

Church Street Station
P.O. Box 2729
New York, NY 10008-2729
June 28, 2017

By Hand and Via U.S. Mail

Joon H. Kim
Acting United States Attorney
U.S. Attorney's Office for the Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007

Re: Formal Complaint re Alleged Criminal Misconduct by Mayor Bill de Blasio and
New York City Council Member Margaret Chin
in Violation of 18 U.S.C. § 241 and 18 U.S.C. § 242

Dear Mr. Kim:

I am an attorney-at-law and a candidate for New York City Council. On Wednesday, June 21, at a publicly funded Town Hall meeting, I personally witnessed the NYPD and other security, on behalf of Mayor Bill de Blasio ("de Blasio") and New York City Council Member Margaret Chin ("Chin"), confiscate opposing signs and opposing political flyers from members of the public before entering the Town Hall. In addition, I have secured both video and photographic evidence documenting this conduct.

As described in more detail below, de Blasio's and Chin's premediated acts of suppression of political views for their own personal gain violate the First and Fourth Amendments to the United States Constitution and violate federal criminal statutes, 18 U.S.C. § 241 and 18 U.S.C. § 242.

Complaint re Alleged Criminal Misconduct by Bill de Blasio and Margaret Chin

Background: The Publicly Funded Town Hall Meeting

1. On the evening of Wednesday, June 21, a Town Hall meeting was held with Mayor Bill de Blasio ("de Blasio") at 273 Bowery, New York, NY. The official invitation stated that the Town Hall was "present[ed]" by "Lower Manhattan Council Member Margaret Chin with Borough President Gale A. Brewer [and] U.S. Representative Nydia Velázquez." (Official Invitation to June 21, 2017 Town Hall Meeting, attached hereto as Exhibit A.)

2. The Seal of the City of New York, along with the logo of the Mayor's Community Affairs Unit, appeared on the official invitation to the Town Hall. Members of the public were invited to RSVP if they wished to attend the Town Hall at the e-mail address, townhallrsvp@cityhall.nyc.gov.

3. The Town Hall was scheduled to begin at 6:30 p.m. The Town Hall began at about 7:00 p.m. and lasted for nearly three hours. The Town Hall was held within City Council District 1, located within Lower Manhattan and City Council Member Margaret Chin's ("Chin") district.

4. Aaron Foldenauer attended the publicly funded Town Hall since his opponent in the race for the City Council seat in Lower Manhattan, incumbent Margaret Chin, was featured to speak alongside Mayor de Blasio.

5. In addition to attending the Town Hall itself, Foldenauer spent a lengthy amount of time campaigning in advance of the event, standing in line waiting to enter the event, and proceeding through security.

6. The vast duration of the Town Hall featured Chin and de Blasio on stage addressing questions from members of the public. A number of commissioners of New York City agencies were in attendance, as well as a number of uniformed NYPD chiefs and NYPD deputy commissioners. On occasion, de Blasio asked one or more of these commissioners and members of NYPD leadership to assist in answering questions from members of the public.

7. Once inside the Town Hall event, attendees were handed free bottles of water and were told that they were "courtesy of the Mayor," i.e., paid for by the New York City taxpayer.

Anti-de Blasio and Anti-Margaret Chin Groups Distribute Political Literature Prior to the Event

8. In advance of the event, various candidates and political organizations were campaigning outside and handing out flyers to spectators as they stood in line and waited to proceed through a security checkpoint.

9. A number of volunteers working for Aaron Foldenauer ("Foldenauer"), a candidate for New York City Council running against Council Member Chin, were present outside the Town Hall meeting while spectators were waiting in line. Certain of Foldenauer's volunteers were handing out positive literature in support of Foldenauer (attached hereto as Exhibit B), and other of Foldenauer's volunteers were handing out both English-language and Chinese-language flyers critiquing Chin's record (attached hereto as Exhibit C).

