

No. A165040

**IN THE COURT OF APPEAL FOR THE STATE OF
CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR**

HOPE WILLIAMS, NATHAN SHEARD, AND NESTOR REYES,
Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO,
Defendant and Appellee,

Appeal from the Superior Court for the County of San Francisco
The Honorable Richard B. Ulmer, Jr., Presiding Judge
Case No. CGC-20-587008

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE
BRIEF – ASIAN LAW CAUCUS AND BLACK MOVEMENT-
LAW PROJECT, *ET AL.* IN SUPPORT OF PLAINTIFFS-
APPELLANTS**

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APPLICATION

Pursuant to Rule 8.200, subdivision (c) of the California Rules of Court, proposed amici curiae Asian Americans Advancing Justice – Asian Law Caucus (“ALC”) and Black Movement-Law Project (“BMLP”) respectfully seek the Court’s permission to file the attached brief in support of Appellants Hope Williams, Nathan Sheard and Nestor Reyes. The legal controversy in this case cannot be appropriately resolved without understanding the San Francisco Police Department’s long history of targeting San Francisco’s most vulnerable and marginalized communities for discriminatory surveillance and harassment. The proposed brief respectfully urges this Court to reverse the trial court’s ruling in light of this history.

I. INTERESTS OF AMICI CURIAE

ALC is a nonprofit civil rights organization committed to the pursuit of justice, with a focus on serving low-income, immigrant, and underserved Asian American, Pacific Islander, Arab, Middle Eastern, Muslim and South Asian communities. ALC has challenged police overreach and surveillance targeting marginalized communities in San Francisco since its founding, including litigating *Chann v. Scott*, a class action lawsuit against the SFPD on behalf of young Asian Americans who were routinely singled out in police sweeps in San Francisco, its work in coalition to sever the SFPD’s relationship with the FBI’s Joint Terrorism Task Force, and its continued efforts to curb the SFPD’s expanding authority to conduct increasingly unchecked surveillance on San Franciscans.

BMLP is a legal educational organization with experience providing legal support throughout the country in support of communities uprising and demonstrating against policing and systemic racism. BMLP's work includes legal observation, digital security, and Know Your Rights trainings, as well as emergency infrastructure such as jail support. BMLP helps individuals and organizations understand the threats posed by the legal system while helping them exercise their rights.

Additional amici joining this brief are listed in the Appendix. They are civil rights, advocacy, and grassroots organizations committed to challenging discriminatory policing policies and practices that harm and impact marginalized communities. Many of them have represented or advocated for communities and individuals injured by the SFPD's abusive conduct. Amici therefore have a direct interest in ensuring that the SFPD is subject to appropriate oversight measures and accountable to the people of San Francisco.

II. PURPOSE OF AMICI CURIAE BRIEF

ALC, BMLP and additional amici submit this proposed amici curiae brief because they believe documenting and contextualizing the SFPD's historical and ongoing patterns of discriminatory targeting of San Francisco's marginalized communities is critical to this Court's review of the superior court's decision. As civil rights, advocacy and grassroots organizations, amici have a direct interest in the outcome of this case. Many of them have represented communities and individuals harmed by the SFPD's abusive practices and

advocated for accountability and oversight measures governing the department. This brief sets forth the broader context within which and why San Francisco’s Acquisition of Surveillance Technology Ordinance, passed in 2019, was passed, and why it is critical to past and continuing calls for public oversight of the SFPD.

III. CONCLUSION

For the foregoing reasons, Amici respectfully request that the Court grant this application and accept the attached brief for filing and consideration.

Dated: January 20, 2023

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**CERTIFICATE OF COMPLIANCE PURSUANT TO
CALIFORNIA RULES OF COURT RULE 8.200(c)(3)**

Pursuant to California Rules of Court, Rule 8.200(c)(3)(A), I certify that no party or counsel for any party authored the proposed brief in whole or in part or made any monetary contributions intended to fund the preparation or submission of the brief. I further certify under California Rules of Court, Rule 8.200(c)(3)(B) that no person or entity other than Amici, their members, and their counsel made any monetary contribution intended to fund the preparation or submission of the brief.

Dated: January 20, 2023

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I. SUMMARY OF THE ARGUMENT

The San Francisco Police Department has disproportionately targeted San Francisco's marginalized, immigrant, and minority groups for surveillance and harassment throughout much of its history. Beginning in the 1800s, San Francisco's police established the Chinatown Squad, a specialized force created specifically to police the city's Chinese communities. With the onset of World War II, the SFPD helped carry out the federal government's incarceration of Japanese Americans. In the post-war era, the SFPD violently policed the city's Black communities and monitored and harassed its burgeoning LGBTQ communities, leading to some of San Francisco's most infamous incidents of police violence. Even after calls for—and city responses to—public accountability for SFPD's actions, the department has persisted in violating its own policies, such as those set forth in Department General Order 8.10, as it targeted Arab American and anti-apartheid organizations and, after 9/11, San Francisco's Arab, Middle Eastern, Muslim and South Asian communities.

The SFPD's long and checkered history reveals one truth: the institution and its officers must be subject to rigorous public oversight and accountability. Time and again, the SFPD has continued to engage tactics that have violated the rights of the very communities its officers vow to protect. Instead, despite a cycle of high-profile incidents revealing policing practices that have persistently broken the law (and the SFPD's own policies), the institution has repeatedly failed to hold itself and its officers to account. As a result, marginalized communities have not just

lost trust and confidence in the SFPD; rather, these communities have come to resent and fear it. Public distrust will only deepen, however, if Defendant's position is accepted. Such an outcome would risk rendering the hard-fought public measures the city has enacted meaningless. Amici therefore respectfully ask the Court to reverse the superior court's grant of Defendant-Appellee's motion for summary judgment, and remand with instructions to the superior court to grant summary judgment to Plaintiffs-Appellants.

II. ARGUMENT

A. The Late 19th Century Through WWII: Criminalization and Surveillance of San Francisco's Chinese and Japanese Residents

1. SFPD's "Chinatown Squad"

Numerous historical records show how the SFPD targeted minority Chinese communities in San Francisco as early as the late 1800s, subjecting them to invasive and discriminatory policies and law enforcement operations based primarily, if not solely, on their ethnicity and national origin. The SFPD employed these practices amidst a backdrop of pervasive and vehement anti-Chinese and general anti-Asian prejudice across the country, but which was particularly intense on the West Coast.¹

¹ COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED: PART I: NISEI AND ISSEI 29 (1982), [hereinafter Personal Justice Denied] <https://www.archives.gov/files/research/japanese-americans/justice-denied/chapter-1.pdf>.

San Francisco city officials like the clerk to San Francisco’s Chief of Police publicly stated in 1878, for instance, in testimony before a state Senate Special Committee on Chinese Immigration that, “the effect of this large criminal population is very injurious on the morals of the community.”² Such statements indicated that the city’s public officials and law enforcement agencies regarded Chinese immigrants as criminally predisposed and constituting a moral threat to the city.

As part of its decision to focus its policing resources on Chinese communities in San Francisco and, specifically, those residing in the Chinatown area, the SFPD established the “Chinatown Squad.”³ Its mandate was to “correct the glaring evils long existing in Chinatown,”⁴ with the Squad constituting the first-ever specialized police force created for the purpose of combating “ethnic crime” in the United States.⁵

The Chinatown Squad was well known for its “harsh and often illegal tactics.”⁶ In 1891, a Squad leader told SFPD’s Chief that it would be necessary to “go beyond our present laws” to

² CAL. STATE SEN. SPECIAL COMM. ON CHINESE IMMIGR., CHINESE IMMIGRATION: ITS SOCIAL, MORAL, AND POLITICAL EFFECT: REPORT TO THE CALIFORNIA STATE SENATE 135 (1878), <https://id.lib.harvard.edu/curiosity/immigration-to-the-united-states-1789-1930/39-990042964360203941>.

³ KEVIN J. MULLEN, CHINATOWN SQUAD: POLICING THE DRAGON FROM THE GOLD RUSH TO THE 21ST CENTURY 6 (2008).

⁴ *Id.* at 55.

⁵ *Id.* at 6.

