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**RE: San Francisco Police Department Involvement with the FBI's Joint
Terrorism Task Force**

Dear Acting Mayor Breed:

We are writing regarding your comments to KPIX on December 26, 2017, which indicated that you may be re-examining the San Francisco Police Department's ("SFPD's") involvement with the Federal Bureau of Investigation's ("FBI") Joint Terrorism Task Force ("JTTF"). As you are aware, the SFPD's relationship with the JTTF and preceding task forces has been the subject of considerable controversy off and on for more than 20 years. Since it has come under the direction of Attorney General Jeff Sessions and President Donald Trump, long-standing concerns about the tactics employed by the FBI and JTTF have become even more pronounced.

Our groups have worked collaboratively with the City of San Francisco to resist many troubling Trump Administration policies and protect vulnerable San Franciscans targeted by this Administration, especially San Francisco's Arab, Middle Eastern, Muslim, and South Asian ("AMEMSA") communities.¹ In the spirit of that partnership, we wish to briefly summarize the major concerns civil rights and AMEMSA advocacy groups have with the JTTF and provide some background on the City's participation in the JTTF. We would also welcome the opportunity to discuss this issue with you in person.

CONSISTENTLY ASSERTING LOCAL CONTROL OVER OUR LOCAL OFFICERS

Concern over SFPD involvement with FBI task forces, including the JTTF, is not a recent phenomenon. As far back as 1997, Mayor Willie Brown rejected the FBI's proposal to have the SFPD assign officers to its Task Force. Mayor Brown's major concern was that the arrangement would have allowed SFPD officers working on the Task Force to follow FBI rules and regulations, instead of stronger California and San Francisco laws and policies. He defended San Francisco values by insisting that San Francisco police officers abide by local policies designed

¹ We have *inter alia* worked with City leaders to combat the Muslim Ban and resist any attempts to use City resources for a Muslim registry.

to reflect those values, and San Francisco did not join the task force at that time. This of course did not mean that the SFPD was unable to work with the FBI; rather, it simply meant that their collaboration did not take the form of this particular Task Force.

Years later, after the City joined the JTTF, San Franciscans discovered that that the SFPD had secretly signed a Memorandum of Understanding (“MOU”) with the FBI that not only assigned SFPD officers to the JTTF (with no financial reimbursement), but also deputized those local officers as federal agents, thus placing them beyond the reach of the legally-required local civilian oversight and various local and state civil rights laws.²

After considerable public discussion and hearings before the Police and Human Rights Commissions, in May 2012, Mayor Ed Lee again asserted the primacy of San Francisco values by signing into law the Safe San Francisco Civil Rights Ordinance³ (“the Ordinance”). As leaders of the Coalition for a Safe San Francisco,⁴ the coalition that spearheaded the Ordinance, our groups worked collaboratively with the Mayor’s Office, the SFPD, Police Commission, Human Rights Commission, and the Board of Supervisors to pass this law, which was unanimously passed by the Board of Supervisors.

Since that time, we have repeatedly expressed concerns about SFPD compliance with that law to both the Police Commission and to the SFPD’s Chiefs of Police and command staff. We were repeatedly assured that the FBI would never assign SFPD officers to JTTF tasks that would violate SFPD policies. We were skeptical of these claims and unfortunately, those fears were proven correct in 2014, when a SFPD officer assigned to the JTTF went to Google’s offices in San Francisco to question a Google employee about a Freedom of Information Act (“FOIA”) request he filed due to repeated delays and harassment while traveling. In other words, the officer questioned the Google employee about First Amendment protected activity, and did so without the required, documented “reasonable suspicion” of criminal activity mandated by our local San Francisco policies. We filed a complaint regarding that incident and the Department of Police Accountability (formerly the Office of Citizen Complaints) ruled that SFPD policies had indeed been violated. *The DPA held that the reason for this troubling failure was a lack of training for SFPD officers on our local policies, an issue that has not yet been addressed.*

Throughout 2016, we had several meetings with Police Chief Greg Suhr, Acting Police Chief Toney Chaplin, and key members of the SFPD command staff regarding these issues. Those meetings were still ongoing when Donald Trump was elected President and the need to ensure that SFPD officers were not violating our laws, policies, and values while working for the new administration’s Justice Department and FBI became all the more urgent and readily apparent. The stakes were further increased a few weeks later when we discovered that standard JTTF procedures require local officers working in the JTTF to document the immigration status of

² An abbreviated history of the SFPD’s Intelligence-Gathering Practices and Reforms is available at https://www.aclunc.org/sites/default/files/asset_upload_file806_10599.pdf; our groups shared this document with City leadership, including the Board of Supervisors, years ago when we were working to pass the Safe San Francisco Civil Rights Ordinance.

