

## WATCH OUT: YOU'RE BEING WATCHED (IF YOU'RE MUSLIM)

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### I. INTRODUCTION

Following the terror attacks on September 11, 2001, the New York City Police Department (NYPD) Intelligence Division began a counter-terrorism program that conducted surveillance on Muslim community leaders, mosques, student associations, businesses, and individuals.<sup>1</sup> This surveillance was not limited to New York, but extended to Pennsylvania, Connecticut, and New Jersey.<sup>2</sup> The reason for the widespread surveillance was simple: the NYPD believed the mere belief and practice of the Islamic religion was a lawful basis for surveillance as a preventive measure against future acts of terrorism.<sup>3</sup> Various Muslim groups were spied on with video and photo surveillance.<sup>4</sup> The NYPD also recruited “mosque crawlers” to observe activities within mosques as well as “rakers,” plain clothed officers responsible for listening to conversations at Muslim restaurants and businesses.<sup>5</sup> Through collecting license plate numbers at mosques, taking photographs, and monitoring grade schools, the NYPD was able to collect personal information on Muslim citizens despite the fact that none of these individuals were accused of committing any crimes.<sup>6</sup>

While the original goal of the program was to identify mundane locations where a potential terrorist could blend seamlessly into society, the program evolved into a large-scale surveillance of Muslim citizens performing regular daily tasks; the

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<sup>1</sup> *Factsheet: The NYPD Muslim Surveillance Program*, AM. CIV. LIBERTIES UNION, [https://www.aclu.org/sites/default/files/field\\_document/nypd\\_surveillance\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/nypd_surveillance_0.pdf) (last visited June 6, 2015); See also *Highlights of AP's Pulitzer Prize-Winning Probe into NYPD Intelligence Operations*, ASSOCIATED PRESS, <http://www.ap.org/media-center/nypd/investigation> (last visited June 5, 2015).

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

<sup>6</sup> Romtin Parvaresh, Note, *Prayer for Relief: Anti-Muslim Discrimination as Racial Discrimination*, 87 S. CAL. L. REV. 1287, 1288 (2014).

vast majority of whom were innocent.<sup>7</sup> Muslim communities originating from varying countries—with different cultures, languages, and practices—were watched by the NYPD.<sup>8</sup> The only thing these individuals had in common was that they all belonged to the Islamic religion.<sup>9</sup>

In New Jersey alone, police monitored at least twenty mosques, fourteen restaurants, eleven retail stores, two grade schools, and two student groups taking particular interest in the Muslim community in Newark.<sup>10</sup> A suit was filed in 2012 by a cross section of New Jersey's Muslim community, claiming they suffered a variety of injuries from the surveillance and their constitutional rights were violated because of this infringement on daily life and religious practices.<sup>11</sup> A similar suit was filed by affected Muslims against the NYPD in New York.<sup>12</sup>

This article will discuss the implications of this case on the surveillance of potential terrorists and how basic constitutional rights—specifically the right to religious freedom granted by the First Amendment—should not be compromised to prevent acts of terrorism. Further, this article will discuss why the public's interest in preventing terrorism should not be used as a justification for massive surveillance of communities across state lines, especially when the individuals targeted are victimized on the basis of their religious beliefs. Lastly, this article will suggest a workable solution for future surveillance programs to avoid unwarranted intrusions into the lives of individual members of religious communities.

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<sup>7</sup> Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, at A1, available at <http://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Charles Toutant, *Third Circuit Considers NYPD Muslim Surveillance Suit*, N.J. L.J. (Jan. 14, 2015), <http://www.njlawjournal.com/id=1202715191998/Third-Circuit-Considers-NYPD-Muslim-Surveillance-Suit?slreturn=20150203161414>.

<sup>11</sup> *Id.*

<sup>12</sup> *Raza v. City of New York*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013) (ruling on preliminary discovery matters). As of March 9, 2015, this case had not proceeded further than the discovery stage. See also, Shirin Sinnar, *NYPD Uses Discovery Tactics to Deter Civil Rights Claims*, JUST SEC. (Sept 10, 2014, 9:05 AM), <http://justsecurity.org/14773/nypd-discovery-tactics-deter-civil-rights-claims/>.

