

# **Suspicionless Surveillance of Muslim Communities and the Increased Use and Abuse of Muslim Informants**

## ***NGO Shadow Report before the United Nations Committee on the Elimination of Racial Discrimination***

85<sup>th</sup> Session, Geneva, 11-29 August 2014

### **I. Reporting Organizations**

This report is being submitted by the following civil rights and community organizations: Center for Constitutional Rights; American Civil Liberties Union (ACLU); Asian Americans Advancing Justice – Asian Law Caucus; Bill of Rights Defense Committee (BORDC); Brennan Center for Justice; Council on American-Islamic Relations (CAIR); Creating Law Enforcement Accountability & Responsibility (CLEAR) project; Desis Rising Up and Moving (DRUM); International Center for Advocates Against Discrimination (ICAAD); Muslim Advocates; Muslim American Civil Liberties Coalition (MACLC); Muslim Consultative Network (MCN); No Separate Justice; Sikh Coalition; and Women in Islam, Inc.

### **II. Issue Summary**

This submission discusses (1) the NYPD's targeting of Arab, Muslim, and South Asian neighborhoods in New York and New Jersey for law enforcement investigations without any suspicion of wrongdoing, and (2) federal law enforcement agencies' use of coercive and intimidating tactics to recruit Muslim men to become informants within Arab, Muslim, and South Asian communities across the country.

#### **Suspicionless Surveillance of Muslims by Local Law Enforcement**

Since at least 2002, the NYPD has conducted a surveillance program that targets, maps, and monitors American Muslims in Arab and South Asian communities throughout New York City, New Jersey, and beyond on the basis of their religion. Although the NYPD's unlawful surveillance was not a secret to these targeted communities, the full extent of the program was documented in NYPD records leaked to the Associated Press (AP) and published in 2011. The documents detail how the NYPD has monitored and gathered information about the daily lives of Muslims, their places of worship, organizations, businesses, and schools using undercover officers, paid informants, surveillance cameras, and other techniques, all without any suspicion of wrongdoing.<sup>1</sup>

The NYPD used government databases and immigration forms to locate and map neighborhoods in New York and New Jersey with significant Muslim, Arab, and South Asian

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<sup>1</sup> The AP released a series of articles in 2011 and 2012 documenting the NYPD's surveillance program in detail. See AP's Probe into NYPD Intelligence Operations, ASSOCIATED PRESS, <http://www.ap.org/Index/AP-In-The-News/NYPD> (last visited 27 June 2014).

populations.<sup>2</sup> Internal documents show that the NYPD prepared an analytical report on every mosque within 100 miles of New York City and strived to have an informant inside every mosque within a 250-mile radius. The police department also identified specific Muslim businesses, community organizations, and student groups as “hot spots” based on the particular religion or faith of their members and subjected them to additional scrutiny.<sup>3</sup> In all, the NYPD scrutinized more than 250 mosques and hundreds of Muslim student groups, businesses, and community organizations under its massive surveillance program.<sup>4</sup> Its intelligence bureau amassed information about thousands of law-abiding Muslims.

Under the surveillance program, NYPD officers took videos and photographs of mosques and businesses, and monitored scores of Muslims, Arabs, and South Asians living in New York and New Jersey, cataloguing where they worked, ate, and prayed.<sup>5</sup> The NYPD also used informants and undercover police officers known as “mosque crawlers” to infiltrate dozens of mosques and Muslim student groups and attend hundreds of sermons and meetings.<sup>6</sup> The vast majority of the surveillance was conducted without a criminal predicate. Informants were routinely asked to eavesdrop on conversations between innocent people and report to their police handlers about what they heard.<sup>7</sup> Yet despite implementing this expansive program, the NYPD’s own Assistant Chief Thomas Galati, admitted in sworn testimony that during the six years of his

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<sup>2</sup> The NYPD mapped communities based on a list of “ancestries of interest,” which included 28 countries (nearly all of which have majority Muslim populations) as well as “American Black Muslims.” Matt Apuzzo & Adam Goldman, “Inside the Spy Unit that NYPD Says Doesn’t Exist,” ASSOCIATED PRESS, 31 Aug. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/Inside-the-spy-unit-that-NYPD-says-doesnt-exist>.

