

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. SAGAL, MICHAEL
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,
ANNETTE T. RUBINSTEIN, MICKEY SHERIDAN, JOE
SUCHER, STEVEN FISCHLER, HOWARD BLATT,
ELLIE BENZONI, on behalf of themselves and all others
similarly situated,

**DECLARATION OF
THOMAS GALATI**

71 Civ. 2203 (CSH)

Plaintiffs,

- versus -

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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DECLARATION OF THOMAS GALATI

THOMAS GALATI, declares under penalty of perjury and pursuant to 28 U.S.C. §1746
that the following statements are true and correct:

1. I am Commanding Officer of the Intelligence Division for the New York City Police
Department ("NYPD"). I submit this declaration in support of Defendants' Opposition to Class
Counsel's Motion for Injunctive Relief and for Appointment of an Auditor or Monitor.
Specifically, this declaration sets forth facts related to the NYPD's Zone Assessment Unit
(formerly known as the Demographics Unit) about which Class Counsel complains. This

declaration is based upon personal knowledge, books and records of the NYPD, and upon information received from officers and employees of the NYPD which I believe to be true.

2. I will have been a member of the NYPD for 29 years as of July 2013. In 2006, I was appointed as Commanding Officer of the NYPD Intelligence Division, while holding the rank of Deputy Chief. Most recently, I was promoted to Assistant Chief in December 2008, and continue to serve as Commanding Officer of the NYPD Intelligence Division to date. In this role, I am the highest ranking uniformed officer in the NYPD Intelligence Division and report directly to the Deputy Commissioner of Intelligence, David Cohen. I have overall responsibility for the various units of the NYPD Intelligence Division, including the Zone Assessment Unit.

3. Prior to becoming the Commanding Officer of the NYPD Intelligence Division, I held numerous ranks and commands over the course of my 29 year career with the NYPD. Some of the more prominent positions and corresponding ranks include: Deputy Chief and Commanding Officer of the Gang Division, Inspector and Commanding Officer of the 46th Precinct, Deputy Inspector and Commanding Officer of the 47th Precinct, Captain and Commanding Officer of the Bronx Anti-Crime Unit, Captain and Commanding Officer of the Bronx Tracer Unit, and Lieutenant and Platoon Commander of the Street Crime Unit.

4. In an effort to resolve the concerns raised by Class Counsel about the Zone Assessment Unit, I was deposed by Class Counsel in response to their request to have someone speak about the Zone Assessment Unit and the information this unit collected. My deposition took place on 28 June 2012. Prior to my deposition, the NYPD Intelligence Division made available to Class Counsel samples of the reports generated by the Zone Assessment Unit. The purpose of this production was to allow Class Counsel to see the type of information collected and retained by the Zone Assessment Unit.

The Mission of the Zone Assessment Unit

5. The Zone Assessment Unit, then known as the Demographics Unit, was created in the wake of the 11 September 2001 terrorist attack on New York City to provide the NYPD with an understanding of particular ethnic and nationality concentrations within New York City. The ethnicities and nationalities that the Zone Assessment Unit focused on were ones whose home countries were identified by the federal government as containing incubators for Islamists radicalized to violence – i.e., terrorists. The goal was to institutionalize our knowledge of where these ethnicities and nationalities were concentrated in the New York City area and to obtain information about the locations and types of businesses or institutions within that area, including mosques and other religious institutions. This effort drew heavily on cataloging related data contained in the U.S. Government 2000 Census. This core data was then updated and made more granular via visits to the census-identified areas by the Zone Assessment Unit.

6. While the Zone Assessment Unit collected publicly available information about the ethnic concentration within an area, it did not, and its mission never was to, conduct criminal investigations or conduct investigations as set out in Section V of the Modified Handschu Guidelines.

