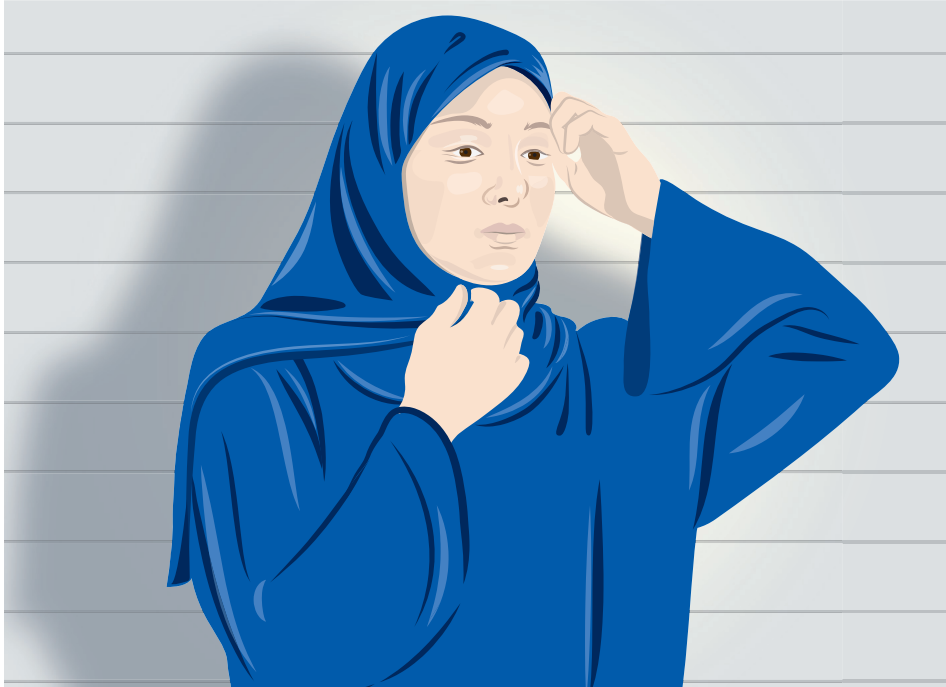


Law Enforcement and Religious Freedom: A Proposal to Amend the NYPD Photo Booking Policy

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I. Introduction

In the aftermath of the terrorist attacks of September 11, 2001 Muslim men and women, especially those who could be readily identified by their dress or practices,¹ faced increased discrimination. The FBI reported that “anti-Muslim hate crimes are approximately five times more frequent than they were before 2001” and “Muslims are consistently portrayed as somehow un-American because of their faith.”² Although both Muslim men and women are victims of discrimination, Muslim women who choose to wear a headscarf face unique forms of discrimination and are adversely impacted in ways that Muslim men are not.³

Muslim women have struggled to express their religious freedom and identities in numerous contexts. In the workplace, Muslim women have been denied the right to wear a headscarf (hijab) and have been fired for their refusal to remove their hijab; at school, Muslim girls have experienced public humiliation and have been prevented from participating in extracurricular activities; in the criminal justice system, they have been denied the right to wear a hijab while in courthouse, jails, and in correctional institutions.⁴ They have also been mistreated by police officers, both when being arrested and when seeking police assistance.⁵

Because of their visibility, Muslim

women who choose to wear a hijab experience discrimination and racism that is committed either consciously or subconsciously due to a widespread bias against Muslims. In New York City (City), the lack of religious accommodations and tolerance for Muslim women arrestees being processed by the New York Police Department (NYPD) has caught media attention after several incidents of police misconduct were reported. Within the past five years, the City and NYPD have been the subject of three separate lawsuits by Muslim women who were victims of police harassment and were forced to remove their headscarves for booking photographs (i.e. mugshots).⁶ Although these women settled with the City and NYPD, similar incidents are still occurring, as evidenced by the most recent civil rights class action lawsuit filed in March of this year, urging a change in NYPD’s photo booking policy.⁷ The NYPD’s treatment of Muslim women has generated great fear within this community, especially for Muslim women and girls who are victims of domestic violence and feel too terrified to seek help.⁸

This article examines the tension between NYPD’s photo booking policy and the First Amendment right of Muslim American women to wear the hijab. First, I will discuss the significance of the hijab

for Muslim-American women and the laws protecting one’s right to religious expression. Second, I will examine how NYPD’s current policy mandating the removal of the hijab is in violation of the First Amendment.

