

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

09

698

JANGIR SULTAN,

Plaintiff,

09 Civ.

-versus-

RAYMOND KELLY, Commissioner of the New  
York City Police Department, and THE CITY  
OF NEW YORK

Defendants.

DEARIE, J.  
REYES, M.J.

COMPLAINT

JURY TRIAL  
DEMANDED

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
FEB 19 2009 ★

PRELIMINARY STATEMENT

BROOKLYN OFFICE

1. This civil rights action challenges racial profiling in the New York City Police Department's subway bag-search program. In the three years after the program was initiated in July 2005, the plaintiff Jangir Sultan, a lifelong New Yorker, was stopped and searched twenty-one times at NYPD subway bag-search checkpoints. The experience of Mr. Sultan, who carries nothing unusual into the subway, differs drastically from that of white New Yorkers, most of whom have been stopped rarely, if at all. Although under the program officers are supposed to stop people solely on the basis of a race-neutral mathematical formula, the probability that Mr. Sultan would have been stopped twenty-one times on this basis is approximately 1 in 165 million. The only plausible explanation for the NYPD's persistent targeting of Mr. Sultan is his South Asian appearance.

2. The NYPD has deliberately structured the subway-bag search program in a way that invites racial profiling and insulates it from scrutiny. Under the program, officers are authorized to pick out individuals from amongst crowds entering subway stations for bag searches and are prohibited from recording any demographic information about those whom they select for search. As a result of this unchecked discretion, officers are left free to engage in racial profiling, and the Department ensures that it will not know about such unconstitutional behavior. This policy therefore permits officers to stop New Yorkers, like Mr. Sultan, on the basis of race with impunity.
3. The defendants have violated Mr. Sultan's rights under the Fourth and Fourteenth Amendments to the United States Constitution and under New York State law. He seeks declaratory and injunctive relief to eliminate the threat of racial profiling in the NYPD's subway bag-search program. Mr. Sultan believes in the need for anti-terrorism measures in New York City but not at the expense of the rights of its citizens.

#### PARTIES

4. Plaintiff JANGIR SULTAN is a native New Yorker and a resident of Brooklyn, New York. He manages a staff of occupational therapists at a Brooklyn hospital and commutes to and from work each day on the subway.
5. Defendant RAYMOND KELLY is the Commissioner of the New York City Police Department. He is its chief executive officer, responsible for the execution of all laws and regulations of the department. He is sued in his official capacity.

6. Defendant THE CITY OF NEW YORK is a municipal corporation within the State of New York. The New York City Police Department (“NYPD”) is an agency of the City of New York.

### FACTS

#### **The Plaintiff Jangir Sultan**

7. Jangir Sultan is a 32-year-old Brooklyn-born man of Kashmiri descent. Except for a brief period as a child, Mr. Sultan has lived in New York City his entire life. Since April 2007, he has owned a home in downtown Brooklyn with his partner. Prior to moving to Brooklyn, Mr. Sultan lived in Gramercy in Manhattan.
8. Mr. Sultan is proud of his South Asian heritage and has close ties with the members of his Kashmiri family, who now live in Kansas. Mr. Sultan also has a wide social circle, which includes several coworkers who have become close friends over the years.
9. Mr. Sultan has medium brown skin and light brown eyes; he keeps his black hair short and is clean shaven. Based on his skin color and facial features, Mr. Sultan appears to be Middle Eastern or South Asian. Mr. Sultan describes his ethnicity as South Asian.
10. For the last eight years, Mr. Sultan has worked as an occupational therapist at a hospital in Brooklyn. He was promoted in January 2008 and now manages a staff of roughly two dozen occupational therapists. In addition to supervising the occupational therapy program, Mr. Sultan still sees patients directly and

oversees a wheelchair clinic. Because he is responsible for assigning patients to therapists each morning, it is very important for Mr. Sultan to arrive at work early each morning.

