

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:

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ASIAN AMERICAN LEGAL DEFENSE AND
EDUCATION FUND, and MUSLIM ADVOCATES,

Petitioners,

-against-

NEW YORK CITY POLICE DEPARTMENT, and
RAYMOND KELLY, in his official capacity as
Commissioner of the New York City Police Department,

Respondents.
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**AFFIDAVIT OF
DAVID COHEN**

Index No. 103802/2012

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

I, DAVID COHEN, being duly sworn, declare that the following statements are true and correct:

1. I am the Deputy Commissioner for Intelligence for the New York City Police Department ("NYPD"). In that capacity, I have general oversight of the Intelligence Division, the unit within the NYPD that gathers and analyzes information to assist in the detection and prevention of unlawful activity, including acts of terror. As such, I have firsthand knowledge of the facts set forth below. I submit this affidavit in support of Respondents' verified answer, and in opposition to disclosure of records and information requested by the Petitioners which, if released, would seriously endanger sources of information and disclose law enforcement operational methods that are used to protect the public safety of New York City and the lives and safety of its inhabitants. I make this affidavit based upon my personal knowledge and upon information received from officers and employees of the NYPD, which I believe to be true.

2. In addressing the matter of releasing intelligence documents, I am drawing on my background not only as the NYPD Deputy Commissioner for Intelligence for the last eleven years, but also on my forty-seven years as an intelligence officer. In those forty-seven years, I served for five years as the Central Intelligence Agency's (CIA) Associate Director for Intelligence and, as such, was the CIA's senior professional responsible for the preparation of all finished intelligence analysis provided to the Nation's national security leadership at the highest levels, including the President.

3. I also served for ten years in the CIA's Directorate of Operations, including two years as the Deputy Director of Operations, the senior most person responsible for world-wide collection of raw, unevaluated, intelligence. In both positions, I was a full member of the CIA's Executive Committee, which is responsible for developing and implementing policies affecting all aspects of intelligence at the CIA.

Summary

4. This affidavit is intended to address the serious adverse consequences to the safety of New York City that I believe will result from disclosure in redacted or unredacted form of the records now sought from the FOIL request, dated 21 September 2011, submitted by the Asian American Legal Defense and Education Fund, Muslim Advocates, and NYU's Brennan Center for Justice (the "FOIL Request") that is the subject of the instant Article 78 proceeding¹. In this proceeding the Petitioners are purporting to limit their request by the removing of what they refer to as specific requests 1-11 and 14-15. I also will address the feasibility of responding

¹ Although the Petitioners allege that they have narrowed the FOIL Request for purposes of the instant litigation, in order to assemble records that are responsive to the FOIL Request, NYPD would have to review virtually every document maintained by the NYPD Intelligence Division between 11 September 2001 and 21 September 2011.

to the FOIL Request and the adverse affect that preparing a response will have on the ability the Intelligence Division to perform its functions.

5. Based on my familiarity with NYPD Intelligence Division records, the documents that may be responsive to the FOIL Request are exempt from disclosure because they contain information that reveals sources of intelligence information, methods of operation that are not routine and whose disclosure would allow investigative subjects to evade detection. In fact, even revealing portions of these records which, to the casual observer might appear to be innocuous, would provide those intent on acts of terror with great insight into NYPD's strategies, operations, tactics and techniques, which information could be used to evade detection.

6. Documents retained by the NYPD Intelligence Division contain extraordinarily sensitive information that, if disclosed, would reveal: (i) the details of discontinued, ongoing and future investigations; (ii) the identities of confidential sources and confidential information that pertains to criminal investigations; (iii) intelligence methodologies used in the detection and prevention of crimes and the apprehension of perpetrators; and (iv) the identities and violate the privacy of individuals who have chosen to share what they believed to be important and relevant information that needed to be investigated or reviewed by the NYPD in order to address public security and safety matters, including those involving potential support for acts of terrorism. The documents also name, or otherwise identify, individuals who have been or are the subjects of investigations and individuals who have interacted with those subjects. Protection of this sensitive information is of the highest priority, as it underpins the NYPD Intelligence Division's role in protecting New York City from another act of terrorism.

7. In addition, the inability of NYPD to protect the names and/or identities of its undercover police officers, confidential informants and other human sources of information

would not only put these sources directly at risk, but would severely damage our effectiveness in protecting New York City against acts of terrorism and other criminal activity for the indefinite future because it would raise serious doubts about NYPD's ability to protect anyone willing to work for it as an undercover police officer or confidential informant in a counterterrorism investigation. Likewise, members of the public who are not confidential informants would have doubts about the ability of NYPD to protect them should they supply information in a counterterrorism or other criminal investigation.

8. In order to align the descriptions in the FOIL Request with potentially responsive records maintained by the NYPD, I have carefully reviewed the FOIL Request in light of my knowledge of the nature, structure, and manner of storage of records by the NYPD Intelligence Division. Based upon my knowledge of the investigative processes undertaken by the NYPD Intelligence Division, the types of information that its records contain, and the manner in which the Intelligence Division maintains its records, I conclude that the FOIL Request is extremely sweeping in nature and would require a page by page review of over five hundred thousand pages of paper and computer records maintained by the Intelligence Division for over a ten year period. Although the Petitioners allege that they have narrowed the FOIL Request for purposes of the instant litigation, in order to assemble records that are responsive to the FOIL Request, NYPD would have to review virtually every document maintained by the NYPD Intelligence Division between 11 September 2001, and 21 September 2011. Furthermore, in order to identify responsive records and the exemptions and privileges that apply to the information that such responsive records contain, one would have to mobilize a large workforce comprised of highly trained police intelligence personnel to engage in this endeavor. Such an entirely new enterprise

record would then have to be reviewed in order to see whether the confidential informant provided information about any persons who were “MASA individuals” and whether any of the locations mentioned in any of the records relating to the confidential informant were locations frequented by MASA individuals or constituted social, cultural, or religious entities or places of business.

12. According to the Merriam-Webster Online, the word “frequent” means **“to associate with, be in, or resort to often or habitually”**. Therefore, in continuation of the example above, if an informant was used to gather information in a local delicatessen, grocery or other store regarding the purchase or sale of stolen merchandise, and the business establishment visited by the confidential informant catered to a diverse population - as is most often the case in the City of New York - that could include a MASA individual, then any NYPD records that pertained to the confidential informant would be responsive to the request.

13. Once this one-page-at-a-time identification of responsive records is done, only a limited number of NYPD Intelligence Division personnel would be able to review data in these documents in order to properly redact data that is not responsive. This is based on the fact that access to documents within the Intelligence Division is only given on a need to know basis. Furthermore, an even smaller selection of Intelligence Division personnel would be capable of sorting through documents found to be responsive in order to identify information that would reveal sources and methods and is therefore exempt from disclosure under FOIL.

