

14-1688-CV

IN THE
United States Court of Appeals
FOR THE THIRD CIRCUIT

SYED FARHAJ HASSAN, THE COUNCIL OF IMAMS IN NEW JERSEY, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., ALL BODY SHOP INSIDE & OUTSIDE, UNITY BEEF SAUSAGE COMPANY, MUSLIM FOUNDATION INC., MOIZ MOHAMMED, JANE DOE, SOOFIA TAHIR, ZAIMAH ABDUR-RAHIM, AND ABDUL-HAKIM ABDULLAH,

Appellants,

— against —

THE CITY OF NEW YORK

Appellee.

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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STATEMENT OF JURISDICTION

Plaintiffs-Appellants invoked the jurisdiction of the district court pursuant to 28 U.S.C. § 1331, based upon alleged violations of the United States Constitution and 42 U.S.C. § 1983, and 28 U.S.C. § 1343 because they sought relief for the deprivation of their constitutional rights under color of State law. This Court has jurisdiction of the appeal under 28 U.S.C. § 1291, because it is an appeal from a final judgment of dismissal disposing of all parties' claims. The district court entered Final Judgment dismissing the case on February 20, 2014 (Dkt. 41), and Plaintiffs-Appellants filed a timely Notice of Appeal on March 21, 2014 (Dkt. 42).

ISSUES PRESENTED

1. Whether the myriad, specific injuries Plaintiffs allege — which include being subject to discriminatory classification by the City based solely upon their religious identity as Muslims, the stigma that follows such disfavored treatment, interference with religious practices, loss of business and property value, and likelihood of future repercussions — constitute concrete injury-in-fact that confers standing to assert their constitutional claims.
2. Whether Plaintiffs' injuries are fairly traceable to the City and the New York Police Department, which established, implemented, and publicly defended its discriminatory surveillance program, rather than the Associated Press, which exposed the program.
3. Whether Plaintiffs' specific allegations that the New York Police Department targeted them for surveillance pursuant to an expressly discriminatory policy, plausibly state claims upon which relief can be granted for violations of the Equal Protection Clause of the Fourteenth Amendment and the Free Exercise and Establishment Clauses of the First Amendment.

STATEMENT OF FACTS

A. The Complaint's Allegations

Plaintiff's First Amended Complaint ("Complaint") alleged that, since January 2002, defendant City of New York (the "City") has, through the New York City Police Department ("NYPD" or "the Department"), conducted a massive targeting, mapping and surveillance program (the "Program") to monitor the lives of Muslims, their businesses, houses of worship, organizations, and schools in New York City and surrounding states, particularly New Jersey. JA-37, 38 (¶¶36, 38). The fact of this Muslim-surveillance program, and the details of its operation, are revealed by now-public NYPD documents. JA-23–25 (¶¶26-62), JA-54–202, The Program intentionally targets Plaintiffs and untold other Muslim individuals, associations, and organizations based purely on their religious affiliation, JA-24 (¶3), while it does not subject any other religious group to surveillance of this kind. JA-38 (¶37). Moreover, the surveillance activities are undertaken without reason to believe that the Muslim targets have committed or are connected to any crime or terrorism. JA-24 (¶3). In its ten years of existence, the Program has not produced a single lead to criminal activity. JA-24 (¶2).

1. Targeting of Muslims in New Jersey

Using a wide variety of methods to spy on Muslims, the Program targets virtually every aspect of day-to-day Muslim life, from the mundane to the sacred. JA-24, 38–43 (¶¶2, 39-47). Among other measures, the NYPD videotapes, photographs, and infiltrates mosques, Muslim-owned businesses, organizations, and schools; the surveillance has included Plaintiffs. JA-41–43 (¶¶46-47). Undercover officers engage in pretextual conversations to elicit information from proprietors and patrons. JA-38–39 (¶39). For example, the NYPD uses undercover officers called "rakers" to surveil locations such as bookstores, bars,

cafes and nightclubs in neighborhoods it believes to be predominantly frequented by Muslims. JA-41–43 (¶47). These rakers, as well as other officers and agents compile surveillance reports which, among other things, catalogue religiously-oriented facts such as: (i) Muslim prayer mats hanging on restaurant walls; (ii) flyers posted in shops advertising for *Quranic* tutoring; (iii) pictures of mosques hanging in grocery stores; (iv) restaurants that serve “religious Muslims” or that are located near mosques; (v) customers visiting Dunkin’ Donuts after Friday prayer; (vi) employees or customers of establishments observed wearing “traditional clothing;” (vii) and stores posting signs announcing that they will be closed in observance of Friday prayer. *Id.* The reports also include maps indicating the locations of mosques, restaurants, retail establishments and schools owned by or serving both Muslims and ethnic populations from heavily Muslim countries. JA-44 (¶53). For Newark, New Jersey, alone, the Department maintains over twenty such maps. JA-24 (¶3).

The Program devotes special attention to Islamic places of worship. The Program uses informants called “mosque crawlers” to monitor sermons and conversations in mosques and then report back to the NYPD. It has tried to insert informants inside every mosque within a 250-mile radius of New York City; it has also prepared an analytical report on every mosque within 100 miles, including Plaintiff Muslim Foundation, Inc. and at least two members of Plaintiff Council of Imams in New Jersey. JA-41–43 (¶47). Mosque crawlers have monitored thousands of prayer services within mosques, thereby amassing a trove of detailed personal information about worshippers solely on the ground of their Muslim affiliation. *Id.* Officers also take photographs and video of license plate numbers of congregants as they arrive to pray. JA-41 (¶46). The Department has even mounted surveillance cameras on traffic light poles aimed at mosques, to allow

round-the-clock surveillance of these religious institutions and to identify worshippers. *Id.*

The Department further closely monitors the activities of Muslim Student Associations (“MSAs”) at colleges and universities in New York, New Jersey, Connecticut, and Pennsylvania, solely because of their Muslim membership. JA-43 (¶49). Undercover NYPD officers pose as students to attend MSA events, JA-43 (¶50). One officer, for example, went on a rafting trip with an MSA and monitored and recorded how often the student participants on the trip prayed, describing their religious discussions. *Id.* On a weekly basis, the NYPD prepares an MSA Report, encompassing the MSAs at Rutgers New Brunswick and Rutgers Newark to which some Plaintiffs belonged. JA-43 (¶50). The NYPD even established a base of operations in an off-campus apartment near Rutgers New Brunswick. JA-44 (¶51). By inserting informants and undercover officers into all or virtually all MSAs, the Program extracts information about the activities and individuals involved, including the names of professors, scholars and student participants, *id.*, all without any indication whatsoever of criminal activity or connection to wrongdoing. JA-43 (¶49). NYPD officers also monitor the websites of Muslim student organizations, troll student chat rooms, and talk to students online. JA-43 (¶50).

The NYPD also tracks Muslims by inspecting records of name changes and compiling databases of new Muslim converts who take Arabic names, as well as Muslims who take “Western” names. JA-44 (¶55). Significantly, the Department does not compile similar information for other kinds of name changes. *Id.*

In addition, the Program intentionally targets Muslim individuals by using ethnicity as a proxy for faith, selecting only Muslims for surveillance. JA-39 (¶40). Thus, the Department has designated twenty-eight countries – which, combined,

contain 80% of the world’s Muslim population – and “American Black Muslim” as “ancestries of interest.” JA-39 (¶41). Tellingly, the NYPD does not surveil all people and establishments linked to countries with “ancestries of interest.” To the contrary, it expressly excludes non-Muslim people and establishments with such “ancestries”– thus, for example, the NYPD does not surveil Egyptian Christians, Syrian Jews, or Albanian Catholics and Orthodox Christians. JA-39–40 (¶42). Likewise, the NYPD reports discuss the African-American Muslim population, but not non-Muslim African-American communities. JA-40 (¶43).

The City has made repeated specific statements – both for internal and public consumption – assigning guilt to all Muslims and suggesting they all pose a special threat to public safety. JA-45 (¶57). For example, the Department’s Newark report focuses on some forty so-called “Locations of Concern,” which consist of mosques, restaurants and retail establishments owned and frequented by Muslims, and Muslim schools. JA-45–46 (¶58). “Locations of Concern” are defined as “location[s] that individuals may find coconspirators for illegal actions” or which have “demonstrated a significant pattern of illegal activities.” *Id.* Yet the report fails to identify any “illegal activity” in such locations. It simply assumes that Muslims are inherently more likely to pose a threat to public safety.

2. Injuries to Plaintiffs Caused by the Surveillance Program

All Plaintiffs are injured by being subject to a government classification that disfavors them because of their status as Muslims, and that unfairly stigmatizes them as public safety threat and unequal members of the political community. JA-48 (¶65). Each Plaintiff has also suffered a variety of additional injuries as a result of the NYPD’s surveillance above and beyond the Program’s obvious stigmatizing effects. *See* JA-25–26, 45–46, 47, 48 (¶¶7, 57-58, 61, 65).

Plaintiff Syed Farhaj Hassan, a soldier in the U.S. Army who has worked in military intelligence, has reduced his mosque attendance out of a reasonable fear that attending mosques under surveillance will jeopardize his ability to hold a security clearance and will tarnish his reputation among his fellow soldiers. JA-27–28 (§§11-13). Similarly, Plaintiffs Moiz Mohammed, Jane Doe, and Soofia Tahir now avoid discussing their faith openly or at MSA meetings for fear their comments will be misinterpreted by law enforcement. JA-32–33, 33–34, 34–35 (§§24, 27, 29-30). Their future education and professional opportunities are impaired by the NYPD’s surveillance and by City officials’ public comments about the spying program. JA-33, 33–34, 34 (§§25, 27, 29).

The surveillance of Rutgers University chapters of the Muslim Students Association of the U.S. & Canada, Inc. has undermined their ability to fulfill their mission, deterring potential members from joining and casting doubt on these organizations’ ability to maintain the confidentiality of their membership. JA-29–30 (§17). In addition, two member mosques of Plaintiff Council of Imams in New Jersey who are named in the NYPD’s Newark report have seen a decline in attendance and contributions as a result of the Department’s surveillance. JA-28–29 (§15). Yet another mosque named in an NYPD report, operated by Plaintiff Muslim Foundation Inc., has been forced to change its religious and educational programming to avoid controversial topics that might attract the attention of law enforcement. JA-31–32 (§23). Indeed, the NYPD’s surveillance of all Plaintiff mosques and individual Plaintiffs has created an atmosphere in which it is impossible to worship freely knowing that law enforcement agents or informants are likely in their midst. JA-28–29, 31–32, 33, 33–34, 35 (§§15, 23, 25, 27, 30).

The surveillance has damaged Plaintiffs All Shop Body Inside & Outside and Unity Beef Sausage Company by scaring away customers. JA-30, 30–31

(¶¶19, 20). It has diminished the value of Plaintiffs Zaimah Abdur-Rahim and Abdul-Hakim Abdullah's home as a result of a picture of that home being included in a surveillance report. JA-36, 36–37 (¶¶32, 34). In short, each Plaintiff has suffered multiple injuries as a direct consequence of the City's policy of singling out Muslims for surveillance, on the basis of insidious and patently false stereotypes.

B. Proceedings Below

Plaintiffs commenced this action on June 2, 2012, filing an amended complaint on October 3, 2012. Based on the foregoing allegations, Plaintiffs sued the City pursuant to 42 U.S.C. § 1983 and *Monell v. City of New York Dep't. of Social Services*, 436 U.S. 658 (1978), for its unlawful policy of discriminating against them on the basis of their Islamic faith. Plaintiffs asserted that the City's expressly discriminatory policy violated Plaintiffs rights under the Equal Protection Clause of the Fourteenth Amendment (Count I) and the Free Exercise and Establishment Clauses of the First Amendment (Count II). JA-27 (¶¶66-69). Plaintiffs also sought expungement of their unlawfully obtained records, an injunction prohibiting continued surveillance based on religion; compensatory damages for Plaintiffs who suffered economic harm, and nominal damages for others, *see Cary v. Piphus*, 435 U.S. 247 (1978).

On February 20, 2014, without having entertained oral argument, the district court issued a ten-page opinion and order granting the City's motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing and, under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim. (JA-13–22). The court first ruled that Plaintiffs failed to demonstrate standing because they failed to identify any cognizable "injury-in-fact." JA-17. The district court likened all of the distinct injuries alleged by Plaintiffs collectively to those

considered and rejected in *Laird v. Tatum*, 408 U.S. 1 (1972), where the Plaintiffs could not allege they were actually the targets of a government surveillance program or otherwise demonstrate that their First Amendment activity was chilled by “any specific action of the Army against them.” *Id.* at 3, *cited in* JA-18.

The district court also concluded that Plaintiffs could not satisfy the causation prong of the standing inquiry. JA-18–19. The court reasoned that, even if Plaintiffs had suffered injuries, they were not “fairly traceable” to the design, implementation or public defense of NYPD’s surveillance Program, but rather, were caused by the Associated Press’s disclosure of the allegedly unlawful program.

Finally, the district court dismissed the Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The district court did not specifically address Plaintiffs’ Equal Protection, Free Exercise, or Establishment Clause claims, treating them all as one, and holding that Plaintiffs’ claims of discrimination were not plausible under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), because Plaintiffs failed to show that the City did not adopt the program “for a neutral, investigative reason.” JA-20–22. In assessing the sufficiency of the pleadings, the court accepted the City’s assertion that a program that exclusively surveils Muslims does not discriminate, and is otherwise justified by the events of September 11, 2001. JA-21 (“The more likely explanation for the surveillance was a desire to locate budding terrorist conspiracies. The most obvious reason for so concluding is that surveillance program began just after the attacks of September 11, 2001.”).

STATEMENT OF RELATED CASES

There are no related cases pending in this Court. A case challenging the NYPD’s surveillance of Muslims in New York City was filed in the Eastern District of New York, and after the City answered the complaint, is in the midst of

discovery. *Raza, et al. v. City of New York*, No. 13-3448 (E.D.N.Y. June 18, 2013). A case seeking to hold the City in contempt of guidelines adopted in 1971 and amended in 2002, which limited the City's ability to surveil First Amendment activity and keep records of monitored individuals is also pending in the Southern District of New York. *Handschu v. Special Services*, No. 71 Civ. 2203 (S.D.N.Y.) (Mot. for Inj. Relief and Appointment of An Auditor or Monitor filed February 4, 2013 (Dkt. 408)).

STANDARD OF REVIEW

The district court granted the City's motion to dismiss for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1), and for failure to state a claim upon which relief can be granted under Rule 12(b)(6). For each such ruling, this Court's standard of review is *de novo*. *Barefoot Architect, Inc. v. Bunge*, 632 F.3d 822, 826 (3d Cir. 2011) (circuit court reviews a district court's dismissal for failure to state a claim under a *de novo* standard of review); *Marion v. TDI Inc.*, 591 F.3d 137, 146 (3d Cir. 2010) (legal conclusion of district court regarding standing reviewed *de novo*).

SUMMARY OF ARGUMENT

Plaintiffs challenge, pursuant to 42 U.S.C. § 1983 and *Monell v. City of New York Dep't. of Social Services*, 436 U.S. 658 (1978), an overtly discriminatory policy adopted by the City that singles out Muslims for law enforcement surveillance based solely on their religion, and not upon any indicia of wrongdoing or criminal suspicion. Plaintiffs have demonstrated that they have standing to challenge the City's policy. The NYPD's surveillance program and the City's public comments about it cause Plaintiffs constitutionally recognized injury by: (1) classifying them for differential treatment based solely upon their religion; (2) stigmatizing them by painting Plaintiffs as a danger to society that should be

monitored constantly; (3) interfering with Plaintiffs' religious practices by deterring them from attending religious services; (4) causing loss in value to a home included in an NYPD surveillance report, decreasing business at stores and reducing donations at mosques; (5) and harming future education and employment prospects for certain Plaintiffs because of their affiliation with mosques and organizations that the NYPD has targeted and besmirched.

Contrary to the district court's reasoning, these discrete injuries are fundamentally distinct from those deemed insufficient in *Laird v. Tatum*. Plaintiffs here have not speculatively altered their behavior based on the mere possibility of a government surveillance program; their injuries stem from having been specifically targeted by a publicly acknowledged surveillance program. The district court also erred in concluding that Plaintiffs' injuries were not "fairly traceable" to the City's unlawful surveillance program, but to the Associated Press's disclosure of the program. There can be no doubt that the City's adoption and maintenance – and post-disclosure defense – of the spying program is the "but for" cause of Plaintiffs' injuries. Nor is there doubt that a judicial order enjoining the City's unlawful program would redress Plaintiffs' injuries. No more is required to meet the causation prong of standing at the pleading stage.

The Complaint also provides ample, non-conclusory allegations – most based on the NYPD's own documents – demonstrating that the NYPD targeted Muslims exclusively for surveillance. The allegations describe the methodology and locations of the NYPD's religion-based spying in great detail, and identify Plaintiffs as specific targets of the program. When assumed to be true, as they must be, *Mandel v. M&Q Packaging Corp.*, 706 F.3d 157, 263 (3d Cir. 2013), the allegations leave no doubt that the City adopted a policy that relies on an express classification of Muslims for disfavored treatment.

A facially discriminatory policy such as the City's here states a claim under the Equal Protection Clause, the Free Exercise Clause and the Establishment Clause, regardless of the subjective motivations of any government decision-maker or of the asserted necessity of the law enforcement reasons for such a policy.

Accordingly, the district court erred in uncritically accepting, at the pleading stage, the City's assertion that its avowedly discriminatory spying program was justified by "a desire to locate budding terrorist conspiracies." JA-21. By endorsing the City's justification for the program rather than evaluating whether Plaintiffs alleged a plausible claim for relief, the district court not only elevated the plausibility standard into a probability requirement, but also subverted the very purpose of strict scrutiny, which is to skeptically examine the government's asserted justification for discrimination against a protected class. Indeed, the district court's decision to accept the stereotypes underlying the City's defense of the program perpetuates the very discrimination this action is designed to challenge.

The district court also erred in interpreting the Supreme Court's decision in *Ashcroft v. Iqbal* to sanction overt discrimination against Muslims. It does not. The claims here differ significantly. The *Bivens* claims asserted in *Iqbal* required those plaintiffs to show the discriminatory state of mind of individual supervisory defendants. In contrast, under *Monell*, the existence of a facially discriminatory policy states a claim for municipal liability, regardless of any individual decision-maker's state of mind. In addition, the non-conclusory allegations in *Iqbal* could not support a legally sufficient disparate treatment claim, whereas Plaintiffs' well-pled allegations here demonstrate the existence of a facially discriminatory government classification – one that triggers strict scrutiny.

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO PURSUE THEIR CONSTITUTIONAL CLAIMS

To establish the “constitutional minimum of standing,” a party must allege that: (1) it has suffered an “injury in fact” that is “concrete and particularized, and also “actual or imminent;” (2) the injury is “fairly . . . trace[able] to the challenged action of the defendant;” and (3) it is “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations omitted) (alterations in original). Because standing “turns on the nature and source of the claim asserted,” *id.*, the proper inquiry here is whether Plaintiffs have alleged concrete and particularized injuries cognizable under the Equal Protection Clause of the Fourteenth Amendment and the Free Exercise and Establishment Clauses of the First Amendment.

Plaintiffs have asserted no fewer than five concrete injuries that have long been cognizable. The district court failed to acknowledge – let alone analyze – these distinct injuries under governing standing law. Instead, the district court summarily concluded that the all of Plaintiffs’ injuries “mirror” those of the plaintiffs in *Laird v. Tatum*, 408 U.S. 1 (1972). But unlike the “subjective chill” allegations in *Laird*, Plaintiffs here allege that they are the *actual* targets of an acknowledged government surveillance program. The district court’s further conclusion that the Associated Press’s revelations of the City’s illegal activity – not the illegal activity itself – caused Plaintiffs’ injuries is contrary to controlling law, logic and the record.

A. Plaintiffs Have Alleged Numerous Injuries Sufficient to Confer Standing on their Equal Protection and First Amendment Claims.

Plaintiffs’ burden of alleging injury-in-fact at the pleading stage is low, requiring nothing more than “an identifiable trifle” of harm. *Joint Stock Soc’y v. UDV N. Am., Inc.*, 266 F.3d 164, 177 (3d Cir. 2001). In this case, Plaintiffs have suffered numerous harms that are well beyond a “trifle,” ones that are routinely recognized under the Equal Protection Clause and First Amendment as injuries-in-fact. *First*, Plaintiffs were subject to a discriminatory government classification, which itself confers standing to challenge that discrimination. *Second*, the City’s discrimination stigmatized Plaintiffs based on their religion and subjected them to reputational harm. *Third*, the City’s interference with certain Plaintiffs’ religious practices confers standing. *Fourth*, some Plaintiffs suffered monetary injury as a result of the surveillance program. And *fifth*, certain Plaintiffs are likely to suffer future, concrete harm as a result of having been classified and surveilled by the NYPD.

1. The City’s Classification and Targeting of Plaintiffs Based on Membership in a Protected Class Is an “Injury in Fact”

The Complaint plainly alleges – and the City does not contest – that the challenged policy targets Muslims, and only Muslims, on the basis of religious identity, JA-39–40 (¶¶40-44), and that Plaintiffs are in fact targeted and investigated based solely upon their religion. JA-27–29, 29–33, 34, 35–36, 36–37 (¶¶12-15, 17-26, 28-29, 31-32, 34). The very fact that Plaintiffs are subjected to a discriminatory law enforcement classification constitutes an injury-in-fact. *Northeastern Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (“The ‘injury in fact’ in an equal protection case of this variety is the denial of equal treatment.”); *Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 542 (3d Cir. 2011) (“[i]n the equal protection context, an

injury resulting from governmental racial discrimination accords a basis for standing ... to those persons who are personally denied equal treatment by the challenged discriminatory conduct”) (citing *United States v. Hays*, 515 U.S. 737, 744-45 (1995)); accord *Allen v. Wright*, 468 U.S. 737, 755 (1984) (internal citation omitted)). Indeed, the injury-in-fact from unequal treatment is sufficient to confer standing regardless of any subsequent or additional harm that may or may not flow from the discrimination. See *Northeastern*, 508 U.S. at 666 (no obligation for Plaintiffs to assert subsequent harm because the injury-in-fact is the denial of equal treatment “*not the ultimate inability to obtain the benefit*”) (emphasis added); *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003) (plaintiff-student satisfied the injury-in-fact requirement by alleging that the University’s discriminatory admissions policy had “denied him the opportunity to compete for admission on an equal basis,” even without proof he could have obtained admission absent the policy); *Shaw v. Reno*, 509 U.S. 630, 641 (1993) (placement in predominantly white election district is a discriminatory classification sufficient to confer standing, even absent any concrete impact on voting rights). On this basis alone, the district court’s decision on standing must be reversed and the Complaint reinstated.

2. The Targeting of Plaintiffs for Surveillance and Investigation Based on Religion Causes Stigmatic Harm that Establishes Injury in Fact

Independent of the harm attributable to unequal treatment by the City, the stigma that inevitably flows from a facially discriminatory classification of a disfavored group is also a well-recognized injury that confers standing. As the Supreme Court explained in *Shaw v. Reno*: “Classifications of citizens solely on the basis of race ‘are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality’” because they “threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial

hostility.” 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). Accordingly, the Equal Protection Clause authorizes challenges to discriminatory classifications that “perpetuat[e] archaic and stereotypic notions” or “stigmatiz[e] members of the disfavored group as innately inferior and therefore as less worthy participants in the political community.” *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (internal quotation omitted); *see also Allen v. Wright*, 468 U.S. 737, 755 (1984) (stigmatic injury associated with invidious official conduct is cognizable for standing purposes if the plaintiff is directly affected).

The City’s surveillance program is explicitly based upon, and accordingly perpetuates, a malignant stereotype: that Muslims are a danger to society appropriately kept under constant monitoring. *See* JA-47, 48, (¶¶61, 65) (describing City officials defending the surveillance of Muslims by arguing that the surveillance program was focused on “threats” and “terrorists”). This is precisely the sort of official stereotyping that violates both the Equal Protection Clause, *see Allen*, 468 U.S. at 755, and the Religion Clauses of the First Amendment. *See Church of Scientology Flag Service Organization, Inc. v. City of Clearwater*, 2 F.3d 1514, 1525 (11th Cir. 1993) (“Religious groups and their members that are singled out for discriminatory government treatment . . . have standing to seek redress in federal courts” under the Free Exercise Clause); *Church of Scientology v. Cazares*, 638 F.2d 1272, 1279-80 (5th Cir. 1981) (same); *Awad v. Ziriax*, 670 F.3d 1111, 1123 (10th Cir. 2012) (allegation that “proposed state amendment *expressly* condemns [plaintiff’s] religion and exposes him and other Muslims in Oklahoma to disfavored treatment – suffices to establish the kind of direct injury-in-fact necessary to create Establishment Clause standing”) (original emphasis).

In addition, unconstitutional government action that diminishes a group’s reputation in the community – even short of an invidious classification – has long

been a basis for standing. In *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951) (plurality opinion), for example, the Supreme Court found that the effect of designating the plaintiff organizations as “Communist” was to “cripple the functioning and damage the reputation of those organizations in their respective communities and in the nation,” which is a cognizable injury. *Id.* at 139-40. Similarly, in *Meese v. Keene*, 481 U.S. 465 (1987), the federal government’s derogatory designation of plaintiff’s films as “political propaganda” allegedly injured plaintiff’s reputation and was therefore sufficient to confer standing. *Id.* at 473-74. See also *Turkish Coalition of America, Inc. v. Bruininks*, 678 F.3d 617, 622-23 (8th Cir. 2012) (“a non-profit organization that alleges an injury to reputation through stigmatizing government speech has Article III standing to bring a constitutional claim”); *Riggs v. City of Albuquerque*, 916 F.2d 582, 583–85 (10th Cir. 1990) (“politically active organizations who, it was alleged, have often taken controversial and unpopular positions” pled a cognizable injury where they “allege[d] harm to their personal, political, and professional reputations in the community”). Accordingly, the Plaintiffs have standing to challenge the City’s denigration of Muslims.

3. The City’s Interference With Plaintiffs’ Religious Practices Constitutes an Injury In Fact.

In addition to the injury stemming from the City’s discriminatory classification described above, *see supra* Section I(A)(1)-(2), Plaintiffs suffer a second form of Religion Clause injury: interference with their ability to engage in collective worship, as their faith compels. The Complaint clearly alleges that many of the Plaintiffs have stopped attending mosques and MSAs, and instead refrain from openly discussing their religious beliefs for fear their statements will be misinterpreted and so invite unwanted attention from law enforcement. JA-27–

28, 29–30, 33, 33–34, 35 (¶¶13, 17, 25, 27, 30). One Plaintiff mosque has even altered its religious services and programming to avoid subjects and speakers that might generate controversy. JA-31–32 (¶23).

For example, Plaintiff Hassan has significantly reduced his attendance at mosques that were targeted by the NYPD surveillance program. Plaintiff MSA has seen its ability to fulfill the spiritual needs of its members in a confidential manner impaired. JA-29–30 (¶17). Plaintiffs Mohammed, Doe, and Tahir, all current and former members of the Rutgers Muslim Student Association have also changed their worship habits to avoid attracting the attention of the NYPD and the university community. JA-33, 33–34, 35 (¶¶25, 27, 30). Each of these instances of compelled self-censorship is a paradigmatic example of the sort of injury the Free Exercise Clause is meant to redress. Each accords standing.

Indeed, it is well established that centers of worship like churches, mosques, and synagogues, “as organizations, suffer a cognizable injury when assertedly illegal government conduct deters their adherents from freely participating in religious activities protected by the First Amendment.” *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 523 (9th Cir. 1989). In considering a challenge to the Immigration and Naturalization Service’s practice of sending agents into churches to surreptitiously record services – causing reduction in church attendance and financial support – the Ninth Circuit explained why a religious group suffers a cognizable injury under the Free Exercise Clause:

When congregants are chilled from participating in worship activities, when they refuse to attend church services because they fear the government is spying on them and taping their every utterance, all as alleged in the complaint, we think a church suffers organizational injury because its ability to carry out its ministries has been impaired. . . . The alleged effect on the churches is

not a mere subjective chill on their worship activities; it is a concrete, demonstrable decrease in attendance at those worship activities. The injury to the churches is “distinct and palpable.”

Id. at 522 (citing *Allen v. Wright*, 468 U.S. 737, 751 (1984) (emphasis removed); accord *Muslim Community Ass'n of Ann Arbor v. Ashcroft*, 459 F.Supp.2d 592, 598 (E.D. Mich. 2006) (finding standing where “members are afraid to attend mosque, practice their religion, and express their opinions on religion and political issues”); cf. *Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate*, 519 F.2d 1335, 1338 (3d Cir. 1975) (finding standing when “mere anticipation of the practical consequences of joining or remaining with plaintiff organizations [subject to police surveillance] may well dissuade some individuals from becoming members”).

In sum, houses of worship and those who practice religion in a communal setting cannot function properly with undercover law enforcement officers and informants in their midst, tracking their sermons and conversations, and filming and photographing their activities. They have standing to challenge the surveillance at issue here, and the district court’s opinion denying them access to the federal court on standing grounds should be reversed.

4. Plaintiffs’ Monetary Damages Are an Injury in Fact

A number of Plaintiffs allege monetary damages – allegations the district court effectively ignored. Two mosques that are members of Plaintiff Council of Imams in New Jersey¹ – Masjid al-Haqq and Masjid Ali K. Muslim – allege a

¹ Plaintiffs Council of Imams in New Jersey and MSA National also assert associational standing under *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). See JA 28-30 (¶¶14-17). Suits brought by an association on behalf of members are appropriate where, as here, “the association seeks a declaration, injunction, or some other form of prospective relief [that] can

decrease in contributions as a result of the NYPD's surveillance program. JA-28–29 (¶15). Plaintiff businesses All Body Shop Inside & Outside and Unity Beef Sausage Company allege a decrease in customers caused by the program. JA-30, 31 (¶¶19, 21). Plaintiffs Abdur-Rahim and Abdullah claim compensatory damages due to the loss of value to their home, as a result of it being pictured in the NYPD's Newark report. JA-35–37 (¶¶31-34).

There can be no doubt that such financial harm constitutes injury-in-fact. *Danvers Motor Co., Inc. v. Ford Motor Co.*, 432 F.3d 286, 292 (3d Cir. 2005). Indeed, it is the classic form of injury-in-fact that confers standing. *Id.* at 293 (citing *Adams v. Watson*, 10 F.3d 915, 920–25 & n. 13 (1st Cir. 1993) (collecting cases)); *see also Baugh Constr. Co. v. Mission Ins. Co.*, 836 F.2d 1164, 1171 (9th Cir. 1988) (diminution in value based upon negative publicity constitutes injury).

5. Likelihood of Future Harm Caused By NYPD Surveillance

Certain Plaintiffs face the likelihood that the NYPD's collection and retention of surveillance records will harm their future education and employment prospects. Plaintiff Hassan is a soldier in the U.S. Army Reserve who has worked in military intelligence. JA-27 (¶11). Any blemish in his background jeopardizes his security clearance and thus his career. JA-27–28 (¶13). Hassan is also concerned that his fellow soldiers, including his superiors, will have diminished trust in him – thereby harming his career prospects – if they learn he is a congregant at mosques under NYPD surveillance. *Id.* Plaintiff Abdur-Rahim is a teacher at Al Hidaayah Academy, a school included in the NYPD's Newark report; from 2002 through 2010, she was the principal of Al Muslimaat Academy, a school for fifth- to twelfth-grade girls on which the NYPD spied, as documented in

reasonably be supposed . . . will inure to the benefit of those members of the association actually injured.” *Warth v. Seldin*, 422 U.S. 490, 516 (1975).

its Newark report. JA-35 (¶31). She reasonably fears that her future employment prospects are diminished by working at two schools under surveillance by law enforcement. JA-36 (¶32). Finally, the three Plaintiffs who are a current student and recent graduates of Rutgers – Mohammed, Doe and Tahir – have their future education and career prospects encumbered by their membership in the University’s Muslim Student Association, which the NYPD unlawfully monitored and made records about solely because its membership is Muslim. JA-34 (¶29).

Each of these is a cognizable injury. In this Court’s decision in *Philadelphia Yearly*, the plaintiffs alleged that information collected during an investigation conducted by Philadelphia police would be available to other individuals, governmental agencies, and the media. *Philadelphia Yearly*, 519 F.2d at 1338. These allegations, the Third Circuit held, afforded plaintiffs standing because the “general availability of such materials and lists could interfere with the job opportunities, careers or travel rights of the individual plaintiffs.” *Id.* In this case, the widespread availability² of the City’s surveillance records implicating Plaintiffs, combined with City officials’ public statements indicating that those records focused on “threats” and attempted to document the “likely whereabouts of terrorists” thus confer standing upon Plaintiffs just as in *Philadelphia Yearly*. Indeed, this Court reached an identical conclusion in *Paton v. La Prade*, 524 F.2d 862 (3d Cir. 1975), which held that a student plaintiff suffered a cognizable injury and had standing to seek expungement of FBI records where that agency surveilled her and maintained an investigative file, because that file “possibly could endanger

² It cannot matter for standing purposes that in *Philadelphia Yearly*, the police intentionally publicized its surveillance system and disclosed certain information regarding the plaintiffs, 519 F.2d at 1337, while in this case the disclosures were originally publicized by an unauthorized leak. The actual harm suffered by the victims of the surveillance is the same in both cases.

her future educational and employment opportunities.” *Id.* at 868. *See also Meese v. Keene*, 481 U.S. at 473-74.

B. Because Plaintiffs Are Actual Targets of the City’s Surveillance, Their Injury is “Concrete and Particularized,” Not “Speculative.”

The district court did not analyze each of the above independent bases for standing. Instead, the court summarily concluded that Plaintiffs’ assertion of standing “mirror” those in *Laird v. Tatum*, 408 U.S. 1 (1972). This is a fundamentally flawed comparison. In *Laird*, the plaintiffs feared the *possibility* that a government surveillance program might ensnare them, and claimed that such a possibility inhibited their political activity. This mere “subjective chill,” the Supreme Court held, was insufficient to confer standing. *See Laird*, 408 U.S. at 11. But in obvious contrast to the *Laird* plaintiffs, Plaintiffs here allege that they have been direct targets of a well-documented Muslim surveillance program. *See Laird*, 408 U.S. at 9 (Plaintiffs “complain of no specific action of the Army against them”). Indeed, every single Plaintiff in this case is either specifically named in an NYPD spying report or is a member of at least one mosque or other association named in such a report. JA-27–29, 29–33, 34, 35–36, 36–37 (¶¶12-15, 17-26, 28-29, 31-32, 34).

This Court, like many others, has long held that when plaintiffs are the subject of law enforcement surveillance based upon constitutionally protected activities, they have standing to challenge the propriety of that surveillance. In *Anderson v. Davila*, 125 F.3d 148 (3d Cir. 1997), for example, this Court, distinguishing *Laird*, concluded that a plaintiff who was spied on by police, allegedly in retaliation for advancing a discrimination claim, had standing to challenge such surveillance.. *Id.* at 160. Likewise, in *Riggs v. City of Albuquerque*, 916 F.2d 582 (10th Cir. 1990), the plaintiffs alleged, as do Plaintiffs here, “that

they were the actual targets of the illegal investigations.” *Id.* at 585. This allegation rendered *Laird* “easily distinguishable because there the plaintiffs alleged only that they experienced a generalized chilling effect by their mere knowledge of the existence of the Army’s data-gathering system without alleging any specific Army action against them.” *Id.* at 586-87.

Similarly, several district courts, although reaching different conclusions about the merits of plaintiffs’ claims, have found that plaintiffs who alleged they were actually surveilled by the National Security Agency (“NSA”) have standing to challenge the legality of the surveillance. *See Klayman v. Obama*, 957 F.Supp.2d 1, 9 (D.D.C. 2013) (“plaintiffs have standing to challenge the constitutionality of the Government’s bulk collection and querying of phone record metadata”), *appeal docketed*, No. 14-5004 (D.C. Cir. Jan. 9, 2014); *Am. Civil Liberties Union v. Clapper*, 959 F. Supp. 2d 724, 738 (S.D.N.Y. 2013) (“[T]here is no dispute the Government collected telephony metadata related to the ACLU’s telephone calls. Thus, the standing requirement is satisfied.”), *appeal docketed*, No. 14-42 (2d Cir. Jan. 2, 2014); *Hepting v. AT & T Corp.*, 439 F.Supp. 2d 974, 1000 (N.D. Cal. 2006) (standing found where plaintiffs alleged that defendant provided the government access to their phone records).

In these NSA cases, as in Plaintiffs’ case, the allegations of actual surveillance could not be dismissed as merely “speculative.” *See Clapper v. Amnesty Int’l*, 133 S. Ct. 1138, 1154 (2013) (rejecting claim of standing where plaintiffs “present no concrete evidence to substantiate their fears, but instead rest on mere conjecture about possible governmental actions.”); *id.* at 1148 (plaintiffs “have no actual knowledge of the Government’s . . . targeting practices”). Indeed, in *Clapper*, the Supreme Court makes clear that non-speculative allegations of actual surveillance would confer standing. *See id.* at 1153 (explaining that *Clapper*

would resemble cases in which the Court found standing if it were undisputed that the government had acquired the plaintiffs' communications and the only question in the case was the reasonableness of the plaintiffs' actions to avoid such acquisition).

Accordingly, by alleging that the City has targeted them directly for surveillance based upon their exercise of a constitutionally protected right to practice their religion and/or their membership in a protected class, Plaintiffs have alleged a concrete and particularized injury-in fact-that confers standing to assert claims under the Equal Protection Clause and First Amendment.

C. The District Court Erred in Finding That Plaintiffs' Injuries Were Not "Fairly Traceable" to the NYPD's Unconstitutional Surveillance Practices

In evaluating the second prong of the standing requirement, the district court erred in finding that Plaintiffs failed to demonstrate that their injuries were caused by Defendant's unconstitutional conduct. The court attributed all of Plaintiffs' harms to the revelation of the NYPD's surveillance program, and none to the NYPD's unlawful conduct that was revealed. In particular, the court reasoned that because "[n]one of Plaintiffs' injuries arose until after the Associated Press released unredacted, confidential NYPD documents and articles expressing its own interpretation of those documents," Plaintiffs' injuries were "fairly traceable" not to the City's surveillance practices, but to the Associated Press's reporting which exposed those practices. JA-18–19. That finding is factually and legally incorrect.

1. Because the Discriminatory Surveillance Program Is the But-For Cause of Plaintiffs' Injuries, the Injuries are Fairly Traceable to the City.