⁶ Gary Kamiya, *When SF Police Broke the Law to Combat Chinatown’s Violent Gangs*, S.F. CHRON. (Dec. 14, 2019), https://www.sfchronicle.com/chronicle_vault/article/When-SF-police-broke-the-law-to-combat-14904377.php.

address alleged criminal enterprises the SFPD believed were operating in Chinatown at the time.⁷ Specifically, the Squad proposed “violent raids” on all “tongs,”⁸ which originated as halls or meeting places for “benevolent protective associations” established by Chinese immigrants in the 19th century, especially in cities like San Francisco and Los Angeles, and which continue to this day.⁹ However, the term later came to be associated “by the white population in the 1880s . . . to refer to the secret societies or fraternal organizations that were involved in illegal activities, such as opium trade or gambling.”¹⁰ The Chief of Police approved this unlawful plan,¹¹ and the Squad’s officers were soon raiding 20 to 30 tongs a day, mainly because they were gathering places for mostly male and Chinese immigrants.¹²

Some of the more infamous raids occurred during Chinatown’s annual Chinese New Year celebrations in 1894,¹³ involving a force of some 100 officers. SFPD’s Chinatown Squad raided at least thirty homes and premises it had identified as associated with suspected Chinatown vice.¹⁴ They mercilessly broke apart furniture, pushing Chinese residents down stairwells and onto streets in massive numbers.¹⁵ One Squad officer recalled

⁷ MULLEN *supra* note 3 at 55.

⁸ *Id.*

⁹ The Editors of Encyclopaedia, *Tong War*, ENCYC. BRITANNICA, Apr. 22, 2021, <https://www.britannica.com/topic/tong-war>.

¹⁰ *Id.*

¹¹ Kamiya, *supra* note 6.

¹² MULLEN, *supra* note 3 at 54.

¹³ *Id.* at 87.

¹⁴ *Id.* at 91.

¹⁵ *Id.*

how they planned the raids, stating, “I got 16 men in uniform and a surgeon and supplied them all with axes . . . we marched from one to another of these societies and literally cut them to pieces; did not leave a piece of furniture five inches long in one of them.”¹⁶ The Squad’s “rough tactics outraged some Chinatown residents,” with the Chinese consul protesting “that police had made mistakes and stormed innocent people’s homes and businesses.”¹⁷ Later, it was revealed that, of the 60 suspected gambling and vice premises the Squad had raided in a campaign that year, 33 were not, in fact, gambling dens at all.¹⁸ Still, the SFPD violently destroyed those lawful Chinese immigrant-owned establishments, and it continued such raids with impunity and varying frequency until the 1920s.¹⁹

The city of San Francisco also subjected residents of Chinatown to surveillance and monitoring through an extensive, two-decade long mapping project.²⁰ As part of this project, surveyors visited “every floor and every room in Chinatown,”²¹ documenting the “conditions of occupancy of every room,” including the number of inhabitants, sanitary conditions, and the function of each room, replete with minute details like the entrances, exits, dimensions, and number of floors of every

¹⁶ Kamiya, *supra* note 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NAYAN SHAH, *CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO’S CHINATOWN* 37-38 (2001).

²¹ *Id.*

property surveyed.²² From the outset, the maps were used by city officials and law enforcement to make the perceived “impenetrable” geography of Chinatown more accessible and intelligible.²³

These surveillance efforts culminated in 1885 in the “Official Map of ‘Chinatown’ in San Francisco,” which colloquially came to be referred to as the “Vice Map of Chinatown.”²⁴ The color-coded map identified purported vice across Chinatown, with designations for “General Chinese Occupancy,” “Chinese Gambling Houses,” “Chinese Opium Resorts,” “Chinese Joss Houses,” and “Chinese Prostitution.”²⁵ The map also identified businesses by the race of the owners, with those that were owned by whites marked separately, such as distinguishing between “White Prostitution” and “Chinese Prostitution, apparently so police would know not to disturb the criminal activity at the white establishments.²⁶

While records documenting the use and impacts of such a map are scarce, historians believe San Francisco city and law enforcement officials used such a map to target specific Chinatown locations for discriminatory surveillance. As Nayan Shah writes, “[t]he map and inventories were the products and tools of extensive surveillance, but they also ensured that more intensive surveillance would occur in the future.”²⁷ Ultimately,

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

the map served to justify San Francisco city and law enforcement officials' perceived "lawlessness" of the city's Chinese residents.²⁸

The SFPD's targeting of Chinese communities foreshadowed how the agency would police San Francisco for decades to come. San Francisco police's targeting and abuse of people of Asian descent would only intensify at the turn of the century, as it helped carry out the internment of Japanese Americans with the onset of America's involvement in World War II.

2. SFPD and the Incarceration of Japanese Americans During World War II

In response to Japan's attack on Pearl Harbor, President Roosevelt issued Executive Order 9066,²⁹ directing the evacuation of "all persons deemed a threat from the West Coast" to so-called "relocation centers" further inland.³⁰ The order came amidst a growing "rash of fear about national security, especially on the West Coast,"³¹ and rising anti-Japanese sentiment across the country. As the Report of the Commission on Wartime Relocation and Internment of Civilians notes, Pearl Harbor "rekindled the fears and prejudices of long years of anti-Asian agitation"³² Such hostility was particularly intense on the West Coast, where "[l]aws which prohibited the ownership of

²⁸ *Id.*

²⁹ Exec. Order No. 9066, 7 Fed. Reg. 1,407 (Feb. 25, 1942).

³⁰ *Japanese-American Incarceration During World War II*, NAT'L ARCHIVES, <https://www.archives.gov/education/lessons/japanese-relocation>.

³¹ *Id.*

³² Personal Justice Denied *supra* note 1 at 28.

land by Japanese resident aliens and imposed segregation in the schools” were pervasive.³³ Ultimately, fear of economic competition, combined with differences of language and culture, enflamed public animus, leaving Japanese Americans on the West Coast “isolated – a ready target at a time of fear and anxiety.”³⁴

While the federal government had identified and surveilled German, Italian and Japanese “suspected enemy aliens” throughout the West Coast,³⁵ curfews announced under the Order’s authority applied only to Japanese Americans,³⁶ and only those of Japanese descent were forced to leave their homes and endure incarceration for the duration of the war. In the end, Roosevelt’s order was employed to exclude all persons of Japanese descent, whether noncitizens, numbering around 52,000 nationwide, or citizens, numbering nearly 70,000.³⁷ Infamously, neither curfews nor internment were based on any particularized suspicion of wrongdoing. They were based only on people’s Japanese heritage.³⁸

In San Francisco, the SFPD played a major role in forcibly removing from their homes more than 5,000 Japanese-

³³ *Id.*

³⁴ *Id.*

³⁵ *Executive Order 9066: 02/19/1942*, DOCSTEACH, <https://www.docsteach.org/documents/document/executive-order-9066>.

³⁶ *Id.*

³⁷ *Id.* (Approximating that 122,000 Japanese-Americans were forcibly removed and incarcerated at internment camps, nearly 70,000 of which were American citizens).

³⁸ *Id.*

Americans.³⁹ Even before any orders directing the incarceration of Japanese-Americans were issued, the SFPD helped enforce a military directive requiring “San Francisco citizens of Japanese ancestry to surrender their cameras and short-wave radios to the nearest police station.”⁴⁰ After the military ordered the complete evacuation of Japanese-Americans, San Francisco police officers collaborated with the FBI in “in raiding the homes and businesses of Japanese Americans, the arrest of Japanese American community leaders, and assisted in the round-up of over 5,000 Japanese Americans residing in San Francisco.”⁴¹ These operations rounded up Japanese-American residents across the region for their forcible transportation to internment camps.⁴² Numerous SFPD stations served as assembly places for those awaiting relocation.⁴³ City and business leaders declared

³⁹ Peter Hartlaub, *Life and Death: Anti-Japanese Order Devastated SF Citizens*, S.F. CHRON., Jan. 2, 2018, <https://www.sfchronicle.com/oursf/article/Life-and-death-Anti-Japanese-order-devastated-10954192.php>.

⁴⁰ *Id.*; see also *FBI Rounds Up More Japanese: Aliens to be Sent to Owens Valley Center*, S.F. NEWS, Mar. 18, 1942, <https://www.sfmuseum.org/hist8/intern6.html> [hereinafter *FBI Rounds Up More Japanese*].

⁴¹ Resolution Commemorating the 80th Anniversary of Signing of Executive Order 9066 – Day of Remembrance – February 19, 2022, S.F. Bd. of Supervisors Resol. No. 63-22 (File No. 220153) [hereinafter *S.F. Resol. 63-22*]; see also *Hundreds of Japs Get Ouster Orders: Must Quit Banned S.F. Areas and Go to Manzanar*, S.F. NEWS, Apr. 2, 1942, <https://www.sfmuseum.org/hist8/sfevac.html> [hereinafter *Ouster Orders*].

⁴² *Ouster Orders*, *supra* note 41.

⁴³ Hartlaub, *supra* note 39; see also Cuneyt Dil, *California to Apologize for Internment of Japanese Americans*, SFGATE, Feb.

“Little Tokio” a “slum area” in an effort to physically clear out the Japanese residents living there.⁴⁴ Ultimately, local government and law enforcement agencies were extensively involved in what has since been considered a dark chapter in our nation’s history.

