

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

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**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,

-against-

THE CITY OF NEW YORK,

Defendant.
----- x

12-CV-3401 - SDW - MCA

**NOTICE OF MOTION TO
DISMISS THE FIRST
AMENDED COMPLAINT
WITH PREJUDICE**

MOTION DATE: JANUARY 7,
2013

ORAL ARGUMENT
REQUESTED

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PLEASE TAKE NOTICE that, on January 7th, 2013, or as soon thereafter as counsel may be heard, Defendant City of New York will move this Court before the Honorable Susan D. Wigenton, United States District Judge, at the United States Courthouse for the District of New Jersey, located at 50 Walnut St. Newark, New Jersey 07101, for an Order, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint in its entirety with prejudice, together with such other relief as this Court deems just and proper.

In support of its Motion, Defendant City of New York will rely upon the accompanying Memorandum of Law, dated December 6, 2012; the Declaration of Peter G. Farrell, dated December 6, 2012, with attached exhibits; and the Proposed Order annexed hereto.

Defendant requests oral argument.

Dated: New York, New York
December 6, 2012

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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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
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ABDULLAH

12 Civ 3401 (SDW)(MCA)

**ORAL ARGUMENT
REQUESTED**

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

----- x

**DEFENDANT CITY OF NEW YORK'S MEMORANDUM
OF LAW IN SUPPORT OF ITS' MOTION TO DISMISS
THE COMPLAINT PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 12(b)(6) and 12(b)(1)**

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PRELIMINARY STATEMENT

Defendant respectfully submits this Memorandum of Law in support of its' motion to dismiss the plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and 12(b)(1) on the grounds that (i) the first amended complaint fails to pass the "plausibility" test set out by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-680 (2009) and fails to state a claim; and (ii) the first amended complaint fails to allege concrete and particularized injuries to establish standing under Article III of the U.S. Constitution depriving the Court of subject matter jurisdiction.

In their first amended complaint, plaintiffs allege that starting in early 2002, shortly after the terrorist attacks of September 11th, the New York City Police Department ("NYPD") began a program of illegally targeting the Muslim community for surveillance based solely upon their religion. Plaintiffs allege that this surveillance program reflects a policy, custom or practice of the NYPD to target the Muslim community for surveillance solely on the basis of religion. Plaintiffs allege that this policy resulted in impermissible discrimination against them and they seek to hold the City of New York liable for alleged violations of their rights under the 1st and 14th amendments to the U.S. Constitution. Plaintiffs bring this action despite a three month fact finding investigation by the New Jersey Attorney General which concluded that the NYPD's actions in New Jersey about which plaintiffs complain did not violate New Jersey civil or criminal law.

As demonstrated fully below, the Court should dismiss plaintiffs' complaint for several reasons. First, the NYPD's collection of information by itself is not unconstitutional (Point I). Second, plaintiffs' amended complaint fails to satisfy the plausibility test because the conduct about which they complain is more likely the result of a non-discriminatory intent by the NYPD to deter and detect terrorism in the post 9/11 world, not an intent to discriminate against

New Jersey Muslims based solely upon religion (Point II). Third, this Court lacks subject matter jurisdiction because plaintiffs' allegations of injury are based upon fears and speculation neither of which satisfy the injury required for standing (Point III). In addition, all of plaintiffs' alleged injuries arose only after the Associated Press released confidential NYPD documents and it is that disclosure that has resulted in plaintiffs' alleged stigmatization. Fourth, plaintiffs' request for the expungement of records fails for the same reasons that the collection of information is not unconstitutional in the first instance (Point IV).

For all these reasons, plaintiffs' first amended complaint should be dismissed with prejudice.

STATEMENT OF FACTS

Plaintiffs filed a complaint on June 6, 2012, with the United States District Court, District of New Jersey, naming the City of New York as the sole defendant. That complaint was never served on defendant City of New York. Four months later, on October 3, 2012, plaintiffs filed a First Amended Complaint, which was served on the City of New York on October 4, 2012. A copy of the First Amended Complaint ("Am. Compl") is attached as Exhibit A to the Declaration of Peter G. Farrell, dated December 6, 2012 ("Farrell Dec.") and submitted herewith. In the First Amended Complaint, the relevant allegations for purposes of this motion to dismiss are as follows.¹

Plaintiffs allege that the NYPD illegally and unconstitutionally targets New Jersey Muslims for surveillance based solely upon their religion. (Am. Compl ¶ 1). Specifically, plaintiffs allege that in early 2002, just after the terrorist attacks of September 11th, the NYPD began a secret spying program ("Program") to infiltrate and monitor Muslim life in and around

¹ The City accepts the allegations in the First Amended Complaint as true for purposes of this motion.

