “noneconomic injuries” from the Program’s unfair stigmatization of the Plaintiffs and their American Muslim communities have been severe. *See* Diala Shamas & Nermeen Arastu, *Mapping Muslims: NYPD Spying and Its Impact on American Muslims* 4, 12-45 (2013)<sup>38</sup> (“based on an unprecedented number of candid interviews with American Muslim community members . . . [w]e have found that surveillance of Muslims’ quotidian activities has created a pervasive climate of fear and suspicion, encroaching upon every aspect of individual and community life.”).

Research confirms that stigmatization from the use of religious stereotypes inevitably leads to psychological harm, including to the American Muslim population. “What they’ve found is anxiety, depression and even post-traumatic stress disorder among a population some call doubly traumatized – first by the [9/11] attacks themselves and then by the finger-pointing that followed.” Rebecca A. Clay, *Muslims in America, Post 9/11*, Am. Psych. Assoc. (Sept. 2011)<sup>39</sup> (describing mental health studies of American Muslims post 9/11).

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<sup>38</sup> Available at <http://aaldef.org/Mapping%20Muslims%20NYPD%20Spying%20and%20its%20Impacts%20on%20American%20Muslims.pdf>.

<sup>39</sup> Available at <http://www.apa.org/monitor/2011/09/muslims.aspx>.

One study examined anxiety and depression rates among more than 600 adult Arab-Americans (mostly Muslim) in 35 states. *Id.* “Half the study participants had depression serious enough to warrant further assessment, they found. A quarter reported moderate to severe anxiety. These rates are higher than those of the general public and other minority groups.” *Id.* (citing Mona M. Amer, Ph.D. & Joseph D. Hovey, Ph.D., *Anxiety and depression in a post-September 11 sample of Arabs in the USA*, 47 *Soc. Psychiatry and Psychiatric Epidemiology* 409 (2012) (reporting “significantly higher levels of anxiety and depression compared to normative samples” as a result of stress from daily life, “uniquely compounded by the heightened and ongoing pressures directed against Arab Americans, especially Muslims. Examples include profiling, discrimination, and biased anti-Arab media.”)). *See also*, Nicole J. Henderson et al., Vera Institute of Justice, *Law Enforcement & Arab American Community Relations After September 11, 2001: Engagement in a Time of Uncertainty* 10 (2006)<sup>40</sup> (finding that “the key dynamics affecting Arab Americans [post 9/11] include an increased sense of being victimized and harassed; heightened suspicion of government and law enforcement; anxiety about their place in American society . . .; and concerns about protecting their civil liberties.”).

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<sup>40</sup> Available at [http://www.vera.org/sites/default/files/resources/downloads/Arab\\_American\\_community\\_relations.pdf](http://www.vera.org/sites/default/files/resources/downloads/Arab_American_community_relations.pdf).

In another study of 110 American Muslims conducted in 2011 and 2012, those who reported personal experience with governmental surveillance “expressed more anxiety in response to surveillance . . . than participants with no personal experience with surveillance.” Alexander J. O’Connor & Farhana Jahan, *Under Surveillance and Overwrought: American Muslims’ Emotional and Behavioral Responses to Government Surveillance*, J. Muslim Mental Health, 2014, at 95, 99. They also “reported adopting more avoidant and vigilant behaviors in response to the possibility of government surveillance . . . than participants with no personal experience with government surveillance.” *Id.* at 100. The researchers concluded that the study:

provides evidence that American Muslim’s experiences with governmental surveillance are accompanied by increases in anxiety over future surveillance, avoidance discussing topics that may increase the possibility of surveillance, and avoidance of certain settings over concern it would lead to being reported to intelligence agencies. This result is in line with the increasing prevalence of anxiety and paranoia symptoms reported in American Muslims experiencing religious discrimination.

*Id.* (citing, *inter alia*, Amer & Hovey, *supra*). See also, Amna Akbar, *Policing “Radicalization,”* 3 U.C. Irvine L. Rev. 809, 870 (2013) (“Muslims feel the stigma in their bodies, and in their ability to move and speak in the world.”).