10. Another organization that was present was the National Mobilization against SweatShops (NMASS), which had representatives handing out flyers outside the Town Hall entrance on green sheets of paper (collectively, the "NMASS Flyers"). The NMASS Flyers, which were available in different languages, critiqued Margaret Chin, and began by asserting in

large font that, “Margaret Chin Lied to the Community, Tried to Escape Responsibility—Let’s Protest!” (The NMASS Flyers are attached hereto as Exhibit D.)

11. Representatives of an organization called the “Friends of Elizabeth Street Garden” were also present outside the Town Hall event handing out flyers. This group’s representatives handed out a flyer criticizing Margaret Chin, given that this group supports preserving the Elizabeth Street Garden located in Lower Manhattan, whereas Margaret Chin has advocated for that garden to be destroyed and replaced with more housing. (The Elizabeth Street Garden Flyer is attached hereto as Exhibit E.)

12. Representatives of JustLeadershipUSA and its #CLOSErikers campaign were in attendance outside the Town Hall handing out a flyer advocating for the Rikers Island Jail Complex to be closed. (The CLOSErikers Flyer is attached hereto as Exhibit F.) This particular group has been especially critical of Mayor de Blasio. *See, e.g.*, Ex. F at 1 (“We must hold the Mayor and all NYC elected accountable”); Press Release, Statement from Leaders of the #CLOSErikers Campaign on Mayor Bill De Blasio’s Roadmap to Closing Rikers Island, available at <http://www.closerikers.org/media/news/statement-from-leaders-of-the-closerikers-campaign-on-mayor-bill-de-blasios-roadmap-to-closing-rikers-island/> (“While the Mayor spends his time assembling a task force, New Yorkers at Rikers – mostly black and brown – continue to suffer in deplorable conditions and face routine human rights abuses.”) (last visited June 28, 2017).

13. One or more representatives of a group opposed to the growth of the real estate industry—and specifically, the Real Estate Board of New York (“REBNY”)—were also present outside the Town Hall handing out flyers. de Blasio has been often criticized as being beholden to real estate developers and other real estate interests such as REBNY. (The anti-REBNY Flyer is attached hereto as Exhibit G.)

14. Sal Albanese, a candidate for Mayor who is running against de Blasio, was also present outside the entrance to the Town Hall for a period of time prior to its start, and one or more individuals affiliated with his campaign handed out flyers criticizing de Blasio.

15. Accordingly, of the hundreds of members of the public coming to attend the Town Hall, as they waited in line to enter the Town Hall, most of the attendees had several flyers in their hand or inside a bag obtained from one or more of these (or other) organizations conducting political advocacy outside the event.

16. The vast bulk of the materials distributed by the various groups outside the event were anti-Margaret Chin and/or anti-de Blasio.

Large Uniformed and Plainclothes Security Presence at this de Blasio/Chin Event
Confiscates Political Flyers from Attendees of the Town Hall Prior to Entering the Town Hall

17. A large police presence provided security for the event, including uniformed NYPD, a plainclothes security detail, and bomb-sniffing dogs.

18. As attendees entered an NYPD security tent and metal detectors, members of the Chin/de Blasio security force searched attendees' bags and confiscated any opposing political literature in their possession. In addition, members of the security force also either grabbed opposing political flyers out of attendees' hands or forced them to give up their flyers prior to entering the Town Hall.

19. Foldenauer approached the security checkpoint with several other individuals who were volunteers as part of his campaign team.

20. One of Foldenauer's staff members had one of Foldenauer's campaign signs rolled up in her purse. A member of the Chin/de Blasio security force removed it from her bag and discarded it.

21. Another of Foldenauer's staff members had several individual flyers in his bag that the campaign staffer had received from other organizations (including the Elizabeth Street Garden Flyer and the anti-REBNY flyer) in advance of the event. That same staff member also had extra literature in support of Foldenauer attached to a clipboard that was in his bag. A member of the Chin/de Blasio security force told the staffer, with Foldenauer present, that he was not allowed to take any of these flyers into the Town Hall (but that he *was* allowed to bring the clipboard inside).

