

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

December 19, 2017

Re: The newly established counterterrorism advisory council

The undersigned coalition of civil rights, racial justice, and Muslim organizations and communities are dismayed by the recent announcement that your office has appointed former New York City Police Department (NYPD) Commissioner Raymond Kelly to serve on the newly-formed counterterrorism advisory council. We understand that this council will be tasked with making recommendations, and developing execution plans for the state's counterterrorism efforts. We write to remind your office of Ray Kelly's legacy, and urge you to reconsider his appointment at a time when we must be united, rather than divided. Moreover, his appointment raises concerns about the council's priorities, and we seek assurances that any policies growing out of its recommendations abide by principles of non-discrimination and do not result in the targeting of Muslims.

Commissioner Kelly's track-record of conceiving, overseeing and subsequently defending racial and religious profiling programs makes this designation a slap in the face to millions of New Yorkers whom your office intends to protect. The communities we work with and represent have, over the years, successfully challenged Kelly's flawed and harmful policies in the legislature and in the courts. His nomination is a step backwards: it communicates your office's endorsement of racial and religious profiling.

Two of his signature initiatives as Police commissioner – the aggressive, race-based stop and frisk practice, and the Muslim suspicionless surveillance program, were harmful to millions of New Yorkers despite having failed to make any New Yorkers safer and demonstrate his unfitness for this position.

Commissioner Kelly was the lead architect behind the NYPD's Muslim Surveillance program. As part of that program, he oversaw an intelligence division which he tasked with mapping, spying on, and infiltrating Muslim neighborhoods, sites, and individuals in New York, New Jersey and beyond. His own intelligence division chief at the time, Lt. Paul Galati, admitted during sworn testimony that in the six years of his tenure as the Chief of the NYPD Intelligence Division, the unit tasked with monitoring American Muslim life had not yielded a single criminal lead.¹ Yet, as many of our organizations have documented, the policies were deeply harmful to New York's American-Muslim communities. After Kelly's stepping down, the NYPD entered into a settlement agreement in two different lawsuits challenging the lawfulness of the surveillance program – agreeing to strengthening protections and oversight in order to rein in future abuses.

¹ *Handschu v. Special Servs. Div.*, No. 71CIV.2203, Galati Dep. 128-129 (June 28, 2012).

In a case challenging this suspicionless surveillance of Muslims in New Jersey, the Third Circuit Court of Appeals categorically rejected the City's attempted defense of the religious and ethnic profiling at issue, likening the NYPD's actions to the treatment of "Jewish-Americans during the Red Scare, African-Americans during the Civil Rights Movement, and Japanese-Americans during World War II."² An NYPD Inspector General report found that the NYPD has violated the rules governing investigations in conducting the Muslim surveillance program.³ Kelly himself, however, has never publicly disavowed the program. Indeed, in response to public outcry, Kelly has defended this discriminatory and demeaning profiling both as publicly popular and as a necessary means "to protect the City."⁴

Similarly, under Commissioner Kelly's leadership, the NYPD implemented a decade-long program of unconstitutional and racially discriminatory stops and frisks of New York City residents. During Kelly's tenure as Commissioner, hundreds of thousands of Black and Latino New Yorkers were stopped and frisked without any cause. Brooklyn Borough President Eric Adams, himself a former NYPD captain, reported that in response to concerns he raised directly with Kelly in 2010 about disproportionately high numbers of Black and Latino men being stopped by the NYPD, Kelly responded that he endorsed such racial targeting "because he wanted to instill fear in them, every time they leave their home, they could be stopped by the police."⁵ A federal judge found in 2013 that this widespread and systematic targeting amounted to "indirect racial profiling" that violated the Fourth and Fourteenth Amendments of the United States Constitution, and placed the NYPD under federal monitorship to make large-scale changes to its stop-and-frisk practices. Yet in his public statements and writing since, Kelly has continued to defend this illegal and racially discriminatory policing tactic,⁶ even as a dramatic drop in the number of stop and frisks has not, contrary to Kelly's overheated position, caused any appreciable increase in crime.⁷ His policing philosophy has thus been twice rejected by the courts, is damaging to communities and is, on his own terms, demonstrably ineffective.

