

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HANDSCHU, RALPH DiGIA, ALEX  
McKEIVER, SHABA OM, CURTIS M. POWELL,  
ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL  
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,  
ANNETTE T. RUBENSTEIN, MICKEY SHERIDAN,  
JOE SUCHER, STEVEN FISCHLER, HOWARD  
BLATT, ELLIE BENZONI, on behalf of  
themselves and all others similarly  
situated,

71 Civ. 2203 (CSH)

NOTICE OF MOTION  
FOR APPROVAL OF  
SETTLEMENT

Plaintiffs,

-against-

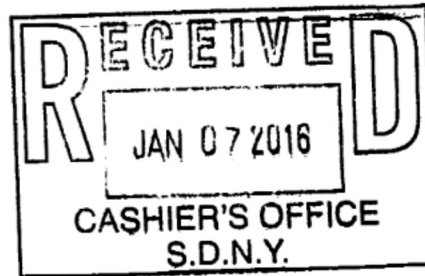
SPECIAL SERVICES DIVISION, a/k/a  
Bureau of Special Services; WILLIAM  
H.T. SMITH; ARTHUR GRUBERT; MICHAEL  
WILLIS; WILLIAM KNAPP; PATRICK  
MURPHY; POLICE DEPARTMENT OF THE  
CITY OF NEW YORK; JOHN V. LINDSAY;  
and various unknown employees of the  
Police Department acting as  
undercover operators and informers,

Defendants.

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COUNSEL:

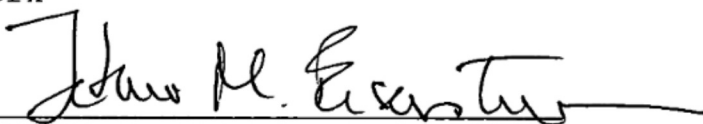
PLEASE TAKE NOTICE that upon the annexed Declaration  
of Jethro M. Eisenstein, executed the 7th day of January,  
2016, the exhibits annexed thereto and the accompanying  
memorandum of law, the undersigned counsel for the  
plaintiff class in the above-captioned action will move  
this Court, on a date and at a time to be designated by the  
Court, at the courthouse thereof, 500 Pearl Street, New  
York, New York for an order pursuant to Rule 23(e)



2016 JAN -7 AM 10:37  
CITY OF N.Y. LAW DEPT.  
OFFICE OF CORP. COUNSEL  
COMMUNICATIONS UNIT

approving the attached proposed revision of the Modified Handschu Guidelines, after notice to the members of the class and a hearing, and upon a finding that the proposed revision is fair, reasonable and adequate; and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
January 7, 2016

  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA HANDSCHU, RALPH DiGIA, ALEX  
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JOE SUCHER, STEVEN FISCHLER, HOWARD  
BLATT, ELLIE BENZONI, on behalf of  
themselves and all others similarly  
situated,

71 Civ. 2203 (CSH)

DECLARATION OF  
JETHRO M.  
EISENSTEIN

Plaintiffs,

-against-

SPECIAL SERVICES DIVISION, a/k/a  
Bureau of Special Services; WILLIAM  
H.T. SMITH; ARTHUR GRUBERT; MICHAEL  
WILLIS; WILLIAM KNAPP; PATRICK  
MURPHY; POLICE DEPARTMENT OF THE  
CITY OF NEW YORK; JOHN V. LINDSAY;  
and various unknown employees of the  
Police Department acting as  
undercover operators and informers,

Defendants.

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JETHRO M. EISENSTEIN, for his declaration pursuant to  
28 U.S.C. 1746, states as follows:

1. I am one of the attorneys for the plaintiff class  
in the above-captioned action (hereinafter collectively  
referred to as "Class Counsel"). I make this Declaration  
in support of the application of Class Counsel for approval  
of certain modifications of the Modified Handschu



Guidelines that are to be embodied in and made part of the consent decree in this case.

2. The modifications for which approval is sought are the product of extensive negotiation, as detailed below, and have the support of the attorneys for the plaintiff class as well as the defendant Police Department of the City of New York (hereinafter "NYPD"). These modifications also have the support of plaintiffs and their counsel in Hamid Hassan Raza, et al. v. City of New York, et al., 13-CV-3448 (BKC) (JMA) (hereinafter "Raza"), an action pending in the United States District Court for the Eastern District of New York. The central role played by the plaintiffs in Raza and their counsel in the process that led to these proposed modifications is further explained below.

3. As shown in the accompanying memorandum of law, modification of the consent decree on consent requires notice to the plaintiff class and the convening of a fairness hearing to allow class members to comment. Our proposals regarding notice to the class are set forth in the accompanying memorandum of law.

4. This proposed settlement was agreed in principle in August, but is being presented to the Court in the wake of murderous attacks in Paris, France, the Planned

Parenthood Clinic in Colorado and San Bernardino, California. There is anxiety about the risk of another attack. At the same time, anti-Muslim discrimination and hate crimes are at unprecedented levels nationwide. As always, thoughtful consideration is required to keep New York safe and protect the rights of the people of New York, who are members of the plaintiff class.

5. The proposed modifications of the Handschu Guidelines promote effective law enforcement and give the NYPD the tools it needs to address extremist violence whatever its source, while providing protection against unwarranted investigation. Under the rules, New York Muslims' religious identity must not be treated as inherently suspect. The rules bar policing that stigmatizes New York Muslims or any other New Yorkers on the basis of religion or other protected First Amendment freedoms. This is as it should be, for as the Supreme Court said long ago, the "shield" of the First Amendment is "[n]owhere . . . more necessary than in our own country for a people composed of many races and of many creeds." Cantwell v. Connecticut, 310 U.S. 296, 310 (1940).

6. The history of this action is well known to this Court. It is summarized below because this Declaration is also intended to inform members of the plaintiff class

about what has led to these proposed modifications and about the reasons why Class Counsel and counsel for the plaintiffs in Raza recommend their approval.

#### History of the Action

7. This case was commenced as a class action in 1971. The representative plaintiffs claimed that the defendant NYPD conducted surveillance, infiltration and dossier collection regarding organizations and individuals who had "expressed criticism of social conditions or governmental policies or who espoused unorthodox or dissenting beliefs, and had engaged in only lawful political activity in furtherance thereof." (Complaint, ¶79). As alleged in the complaint, the organizations targeted by the NYPD included political and religious organizations.

8. In 1979, the Court certified a plaintiff class, defined as follows:

"All individuals resident in the City of New York, and all other persons who are physically present in the City of New York, and all organizations located or operating in the City of New York, who engage in or have engaged in lawful political, religious, educational or social activities and who, as a result of these activities, have been, are now or hereafter may be subjected to or threatened by infiltration, physical and verbal

coercion, photographic, electronic and physical surveillance, provocation of violence, recruitment to act as police informers and dossier collection and dissemination by defendants and their agents."

9. Based on a significant factual record that had been developed about the activities of the NYPD, and after lengthy negotiations, a settlement was reached with two major components: (1) a process for individuals and groups to obtain copies of files maintained about them by the NYPD; and (2) a set of rules ("the Handschu Guidelines") embodied in a consent decree governing investigation of political activity by the NYPD.

10. Following a fairness hearing, at which proponents of and objectors to the settlement were heard, the settlement was approved and the consent decree entered (605 F.Supp. 1384 (S.D.N.Y. 1985)). Approval of the settlement was affirmed on appeal, 787 F.2d 828 (2d Cir. 1986).

11. The Intelligence Division of the NYPD functioned under the Handschu Guidelines from 1985 through 2002. Following the attack on the World Trade Center on September 11, 2001, the NYPD moved for modification of the Handschu Guidelines, claiming that the dangers to New York City from acts of terrorism made the Handschu Guidelines unduly restrictive.

12. Over strenuous opposition from plaintiff Class Counsel and members of the plaintiff class, the Court approved modified guidelines (2003 WL 21961367 (S.D.N.Y., April 7, 2003)). After additional litigation, these Modified Handschu Guidelines were incorporated in the consent decree (288 F.Supp.2d 411 (S.D.N.Y. 2003))<sup>1</sup> and the Court confirmed that Class Counsel are empowered to "[inquire] into police surveillance practices" and "to challenge NYPD policies resulting in non-constitutional violations of the [Modified Handschu] Guidelines" (679 F.Supp.2d 488, 497 (2010)).

#### Origin of Proposed Modifications

13. Beginning in August 2011, the Associated Press and independent journalist Leonard Levitt published a series of articles, based on interviews said to have been conducted with more than forty present and former members of the NYPD, that described an NYPD policy of using undercover officers and confidential informants to gather information about political activity in circumstances where there was no indication of criminal activity. According to these articles, the operations described targeted places of

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<sup>1</sup>This court has noted, "...the 'Modified Handschu Guidelines' consist of the appendices of *Handschu IV* [273 F.Supp.2d 327 at 349-351] and *Handschu V* [288 F.Supp.2d 411 at 420-431] read together." 2006 WL 1716919 at 1 (*Handschu VI*).

association and worship in the Muslim communities in New York, including mosques, social gathering places and student organizations based on college campuses.

14. The articles, as well as NYPD documents published in conjunction with them, identified the entity that conducted these operations as the "Demographic Unit", and strongly suggested that the NYPD retained records of these surveillance activities as a matter of policy. In the view of class counsel, the retention of such records was a violation of the Modified Handschu Guidelines, which permit the NYPD to visit places that are open to the public on the same terms and conditions as members of the public generally, but bar retention of information obtained from such visits "unless it relates to potential unlawful or terrorist activity." Modified Handschu Guidelines §VIII(A)(2).

15. Because plaintiff Class Counsel are the only persons empowered to bring to the Court's attention policies of the NYPD that violate the Modified Handschu Guidelines,<sup>2</sup> it was the duty of Class Counsel to investigate the assertions made in the published articles, to ascertain whether there were NYPD policies in place that violated the

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<sup>2</sup> See 2008 WL 515695,\*5 (S.D.N.Y. 2/27/08).

Modified Handschu Guidelines. To that end, on October 25, 2011, Class Counsel made a motion for discovery.

16. In response to the motion, the NYPD proposed to provide voluntary discovery about the Demographic Unit in the form of a sampling of the documents generated by the Demographic Unit and a deposition of NYPD Assistant Chief Thomas Galati, commanding officer of the Intelligence Division, at which Class Counsel would be permitted to question Chief Galati about the operation of the unit. This discovery was completed in the fall of 2012.

17. The discovery provided by the NYPD led Class Counsel to conclude that as a matter of policy, the NYPD was in fact maintaining records based on visits to public places even when there was no evidence of crime or terrorism. Based on this conclusion, as well as the evidence indicative of additional violations of the Modified Handschu Guidelines that is catalogued in the Declaration of Professor Paul G. Chevigny dated January 22, 2013, Class Counsel moved for injunctive relief and for the appointment of a monitor to supervise the activities of the Intelligence Division, which had been renamed the Intelligence Bureau.

18. The NYPD opposed the motion and denied it was violating the Modified Handschu Guidelines. It

specifically questioned the probative value of the documents that Class Counsel had submitted in support of the motion. None of the documents submitted was an "investigative statement", the document in which the NYPD said it sets forth the facts and circumstances warranting an investigation.