New York City including New Jersey. (Id. ¶¶ 2, 3, 36). Plaintiffs allege the surveillance in New Jersey was directed at mosques, restaurants, retail stores, schools, associations and on the individuals who own, operate or visit those establishments. (Id. ¶¶ 3, 36). Plaintiffs allege that the NYPD collects information through various means including photographs and videos, undercover officers and informants, and that the NYPD has created certain reports containing the information collected. (Am. Compl. ¶¶ 4, 5.) As part of the Program, for example, the NYPD created over twenty precinct-level maps of the City of Newark noting locations of mosques and businesses. (Id. ¶¶38, 53.) Plaintiffs also allege that the NYPD prepared various reports based upon the information collected such as a report in February 2006 on discussions in mosques about the controversy surrounding the publication of a Danish artist's cartoons of the Prophet Muhammad and another report in October 2006 after a plane crash in Manhattan. (Id. ¶ 47(c)).

The Amended Complaint further alleges that the NYPD designated twenty-eight countries as "ancestries of interest," two of which are not majority Muslim. (Id. ¶41). Plaintiffs allege that the NYPD only chooses to surveil establishments with "ancestries of interest" if they are Muslim and does not surveil, for example, Egyptians if they are Coptic Christians, Syrians if they are Jewish, or Albanians if they are Catholic or Orthodox Christian. (Id. ¶42).

Plaintiffs alleged injuries "followed the disclosure" of various documents such as the "Newark" report which "has been widely publicized". (See e.g. Id. ¶¶ 5, 15, 20, 21, 31, 45). Notably, the plaintiffs do not allege that the NYPD disclosed or publicized the documents or the "Program". Plaintiffs fail to mention in their First Amended Complaint that the disclosure of the documents about which they complain was the sole result of the Associated Press covertly obtaining those confidential NYPD documents and publishing them along with a series of articles based upon their own interpretation of the documents. (See Farrell Dec. ¶ 3).

The disclosure of the documents has allegedly stigmatized plaintiffs, caused various “fears,” and for three plaintiffs, resulted in an alleged loss of customers. (Am. Compl. ¶¶ 11-34). Riddled throughout the Amended Complaint is the conclusory assertion that the “Program reflects” an unconstitutional and discriminatory policy by the City of New York to target the Muslim community for surveillance solely on the basis of religion. (Id. e.g. ¶¶ 36, 57, 67).

After the release by the Associated Press of the confidential NYPD documents, the New Jersey Attorney General was requested to conduct an investigation into the NYPD’s activities, reported on by the Associated Press, that form the basis of plaintiffs’ complaint. On May 24 2012, after a three month investigation, the New Jersey Attorney General concluded that “the fact finding review, which is ongoing, has revealed no evidence to date that the NYPD’s activities in the state violated New Jersey civil or criminal laws.” *See* Exhibit B to Farrell Decl., a 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.”²

ARGUMENT

POINT I

THE SURVEILLANCE COMPLAINED OF IS CONSTITUTIONAL

Plaintiffs do not allege that the “surveillance” is *per se* unconstitutional. Indeed, the Constitution does not prohibit police observation at public events nor the collection of information at those events, in other words, intelligence-gathering. *Laird v. Tatum*, 408 U.S. 1 (1972). It is of no import whether the police observation is through personal observation or

² This document can also be found at <http://www.nj.gov/oag/newsreleases12/pr20120524b.html>.

photography. *See Laird*, 406 U.S. at 12-14 (denying injunction to stop, among other things, surveillance by Army intelligence officers at public meeting); *Philadelphia Yearly Meeting of Religious Soc'y of Friends v. Tate*, 519 F.2d 1335, 1337 (3d Cir. 1975) (allegations of “police photographing and data gathering at public meetings” failed to state a claim). Nor does the Constitution prohibit the retention of the information obtained at public events. *Philadelphia Yearly Meeting of Religious Soc'y of Friends v. Tate*, 519 F.2d at 1337-1338 (affirming dismissal of complaint where allegations included that files were kept indefinitely); *Donohoe v. Duling*, 465 F.2d 196, 202 (4th Cir. 1972) (denying injunction where record showed police department maintained photographs in its files).

Moreover, the Attorney General of New Jersey has stated that after a three-month fact-finding review, no evidence had been found that the NYPD’s activities in New Jersey violated any New Jersey civil or criminal laws. *See Exhibit B to Farrell Decl.*

Accordingly, the NYPD’s activities about which plaintiffs’ complain are not by themselves unconstitutional or illegal. We next turn to the allegations that the NYPD’s actions were taken for a “discriminatory” purpose.