To begin, the district court incorrectly assumed that all of the injuries alleged by Plaintiffs were triggered only by the public reporting of the NYPD surveillance

practices. As described in Section I(A)(1) *supra*, however, the mere occurrence of a discriminatory classification – independent of its disclosure – constitutes an injury-in-fact. Accordingly, the adoption of the discriminatory policy in this case, precedent to the Associated Press’s revelations, caused Plaintiffs harm by classifying them in violation of the constitution.

Second, even if the Associated Press reports were the immediate cause of Plaintiffs’ injuries (and as a factual matter they were not, as explained below) that would not defeat standing. At the pleading stage, plaintiffs’ “burden . . . of alleging that their injury is ‘fairly traceable’” to the challenged act is “relatively modest.” *Bennett v. Spear*, 520 U.S. 154, 171 (1997). To meet this “modest” burden, a plaintiff need only show that the defendant’s actions were a “but for” cause of the injury. *Edmonson v. Lincoln Nat’l Life Ins. Co.*, 725 F.3d 406, 418 (3d Cir. 2013). Once the plaintiff makes that showing, the “traceability requirement [will be deemed to be] met even where the conduct in question might not have been a proximate cause of the harm, due to intervening events.” *Id.* Put another way, it is well established that the presence of a third party does not break the causal chain for standing purposes. *See Bennett*, 520 U.S. at 168-69 (it is “wrong[]” to “equate[] injury ‘fairly traceable’ to the defendant with injury as to which the defendant’s actions are the very last step in the chain of causation.”); *see also Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003) (“[N]o authority even remotely suggests that proximate causation applies to the doctrine of [Article III] standing”) (internal quotation omitted).

In tort law, proximate cause requires a showing that the defendant’s conduct was “a substantial factor in the sequence of responsible causation,” and that the resulting “injury was reasonably foreseeable or anticipated as a natural consequence,” *Rothstein v. UBS AG*, 708 F.3d 82, 91-92 (2d Cir. 2013) (internal

quotation marks omitted). In contrast, “but for” causation only “requires proof that the harmful result would not have come about but for the conduct of the defendant.” *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 366 (3d Cir. 1990). Courts have routinely found standing even where, as the district court assumed, a third party and not the defendant proximately caused the injury. Thus, for example, in *Meese v. Keene*, 481 U.S. 465 (1987), the Court found that a plaintiff who wished to show films that the government had labeled “political propaganda” had standing to challenge the label even though the proximate cause of the injury was the public’s possibly hostile response to anyone who exhibited such material. *Id.* at 472-74. *See also Pitt News v. Fisher*, 215 F.3d 354, 360-61 (3d Cir. 2000) (traceability requirement met where regulation restricting advertisements was cause-in-fact of newspaper’s lost revenue, even though the proximate cause was third parties’ decision to stop buying advertisements); *Schurr v. Resorts Int’l Hotel, Inc.*, 196 F.3d 486, 493-94 (3d Cir. 1999) (plaintiff not hired by employer had standing to challenge government regulations that encouraged affirmative action, even though adverse employment decision was actually made by private employer and not specifically mandated by the challenged regulations).³

Here, the NYPD’s discriminatory surveillance practices are plainly a “but for” cause of Plaintiffs’ injuries: Absent those practices, there would have been nothing for the Associated Press to investigate and expose. That obvious fact resolves the “fairly traceable” inquiry and establishes standing.

³ *See also McKay v. Horn*, 529 F. Supp. 847, 854-55 (D.N.J. 1981) (injury was fairly traceable to federal statute even though injury was directly caused by New Jersey legislature’s decision to enact a state statute in response to federal statute); *Camden v. Plotkin*, 466 F. Supp. 44, 48-50 (D.N.J. 1978) (plaintiffs had standing to challenge methodology used by Census Bureau because undercounting of minorities might result in reduced federal aid, even though third-party agency was responsible for making such cuts).

Even under the proximate cause standard that the district court erroneously incorporated into the “fairly traceable” inquiry, Plaintiffs’ injuries could be readily traced to the NYPD’s surveillance practices. That is because, as this Court has made clear, “[a]n intervening cause which is foreseeable or a normal incident of the risk created by a tortfeasor’s action does not relieve the tortfeasor of liability.” *Thabault v. Chait*, 541 F.3d 512, 526 (3d Cir. 2008). Here, it was of course entirely foreseeable that a massive, discriminatory surveillance operation, employing countless undercover officers and informants across four states, would attract the attention of investigative reporters and the public.⁴ Indeed, the very purpose of the press in our democracy –the reason it secures strong First Amendment protections – is that it informs the people about governmental policies and enables the public to challenge official misconduct. *See, e.g., Branzburg v. Hayes*, 408 U.S. 665, 727 (1972) (the press “has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences”) (internal citation omitted). Tellingly, neither the City nor the court below cited a single case for the proposition that the predictable (and salutary) involvement of the press undermines standing with regard to a lawsuit against the actors whom the press was covering.

⁴ After all, the scope of this program was staggering. *See, e.g.,* JA-41–43 (¶47) (describing the NYPD’s seeking to put an informant inside every mosque within a 250-mile radius of New York City, using mosque crawlers to monitor thousands of prayer services, and deploying undercover officers to surveil bookstores, bars, cafes, and nightclubs in neighborhoods believed to be frequented by Muslims).

2. The Undisputed Existence of a Redressable Harm Proves Causation as a Matter of Law.

It is uncontested that a favorable ruling enjoining the NYPD's unconstitutional surveillance practices would redress Plaintiffs' harms. That fact conclusively demonstrates that those injuries are "fairly traceable" to the NYPD's actions. While "traceability" and "redressability" are traditionally listed as two separate requirements of standing, "the 'fairly traceable' and 'redressability' components for standing overlap and are 'two facets of a single causation requirement.'" *Wash. Envtl. Council v. Bellon*, 732 F.3d 1131, 1146 (9th Cir. 2013) (quoting *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984)); accord *Allen*, 468 U.S. at 759 n.24 (Where "[t]he relief requested by the plaintiffs [is] simply the cessation of the allegedly illegal conduct ... the 'redressability' analysis is identical to the 'fairly traceable' analysis."); *Dynalantic Corp. v. Dep't of Def.*, 115 F.3d 1012, 1017 (D.C. Cir. 1997) (calling the two standing requirements "two sides of a causation coin"); *Pub. Interest Research Grp. v. Powell Duffryn Terminals*, 913 F.2d 64, 73 (3d Cir. 1990). Cf. *Duquesne Light Co. v. U.S. Env't Prot. Agency*, 166 F.3d 609, 613 (3d Cir. 1999) (Having failed to establish that the injury was fairly traceable to defendants' conduct, plaintiff necessarily failed to satisfy the redressability prong as well); *Lac Du Flambeau Band v. Norton*, 422 F.3d 490, 501 (7th Cir. 2005) (same). Plaintiffs have encountered no case suggesting otherwise.

Defendant has never disputed that a judicial order declaring the NYPD's surveillance practices unconstitutional would redress Plaintiffs' injuries in their entirety. This demonstrates as a matter of logic and law that the surveillance practice caused Plaintiffs harm. By contrast, no judicial order directed at the Associated Press could accomplish that result: even if somehow constitutional, a gag order barring the Associated Press from further reporting on the NYPD's

surveillance conduct could not reverse the facially discriminatory policy, expunge from the public memory the existence of those programs, or erase the harms that have flowed from the NYPD's actions.

The sole case on which the district court relied, *Duquesne Light Co. v. U.S. Env't Prot. Agency*, *supra*, does not remotely support its conclusion that Plaintiffs' injuries are not fairly traceable to the City's conduct. In *Duquesne Light*, the plaintiffs challenged the Environmental Protection Agency's approval of a state regulatory plan that reduced the plaintiffs' emission reduction credits. However, the EPA lacked authority to disallow the state plan because that plan was more stringent than what federal law required. *Id.* at 613. Accordingly, the Court found that the injury was traceable not to the EPA (which had no choice but to approve the plan and played a purely ministerial role), but rather to the state agency that enacted the plan. *Id.* Here, by contrast, the NYPD's conduct was plainly a but-for cause of the Plaintiffs' injuries: the Associated Press could not have exposed a surveillance policy that did not exist, and only an order enjoining the NYPD's practices would provide full relief.

3. The District Court Ignored Allegations Demonstrating The City's Public Ratification of the Discriminatory Program Even After the Associated Press Disclosures.

Finally, the district court's conclusion suffers from a glaring factual flaw: the court inexplicably ignored the role that City officials played in broadcasting the existence of the surveillance program. As the record reveals, *see* JA-53–58, after the Associated Press published its initial expose, the City did not deny or even refuse to comment upon the articles. To the contrary, Mayor Bloomberg and Police Commissioner Kelly offered a full-throated defense of those practices, confirming that the NYPD surveilled Muslim communities even absent allegations

of wrongdoing, JA-59–62, that such surveillance extended across state boundaries, JA-63–69, and that the NYPD undertook a “demographic study” of Muslims in Newark, JA-54–56. Other police officials confirmed that the NYPD targeted individuals from predominantly Muslim “ancestries of interest” and “countries of concern,” and that the NYPD surveilled mosques and commercial establishments to discover where “Islamics radicalized toward violence would hide.” JA-70–202. In so doing, the City reaffirmed the deeply stigmatizing and unconstitutional premise of the program that was the principal source of Plaintiffs’ injuries – namely, that Muslims such as Plaintiffs are properly objects of suspicion simply on account of their religion, and are properly singled out by law enforcement on that basis. *See supra* Section I(A)(2).

II. THE COMPLAINT’S NON-CONCLUSORY ALLEGATIONS THAT THE NYPD HAS ENGAGED IN A FACIALLY DISCRIMINATORY POLICY OF SUSPICIONLESS SURVEILLANCE OF MUSLIMS IN NEW JERSEY STATES A PLAUSIBLE CLAIM OF RELIGIOUS DISCRIMINATION UNDER THE EQUAL PROTECTION CLAUSE AND THE FIRST AMENDMENT.

Plaintiffs set forth ample, non-conclusory allegations demonstrating that the NYPD adopted a facially discriminatory policy to surveil Muslims on the basis of their religion, which plainly state claims for relief under the Equal Protection Clause and the First Amendment. In summarily dismissing these substantial constitutional claims pursuant to Fed. R. Civ. P. 12(b)(6), the district court erred in three ways.

First, the court failed to examine the Complaint’s well-pled allegations to assess whether they create the reasonable inference that the City is liable for maintaining a discriminatory policy, as the court was required to do under this Court’s interpretation of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic*

Corp. v. Twombly, 550 U.S. 544 (2007). Instead, the district court simply adopted the City's explanation for its discrimination, contravening elementary pleading standards and short-circuiting the mandatory strict-scrutiny inquiry that governs facially discriminatory classifications like this one.

Second, contrary to the district court's perspective, this is unlike a *Bivens* suit against individual supervisory defendants that requires proof of an individualized discriminatory intent, as in *Iqbal*; rather, it is a suit against a city under *Monell v. City of New York Dep't. of Social Services*, 436 U.S. 658 (1978), which imposes liability for a municipality's discriminatory policy and custom, regardless of any decision-maker's state of mind.

And *third*, the district court erroneously applied *Iqbal*'s analysis of challenges to facially neutral policies with disparate impacts to this challenge to a facially discriminatory policy. Neither *Iqbal* nor the law of disparate impact generally has any bearing on Plaintiffs' challenge to a policy that expressly discriminates against a protected class, and is thus presumptively unconstitutional. As a result of these errors, the district court ratified express religious discrimination in contravention of decades of Equal Protection and Religion Clause jurisprudence.

A. The Complaint's Non-Conclusory Allegations State A Plausible Claim For Discriminatory Treatment Under The Equal Protection Clause And The First Amendment

In evaluating a motion to dismiss under Fed. R. Civ. P. 12(b)(6), *Iqbal* requires the court to determine whether a complaint has "sufficient factual matter, accepted as true to 'state a claim for relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 677 (2009) (quoting *Twombly*, 550 U.S. at 570 (2007)). This Court

mandates a three-step process for evaluating the sufficiency of a complaint in light of these precedents:

[1] [O]utline the elements a plaintiff must plead to state a claim for relief. [2] [P]eel away those allegations that are no more than conclusions and thus not entitled to the assumption of truth. [3] [L]ook for well-pled factual allegations, assume their veracity, and then ‘determine whether they plausibly give rise to an entitlement to relief.’

Bistrrian v. Levi, 696 F.3d 352, 365 (3d Cir. 2012) (quoting *Iqbal*, 556 U.S. at 679); see also *Argueta v. U.S. Immigration & Customs Enforcement*, 643 F.3d 60, 73 (3d Cir. 2011). In the third step, the court must determine whether, “under any reasonable reading of the complaint,” the court is able to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Fowler v. UMPC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678). See also *Badger v. City of Phila. Office of Prop. Assessment*, No. 13-4637, 2014 U.S. App. LEXIS 6983 at *4-5 (3d Cir. April 15, 2014). Of course, pleading “plausibility” does not require demonstrating that a claim is probable. *Twombly*, 550 U.S. at 556; *Iqbal*, 556 U.S. at 678.

1. A Facially Discriminatory Government Classification Violates the Equal Protection Clause Regardless of a Defendant’s Animus or Antipathy.

The complaint’s gravamen is that the City of New York adopted a facially discriminatory policy that triggers municipal liability under *Monell*. Expressly discriminatory classifications state a claim under the Equal Protection Clause and trigger strict scrutiny. *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999); *Loving v. Virginia*, 388 U.S. 1, 11 (1967). Further, “[a] showing of discriminatory intent is not necessary when the equal protection claim is based on an overtly discriminatory classification.” *Wayte v. United States*, 470 U.S. 598, 608 n.10

(1985) (citing *Strauder v. West Virginia*, 100 U.S. 303 (1880)).⁵ In challenges to affirmative action and racial gerrymanders, for example, it is well understood that facially discriminatory policies can and will be invalidated even absent evidence of bad intent. *See Fisher v. University of Texas*, 133 S. Ct. 2411, 2419 (2013) (“Any official action that treats a person differently on account of his race or ethnic origin is inherently suspect.”); *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (“No inquiry into legislative purpose is necessary when the racial classification appears on the face of the statute. Express racial classifications are immediately suspect.”) (internal citations omitted).

There is no doubt here that Plaintiffs are members of a protected class based upon their religion. *See, e.g., City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (listing distinctions based on religion, like those based on race or alienage, as “inherently suspect”); *Tolchin v. Supreme Court*, 111 F.3d 1099, 1114 (3d Cir. 1997) (identifying “suspect distinctions such as race, religion or alienage”); *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F.Supp.

⁵ The Supreme Court has explained that an Equal Protection claim requires a showing of purposeful government discrimination, *Washington v. Davis*, 426 U.S. 229, 240 (1976) – *i.e.*, that the challenged actions occurred “‘because of’, and not merely ‘in spite of,’” a protected characteristic. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Yet unlike cases which merely allege a discriminatory impact and therefore require a more elaborate inquiry to assess whether discriminatory purpose was “a motivating factor” for the government action, *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977), cases involving facially discriminatory classifications categorically demonstrate discriminatory purpose as a matter of law; *Miller v. Johnson*, 515 U.S. 900, 904-905 (1995); *see also Antonelli v. New Jersey*, 419 F.3d 267, 274 (3d Cir. 2005) (“Intentional discrimination can be shown when... a law or policy explicitly classifies citizens on the basis of [a protected characteristic]”) (citing *Hunt v. Cromartie*, 526 U.S. 541 (1999)).

2d 961, 976 (N.D. Ill. 2003) (striking down zoning ordinance on equal protection grounds because it “classifie[d] on the basis of religion”).

The court’s inquiry should have focused on whether Plaintiffs sufficiently alleged that Defendant’s policy classified them “differently from similarly situated members of an unprotected class.” *Bradley v. United States*, 299 F.3d 197, 206 (3d Cir. 2002). Such facially discriminatory policies are presumptively unconstitutional regardless of the decision-maker’s subjective motivations for adopting the challenged policy, as an invidious classification itself causes “stigma or dishonor” and “contravenes equal protection principles.” *Powers v. Ohio*, 499 U.S. 400, 410 (1991). Even benign justifications for racial classifications are “constitutionally suspect.” *Adarand Constructors, Inc., v. Pena*, 515 U.S. 200, 223 (1995) (internal citation omitted); *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (classification based on “benign” purpose subject to strict scrutiny); *see also Ferrill v. Parker Group, Inc.*, 168 F.3d 468, 473 n.7 (11th Cir. 1999) (“[I]ll will, enmity, or hostility are not prerequisites of intentional discrimination”).

Nor do discriminatory classifications escape strict scrutiny merely because the government asserts a law-enforcement justification. *See Johnson v. California*, 543 U.S. 499, 505-06 (2005) (racial classifications for penological purposes, such as controlling gang activity in prison, subject to strict scrutiny); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1975) (Law enforcement need “does not justify stopping all Mexican-Americans to ask if they are aliens”). Targeting individuals for investigation based on a protected characteristic is, like any other discriminatory law enforcement activity, presumptively unconstitutional and subject to strict scrutiny. As this Court has explained:

Although it may be assumed that the state may arrange for photographing all suspicious persons entering the bank, it does not follow that its criterion for selection

may be racially based, in the absence of a proven compelling state interest.

Hall v. Pa. State Police, 570 F.2d 86, 91 (3d Cir. 1978) (internal citation omitted).

Once a government policy that classifies individuals based on a protected characteristic is identified, strict scrutiny follows. Strict scrutiny will ultimately require – *after* discovery – that the City justify its presumptively unlawful policy by demonstrating that the policy is “narrowly tailored to serve a compelling government interest.” *Johnson*, 543 U.S. at 505. But strict scrutiny does not permit the district court to hypothesize or even entertain justifications at the pleading stage. Rather, at this threshold stage, the district court is only to ascertain whether the complaint alleged “‘enough facts to raise a reasonable expectation that discovery will reveal evidence of’ the necessary elements’” of a claim for relief. *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 550 U.S. at 556). If courts were permitted to accept a defendant’s hypothesized justification for misconduct at the pleading stage, no case would survive a motion to dismiss.

2. A Government Policy that Purposefully Discriminates on the Basis of Religion or Signals Disapproval of a Particular Religion Violates the Free Exercise and Establishment Clauses of the First Amendment.

Plaintiffs assert violations of both the Establishment Clause of the First Amendment, which provides that governments shall “make no law respecting an establishment of religion,” and the Free Exercise Clause, “prohibiting the free exercise thereof.” U.S. Const. Amend. I. To state a Free Exercise claim, a plaintiff must show that a government policy or practice discriminates “against some or all religious beliefs.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532, 542 (1993). “If the law is not neutral (*i.e.*, if it

discriminates against religiously motivated conduct) or is not generally applicable (*i.e.*, if it proscribes particular conduct only or primarily when religiously motivated), strict scrutiny applies and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest.” *Tenaflly Eruv Ass’n Inc. v. Borough of Tenaflly*, 309 F.3d 144, 165 (3d Cir. 2002). The NYPD’s express policy of targeting Muslims based upon their faith alone both targets religiously motivated conduct – such as attending mosques and operating religious schools – and applies to those activities that are religiously motivated – such as participating in Muslim-affiliated student groups. JA-37–44 (¶¶36-52). Plaintiffs’ complaint thus plainly states a claim under the Free Exercise clause compels strict judicial scrutiny.

The Establishment Clause, barring government approval or disfavor of a particular religion, also demands government “neutrality.” *Tenaflly Eruv*, 309 F.3d at 175 n.39. Thus, a plaintiff may state a claim under the Establishment Clause by showing that the challenged government policy or practice signals disapproval, symbolically or otherwise, of a particular religion. *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 284 (3d Cir. 2011) (citing *Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89, 100 (3d Cir. 2009)). Government policies that grant “a denominational preference” or deny equal treatment to “small, new or unpopular denominations,” are subject to strict scrutiny. *Larson v. Valente*, 456 U.S. 228, 245 (1982). Here, the NYPD’s program classified and stigmatized all members of New Jersey’s Muslim community as potential threats, and the City publicly defends its sweeping policy as documenting “the likely whereabouts of terrorists,” JA-45–47 (¶¶57-62). Its express policy to deny equal treatment to Muslims boldly trumpets government disfavor of Islam. Hence, Plaintiffs’ allegations easily demonstrated a claim under the Establishment Clause.

As with the Equal Protection Clause, plaintiffs alleging violations of the Free Exercise or Establishment Clause need not show that the government policy was motivated by ill will or animus. *Indian River Sch.*, 653 F.3d at 284 (Under Establishment Clause, “*regardless of its purpose*,” the government practice “cannot symbolically endorse or disapprove of religion.”) (internal citation omitted and emphasis added); *Shrum v. City of Coweta, Oklahoma*, 449 F.3d 1132, 1145 (10th Cir. 2006) (“[T]he Free Exercise Clause is not confined to actions based on animus”). As in Equal Protection jurisprudence, constitutional injury flows from the classification itself. *Bd. of Ed. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 728 (1994) (Kennedy, J., concurring) (“Just as the government may not segregate people on account of their race, so too it may not segregate on the basis of religion. The danger of stigma and stirred animosities is no less for religious line-drawing than for racial.”). Thus, the City’s defense of its discriminatory policy at this stage of the proceedings – that it is justified by well-intentioned law-enforcement imperatives – cannot displace the constitutional requirement of closely examining the policy for whether it is narrowly tailored to meet a compelling government interest.

3. Because the Complaint’s Non-Conclusory Allegations Plausibly State Discriminatory Treatment Claims, the District Court Erred in Accepting Any Explanation for the City’s Discriminatory Policy at the Pleading Stage.

The Complaint sets forth numerous, non-conclusory allegations demonstrating that the NYPD maintains an explicit, formalized policy and practice of targeting Muslims in New Jersey and elsewhere for surveillance and investigation based upon their faith, and absent any individualized suspicion of criminal activity. *See* JA-37–48 (¶¶36-65). The district court simply failed to

evaluate these allegations against the relevant Equal Protection and First Amendment law. *See Bistrain*, 696 F.3d at 365.

Specifically, the Complaint asserts – relying on the NYPD’s own, publicly disclosed documents – that the NYPD’s surveillance program in New Jersey on its face targets Muslim, and only Muslim, businesses, residents, organizations, mosques, and schools. JA-38, 39–40 (¶¶38, 42–44). It focuses solely on hubs of Muslim life in Newark and Central New Jersey. JA-38, 44 (¶¶38, 51). And Defendant’s policy is to conduct surveillance based entirely on a target’s status as a Muslim, not because of any criminal suspicion. JA-24 (¶¶2, 3).

The Complaint also alleges that Defendant excludes ethnic communities of Egyptian Coptic Christians, Syrian Jews, and Catholic and Orthodox Christian Albanians from the surveillance program in order to focus exclusively on their Muslim segments. JA-39–40 (¶¶42–44). As such, the Complaint states that Plaintiffs are treated differently not merely from members of unprotected classes, but also differently from similarly situated members of other *protected* classes. The Complaint further alleges that individual and organizational Plaintiffs alike are targeted based solely on their faith. JA-26–27 (¶12) (targeting of Plaintiff Hassan’s mosques); JA-31–33, 13 (¶¶23–26, 30) (targeting of Rutgers University MSA chapters); JA-35–37 (¶¶31–34) (targeting and photographing private grade school run by Plaintiff Abdur-Rahim).⁶

⁶ The Complaint also thoroughly describes the methods the NYPD uses to target Muslim individuals and associations. For example, the NYPD takes photos and videos of mosques, congregants, and congregants’ license plates. JA-38–39, 41 (¶¶39, 41, 46). It uses undercover “rakers” to surveil locations such as bookstores and cafes in communities the NYPD has identified to be predominantly Muslim, JA-41–43 (¶47), and deploys informants it calls “mosque crawlers” to monitor sermons and conversations in mosques and report back to the NYPD. *Id.* The NYPD prepares reports and maps of Muslim communities. JA-25, 27, 38, 41–

These well-pled allegations, all presumed to be true at the motion to dismiss stage, *Bistran*, 695 F.3d at 365, more than suffice to “draw the reasonable inference that the defendant is liable,” *Fowler*, 578 F.3d at 210, under both the Equal Protection Clause and the First Amendment. Indeed, the district court’s decision itself appears to acknowledge that the motive for the NYPD’s surveillance policy was at least in part discriminatory toward Muslims: “the motive for the Program was not *solely* to discriminate against Muslims.” JA-22 (emphasis added). But express discrimination – even if only a part of the City’s motivation – established, as a matter of law, that Plaintiffs stated a claim. *See Arlington Heights*, 429 U.S. at 2465-66 (discriminatory purpose need only be “a motivating factor” not the “dominant” or “primary” one).

Rather than assessing Plaintiffs’ allegations to see whether they plausibly supported the claim of purposeful discrimination, the district court instead copied, nearly verbatim, the City’s self-serving explanation for its facially discriminatory conduct. *Compare* Dkt. 15-1 at 7 (“Plaintiffs allege that the Program was initiated soon after the September 11th terrorist attack. Thus, the initiation of the program was more likely in response to the terrorist threat.”) *with* JA-21 (“The more likely explanation for the surveillance was a desire to locate budding terrorist conspiracies. The most obvious reason for so concluding is that surveillance program began just after the attacks of September 11, 2001.”). Thus, the court implicitly found that the City’s explanation for its religious classification, which by definition requires the application of strict scrutiny, satisfied that heavy burden at the pleading stage. And it did so without any opportunity for the Plaintiffs to show

43, 44, 45–46 (¶¶5, 12, 37, 47, 53, 58). And it deploys officers to pose as students to monitor how often MSA members pray. JA-43 (¶50).

that, in fact, the surveillance program was not narrowly tailored to serve a compelling governmental interest.⁷

This finding stands in direct contravention of repeated admonitions by the Supreme Court that courts must not accept justifications for discriminatory classifications at the pleading stage because, “absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are “benign” or “remedial” and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics. Indeed, the purpose of strict scrutiny is to ‘smoke out’ illegitimate uses of race.” *Richmond v. J.A. Croson*, 488 U.S. 469, 493; *see also Fisher*, 133 S. Ct. at 2421 (“Strict scrutiny does not permit a court to accept a [defendant’s] assertion that it[...] uses race in a permissible way without a court giving close analysis to the evidence of how the process works in practice.”) (internal quotation omitted).

⁷ In effect, the court erroneously applied rational basis scrutiny to Equal Protection and First Amendment claims. While the “exacting standard [of strict scrutiny] has proven automatically fatal in almost every case,” *Fisher*, 133 S.Ct. at 2422 (internal quotation omitted), rational basis scrutiny requires far less. “[I]f a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996) (striking down Colorado state law nullifying and banning protections for gays and lesbians). But even if rationality review applied here – which of course it does not – the City’s justification for its policy would fail, because the NYPD’s policy, like Colorado’s, has the “peculiar property of imposing a broad and undifferentiated disability on a single named group.” 517 U.S. at 632. Further, “its sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests.” *Id.*

The City will have an opportunity at trial, based on a yet-to-be developed evidentiary record, to show that its facially discriminatory policy satisfies strict scrutiny. Yet by summarily resolving that dispute in the City's favor (and ultimately based on invidious stereotypes, *see infra* II(C)), the district court disregarded the principle that all factual averments must be taken as true and the requirement that complaints be viewed in the light most favorable to the plaintiff. *See Mandel v. M&Q Packaging Corp.*, 706 F.3d 157, 263 (3d Cir. 2013). The choice to accept the City's justification for its policy as "more likely" than Plaintiffs' well-pled allegations demonstrating the existence of a law enforcement program that singled out Muslims, likewise runs afoul of the Supreme Court's admonition that "[t]he plausibility standard is not akin to a 'probability requirement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); *Braden v. Wal-Mart Stores Inc.*, 588 F.3d 585, 596 (8th Cir. 2009) ("[r]equiring a plaintiff to rule out every possible lawful explanation for the conduct he challenges . . . would impose the sort of 'probability requirement' at the pleading stage which *Iqbal* and *Twombly* explicitly reject." (internal citations omitted)). *See also Watson Carpet & Floor Covering, Inc. v. Mohawk Indus.*, 648 F.3d 452, 458 (6th Cir. 2011) ("Ferretting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage."). This, too, is a reversible error.

B. *Iqbal's* Holding Regarding Individual Supervisory Liability Under *Bivens* Is Inapposite to Plaintiffs' Claims of Municipal Liability Based on a Facially Discriminatory Policy.

The district court rested its brief analysis of Plaintiffs' substantive claims for relief on an analogy to the Supreme Court's decision in *Iqbal*. Believing that this case and *Iqbal* "grow out of the same tensions between security and the treatment of Muslims" arising after September 11, 2001, the district concluded that *Iqbal* is "particularly instructive" in assessing Plaintiffs' entitlement to relief. JA-21. But

the comparison to *Iqbal* is inapt. *Iqbal*'s analysis is instructive only insofar as it is fundamentally distinguishable from the substantive discrimination claims Plaintiffs present here. Nothing in that decision – including its references to the attacks of September 11th – justifies the overt discrimination against Muslims as a class that is at issue here.

1. *Iqbal*'s Dismissal of Claims Against Individual *Bivens* Defendants for Failure to Plausibly Plead their Discriminatory State of Mind is Inapposite to Plaintiffs' *Monell* Claims.

Plaintiffs allege that the City of New York is liable for the adoption of an unconstitutional “policy or custom” under 42 U.S.C. § 1983 and *Monell, supra*. Under *Monell*, if a municipality’s policy or custom has an unlawful purpose and effect, the municipality is liable without regard to the intent of individual decision-makers; *mens rea* is irrelevant. *Monell*, 436 U.S. at 694 (“it is when execution of a government’s policy or custom ... inflicts the injury that the government as an entity is responsible under § 1983”). Framed another way, “[t]he formulation of policies is generally regarded as an intentional act” that obviates the need to show an additional or separate “intentional course of conduct” by individual policymakers. *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1089 (3d Cir. 1991) (Sloviter, J. concurring).

The district court neither mentioned *Monell*, nor analyzed Plaintiffs’ claims under its well-established framework. Instead, it reasoned that because Mr. *Iqbal*’s discrimination claims against high-level officials were not plausible, neither were Plaintiffs’ against the City. In doing so, it ignored fundamental differences between the claims alleged in the two cases. For the individual defendants in *Iqbal* to be liable under *Bivens* for the implementation of a facially neutral policy, the Supreme Court held that the plaintiff had to plausibly allege that they *personally*

harbored discriminatory intent. *Iqbal*, 556 U.S. at 676. The Court upheld the dismissal of the plaintiff’s claim precisely because the complaint failed to allege facts plausibly establishing the supervisory defendants’ discriminatory state of mind. *Id.* at 684.

Of course, had Plaintiffs here sought damages pursuant to § 1983 against then-Mayor Michael Bloomberg or Police Commissioner Raymond Kelly in their individual capacities, *Iqbal* would be instructive. But Plaintiffs did not bring such claims, and the City of New York has no “state of mind” or subjective intent for the court to evaluate. Uniform precedent – ignored by the district court – demonstrates that the existence of a discriminatory policy is itself sufficient to establish municipal liability. *See Olivieri v. Country of Bucks*, 502 Fed. Appx. 184, 189 (3d Cir. 2012), *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996), *Nykiel v. Borough of Sharpsburg Police Dep’t*, 778 F. Supp. 2d 573, 586 (W.D. Pa. 2011). Plaintiffs’ claims should have been allowed to proceed.

2. *Iqbal*’s Dismissal of a Disparate Impact Claim Arising From a Facially Neutral Policy in No Way Supports Dismissal of Plaintiffs’ Unlawful Treatment Claims Arising from a Facially Discriminatory Policy.

Iqbal likewise provides no support for the district court’s conclusion that the events of September 11th justify an overtly discriminatory classification of Muslims. *Iqbal* considered the effects of a *specific* investigation into a *particular* terrorist attack. As the Court took pains to point out, the defendants had not targeted Muslims as a group, but only individuals who were illegally present in the United States and who had been classified as “high interest” with “potential connections to those who committed terrorist acts,” *Iqbal*, 556 U.S. at 682 – a status shared by none of the Plaintiffs here.

Against the backdrop of a *bona fide*, neutral criminal investigation, Mr. Iqbal's allegations of defendants Ashcroft and Mueller's discriminatory purpose were "threadbare" and "formulaic." *Iqbal*, 556 U.S. at 663. The *Iqbal* complaint did "not show, or even intimate that [Ashcroft and Mueller] purposefully housed detainees in [harsh conditions]" or that they had "labeled [Iqbal] as a person 'of high interest' for impermissible reasons." *Id.* at 683. In the wake of September 11th, the Court found it "no surprise that a legitimate policy directing law-enforcement to arrest and detain individuals because of their suspected links to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims." *Id.* at 682. In *Iqbal*'s particular context, the unfolding of a lawful criminal investigation with a discriminatory impact on Muslims was a more "obvious alternative explanation" for plaintiffs' arrest than an otherwise unsubstantiated inference of individual purposeful discrimination. *Id.*

Here, in obvious contrast, the NYPD surveillance program does not even purport to be connected to a specific criminal investigation. Its express policy is to target Muslims alone, without even the barest suspicion of criminality. Discriminatory purpose is the very essence of the City's policy and is thus actionable without an inquiry into discriminatory intentions, which are self-evident. *See Wayte v. United States*, 470 U.S. at 609 n.10; *see supra* Section II(A).

C. The District Court's Uncritical Acceptance of the City's Justification for Discrimination at the Pleading Stage Undermines Elementary Civil Rights Protections.

The City attempted to justify the NYPD's discriminatory policy at the motion-to-dismiss stage by a bare assertion: because one specific group of Muslims executed the tragic September 11th attacks, then the undifferentiated

surveillance of Plaintiffs and all other Muslims is constitutionally permissible. *See* Dkt. 15-1 at 7. The district court’s uncritical acceptance of this assertion at the pleading stage is not only procedural error, *see supra* at I(A)(3), but it perpetuates the very invidious stereotypes – and resulting discrimination – that Plaintiffs seek to challenge in this case.

The City’s justification for wholesale discrimination appears ultimately premised on an ugly, yet all-too-common, stereotype about Muslims: that they have a propensity toward terrorism.⁸ This is a discredited and illegitimate law enforcement framework. As the New Jersey Attorney General’s office explained,

⁸ This connection, no better than a presumption that blacks have a propensity to commit more crime, is both impermissible and empirically false, as a trial would reveal. There is “overwhelming [empirical] support for two propositions: 1) There is no profile of the type of person who becomes a terrorist; . . . and 2) . . . Islam itself does not drive terrorism.” Faiza Patel, Brennan Center For Justice, *Rethinking Radicalization* 8 (2011). For example, a 2008 empirical study by the British national security service (MI5) found that “[f]ar from being religious zealots, a large number of those involved in terrorism do not practise their faith regularly. Many lack religious literacy and could actually be regarded as religious novices.” *See* Alan Travis, *MI5 Report Challenges Views on Terrorism in Britain*, *Guardian*, Aug. 20, 2008. Former CIA case officer and psychologist, Marc Sageman, came to similar conclusions in his review of 500 terrorism cases, Marc Sageman, *Leaderless Jihad: Terror Networks in the Twenty-First Century* 31 (2008), as did the RAND Corporation, when it found that attraction to terrorist groups “appears to have had more to do with participating in action than with religious [motivation],” Brian Michael Jenkins, RAND Corp., *Would-Be Warriors: Incidents of Jihadist Terrorist Radicalization in the United States since September 11, 2001* 3 (2010), available at http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP292.pdf. Moreover, the RAND Corporation study found that “individuals turning toward violence would find little support in the [American] Muslim community.” *Id.* at 5. “In fact, the most recent research suggests that a well-developed Muslim identity actually counteracts *jihadism*.” Patel, *Rethinking Radicalization*, *supra* at 10.

after its investigation of unlawful racial profiling on the New Jersey Turnpike, such tautological considerations are impermissible because: “[m]any of the facts that are relied upon to support the relevance of race and ethnicity in crime trend analysis ... only demonstrate the flawed logic of racial profiling, which largely reflects *a priori* stereotypes that minority citizens are more likely than whites to be engaged in certain forms of criminal activity.” Peter Verniero & Paul H. Zoubek, *Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling* 66 (1999), available at http://www.state.nj.us/lps/intm_419.pdf.⁹ Reliance on such generalizations, the Attorney General warned, “ha[s] been used to grease the wheels of a vicious cycle — a self-fulfilling prophecy.” *Id.* at 68.

The City here relies upon just such *a priori* stereotypes, but these kinds of assumptions have been consistently rejected by courts adjudicating similar claims of expressly discriminatory law enforcement policies. Thus, in ruling that the City’s “stop-and-frisk” program was racially discriminatory, the court rejected the City’s suggestion that law-abiding members of some “racial groups have a greater tendency to appear suspicious than members of other racial groups.” *Floyd v. City of New York*, 959 F. Supp. 2d 540, 587 (S.D.N.Y. 2013). The court astutely observed:

Rather than being a defense *against* the charge of racial profiling, however, this reasoning is a defense *of* racial profiling. To say that black people in general are somehow more suspicious-looking, or criminal in appearance, than white people is not a race-neutral

⁹ See also U.S. Dep’t of Justice, Civil Rights Div., *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* 4 (2003), available at http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf (“[A]ffirmative use of such generalized notions” regarding race-based discrepancies in crime rates, in law enforcement “tantamount to stereotyping. . . . This is the core of ‘racial profiling’ and must not occur.”).

explanation for racial disparities in NYPD stops: it is itself a racially biased explanation.

Id. (emphasis in original). *See also Melendres v. Arpaio*, No. PHX-CV-07-02513-GMS, 2013 U.S. Dist. LEXIS 73869, at *241 (D. Ariz. May 24, 2013) (striking down policy of focusing on Hispanic persons in immigration enforcement because “there is no legitimate basis for considering a person’s race in forming a belief that he or she is more likely to engage in a criminal violation and the requisite ‘exact connection between justification and classification,’ is lacking”) (quoting *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003)).

Here, by accepting the City’s illegitimate justification for its policy of discrimination, the district court impermissibly ratified the very discrimination that Plaintiffs here seek to challenge. *See Paltmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“The Constitution cannot control prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly give them effect.”). Indeed, the district court’s reasoning, if left standing, dooms any claim of discrimination on the basis of religion (or another protected characteristic), so long as the defendant offers a rationalization for its conduct in its motion to dismiss that strikes the court as potentially acceptable.

