



San Francisco Police Commission  
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January 05, 2017

**RE: Update on SFPD's Participation in FBI's Joint Terrorism Task Force**

Dear Commissioners:

We write to you to provide an update on the San Francisco Police Department's ("SFPD") compliance with the Safe San Francisco Civil Rights Ordinance<sup>1</sup> ("the Ordinance"), which legally requires our local police to adhere to our strong local and state civil rights protections – rather than the Federal Bureau of Investigation's ("FBI") exceedingly lax guidelines – when they participate in the FBI's Joint Terrorism Task Force ("JTTF").

As leaders of the Coalition for a Safe San Francisco,<sup>2</sup> our organizations worked with the SFPD, Police Commission, Human Rights Commission, Board of Supervisors, and the Mayor's Office to enact the ordinance in 2012. As most of you know, since that time, we have worked to ensure that the SFPD provide adequate and accurate information about the scope of its work in the JTTF during the annual reports mandated by the Ordinance. We have been both diligent and patient in our efforts to rectify a number of long-standing and very troubling problems. We have documented our concerns in writing; provided detailed public testimony; filed an Office of Citizen Complaints ("OCC") complaint, as suggested by the Commission; saw the complaint through to its long-delayed conclusion; and met repeatedly with SFPD command staff, Commissioners, OCC staff, and the FBI.

While we are continuing collaborative efforts aimed at fixing the serious problems that have now been identified and conceded by all involved, **the election of Donald Trump and his imminent inauguration renders these issues extremely urgent. Through this letter, we hope to not only thoroughly update you on the status of these issues, but also provide you with a preview of the necessary steps that must occur in the next few weeks.**

**THE URGENCY: THE FBI UNDER DONALD TRUMP**

Mr. Trump's election was due in large part to his troubling, but obviously effective, use of Islamophobia to stir up fear in parts of the electorate (but, thankfully, not in San Francisco, where more than 90% of the votes cast were against his candidacy). Indeed, during his campaign, he promised to ban Muslims from entering the country; stated he would subject Muslims to "extreme

<sup>1</sup> S.F. Admin. Code § 2A.74, Ord. 83-12, File No. 120351, App. 5/9/2012, Eff. 6/8/2012.

<sup>2</sup> 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.



vetting;" promised to create a special "Muslim registry;" endorsed widespread and suspicionless surveillance of Muslim prayer spaces; and even claimed that Muslims in New Jersey were seen cheering as the World Trade Center fell on September 11<sup>th</sup>, which is of course patently false. Since the election, the Muslim community's alarm has only intensified with the announcement of one appointment after another of high level administration officials known for holding deeply Islamophobic views.

All signs indicate that the Trump administration will greatly increase the sort of discredited, counterproductive, and racist surveillance of Muslim communities that the New York Police Department ("NYPD") became notorious for. Indeed, about three weeks ago, Representative Peter King (R-NY) met with Mr. Trump and others to support precisely this proposition.<sup>3</sup> As you may remember, even the Special Agent in Charge of the FBI's Newark Office publicly criticized the NYPD program and blamed it for alienating Muslim communities from law enforcement. The Third Circuit Court of Appeals was even more specific, stating that the NYPD's mass surveillance approach evoked the government's mistreatment of "Jewish Americans during the Red Scare, African-Americans during the civil rights movement, and Japanese-Americans during World War II." Despite this, not only did Mr. Trump fail to push back on Mr. King's proposals, Mr. King reported that Mr. Trump agreed with the view that the country should be "more aggressive on terrorism and less concerned with political correctness."<sup>4</sup>

This is a frightening state of affairs, and if this or similar proposals are implemented once Mr. Trump takes office – which is all but a certainty at this point – the FBI's JTTFs will be tasked with conducting these domestic counterterrorism activities. **This means that local police officers cross-designated as JTTF agents will be carrying out a lot of this activity.** Furthermore, because the rules governing the FBI<sup>5</sup> set few meaningful limits on their intelligence gathering practices, even significant changes in the scope of JTTF activities will not necessarily be announced or immediately detectable to the public.

