



AMAL

THE ASSOCIATION OF MUSLIM AMERICAN LAWYERS

233 Broadway, Suite 801 New York, NY 10279

www.theamal.org

Tel: (212)608-7776

February 20, 2012

VIA FEDERAL EXPRESS

The Honorable Eric Schneiderman
Attorney General of the State of New York
The Capitol
Albany, NY, 12224

Re: Request for Investigation of the New York Police Department

Dear Attorney General Schneiderman:

As the President of the Association of Muslim American Lawyers (“AMAL”), a member organization of the Muslim Americans Civil Liberties Coalition (“MACLC”), and on behalf of the undersigned civil rights and community groups and Muslim Student Associations (“MSA”), I write to your Honor to request an investigation and possible action against the New York Police Department (“NYPD”) for its blatant violations of American Muslims’ civil liberties.

The NYPD’s use of anti-Muslim training materials, the publication of its flawed report and its surveillance of Muslims based on their religion and national origin constitute clear violations of civil liberties. Due to the prima facie violations of the equal protection clause, the Fourth and the Fifth Amendments, and the anti-discrimination laws under the United States and New York State Constitutions, we urge you to immediately conduct an investigation into the NYPD’s policy, training, pattern and practice. We trust that your office has the legal authority to investigate and has shown a compelling record documenting the NYPD abuse, profiling and illegal stops-and-frisks.

The NYPD's Actions Constitute a Policy of Discrimination and Racial Profiling

In 2006, four physicians traveling from New Jersey to New York were stopped, frisked, and arrested by the NYPD. The four physicians were wearing religious clothing. The police officers stopped them without any suspicion and arrested them without probable cause. The only crime they committed was that they looked Muslim. The NYPD settled this case since the arrest was purely motivated by the officers' religious animus toward the four physicians. When I personally expressed my concerns to Commissioner Ray Kelly, he replied that this was an isolated and unfortunate incident. He also stated that his Police Department did not condone such behavior.

Unfortunately, the arrest of the four Muslim physicians based on their religious beliefs was not an isolated incident. The stop, frisk and arrest is the result of a policy of religious profiling instituted at NYPD training schools. In 2009, the NYPD conducted random bag searches at NYC subway stations.¹ Pursuant to the NYPD's formula, officers were to stop one in every 25th person. In 2009, the New York Civil Liberties Union filed a federal lawsuit on behalf of a native Brooklyn man, 32-year-old Jangir Sultan, who was stopped and searched by police officers 21 times since the bag searches began.² The search resulted in profiling people who were or perceived to be Muslims, Arabs or South Asian. There have been many incidents of stops-and-frisks where police officers asked about the religious beliefs and practices of New York citizens who looked Muslim.

The NYPD has established this policy to target a segment of the New York community based on religion and not on suspicion or probable cause afforded under the Fourth Amendment of the US Constitution and the N.Y. Const. Art. I, § 12.

Through its controversial spying program, the NYPD has established an institution motivated by religious-bias. It allows spying on members of a specific community based on their religion and national origin. The NYPD officers are specifically instructed to spy on Moroccans based on national origin and on leaders in the Muslim community based on their religion. Profiling is illegal and targeting an entire community cannot be justified.

¹"NYPD Accused of Racial Profiling in Subway Bag Searches," The Gothamist, February 20, 2009, available at: http://gothamist.com/2009/02/20/nypd_accused_of_racial_profiling_in.php

² *Id.*

In 2011, the Associated Press reported that the NYPD went as far as monitoring, “Muslims who change their names to sound American, as an identifier for a potential investigation and are catalogued in secret New York Police Department intelligence files.”³ This policy burdens Muslim Americans and prevents them from enjoying their First Amendment Rights.

Most recently, the NYPD released information to the Associated Press to document its illegal surveillance of Muslim Student Associations and Muslim scholars of over 20 universities and colleges within the Northeast.⁴ The NYPD has been monitoring the activities of these students and scholars based on their religion without any suspicion or probable cause. The NYPD has been issuing weekly updates that include information on prayers and religious events. While American higher education facilities offer the opportunity for students to interact, exchange ideas and engage in open and free discourse, the NYPD has poisoned that environment with fear of surveillance and prosecution based on religion and practice. For years, the NYPD violated these students’ First Amendment right to freely practice their faith and assemble with other members of their faith.