POINT II

THE COMPLAINT FAILS TO STATE A CLAIM AGAINST THE CITY OF NEW YORK

In order to survive a motion to dismiss, a complaint must contain more than mere labels and conclusions and must state sufficient facts, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). *See also Bistran v. Levi*, 696 F.3d 352 at 365, 372 (3d Cir. 2012) (affirming dismissal of allegations that officials failed to intervene for lack of plausibility); *Argueta v. United States Immigration and Customs Enforcement*, 643 F.3d 60, 72-

73 (3d Cir. 2011) (holding that plaintiffs failed to allege a plausible *Bivens* claim against four officials).

Determining whether a complaint states a plausible claim for relief will “be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679 (citations omitted). A plaintiff is not entitled to relief “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Id.*

Iqbal arose out of the federal government’s response to the terrorist attacks on September 11, 2001. The plaintiff alleged in his complaint that the FBI’s arrest and detention of thousands of Muslim men was based solely on the detainees’ race, religion, or national origin. *Id.* at 680-681. The Court found that while plaintiff’s factual allegations were consistent with his conclusory claim that the FBI’s actions were based solely on detainees’ race, religion or national origin, because there was a more likely explanation, the Supreme Court held plaintiffs allegations did not plausibly establish discriminatory purpose. *Id.* In other words, *Iqbal* “ha[d] not ‘nudged [his] claims’ of invidious discrimination’ across the line from conceivable to plausible.” *Id.* at 680.

The Supreme Court relied upon the following facts in reaching its conclusion that there was a more likely purpose for the FBI’s actions than discrimination. The Court stated that: “[t]he 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.” *Id.* at 682.

The Court here should similarly dismiss the plaintiffs’ amended complaint because just as in *Iqbal*, while plaintiffs’ factual allegations may be viewed by some as consistent with their conclusory claim that the NYPD’s purpose was driven solely based upon their religion, the more likely explanation is that the NYPD’s purpose was part of its overall efforts to deter or detect another terrorist attack rather than target Muslims based upon their religion. A review of plaintiffs’ own allegations supports that conclusion.

For example, the 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 than, as plaintiffs allege, driven based on a desire to discriminate based upon religion. Plaintiffs also allege that the Program was directed at not just mosques but also Muslim restaurants, retail stores, schools, and associations and on the individuals who own, operate or visit those establishments and that the NYPD created over twenty precinct-level maps of the City of Newark. These allegations are more likely consistent with the NYPD’s efforts to understand post 9-11 where an Islamist radicalized to violence might try and conceal himself to fit in with his surroundings or attempt to recruit others to assist him. A comprehensive understanding of the makeup of the community would help the NYPD figure out where to look in the event it received information that an Islamist terrorist may be secreting himself in New Jersey. Likewise, the factual allegation that the NYPD has identified twenty-eight “ancestries of concern” and that they have identified where those ancestries congregate, which businesses they visit, and the like is more likely a tool to use to help in the response to an Islamist terrorist threat

than driven by the purpose to discriminate against Muslims based upon their religion as plaintiffs allege.

Plaintiffs' allegations about a February 2006 NYPD report on discussions about the controversy surrounding the publication of a Danish artist's cartoons of the Prophet Muhammad and another report in October 2006 after a plane crash in Manhattan further demonstrate that the more likely explanation for the NYPD's actions is public safety rather than discrimination based upon religion. The Danish cartoon on the Prophet Muhammad was a widely publicized incident that caused strong reactions in the Muslim community. *See* ¶5 and Exhibit C to the Farrell Decl. The allegation that the NYPD gauged the reactions in the related communities is more likely consistent with its pursuit of ensuring public safety than a discriminatory intent. The same is true regarding the allegations about the report on the 2006 plane crash in Manhattan. Because it involved a plane flown into a Manhattan building just as in 9/11, prudent policing for public safety would have the NYPD collecting information about the 2006 incident.

