

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
HAMID RAZA, : 13-cv-03448-PKC-JMA
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 : U.S. Courthouse
 : Brooklyn, New York
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 : July 9, 2014
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TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY CONFERENCE
BEFORE THE HONORABLE JOAN M. AZRACK
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Civil Cause for Discovery
2 Conference, docket number 13-cv-3448, Raza v. City of New
3 York.

4 Lead counsel, state your name please.

5 MS. SHAMSI: Good afternoon, your Honor.

6 Hina Shamsi, counsel for plaintiffs.

7 MR. FARRELL: And good afternoon, your Honor.

8 Peter Farrell on behalf of New York City Law Department
9 on behalf of defendants.

10 THE COURT: Hi, good afternoon. Let me just
11 get organized here a minute.

12 Okay. I wanted to bring you all in to discuss
13 some discovery issues. I think it's been too long since
14 we've been together and I think we need to create some
15 momentum and get discovery moving a little more quickly
16 than it has been moving.

17 I have a couple of items on my agenda that I
18 would like to discuss first and then I'll hear from each
19 of you. And you have the whole afternoon. All right.

20 So the first thing on my agenda is this issue
21 that seems to be outstanding about whether Al-Ansar and
22 MGB are asserting economic injuries. Ms. Shamsi?

23 MS. SHAMSI: Yes, your Honor and I'm going to
24 be joined by my colleague, Ashley Gorski, to speak to a
25 couple of these issues. If I may, I'd like to hand to

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1 the Court proposed stipulations that we've provided to
2 the defendants on these issues, some time ago, to which
3 we have never had a response --

4 THE COURT: Oh, okay.

5 MS. SHAMSI: -- so this will assist I think
6 in --

7 THE COURT: Okay.

8 (Pause)

9 THE COURT: Mr. -- oh.

10 MS. GORSKI: Your Honor, Ashley Gorski for
11 plaintiffs.

12 Plaintiffs sent these proposed stipulations to
13 defendants on April 30th and have subsequently sought a
14 response on more than one occasion and we have not yet
15 received a response to the proposed stipulations.

16 They've rendered the document request that the
17 Court identified in its order completely irrelevant as to
18 Masjid At-Taqwa and Masjid Al-Ansar.

19 THE COURT: Well, let's hear from them and then
20 I'll hear from you, if I need to. Okay.

21 So, Mr. Farrell?

22 MR. FARRELL: Your Honor?

23 THE COURT: These are a welcome sight.

24 MR. FARRELL: Your Honor, my colleagues are
25 also going to be responding to individual arguments.

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1 THE COURT: All right.

2 MR. FARRELL: So I am going to have Ms. Shammass
3 address this issue.

4 THE COURT: Okay.

5 MS. SHAMMAS: Good afternoon, your Honor. This
6 is Cheryl Shammass.

7 These stipulations are problematic for all the
8 reasons that were articulated, both during the court
9 conference and in the motion that we had submitted. The
10 plaintiffs are attempting to narrow the scope of their
11 claims in the stipulation which are vastly different from
12 what's being alleged in the complaint.

13 So for example, the -- well, first by way of
14 example, let's just look at number 6. When the --

15 THE COURT: Well, no, let's look at 1 through 5
16 first.

17 MS. SHAMMAS: Okay. So just by way of -- the
18 order that the Court had issued yesterday, we think is
19 far more effective in terms of narrowing what the scope
20 of the alleged injury would be because we are prepared to
21 -- the plaintiffs represented on the record that no
22 plaintiffs other than Muslims Giving Back are alleging an
23 economic injury and Masjid Al-Ansar is alleging an
24 economic injury with the limited extent to the purchase
25 of the camera installation. That is at most that we're

1 prepared to narrow the scope of their allegations.

2 So the allegations -- the proposed stipulations
3 that they have are far too -- I don't think they really
4 address the concerns and the issues that we've raised
5 both in court and in the motions.

6 THE COURT: Now I'll hear from you.

7 MS. GORSKI: Your Honor, we're happy to first
8 address the stipulations that the Court identified in its
9 order yesterday but we see no reason that plaintiffs
10 should be barred from clarifying and refining the
11 allegations in the complaint that concern other document
12 requests made by the plaintiffs.

13 THE COURT: No, I agree.

14 MS. GORSKI: We don't understand why plaintiffs
15 would be barred from stipulating to particular facts.

16 THE COURT: I mean let me get this straight.
17 In a way, you're stipulating certain allegations out of
18 the complaint.

19 MS. GORSKI: That is correct. That we were
20 refining our allegations.

21 THE COURT: I mean you can't have it both ways.
22 You can't say we are say At-Taqwa does not allege that it
23 has suffered a decline in donations resulting from the
24 surveillance and then say but we've suffered economic
25 harm.

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1 MS. GORSKI: No.

2 THE COURT: The door is still going to be open
3 to discovery then.

4 MS. GORSKI: Absolutely not. This would be the
5 final word on the allegations that plaintiffs are making
6 with respect to the injuries discussed in the proposed
7 stipulations.

8 THE COURT: Right. So, with respect to At-
9 Taqwa, you would say they don't need financial
10 information.

11 MS. GORSKI: Precisely.

12 THE COURT: And you would say, Ms. Shammass, we
13 need financial information because?

14 MS. SHAMMAS: Because it is --

15 THE COURT: You're taking the economic injury
16 out of the complaint -- out of their allegations.

17 MS. SHAMMAS: Right, so the defendants are not
18 seeking the discovery of their financials based upon
19 their allegation of economic injury. The defendants had
20 articulated a basis for that information based upon the
21 conduct that Masjid At-Taqwa has engaged in.

22 So they have -- At-Taqwa has engaged in
23 financial dealings which have resulted in NYPD looking at
24 that particular entity --

25 THE COURT: But then the financial dealings

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1 you're probing have to relate to something other than
2 alleged economic harm.

3 MS. SHAMMAS: That is correct.

4 THE COURT: So what are you -- why do you need
5 it?

6 MS. SHAMMAS: We need it in order to probe into
7 their conduct -- their conduct as it relates to their
8 financial dealings, regardless of whether or not they
9 made a claim of economic injury.

10 So it's immaterial to the case to the
11 plaintiff's -- let me rephrase that.

12 Regardless of whether Masjid At-Taqwa is
13 alleging economic injury --

14 THE COURT: Which they're not.

15 MS. SHAMMAS: Right. The requests for their
16 financial information is relevant not to that claim but
17 as relevant to the conduct that Masjid At-Taqwa has
18 engaged in in connection with their financial dealings.
19 So Masjid At-Taqwa has, for example, channeled funds from
20 its organization to foreign terror organizations. So
21 that is just one example of its conduct that it has
22 engaged in which warrant these types of discovery
23 demands.

24 THE COURT: So it goes to conduct, not to a
25 reduction in their financial health.

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1 MS. SHAMMAS: That's correct, your Honor.

2 MS. GORSKI: Your Honor, it goes precisely to
3 defendant's impermissible theory of retroactive
4 justification --

5 THE COURT: Yes, I know.

6 MS. GORSKI: -- that the plaintiffs set forth
7 in their briefing. It has no basis in law and cannot
8 serve as a basis for document requests.

9 THE COURT: All right. I mean your retroactive
10 justification, I think is what you would call
11 corporation; is that right?

12 MS. SHAMMAS: I would limit it to simply
13 corroboration. We haven't --

14 THE COURT: Corroboration plus.

15 MS. SHAMMAS: Correct.

16 THE COURT: Okay.

17 MS. GORSKI: But, your Honor, it is important
18 to note that it is not corroboration in -- with respect
19 to any allegation that plaintiffs have made. It's what
20 from the NYPD's perspective, corroboration of information
21 that is in their files and this case must be decided on
22 the basis of --

23 THE COURT: Which you're going to get.

24 MS. GORSKI: But -- yes, your Honor, but this
25 case must be decided on the basis of what the NYPD

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1 actually knew at the time --

2 THE COURT: I understand that.

3 MS. GORSKI: -- in which it was engaged in
4 surveillance investigations.

5 THE COURT: All right. Is that your position?
6 Is that the City's position on Al-Ansar, as well?

7 MS. SHAMMAS: The City's position with respect
8 to the discovery of Al-Ansar's financials is that we are
9 not seeking the financials of that organization. We have
10 only sought information concerning the purchase of the --
11 of information concerning the installation, the purchase
12 of the camera equipment.

13 THE COURT: Okay.

14 MR. FARRELL: Your Honor, can I just be heard?
15 So it's Peter Farrell.

16 Just -- I know it's been a little while since
17 we were here the last time, but in response to that
18 retroactive justification, just to remind the Court, the
19 issue from the defendant's perspective is is that
20 plaintiff's counsel are seeking to take issue with the
21 veracity of facts that may be contained or are contained
22 in the NYPD documents.

23 It's defendant's position all along that that
24 is not a proper analysis for this case. They're making a
25 policy claim and they need to show that it was by the

1 decision-makers, the information they had, whether that
2 was for a legitimate law enforcement purpose or not. The
3 veracity of a particular fact of whether somebody was at
4 a particular place on one day or a different day is not
5 -- and from defendant's viewpoint, is not germane to the
6 dispositive issue in this case.

7 However, defendants have been put in the
8 position because plaintiffs continue to say that they
9 want to take issue with individual facts contained in the
10 NYPD documents, that then we need the information to show
11 that they're taking issue with it is not accurate. So we
12 disagree with the terminology of retroactive
13 justification. I want no doubt for the Court that is not
14 why we are seeking the information.

15 THE COURT: I understand your position.

16 MR. FARRELL: Okay.

17 THE COURT: Okay. So on Al-Ansar --

18 MS. GORSKI: Your Honor, if I may, just a brief
19 response to Mr. Farrell. Plaintiffs are not seeking to
20 contest the veracity of the facts in the NYPD's files.
21 Plaintiffs simply wish to retain the ability to contest
22 facts that they may encounter that may be inaccurate and
23 we'll note for the Court that to date, plaintiffs (sic)
24 have produced fewer than 200 pages of documents. So we
25 have not yet reached the stage of discovery in which it

1 would appropriate to contest those facts because we have
2 a limited set of facts before us.

3 THE COURT: Okay. So now let me just get this
4 straight. On --

5 MS. GORSKI: Excuse me. I misspoke.
6 Defendants have produced fewer than 200 documents.

7 THE COURT: I know that.

8 MS. GORSKI: Thank you.

9 THE COURT: So on Al-Ansar, can we agree, it's
10 just on the video?

11 MS. SHAMMAS: The question is do we agree that
12 we're not seeking information beyond --

13 THE COURT: Yes.

14 MS. SHAMMAS: That is what the current requests
15 seeks. We reserve our right to seek additional
16 information concerning the purchase of the video or any
17 related information concerning that but we're not seeking
18 the type of discovery --

19 THE COURT: Right. Okay. Fine.

20 MS. SHAMMAS: -- okay.

21 THE COURT: What about Raza -- on Raza, number
22 3?

23 MS. SHAMMAS: And we take the same position
24 with respect to Imam Raza.

25 THE COURT: Okay. Same with 4?

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1 MS. SHAMMAS: Mr. Dandia?

2 THE COURT: Um-hum.

3 MS. SHAMMAS: Yeah, and just to be clear on
4 that one also, the -- going back to Mr. Raza, the
5 complaint I believe alleges that he paid for the
6 installation and the purchase of the video camera. Just
7 so there's no mistake that it's clear that he did so on
8 behalf of the organization and not himself personally.

9 MS. SHAMSI: Mr. Dandia?

10 THE COURT: Okay. All right. 4?

11 MS. SHAMMAS: Correct with Mr. Dandia, we take
12 the same position.

13 THE COURT: 5?

14 MS. SHAMMAS: And correct as far as Mr.
15 Elshinawy is concerned with the reservation that Mr.
16 Elshinawy claimed in the complaint that he doesn't derive
17 any benefit or monetary compensation for his work. So we
18 reserve the right to seek additional discovery, perhaps
19 if during the deposition additional discovery comes out
20 related to that particular allegation but currently we're
21 not seeking his financials as it stands.

22 THE COURT: All right. And what about 6?

23 MS. SHAMMAS: Well, 6 states that we agree that
24 Mr. Elshinawy suffered of a loss of attendees. We
25 certainly don't agree to that. We also have a problem

1 with number 6 concerning measurable decline. We don't
2 know what a measurable decline refers to. And we would
3 view number 6 as an admissible by Mr. Elshinawy, that he
4 has not suffered a decline in attendees at his lectures
5 or sermons.

6 THE COURT: I mean, then measurable becomes the
7 wild card there. All right. So other than 1, you're
8 going to be able to enter into a stipulation on the
9 discovery on 2 through 5, right?

10 MS. GORSKI: It would seem so.

11 THE COURT: Okay. So you're --

12 MR. FARRELL: Your Honor?

13 THE COURT: He'll do that --

14 MR. FARRELL: The one caveat on that is we
15 don't believe that this should be a limitation to the
16 personal capacity. It should just be a complete release
17 on behalf of those three individuals. There's no reason
18 to limit their --

19 THE COURT: Yes, I see.

20 MR. FARRELL: -- release to personal capacity.

21 THE COURT: Yeah, I see. I see that. All
22 right. Well, I consider this except for number 1,
23 basically to be resolved and you'll actually do a stip
24 together after this conference.

25 Now the second item on my agenda is how we deal

1 with what I am calling the qualification of the term
2 "Muslim." The fill-in-the-blank issue, you know, in
3 terms of Judge Chen's order.

4 I think you've discussed this a bit with my law
5 clerks but let me just throw out to you a definition
6 which I propose which is for purposes of complying with
7 Judge Chen's order, to qualify the different groups.
8 What about believed to be Muslim or believed more likely
9 than not to be Muslim? This is in terms of the
10 definition.

11 MS. SHAMMAS: May we briefly consult, your
12 Honor?

13 THE COURT: Sure.

14 (Counsel confer)

15 THE COURT: I assume this is agreeable with
16 plaintiffs --

17 MS. GORSKI: Just one more second, your Honor.

18 THE COURT: You're consulting too? I'm sorry,
19 I thought they were consulting.

20 (Counsel confer)

21 MS. SHAMMAS: Your Honor, if I may? While
22 plaintiffs are conferring on that issue --

23 THE COURT: Yes.

24 MS. SHAMMAS: -- I just wanted clarification
25 with respect to the stipulations that we had discussed a

1 moment ago because --

2 THE COURT: You're going to do the stipulation
3 after this conference is over.

4 MS. SHAMMAS: Okay. I just wanted to make sure
5 that it wasn't -- that was something that we could still
6 work out with the other side.

7 THE COURT: Yes, but you two are going to do it
8 today. You're not leaving this courthouse until it's
9 done.

10 MS. SHAMMAS: Okay.

11 THE COURT: Okay. So what about my definition?
12 Mr. Farrell, do you want to be heard?

13 MR. FARRELL: Yes, your Honor. That definition
14 still raises similar concerns to the ones that I
15 articulated at the last conference and I guess there are
16 a couple of things I'll just --

17 THE COURT: It's been four months. So you have
18 to come up with a better one then.

19 MR. FARRELL: Yes, your Honor. We had proposed
20 a stipulation and I have another copy of it which I am
21 happy to -- this was the one that we had proposed at the
22 last conference as a way to address the issue and I can
23 pass this up --

24 THE COURT: You mean a definition?

25 MR. FARRELL: Not a definition, your Honor, a

1 stipulation as to that the responsive documents when
2 looked at as a whole, indicate that the majority of
3 individuals whose identity has been redacted in the
4 documents produced as responsive to plaintiff's document
5 request number 1, excluding NYPD personnel, are likely to
6 consider themselves Muslim in the majority of
7 organizations whose identity has been redacted in the
8 documents produced as responsive to plaintiff's document
9 request number 1, having a mission or purpose that
10 references or relates to Islam.

11 The difficulty we have, your Honor, with this
12 is a couple of things.

13 THE COURT: Well let me see that one while
14 you're talking about it.

15 MR. FARRELL: Okay.

16 THE COURT: Okay. Go ahead.

17 MR. FARRELL: So there's a couple of things.
18 One is, it's unclear how you would make that
19 determination today. Are the defendants being asked that
20 the author of the document at the time believed the
21 person whose name is being redacted to be Muslim or
22 believed it to be more likely than not? That would
23 require the --

24 THE COURT: Well, no, you're not conceding it.
25 You're saying with -- I'm suggesting with a name

1 suggesting Muslim or Islamic identity. It's not as
2 strong as an admission you would be bound by but you've
3 got to qualify it. I mean, I am not sure that I have
4 that much of a problem with what you suggest. So let me
5 just hear from the plaintiffs. Maybe we can cut this
6 short.

7 MS. SHAMSI: Your Honor, I think we spent about
8 a half an hour talking last time or the time before about
9 why ths proposal was problematic because it uses various
10 kinds of terms that are just entirely imprecise. What
11 does it mean surrounding facts contacts --

12 THE COURT: Well, do you have a problem --
13 what's your take on my definition?

14 MS. SHAMSI: We're -- I think we're fine with
15 your definition. We would ask you to consider one other
16 addition which is a third one, which is believed not to
17 be Muslim.

18 THE COURT: Believed not to be?

19 MS. SHAMSI: Yes.

20 THE COURT: But then that takes -- the whole
21 point is to differentiate between Muslims and non-
22 Muslims.

23 MS. SHAMSI: If that -- as long as that is
24 understood and as long as that is clear.

25 THE COURT: I think that's what the import and

1 intent of Judge Chen's order was.

2 MS. SHAMSI: Then that would be fine.

3 MR. FARRELL: Your Honor, are you suggesting
4 that your proposed language would be an analysis that the
5 defendants would have to do on a name by name basis in
6 each document and for each name or are you suggesting
7 that the language you're proposing would fit into what
8 we're trying to accomplish which is to say as a whole,
9 it's believed that the majority of the names redacted are
10 believed to be Muslim or believed more likely than not to
11 be Muslim because I think if it's the latter, which is
12 what we're trying to do, I can consult but I think that
13 would likely be acceptable.

