

NATIONAL SECURITY
PROJECT



September 12, 2013

BY ECF

Honorable Pamela K. Chen
United States District Judge
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

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Re: *Raza et al. v. City of New York et al.*
Case No. 13-cv-03448-PKC-JMA

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

Dear Judge Chen:

On behalf of Plaintiffs, who are New York Muslims subject to unlawful and ongoing New York City Police Department (“NYPD”) surveillance on the basis of their religion and without any evidence of wrongdoing, we write to request a conference at which we will present an order to show cause for expedited discovery in support of a preliminary injunction. We have consulted with counsel for the Defendants, who indicated that Defendants will object to the expedited proceedings.

As alleged in Plaintiffs’ Complaint, the NYPD has engaged in an unlawful policy and practice of religious profiling and suspicionless surveillance of New York Muslims (“Muslim Surveillance Program”). The NYPD’s own records, revealed through investigative reporting, confirm that its Intelligence Division has singled out Muslim religious and community leaders, mosques, organizations, businesses, and individuals for pervasive surveillance that is not visited upon the public at large or upon institutions or individuals belonging to any other religious faith.¹ A number of these documents further confirm that Plaintiffs were subjected to discriminatory and unlawful surveillance.² The NYPD’s surveillance program violates the First

¹ NYPD documents confirming these allegations are available at <http://www.ap.org/media-center/nypd/investigation>, and at http://enemieswithinbook.com/document_legend/.

² See, e.g., NYPD Intelligence Division, *Deputy Commissioner’s Briefing* (Oct. 24, 2008) (discussing NYPD surveillance and infiltration of Mr. Elshinawy’s wedding; also discussing several people who attended a lecture by Mr. Elshinawy and later went to Masjid Al-Ansar, noting that “[t]hey’re fixing up the basement at

and Fourteenth Amendments of the U.S. Constitution, as well as Article I, § 3 of the New York State Constitution.

Plaintiffs intend to file a motion for a preliminary injunction that, pending final judgment, (1) orders the NYPD to segregate all existing records related to Plaintiffs' religious identity, speech, beliefs, and practices that are not supported by any individualized suspicion of Plaintiffs' wrongdoing, and prohibits any use or dissemination of such records; and (2) enjoins the NYPD from any investigation of Plaintiffs that is based solely or predominantly on their religion.

Preliminary relief is warranted here. Because Plaintiffs seek an injunction barring Defendants from using records related to Plaintiffs that are already in existence or investigating Plaintiffs based on their religion, the injunction sought is "more prohibitory than mandatory in nature." *Abdul Wali v. Coughlin*, 754 F.2d 1015, 1025–26 (2d Cir. 1985), *overruled on other grounds*, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). Accordingly, Plaintiffs must demonstrate irreparable harm in the absence of the requested relief, and either (i) a likelihood of success on the merits, or (ii) "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward [Plaintiffs]." *Bery v. City of N.Y.*, 97 F.3d 689, 694 (2d Cir. 1996) (internal quotation marks omitted). Plaintiffs satisfy both of these standards.³

The harms suffered by Plaintiffs—a religious leader, a Muslim scholar, two mosques, a charity, and a Muslim student—are ongoing and irreparable. The Second Circuit has frequently presumed irreparable harm when there is an alleged deprivation of constitutional rights. *See, e.g., Statharos v. New York City Taxi and Limousine Comm'n*, 198 F.3d 317, 322

Al-Ansar for the purpose of transforming it somewhat, into a gym for working out. They also want to start JiuJitsu classes in Al-Ansar."), *available at* <http://bit.ly/17Qnj8>; NYPD Technical Operations Unit, *Surveillance Request* (Feb. 9, 2009) (requesting daily surveillance of Mr. Elshinawy based on the NYPD's characterization of his religious beliefs), *available at* <http://bit.ly/13MVyYg>; NYPD Intelligence Division, *Strategic Posture 2006* 8, 53, 54, 56, 85 (discussing Masjid At-Taqwa), *available at* <http://bit.ly/1eEuSNV>; NYPD Intelligence Division, *Handschu Committee Meeting Minutes* (May 12, 2009) (discussing "terrorism enterprise investigations" into entire mosques, including Masjid At-Taqwa), *available at* <http://apne.ws/15RLAZ0>; *see also* Adam Goldman & Matt Apuzzo, *NYPD Designates Mosques as Terrorism Organizations*, Associated Press, Aug. 28, 2013, *available at* <http://bit.ly/1b62GmZ>.

