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Revised Settlement Enhances Protections From Discriminatory NYPD Surveillance of American Muslims

March 6, 2017 – In a revised settlement announced today, the New York City Police Department has agreed to strengthen reforms in a landmark settlement agreement that will protect New York Muslims and others from discriminatory and unjustified surveillance.

The revised agreement expands the independence, authority, and responsibilities of a civilian representative who will act as a check against surveillance abuses by the NYPD. The settlement was reached in two federal lawsuits, *Raza v. City of New York* and *Handschu v. Special Services Division*.

The agreement comes after an October [ruling](#) from the judge in the *Handschu* case that recommended enhancements to the previous settlement [announced](#) in January 2016.

The new agreement requires the mayor to obtain federal court approval before abolishing the position of civilian representative, expands the scope of the representative's authority to ensure the NYPD's compliance with the "Handschu Guidelines" on surveillance of political and religious activity, and empowers the representative to report to the court at any time concerning violations of the guidelines.

In the October ruling, Judge Charles S. Haight Jr. had found that the "other provisions in the proposed settlement are salutary" and "would strongly militate in favor of approval."

Raza was [brought](#) in June 2013 by the American Civil Liberties Union, the Creating Law Enforcement Accountability & Responsibility ([CLEAR](#)) project of Main Street Legal Services at CUNY School of Law, the New York Civil Liberties Union, and the law firm Morrison & Foerster LLP. The case was filed on behalf of religious and community leaders, mosques, and a charitable organization alleging they were swept up in the NYPD's dragnet surveillance of Muslims. The suit charged that the NYPD violated the U.S. and New York State Constitutions by singling out and stigmatizing entire communities of New Yorkers based on their religion. The case sought systemic reforms to prevent law enforcement abuses.

Separately in 2013, lawyers in the *Handschu* case, including the NYCLU, [filed papers](#) arguing that the NYPD's investigations of Muslims violated a long-standing consent decree in that case, which was a class action to protect New Yorkers' lawful political and religious activities from unwarranted NYPD surveillance.

The settlement must be approved by the judges in both cases.

Below are comments on the agreement:

Hina Shamsi, ACLU National Security Project director:

“As religious bigotry rises to a fever pitch nationwide, this settlement sends the message that Muslims and all New Yorkers will have even stronger protections from unconstitutional religious profiling and surveillance. Federal officials and local police elsewhere should take heed that courageous people like our clients and their supporters will always stand up for constitutional rights and freedoms.”

Imam Hamid Hassan Raza, lead plaintiff in the Raza suit:

“This settlement represents important progress, not only for Muslim New Yorkers but for other minorities in New York and beyond. The new additions to the agreement cement the gains that we achieved before, securing our freedom to practice our religion without being afraid of who’s watching.”

Ramzi Kassem, CLEAR founding director and CUNY professor of law:

“For far too long, Muslims in New York City have borne the harms of their own police department’s surveillance apparatus. They pushed back courageously and these new safeguards are among their hard-fought gains. Contrary to what some have said, the NYPD’s unfettered Muslim surveillance program is no model for others to follow —it has been discredited.”

Arthur Eisenberg, NYCLU legal director:

“We appreciate Judge Haight’s suggestions for enhancing the settlement. We believe the terms we have now arrived at make it even more protective of religious and political freedoms.”

The previous settlement included the following changes:

- Prohibiting investigations in which race, religion, ethnicity, or national origin is a substantial or motivating factor.
- Requiring articulable and factual information regarding possible unlawful activity before the NYPD can launch a preliminary investigation into political or religious activity.
- Requiring the NYPD to account for the potential effect of investigative techniques on constitutionally-protected activities such as religious worship and political meetings.
- Limiting the NYPD’s use of undercover and confidential informants to situations in which the information sought cannot reasonably be obtained in a timely and effective way by less intrusive means.
- Putting an end to open-ended investigations by imposing presumptive time limits and requiring reviews of ongoing investigations every six months.
- Installing a civilian representative within the NYPD with the power and obligation to ensure all safeguards are followed and to serve as a check on investigations directed at political and religious activities. The civilian representative must record and report any

violations to the police commissioner, who must investigate violations and report back to the civilian representative. If violations are systematic, the civilian representative must report them directly to the judge in the *Handschu* case.

- Removing from the NYPD website the [discredited and unscientific](#) *Radicalization in the West* report, which justified discriminatory surveillance, and affirming that the report is not and will not be relied upon to open or prolong NYPD investigations.

Under the new changes:

- The civilian representative is empowered to report to the court at any time if there are violations of the Handschu Guidelines, is required to report to the court if there are systematic violations, and is required to report to the court on an annual basis.
- The mayor is prohibited from abolishing the civilian representative position without judicial approval, and abolition by order of the court is only permitted if there have not been systemic violations for a period of three years.
- The civilian representative is specifically authorized to review not just the opening or extension of investigations, but also how they are conducted. In addition, the civilian representative is specifically authorized to review the propriety of the use or extension of use of undercover officers or confidential informants.

The plaintiffs in the *Raza* case in addition to Imam Raza are Asad Dandia, Masjid Al-Ansar mosque, the charity Muslims Giving Back, Masjid At-Taqwa mosque, and Mohammad Elshinawy.

In addition to Shamsi, Kassem, and Eisenberg, lawyers on the *Raza* case include Ashley Gorski and Patrick Toomey of the ACLU, Naz Ahmad and Tarek Z. Ismail of CLEAR, Beth Haroules of the NYCLU, and Hector Gallegos, Kyle Mooney, and Adam Hunt of Morrison & Foerster LLP.

Lawyers on the *Handschu* case are Eisenberg, Jethro M. Eisenstein, Martin R. Stolar, Paul G. Chevigny, and Franklin Siegel.

A comparison document filed in the *Raza* case today showing changes to the 2003 Handschu Guidelines based on today's agreement is here:

<https://www.aclu.org/NYPD-revised-agreement-2003-2017>

A comparison document filed in the *Raza* case today showing the most recent changes is here:

<https://www.aclu.org/NYPD-revised-agreement-2016-2017>

A document filed today in the *Handschu* case explaining the changes to the guidelines is here:

<https://www.aclu.org/NYPD-Handschu-declaration>

More information on the case and plaintiffs is here: <https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program>