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June 18, 2014

Hon. Joan M. Azrack
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Raza et al. v. City of New York, et al.* 13-cv-3448 (PKC/JMA)

Dear Judge Azrack:

We are writing on behalf of Plaintiffs Hamid Hassan Raza, Masjid Al-Ansar, Asad Dandia, Muslims Giving Back, Masjid At-Taqwa, and Mohammad Elshinaway (“Plaintiffs”) to challenge Defendants’ designations of their produced documents under Paragraph II.D of the Protective Order, and to raise integrally-related issues going to the heart of Plaintiffs’ ability to fairly prosecute their claims that Defendants have violated Plaintiffs’ constitutional rights.

Defendants, to date, have produced only a very limited number of documents in response to Plaintiffs’ document requests. Defendants, however, are already frustrating Plaintiffs’ counsel’s ability to review documents and prepare Plaintiffs’ case by (1) severely redacting documents, and (2) designating numerous documents, including heavily redacted documents, as “Inspection Only” under the Protective Order. Defendants have defended their designations and redactions with generalized claims of “law enforcement privilege” or “privacy.”

Plaintiffs have met and conferred with Defendants to try to resolve this issue without burdening the Court, but have been unable to do so. Plaintiffs, therefore, have been forced to bring this issue to the attention of the Court. Plaintiffs ask that the Court order Defendants to produce unredacted copies of all documents produced to date as “Attorneys Eyes Only” or “Inspection Only.”

Plaintiffs, in the alternative, ask that the Court direct Defendants to produce a log that, on a document-by-document basis, details the privilege claims that Defendants contend support their redactions and “Inspection Only” designations. Plaintiffs further request that the Court set an expedited briefing schedule for adjudication of these issues

that will allow them to be resolved a reasonable time in advance of the August 1 deadline for completion of document production.

A. The Protective Order Provides Strict Protections Regarding Access to Defendants' Confidential Information

The Protective Order in this action includes extremely stringent terms concerning access to, storage, and utilization of designated confidential and protected documents. (*See generally* Dkt. No. 45.) The Protective Order includes three levels of protection, and provides significant protections at every level:

- "Inspection Only Documents": Produced for inspection by Plaintiffs' counsel of record at the offices of Defendants' counsel. Plaintiffs are not entitled to make any electronic or hard copies of the documents. (Protective Order, ¶ III.A, Dkt. No. 45.)¹
- "Attorneys Eyes Only": Access limited only to Plaintiffs' counsel of record and Designated Support Staff who have subscribed to the Protective Order (and for whom the Court granted Defendants the right to perform background checks). Access must be limited by encryption or similar electronic protection. (Protective Order, ¶ III.B, Dkt. No. 45.)
- "Confidential Documents": Access limited only to Plaintiffs' counsel of record and Designated Support Staff. (Protective Order, ¶ III.D, Dkt. No. 45.)

Plaintiffs were hopeful that the three-tiered Protective Order would ensure that Defendants did not over-designate documents, and that Defendants would not severely redact from relevant documents produced to Plaintiffs. Both problems, however, have already arisen in connection with Defendants' first document production.

B. Defendants Have Designated Numerous Documents as "Inspection Only," and Severely Redacted Documents

On April 21, 2014, Defendants produced their first, and thus far only, document production (the "April 21 Production"). Defendants produced 61 documents. Defendants designated 30 of these documents as at least "Attorneys Eyes Only," including 13 documents designated as "Inspection Only." Defendants also redacted all 61 of the produced documents, including significant redactions of even the "Inspection Only" documents securely maintained only at Defendants' counsels' own offices.

Defendants also served a "Categorical Privilege Log" that listed the redacted documents under the following general headings: (1) "Law Enforcement Privilege –

¹ The "Inspection Only" designation is available only to Defendants. (Protective Order, ¶ III.A, Dkt. No. 45.) Plaintiffs are not entitled to designate any of their documents as Inspection Only under the Protective Order. (*Id.*)

Redactions . . . based on the Law Enforcement Privilege because disclosure of the information would reveal sources, methods, and/or past or present subjects of investigation”; and (2) “Documents . . . redacted to protect the privacy of persons or entities referenced therein.” (4/21/14 Categorical Privilege Log, Exhibit A.) In short, Defendants invoked overlapping and generalized “law enforcement” and “privacy” privileges with respect to the various redactions made in 47 of the 61 documents produced. Plaintiffs, before Defendants’ April 21 Production, agreed that Defendants could produce a privilege log that appropriately categorized documents based on withheld information and claims of privilege. Plaintiffs, however, did not agree that Defendants did not have to distinguish between the privileges invoked for each instance of redacted and withheld information. Plaintiffs also did not agree that Defendants did not have to carry their burden of providing information sufficient to even assess their privilege claims as required by Federal Rule 26(b)(5)(A) and the governing case law.

