

Settlement reached in lawsuits against NYPD's illegal surveillance of Muslims

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Late last month, the second of two federal judges approved a revised settlement of two long-standing lawsuits, *Handschu v. Special Services Division* and *Raza v. City of New York*, both filed in 2013, which were brought against the New York Police Department (NYPD) for illegal surveillance of Muslims following the September 11, 2001 terrorist attacks.

The agreement establishes mechanisms which are supposed to permit oversight of police investigations regarding religious and political activities. However, the settlement establishes, in effect, little more than a rubber stamp by a well-vetted member of the legal establishment to legitimize the continuation of wide-ranging spying by the police.

Among the provisions of the agreement are:

- Prohibiting investigations in which race, religion, ethnicity, or national origin is a substantial or motivating factor.
- Requiring articulable and factual information regarding possible unlawful activity before the NYPD can launch a preliminary investigation into political or religious activity.
- Requiring the NYPD to account for the potential effect of investigative techniques on constitutionally protected activities such as religious worship and political meetings.
- Payment to plaintiffs by the city of approximately \$1.67 million to cover legal fees.

According to the settlement, a civilian is to be appointed with the responsibility to oversee adherence to the terms of the agreement, including review of the use of undercover officers and confidential informants and how ongoing investigations are conducted.

The new civilian monitor will sit on the monthly meetings of an NYPD committee that discusses surveillance operations, and will report periodically or

under special circumstances, and have the authority to refer violations to a court for review. The agreement will be in effect for five years. After that, the mayor would require judicial approval for its termination. An earlier version had been rejected as inadequate.

The city announced that the civilian monitor will be Stephen Robinson, a retired federal judge who was once deputy general counsel to the FBI. Muslim groups have voiced criticism of the selection, which was made by the administration of Democratic mayor Bill de Blasio without consultation.

Following the September 11 terrorist attacks, the city relaxed what are known as the Handschu guidelines, established in 1985 to limit the NYPD's activities in collecting intelligence on activities covered by the First Amendment to the Constitution including the free exercise of religion, free speech, press, assembly, and the right to petition the government.

For the decade and a half since 9/11, New York police have conducted a massive spying program under the guise of antiterrorism that profiled members of ethnic and religious groups as a class instead of conducting investigations on the basis of particular evidence of alleged unlawful activities by individuals.

The recent settlement is only the latest in a series of rulings that have permitted or only marginally impeded the NYPD's ability to carry out various forms of surveillance targeted at Muslims and any other group of people or organization.

A report published last year by the city's own Inspector General for the NYPD revealed that the police simply ignored existing reporting and other requirements, including their own internal guidelines, that are supposed to provide checks on and create a record of such activities. This is despite the fact that in 2014 the NYPD formally disbanded the so-called

Demographics Unit, established by a CIA agent working within the police department in 2003, which had been charged with spying on Muslims.

An earlier 2016 court ruling upheld the NYPD's use of the so-called Glomar doctrine, first established at the federal level, authorizing the government to refuse information requests from individuals who suspect that they are under surveillance, by neither confirming nor denying the existence of secret operations, even in response to inquiries under the Freedom of Information Law (FOIL).

The department has a long tradition of violating any formal procedural guidelines, as in its well documented practice of conducting warrantless, and often violent residential searches.

Now, under the Trump administration's sweeping campaign of terror against undocumented workers, the collaboration of local police forces with federal agencies, such as ICE and Customs and Border Patrol, are being intensified. A broad range of racial, ethnic, and religious groups are being targeted with impunity.

As the economic crisis deepens and Trump's anti-working class policies increasingly take effect, the role of the police in suppressing all opposition will continue to expand, regardless of this or any other pro forma 'restraints.'



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