19. In a Memorandum dated August 29, 2013 this Court observed that

". . . the NYPD has succeeded in identifying the investigative statement as the best evidence, perhaps the only probative evidence of whether a particular investigation was commenced in compliance with the Handschu Guidelines . . . presumably each investigation statement describes the level of investigation proposed, the target(s) or subject(s) of the investigation and the specific 'facts and circumstances that warrant an investigation.' Those facts and circumstances either satisfy the relevant Handschu Guideline requirement or they do not - which is to say, the particular investigation in question either complies with the Guidelines or it does not.

It would seem difficult, if not impossible, to evaluate a particular investigation's compliance with the Guidelines without examining the investigative statement purporting to justify the investigation: a difficulty shared by skeptics such as Class Counsel, and a neutral disinterested person such as a District Judge."



2013 WL 4767815 (S.D.N.Y., August 29, 2013). The Court directed that Class Counsel and Corporation Counsel confer about how discovery into and proof of the investigation statements might be arranged. Id.

20. After hearing oral argument on October 1, 2013, the Court ruled that the motion of the plaintiff Class on behalf of the Muslim community "presents issues worthy of further litigation which entitle Class Counsel to further discovery in aid of their claims." 2014 WL 407103,\*4 (S.D.N.Y., January 30, 2014). The Court noted that in an exchange of letters, the parties' attorneys had discussed a protocol for disclosure of investigation statements, and suggested that it should be implemented.

21. During the proceedings in Handschu described above, on June 18, 2013, the Raza case was commenced in the United States District Court for the Eastern District of New York. As summarized by Judge Chen in her Memorandum and Order dated November 22, 2013,

"Plaintiffs [in Raza] are three Muslim individuals, two mosques and a non-profit Muslim organization. They allege that defendants have violated, and continue to violate, their constitutional rights through unlawful, 'suspicionless' surveillance and investigation conducted by the New York Police Department ("NYPD") pursuant to its purported 'Muslim surveillance program.' . . . Plaintiffs' complaint sets forth four causes of

action: (1) violation of the Equal Protection Clause of the Fourteenth Amendment; (2) violation of the Free Exercise Clause of the First Amendment; (3) violation of the Establishment Clause of the First Amendment; and (4) violation of the right to freely exercise their religion under Article 1, Section 3 of the New York State Constitution."

Raza v. City of New York, 998 F.Supp.2d 70, 73 (E.D.N.Y. 2013).

22. In the November 22, 2013 Memorandum and Order, Judge Chen granted in part the plaintiffs' motion for expedited discovery. As a result of this Court's decision and the decision of Judge Chen, discovery proceeded on separate tracks in Handschu and in Raza, with steps being taken for disclosure of certain investigative statements, which the NYPD had identified as the documents setting forth the factual basis for instituting or continuing each investigation.

#### The Settlement Process

23. On February 4, 2014, as these separate discovery processes were underway, Class Counsel and the attorneys for the plaintiffs in Raza jointly wrote to Zachary Carter, the new Corporation Counsel, suggesting a meeting to discuss the possibility of settling the Raza action and the Handschu motion. An initial meeting with Corporation

Counsel Zachary Carter and representatives of the NYPD took place on April 17, 2014, while discovery was ongoing. After the initial meeting, all parties agreed to continue discussions.

24. In the meantime, extensive discovery and discovery litigation proceeded in the Raza case. Among other rulings, on July 9 2014, the court in Raza ordered defendants in that case to provide plaintiffs with certain electronically-stored information of field level NYPD personnel, including undercover officers and the "handlers" of undercover officers and confidential informants involved in any investigation of the Raza plaintiffs. The Raza defendants sought reconsideration of that decision on August 15, 2014.

25. During the course of settlement discussions and as part of the settlement process, the NYPD agreed to make certain additional investigation statements available to counsel in Raza and Class Counsel. The NYPD also agreed to permit both Raza counsel and Class Counsel to examine investigation statements that had previously been made available in either case. On August 15, 2014, the parties moved to stay discovery in the Raza and Handschu cases and entered into a strict confidentiality agreement, which provided that disclosure of the investigative statements

would be to counsel only, and that nothing disclosed could be used in subsequent litigation, in the event a settlement was not achieved. The confidentiality agreement covered all discussions between the parties. On August 20, 2014, This Court ordered compliance with the confidentiality agreement that had been made by counsel.

26. Between September 17, 2014 and June 29, 2015 there were more than ten meetings between plaintiffs' Counsel (Class Counsel and counsel for the Raza plaintiffs) and representatives of the NYPD. Senior operational staff from the NYPD Intelligence Bureau attended many of these meetings. Counsel for the plaintiffs in Raza had the opportunity to describe in detail to these senior NYPD officials the profoundly negative impact of police surveillance activities on individuals and institutions in the Muslim communities in New York.

27. In the course of these meetings, senior staff of the Intelligence Bureau described to Class Counsel and counsel for the Raza plaintiffs, in detail, the processes currently employed by the Intelligence Bureau to gather information and to determine whether investigations should be initiated, continued, expanded or terminated. The process they described entailed extensive review and scrutiny of the facts on which investigations were based,

and revealed a collaborative decision-making process involving numerous civilian analysts, lawyers and senior members of the NYPD.

28. Once this exchange of information was completed, the parties began discussions with a view to achieving a settlement of the Raza action and the Handschu motion. The goals of Class Counsel and counsel for the plaintiffs in Raza in these negotiations were based on the Raza plaintiffs' views, on consultation with other individuals and groups within the plaintiff class, on what we had learned through discovery as well as from published articles and documents and on what we had heard in our discussions with the NYPD. These goals are summarized here:

- To tighten standards for the initiation, renewal, and extension of investigations.
- To limit use of intrusive investigative techniques in religious institutions.
- To reinstitute civilian, non-NYPD participation in the process of deciding whether investigations should be initiated, continued or ended.
- To establish time limits for investigations.

- To formalize and institutionalize the collaborative decision-making process that had been described to us.

It was understood that the changes reflecting these goals, to the extent we were able to achieve them, would be memorialized in the Modified Handschu Guidelines, the existing set of rules governing NYPD investigation of political activity.

29. Numerous proposals and counterproposals were presented in the course of the negotiations, which were conducted in additional meetings and telephone conferences. An agreement in principle was reached in August 2015. We immediately advised this Court, and sought and received permission to file the final settlement terms in the public docket.<sup>3</sup> The same application was made to the Court in Raza and was granted. Following the agreement in principle, several additional meetings and telephone conferences were needed to craft acceptable settlement terms. Final agreement has now been reached on the documents memorializing the proposed settlement.

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<sup>3</sup> Memo Endorsed, August 5, 2015.

## Summary and Description of Proposed Modifications

30. In our view, what we achieved is meaningful protection for the members of the plaintiff class. There are now presumptive time limits on investigations - before there were none. In addition, each investigation must be reviewed every six months.

31. Preliminary inquiries cannot be commenced except upon articulable factual information. There is an explicit commitment against investigations for which race, religion or ethnicity is a substantial or motivating factor. The NYPD is required to consider the impact of intrusive investigative techniques and to use the least intrusive means consistent with the needs of the investigation.

32. The Deputy Commissioner for Intelligence makes the final decision regarding investigations, but a collaborative decision-making process has been made part of the rules. A civilian member has been added to the committee advising the Deputy Commissioner for Intelligence. This civilian member is charged with the power and the duty to record violations of the Modified Handschu Guidelines and report them to the Police Commissioner and if necessary to the Court.

33. The changes in the Modified Handschu Guidelines are embodied in a set of those Guidelines as amended, which

is appended to the Stipulation of Settlement attached hereto as Exhibit A<sup>4</sup> and submitted for approval by the Court. We detail the changes below:

A. The Statement of Policy has been revised so that it explicitly ties the guarantee of equal protection under the Constitution to a right to be free from investigations in which race, religion or ethnicity is a substantial or motivating factor.

B. The General Principles reiterate that investigations must not intrude upon rights of expression or association in a manner that discriminates on the basis of race, religion or ethnicity.

C. To initiate a Preliminary Inquiry, there must be fact-based and articulable allegations or information supporting the inquiry.

D. All Preliminary Inquiries are subject to review every six months.

E. All Preliminary Inquiries are subject to an eighteen months presumptive limit.

F. All Full Investigations are subject to review every six months.

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<sup>4</sup> Attached as Exhibit B is a set of the proposed amended guidelines in which the changes from the existing modified guidelines are tracked.



G. All Full Investigations are subject to a three-year presumptive limit.

H. All Terrorism Enterprise Investigations are subject to review every six months.

I. All Terrorism Enterprise Investigations are subject to a five-year presumptive limit in duration.

J. The Amended Modified rules provide for the establishment of a Handschu committee, thereby institutionalizing and formalizing a collaborative decision-making process involving many participants with regard to opening, continuing and closing investigations.

K. The Amended Modified Handschu Guidelines add to the Handschu Committee a civilian member, unaffiliated with the Police Department, as a full participant in the collaborative process with regard to the initiation, continuation and closing of investigations.<sup>5</sup>

L. The civilian member of the Handschu Committee is endowed with the power and obligation to

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<sup>5</sup> The civilian member is appointed for a five-year term and continues thereafter unless the position is abolished or modified by the Mayor, in consultation with the Police Commissioner. We sought to have any such decision subject to judicial review but this change was refused. If the Mayor chooses to abolish this position, Class Counsel must be given 90 days advance notice. The plaintiff class will thus have an opportunity to mobilize popular opposition to the elimination of the civilian member, if it should ever be proposed.

monitor compliance with the Modified Handschu Guidelines. If the rules are being violated, she is required to record her objection in the minutes of the Handschu committee. She is required to contact the Police Commissioner and to secure from the Commissioner a review of the investigation for compliance with the Modified Handschu Guidelines. In addition, in the event that the civilian member concludes that the NYPD is violating the Modified Handschu Guidelines as a matter of policy, she is required to notify the Court of the violative policies and, with notice to class counsel, to seek judicial intervention.

M. The Amended Modified Handschu Guidelines require that the choice of investigative techniques take account of the potential effect of the investigation on the political or religious activity of individuals, groups or organizations and the potential effect on persons who, although not a target of the investigation, are affected by or subject to the particular investigative technique.

N. The Amended Modified Handschu Guidelines require that operations deploying undercover police officers and confidential informants only be initiated

and continued when the information sought cannot be obtained in a timely and effective way by less intrusive means.

34. In addition to the changes in the Modified Handschu Guidelines that have been agreed to by the NYPD and that we now recommend for approval by this Court, the NYPD has agreed to remove from its website the report entitled Radicalization in the West, which has been harshly criticized as to its assumptions, methodology and conclusions.

35. After agreement had been reached on these changes, subject to the approval of the court, class counsel submitted contemporaneous time records to the defendants in support of our claim for counsel fees for the work described above, beginning in 2011. After review of these records, the defendants offered and class counsel agreed to accept \$361,730.26 in full satisfaction of the claim for counsel fees.

36. In agreeing to these changes in the Modified Handschu Guidelines, and recommending them to the Court and to members of the plaintiff Class for approval, we are mindful of the fact that these negotiated changes in the rules provide relief for the class that extends beyond remedies that a court would likely impose by order after a

contested motion. The Handschu rules as modified, and now as sought to be amended, are a unique instrument for the preservation of the balance between law enforcement and civil liberties in New York City. We respectfully suggest that these proposed amendments are a measurable improvement to the rules and should be approved.

