



July 18, 2013

The Honorable Charles Schumer
United States Senator
780 Third Ave.
Suite 2301
New York, NY 10017

**American Muslim Concern Regarding Potential Nomination of NYPD Commissioner
Ray Kelly for Secretary of Homeland Security**

Dear Senator Schumer:

The Muslim American Civil Liberties Coalition (MACLC), a New York-based coalition consisting of citizens, community leaders, faith leaders, organizers, and advocates, is gravely concerned about your recent statements supporting New York City Police Department (NYPD) Commissioner Ray Kelly's nomination for United States Secretary of Homeland Security. MACLC has been at the forefront of issues concerning the NYPD and the New York Muslim Community, and its members have actively engaged the NYPD through direct discussions, community advocacy, litigation, and even participation on the Commissioner Kelly's own Muslim Advisory Council.

In 2011 the White House released its *Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States*, which underscored the **"critical importance of building relationships, based on trust, with the communities"** served by law enforcement, and how **"[m]isconceptions about the threat and statements and actions that cast suspicion on entire communities based on the actions of a few distract attention from the real threat and can undermine our ability to build partnerships."**¹ Give the vital role that civil liberties and community relations play in the work of the Department of Homeland Security, we feel compelled to inform you about Commissioner Kelly's troubling track record on these issues.

I. Commissioner Kelly has Supported and Participated in Programs that Promote Negative Profiling of Muslims

Regrettably, Commissioner Kelly's legacy in New York is synonymous with divisive, harmful, and ineffective policing that promotes stereotypes and profiling. Under his watch, Commissioner Kelly has created, shaped and developed controversial programs of suspicionless surveillance targeting Muslim

¹ Available at <http://www.whitehouse.gov/the-press-office/2011/12/08/strategic-implementation-plan-empowering-local-partners-prevent-violent>.

communities in New York City and its surrounding areas. He has also overseen and promoted the distribution of reports that equate Islam with terrorism. Lastly, he participated in – and falsely denied knowledge of – a harmful film that casts suspicion on innocent Muslim Americans. As detailed below, not only has Commissioner Kelly been supportive of programs that single out Muslim New Yorkers, but he has been combative and dismissive when presented with information about how such programs impact communities and their trust in law enforcement. We do not believe that such views and traits are befitting the Office of the Secretary of Homeland Security.

A. NYPD Surveillance of Muslim New Yorkers

In the name of security, Commissioner Kelly has placed tens of thousands of Muslim New Yorkers under surveillance. The full extent of this program was first revealed by documents that were leaked to the Associated Press in 2011. Since 2001, the NYPD has surveilled and collected intelligence on at least 250 mosques, 12 Islamic schools, 31 Muslims student organizations, 10 non-profit organizations, and 256 “ethnic hotspots.” The NYPD has sent undercover officers and paid informants to spy on neighborhood cafes and places of worship, infiltrate student whitewater-rafting trips, and record mosque sermons.

Yet despite this expansive program, the NYPD’s own Commanding Officer of the NYPD Intelligence Division, Lt. Paul Galati, has admitted during sworn testimony that in six years of his tenure, the unit tasked with monitoring American Muslim life has not yielded a single criminal lead.²

The NYPD has defended their program as lawful and Commissioner Kelly has consistently downplayed the scope of the program by saying that the NYPD does not conduct general surveillance but only follows leads. However, in a sworn legal document the NYPD’s own David Cohen stated quite clearly that NYPD operatives went into New York mosques not to investigate specific individuals, but to monitor services in order to assess whether anyone was espousing harmful views.³

What the NYPD has failed to account for is how harmful the surveillance program has been to communities. Our coalition, in conjunction with the CLEAR project at CUNY School of Law and the Asian American Legal Defense and Education Fund, has recently published a report documenting these devastating impacts.⁴ In depth interviews revealed that fear of surveillance has resulted in a decline in participation and involvement in religious activities, community and social activities, and Muslim student organizations. Many American Muslims avoid attending mosques that the NYPD is likely to monitor and associate new faces at their mosque with potential undercover informants. Imams hesitate when advising their congregants. Ethnic television programming is banned from public places, and many American Muslims are afraid to discuss politics, religion, world events, while others avoid appearing overtly “Muslim.”

More critically, the report also demonstrates that the NYPD surveillance program has severed the essential relationship of trust that should exist between law enforcement agencies and the communities

² *Handschu v. Special Servs. Div.*, No. 71CIV.2203, Galati Dep. 128-129 (June 28, 2012).

³ *Handschu v. Special Servs. Div.*, No. 71CIV.2203, Cohen Statement (May 17, 2013).

⁴ Mapping Muslims: NYPD Spying and its Impact on American Muslims (2013), *available at* <http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

they are charged with protecting, which is particularly devastating as American Muslims feel increasingly vulnerable to hate crimes. Trust between law enforcement and communities is vital to the security of our city, and Commissioner Kelly has done more to break that trust than to build it.