<sup>3</sup> For example, one internal police document identified a Bangladeshi restaurant as a hot spot because it had a “devout crowd.” Matt Apuzzo & Adam Goldman, “Documents Show NY Police Watched Devout Muslims,” ASSOCIATED PRESS, 6 Sept. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/Documents-show-NY-police-watched-devout-Muslims>. Police records also showed that the NYPD singled out communities for investigation based on ethnicity and nationality, and that the NYPD has investigated the Syrian, Moroccan, Albanian Muslim, and Egyptian Muslim communities in New York and New Jersey in detail even though there was no suspicion of criminal activity. Adam Goldman & Matt Apuzzo, “NYPD Docs: ‘Focus’ Scrutiny on Muslim Americans,” ASSOCIATED PRESS, 9 March 2012, <http://www.ap.org/Content/AP-In-The-News/2012/Focus-scrutiny-on-Muslim-Americans>; “Document Shows NYPD Eyed Shiites Based on Religion,” ASSOCIATED PRESS, 2 Feb. 2012, <http://www.ap.org/content/ap-in-the-news/2012/document-shows-nypd-eyed-shiites-based-on-religion>.

<sup>4</sup> Eileen Sullivan, “NYPD Spied on City’s Muslim Anti-Terror Partners,” ASSOCIATED PRESS, 6 Oct. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-spied-on-citys-Muslim-anti-terror-partners>.

<sup>5</sup> Adam Goldman, Eileen Sullivan, & Matt Apuzzo, “NYPD Eyed US Citizens in Intel Effort,” ASSOCIATED PRESS, 22 Sept. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-eyed-US-citizens-in-intel-effort>; Matt Apuzzo, Adam Goldman, & Eileen Sullivan, “NYPD’s Spying Programs Yielded Only Mixed Results,” ASSOCIATED PRESS, 23 Dec. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-spying-programs-yielded-only-mixed-results>.

<sup>6</sup> Chris Hawley & Matt Apuzzo, “NYPD Infiltration of Colleges Raises Privacy Fears,” ASSOCIATED PRESS, 11 Oct. 2011, <http://www.ap.org/Content/AP-In-The-News/2011/NYPD-infiltration-of-colleges-raises-privacy-fears>; Sullivan, *supra* n. 4.

<sup>7</sup> One former informant, Shamiur Rahman, stated that he spied on “everything and anyone,” and that police told him to start conversations about jihad or terrorism and send the responses to the NYPD, a tactic they called “embrace and capture.” Adam Goldman & Matt Apuzzo, “Informant: NYPD Paid Me to ‘Bait’ Muslims,” ASSOCIATED PRESS, 23 Oct. 2012, <http://www.ap.org/Content/AP-In-The-News/2012/Informant-NYPD-paid-me-to-bait-Muslims>.

tenure, the unit tasked with monitoring American Muslim life had not yielded a single criminal lead.<sup>8</sup>

The NYPD's surveillance program has had a significant impact on Arabs, Muslims, and South Asians, particularly in New York and New Jersey, altering the way they practice their faith and interact with members of their community. By subjecting Muslims to law enforcement scrutiny that isn't visited upon any other community, the surveillance program stigmatizes all people of that faith and creates a pervasive climate of fear and suspicion within Muslim communities. Individuals represented by a number of our organizations have stated that they are now reluctant to attend community meetings or mosques for worship because they expect that they will be monitored or their conversations recorded. They have also observed that attendance at their mosques has declined, and that newcomers are now being met with distrust and suspicion.<sup>9</sup> In addition, community members are less inclined to engage in political speech and activism because they are afraid that statements will be taken out of context and reported to law enforcement.<sup>10</sup>

CCR, CLEAR, Muslim Advocates, the American Civil Liberties Union (ACLU), and the New York Civil Liberties Union (NYCLU) have filed two lawsuits against the NYPD on behalf of various Muslim businesses, mosques, and organizations that were targeted for surveillance. Both lawsuits, *Hassan v. City of New York* and *Raza v. City of New York*, claim that the programs, which expressly discriminate on the basis of religion, violate the Constitution. In February 2014, the federal district court in New Jersey dismissed the *Hassan* case.<sup>11</sup> That dismissal is pending appeal in the Third Circuit. The *Raza* case is being actively litigated in federal district court in New York.<sup>12</sup> In addition, there is a third litigation effort asserting that NYPD surveillance practices directed at Muslim communities violate a long-standing consent decree in *Handschu v. Special Services Division*. The *Handschu* matter is also pending before a federal district court in New York.

