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NEW YORK CIVIL LIBERTIES UNION

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**TESTIMONY OF UDI OFER  
ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION**

**before**

**THE NEW YORK CITY COUNCIL  
PUBLIC SAFETY COMMITTEE**

**on**

**NYPD SURVEILLANCE OF MUSLIM NEW YORKERS**

**October 6, 2011**

In a time of national crisis the government will exercise its considerable powers to protect the public safety. But, as is well documented in earlier periods of American history, it is not only the national security that is at risk; at such times, individual civil rights and civil liberties often come under attack as well.

On September 11, 2001, New York City and the nation entered once again into such a time. It is in this context that the NYCLU submits the following testimony about various reports and accounts of NYPD activities that, if true, raise serious concerns about the NYPD using national security as a pretext for needlessly compromising New Yorkers' rights and freedoms.

In a series of articles and broadcasts by the Associated Press, Leonard Levitt, and National Public Radio, former and current NYPD personnel have revealed that the NYPD has conducted surveillance on New York City's Muslim communities, targeting New Yorkers based on their religious beliefs and practices and with no suspicion of wrongdoing. According to the reports, the NYPD has:

- Dispatched undercover officers to Muslim and Arab neighborhoods in New York City in order to monitor daily life, including at mosques, bookstores, restaurants, and Internet cafes;<sup>1</sup>
- Deployed “mosque crawlers” to monitor hundreds, if not thousands, of mosque prayer services;<sup>2</sup>
- Monitored neighborhoods for “angry rhetoric and anti-American comments” and targeted individuals based on their reading habits and Internet search histories;<sup>3</sup>
- Monitored Muslim student associations at City College, Baruch College, Hunter College, LaGuardia Community College, St. John’s University, Queens College, and Brooklyn College;<sup>4</sup>
- Engaged in pretextual traffic stops in Pakistani neighborhoods for the sole purpose of recruiting informants to assist the NYPD in targeting Muslim and Arab communities;<sup>5</sup>
- Built dossiers on Muslim New Yorkers engaged in no wrongdoing;<sup>6</sup> and
- Destroyed documents and other evidence to hide undercover operations.<sup>7</sup>

The allegations contained in the media accounts appear to be consistent with a “radicalization” report released by the NYPD in 2007, which conflated religious beliefs and practices with preparations for terrorism, and focused exclusively on people who practice Islam in the United States.<sup>8</sup>

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<sup>1</sup> Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011; Adam Goldman, *NYPD monitored where Muslims ate, shopped, prayed*, Associated Press, August 31, 2011; Leonard Levitt, *The NYPD: Spies, Spooks and Lies*, NYPD Confidential Blog, September 5, 2011

<sup>2</sup> Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011; *NYPD Intelligence Unit Seen Pushing Rights Limits*, National Public Radio, August 24, 2011.

<sup>3</sup> Adam Goldman, *NYPD monitored where Muslims ate, shopped, prayed*, Associated Press, August 31, 2011; Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011.

<sup>4</sup> Leonard Levitt, *The NYPD: Spies, Spooks and Lies*, NYPD Confidential Blog, September 5, 2011

<sup>5</sup> Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011.

<sup>6</sup> Adam Goldman, Eileen Sullivan And Matt Apuzzo, *NYPD Developed Detailed Muslim Surveillance Program*, Associated Press, September 22, 2011; Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011; NYPD Intelligence Division PowerPoint, “The Demographics Unit,” available at <http://www.nyclu.org/files/releases/Exhibit5.pdf>; Memo from Supervisor of Demographics Unit to Commanding Officer C.A.R.U., January 26, 2006, available at <http://www.nyclu.org/files/releases/Exhibit6.pdf>.

<sup>7</sup> Adam Goldman, *With CIA Help, NYPD moves covertly in Muslim areas*, Associated Press, August 24, 2011.