## II. LEGAL BACKGROUND

In 2014, the case of *Hassan v. City of New York* was decided in the United States District Court for the District of New Jersey.<sup>13</sup> Six Muslim individuals, two organizations that operate mosques, two Muslim-owned businesses, and the Muslim Student Association at Rutgers University filed suit against the NYPD.<sup>14</sup> Syed Farhaj Hassan was the lead Plaintiff in the case.<sup>15</sup> Hassan—a veteran who served in the Iraq War—claimed he attended mosque services less frequently because of a reasonable fear that his security clearance would be jeopardized because of his affiliation with mosques under surveillance by law enforcement.<sup>16</sup> The complaint alleged that the NYPD surveillance, which involved undercover officers infiltrating Muslim organizations to monitor religious and social occurrences, caused a series of spiritual and pecuniary losses as well as diminished religious expression and interference with employment prospects.<sup>17</sup>

The plaintiffs in *Hassan* alleged that, once the surveillance program was made public, mosque attendance declined due to fear of threats and retaliation from law enforcement for religious expression and association.<sup>18</sup> Plaintiffs believed the only motivation for the surveillance was animus against Muslims in violation of the First Amendment right to be free from religious discrimination.<sup>19</sup> Other members of the Muslim community echoed Mr. Hassan's fear of attending religious services at mosques because of government surveillance.<sup>20</sup> The lawsuit sought: public disclosure of the surveillance records; an injunction to end religious-based targeting; and compensatory, economic, and nominal damages.<sup>21</sup>

The case was ultimately dismissed with prejudice for several reasons.<sup>22</sup> The District Court reasoned that the facts

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<sup>13</sup> *Hassan v. City of New York*, Civ. No. 2:12-3401, 2014 U.S. Dist. LEXIS 20887 (D.N.J. Feb. 20, 2014).

<sup>14</sup> *Id.* at \*1–2.

<sup>15</sup> Toutant, *supra* note 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Hassan*, 2014 U.S. Dist. LEXIS 20887, at \*3–4.

<sup>18</sup> *Id.* at \*5–7.

<sup>19</sup> *Id.* at \*7.

<sup>20</sup> Toutant, *supra* note 10; Linda E. Fisher, *Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups*, 46 ARIZ. L. REV. 621, 623 (2004).

<sup>21</sup> *Hassan*, 2014 U.S. Dist. LEXIS 20887, at \*7.

<sup>22</sup> *Id.* at \*19.

alleged were insufficient to permit an inference that the individuals were targeted solely on the basis of religion, and dismissed the complaint because of a failure to state a claim for discrimination in violation of the First Amendment.<sup>23</sup> The District Court further stated that Plaintiffs did not allege an injury in fact, because the “allegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.”<sup>24</sup> Moreover, the District Court stated that causation—a required element for standing—had not been demonstrated because none of the alleged harms occurred until the surveillance program was made public.<sup>25</sup> Finally, the District Court emphasized that surveillance of the Muslim community began just after the terrorist attacks of September 11, 2001 and that the sole purpose of the program was to find Muslim terrorists hiding among law-abiding Muslim citizens.<sup>26</sup>

On January 13, 2015, the United States Court of Appeals for the Third Circuit heard oral argument on this issue.<sup>27</sup> The subject of the appeal was whether Plaintiffs suffered injuries sufficient to afford them standing to pursue First Amendment claims of religious discrimination based on government surveillance of their daily activities.<sup>28</sup> If the Third Circuit were to find sufficient injuries had been suffered, then Plaintiffs would be permitted to move forward with their claim.<sup>29</sup> The Third Circuit assessed whether to reverse the District Court’s ruling in dismissing the case for lack of standing.<sup>30</sup>

Plaintiffs claimed their injuries resulted from being singled out solely on the basis of their religion, and that they had standing based on that fact alone.<sup>31</sup> Plaintiffs further alleged that the surveillance was facially discriminatory, causing long term and

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<sup>23</sup> *Id.* at \*14–15, 19. The fact that the individuals were allegedly targeted on the basis of their religion will be the focus of this paper.

<sup>24</sup> *Id.* at \*10–11 (quoting *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972)). This article will only discuss the claims that Plaintiffs have made in regard to injuries caused by violations of First Amendment rights.

<sup>25</sup> *Id.* at \*11–12.

<sup>26</sup> *Hassan*, 2014 U.S. Dist. LEXIS 20887, at \*19.