14 The difficulty is to ask the defendants and the
15 NYPD personnel to look at hundreds of names and make
16 determinations as to whether those people are believed to
17 be Muslim or believed more likely than not to be Muslim.
18 The first question is at what point in time? Are you
19 asking us today as defendants sitting here as part of a
20 litigation whether we believe those people are -- believe
21 themselves to be Muslim or believe more likely than not
22 to be Muslim? Or are you asking us to make
23 determinations back in 2003, '04, '05, '06, '07, '08,
24 '09, '10 and '11 that the author of the document who was
25 writing it even (a) whether they even considered the

1 person's religion or (2) whether they believed the person
2 to be Muslim or believed that more likely than not to be
3 Muslim. That is an -- I would suggest that that's an
4 impossible task due to the amount of documents we have,
5 due to the length of documents that are at issue in this
6 case which are years and to the fact that they've been
7 authored by many different individuals, many of whom are
8 no longer employees of the NYPD.

9 The second part is if the person does not make
10 a conscious decision at the time to say yes, I believe
11 that this person is Muslim and they're just taking the
12 information down and not making that thought process,
13 there's no way for the NYPD --

14 THE COURT: Or it might be with a name
15 suggesting Muslim.

16 MR. FARRELL: But the difficulty with that,
17 your Honor, it's not a bright line test. So then it's
18 going to be left to the NYPD to make now make assumptions
19 or guesses --

20 THE COURT: Well you've got to qualify it
21 somehow because that's what you have to do to comply with
22 the order of the Court.

23 MR. FARRELL: But Judge Chen, we -- this was
24 not an issue that had been briefed before Judge Chen.
25 And this was not an issue that we were heard on and this

1 was something that the Court came up with sua sponte and
2 the difficulties about with this part of the order were
3 never discussed and we took an attempt to see whether it
4 could be done and when you start to try and do it, it
5 raises the difficulties and the impossibilities of trying
6 to comply with the order.

7 And the question then becomes well what is the
8 purpose behind requiring the NYPD to do something which
9 they didn't do at the time? Is it to show -- I mean from
10 plaintiff's perspective, what is the import? Is the
11 import to show that there's a disparate impact on
12 people --

13 THE COURT: That was the point of Judge Chen's
14 order so that there could be some kind of analysis.

15 MR. FARRELL: Well, the -- no, defendants do
16 not dispute, your Honor, since 9/11 that the threat
17 that's been posed in terms of terrorism has been posed by
18 Islamists radicalized to violence. You're not going to
19 have that disputed before this Court or before Judge
20 Chen.

21 In terms of that, the -- what the intelligence
22 bureau does in terms of conducting investigations, to the
23 extent that disparate impact is an issue, we're not going
24 to be contesting that it has a disparate impact. The
25 threat since 9/11 and before, but we're in the period

1 post-9/11, has been -- the majority threat for terrorism
2 has been posed by Islamists radicalized to violence.

3 So investigations are going to have a disparate
4 impact upon the Muslim community. We're not disputing
5 that. So I am not sure of the purpose behind going
6 through -- well, (a) I think it's impossible. (2) I
7 think that you're asking the police department to do
8 something that they have not done and which plaintiffs
9 have accused them of doing or wanting to do and create
10 now a laundry list of every name who appears in these
11 documents to make determinations of whether they're
12 Muslim or not.

13 THE COURT: Let me ask you, how much a problem
14 do you have with their definition?

15 MS. SHAMSI: We have a fairly --

16 THE COURT: Because I think it may be the
17 practical way to proceed.

18 MS. SHAMSI: Your Honor, there are at least a
19 couple of problems with their definition, talking about
20 the majority. What does the majority mean? Are we
21 talking -- and we talked about this again last time. Are
22 we talking about greater than fifty percent with respect
23 to a lawsuit that is based on equal protection ground
24 where as judge recognized, we have a few theories that we
25 can proceed on. The difficulty of showing discriminatory

1 intent, we need something more precise and I think that
2 your proposal --

3 THE COURT: Well if you took out majority --

4 MS. SHAMSI: Well --

5 THE COURT: If you took out the qualifier of
6 majority in both cases --

7 MS. SHAMSI: So that this would read, just so
8 that I am clear, your Honor, as a whole indicate that the
9 individuals whose identity has been redacted --

10 THE COURT: Um-hum.

11 MS. SHAMSI: -- are likely to consider
12 themselves Muslim?

13 THE COURT: Um-hum. Take out majority in both
14 cases -- where it is in both sentences.

15 MS. SHAMSI: Will you give me a second to
16 consult with my co-counsel?

17 THE COURT: Yes.

18 (Counsel confer)

19 MS. SHAMSI: I think we could live with that,
20 your Honor.

21 THE COURT: Okay. Mr. Farrell?

22 MR. FARRELL: Your Honor, the concern that we
23 have is is that it's not every single person and that
24 would -- to do it -- to say by removing the qualifier
25 would make it indicate that every person who is in that

1 -- in those documents, whose name's been redacted falls
2 in that category, we're prepared to say something, the
3 large majority of individuals to show.

4 Again, we're not going to be contesting --
5 again, I don't know what it goes to from plaintiff's
6 perspective --

7 THE COURT: Okay. I've heard enough. I'm
8 going to give you a definition. It will be the definition
9 that will be used.

10 MR. FARRELL: That --

11 THE COURT: All right. Moving on.

12 MR. FARRELL: I'm sorry?

13 THE COURT: Moving onto the next issue. I'll
14 come up with a definition.

15 MR. FARRELL: In terms of this proposal?

16 THE COURT: Yes, yes. That's what I'm going to
17 do.

18 3, this is the last thing on my agenda which is
19 the field officer's issue. So I'm ready to hear you, if
20 you want to be heard beyond your -- well, actually in
21 terms of the field officers, are you talking about people
22 all the way down to through the detective level, the
23 handlers of the confidential informants? What -- tell me
24 sort of break out for me --

25 MS. LEIST: Alexis Leist, your Honor.

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1 THE COURT: -- what we're talking about.

2 MS. LEIST: It's our understanding from
3 plaintiffs that that is what they're looking for. They
4 are looking for not only the undercovers and the
5 confidential informants, those people who handle the
6 undercovers and the confidential informants, presumably
7 those people above those, you know -- if there might be
8 another level of detectives --

9 THE COURT: Well, clearly it does; right.

10 MS. LEIST: Right. So it does go down that
11 far.

12 THE COURT: Okay.

13 MS. LEIST: According to them.

14 THE COURT: Do you want to add anything?

15 MS. SHAMSI: Just, your Honor, that -- I'm
16 sorry, this is Hani Shamsi for plaintiffs.

17 THE COURT: Yes, yes. You don't have to say
18 your name again.

19 MS. SHAMSI: All right.

20 THE COURT: And you can stay seated.

21 MS. SHAMSI: All right. Thank you.

22 Just to say that the issue before you here when
23 you're looking at the field officer request is really an
24 issue that Judge Chen already decided and I think that
25 her opinion sets forth the parameters for the discovery

1 that's going to be conducted in this case and it rejects
2 the fundamental distinction that defendants are asking
3 you to draw which is between the case that plaintiffs
4 have actually brought which is an equal protection and
5 religion clause based challenge to one that the
6 defendants would like to litigate which is one based on
7 their view that this is solely a policy case.

8 And we've laid out in our filing to you why
9 that's incorrect. I do think that it's important to
10 emphasize that the case law does not support defendant's
11 narrow view of what the theories in this case are. Judge
12 Chen's order on page 20 and 21 recognizes that this is a
13 lawsuit that is about policies, as well as practices.

14 And I don't think that there's really any
15 question that the ways in which people at the field level
16 conducted surveillance of the plaintiffs are relevant.
17 They go to whether or not the extent of which there was a
18 discriminatory intent, how that practice was carried out
19 and a number of theories that we would have and Judge
20 Chen recognized that we have in the Monell context.

21 Now, I also just wanted to say as a final thing
22 that resolution of this issue is especially important
23 because the defendant's theory of the case and how they
24 would like to litigate it comes across in a number of
25 other disputes in the discovery context and causes us not

1 to be able to move forward -- I'm not going to address
2 those disputes but resolution of this case, so that it is
3 one that is litigated in -- consistent with
4 constitutional equal protection doctrine, actual Monell
5 cases and Judge Chen's order in this case would I think
6 allow us to move forward a lot more swiftly.

7 And I think finally at the practical level, I
8 think it's important to emphasize that we haven't even
9 been able to have the kind of conversation about how
10 those identities might be protected. You've entered a
11 very strong protective order in this case and I think
12 that we should be able to come up with ways in which
13 defendant's security concerns -- and we understand why
14 there are security concerns -- can be met while giving us
15 the information to which we are entitled.

16 MS. LEIST: Your Honor, I think the first thing
17 that defendants want to say is despite Ms. Shamsi's
18 representations, we are not not going to comply with
19 Judge Chen's first document request.

20 THE COURT: I know you're -- right.

21 MS. LEIST: What the -- the plaintiffs will
22 already be getting the key documents related to their
23 investigations and this is a very important point because
24 it's --

25 THE COURT: But didn't you concede that you

1 would give them everything that has to do with the
2 plaintiffs? Didn't you already say you would give them
3 all documents?

4 MS. LEIST: We said we would give them all
5 documents related to their investigations and they're
6 going to get that. They're going to be getting the DD-5s
7 and the surveillance reports particular to their
8 plaintiff's investigations.

9 So if I can just step back a moment.
10 Undercovers and confidential informants go out, you know,
11 pursuant to authorized investigations, gather the
12 information, whatever the case might be. Relay that
13 information to their handlers. Their handlers record
14 what they have gathered or collected --

15 THE COURT: Right.

16 MS. LEIST: -- in what is known as DD-5s.

17 THE COURT: Right. You're going to give them
18 the DD-5s.

19 MS. LEIST: They are getting all of those.

20 THE COURT: Okay.

21 MS. LEIST: And this is --

22 THE COURT: Well, then --

23 MS. LEIST: -- thousands of pages, your Honor.

24 So --

25 THE COURT: Wait, hold on. Then maybe we don't

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1 have a dispute. My view would be they're entitled to
2 every document that mentions their clients, even if it
3 includes a DD-5 recounting either an undercover or an
4 informant's visit to say Al-Taqwa.

5 MS. LEIST: And they're getting that, your
6 Honor.

7 THE COURT: Well, then what are we arguing
8 about?

9 MS. LEIST: The problem is is that they want
10 the electronically stored information from these field
11 level personnel. For example, if I am understanding
12 plaintiffs correctly, is they want their e-mails and
13 other things of that nature from undercovers. We
14 certainly can't provide --

15 THE COURT: Well, as they relate to -- I'm just
16 going to use this because it's just one of the plaintiffs
17 -- as it relates to Al-Taqwa, why wouldn't they get it?

18 MS. LEIST: Well, two reasons; first, your
19 Honor, we're giving them everything that memorializes
20 what an undercover has reported to his handler.

21 THE COURT: Good.

22 MS. LEIST: The second --

23 THE COURT: Good. I'm sure you're happy with
24 that.

25 MS. LEIST: Right. The second --

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1 THE COURT: Because I consider that field
2 officer material.

3 MS. LEIST: Yes.

4 THE COURT: Okay.

5 MS. LEIST: The second thing is for operational
6 reasons, that's really not how the intelligence bureau
7 operates. You would not have that kind of thing in an
8 e-mail or other electronic device for safety reasons.

9 THE COURT: Yeah, I -- yes.

10 MS. LEIST: So there's that, as well. So what
11 they're looking for is not going to be there.

12 THE COURT: Not going to be where?

13 MS. LEIST: In the ESI -- in any ESI from
14 undercovers.

15 THE COURT: All right. But you are agreeing
16 that you're going to give them -- let me just -- you're
17 going to give them every piece of paper that exists
18 including DD-5s relating to the plaintiffs. And your
19 investigation of the plaintiffs.

20 MR. FARRELL: Well, your Honor, when I -- that
21 conversation with Judge Chen was with me when we were
22 before her.

23 THE COURT: Yes.

24 MR. FARRELL: And we had a back and forth on
25 what that means and at the time what it meant to me was

1 the investigative statements, the surveillance reports,
2 and the DD-5 reporting that is the where -- and the DD-5
3 is where the information that's communicated from the
4 either confidential informants --

5 THE COURT: Right.

6 MR. FARRELL: -- or the UC gets documented in
7 the intelligence division.

8 THE COURT: It's the first place the actual
9 information gets documented.

10 MR. FARRELL: All right.

11 THE COURT: Yes.

12 MR. FARRELL: So that's --

13 THE COURT: Yes.

14 MR. FARRELL: -- what we are turning over; any
15 document that is related to the plaintiff's
16 investigations with respect to those documents. What has
17 happened in the interim now most recently as I understand
18 it and I've been out a little bit recently but -- well, I
19 should say occupied in another matter recently --

20 THE COURT: Yes.

21 MR. FARRELL: -- is that they want to get the -
22 - we're at the point now where we're having discussions
23 about electronically stored information --

24 THE COURT: Right.

25 MR. FARRELL: -- e-mails and those types of

1 things. That is a separate entity or a set of
2 information that was not -- when I was having that
3 conversation with Judge Chen, that I was contemplating
4 was being discussed.

5 For example, (a) I don't -- a confidential
6 informant -- the Department doesn't have custody and
7 control over their electronic --

8 THE COURT: Well, they're not -- I'm excluding
9 confidential informants. I'll tell you that right now.
10 But I'm talking about stuff in the PD's possession.

11 MR. FARRELL: In the police --

12 THE COURT: The PD's electronically stored
13 information.

14 MR. FARRELL: So that becomes a question of --
15 I'm sorry, do you want to --

16 MS. LEIST: Sorry.

17 MR. FARRELL: No. It becomes a question in
18 terms of who we -- in terms of the custodians for
19 electronic e-mail and those types of things, we have had
20 conversations with plaintiffs and we have offered them
21 the 16 people who were involved in the variety of
22 decision making level decisions and to the extent that
23 there was information that was communicated up from
24 anybody below, it would be in their electronic or ESI
25 discovery. And I don't have the numbers but that number

1 for electronic discovery just for those 16 people is a
2 massive amount of documentation.

3 THE COURT: But didn't you also offer the
4 lieutenants --

5 MR. FARRELL: So, let me just finish. So that
6 universe of the 16 custodians currently being offered --

7 THE COURT: Right.

8 MR. FARRELL: -- comprises roughly 280,000
9 documents and has according to -- that's the search terms
10 -- on the search terms has over 375,000 hits for the
11 search terms that plaintiffs are currently proposing for
12 us to search those documents for.

13 THE COURT: Okay.

14 MR. FARRELL: Now as a compromise recently,
15 there was an offer to go -- to basically go down a
16 level --

17 THE COURT: Right.

18 MR. FARRELL: -- you have below the decision
19 makers to the lieutenants.

20 THE COURT: Now just tell me, when you go down
21 a level to the lieutenants, how many lieutenants are
22 there and how is it structured, so who do they cover?
23 Like what is their universe, so I have a sense of why
24 that's actually, you know, materially different --

25 MR. FARRELL: Well --

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1 THE COURT: -- from the 16?

2 MR. FARRELL: From the 16? Can I just have a
3 second to consult? Let me -- just give me one second,
4 your Honor.

5 (Counsel confer)

6 MR. FARRELL: So, your Honor, it's my
7 understanding that over the course of the years that are
8 involved, a ballpark figure is about a dozen lieutenants
9 who were being basically the detectives below them would
10 be reporting on these investigations, two lieutenants.

11 THE COURT: Right.

12 MR. FARRELL: And those lieutenants compromise
13 about roughly a dozen over the years, would be reporting
14 information to those lieutenants. So information was
15 coming up from detectives. It would be going to those
16 lieutenants and that was the additional level, if you
17 will, of lieutenants that defendants were offering to
18 search for plaintiff's names in --

19 THE COURT: Right.

20 MR. FARRELL: -- to see whether there's
21 documents that have plaintiffs names in those
22 lieutenant's ESI materials.

23 THE COURT: Right. And how many detectives
24 would a lieutenant supervise in this type of
25 investigation?

1 MR. FARRELL: I can tell you that's going to
2 vary and it's going to change over the years and certain
3 detectives are going to have more of a -- a greater role
4 in the investigation and then you may have a bunch of
5 other detectives who just have some -- I think a handler
6 may be involved but then that handler may be away, you
7 may have another handler who comes in and then --

8 THE COURT: But how do we know that the
9 detective's information, for instance, about a
10 surveillance of one of the plaintiffs went up the chain
11 to the lieutenant? How do we know that that lieutenant's
12 information is going to -- or the detective's information
13 is going to be subsumed in the detective's -- in the
14 lieutenant's?

15 MR. FARRELL: I'll say two things. I would say
16 one is the information that goes up the chain is reported
17 in the DD-5. That's where it gets -- that's the official
18 document where it gets memorialized.

19 THE COURT: Do DD-5s necessarily go up the
20 chain to the lieutenant? Do you see what I'm asking?
21 I'm saying -- I'm trying to get at whether detectives
22 who, for instance, might be handling a CI or supervising
23 an undercover, if their -- the information that's
24 communicated to detective goes up the chain necessarily
25 to the lieutenant.

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1 MR. FARRELL: Where it goes, your Honor, it
2 goes into the DD-5 that gets created by the handler and
3 then it may be duplicative information, if there's
4 something gets passed along to the lieutenant. Again,
5 we're talking about the ESI material.

6 THE COURT: Yeah, I know.

7 MR. FARRELL: The DD-5s are being created by
8 the handlers --

9 THE COURT: I know.

10 MR. FARRELL: And that contains the information
11 that is being passed onto them. If there are other
12 pieces of information that would be passed on to the
13 lieutenants, the point is it's in the DD-5s. I don't
14 know whether it would be duplicative or not.