In addition to the “Categorical privilege Log,” Defendants provided a “Redaction Key” [REDACTED] (4/21/14 Redaction Key, Exhibit B.) Plaintiffs requested that Defendants number code and key the redacted names of sources to indicate whether the source is a uniformed NYPD officer, undercover NYPD officer, confidential informant, JTTF member, other law enforcement officer, or a community member being interrogated or de-briefed.³ Defendants refused to provide that information.

Plaintiffs, pursuant to Paragraph II.D of the Protective Order, challenged Defendants’ confidentiality designations. (5/23/14 letter from Beth Haroules to Peter Farrell, Exhibit C.)⁴ Plaintiffs also challenged Defendants’ over-redaction of documents. The parties have met and conferred on numerous occasions, but have been unable to resolve this dispute.

² Defendants’ Redaction Key is inadequate because, for example, Plaintiffs are entitled to information about whether any subjects of investigation identified in this list are Muslim individuals or organizations, as directed by Judge Chen’s November 22, 2013 Order. Plaintiffs are also entitled to information about non-subjects whose names have been redacted and who served as sources for the factual information contained in the April 21 Production.

³ These number-coded sources should be traceable across documents and investigations, in the same way that Plaintiffs understand the number-coded subjects of Intelligence Division investigations have been consistently identified across the documents produced to date.

⁴ The parties have met and conferred regarding Plaintiffs’ designations and redactions on numerous occasions, including June 3, June 5, June 6, June 9, June 11, and June 13. On June 9, Defendants agreed to remove redactions for certain Intelligence Division unit and division names specified in organizational charts. On June 13, Defendants also proposed a limited unredaction of some — but not all — names of individuals who are part of the institutional Plaintiffs’ leadership, but refused Plaintiffs’ request to unredact the names of any other leaders, members, or congregants of the institutional Plaintiffs. Defendants’ proposals do not fully address Plaintiffs’ concerns.

C. Defendants' Cannot Justify their Designations and Redactions with Generalized Claims of "Law Enforcement" and/or "Privacy"

Plaintiffs recognize that the "law enforcement privilege" may be implicated by information responsive to certain of Plaintiffs' document requests. Defendants, however, cannot simply invoke a generalized "law enforcement privilege" to justify all of their extensive redactions (and "Inspection Only" designations).

The federal law enforcement privilege is a qualified privilege. The purpose of the law enforcement privilege is "to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation." *United States v. Myerson*, 856 F.2d 481, 483–84 (2d Cir. 1988). It is well-established that "the party asserting the law enforcement privilege bears the burden of showing that the privilege applies." *Dinler v. City of New York*, 607 F.3d 923, 944 (2d Cir. 2010); *see also Pegoraro v. Marrero*, 2012 WL 1948887, at *8 (S.D.N.Y. May 29, 2012).

Significantly, "the party asserting the privilege must demonstrate that the documents contain information that the law enforcement privilege is intended to protect." *Dinler*, 607 F.3d at 948-49. In particular:

[T]he party asserting the privilege must show that the documents in question contain

- (1) information pertaining to law enforcement techniques and procedures,
- (2) information that would undermine the confidentiality of sources,
- (3) information that would endanger witness and law enforcement personnel,
- (4) information that would undermine the privacy of individuals involved in an investigation, or
- (5) information that would seriously impair the ability of a law enforcement agency to conduct future investigations.

Dinler, 607 F.3d at 948-49 (internal quotations omitted). If the party asserting the privilege carries that burden, then "the district court must balance the public interest in nondisclosure against 'the need of a particular litigant for access to privileged information.'" *Id.* at 948-49 (quoting *In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir. 1988)).