While the NYPD's actions are alleged to have disparate impact on Muslims, as the Supreme Court stated, it should come as no surprise that legitimate law enforcement actions in the post 9/11 world may have such consequences, which do not mean that the purpose of the policy is to target Muslims because of their religion. Accordingly, plaintiffs' first amended complaint should be dismissed with prejudice as it fails to pass the plausibility test under Supreme Court precedent.³

³ To the extent that plaintiffs are alleging a "stigma-plus" claim, they have also failed to state such a claim. As a preliminary matter, most of the cases in this Circuit in which this claim is alleged involve a plaintiff who is or was a public employee upon whom certain actions had been taken by state actors. None of the plaintiffs in this case have alleged that they are in such a position. In this Circuit, in order to satisfy the "stigma" portion of the test it must be alleged that

POINT III

PLAINTIFFS LACK ARTICLE III STANDING BECAUSE THEIR ALLEGATIONS OF INJURY ARE NOT CONCRETE AND PARTICULARIZED AND INSTEAD REST ON SPECULATION AND CONJECTURE

A. Standing Requirements

Article III of the Constitution limits the jurisdiction of the federal courts to the resolution of “cases” and “controversies.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). An “essential and unchanging part” of that limitation is the doctrine of standing. *Id.* at 560. The plaintiff bears the burden of meeting the “irreducible constitutional minimum” of Article III standing by establishing 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 traceable 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.

the purportedly stigmatizing statements were (1) made publicly, and (2) were false. *Hill v. Borough of Kutztown*, 455 F.3d 225, 236 (3d Cir. 2006). The plaintiffs fail to satisfy the first prong of this test as nowhere in their complaint do they allege that the NYPD has made any aspect of the surveillance program public (and it is a matter of public record that the Associated Press disclosed the documents referenced in the Amended Complaint). Plaintiffs also fail to satisfy the second prong of this test, as nowhere in their complaint do they allege either a) what the purportedly stigmatizing statements about the plaintiffs were, or b) that they were false. *See Werner v. County of Northampton*, 350 Fed. Appx. 724, 726 (3d Cir. 2009) (“Having failed to allege the falsity of the statement at issue, Werner failed to state a claim under the “stigma-plus” test and his Second Amended Complaint was properly dismissed on this basis.”) Finally, plaintiffs fail to allege a sufficient “plus” to their alleged stigma-plus claim. Both allegations of possible loss of future employment opportunities and outright financial harm have been held to fail the “plus” prong of the claim. *See Clark v. Twp. of Falls*, 890 F.2d 611, 620 (3d Cir. 1989); *Sturm v. Clark*, 835 F.2d 1009, 1013 (3d Cir. 1987).

Id. at 560–561.

A particularized injury is one that affects a plaintiff “in a personal and individual way.” *Id.* at 561 n.1; *see also Raines v. Byrd*, 521 U.S. 811, 819 (1997). Only a plaintiff so injured will have “such a personal stake in the outcome of the controversy” to warrant his invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.” *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

A plaintiff must also satisfy certain “prudential” standing requirements based on the principle that the judiciary should “avoid deciding questions of broad social import where no individual rights would be vindicated.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985); *see also Warth*, 422 U.S. at 500. Prudential standing requires, *inter alia*, that a party “assert his own legal interests rather than those of third parties,” *Shutts*, 472 U.S. at 804, that a claim not be a “generalized grievance” shared in by all or a large class of citizens, *Warth*, 422 U.S. at 499, and that a plaintiff must “demonstrate standing for each claim he seeks to press.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

B. Plaintiffs’ Alleged Future Injuries Are Not Concrete, Particularized, or Imminent

In order to evaluate whether or not plaintiffs have Article III standing, it is necessary to examine the types of injuries alleged by plaintiffs. Nowhere do plaintiffs allege a *concrete* injury caused by the NYPD’s alleged surveillance. Rather, plaintiffs’ alleged injuries are purely speculative and consist of their fears of what might result from being “surveilled” or their own self-imposed limitations based on those fears.

A look at the allegations of various plaintiff demonstrates this point:

- Plaintiff Hassan alleges that he has a “fear” that his security clearance “would be jeopardized by being closely affiliated with mosques under surveillance” and so

he has chosen to decrease his mosque attendance. He is also “concerned” that his superiors “will” have diminished trust in him, thereby harming his career “prospects.” (Am. Compl. ¶ 13.)