We remember well Commissioner Mazzucco reacting with skepticism in 2011 to our concerns then about the SFPD's activities in the JTTF because, as he told us, he could not imagine there would be abusive or inappropriate FBI practices during the Obama presidency. However, it is about to become the Trump administration, and we trust the entire Commission fully understands the great, urgently-felt alarm in many communities about what havoc Mr. Trump's FBI – and our local officers working with Mr. Trump's FBI in the JTTFs – could wreak on our civil rights, safety, and confidence in local law enforcement.

## **2016 COLLABORATIVE EFFORTS**

As you may recall, the January 2016 hearing on the SFPD's 2015 JTTF ordinance annual compliance report, once again, raised many more questions than it answered. The SFPD's report contained inaccurate and incomplete information and inexplicably quoted FBI standards, rather than the much stronger local standards that are required by the Ordinance. As detailed below, our local law states that all SFPD activity **involving** First Amendment activity – a deliberately broad and protective

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<sup>3</sup> Ngo, Emily, "Peter King Presses Donald Trump on Muslim Surveillance," Dec. 15, 2016, Newsday, available at <https://www.newsday.com/news/nation/peter-king-presses-donald-trump-on-muslim-surveillance-1.12761336>.

<sup>4</sup> *Id.*

<sup>5</sup> These include the 2008 Attorney General's Guidelines for Domestic FBI Operations, available at <https://www.justice.gov/archive/opa/docs/guidelines.pdf>.



standard – be supported by articulable and reasonable suspicion, and requires that simple, written supervisory approvals be obtained and retained. By contrast, the FBI’s standards do not require a factual predicate, which is far below reasonable suspicion. Since the January 2016 report, because of the concerns we and members of the Commission expressed, we have held six meetings with SFPD command staff, including the chief, interim chief, deputy chief, and the commander and lieutenant in charge of the Special Investigation Division (“SID”).<sup>6</sup>

In turn, the SFPD has met with and discussed these issues with the FBI. Additionally, at the request of the FBI and the SFPD, former ACLU police practices attorney John Crew has met in person and by phone for more than three hours with the FBI’s supervisor of the San Francisco JTTF, Assistant Special Agent in Charge (“ASAC”) Craig Fair, to discuss these problems and seek solutions. Mr. Crew, whom we continue to work very closely with, is intimately familiar with these issues. He collaborated with the SFPD and Commission in the drafting and enactment of the principal local policy at issue, Department General Order 8.10, “Guidelines for First Amendment Activities” (“DGO 8.10”), which controls all SFPD intelligence gathering whenever any First Amendment information is “involved.”<sup>7</sup> Mr. Crew was also the Coalition’s partner in drafting and advocating for the enactment of the ordinance and represented Asian Americans Advancing Justice-Asian Law Caucus (“Asian Law Caucus”) in the latter stages of the OCC complaint we filed in March 2015 about the SFPD’s JTTF activities.<sup>8</sup> To ensure that our understanding of FBI JTTF policies and practices is fully accurate and that our solutions are practical, we have also consulted extensively with Michael German of the Brennan Center for Justice’s Liberty and National Security Program. Mr. German was an FBI agent for 16 years, where he specialized in domestic terrorism and covert operations.<sup>9</sup>

We are happy to report that we – our groups and the SFPD – now have a much clearer and consensus understanding of the source, nature, and scope of the SFPD’s compliance problems with the Ordinance and DGO 8.10. The bad news is that, while we are poised and ready to implement jointly-crafted solutions, the FBI has not yet indicated their position on those solutions. The SFPD’s legal obligations under the Ordinance are unambiguous; SFPD officers may participate in FBI JTTF activities “only in a manner that is fully consistent with the laws of the State of California, including but not limited to the inalienable right to privacy guaranteed by Article I, Section 1 of the California Constitution, as well as the laws and policies of the City and County of San Francisco and, as applicable to the Police Department, that Department’s policies, procedures and orders.”<sup>10</sup> In short, nothing the FBI will or could say can interfere with the SFPD’s need at all times to comply with local intelligence gathering standards and protocols in DGO 8.10, as well as with the state constitutional right to privacy’s requirement not to create intelligence records absent reasonable suspicion (it is important to note that JTTF activities routinely involve activities where there is no reasonable suspicion).<sup>11</sup> **The need to follow our own state and local laws and policies — which were**

<sup>6</sup> These meetings were delayed at one point by a five-month wait in getting a meeting scheduled with Acting Chief Chaplin after Chief Suhr’s departure. A progress report was on the Commission calendar for June, but the item was removed due of this delay.