22. Foldenauer also had campaign literature in his personal possession. Foldenauer and his staffer were forced to step aside from the security line in order to organize all of the literature and give it to a third staff member (who was not going inside the Town Hall) so that the literature would not go to waste. During this entire process, Foldenauer saw opposing political literature being taken from other attendees and the confiscated political literature sitting near the metal detectors.

23. Jiexi Tian, Director of Communications for Foldenauer's campaign for City Council, entered the event separately, sometime after Foldenauer entered the event. As she went through security, she had one piece of paper in her hand, a single copy of the Foldenauer anti-Chin flyer in Chinese (Exhibit C at 2). After checking her bag, the police grabbed this one page out of her hand and confiscated it.

Foldenauer Obtains Photographic and Video Evidence of the Confiscation of Political Flyers

24. After entering the Town Hall, and upon realizing the injustice of the fact that the security forces directed by Chin and de Blasio were confiscating political literature opposed to them, Foldenauer and his team began efforts to capture evidence of this activity.

25. One video depicts an NYPD officer reviewing literature to determine whether to confiscate it. <https://www.youtube.com/watch?v=RVKWIOyAAdk> (last visited June 28, 2017). Another video depicts confiscated literature sitting by a metal detector and a plainclothes officer in a blue tie confiscating literature (including one or more of the NMASS Flyers on green paper)

from an Asian woman. <https://www.youtube.com/watch?v=KRur-QvbC0&t=7s> (last visited June 28, 2017).

26. During the Town Hall, Foldenauer returned to the hallway entrance to the building, exactly next to the location of the security screening process. Foldenauer discovered a large pile of confiscated opposing political literature on the floor at that location. Pictures of this pile of confiscated literature are attached hereto as Exhibits H and I.

27. A careful examination of Exhibits H and I (in comparison with full copies of the political flyers handed out prior to the event) will show one or more copies of the NMASS Flyers (Exhibit D), Elizabeth Street Garden Flyer (Exhibit E), and the CLOSERikers Flyer (Exhibit F) as part of this large pile of confiscated literature.

After Security, Margaret Chin is Permitted to, and Distributes, Her Own Literature

28. Margaret Chin and Mayor de Blasio are close political allies. Margaret Chin was one of the first members of New York City Council to endorse Mayor de Blasio in late-2016. Politico, *City Council Members Explain Early Endorsements of de Blasio* (Dec. 20, 2016), available at <http://www.politico.com/states/new-york/city-hall/story/2016/12/de-blasio-rolls-out-council-endorsements-tk-108208> (last visited June 28, 2017).

29. Under normal circumstances, police officers would not take it upon themselves to inspect pieces of paper to determine whether they should be allowed in a public venue.

30. Given that the vast bulk of the materials distributed by the various groups outside the event were anti-Margaret Chin and/or anti-de Blasio, both Chin and de Blasio benefited enormously by using the police and other security forces to force their opponents' political literature to be thrown away, even if a small subset of the confiscated literature were supportive of either Chin or de Blasio.

31. Once inside the event, four individuals affiliated with Margaret Chin's staff were handing out Margaret Chin's own literature to attendees as they entered the Town Hall—after, of course, attendees were required to throw away all other opposing political literature. The literature that Margaret Chin was handing out consisted of a variety of handouts paid for by New York City taxpayers concerning, among other things, her accomplishments in office. Notably, Chin was distributing all of this taxpayer funded literature just months before a hotly contested election. A photograph depicting the various pieces of literature Margaret Chin distributed at the event, and after the security checkpoint, is attached hereto as Exhibit J.