15 THE COURT: Yeah.

16 MR. FARRELL: Or contain the names of the --

17 THE COURT: Okay.

18 MR. FARRELL: -- and again, I would just
19 emphasize that the information where the decision makers
20 are about who -- the reasons for the investigation, isn't
21 in some piece of -- one piece of information somewhere
22 and down there it goes up and there's a structure as to
23 who makes those decisions. That is the information that
24 we're providing.

25 THE COURT: I get it. okay.

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1 MR. FARRELL: And this is -- it's a policy
2 case.

3 THE COURT: I know. All right. So tell me, you
4 said there are 12 lieutenants.

5 MR. FARRELL: Roughly, your Honor.

6 THE COURT: About.

7 MR. FARRELL: And that's over the period of
8 time.

9 THE COURT: Yes.

10 MR. FARRELL: There weren't 12 all the time.
11 They -- you know, they -- I don't know an exact number at
12 any particular point but that's our rough estimate of --

13 THE COURT: Yes, yes.

14 MR. FARRELL: -- who was involved.

15 THE COURT: Why doesn't that work?

16 MS. SHAMSI: Your Honor, if I may, it doesn't
17 work for very practical reasons that go to the heart of
18 our lawsuit; not hypothetical but information based on
19 the public record which is that an individual called
20 Shamir Rhaqman (ph.), this is actual information in the
21 public record, confidential informant, was instructed by
22 his handler via text messages in order to carry out
23 surveillance. That surveillance included surveillance at
24 several of our clients. He was -- submitted a sworn
25 affidavit in the Handschu lawsuit indicating that he was

1 instructed to carry out surveillance on Muslim
2 individuals and organizations, even though they had done
3 nothing wrong.

4 Now that --

5 THE COURT: And does this affidavit say that
6 his handling detective told him to do that?

7 MS. SHAMSI: Yes.

8 THE COURT: Okay.

9 MS. SHAMSI: Yes, it did.

10 THE COURT: A detective of the NYPD?

11 MS. SHAMSI: Yes.

12 THE COURT: Who was his handler.

13 MS. SHAMSI: That's exactly right. That's
14 exactly right.

15 THE COURT: Okay. And so what defendants would
16 propose to do would prevent us from being able to obtain
17 electronically stored information that would be in their
18 possession because after all, it was the detective giving
19 instructions and getting reports back, one would assume,
20 based on what is in the public record. This information
21 would allow us to establish intent. It would allow us to
22 establish practice. It would show and go to whether or
23 not superiors were deliberately indifferent to
24 instructions or violations of policy. It would allow us
25 to establish a policy itself.

1 And most critically, your Honor, we're glad
2 that --

3 THE COURT: Are you worried -- obviously what
4 you're suggesting is that all documents don't go up the
5 chain.

6 MS. SHAMSI: What defendants are agreeing to
7 provide us are summaries of information when the most
8 probative information with respect to our claims is
9 likely -- could be include information from the
10 individuals who were actually carrying out the
11 surveillance of our clients.

12 THE COURT: Well, I'm not giving you
13 confidential informants. I am considering giving you the
14 detective level.

15 MS. SHAMSI: If I may, your Honor?

16 THE COURT: Don't argue that.

17 MS. SHAMSI: If you're --

18 THE COURT: I'm not doing -- I'm not giving it
19 to you.

20 MS. SHAMSI: And even though --

21 THE COURT: No, I'm not.

22 MS. SHAMSI: -- I've just given you an example
23 of Shamir Rhaqman --

24 THE COURT: Yes.

25 MS. SHAMSI: -- who is a confidential

1 informant?

2 THE COURT: Yes, you've given me example.
3 You're not getting it.

4 MS. SHAMSI: And would that, your Honor,
5 include our inability to get information from his NYPD
6 detective handler --

7 THE COURT: No.

8 MS. SHAMSI: -- about instructions?

9 THE COURT: I'm considering the handler.
10 That's where I'm -- that's what I am asking you to
11 address.

12 MS. SHAMSI: Okay.

13 THE COURT: Because the confidential informant
14 reports to the handler. My question to the City was
15 would the detective who is handling the informant
16 necessarily communicate information up the chain and
17 you're suggesting it may not go up the chain and the most
18 important, relevant information is going to be at the
19 handler-detective level. That's, I think your argument.

20 MS. SHAMSI: Some of the most important,
21 relevant information.

22 THE COURT: Yes, potentially.

23 MS. SHAMSI: Yes.

24 MR. FARRELL: Your Honor, on that --

25 THE COURT: And I think you're saying it's

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1 impossible for us. Is that what you're saying?

2 MR. FARRELL: (A) it's impossible. (2), I
3 don't see how that's the most relevant information. We
4 are -- defendants are making available and turning over
5 to the plaintiffs, the investigative statements which are
6 the documents that lay out the factual predicates for the
7 investigations.

8 We're giving -- we're making available to them
9 all the DD-5s. There are over 6,000 pages of DD-5s which
10 will have the information that is communicated from the
11 field.

12 THE COURT: Well, here's my question to you.

13 MR. FARRELL: Yeah.

14 THE COURT: Is a DD-5 going to include the
15 information Ms. Shamsi was just referring to; an
16 informant telling a detective --

17 MR. FARRELL: That's what the DD-5 is, your
18 Honor. It's the information that the confidential
19 informant or the undercover in the field passes on to the
20 handler and that's typically done orally and what then
21 happens is the handler memorializes it into a document.

22 THE COURT: No, I'm --

23 MR. FARRELL: So that has the information on
24 it. They have -- they're saying, oh, there could be this
25 theory about there could be some piece of information

1 down at that level. They still have to review and we're
2 in the -- this is a very tedious task to go through all
3 these documents before the privilege issues, but they
4 still have to review all those DD-5s and they have to
5 review all those surveillance repots. At a minimum, they
6 should have to make a showing at some point later on that
7 there's some indicia of evidence based upon the review of
8 the thousands of pages that we are going to be in the
9 process of giving them to come back and say okay. And
10 now because of whatever these -- all these documents
11 show, there's a reason to go out and collect what they
12 are not asking the Court to do up-front when there is no
13 basis for that at this point.

14 MS. SHAMSI: We just --

15 THE COURT: Is it on --

16 MS. SHAMSI: I'm sorry, your Honor.

17 THE COURT: Wait one second. Is it NYPD policy
18 for any detective who is handling an informant to create
19 a DD-5 of that informant's work for the police
20 department?

21 MR. FARRELL: Your Honor, sitting here based on
22 what I know, the answer to that is yes, that is the
23 practice of what happens. That's how the information
24 gets brought into the department.

25 THE COURT: So any --

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1 MR. FARRELL: So, yes.

2 THE COURT: -- anything that a confidential
3 informant would have reported to a detective is going to
4 be on a paper DD-5 that the plaintiffs are going to get.

5 MR. FARRELL: When you say anything, your
6 Honor, any salient --

7 THE COURT: Anything that's memorialized.

8 MR. FARRELL: That's my understanding.

9 THE COURT: Okay.

10 MS. SHAMSI: Your Honor, if I may?

11 THE COURT: Yes.

12 MS. SHAMSI: Again, I've provided you with a
13 concrete example that exists out there --

14 THE COURT: Yeah.

15 MS. SHAMSI: -- what would be important which I
16 don't think and it doesn't seem like it would be
17 reflected in the DD-5s would be instructions given by the
18 NYPD officer to the confidential informant about who to
19 investigate. It doesn't -- for example, in the Shamir
20 Rhaqman example --

21 THE COURT: Why do you think that's going to be
22 in an e-mail? Why wouldn't that just have been oral?

23 MS. SHAMSI: In text because that's how they
24 were communicating. That's how they were communicating in
25 text and we don't know whether others were being

1 communicated in e-mail or not. And we should have that.

2 It's both the directions and also each document
3 we're talking about is a summary. It could end up being
4 the most sanitized version of instructions that were
5 given. Is a handler likely to write down that I told
6 Shamir Rhaqman to investigate Masjid At-Taqwa and MGB
7 despite the fact that there was no evidence of
8 wrongdoing? It seems unlikely but given that he was so
9 instructed and that he was -- he said that in a sworn
10 statement, I think it would be significantly detrimental
11 to our case if we cannot have access to the information
12 on the ground and the instructions that were being given
13 on the ground about the basis for which to carry out the
14 surveillance of our clients.

15 THE COURT: Which in sum means the
16 electronically stored information of the detectives who
17 handled the informants.

18 MS. SHAMSI: That's exactly right, your Honor.

19 MR. FARRELL: Your Honor, I would respond to
20 that by saying that any action with respect to
21 confidential informants or undercovers in terms of the
22 Department's perspective happening under an authorized
23 Handschu investigation. That means there's been an
24 investigation that's been opened. There's an
25 investigative statement that's been created. Those are

1 the investigative statements that we have made available
2 and are making available to plaintiff's counsel.

3 Those are the statements that have the facts
4 for the reasons for the deployment of undercover officers
5 or confidential informants. This is not happening just
6 some officer down below says oh, I am going to send some
7 people out. They have those -- we're making those
8 documents available. When those confidential informants
9 and undercovers have information that they report back to
10 the handler, the handler then takes the facts and puts
11 them into the DD-5. Again, those are documents that we
12 are turning over.

13 As an aside, the fact that one particular --

14 THE COURT: But you would agree that that DD-5
15 would not necessarily include what the handler told the
16 informant.

17 MR. FARRELL: I can't represent that the DD-5
18 is going to say that.

19 THE COURT: No.

20 MR. FARRELL: But again, I don't see how that
21 is salient to the claim at issue. This is not an
22 ordinary case, your Honor. This isn't a case where you
23 know, you have some business records that aren't
24 confidential where, you have, you know, it's an easy
25 collection and the typical type of discovery that says,

1 well, we'll figure out later whether it's relevant to the
2 claim. The Court may exclude it. It may include it.

3 This is a case, the first of its kind, where
4 information is being sought from the intelligence bureau.
5 It's unprecedented, as far as I'm aware and I've been at
6 the Law Department for a long time handling these types
7 of matters, where the scope of the information that is
8 currently being made available has ever been done before.
9 And rather than looking at that information, and
10 determining whether there's a basis to go and seek
11 additional information, I think that's the first step
12 that should have to happen in this case.

13 THE COURT: Well --

14 MR. FARRELL: The second thing is, I think the
15 Court would need to make a decision when that time comes
16 as to whether that type of information at that level is
17 going to be considered; is that part of the test that
18 they are articulating, that something that's never
19 brought to decision makers, that's never communicated to
20 decision makers, that never got reported in the DD-5s,
21 isn't in the investigative segments? If that is --

22 THE COURT: But admissibility isn't the test at
23 the discovery stage.

24 MR. FARRELL: And I agree with you but this
25 isn't the normal case and that's why the normal rule

1 about admissibility isn't the test shouldn't apply in
2 this case. This case, there are the safety concerns that
3 are posed by disclosure of this type of information are
4 not seen in your typical case. So while I understand
5 that's the typical rule, I would respectfully ask that
6 the Court -- that when the time comes, if that
7 information was going to be considered that in addition
8 to see whether they've made a good faith basis upon all
9 the documents we have given them to try and seek that, I
10 think the Court before we can order disclosure, that has
11 to determine is that information going to be admissible
12 in determining the dispositive motion because if it's
13 not, then the risk and the compelling need can't be there
14 for plaintiffs to have that information turned over to
15 them.

16 MS. SHAMSI: Your Honor?

17 MR. FARRELL: And that this isn't the unique
18 case.

19 MS. SHAMSI: Mr. Farrell and I agree on one
20 thing which is that this is not an ordinary case but we
21 disagree on the basis for that. It is -- it is rare that
22 you would have this kind of information going in where a
23 confidential informant has actually sworn on the public
24 record that he was carrying out investigations of people
25 and that was being done on the basis of their religion.

1 That is the crux of this lawsuit.

2 The people that the confidential informant --

3 THE COURT: But you're going to see that in the
4 DD-5s.

5 MS. SHAMSI: But, your Honor, what we will see
6 in the DD-5s are a summary of information that could be
7 the most sanitized version --

8 THE COURT: Well I think --

9 MS. SHAMSI: -- of whatever instructions were
10 given and what we're entitled to -- I mean, the case is
11 also clear that when there are subordinate officers who
12 are carrying out the practice that is being challenged,
13 that information is --

14 THE COURT: Yes.

15 MS. SHAMSI: -- relevant.

16 THE COURT: Let me ask you one other question
17 and then I will let you speak. How many detectives are
18 we likely to be talking about?

19 MR. FARRELL: When you say detectives, you mean
20 under --

21 THE COURT: Who are supervising, who are
22 handling confidential informants --

23 MR. FARRELL: Your Honor, we would have to
24 go --

25 THE COURT: -- or undercovers --

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1 MR. FARRELL: Yeah, we'd have --

2 THE COURT: -- in this case of these
3 plaintiffs.

4 MR. FARRELL: In these cases?

5 THE COURT: Only these plaintiffs.

6 MR. FARRELL: Yeah. I don't have an exact
7 number but my -- the approximation is there's going to be
8 potentially over a hundred because you have people who
9 are away -- the scope of somebody coming in -- you could
10 have somebody who is just there for the day, takes
11 something. Then what they're asking for to have happen
12 is you would have to have search and collect and look
13 through --

14 THE COURT: But that's not typically the way it
15 is with a detective that's -- who has an informant. It's
16 usually much more of a one-on-one relationship than
17 people covering.

18 MR. FARRELL: Well, again, I don't want to
19 speculate on that, your Honor and I would ask the Court
20 to refrain from making that assumption at this point in
21 time.

22 I do want to respond to something that's been
23 brought up. Plaintiffs have put a lot of credibility or
24 emphasis on this confidential informant named Rhaqman. I
25 am also handling the Handschu litigation. And I can tell

1 you and one of the counsel there, Mr. Eisenberg is also a
2 part of the class counsel, plaintiff's counsel in
3 Handschu, if that is -- their sole basis is the
4 credibility of Mr. Rhaqman's statement that he was told
5 to go out and do that, I'm going to say two things; we'll
6 happily brief that separately to you and show you what
7 investigation Mr. Rhaqman was involved in and show you
8 that he has absolutely no credibility in his statement
9 that he was being tasked for no reason.

10 What happens is you do not disclose as to the
11 police department, who the subjects of your investigation
12 are because the confidential informant might reveal that
13 in -- so he has -- he, in fact, has no idea of what he's
14 going to look at or why he's going to look at it. He may
15 be told certain things but as a general matter, you're
16 not going to disclose who your subjects are to a
17 confidential informant because you could jeopardize the
18 entire investigation.

19 So if that is the basis, because we are
20 litigating that in front of Judge Haight in the Southern
21 District of New York, and that specific issue where
22 they've challenged the separate investigations, ones in
23 which Mr. Rhaqman was involved, I'm familiar with those
24 documents and we're briefing that. And if the Court --
25 if that's the sole basis, we will submit those

1 investigatory statements to your Honor and show you that
2 Rhaqman's activities were not based upon "that no one has
3 done anything wrong."

4 THE COURT: Uh-hum.

5 MS. SHAMSI: Your Honor, one final thing, if I
6 may, which is I think it's really important to emphasize
7 that it's important to have not just the summary of the
8 information coming into the handlers but the directions
9 that the handlers are providing and that are going out.
10 Because that shows how the practice is being carried out
11 on the ground and whatever information gets fed up we're
12 entitled, I think, to look at and query and test what
13 information was being used to surveil our clients.

14 And finally, your Honor, we have an
15 extraordinarily strong protective order --

16 THE COURT: I know.

17 MS. SHAMSI: -- in this case.

18 THE COURT: I know. Were you reading my mind
19 just then?

20 MS. SHAMSI: Probably not.

21 THE COURT: I'm going to grant the plaintiff's
22 request. I think we have a very, very strict protective
23 order. I don't -- I think that this is relevant
24 information. I don't think it's going to be unduly
25 burdensome. We still have privilege issues to get to

1 down the road. I'm granting the request.

2 MR. FARRELL: Okay.

3 THE COURT: So go the detective level, not the
4 confidential informants, just whatever the handling
5 detectives have. They are now within the group.

6 MS. SHAMSI: And does that include undercover
7 detectives who are carrying out investigations?

8 THE COURT: Yes, not the informants; just
9 whatever was memorialized or instructions to the
10 undercovers or the informants.

11 MR. FARRELL: Your Honor, a couple of things on
12 that point. One is --

13 THE COURT: I don't want to hear argument
14 anymore.

15 MR. FARRELL: Okay.

16 THE COURT: I'm just ordering it.

17 MR. FARRELL: Well, we're reserving our right
18 to make the objections to privilege and to other --

19 THE COURT: Yeah.

20 MR. FARRELL: -- issues.

21 THE COURT: I know that. I understand that but
22 we're just not there yet.

23 MS. LEIST: Your Honor, if we could just
24 clarify. Do you mean information from the undercovers
25 who are actually out in the field or just the people that

1 were handling the undercovers?

2 THE COURT: If the undercovers who were in the
3 field memorialized what they did, that as well but when I
4 was accepting the confidential informants, they don't
5 tend to write anything but they may get instructions.
6 For instance, as Ms. Shamsi referred to, a text from
7 their handler. The handler's material would be included.
8 Yes.

9 MS. SHAMSI: And again, just to clarify in
10 response to Ms. Leist's question, if there are undercover
11 officers who are carrying out surveillance or receiving
12 information from individuals --

13 THE COURT: Yeah.

14 MS. SHAMSI: -- would that be included?

15 THE COURT: Yes, that would be included.

16 MS. SHAMSI: Okay.

17 MR. FARRELL: Your Honor, for purposes of the
18 search, so we're talking about documents that contain
19 because of the scope that's being discussed here, the
20 documents that contain --

21 THE COURT: Only pertaining to the plaintiffs.

22 MR. FARRELL: But contain the plaintiff's names
23 or -- I mean is that what we're being ordered to go in
24 the four --

25 THE COURT: Yes.

1 MR. FARRELL: Okay.

2 THE COURT: Yeah. I'm not asking -- you don't
3 go beyond the plaintiffs.

4 MS. SHAMSI: I'm worried that an interpretation
5 that it's only containing the plaintiff's name is unduly
6 narrow -- surveillance and investigation of all
7 plaintiffs. It shouldn't include if there's no, you know
8 -- if the text doesn't say surveil Masjid At-Taqwa and
9 yet it's part of a stream of texts about the surveillance
10 of Masjid At-Taqwa, that should be included.