Finally, I propose changes to the current Photo Booking policy that reflects sensitivities not only to the customs of the Muslim community but to all residents of the City whose religious beliefs and customs may be undermined by this policy.

II. Background

a. What is a hijab?

The prevailing custom during the time of the Prophet Mohammad was for a woman to wear the hijab covering her head and neck in front of all “non-mahram” males; she was only permitted to remove her head covering in front her “mahram” males.⁹ A “mahram” male is defined as a male who has a close familial relationship and is an individual that the woman can never marry, such as her father, brother, son, uncle, nephew, and husband’s father.¹⁰ Within the Muslim community there are various types of coverings for women, ranging from merely covering a woman’s head and neck, such as the hijab, or one that conceals a woman’s entire body including her face, such as a burka or niqab.¹¹ As with each of these religious coverings, a rationale behind the hijab is, in fact, to protect Muslim women from the immorality and objectification by the opposite sex.¹² Therefore, the conscious decision of Muslim women to wear a hijab reflects an expression of empowerment, and a policy that prohibits or forces her to remove her hijab violates her religious autonomy.¹³

This article will focus on NYPD’s arrest and photo booking policy regarding women who wear a hijab, which leaves a woman’s face visible and recognizable. (I make this distinction because there are different policy concerns, such as that of identification, that can justify the partial removal of a full burqa or niqab versus a head covering). Although the prevailing perception of the hijab in America is one of oppression, it is important to note that in the United States Muslim women do not face the same societal pressures to wear the head scarves as their counterparts in other countries. In fact, many Muslim American women make a deliberate decision to dress according to their religious beliefs and customs, and thus it is a deeply personal choice.¹⁴ To these women, wearing a hijab is fundamental to their understanding and adherence to their faith and to their own identity.¹⁵

b. Religious protections under the U.S. and New York Constitutions.

The practice of religious freedom with regards to religious dress extends far beyond Muslim women; for instance, forms of religious dress can also be found in Catholicism, in Mormonism, in Sikhism, and in Orthodox Judaism.¹⁶ Accordingly, the Free Exercise clause of the First Amendment has implications for all such religious expression. While the right to religious expression has not always been fully honored in federal case law, the First Amendment does provide a fundamental right to protection from governmental regulation that substantially burdens this right. The Supreme Court has held that laws that “substantially burden” the free exercise of religion can survive scrutiny if the government can present a “compelling interest” for passing such regulation.¹⁷ In 1990, the Court in *Department of Human Resources v. Smith* held that Oregon’s law prohibiting the use of hallucinogenic drugs (peyote) for sacramental purposes was constitutional.¹⁸ The Court explained that the state law was facially neutral because it did not aim to promote or restrict a certain religious belief but rather only incidentally affected the plaintiffs and therefore the Free Exercise clause was inapplicable.¹⁹ The *Smith* decision was significant because it was generally seen as abandoning strict scrutiny for claims alleging religious freedom violations under the First Amendment.²⁰

As a response, Congress enacted the Religious Freedom Restoration Act (RFRA) of 1993²¹ which aimed to restrict government action that would intrude on sincerely held religious beliefs.²² It further provided that the government—federal or state—cannot “substantially burden” religious conduct even by “a rule of general applicability” unless the government can demonstrate that it took the least restrictive means in furthering its compelling governmental interest.²³ However, in *City of Boerne v. Flores*, the Supreme Court struck down RFRA’s application to state laws, holding that it violated the separation of powers between the federal and state government.²⁴ Nevertheless, RFRA still applied federally—and many states have since interpreted their own constitutions to legitimize statewide statutes that provide heightened protection for religious expression.²⁵ Therefore, despite the decisions in *Flores* and *Smith*, a general consensus remains among the states that freedom of religious beliefs cannot be regulated without a compelling state interest.

