



The Interfaith Center of New York

Via Electronic Mail and Hand Delivery

Honorable Charles S. Haight
United States District Court
Southern District of New York
500 Pearl Street New York, New York 10007

*Re: Handschu v. Special Servs. Div., No. 71 Civ. 2203 (CSH) and Raza, et al v. City of New York, et al,
13 CV 3448 (PKC) (JO) – Settlement*

Dear Judge Haight,

The Interfaith Center of New York (ICNY), is submitting comment on behalf of our organization responding to the proposed Handschu guidelines addressing NYPD surveillance against Muslims and activists. We would like to take this opportunity to thank the Court for this chance to comment, for the time extension awarded to us as a class, and for ordering this additional hearing date, today, so that communities can be heard. The extra time has allowed us the chance to deliberate and educate each other on this historic proposed settlement and its legal and policy implications. ICNY would also like to thank the Raza plaintiffs, leaders of the Muslim community who bravely stepped forward to protect our collective civil liberties and in so doing opened themselves and their families to scrutiny and hardship. Thank you.

The Interfaith Center of New York has been instrumental in strengthening the diverse religious communities of our city based on our embrace of a deep-seated American value-- *E Pluribus Unum*—"Out of Many, One." Founded in 1997 by the Very Rev. James Parks Morton, ICNY has grown over time to become a nationally-recognized non-profit organization that catalyzes partnerships among grassroots and immigrant religious leaders and civic officials to address New York's most pressing social problems. ICNY has engaged in coalition-building and advocacy with Muslim, Sikh, and South Asians partners in the area of religious freedom, surveillance, and NYPD reform. We have produced a religious diversity

training film for police officers and are also engaged in rallies and public events to combat Islamophobia. Our past and present institutional partners include The Mayor's Office of Immigrant Affairs, The New York Public Library, The National Endowment for the Humanities, Catholic Charities of New York, and UJA-Federation, Union Theological Seminary, and the Harlem Community Justice Center.

As an organization that is devoted to respecting the sanctity of all religions, ICNY is deeply concerned that our brothers and sisters in the Muslim community have been suffering from systematic, unwarranted surveillance because of their religion. After the Associated Press revelations in 2011¹ it became clear that the suspicions of many ICNY Muslim partners since 9/11 were accurate: The NYPD was indeed involved in unwarranted, sweeping surveillance operations against Muslims all over the Northeast. These operations ranged from spying on mosques to sending undercover agents into Muslim Student Associations. Already difficult relations between the Muslim communities of New York and NYPD worsened.

The Sanctity of the Sacred Space and Respecting Religious Freedom:

ICNY's mission lies in ensuring that New York City remains a place where all religious traditions feel respected and welcome. NYPD's widespread espionage operations have had a chilling effect on mosques, Muslim Community Centers, and Muslim Student Associations, causing many of our Muslim partners to self-censor and inhibiting their rights to worship freely. They have led many Imams, some of whom are here today, to fall short of their sacred duties to their Muslim congregants—often taping their own sermons for fear that they may be entrapped by an undercover or unjustly accused of incitement. The bonds of trust forged in the sacred mosque space are disrupted by the interventions of NYPD undercovers,

¹ AP's Probe Into NYPD Intelligence Operations

<http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas>

informants, and recording activities. Moreover, NYPD surveillance activities have also hurt Muslim New Yorkers in their abilities to engage in the political process, weakening their abilities to exercise their fundamental right to free speech. Indeed, many Muslims are now *less* likely to visit certain websites for research purposes. They are less likely to exercise the full extent of their rights to free speech. They are *less* likely to engage in political work out of fear that those statements will be taken out of contexts and may be used against them. These obstacles preventing many Muslim New Yorkers from entering the public square are particularly serious given the need for our Muslim brothers and sisters engage in public discourse and to speak out against all types of extremism.

Recognizing our country's Constitutional commitment to religious freedom, we fear for our own fundamental freedoms when we learn that houses of worship where Muslim families gather to pray have been spied on and infiltrated without warranted suspicion. Spying based solely on religion by law enforcement defiles the sacred character of houses of worship. More often mosques serve as a defense against terrorism,² than terrorism hot-beds. Historically, houses of worship have enjoyed special protections for a reason. It is imperative that local law enforcement respect the First Amendment and that the NYPD stays out of mosques, only entering them as a last resort.

