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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HANDSCHU, RALPH DiGIA, ALEX  
McKEIVER, SHABA OM, CURTIS M. POWELL,  
ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL  
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,  
ANNETTE T. RUBENSTEIN, MICKEY SHERIDAN,  
JOE SUCHER, STEVEN FISCHLER, HOWARD  
BLATT, ELLIE BENZONI, on behalf of  
themselves and all others similarly  
situated,

71 Civ. 2203 (CSH)

ORDER TO SHOW CAUSE  
FOR DISCOVERY AND  
A RESTRAINING ORDER

Plaintiffs,

-against-

SPECIAL SERVICES DIVISION, a/k/a  
Bureau of Special Services; WILLIAM  
H.T. SMITH; ARTHUR GRUBERT; MICHAEL  
WILLIS; WILLIAM KNAPP; PATRICK  
MURPHY; POLICE DEPARTMENT OF THE  
CITY OF NEW YORK; JOHN V. LINDSAY;  
and various unknown employees of the  
Police Department acting as  
undercover operators and informers,

Defendants.

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Upon the consent decree entered herein on March 7,  
1985, the Guidelines For Investigations Regarding Political  
Activity attached as Appendix A to the Second Revised Order  
and Judgment dated August 6, 2003, the orders of this Court  
thereafter made, the annexed declaration of Jethro M.  
Eisenstein, Esq., made on the 3rd day of October, 2011, the  
exhibits annexed thereto and the accompanying memorandum of

law, and upon all other papers and proceedings heretofore had herein, it is hereby

ORDERED that the defendants show cause before Senior United States District Judge Charles S. Haight, in his courtroom at the United States Courthouse for the District of Connecticut, 141 Church Street, New Haven, Connecticut 06510, on October — , 2011 at — o'clock or as soon thereafter as counsel can be heard, why an order should not be entered pursuant to Rules 26(b), (1) and Rule 65(b), FRCP:

a) Granting the plaintiff class leave to conduct discovery herein to determine whether the defendants, as a matter of policy, retain information about political activity on the part of members of the Muslim communities in New York that has been obtained from visits to public places and events, when such information does not relate to potential unlawful or terrorist activity, in violation of §VIII(A)(2) of the Modified Handschu Guidelines; and

b) Pending a determination of class counsel's application for such discovery, directing the defendants to retain all documents, relating to members of the Muslim communities, that were created based on information obtained by members of the Intelligence Division of the New

York City Police Department by visiting public places or attending events that are open to the public, and that are now maintained by the defendants in an electronic database or in the form of paper documents, where such visits or such attendance at public meetings did not yield or produce evidence of potential unlawful or terrorist activity; and

c) Directing such other and further relief as to the Court may seem just and proper; and it is further

ORDERED that sufficient cause having been shown, service of this Order, together with the papers upon which it was granted, may be made upon the defendants by delivering copies thereof by hand to the Corporation Counsel of the City of New York at its office located at 100 Church Street, New York, New York \_\_\_\_\_ on or before October \_\_, 2011, and such service shall be deemed good and sufficient; and it is further

ORDERED that answering papers, if any, shall be served upon the attorneys for the plaintiff class by hand delivery and/or electronic transmission thereof to their offices so that they are received at or before 5:00 p.m. on October \_\_, 2011; and it is further

ORDERED that reply papers, if any, shall be served upon the Corporation Counsel of the City of New York by hand delivery or by electronic transmission thereof to

✓ their offices so they are received on October — , 2011 at  
or before 5:00 p.m.

✓ Dated: New Haven, Connecticut  
October — , 2011

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HANDSCHU, RALPH DiGIA, ALEX  
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JOE SUCHER, STEVEN FISCHLER, HOWARD  
BLATT, ELLIE BENZONI, on behalf of  
themselves and all others similarly  
situated,

71 Civ. 2203 (CSH)

DECLARATION OF  
JETHRO M.  
EISENSTEIN

Plaintiffs,

-against-

SPECIAL SERVICES DIVISION, a/k/a  
Bureau of Special Services; WILLIAM  
H.T. SMITH; ARTHUR GRUBERT; MICHAEL  
WILLIS; WILLIAM KNAPP; PATRICK  
MURPHY; POLICE DEPARTMENT OF THE  
CITY OF NEW YORK; JOHN V. LINDSAY;  
and various unknown employees of the  
Police Department acting as  
undercover operators and informers,

Defendants.

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JETHRO M. EISENSTEIN, for his declaration pursuant to  
28 U.S.C. 1746, states as follows:

1. I am one of the attorneys for the plaintiff class  
in the above-captioned action, hereinafter collectively  
referred to as "Class Counsel". Under the terms of the  
consent decree, the Guidelines for Investigations involving  
Political Activity (hereinafter "Modified Handschu  
Guidelines") and the orders that have been made in this

action, Class Counsel are empowered to bring to the Court's attention policies of the defendants (hereinafter collectively referred to as "the NYPD") that violate the Modified Handschu Guidelines. This application is an invocation of that authority.

2. As shown below, class counsel have reason to believe that the NYPD, in its investigation of the Muslim communities that form a part of the plaintiff class, as a matter of policy retains information about class members' political activity that does not relate to potential unlawful or terrorist activity. Such a policy violates §VIII(A)(2) of the Modified Handschu Guidelines.