The experience of removal and forced incarceration based solely on ethnic and national origin was profoundly “humiliating and disorienting” for the over 120,000 American citizens and residents of Japanese descent.⁴⁵ John Tateishi, a UC Berkeley graduate who later taught at the City College of San Francisco, remembers leaving the Manzanar camp as a child “with a sense of shame and guilt, of having been considered betrayers of our country.”⁴⁶ Donna Nagata, professor of psychology at the University of Michigan, writes that those who were incarcerated were “sad and angry about the injustice,” carrying long term effects like “feelings of low self-esteem, the pressure to

18, 2020, <https://www.sfgate.com/news/article/japanese-american-internment-camps-executive-order-15064855.php#photo-12402486> (documenting June 1942 photograph of “[a] San Francisco family of Japanese descent wait[ing] near the SFPD Northern Station, before heading to a U.S. internment camp during World War II”).

⁴⁴ *Internment of San Francisco Japanese*, THE MUSEUM OF THE CITY OF S.F., <https://www.sfmuseum.org/war/evactxt.html>.

⁴⁵ Bilal Qureshi, *From Wrong to Right: A U.S. Apology for Japanese Internment*, NAT’L PUB. RADIO, Aug. 9, 2013, <https://www.npr.org/sections/codeswitch/2013/08/09/210138278/japanese-internment-redress>.

⁴⁶ *Id.*

assimilate, [and experiencing] an accelerated loss of the Japanese culture and language” for the remainder of their lives.⁴⁷

The federal government has since offered a formal apology for what it described as “a grave injustice . . . motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership.”⁴⁸ California, too, formally apologized through a resolution passed only recently, in 2020.⁴⁹ And while the San Francisco Board of Supervisors unanimously passed a resolution in February 2022 that acknowledged the San Francisco city government’s “implicit support for and assistance in the mass incarceration of Japanese Americans,” the SFPD, by contrast, has never acknowledged, let alone apologized for, its role in uprooting and detaining San Franciscans of Japanese descent for internment.⁵⁰

⁴⁷ DONNA K. NAGATA, LEGACY OF INJUSTICE: EXPLORING THE CROSS-GENERATIONAL IMPACT OF THE JAPANESE AMERICAN INTERNMENT (Melvin J. Lerner & Riël Vermunt eds., 1993).

⁴⁸ 50 U.S.C. § 4202 (2022) (formerly classified to § 1989a of this title prior to editorial reclassification and renumbering) [hereinafter Civil Liberties Act].

⁴⁹ California Assem. Res. No. 77 (2019-2020 Reg. Sess.), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200HR77.

⁵⁰ *S.F. Board of Supervisors Commemorates 80th Anniversary of EO 9066*, RAFU SHIMPO, Feb. 18, 2022, <https://rafu.com/2022/02/s-f-board-of-supervisors-commemorates-80th-anniversary-of-eo-9066/>; S.F. Resol. 63-22 *supra* note 41.

B. The End of the 20th Century: Criminalization and Surveillance of LGBTQ Communities and Civil Rights and Anti-War Activists

1. SFPD's "Gang Task Force": The Evolution of the Chinatown Squad and Dragnet Arrests

Long after the egregious and widely condemned incarceration of Japanese Americans during World War II, the SFPD continued to mark entire communities for suspicionless policing. In the latter half of the 20th century, such targeting expanded beyond assuming criminal intent on the basis of ethnicity or national origin to marking for suspicion groups and others based primarily, if not solely, on group affiliation and political ideology.

The notorious Chinatown Squad, for example, continued in some form well into the late 20th century, rebranded as the more facially neutral "Gang Task Force" in 1977.⁵¹ Like the more explicitly named Chinatown Squad, however, the task force was still "focused on crimes committed by Asian gangs."⁵² Through the Gang Task Force, the SFPD continued to employ abusive and discriminatory tactics against San Francisco's Asian communities, especially targeting its youth. Among the Gang Task Force's most egregious practices was its consistent practice

⁵¹ MULLEN *supra* note 3 at 7.

⁵² Michael Barba, *Faced With Surge in Shootings, Chief Scott Reenvisioned SFPD's Gang Task Force*, S.F. EXAMINER, May 6, 2021, https://www.sfexaminer.com/archives/faced-with-surge-in-shootings-chief-scott-reenvisions-sfpd-s-gang-task-force/article_e2059171-0a93-5d9d-8918-f898140f32cc.html.

of dragnet arrests, where the Task Force would indiscriminately detain Asian males in Chinatown “without probable cause” and based “solely on skin color and ethnic features.”⁵³ In carrying out these dragnet operations, the Task Force targeted not just Chinese youth, but Korean, Japanese, and other Asian American youth across San Francisco, indicating its biased design and execution.⁵⁴

The SFPD’s dragnet operations in Chinatown were exposed in a class action lawsuit spurred by the 1972 arrest of Barry Chann, a 23-year-old freelance photographer and teacher from Piedmont.⁵⁵ Chann, who had never been arrested or involved with gangs, was walking in San Francisco’s Chinatown after 11:00 pm one night⁵⁶ when he was arrested in a dragnet sweep and manhandled by an SFPD Officer.⁵⁷ No charges were ever filed, and it appeared Chann had been detained simply because he was a young Chinese man walking inside an area of Chinatown that police had staked out for surveillance.⁵⁸ After filing suit for civil rights violations, Chann relayed his experience to a reporter, stating, “[t]hey roughed me up in front of a lot of people. I don’t know anything about [police reports of gang frictions] but I do know that there is a systematic policy of

⁵³ SAM CACAS, IN DEFENSE OF CIVIL RIGHTS: THE 40 YEAR HISTORY OF THE ASIAN LAW CAUCUS 31 (2012).

⁵⁴ *Id.* at 34-35.

⁵⁵ *Id.* at 31.

⁵⁶ *Id.* at 31-32.

⁵⁷ *Id.*

⁵⁸ *Id.* at 34-35.

harassing and intimidation.”⁵⁹ While the lawsuit was ultimately successful and helped end the SFPD’s discriminatory dragnet practices in Chinatown, the SFPD failed to end its institutionalized habit of profiling entire groups in the decades to come.

2. SFPD’s Targeting of San Francisco’s LGBTQ Communities

As the SFPD continued to target Chinese and other Asian communities for increased policing through unlawful methods, an influx of LGBTQ communities in San Francisco turned SFPD’s attention to policing on the basis of group affiliation and political ideology beyond the longstanding paradigm of ethnicity and national origin.

After World War II, San Francisco witnessed a rapid influx of gay communities, making post-war San Francisco home to one of the largest queer communities in the nation. Consequently, San Francisco became home to some of the nation’s earliest and most prominent LGBTQ organizations like the Daughters of Bilitis – the U.S.’s first lesbian rights– and many others like the Society for Individual Rights, the Council on Religion and the Homosexual, and the League for Civil Education.⁶⁰ Additionally,

⁵⁹ *Id.* at 32.

⁶⁰ *Making History, The Homophile Movement: A Shared Identity*, PHOENIX SOC’Y, <https://info.umkc.edu/makinghistory/the-homophile-movement/>. (displaying digital version of a museum exhibit); *see also LGBTQIA+ Studies: A Resource Guide, Before Stonewall, the Homophile Movement*, LIBR. OF CONG., <https://guides.loc.gov/lgbtq-studies/before-stonewall>.

gay bars and clubs quickly proliferated across storied San Francisco neighborhoods like North Beach and the Tenderloin following the 1951 California Supreme Court decision in *Stoumen v. Reilly*,⁶¹ which held that LGBTQ groups and individuals had the right to assemble.⁶² That case involved a well-known North Beach bar called Black Cat, where police and the state Board of Equalization alleged “persons of known homosexual tendencies patronized said premises and used said premises as a meeting place.”⁶³ Several police officers also testified “that many of the patrons of the Black Cat were homosexuals and that it was reputed to be a ‘hangout’ for such persons,” making clear the SFPD’s hostility towards gay residents and its efforts to police and regulate their activities.⁶⁴

Even after *Stoumen*, however, the SFPD continued to target San Francisco’s LGBTQ communities by marking gay bars and other LGBTQ gathering places for regular harassment and surveillance.⁶⁵ One tactic the SFPD used was to train young, plainclothes officers to infiltrate gay bars, bathhouses, and other

⁶¹ *Stoumen v. Reilly*, 234 P.2d 969 (1951).

⁶² Gary Kamiya, *1961 Police Raid Pivotal for Gay Rights in S.F.*, SF GATE, June 21, 2013, <https://www.sfgate.com/bayarea/article/1961-police-raid-pivotal-for-gay-rights-in-S-F-4615713.php>.

⁶³ *Stoumen v. Reilly*, 234 P.2d 969, 970 (1951).