Indeed, the district court’s reasoning parallels the long-discredited logic of the infamous *Korematsu* case, in which the Supreme Court uncritically accepted the government’s claim of military necessity rather than strictly scrutinizing the factual validity of the government’s rationale for its overtly discriminatory policy. *Compare Korematsu v. United States*, 323 U.S. 214, 223 (1944) (“Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire [and] because the properly constituted military authorities . . . felt constrained to take proper security

measures”); *with* JA-21–22 (“the motive for the Program was not solely to discriminate against Muslims, but rather to find Muslim terrorists hiding among ordinary, law-abiding Muslims.”). Neither assertion should be left untested.

This is why *Korematsu* now “stands as a caution that in times of international hostility and antagonism, our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.” *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N. D. Cal. 1984). It is this Court’s role to ensure that government discrimination against disfavored groups – especially when based on invidious stereotypes – cannot endure. These Plaintiffs, like all civil rights plaintiffs that have come before them, and that will come after, deserve no less.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the Bar of the Court of Appeals for the Third Circuit.

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CERTIFICATION OF IDENTICAL COMPLIANCE OF BRIEFS

I hereby certify that the text of the electronic and hard copies of this brief are identical.

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CERTIFICATION CONCERNING VIRUS CHECK

I certify that the electronic file of this brief were scanned with Symantec AntiVirus software.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief (as indicated by word processing program, Microsoft Word) contains 13,904 words, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii). I further certify that this brief complies with the typeface requirements of Rule 32(a)(5) and type style requirements of Rule 32(a)(6) because this brief has been prepared in the proportionally spaced typeface of 14-point Times New Roman.

/s/Baher Azmy

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CERTIFICATE OF SERVICE

I hereby certify that I am filing the foregoing Brief of Appellant and the Joint Appendices electronically via this Court's ECF system and am serving the foregoing Brief of Appellant, and the accompanying Joint Appendix, via this Court's ECF and by electronic mail, upon all counsel of record for the Defendants.

/s/Baher Azmy

Dated: July 3, 2014
New York, New York

14-1688- CV

IN THE
United States Court of Appeals
FOR THE THIRD CIRCUIT

**SYED FARHAJ HASSAN, THE COUNCIL OF IMAMS IN NEW JERSEY, MUSLIM
STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., ALL BODY SHOP INSIDE
& OUTSIDE, UNITY BEEF SAUSAGE COMPANY, MUSLIM FOUNDATION INC., MOIZ
MOHAMMED, JANE DOE, SOOFIA TAHIR, ZAIMAH ABDUR-RAHIM, AND ABDUL-
HAKIM ABDULLAH,**

Appellants,

—against—

THE CITY OF NEW YORK

Appellee.

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

**JOINT APPENDIX
VOLUME I OF II
(PAGES JA-1 TO JA-53)**

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APPEAL,CLOSED

**U.S. District Court
District of New Jersey [LIVE] (Newark)
CIVIL DOCKET FOR CASE #: 2:12-cv-03401-WJM-MF**

HASSAN et al v. THE CITY OF NEW YORK
Assigned to: Judge William J. Martini
Referred to: Magistrate Judge Mark Falk
Case in other court: Third Circuit, 14-01688
Cause: 42:1983 Civil Rights Act

Date Filed: 06/06/2012
Date Terminated: 02/20/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
06/06/2012	<u>1</u>	COMPLAINT against THE CITY OF NEW YORK (Filing fee \$ 350) with JURY DEMAND, filed by MUSLIM FOUNDATION INC., THE COUNCIL OF IMAMS IN NEW JERSEY, ALL BODY SHOP INSIDE & OUTSIDE, UNITY BEEF SAUSAGE COMPANY, JANE DOE, SYED FARHAJ HASSAN, MOIZ MOHAMMED, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC.. (Attachments: # <u>1</u> Supplement, # <u>2</u> Civil Cover Sheet)(ld,) (Entered: 06/07/2012)
06/06/2012	<u>2</u>	Corporate Disclosure Statement by ALL BODY SHOP INSIDE & OUTSIDE, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY identifying NONE as Corporate Parent.. (ld,) (Entered: 06/07/2012)
06/07/2012	<u>3</u>	SUMMONS ISSUED as to THE CITY OF NEW YORK Attached is the official court Summons, please fill out Defendant and Plaintiffs attorney information and serve. Issued By *LEROY DUNBAR* (ld,) (Entered: 06/07/2012)
06/11/2012	<u>4</u>	APPLICATION/MOTION to Intervene as Pltf. by GINA ROMANO. (sr,) (Entered: 06/11/2012)
06/28/2012	<u>5</u>	MOTION for Leave to Appear Pro Hac Vice by ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC.. (Attachments: # <u>1</u> Motion, # <u>2</u> Certification of Glenn Katon, # <u>3</u>

		Certification of Farhana Khan, # 4 Certification of Ravinder S. Bhalla, # 5 Text of Proposed Order)(BHALLA, RAVINDER) (Entered: 06/28/2012)
06/28/2012		Set Deadline as to 5 MOTION for Leave to Appear Pro Hac Vice . Motion set for 8/6/2012 before Judge Susan D. Wigenton. The motion will be decided on the papers. No appearances required unless notified by the court. (sr,) (Entered: 06/28/2012)
07/19/2012	6	RESPONSE in Opposition filed by ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC. re 5 MOTION for Leave to Appear Pro Hac Vice <i>Corrected: Motion to Intervene</i> (Attachments: # 1 Text of Proposed Order)(BHALLA, RAVINDER) (Entered: 07/19/2012)
07/31/2012	7	ORDER granting 5 Motion for Leave to Appear Pro Hac Vice re: Glenn Katon & Farhana Khera. Signed by Magistrate Judge Madeline C. Arleo on 7/30/12. (sr,) (Entered: 07/31/2012)
08/14/2012		Pro Hac Vice fee: \$ 300, receipt number NEW014337 Re: Farhana Khera & Glenn Katon. (sr,) (Entered: 08/14/2012)
08/28/2012	8	NOTICE of Appearance by RAVINDER S. BHALLA on behalf of All Plaintiffs (BHALLA, RAVINDER) (Entered: 08/28/2012)
09/20/2012	9	Request for Summons to be Issued by MUSLIM FOUNDATION INC., ALL BODY SHOP INSIDE & OUTSIDE, JANE DOE, SYED FARHAJ HASSAN, MOIZ MOHAMMED, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC. as to All Plaintiffs. (BHALLA, RAVINDER) (Entered: 09/20/2012)
10/03/2012	10	AMENDED COMPLAINT against THE CITY OF NEW YORK, filed by MUSLIM FOUNDATION INC., THE COUNCIL OF IMAMS IN NEW JERSEY, ALL BODY SHOP INSIDE & OUTSIDE, UNITY BEEF SAUSAGE COMPANY, JANE DOE, SYED FARHAJ HASSAN, MOIZ MOHAMMED, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, ZAIMAH ABDUR-RAHIM, ABDUL-HAKIM ABDULLAH.(BHALLA, RAVINDER) (Entered: 10/03/2012)
10/17/2012	11	AFFIDAVIT of Service for Summons, Amended Complaint served on City of New York on 10/4/12, filed by ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY. (BHALLA, RAVINDER) (Entered: 10/17/2012)
10/19/2012		Answer Due Deadline Update - RE: 11 Affidavit of Service as to THE CITY OF NEW YORK. The answer due date has been set for 10/25/12. (sr,) (Entered: 10/19/2012)
10/22/2012	12	Application and Proposed Order for Clerk's Order to extend time to answer Attorney PETER G. FARRELL for THE CITY OF NEW YORK added. (FARRELL, PETER) (Entered: 10/22/2012)

10/23/2012		Clerk`s Text Order - The document 12 Application for Clerk's Order to Ext Answer/Proposed Order submitted by THE CITY OF NEW YORK has been GRANTED. The answer due date has been set for 11/8/12. (sr,) (Entered: 10/23/2012)
11/06/2012	13	MOTION for Extension of Time to File Answer by THE CITY OF NEW YORK. (FARRELL, PETER) (Entered: 11/06/2012)
11/07/2012	14	ORDER extending defts time to answer amended complaint until 12/6/12. Signed by Judge Susan D. Wigenton on 11/7/12. (sr,) (Entered: 11/08/2012)
12/06/2012	15	MOTION to Dismiss <i>First Amended Complaint pursuant to FRCP 12(b)(6) and 12(b)(1)</i> by THE CITY OF NEW YORK. Responses due by 12/26/2012 (Attachments: # 1 Brief in Support of Motion To Dismiss, # 2 Declaration of Peter G. Farrell with Exhibits, # 3 Text of Proposed Order, # 4 Certificate of Service)(FARRELL, PETER) (Entered: 12/06/2012)
12/07/2012		Set Deadline as to 15 MOTION to Dismiss <i>First Amended Complaint pursuant to FRCP 12(b)(6) and 12(b)(1)</i> . Motion set for 1/7/2013 before Judge Susan D. Wigenton. The motion will be decided on the papers. No appearances required unless notified by the court. (sr,) (Entered: 12/07/2012)
12/18/2012	16	Letter re 15 MOTION to Dismiss <i>First Amended Complaint pursuant to FRCP 12(b)(6) and 12(b)(1)</i> . (BHALLA, RAVINDER) (Entered: 12/18/2012)
12/27/2012	17	TEXT ORDER granting 16 letter request. Ordered by Judge Susan D. Wigenton on 12/27/12. (ak,) (Entered: 12/27/2012)
12/31/2012	18	NOTICE of Appearance by BAHER AZMY on behalf of All Plaintiffs (AZMY, BAHER) (Entered: 12/31/2012)
01/04/2013	19	Notice of Request by Pro Hac Vice Glenn Katon to receive Notices of Electronic Filings. (BHALLA, RAVINDER) (Entered: 01/04/2013)
01/04/2013	20	Notice of Request by Pro Hac Vice Farhana Khera to receive Notices of Electronic Filings. (BHALLA, RAVINDER) (Entered: 01/04/2013)
01/25/2013	21	MOTION for Leave to Appear Pro Hac Vice by ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY. (Attachments: # 1 Certification Azmy Cert in Support of Pro Hac Appearances, # 2 Certification Farah Cert in Support of Pro Hac Appearance, # 3 Certification Schwarz Cert in Support of Pro Hac Apperance)(AZMY, BAHER) (Entered: 01/25/2013)
01/25/2013	22	BRIEF in Opposition filed by ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY re 15 MOTION to Dismiss <i>First Amended Complaint pursuant to FRCP 12(b)(6) and</i>

		<i>12(b)(1)</i> (Attachments: # 1 Declaration Decl. of Glenn Katon, Esq., # 2 Exhibit Exhibit A, # 3 Exhibit Exhibit B, # 4 Exhibit Exhibit C, # 5 Exhibit Exhibit D, # 6 Exhibit Exhibit E, # 7 Exhibit Exhibit F)(AZMY, BAHER) (Entered: 01/25/2013)
01/25/2013		CLERK'S TEXT NOTE - DOCKET ENTRY NO. 21 WAS SUBMITTED IN ERROR. PLEASE DISREGARD. (dc,) (Entered: 01/28/2013)
01/28/2013	23	MOTION for Leave to Appear Pro Hac Vice by ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY. (Attachments: # 1 Certification Azmy Cert in Support of Pro Hac Appearances, # 2 Certification Farah Cert in Support of Pro Hac Appearance, # 3 Certification Schwarz Cert in Support of Pro Hac Apperance, # 4 Text of Proposed Order Proposed Order Re Farah & Schwarz Pro Hac Appearance)(AZMY, BAHER) (Entered: 01/28/2013)
01/30/2013		Set Deadline as to 23 MOTION for Leave to Appear Pro Hac Vice . Motion set for 3/4/2013 before Judge Susan D. Wigenton. The motion will be decided on the papers. No appearances required unless notified by the court. (sr,) (Entered: 01/30/2013)
01/31/2013	24	ORDER granting 23 Motion for Leave to Appear Pro Hac Vice RE: Omar Farah & Ghita Schwarz. Signed by Magistrate Judge Madeline C. Arleo on 1/30/13. (sr,) (Entered: 01/31/2013)
02/11/2013	25	MOTION for Extension of Time to File Response/Reply <i>on Defendant's Motion to Dismiss the First Amended Complaint</i> by THE CITY OF NEW YORK. (FARRELL, PETER) (Entered: 02/11/2013)
02/11/2013	26	ORDER granting an extension of time for the City of NY to submit reply on its' Motion to Dismiss the Amended Complaint until 2/22/13. Signed by Judge Susan D. Wigenton on 2/11/13. (sr,) (Entered: 02/13/2013)
02/13/2013	27	Mail Returned as Undeliverable. Mail sent to Gina Romano (sr,) (Entered: 02/13/2013)
02/19/2013	28	Notice of Request by Pro Hac Vice Ghita Schwarz to receive Notices of Electronic Filings. (Pro Hac Vice fee \$ 150 receipt number 0312-4837914.) (AZMY, BAHER) (Entered: 02/19/2013)
02/19/2013	29	Notice of Request by Pro Hac Vice Omar A. Farah to receive Notices of Electronic Filings. (Pro Hac Vice fee \$ 150 receipt number 0312-4837986.) (AZMY, BAHER) (Entered: 02/19/2013)
02/19/2013	30	ORDER permitting deft City of NY an extension of time to submit reply Re: Motion to Dismiss until 2/22/13. Signed by Judge Susan D. Wigenton on 2/19/13. (sr,) (Entered: 02/21/2013)
02/22/2013	31	Consent MOTION for Extension of Time to File Response/Reply <i>Brief on Defendant's Motion to Dismiss</i> , Consent MOTION for Leave to File Excess Pages <i>on Reply Brief</i> by THE CITY OF NEW YORK. (FARRELL, PETER) (Entered: 02/22/2013)

02/22/2013	32	ORDER granting the City of NY's request for an an extension of time to submit a reply on its' motion to dismiss until 2/22/13. Signed by Magistrate Judge Madeline C. Arleo on 2/20/13. (sr,) (Entered: 02/22/2013)
02/22/2013	33	TEXT ORDER re 31 Consent MOTION for Extension of Time to File Response/Reply Brief on Defendant's Motion to Dismiss Consent MOTION for Leave to File Excess Pages on Reply Brief filed by THE CITY OF NEW YORK; is hereby GRANTED.ORDERED by Judge Susan D. Wigenton on 2/22/13. (cds,) (Entered: 02/22/2013)
02/25/2013	34	REPLY BRIEF to Opposition to Motion filed by THE CITY OF NEW YORK re 15 MOTION to Dismiss <i>First Amended Complaint pursuant to FRCP 12(b)(6) and 12(b)(1)</i> (FARRELL, PETER) (Entered: 02/25/2013)
02/26/2013	35	Mail Returned as Undeliverable. Mail sent to Gina Romano (sr,) (Entered: 02/26/2013)
04/22/2013	36	ORDER REASSIGNING CASE. Case reassigned to Judge William J. Martini and Magistrate Judge Mark Falk for all further proceedings. Judge Susan D. Wigenton, Magistrate Judge Madeline C. Arleo no longer assigned to case. Signed by Chief Judge Jerome B. Simandle on 4/22/13. (ak,) (Entered: 04/23/2013)
05/23/2013	37	Letter from Baher Azmy to Judge Martini. (AZMY, BAHER) (Entered: 05/23/2013)
05/30/2013	38	Letter from B. Azmy Regarding Supplemental Authority. (AZMY, BAHER) (Entered: 05/30/2013)
08/09/2013	39	Letter from Baher Azmy, Esq., counsel for Plaintiffs. (AZMY, BAHER) (Entered: 08/09/2013)
02/20/2014	40	OPINION. Signed by Judge William J. Martini on 2/20/14. (gh,) (Entered: 02/20/2014)
02/20/2014	41	ORDER granting 15 Motion to Dismiss ***CIVIL CASE TERMINATED. Signed by Judge William J. Martini on 2/20/14. (gh,) (Entered: 02/20/2014)
03/21/2014	42	NOTICE OF APPEAL as to 40 Opinion, 41 Order on Motion to Dismiss by ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, ALL BODY SHOP INSIDE & OUTSIDE, SYED FARHAJ HASSAN, JANE DOE, MOIZ MOHAMMED, MUSLIM FOUNDATION INC., MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SOOFIA TAHIR, THE COUNCIL OF IMAMS IN NEW JERSEY, UNITY BEEF SAUSAGE COMPANY. Filing fee \$ 505, receipt number 0312-5575520. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (AZMY, BAHER) (Entered: 03/21/2014)
03/24/2014	43	USCA Case Number 14-1688 for 42 Notice of Appeal (USCA) filed by ALL BODY SHOP INSIDE & OUTSIDE, ABDUL-HAKIM ABDULLAH, ZAIMAH ABDUR-RAHIM, MUSLIM FOUNDATION INC., UNITY BEEF SAUSAGE COMPANY, MOIZ MOHAMMED, THE COUNCIL OF IMAMS IN NEW JERSEY, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., SYED FARHAJ HASSAN, JANE DOE, SOOFIA TAHIR. USCA Case Manager Tina (Document Restricted - Court Only)(ca3tmk) (Entered: 03/24/2014)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

	x	
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SYED FARHAJ HASSAN, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civ. No. 2:12-3401 (WJM)
	:	
THE CITY OF NEW YORK,	:	
	:	
Defendant.	:	
	x	

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs Syed Farhaj Hassan, The Council of Imams in New Jersey, Muslim Students Association of the U.S. and Canada, Inc., All Body Shop Inside & Outside, Unity Beef Sausage Company, Muslim Foundation Inc., Moiz Mohammed, Jane Doe, Soofia Tahir, Zaimah Abdur-Rahim, and Abdul-Hakim Abdullah appeal to the United States Court of Appeals for the Third Circuit from the Final Judgment entered in the above-captioned matter on February 20, 2014, by the United States District Court, District of New Jersey (Dkt. No. 41), dismissing Plaintiffs' claims against Defendant City of New York under the First and Fourteenth Amendments to the U.S. Constitution, and at common law for expungement of records.

Dated: March 22, 2014
New York, New York

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SYED FARHAJ HASSAN; THE
COUNCIL OF IMAMS IN NEW JERSEY;
MUSLIM STUDENTS ASSOCIATION OF
THE U.S. AND CANADA, INC.; ALL
BODY SHOP INSIDE & OUTSIDE;
UNITY BEEF SAUSAGE COMPANY;
MUSLIM FOUNDATION, INC.; MOIZ
MOHAMMED; JANE DOE; SOOFIA
TAHIR; ZAIMAH ABDUR-RAHIM; and
ABDUL-HAKIM ABDULLAH,**

Plaintiffs,

V.

THE CITY OF NEW YORK,

Defendant.

Civ. No. 2:12-3401 (WJM)

ORDER

THIS MATTER comes before the Court on the Defendant's motion to dismiss the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). For the reasons set forth in the accompanying opinion,

IT IS on this 20th day of February 2014, hereby,

ORDERED that Defendants' motion to dismiss the Amended Complaint is hereby **GRANTED**; and it is further

ORDERED that the Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SYED FARHAJ HASSAN; THE
COUNCIL OF IMAMS IN NEW JERSEY;
MUSLIM STUDENTS ASSOCIATION OF
THE U.S. AND CANADA, INC.; ALL
BODY SHOP INSIDE & OUTSIDE;
UNITY BEEF SAUSAGE COMPANY;
MUSLIM FOUNDATION, INC.; MOIZ
MOHAMMED; JANE DOE; SOOFIA
TAHIR; ZAIMAH ABDUR-RAHIM; and
ABDUL-HAKIM ABDULLAH,**

Plaintiffs,

v.

THE CITY OF NEW YORK,

Defendant.

Civ. No. 2:12-3401 (WJM)

OPINION

WILLIAM J. MARTINI, U.S.D.J.:

This case involves the New York City Police Department's surveillance of the Muslim community in New Jersey following the attacks of September 11, 2001. Plaintiffs are six Muslim individuals, two organizations that operate mosques, two Muslim-owned businesses, and the Muslim Students Association at Rutgers University. Plaintiffs allege that the New York City Police Department's surveillance program targeted Muslims solely on the basis of religion, thereby violating their First and Fourteenth Amendment rights. Defendant City of New York ("the City") filed a motion to dismiss for lack of standing under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Plaintiffs opposed. There was no oral argument. L.Civ.R. 78(b). For the reasons set forth below, Defendant's motion to dismiss is **GRANTED**.

I. BACKGROUND

In early 2002, the New York City Police Department (“NYPD” or “the Department”) began a secret spying program (“the Program”) to infiltrate and monitor Muslim life in and around New York City. (Amended Complaint (hereinafter “Complaint”) at ¶ 2) According to Plaintiffs, the Program involved the “painstaking” documentation of the details of Muslim life in New Jersey. (Complaint at ¶ 47d)

The Complaint alleges that the NYPD used a variety of surveillance techniques to infiltrate Muslim businesses and organizations. For example, Plaintiffs allege the NYPD conducted continuous video surveillance of mosques via cameras posted on light polls. (Complaint at ¶ 46) The NYPD photographed and videotaped mosque congregants and collected their license plate numbers. (Complaint at ¶ 4)

Undercover officers infiltrated Muslim organizations and monitored sermons, meetings, conversations, and religious practices. (Complaint at ¶ 46-47, 50-51) The undercover officers created many reports on their observations. These reports named specific individuals without any evidence of wrongdoing. (Complaint at ¶ 51)

In their reports, the NYPD allegedly labeled many organizations as “Locations of Concern.” (Complaint at ¶ 58) The Complaint alleges that this label designated the subject organizations as demonstrating “a significant pattern of illegal activity.” (*Id.*) The Complaint alleges that this label was false and stigmatizing because the reports contain no evidence of illegal activity. (*see id.*)

The NYPD did not publicize the existence of the Program. The Program became public knowledge in August 2011 when the Associated Press broke a story about it. (*See* Complaint at ¶ 61; Declaration of Peter G. Farrell (“Farrell Decl.”) at ¶ 3) The Associated Press covertly obtained confidential NYPD documents and published unredacted versions of these documents, as well as articles interpreting the documents. (Farrell Decl. at ¶ 3; Moving Brief at 2-3, 4, 17-18) Upon the Associated Press’s publication of the documents, City officials publicly commented that the surveillance Program was focused on “threats” and documenting the “likely whereabouts of terrorists.”¹ (Complaint at ¶ 61)

¹ Following the Associated Press publication about the secret Program, the Attorney General of New Jersey conducted an investigation and concluded that that NYPD had not violated any New Jersey civil or criminal laws. (Farrell Decl. at ¶ 4)

Collectively, Plaintiffs allege that the surveillance Program caused a series of spiritual, stigmatic, and pecuniary losses. Plaintiffs report diminished religious expression, employment prospects, property values, and revenue following the Associated Press's publication of its story about the Program.

The organizational Plaintiffs allege that the Program impaired them from engaging members in open political and religious discussion and from fulfilling the spiritual needs of their members. (*See* Complaint at ¶ 15, 17, 23) The Plaintiffs that operate mosques report a drop in attendance. (Complaint at ¶ 14) They also report altering religious services and events to avoid being perceived as controversial. (Complaint at ¶ 23) Four of the individually-named Plaintiffs complain that they have avoided discussing religious and political topics, praying in public, or attending mosque service in order to avoid law enforcement scrutiny. (Complaint at ¶ 13, 26-30)

Plaintiffs Syed Hassan, Soofia Tahir, and Zaimah Abdur-Rahim fear that being the subjects of surveillance will interfere with their careers. Hassan is a U.S. Soldier and Tahir is expecting to begin a career in international social work. Both plaintiffs allege that career advancement will require background checks and security clearances. Both allege that their affiliations with organizations falsely labeled as "threats" will hinder their career advancement. (Complaint at ¶ 13, 29) Hassan also alleges that his career prospects will be harmed because his fellow soldiers and superiors will have diminished trust in him and treat him differently upon learning he was a regular congregant at a mosque that was the subject of surveillance. (Complaint at ¶ 13)

Abdur-Rahim is a teacher who has worked at two different Muslim girls' schools in Newark, one of which was run out of her own residence. (Complaint at ¶ 31-32) The NYPD conducted surveillance on both these schools. Abdur-Rahim alleges that as a result of working at two monitored schools, her future career prospects will be diminished. (Complaint at ¶ 32)

Abdur-Rahim and her husband, Plaintiff Abdul-Hakim Abdullah, are co-owners of the home in which one of the monitored schools was located. (Complaint at ¶ 32, 34) A police surveillance photograph of this school appears on the internet in connection with the NYPD's surveillance Program. (Complaint at ¶ 32) Abdur-Rahim and Abdullah both allege that the value of their home has been diminished because of its connection to the Program. (Complaint at ¶ 32, 34)

Plaintiffs All Body Shop Inside & Outside and Unity Beef Sausage Company are Muslim-owned businesses in Newark that were both subjects of the surveillance Program. (Complaint at ¶ 18-21) Both these Plaintiffs allege that business declined when it became publically known that the NYPD was monitoring them. (Complaint at ¶ 18, 20) Customers told the owner of Unity Beef Sausage Company that they felt uncomfortable going to the store knowing that the NYPD was monitoring them. (Complaint at ¶ 21) The Plaintiffs that operate mosques also complain of pecuniary losses in the form of decreasing financial support. (Complaint at ¶ 15)

The Complaint does not allege that the surveillance itself was illegal or unconstitutional. Rather, the Complaint alleges that the motivation for the surveillance was solely animus against Muslims, which, if true, could mean the City violated Plaintiffs' First and Fourteenth Amendment rights to be free from religious discrimination.

Plaintiffs seek expungement of the surveillance records, an injunction to end the targeting of Plaintiffs on the basis of religion, as well as compensatory, economic, and nominal damages. (Complaint at ¶ 73)

II. RULE 12(b)(1) MOTION TO DISMISS FOR LACK OF STANDING

The City argues that Plaintiffs' Complaint should be dismissed for lack of standing. A case should be dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction if the Plaintiff has no standing. *Ballentine v. United States*, 486 F.3d 806, 810 (3d Cir. 2007). Plaintiff bears the burden of demonstrating standing "with the manner and degree of evidence required at the successive stages of the litigation." *New Jersey Physicians, Inc. v. President of U.S.*, 653 F.3d 234, 239 (3d Cir. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). "Even at the motion to dismiss stage . . . '[i]t is a long-settled principle that standing cannot be inferred argumentatively from averments in the pleadings but rather must affirmatively appear in the record.'" *Id.* at 239 (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990)).

Article III standing is "fundamental to the judiciary's proper role in our system of government." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *Id.* at 341.

The starting point for the analysis of Plaintiffs' standing is *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In order to establish the "constitutional minimum

of standing,” a party must establish three elements. First, the plaintiff must have suffered an “injury in fact” – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-61 (internal citations omitted). Plaintiffs have not satisfied the first two prongs of the test.

A. Injury in fact

Plaintiffs do not allege an injury in fact. In *Laird v. Tatum*, 408 U.S. 1 (1972), the Supreme Court considered allegations similar to those in this case and rejected them as a basis for Article III standing. In *Laird*, plaintiffs sought injunctive relief against the Army’s surveillance of civilian political activity. The Army’s information gathering system in *Laird* involved the attendance by Army intelligence agents at meetings that were open to the public, the preparation of field reports describing the meetings (containing the name of the sponsoring organization, the identity of the speakers, the number or persons present, and an indication of whether any disorder occurred), and the collecting of information from the news media. *Id.* at 6. This information was reported to Army Intelligence headquarters, disseminated from headquarters to major Army posts around the country, and stored in a computer data bank. *Id.* at 6-7.

The Supreme Court identified the issue before it as “whether the jurisdiction of a federal court may be invoked by a complainant who alleges that the exercise of his First Amendment rights is being chilled by the mere existence, without more, of a governmental investigative and data gathering activity that is alleged to be broader in scope than is reasonably necessary for the accomplishment of a valid governmental purpose.” *Id.* at 10. Accordingly, the Court found that the plaintiffs lacked standing because “[a]llegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm [.]” *Id.* at 13-14. The plaintiffs were not able to demonstrate that they were chilled by “any specific action of the Army against them.” *Id.* at 3. Thus, the Court refused to grant the plaintiffs what they really sought through the litigation: “a broad-scale investigation, conducted by themselves as private parties armed with the

subpoena power of a federal district court and the power of cross examination, to probe into the Army's intelligence-gathering activities." *Id.* at 14.

The allegations in this Complaint mirror those in *Laird*. For this reason, the court finds that there was no injury-in-fact.

B. Causation

Even if Plaintiffs had an injury in fact, they have not demonstrated the required causation element of standing. A party does not have standing when the injury-in-fact alleged is "manifestly the product of the independent action of a third party." *Duquesne Light Co. v. U.S. E.P.A.*, 166 F.3d 609, 613 (3d Cir. 1999). Defendant argues that the Associated Press and not the City is the manifest cause of Plaintiffs' alleged injuries. (Moving Brief at 17.) Plaintiffs argue that no existing case law holds the action of a newspaper reporting on a government program as an "independent action of a third party." (Plaintiffs' Brief at 36.) Defendant's argument is more persuasive.

None of the Plaintiffs' injuries arose until after the Associated Press released unredacted, confidential NYPD documents and articles expressing its own interpretation of those documents. Nowhere in the Complaint do Plaintiffs allege that they suffered harm prior to the unauthorized release of the documents by the Associated Press. This confirms that Plaintiffs' alleged injuries flow from the Associated Press's unauthorized disclosure of the documents. The harms are not "fairly traceable" to any act of surveillance. *See Lujan*, 504 U.S. at 560-61.

The court is also persuaded by a distinction between this case and *Philadelphia Yearly Meeting of Religious Soc. of Friends v. Tate*, 519 F.2d 1335, (3d Cir. 1975). Like this case, *Philadelphia Yearly* involved media coverage of a police surveillance program. The media coverage publicly disclosed the names of certain groups and individuals on whom the Philadelphia Police Department was keeping surveillance records. *Id.* at 1337. In *Philadelphia Yearly*, the court reiterated the Supreme Court's holding in *Laird* that the surveillance itself was legal and that the surveillance's mere existence did not cause a concrete injury to the Plaintiffs. *Id.* at 1337-38.

However, the government in *Philadelphia Yearly* openly cooperated with the press in the publicizing of the story. The Third Circuit found this cooperation with the media improper. *Id.* at 1338. The court stated:

It is not apparent how making information concerning the lawful activities of plaintiffs available to non-police groups or individuals could be considered within the proper ambit of law enforcement activity, particularly since it is alleged that plaintiffs are subject to surveillance only because their political views deviate from those of the “establishment.”

Id. at 1338 (3d Cir. 1975).

Thus, the *Philadelphia Yearly* court found the claim justiciable on the grounds that the police department had an “absence of a lawful purpose” in disclosing on nationwide television that “certain named persons or organizations are subjects of police intelligence files.” By contrast, the City of New York did not make any information about the NYPD's Program available to non-police groups. The Associated Press covertly obtained the materials and published them without authorization. Thus the injury, if any existed, is not fairly traceable to the City.

Although the *Philadelphia Yearly* court did find that the plaintiffs had a justiciable claim, had *Philadelphia Yearly* been decided today, the court would have had to dismiss it for lack of standing. The court in *Philadelphia Yearly* recognized that the plaintiffs’ alleged injuries were “not concrete.” *Id.* at 1339. *Philadelphia Yearly* was decided well before *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In *Lujan*, the Supreme Court held that standing required a “concrete and particularized injury.” *Lujan*, 504 U.S. at 560. Therefore, had *Philadelphia Yearly* reached the Third Circuit after *Lujan*, it would have been highly improbable that the plaintiffs would have had standing.

For these reasons, Plaintiffs have demonstrated neither the injury in fact element nor the causation elements of standing required to survive a Rule 12(b)(1) motion.

III. RULE 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Even if Plaintiffs did have standing to sue, Plaintiffs still have not plead facts sufficient to state a claim for discrimination in violation of the First or Fourteenth Amendments.

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. The moving party bears the burden of showing that no claim has been stated. *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). In deciding a motion to dismiss under Rule 12(b)(6), a court must take all allegations in the complaint as true and view them in the light most favorable to the plaintiff. See *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts Inc.*, 140 F.3d 478, 483 (3d Cir. 1998) (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)).

Although a complaint need not contain detailed factual allegations, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, the factual allegations must be sufficient to raise a plaintiff’s right to relief above a speculative level, such that it is “plausible on its face.” See *id.* at 570; see also *Umland v. PLANCO Fin. Serv., Inc.*, 542 F.3d 59, 64 (3d Cir. 2008). A claim has “facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). While “[t]he plausibility standard is not akin to a ‘probability requirement’ . . . it asks for more than a sheer possibility.” *Id.* at 678. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” *Id.* at 662 (quoting *Twombly*, 550 U.S. at 557).

Where the claim is invidious discrimination based on religion, Plaintiffs must plead (and ultimately prove) that the Defendant acted with discriminatory purpose. *Ashcroft v. Iqbal*, 556 U.S. at 676 (citing *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 540-41 (1993)); *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 317 (3d Cir. 2001). “Purposeful discrimination requires more than ‘intent as volition or intent as awareness of consequences. It involves a decisionmaker’s undertaking a course of action ‘because of, not merely in spite of, [the action’s] adverse effects upon an identifiable group.’” *Iqbal*, 556 U.S. at 676-77 (quoting *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). It follows that, to state a claim based on a violation of a constitutional right, Plaintiffs must plead sufficient factual matter to show that the City adopted and implemented the surveillance program not for a neutral, investigative reason but for the purpose of discriminating on account of religion. *Iqbal*, 556 U.S. at 677, 682.

“[D]etermining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense.” *Iqbal*, 556 U.S. at 663-64 (citing *Twombly*, 550 U.S. at 556). *Ashcroft v. Iqbal* is particularly instructive here because of the similar context. Both *Iqbal* and this case grow out of the same tensions between security and the treatment of Muslims that is particular to the post-September 11 time period.

In *Iqbal*, the plaintiff alleged that he was detained as a “high interest” suspect and subjected to particularly harsh conditions of detention based upon his race, religion, or national origin. Although his allegations were consistent with a discriminatory purpose, there was a “more likely explanation” for his treatment as a “high interest” suspect. *Id.* at 681. As the U.S. Supreme Court stated in *Iqbal*:

The September 11 attacks were perpetrated by 19 Arab Muslim hijackers who counted themselves members in good standing of al Qaeda, an Islamic fundamentalist group. Al Qaeda was headed by another Arab Muslim—Osama bin Laden—and composed in large part of his Arab Muslim disciples. It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims. On the facts [alleged] the arrests . . . were likely lawful and justified by [a] nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts. As between that “obvious alternative explanation” for the arrests, *Twombly*, 550 U.S. at 567, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.

Iqbal, 556 U.S. at 682.

For similar reasons, the Plaintiffs in this case have not alleged facts from which it can be plausibly inferred that they were targeted solely because of their religion. The more likely explanation for the surveillance was a desire to locate budding terrorist conspiracies. The most obvious reason for so concluding is that surveillance of the Muslim community began just after the attacks of September 11, 2001. The police could not have monitored New Jersey for Muslim terrorist activities without monitoring the Muslim community itself. While this surveillance

Program may have had adverse effects upon the Muslim community after the Associated Press published its articles; the motive for the Program was not solely to discriminate against Muslims, but rather to find Muslim terrorists hiding among ordinary, law-abiding Muslims.

IV. CONCLUSION

For the reasons stated above, Defendant's motion to dismiss is **GRANTED**. An appropriate order follows.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

Date: February 20, 2014

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PRELIMINARY STATEMENT

1. This is a civil rights action based upon the United States Constitution and 42 U.S.C. § 1983, to remedy the illegal and unconstitutional targeting of New Jersey Muslims for surveillance based solely upon their religion by the New York City Police Department (“NYPD” or “Department”). Plaintiffs seek an injunction prohibiting the NYPD from targeting them for unconstitutional surveillance, expungement of all records made pursuant to past unlawful spying, a declaratory judgment, and compensatory and nominal damages.

2. In early 2002, the NYPD began a secret spying program (“Program”) to infiltrate and monitor Muslim life in and around New York City. In all its years of operation, the Program has never generated a single lead.

3. The Department has focused, in particular, upon New Jersey Muslims. It has conducted surveillance of at least twenty mosques, fourteen restaurants, eleven retail stores, two grade schools and two Muslim Student Associations, in addition to an untold number of individuals who own, operate, and visit those establishments. The thoroughness and precision of the Department's surveillance is reflected in its creation of more than twenty precinct-level maps of the City of Newark, noting the location of mosques and Muslim businesses and the ethnic composition of the Muslim community.

4. As part of the Program, the NYPD takes photographs and videos and collects license plate numbers at mosques. The Department also utilizes undercover officers and

informants to infiltrate and surveil Muslim communities, including mosques, Muslim Student Associations, and Muslim-owned businesses. Upon information and belief, the NYPD Program has not undertaken such surveillance with respect to non-Muslim communities in New Jersey.

5. The NYPD has created a series of reports documenting in detail the information obtained from its surveillance of New Jersey Muslim communities through its surveillance Program, including a report focusing on the Muslim community in Newark (“Newark report”). Plaintiffs include mosques, the national umbrella Muslim student association, Muslim-owned businesses, and the principal of an Islamic school for girls, that were identified in these reports, as well as associations whose members were identified in these reports. Plaintiffs also include individual members of New Jersey mosques and Muslim Student Associations that were identified in the NYPD reports as subjects of the surveillance Program.

6. The NYPD Program is founded and operated upon a false and constitutionally impermissible premise: that Muslim religious identity is a legitimate criterion for selection of law enforcement surveillance targets, or that it is a permissible proxy for criminality, and that Muslim individuals, businesses, and institutions can therefore be subject to pervasive surveillance not visited upon individuals, businesses, and institutions of any other religious faith or the public at large.

7. Through the Program, the NYPD impermissibly discriminates on the basis of religion and singles out Plaintiffs for disfavorable and unequal treatment by police. By targeting Muslim entities and individuals in New Jersey for investigation solely because they are Muslim

or believed to be Muslim, the Program casts an unwarranted shadow of suspicion and stigma on Plaintiffs and, indeed, all New Jersey Muslims. Each Plaintiff has suffered from the stigmatization that results from being singled out for surveillance on the basis of their religious beliefs, which is a harm that invites additional prejudice and discrimination against them and all American Muslims.

8. Plaintiffs bring this lawsuit in order to affirm the principle that individuals may not be singled out for intrusive investigation and pervasive surveillance that cause them continuing harm simply because they profess a certain faith.

JURISDICTION AND VENUE

9. The Court possesses jurisdiction to hear this matter pursuant to 28 U.S.C. § 1331 because it alleges violations of the United States Constitution and 42 U.S.C. § 1983, and therefore raises questions of federal law. Jurisdiction is also based upon 28 U.S.C. § 1343 because relief is sought for the deprivation of Plaintiffs' constitutional rights under color of State law.