11. Prior to his promotion, Mr. Sultan wore hospital scrubs to work every day. As a manager, he dresses more formally. He usually carries a bag large enough to hold a laptop and paperwork and frequently also carries a large gym bag with him to work.
12. Mr. Sultan relies on the subway to get to and from work each day, to go to the gym, and to see his family and friends throughout the city. Mr. Sultan does not own a car.

**Mr. Sultan's Experience with the Subway Checkpoint Program**

13. In response to high-profile transit bombings in London, the NYPD initiated a program of subway checkpoints to search passengers' bags ("Subway Checkpoint Program") in July 2005. Upon information and belief, through the Subway Checkpoint Program the NYPD places checkpoints in a tiny percent of the approximately 1,000 subway entrances throughout New York City at any given point in time. Each checkpoint lasts for a few hours, during which police officers search the bags of entering passengers selected by the officers. Police officers are supposed to select passengers on a solely numerical basis -- for instance, every twentieth or thirtieth passenger -- regardless of any other factor, such as race or ethnicity. Checkpoint officers decide at the beginning of the checkpoint what fraction of passengers to search, but they can change this number at will. Any passenger carrying a bag larger than a wallet may be

searched. Any passenger who declines a search must leave the subway system and may be arrested if caught reentering, even at another station.

14. For New Yorkers who depend on the subway, the search is effectively mandatory.
15. On information and belief, most white New Yorkers have been stopped rarely, if ever, by the Subway Checkpoint Program.
16. Mr. Sultan was first stopped and searched by a checkpoint officer at Union Square Station shortly after the Subway Checkpoint Program's inception, while Mr. Sultan was living in Gramercy. As he was entering the station, one of several officers standing at a folding table just outside the turnstile singled him out and called him over to the table. One of the officers told him to open his bag, and Mr. Sultan complied. The officer proceeded to sift through Mr. Sultan's bag before permitting him to enter the subway platform. This process was fully visible to everyone passing through the station.
17. Over the next two years, Mr. Sultan was stopped repeatedly at the Union Square Station. Mr. Sultan was also stopped at a station near his gym in Manhattan and one near his work in Brooklyn. In April 2007, he moved to Brooklyn, and he continued to be stopped. As before, most of these stops occurred at the subway station nearest his home, the Borough Hall Station. By August 2007, Mr. Sultan had been stopped approximately thirteen times by the Subway Checkpoint Program.
18. At the time, Mr. Sultan felt the stops were a necessary burden on every New Yorker to prevent another terrorist attack.

19. When Mr. Sultan began discussing the stops with his friends, however, he learned that none of them had been searched more than a single time. Most had not been searched at all. Mr. Sultan gradually realized that he was being selected not on a numerical basis, but because of his appearance.
20. Mr. Sultan began looking at himself in the mirror in the mornings before he left for work, wondering what about him provoked the officers to search him so frequently. He tried carrying a different type of bag, but the stops continued.
21. After approximately the thirteenth time he was stopped, Mr. Sultan learned about the Civilian Complaint Review Board (“CCRB”), a city agency designed to receive and investigate complaints against the police. Mr. Sultan began making reports to the CCRB by telephone after each stop.
22. Mr. Sultan was stopped on August 7, 2007, at approximately 7:20 a.m., while entering the Borough Hall Station on his way to work. He filed a complaint with the CCRB about the stop.
23. Less than a month later, on September 4, 2007, at approximately 7:20 a.m., Mr. Sultan was stopped again at the Borough Hall Station. Mr. Sultan was singled out from among a group of several other passengers all entering the subway at the same time. Mr. Sultan again filed a complaint with the CCRB.
24. Mr. Sultan was stopped the very next week, on September 12, 2007, as he was entering the 14<sup>th</sup> Street 1/2/3 Station at approximately 7:00 p.m, on his way home from the gym. Mr. Sultan asked the officer searching his bag if he was being racially profiled. In reply, the officer asked, “Who said that?” Mr. Sultan asked for the name and badge number of the officer who searched his bag and