<sup>7</sup> Available at <http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/24722-DGO%208.10%20100108%20police%20commission%20members.pdf>.

<sup>8</sup> Available at <http://ww2.kqed.org/news/2015/03/26/complaint-alleges-sfpd-officer-brokecity-law-while-investigating-with-fbi/>. See also <http://archives.sfexaminer.com/sanfrancisco/sf-police-could-be-violating-city-law-in-work-with-fbis-joint-terrorism-task-force/Content?oid=2922163>; <http://www.sfexaminer.com/sf-cops-work-with-the-fbi-jointterrorism-task-force-prompts-citizen-complaint/>.

<sup>9</sup> Mr. German’s biography is available at <https://www.brennancenter.org/expert/mike-german>.

<sup>10</sup> San Francisco Administrative Code Section 2A.74(b) (emphasis added).

<sup>11</sup> See “California Attorney General’s Model Standards and Procedures for Maintaining Criminal



**enacted to reflect our values and priorities — rather than the federal government's was never more important that it will be under President Trump.**

### **WHAT WE NOW KNOW**

We appreciate the candor and openness of the SFPD and FBI during our recent discussions.<sup>12</sup> This collaborative approach has allowed us all to much more clearly understand the nature of past compliance problems with the Ordinance and work together towards practical solutions that are now so very urgently needed given the possible intentions of the Trump administration. For your convenience, we have provided a summary of the major, recent developments in this issue.

- **JTTF STAFFING:** In preparation for the Super Bowl in 2016, SFPD doubled the number of officers it assigned full-time to the JTTF from one to two. That expanded staffing continues.
- **UNCONTESTED TRAINING FAILURES:** In its annual compliance reports, SFPD has consistently claimed that officers assigned to the JTTF are “trained to be intimately familiar with the guidelines and restrictions contained in DGO 8.10, Bureau Order 2011-07, and the Ordinance.”<sup>13</sup> The reports have also claimed that “[t]he FBI understands the restrictions placed on members of the SFPD and they have been cooperative in efforts to ensure the officers assigned to the JTTF adhere to SFPD policy;” they have additionally stated that “[t]he FBI has not placed SFPD members in any position at risk of any policy violations.”<sup>14</sup> Those statements and assumptions are now demonstrably false:

- **OCC Finding:** On August 12th, the OCC ruled that a “training failure” had occurred in our complaint (#168-15) about an SFPD JTTF officer’s failure to comply with DGO 8.10 and the Ordinance when seeking to interview a Google employee after showing up unannounced at his workplace. Specifically, according to the OCC: the officer “stated that although the investigation *did* contain elements of First Amendment activity, that was not the reason for the investigation;” the “officer was unaware that any time his investigation *involves* any element of First Amendment activity, he must first obtain SFPD supervisory approval for the activity, which must be justified and documented;” and “**the evidence proved that the actions complained of were the result of inadequate or inappropriate training[,] or an absence of training when viewed in light of Departmental policy and procedure.**”<sup>15</sup>
- **SFPD’s Current JTTF Training Materials:** In response to our request for the training materials used to educate SID officers assigned to the JTTF about the key differences between stricter local legal and policy obligations and the far broader standards used by the FBI, the SFPD informed us that *no specialized materials existed*. The materials used to train JTTF officers merely consists of unannotated copies of the text of the Ordinance and some Departmental orders, as well as a very old, brief, simple training video, which was apparently created well before the SFPD joined the JTTF. The video is a simple roll call training approach aimed at patrol

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Intelligence Files and Criminal Intelligence Operational Activities,” Nov. 2007.