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New York is one such jurisdiction. Its State Constitution establishes that “the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind.”²⁶ In language more robust than that of the First Amendment, it emphasizes the importance of religious liberty, a fundamental right that can only be overridden in limited circumstances.²⁷ In *Catholic Charities of the Diocese of Albany v. Serio*, the New York Court of Appeals had the opportunity to apply *Smith* after a faith-based organization alleged that certain provisions in the Women’s Health and Wellness Act²⁸ that required employer health insurance policies to provide coverage for prescriptions drugs and contraception, violated the Free Exercise Clauses of the New York and U.S. Constitutions.²⁸ Although the court did not apply strict scrutiny in *Serio* and found, applying *Smith*, that the First Amendment had not been offended, this opinion was significant because it demonstrated a willingness to adhere by New York’s Constitution and only limit the free exercise of religion by a compelling governmental interest in maintaining public peace, safety, or the prevention of licentiousness.³⁰ This is aptly summarized in Justice Kaye’s concurrence; “the court has been cognizant that where the Supreme Court has changed course and diluted constitutional principles, the Court of Appeals has the responsibility to support the State Constitution when [it] examines whether [it] should follow along as a

matter of State law.”³¹ The Court of Appeals in *Serio* thereby acknowledged that New York State’s Free Exercise protection under its Constitution is broader and more robust than the current protections granted under the U.S. Constitution.³²

III. NYPD’s Photo Booking Restrictions on Religious Head Coverings

The first civil rights lawsuit that the City and NYPD encountered regarding its photo booking procedures occurred in 2012 when a young high school student was forced to remove her hijab and she was denied the opportunity to have her official photograph taken by a female officer.³³ In 2012, NYPD’s patrol guide had not implemented an official policy as to whether religious head coverings in official post-arrest photographs would be allowed.³⁴ Due to the lack of guidance, central booking facilities throughout the City handled this issue differently. Some would allow individuals to wear religious head coverings for photographs and others would not, making the policy discretionary.³⁵ Practicing Muslim-American women throughout the City had varying experiences in their interactions with law enforcement, with no certainty or guarantee of their constitutional rights.

In 2015, another lawsuit ensued alleging a similar complaint against the NYPD. A Muslim-American woman claimed that she was forced to remove her hijab in the presence of male officers and prisoners while her photograph was being taken.³⁶ In reaction to these civil rights lawsuits NYPD passed and implemented Interim Order 29 in March 2015, which attempted to establish certain protocols for taking pictures of arrestees who

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refused to remove religious headwear.³⁷ Interim Order 29 amended Patrol Guide 208-03, "Arrests-General Processing," and established the following governing policy:

In order to accommodate arrestees who refuse to remove their religious head covering for an official department photograph, the Department has authorized the Mass Arrest Processing Center ("MAPC") at One Police Plaza be available so that an arrestee can remove their religious head covering and have their photograph taken in private. . . the Department requires that an official photograph be taken of an arrestee with an unobstructed view of the arrestee's head, ears, and face.³⁸

This amendment is aimed at accommodating those with religious apparel by instructing both Desk Officers and Borough Court Section Supervisors the as follows: (1) Notify Manhattan Court Section to ensure that someone of the same gender is available to take the picture of the arrestee; (2) Once at the processing center, have an officer of the same gender take an official Department picture without the religious head covering; and (3) Transport the arrestee to the Mass Arresting Processing Center ("MAPC") and return the arrestee back to the respective Borough Court Section upon completion.³⁹ Since the passing of Interim Order 29, there have been no further changes to NYPD's Patrol Guide regarding the procedures for official NYPD photographs of arrestees, and it continues to be the current protocol.

Despite the implementation of this policy, mistreatment of individuals with religious requirements continued. An incident in 2016 led to another lawsuit by a Muslim-American woman who alleged various violations of her religious rights when a male officer forcefully removed her hijab for a photograph, and never gave her the option of being escorted to MAPC to have her picture taken in private by a female officer.⁴⁰ As evidenced in these cases, in practice, the police department was inconsistent in the application of the order and continued to use their discretion on the treatment of Muslim-American arrestees. Muslim American women are vulnerable to these inconsistencies—which can result in severe mental and emotional distress, as that experienced by the three woman who filed suits against the City and NYPD.⁴¹ They each expressed that they felt exposed, distraught, and violated when they were forced to remove their religious head covering, especially since their own experience was

in front of "non-mahram" males.⁴² The City recognized their significant constitutional interests and harm that the NYPD's protocol may have caused and agreed to pay \$60,000 in damages to each woman.⁴³