- included them in his CCRB complaint. From this stop forward, Mr. Sultan began asking all of the checkpoint officers present for their names and badge numbers, which he included in his CCRB complaints.
25. Mr. Sultan was stopped again a month later, on October 10, 2007, while entering the Borough Hall Station at approximately 7:30 a.m. He filed a CCRB complaint.
  26. Mr. Sultan was next stopped two weeks after that, on October 24, 2007, on his way to work. He filed a complaint with the CCRB.
  27. Mr. Sultan was stopped again on November 14, 2007, at approximately 7:20 a.m., while entering the Borough Hall Station. One officer wiped the top of his bag with a small swab. When Mr. Sultan asked for the checkpoint officers' names and badge numbers, one of the officers asked if there was a problem. Mr. Sultan replied that he felt he was being racially profiled. "I don't support city-sponsored racial profiling," Mr. Sultan said. He filed another CCRB complaint about the stop.
  28. In January 2008, Mr. Sultan received a promotion at work. He began wearing business attire instead of scrubs.
  29. On May 13, 2008, Mr. Sultan was stopped by checkpoint officers at the Borough Hall Station at approximately 7:00 a.m. Mr. Sultan attempted to take pictures of the officers' badges with his phone in order to keep a record of the incident. One of the officers stopped him, stating that he was not allowed to take a picture because he would, in the words of the officer, "put it on YouTube." The officers told him that the bag search was routine, and Mr.

Sultan replied, "You and I both know that this is not routine." When the officers answered that the selection was random, Mr. Sultan asked, "What is my number?" The officers told Mr. Sultan that they could not provide him with that information. One of the officers commented that he remembered Mr. Sultan from previous stops.

30. Mr. Sultan wrote a letter to Mayor Bloomberg on June 8, 2008 to notify him of the racial profiling and to seek his help in bringing it to an end. "Although I have filed multiple complaints, the racial profiling of the NYCPD continues," he wrote. "My constitutional rights as an American are being violated. These searches are degrading and demeaning." That same day, he also wrote to other public figures, including his Senators, Representatives, and City Councilmembers.
31. Around the same time, Mr. Sultan sent a complaint to defendant Raymond Kelly through New York City's "Message to the Commissioner, Police Department" website (<http://www.nyc.gov/html/mail/html/mailnypd.html>). In his message, he informed Commissioner Kelly of the ongoing racial profiling committed by NYPD employees, using much of the same language as in his letter to Mayor Bloomberg.
32. To Mr. Sultan's knowledge, nothing has been done as a result of these letters to impose stricter controls on the Subway Checkpoint Program in order to prevent future racial profiling.
33. On June 8, 2008, Mr. Sultan even emailed the City of New York's "customer service" address. His email was forwarded to Cliff Mulqueen, Deputy



Commissioner of the New York City Commission on Human Rights. Mr. Mulqueen stated that his agency had no jurisdiction over the police and that the CCRB was the proper venue for Mr. Sultan's complaints.

34. On June 9, 2008, Mr. Sultan filed a complaint with the State of New York Office of the Attorney General Civil Rights Bureau. Mr. Sultan never received a response.
35. Mr. Sultan was stopped again on June 24, 2008, at the Borough Hall Station at approximately 7:20 a.m. Because Mr. Sultan was aware of the numerical system that checkpoint officers were supposed to follow, he asked what number he was. One officer said that Mr. Sultan was number eight. While Mr. Sultan was still at the table, the officers stopped and searched another passenger. This second passenger was the third person to enter the station after Mr. Sultan. Mr. Sultan asked, "If I'm number eight, why is his bag being checked?" He didn't get an answer. Mr. Sultan filed a CCRB complaint about the stop.
36. On July 14, 2008, Mr. Sultan wrote another letter to Mayor Bloomberg, attaching a copy of his CCRB complaint about the June 24<sup>th</sup> stop.
37. Between July 2005 and June 2008, Mr. Sultan was stopped at subway bag-search checkpoints twenty-one times.
38. Mr. Sultan has been stopped at different subway entrances, at different times of day, while wearing scrubs, business apparel, and casual clothing, and while carrying several different bags. The only consistent factor among Mr. Sultan's many stops is his race.