<sup>12</sup> We especially thank former Chief Suhr, Acting Chief Chaplin, Deputy Chief Redmond, Commander McEachern, and Lieutenant O’Connor for the time they have devoted to this topic this past year.

<sup>13</sup> See e.g. 2015 SFPD “Annual Report on Involvement in the FBI Joint Terrorism Task Force.” See also 2012 SFPD Annual Compliance report: “Each of the officers assigned to the JTTF have received training in the SFPD’s Guidelines for First Amendment Activities, DGO 8.10, ...[t]hese officers are intimately familiar with these department policies.”

<sup>14</sup> See 2015 SFPD JTTF report.

<sup>15</sup> OCC Complaint Summary (“openness”) Report at 3, Aug. 12, 2016 (emphasis added).



officers reminding them, per DGO 8.10, to notify SID if they come across evidence of religiously- or politically-motivated hate crime activity.<sup>16</sup> SFPD now recognizes the need for more detailed training about when DGO 8.10 applies, how it should be used to properly document and authorize investigative activity in JTTF contexts, and how local regulations differ from the FBI's standards.

- **The FBI's Understanding of the Ordinance:** When Mr. Crew met with the FBI on December 14<sup>th</sup>, he asked ASAC Fair for his understanding of the major differences between local San Francisco laws and policies and the broader standards of the FBI. ASAC Fair replied initially that he was not aware of any, but after Mr. Crew walked him through DGO 8.10, ASAC Fair readily acknowledged the various differences. They have had subsequent conversations involving, in part, discussion of various hypothetical scenarios to illustrate how the DGO 8.10 **"involves First Amendment activity"** standard must be applied; how it guides officers to properly investigate terrorism concerns if reasonable suspicion is present and simple supervisory approvals are obtained and retained; and how the FBI's simple ban on targeting groups or individuals based **"solely" on their First Amendment activity** is far more permissive in terms of intelligence gathering activities than SFPD standards. ASAC Fair reported that, now that these policy differences have been understood, there are discussions taking place internally within the local FBI office, as well as at the deputy director level at FBI headquarters. ASAC Fair stated that he understands both the urgency of the community's concerns given Mr. Trump's looming inauguration and the great frustration that these basic differences were not fully understood and incorporated into local JTTF supervision of SFPD officers years ago when the Ordinance was enacted.<sup>17</sup>
- **FAILURE TO CREATE AND RETAIN WRITTEN AUTHORIZATIONS:** For years, we have been told that DGO 8.10 written authorizations in the JTTF context did not exist because the SFPD was not participating in activities that require such authorizations. We have repeatedly taken issue with those unlikely statements. Given the full-time assignment of SFPD officers to the JTTF, and given that terrorism, by its nature, involves politically- and religiously-motivated activity, it was simply not credible to think *none* of the SFPD's work for the FBI had "involved" First Amendment activities. The SFPD's prior explanation for this has been that if DGO 8.10 was potentially implicated, the FBI either did not assign SFPD JTTF officers to those assignments or the officers did not accept those assignments. **We now know that this was based on a fundamental failure on the SFPD's and FBI's part to correctly apply the "involves First Amendment activity" standard**, as shown by the OCC finding, the FBI's recent statements, and the SFPD's recent acknowledgments that the training needs to be improved (*supra*). While we all remain committed to trying to fix the problem going forward, it is important to recognize that **this misunderstanding and misapplication has likely led to dozens of violations of the Ordinance and DGO 8.10 in recent years**. While our OCC complaint is a clear and unequivocal example of such a violation, there is additional information that the Commission will no doubt be interested in:

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<sup>16</sup> The video depicted an explosive device left outside a synagogue combined with anti-Semitic writings, suggesting a connection to a politically-motivated hate group. It was not aimed at SID's obligations under DGO 8.10 to document the "reasonable suspicion" and supervisory approvals for the investigative activity that would follow.

<sup>17</sup> Mr. Crew reports that he strongly encouraged the FBI to attend the upcoming Police Commission hearing on the 2016 compliance report since their failure to do so in prior years – notwithstanding invitations from SFPD – sends a message that fixing these problems is not a concern for the FBI. ASAC Fair promised to think about it.



