

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x

JAMES LOGUE,

Petitioner,

-against-

THE NEW YORK CITY POLICE DEPARTMENT, and  
WILLIAM BRATTON, in his official capacity as  
Commissioner of the New York City Police Department,

Respondents.

**AFFIDAVIT OF JOHN  
DONOHUE IN SUPPORT OF  
RESPONDENTS' VERIFIED  
ANSWER**

Index No. 153965/2016  
I.A.S. Part 8M  
(Kenney, J.)

----- x

STATE OF NEW YORK

COUNTY OF NEW YORK

John Donohue, being duly sworn, deposes and says as follows:

1. I have been a member of the New York City Police Department ("NYPD") since 1987 and hold the rank of Assistant Chief. In March 2014, I was appointed Executive Officer of the Intelligence Bureau and currently serve in that capacity. As the Executive Officer, I am the second highest ranking uniformed officer in the Intelligence Bureau and report directly to the Chief of Intelligence, Thomas P. Galati, and Deputy Commissioner of Intelligence and Counterterrorism, John J. Miller. In this capacity, I have overall responsibility of the various units of the Intelligence Bureau and, therefore, am familiar with the operations and the security concerns outlined below.

2. I am familiar with the facts and circumstances stated herein. This affidavit is based on my personal knowledge, as well as upon information and belief based on information provided by other employees of the NYPD and on records of the NYPD maintained in the

ordinary course of business, which I believe to be true and accurate. I submit this affidavit in support of Respondents' Verified Answer to the Petition.

3. I understand that Petitioner seeks "all records pertaining to officers' filming and photographing in Grand Central Station from November 2014 through January 2015", and that NYPD has withheld certain responsive documents: specifically, communications between undercover officers and their handlers, and multimedia records (together, "Withheld Records").

4. I have reviewed the Withheld Records and wish to advise the Court that disclosure of the records could endanger the lives and safety of members of the public, and especially of undercover officers. Additionally, disclosure of the Withheld Records would greatly hamper NYPD's ability to conduct undercover operations and to engage in non-routine investigative techniques.

5. With the Assassination of Police Officers Wenjin Lu and Raphael Ramos in Brooklyn in December of 2014 and of the eight police officers and sheriffs in Dallas and Baton Rouge in July of 2016, it is clear that law enforcement officers around the country are at risk of being targeted, attacked and killed simply because of their status as law enforcement officers. Indeed, the Department maintains a Threat Assessment and Protection Unit whose purview includes investigating threats against police officers. Between July 7 and August 5, 2016, the Threat Assessment and Protection Unit has investigated over ninety separate threats to police in New York City.

6. Moreover, there are persistent calls from foreign terrorist organizations to kill security, intelligence and military personnel.<sup>1</sup> These calls to violence have been followed by

---

<sup>1</sup> In late September 2014, the spokesman for the Islamic State of Iraq and the Levant (ISIL) issued a public call for the group's supporters in Western countries to attack "soldiers, patrons, and troops ... their police, security and

attacks against police, with recent attacks in France and Belgium and prior incidents in Australia, Canada, and the US.<sup>2</sup> For the reasons described below, undercover police officers' lives and safety are at even greater risk than other police officers.

### *Undercover Officers at NYPD*

7. Undercover officers are deployed in various investigative contexts to gather evidence and intelligence, to further investigations, and to prevent crime or acts of terrorism. Undercover officers often operate with persons who are known criminals including narcotics traffickers, illegal firearm dealers, and with persons who seek to do physical harm to others, yet most do not carry weapons or police identification. Sometimes such officers will be under surveillance by other officers, but often surveillance is not possible, and they will have no

---

intelligence members.” Around the same time, an ISIL supporter posted a list of potential US military, law enforcement, and government targets. In January 2015, ISIL specifically named the US, France, Australia, and Canada as targets. More recently, following the deadly shooting of police in Dallas in July 2016, members of a top tier ISIL web forum discussed ways to exploit the incident to “incite Blacks to kill the biggest number of police.” Additionally, ISIL-linked hacking groups have regularly posted the personal information of law enforcement and military personnel online and encouraged followers to target the named individuals.