Under Commissioner Kelly’s leadership, the NYPD has engaged in programs that foster violations of civil liberties under the banner of security. Practices such as data mapping of Muslim Americans in New York City, unwarranted surveillance of Muslims in mosques, cafes and of student associations have become common pattern and practice. This type of surveillance and monitoring further alienates Muslims, preventing them from practicing their religion and interacting with their fellow Muslims.

The Police Department’s showing of the film “The Third Jihad” to approximately 1,489 officers further demonstrates that the NYPD is engaging in a policy, custom and pattern based on religious beliefs.⁵ “The Third Jihad” film is a Clarion production, a biased organization that seeks to demonize and marginalize Muslims in America. The film is a one-sided depiction of all Muslims as warmongers seeking to dominate and cause destruction to the world. The NYPD has trained its officers to treat Muslims as

³ “AP IMPACT: New York City Police monitor Muslims who change their names,” October 26, 2011, Syracuse.com, available at: http://www.syracuse.com/news/index.ssf/2011/10/new_york_city_police_monitor_m.html

⁴ <http://online.wsj.com/article/AP5e5e392042bf4a1f8b084d549922afbe.html>

⁵ “In Shift, Police Say Leader Helped with Anti-Islam Film and Now Regrets It,” Michael Powell, The New York Times, Jan 24, 2012, available at: <http://www.nytimes.com/2012/01/25/nyregion/policecommissioner-kelly-helped-with-anti-islam-film-and-regretsit.html?scp=1&sq=kelly%20third%20jihad&st=cse>

dangerous criminals. Such training constitutes a policy and practice based on religious profiling.

The NYPD has sanctioned a policy of religious targeting. Police Commissioner Kelly gave a 90 minute interview during the making of the “The Third Jihad.” Just as egregious, the Commissioner and his staff denied that this was an institutional decision, but a mistake made by a few.

In 2007, the NYPD released a report, *Radicalization in the West: The Home Grown Threat*, which specifically targeted Muslim New Yorkers.⁶ The report labels every Muslim American as a potential threat. The report reinforces a negative stereotype that singles out one entire community. The report creates fear and unwarranted suspicion against one community within New York City. This report is typical of Islamophobic writings about Islam and Muslims. It is dangerous and troubling when this report is being used to educate law enforcement officers acting under the color of state law.

Commissioner Kelly’s dismissive approach clearly sends the message that the NYPD will continue to profile and discriminate against Muslims if no investigation is conducted. The NYPD would still believe these policies, actions, patterns and practices are acceptable unless your office sends a message that it is illegal to train officers to profile Muslims.

The NYPD’s Practice Violates State and Federal Constitutionally Protected Rights

The Fourth Amendment of the U.S. Constitution and N.Y. Const. Art. I, § 12, guarantees all people the right not to be deprived of liberty without due process of law, to be secure in their persons “houses, papers and effects, against unreasonable searches and seizures.” These rights shall not be violated and no warrant shall be issued without probable cause. The N.Y. Constitution also guarantees “the right of people to be secure against unreasonable interception of telephone” unless a reasonable ground exists. The NYPD’s surveillance and monitoring of American Muslims is wholly without reasonable cause or any warrant. This type of invasive surveillance clearly violates the Fourth Amendment’s protections against unreasonable searches and violates Article 12 of the N.Y. Constitution as well.

⁶ Mitchell Silber and Arvin Bhatt, *Radicalization in the West: The Homegrown Threat*, NYPD Intelligence Division (New York, NY: NYPD, 2007). “How to Look at Homegrown Terrorism.” Time Magazine, August 16, 2007, available at: <http://www.time.com/time/nation/article/0,8599,1653566,00.html>

All people have the right not to be deprived of liberty without due process of law, to be secure in their persons when approached by officers acting under color of state law and not be subjected to excessive force used by an agent or officer acting under the color of state law. *See United State v. Johnstone*, 107 F.3d 200, 208 (3rd Cir. 1997); *see also Hernandez v. Robles*, 7 N.Y.3d 338, 361-62, 855 N.E.2d 1, 9 (N.Y. 2006) (finding that New York Courts use the same analytical framework as the Supreme Court in considering due process cases). In *People v. De Bour*, 40 N.Y.2d 210, 217, 352 N.E.2d 562, 567-68 (N.Y. 1976) the Court opined:

“The basic purpose of the constitutional protections against unlawful searches and seizures is to safeguard the privacy and security of each and every person against all arbitrary intrusions by government. Therefore, any time an intrusion on the security and privacy of the individual is undertaken with intent to harass or is based upon mere whim, caprice or idle curiosity, the spirit of the Constitution has been violated.”