Here, Defendants have fallen far short of meeting their initial burden as well as their obligations under Federal Rule 26(b)(5)(A). Defendants failed entirely to meet their burden of making a specific *prima facie* showing for each document, and for the

information redacted in each document, that the privilege applies to the withheld information. The mere listing of documents in the Defendants' Categorical Privilege Log and Defendants' Redaction Key does not provide Plaintiffs with information sufficient to determine whether Defendants have made a *prima facie* showing, let alone a meaningful opportunity to evaluate and challenge those claims.

Plaintiffs cannot meaningfully challenge the redactions, and the Court cannot fairly assess and adjudicate Defendants' broad privilege claims, until Defendants come forward with specific detailed claims of privilege required under Federal Rule 26(b)(5)(A) and under the case law concerning the law enforcement privilege. *Cf. Stinson v. City of New York*, 2014 WL 1243796 (S.D.N.Y. March 24, 2014) (directing defendants to provide specific privilege log so plaintiff could assess and litigate the assertion of law enforcement privilege); *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1342 (D.C.Cir.1984) ("Until the claim of privilege has been presented to a district court with appropriate deliberation and precision and the duty of the demanding party to show his or her need for disclosure has been triggered, and until that duty has been discharged by the demanding party, the district court is not equipped to engage in the task of identifying and weighing the competing interests.").

Finally, it is particularly important to protect Plaintiffs' ability to meaningfully consider and challenge Defendants' designations and redactions here because Plaintiffs have alleged violations of their constitutional rights, and the information may be produced pursuant to a very stringent Protective Order. *See, e.g., Floyd v. City of New York*, 739 F. Supp. 2d 376, 381 (S.D.N.Y. 2010) (emphasizing that "whether a lawsuit involves a matter of public concern such as civil rights" will "usually support disclosure," and that a protective order "can mitigate many if not all of the oft-alleged injuries to the police and law enforcement").

D. Defendants' Over-Designations and Redactions Severely Prejudice Plaintiffs' Ability to Prosecute their Claims

Plaintiffs, over the past several weeks, have been persistently trying to resolve open discovery issues with Defendants and may be forced to raise additional disputes with the Court in the coming days. Plaintiffs, however, believe that Defendants' over-redaction and over-designation of documents require the immediate intervention of the Court. Defendants' over-redaction of information hampers Plaintiffs' ability to conduct discovery, further investigate the merits of the claims and defenses, and prepare for trial. Defendants' over-designation of documents as "Inspection Only" only adds to this burden.

To be clear, Plaintiffs are sensitive to the fact that Defendants might properly designate documents produced in this case as "Inspection Only" and, in fact, the Protective Order provides for such an accommodation so that extremely sensitive information may be so designated. Plaintiffs also understand that certain information in this case may properly be withheld, after the Court's adjudication, based on law enforcement privilege. Plaintiffs, however, object to Defendants redacting all of their produced documents while also producing many of those redacted documents as

“Inspection Only” — and then refusing to provide the information required by Federal Rule 26(b)(5) and to carry their burden under *Dinler* and its progeny.

* * *

For the foregoing reasons, Plaintiffs respectfully request that the Court order Defendants to produce unredacted versions of all documents produced to date as “Attorneys Eyes Only” or “Inspection Only.”

In the alternative, Plaintiffs respectfully request that this Court direct Defendants to produce a log that, on a document-by-document basis, details the privilege claims that Defendants contend support their redactions and “Inspection Only” designations. Plaintiffs further request that the Court set an expedited briefing schedule for adjudication of these issues that will allow them to be resolved a reasonable time in advance of the August 1 deadline for completion of document production.

We thank the Court for its consideration of this request. Plaintiffs can provide any further information that the Court believes would be useful in considering this request, or make themselves available for a teleconference at the Court’s convenience.

Respectfully submitted,

/s/Beth Haroules

Beth Haroules

cc: All Counsel of Record (*via ECF*)

Hamid Hassan Raza, et al., v. City of New York, et al.,
13 Civ. 3448 (PKC) (JMA)
Categorical Privilege Log for Redactions Contained in
April 21, 2014 Production¹

Law Enforcement Privilege – Redactions in documents beginning with the following Bates Numbers are based on the Law Enforcement Privilege because disclosure of the information would reveal sources, methods, and/or past or present subjects of investigation.