<sup>27</sup> Toutant, *supra* note 10.

<sup>28</sup> Reply Brief of Plaintiff-Appellants at 2, *Hassan v. City of New York* (No. 14-1688), available at <http://ccrjustice.org/files/Hassan%20Pl%20Reply%20Brief%203rd%20Cir%2011-7-14.pdf>.

<sup>29</sup> *Id.* at 1.

<sup>30</sup> Toutant, *supra* note 10.

<sup>31</sup> *Id.*

specific injuries that were sufficient for relief to be granted.<sup>32</sup> As of July 2015,<sup>33</sup> the Third Circuit has not made a decision on this case.

Ultimately, the NYPD's surveillance program was disbanded after criticism from civil rights groups and after a senior official at the Federal Bureau of Investigation (FBI) said that sowing mistrust for law enforcement in Muslim communities by spying on them threatened national security.<sup>34</sup> Indeed, many Muslims who were spied on believed that law enforcement viewed their every action as suspicious behavior.<sup>35</sup> The Third Circuit is not expected to rule for several months.<sup>36</sup>

### III. POLICE SURVEILLANCE AND COUNTERTERRORISM

Beginning in the 1930s, police in Chicago began monitoring civic and religious groups, labor unions, and certain publications after these groups took extreme political positions, which included vocalizing strong opinions against the administration of the City of Chicago.<sup>37</sup> Similar to the NYPD surveillance, investigators infiltrated these organizations to collect information about their members, activities, and beliefs.<sup>38</sup>

Next, in the 1960s, the FBI conducted wide-ranging investigations with the goal of arresting Communists, and examined groups suspected to be engaged in communist activity.<sup>39</sup> These investigations included police monitoring of Dr. Martin Luther King, Jr. and encompassed extensive surveillance of his church sermons.<sup>40</sup> The monitoring of suspicious persons and groups spanned across the country and was also conducted by local law enforcement agencies.<sup>41</sup> In response to the unfettered and widespread surveillance of religious groups by law enforcement,

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<sup>32</sup> Brief for Plaintiffs at 5, *Hassan v. City of New York*, No. 14-1688, available at <http://ccrjustice.org/files/Hassan%20P1%20Reply%20Brief%203rd%20Cir%2011-7-14.pdf>.

<sup>33</sup> This article was edited to completion in July 2015.

<sup>34</sup> Apuzzo & Goldstein, *supra* note 7.

<sup>35</sup> *Id.*

<sup>36</sup> Anna Werner, *NJ Muslims Take NYPD Surveillance Program to Court*, CBS NEWS (Jan. 13, 2015, 7:54 PM), <http://www.cbsnews.com/news/nj-muslims-take-nypd-surveillance-program-to-court/>. This article was written on March 3, 2015.

<sup>37</sup> Fisher, *supra* note 20, at 632–33.

<sup>38</sup> *Id.* at 633.

<sup>39</sup> Tom Lininger, *Sects, Lies, and Videotape: The Surveillance and Infiltration of Religious Groups*, 89 IOWA L. REV. 1201, 1210 (2004).

<sup>40</sup> *Id.* at 1211.

<sup>41</sup> *Id.* at 1213.

the FBI adopted guidelines that restricted such surveillance unless the agents had collected “specific and articulable facts giving reason to believe that an individual or group is or may be engaged in activities which involve the use of force or violence . . . .”<sup>42</sup> State and local governments followed the lead of the federal government and restrained the investigative powers of police in the same manner, resulting in a prohibition of monitoring First Amendment conduct unless there was a particular, good faith basis for suspecting criminal activity.<sup>43</sup>

These guidelines, however, were replaced in 2001 in response to the terrorist attacks of September 11, 2001.<sup>44</sup> John Ashcroft, the then U.S. Attorney General, proposed new measures to improve the ability to detect and prosecute terrorists, stressing that prevention was more important for the anti-terrorism policy than ever before.<sup>45</sup> New guidelines were enacted, and as a result, law enforcement agents were allowed to attend meetings of religious organizations without an articulable suspicion that any of the members were involved in criminal activities.<sup>46</sup> The law enforcement response to the terror attacks of September 11, 2001 was possibly one of the largest and most complex criminal investigations in American history, and included both federal and state efforts.<sup>47</sup>

Since then, the NYPD has paralleled the federal government in its efforts to expend resources to prevent a terrorist attack like the one on September 11, 2001 from happening again.<sup>48</sup> The investigation of Muslims in the greater New York area is one of the ways in which prevention efforts have been enacted.<sup>49</sup> Police have not denied the widespread infiltration of Muslim communities in the greater New York area,<sup>50</sup> but the NYPD justified this conduct by stating it followed leads which lead to the surveillance operation.<sup>51</sup> According to the NYPD, a “lead” is the

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<sup>42</sup> *Id.* at 1214–15 (internal quotation marks omitted).