Thus, any intrusion into the privacy of Muslim Americans with the intent to harass, or simply because of idle curiosity into their habits or religious practices, is in violation of the rights afforded by the Constitution.

The Fourteenth Amendment of the Constitution and N.Y. Const. Art. I, § 11 guarantees each person equal protection of the laws, which shall not be violated because of “race, color, creed or religion.” Under Art. I of the N.Y. Constitution, no person, including a Muslim, shall “be subjected “to any discrimination in his or her civil rights by ... the state or any agency or subdivision of the state.” This constitutional right specifically affords people of racial, religious and ethical background, including the Muslim community, the absolute right to freely access the streets of the city of New York, to worship and gather at the mosques and cafes without the fear of being pursued and spied on by the NYPD. This right cannot be violated simply because of one’s racial, religious or ethnic background. *See Harlen Assoc. v. Inc. Vill. of Mineola*, 273 F.3d 494, 499 (2d Cir.2001). There is no excuse or justification for the burdens being placed on the civil rights of Muslim-Americans by prohibiting their freedom to live by monitoring and profiling them.

Under the claim for equal protection, a government actor must intentionally discriminate against a group on the basis of race, national origin or gender. Such intentional discrimination can be demonstrated in several ways. *See Hayden v. County of Nassau*, 180 F. 3d 42, 48 (2d Cir. 1999) (“[A] law or policy is discriminatory on its face if it expressly classifies persons on the basis of race or gender... In addition, a law which is facially neutral violates equal protection if it is applied in a discriminatory

fashion...Lastly, a facially neutral statute violates equal protection if it was motivated by discriminatory animus and its application results in a discriminatory effect.) (internal citations omitted).

A statute or policy utilizes a “racial classification” when, on its face, it explicitly distinguishes between people on the basis of some protected category. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 11–12, 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967) (invalidating a miscegenation statute which, on its face, prohibited interracial marriages); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 282–84, 106 S.Ct. 1842, 1851–52, 90 L.Ed.2d 260 (1986) (invalidating a school board plan which expressly utilized race-based preferences in teacher lay-offs); *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (finding an equal protection violation where a facially neutral ordinance was discriminatorily applied to Chinese businesses).

In *Brown v. State of New York*, 89 N.Y.2d 172, 191, 652 N.Y.S.2d 223, 674 N.E.2d 1129 (N.Y. 1996), New York recognized a Plaintiff’s cause of action for a violation of the Equal Protection Clause and the Search and Seizure Clause of the State Constitution. The Court asserted the right of African Americans to sue for alleged violations of their right to equal protection and freedom from unreasonable searches and seizures, when they were detained because of their race. It opined:

“These sections [art. I, §§ 11, 12] establish a duty sufficient to support causes of action to secure the liberty interests guaranteed to individuals by the State Constitution independent of any common-law tort rule. Claimants alleged that the defendant's officers and employees deprived them of the right to be free from unlawful police conduct violating the Search and Seizure Clause and that they were treated discriminatorily in violation of the State Equal Protection Clause. The harm they assert was visited on them was well within the contemplation of the framers when these provisions were enacted for fewer matters have caused greater concern throughout history than intrusions on personal liberty arising from the abuse of police power. Manifestly, these sections were designed to prevent such abuses and protect those in claimants' position.”

The Muslim community has established the prima facie case for equal protection violations. Even under the permissive rule later established in *Brown*⁷, the NYPD has crossed the line in the case at bar where religion and national origin are the only factors considered in their reporting, training, spying and stops-and-frisks. The NYPD’s actions against Muslims are based solely on a religious basis. The NYPD trained approximately 1,500 officers using a biased movie that portrays all Muslims as criminals. The NYPD

⁷ Later resolving liability in favor of the State, *Brown v. State*, 45 A.D.3d 15 (3d Dept. 2007).

spied on Muslims during their day-to-day activities including visits to mosques and cafes. It specifically targeted Moroccans based on their national origin, Muslim students and scholars in various colleges and universities based on their religion. The NYPD has stopped-and-frisked Muslims on the basis of religion alone, without suspicion or probable cause. The NYPD must not be allowed to target Muslims simply on the basis of their faith, effectively criminalizing the practice of Islam.