7. The retention of the information collected by the Zone Assessment Unit serves several purposes related to deterring and detecting terrorism and unlawful activity. First, it assists the NYPD Intelligence Division in understanding where an Islamist radicalized to violence might try to blend in and secrete himself before or after carrying out a terrorist act. A comprehensive understanding of where certain ethnicities are concentrated provides a roadmap in the event the NYPD receives information about the characteristics of an Islamist terrorist who

is believed to be secreting himself in the New York City area, as he may likely try and blend in by gravitating to a community bearing the same traits as himself. Second, the information assists in identifying where that same terrorist might try and recruit assistance from those with common traits – language, dialect, region of origin, religious sect, etc. Third, the information assists the NYPD in deploying resources in the face of potential ricochet violence from events taking place here or abroad, such as sectarian or nationalist violence. In other words, the NYPD will be in a position to deploy its resources efficiently and effectively when it is necessary to ascertain a community's reaction to current events which the NYPD believes could result in violence.

8. For instance, in the wake of the Boston Marathon bombings which occurred on 15 April 2013, the Zone Assessment Unit was deployed to neighborhoods in which individuals from the Caucasus geographic region, which include Chechens, live in New York City to: (i) help ascertain whether people in these neighborhoods were at risk of victimization through retaliatory acts of violence in response to the bombings; and (ii) be prepared in the event the perpetrators attempted to blend in within an area where persons from the Caucasus geographic region reside and frequent. The Zone Assessment Unit was able to quickly respond to these neighborhoods because of the previous cataloging efforts identifying where people from the Caucasus geographic region lived.

9. Similarly, in April 2013, the Zone Assessment Unit responded to the Hazara community in New York City in response to a suicide attack targeting the leader of the Hazara community in Quetta, Pakistan – the attack was perpetrated by Lashkar-i-Jhangvi, a foreign terrorist organization based in Pakistan. Again, the Zone Assessment Unit's knowledge of the communities in New York City enabled this outreach mission to be achieved.

10. The Zone Assessment Unit has conducted similar cataloging of predominantly non-Muslim ethnicities and nationalities in the New York City area for some of the same purposes identified above. Those included the Sri Lankan community in regards to the Liberation Tigers of Tamil and Eelam (LTTE), an ethno-nationalist terrorist group; the Russian community in regards to Russian Organized Crime; the Mexican community in regards to a swine flu epidemic; and the Indian Sikh community in reaction to Indian riots after a Sikh shooting in Australia; the Egyptian Coptic and Muslim community reaction to anti-Coptic riots in Egypt; and more recently to the Azeri and Armenian communities in the wake of the threat of war between both countries earlier this year. The NYPD Intelligence Division also maintains extensive knowledge of New York City Jewish community concentrations and locations.

11. Class Counsel attempts to make much of the fact that I testified at my deposition that since my time as Commanding Officer of the NYPD Intelligence Division in 2006, none of the visits conducted by the Zone Assessment Unit resulted in an investigation. While that fact is true, the critical point is that the Zone Assessment Unit was not created to trigger investigations or otherwise generate "leads." As I describe above, the Zone Assessment Unit's mission was to further identify concentrations of certain ethnicities and nationalities in New York City beyond what was available in the U.S. Government 2000 Census so that the NYPD would be in a better position to respond to terrorist threats or potential violence, to gauge community reaction to public events here or abroad in order to protect against ricochet violence or civil unrest, and to effectively outreach to the community in the face of such threats.

The Information Retained From the Zone Assessment Unit's Visits to Public Places

12. In order to carry out its mission, plainclothes police officers assigned to the Zone Assessment Unit visit public places and events. While most of the activities of the Zone

Assessment Unit do not concern the “investigation” of “political activity” as those terms are defined under the Modified Handschu Guidelines, when the Zone Assessment Unit’s activities arguably fall within the scope of those terms, the Zone Assessment Unit is authorized under § VIII(A)(2) of the Modified Handschu Guidelines to carry out its mission by such visits.

13. Information retained from these visits to public places mainly consists of factual information. This includes, for example, common pedigree information, such as the name and address of the place visited, the nature of the business or establishment (i.e. restaurant, coffee shop, deli, mosque), the type of building, the general ethnicity of the customers and/or owner, and sometimes the name of the owner. In addition, on some field reports, a conversation that occurred at the location is noted if there is a specific focus of concern at the time of the visitation, such as concern about the potential for violence in the wake of a Danish newspaper’s publishing several cartoons depicting the Prophet Muhammad in the fall of 2005. There was a strong negative reaction to the publication of the cartoons by Muslims overseas which resulted in dozens of casualties, including many deaths. The Zone Assessment Unit would be sensitive to this type of risk of potential ricochet violence from events abroad.