10. Venue is proper in the District of New Jersey under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

PARTIES

Plaintiffs

11. **Syed Farhaj Hassan** is a New Jersey resident and a Soldier in a Civil Affairs Brigade who has served in the United States Army Reserves since September 2001. He is thirty-five years old and a U.S. Citizen. Hassan has served in Iraq (fourteen months of active duty and deployment to Iraq), during which time he worked in military intelligence, and has received numerous honors for his service, including the Army Service Ribbon, Global War on Terrorism Expeditionary Ribbon, National Defense Ribbon, Iraq Campaign Medal, Good Conduct Medal, three Army Commendation Medals, Army Achievement Medal, and Combat Action Badge. His address is 2403 Candlelight Court, Helmetta, NJ 08828.

12. Hassan is an observant Shi'a Muslim who attends mosque regularly. He has attended the Astaana-e-Zehra mosque most Fridays for the last two years and has been a congregant for 16 years. He also worships and attends events at the Masjid-e-Ali mosque approximately ten times per year, the Mehfile Shahe Khorasan mosque approximately four times per year, and the Imam-e-Zamana Foundation of North America mosque approximately twice per year. Each of these mosques is located in New Jersey and was identified in the NYPD reports as a subject of the NYPD surveillance Program.

13. Hassan has been unfairly targeted and stigmatized by the NYPD's surveillance of his mosques as part of a program targeting Muslim organizations. He has decreased his mosque

attendance significantly since learning that the mosques he attends have been under surveillance by the NYPD because he has a reasonable and well-founded fear that that his security clearance would be jeopardized by being closely affiliated with mosques under surveillance by law enforcement. Any blemish in his background check jeopardizes his security clearance and thus his career. Hassan is also concerned that his fellow soldiers, including his superiors, will have diminished trust in him and treat him differently – thereby harming his career prospects – if they learn he is a regular congregant at mosques under NYPD surveillance. He believes, reasonably, that if he decreases his attendance, he is less likely to be seen and/or recorded at the mosques.

14. **The Council of Imams in New Jersey** (“Council” or “CINJ”) is a non-profit corporation organized under the law of New Jersey and based in the Newark area. Its address is 62-70 Howard Street, Irvington, NJ 07111. Among other things, the Council is formed to conduct what is called Mutual Consultation (“Shuraa Baynahum”) for the purpose of establishing a whole and balanced society and facilitating the current and future circumstances that shape the continuous improvement of the Muslim Community. The Council is a membership organization comprising a dozen New Jersey mosques, at least two of which, Masjid al-Haqq and Masjid Ali K. Muslim, have been surveilled as part of the NYPD’s Program in New Jersey. Photographs and descriptions of both of these mosques are included in the Department’s Newark report.

15. Masjid al-Haqq and Masjid Ali K. Muslim have been a part of the Newark community for thirty and over forty years, respectively. Leaders and congregants in both mosques have been unfairly targeted and stigmatized by the NYPD’s surveillance of their

mosques as part of a program targeting Muslim organizations. Both mosques have also seen a decline in attendance and contributions as a result of the Department's surveillance. Losses in attendance and financial support that followed the disclosure of the Program targeting Muslims have directly harmed both mosques' ability to fulfill their religious missions.

16. **Muslim Students Association of the U.S. & Canada, Inc.** ("MSA National") is a non-profit corporation organized under the law of Indiana, based at 6555 South 750 East, Plainfield, IN 46168. MSA National serves Muslim students during their college and university careers by facilitating their efforts to establish, maintain and develop local MSA chapters. It strives to facilitate networking, educating and empowering the students of today to be citizens of tomorrow's community. To achieve its objectives, MSA National develops tools and resources to facilitate information sharing and to unite students across North America.

17. Two of MSA National's members, the Muslim Student Associations for the Rutgers University campuses at Newark and New Brunswick, were subject to surveillance in New Jersey through the NYPD Program. These MSAs were singled out for surveillance by the NYPD simply because their membership is made up of Muslim students. Student organizations affiliated with other religious denominations were not subject to similar surveillance. Such biased police spying invites additional discrimination and prejudice against all current and former MSA students and diminishes the MSAs' ability to fulfill their spiritual and practical missions. As affinity student groups, MSAs subject to surveillance of their activities and discussions are diminished in their ability to establish viable student organizations that students

will feel secure joining and participating in. Their ability to embark upon integral partnerships with campus administrators and other organizations and fulfill the spiritual needs of their members in a confidential manner is also impaired.

18. **All Body Shop Inside & Outside** is a New Jersey corporation that owns and operates a retail store and cafe in downtown Newark (20 Branford Place, Newark, NJ 07102). The store was founded in 1998. Its owners, Gary Abdul Karim Abdullah and Hamidah Z. Abdullah, are Muslims who have lived and worked in the Newark community for their entire lives. All Body Shop Inside & Outside was identified in an NYPD report as “Hamidah’s Body Shop” and was subject to surveillance as part of the NYPD Program.

19. The owners of All Body Shop Inside & Outside have been unfairly targeted and stigmatized by the NYPD’s surveillance of their business as part of a program targeting Muslim organizations. The NYPD’s Program has also harmed their business by scaring away customers. A photograph and description of their store is included in the NYPD’s Newark report, which has been widely publicized. Since people learned that All Body Shop Inside & Outside was under NYPD surveillance, the number of customers visiting the store has decreased and some customers have told the owners by telephone that they did not feel comfortable visiting the location because of the threat of NYPD surveillance.

20. **Unity Beef Sausage Company** (“Unity”) is a New Jersey corporation that owns and operates Unity Brand Halal Products, Inc., a halal meat store in downtown Newark (94 Orange Street, Newark, New Jersey 07102). It has a store for retail and wholesale and a building

for manufacturing. Founded in 1968, Unity is owned by Akbar Salaam, who is Muslim. Unity was surveilled as part of the NYPD Program in New Jersey, and a photograph and description of the Unity store appears in the NYPD's Newark report, which has been widely publicized.

21. Unity's owner, his employees, and his customers have been unfairly targeted and stigmatized by the surveillance of Unity as part of a program targeting Muslim organizations. The NYPD surveillance has also hurt business at the Unity halal meat store. Many regular customers have not been coming to the store since the NYPD's Newark report was made public. For example, the store typically experiences a rush of business after Friday prayer services, when many Newark area Muslims do food shopping and run errands. That rush slowed considerably immediately after the Newark report became public. Some customers have called to ask the owner about the NYPD's surveillance and told him they are no longer comfortable visiting the store. The store's owner now fears conducting his legitimate business; he is concerned that anyone who comes in or looks at him from across the street might be an NYPD spy.

22. **Muslim Foundation Inc.** ("MFI") is a New Jersey non-profit corporation that owns and operates the Masjid-e-Ali mosque, located at 47 Cedar Grove Lane, Somerset, NJ, 08873. MFI's congregation comprises approximately 250 families. The Masjid-e-Ali mosque was surveilled as part of the NYPD's Program in New Jersey, and was identified in an NYPD report as a subject of surveillance.

23. Leaders and congregants in MFI have been unfairly targeted and stigmatized by the NYPD's surveillance of their mosque as part of a program targeting Shi'a Muslim

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She also has a reasonable fear that her discussions with other students and other participation in MSA activities may be observed by NYPD and taken out of context, resulting in unwarranted scrutiny premised solely on her Muslim faith and participation in religious discourse.

28. **Soofia Tahir** is a New Jersey resident (56 Southside Avenue, Somerville, NJ 08876) who was a member of the Rutgers Newark MSA during the 2003-2004 school year. She then attended Rutgers University's New Brunswick campus as an undergraduate from 2004 through 2008, and graduated with a bachelor's degree. She was a member of the Rutgers New Brunswick MSA during those years and served as its Vice President during the 2006-2007 school year. Tahir went on to attend graduate school at the Rutgers New Brunswick campus from 2010 through 2012, and graduated with a master's degree.

29. Like Mohammed and Doe, Tahir has been unfairly targeted, and stigmatized by the NYPD's surveillance of the Rutgers MSAs in a way that is likely to endanger her future educational and employment opportunities. In particular, she focused her graduate studies on international social work, a field in which many employment opportunities are with governmental or non-governmental agencies that require background checks and/or security clearance. She reasonably fears that her membership and leadership in organizations that have been surveilled by the NYPD as part of a program it describes as focused on "threats" and an attempt to document the "likely whereabouts of terrorists" will adversely affect her future job prospects and any further educational pursuits.

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32. Abdur-Rahim has been unfairly targeted and stigmatized by the NYPD's surveillance of AHA, where she is currently employed, and AMA, where she was last employed, as part of the Department's program targeting Muslim organizations. She reasonably fears that her future employment prospects are diminished by working at two schools under surveillance by law enforcement. Moreover, the Newark report's photograph of AMA is also Abdur-Rahim's home, where she has lived since 1993 with her husband and, at various times, her children and grandchildren. The fact that a photograph of her home appears on the internet in connection with the NYPD's surveillance program that the City of New York has since publicly exclaimed is necessary for public safety, has decreased the value of the home and diminished the prospects for sale of the home.

33. Abdur-Rahim is especially concerned with the Department's spying on AMA, because she and the all-female population of students there did not wear head coverings while attending classes. One of Abdur-Rahim's and her students' most sacred religious tenets is modesty, their practice of which requires them to always keep their heads covered in the presence of men or boys. If NYPD officers entered the property surrounding the school and looked inside – for example to determine that it was attended by African Americans as reported – they would be violating this religious tenet.

34. **Abdul-Hakim Abdullah** is married to Abdur-Rahim and co-owns the 35 Finlay Place home with her. He also served on the Board of Directors of Al Muslimaat from 2002 through 2010. Abdullah has suffered the same harm as Abdur-Rahim in connection with a

decrease in the value of his home caused by the NYPD's surveillance and subsequent statements by Department officials.

Defendant

35. **The City of New York** is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York and having its principal offices at City Hall, New York, NY 10007. The City of New York has established and maintains the NYPD as a constituent department or agency. The NYPD acts as the City of New York's agent in the area of law enforcement. The NYPD's operations include the activities described herein.

STATEMENT OF FACTS

The NYPD Program Intentionally Targets Muslims for Surveillance on the Basis of Religion

36. In January 2002, the NYPD created a secret spying program to analyze and surveil the Muslim community in New York City and nearby regions, including Muslim religious institutions, schools, businesses, associations, and congregations. The Department created the Program following the September 11, 2001, attacks based on the mistaken and unconstitutional premise that Muslim religious identity is a legitimate criterion for selection of law enforcement surveillance targets, or that it is a permissible proxy for criminality, and that Muslims can therefore be subject to pervasive surveillance not visited upon any other religious group or the public at large, simply because of their religion. This Program reflects a policy, custom, usage and/or practice of the NYPD to target the Muslim community for surveillance solely on the basis of religion.

37. As part of this Program, the NYPD specifically and purposefully targets mosques, Muslim-owned businesses, Muslim Student Associations, and Muslim schools for surveillance based only upon the religious beliefs of their owners or members. The NYPD Program intentionally targets only the Muslim faith and does not undertake similar surveillance with respect to any other religious group. Thus, the Program perpetuates odious and unfounded stereotypes about Muslims, including Plaintiffs, and stigmatizes them as members of a disfavored community that is inherently dangerous and inferior.

38. The Department has focused, in particular, upon New Jersey Muslims as part of its Program. The Department has conducted surveillance of at least twenty mosques, fourteen restaurants, eleven retail stores, two grade schools and two Muslim Student Associations in New Jersey, in addition to an untold number of individuals who own, operate, and visit those establishments. Furthermore, the Department has created over twenty precinct-level maps of the City of Newark, noting the location of mosques and Muslim businesses and the ethnic composition of the Muslim community. As part of the Program, it has also created a series of reports documenting in detail the information obtained from its surveillance of New Jersey Muslim communities.

39. The Program uses a variety of methods to spy on Muslims. It has, among other measures, taken video and photographs at mosques, Muslim-owned businesses, and schools. It has sent undercover officers to those locations to engage in pretextual conversations to elicit information from proprietors and patrons. And it has planted informants in mosques, and

monitored websites, listserves, and chat rooms. The Department does not conduct similar surveillance of houses of worship, businesses, and schools associated with other religions. For example, on information and belief, no other religious group is uniformly and categorically viewed as a legitimate target for investigation merely because of the actions of an exceedingly small fraction of people of the same faith who have violated the law.

40. In addition to targeting Muslims by focusing on mosques, Muslim-owned businesses, and other Muslim-associated organizations as subjects of surveillance, the Program also intentionally targets Muslims by using ethnicity as a proxy for faith.

41. As part of the Program, the Department has designated twenty-eight countries and “American Black Muslim” as “ancestries of interest.” The twenty-eight countries are: Afghanistan, Albania, Algeria, Bahrain, Bangladesh, Chechnya, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Pakistan, Palestine, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, U.A.E., Uzbekistan, Yemen, and Yugoslavia. Those twenty-eight countries constitute about 80% of the world’s Muslim population. All but five of the countries on the list are more than three-fourths Muslim. Of these five, all but two countries are majority Muslim and one of the remaining two countries is India, which alone is home to 11% of the world’s Muslims.

42. However, the Department does not surveil all people and establishments with “ancestries of interest,” but expressly chooses to exclude people and establishments with such “ancestries” if they are not Muslim. Thus, for example, the NYPD does not surveil Egyptians if

they are Coptic Christians, Syrians if they are Jewish, or Albanians if they are Catholic or Orthodox Christian.

43. The NYPD's report analyzing Newark observes: "There appears to be a sizable and growing non-immigrant, African-American Muslim population." No analysis of non-Muslim African-Americans appears in the Newark report.

44. The NYPD's surveillance is not limited to those Muslims with "ancestries of interest." In its surveillance of Newark, the Department has observed that the largest immigrant communities in that city are from Portugal and Brazil, countries not found on its list of twenty-eight "ancestries." Nevertheless, the Department's Newark report examines these communities for the presence of Muslims: "No Muslim component within these [Portuguese and Brazilian] communities was identified, with the exception of one identified location being owned and operated by a Brazilian Muslim of Palestinian descent." No non-Muslim individuals or establishments from Newark's Portuguese or Brazilian immigrant communities are identified in the NYPD's Newark report. The Department's investigation, surveillance, and analysis are concerned only with Muslims. Religious affiliation is employed as the sole predicate for investigation pursuant to the Program.

NYPD's Surveillance Activities Against Muslims

45. The NYPD Program utilizes numerous forms of surveillance in its monitoring of Muslim communities, including its surveillance of Muslim communities in New Jersey. The NYPD Program does not undertake similar surveillance of non-Muslim communities. Despite

its initial secrecy, public knowledge of the NYPD program to single out Muslims for surveillance has become widespread in New Jersey and elsewhere.

46. As part of the Program, NYPD officers snap pictures, take video, and collect license plate numbers of congregants as they arrive at mosques to pray, making records of those in attendance. They also mount surveillance cameras on light poles, aimed at mosques, for the purpose of round-the-clock surveillance. Officers can control the cameras with their computers and use the footage to help identify worshippers. The NYPD has not conducted similar surveillance at non-Muslim houses of worship.

47. The Department also utilizes informants and undercover officers, who identify and report upon, among other things, businesses owned or frequented by Muslims; which stores sell halal meat; the subject of conversations overheard at mosques; and where religious schools are located. For example:

- a. The NYPD uses undercover officers called “rakers” to monitor daily life in neighborhoods it believes to be heavily Muslim. Rakers surveil locations such as bookstores, bars, cafes, and nightclubs. They do so not based upon evidence of wrongdoing, but because the Department believes it should surveil and investigate American Muslims comprehensively in a way that it does not other religious communities.
- b. The NYPD also has informants called “mosque crawlers” who monitor sermons and conversations in mosques and report back to the NYPD. Mosque crawlers are

used at mosques as part of a broader plan for blanket surveillance of Muslim communities. The Department has strived to have an informant inside every mosque within a 250-mile radius of New York City and has, in fact, prepared an analytical report on every mosque within 100 miles, including Plaintiff MFI and at least two of the members of CINJ. Upon information and belief, the NYPD's mosque crawlers have monitored thousands of prayer services in mosques, collecting detailed information about worshippers simply because they are Muslim, without evidence they engaged in any wrongdoing.

c. Rakers and mosque crawlers have monitored discussions in mosques about the controversy surrounding the publication of a Danish artist's cartoons of the Prophet Muhammad, the results of which were included in a February 2006 report. That report, for example, documents twenty-three conversations at twenty mosques. None of the information collected showed any indication of criminal activity. The NYPD prepared a similar report after an accidental plane crash in Manhattan in October 2006. Upon information and belief, the Department prepares many such reports targeting Muslims, none of which even allegedly involve any wrongdoing.

d. Using mosque crawlers, rakers, and other officers and agents, the NYPD has documented painstaking details of American Muslim life, including in New Jersey, and plaintiff institutions and businesses. For example, Department surveillance reports note the fact that flyers are posted in shops advertising for Quran tutoring; a

picture of a mosque hangs in a grocery store; a restaurant serves “religious Muslims;” customers visit a Dunkin’ Donuts after Friday prayer; a restaurant is located near a particular mosque; employees or customers of establishments are observed wearing “traditional clothing;” Muslim prayer mats are hanging on the wall at an Indian restaurant; and a store posts a sign that it will be closed on Friday in observance of Friday prayer.

48. The NYPD Program has not utilized informants and undercover agents to undertake such focused or intensive surveillance of non-Muslim communities.

49. The NYPD also closely monitors the activities of Muslim Student Associations at colleges and universities in New York, New Jersey, Connecticut, and Pennsylvania. It places informants or undercover officers in all or virtually all MSAs, without any indication whatsoever of criminal activity or any connection whatsoever to wrongdoing.

50. NYPD officers monitor the web sites of Muslim student organizations, troll student chat rooms, and talk to students online. Undercover NYPD officers sometimes pose as students to attend MSA events. One officer, for example, went on a rafting trip with an MSA and monitored and recorded how often the student participants on the trip prayed, and that they discussed religious topics. Knowing that undercover NYPD officers are recording the topics of Muslims’ conversations and the frequency with which they pray reasonably causes Plaintiffs and other Muslims in the jurisdictions surveilled by the Department to chill their religious practices.

51. On a weekly basis, the Department prepares an MSA Report on schools, including reports on Rutgers New Brunswick and Rutgers Newark. Its reports include the names of professors, scholars, and students without any evidence that they engaged in wrongdoing.

52. The Department does not conduct similar blanket surveillance of the activities of Christian, Jewish, or any other religious student group.

53. To facilitate future surveillance of entire American Muslim communities, the NYPD has created maps indicating the locations of mosques, restaurants, retail establishments, and schools owned by or serving Muslims, as well as ethnic populations from heavily Muslim countries. The Department has over twenty such maps of Newark, New Jersey.

54. The NYPD has not compiled similar maps of non-Muslim communities.

55. The NYPD also inspects records of name changes and compiles databases of new Muslim converts who take Arabic names, as well as Muslims who take names that are perceived to be “Western.” The Department does not compile similar information for other kinds of name changes.

56. The NYPD’s surveillance of the Muslim community in New Jersey, including its surveillance of Plaintiffs, is extensive and sustained. For example, undercover NYPD officers participating in the Program operated a base of operations in an off-campus apartment near Rutgers New Brunswick. On information and belief, the NYPD Program in New Jersey, including its surveillance of Plaintiffs, is ongoing.

The NYPD Program Harms the Plaintiffs and the Muslim Community as a Whole

57. The NYPD's blanket surveillance of Muslims casts guilt on all people of that faith by suggesting that Muslims pose a special threat to public safety. As targets of the NYPD's discriminatory Program that endorses and perpetuates such false stereotypes, the Plaintiffs and other New Jersey Muslims have been gravely stigmatized and will continue to suffer significant harm as a group disfavored by the government.

58. The Department's Newark report analyzes more than forty "Locations of Concern," which include mosques, restaurants, retail establishments, and a school for grades one through four recognized by the New Jersey Department of Education. The report defines "Location of Concern" as, among other things, a "location that individuals may find co-conspirators for illegal actions" and a "location that has demonstrated a significant pattern of illegal activities." The report does not identify any "illegal activity" in respect to any of these locations. Rather, these establishments, which include Plaintiffs Unity halal meat store, All Body Shop Inside & Outside, and two of the mosques represented by the Council of Imams in New Jersey, were surveilled and are documented in the report only because they are Muslim-owned or -affiliated. The sole basis for the Department's stated belief that illegal activity occurred or is likely to occur is the religious identify of those surveilled. Nonetheless, the Department's use of such a description for mosques, businesses, and schools casts a dark shadow of suspicion on congregations, customers, lenders, children and parents – indeed, the community

as a whole – gravely stigmatizing and otherwise having a significant deleterious impact upon them.

59. The NYPD causes similar damage in its report on the threat to New York City of a potential U.S. - Iran conflict. Among the “key findings” and “recommended actions,” included in the report are to “[e]xpand and focus intelligence collections at Shi’a mosques.” While the report observes that “the majority of Iranian nationals residing in the US are either Zoroastrian, Jewish, or Christian,” the report only targets Muslim institutions, without any justification. Moreover, the report’s focus on Shi’a Muslim mosques sweeps up vast numbers of individuals with no connection to Iran or to any threat arising from a potential conflict between the United States and Iran. Indeed, the report observes that the Shi’a Muslim community includes many individuals of Iraqi, Lebanese and Pakistani descent. Yet the report targets the Shi’a Muslim community as an undifferentiated whole. The report therefore unmistakably targets Muslim institutions simply because they are Muslim and unconstitutionally deploys religious affiliation as a criterion for selection of law enforcement surveillance targets, or as a proxy for criminality.

60. The U.S – Iran report describes organizations believed to pose serious threats to New York City, such as Hezbollah and Hamas, supporters of those organizations and their locations, followed by a list of “Other Shi’a Locations in the vicinity of NYC.” This list of twelve Shi’a Muslim locations includes six in New Jersey, including Plaintiff MFI and its Masjid-e-Ali mosque, as well as three additional mosques attended by Plaintiff Hassan (Astaana-e-Zehra, Mehfile Shahe Khorasan, and Imam-e-Zamana Foundation of North America). The

clear implication of the report is that Shi'a mosques pose a threat to public safety unlike other establishments and places of worship. But under the NYPD's Program the only reason that these mosques, including Plaintiff MFI and those attended by Hassan, were included in the report is that they are affiliated with Shi'a Islam, not because of any wrongdoing, any affiliation with designated organizations such as Hamas or Hezbollah, or any other legitimate reason.

61. The harm the NYPD inflicts on Plaintiffs and Muslim communities results not just from the surveillance, and from the stigma of being targets of discrimination, but also from the public statements that defendant New York City officials make in support of the surveillance. These statements have acknowledged the existence of the NYPD program, describing it as focused on "threats" and as an attempt to document the "likely whereabouts of terrorists." By singling out American Muslims for unequal treatment and as "threats," government officials have sent a signal that they are less worthy participants in the political community.

62. Because the NYPD Program did not limit itself to threats or terrorists but rather targeted the Muslim community as a whole, such statements suggest that all Muslim establishments are dangerous or likely to harbor terrorists, thereby engendering suspicion and distrust of Muslim individuals and Muslim establishments, including Plaintiffs, affecting people's livelihoods, damaging the fabric of Muslim communities and the broader society within which Muslims live, and inviting prejudice and discrimination against Plaintiffs and other Muslim individuals.

63. On information and belief, the NYPD Program in New Jersey, including broad surveillance of mosques, Muslim businesses and MSAs and, in particular surveillance of Plaintiffs, is ongoing.

64. As part of the Program, NYPD officers frequently go back to surveillance locations to make sure they have not changed, and updating their information is part of their duties and responsibilities. Indeed, New York City officials have made clear that they believe the NYPD's targeting of Muslims for surveillance on the basis of their religion is appropriate and will continue. Discussing the surveillance, Mayor Bloomberg has stated publicly, "We're doing the right thing. We will continue to do the right thing." Commissioner Kelly has said, "We're going to continue to do what we have to do to protect the city." Under our Constitution, however, what the NYPD may not do is continue to target American Muslims for investigation and pervasive surveillance simply because they are Muslim.

65. The Mayor and Police Commissioner have justified this sweeping, discriminatory policy by repeatedly claiming that it is necessary to protect the public's safety. These public officials' statements conflate religion with a security risk and falsely suggest that Muslims alone present a unique law enforcement threat. Such official proclamations, made exclusively in reference to the Muslim community, stigmatize Plaintiffs and the Muslim community in New Jersey, and invite additional prejudice and discrimination against them.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATIONS OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

66. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

67. The Defendant's Program impermissibly and intentionally discriminates against Plaintiffs because of their religion. As a direct and proximate result of the acts of the Defendant and its agents, the Plaintiffs have therefore been deprived of their rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

VIOLATIONS OF THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

68. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

69. The Defendant's Program is neither neutral with respect to religion, nor of general applicability. The Program instead singles out Plaintiffs' religion for disfavor and intentionally denigrates Islam. As a direct and proximate result of the acts of the Defendant and its agents, the Plaintiffs have therefore been deprived of their rights under the Free Exercise Clause and the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION
EXPUNGEMENT ACTION AT COMMON LAW

70. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

71. Government entities may not maintain records where the harm to the Plaintiffs caused by the existence of records outweighs the utility of their continued maintenance, especially where the information contained in the records was compiled by unlawful methods.

72. Defendants' have compiled records identifying mosques represented by Plaintiffs CINJ and MFI, the Rutgers Newark and Rutgers New Brunswick MSA chapters, represented by Plaintiff MSA National, Plaintiff Unity Beef Sausage Company, and Plaintiff All Body Shop Inside & Outside as targets of surveillance and investigation. Upon information and belief, the NYPD also maintains records identifying Plaintiffs Hassan, Mohammed, Doe, Tahir, Abdur-Rahim, and Abdullah as targets of surveillance or investigation. These records are likely to command attention from law enforcement officials, other agencies of government, and the public at large, to the detriment of the Plaintiffs.

73. Maintenance of these records, which are the fruits of the Defendant's unconstitutional actions and which falsely identify the Plaintiffs as linked to the threat of terrorism, creates harms that significantly outweigh their utility, if any.

PRAYER FOR RELIEF

WHEREFORE the Plaintiffs respectfully request that the Court:

(a) Declare that the Defendant's actions violate the Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution;

(b) Enjoin further violations of the Plaintiffs' constitutional rights, including but not limited to an injunction that requires the Defendant to refrain from targeting Plaintiffs for surveillance on the basis of religion;

(c) Order the expungement of all records of Plaintiffs made pursuant to past unlawful spying;

(d) Award Compensatory Damages to those Plaintiffs who have suffered economic harm;

(e) Award Nominal Damages for the harms suffered by Plaintiffs who are not awarded compensatory damages;

- (f) Award attorney's fees and costs associated with this action; and
- (g) Award any further relief as is just and proper and any other relief as allowed by law.

Respectfully submitted,

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Dated: October 3, 2012

14-1688- CV

IN THE
United States Court of Appeals
FOR THE THIRD CIRCUIT

SYED FARHAJ HASSAN, THE COUNCIL OF IMAMS IN NEW JERSEY, MUSLIM STUDENTS ASSOCIATION OF THE U.S. AND CANADA, INC., ALL BODY SHOP INSIDE & OUTSIDE, UNITY BEEF SAUSAGE COMPANY, MUSLIM FOUNDATION INC., MOIZ MOHAMMED, JANE DOE, SOOFIA TAHIR, ZAIMAH ABDUR-RAHIM, AND ABDUL-HAKIM ABDULLAH,

Appellants,

—against—

THE CITY OF NEW YORK

Appellee.

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

**JOINT APPENDIX
VOLUME II OF II
(PAGES JA-54 TO JA-232)**

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that independently acknowledge, endorse, and describe in detail the policies and practices upon which Plaintiffs base their claims. These facts, and the exhibits attached hereto, are submitted solely for the purpose of supporting Plaintiffs' alternative argument that their injuries are "fairly traceable" to the Defendant because New York City officials have perpetuated and amplified the harms suffered by the Plaintiffs after the press first revealed the NYPD's unlawful program. *See id.*

3. Since the AP began publishing reports regarding the NYPD's policy and practice of targeting Muslims for surveillance, senior New York City officials have acknowledged and endorsed the NYPD's tactics. These acknowledgements have largely confirmed the AP's reporting, and have propagated and amplified the harms suffered by the Plaintiffs as a result of the NYPD's unlawful activities. For example:

- a. Mayor Michael Bloomberg, speaking on the radio, acknowledged that the NYPD engages in surveillance not based upon any allegations of wrongdoing: "When there's no lead, you're just trying to get familiar with what's going on, where people might go and where people might be to say something." "And you want to listen. If they're going to give a public speech, you want to know where they do it." *See Adam Goldman & Matt Apuzzo, NYPD docs: 'Focus' scrutiny on Muslim Americans*, Assoc. Press, March 9, 2012 (a true and correct copy is attached hereto as **Exhibit A**).
- b. In response to criticism of the NYPD for operating in New Jersey, Mayor Bloomberg has acknowledged and endorsed the NYPD's practice: "The police department can follow leads and threats wherever they come from. [. . .] They can go into any state." *See Adam Goldman & Matt Apuzzo, Consequences for*

Security as NYPD-FBI Rift Widens, Assoc. Press, Mar. 20, 2012 (a true and correct copy is attached as **Exhibit B**).

- c. Discussing the NYPD's surveillance program in a television interview, Police Commissioner Raymond Kelly acknowledged that the NYPD created the Newark Report, which is described in Plaintiffs' complaint: "We did that demographic study, if you will, in Newark with the acquiescence, with the knowledge of law enforcement personnel in Newark, and we gave them a copy." *See* Interview of Raymond Kelly by Josh Robin, NY1, Mar. 22, 2012, available at <http://www.ny1.com/content/158115/ny1-online--police-commissioner-kelly-defends-nypd-surveillance-of-muslims> (last visited Jan 24, 2013).
- d. In the same interview, Police Commissioner Kelly acknowledged that the NYPD creates maps identifying Muslim-owned business and endorsed the practice: "I think this is the type of information that helps us do our job. It gives us a total picture, context, of a particular neighborhood. But if you spin it out that it is somehow spying, I can see someone being annoyed by it. And I think that's part of the issue." *Id.*
- e. In sworn deposition testimony, Thomas Galati, Commanding Officer of the NYPD's Intelligence Division, confirmed many details about the surveillance activities of the NYPD Intelligence Division's Demographics Unit/Zone Assessment Unit that had previously been reported by the Associated Press. Deposition of Thomas Galati, *Handschu v. Special Services Division*, No. 71-cv-2203 (S.D.N.Y. June 28, 2012) (a true and correct copy is attached hereto as **Exhibit C**). For example, Mr. Galati acknowledged that the "ancestries of

interest” identified in the NYPD reports published by the Associated Press – among which are “American Black Muslim” and countries that together comprise 80% of the world’s Muslim population – are largely consistent with the current targets of the NYPD Intelligence Division’s surveillance. *Id.* at 26. Mr. Galati also acknowledged that such “countries of concern” were identified on the basis of Muslim religion: “Islamics that have been radicalized through violence that committed [attacks in New York and throughout the world] came from countries. Those countries were identified.” *Id.* at 25. Mr. Galati’s deposition testimony confirmed in significant detail the supervision, training, function, and tactics of the NYPD unit that conducted some or all of the surveillance in question. His testimony acknowledged that, as reported by the AP, the NYPD surveilled mosques, *see, e.g., id.* at 46 (“The purpose of the Demographics Unit and the Zone Assessment Unit was to identify mosques, to identify the ethnic community that would be associated with the mosques”), surveilled commercial establishments, *see, e.g., id.* at 71, and documented conversations of Muslims discussing world events, *see e.g., id.* at 69-79. His testimony generally confirms the AP’s prior reports that the NYPD surveillance was targeted at the Muslim community in particular. *See, e.g., id.* at 36 (program intended to discover where “Islamics radicalized toward violence would hide.”).

4. A former NYPD informant has spoken publicly in great detail about his part in the NYPD’s policy and practice of surveilling Muslims on the basis of religion. This disclosure independently revealed the NYPD’s practice of targeting innocent Muslims and contributes to the stigma caused by the program by making the public more aware that Plaintiffs are considered

suspects by the NYPD simply based upon their religion. *See* Adam Goldman & Matt Apuzzo, *Informer: NYPD Paid Me To 'Bait' Muslims*, Assoc. Press, Oct. 23, 2012 (a true and correct copy is attached hereto as **Exhibit D**).

5. The statements of senior City officials have also communicated the message that the Muslim community as a whole is properly a target for suspicion and surveillance, contributing to the significant stigma that has resulted from the NYPD's discriminatory policy and practices. For example:

- a. Mayor Bloomberg, responding to responding to criticism of the NYPD's spying on Muslim student groups throughout the Northeast, stated "The police department goes where there are allegations. And they look to see whether those allegations are true." Adam Goldman & Matt Apuzzo, *NYPD Built Secret Files on Mosques Outside NY*, Assoc. Press, Feb. 22, 2012 (quoting Mayor Bloomberg) (a true and correct copy is attached hereto as **Exhibit E**). But, as reported by the AP and alleged in the Plaintiffs' complaint, there are no allegations of terrorism in the NYPD's reports, which make clear on their face that the police were only interested in locations associated with the Muslim population. *Id.* The implication of Mr. Bloomberg's remarks, then, is that all Muslims who were surveilled by the NYPD were proper targets of investigation, even though they were targeted only because they are Muslim.
- b. Police Commissioner Raymond Kelly, discussing the NYPD's program targeting Muslims for surveillance, has said "If you poll these issues they don't seem to be an unpopular position on the part of most of the public," and "We're going to continue to do what we have to do to protect the city." *See* Tina Moore, Rocco

Parascandola & Corky Siemaszko, *Mayor Bloomberg Defends NYPD Spying on Muslims Calling it Legal, Appropriate and Constitutional*, N.Y. Daily News, Feb. 24, 2012 (a true and correct copy is attached as **Exhibit F**). These comments not only endorse the NYPD's surveillance targeting Muslims, but also send the unmistakable message that surveillance of Muslims is justified because the Muslim community poses a threat.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 25, 2013, at San Francisco, California.

/s/ Glenn Katon
Glenn Katon



NYPD docs: 'Focus' scrutiny on Muslim Americans

ADAM GOLDMAN and MATT APUZZO

March 9, 2012

NEW YORK (AP) — The New York Police Department collected information on businesses owned by second- and third-generation Americans specifically because they were Muslims, according to newly obtained secret documents. They show in the clearest terms yet that police were monitoring people based on religion, despite claims from Mayor Michael Bloomberg to the contrary.

The NYPD has faced intense criticism from Muslims, lawmakers — and even the FBI — for widespread spying operations that put entire neighborhoods under surveillance. Police put the names of innocent people in secret files and monitored the mosques, student groups and businesses that make up the Muslim landscape of the northeastern U.S.

Bloomberg has defended his department's efforts, saying they have kept the city safe, were completely legal and were not based on religion.

"We don't stop to think about the religion," Bloomberg said at a news conference in August after The Associated Press began revealing the spying. "We stop to think about the threats and focus our efforts there."

In late 2007, however, plainclothes officers in the department's secretive Demographics Unit were assigned to investigate the region's Syrian population. Police photographed businesses and eavesdropped at lunch counters and inside grocery stores and pastry shops. The resulting document listed no threat. And though most people of Syrian heritage living in the area were Jewish, Jews were excluded from the monitoring.

"This report will focus on the smaller Muslim community," the report said.

Similarly, police excluded the city's sizable Coptic Christian population when photographing, monitoring and eavesdropping on Egyptian businesses in 2007, according to the police files.

"This report does not represent the Coptic Egyptian community and is merely an insight into the Muslim Egyptian community of New York City," the NYPD wrote.

Many of those under surveillance were American-born citizens whose families have been here for the better part of a century.

"The majority of Syrians encountered by members of the Demographics Unit are second- or even third-generation Syrian Americans," the Syrian report said. "It is unusual to encounter

a first generation or new arrival Syrian in New York City."

The AP has posted the documents at <http://apne.ws/ABtsAH> and <http://apne.ws/A1s5BQ> and <http://apne.ws/xUlmEQ>.

The Demographics Unit was conceived in secret years ago as a way to identify communities where terrorists might hide and spot potential problems early. If the plainclothes officers, known as "rakers," overheard anti-American sentiment or violent rhetoric, they flagged it for follow-up investigation.

If police, for example, ever received a tip that an Egyptian terrorist was plotting an attack, investigators looking for him would have the entire community already on file. They would know where he was likely to pray, who might rent him a cheap room, where he'd find a convenient Internet cafe and where he probably would buy his groceries.

As a result, many people were put into police files, not for criminal activities but because they were part of daily life in their neighborhoods. Shopkeepers were named in police files, their ethnicities listed. Muslim college students who attended a rafting trip or discussed upcoming religious lectures on campus were cataloged. Worshippers arriving at mosques were photographed and had their license plate numbers collected by police.

The Demographics Unit is one example of how, since the 2001 terrorist attacks, the NYPD has transformed itself into one of the most aggressive domestic intelligence agencies in the country, operating with little oversight and in areas outside the city such as New Jersey.

Speaking Friday, Bloomberg said: "We're doing the right thing. We will continue to do the right thing. We do take every precaution possible to not do anything that ever violates the law. You've just got to be very careful not to take away the rights that we're trying to protect."

And although civil rights lawyers disagree, the legal question isn't expected to be settled soon. In the meantime, the NYPD has become a flashpoint in the debate over the balance between civil rights and security.

U.S. Attorney General Eric Holder told Congress on Thursday he was disturbed by what he's read about the NYPD's surveillance of mosques and Islamic student organizations in New Jersey. "And these are things that are under review at the Justice Department," he said.

Police said they can't afford to become complacent or ignore the reality that Islamic terrorists carried out the 2001 attacks and others. If Muslim neighborhoods feel unfairly singled out, however, it could reinforce the perception that the United States is at war with Islam, which al-Qaida has used as a major recruiting pitch.

Since the AP began reporting on these efforts last year, Bloomberg and the NYPD have offered varying explanations for the clandestine efforts.

At first, police spokesman Paul Browne denied the Demographics Unit existed. When documents proved that it did, Police Commissioner Ray Kelly said his department only follows investigative leads.

For instance, after Moroccans were involved in terrorist attacks overseas, the NYPD photographed and eavesdropped in New York businesses where Moroccans might work, shop and eat.

Asked during a City Council meeting in October whether the NYPD maintained similar documents for Irish and Greek neighborhoods, Kelly replied: "We don't do it ethnically. We do it geographically."

Bloomberg echoed those comments in December.

