



AMAL

THE ASSOCIATION OF MUSLIM AMERICAN LAWYERS

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Via Electronic Mail and Hand Delivery

Hon. Charles S. Haight
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007
Lori_Dorais@ctd.uscourts.gov

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

Dear Judge Haight:

We, the Association of Muslim American Lawyers (“**AMAL**”), have been asked to opine on proposed revisions to the Handschu Guidelines (the “**Guidelines**”). These revisions were negotiated and agreed upon by the parties in the above referenced action during the course of settlement negotiations, and are awaiting this Court’s approval as a predicate to being implemented.

By way of brief background, AMAL’s mission is (i) to facilitate the Muslim-American community's exercise of legal rights through education, (ii) to assist members in their professional development, (iii) to promote the administration of justice, (iv) to identify and explore themes common to American and Islamic jurisprudence, and (v) to advance the highest standards of professionalism, integrity and honor amongst its members. Since its founding in 2005, AMAL has tackled many legal issues affecting minorities and the traditionally under-represented in the Tri-State area, and has made various submissions to countless city, state and federal agencies in this regard. Also in furtherance of its mission, AMAL has organized and participated in dozens of seminars, panel discussions, and old- fashioned community activism initiatives.

The issues raised in the *Raza* litigation have been of the most divisive, controversial, and constitutionally challenging issues that AMAL and the Tri-State Muslim community have faced. Indeed, the public record is replete with articles and exposés detailing the New York City Police Department’s (“**NYPD**”) secret post-9/11 religious/racial profiling and domestic surveillance initiatives, none of which initiatives has borne any credible leads in the fight against terror¹. As has been extensively

¹ See, e.g., AP’s Probe Into NYPD Intelligence Operations, Associate Press, available at <http://www.ap.org/Index/AP-In-The-News/NYPD>.

documented, the NYPD routinely profiled and infiltrated masjids, educational institutions, and businesses for no other reason than their Muslim/Arab/South Asian identities. There is little doubt that these initiatives, besides being wholly unsuccessful and a spectacular waste of tax-payer resources, reached well beyond even the penumbras of our Constitution and were down-right illegal.

We believe the proposed Guidelines to be a step in the right direction in the Muslim-American community's continuing fight against Constitutional over-reaching by the City of New York (specifically the NYPD and specifically in the areas of privacy rights and surveillance). However, we would like to go record with our concerns, especially in light of the NYPD's documented and stubborn refusal to engage in any further settlement negotiation (according to the NYPD, it is either this settlement or trial). The question is whether the proposed Guidelines offer enough protection for the members of the class, especially the Muslim community which has been victim of illegal surveillance by the NYPD based on its religion for the past fourteen (14) years. Our four greatest concerns are discussed below.

First, the most critical part of the Proposed Settlement is the impact that it will have on future litigations. The Proposed Guidelines must contain a crystal clear statement that this litigation will not be used by the NYPD to assert defenses based the Handschu Guidelines.

Language should be added to the Handschu Guidelines to state: (i) the NYPD would not use the Handschu Guidelines as a defense in any private claim against the City of New York, (ii) even where that individual's rights were violated under the Handschu Guidelines as they currently stand (*i.e.* prior to the implementation of the proposed revised Handschu Guidelines, assuming this Court approves the proposed Guidelines). It must be noted that the defendant City of New York, in *Hassan v. City of New York*, Civ. No. 2:12-3401 (D.N.J.) (WJM), has raised the proposed Handschu Guidelines as a defense in that action. We find this to be a rather duplicitous act, and are still awaiting an explanation. The Muslim community members have already faced many challenges in their lawsuits against the NYPD either in the form of the Freedom of Information Law request or in in constitutional challenges. It does not want additional and unnecessary challenges, especially when there is no opt out option if the Guidelines are approved.

Second, the portion of the proposed Guidelines addressing and implementing civilian oversight must also be strengthened. In sum, out of a dozen committee members, only one will be the "Civilian Representative" ("CR"). The remaining members are high-level intelligence officials and legal counsel². The CR is appointed by the Mayor in consultation with the police commissioner and the Mayor has the right to abolish the CR post after five years. The CR must bring violations to the Police commissioner for review, and is prohibited from discussing corrective action with the public or impacted parties. The CR can only go to the court when there is evidence of NYPD "systematically and repeatedly violating" the Guidelines. As per the proposed Guidelines, the CR does not have access to records except for an investigatory statement which may be discussed during monthly meetings that he/she is allowed to attend. The CR does not have Subpoena power to compel production of documents nor does he/she have the power to initiate inquiries or investigations. The CR is unable to conduct or even initiate any

² The unwritten laws of group dynamics place the CR in a very precarious position.

investigation of the violation of our rights by the NYPD, beyond "blowing the whistle" on such any action that he or she might observe or become aware of. The CR would not even have access to our NYPD surveillance records, except for a statement being presented to a meeting he or she may attend.

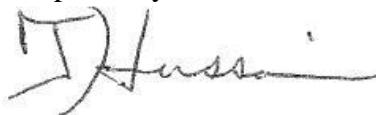
We urge that the CR must have investigatory power as part of the Handschu Committee. In addition, the CR should be a judicial appointment (by the Court) rather than being a political appointment (by the Mayor). Finally, the CR should have authority to bring all violations of the Handschu Guidelines to Court irrespective of whether or not those violations are "systematic" or "repeated", and the CR's seat on the committee should be made permanent. We also ask that the CR will have access to all NYPD records.

Third, the proposed settlement is silent as to what happens to the records that have been unconstitutionally collected by the NYPD thus far. As fruits from a poisonous tree, these records must be destroyed. Moreover, the proposed Guidelines continue to give police sweeping authority to collect immense amounts of personal data, which, if left unchecked, could continue to be abused. Indeed, the Civilian Monitor must be given the authority to oversee record use and retention in this regard.

Fourth: Section IX of the proposed guidelines appears to allow the NYPD to continue to engage in the same activities that led to the people's law suits in the first place, by spying on Mosques, Muslim Business and Muslim Students Associations without any leads and based solely on religion. Section IX has not changed from the 2003 guidelines which allowed the NYPD to conduct illegal surveillance against the Muslim community for the past fourteen (14) years. The NYPD, despite the well publicize illegal surveillance based on religion they still claim they did not do anything wrong in violation of the Handschu Guidelines and the constitution and they will continue to do so. Considering the relatively weak position of the Civil Representative coupled with section IX of the proposed Guidelines, we believe the class members and especially the Muslim community members, who have been the target of the NYPD illegal surveillance, feel they do not have enough protection. We ask that the Guidelines be strengthened.

As noted above, AMAL believes the proposed Guidelines to be a positive step forward. And while we do not wish to stand in the way of this Court's approval and implementation of the proposed Guidelines, we are concerned that the proposed Guidelines do not do enough to curtail the NYPD's constitutional abuses, especially as against the Muslim Community in the Tri State area. As such, we would like our objections noted for the record and stand ready willing and able to assist the Court in any way possible to strengthen the proposed Guidelines.

Respectfully Submitted,



Tariq Hussain, Esq. on behalf of the
AMAL Board