11 MR. FARRELL: But, your Honor, how --

12 THE COURT: Wouldn't that --

13 MR. FARRELL: -- is that going to be searched
14 or looked for? You're talking about then reviewing every
15 pieces of potential --

16 THE COURT: Well, no, look, I'm not going to
17 sit here -- obviously, if it's about a series of
18 surveillance at At-Taqwa, you take the whole series. I
19 mean, you've got to use your common sense about how you
20 search this. It's going to be within, you know, three
21 texts of the plaintiff's name or something. You've got
22 to figure out some way to do it so it's narrow because
23 you're only entitled to ones that involve plaintiffs.

24 MS. SHAMSI: So as long as we are all clear
25 that we're entitled to information from these particular

1 individuals, we're happy to work with defense counsel to
2 figure out how to narrow to ensure the information
3 captured is about our clients.

4 THE COURT: About the clients, yes.

5 MS. SHAMSI: Yes.

6 THE COURT: All right. That's my agenda.

7 What --

8 MS. LEIST: Your Honor, if we could -- I'm
9 sorry, if we could just have a clarification again of
10 what you're ordering us to turn over is the ESI --

11 THE COURT: Just -- yes.

12 MS. LEIST: -- from the detectives.

13 THE COURT: Yes. Handlers.

14 MS. LEIST: -- who -- handlers.

15 THE COURT: Um-hum.

16 MS. LEIST: Thank you.

17 THE COURT: Or the undercovers themselves.

18 MS. LEIST: If they had any -- if they
19 memorialized what they were doing.

20 THE COURT: Yeah, yes, yes.

21 MS. LEIST: Is that what you're saying?

22 THE COURT: Yes. Okay. So --

23 MR. FARRELL: And obviously, your Honor, you
24 have our objection to that.

25 THE COURT: I know. I know.

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1 MR. FARRELL: Okay.

2 THE COURT: I understand. So I understand that
3 you may have met and conferred about certain other
4 things. So I'm ready to hear you. Do you have anything?
5 Mr. Farrell, nothing?

6 MR. FARRELL: Your Honor, I'm looking to see
7 whether this --

8 THE COURT: Okay. Plaintiffs, anything?

9 MS. SHAMSI: Your Honor, one issue that perhaps
10 we might be able to deal with pretty quickly is the issue
11 of -- sorry, this is Ms. Shamsi.

12 THE COURT: Yes.

13 MS. SHAMSI: This is the issue of we wanted to
14 ask your Honor to set a briefing schedule on a set of
15 issues that we've reached an impasse at and this is the
16 interrogatories by defendants that raise First Amendment
17 and retroactive justification issues. There's going to
18 be no resolution of that. We've met and conferred.

19 THE COURT: How many are in dispute?

20 MS. LEIST: 24.

21 MS. SHAMSI: 24. These were --

22 THE COURT: Out of how many?

23 MS. LEIST: Nearly 60 and some are multi-part
24 and go to several defendants.

25 MS. SHAMSI: Your Honor, we had briefed this to

1 you earlier on. I believe it was in April.

2 THE COURT: Yes.

3 MS. SHAMSI: At that time, defendants objected
4 and you had ruled that the issues were not ripe --

5 THE COURT: Right.

6 MS. SHAMSI: -- because we had not met and
7 conferred. We would be willing to rest upon our original
8 briefs --

9 THE COURT: Um-hum.

10 MS. SHAMSI: -- with potentially depending on
11 whether plaintiff had additional -- sorry, defendants had
12 a couple of other objections. We would propose that you
13 set a date by which defendants would respond. We would
14 get a reply.

15 Defendants have sought to -- have argued that
16 we should finish discussing all interrogatories and all
17 issues raised by interrogatories before addressing this
18 issue but to us that makes little sense because this
19 issue is exactly the same as a legal matter as an issue
20 already before the Court and the Court should just
21 resolve those sets of issues together with efficient,
22 quicker briefing given that much of the briefing's
23 already been done.

24 MS. SHAMMAS: Your Honor, Cheryl Shammass.

25 THE COURT: Yes.

1 MS. SHAMMAS: I'll be addressing that issue.
2 We have expressed to the plaintiffs a number of problems
3 we had with that proposal. The first one is that some of
4 the interrogatories specifically ask for the identities
5 of the individuals who are referenced in the complaint.

6 During the last court conference, the Court had
7 ruled that the document requests that related to those
8 particular individuals would be discoverable. Plaintiffs
9 had then started to --

10 THE COURT: Sorry.

11 MS. SHAMMAS: Are you okay, your Honor?

12 THE COURT: Yes. Go ahead.

13 MS. SHAMMAS: Plaintiffs had then started to
14 relitigate that issue. So the defendant's position has
15 been that this information is discoverable. The Court
16 has already ruled on that particular information and
17 we're not going to brief it again.

18 There is another issue related to the
19 identities of other individuals that were not referenced
20 in the complaint. The defendants have articulated a
21 basis for why we needed those identities because they are
22 individuals who the plaintiff will be relying upon to
23 support their case and therefore, we are entitled to take
24 discovery from those particular individuals.

25 The plaintiffs have now sought to engage in

1 additional briefing. As we've articulated to the
2 plaintiffs, we currently have a motion pending before the
3 Court on discovery. We are still continuing to work out
4 outstanding issues with the other document requests and
5 additional interrogatories and we feel that it is more
6 efficient to have an omnibus motion to address all the
7 discovery that is at issue rather than submitting brief
8 after brief after brief to the Court.

9 We feel that it is more expeditious, it is more
10 economical, to submit to resolve all the issues and then
11 submit an omnibus motion that contains all of the
12 disputed requests rather than tie up the Court with
13 continual briefs over various discovery disputes that the
14 parties have engaged in.

15 MS. SHAMSI: Your Honor, the First Amendment
16 privacy and retroactive justification issues that we have
17 already briefed to you are core to many other issues that
18 run through the case. We've met and conferred about the
19 set of discovery requests that raise those issues. We
20 wouldn't seek to do any additional briefing. We would
21 simply ask that defendants have an opportunity to respond
22 to our briefing on the interrogatories that has already
23 been done. And that we would get a short reply.

24 MS. SHAMMAS: The additional problem with that,
25 your Honor, is that if the defendants are going to engage

1 in briefing on that particular issue, that is time taken
2 away from us being able to work out and resolve the other
3 disputes that we're continuing to have.

4 THE COURT: Why? Why does that stop you from
5 trying to work out other disputes, just because you take
6 a position on something obviously --

7 MS. SHAMMAS: It doesn't prevent us but I am
8 saying it is resources and time taken away from our
9 ability to engage in those discussions. These
10 discussions require a lot of time and effort on both
11 sides to review, to determine what the deficiencies are
12 and then to try to work them out. And then these meet
13 and confers are a very lengthy process.

14 THE COURT: Yeah.

15 MS. WELSH: So, you know, for every few hours
16 that are spent, it's every few hours --

17 THE COURT: Yeah. Why shouldn't we do it all
18 at once with all the interrogatories after you've met on
19 everything?

20 MS. SHAMSI: Because given the record's so far
21 and how long the delays have been and, you know, we can
22 put forward to you the number of times that we've sought
23 to move forward, I just don't think that that would be
24 possible. And in part because your Honor, the First
25 Amendment and retroactive justification issues as both a

1 practical matter and a doctrinal matter, have an impact
2 on the responses with respect to a number of other
3 interrogatories and document requests.

4 So once those issues are resolved, our hope
5 would be that they open up a bottleneck in terms of a
6 significant area of dispute and your Honor, because they
7 go to very -- I don't need to reargue this but, you know,
8 they go to the issues of requiring production of
9 information about donor lists, about congregant's
10 identities and so on.

11 We again have briefed this. I'm not going to
12 belabor it but I do think that --

13 THE COURT: But have you briefed it? I mean, I
14 just don't -- with respect to particular interrogatories
15 or just --

16 MS. SHAMSI: Yes, your Honor, we have.

17 THE COURT: Okay.

18 MS. SHAMSI: We've already done that. We've
19 identified --

20 THE COURT: And you said there are 24?

21 MS. SHAMSI: That's correct.

22 THE COURT: And you've identified them?

23 MS. SHAMSI: Yes, your Honor.

24 MS. SHAMMAS: Again, your Honor, the Court has
25 already ruled with respect to the identities of

1 individuals referenced in the complaint, okay? And that
2 encompasses a huge part of the 24 requests that the
3 plaintiffs are referring to. So it's already been ruled
4 on. We're not going to brief that again.

5 THE COURT: Well you didn't brief it.

6 MS. SHAMMAS: Well, your Honor, it's been
7 briefed in connection with the document request. So we
8 believe that the decision of the Court with respect to
9 the document requests would offer guidance with respect
10 to the interrogatories.

11 THE COURT: It may but now there are 24
12 interrogatories at issue.

13 MS. SHAMSI: Respectfully, your Honor, those
14 issues have not been resolved and we explain again in our
15 brief --

16 THE COURT: Yes, I know you say that.

17 MS. SHAMSI: Yeah.

18 THE COURT: But are you suggesting that if this
19 gets briefed and I rule on it, it's going to give you
20 guidance as to how you -- what your position might be in
21 your meet and confer on other interrogatories?

22 MS. SHAMSI: Yes and it would also open up our
23 ability to know what exactly to produce and how to go
24 forward on a number of issues.

25 MS. SHAMMAS: That is correct, your Honor. We

1 also reiterate our position that it continues to make
2 sense to have an omnibus motion on all unresolved issues
3 rather than briefing everything in piecemeal and
4 bombarding the Court with numerous briefs, one after the
5 other.

6 THE COURT: Well, no, she doesn't want to put
7 any other brief in. She just wants you to respond to
8 them.

9 MS. SHAMMAS: On that particular issue --

10 THE COURT: And then --

11 MS. SHAMMAS: -- the parties disagree on
12 several other issues. I mean, there are a number of
13 outstanding requests that the parties are trying to agree
14 upon and we still are very far apart on.

15 MS. SHAMSI: So, your Honor --

16 MS. SHAMMAS: And related to that is that
17 during the last court conference, the Court had made
18 particular rulings.

19 THE COURT: Yeah.

20 MS. SHAMMAS: Subsequent to that, there was
21 briefing. Some of the briefing seeks to reopen the door
22 to some of those rulings --

23 THE COURT: I understand that --

24 MS. SHAMMAS: -- and --

25 THE COURT: -- but any -- I didn't rule on any

1 interrogatories at the last conference.

2 MS. SHAMMAS: I understand. At the last
3 conference --

4 THE COURT: And they're now saying there is a
5 dispute about 24 of them and you don't want to respond.
6 You want to wait until everything's done and the
7 plaintiff's position is, Judge, if we give you briefs and
8 you rule, it's going to hopefully change the dynamic
9 going forward with respect to the rest of discovery.

10 MS. SHAMMAS: And I agree --

11 THE COURT: So I don't know why that hurts you.

12 MS. SHAMMAS: No, I agree with that with
13 respect to certain requests. The interrogatories, many
14 of the interrogatories seek the identities of the
15 individuals who are referenced in the complaint and upon
16 whom the plaintiffs rely upon to support their claims and
17 their action.

18 At the last court conference --

19 THE COURT: I know. I ruled on them in the
20 context of a document request but I haven't ruled in the
21 context of the 24 disputed interrogatories.

22 MS. SHAMMAS: Some of those 24 --

23 THE COURT: Now if you don't want to put a
24 brief in, you don't have to.

25 MS. SHAMMAS: That's not what we're saying.

1 We're saying that we would like to put a brief in and
2 respond to that but the first point that we're saying is
3 that we believe it should be briefed all together in
4 connection with the other disputes that we're having on
5 the other document requests and interrogatories.

6 THE COURT: Well, what are the -- I mean --

7 MS. SHAMSI: We haven't even finished having
8 meet and confers on the remaining interrogatories. There
9 are a number of other meet and confers that are pending.
10 This is an issue that is --

11 THE COURT: All right.

12 MS. SHAMSI: -- done.

13 THE COURT: So let me just say this, right now
14 what you are requesting is is that I ask the plaintiff --
15 defendants to put in some kind of papers if they wish,
16 with regard to 24 disputed interrogatories and respond to
17 anything you put in in your prior papers.

18 MS. SHAMSI: That's exactly right, your Honor.

19 THE COURT: Okay. And you want me to rule on
20 that --

21 MS. SHAMSI: We would --

22 THE COURT: -- while you on a parallel track
23 keep your meet and confers going on these other issues.

24 MS. SHAMSI: That's exactly right, your Honor.

25 THE COURT: All right. Well, I can tell you

1 what you're going to do now with me is you're going to
2 meet with me once a month because that's the only way
3 we're going to keep momentum going in this case.

4 You don't want to put any other papers in.
5 Today is July 9th. The defendants have until the 18th to
6 respond to the papers that the plaintiff's already put in
7 on these interrogatories.

8 MS. SHAMMAS: Your Honor, if I may? I just
9 have a couple of briefs that are due next week and
10 several other work obligations. Can I respectfully have
11 a week after that to do that?

12 THE COURT: July 25th.

13 MS. SHAMMAS: Thank you.

14 THE COURT: And if you want to put anything in
15 response, you have until August 1st. And then we're
16 going to pick a date to meet in August.

17 MR. FARRELL: Your Honor, there are a couple of
18 outstanding items that we have that plaintiffs have --
19 keep asking for additional meet and confers on that we
20 think is becoming fruitless now.

21 THE COURT: Okay. Wait one second. Let me
22 just pick a date. August 19th at 2 o'clock?

23 Okay. So did you have something --

24 MS. SHAMMAS: Your Honor, wait just a minute.
25 Just to seek clarification, is the -- are our papers

1 limited to solely what was submitted to the court in
2 connection with their brief on the interrogatories?

3 THE COURT: Well, yes, unless you have anything
4 else to -- I mean I don't know which 16 -- 24, did you
5 say or -- 24, it was wishful thinking 16.

6 MS. SHAMMAS: Well, because since --

7 THE COURT: You can address the 24
8 individually, however you want to address them. It's 24
9 interrogatories and whatever other response you want to
10 make to whatever arguments they made in their prior
11 brief.

12 MS. SHAMMAS: Okay. Because it's unclear
13 sitting here if the 24 that are being articulated include
14 those interrogatories that we had discussed at the last
15 meet and confer in which you --

16 THE COURT: Well you can talk to each other
17 about it.

18 MS. SHAMMAS: Okay.

19 THE COURT: All right.

20 MS. SHAMMAS: So I just wanted to know what the
21 scope is of our response because I don't want to be in a
22 position where I'm waiting there to argue --

23 THE COURT: I agree.

24 MS. SHAMMAS: Okay.

25 MS. SHAMSI: Your Honor, if I may just clarify

1 and just so that we are clear on the record which is that
2 we would ask for a response to the interrogatories we've
3 already briefed and to the extent that you have -- you
4 seek specific information to the -- that we've identified
5 with respect to the additional four or five
6 interrogatories that we talked about, then we would
7 assert a First Amendment objection. We would address it
8 in our reply.

9 MS. SHAMMAS: So that is grounds for me to
10 address --

11 MS. SHAMSI: Yes.

12 MS. SHAMMAS: -- in my motion papers.

13 MS. SHAMSI: Yes.

14 THE COURT: That's the universe.

15 MS. SHAMMAS: Okay.

16 THE COURT: No, so do you have something else
17 for today?

18 MR. FARRELL: Your Honor, it's not for today.
19 What I wanted to ask the Court was there are a couple of
20 items such as plaintiff's custodians who they're going to
21 search that we've been trying to get to have meet and
22 confers on and there's been some discussion about those
23 things.

24 I do not want to wait until August 19th to have
25 that be heard because I believe that it's going to be --

1 we're not going to have a resolution of that with
2 plaintiffs and there are additional -- there are still
3 outstanding document requests that we had served that
4 they haven't responded to and interrogatories.

5 So I would ask the Court as one of two things;
6 either once we believe we're at an impasse, which will
7 probably be sooner rather than later, that you give us
8 permission now to submit briefing to you or if you want
9 us to come in first and hear this type of same arguments
10 with respect to the issue we have --

11 THE COURT: Here's what I want you to do. I
12 want you to have met and conferred.

13 MR. FARRELL: But we have, your Honor.

14 THE COURT: No, no, I know, I know. But to the
15 extent that you know exactly what is at issue, can you do
16 that within a week? And then let my chambers know and if
17 we want paper on it, we'll tell you then.

18 MR. FARRELL: I know on one of the items
19 there's currently a meet and confer set up and on the
20 other one, in terms of the custodians, I don't know
21 whether that's been scheduled yet. So it depends on what
22 the -- I'm not sure a week is going to be the time frame,
23 depending on what the schedules are. Certainly on one
24 item, I think that's accurate.

25 THE COURT: Well, I don't want you to wait

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1 until August 19th either.

2 MR. FARRELL: Okay.

3 THE COURT: And I'll see you at your
4 convenience.

5 MR. FARRELL: All right.

6 THE COURT: But you've got to tee it up.

7 MR. FARRELL: All right. So how would you like
8 us to -- when the time is ripe before August 19th, which
9 we --

10 THE COURT: Call chambers.

11 MR. FARRELL: And we'll tell you that we have
12 it, okay.

13 THE COURT: Yes.

14 MR. FARRELL: Good.

15 THE COURT: But don't write me, call chambers.
16 If we want paper, we'll tell you exactly what we want.
17 If we don't want paper, we'll say we're going to have you
18 come in on these three discrete issues.

19 MR. FARRELL: All right. Thank you, your
20 Honor.

21 MS. SHAMSI: Which just so that the Court
22 knows, we have been seeking resolution on a number of
23 issues ourselves. So I think it would be helpful to both
24 parties to be able to say that.