⁶⁴ *Id.*

⁶⁵ *See generally*, J. TODD. ORMSBEE, *THE MEANING OF GAY: INTERACTION, PUBLICITY, AND COMMUNITY AMONG HOMOSEXUAL MEN IN 1960S SAN FRANCISCO* (2010).

places where gay men in particular congregated,⁶⁶ lure patrons suspected of being homosexuals into accepting the officer's advances, and if the patrons accepted, to arrest them.⁶⁷

The SFPD also conducted raids on establishments where gay men gathered, with little to justify the raids other than the fact that the police knew that gay men congregated there. One such raid was conducted on September 14, 1961, when SFPD officers raided the Tay-Bush Inn, packed with over 240 patrons.⁶⁸ At 3:15 am, "three undercover police officers in the bar gave a prearranged signal, the jukebox went silent, [and] a loudspeaker outside blared."⁶⁹ Uniformed officers then surged in, herding the patrons onto the sidewalk and arresting them.⁷⁰ In total, they arrested 103 men, many of them students.⁷¹ Of the 103, 89 were accused of "dancing together and kissing,"⁷² and most were booked as "visitors to a disorderly house."⁷³ Charges were eventually dropped against all but two.⁷⁴

Another raid was that of a 1965 New Year's Eve ball at California Hall, put on by the Council on Religion and the Homosexual (CRH), an organization formed "to increase

⁶⁶ Christopher Agee, *Gayola: Police Professionalization and the Politics of San Francisco's Gay Bars, 1950-1968*, 15.3 J. HIST. SEXUALITY 462, 479 (2006).

⁶⁷ ORMSBEE *supra* note 65 at 22.

⁶⁸ Kamiya, *supra* note 62.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

discussion between clergy and homosexuals.”⁷⁵ To monitor and shame attendees, officers blocked the intersection leading to the hall and photographed and filmed attendees as they entered.⁷⁶ Despite CRH taking all measures to ensure proper permitting and “even meeting with the sex crime department of the SFPD” ahead of the ball,⁷⁷ a task force of 55 SFPD officers raided the event, subjecting the 600 attendees to intimidation, harassment, and arrests.⁷⁸ As reported in a newsletter of the Society for Individual Rights, a civil rights organization supporting San Francisco’s gay and lesbian community at the time, the SFPD’s intent was to disrupt the festivities “in [a] most brutal and ugly manner.”⁷⁹ Eventually, CRH filed false-arrest suits against the SFPD, ultimately prevailing on claims that the city violated its members’ rights.⁸⁰

The CRH ball was a watershed moment for the city’s LGBTQ community, bringing to light the SFPD’s systematic and baseless targeting of the city’s gay community and resulting in

⁷⁵ Amanda Harbrecht, *New Year’s Eve Jan. 1 1965: A Night for Gay Rights: Historical Essay*, FOUND SF, https://www.foundsf.org/index.php?title=New_Year%27s_Eve_Jan._1_1965:_A_Night_for_Gay_Rights.

⁷⁶ Tegan Smith, *Gay Bars in Pre-Stonewall San Francisco: “Walk-In Closets” as the Source of a Surprisingly Divergent Queer Activism*, 26 HIST. PERSPECTIVES SERIES II: SANTA CLARA UNDERGRADUATE J. HIST., 120 (2021).

⁷⁷ Harbrecht, *supra* note 75.

⁷⁸ *Private Benefit Ball Invaded*, 1.2 VECTOR (Jan. 1965), <https://exhibits.lgbtran.org/exhibits/show/crh/item/1789>.

⁷⁹ *Id.*

⁸⁰ Smith, *supra* note 76, at 121; see also *Id.*

the appointment of an SFPD liaison to work with gay residents.⁸¹ Years on from the Tay-Bush Inn and California Hall incidents, however, the SFPD continued to antagonize San Francisco's LGBTQ population. The murder of San Francisco Supervisor Harvey Milk, widely considered the first openly gay man elected to public office in the United States, and its aftermath, brought to a head the simmering tensions between the city's police and its gay communities.⁸²

Dan White, the man who murdered Milk, was himself a former San Francisco Supervisor who had previously served as a police officer.⁸³ Milk's murder and subsequent trial exposed the deep rifts between the city's close to 150,000 LGBTQ residents⁸⁴ and the "conservative forces within the city, specifically the police department and members of the working class."⁸⁵ When White was convicted of manslaughter, a charge that meant he would only spend eight years in prison, rather than first-degree murder, the gay community erupted in anger.⁸⁶ By contrast, police officers across the city met the verdict with joy, with several officers

⁸¹ Stan Yogi, *The Night San Francisco's Sense of Gay Pride Stood up to Be Counted*, SFGATE. June 24, 2007, <https://www.sfgate.com/opinion/article/The-night-San-Francisco-s-sense-of-gay-pride-2572316.php>.

⁸² Bruce Martinez, *The San Francisco "White Night" Riots of 1979*, 9 HIST. PERSPECTIVES SERIES II: SANTA CLARA UNDERGRADUATE J. HIST., 31 (2004).

⁸³ *Id.*

⁸⁴ *Id.* at 32.

⁸⁵ *Id.* at 31.

⁸⁶ *Id.* at 32.

reportedly singing “Danny Boy,” an Irish ballad,⁸⁷ in celebration when the verdict was announced.⁸⁸

On the night the verdict came down, San Francisco’s gay communities called for a peaceful march to City Hall in protest.⁸⁹ While the march reportedly began with around 500 protestors, it numbered around 5,000 by the time the crowd reached City Hall.⁹⁰ There, protestors were met by police, many of whom began attacking them with night sticks and using tear gas to disperse the crowd, despite orders to simply hold the crowd back.⁹¹ Many officers even taped over their badges so as not to be identified.⁹² Meanwhile, the chief of police reportedly “lost control of his rank and file officers.”⁹³ With the SFPD losing authority over its own, some officers gathered on their own to raid and vandalize establishments across the Castro district.⁹⁴ Officers began assaulting anyone that happened to be on Castro Street.⁹⁵ In one instance, these rogue officers raided a lesbian bar with a force of ten officers, some on duty, some off, but all with their badge

⁸⁷ Debra Lew Harder, *The Mysteries Behind the Beloved Ballad “Danny Boy”*, Mar. 15, 2022, <https://www.wrti.org/arts-desk/2021-03-16/the-mysteries-behind-the-beloved-irish-ballad-danny-boy>.

⁸⁸ Martinez, *supra* note 82, at 33.

⁸⁹ *Id.* at 32.

⁹⁰ Martin Stezano, *What Were the White Night Riots?*, HISTORY.COM, June 22, 2020, <https://www.history.com/news/what-were-the-white-night-riots>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Martinez, *supra* note 82, at 32.

⁹⁴ Martinez, *supra* note 82, at 31-32.

⁹⁵ Stezano, *supra* note 90.

numbers covered.⁹⁶ The officers reportedly ran into the bar shouting, “[l]et’s get the dykes,” before beating the bar owner and several patrons with their night sticks.⁹⁷ In another, 24 officers raided the Elephant Walk, a LGBTQ bar in the Castro district,⁹⁸ where patrons suffered “brutal beatings at the hands of the officers who were not following any standard protocol.”⁹⁹ Officers beat one man so severely, that he suffered lacerations to his right ear and chin, five broken ribs, and a partially collapsed lung as a result.¹⁰⁰ While then SFPD Chief Charles Gain ultimately ordered the rogue officers to stop their attacks, no officers were held accountable for the brutal violence they carried out on Castro’s residents that night.¹⁰¹

More than a decade later, in 1989, over 200 SFPD officers converged on the Castro District once again in response to a small, peaceful gathering organized by ACT UP, an AIDS advocacy organization.¹⁰² The incident, known as the “Castro Sweep,” is described as “the single worst incident of mass police violence against the lesbian, gay, bisexual and transgender community in the history of San Francisco.”¹⁰³ Historians report that the SFPD unleashed a “colossal and incomprehensible show

⁹⁶ Martinez, *supra* note 82, at 36.

⁹⁷ *Id.*

⁹⁸ Martinez, *supra* note 82, at 40; GERARD KOSKOVICH, REMEMBERING A POLICE RIOT: THE CASTRO SWEEP OF OCTOBER 6, 1989 191 (Winston Leyland ed., 2002).

⁹⁹ Martinez, *supra* note 82, at 40.

¹⁰⁰ *Id.*

¹⁰¹ Stezano, *supra* note 90.

¹⁰² KOSKOVICH *supra* note 98 at 189.