Our communities organized to challenge many of Kelly's policies in New York City and beyond, successfully passing legislation that improved oversight and accountability at the NYPD. Various rounds of litigation, which grew out of community organizing efforts, also resulted in settlements that have included policy and practice changes to bring the NYPD into compliance with the law, and establishing independent oversight mechanisms. Despite these successful challenges, Kelly had doubled down on the defense of his discredited practices. In fact, since he has left his Commissioner's office, none of his actions or words have suggested that his perspective on policing and counterterrorism have evolved. His nomination would thus reward and endorse these programs and the harm they imposed upon New Yorkers and beyond.

² *Hassan v. City of New York*, 804 F.3d 277 (2015).

³ New York City Department of Investigation, Office of the Inspector General for the NYPD, *An Investigation of NYPD's Compliance with Rules Governing Investigations of Political Activity* (August 23, 2016).

⁴ Tina Moore & Rocco Parascandola, *Mayor Bloomberg defends NYPD spying on Muslims calling it legal, appropriate and constitutional*, N.Y. Daily News, February 24, 2012.

⁵ *Floyd v. City of New York*, 959 F.Supp.2d 540, 606 (S.D.N.Y. 2013). Significantly, neither Kelly nor any other NYPD witness ever tried to rebut Adams' testimony in court. *Id.*

⁶ Sam Roberts, *Raymond Kelly, Ex-Police Commissioner, Blames Mayor de Blasio for Rise in Killings*, New York Times, September 7, 2015.

⁷ Editorial, *We were wrong: Ending stop and frisk did not end stopping crime*, N. Y. Daily News, August 8, 2016.

Thus, we have well-founded concerns that rather than unite and protect New Yorkers at the time when it is most needed, Kelly's anticipated recommendations as a member of the advisory council will result in policies disproportionately targeting Muslims.⁸

Your office should not endorse Commissioner Kelly's track-record. We call on your office to rescind his appointment. At a minimum, we respectfully request the opportunity for a subset of the undersigned to meet with you to discuss our concerns, including how you will ensure that any policies growing out of the recommendations made by this council will abide by principles of non-discrimination. We look forward to hearing your response.

Please direct your responses to roksana@drumnyc.org and dshamas@ccrjustice.org.

Sincerely,

New York-based organizations

American Friends Service Committee, New York Office
Arab American Association of New York (AAANY)
Association of Legal Aid Attorneys (ALAA), UAW Local 2325
Council on American-Islamic Relations – New York (CAIR-NY)
DRUM - Desis Rising Up and Moving
Drug Policy Alliance – New York (DPA)
Gay Asian Pacific Islander Men of New York (GAPIMNY)
Jews for Racial & Economic Justice (JFREJ)
Jews Say No!
Justice Committee (JC)
Katal Center for Health, Equity, and Justice
Muslim Bar Association of New York (MuBANY)

National organizations

American-Arab Anti-Discrimination Committee (ADC)
Arab American Bar Association (AABA)
Center for Constitutional Rights (CCR)
Creating Law Enforcement Accountability & Responsibility (CLEAR) project
Council on American-Islamic Relations (CAIR)
Immigrant Defense Project (IDP)
National Campaign to Take on Hate
MPower Change
Muslim Public Affairs Council (MPAC)
United States Human Rights Network (USHRN)

⁸ This outcome would be particularly unfortunate at a time when law enforcement studies report that the more significant threat of violence to Americans comes from white supremacist groups. *See, e.g.*, David Neiwert, *Homegrown Terror*, Reveal News, June 22, 2017 (finding that from 2008 through 2016, Far-right plots and attacks outnumber Islamist incidents by almost 2 to 1); Mike Levine, *FBI has 1,000 open investigations into violent white supremacy, domestic terror: Agency chief*, ABC News, September 27, 2017 (citing Senate committee testimony by FBI director Christopher Ray).