25 THE COURT: All right.

1 MS. SHAMSI: We've got a set of other issues
2 that we think --

3 THE COURT: Okay. I'm listening.

4 MS. SHAMSI: -- are ripe for resolution. They
5 relate to our --

6 MR. FARRELL: Your Honor, just before you go,
7 just so I can finish. In terms of the documents, they're
8 not producing documents to us because we have the pending
9 document disputes that has been -- that we had submitted
10 before the Court the last time we were here.

11 So right now, in terms of plaintiffs giving us
12 documents responsive to our document requests, for all
13 the requests that were argued and sought before the
14 Court, we're not getting any paper from them on those
15 issues.

16 MS. SHAMSI: Your Honor?

17 MR. FARRELL: So they've taken the position
18 that it's pending, so we're not, you know -- we're not
19 doing anything further on it and they're taking that
20 position. Of course, the other document requests to say
21 hey, we had that issue teed up in front of the Court.
22 We're not going to give you any documents in response to
23 the other requests that we haven't teed up in front of
24 the Court because our reasons for not doing that are the
25 same.

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1 MS. SHAMSI: Your Honor, that's not quite
2 correct. We are holding in abeyance any documents that
3 would be subject to the dispute on First Amendment
4 privacy and retroactive justification grounds. We have
5 been moving forward with production on document requests
6 that are not subject to those disputes and also, we have
7 been meeting and conferring intensively over where a lot
8 of information will come from which is the electronic
9 discovery issues and that is still ongoing. Those
10 negotiations are being had. Some issues will undoubtedly
11 come before you but that's not ripe because there are a
12 couple of more conversations to be had.

13 THE COURT: All right. I have to change the
14 date. August 26th at 2 o'clock.

15 MR. FARRELL: Your Honor, that last week of
16 August, I -- is that the week that maybe precedes the
17 Memorial Day (sic) weekend?

18 THE COURT: Oh, you mean Labor Day.

19 MR. FARRELL: I'm sorry, Labor Day.

20 THE COURT: Okay.

21 (Pause)

22 THE COURT: Thursday, September 4th, 1 o'clock?

23 MR. FARRELL: That's fine for defendants, your
24 Honor.

25 THE COURT: All right.

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1 MR. FARRELL: With respect to the production,
2 there has been essentially no production. There's been
3 maybe 100 pages of documents that plaintiff produced
4 which are basically, you know, useless in terms of the --

5 THE COURT: So what are you waiting for?

6 MS. SHAMSI: Go ahead.

7 MR. HARTMAN: Your Honor?

8 MS. SHAMSI: Your Honor, this is Joshua Hartman
9 of Morrison & Foerster.

10 MR. HARTMAN: Yes. your Honor, that's not
11 accurate. We have produced close to a thousand pages of
12 documents at this point. We're engaged in review of
13 those documents. We've undertaken electronic collection
14 of ESI and defendants are well aware of that. We've been
15 meeting and conferring about process in response to
16 defendant's request that we produce documents. We have
17 done so and provided date certainties for productions when
18 asked to do so. So, I don't think Mr. Farrell's
19 representations are an accurate reflection of the state
20 of play.

21 MR. FARRELL: Your Honor, in response to that,
22 out of the thousand pages that they produced, 855 pages
23 were the NYPD's or allegedly the NYPD's documents. They
24 are not plaintiff's documents. The remaining 100 pages
25 which is what it's left with, is what I am going to call

1 nonsensical information. At the heart of this case is
2 what we were seeking in our document requests. They have
3 taken the position we're giving you no paper in response
4 to your first set of document requests because we have
5 for all the ones that we've disputed, it's pending before
6 the Court and until we get a ruling, we're not going to
7 produce any paper.

8 And they make that same rationale for the other
9 requests that were not discussed in front of the Court
10 the last time we were here and they say well, the same
11 rationale in some of these additional requests are the
12 ones we put before the Court on the prior ones. So,
13 until we get a resolution, nothing's happening.

14 MR. HARTMAN: Your Honor, this is quite
15 surprising to hear. We've met and conferred over our
16 document production efforts. We've met and conferred
17 over ESI. What happened following those efforts is we
18 produced documents. That's well-documented. Defendants
19 have not taken any issue with the progress of our
20 document production since our last production.

21 So this is not something that we met and
22 conferred about in preparation for today's hearing. If
23 defendants have issues with the state of our production,
24 I respectfully submit that this is not the time to
25 discuss them. We're willing to engage in good faith meet

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1 and confer efforts about them but these are new issues.

2 MR. FARRELL: Your Honor, the issue is simple.
3 They can respond to the Court and tell the Court whether
4 they're producing documents that are responsive to the
5 requests that we have before you. I think the answer to
6 that is going to be no.

7 So unless I am mistaken about that and they've
8 produced documents or are intending on doing that with
9 respect to the document requests they have opposed before
10 your Honor, and on the similar ones that ask for similar
11 types of information that they claim retroactive
12 justification or the other types of things, the answer is
13 they are not producing that.

14 We have documented and requested from them on
15 numerous occasions to produce documents. There's been --
16 putting aside the NYPD documents that they've given us,
17 it's less than 150 pages.

18 MR. HARTMAN: Your Honor, if we have a pending
19 objection that is still in need of resolution, I -- your
20 Honor, we're not producing documents responsive to those
21 requests. Otherwise, we are engaged in document
22 production and we have produced documents. And
23 defendants have not taken any issue with it in
24 correspondence, during meet and confers, since we made
25 our last production.

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1 MS. SHAMSI: Your Honor, we're going to keep
2 going back and forth on something which quite frankly --

3 THE COURT: Well, I've heard enough because --

4 MS. SHAMSI: Right.

5 THE COURT: -- to the extent that it has to do
6 with the objections, you're going to get a ruling from me
7 very quickly. All right.

8 What else do you have?

9 MR. HARTMAN: Your Honor, we also have issues
10 with requests for production that we've served and that
11 we have not received responses to. I have a copy of the
12 request and the defendant's objections, as well as
13 relating --

14 THE COURT: And you've met and conferred?

15 MR. HARTMAN: We have met and conferred; yes.

16 THE COURT: And what are these about?

17 MR. HARTMAN: A range of issues, your Honor.

18 THE COURT: What's number 1?

19 MR. HARTMAN: May I approach to hand -- and I
20 would suggest that we work off tab 2 which is defendant's
21 objections because these have both the requests and the
22 objections in them.

23 The first request that we have an issue with is
24 document request number 4 which is on page 6. The
25 request is for documents concerning policies and

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1 standards for retention of information obtained during
2 surveillance and investigation. It's relevant to our
3 claim for expungement and therefore, also to standing.

4 THE COURT: Document request number 4?

5 MR. HARTMAN: That's correct.

6 THE COURT: Okay. Who wants to be heard on
7 document request number 4?

8 MS. LEIST: Your Honor, Leist for the
9 defendants.

10 Just to take a step back here, plaintiffs
11 served 35 document requests on us. I believe there's
12 about 28 or 27 that are in dispute right now. Regarding
13 the majority of the defendant's objections are to the
14 fact that none of these document requests are tied -- are
15 relevant to the allegations that are in their complaint
16 and it's defendant's position that they are instead
17 seeking an audit of the intelligence bureau writ large.
18 And you'll see that as time goes on as to what kinds of
19 documents they're actually looking for. So that's just
20 sort of the overview.

21 The second thing is they're also looking for
22 document requests for things that have already been
23 denied by Judge Chen, maybe not in so many words but in
24 sum and substance and I'll have quotations from her
25 order.

1 So Judge Chen found that the scope of discovery
2 what were two things; the first thing is documents
3 pertaining to the plaintiff's investigations which as you
4 know we're turning over. The second thing is documents
5 pertaining to any policy that the NYPD have in
6 investigating people based on their religion. So that is
7 the vehicle that we go forward in.

8 This document request is not relevant to any of
9 their policy claims. They do not have a policy claim
10 regarding the unlawful retention of documents. So that
11 is our position with this document request.

12 MR. HARTMAN: If I may respond? Judge Chen
13 certainly issued an order that related to the scope of
14 discovery. Judge Chen was considering specific requests
15 for production and interrogatories in that order. And
16 she certainly concluded that documents concerning
17 plaintiffs are discoverable and documents concerning NYPD
18 policies that pertain to investigations with surveillance
19 of Muslims are relevant and should be produced. But
20 nothing in Judge Chen's order limits discovery to those
21 two categories of information.

22 In terms of whether request number 4 is tied to
23 the allegations in our complaint, I've already set forth
24 how it is. We have alleged a claim for expungement
25 that's clear as day in our request for relief. That's

1 well documented during the discovery process.

2 THE COURT: You want information concerning the
3 retention of information concerning individuals and
4 organizations that are not the target of this
5 investigation?

6 MR. HARTMAN: That is correct. So the scenario
7 that this would occur in is if there were surveillance or
8 investigations of a particular individual that is being
9 conducted and that individual is for example, attending
10 Masjid At-Taqwa, one of the plaintiffs but there's not a
11 specific active investigation or inquiry related to the
12 first investigation of the individual. We are seeking
13 documents that would go to the retention of the records
14 from -- relating to Masjid At-Taqwa that are collected
15 incidentally to the other investigation.

16 And the retention of records and information of
17 the individuals that are not themselves the target of
18 surveillance --

19 THE COURT: Wait. You're getting any At-Taqwa
20 documents.

21 MR. HARTMAN: That's correct. These requests
22 are related to policies that govern retention of
23 documents though. Whether the NYPD is complying with
24 their stated policies for retention is relevant to the
25 issues in this case. In particular, whether there is

1 discriminatory intent, whether a facially neutral policy
2 is carried out in a discriminatory manner.

3 MS. LEIST: But there is no claim of an
4 unlawful retention policy. So I'm not understanding how
5 any of this is just -- it's defendant's position that
6 it's not relevant, your Honor.

7 MR. HARTMAN: Your Honor, we're not obligated
8 to allege --

9 MS. LEIST: And -

10 MR. HARTMAN: -- a specific unlawful retention
11 policy. An unlawful retention policy would be part of
12 our broader claims for unconstitutional violations,
13 unconstitutional surveillance investigation and --

14 THE COURT: 4 is denied. What's next?

15 MS. SHAMSI: Your Honor, if I may just --

16 THE COURT: 4 is denied. I don't want to hear
17 anymore.

18 MR. HARTMAN: Understood, your Honor. Request
19 number 5 is next. And I suggest that request number 5
20 and request number 34 be taken together. They're --

21 THE COURT: Okay, 34?

22 MR. HARTMAN: -- related requests.

23 THE COURT: 34.

24 MR. HARTMAN: Request number 5 seeks --

25 THE COURT: Wait. Does this have to do with

1 the plaintiff?

2 MS. LEIST: No.

3 MR. HARTMAN: It is --

4 THE COURT: I'm looking at request number 34,
5 am I right, it's on page 19? Documents and --

6 MR. HARTMAN: yes.

7 THE COURT: -- statistics.

8 MR. HARTMAN: Documents and statistics
9 concerning the number of criminal charges resulting from
10 intelligence division surveillance or investigation.

11 This is relevant to any contention from defendants that a
12 Muslim surveillance or investigative program has a
13 compelling government interest that's narrowly tailored.

14 In the media, the defendants have -- NYPD has
15 made numerous public statements about the success of
16 their activities in thwarting terrorist plots and
17 apprehending individuals who plan to engage in terrorism.

18 THE COURT: Right. But what's that got to do
19 with this case?

20 MR. HARTMAN: Whether these apprehended
21 individuals or any charges filed in the incidents that
22 are discussed in public record by NYPD, it goes to this
23 case to the extent that those charges actually stemmed
24 from an investigation or surveillance authorized under a
25 length of time at issue here.

1 MS. SHAMSI: If I could just add very quickly,
2 your Honor --

3 THE COURT: No. One person is going to speak.

4 MS. SHAMSI: Okay.

5 THE COURT: Unless it has to do with these
6 plaintiffs, I don't see how it's relevant to this case.
7 You're saying that the defendants -- the complaint says
8 the defendants investigated these people, did
9 surveillance or the locations of the plaintiffs based on
10 the fact that they were Muslim and that's the violation.
11 That's the constitutional violation.

12 MR. HARTMAN: That's correct, your Honor.

13 THE COURT: What's that got to do with whatever
14 the intelligence division was doing with respect to
15 anybody else?

16 MR. HARTMAN: Whether the investigations or
17 surveillance of our plaintiffs were carried out as part
18 of a broader policy or practice of surveilling or
19 investigating Muslim individuals or organizations is
20 relevant to this case. It's relevant to the extent of
21 the constitutional violation that we're alleging.

22 MS. LEIST: Your Honor, this request has
23 already been sought and denied. In Judge Chen's order,
24 specifically on page 26, the plaintiffs had originally
25 sought statistics and documents regarding investigation

1 -- the number of investigations as to Muslim individuals
2 and non-Muslim individuals, which is actually a narrower
3 scope of universe than they're seeking in these requests.

4 But in denying those requests, Judge Chen said
5 and I quote, "Statistics concerning the number of
6 intelligence bureau investigations" --

7 THE COURT: What page? Oh, I see. Yes, okay.
8 I see it. Yeah.

9 MS. LEIST: Do you see it?

10 THE COURT: Um-hum.

11 MS. LEIST: -- "instances of surveillance and
12 criminal charges of Muslims and non-Muslims are not
13 readily susceptible to the conclusion plaintiffs seek to
14 draw from them or any conclusion, for that matter, given
15 as previously discussed, the countless factors and
16 variables behind any investigation. Accordingly, given
17 the impossibility of compliance, as well as the minimal
18 probative value and relevance, these request are denied."

19 These request are exactly similar, if not more
20 broad than the ones that Judge Chen already denied.

21 THE COURT: Is this number 6 and number 34?

22 MS. LEIST: 5 and 34, your Honor.

23 MR. HARTMAN: No, 5 and 34, your Honor. Your
24 Honor, if I may respond to that point?

25 THE COURT: Yeah, go ahead.

1 MR. HARTMAN: The request before Judge Chen
2 dealt with a different issue. It dealt with the issue of
3 the defendant's claim that they would have to review
4 documents from each investigation that they've ever
5 carried out over a nine-year period to determine whether
6 those investigations related to Muslims or non-Muslims
7 and whether they related to religious speech or beliefs.
8 And that issue is not implicated by these requests.
9 These request are directed to total numbers of
10 investigations that have been initiated or extended and
11 any charges that flowed from those investigations.

12 And in terms of the relevance to the compelling
13 government interest point, if the defendants have opened
14 up thousands of investigations and they've led to charges
15 in three instances, for example, that would undercut any
16 claim that there is a narrow tailoring of any compelling
17 interest they have in these kinds of activities.

18 MS. LEIST: Your Honor, I would disagree. Just
19 to take it out of the terrorism context and look at it in
20 the context of just any -- you know, a gun investigation
21 or a buy and bust investigation, a long term
22 investigation in which something doesn't result in
23 criminal charges does not indicate that the NYPD or
24 anyone else had no reason to be looking at these people.
25 I just -- the statistics would prove nothing and despite

1 what Mr. Hartman is saying, these statistics are not
2 readily available at the intelligence bureau's
3 fingertips. So they would have to be created.

4 And as Judge Chen already ruled in her
5 decision, "Defendants cannot be compelled to produce
6 documents or information that they do not possess."

7 MR. HARTMAN: Your Honor, we're not asking --

8 MS. LEIST: I'm not saying that we don't
9 possess it, your Honor. I'm saying that it would need to
10 be compiled.

11 THE COURT: Okay.

12 MS. LEIST: So that -- okay.

13 THE COURT: My ruling on 5 and 34 is that they
14 are denied.

15 What's next?

16 MR. HARTMAN: Request number 9, your Honor.

17 THE COURT: 9.

18 MR. HARTMAN: Request number 9 concerns
19 documents concerning policies and standards relating to
20 intelligence sufficiencies of informants, handlers,
21 cooperatives, undercover officers, plainclothes officers,
22 rakers, investigators; these are exactly within the scope
23 of documents that Judge Chen has already stated that we
24 are entitled to. Documents that relate to NYPD policies
25 and standards.

1 We have allegations our complaint about use of
2 undercover officers and confidential informants to
3 investigate and surveil our clients. Broader policy
4 documents are relevant to discriminatory intent, to
5 municipal liability and to the extent to which any
6 policies have been carried out in practice by NYPD
7 officers.

8 THE COURT: All right. Let me hear from the
9 City.

10 MS. LEIST: Your Honor, it's defendant's
11 position that these documents are not relevant here.
12 Under Judge Chen's November 22nd order on page 11, the
13 plaintiffs -- she reframes what the plaintiffs indicate
14 that they may seek to prove their claim, either through
15 an express classification or a discriminatory application
16 and that the plaintiff's investigations were of unequal
17 and unwarranted scope, duration and invasiveness as a
18 result of their religion.

19 There is absolutely no policy claim pled in the
20 complaint regarding the wrongful use of undercovers or
21 informants. Any allegation as to that wrongful -- this
22 alleged wrongful use is limited to that one CI that we've
23 been talking about before and on its face, that's
24 insufficient for a customer usage claim.

25 So it is defendant's position that this is not

1 relevant to either one of their policy theories through
2 which they're trying to prove their case.

3 THE COURT: I mean it's not as if you're
4 arguing that the undercovers or the informants were out
5 of control in terms of what they did vis-a-vis the
6 plaintiffs. I thought the plaintiff's argument was the
7 fact that the NYPD had a policy of unlawful surveillance
8 based on religion is really the crux of the lawsuit, not
9 that there were informants doing things they weren't
10 allowed to do or doing things that were outside of their
11 protocols, is it?

