



The Honorable Pamela K. Chen
United States District Judge
Courtroom 4F
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Via ECF

Re: *RAZA, ET AL. V. CITY OF NEW YORK, ET AL.*, No. 13-CV-3448 (PKC)(JMA)

Dear Judge Chen:

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, I respectfully request that the Court consider my instant intervention in the above-referenced matter.

To be granted intervention as of right or by permission, “an applicant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.” *See Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014) (internal citations omitted). As set forth below, this four-factor test is met.

The docket sheet reflects that the Court has not yet approved any settlement in the instant matter. Nor has it scheduled any trial. Therefore, my request to intervene is timely.

As shown by the December 1, 2016 letter, attached hereto, the New York City Police Department (“NYPD”) denies that two detectives of its *Intelligence Division* engaged, on or about

December 15, 2015, in acts prohibited by 18 U.S.C. § 913, 18 U.S.C. § 1512(b), 18 U.S.C. § 241, 18 U.S.C. § 242, and 42 U.S.C. § 3631. Said detectives, without identifying themselves, without a search or arrest warrant, without being invited, without having any probable cause or arguable probable cause that I committed or was about to commit a crime, without having any reasonable suspicion that I was engaging in some type of criminal activity, stormed into my home and began interrogating me.

Using tactics of intimidation and coercion¹, they demanded that I “cooperate with them” and answer their questions about my alleged religious and political activities. They also demanded that I address their inquiries about my alleged involvement in acts of terrorism.

Without my permission, they searched my home, took pictures of my papers and belongings with their smartphones’ cameras, and threatened to arrest me if I interfere with their investigation.

When I asked them to leave they flashed their guns and stated that they were federal agents from the Federal Bureau of Investigation.

I never allowed those two detectives into my home. A 911 call made during their intrusion corroborates my claim. Moreover, *there was no evidence that I had ever been involved in any criminal or terrorist activity*. Clearly, their unlawful acts fall within the NYPD’s policy or practice that violates the Handschu Guidelines². Uncontestably, these are the very guidelines that prohibit the NYPD from conducting surveillance and investigations of individuals and organizations associated with the Muslim religion solely on the basis of religion, and without a factual predicate.

¹ See, e.g., <https://www.nytimes.com/2014/05/11/nyregion/new-york-police-recruit-muslims-to-be-informers.html>

² See *Handschu v. Special Services Div.*, 273 F. Supp. 2d 327 (S.D.N.Y. 2003).

Had these detectives been lawfully assigned, in accordance with the Handschu Guidelines, to investigate some crime or, as they have been falsely claiming, a terrorist activity, they would have revealed their identities to me and to other witnesses. The following recorded testimony proves otherwise:

<https://soundcloud.com/user118813203/conversation-with-kim-penater-brittany-nicholson/s-uw8BQ>

Considering the facts herein articulated, it is clear that, as an individual of Muslim confession, who has been subjected to prohibited practices consisting of illegal surveillance, I have an immediate interest in the instant matter. My rights will be impaired if the Court denies my intervention.

As stated by the December 1, 2016 letter, hereto attached, the New York City Police Department denies any wrongdoing. Yet, it maintains that the detectives' search was legitimate on the ground that they had received an anonymous tip through the NYC SAFE Terrorism Hotline.

Even if one wanted to assume, *arguendo*, that the detectives' presence was caused by some *anonymous tip*, which is not true³, the letter's determination is not persuasive. Any reasonable officer would readily acknowledge that whenever an anonymous tip first alerts a law enforcement agency to possible wrongdoing, the question to be answered is whether the "tip, suitably corroborated, exhibits 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.'" *Florida v. J.L.*, 529 U.S. 266, 270 (2000)(quoting *Alabama v. White*, 496 U.S. 325, 327 (1990)). Reasonable suspicion "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *J.L.*, 529 U.S. at 272.

³ The NYPD has the technology and the resources to trace any call and identify the caller. See, e.g., <https://www.wsj.com/articles/nypd-defends-its-use-of-surveillance-technology-1455243710>

In my case, it is evident that the tip was not reliable in its “assertion of illegality.” Therefore, it is fair to conclude that the detectives’ unwarranted presence was a manifest act of surveillance predicated on my religion, rather than on any criminal or terrorist activity.

My calm interaction with those detectives proved that their statements regarding matters to which no one could have been so privy, but the landlord’s employees, support the fact that the individual who made the false report had an axe to grind. Yet, despite its determination that a crime was committed against me, i.e., false report by an identifiable individual, the NYPD has been speciously using Public Officers Law § 87(2)(e) and unlawfully denying me access to records or, at least, to the identity of the individual who allegedly made the false report. See letter dated January 24, 2017.

Obviously, the denial is discriminatory. It is a pretext and is contradicted by Public Officers Law § 95(8)⁴. In similar cases, where an individual willfully made a false report to the authorities, the NYPD would release to the large public and to the media all records pertaining to the investigation and the identity of the alleged perpetrator:

<http://www.nydailynews.com/new-york/muslim-woman-reported-trump-supporter-attack-made-story-article-1.2910944>

<https://www.nytimes.com/2016/12/14/nyregion/manhattan-yasmin-seweid-false-hate-crime.html>

Such unequal treatment definitely corroborates the finding of this Court that the NYPD’s investigatory authority is

⁴ Public Officers Law § 95(8) provides:

Nothing in this section shall limit, restrict, abrogate or deny any right a person may otherwise have including rights granted pursuant to the state or federal constitution, law or court order.

discriminatory when applied to Muslims. *See, e.g. Raza v. City of New York*, 998 F.Supp.2d 70, 78-81 (E.D.N.Y.2013).

This being stated, it is now inevitably clear that my interest in having the NYPD investigation's records disclosed will not be adequately protected by the parties in this action. Indeed, I have contacted the plaintiff's attorneys and, at the very instant of submitting this letter, I have not yet received any response from them.

Finally, I would like to stress that my intervention will not delay the adjudication of the present matter. Any requests herein made or to be made in the future are in consonance with the plaintiffs' requests for relief. More important, I do not and will not seek any monetary relief that would necessitate allocation of this Court's judicial resources.

WHEREFORE, for the reasons set forth above, I respectfully request that the Court:

1. Permit my intervention in the present action;
2. Hold the New York City Police Department and its officers in contempt for violating this Court Order and further engaging in activity strictly prohibited by the Hundschu Guidelines;
3. Refer NYPD Detective Yuriy Posternak and NYPD Detective Luis Torres to the U.S. Attorney's Office for willfully violating 18 U.S.C. § 913, 18 U.S.C. § 1512(b), 18 U.S.C. § 241, 18 U.S.C. § 242, and 42 U.S.C. § 3631.
4. Order the New York City Police Department to immediately disclose to me and to the plaintiffs' counsel all records pertaining to the December 15, 1015 incident and any investigation thereof;

5. Enjoin the New York City Police Department from further conducting prohibited acts of unlawful surveillance on the Muslim community;
6. Enjoin the New York City Police Department from further engaging in discriminatory and retaliatory practices against Muslims who assert rights guaranteed and protected by the laws and Constitution of the United States; and
7. Grant me any other relief that this Court may deem proper and appropriate.

Respectfully submitted,

Hicham Azkour, *pro se*

A handwritten signature in blue ink, appearing to be 'Hicham Azkour', written in a cursive style.