RAZA-DEF-
INSP_00000001
RAZA-DEF-
INSP_00000004
RAZA-DEF-
INSP_00000006
RAZA-DEF-
INSP_00000011
RAZA-DEF-
INSP_00000016
RAZA-DEF-
INSP_00000021
RAZA-DEF-
INSP_00000024
RAZA-DEF-
INSP_00000028
RAZA-DEF-
INSP_00000032
RAZA-DEF-
INSP_00000042
RAZA-DEF-
INSP_00000048
RAZA-DEF-
INSP_00000057
RAZA-DEF-
INSP_00000059
RAZA-DEF-
INSP_00000067
RAZA-DEF-
INSP_00000076
RAZA-DEF-
INSP_00000084

¹ Categorical Privilege Log was agreed to by plaintiffs' counsel on March 6, 2014.

Law Enforcement Privilege - Redactions in documents beginning with the following Bates Numbers are based on the Law Enforcement Privilege because disclosure of the information would reveal sources, methods, and/or past or present subjects of investigation.

RAZA-DEF-
INSP_00000095
RAZA-DEF-
AEO_00000001
RAZA-DEF-
AEO_00000003
RAZA-DEF-
AEO_00000005
RAZA-DEF-
AEO_00000007
RAZA-DEF-
AEO_00000009
RAZA-DEF-
AEO_00000011
RAZA-DEF-
AEO_00000013
RAZA-DEF-
AEO_00000015
RAZA-DEF-
AEO_00000017
RAZA-DEF-
AEO_00000019
RAZA-DEF-
AEO_00000021
RAZA-DEF-
AEO_00000023
RAZA-DEF-
AEO_00000025
RAZA-DEF-
CONF_00000001
RAZA-DEF-
CONF_00000018
RAZA-DEF-
CONF_00000019
RAZA-DEF-
CONF_00000020
RAZA-DEF-
CONF_00000021
RAZA-DEF-
CONF_00000022
RAZA-DEF-
CONF_00000023

Law Enforcement Privilege - Redactions in documents beginning with the following Bates Numbers are based on the Law Enforcement Privilege because disclosure of the information would reveal sources, methods, and/or past or present subjects of investigation.

RAZA-DEF-
CONF_00000024
RAZA-DEF-
CONF_00000025
RAZA-DEF-
CONF_00000026
RAZA-DEF-
CONF_00000027
RAZA-DEF-
CONF_00000028
RAZA-DEF-
CONF_00000029
RAZA-DEF-
CONF_00000030
RAZA-DEF-
CONF_00000031
RAZA-DEF-
CONF_00000032
RAZA-DEF-
CONF_00000033
RAZA-DEF-
CONF_00000034
RAZA-DEF-
CONF_00000035
RAZA-DEF-
CONF_00000036
RAZA-DEF-
CONF_00000037
RAZA-DEF-
CONF_00000038
RAZA-DEF-
CONF_00000039
RAZA-DEF-
CONF_00000040
RAZA-DEF-
CONF_00000041
RAZA-DEF-
CONF_00000042
RAZA-DEF-
CONF_00000043
RAZA-DEF-
CONF_00000044

Law Enforcement Privilege: Redactions in documents beginning with the following Bates Numbers are based on the Law Enforcement Privilege because disclosure of the information would reveal sources, methods, and/or past or present subjects of investigation.

RAZA-DEF-
CONF_00000045
RAZA-DEF-
CONF_00000046
RAZA-DEF-
CONF_00000047
RAZA-DEF-
CONF_00000048
RAZA-DEF-
CONF_00000049

Documents Beginning With The Following Bates Numbers have been redacted to protect the Privacy of persons or entities referenced therein.

RAZA-DEF-
INSP_00000001
RAZA-DEF-
INSP_00000004
RAZA-DEF-
INSP_00000006
RAZA-DEF-
INSP_00000011
RAZA-DEF-
INSP_00000016
RAZA-DEF-
INSP_00000021
RAZA-DEF-
INSP_00000024
RAZA-DEF-
INSP_00000028
RAZA-DEF-
INSP_00000032
RAZA-DEF-
INSP_00000042
RAZA-DEF-
INSP_00000048
RAZA-DEF-
INSP_00000057
RAZA-DEF-
INSP_00000059

Documents Beginning With The Following Bates Numbers Have been redacted to protect the Privacy of persons or entities referenced therein.