#### Coercive Recruitment of Muslim Informants for Surveillance of Muslim Communities

Since 9/11, the Federal Bureau of Investigation (FBI) has greatly expanded the use of informants who, at the FBI's behest, infiltrate communities and spy on the activities of millions

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<sup>8</sup> Adam Goldman & Matt Apuzzo, "NYPD: Muslim Spying Led to No Leads, Terror Cases," ASSOCIATED PRESS, 21 Aug. 2012, <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases>.

<sup>9</sup> CLEAR, MACLC, & AALDEF, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 12-15 (2013), available at <http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>10</sup> *Id.* at 20-24.

<sup>11</sup> The district court held that: (1) the plaintiffs are not actually injured by the NYPD's surveillance; (2) if Plaintiffs have been injured, responsibility fell to the AP, which revealed the program's existence to the public, not the NYPD, which established and executes the program; and (3) even if the NYPD were responsible for the harm, the NYPD's discriminatory policy – which unearthed no leads in more than ten years of existence – is explained by a "desire to locate budding terrorist conspiracies" and thus not actionable. Opinion, *Hassan v. City of New York*, No. 12-3401 (WJM), 2014 U.S. Dist. LEXIS 20887, at \*10-11, \*12-14 (D.N.J. 20 Feb. 2014).

<sup>12</sup> In April 2014, the NYPD announced that it had disbanded the police unit responsible for the surveillance program.. See Adam Serwer, "NYPD Ends Controversial Muslim Spying Unit," MSNBC.COM, 16 Apr. 2014, <http://www.msnbc.com/msnbc/nypd-bill-de-blasio-shutters-controversial-muslim-unit>.

of law-abiding Americans. In 2008, the FBI disclosed that it had 15,000 informants on its payroll, the most the agency has ever had in history.<sup>13</sup> The FBI has targeted Arab, Muslim, and South Asian communities for surveillance and investigation by informants.<sup>14</sup> A vast number of the FBI's informants are recruited to infiltrate mosques, businesses, and organizations within those communities and to report back on the activities of innocent individuals.<sup>15</sup> The FBI frequently asks informants to monitor activities within the community without any reasonable suspicion that there is criminal activity afoot – a practice that is sanctioned by FBI guidelines.<sup>16</sup>

The FBI aggressively targets men of Arab, Muslim, and South Asian descent and attempts to get them to become informants against their own communities. Although a spokesperson for the FBI has stated that its agents are prohibited from using threats or coercion to recruit informants,<sup>17</sup> the Attorney General's guidelines regarding the use of confidential informants do not explicitly ban this practice.<sup>18</sup> Many individuals have publicly recounted how FBI agents threatened them with baseless terrorism charges or deportation in an attempt to coerce them into becoming informants, or have brought charges against them in retaliation for their refusal to work as informants.<sup>19</sup> Organizations that engage in outreach and provide legal services to individuals within Arab, Muslim, and South Asian communities have also reported to us that the FBI's practice of using intimidation tactics to recruit informants among Muslim men is widespread.<sup>20</sup>

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<sup>13</sup> See "Terror Probes have FBI's Informant Numbers Soaring," NPR, 21 Aug. 2011, <http://www.npr.org/2011/08/21/139836377/the-surge-in-fbi-informants?sc=emaf>; TREVOR AARONSON, *THE TERROR FACTORY: INSIDE THE FBI'S MANUFACTURED WAR ON TERRORISM* 112 (2013).