¹⁰³ *Id.*

of force” against the protestors,¹⁰⁴ even arresting a police liaison appointed for the event.¹⁰⁵ The SFPD continued to terrorize the group’s march through the city, with officers rushing to “enforce even the most petty of traffic regulations” by charging the crosswalks as soon as the lights turned red, pushing marchers back onto the curb, and even arresting them.¹⁰⁶ At other times, officers “wrenched banners and signs from the hands of protestors.”¹⁰⁷ When the marchers reached the intersection of Market and Castro, where most demonstrations often peacefully concluded with officers diverting traffic, they were instead met with “several dozen officers in full riot gear – a horde of blue fatigues, black combat boots, blue helmets with plastic face shields [and] long black truncheons.”¹⁰⁸ As protestors staged sit-ins and various onlookers and neighborhood residents joined the swelling crowd, tensions escalated and the police charged, declaring the entire block of Castro from Market to 18th Street – including the sidewalks – an unlawful assembly area.¹⁰⁹ Soon, many SFPD officers broke ranks and rushed into the crowd, beating people indiscriminately with their batons, leaving many bloodied and bruised on the ground.¹¹⁰ Officers then advanced in lockstep to sweep and clear the entire Castro neighborhood.¹¹¹ All

¹⁰⁴ *Id.* at 189-190.

¹⁰⁵ *Id.* at 190.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 191.

¹⁰⁹ *Id.* at 191-192.

¹¹⁰ *Id.* at 193.

¹¹¹ *Id.* at 194.

told, “accompanied by further police beatings and arrests, the sweep [] completely emptied almost seven blocks of the Castro.”¹¹² It involved half of all SFPD officers on duty at the time.¹¹³

A rash of investigative reporting, formal investigations, hearings, and two lawsuits filed against the city in the aftermath of the SFPD’s violent response to the ACT UP protest revealed that an officer, “regarded by many progressive organizers in San Francisco as an authoritarian deeply opposed to the city’s tradition of street protest,” had defied direct orders.¹¹⁴ He had unilaterally directed “the commanders assigned to the demonstration to confine the march to the sidewalk, whatever the cost,” authorizing them to “deploy as many officers as needed – to ‘strip the station houses’ if necessary.”¹¹⁵ Prominent observers also concluded that the crackdown was “an act of retaliation by a substantial faction of the department that was fed up with the antics of radical queers and with the liberal establishment that tolerated them” – a clear “symptom of broader homophobia among cops” refusing to accept that the peaceful protestors posed no threat to public safety or private property.¹¹⁶

3. SFPD’s Disproportionate Targeting of Black Communities

The SFPD also has a long and continuing history of targeting Black individuals and communities in San Francisco. In

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 195.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 196.

1966, the city's Black residents responded in protest and anger after an SFPD officer fatally shot in the back a fleeing 16 year-old Black teenager named Matthew Johnson who the officer suspected of stealing a car.¹¹⁷ As anger spread across the city's Black communities, particularly those in Hunters Point, a majority Black neighborhood in the southeastern part of the city, San Francisco's police and city officials subjected Black-majority areas of Hunters Point and the Fillmore district to curfews, and with the deployment of the National Guard, the city's largest police mobilization since the end of World War II.¹¹⁸ White-majority areas of these districts were exempted.¹¹⁹ The day after the police killing, SFPD officers shot at a local community center in neighboring Bayview, where Black community leaders and members had gathered to address the shooting.¹²⁰ According to a Student Nonviolent Coordinating Committee of California's newsletter documenting what is now called the Hunters Point uprising, SFPD officers poured bullets into the community center

¹¹⁷ *Negro Youth Killed: Police Alert Guard*, PITTSBURGH POST-GAZETTE, Sept. 28, 1966, <https://news.google.com/newspapers?id=d51RAAAAIBA&sjid=dWwDAAAIBA&pg=3397%2C4892920>.

¹¹⁸ *Killing of Youth Sparks Troubles*, SPOKANE DAILY CHRON., Sept. 28, 1966, <https://news.google.com/newspapers?id=DLwSAAAIBA&sjid=rPcDAAAIBA&pg=6556%2C2915582>.

¹¹⁹ *Hunters Point – Cops Shot Into Community Center Sheltering 200 Children*, STUDENT NONVIOLENT COORDINATING COMM'Y OF CAL. (The Movement Vol. 2.9, Oct. 1966), <https://libraries.ucsd.edu/farmworkermovement/ufwarchives/sncc/16B%20-%20October%201966.pdf>.

¹²⁰ *Id.*

for nearly seven to eight minutes, even though there were more than 200 children inside at the time.¹²¹ Ultimately, police injured seven people during their siege on the community center that day.¹²²

The SFPD's targeting of the city's Black communities continues to the present day. While Black San Franciscans comprise only 5% to 6% of the city's population, they are "disproportionately more likely to interact with the police and to be subjected to police brutality than are members of other racial groups."¹²³ For instance, Black people are disproportionately more likely to be stopped, searched, arrested and subjected to use of force by the SFPD than are those of other races.¹²⁴ A 2002 ACLU report analyzing data from nearly 50,000 SFPD traffic stops conducted from 2001 to 2002 found that SFPD officers were significantly more likely to stop Black drivers, accounting for 15% of all traffic stops.¹²⁵ By 2018, that number increased to 20%.¹²⁶ In fact, the SFPD has had the widest racial disparity in traffic stops compared to California's other largest police departments.¹²⁷

¹²¹ *Id.*

¹²² *Id.*

¹²³ David Maxson Harris, et al., *Forming a San Francisco Truth Commission: An Overview of Anti-Black Violence in San Francisco* 10 (Int'l Hum. Rts. Clinic, Working Paper No. 7, 2021), <https://www.law.berkeley.edu/wp-content/uploads/2021/09/Forming-San-Francisco-Truth-Commission-Working-Paper-2021.pdf>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

The SFPD has also been found to be more likely to search vehicles if the occupants are Black.¹²⁸ Traffic stop data from 2015 reveals that the SFPD searched cars with Black occupants “at rates nearly eight times greater than those for White people.”¹²⁹ This was despite findings showing that “searches of Black drivers were ‘significantly less likely’ to result in evidence of criminality.”¹³⁰ In more recent findings, searches of cars with Black drivers and passengers comprised nearly 40% of searches in 2019 and 2020, even though Black residents made up less than 6% of the city’s population.¹³¹

Since 1985, the majority of killings by the SFPD have occurred in districts with the city’s highest concentrations of Black residents, with the “vast majority of the killings in these neighborhoods [involving] Black victims.”¹³² Across the city, approximately 38% of those killed by the SFPD since 1985 have been Black, even though the city’s Black population has never exceeded 13%.¹³³ From 2013 to 2017, “Black people were killed by police in the San Francisco-Hayward-Oakland metropolitan area at a rate greater than in every other U.S. metropolitan area but Oklahoma City.”¹³⁴ All of this is despite San Francisco’s Black

¹²⁸ *Id.*

¹²⁹ *Id.* at 11.

¹³⁰ *Id.* at 10-11.

¹³¹ *Id.* at 11.

¹³² *Id.* at 15.

¹³³ *Id.* at 12.

¹³⁴ *Id.*

population declining at a rate faster than in any other large U.S. city over the last several decades.¹³⁵

4. SFPD's Surveillance of Anti-War and Political Activists

The SFPD continued its surveillance operations well into the latter half of the 20th century, monitoring the activities of political activists in the midst of the Vietnam War when anti-war activism intensified across San Francisco and the Bay Area. Among the tactics deployed by the SFPD was intelligence gathering of San Francisco residents involved in out-of-state political activity.¹³⁶ On at least two occasions, the SFPD sought information from Chicago Police Department. intelligence officers on San Francisco residents who traveled to Chicago for the 1968 Democratic National Convention.¹³⁷ Once on a woman who attended the National Student Strike for Peace conference while the convention was taking place,¹³⁸ and once on an individual belonging to a pro-Castro political organization.¹³⁹ In return, the SFPD passed reports back to Chicago P.D.¹⁴⁰ For instance, SFPD Chief Thomas Cahill sent Chicago police a letter in May 1969 reporting on an interview conducted by a SFPD beat patrolman

¹³⁵ *Id.* at 7.

¹³⁶ Bill Wallace, *S.F. Police Spied During Demo Convention*, S.F. CHRON., Mar. 7, 1988.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

concerning the opening of a new bookstore by two alleged Communist Party members in San Francisco.¹⁴¹

The SFPD's intelligence gathering operations were so extensive and intrusive that its Intelligence Unit retained records on over 100,000 individuals for decades, with some records dating back to the 1930s.¹⁴² These records included files on civil rights demonstrators, anti-war activists, protestors at San Francisco State University, members of labor unions, and actors and actresses who were questioned during the McCarthy era.¹⁴³ Such intelligence gathering was justified under a "broad mandate to gather information and maintain files on known and suspected activities in the community, subversive groups, and individuals whose activities might threaten the welfare of the community."¹⁴⁴

In 1984, SFPD engaged in another wide-ranging surveillance program, together with the FBI, targeting law-abiding political groups during the 1984 Democratic National Convention in San Francisco.¹⁴⁵ During these operations, SFPD kept files on nearly 100 Bay Area civil rights, labor, and special

¹⁴¹ *Id.*

¹⁴² Veena Dubal, *The Demise of Community Policing? The Impact of Post-9/11 Federal Surveillance Programs on Local Law Enforcement*, 19 Asian Am. L.J. 35, No. 175, 40-41 n.28 (2012) (citing footnote 28 included therein).