12 MR. HARTMAN: All along we have maintained that
13 and we are alleging -- we intend to prove our claims in
14 two ways, the first is certainly a policy, a specific
15 policy of Muslim surveillance. The second is a practice
16 --

17 THE COURT: Right, exactly.

18 MR. HARTMAN: -- of -- the second is a practice
19 of Muslim surveillance. So the extent to which there's a
20 lack of supervision, a lack of training of particular
21 officers that leads to a constitutional violation of
22 plaintiff's rights --

23 THE COURT: But you haven't seen any documents
24 that suggests that there was any lack of training. I
25 mean you're --

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1 MR. HARTMAN: That --

2 THE COURT: -- you're asking for these when you
3 haven't even seen the underlying documents that might
4 give rise to such an allegation.

5 MR. HARTMAN: But this is exactly part of the
6 problem and frustration for us though, your Honor. We've
7 seen very few documents in this case. Document
8 production is supposed to conclude by August 1st by
9 agreement of the parties and by order.

10 THE COURT: Look, it took them three months to
11 do a protective order.

12 MR. HARTMAN: Your Honor, we're extremely
13 frustrated.

14 THE COURT: I know you're new to the case.

15 MR. HARTMAN: We're trying to get documents.

16 THE COURT: I don't see the relevance of this.
17 This is denied. This one I might let you revisit after
18 the document production that we discussed today.

19 What's the next one?

20 MR. HARTMAN: Your Honor, if I may be heard
21 regarding the document production we've discussed today,
22 we would like some understanding of when to expect it.
23 Defendants for months have been representing that they
24 have thousands of pages that are going to be produced.
25 They've produced fewer than 200 to date.

1 THE COURT: Okay. They'll discuss it with you
2 after the conference when they expect to give it to you.

3 MR. HARTMAN: Your Honor, we had asked them for
4 a date certain many times. Defendants committed to
5 provide a date certain for their next production by June
6 16th. That date came and went.

7 THE COURT: All right.

8 MR. HARTMAN: We did not hear from them. If it
9 would please the Court, we would request a date certain
10 that the defendants be ordered to provide us a date
11 certain by which they will produce documents.

12 THE COURT: Okay. Are we finished with these
13 document requests?

14 MR. HARTMAN: We have many others, your Honor.

15 THE COURT: Oh, all right. Which one are we on
16 next?

17 MR. HARTMAN: We are on 10. And just to
18 follow-up, we understand --

19 THE COURT: 10, hold on.

20 MR. HARTMAN: -- with respect to 9, that we may
21 be permitted to re-raise this request after we review the
22 other documents that we'll be receiving from defendants.
23 Is that correct, your Honor?

24 THE COURT: Yea. And 10 is denied for the same
25 -- I don't need to hear argument again on 10.

1 What's next?

2 MR. HARTMAN: It's 11 and this does implicate
3 the same issues.

4 THE COURT: Same thing; denied.

5 MR. HARTMAN: And we understand that we will be
6 able to re-raise these requests following review of
7 defendant's production.

8 THE COURT: Um-hum.

9 MR. HARTMAN: Request number 13 is the next
10 one. Defendants non-privileged communications about this
11 lawsuit.

12 THE COURT: What? What is that?

13 MR. HARTMAN: That's relevant to defendant's
14 intent.

15 THE COURT: Every non-privileged communication
16 the defendants have had about the lawsuit?

17 MR. HARTMAN: Your Honor, I think that we
18 are --

19 THE COURT: About the lawsuit?

20 MR. HARTMAN: Yes, your Honor. I think that we
21 are able to agree on this one.

22 THE COURT: Oh.

23 MR. HARTMAN: Defendants have actually made a
24 proposal that --

25 THE COURT: Okay.

1 MR. HARTMAN: -- that they will limit this
2 response to the custodians that they've offered. We
3 think limiting it to particular custodians is fine,
4 provided that it is the universe of whatever universe of
5 the custodians is --

6 THE COURT: What did you agree to?

7 MR. HARTMAN: -- ultimately.

8 MS. LEIST: Your Honor, we had agreed to
9 originally provide the non-privileged communications
10 about this lawsuit from the 16 custodians we had
11 originally identified. What plaintiffs had sought were
12 non-privileged communications from every single member of
13 the intelligence bureau and all the key players of the
14 NYPD. So we attempted to narrow it and to compromise
15 with the 16 custodians that we were providing.

16 And I believe they are also giving us their
17 communications, if I'm not mistaken but if it's not a
18 reciprocal obligation then we would withdraw our offer.

19 THE COURT: Is it reciprocal?

20 MR. HARTMAN: Yes, your Honor.

21 THE COURT: And how are you limiting yours?

22 MS. SHAMSI: To the custodians that are agreed
23 upon.

24 THE COURT: All right. So you'll do the
25 custodians and we don't have to discuss it. All right.

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1 What's next?

2 MR. HARTMAN: Request number 15. And just to
3 briefly address the last request again, number 13. We
4 understand that the request will be limited to all
5 custodians for both sides.

6 THE COURT: Yeah, whatever you agreed to.

7 MR. HARTMAN: Thank you.

8 THE COURT: Tell me about 15.

9 MS. LEIST: Only -- your Honor, we had only
10 agreed for the 16 custodians.

11 THE COURT: Right, okay. That's fine.

12 Tell me about 15.

13 MR. HARTMAN: Your Honor, we were discussing
14 adding additional custodians beyond 16. However, we've
15 already discussed a number of other custodians beyond 16
16 earlier today. We would request that the --

17 THE COURT: They agreed to 16, right?

18 MR. HARTMAN: They've offered 16.

19 THE COURT: Right.

20 MR. HARTMAN: We have agreed to provide
21 communications from all custodians on our side.

22 THE COURT: How many custodians do you have? I
23 think you're a little different than the New York City
24 Police Department.

25 MR. HARTMAN: That's true. We also have a

1 number of individuals, however. I don't have the exact
2 number of custodians as I sit here today.

3 MS. LEIST: I'm not sure how they're agreeing
4 to it then if they don't know their custodians.

5 THE COURT: Well, they're not agreeing to your
6 16. They want more than 16.

7 MS. LEIST: Well, the --

8 THE COURT: I think 16 is fine. Let's move
9 onto 15.

10 MS. LEIST: Thank you.

11 THE COURT: Tell me about 15. What does this
12 have to do with anything?

13 MR. HARTMAN: The demographics unit, your
14 Honor, is an organization that was within the
15 intelligence division. We have numerous allegations in
16 the complaint about the demographics unit activities.
17 Judge Chen has already reviewed documents related to the
18 demographics unit. The demographics unit is an
19 organization that was responsible for mapping Muslim
20 organizations in response to 9/11 essentially. And they
21 have conducted activities including mapping mosques in
22 the New York area and surrounding states, mapping other
23 Muslim institutions, Muslim hot spots.

24 And this goes directly to the heart of our
25 claim of disparate treatment of Muslim individuals. And

1 we do know that there are documents that have made their
2 way into the public record that are directly relevant to
3 our clients. We're seeking policy documents that relate
4 to the foundation of the demographics unit that would
5 inform the intent in mapping Muslim individuals including
6 the plaintiffs.

7 MS. LEIST: This is going to be a fundamental
8 disagreement as you'll see as they go forward because
9 they're seeking all kinds of reports and other things
10 that come out of the demographics unit. It is
11 defendant's position that the demographic -- anything
12 from the demographics unit is not relevant to the
13 plaintiff's claims in this case. The demographics unit
14 was not involved in the investigation of these
15 plaintiffs, nor do they conduct the type of
16 investigations as to which plaintiffs may have been
17 subject to. So --

18 THE COURT: What is the demographics unit?

19 MS. LEIST: The demographics unit is a unit --
20 under the Handschu guidelines, there's a section 882 in
21 which officers can go out to public places and gather
22 information. So the demographics unit would send
23 plainclothes officers to certain locations and just
24 gather basic information, where it's located. If there
25 was an incident overseas and the NYPD was concerned there

1 might be some kind of ricochet effect over here, the
2 officers might take down -- excuse me -- what people were
3 saying about that particular event and things of that
4 nature.

5 The demographics unit did not identify who they
6 were taking down from and it has nothing to do with the
7 plaintiff's investigations in this case. It is a
8 separate unit.

9 MR. HARTMAN: Your Honor, there are documents
10 that are in the public record that are demographic units
11 documents that specifically mention the plaintiffs.
12 These are documents that are not --

13 THE COURT: They specifically mention the
14 plaintiffs?

15 MR. HARTMAN: Yes, your Honor.

16 THE COURT: Well, why wouldn't they be in the
17 production of the documents referenced in the claims?

18 MS. LEIST: They would be, your Honor.

19 THE COURT: So you're going to get them.

20 MR. HARTMAN: Your Honor, we would get
21 documents that are specific to activities that the
22 demographics unit has carried out. However, we also have
23 requested documents to go to the formation of the
24 demographics unit. These are policy documents. They go
25 to the impetus for creating the demographics unit in the

1 first place. The intent in surveilling Muslims that was
2 carried out through the demographics unit that ultimately
3 trickled down to actions that affected our plaintiffs.

4 THE COURT: Well, you're going to get any
5 demographics unit records that mentioned your clients.

6 MR. HARTMAN: Certainly, your Honor. But these
7 are documents that are responsive to request number 15.
8 We're seeking documents that go to the reasons that our
9 clients were ultimately investigated by the demographics
10 unit. These are policy documents. We've said --

11 THE COURT: But --

12 MR. HARTMAN: -- we've heard all afternoon
13 about how we have a policy claim. You know, we at least
14 agree on that, that a policy is relevant -- it's highly
15 relevant to our claims. These are policy documents.

16 MS. LEIST: I think -- well, first of all, I
17 don't think they're actually asking for policy documents.
18 They're asking for documents concerning the formation.
19 Were it more narrowly tailored, perhaps they would be.

20 THE COURT: Did you say that the --

21 MS. LEIST: But --

22 THE COURT: -- demographics unit was formed as
23 a result of the Handschu guidelines?

24 MS. LEIST: No, no, no.

25 THE COURT: Did you say --

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1 MS. LEIST: The activity they conducted was
2 under the Handschu guidelines. In a specific section
3 that's separate and apart from the other types of
4 investigations that the plaintiffs may have been subject
5 to, just -- not to get into a discussion about Handschu,
6 your Honor.

7 MR. HARTMAN: Your Honor?

8 MS. LEIST: But the demographics unit is not
9 what the intelligence bureau would consider a unit that
10 conducts surveillance pursuant to an authorized Handschu
11 investigation.

12 MR. HARTMAN: Your Honor?

13 MS. LEIST: And again, your Honor, they're
14 getting every document that has their name on it.

15 MR. HARTMAN: Your Honor, a decision --

16 THE COURT: Whether it's from the --

17 MS. LEIST: Whether it's from any unit.

18 THE COURT: -- zone assessment unit or the
19 demographics unit?

20 MS. LEIST: Right. Any unit within the
21 intelligence bureau, they'll be getting the documents
22 from them.

23 MR. HARTMAN: Your Honor, the decision to form
24 a specific unit within the intelligence division for the
25 purpose of mapping all Muslim institutions in the tri-

1 state area is absolutely a policy document.

2 THE COURT: But was the demographics unit
3 formed just to investigate Muslims?

4 MR. HARTMAN: It --

5 MS. LEIST: No.

6 THE COURT: I don't understand what the
7 demographics unit is.

8 MR. HARTMAN: It was formed as a direct result
9 of 9/11. There are documents again in the public record
10 that refer to ancestries of interest that the
11 demographics unit has identified and we'll see other
12 requests that refer to ancestries of interest. Documents
13 concerning ancestries of interest have specifically been
14 addressed by Judge Chen's prior order and allowed.

15 MS. SHAMSI: If we may just a second, your
16 Honor.

17 (Counsel confer)

18 THE COURT: Tell me more about the demographics
19 unit.

20 MS. LEIST: Yes, your Honor. The demographics
21 unit does not investigate individuals and so they would
22 have played no role in the investigation of these
23 plaintiffs.

24 THE COURT: But the demographics --

25 MS. LEIST: The demographics unit was formed

1 after 9/11 in response to what happened in 9/11. It was
2 important for the NYPD to know which communities in New
3 York City, if for example an Islamist radicalized in
4 violence wanted to come to New York, where could they
5 easily fit in and that kind of thing.

6 And so it's a very typical form of law
7 enforcement. It's similar to what they do in the gang
8 unit or the drug unit.

9 THE COURT: Okay.

10 MS. LEIST: That is what the demographics unit
11 does.

12 THE COURT: All right. I get it.

13 MR. HARTMAN: Your Honor, there are
14 documents --

15 THE COURT: I get it. 15 is granted.

16 What's next?

17 MR. HARTMAN: Document request number 16, your
18 Honor and these are documents concerning a report that
19 has also made its way into the public record. In fact it
20 was issued as a public document; Radicalization In The
21 West, the home grown threat. This is a document that was
22 authored by two intelligence division officials. This is
23 absolutely a fundamental document in this case.

24 THE COURT: So this document is now in the
25 public record?

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1 MR. HARTMAN: It has -- yes. Yes, it is, your
2 Honor. And --

3 THE COURT: And who commissioned it?

4 MR. HARTMAN: The intelligence division, your
5 Honor.

6 THE COURT: Do you want to tell me about that?

7 MS. LEIST: Yes, your Honor. The
8 Radicalization In The West Report as we have stated
9 numerous times and also in the other related case, the
10 Handschu litigation, was a report written by the NYPD.
11 It is not a policy. It is not an operational directive.
12 It is a law enforcement report regarding the process of
13 radicalization, if that makes sense. If I'm unclear, I
14 could -- I can be more specific. But it is --

15 THE COURT: Is it a post-9/11?

16 MS. LEIST: It is post-9/11. I believe it
17 was --

18 THE COURT: And did the intelligence division
19 commission it?

20 MS. LEIST: They did commission it.

21 THE COURT: Okay. It's granted. 16.
22 What's next?

23 MR. HARTMAN: 17, your Honor.

24 THE COURT: So how much did you agree on?

25 MR. HARTMAN: Very little. Very little. Part

1 of the problem here is we identified issues in
2 discovery. We met and conferred. We received boilerplate
3 objections --

4 THE COURT: At the meet and confer?

5 MR. HARTMAN: In writing and at the meet and
6 confer. We discussed each request. We explained our
7 view of the relevance and from defendants, we had very
8 little specificity in terms of their objections. In
9 fact, at the meet and confer they refused to identify the
10 objections on which they were actually standing.

11 MS. LEIST: Your Honor, if I may just to
12 correct these inaccuracies. We specifically came into
13 that meet and confer and sought to ask the plaintiffs why
14 some of these document requests are relevant and they
15 refused to answer for some of them but for others, they
16 would just punt it back to us and say well, why are you
17 objecting.

18 THE COURT: Well now they're telling us because
19 I'm asking them.

20 MS. LEIST: Right.

21 THE COURT: All right.

22 MR. HARTMAN: Your Honor, that's absolutely not
23 true.

24 MS. LEIST: So this is --

25 THE COURT: Let's not argue about that. Let's

1 go to 17.

2 MR. HARTMAN: Sure, 17 documents concerning
3 NYPD research, policy statements, operational directives,
4 related to Islamic schools of thought, Islamic extremism
5 and so forth. And 18 is very similar. I think we're not
6 very far apart.

7 THE COURT: But 18 refers to non-Muslim group
8 extremism.

9 MR. HARTMAN: That's right and the reason for
10 the pair of these two requests is as comparator evidence.
11 Judge Chen already considered very similar document
12 requests and allowed them including document requests
13 that relate to non-Muslim individuals as they relate to
14 terrorism. These requests were granted in Judge Chen's
15 order number -- docket number 28.

16 There's an issue here in terms of --

17 THE COURT: But are you limiting 17 and 18 to
18 the intelligence division?

19 MR. HARTMAN: Yes, your Honor.

20 THE COURT: Okay.

21 MR. HARTMAN: The issue here is that defendants
22 are limiting their response to documents that would also
23 be responsive to the specific request considered in Judge
24 Chen's order. There's a broader scope fo request number
25 17 and 18. The request in the prior order was limited to

1 NYPD research, policy statements, et cetera as a basis or
2 factor in initiating investigations.

3 And what 17 and 18 go to are the analytical
4 foundations for decisions to issue investigations. So
5 the research that went into forming the NYPD policies;
6 these go to our religion clause and equal protection
7 claims.

8 MS. LEIST: Your Honor?

9 THE COURT: Now that you've heard why they want
10 them --

11 MS. LEIST: So we're already providing them
12 with most of these as per Judge Chen's directive but
13 Judge Chen also denied a portion of that as overly broad
14 in that it could be interpreted as requiring the
15 production of documents other than strategic or policy
16 documents. That is the problem that defendants have with
17 words like research --

18 THE COURT: Well, so that means that if you met
19 and conferred, you could narrow 17 and 18.

20 MS. LEIST: Yes, we could narrow it.

21 THE COURT: And you would agree to some of it.
22 How would you suggest narrowing it?

23 MS. LEIST: I would suggest taking out
24 research, taking out communications.

25 THE COURT: You're on 17 now, right?

1 MS. LEIST: Yes.

2 THE COURT: Or you want to do the same thing on
3 18?

4 MS. LEIST: And the same thing for 18.

5 MR. HARTMAN: Your Honor, taking out
6 communications, these are communications among policy
7 makers that we're seeking. These are policy items. And
8 in terms of research, we're seeking documents that
9 provide the research that went into the formation of
10 policies. These absolutely go to whether there's a
11 knowing government interest in --

12 THE COURT: No.

13 MR. HARTMAN: -- connecting the policies.

14 MS. LEIST: Well, they're getting the policies.

15 MR. HARTMAN: Your Honor, we --

16 MS. LEIST: And the operational directives. So
17 it's not --

18 THE COURT: Okay. 17 and 18 are granted as
19 limited.

20 MS. SHAMSI: Your Honor, what's the limitation?

21 THE COURT: Taking out research and
22 communications on both. Okay.

23 What's next?

24 MR. HARTMAN: 19, your Honor. 19 concerns
25 documents regarding the definition of ancestries of

1 interest and the development of an ancestries of interest
2 list. These are lists that are used by the -- were used
3 by the demographics unit. Documents concerning
4 ancestries of interest were already determined by Judge
5 Chen to be relevant to this case and we're seeking
6 documents that would allow us to understand how
7 particular ancestries were selected as of interest.