<sup>14</sup> See, e.g., Scott Glover, "FBI Monitored Members of O.C. Mosques at Gyms, Alleged Informant Says," *LOS ANGELES TIMES*, 28 Apr. 2009, <http://articles.latimes.com/2009/apr/28/local/me-surveillance28>; Jerry Markon, "FBI Accused of Spying on Muslims at Community Outreach Forums," *WASHINGTON POST*, 2 Dec. 2011, [http://www.washingtonpost.com/politics/fbi-illegally-using-community-outreach-to-gather-intelligence-aclu-alleges/2011/11/30/gIQA1qxyGO\\_story.html](http://www.washingtonpost.com/politics/fbi-illegally-using-community-outreach-to-gather-intelligence-aclu-alleges/2011/11/30/gIQA1qxyGO_story.html).

<sup>15</sup> See AARONSON, *supra* note 13, at 48-51.

<sup>16</sup> FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, *DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE* 89 (2011), *available at* <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIQG%29/fbi-domestic-investigations-and-operations-guide-diog-2011-version>; see also Petra Bartosiewicz, "Deploying Informants, the FBI Stings Muslims," *THE NATION*, 13 June 2012, <http://www.thenation.com/article/168380/deploying-informants-fbi-stings-muslims>.

<sup>17</sup> AARONSON, *supra* note 13, at 100 (quoting FBI spokesperson Kathleen Wright).

<sup>18</sup> See U.S. DEP'T OF JUSTICE, *THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE USE OF FBI CONFIDENTIAL HUMAN SOURCES* (Dec. 2006), *available at* <http://fas.org/irp/agency/doj/fbi/chs-guidelines.pdf>.

<sup>19</sup> See, e.g., AARONSON, *supra* note 13, at 92-97 (recounting cases of Foad Farahi, Tarek Saleh, and Yassine Ouassif); Bartosiewicz, *supra* note 16 (recounting cases of Ahmadullah Niazi and Tarek Mehanna); Nick Baumann, "This American Refused to Become an FBI Informant. Then the Government Made His Family's Life Hell.," *THE NATION*, May/June 2014, <http://www.motherjones.com/politics/2014/05/sudan-fbi-informant-naji-mansour-terrorism>.

<sup>20</sup> In addition, the U.S. government has used intimidation tactics and punitive measures to coerce terrorism suspects into cooperating or pleading guilty. CCR represents one such individual, Fahad Hashmi, who was placed under highly restrictive Special Administrative Measures while in pre-trial detention after refusing to cooperate with the government. See Jeanne Theoharis, "My Student, The 'Terrorist,'" *CHRONICLE OF HIGHER EDUCATION*, 3 Apr. 2011, <http://chronicle.com/article/My-Student-the-Terrorist/126937/>.

In addition to using immigration status and the threat of criminal charges to intimidate individuals into working as informants, the FBI threatens people with placement on the federal government's secretive No Fly List, a particularly coercive tactic because there is no effective or transparent process for being taken off the List.<sup>21</sup> CCR and CLEAR represent four individuals in a lawsuit directly challenging this practice. The case, *Tanvir v. Comey*, is currently being litigated in federal district court in New York.<sup>22</sup> One plaintiff, Mohammed Tanvir, was repeatedly harassed over the course of three years by FBI agents who wanted him to spy on his South Asian and Muslim community. Agents threatened him with deportation if he would not become an informant. After it became clear that he would not submit to their threats, the FBI turned up the pressure. Mr. Tanvir suddenly found himself on the No Fly List, unable to fly home to Pakistan to visit his ailing mother, and was told by agents that the only way he would be taken off the List was if he worked for the FBI.<sup>23</sup> Another client, Jameel Algibhah, found himself on the No Fly List after he turned down FBI agents' requests to infiltrate a mosque in Queens as an informant, "act extremist," and spy on his community. Agents have continued to visit Mr. Algibhah and have told him that he will only be removed from the No Fly List if he works with the FBI. Mr. Algibhah remains unable to fly and has been separated from his wife and daughters in Yemen for over five years.<sup>24</sup>