- Plaintiff Unity Beef Sausage Company (“Unity”) alleges that the store owner now “fears conducting his legitimate business” and that “he is concerned that anyone who comes in or looks at him from across the street might be an NYPD spy.” (Am. Compl. ¶ 21).
- Plaintiff Muslim Foundation Inc. (“MFI”) claims that the surveillance “casts an unwarranted cloud of suspicion upon the mosque and its membership.” MFI also alleges that it has changed its religious services and programming as a direct result of the NYPD surveillance so as not “to be perceived as controversial” and that MFI’s leaders “feared” that by inviting religious authorities who might nevertheless be “perceived as controversial,” their views “would be” attributed to the mosque’s membership (Am. Compl. ¶ 23.)
- Plaintiff Mohammed, a member of the Muslim Students Association at Rutgers University, now avoids discussing his faith or his MSA participation and praying in places where non-Muslims “might see him doing so.” (Am. Compl. ¶ 25.)
- Plaintiff Jane Doe alleges that she no longer discuss religious topics at MSA meetings because she has a “fear” that such discussions “would be” misunderstood and taken out of context by those suspicious of her religion. (Am. Compl. ¶ 29).
- Plaintiff Soofia Tahir alleges the surveillance will “likely endanger her future educational and employment opportunities” and “adversely affect her future job

prospects and any other further educational pursuits.” She has also changed the way she prays because of a “fear” of being overheard. (Am. Compl. ¶ 29)

- Plaintiff Zaimah Abdur-Rahim “fears that her future employment prospects are diminished by working at two schools under surveillance by law enforcement.” She also alleges that “the fact that a photograph of her home appears on the internet in connection with the NYPD’s surveillance” has “decreased the value of the home and diminished the prospects for sale of the home.” (Am. Compl. ¶ 32).
- Plaintiff Abdul-Hakim Abdullah, Zaimah Abdur-Rahim’s husband, alleges that there has been a decrease in the value of his home because of the surveillance. (Am. Compl. ¶ 34).

None of plaintiffs alleged “fears” meets the threshold requirement of concrete or particularized injuries sufficient to establish standing. *See Lujan*, 504 U.S. at 560, 562-568 (where plaintiff’s fears that certain funded activities abroad increased the rate of extinction of endangered and threatened species, that allegation was held an insufficient injury for standing purposes).

Plaintiffs injuries are also not actual or imminent. For example, not a single plaintiff alleges that his or her career or employment was in fact injured as a result of the NYPD’s alleged surveillance. To the contrary, plaintiff Hassan alleges that he “has received numerous honors for his service in military intelligence.” Am. Compl. ¶11. Thus, the alleged NYPD Program, alleged to have begun in 2002, has not had any adverse effects on plaintiff Hassan’s career to date. Rather, plaintiffs merely speculate about what they fear may occur in the future. Similarly, the conjecture about a decrease in the value of the home of plaintiffs Abdul-Hakim Abdullah and Zaimah Abdur-Rahim is not actual or imminent as there is no

allegation that they have or are currently selling their home. *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 297-298 (3rd Cir. 2003) (3rd Circuit holds that plaintiffs' injuries are too speculative where they could not demonstrate that their hotel/bed and breakfast was subject to anything other than prospective damages). Moreover, to the extent plaintiffs' alleged injuries are based on their perception of how others may perceive or react to them, their claims are also pure speculation.

Over thirty years ago, 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 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 14.⁴

Other courts have followed *Laird* in similarly holding that plaintiffs cannot challenge surveillance activities based merely on the fear that they will sustain a conjectural injury, fear of surveillance itself, or some future speculative harm. In a case with facts similar to this one, the Third Circuit has held that police photographing and data gathering at public meetings, "without more, is legally unobjectionable and creates at best a so-called subjective chill which the Supreme Court has said is not a substitute for a claim of specific present harm or a threat of specific future harm." *Philadelphia Yearly Meeting of Religious Soc. of Friends v. Tate*, 519 F.2d 1335, 1336-1338 (3d Cir. 1975) (where plaintiffs alleged in their complaint that members of the Philadelphia Police Department were present at various demonstrations and meetings and took photographs of many of those in attendance, and that the Department compiled intelligence files on numerous individuals and groups).

Similarly, in *Fifth Ave. Peace Parade Comm. v. Gray*, 480 F.2d 326 (2d Cir. 1973), the Second Circuit applied *Laird* and rejected a claim that anti-war demonstrators' free-speech rights were chilled by FBI investigation into the demonstration, given that plaintiffs could not show specific misuse of any information the FBI might have obtained about them. In that case, the plaintiffs alleged that the FBI maintained and kept records, including photographs, of various individuals who would be attending an anti-war demonstration in *New York City*. And in

⁴ 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.*

Nour v. New York City Police Dep't, 1995 U.S. Dist. Lexis 1096 (S.D.N.Y. 1995) (Keenan, J.), the Court found the plaintiff's allegations that the surveillance he was subjected to was "nerve-raking [sic]," "shocking," and impeded the "forward progress of [his] movements," and that he no longer had a "private life" all insufficient to allege the required objective injury to establish standing. *Id.* at 8-10.