RAZA-DEF-
INSP_00000067
RAZA-DEF-
INSP_00000076
RAZA-DEF-
INSP_00000084
RAZA-DEF-
INSP_00000095
RAZA-DEF-
AEO_00000001
RAZA-DEF-
AEO_00000003
RAZA-DEF-
AEO_00000005
RAZA-DEF-
AEO_00000007
RAZA-DEF-
AEO_00000009
RAZA-DEF-
AEO_00000011
RAZA-DEF-
AEO_00000013
RAZA-DEF-
AEO_00000015
RAZA-DEF-
AEO_00000017
RAZA-DEF-
AEO_00000019
RAZA-DEF-
AEO_00000021
RAZA-DEF-
AEO_00000023
RAZA-DEF-
AEO_00000025
RAZA-DEF-
CONF_00000018
RAZA-DEF-
CONF_00000019
RAZA-DEF-
CONF_00000021
RAZA-DEF-
CONF_00000022
RAZA-DEF-
CONF_00000023

Documents Beginning With The Following Bates Numbers have been redacted to protect the Privacy of persons or entities referenced therein

RAZA-DEF-
CONF_00000024
RAZA-DEF-
CONF_00000031
RAZA-DEF-
CONF_00000032
RAZA-DEF-
CONF_00000033
RAZA-DEF-
CONF_00000035
RAZA-DEF-
CONF_00000036
RAZA-DEF-
CONF_00000042
RAZA-DEF-
CONF_00000044
RAZA-DEF-
CONF_00000045
RAZA-DEF-
CONF_00000046
RAZA-DEF-
CONF_00000047
RAZA-DEF-
CONF_00000049

Protected Material Subject to Protective Order – Attorney's Eyes Only

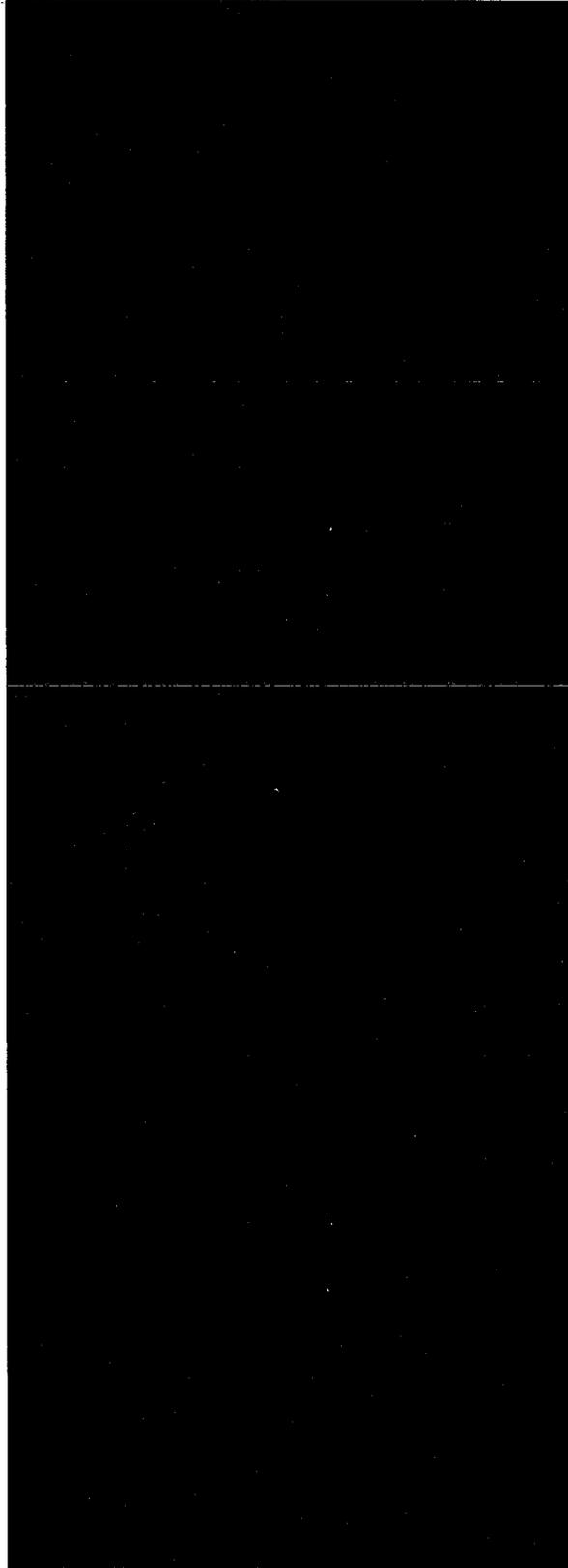
Hamid Hassan Raza, et al., v. City of New York, et al.,
13 Civ. 3448 (PKC) (JMA) – Redaction Key for
April 21, 2014 Production