One measure of the psychological harm done by the Program was described by Michael Ward, director of the FBI’s Newark division, in remarks critical of the Program: “What we have now is [Muslim communities] that they’re not sure they

trust law enforcement in general, they're fearing being watched, their starting to withdraw their activities." Jason Grant, *Recent NYPD Spying Uproar Shakes FBI's Foundations in N.J. Terror Intelligence*, N.J. Star Ledger, Mar. 7, 2012<sup>41</sup> (describing the Program as causing a "sinking tide of cooperation [which] means that we don't have our finger on the pulse of what's going on in the community . . . we're less knowledgeable, we have blind spots, and there's more risk."). *See also* Paul Vitello & Kirk Semple, *Muslims Say F.B.I. Tactics Sow Anger and Fear*, N.Y. Times, Dec. 18, 2009 (Muslim leaders citing a "corrosive fear" in their communities sown from "a sense that law enforcement is viewing our communities not as partners but as objects of suspicion.") (internal quotation omitted); Tom Tyler, Stephen Schulhofer & Aziz Huq, *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 *Law & Soc'y Rev.* 365, 368-69 (2010) (finding "a robust correlation between perceptions of procedural justice and both perceived legitimacy and willingness to cooperate among Muslim American communities in the context of antiterrorism policing.").

In conclusion, the massive surveillance conducted by the NYPD under the Program solely on the basis of the religious beliefs and associations of American Muslims has unfairly stigmatized the Plaintiffs and an entire community of

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<sup>41</sup> Available at [www.nj.com/news/index.ssf/2012/03/recent\\_nypd\\_spying\\_uproar\\_shak.html](http://www.nj.com/news/index.ssf/2012/03/recent_nypd_spying_uproar_shak.html).

Americans as a danger to their own country based on their religious beliefs, and psychologically damaged the population subject to surveillance. The Plaintiffs and American Muslim communities suffer these injuries in the name of national security, yet no evidence of terrorist activity was uncovered; and, in fact, according to FBI officials, the Program actually made the United States *less secure*.

#### IV.

##### **Courts Should Neither Tolerate nor Ratify Religion-Based Law Enforcement**

In dismissing Plaintiffs' complaint at the pleading stage for failing to state a plausible claim of religious discrimination, the district court took at face value, and prior to any discovery, the NYPD's assertion that it simply had no choice but to monitor entire American Muslim communities (to the exclusion of any others) in order to prevent terrorist activities. *Hassan v. City of New York*, No. 2:12-cv-03401-WJM, 2014 WL 654604, at \*7 (D.N.J. Feb. 20, 2014) ("The more likely explanation for the surveillance was a desire to locate budding terrorist conspiracies."). In doing so, the court failed in its obligation to safeguard a protected class's constitutional liberties, and impermissibly ratified the unfounded ugly religious stereotypes rooted in the NYPD Program that perpetuate discrimination against American Muslim communities: namely, that they are breeding grounds for terrorism. *Id.* ("The police could not have monitored New Jersey for Muslim terrorist activities without monitoring the Muslim community itself.").

The Supreme Court has long refused to tolerate government action that is “deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.” *Oyler v. Boles*, 368 U.S. 448, 456 (1962). *See also United States v. Armstrong*, 517 U.S. 456, 464-65 (1996) (explaining that a defendant may prove the use of an unjustifiable standard by demonstrating that “the administration of a criminal law is ‘directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive’ that the system of prosecution amounts to ‘a practical denial’ of equal protection of the law.” (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886))). In such circumstances, when an entire class is subjected to discriminatory treatment by the government, the government’s action “raise[s] the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected.” *Romer v. Evans*, 517 U.S. 620, 634 (1996).

The Supreme Court further emphasized that courts must be vigilant in not ratifying private or public discrimination. For example, in *Palmore v. Sidoti*, 466 U.S. 429 (1984), the Supreme Court took the rare step of intervening in a child custody dispute to overturn a district court decision that justified denying a mother custody of her child because of the societal prejudice the family would face from her cohabitation with a man of another race. The Court recognized that “[p]rivate biases may be outside the reach of the law, but the law cannot, directly or

indirectly, give them effect” by justifying its ruling on the basis of that bias, as the district court had done. *Id.* at 433.

Indeed, this is the fundamental lesson taught by *Brown v. Board of Education*, which recognized that the impact of discriminatory action “is greater when it has the sanction of law,” because that sanction will be “usually interpreted” by the public as “denoting the inferiority” of the affected group. 347 U.S. 483, 494 (1954) (internal quotation and citation omitted); *see also, Doe v. Gonzales*, 500 F. Supp. 2d 379, 415 (S.D.N.Y. 2007) (“The Constitution was designed so that the dangers of any given moment would never suffice as justification for discarding fundamental individual liberties or circumscribing the judiciary’s unique role under our governmental system in protecting those liberties and upholding the rule of law.”), *aff’d in part, rev’d in part sub nom. Doe, Inc. v. Mukasey*, 549 F.3d 861 (2d Cir. 2008).