14. In sum, given the sweeping nature of the FOIL Request and its uninformed and wholly inaccurate premise that the NYPD Intelligence Division has undertaken and is undertaking activities based on the race, religion, and ethnicity of persons, organizations and/or firms, responding to the Request would require a resource commitment that would largely

cripple the NYPD Intelligence Division's counterterrorism and criminal intelligence program as it currently exists. An attempt to align the NYPD Intelligence Division documents to match the religious, racial and ethnic paradigm that Petitioners believe to exist, so as to identify what may be responsive, would constitute a massive undertaking by itself. The ensuing review, which must specifically link applicable FOIL exemptions to information contained in the records so as to protect ongoing investigations, sources, methods, and privacy interests would be another massive undertaking. Given the ongoing terrorist threat to New York City, the crippling effect of this double-edged process---aligning a massive number of documents so as to find elements that correspond to the faulty paradigm which underlies the FOIL Request and the review for protection of the interests described above---would place New York City at severe risk. It also would greatly undermine the ability of the NYPD Intelligence Division to fulfill its responsibilities in the detection and prevention of criminal activity unrelated to terrorism.

Structure of the Intelligence Division

15. The NYPD Intelligence Division's current configuration dates from early 2002 and was designed as part of Commissioner Kelly's intention to create a strong program to protect New York City, its citizens and visitors from another terrorist attack. The attacks on the World Trade Center on 26 February 1993 and 11 September 2001 had brought home the reality of terrorism and the fact that New York City had been, and would continue to be, a top terrorist target. Indeed, as demonstrated by events since 2002, including three arrests in the last quarter of 2012 (discussed in paragraph 62 of this declaration), New York City remains a top terrorist target. This finding has been consistently supported by those in the U.S. intelligence community responsible for assessing the threat to the homeland.

16. The Intelligence Division is made up of the following four sections: Criminal Intelligence Section (“CIS”), Intelligence Operations and Analysis Section (“IOAS”), Public Security Section (“PSS”) and Municipal Security Section (“MSS”). CIS is responsible for most of the traditional anti-crime responsibilities, as well as essential counterterrorism duties, of the Intelligence Division. IOAS is responsible for much of the Intelligence Division’s counterterrorism intelligence gathering and other investigative activities. IOAS units also engage in investigations of non-terrorism criminal activity. PSS is responsible for dignitary protection, investigating threats, visiting merchants to alert them to suspicious transactions, and the Domain Awareness program in which ZAU has been engaged. Each section, except for MSS, is engaged in activity that arguably may fall within the broad FOIL Request at issue. Likewise, each section, except for MSS, is engaged in information collection that is governed by the Handschu Consent Decree and Modified Handschu Guidelines (discussed below) and information collection that is not governed by the Handschu Consent Decree and Modified Handschu Guidelines.

Handschu Consent Decree and Guidelines

17. The Handschu Consent Decree resulted from the settlement of a class action suit, *Barbara Handschu et al., v. Special Services Division a/k/a Bureau of Special Services et al.*, filed in 1971 against the City of New York in the Southern District of New York. Plaintiffs were political activists who alleged that their Constitutional rights, First Amendment in particular, were being violated by unconstitutional surveillance and intelligence gathering by the NYPD. In 1985, a consent decree (“Handschu Consent Decree”) settling the litigation was approved by the District Court and subsequently affirmed by the United States Court of Appeals for the Second Circuit. The Handschu Consent Decree governs the investigation of political activity. Both

“political activity” and “investigation” are defined terms in the Handschu Consent Decree. “Political activity” is defined as “the exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.” “Investigation” is defined as “a police activity undertaken to obtain information or evidence.”

18. In the aftermath of the 11 September 2001 terror attacks, the NYPD successfully petitioned the District Court to modify the Handschu Consent Decree because it required NYPD to follow a set of investigative guidelines that limited NYPD’s ability to effectively prevent future terrorist attacks. In seeking the modification, it was recognized by the NYPD that whether an investigation concerned Islamists radicalized to violence, anarchists, neo-nazis or other extremists aspiring to bring about governmental or social change by way of terrorism or other unlawful activity, the investigation would be of, or involve, political activity as that term is defined under the Handschu Consent Decree. On 11 February 2003 the District Judge approved the modification, relying on my statement that “the continued enforcement of the Guidelines is no longer consistent with the public interest because they [the Guidelines] limit the effective investigation of terrorism and prevent cooperation with federal and state law enforcement agencies in the development of intelligence.” See *Handschu v. Special Servs. Div.*, 273 F. Supp. 2d 327 (S.D.N.Y. 2003). Pursuant to the decision modifying the Handschu Consent Decree, the NYPD put into effect a new set of Guidelines for the investigation of political activity that were approved by the Court.

19. The NYPD’s Guidelines *for Uniformed Members of the Service Conducting Investigations of Unlawful Political Activities* (hereinafter “Modified Handschu Guidelines”) were incorporated into the Modified Consent Decree on 6 August 2003, and incorporated in the NYPD’s Patrol Guide as P.G. 212-72. See *Handschu v. Special Servs. Div.*, 288 F.Supp.2d 411,

418-419 (S.D.N.Y. 2003). Since 2003, the NYPD has been governed by the Modified Handschu Guidelines when it is investigating political activity as defined therein.

20. As expressly recognized in the first paragraph of the preamble to the Modified Handschu Guidelines, the prevention of future terrorist acts requires the development of intelligence and the investigation of potential terrorist activity before unlawful acts occur. In Section V, the Modified Handschu Guidelines authorize that leads may be investigated and Preliminary Inquiries may be conducted on the basis of allegations or other information indicating the possibility of unlawful activity by the subjects of the investigation. Section V also authorizes the conducting of Full Investigations and Terrorism Enterprise Investigations. Each of these activities is described in greater detail in paragraph 21 below. Section VIII of the Modified Handschu Guidelines authorizes other activities the NYPD may engage in to identify terrorist threats and activities. These activities include: (i) the use of information systems; (ii) visiting public places and events; (iii) conducting general topical research; (iv) using available online resources and forums; and (v) preparing reports and assessments. These are more fully described in Section VIII of the Modified Handschu Guidelines. The Modified Handschu Guidelines also authorize the use of undercover police officers and confidential informants in Section V investigations on the written authorization of the Deputy Commissioner of Intelligence.

Examples of NYPD Intelligence Division Counterterrorism Activities

21. Some examples of NYPD's counterterrorism activities are described below:

- a. **Operation of a Terrorism Hotline:** Beginning in early 2002, the NYPD established a counterterrorism hotline mechanism that allows individuals to call in

observations of suspicious activity that the caller believes may be associated with planned or intended terrorist activities targeting New York City or elsewhere. Many of the individuals calling in request anonymity. The Intelligence Division honors such requests unless there are exigent conditions that dictate the sharing of caller identity information with other law enforcement agencies. Race, religion, or ethnicity may be noted in the course of such calls, but in no case is race, religion, or ethnicity a determinant of whether and how a call will be pursued. Calls received by the Terrorism Hotline generally generate lead investigations. However, they also may lead to the conducting of Preliminary Inquires, Full Investigations, or Terrorism Enterprise Investigations.