<sup>43</sup> *Id.* at 1215–16.

<sup>44</sup> Lininger, *supra* note 39, at 1228.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1229.

<sup>47</sup> Steven G. Brandl, *Back to the Future: The Implications of September 11, 2001 on Law Enforcement Practice and Policy*, 1 OHIO ST. J. CRIM. L. 133, 133 (2003).

<sup>48</sup> Eric Lane, *On Madison, Muslims, and the New York City Police Department*, 40 HOFSTRA L. REV. 689, 692 (2012).

<sup>49</sup> *Id.* at 699.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 699–700.

threshold standard that is a predicate for surveillance, and comprises “information that indicates the possibility of unlawful activity.”<sup>52</sup> The NYPD has repeatedly stated they are acting lawfully and working in the best interests of public safety, since many New Yorkers are of the belief that the city is a target for a terrorist attack.<sup>53</sup>

#### IV. CONSTITUTIONAL ISSUES

The Supreme Court of the United States has adopted two tiers of review—rational basis review and strict scrutiny review—that have provided the court with methods of analysis regarding the constitutionality of government actions.<sup>54</sup> Rational basis review is considered the default standard.<sup>55</sup> A court using this analysis must determine that the challenged law is “reasonably related to a legitimate state interest” and that it is not arbitrary or unreasonable.<sup>56</sup> Because this is a highly deferential standard, legislation undergoing this analysis is typically upheld.<sup>57</sup> Rational basis is applied to equal protection claims that do not implicate gender, suspect classifications, or fundamental rights.<sup>58</sup>

Conversely, strict scrutiny requires challenged legislation to be “narrowly tailored to serve a compelling state interest,” and must also be the least restrictive way of achieving that goal.<sup>59</sup> This is more demanding than rational basis review, and is applicable to claims involving fundamental rights and suspect classifications, such as race and religion.<sup>60</sup>

In order to provide for a middle ground between deferential rational basis and rigorous strict scrutiny, however, intermediate scrutiny has developed. Under this level of scrutiny, a law must be

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<sup>52</sup> *Id.* at 700 (quoting *Oversight - Safety in NYC Ten Years After 9-11: Hearing Before Comm. on Pub. Safety*, 2011 N.Y. CITY COUNCIL 24 (Oct. 6, 2011) (statement of Raymond Kelly, Comm’r of the New York City Police Department) available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=98476%206&GUID=C6F59E3A-12DE-4C99-9A82-9E53C83719A5>).

<sup>53</sup> Lane, *supra* note 48, at 698–99.

<sup>54</sup> Ashutosh Bhagwat, *The Test that Ate Everything: Intermediate Scrutiny in First Amendment Jurisprudence*, 2007 U. ILL. L. REV. 783, 784 (2007).

<sup>55</sup> Emma Freeman, Note, *Giving Casey Its Bite Back: The Role of Rational Basis Review in Undue Burden Analysis*, 48 HARV. C.R.-C.L. L. REV. 279, 282 (2013).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 282–83.

<sup>58</sup> *Id.* at 283.

<sup>59</sup> *Id.* at 284.

<sup>60</sup> *Id.* at 284.