"The communities, whether they're Muslim or Jewish or Christian or Hindu or Buddhist or whatever, all contribute to this city. We don't target any one of them. We don't target any neighborhood," Bloomberg said.

The AP has since obtained documents outlining NYPD efforts to monitor Albanians, Egyptians and Syrians. Each report focused specifically on ethnicity.

In the case of the Egyptians and Syrians, the reports explicitly focused on Muslims. The Albanian report mentions Albania's diverse religious composition but police only photographed and mapped mosques for the report. There was no indication that criminal leads prompted any of the reports.

In a recent interview on WOR radio, Bloomberg acknowledged for the first time that police were not just following leads, and at times conducted these operations without any indications of criminal wrongdoing.

"When there's no lead, you're just trying to get familiar with what's going on, where people might go and where people might be to say something," Bloomberg said. "And you want to listen. If they're going to give a public speech, you want to know where they do it."

The Damascus Bread and Pastry Shop in Brooklyn, where judges and lawyers from the nearby federal courthouse frequently dine on fresh baklava and rugelach, was listed in police files with other businesses that the NYPD described as "Syrian Locations of Concern." Police noted that the building is owned by a Syrian family, adding: "This location mostly sells Middle Eastern pastries, nuts, foreign newspapers and magazines."

"If they want to check on Damascus Bakery, why not, let them check," said Ghassan Matli, 52, when showed the police documents.

But like many whose businesses were monitored, he said he wishes the NYPD would stop by and talk to him so it would get its information right. The people who owned the store at the time of the report, for instance, were the grandchildren of Syrian immigrants. They had been raised as Catholics.

"If they need help, I will help them," said Matli, who is a Christian. "This is the last country we can go to for freedom and to live in freedom. So if they want, why not? Let them check."

Online:

Read the documents:

Syria: <http://apne.ws/ABtsAH>

Egypt: <http://apne.ws/A1s5BQ>

Albania: <http://apne.ws/xUlmEQ>

Contact the Washington investigative team at [dcinvestigations \(at\) ap.org](mailto:dcinvestigations@ap.org)

Follow Goldman and Apuzzo at <http://twitter.com/goldmandc> and
<http://twitter.com/mattapuzzo>

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AP

Consequences for security as NYPD-FBI rift widens

ADAM GOLDMAN AND MATT APUZZO

March 20, 2012

NEW YORK (AP) — In the fall of 2010, the FBI and New York Police Department were working together on a terrorism investigation on Long Island. The cyber case had been open for more than a year at the U.S. attorney's office in Brooklyn. So, the Justice Department was surprised when, without notice, the NYPD went to federal prosecutors in Manhattan and asked them to approve a search warrant in the case.

The top counterterrorism agent at the FBI in New York at the time, Greg Fowler, was furious. When two agencies don't coordinate, it increases the risk that the investigation and any prosecution could be compromised.

In an email response, Fowler prohibited his agents from sharing information with the NYPD's intelligence unit. He also suspended the weekly management meetings of the Joint Terrorism Task Force, the primary pipeline through which information flows to federal, state and local law enforcement agencies. It slowed to a trickle.

The episode was recalled by current and former NYPD and FBI officials who, like most who discussed this issue, spoke on condition of anonymity to describe sensitive law enforcement cases. It was not merely a low point in a relationship already littered with low points. It highlights how the dysfunctional partnership jeopardizes cases and sometimes national security.

The relationship between the FBI and the NYPD — particularly the NYPD Intelligence Division — is among the most studied collaborations in all law enforcement. In the New York media, the fighting and personalities are frequently covered like a dysfunctional celebrity marriage, with perceived betrayal and reconciliation spilling into the news.

The dispute is not trivial. At its core, it is based on fundamental disagreements between the nation's largest police force and the nation's premier counterterrorism agency. As the NYPD has transformed itself into one of the nation's most aggressive intelligence agencies and has spied on Muslims in ways that would be prohibited for the FBI, the rift has widened.

The result is that, in the United States' largest city, the NYPD and FBI are at times working at cross-purposes. Documents show that the NYPD conducted surveillance on mosques outside its jurisdiction, recording license plates of worshippers as they came and went. On its own, the NYPD has tried its hand at counterintelligence, the clandestine world that within the United States is run by the FBI under a presidential order.

The issue is especially relevant now following criticism from the top FBI agent in New Jersey, who said the NYPD's spying in his state had jeopardized national security because it made people afraid to cooperate with law enforcement.

"When people pull back cooperation, it creates additional risks, it creates blind spots," Michael Ward said. "It hinders our ability to have our finger on the pulse of what's going on around the state, and thus it causes problems."

The NYPD rejects that argument, and New York Mayor Michael Bloomberg has said his department will operate anywhere in the United States if it believes it's necessary to prevent terrorism.

"The police department can follow leads and threats wherever they come from," Bloomberg said, adding that it was all legal. "They can go into any state."

In the world of New York intelligence-gathering, there is perhaps no larger personality than David Cohen, the NYPD's irascible 69-year-old intelligence chief. Cohen was once one of the CIA's most senior analysts. To an analyst, one of the major pitfalls to be avoided is slipping into groupthink. When everyone endorses the conventional way of thinking, problems often arise.

Cohen similarly doesn't want the NYPD falling in line behind the FBI, according to those who have worked with him. The NYPD's lesson from the 9/11 terror attacks was that it could not trust counterterrorism to the federal government, so Cohen wants his team developing its own intelligence and chasing its own cases; if the FBI is doing the same thing, they eventually can combine their efforts.

Tensions between the FBI and local police are nothing new. Around the country, police grouse that the FBI snatches their biggest cases. The FBI complains that police don't alert the federal government early enough on big cases.

New York is supposed to be different. The NYPD is perhaps the premier police force in the nation. No other department comes close to the NYPD's manpower. No other city can rival its team of counterterrorism analysts, language capabilities or stable of officers working overseas.

New York was the first city to form a Joint Terrorism Task Force, a collaboration of federal and local agencies that has been replicated in cities nationwide. The NYPD has hundreds of officers assigned to that task force, working side by side with the FBI.

When the NYPD Intelligence Division, the secretive squad that answers to Cohen, and the FBI work together, they have produced strong cases. When the FBI was keeping tabs on two New Jersey men whose rhetoric was becoming increasingly violent, it was an undercover NYPD intelligence officer who helped make a case that sent the men to prison.

But the intelligence division often operates independently. The FBI, for example, says it was neither involved with nor aware of a 2007 NYPD intelligence operation that photographed and catalogued every mosque in Newark, N.J., and cavedropped inside Muslim-owned

businesses there. The FBI also did not know that the NYPD was in Paterson, N.J., collecting license plates outside a mosque and taking pictures as people arrived for Friday prayers.

"They think their jurisdiction is the world. Their jurisdiction is New York City," New Jersey Gov. Chris Christie, the state's former top federal prosecutor, said recently. "My concern is this kind of obsession that the NYPD seems to have that they're the masters of the universe."

The NYPD's top lawyer, Andrew Schaffer, said New York police were not acting as police officers outside the city.

Police said they don't have to notify anyone of such operations.

"They don't exercise police power, they don't make arrests, they don't conduct searches, they don't execute search warrants," Schaffer told reporters recently. "That is beyond our power outside of our defined jurisdiction. But there's no prohibition on traveling to, residing in or investigating within the United States."

In May 2008, a young man named Abdel Hameed Shehadeh came to the attention of the NYPD as part of another investigation. Shehadeh, a former Staten Island resident, had become increasingly radicalized, according to court documents. That spring, he told a close friend about wanting to die as a martyr and wage violent jihad abroad against the U.S. military. He hoped to attend a terrorist training camp in Pakistan, authorities said.

The NYPD knew about Shehadeh. His friend was an NYPD informant.

But the FBI had no idea.

On June 13, the NYPD informant gave Shehadeh a ride to John F. Kennedy International Airport to catch a flight to Pakistan. The informant scrambled to notify the police, who alerted the FBI that a potentially dangerous man was about to fly to Pakistan.

The FBI suggested that the NYPD stop Shehadeh at the airport, current and former federal officials said, but the NYPD worried it would compromise the informant. With no justification for keeping him off the airplane, the FBI let Shehadeh fly but arranged for the Pakistani government to turn him away at the airport and send him home.

NYPD officials say they didn't intentionally withhold information from the FBI. They said they hadn't expected Shehadeh to move so quickly from talk to action. Once he did, police swiftly alerted the federal government. And there is nothing to prohibit the NYPD from starting its own investigations.

At the FBI, the incident reinforced the perception that the NYPD wasn't interested in a partnership. The strongest case the U.S. put together against Shehadeh focused on charges of lying to investigators. He faces up to eight years in prison.

At the NYPD, the FBI's concerns about the Shehadeh case are chalked up to the inevitable strains that sometimes occur in policing. NYPD officials promised to work more closely with

the FBI, to share information earlier, federal and city officials said. FBI officials, too, promised to be more open about their cases. The goal was to make sure something like that didn't happen again.

It did.

In 2009, federal prosecutors in Boston charged Terak Mehanna in a terror plot. The Justice Department said he and his friends conspired to travel to Yemen for terrorism training so they could fight the U.S. in Iraq.

While Mehanna was in jail in Boston, a source working with the NYPD was in contact with Mehanna, according to current and former FBI and NYPD officials involved in the case. Such contact with another agency's suspect, who's already been charged, is considered improper.

The NYPD dispatched senior officials to Boston to explain to the Justice Department what happened, according to people briefed on the meeting. The NYPD said the contact with Mehanna was inadvertent, part of an unrelated investigation with clear New York ties.

The FBI asked, how could it be inadvertent when the NYPD was working 200 miles outside its jurisdiction?

In an interview last year, NYPD spokesman Paul Browne made a distinction between the NYPD "making contact" with Mehanna and "having contact" with him.

"We did not initiate any contact," Browne said.

He would not elaborate.

At trial, Mehanna's lawyers asked what the Justice Department knew about the NYPD's contact with Mehanna.

"We are not aware of any such contact," Assistant U.S. Attorney Alope Chakravarty said.

Mehanna was convicted of terrorism charges in December and awaits sentencing. His lawyers said they still don't know how the NYPD was involved with their client.

As Cohen was expanding his department's counterterrorism mission, documents show that he also steered the NYPD into the murky world of counterintelligence.

Counterintelligence includes spying on other nation's spies inside the United States. Under a 1981 presidential order, that's supposed to be coordinated by the FBI. But as home to the United Nations, New York is a major arena for U.S. spy games.

In 2006, documents show, the NYPD focused on the Iranian threat, believing that Iran's government or its proxies, including the Hezbollah terrorist organization, might strike at New York City. It fanned out across the Northeast, looking for Shiite mosques and other places where Iranians might gather. The goals were to spot potential problems and develop informants with ties to Iran and Hezbollah.

In one highly unusual operation, the NYPD recruited a source close to the Iranian Mission at the United Nations, former senior NYPD officials said. Police had tried something similar before, former federal officials said, and crossed paths with the FBI. But this time, the FBI didn't know about it.

The Associated Press is withholding details of the operation for national security reasons.

Normally, agencies coordinate their efforts, a process known as deconfliction. Without it, two investigators might work the same source. One agency's informant might be the target of another agency's investigation. That can undermine cases and hurt both efforts.

Cohen's team recruited the source on its own, the former NYPD officials said.

The source gave the NYPD unique insight into the Iranian mission, a connection that the NYPD hoped would provide them early warning of Iranian collaborators in the city. But it also infringed on the turf of the FBI and the CIA, which have long-standing counterintelligence sources across the diplomatic terrain of New York City.

Cohen and Browne did not return several messages asking whether they had any comment or concerns about the AP reporting on this incident.

NYPD documents also show that police used one of its telephone pole-mounted video cameras to monitor the Saudi Mission, another sensitive diplomatic and counterintelligence location.

Documents also show that the NYPD began surveillance of Gholamzadeh Mahabadi Hossein, an Iranian man working closely with his country's U.N. Mission. Police believed he had technology expertise and ties to the Iranian Revolutionary Guard. Hossein was dubbed "Dasher."

Police put him under surveillance and trained a camera on his home in Queens, according to documents, as part of a secret police action dubbed "Operation Tailgate."

A former NYPD official familiar with Dasher said the NYPD was worried that people like him might be used as an Iranian proxy to launch an attack against New York.

The FBI, too, was well aware of Dasher, according to one former FBI official who worked the Iranian target at the time. To the FBI, Dasher was viewed as a potential spy, never a potential terrorist.

Had the NYPD raised Dasher's name with the Joint Terrorism Task Force, it would have flagged his ties to counterintelligence operations. That never happened.

Dasher has since left the country, officials said. There's no indication that he knew he was being watched. But officials said the incident is an example of how the broader mission the NYPD has taken for itself sometimes puts the department in lanes traditionally occupied by the FBI.

In Dasher's case, the FBI and NYPD were watching the same man. Neither knew what the

other was up to.

FBI Director Robert Mueller said conflicts often arise between the bureau and local law enforcement.

"It is not unusual to have that," he recently told a Senate subcommittee. "And my belief is you sit down, you talk about it in private, you get it resolved and you move on."

In August, John Giacalone, a veteran FBI counterterrorism official with Long Island roots, arrived in New York to replace Fowler, who was promoted to run the FBI office in Portland, Ore. Giacalone knew about the FBI's problems with the intelligence division but said the relationship was a clean slate.

One of the first things the FBI did under Giacalone was to examine a terrorism case of the NYPD. It would become one of the most public spats between the FBI and NYPD. And it shows how, even when the two agencies collaborate, their efforts can be undermined by mutual distrust.

The NYPD had been using an informant to keep tabs on Jose Pimentel, a troubled young man whom authorities believed was being inspired to commit violence. But Pimentel had a drug problem and the informant used drugs with Pimentel, who had no known links to al-Qaida or other terrorism groups.

Under Fowler, the FBI said it was not interested in pursuing the case. But as new facts came to light, the FBI spent six weeks reviewing the case alongside the NYPD and city and federal prosecutors, federal officials said. The agencies agreed that Pimentel was potentially dangerous and could not be ignored. They decided to move forward in state court, federal officials said.

The NYPD arrested Pimentel on Nov. 20. Authorities said he wanted to attack police and post offices using pipe bombs. Pimentel has since pleaded not guilty to rarely used state-level terrorism charges.

At a news conference, Bloomberg and New York Police Commissioner Raymond Kelly spoke to reporters.

"We had to act quickly yesterday because he was, in fact, putting this bomb together," Kelly said. "He was drilling holes and it would have been not appropriate for us to let him walk out the door with that bomb."

Asked why the FBI wasn't involved, Kelly suggested the federal government moved too slowly for the NYPD.

"There is an assessment process that is engaged in by the federal authorities, the U.S. attorney," Kelly replied. "We just believed we couldn't let it go any further. We had to act."

In an interview with the AP in late January, Giacalone said he had met with all the NYPD's senior leaders when he arrived in New York and found them to be "honest partners."

Nothing has changed that view, he said.

Giacalone said the infighting has to end. Al-Qaida and its franchises might be crippled but they're still a threat. New York is still a target. To protect the city, the NYPD and FBI need each other.

"We are better working together than working apart," Giacalone said. "I am focusing on moving forward. We both recognize the way forward is to work together and to be good partners. The American people would never forgive us if our refusal to share intelligence resulted in a terrorist attack."

Associated Press writer Eileen Sullivan contributed to this report.

Contact the Washington investigative team at DCinvestigations@ap.org

Follow Apuzzo, Goldman and Sullivan at <http://twitter.com/mattapuzzo>, <http://twitter.com/goldmandc> and <http://twitter.com/esullivanap>

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[Page 1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

HANDSCHU,

PLAINTIFF,

-against- 71CIV.2203
 (CSH)

SPECIAL SERVICES DIVISION,

DEFENDANT .

-----X

100 Church Street
New York, New York

June 28, 2012
10:30 a.m.

EXAMINATION BEFORE TRIAL of a
non-party witness, THOMAS GALATI, taken by
the respective parties herein, pursuant to
order, held at the Offices of The New York
City Law Department, 100 Church Street, New
York, New York, before a Notary Public of
the State of New York.
the State of New York.

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A P P E A R A N C E S:

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Arthur Eisenberg

Paul G. Chevigny

Martin R. Stolar

Franklin Siegel

ALSO PRESENT:

New York Police Department

Steve Colon

Stuart Parker

Thomas Doepfer

THE NEW YORK CITY LAW DEPARTMENT:

Celeste Koelveld

Natalya Fadayevea

[Page 3]

1 T. Galati

2 T H O M A S G A L A T I, called as a

3 witness, having been first duly sworn by a

4 Notary Public of the State of New York, was

5 examined and as follows:

6

7 MR. EISENSTEIN: I want to put on

8 the record part of the terms in which

9 this deposition is being conducted.

10 We have agreed that the entire
11 deposition is confidential for 30 days
12 after delivery of the transcript to the
13 defendants.

14 So that, you, Peter have the
15 opportunity to review the transcript to
16 determine what, if anything, you and
17 your client feel needs to be kept
18 confidential.

19 30 days after delivery of the
20 transcript, you will identify any
21 portions you want sealed. If there is
22 agreement about sealing, those portions
23 will be sealed. If plaintiff's counsel
24 disagrees, the matter is to be submitted
25 to the court and the portions you have

1

2 designated are under a protective order
3 pending a decision. That pending a
4 decision on your request, that it be
5 sealed.

6 If a part wishes to append the
7 portion of the deposition transcript to
8 its court's submission, the filing will
9 be done under protective order setting
10 forth a procedure for determining
11 whether the attachment itself shall be
12 sealed and disclosed, outlined in
13 Lugosch, L-U-G-O-S-C-H versus Pyramid
14 Company 435F3D110 second circuit 2006.

15 First of all, I'd like to ascend
16 that that's the agreement that we have
17 made.

18 MR. FARRELL: I concur that the
19 agreement regarding confidentiality I
20 have one question about. I'd like to
21 add, the confidentiality where the five
22 attorneys in the room are not to be
23 disclosed. That's what we mean by
24 confidentiality. You agree?

25 MR. EISENSTEIN: Correct.

1

2

MR. FARRELL: We had agreed that

3

we would in 30 days look at the

4

transcript. You and I had a discussion.

5

If I needed additional time to do the

6

review so I would ask that it come

7

30 days, I will be in contact with you.

8

Rather than having a trigger, put the

9

transcript on the internet, at least we

10

can confer on that point.

11

MR. EISENSTEIN: Peter, we

12

initially agreed 30. That's fine. If

13

you call prior to the 30 days, you're in

14

the middle of a trial. I'm not going to

15

disclose it.

16

If you're otherwise unable to

17

make the decision, we're not going to

18

disclose it. On the other hand, we

19

expect your good faith about not letting

20

that process go on indefinitely.

21

MR. FARRELL: That I concur with

22

upon receiving the transcript. The only

23

part I wasn't sure about is, if there's

24

a disagreement over sealing that part

25

that we want to remain confidential.

1

2 Did you in your recitation put the
3 burden on one of us in particular?

4 MR. EISENSTEIN: Yes, I thought
5 we had agreed that the presumption is to
6 be disclosed. In other words, we
7 started out and plaintiffs did not agree
8 that the presumption was going to be
9 confidential. Because the presumption
10 is to be disclosed, you're the ones that
11 are pushing the rock up the hill about
12 sealing it.

13 In other words, unless you
14 prevail in persuading the court that the
15 section needs to be sealed, then it
16 would be disclosed. Presumption is
17 disclosure, presumption of
18 confidentiality. Look at our exchange
19 of letters. That was one of the things
20 which clearly in my view we agreed upon.

21 MR. FARRELL: I'll reserve my
22 right to look at that. I'm not going to
23 take issue on that. I want to add that
24 this deposition is pursuant to an
25 agreement between the parties to conduct

1
2 some voluntary discovery in response to
3 counsel's motion of, I believe it is,
4 October of 2011, and that voluntary
5 discovery is set out. The parameters
6 are set out in letter and e-mail
7 correspondence between counsel for the
8 parties and specifically there are at
9 least five letters that are set out.

10 The dates are January 3rd, 2012,
11 January 24, 2012. February 2nd, 2012,
12 February 29, 2012 and March 30, 2000 the
13 1, 12 March 3 0, 2012.

14 While we call this voluntary
15 discovery, we have also reserved our
16 rights regarding the duration of the
17 deposition and that's set forth in those
18 correspondence.

19 Finally, I would like to request
20 review and in signing as contemplating
21 under federal rules civil procedure 30
22 rules 30E, which is a separate request
23 other than or in addition to the 30-day
24 review for the confidentiality.

25 MR. EISENSTEIN: I don't think we

1

2 would have an objection to signing, but
3 if review in signing is going to extend
4 the period during which we have agreed
5 to keep it confidential, that is
6 certainly not something that we had
7 discussed. I don't see any reason why
8 the review for the purpose of signing
9 can't go on concurrently with your
10 review.

11 I'm not sure whether you're
12 suggesting that that is an additional
13 period of time.

14 MR. FARRELL: I wasn't
15 addressing the time period right now.
16 What I was addressing was, in addition
17 to having the ability to deem things
18 confidential, I explicitly want the
19 right to review as contemplated under
20 the federal rules. That's usually done
21 as a review and signing of the
22 transcript under Federal Rule 30,
23 Subsection E.

24 MR. EISENSTEIN: If all you're
25 saying is you want to invoke 30E, this

1 T. Galati
2 is a deposition in an action pending in
3 the United States District Court for the
4 Southern District of New York.

5 It's governed by the federal
6 rules. I don't know what else to say
7 about that.

8 You're invoking a rule which
9 exists and applies to any deposition as
10 far as I'm concerned. You can either
11 waive reviewing and signing or they can
12 insist in reviewing and signing.

13 On behalf of Chief Galati, you
14 are insisting on reviewing --

15 MR. FARRELL: Yes, we have that
16 right.

17 MR. EISENSTEIN: Anything else?

18 MR. FARRELL: No, that's all
19 that I have.

20 EXAMINATION BY

21 MR. EISENSTEIN:

22 Q With that introduction, good
23 morning. My name is Jethro Eisenstein. I'm
24 one of the attorneys for the plaintiff in
25 the Handschu case. Chief, have you had your

[Page 10]

1 T. Galati

2 deposition taken before?

3 A I have had depositions taken
4 before, yes.

5 Q I just want to review a couple of
6 rules: The court reporter sitting to your
7 left is going to take down every word that
8 you say and every word that I say. Do you
9 understand that?

10 A Yes.

11 Q Do you understand the oath that
12 you take to tell the truth is the same oath
13 that you take in court?

14 A Yes.

15 Q Do you agree to answer the
16 questions out loud with words because the
17 court reporter can't take down nods of the
18 head?

19 A Yes.

20 Q I'm going to ask you to wait
21 until I finish a question so that we get a
22 clean record. Sometimes it's hard to
23 discipline oneself, but if you wait until
24 I'm done, she gets the question and then the
25 answer and we have a clean record. Okay?

[Page 11]

1 T. Galati

2 A Yes.

3 Q If I ask you a question that is
4 not clear to you, please don't guess at my
5 question, just tell me you don't understand
6 and I'll ask the question in a different
7 way. Okay?

8 A Yes.

9 Q Are you employed by the New York
10 City Police Department?

11 A Yes, I am.

12 Q What is your current rank and
13 command?

14 A I am an Assistant Chief. I am
15 the Commanding Officer of the Intelligence
16 Division.

17 Q How long have you been employed
18 by the New York City Police Department?

19 A This July will complete 28 years.

20 Q How long have you held your
21 current rank?

22 A My current rank, I believe I'm in
23 four years, three or four years.

24 Q How long have you been assigned
25 to the Intelligence Division?

1 T. Galati

2 A Since September of 2006.

3 Q What positions have you held in
4 the Intelligence Division?

5 A I've always been the commanding
6 officer of the Intelligence Division.

7 Q Have you held the position of
8 supervisor in other commands in the police
9 department?

10 A Yes, I have.

11 Q What other commands and what
12 supervisory divisions? You don't have
13 sergeant. Let's just say lieutenant and
14 above.

15 A It may be easier if I go
16 backwards.

17 Q Go backwards.

18 A I'm presently the commanding
19 officer of the Intelligence Division. Prior
20 to that, I was the commanding officer of the
21 gang division. Prior to that, I was the
22 commanding officer of the 46th Precinct.

23 Prior to that, I was the
24 commanding officer of the 47th Precinct.

25 Prior to that, I was the

1 T. Galati

2 commanding officer of the Bronx Anticrime
3 Unit. Prior to that, I was the commanding
4 officer of the Bronx Tracer Unit and prior
5 to that, I was a lieutenant and I was
6 assigned to the Street Crime Unit.

7 Q What is your formal educational
8 background?

9 A I have a bachelors from Empire
10 State. I've also had other certificate
11 programs from the Harvard Kennedy School and
12 the police management of Columbia
13 University.

14 Q What were those certificate
15 programs in?

16 A Harvard Kennedy School was for
17 state and local -- I can't think of the name
18 of the actual program, but it was for state
19 and local. Not law enforcement, it was for
20 municipal, I guess.

21 Q But, it's related to law
22 enforcement?

23 A No, it's related to many
24 different issues.

25 Q And the Columbia University

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1 T. Galati

2 program is?

3 A A business school for police
4 executives.

5 MR. EISENSTEIN: Off the record.

6 (A discussion was held off the
7 record.)

8 Q Did you review any documents in
9 preparation for this deposition today?

10 A Yes.

11 Q What did you review?

12 A I reviewed the police
13 department's Handschu Guidelines and I did
14 look through some material that was provided
15 to me, I believe the same material that you
16 have. I did parous.

17 Q The material, the Zone Assessment
18 Unit reports?

19 A Yes.

20 MR. EISENSTEIN: Would you mark
21 this as Exhibit 1 for today's date.

22 (Plaintiff's Exhibit 1, a
23 document, was marked for identification,
24 as of this date.)

25 Q Chief, I'm showing you what had

1 T. Galati

2 been marked as Plaintiff's Exhibit 1. Do
3 you recognize this document?

4 A I do recognize this document.

5 Q Can you tell us who prepared this
6 document?

7 A I cannot tell you who prepared
8 this document. I seen this document for the
9 first time when it was published in the AP
10 Article.

11 Q Do you know whether it is a
12 document that was prepared within the New
13 York City Police Department?

14 A I can't tell you definitively
15 that it was prepared by someone in the
16 police department. It appears to have the
17 police department's logo on it, but I have
18 been unable to find who authorized it and
19 find it in any of my records or the
20 department's records.

21 Q When it was published by the AP
22 Article, did you inquire about the origins
23 of this document?

24 A Yes.

25 Q Am I to understand that you were

[Page 16]

1 T. Galati

2 not able to find anybody in the Intelligence
3 Division who knew what the origins were?

4 A Yes.

5 MR. EISENSTEIN: Can you mark
6 this as Exhibit 2?

7 (Plaintiff's Exhibit 2, a
8 document, was marked for identification,
9 as of this date.)

10 Q Do you recognize this document?

11 A Yes.

12 Q Can you identify what this
13 document is?

14 A This is a section out of the
15 police department's organizational guide.

16 Q Is the first page of it an
17 organizational chart for the Intelligence
18 Division as of 2/15/08?

19 A Yes, 2/8/08.

20 Q Sorry, 2/8/08. The Demographics
21 Unit, would that name exist at the present
22 time in the New York City Police Department?

23 A Not at the present time.

24 Q The Zone Assessment Unit was
25 formerly known as the Demographics Unit?

1 T. Galati

2 A Yes.

3 Q When did the change from
4 Demographics Unit to Zone Assessment Unit
5 occur?

6 A I couldn't give you an exact
7 date, but I believe it was sometime in 2010.

8 Q What was the reason for the
9 change of name?

10 A It was a different way that we
11 wanted to look at deployment. We were
12 breaking up deployments into zone, so that
13 could correspondence with an analyst who
14 also had a zone deployment.

15 Q When it was called the
16 Demographics Unit, who did the Demographics
17 Unit report to?

18 A Clarify your question. Direct
19 report?

20 Q Yes. Who did the Demographics
21 Unit operatives directly report to?

22 A The people assigned to the
23 Demographics Unit reported to a sergeant,
24 sergeants actually in the Demographics Unit.

25 Q In turn, who did they report to?

[Page 18]

1 T. Galati

2 A The sergeants reported to a
3 lieutenant.

4 Q Was the lieutenant in the
5 Demographics Unit?

6 A The lieutenant would oversee more
7 than the Demographics Unit. He would
8 oversee other units as well.

9 Q What other units did the
10 lieutenant oversee?

11 A Its changed over the years. I'm
12 not exactly positive. Presently, I believe
13 he oversees the Citywide Debriefing team and
14 the Demographics team, the zone assessment
15 team, and I think that's all he oversees
16 right now. It may have been different at
17 different times.

18 Q You're talking about now when
19 it's called the Zone Assessment Unit, right?

20 A Yes.

21 Q Was that different when it was
22 called the Demographics Unit in terms of the
23 lieutenant?

24 Who did the lieutenant supervise?

25 Were one of the things he or she was

1 T. Galati

2 supervising was the Demographics Unit, also
3 Citywide Debriefing?

4 A The lieutenants have been
5 assigned to different people at different
6 times. I am not exactly positive what other
7 ones. I believe -- I don't want to guess
8 what ones they were. We switched it.

9 Q Are there persons assigned to the
10 Demographics Unit? Withdrawn.

11 Were there persons assigned to
12 the Demographics Unit who were referred to
13 as Rakers?

14 MR. FARRELL: Objection.

15 A The first time when I heard the
16 Rakers is when the AP Articles came out.
17 However, I believe the term would be the
18 people assigned within then Demographics,
19 Zone Assessment Unit.

20 Q Were there persons within the
21 Demographics Unit who were referred to as
22 mosque crawlers?

23 MR. FARRELL: Objection.

24 A Again, the term mosque
25 crawlers -- the first time I ever heard that

1 T. Galati
2 was from the AP Article. I've never heard
3 anyone in the division reference mosque
4 crawlers.

5 As I mentioned, Rakers two, that
6 term I've been assigned to since 2006 and
7 I've never heard that term being used other
8 than when it came out in the AP Articles.

9 Q Are the persons, who have been
10 assigned to the Demographics Unit and then
11 to the Zone Assessment Unit, members of the
12 New York City Police Department?

13 By members, I mean graduates of
14 the police department, police academy
15 assigned to shield and tax ID number.

16 A Yes, they were sworn members of
17 the NYPD.

18 Q What formal training have the
19 persons had, the members of the NYPD
20 assigned to the Demographics Unit?

21 Let me break it down. What
22 formal training did members of the NYPD,
23 assigned to the Demographics Unit, receive
24 before being deployed in the Demographics
25 Unit's activities?

1 T. Galati

2 MR. FARRELL: Objection.

3 A There's a lot of training that
4 officers get when they are in the academy
5 and outside of the academy during the course
6 of their career, you know. You're asking
7 for a specific time?

8 Q Let me be more specific. I'm
9 asking about the training received by
10 members of the force who were assigned to
11 the Demographics Unit.

12 I'm asking about the training
13 received by members of the force who were
14 assigned to the Demographics Unit before
15 they were deployed in their capacity as
16 members of the Demographics Unit.

17 In other words, training
18 specifically to the tasks that they would be
19 undertaking as members of the Demographics
20 Unit?

21 A Well, members of the Demographics
22 Unit/Assessment Unit receive training that
23 we give every year. We go to an annual
24 training, more specifically to their
25 assignments.

1 T. Galati

2 They are given Handschu training
3 based on the Handschu Guidelines that is
4 provided by the legal team that we have
5 assigned to the Intelligence Division.

6 Q Is there written material
7 provided to them in connection with the
8 Handschu training?

9 A The Handschu Guidelines which is
10 in the patrol guideline, written material.
11 I believe the other training does not have
12 any other handouts other than the Handschu
13 Guideline.

14 Q Before being deployed as members
15 of the Demographics Unit or the Zone
16 Assessment Unit, do they receive any other
17 training detailing what they are expected to
18 do?

19 A Yes, we do inform them. If you
20 want to call it a specific training, we do
21 inform them about things that they should
22 do. Yes, I don't want to call it official
23 training, if that's what you're asking for.

24 Official is not the word I'm
25 looking for. They are instructed on what

1 T. Galati

2 they should do.

3 Q Who issues the instructions to
4 them about what they are to do?

5 A Their instructions would come
6 from their direct supervisor. Their
7 instructions could come from me. I do know
8 that our legal counsel has sat down with the
9 entire unit at one point, so instructions
10 has come from our legal council.

11 Q Have you personally had
12 interaction with the members of the force
13 who were assigned to the Zone Assessment
14 Unit?

15 I can call it that and you'll
16 tell me if the answer would be different
17 than when it was the Demographics Unit;
18 okay?

19 A Yes.

20 Q Have you personally issued
21 instructions to members of the Zone
22 Assessment Unit?

23 A I would say I have personally
24 issued instructions, but I may have done it
25 through a chain of command. I would direct

1 T. Galati

2 something and then it would be given down to
3 the ranks, to them.

4 Q What were the members of the Zone
5 Assessment Unit told that they are to do?
6 What are the instructions that are given to
7 them?

8 MR. FARRELL: Objection.

9 A It's a broad statement. If
10 you're asking me what their duties and
11 responsibilities are, I don't know what your
12 question is.

13 Q Okay. What are the duties and
14 responsibilities of the members of the Zone
15 Assessment Unit?

16 A The function of the Zone
17 Assessment Unit is to -- let me begin by
18 saying that in the beginning of the Zone
19 Assessment Unit, the function of the Zone
20 Assessment in the post 911 time was to go
21 out and go through the different communities
22 in New York City and help us identify
23 different communities that would be
24 considered communities that have people that
25 live in it from countries of concern.

1 T. Galati

2 Q How were they told to go about
3 identifying such people?

4 A Well, as I said, this is directly
5 after 911, and countries that are concerned
6 were identified based on the 911 attack and
7 other attacks that happened throughout the
8 world, the people who committed those
9 attacks;

10 Islamics that have been
11 radicalized through violence that committed
12 those came from countries. Those countries
13 were identified. The Demographics Unit were
14 to go out to communities and tell us if
15 these communities represented the same
16 countries of concern where these Islamic
17 radicles came from.

18 Q Take a look at Exhibit 1. On the
19 fifth page, there's a page headed ancestries
20 of interest.

21 A Yes.

22 Q Does that correspond to the
23 communities that you were sending people out
24 to look into?

25 MR. FARRELL: Objection.

1 T. Galati

2 A Are you asking me if this
3 corresponds to the countries of concern?

4 Q Correct.

5 A I would say that most of them
6 here do, but not all. Yugoslavia is no
7 longer a country. Chechnya is part of
8 Russia.

9 Most of the other countries
10 themselves are at Akrotiri and American black
11 Muslim is not a country.

12 Q Take a look at page five of
13 Exhibit 2. I'm looking at the paragraph on
14 page five on Demographics Unit.

15 Was it a function of the
16 Demographics Unit to develop a comprehensive
17 analysis and understanding of the
18 demographics trend throughout New York City?

19 A I don't believe that is one of
20 their functions. They are not analysts, so
21 they are not trying to analyze, but, yes,
22 they are supposed to understand the trend,
23 the demographics trend in the city.

24 Q What does that mean, demographics
25 trend? What's your understanding of that

1 T. Galati

2 phrase?

3 A When the Demographics Unit
4 started, it was started with, you know,
5 terrorism in mind, post 911. At that point,
6 nobody knew where the next attack was
7 coming.

8 All we knew was, there had been
9 people from countries of concern that
10 committed this attack. In order to fight
11 terrorism, we needed to know where people
12 lived from countries of concern that could
13 either recruit, hide or secrete themselves
14 in these communities that were radicalized
15 towards violence and we needed to know where
16 they were, to identify those countries of
17 concern, to find those people that were
18 radicalized towards violence.

19 Q That's your understanding of the
20 phrase demographic trends?

21 A Yes.

22 Q That's what their function is?

23 A Yes.

24 Q Were members of the Demographics
25 Unit also to conduct investigations and

1 T. Galati

2 gather intelligence information as directed?

3 A Based on the Handschu Guidelines,
4 the term investigations means the gathering
5 of information. So, based on the Handschu
6 Guidelines, I would say that that is
7 correct. As far as the police department's
8 terminology that I use in investigation,
9 they do not conduct investigations, they
10 gather information.

11 Q When you say the terminology that
12 you use about investigations, what is in
13 your terminology? What is an investigation?

14 A In traditional department
15 terminology of what an investigation is,
16 there's a crime or a person that is being
17 investigated because crime is committed, and
18 we have to find out who did this crime.

19 Or, we have information that the
20 crime will be committed and we're going to
21 conduct an investigation on that crew. That
22 is what an investigation is. An
23 investigation could be from a car accident.
24 An investigator has to investigate how the
25 car accident occurred.

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1 T. Galati

2 That's how I understand the term
3 of an investigation from traditional
4 department terminology.

5 Q Do I understand you to be saying
6 that using that terminology "Demographics
7 Unit" was not to engage in investigations,
8 as you just defined it?

9 A The demographic's
10 responsibilities was to collect information
11 on areas so that we can identify countries
12 of concern, where people that were being
13 radicalized towards violence, Islamics
14 radicalized towards violence.

15 Q Was the function of the members
16 of the force assigned to the Demographics
17 Unit to make assessment regarding the
18 potential for World events to impact upon
19 local communities?

20 A I don't believe it's their job to
21 make an assessment. However, through the
22 rest of the Intelligence Division, we
23 monitor World events.

24 If World events dictated that a
25 particular area may become more of a

[Page 30]

1 T. Galati

2 concern, then the Demographics or assessment
3 unit would go to that general area.

4 Q Was it in connection with that
5 activity that you just described? Was it
6 their job to collect information about how
7 World events were impacting local
8 communities for the analyst to analyze?

9 A I would say that if there was an
10 event in the world that resulted in some
11 type of violence or disruption, anywhere in
12 the World or within the state that was
13 related to terrorism activity, yes, they
14 would go.

15 They would basically see if it's
16 going to have any implications in New York
17 City.

18 Q Would it be fair to say that
19 their job was to see whether people were
20 talking about it and how people were talking
21 about it?

22 MR. FARRELL: Objection.

23 A Their job was, if they hear
24 people talking about it, you know, they
25 should inform us. If what they're hearing

1 T. Galati
2 is hostility towards the United States or to
3 the general public at large, you know, as a
4 result of these events, would something
5 happen here as a result? Their job is to
6 listen for that.

7 Q You used the word hostility
8 towards the United States. I want to make
9 sure that I don't misunderstand you.

10 A lot of people talk. They don't
11 like what's going on, what this person is
12 doing, they don't like what the United
13 States is doing.