³ Administrative Code Section 2A.74.

⁴ The Coalition for a Safe San Francisco worked for three years to pass the Ordinance. It was comprised of 79 community and civil rights groups, and coordinated the participation of thousands of community members.

anyone they target for scrutiny (again, without any suspicion of criminal activity) and enter that information into databases that Immigration and Customs Enforcement has ready access to.⁵ This would of course be a violation of San Francisco’s sanctuary law and policies.

We detailed our concerns in a January 2017 letter⁶ to the Police Commission, in advance of their annual hearing on compliance with the JTTF ordinance, which was to take place on February 1, 2017. Several other organizations and community leaders joined our urgent request that these issues finally be resolved, given the threats of the incoming Trump administration to target Muslims, immigrants, and organizations protesting police abuse. One letter from prominent LGBTQ leaders (including former and current state senators Mark Leno and Scott Weiner, and current and former supervisors Jeff Sheehy, Tom Ammiano, David Campos, and LGBTQ ally Angela Alioto) noted that “... if this ordinance is not effectively enforced, and if SFPD officers are not fully trained to understand and follow its requirements, those local officers will become entangled in the implementation of Trump’s policies, which our city’s leadership and residents have unequivocally rejected.”⁷ Immediately prior to the February hearing, the SFPD announced they were suspending their participation in the JTTF, and our discussions were put on hold.

THE PATTERN OF PROBLEMATIC JTTF STING OPERATIONS TARGETING MUSLIMS

We do not mean to imply there were no civil rights concerns with JTTF activities under prior presidential administrations. Indeed, the FBI and JTTF have a long-established pattern of targeting isolated, disaffected, and often mentally troubled individuals who have no connection with terrorist groups and no apparent ability to plan or carry out any “plots” on their own, and painstakingly manipulating them or leading them on until they say or do enough to form the basis for an arrest and prosecution. The fact that the courts have said these very aggressive sting operations fall just short of the ban on illegal entrapment makes them no less problematic, especially when they target hyper-vulnerable communities.

In their 2014 report, “The Illusion of Justice: Human Rights Abuses in US Terrorism Prosecutions,” Human Rights Watch and the Columbia Law School’s Human Rights Institute found that many of these sting operations would violate international human rights standards because they regularly involve “(d)iscriminatory investigations, often targeting particularly vulnerable individuals (including people with intellectual and mental disabilities and the indigent), in which the government – often acting through informants – is actively involved in developing the plot, persuading and sometimes pressuring the target to participate, and providing the resources to carry it out.”⁸ As the report notes, Muslim defendants ensnared by these stings often struggle to get fair trials on terrorism-related charges, “where inflammatory stereotypes and

⁵ See “Counterterrorism Program Guidance: Baseline Collection Plan,” available at <https://www.aclu.org/files/fbimappingfoia/20111019/ACLURM004887.pdf>.

⁶ Asian Law Caucus, CAIR-SFBA, and ACLU-NC, Letter to San Francisco Police Commission re Update on SFPD’s Participation in FBI’s Joint Terrorism Task Force, Jan. 05, 2017, available at https://ca.cair.com/sfba/wp-content/uploads/2017/01/2017.01.05_ALC-CAIR-ACLU-NC-Ltr-re-SFPD-Participation-in-JTTF.pdf.

⁷ See Matthew Bajko, “Concerns Grow over SF Police Working with FBI,” Bay Area Reporter, Feb. 2, 2017, available at <http://transgenderlawcenter.org/wp-content/uploads/2017/01/SF-Police-Comm-Letter-FINAL.pdf>.

⁸ Available at https://www.hrw.org/sites/default/files/reports/usterrorism0714_ForUpload_1_0.pdf (“Human Rights Watch” report).

highly charged characterizations of Islam and foreigners often prevail.”⁹ The findings from this report were updated and expanded upon last year by investigative journalists, which shows that these same concerning practices remain in use today.¹⁰

The report further concludes that these operations “have alienated the very communities the government relies on most to report possible terrorist threats and diverted resources from other, more effective ways, of responding...”¹¹ These stings continue to target vulnerable people of one religion and represent a great bulk of all arrests made by the JTTFs, but rarely, if ever, do such operations target violent white supremacists who are active online. This was all made possible because, when the FBI transformed itself from a criminal justice agency into a national security, intelligence-driven organization after 9/11, it “substantially changed its approach, loosening regulations and standards governing the conduct of terrorism investigations.”¹²