  
JETHRO M. EISENSTEIN

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 7, 2016.

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
BARBARA HANDSCHU, RALPH DiGIA, ALEX  
MCKEIVER, SHABA OM, CURTIS M. POWELL,  
ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL  
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,  
ANNETTE T. RUBINSTEIN, MICKEY SHERIDAN, JOE  
SUCHER, STEVEN FISCHLER, HOWARD BLATT,  
ELLIE BENZONI, on behalf of themselves and all others  
similarly situated,

71 Civ. 2203 (CSH)

Plaintiffs,

- against -

SPECIAL SERVICES DIVISION, a/k/a Bureau of Special  
Services; WILLIAM H.T. SMITH; ARTHUR GRUBERT;  
MICHAEL WILLIS; WILLIAM KNAPP; PATRICK  
MURPHY; POLICE DEPARTMENT OF THE CITY OF  
NEW YORK; JOHN V. LINDSAY; and various unknown  
employees of the Police Department acting as undercover  
operators and informers,

Defendants.

2016 JAN - 7 AM 10: 37  
CITY OF N.Y. LAW DEPT.  
OFFICE OF CORP. COUNSEL  
COMMUNICATIONS UNIT

-----x  
**STIPULATION OF SETTLEMENT AND ORDER**

**WHEREAS**, in 1979, the Court certified a class in this case (“The Plaintiff  
Class”) defined as follows:

“All individuals resident in the City of New York, and all other persons who are  
physically present in the City of New York, and all organizations located or  
operating in the City of New York, who engage in or have engaged in lawful  
political, religious, educational, or social activities and who, as a result of these  
activities have, been, are now or hereafter may be subjected to or threatened by

infiltration, physical and verbal coercion, photographic, electronic and physical surveillance, provocation of violence, recruitment to act as police informers and dossier collection and dissemination by defendants and their agents.”

605 F. Supp. 1384, 1418 (S.D.N.Y. 1985), (*Handschu II*); and

**WHEREAS**, the defendants in this case (“Defendants”) include the incumbent successors to the governmental officials named in the caption in their official capacity; and

**WHEREAS**, in 1985, the Court approved a settlement and entered a consent decree incorporating Guidelines governing the investigation of political activity by the New York City Police Department (“The Handschu Guidelines”) 605 F. Supp. 1384 (S.D.N.Y. 1985); and

**WHEREAS**, in 2003, the Court approved Defendants’ motion for modifications to the Handschu Guidelines and subsequently incorporated in the Consent Decree, as set forth in a Second Revised Order and Judgment, the modified guidelines governing investigation of political activity by the New York City Police Department (“The Modified Handschu Guidelines”), 288 F.Supp.2d 411, 419-420 (S.D.N.Y. 2003) (*Handschu V*)<sup>1</sup>; and

**WHEREAS**, in 2007, the Court held that counsel for the Plaintiff Class (“Class Counsel”) are entitled to seek judicial relief when they can demonstrate that the NYPD systematically and repeatedly violated the Modified Handschu Guidelines to a degree sufficient to show an NYPD policy to act in such a fashion or when the NYPD adopts a policy that violates the Modified Handschu Guidelines. 2007 U.S. Dist. LEXIS 43176, \*67-69 (S.D.N.Y. June 13, 2007), 2007 WL 1711775 (S.D.N.Y. June 13, 2007), \*12, \*20 (*Handschu VIII*); and

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<sup>1</sup> This Court has noted “...the ‘Modified Handschu Guidelines’ consist of the appendices to *Handschu IV* [273 F.Supp.2d 327, 349-50] and *Handschu V* [288 F.Supp.2d 411, 420-431], read together.” 2006 U.S. Dist. LEXIS 41940 at \*4, 2006 WL 1716919 at 1 (*Handschu VI*).

**WHEREAS**, on November 3, 2011, Class Counsel brought a Motion for preservation of records and to take discovery concerning media reports that the New York City Police Department (“NYPD”) had engaged in investigations of political activity by Muslim Class members that did not comply with the Modified Handschu Guidelines (the “Discovery Motion”); and

**WHEREAS**, in 2012 after the motion to preserve records and take discovery was made, Defendants agreed to preserve documents and provide Class Counsel limited voluntary discovery; and

**WHEREAS**, on April 2, 2013, Class Counsel brought a Motion For Injunctive Relief and Appointment of a Monitor, alleging that the NYPD had a policy or practice that violated the Modified Handschu Guidelines in that the NYPD conducts investigations of individuals and organizations associated with the Muslim religion solely on the basis of religion, and without a factual predicate (the “Handschu Motion”); and

**WHEREAS**, Defendants have denied any and all liability arising out of the Handschu Motion as defined above; and

**WHEREAS**, the Court ruled on January 30, 2014 that the Handschu Motion presented issues worthy of further litigation which entitled Class Counsel to further discovery in aid of their claims (2014 U.S. Dist. LEXIS 13655, \*13, 2014 WL 407103, \*4); and

**WHEREAS**, the Court further ruled that the best evidence as to whether a particular investigation was commenced in compliance with the Modified Handschu Guidelines was the “Investigative Statement” (the written document that identifies the subject of an Intelligence Bureau Investigation and sets forth the facts on which a request for the subject’s investigation is predicated); and



**WHEREAS**, following the January 30, 2014 ruling of the Court, the Parties agreed that a certain set of Investigative Statements would be made available to Class Counsel subject to a strict protective order; and

**WHEREAS**, on June 18, 2013, the plaintiffs in the action entitled *Raza, et al. v. City of NY, et al.*, 13 CV 3448 (PKC) (JO) (“The Raza Action”) filed a complaint in the United States District Court for the Eastern District of New York, alleging that Defendants have violated, and continue to violate the First and Fourteenth Amendment rights of the *Raza* plaintiffs in that the NYPD’s Intelligence Bureau has a policy or practice of investigating individuals and conducting surveillance unlawfully on the basis of religion; and

**WHEREAS**, the parties in *Raza* have engaged in discovery subject to a strict protective order during which certain Investigative Statements were made available to the *Raza* plaintiffs’ counsel; and

**WHEREAS**, beginning in August 2014, the Parties in both the *Handschu* and *Raza* matters entered into a Joint Settlement Process during which there was a stay of the *Raza* litigation and *Handschu* Motion, with the Joint Settlement Process taking place under a strict confidentiality agreement; and

**WHEREAS**, as part of the Joint Settlement Process, Class Counsel and the attorneys for the *Raza* plaintiffs reviewed additional Investigative Statements subject to a strict confidentiality agreement; and

**WHEREAS**, during the Joint Settlement Process, the attorneys for the parties have met in person or through teleconferences over 20 times during which both sides, subject to a strict protective order, have made presentations about various topics and issues central to the

cases; have discussed certain Investigative Statements that had been made available to Class Counsel and to *Raza* counsel; and have discussed the parties' respective settlement positions; and

**WHEREAS**, the terms of this Stipulation of Settlement and Order ("Stipulation") were extensively and vigorously negotiated in good faith over a period of several months; and

**WHEREAS**, the negotiations have resulted in this Stipulation, which, subject to the approval of the Court, settles the claims in the Handschu Motion in the manner and upon the terms set forth below; and

**WHEREAS**, the Defendants represent that they do not, have not, and will not rely upon the Radicalization in the West report to open or extend investigations; and

**WHEREAS**, the Parties agree that the NYPD must fulfill its responsibility to preserve public safety and security; and

**WHEREAS**, Defendants are committed to mitigating the potential impact that the investigation of potential unlawful conduct may have on the lawful political or religious activity of individuals, groups, or organizations, and the potential effect on persons who, although not a target of the investigation, are affected by or subject to the NYPD's investigative techniques;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. It is the policy of the NYPD that investigations involving political activity conform to the guarantees of the U.S. and New York state constitutions, including the U.S. Constitution's guarantee of equal protection. It is also the policy of the NYPD that care be exercised in the conduct of those investigations so as to protect constitutional rights, including the right to be free from investigation in which race, religion, or ethnicity is a substantial or motivating factor.

2. Defendants will remove the “Radicalization in the West” report from the NYPD website.

3. Subject to the approval of the Court, the Guidelines for Investigations Involving Political Activity set forth as Appendix A to the Second Revised Order and Judgment dated August 6, 2003 (288 F.Supp.2d at 420-431) shall be revised as shown in Exhibit 1 annexed hereto.

4. Upon the order of this Court approving this Stipulation of Settlement and approving the revision of the Guidelines for Investigations Involving Political Activity that is attached hereto as Exhibit 1, the Modified Handschu Guidelines shall thereafter consist of (i) Appendix A to *Handschu* IV (set forth in 273 F.Supp.2d at 349-351); and (ii) Exhibit 1 annexed hereto, which wholly replaces and supersedes Appendix A to the Second Revised Order and Judgment dated August 6, 2003 (set forth in 288 F.Supp.2d at 420-431).

5. This Stipulation and Order does not create any additional rights of enforcement, or forms of relief available, for alleged violations of the Modified Handschu Guidelines. The Court’s prior orders continue to govern the circumstances under which relief is available.

6. Counsel for the Parties enter into this Stipulation after good faith negotiations for the purpose of settling all issues and claims raised or made by the parties in the Handschu Motion, or which were known to Class Counsel prior to the date of this Stipulation, to avoid the burden of further litigation, and to promote lawful and nondiscriminatory activities of the Intelligence Bureau of the New York Police Department to preserve public safety and security.

7. Defendants deny any and all liability and deny that they had or have a policy, or engaged in or currently engage in a pattern or practice of conduct, that deprived any persons, including the Plaintiff Class and the plaintiffs in *Raza*, of rights protected by the Constitution and laws of the United States.

8. Defendants deny any and all liability and deny that they had or have a policy, or engaged in or currently engage in a pattern or practice of conduct, that violated the Modified Handschu Guidelines.

9. This Stipulation does not, and shall not be deemed to, constitute an admission by Defendants as to the validity or accuracy of any of the allegations, assertions or claims made in the Handschu Motion or the Discovery Motion. This Stipulation does not constitute an admission, adjudication, or finding on the merits of the Handschu Motion or the Discovery Motion.

10. This Stipulation shall not be admissible in, nor is it related to any other litigation or settlement negotiations, except for the *Raza* litigation and except to enforce the terms of this agreement.

11. Upon approval by the Court, this Stipulation and Order, as of its effective date, resolves in full any and all claims or rights of action against the Defendants and their predecessors, successors, or assignees, together with past, present, and future officials, employees, representatives, and agents of the Defendants, the NYPD, and the City of New York, with respect to matters set forth in the Handschu Motion or the Discovery Motion and any other alleged violation of the Modified Handschu Guidelines known to Class Counsel as of the date of this Stipulation including, but not limited to, issues and claims arising out of the activities of the Citywide Debriefing Unit of the Intelligence Bureau as set forth in a letter by Class Counsel

dated June 4, 2014, debriefings conducted by the Detective Bureau as set forth in a letter by Class Counsel dated May 11, 2015, the issues raised in Class Counsel's letter dated November 6, 2015, and concerns raised regarding the NYPD's policing of the protests at Grand Central Station between December 2014 and mid-January 2015.