- b. **Checking of Leads** -- Undertaken whenever information is received of such a nature that warrants follow-up as to the possibility of unlawful activity. Such leads may result from a call from a private citizen to the NYPD Terrorism Hotline, or from other sources of information.
- c. **Preliminary Inquiries** -- Where the NYPD receives information or allegations that do not immediately suggest a “reasonable indication” of unlawful activity but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate a Preliminary Inquiry in response to the allegation or information indicating the possibility of unlawful activity. Unlike lead investigations, Preliminary Inquiries are based on written investigative statements and must have the written approval of the Deputy Commissioner of Intelligence.

g. **Domain Awareness by ZAU:** Media reporting has inaccurately portrayed the activities of the Zone Assessment Unit as spying and surveillance of the Muslim community. It is engaged in neither. Here, the Intelligence Division begins with publicly available U.S. Government data that identifies ethnic neighborhoods throughout New York City. While officers in plain clothes participate in this program, they are not operating as undercover officers. The goals of Domain Awareness activities are two-fold: 1) to identify locations where an individual radicalized to violence---coming from overseas or homegrown---might go to blend in; and 2) to learn if sectarian violence abroad is ricocheting into New York City and, if it does, where the NYPD needs to go in order to protect those against whom the violence would be directed. The NYPD Intelligence Division Domain Awareness activity mirrors that authorized for use by the FBI as part of its counterterrorism program. Department of Justice and FBI policy permit the FBI “to identify locations of concentrated ethnic communities...if these locations will reasonably aid the analysis of potential threats and vulnerabilities.” FBI Domestic Investigations and Operations Guide, § 4.3(C)(2)(a) (Dec. 16, 2008). This includes, “for example, where identified terrorist subjects from certain countries may relocate to blend in and avoid detection.” *Id.*

Non-Handschu Investigations

22. The Intelligence Division also is engaged in a substantial amount of information gathering activity and investigations that seek to prevent and combat criminal activity that does not involve terrorism or political activity. These information gathering and investigative

activities are not governed by the Modified Handschu Guidelines. However, these activities often involve confidential informants and result in the preparation of a large volume of documents. For example, a Field Intelligence Officer (FIO) from the Intelligence Division is assigned to each of the 76 precincts within the NYPD and is responsible for gathering and disseminating information that is used to prevent and solve a wide range of crimes, including crimes of violence, unlawful possession of firearms, trademark counterfeiting and larceny. In fulfilling their responsibilities, FIOs work with confidential informants, receive information from members of the public who are not confidential informants and visit business establishments and other places. The FIOs prepare field reports and other records, each of which would have to be reviewed to ascertain whether it reported information relating to MASA individuals or places frequented by MASA individuals to determine whether a report is responsive to the FOIL Request; and would require further review to assert the FOIL exemptions applicable to each report.

The types of reports prepared by the NYPD Intelligence Division

23. The activities of the Intelligence Division result in the preparation of various types of records. These are:

- a. **Raw unevaluated field reports** (“field reports”) are the reports that contain the initial raw intelligence gleaned from sources (including confidential sources), the internet, the public, etc.
- b. **Derivative reports** typically are the combination, integration, or analysis of field reports; they often contain additional relevant law enforcement sensitive material from federal, state, and/or local law enforcement databases.

c. **Intermediate reports** are those that integrate larger volumes of the most sensitive and relevant information included in the above two categories; these typically support or inventory the direction of ongoing authorized investigations.

d. **End user reports** are reports that typically emerge from open source and other traditional collection activities. The results usually are designed to assist the general law enforcement responsibilities of the Intelligence Division or the NYPD generally. End user reports contain law enforcement sensitive information mainly revealing confidential law enforcement methods. These reports may also contain information received from confidential sources but are prepared in a manner protecting such sources.

24. Many of the documents that the Intelligence Division creates also contain the mental impressions, opinions, recommendations and/or advice of NYPD personnel regarding: (i) the information that has been obtained in conducting their activities; (ii) information that is desired to be obtained; (iii) potential investigative steps or future activities; (iv) value and use of certain information; (v) lessons learned to assist in future law enforcement activities and (vi) advice from in-house counsel, as well as the NYC Law Department.

25. As discussed in more detail in paragraphs 26-29 below, the field reports, as well as derivative and intermediate reports, commingle the substance of our information-gathering effort with data that is, or tends to be, both source and methods revealing. End user reports tend to be less likely to be source revealing, but are law enforcement sensitive due to the methods revealed. Privacy and the sensitivity of information from federal, state and/or local authorities may also be incorporated into the end user reports. Disclosure of any portion of the information contained in a field report and all or most of the information contained in derivative and intermediate documents, could potentially facilitate the identification of the source of the

information in the document. Disclosure of any portion of the information contained in a field report and all or most of the information contained in derivative, intermediate and end user reports/documents could potentially facilitate the following: 1) disclosure of the size and capabilities of the NYPD undercover program; and 2) disclosure of the tradecraft, policies, modes of operation, and methods used by the NYPD in an undercover investigation.

Field Reports: Sources and Methods Vulnerabilities

26. Listed below is a summary of specific ways in which the disclosure of information from field reports can have source and method vulnerabilities. Specifically, as indicated in the following, the presence of a high level of detail in field reports makes it relatively easy to connect strands of information which in turn, provides a factual basis from which the identity of sources, methods and capabilities can be determined:

- a. **Case Number** - from the case number, information about the number of investigations undertaken by the Intelligence Division can be ascertained. The number of investigations reveals information about the scope of our investigative activities.
- b. **Date of report** - corresponds to the date of the activities reported on. Taken together with information from other documents, this information can disclose the scope of our investigative activities by revealing the total number of matters reported upon.
- c. **Date of Opening of Investigation** - provides detail about the length of involvement of NYPD personnel in a particular matter and information about when the attention of NYPD to a particular matter began. Taken together with

data from other documents, this information reveals the scope of our investigative activities.

- d. **Unit reporting** - discloses the names of units within the Intelligence Division conducting an investigation. Coupled with information from other sources and documents, this information could reveal the scope of activities of a particular unit and provide comparative data on activities of other units.
- e. **Person reporting** - reveals names of NYPD handlers, some of whom are still active in undercover investigations. Handlers are engaged in confidential assignments and are known only by NYPD Intelligence Division personnel. The disclosure that an officer has been serving as a handler may lead to the disclosure of the identity of the undercover or confidential informant with whom the handler has been working. For example, if the handler is named or otherwise identified, the handler may be located and followed in order to see with whom the handler is meeting.
- f. **Date, time and location information** - Revealing this type of information has great potential for revealing the source of information. This information provides a clear indication of the undercover officer's, confidential informant's or other human source's physical presence at a particular place and at a specific point in time. Others present at the location at the same time may be able to determine who has provided the information in the field report. Taken together with information in other documents or from other sources, date, time and location information may provide insights into where, when and how counterterrorism

intelligence is gathered, and provide useful information to those seeking to avoid detection.

- g. **Description of activities** - Like date, time, and place information, the descriptive details reported on will allow the person or persons being reported on to identify who may have been supplying NYPD with information about them. For example, if nine people were present during a reported incident, the person supplying information to NYPD could easily be identified by process of elimination or from a piece of information reported that only was shared with a limited number of people. Such information might be a phone number, an email address or a fictitious internet screen name. The information reported also may provide insights into the status and nature of a particular counter terrorism investigation and, more generally, the methods used to conduct such investigations.