Interim Order 29 was a laudable attempt to accommodate religious customs, but the current policy continues to be problematic because it mandates the removal of all religious head coverings.⁴⁴ The policy as it stands today substantially burdens Muslim-American women's ability to practice their sincerely held beliefs.⁴⁵ As such, NYPD's photo booking procedure violates Muslim women's rights under the First Amendment and Article I section 3 of the New York State Constitution.

The NYPD, like other federal and state agencies that impose specific requirements for official photographs, has an interest in capturing pictures that accurately portray the identity of the individual in order to facilitate their identification by the public, victims, and other officers. However, the ban on wearing a hijab in photographs does not serve any overriding governmental interest because a hijab leaves the woman's face completely visible and unobstructed.. Further,

A blanket ban on religious head coverings is not the least restrictive means by which the NYPD can achieve its stated interest. For instance, if the hijab casts a shadow on a woman's face obstructing a clear view of distinctive features, an officer can easily ask her to adjust the hijab in order to facilitate the identification process; this would mimic a similar existing policy within the United States Citizenship and Immigration Services.⁴⁶ To oblige a woman to completely remove her hijab is insensitive towards her personal religious practices—and ultimately disrespects the customs of all religions requiring a religious dress.

This NYPD policy remains in place, and continues to harm many more Muslim-American women who are residents of City. In March 2018, two Muslim-American women came forward with their traumatizing experience and filed a federal class-action lawsuit against the City. Both women endured hostile comments and mistreatment as they were forced to remove their hijabs for official Department photographs in spite of their tearful objections.⁴⁷ These women are urging City-wide reform to the existing NYPD policy to ensure that no individual is deprived of their fundamental right to exercise their religion and forced to undress against their will.⁴⁸

IV. Proposed Changes to NYPD's Post-Arrest Photo Booking Policy

a. Authority to amend NYPD's Patrol Guide 208-03

NYPD's photo-booking policy squarely falls within the arena of local government. The New York State Constitution grants local government home rule power to enact laws relating to "property, affairs, or government" and to revise their city charters in accordance with the State Constitution.⁴⁹ Furthermore, the Municipal Home Rule Law broadens that power to include the "protection, order, conduct, safety, health, and wellbeing of persons or property" of its local citizens.⁵⁰ With this authority to self-govern, the Charter of New York City (Charter) delegates its authority among its elected legislative body, the New York City Council and its' agencies.⁵¹ Specifically, the legislative body is equipped with the power to "adopt local laws [. . .] for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the city and its inhabitants."⁵²

The Charter has also created agencies to provide certain services, which the City Council is also responsible for overseeing by holding regularly scheduled hearings to ensure that each agency is working to fulfill its purpose with the appropriate procedures.⁵³ One service provided to the citizens by the Charter is police protection; Chapter 18 of the New York City Charter establishes the City's police department and bestows upon it the duty to:

[P]reserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages. . . protect the rights of persons and property, guard the public health, preserve order at elections and all public meetings and assemblages. . . enforce and prevent the violation of all laws and ordinances in force in the city; and for these purposes to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crimes or offenses.⁵⁴

Consequently, law enforcement is the most visible, accessible, and direct representation of the local government's policies, making it imperative that police officers uphold law and order, and promote public safety without abusing their power. NYPD's post-arrest photo booking policy is a matter that needs to be addressed by both the City Council and NYPD to create consistent practices that will not trigger constitutional violations.

b. Nationwide progress regarding hijabs in booking photographs.