The ACLU also represents several individuals who were pressured to become informants in exchange for being taken off the No Fly List. One client, Nagib Ali Ghaleb, was prevented from boarding a flight home to San Francisco at an airport in Frankfurt, Germany. FBI agents who interviewed him in Germany asked for information about his mosque and San Francisco Yemeni community, and suggested that he become an informant for the FBI. When Mr. Ghaleb refused, FBI agents threatened to have him arrested and jailed in Yemen.<sup>25</sup> Mr. Ghaleb is a plaintiff in the ACLU's case, *Latif v. Holder*, in which a federal judge held that procedures for contesting placement on the No Fly List were "wholly ineffective" and violate due process guaranteed by the Fifth Amendment.<sup>26</sup> Our organizations are also aware of other cases in which the No Fly List was used to coerce individuals into acting as informants for the FBI.<sup>27</sup>

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<sup>21</sup> See ACLU, UNLEASHED AND UNACCOUNTABLE: THE FBI'S UNCHECKED ABUSE OF AUTHORITY 46-48 (Sept. 2013).

<sup>22</sup> See [www.ccrjustice.org/Tanvir](http://www.ccrjustice.org/Tanvir).

<sup>23</sup> Amended Complaint, *Tanvir v. Holder*, No. 13-cv-6951 (S.D.N.Y. 22 Apr. 2014), at 18-28; Bartosiewicz, *supra* note 16.

<sup>24</sup> Amended Complaint, *Tanvir v. Holder*, *supra* note 23, at 28-36.

<sup>25</sup> Third Amended Complaint, *Latif v. Holder*, No. 10-cv-750 (D. Oreg. 11 Jan. 2013), at 18-19.

<sup>26</sup> In addition to *Tanvir v. Holder* and *Latif v. Holder*, several other federal lawsuits have been filed challenging the No Fly List for violating Fifth Amendment due process. See, e.g., *Ibrahim v. DHS*, No. 06-cv-545 (N.D. Cal.); *Mohamed v. Holder*, No. 11-cv-50 (E.D. Va.); *Fikre v. FBI*, No. 13-cv-899 (D. Oreg.); and *Tarhuni v. Holder*, No. 13-cv-00001 (D. Oreg.).

<sup>27</sup> See also AARONSON, *supra* note 13, at 103-05. For example, another individual, Yonas Fikre, represented by CAIR, was told by FBI agents in Sudan that he had been placed on the No Fly List and that he would be removed from the List if he became an FBI informant. Mr. Fikre refused. Later, after traveling to the United Arab Emirates, he was arrested and tortured by security officials who told him that his detention and interrogation was at the request of the FBI. Mr. Fikre's lawsuit against the FBI is pending in federal district court in Oregon. See Second Amended Complaint, *Fikre v. FBI*, No. 13-cv-1554 (D. Oreg. 27 June 2014), at 7-21.

### III. Prior Concluding Observations

In Paragraph 14 of its 2008 Concluding Recommendations to the United States, the Committee on the Elimination of Racial Discrimination noted that it was “deeply concerned about the increase in racial profiling against Arabs, Muslims, and South Asians in the wake of the 11 September 2001 attack,” and recommended that the U.S. “strengthen its efforts to combat racial profiling at the federal and state levels.”<sup>28</sup> We welcome the Committee’s additional consideration of widespread surveillance of Arab, Muslim, and South Asian communities by local and federal law enforcement, and the widespread use and recruitment of Muslim informants to spy on Muslim communities.

### IV. U.S. Government Reports

In its 2013 Periodic Report to the Committee, the U.S. Government noted that racial or ethnic profiling “is not effective law enforcement practice and is not consistent with our commitment to fairness in our justice system,” and listed recent Department of Justice investigations into police departments for discriminatory conduct.<sup>29</sup> To date, however, the Department of Justice has not opened an investigation into the NYPD for its discriminatory surveillance of Muslim communities despite calls by more than 125 faith, civil rights, and community organizations to do so.<sup>30</sup>

The U.S. Government did not otherwise address the issue of widespread surveillance of Arab, Muslim, and South Asian communities in its 2003 report, nor did it address the widespread use and recruitment of Muslim informants to spy on Muslim communities.