- The 2015 SFPD compliance report revealed that in that year alone, “SFPD members detailed to the JTTF were assigned a combined total of thirty-five cases from tips -- either from the phone line, private sector partners or other law enforcement agencies.” It went on to state that all tips submitted to the FBI with a credible nexus to terrorism are forwarded to the JTTF for further action. Again, given the nature of terrorism investigations, it is simply not credible to assert that none of these 35 cases involved First Amendment activity.
- The “nexus” referred to in the FBI’s standards is a theoretical connection requiring “no particular factual predicate,” meaning no facts indicating any wrongdoing whatsoever.<sup>18</sup> This is well short of the “reasonable suspicion” standard required by DGO 8.10 whenever any SFPD activity – including JTTF activity – “involves” First Amendment information. On his own, **ASAC Fair volunteered that nearly everything the FBI JTTFs do “involves” (but does not target) First Amendment information**, given the role of political and religious motives for crimes of terrorism.
- The “cases” or investigations handled by the FBI are broken down into three categories by their Guidelines: assessments, preliminary investigations, and full investigations. According to ASAC Fair, San Francisco’s JTTF handles about 1,000 assessments each year. They nearly always involve voluntary interviews of the type attempted with the Google employee in our complaint. These assessments are tips and other information that the FBI feels are worth looking into, but which are nearly always closed without action beyond entering whatever information is obtained into federal intelligence databases. In addition to interviews, the FBI Guidelines (contrary to local standards) permit these assessments to include the use of surveillance, informants, and other intrusive techniques — all in the absence of “reasonable suspicion” of criminal activity. Part of what SFPD officers — and other local officers — do for the FBI in the JTTF is handle many of these assessments, presumably at least dozens of them each year by SFPD personnel.
- Per ASAC Fair’s statement that nearly all of the JTTF’s investigative activity “involves” First Amendment information (and therefore implicates DGO 8.10), SFPD officers can legally **only** handle JTTF matters that involve reasonable suspicion of criminal activity; these must be approved by written SFPD supervisory authorizations, retained by the SFPD, and subjected to the annual OCC audit and oversight by the Commission. Instead, the SFPD has seemingly been handling tips and other assessments that very likely lack reasonable suspicion. Moreover, they have done so without ever obtaining the required written authorizations, which is a clear violation of local law.
- Like the best practices models upon which it was based, DGO 8.10’s various components are designed to work in concert with one another: the “reasonable suspicion” investigative standard is reinforced by the “pause and think” need (absent an emergency) to briefly articulate that suspicion in writing; that, in turn, serves to facilitate active supervision in this sensitive area by requiring written approvals from SFPD supervisors; these written approvals then facilitate routine audits and oversight that can help spot any problems and boost public confidence in the SFPD’s activities. The policy fails if officers do not understand it and follow it due to a lack of training.

<sup>18</sup> See e.g. Berman, Emily, “FBI: Fact or Fiction?,” July 27, 2011, available at <https://www.brennancenter.org/analysis/fbi-fact-or-fiction>.



- **SANCTUARY ORDINANCE:** Mr. German recently provided us with a document that details the FBI's "Baseline Collection Plan," which seeks to standardize the information collected during JTTF and other counterterrorism assessments and investigations.<sup>19</sup> It is also intended to "establish a foundation of intelligence upon which the FBI may base the decision to continue or close an Assessment or investigation."<sup>20</sup> Inter alia, **this document instructs JTTF officers to use federal databases to inquire about the "US person status" (citizenship or legal residency) of all people who are the subject of an "assessment,"** even if it is based on nothing more than a tip. This information is recorded in the case files and in federal databases accessible to, among others, Immigration and Customs Enforcement ("ICE") and other Department of Homeland Security agencies. ASAC Fair could not confirm whether an updated Baseline Collection Plan has been promulgated since 2009, but **he did not dispute that this sort of information is sought and retained in federal databases as a result of JTTF-conducted assessments.**
  - **This standard JTTF activity, if performed for the FBI by SFPD officers, violates the intent of the San Francisco City and County of Refuge law, and directly violates SFPD's Department General Order 5.15, which states that SFPD officers "shall not inquire into an individual's immigration status or release or threaten to release information to [ICE] regarding an individual's identity or immigration status."**<sup>21</sup> It does not matter if that information is sought from federal databases or from individuals. It does not matter if the SFPD officer makes use of the information during the JTTF assessment or investigation. The outcome of the search (whether a person is found to be with or without legal status) is irrelevant. **SFPD's own policy prohibits the inquiry from being made at all.** If the person is undocumented, a new record will have been created in a federal database identifying him or her as such for the first time. SFPD should not participate in that activity.
  - We have not yet had an opportunity to share or discuss this new information with SFPD command staff. Given the threats posed to immigrants by the Trump administration, it is critical that SFPD become fully disentangled from this sort of activity in the JTTFs immediately.

