



September 15, 2021

**Via Email**

Malia Cohen, President  
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San Francisco Police Commission

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**RE: San Francisco Police Department's Proposed General Order 5.16 on "Search Warrants"**

We write this letter to register our opposition both to the process by which the San Francisco Police Department's Proposed General Order 5.16 ("DGO") is being advanced, and to some of the substantive changes that are being articulated.

The ACLU of Northern California is an enduring guardian of justice, fairness, equality and freedom working to protect and advance civil liberties for all Californians. The genesis of the ACLU of Northern California was the 1934 San Francisco General Strike, where lawyers and organizers were called upon to protect the rights of Bay Area Maritime workers against vicious attacks by police, and two trade unionists were shot and killed. Since our founding, we have worked continuously to hold the institution of policing and Police Departments across the state accountable to the communities they serve and to the rights of people enumerated in the Constitution.

We provide below some initial concerns.

1. **Transparency and Community Input Must Be at the Center of the Process**

There has not been sufficient time for members of the public, subject matter experts, community organizations, and other relevant stakeholders (such as the Public Defenders or District Attorney's offices) to provide critical feedback to this proposal. This was first presented to the Police Commission on September 8, 2021. Given the importance of the subject area and the impact it will have for San Francisco communities and residents, the Commission should not simply rubberstamp this draft proposal by the Police Department. Instead, in the spirit of

transparency, accountability, and good governance, the Commission should actively invite public comment and allow sufficient time for advocates and community members to register their input. This policy should not be finalized and endorsed prior to adequate time for consideration.

2. **San Francisco Should Ban No-Knock Warrants**

The murder of Breonna Taylor at the hands of Louisville police officers following a no-knock warrant shocked the nation and sparked massive calls to significantly reform the institution of policing which continues to terrorize and kill communities of color. Following Breonna Taylor’s killing, many states and cities have instituted full bans of no-knock warrants; other states have introduced legislation to partially ban no-knock warrants.<sup>1</sup> San Francisco should lead on this issue and ban no-knock warrants. Anything less will inevitably lead to more terror, brutality, and death to the over-policed communities, namely communities of color and poor communities, in San Francisco.

3. **All Exculpatory Evidence, Including the Affiant’s Inclusion in a Brady List, Must Be Included in the Search Warrant Affidavits Provided to the Magistrate**

The proposed DGO states that “members shall include known exculpatory evidence and information *members would reasonably believe could affect the probable cause determination by a magistrate.*” (Emphasis added.) As written, this DGO leaves the determination of whether exculpatory evidence or information *could affect* the probable cause determination to the affiant or the officer preparing the search warrant. In other words, this leaves room for the possibility that exculpatory evidence can exist but could nonetheless be excluded if the affiant *reasonably believes it could not affect the probable cause determination by the magistrate.* Any Police Department order concerning search warrants should mandate that **all exculpatory evidence must be included in the search warrant affidavits**—regardless of what the affiant believes the effect will be on the determination by the magistrate. This is especially significant in cases where the affiant is an officer who is included in a “Brady list,” a list of police officers who are not deemed credible by the District Attorney’s Office to provide testimony due to their prior history and conduct.

**Conclusion**

We urge the San Francisco Police Commission to not simply rubberstamp the Police Department’s desired policy without adequate consideration by the public, and without ensuring that the policy is poised to protect those most vulnerable to Police Department overreach. The

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<sup>1</sup> <https://www.theguardian.com/global-development/2021/mar/26/breonna-taylor-no-knock-warrant-bans-us-police-experts>



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Commission should solicit input from the public and all relevant stakeholders to create policies that best serve San Francisco communities.

Regards,

A handwritten signature in black ink, appearing to read 'Yoel Y. Haile', with a long horizontal stroke extending to the right.

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cc: William Scott, SFPD Chief of Police