14 Are you talking as broadly as the
15 hostility in the United States, in the sense
16 of expressions of opinions that were
17 contrary to the policies of the United
18 States --

19 MR. FARRELL: Objection.

20 Q -- or objected to the policies of
21 the United States?

22 A I would say that it doesn't even
23 have to involve the United States at all;
24 its general policing to prevent violence.

25 There is plenty of strength in

1 T. Galati

2 Pakistan where there's violence between shia
3 muslims and sunni muslims.

4 There's violence between these
5 two sections of the religion. It could
6 escalate and happen here. It doesn't have
7 to necessarily relate to the United States
8 itself.

9 It could have just the general
10 public or within that community itself.
11 It's a Pakistani community. It could be
12 among Pakistani to each other.

13 It's broader than hostility
14 towards the United States, hostility in the
15 community.

16 Q Were members of the force
17 assigned to the Demographics Unit instructed
18 to bring back information about expressions
19 of opinion whether or not they related to
20 violence or potential violence?

21 A Say the question again.

22 Q What I'm trying to find out is,
23 were the instructions given to them to
24 report back about what they were hearing
25 broad enough?

1 T. Galati

2 For example, to call for them, to
3 report back? Let me just give you an
4 example about someone commenting to another
5 person from his community about the state of
6 the union message delivered by President
7 Bush.

8 MR. FARRELL: Objection.

9 A I guess I would have to see that
10 comment. I would have to see what that
11 comment is to make a determination.

12 It's not something that they
13 should bring to us. It depends on the
14 context, it depends on the time, it depends
15 on who is talking about it. I couldn't
16 answer that question.

17 Q Fair enough. Since the
18 instructions have to be given before going
19 out, what I'm trying to get from you is
20 whether the instructions were as broad as
21 simply telling us what you hear, whatever it
22 is or were they limited in any fashion by
23 the instructions that came from you through
24 the chain of command?

25 Were they limited in any fashion

1 T. Galati

2 or were they, just to be clear, bringing
3 back everything you hear?

4 MR. FARRELL: Objection.

5 A No, their instructions were not
6 to go and bring back every conversation that
7 they heard. That's not what their
8 instructions were.

9 Q What was given to them in way of
10 instructions to guide their judgement about
11 what to bring back?

12 MR. FARRELL: Objection.

13 MR. EISENSTEIN: He says that
14 for a reason, but it doesn't mean you
15 should answer. He'll be very clear if
16 it's something he doesn't want you to
17 answer.

18 A A lot of conversation that has
19 been brought back has value. On the
20 surface, it may seem valuable. Overall
21 conversation may relate to where people are
22 at that particular location, you know. To
23 get a little bit deeper, I think that a
24 conversation overheard by people in the
25 Lebanese cafe may indicate to us that they

1 T. Galati

2 are from South Lebanon or North Lebanon.

3 Although it may seem not
4 important when analysts look at it, an
5 analyst can understand that a particular
6 town that was mentioned in a conversation
7 may be in South Lebanon.

8 That may be an indicator of
9 possibility that that is a sympathizer to
10 Hezbollah because Southern Lebanon is
11 dominated by Hezbollah.

12 Q I understand what you're saying.
13 A lot of stuff can be a risk, useful
14 information. What I'm trying to find out
15 is, somehow or another, the people assigned
16 to the Demographics Unit or the Zone
17 Assessment Unit are being asked to
18 distinguish between what they should report
19 about and what they shouldn't be reporting
20 about. They have to make some judgements
21 about what to report about, correct?

22 A Yes. I would have to say they
23 would make some suggestions.

24 Q What are given by way of
25 instructions to help guide their use of

1 T. Galati

2 their judgement about what to report about?

3 A If we deployed them because of an
4 event that took place in a particular part
5 of the World, a drone attack, we would want
6 to know and we would instruct them that
7 people are upset about this drone attack.

8 If they are, that's something
9 that would be important for us to know, that
10 would be something we would want to know.

11 If they were talking about something that
12 would help us identify what religion or what
13 type of people they are from the country of
14 concern that we're trying to identify, that
15 would be something that we would want them
16 to report.

17 So, it's twofold. If there's a
18 reaction to something or if it's going to
19 help us, their main purpose is just to help
20 us identify where in the city we would find
21 people from some countries of concern, that
22 Islamics radicalized towards violence would
23 hide or recruit.

24 Q I understand what you're saying
25 about telling us everything you hear about a

1 T. Galati

2 drone attack, for example.

3 If there isn't a specific event
4 that has occurred, are general instructions
5 given to help guide their judgement about
6 what information to bring back?

7 MR. FARRELL: Objection.

8 A Their main function is to
9 catalogue those locations so we can
10 understand what countries of concern they're
11 from, their observations and overheard
12 conversations.

13 When they are not deployed in
14 relation to an event, should they hear an
15 overheard conversation that I would
16 consider, and I'll use the word alarming or
17 aggressive. Those kinds of conversations we
18 would want them to bring back.

19 Q Was it part of the job of members
20 of the force assigned to the Demographics
21 Unit to analyze religious institutions,
22 locations or congregations?

23 MR. FARRELL: Objection.

24 A The Zone Assessment Unit/
25 Demographics Unit does not do any analytical

1 T. Galati
2 work when it comes to what their function
3 is. They have identified religious
4 institutions to the extent that we can
5 understand what country or countries of
6 concern would go to those particular
7 locations.

8 Q Have they identified those
9 locations by going to them?

10 MR. FARRELL: Objection.

11 A Yes. Are you asking me -- can
12 you rephrase the question?

13 Q Have members of the force, who
14 are assigned to what's now called the Zone
15 Assessment Unit, visited religious
16 institutions, congregations?

17 MR. FARRELL: Objection.

18 A Let me state that, since I'm here
19 in 2006, members of the Demographics Unit,
20 it is our practice and policy that they do
21 not go into religious institutions unless
22 there's a need to because we have to
23 identify what type of institutions.

24 It's not always readily available
25 from the outside. However, we prefer that

1 T. Galati

2 they do it from the outside, if possible.

3 However, when 911 happened and then this
4 unit stood up and we had to understand a
5 little bit more and gain knowledge, it was
6 necessary to go inside those locations in
7 order to determine what type of congregation
8 it was and what people, from what countries
9 of concern would be there.

10 So, for identification reasons
11 early on, they did go into some of those
12 locations. It is not their normal practice
13 and it is not their practice today.

14 Q When you say early on, are you
15 talking about things that occurred prior to
16 your being in the Intelligence Division?

17 A Yes, I'm talking about early on
18 when the Demographics Unit was first
19 deployed.

20 Q Were those activities, religious
21 institutions going on when you became
22 commander of the Intelligence Division?

23 MR. FARRELL: Objection.

24 A As I stated, I came in 2006 and
25 that is not our normal practice or policy.

1 T. Galati

2 I cannot definitively tell you that it has
3 never happened if it is a new location, a
4 new mosque that we have never seen before.

5 That is not readily available
6 based on signs. They may have. It is not
7 our policy nor is it our practice to have
8 them do that.

9 When I said early on, I am going
10 back to the original starting point of the
11 unit, when it was necessary to first really
12 determine what kind of location it was.

13 MR. EISENSTEIN: Can you mark
14 this as Exhibit 3.

15 (Plaintiff's Exhibit 3, a
16 document, was marked for identification,
17 as of this date.)

18 Q I've handed you what's been
19 marked as Plaintiff's Exhibit 3. My
20 question is, do you recognize this document?

21 MR. FARRELL: Off the record.

22 (A discussion was held off the
23 record.)

24 A [REDACTED]

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2 [REDACTED]

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5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

[REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

22 MR. FARRELL: I guess my trouble

23 with the question is, the deposition is

24 about visiting public places and events

25 and terms of the public.

1 T. Galati

2 The question is open-ended and
3 you aren't putting it within that
4 framework. To the extent that your
5 answers call for something beyond that,
6 that's where I have an objection and I'm
7 instructing the witness not to answer.

8 MR. CHEVIGNY: Wouldn't mosques
9 be considered places open to the public?

10 MR. FARRELL: I can consult with
11 the witness to respond.

12 MR. EISENSTEIN: Let me make it
13 clear. I understand what this
14 deposition is about. I'm trying to find
15 out whether using that power under the
16 Handschu Guidelines are identified in
17 882, I'm trying to guess how many
18 mosques have been visited and my way
19 into that which is perfectly
20 appropriate.

21 I haven't gone into anything
22 that's outside the scope of what I was
23 going to be asking about in my view.

24 MR. FARRELL: Hypothetically,
25 there's a possibility that mosques were

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2 visited, not under 882, but pursuant to
3 an authorized Handschu investigation.

4 To answer that question, it's not
5 making a distinction.

6 MR. EISENSTEIN: You said it's
7 hypothetical. To find out how that is
8 so, ask the witness.

9 MR. FARRELL: I need to confer
10 with the witness.

11 A The Demographics Unit has
12 identified mosques throughout the city and
13 the ethnic community or communities that
14 would go to that mosque. What the exact
15 number is, I couldn't tell you the exact
16 number.

17 Q Was the Demographics Unit tasked
18 with identifying mosques around the city
19 when the unit stood up, as you said?

20 A Yes.

21 Q Do you know when the Demographics
22 Unit was formed?

23 A I don't have an exact date, I'm
24 going to say early in 2003 sometime.

25 Q Did members of the Demographics

1 T. Galati

2 Unit identify mosques and the community that
3 they related to by visiting the mosques?

4 MR. FARRELL: Objection.

5 A The purpose of the Demographics
6 Unit and the Zone Assessment Unit was to
7 identify mosques, to identify the ethnic
8 community that would be associated with the
9 mosques.

10 If they could do it without the
11 outside, they would do it from the outside.
12 Often, they were unable to do that and they
13 would then go inside. I'm talking early in
14 the unit's existence.

15 If they needed to, they would go
16 inside the location in order to determine
17 what ethnic community, what signs to
18 describe, what ethnic community would attend
19 that particular mosque.

20 As I did say, that is not the
21 practice and policy since I've been here in
22 2006, and I think I said earlier that unless
23 for some reason there was no other way to
24 determine that factor, I'm not saying
25 definitively that's not the practice, since

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2 I'm assigned to the unit, that it has been
3 done.

4 Q I think you indicated when
5 there's a new mosque identified even today,
6 it would be part of the job of the
7 Demographics Unit to try to figure out who
8 goes to that mosque; am I correct?

9 MR. FARRELL: Objection.

10 A If we became aware of a new
11 mosque, we would want to know what ethnic,
12 community would attend that mosque.

13 Q If necessary, if you couldn't do
14 it from the outside, the Demographics Unit
15 would visit; is that correct?

16 A Are you asking me today?

17 Q Today.

18 A If the Demographics Unit was
19 unable to determine what kind of mosque it
20 was, would they go inside?

21 Q Yes.

22 A I would want to know what kind of
23 mosque, what kind of congregation it was, I
24 would want to know. I would want to know if
25 they exhausted all other means and that was

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2 the only way. I would say that they would,
3 but they haven't.

4 It has not come out at least
5 since I'm here. I can't recall instances
6 where that has happened.

7 Q Have there been some number of
8 mosques in New York City that have been
9 identified by the NYPD as mosques of
10 concern?

11 MR. FARRELL: Objection. I need
12 to consult the witness whether privilege
13 applies.

14 I have my objection noted. You
15 can answer the question.

16 THE WITNESS: Can you re-ask the
17 question. Can I consult with you again?

18 MR. FARRELL: Sure.

19 (Recess taken).

20 A The Demographics Unit's job is
21 not to identify mosques of concern.
22 However, I can't tell you that when they
23 identify mosques, that it may indicate that
24 it's a mosque of concern.

25 That's not their function and

1 T. Galati

2 that's not who identifies mosques of
3 concern. Mosques of concern are identified
4 under authorized Handschu investigations.

5 Q Okay. What is mosque of concern?
6 Is it a phrase that's used by the NYPD? Is
7 that correct, mosque of concern?

8 MR. FARRELL: Objection.

9 A I don't use the term mosque of
10 concern nor do people in the Intelligence
11 Division since 2006 use the word mosque of
12 concern. I can't tell you that earlier on
13 that terminology may have been used.

14 Q Is the expression mosques of
15 interest used by the Intelligence Division?

16 MR. FARRELL: Objection. There
17 has to be a way for us to continue. The
18 question that is asked generally about
19 Intelligence Division practices outside
20 of section 882 of the Handschu
21 Guidelines, the practicality, the
22 Intelligence Division, operations that
23 operate under other parts of the
24 Handschu Guidelines, that's the
25 difficulty that I have. I want you to

1 T. Galati

2 understand the difficulty I'm having
3 with the way the question is being
4 phrased.

5 We'll have to continue to consult
6 about privilege. I don't know if you
7 can structure the questions to get us
8 within the scope of 882.

9 If you recall the initial notice
10 of deposition, it has the categories.
11 It wasn't limited to 882. It was not
12 going to be about general intelligence
13 practices or investigations, authorized
14 Handschu investigations. You agreed
15 then, you revised the categories limited
16 to 882.

17 MR. EISENSTEIN: I'm aware of
18 that and I'm asking questions that are
19 geared to address specifically 882, but
20 I need to get into that subject in some
21 way.

22 Obviously, you're free to consult
23 about law enforcement privilege. I need
24 to ask the questions to get there. So
25 far, the result of each of the

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2 consultations that you've had had been
3 that you permitted the witness to
4 answer.

5 If you need to do it again, do it
6 again. I'm mindful, Peter, of the
7 constraints of the deposition, if you
8 you have reserved the right to shut this
9 deposition down.

10 I don't think I'm going beyond
11 the bound. You don't have to warn me if
12 I go beyond the bound. Let's take the
13 question one at a time.

14 MR. FARRELL: I was trying to do
15 it in a collegiate way.

16 MR. EISENSTEIN: I appreciate
17 that. I don't think that I'm straining.
18 I've asked a preliminary question about
19 a term and I want to know about that
20 term, and then I'm going to ask whether
21 that term has any significance about
22 what this deposition is about.

23 Q Having said all those things, do
24 you remember the question?

25 MR. FARRELL: Can you restate

1 T. Galati

2 it?

3 Q Has the Intelligence Division
4 used the expression mosques of interest?

5 A Can you say it one more time?

6 Q Does the Intelligence Division
7 use the expression mosques of interest?

8 MR. FARRELL: You have my
9 objection.

10 A I believe that the term mosques
11 of interest or mosques of concern had been
12 used in the past. However, that's not a
13 determination that's made by the
14 Demographics Unit, but I'm not saying that
15 the term has not been used.

16 Q In your understanding of the
17 Handschu Guidelines, does the designation of
18 a mosque as being of concern or of interest
19 give the NYPD in and of itself authority?

20 MR. FARRELL: I'm going to
21 object. I'm going to deem it outside
22 the scope of the deposition.

23 MR. CHEVIGNY: You're not
24 allowing him to answer?

25 MR. FARRELL: Yes.

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2 Q When you've told me that the
3 Demographics Unit does not designate any
4 interest or concern, that that's not their
5 job to designate --

6 MR. FARRELL: Objection.

7 A I did not state that. The
8 Demographics Unit has used the term of
9 concern or interest. However, the way I am
10 interpreting concern, interest is related to
11 stuff that's learned outside of 882 with
12 authorized Handschu investigations.

13 Q Are you saying that that
14 designation has not occurred as a result of
15 a visit under 882?

16 MR. FARRELL: Objection.

17 A Under 882, where the Demographics
18 Unit has visited other establishments, they
19 will use a terminology that may be location
20 of concern or a hotspot. So, in other
21 documents or other identifiable locations,
22 they used that terminology.

23 Q What I'm asking is, have they
24 used that terminology as a result of
25 information gained from a visit under 882?

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2 MR. FARRELL: Objection.

3 A Are we talking about commercial
4 establishments?

5 Q Well, I will ask about that.
6 Right now I'm asking you about mosques.

7 A I don't believe that they make
8 that determination. Fair function was to
9 identify the mosques in the community,
10 ethnicity that would go to the mosques.
11 They don't make that determination if it's a
12 mosque of concern or a mosque of interest.
13 If the way I interpreted it --

14 Q Is the determination that a
15 mosque of concern or of interest, which I
16 understand is made by someone else, not the
17 Demographics Unit, is made on the basis of
18 information obtained in the course of 882
19 visits?

20 MR. FARRELL: Objection.

21 A I could not definitively tell you
22 that there may be a small piece of something
23 that may help determine that, but I will
24 tell you that not in the sense of as I see
25 mosques of concern or of interest, I'm

1 T. Galati
2 talking about authorized Handschu
3 investigations.

[illegible]

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2 [REDACTED]

3 **A** [REDACTED] [REDACTED] .

4 However, I will tell you that Demographics
5 visits mosques and identifies mosques.

6 Q Just so that we're clear, is it
7 your understanding that those visits are
8 authorized under 882 of the Handschu
9 Guidelines?

10 MR. FARRELL: Objection. You're
11 asking from a legal conclusion?

12 MR. EISENSTEIN: Anybody who has
13 to apply a legal rule can be asked about
14 their understanding and their rule. So
15 having said that, let me ask the
16 question again.

17 Q Is it your understanding that
18 those visits to the mosques by the
19 Demographics Unit are authorized under
20 section 882 of the Handschu Guidelines?

21 MR. FARRELL: Objection.

22 A The Demographics Unit identifies
23 locations that would be frequently by
24 communities of countries of interest. By
25 identifying these locations, to help us

1 T. Galati

2 identify the communities, with the goal of

3 trying to detect or prevent terrorism

4 activity, by cataloguing those locations, to

5 include mosques is not investigating

6 political activity. So, I would say that

7 them visiting by itself does not fall into

8 investigating political activity.

9 Q Am I correct that what you're

10 saying in your understanding is the visits

11 to the mosques aren't even covered by the

12 Handschu Guidelines?

13 MR. FARRELL: Objection.

14 A I'm saying the cataloguing of

15 mosques does not necessarily fall under the

16 investigation of political activity.

17 Q I'm a little concerned. I think

18 we're talking slightly passed each other.

19 What I'm hearing you say is that the visits

20 to mosques for the purpose of cataloguing

21 them is not gathering information about

22 political activity if you don't even get to

23 the Handschu Guidelines? Is that what

24 you're saying?

25 In other words, you don't have to

1 T. Galati
2 identify a provision of the Handschu
3 Guidelines that would authorize it because
4 it's not even covered by the Handschu
5 Guidelines?

6 MR. FARRELL: Objection.

7 A No. What I'm saying is that
8 their function by itself by just cataloguing
9 may or may not fall into that depending on
10 what the result of that visit is. But, the
11 basic identification of locations and
12 cataloguing by itself is not investigations
13 of political activity.

14 Q So that, a demographics member of
15 the force assigned to the Demographics Unit
16 who goes to a mosque for the purpose of
17 finding out what kind of a mosque it is and
18 what community goes there is not using the
19 authority that is granted under this
20 section?

21 I'm going to quote, "For the
22 purpose of detecting or preventing terrorist
23 activity, the NYPD is authorized to visit
24 anyplace and attend any event that is open
25 to the public on the same terms and

1 T. Galati
2 conditions as members of the public
3 generally.

4 No information obtained from such
5 visits shall be retained unless it relates
6 to potential unlawful or terrorist
7 activity."

8 My question is, are you saying
9 that, in your understanding, when a member
10 of the Demographics Unit goes to a mosque
11 for the purpose of finding out who goes
12 there, what community goes there, what
13 community it's related to, that member of
14 the force assigned to the Demographics Unit
15 is not using the authority granted by the
16 section?

17 MR. FARRELL: Objection. I'm
18 objecting. It calls for a legal
19 conclusion.

20 You can answer the question.

21 A That section applies to a broader
22 goal with the Handschu Guidelines. 882 is
23 one part of a broader guideline, the
24 Handschu Guidelines, and the Handschu
25 Guidelines describe the main function of the

1 T. Galati

2 investigation of political activity.

3 What I'm saying is, by itself
4 there are levels that can and cannot take it
5 into 882.

6 By itself, cataloguing locations,
7 to know the ethnicity of the community is
8 not investigating political activity.

9 Q Let's just take a member of the
10 force assigned to the demographics community
11 goes into a mosque.

12 Are you saying that whether it's
13 covered by the guidelines depends on what
14 that member of the force brings away? In
15 other words, if he only brings away
16 information about the ethnicity of the
17 people at that mosque, it's not covered by
18 the Handschu Guidelines at all?

19 Is that an example of what you're
20 saying or have I got it wrong?

21 MR. FARRELL: Objection.

22 A I think by identifying locations
23 and cataloguing them, finding out the
24 ethnicity by itself, is not investigating
25 political activity.

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2 Q Do you know what instructions
3 have been given to members of the force
4 assigned to the Demographics Unit who are
5 deployed to visit mosques? Do you want to
6 hear that question back?

7 A That question may be different at
8 different times. I can't give you a direct
9 answer. I did answer a question earlier
10 that we tell the officers to try and make
11 observations that can help us identify a
12 location with the goal of trying to find out
13 what country of concern may go there, should
14 we need to identify an Islamic that's
15 Radicalized towards violence, maybe hiding
16 in for police action, should it arise.

17 Q Are members of the force assigned
18 to the Zone Assessment or Demographics Unit,
19 who are deployed to go into mosques, given
20 instructions about section 882 of the
21 Handschu Guidelines?

22 In other words, are they told
23 that information obtained on the visits is
24 not to be retained unless it's related to
25 potential, unlawful or terrorist activity?

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2 MR. FARRELL: Objection.

3 A You stated that members of the
4 unit are being sent into mosques. I didn't
5 state that. I stated to you that the goal
6 is for them to identify the mosque and the
7 community, countries of interest that may be
8 associated with that mosque.

9 However, the Demographics Unit
10 does receive instructions on 882, so they do
11 know what 882 is.

12 Q Is that instruction something
13 that's given on a regular basis, had been
14 given ones? What's the drill in relation to
15 instructions about 882 to members of the
16 Demographics Unit or Zone Assessment Unit
17 going into the community?

18 A I think that we instruct all
19 members of the Demographics Unit on 882 as
20 part of a broader training that we do on all
21 of Handschu, and I will state that they
22 receive training early on. Every member
23 that's assigned to the division received
24 training. I'm aware of counsel giving
25 personal training on the matter at some

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2 point.

3 Every year, every member of the
4 division comes back to training, and then,
5 issues that arise during the course of daily
6 events we have meetings and we bring people
7 in, and if they need to be trained on a
8 particular area there, we'll address it like
9 that. We do many, many things to make sure
10 that everybody understands the entire
11 guideline, not just the 882.

12 MR. EISENSTEIN: Can I have this
13 marked as Exhibit 4.

14 (Plaintiff's Exhibit 4, a
15 document, was marked for identification,
16 as of this date.)

17 Q I've put in front of you what's
18 been marked as Exhibit 4. My first question
19 is, have you seen this document before?

20 A I have seen this document as one
21 of the documents I reviewed that was
22 released by the AP Articles.

23 Q Do you know whether the statement
24 of particular speakers at particular mosques
25 that are reproduced in Exhibit 4 were

1 T. Galati

2 gathered by the Demographics Unit, whether
3 all or any of them were gathered by the
4 Demographics Unit?

5 A I would say that none of this
6 information was gathered by the Demographics
7 Unit.

8 Q What is the basis for that
9 statement?

10 A Can I consult?

11 Q Sure.

12 A This information is gathered
13 based on authorized Handschu investigation.

14 Q The date of this document,
15 Exhibit 4, is before you took command of the
16 Intelligence Division, correct?

17 A Correct.

18 Q You or someone under your
19 direction reviewed those compiled statements
20 and determined that they were all as a
21 result of authorized investigations?

22 A Yes.

23 Q Did you make that determination
24 yourself or did you have someone review this
25 document and determine that?

1 T. Galati

2 THE WITNESS: Can I consult you?

3 MR. FARRELL: Sure.

4 A I know most of these personally
5 with my own knowledge, and the few that I
6 was unaware of, I did have checked.

7 Q I want to direct your attention
8 to an entry on the third page relating to
9 mosque Jade, J-A-D-E, M-A-S-J-I-D,
10 D-A-W-U-D-I on February 6, 2006.

11 Are you able to tell me whether
12 that was one you knew about yourself?

13 A That is not one that I know about
14 myself.

15 Q Are you able to tell me what
16 level of investigation under the Handschu
17 Guidelines these reports come from?

18 In other words, were they from
19 preliminary investigations?

20 MR. FARRELL: Objection. I'm
21 going to instruct the witness not to
22 answer. That's not within the scope of
23 this deposition.

24 Q Does the NYPD use the term
25 rhetoric? Does the Intelligence Division

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1 T. Galati

2 use the term rhetoric?

3 MR. FARRELL: Objection.

4 A That's a term that's been used.

5 Q Is the determination of whether a

6 person is or a place of interest based in

7 part on what the NYPD refers to as rhetoric?

8 MR. FARRELL: Objection.

9 A It could.

10 Q What is meant by the term

11 rhetoric?

12 MR. FARRELL: Objection. I need

13 to consult with the witness.

14 (Recess at 2:00) .

15 Q That's the pending question.

16 What is meant in that setting by the term

17 rhetoric?

18 A I would say that rhetoric is

19 overheard conversation which would be

20 inciting somebody or encouraging somebody to

21 commit an unlawful act.

22 Q Is that something that's the

23 subject of a written standard? What

24 constitutes rhetoric that would cause

25 someone or some place to be of interest?

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2 A Can you rephrase it?

3 Q Sure. You just gave an answer of
4 inciting, of someone committing an unlawful
5 act. I'm asking if that's a definition of a
6 subject of written standard anywhere?

7 A I don't believe that's a written
8 standard.

9 Q In 882 of the Handschu
10 Guidelines, there's a reference to
11 information: "No information obtained from
12 such visits shall be retained unless it
13 relates to potential unlawful or terrorist
14 activity."

15 Would you say that as applied in
16 882, the same definition that you had just
17 given me of rhetoric applies? In other
18 words, that rhetoric wouldn't pertain or
19 relate to potential unlawful or terrorist
20 activity unless it involves someone saying
21 to someone else or advocating that someone
22 committed an unlawful act?

23 MR. FARRELL: Objection.

24 A Is your question that --

25 Q I'll ask it again. It's an after

1 T. Galati

2 lunch question. You have to forgive me.

3 Does any other unit besides the
4 Demographics Unit within the Intelligence
5 Division engage in the activity that are
6 described and authorized in 882?

7 A No, the Demographics Unit is the
8 only unit.

9 Q Are members of the force assigned
10 to the Demographics Unit instructed to
11 report back about certain kinds of rhetoric?

12 MR. FARRELL: Objection.

13 Q If they hear it.

14 MR. FARRELL: Objection.

15 A What I would say is, the function
16 of the Demographics Unit is to go out,
17 catalog locations. There are times when
18 there are World events, and during the times
19 of World events, then they would be going
20 out looking to gage, I guess gage the
21 feeling or the sentiment of the situation
22 related to it. It's a reaction area. That
23 would be the Demographics Unit that would go
24 into the location to gage that sentiment.
25 It's based often on a World event or could

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2 be based on an event.

3 Q Taking that as an example, in
4 that reaction situation, are the members of
5 the force assigned to the Demographics Unit
6 instructed to report back about what they
7 hear on that subject, on the subject of the
8 event?

9 A I guess it would depend on what
10 they heard about that subject. I would say
11 that they are to report if they have
12 overheard a conversation which would gain a
13 reaction. We're looking for a reaction.

14 Q You're looking for what the
15 reaction is to that World event, correct?

16 A I would like to say the reaction
17 to determine if it has any implications for
18 New York City for that particular community
19 or anything. So, is this Global event going
20 to have an adverse reaction in a particular
21 area, community, particular people that may
22 cause the police department to have to react
23 to it?

24 Q I don't have any copies of this.

25 The record should reflect that there are

[Page 70]

1

2 five looseleaf binders on the table that
3 contain pages one through 260, bates
4 numbered documents that were produced for us
5 to inspect.

6 Since I don't have copies, I'm
7 going to show to Chief Galati the page
8 that's been marked as page 804.

9 Since I don't have it, would you
10 mind, chief, just reading out loud the
11 paragraph about a conversation between two
12 [REDACTED] men in [REDACTED]

[illegible]

1 T. Galati

2

3

4

5

6

7 Q Am I correct that this is
8 contained in a Zone Assessment Unit report
9 about a visit to a commercial establishment?

10 A Yes.

11 Q My question is, was this an
12 activity that was undertaken by the member
13 of the force assigned to the Zone Assessment
14 Unit covered by 882 of the Handschu
15 Guidelines?

16 A Just say the question one more
17 time.

18 Q That's okay. Is this document,
19 bates stamped 904, part of a report of a
20 member of the force assigned to the Zone
21 Assessment Unit conducting a visit pursuant
22 to section 882 of the Handschu Guidelines?

23 A Yes.

24 Q Under section 882 of the Handschu
25 Guidelines, as you understand the

1 T. Galati

2 guidelines, is it permissible to record the

3 information about this conversation given

4 the restriction that says no information

5 retained from such visits shall be retained

6 unless it relates to potential unlawful or

7 terrorist activity?

8 MR. FARRELL: Objection.

9 A The main purpose of the

10 Demographics Unit/Zone Assessment Unit helps

11 us identify locations if we're faced with a

12 threat that's coming from a country of

13 concern and we're looking to find a

14 terrorist that's likely to commit a

15 terrorist attack.

16 The police department needs to

17 know where we should go and look for that

18 particular terrorist. A lot of information

19 that the Zone Assessment Unit captures helps

20 us identify locations that we should look or

21 not look for.

22 In this document, it's clear that

23 speaking in Urdu officers indicate they are

24 Pakistani. It does have value to us for

25 potential terrorist or unlawful activity in

1 T. Galati

2 the sense that it's telling us, in this

3 particular location at [REDACTED], we

4 would be able to find -- that's a location

5 where we would possibly find -- I'm not

6 telling you that would be a Pakistani

7 location and we're going to find someone

8 that speaks Urdu, a terrorist from a

9 particular region in Pakistan where they

10 speak Urdu or if we're looking for an Urdu

11 Pakistani male that would commit a terrorist

12 attack. This piece of information would be

13 very valuable to us.

14 We retain that information

15 because it may seem like minutia. The fact

16 that they speak Pakistani and Urdu is

17 something that I find useful in my quest.

18 Q You comment speaking in Urdu and

19 Pakistani.

20 A Yes.

21 Q From the point of view of what

22 you just described and I'm not seeking to

23 argue with you, isn't the information that

24 this is a location where we could find

25 Pakistanis who speak Urdu -- let me ask the

1 T. Galati

2 question in a different way.

3 How is the police function
4 advanced or aided by the content of this
5 conversation in which one person is
6 complaining to the other about [REDACTED]

7 [REDACTED] worker who supposedly burned the
8 quran was rehired?

9 Does that information relate to
10 potential unlawful activity or terrorist
11 activity?

12 A I would say we're not looking for
13 Pakistanis that speak Urdu. That's not what
14 we're looking for. The goal of the
15 information collected is so that when we're
16 looking for a terrorist, Islamic radicalized
17 towards violence, that we have threat,
18 information that has come in and we need to
19 start looking for that person. We have
20 information that indicates that this person
21 is Pakistani, speaks Urdu or may even to
22 some extent based on Urdu give us a
23 particular region where they might be from.

24 That information is very valuable
25 when we're faced with an intimate threat and

1 T. Galati

2 we have to look for it.

3 My point is that that
4 conversation is indicating that these males
5 who speak Urdu is valuable to us in
6 detecting or preventing a terrorist
7 activity.

8 That's really what I'm focusing
9 on, is the fact that these two men at that
10 location, [REDACTED] speaking [REDACTED] are angry
11 about what happened to someone who burned
12 the quran. Is that of value? Is that
13 useful? The phrase in 882 information
14 relates to potential unlawful activity, not
15 their ethnicity, not their language, not the
16 region where they're from.

17 The particular grievance where
18 they were exchanging about, it's the
19 information that's contained in the
20 conversation that's of value. We're
21 identifying these people. It may not be
22 Pakistani. It's frequently by a Pakistani
23 individual that speaks Urdu. That's an
24 important part. It's the information
25 contained in the conversation that would

1 T. Galati

2 help us when we have to start looking.

3 This is something that we can
4 turn to. We can start saying, where should
5 we be looking for a terrorist who's planning
6 or recruiting potential attack in New York
7 City and we know that that person is
8 Pakistani and Urdu.

9 Based on the language that would
10 be important to us, I would say, not
11 necessarily the content, everything
12 contained in it, the information that the
13 conversation has that I consider of value.

14 Q I'm focusing on the content and
15 on the specific provision of 882 because, in
16 fact, in this report the content was
17 retained. In other words, this is a
18 document from -- I don't remember if it's
19 2010 or 2011. It's relatively the last
20 couple of years. What I'm trying to find
21 out is whether from your vantage point as
22 Commander of the Intelligence Division, in
23 terms of instructing these people of the
24 force who are doing the work of the Zone
25 Assessment Unit, do you understand the

1 T. Galati

2 retention of the content?

3 What I mean by the content is the
4 expressed grievance about this [REDACTED]
5 [REDACTED] workers, the retention of that
6 content. Is that consistent with 882 saying
7 no information shall be retained unless it
8 relates to potential unlawful or terrorist
9 activity?

10 MR. FARRELL: Objection.

11 A What I'm saying is that as a
12 whole, this statement has value to us in the
13 protection or prevention of a terrorist act.

14 Q Take a look at 833. Let me just
15 have the book back to make sure I'm giving
16 you the right page. It's 836. If you
17 would, read it. Since I don't have a copy
18 of it, read the conversation that's
19 reproduced on 836.

20 A [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 T. Galati

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q In relation to the content of
19 that conversation, from your vantage point
20 as commander of the Intelligence Division,
21 is the information, the content, not the
22 fact that these are Pakistani males, not the
23 fact that they were conversing in Urdu, but
24 the content of their conversation, is it
25 authorized under 882 to retain that?

1 T. Galati

2 Does that information relate to
3 unlawful potential activity or terrorism?

4 A I have to state that in these
5 conversations, when they indicate signals to
6 us that we can use as far as identifying
7 people from countries of concern, it is of
8 value.

9 I can't take the content without
10 taking the description and the Urdu in it.
11 I would say that it does have value to us.

12 And under 882, I would state that
13 we could retain that.

14 Q Can you articulate how it has
15 value? What is the thought process that
16 leads you to conclude that the phrase is no
17 information obtained from such visits shall
18 be retained unless it relates to potential
19 unlawful or terrorist activity?

20 If you could, tell us how you
21 would express what the value is?

22 A I think I did explain it in the
23 last example, but I will explain it again.
24 The purpose of the demographics cataloged in
25 these locations, collecting information at

1 T. Galati

2 these locations are for the police
3 department to respond to a threat that they
4 may be facing.

5 When we are faced with a threat
6 or we have information about a threat that
7 is present and we need to go out and we need
8 to try and mitigate that threat, we have to
9 be able to, at our fingertips, find what is
10 the most likely location that that terrorist
11 is going to go to and hide out amongst other
12 people from the same country.

13 But, this is the person that is
14 going to commit a terrorist attack. To
15 value what's in here, that I know if I'm
16 looking for a terrorist who is Pakistani,
17 from a region in Pakistan who speaks Urdu,
18 I'm not going to waste my time in a
19 restaurant where they speak Arabic.

20 I want to know where the
21 restaurant is that are going to be
22 Pakistanis. Mostly likely, Postun that's
23 speaking Urdu. So that's value to me to
24 prevent or detect terrorism that I'm now
25 facing the threat.

1 T. Galati

2 I know where it's coming from. I
3 want to go to these locations so I can
4 either find somebody that's hiding in these
5 locations, recruiting in these locations.
6 That's the value of it.

7 Q Would you agree that there are a
8 number of locations that have been mapped by
9 the Zone Assessment Unit where Pakistani
10 people speaking Urdu congregate?

11 A I believe that they have
12 identified numerous locations where people
13 speak Urdu.

14 Q The question that I'm asking is,
15 are you saying that the fact that two people
16 at a particular location complained about
17 [REDACTED] in
18 the manner that is described in that
19 conversation makes that place more likely to
20 be a haven for someone engaging in a
21 terrorist act and therefore, that
22 information relates to potential terrorist
23 activity?

24 MR. FARRELL: Objection.

25 Q Do you understand my question?

1 T. Galati

2 A I understand the question. I
3 would say no, I am not telling you that this
4 place is more likely than another place
5 where they speak Urdu. What I'm saying is
6 that, depending on what threat we're facing,
7 we need to be able to look at what
8 information we have collected so we could
9 properly deploy and try to find the threat
10 or the terrorist and the tension that are
11 going to help us in the information
12 contained.

13 The fact that it's Pakistani,
14 Urdu is a very important factor. It doesn't
15 mean that there's more of a chance that he's
16 going to be in this particular one. It's
17 important for me to know this is one of the
18 locations that we're going to have a
19 Pakistani community that speaks Urdu that's
20 radicalized towards violence that would
21 either try to either hide or recruit.

22 Q I understand what you're saying.
23 This is the quran. What I'm asking you is
24 about 882. Correct me if I'm wrong, a part
25 of the Handschu rule that places some

1 T. Galati

2 restriction on what information can be
3 retained, right?

4 A Yes.

5 Q And the guidelines for what
6 information can be retained are captured in
7 the World related to potential unlawful or
8 terrorist activity, right? That's where the
9 limitation resides, so to spoke?

10 A Yes.

11 Q Let's take this page 834 or 6,
12 whatever it is.

13 A 836.

14 Q There's certain information at
15 this place, Pakistanis who speak Urdu
16 congregate and talk to each other. That's
17 one set of information. Okay? You've told
18 me that that's extremely valuable for you to
19 know about if you're addressing a threat,
20 right?

21 A Yes.

22 Q I'm apologizing for taxing you
23 about this. I'm focused on whether the
24 retention of the specific conversation for
25 another word complaining about the threat of

1 T. Galati

2 these [REDACTED].

3 You told me that that piece of
4 information that there are two guys there
5 complaining about the [REDACTED]

6 [REDACTED] does not make it more likely
7 that a terrorist would go, am I correct so
8 far?

9 A You'd have to repeat that.

10 Q I think you've told me that the
11 fact that at this particular location where
12 there are Pakistanis speaking Urdu, the Zone
13 Assessment Unit heard two men complaining
14 about the [REDACTED]

15 [REDACTED] That fact alone, their complaint
16 expressed to each other doesn't make it more
17 likely that this is a place where a
18 terrorist would go?