<sup>2</sup> Since June 2016, jihadi sympathizers have targeted police in Paris and Belgium and encouraged others to follow suit. On June 13, 2016, two French law enforcement personnel were murdered in Magnanville, France. Boasting that he had “just killed a policeman and I just killed his wife,” the attacker exhorted his fellow ISIL supporters to prioritize murdering “police, prison guards, journalists;” the wife also worked in law enforcement. According to the prosecutor, police found a target list at the scene of the murder that included names of police. On August 6, 2016, an Algerian man with a machete injured two policewomen in front of police headquarters in Charleroi, Belgium before being shot by responding police. In 2014, Zale Thompson attacked four NYPD police officers with an axe. Thompson consumed jihadist propaganda leading up to the attack and was also motivated by anger at police-involved deaths of minorities. Thompson’s attack came one month after ISIL’s solicitation to “slaughter [the disbeliever] with a knife.” One month after Thompson’s assault and death, ISIL lionized him in *Dabiq*, its English-language propaganda magazine.

Sources: Alissa J. Rubin and Lilia Blaise, “Man Who Killed 2 in France Had Been Sentenced for Terrorist Recruitment.” *The Boston Globe*. June 15, 2016, accessed 8/9/2016. Laurence Norman, “Belgium Launches Terror Probe as ISIS Claims Machete Attack,” *The Wall Street Journal*, 8/7/2016, accessed 8/9/2016. Muhammad al-Anani ISIL Message, September 21, 2014; *Dabiq*, issue 5, released Nov 21, 2014.

choice but to operate independently without any immediate police back-up. As a result, undercover officers in the field are often in grave danger and are extremely vulnerable should they be discovered.

8. It is self-evident that discovery or knowledge that an undercover officer is collecting intelligence or conducting surveillance a subject of an investigation can have serious consequences. There have been numerous instances of undercover officers being assaulted, threatened at gunpoint during operations, or questioned as to whether they are police officers.

9. In addition, following the conclusion of an investigation, the threat of discovery and retaliation against an undercover officer remains a serious concern. In one example, an undercover officer was taking the subway to a Grand Jury appearance when he was approached on the train by two individuals who stated words to the effect, "We know you're a cop. You tried to set us up. We should kill you right now." The undercover pretended he did not know what the individuals were talking about and tried to walk past them. Nonetheless, the individuals assaulted the undercover in front of a crowd, striking the undercover about the head and body causing physical injuries. In 2003, undercover Detectives James Nemorin and Rodney Andrews were murdered by the subjects of investigation during an undercover firearm trafficking investigation.

10. Undercover officers are subject to a far greater level of danger than the typical uniformed officer and other plainclothes officers, especially when they work alone. Undercovers are given special training and are provided with false identifications. In recruiting and training officers to perform undercover police duties, we assure them that their identities will be kept secret, and that the Department will take all necessary steps to ensure their continuing confidentiality. In fact, undercover identities are even concealed from other members of the

NYPD and are only revealed on a 'need to know' basis. Undercover officers' names are removed from NYPD databases containing other employees personally identifying information. In addition, they work in undisclosed, confidential locations, and not from publically listed NYPD facilities.

11. Added precautions are taken when an undercover officer must testify in court to secure convictions. A Hinton hearing is generally conducted prior to testimony of undercover officers. The purpose of the hearing is to demonstrate to the Judge that the undercover continues to perform undercover work and that, in order to protect his or her safety, the undercover must not be made to testify in open court, but instead be allowed to testify in a sealed courtroom.

12. All of these precautions not only protect the identities and safety of the undercover officers, but also convey a message to the undercover officers themselves: namely, that their work and lives are valuable and that NYPD will protect their safety.

### ***The Communications Between and Among Undercover Officers and Their Handlers***

13. I have personally reviewed the Withheld Records. Specifically, many of the records consist of communications between undercover officers and their handlers. Additionally, one record consists of a communication between an officer, working in a plainclothes undercover capacity, and his base.

14. The content of the communications in the records between undercover officers and their handlers would, in many instances, tend to identify the undercover officer who is communicating, thus putting such an officer in danger.

15. Additionally, public disclosure of these records, even if redacted, would reveal NYPD's confidential methods of surveillance and investigation, which are often employed by undercover officers. Disclosure of these confidential investigative techniques would undermine the effectiveness of these methods.

16. First, if these methods were made public, criminals would be apprised of likely times, places, and circumstances when they would be under observation. Such criminals could take precautions so as to conduct their criminal activities outside of any such observation, so as to evade detection, and thus greatly impede NYPD's ability to conduct investigations.

17. Second, if these methods were made public, criminals engaged in an enterprise who were under surveillance by an undercover officer would be more likely to discover the identity of the undercover officer in their midst based on the undercover officer's behavior. Not only would this greatly impede NYPD's ability to conduct an investigation, it would put undercover officers' lives and safety at risk.