“substantially related to an important state interest.”<sup>61</sup> Intermediate scrutiny has been applied to classifications relating to gender and sexual orientation.<sup>62</sup>

The First Amendment to the Constitution provides that any law “respecting an establishment of religion, or prohibiting the free exercise thereof” is prohibited from being enacted.<sup>63</sup> Constitutional law dictates that infringements of the Establishment Clause must be subject to strict scrutiny, and can only be justified if the State brings forth a compelling reason to justify the infringement.<sup>64</sup> That standard, as applies here, requires that the NYPD’s surveillance strategy, which is based on the religious beliefs of the persons being watched, serve a substantial government interest while providing the least restrictive means of achieving that goal.<sup>65</sup>

The First Amendment guarantees that groups are permitted to meet and conduct themselves freely without unjustified government interference.<sup>66</sup> When the government interferes in some way with the free exercise of religion, citizens are reluctant to engage in that protected First Amendment conduct if that activity will cause them to be branded as extremists or terrorists.<sup>67</sup> While the freedom of religion is an individual right, it is also collective in the sense that it often requires association with a particular group for that right to be fully expressed.<sup>68</sup> This expression cannot be interfered with by government action unless the interference is the least restrictive way of serving a compelling state interest.

## V. ANALYSIS

Regardless of what the Third Circuit decides, Plaintiffs in this case should be deemed to have sufficient standing to pursue their suit against the NYPD—at least with respect to their claims

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<sup>61</sup> Freeman, *supra* note 55, at 283.

<sup>62</sup> *Id.* at 283–84; Jeremy B. Smith, Note, *The Flaws of Rational Basis with Bite: Why the Supreme Court Should Acknowledge Its Application of Heightened Scrutiny to Classifications Based on Sexual Orientation*, 73 *FORDHAM L. REV.* 2769, 2770 (2005).

<sup>63</sup> U.S. CONST. amend. I.

<sup>64</sup> Lane, *supra* note 48, at 715 (citing *Hobbie v. Unemployment Appeals Comm’n*, 480 U.S. 136, 141 (1987)).

<sup>65</sup> *Id.*

<sup>66</sup> Fisher, *supra* note 20, at 635.

<sup>67</sup> *Id.* at 625.

<sup>68</sup> *Id.* at 638.

arising under the First Amendment. As crimes become more organized and more complex, it is likely that the efforts of police to detect and prevent that crime will also become more complex,<sup>69</sup> potentially at the expense of civil liberties.<sup>70</sup> Despite the District Court of New Jersey ruling otherwise, the NYPD surveillance of Muslim communities of all ages and backgrounds violates the First Amendment of the United States Constitution, as religion alone is the only reason for the surveillance regardless of the “leads” that the police claim they have.<sup>71</sup>

According to an NYPD report, the compelling state interest, and the justification for the surveillance of the Muslim community, was that terrorism has its roots in perfectly lawful behavior, such as praying in a mosque, engaging in sporting activities, or participating in social groups.<sup>72</sup> While it cannot be denied that after September 11, 2001, countering terrorism became a compelling state and public interest which demanded that anti-terrorism measures be improved, this cannot be accomplished at the cost of the civil liberties of law-abiding citizens.<sup>73</sup>

Requiring a reasonable suspicion<sup>74</sup> of criminal activity before investigating protected First Amendment activity would achieve a balance between national security interests and associational rights,<sup>75</sup> but this does not go far enough in protecting First Amendment activity. Using national security interests in preventing terrorism should not be a permissible justification for infringing upon First Amendment rights. The NYPD has done just that—they have targeted a large religious community on the basis that it is in the best interest for counterterrorism.<sup>76</sup> This should not be a permissible activity, as it is a procedure that is not

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<sup>69</sup> Brandl, *supra* note 47, at 144.

<sup>70</sup> *Id.* at 137.

<sup>71</sup> Lane, *supra* note 48, at 713.

<sup>72</sup> Donna Lieberman, *Infringement on Civil Liberties After 9/11*, 56 N.Y.L. SCH. L. REV. 1121, 1124–25 (2011/2012).

<sup>73</sup> *Id.* at 1126.

<sup>74</sup> Reasonable suspicion is determined by articulable facts that criminal activity may be present, and must be something more than an inchoate and generalized suspicious hunch. This standard is lower than probable cause, and must be evaluated by considering a totality of the circumstances. The Fourth Amendment requires some reasonable justification for a search or seizure, and reasonable suspicion justifies such actions when suspicious activity is suspected but does not rise to the level of having probable cause. See *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989).

<sup>75</sup> Fisher, *supra* note 20, at 627.