Other district courts have fulfilled this “unique” role by blocking police departments – including the NYPD – from engaging in racial profiling based on stereotypes akin to the Program’s. *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (NYPD’s racial profiling inherent in its stop-and-frisk program violated equal protection principles); *Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS, 2013 WL 2297173 (D. Ariz. May 24, 2013) (Maricopa County

Sheriff's Office's use of race as a factor in forming a reasonable suspicion that an individual violated immigration laws barred by equal protection principles).

In the case at hand, the district court abdicated its judicial responsibility by accepting and ratifying the NYPD's use of unfounded but stigmatizing religious stereotypes that have no place in our society.

**CONCLUSION**

For the foregoing reasons, *amici* respectfully request the Court reverse and remand the district court's decision.

Respectfully Submitted,

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**COMBINED CERTIFICATIONS**

1. **Bar Membership.** In compliance with 3d Cir. L.A. R. 46.1(e), I, Gregory J. Wallance, certify on this 10th day of July 2014, that I am a member in good standing of the Bar of the United States Court of Appeals for the Third Circuit.

2. **Virus Check.** In compliance with 3d Cir. L.A.R. 31.1(c), I, Gregory J. Wallance, certify on this 10th day of July 2014, that the virus protection program Symantec Endpoint Protection, version 12.1.4 has been run on the electronic version of this brief and that no virus was detected.

3. **Identical Compliance of Briefs.** In compliance with 3d Cir. L.A.R. 31.1(c), I, Gregory J. Wallance, certify on this 10th day of July 2014, that the electronically filed version of this brief is identical to the hard copies filed with the Clerk of the United States Court of Appeals for the Third Circuit.

4. **Type Volume and Style.** This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,810 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2007 in size 14 Times New Roman type style.

/s/ Gregory J. Wallance  
Gregory J. Wallance

Dated: July 10, 2014

**CERTIFICATE OF SERVICE**

Pursuant to Fed. Rule App. P. 25, 3d Cir. L.A.R. 25, and 3d Cir. Misc. R. 113.4, I, Gregory J. Wallance, hereby certify that I have served the foregoing brief on all counsel in this case through the Court's CM/ECF electronic filing system. Such counsel were served pursuant to 3d Cir. Misc. R. 113.4, when this brief was filed through the Court's electronic filing system, by the Notice of Docket Activity generated by the Court's electronic filing system.

/s/ Gregory J. Wallance  
Gregory J. Wallance

Dated: July 10, 2014

# **Appendix A**

## **Statements of Interest of Amici Curiae**

### **Asian American Legal Defense and Education Fund (AALDEF)**

The Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans, which includes American Muslims. By combining litigation, advocacy, education, and organizing, AALDEF works with American Muslim communities across the country to secure human rights for all. AALDEF focuses on critical issues affecting American Muslims, including immigrant rights, civic participation and voting rights, economic justice for workers, language access to services, affirmative action, educational equity, housing and environmental justice, and the elimination of anti-Muslim violence, police misconduct, and human trafficking.

### **American-Arab Anti-Discrimination Committee (ADC)**

The American-Arab Anti-Discrimination Committee (ADC) is a civil rights organization that seeks to preserve and defend the rights of those who are subject to discrimination within the United States’ judicial system. Founded in 1980 by U.S. Senator James Abourezk, ADC consists of members from all 50 states, and has multiple chapters nationwide. ADC is non-sectarian and non-partisan, and is the country’s largest Arab American nonprofit grassroots civil rights organization. ADC has protected the Arab-American community, including Muslim-Americans, for over thirty years against defamation, discrimination, racism, and stereotyping. ADC is committed to eradicating all forms of unlawful discrimination, in the interest of preserving the constitutional guarantees of Due Process and Equal Protection to all, inasmuch as it views those guarantees as elemental rights that form the key foundations of our nation.

### **Arab American Association of New York (AAANY)**

The Arab American Association of New York (AAANY) is a non-profit social service and advocacy organization located in the heart of the largest Arab American community in the State of New York — Bay Ridge, Brooklyn. Our mission is to support and empower the Arab Immigrant and Arab American community, including Muslim-Americans, by providing services to help them

adjust to their new home and become active members of society. AAANY has been at the forefront of the movement to reform the New York Police Department and was instrumental in the passage of the Inspector General bill, the first of its kind in New York City. In 2013, AAANY learned through secret documents that they too were targets of NYPD's pervasive intelligence gathering apparatus. AAANY believes that all citizens deserve to live in a society free from targeting by law enforcement agencies.