The First and Fourth Amendments to the U.S. Constitution Prohibit de Blasio's and Chin's Government-Sponsored Suppression of Their Opponents' Political Views

32. Quite similar facts were at issue in *Liberty & Prosperity 1776, Inc. v. Corzine*, 720 F Supp. 2d 622 (D.N.J. 2010), which concerned the government's decision to prevent individuals from carrying signs and distributing leaflets at a state-sponsored town

hall. The Court broadly held that the government “may *not* restrict the peaceful, quiet holding of signs or distribution of literature” in a town hall meeting open to the public. *Id.* at 633 (emphasis added). The Court dismissed the government’s contention that signs and flyers posed a “security risk,” noting that the argument was “questionable, to say the least,” particularly since other flyers were allowed to be distributed at the very same meeting. *Id.* at 635. Ultimately, the Court held that there “is no justification” for the government to “exclude even peaceful, non-disruptive dissent” from a town hall meeting. *Id.* at 633. Here, not only were activists prevented from distributing flyers inside the Town Hall, but also Chin and de Blasio used government-funded police to confiscate flyers from unsuspecting citizens.

33. The U.S. Supreme Court has repeatedly emphasized that political speech “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) (holding that the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.”). “Discussion of public issues . . . are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social change desired by the people.’” *McIntyre*, 514 U.S. at 346 (citing *Roth v. United States*, 354 U.S. 476, 484 (1957) (upholding the right of a citizen to distribute political leaflets to individuals attending a public meeting). “When (government restricts) core political speech, we apply ‘exacting scrutiny,’ and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.” *Id.* at 347.

34. Courts routinely hold that “[i]t is beyond dispute that the First and Fourth Amendments protect against the seizure of campaign literature.” *Hodinka v. Del. County*, 759 F. Supp. 2d 603, 612 (E.D. Pa. 2010). The improper seizure of personal property is prohibited by the Fourth Amendment of the U.S. Constitution. *See, e.g., United States v. Place*, 462 U.S. 696, 701 (1983) (“In the ordinary case . . . a seizure of personal property [is] per se unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.”). The confiscation of political literature in particular—which is what de Blasio’s and Chin’s security forces did here—is an improper seizure under the Fourth Amendment. *Hodinka*, 759 F. Supp. 2d 603.

35. In *Rossignol v. Voorhaar*, 316 F.3d 516, 519 (4th Cir. 2003), the Court concluded that government officials who conspired to prevent the distribution of a dissenting local newspaper violated the First Amendment.

36. The Fourth Circuit’s analysis of the government’s First Amendment violation in *Rossignol* is also instructive here. *Id.* at 523, 527-28 (“This scheme [is] a classic example of the kind of suppression of political criticism which the First Amendment was intended to prohibit. . . . The incident in this case may have taken place in America, but it belongs to a society much

different and more oppressive than our own. If we were to sanction this conduct, we would point the way for other state officials to stifle public criticism of their policies and their performance.”)

The Federal Criminal Statutes Applicable to de Blasio and Chin

37. Title 18 U.S.C. Section 241 provides that where two or more individuals conspire to deprive a victim of a federally protected right, they shall be fined or imprisoned for not more than ten years, or both. Here, the evidence indicates that Chin and de Blasio, for personal and political gain, conspired to deprive the public, and their political rivals, of their First and Fourth Amendment rights accorded by the United States Constitution.

38. Title 18 U.S.C. Section 242 provides that where an individual deprives a victim of a right secured or protected by the U.S. Constitution, that individual shall be fined or imprisoned for not more than one year, or both. Here, the evidence indicates that Chin and de Blasio, for personal and political gain, acted beyond the bounds of their lawful authority by depriving the public, and their political rivals, of their First and Fourth Amendment rights accorded by the United States Constitution.

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Thank you for your attention to this matter, and please feel free to contact me at vote@aaronforcitycouncil.com should you need any additional information as you investigate this matter.

Sincerely yours,

*/s Original signed by
Aaron Foldenauer*

Aaron Foldenauer