19 A It doesn't make it more likely or
20 less likely. It's a tool for us to look for
21 that person that we're looking for that has
22 that same characteristic that's going to
23 hide or recruit within a place that he or
24 she is comfortable in.

25 For a terrorist person that we're

1 T. Galati

2 trying to secrete themselves in this
3 particular community, I can't tell you it's
4 more likely or less likely. It's a tool for
5 us to look in the right place.

6 Q If it's either more likely or
7 less likely, the specific conversation about
8 the [REDACTED]

9 [REDACTED], how does that piece of information
10 relate to potential unlawful or terrorist
11 activity?

12 A I'm taking the conversation as a
13 whole. I'm looking in that conversation.
14 I'm seeing Urdu. I'm seeing them identify
15 the individuals involved in that are
16 Pakistani.

17 I'm using that information for me
18 to determine that this would be a kind of
19 place that a terrorist would be comfortable
20 in and I'm retaining that for the fact that
21 I can retain it, if it's going to help me
22 detect or prevent a potential unlawful or
23 terrorist attack.

24 So, a potential terrorist could
25 hide in here and that piece of information

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1 T. Galati
2 is important for me to know. That this is
3 where I'm going to find somebody that speaks
4 Urdu. And again, I'll go far beyond
5 Pakistan. Most Urdu speakers from that
6 region would be of concern, so that's why
7 it's important to me.

8 Q The fact that these two guys are
9 grieved about something that happened in the
10 U.S., is that of importance to you?

11 A That is less important to me than
12 the fact that they are Pakistanis and that
13 they are speaking Urdu.

14 Within this, this is the
15 important pieces that I'm looking for.

16 Q Is the fact that these two guys
17 are grieved about something, is that
18 something that happened in the U.S., does
19 that fact relate to potential unlawful or
20 terrorist activity, the fact alone that they
21 are grieved about something that happened?

22 A Say your question one more time.

23 Q I understand what you said about
24 Pakistani, probably Postun, Urdu speaking,
25 all of the specification of ethnicity.

1 T. Galati

2 Putting that aside, I'm asking
3 about the fact that these two guys are
4 grieved about something that happened in the
5 U.S. is that fact related to potential
6 terrorist or unlawful activity?

7 A I can't separate the conversation
8 based out of the value that I see in the
9 conversation, what their grievance is. It's
10 not what I'm focused on. I'm focused on the
11 identification that I'm getting out of the
12 conversation.

13 Q I'm showing you now what's been
14 Bates stamped as page two in the document
15 production. There's a conversation in
16 boldface, [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 T. Galati

A horizontal bar chart titled 'U.S. should take action to address climate change' showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The y-axis lists the age groups and genders, and the x-axis shows the percentage from 0 to 100. The bars are colored blue for Male and pink for Female. The data is as follows:

Age Group	Gender	Percentage
18-29	Male	92%
	Female	95%
30-49	Male	88%
	Female	90%
50-69	Male	85%
	Female	87%
70+	Male	82%
	Female	84%

19 Q Am I correct that this page two
20 from the Bates stamped two is part of, I
21 guess, Demographics Unit report of a visit
22 to a location conducted by the Demographics
23 Unit under the authority of section 882 of
24 the Handschu Guidelines? Am I correct that
25 that's what this represents?

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1 T. Galati

2 MR. FARRELL: Objection.

3 A This is a report I believe that
4 we call a weekly report of numerous
5 locations that were visited.

6 Q These visits were conducted under
7 section 882 of the Handschu Guidelines?

8 MR. FARRELL: Objection.

9 A The visits and cataloguing alone
10 are not. However, there are a spectrum of
11 things that may in fact fall under 882.

12 Q What are the things that fall in
13 882?

14 A You're asking me about this whole
15 entire document, so, there are numerous
16 locations.

17 Q Just focusing on the section that
18 I asked you to read, does that part of the
19 report fall under 882?

20 A I would say, yes.

21 Q I just want to understand and
22 bear with me with this question, and tell me
23 if you don't understand it. A member of the
24 force assigned to the Demographics Unit goes
25 into a location. At the moment he goes in,

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1 T. Galati

2 I understand you to be saying that that's
3 not necessarily covered by 882. Not
4 necessarily doesn't necessarily have to be
5 authorized by 882.

6 Before he hears a word just going
7 into the location, he's been assigned to go
8 to the location. He steps in the door. I
9 want to try to break it down in some way.
10 This won't be useful, but I'll try.

11 A When we go out and try to
12 catalogue locations so that we could
13 determine what country of concern would go
14 to that, the simple fact that we're
15 cataloguing locations does not necessarily
16 fall in 882. However, the authority that we
17 go out and go to these locations and at
18 times have these overheard conversations
19 does fall within 882, and the reason why we
20 retain them is because we have value in the
21 statements which would help us prevent or
22 detect terrorism activity.

23 Q Thank you. You got a little
24 ahead of me. That visit to [REDACTED]

Q what is it that made it subject to

1 T. Galati

2 882?

3 A Say it again.

4 Q Maybe I need to back up.

5 MR. FARRELL: I want to put on
6 the record, you had asked a question
7 about what the witness has said. It may
8 be confusing as to what it may fall
9 under, but we'll look at it in the
10 review process.

11 MR. EISENSTEIN: So noted that
12 you noted it.

13 Q Just focusing on the portion of
14 the report that relates to what the
15 reporting officer saw and heard at [REDACTED]
16 [REDACTED], is that section of the
17 report subject to section 882 of the
18 Handschu Guidelines covered by 882?

19 MR. FARRELL: The part that he
20 just read into the record?

21 MR. EISENSTEIN: Correct.

22 A I would say yes.

23 Q What is it about that section of
24 the report that in your understanding makes
25 it subject to that rule, the 882?

1 T. Galati

2 A Information contained within
3 there, which has given us other information
4 that could be helpful in the purpose of
5 preventing terrorist activity.

6 Q What is the information contained
7 in what you read that I'm going to use the
8 phrase from 882 that relates to potential
9 unlawful or terrorist activity?

10 A Well, the fact that they are
11 speaking in Bengali is a factor that I would
12 want to know. Being that it's a [REDACTED]
13 store, I would want to know that. There are
14 things in here that has helped me identify
15 who would go and visit this store. So those
16 factors tell me something that I consider of
17 value.

18 Q Am I correct that if they simply
19 reported a location where they speak [REDACTED]
20 and [REDACTED] and they are from a certain
21 region, that's all they wrote down from your
22 understanding, that would not involve 882?
23 That's just a mapping function, correct?

24 A No, it would help us. Mapping is
25 telling us where the places are. Some of

1 T. Galati

2 these observations and overheard
3 conversations just give us more information,
4 so it goes beyond the simple just
5 cataloguing of a location.

6 Q I understand that, chief. What
7 I'm asking you about is everything gives you
8 more information. In other words, every
9 word that they write gives you more
10 information about that location, correct?

11 A Correct.

12 Q But, there's a limitation in the
13 Handschu rules about what information you
14 can retain, right?

15 A Correct.

16 Q Isn't the retention of a
17 conversation in which one [REDACTED] customer
18 says to the guy behind the counter, that
19 [REDACTED] is correct and the [REDACTED] government
20 is not corrupt the way third world countries
21 are corrupt? I'm sorry for the double
22 negative. Isn't that information that does
23 not relate to potential unlawful or
24 terrorist activity?

25 MR. FARRELL: Objection.

1 T. Galati

2 A I am taking the conversation as a
3 whole and I'm reading about two [REDACTED]
4 people that are speaking in [REDACTED] in a
5 [REDACTED] store. I find value in that for some
6 reason. This information is solely used for
7 the purpose of being able to identify a
8 location where I should face a threat, where
9 I'm facing a threat of a terrorist and that
10 terrorist is [REDACTED].

11 This piece of information would
12 be valuable to me. I take it as a whole. I
13 take it as the conversation. I take it as
14 [REDACTED] and that's what I feel is of value.
15 The sole purpose is for identifying a
16 location where I would find somebody that
17 was hiding who is a terrorist from [REDACTED].

18 MR. EISENSTEIN: I need to take
19 a bathroom break.

20 (Recess taken at 3:15 p.m.)

21 A I just want to clarify some of
22 the information: When the information is
23 collected, it is taken back and looked at by
24 an analyst. Analysts make determinations of
25 the information contained in conversations.

1 T. Galati

2 To the extent of that, what is
3 the community's reaction to let's say events
4 or things. Also, I think what's important
5 for us is, if the conversations indicate
6 support for let's say Osama Bin Laden or
7 Iran or depends on a particular
8 conversation, it's important for us to know
9 because that might be a place that a
10 terrorist could recruit from.

11 So, the content of the
12 conversations may give us an idea of the
13 place that a terrorist would be comfortable
14 being in, so he could recruit from a
15 location like that. I think also the fact
16 that current events would tell us if the
17 community's upset, if that's going to have
18 any implication within the city.

19 So just a little bit more in
20 those conversations.

21 Q Who are the analysts that make
22 the kind of determination or assessment that
23 you've just been talking about? What their
24 names are, where do they fit in the
25 structure of the Intelligence Division?

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1 T. Galati

2 A The analysts are non-police
3 officers. They are not police officers
4 that are hired there. They look at whatever
5 they look at, World events.

6 They look at local events. They
7 look at information that comes in from many
8 different parts of the Intelligence
9 Division, and it's their job to make an
10 assessment on whether or not there's an
11 issue of concern that we must address.

12 Q Are they under your command? Are
13 they within the chain of command of the
14 Investigations Unit, Intelligence Unit?

15 A Yes.

16 Q If they make an assessment of
17 what's being brought in, warrants, some
18 action, does that indicate that an
19 investigation has commenced?

20 MR. FARRELL: Objection.

21 A Related to Demographics, I can
22 tell you that information that have come in
23 has not commenced an investigation.

24 Q You're saying that based on what
25 has occurred during your tenor, correct?

1 T. Galati

2 A Yes.

3 Q Do you know whether that was also
4 the case before you took over the
5 Intelligence Division?

6 A I think that prior to me, there
7 had been indication that there was one place
8 that was visited later, that later on became
9 subject of an investigation.

10 However, I have not been able to
11 determine that. That case involved a
12 prosecution, but I have not been able to
13 definitively say that it was because of
14 Demographics.

15 I believe it was because of the
16 Handschu investigation.

17 Q After Demographics provided
18 whatever information, it provided an analyst
19 go over it. If the analyst doesn't find
20 anything that signals a threat or concern,
21 are the reports retained in any event?

22 In other words, are the
23 Demographics reports, whatever they contain
24 or the zone Assessment reports, whatever
25 they contain after they have gone to the

1 T. Galati

2 analyst, retained? Whether or not they are
3 contained, anything that was specifically
4 useful or specifically worth analyzing?

5 MR. FARRELL: Objection.

6 A The information in the
7 Demographics reports does have value. So,
8 yes, it is retained because the report
9 itself contains a lot of bits and pieces of
10 value, of intelligence value.

11 Q What is your understanding of the
12 meaning of the phrase investigation of
13 political activity?

14 A It's in relation to persons or
15 people or groups that want to exercise their
16 right to try and effect change or maintain
17 government or social status. That's what
18 political activity means.

19 Q [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 T. Galati

2 [REDACTED]."

3 Q I understand that that document,
4 page one of the bates stamped documents was
5 prior to your watch, so to speak, right?

6 A Yes.

7 Q Are locations selected quotations
8 to be investigated where the zone assessment
9 based on rhetoric --

10 MR. FARRELL: Objection.

11 A They are not selected based on
12 rhetoric. To go to a location, it's not
13 based on rhetoric.

14 Q Was that a change or are you
15 saying that that change doesn't mean that
16 that location or selected based on rhetoric?
17 Am I making myself clear?

18 A What I believe in this report
19 here is he's indicating that he listed these
20 locations due to rhetoric event flyers.

21 Q You're saying, he went to a
22 larger group of places, but listed these
23 either because of rhetoric that was
24 overheard there or event flyers that he saw?

25 A That's how I understand it.

1 T. Galati

2 Q Under your command, are locations
3 visited or revisited by the Zone Assessment
4 Unit based on rhetoric heard at those
5 locations?

6 MR. FARRELL: Objection.

7 A I think when we're looking for a
8 reaction because of a World event, locations
9 are picked because those locations have
10 characteristics that would make it easier
11 for them to gage that reaction.

12 So, we would be looking for a
13 place that would be more populated, that
14 would be less populated, so that's what I
15 would say about how we would deploy for a
16 reaction.

17 Q There's a reference in there.
18 I'll find it if I need to do a place
19 investigated as part of a [REDACTED]
20 operation.

21 Do you know what a [REDACTED]
22 operation is? I'm representing to you that
23 there's a reference. I'll tell you what
24 page it is.

25 MR. FARRELL: In the document.

1 T. Galati

2 Q Let me say what I'm looking for.

3 I'm representing to you and you'll see

4 whether I'm right or not, that a place in

5 [REDACTED] called [REDACTED] was visited

6 by the Zone Assessment Unit on January 5,

7 2010, January, 14, 2010 and January 21,

8 2010.

9 After you've looked at it, in
10 terms of the purposes that you've described
11 to me of the Demographics Unit or of the
12 Zone Assessment Unit, what is the purpose of
13 going back to this location three times of a
14 period of 11 days or 15 days? The question
15 is, why is the Zone Assessment Unit going
16 back to this location three times in a short
17 period of time?

18 A I can't tell you exactly the
19 reason why we went to these three locations
20 in a short period of time. I can tell you
21 that there are times when we work in a
22 particular area and that may be the reason
23 why they went to it. To give you a
24 definite -- I can't tell you why they went
25 to that location.

1 T. Galati

2 Q I mean, are there multiple teams
3 operating? Is it possible that they are
4 just going back because they don't know if
5 another team was there?

6 A I don't want to guess on
7 something. I don't know the answer to that.
8 I don't want to guess on it.

9 Q Putting aside the specification
10 and you don't know why that happened, is
11 there a reason? I can give you other
12 examples, but you probably will tell me you
13 don't know the specifics of that.

14 But, there are several places
15 where their reports of visits over a short
16 period of time. Without going to the
17 specifics of any particular one, and again
18 focusing on the function of the Zone
19 Assessment Unit, if they have established
20 that a place is owned by and patronized by
21 Pakistanis from a particular region who
22 speak Urdu and Postun, what are they going?

23 In general, why would Zone
24 Assessment Unit teams be going back to such
25 a location repeatedly in a short period of

1 T. Galati

2 see even on this, this is a new location
3 that just recently reopened.

4 Part of their duties and
5 responsibilities is to make sure that they
6 update their information, so that's a reason
7 why they do go back.

8 Another thing that they do is
9 identify places that may be better suited to
10 go to in the event of a World event, where
11 they have to hear an overheard conversation.

12 Similar to what I said, it would
13 be better to go to a location, to go to a
14 location that has more people than less.
15 That's why they would go to a particular
16 location if it was based on a reaction,
17 community, sometimes they are small. So if
18 they are trying to gauge reaction in a
19 particular community, that doesn't have many
20 places and many different parts of the city.

21 They could be in that particular
22 area. Those are some of the reasons why
23 they could go to a location more than once.

24 However, I can't tell you why in
25 this case, in these other instances -- I

[Page 106]

1 T. Galati

2 don't know what this span is, a week, a
3 month, two months. I can't comment on
4 those.

5 Q Take a look please at page 101 to
6 105. I'm going to also ask you about 96
7 through 100. If you would look at both of
8 those and let me know when you're done so I
9 can ask you questions.

10 A You said 101?

11 Q Yes, and then 101 to 105. First
12 question, one of those are two [REDACTED] i
13 locations. One a [REDACTED], another one
14 a [REDACTED], right?

15 A Yes.

16 Q The officer assigned the Zone
17 Assessment Unit, officer described the
18 [REDACTED] or check location of concern for
19 the [REDACTED] and did not check location of
20 concern for the [REDACTED].

21 A Yes.

22 Q First question: Are the
23 reporting officers making that judgement or
24 are they simply checking off what they have
25 been told already?

1 T. Galati

2 In other words, are they
3 assessing these places as locations of
4 concern or not locations of concern based on
5 what they are going out and seeing or are
6 they going because it's already a location
7 of concern or maybe there's a third
8 alternative?

9 A We do not tell the demographics
10 officers to go into a location that is part
11 of some other Handschu investigation. They
12 have no idea whether anybody in the division
13 thinks it is or is not a place of concern.

14 When they reference a location of
15 concern, they reference it in a way that, if
16 there's an incident related to the
17 [REDACTED] community, this is an
18 identifiable location that they would be
19 able to go into and that they would hear
20 conversations.

21 If you look at the [REDACTED]
22 and you look at the [REDACTED], it's exactly
23 for that reason that you see a [REDACTED]
24 isn't going to be filled with people that
25 are going to have conversation.

1 T. Galati

2 They wouldn't be able to gage
3 community reaction to overseas or local
4 events. In a [REDACTED], you would have
5 more people. When they check it as a
6 location of concern, concern is not
7 necessarily indicating that that's a place
8 that there's an investigation or should be
9 an investigation.

10 A concern is their way of saying
11 this is a place that we could go back to if
12 we need to find something within the
13 [REDACTED] community.

14 Q Of concern, that phrase or of
15 interest or whatever it is, let's say of
16 concern, is that phrase used differently in
17 relation to commercial establishment say in
18 relation to mosques?

19 MR. FARRELL: Objection.

20 A I believe that we make locations
21 of concern for commercial establishments.
22 It's not our policy to make locations of
23 concern religious establishments. That
24 being said, I can't tell you that that term
25 has never been used for a mosque.

1 T. Galati

2 But, it is not the practice or
3 the policy nor do I recall that being on any
4 document that I've seen related to a
5 religious institution. I have for
6 commercial establishments.

7 Q Take a look at 164 actually. Let
8 me give you a different one. Take a look at
9 149. Does that relate to location 919?

10 A Yes.

11 Q [REDACTED] ?

12 A Yes.

13 Q Here is a [REDACTED], a

14 [REDACTED] It's been checked
15 as not a location of concern, right?

16 A Yes.

17 Q My question is, is the Zone
18 Assessment Unit assigned officers making a
19 judgement here? Two [REDACTED], both
20 [REDACTED], in the same time frame,
21 January, 2010 and they are saying -- I'm
22 comparing it to 101. The one that I showed
23 you before, page 101?

24 A Yes.

25 Q Location 493.

1 T. Galati

2 A Yes.

3 Q Here, in January of 2010, two
4 [REDACTED]. They are saying
5 one is a location of concern, the other one
6 is not a location of concern. Are the
7 officers making a judgement about whether a
8 place is a location of concern based on the
9 visit that they make, the Zone Assessment
10 officers?

11 A Again, I will go back to the term
12 of concern. The term location of concern is
13 a place that we can go to that if there's an
14 event and we needed to overhear something or
15 get the feeling of community reaction to an
16 event, overseeing that that happened and
17 occurred here, where would we go to hear or
18 get a feel for what's going on?

19 The only judgement that they are
20 making is that this is a location where we
21 may be able to hear something.

22 This is not -- one location is in
23 [REDACTED], which may or may not be in the
24 middle of a [REDACTED] area and one area is
25 in a more densely [REDACTED] area.

[Page 111]

1 T. Galati

2 Their judgement is, if we need to
3 -- this would be a better place for us to
4 hear. It has nothing to do with
5 investigation, just where would we deploy if
6 we needed to get a reaction, if we needed to
7 get a [REDACTED] issue.

8 MR. FARRELL: Where?

9 A The first one is 101. I would
10 like to add to that last conversation. If
11 you look at the occupancy, the occupancy of
12 the location that is not of concern has
13 seating for 10 to 15 customers where the
14 location that they have has seating for a
15 capacity of 60 to 65 people.

16 Q Take a look at 639. You see
17 there's a notation that the owner is a [REDACTED]
[REDACTED] ?

18 A Yes.

19 Q Is that something that was
20 furnished to the assigned officer in way of
21 information when the assignment was made?

22 A No.

23 Q Would you say that that's
24 something that the assigned officer would
25

1 T. Galati

2 know based on his personal history?

3 MR. FARRELL: Objection.

4 MR. EISENSTEIN: It's a stupid
5 question. Let me ask it a different
6 way.

7 Q Is that personal knowledge that
8 that assigned officer is bringing to the
9 report?

10 MR. FARRELL: Objection.

11 A The officers assigned to the
12 Demographics Unit, Zone Assessment Unit,
13 they have language skills. Maybe some of
14 them are also born in these countries. They
15 speak the language, they can determine
16 things that maybe I can't determine.

17 This officer who, I believe, is
18 [REDACTED] now knew that this guy was a

19 [REDACTED]

20 [REDACTED]

21 Q Is there an indication that this
22 was the third visit in a couple of weeks?
23 Do you see that? If you can't find it, I'll
24 find it: Sometimes it says first visit,
25 last visit.

1 T. Galati

2 MR. FARRELL: 639 is the one you
3 have?

4 MR. EISENSTEIN: Yes.

5 MR. FARRELL: It's my notes
6 comparing documents to each other.

7 Q If you look at 639 and 411, but
8 as you may recall, I don't have copies of
9 these.

10 MR. FARRELL: Can you pass us
11 back 639?

12 MR. EISENSTEIN: Certainly.

13 Q According to my reading of these
14 documents, this place [REDACTED] was
15 visited by the Zone Assessment Unit on
16 January 5, 2010, January 8, 2010 and again
17 on January 19, 2010.

18 A What was January 8th?

19 Q In the 411, there's a reference
20 to two reported ID's and it says visited
21 1/5, and 1/8, maybe in the narrative. So
22 here's the location: It's [REDACTED], it's
23 [REDACTED]. It's a [REDACTED]. It's relatively
24 large, so it's clearly a place where people
25 would gather. All of that is known or

1 T. Galati

2 knowable in the visit of January 5th.

3 My question is, for what reason
4 is the Zone Assessment Unit going back to
5 this particular place three times within
6 2 weeks?

7 A I can't give you a definite
8 answer why they went back three times. I
9 would say, it's not their job to monitor
10 locations. Their job is to go when we tell
11 them to go for community reaction and I
12 can't definitively tell you.

13 It may have been an issue related
14 to a [REDACTED] event. They wanted to go to
15 a [REDACTED] location to overhear something.
16 They may have gone to numerous [REDACTED].
17 They may have been working in that
18 particular event.

19 I will tell you definitively they
20 are not monitoring locations. They are not
21 going back to locations because they are
22 monitoring those locations.

23 Q Do you see any reference in any
24 of the reports about that particular
25 location, any of these three reports to any

1 T. Galati

2 specific World event or local event?

3 A I do not see reference to it, but
4 it does not mean they weren't deployed based
5 on that. There are events that are big
6 events and we decide to make -- I decide to
7 make them go to a particular area because of
8 the event that involves a particular
9 community.

10 There are times when there are
11 smaller events that officers from [REDACTED]
12 or [REDACTED] that might pick up local
13 things. What I mean, local from that
14 country that they say, hey, this happened in
15 [REDACTED], maybe we should go to a [REDACTED]
16 area.

17 A sergeant may make that decision
18 and he would deploy them because the
19 sergeant does have the discretion unless he
20 gets a specific assignment from me to go to
21 a particular region to check on locations,
22 to make sure they haven't changed. So they
23 follow their own current event that happened
24 in the World and you the sergeant says
25 "Today we're going to go to an area that has

1 T. Galati

2 [REDACTED] community."

3 I can't tell you why they were in
4 this place three times. I can tell you they
5 are not monitoring these locations.

6 Q I take it that it doesn't relate
7 to the fact that the proprietaries of the
8 places identified as a [REDACTED]
9 [REDACTED]?

10 A [REDACTED] is not a
11 designated terrorist organization as far as
12 I know. I think that it has some value to
13 tell you where from [REDACTED] he's from.

14 But, that is not the basis of why
15 they would be deployed.

16 Q Have members of the force
17 assigned to the Zone Assessment Unit ever
18 been deployed to visit functions of any
19 Muslim student association?

20 MR. FARRELL: I'm sorry, can you
21 have that read back?

22 A No, the Zone Assessment
23 Demographics Unit has never been deployed to
24 a Muslim student association events.

25 Q Have officers assigned to the

1 T. Galati

2 Q Is the activity described in that
3 document something that would be assigned to
4 the Zone Assessment Unit that is going to a
5 mosque and recorded license plates of cars
6 that came there?

7 A The Zone Assessment Unit has
8 never, to my knowledge, recorded license
9 plates.

10 MR. EISENSTEIN: Mark six
11 please.

12 (Plaintiff's Exhibit 6, a
13 document, was marked for identification,
14 as of this date.).

15 Q As part of an authorized
16 investigation, has any unit of the
17 Intelligence Division recorded license
18 plates of people attending a mosque?

19 A Outside of an authorized
20 investigation, to the best of my knowledge,
21 no. I would like to also clarify an answer
22 that I gave earlier. It's not meant to be
23 funny.

24 Sometimes these officers, when
25 they go, they go to places that they may

1 T. Galati

2 like the food and go back for that reason,
3 and I know that that has happened. So
4 multiple visits might indicate such an
5 event.

6 Q There are charges particularly on
7 the DD five's for covering concealment. Is
8 that reimbursement for buying food at the
9 establishment that's been visited?

10 A Yes.

11 Q Do the officers assigned to the
12 Zone Assessment Unit go to the locations in
13 uniform or in plain clothes?

14 A They go in plain clothes.

15 Q Are the officers of the Zone
16 Assessment Unit who are deployed to those
17 locations in their communities, instructed
18 that they are not affiliated with the NYPD?

19 A Yes.

20 Q So, that we might find some of
21 the repeated places where the food is good?

22 A I'm not telling you that's the
23 reason. I am telling you that the reality
24 is that I have talked to people that they
25 have indicated that this is a place that

[Page 121]

1 T. Galati

2 Q Were there some written
3 guidelines about rhetoric levels?

4 A I'm not sure if there's written
5 guidelines or not. We presently do not use
6 and have not used it since I'm here.

7 Q Are you able to tell me where
8 you've seen it used other than Exhibit 6?

9 A I believe during my prep, there
10 was discussion that I asked a question about
11 this, where I was told that at one point
12 there were levels of rhetoric that they
13 used.

14 Q Do you know who told you that?

15 A Sergeant Matha, M-A-T-H-A.

16 Q Is Sergeant Matha still assigned
17 to the Intelligence Division?

18 A Yes.

19 MR. EISENSTEIN: Mark that as
20 seven.

21 (Plaintiff's Exhibit 7, a
22 document, was marked for identification,
23 as of this date.)

24 Q I want you to take a look at
25 Exhibit 7. My question is going to be

1 T. Galati
2 whether any of the activities reported on
3 Exhibit 7 are activities of officers
4 assigned to the Zone Assessment Unit?

5 A None of this is from the Zone
6 Assessment Unit. This is all from
7 authorized Handschu investigations. Can I
8 clarify one thing about this report?

9 Rhetoric, that was used very
10 early on when the unit first started and it
11 was stopped at some point. I think it's
12 important on this document that you're
13 showing me and I don't know what the date
14 is. It says 2006 here.

15 This information was not
16 necessarily collected in 2006. This
17 information most likely was collected in
18 2003. So, I just want to make sure that
19 everybody understands that this is not
20 necessarily a 2006 or whenever this document
21 here was produced. This is older.

22 MR. FARRELL: So the record is
23 clear, the witness was referring to
24 Exhibit 6, not Exhibit 7.

25 MR. EISENSTEIN: Right. Good

24 Q That rhetoric would be considered
25 a basis for moving something into the realm

1 T. Galati

2 of investigation?

3 MR. FARRELL: Objection.

4 A If there was something that was
5 recorded by the Demographics Unit that
6 raised to the level that it needed to be
7 generated, it would be looked at by the
8 analytical shop and then it would be
9 generated to the officer's attention, my
10 attention, and I would make a decision on
11 whether or not we would make a lead on this.

12 I could tell you that I have
13 never made a lead from rhetoric that came
14 from a Demographics report and I'm here
15 since 2006. I don't recall other ones prior
16 to my arrival. Again, that's always a
17 possibility. I am not aware of any.

18 Q Where and in what form are the
19 reports that are generated by the Zone
20 Assessment Unit maintained? In other words,
21 are they at some physical location and are
22 they in paper form, electronic form, both?
23 Those are the questions that I'm asking.

24 A Presently?

25 Q Yes.

1 T. Galati

2 A Presently, when the zone
3 assessment officers do their reports, they
4 do an electronic report that is
5 electronically held in our database which is
6 a server database.

7 In addition, there's a standalone
8 computer where information is inputted for
9 the purpose of generating reports related to
10 demographic areas and so on.

11 Q Does that mean that the reports
12 are in electronic form? One in the
13 standalone computer and the other one in the
14 database on the server?

15 MR. FARRELL: Objection. Go
16 ahead.

17 A Yes, they are produced and held
18 on the server and they also input the
19 information into a standalone for the
20 generation.

21 This is the Zone Assessment Unit.
22 They put it into the zone assessment
23 database for generating special reports,
24 requested reports.

25 Q The Zone Assessment Unit has its

2 own database? That's a question. Does the
3 Zone Assessment Unit have its own database?

5 Q There's also a larger
6 Intelligence Division database?

8 Q If you'll give us 5 minutes, I
9 want to make sure what's covered had been
10 covered. Off the record.

12 Q At the present time, what is the
13 procedure for members of the force assigned
14 to the Zone Assessment Unit in terms of
15 writing up what they have observed?

18 A When they get back to where they
19 were, they prepare an electronic what we
20 call a DD five form, what they did for the
21 day, for the visit.

24 Q Do they work steady day tours or
25 do they work around the clock?

1 T. Galati

2 MR. FARRELL: I'm going to
3 confer about privilege.

4 A I would say for the most part,
5 they do daytime deployments, but we moved
6 them periodically so we can understand
7 different locations at different times.

8 Q To your knowledge, has any
9 supervisor ever eliminated material from a
10 report prepared by a zone and assessment
11 unit officer because it was not related to
12 potential, unlawful activity of terrorism?

13 Q To my knowledge, I am not aware
14 of that, but I can't say that that hasn't
15 happened. I'm not aware of that.

16 Q Do the supervisors in the Zone
17 Assessment Unit have any instructions based
18 on relating to section 882 of the Handschu
19 Guidelines?

20 In other words, let me ask it in
21 a different way. Are the supervisors
22 instructed to look out for the retention of
23 material, retention of information that's
24 not related to potential unlawful or
25 terrorist activity?

1

2 A The supervisors are aware of the
3 procedure, the 882 and they're aware of the
4 Handschu Guidelines in 882.

5 We have a review process that we
6 use where the reports get looked at, and if
7 there's an issue related to that, it would
8 be addressed in a training method.

9 Q Who conducts the review in that
10 review process?

11 A One of the people that review it
12 is our legal staff.

13 Q That's the legal staff of the
14 Intelligence Division?

15 A Yes.

16 Q Are they civilian employees or
17 members of the force?

18 A Both.

19 Q To your knowledge, has the legal
20 staff of the Intelligence Division ever
21 directed or caused the removal of material
22 from a Zone Assessment Unit report because
23 it was not related to potential unlawful or
24 terrorist activity?

25 A The review process that they have

1

2 is done after the report is prepared. So,
3 if they seen something that they felt should
4 be addressed, it would be addressed in a
5 training issue. I can't tell you that the
6 report would be changed. We have not
7 changed reports once they are finalized.

8 MR. EISENSTEIN: I have no
9 further questions. Thank you for your
10 patience and I'm done.

11 (At 5:30 p.m., the Examination
12 of this Witness was concluded.)

13

14

15 _____
THOMAS GALATI

16

17

18 Subscribed and sworn to before me this ____
19 day of _____, .

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23 _____
NOTARY PUBLIC

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1 E X H I B I T S

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3 PLAINTIFF'S EXHIBITS:

4

5 EXHIBIT EXHIBIT PAGE

6 NUMBER DESCRIPTION

7

8 1 Document 15

9 2 Document 16

10 3 Document 40

11 4 Document 63

12 5 Document 117

13 6 Document 118

14 7 Document 121

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I N D E X

EXAMINATION BY	PAGE
Mr. Eisenstein	10-129

INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE
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1 C E R T I F I C A T E

2

3 STATE OF NEW YORK)

4 : SS.:

5 COUNTY OF KINGS)

6

7 AYELET RUSSO, a Notary Public for
8 and within the State of New York, do hereby
9 certify:

10 That the witness whose examination is
11 hereinbefore set forth was duly sworn and
12 that such examination is a true record of
13 the testimony given by that witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or by marriage and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 19th day of July, 2012.

20

21

22

23

AYELET RUSSO

24

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[Page 133]

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ERRATA SHEET

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CORRECTION

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AP

Informant: NYPD paid me to 'bait' Muslims

By ADAM GOLDMAN and MATT APUZZO

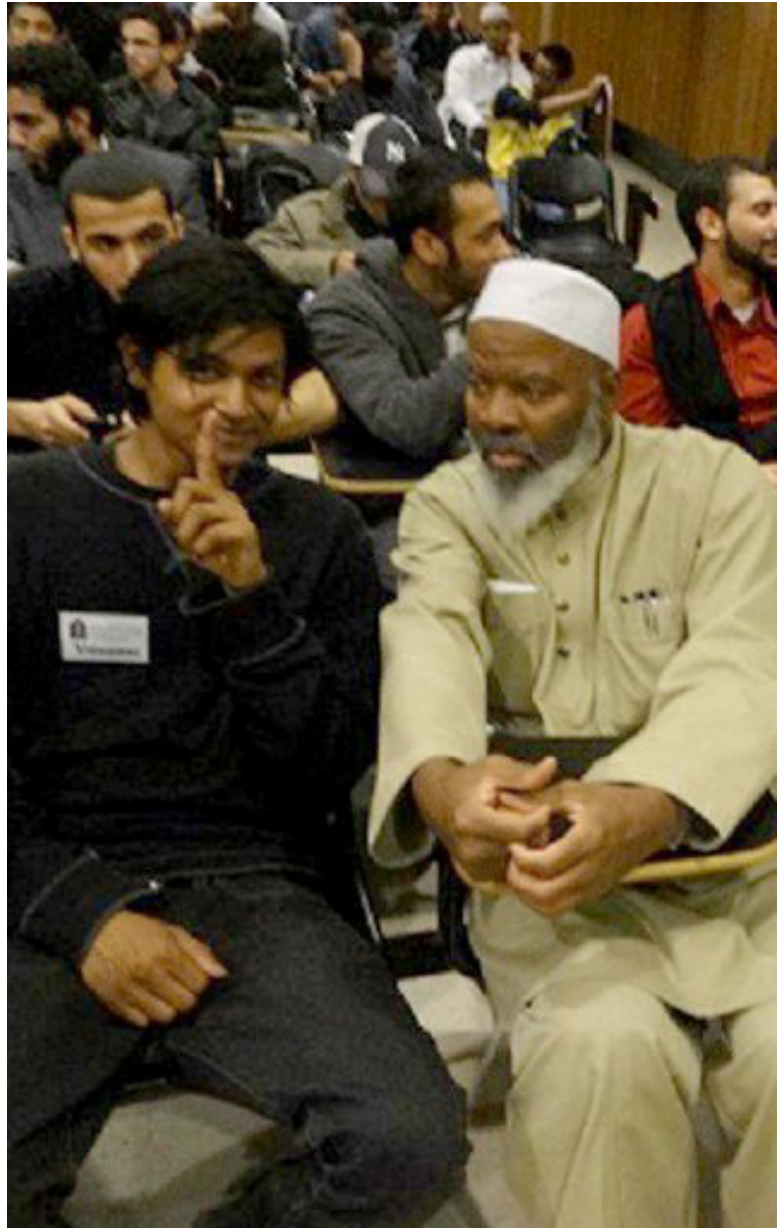
Oct. 23, 2012

NEW YORK — A paid informant for the New York Police Department's intelligence unit was under orders to "bait" Muslims into saying inflammatory things as he lived a double life, snapping pictures inside mosques and collecting the names of innocent people attending study groups on Islam, he told The Associated Press.

Shamiur Rahman, a 19-year-old American of Bangladeshi descent who has now denounced his work as an informant, said police told him to embrace a strategy called "create and capture." He said it involved creating a conversation about jihad or terrorism, then capturing the response to send to the NYPD. For his work, he earned as much as \$1,000 a month and goodwill from the police after a string of minor marijuana arrests.

"We need you to pretend to be one of them," Rahman recalled the police telling him. "It's street theater."

Rahman said he now believes his work as an informant against Muslims in New York was "detrimental to the Constitution." After he disclosed to friends details about his work for the police — and after he told the police that he had been contacted by the AP — he stopped receiving text messages from his NYPD handler, "Steve," and his handler's NYPD phone number



▼ Details

This handout photo provided by Jamill Noorata, taken May 3, 2012, shows Shamiur Rahman, left, sitting with Siraj Wahhaj at John Jay Community

JA-203

EXHIBIT D

272 of 301
1/4

was disconnected.

Rahman's account shows how the NYPD unleashed informants on Muslim neighborhoods, often without specific targets or criminal leads. Much of what Rahman said represents a tactic the NYPD has denied using.

The AP corroborated Rahman's account through arrest records and weeks of text messages between Rahman and his police handler. The AP also reviewed the photos Rahman sent to police. Friends confirmed

Rahman was at certain events when he said he was there, and former NYPD officials, while not personally familiar with Rahman, said the tactics he described were used by informants.

Informants like Rahman are a central component of the NYPD's wide-ranging programs to monitor life in Muslim neighborhoods since the 2001 terrorist attacks. Police officers have eavesdropped inside Muslim businesses, trained video cameras on mosques and collected license plates of worshippers. Informants who trawl the mosques — known informally as "mosque crawlers" — tell police what the imam says at sermons and provide police lists of attendees, even when there's no evidence they committed a crime.

The programs were built with unprecedented help from the CIA.

Police recruited Rahman in late January, after his third arrest on misdemeanor drug charges, which Rahman believed would lead to serious legal consequences. An NYPD plainclothes officer approached him in a Queens jail and asked whether he wanted to turn his life around.

The next month, Rahman said, he was on the NYPD's payroll.

NYPD spokesman Paul Browne did not immediately return a message seeking comment on Tuesday. He has denied widespread NYPD spying, saying police only follow leads.

In an Oct. 15 interview with the AP, however, Rahman said he received little training and spied on "everything and anyone." He took pictures inside the many mosques he visited and eavesdropped on imams. By his own measure, he said he was very good at his job and his handler never once told him he was collecting too much, no matter whom he was spying on.

Rahman said he thought he was doing important work protecting New York City and considered himself a hero.