<sup>76</sup> Lieberman, *supra* note 72, at 1124–25.

narrowly tailored to the specific goal of preventing terrorism.<sup>77</sup> Advances in technology have made surveillance of suspected terrorist groups easier and more comprehensive, but just because police are able to monitor groups easily does not mean that they should necessarily do so at the expense of privacy and civil liberties.<sup>78</sup>

NYPD surveillance has caused—among other damages—a decline in mosque attendance and a fear of retaliation by law enforcement for attending religious services.<sup>79</sup> This fear of associating with a particular religious organization is inconsistent with the rights granted by the First Amendment, and cannot be compromised in the interest of national security.<sup>80</sup> It should not be assumed that membership with a particular religious group indicates personal involvement with terroristic acts.

Even though religion is subject to strict scrutiny, the interests of preventing terrorist attacks do not justify surveillance of Muslim individuals on such a large scale, as this was an intrusive injustice that should not be continued.

Reasonable suspicion is a good start in ensuring that government interests are achieved in the least restrictive manner possible, however, this does not go far enough. A program that uses religion as a proxy for government intrusion into private affairs must be examined under the lens of strict scrutiny, as the free practice of religion is not something that should be interfered with lightly. After reasonable suspicion is articulated by law enforcement officials, any search or surveillance of a group of individuals that follows should be analyzed under the parameters of strict scrutiny. Analyzing programs under this tier of review would ensure that a surveillance program, especially one on a scale as large as the NYPD surveillance program, is as narrowly tailored as possible to achieving that goal. This minimizes the risk of injuries toward innocent civilians provide for more targeted and accurate results in achieving the governmental interest.

The leads that the NYPD used here do not rise to a level of reasonable suspicion, nor do they even come close to the level that would pass muster under a strict scrutiny analysis. As such, they fall short of constitutionality. Leads such as these should not be used in the future, as they do not come close to the specific, articulable facts that are required to meet the standard of

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<sup>77</sup> *Id.*

<sup>78</sup> Fisher, *supra* note 20, at 635.

<sup>79</sup> Toutant, *supra* note 10.

<sup>80</sup> Fisher, *supra* note 20, at 640–41.

reasonable suspicion, nor are these leads narrowly tailored to meet a compelling state interest.

Denying Plaintiffs standing to bring forth the claim would be a great miscarriage of justice. Not only has the Muslim community at large, both inside and outside of New York, been the victim of largely unjustified surveillance by the police, but the surveillance has caused business losses, a decline in mosque attendance, and stigmatization of Muslim individuals.<sup>81</sup> Further, this would set a dangerous precedent for future government infringements on religious practices. If the NYPD surveillance program, based on unconfirmed leads that do not even rise to a level of reasonable suspicion, is considered to be constitutional, the precedent that would be set for government intrusions into religion would stray too far from the Constitution, and would infringe on the religious practices the First Amendment intended to protect. A ruling in favor of the NYPD sets a precedent that Americans should not be comfortable with: the government can monitor and interfere with religious activities, so long as it can justify that behavior by claiming that it is preventing unlawful activity.

## VI. CONCLUSION

Surveillance of a religious group by the NYPD—of such a magnitude—undermines the sanctity of religious and business associations and, therefore, seriously impairs the status of Muslims in American society.<sup>82</sup> Religious beliefs should not serve as a proxy for ties to terrorism, and the relationship between Muslim individuals and other indicators of criminality has not been shown.<sup>83</sup> This kind of unconstitutional surveillance sets a dangerous precedent for future law enforcement activities and puts the free exercise of religion in jeopardy.

A workable solution for the future would be one that requires police officers to articulate reasonable suspicion before surveillance of a religious group can even be contemplated. Once that is done, surveillance must comport with the standard of strict scrutiny that calls for a narrowly tailored procedure that will provide the least restrictive manner of preventing terror activity. Police surveillance that can interfere with the freedom of religion of a large group of people—especially where no member is guilty of

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<sup>81</sup> *Hassan*, 2014 U.S. Dist. LEXIS 20887, at \*3–4.

<sup>82</sup> Fisher, *supra* note 20, at 652.

<sup>83</sup> *Id.* at 659.

any crime—must be done more carefully in order to comply with constitutional standards.

The Third Circuit should determine the plaintiffs in *Hassan* have sufficient standing to bring their claim. This will help prevent future intrusions into the personal lives of innocent citizens. Any governmental invasion on the practice of religion should be analyzed under strict scrutiny and should be as narrowly tailored as possible in order to avoid unnecessary constitutional violations.