

Raza/Handschu FAQ

Below are answers to questions lawyers in the *Raza* and *Handschu* cases have been asked by those seeking to better understand the settlements and the settlement process in those cases. We thought it would be useful to share these questions and answers in advance of the April 19 fairness hearing to be held by the court in the *Handschu* case.

- **What is *Raza v. City of New York* about?**

In June 2013, the American Civil Liberties Union (ACLU), the Creating Law Enforcement Accountability and Responsibility (CLEAR project) at CUNY School of Law, and the New York Civil Liberties Union (NYCLU) filed a lawsuit on behalf of a number of institutional and individual plaintiffs, and were subsequently joined by the law firm of Morrison & Forster LLP. The suit arose out of a community-organized effort to respond to the Associated Press reports confirming what many Muslims in New York City had known or suspected—that the NYPD was conducting extensive, suspicion-less surveillance of their communities. The suit asserted that the surveillance stigmatized and discriminated against Muslims in violation of the U.S. and New York State Constitutions. *Raza* is not a class-action lawsuit.

- **What is *Handschu v. Special Services Division* about?**

Handschu is a class action lawsuit brought in 1971 against New York City as a challenge to several police practices, including the maintenance of dossiers on political activists and the use of various undercover and surveillance techniques to monitor the activities of political organizations and individuals. Counsel in *Handschu* represent the class, which consists of everyone who engages in political or religious activity in New York City. The case was settled with a consent decree entered in 1985, which prohibited the NYPD from investigating political and religious organizations and groups unless there was “specific information” that the group was linked to a crime that had been committed or was about to be committed. The consent decree spells out what are called Handschu Guidelines, which regulate the NYPD’s surveillance of political activity.

In 2011, shortly after the Associated Press reports came out, *Handschu* Class Counsel asked the court to permit discovery, to determine whether the NYPD was violating the Handschu Guidelines. In early 2013, *Handschu* Class Counsel asked the court to order the NYPD to stop its surveillance of New York City Muslims in violation of the Handschu Guidelines, and to appoint a monitor to oversee the NYPD.

- **How are the settlements in *Raza* and *Handschu* related?**

In February 2014, after a new mayoral administration came into office, the lawyers in *Raza* and *Handschu* wrote a joint letter to the City, suggesting a meeting to discuss the possibility of settling the *Raza* claims and the *Handschu* motion. In August 2014, the *Raza* and *Handschu* lawyers and the City began settlement discussions.

In settlement negotiations, the *Raza* and *Handschu* lawyers began with specific goals, based on the *Raza* plaintiffs' views, consultation with other groups and individuals within the *Handschu* class, information that the lawyers had learned in discovery, publicly available information, and discussions with the NYPD. In brief, those goals were to:

- Tighten standards for the initiation, renewal, and extension of investigations.
- Limit the use of intrusive investigative techniques in religious and community institutions.
- Establish time limits for investigations.
- Ensure a safeguard to protect New Yorkers' rights by reinstating civilian, non-NYPD participation in the NYPD's decision-making into whether investigations should be initiated, continued, or ended.

The proposed settlement incorporates each of these goals. It must be approved by the courts in both cases.

- **Do members of the public get to weigh in on the settlement?**

Yes. Because *Handschu* is a class action, the judge in that case must conduct what is called a "fairness hearing" where members of the class (all New Yorkers who engage in religious and political activity) can provide input on the proposed settlement terms. The judge will make a decision on the settlement after the fairness hearing.

- **When is the fairness hearing?**

The hearing will be held before Judge Haight at 10:00 A.M. on April 19, 2016, at the federal courthouse at 500 Pearl Street, New York, NY 10007.

- **I'm interested in providing input on the proposed settlement. How can I do that?**

To provide comments on the proposed settlement, you must register to comment by **April 5, 2016**, by e-mailing your name and address to handschusettlement@gmail.com. You must register to comment by **April 5, 2016** for the court to take your comments into consideration.

- **Do I have to provide a written statement when I register or at the fairness hearing?**

No. You may provide a written statement or submission at the time you register or on the day of the fairness hearing, but you are not required to do so. Similarly, you are not required to present a written submission at the fairness hearing.

- **Can I attend the fairness hearing even if I haven't registered to comment?**

Yes, you are encouraged to attend the fairness hearing even if you have not registered to comment.

- **What will happen after the fairness hearing?**

The *Handschu* court will take into consideration the filings by *Handschu* Class Counsel and the City, and the comments provided by members of the class in deciding whether to approve the settlement. If the *Handschu* court approves the settlement, the *Raza* court will then also have to approve the settlement in the *Raza* case for it to go into effect.

- **What will happen if the *Handschu* court does not approve the settlement?**

The *Handschu* court will announce its approval or disapproval of the settlement in a public opinion. If the judge does not approve the settlement, the opinion will identify what the judge thinks is wrong or unfair about the proposed settlement. The *Handschu* lawyers, the *Raza* plaintiffs and their lawyers, and the lawyers for the City will then have to decide whether to modify the proposed settlement to respond to what the judge has said, or to proceed with the cases in court.