18. Additionally, members of the public reviewing the communications might be able to discern the extent, scope, potential targets, and emphasis of NYPD's undercover operations during the protests at Grand Central Terminal between November 2014 and January 2015. Such a review would permit would-be criminals to learn the inverse: namely, the circumstances in which NYPD does not, or cannot, deploy undercover officers.

19. It is critical that the targets of investigations not be aware of the extent of NYPD's present resources or future resources. However, release of the records would show precisely that information, which would endanger future law enforcement investigations and undermine the effectiveness of surveillance operations.

20. Notably, all of the communications records are intra-agency communications between undercover officers and their handlers. None of these records contain verifiable factual data or instructions that affect the public; rather, the communications are pre-decisional and consist primarily of immediate impressions. If this Court were to order disclosure of such communications, I have no doubt that undercover officers would be hesitant to communicate from the field with managing personnel if they knew their communications could be released to the public at large. Such a chilling effect would greatly impede NYPD officers' abilities to communicate candidly about ongoing events, to make split-second decisions, and could further endanger the lives and safety of the general public and of NYPD officers.

21. I also believe that, should the content of the undercover officers' communications be made public, NYPD would have great difficulty recruiting other officers to serve as undercover officers, since the undercover officers would feel less secure and protected by NYPD. Imagine the cost to the public if the NYPD were unable to recruit officers to work in an undercover capacity for fear that their identities would not be protected.

### ***Multimedia Records***

22. I have also personally reviewed the multimedia records NYPD has withheld in response to Petitioner's FOIL request.

23. If disclosed, these records could reveal the kinds of optical technology NYPD uses, both in its undercover and general surveillance operations.

24. Additionally, these records would show not only which areas were under surveillance, but also the inverse: specifically, any areas NYPD does not have under surveillance, thereby exposing gaps in coverage.

25. Further, the disclosure of some of the multimedia records would permit enterprising persons or would-be criminals to discern the identities of undercover officers by matching NYPD's multimedia records with their own recordings of the events at Grand Central Terminal.

26. Moreover, disclosure of the multimedia records would reveal NYPD's proprietary methods of conducting undercover surveillance using technology. If such information were made public, it would greatly undermine NYPD's ability to conduct undercover surveillance in the future.

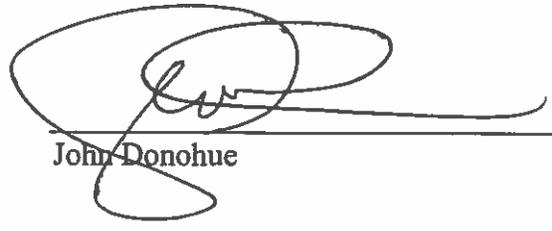
27. Finally, as noted above, disclosure of these records could permit an enterprising person or criminal to learn the kinds of optical technology NYPD uses to conduct surveillance. Some of the data on NYPD's network is transmitted wirelessly, while other data is transmitted on NYPD's fiber-optic network.

28. If the specific kinds of optical technology and transmission equipment were made public, would-be hackers would have a much easier time understanding and exploiting and attacking NYPD's wireless communications and transmission network.

29. Such an attack would jeopardize NYPD's ability to secure its network and surveillance cameras, which are essential information technology assets. Additionally, such an attack could wreak havoc on NYPD personnel's ability to communicate in an emergency, thus endangering the lives and safety of New York's residents and visitors.

30. Accordingly, it is apparent to me, based on my knowledge of undercover operations, that disclosure of the records requested would reveal non-routine law enforcement techniques; could endanger the lives and safety of undercover officers and New York's residents and visitors; could expose gaps in surveillance coverage, thus undermining any deterrent effect

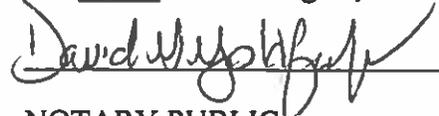
of having surveillance cameras; would hamper NYPD's undercover operations and decrease their effectiveness; would result in difficulty in recruiting and retaining undercover officers in the future; and could jeopardize NYPD's ability to keep its information technology assets secure, thus resulting in impaired communication during an emergency situation.



---

John Donohue

Sworn to before me  
this 15 date of August, 2016



---

NOTARY PUBLIC

DAVID G. GOLDFARB, Notary Public  
State of New York, No. 02GO6124398  
Qualified in New York County  
Commission Expires 3/28/2017