NYPD is not the only law enforcement agency to have aroused tensions when interacting with arrestees who refuse to remove religious head coverings for purposes of official photographs. Dearborn Heights, Michigan; Long Beach, California; Portland, Maine; and Minneapolis, Minnesota have all faced similar situations. However, unlike NYPD, all of these cities' police departments implemented reforms and adopted policies that provided for religious accommodations for arrestees wearing religious garb.⁵⁵ For example, after the Long Beach City Council approved a settlement between a woman who was required to remove her hijab for a post-arrest photograph, the Long Beach Police Department amended its post-arrest photograph policies to allow women to wear their head coverings while in custody and for photographs.⁵⁶ In Dearborn Heights, Michigan the police changed their booking procedures in response to a lawsuit filed by a Muslim-American woman who was forced to remove her hijab while taking an official photo.⁵⁷ The new policy permits Muslim women to be searched by female officers without the presence of male officers and allows for women to wear their head scarves for official photographs.⁵⁸ These are just a few examples where law enforcement officials across the country have acknowledged the need for religious accommodations within their internal post-arrest photo booking policies. Most importantly it demonstrates a growing national consensus that Muslim-American women have a right to wear a hijab during official government photographs.

Other Federal and state entities have already taken additional steps to accommodate individuals wearing religious apparel. For official US passport photographs, the United States Department of State permits individuals to wear hats or head coverings that must be customarily worn in public due to their religious beliefs.⁵⁹ As referenced above, the United States Citizenship and Immigration Services issued a policy memorandum stating that the department will accommodate individuals who wear religious headwear and will not mandate the removal of such head coverings for official photographs.⁶⁰ At the state level, New York's Department of Motor Vehicles regulations regarding official photographs for driver licenses, permit individuals to wear religious head coverings.⁶¹ The progress made at the federal, state, and local levels across the nation to address matters of law enforcement and arrestees' religious rights, should serve as a model policy for other communities faced with such issues.

c. How should NYPD amend its Photo-Booking Policy?

In light of the many lawsuits that the City and NYPD have faced regarding headscarves worn in booking photos, it is in the City's and NYPD's best interest to amend NYPD's Patrol Guide 208-03, "Arrests - General Processing." I would respectfully propose an updated policy that provides direction to police officers to accommodate religious beliefs when requiring an individual to pose for official photographs. In particular, *the City should amend the Patrol Guide to eliminate the wholesale removal of all religious head coverings, following in the footsteps of other police departments who have recognized the rights of citizens to wear a religious head covering, such as a hijab.*

As mentioned above, the City and NYPD have the authority and power to amend NYPD's photo booking policy. It is imperative that the City take the required steps to modify or adopt policies and practices that accommodate religious customs. Thereby, an updated NYPD policy on post-arrest photographs would be consistent with Federal regulations regarding official passport photographs, and state regulations regarding driver licenses; ensuring that individual's right to Free Exercise of religious freedom is subject to the same standards throughout all three levels of government.

Moreover, viewed through the prism of the Free Exercise clauses of the New York and U.S. Constitutions, NYPD's photo-booking policy would not withstand strict scrutiny. Clear identification of a person is a compelling interest, but the NYPD's discriminatory treatment of the Muslim community by requiring removal of a hijab or any religious head covering is not narrowly tailored to this interest. It is far from clear how the removal of a head scarf that leaves a woman's face completely uncovered and visible for pictures furthers the NYPD's intended goal of keeping an accurate photographic record of an individual. To require women to involuntarily remove their religious attire infringes upon their rights to freely exercise their religious beliefs without the interference of substantially burdensome government conduct. In addition to burdening Muslim-American women's rights, having police officers transport these arrestees to and from the Mass Arresting Processing Center to have their pictures taken by an officer of the same gender, when there is no guarantee that one will be available, places a burden on law enforcement's time and efficiency.

This proposed amendment would not only accommodate individual's right to free exercise of religion, but it would also be the least restrictive means in furthering law enforcement's

interests. It would also have wider implications for individuals of various religions beyond the Muslim community, who may also require certain religious dress or coverings.

Conclusion

The right to wear religious apparel such as a hijab is protected under the First Amendment of the United States Constitution and the majority of State Constitutions. Merely because Muslim women's religious practices require an overt expression of faith does not mean that they should be treated differently or marginalized for their sincerely held beliefs. Local government regulations, such as the NYPD's photograph booking policies that mandates the removal of a woman's headscarf violates the First Amendment and Article 1, section 3, of New York State's Constitution. Considering that other federal and state policies do not require the removal of a woman's hijab for purposes of official photographs such as passports and licenses, the City is hard pressed to justify such removal for a photograph serving a similar interest in identification. The various hijab-related suits initiated against the City and its police department make it all the more evident that it would be in the City's best interest to amend the NYPD Patrol Guide 208-03 "Arrests- General Processing." Modifying the existing policy would ensure that all individuals are being treated equally when it comes to religious freedom and allow them to comply with arrest policies without the humiliation and violation of their strongly held religious beliefs.