Pursuant to the Court's Order Dated November 22, 2013, defendants provide the following information:



¹ For each name of an entity or individual withheld on the basis of Law Enforcement Privilege or privacy, defendants have assigned a corresponding identifying number to that entity or individual. On each occasion in a document when that entity or individual's name has been redacted, defendants have superimposed the corresponding number identifier over the redaction.

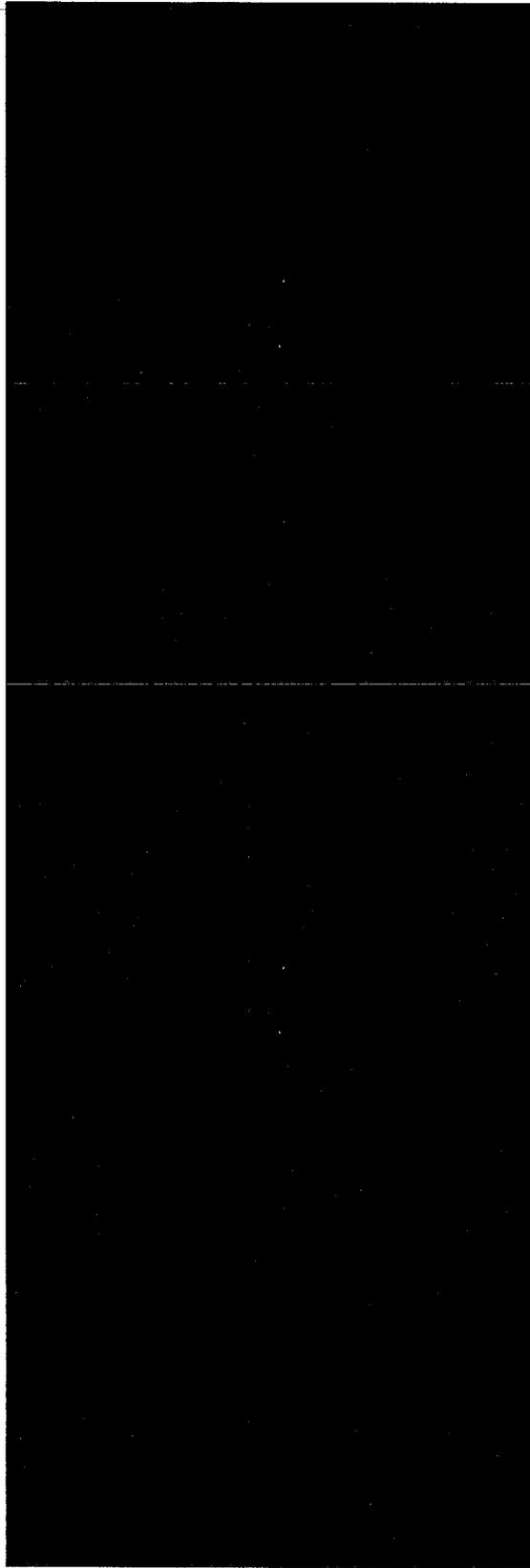
Protected Material Subject to Protective Order – Attorney's Eyes Only



Protected Material Subject to Protective Order – Attorney's Eyes Only



Protected Material Subject to Protective Order – Attorney's Eyes Only



Protected Material Subject to Protective Order – Attorney's Eyes Only



Protected Material Subject to Protective Order – Attorney's Eyes Only





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May 23, 2014

Peter G. Farrell, Esq.
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, New York

Re: *Raza et al. v. City of New York, et al.* 13-cv-3448 (PKC/JMA)

Dear Mr. Farrell:

I write on behalf of Plaintiffs' counsel concerning the 61 documents produced by Defendants on April 21, 2014 (the "April 21, 2014 Production").