B. NYPD's Stereotyping of Muslims in a Widely Circulated Report

In 2007 the NYPD released its troubling 2007 report, "Radicalization in the West: The Homegrown Threat."⁵ Touted as a strategic analysis of how individuals might turn to violent extremism, the report was rife with associations between Islam and terrorism. Simple behavior like increased religiosity, abstinence from smoking, and other constitutionally-protected actions were plotted on a path towards extremism. Notably, but not surprisingly, the NYPD conducted no outreach to the local New York Muslim community prior to the release of this report. Only after months of meetings, letters, and the release of MACLC's written critique of the NYPD's report,⁶ did the NYPD quietly insert a "Statement of Clarification" in the report explaining that the report's findings were not applicable to all Muslims.⁷ While the Statement of Clarification was a welcome gesture, it was insufficient and proved meaningless with the subsequent revelation of the expansive surveillance program which operationalized the theories laid out in "Radicalization in the West." Moreover, the amount of effort required to get the NYPD to clarify its position illustrated Commissioner Kelly's proclivity to resist – not welcome – feedback from the very communities he is charged with protecting.

C. Commissioner Kelly's Participation in 'The Third Jihad'

In 2011 the public learned that nearly 1,500 NYPD cadets were introduced to a racially charged anti-Muslim film called *The Third Jihad* during training sessions.⁸ When MACLC and other community leaders asked the NYPD for more information, Commissioner Kelly was extremely dismissive of the critique and denied his role in the film. However, Commissioner Kelly later admitted that he had participated in the documentary and agreed to be interviewed by the filmmakers.⁹ Again, what is more troubling than the NYPD's use of the film – which was potentially the error of a lower level officer – was Commissioner Kelly's false denial of his role in the film and unwillingness to truly engage concerned community members on the issue.

II. Commissioner Kelly's Policies Have Impacted Many Other Communities and Local and Federal Government have Called for Greater NYPD Oversight

Beyond the Muslim Community, Kelly has also been a proponent of discriminatory policies like the unwarranted stop & frisk of Black and Latino men. Both his stop & frisk and suspicionless surveillance programs have been the subject of many federal and state lawsuits brought against the NYPD. Further, in New York, our communities and allied groups have organized to protest and reform the NYPD's

⁵ Available at http://www.nyc.gov/html/nypd/downloads/pdf/public_information/NYPD_Report-Radicalization_in_the_West.pdf

⁶ Available at <http://maclcnypdcritique.files.wordpress.com/2008/11/counterterrorism-policy-final-paper3.pdf>

⁷ Radicalization in the West: The Homegrown Threat at 11.

⁸ See <http://www.villagevoice.com/content/printVersion/2337684/>

⁹ See http://www.nytimes.com/2012/01/25/nyregion/police-commissioner-kelly-helped-with-anti-islam-film-and-regrets-it.html?_r=0

broken policies. In a damning blow to the NYPD, members of the City Council have voted overwhelmingly to support the Community Safety Act – bringing accountability to the NYPD through oversight by an independent inspector general. This legislation was passed with overwhelming majority, sending a resounding message that New Yorkers do not feel safer as a result of the NYPD’s policies.

The Department of Justice itself has acknowledged the need for oversight over the NYPD by supporting, in a court filing, a court-appointed monitor of the NYPD. The FBI has also castigated the NYPD for undermining their counterterrorism efforts and engaging in unethical police tactics. Newark’s FBI Chief said Kelly’s policies were counterproductive and were sowing mistrust among New York’s Muslims. Additionally, in a recently declassified report by the CIA’s inspector general concludes that there was “inadequate direction and control” within the NYPD. Finally, the Department of Homeland Security’s audits of the NYPD’s use of DHS grants showed that the NYPD awarded \$4.1 million in contracts without following competitive bidding requirements in a blatant waste of taxpayer money. Thus, New Yorkers are not alone in their distaste for Kelly’s ineffective, discriminatory and wasteful policies, many major federal agencies who fund or partner with the NYPD have also voiced their concern about Kelly’s policies.

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For these reasons, MACLC strongly opposes the nomination of Ray Kelly as Secretary of the Department of Homeland Security. Kelly has prided himself on being at the forefront of aggressive policing that pays no heed to the consequences of his policies on those he is tasked with protecting. His appointment would send a strong and damaging message to American Muslim and other communities who have watched Ray Kelly erode their rights in New York City.

Respectfully Submitted,

Muslim American Civil Liberties Coalition
MACLC

MACLC is a New York-based coalition of citizens, community and faith leaders, organizers, advocates and attorneys. MACLC aims to give voice to absent perspectives on issues of national security, counterterrorism, law enforcement, and civil rights, especially as they impact Muslim communities in post-9/11 New York City. Members of the coalition include: Arab American Association of New York (AAANY); Association of Muslim American Lawyers; Council on American Islamic Relations - New York (CAIR-NY); Creating Law Enforcement Accountability & Responsibility (CLEAR) project; Desis Rising Up and Moving (DRUM); Muslim American Society of New York (MAS-NY); Muslim Bar Association of New York; Muslim Consultative Network (MCN); Muslim Progressive Traditionalist Alliance; Muslim Public Affairs Council; and Women in Islam, Inc.

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