14. The form in which the information from the public visits by the Zone Assessment Unit has been retained has evolved over time. In the earlier years of the Zone Assessment Unit’s existence (then known as the Demographics Unit), the information was put into a Microsoft Word document. Subsequent to that, a weekly field report was prepared. Currently, a field report is prepared on a per visit basis and the information is also inputted into the Zone Assessment Unit’s standalone desktop computer. Sometimes reports are generated from this information which illustrates one such reason for inputting such information into the Zone Assessment Unit’s standalone desktop computer.

15. The information retained from the Zone Assessment Unit's visits to public locations (e.g., the name and address of the business, the ethnicity or nationality associated with the location, and other similar "phone book" type of information) is a useful and necessary component to allow the NYPD to respond to potential unlawful or terrorist activity. Not having that basic information at hand could lead to valuable time lost when deciding where to deploy resources in the face of preventing or pursuing a terror suspect, conducting an investigation, or responding to potential ricochet violence arising from events here or abroad. Multiple visits to the same location are necessary to ensure that the information is kept up to date; re-visits to a previously visited location may be directed by leadership in response to overseas or domestic events, such as the Boston Marathon bombing.

16. The Federal Bureau of Investigation ("FBI") similarly recognizes the importance of collecting this type of demographic data. The FBI's Domestic Investigations and Operations Guide ("DIOG"), dated 16 December 2008, states:

The DOJ guidance and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the Field Office's domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and overall, assist domain awareness for the purpose of performing intelligence analysis. If, for example, intelligence reporting reveals that members of certain terrorist organizations live and operate primarily within a certain concentrated community of the same ethnicity, the location of that community is clearly valuable – and properly collectible – data. Similarly, the locations of ethnic-oriented businesses and other facilities may be collected if their locations will reasonably contribute to an awareness of threats and vulnerabilities, and intelligence collection opportunities. Also, members of some communities may be potential victims of civil rights crimes and, for this reason, community location may aid enforcement of civil rights laws. Information about such communities should not be collected, however, unless the communities are sufficiently concentrated and established so as to provide a reasonable potential for intelligence collection that would support FBI mission

programs (e.g., where identified terrorist subjects from certain countries may relocate to blend in and avoid detection).

The relevant pages from the DIOG are attached as Exhibit A. A copy of the DIOG can be found online at <http://www2.hn.psu.edu/faculty/jmanis/poldocs/FBI-Dom-Inv-Op-Guide/original.pdf>.

The Recent Boston Marathon Bombing

17. A prime example of the usefulness of this type of information is illustrated by the events following the recent terror attack at the Boston Marathon and related planned attack on New York City's Times Square. The Zone Assessment Unit police officers were deployed after the bombings into areas previously mentioned in paragraph 8 above in order to fulfill two objectives: ensure that any retaliatory threats to the community would be surfaced to the NYPD quickly; and anticipate the possibility of the Boston Marathon bombers seeking a location to blend into within New York City. This became especially vital when the NYPD learned that the Tsarnaev brothers mentioned Manhattan in the period immediately before being intercepted by police on Thursday evening, just three days after the attack, which resulted in an extended battle with police during which one brother was killed and the other apprehended. The NYPD has since learned the Tsarnaev brothers were on the way to New York City armed with multiple explosive devices.

Conversations Retained

18. As part of my 28 June 2012 deposition by Class Counsel, I was asked about some of the conversations that were retained in the Zone Assessment Unit's field reports or the Zone Assessment Unit's standalone desktop computer. I explained why the conversations were of value in assessing potential unlawful or terrorist activity. The language spoken at a location is a piece of information which can be useful should the NYPD be pursuing a terrorist, conducting an investigation, or trying to gather information about potential unlawful activity due to events

occurring domestically or abroad. Among other things, under exigent circumstances, a unique language environment can help law enforcement officers choose which locations to visit first when searching for an unidentified individual who has been reported to have traveled to New York with the intention of committing a terrorist act. The 15 April 2013 Boston Marathon bombing example is a prime case in point. It was critical to know in advance where Russian speaking locations existed as that was one of the languages spoken by the Tsarnaev brothers.