Pursuant to Section II(D) of the Stipulation and Protective Order for the Production and Exchange of Confidential Materials (the "Protective Order"), Plaintiffs dispute the various Protective Order designations that Defendants have applied to the April 21, 2014 Production. Our concerns regarding Defendants' designations are exacerbated by our belief that Defendants have over-redacted the documents contained in that Production. Defendants have redacted substantial amounts of information from these documents, and have also designated many of them at the highest level possible, preventing Plaintiffs' counsel from both using and accessing information critical to this litigation. Finally, Plaintiffs have concerns and questions with respect to the Categorical Privilege Log and Redaction Key proffered by Defendants as part of the April 21, 2014 Production. We propose to discuss these concerns and questions at the meet and confer session triggered by this objection to Defendants' designations.

1. Over-Redactions of the April 21, 2014 Production

We address the over-redaction issue first, given its significance to the subsequent discussion of Defendants' designations.

We believe that Defendants have inappropriately over-redacted the documents contained in the April 21, 2014 Production. Among other things, Defendants appear to have redacted the names of individuals in our clients' leadership, membership, or

congregations.¹ Defendants may also have redacted our clients' names, although this appears less clear. Defendants have also uniformly redacted: (1) the numbers corresponding to individual investigations, such as TEI, FI, and PI numbers;² (2) specific dates, including months and dates of the month;³ (3) the names and/or titles of the authors of various documents.⁴ With respect to the organization charts contained in the documents designated "Confidential," defendants have redacted names and/or titles within various organizational charts;⁵ as well as the names of entire sub-units or operational divisions within the NYPD Intelligence Division⁶ and description of those units' functions or missions.⁷

We object to these redactions as unnecessary and obstructive. Among other things, these redactions restrict Plaintiffs' ability to: (a) determine the scope and duration of investigations—including, apparently, investigations of organizational Plaintiffs' leaders, members, or congregants—which is a core issue in this litigation; (b) determine who conducted and authorized those investigations; (c) understand the organizational structure of the Intelligence Division and the responsibility of various sub-units in conducting surveillance and investigations. Relatedly, there is an obvious interplay between the redactions within documents and the designations of those documents. If documents are designated as "Inspection Only," there is no need for the redactions. If, however, any of the redactions were to be maintained, there is little or no justification for the highly restrictive designation of "Inspection Only." Because the redactions are unnecessary and impede our ability to litigate our clients' claims, they should be removed.

2. Disputed Designations in the April 21, 2014 Production

a. Inspection Only

We object to Defendants' designation of 17 documents as "Inspection Only."⁸ ¶

As a result, there is no legitimate basis for barring Plaintiffs' counsel from discussing this material with their clients when necessary to fully and adequately litigate their claims. Moreover, as noted above, Defendants have redacted

¹ See, e.g., RAZA-DEF-INSP_00000001.

² See, e.g., RAZA-DEF-INSP_00000021; RAZA-DEF-INSP_00000048; RAZA-DEF-AEO_00000001; RAZA-DEF-AEO_00000009.

³ See, e.g., RAZA-DEF-INSP_00000021 (note within this document, there are inconsistent redactions of months/dates, i.e. "On May [redacted], 2003" vs. "On [redacted] 2003"); RAZA-DEF-INSP_00000013; RAZA-DEF-AEO_00000003; RAZA-DEF-AEO_00000019.

⁴ See, e.g., RAZA-DEF-INSP_00000014; RAZA-DEF-INSP_00000019; RAZA-DEF-AEO_00000005; RAZA-DEF-AEO_00000010.

⁵ See, e.g., RAZA-DEF-CONF_00000023; RAZA-DEF-CONF_00000021.

⁶ See, e.g., RAZA-DEF-CONF_00000030; RAZA-DEF-CONF_00000035.

⁷ See, e.g., RAZA-DEF-CONF_00000006; RAZA-DEF-CONF_00000007.

⁸ These 17 documents are Bates stamped RAZA-DEF-INSP_00000001-00000096.

a substantial amount of material from these documents, based on what we understand to be the “law enforcement privilege” and/or a “privacy privilege.” Should any of the existing redactions stand, there is little reason to maintain these documents under the restrictive and onerous conditions dictated by Defendants’ “Inspection Only” designation. Plaintiffs ask that these documents be re-designated as “Confidential.”

b. Attorneys’ Eyes Only

We object to the designation of 13 documents as “Attorneys’ Eyes Only.”⁹ As with the “Inspection Only” materials, the redactions in these documents are substantial and appear to rest on the “law enforcement privilege” and/or a “privacy privilege.”

