

October 24, 2008

Honorable Raymond Kelly  
Police Commissioner of NYPD  
One Police Plaza  
New York, NY 10038

Dear Commissioner Kelly:

We the undersigned New York Muslim advocates, attorneys, and community leaders write to welcome your commitment to open and ongoing dialogue with the Muslim community and express our appreciation for your decision to publicly distance the New York City Police Department (NYPD) from some of the worrying implications of the NYPD report *Radicalization in the West: The Homegrown Threat* ("NYPD Report") in your letter of October 6, 2008.

Indeed, it is a mark of your leadership that you participated personally in a series of discussions about the NYPD Report with members of the Muslim community, following its release in August of 2007. We believe that frank discussions - including robust public debate and criticism of law enforcement - are necessary precursors to a successful counter-terrorism policy.

As such, in response to your clarifications, observations and updates in the October 6, 2008 letter, we submit the following:

- Without question, terrorism raises serious and painful questions for all New Yorkers irrespective of their faith, race, or national origin. In the same vein, profiling by law enforcement on the basis of religion and race also warrants careful attention. Therefore, we appreciate your acknowledgement in the letter "that Muslims are not in any way a threat to security" (p.1). This statement is critically important because it reduces the actual risk that some police officers, whether here or abroad, might read the NYPD Report and consider it a justification for racial, religious, or ethnic profiling.
- We are grateful you point out that the NYPD Report is "not intended to be policy prescriptive for law enforcement" (p.1), specifically because in a letter signed by you and printed in the preface of the NYPD Report indicates that the intention of the NYPD Report's drafters was indeed to inform policy-makers. Notwithstanding intent, it is unfortunately inevitable that the views of a police department as respected and influential as the NYPD will create a paradigm from which new policies emerge when it issues a report on a topic as intensely debated as domestic terrorism. It is also predictable that line officers within police forces who read the NYPD Report, or are briefed on its contents may draw the inference that all or most Muslims are a public safety threat.
- To our understanding, the absence of any clear indication that the NYPD Report was "not intended to be policy prescriptive for law enforcement" has meant that other state and federal authorities have taken the NYPD Report as a diagnosis and have adopted analyses or remedies that target the entire Muslim community as a whole. While the NYPD is of course not directly responsible for other governmental entities' decisions, the

inadequacies of the NYPD Report have thus encouraged and seemingly vindicated profiling by other agencies, including but not limited to the following:

1. For example, the U.S. Senate Committee on Homeland Security and Governmental Affairs has adopted the NYPD Report's analysis *without* even the reservations contained in your letter.<sup>1</sup> Relying on the NYPD Report, the Committee makes the alarmist statement that “the United States will likely face increasing levels of homegrown terrorism”<sup>2</sup>—a statement that is simply not supported by any evidence from the NYPD Report or any source cited by the Senate Committee.
  2. Furthermore, the NYPD Report has also inspired other jurisdictions to adopt specific ethnic and national origin profiling tactics. Drawing on the NYPD Report, the Kansas City, Missouri Police Department, Homeland Security Division has developed protocols for car stops that profile for citizenship and connections to “Islamic owned businesses.”<sup>3</sup> That is, the NYPD Report has already become a justification for racial and religious profiling.
- You state that the reason for the NYPD Report's release “was for the expressed purpose of engaging and soliciting a broad array of views from a diverse group of people” (p.1). Usually, however, such consultation occurs *before* public release in order to identify problems or misconceptions. If there had been consultations with knowledgeable members of the Muslim community prior to its publication, many of our concerns with the standing NYPD Report could have been flagged and corrected.
  - You mention reaching out to “Muslim Experts” in order to understand the situation of American Muslims. But, it is not clear that the experts you identify in fact are equipped to speak about *American* Muslims. You cite consultations with Saudi experts, but it is well known that Saudi scholars—and certainly the Saudi government—do not speak for Muslims generally nor represent or substitute the views of American Muslims. Indeed, your assumption that the “Muslim Experts” from Saudi Arabia can accurately speak to trends and ideas concerning Islam in America is troubling because it suggests a poverty of understand the demographic and cultural aspects of the American Muslim community in New York and elsewhere.
  - You mention “[t]wo of your members, M. Ali Chaudry ... and Sheikh Moussa Drammeh” were invited to a “Radicalization and De-radicalization Workshop” (p.2). However, neither these “outside experts” have been working with the undersigned groups who represent a significant proportion of New York Muslims, and, to the best of our knowledge, nor were they in attendance at our meetings at Police Plaza. It is further