8 For example, if there are documents that state
9 that a particular ancestry is more likely than not to be
10 related to Muslim individuals or have a high percentage
11 of individuals of the Muslim faith, that would be
12 evidence supporting our discriminatory policy and
13 practice claim.

14 MS. LEIST: Your Honor, not to go back again to
15 the discussion of the demographics unit previously but
16 this is just an example of how overly broad the
17 plaintiffs are trying to go with this discovery. Once
18 again, it is defendant's position that this is not
19 relevant to the claims in their case.

20 THE COURT: What is the ancestries of interest?
21 What is it?

22 MS. LEIST: The ancestries of interest a
23 document that I believe was commissioned by the
24 demographics unit -- not a hundred percent positive but
25 it lists certain countries that the NYPD --

1 MR. HARTMAN: Your Honor?

2 MS. LEIST: -- based -- excuse me -- based on
3 state department information and current events that
4 could possibly be of interest --

5 MR. HARTMAN: Your Honor?

6 MS. LEIST: -- in terrorism investigations,
7 your Honor.

8 MR. HARTMAN: Your Honor, paragraph 26 of the
9 complaint specifically concerns ancestries of interest.
10 It identifies the ancestries of interest that we know of
11 that made their way into public record and it includes,
12 for example, American black Muslims.

13 MS. LEIST: But again, your Honor, it has
14 nothing to do with either the initiation or continuation
15 of plaintiff's investigations or a policy of unlawful
16 Muslim surveillance.

17 MR. HARTMAN: Your Honor, it exactly relates to
18 a policy of unlawful Muslim surveillance.

19 THE COURT: 19 --

20 MR. HARTMAN: These are --

21 THE COURT: 19 is granted.

22 What's next?

23 MR. HARTMAN: Thank you, your Honor. 20 is the
24 next request. This is another request that relates to
25 the demographics units activities. These are reports on

1 non-Muslim communities within the ancestries of interest
2 including Coptic Christians, Jewish Iranians, Christian
3 Iranians, and so forth.

4 And we're seeking these documents to show that
5 -- well to gain evidence that there is a disparate
6 treatment of individuals within these communities, these
7 ancestries of interest that for example, Muslim Egyptians
8 and Muslim Iranians are treated by the NYPD differently
9 than are Coptic Egyptians and Jewish Iranians.

10 THE COURT: Do you want to be heard on 20?

11 MS. LEIST: Yes, I do, your Honor; just one
12 moment. Judge Chen has already found and that's on page
13 23 of her order, your Honor, that this kind of comparison
14 will not be fruitful, she says in the first full --
15 second full paragraph there. "The Court agrees with
16 defendants that there is no meaningful way to compare all
17 Muslims who were investigated by defendants including
18 plaintiffs, to all non-Muslim individuals and
19 organizations investigated by defendants on the basis of
20 their religious beliefs or practices."

21 Now that was in the context of a different
22 request but it's the same theory.

23 MR. HARTMAN: Your Honor, the --

24 MS. LEIST: And so --

25 MR. HARTMAN: -- the passage that --

1 THE COURT: She's not finished. Let her
2 finish. Go ahead.

3 MS. LEIST: And so once again, it goes back to
4 Judge Chen's argument that given the myriad of factors
5 that go into each particular investigation, there is --
6 to have to turn over all these documents, every single
7 report from the demographics unit, for something that is
8 of such limited value, in fact it's of no value, you
9 know, it's just -- it's irrelevant.

10 MR. HARTMAN: Your Honor, this request is not
11 implicating the issue that Judge Chen decided in that
12 request which related to statistics and it was related to
13 non-Muslim and Muslim individuals and the difficulty of
14 identifying investigations that pertain to Muslim
15 individuals or non-Muslim individuals.

16 This request is seeking reports that on their
17 face relate to specific communities. We've already
18 discussed the reason that this request is relevant in
19 terms of the demographic's units activities and in terms
20 of the ancestries of interest list.

21 20 is denied. What's next?

22 MS. SHAMSI: Your Honor, could you --

23 THE COURT: No.

24 MS. SHAMSI: -- specify the basis for denial?

25 THE COURT: No. Oh, because I agree that I

1 think Judge Chen's order pertains to this.

2 What's next?

3 MR. HARTMAN: 21, your Honor.

4 THE COURT: What did you agree -- did you agree
5 on any of these?

6 MS. LEIST: Your Honor, as I --

7 MR. HARTMAN: Your Honor?

8 MS. LEIST: -- as I stated to you earlier, you
9 know, this is -- how can we agree? It's an audit of the
10 intelligence bureau that they're really seeking here and
11 this is the second set of requests.

12 MR. HARTMAN: Your Honor, the truth is that no,
13 we did not agree on very many of these requests.

14 THE COURT: All right. Tell me about 21.

15 MR. HARTMAN: 21 seeks documents relating to
16 the criteria by which the intelligence division
17 designates individual organizations, hot spots or of
18 concern or of interest.

19 We've seen a number of documents in the public
20 record that identify mosques of interest, mosques of
21 concern, Muslim student associations of interest, Muslim
22 student associations of concern, hot spots related to
23 Muslim activities. And this request seeks documents that
24 would illuminate the process by which the intelligence
25 division decides that certain communities or religious

1 groups or mosques, are worthy of being of concern or of
2 interest.

3 THE COURT: But it could be anything. It could
4 be an organized crime group. It could be a narcotics
5 gang. It could be anything, right?

6 MR. HARTMAN: That's certainly not what we're
7 seeking in this request. I mean if there are ways to
8 narrow it, we certainly would be willing to discuss them.

9 THE COURT: What's the City's view on 21? What
10 are we on? Yes, 21.

11 MS. LEIST: Your Honor, the City's view is as
12 stated before, there are two types of claims here that
13 they can seek under a policy. This particular request
14 goes to neither of them.

15 THE COURT: I think 21 should be -- if you want
16 to make an argument about 21, you've got to narrow it. So
17 you can reframe it.

18 MR. HARTMAN: Your Honor, we'll meet and confer
19 in a --

20 THE COURT: Yes.

21 MR. HARTMAN: -- way to narrow that.

22 THE COURT: Narrow it significantly.

23 What's next?

24 MR. HARTMAN: 22, I don't think there will be
25 much of a dispute about this but I just want to make sure

1 the record is clear. We have met and conferred about
2 this request, as we have about all of these requests.

3 THE COURT: Right.

4 MR. HARTMAN: And we have gotten representation
5 from defendants that they will produce documents
6 pertaining to a specific NYPD camera that's --

7 THE COURT: Yes, 22 is fine.

8 MR. HARTMAN: -- identified this request.

9 THE COURT: 22 is fine.

10 MR. HARTMAN: The only reason I am raising it
11 is if we learn of additional NYPD surveillance equipment
12 that would be relevant to our claims, we reserve our
13 rights to seek documents related to that equipment.

14 THE COURT: Well, you're getting 22. Yes.

15 MR. HARTMAN: Thank you, your Honor.

16 MS. LEIST: Well, let's be specific, your
17 Honor. What they're getting in 22 --

18 THE COURT: Is the Fulton and Bedford --

19 MS. LEIST: -- is the Fulton and Bedford --

20 THE COURT: Yes.

21 MS. LEIST: -- camera.

22 THE COURT: Yeah.

23 MS. LEIST: They're not getting equip --
24 surveillance equipment or vehicles outside of mosques and
25 other places of worship in general. You see, they really

1 ask for two things there.

2 THE COURT: Yes.

3 MS. LEIST: So the first part of it needs to be
4 denied and then we'll be providing things specific to
5 that particular camera.

6 THE COURT: Well, you're going to provide
7 documents concerning the placement of NYPD surveillance
8 equipment or vehicles outside plaintiff's mosques.

9 MS. LEIST: If it's in the documents --

10 THE COURT: Or -- yes.

11 MS. LEIST: -- regarding plaintiff's
12 investigations.

13 THE COURT: Yes, because anything relating to
14 the surveillance or surveillance cameras of plaintiffs
15 are going to be disclosed.

16 MS. LEIST: Yes, we agree.

17 MR. HARTMAN: Just to be clear --

18 MS. LEIST: But that's not the way it's framed.
19 If you read it, it could --

20 THE COURT: It could be surveillance
21 equipment --

22 MS. LEIST: -- be read to mean anything outside
23 of any mosque.

24 THE COURT: Well, it says or other places of
25 worship but you mean mosques.

1 MR. HARTMAN: Just to be clear, your Honor, in
2 terms of the representation that we're getting certain
3 documents, there's a specific camera identified in the
4 request. We also understand that your Honor is allowing
5 the request (indiscernible) that we receive documents
6 concerning placement of NYPD surveillance equipment
7 outside the other plaintiff's organizations, as well.
8 Those documents, defendants have represented, are not
9 within the intelligence division. So we just wanted to
10 be sure that we are getting those documents.

11 THE COURT: Well --

12 MS. LEIST: The --

13 THE COURT: -- if they're within the
14 intelligence division or not, you're going to get them.

15 MS. LEIST: Let me just be clear, your Honor.

16 MR. HARTMAN: Thank you, your Honor.

17 MS. LEIST: The allegation in their complaint
18 as to that specific camera at Bedford and Fulton is one
19 of these cameras that says NYPD on it.

20 THE COURT: Okay.

21 MS. LEIST: Those are not maintained by the
22 intelligence bureau.

23 THE COURT: Okay.

24 MS. LEIST: Those are maintained by a separate
25 bureau.

1 THE COURT: Okay.

2 MS. LEIST: To the extent that there was any
3 surveillance equipment used in the investigation of the
4 plaintiff's by the intelligence bureau, they'll be
5 getting that with their documents.

6 THE COURT: That's what I mean, right.

7 MS. LEIST: Yes.

8 THE COURT: Okay. I mean, you can't help it if
9 there's some random crime prevention camera on a pole
10 somewhere and it happens to be near the plaintiffs.

11 MS. LEIST: Thank you, your Honor.

12 THE COURT: All right.

13 MS. LEIST: And that's exactly right.

14 THE COURT: What's next?

15 MR. HARTMAN: Request number 23 and this
16 implicates many of the issues that we have already
17 discussed. These are documents concerning --

18 THE COURT: Aren't you going to get this
19 already?

20 MR. HARTMAN: We thought we did.

21 THE COURT: Well, aren't you going to get it --

22 MR. HARTMAN: What we heard from defendants
23 during the meet and confer was that we were going to be
24 limited to DD-5s. So we're seeking all communications.

25 THE COURT: No, I just ruled that you're

1 getting any documents when they do the search relating to
2 employees, informants, undercovers -- yeah.

3 MR. HARTMAN: Thank you, your Honor.

4 THE COURT: You're getting documents --

5 MS. LEIST: Well, you didn't say informants,
6 your Honor.

7 THE COURT: No, you're not getting the
8 informant's documents.

9 MR. HARTMAN: Right.

10 THE COURT: You're getting the handler's
11 documents. You're getting -- I mean, don't ask me for
12 something you're already getting. I mean, you know, come
13 on. You were here the whole time.

14 MR. HARTMAN: Okay, your Honor. I apologize.

15 THE COURT: I gave you -- I made a very broad
16 ruling with respect to the electronically stored
17 information. It clearly subsumes this.

18 What's next?

19 MR. HARTMAN: Understood, your Honor. I
20 apologize.

21 Document number 24 is disputed but I think we
22 understand your Honor to --

23 THE COURT: Okay.

24 MR. HARTMAN: -- your Honor's ruling on that.

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1 THE COURT: All right.

2 MR. HARTMAN: Document request number 25.

3 Intelligence division documents concerning Masjid Omar
4 and Sharif Elison (ph.). Masjid Omar is a mosque at
5 which plaintiff, Muslims Giving Back, operates. Sharif
6 Elison is the Imam of that mosque. So we're seeking
7 documents regarding --

8 THE COURT: So MGB is at Omar?

9 MR. HARTMAN: That's where they conduct their
10 activities, yes.

11 THE COURT: Oh, so --

12 MR. HARTMAN: And we also note from the public
13 record that Shamir Rhaqman, the confidential informant we
14 discussed earlier, monitored their activities at this
15 mosque.

16 THE COURT: So why are you objecting to 25?

17 MS. LEIST: Because, your Honor, what has
18 already been decided by Judge Chen is that they're
19 entitled to documents pertaining to their investigations.
20 In fact, when they tried to get documents pertaining to
21 other investigations, Judge Chen denied that outright.
22 That's on page 23.

23 THE COURT: Yes.

24 MS. LEIST: So --

25 THE COURT: But you are -- but MGB is one of

1 the plaintiffs.

2 MS. LEIST: MGB is one of the plaintiffs and
3 they will get whatever documents pertain to MGB. But
4 they are certainly -- if there are investigations
5 concerning these two things, plaintiffs are not entitled
6 to that. It is not relevant to their investigation.

7 Now --

8 THE COURT: Perhaps it could be limited to as
9 they are --

10 MS. LEIST: As one of the plaintiffs were
11 there.

12 THE COURT: -- concerning MGB.

13 MS. LEIST: Well, I mean I still don't -- that
14 wouldn't be sufficient.

15 THE COURT: Well, if the investigation of MGB
16 led --

17 MS. LEIST: And they're going to get it if they
18 were there.

19 THE COURT: -- led to a surveillance at Masjid
20 Omar --

21 MS. LEIST: I'm sorry, your Honor?

22 THE COURT: If as part of an investigation of
23 MGB, there was a surveillance done at this mosque --

24 MS. LEIST: They would be getting that.

25 THE COURT: -- then they'll get it.

1 MS. LEIST: Right.

2 THE COURT: Well, that's what I mean.
3 Intelligence concerning if they relate to any of the
4 plaintiffs or if there's any connection to any of the
5 plaintiffs.

6 MR. HARTMAN: And, your Honor, there's
7 potentially another category of information. If this
8 mosque was the target of surveillance or investigation
9 and that led to tangential surveillance of MGB, we think
10 that should also be responsive.

11 THE COURT: You have to figure out a way and
12 I'm sorry, you're going to have to speak to them to
13 narrow it so it pertains to the plaintiff's connection to
14 this organization or this person.

15 MR. HARTMAN: Understood.

16 THE COURT: Okay, what's next?

17 MR. HARTMAN: Number 26 is next, your Honor.

18 THE COURT: Okay.

19 MR. HARTMAN: And I think 26, 27, 29, 30, 31,
20 all really relate to the same issue. These are
21 intelligence division documents identifying mapping
22 mosques, churches, synagogues, temples or gurdwaras in
23 New York City. These are documents that relate to our
24 claims for express classification and documents that
25 would allow us to compare intelligence division

1 activities that relate to mosques with any activities if
2 they exist that relate to churches, synagogues, temples
3 or gurdwaras, other religious institutions.

4 This is specifically narrow on houses of
5 worship and it is a way to gain evidence that does go to
6 the disparate treatment of Muslims.

7 MS. LEIST: And, your Honor, it is defendant's
8 position that these requests have already been denied by
9 -- in Judge Chen's order on page 23. It's that same
10 argument. There's no meaningful way to compare these two
11 things.

12 In addition, these requests are so broad. I
13 mean, it's one thing if you wanted to ask for any policy
14 documents but these just ask for all documents. So first
15 they've been denied already.

16 THE COURT: Why, you would give it to them if
17 it was asking for a policy document?

18 MS. LEIST: Well, I don't think so because it
19 would still -- it still wouldn't go to their claim as,
20 you know, Judge Chen already denied it. So --

21 THE COURT: Yeah.

22 MR. HARTMAN: Your Honor, these go to right --
23 exactly the heart of our equal protection claim that
24 Muslims have been treated differently than other
25 religions. The burden imposed by this request is not as

1 great as the defendant's suggested. In fact, when we met
2 and conferred, they were unable to identify any specific
3 burden associated with this series of requests. We
4 certainly asked them to do so and they refused.

5 And respectfully, you could easily search for
6 these kinds of documents using search times. In fact,
7 we've had search term discussions in which defendants
8 have identified a large number of hits for terms like
9 these.

10 THE COURT: So this pertains to 26 through 31.

11 MR. HARTMAN: Yes, your Honor. And these are
12 all intelligence division activities that were carried
13 out, focused on mosques in particular and if there are
14 any --

15 THE COURT: But you don't want them just on
16 mosques.

17 MR. HARTMAN: If there are any documents --

18 THE COURT: You want them on everything.

19 MS. LEIST: That's right.

20 MR. HARTMAN: Your Honor?

21 THE COURT: It's too broad.

22 MR. HARTMAN: Your Honor, we would be happy
23 with a stipulation --

24 THE COURT: It's too broad.

25 MR. HARTMAN: Your Honor, we would be happy

1 with a stipulation that there were no activities carried
2 out directed to churches, synagogues, temples or
3 gurdwaras. And I don't think that the burden of
4 identifying whether these activities have been used at
5 churches or at temples is so great. And it does seek
6 evidence that could be used to show disparate treatment.

7 MS. LEIST: Your Honor, just to take you back
8 again to Judge Chen's order which is the law of the case
9 at this point, "Given the myriad of factors that go into
10 every investigation and indeed, every step of every
11 investigation, attempting to compare hundreds if not
12 thousands of different investigations to each other, to
13 discern a pattern of disparate treatment of similarly
14 situated individuals would be futile."

15 MR. HARTMAN: Your Honor, Judge Chen never
16 ruled on these specific requests. She never considered
17 them. She never had the basis to consider them and she
18 certainly did not deny for all eternity, plaintiffs from
19 discovering the evidence that could be used to show
20 disparate treatment or comparator evidence.

21 MS. LEIST: I will point to the next sentence
22 in that. "Furthermore, as plaintiffs acknowledged, they
23 need not allege or prove a similarly situated group was
24 treated differently."