Several years later in *United Presbyterian Church v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984), the D.C. Circuit rejected plaintiffs' challenge to enjoin the implementation of Executive Orders authorizing surveillance activities overseas on the ground that the threat of surveillance was inhibiting their protected activities. The D.C. Circuit held that *Laird* precluded this argument as a basis for standing, noting that cases employing the concept of a chilling effect "involve situations in which the plaintiff has unquestionably suffered some concrete harm (past or immediately threatened) apart from the 'chill' itself." *Id.* at 1378. The Court in *United Presbyterian* also found plaintiffs' fears of surveillance to be speculative. *Id.* at 1380.

More recently, in 2006, in a case where the plaintiffs challenged the Terrorist Surveillance Program alleging they were likely to be monitored, the Sixth Circuit held that plaintiffs' "anticipated harm is neither imminent nor concrete – it is hypothetical, conjectural, or speculative" and therefore "cannot satisfy the 'injury in fact' requirement of standing." *ACLU v. NSA*, 493 F.3d 644, 662 (6th Cir. 2007). After that threshold determination, the court went on to examine each of the plaintiffs' claims and concluded that plaintiffs' alleged First Amendment "chill" constituted a "self-imposed unwillingness to communicate" that cannot establish standing under *Laird*. *Id.* at 658, 659-673. Accordingly, all of plaintiffs' alleged self-imposed limitations including decreasing their mosque attendance, changing their religious services, or changing where they choose to pray are not sufficient to establish standing.

Finally, only three plaintiffs make allegations related to their current business.

They include:

- Plaintiff All Body Shop Inside & Outside (“All Body Shop”) alleges that the number of customers visiting the store has decreased and that some customers have told the owners by telephone that they did not feel comfortable visiting the location because of the threat of NYPD surveillance. (Am. Compl. ¶ 19).
- Plaintiff Unity Beef Sausage Company (“Unity Beef”) alleges that “many regular customers have not been coming to the store since the NYPD’s Newark report was made public” and that some customers have called to say “they are no longer comfortable visiting the store.” (Am. Compl. ¶ 21).
- Plaintiff The Council of Imams in New Jersey (“CINJ”) is a membership organization comprising a dozen New Jersey mosques. Two of the mosques, Masjid al-Haqq and Masjid Ali K. Muslim, allege that there has been a decline in attendance and contributions as a result of the NYPD’s alleged surveillance. (Am. Compl. ¶ 15.)

While plaintiffs All Body Shop and Unity Beef allege fewer customers neither alleges a loss of revenue or income and thus have not alleged a concrete economic injury. In addition, while two mosques out of a total of twelve in the membership of plaintiff CINJ allege a “decline in attendance and contributions,” plaintiff CINJ does not allege that there has been an overall decline in revenue or income at those mosques as a result of the complained of actions. In addition, CINJ’s conclusory assertion that the decline in attendance and contributions “followed the disclosure” of the Program does not satisfy the “causal connection” prong of standing as it is pure speculation and not traceable to the defendant’s alleged actions. *Constitution Party of P.A.*

v. Cortes, 433 Fed. Appx. 89, 92 (3rd Cir. Pa. 2011) (3rd Circuit finds that the plaintiffs clearly failed to establish causation as there were no allegations in the complaint, other than conclusory, that the action alleged was responsible for the injury, and that the District Court could not rule out that the injury could have been due to other factors, or the actions of some other third party.) *Eaford v. MR. P. LAGANA*, 2011 U.S. Dist. LEXIS 59822, *6 (D.N.J. June 6, 2011) (“The causal connection between Defendants’ alleged actions (placing Plaintiff’s inmate account on hold) and Plaintiff’s litigation difficulties is too attenuated to constitute the causal connection required for standing under *Lujan*.”) Accordingly, these allegations are insufficient to satisfy either the first or second prong of the test for standing under *Lujan*.

C. Plaintiffs Alleged Injuries Are The Result Of A Third Party, Not the City of New York

Assuming that plaintiffs have asserted a injuries in fact to satisfy Article III standing, which they have not, their injuries are not fairly traceable to the actions of the defendants. Standing requirements dictate that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976); *Duquesne Light Co. v. United States EPA*, 166 F.3d 609, 613 (3d Cir. 1999) (finding standing requirement not met where injury is manifestly the product of the independent action of a third party).