The N.Y. Const. Art. I, § 3, guarantees the freedom to “exercise and enjoy[...] religious profession and worship, without discrimination or preference.” The NYPD has inhibited citizens’ rights to worship for fear of surveillance and religious-based profiling. Therefore, the NYPD is also blatantly violating the State Constitution. The case law and statutory law are evident. The NYPD’s actions are unconstitutional at the federal and state level. The NYPD must be investigated and its discriminatory practices must cease. The Attorney General’s office has the power to investigate matters when there are reasonable facts that demonstrate a violation of the Equal Protection Clause.

The Attorney General Must Investigate the NYPD

The Attorney General has the power to investigate the NYPD. The statutory powers and duties of the Attorney General are set forth in Section 63 of the Executive Law. *See* N.Y. Exec. Law § 63 (McKinney 1993 & supp. 2001). The Executive Law empowers the Attorney General to address police misconduct, by “[p]rosecut[ing]... all actions and proceedings in which the state is interested.” N.Y. Exec. Law § 63(1) (McKinney 1993 & supp. 2001).

The Attorney General may also prosecute criminal actions that violate State anti-discrimination laws when the local district attorney cannot or will not prosecute the offenders. *See* N.Y. Exec. Law § 63(10) (McKinney 1993 & supp. 2001). This section authorizes the Attorney General to prosecute unchecked police misconduct that is motivated by bias.

When the well-being of New York’s citizens is involved, the Attorney General may initiate civil actions pursuant to the common law doctrine of *parens patriae*. *See generally Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Baretz*, 458 U.S. 592, 600 (1982). The Attorney General has a stake and may seek legal relief on behalf of State citizens in this matter since the apparent police misconduct threatens a quasi-sovereign interest.

The Attorney General has previously invoked its authority to investigate abusive police power and prosecute unconstitutional police practices. The New York Attorney

General invoked its authority to address an out-of-control town police force. *See Spitzer v. Town of Walkill*, No. 01- Civ-0364 (S.D.N.Y. March 16, 2001) (order denying motion to dismiss).

In 1999, the New York State Attorney General also issued a report following an investigation on the NYPD's "Stop & Frisk" practice.⁸ This report documents the existence of a pattern of discriminatory practice against minorities and particularly blacks in "stop & frisk" procedures. It demonstrates that "minorities –and particularly- blacks are stopped at higher rate than whites"... "Blacks comprise 25.6% of the City population", yet "50.6% of all stops were blacks." This report reveals that "Blacks comprise 62.7% of all stops made by the New York Police Department's street Crime Unit." In addition, blacks are "stopped 2.1 times more often than whites on suspicion of committing a violent crime and 2.4 times more often than whites on suspicion of carrying a weapon."

The report was enacted in the aftermath of the Louima beating and the shooting of Amadou Diallo. I was counsel to the Estate of Amadou Diallo and filed a civil rights lawsuit against the City of New York, *In Re. Amadou Diallo v. City of New York, et al.* As you may know four police officers attempted to stop Mr. Diallo without reasonable suspicion or probable cause that Amadou Diallo had committed a crime or was about to commit a crime.

Members of the Muslim community are facing the same profiling as Mr. Diallo. Mr. Diallo had the absolute right to freely access the streets of the city of New York and stand in the vestibule of his building. That right could not be violated simply because of his racial, religious or ethnic origin.

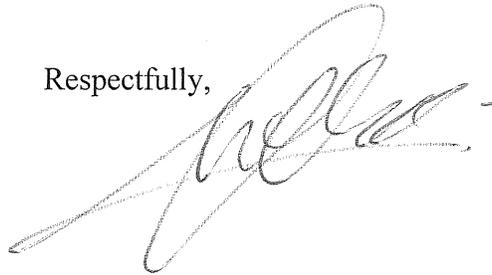
Amadou Diallo was a victim of profiling. The four police officers approached him with a pretext. They saw he was a black man. As a result they saw in him as a rapist, robber and hostage taker. Their pretext could not be derived from Amadou Diallo's actions since he was unarmed and was not committing any crime. The four police officers created these above scenarios in their minds only because Amadou Diallo was a black man living in the Bronx. The NYPD now has created similar scenarios and pretext against members of the community through a radical report, training its cadets on how to profile Muslims and how to spy on them.