<sup>8</sup> Mitchell D. Silber and Arvin Bhatt, “Radicalization in the West: The Homegrown Threat,” New York City Police Department, 2007, available at [http://www.nypdshield.org/public/SiteFiles/documents/NYPD\\_Report-Radicalization\\_in\\_the\\_West.pdf](http://www.nypdshield.org/public/SiteFiles/documents/NYPD_Report-Radicalization_in_the_West.pdf).

The Constitution guarantees all New Yorkers the equal protection of the laws, and civil rights laws further protect us from discrimination based on religion, ethnicity, or national origin. Yet despite these protections, news reports suggest that the NYPD has singled out Muslim New Yorkers for special scrutiny based on their religious beliefs and practices. As a matter of policy as well as constitutional principle, governmental conduct directed at religious, ethnic or racial groups or at individuals because of their religious, ethnic or racial identities is highly suspect and presumptively impermissible. That strong presumption against religious, ethnic or racial discrimination by government can only be justified, if at all, if the government can demonstrate that the practices in question are necessary to achieve a compelling government interest and are narrowly tailored to achieve that compelling interest. While combating terrorism may well provide the NYPD with a compelling interest, engaging in practices that subject entire communities of innocent Muslims to police scrutiny merely because of their religion are wildly overboard and cannot possibly satisfy the requirements of the law.

The attacks of September 11, 2001 were committed by Muslim men, but the common religious practices of those 19 men must not be used as a justification for the NYPD to engage in religious and ethnic profiling on hundreds of thousands of innocent New Yorkers. Our city's greatest strength is its long history of integrating diverse religions and cultures. The legitimate fear of another terrorist attack cannot, and must not, justify the profiling of law-abiding New Yorkers based on religion and ethnicity. Not only have such practices shown to be unjust, but time and again they have shown to be ineffective.<sup>9</sup> Government programs that lead to the

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<sup>9</sup> Government programs since 9/11 have led to tens of thousands of Muslims to be questioned, thousands to be deported for civil immigration infractions, and hundreds to be subjected to secret and arbitrary detention and abusive interrogation. Yet not a single person was arrested or publicly prosecuted for a terrorism-related crime as a result of any of these programs. Office of the Inspector General, U.S. Dept. of Justice, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks* 142 (2003), available at <http://www.justice.gov/oig/special/0306/full.pdf>; American Civil Liberties Union, *Sanctioned Bias: Racial Profiling Since 9/11* (2004),

surveillance of Muslim New Yorkers suspected of no wrongdoing will not make New York safer, but will tear apart the very fabric of our city's democratic values.

Serious charges have been raised about discriminatory NYPD activities, and the City Council must not wait until the next news story before acting. First, the City Council should use its oversight authority to investigate NYPD operations that target Muslim New Yorkers engaged in no wrongdoing. Such oversight should take place in a manner that does not threaten legitimate criminal investigations, yet informs policymakers and the public about how the NYPD deploys its officers and spends taxpayer money. Second, following further inquiry, the City Council should determine whether substantive and procedural limitations are needed to guard against future abuse.

In a speech delivered in 1987 at Hebrew University in Jerusalem, Justice William J. Brennan said, "A jurisprudence that is capable of sustaining the supremacy of civil liberties over exaggerated claims of national security only in times of peace is, of course, useless at the moment that civil liberties are most in danger." Today we are in a period when civil liberties are most in danger. The City Council should work with the NYPD to ensure that our law enforcement officers do not needlessly target our city's most vulnerable communities, and repeat the unfortunate mistakes of the past.

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[www.aclu.org/FilesPDFs/racial%20profiling%20report.pdf](http://www.aclu.org/FilesPDFs/racial%20profiling%20report.pdf); see also "Oversight hearing on the Impact of Antiterrorism Initiatives on Immigrant Communities", New York City Council, February 11, 2004 (testimony of Udi Ofer on behalf of the New York Civil Liberties Union) available at <http://www.nyclu.org/content/testimony-overseeing-impact-of-antiterrorism-initiatives-immigrant-communities-nyc>.