Here, as stated previously, plaintiffs specifically omit from their First Amended Complaint that the disclosure of the documents about which they complain was the sole result of the Associated Press (“AP”) publishing the documents along with a series of articles based upon

their own interpretation of the documents.⁵ When the AP published some of the documents, for example the Newark report, it did so without redacting the names or addresses of the entities therein. *See* Farrell Dec. ¶3. If anything, it is the **disclosure** of the documents by the Associated Press in unredacted form which left in identifying information – not the NYPD’s actions – that has caused plaintiffs’ alleged injuries. *See e.g.*, Am. Compl. ¶¶ 15, 19, 21. To be clear, the City neither challenges the AP’s right to investigate or expose alleged wrongdoing nor does the City endorse unlawful surveillance tactics. Rather, the City maintains that no unlawful surveillance took place and that it is the Associated Press’s actions of publishing unredacted documents which constitutes an independent action of a third party not before the court and breaks the causation requirement.

The fact that nowhere in the Amended Complaint do plaintiffs allege that they suffered any harm prior to the unauthorized release of the documents by the Associated Press confirms that plaintiffs’ alleged injuries flow from the unauthorized disclosure of the documents by the Associated Press.

POINT IV

PLAINTIFFS CLAIM FOR EXPUNGEMENT OF RECORDS SHOULD BE DISMISSED

Plaintiffs’ request for the expungement of records “made pursuant to past unlawful spying” should be dismissed for all the same reasons previously set forth including that the acts complained of in and of themselves are not unconstitutional (Point I), that plaintiffs fail to state a claim (Point II), and because plaintiffs lack standing (Point III).

⁵ On a motion to dismiss pursuant to 12(b)(1) for lack of subject matter jurisdiction, the Court is allowed to consider facts outside the complaint. *See Sandy Hook Watermans Alliance, Inc. v. N.J. Sports & Exposition Auth.*, 2011 U.S. Dist. LEXIS 79488, *2 (D.N.J. July 20, 2011) (court may properly consider documents specifically referenced in the complaint, as well as documents that are part of the public record).

CONCLUSION

WHEREFORE, for the reasons set forth above, plaintiffs' first amended complaint should be dismissed in its entirety with prejudice, together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
December 6, 2012

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By: s/ Peter G. Farrell

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Senior Counsel

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

----- X
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

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

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**UNITED STATES DISTRICT COURT
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

Case No. 2:12-cv-03401-SDW-
MCA

Plaintiffs,

Jury Trial Demanded

v.

THE CITY OF NEW YORK,

Defendant.

FIRST AMENDED COMPLAINT

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

organizations. The NYPD's surveillance of the mosque, and its inclusion in an NYPD report casts an unwarranted cloud of suspicion upon the mosque and its membership. MFI has also changed its religious services and programming as a direct result of the NYPD surveillance. Prior to learning that it had been surveilled by the NYPD, the mosque hosted a variety of visiting Islamic scholars and religious authorities to provide guidance to the congregation on how to conduct their daily lives in accordance with religious laws. These discussions are integral to MFI's religious mission, which includes promoting the lives of its congregants in accordance with divine laws, fellowship, and religious discourse. After learning that it had been targeted for surveillance, MFI decided not to invite otherwise amenable religious authorities who might nevertheless be perceived to be controversial because of their previous spiritual or religious training in Iran, views on or history of vocalizing religious edicts aligned with certain prominent centers of learning in Shi'a Islam, or their opinions on the proper role of the Islamic faith and scholarship in the daily lives of adherent Muslims; MFI's leaders reasonably feared that the views of such religious authorities and guides would be attributed to the mosque's membership. As a result, MFI's ability to fulfill its religious mission has been harmed.

24. **Moiz Mohammed** is a New Jersey resident (22 Woodbridge Street, New Brunswick, NJ 08901) currently enrolled as a full-time student at Rutgers New Brunswick, where he is pursuing a degree in Molecular Biology and Biochemistry. He is currently a junior and has been active in the Muslim Students Association (MSA) since his freshman year. The

Rutgers New Brunswick MSA was surveilled as part of the NYPD's Program in New Jersey, and was identified in an NYPD report as a subject of surveillance.

25. Mohammed has been unfairly targeted, and stigmatized by the NYPD's surveillance of his MSA as part of a program targeting Muslim organizations. The NYPD's surveillance of his MSA unfairly targets him and other Muslim students. Members of other religious groups are not subjected to such surveillance and monitoring. The stigma now attached to being a Muslim member of the MSA has caused Mohammed to avoid discussing his faith or his MSA participation in public and to avoid praying in places where non-Muslims might see him doing so. Thus, Mohammed bears the burden of being discriminated against by the government, solely on account of his religion, which sends a signal that he is a less worthy member of the political community.