19. I instructed my staff to review the sample set of documents chosen by Class Counsel from the years 2006, 2010 and 2011, and identify the number of visits to public places and the number of conversations set out. That review revealed that there were 346 visits and 31 conversations memorialized. That equates to conversations being retained on approximately 8.9% of visits. Notably, the overwhelming majority of the conversations captured were at a time when there were current events that caused the NYPD to fear for the safety of New York City's residents, such as conversations relating to the Danish cartoons, tensions between United States and Iran, tensions between United States and Pakistan, violent conflicts between Sunni and Shite Muslims and terrorist groups including al-Qaeda.

20. Because Class Counsel allege that the NYPD has a widespread practice or policy by the Zone Assessment Unit to retain conversations heard on their visits to public places, I requested a review of all the field reports created by the Zone Assessment Unit over the most *recent* three year period, between 1 January 2010 and 4 April 2013, to identify the number of conversations retained in the field reports. That review revealed that, out of 4,247 field reports created during this time period, 207 field reports contained conversations. On a percentage basis, that equates to conversations being retained in 4.9% of all the visits made by the Zone Assessment Unit over the most recent three year period. A review of the content of the

conversations retained reveals that most of these conversations were noted at a time when there were current events that caused the NYPD to fear for the safety of New York City's residents. Out of the 207 field reports which contained conversations, my staff identified 161 reports that were reactions to overseas events. This number equals 78% of all the conversations retained. The topics of these overseas events include, but are not limited to, the death of Osama Bin Laden, the arrest of Faisal Shahzad, the Arab Spring, and various terrorist attacks around the world.

21. Out of those 207 field reports which contained conversations, only six include the names of individuals participating in the conversation. This number equals 2.8% of all the conversations retained and one tenth of a percent of all the field reports written during this period. In the six field reports that included the names of individuals participating in the conversation, there were two field reports in which an individual's first and last names were memorialized and four field reports in which only an individual's first name was memorialized. None of the reports reviewed by my staff memorialized any unique identification information, such as a date of birth or a social security number, and no other further inquiries or computer checks were conducted.

22. Moreover, none of those conversations were heard in a mosque, a Muslim Student Association, a university, or a non-governmental organization.

23. The Zone Assessment Unit members make a judgment about what information needs to be memorialized that potentially relates to unlawful or terrorist activity. The Zone Assessment Unit members are the most familiar with the communities in which they are receiving information, based in part on their ethnicities and language capabilities, and as a result are well equipped to make such judgments. In paragraph 20, I have pointed out that a review of

the Zone Assessment Unit's reporting for the last three years shows that only 4.9% of the field reports contained reporting of conversations. It is evident from those statistics that it is rare for conversations to be memorialized. It should be kept in mind that the Zone Assessment Unit police officers have overheard many conversations in crowded eateries, but have chosen to memorialize just a fraction of these conversations based on their determination that the conversation may be helpful to NYPD in its counterterrorism mission or in protecting its citizens from violent reactions to events occurring outside of New York City.

24. While the conversations memorialized by the Zone Assessment Unit members in field reports are retained, access to the field reports is strictly limited. The Zone Assessment Unit field reports that are more than 30 days old are placed in an electronic compartment ("sealed compartment") that only may be accessed by the administrator of the Intelligence Division Data System, the NYPD's Assistant Commissioner, Legal Matters for Intelligence Affairs and his staff attorneys. Only the Deputy Commissioner of Intelligence or, if the Deputy Commissioner of Intelligence is unavailable, myself or the Executive Officer of the Intelligence Division may authorize access to information in a sealed field report. This will only occur after receiving a legal recommendation from the NYPD's Assistant Commissioner, Legal Matters for Intelligence Affairs. Regarding the Zone Assessment Unit's standalone desktop computer, the information retained is accessible to and utilized only by members of the Zone Assessment Unit to enable them to perform their duties.