12. The City of New York hereby agrees to pay Plaintiffs' Counsel the sum of \$361,730.26 in full satisfaction of all claims for costs, expenses and attorneys' fees.

13. Class Counsel hereby agree and represent that no other claims for attorneys' fees, costs or expenses arising out of the Handschu Motion or the Discovery Motion shall be made by or on behalf of Class Counsel against Defendants in any application for attorneys' fees, costs or expenses at any time, and Class Counsel shall release and discharge Defendants for all claims for attorneys' fees, costs, and expenses arising out of the Handschu Motion or the Discovery Motion.

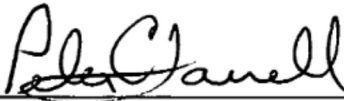
14. Class Counsel shall each execute and deliver to defendants' attorneys all documents necessary to effect this settlement, including, without limitation, General Releases based on the terms of paragraph 13, and plaintiffs' attorneys shall also execute and deliver W-9's.

15. The sole authority to allege that the NYPD has violated the Modified Handschu Guidelines remains with Class Counsel, and nothing in this Stipulation shall be construed to mean otherwise. The sole Court empowered to hear a complaint that there has been a violation of the Modified Handschu Guidelines remains the presiding Judge of the *Handschu* litigation in the United States District Court for the Southern District of New York (the "Handschu Court"), and the parties reserve their right to appeal from any determination made by that court.


16. Upon approval of this Stipulation by this Court, the Handschu Motion is dismissed against Defendants with prejudice.

Dated: New York, New York  
January 7, 2016

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Counsel for the Plaintiff  
Class

SO ORDERED:

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UNITED STATES DISTRICT JUDGE  
CHARLES S. HAIGHT

# **EXHIBIT 1**



## **GUIDELINES FOR INVESTIGATIONS INVOLVING POLITICAL ACTIVITY**

### **PREAMBLE**

Subsequent to the terrorist attacks on the City of New York on September 11, 2001 which resulted in the loss of thousands of lives and the total destruction of the World Trade Center complex, it became apparent that the City faces unprecedented threats to its continued safety and security. In the view of federal, state and local law enforcement agencies, the prevention of future attacks requires the development of intelligence and the investigation of potential terrorist activity before an unlawful act occurs.

As a result of a federal court order entered in 1985, the New York City Police Department was bound by guidelines, known as the Handschu Guidelines, which governed the investigation of political activity. The Handschu Guidelines (i) limited the investigation of political activity to those circumstances when there was specific information of criminal activity and (ii) established the Handschu Authority to oversee compliance. After evaluating the impact of the Handschu Guidelines on the need to investigate terrorism in a changed world, the City made an application to modify the order so as to eliminate the restrictions contained in the Handschu Guidelines and the oversight of the Handschu Authority with respect to those restrictions. The City did not seek to eliminate the Handschu Authority's role to investigate an individual's complaint that the NYPD had engaged in unconstitutional conduct in the investigation of political activity.

The Court granted the City's application to modify the decree provided the City adopt the internal guidelines set forth below and distribute the guidelines to supervisory personnel who, in turn, were to make them known to those under their command. These guidelines were subsequently incorporated into an order of the Court in 288 F.Supp.2d 411, 420 (S.D.N.Y. 2003) and are enforceable as set out in 679 F.Supp.2d 488, 497 (S.D.N.Y. 2010). They shall remain in effect unless otherwise ordered by the Court. These guidelines are binding on all members of the service who are engaged in the investigation of political activity. It is the purpose of these guidelines to enable officers to perform their duties with greater certainty, confidence and effectiveness while at the same time protecting the guarantees of the Constitution.

### **I. STATEMENT OF POLICY**

It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, including the guarantee of equal protection. It is the policy of the New York City Police Department that care be exercised in the conduct of those investigations so as to protect constitutional rights, including the right to be free from investigation in which race, religion, or ethnicity is a substantial or motivating factor. It is the policy of the New York City Police Department that matters investigated be confined to those supported by a legitimate law enforcement purpose.

### **II. GENERAL PRINCIPLES**

(1) In its effort to anticipate or prevent unlawful activity, including terrorist acts, the NYPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such investigations not be based solely on activities protected by the First Amendment. It is also important that investigations not intrude upon rights of expression or association in a manner that discriminates on the basis of race, religion or ethnicity, where such discrimination is a substantial

or motivating factor for the investigation. When, however, statements advocate unlawful activity, or indicate an apparent intent to engage in unlawful conduct, particularly acts of violence, an investigation under these guidelines may be warranted, unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

- (2) Based upon the circumstances of a given case, investigative action may be required under exigent circumstances. Exigent circumstances are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these guidelines. Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.

- (3) Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.

### **III. APPLICABILITY**

These guidelines apply only to investigations which involve political activity. They do not apply to, or limit, other activities of the NYPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety or other legitimate law enforcement activities which do not involve political activity.

### **IV. ROLE OF THE INTELLIGENCE BUREAU**

- (1) Investigation of political activity shall be initiated by, and conducted under the supervision of the Intelligence Bureau. Nothing in this paragraph, however, is intended to prevent any member of the service from reporting his or her observations of suspicious conduct which involves political activity to his or her commanding officer or to the Intelligence Bureau.
- (2) The Deputy Commissioner of Intelligence shall periodically inform and advise the Police Commissioner concerning the status of any investigations conducted pursuant to these guidelines.

### **V. LEVELS OF INVESTIGATION**

These guidelines provide for three levels of investigative activity. They are intended to provide the NYPD with the necessary flexibility to act well in advance of the commission of planned terrorist acts or other unlawful activity. However, if the available information shows at the outset that the threshold standard for a Preliminary Inquiry or Full Investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

#### **A. Checking of Leads**

The lowest level of investigative activity is the “prompt and extremely limited checking out of initial leads,” which should be undertaken whenever information is received of such a nature that

some follow-up as to the possibility of unlawful activity is warranted. This limited activity should be conducted with an eye toward promptly determining whether further investigation (either a Preliminary Inquiry or a Full Investigation) should be conducted.

*Example: If the NYPD receives an allegation that an individual or group has advocated the commission of violence, and no other facts are available, an appropriate first step would be Checking of Leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated unlawful act.*

## **B. Preliminary Inquiries**

(1) In cases where the NYPD receives information or an allegation not warranting a Full Investigation - because there is not yet a “reasonable indication” of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an “inquiry” in response to the allegation or information indicating the possibility of unlawful activity. The possibility of unlawful activity to initiate a Preliminary Inquiry requires an allegation or information that is articulable and factual. However, such allegation or information need not have been verified as true or accurate. Whether it is appropriate to open a Preliminary Inquiry immediately, or instead to engage first in a limited Checking of Leads, depends on the circumstances presented.

(2) The authority to conduct inquiries short of a Full Investigation allows the NYPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit. This is especially important in such areas as where there is no complainant involved or when an allegation or information is received from a source of unknown reliability. Such inquiries are subject to the limitations on duration under paragraph (4) below and are carried out to obtain the information necessary to make an informed judgment as to whether a Full Investigation is warranted.

*Example: Officers are not required to possess information relating to an Individual’s intended unlawful use of dangerous biological agents or toxins prior to initiating investigative activity. If an individual or group has attempted to obtain such materials, or has indicated a desire to acquire them, and the reason is not apparent, investigative action, such as conducting a Checking of Leads or initiating a Preliminary Inquiry, may be appropriate to determine whether there is a legitimate purpose for the possession of the materials by the individual or group. A Preliminary Inquiry is not a required step when facts or circumstances reasonably indicating unlawful activity are already available. In such cases, a Full Investigation can be immediately opened.*

(3) A Preliminary Inquiry may be authorized by the Chief of Intelligence or Executive Officer of the Intelligence Bureau, or the Commanding Officer of the Criminal Intelligence Section (“the Authorizing Officials”). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.

- (4) Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date as the date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.
- (5) A Preliminary Inquiry shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Preliminary Inquiry, including, what operational steps should be taken.
- (6) A Preliminary Inquiry shall be presumptively limited to a total duration of 18 months. This presumptive period of duration may be exceeded in the sole discretion of the Deputy Commissioner of Intelligence, in consultation with the Handschu Committee, where the allegations or information continue to indicate the possibility of unlawful activity and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Preliminary Inquiry continue to apply.
- (7) All lawful investigative techniques, including the use of undercover operations and the development of sources and informants may be used in a Preliminary Inquiry except:
  - (a) Mail openings; and,
  - (b) Eavesdropping and Video Surveillance as those terms are defined in Article 700 of the New York State Criminal Procedure Law.
- (8) The following investigative techniques may be used in a Preliminary Inquiry without any prior authorization from a supervisor:
  - (a) Examination of NYPD indices and files;
  - (b) Examination of records available to the public and other public sources of information;
  - (c) Examination of available federal, state and local government records;
  - (d) Interview of complainant, previously established informants, and other sources of information;
  - (e) Interview of the potential subject;
  - (f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers unless the interviewee was the complainant; and
  - (g) Physical, photographic or video surveillance of any person, provided that such surveillance does not require a warrant.

The use of any other lawful investigative technique that is permitted in a Preliminary Inquiry shall meet the requirements and limitations of Part VII and, except in exigent circumstances, requires prior approval by a supervisor.

- (9) Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.
- (10) All requirements regarding inquiries shall apply to reopened inquiries.

### **C. Full Investigation**

A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed. A Full Investigation may be conducted to prevent, solve or prosecute such unlawful activity.

- (1) The standard of “reasonable indication” is substantially lower than probable cause. In determining whether there is reasonable indication of an unlawful act an investigator may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or future violation of law. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.
- (2) Where an unlawful act may be committed in the future, preparation for that act can be a current violation of the conspiracy or attempt provisions of state law. The standard for opening an investigation is satisfied where there is not yet a current substantive or preparatory unlawful act, but facts or circumstances reasonably indicate that such unlawful conduct will occur in the future.
- (3) Any lawful investigative technique may be used in a Full Investigation, subject to the requirements and limitations of Part VI hereof.
- (4) Authorization and Renewal
  - a. A Full Investigation may be authorized by the Chief of Intelligence or Executive Officer of the Intelligence Bureau or the Commanding Officer of the Criminal Intelligence Section (“the Authorizing Officials”) upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
  - b. A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing.
  - c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.
  - d. A Full Investigation shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Full Investigation, including, what operational steps should be taken.
  - e. A Full Investigation shall be presumptively limited to a total duration of 3 years. This presumptive period of duration may be exceeded in the sole discretion of the Deputy

Commissioner of Intelligence, in consultation with the Handschu Committee, where facts and circumstances continue to reasonably indicate that an unlawful act has been, is being, or will be committed and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Full Investigation continue to apply.

- (5) An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations.