¹⁴³ *Id.* (citing Carol Pogash, *Intelligence Units Sifting 'Garbage' From its Files*, S.F. EXAMINER, Apr. 23, 1975).

¹⁴⁴ MARK SCHLOSBERG, ACLU OF NORTHERN CALIFORNIA, *THE STATE OF SURVEILLANCE: GOVERNMENT MONITORING OF POLITICAL ACTIVITY IN NORTHERN AND CENTRAL CALIFORNIA 4* (2006) (citing Carol Pogash, *Intelligence Units Sifting 'Garbage' From its Files*, S.F. EXAMINER, Apr. 23, 1975).

¹⁴⁵ Wallace, *supra* note 136.

interest groups, including charities.¹⁴⁶ These groups were some of the most prominent organizations in the Bay Area at the time, many of which continue to comprise the heart of the region's public interest and civil rights community. These included the American Civil Liberties Union, the National Lawyers Guild, the Catholic Charities of Oakland, the Committee in Solidarity With the People of El Salvador and other critics of U.S. foreign policy in Central America, Sisters of Perpetual Indulgence and an independent taxi drivers' association that threatened to strike during the convention.¹⁴⁷ The intelligence-gathering program also involved surveillance of labor coalitions, gay rights organizations, and "the general public, political groupies (and) free-lance media and artists."¹⁴⁸

Under the 1984 intelligence gathering operation, officers collected names and personal information about members of targeted groups, and searched for informants willing to infiltrate them and report on "any rumors (and) stories of plots, no matter how bizarre."¹⁴⁹ SFPD's surveillance included officers going undercover at protests and meetings, and monitoring telephone calls of peace groups like the Livermore Action Group, which opposed the development of nuclear weapons.¹⁵⁰ One undercover SFPD intelligence officer attended a meeting where members of the Coalition Against the Moral Majority were planning a

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (citing SFPD memorandums).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

protest, at which he took detailed notes on what was said and done at the meeting, as well as the names, addresses and phone numbers of attendees.¹⁵¹

As a result of such overbroad and dragnet police surveillance, public pressure forced the San Francisco Police Commission to pass oversight measures, eventually adopting Department General Order (DGO) 8.10 in 1990. DGO 8.10 requires that any surveillance or investigation on an individual or group engaged in First Amendment-protected activity be subject to a standard of “articulable and reasonable suspicion” of criminal activity.¹⁵² It also requires that prior to an investigation of any activity that comes under First Amendment protections, SFPD officers must request general authority from a commanding officer and the Police Chief and substantiate that request with facts that give rise to suspicion of criminal activity.¹⁵³ The chief cannot approve any request that does not include evidence of possible criminal activity.¹⁵⁴ DGO 8.10 was seen as “one of the most significant reforms to protect San Franciscans from overbroad police surveillance,” and is still in effect today.¹⁵⁵

¹⁵¹ *Id.*

¹⁵² Dubal, *supra* note 142, at 40; Sarah Phelan, *Spies in Blue*, S.F. BAY GUARDIAN, Apr. 26, 2011, <http://sfbgarchive.48hills.org/sfbgarchive/2011/04/26/spies-blue/>.

¹⁵³ Phelan, *supra* note 152.

¹⁵⁴ *Id.*

¹⁵⁵ Dubal, *supra* note 142, at 40.

DGO 8.10 did not, however, prevent all future abuses.¹⁵⁶ In 1993, an FBI investigation revealed that an intelligence officer with the SFPD, Tom Gerard, carried out an extensive spying operation targeting Bay Area-based political groups, particularly focusing on anti-apartheid and Arab American organizations and later selling such information to an operative working undercover for the Anti-Defamation League (ADL).¹⁵⁷ Gerard had tapped into police computers and accessed criminal histories drawn from police records as well as Department of Motor Vehicles information, such as home addresses, vehicle registration, physical characteristics and driver's license photographs.¹⁵⁸ Investigators found that Gerard had collected files on thousands of individuals, including three members of Congress, as well as files and information on Arab organizations and many other mainstream organizations, including the Asian Law Caucus (ALC), the NAACP, Greenpeace, American Civil Liberties Union, National Lawyers Guild, and Rainbow Coalition.¹⁵⁹ Much of the

¹⁵⁶ *Id.*; Phelan, *supra* note 152 (quoting a December 2010 letter from civil rights organizations, Asian Law Caucus and ACLU, “DGO 8.10 was never fully implemented by SFPD and no officers were trained on the new guidelines and no meaningful audit had ever been implemented.”).

¹⁵⁷ Phelan, *supra* note 152.

¹⁵⁸ Richard Paddock, *Ex-Officer Sentenced in Spying Case*, L.A. TIMES, May 28, 1994, <https://www.latimes.com/archives/la-xpm-1994-05-28-mn-63233-story.html>.

¹⁵⁹ Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295, 307 (2002) (citing Rick Paddock, *A Spy for the Anti-Defamation League: Did a Liberal Civil Rights Group Get Caught with Its Binoculars Up?*, CAL. J., June 1, 1993, at 2).

intelligence information Gerard collected stemmed from unlawful surveillance conducted without reasonable suspicion of a crime, in direct violation of DGO 8.10.¹⁶⁰ Gerard surveilled legitimate First Amendment-protected political activity based solely on the protected racial and ethnic characteristics of his targets, focusing his surveillance on Arab Americans and other San Francisco activists who had been resisting apartheid in South Africa and the U.S. interventions in Central America.¹⁶¹ Compounding the issue was the revelation that Gerard was selling this information to an undercover operative working for the ADL, as well as the South African government, rendering Gerard a possible foreign agent.¹⁶²

Tom Gerard and the SFPD's actions inflicted long lasting harm on social justice movements in the Bay Area for years to come, damaging the work, mission and recruitment efforts of the organizations targeted by the surveillance.¹⁶³ The Gerard revelations also demonstrated, once again, that the SFPD continued to defy the rules designed to prevent the very abuses it persisted engaging in. Following the FBI's disclosure bringing

¹⁶⁰ *Id.* at 307; Dubal, *supra* note 142, at 41.

¹⁶¹ Dubal, *supra* note 142, at 41-42.

¹⁶² Phelan, *supra* note 152; Richard Paddock, *Ex-Officer Sentenced in Spying Case*, L.A. TIMES, May 28, 1994.

¹⁶³ CITY AND CNTY. OF S.F. HUM. RTS. COMM'N, COMMUNITY CONCERNS OF SURVEILLANCE, RACIAL AND RELIGIOUS PROFILING OF ARAB, MIDDLE EASTERN, SOUTH ASIAN, AND MUSLIM AMERICAN COMMUNITIES AND POTENTIAL REACTIVATION OF SFPD INTELLIGENCE GATHERING 14 (2011), [hereinafter Human Rights Commission Report] https://sf-hrc.org/sites/default/files/Documents/HRC_Publications/Articles/AMEMSA_Report_Adopted_by_HRC_022411.pdf.

Tom Gerard's activities to light, SFPD's Chief of Police acknowledged that the agency had violated its own policy by keeping forbidden intelligence files on local organizations involved in political activity.¹⁶⁴ The Department conducted only one audit of compliance between when DGO 8.10 was first adopted in 1990 and when Tom Gerard's activities were first revealed in 1993,¹⁶⁵ with two former San Francisco Police Commissioners who conducted the audit describing the process as "inadequate" to determine whether the department was adhering to its own policies.¹⁶⁶ Rather, their investigation had been severely hampered, as they were forced to rely merely on what the police themselves would show them.¹⁶⁷ Several sources also noted that some officers, particularly those in SFPD's Inspectors Bureau, regularly kept police data on personal computers,¹⁶⁸ undermining attempts to review police files as part of internal audits.

¹⁶⁴ Rachel Gordon, *S.F. Chief Admits to Failure to Destroy Police Files: Department Kept Some Records of Political Groups*, S.F. EXAMINER, Jan. 20, 1993.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* (quoting former Commissioner Gwenn Craig, "[w]e were at the mercy of the police to show us what files we were supposed to be looking at.").

