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ADMITTED: NEW YORK, EIGHTH CIRCUIT
SECOND CIRCUIT, ALGERIAN BAR
US COURT ON INTERNATIONAL TRADE

June 21, 2017

VIA HAND DELIVERY

Mayor of the City of New York
The Honorable Bill de Blasio
City Hall
New York, NY 10007

**Re: Request for Retraction of Statement by the New York Police
Department Deputy Commissioner for Legal Matters**

Dear Mayor de Blasio:

We write to you in reference to the above captioned request on behalf of our law firm's clients, Talib Abdur-Rashid and Samir Hashmi. We represent both of them in their respective Freedom of Information Law ("FOIL") litigation against the New York Police Department ("NYPD") currently on appeal before the New York State Court of Appeals.

On June 8, 2017, the New York Daily News published an article¹ on the NYPD's use of the federal Glomar response to a FOIL request. The article bears comments from the NYPD Deputy Commissioner for Legal Matters, Lawrence Byrne. Deputy Commissioner Byrne made defamatory statements regarding our clients, which we demand he immediately retract. If he fails to do so in a timely manner, we will have to seek alternate remedies.

Specifically, Deputy Commissioner Byrne claimed that the lawyers for the Petitioners in the FOIL litigation were making either mistaken or hysterical arguments ("So I don't have any sympathy for the sky is falling argument."). He then went on to claim that "[t]ransparency does not include criminals being told when they're under investigation or terrorists being told how we act to prevent their terrorist attacks," referring to our clients. This statement has no legal or factual basis and strongly insinuates that our clients are terrorists and/or criminals. Such public statements are defamation *per se* and may even violate New York's Terrorism Preparedness Act and respective criminal laws, which

¹ The article is entitled *NYPD cites Cold War-era spy precedent in rejecting info request*, by Rocco Parascandola.

defamation *per se* and may even violate New York's Terrorism Preparedness Act and respective criminal laws, which punish false accusations of terror with up to a seven year prison sentence. (NY Penal Law § 240.50 as amended by 2001 Chapter 301). We therefore demand an immediate retraction of this statement regarding our clients.

In addition, before you took office, you gave the NYPD a failing grade for its clear breach of FOIL and specifically stated that “[p]roviding access to public records isn’t just the law; it allows critical oversight of City policy.”² We wonder what grade you will give the NYPD now, considering its continued breach of FOIL. As you are aware, since 2002, the NYPD has engaged in a domestic surveillance program and religious profiling that targeted Muslim individuals throughout New York City. The illegal details of this program are now widely known and have been the subject of several civil rights violation litigations. When the Demographic Unit, which was conducting this illegal surveillance, was disbanded, you as the Mayor of New York made the following statement on April 15, 2014: “[O]ur administration has promised the people of New York a police force that keeps our city safe, but that is also respectful and fair. This reform is a critical step forward in easing tensions between the police and the communities they serve, so that our cops and our citizens can help one another go after the real bad guys.”³

We believe that the NYPD has continued to show disregard for the constitutional and civil rights of Muslim New Yorkers – as illustrated by Deputy Commissioner Byrne’s comments – and that your administration has been lax in defending these rights. The NYPD’s Glomar assertion, on behalf of your administration, in the pending FOIL lawsuit is problematic. The NYPD cannot claim that it can “neither confirm nor deny” the existence of records sought under FOIL. This assertion is devastating to the underlying purpose of FOIL. It is an unprecedented attack on police accountability and civil liberties. It is also a claim that has no basis in New York State law. It enables the NYPD to evade its public record disclosure obligations under FOIL and expand its unnecessary secrecy. You already gave the NYPD an “F” for its responses to FOIL requests before you became the Mayor and before the NYPD ever asserted this Glomar theory – which greatly heightens secrecy. This administration’s position regarding FOIL only serves to embolden the NYPD and its disregard for the constitutional and civil rights of Muslim New Yorkers.

² See <http://archive.advocate.nyc.gov/foil/report>.

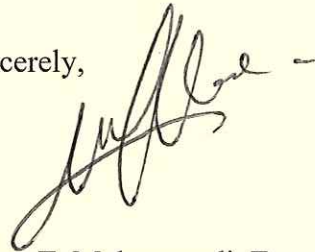
³ See Mayor Bill de Blasio’s Statement regarding Disbandment of Demographics Unit, Apr. 15, 2014, available at <http://www1.nyc.gov/office-of-the-mayor/news/155-14/statement-the-mayor-nypd-demographics-unit>.

We hold that the NYPD is even more strident now than ever before with regards to its surveillance practices and its disdain of adequate oversight. The NYPD is using fear mongering tactics and preventing access to public records simply because the FOIL requesters here are Muslims. It should go without saying that the mere fact that a FOIL requester is a Muslim does not mean that he/she is a terrorist or a criminal, unless it is your administration's policy to equate Muslims to terrorists, as the NYPD appears to insinuate in their arguments.

Harkening back to your own words of April 15, 2014, the people of New York were promised a police force that keeps our city safe but that is also respectful and fair. Is it respectful or fair for the NYPD to treat all Muslim FOIL requesters as potential terrorists? Does the NYPD's use of the Glomar response ease tensions between the police and the communities they serve? Are Muslims not a part of the New York City community that the NYPD is meant to serve?

Thank you for your time and attention to this matter. We look forward to a retraction of the statements made against our clients, one of them being Imam Abdur-Rashid, whom you know very well. We call on you to make clear to the leadership of the NYPD that attitudes such as those expressed by Deputy Commissioner Byrne are unacceptable. Furthermore, we ask you to follow through on your promises to support FOIL's policy of open government.

Sincerely,



Omar T. Mohammedi, Esq.

CC:

NYPD Deputy Commissioner for Legal Matters, Lawrence Byrne (via email)
Corporation Counsel of the City of New York, Zachary Carter (via email)
New York City Public Advocate, Letitia James (via email)
New York City Comptroller, Scott Stringer (via email)
Speaker of the New York City Council, Melissa Mark-Viverito (via email)
Commissioner, Community Affairs Unit, Marco Carrion
Senior Advisor to The Community Affairs Unit, Sarah Sayeed (via email)