By contrast, neither San Francisco nor the State of California has loosened their standards, nor have we compromised our values by weakening our civil rights laws. Quite the contrary, in the wake of Donald Trump’s election, both the State and the City have re-enforced and strengthened the protections against possible federal abuses in a number of key areas. It would be very odd indeed if San Francisco buckled now in the face of pressure from the FBI. There are serious, longstanding problems with San Francisco’s participation in the JTTF that remain unresolved; Police Chief William Scott wisely chose to disengage from a formal partnership with the JTTF because of those unresolved concerns, and his Department remained able to work with the FBI and the JTTF in a manner that respected local laws and policies. We urge you not to let San Francisco retreat from its commitment to standing as a bulwark against federal abuses, simply because of yet another arrest from a questionable sting operation.

FBI TARGETING OF BLACK ACTIVISTS

Sadly, the predictions about the increased dangers inherent in entangling local officers with the FBI’s JTTF during the Trump years – absent the strict application and enforcement of local standards enforced by local oversight – have already borne out. At the request of the SFPD, a month after Donald Trump was elected, our representative met with the FBI’s Bay Area Assistant Special Agent in Charge (“ASAC”). During the meeting, the FBI’s ASAC tried to reassure us that there were strict controls in place that would prevent any president from interfering with FBI operations; however, when our representative asked the ASAC if he really believed

⁹ *Id.*

¹⁰ Last year, *The Intercept* updated and expanded upon the Human Rights Watch findings with their meticulously-reported “Trial and Terror” series of stories, which thoroughly documented these abusive practices. *Inter alia*, It concluded that the federal government’s own behavior towards those caught up in these stings demonstrates they know “many of these so-called terrorists weren’t particularly dangerous in the first place.” Trevor Aaronson, “The Released: More Than 400 People Convicted of Terrorism in the U.S. Have Been Released Since 9/11,” Apr. 20, 2017, available at <https://theintercept.com/2017/04/20/more-than-400-people-convicted-of-terrorism-in-the-u-s-have-been-released-since-911/>. The full “Trial and Terror” series is available at <https://theintercept.com/series/trial-and-terror/>. In January 2018, the *East Bay Express* similarly concluded that JTTF cases in the Bay Area display this same disturbing pattern. See Darwin BondGraham, “Terror or Entrapment,” *East Bay Express*, Jan. 3, 2018, available at www.eastbayexpress.com/oakland/terror-or-entrapment/Content?oid=12242075&showFullText=true.

¹¹ Human Rights Watch report, *supra* note 8.

¹² *Id.*

Donald Trump would respect those controls and norms, the ASAC quickly dropped the point. Sure enough, within just four months of taking office, President Trump fired FBI Director James Comey for not pledging his loyalty to Trump, refusing his requests to drop the investigation of Michael Flynn (now a confessed felon), and refusing to end the larger Russia investigation.¹³ While we all hope the FBI agents working with Special Counsel Robert Mueller will be protected from political interference, the reality is that the FBI itself – aside from the Special Counsel’s investigators – is now under the full control of a Trump-appointed director who reports to Trump’s Attorney General Jeff Sessions on all matters except the Russia investigation.

Over time, it is inevitable that the priorities of the FBI JTTFs will increasingly reflect the political priorities of this administration – priorities that are in so many ways an anathema to most San Franciscans. That reality has been painfully evident in the administration’s response to the shocking news that in August 2017, the FBI issued an intelligence assessment¹⁴ calling for special scrutiny of individuals and organizations aligned with a wholly imagined “Black Identity Extremist” movement that it simultaneously announced and dubbed a threat.

According to *Foreign Policy*, which first obtained and published the document:

Some experts and former government officials said the FBI seemed to be trying to paint disparate groups and individuals as sharing a radical, defined ideology. And in the phrase “black identity extremist” they hear echoes of the FBI’s decades-long targeting of black activists as potential radicals, a legacy that only recently began to change....

The FBI is linking the people discussed in the report based only on them being black, rather than on any sort of larger ideological connection, the official said. “The race card is being played here deliberately.”