- **Does the settlement address the First Amendment and Equal Protection claims brought by the *Raza* plaintiffs?**

Yes. The current Handschu Guidelines do not explicitly mention religion nor do they include equal protection language. As a result of the settlement, the proposed modified Guidelines explicitly reference the guarantee of equal protection of the law. The modified Guidelines prohibit investigations “in which race, religion, or ethnicity is a substantial or motivating factor.”

Similarly, the modified Guidelines state that “it is also important that investigations not intrude upon rights of expression or association in a manner that discriminates on the basis of race, religion or ethnicity, where such discrimination is a substantial or motivating factor of the investigation.”

- **Is the NYPD still relying on its “Radicalization in the West” report?**

As part of the settlement, the NYPD has agreed to remove from its website its “Radicalization in the West” report. Also as part of the settlement, the NYPD affirms that it does not and will not rely on the report to open or extend investigations.

- **What will the Civilian Representative position created in the proposed settlement do?**

The Civilian Representative will serve as a member of a “Handschu Committee” that will include various NYPD officials. This Committee will review all proposals to open, extend, or close investigations directed at political or religious activities. The Civilian Representative will provide input before any such investigation is opened or extended and will serve as a check on possible abuses. He or she has the power and obligation to

ensure all safeguards are followed, and to report on any violations of the Handschu Guidelines.

The proposed settlement requires that the Civilian Representative have access to all of the information that the NYPD has in making decisions about investigations into religious or political activity. The Civilian Representative must be a lawyer who has never worked for the NYPD, and must get a clearance to access any federally classified information.

If the Civilian Representative thinks that an investigation violates the Guidelines, he or she must ask the Police Commissioner to investigate. And if the Civilian Representative thinks there is a pattern of violating the Guidelines, he or she must notify the *Handschu* court and class counsel.

- **How will the Civilian Representative be chosen?**

The Mayor will appoint the Civilian Representative for a five-year term.

- **Will the Civilian Representative be paid? And by whom?**

The settlement does not address whether the Civilian Representative will be paid, and if so, by whom. If the *Raza* and *Handschu* courts approve the settlement, then that issue will be resolved outside of the settlement process.

- **Does the settlement mean the NYPD will stop sending informants and undercover officers into mosques and other Muslim community spaces?**

Law enforcement use of undercovers and informants, especially in religious and community spaces, can be offensive and disruptive. Nevertheless, federal law permits their use in certain circumstances, and the settlement does not change that. However, the settlement does impose restraints on the use of informants and undercovers to safeguard New Yorkers' rights.

Under the proposed settlement, before using an informant or undercover, the NYPD must consider the impact on people or institutions that are not targets of the investigation but will be affected by it. In addition, undercovers or informants will only be deployed if the NYPD determines that the information sought cannot be obtained in a reasonably timely and effective way by less intrusive means. Finally, the period for which an undercover or informant can be approved by the Deputy Commissioner of the Intelligence Bureau will be reduced from 120 days to 90 days. Any extension will be similarly reduced to 90 days, with the same high-level approval requirement. The Civilian Representative is obligated to ensure these safeguards are followed.

- **I heard that there was an NYPD undercover officer at Brooklyn College for over three years, and that she spent a lot of time with female members of the Islamic Society there. Does the settlement mean that something like that won't happen again?**

The NYPD has stated publicly that the undercover female officer was at Brooklyn College and that she conducted a Handschu investigation for a period of year, and then stayed in touch with students to maintain her cover. The NYPD has denied that the undercover actively pursued friendships with students past graduation. The NYPD has also stated that where an undercover continues relationships with people to maintain cover, no records are kept of the undercover's contacts with those people. While the proposed settlement does not explicitly prohibit the reoccurrence of such an investigation, its provisions regarding equal protection, the initiation and length of investigations, the deployment of undercover officers and informants, and the Civilian Representative's obligation to safeguard rights provide multiple layers of added protection against such a scenario.

- **Will the *Raza* plaintiffs receive financial compensation? Will members of the *Handschu* class receive compensation?**

No. Neither *Raza* nor *Handschu* involved claims for compensation to the plaintiffs. Therefore, the settlement does not provide for the *Raza* plaintiffs or members of the *Handschu* class to be compensated financially.

- **Will the lawyers receive compensation under the settlement?**

Yes. U.S. law provides that lawyers who successfully litigate civil rights cases like *Raza* and *Handschu* will be reasonably compensated by the other side. After the terms of the settlement had been agreed upon, and after the *Raza* plaintiffs approved of those terms, the City insisted that compensation of plaintiffs' counsel for costs and fees be made part of the settlement.

Because the plaintiffs' claims in the *Raza* case were so aggressively contested by the NYPD, the plaintiffs' lawyers devoted significant time and resources to the case. This effort consumed approximately \$5 million in hours and costs. In settling the case, plaintiffs' lawyers agreed to payment by the City of approximately \$1.7 million in fees and costs, to be split among the legal organizations. These fees will go toward supporting similar public interest advocacy and litigation in the future. In *Handschu*, the lawyers also settled for a fee award that was considerably less than market rates would typically provide given the time and effort devoted to the case and they agreed to settle for approximately \$362,000 to be split among class counsel.