Derivative Reports/Documents: Sources and Methods Vulnerabilities

27. As noted earlier in this declaration, these reports typically result from the combination, integration, or analysis of field reports. Thus, they contain all or most of the same information described in paragraph 26 above and are no less sensitive in any respect regarding the protection of ongoing investigations, sources and methods, (and privacy) than field reports. The main difference between derivative reports and field reports is that derivative reports are prepared in a more narrative manner and may contain information that may not be in a field report, such as information that has been supplied by another law enforcement agency.

Intermediate Reports/Documents: Sources and Methods Vulnerabilities

28. These highly sensitive reports/documents by and large would include material intended to be used as an evaluation of the status of any ongoing investigation. They contain all or most of the same information described in paragraph 26 & 27 above and:

- a. Specific names, places, dates of meetings attended by NYPD Intelligence Division sources---including but not limited to undercover officers or confidential informants---as well as specific information learned from specific meetings.
- b. These would typically include dialogue regarding criminality, and places/intentions of subjects and/or groups of subjects being investigated. Given that they are highly factual in nature, they constitute in many respects the DNA of an investigation---closed or ongoing---and thus carry all or nearly all of the same sources and methods vulnerabilities of the above report categories.

29. Unlike other documentation, they are apt to include investigative option plans and methods under consideration to further investigate or bring an investigation to a successful conclusion.

End User Documents/Reports: Sources and Methods Vulnerabilities

30. These documents/reports take several forms. They usually entail a lesser degree of risk on the sources (although a risk is still present) they continue to contain a high level of methods vulnerability.

31. The first category within this group would include some of the material collected as part of the NYPD domain awareness endeavor. This would constitute generic open source

material drawn mostly from material such as the year 2000 U.S. Census report or the cataloguing of locations or planned events for multiple purposes such as:

- i. To better understand where an individual or group radicalized to violence might go to blend in or facilitate acts of violent criminality. The need for this is demonstrated in the FBI program and lessons from past acts of terrorism.
- ii. To enable the NYPD to properly deploy personnel and/or resources in order to protect against the violent reverberation locally of acts of violence abroad resulting from religious, ethnic, sectarian or nationality differences.
 1. Towards the ends mentioned both in i. and ii. above, the Intelligence Division maintains an inventory of locations of churches, temples, synagogues, mosques and other locations
 2. The fact that the NYPD Intelligence Division considers a location a potential target for violent retribution over violent events occurring abroad or where an individual or group radicalized to violence might go to blend in or facilitate acts of violent criminality, may be a matter of extreme sensitivity for persons living, working or visiting such locations.

32. The second component of reports/documents in this end-user category is narrative reports prepared by the NYPD Intelligence Division that are designed to support other elements of the NYPD in pursuing their mission, or are intended for dissemination to other law enforcement agencies as “lessons learned” by the NYPD Intelligence Division from terrorist or other events outside the New York City area.

Protecting Sources, Methods, and Privacy

33. The strength and sustainability of the NYPD intelligence program, like any effective intelligence program, in large part hinges on the following elements:

- a. The ability to attract, deploy, retain, and protect the identities of intelligence personnel ---either undercover members of the service or confidential informants working for us.
- b. The development, application, and protection of methodologies or methods of operation deemed necessary to successfully gather, process, analyze, and disseminate intelligence information to end-users.

34. As stated above, our reports contain source and method revealing information. Any attempt to blot out the sensitive information that would provide a basis for determining sources and methods would be futile, resulting in pages of meaningless snippets and punctuation. Were such information to be made public in unredacted form, however, it would not take much effort for those seeking to cause harm to be able to identify undercovers and informants. In addition, a roadmap of investigation decisions, techniques and information could be prepared that would enable every group to undermine future investigations.

35. Regarding release of our most sensitive material, we know that organizations and individuals that have considered operations against New York City, including terrorist operations, carefully watch what we do, what we say, and what any of our documents released would communicate to them regarding our capabilities, strategies and operational tactics. Release of our field reports and other redacted material would provide them with unprecedented knowledge of these very sensitive matters. The doctrine of Al-Qaeda and its affiliates

specifically call for such exploitation. Anarchists and groups sponsoring illegal civil disobedience are also known to observe our strategies and tactics with an eye towards developing counter-measures.

Sources

36. The greatest vulnerability the NYPD intelligence program faces is the release of information that would reveal, or tend to reveal, the identity of its sources. The inappropriate sharing of such information would endanger the lives and safety of the people who are identified either as undercover personnel, confidential informants, or members of the public who, while not confidential informants, voluntarily and without compensation, but with an expectation of confidentiality, provide lead and other information to detectives in the Intelligence Division. Such individuals are often referred to as sources of information and/or informants. Additionally, the revelation of a source's identity places their friends and relatives at risk both in this country and overseas.

37. Our inability to protect the names and/or identities of these persons would not only put them directly at risk, but would severely damage our effectiveness in protecting New York City for the indefinite future by raising serious doubts about our ability to protect anyone willing to work for us as either an undercover members of the service (employees of the NYPD Intelligence Division), or as an Intelligence Division confidential informants. It also would place at risk members of the public who do not work for us, but do volunteer information because they believe it is the right thing to do.

38. Mindful of the damage that would occur to our information gathering abilities and therefore our ability to defend New York City from another terror attack or other threats of

criminal activity, the Intelligence Division has gone to great lengths to protect identity information of our sources. With respect to Intelligence Division undercover personnel, the only NYPD undercover officers authorized to operate against terrorist persons or groups, their identities are, without exception, the most protected personnel information in the NYPD. The individuals involved, for example, neither participate in departmental training programs nor promotion exercises. Training and promotions are accomplished within the strictest security protocols at locations unknown to anyone but the undercover officers and their immediate supervisors.

39. The accidental or intended release of strands of information that could reveal the identity of any one of these persons, whether active or inactive, would cause irreparable harm, not only to the persons involved, but to our ability to recruit members of the service into this sensitive aspect of our law enforcement mission. The ricochet effect on our ability to secure New York City's public safety and security in the post 11 September 2011 period would be severe and permanent. Because of this, the release of such information remains of highest concern within the NYPD Intelligence Division.

40. Confidential informants also play a critical role in the collection of intelligence in some of our most sensitive cases. Informants are recruited with strict consideration for their access to subjects and locations of intelligence value, their suitability to perform as trusted sources, and their reliability in performing assigned tasks. The Division conducts regular reviews of its informants to ensure their value to its mission. Those that do not pass the review are deactivated. The process of informant identification, recruitment, retention and review is rightly resource intensive and the development of the current roster of sources reflects a long-term effort to identify intelligence requirements and tailor recruitment efforts accordingly.

41. Intelligence Division sources have local knowledge of the nation's largest, most complex and highest profile terrorist target that cannot be matched. Further, reflecting the diversity of the City from which they are recruited, our sources bring with them a native understanding of culture and language that is unparalleled in law enforcement. Many have intimate familiarity with the locations across the globe that are of most concern from a terrorism standpoint. Compromising this roster of sources by revealing information that could assist in their identification would yield impotent an irreplaceable tool in the counterterrorism fight.