#### **D. Terrorism Enterprise Investigation**

A Terrorism Enterprise Investigation is a Full Investigation but differs from a general investigation of unlawful conduct in several important respects. As a general rule, an investigation of a completed unlawful act is normally confined to determining who committed that act and securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. A Terrorism Enterprise Investigation must determine the identity and nature of the individual, group, or organization involved, its geographic dimensions, its past acts and intended goals, including unlawful goals, and its capacity for harm, among other factors. While a standard investigation of unlawful conduct terminates with the decision to prosecute or not to prosecute, a Terrorism Enterprise Investigation does not necessarily end, even though one or more of the participants may have been prosecuted. In addition, groups and organizations exhibit a life and continuity of operation not normally found in other types of unlawful activity. As a consequence, these investigations may continue for several years. Furthermore, the focus of such investigations may be less precise than that directed against more conventional types of unlawful conduct. Unlike the usual case involving unlawful conduct, there may be no completed offense to provide a framework for the investigation. A Terrorism Enterprise Investigation often requires the fitting together of bits and pieces of information, many meaningless by themselves, to determine whether a pattern of unlawful activity exists. For this reason, such investigations are broader and less discriminate than usual, involving the interrelation of various sources and types of information. This section focuses on investigations of enterprises that seek to further political or social goals through activities that involve force or violence, or that otherwise aim to engage in terrorism or terrorism-related crimes. It authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

##### **1. General Authority**

- a. A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of:
  - (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts;
  - (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or
  - (iii) committing any offense described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, or 490.35, or other related statutes currently in effect or subsequently enacted.

The standard of “reasonable indication” is identical to that governing Full Investigations generally. In determining whether an investigation should be conducted, the NYPD shall consider all of the circumstances including:

- (i) the magnitude of the threatened harm;
- (ii) the likelihood that it will occur;
- (iii) the immediacy of the threat; and
- (iv) any danger to privacy or free expression posed by an investigation.

In practical terms, the “reasonable indication” standard for opening a Terrorism Enterprise Investigation could be satisfied in a number of ways.

*Example: Direct information about statements made in furtherance of an enterprise’s objectives which show a purpose of committing crimes described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, would satisfy the threshold.*

*Example: Activities such as attempting to obtain dangerous biological agents, toxic chemicals, or nuclear materials, or stockpiling explosives or weapons, with no discernible lawful purpose, may be sufficient to reasonably indicate that an enterprise aims to engage in terrorism.*

- b. While no particular factor or combination of factors is required, considerations that will generally be relevant to the determination as to whether the threshold standard for a Terrorism Enterprise Investigation is satisfied include, as noted, a group’s statements, its activities, and the nature of potential unlawful acts suggested by the statements or activities. Thus, where there are grounds for inquiry concerning a group, it may be helpful to gather information about these matters, and then to consider whether these factors, either individually or in combination, reasonably indicate that the group is pursuing terrorist activities or objectives as defined in the threshold standard. Findings that would weigh in favor of such a conclusion include, for example, the following:
  - (1) Threats or advocacy of violence or other covered unlawful acts. Statements are made in relation to or in furtherance of an enterprise’s political or social objectives that threaten or advocate the use of force or violence, or statements are made in furtherance of an enterprise that otherwise threaten or advocate unlawful conduct within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, or other related statutes currently in effect or subsequently enacted which may concern such matters as , for example:
    - (i) engaging in attacks involving or threatening massive loss of life or injury, mass destruction, or endangerment of the national security;
    - (ii) killing or injuring public officials, or destroying public facilities, or defying lawful authority;
    - (iii) killing, injuring or intimidating individuals because of their status as United States nationals or persons, or because of their national origin, race, color, religion or sex; or

- (iv) depriving individuals of any rights secured by the Constitution or laws of the United States or the State of New York.
  - (2) Apparent ability or intent to carry out violence or other covered activities. The enterprise manifests an apparent ability or intent to carry out violence or other activities within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, for example:
    - (i) by acquiring or taking steps towards acquiring, biological agents or toxins, toxic chemicals or their precursors, radiological or nuclear materials, explosives or other destructive or dangerous material (or plans or formulas for such materials), or weapons, under circumstances where, by reason of the quantity or character of the items, the lawful purpose of the acquisition is not apparent;
    - (ii) by the creation, maintenance, or support of an armed paramilitary organization;
    - (iii) by paramilitary training; or
    - (iv) by other conduct demonstrating an apparent ability or intent to injure or intimidate individuals, or to interfere with the exercise of their constitutional or statutory rights.
  - (3) Potential Unlawful Act. The group's statements or activities suggest potential unlawful acts that may be relevant in applying the standard for initiating a Terrorism Enterprise Investigation - such as crimes under the provisions of the N.Y. Penal Law that set forth specially defined terrorism or support of terrorism offenses, or that relate to such matters as aircraft hijacking or destruction, attacks on transportation, communications, or energy facilities or systems, biological or chemical weapons, nuclear or radiological materials, assassinations or other violence against public officials or facilities, or explosives.
- c. Mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this subpart. But where facts or circumstances reasonably indicate that an individual or group has engaged or aims to engage in conduct described in paragraph 1.a. above in a demonstration, an investigation may be initiated in conformity with the standards of that paragraph. This does not limit the collection of information about public demonstrations by individuals or groups that are under active investigation pursuant to paragraph 1.a. above or any other provisions of these guidelines.

## **2. Purpose**

The immediate purpose of a Terrorism Enterprise Investigation is to obtain information concerning the nature and structure of the enterprise as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the unlawful activities of the enterprise.

## **3. Scope**

- a. A Terrorism Enterprise Investigation initiated under these guidelines may collect such information as:



- (i) the identity and nature of an individual or group and its members, their associates, and other persons likely to be acting in furtherance of its unlawful objectives, provided that the information concerns such persons' activities on behalf of or in furtherance of the suspected unlawful activity of the individual, group, or organization;
  - (ii) the finances of the individual, group, or organization;
  - (iii) the geographical dimensions of the individual, group, or organization; and
  - (iv) past and future activities and goals of the individual, group, or organization.
- b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with the requirements of these guidelines.

#### **4. Authorization and Renewal**

- a. A Terrorism Enterprise Investigation may be authorized by the Chief of Intelligence or Executive Officer of the Intelligence Bureau or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise as described in paragraph 1.a. above. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.
- b. A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing.
- c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized. In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence or other unlawful activities as described in 1.a., nor is there any immediate threat of harm - yet the composition, goals and prior history of the group suggest the need for continuing law enforcement interest. The investigation may be continued in such cases with whatever scope is warranted in light of these considerations.
- d. All Terrorism Enterprise Investigations shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Terrorism Enterprise Investigation, including, what operational steps should be taken.
- e. A Terrorism Enterprise Investigation shall be presumptively limited to a total duration of 5 years, except where the subject of a Terrorism Enterprise Investigation is a designated foreign terrorist organization. This presumptive period of duration may be exceeded in the sole discretion of the Deputy Commissioner of Intelligence,

in consultation with the Handschu Committee, where facts and circumstances continue to reasonably indicate that two or more persons are engaged in an enterprise for the purposes stated above and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Terrorism Enterprise Investigation continue to apply.

- f. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

## **VI. HANDSCHU COMMITTEE**

- (1) There is hereby established a committee (the “Handschu Committee”) whose members may attend and participate in monthly meetings at which investigations are presented for opening, extension or closure by the Deputy Commissioner for Intelligence. All attending members will be provided with the investigative statement pertaining to each proposed opening, extension or closing for the monthly meeting. At the monthly meeting, any member of the Handschu Committee may ask questions and offer opinions regarding the opening, extension or closure of an investigation presented.
- (2) Members of the Handschu Committee from the NYPD will include the Deputy Commissioner of Intelligence, the Chief of Intelligence, the Executive Officer of the Intelligence Bureau, the Commanding Officer of IOAS (Intelligence Operations and Analysis Section), the Executive Officer of IOAS, the Commanding Officer (or the Executive Officer) of the Criminal Intelligence Section, the Director of Intelligence Analysis, the Deputy Commissioner of Legal Matters, Assistant Deputy Commissioner of Legal Matters, Assistant Commissioner of Legal Matters for Intelligence Affairs, Special Counsel for Intelligence Affairs, and/or their successors or persons who occupy similar positions of authority or expertise.
- (3) There shall also be a Civilian Representative on the Handschu Committee who may attend and participate in the monthly meetings for opening, extension, or closure of investigations on the same terms and conditions as set forth in paragraph (1) above. The Civilian Representative shall be a lawyer who has never previously been an employee of the NYPD. The Civilian Representative shall be appointed by the Mayor upon consultation with the Police Commissioner. The Civilian Representative may be replaced by the Mayor for good cause, with 14 days’ advance notice to Class Counsel prior to such replacement. The position of Civilian Representative will exist for a minimum of five years from the appointment of the first person to fill that role. After that initial five year period, the position of Civilian Representative will continue unless abolished or modified by the Mayor, upon which Class Counsel will receive 90 days’ notice in advance of such abolition or modification.

- (a) The Civilian Representative shall submit to a background investigation conducted by the Department of Investigation.
- (b) The NYPD will facilitate an application for a federal security clearance for the Civilian Representative.
- (c) The Civilian Representative shall execute a Non-Disclosure Agreement with the NYPD setting forth his or her undertaking that the proceedings of the Handschu Committee, as well as all materials reviewed by the Civilian Representative for or at the meetings of the Committee, shall be kept confidential and shall not be disclosed to any person except as set forth therein.
- (d) The Civilian Representative shall be required to familiarize himself or herself with the Modified Handschu Guidelines governing the investigation of political activity by the NYPD.
- (e) If the Civilian Representative concludes that an investigation is being opened or extended in violation of the Modified Handschu Guidelines, the Civilian Representative shall record his or her objection to the investigation and the grounds for the objection in the minutes of the Handschu Committee meeting.
- (f) If the Civilian Representative concludes that an investigation is being opened or extended in violation of the Modified Handschu Guidelines, the Civilian Representative shall bring such investigation to the attention of the Police Commissioner. The Civilian Representative shall be provided with means to contact the Police Commissioner directly. The Police Commissioner shall inquire into the investigation and report the findings of the inquiry to the Civilian Representative.
- (g) If the Civilian Representative concludes that the NYPD is systematically and repeatedly violating the Modified Handschu Guidelines to a degree sufficient to show a NYPD policy to act in such a fashion, the Civilian Representative shall report the alleged systematic violation to the Judge assigned to the Handschu case in the Southern District of New York. In the event the Civilian Representative decides to make a report to the Court based upon a perceived policy by the NYPD to violate the Guidelines, a copy of the report shall first be served confidentially upon the Police Commissioner and the Deputy Commissioner of Intelligence seven (7) days prior to its submission to the Court. The report shall be submitted directly to the Judge in a confidential manner, shall be kept confidential, and shall be filed under seal. Class Counsel in the Handschu case shall be given notice that a report was submitted by the Civilian Representative to the Court. The parties will then agree to a confidentiality order governing disclosure of the contents of the report to Class Counsel or, in the event that the NYPD believes the report in whole or in part should not be disclosed to Class Counsel, the NYPD shall be provided an opportunity to inform the Court as to the basis for objecting to disclosure in whole or in part to Class Counsel.

- (4) Nothing herein shall effect, limit, or diminish the authorization and approval provisions for investigations, which grant exclusive approval authority to the Authorizing Officials or the Deputy Commissioner of Intelligence.