¹⁶⁸ *Id.*

C. Post 9/11 to the Present Day: Criminalization and Surveillance of Black and Arab, Muslim, Middle Eastern and South Asian Communities

1. SFPD's Post 9/11 Surveillance Activities

The expansion of domestic surveillance infrastructure after September 11, 2001 deepened intelligence collaborations between federal and local law enforcement.¹⁶⁹ The federal government reasserted an “emphasis on intelligence collection and coordination,” specifically contemplating “a growing role for local law enforcement agencies, where potential intelligence is perceived to reside.”¹⁷⁰ To bolster these efforts, “the U.S. Departments of Justice and Homeland Security sent a half billion dollars to the states to enhance local and state intelligence operations, and to improve local law enforcement agencies’ capacity to respond to any potential future attack,” which often meant “increasing the size of dedicated intelligence staff in local law enforcement agencies.”¹⁷¹ The SFPD was among the several nationally prominent police departments working with the FBI after 9/11 and, like it had for over a century, the agency continued its surveillance operations, much of it in collaboration with federal law enforcement.¹⁷²

¹⁶⁹ See generally, Matthew C. Waxman, Police and National Security: American Local Law Enforcement and Counter-Terrorism after 9/11, 3 J. NAT’L SEC. L. & POL’Y 377 (2009), https://scholarship.law.columbia.edu/faculty_scholarship/1562.

¹⁷⁰ Dubal, *supra* note 142, at 42.

¹⁷¹ *Id.* at 42-43.

¹⁷² *Id.* at 43.

Between October 2002 and February 2003, as in the rest of the country, San Francisco witnessed mass protests against the war in Iraq. SFPD officers conducted undercover surveillance of at least three of these anti-war demonstrations, all without proper approval by the Chief of Police and in violation of San Francisco's Guidelines for First Amendment Activities.¹⁷³ An audit of police practices by the Office of Citizen Complaints revealed that,¹⁷⁴ as part of their surveillance efforts of anti-war protestors, SFPD officers operating in plainclothes (including one wearing a Che Guevara pin in his hat) marched alongside protestors and filmed the protests and multiple participants.¹⁷⁵ The audit also found that "certain officers, supervisors and command staff involved in requesting, providing or authorizing undercover surveillance were not trained or were not responsive to training on the Guidelines for First Amendment Activities."¹⁷⁶

Civil rights groups across the country grew increasingly concerned about the First Amendment implications of expanded policing and surveillance authority after September 11. Bill Hackwell of International Answer, a co-organizer of several anti-war demonstrations held across San Francisco, expressed his concern that the prevailing climate after September 11 gave "law enforcement agencies the green light to do whatever they want to

¹⁷³ SCHLOSBERG *supra* note 144 at 18; Joe Garofoli, *SFPD Spied on Peace Marches*, SFGATE, Mar. 13, 2003, <https://www.sfgate.com/politics/article/SFPD-spied-on-peace-marches-Watchdog-agency-2628826.php>.

¹⁷⁴ SCHLOSBERG *supra* note 144 at 18.

¹⁷⁵ Garofoli, *supra* note 173.

¹⁷⁶ SCHLOSBERG *supra* note 144 at 18.

do to collect information on people.”¹⁷⁷ Hackwell’s view was not without basis, given statements made by officials across the country and in California, where those who spoke out against the U.S.’s foreign policy decisions at the time were either accused of aiding terrorism or accused of perhaps being terrorists themselves. Then Attorney General John Ashcroft, for instance, implied in testimony before the Senate Judiciary Committee that those who raise their voices in dissent aid terrorists:

To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies and pause to America's friends.

The extent to which Mike Van Winkle, spokesman for the California Anti-Terrorism Information Center (CATIC), went further is chilling:

You can make an easy kind of link that, if you have a protest group protesting a war where the cause that’s being fought against is international terrorism, you might have terrorism at that protest You can almost argue that a protest against that is a terrorist act.¹⁷⁸

¹⁷⁷ Garofoli, *supra* note 173.

¹⁷⁸ Michelle Goldberg, *Outlawing Dissent: Spying on Peace Meetings, Cracking Down on Protestors, Keeping Secret Files on Innocent People – How Bush’s War on Terror Has Become a War on Freedom*, SALON, Feb. 11, 2004, https://www.salon.com/2004/02/11/cointelpro_3/.

It was amidst such rhetoric by public officials that American law enforcement scrutiny turned heavily towards Arab, Middle Eastern, Muslim and South Asian (AMEMSA) communities in the U.S. The federal government launched dragnet operations prioritizing the detention, interrogation, and surveillance of Muslim Americans across the country.¹⁷⁹ With no evidence other than association by religion or national origin with the perpetrators of the attacks, the FBI detained over a thousand citizens and noncitizens.¹⁸⁰ Within two months of the attacks, law enforcement authorities had detained, at least for questioning, more than 1,200 citizens and aliens nationwide.”¹⁸¹ The Department of Justice even implemented a project to interview nearly 7,600 nonimmigrants “whose characteristics were similar to those of the September 11 hijackers to try to determine . . . what knowledge they had of terrorists and planned terrorist activities.”¹⁸² None of those detentions led to findings of

¹⁷⁹ See ERIC LICHTBLAU, BUSH’S LAW: THE REMAKING OF AMERICAN JUSTICE 5 (2008).

¹⁸⁰ U.S. DEP’T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS 1 (2003), <https://oig.justice.gov/sites/default/files/legacy/special/0306/full.pdf>.

¹⁸¹ *Id.*

¹⁸² U.S. GEN. ACCOUNTING OFFICE, GAO-03-459, HOMELAND SECURITY: JUSTICE DEPARTMENT’S PROJECT TO INTERVIEW ALIENS AFTER SEPTEMBER 11, 2001 1 (2003), <https://www.gao.gov/assets/gao-03-459.pdf>.

connections to the attacks, let alone any terrorism convictions.¹⁸³

The SFPD, too, was complicit in the unabated and unlawful profiling of AMEMSA communities and individuals at the time. In 2010, SFPD Chief of Police George Gascon made plainly biased comments by stating, at a public breakfast event to celebrate the seismic retrofitting of city buildings, “that the Hall of Justice ‘is susceptible not just to an earthquake, but also to members of the City’s Middle Eastern community parking a van in front of it and blowing it up.’”¹⁸⁴ Gascon also announced that he wished to “reinstate the infamous intelligence unit that had been disbanded after the intelligence scandals of the early 1990s.”¹⁸⁵ These comments raised significant alarm among community members that the SFPD “might once again be engaging in targeted surveillance based on political activity and racial and ethnic characteristics.”¹⁸⁶ In response, the Coalition for a Safe San Francisco, a collection of leading Bay Area-based civil rights organizations,¹⁸⁷ filed records requests to assess whether the Department was still abiding by its DGO 8.10 commitments.¹⁸⁸ Records obtained revealed that “intelligence audits had not been conducted in over three years” and that many presiding police

¹⁸³ David Cole, *Are We Safer?*, N.Y. REV. BOOKS, Mar. 9, 2006, <https://nybooks.com/articles/2006/03/09/are-we-safer/>.

¹⁸⁴ Dubal, *supra* note 142, at 48.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 48.

¹⁸⁷ Coalition for a Safe San Francisco, *Home Page*, Facebook (Jan. 16, 2014), <https://www.facebook.com/Coalition-for-a-Safe-San-Francisco-196796883664698/>.

¹⁸⁸ Dubal, *supra* note 142 at 48.

commissioners were even “unaware of their intelligence oversight responsibilities.”¹⁸⁹ Once these audits were conducted at the coalition’s urging, it was discovered that the “audits did not [even] capture any intelligence gathering activities conducted by SFPD officers assigned to [and working with] the FBI’s [Joint Terrorism Task Force],” and that the SFPD had surreptitiously signed a memorandum of understanding with the FBI “without public review by the City’s Police Commission or the City Attorney’s office,” all in violation of DGO 8.10.¹⁹⁰

Gascon’s comments and the secrecy with which the SFPD operated, skirting public oversight and scrutiny as it built collaborations with federal agencies, deeply diminished community members’ “faith that the SFPD could adequately protect them and their communities.”¹⁹¹ One Muslim community member lamented that as a result of these revelations, his congregation was not only fearful of the FBI, but was becoming “increasingly mistrustful of the SFPD as well.”¹⁹² As Dr. Hatem Bazian, Senior Lecturer at the University California, Berkeley, once testified:

[M]osques are monitored, community members are visited by the FBI, either late at night or early in the morning, [and their] financial transactions are subject to monitoring. Demonstrations are recorded, community monitoring is undertaken, entrapment is

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 48-49.

¹⁹¹ *Id.* at 49.