3. In a series of published articles dated August 24, 2011 (Exhibit 1), September 5, 2011 (Exhibit 2), September 19, 2011 (Exhibit 3) and September 22, 2011 (Exhibit 4), based on interviews with more than 40 present and former members of the New York City Police Department, an investigative unit at the Associated Press and journalist Leonard Levitt have described an NYPD policy of using undercover officers and confidential informants to gather information about political activity in circumstances where there is no indication of criminal activity. According to these articles the operatives, who target the Muslim communities in New York, are referred to

as "rakers"<sup>1</sup> assigned to identify "hotspots" ("raking the coals")<sup>2</sup>, which include mosques, social gathering places and student organizations based on college campuses.<sup>3</sup>

4. The breadth of these operations is reflected in testimony given by NYPD Assistant Commissioner Lawrence Sanchez, a veteran of the CIA, who told the U.S. Senate Homeland Security Committee on October 30, 2007 that the guiding principle of these NYPD operations was to view innocuous activity, including behavior that might be protected by the First Amendment to the United States Constitution, as "potential precursors to terrorism."<sup>4</sup>

5. The surveillance of political activity that these operations represent may not violate the modified Handschu Guidelines, which provide that "[f]or the purpose of protecting or preventing terrorist activities, NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally." Modified Handschu

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<sup>1</sup> Exhibit 1, page 1.

<sup>2</sup> Exhibit 1, page 3.

<sup>3</sup> Exhibit 2, page 1.

<sup>4</sup> The full quote is as follows:

"The key to it was . . . to start appreciating what most people would say would be non-criminal would be innocuous looking behaviors that could easily be argued in a Western Democracy especially in the United States to be protected by First and Fourth Amendment Rights but not to look at them in the vacuum but to look across to them as potential precursors to terrorism."

The testimony of Assistant Commissioner Sanchez can be viewed at [http://hsgac.senate.gov/public/audio\\_video/103007video.ram](http://hsgac.senate.gov/public/audio_video/103007video.ram)



Guidelines SVIII(A)(2), 288 F.Supp.2d 411 at 429. However, retaining records about protected speech and behavior heard and seen during those operations is a violation of the modified Handschu Guidelines, as "[n]o information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity." Id.

6. The articles, as well as NYPD documents that have been published in conjunction with them, strongly suggest that the NYPD retains such records as a matter of policy. For example, an NYPD powerpoint presentation about the NYPD Demographics Unit, which conducts these operations (Exhibit 5), includes a screen entitled "DAILY OPERATIONS AND RECORD KEEPING" that lists the following set of tasks: "gather intelligence and report activity of individual visits on a daily activity report focusing on key indicators." (emphasis supplied). The preparation of daily activity reports obviously means that records are being created of what the NYPD operatives have seen and heard. Similarly, a police department memo from the Demographics Unit (Exhibit 6) records the evaluation of a detective assigned to the unit, which included criticism for his failure to include accounts of "rhetoric" heard in cafes and hotspot



locations in his daily reports.<sup>5</sup>

7. The articles report that the intelligence is passed to a team of analysts for review, and this is further evidence that records are prepared and maintained about what the NYPD operatives see and hear. Finally, interviews with NYPD personnel were reported to have revealed the following:

"Some in the department, including lawyers, have privately expressed concerns about the raking program and how police use the information, current and former officials said. Part of the concern was that it might appear that police were building dossiers on innocent people, officials said. Another concern was that, if a case went to court, the department could be forced to reveal details about the program, putting the entire operation in jeopardy. That's why, former officials said, police regularly shredded documents discussing rakers." (Exhibit 1, page 4; emphasis added).

8. These articles, and the accompanying documents, have given class counsel a good faith basis to apply for the relief sought in this motion: discovery to determine whether the NYPD, as a matter of policy, retains information about political activity obtained from visits

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<sup>5</sup> It is noteworthy that NYPD Spokesman Paul Browne initially denied that the Demographic Unit even existed. See Exhibits 1 and 2. After the AP obtained police documents describing the unit as a team of 16 officers with a mission to map and monitor ethnic neighborhoods, the NYPD said that the Demographics Unit used to exist, but actually never had been more than eight officers. See Exhibit 4.

to public places and events when such information does not relate to potential unlawful or terrorist activity, in violation of §VIII(A)(2) of the modified Handschu Guidelines.

9. The articles also provide a good faith basis for the application for a restraining order, as there is evidence that the NYPD has been shredding documents in order to prevent the exposure in court of the dimensions of this program. Pending a determination of class counsel's application for the discovery sought, class counsel also seek an order directing the NYPD to preserve the records in their possession so that they are available for review if the application of the plaintiff class is granted.

10. As shown in the accompanying Memorandum of Law, there is precedent for the relief sought by class counsel. In the setting of a consent decree discovery has been permitted, where good cause is shown, to determine whether the terms of the decree have been violated. This Court ordered discovery to shed light on disputed factual issues as to whether the NYPD's implementation of Interim Order 47 violated the Modified Handschu Guidelines. See 2008 WL 515695 (2/27/08) at p.7.

11. There is also precedent in case law and in this case for the restraint sought. In 1989, this Court entered

an order temporarily restraining the NYPD from destroying documents concerning allegedly unlawful NYPD conduct in connection with the monitoring of WLIB broadcasts. See 737 F.Supp. 1289, 1292 (1989). That order was made on consent, and we would hope that a similarly agreed restraint could be achieved now.

12. On the basis of the presentation set forth above, class counsel pray that the relief sought herein be granted.

13. No previous application has been made for the relief sought herein.

  
JETHRO M. EISENSTEIN

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 3, 2011.