Dated: New York, New York
May 16, 2013


THOMAS GALATI

EXHIBIT A

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 07-08-2009 BY UC 60322 LP/STP/SZ

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Domestic Investigations and Operations Guide



Federal Bureau of Investigation (FBI)

December 16, 2008

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Domestic Investigations and Operations Guide

C. (U) Guidance on the Use of Race and Ethnic Identity in Assessments and Predicated Investigations

(U) Considering the reality of common ethnicity or race among many criminal and terrorist groups, some question how the prohibition against racial or ethnic profiling is to be effectively applied—and not violated—in FBI assessments and predicated investigations. The question arises generally in two contexts: (i) with respect to an individual or a group of individuals; and (ii) with respect to ethnic or racial communities as a whole.

1. (U) Individual Race or Ethnicity as a Factor

(U) The DOJ Guidance permits the consideration of ethnic and racial identity information based on specific reporting—such as from an eyewitness. As a general rule, race or ethnicity as an identifying feature of a suspected perpetrator, subject, and in some cases, a victim, is relevant if it is based on reliable evidence or information—not conjecture or stereotyped assumptions. In addition, the DOJ Guidance permits consideration of race or ethnicity in other investigative or collection scenarios if it is relevant. These examples illustrate:

- a. (U) The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected and retained when gathering information about or investigating the organization.
- b. (U) Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person. It is axiomatic that there are many members of the same ethnic group who are not members of the group; and for that reason, there must be other information beyond race or ethnicity that links the individual to the terrorist or criminal group or to the other members of the group. Otherwise, racial or ethnic identity would be the sole criterion, and that is impermissible.

2. (U) Community Race or Ethnicity as a Factor

- a. (U) **Collecting and analyzing demographics.** The DOJ guidance and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the Field Office's domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness for the purpose of performing intelligence analysis. If, for example, intelligence reporting reveals that members of certain terrorist organizations live and operate primarily within a certain concentrated community of the same ethnicity, the location of that community is clearly valuable—and properly collectible—data. Similarly, the locations of ethnic-oriented businesses and other facilities may be collected if their locations will reasonably contribute to an awareness of threats and vulnerabilities, and intelligence collection opportunities. Also, members of some communities may be potential victims of civil rights crimes and, for this reason, community location may aid

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enforcement of civil rights laws. Information about such communities should not be collected, however, unless the communities are sufficiently concentrated and established so as to provide a reasonable potential for intelligence collection that would support FBI mission programs (e.g., where identified terrorist subjects from certain countries may relocate to blend in and avoid detection).

(U) [redacted] ethnic/racial demographics. [redacted]

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- c. (U) **General ethnic/racial behavior.** The authority to collect ethnic community location information does not extend to the collection of cultural and behavioral information about an ethnic community that bears no rational relationship to a valid investigative or analytical need. Every ethnic community in the Nation that has been associated with a criminal or national security threat has a dominant majority of law-abiding citizens, resident aliens, and visitors who may share common ethnic behavior but who have no connection to crime or terrorism (as either subjects or victims). For this reason, a broad-brush collection of racial or ethnic characteristics or behavior is not helpful to achieve any authorized FBI purpose and may create the appearance of improper racial or ethnic profiling.
- d. (U) **Specific and relevant ethnic behavior.** On the other hand, knowing the behavioral and life style characteristics of known individuals who are criminals or who pose a threat to national security may logically aid in the detection and prevention of crime and threats to the national security within the community and beyond. Focused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community (not with the community as a whole) may be collected and retained. For example, if it is known through intelligence analysis or otherwise that individuals associated with an ethnic-based terrorist or criminal group conduct their finances by certain methods, travel in a certain manner, work in certain jobs, or come from a certain part of their home country that has established links to terrorism, those are relevant factors to consider when investigating the group or assessing whether it may have a presence within a community. It is recognized that the "fit" between specific behavioral characteristics and a terrorist or criminal group is unlikely to be perfect—that is, there will be members of the group who do not exhibit the behavioral criteria as well as persons who exhibit the behaviors who are not members of the group. Nevertheless, in order to maximize FBI mission relevance and to minimize the appearance of racial or