42. The preservation of confidentiality is also important in our relationships with other law enforcement agencies on the national, state and local levels. These law enforcement agencies must trust that the NYPD Intelligence Division will protect from disclosure information provided. The NYPD Intelligence Division has earned a global reputation, which makes it possible for the NYPD to have access to vital information. It is this reputation that underpinned the willingness of Spanish officials to welcome an NYPD presence in Madrid within hours of the March 11, 2004 Madrid train bombing. The NYPD was the only foreign law enforcement agency on-site, and the information gathered there helped strengthen our own subway security as the Madrid investigation unfolded. More recently, this same understanding of confidentiality enabled our access to events surrounding the 2012 terrorist attack in Toulouse, France, the 2011 terrorist attack in Oslo, Norway, the active shooter event in Liege, Belgium, and many others. If we are unable to protect our sources and methods, other law enforcement agencies will not be able to trust that the information they provide will remain confidential. This will diminish our relationships with those agencies, and compromise those sources of vital information.

Methods

43. We go to great lengths to limit knowledge of our methodologies to those with a need to know within the Intelligence Division itself. Protecting the methodologies used to train, deploy, manage, and communicate with our personnel, or information that would provide knowledge on the capabilities, size, and scope of the NYPD intelligence program is essential to the operational integrity of our program. The following types of information are among the types of information that would reveal our methodologies (this is a non exhaustive list): 1) the persons, groups or organizations about whom information is being obtained; 2) locations where information gathering personnel are or have been deployed, either inside New York City or elsewhere; 3) information that would be revealing of tradecraft techniques, including but not limited to unique training to the Division and how undercover officers or informants travel or communicate; 4) information describing how undercover officers or informants establish their “bona fides” ; and 5) the Division’s resources and capabilities.

44. The Intelligence Division's counterterrorism efforts may include working in conjunction with various federal, State or local agencies. Just as it would not be possible to confirm the identity of a named individual or of a particular business organization as a source of information used by the NYPD (as to do so might reveal an investigative method that the use of that source suggests), it likewise would not be possible to confirm whether the any particular agency has provided records or information to the NYPD Intelligence Division. This includes records from the Taxi and Limousine Commission, which Petitioners seek pursuant to Request Number 20. Were NYPD to divulge whether information in the possession of the TLC has been made available to the NYPD, this would remove any lingering doubts as to whether particular investigative techniques are, or are not, being used. Armed with such knowledge, a would-be

perpetrator could assess its potential exposure to detection and take evasive or preemptive measures.

Internal mechanisms created to protect sources and methods

45. The NYPD Intelligence Division also goes to great lengths to protect against the disclosure of sources and methods which include but are not limited to restricting access to documents even amongst its own members.

46. Accessibility to NYPD Intelligence Division documents are heavily guarded even within the Intelligence Division itself. I have put in place protocols for who can access information according to a need for such information. For example, a detective from one Intelligence Division unit does **not** have access to field reports generated by another Intelligence Division unit.

Counterterrorism and other Intelligence Activities Often Do Not Culminate in Prosecutions

47. It should be kept in mind that as part of NYPD's efforts to prevent or anticipate unlawful activity, including terrorist acts, the Intelligence Division initiates actions including investigations in advance of unlawful activity occurring and that such investigations may be discontinued without an arrest or prosecution for a variety of reasons that have no bearing on the fact that the subject of the investigation remains of investigative interest.

48. Among the reasons that a subject of a discontinued investigation may continue to be of investigative interest for multiple reasons: that (i) because of the subject's past actions or words the subject is viewed as a potential threat to persons or property in New York City even

though there is no pending investigation of the subject and (ii) the subject associates with other individuals who are subjects of open investigations.

49. The reasons for which investigations may be discontinued are wide ranging and may include that all lead information has been exhausted, a subject has left the country or a determination has been made that the investigation tools, for example the availability of a suitable informant to interact with the subject, are not then available. In any of these and other situations, there is a strong interest in not only withholding the identity of the discontinued investigation's subject, but also in not disclosing documents generated in or about the discontinued investigation. This is because disclosure of such information and documents may reveal the identity of undercover officers or informants who participated in the investigation, alert the subject that he may be the subject of a future investigation or reveal confidential investigative methods being used or that may be used in other investigations.

50. Simply put, disclosure of virtually any documents that concern an open or discontinued investigations may interfere with a pending or contemplated investigation or lead to the revelation of the identity of confidential sources or undercover police officers and thereby compromise their safety or when used with other information result in the identification of an informant or undercover police officer and reveal non-routine or confidential investigative methods.

51. The disclosure also may endanger the life or safety of a person or persons, who are not confidential informants or undercover police officers, constitute an unwarranted invasion of a person's privacy interests, compromise the NYPD's ability to guarantee the security of the information technology assets and resources used by the NYPD in counterterrorism efforts.

Individual Privacy and Safety concerns

52. It should be noted that my concerns regarding the release of NYPD Intelligence Division documents extends to the issue of protecting personal privacy. First, the personal privacy of the NYPD's sources, such as undercovers employed by the NYPD and informants must be protected to ensure their safety, as stated previously. Second, we must also protect the privacy of the thousands of individuals who have assisted the NYPD in its counterterrorist efforts, such as those who have made use of the NYPD Counterterrorism Hotline to alert us to what the caller believes is suspicious activity. As indicated earlier in this affidavit, those engaging the hotline mechanism do so based on the understanding that their identity will not become a matter of public record, and personnel receiving calls at the Hotline operate based upon this understanding. Thus, we have an obligation to protect their names, addresses, email addresses, screen names, telephone numbers, employment address, locations of worship and any other identifying information. For example, one can imagine the potential risks to an anonymous caller if the subject of the call saw a record that he recognized as pertaining to him and which provided enough information to enable the subject to ascertain the identity of the caller. The possibility that such disclosure may occur would serve as a deterrent to other members of the public who otherwise would call the Counterterrorism Hotline with a lead or would have volunteered such lead information in an interview by a member of the NYPD.

53. In the absence of reliance on the general understanding by callers to the Hotline that their identity and private information would be protected by the NYPD, we would be obligated to contact each individual who has volunteered information or assistance in the past decade to determine whether or not such individual actually acted based upon such an understanding when contacting the NYPD in order to provide information.

The FOIL Request

54. The FOIL Request starts with the assumption that the NYPD Intelligence Division is surveilling and spying on the Muslim community indiscriminately, is targeting individuals for investigation because of their race, religion, or ethnicity, and is essentially ungoverned and operating outside the guidelines stipulated by the Handschu Consent Decree. The Request is designed to make this case despite the absence of any evidence, and is driven by uninformed and inaccurate assertions appearing in the press. As discussed in paragraphs 8-14 above, disproving this negative will be a massive undertaking, as document identification, retrieval, alignment, and redaction would essentially shut down much of the NYPD Intelligence Division's capabilities until the accusations are disproved. Using the FOIL process to effectively shut down or cripple the NYPD Intelligence Division's counterterrorism capabilities is a misuse of the FOIL objectives.

