

PRESENTATION TO U.N. SPECIAL RAPPORTEUR ON RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

STATEMENT OF THE CENTER FOR CONSTITUTIONAL RIGHTS

JULY 2016

I. THE WORK OF THE CENTER FOR CONSTITUTIONAL RIGHTS

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing advocacy and legal work to challenge unlawful and inhumane government practices.¹ This submission before the Special Rapporteur focuses on failures of government agencies to respect and promote the rights to freedom of peaceful assembly and association, particularly the rights of protestors against police brutality and state violence and of activists supporting Palestinian human rights.

II. SURVEILLANCE AND ARREST OF PROTESTORS AGAINST POLICE BRUTALITY AND STATE VIOLENCE

CCR has helped organize legal support for activists involved in the Black Lives Matter movement in New York City, Ferguson, Baltimore, and other cities since the protest movement emerged in the wake of the police killing of Michael Brown in 2014.² CCR and partners at Color of Change have also been investigating, through the Freedom of Information Act, the surveillance of the protest movement and the coordination between federal, state, and local authorities to monitor and chill the First Amendment-protected activities of Black Lives Matter organizers, activists, and members of the public who wish to speak out in opposition to the crisis of police brutality and killing in the United States. Federal authorities have refused to respond to requests for information.

In partnership with local and state law enforcement, the FBI and the Department of Homeland Security have deployed advanced security technology to monitor First Amendment-protected activity and have embraced a highly militarized, counter-terrorism related approach to monitoring, surveillance, and arrest, thus amplifying the chilling effect on protected political speech. Federal authorities have made use of New York's Joint Terrorism Task Force, the Northern California Regional Intelligence Center, an FBI Joint Terrorism Task Force, and the Commonwealth Fusion Center to monitor activists in New York, California, Minnesota, and Boston, with many activists reporting seeing law enforcement officials tracking their activities outside of protests. We ask the Special Rapporteur to urge the United States to cease efforts to monitor First Amendment activity either alone or in collaboration with local law enforcement, and to force the FBI and the Department of Homeland Security to reveal the extent of their surveillance of protestors.

¹ Learn more about us at www.ccrjustice.org.

² CCR also convened #Law4BlackLives, a national gathering of over 1000 lawyers, law students, legal workers, and jailhouse lawyers, in 2015.

III. SUPPRESSION OF ACTIVISM IN SUPPORT OF PALESTINIAN HUMAN RIGHTS

CCR and partners at Palestine Legal have documented a pattern of suppression of advocacy in support of Palestinian human rights, spearheaded by a network of lobbying groups, watchdog organizations, public relations entities, and advocacy groups funded by, working in coordination with, or supportive of the Israeli government. Last year, we released a joint report, *The Palestine Exception to Free Speech*,³ detailing all incidents of censorship, punishment, or other burdening of advocacy that Palestine Legal responded to since 2014. There were 240 incidents in 2015 alone, most of which targeted students and scholars – a reaction to the increasingly central role universities play in the movement for Palestinian rights. But additionally disturbing is the degree to which state agencies participate in this suppression through tactics such as lawsuits and legal threats, legislation, and criminal investigations and prosecutions.

Right now, lawmakers in Congress and at least 16 states are considering more than two dozen bills aimed at curbing Palestinian rights advocacy, targeting campaigns calling for boycotts, divestment, and sanctions (or BDS) against Israel until it complies with international law.⁴ BDS is a nonviolent strategy that allows people of conscience to play an effective role in the struggle for freedom, justice, and equality for Palestinians in their homeland when all other diplomatic efforts have failed to achieve their rights and Israel's human rights violations continue unabated. Boycotts in particular are a time-honored means of effecting political change that were successfully employed during the Montgomery bus boycott in the 1950s, the California grape boycott in the 1960s, and the boycott of apartheid South Africa in the 1980s. These bills blacklist companies, organizations, and, in some cases, individuals who advocate for Palestinian rights, especially BDS of companies or institutions complicit in the occupation. Although direct or indirect restrictions in public funding or benefits aimed at suppressing particular political perspectives are unconstitutional, these bills essentially deny those blacklisted the ability to engage in state contracts, have state funds invest in them, or access public funding. This forces them to choose between complying with international law and accessing state funds and benefits. Here in New York, the governor even circumvented the legislative process last month by signing an executive order⁵ to implement an anti-BDS blacklist.⁶