[REDACTED]

[REDACTED] We do not believe there is a basis for the “Attorneys’ Eyes Only” designation that Defendants have applied to these documents and ask that they be re-designated as “Confidential.”

c. Confidential

We object to the designation of 31 documents as “Confidential.”¹⁰ As with all the other documents in the April 21, 2014 Production, our understanding is that the substantial redactions within these documents rest on the “law enforcement privilege” and/or a “privacy” privilege. [REDACTED]

[REDACTED]

[REDACTED]¹¹ The redactions of names, officer ranks, as well as entire sub-units or operating divisions and their purposes or missions are so extensive as to effectively eliminate any information other than the basic skeleton structure of the Intelligence Division. The “Confidential” designation attached to these documents is unnecessary and improper, and we ask that no designation be applied to these documents.

3. Privilege Log Assertions

Defendants have provided us with both a “Categorical Privilege Log for Redactions Contained in the April 21, 2014” (“Categorical Log”) and a “Redaction Key for April 21, 2014 Production” (“Redaction Key”). In the Categorical Log, defendants have asserted an overlapping “law enforcement privilege” and “privacy privilege” with

⁹ These 13 documents are Bates stamped RAZA-AEO_0000001-00000026.

¹⁰ These 31 documents are Bates stamped RAZA-CONF_0000001-00000049.

¹¹ Bates stamped RAZA-DEF-CONF_0000001-00000017. *See, e.g.*, RAZA-DEF-CONF_00000006; RAZA-DEF-CONF_00000007.

respect to the various redactions made in 46 of the 61 documents produced.¹² Further, defendants have identified 193 entities or individuals whose names have been “withheld on the basis of Law Enforcement Privilege *or* privacy” (emphasis added). As noted above, every single document in the April 21, 2014 Production contains numerous redactions.¹³ For the majority of redactions set forth in each document, we are unable to identify—and should not have to speculate as to—which redactions are based on either, or both, the “law enforcement privilege” and a “privacy privilege.” When we agreed to the concept of a “categorical privilege log,” it certainly was not our understanding that defendants would assert multiple privileges within a particular document without indicating which privilege(s) applied to which redaction. To the contrary, we sought to clarify that this would not be the case. Without conceding whether or not the redactions are warranted, the Categorical Log and the Redaction Key should be revised so that it is clear which privilege(s) Defendants assert with respect to documents where more than one privilege has been asserted.

Finally, the “Redaction Key” should be revised to provide additional information necessary for Plaintiffs to litigate this case meaningfully. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As an initial matter, plaintiffs are entitled to information about whether any subjects of investigation identified in this list are Muslim individuals or organizations, as directed by the Court’s November 22, 2013 Order. Plaintiffs are also entitled, however, to information about non-subjects whose names have been redacted and who served as sources for the factual information contained in the April 21, 2014 Production. The redacted names of sources should be number coded and keyed to identify whether the source is a uniformed NYPD officer, undercover NYPD officer, confidential informant, JTTF member, other law enforcement officer, or a community member being interrogated or de-briefed.¹⁴ These number-coded sources must be traceable across documents and investigations, in the same way that we understand the number-coded subjects of Intelligence Division investigations have been consistently identified across the documents produced to date.

Plaintiffs are available to meet and confer on all of these issues on Friday, May 30, 2014.

Very truly yours,
Beth Haroules
Beth Haroules

¹² Only the law enforcement privilege is asserted with respect to documents Bates stamped RAZA-DEF-CONF 00000025-30, 00000034, 00000036-41, 00000043, and 00000048.

¹³ See, e.g., RAZA-DEF-INSP_00000016 (4 page document containing 43 redactions); RAZA-DEF-AEO_00000023 (2 page document containing 12 redactions); RAZA-DEF-CONF_00000045 (1 page organizational chart containing 50 redactions).

¹⁴ As noted above, we do not concede that defendants’ redaction of source names is appropriate.

Cc: Anthony DiSenso, Esq.
Alexis Leist, Esq.
Odile Farrell, Esq.
Cheryl Shammass

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