Notes

1. Sahar F. Aziz, *From the Oppressed to the Terrorist: Muslim American Women in the Crosshairs of Intersectionality, In the post-9/11 era, Muslim women donning a headscarf in America find themselves trapped at the intersection of bias against Islam, the racialized Muslim, and women...*, 9 HASTINGS RACE & POVERTY L.J. 191, 191 (2012).

2. Aliyah Frumin and Amanda Sakuma, *Hope and Despair: Being Muslim in America After 9/11*, NBC NEWS, March 28, 2018, <https://www.nbcnews.com/storyline/9-11-anniversary/hope-despair-being-muslim-america-after-9-11-n64545>.

3. Aziz, *supra* note 1 at 192. Due to Muslim women's overt expression and display of their religious identity they become both "visible targets and silent victims" of discrimination and hate-crimes. State and local laws have failed to either protect their constitutional rights or have limited their religious constitutional freedom.

4. *Discrimination Against Muslim Women* - continued on page 23

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5. *Id.*
6. Matthew Wright, *New York City is ordered to pay \$180K to three Muslim women for forcing them to remove their hijabs for mugshots*, DAILY MAIL, March 25, 2018, <http://www.dailymail.co.uk/news/article-5445363/NYC-pay-180K-three-Muslim-women-hijablawsuit.html>.
7. Compl. at 2, *Clark v. City of New York*, No. 1118-cr-02334 (S.D.N.Y. 2018).
8. *Id.* at 14.
9. Aliah Abdo, *The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to wear Muslim Headscarf*, 5 HASTINGS RACE & POVERTY L.J. 441, 449 (2008).
10. Nida Alvi, *Dressed to Opress? An Analysis of the Legal Treatment of the First Amendment and its Effect on Muslim Women Who Wear Hijabs*, 21 CARDOZO J. L. & GENDER 785, 788 (2015).
11. What's the difference between a hijab, niqab and burka?, BBC UK, March 27, 2018, <http://www.bbc.co.uk/newsround/24118241>.
12. Ali Ammoura, *Banning the Hijab in Prisons: Violations of Incarcerated Muslim Women's Right to Free Exercise of Religion*, 88 CHI.-KENT L. REV. 657, 660 (2013).
13. *Id.*
14. *Id.*
15. *Id.* at 659.
16. Abdo, *supra* note 9 at 452.
17. Steven R. Houchin, *Confronting the Shadow: Is Forcing A Muslim Witness to Unveil in a Criminal Trial a Constitutional Right, or an Unreasonable Intrusion?*, 36 PEPP. L. REV. 823, 871 (2009).
18. *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872, 873 (1970).
19. *Id.* at 878. (holding "It is a permissible reading of the text, in the one case as in the other, to say that if prohibiting the exercise of religion (or burdening the activity of printing) is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.")
20. Houchin, *supra* note 17 at 872.
21. 42 U.S.C. § 2000 bb-4 (1994).
22. Abdo, *supra* note 9 at 452.
23. *Id.*; see generally 42 U.S.C. §2000bb.
24. *Id.*
25. Houchin, *supra* note 17 at 872.
26. N.Y. Const. art. I, § 3 "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state