One of his earliest assignments was to spy on a lecture at the Muslim Student Association at John Jay College of Criminal Justice in Manhattan. The speaker was Ali Abdul Karim, the head of security at the Masjid At-Taqlwa mosque in Brooklyn. The NYPD had been concerned about Karim for years and already had infiltrated the mosque, according to NYPD documents obtained by the AP.

College in New York. Rahman, a 19-year-old American of Bengali descent who has now denounced his work, was a paid informant for the New York Police Department's intelligence unit was under orders to "bait" Muslims into saying bad things as he lived a double life, snapping pictures inside mosques and collecting the names of innocent people attending study groups on Islam, he told The Associated Press. (AP Photo/Courtesy of Jamill Noorata)

Rahman also was instructed to monitor the student group itself, though he wasn't told to target anyone specifically. His NYPD handler, Steve, told him to take pictures of people at the events, determine who belonged to the student association and identify its leadership.

On Feb. 23, Rahman attended the event with Karim and listened, ready to catch what he called a "speaker's gaffe." The NYPD was interested in buzz words such as "jihad" and "revolution," he said. Any radical rhetoric, the NYPD told him, needed to be reported.

John Jay president Jeremy Travis said Tuesday that police had not told the school about the surveillance. He did not say whether he believed the tactic was appropriate.

"As an academic institution, we are committed to the free expression of ideas and to creating a safe learning environment for all of our students," he said in a written statement. "We are working closely with our Muslim students to affirm their rights and to reassure them that we support their organization and freedom to assemble."

Talha Shahbaz, then the vice president of the student group, met Rahman at the event. As Karim was finishing his talk on Malcolm X's legacy, Rahman told Shahbaz that he wanted to know more about the student group. They had briefly attended the same high school in Queens.

Rahman said he wanted to turn his life around and stop using drugs, and said he believed Islam could provide a purpose in life. In the following days, Rahman friended him on Facebook and the two exchanged phone numbers. Shahbaz, a Pakistani who came to the U.S. more three years ago, introduced Rahman to other Muslims.

"He was telling us how he loved Islam and it's changing him," said Asad Dandia, who also became friends with Rahman.

Secretly, Rahman was mining his new friends for details about their lives, taking pictures of them when they ate at restaurants and writing down license plates on the orders of the NYPD.

On the NYPD's instructions, he went to more events at John Jay, including when Siraj Wahhaj spoke in May. Wahhaj, 62, is a prominent but controversial New York imam who has attracted the attention of authorities for years. Prosecutors included his name on a 3 1/2-page list of people they said "may be alleged as co-conspirators" in the 1993 World Trade Center bombing, though he was never charged. In 2004, the NYPD placed Wahhaj on an internal terrorism watch list and noted: "Political ideology moderately radical and anti-American."

That evening at John Jay, a friend took a photograph of Wahhaj with a grinning Rahman.

Rahman said he kept an eye on the MSA and used Shahbaz and his friends to facilitate traveling to events organized by the Islamic Circle of North America and Muslim American Society. The society's annual convention in Hartford, Connecticut, draws a large number of Muslims and plenty of attention from the NYPD. According to NYPD documents obtained by the AP, the NYPD sent three informants there in 2008 and was keeping tabs on the group's former president.

Rahman was told to spy on the speakers and collect information. The conference was dubbed "Defending Religious Freedom." Shahbaz paid Rahman's travel expenses.

Rahman, who was born in Queens, said he never witnessed any criminal activity or saw anybody do anything wrong.

He said he sometimes intentionally misinterpreted what people had said. For example, Rahman said he would ask people what they thought about the attack on the U.S. Consulate in Libya, knowing the subject was inflammatory. It was easy to take statements out of context, he said. He said wanted to please his NYPD handler, whom he trusted and liked.

"I was trying to get money," Rahman said. "I was playing the game."

Rahman said police never discussed the activities of the people he was assigned to target for spying. He said police told him once, "We don't think they're doing anything wrong. We just need to be sure."

On some days, Rahman's spent hours and covered miles (kilometers) in his undercover role. On Sept. 16, for example, he made his way in the morning to the Al Farooq Mosque in Brooklyn, snapping photographs of an imam and the sign-up sheet for those attending a regular class on Islamic instruction. He also provided their cell phone numbers to the NYPD. That evening he spied on people at Masjid Al-Ansar, also in Brooklyn.

Text messages on his phone showed that Rahman also took pictures last month of people attending the 27th annual Muslim Day Parade in Manhattan. The parade's grand marshal was New York City Councilman Robert Jackson.

Rahman said he eventually tired of spying on his friends, noting that at times they delivered food to needy Muslim families. He said he once identified another NYPD informant spying on him. He took \$200 more from the NYPD and told them he was done as an informant. He said the NYPD offered him more money, which he declined. He told friends on Facebook in early October that he had been a police spy but had quit. He also traded Facebook messages with Shahbaz, admitting he had spied on students at John Jay.

"I was an informant for the NYPD, for a little while, to investigate terrorism," he wrote on Oct. 2. He said he no longer thought it was right. Perhaps he had been hunting terrorists, he said, "but I doubt it."

Shahbaz said he forgave Rahman.

"I hated that I was using people to make money," Rahman said. "I made a mistake."

Staff writer David Caruso in New York contributed to this story.

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AP

NYPD built secret files on mosques outside NY

ADAM GOLDMAN and MATT APUZZO

Feb. 22, 2012

NEWARK, N.J. (AP) — Americans living and working in New Jersey's largest city were subjected to surveillance as part of the New York Police Department's effort to build databases of where Muslims work, shop and pray. The operation in Newark was so secretive even the city's mayor says he was kept in the dark.

For months in mid-2007, plainclothes officers from the NYPD's Demographics Units fanned out across Newark, taking pictures and eavesdropping on conversations inside businesses owned or frequented by Muslims.

The result was a 60-page report, obtained by The Associated Press, containing brief summaries of businesses and their clientele. Police also photographed and mapped 16 mosques, listing them as "Islamic Religious Institutions."

The report cited no evidence of terrorism or criminal behavior. It was a guide to Newark's Muslims.

According to the report, the operation was carried out in collaboration with the Newark Police Department, which at the time was run by a former high-ranking NYPD official. But Newark's mayor, Cory Booker, said he never authorized the spying and was never told about it.

"Wow," he said as the AP laid out the details of the report. "This raises a number of concerns. It's just very, very sobering."

Police conducted similar operations outside their jurisdiction in New York's Suffolk and Nassau counties on suburban Long Island, according to police records.

Such surveillance has become commonplace in New York City in the decade since the 2001 terrorist attacks. Police have built databases showing where Muslims live, where they buy groceries, even what Internet cafes they use and where they watch sports. Dozens of mosques and student groups have been infiltrated and police have built detailed profiles of ethnic communities, from Moroccans to Egyptians to Albanians.

The documents obtained by the AP show, for the first time in any detail, how those efforts stretched outside the NYPD's jurisdiction. New Jersey and Long Island residents had no reason to suspect the NYPD was watching them. And since the NYPD isn't accountable to their votes or tax dollars, those non-New Yorkers had little recourse to stop it.

"All of these are innocent people," Nagiba el-Sioufi of Newark said while her husband, Mohammed, flipped through the NYPD report, looking at photos of mosques and storefronts frequented by their friends.

Egyptian immigrants and American citizens, the couple raised two daughters in the United States. Mohammed works as an accountant and is vice president of the Islamic Culture Center, a mosque a few blocks from Newark City Hall.

"If you have an accusation on us, then spend the money on doing this to us," Nagiba said. "But you have no accusation."

The Newark chief at the time, Chief Garry McCarthy, is now in charge of the Chicago Police Department. Reached on his cell phone Wednesday and asked about the report, McCarthy responded, "There's nothing to comment on," and hung up.

NYPD spokesman Paul Browne did not return a message seeking comment about the report.

The goal of the report, like others the Demographics Unit compiled, was to give police at-their-fingertips access to information about Muslim neighborhoods. If police got a tip about an Egyptian terrorist in the area, for instance, they wanted to immediately know where he was likely to find a cheap room to rent, where he might buy his lunch and at what mosque he probably would attend Friday prayers.

"These locations provide the maximum ability to assess the general opinions and general activity of these communities," the Newark report said.

The effect of the program was that hundreds of American citizens were cataloged — sometimes by name, sometimes simply by their businesses and their ethnicity — in secret police files that spanned hundreds of pages:

— "A Black Muslim male named Mussa was working in the rear of store," an NYPD detective wrote after a clandestine visit to a dollar store in Shirley, N.Y., on Long Island.

— "The manager of this restaurant is an Indian Muslim male named Vicky Amin" was the report back from an Indian restaurant in Lindenhurst, N.Y., also on Long Island.

— "Owned and operated by an African Muslim (possibly Sudanese) male named Abdullah Ddita" was the summary from another dollar store in Shirley, N.Y., just off the highway on the way to the Hamptons, the wealthy Long Island getaway.

In one report, an officer describes how he put people at ease by speaking in Punjabi and Urdu, languages commonly spoken in Pakistan.

Last summer, when the AP first began reporting about the NYPD's surveillance efforts, New York Mayor Michael Bloomberg said his police do not consider religion in their policing.

On Tuesday, following an AP story that showed the NYPD monitored Muslim student groups around the Northeast, school leaders including Yale president Richard Levin expressed outrage over the tactics. Bloomberg fired back in what was the most vigorous defense yet of

his department.

"The police department goes where there are allegations. And they look to see whether those allegations are true," he told reporters. "That's what you'd expect them to do. That's what you'd want them to do. Remind yourself when you turn out the light tonight."

There are no allegations of terrorism in the Demographics Unit reports and the documents make clear that police were only interested in locations frequented by Muslims. The canvas of businesses in Newark mentions Islam and Muslims 27 times. In one section of the report, police wrote that the largest immigrant groups in Newark were from Portugal and Brazil. But they did not photograph businesses or churches for those groups.

"No Muslim component within these communities was identified," police wrote, except for one business owned by a Brazilian Muslim of Palestinian descent.

Polls show that most New Yorkers strongly support the NYPD's counterterrorism efforts and don't believe police unfairly target Muslims. The Muslim community, however, has called for Police Commissioner Ray Kelly's resignation over the spying and the department's screening of a video that portrays Muslims as wanting to dominate the United States.

In Newark, the report was met with a mixture of confusion and anger.

"Come, look at yourself on film," Abdul Kareem Abdullah called to his wife as he flipped through the NYPD files at the lunch counter of their restaurant, Hamidah's Cafe.

An American-born citizen who converted to Islam decades ago, Abdullah said he understands why, after the 9/11 terror attacks, people are afraid of Muslims. But he said he wishes the police would stop by, say hello, meet him and his customers and get to know them. The documents show police have no interest in that, he said.

"They just want to keep tabs on us," he said. "If they really wanted to understand, they'd come talk to us."

After the AP approached Booker, he said the mayor's office had launched an investigation.

"We're going to get to the bottom of this," he said.

Booker met with Islamic leaders while campaigning for mayor. Those interviewed by the AP said they wanted to believe he didn't authorize the spying but wanted to hear from him directly.

"I have to look in his eyes," Mohammed el-Sioufi said at his mosque. "I know him. I met him. He was here."

Ironically, because officers conducted the operation covertly, the reports contain mistakes that could have been easily corrected had the officers talked to store owners or imams. If police ever had to rely on the database during an unfolding terrorism emergency as they had planned, those errors would have hindered their efforts.

For instance, locals said several businesses identified as belonging to African-American

Muslims actually were owned by Afghans or Pakistanis. El-Sioufi's mosque is listed as an African-American mosque, but he said the imam is from Egypt and the congregation is a roughly even mix of black converts and people of foreign ancestries.

"We're not trying to hide anything. We are out in the open," said Abdul A. Muhammad, the imam of the Masjid Ali Muslim mosque in Newark. "You want to come in? We have an open door policy."

By choosing instead to conduct such widespread surveillance, Mohammed el-Sioufi said, police send the message that the whole community is suspect.

"When you spy on someone, you are kind of accusing them. You are not accepting them for choosing Islam," Nagiba el-Sioufi said. "This doesn't say, 'This guy did something wrong.' This says, 'Everyone here is a Muslim.'"

"It makes you feel uncomfortable, like this is not your country," she added. "This is our country."

Online:

Read the documents:

Newark, N.J.: <http://apne.ws/wBk7Hg>

Nassau County: <http://apne.ws/xhHxNx>

Suffolk County: <http://apne.ws/zmCvMU>

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DAILY NEWS

NEWS

Mayor Bloomberg defends NYPD spying on Muslims calling it legal, appropriate and constitutional

'We don't target individuals based on race or religion. We follow leads' Bloomberg said

BY [TINA MOORE](#), [ROCCO PARASCANDOLA](#) AND [CORKY SIEMASZKO](#) / NEW YORK DAILY NEWS

FRIDAY, FEBRUARY 24, 2012, 12:36 PM



MARIO TAMA/GETTY IMAGES

NYC Mayor Bloomberg swatted away criticism of NYPD spying on Muslims during an appearance on WOR radio.

[Mayor Bloomberg](#) went to bat Friday for the embattled NYPD, vigorously defending the police department's spying on Muslims in the city — and across the river in Newark — as necessary in a post 9/11 world.

"Everything the NYPD has done is legal, it is appropriate, it is constitutional," the mayor said. "They are permitted to travel beyond the border of New York City to investigate cases."

"We don't target individuals based on race or religion. We follow leads."

And anybody who thinks the vigilance of New York's finest ends where another municipality's border begins is being "naive," Bloomberg said on the [John Gambling](#) show on WOR radio.

Newark, in particular, was a staging area for the Sept. 11 attacks, hizzoner said.

"The 9/11 Commission report said the hijackers often traveled to and from New Jersey and [Muhammed Atta](#), the ringleader of the attacks, often met with others in Newark to coordinate and plan the attacks, including which flights to hijack," Bloomberg said.

"The NYPD is trying to stop terrorism in the entire region," the mayor added. "If we knew of a threat in Newark, we wouldn't say, 'Oh that's yours, you worry about it.'"

Bloomberg said their "primary objective is to prevent things from happening."

"We have not let down our guard," he said. "We take the threats of today just as seriously as the threats of Sept. 12 2001. We have not forgotten the lesson of that terrible day on 9/11."

EXHIBIT F

JA-211

280 of 301
1/3

Bloomberg launched his defense a day after the NYPD defended itself against accusations that it violated the law by spying on Muslims.

Police Commissioner Raymond Kelly said Friday he believes the public is on their side.

"If you poll these issues they don't seem to be an unpopular position on the part of most of the public," Kelly said. "We're going to continue to do what we have to do to protect the city."

The spying charges were stoked by a series of Associated Press reports detailing how cops monitored Muslim New Yorkers in mosques, cafes, shops and schools after the terror attacks.

The most recent Associated Press report that the NYPD monitoring had spread to Newark prompted [New Jersey Sen. Robert Menendez](#) to ask [U.S. Attorney General Eric Holder](#) and CIA chief [David Petraeus](#) to look into what New York cops were doing.

And it sparked sharp criticism of the NYPD from [Newark Mayor Corey Booker](#), a Democrat, and even from the state's [Gov. Chris Christie](#), a Republican who called the reports “disturbing.”

"It comes with the territory that you're going to have criticism," Bloomberg said. "We obey the law and then within that context we protect you."

That said, Bloomberg admitted they had kept Booker in the dark about what the NYPD was doing.

"We did brief the Newark police department," he said. "We did not to the best of my knowledge brief Mayor Booker. So when Mayor Booker says he didn't know he's telling the truth."

Booker has said that he was never made aware of any joint NYPD-Newark P.D. probe of Muslims in the Garden State's biggest city.

On Thursday, NYPD Deputy Commissioner for Legal Matters Andrew Schaffer said New York cops could legally work outside the city if they don't exercise police powers.

City cops were restricted before 9/11 on how they monitor possible threats from within by the Handschu agreement, a 1985 consent decree that said cops could only monitor political activity if there was a suspicion of criminality — and then only with a warrant.

The court loosened the rules in 2003.

With [Helen Kennedy](#)

rparascandola@nydailynews.com



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DOE; SOOFIA TAHIR; ZAIMAH ABDUR-
RAHIM; and ABDUL-HAKIM ABDULLAH

12-CV-3401 - SDW - MCA

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

----- X

DECLARATION OF PETER G. FARRELL

PETER G. FARRELL, an attorney duly admitted to practice in the United States District Court for the District of New Jersey, declares under penalty of perjury and pursuant to 28 U.S.C. §1746 that the following statements are true and correct:

1. I am a Senior Counsel in the office of MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, attorney for the defendant. I am familiar with the facts and circumstances stated herein based upon personal knowledge and submit this declaration in support of Defendant's Motion to Dismiss the First Amended Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

2. Annexed hereto as **Exhibit A** is a true and accurate copy of the First Amended Complaint dated October 3, 2012.

3. The documents about which plaintiffs refer to in their First Amended Complaint were the subject of a series of articles by the Associated Press ("AP"). The AP also released the documents to the public at large beginning in or about August 2011. For example, the "Newark

report” referred to in the First Amended Complaint beginning in ¶5 was a document released to the public by the AP. The AP released the Newark report, for example, without redacting the names or addresses of the entities therein.

4. In May of 2012, the office of the Attorney General of New Jersey issued a press release related to the subject matter of the articles written by the Associated Press and the corresponding documents released by the AP. Annexed hereto as **Exhibit B** is a true and accurate copy of a press release from the Office of the Attorney General dated May 24, 2012 titled “Office of the Attorney General Takes Steps to Address Out-of-State Law Enforcement Activity in New Jersey Following Fact-Finding Review.” The press release states that a fact finding review has “revealed no evidence to date that the NYPD’s activities in the state violated New Jersey civil or criminal laws.”

5. The First Amended Complaint refers to a 2006 report regarding a Danish artist’s cartoons of the Prophet Muhammad. Annexed hereto as **Exhibit C** are true and accurate copies of news articles from The New York Times titled (i) “Temperatures Rise Over Cartoons Mocking Muhammad” dated February 3, 2006; (ii) “Italian Quits Over Cartoons; 15 Die in Nigeria” dated February 19, 2006; (iii) “2 Die as Pakistan Cartoon Rage Turns Violent” dated February 15, 2006; (iv) and an article from The Washington Post titled “Cartoons of Prophet Met With Outrage” dated January 31, 2006.

Dated: New York, New York
December 6, 2012

s/ Peter G. Farrell

Peter G. Farrell
Senior Counsel

EXHIBIT A

Exhibit A to the Declaration of Michael Farrell
(Plaintiffs' First Amended Complaint) is reproduced at JA-23.

EXHIBIT B



THE STATE OF NEW JERSEY

DEPARTMENT OF LAW & PUBLIC SAFETY

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For Immediate Release:

May 24, 2012

Office of The Attorney General

- Jeffrey S. Chiesa, Attorney General

**For Further
Information:****Media Inquiries-**
Paul Loriquet
or Lee Moore
609-292-4791**Citizen Inquiries-**
609-292-4925**Office of the Attorney General Takes Steps to
Address Out-of-State Law Enforcement Activity
in New Jersey Following Fact-Finding Review**[View Directive](#)

TRENTON -- Attorney General Jeffrey S. Chiesa announced today that his office has taken steps to improve law enforcement coordination and address concerns expressed by Muslim community leaders following a three-month fact-finding review of intelligence-gathering conducted by the New York Police Department (NYPD) in New Jersey. The fact-finding review, which is on-going, has revealed no evidence to date that NYPD's activities in the state violated New Jersey civil or criminal laws.

Among the steps taken by the Office of the Attorney General are the following:

- An agreement has been reached to strengthen the lines of communication with NYPD concerning investigative activities in New Jersey related to counter-terrorism. New Jersey law enforcement officials will meet with NYPD on a regular basis to exchange information concerning counter-terrorism intelligence and operations.
- Effective immediately, by virtue of an Attorney General's Directive issued today, New Jersey law enforcement agencies have formalized notification protocols to follow when they learn of law enforcement activity being conducted by out-of-state police agencies within their jurisdictions. For counter-terrorism-related matters, the Directive establishes reporting protocols to designated personnel at the New Jersey State Police Counter-Terrorism Bureau and the Office of Homeland Security and Preparedness, for further coordination with the Joint Terrorism Task Force headed by the Federal Bureau of Investigation.
- The Attorney General's Office will establish a Muslim outreach

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committee in order to enhance communication and encourage a greater understanding regarding issues of importance to both law enforcement and the Muslim community.

The fact-finding review conducted by the Office of the Attorney General included gathering information from individuals within the ranks of law enforcement in New Jersey, New York, and other states, as well as from civilians within the Muslim and other communities in New Jersey. The Office of the Attorney General will continue to receive and assess information relevant to the conduct at issue and cooperate with any other state or federal law enforcement agencies engaged in reviewing those matters.

Attorney General Chiesa announced the results of the fact-finding review to date after meeting earlier today with leaders from New Jersey's Muslim community at the Hughes Justice Complex in Trenton. The Attorney General explained that while, as a routine matter, law enforcement in New Jersey effectively coordinates operations to de-conflict and ensure operational safety with out-of-state law enforcement agencies, the Directive issued today will bring consistency to those reporting mechanisms based on the nature and scope of the underlying law enforcement activity. He also indicated that the Directive, as well as regular meetings with the NYPD, will enable better, and more immediate, coordination of information for purposes of conducting counter-terrorism operations.

Recognizing the unique challenges of counter-terrorism intelligence gathering and investigations, while understanding the need to safeguard the public's confidence in law enforcement's respect for fundamental civil liberties, Attorney General Chiesa said, "We remain committed to striking the appropriate balance of ensuring the safety of our citizens through vigilance in fighting terrorism, while not undermining the public's confidence in how we approach that mission."

###

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Temperatures Rise Over Cartoons Mocking Muhammad

By CRAIG S. SMITH and IAN FISHER: Craig S. Smith reported from Paris for this article, and Ian Fisher from Gaza. Published: February 3, 2006

An international dispute over European newspaper cartoons deemed blasphemous by some Muslims gained momentum on Thursday when gunmen threatened the European Union offices in Gaza and more European papers pointedly published the drawings as an affirmation of freedom of speech.

In Gaza, masked gunmen swarmed the European Union offices on Thursday to protest the cartoons, and there were threats to foreigners from European countries where the cartoons have been reprinted. The gunmen stayed about 45 minutes.

A newly elected legislator from Hamas, the radical Islamic group that swept the Palestinian elections last week, said large rallies were planned in Gaza in the next few days to protest the cartoons, which depict the Prophet Muhammad in an unflattering light. Merely publishing the image of Muhammad is regarded as blasphemous by many Muslims.

"We are angry -- very, very, very angry," said the legislator, Jamila al-Shanty. "No one can say a bad word about our prophet."

The conflict is the latest manifestation of growing tensions between Europe and the Muslim world as the Continent struggles to absorb a fast-expanding Muslim population whose customs and values are often at odds with Europe's secular societies. Islam is Europe's fastest growing religion and is now the second largest religion in most European countries. Racial and religious discrimination against Muslims in Europe's weakest economies adds to the strains.

The trouble began in September in Denmark, when the daily Jyllands-Posten published 12 cartoons lampooning intolerance among Muslims and links to terrorism. A Norwegian magazine published the cartoons again last month, and the issue erupted this week after diplomatic efforts failed to resolve demands by several angry Arab countries that the publications be punished.

The cartoons include one depicting Muhammad with a bomb in place of a turban on his head and another showing him on a cloud in heaven telling an

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approaching line of smoking suicide bombers, "Stop, stop, we ran out of virgins!"

They have since been reprinted in France, Germany, Italy, Switzerland, Spain and Hungary. The BBC broadcast them on Thursday.

[On Friday, 300 militant Indonesian Muslims went on a rampage inside the lobby of the Jakarta building housing the Danish Embassy, unable to get past security to the embassy on the 25th floor, Reuters reported. They tossed rotten eggs and made fiery speeches calling on their government to sever diplomatic ties with Denmark and evict its ambassador. The protesters dispersed after an hour. There were no arrests.]

Most European commentators concede that the cartoons were in poor taste but argue that conservative Muslims must learn to accept Western standards of free speech and the pluralism that those standards protect.

Several accused Muslims of a double standard, noting that media in several Arab countries continue to broadcast or publish references to "The Protocols of the Elders of Zion," a notorious early 20th-century anti-Semitic hoax that presented itself as the Jews' master plan to rule the world.

Many Muslims say the Danish cartoons reinforce a dangerous confusion between Islam and the Islamist terrorism that nearly all Muslims abhor. Dalil Boubakeur, head of France's Muslim Council, called the caricatures a new sign of Europe's growing "Islamophobia."

Saudi Arabia and Syria recalled their ambassadors from Denmark, while the Danish government summoned other foreign envoys in Copenhagen to talks on Friday over the issue, having already explained that it does not control the press.

Jyllands-Posten has received two bomb threats in the past few days, despite having apologized for any hurt feelings about the drawings.

Thursday morning, about a dozen gunmen appeared at the European Union offices in Gaza, firing automatic weapons and spray-painting a warning on the outside gate. The men handed out a pamphlet warning Denmark, Norway and France that they had 48 hours to apologize.

The office, staffed then only by Palestinians, reportedly received a warning that the gunmen were coming, and was quickly closed.

In Nablus, on the West Bank, two masked gunmen kidnapped a German from a hotel, thinking he was French or Danish, Agence France-Presse reported. They turned him over to the police once they realized their mistake.

Leaders of Fatah and Hamas said they did not endorse harming any foreigners in Gaza. All the same, the threat emptied hotels there of Europeans, most of them journalists.

France Soir, the only French daily to reprint the cartoons, fired its managing editor late Wednesday as "a strong sign of respect for the beliefs and intimate convictions of every individual," according to a statement from its owner,

Raymond Lakah, an Egyptian-born French businessman.

In an editorial defending its decision to publish the cartoons, France Soir asked Thursday what would remain of "the freedom to think, speak, even to come and go," if society adhered to all of the prohibitions of the world's various religions. The result, the newspaper said, would be "the Iran of the mullahs, for example."

Afghanistan's president, Hamid Karzai, issued a statement condemning "in the strongest terms" France Soir's publication of the cartoons. "Any insult to the holy prophet (peace be upon him) is an insult to more than one billion Muslims," his statement read.

On Thursday, France's embassy in Algeria, a former colony, issued a statement condemning the publication, saying the French government was "deeply attached to the spirit of tolerance and to respect of religious belief, as we are to the principle of freedom of the press."

"In this light, France condemns all those who hurt individuals in their beliefs or religious convictions," the statement read.

Still, Europeans showed no signs of backing down. Le Monde ran a sketch of a man, presumably Muhammad, made of sentences reading, "I must not draw Muhammad."

Photos: Cartoons of Muhammad that offended many Muslims originated in Denmark, leading to flag-burning in Pakistan and a boycott in Bahrain. (Photo by Hamad Mohammed/Reuters); (Photo by Khalid Tanveer/Associated Press); Gunmen in Gaza seized the European Union office and marked it "Closed until an apology is sent to Muslims." Syrians protested Danish imports. (Photo by Louai Beshara/Agence France-Presse -- Getty Images); (Photo by Mohammed Salem/Reuters)

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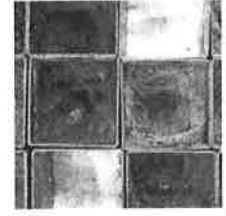
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February 19, 2006

Italian Quits Over Cartoons; 15 Die in Nigeria

By IAN FISHER

TURIN, Italy, Feb. 18 — A day after at least 11 people were killed in Libya amid continuing violence over the Danish cartoons of the Prophet Muhammad, an Italian government minister resigned Saturday for wearing a T-shirt printed with the cartoons.

[In Nigeria, Muslims protesting the cartoons attacked Christians and burned churches on Saturday, killing at least 15 people in the deadliest confrontation yet in the whirlwind of Muslim anger over the drawings, The Associated Press reported.]

The protesters in Libya, angry over the minister's T-shirt, had stormed an Italian Consulate in Benghazi on Friday and were fired on by Libyan soldiers. Here in Italy, critics of Roberto Calderoli, the reforms minister who showed off his T-shirt on television earlier this week, blamed him for the violence — and even his own political allies, including Prime Minister Silvio Berlusconi, demanded his resignation.

In London, some 10,000 demonstrators marched in what was the largest of several protests there so far. And in India, a politician offered a reward for the deaths of the cartoonists.

[Mobs of Muslim protesters swarm through Maiduguri, the capital of Borno State in northeastern Nigeria, with machetes, sticks and iron rods, The A.P. said. One group threw a tire around a man, poured gas on him and set him ablaze.

[Thousands of rioters burned 15 churches in a three-hour rampage before troops and police reinforcements restored order, said a Nigerian police spokesman, Haz Iwendi. Security forces arrested dozens of people, he said.

[Chima Ezeoke, a Christian Maiduguri resident, said protesters attacked and looted shops owned by minority Christians, most of them with origins in the country's south. Witnesses said three children and a priest were among those killed.

[Nigeria, with a population of more than 130 million, is roughly divided between a predominantly Muslim north and a mainly Christian south.

[Thousands of people have died in that West African country since 2000 in religious violence fueled by the adoption of the strict Islamic legal code by a dozen states in the north, seen by most Christians as a move to impose religious hegemony on non-Muslims.]

The Italian minister, Mr. Calderoli, quit under protest, warning against an Islamic "attack on the West."

"In these last days I expressed in my way solidarity with all those who have been struck by the blind violence of religious fanaticism," he said in a statement that referred to an Italian priest killed this month in Turkey by a Muslim who was reportedly angry over the cartoons. "But it was never my intention to offend the Muslim religion nor to be the pretext for the violence of yesterday," he said.

With the dispute over Mr. Calderoli's shirt, the violence over the cartoons breached Italy's domestic politics. Mr. Calderoli belongs to a far-right party, the Northern League, that is small but influential. It is a key member of Mr. Berlusconi's center-right ruling coalition.

Mr. Berlusconi and the Libyan leader Muammar el-Qaddafi discussed the demonstration by telephone, with both agreeing that it should not have "negative repercussions" on their relationship.

In Libya, the riots also claimed a political casualty. Libya's interior minister was suspended for "an excessive use of force" against the protesters there, The Associated Press reported. At least 11 people were killed in violence there on Friday.

In central London, thousands of Muslims from across Britain chanted "Allah-u akbar" ("God is great" in Arabic) and waved placards in protest of the publication of the cartoons in Danish and other European newspapers. The cartoons were shown briefly on the BBC but have not been published by British newspapers.

The protest, which gathered under Nelson's Column in Trafalgar Square, drew at least 10,000 protesters, the police said, making it the biggest of three demonstrations in London in three weeks. Referring to the cartoons, one demonstrator, Mohamed Abdul Kabir, a 23-year-old psychology student from Accrington in the northwest England, said: "It has gone beyond satire; it has gone to insult. Who defines the line where freedom stops?"

In India, a politician in the nation's largest state has offered an \$11 million reward for the killing of any of the Danish cartoonists "who dared to make the caricature of the Prophet," according to Indian news media reports published Saturday. The state government official, Haji Yaqoob Quereshi, made the announcement at a rally in the north Indian town of Meerut after Friday Prayer.

State officials said he would not face charges because he was articulating his personal opinion. Demonstrations have broken out during the past several days in a number of Indian cities with large Muslim populations.

Alan Cowell contributed reporting from London for this article, and Somini Sengupta from Goa, India.

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2 Die as Pakistan Cartoon Rage Turns Violent

By SALMAN MASOOD

Published: February 15, 2006

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ISLAMABAD, [Pakistan](#), Feb. 14 — Two people were killed and dozens injured on Tuesday in the nation's worst day of protests against the cartoons satirizing the Prophet Muhammad, officials said.

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Mian Khursheed/Reuters

A KFC restaurant was among several that demonstrators burned Tuesday in Lahore, Pakistan.

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Violence flared in two cities as demonstrators rampaged through Islamabad, the capital, and Lahore in the east, vandalizing property, burning government buildings and attacking Western businesses. In Lahore, guards at a bank shot dead two people and the police struggled to control thousands of demonstrators.

Protests have continued here for weeks over cartoons published last year in a Danish newspaper that have stirred Muslims' emotions around the world. Until Tuesday, demonstrations here had been relatively peaceful.

On Tuesday morning, however, more than 3,000 students gathered in Aabpara Square and started marching toward

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the diplomatic enclave where most Western embassies are situated. The protesters, mostly teenage students, wielded sticks and clashed with the police while chanting slogans against Denmark and the president of Pakistan, Gen. Pervez Musharraf.

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The police used tear gas to disperse the students, who threw stones and tore down portraits of General Musharraf. Interior Minister Aftab Ahmed Khan Sherpao said the protesters had no leader and were difficult to control. No major damage to Western embassies was reported.

Later, some members of Parliament staged a protest walk from Parliament to the main entrance of the diplomatic enclave.

In Lahore, capital of Punjab Province, demonstrators burned two banks and McDonald's, Pizza Hut and KFC restaurants, and set part of the provincial parliament building afire. More than 200 cars were damaged and dozens of stores were ransacked.

News channels showed smoke billowing from damaged buildings and stick-wielding demonstrators smashing windows and clashing with the police. Protesters were seen looting an office of Telenor, a Norwegian cellphone company, and running off with computers and mobile phone accessories.

Officials said they sympathized with the protesters' emotions but did not condone the violence.

"What message are we giving out by damaging our own?" the chief minister of Punjab, Chaudhary Pervez Elahi, told a television channel. Mr. Elahi said demonstrations were allowed to be held in a peaceful manner, but had been hijacked by miscreants.

As for the shooting of protesters in Lahore, Mr. Elahi said, "Bank authorities allege that the protestors were trying to force their way into the bank."

Although the cartoons have appeared in European newspapers, demonstrators vented their anger over the United States, as well. Geo, a television channel, showed reports of a group of protesters chanting, "Bush dog!" and "Down with Bush!" before smashing vehicles and stores. Protesters across Pakistan have demanded that the government sever ties with the countries where the cartoons have appeared and expel the Danish and Norwegian envoys.

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The Washington Post

Cartoons of Prophet Met With Outrage

Depictions of Muhammad in Scandinavian Papers Provoke Anger, Protest Across Muslim World

By John Ward Anderson
Washington Post Foreign Service
Tuesday, January 31, 2006

PARIS, Jan. 30 -- Cartoons in Danish and Norwegian newspapers depicting the prophet Muhammad in unflattering poses, including one in which he is portrayed as an apparent terrorist with a bomb in his turban, have triggered outrage among Muslims across the Middle East, sparking protests, economic boycotts and warnings of possible retaliation against the people, companies and countries involved.

The cartoons were published in September in a conservative, mass-circulation Danish daily, Jyllands-Posten, and were reprinted three weeks ago in Magazinet, a small evangelical Christian newspaper in Norway. But the reaction has been widespread, and fallout over the images reached new levels Monday, with the European Union backing Denmark in the dispute and warning that a boycott of Danish products -- already being felt by some companies -- would violate World Trade Organization rules.

Saudi Arabia has recalled its ambassador from Denmark and Libya has closed its embassy in Copenhagen, the Danish capital. Kuwait called the cartoons "despicable racism." Iran's foreign minister termed them "ridiculous and revolting."

The cartoons included one of the prophet as a crazed, knife-wielding Bedouin and another of him at the gates of heaven telling suicide bombers: "Stop. Stop. We have run out of virgins!" -- a reference to the belief of some Muslim extremists that male suicide bombers are rewarded in heaven with 72 virgins.

Islamic critics charged that the cartoons were a deliberate provocation and insult to their religion designed to incite hatred and polarize people of different faiths. Defenders of the newspapers and artists said the 12 published cartoons simply were intended to highlight Islam's intolerance.

The controversy has pitted two newspapers championing what they say is the cause of free speech against Islam's prohibition of any artistic depiction of the prophet

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Muhammad, which is considered blasphemous, no matter how benign. The clash is being fueled by a wave of anti-immigrant sentiment in staunchly secular Denmark, where many express frustration that the country's 200,000 Muslim immigrants are resisting assimilation into Danish society.

"There's widespread skepticism toward immigration and integration efforts" because of a popular belief that "immigrants are here to take advantage of the Danish system," said Ulf Hedetoft, a political scientist at Aalborg University and director of Denmark's Academy for Migration Studies.

"People are inclined to see Islam and political extremism as two sides of the same coin," he said.

In a statement, the 57-nation Organization of the Islamic Conference has condemned "the printing of blasphemous and insulting caricatures of the Prophet Mohammed," saying it "falls into the trap set up by fundamentalists and fosters acts of revenge." Protesters across the Muslim world have burned Norwegian and Danish flags and issued sharp denunciations.

The controversy began in September, after an author in Denmark complained that he could not find an artist willing, under his own name, to illustrate a book about the prophet's life.

In response, Jyllands-Posten, the conservative daily, ran 12 cartoons by various staff artists depicting Muhammad. The paper explained that the project was meant to gauge the public's response.

In the Islamic world, it was swift and furious, but in Denmark, the majority backed the paper's right to print the cartoons. A recent poll showed that 62 percent of those surveyed said the paper should not apologize.

The tumult passed, but was reignited even more furiously when Magazinet, the evangelical Christian paper in Norway, reprinted the cartoons. The editor, Vebjoern Selbekk, wrote that he was "sick of the ongoing hidden erosion of the freedom of expression." He told the Reuters news agency that he had received 15 death threats and more than 1,000 hate letters.

The Danish Foreign Ministry late Sunday issued a statement warning its citizens in nine Middle Eastern countries and the Palestinian territories to "show extra vigilance" because of the "strong negative feelings" sparked by the uproar.

Meanwhile, a Denmark-based dairy group, Arla Foods -- which according to a statement on its Web site sells about \$421 million annually in the Middle East and has about 1,000 employees there -- said that sales had come to a "standstill" across the region.

The newspapers have issued explanations but have couched their apologies. "We are sorry if Muslims have been offended," Jyllands' editor in chief, Carsten Juste, told the Associated Press, adding that the newspapers actions were "within the constitution, the Danish penal code and international convention. . . . It is not a dictatorship like Saudi Arabia that is going to dictate our editorial line here in Denmark."

Norway described the cartoons as "unfortunate and deplorable." Danish Prime Minister Anders Fogh Rasmussen has refused to apologize. In a recent speech, without mentioning the controversy, he denounced "any expression, action of indication that attempts to demonize groups of people on the basis of the religion or ethnic background." But he added that "freedom of speech is absolute. It is not negotiable."

"The question here is how far do you show sensitivity and self-control over issues without falling into self-censorship," said Medhi Mozaffari, a professor at Aarhus University in Denmark, who defended his government's stance not to apologize.

"It's unthinkable that the prime minister would make an apology," he said. "This is Islamists putting democracies on trial to see how far they can be pressured."

Special correspondent Marie Valla contributed to this report.

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