26. **Jane Doe** is a New Jersey resident currently enrolled as a full-time student at Rutgers New Brunswick in her junior year and is active in the Muslim Students Association. She will be moving the Court for leave to proceed under pseudonym after counsel for Plaintiffs confers with counsel for Defendant.

27. Doe suffers the same stigma as Mohammed as a result of the NYPD's surveillance of the activities of Muslim students on campus. She experiences this stigma in a variety of ways. For instance, she no longer discusses religious topics at MSA meetings, such as the differences between Sunni and Shi'a Islam, because of a reasonable fear that such discussions would be misunderstood and taken out of context by those suspicious of her religion.

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.

30. The revelation of the NYPD's spying on Muslims in New Brunswick and at Rutgers also caused Tahir to change the way she prayed and limit her conversations with others on certain topics. She curtailed discussions of religious and political topics while on the Rutgers campus out of a reasonable fear that NYPD informants or undercover officers might be eavesdropping and misconstrue what she said. She avoided religious and political topics rather than be subject to law enforcement scrutiny. Tahir also went to pray in very remote areas of the buildings in which she studied and worked on campus in order to try to avoid NYPD surveillance because of the uniquely visible way in which Muslims pray. On occasion, she would also go to work early in the morning so she could leave earlier in the day and do her mid-afternoon prayer at home, thereby reducing the Department's ability to surveil and scrutinize her worship.

31. **Zaimah Abdur-Rahim** resides at 35 Finlay Place, Newark, NJ 07106. She is currently a math teacher at Al Hidaayah Academy ("AHA"), a position she has held since 2010. A record of the NYPD's surveillance of AHA appears in the Newark report, which includes a photograph and description of the school. Abdur-Rahim was also the principal of Al Muslimaat Academy ("AMA"), a school for girls grades five through twelve, from 2002 through 2010. Like AHA, a record of the NYPD's surveillance of AMA appears in the Newark report, including a photograph, the address, and notations stating, among other things, that the school was located in a private house and that the ethnic composition of the school was African American.

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

EXHIBIT B



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For Immediate Release:

May 24, 2012

Office of The Attorney General

- Jeffrey S. Chiesa, Attorney General

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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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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 Iwendu. 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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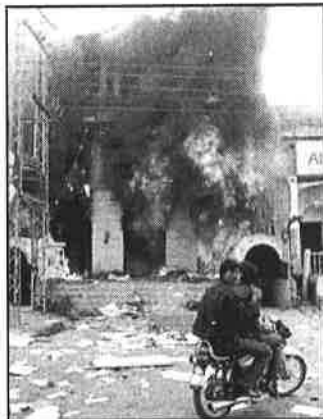
2 Die as Pakistan Cartoon Rage Turns Violent

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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ABDUR-RAHIM; and ABDUL-HAKIM ABDULLAH

12 Civ 3401 (SDW)(MCA)

Plaintiffs,

-against-

THE CITY OF NEW YORK

Defendant.
----- X

**ORDER GRANTING THE MOTION TO DISMISS THE PLAINTIFF'S FIRST
AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) and 12(b)(6)**

THIS MATTER having been opened to the Court by way of a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) filed by Michael A. Cardozo, Corporation Counsel of the City of New York, by Senior Counsel Peter G. Farrell, attorney for Defendant the City of New York; and it appearing that Plaintiffs Syed Farhaj Hassan, The Council of Imams in New Jersey, Muslim Student 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") have notice of this application; and the Court having reviewed the submissions of

the parties; and the Court having heard the arguments of counsel; and for good cause having been shown;

IT IS on this ____ day of _____, 2013, **ORDERED** that:

1. Defendant's Motion To Dismiss the Plaintiffs' First Amended Complaint For Failure to State a Claim and For Lack of Standing is hereby **GRANTED**;
2. Plaintiffs' First Amended Complaint is hereby **DISMISSED** with prejudice;

BY THE COURT:

Hon. Susan D. Wigenton, U.S.D.J.

CERTIFICATE OF SERVICE

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.
2. On this date, I caused to be electronically filed with the Clerk of the United States District Court, District of New Jersey the within Notice of Motion to Dismiss the First Amended Complaint, Defendant's Brief in Support of Motion to Dismiss the First Amended Complaint, Declaration of Peter G. Farrell with Exhibits, and proposed form of Order.
3. On this date, I caused copies of the foregoing to be served by ECF upon Plaintiffs' counsel.

I certify under penalty of perjury that the foregoing statements are true and correct.

Dated: New York, New York
December 6, 2012

s/ Peter G. Farrell

Peter G. Farrell
Senior Counsel