In 2009, at the request of the Committee, the U.S. Government submitted a follow-up report on its implementation of several specific Concluding Recommendations, including Paragraph 14. The U.S. noted that it relied on a 2003 “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies” prepared by the Department of Justice to train various federal law enforcement agencies on racial profiling.<sup>31</sup> However, the 2003 Guidance has long been criticized by civil rights organizations because it does not prohibit profiling based upon religion, and provides a national security and border integrity exemption which allows law

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<sup>28</sup> CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶ 14, CERD/C/USA/CO/6, 8 May 2008, *available at* <http://www.refworld.org/publisher,CERD,,USA,4885cfa70,0.html>.

<sup>29</sup> Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, 12 June 2013, *available at* [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/periodic\\_icerd\\_report\\_of\\_the\\_usg\\_2013.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/periodic_icerd_report_of_the_usg_2013.pdf).

<sup>30</sup> *See* Letter to the Department of Justice seeking an investigation into the NYPD’s suspicionless surveillance of Muslims, 24 Oct. 2013, [https://www.aclu.org/sites/default/files/assets/2013-10-24\\_doj\\_investigation\\_letter\\_combined.pdf](https://www.aclu.org/sites/default/files/assets/2013-10-24_doj_investigation_letter_combined.pdf).

<sup>31</sup> CERD, Information Provided by the Government of the United States of America on the Implementation of the Concluding Observations of the Committee on the Elimination of Racial Discrimination, ¶ 8, CERD/C/USA/CO/6/Add.1, 13 Jan. 2009, *available at* [www.refworld.org/publisher,CERD,,USA,49c8a1a32,0.html](http://www.refworld.org/publisher,CERD,,USA,49c8a1a32,0.html).

enforcement agents to consider race and ethnicity in certain investigations.<sup>32</sup> Revisions to the racial profiling rules, which have not yet been finalized, are currently drafted to give the FBI continued authority to do so.<sup>33</sup>

The U.S. Government also noted in its follow-up report that the FBI is specifically prohibited from racial profiling because the Attorney General's guidelines regulating the FBI's domestic operations incorporate the 2003 Guidance.<sup>34</sup> In fact, by relaxing the bar and allowing the FBI to preliminarily investigate anyone without suspicion of wrongdoing,<sup>35</sup> the Attorney General's guidelines make it much easier for the FBI to consider illegitimate factors such as race, ethnicity, and religion in law enforcement actions involving national security.

## V. Legal Framework

Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits States parties from engaging in any act or practice of racial discrimination and requires them "to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation." Article 2 also requires States parties to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

Additionally, in General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, the Committee specifically recognized that anti-Arab or anti-Muslim feelings have emerged "partly as a result of the security policies and anti-terrorism measures adopted by many States,"<sup>36</sup> and recommended that States parties "take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion."<sup>37</sup>

## VI. Other UN Body Recommendations

The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has condemned the suspicionless surveillance of Muslims. In

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<sup>32</sup> U.S. DEP'T OF JUSTICE, GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES, June 2003, *available at* [http://www.justice.gov/crt/about/spl/documents/guidance\\_on\\_race.pdf](http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf).

<sup>33</sup> Matt Apuzzo, "Profiling Rules Said to Give F.B.I. Tactical Leeway," NEW YORK TIMES, 9 Apr. 2014, <http://www.nytimes.com/2014/04/10/us/profiling-rules-said-to-give-fbi-tactical-leeway.html>.

<sup>34</sup> Information Provided by the United States on the Implementation of the Concluding Observations, *supra* note 31, ¶ 10.

<sup>35</sup> U.S. DEP'T OF JUSTICE, THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS 19, *available at* <http://www.justice.gov/ag/readingroom/guidelines.pdf>.

<sup>36</sup> CERD, Gen. Rec. No. 31, at 2, 71<sup>st</sup> Sess., U.N. Doc. A/60/18, 17 Aug. 2005, *available at* [http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev\\_En.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf).

<sup>37</sup> *Id.* ¶ 20.