We urge the Special Rapporteur to demand that the U.S. government cease its surveillance, investigation, and prosecution of Palestine human rights activists solely on the basis of political viewpoint or expressive conduct protected by the First Amendment. We urge the Special Rapporteur to express great concern over recently introduced legislation that targets individuals or organizations on the basis of political viewpoint or expression or that restricts or penalizes protected protest or expression, and to call on federal, state, and local governments to reject these bills. We also ask the Special Rapporteur to encourage the U.S. Department of State to amend its definition of antisemitism, removing vague and overbroad language and making clear that criticism of Israeli government policy does not constitute antisemitism.

IV. SUSPICIONLESS SURVEILLANCE OF MUSLIM COMMUNITIES BY THE NYPD

For over a decade, starting in 2002, the NYPD has engaged in another overtly discriminatory policy practice by targeting Arab, Muslim, and South Asian neighborhoods for surveillance and “infiltration” – without any

³ The report is available at <https://ccrjustice.org/the-palestine-exception>.

⁴ We note that these legislative initiatives fall into a global pattern of the emergence of anti-BDS laws and that, alongside two of your fellow Special Rapporteurs, you sent a letter in 2011 expressing concern over Israel's “Law for Prevention of Damage to the State of Israel through Boycott – 2011,” available at [https://spdb.ohchr.org/hrdb/19th/AL_Israel_26.08.2011_\(7.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/AL_Israel_26.08.2011_(7.2011).pdf).

⁵ The executive order is available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_157_new.pdf.

⁶ CCR submitted a Freedom of Information Law request to New York State seeking information about the decision-making process behind the executive order, available at http://ccrjustice.org/sites/default/files/attach/2016/06/EO157_Cuomo_FOIL_Request.pdf.

suspicion of wrongdoing.⁷ The NYPD's surveillance program (hereinafter "Program") engaged in "human mapping" and mass surveillance of Muslim communities and infiltration of mosques and of Muslim Student Associations in the New York and New Jersey area. The Program expressly discriminates on the basis of religion and violates the U.S. Constitution. Notably, this Program never yielded a single criminal lead.⁸ The Program caused serious impacts on the lives of Muslim community members, including altering the way they practiced their faith and interacted with other community members, and created a pervasive climate of fear, suspicion, and stigmatization. It is the subject of our ongoing litigation, *Hassan v. City of New York*, on behalf of communities in New Jersey.⁹

Though the NYPD recently disbanded one of the main units through which it conducted the surveillance, we still have concerns about the unlawful targeting and profiling of Muslims. On October 13, 2015, the Third Circuit Court of Appeals issued a favorable opinion that concluded that surveillance on the basis of religion was presumptively unconstitutional and part of a dangerous historical practice. That appellate decision returned the case back to the district court where we are in discussions with the NYPD to settle the case. We recommend that the Special Rapporteur question the NYPD about what concrete protocols they have in place to ensure that Muslims are not the subjects of selective enforcement.

⁷ Moreover, the surveillance of Muslims by the NYPD and the FBI was the subject of UN treaty review bodies throughout 2014. See U.N. Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, Apr. 22, 2014, ¶ 7, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5 (criticizing practices of the NYPD); CERD Committee, Concluding observations on the combined seventh to ninth periodic reports of United States of America, Aug. 29, 2014, ¶ 8, available at <http://www.ushrnetwork.org/resources-media/cerd-concluding-observations-2014>. CCR and partners submitted a shadow report to the CERD Committee discussing this issue, available at https://www.ccrjustice.org/sites/default/files/assets/files/CCR_CERD_ShadowReport_Surveillance-20140708.pdf.

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

⁹ Learn more about *Hassan v. City of New York* at <http://www.ccrjustice.org/hassan>.