25 MR. HARTMAN: Your Honor, I think the other

1 point that's relevant to these requests is that the
2 issues before Judge Chen related to plaintiff's motion
3 for expedited discovery, this was discovery we were
4 seeking for preliminary injunction purposes, we're now in
5 full merits discovery but we don't think it's appropriate
6 to be limited to documents that only relate to Muslims
7 when there has been no specific burden identified with
8 searching for other religious institutions --

9 MS. LEIST: This is a pure --

10 MR. HARTMAN: -- at the specific religious
11 institutions.

12 THE COURT: You're not arguing that it's
13 burdensome.

14 MS. LEIST: Sorry?

15 THE COURT: You're not arguing that it's
16 burdensome.

17 MS. LEIST: Well, it would be burdensome, your
18 Honor.

19 THE COURT: Oh.

20 MS. LEIST: But this is a pure relitigation of
21 Judge Chen's order. Nothing has changed since Judge
22 Chen's order until now that would change the scope of
23 what she ordered in the first place.

24 THE COURT: I'm going to reserve on 26 through
25 31.

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1 All right, what's next?

2 MR. HARTMAN: 32, your Honor.

3 THE COURT: What?

4 MR. HARTMAN: 32 --

5 THE COURT: No, 32 is denied.

6 MR. HARTMAN: Your Honor, if I --

7 THE COURT: I don't need to hear you on 32.

8 It's denied. What's next?

9 MS. LEIST: 33, your Honor.

10 MR. HARTMAN: 33, your Honor.

11 THE COURT: Okay, 33, I'm listening.

12 MR. HARTMAN: We're seeking policy documents
13 governing intelligence division standards for monitoring
14 Web sites, blogs and other online forums. We know from
15 documents that made their way into the public record that
16 the NYPD did this with respect to Muslim individuals
17 including the plaintiffs in this case. We're seeking
18 documents that would relate to the policies under which
19 the NYPD did so.

20 Again, these are policy documents, this is
21 clearly within the scope of discovery based on Judge
22 Chen's order.

23 THE COURT: So these documents concern policies
24 and standards.

25 MS. LEIST: They do, your Honor. However, they

1 do not concern policies and standards of the intelligence
2 bureau to investigate people based on their religion
3 which is at the core of their policy claims.

4 THE COURT: So that means you would agree to
5 giving them intelligence division documents concerning
6 policies and standards --

7 MS. LEIST: No, it means I would not agree.

8 THE COURT: -- for governing monitoring of Web
9 sites and blogs and other online forums of people
10 believed to be Muslim?

11 MS. LEIST: No, your Honor.

12 MR. HARTMAN: Your Honor, these are monitoring
13 activities that focus on Muslim's religious views in
14 particular.

15 THE COURT: Well, but you didn't say that.

16 MR. HARTMAN: As well as First Amendment
17 protected speech.

18 MS. LEIST: No.

19 THE COURT: No, no. This is broader than --
20 33?

21 MR. HARTMAN: 33 would encompass those types of
22 documents.

23 THE COURT: Oh, no, I understand that but it's
24 broader than that.

25 MS. SHAMSI: If we may, your Honor?

1 (Counsel confer)

2 MR. HARTMAN: Your Honor, what we're seeking
3 are policies that relate to monitoring First Amendment
4 protected speech, policies that relate to monitoring of
5 Web sites, blogs, and online forums should address that.
6 If they don't, then that is fundamentally a problem in
7 that it has led to monitoring of Muslim speech.

8 THE COURT: Do you want to be heard?

9 MS. LEIST: Yes, your Honor. Can I just have a
10 moment?

11 THE COURT: Yeah.

12 MR. HARTMAN: And just to be clear, the
13 documents that are in the public record are focused on
14 monitoring of religious speech. So we know that these
15 activities have been carried out. There should be
16 polices that pertain to these activities.

17 (Counsel confer)

18 MS. LEIST: Your Honor, the plaintiffs are
19 already getting policy documents as to things that are at
20 the core of their claims. This request is clearly over
21 broad and the third thing is they will be getting, as you
22 know, all the documents pertaining to the investigations
23 of their plaintiffs.

24 THE COURT: Okay. I'm granting 33.

25 What's next?

1 MR. HARTMAN: 35, your Honor. Your Honor, I've
2 referred a number of times this afternoon to documents
3 that have made their way into public record. They've
4 done so thanks to a series of Associated Press stories
5 about the intelligence division's policy and practice of
6 surveilling and investigating Muslim individuals.

7 THE COURT: Wait. I'm confused. I don't
8 understand what 35 is. You have Associated Press
9 stories.

10 MR. HARTMAN: We have the documents that have
11 made their way --

12 THE COURT: Because they're in the public
13 record.

14 MR. HARTMAN: -- into the public record.

15 THE COURT: So what is it that you want?

16 MR. HARTMAN: We want any documents within the
17 intelligence division that relate to those Associated
18 Press stories. For example --

19 THE COURT: Because?

20 MR. HARTMAN: -- the intelligence division's
21 reactions. Because they are evidence of any
22 discriminatory intent, your Honor.

23 THE COURT: Discriminating against AP?

24 MR. HARTMAN: Against the Muslims that are
25 addressed in the Associated Press stories.

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1 THE COURT: Denied. 35 is denied.

2 What's next? Oh, we're at the end.

3 MR. HARTMAN: We are at the end.

4 MS. LEIST: Actually, your Honor, if I could
5 just -- sorry.

6 THE COURT: I denied 35. Can we move on?

7 MS. LEIST: Your Honor, could we narrow number
8 33?

9 THE COURT: All right. What do you propose?
10 How do you propose to narrow 33?

11 MS. LEIST: Can we meet and confer on that,
12 your Honor?

13 THE COURT: Yes.

14 MS. LEIST: Thank you.

15 THE COURT: Okay. What's next?

16 MS. LEIST: Just one more.

17 THE COURT: Okay.

18 (Counsel confer)

19 MS. LEIST: No, your Honor, we're fine.

20 THE COURT: Good. All right. Anything else,
21 Ms. Shamsi?

22 MS. SHAMSI: Your Honor, I just wanted
23 clarification about what was excluded in 17 and 18.

24 THE COURT: Hold on, 17 and 18.

25 MS. SHAMSI: Yeah.

1 THE COURT: I think it was -- I'm going to get
2 it. Hold on.

3 MS. SHAMSI: So --

4 THE COURT: I said we took out 17 and 18,
5 research and communications are redacted.

6 MS. SHAMSI: So but what we have sought -- what
7 this seeks is NYPD policy, standards --

8 THE COURT: And I think it's also 17, 18 --
9 weren't they also limited to the intelligence division?

10 MS. SHAMSI: That's correct, your Honor.

11 THE COURT: It's the -- limited to the
12 intelligence division and then redacting research and
13 communications.

14 MS. SHAMSI: Okay. But just to be very clear,
15 your Honor, what this document request sought was NYPD
16 and I understand you're limiting it to the intelligence
17 division.

18 THE COURT: Right.

19 MS. SHAMSI: Policy statements, operational
20 directives, training materials, relating to a set of
21 issues that went to policymaker's decisions concerning
22 investigation of Muslims, like the radicalization theory
23 that animates the entire surveillance program that we
24 have alleged, the religion clause claims.

25 And so for the purposes of the record being

1 very clear for us to decide you know what to --

2 THE COURT: Yes.

3 MS. SHAMSI: -- take forward or not, could we
4 just get an articulation from you, your Honor, of why
5 communications among policymakers about core bases for
6 surveillance of Muslims would be denied, given that we're
7 talking about policymakers at the intelligence division?

8 THE COURT: Well, I think it's the policies
9 that matter.

10 MS. SHAMSI: But, your Honor, policymakers --

11 THE COURT: That's what you're alleging is
12 unconstitutional.

13 MS. SHAMSI: It's true but policies and how
14 they are interpreted and why they are formulated is
15 reflected as a result of communications amongst
16 policymakers and it goes to what is one of the issues
17 that may be hard to identify here which is discriminatory
18 intent.

19 MS. LEIST: Your Honor, I think it's exactly
20 what you said. They're getting the policies.

21 MS. SHAMSI: But when you're talking about a
22 discrimination claim in the equal protection context,
23 when you're talking about discriminatory intent and
24 discriminatory purpose, then the communications among the
25 people who are formulating and carrying out those

1 policies --

2 THE COURT: I think that what I've given you is
3 broad enough to cover what you need. Okay.

4 Anything else?

5 MS. SHAMSI: That's it.

6 THE COURT: So you're going to do the stip now
7 and we've got our dates.

8 MS. LEIST: Oh, your Honor, I'm sorry.

9 (Counsel confer)

10 MS. LEIST: Never mind, your Honor.

11 THE COURT: So we have our date which is
12 September 4th and then we have our briefing dates. Okay.
13 All right. One of my law clerks can stay and help you
14 with the stip if you want. Okay. Thanks everybody.

15 IN UNISON: Thank you, your Honor.

16 (Off the record)

17 THE CLERK: This is a continuation of the
18 earlier conference, July 9, 2014. Raza v. The City of
19 New York. Just state your name.

20 MS. SHAMSI: This is Hina Shamsi, counsel for
21 plaintiffs. I believe we do have resolution on at least
22 core parts of the stipulations, given the purpose of the
23 stipulation. Because the stipulations have changed in
24 the months since we ran them by our client, we actually
25 need to consult with our client before formally entering

1 into them which we will obviously do expeditiously but we
2 can talk about what the agreement is for now if that
3 would be helpful and I believe defendants would have
4 additions that they may want to make. And then we can
5 also talk, as you had wanted, about the discovery
6 requests that would be impacted.

7 UNIDENTIFIED SPEAKER: All right.

8 MS. SHAMMAS: This is Cheryl Shammass.

9 We have reached agreement on the language for
10 the stipulation and we're prepared to enter into a stip
11 and order right now on the record.

12 THE CLERK: Okay. Can you call your clients?

13 MS. SHAMSI: We can't. We have multiple
14 clients, people who need to make decisions. They are
15 institutions and we cannot call them right now. And I
16 would remind the Court that this is something that
17 plaintiffs have had -- defendants have had since April,
18 who are now finally having this discussion. We just need
19 to consult with our clients.

20 THE CLERK: Okay. So then how are -- what the
21 Judge is concerned with is how the stipulation impacts
22 the discovery, document requests 21 --

23 MS. SHAMSI: And I think that it would impact
24 the document requests that were in the ECF notice
25 yesterday, as well as document request number 64.

1 THE CLERK: But okay, so for 21 which is
2 directed at Masjid Al-Ansar, Masjid At-Taqwa, Muslims
3 Giving Back, is that now limited to just At-Taqwa and
4 Muslims Giving Back?

5 MS. SHAMMAS: This is Cheryl Shamas for the
6 defendants. May I address that?

7 THE CLERK: Yes, of course. yes.

8 MS. SHAMMAS: It's defendant's document
9 requests.

10 THE CLERK: Yes.

11 MS. SHAMMAS: The document requests seek
12 financials of the plaintiffs as we would stipulate, would
13 impact plaintiff MGB, plaintiff At-Taqwa and to a limited
14 extent, Masjid Al-Ansar with respect to its purchase of
15 audio equipment.

16 So mere fact that Masjid At-Taqwa may or may
17 not be asserting a claim of economic harm, it appears
18 that they are not. We continue to assert our requests
19 and our entitlement to At-Taqwa's financials.

20 So the only limitation on these requests would
21 be that we are not seeking the financials of --

22 THE CLERK: But can we just speak in specific
23 document requests because for example, I mean the sale,
24 lease, rental -- and I know that's a financial but it's
25 not --

1 MS. SHAMMAS: So that request --

2 THE CLERK: This is 25?

3 MS. SHAMMAS: You're looking at 25 or --

4 THE CLERK: Yes.

5 MS. SHAMMAS: -- not 21, okay. So, 25.

6 THE CLERK: Like that just seems like a clear
7 -- that seems like an example where, okay, it's a
8 financial but it's also operating holdings and, you know,
9 it's financial but --

10 MS. SHAMMAS: Correct. So this request would
11 be limited to Masjid At-Taqwa and Muslims giving back and
12 we are prepared to remove the request to Masjid Al-Ansar,
13 to the extent that we agree on the proposed language for
14 stipulating to their economic injury which they're not
15 prepared to do. So I don't want to --

16 THE CLERK: So what's the purpose of this?

17 MS. SHAMMAS: That's the point. We are
18 prepared to enter into this stipulation. The plaintiffs
19 are now going back to talk to their clients. We don't
20 understand what has changed in the past couple of months.
21 If they have an economic injury as a result of
22 investigation or surveillance, if they had it at the time
23 of the complaint, that shouldn't claim from what their
24 claim of economic injury is today.

25

1 So the mere fact that this language was
2 prepared a few months ago, the passage of three months
3 should not impact what their claim of injury is related
4 to thee lawsuit from several years back.

5 So we don't understand why they need to go back
6 and consult with their clients. We've just agreed upon
7 language. We believe that we should be permitted to
8 enter into a stip and order and we can't resolve what the
9 document requests, how they would impact without having a
10 stipulation in place because if they're not going to
11 agree to remove those claims, then the document request
12 is certainly going to seek that information from the
13 plaintiffs.

14 MS. SHAMSI: So we would agree in principle.
15 We have to do what is regular, which is to make sure our
16 clients are in agreement with the word changes and
17 understand what those changes mean and that they're okay
18 with them. That shouldn't be controversial and this is
19 something, you know, that could have been done had
20 defendants responded months ago.

21 THE CLERK: Okay.

22 MS. SHAMSI: We are happy to come back. I
23 think one thing that's important for the Court to
24 understand is that with entry into the stipulation, that
25 does not mean resolution of all of the issues with

1 respect to the document requests.

2 THE CLERK: No, no, right.

3 MS. SHAMSI: Because this would be the basis
4 for I think the Judge to resolve the disputes that exist
5 before her now.

6 THE CLERK: That is correct.

7 MS. SHAMSI: Yes.

8 THE CLERK: That's correct.

9 MS. SHAMSI: So we're willing to, you know, to
10 put a date certain to --

11 THE CLERK: Okay, if we could just come back --
12 yes.

13 MS. SHAMSI: -- well, what we would propose to
14 do is consult with our clients and have a date, for
15 example, by -- I need to consult with my colleagues but
16 next Monday or Tuesday where we would be prepared to --

17 THE CLERK: What about Friday?

18 MS. SHAMSI: I just -- we've got a couple of
19 clients who are traveling and I'm just worried about
20 getting to them. We will do our best but I think we
21 would be safer if it was Monday because sometimes our
22 clients are easier to reach over the weekend. We would
23 be able to file on Monday and there would be a
24 stipulation before the Court.

25 THE CLERK: Okay.

1 MS. SHAMMAS: We have a proposal, I think,
2 which might address --

3 THE CLERK: Yes.

4 MS. SHAMMAS: -- everyone's concerns.

5 THE CLERK: Yes.

6 MS. SHAMMAS: Since we are interested in having
7 a ruling from the Court on these requests, and we don't
8 want this issue to hold that up, what we would propose
9 would be that when the Judge issues its ruling, it does
10 so without necessarily specifying the name of the
11 plaintiff but the language could be in sum and substance,
12 you know, for plaintiffs who allege economic injury as a
13 result of NYPD surveillance and investigation, this
14 request applies. And for the reasons that we articulated,
15 why the requests should apply to At-Taqwa, we stand on
16 those reasons as well as a separate basis.

17 MS. SHAMSI: I don't understand what that means
18 given that the document requests are to each specific
19 plaintiff and there are different kinds of requests.

20 MS. SHAMMAS: Because if the document request
21 lists for example, three plaintiffs --

22 THE CLERK: Right, that's --

23 MS. SHAMMAS: -- and we're still trying to
24 figure out which plaintiff it applies to, the Court can
25 make its ruling. Let's say hypothetically the Court

1 rules in defendant's favor with request number 25. In
2 making that ruling, the Court need simply say that this
3 ruling is applicable to these three plaintiffs to the
4 extent that they claim economic injury resulting from
5 NYPD investigation or surveillance.

6 MR. HARTMAN: The stipulation though describes
7 (indiscernible).

8 MS. SHAMMAS: And to At-Taqwa on the basis that
9 the defendants have articulated it in their motion.

10 MR. HARTMAN: There's not just one generalized
11 type of economic injury. There's several different
12 specifies and that might affect how the document request
13 are ruled upon. There's a video camera recording
14 equipment, species of harm, there's donation type of
15 harm, there are some with no harms. So --

16 MS. SHAMMAS: But the donation type of harm is
17 irrelevant because the stipulation would address economic
18 injury. There is no --

19 MR. HARTMAN: There's certainly still an
20 organization asserting a decline in donations.

21 MS. SHAMMAS: Well that would be MGB, right?
22 And so we are still seeking overall financial information
23 concerning MGB which the Judge has before her in
24 considering the motion papers. She will make her ruling
25 based upon the arguments.

1 MR. HARTMAN: If MGB limited its economic
2 injury claim to a particular type of economic injury, as
3 the stipulation proposes, that would affect what types of
4 financial records defendants are entitled to.

5 MS. SHAMMAS: And the Judge has those papers
6 and she'll make her rulings based upon the arguments that
7 the parties have presented to her. So --

8 MR. HARTMAN: This seems like a very messy set
9 of issues, just practically speaking. I mean as we're
10 talking about it, it just seems very complex and --

11 MS. SHAMMAS: Yes, we wanted this all --

12 MR. HARTMAN: It's going to be a lot easier for
13 the Judge, in my opinion, if we have the stipulation
14 agreed.

15 THE CLERK: Agreed. I think that her thought
16 was that it would be done today. So I need to go ask her
17 because --

18 MS. SHAMMAS: And we would like to --

19 THE CLERK: -- it's not done today and part of
20 the reason for issuing the order, as she did I think it
21 was yesterday or the day before, was to have the parties
22 prepared to talk and reach an agreement on the record.
23 So let me just go speak with her. And I agree, you have
24 to talk with your clients but -- I'll be right back.

25 MS. SHAMSI: Are we still recording while

1 you're gone?

2 THE CLERK: I can pause it.

3 MS. SHAMSI: Thank you.

4 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 16th day of July, 2014.


Linda Ferrara

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