⁸ *See* The New York City Police Department "Stop and Frisk" Practices: A Report to the People of the State of New York from the Office of the Attorney General

As stated above, the Attorney General investigated the NYPD's actions and concluded that there was a practice of targeting minorities and using excessive force against them in violation of their civil liberties. As a result of the report, the NYPD disbanded its Street Crime Unit and changed its training policies to eradicate racial profiling.

Today, it is undisputed that a policy, practice and pattern exist through instances of unreasonable and warrantless stops-and-frisks targeting Muslims based on their religion, and violating constitutional freedoms of assembly and speech. For the forgoing reasons, on behalf of the undersigned, I ask your Honor to investigate these troubling facts against the NYPD. I would like to call you in the next ten days to set up a meeting to discuss these matters further.

Respectfully,



Omar Mohammedi, Esq.
President, AMAL
Member organization of MACLC

Undersigned Organizations:

Muslim Americans Civil Liberties Coalition

Safaa Zazour
Islamic Society of North America

Tariq Rehman
Islamic Circle of North America

Rev. Chloe Breyer
Interfaith Center of New York

Sarah Sayed
Women in Islam, Inc.

Debbie Almontaser
Muslim Consultative Network

Aisha Aladawiya
KARAMAH: Muslim Women Lawyers for
Human Rights

Abdelhafid Djemil
Muslim American Society

Imam Al-Hajj Talib 'Abdur-Rashid
The Islamic Leadership Council of
Metropolitan NY

Rev. Robert B. Coleman
The Riverside Church in the City of New
York

Ibrahim Hooper
Council on American-Islamic Relations,
National

Zead Ramadan
Council on American-Islamic Relations,
New York

Salam Al-Marayati
Muslim Public Affairs Council

Sami El-Mansouri
Muslim Public Affairs Council-NYC

Saira Haider
Fordham Muslim Law Student Association

Imam Zaid Shakir
New Islamic Directions

Mohamed Ramadan
Temple University Muslim Student
Association

Ramy Ibrahim
Harvard University Muslim Student
Association

Helengrace El-Hassan
Seton Hall University Muslim Student
Association

Asha A. Samad
SAFRAD Somali Association

Kareem Elgendy
New Jersey Institute of Technology Muslim
Student Association

Dr. Shaik Ubaid
Muslim Peace Coalition USA

Ibaad Sadiq
Muslim Student Association
Rutgers University-New Brunswick

Rutgers University Muslim Alumni
Association

Linda Sarsour
Arab American Association of New York

Fahad Ahmad
Desis Rising Up and Moving

Mustapha Zayed
Muslim Anti-Defamation Coalition

Kyle Smith
Montclair State University Muslim Student
Association

Nagi Lateefa
Muslim Association of Lehigh Valley

Khalil Abdur Rashid
Columbia University Muslim Student
Association

Muslim Student Association
John Jay College for Criminal Justice

Rev. Dr. Donna Schaper
Judson Memorial Church

Rabbi Sharon Kleinbaum
Congregation Beit Simchat Torah

Peace Action New York State

Mohammad Ali Naquvi
Independent Viewpoints

Ahmed Jaber
Arab Muslim American Federation

Omair Akbar
Rutgers University-Newark Muslim Student
Association

Irma Khoja
Islamic Information Center

Nadia Bandukda
Rutgers School of Law-Newark Muslim
Law Students Association

Mostafa Al-Alusi
Yale Muslim Students Association

Dr. Safiullah Faizullah
Muslim Center of Middlesex County

Hesham El-Meligy
The New York Neighbors for American
Values Coalition
The Building Bridges Coalition of Staten
Island

Lillian Raja
Seton Hall School of Law Muslim Student
Association

Diaa Musleh
Rutgers School of Law-Camden Muslim
Law Students Association

Hassen I. Abdallah, Esq.

Sabila Kadiruzzaman
National Muslim Law Students Association