## **VII. INVESTIGATIVE TECHNIQUES**

- (1) When conducting investigations under these guidelines, the NYPD may use any lawful investigative technique permitted by these guidelines. The choice of investigative techniques is a matter of judgment, which should take account of:
  - (i) the objectives of the investigation and available investigative resources;
  - (ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation;
  - (iii) the potential effect on the political or religious activity of individuals, groups or organizations and the potential effect on persons who, although not a target of the investigation are affected by or subject to the technique;
  - (iv) the seriousness of the unlawful act; and
  - (v) the strength of the information indicating its existence or future commission of the unlawful act.
- (2) Where the conduct of an investigation presents a choice between the use of more or less intrusive methods, the NYPD should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The NYPD should not hesitate to use any lawful techniques consistent with these guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the seriousness of the crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in investigations relating to terrorist activities.
- (3) Authorized methods in investigations include, among others, use of confidential informants, undercover activities and operations, eavesdropping and video surveillance (as defined in Article 700 of the NY Criminal Procedure Law), pen registers and trap and trace devices, consensual electronic monitoring, and searches and seizures.

### **a. Undercover Operations**

- (i) Undercover operations, including confidential informants, may be used when taking into account all the circumstances of the investigation, including the need for the information and the seriousness of the threat, it has been determined that the information sought in the investigation could not be reasonably obtained in a timely and effective way by a less intrusive means. The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence Bureau prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.
- (ii) The use of an undercover or confidential informant will be approved for a period of 90 days and may be extended for additional periods of 90 days with the approval of the Deputy Commissioner of the Intelligence Bureau. Such extensions may be approved for

as long as the investigation continues when it has been determined that the information sought in the investigation could not reasonably be obtained in a timely and effective manner by less intrusive means. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.

- (iii) Undercovers are strictly prohibited from engaging in any conduct the sole purpose of which is to disrupt the lawful exercise of political activity, from instigating unlawful acts or engaging in unlawful or unauthorized investigative activities.
- b. Eavesdropping and Video Surveillance (as defined in Article 700 of the NY Criminal Procedure Law), Pen Registers and Trap and Trace Devices, and Consensual Electronic Monitoring
  - (i) All requirements for the use of such methods under the Constitution, applicable statutes, and NYPD regulations or policies must be observed.
- (4) Whenever an individual is known to be represented by counsel in a particular matter, the NYPD shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel.

## **VIII. DISSEMINATION AND MAINTENANCE OF INFORMATION**

### **A. Dissemination**

The NYPD may disseminate information obtained during the Checking of Leads, Preliminary Inquiries and investigations conducted pursuant to these guidelines to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:

- (i) falls within the investigative or protective jurisdiction or litigative responsibility of the agency;
- (ii) may assist in preventing an unlawful act or the use of violence or any other conduct dangerous to human life;
- (iii) is required to be disseminated by interagency agreement, statute, or other law.

### **B. Maintenance**

All documentation required under these Guidelines shall be maintained by the Intelligence Bureau in accordance with general police department practice and applicable municipal record retention and destruction rules, regulations and procedures. Under these rules and practices documents are retained for no less than five years.

## **IX. COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS**

In order to carry out its mission of preventing the commission of terrorist acts in or affecting the City of New York and the United States and its people, the NYPD must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. This Part accordingly identifies a number of

authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, Preliminary Inquiry, or Full Investigation as described in these guidelines. The authorizations include both activities that are specifically focused on terrorism and activities that are useful for law enforcement purposes in both terrorism and non-terrorism contexts. The authorized law enforcement activities of the NYPD include carrying out and retaining information resulting from the following activities.

## **A. COUNTERTERRORISM ACTIVITIES**

### **1. Information Systems**

The NYPD is authorized to operate and participate in identification, tracking, and information systems for the purpose of identifying and locating potential terrorists and supporters of terrorist activity, assessing and responding to terrorist risks and threats, or otherwise detecting, prosecuting, or preventing terrorist activities. Systems within the scope of this paragraph may draw on and retain pertinent information from any source permitted by law, including information derived from past or ongoing investigative activities; other information collected or provided by governmental entities, such as foreign intelligence information and lookout list information; publicly available information, whether obtained directly or through services or resources (whether nonprofit or commercial) that compile or analyze such information; and information voluntarily provided by private entities. Any such system operated by the NYPD shall be reviewed periodically for compliance with all applicable statutory provisions and Department regulations and policies.

### **2. Visiting Public Places and Events**

For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity.

## **B. OTHER AUTHORIZATIONS**

### **1. General Topical Research**

The NYPD is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. "General topical research" under this paragraph means research concerning subject areas that are relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities. It does not include online searches for information by individuals' names or other individual identifiers, except where such searches are incidental to topical research, such as searching to locate writings on a topic by searching under the names of authors who write on the topic, or searching by the name of a party to a case in conducting legal research.

### **2. Use of Online Resources Generally**

For the purpose of developing intelligence information to detect or prevent terrorism or other unlawful activities, the NYPD is authorized to conduct online search activity and to access online sites and forums on the same terms and conditions as members of the public generally.

### **3. Reports and Assessments**

The NYPD is authorized to prepare general reports and assessments concerning terrorism or other unlawful activities for purposes of strategic or operational planning or in support of other legitimate law enforcement activities.

## **X. PROTECTION OF PRIVACY AND OTHER LIMITATIONS**

### **A. General Limitations**

The law enforcement activities authorized by this Part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Rather, all such law enforcement activities must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and Department regulations and policies.

### **B. Construction of Part**

This Part does not limit any activities authorized by or carried out under other Parts of these guidelines. The specification of authorized law enforcement activities under this Part is not exhaustive, and does not limit other authorized law enforcement activities of the NYPD.

## **XI. RESERVATION**

Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the NYPD or City of New York, or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law which are within the investigative responsibility of the NYPD.

Nothing in these guidelines is intended to limit the NYPD's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations. These guidelines are set forth solely for the purpose of internal NYPD guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural; enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the NYPD or City of New York.

# **EXHIBIT B**



# **Proposed Modifications to the Handschu Guidelines**

## **GUIDELINES FOR INVESTIGATIONS INVOLVING POLITICAL ACTIVITY**

### **PREAMBLE**

Subsequent to the terrorist attacks on the City of New York on September 11, 2001 which resulted in the loss of thousands of lives and the total destruction of the World Trade Center complex, it became apparent that the City faces unprecedented threats to its continued safety and security. In the view of federal, state and local law enforcement agencies, the prevention of future attacks requires the development of intelligence and the investigation of potential terrorist activity before an unlawful act occurs.

As a result of a federal court order entered in 1985, the New York City Police Department was bound by guidelines, known as the Handschu Guidelines, which governed the investigation of political activity. The Handschu Guidelines (i) limited the investigation of political activity to those circumstances when there was specific information of criminal activity and (ii) established the Handschu Authority to oversee compliance. After evaluating the impact of the Handschu Guidelines on the need to investigate terrorism in a changed world, the City made an application to modify the order so as to eliminate the restrictions contained in the Handschu Guidelines and the oversight of the Handschu Authority with respect to those restrictions. The City did not seek to eliminate the Handschu Authority's role to investigate an individual's complaint that the NYPD had engaged in unconstitutional conduct in the investigation of political activity.

The Court granted the City's application to modify the decree provided the City adopt the internal guidelines set forth below and distribute the guidelines to supervisory personnel who, in turn, were to make them known to those under their command. These guidelines [were subsequently incorporated into an order of the Court in 288 F.Supp.2d 411, 420 \(S.D.N.Y. 2003\) and are enforceable as set out in 679 F.Supp.2d 488, 497 \(S.D.N.Y. 2010\)](#). They shall remain in effect unless otherwise ordered by the Court. These guidelines are binding on all members of the service who are engaged in the investigation of political activity. It is the purpose of these guidelines to enable officers to perform their duties with greater certainty, confidence and effectiveness while at the same time protecting the guarantees of the Constitution.

### **I. STATEMENT OF POLICY**

It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, [including the guarantee of equal protection](#). [It is the policy of the New York City Police Department](#) that care be exercised in the conduct of those investigations so as to protect constitutional rights, [including the right to be free from investigation in which race, religion, or ethnicity is a substantial or motivating factor](#). [It is the policy of the New York City Police Department](#) ~~and~~ that matters investigated be confined to those supported by a legitimate law enforcement purpose.

### **II. GENERAL PRINCIPLES**

(1) In its effort to anticipate or prevent unlawful activity, including terrorist acts, the NYPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such

investigations not be based solely on activities protected by the First Amendment. It is also important that investigations not intrude upon rights of expression or association in a manner that discriminates on the basis of race, religion or ethnicity, where such discrimination is a substantial or motivating factor for the investigation. When, however, statements advocate unlawful activity, or indicate an apparent intent to engage in unlawful conduct, particularly acts of violence, an investigation under these guidelines may be warranted, unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

- (2) Based upon the circumstances of a given case, investigative action may be required under exigent circumstances. Exigent circumstances are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these guidelines. Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.

- (3) Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.

### III. APPLICABILITY

These guidelines apply only to investigations which involve political activity. They do not apply to, or limit, other activities of the NYPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety or other legitimate law enforcement activities which do not involve political activity.

### IV. ROLE OF THE INTELLIGENCE ~~DIVISION~~BUREAU

- (1) Investigation of political activity shall be initiated by, and conducted under the supervision of the Intelligence ~~Division~~Bureau. Nothing in this paragraph, however, is intended to prevent any member of the service from reporting his or her observations of suspicious conduct which involves political activity to his or her commanding officer or to the Intelligence ~~Division~~Bureau.
- (2) The Deputy Commissioner of Intelligence shall periodically inform and advise the Police Commissioner concerning the status of any investigations conducted pursuant to these guidelines.

### V. LEVELS OF INVESTIGATION

These guidelines provide for three levels of investigative activity. They are intended to provide the NYPD with the necessary flexibility to act well in advance of the commission of planned terrorist acts or other unlawful activity. However, if the available information shows at the outset that the threshold standard for a Preliminary Inquiry or Full Investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

## A. Checking of Leads

The lowest level of investigative activity is the “prompt and extremely limited checking out of initial leads,” which should be undertaken whenever information is received of such a nature that some follow-up as to the possibility of unlawful activity is warranted. This limited activity should be conducted with an eye toward promptly determining whether further investigation (either a Preliminary Inquiry or a Full Investigation) should be conducted.

*Example: If the NYPD receives an allegation that an individual or group has advocated the commission of violence, and no other facts are available, an appropriate first step would be Checking of Leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated unlawful act.*

## B. Preliminary Inquiries

(1) In cases where the NYPD receives information or an allegation not warranting a Full Investigation - because there is not yet a “reasonable indication” of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an “inquiry” in response to the allegation or information indicating the possibility of unlawful activity. The possibility of unlawful activity to initiate a Preliminary Inquiry requires an allegation or information that is articulable and factual. However, such allegation or information need not have been verified as true or accurate. Whether it is appropriate to open a Preliminary Inquiry immediately, or instead to engage first in a limited Checking of Leads, depends on the circumstances presented.