³ Even if Plaintiffs' request for relief were characterized as one for a mandatory preliminary injunction, *see Mastrovincenzo v. City of N.Y.*, 435 F.3d 78, 89 (2d Cir. 2006), Plaintiffs will show a substantial likelihood of success.

(2d Cir. 1999). But even if the Court did not apply this presumption, Plaintiffs readily satisfy the irreparable harm requirement.

Defendants' September 10, 2013 letter to Magistrate Judge Azrack (Dkt. No. 11) makes plain that the Muslim Surveillance Program continues unabated—and that Defendants believe Plaintiffs' religious activities justify police investigations laden with innuendo and guilt-by-association. It is a further admission that the NYPD has targeted each of the Plaintiffs for surveillance and, even more, it leaves no question that Plaintiffs will suffer irreparable injury going forward.

Indeed, the NYPD's suspicionless surveillance substantially burdens Plaintiffs' religious beliefs and practices, by keeping away congregants from mosques, disrupting religious teaching and counseling, hindering charitable efforts, and subjecting religious activities to baseless police scrutiny and record-keeping. This violation of First Amendment rights itself constitutes irreparable injury. *See, e.g., Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (“[T]he denial of the plaintiff's right to the free exercise of his religious beliefs is a harm that cannot be adequately compensated monetarily.”). Equally irreparable and equally substantial is the injury to Plaintiffs' constitutional right to equal protection. The NYPD's Muslim Surveillance Program has stigmatized Plaintiffs and their religion as deserving of intense suspicion and distrust, while subjecting them to unwarranted police investigation on the basis of their religious faith. *See Sunrise Dev., Inc. v. Town of Huntington*, 62 F. Supp. 2d 762, 779 (E.D.N.Y. 1999) (granting preliminary injunction based on the “irreparable harm associated with disability discrimination and the correlative stigma which attaches to its victims”); *Members of Bridgeport Hous. Auth. Police Force v. City of Bridgeport*, 85 F.R.D. 624, 650 (D. Conn. 1980).

Plaintiffs will also show a substantial likelihood of success on the merits. The NYPD's Muslim Surveillance Program violates the Fourteenth Amendment: Defendants' policy and practice of targeting Plaintiffs because of their religion is discriminatory in purpose and effect; it does not serve a legitimate government interest; and it is not narrowly tailored, instead treating religious belief, speech and practices as proxies for criminal suspicion. The Muslim Surveillance Program also violates Plaintiffs' right to free exercise of religion under the First Amendment and Article I, § 3 of the New York State Constitution. The NYPD's policy and practice is not neutral or one of general applicability—it singles out Muslim religious and community leaders, mosques, organizations, businesses, and individuals for pervasive surveillance that is not visited upon the public at large. It has placed a substantial burden on Plaintiffs' religious exercise, as alleged extensively in the Complaint. In addition, the Muslim Surveillance Program violates the Establishment Clause, as it makes explicit and intentional distinctions between Plaintiffs and individuals and institutions belonging to other religious groups. It has had the

effect of inhibiting Plaintiffs' religious goals, conduct, and practice, and it fosters excessive government entanglement with religion by, among other things, subjecting Plaintiffs to intrusive surveillance, heightened police scrutiny, and infiltration by police informants and officers.

Finally, the balance of hardships favors Plaintiffs' request for preliminary relief. Plaintiffs seek a preliminary injunction that would abate the continuing violation of their rights *pendente lite*: it would segregate records related to Plaintiffs that are the product of Defendants' discriminatory practices and policies, while also barring Defendants from investigating Plaintiffs based solely or predominantly on their religion. At the same time, entry of the requested injunction would not prejudice any legitimate government interest, because it would preserve the NYPD's ability to investigate leads associated with actual criminal activity.

Plaintiffs will propose the following schedule for expedited discovery in support of their motion and briefing:

- September 20: The parties serve document requests and interrogatories.
- October 4: The parties' responses to document requests and interrogatories due.
- October 10: The parties serve deposition notices.
- November 1: All depositions completed by this date.
- November 8: The parties serve requests for admissions, if any.
- November 22: The parties' responses to requests for admissions due.
- December 16: Plaintiffs' motion for preliminary injunction due.
- January 10: Defendants' opposition to Plaintiffs' motion for preliminary injunction due.
- January 20: Plaintiffs' reply due.

Respectfully submitted,



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