Governance of Intelligence

55. Assertions to the contrary, it is the unbending policy of the NYPD that information-gathering by its Intelligence Division conforms to the protections accorded by the Constitution, and the requirements imposed by law or NYPD's patrol guide. These core principles have been at the foundation of the NYPD intelligence program since its post 11 September 2001 reconfiguration, and have informed the activities in which the NYPD Intelligence Division may engage in the execution of its mission.

56. Cognizant of the NYPD's responsibilities under the Modified Handschu Guidelines as well as Constitutional and local and state laws, the NYPD Intelligence Division leadership carefully and consistently reviews its program activities, and assures that all personnel

are specifically trained to understand the legal authority and limitations under which they operate. The training is continuous so that new personnel, including supervisors, are properly informed. A senior civilian Assistant Commissioner for Legal Matters, who reports directly to the Deputy Commissioner for Legal Matters, along with his staff, is embedded in the Intelligence Division where he: (i) oversees the above noted training and (ii) consistently reviews program development and activities to assure compliance with our legal authority and limitations.

57. To underscore this legal oversight, it should be noted that all Preliminary Inquiries, Terrorism Enterprise Investigations and Full Investigations while approved by the Deputy Commissioner for Intelligence are reviewed at regular intervals---intervals established by the Modified Handschu Guidelines---by a Departmental committee whose membership includes, among others, the Deputy Commissioner for Legal Matters, an Assistant Deputy Commissioner for Legal Matters, an Assistant Commissioner for Legal Matters and three other attorneys.

The Issue of CIA

58. The Petitioners draw heavily on media accusations of an inappropriate involvement of the CIA in the workings of the NYPD Intelligence Division counterterrorism program. Again, the accusations and assertions are the creation of media imagination and lack any factual foundation. It should be noted that following the media assertions, the CIA Inspector General conducted a six month review of any and all interactions between the CIA and the NYPD Intelligence Division. In assessing the value of the results of that review, it should be noted that the CIA Inspector General reports directly to the U.S. Congress. In publicly announcing the results of this review in December 2011, a CIA spokesman stated:

The CIA inspector general [“IG”] has completed a review of the CIA’s relationship with the NYPD and has found no violation of law or executive order

on the part of CIA The IG also found no evidence that any part of the agency's support to the NYPD constituted "domestic spying."

CNN Wire Staff, *CIA Report: No issue with spy agency's partnership with N.Y. police*, available at <http://www.cnn.com/2011/12/23/us/new-york-cia-report/> (last visited Jan. 17 2013).

59. This finding is an unambiguous declaration that the media assertions of inappropriate and illicit CIA/NYPD Intelligence Division interactions were false.

The Issue of New Jersey

60. Again drawing on media reporting that was inaccurate, incomplete, and clearly designed to stir controversy, Petitioners cast their FOIL Request in a manner designed to prove that the NYPD Intelligence Division acted inappropriately in undertaking intelligence investigations outside the New York City area. The clear insinuation in this case involves the NYPD Intelligence Division's collaborative work with law enforcement agencies in New Jersey. The media reporting and the Petitioners' underlying assertion in their request is that the NYPD Intelligence Division activities were unilateral in nature and involved criminal and/or civil illegalities. As in the case of the CIA assertions noted above, these claims were examined by the New Jersey Attorney General. On 24 May 2012, following a three month fact finding review of the NYPD's activities in New Jersey, the New Jersey Attorney General announced the review "revealed no evidence to date that NYPD's activities in the state violated New Jersey civil or criminal laws." Office of the New Jersey Attorney General Press Release, *available at* <http://www.nj.gov/oag/newsreleases12/pr20120524b.html>.

61. The findings described above were reaffirmed by the New Jersey Attorney General in public statements made in September 2012. Associated Press, *Attorney General:*

NYPD has stopped spying on Muslims in N.J. (Sept. 6, 2012), available at http://www.nj.com/news/index.ssf/2012/09/nypd_muslim_surveillance_probe.html. It should be further noted that, contrary to the media assertions and accusations that underpin the Petitioners' FOIL Request, all activities undertaken by the NYPD Intelligence Division in New Jersey were done in full collaboration with New Jersey law enforcement agencies at the State and/or local level. This has been testified to in public statements by officials at both the state and local level. See Christopher Baxter, *Secret NYPD surveillance in N.J. was not so secret, former officials say* (Mar. 6, 2012), available at http://www.nj.com/news/index.ssf/2012/03/secret_nypd_surveillance_in_nj.html.

The Continuing Terrorist Threat

62. The on-going and continuous threat to the City is underscored by a long series of events that make clear that New York City, its citizens and visitors, warrant an NYPD intelligence capability that helps protect against this persistent threat. The following events give credence to the need for a vibrant intelligence program that uniquely addresses the counter terrorism security equities of New York City. Each inextricably link New York City and terrorism in the post 11 September period.

A. The Media Anthrax Case: October 2001 — In the space of a week, employees and visitors of the New York Post, NBC, CBS and ABC News in New York City were victim to anthrax attacks. A woman at another Manhattan location died from inhalation of anthrax through cross contamination of the mail.

B. The Iyman Faris case: late 2002/early 2003 — Al Qaeda operative Iyman Faris, on orders from Khalid Sheik Mohammed (mastermind behind 11 September 2001 attack), twice

examined the Brooklyn Bridge to evaluate the feasibility of destroying it. Deterred in part by the NYPD's high visibility policing, Faris reported that the "weather is too hot," meaning security was too tight to carry out the attack. He is serving 20 years in prison for conspiring against targets including the Brooklyn Bridge.

C. The Subway Cyanide Plot: February 2003 — An arrest of a jihadist in Saudi Arabia revealed computer records of a plot to attack the New York City subway system using hydrogen cyanide in dispersal canisters. Surveillance of the subway stations had previously been undertaken.

D. Iranian Agent Reconnaissance: 2003-2004 — On three occasions security personnel from Iran's Mission to the U.S. conducted surveillance of New York City landmarks and infrastructure, including bridges and the subway system leading into Manhattan. The U.S. Government and the NYPD are concerned that they were building "off the shelf" reconnaissance of New York targets in advance of any future attacks against New York by terrorists supported by Iran, such as Hezbollah. This would replicate Iranian action prior to the 1994 bombing of the Jewish center in Buenos Aires where 85 persons were killed.

E. The Mohammed Babar Case: April 2004 — An Al Qaeda operative was arrested by NYPD detectives and FBI agents in Queens, New York, for his role in a plot to bomb pubs, restaurants, and train stations in London. He had been a member of a radical organization Known as al-Mujairoun, whose offshoots still exists in the New York City area.