## THE COLLABORATIVE PATH FORWARD

We greatly appreciate the SFPD's shared commitment to addressing these issues as quickly and effectively as possible. Our joint plan had been to work collaboratively on new training for SID (including JTTF) officers, to be conducted in the very near future, but in any event in advance of Inauguration Day. We temporarily put those efforts on hold to allow Mr. Crew and ASAC Fair to meet, in case anything gleaned during those sessions might improve the quality and specificity of the training. Understanding the urgency, ASAC Fair has committed to trying to get answers from FBI headquarters as soon as he can, while freely acknowledging the FBI sometimes moves more slowly than he would prefer. He has been providing regular updates on his efforts to Mr. Crew, and his last commitment was to try to get an FBI conference call scheduled no later than January 6<sup>th</sup>, with the hope that decisions would be made and could be communicated immediately thereafter. However, given the passage of time and threats posed by Mr. Trump, our view is that we should wait no longer,

<sup>19</sup> "Counterterrorism Program Guidance Baseline Collection Plan: Administrative and Operational Guidance," Sept. 24, 2009, available at <https://www.aclu.org/files/fbimappingfoia/20111019/ACLURM004887.pdf>.

<sup>20</sup> *Id.* at 3, Category A.2.

<sup>21</sup> San Francisco Administrative Code Sec. 12.H.2; San Francisco Police Department General Order 5.15, Enforcement of Immigration Laws.



especially since the SFPD's obligations under the Ordinance will be unaffected by whatever the FBI decides. We therefore suggest the following:

- **TRAINING:** We hope to reconvene with SFPD command staff as soon as possible and carry out our mutual plan to train all SID officers, with special emphasis placed on the need for SFPD's JTTF officers to recognize the conflicts between FBI standards and various local legal and policy obligations. The training will address the Ordinance, DGO 8.10, the stronger local prohibition against Bias-Based Policing in DGO 5.17, and sanctuary obligations. Samara Marion has been assigned by the OCC to follow-up on their "training failure" finding on our complaint. We are keeping her posted on our progress and look forward to her assistance in developing an effective training.
- **WRITTEN AUTHORIZATIONS:** The SFPD and FBI now recognize these authorizations have been and will continue to be necessary, per DGO 8.10, in any JTTF activities involving First Amendment information which, per ASAC Fair, will include the vast majority of their investigative activities. The FBI is concerned about the release of classified information, but much of what the FBI JTTF does during assessments – like trying to conduct an interview in the public lobby of a Google office building – is not classified. In any event, we believe that in all situations, a brief description of the factual basis for the "reasonable suspicion" can be provided in a written authorization (which is kept confidential by SFPD) without revealing any classified information. If that is not possible for any reason, then the Ordinance is clear – our officers may not participate in that activity. During their meeting, Mr. Crew pointed out to ASAC Fair that the FBI's Memorandum of Understanding ("MOU") with the SFPD prohibits the unauthorized release of classified information, but **permits** FBI supervisors to authorize appropriate and necessary sharing of **non-classified** information with local JTTF agency partners, such as the SFPD.<sup>22</sup> As we understand it, among the options the FBI is discussing is whether or not to provide that sort of approval for SFPD under the existing MOU or to possibly modify the MOU. Rather than wait any further, we believe a template for the authorizations can be created, with sample information inserted to illustrate what is necessary to comply with DGO 8.10. **In any event, SFPD JTTF activities involving First Amendment information cannot continue without those authorizations.**
- **SANCTUARY ORDINANCE:** Given the FBI's Baseline Operation Plan, SFPD JTTF officers should be immediately instructed to not participate in US person status checks for citizenship or residency status. Moreover, if any SFPD officer participates in an assessment or investigation where other JTTF squad members learn of the undocumented status of someone, we believe the spirit of the City and County of Refuge Ordinance demands that the SFPD JTTF officer immediately recuse him- or herself from further participation, since their investigative work product will lead to the creation of records in a federal database that could be of assistance in attempted deportations of individuals. Given the special dangers now involved, we trust you will agree that erring on the side of caution and preventing unintentional aid to the Trump administration's efforts to target undocumented immigrants is the position most reflective of San Francisco's values and priorities.
- **OCC AUDIT:** The required DGO 8.10 audit for 2016 will be conducted soon by the OCC. DGO 8.10 requires the OCC to do more than simply peer into the "DGO 8.10 book" and report if any authorizations are present. In the event of any violations, section VI.C.2.h. requires that their audit report specifically address a number of additional factors. In addition