¹⁹² *Id.*

deployed, pressure of recruitment in exchange for green cards [is used] and student organizations are criminalized.¹⁹³

As a result, AMEMSA communities across the Bay Area have suffered deep psychological harm due to the atmosphere of suspicion they have been marked with since 9/11, built in part by the SFPD's covert collaboration with the FBI's persecution of AMEMSA communities. ALC, for instance, has seen dozens of clients, "normal everyday Americans who live in the Bay Area, who are regularly visited by the FBI."¹⁹⁴ As Veena Dubal, former staff attorney at ALC, notes,

I have clients who are small business owners, American citizens who are regularly visited by the FBI at their place of work, in San Francisco. I have clients who are university students who are visited by the FBI right outside of campus; I know an educator who is regularly visited by FBI agents. What do all these people have in common? Nothing, except that they are all innocent Americans who pay taxes, contribute to their community and the economy and who have immaculate criminal records, no criminal records – they just happen to be Muslims.¹⁹⁵

The chilling impacts of the widespread knowledge across AMEMSA communities that they were the primary targets of law

¹⁹³ Human Rights Commission Report *supra* note 163 at 10.

¹⁹⁴ *Id.* at 18.

¹⁹⁵ *Id.*

enforcement scrutiny in the days and years following 9/11 were profoundly felt across the Bay Area. Zahra Billoo, a civil rights attorney and the Director of the San Francisco Bay Area office of the Council on American-Islamic Relations explains the extent of the harm, saying, “[i]magine going to a place of worship, thinking you are in a sanctuary, where you just want to focus on your spirituality but not knowing if you're in danger from the person next to you, if the leadership of that mosque is in collaboration with the FBI.”¹⁹⁶ She continued, “[o]ne of the things we hear most often. . . is that people are afraid that federal and local law enforcement are collaborating to infiltrate mosques. . . [s]o they're less willing to exercise their religious duty to go to the mosque to participate in group prayers because they don't know if they can trust the people they are praying with.”¹⁹⁷

One community member, Adel Samaha, gave powerful testimony highlighting the distrust that continues to pervade amongst San Francisco’s AMEMSA communities:

The FBI agent I spoke with informs me that his department spies on my mosque on a regular basis. I told him and his department that our mosques are places of worship, not spy stations. I conducted a survey in multiple mosques around the Bay Area to understand the level of surveillance conducted; the majority of people I asked told me their stories verbally but were too afraid to write them down.¹⁹⁸

¹⁹⁶ *Id.* at 18-19.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 19.

2. Present Day: SFPD Surveillance of Black Lives Protestors

The SFPD's long history of suspicionless, dragnet surveillance of San Franciscans engaging in First Amendment protected activity continues through today. The subject of this lawsuit itself involves facts that show the disregard the agency continues to have for existing laws regulating its activities, its continued use of protected characteristics as proxies for criminality and wrongdoing, and its resistance to public efforts seeking accountability.

As plaintiffs allege in this matter, the SFPD “acquired, borrowed, and used” an extensive camera surveillance network belonging to the Union Square Business Improvement District (USBID) between May 31 and June 7, 2020.¹⁹⁹ During this time, San Franciscans gathered to participate in overwhelmingly peaceful protests across the city in response to the Minneapolis police killing of George Floyd, which occurred days before on May 25, 2020. These protests were led by many of San Francisco's Black leaders involved with the Black Lives Matter movement and reflected the racial diversity of San Francisco and the Bay Area.

USBID is a nonprofit, non-city entity which owns and operates over 400 video surveillance cameras, all high definition with remote control zoom and focus capabilities.²⁰⁰ These cameras operate in conjunction with software that can analyze

¹⁹⁹ Complaint at 2, *Williams v. City and Cnty. Of S.F.*, 2020 WL 5983946 (Cal. Super.).

²⁰⁰ *Id.* at 6.

content, such as distinguishing between objects, like a car, and a person.²⁰¹ The SFPD accessed real-time footage through such cameras for eight straight days, with the officer reviewing such footage admitting that she did not see any “further civil unrest beyond that Saturday [May 30,]” which had initially prompted the SFPD to request surveillance access through USBID’s camera network.²⁰² Rather, the SFPD continued to monitor ongoing protests for a whole week, suggesting that it was likely the identities and political leanings of the protestors that sustained SFPD’s surveillance of otherwise largely peaceful protests, not any continued basis of criminal activity or wrongdoing.²⁰³ Such a conclusion is plausible, sadly, given the SFPD’s long-standing pattern of monitoring groups based on political activism, especially when it involves advocacy on issues disfavored by police.

The San Francisco ordinance at issue in this case itself grew out of public concern, based on the SFPD’s extensive history of abuses as laid out in this brief, regarding the SFPD’s surveillance capabilities and the potential for overreach and abuse. Responding to this concern, the San Francisco Board of Supervisors passed the Acquisition of Surveillance Technology Ordinance (the Ordinance) in June 2019, which prohibits any City department from acquiring, borrowing, sharing, or using surveillance technology without first obtaining approval from the

²⁰¹ *Id.*

²⁰² Defendant’s Brief at 20, *Williams v. City and Cnty. of S.F.*, 2022 WL 17226002 (Cal.App. 1 Dist.).

²⁰³ *Id.*

Board through a separate ordinance and specific use policy.²⁰⁴ As the Ordinance was being considered, Supervisor Aaron Peskin, the Ordinance’s author, noted that one of its goals was to protect marginalized communities and political dissidents from high-tech police surveillance.²⁰⁵ In fact, Supervisor Peskin expressly noted the SFPD’s history of surveillance of marginalized communities as one of the many important reasons why the Ordinance was necessary, saying, “I could regale you with some of the things that have happened in this city in the late 60s, early 70s, again with surveillance of Act Up during the AIDS crisis, with surveillance of the Black Lives Matter movement.”²⁰⁶ Supervisor Peskin also noted that this consistent and unbroken historical pattern of police abuses only further emphasized the need for “oversight into a category of technology that historically has often been used in abusive ways against marginalized communities.”²⁰⁷ The SFPD’s decision to engage in such extensive surveillance of the San Francisco Black Lives protests in May and June 2020 only further underscores the need for the type of oversight the Ordinance is designed to provide.

III. CONCLUSION

The SFPD’s history reveals a shocking and consistent pattern of abuse of authority and targeted surveillance and harassment of San Francisco’s most vulnerable and marginalized

²⁰⁴ San Francisco Administrative Code, Chapter 19B *et seq.*

²⁰⁵ Complaint at 5, *Williams v. City and Cnty. Of S.F.*, 2020 WL 5983946 (Cal. Super.).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

communities. San Francisco's police have subjected diverse communities to surveillance, harassment, and violence based primarily, if not solely, on the targeted group's ethnic or racial background or their political ideology and group affiliation. Such conduct not only runs afoul of the law, it has violated the department's own internal policies after extensive public efforts seeking accountability and redress. This history alone—and SFPD's persistence on continuing its unlawful conduct—renders measures like the Acquisition of Surveillance Technology Ordinance critical to public oversight of the department.

For the foregoing reasons, this Court should reverse the superior court's grant of Defendant-Appellee's motion for summary judgment, and remand with instructions to the superior court to grant summary judgment to Plaintiffs-Appellants.

**CERTIFICATE OF COMPLAINT PURSUANT TO
CALIFORNIA RULES OF COURT RULE 8.204(c)(1)**

Pursuant to California Rules of Court, Rule 8.204(c)(1) I certify that according to Microsoft Word 2016 the attached brief is proportionally spaced, has a typeface of 13 points and contains 11,325 words.

Dated: January 20, 2023

ASIAN AMERICANS
ADVANCING JUSTICE –
ASIAN LAW CAUCUS

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APPENDIX
ADDITIONAL AMICI CURIAE

1. Anti Police-Terror Project
2. Arab Resource & Organizing Center (AROC)
3. Asian American Legal Defense and Education Fund
(AALDEF)
4. Asian Law Alliance
5. Black Alliance for Just Immigration (BAJI)
6. California Immigrant Policy Center
7. Chinese for Affirmative Action
8. Fred T. Korematsu Institute
9. Iranian American Bar Association, Northern California
Chapter
10. Japanese American Citizens League
11. Lavender Phoenix
12. Media Alliance
13. Muslim Advocates
14. Nikkei for Civil Rights & Redress (NCRR)
15. Oakland Privacy
16. San Jose Nikkei Resisters
17. Tsuru for Solidarity
18. Vigilant Love

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is **input business address here.**

On January 20, 2023, I served true copies of the following documents described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF – ASIAN LAW CAUCUS AND BLACK MOVEMENT LAW PROJECT, ET AL. IN SUPPORT OF PLAINTIFFS-APPELLANTS** and **AMICI CURIAE BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE – ASIAN LAW CAUCUS AND BLACK MOVEMENT LAW PROJECT, ET AL. IN SUPPORT OF PLAINTIFFS-APPELLANTS** on interested parties in this action as follows:

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Executed on January 20, 2023, at San Francisco, California.

NAME OF SERVICE PROVIDER