#### Asian Americans Advancing Justice – Asian Law Caucus (ALC)

Asian Americans Advancing Justice – Asian Law Caucus (ALC) was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities. Advancing Justice – ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, and Washington DC. Inspired by the experience of Japanese-Americans during World War II, Advancing Justice – ALC has defended the civil rights of individuals and communities unjustly impacted by overbroad national security policies since September 11, 2001.

#### Creating Law Enforcement Accountability & Responsibility (CLEAR)

The Creating Law Enforcement Accountability & Responsibility (CLEAR) project is housed at the City University of New York (CUNY) School of Law. CLEAR primarily aims to address the unmet legal needs of Muslim, Arab, South Asian, and other communities in the New York City area that are particularly affected by national security and counterterrorism policies and practices. CLEAR's work is defined by its relationships with communities and grassroots organizations whose members wish to shape and respond to national security and counterterrorism policies and practices affecting them. CLEAR's community-oriented approach combines legal representation with other services directed at satisfying the fuller range of community concerns.

#### DRUM – South Asian Organizing Center (formerly Desis Rising Up and Moving)

DRUM – South Asian Organizing Center (formerly Desis Rising Up and Moving) is a membership led organization of low-wage South Asian immigrant workers and

youth, including Muslim immigrants and youth, in New York City. Founded in 2000, DRUM has mobilized and built the leadership of thousands of low-income, South Asian immigrants to lead social and policy change that impacts their own lives — from civil rights to immigrant rights, education reform, and worker’s justice. Our membership of over 2,400 adults, youth, and families is multigenerational and represents the diaspora of the South Asian community — Afghanistan, Bangladesh, Bhutan, Guyana, India, Nepal, Pakistan, Sri Lanka, and Trinidad. As low-income immigrants, our members and communities face the harshest brunt of police abuse, including from the policies of surveillance.

### Muslim American Civil Liberties Coalition (MACLC)

The Muslim American Civil Liberties Coalition (MACLC) is a New York-based coalition of citizens, community members, spiritual leaders, organizers, advocates, attorneys, and groups whose mission is to organize around and give voice to absent perspectives on issues of national security, counterterrorism, law enforcement, and civil rights, as they affect Muslim communities in post-9/11 New York. MACLC believes that government and law enforcement must be held accountable and respect the rights of Muslims and Muslim communities to practice their faiths, express their political opinions, organize, and live with respect and dignity.

### Muslim Bar Association of New York (MuBANY)

The Muslim Bar Association of New York (MuBANY) is a member-based professional association serving the educational, professional, and social needs of Muslim lawyers, legal professionals, and law students living and working in the New York metropolitan area. In order to advance and protect the rights of Muslims in America and to create an environment that helps guarantee the full, fair and equal representation of Muslims in American society, MuBANY works actively to combat anti-Muslim and anti- Islamic stereotypes in the media, in the courts, in law enforcement, and in the greater community; educates the local and national community about legal matters affecting the Muslim community; engages in various efforts to promote diversity within the legal and judicial professions; and encourages greater civic participation among Muslim Americans.

### Muslim Consultative Network (MCN)

The Muslim Consultative Network (MCN) is a nonprofit organization working to strengthen and unify the diverse New York City Muslim community through dialogue, education, collaboration, and social action. MCN was founded in 2003 by a network of Muslim activists and volunteers responding to the challenges facing the American-Muslim community since 9/11 who sought to bridge the gap between faith, community and action. MCN empowers New York City Muslims to make an impact in their own backyards through civic engagement and community education, cross-cultural engagement and social justice. MCN reaches across boundaries of race, ethnicity, gender, class and religious identity to build safe, supportive and healthy communities free from discrimination and purposefully brings together the diverse cultures and sects of the Muslim community as well as the interfaith community to discuss their differences and work together to achieve common goals.

### Muslim Legal Fund of America (MLFA)

The Muslim Legal Fund of America (MLFA) was established in November of 2001 by a coalition of activists who recognized the need to redress civil liberty violations against Muslims in America. This group of activists understood that civil liberty infringements against any individual or group is a violation of civil liberties for all people in America. As a legal fund, MLFA financially supports legal cases that will have a significant social and judicial impact, to protect civil rights. By funding cases relating to the use of liberty-threatening legislation or prosecutorial practices, MLFA is defending the integrity of the U.S. justice system and the principles of liberty our nation's founders fought so hard to establish.