It is important to note, that while we have heard quite a few reports from our Muslims friends about undercover agents infiltrating mosques, we have yet to hear of a *single* instance of an undercover infiltrating any *other house* of worship of any other religion that we work with. This shows a pattern and practice targeting only mosques and Muslims. We do not see this, your Honor, in other communities where we work. As an organization that works with over 300 communities from about a dozen different

² Evidence of the prevalence of Muslim community members assisting in foiling terrorist plots from 2002– 2012 is compiled in the Muslim Public Affairs Council's Policy Report "Data on Post-9/11 Terrorism in the United States" <http://www.mpac.org/assets/docs/publications/MPAC-Post-911-Terrorism-Data.pdf>

faith traditions ICNY can tell you, that it is only in Muslim communities where we see that brothers and sisters are afraid to perform their religious prayers in public.

Proposed Settlement:

We welcome the proposed settlement guidelines. We hope that the Court will approve the proposed settlement guidelines as a minimum safeguard against further NYPD abuse. Yet, in order to ensure that the guidelines provide an appropriate check against unlawful intelligence gathering, we hope that the Court also approves strengthening the proposed settlement in the following ways:

1. ICNY commends Counsel on reinstating a Handschu Committee and on adding a non-NYPD Civilian Representative. We think these are key steps towards checking potential abuse. We welcome the fact that the Civilian Representative will play a deliberative process, by having the capacity to ask important questions, having access to summary statements, while serving with 11 other NYPD officials sitting on the Handschu Committee. We also are happy to see that the Civilian Representative will have Whistleblower power. However, we remain concerned that the Civilian Representative does not retain investigatory or actual authority over intelligence investigations. Therefore, we respectfully ask that the Court allow the Civilian Representative Subpoena power to access all records, including those that are not necessarily presented to the Handschu committee, in order to empower the Civilian Representative to appropriately investigate intelligence investigations. This will give the Civilian Representative the capacity to initiate investigations and to carry out a true oversight role. The records available to the Civilian Representative should include NYPD documents subject to information-sharing with state or federal agencies, such as the FBI, that implicate First Amendment Handschu issues. We know that many investigations in New York's mosques are joint operations involving information-sharing between local and federal agencies.

2. Also, given the importance of the Civilian Representative position and the importance of checks and balances, we believe that the CR should be a permanent position that cannot be abolished without judicial order. Without accountability to a Civilian Representative, we are not confident that Constitutional and other protections will be protected.
3. We also request that “**national origin**” be added to the new, stronger, equal protection language in the Statement of Policy section where “care be exercised in the conduct of those investigations so as to protect constitutional rights, including the right to be free from investigation in which race, religion, or ethnicity is a substantial or motivating factor.” We know that in the NYPD’s Mapping program outlined in 2011 AP articles, national origin played a substantial factor in triggering unwarranted surveillance. This should never be the case per the Equal Protection Clause of the United States.
4. We insist that all wrongly obtained documents under the NYPD’s Demographics Unit when it existed under the prior administration of Mayor Michael Bloomberg, be expunged. The privacy rights of Muslims matter. There is nothing in the settlement that confirms that this long overdue remedy has occurred.
5. Lastly, we hope that the Court will urge the NYPD to not use defenses or assertions of mootness due to the instatement of these guidelines if there are future findings of misconduct by the NYPD. It is important, as a matter of public policy not to create disincentives for settlement guideline agreements. One way of doing so is to ensure that guidelines cannot be used against class members in the future.

Unevenly applied protections diminish all of us. We regret the rift between law enforcement and many Muslim New Yorkers that these unfair policies helped create. Our Muslim friends have been discouraged in their participation in public life due to the stigma and humiliation of unjust spying practices. We hope

that these proposed settlement guidelines and the strengthening measures we have suggested will support the healing communities across New York City.

Therefore, we respectfully request that the Court approve the proposed settlement guidelines. Equally, we also hope that the Court will approve the additional suggestions that will protect the civil liberties of all New Yorkers and cultivate safe and healthy communities. It is vital that New York's Imams and the mosques they serve are not made fearful in their work to support the spiritual lives of thousands of their congregants. It is ICNY's hope that New Yorkers of all different religious traditions are proud of their faith. This cannot happen without respect for everyone's fundamental rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Chloe Breyer". The signature is fluid and cursive, with the first name "Chloe" and last name "Breyer" clearly distinguishable.

Rev. Chloe Breyer

Executive Director