



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 19, 2020

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio:

We write regarding the recent demonstrations in New York City and raise several civil rights concerns with respect to your enforcement of the Governor's Executive Orders 202.32 and 202.33 and New York City's Emergency Executive Orders 115 and 123. Your recent statements and actions have raised substantial concerns about New York City's commitment to evenhanded application of robust First Amendment protections. As New York City prepares to enter "Phase 2" of New York's reopening plan, we ask that you to take these concerns into consideration while the City continues to return to normal.

We understand that you have a solemn duty to protect the health and safety of New York City residents in the face of a pandemic that is unprecedented in our lifetimes. You and other leaders around the country are called on to balance multiple competing interests, to evaluate the constantly changing information available to you about COVID-19, and to make your best judgment about different possible courses of action.

We commend the actions you have recently taken to support peaceful public protest in New York City during the COVID-19 pandemic. Like the people of New York City, and all across our country, we are deeply troubled by the death of George Floyd.

The Department of Justice recognizes and eagerly enforces the principle that our Constitution requires equal treatment under the laws, without regard to race, religion, or other protected traits. We are thus gratified that, although Executive Orders 202.32, 202.33 and Emergency Executive Orders 115 and 123 prohibit all gatherings larger than 10 persons, you committed to "support and protect peaceful protest in th[e] city," June 1, 2020 Press Release, and allowed thousands of New Yorkers to exercise peacefully their First Amendment rights. Indeed, on June 14, 2020, you personally participated in these protests.

Your support for peaceful assembly and speech follows the best of our Nation's traditions. The First Amendment is incorporated against the States through the Fourteenth Amendment and provides that "Congress shall make no law * * * abridging the freedom of speech, * * * or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I. This Amendment reflects the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Snyder v. Phelps*, 562 U.S. 443, 452

(2011). Indeed, the Supreme Court has recognized that speech on public issues “is the essence of self-government.” *Id.*

The First Amendment also protects the free exercise of religion. Indeed, the First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. Amend. I. Further, the religious liberty restrictions of the First Amendment’s apply to all governments in this country, including state and local governments.

The First Amendment protects religious observers against unequal treatment. Government may not discriminate against religious gatherings compared to other nonreligious gatherings that have the same effect on the government’s public health interest, absent compelling reasons. *See Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993). Indeed, the Chief Justice of the United States recently explained that “restrictions on places of worship” may be consistent with the First Amendment when such restrictions “apply to comparable secular gatherings,” and, while state and local governments have “broad latitude,” such latitude may be respected only when it is “not exceeded.” *South Bay United Pentecostal Church v. Newsom*, 590 U.S. ___, 2020 WL 2813056 (May 29, 2020) (Roberts, C.J., concurring in denial of application for injunctive relief).

New York State and City Executive Orders have significantly restricted gatherings, including religious gatherings, in light of COVID-19. On May 21, Executive Order No. 202.32 loosened earlier restrictions, which had prohibited all non-essential gatherings, by allowing gatherings “of ten or fewer individuals for any religious service or ceremony, or for the purposes of any Memorial Day service or commemoration, provided that social distancing protocols and cleaning and disinfection protocols required by the Department of Health are adhered to.” Executive Order No. 202.33, issued the next day, modified Executive Order No. 202.32 “to permit any non-essential gathering of ten or fewer individuals, for any lawful purpose or reason.” With New York City’s Emergency Executive Order No. 123, you “incorporate[d] any and all relevant provisions of Governor Executive Order No. 202 and subsequent orders issued by the Governor of New York.” Moreover, New York City’s Emergency Executive Order 115 includes a provision directing the cancellation or postponement of “any non-essential gathering of individuals of any size for any reason.” Accordingly, the current orders prohibit the reported gatherings of thousands of people for political protest in New York City.

Media reports and public accounts have described your vigorous enforcement of these restrictions on religious gatherings in New York City. During the period in which all gatherings were banned, you reportedly sent police officers to break up numerous gatherings of the Jewish community in New York, including reported outdoor gatherings for funerals. After Executive Order No. 202.32 eased restrictions on religious gatherings, you reportedly warned, “[i]f it’s more than 10 people, the NYPD and other enforcement agencies will show up and tell people to leave. If they don’t move, if they don’t disperse, then it goes to summonses.” You continued that you “want people to take these rules very, very literally.”

In light of your support for and participation in recent protests in New York City, the message to the public from New York City’s government appears to favor certain secular gatherings and disfavor religious gatherings. As the City moves into Phase 2, the Department of Justice respectfully encourages you to reconsider your posture toward religious gatherings and, as necessary, work with Governor Cuomo to that end. We note with concern your public statement on June 2, 2020, that said that the interests of those protesting “is not the same question as the understandably aggrieved store

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owner or the devout religious person who wants to go back to services.” Concerns, as you likely know, have been raised in the faith community that New York City is acting to protect certain First Amendment expression over others, which the Constitution forbids.

We urge you to ensure that your enforcement of the Governor’s Executive Orders, Emergency Executive Order No. 123, and any subsequent COVID-19 Order, respects both the right of your residents to assemble to express their views on a diverse spectrum of topics and the right to practice their faith. We understand that protests are typically held outdoors—where the risk of COVID-19 transmission is lower—and that religious services are typically held indoors. But New York City has reportedly not limited its enforcement activities to restricting indoor religious gatherings. To selectively enforce the Order to permit gatherings of more than 10 people for political protest yet deny similar gatherings for religious exercise would raise grave concerns under the Constitution. Compliance with the First Amendment is not optional, and that Amendment protects both free exercise of religion and assembly rights.

The Department of Justice does not seek to dictate how New York City sets its enforcement priorities. But in doing so, we urge you to afford gatherings for religious exercise the same respect that you afford gatherings to exercise other First Amendment rights. Given New York City’s approach toward other First Amendment activity and its imminent entry into Phase 2, which authorizes houses of worship to operate with 25 percent capacity, we trust that New York City officials will “pause to remember their own high duty to the Constitution and to the rights it secures.” *Lukumi*, 508 U.S. at 547. We are gratified that you have done so with respect to the freedoms of speech and assembly, and we urge you to do the same with the freedom of religion.

Should you wish to discuss further, please reach out to me regarding any efforts to appropriate protection for the exercise of First Amendment rights, including the specific steps you plan to undertake and the timeline for those steps.

Thank you for your kind attention to this matter.

Sincerely,

Eric S. Dreiband

06/19/2020

Eric S. Dreiband

Assistant Attorney General

Civil Rights Division