- to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state."
27. *Id.*; see also Piero A. Tozzi, *Whither Free Exercise: Employment Division v. Smith and the Rebirth of State Constitutional Free Exercise Clause Jurisprudence?*, 48 J. CATH. LEG. STUD. 269, 286 (2009).
28. Women's Health and Wellness Act, N.Y. Legis. Ch. 554 (2002)
29. *Catholic Charities of the Diocese of Albany v. Serio*, 7 N.Y. 3d 510, 511 (2006).
30. *Id.*; see Tozzi *supra* note 27 at 288.
31. *Id.* at 287.
32. *Id.* at 290.
33. Christine Hauser, *Women Forced to Remove Hijabs for Mug Shots Settle with New York City*, THE NEW YORK TIMES, March 25, 2018, <https://www.nytimes.com/2018/02/28/nyregion/muslim-hijab-nypd.html>.
34. *Id.*
35. *Id.*
36. Wright *supra* note 6.
37. Compl. at 6, *Clark v. City of New York*, *supra* note 7.
38. NYPD Patrol Guide 208-03 "Arrests-General Processing", 1, 9 (2017).
39. *Id.* at 9.
40. *Clark v. City of New York*, *supra* note 7.
41. *Id.*
42. *Id.*
43. NYPD Patrol Guide 208-03 *supra* note 36 at 9.
44. Compl. at 9, *Clark v. City of New York*, *supra* note 7.
45. USCIS Policy Mem., July 23, 2012, USCIS Policy for Accommodating Religious Beliefs during Photograph and Fingerprint Capture, U.S. Citizenship and Immigration Services, April 2, 2018, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2012/August%202012/Accommodating%20Religious%20Beliefs%20PM.pdf>
46. Al Baker, *Hijab Removal by New York Police Prompts Lawsuit*, THE NEW YORK TIMES, March 25, 2018 <https://www.nytimes.com/2018/03/16/nyregion/hijab-police-lawsuit-new-york.html>
47. Carol Kuruvilla, *Muslim Women Forced To Remove Hijab For Mugshots File Civil Rights Lawsuit*, HUFFINGTON POST, March 25, 2018, https://www.huffingtonpost.com/entry/muslim-women-hijab-nypd-mugshots-lawsuit_us_5aafe91ce4b0e862383a206b

48. Elizabeth Fine and James Caras, *Twenty-five Years of the Council-Mayor Governance of New York City: A History of the Council's Powers, the Separation of Powers, and Issues for Future Resolution*, 58 N.Y.L. SCH. L. REV. 119, 121 (2013); see N.Y. Const. art. XI, § 2(c).
49. *Id.* at 122; see generally N.Y. Mun. Home Rule Law § 10.
50. Fine and Caras, *supra* note 48 at 123.
51. N.Y.C. Charter Chapter 2 § 28 (2018).
52. Fine and Caras, *supra* note 48 at 125.
53. N.Y.C. Charter Chapter 18 § 435 (2018).
54. *Id.*
55. Compl. at 11, *Clark v. City of New York*, *supra* note 7.
56. Catherine Trautwein, *Long Beach Settles Lawsuit after Police Forcibly Remove Woman's Hijab* April 3, 2018, <http://time.com/4897803/long-beach-kirsty-powell-police-hijab/>; See also, Compl. at 11, *Jamilla Clark & Arwa Aziz v. City of New York* ("In amending its policy, Long Beach joined neighboring jurisdictions of San Bernardino County and Orange County, which both adopted policies protecting religious headwear in detention following similar lawsuits that settled in 2008 and 2013").
57. CBS Detroit, *Dearborn Heights Police Update Policy on Dealing with Women in Hijabs, April 2, 2018* <http://detroit.cbslocal.com/2015/07/10/dearborn-heights-police-update-policy-on-dealing-with-women-in-hijabs/>.
58. *Id.*
59. Photo Requirements, U.S. Department of State Bureau of Consular Affairs, April 2, 2018, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/photos.html>. ("Do not wear a hat or head covering that obscures the hair or hairline, unless worn daily for a religious purpose. Your full face must be visible, and the head covering must not cast any shadows on your face.")
60. USCIS Policy Mem. *supra* note 46. ("Religious headwear can be worn if a reasonable likeness can be obtained from an individual, the full face is visible, and the religious headwear does not cast a shadow on the face. Therefore, USCIS will ask an individual to remove or adjust portions of religious headwear that covers all or part of the individual's face. . . An individual's ears should be exposed, but religious headwear is allowed to cover the ears if USCIS can still identify the individual.")
61. 15 RR-NY 3.8 (b)(2) ("Presents evidence satisfactory to the commissioner that the taking of the applicant's photograph would violate the applicants sincerely held religious belief forbidding the making of photo images.").