

HOW TO SUBMIT COMMENTS AT HANDSCHU APRIL 19 FAIRNESS HEARING

1. In order to comment, **you MUST register with the court by April 5** by either:
2. Sending an email with your name and address to handschusettlement@gmail.com
or
3. Mailing a letter with your name and address to:

Handschu Settlement
Clerk's Office
500 Pearl Street
New York, NY 10008

Emails must be sent, and written letters must be postmarked, by April 5. You may include the substance of your comment or objection in the email or letter but are not required to do so.

If you do not give notice by email or US Mail that you want to comment or object, your comments or objections will not be considered by the court. You may present your comments yourself or you may have an attorney present them for you.

You can attend the **Fairness Hearing on April 19 at 10am** whether or not you have given notice that you want to comment on the settlement.

The hearing is at 500 Pearl Street before the Honorable Charles S. Haight.

POINTS TO CONSIDER WHEN DRAFTING COMMENTS:

Concerns about proposed settlement terms include the following:

The threshold for opening an investigation is too low, and affords too much latitude to police. This increases the chance that police may abuse their authority and engage in unconstitutional surveillance and infiltration of individuals engaged in First-Amendment protected activities. Further, when individuals know that police have a low threshold for opening investigations and monitoring political or religious activities, it has a chilling effect on the exercise of free speech:

- NYPD should need "probable cause" of criminal activity to open an investigation on political and religious groups
- NYPD should need judicial review in order to conduct surveillance and infiltration against political and religious groups, if not to open an investigation
- Terminology should include a higher standard than "unlawful act" which can encompass minor crimes and acts of civil disobedience.
- NYPD has sufficient counterintelligence and counter-terrorism capability within its own ranks and does not need any special divisions. Therefore, the Special Response Group should be disbanded and a commitment should be made against the reformation of such "intelligence" groups.
- NYPD use of Stingrays and Stingray-type devices should be prohibited without judicial review (i.e. warrant).

There is no mechanism for civilian review and oversight. When police are aware that no oversight body exists, it increases the chance that they may exceed their authority and engage in unconstitutional behavior.

- There is currently no civilian oversight to the NYPD's counterintelligence practices, and the proposed Handschu/Raza settlement only calls for one civilian member of the "Handschu Authority," an attorney appointed by the Mayor.

Police have too much discretion. With wide discretion, opportunities to abuse that discretion increase. Failure to enact mechanisms for accountability also increase the chance that police will abuse their authority.

- Time limits on investigations are meaningless if they can be extended and, regardless, they distract us from (a) the low-threshold for starting investigations in the first place, and (b) what surveillance and infiltration have meant and will continue to mean for our organizing and social change movements in general.
- The proposed modifications to the Handschu Guidelines still give sweeping discretion to infiltrate by undercover police or informants based on a determination that "the information sought could not be reasonably obtained in a timely and effective way by a less intrusive means."
- Despite being caught in the act of unlawful spying, as part of the settlement terms the NYPD "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."
- If not for the information obtained by the Associated Press or its Pulitzer Prize-winning series in 2011 exposing the vast domestic spying network developed by the NYPD since 2001, the massive multi-state operation aimed at the surveillance, mapping, and infiltration of Muslim groups would likely still exist.

Vague settlement language also affords law enforcement agents too much latitude to continue unlawful practices:

- You can't get much more vague than, "an explicit commitment [by NYPD] against investigations in which race, religion or ethnicity is a substantial or motivating factor" or "the choice of investigative techniques should take account of the potential effect of the investigation on the political or religious activity of individuals, groups or organizations."
- In addition to spying on Muslims, the NYPD has used the new intelligence landscape to spy on political groups. Internal police reports made public in 2006 showed that, as early as 2002, teams of undercover NYPD officers "attended meetings of political groups, posing as sympathizers or fellow activists" in order to gather information absent probable cause, which they shared with other law enforcement agencies.

The NYPD continues to spy with impunity on activists and Muslim community, and seems intent on continuing this practice:

- NYPD has used "proactive arrests" and psychological tactics at political demonstrations. Claiming success, NYPD reports have recommended that such tactics be used at future political demonstrations.
- Since at least 2002, the NYPD's Intelligence Division profiled and spied on Muslims as well as political organizations in New York City and elsewhere. This highly discriminatory practice was carried out in part by the NYPD Demographics Unit, later renamed the Zone Assessment Unit, which was forced to close in April 2014 due to public pressure after the exposure of its existence and the Raza lawsuit.
- Less than a year after shuttering the Demographics Unit, NYPD Commissioner William Bratton announced the formation in January 2015 of a new counter-terrorism and counterintelligence group called the Strategic Response Group, which clumsily merged the city's anti-terrorism enforcement with its crowd control efforts around political protest.
- the SRG not only swelled in size to nearly twice the number of intended officers, it also gained attention for helping to suppress Black Lives Matter demonstrations and on multiple occasions used a military-grade Long Range Acoustic Device (LRAD or noise cannon) and aggressive arrest tactics.
- The NYPD admitted it used Stingrays more than one thousand times between 2008-2015 "without a written policy" and using a "practice of obtaining only lower-level court orders rather than warrants," according to the NYCLU.