39. Since September 2005, Mr. Sultan's partner Kevin has taken the same subway line, from the same entrance, to work every morning at approximately the same time as Mr. Sultan. He generally dresses in business attire and carries a bag large enough to hold his laptop. Kevin has only been stopped once at a subway checkpoint. Kevin is white.
40. For the purposes of the Subway Checkpoint Program, the only difference between Mr. Sultan and his partner Kevin is their race.
41. In the course of filing eight complaints with the CCRB, Mr. Sultan has gone to the CCRB office in person eight times to give additional statements. He has repeatedly contacted the CCRB investigator in charge of his case in order to follow up on his case and move it further along.
42. Mr. Sultan continues to occasionally pass by checkpoints at Borough Hall on his way to work. When he sees checkpoints, he makes eye contact with the checkpoint officers, and they appear to recognize him. On information and belief, the Borough Hall checkpoint officers no longer select Mr. Sultan because he drew attention to himself by challenging the stops.
43. On September 19, 2008, Mr. Sultan filed a timely Notice of Claim.

**The Effects of Racial Profiling on Mr. Sultan**

44. During each stop, Mr. Sultan felt humiliated to be singled out and searched by police officers in public. These stops have all occurred in crowded subway stations, and the searches were visible to many people. Borough Hall Station, in particular, is a busy station near Mr. Sultan's home; he worries that hundreds of people, including his neighbors and others who recognize him, watched him

being searched and assumed that he was a terrorist. On several occasions, the feeling of being singled out because of his apparent race has almost brought him to tears.

45. After several stops, Mr. Sultan began to feel a great deal of anxiety when he saw a police officer or entered the subway, even when there was no checkpoint present. Prior to the searches, Mr. Sultan had never felt anxious about the police or the subway. Given how often Mr. Sultan takes the subway, he has felt this anxiety multiple times a day for several years. Mr. Sultan's heart races when he thinks about being stopped and searched.
46. The stops have also strained Mr. Sultan's relationship with his partner. Mr. Sultan's anxiety and frustration were so intense that Kevin could identify the days on which Mr. Sultan had been stopped without being told, simply from observing his uncharacteristically closed-off demeanor.
47. This repeated racial profiling demeans and degrades Mr. Sultan as a New Yorker and as an American.

#### **The Design of the Subway Checkpoint Program**

48. Through its subway bag search program, the NYPD places checkpoints in a tiny fraction of the subway entrances throughout New York. Each checkpoint lasts for a few hours, during which police officers are supposed to search the bags of select entering passengers.
49. Each checkpoint consists of a group of police officers standing at a folding table, positioned outside a turnstile entrance to the subway system. The checkpoint is thus fully visible to everyone passing through the station.

50. Under the NYPD program, individuals are to be selected for search based solely on a numerical formula, such as every 25<sup>th</sup> passenger.
51. Passengers who are selected to be searched are singled out from the crowd of people passing through the station and called over to the table. Any passenger carrying a bag larger than a wallet may be searched. Officers sift through the selected passenger's bag to get a full view of its contents before letting him or her go. Officers may arrest the selected passenger if they find any contraband. Any passenger who declines a search must leave the subway system and may not reenter, even at another station. For New Yorkers who depend on the subway, the search is effectively mandatory.
52. The supervising officer decides at the beginning of the checkpoint what fraction of passengers to search. The supervisor can, however, change this number at will.

**Serious Flaws in the Subway Checkpoint Program**

53. At the Subway Checkpoint Program's initiation, the NYPD provided no training to checkpoint officers other than a "Finest Message," a brief directive explaining how to operate the checkpoints. This memo was silent about recording selected passengers' demographic information. According to an NYPD official involved in designing the Subway Checkpoint Program, "[B]y not imposing a reporting requirement, we were basically telling them not to do something. The assumption by us is they are not going to do something we don't tell them to do."