### Muslim Public Affairs Council (MPAC)

The Muslim Public Affairs Council (MPAC) is a public service agency working for the civil rights of American Muslims, for the integration of Islam into American pluralism, and for a positive, constructive relationship between American Muslims and their representatives. In all its actions, MPAC works diligently to offer the public a portrayal that goes beyond stereotypes in order to elucidate that Muslims worship God, abhor global terrorism, stand against oppression, and are part of a vibrant American pluralism. MPAC operates on the

core belief that change in U.S. policy requires organized, sustained efforts in coalition with like-minded groups both at the grassroots and national levels.

#### National Lawyers Guild — New York City Chapter

The National Lawyers Guild, founded in 1937, is the oldest and largest public interest/human rights bar organization in the United States. Its headquarters is in New York City and it has chapters in every state. The New York City Chapter of the National Lawyers Guild (NLG-NYC) houses the Muslim Defense Project which was formed to dismantle the anti-Muslim laws and policies that provide for illegal surveillance, predatory prosecutions, and the disruption of entire Muslim communities in New York City and beyond.

#### National Network for Arab American Communities (NNAAC)

The National Network for Arab American Communities (NNAAC) is a national consortium of 23 independent Arab American community-based organizations in 11 states. The Network's primary mission is the development of Arab American community-based nonprofit organizations that understand and meet the needs and represent the concerns of Arab Americans, including Muslim Americans, at the local level and collectively address these issues on the national level. NNAAC focuses its advocacy on ending racial and religious profiling, passing common sense immigration reform and fighting against anti-immigrant legislations and ensuring that Arab Americans get their fair share of services funding.

#### New Jersey Muslim Lawyers Association (NJMLA)

The New Jersey Muslim Lawyers Association (NJMLA) is a member-based bar association that exists to advance the goals, needs, and interests of Muslim American attorneys in the New Jersey area. NJMLA strives to address issues affecting the local and national Muslim American population, educate the local and national community about matters affecting the Muslim community, and advance and protect the rights of Muslims in America. NJMLA further seeks to facilitate networking and the sharing of resources among Muslim attorneys and promote education on issues relevant to Muslim attorneys, promote Muslim participation in public service, encourage Muslims to enter the legal profession and to provide mentorship for Muslims who wish to further their legal careers.

### Project SALAM (Support and Legal Advocacy for Muslims)

Project SALAM (Support and Legal Advocacy for Muslims), was founded and incorporated in 2008 as a not-for-profit organization following a conference at Albany Law School in Albany, New York. Made up of academics, lawyers, and civil rights supporters, Project SALAM was one of the first groups to identify preemptive prosecution — which occurs when the government seeks to prosecute people, mostly Muslims, based on pretext and stereotype, rather than actual crime — as a serious civil rights issue. In May 2014, Project SALAM published an extensive report and analysis of Preemptive Prosecution entitled, *Inventing Terrorists: The Lawfare of Preemptive Prosecution*. Project SALAM endeavors to expose criminal prosecutions based on stereotypes and prejudice, and works with prisoners and their families so that their stories will be heard.

### Shia Rights Watch (SRW)

Shia Rights Watch (SRW) is the world's first independent organization dedicated to protecting the rights of Shia Muslims around the world. SRW is a non-governmental, not-for-profit research and advocacy organization headquartered in Washington, D.C. It works to protect and empower Shia Muslims in their freedom of expression and religion. SRW stands for victims of prejudice, supports activism in order to prevent discrimination, supports political freedom, and helps ensure people's human rights and religious freedom.

### South Asian Americans Leading Together (SAALT)

South Asian Americans Leading Together (SAALT) is a national non-profit organization whose mission is to elevate the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. As an organization that is committed to the importance of equality and civil rights, SAALT joins this brief because religious surveillance and profiling of communities violates the civil rights of individuals, perpetuates dangerous stereotypes, and threatens our Constitutional rights and values as a nation.

Universal Muslim Association of America — Advocacy (UMAA Advocacy)

Universal Muslim Association of America — Advocacy (UMAA Advocacy) works towards increasing public awareness of the authentic beliefs of Islam, promoting humanitarian rights in Muslim countries, promoting religious freedoms around the world, and promoting minority rights. The overarching objectives of UMAA Advocacy include: working toward uniting Muslim-Americans, helping fellow Americans better understand Islam, and encouraging civic awareness and engagement within the Muslim community in order to address socioeconomic and political issues that may not be the focus of centers of worship and other organizations. In keeping with its mission to protect minority rights and encourage civic engagement, UMAA Advocacy joins this brief.