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<sup>22</sup> "Joint Terrorism Task Force Standard Memorandum of Understanding Between the Federal Bureau of Investigation and the San Francisco Police Department," signed 2006/2007, available at <https://www.brennancenter.org/sites/default/files/analysis/SFPD%20MOU-JTTF.pdf>.



to the policy violation inherent in their “training failure” finding on our complaint, this letter has detailed a number of other apparent violations. We would be happy to discuss these issues with OCC staff before they complete their report and prepare their own required recommendations.

- **VIOLATIONS PROTOCOL:** In similar fashion, Section VII of DGO 8.10 details a number of obligations the Chief and Commission must undertake if they “become aware of information that a possible violation of these guidelines has occurred.” Our organizations remain focused on finally fixing these problems so they are not repeated, but note the policy’s intent to fully document past mistakes.
- **2016 ANNUAL JTTF ORDINANCE COMPLIANCE REPORT:** The SFPD’s JTTF report is due by January 31, 2017, and must, in addition to reporting on its JTTF work this past year, address “any issues related to compliance” with the Ordinance. For the sake of efficiency, one approach to the reporting obligation on compliance issues would be to simply attach this letter with any updates or commentary from the SFPD’s perspective. We also encourage the Commission to echo the invitations from the SFPD the last several years and independently invite the FBI to attend the hearing on this year’s report once it is scheduled. The FBI’s response – or lack thereof – to a Commission invitation would be an important early indicator of their commitment to addressing our communities’ concerns.

## **CLOSING**

Our organizations – and the thousands of community members we serve – have spent years and countless hours working with community organizations, public officials, and the SFPD to ensure the protections guaranteed by a community-sponsored and SFPD-endorsed ordinance enacted almost five years ago would actually be fully respected in the SFPD’s JTTF work with the FBI. It has been a long and very frustrating process, but we are finally encouraged by the recent signs of progress in the face of the unprecedented threats from the Trump administration that we all fully recognize, and which Mayor Lee and the entire San Francisco government has thoughtfully expressed at numerous public events. We have brought these concerns to this Commission year after year and followed through on them in the exact manners you requested. Those efforts have now fully clarified the issues, defined the problems, and revealed the obvious and necessary solutions. We now look forward to your active support of the solutions we have collaboratively crafted.

Please do not hesitate to let us know if you have any questions or concerns. We look forward to the Commission’s session on these topics in the weeks ahead.

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: Mayor Ed Lee  
Members, Board of Supervisors  
Members, Human Rights Commission  
Acting Chief Toney Chaplin  
Deputy Chief Michael Redmond



Commander Greg McEachern  
Lieutenant Dave O'Connor, SID  
FBI Assistant Special Agent in Charge Craig Fair  
OCC Director Joyce Hicks  
OCC Policy Analyst Samara Marion  
Michael German, Brennan Center for Justice's Liberty and National Security Program  
John Crew