54. The NYPD learned, however, that some checkpoint officers were recording some information, including demographic information about passengers selected for search.
55. In response, at the end of July 2005, the NYPD held four training sessions in which NYPD supervisors showed officers in command positions a PowerPoint presentation outlining the Subway Checkpoint Program in more detail.
56. The presentation focused on the London transit bombings as an example of what might happen in New York if the Subway Checkpoint Program fails to deter or detect a terrorist attack. It included multiple photographs of the carnage and of the suspects, who were primarily men of South Asian descent. These training materials emphasized the connection between young men of South Asian appearance and terrorist attacks.
57. The PowerPoint also instructed: "Don't... record any racial, gender, or sex-based data about the individuals inspected." On information and belief, the NYPD continues to prohibit checkpoint officers from recording demographic information about the people they select. This is in stark contrast to the NYPD's stop-and-frisk policy, which requires officers to record the race of every person they stop.
58. The command officers who saw the PowerPoint were expected to communicate the information to checkpoint officers. On information and belief, this is the extent of the training provided to checkpoint officers.
59. On information and belief, the NYPD does not monitor whether checkpoint officers actually select passengers on the basis of the numerical system or on the

basis of impermissible criteria such as race. The Subway Checkpoint Program thus gives checkpoint officers unbridled discretion in the selection of passengers.

60. By forbidding checkpoint officers from collecting anonymous demographic information about the passengers they stop, the Subway Checkpoint Program ensures that the NYPD can neither detect nor correct racial profiling.
61. On information and belief, despite Mr. Sultan's numerous complaints in several different venues, including the Police Department itself, the defendants have failed to take any actions to institute supervision or monitoring of the Subway Checkpoint Program that would prevent racial profiling.

**Mr. Sultan's Experience Can Only Be Explained by Racial Profiling**

62. On information and belief, Mr. Sultan passed through approximately 115 checkpoints between July 2005 and June 2008.
63. On information and belief, at a checkpoint in a busy subway station during rush hour, officers using the numerical system would stop approximately every 25<sup>th</sup> passenger. According to the most recent data publicly available, the Borough Hall Station and Union Square Station are in the top 10% of New York City's busiest subway stations.
64. Given the number of checkpoints Mr. Sultan passed through from July 2005 through June 2008 and given the frequency at which passengers were to be stopped at those checkpoints, the likelihood that Mr. Sultan would have been stopped twenty-one times on the basis of the numerical formula is approximately 1 in 165 million.

65. The only plausible explanation for the number of times Mr. Sultan was stopped is that he was selected because of his race.

**JURISDICTION AND VENUE**

66. This Court has subject-matter jurisdiction over the plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343(3)-(4).
67. This Court has supplemental jurisdiction over all state constitutional and state law claims pursuant to 28 U.S.C. § 1367(a).
68. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)-(2) in that the plaintiff's claims arise in the Eastern District of New York.

**JURY DEMAND**

69. Plaintiff demands a trial by jury in this action on each and every one of his claims.

**FIRST CAUSE OF ACTION**

70. The defendants' actions violated the plaintiff's rights under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

**SECOND CAUSE OF ACTION**

71. The defendants' actions violated the plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

**THIRD CAUSE OF ACTION**

72. The defendants' actions violated the plaintiff's rights under sections 11 and 12 of Article I of the New York Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue a declaratory judgment that the defendants' actions violated the Fourth and Fourteenth Amendments to the United States Constitution and the New York Constitution;
- (3) Provide the injunctive relief necessary to ensure that Mr. Sultan will not again be a victim of racial profiling in the subway checkpoint program, including training, supervision, and monitoring that will ensure that people are selected for searches solely on the basis of the numerical system. Such monitoring should specifically include a requirement that the NYPD have officers record and report anonymous demographic information about those selected for search.
- (4) Award compensatory damages;
- (5) Award attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- (6) Grant any other relief this Court deems appropriate.



Respectfully Submitted,

NEW YORK CIVIL LIBERTIES UNION  
FOUNDATION



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Dated: February 19, 2009  
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\*The plaintiff and the New York Civil Liberties Union Foundation will be seeking leave of court to permit these students to serve as attorneys in this matter.