F. The Uzair and Saifullah Paracha Case: Early-Mid 2003 — In early 2003, Brooklyn resident Uzair Paracha attempted to facilitate al-Qaeda operative Majid Khan's reentry into the United States from Pakistan by impersonating Khan in dealings with the Immigration and Naturalization Service (INS), and agreeing to use Khan's credit card to make it appear that

Khan was residing in the country. Khan planned to attack gas tanks once in the United States in a plot developed alongside 9/11 planner Khalid Sheikh Mohammed. Paracha was convicted of material support charges in November 2005, and was subsequently sentenced to 30 years in federal prison. Uzair Paracha's father, Saifullah Paracha, a Guantanamo detainee, has also been alleged to have aided al-Qaeda. The senior Paracha worked with Khalid Sheikh Mohammad to devise a way to smuggle explosives – including possible nuclear weapons – into the United States using the New York office of Paracha's import-export business. Saifullah Paracha, who attended the New York Institute of Technology and worked in the city for over a decade, was arrested in 2003 after Uzair stated to authorities that his father was a militant.

G. The Citigroup/Stock Exchange Case: July 2004 — A laptop computer of an Al Qaeda operative was recovered containing detailed reconnaissance plans “a prerequisite for attack” of the New York Stock Exchange and Citigroup headquarters in mid-town Manhattan. Dhiren Barot, aka Aba Esi al-Hindi was convicted 7 November 2006 in London, and sentenced to life in prison for his role in plotting the destruction of London hotels, in addition to New York financial institutions.

H. The Herald Square Case: August 2004 — Shahawar Matin Siraj and James Elshafay were arrested for plotting to bomb the 34th Street and Sixth Avenue Subway station, located just one block away from Madison Square Garden, where the 2004 Republican National Convention was to be held.

I. The Tariq Shah Case: May 2006 — Tariq Shah, a Bronx resident and martial arts expert, was indicted for providing material support to Al Qaeda. Shah had conspired to provide martial arts and hand-to-hand combat with weapons training to Al Qaeda.

J. The Syed Hashmi Case: June 2006 — Syed Hashmi, a Queens resident active in the New York City chapter of a radical Islamic group known as al-Mujairoun, was arrested in London where he was engaged in providing material support to Al Qaeda fighters in Afghanistan; another member of the group was deported after being identified as the source of a suicide bomb threat.

K. Path/Ground Zero Case: July 2006 — Lebanon authorities arrested a principal in a plot to attack the PATH subway linking New Jersey to Lower Manhattan, and to blow up the retaining wall at Ground Zero at the former World Trade Center site in an effort to flood lower Manhattan.

L. JFK Airport Case: January 2006 — Four men plotted to detonate jet-fuel storage tanks and supply lines for JFK Airport hoping to cause wide-scale destruction and economic disruption in an attack dwarfing 9/11. The men, led by Guyanese native Russell Defreitas, conducted extensive surveillance of the airport and had traveled back to Guyana and Trinidad and Tobago to attempt to secure the support of Jamaat al-Muslimeen --- an Islamic extremist group operating in the region. Defreitas and his co-conspirators were found guilty, and received prison sentences ranging from 15 years to life.

M. Transatlantic Airline Plot Case: August 2006 — In a series of three trials spanning 2008-2010, eight men were convicted in Britain of attempting to simultaneously detonate explosives in seven airliners traveling from London to several North American metropolises, including New York. British authorities sought Rashid Rauf, a 27 year-old Briton of Pakistani descent and prominent al-Qaeda operative, as a main suspect in the plot. He was arrested in Pakistan in August 2006. His detention led to the arrest of 25 suspects in Britain for

involvement in the plan. Authorities believe the plan involved the use of peroxide-based liquid explosives that could evade security measures then in place.

N. Long Island Railroad Case: September 2007 — Bryant Neal Vinas, who grew up on Long Island, traveled to Pakistan and received over five weeks of terrorism training from al-Qaeda in North Waziristan in early 2008. That summer, Vinas spoke to al-Qaeda about targeting the Long Island Railroad using a suitcase bomb that would be left in a car and set to detonate. Vinas was arrested by Pakistani authorities in November 2008. He pleaded guilty in the United States to federal charges of conspiracy to murder, material support to al-Qaeda, and receiving military training from al-Qaeda.

O. Bronx Synagogue Case: May 2009 — Four men, led by James Cromitie, were convicted in October 2010 of planning to bomb Jewish targets in the Bronx neighborhood of Riverdale, and to fire missiles at military transport planes at Stewart International Airport near Newburgh, NY. The group was arrested in May 2009 having placed what they believed to be functioning bombs outside of their Riverdale targets. All four were sentenced to 25 year terms.

P. NYC Subway Case: September 2009 — Three Queens men traveled to Pakistan from late 2008 to early 2009, where they received terrorist training from high-ranking members of al-Qaeda. The three returned to the United States and devised a plan to attack the NYC subway system during rush hour, days after the eighth anniversary of 9/11. The plot was intercepted days before the planned attack. Najibullah Zazi, along with another conspirator, pleaded guilty to material support charges; the third was convicted on similar charges in 2012 and was sentenced to life in prison.

Q. Times Square Case: May 2010 — Faisal Shahzad, a Connecticut resident born in Pakistan, attempted to detonate a car bomb in Times Square on May 1, 2010. Shahzad received

terrorist training in Pakistan's Waziristan region during a trip he made to the country from July 2009 to February 2010. The training was provided by the Tehrik-i-Taliban Pakistan (TTP), generally referred to as "the Pakistani Taliban." Shahzad pleaded guilty to all charges against him and was sentenced to life in prison.

R. Mohamed Alessa & Carlos Almonte: June 2010 — Mohamed Alessa and Carlos Almonte, both of New Jersey, pleaded guilty in March 2011 to conspiring to murder persons outside of the United States on behalf of al-Shabaab --- the Somalia-based, al-Qaeda-affiliated terrorist group. The two were arrested in June 2010 as they attempted fly out of JFK Airport to join the Somali-based outfit.

S. Manhattan Synagogue Case: May 2011 — Ahmed Ferhani, an Queens resident born in Algeria, along with Mohammad Mamdouh, a Moroccan immigrant, were arrested in May 2011 in an NYPD operation in which Ferhani purchased a hand grenade, three semi-automatic pistols and ammunition from an undercover detective. Ferhani was charged in an indictment in June 2011 under the New York State Terrorism law with plotting to explode a bomb at a synagogue in New York City and on 4 December 2012, he pleaded guilty to all ten counts of his indictment.

T. Returning Military Case: November 2011 — Jose Pimentel, a native of the Dominican Republic and convert to Islam, was charged in November 2011 of plotting to detonate bombs in an around New York City after NYPD caught Pimentel in the act of assembling three pipe bombs. Pimentel's intended targets included members of the armed forces who were returning from service in Iraq and Afghanistan. Pimentel's criminal case is pending.

U. Jesse Morton & Revolution Muslim Case: February 2012 — Jesse Morton, a New York City based Muslim covert, was apprehended in Morocco and pleaded guilty in February 2012 to conspiring to solicit murder, making threatening communications, and using the Internet to place others in fear, most notably through his website Revolution Muslim. Morton was sentenced in June 2012 to 138 months in prison followed by three years of supervised release. Zachary Chesser, a frequent contributor to Morton's website, was sentenced to 25 years in federal court for providing material support to al-Shabaab, communicating threats, and soliciting acts of extremism, including against the creators of South Park.