~~*Example: If the NYPD receives an allegation that an individual or group has advocated the commission of violence, and no other facts are available, an appropriate first step would be Checking of Leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated unlawful act.*~~

(2) The authority to conduct inquiries short of a Full Investigation allows the NYPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit. This is especially important in such areas as where there is no complainant involved or when an allegation or information is received from a source of unknown reliability. Such inquiries are subject to the limitations on duration under paragraph (4)four below and are carried out to obtain the information necessary to make an informed judgment as to whether a Full Investigation is warranted.

*Example: Officers are not required to possess information relating to an Individual’s intended unlawful use of dangerous biological agents or toxins prior to initiating investigative activity. If an individual or group has attempted to obtain such materials, or has indicated a desire to acquire them, and the reason is not apparent, investigative action, such as conducting a Checking of Leads or initiating a Preliminary Inquiry, may be appropriate to determine whether there is a legitimate purpose for the possession of the materials by the individual or group. A Preliminary Inquiry is not a required step when facts or circumstances reasonably indicating unlawful activity are already available. In such cases, a Full Investigation can be immediately opened.*

(3) A Preliminary Inquiry may be authorized by the Chief of IntelligenceCommanding Officer or Executive Officer of the Intelligence DivisionBureau, or the Commanding Officer of the

Criminal Intelligence Section (“the Authorizing Officials”). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.

- (4) Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date as the date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.
- (5) A Preliminary Inquiry shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Preliminary Inquiry, including, what operational steps should be taken.
- (6) A Preliminary Inquiry shall be presumptively limited to a total duration of 18 months. This presumptive period of duration may be exceeded in the sole discretion of the Deputy Commissioner of Intelligence, in consultation with the Handschu Committee, where the allegations or information continue to indicate the possibility of unlawful activity and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Preliminary Inquiry continue to apply.
- (7) All lawful investigative techniques, including the use of undercover operations and the development of sources and informants may be used in an Preliminary Inquiry except:
  - (a) Mail openings; and,
  - (b) Eavesdropping and Video Surveillance as those terms are defined in Article 700 of the New York State Criminal Procedure Law.
- (8) The following investigative techniques may be used in a Preliminary Inquiry without any prior authorization from a supervisor:
  - (a) Examination of NYPD indices and files;
  - (b) Examination of records available to the public and other public sources of information;
  - (c) Examination of available federal, state and local government records;
  - (d) Interview of complainant, previously established informants, and other sources of information;
  - (e) Interview of the potential subject;
  - (f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject’s employer or coworkers unless the interviewee was the complainant; and

- (g) Physical, photographic or video surveillance of any person, provided that such surveillance does not require a warrant. ~~The use of any other lawful investigative technique that is permitted in a Preliminary Inquiry shall meet the requirements and limitations of Part VI and, except in exigent circumstances, requires prior approval by a supervisor.~~

The use of any other lawful investigative technique that is permitted in a Preliminary Inquiry shall meet the requirements and limitations of Part VII and, except in exigent circumstances, requires prior approval by a supervisor.

(97) Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.

(108) All requirements regarding inquiries shall apply to reopened inquiries.

### C. Full Investigation

A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed. A Full Investigation may be conducted to prevent, solve or prosecute such unlawful activity.

- (1) The standard of “reasonable indication” is substantially lower than probable cause. In determining whether there is reasonable indication of an unlawful act an investigator may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or future violation of law. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.
- (2) Where an unlawful act may be committed in the future, preparation for that act can be a current violation of the conspiracy or attempt provisions of state law. The standard for opening an investigation is satisfied where there is not yet a current substantive or preparatory unlawful act, but facts or circumstances reasonably indicate that such unlawful conduct will occur in the future.
- (3) Any lawful investigative technique may be used in a Full Investigation, subject to the requirements and limitations of Part VI hereof.
- (4) Authorization and Renewal
  - a. A Full Investigation may be authorized by the ~~Chief of Intelligence~~Commanding Officer or Executive Officer of the Intelligence ~~Division~~Bureau or the Commanding Officer of the Criminal Intelligence Section (“the Authorizing Officials”) upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
  - b. A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing.

- c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.
- d. A Full Investigation shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Full Investigation, including, what operational steps should be taken.
- e. A Full Investigation shall be presumptively limited to a total duration of 3 years. This presumptive period of duration may be exceeded in the sole discretion of the Deputy Commissioner of Intelligence, in consultation with the Handschu Committee, where facts and circumstances continue to reasonably indicate that an unlawful act has been, is being, or will be committed and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Full Investigation continue to apply.

(5) An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations.

#### **D. Terrorism Enterprise Investigation**

A Terrorism Enterprise Investigation is a Full Investigation but differs from a general investigation of unlawful conduct in several important respects. As a general rule, an investigation of a completed unlawful act is normally confined to determining who committed that act and securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. A Terrorism Enterprise Investigation must determine the identity and nature of the individual, group, or organization involved, its geographic dimensions, its past acts and intended goals, including unlawful goals, and its capacity for harm, among other factors. While a standard investigation of unlawful conduct terminates with the decision to prosecute or not to prosecute, a Terrorism Enterprise Investigation does not necessarily end, even though one or more of the participants may have been prosecuted. In addition, groups and organizations ~~exhibit~~provide a life and continuity of operation not normally found in other types of unlawful activity. As a consequence, these investigations may continue for several years. Furthermore, the focus of such investigations may be less precise than that directed against more conventional types of unlawful conduct. Unlike the usual case involving unlawful conduct, there may be no completed offense to provide a framework for the investigation. # A Terrorism Enterprise Investigation often requires the fitting together of bits and pieces of information, many meaningless by themselves, to determine whether a pattern of unlawful activity exists. For this reason, such investigations are broader and less discriminate than usual, involving the interrelation of various sources and types of information. This section focuses on investigations of enterprises that seek to further political or social goals through activities that involve force or violence, or that otherwise aim to engage in terrorism or terrorism-related crimes. It authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

##### **1. General Authority**



- a. A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of:
- (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts;
  - (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or
  - (iii) committing any offense described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, or 490.35, or other related statutes currently in effect or subsequently enacted.

The standard of “reasonable indication” is identical to that governing Full Investigations generally. In determining whether an investigation should be conducted, the NYPD shall consider all of the circumstances including:

- (i) the magnitude of the threatened harm;
- (ii) the likelihood that it will occur;
- (iii) the immediacy of the threat; and
- (iv) any danger to privacy or free expression posed by an investigation.

In practical terms, the “reasonable indication” standard for opening a Terrorism Enterprise Investigation could be satisfied in a number of ways.

*Example: Direct information about statements made in furtherance of an enterprise’s objectives which show a purpose of committing crimes described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, would satisfy the threshold.*

*Example: Activities such as attempting to obtain dangerous biological agents, toxic chemicals, or nuclear materials, or stockpiling explosives or weapons, with no discernible lawful purpose, may be sufficient to reasonably indicate that an enterprise aims to engage in terrorism.*

- b. While no particular factor or combination of factors is required, considerations that will generally be relevant to the determination as to whether the threshold standard for a Terrorism Enterprise Investigation is satisfied include, as noted, a group’s statements, its activities, and the nature of potential unlawful acts suggested by the statements or activities. Thus, where there are grounds for inquiry concerning a group, it may be helpful to gather information about these matters, and then to consider whether these factors, either individually or in combination, reasonably indicate that the group is pursuing terrorist activities or objectives as defined in the threshold standard. Findings that would weigh in favor of such a conclusion include, for example, the following:
- (1) Threats or advocacy of violence or other covered unlawful acts. Statements are made in relation to or in furtherance of an enterprise’s political or social objectives that threaten or advocate the use of force or violence, or statements are made in furtherance of an enterprise that otherwise threaten or advocate unlawful conduct within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30,

490.35, or other related statutes currently in effect or subsequently enacted which may concern such matters as [\(e.g.\), for example](#):

- (i) engaging in attacks involving or threatening massive loss of life or injury, mass destruction, or endangerment of the national security;
- (ii) killing or injuring public officials, or destroying public facilities, or defying lawful authority;
- (iii) killing, injuring or intimidating individuals because of their status as United States nationals or persons, or because of their national origin, race, color, religion or sex; or
- (iv) depriving individuals of any rights secured by the Constitution or laws of the United States or the State of New York.

(2) Apparent ability or intent to carry out violence or other covered activities. The enterprise manifests an apparent ability or intent to carry out violence or other activities within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, [for example-e.g.:](#)

- (i) by acquiring or taking steps towards acquiring, biological agents or toxins, toxic chemicals or their precursors, radiological or nuclear materials, explosives or other destructive or dangerous material (or plans or formulas for such materials), or weapons, under circumstances where, by reason of the quantity or character of the items, the lawful purpose of the acquisition is not apparent;
- (ii) by the creation, maintenance, or support of an armed paramilitary organization;
- (iii) by paramilitary training; or
- (iv) by other conduct demonstrating an apparent ability or intent to injure or intimidate individuals, or to interfere with the exercise of their constitutional or statutory rights.

(3) Potential Unlawful Act. The group's statements or activities suggest potential unlawful acts that may be relevant in applying the standard for initiating a Terrorism Enterprise Investigation - such as crimes under the provisions of the N.Y. Penal Law that set forth specially defined terrorism or support of terrorism offenses, or that relate to such matters as aircraft hijacking or destruction, attacks on transportation, communications, or energy facilities or systems, biological or chemical weapons, nuclear or radiological materials, assassinations or other violence against public officials or facilities, or explosives.

c. Mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this [§Subpart](#). But where facts or circumstances reasonably indicate that an individual or group has engaged or aims to engage in conduct described in paragraph 1.a. above in a demonstration, an investigation may be initiated in conformity with the standards of that paragraph. This does not limit the collection of information about public demonstrations by individuals or groups that are under active investigation pursuant to paragraph 1.a. above or any other provisions of these guidelines.



## 2. Purpose

The immediate purpose of a Terrorism Enterprise Investigation is to obtain information concerning the nature and structure of the enterprise as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the unlawful activities of the enterprise.

## 3. Scope

- a. A Terrorism Enterprise Investigation initiated under these guidelines may collect such information as:
  - (i) the identity and nature of an individual or group and its members, their associates, and other persons likely to be acting in furtherance of its unlawful objectives, provided that the information concerns such persons' activities on behalf of or in furtherance of the suspected unlawful activity of the individual, group, or organization;
  - (ii) the finances of the individual, group, or organization;
  - (iii) the geographical dimensions of the individual, group, or organization; and
  - (iv) past and future activities and goals of the individual, group, or organization.
- b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with the requirements of these guidelines.

## 4. Authorization and Renewal

- a. A Terrorism Enterprise Investigation may be authorized by the Chief of Intelligence Commanding Officer or Executive Officer of the Intelligence Division Bureau or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise as described in paragraph 1.a. above. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.
- b. A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing.
- c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized. In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence or other unlawful activities as described in 1.a., nor is there any immediate threat of harm - yet the composition, goals and prior history of the group suggest the need for continuing law enforcement

interest. The investigation may be continued in such cases with whatever scope is warranted in light of these considerations.