Michael German, a former FBI agent and now a fellow with the Brennan Center for Justice’s liberty and national security program, said manufacturing this type of threat was not new.... The use of terms like “black identity extremists” is part of a long-standing FBI attempt to define a movement where none exists. “Basically, it’s black people who scare them,” German said.¹⁵

The “Black Identity Extremist” document was circulated to law enforcement nationwide, creating a real danger that Black Lives Matter and other lawful activists and movements would once again be targeted for the same type of surveillance Black activists suffered during the

¹³ Michael Schmidt, “Comey Memo Says Trump Asked Him to End Flynn Investigation,” N.Y. Times, May 16, 2017, available at <https://www.nytimes.com/2017/05/16/us/politics/james-comey-trump-flynn-russia-investigation.html>.

¹⁴ “Black Identity Extremists Likely Motivated to Target Law Enforcement Officers,” Aug. 3, 2017, available at <https://www.documentcloud.org/documents/4067711-BIE-Redacted.html>.

¹⁵ Jana Winter & Sharon Weinberger, “The FBI’s New U.S. Terrorist Threat: ‘Black Identity Extremists,’” *Foreign Policy*, Oct. 06, 2017, available at <http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>. Michael German is a long-time colleague whose expertise and history infiltrating white supremacist groups for the FBI have been invaluable to our efforts to fully understand FBI operations and policies and to craft effective and practical solutions for the problems they raise.

COINTELPRO years.¹⁶ The Congressional Black Caucus has repeatedly challenged the FBI to explain and justify its position that a non-existent movement in the African American community is now a threat. In three separate hearings over the last two months, former California Assembly Speaker and current House Judiciary Member Karen Bass took the lead in grilling Attorney General Jeff Sessions, Deputy Attorney General Ron Rosenstein, and FBI Director Christopher Wray, seeking answers regarding the shoddy, racist, and dangerously vague and inaccurate intelligence assessment. None were forthcoming. Her calls for the document to be retracted have, to date, been ignored by the Trump Administration.¹⁷

The JTTFs are the principal consumers of these sorts of FBI documents. Consequently, FBI agents and local police officers assigned to staff the JTTFs are now the most likely to be looking for activists and organizations they believe might be “Black identity extremists.” This situation is deeply troubling and – aside from the numerous other concerns noted above – San Francisco should not even *start* to consider renewing its partnership with the JTTF unless and until the Trump Administration adequately addresses the concerns of the Congressional Black Caucus, the National Organization of Black Law Enforcement Executives (“NOBLE”), the National Association for the Advancement of Colored People (“NAACP”), and so many others who have spoken out on this important topic. Even then, the SFPD must not assign officers to the JTTF until the well-documented compliance problems with local policies and laws designed to protect the public and keep our officers from being entangled in FBI activities that violate our laws, our standards, and our values have been fully, finally, and at long last resolved in a credible fashion.

We are of course happy to meet with you, Chief Scott, and members of the Police Commission to discuss these matters more fully or provide additional information.

Sincerely,

Christina Sinha, Asian Americans Advancing Justice-Asian Law Caucus
Brittney Rezaei, Council on American-Islamic Relations of the San Francisco Bay Area
Alan Schlosser, American Civil Liberties Union of Northern California

Cc: Police Chief William Scott
Members, San Francisco Police Commission
Michael German, Brennan Center for Justice’s Liberty and National Security Program

¹⁶ Khaled A. Beydoun & Justin Hansford, “The F.B.I.’s Dangerous Crackdown on ‘Black Identity Extremists,’” N.Y. Times, Nov. 15, 2017, *available at* <https://www.nytimes.com/2017/11/15/opinion/black-identity-extremism-fbi-trump.html>. *See also* Julia Craven, “Surveillance of Black Lives Matter Movement Recalls COINTELPRO,” Huff. Post, Aug. 20, 2015, *available at* https://www.huffingtonpost.com/entry/surveillance-black-lives-matter-cointelpro_us_55d49dc6e4b055a6dab24008.

¹⁷ *See* Adam Goldman & Nicholas Fandos, “Lawmakers Confront F.B.I. Director Over Report on Black Extremists,” N.Y. Times, Nov. 29, 2017, *available at* https://www.nytimes.com/2017/11/29/us/politics/fbi-black-identity-extremist-report.html?_r=1. *See also* video of Representative Bass’ questioning of these three Trump administration officials: Attorney General Sessions, <https://www.youtube.com/watch?v=gc4E2qAXYII>; FBI Director Wray, <https://www.youtube.com/watch?v=E3b7zSFeSMw>; and Deputy Attorney General Rosenstein, https://www.washingtonpost.com/video/politics/bass-questions-rosenstein-on-black-identity-extremism-report/2017/12/14/662bbf68-e112-11e7-b2e9-8c636f076c76_video.html?utm_term=.e89d217cda15.