V. Federal Reserve Case: September 2012 — Quazi Mohammad Rezwanaul Ahsan Nafis, a 21 year old native of Bangladesh residing in the U.S. on a student visa, was arrested in October 2012 as he attempted to remotely detonate what he believed was a bomb in front of the Federal Reserve Bank of New York in lower Manhattan. He was indicted on charges of trying to use a bomb as a weapon of mass destruction, and for providing material support to al-Qaeda.

W. The Brothers Case: November 2012 – Raees Alam Qazi, a 20 year old Florida resident of Pakistani decent, was arrested along with his brother Sheheryar Alam Qazi, 30, for a plot to bomb landmarks in New York City. Raees Qazi had traveled to New York City from Florida and spent days considering potential targets including Wall Street, Times Square and theaters. A search of their Florida home revealed material and instructions related to the construction of an explosive device.

63. Many foreign as well as U.S. military intelligence and law enforcement organizations were responsible for the successful prevention on many of these plots from materializing into actual attacks on New York City. In nine of the twenty-three cases identified in the section above, the NYPD Intelligence Division played either an exclusive, primary or

significant role in bringing the perpetrators to justice or preempting the threatening activity. The NYPD Intelligence Division investigations played the exclusive investigative role in the Herald Square, Ferhani, and Pimentel cases and a major role in the Jesse Morton and Alessa and Almonte cases. Other yet to be surfaced or finalized endeavors---for example, the recent arrest of a pair of individuals with stored weapons and explosives in their New York City apartment---are no less important to the public safety and security of New York City.

In Conclusion

64. **The greatest vulnerability** the NYPD intelligence program faces is the release of information that would reveal, or tend to reveal, the identity of its sources. The inappropriate sharing of such information would **endanger the lives and safety of the people** who are identified either as undercover personnel, confidential informants, or members of the public who, while not confidential informants, voluntarily and without compensation, but with an expectation of confidentiality, provide lead and other information to detectives in the Intelligence Division. Additionally as previously stated, the disclosure of a sources identity, not only places the sources life in jeopardy, but also places their friends' and relatives' lives in jeopardy.

65. If potential undercover officers, confidential informants or members of the public who simply wish to provide information because they think it is the right thing to do, come to believe that their identity and status as undercovers, informants or as sources of information may be revealed as a result of a FOIL Article 78 proceeding, confidence in the ability of the NYPD to protect them would be damaged. As a result, recruitment and retention of undercover officers would be adversely impacted and it is likely that far fewer members of the public would take the risk of acting as good "Samaritans".

66. The disclosure of documents in this FOIL proceeding revealing methods, strategies and techniques of the Intelligence Division also would have a severe adverse effect on the NYPD's counterterrorism and other crime fighting efforts. Simply put, this information will inform terrorists on how to evade detection and that will make it easier for them to succeed in their efforts. The result will be an increased danger of a terror attack in New York City.

67. The unrefined and sweeping nature of the Petitioners' FOIL Request, if allowed to stand, would have a crippling effect on the ability of the NYPD Intelligence Division to perform its public security and public safety responsibilities. Petitioners assume the Intelligence Division programs are formulated around a religious, racial, and/or ethnic paradigm. They also assume that our documents must be created, organized, stored and retrievable by this religious, racial, and/or ethnic paradigm. The Petitioners' assumptions are simply inaccurate. Thus, the NYPD Intelligence Division would be unable to produce over ten years' worth of documents that would satisfy the preconceived and uninformed notions of the Petitioners without a massive effort that would consume the core capabilities of the NYPD Intelligence Division viz-a-viz its public safety and public security responsibilities. It would require that the NYPD Intelligence Division review each and every document produced in the Intelligence Division in the period since 11 September 2001, and identify on a document by document basis any reference within that document to any individual's race, religion, and/or ethnicity. This would have to be done even though no documents are structured, stored or retrievable in this manner.

68. Even if this herculean effort were undertaken, the next step would be to review all of these documents with an eye towards legal exemptions to include law enforcement privilege, protection of ongoing investigations, protection of sources including undercover personnel and confidential informants, protection of intelligence/investigative methodologies, and privacy

protections. The necessary redaction would be substantial and make the documents utterly incomprehensible.

69. For example, the field reports commingle the substance of our information gathering effort with data that are both source and methods revealing. As noted earlier, field reports contain extremely detailed information about a particular activity including the geographic location, the premises, the time of meetings, numbers of persons present (often identifying them by name), relationships between undercovers and confidential informants and other contacts they might have, as well as methods of communication and the means by which information is gathered. The requirement to remove the exempted and sensitive information for documents held by the Intelligence Division would, by and large, result in pages of meaningless snippets of text and punctuation. The review and redaction process, like the alignment process noted above, would require thousands of work hours to produce material of no value. Absent this redaction process the presence of this high level of detail in the field reports makes it possible to connect strands of information which in turn, provides a factual basis from which the identity of sources could be deduced and the Intelligence Division's methods of operation revealed. It is clear that there are individuals and groups that would welcome the opportunity to connect the strands of information in the field reports.

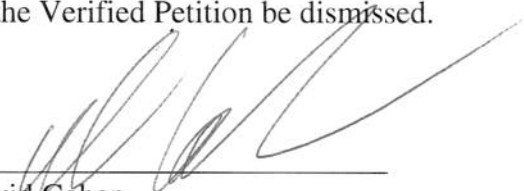
70. In addition to providing valuable information about intelligence operations to potential lawbreakers that would help them avoid detection, arrest, and prosecution, failure to redact appropriately and protect against disclosure of sources and methods and assure privacy protection would have consequences for the operation of the NYPD Intelligence Division as a whole, since it would debilitate our undercover and other essential programs.

71. As noted earlier, our relationships with other international, federal, or other law enforcement and intelligence organizations would be tainted by our inability to protect documents that should not be released due to sources and methods reasons.

72. In sum, the FOIL request has been driven in large measure by inaccurate and false assertions made in ill-informed media reports. All investigations inside and outside the NYPD sparked by these media allegations have demonstrated the accusations to be false. Pursuing the Petitioners' unfettered and ill-defined document request would cripple the NYPD Intelligence Division and fail to support the accusation that the NYPD Intelligence Division's activities are based on race, religion, and/or ethnicities of persons being investigated.

73. The risk of a future terrorist attack is realistic, not merely speculative. Experience teaches that such an attack could result in the loss of innumerable lives, cost millions of dollars of property damage and cause lasting damage to our economy, infrastructure, homes and way of life. However, there simply is no escaping the conclusion that releasing the requested records would cause certain and irreversible damage to the NYPD intelligence program and undermine its effectiveness, allow would-be terrorists to avoid detection, and substantially impair the NYPD's ability to defend New York City from another terrorist attack and other threats to public security and safety.

WHEREFORE, it is respectfully requested that the Verified Petition be dismissed.



David Cohen

Sworn to before me this
18th day of January, 2013.



NOTARY PUBLIC

Notary Public
State of New York
Steven Joseph Colon, Esq.
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Commission Expires on
February 6, 2016