- d. All Terrorism Enterprise Investigations shall be subject to a review every 6 months by the Chief of Intelligence, or an appropriate executive of the Intelligence Bureau designated by him, to discuss the status of the Terrorism Enterprise Investigation, including, what operational steps should be taken.
- e. A Terrorism Enterprise Investigation shall be presumptively limited to a total duration of 5 years, except where the subject of a Terrorism Enterprise Investigation is a designated foreign terrorist organization. This presumptive period of duration may be exceeded in the sole discretion of the Deputy Commissioner of Intelligence, in consultation with the Handschu Committee, where facts and circumstances continue to reasonably indicate that two or more persons are engaged in an enterprise for the purposes stated above and either that some further leads should be lawfully investigated or that there is a legitimate law enforcement purpose to be pursued further. When the presumptive period of duration is exceeded all other provisions regarding a Terrorism Enterprise Investigation continue to apply.
- f. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

## **VI. HANDSCHU COMMITTEE**

- (1) There is hereby established a committee (the “Handschu Committee”) whose members may attend and participate in monthly meetings at which investigations are presented for opening, extension or closure by the Deputy Commissioner for Intelligence. All attending members will be provided with the investigative statement pertaining to each proposed opening, extension or closing for the monthly meeting. At the monthly meeting, any member of the Handschu Committee may ask questions and offer opinions regarding the opening, extension or closure of an investigation presented.
- (2) Members of the Handschu Committee from the NYPD will include the Deputy Commissioner of Intelligence, the Chief of Intelligence, the Executive Officer of the Intelligence Bureau, the Commanding Officer of IOAS (Intelligence Operations and Analysis Section), the Executive Officer of IOAS, the Commanding Officer (or the Executive Officer) of the Criminal Intelligence Section, the Director of Intelligence Analysis, the Deputy Commissioner of Legal Matters, Assistant Deputy Commissioner of Legal Matters, Assistant Commissioner of Legal Matters for Intelligence Affairs, Special Counsel for Intelligence Affairs, and/or their successors or persons who occupy similar positions of authority or expertise.
- (3) There shall also be a Civilian Representative on the Handschu Committee who may attend and participate in the monthly meetings for opening, extension, or closure of investigations on the same terms and conditions as set forth in paragraph (1) above. The

Civilian Representative shall be a lawyer who has never previously been an employee of the NYPD. The Civilian Representative shall be appointed by the Mayor upon consultation with the Police Commissioner. The Civilian Representative may be replaced by the Mayor for good cause, with 14 days' advance notice to Class Counsel prior to such replacement. The position of Civilian Representative will exist for a minimum of five years from the appointment of the first person to fill that role. After that initial five year period, the position of Civilian Representative will continue unless abolished or modified by the Mayor, upon which Class Counsel will receive 90 days' notice in advance of such abolition or modification.

(a) The Civilian Representative shall submit to a background investigation conducted by the Department of Investigation.

(b) The NYPD will facilitate an application for a federal security clearance for the Civilian Representative.

(c) The Civilian Representative shall execute a Non-Disclosure Agreement with the NYPD setting forth his or her undertaking that the proceedings of the Handschu Committee, as well as all materials reviewed by the Civilian Representative for or at the meetings of the Committee, shall be kept confidential and shall not be disclosed to any person except as set forth therein.

(d) The Civilian Representative shall be required to familiarize himself or herself with the Modified Handschu Guidelines governing the investigation of political activity by the NYPD.

(e) If the Civilian Representative concludes that an investigation is being opened or extended in violation of the Modified Handschu Guidelines, the Civilian Representative shall record his or her objection to the investigation and the grounds for the objection in the minutes of the Handschu Committee meeting.

(f) If the Civilian Representative concludes that an investigation is being opened or extended in violation of the Modified Handschu Guidelines, the Civilian Representative shall bring such investigation to the attention of the Police Commissioner. The Civilian Representative shall be provided with means to contact the Police Commissioner directly. The Police Commissioner shall inquire into the investigation and report the findings of the inquiry to the Civilian Representative.

(g) If the Civilian Representative concludes that the NYPD is systematically and repeatedly violating the Modified Handschu Guidelines to a degree sufficient to show a NYPD policy to act in such a fashion, the Civilian Representative shall report the alleged systematic violation to the Judge assigned to the Handschu case in the Southern District of New York. In the event the Civilian Representative decides to make a report to the Court based upon a perceived policy by the NYPD to violate the Guidelines, a copy of the report shall first be served confidentially upon the Police

Commissioner and the Deputy Commissioner of Intelligence seven (7) days prior to its submission to the Court. The report shall be submitted directly to the Judge in a confidential manner, shall be kept confidential, and shall be filed under seal. Class Counsel in the Handschu case shall be given notice that a report was submitted by the Civilian Representative to the Court. The parties will then agree to a confidentiality order governing disclosure of the contents of the report to Class Counsel or, in the event that the NYPD believes the report in whole or in part should not be disclosed to Class Counsel, the NYPD shall be provided an opportunity to inform the Court as to the basis for objecting to disclosure in whole or in part to Class Counsel.

- (4) Nothing herein shall effect, limit, or diminish the authorization and approval provisions for investigations, which grant exclusive approval authority to the Authorizing Officials or the Deputy Commissioner of Intelligence.

## **VII. INVESTIGATIVE TECHNIQUES**

- (1) When conducting investigations under these guidelines, the NYPD may use any lawful investigative technique permitted by these guidelines. The choice of investigative techniques is a matter of judgment, which should take account of:
  - (i) the objectives of the investigation and available investigative resources;
  - (ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation;
  - (iii) the potential effect on the political or religious activity of individuals, groups or organizations and the potential effect on persons who, although not a target of the investigation are affected by or subject to the technique;
  - (iv) the seriousness of the unlawful act; and
  - (v) the strength of the information indicating its existence or future commission of the unlawful act.
- (2) Where the conduct of an investigation presents a choice between the use of more or less intrusive methods, the NYPD should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The NYPD should not hesitate to use any lawful techniques consistent with these guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the seriousness of the crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in investigations relating to terrorist activities.
- (3) Authorized methods in investigations include, among others, use of confidential informants, undercover activities and operations, eavesdropping and video surveillance (as defined in Article 700 of the NY Criminal Procedure Law), pen registers and trap and trace devices, consensual electronic monitoring, and searches and seizures.
  - a. Undercover Operations
    - (i) Undercover operations, including confidential informants, may be used when taking into account all the circumstances of the investigation, including the need for the information

and the seriousness of the threat, it has been determined that the information sought in the investigation could not be reasonably obtained in a timely and effective way by a less intrusive means such operations are the most effective means of obtaining information, taking into account all the circumstances of the investigation, including the need for the information and the seriousness of the threat. The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence ~~Division~~ Bureau prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.

- (ii) The use of an undercover or confidential informant will be approved for a period of ~~90~~120 days and may be extended for additional periods of ~~90~~120 days with the approval of the Deputy Commissioner of the Intelligence ~~Division~~Bureau. Such extensions may be approved for as long as the investigation continues when it has been determined that the information sought in the investigation could not reasonably be obtained in a timely and effective manner by less intrusive means~~the use of the undercover is the most effective means of obtaining information~~. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.
- (iii) Undercovers are strictly prohibited from engaging in any conduct the sole purpose of which is to disrupt the lawful exercise of political activity, from instigating unlawful acts or engaging in unlawful or unauthorized investigative activities.

b. Eavesdropping and Video Surveillance (as defined in Article 700 of the NY Criminal Procedure Law), Pen Registers and Trap and Trace Devices, and Consensual Electronic Monitoring

- (i) All requirements for the use of such methods under the Constitution, applicable statutes, and NYPD regulations or policies must be observed.
- (4) Whenever an individual is known to be represented by counsel in a particular matter, the NYPD shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel.

## **VIII. DISSEMINATION AND MAINTENANCE OF INFORMATION**

### A. Dissemination

The NYPD may disseminate information obtained during the Checking of Leads, Preliminary Inquiries and investigations conducted pursuant to these guidelines to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:

- (i) falls within the investigative or protective jurisdiction or litigative responsibility of the agency;
- (ii) may assist in preventing an unlawful act or the use of violence or any other conduct dangerous to human life;
- (iii) is required to be disseminated by interagency agreement, statute, or other law.

### B. Maintenance

All documentation required under these Guidelines shall be maintained by the Intelligence ~~Division~~Bureau—in accordance with general police department practice and applicable municipal record retention and destruction rules, regulations and procedures. Under these rules and practices documents are retained for no less than five years.

## **IXVIII. COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS**

In order to carry out its mission of preventing the commission of terrorist acts in or affecting the City of New York and the United States and its people, the NYPD must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. This Part accordingly identifies a number of authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, Preliminary Inquiry, or Full Investigation as described in these guidelines. The authorizations include both activities that are specifically focused on terrorism and activities that are useful for law enforcement purposes in both terrorism and nonterrorism contexts. The authorized law enforcement activities of the NYPD include carrying out and retaining information resulting from the following activities.

### **A. COUNTERTERRORISM ACTIVITIES**

#### **1. Information Systems**

The NYPD is authorized to operate and participate in identification, tracking, and information systems for the purpose of identifying and locating potential terrorists and supporters of terrorist activity, assessing and responding to terrorist risks and threats, or otherwise detecting, prosecuting, or preventing terrorist activities. Systems within the scope of this paragraph may draw on and retain pertinent information from any source permitted by law, including information derived from past or ongoing investigative activities; other information collected or provided by governmental entities, such as foreign intelligence information and lookout list information; publicly available information, whether obtained directly or through services or resources (whether nonprofit or commercial) that compile or analyze such information; and information voluntarily provided by private entities. Any such system operated by the NYPD shall be reviewed periodically for compliance with all applicable statutory provisions and Department regulations and policies.

#### **2. Visiting Public Places and Events**

For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity.

### **B. OTHER AUTHORIZATIONS**

#### **1. General Topical Research**

The NYPD is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. “General topical research” under this paragraph means research concerning subject areas that are relevant for the purpose of

facilitating or supporting the discharge of investigative responsibilities. It does not include online searches for information by individuals' names or other individual identifiers, except where such searches are incidental to topical research, such as searching to locate writings on a topic by searching under the names of authors who write on the topic, or searching by the name of a party to a case in conducting legal research.

## 2. Use of Online Resources Generally

For the purpose of developing intelligence information to detect or prevent terrorism or other unlawful activities, the NYPD is authorized to conduct online search activity and to access online sites and forums on the same terms and conditions as members of the public generally.

## 3. Reports and Assessments

The NYPD is authorized to prepare general reports and assessments concerning terrorism or other unlawful activities for purposes of strategic or operational planning or in support of other legitimate law enforcement activities.

# | **IX. PROTECTION OF PRIVACY AND OTHER LIMITATIONS**

## A. General Limitations

The law enforcement activities authorized by this Part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Rather, all such law enforcement activities must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and Department regulations and policies.

## B. Construction of Part

This Part does not limit any activities authorized by or carried out under other Parts of these guidelines. The specification of authorized law enforcement activities under this Part is not exhaustive, and does not limit other authorized law enforcement activities of the NYPD.

# | **XI. RESERVATION**

Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the NYPD or City of New York, or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law which are within the investigative responsibility of the NYPD.

Nothing in these guidelines is intended to limit the NYPD's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations. These guidelines are set forth solely for the purpose of internal NYPD guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural; enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the NYPD or City of New York.