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<sup>1</sup> U.S. Senate Committee on Homeland Security and Governmental Affairs, “Violent Islamist Extremism, The Internet, and the Homegrown terrorist Threat: Majority & Minority Staff Report,” May 8, 2008, at 4.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> Testimony of Major Thomas Dailey, Kansas City, Missouri Police Department, Homeland Security Division, to the Committee on Homeland Security and Government Affairs, “The Role of Local Law Enforcement in Countering Violent Extremism,” 18-19, 22 (October 30, 2007).

unclear what qualifications or expertise these two individuals bring to the discussion on radicalization and de-radicalization. While there may be difficulty in coordinating with the larger Muslim community, the NYPD must consciously solicit representative views and consider a broad spectrum of the Muslim community and expertise in the course of dialogues.

- In responding to the NYPD Report's implicit justification of profiling, you draw a distinction between "religion and ethnicity" and the "broader range of communities that cut across the report's eleven case studies" (p.2). You also note that "behaviors associated with religion" were "endemic across all 11 cases." Notwithstanding due appreciation for this distinction, we are deeply worried that the October 6, 2008 letter continues to mistake selection bias in the NYPD Report itself for a valid inference about Islam. The standing NYPD Report only profiled cases in which the suspect was a Muslim, overlooking the fact that the same behaviors associated with religion are found in other cases with no direct or indirect association to terrorism. Any religious commonality is due to selection decisions of the authors of the NYPD Report's, rather than from an inherent trait of homegrown radicalization. Therefore, it is hardly effective or telling to include these particular behaviors as markers of someone becoming radicalized. We further note that federal law enforcement authorities have been very careful not to make the same error when conversing with us about radicalization.<sup>4</sup>

We therefore urge the NYPD to:

- Post the October 6, 2008, letter on the NYPD web-site along with the NYPD Report, with directions that the NYPD Report should not be read to characterize Muslims as intrinsically dangerous or linked to terrorism, and that it cannot be a license for racial, religious, or ethnic profiling.
- Correct the text of the NYPD Report that is available on the internet, and that is shared within the NYPD and with other law enforcement units so that the language and tone of the NYPD Report no longer implicitly encourage racial, religious, or ethnic profiling. Communicate these corrections to all the law enforcement agencies with which the NYPD has been communicating.
- Improve communications and dialogue with the New York Muslim, Arab, and South Asian communities. We welcome the opportunity to "maintain[n] an open dialogue." Such an open dialogue, however, requires more transparency about the current and planned policies. Sharing an advance draft of the NYPD Report, for example, could have reduced the risk of misinterpretations. Alternatively, such a report can be issued as a consultation document that is open for public feedback before it is finalized.

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<sup>4</sup> Testimony of Michael Chertoff, Secretary of the Department of Homeland Security, before the Senate Committee on Homeland Security and Governmental Affairs, *Hearing on The Threat of Islamic Radicalism to the Homeland* (March 14, 2007) available at [http://hsgac.senate.gov/public/\\_files/031407Chertoff.pdf](http://hsgac.senate.gov/public/_files/031407Chertoff.pdf).

- Undertake “a broader examination of other terrorism-related plots,” of which the 11 case studies “were a subset.” The broader subset may “provide a sound statistical basis to support the report’s findings” (p.2).

In closing, we hope that your recognition of the dangers - not to mention the ineffectiveness- of racial, religious, or ethnic profiling will correct the widespread misunderstandings of Islam encouraged by the NYPD Report’s coupling of religion with terror. We also hope that the NYPD will continue a policy of sincere, productive, and respectful engagement with Muslim communities grounded in recognizing the harms of police profiling, especially on these difficult issues. To that end, we have been working on a longer response to the standing NYPD Report that we hope will help prevent any further distortions of the American Muslim community. We will share this report, enclosed herein, with our community and with the press.

Sincerely,

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Deputy Director, Brennan Center for Justice at NYU Law School

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Community Affairs Director, Council on American Islamic Relations-NY

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