2003, the Special Rapporteur noted with concern that the FBI “might send agents into mosques” to gather information.<sup>38</sup> In his 2006 report, the Special Rapporteur stated that discrimination against Muslims and Arabs in some countries “has become more insidious and less visible,” involving “laws or administrative measures specifically designed to ‘control’ and ‘monitor’ such minorities.”<sup>39</sup> He specifically condemned the United Kingdom’s creation of Special Branch units intended to infiltrate mosques and conduct surveillance on the Muslim community, noting that viewing Muslim places of worship and cultural centers as “breeding grounds for potential terrorists” encourages Islamophobia, which “contributes materially to the erosion of democracy and respect for human rights.”<sup>40</sup>

In its April 2014 Concluding Observations, the UN Human Rights Committee expressed concern regarding the “surveillance of Muslims undertaken by the Federal Bureau of Investigation (FBI) and the New York Police Department (NYPD) in the absence of any suspicion of wrongdoing”<sup>41</sup> and urged review of the 2003 guidance.

## VII. Recommended Questions

We respectfully recommend that the Committee pose the following questions to the United States Government:

- Q.1: Is the NYPD continuing to map and target Arab, Muslim, and South Asian communities for surveillance and investigation?
- Q.2: What concrete steps will the United States take to ensure that federal, state, and local governments end the discriminatory mapping and surveillance of Arab, Muslim, and South Asian communities within the United States?
- Q.3: What concrete steps will the United States take to ensure that federal, state, and local governments end the practice of using informants to monitor Arab, Muslim, and South Asian communities without any reasonable suspicion of wrongdoing?
- Q.4: What concrete steps will the United States take to ensure that law enforcement officers do not use illegal or abusive tactics such as threats and intimidation to recruit and maintain informants? Have any law enforcement officers been censured or disciplined for their misconduct?

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<sup>38</sup> ECOSOC, Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination: Situation of Muslims and Arab Peoples in Various Parts of the World in the Aftermath of the Events of 11 Sept. 2001, ¶ 48, 59<sup>th</sup> Sess., U.N. Doc. E/CN.4/2003/23, 3 Jan. 2003, *available at* <http://www.refworld.org/docid/3f4b0d524.html>.

<sup>39</sup> ECOSOC, Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination: Situation of Muslims and Arab Peoples in Various Parts of the World, ¶ 14, 62<sup>nd</sup> Sess., U.N. Doc. E/CN.4/2006/17, 13 Feb. 2006, *available at* <http://www.refworld.org/docid/45377b040.html>.

<sup>40</sup> *Id.* ¶ 18.

<sup>41</sup> HRC, Concluding Observations on the Fourth Periodic Report of the United States of America, ¶ 7, 110<sup>th</sup> Sess., U.N. Doc. CCPR/C/USA/CO/4, 23 April 2014, *available at* <http://www.refworld.org/publisher,HRC,USA,5374afcd4,0.html>.

## **VIII. Suggested Recommendations to the United States**

- R.1: Ensure the NYPD ends its unconstitutional discriminatory Muslim surveillance program, and direct the Department of Justice to investigate the NYPD's conduct.
- R.2: Ensure that no federal, state, or local law enforcement agency targets Arab, Muslim, and South Asian neighborhoods, businesses, mosques, schools, and organizations for surveillance, monitoring, and intelligence-gathering without particularized suspicion of wrongdoing.
- R.3: Revise the Department of Justice's Guidance Regarding the Use of Race by Federal Law Enforcement Agencies to ban racial profiling on the basis of religion, sexual orientation, gender identity or national origin, and close loopholes in the Guidance that permit all forms of racial profiling in the national security and border contexts.
- R.4: Revise the Attorney General's FBI operations guidelines to (1) prohibit law enforcement from conducting "assessments," preliminary investigations, or full investigations without any factual predicate of wrongdoing, (2) prohibit racial and ethnic mapping, and (3) prohibit the FBI from using informants or undercover agents in "assessments" or preliminary investigations.
- R.5: Ensure that law enforcement agents (1) do not use threats or intimidation when engaging with informants or potential informants, and (2) do not make promises or threats involving the No Fly List when engaging with informants or potential informants.
- R.6: Investigate the use of unlawful or abusive pressure tactics by law enforcement to recruit informants and implement appropriate remedies, including disciplining officers for misconduct.

Dated: 7 July 2014